

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

M E T R O P O L I T A N C O U N C I L
Suite 300 Metro Square Building, Saint Paul, Minnesota 55101

RESOLUTION NO. 77-66

RESOLUTION ADOPTING RULES GOVERNING THE REVIEW OF PROPOSED MATTERS OF METROPOLITAN SIGNIFICANCE

WHEREAS, the Metropolitan Council, pursuant to authority contained in Minnesota Statutes, Section 473.173, is required to adopt regulations establishing standards and guidelines for determining whether proposed matters are of metropolitan significance and establishing procedures for the review of proposed matters required to be considered and reviewed by the Council; and

WHEREAS, the Metropolitan Council held a public hearing before a Hearing Examiner, Howard L. Kaibel, Jr. of the State Office of Hearing Examiners, to consider proposed rules regarding the above on the 16th day of March, 1977, at 1:30 P.M. and reconvened at 7:30 P.M. in the Metropolitan Council Chambers, 300 Metro Square Building, Saint Paul, Minnesota, 55101, after proper notice was served upon interested persons, state agencies and local governmental units as required by Minnesota Statutes Chapter 15 and regulations issued pursuant thereto and Minnesota Statutes, Section 473.173; and

WHEREAS, the Metropolitan Council has performed all the reqxirements imposed by said section and Minnesota Statutes Chapter 15 which are necessary for the purpose of adopting said regulations; and

WHEREAS, the Metropolitan Land Use Advisory Committee, the Physical Development Committee, and the Metropolitan Council have reviewed and considered all of the testimony and evidence adduced in connection with such hearing and the records, files and proceedings herein, including the Report of the Hearing Examiner prepared in response to the public hearing held to consider the adoption of these regulations.

NOW, THEREFORE, BE IT RESOLVED by the Metropolitan Council:

1. That the rules proposed by the Metropolitan Council governing the review of proposed matters of metropolitan significance, identified as MC 1-11, attached hereto and made a part hereof, which were considered at the public hearing held on March 16, 1977, as modified by the changes set forth in the memorandum to the Physical Development Committee of September 12, 1977, and the report of the Physical Development Committee to the Metropolitan Council of October 25, 1977, which report and memorandum are attached hereto and made a part hereof, are hereby approved and adopted pursuant to authority contained in Minnesota Statutes, Section 473.173.

2. That the rules, as modified by the above referenced changes, are found to be reasonable, necessary and supported by the evidence, testimony, records, files and proceedings relating to the proposed rules.

3. That the Findings of Fact and Conclusions attached hereto and incorporated herein are hereby approved and adopted in connection with the adoption of these rules.

4. That the Chairman of the Metropolitan Council be and hereby is authorized to sign an order adopting these rules and to transmit these rules to the State Office of Hearing Examiners and to the Attorney General of the State of Minnesota and thereafter to cause the publication of these rules in the State Register and to do all such things as may be necessary in order to make these rules effective.

Adopted this 3rd day of November, 1977.

METROPOLITAN COUNCIL

By John Boland
John Boland, Chairman

By Darryll Olson
Darryll Olson, Secretary

363

Attorney General

Richard Nowlan
Attorney at Law
c/o Metropolitan Council
300 Metro Square Building

December 19, 197

Michael B. Miller
Special Assistant
Attorney General

296-1288

Metropolitan Significance Rules

The above-captioned rules are returned herewith for the following revisions:

MC 4.C.: "consideration shall be given" is somewhat vague; "a decision shall be based on the following factors" is clearer.

MC 10.L.: The first sentence of this rule is duplicative of statute and should be deleted.

MC 11.A.9.: the word "miles" apparently should be "mile".

MBM/sr

Metropolitan Council
OF THE TWIN CITIES AREA

300 Metro Square Building, 7th Street and Robert Street, Saint Paul, Minnesota 55101 Area 612, 291-6359

December 19, 1977

Mr. Mike Miller
Special Assistant Attorney General
G-19 K
State Administration Building
St. Paul, Minn. 55155

Dear Mr. Miller:

Pursuant to your memorandum of December 19, 1977, the revisions to the Metropolitan Significance Rules submitted to you on November 16, 1977, have been made. Specifically: miles found in MC 11(A)(9) has been changed to mile; the first sentence of MC 10, L, has been deleted; and the second sentence of MC 4, C, has been revised to read as follows:

> "The existence of an emergency matter shall be determined on the basis of the probable consequences of the alleged emergency, the degree to which the alleged emergency circumstances were reasonably foreseeable, the availability of alternative means of alleviating the emergency, and the probable effect of the proposed matter in preventing or mitigating the emergency circumstances."

No other changes have been made to the Rules submitted to you for review.

Pursuant to Metropolitan Council Resolution No. 77-66, I resubmit the Metropolitan Significance Rules, as changed per your requirement for action by your office pursuant to Minnesota Statutes, §15.0412, subdivision 4.

Very truly yours,

John Boland

John Boland
Chairman

JB/cy
Enclosure

Metropolitan Council
OF THE TWIN CITIES AREA

300 Metro Square Building, 7th Street and Robert Street, Saint Paul, Minnesota 55101 Area 612, 291-6359

November 16, 1977

Mike Miller
Special Assistant Attorney General
G 19 K
State Administration Building
St. Paul, MN 55155

Dear Mr. Miller:

Enclosed you will find originals and copies of the rule materials required in connection with the Attorney General's review of proposed rules pursuant to Minn. Stat. Section 15.0412, subd. 4.

The above material is being submitted to you pursuant to authorization contained in the resolution adopting these rules and in accordance with the requirement established by Minn. Stat. Section 473.173 and Section 15.0412, subd. 4, as well as rules of the Attorney General 301-325. It is requested that you review the material and take the action required pursuant to the above authority.

If additional information or material is required, please contact Dick Nowlin or John Rutford of the Metropolitan Council staff.

Very truly yours,

John Boland

John Boland
Chairman

JB/cy

STATE OF MINNESOTA
COUNTY OF RAMSEY
METROPOLITAN COUNCIL

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE METROPOLITAN COUNCIL)
GOVERNING THE REVIEW OF PROPOSED MATTERS) STATEMENT OF COMPLIANCE
OF METROPOLITAN SIGNIFICANCE PURSUANT TO) WITH RULEMAKING PROCEDURES
LAWS OF MINNESOTA, 1976, CHAPTER 321.)

I, Staff Counsel for the Metropolitan Council, do hereby declare that I have examined the proposed rules referenced above and related documents, and that based on them and my personal familiarity with the applicable rulemaking regulations and procedures, all applicable requirements have been followed in connection with the preparation and adoption of these rules.

In connection with the preparation and adoption of these rules, the provisions of Minn. Stat. §473.173 and Chapter 15 have been complied with in accordance with the following statutory provision:

> Subd. 5. The regulations and any major alteration or amendments thereto shall be developed and promulgated by the Council in accordance with the provisions of this section, and to the extent not inconsistent or at variance with this section, in accordance with the Administrative Procedures Act, Chapter 15, and regulations pursuant thereto.... (Minn. Stat. §473.173).

Section 473.173, subd. 5, has been interpreted by this office as establishing a slightly different notice requirement in connection with these proposed rules and the development of a summary statement of the basis for the composition of the proposed rules rather than a Statement of Need.

In the preparation and adoption of these rules, the Metropolitan Council has assumed that the September 1, 1976, completion date contained in Minn. Stat. §473.173, subd. 2, is directory rather

than mandatory provision, based upon my advice as well as Finding of Fact No. 5 of the report of the Hearing Examiner, relating to the July 19, 1976, public hearing regarding these proposed rules, a copy of which is attached hereto.

Forrest D. Nowlin, Jr.
Staff Counsel
Metropolitan Council
300 Metro Square Building
St. Paul, MN 55101

Exhibit I

METROPOLITAN COUNCIL
Suite 300 Metro Square Building, St. Paul, Minn. 55101

RECEIVED
FEB 18 1977
OFFICE OF HEARING EXAMINERS

RESOLUTION NO. 77-65

RESOLUTION CALLING PUBLIC HEARING ON PROPOSED METROPOLITAN SIGNIFICANCE REGULATIONS

WHEREAS, the Metropolitan Council is directed by Minnesota Statutes, Section 473.171, as amended by Laws 1976, Chapter 321, to prepare and adopt regulations establishing standards, guidelines and procedures for determining whether any proposed matter is of metropolitan significance and establishing a procedure for the review and final determination on such matters; and

WHEREAS, the Metropolitan Significance Regulations may be adopted only following a public hearing held for the purpose of considering the developed regulations and receiving comments and recommendations thereon; and

WHEREAS, notice of said hearing must be published in the State Register, appropriate newspapers of general circulation in the metropolitan area and mailed to all persons registered with the Secretary of State, appropriate state and regional agencies, and all cities, counties, towns, school districts and watershed districts within the metropolitan area.

NOW THEREFORE, BE IT RESOLVED:

1. That a public hearing to consider the developed regulations and receive comments and recommendations thereon, shall be held on Wednesday, March 16, 1977, commencing at 1:30 P.M. reconvening at 7:30 P.M., in the Metropolitan Council Chambers, 300 Metro Square Building, St. Paul, Minnesota 55101;

2. That the Chairman of the Council shall prepare, publish, and mail notice of said hearing and do such other acts in connection therewith as are necessary for the purpose of complying with Minn. Stat. Section 473.17, as amended to Minn. Stat. Chapter 15;

3. That notice of hearing be published in the following appropriate newspapers:

   St. Paul Pioneer Press and Dispatch; Minneapolis Star and Tribune, St. Paul Legal Ledger; Finance and Commerce; Lillie Newspapers Ramsey County Review; Anoka County Union; Washington County Bulletin, Dakota County Tribune; Shakopee Valley News; Carver County News.

4. That notice of hearing be mailed to the following appropriate state and regional agencies:

   State Planning Agency; Environmental Quality Council; Minnesota Municipal Board; Department of Transportation, including Department of Highways and Aeronautics; Energy Commission, Department of Natural Resources; Department of Agriculture; Pollution Control Agency; University of Minneosta; Department of Education; Department of Health; Department of Commerce; Public Service Commission.

Metropolitan Transit Commission; Metropolitan Waste Control Commission; Metropolitan Parks Commission; Metropolitan Airports Commission; Metropolitan Mosquito Control District.

Adopted this 13th day of January, 1977.

METROPOLITAN COUNCIL

By John Boland
John Boland, Chairman

By _____
Darryll Olson, Secretary

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EXAMINERS

METROPOLITAN COUNCIL

IN THE MATTER OF THE PROPOSED ADOPTION
OF RULES OF THE METROPOLITAN COUNCIL
GOVERNING THE REVIEW OF PROPOSED
MATTERS OF METROPOLITAN SIGNIFICANCE

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Metropolitan Council Chambers, 300 Metro Square Building, 7th and Robert Streets, St. Paul, on March 16, 1977, commencing at 1:30 p.m., reconvening at 7:30 p.m., and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Mr. Howard Kaibel, State Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104, either before the hearing or within 20 days after the close of the hearing.

The Metropolitan Council is authorized and required by Minnesota Statutes, Section 473.171 as amended by Laws 1976, Chapter 321, Section 2, to adopt regulations dealing with proposed matters of Metropolitan Significance. The proposed regulations would establish standards by which the Council will determine which public and private land use and development activities are of Metropolitan Significance and a process for making that determination and for establishing a metropolitan remedy. Metropolitan Significance would be determined by: (1) The potential effect an action will have on the existing or planned metropolitan sewer, transportation (including highways and transit), parks and open space, and airports facilities and systems, or (2) The potential effect of an action on a local governmental unit other than the one in which the proposed matter will be sited. For example, actions involving residential construction, sited outside the existing metropolitan sewer or transportation system, might be reviewed to determine whether they would result in a premature expansion of that system. Actions within portions of the metropolitan area currently served by metropolitan systems as well, might also be reviewed to determine whether they will cause a system expansion, overutilization or relocation. A Metropolitan Significance review may be initiated only by a local governmental unit, independent commission, state agency, metropolitan commission, the Metropolitan Council, or by a petition signed by five thousand adult residents of the metropolitan area or a majority of the voting residents of an affected local governmental unit. At the conclusion of a Metropolitan Significance review, the statute and the proposed regulations authorize the Council to suspend further construction or development on a proposed matter for a period not to exceed one year or direct amendment of a metropolitan system plan if the proposal is found to be of metropolitan significance.

The total estimated cost to all local public bodies in the metropolitan area in implementing the metropolitan significance regulations is not expected to exceed $100,000 in either of the two years following their adoption. Such costs, if any, will be incurred only if a local body determines to initiate or actively participate in a metropolitan significance review. The regulations contain no provision allowing the Metropolitan Council to allocate costs to and require reimbursement from local bodies.

Copies of the proposed rules will be available on February 7, 1977, at the Council offices, and free copies may be obtained by writing to the Metropolitan Council, 300 Metro Square Building, St. Paul, 55101, or by calling 291-6464. Additional copies will be available at the door on the date of the hearing. A written summary describing the basis for the composition of the draft regulations and a "Statement of Evidence" outlining the testimony the Council will be introducing will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. Section 10A.01, Subd. 11, any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

Persons interested in testifying at the hearing may register in advance to telephoning the Metropolitan Council at 291-6482. Those who register first will be scheduled to speak first.

John Boland, Chairman

Dated: February 1, 1977

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EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed Adoption of Rules by the Metropolitan Council Governing the review of proposed matters of Metropolitan Significance

I hereby certify that the attached 60 8 labels & 1 sheet constitute the complete list of persons, associations, and other interested groups who as of 3:30 o'clock P.M., this 7th day of February, 1977, have requested pursuant to Minn. Stat. Section 15.0412, that their names be registered with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules.

Secretary of State

Joan Anderson Growe

By Cecil Dixon

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EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

AFFIDAVIT

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES BY THE
METROPOLITAN COUNCIL GOVERNING
THE REVIEW OF PROPOSED MATTERS
OF METROPOLITAN SIGNIFICANCE

JOHN RUTFORD, being duly sworn on oath, deposes and says:

1) That he is an employee of the Metropolitan Council, a political subdivision of the State of Minnesota;

2) That on the 7th day of February, 1977, he went to the Secretary of State's office for the State of Minnesota and requested a current complete list of all persons, associations, and other interested groups who had registered their names with the Secretary of State for the purpose of receiving notice of public hearing relating to the promulgation of rules pursuant to Minn. Stat. Section 15.0412;

3) That on the 7th day of February, 1977, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

John Rutford
John Rutford

Subscribed and sworn to before me
this 17 day of February, 1977.

Eugene C. Stevens
Notary Public, ~~Ramsey~~ Anoka County, Minn.
My Commission expires 8-2-81.

EUGENE C. STEVENS
NOTARY PUBLIC - MINNESOTA
ANOKA COUNTY
MY COMMISSION EXPIRES AUG. 2, 1981

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EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

AFFIDAVIT

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES BY THE METROPOLITAN COUNCIL GOVERNING THE REVIEW OF PROPOSED MATTERS OF METROPOLITAN SIGNIFICANCE

AFFIDAVIT OF MAILING

MICHAEL KUEHN, being first duly sworn, deposes and says:

That on the 11th day of February, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to a-1 persons and associations at the addresses listed on the attached Certificate of Secretary of State and that on the 8th day of February, 1977, at the City of St. Paul, he served the attached Notice of Hearing by depositing in the United States mail at said City a true and correct copy thereof, properly enveloped, to the state and regional agencies listed on the attached resolution, and all cities, counties, towns, school districts, and watershed districts within the Metropolitan Area.

Michael Kuehn

Michael Kuehn

Subscribed and sworn to before me this 10 day of February, 1977.

Eugene C. Stevens

Notary Public, Anoka County, Minn.
My Commission Expires 8-2-81.

EUGENE C. STEVENS
NOTARY PUBLIC - MINNESOTA
ANOKA COUNTY
MY COMMISSION EXPIRES AUG. 2, 1981

RECEIVED
FEB 18 1977
OFFICE OF HEARING EXAMINERS

METROPOLITAN COUNCIL
Suite 300 Metro Square Building, Saint Paul, Minnesota 55101

IN THE MATTER OF PROPOSED RULES AND)
REGULATIONS FOR THE REVIEW OF MATTERS) STATEMENT OF EVIDENCE
ALLEGED TO BE OF METROPOLITAN SIGNIFICANCE)

General Summary

The Metropolitan Council will present fact, argument and evidence to establish the reasonableness of the proposed rules, why the various provisions contained have been written as they are, and the consistency of the rules with statutory authorization. In general, the Council will present information relating to: the participatory process which has occurred in the drafting of these proposed rules from 1974 to the present, including specific reference to certain of the various language changes which have been incorporated in response to the comments received during the entire development period; the system effect standards and the approach embodied in those standards; and the basis for and reasonableness of the approach incorporated in drafting particular provisions of the rules. Information presented at the hearing will parallel and amplify the statement and argument contained in the Council document entitled "Basis for the Composition of the Draft Metropolitan Significance Regulations".

The Council will present information to establish the over-all similarity of the metropolitan significance review mechanism with other existing or proposed state land use and environmental review mechanisms including the Development of Regional Impact (DRI) approach proposed in the American Law Institute's Model Land Development Code, the DRI mechanism in effect in the State of Florida, and the somewhat similar state-wide land use review mechanism in force and effect in the State of Vermont. The similarity between the decisional approach embodied in the Minnesota Environmental Quality Council's regulations relating to the preparation of environmental impact statements will also be pointed out and expert testimony will be elicited with regard to the general consistency of the approach embodied in the Metropolitan Significance Regulations with other land use review proposals being considered throughout the nation.

Information will also be introduced regarding the phrase "substantial effect" used throughout MC 2, which will show that the use of this phrase as defined is reasonable in light of its combination with more specific determinations and delineations contained in metropolitan system plans and in association with what is primarily a land use and development review mechanism.

Information will also be introduced with regard to the need for and reasonableness of MC 2, A, 8, as well as the potential operation of the standard. Information with regard to the costs associated with the premature extension of metropolitan systems will be introduced with reference to the report of the National Council on Environmental Quality entitled "The Cost of Sprawl", the report of the Citizens League entitled "Growth Without Sprawl", as well as information and data prepared in connection with the Council's De-

velopment Framework chapter of the Metropolitan Development Guide. Information will also be introduced to show the definitiveness of that standard as it is now drafted with respect to its operation on the land and the incidence of "paper plats" throughout the area potentially affected by this standard as well as practical and legal considerations underlying the inclusion of development at this stage within the ambit of this standard.

Information will be introduced with regard to the effect on operation, as well as consistency of the rules provisions with local comprehensive plans and the provisions contained in the Metropolitan Land Planning Act. In addition, information will be introduced with regard to the initiation, commencement and review process prescribed by the rules as well as specific discussion as to the reason for drafting the provisions as they are. An analysis and discussion of the procedural devices and mechanisms set forth in MC 9 and 10 as well as the definitions contained in MC 11 will be offered.

Names of Agency Personnel and Others who will testify at the hearing on behalf of the agency

The following Council employees will be present at the public hearing at various times for the purpose of offering testimony and responding to questions with regard to the provisions contained in the rules:

> John Rutford; Dick Nowlin; Steve Alderson; Ghaleb Abdul-Rahmen; Maurice Dorton; Robert Nethercut; Karl Burandt; Chauncey Case; Sandy Dean, Jim Schoettler; Bob Davis; Oliver Byrum

In addition, other agency employees may appear as and when requested.

All members of the Metropolitan Council will be invited to attend the public hearing and to present information, argument and opinion with regard to the rules as well as to respond to questions raised by others. In particular, the Council proposes to offer the testimony of Metropolitan Council Chairman John Boland and the Chairman of the Council's Physical Development Committee, Robert Hoffman.

Members of the Advisory Metropolitan Land Use Committee will also be invited to attend and present testimony with regard to the proposed rules. In particular, the Chairman of the Committee, Ms. Donna Stauffer, and the Chairperson of the Committee's Metro Significance Subcommittee, Ms. Gayle Kincannon, may be asked to present testimony with regard to the proposed regulations.

Personnel of the Metropolitan Transit Commission, the Metropolitan Waste Control Commission, the Metropolitan Parks and Open Space Commission, and the Metropolitan Airports Commission will also be asked to be present at the hearing and may present testimony with regard to information and material within the expertise of each of those commissions, including information dealing with typical development effects and the differing impact of proposed matters on the various systems under their control due to existing location and capacity of the metropolitan systems.

Evidentiary materials to be introduced at the public hearing

We intend to introduce the following documentary evidence:

The entire record from the Metropolitan Significance Rulemaking Hearing held on Monday, July 19, 1976, including materials submitted prior to the close of the record and the hearing examiner's report and recommendation to the Metropolitan Council dated September 3, 1976.

All adopted Metropolitan Development Guide chapters and policy plans, including specifically the Development Framework chapter of the Metropolitan Development Guide, the policy plans for the Metropolitan Waste Control Commission, the Metropolitan Transit Commission, and the Metropolitan Parks and Open Space Commission, as well as the Airport Development Guide Chapter.

All statutory and regulatory provisions cited in the proposed rules have been relied upon in the development of the rules and will be available for consideration at the hearing. In addition, provisions contained in Minnesota Statutes Chapter 473 relating to the Metropolitan Council and the role and function of the metropolitan commissions and the Metropolitan Airports Commission have been relied upon as well as provisions contained in Laws 1976, Chapter 127 and 321. Numerous state statutory and regulatory provisions relating to the review of various kinds of actions have been analyzed and relied on in the formulation of these regulations. In particular, the Administrative Procedures Act and regulations of the hearing examiner relating to rulemaking and contested case procedures, the regulations of the Environmental Quality Council relating to the Critical Areas Act, power plant citing, environmental impact statements and environmental impact review, regulations of the Pollution Control Agency relating to permit authority over the establishment of sewage treatment and disposal systems. In addition, regulations of the State of Florida regarding development of regional impact have been considered as well as regulations of the State of Vermont for the review of state-wide development proposals. The Florida and Vermont materials are available for review at the Council offices.

Provisions contained in Davis' Treatus on Administrative Law have been relied on and utilized in the formulation of these regulations and may be raised and introduced in connection with the public hearing. In particular, Volume IV Davis, Administrative Law, Section 29.02 et sec, relating to the meaning of substantial evidence has been relied on and may be referenced in discussion at the public hearing. Volume 40, Words and Phrases, pages 757-779 and 809-829, have been considered in the formulation of the definition of substantial and substantial effect and may be considered and relied on at the public hearing.

Case law and discussion contained in the Development Framework data report entitled "Legal Study of the Control of Urban Sprawl in the Minneapolis-St. Paul Metropolitan Region", which is attached hereto and made a part hereof, has been relied on in connection with the formulation of these rules and may be referenced at the public hearing. Three Metropolitan Council staff prepared entitled

"Existing Laws Relating to the Formulation of Metropolitan Significance" (August 6, 1974), "Background to Metropolitan Significance" (July 23, 1974), and "Metropolitan Significance Revision (October 15, 1976) may be introduced as evidence and are available for review at the Council's offices. Minnesota Case Law relating to the doctrine of vested rights has been relied on and most probably will be discussed at the public hearing in connection with MC 4, E, including Hawkinson v. County of Itasca, ___ Minn. ___, 231 N.W.2d 279 (1975); Almquist v. Town of Marshan, ___ Minn. ___, 245 N.W.2d 819 (1976).

Other non-agency personnel and expert witnesses to be called by the Metropolitan Council

David Graven - attorney and former Council member - historical aspects of Metropolitan Significance, reasonableness of regulations as developed and discussion of function of the Metropolitan Council.

Ray Dietrich - employee, Soil Conservation Service, U.S. Department of Agriculture - submission of report which he prepared regarding septic tanks and groundwater pollution in the metropolitan area as well as discussion of that report and the connection between that report and a premature extension of the metropolitan sewage interceptor system.

Allen Freeman - professor, University of Minnesota Law School - discussion of rules in relation to state and national review and other land use mechanisms; testimony regarding certain specific legal issues relating to rules; discussion of rules from a procedural process standpoint.

Rollin Crawford, President, and Ted Kolderie, Executive Director, of the Citizens League - regarding material contained in report entitled "Growth Without Sprawl", economic analysis in relation to local governmental units and the metropolitan area, economic posture and position of the area in relation to others.

Representative James Casserly - discussion of legislative involvement in connection with Metropolitan Significance Regulations, over-all discussion of rules as proposed in relation to statutory authorization and legislative history.

Mr. Jerry Barfus, former Councilman, City of Dayton - effect of Metropolitan Significance Regulations at local level, pattern of land use and development in the absence of metropolitan significance rules, incidence of paper plats.

Dated: February 18, 1977

FORREST D. NOWLIN, JR.
Staff Counsel

METROPOLITAN COUNCIL
Suite 300 Metro Square Building, St. Paul, Minnesota 55101
February 17, 1977

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EXAMINERS

BASIS FOR THE COMPOSITION OF THE DRAFT METROPOLITAN SIGNIFICANCE REGULATIONS

BACKGROUND

There is a long history associated with the concept of "metropolitan significance." The Metropolitan Council and the Minnesota Legislature have been aware virtually since the Council's inception that some matters are of state concern, some matters are of local concern, and some matters are regional in nature and have a regional effect. The American Law Institute's Model Land Development Code stands as an example of a similar recognition in other parts of the nation.

The legislative recognition that some metropolitan area activities posed such significant effects on metropolitan development that they merit special review first appeared in direction that the Metropolitan Council prepare a comprehensive development guide which shall "recognize and encompass physical, social, or 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." In addition the Council was instructed to review long term comprehensive plans of each independent commission, board, or agency prepared for its operation development within the metropolitan area, but only if such plan is determined by the Council to have an area-wide effect, a multi-community effect, or to have a substantial effect on metropolitan development." (Minn. Laws, 1967, Section 6, Subdivisions 5 and 6)

Early request for review from local governments and affected individuals involved mobile home parks, gravel pit operations, coal handling trans-shipment terminals, and domed stadiums. Some matters were apparently local in effect, but others seem more "significant"; particularly those matters which were larger in scope or unique facilities.

Largely due to a lack of standards upon which to judge "metropolitan significance" the Council's treatment of matters alleged to be of metropolitan significance was not entirely consistent. One threat of consistency, however, related to the Council's study of affect of the proposed matter on existing or planned metropolitan area-wide, or inter community public facilities.

The Council's treatment of two large-scale and highly publicized cases; the Pigs Eye Lake Coal Terminal and the Minneapolis Domed Stadium, renewed the legislature's interest in establishing a set of definitive standards by which the metropolitan significance review could be conducted. In addition a remedy; a one year postponement of the proposed matter, was fashioned. Thus, the legislature in _____ amended the Council Act to require the Metropolitan Council to prepare and submit to the legislature for approval, regulations to be used to identify and to review matters of "metropolitan significance."

The Metropolitan Council and an advisory committee appointed to assist it in the preparation of the regulations soon discovered that a number of alternative methods of defining metropolitan significance were available. Metropolitan significance have been defined by preparing a list of specific activities to review. After consideration, it was concluded that an activity which might be significant in one portion of the metropolitan area may be of less significance somewhere else in the region. In addition, defining a matter by preparing a list suffers the inherent defect of possible omission of a matter which perhaps was socially, technologically, or physically inconceivable at the time the list was prepared. A second approach is to define metropolitan significance in terms of numbers; a generation of so many cars, people, or gallons of sewage can be of metropolitan significance. This approach, too, suffers the shortcoming that it is not locationally specific. While a certain number of people, cars, or gallons may be significant in one area, it may not be significant in another portion of the region. A third approach would be to rely upon a case by case evaluation of each proposed matter expanding the common law doctrine that no person has a right to carry on an activity which poses a nuisance to a neighbor, to a community level. This approach is unattractive, because there are no definite standards. A lack of specific standards generates too much uncertainty for those potentially regulated.

Over a period of time, the Council, advisory committee, and others involved came to realize the primary Metropolitan interest was with protecting and ensuring the utilization of certain metropolitan-wide facilities including public sewer interceptors and treatment plants, limited access freeways, the regional park system, and the metropolitan airports system. Since its formation in 1967, the Council has formulated and adopted a number of long-range policies directed toward guiding the development of the metropolitan area in such a manner as to maximize the return on public and private investments made in the aforementioned metropolitan systems. Clearly, activities which have a severe impact on this metropolitan infrastructure have some sort of significance metropolitan wide. For this reason, in February of 1975, the advisors committee adopted inter-alia the following recommendations:

3. That metropolitan significance be defined as any project that reaches or exceeds the capacity of one of those metropolitan systems defined by the legislature or the Metropolitan Council.

4. That if a municipality feels that a proposed matter located in another municipality has an adverse effect on it or violates the metropolitan system, that it can appeal to the Metropolitan Council who shall respond within 30 days as to whether or not the project has reached the capacity of the system;

The Committee then proceeded to draft regulations based on these principles. It soon became apparent that some sort of numerical threshold was necessary to exclude those matters which might have a significant impact on some minor portion of the metropolitan system, but no significant impact metropolitan wide. Essentially, the problem was to cull out those projects having only a localized effect. The regulations prepared by the advisory committee and adopted on April 10, 1975, used the combination of a fairly high numerical threshold relating to a metropolitan system coupled with a finding that the proposed matter would have a substantial effect generally on the function, size, or plans for a metropolitan facility.

The regulations were submitted to the 1975 legislature for its approval. The legislature completed its business in 1975 without acting upon the proposed regulations. In 1976, the legislature required the Metropolitan Council to adopt, under the Administrative Procedures Act and put into effect by September 1, 1976, regulations establishing standards, guidelines, and procedures for determining whether any proposed matter is of metropolitan significance and establishing a procedure for their view of and final determination on such matters. In 1976, the House of Representatives closely reviewed the 1975 draft and factors deemed relevant for consideration in determining metropolitan significance, and enacted new legislation which, with minor alterations, included among others the following factors first adopted by the legislature in 1974:

1. The impact a proposed matter will have on the orderly, economic development, public and private, of the metropolitan area and its consistency with the metropolitan development guide;

2. The relationship a proposed matter will have to the policy statement goals, standards, programs, and other applicable provisions of the development guide;

3. The impact a proposed matter will have on policy plans adopted by the Council and on the development programs and functions performed and to be performed by a Metropolitan commission;

4. The functions of municipal governments in respect to control of land use as provided for under the municiapl planning act.

The Council and a newly appointed advisory committee soon set to work revising the 1975 regulations in light of the 1976 legislation. In July of 1976 a hearing was held before a hearing examiner appointed by the State Office of Hearing Examiners on the 1976 draft of the proposed metropolitan significance regulations. The hearing continued until all persons were afforded an opportunity to present testimony. The hearing record was closed on August 9, 1976, after allowing 20 days for submission of written comments. Following consideration of all evidence, records, files, and proceedings, the hearing examiner issued his findings of facts and conclusions and recommendations. The hearing examiner concluded that while the basic approach taken was sound and was a major step forward in the long struggle to define "metropolitan significance," the rules when taken as a whole needed a number of revisions to meet specific comments of the hearing examiner. The hearing examiner also concluded that once revisions were made, the revisions would constitute a substantial change, such that due process and procedural fairness to all involved would require that a new hearing and notice be afforded the public. The proposed regulations have been revised by the advisory committee and the Council in accordance with the hearing examiner's recommendation, and the hearing scheduled.

Approach to 1976 Regulations

These regulations for the review of matters of metropolitan significance are drafted in fulfillment of the legislative requirement to adopt and put into effect regulations establishing standards, guidelines and procedures for determining whether any proposed matter is of metropolitan significance and establishing a procedure for the review of and final determination on such matters.

The Development Framework Chapter of the Metropolitan Development Guide is a compilation of policy statements, goals, standards, programs, and maps prescribing guides for an orderly and economic development, public and private, of the metropolitan area.

The purpose of the Metropolitan Significance Regulations and the Development Framework are essentially the same and the Metropolitan Significance Regulations are designed to be one of the implementation devices for the Development Framework.

The Development Framework Chapter is the framework for other chapters of the Metropolitan Development Guide and for the policy plans for metropolitan sewer, transportation, airports, and park systems. It is a guide to local units of government that make development decisions affected by metropolitan systems, and it will aid in directing the use of state and federal programs in the metropolitan area. Much more specific policy statements relating to each of these systems is included in the separate system guides. Since its formation in 1967, the Metropolitan Council has been involved in a wide variety of issues, including sewers, parks, highways, transit, airports, and local development plans. As a result of this involvement, the Council has concluded that a long-range regional growth policy is needed to effectively coordinate the various areas of public investment. A growth policy is needed by the Council, local governmental units, and the private sector. The Development Framework is designed to provide long-range policy direction for guiding growth and for making public and private investment decisions.

The principal purpose of the Development Framework is to preserve and improve the quality of life enjoyed by metropolitan residents by guiding the pattern of the region's development. This includes all aspects of metropolitan life -- social, economic, governmental, and environmental. The area is facing several potentially serious problems. Among these are shortages of reasonably priced housing, spiraling public facility costs, an energy shortage, pollution, increasing crime, and neighborhood deterioration. Many of the area's problems are related to its growth rate and patter of development.

The Metropolitan Council expects the population of the area to increase by 26 percent or 533,000 persons between 1974 and 1990. Approximately 380,000 new housing units and 40,000 new jobs will be needed to support this growth. The aim of the Development Framework is to accommodate the expected growth rationally and economically. Less regional growth than is expected would not reduce the need to plan for orderly development and would increase the importance of not unnecessarily providing expensive public services to large sparsely developed areas.

Guiding growth will ensure cost efficient expenditure of funds for additional public facilities. It is estimated that by guiding growth the MA could save up to approximately $2 Billion in expenditures on public facilities. This estimate is based upon the assumption that continued scattered growth would spread out over a 1,000 square mile area between 1970 and 1990 and would create a need for an expansive skeletal system of roads, water, sewer, and drainage facilities. Because the region probably could not afford them, it is unlikely that all of these facilities would actually be built if scattered growth continued. They would be needed, however, and the region would pay a price to go without them in increased traffic hazard and congestion, water pollution, and flood damage.

The Development Framework is being used by the Council to determine priorities for metropolitan public investments. The metropolitan systems -- highways, regional parks, airports, mass transit and water pollution control are closely related to the development of the region. A plan is needed to ensure that the metropolitan systems and the local public supporting systems are designed to serve overall social, economic, and development objectives rather than single-purpose objectives. This has led the Metropolitan Council to delineate an Urban Service Area and a Rural Service Area. Metropolitan investments that encourage or serve urban development will be made only in the Urban Service Area; investments that maintain rural service standards would be made in the Rural Service Area.

The preceding needs of the Metropolitan Area were the basis for determining the policy direction of the Development Framework, which in turn has been utilized in devloping these rules. The conclusions adopted by the Metropolitan Council that have a relationship to these regulations are:

1) A guided growth policy is needed in the Metropolitan Area. Urban development should be guided into an Urban Service Area, including Freestanding Growth Centers, where urban services such as sewers, roads, transit and parks are or will be provided. The remainder of the Metropolitan Area should be considered a Rural Service Area in which agriculture should be the primary land use. These areas are shown on the Development Framework Plan Map. The metropolitan systems such as sewers, highways, and parks in existence and planned can accommodate the forecasted growth.

2) The Urban Service Area, including the Freestanding Growth Centers, has enough land to accommodate all projected population and economic growth in the region past 1990 at prevailing densities after all fragile environmental features are protected. These environmental features include lakeshores, river banks, floodplains, wetlands and steep slopes. The Urban Service Area should be expanded where needed between 1975 and 1990 to permit a broad choice of living and working environments in urban, suburban, and rural town surroundings.

3) Development within the Urban Service Area should be planned to achieve continued growth in the Minneapolis and St. Paul downtowns, maintenance and rehabilitation of fully developed communities, orderly development of the urban fringe, and moderate growth in Freestanding Growth Centers. In the Rural Service Area, regions for commercial agriculture should be designated and preserved; development should be allowed only in small towns in which public services are adequate or in regions for general rural use where on-site sewage treatment systems can be effective and where public services are adequate.

4) Large-scale employment, shopping, and commercial service facilities should be developed in clusters such as major diversified centers. Such centers are generally more convenient to the population and make more efficient use of the transportation system. The following types of regional centers should be encouraged in the locations shown in Figure 5.

   a) The Minneapolis and St. Paul downtowns will remain attractive locations for the financial community, corporate headquarters, a large retail trade business cultural activities, medical services, and government offices. Their function as living centers should be encouraged.

   b) Major diversified centers should be created by clustering regional scale shopping and service centers, entertainment, office buildings, restaurants, educational and medical facilities, and high density housing. Major diversified centers should serve a sub-regional population of about 200,000 and be convenient to the metropolitan transportation network.

c) Other major centers, such as large industrial and office parks and large educational and entertainment complexes, should locate within the Urban Service Area near the freeway system or other major highways.

4) Investments in metropolitan systems will be made that encourage urban development within the Urban Service Area and agriculture in the Rural Service Area.

5) Reinvestment required for replacement and maintenance of metropolitan systems serving existing development should have priority over investment for expansion except where analysis shows a shortage of land with urban services could seriously affect housing costs.

6) Metropolitan investments should be made in the Rural Service Area only to the extent necessary to maintain rural standards of service and inter-regional transportation routes and in ways which are not detrimental to existing commercial agricultural operations.

7) Improved regulations of on-site waste disposal system installation, maintenance, and annual inspections will probably raise the cost of living in the rural area. However, improved regulations will eliminate the need for metropolitan investment in central sewage facilities in rural areas and thus keep taxes lower throughout the Metropolitan Area.

8) Land uses in the Metropolitan Area should be primarily determined by natural resources and the availability of urban services. Development should not be allowed in areas where the combination of development and the natural conditions would be hazardous to public health or safety.

9) Better installation, maintenance, and inspection of septic tank systems is urgently needed to prevent pollution of surface water and groundwater and the resulting need for costly metropolitan sewer service in rural areas, which eventually destroys the rural atmosphere originally desired by the residents.

10) The planning and implementation responsibilities of the Development Framework should be shared among different levels of government. Counties, municipalities, and townships should prepare and adopt development plans, public facility plans, and capital improvementprograms and enact ordinances and tax policies that are consistent with and help promote metropolitan plans and programs. School districts should adopt school facility plans which are consistent with metropolitan, county, and municipal growth plans.

11) To ensure that all jurisdictions in the Metropolitan Area plan for development and public facilities that utilize but do not overload metropolitan systems, the Metropolitan Council should provide planning assistance in the form of professional services, grants, and loans to local governmental units.

12) The Metropolitan Council will prepare and adopt plans for metropolitan systems.

13) Five-Year development programs containing a description and schedule of capital improvements will be approved by the Metropolitan Council for transportation, sewerage, and recreation open space.

14) The capacity of metropolitan systems should be the basis for county and municipal planning in the Urban Service Area.

15) If a governmental unit, after adopting a comprehensive plan, fails to carry out the plan, and the resulting development requires an unplanned extension or upgrading of a metropolitan system, the governmental unit should bear the responsibility for the full cost of the needed extensions of or improvements to the metropolitan system.

The backbone of the Metropolitan Development Framework is the metropolitan system. These systems as discussed in the Development Framework chapter and incorporated by the Legislature in the definition of "Metropolitan system plans" are airports, waste control, transportation, and regional recreation open space. Implementation of the Development Framework and guiding metropolitan growth depends upon the protection of the design, function and planned and staged construction of these metropolitan systems. The Metropolitan Significance regulations are designed to bring to the attention of the Metropolitan Council those matters that could substantially effect the design, functioning, and timing of construction of the metropolitan systems.

e Regulations

An Overview

As drafted, these regulations provide for the potential review of all public and private proposed matters which are intended to be sited within the Metropolitan area. "Proposed matter" is defined broadly to include most all types of activities which could have a direct physical impact on lands or waters within the Metropolitan area. The physical orientation of the definition, formed by the various committees involved in its drafting, is due in part at least to the fundamental statute, legislative history, and Council precedent relating to Metropolitan significance reviews as well as the Council's overall function of guiding the "orderly and economic development" of the Metropolitan area.

The rules established exclusive standards against which both a review committee and the Metropolitan Council must review proposed matters to determine whether a matter is of Metropolitan significiance. Proposed matters which following hearing are not found to have the potential for causing the effect listed in MC 2 (A) & (B), cannot be determined to be of Metropolitan significance. While the standards contained in the rules are broad, they are not all inclusive. For example, there are no exclusively environmental standards -- air, water, or noise effect. Proposed matters can also have other kinds of effects which are not cognizable under these regulations. In the development of these regulations, consideration was given to standards relating to most every conceivable form of physical effect. The potential effects were limited after careful consideration to those which appear in the draft rules. Considerations in selecting and forming the standards contained here related to the capability of quantification of effect, the status and specificity of Council Development Guide chapters, the nature, incidence, and adequacy of other forms of public agency reviews, with regards to particular areas, and other considerations based on factors which were required to be considered pursuant to the fundamental statute. In general, the standards for determining Metropolitan significance contained herein provide that only matters which will have a substantial effect on an existing or planned Metropolitan "system" or will have a substantial adverse effect on another local governmental unit are cognizable pursuant to these rules. Standards were developed and worded in the form of their effect rather than their type, size, or location, because of past history as well as the opinion that Metropolitan system plans are (and will become more so in the future) specific enough to determine and differentiate between adverse effects without an arbitrary classification based on project characteristics. In general, the approach taken has been to attempt to insure that the Council will: review only matters which may cause recognized and agreed Metropolitan effects; not usurp or disrupt existing local governmental review processees; coordinate with and consolidate other regional, state, and federal reviews so as to minimize duplication and public agency delay; coordinate these rules with the Metropolitan Land Use Act and the Development Framework chapter of the Metropolitan Development Guide, and to provide a speedy but fair review of matters subject to a full significance review.

The broad potential for review attributable to the definition of proposed matters is limited by numerous substantive and procedural provisions contained throughout the rules. These limitations as well as the overall working of the process can best be seen by examing the major steps in a Metropolitan significance review as set forth in these rules.

First, a Metropolitan significance review can be initiated only by: governmental bodies which own or construct the public infrastructure necessary to service a proposed matter or which have statutory responsibility for protecting, by various review mechanisms, state or local residents from various forms of harm or injury to their health, safety, or welfare; a large unified group of citizens of the area or a particular local unit within the area who share concern relating to a proposed matter; and to sponsors of a proposed matter. This limited right of initiation is designed to insure the thorough consideration of a proposed matter and its consequences by elected or appointed bodies, representative groups, and are those most immediately affected by a review -- sponsors -- prior to the intiation of Metropolitan Council consideration.

Second, prior to the actual commencement of a review, the regulations require that the Council determine that a number of preconditions to review have been satisfied. In brief, these preconditions relate to: valid initiating documents; the seriousness of the initiation; arguable claim of effect on certain initiators; and exempt matters. By and large this set of preconditions is designed to protect and elevate the review process by allowing the Metropolitan Council to insure both legitimacy and ri[illegible]ness of review. The Council's power in this regard is balanced and controlled by an appeal mechanism, normal substantiation requirements relating to administrative action, and judicial review.

The broad potential for Metropolitan significance review is further limited by the coordination of the Metropolitan significance review with the Metropolitan comprehensive land planning process established by the Metropolitan Land Planning Act, Laws 1976, Chapter 127. The mechanism established by MC 3 was developed and designed to enable local governmental units having adopted comprehensive plans which have been prepared in full compliance with the content and procedural requirements contained in the Land Planning Act to avoid all but one of the Metropolitan system effect reviews with respect to proposed matters cited within their jurisdiction. The Metropolitan Land Planning Act provides a process whereby Metropolitan systems plan density, capacity, staging, and alignment consideration must be addressed and complied with in the local comprehensive plan. It also provides a new legal mechanism designed

to insure compliance with the formally prepared and processed comprehensive plan following its adoption. Since all of the Metropolitan system standards contained in MC 2 (A) are exclusively designed to protect the same Metropolitan system plans against which the local comprehensive plans are reviewed and possibly modified, a continuation of the potential Metropolitan significance review of proposals in local governmental units having Council accepted plans would result in a duplicative Metropolitan system impact review. Consequently, the mechanism of MC 3 (A) and 2(C) eliminates the potential for Metropolitan Council review to the extent that the local review and determination regarding a proposed matter is consistent with the local comprehensive plan.

Once a Metropolitan significance review has been initiated and commenced, the review of that proposed matter is assigned to a Metropolitan significance committee which may be composed of a smaller number of Metropolitan Council members and members of the Advisory Metropolitan Land Use Committee established by the Metropolitan Land Planning Act. Committee size, composition, and appointment was arrived at following the very considerable participatory process engaged in in the preparation of these regulations. Some of the consideration which went into the formulation of the rules as drafted were desired to have a group smaller than the entire Council capable of thoroughly examining and individual proposal and developing expertise in such a process so as to better examine certain of the relatively difficult determinations which are called for by the Metropolitan significance standards. A combination of Council and Committee members was desired due to the fact that regulations focused on both Metropolitan system effect, presumably matters within the cognizance of Metropolitan Council members, and effects on other local governmental units, subjects which primarily are within the cognizance of local elected officials and others who constitute the Advisory Committee. The composition will allow for the sharing of expertise, and the flexibility in appointment will enable the establishment of Committees with a greater number of members having appropriate spheres of competence. The size of the Committee was also based on a desire to make it possible to process a number of Metropolitan significance reviews at the same time which would not have been possible if the entire membership of the Metropolitan Council or the Advisory Committee had been required to participate in the initial review of all proposed matters.

Following the review by this smaller Metropolitan Significance Review Committee appointed by the Chairman, this Committee prepares a report containing thorough administrative findings and recommendations relating to all subjects of importance to the Metropolitan Council. The Committee, in addition, must hold a public hearing concerning the review of the proposed matter in connection with the preparation of this report. At the conclusion of the Committee activity, it forwards its report together with all information developed to the Metropolitan Council for a final determination with regard to the proposed matter. This process, in general , follows that which obtains with respect to all Council action in that the Council functions primarily through a system of standing committee review and processing and ultimate Council determination established by the Council by-laws. The Council's activities resembles that of an appellate body in connection with a local land use decisional matter. The Council does not perform a de novo review, but rather reviews the record which has been developed by the committee below and reaches an ultimate conclusion with regard to each review. The Council is constrained, obviously, by the record created below in accordance with the typical administrative law processees, but engages in an independent consideration, and is not exclusively bound by the final determination of the committee.

The broad potential for Metropolitan significance review limited as noted above throughout the process is also limited by a number of procedural devices contained in MC 9 and 10, the most important of which is the letter of interpretation, MC 10 (E). The letter of interpretation allows any person to ask the Council to determine the applicability or nonapplicability of certain provisions of the rules of a particular proposed matter. This process, in essence, allows a speedy and abbrieviated determination as to certain limited but critical preconditions to review, and it is hoped that the process will work to minimize the number of full Metropolitan significance reviews to be undertaken by the Metropolitan Council.

Section by Section Analysis

The proposed Metropolitan Significance Regulations (proposed MC 1 though MC 11 established the standards and procedures by which a Metropolitan Significance review is initiated and conducted by the Metropolitan Council. The following is a section by section analysis of the proposed rules and regulations.

MC 1 Purpose and Scope

Minnesota Laws 1976, Chapter 321, Section 2, requires the Metropolitan Council to adopt and put into effect regulations establishing standards, guidelines, and procedures for determining whether any proposed matter is of Metropolitan Significance. This Section points out that the purpose of these regulations is to meet the aforementioned legislative requirements. Pursuant to the legislative requirement and the constitutional requirement of equal protection under the laws, all proposed matters of Metropolitan Significance for which review is initiated, will be reviewed in accordance with the standards set forth in these regulations. The purpose of review under these regulations is to determine the total effect of a proposed matter on the orderly and economic development of the metropolitan area and the health, safety, and welfare of the area residents. This purpose statement is in consonance with both the statutory authorization and with the judicial concept and authority granted to governmental units pursuant to the police power. It should be noted that a significance review does not extend to the impact of a proposed matter on development activity of the health, safety, and welfare of residents other than those within the seven county metropolitan area. The last sentence of the paragraph expressly states the limitation imposed by the law on the length of a significance review. This is inserted for purposes of information and clarity.

MC 2 Standards for Determining Metropolitan Significance.

This section establishes the exclusive standards by which Metropolitan significance can be found. MC 2 A lists standards relating to the effect upon metropolitan systems. The listing is consistent with the statutory definition of metropolitan systems contained in Laws 1976, Chapter 127. MC 2 B establishes a standard for the other kind of effect made cognizable under the fundamental statute: effects upon another local governmental unit. MC 3 establishes the standard in the event of conforming local comprehensive plans, submission, and acceptance by the Metropolitan Council. Unless one or more of the effects listed in MC 2 A, B, or C is found by the Metropolitan Council to be probable result of a proposed matter, a proposed matter cannot be found to be of metropolitan significance. Effects other than those listed in MC 2 are not legally cognizable pursuant to these regulations. Conversely, if after reviewing a matter in accorance with the procedure contained here, the Council finds that one of the effects listed in this section will occur, the matter must be found to be of metropolitan significance. Consequently, though broad, these standards do limit and govern the determination of whether a proposed matter is of metropolitan significance.

Metropolitan System Effect Standards

The system effect standards set forth in MC 2 A 1 through 8, exclusively involved the four metropolitan systems given legislative recognition and definition by Laws 1976, Chapter 127: metropolitan sewage system, transportation and transit system, airports and parks. This limitation is based upon the review authority granted to the Council by Laws 1976, Chapter 321, Section 2 Subd 4, (6). There the Council is empowered to review proposed matters determined to be of metropolitan significance only "as to their consistency and effect upon metropolitan system plans as defined in Laws 1976, Chapter 127, Section 2, and their adverse effects on other local governmental units." The individual standards have been drafted in consonance with that review power and with a recognition of the most probable and dangerous kinds of system plan inconsistencies which could occur. Two of the system effect standards incorporate numerical thresholds, Numbers 1 and 4. These thresholds serve to act as a minimum level cutoff for purposes of review. In the event that a prospective sewage discharger will be discharging less than 50,000 gallons of sewage per day, that discharger cannot be found to be of significance exclusively on the basis of effect one. Both one and four require that a proposed matter have a discharge or generation above the minimum level expressed in those standards as well as a "substantial effect on either the sewer or transportation system." These thresholds are neither extremely high nor extremely low. They were derived from planning information developed both by the Council and other waste and transportation agencies. The 50,000 gallon per day level is one used by the Environmental Protection Agency in regard to the permitting of significant industrial waste discharger. The vehicle trip generation levels are somewhat similar to similar levels contained in the environmental impact statement process. Both thresholds embody elements of a legislative determination based on significant planning data that proposed matters having smaller generating capacities most probably will not generate a metropolitan level effect. The phrase substantial effect embodied in standards 1, 4, 5, 6, and 7 raise concern in connection with the public hearing held in July of 1976. To address the concern that this phrase was not as definitive as is necessary for regulations of this type, definitions of both substantial and substantial effect have been inserted in the public hearing draft of these regulations. Substantial, by dictionary definition, is a "relative term." The definition simply sets forth certain generally recognized synonyms and limitations. The phrase "significanct effect" was used in these standards for a number of reasons; to allow for the consideration of the particular location of a proposal in relatio to a metropolitan facility; to preclude the possibility that reliance on mere quantitative factors might lead to ridiculous results inconsistent with existing capacities; minimize the discouraging effect on development by the establishment of a uniform inflexible numerical threshold; and to provide a means for relating generation attributable to a proposed matter to the realities of a system having varied capacities and varied degrees of utilization. The phrase "location, function, or practical service capacity, or character" utilized in standards 5, 6, and 7 again serve to limit the cognizable system effect and the Council's

in review to physical factors. This again is attributable to the physical orientation of these regulations and in turn the necessity to be able to judge proposed matters against objective, knowable factors. Standards 6A and 7 enable the determination as to park and airport facilities only to the extent that those facilities are given specific demarkation in the applicable planning document. These provisions are inserted to avoid vagueness and to identify the particular metropolitan concern. A substantial effect on the state zoo has made a cognizable system effect because of the Council's involvement in site selection and the location of the zoo in the metropolitan area, as well as the lack of another effective mechanism which will enable the review and consideration of developments which could have an effect on this facility of state and regional importance.

MC2 A 8 provides a standard for addressing development which could have the effect of forcing the expansion of metropolitan systems in advance of the planned provisions for those systems and the disruption of commercial agriculture within the region. Both of these effects clearly would cause inconsistencies with metropolitan system plans. This provision unlike the preceding system standards addresses less direct inconsistencies, but inconsistencies of considerable economic consequence of the area. Outlying community as defined in these regulations includes only those local units of government which in accordance with the Metropolitan Development Framework are either wholly within the Rural Service Area established in connection with the Framework or which have a portion of their territory which eventually will be within the Rural Service Area. The Development Framework with which all metropolitan plans must be consistent provide that no urban scale metropolitan public facilities should be provided to the Rural Service Area prior to 1990. This determination, in turn, is based on the statutory directive to the Council to guide the orderly and economic development of the area. The orderly, economic development of the area can occur only consistent with and to the extent of the minimization to the area residents of the cost of providing metropolitan-scale public facilities. If development in the rural area were to reach a level which necessitates the provision of urban scale public facilities, additional tax revenues would have to be raised to pay for the construction of those facilities or normally generated revenues would have to be diverted from use in connection with other projects and programs initially authorized in the metropolitan plans. Either effect would result in a metropolitan wide economic "loss." The disruption of agricultural use in commercial agricultural areas was found in connection with the Development Framework to also have a significant effect in disrupting the orderly economic development of the area disrupting land uses make farming more difficult and encourage the diversion of prime agricultural lands to less productive uses.

MC 2 B provides a review of projects in one governmental unit which might have a substantial adverse effect on land use or development in another local governmental unit. The orderly development of the metropolitan area can occur only if the action taken by one governmental unit recognize and address extra territorial effects and attempt to make development compatible on an inter-community basis. This standard is based upon provision contained in Section 2, subd 4, (6) of the fundamental act and is similar to phrases which previously occurred in the metropolitan significance statute relating to "having an area-wide effect, multi-community effect, or a substantial effect on metropolitan development." With the insertion of the phrase "planned land use" or "development" is in deregation of the statute and based upon factors which the Council and Committee were to consider in the formulation of these regulations. Activities in one community can have effects other than on land use and development within adjacent or proximate communities. Limitation here is based on the concern that the regulations deal with a quantifiable and calcuable elements of development. This in turn is aimed at insuring the objectivity of this review.

MC 3 Local Comprehensive Plan Exemption

Metropolitan Significance Regulations do not occur in a vacuum; the Minnesota Legislature of 1976 also passed the Metropolitan Land Planning Act which requires all local governments in the Metropolitan area to prepare comprehensive plans. A local government's comprehensive plan must be prepared in a manner and implemented such that development within the local governmental unit would be consistent with and in conformance with Metropolitan plans for extention of Metropolitan systems. When all local governmental units have prepared their plans as required by the Metropolitan Land Planning Act, there will be little need for Metropolitan Significance review. The only time a Metropolitan significance review would be requird would be when the matter is inconsistent with the approved local plan or when the proposed matter would require modification or would be inconsistent with the requirements of the National Pollution Discharge Elimination System permit for the sewage treatment plants of the Metropolitan area. Thus, only these matters are subject to Metropolitan Significance review after local comprehensive plans are approved by the Metropolitan Council. Even though neighboring local governmental units are required by the Land Planning Act to submit their plans to one another for review and comment, without the provision of MC 2 B, there is no formal process by which a local governmental unit can request review of a neighboring local governmental unit's planning and zoning decisions. For this reason, MC 2 B is also retained after the preparation and adoption of plans required under the Land Planning Act. MC 3 B provides a

procedure by which a local governmental unit may request a review of its comprehensive plan by the Council to determine whether its plan is sufficient such that it can be treated as outlined above, that is, like a local governmental unit which had adopted and approved plan under the Land Planning Act.

MC 4 Categories of Exempt Matters

Legal limitations, health, safety, and welfare concerns, and common sense require that certain matters be exempted from Metropolitan Significance review. MC 4 allows the Chairman (see MC 6 D) or the Council (see MC 8 B and MC 10 C) to exempt a matter from Metropolitan Significance review. This section contains the categories of matters which may be exempted. Exempt matters include: matters which have already come before the Council for approval or which will come before the Council as part of its system plan preparation process or budgetary review process, matters subject to review and approval under the power plant siting act, (in which the legislature has specifically precluded any further review,) emergency matters, minor alterations, and matters which have obtained a vested right to proceed. Minnesota Common law provides thatonedoes not obtain a vested right to continue a project unless he has relied to his substantial detriment upon previously granted permit. This provision incorporates this Minnesota law and case law must be utilized in determining the application of this provision to particular cases.

MC 5 Initiation

This provision sets forth a procedure by which a review is begun. The Metropolitan Significance Act required that a Metropolitan Significance review could be requested by an affected local governmental unit or Metropolitan commission or the Council, or a petition by a specified number of residents of the Metropolitan area 18 years of age or older. MC 5 A specifies the number of signatures required on the petition at 5,000, or more than 50% of the voter turnout in any local governmental unit. All requests for initiation of a Metropolitan Significance review must be accompanied by an adequate "information submission" containing the information required in MC 5 B. The primary purpose behind the requirement of the information submission is to heighten consideration of requests for Metropolitan Significance review by requiring the intiating party to state a case as to why a significance review should take place. Specifically, the initiator is required to state which standards are alleged to be exceeded by the proposed matter, and a discussion as to why the matter is not exempt under MC 3 or 4. Initiating resolutions coming from governments or agencies other than the government in which the proposed matter will be cited are also required to state and discuss what effects are alleged to occur as a result of the proposed matter on the local government's existing or planned land use or development, or in the case of petitioners, on their activities.

MC 6 Commencement

Commencement of a Metropolitan Significance review is important in that it establishes the day from which the time clock begins running. Reviews initiated by the Metropolitan Council commence on the day following adoption by the Council of the order requiring the review. Reviews initiated by anyone else begin when the Metropolitan Council Chairman issues an order for commencement and are effective as of the date the requirements of MC 5 are met. In addition to establishing the time the clock runs from, this section provides the Chairman of the Council with an opportunity to review the initiation petition to determine whether it is satisfactory and that it meets the requirements of Section MC 5, has not been initiated in bad faith, is a sham, capricious, or frivolous initiation, makes out an arguable claim in the information submission that cross governmental effects will occur as a result of the proposed matter, finally, that the proposed matter is not exempt under the exemption provision (MC 4). If the Chairman determines not to commence a Metropolitan Significance review, the initiating person, the situs governmental unit, and the sponsor of the matter have the right to appeal the Chairman's decision not to commence the review to the full Council. If an appeal is received, the Council must review the petition at a public hearing and make a determination whether or not to commence the review. The purpose for MC 6 and for giving the Council Chairman the opportunity to decline not to commence a significance review is threefold. 1) To allow means by which exempt (and including emergency) matters can rapidly proceed without further hindrance. 2) To prevent abuse of the Metropolitan Significance review. Specifically, to prevent the use of the Metropolitan Significance review as a means of increasing the expenses a matter's sponsor faces by the use of administrative delay, and 3) To provide an opportunity to delay the commencement of a Metropolitan Significance review until such time as adequate information is available such that a review can properly be conducted.

MC 7 Metropolitan Significance Review

This provision sets forth the procedure by which the Metropolitan Significance review is conducted. Normally, a significance review is conducted by a committee composed of not more than seven (7) or less than three (3) individuals who are members of the Metropolitan Council Land Use Advisory Committee or the Metropolitan Council. The committee has the option under MC 7 B to delegate all or a portion of the review including the public hearing to a hearing examiner from the State Office of Hearing Examiners. This provision was included because it was very possible that proposed matters of Metropolitan Significance could become extremely involved, requiring a great deal of testimony and formal administrative procedure. The Hearing Examiner from the State Office of Hearing Examiners is best equipped to direct such situation. Within the first 20 days following the issuance of the commencement order, any person can submit a preliminary statement to the Significance Review Committee or Hearing Examiner regarding the proposed matter. In addition, the sponsor of the proposed matter must also indicate to the hearing body all the governmental reviews and approvals which the proposed matter will be required to obtain on the current status of the various reviews and approvals. After the initial report is submitted,

additional information may be submitted at any time prior to the close of the public hearing record. Because there is some uncertainty as to how detailed and convoluded a Metropolitan Significance review and its associated procedure might come, depending upon the nature of the matter, the provision is included in the regulations providing that persons who are parties to the review may stipulate a simplified procedure if they desire. If no stipulation is agreed upon, the significance review proceeds along the lines established by MC 7. Discovery is a legal term relating to the rights of one party to the significance review to request another party to provide data or other information which is relevant to the review. It is the Council's and the Advisory Committee's opinion that a significance review will be most successfully conducted when the maximum amount of available information is presented to the review committee and when all parties are given the maximum possible ability to familiarize themselves with all aspects of the matter. For this reason the discovery provisions of MC 7 have been liberally drafted. Ten days prior to the public hearing date, a report will be prepared by the Council staff which discusses all the information submitted up to that point. Prior to the hearing, and after the preparation of the report, a conference shall be, to the maximum extent possible, scheduled by the Chairman and all parties invited to attend. The purpose of the report and conference is to attempt to discuss, collect, and categorize the information submitted, identify inadequacies in information, and frame the issues which must be resolved at the public hearing. At least one public hearing must be held by the review committee or hearing examiner at which any person who wishes to speak must be given the opportunity to do so and present information regarding the proposed matter and the significance review remedy. MC 7 J sets forth the public hearing procedures. MC 7 K provides that the burden of prooving any specific issue or fact rests on the person who has searched that fact. After the public hearing, the committee must examine the record, which includes all formerly submitted information. The committee must then decide that either the matter is exempt or is not of metropolitan significance, the matter is of metropolitan significance, or that because of the lack of supporting information, the review should be suspended. In addition, the committee must establish the basis upon which it made its recommendation. The findings and recommendation of the significance review committee are then delivered to all parties and transmitted to the Council.

MC 8 Council Determination

The Metropolitan Significance Act provides that actual determination of Metropolitan Significance can only be made by the Metropolitan Council. Therefore, after the Metropolitan Significance Committee or Hearing Examiner has made its findings and recommendations, the Council must consider them. This section sets forth the procedure by which the Council makes the consideration. Basically, the Council's determinations are the same as the Review Committee or Hearing Examiner in that the Council must determine that the proposed matter is exempt or not of significance or that it is of metropolitan significance. If the matter is determined by the Council to be of metropolitan significance, the Council must also determine the appropriate remedy. The Council, in effect, has two choices: 1) it can initiate the procedure by which the Metropolitan system plan are amended such that Metropolitan services are provided to the proposed matter or 2) it can suspend the commencement of construction on the proposed matter in accordance with the Metropolitan Significance Act for a period not to exceed one year from the date of the final determination. This suspension might contain if the Council desired, conditions which if complied with, would be grounds by the Council for lifting of the suspension. 3) The Council could determine that the matters of metropolitan significance that no suspension is necessary.

MC 9 Termination, Suspension, Time Change

This section picks up several related housekeeping matters. As mentioned earlier, there exists a very real potential for abuse of the Metropolitan Significance Regulations by parties who wish to use the Metropolitan Significance review in bad faith, frivolous or capricious manners. MC 9 A allows the Council to dismiss reviews which it determines have been made in bad faith. To insure that the opportunity to dismiss such reviews is not arbitrarily made, the Council cannot dismiss a review for bad faith without allowing the parties to present evidence regarding the good faith and rebut the bad faith claim.

MC 9 B allows the initiator or sponsor to petition the Council to withdraw the proposed matter from review. An initiator or sponsor may wish to withdraw the matter from significance review if, for example, it is discovered that the proposed matter is not right for review, or for some reason the party feels the review is not longer necessary. The Council can grant such a petition, but only if the withdrawal of the review would not prejudice or adversely affect the rights of any party. This section is needed to make it clear that the Council cannot preclude a party's right to a Metro Significance review, if it desires one.

MC 9 C is very possible that once the Metropolitan Significance review has begun, and the issues are formulated, the parties may, of their own volition come to an agreed settlement with regard to the proposed matter. This section is included in the regulations to encourage the parties to reach such settlement. Since the Metropolitan Council is responsible for the proper administration of the Metropolitan Significance Review, it is required by statute to consider certain effects of the proposed matter, no settlement agreement can conclude the review without Council acceptance.

MC 9 D. Since Metropolitan Significance matters are likely to involve many reviews by local governments and state agencies, the Council may from time to time desire to suspend a significance review for a period not to exceed 90 days as authorized by the statute to await decision of another public agency. Such a suspension allows the council to avoid a Metropolitan Significance review and thereby avoid duplication of effort in the event that the other public agency denies authorization for the matter. If adequate supporting information upon which to base

significance review until such time as sufficient information is available. A Metropolitan Significance review conducted without adequate information would have two effects:

1) A wrong decision might be reached, and
2) Since the statutes prohibits more than one Metropolitan Significance review per proposed matter, the Council would be precluded from holding a new significance review when adequate information was available.

Finally, there may be situations where both the sponsor and the initiator feel that they could profitably use additional time either, for example, for the preparation of their arguments, or for the gathering of information. MC 9 B 3 allows the initiator and sponsor to agree to suspend the significance review time period, if the suspension is approved by the Significance Review Committee.

MC 10 General Review Provisions

This section contains a number of general provisions. MC 10 A time period provides and clarifies that a specified number of days refers to calendar days and applies a normal rule that when a final day of a time period falls on a weekend or holiday, the time period is automatically extended to the next immediate working day. MC 10 B is included in the regulations to preclude the possibility that a proposed matter might escape the metropolitan significance review or a remedy thereunder by proceedings in the construction or implementation of the matter while the review is taking place. This section provides that during the review period, the proposer must suspend the implementation of the proposed matter.

MC 10 C allows the Council to clarify these regulations through the issuance of a "letter of interpretation." While every attempt has been made to anticipate possible issues and questions raised by these regulations, the possibility exists that clarification may be necessary. Since the issuance of a letter of interpretation may have considerable effect upon determining whether any specific matter may be of metropolitan significance, no letter of interpretation may be issued without first holding a public hearing.

MC 10 D is included in the regulations to allow the Council to coordinate with the Environmental Quality Council and conduct a joint review on matters for which an environmental impact statement or critical areas act review may be required. A joint hearing or coordinated review could save all involved considerable time and money. Some projects or matters may take place in separate stages or segments. Sometimes, an individual segment may not be of metropolitan significance, however, the entire project may be a matter of metropolitan significance, and one which should be reviewed.

MC 10 E is included to bring multiple or phased matters into the Metropolitan Significance review process. Depending upon the proposed matter, the optimal time for a Metropolitan Significance review or reviews may vary. For this reason, the Council is given discretion by this section to consider either the total project or separate independently viable stages or segments of the proposed matter. If a separate stage or segment of a matter is subjected to significance review and further independent stages or segments follow, the first review shall not prejudice subsequent reviews of future stages. This section was included to close a possibility that an initiator could avoid subsequent Metropolitan Significance review of a matter by staging the project. It is possible that after a proposed matter has been reviewed, it may be materially altered prior to actual construction or other activity. The Metropolitan Significance Act provides that if a matter is materially altered, it may be subjected to a new Metropolitan Significance review. This section clarifies the statutory language and places some procedural requirements on the Council. The Metropolitan Significance Review Remedy is a suspension of the proposed matter for up to one year.

MC 10 G provides that if after a matter has been found to be of metropolitan significance, and the one year suspension enacted, the proposer desires to comply with conditions or modifications contained in the Council's final determination (see Section MC 8 C 2)), he may petition for elimination of the proposed suspension. This section was included in the regulations, because it seemed unfair to continue with suspension after the proposer had agreed to meet all ameliorative conditions had set in its review. In addition this section sets the procedure by which the Council is required to proceed in considering petitions for elimination of the suspension.

MC 10 H provides that parties may be represented by legal Council if they desire. MC 10 I requires the Council to retain all information obtained in regard to a Metropolitan Significance review for at least three years following completion of it. In addition it requires the Council to make all information available to the public during business hours. This section is included in the regulations so that all parties and the public are aware of the policy to be followed by the Council with regard to availability of said information. It is possible that certain information may be in the nature of trade secrets or other confidential information. Since the Metropolitan Significance review can best be conducted when all information is available to the Review Committee or Hearing Examiner, it was necessary to include a provision in the regulations allowing for and enabling some information to be kept confidential, in order that it would be available to the hearing officer or Significance Review Committee.

Section MC 10 J sets forth the procedure by which material can be certified as confidential and a procedure for its retention and return to the party who introduced it. Examples of such information might include: market surveys, descriptions of productions processes, and personal data on individuals.

MC 10 K and L are standard clauses contained in the regulations to clarify that each provision of these regulations is severable, and if it can stand as a separate entity, shall be found to continue to be valid even though other sections may be found to be invalid. MC 10 L provides for judicial review of any final decision made by the Council under the regulations and identify what kinds of Council decisions are considered final for purposes of review.

MC 11 Definitions.

To avoid ambiguity and confusion, this section contains a number of definitions of specific terms and phrases used throughout the regulations.

METROPOLITAN COUNCIL

STATEMENT REGARDING METROPOLITAN SIGNIFICANCE REGULATIONS
FOR INTRODUCTION AT MARCH 16, 1977, PUBLIC HEARING

This discussion is presented to support and clarify the Council's position with regard to the proposed Metropolitan Significance Rules and offers an estensive discussion of changes made in the proposal based on and subsequent to the hearing regarding the previous version of these rules held on July 19, 1976.

Vagueness and Substantial Effect

A number of changes have been made in the proposed rules which are designed to alleviate concerns expressed at the public hearing and in the Hearing Examiner's report regarding vagueness. Principal among the changes which have been made to provide more certainty and predictability are the insertion of definitions for both "substantial" and "substantial effect," MC 11 A (34) and (35), and the specification of the territory and territorial boundaries to which MC 2 A 8 applies, MC 11 A (21). Numerous other changes have also been made partly in an attempt to achieve this same end including: the insertion of "effect on" in place of "change in" in Standards MC 2 A 5, 6, and 7; revision to MC 3 and the incorporation of the previous provision relating to the effect of local comprehensive plan exemption in that rule; revision to MC 6 D; revision to MC 7 F relating to discovery; the insertion of a provision relating to review coordination, MC 10 D; revision to MC 10 A dealing with confidential information; the insertion of a provision relating to judicial review, MC 10 L; definition of "commercial agricultural area," MC 11 A (5); specification that the term "independent commission, board, or agency" includes independent or special school districts, MC 11 A (11); and clarification of the definition "critical development," MC 11 A (9).

Careful consideration was given to the criticism regarding the use of substantial effect in MC 2. In conclusion, the phrase was retained, and the definitions were inserted. The necessity for, and reasonableness of, the use of "substantial effect" in association with specified metropolitan system plans, is based upon a wide variety of considerations, some of which are as follows: the provisions regarding the review standards in the Significance Act, subd 4(6); the factors required by subd 3 of the Significance Act to be considered in formulating these rules; provisions contained in the Metropolitan Land Use Planning Act, Laws 1976, Chapter 127; the lack of, and inappropriateness of, other regional and state land use review models; a desire to accomplish the purposes of the metropolitan significance review while actually having to conduct only a limited number of reviews; the consistency and similarity of the significance standards and the entire significance mechanisms with tested standards embodied in local land use official controls, state regulations, and other similar land use and environmental review mechansims; and the existence and status of metropolitan system plans. From a practical standpoint, the phrase is necessary and reasonable, in part, because the Council has been unable to develope ordiscover a reasonable, adequate, and practical alternative, and because practical experience in the use of this phrase and the entire review mechanism is absolutely necessary for

determining how predictable, and effective the mechanism is, and what refinements are appropriate and necessary.

At present, there are relatively few state or regional multi-purpose land use review mechanisms in effect which can be utilized in the development of a mechanism for the metropolitan area or capable of providing practical experience with regard to the reasonableness of various possible alternatives. In developing the proposed significance rules, most of the existing models were examined including: the Development of Regional Impact provisions in the American Law Institute's Model Land Development Code; Developments of Regional Impact statute and rules for State of Florida; Land Use Review law and rules for Vermont; and control and review mechanisms for Adarondack Park in New York, State of Hawaii, and California Coastal Zone Management. See Exhibit A for citations and selected portions of some of the above.

The two mechanisms which have been in effect the longest and are the most similar in purpose and scope are the Florida and Vermont mechanisms. These two models, as well as the ALI model, provide an exclusive listing of projects to which the regional-state review applies. Following careful examination of these mechanisms, the Council in essence concluded that this approach was inappropriate for the Significance Regulations. The Council concluded that the list approach, no matter how refined, involves the problem of rigidity; listing would cause the review of some developments which would have no effect on land use or public service provision, capacity, etc., and would prevent the review others which could have considerable effects on the use capacity and construction of such systems. In other words, lists which embody unit size, floor space, seating capacity, etc., inherently are either too high or too low. In addition, the Council was concerned that the listing approach could very well have the effect of causing sponsors to plan and size developments in such a way as to avoid any possibility of the regional land use review. This, in turn, could result in the construction of many inappropriately sized developments. It was also noted that the list approach to a regional review mechanism is analogous to the typical use districting approach embodied in most local zoning ordinances, and that the history of use districting has underscored this inflexibility. Inadequacies of limited use districting have resulted in a responsive trend to build more flexibility into zoning ordinances through the use of floating zones, discretionary districts, planned unit development requirements, overlay provisions, and performance standards. Given the above, the Council concluded that it was both reasonable and necessary to try to develop regulations which did not incorporate an exclusive list of subject projects.

The existence and content status of metropolitan system plans made a reasonable alternative approach possible. In many situations, as perhaps in the States of Florida and Vermont, the specific list approach is largely necessitated by lack of any specifications with regard to the timing staging utilization and future capacity of the various public services and facilities with which it is attempted to coordinate development. Within the metropolitan area, however, the Metropolitan Council is of the opinion that statutory mechanisms and plan and program documents exist which can be utilized in review standards without

arbitrary cutoff lines and still provide enough specification and delineation to enable considerable predictability and certainty. Here, project sponsors are in a position to know where they can examine existing sewer, transportation, airport, and park plans and reach an understanding of where roads and sewers are going to be built, how much capacity is going to be provided, at what time, etc. While this information is now available from the Metropolitan Council because of the Metropolitan Land Use Planning Act, it will soon be available in the comprehensive plans of all local governmental units. At any rate, numerous specifications and requirements are contained in these plans which will enable project sponsors to know in advance what effect their proposal might have on the basic metropolitan public service infrastructure and to design their proposals accordingly.

The significance-plan approach embodied in the proposed significance reviews is consistent with other existing local and state land use and environmental review mechanisms and standards. Generally, local land use and permit standards and mechanisms are alternatively phrased: in fixed, specific, and limited terms; in more generalized subjective and performance-oriented terms; or in some manner involving a combination of both of these alternative approaches. The permitted land use provisions in local zoning ordinances, for example, typically embody the fixed and specific approach, while special or conditional use permit procedures typically embody the more generalized performance-oriented approach. Both of these approaches have been given legal acceptance.

The regulations of the Minnesota Environmental Quality Council for Environmental Impact Statements, Regs. MEQC 21 to 41, were also carefully examined in developing the standards and the approach incorporated in the significance regulations. These regulations, as now amended, combine objective standards with specific inclusionary and exclusionary lists. This combined approac has a number of virtues, and to a certain extent, the proposed significance regulations incorporate at least part of this approach. For example, MC 4 of the rules roughly parallels the list of exempt matters contained in the EIS regulations. On close examination of the EIS regulations, however, it was concluded that further parallels would not be appropriate or beneficial in connection with the significance rules. A close examination of the EQC mandatory EIS preparation list disclosed the basic concern that such a parallel listing would result in problems similar to the approach taken by the States of Florida and Vermont. In addition, the Council observed that the use of one combined phrase containing a number of somewhat subjective words and terms, without any limiting tie to cognizable effects, as in "an action of more than local significance having a potential for significant environmental effects" simply was too broad and inclusive and not appropriate for the metropolitan significance rules.

The Council's approach in these rules, which is more analogous to a special use permit procedure than to zoning use districting, has been totally to couple a subjective term with an exclusive listing of cognizable effects based on adopted metropolitan-wide plans, specific exemptions, a complex initiating mechanism, and an early warning device, the "letter of interpretation", designed to enable those po-

tentially affected to petition for an early limited review as to whether the project would be subject to the regulations.

The reasonableness of the specific term "substantial effect" is further supported by the frequent use of this and similar language in other regulatory contexts. For example, counties and municipalities issue variances on the basis of a showing of "undue hardship" which is very typically not given specific elaboration in an ordinance. Special and conditional use permits are issued by local units on the basis of consistency with and protection of the "public health, safety, and welfare". The environmental impact statement rules and statute as referenced above include the use of the word "significant" and "substantial". Rules of the Hearing Examiner regarding rule making proceedings themselves also require a determination with regard to substantial change, which is not accompanied by a qualifier, directive, or other explanatory provision. Rules of the Energy Agency, EA 904F and 1004F, use "significant". In addition, other statute and regulatory review mechanisms, such as the Certificate of Need Act, are even broader in terms of constraining or confining standards. The Certificate of Need Act, for example, allows assessment with respect to a number of open-ended unlimited phrases such as "area-wide need and benefit", "adverse impact upon cost", etc.

The use of a standard requiring the exercise of judgment does not prevent a thorough well-founded decision from being made, nor does it mean that vagueness will be present in the decisional process. "Substantial effect" like "undue hardship", "significant environmental effects", etc., emphasizes the importance of the record, since the decision must be based on adequate evidence in the record and findings and conclusions also must be stated and provide support for the decision. Subjective standards require the preparation, utilization, and expression of specific findings and conclusions. The significance rules standards are basically as complete and appropriate as the Minnesota court suggests is necessary with regard to other land use decisional mechanisms. The legality of metropolitan significance determinations will turn on the adequacy and thoroughness of the review, recommendations, and findings, just as in the case with other land use reviews involving somewhat subjective standards. See Zilka v Crystal, 283 Minn. 192, 167 N.W. 2d 45 (1969); Metro 500 v Brooklyn Park, 211 N.W. 2d 358 (1973); Hay v Township of Growe, 295 Minn. 202 N.W. 2d 657 (1972).

In conclusion, if complete predictability were possible, there would be no need for a hearing or for these regulations. The legislature recognized the judgmental aspects of the review process when it required a public hearing for every review. Any development within the metropolitan area is already subject to a large number of public and private reviews, decisions, risks, etc., and while absolute certainty would be desirable, it is not typically present in connection with normal land use development, irrespective of a significance review. The minimal additional development risk created by these rules results primarily from the creation of a regional appellate land use review mechanism. Any version of such a mechanism, irrespective of how it is drafted, will add somewhat to development risk. The decision to establish a regional review mechanism was made by the legislature and not by the Metropolitan Council, and the attempt here has been to minimize the amount of uncertainty by developing a complex, reasonable, and carefully thought out mechanism by which to conduct such regional reviews.

Standards for Determining Metropolitan Significance

Standards MC 2A(1) through (7) tie directly and exclusively to the metropolitan system plans for which the Council was given power in the Metropolitan Land Planning Act to mandate changes in local comprehensive plans to ensure consistency. The general need for and reasonableness of standards such as these has been discussed above in connection with "substantial effect". A more particular examination of each of the standards follows. Additional discussion regarding these standards is contained in the memoranda attached hereto as Exhibit B.

Standard MC 2A(1) is needed in order to alert the Council and the Metropolitan Waste Control Commission to potential developments involving sewage discharges which could cause any of the effects listed in MC 11A(35). Sewage discharges which impede flow by causing bottlenecks, exceeding treatment work capacity, and increasing the risk of improper treatment necessitate expensive remedies or cause damage to property owners and others if they occur. This standard is needed to anticipate, resolve, or prevent the possibility of such occurrences. The 50,000 gallon threshhold was established on the basis of past Commission practice as well as the analogous use of that number by the Environmental Protection Agency. See 40 CFR, Section 124.1(r). While it is true that smaller discharges could cause backups, bottlenecks, treatment plant excesses, etc., past experience indicates that such occurrences would be rare. The average daily total sewage flow through the 20 metropolitan treatment plants is approximately 228 million gallons per day. A typical 42-inch metropolitan interceptor, with rare exception, can receive approximately 20 million gallons of sewage per day. In addition, an 18-inch pipe can receive approximately 2.5 million gallons of sewage per day. Given the general system size and capacity, it is unlikely that a less than 50,000 gallon per day discharge would either utilize a significantly large percentage of interceptor or treatment plant capacity or result in a bottleneck or bypass. In addition, it should be pointed out that the Waste Control Commission does possess authority to remedy problems resulting from smaller discharges, see Minn. Stat. Section 473.504, 473.513, and 473.515. The aim here is to get advance warning as to future developments which could pose problems that cannot be resolved and adjusted by the Commission without expending considerable sums of money, altering system plans, etc.

MC A(2) is needed so as to anticipate and prevent potential Waste Control Commission and Council liability with regard to violations of existing water quality standards for waters into which metropolitan sewage is discharged following treatment. This sentence also applies to other discharge facilities for which national pollution discharge elimination system permits have been issued within the metropolitan area, and will likewise work to prevent potential liability on the part of the persons holding those permits as well as to ensure the maintenance of existing water quality standards. A more elaborate discussion of the need for and appropriateness of this standard is contained in Exhibit attached.

MC 2A(3) is needed in order to alert the Council and local governmental units to developments which could cause problems pursuant to Minn. Stat. Section 473.513. This section makes it unlawful for a local unit of government to construct sewer pipes or disposal facilities otherwise than in accordance with provisions contained

in the local sewer comprehensive plan and program approved by the Waste Control Commission. While many communities have existing land use controls which would prevent the issuance of local permits for this sort of development, a number of communities have yet to submit local comprehensive plans and are still unaware of the problems posed by construction causing local system expansion. As a result, many communities do not have adequate existing official controls with which to prevent developments causing this effect. The reasonableness of this standard is based largely on this statutory mechanism and the fact that construction in conflict with local or metropolitan sewer plans can become extremely expensive because both the Council and Commission in other review capacities often provide negative comments with respect to such proposals, necessitating full-scale local funding.

MC 2A(4) has been changed in response to comment received at the public hearing relating to the use of person trips. Vehicle trip has been inserted instead. The 10,000 and 1,000 vehicle trip limitations are designed to enable review of potential generations which could cause one of the effects listed in MC 11A(35). Some smaller generations could create traffic control problems, but the judgment is that generators in excess of these threshholds will create the major need for expensive adjustments to metropolitan transportation facility plans, etc. See Exhibit B attached for additional discussion with regard to the standard.

"Effect on" has been inserted in place of "change in" in MC 2A(5) to ensure the intent and ability to review developments which could effect an indirect change in location, function, or practical service capacity of a metropolitan transportation facility.

"Effect on" has also been inserted in MC 2A(6) to clarify the fact that the standard applies to developments not only within existing or proposed regional recreation open space areas, but to those developments outside such areas which would have a substantial effect on such areas, causing changes to be made with respect to acquisition, funding, planning, etc. This standard is needed to protect delineated regional parks from developments which could effect their use, character, etc.

MC 2A(7) has likewise been changed with the insertion of "effect on". This change is, in part, designed to alleviate the concern of the City of Minneapolis that construction in clear zones or noise impact zones not consistent with airport master plans would not be subject to review pursuant to the draft of the standard proposed for public hearing in July of 1976. Certain forms of development in clear zones or noise impact zones could quite clearly have a substantial effect on the location, function, or character of an existing metropolitan airport and thus would be cognizable under this standard and subject to review. The standard applies to and encompasses only designated or delineated metropolitan airport facilities. Again, the basis for this standard is the concern that certain kinds of developments could force costly changes in service, routes, runways, etc. The significance regulations will enable their review and allow for mitigation of effects pursuant to review

initiation by the Metropolitan Airports Commission, a local governmental unit, the development sponsor, etc.

MC 2A(8) has been modified based on comments received in connection with the July, 1976, public hearing. In form, the standard has been rearranged to make it easier to understand. The first two lines describe the limited types of proposed matters to which the standards set forth in (a) and (b) apply. Crucial phrases within this limitation have been modified or redefined as follows: First, the definition of land use permit has been changed by deleting "or other public action having the effect of authorizing a critical development". The deletion of this phrase limits the definition, making it clear that the standard applies only to local authorizations which can generally be described as involving permits. The definition was not, however, incorporated into the standard as was suggested by the Hearing Examiner because of its length and the confusion which might result from its insertion within an already complex standard.

Second, the use of the term "rural service area" drew criticism at the previous public hearing because of the fact that it was tied to the Development Framework Chapter which did not contain a specific legally cognizable boundary. This draft uses the phrase "in an outlying community". Outlying communities are defined by specific listing in MC 11A(21). As revised, the definition and thus the standard will have an easily determinable boundary: the existing boundaries of the listed municipalities, towns, and counties. As noted in the Basis Statement, jurisdictions included within the definition of "outlying communities" are those having a part or all of their territory within the rural service area as designated in the Development Framework Chapter of the Guide.

Third, the definition of critical development, MC 11A(9), has been modified to address concern with regard to densities within sections which are partly urban and partly rural. The insertion of "or portion thereof in the rural service area" was designed to make it clear that the 40-unit per square mile density in any section applies only with respect to portions of sections lying within a rural area. However, with the substitution of "outlying community" for "rural service area", MC 11A(9) should be further amended in accordance with the phrasing set forth in Exhibit B attached hereto and made a part hereof, to tie the existing density determinations to lands within outlying communities. Questions with regard to the commercial-agricultural area limits have been resolved by defining that area in a generalized way as lands within those territories delineated within the Development Framework Chapter which the Council determines, based upon predominant land use patterns or locally adopted plans and ordinances, is land used primarily for commercial-agricultural use. The precise location of such area can be determined on the submission of a local comprehensive plan pursuant to MC 3 or in connection with a requested letter of interpretation pursuant to MC 10C.

MC 2B Other Governmental Effect

This provision was given careful consideration in response to comments at the public hearing in order to determine whether the phrasing of the standard improperly limited its scope. Senator John Chenoweth, by letter dated August 6, 1976, to the Hearing Examiner, raised this concern:

> "This standard appears too narrow to include the legislative concern that lead to the bill's passage. A stadium constructed in Bloomington or Minneapolis would probably be excluded in that no other "existing or planned land use or development" would be affected. So the stadium controversy that "gave birth" to metropolitan significance wouldn't be included under the proposed rules and regulations. A similar fate would probably befall a petition regarding a coal terminal facility."

While this standard does expand on the provision contained in the Significance Act upon which it is based ("their adverse effects on other local governmental units") by the addition of "existing or planned land use or development", it is the position of the Council that the additional descriptive phrase is consistent with statutory authorization and that the rule provision was not designed, intended, or expected to result in the limiting effect raised by Senator Chenoweth.

The tie to land use is based on statutory provision, past Council experience regarding metropolitan significance, the Land Use Act, and its specification of metropolitan system plans among other factors. All of the factors set forth in Minn. Stat. Section 473.173, Subd. 3, relate to land use and development. In particular, the fourth factor requires that the significance regulations give consideration to "functions of municipal governments in respect to control of land use as provided for under the Municipal Planning Act".

Council expectation is that both a stadium and a coal terminal facility would have important effects on land use or development outside the situs community if not on metropolitan system plans, and as a result, it is difficult for us to imagine how the phrase could cause such proposals to be excluded from the review or the effect of these standards. In this regard, it should be noted that the standard does not prevent the cognizance of "indirect" effects on existing or planned land use or development. Obviously, the causal connection between a proposed matter and an effect on land use or development will be germain with respect to the consideration of "substantiality". Totally, then, the phrase "existing or planned land use or development" merely will cause the significance review committee and the Council to focus their intention on the more quantifiable potential land use effects of a proposed matter, rather than on social, aesthetic, and commercial effects for which no plans or ordinances, etc. are in existence.

MC 3 Local Plan Exemption

This rule has been rewritten completely following the July hearing. The revisions largely attempt to clarify this rule. One formal change has been to incorporate the standard applicable to exempted local comprehensive plans within MC 3. Paragraph A deals with the exemption granted in connection with local comprehensive plans prepared pursuant to the Metropolitan Land Planning Act. Such plans will have to be submitted by July, 1981, and may be submitted earlier. Paragraph A provides that when such a plan has been submitted and approved or accepted by the Metropolitan Council in accordance with the Metropolitan Land Planning Act, then the local unit to which that plan applies is subject only to the NPDES standard, MC 2A(2), and the inter-community effect standard, MC 2B, so long as it continues to utilize and abide by the approved, accepted, and adopted local comprehensive plan which has been submitted and reviewed. If the local governmental unit does not abide by that plan, then MC 3A(2) applies and the proposal can be given a metropolitan significance review to determine its adverse effect upon metropolitan system plans. In this regard, it should be noted that MC 7K raises a rebuttable presumption as to the consistency of a proposed matter with an adopted and approved local comprehensive plan in the event a local governmental unit determines that such consistency exists.

MC 3B allows local units and the Council to initiate a limited comprehensive plan exemption review and determination prior to the submission of the complete comprehensive plan required by the Metropolitan Land Planning Act. This paragraph follows a similar paragraph found in the rules proposed for hearing during July of 1976. Based on suggestion and opinion received at that hearing, however, a standard for Council action has been provided. "shall re-evaluate that comprehensive plan and assess its adequacy as a substitute for the standards set forth in MC 2A") In addition, the paragraph is written so that it will specifically apply to and enable the review and exemption of comprehensive plans for outlying communities which have been adopted subsequent to January 1, 1976. This expansion was designed to enable outlying communities which are subject to the provisions of MC 2A(8) to formulate less rigorous, but adequate, comprehensive plans providing particularly for determination regarding urban and rural service areas, so that they can submit simplified comprehensive plans and, if acceptable, be given exemption from that standard as to part or all of their territory. In particular, this provision was designed to address the situation where an outlying community based on the Development Framework, has only a portion of its territory within the rural service area, the area which pursuant to the Development Framework, would involve a risk of causing the premature expansion or construction of the metropolitan transportation or sewer facility. In addition, Paragraph B has been changed to expressly allow the Council to initiate a re-evaluation of a local comprehensive plan on its own motion. This provision is designed to provide the utmost flexibility in reassessing the limited number of local comprehensive plans to which this short circuit review is applicable.

MC 4 Exempt Matters

This rule has been revised in a number of minor respects based on comment received at the previous public hearing. First, on the second line of the introductory paragraph, the word "shall" has been inserted in place of "may" to make it clear that if a proposed matter does fall within one of the expressed exemptions, it will be exempted from a significance review. This was intended by the previous language. Second, the Chairman has been given the express authority to rule as to an exemption in response to requests for a more expeditious exemption process. The Chairman's action is to be taken in accordance with MC 6D and is subject to appeal to the Council. The phrase "or at the conclusion of an initial metropolitan significance review" has been deleted because it is merely redundant. Third, in response to comment raised by the Metropolitan Transit Commission, the phrase "within an area(s) of commission operational authority" has been inserted to make the language of the rule directly parallel that contained in Subd. 4(7) of the Significance Act. This change makes it clear that a significance review does not apply to operational activities of the Commissions, including bus route establishment, etc. In response to suggestion by the Environmental Quality Council, Paragraph B has been modified by the insertion of the specific name and appropriate statutory cite for the Power Plant Siting Act. This parallels the intention of the previous regulations and simply makes the exemption relating to power plant matters clearer. Paragraph C has been modified so that it clearly becomes a standard and not a process together with a standard. Emergency exemption can be obtained in connection with the processes and procedures listed in the introductory paragraph.

The final change to MC 4 has been the insertion in Paragraph E of a six-month period of grace with regard to proposed matters for which all applicable land use permits have been issued prior to the effective date of these regulations. This provision was contained in the 1975 draft of these regulations and will have the effect of simply preventing the placement of yet another layer of review on a project which has already been thoroughly approved prior to the adoption of these regulations. While concern was raised with regard to the use of "substantial construction", no change has been made in the regulations in response to comment received. This phrase was taken from Minnesota case law relating to vested rights and paraphrases the current case law standard with regard to determining whether a vested right has been obtained in connection with a project.

The principal Minnesota cases with regard to vested rights are Kiges v. City of St. Paul, 240 Minn. 522, 62 N.W. 363 (1953); Hawkinson v. County of Itasca, ___ Minn. ___, ___ N.W. 2d ___ (1975); and Almquist v. the Town of Marshan, ___ Minn. ___, ___ N.W. 2d ___ (1976). The Hawkinson case, in particular, sets and explains the Minnesota rule which has been used to frame MC 4E. In Hawkinson, a Minnesota court stated as follows:

> "Our conclusions concur with those well summarized by the Supreme Court of Iowa in Board of Supervisors v. Paaske, 259 Iowa 1293, 1360, 98 N.W. 2d 827, 831 (1959):

> "It is impossible to fix a definite percentage of the total cost which establishes vested rights that applies to all cases. It depends on the type of the project, its location, ultimate cost, and principally the amount accomplished under conformity. Each case must be decided on its own merits, taking these elements into consideration."
>
> For plaintiff to prevail, it is not enough that he show some prejudice in not being permitted to carry out his plans. There must be substantial prejudice."

In the Marshan case, the Minnesota court remanded the litigation to the District Court for further examinatin of the issue of whether the plaintiff had taken steps to develop his property in a manner consistent with the existing zoning ordinance which resulted in "detriment so substantial that it would be unjust to deny him the building permit sought". These case provisions have also been utilized by the Energy Agency in EA 904F and 10004F as an aid to assisting the agency to determine that to which the rules do not apply.

MC 4E, together with MC 11A(9), the definition of "critical development", work generally to prevent the grant of exceptions with respect to lands platted prior to the effective date of these rules on which no construction has commenced. In other words, platting without will not provide exemption from a metropolitan significance review. This result is consistent with the current position of the Minnesota Supreme Court as enunciated in the above cited cases. Question was raised at the previous public hearing as to whether, as a practical matter, it would be advisable to exempt previous platted lands from the effect of these rules. The Council has undertaken a limited survey to determine approximately how many platted, but undeveloped, lots exist within selected metropolitan area communities. The affidavit attached as Exhibit C establishes that a considerable number of such lots exist within the metropolitan area. In addition, the affidavit does show that a large number of these lots are located in communities included within the definition of "outlying community". To the extent that these regulations attempt to address problems associated with the premature expansion of metropolitan systems, it is argued that a blanket exemption for platted, but undeveloped, lots would be unreasonable and counter to the purpose of these rules. Development in the magnitude which would be possible by such an exemption could very well result in premature system extension.

MC 5 Initiation

Four notable changes have been made in this rule in response to comment received regarding the previous draft. Paragraph A has been redrafted to clarify that the Council itself has an independent right to initiate a significance review by adopting an order for such purpose. Second, "school district" has been inserted in A2b to make it clear, that a school district is an independent commission and does have the right to initiate a significance review. Third, MC 5 A 2c has been revised to allow a petition signed by 50% of the number of those voting in the last election to initiate a review. It is expected that this change will in some instances allow a petition signed by a smaller number of residents to initiate a significance review. It has been inserted largely in response to concerns raised by persons from "rural" parts of the metropolitan area.

Testimony at the previous hearing was polarized on the subject of what number of petitioning residents should be capable of initiating a significance review. Many regarded 5,000 petitioners as a large number which would make petition initiation difficult. Some, however, indicated that it would not be difficult to get 5,000 residents to sign a significance petition, particularly with reference to matters affecting the cities of Minneapolis and St. Paul. It has been difficult to assess the adequacy of any number chosen, because extremely limited experience with regard to petition initiations of any kind.

The Council is aware of only one other petition initiation process. Minn. Stat. Section 116D.04, subd. 3 provides that a petition signed by 500 persons shall cause the EQC to require EIS preparation if "material evidence of need" exists. Experience with and reaction to that number has been mixed. It is believed, however, that the number has resulted in a large group of petition initiated reviews, that a back log of EIS review requests has developed in part because of petition requests, and that this back log has been one of the main reasons for the decentralization--delegation effected by recent amendments to the Environmental Impact Statement Rules adopted by the Environmental Quality Council.

It is the position of the Council that the alternative petition requirements contained in MC 5 A 2c are reasonable in part, because they will insure that the local land use review process in existence within the metropolitan area will not be subverted or circumvented on the basis of certain limited local concerns. Subdivision 3(4) requires that the Council in drafting the rules consider the functions of municipal government in respect to the control of land use. In a circuitous way, this provision supports the establishment of a higher petition number to insure that local review and permit processing occurs prior to and independent from state or regional review activity. The Significance Act, while requiring the establishment of a petition initiation mechanism, does not provide additional directive or specification with regard to the establishment of a reasonable number of petitioners. The statutory provision, however, does support the position that the review mechanism established by the Significance Act must recognize, support, and be compatible with existing local land use review mechanisms now in force. Neither the Metropolitan

Land Planning Act nor the Significance Act in any way attempted to repeal or totally supercede the existing local structure with regard to land use planning, control, and determination. In order that the significance review not indirectly effect that result, petition initiation has been developed so that most local land use determinations will be made in advance of metropolitan significance determinations and metropolitan concerns will be raised primarily by either local governments or regional or state governmental bodies that may not have been aware of or had an opportunity to participate in or voice their concerns at the local level.

The Metropolitan Significance review is designed to protect and promote orderly and economic development of the region and that end is different from the interest designed to be protected in connection with the environmental impact statement process. It should be easier to get a larger number of petitioners with respect to proposals affecting the orderly and economic development of the metropolitan area than an often local enfironmental effect, if magnitude of effect is in any way connected to public concern. The 5,000 petitioners, it should be noted, can be residents of any local jurisdiction within the metropolitan area, and the petitions could be circulated and developed over a lengthy time period.

In further support of the reasonableness of the resident petition requirement, it should also be noted the other avenues of initiation all would appear to allow a smaller concerned group of citizens to directly state their case either to a metropolitan commission, state agency, or a local governmental unit and to convince the governing body of those agencies to initiate a review. History with regard to previous metropolitan significance reviews (see memorandum of 1974) would also indicate that the primary channel and opportunity for the initiation of significance review has been and will continue to be initiation by local governmental units. Local governmental unit initiation has typically been responsive to citizen group concerns. A number of the past subject matters for review would indicate that it is not extremely difficult to convince a local governmental unit to initiate a significance review process, particularly where a proposal could have a considerable impact on a particular group of residents. Despite the relatively large size of the petition requirement, it is not expected that small groups of citizens will be prevented from directly or indirectly initiating a metropolitan significance review.

The final change made with respect to MC 5 is that relating to the insertion of "affected" in MC 5 A 2 d, e, and f as well as B 4. The Significance Act, at subdivision 4(4), provides that the "Council shall be required to review a proposed matter upon request of an affected local governmental unit or metropolitan commission." This noninclusionary provision has been expanded by the proposed rules to apply to review initiations by independent commissions, state agencies, and sponsors. Consistent with the statutory requirement of "affect," these additional initiators are also required to have an "affect." The basis for the affect requirement is to insure that a significance review only be conducted when initiated by some person having an interest in or potentially capable of being affected by a proposed matter. In illustration, it would be inappropriate for the State Department of Commerce to request the initiation of a significance review with regard to a matter as to which would have no affect on any

of its responsibilities. So, too, it was thought to be inappropriate to allow the Metropolitan Airports Commission to initiate a significance review of a matter which would have absolutely no effect on its airport system. This provision is analogous to requirements with regard to participation in civil litigation where a person seeking to avail himself of the court process must show that the potential outcome will affect his interest.

Paragraph MC 5 B4 was also revised to expand cognizable affects beyond that encompassed within the phrase "existing or planned land use or development," in response in part comment by the Senate Counsel. Other responsibilities of an initiator are now cognizable in terms of determining whether or not the initiator will arguably be affected by a matter. Many state agencies, metropolitan commissions, and independent agencies cannot argue that a proposal will have an affect on their responsibilities with regard to land use and development since they do not have any power or responsibility with regard to land use and development.

MC 6 Commencement

Mc 6 has been changed for purposes of clarification and in response to comments received. A duplicative sentence in Paragraph A has been deleted. The term colorable has been replaced by "arguable" in Paragraph B(3). Arguable is thought to be more descriptive of the intended showing of "affect." It is not intended that this provision necessitate the showing of the "substantial" effect, since that would be redundant, but rather simply that the proposed matter will have some probable causal relationship, or effect or result on the initiating body. Arguable unlike "colorable" better expresses the need to show some, but not a lot, affect. The provision relating to sham or capricious initiation is not entirely synonomous with affect, and thus both provisions have been reatined.

The final change to Paragraph B is the insertion of the consideration of whether the proposed matter is exempt pursuant to MC 4. This insertion has been made in response to the request that an opportunity for early determination of exemption be incorporated in the rules. Paragraph B has been modified by inserting additional language to make it clear what the Chairman is to determine and also to provide notice to those who have requested initiation of the fact and basis for a negative response to their request. Also, a negative determination must be published in the Council bulletin so that others interested in the outcome receive notice of such a result.

Paragraph E has been modified for purposes of clarification and in addition hearing has been inserted in place of "meeting." The Significance Act does require that "a public hearing shall be held prior to the final determination with regard to a proposed matter" and to the extent that a negative Chairman determination supported by the Council is a final determination pursuant to these rules, a public hearing must be held. Note in addition that such a determination is a subject for judicial review in accordance with MC 10 L.

Paragraph F has been modified for purposes of clarification by insertion of a five day requirement with regard to the transmission of a notice to commence. This paragraph has been further modified by the addition of the transmission of an "order to the sponsor not to commence construction." Once a review has been commenced, MC 10 E provides a temporary suspension of activity with regard to a proposed matter. The order authorized by paragraph F simply allows for a formal determination and transmission with regard to this implementation hold. In response to comment received, Paragraph F has been revised to provide that the notice of commencement of a significance review will be published when appropriate in the State Register. The phrase "when appropriate" qualifies publication, because it was envisioned that on occasion State Register publication requirements might not be compatible with the deadlines imposed by the Significance Act and these rules.

MC 7 Metropolitan Significance Review

The report of the Hearing Examiner raised concern with regard to three provisions in MC 7. Revisions have been made in an attempt to address these concerns as follows. First, the previous version of these regulations did not provide for a specific closing of the public hearing record, and as a result, concern was raised that late information could be submitted and would not be subject to any opportunity for cross-examination or rebuttal. As revised, MC 7 D requires submission of additional information prior to the close of the record of the public hearing. Comments with regard to the significance review report, MC 7 H, must also be submitted prior to the close of the record of the public hearing. The close of the hearing record will be established by the significance review committee with respect to hearings conducted by that committee* and will be established by the Hearing Examiner in accordance with HE 217G(2)(gg). No limited time period is established with respect to closing hearings conducted by either the Examiner or the committee so as to provide flexibility necessary to respond to the varied review situations which may arise. The establishment of a date for the close of the record obviously will have to be done clearly and precisely by either, and the committee is guided in this respect by the provision relating to procedural due process and contained in the first sentence of MC 7 J.

The second and third major concerns raised in the Examiner's report related to a sentence which has been deleted from MC 7 D that provided "the committee may consider the effect or consistency of a matter as to all policies and plans adopted by the Council, provided that only metropolitan system plan considerations may be utilized in any final determination." This sentence is deleted to avoid any possible restriction or confusion. The significance review committee is directed to consider only the standards set forth in MC 2 and MC 3 in its review. This provision does encompass both metropolitan system plan effects and inter-governmental unit effects which was part of the concern raised by the previous sentence. In response to recommendation by the Carver County Board of Commissioners, both MC 6 F and MC 7 I have been amended to provide for discretionary publication in the State Register and, as to I, in newspapers of general circulation.

Mc 7 has also been changed in a number of minor respects in response to comment. First, in Paragraph A, "all of whom" has been inserted in place of "who" to make it very clear that members of the significance review committee must be members of either the Metropolitan Council or the Advisory Land Use Committee. This change is simply a matter of clarification as the previous draft provided this restriction on membership as well. MC 7 B has been changed in a number of minor respects so as to express that which was implied in the previous draft. For example, Hearing Examiner Rules for Contested Cases are specifically referenced, and the phrase "including the public hearing" has been placed at a later point in the sentence to make it clear that other portions of the significance review can be delegated, not just the public hearing. Finally, the last sentence in this paragraph, specifically the phrase "accept, reject, or modify" has been revised in response to comment by Senate Counsel so that it states explicitly what can be done with the report of the Hearing Examiner by the significance review committee. Consistent with other administrative practice, the committee is not allowed to modify the Hearing Examiner's report but may either adopt that report or simply consider it in adopting committee findings and recommendations. It should be noted that this paragraph does not require delegation to a person appointed by the State Office of Hearing Examiners. This approach has been included to allow flexibility. Underlying this aim has been the concern that the Council is not a state-wide agency and thus will not normally be required to or otherwise utilize members of the Hearing Examiner's office, and in addition, that it may prove necessary to be able to draw on a pool of hearing examiners with some expertise regarding metropolitan system plans. The potential complexity of significance review makes it reasonable to provide for the possibility of developing a separate group of persons experienced with respect to metropolitan plans and significance reviews.

In response to comment received from the City of Bloomington, MC 7 C(1) has been modified to require the sponsor, initiator, and situs governmental unit to submit preliminary statements. Other parties may submit such statements. In Paragraph C(2), the initiator has been deleted in response to comment which stated that very often the initiator would not have access to this information. Given the lack of access, it appears reasonable to delete the initiator from being obligated to submit such plans, etc. In addition the phrase "specifications, formal presentations, budget requests" has been deleted in response to comment concerned with the bulk and relevance of material which could be required to be submitted to the Metropolitan Council. To this same end, language which would have required the submission of information given to local governmental units not required to approve the proposed matter, such as those "making grants with respect to" or "reviewing," has been deleted. Language calling for the submission of the local determination has been inserted here to make express what was implied before.

A new paragraph, MC 7 E, has been inserted in response to comment with regard to the potential complexity of significance reviews and concerns of the Advisory Land Use Committee. Paragraph E expressly authorizes the execution of a stipulation prescribing a "simplified procedure" for the conduct of a significance review. This provision relates only to reviews conducted exclusively by the significance review committee. The paragraph does not obviate the need for a public hearing as required by the Act or for compliance with due process considerations. A stipulation becomes effective only on execution by all parties and the significance review committee so that there must be complete agreement as to the procedures which will be followed if a simplified process is desired.

Provisions relating to discovery have also been modified with most of the modifications being made for the purposes of clarification. Discovery in connection with reviews delegated to a Hearing Examiner is expressly governed by rules for contested case hearings. These provisions have also been changed to give the significance committee more control over and power with respect to non-voluntary disclosures by parties. Paragraph 2 is the basic grant of power to the significance review committee or Council; information production requirements are contained there as well as the right to authorize inspection by an agent or designee, and the right to propound written interrogatories to another party. Paragraph 4 governs rights with respect to non-voluntary disclosure by parties. This paragraph, which has generally been made consistent with HE 214(C), gives the significance review committee the power to assess requests for discovery by parties, to order such discovery and to establish a penalty for the failure to provide discovery as ordered. The alternative remedies are fashioned directly after those contained in Paragraph C, 1 and 2, of HE 214. These discovery provisions are consistent with practice of other administrative agencies within the State of Minnesota and are reasonable in that both voluntary and involuntary disclosure is provided and reasonable and practical constrainsts may be imposed to ensure non-voluntary discovery.

MC 7 H has been modified in a number of minor respects to clarify its provisions and to provide a better opportunity for a knowledge of the report's contents as well as an opportunity to discuss its contents informally prior to its final preparation. This entire paragraph provides a device analogous to a prehearing conference. It is intended to clarify positions, narrow issues, and to apprise all parties of information which will be examined at the hearing so as to avoid surprise, and simplify reviews, if possible.

MC 7 J has also been changed for clarification. First, the sentence "public hearings conducted by a Hearing Examiner shall be governed by Minn. Reg. HE 201 to 222, as amended" has been added to make express that which was implied before. Paragraph J, thus prescribe public hearing procedures only for hearings conducted by the significance review committee. Extraneous references in the previous version to the Hearing Examiner have been deleted for purposes of clarification. Other reasonable language clarifications have also been inserted, including substituting "findings and recommendations" for "final decision" at the end of Paragraph 1, the insertion of "and made a part of the record" at the end of Paragraph 2, and the insertion of

"the significance review committee and the Council" at the end of Paragraph 3. Paragraph 4 has been altered completely. Its predecessor paragraph addressed discovery and that is now adequately covered by Paragraph MC 7 F. Based on comment received and concern of the Advisory Committee, the ability to limit the amount and scope of direct and cross-examination and presentation has been made express. The need for this provision related to the expeditious handling of reviews. The provision is reasonable in that it will accomplish this end but will not obviate "fundamental fiarness" because of the overall structure contained in the initial sentence of Paragraph J. A specific time requirement, "at least seven days," has been inserted in Paragraph 6 in response to requests for more delineation as to the various time requirements contained in these rules. Specification creates obligation, and will ensure the orderly and, hopefully, speedy processing of significance reviews.

MC 7 K has been modified partly in response to comment raised by Burlington-Northern which stated that the previous version of the first sentence in this paragraph created ambiguity as to who had the obligation to satisfy the initial burden of proof. Consistent with normal requirment with regard to judicial actions as well as administrative processes (see HE 217(C)(5)), the initial burden of proof with regard to any fact is placed on the party asserting the fact. The second sentence in this paragraph clarifies the initial proposal with respect to the ability of a local governmental unit to determine consistency of a proposed matter with its comprehensive plan and to raise a rebuttable presumption shifting the burden of proof with respect to a proposed matter sited within its jurisdiction. This provision is reasonable in that it furthers the approach taken in MC 3 with respect to granting favorable treatment to communities which have submitted comprehensive plans which conform with metropolitan system plans. Despite the creation of this rebuttable presumption, however, a community acting in disregard of its comprehensive plan might not ultimately be able to overcome the obligation created by MC 3A(2) and MC 3B.

MC 7 L has been revised to make it clear that the significance review committee, prior to adopting its report, must await the receipt of the report of the Hearing Examiner. "Or MC 3, as applicable" has been inserted in Paragraph 1(aa) and (bb) to conform with the revision to MC 3 discussed above. Paragraph L(1)(cc) has been changed in response to comment at the public hearing and concern noted in the Examiner's report with regard to "terminated without prejudice." The ability to terminate without prejudice created concern regarding authorization as well as a practical problem. The redraft avoids these problems by enabling suspension. Suspension here is authorized by the provision in the Significance Act which, in specifying the 90-day review process, conditions that process on the accompaniment of "adequate supporting information." If the information submitted is not adequate, arguably the statute will allow a delay in the process which in total might cause the review period to be in excess of 90 days in length. This provision would preserve the effect of the interim hold order with regard to the proposed matter under review. The danger of suspending review and holding additional activity with regard to a proposed matter which might not be found to be of metropolitan significance if adequate information were submitted, is alleviated by

the fact that the significance review committee is not required to assess the adequacy of the information and is permitted to determine applicability and exemption. The paragraph should have the desired effect of causing the production of information necessary for a significance review because of the potential continuation of a hold order.

MC 8 Council Determination

Based upon comment contained in the Hearing Examiner's report, MC 8C(3) has been added to address situations wherein the Council determines that a proposed matter is of metropolitan significance but that neither the power to suspend commencement of construction or to initiate amendments to metropolitan system plans is appropriate. As noted by the Hearing Examiner, as well as Senate Counsel, there may very well be some situations such as in connection with matters requiring a change in a condition in an NPDES permit where a proposed matter is of significance but its effects can be addressed or mitigated without invoking the remedies of suspension or amendment. Paragraph E, providing for reconsideration, which appeared in the previous draft of the significance rules has been deleted. As noted by the Examiner, the ability to reconsider a final determination raises questions as to compliance with the 90-day review period requirement established by the statute. Other clarifying changes have been made to MC 8, including the following. Paragraph A has been revised to clarify precisely what the Council is to consider in connection with its activity respecting a significance review. In addition, the authority to direct the significance review committee to engage in additional review activity has been made more precise by the addition of "specific significance". In response to objection raised at the public hearing, the phrase "as appropriate" previously contained in the last line of Paragraph b has been deleted. Consequently, final determinations must contain those items listed in the subsequent two paragraphs. Paragraph B(3), which had authorized review termination on the basis of an inability to secure adequate information has been deleted. As noted above, however, the power to suspend a significance review pursuant to MC 9D(2) is retained. Again, the position is that while termination is not within the permissible scope of these rules, suspension is. Paragraph C(2) has been revised to provide for an order rather than merely a determination with regard to the suspension of construction.

MC 9. In response to comment in the report of the Hearing Examiner, Paragraph 9E dealing with "waiver by the Council" has been deleted. The only other change to MC 9 has been the insertion at Paragraph D of subparagraph (2) which provides for the independent power to suspend a significance review to await the production of adequate supporting information. It is the position of the Council that this power is within the scope of the statute based on provision contained in Subd. 4(e) which conditions the 90-day review period on "adequate supporting information". This provision is necessary in order that a significance review not be a nullity or a waste of time, money, and effort. A complete significance review will be adequate and defensible only in direct relation to the adequacy of the information submitted and the findings derived therefrom. Again, because of the use of "substantial effect", it is absolutely critical that full and complete information with regard to any proposed matter be developed and be presented to the reviewing bodies. Both the provisions regarding "information submissions" contained in MC 5 and 6 and the provision contained in MC 7F(4) relating to discovery will have the effect

of producing adequate supporting information. But apart from these provisions, the proposed rules do not contain other effective stimulants vis a vis the production of adequate information. MC 9D(2) does provide a limited amount of stimulation to this end and should not be overly burdensome either with respect to the sponsor or an initiator.

MC 10

A number of provisions have been changed in response to comments received at the public hearing. Paragraph B has been expanded by the addition at Line 2 of "or other activity" in accordance with provision contained in Subd. 4(2) of the Act which provides that the Council has the power to suspend action on a proposed matter during the review period. The clear intent of this entire paragraph is simply to halt additional action which otherwise could have the effect of establishing a vested right to continue the proposed matter regardless of the metropolitan significance determination. The primary intent here is to halt other sorts of activity involving expense which would be cognizable for purposes of determining whether substantial construction has been commenced. Paragraph C has been revised to reflect the changes made in MC 2A(8) by deleting rural service and inserting commercial-agricultural area. This provision will enable an advance determination with regard to whether a proposed matter is sited within the commercial-agricultural area in accordance with provision contained in MC 11A(5) and/or whether a proposed matter is a "critical development" in accordance with the provision contained in MC 11A(9). On the whole, the letter of interpretation provision enables consideration determination following public hearing of certain of facts preceedent to a consideration of whether a metter is of metropolitan significance. In keeping with this intent, the phrase "or adopt the remedies specified in MC 8C" has been inserted to make it clear that the letter of interpretation process may not condense or short circuit the entire significance review process. End remedies may not be adopted by letter nor substantial system or inter-governmental effect determined. For purposes of clarification, a sentence at the end of the previous draft of these regulations relating to judicial review has been deleted, though the substance of that sentence has been retained in connection with MC 10L.

In response to considerable question at the public hearing with regard to the coordination of metropolitan significance reviews with reviews conducted by the Metropolitan Council pursuant to the Critical Areas Act and environmental impact statement reviews, Paragraph D has been inserted to allow the Council by order to coordinate a significance review with either of those activities. This provision is needed to speed review disposition to the benefit of both public and private parties involved. The paragraph does not authorize an improper delegation of Council power to the Environmental Quality Council, but does provide for the adoption of a joint agreement enabling the establishment of a joint panel for review. This joint panel would not obviate the need for Council action pursuant to MC 8. Comments

have been made requesting that matters within the Mississippi River Corridor Critical Area not be given a metropolitan significance review. This approach has not been incorporated into Paragraph D because of the clearly separate functions and purposes of the critical area review and the significance review as noted in the Hearing Examiner's report.

Paragraph G relating to the elimination of a suspension has been modified in a number of respects to make it more consistent with the other provisions contained in the rules. The power to eliminate a suspension is contained in the Significance Act at Subd. 4(2), and the rule is consistent with statutory authorization. The word "reconsider" has been deleted at two places in this paragraph, and the phrase "consider the elimination" has been inserted in its place to clarify the fact that the elimination of a suspension is not a reconsideration of the entire review but rather the consideration of compliance with the conditions attached to a final determination, if any.

Paragraph I has been changed to address the concern of the City of Medina expressed at the previous hearing with regard to record retention. To balance the need for retaining an adequate information record against the need to return one of a kind information to a sponsor or initiator, the provision "or copies of the same" has been inserted to make it clear that the original of any information submitted need not be retained by the Council.

Paragraph J, Confidential Information, has been revised in response to comment received which suggested that parties might decline to submit certain information which was not "confidential at law" but which would be helpful for purposes of the review because it contained information, such as trade secrets, which if made available to the public would harm a party's competitive position. Based upon this comment and a review of other existing confidentiality provisions contained in rules of the Pollution Control Agency and the Environmental Quality Council, Paragraph J has been revised to enable a determination as to limited confidentiality with respect to trade information not generally known to or available to the public which would not be confidential at law. This opportunity should be in addition to and not in limitation of the ability to submit information which is confidential at law to the committee. Provisions which would guard against total disclosure of either type of confidential information are contained in the paragraph, as revised, and the final sentence requires that substantiation of this request is necessary for the Chairman's determination as to confidentiality.

Paragraph L has been inserted in response to requests at the previous public hearing with regard to judicial review. The second paragraph of this provision is designed to fix the occurrence of a "final determination" which is necessary for purposes of determining the exhaustion of administrative remedies. Three situations which are classed as final determinations are those where no additional internal review or appeal is provided in these rules.

MC 11 Definitions

Paragraph A which had incorporated certain statutory definitions into the rules by reference has been deleted in response to a request that all operative definitions be contained in these rules. In response to this request, those definitions have been incorporated throughout Paragraph A. A definition of commercial-agricultural area has been included, and the need for and reasonableness of the same has been discussed above. A definition for independent commission, board, or agency is consistent with the definition contained in Minn. Stat. Section 473.121, Subd. 11, except that it is expanded to include school districts to which the Metropolitan Land Planning Act applies. The statutory phrase has never been specifically interpretted either by a Minnesota Court or by the Attorney General. A discussion of the phrase upon which Council practice and posture has been based in the past is attached hereto as Exhibit D. It is our position that reasoning in the attached memorandum and past practice supports the inclusion of school districts within this phrase. In addition, school construction often leads to more extensive residential development, sewer, and road utilization, etc. One of the early metropolitan significance reviews involved the construction of an elementary school in the City of Dayton, and a number of more recent Council A-95 reviews have raised land use issues incident to school district construction. While very often school construction is closely coordinated with existing land use planning and control, situations do arise wherein school districts do not act in conformance with local comprehensive plans and official controls.

The definition "Land Use Permit", A(13), has been improved by the deletion of the redundant "or other public action having the effect of...". Due to oversight, definition (14) did not contain a reference to city, town, or county, and this has been added as well. Number (16) incorporates the definition contained in 473.121, Subd. 7, and it should be noted that the Metropolitan Airports Commission is not by statute defined as a "metropolitan commission". The Metropolitan Airports Commission has been, and will be regarded pursuant to these regulations, as an independent commission, board, or agency. Definition (19) is identical to the definition for this phrase contained in the Metropolitan Land Use Planning Act, Laws 1976, Chapter 127.

Definition (21) relating to party has been revised in response to comments received. As drafted, the provision allows any person whose legal rights, duties, or privileges may be affected by a significance review to petition and be admitted as a party by the significance review committee, Hearing Examiner, or Council. Admission by the committee, Examiner, or Council will have to comport with existing case law. For purposes of clarification, the last sentence relating to Council participation is added. Due to the switch to vehicle trip measurement, the definition of person trip contained in Number (23) has been deleted, and Number (24) which defined "private sewer system" has also been deleted as obsolete. To correct a typographical mistake, the definition of public agency has been revised by deleting the word "where" in the second line and the insertion of "or" prior to "any government".

The definition of substantial, A(34), has developed from material contained in words and phrases which list ways in which courts have interpretted substantial in various cases. The definition is also utilized in a definition for the term contained in Black's Law Dictionary which is as follows:

> "Of real worth and importance; of considerable value; valuable...belonging to substance; actually existing; real; not seeming or imaginary; not elusive; solid; true; veritable...something worthwhile as distinguished from something without value or merely nominal."

In addition, Webster's New Collegiate Dictionary defines substantial as "consisting of or relating to substance; not imaginary or illusionary; ...considerable in quantity; sufficiently large...." The definition in the proposed rules is clearly consistent with the above referenced authority, clearly notifies those who might be involved in a significance review of the fact that the word is a "relative term" and that obviously all the facts and circumstances must be assessed in order to reach a judgment or determination. In addition, the qualifications will provide direction for the committee and Council as they attempt to analyze and assess material submitted in connection with any review.

The term substantial effect, A(35), is defined by example, though in addition it also incorporates the independent definition of "substantial". The listing is expressly made unlimited so that persons will not exclusively rely on the examples listed. The absence of limitation is reasonable and necessary because of the use in part of the word substantial. The listed examples are all clearly ones which have been encountered before and would result in considerable disruption of the system if they were to occur in the future. Note also that the definition is limited in application to MC 2A and does not apply to use of the phrase in MC 2B.

STATE OF MINNESOTA

COUNTY OF RAMSEY

METROPOLITAN COUNCIL

- -

In the matter of adoption of rules of the Metropolitan Council governing the review of proposed matters of Metropolitan Significance pursuant to Laws of Minnesota 1976, Chapter 321.

FINDINGS OF FACT AND CONCLUSIONS OF THE COUNCIL

- -

The above-entitled matter came on for public hearing before the Hearing Examiner, Howard L. Kaibel, Jr., of the State Office of Hearing Examiners on the 16th day of March, 1977, at 1:30 p.m. and reconvened at 7:30 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, St. Paul, Minnesota, 55101, after proper notice as required by Minnesota Statutes, Chapter 15, and Laws of Minnesota 1976, Chapter 321.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and based upon the records, files, and proceedings herein, the Council adopts the rules subject to the changes described and contained herein and in so doing the Council finds the following:

FINDINGS

1. That the report of the Hearing Examiner, Howard L. Kaibel, Jr., of June 2, 1977, setting forth his findings of fact on the above entitled matter is hereby adopted and incorporated by reference herein as a part of the findings of the Metropolitan Council with the following exceptions:

a) Paragraph 7 is rejected and not incorporated as a finding of fact of the Council.

b) Paragraph 12, Clauses (a), (c), and (d) are adopted by the Council as its findings of fact and incorporated herein. However, Paragraph 12, Clause (b) is rejected and is not incorporated as a finding of fact of the Metropolitan Council.

2. That the technical, non-substantive amendments to the proposed rules set forth specifically in the memorandum from John Rutford and Dick Nowlin to the Physical Development Committee dated September 12, 1977, and in the report of the Physical Development Committee to the Metropolitan Council dated October 25, 1977, are reasonable and necessary responses to specific issues raised and comments made in the files, records, and proceedings of the public hearing with regard to these rules, and that the same are adopted and incorporated as part of the Metropolitan Significance Rules accompanied and supported by the following specific findings:

a) That a change 1 relating to MC 5A2c(2) reinserts language which was contained in the public hearing draft of these regulations and is, in fact, no change of the document as such.

b) That change 2 with respect to the definition of "commercial agricultural area" is reasonable and necessary in light of the changes made respecting commercial-agricultural area elsewhere in the rules, which changes were based on concern and recommendation contained

in the Hearing Examiner's report at paragraph . In addition, it is found that the language used to define commercial-agricultural use is language which was previously contained in the definition of commercial-agricultural area and thus was known to the public at the time of the public hearing regarding these rules.

c) That change 3 substituting "suspended" for "extended" in MC 1 is reasonable in that it conforms the language in MC 1 to the language in MC 9D which provides the exclusive authority for extending a significance review beyond the 90-day period. A review period can be suspended, but cannot be "extended".

d) That change 4 substituting "commercial agricultural use" for "commercial agricultural area" at MC 2A8b addresses the problem raised in paragraph 14 of the Hearing Examiner's findings of fact. There it is noted that commercial-agricultural area as defined had no specific boundaries and was, in fact, delineated on a generalized map within the Development Framework Chapter of the Metropolitan Development Guide. To avoid the referenced legal problems relating to the incorporation of a shifting area, the change provides determination based upon interference with the particular land use and the land use has been defined. As the scope and concern of this standard was clearly expressed in the public hearing draft

of these rules, the public has been notified of this feature in the rules.

e) That change 5 inserting "or comprehensive sewer plans and zoning ordinances of outlying communities" in MC 3B is made in response to the suggestion at the public hearing by Roger Peterson, representing the Association of Metropolitan Municipalities. The change would enable the partial exemption from the rules provided in MC 3B for communities which have not yet adopted the local comprehensive plans but which have, in fact, made binding plan and regulatory determinations respecting the provision of sewer service, etc. The change is reasonable because at present many communities are in the process of preparing revised local comprehensive plans in response to the Metropolitan Land Planning Act and will not have completed those plans until 1980 or 1981. These same communities, however, may very well have made planning and regulatory determinations sufficient to justify the partial exemption from the regulations authorized by this provision.

f) The changes and reorganization to MC 5A2c are made for purposes of clarifying the petition initiation process. Since the word "or" was included in the public hearing draft of these regulations, the insertion of "the smaller of the following" makes no substantive change. So, too, the insertion of the number of and "state" were clearly intended and,

in effect, necessary clarification to the 50% petition provision.

g) Change 7, made to MC 6C, is reasonably in that it clarified the Council's power with respect to the Chairman's decision to commence or not to commence a significance review without adding to the power contained in the draft of the regulations. As drafted, the Council was expressly authorized to reverse a negative determination regarding review initiation made by the Chairman. The power to reverse such a determination implies as well the power to affirm. The change merely expresses that implied power.

h) Change 8 to MC 6F conforms language in that provision to the provision relating to the implementation hold during review contained in MC 10B. The change does not extend the substantive scope of the regulations due to the fact that the public hearing draft at MC 10B directed a suspension of "other activity" as well as the commencement of construction.

i) Change 9 is made in response to comment received at the public hearing and makes express the power which was previously implied. The change is technical in nature, but has the effect of clarifying one procedural element which was unspecified.

j) Change 10 is reasonable in that it specifies that any party may request the delegation of responsibility to a hearing examiner. The change clarifies the proposed rule by providing this specification. It does

not change or add to the power contained in the proposed rules respecting the delegation of a review to a hearing examiner.

k) Change 11 merely specifies who and when the required public hearing record will be closed by. Absent this provision, there is limited uncertainty as to how record closing would be accomplished. The record obviously would have had to have been closed in order to comply with due process in the absence of such a provision, and as a result the change does not add substantively to the regulations.

l) Change 12 to MC 9B insures that the rights of all parties will be protected in the case of a withdrawal of the significance review. Without the amendment, the Council would have had to analyze each request before withdrawal individually and to determine whether rights of any parties would have been adversely affected. That action would have involved difficulty and discretion, and the change provides for certainty as well as protection. The change is made in response to comment at the public hearing.

m) Change 13 is made in response to comment made at the public hearing. Concern was expressed that the phrase "construction or other activity" was both too specific and too broad in light of existing case law respecting vested rights. Proposed matters which are the subject of a metropolitan significance review may very well involve something other than construction. As a re-

sult, the broader phrase "site alteration" has been inserted in place of "construction", and the general term "other activity" has been deleted. The change does not substantively expand this provision beyond that which was contained in the draft submitted for public hearing.

n) Change 14 is made to conform this provision to the change respecting commercial-agricultural area which has been made for the reasons stated above. It is made largely in response to paragraph 14 of the Hearing Examiner's findings of fact.

o) Change 15 responds to comment made at the public hearing with regard to the coordination of Metropolitan Council reviews of projects which may be reviewed in accordance with these rules. The phrase "makes review coordination" is directory rather than permissive and does represent an incremental change in relation to the proposed hearing draft. The incremental change, however, is of benefit solely to the parties and projects which may become the subject of a metropolitan significance review. The Council finds that it is definitely reasonable to try to coordinate and consolidate all review activities respecting a particular project to the extent possible. The second change made in provision MC 10D by the insertion of "board" merely conforms the rule to the existing statutory title of this body.

p) The change respecting judicial review merely clarifies the discretion of the court to apply a different standard other than that set out in the Administrative Procedures Act. The change reflects existing law and notifies those subject to this regulation of the legal fact. In addition, the change conforms to recommendation and analysis contained in paragraph 23 of the Hearing Examiner's findings of fact.

q) Change 17 relating to MC 11A9 is merely a technical change which makes this provision consistent with other provisions in the rules. Outlying communities, a phrase which was defined in the draft of the regulations submitted for public hearing is utilized and referenced in connection with MC 2A8.

r) Change 18 is made despite the finding respecting this change made by the Hearing Examiner in paragraph 12, B of his findings of fact. The change is reasonable in that it enables the definition of outlying communities to include all communities similarly situated within the Metropolitan Area. While the inclusion of these two communities was inadvertently omitted from the definition of outlying communities contained in the public hearing draft of the rules, interaction between these communities and the Metropolitan Council extending as far back as 1975 has consistently established their status within the rural and developing portions of the Metropolitan Area, and as a result, the inclusion comes as no surprise. In addition,

as noted by the Hearing Examiner, letters were sent immediately to these communities noting the error which had been made and requesting their participation at the public hearing.

s) The resolutions referenced at Change 19 are not submitted for adoption at this time, but will be adopted by the Council as and when these rules become effective. The resolutions respond to comments from the affected communities made at the public hearing and are consistent with the provision contained in MC 3B respecting partial exemption from the affect of these rules.

3. That a clear and compelling need has been demonstrated for the adoption of the proposed rules governing matters of metropolitan significance changed in accordance with the above.

CONCLUSIONS

1. Conclusions 1, 2, 3, 4 and 5 of the Report of the Hearing Examiner are adopted and incorporated in full herein.
2. The modifications to the proposed rule in the above findings which differ from the Findings of Fact in the Hearing Examiner's Report are non-substantive changes which are necessary to the adoption and administration of the proposed rules.
3. The proposed rules, as modified above, of the Metropolitan Council governing the review of proposed matters of metropolitan significance be promulgated, approved and adopted.

METCO-76-001-HK

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE METROPOLITAN COUNCIL

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE METROPOLITAN COUNCIL GOVERNING THE REVIEW OF PROPOSED MATTERS OF METROPOLITAN SIGNIFICANCE PURSUANT TO LAWS OF MINNESOTA 1976, CHAPTER 321.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on March 16, 1977, before Howard L. Kaibel, Jr., a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Metropolitan Council on June 2, 1977; and

WHEREAS, the Metropolitan Council has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Metropolitan Council has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Metropolitan Council has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Metropolitan Council has the responsibility of submitting the complete hearing record and the rules as adopted by the Council to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 15th day
of November, 1977.

DUANE R. HARVES
Chief Hearing Examiner

ADOPTED BY THE METROPOLITAN COUNCIL ON NOVEMBER 3, 1977
APPROVED BY THE CHIEF HEARING EXAMINER ON NOVEMBER 15, 1977
REVISED AND APPROVED BY THE ATTORNEY GENERAL ON DECEMBER 20, 1977

METROPOLITAN COUNCIL OF THE TWIN CITIES AREA

RULES AND REGULATIONS FOR THE REVIEW OF MATTERS ALLEGED TO BE OF METROPOLITAN SIGNIFICANCE

CHAPTER I

MC. 1 PURPOSE AND SCOPE. The purpose of this Chapter is to implement Minn. Stats., Section 473.173, as amended by Laws of 1976, Chapter 321, Section 2, which requires that the Metropolitan Council adopt and put into effect regulations establishing standards, guidelines and procedures for determining whether any proposed matter is of metropolitan significance. This chapter shall govern the review of all proposed matters alleged to be of metropolitan significance initiated pursuant to the above statute. It is the purpose of these regulations to assure that the total effect of a proposed matter of metropolitan significance is considered and the orderly and economic development of the area is promoted, thereby protecting the health, safety, and welfare of the residents of the area. A metropolitan significance review will be completed by the Council within ninety (90) days following commencement unless ~~extended~~ suspended pursuant to these regulations.

MC. 2 STANDARDS FOR DETERMINING METROPOLITAN SIGNIFICANCE. The following effects listed in paragraphs A and B are the exclusive standards for determining whether a proposed matter is of metropolitan significance. Unless exempted pursuant

to these regulations, a proposed matter shall be determined to be of metropolitan significance if the Council finds that it may cause any of the following effects. Proposed matters which the Council finds will not result in one of the listed effects shall be determined to be not of metropolitan significance. The standards listed in paragraphs MC 2 A and B shall become effective immediately upon adoption of these regulations.

A. Metropolitan System Effects

1. The discharge of fifty thousand (50,000) or more gallons of sewage per day and a substantial effect on a receiving public sewer facility or on the plans for such a facility contained in a metropolitan system plan.

2. A violation of or an amendment to a condition, relating to sewage effluent, contained in a National Pollution Discharge Elimination System Permit for the discharge of sewage effluent in the metropolitan area.

3. The construction of any public sewer facility in conflict with an approved local comprehensive sewer plan or a metropolitan system plan.

4. The generation of ten thousand (10,000) or more vehicle trips per day or one thousand (1,000) or more vehicle trips in any one hour and a substantial effect on a metropolitan transportation facility or on a plan for such a facility contained in a metropolitan system plan.

5. A substantial effect on the location, function, or practical service capacity of the whole or any segment of an existing metropolitan transportation facility or on a plan for such a facility contained in a metropolitan system plan.

6. A substantial effect on the location, size, function or character of:

a. An existing or proposed regional recreation open space designated

in a metropolitan system plan whose boundaries are delineated in a metropolitan system plan or a master plan approved by the Metropolitan Council pursuant to Minn. Stats., Section 473.313, or

b. The Minnesota Zoological Garden.

7. A substantial effect on the location, size, function, or character of an existing metropolitan airport, or an airport or airport site designated as a planned metropolitan airport facility whose boundaries are delineated in the airport chapter of the Metropolitan Development Guide or in an airport master plan which has been accepted by the Metropolitan Council.

8. The issuance of a land use permit in an outlying community for a critical development which could reasonably be expected to lead to:

a. The premature expansion, construction or extension of use in excess of capacity of a public sewer facility or a metropolitan transportation facility, or

b. The disruption of commercial agricultural use ~~in a commercial agricultural area~~.

B. Local Governmental Unit Effect. A substantial effect on existing or planned land use or development within a local governmental unit other than the situs governmental unit.

MC. 3 LOCAL COMPREHENSIVE PLANS EXEMPTION

A. When a local governmental unit has adopted a local comprehensive plan which has been approved by the Metropolitan Council pursuant to Laws 1976, Chapter 127, Section 15, then a proposed matter sited in that local governmental unit shall be determined to be of metropolitan significance only if:

1. It causes the effects listed in Metropolitan Significance Standards MC 2 A or MC 2 B, or

2. The proposed matter is inconsistent with those elements of the local comprehensive plan which are subject to Council modification pursuant to Laws 1976, Chapter 127, and would result in the utilization, extension, or expansion of a metropolitan system plan in conflict with any metropolitan system plan or part thereof.

B. Prior to the adoption of a local comprehensive plan in accordance with Laws 1976, Chapter 127, Section 15, and on the receipt of a petition from a local government unit having a comprehensive plan adopted prior to January 1, 1976 7, or an outlying community, the Council shall re-evaluate that comprehensive plan or comprehensive sewer plans and zoning ordinances of outlying communities and assess ~~its~~ their adequacy as a substitute for the standards set forth in MC 2 A. The Council may initiate such a review on its own motion absent the submission of a petition. Following re-evaluation, the Council may by resolution act to exempt proposed matters in all or part of that governmental unit from all or part of the metropolitan significance standards set forth in MC 2 A and ~~to~~ may apply the standards set forth in MC 3 A.

MC. 4 CATEGORIES OF EXEMPT MATTERS. Proposed matters within the following categories shall not be determined to be of metropolitan significance and shall be exempted from a significance review by the Chairman in accordance with MC 6 D or by the Council in accordance with MC 8 B or MC 10 C.

A. Previous Approval. Any proposed matter of a metropolitan commission or the Metropolitan Airports Commission which is within an area(s) of commission operational authority or which has been or will be subject to approval by the Council as part of a metropolitan system plan; any proposed matter which has

been previously approved by the Council in accordance with Minn. Stat., 1975 Supplement, Section 473.167; or any proposed matter for which a final determination has been made pursuant to these regulations unless the proposed matter has been materially altered subsequent to the final determination.

B. Exclusive Comprehensive Review. Any proposed matter subject to review and approval pursuant to the Power Plant Siting Act, Minn. Stat., Sections 116C.51 to 116C.69, as amended.

C. Emergency Matter. Any proposed matter which must be immediately undertaken to prevent or mitigate an emergency. ~~In determining~~ The existence of an emergency matter ~~consideration shall be given to~~ shall be determined based upon the probable consequences of the alleged emergency, the degree to which the alleged emergency circumstances were reasonably foreseeable, the availability of alternate means of alleviating the emergency, and the probable effect of the proposed matter in preventing or mitigating the emergency circumstances.

D. Minor Alterations. Any proposed matter consisting exclusively of administrative or maintenance activity, or the transfer of ownership, or the operation, restoration, replacement, reconstruction, repair or minor alteration or addition to an existing public or private structure or facility, or to lands or waters within the metropolitan area which involves only a negligible expansion or change of use or use intensity.

E. Vested Rights. Any proposed matter for which all applicable land use permits have been issued and on which substantial construction has commenced prior to the initiation of a significance review and any proposed matter for which all applicable land use permits have been issued prior to the effective date of these regulations and on which substantial construction has commenced within six (6) months following the effective date of these regulations.

MC.5 INITIATION

A. Initiators. A significance review of any proposed matter may be initiated as follows:

1. Upon passage by the Council of a resolution adopting an order to commence a significance review, or

2. Upon the receipt of any of the following documents requesting a significance review which are accompanied by an adequate information submission:

a. A resolution from a situs governmental unit,

b. A resolution from an affected local governmental unit, school district or other independent commission.

c. A petition signed by the smaller of the following:

(1) at least five thousand (5000) residents of the Metropolitan Area eighteen (18) years of age or older, or

(2) that number of residents eighteen (18) years of age or older of an affected local governmental unit which equals or exceeds fifty percent (50%) of ~~those~~ the number of persons who voted in that city or township during the most recently held state general election.

The petition shall designate at least one and no more than three persons to act as initiators on behalf of the petitioner.

d. A resolution or letter from a duly authorized executive officer or governing body of an affected state agency.

e. A resolution or letter from a duly authorized executive officer or governing body of an affected sponsor.

f. A resolution from an affected metropolitan commission.

B. Information Submission. An information submission from the initiator shall contain all information, fact and opinion within their knowledge bearing on the applicability of these regulations and the significance and effect of the proposed matter which contains at least the following:

1. The names and addresses of the initiator, the sponsor and the situs governmental units(s);

2. A description of the proposed matter including its planned character, location, function, use and size;

3. A statement of the standards contained in MC 2 which it is alleged caused the proposed matter to be of metropolitan significance, and a discussion of why it is not exempt pursuant to MC 3 or 4, including facts and opinion upon which such statement and discussion are based;

4. Information submissions accompanying resolutions or letters submitted pursuant to MC 5 A 2. b, d, e, or f shall include a statement of affect containing a discussion of the alleged effect(s) the proposed matter will have on existing or planned land use or development, or on other responsibilities or activities of the submittor.

MC. 6 COMMENCEMENT

A. A significance review initiated by the Council shall commence on the day following the adoption by the Council of an order to commence a significance review.

B. Upon the receipt in accordance with MC 5 A 2 of a resolution, petition, or letter of initiation, accompanied by an information submission, the Council Chairman shall immediately examine the material and determine if:

1. It complies with and satisfies the requirements contained in MC 5 A and MC 5 B; and

2. The significance review has been initiated in bad faith or is a sham, capricious, or frivolous initiation; and

3. The information submission transmitted in connection with matters initiated pursuant to MC 5 A 2 b, d, e, or f, makes out an arguable claim (arguably demonstrates) that the existing or planned land use or development or responsibilities or activities of the submittor will be affected by the proposed matter; and

4. The proposed matter is exempt pursuant to MC 4.

C. In making the determinations required pursuant to MC 6 B, the Chairman may meet with the initiator, situs governmental unit and the sponsor and additional information may be requested and considered.

D. If the Chairman determines that the initiation complies with and satisfies the requirements, is not in bad faith, presents an arguable claim, and is not exempt, he shall immediately commence the significance review by issuing an order for commencement effective as of the date of the receipt of the resolution, petition or letter of initiation and an adequate information submission. If the Chairman determines that the initiation does not comply with or satisfy the requirements, is in bad faith, does not present an arguable claim, or is an exempt matter, he shall determine not to commence a significance review and shall immediately inform the person(s) requesting the initiation, the situs governmental unit and the sponsor of that determination and the basis therefore. A statement that a determination not to commence a significance review has been made shall be published in the next following issue of the Council bulletin.

E. Person(s) requesting the initiation, the situs governmental unit, and the sponsor may appeal the Chairman's decision not to commence the significance review to the full Council by submitting a petition for review within seven (7) days following notification of the Chairman's determination. On appeal, the Council shall review the petition at a public hearing and may direct the issuance of an order for commencement or affirm the Chairman's decision.

F. Notice of the commencement of a significance review shall be served by the Council on the initiator, sponsor, situs governmental unit(s), adjacent governmental units, metropolitan commissions and the metropolitan land use advisory committee within five (5) days following the determination to commence a significance review. The notice shall contain the order for commencement, the initiating documents, the information submission or a summary thereof, and an order to the sponsor ~~not to commence construction~~ to suspend action on the proposed matter, and a schedule for the metropolitan significance review. Notice that a significance review has been commenced shall be published in the next following issue of the Council bulletin and when appropriate in the State Register.

MC. 7 METROPOLITAN SIGNIFICANCE REVIEW

A. Significance Review Committee. Immediately following the commencement of a s significance review, the Chairman shall appoint a significance review committee composed not more than seven (7) or less than three (3) individuals all of whom are members of the Council or the Metropolitan Land Use Advisory Committee. At least one Metropolitan Land Use Advisory Committee member and one Council member shall be appointed to all significance review committees. The Chairman shall on the appointment of a significance review committee designate one of its members to be the chairperson.

B. Delegation to Hearing Examiner. At any time prior to the commencement of the public hearing conducted pursuant to MC 7 I, the significance review committee

may delegate its responsibility for the conduct of relevant portions of the significance review, including the public hearing, to a hearing examiner. A hearing held by a hearing examiner shall be conducted in accordance with the Regulations of the State Office of Hearing Examiners for Contested Cases, Minn. Reg. HE 201 to 222, as amended, to the extent such regulations are not inconsistent with the time periods and procedures specified in these regulations. The report of any hearing examiner appointed by the significance review committee shall be transmitted to the significance review committee. The significance review committee shall review the report and may adopt the report as the significance review committee findings and recommendations or consider it in adopting committee findings and recommendations pursuant to MC 7 L. A request for delegation of responsibility to a hearing examiner may be made by any party.

C. Preliminary Statement.

1. The sponsor, initiator and situs governmental unit(s) shall and any other person may submit to the significance review committee or hearing examiner a preliminary statement containing information, facts and opinions bearing on the applicability of these regulations, the significance and effect of the proposed matter, and the appropriate remedy within twenty (20) days following the issuance of the order for commencement. In addition, the sponsor shall indicate all other governmental reviews and approvals required in connection with the proposed matter and their current status.

2. The sponsor, and situs governmental unit(s) shall submit to the significance review committee or hearing examiner all plans, and other information relevant to the significance review submitted by the sponsor to any local governmental unit required to approve the proposed matter and a copy of any findings, report or determination concerning the proposed matter of such governmental unit(s).

D. Additional Information. Any party or person may voluntarily submit additional written information relevant to the significance review to the significance review committee or hearing examiner at any time, prior to the close of the public hearing record.

E. Stipulated Procedure. Within no sooner than fifteen (15) days or later than thirty (30) days following the commencement of a significance review, the persons who are then parties to a significance review and the significance review committee may execute a stipulation prescribing a simplified procedure for the conduct of a significance review by the significance review committee. No stipulation may be executed with regard to a significance review delegated to a Hearing Examiner. A stipulation procedure may address and modify requirements contained herein relating to additional information, discovery, the significance review report, public hearing procedures, and the transmission and service of notice, findings, and recommendations, reports, and other documents and communications. The stipulation procedure may not contain requirements or provisions inconsistent with statutory requirements and shall become effective only on the execution by all parties and significance review committee.

F. Discovery.

1. Discovery in connection with significance reviews conducted by a hearing examiner shall be governed by Minn. Reg. HE 214, as amended.

2. Upon the request of the significance review committee or Council, any party to a significance review shall furnish to the significance review committee or the Council any records, documents, or other data and information which the party may have that is relevant to the significance review under consideration and allow the significance review committee or Council or any member, employee, agent, or

designee of the Council or the committee when authorized and upon the presentation of proper credentials to enter upon their property, premises or site of the proposed matter for the purpose of obtaining information or examining records or conducting surveys or investigations relevant to the significance review under consideration. Upon approval by the hearing examiner or the chairman of the significance review committee, any party may propound written interrogatories to any other party which shall be answered upon a schedule approved by the chairman or the hearing examiner.

3. Any person may examine and copy all records, documents, surveys, information, and other data relevant to a significance review under consideration which is in the possession of the significance review committee which has not been determined to be confidential pursuant to MC 10 J and any party may request the voluntary disclosure and submission of information to him by any other party.

4. Upon the motion by a party, the significance review committee may order the discovery and production of any material or information relevant to the significance review which is not determined to be confidential pursuant to MC 10 J. Upon the failure of a party to reasonably comply with an order made pursuant to this rule, the significance review committee may order that the subject matter of the order for discovery or any other relevant fact shall be taken as established for purposes of the significance review in accordance with the claim of the party requesting the order or refuse to allow the party failing to comply with the order for discovery to support or oppose designated claims or defenses or prohibit him from introducing designated material into evidence.

G. Scope and Review. The significance review committee may consider all standards set forth in MC 2 and MC 3 in connection with its significance review of a proposed matter, regardless of whether issue is raised in the information submission.

H. Significance Review Report. At least ten (10) days prior to the public hearing conducted by the significance review committee or the hearing examiner, the chairman of the Council shall have a written report prepared discussing all information then submitted with regard to the proposed matter. To the extent practicable, the Chairman of the Council shall hold a conference to discuss information received. Prior to the preparation of this report, notice of this conference shall be transmitted to all parties. The report shall be sent to all parties and made available for inspection and copying by any other person. Parties may submit statements concerning the contents of this report to the significance review committee at any time prior to the close of the record of the public hearing conducted pursuant to MC 7 I. This report shall be presented at the hearing held pursuant to MC 7 I, and its author(s) shall be subject to examination thereon. The report shall contain:

1. A discussion of all information submitted and collected concerning the proposed matter including the sources of such information, any inadequacies in the information and the reason therefor, and a list of all persons consulted and requested to submit information;

2. An objective description of the proposed matter, referencing and discussing disagreements regarding facts about the proposed matter;

3. An objective description of the proposed matter's possible consistencies and inconsistencies with and effect upon metropolitan system plans and effect(s) on other local governmental units; an objective discussion of disagreements regarding the facts as to the proposed matter's consistency and effect; and information regarding issues to be addressed at the public hearing;

4. A discussion of possible modifications to the proposed matter or to any metropolitan system plan(s) which could be made to eliminate inconsistencies or to alleviate adverse effects of the proposed matter;

5. A synopsis of any reports or findings of any other public agency relating to the proposed matter.

I. The significance review committee or a hearing examiner appointed by the committee, shall hold at least one public hearing concerning a proposed matter subject to a significance review following notice to all parties at which all parties and other persons shall be given an opportunity to speak and to present information on the applicability of these regulations, the significance of the proposed matter and the review remedy. Notice of this public hearing shall be published in the Council bulletin, served on all parties at least fifteen (15) days prior to the hearing, and if appropriate, published in the State Register and newspaper(s) of general circulation. Standing committees of the Council or the metropolitan land use advisory committee may hold meetings regarding the proposed matter and prepare and transmit such information, comment or recommendation to the significance review committee as they deem appropriate.

J. Public Hearing Procedures. Public hearings held pursuant to MC 7 I shall be conducted in a manner designed to protect the rights of all persons and parties and ensure fundamental fairness. Public hearings conducted by a hearing examiner shall be governed by Minn. Reg. HE 201 to 222, as amended. The following procedures shall govern public hearings conducted by the significance review committee:

1. Only evidence formally presented to the significance review committee shall be considered in making the findings and recommendations of the significance review committee.

2. All evidence received shall be submitted under oath and made a part of the record.

3. All witnesses shall be subject to cross examination by the parties, the significance review committee and the Council.

4. The chairperson of the significance review committee may, on the request of any party or on his/her own initiative, limit the amount and scope of direct and cross examination and presentation.

5. All hearings shall be transcribed or tape-recorded.

6. The Chairperson of the Significance Review Committee during the public hearing, shall establish a date for the close of the hearing record.

K. Burden of Proof. The burden of proof as to any issue of fact in a significance review shall be by a preponderance of the evidence, and the obligation to satisfy the initial burden of proof on any such issue shall be that of the party asserting that fact. Proposed matters determined by the situs governmental unit to be consistent with the local comprehensive plan adopted pursuant to Laws 1976, Chapter 127, Section 15, or accepted pursuant to MC 3 B shall be presumed to present no substantial conflict with the metropolitan system plan.

L. Committee Findings and Recommendation. Following the public hearing and the receipt of the report of the hearing examiner, if any, the significance review committee shall adopt a committee report regarding the proposed matter which shall contain the following:

1. A recommendation that:

a. The proposed matter is exempt pursuant to MC 4, or that the proposed matter does not cause the effect set forth in any of the standards contained in MC 2 or MC 3, as applicable, or that the proposed matter is not of metropolitan significance; or

b. That the regulations are applicable, that the proposed matter satisfies one or more of the standards in MC 2 or MC 3, as applicable, and that the proposed matter is of metropolitan significance; or

c. That based on the lack of adequate supporting information, the significance review should be suspended at this time.

2. A statement of the standards and exemptions considered in the significance review of the proposed matter.

3. An identification of the metropolitan system plans or parts thereof or adverse effects on another local governmental unit which were considered by the significance review committee.

4. Findings concerning the applicability of the regulations and the effects of the proposed matter in relation to the standards.

5. A recommendation as to the remedy which the Council should adopt with regard to the proposed matter.

M. Transmission and Service of Findings and Recommendation. The findings and recommendation of the significance review committee shall be served on all parties and immediately transmitted to the Council. All information and material considered by the significance review committee shall be made available to Council members in accordance with Council procedure.

MC. 8 COUNCIL DETERMINATION

A. The Council shall consider the committee findings and recommendations and all information submitted during the significance review prior to the close of the public hearing. The Council may hold additional meetings to consider the proposed matter or direct the significance review committee to engage in further specific significance review activity.

B. Following consideration of the findings and recommendations, the Council shall by resolution adopt a final determination with regard to each proposed matter

subject to a significance review. The final determination shall be transcribed in writing and shall contain findings and conclusions supporting the Council determination. The final determination shall contain the following:

1. A determination that the proposed matter is exempt pursuant to MC 4, or that the proposed matter does not cause the effects set forth in any of the standards contained in MC 2, and that the proposed matter is not of metropolitan significance; or

2. That the regulations are applicable, that the proposed matter will cause one or more of the effects set forth in MC 2, and that the matter is of metropolitan significance.

C. In the event that the Council determines that the proposed matter is of metropolitan significance, the Council's final determination shall, in addition, contain the following:

1. A determination as to whether the procedure to amend a metropolitan system plan should be instituted to ensure consistency of the proposed matter with such plans together with a general statement regarding the necessary amendment; and/or

2. An order suspending commencement of construction on the proposed matter for a specified period of time which may not exceed a period of one year from the date of the final determination. An order of suspension may also contain conditions or modifications to the proposed matter which if complied with would cause the Council to eliminate the suspension in accordance with MC 10 G, including but not limited to measures which would:

a. Minimize effects upon metropolitan system plans or on another local governmental unit including changes in the type and intensity of use or the location, magnitude or design of the proposed matter, and/or

b. Control the timing and sequence of the proposed matter, including the dates for commencement and completion.

3. A determination that the matter is of metropolitan significance but not appropriate for the exercise of the power of suspension or amendment.

D. Service, Determination. Copies of the final determination shall be served upon all parties within seven (7) days following its adoption.

MC. 9 TERMINATION, SUSPENSION, TIME CHANGE

A. Bad Faith. The Council may dismiss with prejudice the significance review of any proposed matter which it finds has been initiated in bad faith, or which is a sham, capricious, or frivolous case. No such determination shall be made without allowing the parties to hear, rebut, and present evidence regarding the same.

B. Withdrawal of Review. At any time during the conduct of a significance review, the initiator or sponsor may petition the Council to withdraw the proposed matter from significance review, setting forth the reasons for such a request. The Council may, by resolution, grant such a petition and allow a proposed matter to be withdrawn from significance review only in the event ~~that the withdrawal does not adversely affect the right of any party~~ <u>of consent by all the parties</u>.

C. Settlement. The parties to a significance review may execute an agreed settlement with regard to any proposed matters subject to a significance review at any time prior to the issuance of a final determination. Such an agreement shall be in writing, signed by all parties, and shall be subject to Council acceptance or rejection.

D. Suspension

1. The Council may suspend a significance review for not more than ninety (90) days to await the decision of another public agency which is required

by law to review the proposed matter. In the event that such public agency denies authorization for the proposed matter, the Council may, by resolution, dismiss the metropolitan significance review.

2. The Council may suspend a significance review to await the production of adequate supporting information.

3. The sponsor and initiator may agree to suspend any of the time periods specified for a significance review. Such an agreed suspension must be approved by the significance review committee.

MC. 10 GENERAL REVIEW PROVISIONS

A. Time Periods. As used in this chapter, a specified number of days refers to calendar days provided that where the final day of the time period falls on a weekend or holiday, the period shall be extended to the next immediate working day.

B. Implementation Hold During Review Period. No person shall commence ~~construction or other~~ site alteration ~~activity~~ on a proposed matter after the commencement of a metropolitan significance review and until the Council's issuance of a final determination concerning the proposed matter or the expiration of the significance review period, whichever occurs first.

C. Letter of Interpretation. The Council may, by resolution, on the petition of any person prior to the commencement of a significance review, or on its own initiative at any time, issue a letter of interpretation with regard to the meaning and effect of any provision in these regulations as to any proposed matter. A letter of interpretation may determine that a matter is exempt pursuant to MC 3 or 4 or that a proposed matter is not of metropolitan significance because it would not result in the threshold generation required by MC 2 A 1 and 4, or that a proposed matter is not a critical development or ~~within the commercial agricultural area~~ would not cause the disruption or commercial agricultural use as required by

standard MC 2 A 8. A letter of interpretation may not determine the consistency or effect of a matter with regard to any metropolitan significance standard contained in MC 2 or adopt the remedies specified in MC 8 C. The Council shall determine whether to issue such a letter only following consideration of the request at a public hearing, notice of which shall be published in the Council bulletin at least thirty (30) days in advance of the meeting. The Council may request the submission of appropriate information from any person requesting a letter of interpretation, and from all other potentially interested persons. A letter of interpretation shall be binding on all persons and parties including the Council and may prevent the initiation of a metropolitan significance review.

D. Review Coordination. The Council, at the request of the sponsor, shall ~~may by order~~ direct the coordination of a significance review with the review of a proposed matter being conducted pursuant to the environmental impact statement review process, Minn. Stat. Section 116D.04, as amended, or the Critical Areas Act, Minn. Stat. Chapter 116G, as amended. To this end, the Council may enter into a joint agreement with the Minnesota Environmental ~~Council~~ Board enabling the Council or joint panel to conduct a coordinated review of any proposed matter subject to a metropolitan significance review.

E. Multiple or Phased Proposed Matter. A multiple or phased proposed matter is one which is divided into separate stages or segments, one or more of which, or the totality of which may be of metropolitan significance. Significance review of a multiple or phased proposed matter may, at the discretion of the Council, consider the total project or any separate independently viable stage or segments. In determining independent viability, the Council shall consider whether the particular stage is viable without subsequent development, the extent of the interrelationship between the stage and subsequent development and whether the stage would foreclose

modifications to ameliorate a metropolitan system effect. Any significance review of a separate stage or segment of such a proposed matter shall be without prejudice to the subsequent significance review of other future stages or segments.

F. Material Alteration. Any proposed matter which has been materially altered subsequent to a final determination pursuant to these regulations may be subject to a new significance review pursuant to these regulations. Any party to a previous significance review of the proposed matter, and any person eligible to initiate a metropolitan significance review, may petition the Council to make a determination of whether a proposed matter has been materially altered subsequent to a previous significance review. Such a determination shall be made after appropriate notice to all persons who were parties to the previous significance review and following opportunity to hear, present, and rebut evidence regarding the material alteration.

G. Elimination of Suspension. The sponsor of any proposed matter suspended by a final determination may petition the Council at any time following service of the final determination to consider the elimination of the suspension because of compliance with conditions or modifications contained in the final determination. The petition for consideration shall be accompanied by an affidavit of the sponsor certifying compliance with the conditions or modifications contained in the determination. The Council shall consider each such petition but may refuse to consider the elimination for good cause. In the event that the Council determines to consider the petition, the Council shall schedule a public hearing for the purpose of such considering the elimination and shall notify all parties to the significance review of such hearing at least fifteen (15) days in advance. All parties or other persons may present information,

fact, and opinion, concerning the compliance with the conditions or modifications contained in the final determination.

H. Right to Counsel. Any party may be represented by legal counsel during a metropolitan significance review.

I. Retention and Availability of Information. All non-confidential information or copies of the same submitted by any person or party, and the hearing record, staff reports and determinations made by the significance review committee, hearing officer, if any, or the Council in connection with a metropolitan significance review shall be kept on file at the Council for a period of at least three (3) years following the completion of a significance review and shall be available during the period of review to any person or party for review, inspection, and copying at the Metropolitan Council offices during normal business hours.

J. Confidential Information. The sponsor or initiator of a significance review may identify certain information as confidential and decline to submit such information or request by letter either containing such information or specifying the nature of the subject information, the justification for the request for confidential treatment and a certification in writing that substantially identical information is not available to the public, that the hearing officer or chairman of the significance review committee certify that the material is confidential. Material which is confidential and confidential business information may be certified by the chairman of the significance review committee or hearing officer as confidential. Material certified as confidential shall be retained by the chairman only for the duration of the significance review, be examined only by the significance review committee and hearing examiner and shall not be introduced, disclosed or otherwise made available to the public for examination, inspection or copying unless expressly permitted by the party claiming its confidential-

ity. A letter requesting the certification of information as confidential shall be supported by a certification in writing under oath that substantially identical information is not available to the public or by an opinion of counsel for the party claiming confidentiality certifying as to the basis of such confidentiality.

K. Severability. The provisions of this chapter are severable and if any section, subsection, clause, sentence, paragraph or other provision of these regulations is held invalid for any reason, such invalidity shall not affect this chapter as a whole or the validity of any other section, subsection, clause, sentence, or other provision which can be given effect without the invalid provision.

L. Judicial Review. ~~The judicial review of any final decision made pursuant to these regulations shall be conducted in accordance with the provisions of the Administrative Procedures Act, Minn. Stat. Section 15.0424 to 15.0426, as amended.~~ A final determination adopted by the Council pursuant to MC 8 B, a determination by the Council not to commence a significance review pursuant to MC 6 E and a letter of interpretation issued pursuant to MC 10 C which precludes a significance review constitute final decisions by the Council for purposes of judicial review.

MC. 11 DEFINITIONS

A. As used in this chapter, the following terms shall have these meanings:

1. "Adjacent governmental unit" means all local governmental units and independent commissions whose jurisdiction includes or adjoins, in whole or in part, that of the situs governmental unit(s).

2. "Adopted comprehensive sewer plan" means a comprehensive sewer policy plan submitted to and approved by the Metropolitan Waste Control Commission in accordance with Minn. Stat., Section 473.513 which has been adopted by the submitting local governmental unit.

3. "Metropolitan Land Use Advisory Committee" or "Advisory Committee" means an advisory committee established by the Metropolitan Council pursuant to Laws 1976, Chapter 127, Section 3.

4. "Airport master plan" means a land use and development plan for an airport containing descriptions of at least the following: the real property comprising the airport, aircraft noise zones, and airport air space zones.

5. "Commercial-agricultural ~~area~~ use" means ~~a~~ the use of land ~~area within the commercial-agricultural territories delineated in the Development Framework Chapter of the Metropolitan Development Guide which the Council determines because of the predominant land use pattern and/or locally adopted plans and ordinances, is land used~~ primarily for the growing and/or production of field crops, livestock, and livestock products for the production of income.

6. "Comprehensive plan" or "local comprehensive plan" means a comprehensive plan for a county adopted pursuant to Minn. Stat. Section 394.23, a comprehensive plan for a municipality adopted pursuant to Minn. Stat., Section 462.355, and a comprehensive plan for a town adopted pursuant to Minn. Stat., Section 366.14 or other enabling law.

7. "Chairman" means the chairman of the Metropolitan Council.

8. "Construction has commenced" means to have engaged in a continuous program of construction or development activity including site clearance, excavation, grading, dredging, or land filling in preparation for the erection, establishment or placement of a proposed matter. Interruptions resulting from acts of God, strikes, litigation, or other matters beyond the control of the sponsor shall be considered in determining if the construction program is continuous.

9. "Critical development" means the division of land into three (3) or more parcels or lots which if totally occupied by dwelling units would result in a density of greater than forty (40) units per square mile in any section, or portion thereof ~~in the rural service area~~ within one or more outlying communities, in any section within which a parcel or lot is located; or the construction or placement of dwelling units in previously platted or unplatted areas which would result in the same density or the construction or establishment of a residential, commercial, or industrial use for which a new national pollution discharge elimination system or state disposal system permit must be issued.

10. "Council bulletin" means a newsletter published by the Council at least once a month, containing a summary of previous Council actions and upcoming Council meetings, Council hearings, and other matters.

11. "Independent commission, board or agency" means governmental entities with jurisdictions lying in whole or in part within the metropolitan area, including independent or special school districts whose administrative offices were located within the metropolitan area as of April 15, 1976, but not including the metropolitan commissions.

12. "Initiator" means any person requesting the initiation of a metropolitan significance review pursuant to MC 5 A, herein.

13. "Land use permit" means a building permit, final plat approval, zoning amendment, special or conditional use permit, subdivision or planned unit development permit or variance.

14. "Local government unit" or "unit" means any city, town or county located in whole or in part within the metropolitan area.

15. "Metropolitan area" means the area over which the Metropolitan Council

has jurisdiction, including only the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington.

16. "Metropolitan commission" means the Metropolitan Waste Control Commission, the Metropolitan Transit Commission, and other such commissions as the legislature may hereunder designate.

17. "Metropolitan council" or "council" means the Metropolitan Council established by Section 473.123.

18. "Metropolitan significance review" or "significance review" means a review conducted by the Metropolitan Council pursuant to these regulations.

19. "Metropolitan system plans" means the airports portion of the Metropolitan Development Guide and the policy plans, development programs and capital budgets for metropolitan waste control, transportation and regional recreation open space.

20. "Metropolitan transportation facility" means transit facilities and routes owned, operated, or constructed by the Metropolitan Transit Commission, and principal and intermediate arterial roads, highways, freeways, and interchanges thereon designated as part of the metropolitan highway system in the transportation policy plan adopted pursuant to Minn. Stats., Section 473.146, Subd. 3.

21. "Outlying communities" are:

In Anoka County

Andover
Bethel
Blaine
Burns Township
Centerville
Columbus Township
East Bethel
Ham Lake
Lino Lakes
Linwood Township
Oak Grove Township
Ramsey
St. Francis

In Carver County

all local government units

In Dakota County

Castle Rock Township
Coates
Douglas Township
Empire Township
Eureka Township
Farmington
Greenvale Township
Hampton
Hampton Township
Hastings
Inver Grove Heights
Lakeville
Marshan Township
Miesville
New Trier
Nininger Township
Randolph
Randolph Township
Ravenna Township
Rosemount
Sciota Township
Vermillion
Vermillion Township
Waterford Township

In Hennepin County

Brooklyn Park
Champlin
Corcoran
Dayton
Eden Prairie
Greenfield
Hassan Township
Hanover
Independence
Loretto
Maple Grove
Maple Plain
Medina
Minnetrista
Orono
Plymouth
Rockford
Rogers
St. Bonifacius

In Ramsey County

no local government units

In Scott County

all local government units

In Washington County

Afton
Bayport
Baytown Township
Cottage Grove
Denmark Township
Dellwood
Grant Township
Grey Cloud Township
Forest Lake
Forest Lake Township
Hugo
Lake Elmo
Lakeland
Lakeland Shores
Marine
May Township
New Scandia Township
Oakdale
Oak Park Heights
St. Croix Beach
St. Mary's Point
Stillwater
Stillwater Township
West Lakeland Township
Woodbury

The entire jurisdiction of the above listed local governmental units shall be considered an outlying community unless and until an exemption is specifically authorized in accordance with MC 3 B.

22. "Party" means the initiator, sponsor, and situs governmental unit(s) and any person whose legal rights, duties or privileges may be substantially affected by a significance review who is admitted as a party by the significance review committee, hearing examiner or Council. The Council shall not be a party to a significance review except when it initiates the review pursuant to MC 5 A 1.

23. "Person" means any individual, association, trust, partnership, joint venture, public or private corporation, the Metropolitan Council, a metropolitan commission, a local governmental unit, an independent commission, state agency, or any government or gorvenmental subdivision unit, or agency other than a court of law.

24. "Petition" means a document containing signatures submitted to the Council pursuant to MC 5 A 2c, which contains, at the time that such signatures are placed thereon, a description of what the petition is for, a reference to these regulations, and a brief summary of the reason for the petition.

25. "Proposed matter" means a project or action involving the construction, installation, establishment, siting, demolition, reconstruction, or improvement of any structure or facility, or the subdivision or drilling, extraction, clearing, excavation or other alteration of any lands or waters, planned or proposed to be undertaken, by any person in whole or in part within the metropolitan area.

26. "Public agency" means a local governmental unit, metropolitan commission, independent commission, state agency, or any government or governmental subdivision, unit or agency other than a court of law.

27. "Public sewer facility" means sewage collectors, trunklines, interceptors, treatment works and other sewage collection and treatment facilities owned, constructed, or operated by a public agency.

28. "Review period" means the ninety (90) day period for a metropolitan significance review which begins on the effective date of an order to commence a significance review issued pursuant to MC 6 and automatically terminates on the ninetieth day following unless a suspension of the review period is authorized pursuant to these regulations.

29. "Service" or "serve" means personal service or service by first class U.S. mail, postage prepaid and addressed to the person or party at his last known address. Service by mail shall be complete upon the placing of the item to be served in the mail.

30. "Sewage effluent" means treated sewage.

31. "Situs governmental unit" means the local governmental unit(s) within which a proposed matter will be located.

32. "Sponsor" means any person proposing to undertake or develop a proposed matter.

33. "State agency" means the State of Minnesota or any agency, board, commission, department, or educational institution thereof.

34. "Substantial" is a relative term, the meaning of which is to be gauged by all the circumstances surrounding the transaction, in reference to which the expression has been used. It imports a considerable amount or value in opposition to that which is inconsequential or small, something serious as opposed to trivial, something essential, material or fundamental.

35. "Substantial effect" as used in MC 2 A means an effect which is substantial in nature including, but not limited to, one which would result in:

a. The utilization or loading of any part of a metropolitan system beyond a safe, healthy, or efficient planned, operating or allocated capacity; or

b. A physical or operational modification of any part of a metropolitan system to enable it to function in a safe, healthy, and efficient manner; or

c. The preemption of land planned for future use by a metropolitan system; or

d. A proposed use in conflict or incompatible with the physical or operational plans for a metropolitan system.

36. "Vehicle trip" means a one-way journey by motorized vehicular means between two points.

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APPROVED AS TO FORM AND LEGALITY

DEC 20 1977 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Michael B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 20 1977
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Secretary of State
4:20 PM