

Minnesota Attorney General: Administrative Rules Proceedings

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STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : March 21, 1989

TO : LYNN M. BELGEA
Assistant Counsel

FROM : MARTHA J. CASSERLY
Special Assistant Attorney General

PHONE : 6-6839

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Metropolitan Significance

The above-referenced rule has been approved as to its legality by the Attorney General on March 20, 1989.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accoradance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:klk
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

RULE REVIEW CHECKLIST —

File No. 1574

Docket No. 05.0009.~~0300~~ 0642

DATE RECEIVED 3-8-89

ADOPTED W/O HEARING X

REVIEW DATE 3-17-89

EMERGENCY RULE _____

DUE DATE 3-22-89

REVISOR APPROVED 3/21/89

APPROVED 3-20-89 mjc

REVISOR DISAPPROVED _____

DISAPPROVED _____ ✓

FILED W/SEC. OF STATE 3/21/89

WITHDRAWN _____

RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ ~~Notice to Solicit Outside Information/Opinion (if applicable)~~
10-13-89 ~~Date published in State Register~~
_____ ~~Comments~~

_____ ~~Petition for Adoption of a Rule (if applicable)~~

✓ Board's Authorizing Resolution
7/14/88 Date adopted

✓ Proposed Rule
yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
473.173 Statutory Authority
NO Small Business Statement
NO Expenditure of public money statement
NO Signature

✓ Statement of Need and Reasonableness (if applicable)
YES Small Business Statement
NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
1/3/89 Date (30)/25 days before adoption
NO Notice attached
_____ ~~Copy of rule or summary attached~~

✓ Publication in State Register
1/16/89 Date (30)/25 days before adoption

_____ 180-day deadline from:
_____ Effective date of law requiring rule (14.12) (both rules)
2/13/89 end of comment period (§ 14.26) (rules without hearing)
_____ ~~effective date of statutory authority (§ 14.29)~~ (emergency rules)

✓ Resolution Adopting
2/23/89 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
3/ /89 Date

_____ ~~Written requests, submissions or comments~~

✓ Declaration of attorney
_____ Name of SAAG representing agency

✓ letter to State Register
~~Notice of Submission to Atty. Gen. (if applicable)~~

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

AG Copy

Metropolitan Council

Adopted Permanent Rules Relating to Metropolitan Significance

Rules as Adopted

5800.0010 PURPOSE.

Minnesota Statutes, section 473.173, requires that the Metropolitan Council adopt and put into effect rules establishing standards, guidelines, and procedures for determining whether any proposed project is of metropolitan significance. This chapter will be used in the review of all such projects. The purpose of this chapter is to assure that the total effect of a proposed project alleged to be of metropolitan significance is considered and the orderly and economic development of the area is promoted. It is not the council's intent to use this chapter to stop development, but rather to work out differences among parties and arrive at consensus.

5800.0020 DEFINITIONS.

Subpart 1. **Scope.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Adjacent governmental unit.** "Adjacent governmental unit" means all local governmental units and independent commissions whose jurisdiction includes or adjoins, in whole or in part, that of the governmental unit(s) in which the proposed project is located.

Subp. 3. **Affected governmental unit, state agency, or metropolitan agency.** "Affected governmental unit," "state agency," or "metropolitan agency" means all local governmental units, independent commissions, and state or metropolitan agencies whose legal rights, duties, or privileges may be substantially affected by a proposed project.

Subp. 4. **Bad faith.** "Bad faith" means a conscious and willful decision to act in a manner intending to mislead, deceive, or distort the truth, (including but not limited to

making a claim which one knows to be groundless or unfounded.

Subp. 5. **Chair.** "Chair" means the chair of the Metropolitan Council.

Subp. 6. **Commercial-agricultural area.** "Commercial-agricultural area" means those lands certified by local governments as eligible for agricultural preserves under the Agricultural Preserves Act, Minnesota Statutes, sections 473H.01 to 473H.18.

Subp. 7. **Comprehensive plan or local comprehensive plan.** "Comprehensive plan" or "local comprehensive plan" means a comprehensive plan of a local governmental unit as required by the Metropolitan Land Planning Act, Minnesota Statutes, sections 473.851 to 473.872.

Subp. 8. **Comprehensive sewer plan.** "Comprehensive sewer plan" means a plan required by the Metropolitan Waste Control Commission which describes the collection, treatment, and disposal of all sanitary sewage, including the installation, operation, and maintenance of on-site sewage disposal facilities.

Subp. 9. **Independent commission, board, or agency.** "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 agencies.

Subp. 10. **Land Use Advisory Committee or advisory committee.** "Land Use Advisory Committee" or "advisory committee" means an advisory committee established by the Metropolitan Council pursuant to Minnesota Statutes, section 473.853.

Subp. 11. **Local governmental unit or unit.** "Local governmental unit" or "unit" means any city, town, county, school district, special district, or other political subdivision or public corporation, other than a metropolitan agency, lying in whole or part within the metropolitan area.

Subp. 12. **Mainline.** "Mainline" means those lanes of a

highway that carry through traffic.

Subp. 13. **Metropolitan agency.** "Metropolitan agency" means the Metropolitan Waste Control Commission, the Regional Transit Board, the Metropolitan Transit Commission, and other agencies as the legislature may designate.

Subp. 14. **Metropolitan area.** "Metropolitan area" means the area over which the Metropolitan Council has jurisdiction, including only the counties of Anoka, Carver, Dakota excluding the city of Northfield, Hennepin excluding the city of Hanover, Ramsey, Scott excluding the city of New Prague, and Washington.

Subp. 15. **Metropolitan Council or council.** "Metropolitan Council" or "council" means the Metropolitan Council established by Minnesota Statutes, section 473.123.

Subp. 16. **Metropolitan Development Guide.** "Metropolitan Development Guide" means the comprehensive development guide prepared by the council to achieve the orderly and economic development of the metropolitan area.

Subp. 17. **Metropolitan highway.** "Metropolitan highway" means those highways identified in the Transportation Guide/Policy Plan to serve the region. They include both interstate freeways and major arterials.

Subp. 18. **Metropolitan system.** "Metropolitan system" means the regional airport, transportation, sewer, recreation open space, and solid waste facilities and plans for facilities outlined in the Metropolitan Development Guide.

Subp. 19. **Metropolitan significance review or significance review.** "Metropolitan significance review" or "significance review" means a review conducted by the Metropolitan Council according to this chapter.

Subp. 20. **Party.** "Party" means the requester, sponsor, and local governmental unit(s) in which the proposed project is located 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, administrative law judge, or council. The council will not be a party to a significance review except when it initiates the

review.

Subp. 21. **Person.** "Person" means any individual, association, trust, partnership, joint venture, public or private corporation, metropolitan agency, local governmental unit, independent commission, state agency, government or governmental subdivision, unit, or agency other than a court of law.

Subp. 22. **Petition.** "Petition" means a document containing signatures submitted to the council according to the procedures for initiation of a significance review, which contains, at the time that the signatures are added, a description of what the petition is for, a reference to the metropolitan significance rules, and a brief summary of the reason for the petition.

Subp. 23. **Phased proposed project.** "Phased proposed project" means a proposed project which is divided into separate stages or segments, one or more of which may be of metropolitan significance.

What does this mean?

Subp. 24. **Policy plan or guide chapter.** "Policy plan" or "guide chapter" means the Metropolitan Development Guide chapter adopted pursuant to Minnesota Statutes, section 473.145, the policy plans for metropolitan agencies adopted pursuant to Minnesota Statutes, section 473.146, the Recreation Open Space Development Guide/Policy Plan, adopted pursuant to Minnesota Statutes, section 473.147, the Solid Waste Management Development Guide/Policy Plan, adopted pursuant to Minnesota Statutes, section 473.149, and amendments to any of these plans. These plans or chapters are incorporated by reference in this chapter. They are available through the Minitex interlibrary loan system and subject to frequent change. The policy plans or guide chapters referenced in any metropolitan significance review will be those in effect at the time the review is initiated.

Subp. 25. **Proposed project.** "Proposed project" 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, in whole or in part within the metropolitan area, by any person.

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

Subp. 27. **Publicly subsidized.** "Publicly subsidized" means a direct expenditure or inkind contribution by a state, regional, or local governmental unit to a private project (one that is not publicly financed) for any purpose for which the governmental unit is not reimbursed; or a long-term loan by a state, regional, or local governmental unit to a private project. Public subsidy is determined by how the funds are used and not by the source of the revenues provided. Public subsidy includes, but is not limited to, the purposes in items A to E.

A. Construction of utility improvements without special assessment to the benefited properties of 20 percent or more of the total collective cost of the improvement.

B. Acquisition of property and site development, including demolition, clearance, and relocation together with transfer of title to the property to a private party at a price below the actual costs of acquisition and development.

C. Construction of private, on-site improvements including drainage facilities, site grading, parking, lighting, landscaping, and related improvements.

D. Construction or payment for construction of buildings to be used by one or more private parties for commercial or industrial purposes. Construction may include parking facilities, foundations, building construction, interior furnishings, equipment, and related costs.

E. Construction or reconstruction of a county state aid or state trunk highway improvement that is determined necessary to serve increased traffic from a major private project. Highway improvements may include roadway upgrading,

bridges, overpasses, entrance and exit roadway improvements, and other improvements.

Public subsidy does not include land sold at market value but below the local governmental unit's cost of acquiring and preparing the land for sale.

Subp. 28. **Publicly financed facility.** "Publicly financed facility" means a facility where a governmental jurisdiction has an ongoing obligation to pay operating costs or debt service for the facility or the ultimate responsibility to pay off bonds should other revenue sources fail.

Subp. 29. **Requester.** "Requester" means any person requesting the initiation of a metropolitan significance review.

Subp. 30. **Review period.** "Review period" means the 90-day period for a metropolitan significance review which begins on the effective date of an order to commence a significance review and automatically terminates on the 90th day following unless a suspension or extension of the review period is authorized under part 5800.0100, subpart 1 or 5800.0140, subparts 4 and 6.

Subp. 31. **Service or serve.** "Service" or "serve" means personal service or service by first class United States mail, postage prepaid and addressed to the person or party at his or her last known address. Service by mail will be complete upon the placing of the item to be served in the mail.

Subp. 32. **Sewer policy plan.** "Sewer policy plan" means a component of the local comprehensive plan which describes the areas to be sewered with public facilities and a schedule for providing service to them, existing flows and flow projections for the public sewer system, standards and conditions for the installation of private systems, and areas not suitable for public or private systems.

Subp. 33. **Sponsor.** "Sponsor" means any person proposing to undertake or develop a proposed project.

Subp. 34. **State agency.** "State agency" means the state of Minnesota or any agency, board, commission, department, or educational institution of the state.

Subp. 35. **Substantial.** "Substantial" is a relative term.

here you go - a definition for substantial change! haha

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.

still discretionary

5800.0030 STANDARDS FOR REVIEW.

Unless a proposed project is exempt, the chair of the Metropolitan Council must issue a preliminary finding of metropolitan significance if a proposed project may cause any of the effects listed in part 5800.0040. The same criteria will be used by the council when it makes the final determination of metropolitan significance following the council review process. A proposed project may be found to be of metropolitan significance only if it meets one or more of these criteria.

5800.0040 CRITERIA FOR DETERMINING METROPOLITAN SIGNIFICANCE.

Subpart 1. **Generally.** For the purposes of parts 5800.0070 and 5800.0130, a proposed project listed in subparts 2 to 4 has metropolitan significance if the requirements of the applicable subpart are met.

Subp. 2. **Proposed project affecting a metropolitan system.** A proposed project affecting a metropolitan system has metropolitan significance if it:

A. May result in a substantial change in the timing, staging, and capacity or service area of local facilities in a council-approved local sewer policy plan or comprehensive sewer plan.

B. May result in a wastewater flow that substantially exceeds the flow projection for the local governmental unit as indicated in the Water Resources Management Development Guide/Policy Plan, Part 1. Sewage Treatment and Handling.

C. May require a new national pollution discharge elimination system permit or state disposal system permit or a substantial change to an existing permit.

D. May result in substantially less restrictive standards and conditions to be adopted for the installation or management of private on-site sewer facilities than those described in the comprehensive plan.

E. May have a substantial impact on the use of regional recreation and open space facilities or natural resources within the regional recreation open space system. Impacts on the use of recreation and open space facilities include but are not limited to traffic, safety, noise, visual obstructions (for example, to scenic overlooks), impaired use of the facilities, or interference with the operation or maintenance of the facilities. Impacts on natural resources include but are not limited to the impact on the level, flow, or quality of a facility's water resources (lakes, streams, wetlands) and impact on a facility's wildlife populations or habitats (migration routes, breeding sites, plant communities).

F. May preclude or substantially limit the future acquisition of land in an area identified in the capital improvement program of the council's Recreation Open Space Development Guide/Policy Plan.

G. May substantially affect either the function of a metropolitan airport identified in the council's Aviation Development Guide/Policy Plan or the land use within an airport search area.

H. Is substantially inconsistent with the "Guidelines for Land Use Compatibility with Aircraft Noise" contained in the Aviation Development Guide/Policy Plan.

I. May result in a substantial change to existing or proposed metropolitan highways, highway interchanges, or intersections with metropolitan highways, or to local roadways that have interchanges with metropolitan highways. Substantial changes to the mainline, interchanges, and intersections include an increase in volume that will overload the facility, or a difference in timing, design, or location from that indicated in the Transportation Guide/Policy Plan. Changes to local roadways include changes in timing, staging, volume, capacity, design, location, or functional classification.

J. May result in a substantial change in transit service or facilities inconsistent with the Transportation Guide/Policy Plan.

K. May have a substantial impact on the use of solid waste facilities identified in the Solid Waste Management Development Guide/Policy Plan. Impacts on the use of these facilities include, but are not limited to, disruption of planned facility staging, facility access, or other interference with the operation and maintenance of the facilities.

Subp. 3. **Proposed publicly subsidized project.** A proposed publicly subsidized project has metropolitan significance if it may threaten a publicly financed facility.

Subp. 4. **Proposed project affecting a local governmental unit.** A proposed project affecting a local governmental unit has metropolitan significance if it:

A. May have a substantial physical effect on a local governmental unit other than the local unit in which the proposed project is located. More specifically, a proposed project may be of metropolitan significance if it adversely affects existing or proposed land use or development in another local government with respect to traffic, stormwater runoff, groundwater pollution, air or noise pollution, increased security needs (police, fire) or other similar impacts.

B. May result in the substantial disruption of agricultural use in the commercial-agricultural area of a local governmental unit other than the local unit in which the proposed project is located.

5800.0050 EXEMPT PROJECTS.

Subpart 1. **Generally.** The chair will not commence a metropolitan significance review if a proposed project falls in one or more of the exempt categories in subparts 2 to 5.

Subp. 2. **Local comprehensive plan exemption.** A proposed project that is consistent with a council-approved local comprehensive plan is exempt from review for metropolitan system effects. The council shall determine whether a proposed project is consistent for system effects with the local plan.

Subp. 3. **Previous approval.** Any proposed project of a metropolitan agency or the Metropolitan Airports Commission

which is within an area of that agency's operational authority or which has been or will be subject to approval by the council as part of a regional policy plan; any proposed project which has been previously approved by the council in accordance with Minnesota Statutes, section 473.167; or any proposed project for which a final determination has been made in a metropolitan significance review is exempt from review unless the proposed project has been materially altered subsequent to the final determination.

Subp. 4. **Emergency project.** Any proposed project which must be immediately undertaken to prevent or mitigate an emergency is exempt from review. The following standards will form the basis for determining if an emergency exists:

(1) the degree to which the alleged emergency circumstances were foreseeable;

(2) whether alternate means can alleviate the emergency; and

(3) the probable effect of the proposed project in mitigating the emergency circumstances.

Subp. 5. **Minor alterations.** Any proposed project consisting exclusively of administrative or maintenance activity or a negligible improvement, expansion, or change of use or use intensity is exempt from review.

Subp. 6. **Vested rights.** Any proposed project for which 30 days have elapsed since a negative declaration on an Environmental Assessment Worksheet as described in part 4410.1700, or a determination of adequacy on an Environmental Impact Statement as described in part 4400.2800, or in the event no environmental review is required, any proposed project for which 30 days have elapsed since a local governmental unit has approved a plan amendment or rezoning to accommodate the proposed project is exempt from review. A metropolitan significance review cannot be initiated on any proposed project where a sponsor has vested rights.

5800.0060 INITIATION OF REVIEW.

Subpart 1. **By requesters.** A metropolitan significance review may be requested by:

A. a resolution from the unit of government in which the proposed project is located;

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: at least 5,000 residents of the metropolitan area 18 years of age or older, or that number of residents 18 years of age or older of an affected local governmental unit which equals or exceeds 50 percent of the number of persons who voted in that affected governmental unit during the most recently held state general election. The petition must designate at least one and no more than three persons to act as requesters on behalf of the petitioner;

D. a resolution or letter from a duly authorized executive officer or governing body of state agency;

E. a resolution or letter from a duly authorized executive officer or governing body of a sponsor; or

F. a resolution from an affected metropolitan agency.

Subp. 2. **By council.** The council may review proposed projects of metropolitan significance regardless of whether the council has received a request to initiate a review.

Subp. 3. **Information submission.** A request for review under subpart 1 must be accompanied by an information submission. The purpose of the information submission is to demonstrate an arguable claim of metropolitan significance. An information submission must contain the following:

A. the names and addresses of the requester, the sponsor, and the governmental unit(s) in which the proposed project is located;

B. a description of the proposed project including its planned character, location, function, use, and size;

C. a statement of the criteria contained in the appropriate subpart of part 5800.0040 which cause the proposed project to be of metropolitan significance, and a discussion of

why it is not exempt; and

D. a statement of the effect the proposed project will have on metropolitan systems or existing or planned land use or development, or if publicly subsidized, the effects on a publicly financed facility, including the facts and opinion upon which the statement is based.

5800.0070 PRELIMINARY FINDING OF METROPOLITAN SIGNIFICANCE.

Subpart 1. **Review of information submission.** Upon receipt of a request accompanied by an information submission, the chair must within ten working days examine the materials and make a preliminary finding of metropolitan significance based on the following requirements:

A. the request complies with and satisfies the requirements of part 5800.0060;

B. the significance review has not been requested in bad faith;

C. the information submission arguably demonstrates that a metropolitan system or existing or planned land use or development will be affected by the proposed project or that a publicly subsidized project has an effect on a publicly financed facility; and

D. the proposed project is not exempt.

After receiving a request to commence a metropolitan significance review, but before making a preliminary finding of metropolitan significance, the chair may meet with any of the parties and may request additional information.

Subp. 2. **Scoping of issues.** In the preliminary finding, the chair will identify which of the issues raised in the information submission are legitimate for significance review and specify any other issues which should be included in the significance review. Only these issues will be included in the scope of review at the public hearing, unless the significance review committee gives at least seven days notice before the public hearing to all parties that additional issues will be added to the scope of review. A description of the issues will

be included with the notice.

5800.0080 COMMENCEMENT AND DETERMINATION NOT TO COMMENCE.

Subpart 1. **Council initiation.** A significance review initiated by the council will commence on the day the council adopts an order to commence a significance review.

Subp. 2. **Initiation by requesters.** If the chair determines that the request complies with and satisfies the requirements of part 5800.0060, the chair will commence the significance review by issuing an order for commencement effective as of the date of the order. The order will include the chair's preliminary finding of metropolitan significance. If the chair decides not to commence a significance review, the chair must immediately inform the parties of the determination and basis for it.

Subp. 3. **Appeal.** Person(s) requesting a review, the governmental unit(s) in which the proposed project is located, and the sponsor may appeal the chair's decision not to commence the significance review to the council by submitting a written request within seven days following notification of the chair's determination. The council must review this request at a public hearing and either direct the issuance of an order for commencement or affirm the chair's decision.

Subp. 4. **Notice of commencement of significance review.** The council must serve notice of the commencement of a significance review on all parties, adjacent governmental units, metropolitan agencies, and the Land Use Advisory Committee within five days following the determination to commence a review. The notice will contain the order for commencement, the information submission or a summary of the submission, an order to the sponsor to suspend action on the proposed project, and a schedule for the metropolitan significance review. Notice that the significance review has been commenced will be published in the next following issue of the council bulletin, as described in Minnesota Statutes, section 473.247.

Subp. 5. **Review period.** The council will complete a

metropolitan significance review within 90 days following commencement unless suspended or extended under part 5800.0100, subpart 1, or 5800.0140, subparts 4 and 6.

Subp. 6. **Implementation hold during review period.** Upon commencement of a metropolitan significance review, no person will commence site alteration on a proposed project until the council's issuance of a final determination concerning the proposed project or the expiration of the significance review period, whichever occurs first.

5800.0090 SIGNIFICANCE REVIEW COMMITTEE.

Immediately following the commencement of a significance review, the chair will appoint a significance review committee composed of no more than seven or fewer than three individuals all of whom are members of the council or the Land Use Advisory Committee. The chair will appoint at least one council member and one Land Use Advisory Committee member to all significance review committees and will designate one of the review committee members to be the chair of the committee.

5800.0100 REVIEW ALTERNATIVES

Subpart 1. **Mediation.** The chair may determine that the proposed project under review is more suited to mediation than to a formal public hearing process and may suspend the metropolitan significance review for up to 30 days to bring the parties together to resolve differences. The resolution of these differences will be outlined in a written agreement. The agreement must be signed by all parties and must be accepted by the council. If the parties do not reach agreement within the suspension period, the significance review will resume. Any party may appeal the chair's decision to use mediation by submitting a written request to the council within seven days following the chair's decision. The council must review this request and either direct use of the public hearing process or affirm the chair's decision.

Subp. 2. **Public hearing process.** Unless mediation resolves the differences among the parties, the significance

review will include a formal public hearing.

Subp. 3. **Use of an administrative law judge.** At any time before beginning the public hearing, the significance review committee may decide to use an administrative law judge appointed by the Office of Administrative Hearings for conducting the public hearing. A hearing held by an administrative law judge will be conducted in accordance with the rules of the Office of Administrative Hearings for contested cases, parts 1400.5200 to 1400.8500, to the extent those rules are not inconsistent with the time periods and procedures specified in this chapter. The report of the administrative law judge appointed by the significance review committee will be transmitted to the review committee. The committee will review the report and may use it as a basis for developing committee findings and recommendations. Any party may make a request for delegation of responsibility to an administrative law judge.

Subp. 4. **Phased proposed project.** When undertaking a significance review of a phased proposed project, the council may consider the total project or any separate independently viable stage. In determining independent viability, the council will consider whether a particular stage is viable without subsequent development, the interrelationship between the stage and subsequent development and whether the stage would foreclose the option of making modifications to mitigate metropolitan system effects. Any significance review of a separate stage will not preclude subsequent significance review of other stages.

5800.0110 STEPS IN HEARING PROCESS.

Subpart 1. **Preliminary statement.** Within 30 days after the review is commenced, the sponsor, the requester, and the governmental unit in which the proposed project is located must submit to the significance review committee or administrative law judge a preliminary statement containing information, facts, and opinions regarding the following:

A. the applicability to the proposed project of part 5800.0030;

B. the significance and effect of the proposed project on metropolitan systems or on local governments or, if publicly subsidized, the effects on a publicly financed facility; and

C. the appropriate remedy.

In addition, the sponsor must indicate all other governmental reviews and approvals required in connection with the proposed project, and their current status.

Subp. 2. **Submissions.** The sponsor and the local governmental unit within which the proposed project is located must submit the following to the significance review committee or administrative law judge:

A. copies of any information given by the sponsor to any local governmental unit required to approve the proposed project; and

B. a copy of the findings, report, or determination made by the local government on the proposed project.

Subp. 3. **Participation by nonparties.** The significance review committee will decide the manner and extent of participation by persons other than the parties.

Subp. 4. **Significance review report.** At least ten days before the public hearing conducted by the significance review committee or the administrative law judge, council staff will prepare a written report on the proposed project. This report will not contain any findings or recommendations about the metropolitan significance of the proposed project. The report will be sent to all parties and made available to the public. Parties may submit statements about the report to the significance review committee at any time before the close of the record of the public hearing. The report will contain:

A. a listing, including sources, of all information submitted to the committee or to the administrative law judge;

B. a description of the proposed project;

C. the criteria listed in part 5800.0040 that apply to the proposed project; and

D. a summary of the issues presented in each of the

preliminary statements, including any disagreements regarding facts of the proposed project.

Subp. 5. **Council information.** The council may enter information related to the review of the proposed project into the record of the public hearing. This material and its authors will be subject to examination at the public hearing.

Subp. 6. **Additional information.** On its own initiative or at the request of a party, the significance review committee may request additional information from any party before the close of the public hearing. If a party does not reasonably comply with a request, the significance review committee may order that the subject matter of the information to be produced be considered established for purposes of the significance review in accordance with the claims of the party requesting the information or refuse to allow the party failing to produce the information to support or oppose designated claims or prohibit the party from introducing the designated information into the hearing record.

Subp. 7. **Public hearing.** The significance review committee or an administrative law judge appointed by the committee must hold at least one public hearing on the proposed project. Notice of this public hearing must be published in the council bulletin and served on all parties at least 15 days prior to the hearing. The public hearing must be conducted in a manner designed to protect the rights of all persons and parties and to ensure fundamental fairness. Public hearings conducted by an administrative law judge will be governed by parts 1400.5200 to 1400.8500. Public hearings conducted by the significance review committee will be conducted according to the council's hearing procedures as contained in Procedures for Adopting or Amending a Chapter of the Metropolitan Development Guide. This publication is incorporated by reference in this chapter. It is available through the Minitex interlibrary loan system and subject to frequent change.

5800.0120 COMMITTEE REPORT TO COUNCIL.

Following the public hearing and the receipt of the report of the administrative law judge, if any, the significance review committee must adopt a committee report with findings of fact, conclusions, and recommendations to the Metropolitan Council.

The committee's report will be based on information submitted before the close of the record of the public hearing. Committee members may use their experience, technical competence, and specialized knowledge in the evaluation of this information. In addition, the report may include comments on the consistency of the proposed project with council plans and policies.

The findings of fact, conclusions, and recommendations of the significance review committee will be served on all parties and immediately transmitted to the council. All information and material considered by the significance review committee will be made available to council members.

5800.0130 COUNCIL DETERMINATION.

Subpart 1. **Consideration of findings of fact, conclusions, and recommendations.** The council will consider the committee report and all information submitted before the close of the record of the public hearing in making a final determination on the proposed project. The council may hold additional meetings to consider the proposed project or direct the significance review committee to conduct further specific significance review activity.

Subp. 2. **Metropolitan council final determination.** The council, after review and consideration of the metropolitan significance review committee's report, must adopt a final determination including findings of fact, conclusions, and recommendations with regard to the metropolitan significance of the proposed project. The council must find that the proposed project is or is not of metropolitan significance, based on the conclusion that it does or does not cause one or more of the effects contained in the appropriate subpart in part 5800.0040. The council may also comment on the consistency of the proposed

project with other council plans and policies. Lack of consistency with council plans and policies other than those listed in part 5800.0040 will not constitute a basis for a determination of metropolitan significance.

Subp. 3. **Proposed projects of metropolitan significance.** Upon a determination of metropolitan significance, the final determination also must indicate:

A. whether an amendment to a regional policy plan would eliminate the determination of metropolitan significance and further, whether the council intends to initiate an amendment to the affected policy plan to achieve consistency between its plan and the proposed project; or

B. whether the proposed project should be suspended for up to one year from the date of final determination. If the council orders a suspension, the order may contain conditions or modifications to the proposed project which, if complied with, would cause the council to eliminate the suspension; or

C. without ordering a suspension, how the proposed project could be modified to eliminate the determination of metropolitan significance.

Subp. 4. **Notice to parties.** Copies of the council determination will be served on all parties within seven days following its adoption.

Subp. 5. **Elimination of suspension.** The sponsor of any proposed project suspended by the council with conditions or modifications may request removal of the suspension based on meeting the conditions of the suspension. Upon receipt of a request for removal of the suspension, the council will hold a public hearing to consider the request. Parties to the significance review will be notified at least 15 days before the public hearing on the removal and given an opportunity to speak at the hearing concerning compliance with the conditions of suspension.

5800.0140 TERMINATION, SUSPENSION, EXTENSION, AND COORDINATION.

Subpart 1. **Bad faith.** The council may dismiss with

prejudice any significance review which it finds has been initiated in bad faith. This determination will not be made without allowing the parties to hear, rebut, and present evidence regarding the dismissal.

Subp. 2. **Withdrawal of review.** At any time during the conduct of a significance review, the requester or sponsor may request that the council withdraw the proposed project from significance review, setting forth the reasons for the request. If all the parties agree, the council may grant the request and allow a proposed project to be withdrawn from review.

Subp. 3. **Settlement.** The parties to a significance review may execute a settlement agreement with regard to the proposed project at any time before the issuance of a final determination. The agreement must be in writing, signed by all parties, and will be subject to acceptance or rejection by the council.

Subp. 4. **Suspension.** The council may suspend a significance review for not more than 90 days to allow the council to review a plan amendment for the proposed project under the provisions of the Metropolitan Land Planning Act. The council also may suspend a significance review for not more than 90 days to await the decision of a public agency whose authorization is required for the proposed project to proceed. In the event that the agency denies authorization for the proposed project, the council may dismiss the metropolitan significance review.

The sponsor and the requester may agree to suspend any of the time periods specified for a significance review. The agreement must be approved by the significance review committee. If the council initiates a significance review, the council and the sponsor may agree to suspend any of the time periods.

The council may suspend a significance review to await the submission of adequate supporting information.

Subp. 5. **Review coordination.** When appropriate, the council will coordinate the significance review with other

reviews, such as the environmental review process.

Subp. 6. **Extension.** At any time before the council determination, the significance review committee and the parties may agree to extend the review period in order to collect more information. The time extension must be specified in a written agreement between the committee and the parties. The council, acting on its own initiative, also may extend the time period of a significance review to await the submission of adequate supporting information.

5800.0150 JUDICIAL REVIEW.

A final determination adopted by the council and a determination by the council not to commence a significance review constitute final decisions by the council for purposes of judicial review.

REPEALER. Minnesota Rules, parts 5700.0100; 5700.0200; 5700.0300; 5700.0400; 5700.0500; 5700.0600; 5700.0700; 5700.0800; 5700.0900; 5700.1000; 5700.1100; 5700.1200; 5700.1300; 5700.1400; 5700.1500; 5700.1600; 5700.1700; 5700.1800; 5700.1900; 5700.2000; 5700.2100; 5700.2200; 5700.2300; 5700.2400; 5700.2500; 5700.2600; 5700.2700; 5700.2800; 5700.2900; 5700.3000; 5700.3100; 5700.3200; 5700.3300;5700.3400; 5700.3500; 5700.3600; 5700.3700; 5700.3800; 5700.3900;5700.4000; and 5700.4100, are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAR 2 1 1989

Secretary of State

2:33 PM

APPROVED AS TO FORM AND LEGALITY,
March 20 1989
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Carsely
SPECIAL ASSISTANT ATTORNEY GENERAL

SONAR?

BASIS FOR THE CHANGES TO THE METROPOLITAN SIGNIFICANCE RULES

BACKGROUND

The metropolitan significance rules are authorized under Minnesota Statutes 473.173. The statute itself (subd. 5) establishes the need for and provides evidence in support of the rules.

The rules set standards, guidelines and procedures for determining whether any proposed project is of 'metropolitan significance.' As directed by the statute, the Council reviews all proposed projects determined to be of metropolitan significance as to their consistency with and effect upon metropolitan system plans and their adverse effects on other local governmental units. Under the statute, the Council has a review period of 90 days which, to avoid duplication, can be suspended for not more than 90 days to await completion of review of a project by another public agency. The statute also empowers the Council to suspend action on a proposed project during the review period and for a period not to exceed 12 months following the issuance of its final determination.

The Metropolitan Council adopted the current set of rules in 1978. Fundamentally, the revised rules vary little from these rules. Consequently, only substantive procedural and content changes are discussed below.

NEED FOR CHANGE

The metropolitan significance rules are now ten years old. Since they were adopted, the Council has reviewed and approved local plans under the Metropolitan Land Planning Act, and established and updated procedures for reviewing plan amendments, including the standards for determining regional system impact. The Council has also refined its hearing procedures for adopting and revising policy plans. It has revised all of its policy plans for metropolitan systems and it has established a plan for solid waste. All of these changes have contributed to the need for revising the rules. In addition, actual use of the rules over the past three years in the Mall of America, Homart and NBA Arena reviews has led the Council and participating communities to conclude that, based on these and other procedural and substantive factors, the rules needed revision.

EFFECTS OF THE RULES CHANGES ON LOCAL GOVERNMENT EXPENDITURES, AGRICULTURAL LAND AND SMALL BUSINESS

The Administrative Procedures Act (APA) stipulates that an agency adopting rules according to the act must consider the effects the rules may have on local government expenditures, agricultural land and small business.

Effects on Local Government Expenditures

Neither the current metropolitan significance rules nor the proposed changes to the rules automatically require the expenditure of public money by local public bodies. An expenditure of funds may occur (for example, to pay for the salaries of staff involved in the review or to hire technical experts or

additional attorneys), but only when the Council commences a metropolitan significance review. Since 1978 when the rules were adopted, the Council has commenced only seven reviews.

Furthermore, most of the cost of a review can be absorbed by the Metropolitan Council. The Council is and will continue to be responsible for gathering pertinent information for each review and will enter this information and an analysis of any relevant Council plans and policies into the hearing record. Consequently, the expenditure of public money by local governments is at their discretion and not required by the Council under the rules.

Effects on Agricultural Land

The Metropolitan Council has determined that the revised metropolitan significance rules would not have a direct or substantial adverse impact on agricultural land. In fact, the Council's Metropolitan Development and Investment Framework clearly indicates the Council's support for agricultural land within the region. To this end, the current metropolitan significance rules list the following as one of the system effects for determining whether a proposed project is of metropolitan significance: the issuance of a land use permit in an outlying community for a critical development which could reasonably be expected to lead to...the disruption of commercial agricultural use. The changes to the rules will not affect the Council's support for agricultural land.

Effects on Small Business Considerations

The Council has determined that the only plausible effect the rules may have on small business is when a small business is a project sponsor. However, a proposed project which meets the threshold criteria would have 1) a potential impact on one of the metropolitan systems, 2) a potential impact on a publicly financed facility or 3) a substantial effect on existing or planned land use of development within a local governmental unit other than the local unit in which the proposed project is located. It is highly improbable that a small business would propose a project that could cause such effects.

GENERAL CHANGES

To increase clarity, much of the cumbersome, legalistic language has been reworked or eliminated in the revised rules and the voice is now active instead of passive. Furthermore, the rules have been reorganized so that required actions and procedures are presented in the sequence of occurrence. For example, the section discussing the implementation hold during review is now found in the commencement section, rather than the general provisions at the end of the current rules. Similarly, the discussion about phased, proposed projects is found in the review alternatives section, rather than in the general provisions. The intent of these changes is to improve the reader's understanding of and expectations about the significance review process.

None of these general changes will be discused in the section by section review that follows.

SECTION BY SECTION CHANGES

5800.0010 PURPOSE

The purpose section has two minor changes. It no longer includes the phrase that assures the rules will protect the health, safety and welfare of the residents of the area. Rather, the purpose focuses on promoting the orderly and economic development of the metropolitan area which is consistent with the enabling legislation.

An new sentence was added which states that the Council's intent under the rules is not to stop development, but to work to achieve consensus among the parties. Although the legislation refers to promoting orderly development, the Council also wants to emphasize use of the rules as a way of achieving agreement among disagreeing parties on major new development in the region.

5800.0020 DEFINITIONS

The definitions section reflects changes made throughout the rules. Terms no longer found in the rules have been dropped, while new terms referred to in the changes have been added. Several definitions have been refined to make them consistent with current Council policy plans or guide chapters.

5800.0030 STANDARDS FOR REVIEW

This section was not substantively changed in the revised rules.

5800.0040 CRITERIA FOR DETERMINING METROPOLITAN SIGNIFICANCE

The revised rules contain three types of criteria for determining metropolitan significance - those that apply when a proposed project affects a metropolitan system, when it is publicly subsidized and when it affects a local governmental unit. The criteria addressing publicly subsidized projects is new to the revised rules. The other two sets of criteria are found in the current rules, although both have been revised.

In the revised rules, the system impact standards in the plan amendment guidelines have been substituted for the current physical system effects. This change not only introduces greater consistency among Council procedures, it updates standards that are now more then ten years old to reflect current policy plans. The revised rules also include a solid waste criterion that is not addressed in the current rules. This criterion was added to reflect the Council's increased statutory role in the area of solid waste.

The Council's regional policy plans themselves are incorporated into the new rules by reference to ensure there is sufficient detail to make a determination of regional system impact. Although the plans are revised periodically, the Council seeks substantial public input in the revision process, similar to the amount and type of input that results from using the public hearing process outlined in the Administrative Procedures Act. In addition, when the Council gives notice of its intent to revise a plan and when it gives notice of the public hearing, it will advise the public that changes in the plan may affect the standards for determining projects of metropolitan significance.

The current rules do not specifically address the criteria the Council will use to determine when to initiate a review based on potential economic effects.

This resulted in considerable criticism of the Council and the Council's authority in the two reviews where the Council raised economic issues about a project. The revised rules now clarify the limited instances where the Council would get involved in projects that have a potential economic impact - where a proposed project with public subsidy threatens a publicly financed facility. The Council is concerned with the use of public subsidies to compete with facilities in other communities that are supported directly with taxpayer dollars. This was the most thoroughly discussed and controversial of the proposed changes. It represents substantial input from local government and the Council itself.

The revised rules also clarify that local governmental unit effects, like regional system effects, focus on physical effects. The current rules are ambiguous on this point, stating only that they encompass a substantial effect on existing or planned land use or development. The revised rules also list examples of the types of physical effects likely to be of potential significance, including traffic, stormwater runoff and air, noise and groundwater pollution. Because commercial agriculture designations are controlled locally, the local effects also specifically address disruption of commercial agricultural use. This is a change from the current rules where disruption of commercial agricultural use is listed under system effects. Since the passage of the Agricultural Preserves Act, designation of this use has become a local responsibility and hence, is more appropriately included under local effects.

5800.0050 EXEMPT PROJECTS

The rules now exempt matters that are consistent with a Council-approved local comprehensive plan from review for system impact. The revised rules clearly identify that this determination of consistency is a Council responsibility and that it is tied to system impact. The rules no longer provide for reevaluation of an existing local plan prior to the adoption of a plan under the terms of the Metropolitan Land Planning Act since all communities (except Landfall) now have such a plan.

The current rules allow initiation of a review up to the time of construction or major site alteration. This creates uncertainty for the city and the developer as to whether they will have to undergo a significance review. With input from local government, the rules now tie the vesting of a proposed project to environmental or local review processes. Specifically, a proposed project has vested rights 30 days following a negative declaration on an Environmental Assessment Worksheet or a determination of adequacy on an Environmental Impact Statement, or in the event no environmental review is required, 30 days following the local approval of a plan amendment or rezoning to accommodate the proposed project.

5800.0060 INITIATION OF REVIEW

This section was not substantively changed in the revised rules.

5800.0070 PRELIMINARY FINDING OF METROPOLITAN SIGNIFICANCE

This section incorporates the examination subpart from the current commencement section, which covers how the Chair will review an information submission.

This activity has been expanded under the revised rules to include two new steps in the review process: a preliminary finding of metropolitan significance and a scoping of issues.

The current rules do not clearly specify a time period for the Chair to review an information submission and related materials. The revised rules correct this shortcoming by providing 10 working days for the Chair to examine them. The revised rules also provide a bridge between the examination and commencement of a review, thereby making it clear what basis the Chair has found for commencing a review. Under the revised rules, the Chair must make a preliminary finding of Metropolitan Significance, based on the examination of materials meeting the same requirements as outlined in the current rules.

The revised rules also add a scoping element that states that the Council Chair will identify what issues will be included in the review at the outset of the review process. This approach replaces the scope of review section in the current rules where the committee is allowed to consider all criteria for determining metropolitan significance, regardless of whether they are raised in the information submission. It will eliminate the introduction of extraneous issues and reduce confusion among the parties about the focus of the review. In essence, the scoping element is intended to increase the fairness of the review process and reduce unnecessary work and expense by the parties to the process.

5800.0080 COMMENCEMENT AND DETERMINATION NOT TO COMMENCE

As discussed immediately above, this section no longer contains the subpart on examination of submission materials. However, it does incorporate two elements contained elsewhere in the current rules - information on the length of the review period (90 days unless suspended or extended according to the rules) and the hold on project implementation during the review period.

The only substantive change in this section is the point of commencement. Because the revised rules specify a time period prior to commencement of the review for examination of the submission materials, the time of commencement was changed from the date of submission of these materials to the date of the commencement order. To be consistent, a Council-initiated review will also start on the day the Council adopts a commencement order as opposed to the day following its adoption.

5800.0900 SIGNIFICANCE REVIEW COMMITTEE

This section was not substantively changed in the revised rules.

5800.0100 REVIEW ALTERNATIVES

The revised rules discuss four possible review alternatives: mediation, a public hearing held by the significance review committee, a public hearing held by an administrative law judge and a review of part or all of a phased proposed project. Only mediation is new to the review process.

During the course of discussing what changes were needed in the metropolitan significance rules, many local governments indicated an interest in the Council providing mediation among the parties to a disputed project in place of the full hearing process. Consequently, the revised rules allow a 30-day

suspension of the review process to resolve differences among the affected parties. In the event an agreement is not reached within the 30-day period, the regular review process will resume.

As stated above, the rules currently provide for a public hearing conducted by the significance review committee, or if the committee desires, by an administrative law judge. The revised rules clarify that use of an administrative law judge is only for purposes of holding the public hearing, not for delegating the decision-making responsibility assigned to the Council by statute. In addition, the rules no longer specify the contents of the report of an administrative law judge in that they may vary from review to review.

5800.0110 STEPS IN HEARING PROCESS

This section incorporates several individual sections from the current rules. Changes to these sections are as follows.

To give the parties as much time as possible to prepare their preliminary statements, the deadline for submission of these statements has been changed from 20 to 30 days after the review is commenced. In addition, participation in the process by non-parties will be determined by the significance review committee. The current rules give no guidelines in this regard other than any person may voluntarily submit information relevant to the review at any time prior to the close of the public hearing record. This is an unnecessary guideline in that the public hearing procedures provide for such input.

In response to numerous comments from local governments, the significance review report, which is released at least 10 days prior to the public hearing, will no longer contain any Council staff analysis. To ensure that the report will not prejudice the review committee, but still provide them with necessary background material on the review, the report will now contain only a listing of the information submitted to the committee, a description of the proposed project, the review criteria that apply to the project and a summary of the issues presented in each of the preliminary statements. The revised rules do provide for Council-generated analysis, but they stipulate that such information may be submitted into the record of the public hearing.

Because of the short length of the total review process, the revised rules retain only a portion of the current section on discovery, namely that part concerning the committee's ability to order the production of relevant information and its sanctions if the parties fail to comply.

For hearings conducted by the significance review committee, the current procedures have been replaced by the hearing procedures the Council uses when it adopts or amends it regional policy plans. These procedures have the advantage of being familiar to local governments in the region.

5800.0120 COMMITTEE REPORT TO COUNCIL

The revised rules do not contain any detailed listing of the contents of the report, rather they focus on the structure (findings of fact, conclusions and recommendations) and the basis of the report (information submitted before the close of the record of the public hearing). The rules do specify that the

report may include comments on the consistency of the proposed project with Council plans and policies as is common practice in Council referral reports. This addition to the rules is discussed in greater detail below.

5800.0130 COUNCIL DETERMINATION

This section is similar to its counterpart in the current rules. Although the revised section states that the Council too may comment on the consistency of the proposed project with other Council plans and policies, it further specifies that lack of consistency with plans and policies other than those listed in the criteria for determining metropolitan significance will not constitute a basis for a determination of metropolitan significance. This statement addresses local concerns that Council plans and policies other than those included in the listed significance criteria might become a basis for the actual determination of metropolitan significance.

5800.0140 TERMINATION, SUSPENSION, EXTENSION, AND COORDINATION

This section contains two basic changes from the current rules. The current rules allow suspension of the review process to await completion of review of a project by another public agency. The revised rules expand this provision to allow for the completion of a plan amendment review by the Council. The plan amendment procedures, which are familiar to local governments and simpler than the significance rules, may be used as an effective alternative to the significance review process when the issues involve potential metropolitan system impacts.

The provision for extension of the review is new to the rules. It is similar to the data collection provisions in the suspension subpart, but allows the review process to continue, rather than be put on hold, while the data is being gathered.

5800.0150 JUDICIAL REVIEW

This section was not substantively changed in the revised rules.

DROPPED SECTIONS

A number of sections were not carried over from the current to the revised rules. They include the following.

Exclusive Comprehensive Review: This section exempted any proposed project subject to review and approval under the Power Plant Siting Act. It was included in the rules because 1) power plant siting was a major issue at the time the rules were being drafted and 2) the plant siting process is very comprehensive. However, it is unlikely that any power plants will be proposed in the region in the foreseeable future and thus it seemed unnecessary to retain this provision.

Stipulated Procedure: With the changes to the public hearing procedures, the addition of mediation and the streamlining of discovery, this section was no longer needed.

Burden of Proof: The revised rules identify separate and specific hearing procedures to be used for public hearings conducted by the significance review committee and public hearings conducted by an administrative law judge, and thus there is no need for additonal sections in the rules which provide details about the public hearing procedures.

Time Periods: Because it specified common practice in the computation of time, this section was considered unnecessary.

Letter of Interpretation: The letter of interpretation was intended to allow the Council to clarify the rules themselves. However, the process established to accomplish that task amounted to nearly the same thing as the review process itself and hence did not provide a meaningful alternative to the full process.

Right to Counsel: It is not necessary to specify that parties can be represented by legal counsel.

Retention and Availability of Information: This section is covered by the Council's public hearing procedures and the Minnesota Government Data Practices Act.

Confidential Information: Subsequent to the 1978 adoption of the current rules, the Minnesota Legislature in 1979 enacted the Minnesota Government Data Practices Act which controls the handling of data by state agencies, political subdivisions and statewide systems, including the Council. The Minnesota Government Data Practices Act thus supersedes the Confidential Informnation section of the current rules.

Severability: The notion of severability is no longer commonly used in Minnesota rules.

BGS232, PHLPA1

CERTIFICATE OF THE

METROPOLITAN COUNCIL

I, Joan Campbell, do hereby certify that I am a member and the Vice-Chair of the Metropolitan Council, a regional agency duly authorized under the laws of the State of Minnesota, and that the attached is a true, complete, and correct copy of the minutes documenting a motion adopted at a meeting of the Metropolitan Council duly and properly called and held on the 23rd day of June, 1988, that a quorum was present, and that a majority of those present voted for the motion which has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 2nd day of March, 1989.

Joan M Campbell
Joan Campbell, Vice-Chair

Attested to by:

Mary M. Hauser
Mary Hauser
Metropolitan Council Member

LM240A

Authorizing Resolution

2081.2.2 Revised Metropolitan Significance Rules (Exhibit C)

Rietow briefly explained the committee's recommendation. She then moved, seconded by Ulrich:

"1. That the Metropolitan Council increase the representation from local elected officials on the Land Use Advisory Committee to at least two-thirds of the overall committee membership and to achieve that increase, that the Council work with the AMM to develop a larger pool of elected officials from which to select committee members.

2. That the Metropolitan Council adopt the revised metropolitan significance rules for the purpose of initiating the Administrative Procedures Act process of rules adoption and authorize the Executive Director to sign any documents necessary to proceed with and effectuate said rules adoption."

Motion carried unanimously.

2081.2.3 Policy to Implement Federal Preferences (Exhibit D)

Campbell permitted advocates of the coalition for battered women to address the Council concerning this issue. She also noted that the staff submitted a revised recommendation. Pamela Zeller, Executive Director of a metro shelter for battered women and board member of the Minnesota Coalition for Battered Women addressed the Council. She explained that they had received a letter from the Metro HRA stating that there would no longer be set-aside certificates for battered women. She explained that in the past some of the metro shelters would receive a certain number of certificates every month that could be used for battered women. She reported that this procedure worked very well for them and expressed her concern that this practice is being discontinued. She stated that shortly before the Council meeting, she read the revised recommendation which staff had submitted. She said that recommendation is exactly what they would like because the recommendation states that there would be a continuance of the set-aside program which would continue to ensure safety for battered women and which would continue to reach that population. It also suggests implementing a new policy and procedure that would implement a waiting list, with battered women given the highest priority on the waiting list. The coalition offered its support and cooperation in dealing with any resistence that might be encountered at the federal level. They offered their testimony, time and energy for resolving this issue.

Rietow explained that when the Metro HRA adopted the policies contained in the packet, they were in a position of having to implement the federal rules and regulations. However, they have since submitted a revised recommendation as follows:

"That the Metropolitan Council approve the attached policy implementing the Federal preferences, and that a waiver be requested from the United States Department of Housing and Urban Development to provide that each month, 24 certificates or vouchers be allocated to residents of shelter facilities as currently defined by the Metro HRA and that the Metropolitan Council write to members of our congressional delegation requesting their support in our efforts to obtain this waiver."

PART III - CERTIFICATION

I hereby certify that the foregoing narrative and exhibits constitute a true and accurate record of the Metropolitan Council Meeting of June 23, 1988.

Approved this 14th day of July, 1988.

Sandra Lindstrom

Sandra L. Lindstrom, Secretary

MCM164-CHADM2

Metropolitan Council

Proposed Permanent Rules Relating to Metropolitan Significance

Rules as Proposed (all new material)

5800.0010 PURPOSE.

Minnesota Statutes, section 473.173, requires that the Metropolitan Council adopt and put into effect rules establishing standards, guidelines, and procedures for determining whether any proposed project is of metropolitan significance. This chapter will be used in the review of all such projects. The purpose of this chapter is to assure that the total effect of a proposed project alleged to be of metropolitan significance is considered and the orderly and economic development of the area is promoted. It is not the council's intent to use this chapter to stop development, but rather to work out differences among parties and arrive at consensus.

5800.0020 DEFINITIONS.

Subpart 1. **Scope.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Adjacent governmental unit.** "Adjacent governmental unit" means all local governmental units and independent commissions whose jurisdiction includes or adjoins, in whole or in part, that of the governmental unit(s) in which the proposed project is located.

Subp. 3. **Affected governmental unit, state agency, or metropolitan agency.** "Affected governmental unit," "state agency," or "metropolitan agency" means all local governmental units, independent commissions, and state or metropolitan agencies whose legal rights, duties, or privileges may be substantially affected by a proposed project.

Subp. 4. **Bad faith.** "Bad faith" means a conscious and willful decision to act in a manner intending to mislead, deceive, or distort the truth, including but not limited to

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making a claim which one knows to be groundless or unfounded.

Subp. 5. **Chair.** "Chair" means the chair of the Metropolitan Council.

Subp. 6. **Commercial-agricultural area.** "Commercial-agricultural area" means those lands certified by local governments as eligible for agricultural preserves under the Agricultural Preserves Act, Minnesota Statutes, sections 473H.01 to 473H.18.

Subp. 7. **Comprehensive plan or local comprehensive plan.** "Comprehensive plan" or "local comprehensive plan" means a comprehensive plan of a local governmental unit as required by the Metropolitan Land Planning Act, Minnesota Statutes, sections 473.851 to 473.872.

Subp. 8. **Comprehensive sewer plan.** "Comprehensive sewer plan" means a plan required by the Metropolitan Waste Control Commission which describes the collection, treatment, and disposal of all sanitary sewage, including the installation, operation, and maintenance of on-site sewage disposal facilities.

Subp. 9. **Independent commission, board, or agency.** "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 agencies.

Subp. 10. **Land Use Advisory Committee or advisory committee.** "Land Use Advisory Committee" or "advisory committee" means an advisory committee established by the Metropolitan Council pursuant to Minnesota Statutes, section 473.853.

Subp. 11. **Local governmental unit or unit.** "Local governmental unit" or "unit" means any city, town, county, school district, special district, or other political subdivision or public corporation, other than a metropolitan agency, lying in whole or part within the metropolitan area.

Subp. 12. **Mainline.** "Mainline" means those lanes of a

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highway that carry through traffic.

Subp. 13. **Metropolitan agency.** "Metropolitan agency" means the Metropolitan Waste Control Commission, the Regional Transit Board, the Metropolitan Transit Commission, and other agencies as the legislature may designate.

Subp. 14. **Metropolitan area.** "Metropolitan area" means the area over which the Metropolitan Council has jurisdiction, including only the counties of Anoka, Carver, Dakota excluding the city of Northfield, Hennepin excluding the city of Hanover, Ramsey, Scott excluding the city of New Prague, and Washington.

Subp. 15. **Metropolitan Council or council.** "Metropolitan Council" or "council" means the Metropolitan Council established by Minnesota Statutes, section 473.123.

Subp. 16. **Metropolitan Development Guide.** "Metropolitan Development Guide" means the comprehensive development guide prepared by the council to achieve the orderly and economic development of the metropolitan area.

Subp. 17. **Metropolitan highway.** "Metropolitan highway" means those highways identified in the Transportation Guide/Policy Plan to serve the region. They include both interstate freeways and major arterials.

Subp. 18. **Metropolitan system.** "Metropolitan system" means the regional airport, transportation, sewer, recreation open space, and solid waste facilities and plans for facilities outlined in the Metropolitan Development Guide.

Subp. 19. **Metropolitan significance review or significance review.** "Metropolitan significance review" or "significance review" means a review conducted by the Metropolitan Council according to this chapter.

Subp. 20. **Party.** "Party" means the requester, sponsor, and local governmental unit(s) in which the proposed project is located 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, administrative law judge, or council. The council will not be a party to a significance review except when it initiates the

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review.

Subp. 21. **Person.** "Person" means any individual, association, trust, partnership, joint venture, public or private corporation, metropolitan agency, local governmental unit, independent commission, state agency, government or governmental subdivision, unit, or agency other than a court of law.

Subp. 22. **Petition.** "Petition" means a document containing signatures submitted to the council according to the procedures for initiation of a significance review, which contains, at the time that the signatures are added, a description of what the petition is for, a reference to the metropolitan significance rules, and a brief summary of the reason for the petition.

Subp. 23. **Phased proposed project.** "Phased proposed project" means a proposed project which is divided into separate stages or segments, one or more of which may be of metropolitan significance.

Subp. 24. **Policy plan or guide chapter.** "Policy plan" or "guide chapter" means the Metropolitan Development Guide chapter adopted pursuant to Minnesota Statutes, section 473.145, the policy plans for metropolitan agencies adopted pursuant to Minnesota Statutes, section 473.146, the Recreation Open Space Development Guide/Policy Plan, adopted pursuant to Minnesota Statutes, section 473.147, the Solid Waste Management Development Guide/Policy Plan, adopted pursuant to Minnesota Statutes, section 473.149, and amendments to any of these plans. These plans or chapters are incorporated by reference in this chapter. They are available through the Minitex interlibrary loan system and subject to frequent change. The policy plans or guide chapters referenced in any metropolitan significance review will be those in effect at the time the review is initiated.

Subp. 25. **Proposed project.** "Proposed project" means a project or action involving the construction, installation, establishment, siting, demolition, reconstruction, or

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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, in whole or in part within the metropolitan area, by any person.

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

Subp. 27. **Publicly subsidized.** "Publicly subsidized" means a direct expenditure or inkind contribution by a state, regional, or local governmental unit to a private project (one that is not publicly financed) for any purpose for which the governmental unit is not reimbursed; or a long-term loan by a state, regional, or local governmental unit to a private project. Public subsidy is determined by how the funds are used and not by the source of the revenues provided. Public subsidy includes, but is not limited to, the purposes in items A to E.

A. Construction of utility improvements without special assessment to the benefited properties of 20 percent or more of the total collective cost of the improvement.

B. Acquisition of property and site development, including demolition, clearance, and relocation together with transfer of title to the property to a private party at a price below the actual costs of acquisition and development.

C. Construction of private, on-site improvements including drainage facilities, site grading, parking, lighting, landscaping, and related improvements.

D. Construction or payment for construction of buildings to be used by one or more private parties for commercial or industrial purposes. Construction may include parking facilities, foundations, building construction, interior furnishings, equipment, and related costs.

E. Construction or reconstruction of a county state aid or state trunk highway improvement that is determined necessary to serve increased traffic from a major private project. Highway improvements may include roadway upgrading,

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bridges, overpasses, entrance and exit roadway improvements, and other improvements.

Public subsidy does not include land sold at market value but below the local governmental unit's cost of acquiring and preparing the land for sale.

Subp. 28. **Publicly financed facility.** "Publicly financed facility" means a facility where a governmental jurisdiction has an ongoing obligation to pay operating costs or debt service for the facility or the ultimate responsibility to pay off bonds should other revenue sources fail.

Subp. 29. **Requester.** "Requester" means any person requesting the initiation of a metropolitan significance review.

Subp. 30. **Review period.** "Review period" means the 90-day period for a metropolitan significance review which begins on the effective date of an order to commence a significance review and automatically terminates on the 90th day following unless a suspension or extension of the review period is authorized under part 5800.0100, subpart 1 or 5800.0140, subparts 4 and 6.

Subp. 31. **Service or serve.** "Service" or "serve" means personal service or service by first class United States mail, postage prepaid and addressed to the person or party at his or her last known address. Service by mail will be complete upon the placing of the item to be served in the mail.

Subp. 32. **Sewer policy plan.** "Sewer policy plan" means a component of the local comprehensive plan which describes the areas to be sewered with public facilities and a schedule for providing service to them, existing flows and flow projections for the public sewer system, standards and conditions for the installation of private systems, and areas not suitable for public or private systems.

Subp. 33. **Sponsor.** "Sponsor" means any person proposing to undertake or develop a proposed project.

Subp. 34. **State agency.** "State agency" means the state of Minnesota or any agency, board, commission, department, or educational institution of the state.

Subp. 35. **Substantial.** "Substantial" is a relative term.

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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.

5800.0030 STANDARDS FOR REVIEW.

Unless a proposed project is exempt, the chair of the Metropolitan Council must issue a preliminary finding of metropolitan significance if a proposed project may cause any of the effects listed in part 5800.0040. The same criteria will be used by the council when it makes the final determination of metropolitan significance following the council review process. A proposed project may be found to be of metropolitan significance only if it meets one or more of these criteria.

5800.0040 CRITERIA FOR DETERMINING METROPOLITAN SIGNIFICANCE.

Subpart 1. **Generally.** For the purposes of parts 5800.0070 and 5800.0130, a proposed project listed in subparts 2 to 4 has metropolitan significance if the requirements of the applicable subpart are met.

Subp. 2. **Proposed project affecting a metropolitan system.** A proposed project affecting a metropolitan system has metropolitan significance if it:

A. May result in a substantial change in the timing, staging, and capacity or service area of local facilities in a council-approved local sewer policy plan or comprehensive sewer plan.

B. May result in a wastewater flow that substantially exceeds the flow projection for the local governmental unit as indicated in the Water Resources Management Development Guide/Policy Plan, Part 1. Sewage Treatment and Handling.

C. May require a new national pollution discharge elimination system permit or state disposal system permit or a substantial change to an existing permit.

D. May result in substantially less restrictive standards and conditions to be adopted for the installation or management of private on-site sewer facilities than those described in the comprehensive plan.

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E. May have a substantial impact on the use of regional recreation and open space facilities or natural resources within the regional recreation open space system. Impacts on the use of recreation and open space facilities include but are not limited to traffic, safety, noise, visual obstructions (for example, to scenic overlooks), impaired use of the facilities, or interference with the operation or maintenance of the facilities. Impacts on natural resources include but are not limited to the impact on the level, flow, or quality of a facility's water resources (lakes, streams, wetlands) and impact on a facility's wildlife populations or habitats (migration routes, breeding sites, plant communities).

F. May preclude or substantially limit the future acquisition of land in an area identified in the capital improvement program of the council's Recreation Open Space Development Guide/Policy Plan.

G. May substantially affect either the function of a metropolitan airport identified in the council's Aviation Development Guide/Policy Plan or the land use within an airport search area.

H. Is substantially inconsistent with the "Guidelines for Land Use Compatibility with Aircraft Noise" contained in the Aviation Development Guide/Policy Plan.

I. May result in a substantial change to existing or proposed metropolitan highways, highway interchanges, or intersections with metropolitan highways, or to local roadways that have interchanges with metropolitan highways. Substantial changes to the mainline, interchanges, and intersections include an increase in volume that will overload the facility, or a difference in timing, design, or location from that indicated in the Transportation Guide/Policy Plan. Changes to local roadways include changes in timing, staging, volume, capacity, design, location, or functional classification.

J. May result in a substantial change in transit service or facilities inconsistent with the Transportation Guide/Policy Plan.

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K. May have a substantial impact on the use of solid waste facilities identified in the Solid Waste Management Development Guide/Policy Plan. Impacts on the use of these facilities include, but are not limited to, disruption of planned facility staging, facility access, or other interference with the operation and maintenance of the facilities.

Subp. 3. **Proposed publicly subsidized project.** A proposed publicly subsidized project has metropolitan significance if it may threaten a publicly financed facility.

Subp. 4. **Proposed project affecting a local governmental unit.** A proposed project affecting a local governmental unit has metropolitan significance if it:

A. May have a substantial physical effect on a local governmental unit other than the local unit in which the proposed project is located. More specifically, a proposed project may be of metropolitan significance if it adversely affects existing or proposed land use or development in another local government with respect to traffic, stormwater runoff, groundwater pollution, air or noise pollution, increased security needs (police, fire) or other similar impacts.

B. May result in the substantial disruption of agricultural use in the commercial-agricultural area of a local governmental unit other than the local unit in which the proposed project is located.

5800.0050 EXEMPT PROJECTS.

Subpart 1. **Generally.** The chair will not commence a metropolitan significance review if a proposed project falls in one or more of the exempt categories in subparts 2 to 5.

Subp. 2. **Local comprehensive plan exemption.** A proposed project that is consistent with a council-approved local comprehensive plan is exempt from review for metropolitan system effects. The council shall determine whether a proposed project is consistent for system effects with the local plan.

Subp. 3. **Previous approval.** Any proposed project of a metropolitan agency or the Metropolitan Airports Commission

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which is within an area of that agency's operational authority or which has been or will be subject to approval by the council as part of a regional policy plan; any proposed project which has been previously approved by the council in accordance with Minnesota Statutes, section 473.167; or any proposed project for which a final determination has been made in a metropolitan significance review is exempt from review unless the proposed project has been materially altered subsequent to the final determination.

Subp. 4. **Emergency project.** Any proposed project which must be immediately undertaken to prevent or mitigate an emergency is exempt from review. The following standards will form the basis for determining if an emergency exists:

(1) the degree to which the alleged emergency circumstances were foreseeable;

(2) whether alternate means can alleviate the emergency; and

(3) the probable effect of the proposed project in mitigating the emergency circumstances.

Subp. 5. **Minor alterations.** Any proposed project consisting exclusively of administrative or maintenance activity or a negligible improvement, expansion, or change of use or use intensity is exempt from review.

Subp. 6. **Vested rights.** Any proposed project for which 30 days have elapsed since a negative declaration on an Environmental Assessment Worksheet as described in part 4410.1700, or a determination of adequacy on an Environmental Impact Statement as described in part 4400.2800, or in the event no environmental review is required, any proposed project for which 30 days have elapsed since a local governmental unit has approved a plan amendment or rezoning to accommodate the proposed project is exempt from review. A metropolitan significance review cannot be initiated on any proposed project where a sponsor has vested rights.

5800.0060 INITIATION OF REVIEW.

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Subpart 1. **By requesters.** A metropolitan significance review may be requested by:

A. a resolution from the unit of government in which the proposed project is located;

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: at least 5,000 residents of the metropolitan area 18 years of age or older, or that number of residents 18 years of age or older of an affected local governmental unit which equals or exceeds 50 percent of the number of persons who voted in that affected governmental unit during the most recently held state general election. The petition must designate at least one and no more than three persons to act as requesters on behalf of the petitioner;

D. a resolution or letter from a duly authorized executive officer or governing body of state agency;

E. a resolution or letter from a duly authorized executive officer or governing body of a sponsor; or

F. a resolution from an affected metropolitan agency.

Subp. 2. **By council.** The council may review proposed projects of metropolitan significance regardless of whether the council has received a request to initiate a review.

Subp. 3. **Information submission.** A request for review under subpart 1 must be accompanied by an information submission. The purpose of the information submission is to demonstrate an arguable claim of metropolitan significance. An information submission must contain the following:

A. the names and addresses of the requester, the sponsor, and the governmental unit(s) in which the proposed project is located;

B. a description of the proposed project including its planned character, location, function, use, and size;

C. a statement of the criteria contained in the appropriate subpart of part 5800.0040 which cause the proposed project to be of metropolitan significance, and a discussion of

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why it is not exempt; and

D. a statement of the effect the proposed project will have on metropolitan systems or existing or planned land use or development, or if publicly subsidized, the effects on a publicly financed facility, including the facts and opinion upon which the statement is based.

5800.0070 PRELIMINARY FINDING OF METROPOLITAN SIGNIFICANCE.

Subpart 1. **Review of information submission.** Upon receipt of a request accompanied by an information submission, the chair must within ten working days examine the materials and make a preliminary finding of metropolitan significance based on the following requirements:

A. the request complies with and satisfies the requirements of part 5800.0060;

B. the significance review has not been requested in bad faith;

C. the information submission arguably demonstrates that a metropolitan system or existing or planned land use or development will be affected by the proposed project or that a publicly subsidized project has an effect on a publicly financed facility; and

D. the proposed project is not exempt.

After receiving a request to commence a metropolitan significance review, but before making a preliminary finding of metropolitan significance, the chair may meet with any of the parties and may request additional information.

Subp. 2. **Scoping of issues.** In the preliminary finding, the chair will identify which of the issues raised in the information submission are legitimate for significance review and specify any other issues which should be included in the significance review. Only these issues will be included in the scope of review at the public hearing, unless the significance review committee gives at least seven days notice before the public hearing to all parties that additional issues will be added to the scope of review. A description of the issues will

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be included with the notice.

5800.0080 COMMENCEMENT AND DETERMINATION NOT TO COMMENCE.

Subpart 1. **Council initiation.** A significance review initiated by the council will commence on the day the council adopts an order to commence a significance review.

Subp. 2. **Initiation by requesters.** If the chair determines that the request complies with and satisfies the requirements of part 5800.0060, the chair will commence the significance review by issuing an order for commencement effective as of the date of the order. The order will include the chair's preliminary finding of metropolitan significance. If the chair decides not to commence a significance review, the chair must immediately inform the parties of the determination and basis for it.

Subp. 3. **Appeal.** Person(s) requesting a review, the governmental unit(s) in which the proposed project is located, and the sponsor may appeal the chair's decision not to commence the significance review to the council by submitting a written request within seven days following notification of the chair's determination. The council must review this request at a public hearing and either direct the issuance of an order for commencement or affirm the chair's decision.

Subp. 4. **Notice of commencement of significance review.** The council must serve notice of the commencement of a significance review on all parties, adjacent governmental units, metropolitan agencies, and the Land Use Advisory Committee within five days following the determination to commence a review. The notice will contain the order for commencement, the information submission or a summary of the submission, an order to the sponsor to suspend action on the proposed project, and a schedule for the metropolitan significance review. Notice that the significance review has been commenced will be published in the next following issue of the council bulletin, as described in Minnesota Statutes, section 473.247.

Subp. 5. **Review period.** The council will complete a

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metropolitan significance review within 90 days following commencement unless suspended or extended under part 5800.0100, subpart 1, or 5800.0140, subparts 4 and 6.

Subp. 6. **Implementation hold during review period.** Upon commencement of a metropolitan significance review, no person will commence site alteration on a proposed project until the council's issuance of a final determination concerning the proposed project or the expiration of the significance review period, whichever occurs first.

5800.0090 SIGNIFICANCE REVIEW COMMITTEE.

Immediately following the commencement of a significance review, the chair will appoint a significance review committee composed of no more than seven or fewer than three individuals all of whom are members of the council or the Land Use Advisory Committee. The chair will appoint at least one council member and one Land Use Advisory Committee member to all significance review committees and will designate one of the review committee members to be the chair of the committee.

5800.0100 REVIEW ALTERNATIVES

Subpart 1. **Mediation.** The chair may determine that the proposed project under review is more suited to mediation than to a formal public hearing process and may suspend the metropolitan significance review for up to 30 days to bring the parties together to resolve differences. The resolution of these differences will be outlined in a written agreement. The agreement must be signed by all parties and must be accepted by the council. If the parties do not reach agreement within the suspension period, the significance review will resume. Any party may appeal the chair's decision to use mediation by submitting a written request to the council within seven days following the chair's decision. The council must review this request and either direct use of the public hearing process or affirm the chair's decision.

Subp. 2. **Public hearing process.** Unless mediation resolves the differences among the parties, the significance

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review will include a formal public hearing.

Subp. 3. **Use of an administrative law judge.** At any time before beginning the public hearing, the significance review committee may decide to use an administrative law judge appointed by the Office of Administrative Hearings for conducting the public hearing. A hearing held by an administrative law judge will be conducted in accordance with the rules of the Office of Administrative Hearings for contested cases, parts 1400.5200 to 1400.8500, to the extent those rules are not inconsistent with the time periods and procedures specified in this chapter. The report of the administrative law judge appointed by the significance review committee will be transmitted to the review committee. The committee will review the report and may use it as a basis for developing committee findings and recommendations. Any party may make a request for delegation of responsibility to an administrative law judge.

Subp. 4. **Phased proposed project.** When undertaking a significance review of a phased proposed project, the council may consider the total project or any separate independently viable stage. In determining independent viability, the council will consider whether a particular stage is viable without subsequent development, the interrelationship between the stage and subsequent development and whether the stage would foreclose the option of making modifications to mitigate metropolitan system effects. Any significance review of a separate stage will not preclude subsequent significance review of other stages.

5800.0110 STEPS IN HEARING PROCESS.

Subpart 1. **Preliminary statement.** Within 30 days after the review is commenced, the sponsor, the requester, and the governmental unit in which the proposed project is located must submit to the significance review committee or administrative law judge a preliminary statement containing information, facts, and opinions regarding the following:

A. the applicability to the proposed project of part 5800.0030;

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B. the significance and effect of the proposed project on metropolitan systems or on local governments or, if publicly subsidized, the effects on a publicly financed facility; and

C. the appropriate remedy.

In addition, the sponsor must indicate all other governmental reviews and approvals required in connection with the proposed project, and their current status.

Subp. 2. **Submissions.** The sponsor and the local governmental unit within which the proposed project is located must submit the following to the significance review committee or administrative law judge:

A. copies of any information given by the sponsor to any local governmental unit required to approve the proposed project; and

B. a copy of the findings, report, or determination made by the local government on the proposed project.

Subp. 3. **Participation by nonparties.** The significance review committee will decide the manner and extent of participation by persons other than the parties.

Subp. 4. **Significance review report.** At least ten days before the public hearing conducted by the significance review committee or the administrative law judge, council staff will prepare a written report on the proposed project. This report will not contain any findings or recommendations about the metropolitan significance of the proposed project. The report will be sent to all parties and made available to the public. Parties may submit statements about the report to the significance review committee at any time before the close of the record of the public hearing. The report will contain:

A. a listing, including sources, of all information submitted to the committee or to the administrative law judge;

B. a description of the proposed project;

C. the criteria listed in part 5800.0040 that apply to the proposed project; and

D. a summary of the issues presented in each of the

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preliminary statements, including any disagreements regarding facts of the proposed project.

Subp. 5. **Council information.** The council may enter information related to the review of the proposed project into the record of the public hearing. This material and its authors will be subject to examination at the public hearing.

Subp. 6. **Additional information.** On its own initiative or at the request of a party, the significance review committee may request additional information from any party before the close of the public hearing. If a party does not reasonably comply with a request, the significance review committee may order that the subject matter of the information to be produced be considered established for purposes of the significance review in accordance with the claims of the party requesting the information or refuse to allow the party failing to produce the information to support or oppose designated claims or prohibit the party from introducing the designated information into the hearing record.

Subp. 7. **Public hearing.** The significance review committee or an administrative law judge appointed by the committee must hold at least one public hearing on the proposed project. Notice of this public hearing must be published in the council bulletin and served on all parties at least 15 days prior to the hearing. The public hearing must be conducted in a manner designed to protect the rights of all persons and parties and to ensure fundamental fairness. Public hearings conducted by an administrative law judge will be governed by parts 1400.5200 to 1400.8500. Public hearings conducted by the significance review committee will be conducted according to the council's hearing procedures as contained in Procedures for Adopting or Amending a Chapter of the Metropolitan Development Guide. This publication is incorporated by reference in this chapter. It is available through the Minitex interlibrary loan system and subject to frequent change.

5800.0120 COMMITTEE REPORT TO COUNCIL.

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Following the public hearing and the receipt of the report of the administrative law judge, if any, the significance review committee must adopt a committee report with findings of fact, conclusions, and recommendations to the Metropolitan Council.

The committee's report will be based on information submitted before the close of the record of the public hearing. Committee members may use their experience, technical competence, and specialized knowledge in the evaluation of this information. In addition, the report may include comments on the consistency of the proposed project with council plans and policies.

The findings of fact, conclusions, and recommendations of the significance review committee will be served on all parties and immediately transmitted to the council. All information and material considered by the significance review committee will be made available to council members.

5800.0130 COUNCIL DETERMINATION.

Subpart 1. **Consideration of findings of fact, conclusions, and recommendations.** The council will consider the committee report and all information submitted before the close of the record of the public hearing in making a final determination on the proposed project. The council may hold additional meetings to consider the proposed project or direct the significance review committee to conduct further specific significance review activity.

Subp. 2. **Metropolitan council final determination.** The council, after review and consideration of the metropolitan significance review committee's report, must adopt a final determination including findings of fact, conclusions, and recommendations with regard to the metropolitan significance of the proposed project. The council must find that the proposed project is or is not of metropolitan significance, based on the conclusion that it does or does not cause one or more of the effects contained in the appropriate subpart in part 5800.0040. The council may also comment on the consistency of the proposed

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project with other council plans and policies. Lack of consistency with council plans and policies other than those listed in part 5800.0040 will not constitute a basis for a determination of metropolitan significance.

Subp. 3. **Proposed projects of metropolitan significance.** Upon a determination of metropolitan significance, the final determination also must indicate:

A. whether an amendment to a regional policy plan would eliminate the determination of metropolitan significance and further, whether the council intends to initiate an amendment to the affected policy plan to achieve consistency between its plan and the proposed project; or

B. whether the proposed project should be suspended for up to one year from the date of final determination. If the council orders a suspension, the order may contain conditions or modifications to the proposed project which, if complied with, would cause the council to eliminate the suspension; or

C. without ordering a suspension, how the proposed project could be modified to eliminate the determination of metropolitan significance.

Subp. 4. **Notice to parties.** Copies of the council determination will be served on all parties within seven days following its adoption.

Subp. 5. **Elimination of suspension.** The sponsor of any proposed project suspended by the council with conditions or modifications may request removal of the suspension based on meeting the conditions of the suspension. Upon receipt of a request for removal of the suspension, the council will hold a public hearing to consider the request. Parties to the significance review will be notified at least 15 days before the public hearing on the removal and given an opportunity to speak at the hearing concerning compliance with the conditions of suspension.

5800.0140 TERMINATION, SUSPENSION, EXTENSION, AND COORDINATION.

Subpart 1. **Bad faith.** The council may dismiss with

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prejudice any significance review which it finds has been initiated in bad faith. This determination will not be made without allowing the parties to hear, rebut, and present evidence regarding the dismissal.

Subp. 2. **Withdrawal of review.** At any time during the conduct of a significance review, the requester or sponsor may request that the council withdraw the proposed project from significance review, setting forth the reasons for the request. If all the parties agree, the council may grant the request and allow a proposed project to be withdrawn from review.

Subp. 3. **Settlement.** The parties to a significance review may execute a settlement agreement with regard to the proposed project at any time before the issuance of a final determination. The agreement must be in writing, signed by all parties, and will be subject to acceptance or rejection by the council.

Subp. 4. **Suspension.** The council may suspend a significance review for not more than 90 days to allow the council to review a plan amendment for the proposed project under the provisions of the Metropolitan Land Planning Act. The council also may suspend a significance review for not more than 90 days to await the decision of a public agency whose authorization is required for the proposed project to proceed. In the event that the agency denies authorization for the proposed project, the council may dismiss the metropolitan significance review.

The sponsor and the requester may agree to suspend any of the time periods specified for a significance review. The agreement must be approved by the significance review committee. If the council initiates a significance review, the council and the sponsor may agree to suspend any of the time periods.

The council may suspend a significance review to await the submission of adequate supporting information.

Subp. 5. **Review coordination.** When appropriate, the council will coordinate the significance review with other

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reviews, such as the environmental review process.

Subp. 6. **Extension.** At any time before the council determination, the significance review committee and the parties may agree to extend the review period in order to collect more information. The time extension must be specified in a written agreement between the committee and the parties. The council, acting on its own initiative, also may extend the time period of a significance review to await the submission of adequate supporting information.

5800.0150 JUDICIAL REVIEW.

A final determination adopted by the council and a determination by the council not to commence a significance review constitute final decisions by the council for purposes of judicial review.

REPEALER. Minnesota Rules, parts 5700.0100; 5700.0200; 5700.0300; 5700.0400; 5700.0500; 5700.0600; 5700.0700; 5700.0800; 5700.0900; 5700.1000; 5700.1100; 5700.1200; 5700.1300; 5700.1400; 5700.1500; 5700.1600; 5700.1700; 5700.1800; 5700.1900; 5700.2000; 5700.2100; 5700.2200; 5700.2300; 5700.2400; 5700.2500; 5700.2600; 5700.2700; 5700.2800; 5700.2900; 5700.3000; 5700.3100; 5700.3200; 5700.3300;5700.3400; 5700.3500; 5700.3600; 5700.3700; 5700.3800; 5700.3900;5700.4000; and 5700.4100, are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Metropolitan Significance

AGENCY: Metropolitan Council

MINNESOTA RULES: Chapter 5800

INCORPORATIONS BY REFERENCE:

Rule Numbers and Material Incorporated:

5800.0020, subpart 24: Metropolitan Development Guide.

5800.0110, subpart 7: Procedures for Adopting or Amending a Chapter of the Metropolitan Development Guide.

The attached rules are approved for publication in the State Register

Paul M. Marinac
Asssitant Deputy Revisor

In the Matter of the Proposed Adoption
of Rules of the Metropolitan Council
Governing Metropolitan Significance
Reviews

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Metropolitan Council will hold a public hearing on the above-entitled matter in Conference Room 2A, Metropolitan Council, Mears Park Centre, 230 East Fifth Street, St. Paul, Minnesota, on February 16, 1989 commencing at 1:00 p.m. and continuing until all interested or affected persons have an opportunity to participate. These proposed metropolitan significance rules were the subject of a public hearing held at the Council offices on September 29, 1988 and have been found both needed and reasonable by Judge Phyllis A. Reha in a report dated November 18, 1988.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE METROPOLITAN COUNCIL. To verify whether a hearing will be held, please call the Metropolitan Council between February 7th and February 16, 1989 at 291-6419.

The Metropolitan Council proposes to repeal the current rules governing metropolitan significance reviews, Minnesota Rules parts 5700.0100 through 5700.4100, and to adopt proposed new rules, Minnesota Rules parts 5800.0010 through 5800.0150. The proposed new rules contain a number of changes from the current rules regarding the standards, guidelines and procedures for determining whether any proposed project is of metropolitan significance. Among the most important changes are those which do the following: modify the criteria for determining metropolitan significance by substituting the system impact standards in the plan amendment guidelines for the current physical system effects; expand the system impact criteria to include a consideration of solid waste; establish a new criterion regarding publicly subsidized projects; clarify that local governmental unit effects focus on physical effects; establish new requirements that the Chair of the Metropolitan Council make a preliminary finding of metropolitan significance and identify, at the outset of the review process, the issues which will be included in the review; provide for mediation as an alternative to the public hearing process; provide that the significance review report will no longer contain any Metropolitan Council staff analysis; further limit discovery; and replace the current procedures for hearings conducted by the significance review committee with those used by the Metropolitan Council when it adopts or amends its regional policy plans.

Additional days of hearing will be scheduled if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Written data, statements or arguments may be submitted without appearing at the hearing.

The matter will be heard before Administrative Law Judge Phyllis A. Reha, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, (612) 341-7611. The rule hearing

procedure is governed by Minnesota Statutes, Sec. 14.131 through 14.20 (1986) and by the rules of the Office of Administrative Hearings, Minnesota Rules parts 1400.0200 through 1400.1200 (1987). Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge at the address and telephone number stated above.

The proposed rules are authorized by Minnesota Statutes, Sec. 473.173. The proposed rules are now available for review at the Metropolitan Council offices and at the Office of Administrative Hearings. One free copy of the rules is available on request by contacting:

Barbara Senness
Research and Long Range Planning Program
Metropolitan Council
Mears Park Centre
230 East Fifth Street
St. Paul, Minnesota 55101
(612) 291-6419

Notice is herby given that a Statement of Need and Reasonableness entitled "Basis for the Changes to the Metropolitan Significance Rules" is now available for review at the Metropolitan Council offices and at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Metropolitan Council anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Metropolitan Council offices or at the Office of Administrative Hearings, and copies may be obtained at the cost of reproduction by contacting Barbara Senness of the Metropolitan Council at the address or telephone number above or from the Office of Administrative Hearings.

Any person may present individual views on the proposed rules in one or more of the following ways: by submitting written data to the Administrative Law Judge at any time before the close of the hearing; by submitting oral or written data at the hearing; and by submitting written data to the Administrative Law Judge during the comment period following the hearing. The comment period will be five working days after the public hearing ends, but may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. The written material received during the comment period shall be available for review at the Office of Administrative Hearings. Within three business days after the expiration of the comment period, the Metropolitan Council and interested persons may respond in writing to any new information submitted during the comment period; however, no additional evidence may be submitted during this three-day period.

The Metropolitan Council requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment period also submit a copy of the written information to Barbara Senness, Metropolitan Council, Mears Park Centre, 230 East Fifth Street, St. Paul, Minnesota 55101.

The proposed rules may be modified if the data and views received during the hearing process warrant modification and the modification does not result in a substantial change in the proposed rules.

Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Metropolitan Council may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Metropolitan Council at any time prior to the filing of the rules with the Secretary of State.

Please be advised that Minnesota Statutes chapter 10A (1986) requires each lobbyist to register with the state Ethical Practices Board within five days after the individual commences lobbying. A lobbyist is defined in Minnesota Statutes, Sec. 10A.01, subd. 11 (1986) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including the individual's own travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, (612) 296-5615.

David Renz
Executive Director

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the Metropolitan Council proposes to adopt the above entitled rule witout a public hearing following the procedures set forth in Minnesota Statutes, Section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, Sec. 473.173.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The rule was the subject of a public hearing held on September 29, 1988 and have been found both needed and reasonable by Judge Phyllis A. Reha in a report dated November 18, 1988.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encourage to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Council will proceed pursuant to Minnesota Statutes, Section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON February 16, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE METROPOLITAN COUNCIL. To verify whether a hearing will be held, please call the Metropolitan Council between February 7 and February 16 at 291-6419.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Barbara Senness
Research and Long Range Planning Program
Metropolitan Council
Mears Park Centre
230 East Fifth Street
St. Paul, Minnesota 55101
(612) 291-6419

Comments or requests for a public hearing must be recieved by the Council by 4:30 p.m. on February 7, 1989.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available on request for your review from Barbara Senness.

The proposed new rules contain a number of changes from the current rules regarding the standards, guidelines and procedures for determining whether any proposed project is of metropolitan significance. Among the most important changes are those which do the following: modify the criteria for determining metropolitan significance by substituting the system impact standards in the plan amendment guidelines for the current physical system effects; expand the system impact criteria to include a consideration of solid waste; establish a new criterion regarding publicly subsidized projects; clarify that local governmental unit effects focus on physical effects; establish new requirements that the Chair of the Metropolitan Council make a preliminary finding of metropolitan significance and identify, at the outset of the review process, the issues which will be included in the review; provide for mediation as an alternative to the public hearing process; provide that the significance review report will no longer contain any Metropolitan Council staff analysis; further limit discovery; and replace the current procedures for hearings conducted by the significance review committee with those used by the Metropolitan Council when it adopts or amends its regional policy plans.

A Statement of Need and Reasonableness entitled "Basis for the Changes to the Metropolitan Significance Rules" justifying the need for and reasonableness of the proposed rules has been prepared and is available from Barbara Senness on request.

If no hearing is required on adoption of the rule, the rule and required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any persons may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Barbara Senness.

David Renz
Executive Director

BGS265-PHLPA1

In the Matter of the
Proposed Adoption of
Rules of the Metropolitan
Council Governing Metropolitan
Significance Reviews

AFFIDAVIT OF
MAILING THE
NOTICE OF INTENT
TO ADOPT A
RULE WITHOUT
A PUBLIC HEARING

AND

CERTIFICATE OF
MAILING LIST

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Donna Mattson, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, that their names be placed on the Metropolitan Council rulemaking mailing list is accurate, complete, and current as of the 30th day of December, 1988.

That on the 3rd day of January, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the United States mail a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Donna Mattson
Donna Mattson
Community Outreach Planner

Subscribed and
sworn to before me
this 2nd day of
March, 1989.

Elizabeth Marquardt

ELIZABETH MARQUARDT
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
My Comm. Expires Aug. 12, 1992

LM240A

In the Matter of the Proposed Adoption
of Rules of the Metropolitan Council
Governing Metropolitan Significance
Reviews

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Metropolitan Council will hold a public hearing on the above-entitled matter in Conference Room 2A, Metropolitan Council, Mears Park Centre, 230 East Fifth Street, St. Paul, Minnesota, on February 16, 1989 commencing at 1:00 p.m. and continuing until all interested or affected persons have an opportunity to participate. These proposed metropolitan significance rules were the subject of a public hearing held at the Council offices on September 29, 1988 and have been found both needed and reasonable by Judge Phyllis A. Reha in a report dated November 18, 1988.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE METROPOLITAN COUNCIL. To verify whether a hearing will be held, please call the Metropolitan Council between February 7th and February 16, 1989 at 291-6419.

The Metropolitan Council proposes to repeal the current rules governing metropolitan significance reviews, Minnesota Rules parts 5700.0100 through 5700.4100, and to adopt proposed new rules, Minnesota Rules parts 5800.0010 through 5800.0150. The proposed new rules contain a number of changes from the current rules regarding the standards, guidelines and procedures for determining whether any proposed project is of metropolitan significance. Among the most important changes are those which do the following: modify the criteria for determining metropolitan significance by substituting the system impact standards in the plan amendment guidelines for the current physical system effects; expand the system impact criteria to include a consideration of solid waste; establish a new criterion regarding publicly subsidized projects; clarify that local governmental unit effects focus on physical effects; establish new requirements that the Chair of the Metropolitan Council make a preliminary finding of metropolitan significance and identify, at the outset of the review process, the issues which will be included in the review; provide for mediation as an alternative to the public hearing process; provide that the significance review report will no longer contain any Metropolitan Council staff analysis; further limit discovery; and replace the current procedures for hearings conducted by the significance review committee with those used by the Metropolitan Council when it adopts or amends its regional policy plans.

Additional days of hearing will be scheduled if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Written data, statements or arguments may be submitted without appearing at the hearing.

The matter will be heard before Administrative Law Judge Phyllis A. Reha, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, (612) 341-7611. The rule hearing

procedure is governed by Minnesota Statutes, Sec. 14.131 through 14.20 (1986) and by the rules of the Office of Administrative Hearings, Minnesota Rules parts 1400.0200 through 1400.1200 (1987). Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge at the address and telephone number stated above.

The proposed rules are authorized by Minnesota Statutes, Sec. 473.173. The proposed rules are now available for review at the Metropolitan Council offices and at the Office of Administrative Hearings. One free copy of the rules is available on request by contacting:

Barbara Senness
Research and Long Range Planning Program
Metropolitan Council
Mears Park Centre
230 East Fifth Street
St. Paul, Minnesota 55101
(612) 291-6419

Notice is herby given that a Statement of Need and Reasonableness entitled "Basis for the Changes to the Metropolitan Significance Rules" is now available for review at the Metropolitan Council offices and at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Metropolitan Council anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Metropolitan Council offices or at the Office of Administrative Hearings, and copies may be obtained at the cost of reproduction by contacting Barbara Senness of the Metropolitan Council at the address or telephone number above or from the Office of Administrative Hearings.

Any person may present individual views on the proposed rules in one or more of the following ways: by submitting written data to the Administrative Law Judge at any time before the close of the hearing; by submitting oral or written data at the hearing; and by submitting written data to the Administrative Law Judge during the comment period following the hearing. The comment period will be five working days after the public hearing ends, but may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. The written material received during the comment period shall be available for review at the Office of Administrative Hearings. Within three business days after the expiration of the comment period, the Metropolitan Council and interested persons may respond in writing to any new information submitted during the comment period; however, no additional evidence may be submitted during this three-day period.

The Metropolitan Council requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment period also submit a copy of the written information to Barbara Senness, Metropolitan Council, Mears Park Centre, 230 East Fifth Street, St. Paul, Minnesota 55101.

The proposed rules may be modified if the data and views received during the hearing process warrant modification and the modification does not result in a substantial change in the proposed rules.

Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Metropolitan Council may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Metropolitan Council at any time prior to the filing of the rules with the Secretary of State.

Please be advised that Minnesota Statutes chapter 10A (1986) requires each lobbyist to register with the state Ethical Practices Board within five days after the individual commences lobbying. A lobbyist is defined in Minnesota Statutes, Sec. 10A.01, subd. 11 (1986) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including the individual's own travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, (612) 296-5615.

David Renz
Executive Director

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the Metropolitan Council proposes to adopt the above entitled rule witout a public hearing following the procedures set forth in Minnesota Statutes, Section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, Sec. 473.173.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The rule was the subject of a public hearing held on September 29, 1988 and have been found both needed and reasonable by Judge Phyllis A. Reha in a report dated November 18, 1988.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encourage to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Council will proceed pursuant to Minnesota Statutes, Section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON February 16, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE METROPOLITAN COUNCIL. To verify whether a hearing will be held, please call the Metropolitan Council between February 7 and February 16 at 291-6419.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Barbara Senness
Research and Long Range Planning Program
Metropolitan Council
Mears Park Centre
230 East Fifth Street
St. Paul, Minnesota 55101
(612) 291-6419

Comments or requests for a public hearing must be recieved by the Council by 4:30 p.m. on February 7, 1989.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available on request for your review from Barbara Senness.

The proposed new rules contain a number of changes from the current rules regarding the standards, guidelines and procedures for determining whether any proposed project is of metropolitan significance. Among the most important changes are those which do the following: modify the criteria for determining metropolitan significance by substituting the system impact standards in the plan amendment guidelines for the current physical system effects; expand the system impact criteria to include a consideration of solid waste; establish a new criterion regarding publicly subsidized projects; clarify that local governmental unit effects focus on physical effects; establish new requirements that the Chair of the Metropolitan Council make a preliminary finding of metropolitan significance and identify, at the outset of the review process, the issues which will be included in the review; provide for mediation as an alternative to the public hearing process; provide that the significance review report will no longer contain any Metropolitan Council staff analysis; further limit discovery; and replace the current procedures for hearings conducted by the significance review committee with those used by the Metropolitan Council when it adopts or amends its regional policy plans.

A Statement of Need and Reasonableness entitled "Basis the Changes to the Metropolitan Significance Rules" justifying the need for and reasonableness of the proposed rules has been prepared and is available from Barbara Senness on request.

If no hearing is required on adoption of the rule, the rule and required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any persons may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Barbara Senness.

David Renz
Executive Director

BGS265-PHLPA1

E. projected or planned changes in the amount or cost of services to affiliated school districts.

Subp. 4. **State board criteria.** The criteria used by the state board for approval of the biennial plan and budget are:

A. the computer center complies with the current "Long Range Plan for the Elementary, Secondary, and Vocational (ESV) Information System" approved by the state board;

B. the computer center provides ESV-IS services to each of its affiliates or shows that the center has arranged for services to be provided by another center;

C. the computer center uses cost accounting procedures to account by district for resources consumed at the center for support of each ESV-IS system;

D. the ESV computer council has reviewed the budget, plan, and report and has made a recommendation to the state board; and

E. there is sufficient income and operating capital to pay the amount of expenses identified in the expenditure plan.

3560.0070 INCORPORATIONS BY REFERENCE.

The documents described in this part are incorporated by reference in chapter 3560 to the extent referred to in chapter 3560.

A. "Data Element Dictionary," published by the Department of Education, is frequently changed and is accessible by computer terminal through the Department of Education library. The publication is continuously updated.

B. Uniform Financial Accounting and Reporting Standards (UFARS), published by the Department of Education, is frequently changed and is available through the Minitex interlibrary loan system. The publication is continuously updated.

C. Reporting Requirements of the Department of Education is published annually in the Annual Data Acquisition Calendar and is available through the Minitex interlibrary loan system.

D. Government Accounting and Auditing Financial Reports (GAAFR) is a series of reports used in the audit of a district. A set of sample reports is available through the Minitex interlibrary loan system.

E. "Long Range Plan for the Elementary, Secondary, and Vocational (ESV) Information System" is published by the Department of Education. The publication is updated at least biennially. The current update is available through the Minitex interlibrary loan system.

Metropolitan Council

Proposed Permanent Rules Relating to Metropolitan Significance

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer Than Twenty-five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Metropolitan Council will hold a public hearing on the above-entitled matter in Conference Room 2A, Metropolitan Council, Mears Park Centre, 230 East Fifth Street, St. Paul, Minnesota, on February 16, 1989 commencing at 1:00 p.m. and continuing until all interested or affected persons have an opportunity to participate. These proposed metropolitan significance rules were the subject of a public hearing held at the Council offices on September 28, 1988 and have been found both needed and reasonable by Judge Phyllis A. Reha in a report dated November 18, 1988.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE METROPOLITAN COUNCIL. To verify whether a hearing will be held, please call the Metropolitan Council between February 7th and February 16, 1989 at 291-6419.

The Metropolitan Council proposes to repeal the current rules governing metropolitan significance reviews, *Minnesota Rules* parts 5700.0100 through 5700.4100, and to adopt proposed new rules, *Minnesota Rules* parts 5800.0010 through 5800.0150. The proposed new rules contain a number of changes from the current rules regarding the standards, guidelines and procedures for determining whether any proposed project is of metropolitan significance. Among the most important changes are those which do the following:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

modify the criteria for determining metropolitan significance by substituting the system impact standards in the plan amendment guidelines for the current physical system effects; expand the system impact criteria to include a consideration of solid waste; establish a new criterion regarding publicly subsidized projects; clarify that local governmental unit effects focus on physical effects; establish new requirements that the Chair of the Metropolitan Council make a preliminary finding of metropolitan significance and identify, at the outset of the review process, the issues which will be included in the review; provide for mediation as an alternative to the public hearing process; provide that the significance review report will no longer contain any Metropolitan Council staff analysis; further limit discovery; and replace the current procedures for hearings conducted by the significance review committee with those used by the Metropolitan Council when it adopts or amends its regional policy plans.

Additional days of hearing will be scheduled if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Written data, statements or arguments may be submitted without appearing at the hearing.

The matter will be heard before Administrative Law Judge Phyllis A. Reha, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, (612) 341-7611. The rule hearing procedure is governed by *Minnesota Statutes*, Sec. 14.131 through 14.20 (1986) and by the rules of the Office of Administrative Hearings, *Minnesota Rules* parts 1400.0200 through 1400.1200 (1987). Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge at the address and telephone number stated above.

The proposed rules are authorized by *Minnesota Statutes*, Sec. 473.173. The proposed rules are now available for review at the Metropolitan Council offices and at the Office of Administrative Hearings. One free copy of the rules is available on request by contacting:

Barbara Senness
Research and Long Range Planning Program
Metropolitan Council
Mears Park Centre
230 East Fifth Street
St. Paul, Minnesota 55101
(612) 291-6419

Notice is hereby given that a Statement of Need and Reasonableness entitled "Basis for the Changes to the Metropolitan Significance Rules" is now available for review at the Metropolitan Council offices and at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Metropolitan Council anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Metropolitan Council offices or at the Office of Administrative Hearings, and copies may be obtained at the cost of reproduction by contacting Barbara Senness of the Metropolitan Council at the address or telephone number above or from the Office of Administrative Hearings.

Any person may present individual views on the proposed rules in one or more of the following ways: by submitting written data to the Administrative Law Judge at any time before the close of the hearing; by submitting oral or written data at the hearing; and by submitting written data to the Administrative Law Judge during the comment period following the hearing. The comment period will be five working days after the public hearing ends, but may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. The written material received during the comment period shall be available for review at the Office of Administrative Hearings. Within three business days after the expiration of the comment period, the Metropolitan Council and interested persons may respond in writing to any new information submitted during the comment period; however, no additional evidence may be submitted during this three-day period.

The Metropolitan Council requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment period also submit a copy of the written information to Barbara Senness, Metropolitan Council, Mears Park Centre, 230 East Fifth Street, St. Paul, Minnesota 55101.

The proposed rules may be modified if the data and views received during the hearing process warrant modification and the modification does not result in a substantial change in the proposed rules.

Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Metropolitan Council may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Metropolitan Council at any time prior to the filing of the rules with the Secretary of State.

Please be advised that *Minnesota Statutes* chapter 10A (1986) requires each lobbyist to register with the state Ethical Practices Board within five days after the individual commences lobbying. A lobbyist is defined in *Minnesota Statutes*, Sec. 10A.01, subd. 11 (1986) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including the individual's own travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, (612) 296-5615.

David Renz
Executive Director

Notice of Intent to Adopt a Rule Without a Public Hearing and Notice of Intent to Adopt a Rule With a Public Hearing If Twenty-Five or More Persons Request a Hearing

NOTICE IS HEREBY GIVEN that the Metropolitan Council proposes to adopt the above entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, Section 14.22 to 14.28. The specific statutory authority to adopt the rule is *Minnesota Statutes*, Sec. 473.173.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The rule was the subject of a public hearing held on September 29, 1988 and have been found both needed and reasonable by Judge Phyllis A. Reha in a report dated November 18, 1988.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Council will proceed pursuant to *Minnesota Statutes*, Section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON February 16, 1989, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE METROPOLITAN COUNCIL. To verify whether a hearing will be held, please call the Metropolitan Council between February 7 and February 16 at 291-6419.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Barbara Senness
Research and Long Range Planning Program
Metropolitan Council
Mears Park Centre
230 East Fifth Street
St. Paul, Minnesota 55101
(612) 291-6419

Comments or requests for a public hearing must be received by the Council by 4:30 p.m. on February 7, 1989.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available on request for your review from Barbara Senness.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

The proposed new rules contain a number of changes from the current rules regarding the standards, guidelines and procedures for determining whether any proposed project is of metropolitan significance. Among the most important changes are those which do the following: modify the criteria for determining metropolitan significance by substituting the system impact standards in the plan amendment guidelines for the current physical system effects; expand the system impact criteria to include a consideration of solid waste; establish a new criterion regarding publicly subsidized projects; clarify that local governmental unit effects focus on physical effects; establish new requirements that the Chair of the Metropolitan Council make a preliminary finding of metropolitan significance and identify, at the outset of the review process, the issues which will be included in the review; provide for mediation as an alternative to the public hearing process; provide that the significance review report will no longer contain any Metropolitan Council staff analysis; further limit discovery; and replace the current procedures for hearings conducted by the significance review committee with those used by the Metropolitan Council when it adopts or amends its regional policy plans.

A Statement of Need and Reasonableness entitled "Basis for the Changes to the Metropolitan Significance Rules" justifying the need for and reasonableness of the proposed rules has been prepared and is available from Barbara Senness on request.

If no hearing is required on adoption of the rule, the rule and required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any persons may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Barbara Senness.

David Renz
Executive Director

Rules as Proposed (all new material)

5800.0010 PURPOSE.

Minnesota Statutes, section 473.173, requires that the Metropolitan Council adopt and put into effect rules establishing standards, guidelines, and procedures for determining whether any proposed project is of metropolitan significance. This chapter will be used in the review of all such projects. The purpose of this chapter is to assure that the total effect of a proposed project alleged to be of metropolitan significance is considered and the orderly and economic development of the area is promoted. It is not the council's intent to use this chapter to stop development, but rather to work out differences among parties and arrive at consensus.

5800.0020 DEFINITIONS.

Subpart 1. **Scope.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Adjacent governmental unit.** "Adjacent governmental unit" means all local governmental units and independent commissions whose jurisdiction includes or adjoins, in whole or in part, that of the governmental unit(s) in which the proposed project is located.

Subp. 3. **Affected governmental unit, state agency, or metropolitan agency.** "Affected governmental unit," "state agency," or "metropolitan agency" means all local governmental units, independent commissions, and state or metropolitan agencies whose legal rights, duties, or privileges may be substantially affected by a proposed project.

Subp. 4. **Bad faith.** "Bad faith" means a conscious and willful decision to act in a manner intending to mislead, deceive, or distort the truth, including but not limited to making a claim which one knows to be groundless or unfounded.

Subp. 5. **Chair.** "Chair" means the chair of the Metropolitan Council.

Subp. 6. **Commercial-agricultural area.** "Commercial-agricultural area" means those lands certified by local governments as eligible for agricultural preserves under the Agricultural Preserves Act, *Minnesota Statutes*, sections 473H.01 to 473H.18.

Subp. 7. **Comprehensive plan or local comprehensive plan.** "Comprehensive plan" or "local comprehensive plan" means a comprehensive plan of a local governmental unit as required by the Metropolitan Land Planning Act, *Minnesota Statutes*, sections 473.851 to 473.872.

Subp. 8. **Comprehensive sewer plan.** "Comprehensive sewer plan" means a plan required by the Metropolitan Waste Control Commission which describes the collection, treatment, and disposal of all sanitary sewage, including the installation, operation, and maintenance of on-site sewage disposal facilities.

Subp. 9. **Independent commission, board, or agency.** "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 agencies.

Subp. 10. **Land Use Advisory Committee or advisory committee.** "Land Use Advisory Committee" or "advisory committee" means an advisory committee established by the Metropolitan Council pursuant to *Minnesota Statutes*, section 473.853.

Subp. 11. **Local governmental unit or unit.** "Local governmental unit" or "unit" means any city, town, county, school district, special district, or other political subdivision or public corporation, other than a metropolitan agency, lying in whole or part within the metropolitan area.

Subp. 12. **Mainline.** "Mainline" means those lanes of a highway that carry through traffic.

Subp. 13. **Metropolitan agency.** "Metropolitan agency" means the Metropolitan Waste Control Commission, the Regional Transit Board, the Metropolitan Transit Commission, and other agencies as the legislature may designate.

Subp. 14. **Metropolitan area.** "Metropolitan area" means the area over which the Metropolitan Council has jurisdiction, including only the counties of Anoka, Carver, Dakota excluding the city of Northfield, Hennepin excluding the city of Hanover, Ramsey, Scott excluding the city of New Prague, and Washington.

Subp. 15. **Metropolitan Council or council.** "Metropolitan Council" or "council" means the Metropolitan Council established by *Minnesota Statutes,* section 473.123.

Subp. 16. **Metropolitan Development Guide.** "Metropolitan Development Guide" means the comprehensive development guide prepared by the council to achieve the orderly and economic development of the metropolitan area.

Subp. 17. **Metropolitan highway.** "Metropolitan highway" means those highways identified in the Transportation Guide/Policy Plan to serve the region. They include both interstate freeways and major arterials.

Subp. 18. **Metropolitan system.** "Metropolitan system" means the regional airport, transportation, sewer, recreation open space, and solid waste facilities and plans for facilities outlined in the Metropolitan Development Guide.

Subp. 19. **Metropolitan significance review or significance review.** "Metropolitan significance review" or "significance review" means a review conducted by the Metropolitan Council according to this chapter.

Subp. 20. **Party.** "Party" means the requester, sponsor, and local governmental unit(s) in which the proposed project is located 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, administrative law judge, or council. The council will not be a party to a significance review except when it initiates the review.

Subp. 21. **Person.** "Person" means any individual, association, trust, partnership, joint venture, public or private corporation, metropolitan agency, local governmental unit, independent commission, state agency, government or governmental subdivision, unit, or agency other than a court of law.

Subp. 22. **Petition.** "Petition" means a document containing signatures submitted to the council according to the procedures for initiation of a significance review, which contains, at the time that the signatures are added, a description of what the petition is for, a reference to the metropolitan significance rules, and a brief summary of the reason for the petition.

Subp. 23. **Phased proposed project.** "Phased proposed project" means a proposed project which is divided into separate stages or segments, one or more of which may be of metropolitan significance.

Subp. 24. **Policy plan or guide chapter.** "Policy plan" or "guide chapter" means the Metropolitan Development Guide chapter adopted pursuant to *Minnesota Statutes,* section 473.145, the policy plans for metropolitan agencies adopted pursuant to *Minnesota Statutes,* section 473.146, the Recreation Open Space Development Guide/Policy Plan, adopted pursuant to *Minnesota Statutes,* section 473.147, the Solid Waste Management Development Guide/Policy Plan, adopted pursuant to *Minnesota Statutes,* section 473.149, and amendments to any of these plans. These plans or chapters are incorporated by reference in this chapter. They are available through the Minitex interlibrary loan system and subject to frequent change. The policy plans or guide chapters referenced in any metropolitan significance review will be those in effect at the time the review is initiated.

Subp. 25. **Proposed project.** "Proposed project" 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, in whole or in part within the metropolitan area, by any person.

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

Subp. 27. **Publicly subsidized.** "Publicly subsidized" means a direct expenditure or inkind contribution by a state, regional, or

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local governmental unit to a private project (one that is not publicly financed) for any purpose for which the governmental unit is not reimbursed; or a long-term loan by a state, regional, or local governmental unit to a private project. Public subsidy is determined by how the funds are used and not by the source of the revenues provided. Public subsidy includes, but is not limited to, the purposes in items A to E.

A. Construction of utility improvements without special assessment to the benefited properties of 20 percent or more of the total collective cost of the improvement.

B. Acquisition of property and site development, including demolition, clearance, and relocation together with transfer of title to the property to a private party at a price below the actual costs of acquisition and development.

C. Construction of private, on-site improvements including drainage facilities, site grading, parking, lighting, landscaping, and related improvements.

D. Construction or payment for construction of buildings to be used by one or more private parties for commercial or industrial purposes. Construction may include parking facilities, foundations, building construction, interior furnishings, equipment, and related costs.

E. Construction or reconstruction of a county state aid or state trunk highway improvement that is determined necessary to serve increased traffic from a major private project. Highway improvements may include roadway upgrading, bridges, overpasses, entrance and exit roadway improvements, and other improvements.

Public subsidy does not include land sold at market value but below the local governmental unit's cost of acquiring and preparing the land for sale.

Subp. 28. **Publicly financed facility.** "Publicly financed facility" means a facility where a governmental jurisdiction has an ongoing obligation to pay operating costs or debt service for the facility or the ultimate responsibility to pay off bonds should other revenue sources fail.

Subp. 29. **Requester.** "Requester" means any person requesting the initiation of a metropolitan significance review.

Subp. 30. **Review period.** "Review period" means the 90-day period for a metropolitan significance review which begins on the effective date of an order to commence a significance review and automatically terminates on the 90th day following unless a suspension or extension of the review period is authorized under part 5800.0100, subpart 1 or 5800.0140, subparts 4 and 6.

Subp. 31. **Service or serve.** "Service" or "serve" means personal service or service by first class United States mail, postage prepaid and addressed to the person or party at his or her last known address. Service by mail will be complete upon the placing of the item to be served in the mail.

Subp. 32. **Sewer policy plan.** "Sewer policy plan" means a component of the local comprehensive plan which describes the areas to be sewered with public facilities and a schedule for providing service to them, existing flows and flow projections for the public sewer system, standards and conditions for the installation of private systems, and areas not suitable for public or private systems.

Subp. 33. **Sponsor.** "Sponsor" means any person proposing to undertake or develop a proposed project.

Subp. 34. **State agency.** "State agency" means the state of Minnesota or any agency, board, commission, department, or educational institution of the state.

Subp. 35. **Substantial.** "Substantial" is a relative term. 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.

5800.0030 STANDARDS FOR REVIEW.

Unless a proposed project is exempt, the chair of the Metropolitan Council must issue a preliminary finding of metropolitan significance if a proposed project may cause any of the effects listed in part 5800.0040. The same criteria will be used by the council when it makes the final determination of metropolitan significance following the council review process. A proposed project may be found to be of metropolitan significance only if it meets one or more of these criteria.

5800.0040 CRITERIA FOR DETERMINING METROPOLITAN SIGNIFICANCE.

Subpart 1. **Generally.** For the purposes of parts 5800.0070 and 5800.0130, a proposed project listed in subparts 2 to 4 has metropolitan significance if the requirements of the applicable subpart are met.

Subp. 2. **Proposed project affecting a metropolitan system.** A proposed project affecting a metropolitan system has metropolitan significance if it:

A. May result in a substantial change in the timing, staging, and capacity or service area of local facilities in a council-approved local sewer policy plan or comprehensive sewer plan.

B. May result in a wastewater flow that substantially exceeds the flow projection for the local governmental unit as indicated in the Water Resources Management Development Guide/Policy Plan, Part 1. Sewage Treatment and Handling.

C. May require a new national pollution discharge elimination system permit or state disposal system permit or a substantial change to an existing permit.

D. May result in substantially less restrictive standards and conditions to be adopted for the installation or management of private on-site sewer facilities than those described in the comprehensive plan.

E. May have a substantial impact on the use of regional recreation and open space facilities or natural resources within the regional recreation open space system. Impacts on the use of recreation and open space facilities include but are not limited to traffic, safety, noise, visual obstructions (for example, to scenic overlooks), impaired use of the facilities, or interference with the operation or maintenance of the facilities. Impacts on natural resources include but are not limited to the impact on the level, flow, or quality of a facility's water resources (lakes, streams, wetlands) and impact on a facility's wildlife populations or habitats (migration routes, breeding sites, plant communities).

F. May preclude or substantially limit the future acquisition of land in an area identified in the capital improvement program of the council's Recreation Open Space Development Guide/Policy Plan.

G. May substantially affect either the function of a metropolitan airport identified in the council's Aviation Development Guide/Policy Plan or the land use within an airport search area.

H. Is substantially inconsistent with the "Guidelines for Land Use Compatibility with Aircraft Noise" contained in the Aviation Development Guide/Policy Plan.

I. May result in a substantial change to existing or proposed metropolitan highways, highway interchanges, or intersections with metropolitan highways, or to local roadways that have interchanges with metropolitan highways. Substantial changes to the mainline, interchanges, and intersections include an increase in volume that will overload the facility, or a difference in timing, design, or location from that indicated in the Transportation Guide/Policy Plan. Changes to local roadways include changes in timing, staging, volume, capacity, design, location, or functional classification.

J. May result in a substantial change in transit service or facilities inconsistent with the Transportation Guide/Policy Plan.

K. May have a substantial impact on the use of solid waste facilities identified in the Solid Waste Management Development Guide/Policy Plan. Impacts on the use of these facilities include, but are not limited to, disruption of planned facility staging, facility access, or other interference with the operation and maintenance of the facilities.

Subp. 3. **Proposed publicly subsidized project.** A proposed publicly subsidized project has metropolitan significance if it may threaten a publicly financed facility.

Subp. 4. **Proposed project affecting a local governmental unit.** A proposed project affecting a local governmental unit has metropolitan significance if it:

A. May have a substantial physical effect on a local governmental unit other than the local unit in which the proposed project is located. More specifically, a proposed project may be of metropolitan significance if it adversely affects existing or proposed land use or development in another local government with respect to traffic, stormwater runoff, groundwater pollution, air or noise pollution, increased security needs (police, fire) or other similar impacts.

B. May result in the substantial disruption of agricultural use in the commercial-agricultural area of a local governmental unit other than the local unit in which the proposed project is located.

5800.0050 EXEMPT PROJECTS.

Subpart 1. **Generally.** The chair will not commence a metropolitan significance review if a proposed project falls in one or more of the exempt categories in subparts 2 to 5.

Subp. 2. **Local comprehensive plan exemption.** A proposed project that is consistent with a council-approved local comprehensive plan is exempt from review for metropolitan system effects. The council shall determine whether a proposed project is consistent for system effects with the local plan.

Subp. 3. **Previous approval.** Any proposed project of a metropolitan agency or the Metropolitan Airports Commission which is within an area of that agency's operational authority or which has been or will be subject to approval by the council as part of a

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regional policy plan; any proposed project which has been previously approved by the council in accordance with *Minnesota Statutes*, section 473.167; or any proposed project for which a final determination has been made in a metropolitan significance review is exempt from review unless the proposed project has been materially altered subsequent to the final determination.

Subp. 4. **Emergency project.** Any proposed project which must be immediately undertaken to prevent or mitigate an emergency is exempt from review. The following standards will form the basis for determining if an emergency exists:

(1) the degree to which the alleged emergency circumstances were foreseeable;

(2) whether alternate means can alleviate the emergency; and

(3) the probable effect of the proposed project in mitigating the emergency circumstances.

Subp. 5. **Minor alterations.** Any proposed project consisting exclusively of administrative or maintenance activity or a negligible improvement, expansion, or change of use or use intensity is exempt from review.

Subp. 6. **Vested rights.** Any proposed project for which 30 days have elapsed since a negative declaration on an Environmental Assessment Worksheet as described in part 4410.1700, or a determination of adequacy on an Environmental Impact Statement as described in part 4400.2800, or in the event no environmental review is required, any proposed project for which 30 days have elapsed since a local governmental unit has approved a plan amendment or rezoning to accommodate the proposed project is exempt from review. A metropolitan significance review cannot be initiated on any proposed project where a sponsor has vested rights.

5800.0060 INITIATION OF REVIEW.

Subpart 1. **By requesters.** A metropolitan significance review may be requested by:

A. a resolution from the unit of government in which the proposed project is located;

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: at least 5,000 residents of the metropolitan area 18 years of age or older, or that number of residents 18 years of age or older of an affected local governmental unit which equals or exceeds 50 percent of the number of persons who voted in that affected governmental unit during the most recently held state general election. The petition must designate at least one and no more than three persons to act as requesters on behalf of the petitioner;

D. a resolution or letter from a duly authorized executive officer or governing body of state agency;

E. a resolution or letter from a duly authorized executive officer or governing body of a sponsor; or

F. a resolution from an affected metropolitan agency.

Subp. 2. **By council.** The council may review proposed projects of metropolitan significance regardless of whether the council has received a request to initiate a review.

Subp. 3. **Information submission.** A request for review under subpart 1 must be accompanied by an information submission. The purpose of the information submission is to demonstrate an arguable claim of metropolitan significance. An information submission must contain the following:

A. the names and addresses of the requester, the sponsor, and the governmental unit(s) in which the proposed project is located;

B. a description of the proposed project including its planned character, location, function, use, and size;

C. a statement of the criteria contained in the appropriate subpart of part 5800.0040 which cause the proposed project to be of metropolitan significance, and a discussion of why it is not exempt; and

D. a statement of the effect the proposed project will have on metropolitan systems or existing or planned land use or development, or if publicly subsidized, the effects on a publicly financed facility, including the facts and opinion upon which the statement is based.

5800.0070 PRELIMINARY FINDING OF METROPOLITAN SIGNIFICANCE.

Subpart 1. **Review of information submission.** Upon receipt of a request accompanied by an information submission, the chair must within ten working days examine the materials and make a preliminary finding of metropolitan significance based on the following requirements:

A. the request complies with and satisfies the requirements of part 5800.0060;

B. the significance review has not been requested in bad faith;

C. the information submission arguably demonstrates that a metropolitan system or existing or planned land use or development will be affected by the proposed project or that a publicly subsidized project has an effect on a publicly financed facility; and

D. the proposed project is not exempt.

After receiving a request to commence a metropolitan significance review, but before making a preliminary finding of metropolitan significance, the chair may meet with any of the parties and may request additional information.

Subp. 2. **Scoping of issues.** In the preliminary finding, the chair will identify which of the issues raised in the information submission are legitimate for significance review and specify any other issues which should be included in the significance review. Only these issues will be included in the scope of review at the public hearing, unless the significance review committee gives at least seven days notice before the public hearing to all parties that additional issues will be added to the scope of review. A description of the issues will be included with the notice.

5800.0080 COMMENCEMENT AND DETERMINATION NOT TO COMMENCE.

Subpart 1. **Council initiation.** A significance review initiated by the council will commence on the day the council adopts an order to commence a significance review.

Subp. 2. **Initiation by requesters.** If the chair determines that the request complies with and satisfies the requirements of part 5800.0060, the chair will commence the significance review by issuing an order for commencement effective as of the date of the order. The order will include the chair's preliminary finding of metropolitan significance. If the chair decides not to commence a significance review, the chair must immediately inform the parties of the determination and basis for it.

Subp. 3. **Appeal.** Person(s) requesting a review, the governmental unit(s) in which the proposed project is located, and the sponsor may appeal the chair's decision not to commence the significance review to the council by submitting a written request within seven days following notification of the chair's determination. The council must review this request at a public hearing and either direct the issuance of an order for commencement or affirm the chair's decision.

Subp. 4. **Notice of commencement of significance review.** The council must serve notice of the commencement of a significance review on all parties, adjacent governmental units, metropolitan agencies, and the Land Use Advisory Committee within five days following the determination to commence a review. The notice will contain the order for commencement, the information submission or a summary of the submission, an order to the sponsor to suspend action on the proposed project, and a schedule for the metropolitan significance review. Notice that the significance review has been commenced will be published in the next following issue of the council bulletin, as described in *Minnesota Statutes,* section 473.247.

Subp. 5. **Review period.** The council will complete a metropolitan significance review within 90 days following commencement unless suspended or extended under part 5800.0100, subpart 1, or 5800.0140, subparts 4 and 6.

Subp. 6. **Implementation hold during review period.** Upon commencement of a metropolitan significance review, no person will commence site alteration on a proposed project until the council's issuance of a final determination concerning the proposed project or the expiration of the significance review period, whichever occurs first.

5800.0090 SIGNIFICANCE REVIEW COMMITTEE.

Immediately following the commencement of a significance review, the chair will appoint a significance review committee composed of no more than seven or fewer than three individuals all of whom are members of the council or the Land Use Advisory Committee. The chair will appoint at least one council member and one Land Use Advisory Committee member to all significance review committees and will designate one of the review committee members to be the chair of the committee.

5800.0100 REVIEW ALTERNATIVES

Subpart 1. **Mediation.** The chair may determine that the proposed project under review is more suited to mediation than to a formal public hearing process and may suspend the metropolitan significance review for up to 30 days to bring the parties together to resolve differences. The resolution of these differences will be outlined in a written agreement. The agreement must be signed by all parties and must be accepted by the council. If the parties do not reach agreement within the suspension period, the significance review will resume. Any party may appeal the chair's decision to use mediation by submitting a written request to the council within seven days following the chair's decision. The council must review this request and either direct use of the public hearing process or affirm the chair's decision.

Subp. 2. **Public hearing process.** Unless mediation resolves the differences among the parties, the significance review will include a formal public hearing.

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Subp. 3. **Use of an administrative law judge.** At any time before beginning the public hearing, the significance review committee may decide to use an administrative law judge appointed by the Office of Administrative Hearings for conducting the public hearing. A hearing held by an administrative law judge will be conducted in accordance with the rules of the Office of Administrative Hearings for contested cases, parts 1400.5200 to 1400.8500, to the extent those rules are not inconsistent with the time periods and procedures specified in this chapter. The report of the administrative law judge appointed by the significance review committee will be transmitted to the review committee. The committee will review the report and may use it as a basis for developing committee findings and recommendations. Any party may make a request for delegation of responsibility to an administrative law judge.

Subp. 4. **Phased proposed project.** When undertaking a significance review of a phased proposed project, the council may consider the total project or any separate independently viable stage. In determining independent viability, the council will consider whether a particular stage is viable without subsequent development, the interrelationship between the stage and subsequent development and whether the stage would foreclose the option of making modifications to mitigate metropolitan system effects. Any significance review of a separate stage will not preclude subsequent significance review of other stages.

5800.0110 STEPS IN HEARING PROCESS.

Subpart 1. **Preliminary statement.** Within 30 days after the review is commenced, the sponsor, the requester, and the governmental unit in which the proposed project is located must submit to the significance review committee or administrative law judge a preliminary statement containing information, facts, and opinions regarding the following:

A. the applicability to the proposed project of part 5800.0030;

B. the significance and effect of the proposed project on metropolitan systems or on local governments or, if publicly subsidized, the effects on a publicly financed facility; and

C. the appropriate remedy.

In addition, the sponsor must indicate all other governmental reviews and approvals required in connection with the proposed project, and their current status.

Subp. 2. **Submissions.** The sponsor and the local governmental unit within which the proposed project is located must submit the following to the significance review committee or administrative law judge:

A. copies of any information given by the sponsor to any local governmental unit required to approve the proposed project; and

B. a copy of the findings, report, or determination made by the local government on the proposed project.

Subp. 3. **Participation by nonparties.** The significance review committee will decide the manner and extent of participation by persons other than the parties.

Subp. 4. **Significance review report.** At least ten days before the public hearing conducted by the significance review committee or the administrative law judge, council staff will prepare a written report on the proposed project. This report will not contain any findings or recommendations about the metropolitan significance of the proposed project. The report will be sent to all parties and made available to the public. Parties may submit statements about the report to the significance review committee at any time before the close of the record of the public hearing. The report will contain:

A. a listing, including sources, of all information submitted to the committee or to the administrative law judge;

B. a description of the proposed project;

C. the criteria listed in part 5800.0040 that apply to the proposed project; and

D. a summary of the issues presented in each of the preliminary statements, including any disagreements regarding facts of the proposed project.

Subp. 5. **Council information.** The council may enter information related to the review of the proposed project into the record of the public hearing. This material and its authors will be subject to examination at the public hearing.

Subp. 6. **Additional information.** On its own initiative or at the request of a party, the significance review committee may request additional information from any party before the close of the public hearing. If a party does not reasonably comply with a request, the significance review committee may order that the subject matter of the information to be produced be considered established for purposes of the significance review in accordance with the claims of the party requesting the information or refuse to allow the party failing to produce the information to support or oppose designated claims or prohibit the party from introducing the designated information into the hearing record.

Subp. 7. **Public hearing.** The significance review committee or an administrative law judge appointed by the committee must hold at least one public hearing on the proposed project. Notice of this public hearing must be published in the council bulletin and served on all parties at least 15 days prior to the hearing. The public hearing must be conducted in a manner designed to protect the

rights of all persons and parties and to ensure fundamental fairness. Public hearings conducted by an administrative law judge will be governed by parts 1400.5200 to 1400.8500. Public hearings conducted by the significance review committee will be conducted according to the council's hearing procedures as contained in Procedures for Adopting or Amending a Chapter of the Metropolitan Development Guide. This publication is incorporated by reference in this chapter. It is available through the Minitex interlibrary loan system and subject to frequent change.

5800.0120 COMMITTEE REPORT TO COUNCIL.

Following the public hearing and the receipt of the report of the administrative law judge, if any, the significance review committee must adopt a committee report with findings of fact, conclusions, and recommendations to the Metropolitan Council.

The committee's report will be based on information submitted before the close of the record of the public hearing. Committee members may use their experience, technical competence, and specialized knowledge in the evaluation of this information. In addition, the report may include comments on the consistency of the proposed project with council plans and policies.

The findings of fact, conclusions, and recommendations of the significance review committee will be served on all parties and immediately transmitted to the council. All information and material considered by the significance review committee will be made available to council members.

5800.0130 COUNCIL DETERMINATION.

Subpart 1. **Consideration of findings of fact, conclusions, and recommendations.** The council will consider the committee report and all information submitted before the close of the record of the public hearing in making a final determination on the proposed project. The council may hold additional meetings to consider the proposed project or direct the significance review committee to conduct further specific significance review activity.

Subp. 2. **Metropolitan council final determination.** The council, after review and consideration of the metropolitan significance review committee's report, must adopt a final determination including findings of fact, conclusions, and recommendations with regard to the metropolitan significance of the proposed project. The council must find that the proposed project is or is not of metropolitan significance, based on the conclusion that it does or does not cause one or more of the effects contained in the appropriate subpart in part 5800.0040. The council may also comment on the consistency of the proposed project with other council plans and policies. Lack of consistency with council plans and policies other than those listed in part 5800.0040 will not constitute a basis for a determination of metropolitan significance.

Subp. 3. **Proposed projects of metropolitan significance.** Upon a determination of metropolitan significance, the final determination also must indicate:

A. whether an amendment to a regional policy plan would eliminate the determination of metropolitan significance and further, whether the council intends to initiate an amendment to the affected policy plan to achieve consistency between its plan and the proposed project; or

B. whether the proposed project should be suspended for up to one year from the date of final determination. If the council orders a suspension, the order may contain conditions or modifications to the proposed project which, if complied with, would cause the council to eliminate the suspension; or

C. without ordering a suspension, how the proposed project could be modified to eliminate the determination of metropolitan significance.

Subp. 4. **Notice to parties.** Copies of the council determination will be served on all parties within seven days following its adoption.

Subp. 5. **Elimination of suspension.** The sponsor of any proposed project suspended by the council with conditions or modifications may request removal of the suspension based on meeting the conditions of the suspension. Upon receipt of a request for removal of the suspension, the council will hold a public hearing to consider the request. Parties to the significance review will be notified at least 15 days before the public hearing on the removal and given an opportunity to speak at the hearing concerning compliance with the conditions of suspension.

5800.0140 TERMINATION, SUSPENSION, EXTENSION, AND COORDINATION.

Subpart 1. **Bad faith.** The council may dismiss with prejudice any significance review which it finds has been initiated in bad faith. This determination will not be made without allowing the parties to hear, rebut, and present evidence regarding the dismissal.

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Subp. 2. **Withdrawal of review.** At any time during the conduct of a significance review, the requester or sponsor may request that the council withdraw the proposed project from significance review, setting forth the reasons for the request. If all the parties agree, the council may grant the request and allow a proposed project to be withdrawn from review.

Subp. 3. **Settlement.** The parties to a significance review may execute a settlement agreement with regard to the proposed project at any time before the issuance of a final determination. The agreement must be in writing, signed by all parties, and will be subject to acceptance or rejection by the council.

Subp. 4. **Suspension.** The council may suspend a significance review for not more than 90 days to allow the council to review a plan amendment for the proposed project under the provisions of the Metropolitan Land Planning Act. The council also may suspend a significance review for not more than 90 days to await the decision of a public agency whose authorization is required for the proposed project to proceed. In the event that the agency denies authorization for the proposed project, the council may dismiss the metropolitan significance review.

The sponsor and the requester may agree to suspend any of the time periods specified for a significance review. The agreement must be approved by the significance review committee. If the council initiates a significance review, the council and the sponsor may agree to suspend any of the time periods.

The council may suspend a significance review to await the submission of adequate supporting information.

Subp. 5. **Review coordination.** When appropriate, the council will coordinate the significance review with other reviews, such as the environmental review process.

Subp. 6. **Extension.** At any time before the council determination, the significance review committee and the parties may agree to extend the review period in order to collect more information. The time extension must be specified in a written agreement between the committee and the parties. The council, acting on its own initiative, also may extend the time period of a significance review to await the submission of adequate supporting information.

5800.0150 JUDICIAL REVIEW.

A final determination adopted by the council and a determination by the council not to commence a significance review constitute final decisions by the council for purposes of judicial review.

REPEALER. *Minnesota Rules*, parts 5700.0100; 5700.0200; 5700.0300; 5700.0400; 5700.0500; 5700.0600; 5700.0700; 5700.0800; 5700.0900; 5700.1000; 5700.1100; 5700.1200; 5700.1300; 5700.1400; 5700.1500; 5700.1600; 5700.1700; 5700.1800; 5700.1900; 5700.2000; 5700.2100; 5700.2200; 5700.2300; 5700.2400; 5700.2500; 5700.2600; 5700.2700; 5700.2800; 5700.2900; 5700.3000; 5700.3100; 5700.3200; 5700.3300;5700.3400; 5700.3500; 5700.3600; 5700.3700; 5700.3800; 5700.3900;5700.4000; and 5700.4100, are repealed.

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Commerce

Adopted Permanent Rules Relating to Liquor Liability Assigned Risk Plan Rates

The rule proposed and published at *State Register*, Volume 12, Number 47, pages 2546-2547, May 23, 1988 (12 S.R. 2546) is adopted as proposed.

CERTIFICATE OF THE

METROPOLITAN COUNCIL

RESOLUTION ADOPTING THE RULES

I, Joan Campbell, do hereby certify that I am a member and the Vice-Chair of the Metropolitan Council, a regional agency duly authorized under the laws of the State of Minnesota, and that the attached is a true, complete, and correct copy of a resolution adopted at a meeting of the Metropolitan Council, duly and properly called and held on the 23rd day of February, 1989, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 2nd day of March, 1989.

Joan Campbell, Vice-Chair

Attested to by:

Mary Hauser
Metropolitan Council Member

LM240A

METROPOLITAN COUNCIL
Mears Park Centre, 230 E. Fifth St., St. Paul, Minnesota 55101
612-291-6359

RESOLUTION NO. 89-9

ADOPTING THE PERMANENT RULES
RELATING TO METROPOLITAN SIGNIFICANCE

WHEREAS, the Metropolitan Council is authorized by Minnesota Statutes section 473.173 to adopt and put into effect rules establishing standards, guidelines, and procedures for determining whether any proposed matter is of metropolitan significance; and

WHEREAS, the Metropolitan Council has documented the need for and reasonableness of the proposed revision of the rules relating to metropolitan significance; and

WHEREAS, the parties most affected by the rules were given opportunity to provide oral and written comments during the process of rules revision by the Metropolitan Council and all comments were duly considered by the Metropolitan Council in promulgating the rules relating to metropolitan significance.

NOW, THEREFORE, BE IT RESOLVED:

THAT the permanent rules relating to metropolitan significance are approved and adopted, pursuant to authority vested in the Metropolitan Council by Minnesota Statutes section 473.173.

BE IT FURTHER RESOLVED:

THAT David Renz, the Executive Director of the Metropolitan Council, is authorized to sign the findings of fact, conclusions, and order adopting the rules and further is authorized to modify the rules if necessary to obtain the approval of the rules by the attorney general of the State of Minnesota and to perform the necessary acts to provide that the rules shall have the force and effect of law.

Adopted this 23rd day of February , 1989.

Steve Keefe
Steve Keefe, Chair

Sandi Lindstrom
Sandi Lindstrom, Secretary

STATE OF MINNESOTA

METROPOLITAN COUNCIL

In the Matter of the
Proposed Adoption of the Rules
of the Metropolitan Council
Governing Metropolitan
Significance Reviews

FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER ADOPTING
RULES WITHOUT
PUBLIC HEARING

Notice of the Metropolitan Council's intent to adopt the above-entitled rules was published in the State Register on January 16, 1989, and was sent by United States mail to all persons on the list maintained by the Council pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on January 3, 1989. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the Council.

No submissions or comments on the rule were received by the Council. No requests for notice of submission to the attorney general were received by the Council.

Based on the evidence in the record before the Council, I find the following:

No changes were made between the rules as proposed and the rules as adopted.

The above-captioned rules are needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as Rules Relating to Metropolitan Significance are adopted this ____ day of March, 1989, pursuant to authority vested in the Metropolitan Council by Minnesota Statutes, section 473.173.

David Renz
Executive Director

LM240A

In the Matter of the
Adoption of the Rules
of the Metropolitan Council
Governing Metropolitan
Significance Reviews

DECLARATION
OF COUNSEL

I, Lynn M. Belgea, Assistant Counsel to the Metropolitan Council, do hereby declare that I have examined the above-captioned rules, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed.

Lynn M. Belgea
Lynn M. Belgea
Assistant Counsel to the
Metropolitan Council

Dated: March 6, 1989

LM240A/CHLGL2

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

October 13, 1987

State Register
Legal Notice
504 Rice St.
St. Paul, MN 55103

Attn: Robin Panlener, Legal Advertising

Please run the attached Legal Notice on Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Matters of Metropolitan Significance, for publication in your October 19, 1987 issue. Send the bill and affidavit to Ralph Kuehn, Finance Department at the above address and please refer to Purchase Order No. 26324 when submitting statement.

Sincerely,

Jane E. Larson

Jane E. Larson
Community Services Department
(612-291-6500)

Enclosure

Metropolitan Council

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Matters of Metropolitan Significance

Notice is hereby given that the Metropolitan Council is seeking information or opinions from sources outside the Metropolitan Council in preparing to propose the amendment of the rules governing matters of metropolitan significance. The adoption of the rules is authorized by Minnesota Statutes, section 473.173, which requires the Metropolitan Council to determine whether any proposed matter is of metropolitan significance.

The Metropolitan Council requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Barbara Senness, 300 Metro Square Building, St. Paul, Minnesota 55101. Oral statements will be received during regular business hours over the telephone at 291-6419 and in person at the above address.

All statements of information and opinions shall be accepted until 4:00 p.m., December 17, 1987. Any person who may have previously submitted written material on the subject matter of the rules is hereby advised that any such previously submitted material must be resubmitted pursuant to this notice in order to become part of the record in this rule-making procedure. Any written material received by the Metropolitan Council shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the amended rules are adopted.

10/13/87
Date

David Renz
Executive Director
Metropolitan Council

LM329A

Security Act, sections 1905(a)(6) and 1902(a)(25), which authorize the agency to establish procedures and rules for determining rates for care of residents of intermediate care facilities for persons with mental retardation or related conditions which qualify as vendors of medical assistance, waivered services, and for provision of training and habilitation services.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Lisa Rotegard
Long-term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
St. Paul, MN 55155

Oral statements will be received during regular business hours over the telephone at (612) 297-3829 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Department of Human Services

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Reimbursement for Cost of Care of Patients of State Regional Treatment Centers, under *Minnesota Rules*, Parts 9515.1000 to 9515.2600

Notice is hereby given that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the amendment of rules governing reimbursement for cost of care of patients of state regional treatment centers, under *Minnesota Rules*, Parts 9515.1000 to 9515.2600. The proposals would conform the rules to new statutory definitions, and to the requirement for full-pay by recipients of chemical dependency treatment, and would except Supplemental Security Income from net income in determining ability to pay costs. The amendments of the rules are authorized by *Minnesota Statutes*, section 246.01, section 246.23, and sections 246.50 to 246.55, in conjunction with section 1611(e)(1)(E) of the Social Security Act, which permit the agency to administer and manage state facilities and establish rules for the determination of the responsibility for a patient's or resident's care.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Julie Elhard
Reimbursement Division
Minnesota Department of Human Services
444 Lafayette Road, 2nd Floor
St. Paul, MN 55155

Oral statements will be received during regular business hours over the telephone at (612) 296-3507 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Metropolitan Council

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Matters of Metropolitan Significance

Notice is hereby given that the Metropolitan Council is seeking information or opinions from sources outside the Metropolitan

Council in preparing to propose the amendment of the rules governing matters of metropolitan significance. The adoption of the rules is authorized by *Minnesota Statutes*, section 473.173, which requires the Metropolitan Council to determine whether any proposed matter is of metropolitan significance.

The Metropolitan Council requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Barbara Senness, 300 Metro Square Building, St. Paul, Minnesota 55101. Oral statements will be received during regular business hours over the telephone at 291-6419 and in person at the above address.

All statements of information and opinions shall be accepted until 4:00 p.m., December 17, 1987. Any person who may have previously submitted written material on the subject matter of the rules is hereby advised that any such previously submitted material must be resubmitted pursuant to this notice in order to become part of the record in this rule-making procedure. Any written material received by the Metropolitan Council shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the amended rules are adopted.

Dated: 13 October 1987

David Renz, Executive Director
Metropolitan Council

Department of Natural Resources

Division of Fish and Wildlife

Notice of Intent to Solicit Outside Opinion Regarding Creation of Rules on the Issuance of Permits for Aeration and Similar Systems in Public Waters

Notice is hereby given that the Minnesota Department of Natural Resources is seeking information or opinions from sources outside the agency in preparing to promulgate rules regarding the issuance of permits to operate aeration or similar systems in public waters. Creation of rules relating to the issuance of permits for aeration, bubbler, water circulation, and similar systems used to increase dissolved oxygen or to maintain open water on the ice of public waters is required by Chapter 184 of the 1987 Regular Session Laws.

In the past, lake aeration has been regulated by the Department of Natural Resources by Commissioner's Orders; it is currently regulated by Commissioner's Order Number 2194, as amended by Commissioner's Order Number 2258. The purpose of creating rules to regulate aeration is to clarify permitting requirements and procedures. Copies of the current Commissioner's Orders may be obtained by writing or telephoning the office of the Division of Fish and Wildlife.

The Minnesota Department of Natural Resources requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements shall be addressed to:

Larry R. Shannon, Director
Division of Fish and Wildlife
Department of Natural Resources
500 Lafayette Road, Box 20
St. Paul, MN 55155-4020

Oral statements will be received during regular business hours over the telephone at (612) 296-2835 and in person at the above address.

All statements of information and comment shall be accepted until December 31, 1987. Any written material received by the Department of Natural Resources shall become part of the record.

Dated: 12 October 1987

Joseph N. Alexander, Commissioner
Department of Natural Resources

Minnesota Pollution Control Agency

Division of Air Quality

Notice of Intent to Solicit Outside Information Regarding Amending Rules Governing Standards of Performance for Incinerators

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) is seeking information or opinions from outside