

1 Metropolitan Council

2

3 Adopted Permanent Rules Relating to Metropolitan Significance

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5 Rules as Adopted

6 5800.0010 PURPOSE.

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

19 5800.0020 DEFINITIONS.

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

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

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

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

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

2 Subp. 5. Chair. "Chair" means the chair of the
3 Metropolitan Council.

4 Subp. 6. Commercial-agricultural area.

5 "Commercial-agricultural area" means those lands certified by
6 local governments as eligible for agricultural preserves under
7 the Agricultural Preserves Act, Minnesota Statutes, sections
8 473H.01 to 473H.18.

9 Subp. 7. Comprehensive plan or local comprehensive plan.

10 "Comprehensive plan" or "local comprehensive plan" means a
11 comprehensive plan of a local governmental unit as required by
12 the Metropolitan Land Planning Act, Minnesota Statutes, sections
13 473.851 to 473.872.

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

19 Subp. 9. Independent commission, board, or agency.

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

26 Subp. 10. Land Use Advisory Committee or advisory
27 committee. "Land Use Advisory Committee" or "advisory
28 committee" means an advisory committee established by the
29 Metropolitan Council pursuant to Minnesota Statutes, section
30 473.853.

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

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

1 highway that carry through traffic.

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

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

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

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

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

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

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

30 Subp. 20. **Party.** "Party" means the requester, sponsor,
31 and local governmental unit(s) in which the proposed project is
32 located and any person whose legal rights, duties, or privileges
33 may be substantially affected by a significance review who is
34 admitted as a party by the significance review committee,
35 administrative law judge, or council. The council will not be a
36 party to a significance review except when it initiates the

1 review.

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

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

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

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

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

1 improvement of any structure or facility, or the subdivision or
2 drilling, extraction, clearing, excavation, or other alteration
3 of any lands or waters, planned or proposed to be undertaken, in
4 whole or in part within the metropolitan area, by any person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 It imports a considerable amount or value in opposition to that
2 which is inconsequential or small, something serious as opposed
3 to trivial, something essential, material, or fundamental.

4 5800.0030 STANDARDS FOR REVIEW.

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

13 5800.0040 CRITERIA FOR DETERMINING METROPOLITAN SIGNIFICANCE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 5800.0050 EXEMPT PROJECTS.

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

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

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

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

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

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

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

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

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

24 Subp. 6. **Vested rights.** Any proposed project for which 30
25 days have elapsed since a negative declaration on an
26 Environmental Assessment Worksheet as described in part
27 4410.1700, or a determination of adequacy on an Environmental
28 Impact Statement as described in part 4400.2800, or in the event
29 no environmental review is required, any proposed project for
30 which 30 days have elapsed since a local governmental unit has
31 approved a plan amendment or rezoning to accommodate the
32 proposed project is exempt from review. A metropolitan
33 significance review cannot be initiated on any proposed project
34 where a sponsor has vested rights.

35 5800.0060 INITIATION OF REVIEW.

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

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

5 B. a resolution from an affected local governmental
6 unit, school district, or other independent commission;

7 C. a petition signed by the smaller of the
8 following: at least 5,000 residents of the metropolitan area 18
9 years of age or older, or that number of residents 18 years of
10 age or older of an affected local governmental unit which equals
11 or exceeds 50 percent of the number of persons who voted in that
12 affected governmental unit during the most recently held state
13 general election. The petition must designate at least one and
14 no more than three persons to act as requesters on behalf of the
15 petitioner;

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

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

20 F. a resolution from an affected metropolitan agency.

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

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

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

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

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

1 why it is not exempt; and

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

7 5800.0070 PRELIMINARY FINDING OF METROPOLITAN SIGNIFICANCE.

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

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

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

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

22 D. the proposed project is not exempt.

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

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

1 be included with the notice.

2 5800.0080 COMMENCEMENT AND DETERMINATION NOT TO COMMENCE.

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

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

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

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

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

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

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

10 5800.0090 SIGNIFICANCE REVIEW COMMITTEE.

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

19 5800.0100 REVIEW ALTERNATIVES

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

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

1 review will include a formal public hearing.

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

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

27 5800.0110 STEPS IN HEARING PROCESS.

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

34 A. the applicability to the proposed project of part
35 5800.0030;

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

5 C. the appropriate remedy.

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

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

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

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

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

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

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

33 B. a description of the proposed project;

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

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

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

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

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

19 Subp. 7. Public hearing. The significance review
20 committee or an administrative law judge appointed by the
21 committee must hold at least one public hearing on the proposed
22 project. Notice of this public hearing must be published in the
23 council bulletin and served on all parties at least 15 days
24 prior to the hearing. The public hearing must be conducted in a
25 manner designed to protect the rights of all persons and parties
26 and to ensure fundamental fairness. Public hearings conducted
27 by an administrative law judge will be governed by parts
28 1400.5200 to 1400.8500. Public hearings conducted by the
29 significance review committee will be conducted according to the
30 council's hearing procedures as contained in Procedures for
31 Adopting or Amending a Chapter of the Metropolitan Development
32 Guide. This publication is incorporated by reference in this
33 chapter. It is available through the Minitex interlibrary loan
34 system and subject to frequent change.

35 5800.0120 COMMITTEE REPORT TO COUNCIL.

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

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

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

17 5800.0130 COUNCIL DETERMINATION.

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

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

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

5 Subp. 3. Proposed projects of metropolitan significance.

6 Upon a determination of metropolitan significance, the final
7 determination also must indicate:

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

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

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

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

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

34 5800.0140 TERMINATION, SUSPENSION, EXTENSION, AND COORDINATION.

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

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

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

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

17 Subp. 4. **Suspension.** The council may suspend a
18 significance review for not more than 90 days to allow the
19 council to review a plan amendment for the proposed project
20 under the provisions of the Metropolitan Land Planning Act. The
21 council also may suspend a significance review for not more than
22 90 days to await the decision of a public agency whose
23 authorization is required for the proposed project to proceed.
24 In the event that the agency denies authorization for the
25 proposed project, the council may dismiss the metropolitan
26 significance review.

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

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

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

1 reviews, such as the environmental review process.

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

10 5800.0150 JUDICIAL REVIEW.

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

15

16 REPEALER. Minnesota Rules, parts 5700.0100; 5700.0200;
17 5700.0300; 5700.0400; 5700.0500; 5700.0600; 5700.0700;
18 5700.0800; 5700.0900; 5700.1000; 5700.1100; 5700.1200;
19 5700.1300; 5700.1400; 5700.1500; 5700.1600; 5700.1700;
20 5700.1800; 5700.1900; 5700.2000; 5700.2100; 5700.2200;
21 5700.2300; 5700.2400; 5700.2500; 5700.2600; 5700.2700;
22 5700.2800; 5700.2900; 5700.3000; 5700.3100; 5700.3200;
23 5700.3300; 5700.3400; 5700.3500; 5700.3600; 5700.3700; 5700.3800;
24 5700.3900; 5700.4000; and 5700.4100, are repealed.