

CHAPTER 5700
METROPOLITAN COUNCIL
REVIEW OF MATTERS OF METROPOLITAN
SIGNIFICANCE

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5700.0100 PURPOSE.

The purpose of parts 5700.0100 to 5700.4100 is to implement Minnesota Statutes, section 473.173, which requires that the Metropolitan Council adopt and put into effect rules establishing standards, guidelines, and procedures for determining whether any proposed matter is of metropolitan significance. Parts 5700.0100 to 5700.4100 shall govern the review of all proposed matters alleged to be of metropolitan significance initiated pursuant to Minnesota Statutes, section 473.173. It is the purpose of parts 5700.0100 to 5700.4100 to assure that the total effect of a proposed matter of metropolitan significance is considered and the orderly and economic development of the area is promoted, thereby protecting the health, safety, and welfare of the residents of the area. A metropolitan significance review will be completed by the council within 90 days following commencement unless suspended pursuant to parts 5700.0100 to 5700.4100.

Statutory Authority: *MS s 473.173*

5700.0200 DEFINITIONS.

Subpart 1. Scope. As used in parts 5700.0100 to 5700.4100, the following terms shall have these meanings.

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 situs governmental unit(s).

Subp. 3. Adopted comprehensive sewer plan. "Adopted comprehensive sewer plan" means a comprehensive sewer policy plan submitted to and approved by the Metropolitan Waste Control Commission in accordance with Minnesota Statutes, section 473.513, which has been adopted by the submitting local governmental unit.

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

Subp. 5. **Chairman.** "Chairman" means the chairman of the Metropolitan Council.

Subp. 6. **Commercial-agricultural use.** "Commercial-agricultural use" means the use of land primarily for the growing and/or production of field crops, livestock, and livestock products for the production of income.

Subp. 7. **Comprehensive plan or local comprehensive plan.** "Comprehensive plan" or "local comprehensive plan" means a comprehensive plan for a county adopted pursuant to Minnesota Statutes, section 394.23, a comprehensive plan for a municipality adopted pursuant to Minnesota Statutes, section 462.355, and a comprehensive plan for a town adopted pursuant to Minnesota Statutes, section 366.14, or other enabling law.

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

Subp. 9. **Council bulletin.** "Council bulletin" means a newsletter published by the council at least once a month, containing a summary of previous council actions and upcoming council meetings, council hearings, and other matters.

Subp. 10. **Critical development.** "Critical development" means the division of land into three or more parcels or lots which if totally occupied by dwelling units would result in a density of greater than 40 units per square mile in any section or portion thereof within one or more outlying communities, in any section within which a parcel or lot is located; or the construction or placement of dwelling units in previously platted or unplatted areas which would result in the same density or the construction or establishment of a residential, commercial, or industrial use for which a new national pollution discharge elimination system or state disposal system permit must be issued.

Subp. 11. **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 commissions.

Subp. 12. **Initiator.** "Initiator" means any person requesting the initiation of a metropolitan significance review pursuant to part 5700.1300, subpart 1.

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

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

Subp. 15. **Metropolitan area.** "Metropolitan area" means the area over which the Metropolitan Council has jurisdiction, including only the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

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

Subp. 17. **Metropolitan Council or council.** "Metropolitan Council" or "council" means the Metropolitan Council established by Minnesota Statutes, section 473.123.

Subp. 18. **Advisory Metropolitan Land Use Committee or advisory committee.** "Advisory Metropolitan Land Use Committee" or "advisory committee" means an advisory committee established by the Metropolitan Council pursuant to Minnesota Statutes, section 473.853.

Subp. 19. **Metropolitan significance review or significance review.** "Metropolitan significance review" or "significance review" means a review conducted by the Metropolitan Council pursuant to parts 5700.0100 to 5700.4100.

Subp. 20. **Metropolitan system plans.** "Metropolitan system plans" means the airports portion of the Metropolitan Development Guide and the policy plans, development programs, and capital budgets for metropolitan waste control, transportation, and regional recreation open space.

Subp. 21. **Metropolitan transportation facility.** "Metropolitan transportation facility" means transit facilities and routes owned, operated, or constructed by the Metropolitan Transit Commission, and principal and intermediate arterial roads, highways, freeways, and interchanges thereon designated as part of the metropolitan highway system in the transportation policy plan adopted pursuant to Minnesota Statutes, section 473.146, subdivision 3.

Subp. 22. **Outlying communities.** "Outlying communities" are:

A. In Anoka County: Andover, Bethel, Blaine, Burns Township, Centerville, Columbus Township, East Bethel, Ham Lake, Lino Lakes, Linwood Township, Oak Grove Township, Ramsey, and St. Francis;

B. In Carver County: all local government units;

C. In Dakota County: Castle Rock Township, Coates, Douglas Township, Empire Township, Eureka Township, Farmington, Greenvale Township, Hampton, Hampton Township, Hastings, Inver Grove Heights, Lakeville, Marshan Township, Miesville, New Trier, Nininger Township, Randolph, Randolph Township, Ravenna Township, Rosemount, Sciota Township, Vermillion, Vermillion Township, and Waterford Township;

D. In Hennepin County: Brooklyn Park, Champlin, Corcoran, Dayton, Eden Prairie, Greenfield, Hassan Township, Hanover, Independence, Loretto, Maple Grove, Maple Plain, Medina, Minnetrista, Orono, Plymouth, Rockford, Rogers, and St. Bonifacius;

E. In Ramsey County: no local government units;

F. In Scott County: all local government units;

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

The entire jurisdiction of the above listed local governmental units shall be considered an outlying community unless and until an exemption is specifically authorized in accordance with part 5700.0600, subpart 2.

Subp. 23. **Party.** "Party" means the initiator, sponsor, and situs governmental unit(s) and any person whose legal rights, duties, or privileges may be substantially affected by a significance review who is admitted as a party by the significance review committee, hearing examiner, or council. The council shall not be a party to a significance review except when it initiates the review pursuant to part 5700.1300, subpart 1, item A.

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Subp. 24. **Person.** "Person" means any individual, association, trust, partnership, joint venture, public or private corporation, the Metropolitan Council, a metropolitan commission, a local governmental unit, an independent commission, a state agency, or any government or governmental subdivision, unit, or agency other than a court of law.

Subp. 25. **Petition.** "Petition" means a document containing signatures submitted to the council pursuant to part 5700.1300, subpart 1, item B, subitem (3), which contains, at the time that such signatures are placed thereon, a description of what the petition is for, a reference to parts 5700.0100 to 5700.4100, and a brief summary of the reason for the petition.

Subp. 26. **Proposed matter.** "Proposed matter" means a project or action involving the construction, installation, establishment, siting, demolition, reconstruction, or improvement of any structure or facility, or the subdivision or drilling, extraction, clearing, excavation, or other alteration of any lands or waters, planned or proposed to be undertaken, by any person in whole or in part within the metropolitan area.

Subp. 27. **Public agency.** "Public agency" means a local governmental unit, metropolitan commission, independent commission, state agency, or any government or governmental subdivision, unit, or agency other than a court of law.

Subp. 28. **Public sewer facility.** "Public sewer facility" means sewage collectors, trunk lines, interceptors, treatment works, and other sewage collection and treatment facilities owned, constructed, or operated by a public agency.

Subp. 29. **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 issued pursuant to part 5700.1400 and automatically terminates on the 90th day following unless a suspension of the review period is authorized pursuant to parts 5700.0100 to 5700.4100.

Subp. 30. **Service or serve.** "Service" or "serve" means personal service or service by first class U.S. mail, postage prepaid and addressed to the person or party at his last known address. Service by mail shall be complete upon the placing of the item to be served in the mail.

Subp. 31. **Sewage effluent.** "Sewage effluent" means treated sewage.

Subp. 32. **Situs governmental unit.** "Situs governmental unit" means the local governmental unit(s) within which a proposed matter will be located.

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

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

Subp. 35. **Substantial.** "Substantial" is a relative term, the meaning of which is to be gauged by all the circumstances surrounding the transaction in reference to which the expression has been used. It imports a considerable amount or value in opposition to that which is inconsequential or small, something serious as opposed to trivial, something essential, material, or fundamental.

Subp. 36. **Substantial effect.** "Substantial effect" as used in part 5700.0400 means an effect which is substantial in nature including, but not limited to, one which would result in:

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

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

C. the preemption of land planned for future use by a metropolitan system; or

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

Subp. 37. **Vehicle trip.** "Vehicle trip" means a one-way journey by motorized vehicular means between two points.

Statutory Authority: *MS s 473.173*

5700.0300 STANDARDS FOR DETERMINING METROPOLITAN SIGNIFICANCE.

The following effects listed in parts 5700.0400 and 5700.0500 are the exclusive standards for determining whether a proposed matter is of metropolitan significance. Unless exempted pursuant to parts 5700.0100 to 5700.4100, a proposed matter shall be determined to be of metropolitan significance if the council finds that it may cause any of the following effects. Proposed matters which the council finds will not result in one of the listed effects shall be determined to be not of metropolitan significance. The standards listed in parts 5700.0400 and 5700.0500 shall become effective immediately upon adoption of parts 5700.0100 to 5700.4100.

Statutory Authority: *MS s 473.173*

5700.0400 METROPOLITAN SYSTEM EFFECTS.

The effects on the metropolitan system include:

A. the discharge of 50,000 or more gallons of sewage per day and a substantial effect on a receiving public sewer facility or on the plans for such a facility contained in a metropolitan system plan;

B. a violation of or an amendment to a condition relating to sewage effluent contained in a national pollution discharge elimination system permit for the discharge of sewage effluent in the metropolitan area;

C. the construction of any public sewer facility in conflict with an approved local comprehensive sewer plan or a metropolitan system plan;

D. the generation of 10,000 or more vehicle trips per day or 1,000 or more vehicle trips in any one hour and a substantial effect on a metropolitan transportation facility or on a plan for such a facility contained in a metropolitan system plan;

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

F. a substantial effect on the location, size, function, or character of an existing or proposed regional recreation open space designated in a metropolitan system plan whose boundaries are delineated in a metropolitan system plan or a master plan approved by the Metropolitan Council pursuant to Minnesota Statutes, section 473.313, or the Minnesota Zoological Garden;

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

H. the issuance of a land use permit in an outlying community for a critical development which could reasonably be expected to lead to the premature expansion, construction, or extension of use in excess of capacity of a public sewer facility, a metropolitan transportation facility, or the disruption of commercial agricultural use.

Statutory Authority: *MS s 473.173*

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5700.0500 LOCAL GOVERNMENTAL UNIT EFFECT.

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

Statutory Authority: *MS s 473.173*

5700.0600 LOCAL COMPREHENSIVE PLANS EXEMPTION.

Subpart 1. Metropolitan significance. When a local governmental unit has adopted a local comprehensive plan which has been approved by the Metropolitan Council pursuant to Minnesota Statutes, section 473.864, then a proposed matter sited in that local governmental unit shall be determined to be of metropolitan significance only if it causes the effects listed in metropolitan significance standards part 5700.0400, item B or 5700.0500, or the proposed matter is inconsistent with those elements of the local comprehensive plan which are subject to council modifications pursuant to Laws of Minnesota 1976, chapter 127, and would result in the utilization, extension, or expansion of a metropolitan system plan in conflict with any metropolitan system plan or part thereof.

Subp. 2. Reevaluation. Prior to the adoption of a local comprehensive plan in accordance with Minnesota Statutes, section 473.864, and on the receipt of a petition from a local government unit having a comprehensive plan adopted prior to January 1, 1977, or an outlying community, the council shall reevaluate that comprehensive plan or comprehensive sewer plans and zoning ordinances of outlying communities and assess their adequacy as a substitute for the standards set forth in part 5700.0400. The council may initiate such a review on its own motion absent the submission of a petition. Following reevaluation, the council may by resolution act to exempt proposed matters in all or part of that governmental unit from all or part of the metropolitan significance standards set forth in part 5700.0400 and may apply the standards set forth in subpart 1.

Statutory Authority: *MS s 473.173*

5700.0700 CATEGORIES OF EXEMPT MATTERS.

Proposed matters within the following categories shall not be determined to be of metropolitan significance and shall be exempted from a significance review by the chairman in accordance with part 5700.1400, subpart 4, or by the council in accordance with part 5700.2800, subpart 2, or 5700.3200.

Statutory Authority: *MS s 473.173*

5700.0800 PREVIOUS APPROVAL.

Any proposed matter of a metropolitan commission or the Metropolitan Airports Commission which is within an area(s) of commission operational authority or which has been or will be subject to approval by the council as part of a metropolitan system plan; any proposed matter which has been previously approved by the council in accordance with Minnesota Statutes, section 473.167; or any proposed matter for which a final determination has been made pursuant to parts 5700.0100 to 5700.4100 unless the proposed matter has been materially altered subsequent to the final determination.

Statutory Authority: *MS s 473.173*

5700.0900 EXCLUSIVE COMPREHENSIVE REVIEW.

Any proposed matter subject to review and approval pursuant to the Power Plant Siting Act, Minnesota Statutes, sections 116C.51 to 116C.69.

Statutory Authority: *MS s 473.173*

5700.1000 EMERGENCY MATTER.

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

Statutory Authority: *MS s 473.173*

5700.1100 MINOR ALTERATIONS.

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

Statutory Authority: *MS s 473.173*

5700.1200 VESTED RIGHTS.

Any proposed matter for which all applicable land use permits have been issued and on which substantial construction has commenced prior to the initiation of a significance review and any proposed matter for which all applicable land use permits have been issued prior to the effective date of parts 5700.0100 to 5700.4100 and on which substantial construction has commenced within six months following the effective date of parts 5700.0100 to 5700.4100.

Statutory Authority: *MS s 473.173*

5700.1300 INITIATION.

Subpart 1. Initiators. A significance review of any proposed matter may be initiated as follows:

A. upon passage by the council of a resolution adopting an order to commence a significance review; or

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

(1) a resolution from a situs governmental unit;

(2) a resolution from an affected local governmental unit, school district, or other independent commission;

(3) 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 city or township during the most recently held state general election. The petition shall designate at least one and no more than three persons to act as initiators on behalf of the petitioner;

(4) a resolution or letter from a duly authorized executive officer or governing body of an affected state agency;

(5) a resolution or letter from a duly authorized executive officer or governing body of an affected sponsor; or

(6) a resolution from an affected metropolitan commission.

Subp. 2. Information submission. An information submission from the initiator shall contain all information, fact, and opinion within their knowledge bearing on the applicability of parts 5700.0100 to 5700.4100 and the significance and effect of the proposed matter which contains at least the following:

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A. the names and addresses of the initiator, the sponsor, and the situs governmental unit(s);

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

C. a statement of the standards contained in parts 5700.0300 to 5700.0500 which it alleged caused the proposed matter to be of metropolitan significance, and a discussion of why it is not exempt pursuant to parts 5700.0600 or 5700.0700 to 5700.1200, including facts and opinion upon which such statement and discussion are based; and

D. information submissions accompanying resolutions or letters submitted pursuant to subpart 1, item B, subitem (2), (4), (5), or (6) shall include a statement of effect containing a discussion of the alleged effect(s) the proposed matter will have on existing or planned land use or development, or on other responsibilities or activities or activities of the submitter.

Statutory Authority: *MS s 473.173*

5700.1400 COMMENCEMENT.

Subpart 1. **Order.** A significance review initiated by the council shall commence on the day following the adoption by the council of an order to commence a significance review.

Subp. 2. **Examination.** Upon the receipt in accordance with part 5700.1300, subpart 1, item B, of a resolution, petition, or letter of initiation, accompanied by an information submission, the council chairman shall immediately examine the material and determine if:

A. it complies with and satisfies the requirements contained in part 5700.1300, subparts 1 and 2;

B. the significance review has been initiated in bad faith or is a sham, capricious, or frivolous initiation;

C. the information submission transmitted in connection with matters initiated pursuant to part 5700.1300, subpart 1, item B, subitem (2), (4), (5), or (6) makes out an arguable claim (arguably demonstrates) that the existing or planned land use or development or responsibilities or activities or the submitter will be affected by the proposed matter; and

D. the proposed matter is exempt pursuant to parts 5700.0700 to 5700.1200.

Subp. 3. **Additional information.** In making the determinations required pursuant to subpart 2, the chairman may meet with the initiator, situs governmental unit, and the sponsor, and additional information may be requested and considered.

Subp. 4. **Order for commencement or determination not to commence significance review.** If the chairman determines that the initiation complies with and satisfies the requirements, is not in bad faith, presents an arguable claim, and is not exempt, he shall immediately commence the significance review by issuing an order for commencement effective as of the date of the receipt of the resolution, petition, or letter of initiation, and an adequate information submission. If the chairman determines that the initiation does not comply with or satisfy the requirements, is in bad faith, does not present an arguable claim, or is an exempt matter, he shall determine not to commence a significance review and shall immediately inform the person(s) requesting the initiation, the situs governmental unit, and the sponsor of that determination and the basis thereof. A statement that a determination not to commence a significance review has been made shall be published in the next following issue of the council bulletin.

Subp. 5. **Appeal.** Person(s) requesting the initiation, the situs governmental unit, and the sponsor may appeal the chairman's decision not to commence the significance review to the full council by submitting a petition for review within seven days following notification of the chairman's determination. On appeal,

the council shall review the petition at a public hearing and may direct the issuance of an order for commencement or affirm the chairman's decision.

Subp. 6. **Notice of commencement of significance review.** Notice of the commencement of a significance review shall be served by the council on the initiator, sponsor, situs governmental unit(s), adjacent governmental units, metropolitan commissions, and the Advisory Metropolitan Land Use Committee within five days following the determination to commence a significance review. The notice shall contain the order for commencement, the initiating documents, the information submission or a summary thereof, an order to the sponsor to suspend action on the proposed matter, and a schedule for the metropolitan significance review. Notice that a significance review has been commenced shall be published in the next following issue of the council bulletin and when appropriate in the State Register.

Statutory Authority: *MS s 473.173*

5700.1500 SIGNIFICANCE REVIEW COMMITTEE.

Immediately following the commencement of a significance review, the chairman shall 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 Advisory Metropolitan Land Use Committee. At least one Advisory Metropolitan Land Use Committee member and one council member shall be appointed to all significance review committees. The chairman shall, on the appointment of a significance review committee, designate one of its members to be the chairperson.

Statutory Authority: *MS s 473.173*

5700.1600 DELEGATION TO HEARING EXAMINER.

At any time prior to the commencement of the public hearing conducted pursuant to part 5700.2300, the significance review committee may delegate its responsibility for the conduct of relevant portions of the significance review, including the public hearing, to a hearing examiner. A hearing held by a hearing examiner shall be conducted in accordance with the rules of the Office of Administrative Hearings for contested cases, parts 1400.5200 to 1400.8500, to the extent such rules are not inconsistent with the time periods and procedures specified in parts 5700.0100 to 5700.4100. The report of any hearing examiner appointed by the significance review committee shall be transmitted to the significance review committee. The significance review committee shall review the report and may adopt the report as the significance review committee findings and recommendations or consider it in adopting committee findings and recommendations pursuant to part 5700.2600. A request for delegation of responsibility to a hearing examiner may be made by any party.

Statutory Authority: *MS s 473.173*

5700.1700 PRELIMINARY STATEMENT.

The sponsor, initiator, and situs governmental unit(s) shall, and any other person may, submit to the significance review committee or hearing examiner a preliminary statement containing information, facts, and opinions bearing on the applicability of parts 5700.0100 to 5700.4100, the significance and effect of the proposed matter, and the appropriate remedy within 20 days following the issuance of the order for commencement. In addition, the sponsor shall indicate all other governmental reviews and approvals required in connection with the proposed matter, and their current status.

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

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determination concerning the proposed matter of such governmental unit(s).

Statutory Authority: *MS s 473.173*

5700.1800 ADDITIONAL INFORMATION.

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

Statutory Authority: *MS s 473.173*

5700.1900 STIPULATED PROCEDURE.

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

Statutory Authority: *MS s 473.173*

5700.2000 DISCOVERY.

Discovery in connection with significance reviews conducted by a hearing examiner shall be governed by parts 1400.6700 and 1400.6800.

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

Any person may examine and copy all records, documents, surveys, information, and other data relevant to a significance review under consideration which is in the possession of the significance review committee which has not been determined to be confidential pursuant to part 5700.3900, and any party may request the voluntary disclosure and submission of information to him by any other party.

Upon the motion by a party, the significance review committee may order the discovery and production of any material or information relevant to the significance review which is not determined to be confidential pursuant to part 5700.3900. Upon the failure of a party to reasonably comply with an order made pursuant to this part, the significance review committee may order that the subject matter of the order for discovery or any other relevant fact shall be taken as established for purposes of the significance review in accordance with the claim of the party requesting the order or refuse to allow the party failing to comply with the order for discovery to support or oppose designated claims or

defenses or prohibit him from introducing designated material into evidence.

Statutory Authority: *MS s 473.173*

5700.2100 SCOPE OF REVIEW.

The significance review committee may consider all standards set forth in parts 5700.0300 to 5700.0600 in connection with its significance review of a proposed matter, regardless of whether issue is raised in the information submission.

Statutory Authority: *MS s 473.173*

5700.2200 SIGNIFICANCE REVIEW REPORT.

At least ten days prior to the public hearing conducted by the significance review committee or the hearing examiner, the chairman of the council shall have a written report prepared discussing all information then submitted with regard to the proposed matter. To the extent practicable, the chairman of the council shall hold a conference to discuss information received. Prior to the preparation of this report, notice of this conference shall be transmitted to all parties. The report shall be sent to all parties and made available for inspection and copying by any other person. Parties may submit statements concerning the contents of this report to the significance review committee at any time prior to the close of the record of the public hearing conducted pursuant to part 5700.2300. This report shall be presented at the hearing held pursuant to part 5700.2300, and its author(s) shall be subject to examination thereon. The report shall contain:

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

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

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

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

E. a synopsis of any reports or findings of any other public agency relating to the proposed matter.

Statutory Authority: *MS s 473.173*

5700.2300 PUBLIC HEARING.

The significance review committee or a hearing examiner appointed by the committee shall hold at least one public hearing concerning a proposed matter subject to a significance review following notice to all parties, at which all parties and other persons shall be given an opportunity to speak and to present information on the applicability of parts 5700.0100 to 5700.4100, the significance of the proposed matter, and the review remedy. Notice of this public hearing shall be published in the council bulletin, served on all parties at least 15 days prior to the hearing, and, if appropriate, published in the State Register and newspaper(s) of general circulation. Standing committees of the council or the Advisory Metropolitan Land Use Committee may hold meetings regarding the proposed matter and prepare and transmit such information, comment, or recommendation to the significance review committee as they deem appropriate.

Statutory Authority: *MS s 473.173*

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5700.2400 PUBLIC HEARING PROCEDURES.

Public hearings held pursuant to part 5700.2300 shall be conducted in a manner designed to protect the rights of all persons and parties and ensure fundamental fairness. Public hearings conducted by a hearing examiner shall be governed by parts 1400.5200 to 1400.8500. The following procedures shall govern public hearings conducted by the significance review committee:

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

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

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

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

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

F. The chairperson of the significance review committee during the public hearing shall establish a date for the close of the hearing record.

Statutory Authority: *MS s 473.173*

5700.2500 BURDEN OF PROOF.

The burden of proof as to any issue of fact in a significance review shall be by a preponderance of the evidence, and the obligation to satisfy the initial burden of proof on any such issue shall be that of the party asserting that fact. Proposed matters determined by the situs governmental unit to be consistent with the local comprehensive plan adopted pursuant to Minnesota Statutes, section 473.864, or accepted pursuant to part 5700.0600, subpart 2 shall be presumed to present no substantial conflict with the metropolitan system plan.

Statutory Authority: *MS s 473.173*

5700.2600 COMMITTEE FINDINGS AND RECOMMENDATIONS.

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

A. a recommendation that:

(1) the proposed matter is exempt pursuant to parts 5700.0700 to 5700.1200, or that the proposed matter does not cause the effect set forth in any of the standards contained in parts 5700.0300 to 5700.0500 or part 5700.0600, as applicable, or that the proposed matter is not of metropolitan significance; or

(2) that the rules are applicable, that the proposed matter satisfies one or more of the standards in parts 5700.0300 to 5700.0500 or part 5700.0600, as applicable, and that the proposed matter is of metropolitan significance; or

(3) that based on the lack of adequate supporting information, the significance review should be suspended at this time;

B. a statement of the standards and exemptions considered in the significance review of the proposed matter;

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

D. findings concerning the applicability of the rules and the effects of the proposed matter in relation to the standards; and

E. a recommendation as to the remedy which the council should adopt with regard to the proposed matter.

Statutory Authority: *MS s 473.173*

5700.2700 TRANSMISSION AND SERVICE OF FINDINGS AND RECOMMENDATION.

The findings and recommendations of the significance review committee shall be served on all parties and immediately transmitted to the council. All information and material considered by the significance review committee shall be made available to council members in accordance with council procedure.

Statutory Authority: *MS s 473.173*

5700.2800 COUNCIL DETERMINATION.

Subpart 1. Consideration of findings and recommendations. The council shall consider the committee findings and recommendations and all information submitted during the significance review prior to the close of the public hearing. The council may hold additional meetings to consider the proposed matter or direct the significance review committee to engage in further specific significance review activity.

Subp. 2. Final determination. Following consideration of the findings and recommendations, the council shall by resolution adopt a final determination with regard to each proposed matter subject to a significance review. The final determination shall be transcribed in writing and shall contain findings and conclusions supporting the council determination. The final determination shall contain the following:

A. a determination that the proposed matter is exempt pursuant to parts 5700.0700 to 5700.1200, or that the proposed matter does not cause the effects set forth in any of the standards contained in parts 5700.0300 to 5700.0500, and that the proposed matter is not of metropolitan significance; or

B. that the rules are applicable, that the proposed matter will cause one or more of the effects set forth in parts 5700.0300 to 5700.0500, and that the matter is of metropolitan significance.

Subp. 3. Matter of metropolitan significance. In the event that the council determines that the proposed matter is of metropolitan significance, the council's final determination shall, in addition, contain the following:

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

B. an order suspending commencement of construction on the proposed matter for a specified period of time which may not exceed a period of one year from the date of the final determination. An order of suspension may also contain conditions or modifications to the proposed matter which if complied with would cause the council to eliminate the suspension in accordance with part 5700.3600, including but not limited to measures which would minimize effects upon metropolitan system plans or on another local governmental unit including changes in the type and intensity of use or the location, magnitude, or design of the proposed matter, and/or control the timing and sequence of the proposed matter, including the dates for commencement and completion;

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

Subp. 4. Service determination. Copies of the final determination shall be served upon all parties within seven days following its adoption.

Statutory Authority: *MS s 473.173*

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5700.2900 TERMINATION, SUSPENSION, TIME CHANGE.

Subpart 1. **Bad faith.** The council may dismiss with prejudice the significance review of any proposed matter which it finds has been initiated in bad faith, or which is a sham, capricious, or frivolous case. No such determination shall be made without allowing the parties to hear, rebut, and present evidence regarding the same.

Subp. 2. **Withdrawal of review.** At any time during the conduct of a significance review, the initiator or sponsor may petition the council to withdraw the proposed matter from significance review, setting forth the reasons for such a request. The council may, by resolution, grant such a petition and allow a proposed matter to be withdrawn from significance review only in the event of consent by all the parties.

Subp. 3. **Settlement.** The parties to a significance review may execute an agreed settlement with regard to any proposed matters subject to a significance review at any time prior to the issuance of a final determination. Such an agreement shall be in writing, signed by all parties, and shall be subject to council acceptance or rejection.

Subp. 4. **Suspension.** The council may suspend a significance review for not more than 90 days to await the decision of another public agency which is required by law to review the proposed matter. In the event that such public agency denies authorization for the proposed matter, the council may, by resolution, dismiss the metropolitan significance review.

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

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

Statutory Authority: *MS s 473.173*

GENERAL REVIEW PROVISIONS

5700.3000 TIME PERIODS.

As used in parts 5700.0100 to 5700.4100, a specified number of days refers to calendar days provided that where the final day of the time period falls on a weekend or holiday, the period shall be extended to the next immediate working day.

Statutory Authority: *MS s 473.173*

5700.3100 IMPLEMENTATION HOLD DURING REVIEW PERIOD.

No person shall commence site alteration on a proposed matter after the commencement of a metropolitan significance review and until the council's issuance of a final determination concerning the proposed matter or the expiration of the significance review period, whichever occurs first.

Statutory Authority: *MS s 473.173*

5700.3200 LETTER OF INTERPRETATION.

The council may, by resolution, on the petition of any person prior to the commencement of a significance review, or on its own initiative at any time, issue a letter of interpretation with regard to the meaning and effect of any provision in parts 5700.0100 to 5700.4100 as to any proposed matter. A letter of interpretation may determine that a matter is exempt pursuant to parts 5700.0600 or 5700.0700 to 5700.1200 or that a proposed matter is not of metropolitan significance because it would not result in the threshold generation required by part 5700.0400, items A and D, or that a proposed matter is not a critical development or would not cause the disruption of commercial agricultural use as required by standard part 5700.0400, item H. A letter of interpretation may not determine the consistency or effect of a matter with regard to any metropolitan

significance standard contained in parts 5700.0300 to 5700.0500 or adopt the remedies specified in part 5700.2800, subpart 3. The council shall determine whether to issue such a letter only following consideration of the request at a public hearing, notice of which shall be published in the council bulletin at least 30 days in advance of the meeting. The council may request the submission of appropriate information from any person requesting a letter of interpretation, and from all other potentially interested persons. A letter of interpretation shall be binding on all persons and parties including the council and may prevent the initiation of a metropolitan significance review.

Statutory Authority: *MS s 473.173*

5700.3300 REVIEW COORDINATION.

The council, at the request of the sponsor, shall direct the coordination of a significance review with the review of a proposed matter being conducted pursuant to the environmental impact statement review process, Minnesota Statutes, section 116D.04, or the Critical Areas Act, Minnesota Statutes, chapter 116G. To this end, the council may enter into a joint agreement with the Minnesota environmental board enabling the council or joint panel to conduct a coordinated review of any proposed matter subject to a metropolitan significance review.

Statutory Authority: *MS s 473.173*

5700.3400 MULTIPLE OR PHASED PROPOSED MATTER.

A multiple or phased proposed matter is one which is divided into separate stages or segments, one or more of which, or the totality of which, may be of metropolitan significance. Significance review of a multiple or phased proposed matter may, at the discretion of the council, consider the total project or any separate independently viable stage or segments. In determining independent viability, the council shall consider whether the particular stage is viable without subsequent development, the extent of the interrelationship between the stage and subsequent development, and whether the stage would foreclose modifications to ameliorate a metropolitan system effect. Any significance review of a separate stage or segment of such a proposed matter shall be without prejudice to the subsequent significance review of other future stages or segments.

Statutory Authority: *MS s 473.173*

5700.3500 MATERIAL ALTERATION.

Any proposed matter which has been materially altered subsequent to a final determination pursuant to parts 5700.0100 to 5700.4100 may be subject to a new significance review pursuant to parts 5700.0100 to 5700.4100. Any party to a previous significance review of the proposed matter, and any person eligible to initiate a metropolitan significance review, may petition the council to make a determination of whether a proposed matter has been materially altered subsequent to a previous significance review. Such a determination shall be made after appropriate notice to all persons who were parties to the previous significance review and following opportunity to hear, present, and rebut evidence regarding the material alteration.

Statutory Authority: *MS s 473.173*

5700.3600 ELIMINATION OF SUSPENSION.

The sponsor of any proposed matter suspended by a final determination may petition the council at any time following service of the final determination to consider the elimination of the suspension because of compliance with conditions or modifications contained in the final determination. The petition for consideration shall be accompanied by an affidavit of the sponsor certifying

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compliance with the conditions or modifications contained in the determination. The council shall consider each such petition but may refuse to consider the elimination for good cause. In the event that the council determines to consider the petition, the council shall schedule a public hearing for the purpose of considering the elimination and shall notify all parties to the significance review of such hearing at least 15 days in advance. All parties or other persons may present information, fact, and opinion concerning the compliance with the conditions or modifications contained in the final determination.

Statutory Authority: *MS s 473.173*

5700.3700 RIGHT TO COUNSEL.

Any party may be represented by legal counsel during a metropolitan significance review.

Statutory Authority: *MS s 473.173*

5700.3800 RETENTION AND AVAILABILITY OF INFORMATION.

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

Statutory Authority: *MS s 473.173*

5700.3900 CONFIDENTIAL INFORMATION.

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

Statutory Authority: *MS s 473.173*

5700.4000 SEVERABILITY.

The provisions of parts 5700.0100 to 5700.4100 are severable and if any part, subpart, item, clause, sentence, paragraph, or other provision of parts 5700.0100 to 5700.4100 is held invalid for any reason, such invalidity shall not affect parts 5700.0100 to 5700.4100 as a whole or the validity of any other part, subpart, item, clause, sentence, or other provision which can be given effect without the invalid provision.

Statutory Authority: *MS s 473.173*

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5700.4100 JUDICIAL REVIEW.

A final determination adopted by the council pursuant to part 5700.2800, subpart 2, a determination by the council not to commence a significance review pursuant to part 5700.1400, subpart 5, and a letter of interpretation issued pursuant to part 5700.3200, which precludes a significance review, constitute final decisions by the council for purposes of judicial review.

Statutory Authority: *MS s 473.173*