

an account for non-MWBE firms under the number assigned to the agreement of intent. Upon proof of completion of the agreement, or portions thereof if applicable, credits for the negotiated dollar value of the contract will be placed in the non-MWBE firm's account.

(4) The credit received by the non-MWBE firms will be calculated from the firm's documented expenditures. Prior to initiating a goods or service contract or other approved assistance, the non-MWBE firm must file an agreement of intent with OMWBE. Upon approval of the plan, the firm will thereafter document the actions that have been taken on behalf of MWBEs. The actual dollar value to be credited may be established either before or after the program is concluded, but the agreement of intent must set the standards for evaluation and receive approval by OMWBE. The amount of credit that will be given for any contracted good or service or other approved assistance will be established between OMWBE and the non-MWBE firm. [Statutory Authority: Chapter 39.19 RCW. 85-24-010 (Order 85-10), § 326-50-040, filed 11/25/85, effective 3/1/86.]

WAC 326-50-050 Utilization of credits in business partnership account. (1) The credits in a non-MWBE firm's business partnership account may be applied only to goods and services contracts or requests for proposals. The credits cannot apply to MWBE requirements set on construction, public works, or personal services contracts.

(2) Only the value of those transactions requested and approved may be applied against MWBE requirements set by state agencies or educational institutions in meeting contract specifications.

(3) When the non-MWBE firm bids on a state contract, it may utilize the credit it has established with OMWBE by applying the credit against the MWBE participation requirements set on contracts or requests for proposals for purchase of goods and services.

(4) The state agency or educational institution shall give the non-MWBE firm equal consideration as other vendors utilizing certified MWBE vendors in evaluating the bids or requests for proposal. The state agency or educational institution may count the credit toward its annual overall goals.

(5) The credit obtained by an agreement of intent shall only be used once. Additional credits may be obtained by filing additional agreements of intent with OMWBE.

(6) If credits on file with OMWBE are invoked by the non-MWBE firm on more than one outstanding bid or proposal, the credits shall be utilized on the first contract awarded.

(7) The state agency letting a contract shall contact the OMWBE to verify the existence of credits on file at the time an apparent low bidder using business partnership credits to meet the MWBE requirements of the

contract is identified. The state agency letting the contract shall notify the OMWBE of the award of the contract, and the number of credits utilized by the non-MWBE firm to meet the MWBE requirements of the contract.

(8) If credits are used on one contract (first awarded), the non-MWBE firm, if the apparent low bidder, may be allowed a period of up to 24 working hours to secure new or additional MBE or WBE subcontractors. If written proof of subcontractors with new or additional MBE or WBE firms is not provided to the agency within that time, agency may award contract pursuant to WAC 326-40-020.

(9) The business partnership credits will remain in the account established for the non-MWBE firm for one year after the credits are accrued, or for one year from the time the contract in the agreement of intent is completed, as stipulated in the agreement of intent. All unused credit will be voided six months after the effective date, in the event the business partnership program is discontinued. [Statutory Authority: Chapter 39.19 RCW. 85-24-010 (Order 85-10), § 326-50-050, filed 11/25/85, effective 3/1/86.]

WAC 326-50-060 Default by either party to the agreement of intent. The parties to the agreement of intent (the non-MWBE firm and MWBE firm) reserve their rights to pursue legal remedies based upon the underlying contract between them. In the event of default by either party, appropriate action can be taken by either to assure compliance or to recover damages. Approval of the agreement of intent by OMWBE does not constitute a ruling that the contract is in compliance with state laws, nor that either party is capable of performing its portion of the agreement. Approval of the agreement by OMWBE merely signifies that OMWBE believes the fulfillment of this agreement will further the goals of the program established by the state under chapter 39.19 RCW. If the MWBE is unable or unwilling to perform the agreement of intent, the non-MWBE firm may utilize its right to substitute under WAC 326-30-080. OMWBE also reserves the authority to apply the full range of sanctions available under the law against the parties to the agreement of intent, as appropriate, if perjured agreements of intent are filed, or spurious claims for credits are made. [Statutory Authority: Chapter 39.19 RCW. 85-24-010 (Order 85-10), § 326-50-060, filed 11/25/85, effective 3/1/86.]

Title 330 WAC

MUNICIPALITY OF METROPOLITAN SEATTLE

Chapter 330-01

Procedures for corridor and design public hearings under RCW 35.58.273.

Chapter 330-01 WAC

PROCEDURES FOR CORRIDOR AND DESIGN
PUBLIC HEARINGS UNDER RCW 35.58.273

WAC

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WAC 330-01-010 Authority. This chapter is promulgated pursuant to RCW 35.58.273 and is intended to administratively implement that statutory provision. [Statutory Authority: RCW 35.58.273. 84-07-034 (Resolution No. 4328), § 330-01-010, filed 3/19/84.]

WAC 330-01-020 Purpose of this chapter. The municipality of metropolitan Seattle is a municipal corporation as authorized by chapter 35.58 RCW and defined in RCW 35.58.020(1). The municipality of metropolitan Seattle has established procedures for adopting its own resolutions, rules, and regulations, in accordance with RCW 35.58.130. RCW 35.58.273, however, requires the municipality to "adhere to the provisions of the Administrative Procedure Act," chapter 34.04 RCW, in adopting one particular rule. This chapter was created to fulfill that legal requirement. [Statutory Authority: RCW 35.58.273. 84-07-034 (Resolution No. 4328), § 330-01-020, filed 3/19/84.]

WAC 330-01-030 Purpose of this rule. (1) The purpose of this rule is to provide detailed procedures for public participation and hearings in certain situations involving the location and design of a mass rapid transit system. A hearing on the location of the route of the proposed system is called a "corridor public hearing." A hearing on the major design features of the proposed system is called a "design public hearing."

(2) Another purpose of this rule is to coordinate public hearings under RCW 35.58.273 with other hearings that the municipality may hold during its planning process. RCW 35.58.273 was enacted prior to SEPA and NEPA. The municipality's public hearings under these laws, for example, can fulfill the requirements of RCW 35.58.273. [Statutory Authority: RCW 35.58.273. 84-07-034 (Resolution No. 4328), § 330-01-030, filed 3/19/84.]

WAC 330-01-040 When this rule applies. (1) This rule applies in a specific situation involving the planning and design of mass rapid transit systems.

(2) This rule applies only when the municipality:

(a) Proposes to approve and construct a specific mass rapid transit system; and

(b) Will acquire right of way or construct a mass transit facility on a separate right of way for the system; and

(c) Will utilize certain special excise tax monies for such acquisition or construction.

(3) If all three items in the preceding subsection occur, the municipality must provide an opportunity for corridor and design public hearings. However, if an overall mass rapid transit system plan is adopted by a vote of the electorate of the municipality, prior corridor public hearings are not required under RCW 35.58.273. [Statutory Authority: RCW 35.58.273. 84-07-034 (Resolution No. 4328), § 330-01-040, filed 3/19/84.]

WAC 330-01-050 Definitions for this chapter. (1) "Corridor" means a pathway for mass rapid transit. It is synonymous with words such as "route," "route location," "route proposal," "location of the system," and "alignment." In this chapter, a corridor refers to a route used by a substantial portion of vehicles in the overall system and not simply to one or several bus routes. A corridor need not be used exclusively for mass rapid transit.

(2) "Corridor public hearing" means a public hearing that:

(a) The municipality holds before it is committed to or establishes a specific mass rapid transit system corridor; and

(b) Affords an opportunity for public comment on the need for and location of the system and on the social, economic, and environmental efforts on that location and alternate locations.

The statutory phrases "committed to or establishes" and "adoption of location plans" shall refer to a resolution of the council of the municipality that authorizes a specific mass rapid transit system project and describes its location. The consideration of various proposals, including preferred alternatives, preliminary engineering work, or other planning during the environmental review process, do not constitute the establishment of or commitment to a specific mass transit route proposal.

(3) "Design public hearing" means a public hearing that:

(a) The municipality holds after it establishes a system route location, but before it adopts a design; and

(b) Affords an opportunity for public comment on the system's design and on the social, economic, and environmental effects of that design and alternate designs.

The phrase "adopts a design" shall refer to a resolution of the council of the municipality that approves a final design for the system's major design features. Authorization or approval of preliminary design (sometimes referred to as predesign) does not constitute adopting a design.

(4) "EIS" means an environmental impact statement prepared under SEPA or NEPA.

(5) "Environmental document" means any written public document prepared under SEPA or NEPA.

(6) "Executive director" means the executive director of the municipality or the executive director's designee.

(7) "Final design" means plans and specifications in sufficient detail to authorize construction activities or, if applicable, to receive final approvals from other government agencies under Section 4(f) of the Department of

Transportation Act or Section 106 of the National Historic Preservation Act of 1966.

(8) "Lead agency" means the local, state, or federal agency or agencies responsible for the preparation of environmental documents under SEPA or NEPA.

(9) "Major design features" means the physical size, shape, and appearance of the principal components of a mass rapid transit system, and the relationship of these components to each other and to their surroundings.

(10) "Mass rapid transit system" (or "system") means a new network of routes and facilities to be used by mass transit vehicles serving the municipality's functions. A system is not simply a particular facility or group of facilities serving transit purposes, but must involve the establishment of a new corridor for transit vehicles. A system refers both to the location and to the major design features of the corridor and associated facilities.

(11) "Mass transit facility" means a facility constructed on a separate right of way as part of a mass rapid transit system.

(12) "Mass transit route proposal" means a proposed corridor for a mass rapid transit system.

(13) "Municipality" means the municipality of metropolitan Seattle, a unit of local government established under chapter 35.58 RCW.

(14) "NEPA" means the National Environmental Policy Act of 1969, 40 U.S.C. 4321 *et seq.*

(15) "Right of way acquisition" refers to right of way acquisition for a mass rapid transit system (as defined in WAC 330-01-050(10)), and does not include rights of the municipality under RCW 35.58.330.

(16) "Route." See "corridor."

(17) "SEPA" means the State Environmental Policy Act of 1971, chapter 43.21C RCW.

(18) "Separate right of way" means a right of way proposed to be used for public transportation that is not in, along, on, under, over, or through public streets, bridges, viaducts, and other public rights of way.

(19) "Social, economic, and environmental effect" means a direct or indirect consequence of a system's location or design. The term "environmental effect" means the impact on the elements of the environment, as specified by RCW 43.21C.110 (1)(f), and is not synonymous with "social" or "economic" effects.

(20) "System" means "mass rapid transit system" (WAC 330-01-050(10)). [Statutory Authority: RCW 35.58.273. 84-07-034 (Resolution No. 4328), § 330-01-050, filed 3/19/84.]

WAC 330-01-060 Opportunity for and timing of public hearings. (1) Generally speaking, the municipality will provide an opportunity for public hearings before locating, designing, and building a system that has substantial impacts (see subsection (2) of this section for a technical explanation). If the municipality already has a system operating on a separate right of way, metro will provide an opportunity for public hearings before substantially changing that system.

(2) When this rule applies (WAC 330-01-040), the municipality shall afford opportunity for corridor and design public hearings:

(a) Before the municipality adopts location and design plans having a substantial social, economic, or environmental effect upon the locality where the plans are to be constructed; or

(b) Whenever a substantial change, having a substantial social, economic, or environmental effect, is proposed relating to the location or design in the adopted plan (if any) for a mass rapid transit system operating on a separate right of way.

(3) Corridor public hearings shall be held before the municipality is committed to a specific mass transit route proposal and before a route location is established. If an EIS analyzes alternative corridors, corridor public hearings are encouraged to be held no earlier than the scoping process nor later than the public hearing on the draft EIS.

(4) Design public hearings shall be held after the municipality establishes the corridor location, but before it adopts the design. If there is a formal preliminary design document, such as an environmental, engineering, or predesign document, design public hearings are encouraged to be held after such a document has been prepared for consideration by the municipality.

(5) Recognizing that the planning and design of mass rapid transit systems is a long and complex process, the executive director shall have discretion to determine the most appropriate time in the planning and decision-making process to hold any corridor and design public hearings.

(6) Nothing in this chapter shall restrict the council of the municipality or any of its committees or members from **considering** the location or design of a system, or documents related thereto, prior to any corridor or design public hearings.

(7) Nothing in this chapter shall restrict the municipality from preparing or considering a single document that covers both system location and design. Design public hearings, however, cannot be held until after the municipality holds corridor public hearings and establishes a corridor location. [Statutory Authority: RCW 35.58.273. 84-07-034 (Resolution No. 4328), § 330-01-060, filed 3/19/84.]

WAC 330-01-070 Combination with other public participation. (1) The municipality may hold corridor and design public hearings concurrently with any other public hearings on a proposed mass rapid transit system. Corridor or design public hearings may be combined with a public comment period at a meeting of the council or transit committee of the municipality. The executive director may make the decision to combine such public hearings. Corridor or design public hearings that are combined with other public participation shall meet the requirements of this section.

(2) If corridor or design public hearings are held concurrently with public hearings on an EIS, WAC 330-01-080 shall govern. If corridor or design public hearings are held concurrently with any other hearings, the procedures for such other hearings shall apply, except that:

(a) Notice shall at a minimum contain the information and be published as specified in WAC 330-01-090(4); and

(b) The hearing shall provide a forum for commenting on the subjects specified in WAC 330-01-090 (5)(d) and (e).

(3) Except for the notice referred to in the preceding subsection, holding corridor and design public hearings with any other hearings does not change or expand the requirements for any documents prepared for the hearings, including but not limited to environmental impact statements. [Statutory Authority: RCW 35.58.273. 84-07-034 (Resolution No. 4328), § 330-01-070, filed 3/19/84.]

WAC 330-01-080 Public hearings when there is an EIS. (1) The municipality shall conduct corridor and design public hearings whenever the municipality is a lead agency for an EIS on a proposed system which meets the criteria of WAC 330-01-040.

(2) If the municipality holds corridor or design public hearings concurrently with public hearings on an EIS under SEPA, the municipality shall follow the procedures for hearings on EISs, as specified by chapter 43-.21C RCW, chapter 197-11 WAC, and the municipality's resolution setting forth its SEPA procedures.

(3) If the municipality holds corridor or design public hearings concurrently with public hearings on an EIS under NEPA, the municipality shall follow the procedures for hearings specified by its own procedures and by the federal joint lead agency and that agency's NEPA implementing procedures.

(4) Compliance with SEPA procedures (and/or NEPA procedures if applicable) fully satisfies the requirements of this chapter if:

(a) The information required by WAC 330-01-090 (4)(b) is included in the published notice for the hearings; and

(b) The public hearing provides a forum for commenting on the subjects specified in WAC 330-01-090 (5)(d) and (e). [Statutory Authority: RCW 35.58.273. 84-07-034 (Resolution No. 4328), § 330-01-080, filed 3/19/84.]

WAC 330-01-090 Public hearings when there is no EIS. (1) **No EIS.** When this chapter applies to a proposal, but an EIS is not being prepared, the municipality shall nonetheless provide an opportunity for public hearings by following the procedures in this section.

(2) **Notice of opportunity for hearings.** The municipality shall publish a notice in a newspaper of general circulation in the area where proposed system would be located. The notice shall contain:

(a) A statement that members of the public may request the municipality to hold a corridor or design public hearing (as applicable).

(b) A brief description of the system's route location or major design features (as applicable).

(c) The availability of an environment document, if any, on the proposal.

(d) The method and date by which members of the public can request a public hearing.

(3) **When a hearing must be held.** The municipality shall hold a corridor or design public hearing (as applicable) under this section when written requests are submitted by:

(a) Twenty-five or more persons residing within the municipality, or who would be affected by the proposal; or

(b) Two or more agencies with the authority to approve or disapprove the proposal. The written requests must be received within thirty days of the publication of the notice required by subsection (2) above.

(4) **Notice of corridor/design public hearings.**

(a) **Publication.** The municipality shall publish a notice of public hearings in a newspaper of general circulation in the area where the proposed system would be located. The hearing shall be held no earlier than fifteen days nor later than fifty days from the date of first newspaper publication.

(b) **Content.** The notice shall contain:

(i) A brief description of the location or design (as applicable) of the proposed system.

(ii) A statement that members of the public may comment on:

(A) The need for and location of the system, for corridor public hearings;

(B) The major design features of the system, for design public hearings; and

(C) The social, economic, and environmental effects of the location (or design) of the proposal and alternate locations (or designs).

(iii) The name and availability of environmental or other documents pertaining to the hearing.

(iv) The time and place of the hearing.

(5) **Conduct of public hearings.**

(a) **Availability of documents before hearings.** The municipality shall make any environmental document on the proposed system available to the public at least fifteen days before the public hearings. The municipality shall also make these documents available for public inspection at the hearings.

(b) **Chair and rules.** The public hearings shall be chaired by a member of the council of the municipality or a person designated by the chair of the transit committee. The hearing shall be conducted in conformance with the municipality's adopted rules or procedures for public hearings and with applicable state or federal regulations.

(c) **Recordings.** Recording may be made of any proceedings of these public hearings, and such recordings shall be appropriately indexed and made available at the municipality's library or its SEPA public information center.

(d) **Corridor public hearings.** At corridor public hearings, the municipality shall allow the public to present views on the need for the system, the location of the system, and the social, economic, and environmental effects of the system's location and alternate locations.

(e) **Design public hearings.** At design public hearings, the municipality shall allow the public to present views

on the major design features of the system, and on the social, economic, and environmental effects of the system's design and alternate designs.

(6) **Combined hearings.** The municipality may combine corridor or design public hearings with other public participation, in which case alternative procedures may be used (see WAC 330-01-070 and 330-01-080). [Statutory Authority: RCW 35.58.273. 84-07-034 (Resolution No. 4328), § 330-01-090, filed 3/19/84.]

Title 332 WAC

NATURAL RESOURCES, BOARD AND DEPARTMENT OF

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Chapter 332-14 WAC

COAL LEASING RULES AND REGULATIONS

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WAC 332-14-010 Definitions. The following terms are applicable when used in the chapter and shall be defined as follows unless the context clearly requires otherwise:

(1) "Abandon" means the removal of all drilling and production equipment from the site and the restoration of the surface of the site to standards set forth by the Office of Surface Mining in 30 CFR, Part 947, "Surface Mining and Reclamation Operation Under a Federal Program for the State of Washington" or a federally approved state program.

(2) "Auction" means competitive lease bidding by oral or sealed bids or a combination thereof.

(3) "Blending" means combining two or more grades of coal to achieve desired chemical or combustive properties.

(4) "Coal" means a black or brownish-black solid combustible substance which has been subjected to the natural process of coalification and which falls within the classification of coal by rank for lignite, subbituminous, bituminous or anthracite as defined in the American Society of Testing Material Standards.

(5) "Coal mining lease" means a lease not to exceed twenty years entitling the operator to develop, mine and market a known coal resource on state lands.

(6) "Coal option contract" means a one-year agreement entitling its holder to explore for coal on one section or 640 acres, whichever is larger and to remove up to 250 tons of coal for testing purposes.

(7) "Commingling" means the mixing of coal from the leased premises with coal from land other than the leased premises.

(8) "Department" means the department of natural resources.

(9) "Development" means any work which occurs after exploration and which furthers coal production.

(10) "Exploration" means investigation to determine presence, quantity and quality of coal resources by geologic, geophysical, geochemical or other means.

(11) "Exploration drill hole" means an exploratory drill hole constructed for the purpose of determining depth, thickness, quality and quantity of coal for the identification of underlying rock formations in which the coals occur and the determination of hydrological conditions.

(12) "Gross receipts from mining" means the fair market price per ton according to rank as prepared for market at the first point of sale or commercial use.

(13) "Grout" means a cementing agent which is used for plugging and sealing exploration drill holes.

(14) "Improvements, structures, and development work" means anything considered a fixture in law or the removal of overburden or the diversion of drainage or other work preparatory to removal of coal, placed upon or attached to state lands that has added value to the state's interest therein.

(15) "Logical mining unit" means contiguous lands or lands in reasonable proximity in which the recoverable coal reserves can be developed in an efficient, economical, and orderly manner as a unit with due regard to recoverable coal reserves. A logical mining unit may