



Planning & Development Division
Planning & Economic Development Department

Room 160
411 West First Street
Duluth, Minnesota 55802

218-730-5580
planning@duluthmn.gov

MEMORANDUM

DATE: June 7, 2022
TO: Planning Commission
FROM: Steven Robertson, Senior Planner
RE: Citizen Petition for An Environmental Assessment Worksheet (EAW) Related to a Potential Housing Development at Vassar Street

On May 16, 2022, the Minnesota Environmental Quality Board (EQB) notified the City of Duluth that a citizen petition for an Environmental Assessment Worksheet (EAW) had been submitted. The petition stated: the proposed project is a mixed use development with 400 units of market rate and "affordable housing" with 80,000 square feet of commercial development, on 37 acres of the Lester Park Golf Course, in the Lester River drainage basin at the eastern edge of Duluth and the international gateway to Duluth and the North Shore of Lake Superior.

According to Section 2-41 of the City Code, the planning commission shall serve as the responsible governmental unit and conduct environmental reviews pursuant to Minnesota Statutes Chapter 116D and the applicable state regulations.

The most recent residential EAW for residential development was for Kayak Bay (PL 17-085, 105,000 square feet of retail space, 175,000 square feet of office space, 540 units of attached dwellings, or 65 units of unattached dwellings (townhomes), and the most recent commercial/industrial EAW was for Essentia Vision Northland (PL 18-120, 920,000 square foot multi-story tower).

It is the Planning Commission's task to review the submitted petition and the scope of the proposed project, and determine if there is a potential for significant environmental impacts, and determine if an EAW is required. When deciding whether a project has the potential for significant environmental effects, the following factors shall be considered: A. type, extent, and reversibility of environmental effects; B. cumulative potential effects; C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer.

Existing regulatory and mitigation standards in the UDC include: floodplain standards; wetland avoidance, minimization, and replacement standards; shoreland setback standards; tree protection standards including replacement, setback standards for zoning districts, and stormwater management standards.

Based on the fact that a preliminary plat application has not been submitted for this project and there has been no formal, official, or specific project accepted for this site, it is the recommendation of City Staff that an EAW is not appropriate at this time and the petition should be denied.

What is the purpose of the environmental review process?

The Minnesota Environmental Policy Act of 1973 established a formal process for reviewing the environmental impacts of major development projects. The purpose of the review is to provide information to units of government on the environmental impacts of a project before approvals or necessary permits are issued. After projects are completed, unanticipated environmental consequences can be very costly to undo, and environmentally sensitive areas can be impossible to restore. Environmental review creates the opportunity to anticipate and correct these problems before projects are built. The process operates according to rules (legally binding regulations) adopted by the EQB, but it is carried out by a local governmental unit or state agency (which is termed the RGU, for Responsible Governmental Unit). The Duluth City Planning Commission is the RGU for the City of Duluth. The primary role of the EQB is to advise local units and state agencies on the proper procedures for environmental review.

What is an Environmental Assessment Worksheet (EAW)?

An EAW is a document designed to provide a brief analysis and overview of the potential environmental impacts for a specific project and to help the RGU determine whether an Environmental Impact Statement (EIS) is necessary. The EAW consists of a standard list of questions and is meant to set out the basic facts of the project's environmental impacts. The EAW is not meant to approve or disapprove a project, but is simply a source of information to guide other approvals and permitting decisions. The information in the EAW process has two functions: to determine whether an EIS is needed, and to indicate how the project can be modified to lessen its environmental impacts; such modifications may be imposed as permit conditions by regulatory agencies.

What are significant environmental effects?

In deciding whether a project has the potential for significant environmental effects, the RGU "shall compare the impacts that may reasonably be expected to occur from the project with the criteria in this rule," considering the following factors (part 4410.1700, subparts 6 and 7):

- A. Type, extent, and reversibility of environmental effects;
- B. Cumulative potential effects of related or anticipated future projects;
- C. The extent to which environmental effects are subject to mitigation by ongoing public regulatory authority; and
- D. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other Environmental Impact Statements.

Can the RGU's decision be appealed?

The decision of the RGU to prepare or not prepare an EAW can be appealed in the county district court where the project would take place. The appeal must be filed within 30 days of the date on which the RGU makes its decision. There is no administrative appeal of an RGU; the EQB has no jurisdiction to review an RGU's decision.



MINNESOTA
ENVIRONMENTAL QUALITY BOARD

**Minnesota Environmental Quality Board
520 Lafayette Road North
Saint Paul, MN 55155**

VIA E-MAIL (cover letter & petition)

May 16, 2022

Adam Fulton
Interim Director, Planning & Economic Development
City of Duluth
afulton@duluthmn.gov

RE: Petition for an Environmental assessment worksheet for proposed mixed use development for 37 acres of Lake 9 of the Lester Park Golf Course

Dear Mr. Fulton,

The Environmental Quality Board (EQB) received a complete petition on May 16, 2022 requesting that an Environmental Assessment Worksheet (EAW) be prepared for the project described in the petition. When a petition is filed, [Minn. R. 4410.1100](#), Subp. 5 directs EQB to designate a Responsible Governmental Unit (RGU) pursuant to [Minn. R. 4410.0500](#). EQB determined the City of Duluth is the appropriate responsible governmental unit to decide the need for an EAW (Minn. R. 4410.0500, Subp. 3) because *"for any project of a type for which a mandatory category is listed in part [4410.4300](#), the RGU is the governmental unit specified by the mandatory category for projects of that type, unless the project will be carried out by a state agency"*.

The procedures to be followed in making the EAW decision are set forth in part Minn. R. 4410.1100.

1. Because a petition for an EAW has been filed that complies with the requirements of Minn. R. 4410.1100, a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until the petition for an EAW is dismissed. To start or begin a project includes taking any action or activity that directly alters the environment. It includes preparation of land or fabrication of facilities. It does not include surveying or mapping. See [Minn. R. 4410.3100](#), Subparts 1 and 2 for the prohibitions on final governmental decisions.
2. Please notify EQB staff as soon as possible if the City of Duluth determines the following conditions apply:
 - a. If the City of Duluth has already made its final decisions to grant all permits or approvals required from it to construct the project (Minn. R. 4410.0500); and/or
 - b. If the City of Duluth cannot act on a petition because no permit application has been filed, the application has been withdrawn, or the application has been denied. In those cases, the petition remains in effect for no more than one year from the date on which it was filed with the EQB. While the petition remains in effect, Minn. R. 4410.3100, Subparts 1 and 2, apply to any proposed project for which the nature and location is

substantially similar to the project identified in the petition (Minn. R. 4410.1100). As a courtesy, a notification of this determination will appear in the *EQB Monitor*.

3. Compare the project to the mandatory EAW and mandatory Environmental Impact Statement (EIS) categories listed in [Minn. R. 4410.4300](#) and [4410.4400](#).
4. Compare the project to the exemption categories in [Minn. R. 4410.4600](#); if the project should fall under any of these categories, the project is exempt from environmental review.
5. The standard for making the decision on the need for an EAW is provided in Minn. R. 4410.1100, subpart 6. When considering the evidence provided by the petitioners, proposers, or other persons, the City of Duluth must take into account the factors listed in [Minn. R. 4410.1700](#), subpart 7. The RGU shall maintain either as a separate document or contained within the records of the RGU, a record, including specific findings of fact, of its decision on the need for an EAW.
6. The City of Duluth has 15 days from the date of the receipt of the petition to decide on the need for an EAW; intermediate Saturdays, Sundays, and legal holidays shall be excluded in the counting of days (Minn. R. 4410.1100; [Minn. R. 4410.0200](#)).
 - a. If the decision must be made by a board, council, or other body which meets only on a periodic basis, the time period may be extended for an additional 15 days.
 - b. For all other RGUs, the EQB's chair shall extend the 15-day period by not more than 15 additional days upon request of the RGU.
7. Within 5 working days of a decision, the City of Duluth must provide written notification of the decision to the Proposer, the Petitioners' Representative, and the EQB as described in Minn. R. 4410.1100, subpart 8. Please provide written notification to these parties even in cases where an EAW or EIS will be prepared according to [Minn. R. 4410.1000](#), subparts 2 or 3, or the project is found to be exempt from environmental review.
 - a. To notify the EQB of the decision on the need for an EAW, please send an email to EQB.Monitor@state.mn.us. The EQB requests that you include a copy of your record of decision in your email, including instances where environmental review is mandatory, voluntary, or exempt.

Proposed mixed use development for 37 acres of Lake 9 of the Lester Park Golf Course

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May 16, 2022

Notice of the petition and its assignment to your unit of government will be published in the *EQB Monitor* on May 17, 2022.

If you have any questions or need any assistance, please do not hesitate to contact us at env.review@state.mn.us or 651-757-2873.

Sincerely,

Katrina Hapka

Katrina Hapka
Environmental Review Program Coordinator
Environmental Quality Board

cc: John M. Klaers, Petitioner's Representative
Katie Pratt, EQB Executive Director
Denise Wilson, Director of Environmental Review Program

JOHN KLAERS PLANNING & DEVELOPMENT INC.
218 N. 12TH Ave W. Duluth, MN. 55806

May 13, 2022

Katrina Hapka
Environmental Review Coordinator
Minnesota Environmental Quality Board
520 Lafayette Road
St. Paul, MN, 55155

Dear Ms Hapka:

Attached for your review and information is the revised EAW Citizens Petition, prepared and resubmitted by Duluthian's for Preservation of Minnesota's Most Livable City.

Specifically the addresses for 124 signatories of the Petition are now compliant with MR 4400.1100 subpart 1. All residents and/or property owners supporting the petition now have a complete mailing address. We entered every mailing address into Google Maps to obtain and verify place of residence and zip code. It's not pretty, but compliant with the rules.

In addition to this electronic re-submittal we have forwarded the amended, original document returned to me on May 12, 2022, via US Mail.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "John M. Klaers". The signature is written in dark ink and is positioned above the printed name and title.

John M. Klaers
Petitioners Representative

**DULUTHIAN'S FOR PRESERVATION OF MINNESOTA'S MOST LIVABLE
CITY**

P.O. BOX 16065 DULUTH, MN. 55816

**PETITION TO MINNESOTA ENVIRONMENTAL EQUALITY BOARD TO
REQUIRE THE CITY OF DULUTH TO PREPARE AN EAW ON THE MIXED
USE DEVELOPMENT PROPOSED FOR 37 ACRES OF THE LAKE 9, OF THE
LESTER PARK GOLF COURSE.**

May 2022

INFORMATION REQUIRED BY MN RULES, CHAPTER 4410.1100

A. DESCRIPTION OF THE PROJECT

The proposed project is a mixed use development with 400 units of market rate and “affordable housing” with 80,000 square feet of commercial development, on 37 acres of the Lester Park Golf Course, in the Lester River drainage basin at the eastern edge of Duluth and the international gateway to Duluth and the North Shore of Lake Superior.

B. PROPOSER OF THE PROJECT

The City of Duluth has conveyed the property to the Duluth Economic Development Authority to execute a development agreement with a land development company by December 2022. Land development projects of this size and scope require a mandatory EAW under MN Rules.

The Duluth Parks and Recreation Commission, Planning Commission and City Council all approved the project and land conveyance to DEDA, with no consideration of the environmental, social, and economic impacts of the project.

C. NAME ADDRESS AND TELEPHONE NUMBER OF PETITIONERS REPRESENTATIVE

John Klaers Planning & Development Inc. 218 N. 12th Ave West, Duluth, MN. 55806

Telephone: 218-727-5543

D. DESCRIPTION OF POTENTIAL ENVIRONMENTAL EFFECTS OF THE PROJECT

The project will potentially impact water quality of the Lester River and Lake Superior. Project impacts are short term, long term and cumulative. The project will change forested, and grassed, open areas that buffers and protects water quality in the area, to impervious surfaces of mixed use, high density urban development. The project will require removal of grass and trees, and other vegetation covering highly erodable clay soils, on sloped areas. The project requires grading and removal of vegetation covering clay soils, excavation and removal of clay soils, fractured bedrock, and importation of granular soils.

The project will alter ground water flows and seepage through fractured bedrock that flows to the river and the Lake.

The project will cause soil erosion and sedimentation of spawning areas of the river and the lake. The project will generate heated storm water and snow melt runoff, contaminated by deicing chemicals and sand/grit, to the Lester River and Lake Superior threatening cold water fisheries.

The project is located in a land use district protected by the North Shore Management Plan (NSMP). The NSMP is administered by the North Shore Management Board. The NSMP was updated in June of 2016, and is intended to preserve the archaeological, historical, and architectural resources of the international gateway to Duluth and the North Shore. Duluth is not a participant in the NSMP or the Board but can impact both.

The NSMP Shoreland Alteration Goals include;

Maintain vegetation especially on steep slopes and bluffs.

Limited Vegetation Removal.

Require Storm Water management.

Maintain Character of the North Shore.

The project is incompatible with other low density, low environmental impact development in the area. The project is incompatible with nearby designated parks, trails, and recreation areas.

The project will generate noise, dust and odors during and after construction that will have short and long term cumulative impacts on the area its ecosystems and nearby resources.

The site is located in the International Flyway for migrating birds and raptors which extends from the Arctic Circle to the Gulf of Mexico. The project will create barriers and hazards to birds and raptors in the form of 80 to 100 foot high concrete and plate glass structures on the highest part of the site, 230 above the level of Lake Superior. The project will result in the loss of transitional habitat for migrating birds and raptors, and threatened and endangered species in range of the site.

The project will cause the loss of unique scenic views and vistas available to Duluth residents and visitors to the North Shore of Lake Superior. The project will generate air pollution from stationary and mobile sources. Vehicle traffic to and from the site traffic will generate dust, noise and odors with cumulative environmental impacts to sensitive receptors adjacent to the project site.

The projects impacts on public infrastructure and public services requires the city administration to eliminate the golf course in order to meet the projects demand for fire flows and daily potable water consumption.

The project's environmental, social and financial impacts will degrade the environment of a sensitive area and reduce recreation opportunities and quality of life city wide, and result in adverse impacts on the local economy.

E. MATERIAL EVIDENCE INDICATING THE NATURE AND LOCATION OF THE PROJECT WILL POTENTIALLY CAUSE SIGNIFICANT ENVIRONMENTAL EFFECTS

The attached maps and air photo exhibits illustrate and support the following factual evidence:

1. Land Use Impacts.

The project and the development site are not natural or logical extensions of urban density development in Duluth, or the Lakeside /Lester Park neighborhoods.

The project site is within the duly established shoreland zones of both the Lester River and Lake Superior.

The project site is a key part of the International Flyway for migrating birds and raptors that stretches from the Arctic Circle to the Gulf of Mexico.

The Lester River is the eastern edge of the geographic area covered by the North Shore Management Plan. A multi jurisdictional plan that seeks to preserve the natural environment and the historic character of Lake Superiors' Scenic North Shore, from Duluth to Silver Bay.

The area surrounding the project site is sparsely developed and the golf course is the perfect buffer and transitional, seasonal, recreational land use between the Lester River and urban density development of Duluth and the existing Lakeside/Lester Park neighborhoods. .

Duluth closed the Lester Park Golf Course in 2020 because of the Covid 19 Pandemic, and a determination that it was less accessible than Enger Park. Now it is deemed accessible for five times the Average Daily Traffic generated by the golf course during peak periods.

The project will forever change the scenic views and vistas from Hawk Ridge, Lester River basin parks and trails, and from Lake Superior and the North Shore.

The project is incompatible with the character of development in the Gateway area that is also a popular location for lake trout anglers, birders, residents and visitors to Lester River parks and trails.

Lester River is a unique Wild, Scenic Recreational River that is both fishable and swimmable. The river supports a brook trout population and the mouth of the river is a spawning area for cold water fish species of Lake Superior. Duluth residents use the river water and shorelands for swimming, kayaking, hiking and fishing.

Hawks, eagles, and falcons frequent the area year round. Brighton Beach is a Duluth park and part of the North Shore Gateway experience.

The project will adversely, physically and visually degrade the area and reduce tourism and recreation in Duluth, the region and the state. See Map/Exhibits 1 and 2.

2. Physical Impacts on Water Resources.

The volume of Storm water and snow melt runoff to the river and the lake will increase exponentially. Runoff from the site will carry contaminants from construction activities, and after construction from

roofs, driveways and parking areas. Runoff will be heated and cause erosion and carry soil sediments as it leaves the site. Heated, contaminated runoff and sediments will impact critical fish habitat and spawning grounds of the river and the lake. Reduced water quality will adversely impact recreation and reduce tourism and visitors to the area.

3. Wastewaters.

Sewage from the development will discharge to the Duluth city sewer system that serves Lakeside/Lester Park. These neighborhoods have a high rate of sewer system Infiltration and Inflow due to substandard building drains connecting to city lateral sewers. The City only requires building drain line upgrades when properties are sold. Sewage overflows are directed to Lake Superior.

4. Water Use.

The City cannot meet fire flow and consumption demand for the project without first taking the irrigation water the golf course uses. The golf course and the project cannot coexist. A new water main to serve the project is cost prohibitive, so the golf course is subjected to artificial political barriers intended to eliminate the use and allocate potable water to the project. The city has considered using the remaining golf course acreage for more housing development.

5. Geologic Hazards and Soil Conditions.

The project site has shallow depth to bedrock and tight clay soils. The project site is characterized by changes in elevation and slopes to the river and the lake. Clay soils are highly erodible once the vegetative cover is disturbed. Project construction will require site grading exposing acres of bare soil, removal of clay soils, rock excavation and importation of mineral soils. Fugitive sediments in runoff to the river and lake are a threat to water quality, impacting spawning grounds and fisheries.

A single extreme weather precipitation/storm event during the project's Site Preparation Phase, will blow out downstream stormwater sediment barriers and the Construction Phase Temporary holding pond.

The resulting damage to the mouth of the Lester River and the shoreline of Lake Superior could be catastrophic to salmon, lake trout, brown trout, steel heads and other cold water fish that spawn in the river and the lake. Sediments in lake and river water will cover spawn and kill recently hatched fish. Storms and Lake Superior wave action will continually disturb and re-suspend fine clay particles. Degraded water quality will devastate the fishery and reduce the area's appeal for recreation and visitation. See Map/Exhibit 3.

6. Air Emissions, Dust, Noise and Odors.

Project construction and post construction, will generate stationary air emissions from construction equipment and heating/cooling systems. Truck and vehicle traffic to and from the site will generate mobile air emissions. Construction and post construction truck and vehicle traffic will generate dust, noise and odors in the project area and Duluth neighborhoods along arterial streets connecting the project to employment and business centers. London Road, and Superior Street are the primary arterial

streets connecting the project site to the community below the Lake Superior escarpment. London Road carries through traffic connecting to I-35 and the North Shore. Superior Street carries local traffic to and from neighborhoods and nearby activity centers. See map/Exhibit 1.

Glenwood Street, Snively Blvd and West Arrowhead Road connect the project site and eastern neighborhoods to Duluth's commercial retail and employment centers over the hill. Existing development along these arterial connectors will be subjected to more traffic generated dust, noise and odors. Some eastern and hilltop neighborhoods will be subject to "cut through traffic" as drivers seek to avoid bottlenecks and traffic congestion. Construction and post construction traffic impacts have not been studied or evaluated. See Map/Exhibits 1 and 2.

7. Visual Impacts

The completed project will forever alter and **eliminate** scenic views and vistas from Hawk Ridge, Lester River parks and trails, Lake Superior and the North Shore. The project will create fugitive light and illuminate natural areas and sensitive resources adjacent to the project site in the gateway area.

The roofs of project structures will likely contain communication system antenna's, some of which will require continuous flashing, high intensity warning beacons. Another bird hazard and degradation of the areas natural environment. See Map/Exhibit 2 and 3.

8. Energy Consumption

This is not a green project by any stretch. Urban sprawl into a sensitive and critical area will be an economic and community development mistake that will be an identifiable burden on the cost of local government and Duluth's economy for decades. This project will forever change the image and perception of Duluth, and the North Shore of Lake Superior.

The project's location in the community will result in high energy costs and consumption for all of the occupants of the development, forever.

Old cities like Duluth, must be continually revitalizing and redeveloping the older core neighborhoods of the City. This project was proposed for the Central High School property but proposers backed out in favor of this site.

Redevelopment and revitalization of older core neighborhoods in Duluth needs multiple smaller versions of this project that mesh with preservation of single family homes and community redevelopment needs. Needed infrastructure upgrades must be planned and programmed to facilitate redevelopment and preservation. Duluth City Planning is none existent in this regard.

9. Impact on Infrastructure and Public Services.

Failure to consider short and long term project impacts on infrastructure and public services will hide the real public costs of urban sprawl in a city 27 miles long, shaped like an isosceles triangle. Duluth taxpayers will have to subsidize the project in order to update and expand the Lakeside/Lester Park Fire Hall. Police services will decentralize and have to travel farther, responding to more calls for assistance from other less populated and developed areas within their jurisdiction.

The City has already closed the golf course and continues to create artificial political barriers to eliminate golf, and allocate golf course irrigation water for the project. A **special interest, city/public subsidy** for this project which should have been approved by voters.

The golf course provides multiple recreational opportunities for the Lakeside/Lester Park neighborhoods and the city. Walking, running, cross county skiing, snowshoeing, sleigh rides, kiting, and community/neighborhood events, are a few of the many recreational activities supported by the golf course, at minimal cost to the city.

The project's demand for water, sanitary sewer and natural gas will require the city to upgrade mains and pumping stations to convey potable water, sewage and natural gas to and from the project site. The project location was never intended to be a site for high density urban mixed use, development. No duly prepared and approved, Duluth Comprehensive Land Use Plan ever targeted this site for urban level development.

School age children will have to be bused to school from the project site, they will never walk to school, only to the bus stop. See Map/Exhibits 1,2, and 3.

10. Cumulative Impacts.

The cumulative environmental impacts of the project on Lester River and Lake Superior water quality has the potential to adversely impact the cold water trout and salmon fisheries that make the mouth of the river and the nearby shoreline of the Lake, a rich habitat for fish, birds and wildlife.

The River and the Lake have combined to create a unique subsurface delta of sand and gravel formed by high spring, white water flows along the river, and high wind events on the lake to create an intricate pattern of stratified sediments fanning into the lake.

The projects potential to erode soils and direct fine clay particles into the delta will cause fine soil particles to remain suspended by Lake Superior wave action, above the bottom elevation of the river delta. Combined with heated runoff from new impervious surfaces, the project will destroy pristine fish habitat and forever impact the natural environment of the area surrounding the project site.

The project will forever change the ecology and undeveloped character of a unique, sensitive part of Duluth and the North Shore. The Cumulative impacts of constructing the project, will increase dust, noise and odors on land adjacent to the development site, including Lester River and Lake Superior shoreland zones. Post construction traffic will increase air emissions, including dust, noise and odors along the roadways connecting the development to community activity centers.

The cumulative visual impacts of construction and post construction will forever change the environment and character of an international gateway to Duluth and the North Shore of Lake Superior. Cumulative visual impacts will impact scenic views and vistas from Hawk Ridge, Lester River parks and trails and the remaining 18 holes of the Lester Park golf course.

The project will create incentives for more urban level development on golf course land and vacant private property in the gateway area. More urban development compounds all of the negative environmental impacts created by the project. See Map/Exhibits 1,2, and 3.

11. Compliance with State Law and Environmental Regulations

The City and State agencies have failed to comply with State Law and Mn Rules regulating development in sensitive areas. Specifically:

A. The project unanimously approved by the Parks and Recreation Commission, Planning Commission and City Council, should have been subject to an EAW before the land was conveyed to DEDA.

MN Rules 4410.4300 Governmental Units Discretionary Worksheets:

Mn Rules 4410.4500: A governmental unit with jurisdiction may order an EAW for any project that does not exceed the mandatory thresholds designated in Part 4410.4300 or 4410.4400 if the governmental unit determines that because of the nature or location of the proposed project, the project may have the potential for significant environmental effects and the project is not exempted pursuant to part 4410.4600.

Mn Rules 4410.4300 – 4410.4400 Mandatory EAW Thresholds The Project Approved by the Duluth Parks and Recreation Commission, Planning Commission and City Council and City Council requires a Mandatory EAW.

Mn Rules 4410.0300 Authority, Scope, Purpose and Objectives.

Subpart 3. Purpose:

The Minnesota Environmental Policy Act recognizes that the restoration and maintenance of environmental quality is critically important to our welfare. The Act also recognizes that human activity has a profound and often adverse impact on environment.

A first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of Parts 4410.0200 to 4410.0500 is to aid in providing that understanding through the preparation of environmental documents.

Environmental documents shall contain information that addresses the significant environmental issues of a proposed action. This information shall be made available to governmental units and citizens early on in the decision making process.

B. Minnesota Department of Natural Resources (MDNR)

The MDNR should be actively involved with Duluth regarding the environmental impacts of the proposed project at the proposed project location.

1. Watershed Health Scores for Lester River and Lake Superior.

MDNR Watershed Health Scores compare conditions of land, water and habitat by inventorying and comparing 24 criteria under the following categories:

Biology, Connectivity, Geomorphology, Hydrology, and Water Quality.

MDNR should be advising the City of baseline Watershed Health Scores before and after the project, with and without the golf course.

2. Chapter 6115.050 Purpose, Statutory Authority.

Provide for the orderly and consistent review permit applications to conserve and utilize water resources of the state in the best interests of its people.

Proposed development must be consistent with Federal, State, and local environmental quality programs, shoreland, floodplain, water surface use, boat and water safety, wild and scenic rivers, water quality, recreational or wilderness critical areas, wilderness critical areas, scientific and natural areas, protected species management.

None of these issues have been addressed by the City of Duluth or MDNR.

Clearly, the proposer of the project at the project location, is obligated to lawfully prepare an EAW on the project consistent with state law and statutory rules. Clearly, the Larson Administration has failed to comply with state law and statutory rules. They are undoubtedly the proposers of the project at this location.

The City has the money and the time to complete an EAW and before moving forward with sale of the property. We shouldn't have to Petition the EQB to make this happen.

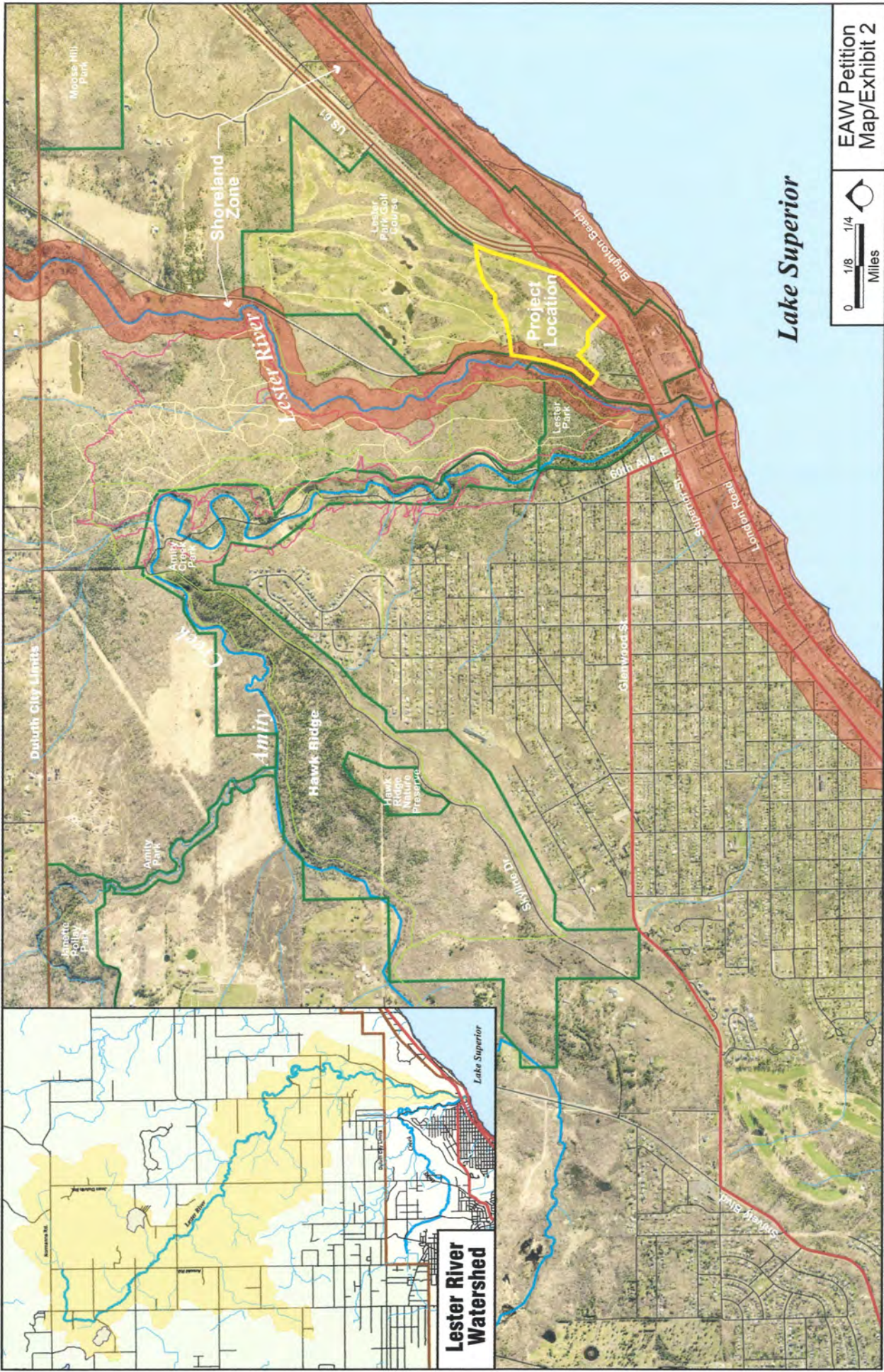
We also intend to raise these issues with the Attorney General's Office.

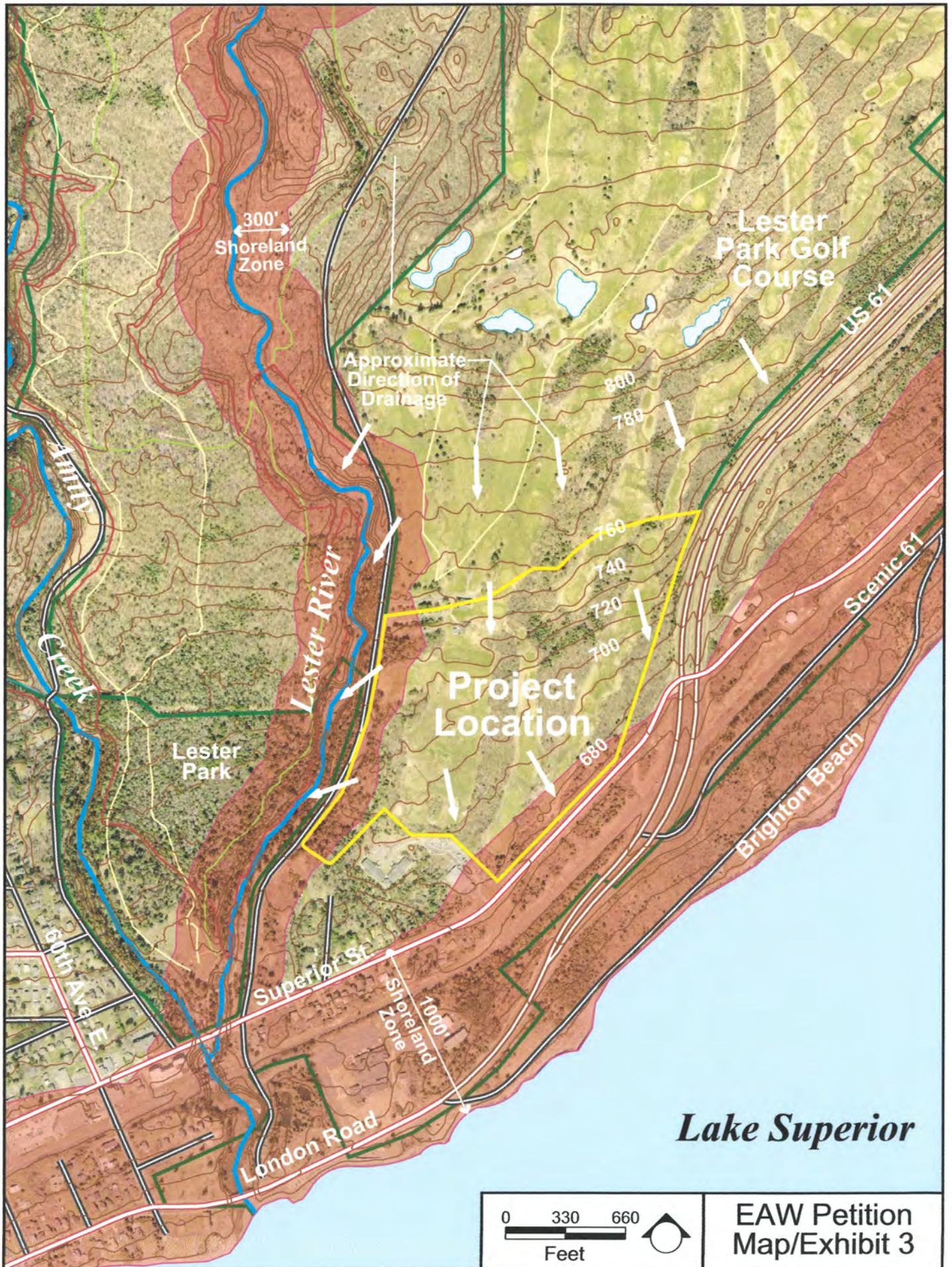


Duluthian's for Preservation of
Minnesota's Most Livable City



EAW Petition
Map/Exhibit 1





DULUTHIAN'S FOR PRESERVATION OF MINNESOTA'S MOST LIVABLE CITY

P.O. BOX 16065 DULUTH, MN. 55816 Visit our Website <https://www.jmkp-di.org>

February 24, 2022

PETITION TO THE MINNESOTA ENVIRONMENTAL QUALITY BOARD TO REQUIRE THE CITY OF DULUTH/DULUTH ECONOMIC DEVELOPMENT AUTHORITY TO PREPARE AN EAW ON THE MIXED USE DEVELOPMENT PROPOSED FOR THE 37 ACRE PARCEL OF THE LESTER PARK GOLF COURSE LAKE 9.

BY THEIR SIGNATURE BELOW THE UNDERSIGNED CERTIFY THEY ARE RESIDENTS AND/OR PROPERTY OWNERS OF MINNESOTA.

PRINTED NAME	ADDRESS	SIGNATURE	DULUTH ZIP
SCOTT A HAGBERG	4125 COOKE ST	Scott A. Hagberg	DULUTH 55804
Janet Anelli	5023 London Rd	Janet Anelli	DULUTH 55804
Megan Spitzum	4717 Oakley	Megan Spitzum	DULUTH 55804
Eric Frost	30 Savila Rd	Eric Frost	ESKO 55737
Ryan Michela	4929 Idlewild St	Ryan Michela	DULUTH 55804
Melina Lind	5317 Oakley St.	Melina Lind	DULUTH 55804
Jon Lind	5317 Oakley St.	Jon Lind	DULUTH 55804
Kathleen Allen	4521 Pitt St	Kathleen Allen	DULUTH, 55804
Jeff Linder	1900 Lester River Rd	Jeff Linder	DULUTH, 55804
Deak's Isaksson	2317 Skow Dr	Deak's Isaksson	DULUTH 55804
Anita Hanna	3129 Beyer Rd	Anita Hanna	DULUTH 55812
Jason Welles	600 N 23rd Ave E	Jason Welles	DULUTH 55811
Peter Bussa	2228 Nanticoke St.	Peter Bussa	DULUTH 55811
Chris Reimer	4116 Oak Bend Dr	Chris Reimer	DULUTH 55803
Gohn Kroeschel	5305 Sawmill Rd	Gohn Kroeschel	DULUTH 55803
Robert Olson	4610 W Pioneer Rd	Robert Olson	DULUTH 55803
Joanne Chesney	4773 Chesney Rd	Joanne Chesney	DULUTH 55803
RALPH JOHNSON	4274 ANDERSON RD	Ralph Johnson	DULUTH 55811

DULUTHIAN'S FOR PRESERVATION OF MINNESOTA'S MOST LIVABLE CITY

P.O. BOX 16065 DULUTH, MN. 55816 Visit our Website <https://www.jmkp-di.org>

February 24, 2022

PETITION TO THE MINNESOTA ENVIRONMENTAL QUALITY BOARD TO REQUIRE THE CITY OF DULUTH/DULUTH ECONOMIC DEVELOPMENT AUTHORITY TO PREPARE AN EAW ON THE MIXED USE DEVELOPMENT PROPOSED FOR THE 37 ACRE PARCEL OF THE LESTER PARK GOLF COURSE LAKE 9.

BY THEIR SIGNATURE BELOW THE UNDERSIGNED CERTIFY THEY ARE RESIDENTS AND/OR PROPERTY OWNERS OF MINNESOTA.

PRINTED NAME	ADDRESS	SIGNATURE	
MARLA AHLGREN	243 Freeman Rd Cloquet	Marla Ahlgr	55720
MARGARET C. SKINNER	4709 JAG ST	Margaret C Skinner	55720
KATHLEEN M HANSON	4930 Trails End Dr Hermantown	Kath M Han	55811
PAMELA M. PRUDHOMME	319 Hickory St Duluth, MN	Pamela M Prudhomme	55811
Kathy Levine	1125 E. Skyline Pkwy Duluth MN.	Kathy Levine	55805
Paul Johnson	636 Levesque Ave Duluth MN	Paul Johnson	55803
Michael Johnson	3719 N RIDGERD	Michael Johnson	DULUTH MN 55804
Dennis Hughes	4718 GLADSTONE ST	Dennis Hughes	DULUTH MN 55804
Tim Allen	4521 Pitt St. Duluth Mn.	Timothy Allen	55804
Kay Allen	4521 Pitt St Duluth mn	Kay Allen	55804
Michael Johnson	3747 Keene Creek Lane Hermantown	Michael Johnson	55811
FRANK LEFS	3708 Greysolon Rd Duluth Mn	Frank Lefs	55804

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PRINTED NAME	ADDRESS	SIGNATURE	
Sharon Bergquist	5524 Highland St Duluth	Sharon Bergquist	55807
MARK FIEGE	5021 McComb Rd Duluth	Mark Fiege	55803
Patricia Carlson	1715 Trail Dr Duluth	Patricia A. Carlson	55803
Judy Rindor Arnold	6650 Bergstrom Rd Duluth	Judy Rindor Arnold	55803
Jinger Lauritzen	118 Beebeek Blvd Duluth	Jinger Lauritzen	55811
ROSEMARY TARNOWSKI	118 Coffee Creek Blvd #202	Rosemary H. Tarnowski	DULUTH 55811
Lorna J Burda	1812 Rice Lake Rd	Lorna J. Burda	DULUTH 55811
Lawrence J. Burda	"	"	DULUTH 55811
RONALD HEIN	1214 BUTTERNUT AVE	Ronald H. Hein	DULUTH 55811
Jennifer Wilson	4279 Birch Valley	Jennifer B. Wilson	HERMANTOWN 55811
Phillip Carlson	4066 West Main St Duluth	Phillip Carlson	55811
DALE JONES	5724 River La	Dale Jones	DULUTH 55803
STALE EKLUND	1571 Circle Dr Duluth	Stale Eklund	CARLTON MN 55718
Byron Gorman	Box 33 Knife River	Byron E. Gorman	55609
DAVID WENBERG	5072 Starbuck #19 Hermantown	David Wenberg	55811
FRED HAUGEN	4126 Dodge St.	Fred Haugen	DULUTH 55804
Forrest Lundberg	4929 Tioga St	Forrest Lundberg	DULUTH 55804
Mark	5131 Miller Trk Hwy Hermantown	Mark	HERMANTOWN 55811

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PRINTED NAME	ADDRESS	SIGNATURE
DONALD A. LARSON	1102 COMO AVE	Donald A. Larson DULUTH 55811
JO ANN LARSON	1102 COMO AVENUE	Jo Ann M. Larson DULUTH 55811
Roberta Johnson	405 W. Watonna St.	Roberta Johnson DULUTH 55803
Helen Stellmaker	4920 Wyoming St	Helen Stellmaker DULUTH 55804
Carol Lilyquist	1122 Como Avenue	Carol Lilyquist DULUTH 55811
Tom De Sutter	5627 N. Shore Dr	Tom De Sutter DULUTH 55864
Glen Nelson	2009 Hutchinson Rd	Duluth, MN 55811
Marilyn Nelson	2009 Hutchinson Rd	Duluth, MN 55811
GARY PAGE	2974 EXETER ST.	Duluth, MN, 55806

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PRINTED NAME	ADDRESS	SIGNATURE	
DEWANE Kolar	2021 E 9th St	[Signature]	DULUTH 55812
JAMES TRACHSEL	420 W. FARIBAUT ST	[Signature]	DULUTH 55803
GAY TRACHSEL	420 W. Faribault	[Signature]	DULUTH 55803
Heitha Gille	4117 W 8th St	[Signature]	DULUTH 55803
JAMES SCHULZETENBERG	4117 W 8th St	[Signature]	DULUTH 55803
PATRICK MILINOWSKI	1221 BIRCHWOOD DR	[Signature]	DULUTH 55810
Kelly Kinnunen		[Signature]	HERMANTOWN 55811
Christina Sandwig	4892 Tomcrack Lane Unit B	[Signature]	
Carol Kinnunen		[Signature]	
John C. McGraw	119 W. 9th St Duluth	[Signature]	55806
Geraldine F. McGraw	119 W 9th St Duluth	[Signature]	55806

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PRINTED NAME	ADDRESS	SIGNATURE	
DOUG McKERCHER	333 COFFEE CRK BLVD DULUTH MN	<i>Doug McKercher</i>	DULUTH 55811
LINDA BLOOM	333 COFFEE CRK BLVD DULUTH MN - 55811	<i>Linda Bloom</i>	
KAREN NOVITZKI	2822 PARKWOOD LN DULUTH 55811	<i>Karen Novitzki</i>	

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PRINTED NAME	ADDRESS	SIGNATURE	
Bob McKencher	428. No. 59th W	Bob McKencher	DULUTH 55807
James D. Orump	4260 Lindahl Hmtn	James D. Orump	55811
Randy Bowen	4179 Lyndal Rd	Randy Bowen	HERMANTOWN 55811
Beth Freeman	5846 Roserd	Beth Freeman	HERMANTOWN 55811
Steve Freeman	" "	Steve Freeman	HERMANTOWN 55811
DONNA SWANSON	1116 2ND AVE PROCTOR	Donna Swanson	55811
TIMBER SWANSON	1116 2ND AVE PROCTOR	Timber Swanson	55806
Chuck Bergquist	5506 Lavaglen Rd	Chuck Bergquist	HERMANTOWN 55811
DENNIS STURDEWANT	6171 LAKEWOOD RD	Dennis Sturdevant	DULUTH 55804
DICK PRILEY	120 SUMMIT ST	Dick Priley	DULUTH 55803
DICK KUPCZYNSKI	4091 REINKE RD	Dick Kupczynski	HERMANTOWN 55811
Randy Miller	1915 DENIM ST	Randy Miller	DULUTH 55811
Neil Busch	2525 Plymouth Ave	Neil Busch	DULUTH 55811
Terry A. Olson	2610 Bayhill Trail	Terry A. Olson	DULUTH 55807
KENNETH KLEMMACK	326 S. 90TH AVE	Kenneth Klemmack	DULUTH 55808
James S. Anderson	54 Arbutus Dr	James S. Anderson	DULUTH 55810
James Christenson	3979 OLD MIDWAY RD	James Christenson	HERMANTOWN 55810
JAMES GILBERT	910 6TH ST	James Gilbert	DULUTH 55805
ROBERT ROSKOSKI	1911 DENIM ST	Robert Roskoski	DULUTH 55811
GARY SORENSEN	4129 JEFFREY RD	Gary Sorensen	DULUTH 55810
DENNIS SAVOY	1214 STANFORD AVE	Dennis L. Savoy	DULUTH 55811
GARY BERSON	1882 E 5TH ST	Gary Berson	DULUTH 55805
LEA SORENSEN	4129 JEFFREY RD	Lea Sorensen	DULUTH 55810

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PRINTED NAME	ADDRESS	SIGNATURE
<i>Leahis Telepa</i>	3906 Trinity Rd - Duluth 55811	<i>Leahis Telepa</i>
BRANDY SORENSEN	4732 GLENWOOD ST-DULUTH	<i>Brandy Sorensen</i> 55804

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PRINTED NAME	ADDRESS	SIGNATURE	
Gary Westerff	2202 Lester River Rd 55804	Gary Westerff	DULUTH
Steve Moellen	2231 Pershing St 55811	Steve Moellen	DULUTH
ROBERT MYERS	1601 E 8th St 55812	Robert Myers	DULUTH
James Stearnson	28 W. Cleveland St 55801	James Stearnson	DULUTH
Erika Bassett	410 N 9th Ave E 55805	Erika Bassett	DULUTH
Paul Sandholm	3933 Fountain Gate	Paul Sandholm	DULUTH 55811
Pam Merviel	1437 LaVague 55806	Pam Merviel	HERMANTON 55811
Glen Merviel	1637 LAVAGUE RD	Glen Merviel	HERMANTON 55811
Margaret Edens	6035 E. Superior St	Margaret Edens	DULUTH 55804
Binky Moen	1111 Stanford Ave	Binky Moen	DULUTH 55811
Zach Tarkan	817 LIBBY CIR	Zach Tarkan	PROTOR 55810
DAVE GILFILL	3236 TRUSDAV Rd.	Dave Gilfill	55811
Tom Kemp	Duluth, Minn	Tom Kemp	DULUTH 55811
Lowell Olson	3953 Fountain Gate	Lowell Olson	DULUTH
Ron W. Linden	5051 ALPINE DR. 55811	Ron W. Linden	DULUTH 55806
Ron M. Linden	302-18th Ave West	Ron M. Linden	DULUTH 55806
John CRAIN	616 N 7th Ave W	John Crain	DULUTH 55802
Al Johnson	3327 MN Ave	Al Johnson	DULUTH 55812
Valerie Backovich	1732 E 4th St Apt W	Valerie Backovich	DULUTH 55804
LEN WEISS	4607 Jay St	Len Weiss	DULUTH 55812
RICHARD M. HARRIS	274 SKIFF LANE RD. E	Richard Harris	DULUTH 55803
John Loiseille	1525 E Superior St	John Loiseille	DULUTH 55803
JOAN LOISEILLE	422 West Quatana	Joan Loiseille	DULUTH 55811
Kathy Harper	422 West Quatana	Kathy Harper	DULUTH 55811
John P. Horner	2032 Springdale Cir	John P. Horner	DULUTH 55811
John A. Horner	" " "	John A. Horner	DULUTH 55811

55812

RESOLUTION DENYING PETITION TO ORDER AN EAW FOR A 37 ACRE MIXED USE DEVELOPMENT AT LESTER PARK GOLF COURSE

WHEREAS, on May 16, 2022, the Minnesota Environmental Quality Board (the “EQB”) notified the City of Duluth that a citizen petition (the “Petition”) meeting the requirements of Minn Rules 4410.1100 had been filed with the EQB requesting that an Environmental Assessment Worksheet (“EAW”) be required for a proposed mixed use development covering 37 acres of the Lake 9 of the Lester Golf Course; and

WHEREAS, that the EQB identified the City of Duluth as the Responsible Governmental Unit (“RGU”) for the Petition; and

WHEREAS, pursuant to Section 2-41 of the City Code, the planning commission serves as the responsible governmental unit (the “RGU”) pertaining to the conduct of environmental reviews pursuant to Minnesota Statutes Chapter 116D and the applicable state regulations; and

WHEREAS, pursuant to Section 4410.1100 Subp. 6, the RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects but the RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects, and in considering the evidence, the RGU must take into account the factors listed in Minn Rule 4410.1700, subpart 7; and

WHEREAS, the Petition states that there are several environmental considerations related to a potential project: the project is incompatible with low density development in the area; the project is incompatible with nearby parks and trails; the project will generate noise, dust and odors during construction; the project will create barriers and hazards to birds and raptors in the form of 80 to 100 foot high concrete and plate glass structures; the project will cause the loss of unique scenic views; the project impacts demand for fire flows and daily potable water consumption; and the project’s environmental, social, and financial impacts will degrade the environment and reduce recreation opportunities and the quality of life city wide; and

WHEREAS, on August 8, 2014, the City of Duluth issued an RFP seeking a qualified housing developer to purchase all or a portion of the 268 acres of the Lester Park Golf Course for new commercial or housing development, however no qualified proposals were submitted and/or accepted; and

WHEREAS, on January 29, 2020, the City of Duluth issued, and reissued on April 24, 2020, an RPF seeking a qualified developer to purchase 50 acres of the Lester Park Golf Course for a new mixed-use residential development, however no qualified proposals were submitted and/or accepted; and

WHEREAS, on September 22, 2021, the Duluth Economic Development Authority discussed a preliminary design concept to develop 37.5 acres of the property, but no specific housing size or density was discussed other a concept plan showing a concept that indicated three development parcels: Affordable Phase I 3.8 Acres, Affordable Phase II 3.8 acres, and Mixed Use/Mixed Income Phased 28 Acres; and

WHEREAS, there is not a specific project proposed for Lester Park Golf Course to date and there has not been filed an application to replat Property or for any other zoning permit or authorization to proceed with any development of the Property; and

WHEREAS, the most likely trigger for a mandatory EAW would be either 4410.4300 sub 19, which mandates an EAW for housing developments of at least 250 unattached units or 375 attached units in a city not located in the seven county metro area that has filed with the EQB a certification that it has adopted a comprehensive plan, or 4410.4300 sub 36, which mandates an EAW for land use conversion, for golf courses, for residential development where the lot size is less than five acres, and other projects resulting in the permanent conversion of 80 or more acres of agricultural, native prairie, forest, or naturally vegetated land; and

WHEREAS, the need for an EAW is premature as there is the desire for general housing development in the future but there has not been specific project proposed in this area to date;

WHEREAS, pursuant to Minn. Rules 4410.1700 Subp. 7, the RGU is required to consider the following criteria in deciding whether a project has the potential for significant environmental effects:

- §
- A. type, extent, and reversibility of environmental effects;
 - B. cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;
 - C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
 - D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

RESOLVED, that the Petition of petitioners herein to require an EAW of the 37.5 acre mixed use development at Lester Golf Course is hereby denied, by a vote of ____, with ____ Planning Commissioners absent, at the June 14, 2022, Planning Commission meeting.

RESOLUTION AFFIRMING PETITION TO ORDER AN EAW FOR A 37 ACRE MIXED USE DEVELOPMENT AT LESTER PARK GOLF COURSE

WHEREAS, on May 16, 2022, the Minnesota Environmental Quality Board (the “EQB”) notified the City of Duluth that a citizen petition (the “Petition”) meeting the requirements of Minn Rules 4410.1100 had been filed with the EQB requesting that an Environmental Assessment Worksheet (“EAW”) be required for a proposed mixed use development covering 37 acres of the Lake 9 of the Lester Golf Course; and

WHEREAS, that the EQB identified the City of Duluth as the Responsible Governmental Unit (“RGU”) for the Petition; and

WHEREAS, pursuant to Section 2-41 of the City Code, the planning commission serves as the responsible governmental unit (the “RGU”) pertaining to the conduct of environmental reviews pursuant to Minnesota Statutes Chapter 116D and the applicable state regulations; and

WHEREAS, pursuant to Section 4410.1100 Subp. 6, the RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects but the RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects, and in considering the evidence, the RGU must take into account the factors listed in part Minn Rule 4410.1700, subpart 7; and

WHEREAS, the Petition states that there are several environmental considerations related to a potential project: the project is incompatible with low density development in the area; the project is incompatible with nearby parks and trails; the project will generate noise, dust and odors during construction; the project will create barriers and hazards to birds and raptors in the form of 80 to 100 foot high concrete and plate glass structures; the project will cause the loss of unique scenic views; the project impacts demand for fire flows and daily potable water consumption; and the project’s environmental, social, and financial impacts will degrade the environment and reduce recreation opportunities and the quality of life city wide; and

WHEREAS, the most likely trigger for a mandatory EAW would be either 4410.4300 sub 19, which mandates an EAW for housing developments of at least 250 unattached units or 375 attached units in a city not located in the seven county metro area that has filed with the EQB a certification that it has adopted a comprehensive plan, or 4410.4300 sub 36, which mandates an EAW for land use conversion, for golf courses, for residential development where the lot size is less than five acres, and other projects resulting in the permanent conversion of 80 or more acres of agricultural, native prairie, forest, or naturally vegetated land; and

WHEREAS, pursuant to Minn. Rules 4410.1700 Subp. 7, the RGU is required to consider the following criteria in deciding whether a project has the potential for significant environmental effects:

- §
- A. type, extent, and reversibility of environmental effects;
 - B. cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative

potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;

C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and

D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

RESOLVED, that based on the application for the rezoning of the Property and the Applicant's presentation to the Commission and the evidence adduced at the above-referenced public hearing, the Commission hereby makes the following findings:

- A.
- B.
- C.
- D.

FURTHER RESOLVED, that the Petition of petitioners herein to require an EAW prior to the adoption of the proposed rezoning of the Property is hereby affirmed by a vote of ____, with ____ Planning Commissioners absent, at the June 14, 2022, Planning Commission meeting.

4410.4300 MANDATORY EAW CATEGORIES.

Subpart 1. **Threshold test.** An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 37, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

If the proposed project is an expansion or additional stage of an existing project, the cumulative total of the proposed project and any existing stages or components of the existing project must be included when determining if a threshold is met or exceeded if construction was begun within three years before the date of application for a permit or approval from a governmental unit for the expansion or additional stage but after April 21, 1997, except that any existing stage or component that was reviewed under a previously completed EAW or EIS need not be included.

Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when comparing the project or projects to the thresholds of this part and part 4410.4400.

Subp. 2. **Nuclear fuels and nuclear waste.** Items A to F designate the RGU for the type of project listed:

A. For construction or expansion of a facility for the storage of high level nuclear waste, other than an independent spent-fuel storage installation, the EQB is the RGU.

B. For construction or expansion of a facility for the storage of low level nuclear waste for one year or longer, the MDH is the RGU.

C. For expansion of a high level nuclear waste disposal site, the EQB is the RGU.

D. For expansion of a low level nuclear waste disposal site, the MDH is the RGU.

E. For expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel, the EQB is the RGU.

F. For construction or expansion of an on-site pool for temporary storage of spent nuclear fuel, the EQB is the RGU.

Subp. 3. **Electric-generating facilities.** Items A to D designate the RGU for the type of project listed:

A. For construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of 25 megawatts or more but less than 50 megawatts and for which an air permit from the PCA is required, the PCA is the RGU.

B. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 25 megawatts or more but less than 50 megawatts and for which an air permit from the PCA is not required, the local governmental unit is the RGU.

C. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, the PUC is the RGU, and

environmental review must be conducted according to parts 7849.1000 to 7849.2100 and chapter 7850.

D. For construction of a wind energy conversion system, as defined in Minnesota Statutes, section 216F.01, designed for and capable of operating at a capacity of 25 megawatts or more, the PUC is the RGU, and environmental review must be conducted according to chapter 7854.

Subp. 4. **Petroleum refineries.** For expansion of an existing petroleum refinery that increases the refinery's capacity by 10,000 barrels per day or more, the PCA is the RGU.

Subp. 5. **Fuel conversion facilities.**

A. Subitems (1) and (2) designate the RGU for the type of project listed:

(1) For construction of a new fuel conversion facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input, the PCA is the RGU.

(2) For construction of a new fuel conversion facility for the production of alcohol fuels that would have the capacity to produce 5,000,000 gallons or more per year of alcohol, the PCA is the RGU.

B. An EAW is required if an ethanol plant or biobutanol facility meets or exceeds thresholds of other categories of actions for which EAWs must be prepared.

Subp. 6. **Transmission lines.** For construction of a transmission line at a new location with a nominal capacity of between 70 kilovolts and 100 kilovolts with 20 or more miles of its length in Minnesota, the EQB is the RGU. For construction of a high-voltage transmission line and associated facilities, as defined in part 7850.1000, the PUC is the RGU. Environmental review must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

Subp. 7. **Pipelines.** Items A to D designate the RGU for the type of project listed:

A. For routing of a pipeline, greater than six inches in diameter and having more than 0.75 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivatives, the EQB is the RGU.

B. For the construction of a pipeline for distribution of natural or synthetic gas under a license, permit, right, or franchise that has been granted by the municipality under authority of Minnesota Statutes, section 216B.36, designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:

(1) five miles if the pipeline will occupy streets, highways, and other public property;
or

(2) 0.75 miles if the pipeline will occupy private property;
the EQB or the municipality is the RGU.

C. For construction of a pipeline to transport natural or synthetic gas subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et. seq., designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:

(1) five miles if the pipeline will be constructed and operated within an existing right-of-way; or

(2) 0.75 miles if construction or operation will require new temporary or permanent right-of-way;

the EQB is the RGU. This item shall not apply to the extent that the application is expressly preempted by federal law, or under specific circumstances when an actual conflict exists with applicable federal law.

D. For construction of a pipeline to convey natural or synthetic gas that is not subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et seq.; or to a license, permit, right, or franchise that has been granted by a municipality under authority of Minnesota Statutes, section 216B.36; designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than 0.75 miles, the EQB is the RGU.

Items A to D do not apply to repair or replacement of an existing pipeline within an existing right-of-way or to a pipeline located entirely within a refining, storage, or manufacturing facility.

Subp. 8. **Transfer facilities.** Items A to C designate the RGU for the type of project listed:

A. For construction of a new facility designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation or the expansion of an existing facility by these respective amounts, the PCA is the RGU.

B. For construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the PCA is the RGU.

C. The PCA is the RGU for a silica sand project that:

(1) is designed to store or is capable of storing more than 7,500 tons of silica sand; or

(2) has an annual throughput of more than 200,000 tons of silica sand.

Subp. 9. **Underground storage.** Items A and B designate the RGU for the type of project listed:

A. For expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (a), the DNR is the RGU.

B. For expansion of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (b), the DNR is the RGU.

Subp. 10. **Storage facilities.** Items A to H designate the RGU for the type of project listed:

A. For construction of a new facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal or the expansion of an existing facility by these respective amounts, the PCA is the RGU.

B. For construction of a new major facility, as defined in part 7151.1200, that results in a designed storage capacity of 1,000,000 gallons or more of hazardous materials, the PCA is the RGU.

C. For expansion of an existing major facility, as defined in part 7151.1200, with a designed storage capacity of 1,000,000 gallons or more of hazardous materials when the expansion adds a net increase of 1,000,000 gallons or more of hazardous materials, the PCA is the RGU.

D. For expansion of an existing facility that has less than 1,000,000 gallons in total designed storage capacity of hazardous materials when the net increase in designed storage capacity results in 1,000,000 gallons or more of hazardous materials, the PCA is the RGU.

E. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of liquefied natural gas, as defined in Minnesota Statutes, section 299F.56, subdivision 14, or synthetic gas, as defined in Minnesota Statutes, section 216B.02, subdivision 6b, the PUC is the RGU, except as provided in item G.

F. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of anhydrous ammonia, the MDA is the RGU, except as provided in item G.

G. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of a combination of liquefied natural gas, as defined in Minnesota Statutes, section 299F.56, subdivision 14; synthetic gas, as defined in Minnesota Statutes, section 216B.02, subdivision 6b; or anhydrous ammonia, the PUC is the RGU.

H. The PCA is the RGU for a silica sand project that:

- (1) is designed to store or is capable of storing more than 7,500 tons of silica sand; or
- (2) has an annual throughput of more than 200,000 tons of silica sand.

Subp. 11. **Metallic mineral mining and processing.** Items A to C designate the RGU for the type of project listed:

A. For mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite, the DNR is the RGU.

B. For expansion of a stockpile, tailings basin, or mine by 320 or more acres, the DNR is the RGU.

C. For expansion of a metallic mineral plant processing facility that is capable of increasing production by 25 percent per year or more, provided that increase is in excess of 1,000,000 tons per year in the case of facilities for processing natural iron ore or taconite, the DNR is the RGU.

Subp. 12. **Nonmetallic mineral mining.** Items A to D designate the RGU for the type of project listed:

A. For development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence, the DNR is the RGU.

B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of land to a mean depth of ten feet or more during its existence, the local governmental unit is the RGU.

C. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 20 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 40 acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the local governmental unit is the RGU.

D. For development of a silica sand project that excavates 20 or more acres of land to a mean depth of ten feet or more during the project's existence, the local governmental unit is the RGU.

Subp. 13. **Paper or pulp processing mills.** For expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or more, the PCA is the RGU.

Subp. 14. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. For construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of the following thresholds, expressed as gross floor space, the local governmental unit is the RGU:

- (1) unincorporated area, 150,000 square feet;
- (2) third or fourth class city, 300,000 square feet;
- (3) second class city, 450,000 square feet; and
- (4) first class city, 600,000 square feet.

B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the local governmental unit is the RGU:

- (1) unincorporated area, 100,000 square feet;
- (2) third or fourth class city, 200,000 square feet;
- (3) second class city, 300,000 square feet; and

(4) first class city, 400,000 square feet.

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 13, 16, 17, 20, 23, 25, 29, or 34, or part 4410.4400, subparts 2 to 10, 12, 13, 17, or 22, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 15. **Air pollution.** Items A and B designate the RGU for the type of project listed.

A. For construction of a stationary source facility that generates 250 tons or more per year or modification of a stationary source facility that increases generation by 250 tons or more per year of any single air pollutant, other than those air pollutants described in item B, after installation of air pollution control equipment, the PCA is the RGU.

B. For construction of a stationary source facility that generates a combined 100,000 tons or more per year or modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide equivalents, the PCA is the RGU. For purposes of this subpart, "greenhouse gases" include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride, and their combined carbon dioxide equivalents shall be computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in Table A-1 to subpart A of Code of Federal Regulations, title 40, part 98, Global Warming Potentials, as amended, and summing the resultant value for each.

Subp. 16. **Hazardous waste.** Items A to D designate the RGU for the type of project listed:

A. For construction of a new or expansion of an existing hazardous waste disposal facility, the PCA is the RGU.

B. For construction of a new facility for hazardous waste storage or treatment that is generating or receiving 1,000 kilograms or more per month of hazardous waste or one kilogram or more per month of acute hazardous waste, the PCA is the RGU.

C. For expansion of an existing facility for hazardous waste storage or treatment that increases the facility's capacity by ten percent or more, the PCA is the RGU.

D. For construction or expansion of a facility that sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be stored for a time period in excess of 90 days, if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock, the PCA is the RGU.

Subp. 17. **Solid waste.** Items A to G designate the RGU for the type of project listed:

A. For construction of a mixed municipal solid waste land disposal facility for up to 100,000 cubic yards of waste fill per year, the PCA is the RGU.

B. For expansion by 25 percent or more of previously permitted capacity of a mixed municipal solid waste land disposal facility for up to 100,000 cubic yards of waste fill per year, the PCA is the RGU.

C. For construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year, the PCA is the RGU.

D. For construction or expansion of a mixed municipal solid waste energy recovery facility or incinerator or use of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a permitted capacity of 30 tons or more per day of input, the PCA is the RGU.

E. For construction or expansion of a mixed municipal solid waste compost facility or a refuse-derived fuel production facility with a permitted capacity of 50 tons or more per day of input, the PCA is the RGU.

F. For expansion by at least ten percent but less than 25 percent of previously permitted capacity of a mixed municipal solid waste land disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.

G. For construction or expansion of a mixed municipal solid waste energy recovery facility ash landfill receiving ash from an incinerator that burns refuse-derived fuel or mixed municipal solid waste, the PCA is the RGU.

Subp. 18. **Wastewater systems.** Items A to F designate the RGU for the type of project listed:

A. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 1,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with a capacity less than 20,000,000 gallons per day, the PCA is the RGU.

B. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with the capacity of 20,000,000 gallons or greater, the PCA is the RGU.

C. For expansion or modification of an existing municipal or domestic wastewater treatment facility that results in an increase by 50 percent or more and by at least 200,000 gallons per day of the facility's average wet weather design flow capacity, the PCA is the RGU.

D. For construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 200,000 gallons per day or more, the PCA is the RGU.

E. For expansion or modification of an existing industrial process wastewater treatment facility that increases the facility's design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, the PCA is the RGU.

F. For construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, the PCA is the RGU. This category does not apply to industrial process wastewater treatment facilities that discharge to a publicly owned treatment works or to a tailings basin reviewed according to subpart 11, item B.

Subp. 19. **Residential development.** An EAW is required for residential development if the total number of units that may ultimately be developed on all contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the RGU shall include the number of units in any plans of the proposer; for land for which the proposer has not yet prepared plans, the RGU shall use as the number of units the product of the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plans of the proposer for those lands for which plans exist. If the total project requires review but future phases are uncertain, the RGU may review the ultimate project sequentially in accordance with part 4410.1000, subpart 4.

If a project consists of mixed unattached and attached units, an EAW must be prepared if the sum of the quotient obtained by dividing the number of unattached units by the applicable unattached unit threshold, plus the quotient obtained by dividing the number of attached units by the applicable attached unit threshold, equals or exceeds one.

The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development of:

A. 50 or more unattached or 75 or more attached units in an unsewered unincorporated area or 100 unattached units or 150 attached units in a sewerer unincorporated area;

B. 100 unattached units or 150 attached units in a city that does not meet the conditions of item D;

C. 100 unattached units or 150 attached units in a city meeting the conditions of item D if the project is not consistent with the adopted comprehensive plan; or

D. 250 unattached units or 375 attached units in a city within the seven-county Twin Cities metropolitan area that has adopted a comprehensive plan under Minnesota Statutes, section 473.859, or in a city not located within the seven-county Twin Cities metropolitan area that has filed with the EQB chair a certification that it has adopted a comprehensive plan containing the following elements:

(1) a land use plan designating the existing and proposed location, intensity, and extent of use of land and water for residential, industrial, agricultural, and other public and private purposes;

(2) a transportation plan describing, designating, and scheduling the location, extent, function, and capacity of existing and proposed local public and private transportation facilities and services;

(3) a sewage collection system policy plan describing, designating, and scheduling the areas to be served by the public system, the existing and planned capacities of the public system, and the standards and conditions under which the installation of private sewage treatment systems will be permitted;

(4) a capital improvements plan for public facilities; and

(5) an implementation plan describing public programs, fiscal devices, and other actions to be undertaken to implement the comprehensive plan, and a description of official controls addressing the matters of zoning, subdivision, private sewage systems, and a schedule for the implementation of those controls. The EQB chair may specify the form to be used for making a certification under this item.

Subp. 19a. Residential development in shoreland outside of the seven-county Twin Cities metropolitan area.

A. The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development located wholly or partially in shoreland outside the seven-county Twin Cities metropolitan area of a type listed in items B to E. For purposes of this subpart, "riparian unit" means a unit in a development that abuts a public water or, in the case of a development where units are not allowed to abut the public water, is located in the first tier of the development as provided under part 6120.3800, subpart 4, item A. If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one.

B. A development containing 15 or more unattached or attached units for a sensitive shoreland area or 25 or more unattached or attached units for a nonsensitive shoreland area, if any of the following conditions is present:

(1) less than 50 percent of the area in shoreland is common open space;

(2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or

(3) if any portion of the project is in an unincorporated area, the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that would be allowable on the parcel calculated according to the applicable lot area standards for nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b.

C. A development containing 25 or more unattached or attached units for a sensitive shoreland area or 50 or more unattached or attached units for a nonsensitive shoreland area, if none of the conditions listed in item B is present.

D. A development in a sensitive shoreland area that provides permanent mooring space for at least one nonriparian unattached or attached unit.

E. A development containing at least one unattached or attached unit created by the conversion of a resort, motel, hotel, recreational vehicle park, or campground, if either of the following conditions is present:

(1) the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that would be allowable on the parcel calculated according to the applicable lot area standards for nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or

(2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and 2b.

F. An EAW is required for residential development if the total number of units that may ultimately be developed on all contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the RGU shall include the number of units in any plans of the proposer. For land for which the proposer has not yet prepared plans, the RGU shall use as the number of units the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plan of the proposer for those lands for which plans exist.

Subp. 20. Campgrounds and RV parks. For construction of a seasonal or permanent recreational development, accessible by vehicle, consisting of 50 or more sites, or the expansion of such a facility by 50 or more sites, the local governmental unit is the RGU.

Subp. 20a. Resorts, campgrounds, and RV parks in shorelands. The local governmental unit is the RGU for construction or expansion of a resort or other seasonal or permanent recreational development located wholly or partially in shoreland, accessible by vehicle, of a type listed in item A or B:

A. construction or addition of 25 or more units or sites in a sensitive shoreland area or 50 units or sites in a nonsensitive shoreland area if at least 50 percent of the area in shoreland is common open space; or

B. construction or addition of 15 or more units or sites in a sensitive shoreland area or 25 or more units or sites in a nonsensitive shoreland area, if less than 50 percent of the area in shoreland is common open space.

If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one.

Subp. 21. **Airport projects.** Items A and B designate the RGU for the type of project listed:

A. For construction of a paved, new airport runway, the DOT, local governmental unit, or Metropolitan Airports Commission is the RGU.

B. For construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway, the DOT, local governmental unit, or Metropolitan Airports Commission is the RGU. The RGU is selected according to part 4410.0500, subpart 5.

Subp. 22. **Highway projects.** Items A to C designate the RGU for the type of project listed:

A. For construction of a road on a new location over one mile in length that will function as a collector roadway, the DOT or local governmental unit is the RGU.

B. For construction of additional through lanes or passing lanes on an existing road for a length of two or more miles, exclusive of auxiliary lanes, the DOT or local governmental unit is the RGU.

C. For the addition of one or more new interchanges to a completed limited access highway, the DOT or local governmental unit is the RGU.

Subp. 23. **Barge fleeting.** For construction of a new or expansion of an existing barge fleeting facility, the DOT or port authority is the RGU.

Subp. 24. **Water appropriation and impoundments.** Items A to C designate the RGU for the type of project listed:

A. For a new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water, the DNR is the RGU.

B. For a new permanent impoundment of water creating additional water surface of 160 or more acres or for an additional permanent impoundment of water creating additional water surface of 160 or more acres, the DNR is the RGU.

C. For construction of a dam with an upstream drainage area of 50 square miles or more, the DNR is the RGU.

Subp. 25. **Marinas.** For construction or expansion of a marina or harbor that results in a 20,000 or more square foot total or a 20,000 or more square foot increase of water surface area used temporarily or permanently for docks, docking, or maneuvering of watercraft, the local governmental unit is the RGU.

Subp. 26. **Stream diversion.** For a diversion, realignment, or channelization of any designated trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles unless exempted by part 4410.4600, subpart 14, item E, or 17, the DNR or local governmental unit is the RGU.

Subp. 27. **Public waters, public waters wetlands, and wetlands.** Items A and B designate the RGU for the type of project listed:

A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit according to Minnesota Statutes, chapter 103G, the DNR or local governmental unit is the RGU.

B. For projects that will cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, regardless of type, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local governmental unit is the RGU. This item does not apply to projects exempted by part 4410.4600, subpart 14.

Subp. 28. **Forestry.** Items A and B designate the RGU for the type of project listed:

A. For harvesting timber for commercial purposes on public lands within a state park, a historical area, a wilderness area, a scientific and natural area, a wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or a critical area that does not have an approved plan under Minnesota Statutes, section 86A.09 or 116G.07, the DNR is the RGU.

B. For a clear-cutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland area and within 100 feet of the ordinary high water mark of the lake or river, the DNR is the RGU.

Subp. 29. **Animal feedlots.** The PCA is the RGU for the types of projects listed in items A and B unless the county will issue the feedlot permit, in which case the county is the RGU. However, the county is not the RGU prior to January 1, 2001.

A. For the construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more if the facility is not in an area listed in item B.

B. For the construction of an animal feedlot facility of more than 500 animal units or expansion of an existing animal feedlot facility by more than 500 animal units if the facility is located wholly or partially in any of the following sensitive locations: shoreland; a delineated flood plain, except that in the flood plain of the Red River of the North the sensitive area includes only land within 1,000 feet of the ordinary high water mark; a state or federally designated wild and scenic river district; the Minnesota River Project Riverbend area; the Mississippi headwaters area; or an area within a drinking water supply management area delineated under chapter 4720 where the aquifer is identified in the wellhead protection plan as vulnerable to contamination; or within 1,000 feet of a known sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley.

The provisions of part 4410.1000, subpart 4, regarding connected actions do not apply to animal feedlots. The provisions of part 4410.1000, subpart 4, regarding phased actions apply to feedlots.

With the agreement of the proposers, the RGU may prepare a single EAW to collectively review individual sites of a multisite feedlot proposal.

Subp. 30. **Natural areas.** For projects resulting in permanent physical encroachment on lands within a national park, a state park, a wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, or a scientific and natural area when the encroachment is inconsistent with laws applicable to or the management plan prepared for the recreational unit, the DNR or local governmental unit is the RGU.

Subp. 31. **Historical places.** For the destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places, the permitting state agency or local governmental unit is the RGU, except this does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966, United States Code, title 54, section 306108, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United States Code, title 49, section 303, or projects reviewed by a local heritage preservation commission certified by the State Historic Preservation Office pursuant to Code of Federal Regulations, title 36, sections 61.5 and 61.7. This subpart does not apply to a property located within a designated historic district if the property is listed as "noncontributing" in the official district designation or if the State Historic Preservation Office issues a determination that the property is noncontributing.

Subp. 32. **Mixed residential and industrial-commercial projects.** If a project includes both residential and industrial-commercial components, the project must have an EAW prepared if the sum of the quotient obtained by dividing the number of residential units by the applicable residential threshold of subpart 19, plus the quotient obtained by dividing the amount of industrial-commercial gross floor space by the applicable industrial-commercial threshold of subpart 14, equals or exceeds one. The local governmental unit is the RGU.

Subp. 33. **Communications towers.** For construction of a communications tower equal to or in excess of 500 feet in height, or 300 feet in height within 1,000 feet of any public water or public waters wetland or within two miles of the Mississippi, Minnesota, Red, or St. Croix rivers or Lake Superior, the local governmental unit is the RGU.

Subp. 34. **Sports or entertainment facilities.** For construction of a new sports or entertainment facility designed for or expected to accommodate a peak attendance of 5,000 or more persons, or the expansion of an existing sports or entertainment facility by this amount, the local governmental unit is the RGU.

Subp. 35. **Release of genetically engineered organisms.** For the release of a genetically engineered organism that requires a release permit from the EQB under chapter 4420, the EQB is the RGU. For all other releases of genetically engineered organisms, the RGU is the permitting state agency. This subpart does not apply to the direct medical application of genetically engineered organisms to humans or animals.

Subp. 36. **Land use conversion, including golf courses.** Items A and B designate the RGU for the type of project listed:

A. For golf courses, residential development where the lot size is less than five acres, and other projects resulting in the permanent conversion of 80 or more acres of agricultural, native prairie, forest, or naturally vegetated land, the local governmental unit is the RGU, except that this subpart does not apply to agricultural land inside the boundary of the Metropolitan Urban Service Area established by the Metropolitan Council.

B. For projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a different open space land use, the local governmental unit is the RGU.

Subp. 36a. **Land conversions in shoreland.**

A. For a project proposing a permanent conversion that alters 800 feet or more of the shoreline in a sensitive shoreland area or 1,320 feet or more of shoreline in a nonsensitive shoreland area, the local governmental unit is the RGU.

B. For a project proposing a permanent conversion that alters more than 50 percent of the shore impact zone if the alteration measures at least 5,000 square feet, the local governmental unit is the RGU.

C. For a project that permanently converts 20 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 40 or more acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the local governmental unit is the RGU.

Subp. 37. **Recreational trails.** If a project listed in items A to F will be built on state-owned land or funded, in whole or part, by grant-in-aid funds administered by the DNR, the DNR is the RGU. For other projects, if a governmental unit is sponsoring the project, in whole or in part, that governmental unit is the RGU. If the project is not sponsored by a unit of government, the RGU is the local governmental unit. For purposes of this subpart, "existing trail" means an established corridor in current legal use.

A. Constructing a trail at least 25 miles long on forested or other naturally vegetated land for a recreational use, unless exempted by part 4410.4600, subpart 14, item D.

B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling. When designating an existing motorized trail or existing corridor in current legal use by motor vehicles, the designation does not contribute to the 25-mile threshold under this item. When adding a new recreational use or seasonal recreational use to an existing motorized recreational trail, the addition does not contribute to the 25-mile threshold if the treadway width is not expanded as a result of the added use. In applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use, an EAW must be prepared if the total length of the newly constructed and newly designated segments is at least 25 miles.

C. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, item B or F. Paving an unpaved trail means to create a hard surface on the trail with a material impervious to water.

D. Constructing an off-highway vehicle recreation area of 80 or more acres, or expanding an off-highway vehicle recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land.

E. Constructing an off-highway vehicle recreation area of 640 or more acres, or expanding an off-highway vehicle recreation area by 640 or more acres, if the land on which the construction or expansion is carried out is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities such as mineral mining.

F. Some recreation areas for off-highway vehicles may be constructed partially on agricultural naturally vegetated land and partially on land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities. In that case, an EAW must be prepared if the sum of the quotients obtained by dividing the number of acres of agricultural or naturally vegetated land by 80 and the number of acres of land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities by 640, equals or exceeds one.

Statutory Authority: *MS s 116C.94; 116C.991; 116D.04; 116D.045; L 1998 c 401 s 54; L 2013 c 114 art 4 s 105; L 2015 1Sp4 art 4 s 121; art 5 s 33*

History: *11 SR 714; 13 SR 1437; 13 SR 2046; 17 SR 139; 21 SR 1458; 24 SR 517; 28 SR 951; 30 SR 319; 31 SR 539; 34 SR 721; 36 SR 567; 44 SR 691*

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