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- Check out our webinar series: <https://curemn.org/blog/webinar-series-data-centers/>
- We'll get started momentarily.



**CURE**

# Data Centers Webinar Series



WELCOME TO

# Data Centers: Environmental Review

  
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# Our presenters

Sarah Mooradian



Government Relations &  
Policy Director

Hudson Kingston



Legal Director

# MEPA – Minn. Stat. 116D & Minn. R. Chapter 4410

- Minnesota Environmental **Policy** Act (don't say "Protection" even if it sounds right – it is not right).
- Regulations and guidance by Environmental Quality Board, a Minnesota state agency  
<https://www.eqb.state.mn.us/>.
- Just about the best law in the state.
- 53 years young.
- Similar to a federal law, NEPA, and 20 state/local/territorial/regional environmental review laws. Cross-cutting term for all of these is "environmental review."



# MEPA – Minn. Stat. 116D.04, Subd. 2a(a)

- “Where there is **potential** for significant environmental effects resulting from any major governmental action, the action must be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement must be an analytical rather than an encyclopedic document that describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement must also analyze those economic, employment, and sociological effects that cannot be avoided should the action be implemented. To ensure its use in the decision-making process, the environmental impact statement must be prepared as early as practical in the formulation of an action.”

# MEPA – pretty simple on its face

## Elements:

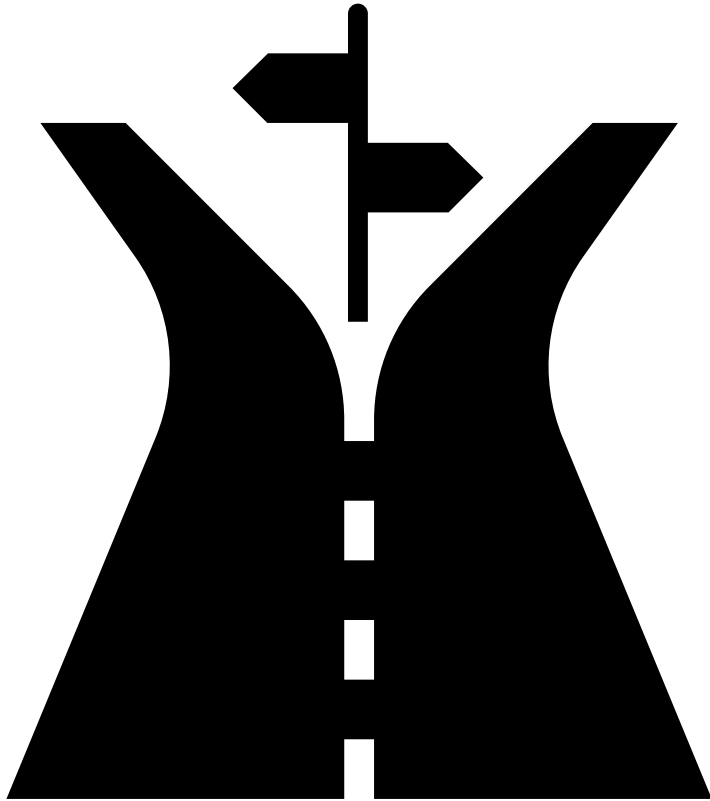
- ✓ Major government action (state or local government)
- ✓ Which *potentially* impacts the environment
  - ✓ If you don't know you still do a review!

## Specifics of analysis:

- Analysis precedes the action
- Analyze all significant environmental impacts, *including* economic, employment, and sociological effects
- Appropriate alternatives
- Explore mitigation



# MEPA – Less Harmful Alternatives



- Most environmental review laws are **purely procedural** – they require the government “look before they leap” but do not require a particular outcome. MEPA has substantive standards that goes further:
  - “Economic considerations alone” cannot justify any government action that would harm the environment if there is a feasible and prudent alternative that wouldn’t cause such harm. **Minn. Stat. 116D.04, Subd. 6.**
  - *See also Minn. Stat. 116D.03, Subd. 2*, listing numerous duties of state agencies to protect environment and further knowledge on interdisciplinary science. These are affirmative duties placed on all state agencies.

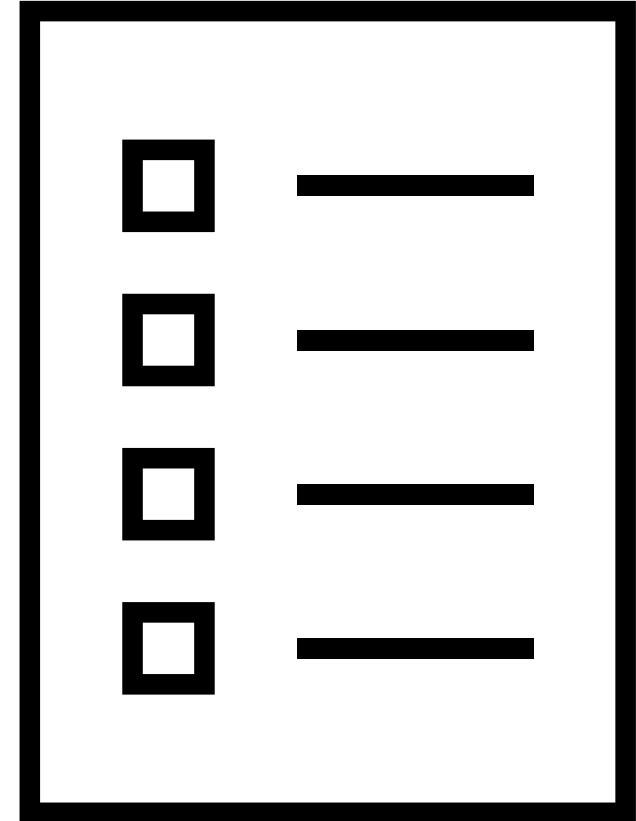
# MEPA – Scoping

- The size of the review should be tailored to the government action
  - If it's a local/regional project assess the local/regional impacts
  - If it produces greenhouse gas emissions, assess global climate impacts
  - If it emits “forever chemicals” or long-term water pollution, assess the impacts for the duration of the harm
- Cumulative impacts
  - Even if a project only has incremental pollution impacts, these can still be significant considering the other sources of pollution/stress already existing in the community.



# Environmental Assessment Worksheet (EAW)

- Either leads to an EIS or a negative determination
  - Minn. R. 4410.1700, Subp. 3. “**Form and basis for decision.** The RGU's decision shall be either a negative declaration or a positive declaration. The RGU shall base its decision regarding the need for an EIS on the information gathered during the EAW process and the comments received on the EAW.”
  - In practice very few EAWs lead to a full EIS review.
- An EAW can also be part of an EIS process, to identify the main issues and therefore establish scope.



# Environmental Assessment Worksheet (EAW)

- Can feel like a game of “20 Questions” – actually, now 22 questions.
- **Including cumulative impacts!**
- However: does not require alternatives analysis.

*December 2022 version*

## Environmental Assessment Worksheet

This most recent Environmental Assessment Worksheet (EAW) form and guidance documents are available at the Environmental Quality Board’s website at: <https://www.eqb.state.mn.us/> The EAW form provides information about a project that may have the potential for significant environmental effects. Guidance documents provide additional detail and links to resources for completing the EAW form.

**Cumulative potential effects** can either be addressed under each applicable EAW Item or can be addressed collectively under EAW Item 21.

**Note to reviewers:** Comments must be submitted to the RGU during the 30-day comment period following notice of the EAW in the *EQB Monitor*. Comments should address the accuracy and completeness of information, potential impacts that warrant further investigation and the need for an EIS.

**1. Project title:**

**2. Proposer:**

Contact person:  
Title:  
Address:  
City, State, ZIP:  
Phone:  
Fax:  
Email:

**3. RGU:**

Contact person:  
Title:  
Address:  
City, State, ZIP:  
Phone:  
Fax:  
Email:

**4. Reason for EAW Preparation: (check one)**

Required:

- EIS Scoping  
 Mandatory EAW

Discretionary:

- Citizen petition  
 RGU discretion  
 Proposer initiated

# EAW Petitions | substance | Minn. Stat. 116D.04, Subd. 2a(e)

- An environmental assessment worksheet **must** also be prepared for a proposed action **whenever material evidence** accompanying a petition by not less than **100 individuals who reside or own property in a Minnesota county** where the proposed action will be undertaken **or in one or more adjoining counties**, submitted before the proposed project has received final approval by the appropriate governmental units, demonstrates that, because of the nature or location of a proposed action, there **may be potential for significant environmental effects**. . . .



# EAW Petitions | procedure | Minn. Stat. 116D.04, Subd. 2a(e)

- . . . . Petitions requesting the preparation of an environmental assessment worksheet must be submitted to the board. The chair of the board must **determine the appropriate responsible governmental unit** and forward the petition to it. A decision on the need for an environmental assessment worksheet must be made by the responsible governmental unit within **15 days after the petition is received** by the responsible governmental unit. The board's chair **may extend the 15-day period by not more than 15 additional days** upon request of the responsible governmental unit.



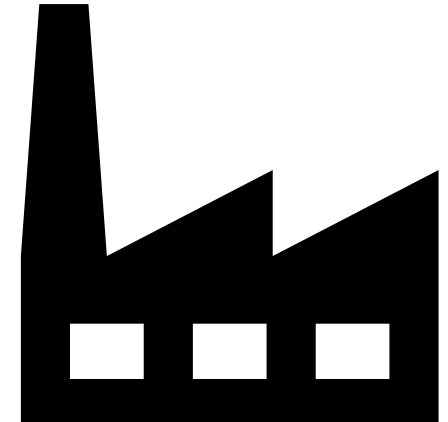
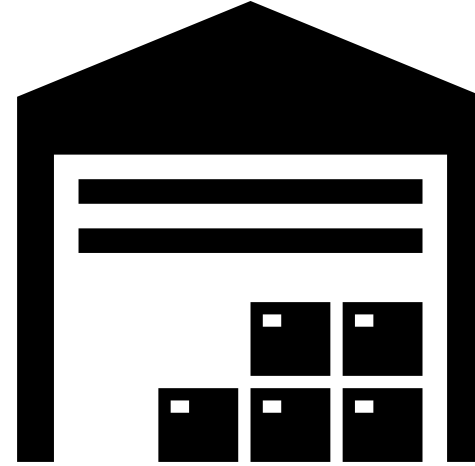
# EAW Petitions – slow things down a bit

- When there is a pending petition the major government action cannot be approved before the petition is resolved
- If there is no application for the project the petition describes, it remains on file with the responsible government unit for one year and relevant permits cannot issue during that year until the petition is resolved



# Mandatory Categories

- For both EAW and EIS – listed in MEPA regulations
- Creates a misnomer of “mandatory” versus “discretionary” EAW/EIS
- A “discretionary” review is still required by law:
  - If there is the potential for significant environmental impacts – EIS
  - If there may be the potential for significant environmental impacts – EAW
- “Discretionary” does not mean optional in this case.

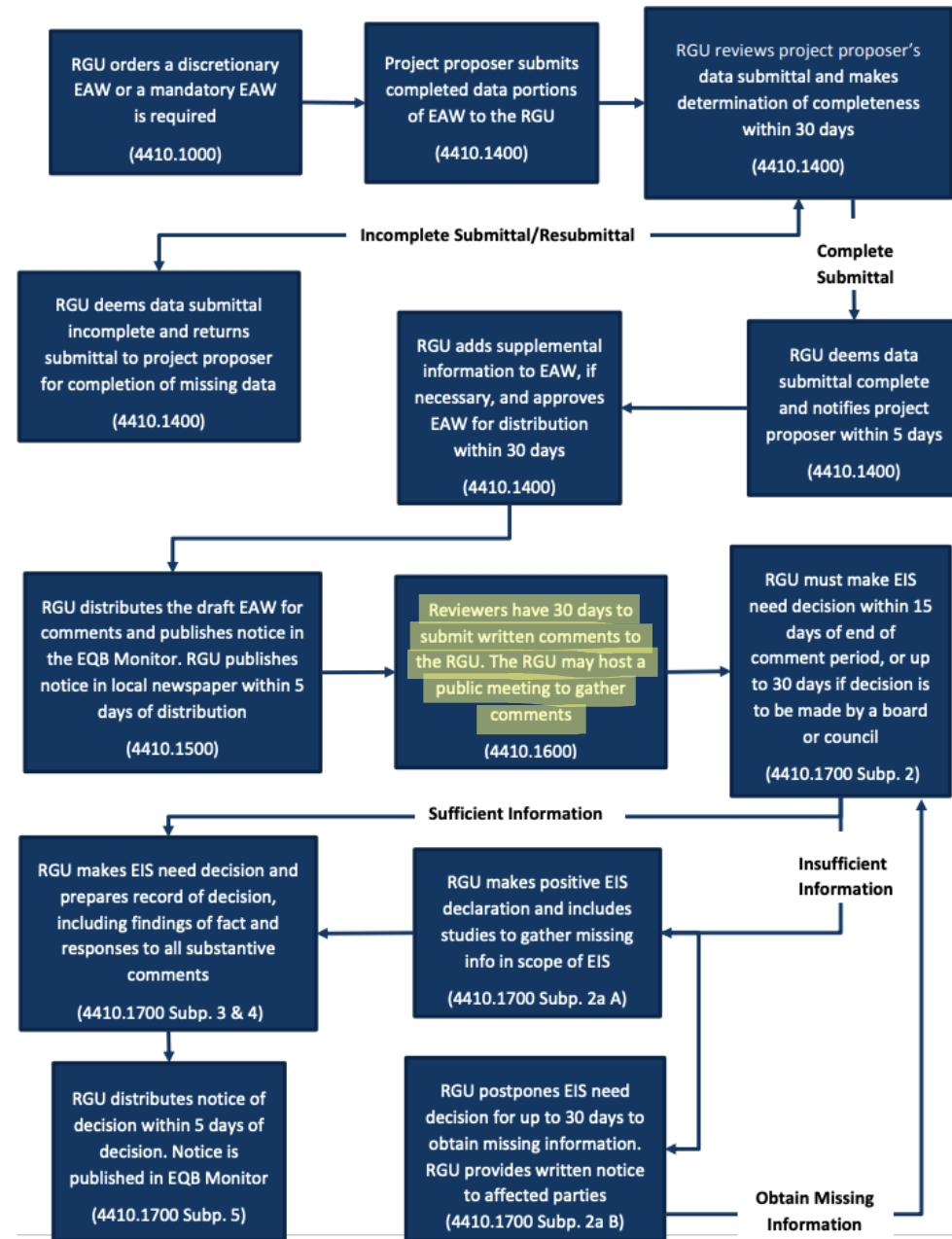


# MEPA Review Without a Mandatory Category

- Repeating myself: Review can still be mandatory under the law in the absence of a “mandatory category”
- This is especially true for new types of projects which the EQB and legislature do not have experience with yet – often can’t establish a mandatory category without years of experience



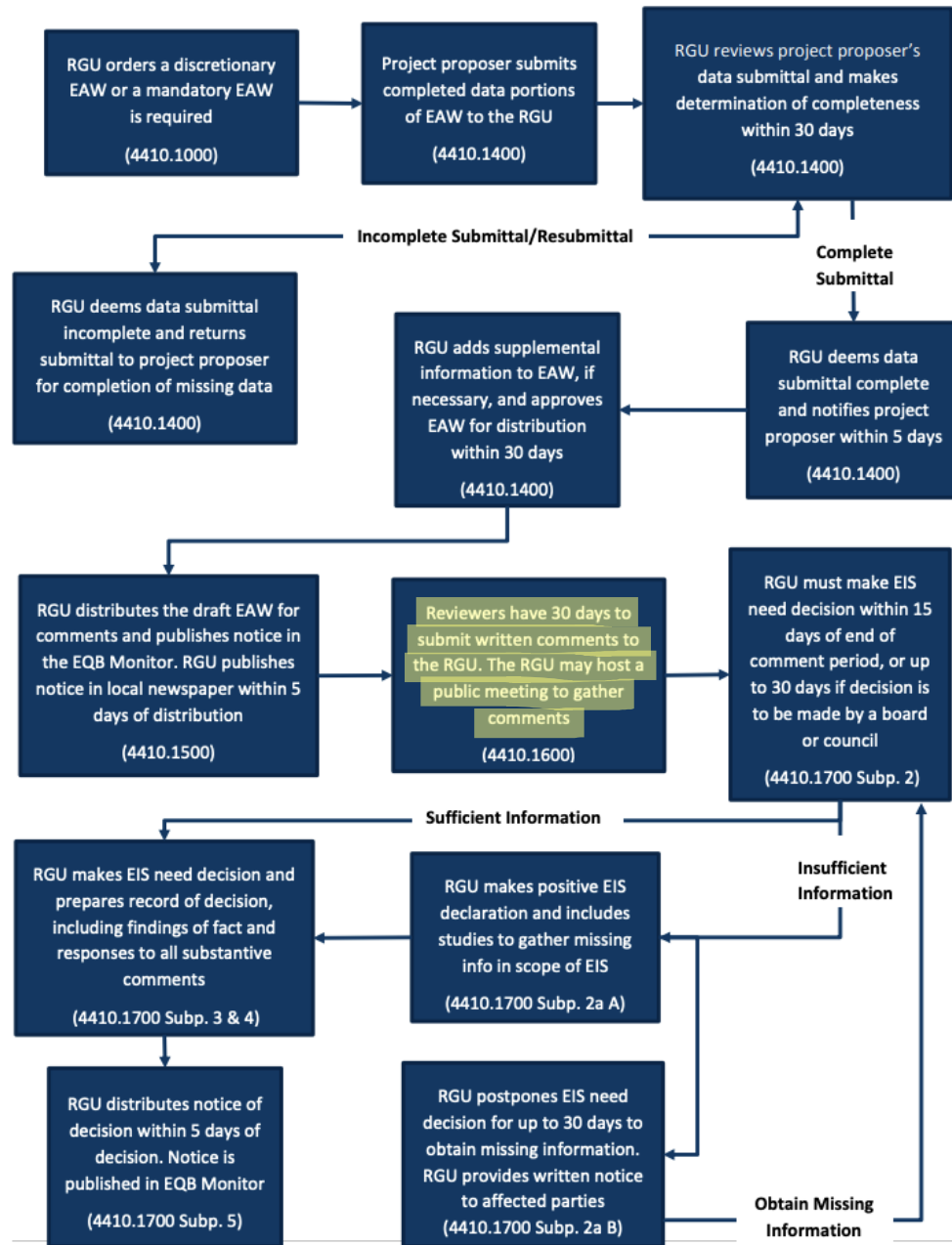
Even an EAW has many procedural steps!



Even an EAW has many procedural steps!

EQB publication at several stages →

EQB publication at several stages →



← Project proposer produces most of the analysis

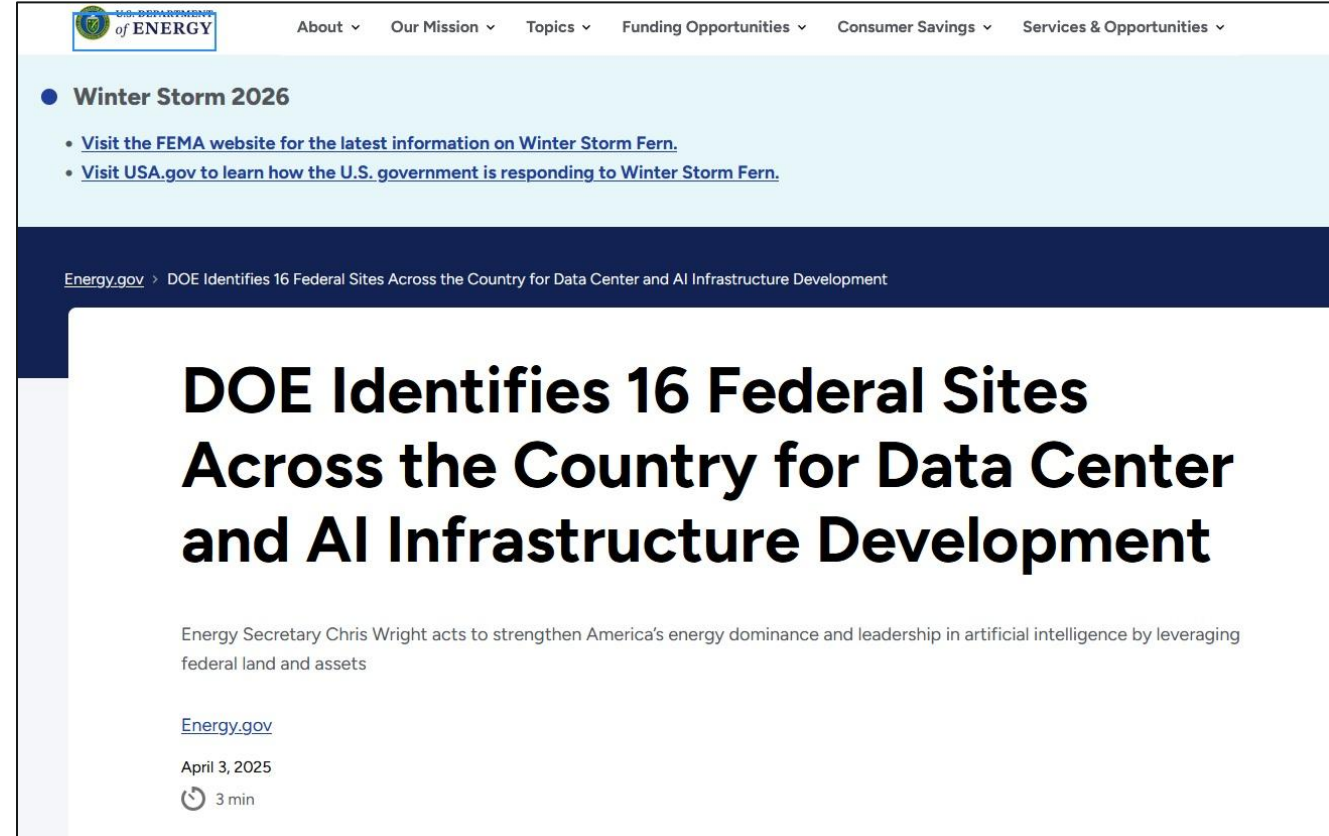
← Tight timeline

← 30-day public comment period, optional public meeting

← Tight timeline

# Environmental Impact Statement (EIS)

- New York State has ordered and completed a **draft Generic EIS** covering crypto mining facilities (a type of data center) – final EIS should follow. <https://dec.ny.gov/sites/default/files/2025-05/cryptocurrencygeis.pdf>
- Other than the NY GEIS, we have been unable to find any EIS at the federal level or under a state program for a data center. **They do not seem to exist!**
- Next two years: Announced data centers sited on federal lands will likely qualify for environmental review under federal law – could require federal EIS.



The screenshot shows the Department of Energy website. At the top, there is a navigation bar with the Department of Energy logo and links for About, Our Mission, Topics, Funding Opportunities, Consumer Savings, and Services & Opportunities. Below the navigation bar, there is a section titled "Winter Storm 2026" with two bullet points: "Visit the FEMA website for the latest information on Winter Storm Fern." and "Visit USA.gov to learn how the U.S. government is responding to Winter Storm Fern." Below this, there is a breadcrumb trail: "Energy.gov > DOE Identifies 16 Federal Sites Across the Country for Data Center and AI Infrastructure Development". The main headline of the article is "DOE Identifies 16 Federal Sites Across the Country for Data Center and AI Infrastructure Development". Below the headline, there is a sub-headline: "Energy Secretary Chris Wright acts to strengthen America's energy dominance and leadership in artificial intelligence by leveraging federal land and assets". Below the sub-headline, there is a link to "Energy.gov", the date "April 3, 2025", and a clock icon with "3 min".

# Environmental Impact Statement (EIS)

- What is an EIS?
  - Comprehensive analysis
  - Alternatives and mitigation analysis
  - Consultation with expert agencies
  - Consultation with wildlife agencies about endangered and threatened species
  - Consultation with Tribal Nations
  - Cumulative impacts: climate impacts
  - Economic and social impacts
- What is beyond an EIS? (though EIS clarifies options)
  - Substantive decisions on permits
  - Yes/no on project
  - Community benefits agreements

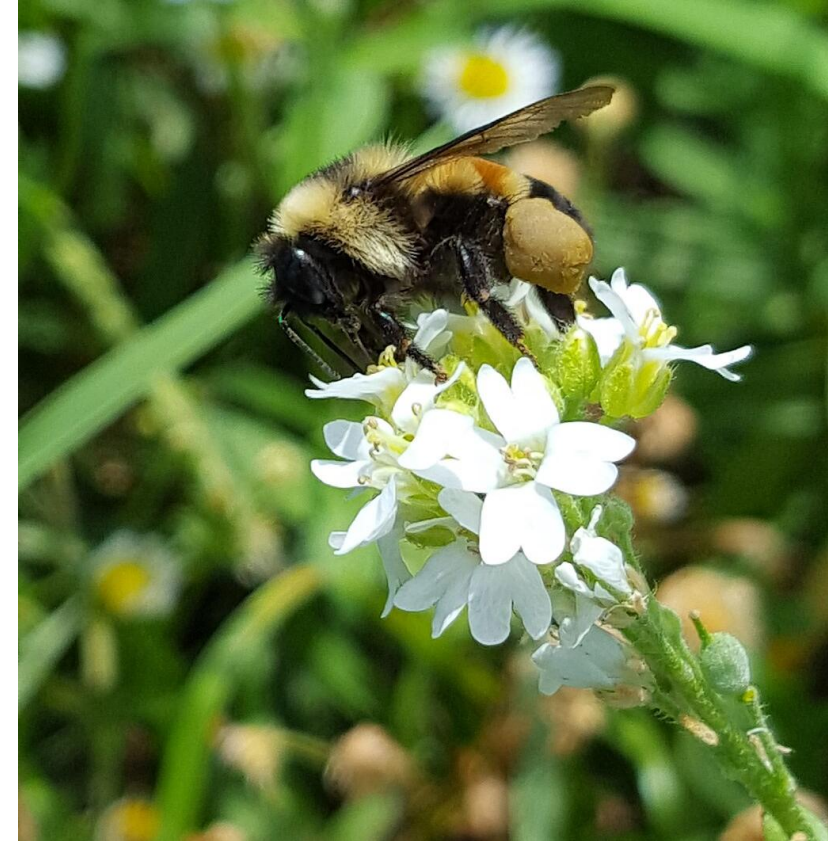
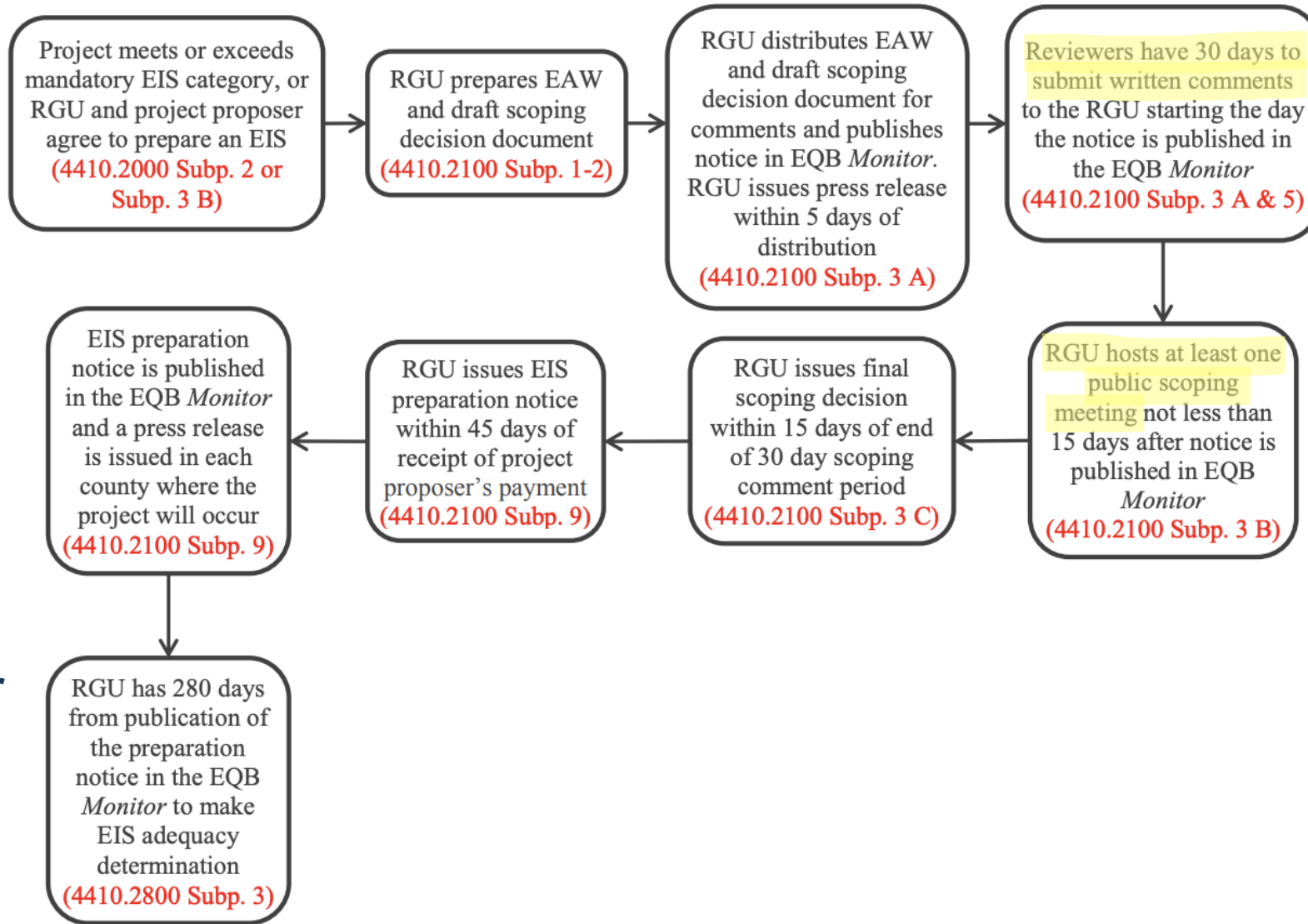


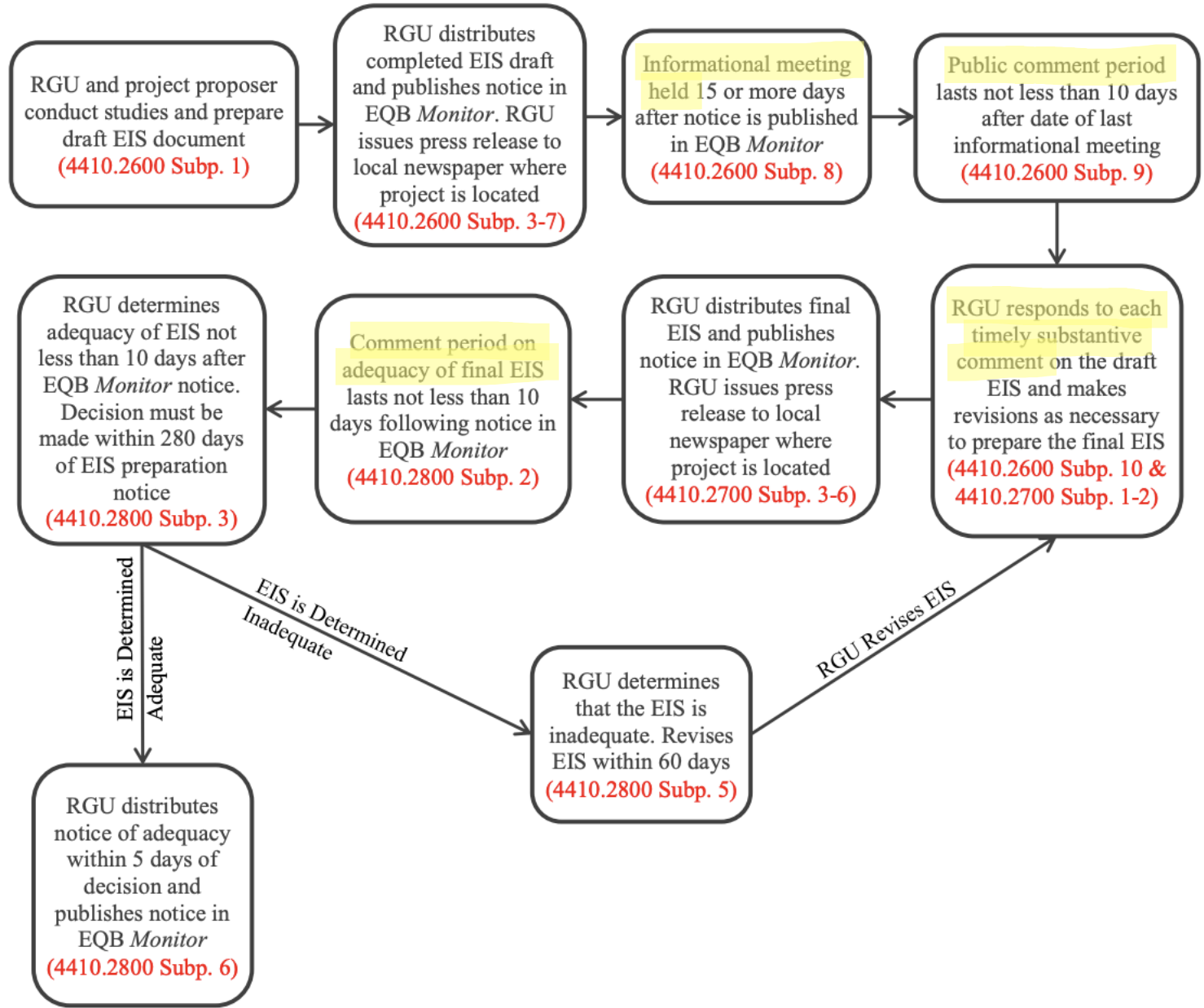
Photo by USFWS

## Scoping an EIS



**EIS has more steps, more opportunities for comment, more analysis**

# Preparing a draft and final EIS



EIS has more steps, more opportunities for comment, more analysis

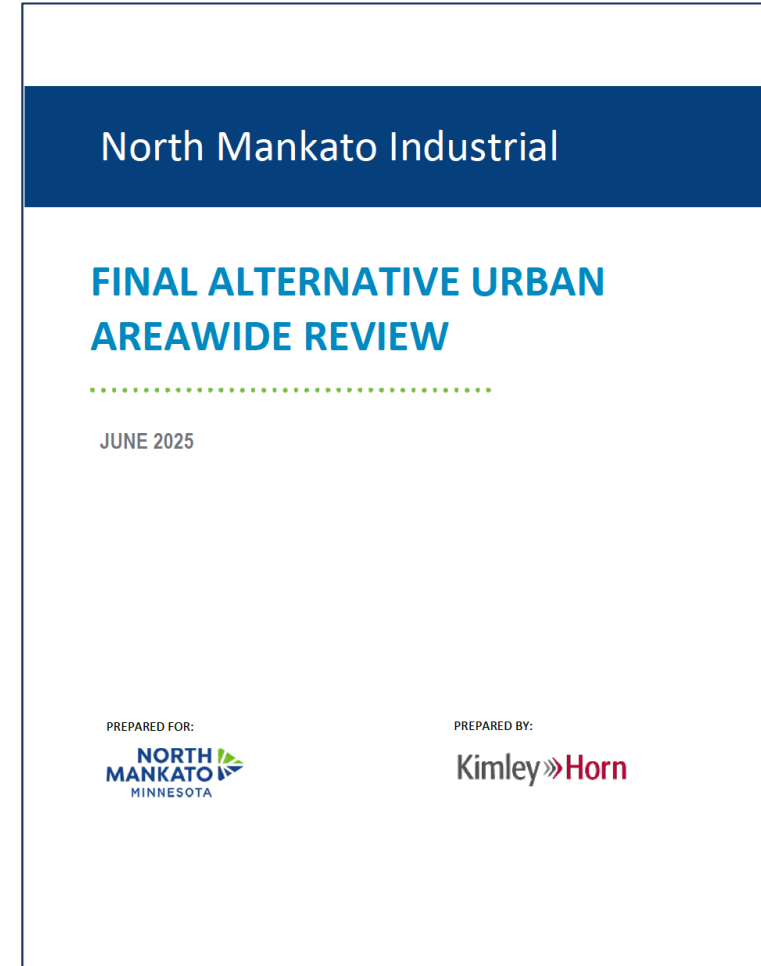
# Alternative Review Under MEPA

MEPA contemplates alternatives to EAW/EIS reviews:

**Minn. Stat. 116D.04, subd. 4a. Alternative review.** The board shall by rule identify alternative forms of environmental review which will *address the same issues* and *utilize similar procedures* as an environmental impact statement in a more timely or more efficient manner to be utilized in lieu of an environmental impact statement.

# Alternative Urban Areawide Review (AUAR)

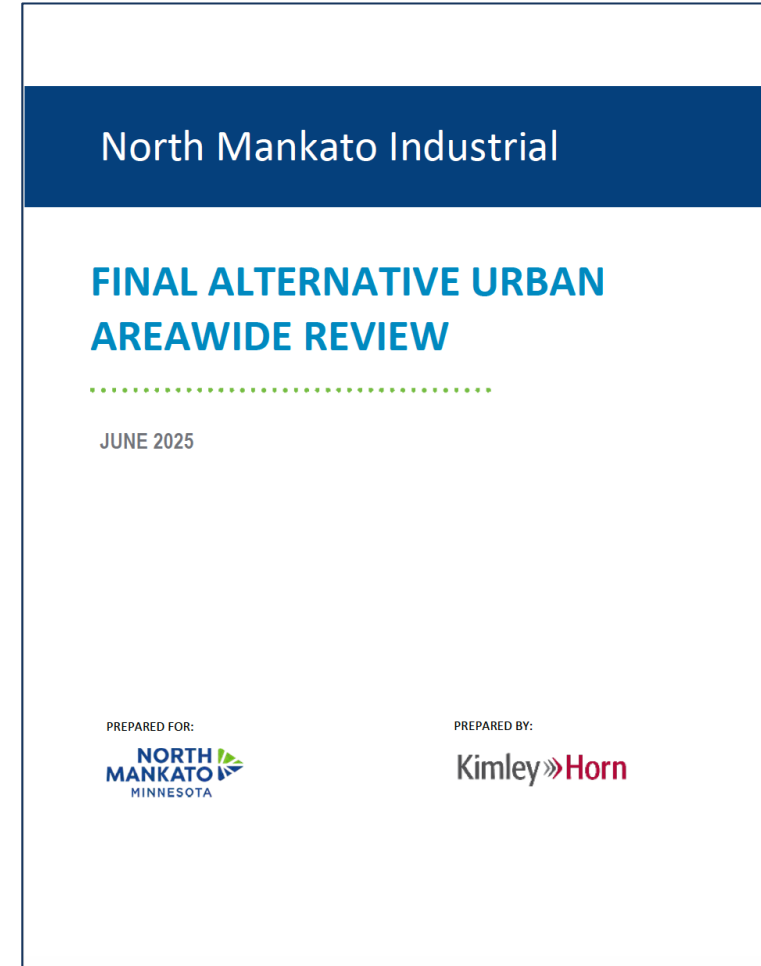
- Designed to assess the cumulative impacts of potential *development scenarios* in a defined geographic area.
- Only for residential or commercial development, warehousing, light industrial development, and infrastructure associated with development.
- Future projects in the area do not require additional environmental review, *if* they are consistent with the development scenarios studied in the AUAR *and* do not independently trigger a mandatory EAW or EIS.
- Not exclusive to “urban” areas!

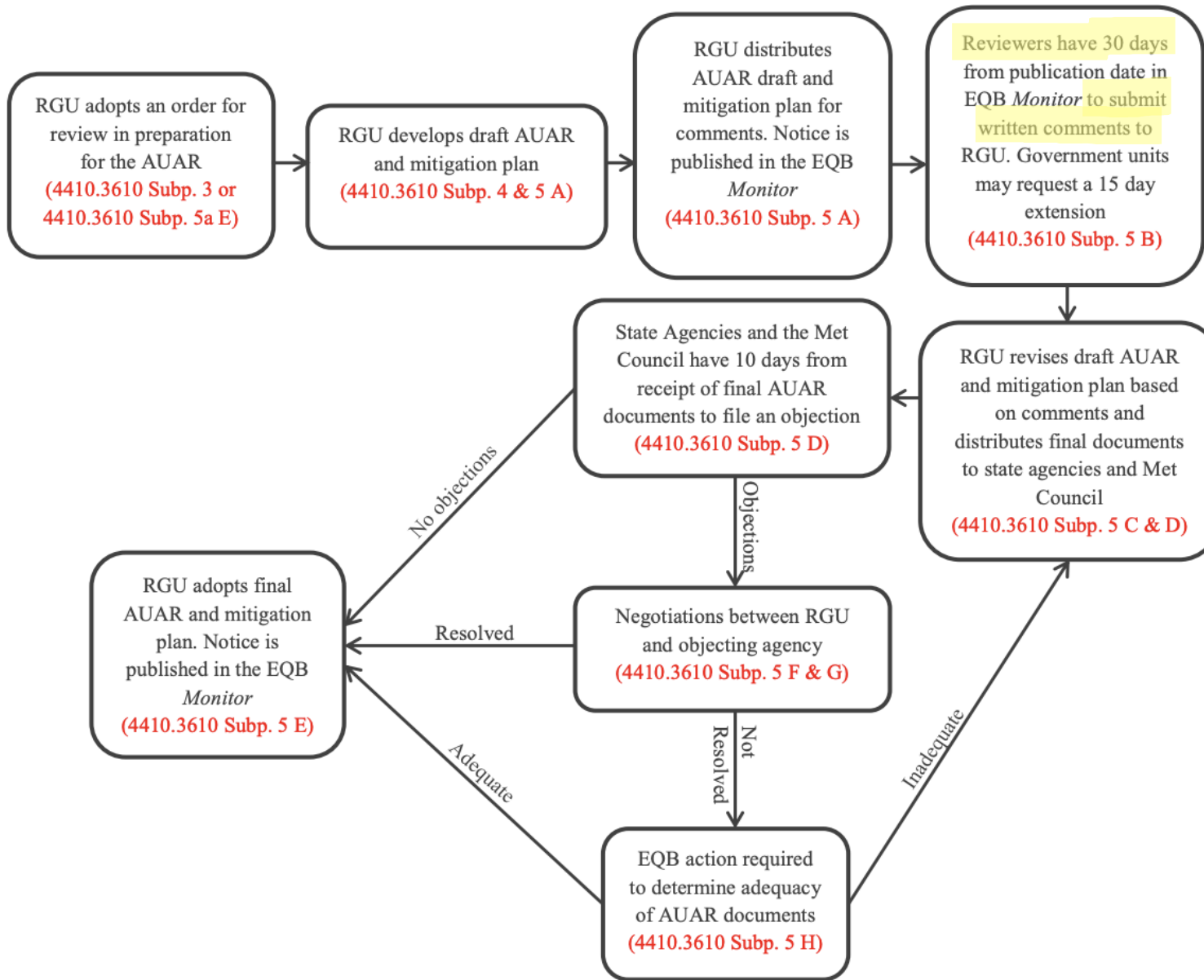


# Alternative Urban Areawide Review (AUAR)

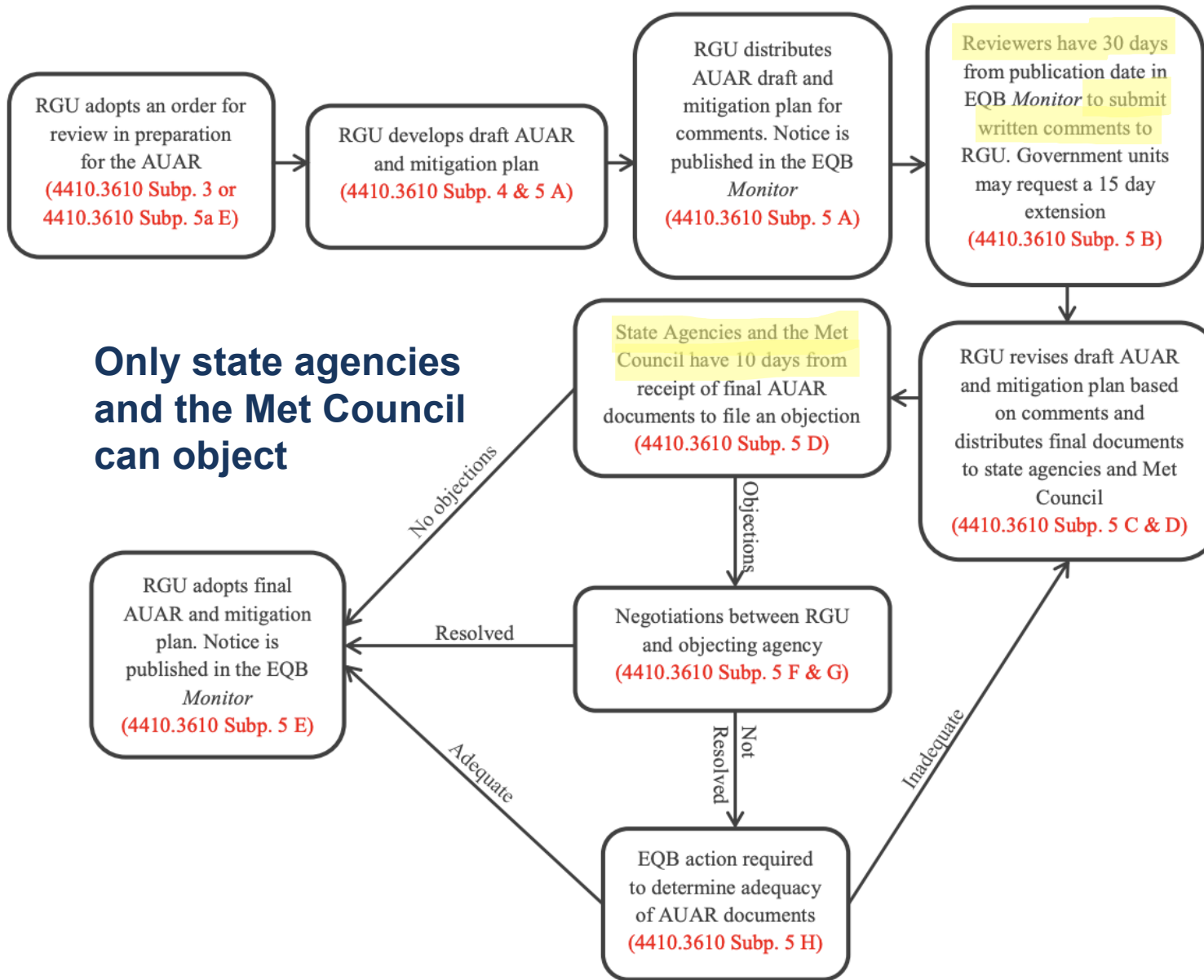
- Environmental analysis content and form must be similar to an EAW
- Level of analysis must be comparable to an EIS for direct, indirect, and cumulative potential effects
- No alternatives discussion required

**Additional procedures required if a large specific project is contemplated and would otherwise require preparation of an EIS or will comprise at least 50% of the geographic area to be reviewed**





Only one, 30-day comment period

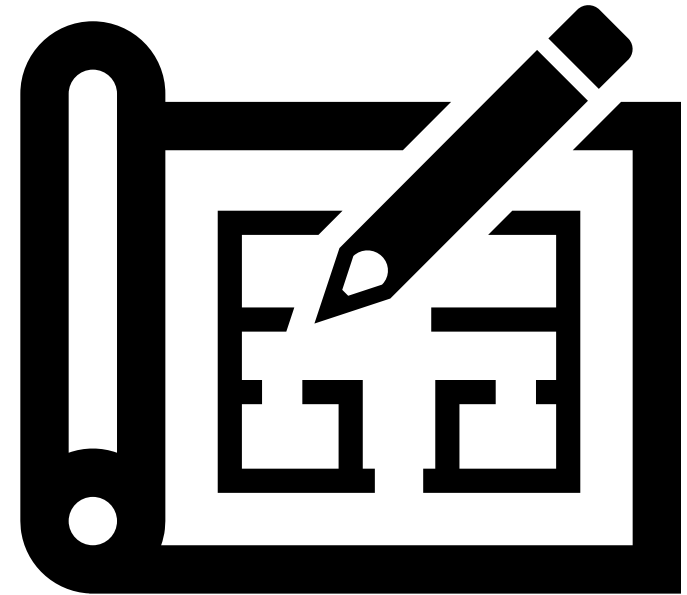


**Only state agencies and the Met Council can object**

**Only one, 30-day comment period**

# Alternative Urban Areawide Review (AUAR)

- Data centers are assumed to be “light industrial development,” and therefore eligible for an AUAR.
- Often referred to as “technology parks” in AUARs.
- Data centers might trigger additional environmental review, if they meet the threshold for a mandatory EAW or EIS
  - Industrial, commercial, and institutional facilities (EAW/EIS)
  - Air pollution (EAW)
  - Wastewater (EAW)
  - Water appropriation (EAW)



# Meta Data Center - Rosemount

- Multiple overlapping issues
  - Request for Planned Unit Development Master Development Plan with rezoning
  - Request for tax abatement
  - AUAR update
- Public comment period December 5 to December 19 on updated AUAR
- Final AUAR approved on December 21, 2023
- No environmental review conducted



Rendering of Meta's new 715,000-square-foot data center in Rosemount **PHOTO COURTESY OF META PLATFORMS INC.**

*Source: Twin Cities Business*

# Amazon Data Center - Becker

- 2023 AUAR lists data center as a development scenario
  - EAW conducted in 2019 for a proposed data center within the AUAR
  - Triggered mandatory EAW for industrial, commercial, and institutional facilities
- Sale of land to Amazon in 2024
- Amazon requests exemption from Certificate of Need process from PUC in December 2024
- Future environmental review?



# Public Utilities Commission – Standard Review

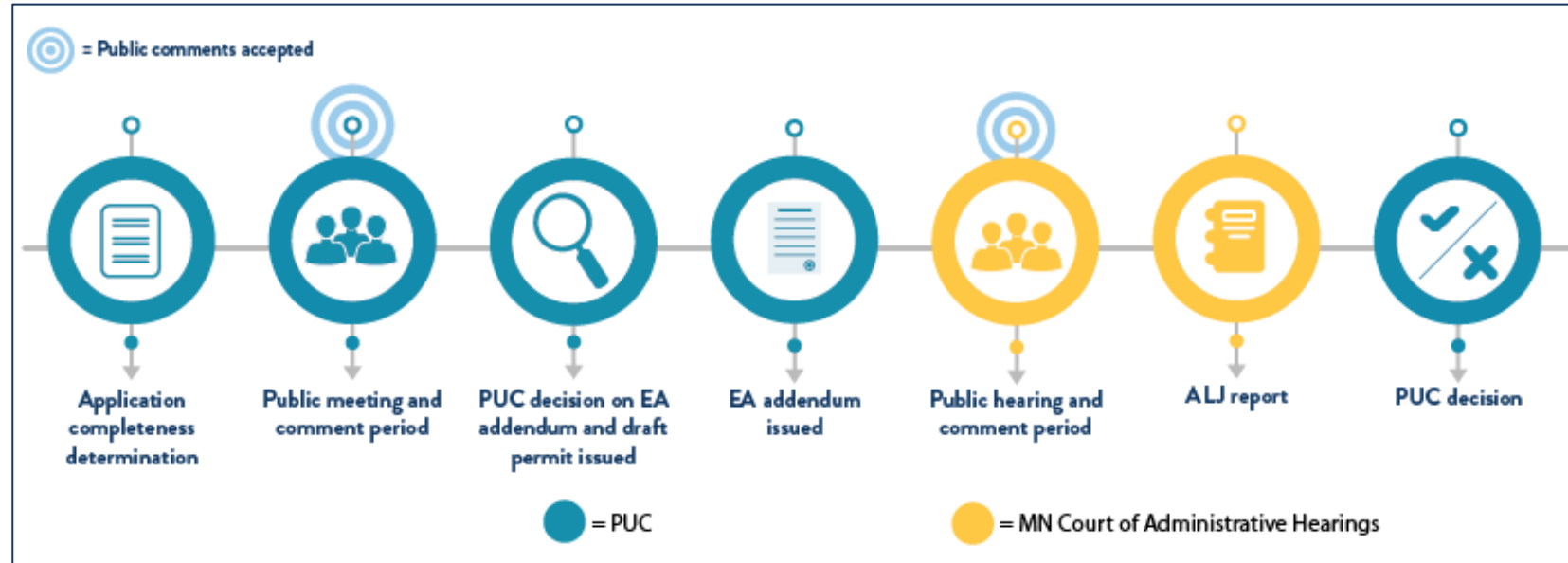
- Applies to:

- Large electric power generating plants with capacity < 80 MW
- LEPGPs fueled by natural gas
- Certain high-voltage transmission lines
- Solar, wind, and storage

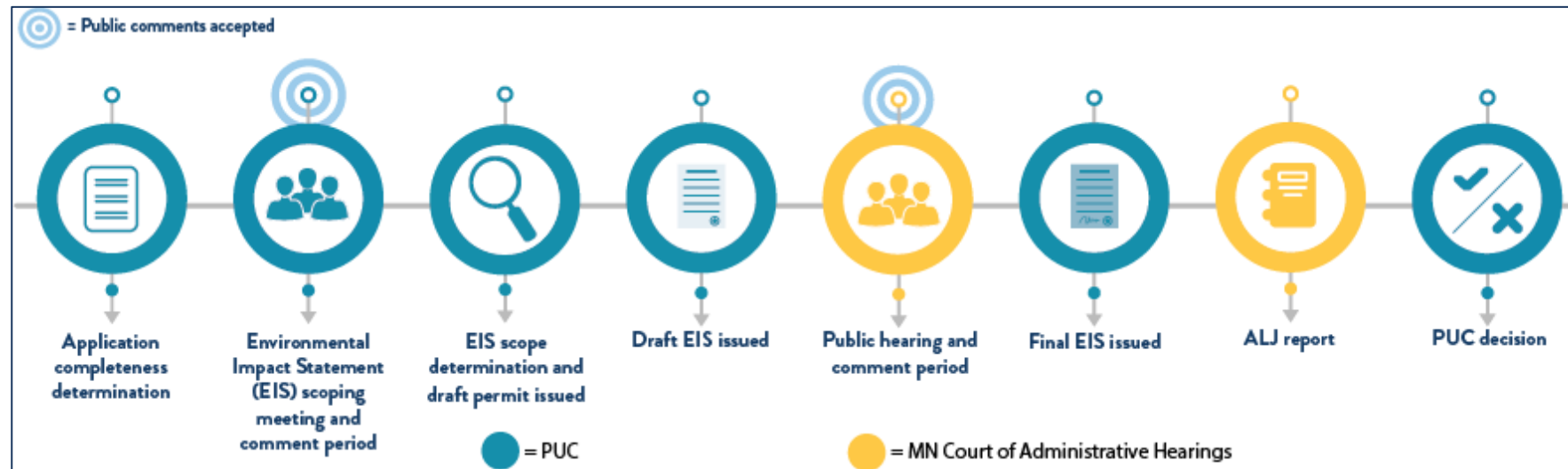
**Does not apply to the data center itself**

- Alternative review in the form of an Environmental Assessment
  - Prepared by the applicant
  - Info regarding proposed project's human and environmental impacts
  - Address mitigating measures
- Public meeting and comment periods
- Final decision must be made within 6 months of receiving a complete application

**Environmental assessment is the only state environmental review document that must be prepared for the proposed project.**



## Standard Review



## Major Review

# MEPA and Data Centers

- Lack of consistency between projects
- Mandatory category thresholds for triggering environmental review may not be relevant to data centers
- AUARs are only as good as the RGU designing them
  - Lack of transparency – NDAs and lack of capacity
  - Limited guaranteed opportunity for public engagement/comment
  - Meant to cover site preparation, but not designed to replace review of a large industrial project
- There is no state agency permit that regulates data center development!
  - Without one central permit that covers impacts across different media (water/land/air/noise/light/etc.), environmental review will usually be scoped poorly
  - PUC alternative process might apply, but it still isn't great



## Questions?

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Website: <https://curemn.org/>