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Submitted by email: AUARcomments@hermantownmn.com

Director Johnson:

The Fond du Lac Band of Lake Superior Chippewa (“Band”) and CURE (collectively, “Commenters”) appreciate the opportunity to provide the City of Hermantown (“The City” or “Hermantown”) with comments for the environmental review of your data center development project (Project). The Band is a federally recognized Indian tribe that occupies and governs Fond du Lac Reservation located 30 miles south of Lake Superior. Under the Treaty of La Pointe of 1854, the Fond du Lac Band ceded significant land to the United States government while expressly retaining rights to hunt, fish, and gather within the ceded territory. Those rights were never extinguished. CURE is a rurally based, non-profit organization dedicated to protecting and restoring resilient towns and landscapes by harnessing the power of the people who care.

Commenters do not think that the Draft Alternative Urban Areawide Review (Draft AUAR)¹ is an adequate or useful method to review a hyperscale data center, and the environmental review should be reconsidered (and potentially reassigned) so that a full review of the Project can be completed, consistent with state law.

I. Public comments on the updated Draft AUAR’s Scoping Document were insufficiently addressed

Hermantown failed to meaningfully address many concerns voiced in public comments for this AUAR’s Scoping Document.² The Draft AUAR continues to ignore many of these concerns, as highlighted in the relevant sections below.

¹ The Draft AUAR and its Appendices are available at [https://hermantownmn.com/project/. Updated Hermantown Industrial AUAR, Draft Alternative Urban Areawide Review, June 2026 \[hereinafter “Draft AUAR”\] https://hermantownmn.com/wp-content/uploads/2026/06/Main-Body-2026-06-Hermantown-Industrial-Draft-AUAR-Appendices.pdf](https://hermantownmn.com/project/. Updated Hermantown Industrial AUAR, Draft Alternative Urban Areawide Review, June 2026 [hereinafter “Draft AUAR”] https://hermantownmn.com/wp-content/uploads/2026/06/Main-Body-2026-06-Hermantown-Industrial-Draft-AUAR-Appendices.pdf).

² Scoping Document comments that were not addressed by the Draft AUAR preparers are discussed more in the relevant sections below. All Scoping Comments are available at: *Updated Hermantown Industrial AUAR: Scoping Document* (Appendix C: Comment Letters), Mar. 2026, [hereinafter “AUAR Scoping Document Comments”] <https://hermantownmn.portal.civicclerk.com/event/27/files/attachment/3786>.

Given this failure, Commenters incorporate, by reference, our scoping document comments into this comment and requests that Hermantown meaningfully address the concerns we have raised for both documents before finalizing the AUAR or any other environmental review.

II. The Project must be reviewed with an Environmental Impact Statement

As previously stated in Commenters' Scoping Comments,³ using an AUAR process, instead of an Environmental Impacts Statement (EIS), for the Project is both detrimental to public engagement and transparency and contrary to state law. It is beyond any question that the proposed Project poses the "potential for significant environmental effects."⁴ And while an AUAR for a specific project can be used in lieu of an Environmental Assessment Worksheet (EAW) or EIS in certain circumstances, a Responsible Governmental Unit (RGU) can also opt for a more robust form of environmental review.⁵ That is what Hermantown, or another more expert RGU, must do in this instance. To comply with MEPA, the environmental review of the Project must include the consideration of a no action alternative, along with other foreseeable alternatives identified below.

III. Errors, omissions, and other inaccuracies in Draft AUAR

Despite the need for an EIS, the City has chosen to move forward with the AUAR process. The City should have incorporated input from commenters during the scoping phase, but several issues and gaps in information are still present in the Draft AUAR. Each of these must be addressed in the Final AUAR.

1. Construction

The Draft AUAR fails to specify the timeframe for construction, stating that the "full master-planned campus is anticipated to take more than 5 years to complete" without providing a precise estimate of the duration.⁶ Appendix H suggests that the "building construction" will take 4,309 days, or approximately 12 years.⁷ However, this estimate does not consider weekends, holidays, and periods when work cannot be completed due to foreseeable hazardous conditions (i.e. extreme cold or periods of intense wildfire risk). As such, the duration of construction is still undefined in the Draft AUAR. Such a vague construction timeframe makes it difficult for the public to evaluate the potential impact of the Project on the environment and the surrounding residential communities. As such, Commenters recommend Hermantown provide more detail on length of the Project's construction phases, including a detailed timeline which lays out the anticipated duration for each Project component's construction (i.e. time to construct each building and associated facilities, time to construct stormwater holding pond, time to scrape soil and replace with fill, etc.).

³ Fond du Lac Band of Lake Superior Chippewa comment within AUAR Scoping Document Comments, *supra* note 2, at 18; CURE comment within AUAR Scoping Document Comments, *supra* note 2, at 588.

⁴ MINN. R. 4410.1000, subp. 3.

⁵ MINN. R. 4410. 3610, supb. 2(C).

⁶ Draft AUAR *supra* note 1, at 13.

⁷ Draft AUAR, *supra* note 1, (Appendix H) at 8 (*available at*: https://hermantownmn.com/wp-content/uploads/2026/01/Appendix-E-K-R_Red_0714.pdf).

In its analysis of construction impacts, the Draft AUAR also fails to sufficiently analyze the environmental impacts and risks of potential dewatering. The Draft AUAR only states that “[i]f dewatering is to take place, adequate treatment must be provided so that nuisance conditions would not result from the discharge.”⁸ And while “[i]t is not anticipated that significant dewatering efforts would be necessary to install below grade foundations/utilities[,]”⁹ the Draft AUAR does not attempt to evaluate the potential impacts of such dewatering. The only requirement related to dewatering in the mitigation plan is that the “developer must obtain an MDNR temporary water appropriation permit for any temporary dewatering that may be needed for construction.”¹⁰ This does not exempt Hermantown from evaluating the impact of dewatering in this Draft AUAR. It is foreseeable that large-scale dewatering in this area will impact nearby residential water wells and could negatively impact both water availability and quality. By law, the state of Minnesota is expected to maintain groundwater “in its natural condition, free from any degradation caused by human activities.”¹¹ However, the Draft AUAR currently fails to provide sufficient information on how prevention of groundwater degradation will be achieved or implement appropriate mitigation measures for dewatering.

As such, Hermantown should perform a proper groundwater survey and attach its findings as an appendix to the Final AUAR. The Draft AUAR appears to contemplate these surveys would be performed but fails to include the results. The AUAR claims that “the Project Proposer is committing to . . . [c]ompleting a pre-construction survey of groundwater table elevation” and “[m]onitoring of groundwater table elevation from on-site wells during construction”¹² Yet these surveys are not mentioned in the mitigation plan and appear to be voluntary commitments from the Project proposer which are not binding and may not be shared with the public.

Because the current mitigation measures do not provide any meaningful guidance on how the environmental impact of dewatering will be mitigated (i.e. how groundwater would be treated, transported, how much dewatering can occur and when, etc.),¹³ more information must be included in the Final AUAR. As such, Commenters recommend the Final AUAR mitigation plan include a condition prohibiting any dewatering. In the alternative, the Final AUAR could require the groundwater surveys mentioned in the Draft AUAR and identify appropriate mitigation measures specifying how any dewatering must occur.

The Draft AUAR also fails to describe the impact of dust emissions associated with construction for the proposed Project. Although the Draft AUAR briefly describes how it may mitigate dust, there is no meaningful discussion on the impacts of dust emissions “on nearby ecosystems, residents, and workers[,]” as was requested by Healthy Professionals for a Healthy Climate (HPHC) in its Scoping Document Comment.¹⁴ This is concerning, given that significant amounts of dust from construction can accumulate on native plants, harming pollinators and other wildlife

⁸ *Id.* at 67.

⁹ *Id.* at 57.

¹⁰ *Id.* at 136.

¹¹ MINN. STAT. § 103H.001.

¹² *Id.* at 57.

¹³ *See infra*, Sec. 6.a., Groundwater Impacts.

¹⁴ *See* HPHC comment within AUAR Scoping Document Comments, *supra* note 2, at 701.

that rely on such plants.¹⁵ As such, the Final AUAR should include (1) a comprehensive study of the public health and environmental impacts of dust emissions, as well as (2) a detailed dust management plan, outlining the specific activities the Project developer must comply with to mitigate construction-related dust emissions and how frequently such activities should be performed. It is not adequate for the Draft AUAR to simply state that the City will regulate dust “in accordance with the standards set by the [Minnesota Pollution Control Agency (MPCA)].”¹⁶

2. *Stormwater management*

a. *Additional analysis*

Commenters appreciate the City’s completion of a preliminary stormwater management plan for the Project and the inclusion of its results in the Draft AUAR. However, additional stormwater management plans referenced should also be completed and included in the Final AUAR. The Draft AUAR states that the “Stormwater Management Plan in Appendix C is based on a general plan with area assumptions based on the proposed Project” and that a “site-specific Stormwater Management Plan would be submitted at time of permitting.”¹⁷ Commenters recommend the results of this site-specific plan be included in the Final AUAR, as well, along with any relevant mitigation measures identified from this plan.

Similarly, Commenters recommend that all additional stormwater analyses referenced in the Draft AUAR be completed and included in the Final AUAR. The Draft AUAR suggests that “[a]dditional detailed stormwater analysis would be provided at later stages of the design phase.”¹⁸ However, information from this additional analysis could yield key information about the potential environmental impacts of the Project. Allowing the developer to provide this information at “later stages of the design phase,” prevents the public from fully understanding the potential environmental impacts of stormwater now, as the Project and the appropriate mitigation measures that the developer must implement are still being analyzed.

MPCA stormwater permits issue without any opportunity for meaningful public comment, and therefore it is all the more important to include this information in the environmental review stage so that the public can understand the impacts and mitigation measures prior to permitting.

b. *Trout stream impacts*

Despite several commenters raising legitimate and well-supported concerns about the Project’s potential impacts on local trout streams, the Draft AUAR fails to adequately incorporate any of that information. The mitigation plan says the “[d]eveloper must coordinate with the MPCA and

¹⁵ See Amy W. O'Donnell et. al., *Dust Management at an Active Construction Area Affects Monarch Distribution*, 18 HUMAN-WILDLIFE INTERACTIONS 289, 289 (2024). (available at: <https://digitalcommons.usu.edu/hwi/vol18/iss3/11>) (“Dust accumulation on areas where floral nectaries such as leaves, stems, and flowers may be present could reduce the ability of pollinators, such as monarchs, to access nectar from flowering plants . . .”).

¹⁶ Draft AUAR, *supra* note 1, at 99.

¹⁷ *Id.* at 68.

¹⁸ *Id.* at 70.

[Minnesota Department of Natural Resources (MDNR)] to ensure compliance with anti-degradation policies and trout stream protections”¹⁹ However, there is no discussion of when this coordination will take place, whether these communications will be disclosed in the Final AUAR for public review, and whether or how any measures identified will be enforced. As such, Commenters recommend that all relevant communications between the developer and MPCA and MDNR be included in the Final AUAR, especially any agency recommendations for mitigating the Project’s impact on trout streams. This will give the public an opportunity to compare the agencies’ recommended mitigation measures to those adopted in the final mitigation plan.

Additionally, the Draft AUAR disregards findings and recommendations from the Midway River Watershed Protection Study (MRWPS). For example, MRWPS specifically mentions this Project is “adjacent to two of the highest quality trout streams in the Midway River Watershed (West Rocky Run and Elm Creek) and contains many acres of forest, wetlands, and several prominent groundwater springs” within the proposed development area.²⁰ As such, MRWPS concludes that “[h]eadwater areas and cold tributaries are under pressure from urban development, particularly in Hermantown and near the East Rocky Run Watershed” and offers concrete suggestions for projects (including this proposed data center) in these areas, to help minimize potential harms to brook trout.²¹ However, the Draft AUAR fails to incorporate these suggestions into the mitigation plan.

The most obvious solution to this particular issue is to move the Project elsewhere so that it won’t impact these extremely important trout streams – this is an alternative that should be fully explored in environmental review. But if the developer and end user are unwilling to do so, and the Project remains proposed at this site, the City must meaningfully incorporate the site-specific recommendations from the MRWPS (listed in Appendix A1 of the study), including but not limited to:

- Restoring wetlands and natural stream channels in heavily developed/ditched/modified headwaters tributaries to East Rocky Run with cold water temperatures
- Protecting existing wetlands and headwaters tributaries
- Protecting land around Coldwater Protection Areas from further development and contamination
- Maintaining or improving forested buffers
- Replacing road culverts to restore full connectivity.²²

A failure to adequately consider these impacts and appropriate alternatives or mitigation measures will cast serious doubt on the overall adequacy of the Final AUAR. In order to achieve many of the above mitigation measures, the Project may need to alter its design to not include all the buildings currently proposed, especially those that necessitate destruction of wetlands and forested buffers. These are alternatives that should be fully evaluated in the environmental review.

¹⁹ *Id.* at 135.

²⁰ MINN. POLLUTION CONTROL AGENCY, *Midway River Watershed Protection Study* (Aug. 2025), 13, <https://www.pca.state.mn.us/sites/default/files/wq-ws4-104p.pdf> [hereinafter MRWPS].

²¹ *Id.* at 75

²² *See id.* at 76-79 (showing recommended site-specific actions for projects in East Rocky Run, West Rocky Run, Adolph Creek, and different portions of the Midway River).

3. Hazardous waste

a. E-waste

The Draft AUAR fails to clearly or sufficiently describe the scope of electronic waste (e-waste) generated when the Project is operational. The Draft AUAR states that “2,204 to 5,511 tons per year is anticipated for office/light industrial waste that typically includes paper, plastic, *electronic*, cardboard, metal, and glass waste.”²³ The exact amount of E-waste is not specified but is instead lumped in with a broad estimate of the office/light industrial waste expected from the Project. As such, the public cannot determine how much e-waste will be generated from this project.

This issue/omission is compounded and confused by the fact that guidance on the management of e-waste is unclear. The Draft AUAR specifies that “[f]or solid waste generated from the completed Project, a source recycling/separation plan must be implemented, and wastes that cannot be recycled must be managed in accordance with state regulations and guidelines”²⁴ That plan was not provided in the Draft AUAR, and the current Minnesota state regulations and guidelines for recycling and managing e-waste are grossly insufficient.²⁵

And while the Draft AUAR asserts that Google “maintains strict management through its reverse logistics” and ensures “[a]ll equipment is managed to be reused, remarketed, or recycled, ensuring that no e-waste goes to landfills,”²⁶ these voluntary commitments are unenforceable on their own and insufficient to assuage concerns regarding e-waste management. Google can write general statements about the lack of environmental impact and claim sustainability, but unless these recycling and sustainability initiatives are specified, analyzed, and included in the Draft AUAR and incorporated into an *enforceable* mitigation plan and as a condition of any permitting, they will not be binding on the company.

Accordingly, Commenters recommend that the Final AUAR include the source recycling/separation plan and incorporate Google’s voluntary sustainability measures (as a minimum) into the final mitigation plan and as mandatory conditions of any City permitting.

b. Backup generation fuel storage

Hazardous materials associated with backup generation are not sufficiently defined or identified in the Draft AUAR. The proposed Project “may include backup generators for emergency electricity use[,]” but the “[s]pecific backup generators fuel needs have not yet been defined.”²⁷ As such, there is no way for the public to know what type of fuel will be stored within the project area,

²³ Draft AUAR, *supra* note 1, at 85 (emphasis added).

²⁴ *Id.* at 137.

²⁵ A comprehensive e-waste recycling bill has been proposed in the Minnesota legislature but has yet to be adopted as law. More information on why this change is needed, and the current insufficient legal protections can be found here: Maria Jensen, *Factsheet: e-Waste Recycling in Minnesota*, CLEAN WATER ACTION (Oct. 30, 2025), <https://cleanwater.org/publications/factsheet-e-waste-recycling-minnesota>.

²⁶ Draft AUAR, *supra* note 1, at 85.

²⁷ *Id.* at 86.

and the risks associated with such storage. Any argument that the actual backup generators needed for this project is not foreseeable is entirely noncredible. Google can either state with certainty how many generators will be used (this project likely cannot proceed without a plan for on-site energy resources), or point to other completed Google facilities as a proxy; there is absolutely no justification for leaving this data point blank, as the Draft AUAR now does.

The mitigation measures for backup generation fuel storage in the Draft AUAR are similarly insufficient. Currently, the mitigation plan only requires that the “developer . . . prepare a spill prevention plan for any fuel stored on site.”²⁸ This spill prevention plan is not included in the Draft AUAR, and it is unclear if the public will have an opportunity to review the plan prior to permit authorizations.

To address these gaps, the Final AUAR must include a discussion of the fuel needs and storage requirements for backup generators. This should encompass the type of fuel used and the amount to be stored on site, as well as an analysis of the exposure of the stored fuel to wildfires, flooding/flash flooding, tornadoes/straight-line winds, or other foreseeable climate hazards. The Final AUAR should also include a completed spill prevention plan, as described in the Draft AUAR.²⁹

4. *Water appropriation*

The water usage associated with the Project is not sufficiently described in the Draft AUAR. The Project is anticipated to use 50,000 gallons per day (GPD), from Lake Superior, only for domestic wastewater.³⁰ Table 16 describes two additional foreseen non-domestic water usage requirements, associated with a closed loop cooling system: 1.7 million gallons initially per building for commissioning the system and up to 2,000 gallons monthly per building for maintenance needs.³¹ The mitigation plan states that the Project “must be limited to the water use volumes studied in the AUAR[,]”³² but estimated water use varies significantly depending on the frequency of maintenance and the number of buildings to be constructed—scenarios and issues that are insufficiently analyzed in the Draft AUAR. The result is that the public has no way to accurately estimate how much water the Project will consume, or to know whether or how the mitigation plan may adequately address those impacts.

As such, Commenters recommend the Final AUAR include the exact water quantity the Project will be “limited to.” If multiple volumes are being considered, each should be studied in an alternatives analysis, with a similar level of detail to an EIS. The Final AUAR should also describe the specific design details for all cooling systems under consideration, including how the water will be used in the system and the necessary treatment that must occur following its use.

²⁸ *Id.* at 138.

²⁹ *See infra*, Sec. 8.b., Backup generation, for additional discussion and recommended action regarding backup generation for this project.

³⁰ Draft AUAR, *supra* note 1, at 75.

³¹ *Id.*

³² *Id.* at 137.

Additionally, the AUAR lacks important details regarding how phasing will occur for the commissioning and maintenance of the closed-loop cooling system. Although all water for the Project is supposed to be sourced from Lake Superior,³³ and “phasing of water use for commissioning, and maintenance would be coordinated with the City of Hermantown for any additional implementation needs[,]” nothing in the Draft AUAR suggests that this coordination has occurred, or if it will occur prior to permit approvals.³⁴ This is concerning because, at 50,000 GPD, the domestic use of water for the Project is already a very large proportion of Hermantown’s overall daily water use—1/8th of the City’s current average use, excluding any water needed for non-domestic purposes.³⁵

As such, prior to the Final AUAR, Commenters recommend that all necessary coordination be completed between the Project developer, the data center end user, the City of Hermantown, and other local municipalities/organizations using water from Lake Superior (such as the cities of Duluth and Cloquet). The Final AUAR and city permit should also include a binding phasing plan as an enforceable mitigation measure and a condition of any permits. And if different methods/timelines of phasing are considered, each should be treated as an alternative, with a corresponding EIS-level analysis of the alternatives. Additionally, Commenters recommend that the Final AUAR include mitigation measures to prohibit any loss of water from the Lake Superior watershed, including a ban on evaporation of city water through a water-cooling system that results in any loss of water from the watershed. There should also be a condition that each individual building (or at least the four data center buildings) be equipped with a water meter, and that water use at each building/meter is reported and the information be made publicly available on a city website on a monthly and annual basis. The Final AUAR should also restrict the destruction of any wetlands (from groundwater extraction) in the headwaters of the Lake Superior watershed or provide greater analysis of such impacts.

5. Cooling system

As noted above, the Draft AUAR fails to sufficiently describe the cooling system for the Project. First, rather than meaningfully describing the exact water use associated with each cooling system, the AUAR merely states “water may be used as part of data center cooling.”³⁶ Additionally, although the AUAR claims that “either a closed-loop or air-cooled system” will be used, no information is given on the design details for each system being considered (such as the process for ejecting heat, any chemicals or refrigerants that will be used in the cooling process, and the potential environmental impacts of each system).³⁷ As such, the current information in the Draft AUAR prevents the public from truly understanding the environmental impacts of each cooling system proposed.

³³ *Id.* at 75.

³⁴ *Id.*

³⁵ See HERMANTOWN, *Water & Sewer*, <https://hermantownmn.com/departments/public-works/water-sewer/> (last visited July, 14, 2026) (“The average water usage across the city system exceeds 400,000 gallons per day.”).

³⁶ Draft AUAR, *supra* note 1, at 75.

³⁷ *Id.* at 56.

The Draft AUAR also makes misleading claims about the environmental impacts of the closed-loop and air-cooled systems proposed. For a the closed-loop system, the Draft AUAR claims that “water use would occur only during the initial startup and would not represent a recurring long-term operational demand aside from occasional maintenance needs”³⁸ But closed-loop systems still “need to remove heat from the liquid loop — and the data center building itself” which, for “Google, . . . means using some form of evaporative cooling.”³⁹ In fact, “water is often the most effective method, [for expelling heat] especially when it’s above 85 degrees[,]” which will likely be the case in Hermantown, during the summer months.⁴⁰ Nevertheless, the AUAR does not provide any detail on how the closed-loop cooling system will reject heat, instead, the AUAR gives a vague overview of how a closed-loop system functions and simply says it “rejects that heat to outside air,” with no further details.⁴¹ This is wholly inadequate since both water use and heat island effects are major environmental issues identified in the scoping phase of this environmental review.

The Draft AUAR also fails to describe the environmental impacts of any chemicals used in the proposed cooling systems. Although the Draft AUAR claims that the wastewater for the closed-loop system “would be coordinated with Western Lake Superior Sanitary District (WLSSD) to ensure it is acceptable for sanitary sewer discharge[,]” there is little information on what chemicals or pollutants may be used in the water for the closed-loop system (and how such chemicals would be treated and disposed of).⁴² This is especially concerning, given that some data centers are known to use PFAS-class chemicals as a part of their cooling systems.⁴³ Therefore, it is important for the Final AUAR to address the potential impact of chemicals used in the closed-loop cooling system process and provide a plan with appropriate mitigation measures to deal with any contaminated water that could be removed from the closed-loop system after its commissioning and maintenance.⁴⁴ Additionally, the Final AUAR should discuss how this project will comply with Amara’s Law and other Minnesota laws that pertain to PFAS.

Finally, the AUAR fails to meaningfully discuss how using an air-cooled system will impact the energy needs of the facility. It may be true that “[d]ry-cooling and air-cooled chillers . . . do not evaporate water as part of their process.”⁴⁵ However, as described by Google’s own representative in a recent article from Politico, when a data center “move[s] away from evaporative cooling towards air-based cooling, energy consumption goes up dramatically, as do the

³⁸ *Id.* at 76.

³⁹ Ariel Wittenberg & Arianna Skibell, *AI’s no-win choice: Using huge amounts of water or energy*, POLITICO: E&E NEWS (July 9, 2026), <https://www.eenews.net/articles/ais-no-win-choice-using-huge-amounts-of-water-or-energy>.

⁴⁰ *Id.*

⁴¹ Draft AUAR, *supra* note 1, at 62.

⁴² *Id.*

⁴³ See Andie May Hardin, *Data Centers Are Contributing to PFAS Forever Chemical Pollution*, EESI (APR. 9, 2026), <https://www.eesi.org/articles/view/data-centers-are-contributing-to-pfas-forever-chemical-pollution>. (“Data centers primarily use PFAS to cool their servers and to suppress fires.”).

⁴⁴ This would also apply to any dangerous chemicals used as a part of the air-cooled/dry cooling systems proposed.

⁴⁵ Draft AUAR, *supra* note 1, at 62.

emissions”⁴⁶ However, the current Draft AUAR fails to clearly describe the different energy needs for the closed-loop and air-cooled cooling systems considered and the emissions impacts associated with each. For the public to understand the potential energy and climate impacts for each cooling system, as well as the heat island impacts that can be attributed to either technology, this information must be analyzed and included in the Final AUAR.

6. *Land use impacts*

a. *Groundwater impacts*

The groundwater analysis in the Draft AUAR is inadequate and incomplete. The Draft AUAR claims that the “presence of intermittent or unmapped groundwater discharge features cannot be entirely excluded given site geology and topography.”⁴⁷ As such, “[i]f groundwater seepage or spring flow is encountered during construction, the Project Proposer would implement an adaptive management response consistent with MPCA and MDNR best practices”⁴⁸ However, the Draft AUAR’s groundwater analysis does not examine all the groundwater features within the study area and it appears that the mitigation measures described above would only be determined *after* construction for the Project had already begun (at which point sensitive groundwater features may already be damaged or entirely destroyed).

Additionally, while the Draft AUAR hints that additional groundwater analyses could be performed, it is unclear if these will be completed prior to the Final AUAR. For example, the AUAR says that “two lines of evaluation” will be performed by the Project proposer: (1) a spring inventory; and (2) survey and a groundwater–surface water interaction and thermal evaluation.⁴⁹ These analyses would provide a “framework for evaluating whether changes in shallow groundwater conditions could influence nearby streams and aquatic resources and quantify to what degree, if any, the proposed land use changes affect groundwater recharge rates and offsite hydrology.”⁵⁰ As mentioned previously, the Project is adjacent to multiple trout streams, and groundwater features within the study area may be essential for the feeding and preservation of those streams. This groundwater is also likely the source of drinking water for numerous households that are adjacent to the project site. The additional groundwater analyses described above could be essential for informing the mitigation measures necessary to protect sensitive environments adjacent to the project site, such as trout streams (not to mention public health). However, the Draft AUAR only says these evaluations will occur sometime in 2026 and will “inform final site design and permitting applications as design advances.”⁵¹ It is not clear whether these important analyses will be included in the Final AUAR or made available to the public in another way.

Given the particular importance of this information, due to sensitive aquatic environments near the project site and the clear risk to drinking water in resident’s wells, the Final AUAR must include the results of these or similar studies, and corresponding mitigation measures informed

⁴⁶ Wittenberg & Skibell, *supra* note 39.

⁴⁷ Draft AUAR, *supra* note 1, at 56.

⁴⁸ *Id.* at 57.

⁴⁹ *Id.* at 72.

⁵⁰ *Id.* at 73.

⁵¹ *Id.* at 73.

by such studies, to mitigate the Project's impact on sensitive aquatic environments surrounding the project area.

b. Wetland impacts

The Draft AUAR fails to meaningfully mitigate the Project's impact on wetlands within the study area. The Draft AUAR claims that there will be "[s]ome wetland impacts, including draining, filling, cutting, and vegetative removal,"⁵² with "32 acres of wetlands lost from the Project."⁵³ The Draft AUAR also states that the developer would mitigate any wetland impacts "to the extent practicable by locating Project facilities outside of delineated wetlands, and comply with wetland mitigation requirements."⁵⁴ But the phrase "to the extent practicable" lacks any meaningful description of which wetlands might be protected from destruction and how harms will be mitigated.

This is especially concerning because the current proposal appears to destroy key wetlands with important environmental benefits. Table 8 of the Draft AUAR describes different soil types within the project area, one of which is 14.4 acres of "[t]acoosh mucky peat" soil, which is indicative of a peatland.⁵⁵ The next page provides a figure showing a peat wetland in the northeast part of the Project footprint.⁵⁶ However, Appendix A of the Draft AUAR (the proposed buildout of the data center) suggests that the development of "LOT 4 BLOCK 1" will be directly on top of this peat soil type wetland, completely destroying 14.4 acres of peatland within the project area.⁵⁷ This is a major concern because peatlands "play a critical role in the global carbon cycle."⁵⁸ These wetlands are responsible for storing up to "up to 30% of the world's terrestrial carbon[.]"⁵⁹ and their protection and restoration has been identified as a goal in Minnesota's Climate Action Framework.⁶⁰

Additionally, the Draft AUAR's specified mitigation measures are insufficient to meaningfully conserve key wetlands. The Draft AUAR suggests there will be additional "wetland mitigation requirements through the purchase of wetland banking credits and performing a comprehensive Sequencing Analysis in accordance with Minn. R. 8420.0520."⁶¹ However, the Draft AUAR does not specify who will perform this analysis, when it would be performed, and whether the results will be made public.

⁵² *Id.* at 78.

⁵³ *See id.* at 25 (Table 3, showing the existing acreage of wetland decreases from 58 to 26 acres in the project area after construction).

⁵⁴ *Id.* at 22.

⁵⁵ *Id.* at 47.

⁵⁶ *Id.* at 48 (Figure 13, mapping F151A "Tacoosh mucky peat, dense substratum").

⁵⁷ *See* Draft AUAR *supra* note 1, (Appendix A) at 5 (modeling a building that completely covers the F151A wetland).

⁵⁸ MINN. BOARD OF WATER & SOIL RES., *Peatlands: A Restorable, Carbon-Rich Resource*, <https://bwsr.state.mn.us/peatlands> (last visited July 15, 2026).

⁵⁹ *Id.*

⁶⁰ CLIMATE CHANGE SUBCABINET, *Climate Action Framework* (Feb. 2026) at 54, <https://climate.state.mn.us/sites/climate-action/files/cc-mn4-04.pdf>.

⁶¹ Draft AUAR, *supra* note 1, at 78.

It is also important to acknowledge that the purchase of wetland banking credits is not an adequate mitigation measure for the destruction of important wetlands, especially peatlands. The wetland banking credit system allows for the purchase of “credits” created “through the restoration, creation or enhancement of wetlands.”⁶² By destroying a peatland, important carbon sequestration benefits are lost permanently which cannot be undone by purchasing a credit based on the creation of an artificial wetland. As such, allowing the developer or end user to purchase credits ignores the importance of peatlands and fails to meaningfully mitigate the actual environmental effects from the destruction of that resource. The impact of digging up, draining, or filling a peatland must be fully analyzed and reported in the Final AUAR, and the developer or end user must not be allowed to replace these key environments with artificial wetlands which do not provide the same beneficial environmental and climate effects. It goes without saying that wetland credits from elsewhere will do nothing for preserving trout streams in Hermantown, as well.

As such, Commenters recommend the Final AUAR prohibit the destruction of any wetlands—especially the peatlands located in the project area—by moving the Project or limiting its development to buildings that do not cover any extant wetlands. However, if the developer and end user are unwilling to change the location of their Project, the Final AUAR must at least identify detailed mitigation measures and enforcement mechanisms to protect key wetlands and prohibit the destruction or filling of any peatlands or calcareous fens. The environmental review must include an alternative that leaves the 14.4 acres of peatland intact and connected to the groundwater that it currently links to.

Lastly, the Draft AUAR does not sufficiently evaluate the impact of stormwater runoff on wetlands within and surrounding the study area. The AUAR states that “85 percent of this site drains eastward through wetlands and collects in ephemeral stream segments prior to leaving the site and entering Midway River.”⁶³ However, the current analysis of groundwater and stormwater management does not evaluate how the Project could affect the recharge rates or erosion of these wetlands (surrounding the study area).⁶⁴ The Final AUAR must address this gap and how a loss of this water storage will impact nearby wells and flooding.

c. Tree cover

The number of trees which the proposer must plant as a part of the Project is not clearly described. The AUAR states that 10,783 trees will be removed as a result of the Project, and that just 245 new trees will be planted as a replacement.⁶⁵ The “[e]xact number” of trees planted is “to be determined as design plans advance,”⁶⁶ but this guidance is vague and leaves the Project proposer with unlimited discretion to choose the final number of trees to plant. Without a concrete number for how many trees the Project proposer must plant, it is difficult for the public to truly understand

⁶² U.S. DEP’T OF AGRICULTURE, *Wetland Mitigation Banking Program (WMBP)*, <https://www.nrcs.usda.gov/programs-initiatives/wetland-mitigation-banking-program> (last visited July 15, 2026).

⁶³ Draft AUAR, *supra* note 1, at 66.

⁶⁴ *See infra*, Secs. 2., 6.a., Stormwater management & Groundwater impacts.

⁶⁵ Draft AUAR, *supra* note 1, at 26.

⁶⁶ *Id.* at 26 n.17.

the impact that the Project will have on the ecology of the surrounding area over time. This level of vagueness makes the Draft AUAR's analysis totally meaningless on this point.

In the Final AUAR, the mitigation plan must set a clear, enforceable requirement to plant, water, and maintain a minimum number of native trees that are appropriate to Hermantown and the area's ecological needs, rather than allow the developer or end user to choose a number on their own. This should be done in consultation with ecosystem experts at tribal governments and from state agencies (including the Cloquet Forestry Center).⁶⁷

7. *Wildlife impacts*

a. *Wild rice waters*

The Draft AUAR does not currently discuss the potential impact of the Project on wild rice/Manoomin located downstream of the project site. The MDNR is currently working with a coalition of tribal and federal governments, and conservation stakeholders managing the St. Louis River Restoration Initiative, which includes efforts "to increase the abundance and distribution of self-sustaining wild rice within the St. Louis River estuary"⁶⁸ Tens of millions of dollars of public money have been spent on this restoration initiative and the potential to upset that effort is environmentally and financially significant.⁶⁹ As such, the impacts of this project on the St. Louis River Restoration Initiative and its wild rice/Manoomin investments should be fully evaluated in the Final AUAR.

When viewed as a totality of significant impacts, this issue deserves more attention because the Project demonstrably has the potential to cause harm to wild rice/Manoomin in the St. Louis River Estuary. As discussed in the stormwater and groundwater sections of this comment, this project could increase stormwater runoff and interrupt groundwater flow due to the increase in impervious surfaces from the Project's development.⁷⁰ Such impacts could cause harm to sensitive organisms in surrounding aquatic environments, including wild rice in the St. Louis River, by increasing the flow and temperature of waters downstream of the project site. This is especially concerning, because the Project sits next to multiple streams which feed into the St. Louis River

⁶⁷ The mitigation plan in the Final AUAR should also contemplate the purchase of land in a similar region in Minnesota equivalent to or larger in size to the project area, to be placed under a permanent conservation easement.

⁶⁸ See MINN. DEP'T NAT. RES., *St. Louis River Restoration Initiative*, https://www.dnr.state.mn.us/waters/watermgmt_section/st-louis-river-restoration/index.html (last visited July 4, 2026) (describing Manoomin (wild rice) restoration projects in the St. Louis River Estuary).

⁶⁹ U.S. ENV'T PROT. AGENCY, *EPA Announces \$22 Million to Help Restore St. Louis River in Minnesota* (Dec. 20, 2023) <https://www.epa.gov/newsreleases/epa-announces-22-million-help-restore-st-louis-river-minnesota>; see also Melissa Jolund & Darly Peterson, *The St. Louis Restoration Initiative*, (May 22, 2024) at 9, [https://www.lsohc.mn.gov/materials/24_Mtg/05_22_2024/\(R\)SLRRI_Presentation.pdf](https://www.lsohc.mn.gov/materials/24_Mtg/05_22_2024/(R)SLRRI_Presentation.pdf) (describing some of the investments of federal and state funds for just some of the restoration projects undertaken in the St. Louis River Estuary).

⁷⁰ See *infra*, Secs. 2, 6.a., Stormwater management & Groundwater impacts.

Estuary and wild rice is particularly sensitive to water temperature, requiring “[a] cool period with water temperature below 35°F for 3 to 4 months to sustain dormancy . . . prior to germination.”⁷¹

As such, Commenters recommend that before the Final AUAR is published, the City consult with tribal governments, inter-tribal organizations, and the MDNR on this Project’s potential to impact wild rice/Manoomin. The City should also hold public meetings so that the relevant parties and stakeholders in the St. Louis River Restoration Initiative can discuss the potential harm to the estuary from increased heat and sediment pollution through stormwater runoff. If agreed upon by tribal governments, inter-tribal organizations, and the MDNR, a detailed study evaluating the potential impact that this Project could have on wild rice/Manoomin in waters downstream of the project site should also be completed. The Final AUAR must also include specific mitigation measures to protect wild rice/Manoomin in the St. Louis River Estuary.⁷²

b. Birds

The AUAR failed to adequately respond to Commenters’ concerns regarding the impact of the Project on birds. As mentioned in Commenters’ Scoping Comments, there are four important birding areas/bird habitats located around the project location (Sax-Zim Bog to the northwest; the South-Central Northshore and Hawk Ridge Nature Reserve to the northeast; and the St. Louis River Estuary to the southeast).⁷³ The Draft AUAR refuses to evaluate how the Project may impact birds in any of these areas and instead merely states that “[n]o migratory waterfowl feeding/resting areas or designated wildlife lakes are present within or adjacent to the Study Area.”⁷⁴ The study area is confined to the 1.8 million square feet of the facility.⁷⁵ Such a narrow scope of analysis necessarily misses the real, foreseeable impacts on bird populations that exist outside of, but in extremely close proximity to the study area.

Birds are notoriously capable of flight.⁷⁶ This means they are highly mobile and can cover large regions by air, land, and water. As such, they are impacted by developments (such as this Project) which result in significant noise and light pollution and reduce tree cover and nesting areas near

⁷¹ FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA, *Expanding the Narrative of Tribal Health: The Effects of Wild Rice Water Quality Rule Changes on Tribal Health*, (Oct. 1, 2018), at 48, <https://www.pew.org/-/media/assets/2019/09/wild-rice-hia-report.pdf>.

⁷² In consulting with impacted tribal governments, the City must also identify other important resources, such as fisheries, that will be impacted by the Project and similarly work to mitigate all foreseeable harms.

⁷³ *Important Bird Areas*, NAT’L AUDUBON SOC’Y, https://gis.audubon.org/portal/apps/sites/?_gl=1*1s68atc*_gcl_au*MzAoNjMyMjY4LjE3ODQxNDU4ODQ.*_ga*MTQxNjAyMDI5NC4xNzgoMTQ1ODgo*_ga_X2XNL2MWTt*cZ3ODQxNDU4ODMkbzEkZzAkDDE3ODQxNDU4ODMkajYwJGwwJGgw#/nas-hub-site (last visited July 15, 2026).

⁷⁴ Draft AUAR, *supra* note 1, at 49.

⁷⁵ *Id.* at 7.

⁷⁶ A few classic exceptions being penguins, kiwis, ostriches, and the kākāpō.

important sites, even if they do not spend all of their time in those specific locations.⁷⁷ There are obvious potential impacts that the development could have on birds that should be evaluated. The Final AUAR must be appropriately scoped to consider how animals, like birds,⁷⁸ may migrate through, around, and near the study area, not just within the literal Project footprint.

The Draft AUAR also fails implement U.S. Fish and Wildlife Service (USFWS) recommendations for protecting migratory birds into the mitigation plan. The Draft AUAR mitigation plan requires tree clearing activities to be restricted to winter months (October 1 through April 14).⁷⁹ Apparently, this limitation was based on the field species and habitat review for the study area “and consultation results from the USFWS and the MDNR”⁸⁰ Notably this does not include required consultation with impacted tribal governments.

However, in Appendix E, which includes the consultation emails with USFWS, the agency states that it “encourage[s] implementation of recommendations that minimize potential impacts to migratory birds. Such measures include clearing forested habitat outside the nesting season (generally *March 1 to August 31*)[.]”⁸¹ As such, the Draft AUAR’s mitigation plan appears to disregard USFWS’s recommended restrictions on clearing forested habitat and, instead, allows the Project developer to continue tree clearing a month and half into the nesting season for migratory birds.

This not only blatantly disregards federal agency guidance, it also creates an unacceptable risk for migratory birds, which are federally protected under the Migratory Bird Treaty Act (MBTA).⁸² The Draft AUAR acknowledges “USFWS has the responsibility under the MBTA to prevent the mortality of migratory birds and provide recommendations to mitigate or reduce potential impacts to migratory birds[.]”⁸³ However, despite this acknowledgement, USFWS’s recommendations have not been incorporated into the draft mitigation plan. Accordingly, the Final AUAR must amend the mitigation plan to strictly follow USFWS guidance on migratory birds, including prohibiting tree clearing during nesting season (March 1 through August 31), as recommended by USFWS. It must also include any mitigation measures deemed necessary by tribal government resource experts.

The Draft AUAR also fails to meaningfully evaluate the Project’s impact on federally protected bald and golden eagles. As described in the Appendix E USFWS consultations, “[t]here are Bald Eagles and/or Golden Eagles in [the] project area”⁸⁴ and “[i]t is the responsibility of the project proponent to survey the area for any migratory bird nests.”⁸⁵ Accordingly, USFWS recommends

⁷⁷ Matthew G. Betts et. al., *Forest Degradation Drives Widespread Avian Habitat and Population Declines*, 6 NATURE: ECOLOGY & EVOLUTION 709, 709 (2022) (available at: <https://research.fs.usda.gov/treesearch/65926>).

⁷⁸ Obviously, this would also include bats and flying insects.

⁷⁹ Draft AUAR, *supra* note 1, at 138.

⁸⁰ *Id.* at 87.

⁸¹ Draft AUAR, *supra* note 1, (Appendix E, Attachment A) at 4 (emphasis added).

⁸² See generally U.S. FISH & WILDLIFE SERV., *Migratory Bird Treaty Act of 1918*, <https://www.fws.gov/law/migratory-bird-treaty-act-1918> (last visited July 15, 2026).

⁸³ Draft AUAR, *supra* note 1, at 92.

⁸⁴ Draft AUAR, *supra* note 1, (Appendix E, Attachment A) at 9 (emphasis added).

⁸⁵ *Id.* at 4.

“avoiding and minimizing disturbance to eagles whenever practicable” and seeking a permit “[i]f you cannot avoid eagle disturbance[,]” including “[a] nest take permit . . . for removal, relocation, or obstruction of an eagle nest.”⁸⁶ However, the AUAR does not discuss bald and golden eagles anywhere in the main body of the Draft AUAR or mitigation plan and recommendations from USFWS are not included in the mitigation plan. This issue must be addressed in consultation with tribal governments.

To ensure project complies with the Bald and Golden Eagle Act (BGEA) and USFWS and tribal government guidance, Commenters recommend the Final AUAR include a detailed study evaluating the potential for the Project to impact bald and golden eagles and their nests. This should also include nest surveys prior to the removal of any trees and a discussion about whether any take permits will be required and obtained before any action occurs that might result in a taking under the BGEA.

c. Species of tribal concern

It appears from the Draft AUAR that the City failed to consult with Tribal Nations and inter-tribal resource management organizations and consider Indigenous perspectives on the Project’s wildlife impacts. As described in the Draft AUAR, the impact of the Project on wildlife was conducted through a “field species and habitat review for the Study Area . . . and consultation results from USFWS and MDNR” to determine if any “federal- and state-listed threatened and endangered species were identified for their potential to be affected by this Project.”⁸⁷ However, the Draft AUAR does not make any attempt to evaluate how the Project could impact species of tribal significance or incorporate traditional ecological knowledge (TEK) into the wildlife impacts analysis.

The City—not the developer—must meet its legal obligation for government-to-government consultation with interested tribal governments and inter-tribal organizations on all potentially impacted tribal species of concern, and any management or restoration strategies underway in the project area. This must be done before the Final AUAR, and the City should not take any final action without completing consultation. Additionally, in the Final AUAR, tribal perspectives and TEK should be included in the wildlife impacts analysis and all other matters of interest to tribal government resource managers.

d. Lighting impacts

The Draft AUAR lacks clarity on how the impact of lighting on wildlife will be mitigated. The Draft AUAR states that the “Proposer would follow guidance from the USFWS to minimize blue light, uplight, and backlight *to the extent practicable*.”⁸⁸ But the USFWS resource cited in the Draft AUAR makes it clear that there are *no enforceable standards* when it comes to lighting, only

⁸⁶ *Id.*

⁸⁷ Draft AUAR, *supra* note 1, at 87.

⁸⁸ *Id.* at 93 (emphasis added).

suggestions.⁸⁹ Without specific mitigation and enforcement measures, there is nothing to ensure that the Project won't exceed even the anticipated lighting impacts described in Appendix G.

Furthermore, the mitigation plan only says that "[d]evelopment must conform with the city ordinances for building height, building form, and lighting intensity to avoid impacts to neighboring properties and species[.]" but fails to specify (or even cite to) what these ordinances and their requirements are in the Draft AUAR.⁹⁰ This prevents the public from reviewing and understanding the standards for lighting that the Project will be held to and omits key information from the administrative record.

Accordingly, the Final AUAR should include specific mitigation measures to ensure downward facing, shielded, low wavelength lighting is used for all outside lighting fixtures in the study area during the operational phase of the Project. Mitigation measures should also incorporate the suggestions from Starry Skies North's Scoping Comment.⁹¹ Additionally, the Final AUAR would be improved by explaining why the photometric plan contemplates minimal lighting impacts but appears to list lights that could emit as much as 130,857 lumens, which is comparable to stadium lighting.⁹²

8. Energy use

The Draft AUAR reports that the data center is anticipated to consume between 2,233,800,000 and 4,467,600,000 kilowatt-hours (kWh) of electricity annually but does not provide the nameplate capacity of the facility.⁹³ This provides an incomplete picture of the maximum amount of energy the facility may need, which directly influences the Project's potential impacts on greenhouse gas (GHG) emissions, noise, and water use. The Final AUAR should include the total nameplate capacity of the facility at full buildout, as well as the total demand from each building, and a discussion of utilization rate assumptions, which are important for understanding the backup generation needs of the data center. It is not possible that these are unforeseeable parameters for a project of this size with a developer of this type.⁹⁴

While additional regulatory action may be required for the energy-related components of the data center, this does not exempt the City from publicly disclosing the energy needs of the Project or analyzing potential rate impacts in this AUAR. The proposed Electric Service Agreement between Google and Minnesota Power, while its review by state regulators is ongoing, has not been finalized or approved by the Public Utilities Commission (PUC). This means that the assumptions in the Draft AUAR about how the facility will be powered and paid for may be incorrect, but they should nonetheless be stated clearly. The Draft AUAR also does not meaningfully address how the

⁸⁹ See *Id.* at 93, n.34 (suggesting guidelines are only recommendations and non-binding requirements).

⁹⁰ *Id.* at 139.

⁹¹ See Starry Skies North comment within AUAR Scoping Document Comments, *supra* note 2, at 549.

⁹² Draft AUAR, *supra* note 1, (Appendix G, Lighting Fixture Schedule) at 1.

⁹³ Draft AUAR, *supra* note 1, at 129.

⁹⁴ Any uncertainty between different scenarios obviously could be assessed in an alternatives analysis consistent with MEPA.

Project will mitigate rate impacts associated with increased energy demand from the Project, grid reliability, and backup generation needs for the Project. As the RGU, the City of Hermantown can evaluate and implement mitigation measures for each of these concerns. Affordability issues are a socio-economic impact of this project of high importance to Hermantown residents and all Minnesota Power ratepayers.

a. *“New clean energy” and batteries*

Without knowing the nameplate capacity of the data center, it is also impossible to analyze whether the 300 megawatts (MW) of wind and 400 MW of battery storage resources “enabled” by the Project are sufficient to cover the energy needs of the facility. It seems very unlikely that only 300 MW of intermittent wind power could fully cover the needs of a hyperscale data center that consumes between 2,233,800,000 and 4,467,600,000 kWh of electricity annually. If the wind power associated with this Project will not cover its energy demand the Final AUAR must state so and discuss how the electricity needed will be generated. Overall, the lack of details about where the new resources might be installed and what assumptions are made about the capacity factor of the wind resource means the public cannot know whether the 300 MW of wind will address the increased energy demand from the Project, or whether fossil fuel generation will be used to power the Project. It is also important to recognize that battery storage is not an inherently “clean” resource—it can absorb and dispatch electricity from both clean and fossil fuel resources equally. If the battery storage proposed here is paired with fossil fuel energy resources, it will add to emissions, not reduce them. This is not a hypothetical impact: we have already seen data centers deploy large amounts of batteries with natural gas across the country.⁹⁵

The Final AUAR must provide information about the nameplate capacity of the Project, the details about the location and timing of the 300 MW of wind power “enabled” by the Project, and whether the battery storage will be explicitly paired with renewable energy or fossil fuel resources. The Final AUAR must also honestly discuss the fossil fuel resources that will be used to fill any gaps in clean energy provisioned for the Project.

Additionally, the Final AUAR should address whether the Project may lead to a delay in the retirement of fossil fuel facilities, such as Boswell Energy Center in Cohasset and the Hibbard plant in Duluth. In Reply Comments before the PUC about its Integrated Resource Plan (IRP), Minnesota Power describes the remaining Boswell units as “vital” for reliable service to its “energy-intensive customer base,” and suggests that the only way to meet this need is by converting Boswell’s remaining units to natural gas generation by 2030 and 2035.⁹⁶ Specifically, Minnesota Power states that this continuation of fossil fuel usage at Boswell is based on “the need to replace

⁹⁵ Mark Chediak, Michelle Ma, & Bloomberg, *Data Centers are Finding a Surprising Way to Deploy Batteries*, FORTUNE (Apr. 4, 2026), <https://fortune.com/2026/04/24/data-centers-ai-batteries-natural-gas-power/> (“Data centers also have sharp demand spikes driven by computing intensive tasks, such as training models. Batteries paired with gas can help provide power rapidly enough to ensure smooth operations. Energy storage is projected to support 9.8 gigawatt-hours of gas generation at data centers through 2030, according to BNEF.”).

⁹⁶ Minnesota Power Reply Comments, *In the Matter of Minnesota Power’s 2025-2039 Integrated Resource Plan*, PUC Docket No. 25-127, May 18, 2026, eDockets No. 20265-231954-01 at 5, 7 (emphasis added).

nearly 1,000 MW of baseload generation and approximately 3 million MWh [megawatt-hours] of energy.”⁹⁷ The three million MWh identified in those comments is, coincidentally, within the range of the Project’s estimated electricity consumption provided in the Draft AUAR. This warrants a closer look and full analysis in the Final AUAR.

b. Backup generation

Backup generators are a potentially significant source of noise and air pollution near hyperscale data centers. It is therefore concerning that the Draft AUAR continues to try to pass the buck when it comes to analyzing these potential impacts by saying that the specific number of backup generators is “uncertain” and that “backup generation needs would be identified through a separate environmental review process outside of this AUAR.”⁹⁸ This AUAR process is the appropriate place to analyze potential air emissions and hazardous waste impacts of backup generators, not in subsequent permitting—which, as the Draft AUAR acknowledges, may not be triggered. An AUAR “must provide for a level of analysis comparable to that of an EIS for direct, indirect, and cumulative potential effects,” of the Project. To comply with these rules and Minnesota law, this AUAR *must* include a detailed analysis of the impacts of backup generation.

The argument that the number and type of backup generators are not known at this time is not persuasive nor credible. In a discussion of potential noise impacts, the Draft AUAR implies that 16 backup generators would be “the worst-case” scenario. This seems to be based on an assumption in Appendix H that “up to 4 x 2.75 MW generators are assumed per building (up to 4 buildings total)” for backup generation.⁹⁹ The Draft AUAR and the Appendices do not indicate how or why they assume 16 backup generators would be the maximum number possible for this Project. Recent reporting on the use of backup generation at data centers suggests that even this “worst-case scenario” is a vast underestimation of what might actually be put in place in Hermantown. In general, “large data centers can have *hundreds* of 2-4 MW diesel generators.”¹⁰⁰

Because diesel generators are “typically the largest source of air pollution at a data center,” and emit on average two times more CO₂ per unit of energy than the average grid mix,¹⁰¹ it is not appropriate for this AUAR to skip taking a closer look at the type, number, size, and potential impacts of backup generators for the specific facility that this Draft AUAR is analyzing. The Final AUAR must explain why and how it limited its noise and GHG emissions analysis for backup generation to only 16 generators, and likely must be supplemented with additional analysis of far more generators. More importantly, the Final AUAR must provide clear, detailed information about the type, number, and size of backup generation that the end user is considering and uses at their existing facilities. To say these things are unknown at this time—especially by the end user—seems disingenuous and impossible.

⁹⁷ *Id.*

⁹⁸ Draft AUAR, *supra* note 1, at 98.

⁹⁹ Draft AUAR, *supra* note 1, (Appendix H) at 10.

¹⁰⁰ BETTER DATA CENTER PROJECT, *Diesel Generators at Data Centers: Status, Impact, and Protective Practices*, (Mar. 2026), at 6, <https://betterdatacenterproject.com/wp-content/uploads/2026/03/Diesel-Generators-at-Data-Centers-Status-Impacts-and-Protective-Practices.pdf> (emphasis added).

¹⁰¹ *Id.* at 14, 21.

In terms of mitigating the impacts of backup generation, the Final AUAR must also identify specific measures that *will* be taken and explain how those measures will be enforced. Currently, Appendix H offers ideas but not detailed plans for mitigation. This does not meet the standard required by Minnesota law for adequately addressing mitigation measures.¹⁰² The Final AUAR should look to the Better Data Center Project’s *Diesel Generators and Data Centers* report for specific mitigation measures and alternatives to diesel backup generators that should be considered, including battery energy storage systems (BESS), infrastructure upgrades to alleviate grid stress, reducing data center power needs (load shifting or reducing overall demand), requiring Tier 4 generators if diesel generators must be used, and restricting use to true emergencies and only required testing.¹⁰³

To the extent that this Project only requires a “worst case scenario” of 16 diesel generators with a combined generation capacity of 44 MW, the Final AUAR should clearly state this limit. It should also contain significantly more information and analysis about how the Project can operate with so little generation capacity, and any energy storage (i.e. batteries) planned for the site.

c. GHG emissions

The GHG emission estimates provided in the Draft AUAR appear to be unrealistically low, given what we know about Minnesota Power’s electricity mix now and for the next several years. This, combined with the lack of specificity in the Draft AUAR about GHG mitigation strategies, suggests that the City must go back to the drawing board before issuing the Final AUAR.

The first assumption the Final AUAR should reconsider is the estimated emissions from HFC leakage. Table 19 in the Draft AUAR assumes only 81.72 tons of CO₂-equivalent will be emitted due to HFC leakage annually.¹⁰⁴ There is no evidence offered to support this assumption, so it is impossible for the public to know whether this estimate is based in reality. It is also unclear whether alternative refrigerants, with a lower Global Warming Potential (GWP) were considered for this project and what the corresponding decrease in GHG emissions estimates might be.¹⁰⁵ The Final AUAR should resolve these gaps.

The Draft AUAR also states that the GHG emission assumptions in Table 19 for electricity use “account for the transition to renewable energy sources.”¹⁰⁶ But it isn’t clear whether these estimates accurately reflect Minnesota Power’s current energy mix and its anticipated energy mix in the short term. It also fails to acknowledge that in its 2025 Integrated Resource Plan (IRP), Minnesota Power proposes adding as much as 1500 MW of new natural gas generation, which the company explicitly states is necessary to meet anticipated additional load growth, including for

¹⁰² See *infra*, Sec. 15 Mitigation plan enforcement.

¹⁰³ BETTER DATA CENTER PROJECT, *supra* note 103, at 21-27.

¹⁰⁴ Draft AUAR, *supra* note 1, at 102 (Table 19).

¹⁰⁵ Alternative refrigerants are discussed in Appendix H, but there is no indication that the developer or end user considered these options or that they will be implemented. Draft AUAR, *supra* note 1, (Appendix H) at 15.

¹⁰⁶ Draft AUAR, *supra* note 1, at 100.

data centers such as this Project.¹⁰⁷ The IRP also explains that Minnesota Power will maintain its coal-fired resources until the proposed new combined cycle gas plant generation is complete. Minnesota Power also proposes to replace its current coal units with gas-fired and gas/biomass-fired units, which will have their own GHG emissions to account for.¹⁰⁸ These plans are part of the IRP’s “Long-Term Action Plan” for 2030-2039, which suggests that the Draft AUAR likely misstates the amount of total GHG emissions over the lifetime of the Project.¹⁰⁹ The Final AUAR must address the likelihood that some or all of the additional electricity needed to power this data center will come from non-carbon-free resources like natural gas, biomass, or even coal, for the next 15 years and beyond.

Included in the Draft AUAR and Appendix H (not Appendix G as stated in the text of the AUAR) is a list of mitigation strategies to address the anticipated GHG emissions from the Project. The list includes nonspecific things like planting trees and providing electric vehicle charging infrastructure.¹¹⁰ A small amount of tree planting or EV chargers will never be able to offset hundreds of megawatts worth of carbon pollution from biomass or fossil fuel electricity sources. It’s not clear whether any of the mitigation strategies will actually be implemented, or whether they were just included as vague concepts with no commitment to follow through. The Final AUAR should establish clear, detailed, and enforceable mitigation measures to reduce GHG emissions from the Project.

9. *Historic properties*

The Draft AUAR misinterprets the conclusion of the *In Situ* Phase I Archeological Finding. The Draft AUAR suggests that this study recommended a “finding of No Historic Properties Affected was recommended for the Study Area.”¹¹¹ However, the actual management recommendations for the Project, included in Appendix F, states that “[i]f the agencies concur with these findings and recommendations, and provided that the Inadvertent Discovery Plan is implemented and tribal consultation continues as appropriate, In Situ recommends a determination of *No Further Archaeological Work* for the Project.”¹¹² As such, even if a finding of *No Historic Properties Affected* was recommended for the Study Area, the corresponding recommendation of *No Further Archaeological Work* for the Project was contingent on (1) agencies concurring with the findings of the report (2) continuing and completing tribal consultation and (3) implementation of the inadvertent discovery plan.

¹⁰⁷ *Minnesota Power*, 2025-2039 Integrated Resource Plan, PUC Docket No. E015/RP-25-127, Mar. 3, 2025, eDockets No. 20253-215986-11 at 26.

¹⁰⁸ *Id.* at 9-10.

¹⁰⁹ *Id.* at 86.

¹¹⁰ Draft AUAR, *supra* note 1, (Appendix H) at 11-16. It is also worth noting that the Draft AUAR suggests that 245 new trees will be planted, but that a total of 10,783 mature trees will be removed because of the project. It’s unclear how this discrepancy could possibly mitigate overall GHG emissions from the project’s offsite electricity usage.

¹¹¹ Draft AUAR, *supra* note 1, at 95.

¹¹² Draft AUAR, *supra* note 1, (Appendix F, Phase I Archaeological Survey for Project Loon—Hermantown, St. Louis County, Minnesota) at 37.

However, Hermantown has failed to meaningfully implement any of *In Situ*'s recommended actions from its Phase I Archeological Study. Although the draft mitigation plan includes requirements for the developer to complete tribal consultation and implement an inadvertent discovery plan, there is little detail on how either of these will be implemented.¹¹³ The inadvertent discovery plan appears nowhere in the Draft AUAR or its appendices, and it's unclear when (or if) the Project developer will be required to provide this plan to the public for review.

Additionally, the Draft AUAR fails to comprehend or accurately state the level of tribal consultation required for this project. Nowhere in the Draft AUAR is it evident that Hermantown has engaged in formal government-to-government consultations with interested Tribal Nations that could be impacted by this project. Although page 95 of the Draft AUAR provides a summary of tribal coordination completed during the AUAR process, all these so-called "consultations" have been between the Project proposer and tribal entities, not the actual city government of Hermantown. This is not true tribal consultation.¹¹⁴ There are no details or concrete commitments on how and when tribal consultations with the City must occur, and at which steps the Project developer must receive approval and informed consent from interested tribal governments. Additionally, the accelerated timeline for this project does not provide sufficient space for proper feedback and consultation with expert tribal staff.

Therefore, given the discussion above, Commenters recommend that (1) tribal consultations are completed with all interested Tribes (and inter-tribal resource management organizations) prior to the preparation and publishing of a Final AUAR for public review; (2) the inadvertent discovery plan recommended by *In Situ* is completed and included in the Final AUAR for public review; (3) greater detail is provided in the mitigation plan on how, when, and with whom tribal consultations for this project will be completed. It is not sufficient to merely state that tribal consultations must continue without commitments to integrate Tribes' viewpoints and knowledge into the environmental analysis. Free Prior and Informed Consent should be respected, including the right of tribal organizations approve or veto the measures included in the Final AUAR's mitigation plan and the inadvertent discovery plan. Additionally, consultation must precede any permitting decisions and inform permit conditions.

10. 1854 Treaty

As mentioned in Commenters' Scoping Comments, this project implicates Tribal Nations' interest and likely will harm treaty-protected resources within the 1854 Treaty of LaPointe's covered territory.¹¹⁵ Nevertheless, the Draft AUAR does not acknowledge the 1854 Treaty. In the main body of the 142-page Draft AUAR, the 1854 Treaty is not mentioned a single time. In fact, in all of the

¹¹³ Draft AUAR, *supra* note 1, at 139.

¹¹⁴ See *infra*, Sec. 10, 1854 Treaty.

¹¹⁵ See MINN. DEP'T NAT. RES., *1854 Treaty*, https://www.dnr.state.mn.us/aboutdnr/laws_treaties/1854/index.html (last visited July 15, 2026) (providing 1854 Treaty language, legal history, and the treaty map, as well as referencing 1854 Treaty Authority website).

hundreds of pages of Appendices attached to the AUAR, the Treaty is mentioned once, in a brief overview of St. Louis County's history in *In Situ's* Phase I archeological study.¹¹⁶

As previously mentioned, the only tribal consultations performed and recommended in the AUAR appear to be between the Project proposer or developer and interested tribal governments. However, this is not true government-to-government consultation in accordance with the U.S. Constitution, which must occur between governments.¹¹⁷ The Project developer is not a government and cannot implement a treaty on behalf of Hermantown (neither can the environmental review consultant selected by the City). As such, their coordination with any tribal entity is irrelevant to Hermantown's duty under federal law and norms to follow and uphold the 1854 treaty.

Given that this treaty has the clear potential to implicate tribal resources protected under the 1854 Treaty, it is imperative that Hermantown connect with all interested tribal governments and inter-tribal organizations and adequately conduct the consultation required for this project. Specifically, Commenters recommend that Hermantown (1) engage in government-to-government consultation with all Tribal Nations that are a party to the 1854 Treaty, their inter-tribal organizations (such as the 1854 Treaty Authority, who already submitted Scoping Comments in this matter), and all other interested tribal governments and inter-tribal resource management organizations; (2) perform consultations with interested tribal governments and inter-tribal organizations on all other topics of interest to them; (3) explicitly recognize and respect 1854 Treaty rights during the Final AUAR drafting process; (4) acknowledge and respect Free Prior and Informed Consent, including the right of tribal governments to approve or veto any component of the Project with the potential to impact treaty-protect resources; (5) meaningfully incorporate feedback from interested Tribal Nations and inter-tribal organizations into the environmental analysis and any permits being considered for this Project; and (6) provide more information on specific government-to-government consultation activities and engagement actions that will occur to ensure 1854 treaty rights are upheld.

11. Local community impacts

The Final AUAR must address the potential visual impacts of the Project on more than just aesthetics. As identified by Commenters in Scoping Comments, the analysis of visual impacts must include culturally significant sightlines, landscape-scale settings, and relationships to the sky and the horizon.¹¹⁸ Unfortunately, the Draft AUAR does not appear to have addressed this issue at all. In consultations with Tribes, Hermantown must assure that it understands this issue and incorporates it into environmental review and permitting. The Final AUAR must correct this deficiency, and change project plans consistent with all interested Tribes' input.

¹¹⁶ Draft AUAR (Appendix F, Phase I Archaeological Survey for Project Loon—Hermantown, St. Louis County, Minnesota) at 17.

¹¹⁷ Tribal governments may delegate some of their interest and expertise in resource management to entities like the 1854 Treaty Authority, but Hermantown cannot abdicate its duties to uphold the law by having a private for-profit developer perform its governmental duty.

¹¹⁸ Fond du Lac Band of Lake Superior Chippewa comment within AUAR Scoping Document Comments, *supra* note 2, at 24.

12. Cumulative impacts

a. Cumulative impact of hyperscale data centers across Minnesota

At least ten hyperscale data centers have been proposed in communities across our state over the last two years. Not all will come to fruition, of course, but several have detailed plans for development and have been in discussions with local planners for years. Given the scope of the proposed development, and the potential for these kinds of projects to attract more hyperscale data centers to the area, the Final AUAR should contemplate the cumulative impacts on water, energy, communities, and economies, of these other proposed developments.¹¹⁹

One hyperscale data center proposal in particular must be included in the AUAR: Cohasset. Cohasset city meeting minutes indicate that the city is considering a large AI data center, and that city representatives may have entered into nondisclosure agreements following an Economic Development Authority meeting in March of 2025.¹²⁰ Given the proximity to Hermantown, and the fact that both data centers would receive their electricity from Minnesota Power, it is prudent to address whether a proposal is moving forward in Cohasset, and how it might compound the potential impacts of the proposed Hermantown data center (i.e. the cumulative impacts of electricity demand and additional fossil fuel burning to serve that electric load). Importantly, the absence of an application for a data center in Cohasset, in light of meeting notes that suggest a nondisclosure agreement between the developer and the city may be in place, does not absolve Hermantown from its duty to consider the potential cumulative impacts of nearby development. Any information that Hermantown needs to fill out the details on this Cohasset proposal likely could be gathered from Minnesota Power, who regularly is approached by developers with proposals in an initial phase.¹²¹

b. Public infrastructure upgrades and costs

The Draft AUAR fails to address the potential long-term costs of infrastructure to serve the Project for existing Hermantown residents. The Draft AUAR only contemplates the initial costs associated with upgrading the City's existing water and sewer infrastructure to serve the Project. This is carefully described in the Draft AUAR to explicitly avoid any discussion of *future* costs for maintenance: "[there] will not be any public utility assessment levied against private property

¹¹⁹ At the very least, it seems pertinent to consider Google's other hyperscale data center proposal in Pine Island, to compare and contrast the anticipated impacts and the kinds of benefits being offered each city.

¹²⁰ See CITY OF COHASSET ECON. DEV. AUTH., *Minutes*, Mar. 4, 2025, https://www.cohasset-mn.com/AgendaCenter/ViewFile/Minutes/_03042025-84 ("There are ongoing dialogues regarding a data center initiative within the industrial park, with efforts aimed at preventing redundancy in site readiness activities. Communication with all parties involved is being maintained. The city is in the process of formalizing a non-disclosure agreement and is reviewing various documents and procedures to secure federal and state funding.").

¹²¹ If Minnesota Power cannot reveal the specifications of a particular proposed data center, it can undoubtedly approximate what kind of data center would be likely based on past proposals from developers that never came to fruition. This would be sufficient information to perform additional analysis consistent with MEPA.

owners for the installation of the new utilities. Installation of the public utility improvements will be financed by the developer.”¹²² And although the developer will cover the installation costs of these improvements, it is clear from the Draft AUAR that the City will take ownership of those assets, along with their long-term management and maintenance costs.¹²³

The Final AUAR must adequately assess the potential impacts to public infrastructure and public finances over the long term, especially after the lifetime of the Project. This analysis should include the costs of both maintenance and decommissioning and a discussion of long-term cost coverage or a decommissioning account, paid for by the end user, to mitigate this economic impact. Hermantown residents should not be left holding the bag for infrastructure that is only built to benefit the Project and associated facilities.

c. Heat island

In Scoping Comments, Commenters and others noted that the proposed data center could result in a significant heat islanding effect, due to the land use change from forest, wetlands, and peatlands to impervious surfaces.¹²⁴ The Draft AUAR concludes that: “While there is some heat expelled, it is not anticipated that heat from the data center would cause heat island effect.”¹²⁵ This is a bald-faced conclusion with no analysis. It is unclear what evidence supports this assumption. This is especially concerning given that the area surrounding the Project is zoned for Business and Light Manufacturing (BLM) uses and expected to change as the city develops.¹²⁶ The Final AUAR should discuss the cumulative potential of such BLM development to create heat islanding effects by describing how much BLM development is expected or already planned nearby and identify mitigation strategies to reduce the risk of future heat island effects if more development occurs. Conversion of rural land to paved surfaces, along with a large new source of ambient heat, is likely to have significant temperature impacts that cannot merely be brushed off with a denial lacking any support.

The Final AUAR must include clear support for this conclusion, or in the absence of such, offer concrete mitigation and enforcement plans. The Final AUAR should also be preceded by the heat study described in the draft mitigation plan and incorporate any mitigation measures identified therein as conditions of final project approval. The Draft AUAR’s utter failure to discuss how heat will be expelled from a closed-loop or air-cooled system further renders this “analysis” inadequate and in need of correction.

¹²² Draft AUAR, *supra* note 1, at 126-27.

¹²³ *Id.* at 32.

¹²⁴ CURE comment within AUAR Scoping Document Comments, *supra* note 2, at 586.

¹²⁵ Draft AUAR, *supra* note 1, at 131.

¹²⁶ *See Id.* at 37 (“While the Study Area’s current zoning is BLM and the City’s Comprehensive Plan indicates that the Study Area is guided for Business and Light Manufacturing . . . , there are residential homes in the area that would see the transition of this land use over time.”).

13. Mitigation plan enforcement

The Draft AUAR relies heavily on the assumption that any of the Project's potential impacts will be mitigated and therefore, are not of concern. But the Draft AUAR fails to address how the proposed mitigation measures will be implemented and *enforced* in practice. Without a method to compel performance of identified mitigation measures, it cannot be assumed that the Project will not result in the stated impacts. Mitigation without enforcement is not mitigation.

To comply with MEPA rules and avoid risk of legal challenge under MEPA and the Minnesota Environmental Rights Act (MERA), Hermantown should include in the Final AUAR a “description of how each mitigation measure will be implemented,” and should consider “legal and financial measures and institutional arrangements . . . that will be implemented to ensure mitigation.”¹²⁷ This could include fines or permit revocation for noncompliance. Leaving this type of information out is not acceptable in view of the concerns of Hermantown residents about this process and its outcomes.

IV. Conclusion

For the foregoing reasons, Commenters request that Hermantown either conduct an EIS for this project or request reassignment of the RGU so that a state agency like MPCA or the Environmental Quality Board can conduct an adequate EIS. The instant do-over of an inadequate AUAR strongly suggests that the City has taken on more than it can handle in this process, and it is entirely reasonable to reassess a mistake and correct the planned environmental review so that it doesn't violate state law. Hermantown must engage in formal and meaningful consultation with interested and impacted tribal governments or risks violating federal law, treaties that cover Hermantown and the region in its entirety, and the U.S. Constitution.

Continuing down the wrong path will slow the overall process, waste public resources, and may lead to needless legal costs imposed on the City, which can easily be avoided by following MEPA and doing a sufficient environmental review for the City's largest and most impactful development, ever. The City is fast approaching a “point of no return” where it will no longer be able to seek the assistance of a more qualified RGU, which is an unfortunate unforced error if the Final AUAR continues to be riddled with inaccuracies and omissions.

When environmental impacts are honestly identified and analyzed they can be mitigated and projects can proceed. But engaging in a process that never identifies impacts in the first place is a misuse of the public's trust and a violation of the state's law.

¹²⁷ MINN. R. 4410.3600, subp. 5(C); see also MINN. ENV'T QUALITY BD., *Alternative Urban Areawide Review (AUAR) Guidance*, <https://www.eqb.state.mn.us/environmental-review/guidance-practitioners/alternative-urban-areawide-review-auar-guidance> (last visited July 16, 2026) (providing guidance for how the AUAR process should be implemented by local governments and project applicants).

Sincerely,

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