

## **ENVIRONMENTAL REVIEW 101**

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### **I. PURPOSE**

The purpose of the state-mandated Environmental Review Program contained in Minnesota Statutes Chapter 116D (Minnesota Rules Chapter 4410) is to assess and mitigate the significant environmental effects caused by public and private actions. This purpose is achieved by requiring certain proposed development projects to undergo environmental review prior to obtaining the governmental approvals and permits needed to commence construction.

The function of environmental review is information-gathering, so that governmental units with approval or permitting authority over a project can incorporate environmental protection into the proposed development.

Environmental review itself has no approval authority over a project. The information revealed by the review process only becomes "effective" when decision-makers are able to incorporate it into their permitting decisions through mitigation measures or negotiated project modifications aimed at reducing identified impacts. The environmental review process usually occurs in conjunction with a city's administration of its zoning ordinance. Mitigation measures would include the imposition of binding conditions of approval on the land use applications required for a development project.

## II. PROCESS – EAW and EIS

**A. Step 1** – Determining the “responsible governmental unit” (RGU) is the first step in the environmental review process. Different governmental units are responsible for conducting the review depending on the nature of the project. The RGU decides whether the proposed project fits any mandatory EAW or EIS categories. The RGU for a project meeting the thresholds of any mandatory category is specified in the implementing rule. The mandatory review categories for a sports or entertainment facility are attached to this document.

Minn. R. 4410.4400, subp. 22 states that the local governmental unit in which the sports facility will be located is the designated RGU. However, the stadium legislation provides that the Minnesota Sports Facilities Authority (MSFA) is the RGU in the specific case of the Vikings stadium. Minn. Stat. § 473J.17, subd. 3.

**B. Step 2** – If a project is subject to environmental review, the next step is the preparation of an environmental assessment worksheet (EAW). Depending on the size, type, and location of a project, preparation and review of the EAW is either mandatory, specifically exempt, or at the discretion of the governmental unit. The EAW is a relatively short worksheet containing standardized questions related to environmental impacts. Its purpose is to provide sufficient information to determine if the more detailed level of review of an environmental impact statement (EIS) is required. A “scoping” EAW/scoping decision document is prepared for projects, such as the Vikings stadium, that meet a mandatory EIS

category. The scoping EAW functions as a “blueprint” or “roadmap” to outline the issues that will be addressed in detail in the EIS.

The MSFA has identified the following issues that will be addressed in the stadium EIS:

- Traffic
- Air Quality
- Odors, Noise, and Dust
- Visual Impacts
- Public Infrastructure Improvements
- Archaeological, Historical, and Architectural Resources
- Past Site Uses, including any contamination
- Soil Conditions
- Water Use
- Water Quality, including stormwater runoff and Mississippi River impacts
- Solid Waste, Hazardous Materials, Storage Tanks
- Cumulative Impacts

**C. Step 3** – If a project meets a mandatory EIS category (and a scoping EAW/scoping decision document is prepared) or if the RGU determines that a project has the potential for significant environmental effects after consideration of the EAW, then the next step is to prepare an EIS. The EIS is a thorough study of the project’s environmental impacts. It must address reasonable alternatives, including the “no-build” alternative. The EIS is primarily intended to give

governmental units information to determine whether the project is environmentally acceptable and what mitigation measures are needed. The Vikings stadium legislation specifically exempts the RGU from the consideration of alternative stadium sites, including the “no-build” scenario.

### **III. ENFORCEMENT MECHANISM – PROJECT MORATORIUM**

In order for environmental review to have utility in the governmental approval process, a moratorium is automatically placed on project approval and construction. Minnesota law requires that when environmental review is being conducted, a project may not proceed and permits authorizing the project may not be issued. Minn. Stat. § 116D.04, subd. 2b. If governmental approvals and/or construction were to occur before environmental review is complete, then the information revealed may be rendered ineffective, unless there is a commitment by the project proposer to voluntarily incorporate environmental protection measures. The EIS itself is not a means to approve or disapprove a project. It can only point out problems and solutions, it cannot enforce them.

In creating an exception to the moratorium provision, the Vikings stadium legislation states that “the [EIS] must be determined to be adequate before commencing work on the foundation of the stadium, but the stadium and stadium infrastructure may otherwise be started and all preliminary and final government decisions and actions may be made and taken including, but not limited to, acquiring land; obtaining financing; granting permits or other land use approvals; entering into grant, lease, or use agreements; or preparing the site or related

stadium infrastructure prior to a determination of the adequacy of the [EIS].”

Minn. Stat. § 473J.17, subd. 3.

#### **IV. LEGAL RECOURSE**

Any person aggrieved by a final decision on the adequacy of an EIS can seek judicial review with the Minnesota Court of Appeals. Minn. Stat. § 116D.04, subd. 10. A petition for writ of certiorari must be filed and served no more than 30 days after the party receives the final decision and order of the RGU. The posting of a bond may be required. The adequacy determination is made by the RGU and will examine:

- whether the final EIS includes topics required to be in the EIS or that were in the scoping document and does a reasonable job analyzing the topics;
- whether the final EIS includes responses to comments on the draft EIS;
- whether procedures were followed to provide ample opportunity for public comment on the EIS.

An RGU’s determination will be affirmed if it is supported by substantial evidence in the administrative record and is not arbitrary or capricious.

## SPORTS OR ENTERTAINMENT FACILITIES

### **Mandatory EAW**

**4410.4300, subpart 34**

Construction of a new sports or entertainment facility designed for or expected to accommodate a peak attendance of 5,000 or more persons, or the expansion of an existing sports or entertainment facility by this amount, **local governmental unit**

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### **Mandatory EIS**

**4410.4400, subpart 22**

Construction of a new outdoor sports or entertainment facility designed for or expected to accommodate a peak attendance of 20,000 or more persons or a new indoor sports or entertainment facility designed for or expected to accommodate a peak attendance of 30,000 or more persons, or the expansion of an existing facility by these amounts, **local governmental unit**

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### **Exemptions**

**None**

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### **Notes**

**Sports or entertainment facility** is any facility for sports events or various forms of entertainment or amusement that attract large numbers of people within a limited period of time, including sports stadiums and arenas; racetracks; concert halls or amphitheaters; theaters; facilities for festivals or pageants (if other than temporary facilities such as grandstands, amplification systems, or lighting are to be constructed); fairgrounds; amusement parks; and zoos.

The number of participants is to be counted as part of the attendance.