

4410.3610 ALTERNATIVE URBAN AREAWIDE REVIEW PROCESS.

Subpart 1. **Applicability.** A local unit of government may use the procedures of this part instead of the procedures of parts 4410.1100 to 4410.1700 and 4410.2100 to 4410.3000 to review anticipated residential, commercial, warehousing, and light industrial development and associated infrastructure in a particular geographic area within its jurisdiction, if the local unit has adopted a comprehensive plan that includes at least the elements in items A to C. The procedures of this part may not be used to review any project meeting the requirements for a mandatory EAW in part 4410.4300, subparts 2 to 13, 15 to 17, 18, item C, D, or E, or 24, or a mandatory EIS in part 4410.4400, subparts 2 to 10, 12, 13, or 25. The local unit of government is the RGU for any review conducted under this part.

A. A land use plan designating the existing and proposed location, intensity, and extent of use of land and water for residential, commercial, industrial, agricultural, and other public and private purposes.

B. A public facilities plan describing the character, location, timing, sequence, function, use, and capacity of existing and future public facilities of the local governmental unit. The public facilities plan must include at least the following parts:

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

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

C. An implementation program describing public programs, fiscal devices, and other actions to be undertaken to implement the comprehensive plan. The implementation plan must include a description of official controls addressing the matters of zoning, subdivision, and private sewage treatment systems, a schedule for the implementation of those controls, and a capital improvements program for public facilities.

A local governmental unit that has an adopted comprehensive plan that lacks any of the elements required by this subpart may qualify for the use of the procedures of this part upon a demonstration to the EQB chair that the lacking element would have no substantial effect on the purpose of or outcome of the environmental review and upon receiving authorization from the EQB chair to use these procedures.

Subp. 2. Relationship to specific development projects.

A. Upon completion of review under this part, residential, commercial, warehousing, and light industrial development projects and associated infrastructure within the boundaries established under subpart 3 that are consistent with development assumptions established under subpart 3 are exempt from review under parts 4410.1100 to 4410.1700 and 4410.2100 to 4410.3000 as long as

the approval and construction of the project complies with the conditions of the plan for mitigation developed under subpart 5.

B. The prohibitions of part 4410.3100, subparts 1 and 2, apply to all projects for which review under this part substitutes for review under parts 4410.1100 to 4410.1700 or 4410.2100 to 4410.3000. These prohibitions terminate upon the adoption by the RGU of the environmental analysis document and plan for mitigation under subpart 5.

C. If a specific residential, commercial, warehousing, light industrial, or associated infrastructure project, that is subject to an EAW or EIS, is proposed within the boundaries of an area for which an alternative review under this part is planned or is in preparation but has not yet been completed, the RGU may, at its discretion, review the specific project either through the alternative areawide review procedures or through the EAW or EIS procedures. If the project is reviewed through the alternative areawide review procedures, at least one set of development assumptions used in the process must be consistent with the proposed project, and the project must incorporate the applicable mitigation measures developed through the process.

D. The ordering of a review pursuant to subpart 3 does not constitute a finding by the RGU that each potential project within the designated boundary has or may have the potential for significant environmental effects. After an order for review has been adopted under subpart 3, if a specific project for which an EAW or EIS is not mandatory is proposed within the boundaries of the review area, the RGU may exclude the project from the review process and proceed with its approval by using the following process. The RGU must provide notice of the intended exclusion and the reasons for the intended exclusion in the same manner as for distribution of an EAW pursuant to part 4410.1500. Agencies and interested persons shall have ten days from the date of the notice in the *EQB Monitor* to file comments with the RGU about the proposed removal of the project from the review. If no adverse comments are received within the comment period, the project is automatically excluded from the review and the prohibitions under part 4410.3100 do not apply to the project without further action by the RGU. If adverse comments are received, the RGU must consider the comments and determine whether to include the project in the review or to exclude it within 30 days of the end of the comment period based on whether the project may have the potential for significant environmental effects, taking into account the comments received and the interaction of the project with other anticipated development in its surrounding area.

E. If a specific project will be reviewed through the procedures of this part rather than through the EAW or EIS procedures and the project itself would otherwise require preparation of an EIS pursuant to part 4410.4400 or will comprise at least 50 percent of the geographic area to be reviewed, the RGU must follow the additional procedures of subpart 5a in the review.

Subp. 3. Order for review; geographic area designation and specification of development. The RGU shall adopt an order for each review under this part that specifies the boundaries of the geographic area within which the review will apply and specifies the anticipated nature, location, and intensity of residential, commercial, warehousing, and light industrial development and associated infrastructure within those boundaries. The RGU may specify more than one scenario of anticipated development provided that at least one scenario is consistent with the adopted comprehensive plan. At least one scenario must be consistent with any known

development plans of property owners within the area. The RGU may delineate subareas within the area, as appropriate to facilitate planning and review of future development, and allocate the overall anticipated development among the subareas.

Subp. 4. **Environmental analysis document; form and content.** The content and format must be similar to that of the EAW, but must provide for a level of analysis comparable to that of an EIS for direct, indirect, and cumulative potential effects typical of urban residential, commercial, warehousing, and light industrial development and associated infrastructure. The content and format must provide for a certification by the RGU that the comprehensive plan requirements of subpart 1 are met.

Subp. 5. **Procedures for review.** The procedures in items A to H must be used for review under this part.

A. The RGU shall prepare a draft environmental analysis document addressing each of the development scenarios selected under subpart 3 using the standard content and format provided by the EQB under subpart 4. A draft version of the mitigation plan as described under item C must be included. The geographic extent of the analyses of direct, indirect, and cumulative potential effects conducted in preparing the document is not to be limited by the boundaries set in the order for review under subpart 3. The draft document must be distributed and noticed in accordance with part 4410.1500.

B. Reviewers shall have 30 days from the date of notice of availability of the draft environmental analysis in the EQB Monitor to submit written comments to the RGU. Reviewers that are governmental units shall be granted a 15-day extension by the RGU upon a written request for good cause. A copy of the request must be sent to the EQB.

Comments may address the accuracy and completeness of the information provided in the draft analysis and draft mitigation plan, potential impacts that warrant further analysis, further information that may be required in order to secure permits for specific projects in the future, mitigation measures or procedures necessary to prevent significant environmental impacts within the area when actual development occurs, and the need to analyze additional development scenarios as required by this part.

Governmental units shall also state in their comments whether or not they wish to be notified by the RGU upon receipt of applications for specific development projects within the area.

C. The RGU shall revise the environmental analysis document based on comments received during the comment period. The RGU shall include in the document a section specifically responding to each timely, substantive comment received that indicates in what way the comment has been addressed. If the RGU believes a request for additional analysis is unreasonable, it may consult with the EQB chair before responding to the comment.

The RGU shall include in the document a plan for mitigation specifying the mitigation measures that will be imposed upon future development within the area in order to avoid or mitigate potential environmental impacts. The plan shall contain a description of how each mitigation measure will be implemented, including a description of the involvement of other agencies, if appropriate.

D. The RGU shall distribute the revised environmental analysis document, including the plan for mitigation, in the same manner as the draft document and also to any persons who commented on the draft document and to the EQB staff. State agencies and the Metropolitan Council of the Twin Cities have ten days from the date of receipt of the revised document to file an objection to the document with the RGU. A copy of any letter of objection must be filed with the EQB staff. An objection may be filed only if the agency filing the objection has evidence that the revised document contains inaccurate or incomplete information relevant to the identification and mitigation of potentially significant environmental impacts, that the review has not analyzed sufficient development scenarios as required by this part, or that the proposed plan for mitigation will be inadequate to prevent potentially significant environmental impacts from occurring.

E. Unless an objection is filed in accordance with item D, the RGU shall adopt the revised environmental analysis document, including the plan for mitigation, at its first regularly scheduled meeting held 15 or more days after the distribution of the revised document. The RGU shall submit evidence of the adoption of the document and plan for mitigation to the EQB staff and all agencies that have stated that they wish to be informed of any future projects within the area as part of their comments on the draft environmental analysis document. The EQB shall publish a notice of the adoption of the document and the completion of the review process in the EQB Monitor.

Upon adoption of the environmental analysis document, including the plan for mitigation, residential, commercial, warehousing, and light industrial projects and associated infrastructure within the area that are consistent with the assumptions of the document and that comply with the plan for mitigation are exempt from review under parts 4410.1100 to 4410.1700 and 4410.2100 to 4410.2800.

F. If an objection is filed with the RGU in accordance with item D, within five days of receipt of the objection the RGU shall consult with the objecting agency about the issues raised in the objection and shall advise the EQB staff of its proposed response to the objection. At the request of the RGU, the objecting agency, the EQB staff, and any other affected agency shall meet with the RGU as soon as practicable to attempt to resolve the issues raised in the objection.

Within 30 days after receipt of the objection the RGU shall submit a written response to the objecting agency and the EQB chair. The response shall address each of the issues raised in the objection. The RGU may address an issue by either revising the environmental analysis document or plan for mitigation, or by refuting the comment.

G. Within five days of receipt of the RGU's response to the objection, the objecting agency shall advise the EQB chair of whether it accepts the response and withdraws its objection or continues to object. If the objecting agency continues to object, the EQB chair shall place the matter on the agenda of the next regularly scheduled EQB meeting or of a special meeting.

H. If the matter is referred to the EQB under item G, the EQB shall determine whether the environmental analysis document, including the plan for mitigation, is adequate, conditionally adequate, or inadequate. If the EQB finds the document conditionally adequate or inadequate, the EQB shall specify the revisions necessary for adequacy. The EQB shall only find the document inadequate if the EQB determines that it contains inaccurate or incomplete information necessary

to the identification and mitigation of potentially significant environmental impacts, that the review of development scenarios is not in compliance with this part, or that the proposed plan for mitigation will be inadequate to prevent the occurrence of potentially significant environmental impacts.

If the EQB finds the document adequate or conditionally adequate, the RGU shall adopt the document under item E. If the document is found conditionally adequate by the EQB, the RGU shall first revise the document as directed by the EQB. If the EQB finds the document inadequate, the RGU has 30 days to revise the document and circulate it for review in accordance with items D to H.

Subp. 5a. Additional procedures required when certain large specific projects reviewed.

A. The procedures of this subpart must be followed in addition to those of subpart 5 if a specific project will be reviewed according to this part and the project would otherwise require preparation of an EIS pursuant to part 4410.4400 or will comprise at least 50 percent of the geographic area to be reviewed.

B. Prior to final approval of the order for review pursuant to subpart 3, the RGU must conduct a public process to receive comments about the scope of the review. The RGU shall prepare a draft order for review and distribute and provide notice of its availability in the same manner as for an EAW pursuant to part 4410.1500. The draft order for review must include the information specified in subpart 3 and a description of the specific large project or projects to be included in the review comparable to that of a scoping EAW pursuant to part 4410.2100, subpart 2.

C. Government units and interested persons shall participate in the public comment process in accordance with part 4410.1600, except that the purpose of the comments is to suggest additional development scenarios and relevant issues to be analyzed in the review. Comments may suggest additional development scenarios that include alternatives to the specific large project or projects proposed to be included in the review, including development at sites outside of the proposed geographic boundary. The comments must provide reasons why a suggested development scenario or alternative to a specific project is potentially environmentally superior to those identified in the RGU's draft order.

D. The RGU must consider all timely and substantive comments received when finalizing the order for review. The RGU shall apply the criteria for excluding an alternative from analysis found under part 4410.2300, item G, in determining if a suggested additional scenario or alternative to a specific project should be included or excluded and must explain its reasoning in a written record of decision.

E. The RGU shall adopt the final order for review within 15 days of the end of the comment period. A copy of the order and the RGU's record of decision must be sent within ten days of the decision to the EQB and to anyone who submitted timely and substantive comments.

Subp. 6. Time limit. Unless an objection is filed under subpart 5, item D, the RGU shall adopt the environmental analysis document and plan for mitigation no later than at its first meeting held more than 120 days after the date on which the RGU ordered review under this part. The time limit

may be extended upon the agreement of all proposers whose project schedules are affected by the review.

Subp. 7. **Updating review.** To remain valid as a substitute form of review, the environmental analysis document and the plan for mitigation must be revised if any of the circumstances in items A to H apply.

A. Five years have passed since the RGU adopted the original environmental analysis document and plan for mitigation or the latest revision. This item does not apply if all development within the area has been given final approval by the RGU.

B. A comprehensive plan amendment is proposed that would allow an increase in development over the levels assumed in the environmental analysis document.

C. Total development within the area would exceed the maximum levels assumed in the environmental analysis document.

D. Development within any subarea delineated in the environmental analysis document would exceed the maximum levels assumed for that subarea in the document.

E. A substantial change is proposed in public facilities intended to service development in the area that may result in increased adverse impacts on the environment.

F. Development or construction of public facilities will occur on a schedule other than that assumed in the environmental analysis document or plan for mitigation so as to substantially increase the likelihood or magnitude of potential adverse environmental impacts or to substantially postpone the implementation of identified mitigation measures.

G. New information demonstrates that important assumptions or background conditions used in the analysis presented in the environmental analysis document are substantially in error and that environmental impacts have consequently been substantially underestimated.

H. The RGU determines that other substantial changes have occurred that may affect the potential for, or magnitude of, adverse environmental impacts.

The environmental analysis document and plan for mitigation must be revised by preparing, distributing, and reviewing revised documents in accordance with subpart 5, items D to H, except that the documents must be distributed to all persons on the EAW distribution list under part 4410.1500. Persons not entitled to object to the documents under subpart 5, item D, may submit comments to the RGU suggesting changes in the documents.

Subp. 8. **Report to EQB.** The EQB chair may ask the RGU to report on the status of actual development within the area, and on the status of implementation of the plan for mitigation. Upon request, the RGU shall report to the EQB chair within 30 days.

Statutory Authority: *MS s 116D.04; 116D.045*

History: *13 SR 1437; 21 SR 1458; 31 SR 539; 31 SR 646; 34 SR 721*

Published Electronically: *December 27, 2019*