

MEMORANDUM

To: Mayor Zweifel and City Council **VIA EMAIL ONLY**

From: Christopher M. Hood, City Attorney

Date: June 16, 2026

Re: **Petition for Environmental Assessment Worksheet – Harvest Hills Development**

INTRODUCTION

By letter, dated May 29, 2026, from Sarah Lerohl, Environmental Review Program Coordinator with the Minnesota Environmental Quality Board (“EQB”), the City of Northfield (“City”) received a petition for an environmental assessment worksheet (“EAW”)¹, received by the EQB on May 28, 2026 (the “Petition”), for the proposed Harvest Hills Development. The Petition is signed by approximately 107 individuals and was submitted to the EQB pursuant to Minnesota Rules, part 4410.1100. The Petition is requesting that an EAW be prepared on the proposed Harvest Hills Development project.

BACKGROUND

The following is provided for purposes of background to place in context the discussion that follows:

1. Schrom Real Estate Holdings, LLC (the “Property Owner”) and Schrom Construction, Inc. (the “Developer”) have received preliminary plat approval with conditions from the City Council (Resolution 2026-050, dated May 5, 2026) for a housing development on a 10.3 acre parcel located within the City, PID 2212426022, and described as Outlot A, Harvest Hills Addition (the “Property”).
2. The approved preliminary plat for the Harvest Hills 2nd Addition subdivision, consists of a mix of 71 residential townhome housing units comprised of 21 duplexes (42 units), five triplexes (15 units), two 4-plexes (8 units), and one 6-plex (6 units) (collectively the “Project” or “Development”). The proposed Project is planned to be constructed in two phases.
3. At least 20% of the above-mentioned units in the Development will be reserved for rental to persons whose annual income does not exceed 50% of applicable area median income.
4. The Property is depicted, as outlined in red, on the map attached hereto as Exhibit 1.

¹ See Minn. R 4410.1100, subp. 5.

5. The Developer has also submitted an application to the City for final plat approval for phase 1 of the Project and for tax increment financing (“TIF”) assistance related to the Project.

QUESTIONS AND ANALYSIS

1. **Does the Project fall within a category under State law requiring preparation of a mandatory EAW?**

No. The Project does not meet the threshold for preparation of a mandatory EAW under Minnesota Rules.² Therefore, preparation of an EAW is discretionary, or one may be required by the City Council in the event the City Council grants the Petition for an EAW.

2. **Does the Petition require preparation of an EAW for the Project?**

No. The City Council must make that decision. The City Council may either: a. choose to grant the Petition and thereby order the Developer to prepare an EAW on the Project; or b. the City Council may deny the Petition and not require the preparation of an EAW.

In making this decision, the City Council must order the preparation of an EAW if the material evidence presented by the Petitioners demonstrates that, because of the nature or location of the proposed Project, the Project may have the potential for significant environmental effects. The City Council must deny the Petition if the evidence presented fails to demonstrate that the Project may have the potential for significant environmental effects.³

In considering the evidence whether the Project has the potential for significant environmental effects, the Council shall compare the impacts that may be reasonably expected to occur from the Project with the criteria / factors listed in Minnesota Rules, part 4410.1700, subp. 7,⁴ which provides as follows:

“Criteria. In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:

- A. type, extent, and reversibility of environmental effects;
- B. cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential

² See Minn. R 4410.4300, subp. 19.

³ Minn. R 4410.1100, subp. 6.

⁴ See also *Id.*

effect; and the efforts of the proposer to minimize the contributions from the project;

- C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
- D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.”

The City Council must make specific findings of fact of its decision based upon the above criteria on the need for an EAW.⁵

The City Council must make such decision within 15 working days from the date of receipt of the Petition (May 29, 2026), except that such date may be extended by the Council an additional 15 days.⁶ Thus, the City Council must make a decision on the Petition to either grant or deny/dismiss the same with findings supporting the decision by no later than June 19, 2026, unless the date is otherwise extended by the Council another 15 days. Once a decision is made by the City Council then the City must communicate that decision in writing to the EQB and Petitioner’s representative.⁷

3. Does the Petition meet the basic legal requirements for submission of a petition for an EAW thereby allowing for further consideration of the same by the City Council?

Yes. Minnesota Rules, part 4410.1100, subp. 5, requires the EQB to determine the adequacy of a Petition, and specifically whether the Petition complies with the basic requirements of Minnesota Rules, part 4410.1100, subparts 1 and 2, allowing for such a Petition to proceed further in the process.

The above Rule goes on to state that if the petition complies with subparts 1 and 2, then the EQB must designate the Responsible Governmental Unit (“RGU”) pursuant to Minnesota Rules, part 4410.0500, and forward the petition to the RGU within five days of receipt of the petition, or, to the contrary, if the petition fails to comply with subparts 1 and 2, then the EQB shall return the petition to the petitioner’s representative within five days of receipt of the petition with a written explanation of why it fails to comply.

In this case, the EQB has submitted a transmittal letter to the City, dated May 29, 2026, enclosing the Petition and designating the City as the RGU. Based on the above Rule and

⁵ Minn. R 4410.1100, subp. 6.

⁶ See Minn. R 4410.0200, subp. 12 and Minn. R 4410.1100, subp. 7..

⁷ Minn. R 4410.1100, subp. 8.

the above-referenced EQB letter, the City can conclude that the EQB has determined that the Petition meets the basic legal requirements for it to be considered further by the City Council to either grant or deny the same.

It should be noted that the mere fact that the EQB determined that the Petition met basic legal requirements for a petition to receive further consideration by the Council is not dispositive of whether an EAW should be ordered or not ordered. It is instead in the City Council's sole judgment, as the RGU, to make the decision whether to order the petitioned EAW. The Court of Appeals has expressly addressed this issue and ruled as follows:

Minn. R. 4410.1100, subp. 5, states that, if a petition complies with the requirements of subparts 1 and 2, the EQB's chair shall designate an RGU and forward the petition to the RGU. One of the requirements of subpart 2 is that the petition shall include "material evidence indicating that, because of the nature or location of the proposed project, there may be potential for significant environmental effects." Minn. R. 4410.1100, subp. 2(E). But the fact that the EQB's chair forwarded the petition to the RGU does not mean that the EQB concluded that there may be potential for significant environmental effects; it means only that the EQB determined that the petition included evidence that there may be potential for significant environmental effects. The RGU is responsible for evaluating the evidence and deciding whether to order the preparation of an EAW. The rule states that the RGU shall either (1) order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that the project may have the potential for significant environmental effects or (2) deny the petition if the evidence fails to [*17] demonstrate that the project may have the potential for significant environmental effects. Minn. R. 4410.1100, subp. 6; *see also* Minn. Stat. § 116D.04, subd. 2a(c) (stating that "[a] decision on the need for an environmental assessment worksheet shall be made by the responsible governmental unit").⁸

4. What is the purpose of an EAW?

The City Council in addressing this matter should first understand what an EAW does if the City Council orders one to be prepared. An EAW is a document designed to set out the basic facts necessary to determine whether a more complex environmental study called an environmental impact statement ("EIS") should be required.

5. What evidence is needed to support a petition for an EAW?

A petition for an EAW must be supported by material evidence.⁹ The courts have interpreted this to mean that the evidence filed with the EAW petition must be evidence that is "admissible, relevant, and consequential to determine whether the project may have the

⁸ *Whitefish Area Prop. Owners Ass'n v. Minnesota-Iowa Baptist Conf.*, 2015 Minn. App. Unpub. LEXIS 149, *15-17.

⁹ Minn. R 4410.1100, Subp. 2. The petition shall also include: ... E. material evidence indicating that, because of the nature or location of the proposed project, there may be potential for significant environmental effects. The material evidence must physically accompany the petition. It is not sufficient to merely provide a reference or citation to where the evidence may be found.

potential for significant environmental effects.”¹⁰ “Allegations of vague or generalized fears and concerns are therefore not sufficient under the statute.”¹¹ “Moreover, in determining whether an EAW is warranted, an RGU properly considers “the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority.”¹² The material evidence must also physically accompany the petition. It is not sufficient to merely provide a reference or citation to where the evidence may be found.¹³

It is therefore insufficient to just have identified environmental concerns in a petition.¹⁴ Instead, the Petition must present material evidence that the Project because of its nature or location may have the potential for significant environmental effects. Most projects will have environmental effects, but the evidence to require an EAW from the Petitioner must meet a higher threshold and show that any potential effects may be significant.¹⁵

6. Given that a Petition has been filed and the same has been deemed by the EQB to meet the basic requirements for further consideration by the Council, what impact does filing the Petition have on the City’s consideration of the final plat and/or TIF for the Project?

Minnesota Rules, part 4410.3100, subp. 1, requires that when an EAW is required or a petition for an EAW is filed, which it has been here, no project may be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project until either a petition for an EAW is dismissed; a negative declaration on the need for an environmental impact statement (“EIS”) is issued; an EIS is determined adequate; or a variance is granted under subparts 3 to 7 or the action is an emergency under subpart 8 of the above-referenced Rule.

The primary question with this Rule based project decision prohibition is whether it precludes the City Council from considering for approval the final plat and/or TIF application for the Project until following the EAW determination. The governing law and case law, including the definitions in Minnesota Rules, part 4410.0200, subp.4, 33, 58 and 65 defining the terms approval, governmental action, permit and project, lead to the conclusion that the Rule would apply to the present Council actions on the final plat and TIF postponing a decision on the same until following a decision on the EAW.

¹⁰ *Watab Twp. Citizen Alliance v. Benton Cnty. Bd. of Comm’rs*, 728 N.W.2d 82, 90 (Minn. App. 2007), review denied (Minn. May 15, 2007).

¹¹ *Id.*

¹² *Id.* (citing Minn. R. 4410.1700, subp. 7 (2005)).

¹³ Minn. R 4410.1100, subp. 2.

¹⁴ See *Wescott v. Wabasha Cty. Bd. of Comm’r*, 2017 Minn. App. Unpub. LEXIS 555, *8, 2017 WL 2729597. (“The county board noted that environmental effects are subject to mitigation by the ongoing public regulatory authority of the MDA, MPCA, Minnesota Department of Natural Resources, and the county. See *Friends of Twin Lakes v. City of Roseville*, 764 N.W.2d 378, 382 (Minn. App. 2009) (stating caselaw supports the use of “regulatory oversight as a means of preventing significant environmental effects”). The petition contains no evidence that these regulations will not sufficiently address any potential negative environmental effects. The petition also cites several generalized concerns that are allayed by project-specific evidence presented to the county board by the CUP applicant.”)

¹⁵ *Whitefish Area Prop. Owners Ass’n v. Minnesota-Iowa Baptist Conf.*, 2015 Minn. App. Unpub. LEXIS 149, *15-17.

The mere filing of the Petition triggered the above prohibition on subsequent decisions by the City Council for approval of the Project. The above Rule prohibition states that: "... a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project ..." until the EAW decision is made. The use of the term "permit" here, and as defined above, encompasses both the final plat decision and the TIF decision on the Project.

The term "permit" specifically includes "... the commitment to issue or the issuance of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, by a governmental unit ..." ¹⁶ TIF falls within that definition as financial assistance to the Project. Thus, the City should postpone a decision on TIF until after the EAW decision is made.

With respect to the plat decision, the final plat is a step towards Project approval and outlines a specific Project "... the results of which would cause physical manipulation of the environment, directly or indirectly." ¹⁷ The results of environmental review could also impact the plat and may require alterations to it to address required mitigation of any identified significant environmental effects. Again, based on this, the City should postpone a decision on the final plat until after the EAW decision is made.

- 7. While the TIF decision is not subject to any specific approval time deadline and can be delayed pending the EAW decision, the final plat is subject to the 60-day rule. Based on the application of the statutory timing rules, what is the impact of the above State Rule prohibition on a final plat with respect to the timing for City Council action on the final plat for the Project?**

With respect to the final plat, Minnesota Statutes, Section 462.358, subd. 3b, provides in part that:

"... Following preliminary approval the applicant may request final approval by the municipality, and upon such request the municipality shall certify final approval within 60 days if the applicant has complied with all conditions and requirements of applicable regulations and all conditions and requirements upon which the preliminary approval is expressly conditioned either through performance or the execution of appropriate agreements assuring performance. If the municipality fails to certify final approval as so required, and if the applicant has complied with all conditions and requirements, the application shall be deemed finally approved, and upon demand the municipality shall execute a certificate to that effect. After final approval a subdivision may be filed or recorded. ..."

Thus, for final plats, a decision to approve or deny a final plat must be made by the City Council within 60 days of the date of submission of a completed application to the City. In this case, however, the Minnesota Environmental Policy Act (MEPA), Minnesota Statutes,

¹⁶ Minn. R 4410.0200, subp. 58.

¹⁷ Minn. R 4410.0200, subp. 65.

c. 116D, and its corresponding rules as contained in Minnesota Rules, c. 4410, mandate additional procedures, which cannot be likely completed within the statutory 60-day period contained in the above-referenced statute. The above referenced statute does not address this issue, but it is addressed in the 60-day rule statute contained in Minnesota Statutes, section 15.99.

Specifically, Minnesota Statutes, section 15.99, subd.3, provides in part as follows:

“(d) The time limit in subdivision 2 is extended if a state statute, federal law, or court order requires a process to occur before the agency acts on the request, and the time periods prescribed in the state statute, federal law, or court order make it impossible to act on the request within 60 days. In cases described in this paragraph, the deadline is extended to 60 days after completion of the last process required in the applicable statute, law, or order. Final approval of an agency receiving a request is not considered a process for purposes of this paragraph.”

The final plat is request related to zoning under the above-quoted subdivision 3(b). More specifically, however, the EAW process is a state statutory process required to occur before the Council can legally act upon the final plat based upon the prohibition on governmental action in Minnesota Rules, part 4410.3100. As a result, Minnesota Statutes, section 15.99, subd.3(d) applies under these circumstances, which means the time period for consideration of approval of the final plat is stayed until the EAW decision can be made; after which the City will have 60 days to make the decision on the final plat.¹⁸

8. What is the EAW preparation, review and decision process?

The general process and timeline to complete an environmental assessment worksheet is as follows:¹⁹

- a. City orders preparation of an EAW on the Project.
- b. Project applicant submits completed data portions of the EAW to the City.
- c. City reviews data submittal from Project applicant for completeness and makes determination of completeness within 30 days, unless the time period is extended.

¹⁸ See *Allen v. City of Mendota Heights*, 694 N.W.2d 799, 800, 2005 Minn. App. LEXIS 317, *1. After the developer had made its various written requests for preliminary plat approval, rezoning, site-plan approval, and a conditional-use permit for a planned-unit development, citizens petitioned the Minnesota Environmental Quality Board for an environmental-assessment worksheet. The developer argued that its applications for permits to the city were automatically approved under Minn. Stat. § 15.99, subd. 2 (2004). The appellate court noted that the issue on appeal was whether a citizens' petition under the Minnesota Environmental Policy Act (MEPA), Minn. Stat. ch. 116D (2004), tolled the running of the 60-day period for city action under Minn. Stat. § 15.99, subd. 2. The city responded that the 60-day deadline for agency action was tolled by Minn. Stat. § 15.99, subd. 3(d), when environmental processes under MEPA were initiated. The appellate court held that because a citizens' petition for an environmental-assessment worksheet under MEPA initiated a process that had to occur before agency action on a written request under Minn. Stat. § 15.99, subd. 2 (2004), and that made it impossible to act within 60 days, the 60-day deadline of Minn. Stat. § 15.99 was extended by Minn. Stat. § 15.99, subd. 3(d) to 60 days after completion of the last environmental-review process required by MEPA.

¹⁹ See Minn.R. parts 4410.1100 through 4410.1700.

- d. If complete, City notifies applicant that the data submittal is complete within 5 business days of such determination.
- e. If incomplete, City returns to applicant for corrections and completion of the missing data (then steps a & b are above are repeated).
- f. City prepares the EAW on the EQB standard form from the data submittals and adds any supplemental information, if necessary, approves the EAW for distribution.
- g. Within 5 days after the City approves the EAW, the City must provide a copy of the EAW to the EQB to publish the notice of availability of the EAW in the *EQB Monitor*. The City can submit the EAW electronically to EQB using the *EQB Monitor* Submission Form found on the EQB website:
<https://www.eqb.state.mn.us/eqb-monitor>
- h. At the time of submission of the EAW to EQB, the City shall also submit one copy of the EAW to each of the following:
 - ii. each member of the EQB;
 - iii. the proposer of the project;
 - iv. the U.S. Corps of Engineers;
 - v. the U.S. Environmental Protection Agency;
 - vi. the U.S. Fish and Wildlife Service;
 - vii. the State Historical Society;
 - viii. the state archaeologist;
 - ix. the Indian Affairs Council;
 - x. the Environmental Conservation Library;
 - xi. the regional development commission and regional development library for the region of the project site;
 - xii. any local governmental unit within which the project will take place;
 - xiii. the representative of any petitioners pursuant to part 4410.1100; and
 - xiv. any other person upon written request.
- i. Within 5 days of EAW submission to the EQB, City publishes press release/notice about the EAW to at least one newspaper of general circulation in the project area or on an official publication website for the political subdivision in which the project is proposed (this must be done within 5 business days of the notice sent to the EQB).
- j. Such notice must contain the availability of the EAW for public review, the name and location of the project, a brief description of the project, the location at which copies of the EAW are available for review, the date the comment period expires, and the procedures for commenting.
- k. *Notice will appear in the EQB Monitor* (varies between 7 and 20 days from receipt of notice at EQB, but usually is 7 days).
- l. *Comment period ends* (30 days after the *EQB Monitor* notice is published).
- m. City prepares written responses to substantive and timely comments (Documented in Record of Decision documents – the City may request further information from the applicant as necessary).
- n. The City makes the decision on whether an EIS is needed for the Project based on whether the record (EAW, comments, responses) indicates the Project has the potential for significant environmental effects (between 3 business and 30 calendar days after the end of public comment period; the City may postpone the decision to gather critical missing information for up to 30 days or a longer period if agreed to

by the Project proposer; the City decision must be documented in a written record of decision with findings).

- o. City distributes notice of EIS need decision (within 5 business days to EAW distribution list (above) and anyone else who submitted timely and substantive comments, commenters must receive a copy of the response to their comments).
- p. EQB publishes notice of EIS need decision in *EQB Monitor*.

Often, cities will hire consultants to prepare all or part of the EAW or to independently review the Project proposer's submittal. The City may want to hire a consultant, typically an engineering and planning consultant, to assist with the EAW process if the same is ordered. In addition, cities are allowed to charge the costs of the EAW to the applicant if they have an ordinance in place allowing the City to do so. Staff and consultant time may be significant to undertake and complete the EAW process. Northfield City Code, Chapter 34, Section 8.3.9 (C)(4)(a)(i) provides that if it is determined that an EAW shall be prepared, the proposer of the project shall submit an application along with the completed data portions of the EAW. The applicant shall also agree in writing, as a part of the application, to reimburse the city for all reasonable costs, including legal and consultants' fees, incurred in preparation and review of the EAW.

I hope that the foregoing is helpful in your consideration of this matter. Thank you.

CMH/sc

EXHIBIT 1

Depiction of Development Property

