



Preparing EAWs: A Procedural Guide for Local RGUs

The Environmental Quality Board (EQB) draws together the Governor's Office, five citizens and the heads of 9 state agencies in order to develop policy, create long-range plans and review proposed projects that would significantly influence Minnesota's environment. The Board staff is housed in the State and Community Services Division of the Department of Administration.

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This document is not intended as a substitute for Environmental Quality Board rules and should be used in conjunction with the rule provision parts 4410.1000 to 4410.1700. Copies of the rules are available from Minnesota's Bookstore, www.minnesotasbookstore.com, 651-297-3000 or 800-657-3757, or at the Revisor of Statutes homepage at www.revisor.leg.state.mn.us. Further information about the environmental review process is available in the Guide to Minnesota Environmental Review Rules, also located on the EQB website. Upon request, this document will be made available in an alternate format, such as Braille, large print or audiotape. For TTY, contact Minnesota Relay Service at 800-282-5077 and ask for the Minnesota Environmental Quality Board.

Updates and corrections to this document and all its accompanying links, forms, or examples will be posted on the EQB homepage at <http://www.eqb.state.mn.us/review.html>.

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This document is available as a PDF document on the Environmental Quality Board's Internet site at www.eqb.state.mn.us.



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Overview - Preparing an EAW

Here's an overall summary of the steps involved in coordinating an Environmental Assessment Worksheet (EAW) for environmental review:

Steps	1-5	Preliminary steps
Steps	6-8	Get started
Steps	9-10	Review the data submittal
Steps	11-16	Put the EAW on public notice and receive comments
Steps	17-21	Reach an informed decision
Step	22	Notify Required Parties

Introduction

There are three reasons for which an EAW can be ordered for a project:

- When the project crosses one of the mandatory EAW thresholds
- When a Responsible Government Unit (RGU) orders a discretionary EAW
- When an RGU orders an EAW as a result of a citizen petition

This document is designed to be another resource for RGU staff that need to prepare a mandatory EAW, or those that are reviewing a project for which a discretionary EAW may be necessary. In addition to reviewing this document, there are other guidance documents and resources on the Environmental Quality Board (EQB) website regarding environmental review rules and procedures for EAWs that may be useful. The EQB website is located at www.eqb.state.mn.us.

If RGU staff are uncertain of the procedures regarding citizen petitions for environmental review, they may wish to consult the documents on the EQB website, particularly "Guide to the Environmental Review Rules" and "Processing Petitions: A Procedural Guide for Local Government RGUs". RGU staff may also contact EQB staff for assistance with questions beyond the scope of these materials. The EQB's phone number, email, and mailing address can be found on its website at www.eqb.state.mn.us.

Step 1 – Determine whether the project requires a mandatory EAW

In the environmental review rules, there are criteria that make EAWs mandatory for many different types of projects. These criteria are called "mandatory thresholds" and can be found in MN Rule 4410.4300. If a project's size is above the mandatory threshold for its category, then environmental review becomes mandatory (required).

As a matter of practice, RGU staff should compare all project applications to the mandatory threshold list, making certain to review the appropriate threshold for the project type, but also thresholds for wetlands, streams, and ditches. RGU staff can consult the EQB's guidance document called "A Guide to the Environmental Review Rules" (located on the EQB website) for a complete list of the mandatory thresholds for environmental review.

If RGU staff determine that a project requires mandatory environmental review, they should proceed to Step 3 of this document.

Step 2 – Determine whether a discretionary EAW should be ordered

Any government unit with approval authority for a project can order a discretionary EAW if it determines that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects.

If the project does not meet the following criteria, however, it is considered exempt from environmental review, and a discretionary EAW cannot be ordered.

- The action or project must involve the physical manipulation of the environment, directly or indirectly.
- The action or project must involve at least one governmental approval, one form of governmental financial assistance, or be conducted by a government unit.
- Action or project approval and construction must take place in the future; that is, projects already constructed or those with all required governmental approvals are not subject to further review unless an



expansion is proposed.

- The project is cannot be subject to the exemptions listed in MN Rule 4410.4600.

The term “governmental action” refers to activities including projects conducted, permitted, assisted, financed, regulated, or approved by federal, state, and local governmental units.

The term “permit” means a permit, lease, license, certificate, or other entitlement for use or permission to act that may be granted or issued by a governmental unit, or the commitment to issue or the issuance of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, by a governmental unit.

The term “governmental unit” applies to local government units such as watershed districts, counties, towns, cities, port authorities, housing authorities and the Metropolitan Council with the exception of courts, school districts, and regional development commissions.

Helpful Tip

It is important to know that making a decision to “not order” a discretionary EAW is legally and procedurally different from denying a citizen petition for environmental review. If a government unit does not proceed with a discretionary EAW, and then receives a citizen petition at a later date, its staff must still appropriately evaluate the concerns listed in the petition.

Step 3 – Verify your organization has the authority to prepare a mandatory EAW or to order a discretionary EAW

For projects requiring mandatory EAWs, the EQB has already established rules to determine a project’s RGU. (A diagram of the RGU designations assigned by the EQB, can be found on the EQB’s website at: www.server.mn.state.us.) Local

government RGUs are determined by the project’s location as well as by determining which government organization (city, county, or township) has the most jurisdiction over a project.

For discretionary EAWs, any government unit with approval authority for a project can order an EAW, even if a citizen petition for environmental review has been denied by a different government unit.

A discretionary EAW can also be prepared when a project proposer wishes to voluntarily initiate environmental review in order to determine if a project has the potential for significant environmental effects.

Helpful Tip

Once a government unit with approval authority for a project orders a discretionary EAW, the government unit is then referred to as the RGU for the project and is responsible for EAW preparation and review.

Step 4 – Contact the project proposer

Once RGU staff have identified a project that needs to undergo mandatory environmental review or may need a discretionary EAW, they should contact the project proposer as soon as possible and inform them of their findings. This way, the project proposer can attend any relevant meetings and provide additional information about the project. In some cases, the project proposer may already be aware that a mandatory EAW is necessary, and may have already started preparing the EAW data portions.

In some cases, when it seems likely that a council/board will order a discretionary EAW, a project proposer may actually volunteer to do an EAW in the hopes of speeding up the process. (So that EAW preparation can begin instead of waiting for a council/board decision.) If the project proposer volunteers to prepare an EAW, they should not receive any special treatment or consideration, and are subject to all of the environmental review requirements listed in the rules.



Helpful Tip

The project proposer will probably have a lot of questions for RGU staff, including questions on how an EAW will affect the approval of their proposal, site plan, permits, etc. In the event that RGU staff are unfamiliar with the environmental review process, and can't answer some of the project proposer's questions, it is a good idea to recommend the proposer review the EQB website or contact EQB staff for more information.

For many local governments, environmental review occurs very infrequently, and it is common for their staff to be unfamiliar with process steps or procedures. In addition to contacting the EQB for assistance, RGU staff may wish to talk with other zoning administrators in their area to see how they have approached preparing and reviewing EAWs.

Step 5 – Make an official decision on whether an EAW is required or needed

RGU staff should then identify the authority in their organization that can make environmental review decisions (such as ordering an EAW). This varies from one local government to another, but in most local governments it will be the board/council. The authority for making environmental review decisions is determined by local procedures/ordinances, not by state environmental review rules, and anyone making environmental review decisions other than the governing body must have a specifically delegated authority to do so.

When an RGU is ordering a mandatory EAW, it is because the project is large enough to cross over one or more mandatory thresholds established in the environmental review rules.

When a government unit is ordering a discretionary EAW, it is because the project may create the potential for significant environmental effects or because the project proposer has volunteered. In many cases the discretionary EAW is ordered on projects that are expected to be controversial in nature, or that would likely be petitioned for environmental review anyway.

Helpful Tip

With some RGUs, the recognition that an EAW is mandatory may not necessarily need to go before the governing authority for an official decision. The procedures for officially ordering the preparation of an environmental review documents are determined by local ordinance. If RGU staff are uncertain of how to officially proceed with this step, they should contact their local government attorney for assistance.

Step 6 – Schedule a meeting with the project proposer to plan out the EAW preparation

When a mandatory EAW is required, or when a government unit orders a discretionary EAW, they should schedule a meeting with the project proposer to discuss the EAW process. This will allow both parties to review what will be required and to sign any necessary paperwork.

Since the environmental review rules do not provide a standard method of assessing EAW preparation and review costs back to the project proposer, RGU staff should sign a contract or formal agreement with them stating that the proposer will be responsible for all EAW preparation and analysis costs, including those incurred by the RGU. In order to do this, RGU staff should follow the procedures their local government already has in place for preparing contracts and assessing fees – each local government will have their own way of proceeding with this step.

To ensure a timely and complete payment of fees, RGU staff may wish to require the project proposer to pay for all RGU costs prior to the issuance of local permits (such as building permits).

Helpful Tip

Some proposers think the “sixty day rule” (MN Statute 15.99) continues to apply to projects that are going through the environmental review process, but this is not the case. RGU staff should inform the project proposer that, because environmental review decisions can often take 30+ days to be reached, environmental review is one of the exceptions to the rule. Essentially, the clock stops ticking on the “sixty day rule” until environmental review has been completed and, once environmental review has been completed, the clock is reset at 60 days.



Step 7 – Start a project file

If it has not already been done, RGU staff should start a file for the project and keep copies of all written or email correspondence, faxes, contracts, etc. RGU staff will also want to keep track of their phone calls with the proposer, including the dates, times, and subject of their calls in a phone log.

As citizens will sometimes submit comments to the RGU prior to the EAW public comment period, RGU staff will likely want to keep copies of these letters with the project file. While the RGU is only required to respond to substantive comments submitted during the official public comment period, citizen comment letters submitted prior to this time can sometimes raise important issues that a local government will want to review and/or address during either the EAW preparation or through local permitting procedures.

Helpful Tip

RGU staff should make certain project proposers are aware of the EQB's "EAW Guidelines: Preparing Environmental Assessment Worksheets", located on the EQB website at:

<http://www.mnplan.state.mn.us/pdf/2000/eqb/eawrules.pdf>.

This document provides item-by-item guidance for completing an EAW.

Step 8 – Retain a consultant (if needed)

RGU staff will need to determine whether or not their organization has the staff time and expertise to review the data portions of the EAW submitted by the project proposer, suggest EAW changes, and perform other requirements of the environmental review process without the assistance of a consultant. If not, and it will be necessary to hire a consultant for environmental review, RGU staff should make the necessary arrangements for doing so at this stage of the process.

Each local government may carry out this step in a different way, though, according to its own local ordinances and procedures. For more information on using consultants during environmental review, please see the EQB document titled, "Hiring a Consultant for Environmental Review: A Guide for

Local Governments" located on the EQB website.

Project proposers sometimes have the ability to complete the data portions of the EAW in as little as 2 weeks time, so RGU staff should attempt to retain a consultant as soon as possible.

Step 9 – Evaluate the proposer's EAW data submittal

MN Rule 4410.1400 provides the following information regarding the completeness of a proposer's data submittal:

"When an EAW is to be prepared, the proposer shall submit the completed data portions of the EAW to the RGU. The RGU shall promptly determine whether the proposer's submittal is complete.

If the RGU determines that the submittal is incomplete, the RGU shall return the submittal to the proposer for completion of the missing data. If the RGU determines that the submittal is complete, the RGU shall notify the proposer of the acceptance of the submittal within five days.

The RGU shall have 30 days from notification to add supplementary material to the EAW, if necessary, and to approve the EAW for distribution. The RGU shall be responsible for the completeness and accuracy of all information. "

RGUs and project proposers can consult "EAW Guidelines: Preparing Environmental Assessment Worksheets", for item-by-item assistance on the types of information needed for the EAW. This document, can be found on the EQB website at: <http://www.mnplan.state.mn.us/pdf/2000/eqb/eawrules.pdf>.

RGU staff should use the information in this document to help determine whether a proposer's data submittal is accurate and complete.

Step 10 - Prepare the EAW for final release

Once an RGU has received the data submittal from the project proposer, determined the submittal is complete, and notified the proposer of the completeness of the data submittal, the RGU has 30 calendar days to edit and finalize the EAW document. At this point in the process, the RGU is mostly editing the document for understandability, spelling/grammar, etc. The RGU may also add supplementary material to the EAW at this time in order to provide more information about the project's potential for significant environmental effects.



If an RGU is using its own staff to review the EAW, and is assessing its costs to the project proposer, it should keep a record of all staff time spent performing environmental review tasks. This includes tasks completed by its engineering staff, planning staff, administrative staff, etc. By keeping an accurate record of the hours spent on the project's environmental review, the RGU will be able to correctly assess fees for services back to the project proposer.

After the RGU staff is satisfied with the editing of the EAW document, it may be a good idea for them to send the document back to the project proposer for final review. This allows the proposer to suggest any changes and/or clarifications that need to be made so that the EAW accurately describes the project and its potential for significant environmental effects. While it is important for RGUs to take the proposer's comments and information into account, it is the RGU that is ultimately responsible for the accuracy and completeness of the information in the EAW.

Helpful Tip

Steps 9 and 10 illustrate the importance of understanding whether or not an EAW data submittal is complete. Once an RGU verifies a proposer's submittal is complete, it only has 30 days (according to the rules) to finalize and edit the document. RGUs should make certain they have all needed information and conducted any analyses or studies prior to notifying the proposer that the data submittal is complete.

Helpful Tips

When reviewing and editing an EAW, here are some helpful tips:

RGU staff should specifically designate someone to be the EAW coordinator. This person will be responsible for making sure the EAW gets to all necessary staff members and that their input will be incorporated into the final draft of the EAW.

If an RGU has hired a consultant to assist in the review process, it should make certain the consultant receives the EAW data and documents as soon as possible. The RGU may even want to have the consultant review the data submittal

before making it available for editing by RGU staff, as an experienced consultant can often identify potential problems more quickly, as well as recommend solutions.

RGUs will likely want to have all the necessary staff members reading/editing the EAW at the same time, rather than one at a time (and then handing it off to the next person). Afterwards, a meeting can be scheduled to get everyone together and discuss staff concerns and/or needed corrections. This may lead to some duplication, ex. three people identifying the same issue that needs to be addressed, but will ensure a faster review process in the end.

Step 11 - Approve the EAW for distribution and make copies

While it is not required, the RGU may want to approve the EAW for distribution through some kind of formal action or resolution. This makes it clear to everyone – RGU council/board members, citizens, RGU staff, the proposer, etc., that the EAW is officially ready for distribution and public comments.

Preparing the EAW for public notice involves:

- Determining the number of copies of the EAW will be needed
- Making copies of the EAW
- Preparing the mailing list/ mailing labels
- Assembling all materials for mailing

When the EAW is complete and ready for public notice, RGU staff should consult the EQB distribution list (located on the EQB website) and determine the number of copies that will be needed. If the EAW is more than 30 pages long or includes a number of maps and appendices, it may be a good idea to have it bound for easier reading.



Helpful Tip

In recent years many RGUs are choosing to prepare and distribute environmental review documents on CDROM, as this format can sometimes save on copying and mailing costs. It is EQB staff policy that publishing documents on CDROM satisfies environmental review rule requirements, but RGUs must be able to provide a paper copy of the document upon request.

Step 12 – Submit project information to EQB staff for publication in the EQB Monitor

Environmental review rules require RGUs to submit an abstract (brief description) of the project and the RGU's contact information for a notice to be published in the EQB Monitor. Publishing the notice in the EQB Monitor officially starts the 30 day public comment period.

RGUs can use the information listed in Item 6a of the EAW for the abstract section of the EQB Monitor notice. RGUs can also use this opportunity to communicate other important information, such as public meeting dates/times, where copies of the EAW are available, etc.

Once an RGU has completed the required information, EQB staff recommend that the information be submitted via email to eqb.monitor@state.mn.us. If necessary, the EQB can also receive the information by fax or US mail. The EQB's fax number and mailing address can be found on its website at: www.eqb.state.mn.us.

When requesting information to be published in the Monitor, RGU staff should consider the list of publication dates and information submittal deadlines located on the EQB website at www.eqb.state.mn.us/monitor. The EQB Monitor is published every other Monday and the information submittal deadline is at least 1 week prior to this date.

Step 13– Prepare and send out a press release to a newspaper of general circulation

In addition to putting a notice in the EQB Monitor, the RGU is required to offer a press release regarding the availability of the EAW for public review and comment to a "newspaper of general circulation" in the area in which the project will be

located.

A press release is a general announcement of a newsworthy event, it is not the same thing as a legal or government announcement that you are required to pay for publication. While the newspaper is not required to and may not wish to publish the information, by in offering the press release the RGU has fulfilled its required responsibilities.

Step 14 – Mail copies of the EAW to all required parties prior to the EQB Monitor publication date

Several days prior to the project's notice in the EQB Monitor, RGU staff will need to mail the EAW to all required organizations and individuals from the EQB's distribution list. It is necessary to mail the EAWs out beforehand so they will arrive at their respective destinations by the actual EQB Monitor publication date.

Helpful Tip

While it does not happen often, the EAW distribution list is sometimes updated or revised. RGUs should always verify they have downloaded the most recent version of the EAW distribution list from the EQB's website.

Step 15 – Receive public comment letters

Once the project has been noticed in the EQB Monitor, the official 30-day public comment period begins (the 30-day comment period refers to actual calendar days, not business or working days). During this time, interested parties have the opportunity to submit letters to the address provided in the EQB Monitor.

Step 16 – Prepare a response to public comments

RGUs are required to respond to comments that are both substantive and timely. For instance, if a commenter states, "I don't think the project fits the neighborhood," this has little to do with the EAW or the environmental impacts of the project. Substantive comments are comments that "address the accuracy and completeness of the materials contained in the EAW, potential impacts that may warrant further investigation before the project is commenced, and the need



for an Environmental Impact Statement (EIS) on the proposed project.”

The easiest way for RGUs to deal with comments that are not relevant is to write something like “comment noted” in the response to comments. This allows the commenter to know that, while RGU staff were paying attention to their comments, they felt the comment was outside the bounds of issues to be considered during the environmental review process.

Similarly, if a comment letter is received any time after the deadline, the RGU is not required to respond to it (this letter would not be considered timely). The RGU can accept late comments at its discretion, however, but it should have a relevant reason for doing so – such as significant public interest or discovering through comments indications that the project may have the potential for significant environmental effects. If a comment letter is received only a few days after the public comment period has ended, it is usually good practice to consider the letter and to provide an appropriate response to the issue the commenter raised.

When preparing a response to comments, RGU staff should be aware that the response to comments will become a part of the official record of decision.

Step 17 – Determine whether an EIS will be necessary

Determining the appropriateness of ordering an EIS is a complex process and requires good local government policy and sound consideration of the facts on the part of the RGU. MN Rule 4410.1700 provides the following direction on how to reach an appropriate a decision on whether an EIS will be necessary:

Subpart 1. Standard for decision on need for EIS. An EIS shall be ordered for projects that have the potential for significant environmental effects.

Subp. 2a. Insufficient information. If the RGU determines that information necessary to a reasoned decision about the potential for, or significance of, one or more possible environmental impacts is lacking, but could be reasonably obtained, the RGU shall either:

- A. make a positive declaration and include within the scope of the EIS appropriate studies to obtain the lacking information; or*
- B. postpone the decision on the need for an EIS, for not more than 30 days, in order to obtain the lacking*

information. If the RGU postpones the decision, it shall provide written notice of its action, including a brief description of the lacking information, within five days to the project proposer, the EQB staff, and any person who submitted substantive comments on the EAW.

Subp. 6. Standard. In deciding whether a project has the potential for significant environmental effects the RGU shall compare the impacts that may be reasonably expected to occur from the project with the criteria in this part.

Subp. 7. 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 of related or anticipated future projects;*
- C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; 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.*

Step 18 – Prepare a proposed findings of fact

The “findings of fact” is a written document that lists the RGU’s findings regarding issues of fact related to the project, and that were used in reaching an appropriate environmental review decision. In other words, the findings of fact is a summary of the RGU’s factual and legal reasons for reaching its conclusion.

As affected parties have the ability to appeal environmental review decisions to the county district court in which the proposed project is located, RGU staff should have their attorney review the proposed findings of fact and suggest changes if necessary. The attorney will be able to verify that the RGU has legally “covered all the bases”.

RGUs frequently incorporate substantive comments and the RGU’s response to comments into the findings of fact when appropriate.

Step 19 – Prepare a draft resolution

In nearly all cases, reaching a decision regarding the need



for an EIS will involve the local government's council/board and so a resolution will need to be drafted. Exceptions to this would be cases where another local government authority has been delegated the decision-making powers for environmental review. Prior to presenting the information before a board/council for a decision, though, RGU staff may want to consult the local government's attorney in order to draft appropriate resolution language.

In cases where the RGU staff are uncertain of how the board/council will vote, two draft resolutions may be prepared; one ordering an EIS and not ordering an EIS.

Step 20 – Seek official local government approval of the decision on the need for an EIS

Once an RGU's analysis of the project, the proposed findings of fact, and draft resolution are complete, the RGU should seek official action on whether or not to order an EIS.

In most cases this step will involve the local government's council/board, and RGU staff should follow regular procedures for including this decision at one of their council/board meetings, such as listing the item on the meeting agenda, preparing presentation materials, verifying the project proposer and any consultants/ engineering staff will be available for questions, distributing copies of substantive comments, the response to comments, and findings of fact to members, etc.

The rules require most RGUs to make a decision on the need for an EIS between three working days and 30 days after the comment period ends (this time frame applies to all RGUs where the decision is made by a council/board that only meets occasionally). If the decision will be made by a single individual in authority, then the decision must be made within 15 business days from the end of the comment period, but this individual can request a 15 business day extension from the EQB.

If an RGU believes an EIS may be necessary, they can contact the EQB or consult documents on the EQB website in order to get more information about the procedures and requirements of EIS process. The EQB's contact information can be found on its website at www.eqb.state.mn.us.

Delay of EIS decision due to insufficient information

The RGU may postpone its decision on the need for an EIS for up to 30 additional calendar days *if* it determines that “information necessary to a reasoned decision about the potential for, or significance of, one or more possible environmental impacts is lacking, but could be reasonably obtained” (part 4410.1700, subpart 2a).

If, on the other hand, the missing information is not critical to the EIS need decision in the opinion of the RGU, the decision should not be delayed. This provision is intended to provide for a postponement only on the basis of important missing information that bears on the question of potential for significant environmental impacts. This information can be developed later as part of an appropriate permitting process. In its record of decision, the RGU can describe the missing information and how it will be obtained and used.

If the project proposer agrees, an RGU can extend the postponement beyond the 30 days stated in the rules. In unusual cases where important information is found to be lacking from the EAW, the RGU may simply withdraw the EAW, revise it and restart the 30-day comment period. This can normally only be justified if the project description information is so incomplete or inaccurate that reviewers are not given a fair chance to review the true project.

Step 21 – Prepare the record of decision

The “record of decision” is a record of the RGU's investigation and includes various elements related to the project and the environmental review decision. The record of decision often includes such items as meeting minutes, the findings of fact, the EAW, comments received, and the response to comments (unless the comments and the response to comments were already incorporated into the findings of fact).

As suggested with the findings of fact, RGU staff should have their local government attorney review the record of decision and suggest changes if necessary. The attorney will be able to verify that the RGU has legally “covered all the bases”.



Step 22 – Distribute a notice of decision and the response to comments to all required parties

Regardless of the decision made on the EAW, the RGU must distribute a notice of decision to the agencies on the EQB distribution list, the project proposer, all persons who commented in writing during the public comment period, and anyone else who requested notification of the RGU's decision. The RGU is also required to send a copy of its response to comments to all persons that submitted timely and substantive comments during the public comment period.

RGU staff may also find it useful to include any applicable meeting minutes or a copy of the approved resolution when mailing materials to the EQB or others. In this way, interested parties may better understand how a decision by the RGU was reached.

When the RGU submits the notice of decision to the EQB, the EQB will publish a notice regarding the EAW's outcome in the EQB Monitor, and any other documents submitted with the notice of decision will be added to the project file at the EQB office. If the RGU has issued a positive declaration on the need for an EIS, it will also need to indicate the date, time and place of the EIS scoping review meeting.