

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1617**

Approving the Findings of Fact and Record of Decision for Archer Datacenters
Environmental Assessment Worksheet (EAW) and Negative Declaration Concerning the
Need for an Environmental Impact Statement (EIS).

**Filed June 8, 2026
Reversed and remanded
Bentley, Judge**

City of Faribault
File No. 2025-191

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Considered and decided by Bentley, Presiding Judge; Beane, Judge; and Smith,
John, Judge.*

NONPRECEDENTIAL OPINION

BENTLEY, Judge

In this certiorari appeal, relator Minnesota Center for Environmental Advocacy
(MCEA) challenges respondent City of Faribault's negative declaration concerning the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

necessity of an environmental impact statement for a data center project proposed by respondent Archer Datacenters SPE2, LLC. MCEA argues that the city violated the Minnesota Environmental Policy Act (MEPA), Minnesota Statutes sections 116D.01-.11 (2024 & Supp. 2025), in its review of the environmental assessment worksheet for the project, resulting in a decision that is arbitrary and capricious, unsupported by substantial evidence, and affected by errors of law. We conclude that the city’s negative declaration is unsupported by substantial evidence, and we therefore reverse and remand.

FACTS

To provide helpful context for the facts and procedural history, we begin with an overview of the relevant legal framework governing the environmental review process. We then summarize the circumstances giving rise to this case.

A. Relevant Statutory and Regulatory Background

Under MEPA, the Environmental Quality Board (EQB) adopts rules governing the necessity for environmental review. *See* Minn. Stat. § 116D.04, subd. 2a(b); *see also* Minn. R. 4410.0200-.6500 (2023). Under those rules, the responsible governmental unit (RGU)—here, the City of Faribault—determines the level of environmental review required for a project. *See* Minn. R. 4410.0200, subps. 75-76 (defining “responsible governmental unit” and “RGU”), .0400, subp. 2 (setting out the RGU’s role in decisions on the need for environmental impact statements). MEPA identifies two types of environmental review for proposed projects: an environmental assessment worksheet (EAW) and an environmental impact statement (EIS). Minn. Stat. § 116D.04, subds. 1a(c), 2a(a).

An EAW is “a brief document which is designed to set out the basic facts necessary to determine whether an [EIS] is required for a proposed action.” Minn. Stat. § 116D.04, subd. 1a(c). EAWs must be prepared for projects that meet certain criteria. Minn. R. 4410.4300, subp. 1, .1000, subp. 2. Relevant here, an EAW is required for the construction of a new “industrial, commercial, or institutional facility” that is larger than 300,000 square feet. Minn. R. 4410.4300, subp. 14(B). After an EAW is prepared, it must be published for a 30-day public-review-and-comment period. Minn. R. 4410.1600.

An EIS is a more “exhaustive environmental review” than an EAW, and “the party proposing the project must conduct [the EIS] at its own expense.” *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm’rs*, 713 N.W.2d 817, 824 (Minn. 2006) (*CARD*). An EIS provides “information for governmental units, the proposer of the project, and other persons to evaluate proposed projects . . . , to consider alternatives to the proposed projects, and to explore methods for reducing adverse environmental effects.” Minn. R. 4410.2000, subp. 1. A project requires an EIS if the project has the “potential for significant environmental effects.” Minn. Stat. § 116D.04, subd. 2a(a).

The EQB has promulgated four criteria that an RGU must consider when reviewing a proposed project and its EAW to determine whether an EIS is required: (1) the “type, extent, and reversibility of environmental effects”; (2) the “cumulative potential effects” of the project; (3) “the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority”; and (4) “the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies . . . including other EISs.” Minn. R. 4410.1700, subp. 7. In reviewing the EAW and

related record to determine whether an EIS is necessary, the RGU must consider and balance all criteria. *See CARD*, 713 N.W.2d at 825, 838; Minn. R. 4410.1700, subp. 6 (“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.”). During this process, “[t]he RGU shall maintain a record, including specific findings of fact, supporting its decision. The record must include specific responses to all substantive and timely comments on the EAW.” Minn. R. 4410.1700, subp. 4.

B. Facts and Procedural History

Archer Datacenters purchased real property in Faribault on which it seeks to develop a project known as the Archer Datacenters Faribault Campus. The project includes a facility featuring “up to 500,000 square feet of data center buildings with associated utilities and parking lot.” The City of Faribault is the RGU for the project.¹ Because the planned data center is over 300,000 square feet, an EAW was required. Minn. R. 4410.4300, subp. 14(B). Archer Datacenters submitted a draft EAW to the city in May 2025, and the city council declared it complete for public review. During the 30-day public-comment period, the city received comments from nine community members, Faribault’s Environmental Commission, the Minnesota Department of Natural Resources, and the Minnesota Pollution Control Agency.

¹ When discussing the respondents individually we refer to them as “Archer Datacenters” or “the city.” In its brief, the city “adopts and incorporates by reference” the arguments set forth in Archer Datacenters’ brief. We therefore refer to “respondents” when addressing those joint arguments.

In response to the public comments, the city concluded that “additional data [was] needed to provide a reasoned decision on the need for an Environmental Impact Statement” and asked Archer Datacenters to provide more information about “potential emissions, including emissions from either diesel or natural gas power generation,” water demand, and “current and anticipated sound levels in the project area.” Discussing the need for more information about potential emissions, the city explained, “This information must be provided to assess the potential for air quality impacts and confirm that the project does not trigger the mandatory EAW category for air pollution.”² To accommodate the need for that additional information, the city extended its decision timeline by 30 days.

Archer Datacenters submitted a revised EAW in July 2025 that included an appendix with the comments received and Archer Datacenters’ responses to the comments. It also prepared a document, entitled “Findings of Fact and Record of Decision,” which summarized the EAW, discussed the four regulatory criteria, and set out the conclusion that an EIS is not required. With these documents in the record, the city’s Environmental and Planning Commissions, Development Review Committee, and planning manager each recommended the city council make a negative declaration as to the need for an EIS. The city council subsequently passed a resolution titled, “Approving the Findings of Fact and Record of Decision for Archer Datacenters Environmental Assessment Worksheet (EAW)

² EQB rules provide that, if a project generates above a certain level of air pollutant emissions, an EAW, with the Pollution Control Agency acting as the RGU, is mandatory. Minn. R. 4410.4300, subp. 15. If an EAW is required on two or more bases for which different RGUs are designated, the rules provide a process for determining which governmental entity will be the RGU. Minn. R. 4410.0500, subp. 5(B).

and Negative Declaration Concerning the Need for an Environmental Impact Statement (EIS).” The council determined that, “[b]ased on the EAW and comments received, adequate information has been received to determine that the project will not have significant environmental impacts and development of an [EIS] is not required.”

MCEA appeals by writ of certiorari.

DECISION

MCEA asserts that three aspects of the city’s EIS determination are unsupported by substantial evidence, are arbitrary and capricious, or involve an error of law: (1) the air-quality and noise-pollution analyses; (2) the greenhouse-gas-emission estimate; and (3) the cumulative-potential-effects analysis. Respondents argue as a threshold matter that the appeal should be dismissed because MCEA lacks standing. Then, on the merits, respondents contend that the city’s determination is supported by substantial evidence, is not arbitrary and capricious, and contains no errors of law because the city considered all the necessary factors.

We first address standing and conclude that MCEA may challenge the city’s determination on appeal. Then, turning to the merits, we analyze whether the city’s determination is supported by substantial evidence. Because we determine that it is not, we reverse and remand on that ground and do not decide whether it was arbitrary and capricious or the product of an error of law.

I

MCEA must have standing to invoke the jurisdiction of this court. *Webster v. Hennepin County*, 910 N.W.2d 420, 433 (Minn. 2018) (“Standing to appeal is essential to

our jurisdiction.”). To have standing, MCEA “must have a sufficient stake” in the controversy, “meaning it has suffered some injury in fact or is the beneficiary of some legislative enactment granting standing.” *Minn. Voters All. v. Hunt*, 10 N.W.3d 163, 167 (Minn. 2024) (quotations omitted).

MCEA asserts it has statutory standing under MEPA, which provides that “[a] person aggrieved by a final decision on the need for an environmental assessment worksheet, the need for an environmental impact statement, or the adequacy of an environmental impact statement is entitled to judicial review of the decision under sections 14.63 to 14.68.” Minn. Stat. § 116D.04, subd. 10. Because the statute requires that the party seeking judicial review be “aggrieved” by the decision, the considerations in determining whether the party has standing by legislative enactment “are similar to the considerations of the ‘injury-in-fact’ test for standing.” *Minn. Educ. Ass’n v. Indep. Sch. Dist. No. 404*, 287 N.W.2d 666, 669 (Minn. 1980). As a general matter, to be aggrieved, a “person must be ‘injuriously or adversely affected by [a decision] when it . . . bears directly upon [their] personal interest.’” *Stansell v. City of Northfield*, 618 N.W.2d 814, 818 (Minn. App. 2000) (quoting *In re Getsug*, 186 N.W.2d 686, 689 (Minn. 1971)), *rev. denied* (Minn. Jan. 26, 2001).

Here, MCEA invokes the concept of “associational” or “organizational” standing to establish that it is an aggrieved party and it submitted declarations in support of those arguments in an addendum to its reply brief. “The Minnesota Supreme Court has adopted a liberal standard for organizational standing.” *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 913 (Minn. App. 2003) (citing *Snyder’s Drug Stores, Inc. v. Minn. State*

Bd. of Pharmacy, 221 N.W.2d 162, 166 (Minn. 1974)). An entity may have organizational standing by demonstrating an injury to itself or its members. *Id.* at 914-15. MCEA maintains it has standing based on both types of injury.

Before turning to the merits of those arguments, we address two threshold matters raised by respondents.

First, respondents argue MCEA forfeited any argument regarding its standing because it did not address standing in its initial brief. Their argument misconstrues the proper scope of a reply brief. Minnesota Rule of Civil Appellate Procedure 128.02, subdivision 3, provides that an appellant's reply brief "must be confined to new matter raised in the brief of the respondent." Respondents did not bring a motion to dismiss the appeal for lack of standing under Minnesota Rule of Civil Appellate Procedure 127, instead raising the jurisdictional issue for the first time in their briefs. Comporting with rule 128.02, subdivision 3, MCEA's reply brief responded to the standing argument. In any event, "[a]n essential element of jurisdiction is standing," *Minn. Voters All.*, 10 N.W.3d at 167, such that standing may be addressed on the court's own initiative, *In re Block*, 727 N.W.2d 166, 174 (Minn. App. 2007).

Second, respondents assert that, in our standing determination, we may consider only the record developed before the city, which does not include any information from or about MCEA. Although neither the Minnesota Supreme Court nor this court has addressed this precise issue, the supreme court has accepted a supplemental record in order to address the related jurisdictional issue of mootness. *See Hous. & Redevelopment Auth. ex rel. City of Richfield v. Walser Auto Sales, Inc.*, 641 N.W.2d 885, 888 (Minn. 2002). Separately,

federal courts have allowed parties to supplement the record in appeals under the National Environmental Policy Act (NEPA) to demonstrate Article III standing. *See, e.g., Trenton Threatened Skies, Inc v. Fed. Aviation Admin.*, 90 F.4th 122, 130 (3d Cir. 2024) (“It is well established that petitioners challenging agency action may supplement the administrative record for the purpose of establishing Article III standing, even though judicial review of agency action is usually limited to the administrative record.” (quotation omitted)). The Minnesota Supreme Court has relied on federal caselaw addressing NEPA when interpreting MEPA. *In re Minn. Power’s Petition for Approval of EnergyForward Res. Package*, 958 N.W.2d 339, 346 (Minn. 2021). Consistent with these authorities, we conclude that it is appropriate to accept MCEA’s declarations as a supplemental record solely for the purpose of determining whether MCEA has standing to bring this certiorari appeal.

Having addressed those threshold issues, we turn to MCEA’s argument that the organization itself has suffered an injury. To establish an injury to its own interests, an organization must assert something more concrete than a “mere ‘interest’ in the problem.” *In re Sandy Pappas Senate Comm.*, 488 N.W.2d 795, 798 (Minn. 1992). “[I]mpediments to an organization’s activities and mission” are injuries “sufficient for standing.” *Rukavina v. Pawlenty*, 684 N.W.2d 525, 533 (Minn. App. 2004), *rev. denied* (Minn. Oct. 19, 2004).

The declaration of MCEA’s executive director explains that a core part of MCEA’s mission is ensuring that “state and local governmental units comply with [MEPA]” and that MCEA “has had to dedicate considerable resources of the entire organization to respond to data center proposals, including the Faribault proposal.” Going further, the

declaration asserts that MCEA's staff have had to devote time and resources to communicating with and educating the public on the environmental risks of data centers, which has "diverted substantial organizational resources" to the data center proposal that would have been "devoted to other aspects of MCEA's environmental advocacy work" such as "educating the public and policy-makers on carbon-free energy policy." MCEA also "has members who reside in Faribault . . . in the vicinity of the proposed Archer Datacenter project."

These assertions are sufficient to meet Minnesota's liberal organizational standing requirement. In *Alliance for Metropolitan Stability*, this court concluded that three organizations' allegations that "their resources have been diverted and that their educational, advocacy, and placement efforts are impeded" by the respondent's actions were sufficient to establish associational or organizational standing. 671 N.W.2d at 913-14. Here, MCEA has similarly alleged that they have had to divert resources to address the environmental risks of the proposed Faribault data center at the expense of their other educational or policy goals. Those allegations amount to an injury beyond a simple "interest" in the outcome. *Sandy Pappas*, 488 N.W.2d at 798. Archer Datacenters argues that, to be "aggrieved" within the meaning of the statute, MCEA was required to participate in the proceedings below, but there is no such requirement in Minnesota law. Moreover, MCEA has demonstrated that at least one of their members did participate in the public-comment process. MCEA has thus demonstrated an injury to itself.

We next consider MCEA's argument that it also has standing on behalf of its members. An organization has standing to sue based on an injury to its members when:

“(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Minn. Voters All.*, 10 N.W.3d at 170 (quoting *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)).

MCEA asserts that it has members residing in Faribault near the proposed datacenter site who “would be directly affected by any . . . environmental effects from the data center,” and it submitted a declaration from one such member. That member’s declaration expresses concern that the data center could cause respiratory problems for themselves or their neighbors, mentions enjoying “traveling through the part of Faribault where this data center site is being proposed because it is quiet,” and believes that “a new and uncontrolled source of industrial noise will be disruptive and harmful.” Considering the standard articulated in *Minnesota Voters Alliance*, MCEA has satisfied the first prong. The member who lives in Faribault would constitute an “aggrieved party” and “otherwise have standing to sue in their own right,” Minn. Stat. § 116D.04, subd. 10; *Minn. Voters All.*, 10 N.W.3d at 170 (quoting *Hunt*, 432 U.S. at 343), because environmental harm that “affects the recreation or even the mere esthetic interests” of an individual is sufficient to establish standing. *Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009).³ As to the second prong,

³ Though we cite federal caselaw here, we are persuaded that these harms are also sufficient to establish standing under Minnesota law, which is not constrained by the limitations of Article III of the United States Constitution. See *Grove v. Simon*, 2 N.W.3d 490, 499 (Minn. 2024) (holding that Minnesota courts are “not bound by the standing constraints of Article III of the United States Constitution”); see also *N.Y. State Club Ass’n v. City of New*

as we have explained, the interests MCEA seeks to protect here are central to its purpose as an organization. *Minn. Voters All.*, 10 N.W.3d at 170 (quoting *Hunt*, 432 U.S. at 343). Regarding the third prong, neither the claim nor the relief requested require individual participation. *Id.* MCEA seeks a reversal and remand of the city’s negative declaration, which does not require the intervention of any individual aggrieved person.

MCEA has standing to appeal the city’s decision under Minnesota Statutes section 116D.04, subdivision 10.

II

On appeal from an RGU’s decision about whether an EIS is statutorily required, appellate courts “evaluate whether the RGU took a ‘hard look’ at the salient issues, but defer to the RGU’s decision unless the decision reflects an error of law, is arbitrary and capricious, or is unsupported by substantial evidence.” *Friends of Twin Lakes v. City of Roseville*, 764 N.W.2d 378, 381 (Minn. App. 2009) (citing *CARD*, 713 N.W.2d at 832).

When conducting a substantial-evidence review, appellate courts must determine “whether the agency has adequately explained how it derived its conclusion and whether that conclusion is reasonable on the basis of the record.” *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 749 (Minn. 2021) (quotation omitted). The relator has the burden of proving that the RGU’s findings are unsupported by substantial evidence. *In re Env’t Impact Statement*, 849 N.W.2d 71, 75 (Minn. App. 2014) (citing *CARD*, 713 N.W.2d at 833).

York, 487 U.S. 1, 8 n.2 (1988) (“[T]he special limitations that Article III of the Constitution imposes on the jurisdiction of the federal courts are not binding on the state courts.”).

MCEA maintains that three aspects of the city's negative declaration are unsupported by substantial evidence: the air-quality and noise-pollution analyses; the greenhouse-gas-emissions estimate; and the cumulative-potential-effects analysis. We address each issue in turn.

A. Air Quality and Noise Pollution

MCEA asserts that the city's determination that there will not be significant environmental effects on air quality and operational noise pollution is unsupported by substantial evidence. It maintains that the city did not adequately explain how it reached this determination, and the record does not support that the determination is reasonable. We agree.

MEPA and its implementing rules establish that an RGU's EIS decision "must be based on the [EAW] and the comments received during the comment period," Minn. Stat. § 116D.04, subd. 2a(d), and that the record must include "specific responses to all substantive and timely comments on the EAW." Minn. R. 4410.1700, subp. 4. Conclusory responses to comments or responses that do not explain the RGU's reasoning may reveal that the determination is unsupported by substantial evidence. *See In re City of Cohasset's Decision on Need for an Env't Impact Statement for Proposed Frontier Project*, 985 N.W.2d 370, 382-83 (Minn. App. 2023) (holding an RGU's decision was unsupported by substantial evidence when responses to public comments were conclusory and did not include "scientific analysis supporting [its] proclamation"); *see also Pope Cnty. Mothers v. Minn. Pollution Control Agency*, 594 N.W.2d 233, 238 (Minn. App. 1999) (reversing a negative EIS declaration based, in part, on the fact that the RGU did not adequately respond

to comments, suggesting that the determination “was premature and based on inadequate information,” and the RGU did not take steps to obtain missing information before making a negative declaration).

The city received comments highlighting the lack of information in the EAW with respect to both the air-quality and noise-pollution impacts, and yet, the record shows that neither the city nor Archer Datacenters meaningfully responded to those comments or otherwise supplemented the record to address missing information.

On the subject of air quality, the draft EAW stated in the section on emissions from “stationary sources such as boilers or exhaust stacks” that “[t]his item is not applicable because any stationary air emissions source large enough to merit environmental review requires individual review.” During the public-comment period, the Minnesota Pollution Control Agency (MPCA) commented that this discussion was inadequate and that the “section is still required to be answered for projects that do not trigger the mandatory air pollution EAW category.” Elaborating further, MPCA expressed, “The Project Proposer should add material information regarding the nature of the project. Other sections of the EAW suggest the Project will include power generation in the form of either diesel or natural gas. These emission units, their emissions, and the impacts of those emissions should be discussed.” The response to the comment states:

Comment Noted. The EAW has been updated. Stationary source air emissions for the proposed buildings are anticipated to be minimal based on the anticipated mechanical equipment that will be installed. The proposed project will employ back-up emergency generation to provide power to the critical infrastructure of the facility during power outages. It is not known at this time what size, type, and quantity of back up

emergency generators will be utilized by the project; therefore, two technologies were analyzed for the greenhouse gas emissions section. Once more information is known for the site, a full air quality analysis will be completed, coordination with the [MPCA] will occur, and any anticipated permits will be obtained from the MPCA. If the emissions exceed a mandatory EAW threshold, an additional environmental review will be completed.

The section on air quality in the revised EAW then adopted that language nearly verbatim, except it was altered to express with less certainty: “[t]he proposed project *may consist of some type of* back up emergency generator to provide power to the critical infrastructure of the facility during power outages.” (Emphasis added.)

The comment responses and revised EAW lack important details. They do not identify the type of mechanical equipment that will be installed or explain how it supports the conclusion that the anticipated air emissions are minimal. The record does not indicate whether backup generators will be used or, if so, the extent of air emissions such generators may create during monthly testing or power outages. The most that can be deduced from the revised EAW is that the city does not yet know the extent to which the project will generate air emissions. The city has not “adequately explained how it derived its conclusion” that the project’s air emissions are not likely to have a significant environmental impact, and its determination is not “reasonable on the basis of the record.” *NorthMet*, 959 N.W.2d at 749 (quotations omitted).

On the subject of operational noise pollution, the draft EAW stated that “the main sources of noise include ventilation systems, industrial traffic and the use of generators tested once a month and in the case of emergency. Sensitive receptors within the project

site vicinity include adjacent residential houses, and businesses.” The draft EAW explained that further noise evaluation will be done “as design progresses,” noting that best practices for noise reduction will be implemented in order “to ensure compliance with local and state noise regulations” and that “[n]oise attenuation measures such as sound walls or increased buffering from the property line (i.e. physical distance, berms, or dense landscaping) *may be* incorporated into project design to ensure that MPCA noise rules and City noise ordinances are followed.” (Emphasis added.)

During the public-comment period, members of the public expressed concern about the potential for noise, and MPCA commented:

The Noise section of the EAW does not provide enough detail regarding current and anticipated sounds levels in the project area to determine whether an immediate violation of the state noise standards would occur if the project were approved.

Members of the public often have noise concerns related to data center operations. MPCA notes statements in the Noise section of the EAW indicate further noise evaluation will be completed, and noise mitigations may be incorporated into project design.

The responses to comments provide, “Comment noted. As noted in the EAW, further noise analysis will be completed once design progresses for the proposed project and equipment is selected for project design. The project will be required to meet the state noise standards during operations.” The only material change to the operational noise section between the draft EAW and the revised EAW involved the backup generators. The revised EAW says, “The proposed facility *may* also include back-up emergency generators that would be

tested once a month and would be used in the event of a critical loss of power.” (Emphasis added.)

Again here, the record lacks sufficient detail with respect to anticipated noise pollution. The record provides almost no insight into what sort of operational noise can be expected from the proposed project, much less enough information to know the extent of any environmental effects it will cause. The city does not explain why it determined, contrary to the MPCA’s comment, that it had sufficient information to make a negative declaration. *See* Minn. Stat. § 116D.04 subd. 2a(d); *NorthMet*, 959 N.W.2d at 749. The response to MPCA’s comment merely noted the comment and reiterated the information provided in the draft EAW. We question whether that constitutes a “specific response,” as required by the governing regulations. Minn. R. 4410.1700, subp. 4. And the revised EAW included less specificity on sources of noise than the draft EAW. These shortcomings persuade us that the city failed to take a “hard look” at the salient issue of noise pollution and failed to “genuinely engage[] in reasoned decision-making.” *CARD*, 713 N.W.2d at 832 (quotations omitted). Because the city did not adequately explain “how it derived its conclusion” that noise pollution is unlikely to have a significant environmental impact and because that determination is not “reasonable on the basis of the record,” *NorthMet*, 959 N.W.2d at 749 (quotations omitted), the city’s negative declaration in this respect is not supported by substantial evidence.

With respect to both air quality and noise pollution, respondents maintain that the lack of detail in the revised EAW is not a basis on which to reverse the city’s negative declaration because the record shows that “the Project is early in its timeline and further

analysis [will] be conducted in the future if necessary.” In other words, respondents express an intent to rely on subsequent permit and regulatory processes to keep any environmental impacts below levels necessitating an EIS. The supreme court has already rejected this approach.

In *CARD*, the supreme court noted that “mitigation by an ongoing regulatory authority is a required consideration in a project-specific EIS determination review,” but it emphasized that “an RGU may not rest its EIS determination decision on mitigation that amounts to only vague statements of good intentions.” 713 N.W.2d at 834 (quotations omitted). The supreme court continued, “Under MEPA, an RGU must determine whether a given project has the potential for significant environmental effects before approving the project.” *Id.* at 835. The city’s determination runs afoul of this directive. Instead of investigating the environmental effects of the project before approving it, the city’s negative declaration is based on “vague statements of good intentions” to work with regulatory authorities down the line. *Id.* at 834. That does not comport with the requirement that the city’s determination be supported by substantial evidence.

Respondents attempt to distinguish the circumstances here from those in *CARD*, arguing that they are not impermissibly stating an intent to use regulations to remedy environmental impacts *after* they occur, like the agency in *CARD*. *Id.* at 834-35. Rather, respondents maintain that down-the-line permitting requirements and regulatory oversight will prevent any impacts *before* they occur. That is a distinction without a difference. The point in *CARD* is that, before making a negative declaration on an EIS, the RGU “must have some concrete idea of what problems may arise and how they may specifically be

addressed by ongoing regulatory authority.” *Id.* at 835. If the RGU does not understand the potential for problems because it has not genuinely investigated the potential for significant environmental effects, it cannot know how ongoing regulatory oversight will address the problems.

Indeed, “MEPA’s purpose is ‘to force agencies to make their own impartial evaluation of environmental considerations before reaching their decisions.’” *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 880 (Minn. App. 1995) (quoting *No Power Line, Inc. v. Minn. Env’t Quality Council*, 262 N.W.2d 312, 327 (Minn. 1977)), *rev. denied* (Minn. July 28, 1995). Consistent with that purpose, MEPA requires that the environmental-review process take its course before a final decision may be made “to grant a permit, approve a project, or begin a project.” *See* Minn. Stat. § 116D.04, subd. 2b (“If an [EAW] or an [EIS] is required for a governmental action under subdivision 2a, 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: . . . a negative declaration has been issued on the need for an environmental impact statement[.]”). Moreover, the scope of an EAW is different from the permitting process. The rules require an RGU to balance many factors in determining the potential for significant environmental effects, only one of which is “mitigation by ongoing public regulatory authority.” Minn. R. 4410.1700, subp. 7(C).

Respondents invoke a separate rule provision, rule 4410.1000, subpart 5, to support their view that, even if some details are lacking at this point in the process, a negative declaration is reasonable at this stage because the “regulations specifically contemplate that subsequent EAWs may be necessary as the project becomes more defined.” This

changed-circumstances provision states that, after a negative declaration is made, if “the RGU determines that a substantial change has been made in the proposed project or has occurred in the project’s circumstances, which change may affect the potential for significant adverse environmental effects that were not addressed in the existing EAW, a new EAW is required.” Minn. R. 4410.1000, subp. 5. Respondents assert that this rule allows the city to make its negative declaration now and require additional EAWs as necessary later.

This argument overstates the significance of the changed-circumstances provision. The rules elsewhere offer an RGU only two choices if it determines that information is lacking in assessing the necessity of an EIS—and issuing a negative declaration with insufficient information to determine potential environment effects is not one of them. The pertinent rule states:

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 or such other period of time as agreed upon by the RGU and proposer, in order to obtain the lacking information.

Minn. R. 4410.1700, subp. 2a; *see also Pope Cnty. Mothers*, 594 N.W.2d at 238 (discussing prior version of same rule). The changed-circumstances provision, in contrast, applies after an RGU has rendered a negative declaration that is reasoned and supported in the record.

Rule 4410.1000, subp. 5. Reading these provisions together, the process makes sense. An RGU cannot know whether a change in the process “may affect the potential for significant adverse environmental effects” if it has not determined what those effects are in the first place.

The city has not “adequately explained how it derived its conclusion” and based on our review, its conclusion is not “reasonable on the basis of the record.” *NorthMet*, 959 N.W.2d at 749 (quotations omitted). The negative declaration with respect to air quality and noise pollution is therefore unsupported by substantial evidence.

B. Greenhouse Gas Emissions

MCEA also argues that the city’s negative EIS declaration is unsupported by substantial evidence as it relates to greenhouse gas emissions⁴ because the estimated emissions dropped by 98 percent between the draft and revised EAWs with scant explanation. Our review is, again, focused on “whether the agency has adequately explained how it derived its conclusion and whether that conclusion is reasonable on the basis of the record.” *NorthMet*, 959 N.W.2d at 749 (quotation omitted).

The EAW worksheet provided by the EQB requires quantification of greenhouse gas emissions. Those completing the EAW are instructed to “provide quantification and discussion of project [greenhouse gas] emissions” and to “[d]escribe the methods used to

⁴ The revised EAW describes greenhouse gases as “[c]ertain gases in the earth’s atmosphere” that “play a critical role in determining the earth’s surface temperature.” It notes that “[h]uman-caused emissions of [greenhouse gases] exceeding natural ambient concentrations are believed to be responsible for . . . leading to a trend of unnatural warming of the earth’s climate, known as global climate change or global warming.”

quantify emissions.” It further instructs, “If calculation methods are not readily available to quantify [greenhouse gas] emissions for a source, describe the process used to come to that conclusion.”

The draft EAW here provided an estimate of the carbon dioxide emissions⁵ from the project. According to the tables included in the draft EAW, the vast majority of the emissions were projected to come from offsite electricity. The draft EAW includes an appendix containing the “EPA simplified greenhouse gas emissions calculator,” evidently used to calculate possible emissions. That calculator lists an input of 1,050,000,000 kilowatt hours (kWh) of purchased electricity used to calculate the emissions estimate.

After the draft EAW was published, members of the public and the city’s Environmental Commission submitted comments expressing concern and confusion about the high level of emissions and power usage. Some comments pointed out comparisons with other local industry and data center projects. Responses to those comments explained that “[t]here was an error in the [emissions] calculation provided; this has been updated in the EAW,” and noted that the proposer “has worked extensively” with energy and electricity companies “on power procurement and availability.”

The revised EAW included a different greenhouse-gas-emissions estimate, altering the proposed carbon dioxide emissions to 9,924 tons of carbon dioxide emissions if diesel generators are used or 9,753 tons from natural gas as compared to the original estimates of 529,803 tons and 529,632 tons, respectively. The attached appendix again included the

⁵ The revised EAW describes carbon dioxide as one of the “primary [greenhouse gases] contributing to the greenhouse effect.”

EPA calculator used by respondents, which showed that the source area input was increased from 500,000 square feet to 700,000 square feet between the draft and revised EAWs. Despite that increase in size, the electricity purchased was reduced from 1,050,000,000 kWh to 14,140,000 kWh.

We agree with MCEA that the city did not adequately explain on the record how it concluded that the project will not have significant environmental effects in the form of greenhouse gas emissions. *See NorthMet*, 959 N.W.2d at 749. There is nothing in the record explaining the figures used in the emissions calculation, most notably the necessary electricity. Nor is there anything in the record explaining the stark differences between the figures and calculations in the draft EAW and the revised EAW, aside from the comment response that “[t]here was an error in the calculation.” This is significant because the substantial gap between the two estimates suggests different magnitudes of potential environmental effects, and the city does not explain why it credits the estimates from the revised EAW over the draft EAW. Because of that lack of explanation and the mixed evidence in the record between the two EAWs and the comments, we cannot conclude that the city’s determination on this issue was “reasonable on the basis of the record.”⁶ *Id.* (quotation omitted).

⁶ On appeal, the city provided an explanation that they followed a method provided by the EPA calculator “for estimating energy usage by utilizing data from the Energy Information Administration, specifically the Commercial Building Energy Consumption Survey, which provides average annual energy intensity (per square foot) by building type.” But “[c]ertiorari is, by its nature, a review based solely upon the record.” *Amdahl v. County of Fillmore*, 258 N.W.2d 869, 874 (Minn. 1977). The city’s explanation and the tool cited are not in the record on appeal, so they are not properly within the scope of our review. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) (“An appellate court may not base its

C. Cumulative Potential Effects

As a final matter, MCEA contends that the record lacks a sufficient explanation for the city's determination that there will be no cumulative potential effects and that it instead relied on "bare assertions" on that issue. We agree.

The term "cumulative potential effects" is defined as the "effect on the environment that results from the incremental effects of a project in addition to other projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resources, including future projects actually planned or for which a basis of expectation has been laid." Minn. R. 4410.0200, subp. 11a. When determining "whether a project has the potential for significant environmental effects," an RGU must specifically consider cumulative potential effects, including

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

Minn. R. 4410.1700, subp. 7.

Here, the cumulative-potential-effects discussion did not change between the draft and revised EAW. In the relevant section, the revised EAW included the above regulatory definition of cumulative potential effects and explained that "[t]he geographic areas considered for cumulative effects are those areas adjacent to the EAW study area, and the

decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.").

timeframe considered includes projects that would be constructed in the reasonably foreseeable future.” In the section requiring a description of “reasonably foreseeable future projects,” the revised EAW states that “[f]uture private development projects may result in impacts to transportation, water resources, and utilities. These impacts will be addressed via the regulatory permitting and approval processes and will be individually mitigated to ensure minimal cumulative impacts occur.” When asked to “[d]iscuss the nature of the cumulative potential effects and summarize any other available information relevant to determining whether there is potential for significant environmental effects due to these cumulative effects,” the revised EAW lists that the provision was “Not Applicable.”

Multiple comments on the draft EAW identified other projects or entities that draw on water and energy resources in the area. For example, they mentioned other proposed data centers and other industrial facilities such as a bottling company, with one comment expressing concern about the combined impact of water use on a shared aquifer. The responses to comments expressed Archer Datacenters’ intent to work with the city and other permitting entities on the issues of electricity and water consumption. The findings of fact adopted by the city in its resolution on this topic do no more than restate the definition of cumulative potential effects: “Cumulative effects result from the incremental impact of the proposed project when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions.”

Again, looking at the record and the city’s decision relative to this factor, we cannot identify evidence that the city adequately considered the cumulative potential effects of the

proposed project. The city does not explain what it considered in any such analysis, beyond that it looked to “areas adjacent to the EAW study area.” The record, including the public comments, establishes that there are other proposed data centers and industrial or commercial facilities using natural resources in the area, but there is no evidence that the city looked at those entities, even if only to determine that they are not within the environmentally relevant area or are irrelevant to a cumulative-potential-effects analysis. We are left to guess how the city defined the “environmentally relevant area,” and what past, present, or reasonably foreseeable future actions it considered, if any at all. Minn. R. 4410.0200, subp. 11a.⁷

We conclude that the city’s determination that there would be no cumulative potential effects was not supported by substantial evidence. *NorthMet*, 959 N.W.2d at 749; *see also CARD*, 713 N.W.2d at 838 (concluding that “there is simply not enough evidence in the record before us to show that the county actually took a hard look at the question of cumulative potential effects during the EIS determination as required by Minn. R. 4410.1700, subp. 1, and our case law” (quotation omitted)).

In conclusion, when reviewing the record and the city’s decision as a whole and considering the deficiencies on multiple issues salient to the potential environmental effects of this project, we cannot conclude that the city took a “hard look” and “genuinely engaged

⁷ Respondents explain on appeal that other data centers were not considered in the negative-declaration analysis because they are only “speculative.” But the underlying record contains no such explanation, so we do not consider it. *Thiele*, 425 N.W.2d at 582-83 (“An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.”); *see also Amdahl*, 258 N.W.2d at 874 (“Certiorari is, by its nature, a review based solely upon the record.”).

in reasoned decision-making.” *CARD*, 713 N.W.2d at 832 (quotations omitted). To the contrary, we see a “combination of danger signals” suggesting it has not. *Rsrv. Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977). We therefore reverse and remand for further proceedings not inconsistent with this opinion. Given the insufficient information and lack of evidence in the current record, the city must, on remand, act consistently with rule 4410.1700, subp. 2a, and either make a positive declaration requiring an EIS that includes appropriate studies to obtain the lacking information or postpone its decision “for not more than 30 days or such other period of time as agreed upon by” the city and Archer Datacenters, “in order to obtain the lacking information.”

Reversed and Remanded.