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No. A26-0468

**STATE OF MINNESOTA
IN COURT OF APPEALS**

*In Re: Steele County's Decision on the Need for an Environmental Impact Statement
for the Proposed East Side Corridor (29th Avenue Corridor)*

RELATOR OWATONNA EAST SIDE CORRIDOR RESIDENTS' REPLY BRIEF

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INTRODUCTION

The Steele County Highway Department and Steele County Board of Commissioners (collectively, “Steele County” or “Respondent”) conducted an insufficient Environmental Assessment Worksheet (“EAW”) and engaged in irregular procedures that thwarted public engagement, rendering Steele County’s determination that an Environmental Impact Statement (“EIS”) for the East Side Corridor Project (the “Project”) is not warranted (“Negative Declaration”) arbitrary and capricious. The Owatonna East Side Corridor Residents (“Owatonna Residents” or “Relator”) respectfully request that this Court reverse Steele County’s Negative Declaration and require Steele County to conduct an EIS.

ARGUMENT

I. STEELE COUNTY UNLAWFULLY FAILED TO EVALUATE IMPACTS FROM TRAFFIC NOISE

Four factors must be considered by the Responsible Governmental Unit (“RGU”) when determining whether a proposed project has the potential for significant environmental effects:

1. The type, extent, and reversibility of environmental effects;
2. Cumulative potential effects of related or anticipated future projects;
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 undertaken by public agencies or the project proposer, including other EISs.

Minn. R. 4410.1700, subp. 7. Steele County's EAW failed to evaluate the type, extent, and reversibility of traffic-related noise effects resulting from the Project. Due to this failure, there is no evidence that Steele County's proposed mitigation measures in its Findings of Fact and Conclusions ("FOFC") will provide effective mitigation. As a result, Steele County's Negative Declaration is arbitrary and capricious, unsupported by substantial evidence, and not in accordance with the law.

Steele County repeatedly misrepresents the Administrative Record to argue that the EAW evaluated traffic-related noise impacts and that the resulting Negative Declaration complies with Minnesota Rules. However, a review of the Administrative Record shows that the extent of Steele County's analysis of traffic-related noise was analysis of pre-Project existing conditions and the proposal of mitigation measures that are demonstrably insufficient to reduce traffic-related noise impacts. Steele County's misrepresentations of the Administrative Record must be rejected.

First, Steele County misrepresents the Administrative Record to erroneously assert that the existing traffic-related sound levels within the Project area will not change. Respondent's Brief ("Br.") at 19. This conclusion is nowhere to be found in the Administrative Record. To the contrary, the results of the preliminary, draft noise impact analysis show that residences near the Project area will experience sound increases *over six times greater than existing levels*.¹ Document ("Doc.") 7 at Administrative Record

¹ As noted in Owatonna Residents' Principal Brief, the dBA sound pressure scale is a logarithmic scale, meaning that an increase of 10 dBA is a doubling of perceived sound, an increase of 20 dBA sounds four times as loud as existing conditions, and an increase of 30 dBA sounds eight times as loud as existing conditions. Owatonna Principal Br. at 5 n.2.

(“AR”) 601-743; (*Draft Traffic Noise Analysis*); Relator’s Br. at 5,7-8. The EAW notes that the existing sound levels “vary within the Project, with some areas having limited traffic noise, to other areas having regularly occurring traffic noise.” Doc. 4 at 150. Depending on location, the pre-Project sound levels vary between 26.3 and 64.2 dBA. *Id.* The EAW, however, does not analyze what impact the Project will have on these existing sound levels. The *Draft Traffic Noise Analysis*, on the other hand, shows that one residence near the Project will experience a 27 dBA increase, from 31.8 dBA to 58.8 dBA, and ten other residences will experience an increase of over 20 dBA. Doc. 7 at 649-56. As a result, these residences will be subjected to sound impacts that are four to over six times louder than current conditions. This evidence demonstrably shows that the existing traffic sound levels **will change considerably**.

Second, Steele County further misrepresents the Administrative Record to assert that Steele County considered the *Draft Traffic Noise Analysis* in its decision-making. Respondent’s Br. at 21. Yet, neither the EAW, Steele County’s responses to public comments, or the FOFC reference the *Draft Traffic Noise Analysis*, address its findings, or incorporate its conclusions. To the contrary, Steele County’s own responses to public comments that raised the *Draft Traffic Noise Analysis* show that the Respondent did not rely on the analysis in developing the EAW or issuing its Negative Declaration. *See, e.g.*, Doc. 7 at AR 492 (Response to Comment 48). When one commenter raised the issue of the noise analysis, Steele County responded that “[t]he noise study was prepared when the project had federal funding and was required to conduct a federal noise analysis. Federal funding has been removed and the project is no longer a federal undertaking. . . . **The**

federal study is not applicable to MEPA requirements.” Id. (emphasis added). Steele County repeated this assertion in response to another commenter, stating that “a noise study was completed in conjunction with federal requirements, which are different than MEPA requirements. ***The noise study was not included because it is not relevant to MEPA.***” *Id.* at 500 (Response to Comment 62) (emphasis added). In response to another public comment raising Steele County’s failure to provide documents related to the Project in response to Minnesota Government Data Practices Act (“MGDPA”) requests, including noise study materials, Steele County noted that “[d]ata needed to support the EAW is included in the document text and as attachments in accordance with MEPA.” *Id.* at 490 (Response to Comment 41). The *Draft Traffic Noise Analysis* was not included in the EAW or as an attachment. There is no evidence in the Administrative Record that the *Draft Traffic Noise Analysis* was considered by Steele County when assessing the impact of traffic related noise from the Project.

Third, Steele County erroneously claims that nowhere in the *Draft Traffic Noise Analysis* does the analysis demonstrate that traffic noise from the Project will be significant. Respondent’s Br. at 21. The *Draft Traffic Noise Analysis* established that an increase of 5 dBA or more is considered “substantial.”

Noise Level Comparison	
XX	Approaches or Exceeds FHWA Noise Abatement Criteria
XX	Substantial Noise Increase (Increase of 5dBA or more)

Id. at 649. As noted above, eleven residences in the neighborhood nearest to the Project will experience an increase of over 20 dBA, perceiving a four-fold to six-fold increase in sound at their residences attributable to the Project. *Id.* at 649-56. In the whole of the

Project area studied in the *Draft Traffic Noise Analysis*, the noise increase at 85 separate receptor points will be “substantial.” *Id.* There can be no question that the traffic-related noise from the Project will be significant.

Fourth, Steele County points to its evaluation of construction-related noise impacts and its traffic volume study that are incorporated into the EAW to support its Negative Declaration. Respondent’s Br. at 18-20. These are irrelevant to Steele County’s failure to evaluate *traffic-related noise* resulting from the Project. Neither the construction-related noise section of the EAW nor the traffic volume study that evaluated the amount of traffic that would be generated address the traffic-related noise impacts that Owatonna Residents and others will experience.

Fifth, Steele County also argues that it considered the *Draft Traffic Noise Analysis* when it proposed mitigation, citing to its responses to public comments. Respondent’s Br. at 21 (citing Doc. 7 at AR 485). Yet, a review of Steele County’s response shows that it only “considered state noise standards and have provided some options that would screen adjacent homes from the roadway and provide some mitigation.” Doc. 7 at 485 (Response to Comment 20). Mitigation can only be relied on to offset the potential for significant environmental effects if the mitigation measures are “specific, targeted, and [] certain to be able to mitigate the environmental effects.” *Citizens Advocating Responsible Development (CARD) v. Kandiyohi Cty. Bd. of Comm’rs*, 713 N.W.2d 817, 834-35 (Minn. 2006). Without understanding the extent of the noise to be mitigated, the proposed measures cannot be specific, targeted, or certain. Nowhere in the EAW, the FOFC, or Steele County’s responses to public comments is any indication that it even considered the results of the

Draft Traffic Noise Analysis or any other traffic-related noise analysis, much less used those results to ensure that the proposed mitigation was specific, targeted, or certain to mitigate the traffic-noise. Instead, the EAW only identified a wide range of existing, pre-Project traffic sound levels (from 26.3 dBA to 64.2 dBA without any identification of where those existing levels are located) and proposed potential mitigation without any evaluation of how or to what extent that mitigation may address noise generated by as many as 3,500 vehicles per day. Doc. 4 at AR 150, 153. As discussed in Relator's Principal Brief, evidence in the record runs counter to Steele County's assertions that the proposed mitigation would even affect, much less meaningfully mitigate, the traffic-noise related impacts. Relator's Br. at 7-8. Simply put, there is no evidence in the record that the proposed mitigation will be effective.

Finally, Steele County argues that this Court must defer to its determination when there exists technical disputes or uncertainties. Respondent's Br. at 22 (citing *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 881 (Minn. App. 1995)). This deference, however, is predicated on conflicting views regarding the analysis of the evidence before the RGU. That is not the situation here. Here, the RGU entirely failed to analyze the evidence. A decision is arbitrary and capricious if the RGU "entirely failed to consider an important aspect of the problem." *Trout Unlimited, Inc. v. Minn. Dept. of Agric.*, 528 N.W.2d 903, 907-08 (Minn. Ct. App. 1995) (holding that documents in the possession of an agency or RGU are part of the record and should be considered when determining whether an EIS is necessary); *Pope Cty. Mothers v. Minn. Pollution Control Agency*, 594 N.W.2d 233, 236 (Minn. Ct. App. 1999). It is clear from the EAW, the FOFC,

and Steele County's responses to public comments that it entirely failed to evaluate traffic-related noise impacts, apparently due to its erroneous belief that the exemption from State noise requirements eliminated the need to evaluate noise as required by Environmental Quality Board rules and the EAW form. Doc. 4 at AR 150; Doc. 5 at 465-66; Doc. 7 at AR 485 (Response to Comment 20).

Here, Owatonna Residents provided data showing the potential for significant traffic-related noise impacts, contrary to Steele County's Negative Declaration. The only evidence in the record regarding traffic-noise related impacts shows that there are no "technical disputes" or "uncertainties" that require this Court to assume the RGU exercised its discretion appropriately. The *Draft Traffic Noise Analysis* shows that the Project will result in significant traffic-related noise increases at residences and other receptors within the Project area. *Id.* at 649-56. Not only did Steele County demonstrably ignore the *Draft Traffic Noise Analysis*, the Administrative Record is clear that Steele County relied on no evidence at all regarding "the type, extent, and reversibility" of traffic-related noise impacts. *See, e.g.*, Doc. 4 at AR 150. This Court should not afford any deference to Steele County's determination that is unmoored from the Administrative Record.

Steele County's failure to evaluate the potential for environmental effects from traffic-related noise render its Negative Declaration arbitrary, capricious, unsupported by substantial evidence, and not in accordance with the law.

II. STEELE COUNTY UNLAWFULLY FAILED TO EVALUATE CUMULATIVE POTENTIAL EFFECTS

The RGU is required to assess the cumulative potential effects of the project in addition to related or planned future projects “to put the proposed project into context.” *CARD*, 713 N.W.2d at 829. The RGU must consider “whether the cumulative potential effect is significant,” and “whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect.” Minn. R. 4410.1700, subp. 7.B. Cumulative potential effects are 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.

Much as with its argument regarding traffic-related noise impacts, Steele County misrepresents the Administrative Record and asserts that Steele County evaluated cumulative effects from future planned development simply because it nominally included a section on cumulative potential effects in its EAW. Respondent’s Br. at 25. Steele County concedes in its Brief that “it is reasonable to anticipate future projects in the area which are not currently proposed[,]” and the “existing and future land use maps in the comprehensive plan for the City of Owatonna outlin[ing] plans for the development of presently vacant and agricultural areas” are relevant to the analysis of cumulative potential effects. *Id.* at 24-25. However, Steele County did not evaluate the impact of this future development in many of the required EAW categories.

Steele County cites to the section on traffic noise on Administrative Record page 150 in support of its argument that “the County did evaluate the cumulative effects this development, additional traffic and additional noise would have on the project.” Respondent’s Br. at 25. But a review of the traffic noise section on page 150 includes no discussion of this development or cumulative potential effects at all (or *any* evaluation of traffic-related noise impacts, for that matter). Doc. 4 at 150. Steele County similarly cites to Table 22 in the EAW that ostensibly summarizes the cumulative potential effects from this development and other relevant projects. Respondent’s Br. at 25. However, with few exceptions, the future impacts identified in Table 22 are conclusory statements that do not analyze whether or to what extent the cumulative potential effect is significant, as required by Minnesota Rule 4410.1700, subp. 7.B. Doc. 4 at 156; *see also*, Relator’s Br. at 29 n.8. For example, Table 22 notes that “[p]lanned future development outside the Project footprint but adjacent to 29th Ave/East Side Corridor and connecting roadways has the potential to generate additional traffic and associated traffic noise.” Doc. 4 at 156. Yet, there is no evaluation of whether the cumulative potential effect of this additional traffic noise will be significant. The mere identification that other projects will cause cumulative potential effects does not satisfy the requirement to *understand* the contributions of other projects to the cumulative potential effect. Minn. R. 4410.1700, subp. 7.B.

Steele County further misrepresents the record when addressing the cumulative potential effect related to climate change, air quality, and greenhouse gas (“GHG”) emissions. As Steele County recognized in its Brief, Owatonna Residents noted that the EAW did not address the cumulative potential effects resulting from other roadway

projects impacting the same transportation network. Relator's Br. at 33; Respondent's Br. at 26. In response, Steele County refers to the EAW analysis of air quality and GHG emissions. Respondent's Br. at 26 (citing Doc. 4 at 141-42, 145-46). However, the sections cited by Steele County relating to air quality and GHG emissions only address the Project's impacts. There is no acknowledgment of the cumulative potential effects of other planned roadway projects or how those projects impact the analyses referenced in Steele County's Brief. In short, Steele County failed to point to anywhere in the record that refutes Owatonna Residents' argument that the EAW did not analyze the cumulative potential effect of these planned roadway projects.

Steele County's failure to evaluate the cumulative potential effects of other planned projects in the environmentally relevant area render its Negative Declaration arbitrary, capricious, unsupported by substantial evidence, and not in accordance with the law.

III. STEELE COUNTY ENGAGED IN IRREGULARITIES OF PROCEDURE CONSTITUTING DANGER SIGNALS OF AN ARBITRARY AND CAPRICIOUS DETERMINATION

Steele County repeatedly violated and continues to violate the Minnesota Government Data Practices Act ("MGDPA"), Minn. Stat. § 13.01 et seq., by failing to provide documents related to the EAW process (or affirm that such documents do not exist) in response to MGDPA requests submitted as early as October 2024. *See* Doc. 7 at 544, 814, 819-20, 832-34, 1195-1202. As discussed in Owatonna Residents' Principal Brief, this resulted in a decision from the Minnesota Court of Administrative Hearings on November 24, 2025 finding that Steele County "constru[ed] [Owatonna Residents'] data

requests uncharitably to excuse minimal communication and disregard for legitimate data requests and requests for updates.” Relator’s Br. 38 (citing Doc. 7 at 832).

Instead of addressing these repeated and ongoing violations, Steele County singles out the *Draft Traffic Noise Analysis* to argue that Steele County’s continued efforts to minimize the public’s access to responsive government data does not thwart public participation or constitute irregular procedure. Respondent’s Br. at 28 (“[T]he record shows the Draft Traffic Noise Analysis, which Relator asserts should have been in the record for review, is in the Administrative Record and had been commented on by the public and responded to by the County.”) This argument strains credulity to the breaking point and must be rejected. As an initial matter, the *Draft Traffic Noise Analysis* is only part of this record due to the diligence of public commenters, including members of the Owatonna Residents. As discussed in Owatonna Residents’ Principal Brief, and ignored by Steele County, Steele County affirmatively stated in response to an April 2, 2025 MGDPA request that “the county does not have any studies or documents related to a noise study for the east side corridor at this time. Since no such data exists at this time, this data request will be closed.” Relator’s Br. at 37 (citing Doc. 7 at AR 821). The *Draft Traffic Noise Analysis* was entirely withheld by Steele County and was instead provided to members of Owatonna Residents by the Minnesota Department of Transportation in response to a similar MGDPA request. Doc. 7 at AR 598-600. It is confounding that Steele County now argues that the inclusion of the *Draft Traffic Noise Analysis* in the Administrative Record is evidence that Steele County engaged in appropriate procedure, ***despite Steele County’s repeated assertions that it did not exist and failure to produce it.*** *Id.* at AR 820-21. Steele County

tried to bury this report, and cannot now rely on the diligence of public commenters that developed a robust record to sidestep its procedural failings. This also ignores numerous other MGDPA requests that remain unfulfilled, directly related to the EAW and EAW process, that may include responsive data that directly refutes conclusions in the EAW to the same extent as the *Draft Traffic Noise Analysis*. Doc. 7 at AR 544 (Comment 181).

Further, Steele County's attempts to distinguish *In re Denial of Contested Case Hearing* must be rejected. The irregularities in Steele County's procedure are not only of the same nature and kind as the procedural irregularities that the Minnesota Supreme Court determined were evidence that the agency "exercised its will and not its judgment" rendering the agency's decision arbitrary and capricious, but also cut to the core of the Minnesota Supreme Court's concerns in *In re Denial of Contested Case Hearing*. 993 N.W.2d 627, 653 (Minn. 2023). In that case, the Minnesota Pollution Control Agency ("MPCA") thwarted public engagement by refusing to document concerns from the Environmental Protection Agency with "the motivation . . . to avoid public scrutiny, . . . contrary to the purposes of the Minnesota Administrative Procedures Act." *Id.* The Minnesota Supreme Court explained the driving concern underlying its decision, stating that "the public has a right to be informed of all actions and deliberations made in connection with activities that affect the public interest, and the public's knowledge of the bases for government decisions lies at the heart of a democratic government." *Id.* (citation and internal quotation marks omitted). Steele County's irregularities of procedure directly blocked the public's ability to be informed of the actions and deliberations of Steele County in connection with the EAW and the East Side Corridor Project—government activities

that are directly within the public interest. Such irregularities of procedure constitute danger signals that, based on the extent to which these irregularities frustrated the public's ability to be informed, render its Negative Declaration arbitrary and capricious. *See id.*

Finally, Steele County's blanket refusal to address the record evidence cited by Owatonna Residents that the federal funding transfer was an irregular procedure to avoid compliance with federal noise standards is telling. As noted in Owatonna Residents' Principal Brief, there is no disagreement that the reallocation of funds is within Steele County's authority and permissible under MEPA. Relator's Br. at 40. Nevertheless, the motivation behind the transfer of funds is a relevant consideration when evaluating whether there exists a "combination of danger signals" that indicate Steele County did not take a hard look at the salient problems and engage in reasoned decision-making. *In re Denial of Contested Case Hearing*, 993 N.W.2d at 653. As identified in Owatonna Residents' Principal Brief, the record shows that reallocating federal funding was motivated in no small part by Steele County's desire to avoid the consequences of having to consider and comply with federal noise standards. Relator's Br. at 40-43. Steele County offers no explanation or further insight into the numerous emails mentioning avoiding federal noise standards, other than to assert the only reason for the funding transfer was to "maximize road improvements on Main Street for best use of funds." Steele County Br. at 29.

Steele County failed to point to any evidence explaining away its irregular procedures. It does not because it cannot. Such irregularities constitute danger signals that Steele County exercised its will rather than its judgment and the combination of these danger signals render Steele County's Negative Declaration arbitrary and capricious.

CONCLUSION

Steele County's brief misrepresents the record before this Court and asserts that analyses, data, or information is in the EAW that simply does not exist. This only highlights Steele County's failure to adequately conduct an EAW that considers the type, extent, and reversibility of environmental effects, and the cumulative potential effects of related or anticipated future projects, as required by Minnesota Rule 4410.1700, subpart 7. As a result, Steele County's Negative Declaration is arbitrary, capricious, unsupported by substantial evidence, and not in accordance with the law. Steele County's decision should be reversed and this Court should require Steele County to conduct an EIS.

Dated: July 24, 2026

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 132.01 subd. 3, the undersigned hereby certifies, as counsel for Relator Owatonna East Side Corridor Residents, that this Brief complies with the type-volume limitation as there are 3,673 words of proportional space type in this Brief. This Brief was prepared using Microsoft Word 365.

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