

FILED

June 10, 2026

**OFFICE OF
APPELLATE COURTS**

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' BRIEF

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INTRODUCTION

The Owatonna East Side Corridor Residents (“Owatonna Residents” or “Relator”), respectfully submits this brief regarding Steele County Board of Commissioners’ and Steele County Highway Department’s (collectively, “Steele County” or “Respondent”) determination as Responsible Government Unit (“RGU”) that an Environmental Impact Statement (“EIS”) is not required (“Negative Declaration”) for Steele County’s own proposed development of the East Side Corridor (29th Ave. Corridor) Project (“the Project”) based on Steele County’s insufficient Environmental Assessment Worksheet (“EAW”). The Owatonna Residents, an *ad hoc* coalition of individuals who will be affected by the Project, respectfully requests this Court require Steele County to conduct an EIS.

STATEMENT OF ISSUES

1. Did Steele County err by failing to evaluate environmental impacts related to the traffic noise that will result from the Proposed Project in the EAW such that Steele County failed to take a hard look at the environmental effects, thereby rendering the Negative Declaration unsupported by substantial evidence?

Decision below: Steele County issued a Negative Declaration and did not require an EIS.

Most Apposite Authorities:

- Minn. R. 4410.1700, subp. 7.
- *Pope County Mothers v. Minn. Pollution Control Agency*, 594 N.W.2d 233 (Minn. Ct. App. 1999).
- *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817 (Minn. 2006).

2. Did Steele County err by failing to consider the “cumulative potential effects” of related projects or anticipated future development and roadway projects such that Steele County’s Negative Declaration is not in accordance with the law and unsupported by substantial evidence?

Decision below: Steele County issued a Negative Declaration and did not require an EIS.

Most Apposite Authorities:

- Minn. R. 4410.1700, subp. 7.
- Minn. R. 4410.0200, subp. 11a.
- *Trout Unlimited, Inc. v. Minn. Dept. of Ag.*, 528 N.W.2d 903 (Minn. Ct. App. 1995).

3. Did significant irregularities of procedure both before and during the EAW process render Steele County’s Negative Declaration arbitrary and capricious?

Decision below: Steele County issued a Negative Declaration and did not require an EIS.

Most Apposite Authorities:

- Minn. Stat. § 13.01, subd. 3.
- Minn. Stat. § 14.69(f).
- *In re Denial of Contested Case Hearing Request*, 993 N.W.2d 627 (Minn. 2023).

STATEMENT OF THE CASE

This case is before the Court of Appeals by certiorari concerning Steele County’s arbitrary, unlawful, and unsupported decision that an EIS is not required to evaluate the significant environmental impacts that will result from the construction of its own proposed project. Steele County failed to evaluate or consider the noise-related impacts of the Project, failed to adequately evaluate the cumulative potential effects of planned future

projects, and engaged in an irregular process that unlawfully impeded the public's ability to adequately participate in the environmental review process and sought to avoid the required level of environmental review. Steele County's actions represent its will to build the Project, rather than its judgment, by avoiding the level of legally required environmental review that would show the Project will have the potential for significant environmental effects.

On January 22, 2026, the Steele County Highway Department issued Findings of Fact and Conclusions ("FOFC") determining that the EAW for the Project was adequate and that an EIS is not needed or required. Administrative Record Document ("Doc.") 5 at Administrative Record Page ("AR") 440-71. On January 27, 2026, the Steele County Board of Commissioners passed a resolution incorporating the Highway Department's FOFC and determining that no EIS is needed or required with respect to the Project. Doc. 12 at AR 2008-10. On February 10, 2026, notice of Steele County's decision on the need for an EIS was published in the Minnesota Environmental Quality Board's ("EQB") *EQB Monitor*. On March 12, 2026, the Owatonna Residents timely petitioned this Court for review, challenging the Negative Declaration on the basis that the decision is arbitrary, not in accordance with the law, and unsupported by substantial evidence.

STATEMENT OF THE FACTS

I. The East Side Corridor Project

Steele County, in its capacity as the project proposer, is proposing the Project, which would include a new, approximately 3.4 mile long, two-lane roadway, the construction of a new 350-foot-long bridge over Maple Creek, construction of roundabouts at various new

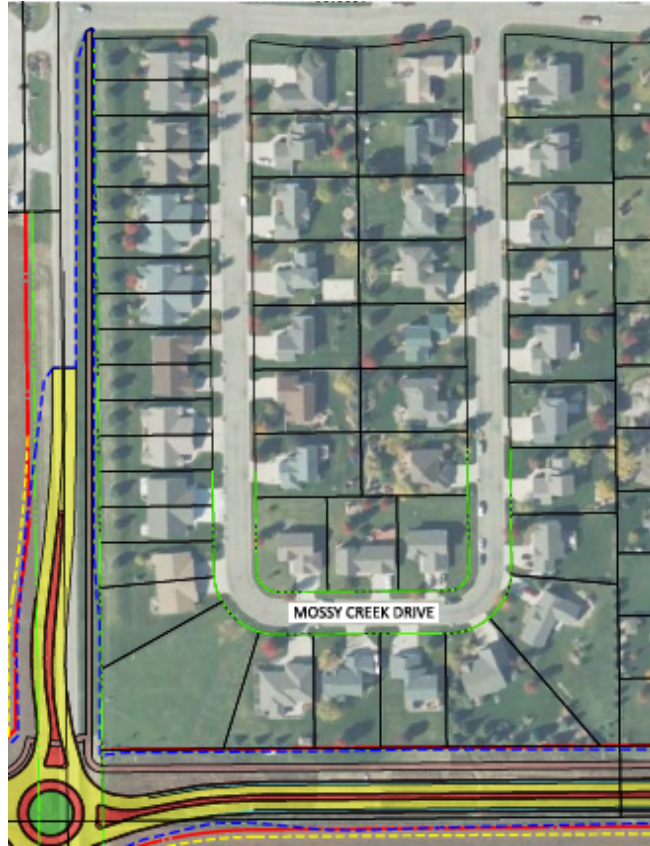
intersections, and removal, reconstruction, or realignment of numerous County State Aid Highway (“CSAH”) segments and other roadways. Doc. 4 at AR 95-97. In total, the Project will impact 89.5 acres of land, remove all or part of three existing roadways, and construct new branch roadways. *Id.* at AR 98. The Project will be constructed immediately adjacent to existing residences near the eastern edge of the developed part of the City of Owatonna, including some owned by the Owatonna Residents. *Id.* at AR 166, 170-71. Figures 1 and 2 show the proximity of the Project to these residences.¹

Figure 1.



¹ Doc. 4 at 170-71, Figures 5c, 5d. Yellow shading represents the proposed highway and the blue dotted line represents construction limits. *Id.*

Figure 2.



The Project is expected to be utilized by 2,500 to 3,500 vehicles per day, on the new 29th Avenue/East Side Corridor and 1,600 to 3,700 vehicles per day on connecting roadways. *Id.* at AR 153. This traffic will generate substantial noise increases at those nearby residences. A preliminary, draft noise impact analysis that Steele County abandoned and refused to acknowledge in the EAW or FOFC indicated that some of these residences would experience sound *over six times greater than existing levels.*² Doc. 7 at AR 601-743 (*Draft Traffic Noise Analysis*).

² The dBA sound pressure level scale is a logarithmic scale due to the human ear's ability to hear a wide range of sound levels. Because of how the logarithmic scale functions, an increase of 10 dBA sounds twice as loud as existing levels, an increase of 20 dBA sounds

Steele County asserted in the EAW that the Project is needed to improve the connectivity of Steele County's transportation network and to meet future travel needs on the east side of the City of Owatonna. Doc. 4 at AR 98. Steele County identified anticipated growth and planned development in the City of Owatonna and Steele County to support the need for the Project. *Id.* at AR 101. In particular, Steele County noted that the Project area "includes one of the city's primary growth areas. The existing roadway network is not equipped to manage and distribute traffic generated by new developments." *Id.* The EAW identified planned future development near the Project, including low-density residential, mixed use, limited commercial development, and a new school as a driver of the need for the Project. *Id.* at AR 101, 182, 421, 424. Despite relying on this planned future development to support the need for the Project, the EAW failed to analyze the cumulative potential effects the future development will create when considered along with the effects from the Project.

Steele County was awarded \$3,960,000 in federal funding for the Project. Doc. 7 at AR 1047. This federal funding required federal environmental review, including a noise impact analysis conducted pursuant to federal noise analysis standards. *Id.* Steele County began working on the federal environmental review in January 2022. *Id.* As part of that review, engineering firm HZ United prepared the *Draft Traffic Noise Analysis* for Steele County dated December 14, 2024. *Id.* at AR 601-743. Steele County did not reference this study in the EAW, and did not provide it to the Owatonna Residents in response to their

four times as loud as existing levels, and an increase of 30 dBA sounds eight times as loud as existing levels. ADD9 (cited in the record at AR 157).

Minnesota Government Data Practice Act (“MGDPA”) requests to Steele County. In fact, Steele County repeatedly insisted that no noise studies existed. *Id.* at AR 744, 821. Instead, the Owatonna Residents were forced to obtain this study from the Minnesota Department of Transportation (“MnDOT”). The *Draft Traffic Noise Analysis* determined there would be “substantial noise increases” at 55 residences or properties in the residential area nearest to the Project,³ including the Owatonna Residents’ homes. *Id.* at AR 651-53. Eleven of those 55 residences will experience sound over four times greater than existing levels, with some experiencing sound over six times greater than existing levels. *Id.*

The *Draft Traffic Noise Analysis* also evaluated the effectiveness of mitigation through the construction of noise walls between the Project and impacted residences, and the costs associated with construction of those walls. *Id.* at AR 605-615, 657-752. As it relates to the properties nearest the Project, including some of the Owatonna Residents’ homes, the analysis determined that a 340 foot long wall that is 20 feet tall would not reduce the noise impacts by even 7 dBA for any impacted residence and thus did not meet the noise reduction goal. *Id.* at AR 607. The analysis determined that a 2,430 foot long wall that is 20 feet tall would provide the most effective mitigation benefitting the greatest number of impacted properties, and that a 2,430 foot long wall would reduce the noise impacts by 7 dBA for at least one residence or property in the area nearest the Project and benefit an additional eight properties, as long as the wall was a minimum of 8 feet tall. *Id.*

³ The residences nearest the Project are identified as Noise Sensitive Area K in the *Draft Traffic Noise Analysis*.

To put this reduction into context, the *Draft Traffic Noise Analysis* determined that one residence will experience a 27 dBA increase without mitigation. *Id.* at AR 651. This analysis that traffic noise from the Project will have significant environmental effects was not utilized in the EAW or FOFC.

II. EAW and Public Concerns

The Project required a mandatory EAW and Steele County, in its capacity as the RGU, was tasked with completing the EAW to assess the potential for significant environmental impacts associated with the Project. Minn. Stat. § 4410.4300, subp. 22; Doc. 4 at AR 93. Steele County filed the EAW with the EQB and a “Notice of Availability” was published in the *EQB Monitor* on November 18, 2025, and again on November 25, 2025 with corrected dates for the public comment period. Doc. 5 at AR 443; Doc. 6 at 474-75, 477. The public comment period was open from November 18, 2025 through December 31, 2025. Steele County received 249 public comments from concerned residents, including from the Owatonna Residents. These comments raised significant issues with the adequacy of the EAW and the EAW process. *See* Doc. 7 at AR 483-564. Major concerns expressed by the public included (1) the lack of any analysis of traffic noise impacts, in particular the impacts on nearby residences; (2) the transfer of federal funding from the Project to other roadway projects, eliminating federally-required noise analyses and mitigation for the Project; (3) the failure to evaluate cumulative effects from future planned development and other roadway projects, including the project that received the Project’s federal funds; and (4) Steele County and the City of Owatonna’s ongoing failures

to respond to MGDPA requests for data that remain unfulfilled, in some cases for over a year. *Id.*

A. Failure to Evaluate the Project's Noise Impacts

Steele County's FOFC and EAW entirely failed to evaluate the noise-related impacts associated with traffic noise that will be generated by the Project. *See* Doc. 4 at AR 148, 150; Doc. 5 at 450. Instead, Steele County provided only the following in its FOFC, echoing similar assertions in the EAW:

As noted in Question 19 of the EAW, the Project is exempt from state noise standards. Steele County and the city of Owatonna, however, identified potential measures that would be considered to mitigate effects of noise as part of the Project. These options were outlined in the EAW. After considering public input, costs, impacts on utilities and drainage, Steele County is working to incorporate the following mitigation measures into the Project, some of which will also serve as visual impact mitigation measures:

- Berming with trees – similar to what is currently in place along the south side of 26th St NE just east of Deer Trail Ln NE. Berms and trees would be in the public right of way.
- The design speed of the new roadway would be 40 miles per hour, which is considered low speed.
- The proposed roundabouts (see Section 3.1.2) will reduce vehicle speeds and resulting traffic noise.
- An urban design was used to minimize the roadway footprint in developed areas and to slow travel speeds.
- A portion of the urban section roadway between School St and Dane Rd where the roadway passes near an existing neighborhood (and the ROW narrows to approximately 100 feet) has been shifted east (away from the neighborhood) compared to previous design iterations, while remaining within the ROW.

Doc. 5 at AR 450. Neither the EAW nor the FOFC acknowledge the results of the *Draft Traffic Noise Analysis* or include any analysis of the extent of noise impacts or whether and to what extent these potential mitigation measures would reduce those impacts.

B. Transfer of Federal Funding to Avoid Federal Environmental Review and Costly Mitigation

Steele County ultimately decided to request transfer of the nearly \$4 million in federal funding away from the Project to allocate it to the Main Street roadway project, and Steele County abandoned the federal environmental review process and associated noise study. Doc. 7 at AR 1047, 1300. According to the Steele County Engineer, the “biggest benefit” of this reallocation of federal funding was to “align federal dollars better to maximize road improvements on Main Street and not have to spend a very significant portion of that nearly \$4 million on noise walls, arguably not a good use for these funds.” *Id.* at AR 1028. As a result, the Main Street roadway project timeline was accelerated to use those federal funds. *Id.* at AR 1042. In the wake of this decision, Steele County erroneously asserted, time and time again in the EAW, FOFC, and responses to public comments, that it no longer needed to evaluate traffic-related noise impacts from the Project at all, and buried the noise work already conducted.

C. Failure to Evaluate Cumulative Potential Effects

Steele County identified in the EAW the anticipated future development in the area surrounding the Project to support the purpose and need for the Project, including using additional trips related to that development in its forecast of future traffic. Doc. 5 at AR 101, 152. Steele County further recognized that this development will have

environmental impacts related to the categories studied in the EAW. Doc. 4 at AR 156. Yet, there is no analysis, evaluation, or quantification of the extent of these impacts. Further, despite accelerating the Main Street roadway project from 2029 to 2026, the EAW does not include any analysis of the cumulative potential effects resulting from multiple roadway projects impacting the same roadway network.

D. Repeated Violations of MGDPA

The Owatonna Residents issued multiple MGDPA requests between October 2024 and July 2025 to Steele County requesting government data that is directly related to the Project and is highly relevant to the EAW. Doc. 7 at AR 1195-1202. After significant delay, lack of production of government data, and restrictions on viewing government data, the Owatonna Residents filed an MGDPA Complaint with the Court of Administrative Hearings (“CAH”). *Id.* at AR 813. On November 24, 2025, the CAH issued an Order finding that Steele County’s procedure for responding to Relator’s requests resulted in multiple inappropriate responses to data requests in violation of Minnesota Statutes Section 13.03, subdivision 2(a). *Id.* at AR 814, 833. The Administrative Law Judge ordered Steele County to maintain procedures that ensure appropriate responses to data requests to address these violations. *Id.* at AR 833-84. Nevertheless, at the close of the comment period numerous MGDPA requests remained unfulfilled. *Id.* at AR 1195-1202. Steele County’s willful failure to comply with the law significantly impeded the public’s ability to participate in the environmental review process.

SUMMARY OF THE ARGUMENT

An Environmental Impact Statement is required for the Project because the Project has the “potential for significant environmental effects,” as set forth in the Minnesota Environmental Policy Act (“MEPA”). Minn. Stat. § 116D.04, subd. 2a(a); Minn. R. 4410.1700, subp. 3. Steele County’s EAW is insufficient to provide the basis for Steele County’s findings and, ultimately, Steele County’s Negative Declaration on the need for an EIS is arbitrary and capricious because the EAW failed to analyze impacts that will result from the Project, failed to evaluate cumulative potential effects, and involved significant irregularities of procedure that impeded public access to information and participation in the EAW process.

Steele County entirely omitted any analysis of traffic noise-related impacts that will result from the Project based on its flawed conclusion that the Project’s exemption from compliance with state noise standards meant that Steele County need not evaluate those impacts at all. This is not the standard when conducting an EAW, which requires an evaluation of “the type, extent, and reversibility of environmental effects” to determine whether there is a potential for those environmental effects to be significant.

Steele County also failed to substantively evaluate the “cumulative potential effects” of other projects or development that are “actually planned or for which a basis of expectation has been laid,” including the low-density residential, mixed use, and commercial development identified as a driver of the Project. Minn. R. 4410.0200, subp. 11a. Because the environmental effects of these projects were not addressed, the

EAW that does not fully account for, among other things, greenhouse gas emissions (“GHG”), increased noise-related impacts, and impacts to land and surface water.

Finally, Steele County engaged in irregularities of procedure that have frustrated public participation and limited environmental review. Steele County has failed, and continues to fail, to fulfill MGDPA requests that were submitted by Relator between October 2024 and July 2025, despite an order from the CAH finding that Steele County’s procedure for responding to Relator’s requests resulted in multiple inappropriate responses to data requests in violation of the MGDPA. The requests at issue are directly related to public oversight of the EAW process, consistent with the purpose of the MGDPA and the Minnesota Administrative Procedures Act. Further, documents produced by MnDOT in response to MGDPA requests show that Steele County withheld relevant documents and even denied their existence in violation of the MGDPA. And those documents that Steele County did produce in response to MGDPA requests show that Steele County steadfastly refused to consider appropriate mitigation for the Project’s impacts, despite being aware of significant noise impacts as early as April 2024. For example, these documents demonstrate that the County transferred nearly \$4 million in federal funding awarded to the Project to another project to avoid compliance with federal noise standards under the belief that doing so would avoid having to implement costly mitigation. This shell game may allow Steele County to avoid noise-related federal requirements, but it does not excuse Steele County from analyzing impacts under MEPA, and the studies conducted during the time the Project was a federal undertaking remain relevant to analysis of the potential for

significant environmental effects. Simply put, Steele County cannot ignore relevant information in its possession simply because that information is inconvenient.

STANDARD OF REVIEW

The Court's review of Steele County's Negative Declaration is based on whether that decision reflects an error of law, is made upon unlawful procedure, or is arbitrary, capricious, or unsupported by substantial evidence. Minn. Stat. § 14.69; Minn. Stat. § 116D.04, subd. 10; *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006) (*CARD*). Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion. *Id.* A decision is arbitrary or capricious if the Responsible Governmental Unit ("RGU") relied on factors the legislature never intended it to consider, if it entirely failed to consider an important aspect of the problem, if it offered an explanation for the decision that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view of the result of the RGU's expertise. *Trout Unlimited, Inc. v. Minn. Dep't of Agric.*, 528 N.W.2d 903, 907 (Minn. Ct. App. 1995), *rev. denied* (Minn. Apr. 27, 1995). A decision is arbitrary and capricious if the decision represents the RGU's will, rather than its judgment, *Pope County Mothers v. Minn. Pollution Control Agency*, 594 N.W.2d 233, 236 (Minn. Ct. App. 1999), and it is the Courts duty to intervene where there is a "combination of danger signals which suggest the [RGU] has not taken a 'hard look' at the salient problems and 'has not genuinely engaged in reasoned decision-making,'" *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977) (quoting *Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841, 851 (D.C. Cir. 1970)).

The record on appeal demonstrates that Steele County failed to take a “hard look” at the salient problems by entirely failing to evaluate certain impacts, failing to consider cumulative potential effects, and employing irregular procedures, including attempting to hide highly-relevant information, that prevented informed public participation in an attempt to forego legally required analysis and mitigation.

ARGUMENT

I. Steele County’s EAW Failed to Consider Important Aspects of the Problem

A. The EAW Failed To Evaluate All Reasonably-Expected Environmental Effects of the Project

The Minnesota Environmental Policy Act’s (“MEPA”) purpose is “to force [RGUs] to make their own impartial evaluation of environmental considerations before reaching their decisions,” and to “consider the significant environmental consequences of a project to the fullest extent practicable.” *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 880 (Minn. Ct. App. 1995) (internal citation and quotation marks omitted). In furtherance of this purpose, MEPA requires that a detailed environmental impact statement (“EIS”) be completed when there is “potential for significant environmental effects” from a project. Minn. Stat. § 116D.04, subd. 2a(a); Minn. R. 4410.1700, subp. 1; Minn. R. 4410.2000, subp. 3A. The RGU is required to either make a Positive Declaration indicating that an EIS must be completed or a Negative Declaration indicating that there is no potential for significant environmental effects. Minn. R. 4410.1700, subp. 3. The RGU’s determination must be based on the information gathered during the EAW process and the comments received on the EAW. *Id.*

The preparation of an EAW, making the decision of whether an EIS is required, and preparation of an EIS are therefore “essentially an information gathering and analytical process.” *Minn. Center for Env’tl Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 468 (Minn. 2002). The Minnesota Environmental Quality Board (“EQB”) has promulgated four factors that must be considered by the 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 anticipate future projects;
3. the extent to which the environmental effects are subject to mitigation by ongoing public 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. 7.⁴

Steele County’s FOFC, EAW, and the record underlying Steele County’s Negative Declaration demonstrate that Steele County did not consider some environmental consequences of the Project at all, much less to the fullest extent practicable, that it failed to gather and analyze necessary information, and that it did not assess the potential for significant environmental effects consistent with MEPA or EQB regulations. Even more troubling is that with respect to noise, which is among the most serious impact from the Project, Steele County ignored information in its possession and then attempted to deny the very existence of that information.

⁴ Under MEPA, the EQB has the authority to establish the form and content of EAWs. See Minn. Stat. § 116D.04, subd. 5a(2).

1. The EAW Entirely Failed to Analyze Impacts from Traffic Noise

Noise is a pollutant. ADD5. “Quietude” is a statutorily protected natural resource. Minn. Stat. § 116B.02, subd. 4. In recognition of this, the EQB requires an evaluation of noise-related impacts resulting from construction and operation of a proposed project, including the requirement to “[d]escribe sources, characteristics, **duration, quantities, and intensity of noise generated during** project construction and **operation.**” Doc. 4 at AR 147 (emphasis added). Despite this clear direction, Steele County did not even attempt to evaluate the duration, quantities, and intensity of traffic noise generated during operation of the Project. *Id.* at AR 150; Doc. 5 at 465-66. Instead, Steele County repeatedly stated in the EAW, in response to public comments raising concern about potential unknown noise impacts, and in the FOFC that “the county is exempt from state noise standards as the roadway is not fully access controlled. The county and city [of Owatonna] have considered state noise standards and have provided some options that would help screen adjacent homes from the roadway and provide some mitigation.” Doc. 4 at AR 150; Doc. 5 at 465-66; Doc. 7 at AR 485 (Response to Comment 20). This conclusory language falls far short of what is required by an EAW. *In re City of Cohasset’s Decision on Need for and Environmental Impact Statement for Proposed Frontier Project*, 985 N.W.2d 370, 381-82 (Minn. Ct. App. 2023) (stating that when an RGU makes “conclusory statements with no analysis of their scientific basis, substantial evidence is lacking” to support a determination on the potential for environmental effects.).

Instead, an RGU must evaluate the potential environmental effects for each category in an EAW regardless of whether there is a statute, regulation or other law establishing

compliance thresholds for that category. This reflects an EAW's purpose as an information gathering and analytical process. Steele County cannot avoid an entire category simply because it is exempt from complying with a statewide standard. In fact, there are numerous categories that the EQB requires RGUs to evaluate that have no statewide standards of compliance or other mandatory thresholds, such as climate change, land use, visual impacts, GHG emissions from non-stationary sources, and transportation. This Court has previously determined that an RGU's failure to assess GHG emissions or the impacts on climate change from increased vehicle travel, which are subject to no standards of compliance, rendered an RGU's Negative Declaration arbitrary and capricious. *Matter of Determination of Need for Env't'l Impact Statement for Mankato Motorsports Park*, A20-0952, 2021 WL 1604359, at *11 (Minn. Ct. App. Apr. 26, 2021) An EAW must evaluate the potential for significant environmental effects based on all of the impacts that "may be reasonably expected to occur from the project," not only impacts that will violate an enforceable threshold. Minn. R. 4410.1700, subp. 6.

Steele County cannot rely on the exemption from complying with state noise standards to avoid evaluating noise in the EAW. This is demonstrated by the EAW form itself. The EAW form's requirements with respect to noise include the following:

Describe sources, characteristics, duration, quantities, and intensity of noise generated during project construction and operation. Discuss the effect of noise in the vicinity of the project including

1) existing noise levels/sources in the area, 2) nearby sensitive receptors, 3) conformance to state noise standards, and 4) quality of life. Identify measures that will be taken to minimize or mitigate the effects of noise.

Doc. 4 at AR 147. Notably, conformance to state noise standards is only one of a number of noise-related considerations that must be evaluated by an EAW. *Id.* Even if exemption from compliance with noise standards excused Steele County from evaluating whether the project would meet those standards, that is not a basis for ignoring impacts from noise entirely.

An EAW is a decision-making tool designed to set out the basic facts necessary to determine whether a project may harm the environment and, thus, whether an EIS is required. *Trout Unlimited, Inc. v. Minn. Dept. of Ag.*, 528 N.W.2d 903, 909 (Minn. Ct. App. 1995). Unlike a permitting decision that assesses whether a certain action is compliant with governing regulations or limitations, a legally-compliant EAW must assess *all* of the environmental effects that a project may contribute. In determining the potential for significant environmental effects and the need for an EIS, the RGU must consider all information gathered during the environmental review, including comments received on the EAW. Minn. R. 4410.1700, subp. 3. If comments raise a concern and provide evidence that there is a potential for a specific environmental impact or challenge the RGU's failure to address that particular impact, it is arbitrary and capricious for the RGU to "bypass any discussion on the potential for significant environmental effects or how they can be mitigated." *Pope Cnty. Mothers*, 594 N.W.2d at 238; *Mankato Motorsports*, A20-0952, 2021 WL 1604359, at *11 (Minn. Ct. App. Apr. 26, 2021).

In *Pope County Mothers*, this Court evaluated whether the RGU's Negative Declaration was arbitrary and capricious due to the RGU's failure to assess the potential for significant environmental effects from certain air pollutant emissions. 594 N.W.2d at

237-38. Although the RGU had recently obtained the ability to model such emissions, it did not conduct any modeling despite acknowledging that there was a potential for impacts in response to public comments. *Id.* at 238. This Court affirmed the district court’s ruling that the RGU’s Negative Declaration was arbitrary and capricious, in part, because the RGU “bypasse[d] any discussion on the potential for significant environmental effects.” *Id.* at 238-39.

In *Mankato Motorsports*, this Court evaluated whether the RGU’s Negative Declaration was arbitrary and capricious due to the RGU’s failure to evaluate GHG emissions and the impact on climate change. 2021 WL 1604359, at *11. Agency commenters raised concerns about the lack of any evaluation of the project’s potential to contribute to climate change. *Id.* at *10. The RGU responded that “[t]he carbon footprint of the vehicles is no different as if they were being driven on public roadways.” *Id.* at *11. This Court determined that public comments warranted a “specific response” and the RGU’s failure to adequately address the concerns raised by the commenters similarly “bypasse[d] any discussion on the potential for significant environmental effects.” *Id.* (citing *Pope Cnty. Mothers*, 594 N.W.2d at 238).

Steele County’s Negative Declaration is arbitrary and capricious for the same reasons articulated in *Pope County Mothers* and *Mankato Motorsport*. Noise is a pollutant and is a category required to be evaluated in all EAWs. The public comments regarding the EAW raised significant concerns about potential noise from a new highway and the

lack of any analysis.⁵ See, e.g., Doc. 7 at AR 485 (Comment 22). In response to each of these comments, Steele County referred back to its Response to Comment 20 stating only that it need not comply with state noise standards. See, e.g., *Id.* at AR 485, 487-89 (Responses to Comments 22, 29, 34, 38). Steele County’s failure to evaluate the potential for impacts and failure to provide a “specific response” to the public’s comments demonstrates that it did not genuinely engage in reasoned decision making. Steele County’s Negative Declaration represents its will, rather than its judgment.

Steele County’s decision to almost entirely ignore the noise impacts of the Project is even more egregious given that Steele County had already evaluated the traffic noise-related impacts associated with prior iterations of the Project. At that time, the Project was anticipated to be federally funded, and Steele County was therefore required to conduct a noise analysis consistent with federal standards. This resulted in the *Draft Traffic Noise Analysis* prepared for Steele County on December 14, 2024. *Id.* at AR 601-743. This draft

⁵ Noise impacts or the lack of analysis in the EAW of such impacts was raised in dozens of public comments, including the following non-exhaustive list of concerns: “The noise will affect mental health with sleep disturbances.” Comment 20; “Where are the Noise, Pollution, Safety Impact Studies?” Comment 22; “We are extremely concerned about the incomplete studies that have been done on noise and noise mitigations[.]” Comment 29; “What quality of life (visual, noise, safety, etc.) impact studies have been completed?” Comment 34; “The traffic noise impacts of this project are not adequately addressed in the Environmental Assessment Worksheet (EAW). Noise impacts are predictable, distance-based, and permanent when roadways are placed close to homes, yet the EAW fails to meaningfully evaluate avoidance, separation distance, or long-term impacts to nearby residents.” Comment 38; “This comment identifies fundamental deficiencies in the Environmental Assessment Worksheet, including the absence of required noise modeling, failure to disclose absolute and relative noise levels, mischaracterization of nonfunctional measures as mitigation, and failure to evaluate avoidance and minimization.” Comment 45.

report shows significant traffic noise-related impacts resulting from the Project to areas determined by the report to be Noise Sensitive Areas. *Id.* at AR 603-04, 649-56. For example, the *Draft Traffic Noise Analysis* shows that 55 residences or properties in Noise Sensitive Area K, the residential area closest to the Project, will experience “substantial noise increases”⁶ with ten residences experiencing an increase of over 20 dBA, as compared to current conditions, and one of those residences experiencing a 27 dBA increase. *Id.* at AR 649-56. According to the EAW, “a five dBA increase is clearly noticeable, and a 10 dBA increase is heard as twice as loud.” *Id.* at AR 148; ADD9. A 20 dBA increase is four times louder than current conditions, and a 27 dBA increase is over six times louder. ADD9. The *Draft Traffic Noise Analysis* was only discovered because an Owatonna resident acquired the *Draft Traffic Noise Analysis* from MnDOT through a MGDPA request after Steele County repeatedly stated that no such document or study existed. Doc. 7 at AR 820.

It is clear from Steele County’s response to comments that the *Draft Traffic Noise Analysis* was not considered when evaluating traffic noise related to the Project during the EAW. When commenters to the EAW pointed out that the *Draft Traffic Noise Analysis* results demonstrated that traffic noise from the Project will be significant, the County stated that

The 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. See Comment 28

⁶ The *Draft Traffic Noise Analysis* considers 5 dBA to be a “substantial noise increase.”

and responses to Comments 248 and 249. The federal study is not applicable to MEPA requirements.

The project is exempt from state noise standards as the roadway is not fully access controlled and is owned by the county. Detailed noise modeling following federal requirements is not necessary under MEPA. Please see response to Comment 20 on noise. The county understands that a new roadway will change noise from what it is today and has identified some measures to help mitigate for the change in conditions for existing development. The county has sought input from the public on these measures, which include berming, landscaping and/or fencing. The county acknowledges these measures will not reduce sound to the extent that a noise wall would, but it is not required to provide that type of mitigation.

Id. at AR 492 (Response to Comment 48). Having done the analysis, Steele County cannot now ignore the results. Where, as here, information is presented during the EAW process that a project may have significant environmental effects, concluding that an EIS is unnecessary “makes a mockery of the EAW as a decision-making tool.” *Trout Unlimited*, 528 N.W.2d at 909 (citation and internal quotation marks omitted).

A Negative Declaration on the need for an EIS can be supported by a consideration of “the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental effects of the project.” Minn. R. 4410.1700, subd. 7.C. Mitigation can 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.” *CARD*, 713 N.W.2d at 834-35. Not only are the proposed mitigation measures not specific or targeted, the only thing that is “certain” is that the proposed mitigation is demonstrably ineffective. The *Draft Traffic Noise Analysis* evaluated variations of

mitigation through the use of traffic walls and the resulting impact on noise at the same Noise Sensitive Area K. Doc. 7 at AR 606-07. The analysis determined that a 340 foot long wall that is 20 feet tall would not reduce the noise impacts by even 7 dBA and thus did not meet the noise reduction goal. The analysis determined that a 2,430 foot long wall would reduce the noise impacts by 7 dBA for at least one residence or property in the Noise Sensitive Area, as long as the wall was a minimum of 8 feet tall. *Id.* Nevertheless, Steele County did not propose a 2,430 foot long wall of at least 8 feet as mitigation in the EAW. Instead, in the FOFC, Steele County proposed berming with trees, a 40 mile per hour speed limit, and roundabouts. Doc. 5 at AR 450. There is no accompanying analysis of how such mitigation compares to a 2,430 foot long wall or extent of reduction in noise it can provide. Even Steele County “acknowledges these measures will not reduce sound to the extent that a noise wall would, but it is not required to provide that type of mitigation.” Doc. 7 at AR 491 (Response to Comment 45). In its response to comments, Steele County has acknowledged that the mitigation it has tepidly proposed will not address the noise impacts from the project. Although Steele County may no longer be required to mitigate impacts pursuant to federal requirements attached to the federal funding, it is wholly incorrect to state that Steele County is not required to provide mitigation sufficient to address these significant environmental effects. Further, these paltry mitigation measures are not subject to “ongoing public regulatory authority,” as Steele County has stated only that “Steele County *is working* to incorporate the following mitigation measures into the Project.” Doc. 5 at AR 450 (emphasis added). This does not meet the requirements set forth in Minn. R. 4410.1700, subd. 7.C. *CARD*, 713 N.W.2d at 835 (“The RGU must have some concrete

idea of what problems may arise and how they may specifically be addressed by ongoing regulatory authority.”).

Steele County’s conclusion that it does not need to evaluate traffic noise because it is not required to comply with state noise requirements is incorrect and ignores the purpose of an EAW. Because the EAW and FOFC are silent as to traffic noise related impacts, Steele County’s Negative Declaration is arbitrary, capricious, and unsupported by substantial evidence.

2. Steele County Failed to Adequately Consider Planned or Expected Projects and Development in its Cumulative Potential Effects Analysis

An RGU is required to assess the cumulative potential effects of the project in addition to related or planned future projects. Minn. R. 4410.1700, subp. 7. The purpose of a cumulative potential effects analysis “is to put the proposed project into context.” *CARD*, 713 N.W.2d at 829. Here, that context includes future development that is planned to occur in the same area as, and is likely driven by, the Project. The record shows that Steele County expects low-density residential development, mixed-use development limited commercial development, and a new school in the Project area. Doc. 4 at AR 101, 182, 421, 424. Steele County incorporated this expected development into its assessment of the purpose and need for the Project. *Id.* at AR 101.

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. . . . In determining if a basis of expectation has***

been laid for a project, an RGU must determine whether a project is reasonably likely to occur and, if so, whether sufficiently detailed information is available about the project to contribute to the understanding of cumulative potential effects. In making these determinations, the RGU must consider: whether any applications for permits have been filed with any units of government; whether detailed plans and specifications have been prepared for the project; ***whether future development is indicated by adopted comprehensive plans or zoning or other ordinances***; whether future development is indicated by historic or forecasted trends; and any other factors determined to be relevant by the RGU.

Minn. R. 4410.0200, subp. 11a (emphasis added).

Although an RGU is not required to analyze future projects that are entirely based on speculation, *see In re Enbridge Energy, LP*, 930 N.W.2d 12, 35 (Minn. Ct. App. 2019), the RGU is required to assess the potential environmental effects of additional projects that are planned or likely. *Trout Unlimited, Inc. v. Minn. Dept. of Ag.*, 528 N.W.2d 903, 908 (Minn. Ct. App. 1995), *rev. denied* (Minn. Apr. 27, 1995). In *Trout Unlimited*, this Court concluded that the RGU's determination that there would be no significant environmental effects because future expansion of irrigation of cropland beyond the proposed project was too uncertain was an arbitrary determination. *Id.* The record evidence in that case showed that a nearby landowner "hoped" to convert to similar irrigation farming pending the outcome of the permit for the project at issue. *Id.* The court determined that this evidence, along with the Minnesota Department of Health's letter to the project proposer that additional information was necessary regarding the plans of nearby landowners for similar farming operations, was sufficient to require the RGU to evaluate the potential impacts from these future projects, despite the RGU's assertion that "potential impacts associated

with possible future expansion of irrigation of cropland cannot be inferred from this project.” *Id.*

Although decided prior to the EQB’s promulgation of the definition of “cumulative potential effects” at Minnesota Rule 4410.0200, subp. 11a, this Court’s reasoning in *Trout Unlimited* is consistent with the definition. For example, the EAW stated that these other irrigation projects were “planned or likely,” consistent with the definition’s guidance that projects must be evaluated if they are “planned or for which a basis of expectation has been laid.” *Id.*; Minn. R. 4410.0200, subp. 11a. Similarly, the other projects were one mile away from the proposed project at issue and adjacent to a creek that may be impacted by the projects, consistent with the definitions guidance to evaluate impacts “in the environmentally relevant area that might reasonably be expected to affect the same environmental resources.” *Id.* As such, the EQB’s promulgation of the cumulative potential effects definition reinforces this Court’s determinations in *Trout Unlimited*.

Steele County failed to consider planned and reasonably expected future development when analyzing the potential for significant environmental effects of the Project.

a) Steele County Failed to Sufficiently Analyze Impacts from Development Planned in the City of Owatonna’s Comprehensive Plan

Despite the EQB’s direction to evaluate future development indicated by comprehensive plans in the same relevant area that will affect the same environmental resources, Minn. R. 4410.0200, subp. 11a, Steele County failed to appropriately account

for cumulative potential effects that will result from development reasonably expected to occur immediately adjacent to the Project.

Steele County relied on the City of Owatonna's *Imagine Owatonna: 2050 Comprehensive Plan* (2024)⁷ ("2050 Comprehensive Plan") to support its assessment that the Project aligns with current zoning regulations, future land use plans for the City and Steele County, and the visual environment. Doc. 4 at AR 113, 408. In support of its determination that the Project is consistent with the visual environment, Steele County explained that

Nearby land uses include developed areas within portions of the Project along existing roadways to rural/agricultural areas identified for future urban growth in other locations within the Project. ***The Project is within one of the primary areas identified for future growth in the city's comprehensive plan (Imagine Owatonna: 2050 Comprehensive Plan – adopted in 2024), including low- to medium density residential housing and mixed-use development.*** This area is also part of an orderly annexation area within Owatonna Township that has been agreed upon for future city expansion. A new roadway in this area and improvements to existing roadways in the Project area is consistent with both these plans, as well as the Steele County transportation plan. The Project area has also been identified as a location for trail development and connections by the city of Owatonna.

Id. at AR 408 (emphasis added). In response to public comments, Steele County noted that "the city continues to grow and develop. This development is on the eastern side of the community as reflected in the city's comprehensive plan and in its annexation agreement with the neighboring township. The project will help support this growth." Doc. 7 at AR 483 (Response to Comment 1).

⁷ Available at <https://www.owatonna.gov/DocumentCenter/View/10792>.

Yet, despite acknowledging that the Project furthers these plans for future growth in the Project area, the EAW and FOFC did not analyze the cumulative potential effect of this planned and reasonably expected future growth in a majority of the required EAW criteria. Instead, Steele County merely identified general types of cumulative potential effects that will occur, Doc. 4 at AR 156, before ultimately concluding that “the proposed Project has minimal potential for cumulative impacts to the resources directly or indirectly affected by the Project.” Doc. 5 at AR 468. This conclusory language falls far short of what is required by an EAW. *In re City of Cohasset’s Decision on Need for and Environmental Impact Statement for Proposed Frontier Project*, 985 N.W.2d 370, 381-82 (Minn. Ct. App. 2023).

The RGU must evaluate “the effect on the environment that results from the incremental effects of a project in addition to other projects in the environmentally relevant area.” Minn. R. 4410.1700, subp. 7; Minn. R. 4410.0200, subp. 11a. It is not sufficient to identify planned or expected future projects that are located in the same geographic area, acknowledge that those future projects will result in additional environmental impacts,⁸ but

⁸ See, e.g., “Additional growth and development along 29th Ave/East Side Corridor and connecting roadways would result in converting existing farmland to other uses.”; “Additional soil disturbance outside the Project footprint is possible because of future growth and development along 29th Ave/East Side Corridor and connecting roadways.”; “there is potential for future development along 29th Ave/East Side Corridor and connecting roadways outside the Project footprint. The conversion of farmland and/or natural areas adjacent to the corridor to more intensive land uses would result in new areas of impervious surface, potential wetland impacts, and a potential need for water appropriation.”; “Planned future development (see Item 10) adjacent to 29th Ave/East Side Corridor and connecting roadways could result in additional tree removal outside the Project footprint. As noted in the “Water Resources” topic above, these developments could also create new areas of impervious surface outside the Project footprint. Additional

then fail to analyze or quantify those impacts. Doc. 4 at AR 156. The *2050 Comprehensive Plan* proposes a mixed-use neighborhood node for the area immediately around a portion of the Project. *2050 Comprehensive Plan* at 21.

Figure 3⁹



Similarly, the 2024 Owatonna Township Orderly Annexation identifies the area immediately around the Project for future development. Doc. 4 at AR 421, 423. The

impervious surface could impact the quality and volume of water entering wetlands.”; “Planned 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 on 29th Ave/East Side Corridor, connecting routes, and nearby highways. Future developments were considered in analyzing future traffic within the Project area. If future highway expansion projects receiving federal funds are proposed in the area, noise impacts would have to be evaluated as part of these projects.”

⁹ The blue dashed line is the location of the Project.

Owatonna School District is planning a future elementary school in the same location as is indicated in the *2050 Comprehensive Plan*. *Id.* at AR 421, 424. Thus, an expectation has been laid for development in this same geographic area in various iterations of planning by the City of Owatonna and the Owatonna School District. The EAW does not account for the effect on the environment that results from the incremental effects of the Project and this future development, except in one key category: traffic.

The EAW relies on the traffic generated by this future planned development because it supports the need for the Project. Steele County noted in the EAW 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 on 29th Ave/East Side Corridor, connecting routes, and nearby highways. ***Future developments were considered in analyzing future traffic within the Project area.*** If future highway expansion projects receiving federal funds are proposed in the area, noise impacts would have to be evaluated as part of these projects.”

Id. at AR 156 (emphasis added). The Traffic Study conducted to evaluate the Project explained that “[t]he forecast volumes for the horizon year *include trips generated by anticipated future development in the area surrounding the corridor* in addition to a general increase in traffic from the near-term year.” *Id.* at AR 421. The purpose of the Project is to “improve the connectivity of Steele County’s transportation network and meet existing and future travel needs on the east side of the city of Owatonna.” *Id.* at AR 98. Modeling the increased future traffic volume from the planned future development thus directly supports Steele County’s stated purpose and need for the Project. On the other hand, traffic noise will negatively impact residents of Steele County and is very likely to cause significant environmental effects. Yet there is no corresponding analysis in the EAW or FOFC of how

these same future traffic volumes will impact traffic noise at nearby residences. Similar lack of analysis of the cumulative potential effects from the planned and expected development identified in the *2050 Comprehensive Plan* and 2024 Owatonna Township Orderly Annexation is persistent throughout the EAW, including additional ground/soil disturbance; wetland impacts and increased impervious surface area; and additional tree removal impacting protected species. *See, e.g., Id.* at AR 156.

Steele County's recognition of the *types* of impacts that will result from this development but failure to analyze the *cumulative potential effects* (unless it supports the need for the Project) demonstrates Steele County's will, rather than its judgment, and renders the Negative Declaration arbitrary and capricious.

b) Steele County Failed to Sufficiently Analyze Impacts from Other Transportation Projects

Steele County accelerated the development timeline for the Main Street roadway project to use the nearly \$4 million in federal funding originally awarded to the Project. Doc. 7 at AR 1047-48. Despite recognizing repeatedly in the EAW that the Project will have impacts to the broader Steele County's transportation network, the EAW only considers the Project's impacts as it relates to the need for the project and expected alleviation of traffic volumes on certain roadways in and around the City of Owatonna. Doc. 4 at AR 98-102. The EAW does not, on the other hand, evaluate the impacts associated with other construction projects planned for the broader Steele County transportation network, including those that will take place near to or concurrently with the Project. The EAW is silent as to the impacts to traffic of multiple concurrent roadway

construction projects, the increased GHG emissions due to construction activities and these unknown traffic impacts during construction, and artificially constrains the study area by ignoring the interconnected nature of the roadway network unless it supports the proposed purpose and need of the Project.

The City of Owatonna identifies multiple transportation projects that are planned to occur in 2026.¹⁰ These include the 2026 18th Street SE Reconstruction, the 2026 Street & Utility Project, the Main Street Reconstruction, and the East Side Corridor. *Id.* The planned and potentially concurrent roadway projects will impact the same transportation network as the Project, yet there is no acknowledgment of any cumulative potential effects related to these projects. Similarly, Steele County relied on the *Steele County 2040 Transportation Plan* (“2040 Transportation Plan”)¹¹ to justify the need for the Project. Doc. 4 at AR 100, 101, 113, 421-22. Nevertheless, Steele County did not consider planned and expected future projects set forth in the *2040 Transportation Plan* when assessing the cumulative potential effects of the Project. The *2040 Transportation Plan* identified numerous long-term projects, including the East Side Corridor Project, along with each project’s type and estimated budget, establishing a basis of expectation for these projects. *2040 Transportation Plan* at 56, Table 22. Yet none of these future projects identified in the *2040 Transportation Plan* were considered in the evaluation of cumulative potential effects, such as the impact to climate change, localized air quality, or in the GHG analysis.

¹⁰ Construction Projects, City of Owatonna, <https://www.owatonna.gov/494/Construction-Projects> (last accessed June 9, 2026).

¹¹https://www.steelecountymn.gov/Highway/CIP%20and%20Long%20Range%20Plans/Steele%20County%202040%20Transportation%20Plan_Final.pdf.

Steele County’s failure to recognize other planned roadway projects that will occur near to or concurrently with the Project results in an EAW that impermissibly ignores and, as a result, may understate the cumulative potential effects of the Project. This failure renders Steele County’s Negative Declaration arbitrary and capricious.

II. Steele County Engaged in Irregular Procedures that Thwarted Informed Public Participation and Demonstrated Pervasive Bias in the Decision-making Process

A. Steele County’s Irregular Procedure Constitutes a “Danger Signal” Rendering its Negative Declaration Arbitrary and Capricious

The many purposes of the Minnesota Administrative Procedure Act include provision of oversight of power and duties delegated to administrative agencies, increased public accountability of administrative agencies, and increased public access to government information. Minn. Stat. § 14.001. “Irregularities in procedure” include any procedure or deviation therefrom that thwarts these purposes of the Administrative Procedure Act.” *In re Denial of Contested Case Hearing Request*, 993 N.W.2d 627, 648 (Minn. 2023).

The arbitrary and capricious standard “may be likened to a catchall, picking up administrative misconduct not covered by other more specific paragraphs.” *Id.* at 646-47 (Minn. 2023) (citation and internal quotation marks omitted). As discussed below, Steele County has engaged in unlawful procedure. That said, even if an irregular procedure does not rise to the level of an unlawful procedure, “irregularity in procedure may constitute a ‘danger signal’ that may be considered in determining whether an agency decision is

‘arbitrary or capricious’ under Minn. Stat. § 14.69(f),” and “raises the specter of pervasive bias.” *Id.* at 648 (citing *Reserve Mining*, 256 N.W.2d at 825).

Steele County engaged in violations of state law resulting in irregularities of procedure that critically impacted the public’s ability to be informed about the Project, adequately assess and comment on the Project, and now to evaluate the veracity and accuracy of the EAW and negative declaration.

B. Steele County Violated the MGDPA and Failed to Provide Access to Government Data, Significantly Impairing Public Participation in the EAW Process

Steele County has thwarted public participation in the EAW process by failing to timely provide access to government data under the MGDPA. The MGDPA “establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.” Minn. Stat. § 13.01, subd. 3. Government data is “all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.” Minn. Stat. § 13.02, subd. 7.

In *In re Denial of Contested Case Hearing Request*, the Supreme Court of Minnesota held that the Minnesota Pollution Control Agency’s (“MPCA”) “unusual agreement” with the United States Environmental Protection Agency (“EPA”) to delay the submission of the EPA’s comments on a proposed permit until after the public comment period had concluded was an irregularity of procedure constituting a danger signal indicating arbitrary and capricious decision-making. 993 N.W.2d at 650. The Court

explained that the MPCA’s motivation, specifically avoiding public awareness and scrutiny of the EPA’s concerns, was “contrary to the express purposes of the Administrative Procedure Act to increase transparency and public access to governmental information.” *Id.* (internal quotation marks omitted). Similarly, the Court held that the MPCA’s failure to make a record of the concerns that the EPA raised to the MPCA orally, in lieu of a written submission, was also “directly contrary to the purpose of the Administrative Procedure Act to increase public accountability of administrative agencies. *Id.* at 651. Finally, the Court addressed the MPCA’s failure to document its response to the concerns of the EPA that was principally motivated by the MPCA’s desire to avoid responding in writing and creating a record. *Id.* at 652. The Court determined that each of the MPCA’s actions were irregularities in procedure that each constituted a danger signal of arbitrary and capricious decision-making. *Id.* at 650-52. The Court concluded that this combination of danger signals was evidence that the MPCA did not take a “hard look” at the salient problems or engage in reasoned decision-making, rendering the MPCA’s decision arbitrary and capricious. *Id.* at 653

Similar irregularities in procedure plague Steele County’s Negative Declaration. The public comment period for the Project was held between November 18, 2025 and December 31, 2025. However, numerous data requests issued pursuant to the MGDPA well before the start of the comment period went unfulfilled by the close of the comment period. Doc. 7 at AR 544 (Comment 181). In response to these concerns, Steele County stated that “data needed to support the EAW is included in the document and as attachments in

accordance with MEPA.” *Id.* at AR 544 (Response to Comment 181). This is demonstrably not true and further shows that Steele County misconstrues the purpose of the MGDPA.

Relator sought access to government data to ensure that Steele County’s EAW accurately reflected the data available to the County. For example, the *Draft Traffic Noise Analysis* shows that the Project has the potential for significant environmental effects by subjecting residents to a sixfold increase in perceived sound as compared to current levels. Yet, the *Draft Traffic Noise Analysis* is only part of this record as a result of an MGDPA request to another agency after Steele County stated that no such studies existed. Members of the Owatonna Residents submitted an MGDPA request on April 2, 2025 to Steele County requesting “all noise studies for the East Side Corridor (ESC) project that were initiated on or after January 1, 2020[,] . . . include[ing], but [] not limited to, initial assessments, updated analyses, modeling data, and any related reports or documentation.” *Id.* at AR 819. The Steele County Attorney responded on April 18, 2025 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.” *Id.* at AR 820. The Steele County Attorney reiterated this position in an email to Owatonna Residents on December 8, 2025, during the public comment period. *Id.* at AR 821. It was only after a similar request was made to MnDOT that members of the Owatonna Residents received the *Draft Traffic Noise Analysis* for the Project. Were it not for the MGDPA request to MnDOT and subsequent public comments providing the study, the *Draft Traffic Noise Analysis* would not be part of this record. This further begs the question of what additional information is being withheld by Steele County that is responsive to outstanding

MGDPA requests and that may be directly contrary to Steele County's assertions in the EAW and its Negative Declaration.

Steele County's refusal to timely provide responses to MGDPA requests submitted by Relator between October 2024 and July 2025 resulted in an Order from the Court of Administrative Hearings on November 24, 2025, finding that Steele County's procedure for responding to Relator's requests resulted in multiple inappropriate responses to data requests in violation of Minnesota Statutes Section 13.03, subdivision 2(a). *Id.* at AR 814, 833. Specifically, the Administrative Law Judge stated that "[t]he record of communication between County Attorney Jarrett and the Complainants is sparing. *However, the record shows a pattern of construing Complainants' data requests uncharitably to excuse minimal communication and disregard for legitimate data requests and requests for updates from Complainants.*" *Id.* at AR 832 (emphasis added). The Administrative Law Judge further found that "[t]he record demonstrates a pattern of responses inappropriate under the MGDPA. This pattern was a consequence of a procedure that seemingly allowed the Responsible Authority to be, in apparent effect, the only check on his own errors, misunderstandings, or miscommunications in the context of an ongoing relationship with multiple active data requests and in which tensions had escalated." *Id.* at AR 833. As a result, the Administrative Law Judge ordered Steele County "to maintain procedures that ensure appropriate responses to data requests and, in so doing, address this specific shortcoming." *Id.* at AR 834.

Despite that this Order was issued during the pendency of the public comment period on the adequacy of the EAW, the Administrative Law Judge's Order has not been

fulfilled and at the close of the comment period, many requests remained outstanding. *See Id.* at AR 1195-1202. On the final day of the comment period, one member of the Owatonna Residents submitted comments noting that numerous data requests still remained unfulfilled and that “[o]pening and conducting an EAW comment period while access to key protected data remains unlawfully restricted undermines . . . the procedural integrity of the review process.” *Id.* at AR 544 (Comment 181). Steele County once again stated only that all data needed to support the EAW is included in the document text and as attachments (which did not include the *Draft Traffic Noise Study*). *Id.* at AR 544 (Response to Comment 181).

Steele County’s failure to provide responsive government data in response to MGDPA requests that were pending long before the public comment period opened is “contrary to the express purposes of the Administrative Procedure Act to increase transparency and public access to governmental information . . . [and] to increase public accountability of administrative agencies.” *In re Denial of Contested Case Hearing Request*, 993 N.W.2d at 650-51. The CAH’s Order finding numerous violations of the MGDPA and requiring Steele County to implement and maintain procedures to address its failure to comply with the MGDPA, and Steele County’s subsequent failure to do so, demonstrate that Steele County engaged in irregularities of procedure that constitute danger signals that Steele County acted arbitrarily and capriciously. These danger signals are all the more glaring considering that information provided by another agency in response to MGDPA requests is directly at odds with Steele County’s assertions that no responsive documents exist and directly refute Steele County’s conclusion that the Project will not

have the potential for significant effects. These irregularities in procedure substantially constrained the public's ability to provide oversight of power and duties delegated to administrative agencies and access government information, and constitute danger signals that Steele County's Negative Declaration is arbitrary and capricious.

C. Steele County Transferred Federal Funding to Avoid Evaluating Noise Impacts and Avoid Costly Mitigation

During an April 8, 2025 Board Meeting, the Steele County Board of Commissioners took up an agenda item proposing to transfer the federal funding of \$3,960,000 awarded to Steele County for the Project to another roadway project. *Id.* at AR 1047-48. Although this transfer of funds on its own is permissible under MEPA, it is the purpose of this transfer that constitutes an irregular procedure and a danger signal that Steele County substituted its will for its judgment. Steele County communications indicate the reason for the funding transfer stems from avoiding federal noise standards, *id.* at AR 1091, 1095,¹² and to “not have to spend a very significant portion of that nearly \$4 million on noise walls.” *Id.* at AR 1028. Steele County's communications show that it was aware there was a potential for significant environmental effects requiring mitigation and that Steele County chose instead to transfer funds in an attempt to bury that knowledge and avoid mitigating those effects.

¹² The emails attached to Comment 157 consist of photographs taken of emails on a computer screen due to limitations Steele County placed on the commenter when viewing public data pursuant to the MGDPA.

In an email dated March 25, 2025, the Steele County Engineer sent an email to the Minnesota Department of Transportation proposing to remove the federal funding from the Project and reallocate the funds to a separate roadway project. *Id.* at AR 1028. The County Engineer noted that the proposal “would solve some significant issues with the [East Side Corridor], defederalize that project, and remove the need for us to do a CATEX¹³ on that project.” *Id.* The County Engineer explained that the “biggest benefit” of this proposal was to “align federal dollars better to maximize road improvements on Main Street and not have to spend a very significant portion of that nearly \$4 million on noise walls, arguably not a good use for these funds.” *Id.* Notably, this email was sent one day after Relator started a GoFundMe to raise funds to challenge Steele County’s failure to respond to MGDPA requests, including requests related to noise studies and impacts. *See Id.* at AR 1025-27.

Steele County correspondence from nearly a year prior further indicates that Steele County was already considering methods of dropping the federal funding to avoid federal noise standards and implementing appropriate mitigation. In an email dated April 25, 2024, consultants working on the project note that “[a]s far as if the county elects to eliminate federal funds, thus requiring an EAW. Chris is correct that ‘local agencies’ are exempt

¹³ CATEX, or Categorical Exclusion, is a category of actions that do not require heightened environmental review under the National Environmental Policy Act. 45 C.F.R. § 900.204(a). A project may qualify for Categorical Exclusion if it falls within predetermined categories, in the absence of extraordinary circumstances. *Id.* Determining whether extraordinary circumstances exist requires an assessment of a projects impacts, including whether the project has “a reasonable likelihood of significant impacts on public health, safety, or the environment.” 42 C.F.R. § 900.204(c).

from the federal noise standards; however, there is sometimes a Federal action that pushes the project to adhere to some federal requirements. One of those being federal permits (sometimes).” *Id.* at AR 1095. A subsequent email on May 9, 2024 from the Assistant County Engineer to the consultants working on the project stated that “[w]e had our Public Works Committee today. Consensus was we are going to continue the federal process. Too many ramifications to walk away from it. But that doesn’t consider the city’s desire to keep the original 29th Ave corridor. One option talked about it [sic] to take the wall to a vote.” *Id.* at AR 1094. A follow up email on May 10, 2024 from the Assistant County Engineer to the consultants stated,

Would we do a vote before finalizing the concurrence memo and submitting to the [Federal Highway Administration] so that we can determine the final need for the wall? We aren’t going to build a sound wall, but if the neighborhood votes against the wall, we can move forward with the original alignment [i.e., the Project alignment]. Include the sound wall costs in the matrix for now and we can discuss with the Committee on Monday. So far, the idea of abandoning federal funding isn’t being well received. And with the uncertainty of federal requirements in permits, not something we’ll likely pursue.

Id. at AR 1093. Additional emails attached to Comment 157 further discuss additional measures Steele County considered to avoid building a noise wall for mitigation. *Id.* at AR 1091-1095. Ultimately, Steele County chose to forego the federal funding for the Project, conduct an EAW instead of the more stringent federal environmental review, and avoid analyzing noise impacts.

These emails demonstrate that Steele County undertook considerable effort to avoid further studying and mitigating noise impacts. The emails show that Steele County believed that if it did not have to comply with federal noise standards, it could simply not mitigate

significant environmental effects. These efforts ultimately led Steele County to forego nearly \$4 million in federal funding for the Project to prevent it from having to construct a noise wall or relocate the Project, even by as little as a couple hundred feet. These irregularities in procedure to avoid fulsome environmental review (which is nevertheless required under MEPA) are clear danger signals that Steele County's Negative Declaration is arbitrary and capricious.

This Court should view the irregularities in Steele County's procedure for what they are: attempts to avoid public scrutiny and a predetermination that the Project will be built in Steele County's preferred location without appropriate mitigation. These irregularities do more than merely raise the specter of pervasive bias. They demonstrate that bias was at the heart of this EAW process, rendering the Negative Declaration arbitrary and capricious.

CONCLUSION

Steele County is aware that the Project has potential environmental effects due to, at minimum, the noise related impacts from the Project. Steele County is also aware that mitigation in the form of a noise wall or moving the location of the Project is required to address those noise impacts. However, instead of conducting an EAW that is compliant with MEPA, that adequately identifies these impacts, and proposing appropriate mitigation or ordering an EIS to evaluate more reasonable alternatives, Steele County produced an insufficient EAW that avoided analyzing the noise impacts all together. Steele County then frustrated public participation and oversight by failing to fulfill MGDPA requests from citizens that will be impacted by Steele County's predetermination. These danger signals show that Steele County exercised its will, not its judgment, and issued a Negative

Declaration for its own Project that is arbitrary, capricious, and unsupported by substantial evidence. Owatonna Residents respectfully requests that this Court require Steele County to make a Positive Declaration on the need for an EIS based on the record evidence that the Project has the potential for significant environmental effects.

Dated: June 10, 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 11,686 words of proportional space type in this Brief. This Brief was prepared using Microsoft Word 365.

Dated: June 10, 2026

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