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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0952**

In the Matter of the Determination of the Need for an Environmental Impact Statement
for the Mankato Motorsports Park.

**Filed April 26, 2021
Reversed and remanded
Bratvold, Judge**

City of Eagle Lake
Resolution No. 2020-21

Marshall H. Tanick, David Robbins, Meyer Njus Tanick, PA, Minneapolis, Minnesota
(for relators Citizens Against Motorsports Park, Michael Guentzel, and Erin Guentzel)

Paul D. Reuvers, Andrew A. Wolf, Iverson Reuvers Condon, Bloomington, Minnesota
(for respondent City of Eagle Lake)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this certiorari appeal, relators challenge respondent's decision not to require an environmental impact statement (EIS) for a proposed motorsports park that includes a seasonal driving track (the project). Relators argue the respondent's determination that the project would not have the potential for significant environmental effects is arbitrary and capricious and unsupported by substantial evidence. We conclude that substantial evidence supports the respondent's determination that an EIS need not address noise impacts on

humans, waste storage and disposal, land alterations, and wetlands. But because the respondent did not rely on substantial evidence to determine whether the project would have the potential for significant effects on wildlife and failed to address agency and county concerns about the potential for cumulative effects from greenhouse gas emissions, we reverse and remand for a new determination on the need for an EIS.

FACTS

Respondent Bradford Development Group Inc. (Bradford) proposes to construct the Mankato Motorsports Park in the City of Eagle Lake.¹ Respondent City of Eagle Lake (the city) is the responsible government unit (RGU) charged with determining what environmental review is required for the project. The project would be in Blue Earth County, within the city, and situated near the southeastern shore of Eagle Lake. On its southern side, the project would abut U.S. Route 14, a four-lane divided freeway with a 65 mile-per-hour speed limit.

The project would include a three-mile driving track, a track clubhouse, 96 car condos,² a restaurant, a 70-unit hotel, a golf course, and related parking lots. As described in the Environmental Assessment Worksheet (EAW): “The track is intended for individuals to drive at their desired pace in order to experience the optimal performance of their automobiles.” The track would “be available for public participation for driving events,

¹ Bradford did not file a brief with this court.

² The EAW states that car condos are multi-unit “seasonable living areas” that include a garage. The city’s findings clarify that the car condos are *not* residences, but provide storage for cars, along with amenities for car owners.

including performance driving schools, teen driving school, and exotic car rentals.” The track would be a private club for members, and people could purchase car condos or “purchase membership as non-condo owners” to use the track.

Because the project would convert 230 acres of land from agricultural to industrial use, it required an EAW. The city, as the RGU, is tasked with complying with the EAW processes and hired Bolton & Menk Inc. to prepare an EAW for the project.

The project’s EAW was published in the Environmental Quality Board (EQB)³ Monitor on March 2, 2020. The 30-day public-comment period ran from March 2 to April 1, 2020, during which time the city received 17 comments from the Minnesota Department of Natural Resources (DNR), the Minnesota Pollution Control Agency (MPCA), the Minnesota Department of Transportation (DOT), the Blue Earth County (the county) Public Works Department (Public Works), the county Property and Environmental Resources Department (Environmental Resources), and 13 members of the public.

Relators’ arguments on appeal echo some of the comments received. For example, the DNR commented and made recommendations on the project’s potential environmental effects on Eagle Lake as a “designated wildlife lake,” on stormwater management and land alterations, and on climate change. The MPCA commented on potential environmental effects involving noise, particularly on residents in nearby properties. Public Works

³ The EQB consists of nine agency heads and eight public members and is charged with “review[ing] programs of state agencies that significantly affect the environment and coordinat[ing] those it determines are interdepartmental in nature, and ensur[ing] agency compliance with state environmental policy.” Minn. Stat. § 116C.04, subd. 2(b) (2020). Once an EAW is complete, it must be published in the EQB Monitor for public comment. Minn. R. 4410.1600 (2019).

commented that the EAW failed to consider the effect of noise on the “high recreational value associated with the adjacent wildlife and fishing areas of Eagle Lake” and warned that the “natural resource will be detrimentally impacted by this project.” Environmental Resources commented on the EAW’s failure to discuss potential environmental effects on wildlife, waste storage and disposal, land alteration, vehicle emissions, and the cumulative potential impact of climate change.

After the April 1 public-comment deadline, the city consulted with a third-party reviewer, Houston Engineering Inc., and determined it had insufficient information to make an EIS determination. At a special city council meeting on April 30, 2020, the city extended the EIS decision deadline to May 28 “to develop additional information to adequately answer substantive comments raised during the EAW review period.” The city decided it required more information on the “project description, noise mitigation, land use, stormwater management, and fish and wildlife.”

The city released proposed findings of fact and responses to the EAW comments 24 hours before a May 28, 2020, city council meeting. The city’s findings of fact made three corrections to the project described in the EAW: the project would have 104 car condo units in 11 buildings, Bradford would close “gaps” in the noise-abatement structures, and the city would establish a “Sound Committee . . . to enforce MPCA noise standards.” The city’s responses to EAW comments also explained that the “hotel and golf entertainment center are no longer being considered as part of this development.”

At the May 28 city council meeting, Houston Engineering explained that it reviewed the EAW, its comments, and the city’s responses and “concluded that an EIS is not

needed.” Some nearby residents urged the city council to require an EIS; these residents later formed relator Citizens Against Motorsports Park (CAMP).⁴ The city council decided by a four-to-one vote that the project did not have the potential for significant environmental effects, so no EIS was necessary. The city council approved detailed findings of fact, conclusions of law, and a resolution (findings), spanning 65 pages, and its decision was later published in the EQB Monitor.

Relators sought this court’s review by petitioning for a writ of certiorari.

DECISION

The city’s negative EIS declaration is not reasonable and is unsupported by substantial evidence.

A reviewing court defers to the RGU’s decisions unless “they reflect an error of law, the findings are arbitrary and capricious, or the findings are unsupported by substantial evidence.” *Citizens Advocating Responsible Dev. v. Kandiyohi Cty. Bd. of Comm’rs (CARD)*, 713 N.W.2d 817, 832 (Minn. 2006). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* A decision is considered arbitrary and capricious if it is “based on factors that the legislature did not intend”; “entirely fails to address an important aspect of the problem”; “offers an explanation that is counter to the evidence”; or is “so implausible that it could not be explained as a difference in view or the result of the RGU’s decision-making expertise.” *Friends of Twin Lakes v. City of Roseville*, 764 N.W.2d 378, 381 (Minn. App. 2009); *see also Trout Unlimited, Inc. v. Minn. Dep’t of Agric.*, 528 N.W.2d 903, 907 (Minn. App.

⁴ CAMP includes relators Michael Guentzel and Erin Guentzel.

1995), *review denied* (Minn. Apr. 27, 1995). The party challenging an RGU’s decision “has the burden of proving that its findings are unsupported by the evidence as a whole.” *Friends of Twin Lakes*, 764 N.W.2d at 381.

In other words, if the RGU’s decision “represents its will, rather than its judgment, the decision is arbitrary and capricious.” *Pope Cty. Mothers v. Minn. Pollution Control Agency*, 594 N.W.2d 233, 236 (Minn. App. 1999). “Our role when reviewing agency action is to determine whether the agency has taken a hard look at the problems involved, and whether it has genuinely engaged in reasoned decision-making.” *CARD*, 713 N.W.2d at 832 (quotations omitted).

We begin by summarizing Minnesota’s environmental-review process. Second, we address the city’s decision not to require an EIS, given the five areas that relators contend pose potential significant environmental effects. Third, we consider relators’ challenge to the project’s cumulative potential effects. Finally, we consider relators’ argument that the city’s environmental assessment procedure was improper.

A. Overview of environmental-review process

An EAW is required for projects that may convert 80 or more acres of agricultural land to a different use. Minn. R. 4410.4300, subp. 36 (2019). An EAW is “a brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required” for a proposed project. Minn. Stat. § 116D.04, subd. 1a(c) (2020).

In contrast, an EIS is a more “exhaustive environmental review” than an EAW, and “the party proposing the project must conduct [the EIS] at its own expense.” *CARD*,

713 N.W.2d at 824. An EIS provides “information for governmental units, the proposer of the project, and other persons to evaluate proposed projects. . . , to consider alternatives to the proposed projects, and to explore methods for reducing adverse environmental effects.” Minn. R. 4410.2000, subp. 1 (2019). A project requires a detailed EIS if it has the “potential for significant environmental effects.” Minn. Stat. § 116D.04, subd. 2a(a) (2020).

The EQB has promulgated four criteria that an RGU must consider when determining whether a proposed project has the potential for significant environmental effects: (1) the “type, extent, and reversibility of environmental effects”; (2) the “cumulative potential effects” of the project; (3) “the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority”; and (4) “the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies . . . including other EISs.” Minn. R. 4410.1700, subp. 7 (2019). The RGU must consider and balance all criteria when making its EIS decision. *See CARD*, 713 N.W.2d at 825.

Here, the city’s findings led it to ultimately conclude that the project does not have the potential for significant environmental effects because: (1) “all potential environmental effects resulting from the project will be minor in type, extent, or are reversible”; (2) the “current EAW project and the potential future commercial development on the site has considered potential impacts for the project, therefore there are no known cumulative impacts”; (3) the project would “be subject to various ongoing approval and permitting

authorities”; and (4) the determination of “reversibility incorporates environmental commitment and mitigation” into the project.

B. Alleged potential significant environmental effects

Relators argue that the city’s negative EIS declaration is unreasonable, arbitrary, capricious, and unsupported by substantial evidence; they challenge the city’s analysis of noise impacts on humans, wildlife, waste storage and disposal, land alterations, and wetlands. We address each area raised in relators’ brief.

1. Noise impact on humans

Relators argue the project’s noise levels would significantly disrupt “quietude” and affect nearby residents. The city argues that substantial evidence supports its determination that the project would comply with Minnesota noise standards.

“Quietude” is a statutorily protected natural resource. Minn. Stat. § 116B.02, subd. 4 (2020); *see Minn. Pub. Interest Research Grp. v. White Bear Rod & Gun Club*, 257 N.W.2d 762, 770, 780 (Minn. 1977) (explaining that legislature established quietude “as a protectable natural resource” and that noise may pollute, impair, or destroy “the natural resources of the area”). Like other significant environmental effects, noise may be mitigated by, among other things, a showing that “regulatory oversight is a proper means of preventing significant environmental effects before they occur.” *In re Env’t Impact Statement*, 849 N.W.2d 71, 81 (Minn. App. 2014) (discussing noise pollution from traffic); *see also* Minn. R. 4410.1700, subp. 7.C. (mandating a review of “the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority”).

As part of the EAW, SBP Associates Inc., completed a noise-impact analysis using the MINNOISEV31 model (developed by the DOT). Noise levels were monitored at three locations within the study area. The city’s findings relied on the SBP study and stated that the project could operate in compliance with Minnesota noise standards. Recognizing that particular vehicles may exceed expected levels, the city’s findings cited Bradford’s agreement to implement a Track Noise Impact Compliance Plan, which would include “quickly-mountable muffler systems,” a policy that “non-compliant vehicles will not be allowed at track events,” and sound monitoring systems around the track.

The city’s findings also noted two changes to the project that were adopted after the comment period: (1) a new Eagle Lake Sound Committee would monitor, investigate, and enforce track compliance with MPCA noise standards; and (2) Bradford agreed to “close the gap in noise abatement structures on the western side of the facility to protect lake users and wildlife from noise and visual aspects of the track.”

Relators make three arguments, which we discuss in turn.⁵

First, relators argue that “[p]rojected noise from the Project would reach nearly 110 decibels—nearly equivalent to a raucous rock concert.” As the city points out, relators rely on the SBP study, which used data collected from the Brainerd International Raceway (BIR) to validate the methodology, but did not determine that projected noise from the

⁵ Below, in section B.2. of this opinion, we discuss relators’ fourth argument about the effect of noise on wildlife and recreation.

track would reach 110 decibels.⁶ Thus, relators’ argument incorrectly relies on data that was used to validate methodology and cites no basis for extrapolating that data into a noise projection for the project. The SBP study actually determined that “[t]he impact analysis indicates that, given the proposed berms, barriers, buildings, the track impacts can be in compliance with Minnesota noise standards given the emission levels of most of the vehicles that are expected to operate at the track.”

Second, relators argue that the “MPCA noted additional concerns for excessive noise near the proposed car condos and hotel.” But the city’s findings explain that the MPCA concerns “were submitted before the Proposer ‘had a discussion with the MPCA regarding this response’ and the ‘MPCA confirmed that the car condos are not residential units and could be constructed to appropriately mitigate sound.’” The record supports the city’s findings.

Third, relators argue that “governmental entities expressed serious reservations” about the effects of noise and “the project developer’s plan to mitigate noise,” and that the “EAW’s suggestion that those effects could be minimized is misleading.” For support, relators explain that the MPCA commented that “the Project proposer should have given

⁶ The SBP study found the data gathered during the project’s monitoring and the data from the MINNOISEV31 model were within 2.5 A-weighted decibels (dBA) of the measured results at the BIR. “[A]n adjustment, or weighting, of the high- and low-pitched sounds is made to approximate the way that an average person hears sounds. The weighted sound levels are stated in units of ‘A-weighted decibels.’” According to SBP, “Results of roadway noise models that are within 3 dBA of the measured data are normally considered to be in good agreement.” In other words, SBP concluded that the noise-modeling methodology is accurate.

attention to possible mitigation techniques for the existing apartment buildings . . . to prevent further exceedance of the state noise standards.”

Based on our review of the record, relators misconstrue the MPCA’s comments and overlook mitigation measures and regulatory oversight of noise at the track. Relators are correct that the MPCA reviewed SBP’s noise analysis and determined modeling showed that physical barriers and constraints on track use “would allow for noise to meet the state standards.” The MPCA pointed out that “the monitored noise already exceeds the state noise standards” and that U.S. Route 14 “traffic is identified as the primary source of noise.” Based on the MPCA comments, the city’s findings concluded that the anticipated noise-level changes “are below the threshold of perceptibility.” Still, the MPCA raised concerns that the proposed noise-mitigation plan “does not address any triggers for testing vehicle noise, an explicit enforcement mechanism, or a way for the City of Eagle Lake to hold the developer accountable to their noise mitigation plan.”

But relators overlook that the MPCA’s comments on noise were generally favorable and were made *before* two key changes to the project: Bradford’s proposal to close the gap on the noise-abatement structures and the city’s decision to implement a “Sound Review Committee” to address any ongoing public complaints and enforce MPCA noise standards.⁷ Thus, we conclude that substantial evidence supports the city’s determination

⁷ The city’s resolution states, “The committee shall be composed of 5 members: 3 residents of the City of Eagle Lake selected by the City Council; 1 city staff member or city council member selected by the City Council; and 1 representative of the Developer.” The committee must “monitor noise generating activities at the Track to [e]nsure” MPCA noise standard compliance, investigate noise complaints, report its findings to the city council, and make recommendations “for reasonable corrective action.” The resolution also

that the project would comply with Minnesota noise standards because the record supports the city's finding that the project would account for and mitigate excessive noise and be subject to ongoing regulatory oversight.

2. Wildlife

Relators argue the project has the potential to harm wildlife around Eagle Lake. The city disagrees, relying on the DNR's Natural Heritage Information System (NHIS) and the SBP noise studies. The city also contends that relators' claims amount to "[b]ald assertions and unsupported speculation."

An RGU "cannot be compelled to prepare an EIS on the basis of speculative factors." *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 881 (Minn. App. 1995). Indeed, "unsupported fears do not require a full-blown investigation." *CARD*, 713 N.W.2d at 833. Relators must show that "the findings of the [RGU] are not supported by the evidence in the record, considered in its entirety." *Id.* (quotation omitted); *see also White v. Minn. Dep't of Nat. Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997).

As part of the EAW, the DNR conducted a "Natural Heritage Review" of the project, which at the time was proposed for a different location. The NHIS is a "collection of databases that contains information about Minnesota's rare natural features" and is

provides that "[t]he Developer shall reimburse the City for its reasonable, necessary and documented costs . . . including reimbursement to the City for the City Attorney's time and . . . for the time of an acoustics professional retained for the purpose of assisting the City in resolving any noise disputes with the Project Developer" and "[t]he Committee is accountable to the City Council." The resolution includes a process for dispute resolution and mediation, the costs of which "shall be paid by Developer."

continually updated. The DNR's review letter stated that the author did "not believe the proposed project will negatively affect any known occurrences of rare features." The DNR reissued the Natural Heritage letter in 2020 for the project's current location.

During the comment period, however, the DNR, Public Works, and Environmental Resources questioned the project's potential effects on wildlife. The DNR commented that the EAW failed to mention that Eagle Lake is "a designated wildlife lake." A "designated wildlife lake" means that "the highest value of this lake is that it be managed for wildlife and wildlife habitat." The DNR explained this designation "is significant because very few lakes in Minnesota have been so designated." The DNR also stated that Eagle Lake's value as a wildlife lake "*would be damaged* by the proposed project, which would generate noise, heavy vehicular and human traffic, automobile exhaust fumes, and the creation . . . of turf lawn." (Emphasis added.) The DNR commented that the project "has significant potential to disturb waterfowl." Finally, the DNR explained that SBP's noise analysis "only addresses the possible impacts of noise on people but does not take the needs of wildlife into consideration."

Public Works commented that the EAW failed to consider the effect of noise on the "high recreational value associated with the adjacent wildlife and fishing areas of Eagle Lake" and warned that this "natural resource will be detrimentally impacted by this project." Environmental Resources also commented that "Eagle Lake is classified as a Natural Environment Lake." Natural Environment Lakes are "generally small, often shallow lakes with limited capacities for assimilating the impacts of development." Minn. R. 6120.3000, subp. 1a. A (2019).

The DNR also recommended how the project should address its wildlife concerns. The DNR recommended that Bradford “limit organized events for times when waterfowl are not present, and [should] prohibit or limit use during times when wildlife are using the lake for significant seasonal activities, such as migration staging or nesting.” The DNR also recommended “this plan be amended to also monitor noise on the shore of and on the water of the lake to determine noise impacts to wildlife.”

The city’s findings relied on the DNR’s Natural Heritage Review letter and stated: “It is unlikely that there is noise-sensitive wildlife near and on Eagle Lake [that] will be significantly impacted by the proposed project.” The city’s findings explained that U.S. Route 14 “borders the south end of the lake, and traffic from this roadway currently impacts the noise levels on and near that Lake.” The city’s findings concluded, “[I]t can be expected that the entire Lake frequently experiences elevated noise levels, making it unlikely that it is an important area for noise-sensitive wildlife.” In response to comments about Eagle Lake’s designation as a Natural Environment Lake, the city stated, “The appropriate protections will be recognized as this project is designed and constructed.”

Relators argue, “Given the presence of abundant wildlife . . . there can be no doubt that the Project has the potential to substantially impair Eagle Lake’s unique ecosystem.” The city disagrees and makes its argument in four parts; we address each in turn.

First, the city argues that the DNR’s Natural Heritage Review supports its findings that the project would not significantly affect wildlife. Relators correctly point out that the DNR’s Natural Heritage Review is limited because it only has “data on Minnesota’s rare or otherwise significant species, native plant communities, and other natural features.”

According to the DNR, the NHIS “is not an exhaustive inventory,” and “[t]he Natural Heritage Review does not constitute review or approval by the [DNR] as a whole. Instead, it identifies issues regarding known occurrences of rare features.”

Given the Natural Heritage Review’s focus on “rare or otherwise significant species,” we conclude that the city lacks substantial evidence to support its determination that the project has no potential to significantly affect wildlife as a whole. As relators point out, the record contains no evidence about the project’s effect on wildlife because there was no attempt to identify, survey, or catalog the wildlife in the project area.⁸

Second, the city argues that relators’ claims about wildlife are unsubstantiated because “the record . . . contains no such warning from the DNR or otherwise.” We disagree. The DNR commented that Eagle Lake’s value as a “designated wildlife lake” in fact “*would be damaged* by the proposed project, which would generate noise, heavy vehicular and human traffic, automobile exhaust fumes, and the creation . . . of turf lawn.” (Emphasis added.) Public Works and Environmental Resources made similar comments. While the city responded to some of the noise concerns by pointing to the SBP study, that study was limited to noise impact on humans. The city did not address the potential harm to wildlife or the lake’s recreational value from the project’s vehicular and human traffic or automobile exhaust fumes, even though the DNR and the county identified these harms.

⁸ Environmental Resources noted that the EAW “does not ‘describe fish and wildlife resources as well as habitats and vegetation on or near the site’” (quoting EAW Guidance), and asked whether there was a study of bird populations that the project may affect. The city responded, without discussion: “Comment noted and taken into consideration.”

Third, the city argues that “the record contains unsupported speculation regarding the effects of noise from the project . . . on wildlife in and around Eagle Lake.” Yet the city’s own findings in response to comments on this project acknowledge that “there are studies that indicate roadway noise can have negative impacts on certain wildlife species, including migratory birds.” While the record here includes no study of the project’s noise impact on wildlife, despite the DNR’s request for such a study, the city concluded “it is unlikely that such noise-sensitive wildlife will be impacted by the proposed facility.” We conclude that the city lacks substantial evidence for its determination that noise from the project has no potential to significantly affect wildlife.

Fourth, the city argues that the project’s noise-mitigation measures would ameliorate the project’s noise impact on wildlife. “[T]o the extent any noise-sensitive wildlife inhabit the area, the Proposer agreed to ‘close the gap in noise-abatement structures on the western side of the facility to protect lake users and wildlife from noise.’” While the city may be correct, more review should address whether noise-sensitive wildlife inhabit the area and, if so, what mitigation may be effective. Here, the city relied on SBP’s study about the effect of noise on people as measured from residential areas. As the DNR recommended, the record should consider data on “noise on the shore of and on the water of the lake to determine noise impacts to wildlife,” as well as consider use restraints on the track during important wildlife seasonal activities.

For the reasons discussed, we conclude that substantial evidence does not support the city’s determination that the project has no potential to significantly affect wildlife.

3. Waste storage and disposal

Relators argue that the EAW failed to address the project's storage and disposal of solid waste, as well as the use and storage of hazardous materials. The city responds that the "uncontroverted record evidence confirms the project will comply with all applicable rules regarding solid waste handling."

Like our discussion of noise impacts, regulatory oversight may affect our analysis of waste storage and disposal. "[C]aselaw supports the use of pre-existing regulatory oversight as a means of preventing significant environmental effects before they occur." *Friends of Twin Lakes*, 764 N.W.2d at 382; *see, e.g., Watab Twp. Citizen All. v. Benton Cty. Bd. of Comm'rs*, 728 N.W.2d 82, 92, 94 (Minn. App. 2007) (when a "project will require an NPDES permit from the MPCA and the waste-water discharge is subject to ongoing regulatory review," a determination of no significant impact is supported by substantial evidence). An RGU must consider "the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority." Minn. R. 4410.1700, subp. 7.C.

Relators argue that "the waste that is anticipated to emanate from the facility is of concern" and that the EAW lacks information "related to the 'use and storage of hazardous materials during operations . . . like 'diesel fuels and cleaners.'" The city correctly points out, however, that the record identifies specific and ongoing regulatory oversight to address these concerns.

Following the comment period, the city's findings stated, "[t]he proposed motorsports park will follow the rules as set forth by the [MPCA] for the handling of solid

waste.” The city also found, “A third-party partner will be employed to provide and service itemized disposal containers and for the disposal of automotive fluids, in compliance with MN Statute 115A.916.” The project would “follow the MPCA’s National Pollutant Discharge Elimination System (NPDES) Permit and will have a Storm Water Pollution Prevention Plan” reviewed by the MPCA as part of the NPDES permit.

The city also argues, citing the administrative record, that hazardous waste, including fuel, “stored on site will be contained in above ground storage tanks. Above ground storage tanks will be in compliance with MN Rules 7151.5300 and 7151.5400. . . . Tanks will be protected from corrosion following ways outlined in MN Rule 7151.5600.” The city further responds that floor drains in the car condos would “adhere to the guidance of Minnesota Administrative Rules, Chapter 4714, Plumbing Code, Part 4714.0418.7.”

Because the project’s waste storage and disposal would be subject to ongoing regulatory oversight, substantial evidence supports the city’s determination of no potential significant environmental effects from waste storage and disposal.

4. Land alterations

Relators argue that the city did not adequately address whether and how much land excavation, grading, and stormwater runoff has the potential to cause significant environmental effects. The city contends that “to the extent the project requires grading or land alteration, the Proposer will need to apply for and receive a grading permit,” so this too is subject to ongoing regulatory oversight. As addressed above, an RGU may

“permissibly rel[y] on existing regulatory oversight to prevent significant environmental impact before it occur[s].” *Friends of Twin Lakes*, 764 N.W.2d at 383.

The parties dispute the extent to which the project requires land alterations. The EAW and the city’s findings described the project area as “largely flat.” Relators disagree and argue there are “steep-slopes” that require excavation.⁹ Even if we were to conclude that this amounts to a factual dispute, it does not affect our analysis of relators’ argument. Because completion of the project would require grading plans and permits, we conclude that the city reasonably relied on existing regulatory oversight when determining whether an EIS is required for land alterations.

As Environmental Resources commented, “Grading plans are needed in the EAW to evaluate potential environmental impacts from stormwater runoff and drainage to wetlands and surface waters.” The city’s findings agreed that a grading permit is required and “[a]s the project moves forward a detailed grading plan will be prepared.” Additionally, the city’s findings stated, “The City of Eagle Lake and the MPCA will be able to review the Grading Plan before their permits are secured.”

In response to commenters’ concerns about stormwater runoff and drainage, the city’s findings stated that the project would have a full stormwater management system. “The system will be designed to at least meet the [MPCA] design standards with reference

⁹ Relators cite no record evidence to support their claim. The city argues that “no slopes exceed 10 percent,” and a “steep slope” is 12 to 18 percent measured over a distance equal to or greater than 50 feet.

to the Minnesota Stormwater Manual, it will also adhere to the City of Eagle Lake's MS4 requirements."

Because grading and stormwater runoff at the project would comply with permitting and review by agencies and local government units, substantial evidence supports the city's determination that land alteration lacks potential for significant environmental effects.

5. Wetlands

Relators argue that the project would eliminate some wetlands and that the city failed to meet mitigation standards because "five acres of wetlands will be removed and will not be replaced within the Eagle Lake watershed." The city argues that it would mitigate any negative effect on wetlands "through process made available by the Minnesota Wetland Conservation Act and Section 404 of the Clean Water Act" and that no evidence suggests "harmful environmental effects will result from the simple fact these replacement wetlands might not be located near Eagle Lake."

An RGU may consider mitigation measures to offset potential environmental effects, but "may reasonably do so only if those measures are *specific, targeted, and are certain* to be able to mitigate the environmental effects. The RGU must have some concrete idea of what problems may arise and how they may specifically be addressed by ongoing regulatory authority." *CARD*, 713 N.W.2d at 835 (emphasis added). Mitigation measures are reasonable where the RGU "outlined the specific mitigation measures" to address specific concerns, and "evaluated the status of those measures" against similar measures undertaken elsewhere. *Nat'l Audubon Soc. v. Minn. Pollution Control Agency*, 569 N.W.2d 211, 217 (Minn. App. 1997).

Relators argue that the city's proposal to replace wetlands "fails to meet the mitigation standard" because no analysis determined how the loss of wetlands "will impact the biodiversity of Eagle Lake or the water quality of the lake." The city responds that the EAW showed that the only plant communities present in the wetlands were recently planted soybeans or corn, and that "[t]o the extent these farmed wetlands do presently drain into Eagle Lake, they are a degrading feature due to the chemical runoff."

The city also argues that the Joint Permit Application, under the Minnesota Wetland Conservation Act (WCA), requires an analysis of wetlands replacement and that Bradford would replace all wetlands removed by the project at a 2:1 ratio. Relators criticize this approach because the replacement wetlands are not in the Eagle Lake watershed. But the city responds that the replacement plan follows state and federal laws and guidelines.¹⁰ We conclude that the city has adequately addressed mitigation of the project's impact on wetlands because the project's mitigation measures are specific, targeted to wetlands, and follow best practices and existing law.

C. Cumulative potential effects

Relators argue that "[e]ven if these effects on noise, waste, and degradation of wildlife and waterfowl and other features are considered insubstantial in themselves, . . . they must be viewed in the context of their totality." The city contends that

¹⁰ As the city explained in its findings: "Sequencing for replacement credits of wetlands will follow WCA and Section 404 [of the Clean Water Act] guidelines. Replacement wetlands must and will meet the siting criteria of state WCA and federal Clean Water Act (CWA), as part of the permit. On-site mitigation has been shown to be costly and does not have as high of a success rate as state and federally approved wetland banks, and purchase of credits is favored by the Army Corps over on-site mitigation."

the record supports its decision that the project will not have cumulative potential effects on the environment.

Minn. R. 4410.0200, subp. 11a (2019), defines “cumulative potential effects” as environmental impacts resulting from “incremental effects of a project in addition to other projects in the environmentally relevant area” that could affect the same resources. This criteria is meant “to put the proposed project into context. The criteria aims to determine whether the project, which may not individually have the potential to cause significant environmental effects, could have a significant effect” when other existing or future projects are considered. *CARD*, 713 N.W.2d at 829.

In part, relators argue generally about the project’s cumulative effects, but cite no record evidence about cumulative effects. Instead, they repeat points already addressed above. Relators’ argument about climate change, however, finds support in the administrative record. *See Watab*, 728 N.W.2d at 93-94 (explaining that our review focuses on the facts in the record and the correct application of the law).

Relators contend that the project implicates climate change, a cumulative potential effect, but that the city’s findings ignore climate change. Significantly, the DNR commented on the project’s potential to contribute to climate change:

[C]ontributions of the project to global climate change are not discussed in Section 19 (Cumulative Potential Effects). Both construction and ongoing use of the proposed project (recreational driving of high performance vehicles) would generate additional greenhouse gases, thereby contributing to global climate change. This is a cumulative potential effect that should be addressed.

Relators are correct that neither the EAW nor the city’s findings on the project address the project’s potential to contribute to climate change. Environmental Resources also commented, “What is the carbon footprint of the proposed motorsports park?” The city responded, “The carbon footprint of the vehicles is no different as if they were being driven on public roadways.”

Under Minn. R. 4410.1700, subp. 4 (2019), “[t]he record must include specific responses to all substantive and timely comments on the EAW.” The DNR and county’s comments were timely; and this court has considered agency comments on climate change to be substantive, warranting a response. *See In re Enbridge Energy, Ltd. P’ship*, 930 N.W.2d 12, 21 (Minn. App. 2019).

Two previous cases instruct our analysis. In *Enbridge Energy*, this court recognized that recent federal decisions have held that an environmental review “must address impacts of [greenhouse-gas or] GHG emissions.” *Id.* at 29 (considering whether EIS reasonably addressed GHG emissions). Relators argued an EIS did not adequately analyze the effects of greenhouse-gas emissions. *Id.* We disagreed because the EIS “address[ed] the impact of the project on GHG emissions,” including downstream emissions, market forecasts, life-cycle GHG emissions, and social costs. *Id.*¹¹

Similarly, in *Pope Cty. Mothers*, this court considered the MPCA’s failure to address air emissions from a proposed feedlot when deciding not to require an EIS.

¹¹ While *Enbridge Energy* involved an EIS and not a negative declaration on the need for an EIS, we find its analysis instructive as to whether comments on climate change are substantive, warranting a response.

594 N.W.2d at 235. The MPCA responded to comments about air emissions: “If necessary, this applicant would be required to control emissions to minimize the potential for impacts.” *Id.* at 238. On appeal, this court affirmed the district court’s ruling that the MPCA’s decision to not require an EIS was arbitrary and capricious because the MPCA’s response “bypasse[d] any discussion on the potential for significant environmental effects.” *Id.* We concluded that “the MPCA did not genuinely engage in the reasoned decision making the law requires,” therefore, the agency’s decision represents its “will, rather than its judgment.” *Id.* at 238-39 (quotation omitted).

Here, we conclude that the DNR and the county’s comments about the project’s impact on climate change had substantive merit and required a “specific response.” *See* Minn. R. 4410.1700, subp. 4. But the city did not respond to the DNR’s comment, and its response to the county’s concern about the project’s carbon footprint “bypasses any discussion on the potential for significant environmental effects.” *See Pope Cty. Mothers*, 594 N.W.2d at 238. By failing to respond to the “substantive and timely comments” from the DNR and the county on climate change, the city “entirely fail[ed] to address an important aspect of the problem” making its determination that the project had no significant cumulative effects arbitrary and capricious. *See Friends of Twin Lakes*, 764 N.W.2d at 381.

D. The city’s procedure

Relators argue that the city’s EAW procedure was flawed because it materially changed the project in its responses to public comments without extending the public-comment period, depriving “the concerned members of the public and the

governmental agencies an opportunity to confirm the ‘new’ EAW satisfied their concerns.” The city contends an RGU may consider additional information after releasing the EAW for comment and before making an EIS determination.

Minn. Stat. § 116D.04, subd. 2a (d) (2020), provides that the RGU’s “decision on the need for an environmental impact statement must be based on the environmental assessment worksheet and the comments received during the comment period.” Minn. R. 4410.1700, subp. 3, similarly instructs that “[t]he RGU shall base its decision regarding the need for an EIS on the information gathered during the EAW process and the comments received on the EAW.”

After the city received comments on the EAW for this project, it determined that it needed more information to make its EIS determination. The city argues that this procedure follows Minn. R. 4410.1700, subp. 2a, which provides that if an “RGU determines that information necessary to a reasoned decision about the potential for, or significance of, one or more possible environmental impacts is lacking,” then the RGU may “postpone the decision on the need for an EIS . . . in order to obtain the lacking information.” Minn. R. 4410.1700, subp. 2a. B.

Relators point out that the city’s decision not to require an EIS relied on revisions to the project, made in response to public comments, and not just “additional information.” Relators contend that a “change to the project, not the gathering of additional information relative to the decision whether to conduct an EIS,” is outside the scope of obtaining information, as contemplated by the administrative rules. Specifically, relators assert that the city relied on the following project changes: “removing the hotel and golf course,

creating a ‘sound committee’ and changing the plan to monitor sound, completing an additional sound barrier, agreeing to ‘discuss’ the impact of the Project on wetlands, and admitting that Eagle Lake is a ‘wildlife lake.’”

We are aware of no authority providing that an RGU *must* prepare a new EAW or supplemental EAW in the event of project changes. The rules provide, however, for a supplemental EIS when “substantial changes” are made to a proposed project “that affect the potential significant adverse environmental effects of the project.” Minn. R. 4410.3000, subp. 3(A)(1). In that case, the rules also provide for another public-comment period on the EIS. *Id.*, subp. 5; *cf. id.*, subp. 2 (allowing “minor revisions” through addendum not subject to public-comment period).

Thus, relators establish no legal error in the city’s procedure under the circumstances and the existing legal framework. Nor do we consider the city’s decision to rely on changes in response to the EAW comments to be arbitrary and capricious where those changes decreased the potential for environmental impacts, as happened here.

To conclude, substantial evidence supports the city’s determination that an EIS need not address noise impacts on humans, waste storage and disposal, land alterations, and wetlands. The city, however, failed to rely on substantial evidence to determine the project’s potential effects on wildlife and failed to consider the project’s cumulative effects on climate change. We conclude that the city’s negative EIS declaration was arbitrary and capricious. Thus, we reverse and remand for a new EIS determination. In doing so, we express no opinion about whether an EIS is required.

Reversed and remanded.