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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0631**

In the Matter of the Determination of Need for an
Environmental Assessment Worksheet for
the Border to Border Touring Route.

**Filed March 7, 2022
Affirmed
Smith, Tracy M., Judge**

Minnesota Department of Natural Resources

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Considered and decided by Gärtas, Presiding Judge; Smith, Tracy M., Judge; and
Slieter, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this certiorari appeal, relators, a group of individuals and organizations, challenge
a decision by respondent Minnesota Department of Natural Resources (DNR) denying their
petition to prepare an environmental-assessment worksheet (EAW) for a proposed project
that maps existing backroads across northern Minnesota into what is called the Border to

Border Touring Route (the project). Relators assert that the DNR's decision is arbitrary, capricious, unsupported by substantial evidence, and contrary to law. We affirm.

FACTS

In 2015, the Minnesota legislature appropriated \$200,000 to the DNR to plan or designate new off-road-vehicle touring routes in collaboration with the Minnesota 4-Wheel Drive Association. Pursuant to this appropriation, the DNR, the 4-Wheel Drive Association, and the National Off-Highway Vehicle Conservation Council (NOHVCC) worked on designating a new touring route.

The project emerged from that collaboration. The project designates 764.6 miles of existing unpaved roads to create a new off-highway-vehicle route stretching from Lake Superior to the North Dakota border. The project requires no new construction or immediate road improvements. Instead, the DNR will provide maps, signage, and roadside markers to indicate the designated route. The roads that will make up the project are already open for public use by highway-licensed vehicles, and the project is meant for use only by high-clearance highway-licensed vehicles. ATVs and motorcycles will not be permitted on the route. The route will be open only during part of the year.

To help plan and design the project, the DNR contracted with NOHVCC and the consulting company UP!. The DNR also engaged with several agencies and interested communities to determine the project's final route. Over two years, the DNR held listening sessions with impacted communities. During that time, the project garnered opposition from some counties, an Indian tribe, interest groups, and legislators. Based on the

opposition and the feedback received during the listening sessions, the DNR adjusted the project's route several times.

The DNR struggled to estimate the increase in traffic along the project's route because there was not baseline traffic data for all the roads included in the project. Based on the data available for certain roadways included in the project as well as studies of similar projects, the DNR estimated that the project will cause an increase in traffic ranging from 5 to 15 more vehicles per week to a few thousand more vehicles per year. This range reflects the DNR's expectation that some parts of the project will be more popular than others.

In light of the uncertainty regarding increased traffic, the DNR committed to several mitigation and monitoring programs. First, when possible, the DNR chose higher objective-maintenance-level roads, which do not require significant maintenance to support additional traffic. Second, DNR officials will patrol the project in its first years of operation to ensure compliance with the route designation and applicable laws. Third, the DNR contracted with UP! to develop a mitigation plan to combat noncompliance. Finally, the DNR will maintain a fund to help address maintenance requirements.

The DNR's Environmental Review Unit determined that the project is not subject to a mandatory EAW. After that determination, relators petitioned for a discretionary EAW. The petition raised a number of environmental concerns in connection with the project, including water pollution, air pollution, fire damage, impacts to endangered species, spread of invasive species, noise pollution, and impacts to existing animals and plants. The DNR denied the petition. In its record of decision, the DNR determined that

any environmental impact would be minimal and could be mitigated by its to-be-developed management plan.

Relators appeal.

DECISION

Relators argue that the DNR's decision to deny their petition and not prepare an EAW for the project was arbitrary and capricious, unsupported by the substantial evidence, and contrary to law.

The preparation of an EAW may be required if a petition, signed by more than 100 citizens, establishes that, because of the nature or location of a project, "there may be potential for significant environmental effects." Minn. Stat. § 116D.04, subd. 2a(e) (2020); *see also* Minn. R. 4410.1100 (2021) (governing the petition process). "A person aggrieved by a final decision on the need for an environmental assessment worksheet . . . is entitled to judicial review of the decision." Minn. Stat. § 116D.04, subd. 10 (2020). The party challenging the DNR's decision "has the burden of proving that [the DNR's] findings are unsupported by the evidence as a whole." *Friends of Twin Lakes v. City of Roseville*, 764 N.W.2d 378, 381 (Minn. App. 2009). When reviewing agency action, an appellate court's role 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.'" *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006) (*CARD*) (quoting *Rsrv. Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977)).

We presume agency decisions are correct and, recognizing agencies' expertise and special knowledge in their fields, defer to those decisions. *Minn. Ctr. for Env't Advoc. v.*

Minn. Pollution Control Agency, 644 N.W.2d 457, 463 (Minn. 2002) (quotation omitted) (citing Minn. Stat. § 14.69 (2000)). “A determination whether significant environmental effects result from [a] project is primarily factual and necessarily requires application of the agency’s technical knowledge and expertise to the facts presented.” *Id.* at 464. However, we do not defer to the DNR’s decision if it “reflect[s] an error of law, the findings are arbitrary and capricious, or the findings are unsupported by substantial evidence.” *CARD*, 713 N.W.2d at 832; *see also* Minn. Stat. § 14.69 (2020).

A decision is 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 DNR’s decision-making expertise. *Friends of Twin Lakes*, 764 N.W.2d at 381. A decision is supported by substantial evidence if it is based on relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *CARD*, 713 N.W.2d at 832. We will affirm an agency’s reasoned decision even if we might have reached a different result if acting as the factfinder. *White v. Minn. Dep’t of Nat. Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997), *rev. denied* (Minn. Oct. 31, 1997).

The DNR, when determining whether a petition warrants a discretionary EAW, reviews whether the petition sufficiently sets forth “material evidence” showing the project’s “potential for significant environmental effects.” Minn. Stat. § 116D.04, subd. 2a(e); *see also* Minn. R. 4410.1100. “Material evidence” is admissible evidence that is “relevant and consequential to whether the project may have the potential for significant

environmental effects.” *Watab Twp. Citizen All. v. Benton Cnty. Bd. of Comm’rs*, 728 N.W.2d 82, 90 (Minn. App. 2007), *rev. denied* (Minn. May 15, 2007). While relators face a low burden of proving the potential for significant environmental effects, “[a]llegations of vague or generalized fears and concerns” are insufficient. *Id.*; *Carl Bolander & Sons Co. v. City of Minneapolis*, 488 N.W.2d 804, 810 (Minn. App. 1992) (classifying an EAW petitioner’s burden of providing evidence of significant environmental effects as a “minimal standard”), *aff’d*, 502 N.W.2d 203, 207 (Minn. 1993).

In determining whether a petitioner has set forth material evidence showing the potential for significant environmental effects, the DNR must consider these factors: (1) the “type, extent, and reversibility of environmental effects”; (2) the “cumulative potential effects” caused by 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 undertaken by public agencies or the project proposer.” Minn. R. 4410.1700, subp. 7 (2021); *see also* Minn. R. 4410.1100, subp. 6 (stating that the responsible government unit must consider the factors in rule 4410.1700, subpart 7, when evaluating a petition for an EAW).

Relators’ arguments on appeal relate to the first three of these factors: (1) the “type, extent, and reversibility” of the project’s environmental effects; (2) the project’s cumulative effects; and (3) the DNR’s proposed mitigation plan. We address each in turn.

I. The DNR's determination that the project does not have the potential for significant environmental effects is not arbitrary and capricious, is based on substantial evidence, and is not based on an error of law.

Relators argue that the DNR erred in four ways when it determined that the project does not have the potential for significant environmental effects. First, they argue that the DNR's estimate of the increase in traffic caused by the project is too low. Second, they argue that the DNR ignored six categories of environmental harm that the project could cause that relators claimed in their petition. Third, they argue that the DNR erred by determining that the project would not change the current uses of the existing roads. Finally, they argue that the DNR erred as a matter of law by not reviewing the project as part of a phased or connected action.

A. The DNR's determination that the project will not cause a substantial increase in vehicle traffic was not arbitrary or capricious and is supported by the record.

Because the project consists of existing roads and trails, the potential for an increase in traffic on those roads and trails is critical to evaluating the project's potential environmental effects.

As noted above, the DNR struggled to estimate the exact traffic increase attributable to the project. To come to its determination, the DNR relied on articles by scholars, studies of similar routes by federal agencies, and guidance from the Minnesota Department of Transportation. The DNR relied on a 2001 study by the economic consulting firm Economic Development Research Group, which estimated that the traffic increase caused by the designation of a new scenic byway is between 3.4% and 20%. Based on that study and estimates from NOHVCC, the DNR told the United States Forest Service (USFS) that

segments of the route could experience up to “5-15 extra vehicles per week.” The DNR also concluded, based on a study of another scenic byway in California, that the increase in traffic will likely not be consistent across the entire route. Based on these studies, the DNR found that there would be minimal traffic increase and thus any environmental effects caused by this increase in traffic would be likewise limited.

Relators’ raise four arguments against this determination, but they are unpersuasive. First, relators argue that the DNR’s estimate of an additional 5 to 15 vehicles per week is too low. But the DNR’s reasonable conclusions and inferences drawn from the evidence are entitled to judicial deference. *See Red Owl Stores, Inc. v. Comm’r of Agric.*, 310 N.W.2d 99, 104 (Minn. 1981) (stating that a court’s “judgment concerning inferences to be drawn from the evidence should not be substituted for that of the agency”).

Second, relators argue that the DNR did not listen to concerns raised by collaborating agencies and organizations, leading to an arbitrary decision. *See Trout Unlimited, Inc. v. Minn. Dep’t of Agric.*, 528 N.W.2d 903, 907-08 (Minn. App. 1995) (holding that an agency acted arbitrarily when it ignored the concerns from sister agencies about the cumulative effects of a proposed project), *rev. denied* (Minn. Apr. 27, 1995). But the record shows that the DNR responded to those concerns. The DNR responded to the USFS’s concern about increased impact on USFS-maintained roads, explaining that it would reroute the project around a specific class of USFS-maintained roads in favor of roads that could handle increased traffic and would require less maintenance. And the DNR responded to the increased-traffic concerns of the counties, interest groups, and Indian tribe opposed to the project by rerouting the project outside of their boundaries.

Third, relators point to the difference between the DNR's public promotion of the project and the DNR's estimation of minimal traffic increases. They argue that the DNR's public posturing does not square with its ultimate estimate that increased traffic will be minimal across the route. But the fact that the route will be promoted to enthusiasts does not mean that DNR's reliance on studies and other sources of information to estimate actual traffic increase was unreasonable.

Finally, relators argue that the DNR's review failed to consider the project's "capacity." To make this argument, relators rely on *Berne Area All. for Quality Living v. Dodge Cnty. Bd. of Comm'rs*, 694 N.W.2d 577 (Minn. App. 2005), *rev. denied* (Minn. June 28, 2005). There, we interpreted a statute that exempted from environmental review proposed feedlots with a "capacity of less than 1,000" animals. *Id.* at 580 (quotation omitted). We held that, applying the correct meaning of "capacity," a feedlot that was permitted to hold 995 hogs but that could physically hold more than 1,000 hogs was not exempt from mandatory environmental review. *Id.* at 578-79, 581 (interpreting Minn. Stat. § 116D.04, subd. 2a(d)(1)(i) (2004)). *Berne* is inapplicable here. In this case, we are not interpreting a statutory exemption based on "capacity"; rather, we are evaluating the agency's determination that the project does not pose the potential for significant environmental effects. That determination depended on whether there will be an increase in vehicular traffic, and the DNR reasonably found that any increase will be small.

In sum, the DNR's determination that the project will only cause a minor increase in traffic was not arbitrary and capricious and is supported by the record.

B. The DNR's conclusion that the project will not have significant environmental effects is supported by the record.

Relators argue that the DNR's decision that the project will not have significant environmental effects is not supported by substantial evidence. In their petition, relators pointed to six potential categories of environmental harm that may be caused by the project: water pollution, air pollution, increased fire risk, increased risk to endangered plants and animals, increased spread of invasive species, and noise pollution. To meet their burden of proving the potential for significant environmental effects, relators' petition had to include material evidence that is "relevant and consequential to whether the project may have the potential for significant environmental effects." *Watab Twp. Citizen All.*, 728 N.W.2d at 90.

As for the spread of invasive species, relators did present material evidence about an increase in the spread of invasive species that may be caused by the project. Relators cited a 2017 study finding that off-highway vehicles are more likely to spread the seeds of invasive species than other modes of transportation like hiking or mountain biking. Because the project runs along protected forests, relators argue, this unknowing transportation could have significant environmental effects.

But, while the relators included material evidence, the DNR's decision rejecting the invasive-species concern was nevertheless supported by substantial evidence. The DNR explicitly responded to the study presented by relators in its record of decision. It found that the risk for invasive species transport was low because "the Proposed Project does not include any authorizations for new vehicle uses along the route" and the project will be

closed during wet seasons when transportation of invasive species is more prevalent. We defer to the agency's review of the study and its factual determinations.¹ *See Minn. Ctr. for Env't. Advoc.*, 644 N.W.2d at 463.

As for the other environmental effects that relators raised, we conclude that the evidence included in relators' petition is not material to whether the project will cause the significant environmental effects. Each of relators' arguments regarding the other six potential environmental effects would require us to conclude that the DNR erred when estimating the increase in vehicle use along the project. Because we conclude that the DNR's estimate is not arbitrary or capricious and is supported by the record, the evidence that relators present is no longer material. *Watab Twp. Citizen All.*, 728 N.W.2d at 90 (stating that the agency need only consider material evidence that is "relevant and consequential" to their determination and not "vague or generalized fears and concerns").

Thus, the DNR's determination that relators did not show—under any of the six categories—that the project could lead to significant environmental impacts is supported by the record.

¹ Relators also argue that the DNR will be unable to mitigate any spread of invasive species because the DNR's fund for eradicating invasive species is empty. The DNR collects revenues, and part of those revenues go into the invasive species account. The same year that the fund was empty, the DNR spent more than \$3 million in invasive-species prevention and eradication. While there may not be reserves, the DNR has funded annual invasive-species eradication.

C. The DNR’s determination that the project will not change the included roads’ existing uses is supported by the record.

Relators next argue that the DNR erred by determining that the project would not change the existing use of the included roads. The DNR found that the project “does not include new vehicles or new authorizations for use.” Relators contend that the DNR’s finding disregards individuals who might leave the marked trail. But the record shows that the DNR does recognize that users will stray from the marked trail. In its contract with UP!, the DNR included language requiring UP! to assist the DNR’s enforcement division in managing the project and developing a mitigation program. This work with UP! will include estimating funding needs, putting in place a selection process for “[off-road vehicle] trail ambassadors,” assisting in training, and “[a]ssist[ing] in development of responsible messages.” This plan to implement a mitigation program, coupled with the fact that the roads have already been in use, is enough to support the DNR’s determination that the project “does not include new vehicles or new authorizations for use” and will therefore not have significant environmental effects related to off-road use.

D. The DNR did not err by not treating the project as part of a phased or connected action.

Relators next argue that the DNR erred by not reviewing the project as part of a phased or connected action in light of supposed future related projects. In its record of decision, the DNR determined that the project was not part of a “phased action” but did not address whether it was part of a “connected action,” although the DNR considered the project as a stand-alone project.

“Phased actions” must be evaluated by the DNR as a single project. Minn. R. 4410.1000, subp. 4 (applying the phased-action rule to reviews for EAWs), .1700, subp. 9 (requiring consideration of phased actions in reviews for the need for environmental-impact statements) (2021). A “phased action” consists of (1) two or more projects, (2) undertaken by the same proposer, (3) with environmental effects on the same geographic area, and (4) which are substantially certain to be undertaken sequentially over a limited time. Minn. R. 4410.0200, subp. 60 (2021).

Like phased actions, “connected actions” must also be evaluated as a single project when determining the need for an EAW. Minn. R. 4410.1700, subp. 9. Two projects are connected actions if the DNR determines that (1) one project directly induces the other, (2) “one project is a prerequisite for the other and the prerequisite project is not justified by itself,” or (3) neither project can be justified by itself. Minn. R. 4410.0200, subp. 9(c), .1000, subp. 4 (applying connected-action rule to reviews for EAWs) (2021).

Both phased actions and connected actions require the existence of two or more projects. Our caselaw defines “project” as “a definite, site-specific, action that contemplates on-the-ground environmental changes.” *Minnesotans for Responsible Recreation v. Dep’t of Nat. Res.*, 651 N.W.2d 533, 540 (Minn. App. 2002); *see also* Minn. R. 4410.0200, subp. 65 (2021) (defining “project” as “governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly”); Minn. Stat. § 116D.04, subd. 1a (2020) (defining “governmental action” as “activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated, or approved by units of government”). The “definiteness” and “maturity” of the plans and

proposed location help determine whether a project exists. *In re Env't Assessment Worksheet for the 33rd Sale of State Metallic Leases*, 838 N.W.2d 212, 217 (Minn. App. 2013), *rev. denied* (Minn. Nov. 26, 2013).

Relators contend that the DNR's contracts with UP! and NOHVCC demonstrate that there will be two or more projects. The UP! contract requires UP! to "find areas off of or connecting to the initial route where additional opportunities are possible." Similarly, the NOHVCC contract requires the analysis of a potential "South to North adventure touring trail" consisting of "existing legal routes" from Crow Wing County to Koochiching County. The language in both contracts is neither specific nor definite enough to classify as a "project." Instead, they merely require that the organization research potential expansions. *See id.* Neither contemplates on-the-ground environmental changes at this juncture. *Minnesotans for Responsible Recreation*, 651 N.W.2d at 540.

Relators also point to public reports and comments about the project. A 2018 DNR report on the project listed "Concerns for Phase II" when classifying public comments about the project. That same report also discusses a potential south-to-north route to be built after the project. The report states that, "[a]lthough the end-product will be 2 distinct routes, the team will approach the project as one full route with 2 sections or branches of the route." But these comments, like the contract language, do not establish that the DNR is engaged in two or more projects. Nothing in the record suggests a second route will imminently occur, has a definite route, or even funding. Thus, relators have not shown that any of the DNR's plans for future off-road touring routes constitute a second project, and

the agency's review of the project as a stand-alone project is supported by substantial evidence.²

II. The DNR adequately considered the project's cumulative potential effects.

Relators next argue that the DNR did not adequately consider the project's cumulative potential effects. When determining whether a project warrants an EAW, one of the factors that must be considered is the project's "cumulative potential effects." Minn. R. 4410.1700, subp. 7(B); *see also* Minn. R. 4410.1100, subp. 6. Regulations define "cumulative potential effects" as

the effect on the environment that results from the incremental effects of a project in addition to other projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resources, including future projects actually planned or for which a basis of expectation has been laid, regardless of what person undertakes the other projects or what jurisdictions have authority over the projects.

Minn. R. 4410.0200, subp. 11a (2021). This definition includes minor projects that take place over time. *Id.* If there is an expected future project, then the DNR 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

² Relators observe that the DNR's decision does not discuss the connected-action rule, and they assert that, at the very least, the matter must be remanded for further findings. But relators' claim that there are two or more projects for purposes of a connected action is identical to its argument that there are two or more projects for purposes of a phased action. Since substantial evidence supports the DNR's determination that there are not two or more projects for purposes of a phased action, it follows that there are not two or more projects for purposes of a connected action. Any error by the DNR in not addressing the connected-action issue therefore does not prejudice relators' substantial rights and is not a basis for reversal. *See* Minn. Stat. § 14.69.

potential effects.” *Id.* This determination requires reviewing any permit applications, prepared plans or specifications, zoning laws or local ordinances that suggest the project will begin, trends that forecast additional projects, and any other relevant factors. *Id.* If there is a past project, then “it is sufficient to consider the current aggregate effects of past actions. It is not required to list or analyze the impacts of individual past actions, unless such information is necessary to describe the cumulative potential effects.” *Id.*

Relators argue that the DNR disregarded the cumulative effects arising from (1) off-trail use, (2) the DNR’s plan for a broader off-highway vehicle trail system, and (3) the DNR’s failure to address traffic on spur routes extending off the project.

Relators first argue that it is inevitable that drivers on the project will stray off the roads, which will increase environmental damage and “social conflict” and will cause law-enforcement problems. This argument is unpersuasive for the same reasons described above regarding relators’ arguments on existing use. The DNR plans to increase enforcement along the project to curb off-trail activities. In its contract with UP!, the DNR requires UP! to assist the DNR’s enforcement division to manage the project and develop a mitigation program. This plan shows that the DNR adequately considered potential off-road uses in its analysis of relators’ petition for an EAW.

Relators’ second argument relates to the Prospector ATV trail, which uses the same roads as the project in certain places along the project’s route. The first portion of the Prospector Trail opened in June 2020 and traverses the same region as the project, but, unlike the project, allows the use of ATVs. Because the Prospector Trail and the project run coextensively in places, relators argue, the DNR must consider the project and the

Prospector Trail together to adequately determine the project's cumulative effects. The DNR argues that it need not look at the entire lengths of the two trails, but rather only the places where the two trails overlap. The DNR's argument aligns more closely with the text of the rule. Because the Prospector Trail is a past project, the DNR need only consider the "current aggregate effects of" that trail. *Id.* And the DNR considered where the two trails run coextensively, concluding that ATV and off-highway-vehicle uses, which are allowed on the Prospector Trail, will "not be extended to other segments of the route that do not allow these uses." This determination is supported by the record. Only high-clearance highway-licensed vehicles will be allowed to use the project.

Finally, relators argue that the DNR omitted the network of existing spur routes from its environmental review. But the DNR did consider existing circumstances where the two trails run coextensively, which is all that the rule requires. *See id.* (stating the DNR need only consider the "current aggregate effects" of past projects). To the extent relators are referring to roads that are not part of the trail, examining the project's impact on those roads is not necessary to determine the project's cumulative potential effects. *See id.* And there is support in the record that the DNR considered the project's environmental effects. Thus, the DNR adequately considered the project's cumulative potential effects.

III. The DNR did not act arbitrarily when it committed to devising a mitigation plan after determining whether to prepare an EAW.

Relators next contend that the DNR failed to consider specific mitigation of the project's potential environmental effects. When determining whether the project could lead to significant environmental effects, the DNR 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). These mitigation measures must be “specific” and “reasonably expected to effectively mitigate the identified environmental impacts of the project.” *Id.*; *see also CARD*, 713 N.W.2d at 834-35. Reliance on an already existing regulatory scheme is sufficiently specific mitigation. *Friends of Twin Lakes*, 764 N.W.2d at 383.

The DNR has committed to mitigating any of the project’s environmental effects while the mitigation plan is finalized. First, the DNR contracted with UP! to develop a mitigation plan to combat noncompliance. Second, the DNR will maintain a fund to help address maintenance requirements. Third, DNR officials will patrol the project in its first years of operation to ensure compliance with the route designation and applicable laws.

Relators argue that, by committing to devise a mitigation plan after the project’s completion, the DNR failed to adequately consider how mitigation impacts the project’s potential environmental effects. Relators point to *Trout Unlimited, Inc.* in support of their argument. There, we reversed the Minnesota Department of Agriculture’s decision not to order an environmental-impact statement for a proposed irrigation project. 528 N.W.2d at 905. We reversed, partly because the department of agriculture relied on future monitoring and permit conditions to “identify significant impacts.” *Id.* at 909.

But *Trout Unlimited, Inc.* does not compel reversal here. Unlike the department of agriculture in *Trout Unlimited, Inc.*, the DNR is not waiting for later monitoring to *identify* significant environmental impacts. Instead, it committed to crafting a mitigation plan to address minor environmental impacts that may occur. Because the DNR explicitly found

that the project would “have limited direct environmental effects,” how much these effects are “subject to mitigation” is also limited. The DNR determined—with support from the record—that the project will not have significant environmental effects. As a result, the DNR’s commitment to develop a mitigation plan is sufficient for the DNR to have adequately considered mitigation under rule 4410.1700.

Affirmed.