

*This opinion is nonprecedential except as provided by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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1592**

In the Matter of Citizen Petition for Preparation of an Environmental Assessment
Worksheet for the Proposed Summit Avenue Regional Trail (SART).

**Filed July 8, 2024
Affirmed
Slieter, Judge**

City of St. Paul

Brian B. Bell, Jennifer Coates, Nathan Webster, Dorsey & Whitney LLP, Minneapolis,
Minnesota; and

Robert E. Cattanaach, HCSC Group, LLC, St. Paul, Minnesota (for relators Gary R. Todd
and Historic Summit Avenue)

Lyndsey Olson, St. Paul City Attorney, Daniel J. Stahley, Assistant City Attorney, St. Paul,
Minnesota (for respondent City of St. Paul)

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

NONPRECEDENTIAL OPINION

SLIETER, Judge

Relators Gary R. Todd and Historic Summit Avenue challenge a decision by
respondent City of St. Paul not to require preparation of an Environmental Assessment
Worksheet (EAW) in connection with the city's currently unfunded plans for the Summit
Avenue Regional Trail (SART), arguing that the city (1) acted arbitrarily and capriciously
and without substantial evidence when it denied the request for an EAW, (2) erred in

concluding that the streetscape is not part of the protected historic district, and (3) erred in concluding that an EAW is premature because there is not yet a definitive project. Because we conclude that the city's plans do not yet constitute a project, we affirm without addressing relators' first two arguments.

FACTS

The City of St. Paul has begun planning for the development of the SART along Summit Avenue in St. Paul. If built, the SART would be separated from vehicular traffic with a 6-inch curb, thus creating a protected trail for bicyclists. The SART would be designated as a regional linking trail because it would connect to other regional parks and trails in St. Paul and beyond. The city published several iterations of the SART plan for public viewing: a "60% plan" in October 2022, a "90% plan" in February 2023, and a "final plan" in October 2023. It is uncontested that there is no funding for the SART, and it is not currently on the city's construction calendar.

Gary Todd, on behalf of Save Our Streets (SOS), submitted a petition to the city seeking the completion of an EAW for the SART. SOS' petition states its concerns are destruction of the tree canopy and irreversible demolition of the nationally protected historic streetscape on Summit Avenue.

The city denied the request for an EAW on the merits and because it did not consider the SART to be a "project" within the meaning of the administrative rules governing environmental review. It concluded that "[w]ithout a funding source, the SART is not sufficiently definite to constitute a project for the purposes of environmental review." SOS appeals this determination by petition for writ of certiorari.

DECISION

SOS argues that the city “exceeded its statutory authority, acted pursuant to unlawful procedure, erred as a matter of law, acted arbitrarily and capriciously, and made factual findings and conclusions of law unsupported by substantial evidence.” SOS brings this appeal pursuant to Minn. Stat. § 116D.04, subd. 10 (2022), which provides that any person aggrieved by a final decision on the need for an EAW is entitled to judicial review by petition for writ of certiorari under Minn. Stat. §§ 14.63-.68 (2022).

We reverse an agency’s decision if it reflects an error of law, the findings are arbitrary and capricious, or the findings are unsupported by substantial evidence. Minn. Stat. § 14.69 (2022); *see also Citizens Advocating Responsible Dev. v. Kandiyohi County Bd. of Comm’rs*, 713 N.W.2d 817, 832 (Minn. 2006) (reviewing whether the agency’s decision not to complete an EAW was unsupported by substantial evidence, arbitrary and capricious, or based on an error of law); *In re Env’t Assessment Worksheet for 33rd Sale of State Metallic Leases*, 838 N.W.2d 212, 217 (Minn. App. 2013) (reviewing the agency’s determination that there was not a project under an arbitrary and capricious standard). “[D]ecisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies’ expertise and their special knowledge in the field[s] of their technical training, education, and experience.” *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977). A reviewing court’s role is to determine whether the agency has taken a “hard look” at the problems involved, and whether the agency “genuinely engaged in reasoned decision-making.” *Id.* at 825 (quotations and citation omitted). If an agency engages in reasoned decision-making, we will affirm the

agency's decision, even if we may have reached a different result. *See Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 669 (Minn. 1984). “The interpretation of statutes and rules and the application of statutes and rules to undisputed facts are both questions of law that we review de novo.” *Minnesotans for Responsible Recreation v. Dep't of Nat. Res.*, 651 N.W.2d 533, 538 (Minn. App. 2002).

The necessity for environmental review is governed by rules adopted by the Environmental Quality Board (EQB) pursuant to the Minnesota Environmental Policy Act (MEPA), Minn. Stat. §§ 116D.01-.11 (2022). *See* Minn. Stat. § 116D.04, subd. 2a(b) (directing EQB to establish categories for which EAWs and EISs are and are not required). MEPA provides for two types of environmental review of proposed actions—an EAW and an environmental impact statement (EIS). Minn. Stat. § 116D.04, subds. 1a(c), 2a(a) (2022). An EAW is a “brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement (EIS) is required for a proposed action.” *Id.*, subd. 1a(c).

Environmental review is mandatory if a “project” meets certain thresholds articulated in the rules. Minn. R. 4410.4300 (listing projects requiring an EAW), 4410.4400 (listing projects requiring an EIS), 4410.4600 (listing exempt projects) (2021). An EAW is also required if material evidence accompanying a petition signed by more than 100 citizens demonstrates that a project has the “potential for significant

environmental effects.” Minn. Stat. § 116D.04, subd. 2a(e) (2022)¹; Minn. R. 4410.1100 (2021).

“Because the EAW requirement applies to ‘projects,’ determining whether an action is a ‘project’ is a threshold issue.” *State Metallic Leases*, 838 N.W.2d at 216. “‘Project’ means a governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly.” Minn. R. 4410.0200, subp. 65 (2021). “The determination of whether a project requires environmental documents shall be made by reference to the physical activity to be undertaken and not to the governmental process of approving the project.” *Id.* “[A] ‘project’ for purposes of the Minnesota Environmental Protection Act is a definite, site-specific, action that contemplates on-the-ground environmental changes, including changes in the nature of the use.” *Minnesotans for Responsible Recreation*, 651 N.W.2d at 540.

In its decision denying SOS’ petition for EAW, the city stated that there was “no funding source for the SART which would result in physical manipulation of the environment as a result of governmental action,” without which “the SART is not substantially certain to be undertaken,” citing Minn. R. 4410.0200, subp. 65.

On appeal, the city defends its determination that the plan is not a project because “there is no governmental action that would result in the physical manipulation of the environment, under Minn. R. 4410.0200, subp. 65” because the project is not funded, plans

¹ As we noted in *State Metallic Leases*, the statute references a “proposed action” rather than a project, but the distinction is not significant where the parties agree that the dispositive issue is whether the sale of the leases is a “project.” 838 N.W.2d at 216 n.3.

are not final, and it is not on the city’s construction calendar. The city further argues that the plan fails to constitute “governmental action” pursuant to Minn. R. 4410.0200, subp. 33 (2021) because it is not funded, permitted, or approved.

SOS argues that the city’s determination was based upon an error of law because the project is sufficiently finalized to warrant environmental review and compares the SART to *Minnesotans for Responsible Recreation*. It also argues that the purpose of environmental review is for agencies to evaluate environmental impact “before reaching their decisions” and that the EAW should be prepared “as early as practicable.” Minn. R. 4410.1400(A) (2021).

A comparison to *Minnesotans for Responsible Recreation* and *State Metallic Leases* leads us to conclude that the city’s determination that the SART proposal is not a project pursuant to Minn. R. 4410.0200, subps. 65 and 33, was not affected by an error of law. Because we so conclude, we affirm without reaching the merits of SOS’ petition.²

In *Minnesotans for Responsible Recreation*, the Minnesota Department of Natural Resources (DNR) proposed plans for off-road vehicles. 651 N.W.2d at 536. The DNR and two intervening groups argued that the plans were not “projects” because “there ha[d] not been sufficient governmental action within the scope of Minn. R. 4410.0200, subp. 65.” *Id.* at 539. We agreed that the system plans were not “projects” that required EAWs. *Id.* at 540. Rather, the system plans “demonstrated the governmental process of approving

² We note that the city “requests a ruling on the merits and that the Court only address whether the project is ripe as an alternative form of relief.” Because the determination of whether the SART is a “project” is a threshold issue, *see State Metallic Leases*, 838 N.W.2d at 216, and we conclude it is not a project, we do not reach the merits.

the project[s],” but after consideration by the DNR, the plans “will never be developed because of lack of funding, personnel, or feasibility.” *Id.* We concluded that the system plans were thus “too broad and speculative to provide the basis for meaningful environmental review.” *Id.* We determined, however, that eight trails that were identified in the system plans *were* projects that required EAWs because they were “site-specific actions.” *Id.* Specifically, the proposals to add a 4.5-mile trail, allowing off-road vehicles in an area where currently prohibited, and change to railroad trails and trust fund lands were all “definite, site-specific action[s] that contemplate[d] an on-the-ground environmental change.” *Id.* at 540-41.

In *State Metallic Leases*, we affirmed the DNR’s decision not to complete an EAW in connection with the state’s sale of metallic-mineral leases. 838 N.W.2d at 216. We noted that because the leases granted “exclusive rights to explore for and mine minerals,” they contemplated “the possibility of on-the-ground physical changes to the environment.” *Id.* We also acknowledged that the leases were “somewhat site-specific” because they designated specific mining “units” of several hundred acres. *Id.* But we ultimately concluded that the “contemplated physical changes” were indefinite and the specific locations where future exploration activities might take place were not ascertainable. *Id.*

We conclude that the city’s determination that the SART is not a project was not affected by an error of law because it is not “substantially certain to be undertaken” and does not meet the definiteness requirements under Minn. R. 4410.0200. In its denial of the petition, the city relied on the lack of funding for the SART, and we find this reason persuasive. The lack of a funding source for the project makes it quite *uncertain* that the

plan will be undertaken. We also conclude that the city's determination that the SART is not substantially certain to be undertaken is supported by the record evidence showing that the SART does not have a final plan, no plan is on the construction calendar, and the city has yet to approve the plan. As the city notes, the plan is incomplete because there are still three potential options for the trail's width. *See Minnesotans for Responsible Recreation*, 651 N.W.2d at 541 (stating that a general plan is "too broad and speculative to provide the basis for meaningful environmental review"). This is not a minor detail because the width would clearly impact the very issue SOS raises—how the SART could disrupt the tree canopy and cause environmental harm. Because the SART is not funded, has no final plan, and is not scheduled for construction, it is not a project and the city's determination that no EAW is needed is, therefore, not affected by an error of law.

Affirmed.