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STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0076

In re City of St. Paul's Decision on the Need for an Environmental Impact Statement for the Proposed University of St. Thomas Phased Action.

Filed September 8, 2025
Affirmed
Ede, Judge

City of Saint Paul

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Considered and decided by Slieter, Presiding Judge; Frisch, Chief Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this certiorari appeal following our previous opinion reversing and remanding respondent city's negative declaration on the need for an environmental-impact statement (EIS) regarding respondent university's plan to build a multipurpose arena on its campus,

relator challenges the city's second negative EIS declaration for the project.[1] Relator argues that the city failed to remedy the defects in the environmental-assessment worksheet (EAW) that we identified in our first decision and that the city otherwise erred in several ways on remand. We affirm.

FACTS

In 2023, respondent University of St. Thomas proposed to redevelop an approximately six-acre site on its St. Paul campus and to build a multipurpose arena. The arena would serve as a "competition venue for the university's hockey and basketball programs with capacity for approximately 4,000 to 5,500 spectators." *See In re City of St. Paul's Decision on Need for Env't Impact Statement*, No. A23-1656, 2024 WL 3320586, at *1 (Minn. App. July 8, 2024) (*ARD I*), *rev. denied* (Oct. 15, 2024). In addition to athletic competitions, the university planned for the arena to host "other university events such as commencement ceremonies, academic convocations, speakers, career fairs, and other events for the university." *Id.*

Based on the size of the arena, respondent City of St. Paul—which is the responsible government unit (RGU)—needed to complete an EAW. The city completed the EAW in June 2023 and opened a 30-day comment period, during which it received comments from members of the public and agencies, including relator Advocates for Responsible

[1] This opinion uses several acronyms for certain terms that appear more than three times. For ease of reference, these acronyms are listed and defined here in alphabetical order: ARD (relator Advocates for Responsible Development); CUP (conditional-use permit); EAW (environmental-assessment worksheet); EIS (environmental-impact statement); EMP (event-management plan); GHG (greenhouse gas); MRCCA (Mississippi River Corridor Critical Area); and RGU (responsible governmental unit).

Development (ARD). ARD is a nonprofit entity located in Ramsey County. ARD's members include neighborhood residents near the university.

Following the public-comment period, the city reviewed the EAW and found that the project could impact parking and traffic, increase greenhouse-gas (GHG) emissions, and have potential cumulative effects on the environment. The city identified five mitigation measures the university could undertake to "address the potential environmental effects associated with the project." *Id.* These measures included: monitoring event attendance; developing a traffic-management plan; establishing parking incentives; maintaining a list of events; and informing the community of events. Based on these findings, the city issued a negative EIS declaration in September 2023, determining that an EIS was unnecessary because the project did not have the potential for significant environmental effects.

In November 2023, ARD petitioned this court for certiorari review of the city's negative declaration on the need for an EIS. ARD asserted that the negative EIS declaration was flawed because: the city disregarded the potential environmental impact of the Schoenecker Center, which is a four-story academic building north of the arena site on the university's campus;[2] the evidence did not support the city's findings about the project's impacts on parking, traffic, and GHG emissions; and the city's identified mitigation measures failed to adequately address the project's environmental effects.

[2] The Schoenecker Center opened in February 2024.

In July 2024, we reversed the city's negative EIS declaration. We concluded that the city's EAW was deficient in three ways. First, the EAW did not consider the environmental impact of a phased action involving the Schoenecker Center. Second, the city's decision was arbitrary and capricious because the EAW did not consider GHG impacts associated with arena spectator traffic and parking. Third, the mitigation measures identified by the city were not specific, targeted, and certain. We therefore remanded with instructions that the city prepare a revised EAW to address these issues.

On remand, the city prepared two documents: the *University of St. Thomas Multipurpose Arena Environmental Assessment Worksheet Update*, dated September 2024 (the updated EAW), and the *UST Multipurpose Arena EAW Transportation Analysis*–2024 EAW Update Transportation Analysis Addendum (the updated transportation study). The updated EAW detailed the potential environmental effects of the university's phased action, including the arena, the Schoenecker Center, and a proposed expansion of the university's Center for Microgrid Research. It also addressed GHG emissions in that context, as did the updated transportation study, which further considered the effects of traffic and parking stemming from the project.

In October 2024, the city published the updated EAW for public comment. And in December 2024, the city released a second negative EIS declaration, again determining that an EIS was not required because there was no potential for significant environmental effects from the project.

ARD filed this certiorari appeal challenging the city's second negative EIS declaration.

DECISION

ARD contends that the city failed to remedy the defects in the EAW that we identified in our first decision and that the city otherwise erred in several ways on remand. Before analyzing ARD's arguments, we summarize the applicable legal principles.

I. Relevant Law and Standard of Review

The necessity for environmental review is governed by rules adopted by the Environmental Quality Board under the Minnesota Environmental Policy Act, Minnesota Statutes sections 116D.01–.11 (2024). *See* Minn. Stat. § 116D.04, subd. 2a(b); *see also* Minn. R. 4410.0200–.6500 (2023). The RGU—here, the city—determines the level of environmental review required for a project. *See* Minn. R. 4410.0200, subps. 75–76 (defining "responsible governmental unit" and "RGU"). The Minnesota Environmental Policy Act provides for two types of environmental review for proposed actions: an EAW and an EIS. Minn. Stat. § 116D.04, subds. 1a(c), 2a(a).

An EAW is "a brief document 'designed to set out the basic facts necessary to determine whether an EIS is required for a proposed project.'" *White v. Minn. Dept. of Nat. Resources*, 567 N.W.2d 724, 735 (Minn. App. 1997) (quoting Minn. R. 4410.0200, subp. 24), *rev. denied* (Minn. Oct. 31, 1997). An EAW must be prepared for projects that meet certain criteria. Minn. R. 4410.4300, subp. 1. As relevant here, this includes the construction of a "new sports or entertainment facility designed for or expected to accommodate a peak attendance of 5,000 or more persons." *Id.*, subp. 34.

By contrast, an EIS is a more "exhaustive environmental review," required when a project has the potential for significant environmental effects. *Citizens Advocating*

Responsible Dev. v. Kandiyohi County Bd. of Comm'rs, 713 N.W.2d 817, 824 (Minn. 2006) (*CARD*); *see also* Minn. Stat. § 116D.04, subd. 2a(a). An EIS "describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated." Minn. Stat. § 116D.04, subd. 2a(a). And an EIS provides information to governmental units, the project proposer, and other interested parties so that they may evaluate the project, consider possible alternatives, and "explore methods for reducing adverse environmental effects." Minn. R. 4410.2000, subp. 1.

When evaluating whether a proposed project has the potential for significant environmental effects and therefore requires an EIS, the RGU considers: (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," such as an EIS. Minn. R. 4410.1700, subp. 7. The RGU must balance all four factors when deciding whether to require an EIS. *See CARD*, 713 N.W.2d at 825.

Through a writ of certiorari, an aggrieved party may appeal to this court certain RGU decisions, including a negative declaration on the need for an EIS. Minn. Stat. § 116D.04, subd. 10 (providing for judicial review under Minnesota Statutes sections 14.63–.68 of "a final decision on the need for an [EAW], the need for an [EIS], or the adequacy of an [EIS]").

On review, "decisions of administrative agencies enjoy a presumption of correctness" and deference is shown "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). An appellate court's "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). And an appellate court will reverse when a decision "reflect[s] an error of law, the findings are arbitrary and capricious, or the findings are unsupported by substantial evidence." *Id.*; *see also* Minn. Stat. § 14.69 (2024). "An agency's decision is arbitrary or capricious when it represents the agency's will and not its judgment." *In re Schmalz*, 945 N.W.2d 46, 54 (Minn. 2020) (quotation omitted). An arbitrary and capricious agency decision is one that "runs counter to the evidence" or "is so implausible that it could not be explained as a difference in view or the result of the agency's expertise." *Id.* (quotation omitted).

An appellate court views an agency's factual findings in the light most favorable to the RGU's decision, *Bd. Ord., Kells (BWSR) v. City of Rochester*, 597 N.W.2d 332, 336 (Minn. App. 1999), and defers to an "agency's technical knowledge and expertise" when the analysis "is primarily factual," *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002). Thus, a decision is not arbitrary and capricious if the agency has articulated a rational connection between the facts in the record and the choice it made. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001). And an appellate court will affirm an agency's

decision, even if it would have reached a different conclusion. *Cable Commc'ns Bd. v. Nor-W. Cable Commc'ns P'ship,* 356 N.W.2d 658, 669 (Minn. 1984). The complaining party bears the burden of establishing that the findings of the RGU are unsupported by the evidence in the record, considered in its entirety. *Reserve Mining Co.*, 256 N.W.2d. at 825. At the same time, "[t]he 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).

With these legal principles in mind, we now address the merits of this appeal.

II. Substantial evidence supports the city's second negative EIS declaration, and the city complied with our remand instructions in reaching a decision that is neither arbitrary nor capricious.

ARD asserts that the city did not follow our remand instructions in *ARD I* and that its second negative EIS declaration is unsupported by substantial evidence. And ARD contends that the negative EIS declaration is arbitrary and capricious.

On remand, an agency "must execute an appellate court's mandate strictly according to its terms and lacks power to alter, amend, or modify that mandate." *Johnson v. Princeton Pub. Utils. Comm'n*, 899 N.W.2d 860, 868 (Minn. App. 2017) (quotation omitted); *see also Halverson v. Village of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982). If no specific instructions are provided, the agency must proceed in a manner consistent with the remand order. *Halverson*, 322 N.W.2d at 766; *see also Bauerly v. Bauerly*, 765 N.W.2d 108, 110–11 (Minn. App. 2009). We review an agency's compliance with remand instructions under

a deferential abuse-of-discretion standard. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005).

Here, our remand instructions were as follows: (A) that the revised EAW "consider[] the project and [the] Schoenecker Center to be a phased action" in assessing the potential environmental impacts of the project; (B) "that, during remand, the city's revised EAW [could] likewise revise its conclusions on the potential environmental effects in parking, traffic, and GHG emissions by spectator traffic"; and (C) that, because the city's mitigation "measures [were] not specific, targeted, and certain[,] . . . [t]he city must address the noted shortcomings upon remand." *ARD I*, 2024 WL 3320586, at *5, 6, 10.

For the reasons discussed below, we conclude that substantial evidence supports the city's second negative EIS declaration, that the city complied with our remand instructions, and that its negative EIS declaration is neither arbitrary nor capricious.

A. Phased Action

We first review the city's determination in the updated EAW and the updated transportation study that the phased action involving the arena and the Schoenecker Center did not require an EIS.

"Connected actions or phased actions shall be considered a single project for purposes of the determination of need for an EIS." Minn. R. 4410.1700, subp. 9. A phased action "means two or more projects to be undertaken by the same proposer that a RGU determines: A. will have environmental effects on the same geographic area; and B. are substantially certain to be undertaken sequentially over a limited period of time." Minn. R. 4410.0200, subp. 60. "Multiple projects and multiple stages of a single project that are

connected actions or phased actions must be considered in total when determining the need for an . . . EIS." Minn. R. 4410.1000, subp. 4.

In the initial EAW, the city determined that construction of the arena was not part of a phased action. And in the first appeal, ARD maintained that the initial EAW was arbitrary and capricious because it ignored the Schoenecker Center as part of a phased action with the arena. *ARD I*, 2024 WL 3320586, at *4. We agreed with ARD, stating that, "[b]y failing to consider the project as part of a phased action that included the Schoenecker Center, the city overlooked an important aspect of the problem." *ARD I*, 2024 WL 3320586, at *4 (quotation omitted). Thus, we reversed and remanded for the city to prepare an EAW "that consider[ed] the project and [the] Schoenecker Center to be a phased action." *Id.* at *5.

On remand, the city prepared the updated EAW, which addressed the project's environmental impact and "[a]dditional development on or near the . . . [c]ampus," including "the completed Schoenecker Center [and] the proposed expansion of the Center for Microgrid Research."[3] The city also prepared the updated transportation study, which

[3] The city also included in the updated EAW's phased-action analysis a nearby parking lot proposed for construction on property owned by respondent St. Paul Seminary, "given the proximity and overlapping timing of the project to the separate arena project." ARD argues that the city failed to properly analyze the parking lot's environmental impact. The seminary counters that it "had no involvement in the environmental review of the arena" and that the parking lot should not be considered part of the university's project. The city did not consult with the seminary before incorporating the parking lot into its phased-action analysis and now concedes that it should not have included the parking lot. We agree with the seminary and the city. The record reflects that the seminary owns the land on which it has intended to build the parking lot and that the university and the seminary "are separate legal entities with distinct non-profit missions and separate boards of trustees." While they "cooperate" in certain academic programs, "[the university] and [the seminary] are

described the expansion of the Schoenecker Center and the Center for Microgrid Research as "academic building projects that accommodate existing academic programs." Construction of the Schoenecker Center added an outdoor plaza and greenspace area, loading docks, utility tunnels, an art gallery, and music rehearsal and performance spaces. The updated transportation study stated that, "[w]hile both projects result in an increase in lab, classroom, office, and collaboration space, they do not necessarily correlate to additional vehicular trips or parking demand."

In this appeal, ARD contends that the city's phased-action analysis remains defective. ARD raises four primary arguments in support of its claim that, because the phased action will increase traffic and require more parking spaces, it should be addressed in an EIS. We review these arguments in light of the Minnesota Supreme Court's instruction that an agency's factual determinations—made within the scope of the agency's statutory authority—are reviewed under the substantial-evidence test. *In re Application of Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 838 N.W.2d 747, 757 (Minn. 2013) (*Minn. Power*). Under that test, we assess whether the agency's decision (1) "adequately explained how it derived its conclusion" and (2) is reasonable based on the record. *Id.*

First, ARD asserts that the new facilities are expansions of older facilities, which will increase traffic. But ARD does not identify any basis in the record to support this

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independent of one another." Thus, the seminary's parking lot is not part of the university's "phased action," which is defined as "two or more projects to be undertaken by the same proposer." Minn. R. 4410.0200, subp. 60. We therefore decline to consider ARD's arguments about this independent project.

claim. And contrary to ARD's position, the record shows that the city considered this issue in the updated transportation study. The city determined that, while the Schoenecker Center and the Center for Microgrid Research added classroom and learning spaces, it would not result in more vehicle traffic. Relying on industry standards, the city found that "enrollment data at the university's St. Paul campus was the focus for assessing the traffic and parking operations of the projects, rather than changes in building square footage."

Second, ARD contends that the university's enrollment is increasing, which will lead to increased traffic. The record does not support this argument. Student enrollment at the university dropped from about 10,245 total undergraduate and graduate students in 2015, to about 9,061 students in the fall of 2022. At the time of the public comments on the project in December 2024, the university's total enrollment was 9,400. This figure, however, was not limited to the St. Paul campus—the only location relevant to this dispute—but rather also included students enrolled in classes at the university's Minneapolis and online campuses.

Third, ARD argues that the city's parking and traffic analysis overlooked an important aspect of the problem—the increase in commuter traffic that ARD claimed would result from the university's demolition of a residential housing unit on its St. Paul campus. The university responds that it added two new residence halls to the campus in 2020, "which significantly expanded on-campus housing." And the city found that, even with the demolition of one residential housing unit, the university still had "a similar number of students in on-campus housing in fall 2024 as compared to fall 2023." More specifically, the university had 2,910 students living in on-campus housing in the fall of

2023, and 2,868 students living in on-campus housing in the fall of 2024. A comparison of visitor parking data from the spring of 2023 to the spring of 2024 likewise supports the city's finding that "parking utilization within the visitor lots ha[d] remained relatively consistent, despite the removal of the non-visitor parking lots, the Schoenecker Center being open, and the construction of the arena being underway."

Fourth, ARD maintains that the Schoenecker Center contains a coffee shop, art gallery, and performance spaces, which will attract visitors. But the record reveals that the city accounted for these uses. The city explained in the updated transportation study that attendance at the approximately 35 to 40 events anticipated annually would typically range from 50 to 150 visitors per event and would generally occur on weeknights. The city also found that these uses were "not new to campus" and instead had existed before in other campus buildings.

In short, the city "adequately explained [in the updated EAW and the updated transportation study] how it derived its conclusion" that the phased action involving the arena, the Schoenecker Center, and the Center for Microgrid Research did not require an EIS. *Minn. Power*, 838 N.W.2d at 757. And, based on our careful review of the record, we conclude that the city's decision is reasonable. *See id.* The updated EAW and the updated transportation study reflect that the city considered the effects of the arena, the Schoenecker Center, and the Center for Microgrid Research as a phased action. The city specifically assessed the impact that events at the Schoenecker Center would have on parking and traffic at the university, concluding that the phased action as a whole did not have the potential for significant environmental effects and thus an EIS was not required. Substantial

evidence supports the city's decision, which complies with our remand instructions as to the phased-action analysis.

B. GHG Emissions

We next review whether the city considered the effect of GHG emissions associated with arena spectator traffic.

In the first appeal, we concluded that the city's negative EIS declaration was arbitrary and capricious because the city overlooked the GHG emissions from increased spectator traffic. *ARD I*, 2024 WL 3320586, at *5, 7–8. We ruled that, "[b]y overlooking how spectator travel would impact the project's GHG emissions, the city entirely failed to address an important aspect of the problem." *Id.* at *8 (citation omitted). And "[w]e acknowledge[d] that, during remand, the city's revised EAW [could] likewise revise its conclusions on the potential environmental effects in parking, traffic, and GHG emissions by spectator traffic." *Id.* at *10.

The updated EAW includes an exhibit setting forth the expected number of vehicles for basketball and hockey games, along with the average roundtrip miles driven per game, an estimate of the total number of miles driven, and estimated emissions. And the updated transportation study analyzed the traffic demands associated with the Schoenecker Center and the Center for Microgrid Research, explaining that any traffic increases caused by the phased action would be "minimal." The city determined that, "[o]verall, GHG emissions from vehicles associated with the three projects are not anticipated to be significant."

We conclude that the city's determination is reasonable based on the record. *See Minn. Power*, 838 N.W.2d at 757. In light of its analysis of past sporting events,

commencements, conventions, and other university affairs, the city estimated attendance and traffic needs. The city used these estimates to consider GHG emissions in the updated transportation study. The updated EAW also includes charts setting out proposed and existing operational and construction emissions for the arena, the Schoenecker Center, and the Center for Microgrid Research. The city adequately explained how it determined that the potential environmental effects in parking, traffic, and GHG emissions did not require an EIS, in line with our remand instructions.

ARD nonetheless argues that the city failed to evaluate the GHG emissions associated with the phased action. And ARD contends that the city's decision lacked the "required analytical rigor" because it miscalculated the expected number of visitors, vehicle emissions, and parking spaces. But the record establishes that the city evaluated the GHG emissions associated with the phased action and decided that the construction projects would have only "minimal impacts on campus traffic and parking." The city determined that the GHG emissions did not create significant environmental effects based on its analysis of the record before it, as well as its reliance on Environmental Quality Board guidance and the expertise of qualified consultants. Because the city adequately explained the rationale for its decision and substantial evidence in the record reasonably supports its findings, we may not substitute our judgment for that of the city. *See In re Denial of Eller Media Co.'s Applications for Outdoor Device Advert. Permits*, 664 N.W.2d 1, 7 (Minn. 2003); *see also Cable Commc'ns Bd.,* 356 N.W.2d at 669.[4]

[4] ARD also argues that the city failed to analyze GHG emissions from the cooling and refrigeration systems of the arena, the Schoenecker Center, and the Center for Microgrid

C. Mitigation Measures

We next consider whether the city followed our remand instruction to identify mitigation measures that are specific, targeted, and certain.

Under Minnesota Rule 4410.1700, a city may rely on mitigation measures to offset the potential for significant environmental effects "only if those measures are specific, targeted, and are certain to be able to mitigate the environmental effects." *CARD*, 713 N.W.2d at 835 (quotation omitted). "Mitigation includes avoiding or limiting the size of a project, repairing or restoring the environment, working to preserve or maintain the environment during the life of the project, or replacing or substituting resources." *Trout Unlimited v. Minn. Dep't of Agric.*, 528 N.W.2d 903, 908 (Minn. App. 1995) (quotation omitted), *rev. denied* (Minn. Apr. 27, 1995); *see also* Minn. R. 4410.0200, subp. 51 (defining mitigation).

In the initial EAW, the city identified mitigation measures to address the project's impact on parking and traffic. *ARD I*, 2024 WL 3320586, at *2. We concluded in the first appeal that these measures were "not specific, targeted, and certain" to mitigate the environmental effects of the increased parking and traffic at the university, and we

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Research. But we considered this issue in the first appeal, concluding that "[t]he city's decision to omit the cooling and refrigeration systems from the GHG analysis [was] . . . supported by substantial evidence." *ARD I*, 2024 WL 3320586, at *7. Because our conclusion on this issue is the law of the case, ARD may not seek reexamination of it in this second appeal. *See Sigurdson v. Isanti County*, 448 N.W.2d 62, 66 (Minn. 1989) ("Law of the case applies when the appellate court has ruled on a legal issue and remanded for further proceedings on other matters. The issue decided becomes law of the case and may not be relitigated . . . or reexamined in a second appeal." (quotation omitted)).

therefore ordered the city to "address the noted shortcomings upon remand." *Id.* at *9–10 (citing *CARD*, 713 N.W.2d at 835).

On remand, the city adopted a mitigation plan aimed at reducing the environmental effects of traffic and parking associated with the project. The city identified seven measures that it found were "expected to effectively mitigate the potential traffic, parking, and other transportation-related impacts of the project." These measures included: event traffic management; the development of an event-management plan (EMP); monitoring; annual reporting on event attendance and the efficiency of the plan; a limitation on the sale of standing-room-only tickets; a snow-and-ice-management plan; and parking for visiting team buses. The EMP also included 11 mandatory components: prepaid-event tickets and parking assignments; measures to increase parking availability; free-transit passes through Metro Transit; discounted rideshare rates; shuttle services with local restaurants and bars; policies to avoid or minimize the number of other on-campus events during large events at the arena; efforts to reduce illegal parking on residential streets; the appointment of an event transportation coordinator to oversee and manage the EMP; off-street parking and shuttle services; traffic-control officers and designated pedestrian routes; and an option to modify these components to respond to concerns.

ARD asserts that the mitigation measures identified in the city's findings are not sufficiently specific, targeted, and certain. And ARD claims that the mitigation measures suffer from the same defects that required reversal and remand in the first appeal because the measures "emphasize passive observation and communication"—not active prevention

of significant environmental effects. The city counters that, on remand, it "developed a specific mitigation plan with more details identified." We agree with the city.

The city adopted mitigation measures "[b]ased on the nature and extent of the potential traffic and parking impacts," and in light of "the strategies identified in the EAW" and in the site-plan review process. Moreover, the city identified seven specific measures, including factors outlined in the EMP. The city explained that "EMPs are regularly used to effectively manage parking, traffic, and pedestrian safety," and the city found that "an EMP for the arena can reasonably be expected to manage the identifiable parking congestion and traffic issues that may result from arena operations." In the updated transportation study, the city determined that the mitigation measures were "expected to reduce parking demand on campus, enhance overall mobility, and lessen the potential impact on the neighboring community." The updated transportation study also calculated the estimated reduction in parking demand, based on the EMP. And the city reasoned that its estimates were "based on engineering judgment and discussion with the project team."

Considering the record as a whole, we conclude that the updated EAW and the updated transportation study reflect that the city adequately explained the reasons for its decision and that the record supports the city's determination about mitigation measures. *See Minn. Power*, 838 N.W.2d at 757, 762. The city complied with our remand instructions because it revised the mitigation measures, such that they are now sufficiently "specific," "targeted," and "certain" to mitigate the environmental effects of the project. *CARD*, 713 N.W.2d at 835.

Even so, ARD maintains that the project will not be subject to any ongoing public regulatory authority. This argument is unavailing.

When determining "whether a project has the potential for significant environmental effects," an RGU must consider "the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority." *ARD I*, 2024 WL 3320586, at *8 (citing Minn. R. 4410.1700, subp. 7(C)). In doing so, "[t]he 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. The Minnesota Supreme Court has recognized "a fundamental distinction between a requirement that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated, on the one hand, and a substantive requirement that a complete mitigation plan be actually formulated and adopted, on the other." *Minn. Ctr. for Envtl. Advocacy*, 644 N.W.2d at 468.

In the first appeal, we observed that it was "unclear how the city could or would enforce the mitigation measures it [had] recommend[ed] because the measures described [would] occur *after* the city issue[d] a certificate of occupancy [for the arena] to the university." *ARD I*, 2024 WL 3320586, at *10 (emphasis in original). The city had originally asserted that it had ongoing authority because the arena's certificate of occupancy would "not be awarded unless the university agreed to the mitigation required by the city." *Id.* (quotation omitted). We concluded that this fell short of what caselaw required because "the certificate of occupancy cannot be compared to permitting requirements and does not provide 'ongoing regulatory authority' without additional evidence or findings by the city." *Id.* (quoting *CARD*, 713 N.W.2d at 835).

On remand, the city explained that its "regulatory authority over the mitigation measures is ongoing," which permits the city to revoke the university's certificate of occupancy if the university flouts the required mitigation efforts. The city found that, "implementing and enforcing the mitigation measures through the certificate of occupancy will ensure that the mitigation measures are subject to ongoing regulatory authority." And it determined that "[f]ailure to comply with any condition of a zoning determination or other zoning approval may result in revocation or modification of such approval." Thus, the record establishes that the city retains the authority to revoke the certificate of occupancy for the arena if the university fails to mitigate the traffic and parking impacts of the project. We conclude that the city complied with our remand instruction to provide "additional evidence and findings" that the arena will be subject to ongoing regulatory authority. *ARD I*, 2024 WL 3320586, at *10.

III. Substantial evidence supports the city's findings on the environmental issues raised for the first time within the scope of this appeal, and the city's decision as to those issues is neither arbitrary nor capricious.

ARD raises several additional challenges relating to: (A) the cumulative potential effects of the project; (B) the rusty patched bumble bee; (C) soil erosion; (D) ice-rink refrigerants;[5] and (E) the effects of the arena's building height and the prohibition on

[5] The city and the university argue that we should decline to consider ARD's arguments about issues (A) through (D) because ARD failed to challenge the city's negative EIS declaration on those grounds in the first appeal. But the Minnesota Supreme Court has explained that, while "[i]ssues determined in a first appeal will not be relitigated . . . nor re-examined in a second appeal[,] . . . issues not determined in the first appeal may, on remand, be litigated." *Mattson v. Underwriters at Lloyds of London*, 414 N.W.2d 717, 720 (Minn. 1987); *see also Sigurdson*, 448 N.W.2d at 66 (explaining that "the doctrine of law of the case applies only to litigated issues and does not reach issues which could have been

development within a setback area from the Mississippi River Bluff.[6] We address each argument in turn.

A. The Cumulative Potential Effects of the Project

ARD argues that the city failed to address the cumulative potential environmental effects of the project because its analysis did not include all buildings on the St. Paul campus, a second ice rink, non-athletic events at the arena, and employee parking.

"Cumulative potential effects" are the 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. Minn. R. 4410.0200, subp. 11a. The criteria "put[s] the proposed project into context" and "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.

Here, we conclude that the updated EAW addressed the cumulative potential effects of the project on the environment. For instance, the city recognized that the arena was expected to hold "other university events" in addition to sporting events. Similarly, the updated transportation study explained that, while "[t]he primary scheduled, reoccurring use of the arena is for basketball and hockey events," the university anticipated other

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but were not litigated" (quotation omitted)). We therefore assume without deciding that issues (A) through (D) are within the scope of our review in this appeal.

[6] The city and the university also assert that the two issues described in (E), above, are outside the scope of our review in this appeal, on different grounds than those just noted. For the reasons discussed below in section III.E, we agree.

activities at the arena. These activities included commencement, external events and conventions, youth events, and club room rentals. The city observed that the capacity of the arena is limited to 5,500 seats, and it evaluated traffic impacts "for a maximum attendance event," regardless of the event type. The updated transportation study also considered parking for employees, coaches, players, and vendors.

On this record, we conclude that the updated EAW and the updated transportation study adequately analyzed the cumulative potential effects of the project.

B. Rusty Patched Bumble Bee

ARD contends that the city failed to investigate or mitigate the effects of arena construction on the rusty patched bumble bee, which is listed as federally endangered and has a "[p]referred habitat [that] includes semi-natural upland grassland, shrubland, woodlands, and forests." And ARD asserts that an EIS is necessary to determine the project's effect on the bee.

The updated EAW acknowledged that the project "is located within a high potential zone of the rusty patched bumble bee." That said, based on information it obtained from the U.S. Fish and Wildlife Service, the city determined that "the disturbed nature of the site is not likely to provide [a] suitable habitat" for the bee. And, in consultation with the Minnesota Department of Natural Resources, the city found that the best management practice would be to "reseed disturbed soils with native species of grass" for the benefit of the bee.

We conclude that the city adequately explained its determination that the disturbed nature of the site made it an unattractive habitat for the bee. And the city's decision is

reasonable based on the record. *See Minn. Power*, 838 N.W.2d at 757. Because substantial evidence supports the city's determination about the potential impacts to the rusty patched bumble bee and because that decision is neither arbitrary nor capricious, we decline to reverse the city's decision based on this issue.

C. Soil Erosion

ARD argues that the city acted arbitrarily and capriciously by failing to order an EIS to consider the environmental effects of the project on unstable soil. According to ARD, the arena site plan includes structures on soils that are susceptible to erosion or soils with high water tables, and construction will have environmental consequences for surrounding areas.

In the updated EAW, the city considered the geology underlying the project area. The city noted that there are four soil types within the site, that the soil types do not have an erosion-hazard rating, and that "there is not enough information to make a determination regarding soil erodibility." And the city found that the site would be graded for development, that soil-stabilization measures would be taken to help control erosion, and that these measures would provide adequate support for the building.

As with the previous issues, we conclude that the city adequately explained in the updated EAW how it made this determination and that the city's decision is reasonable based on the record. *See id.* ARD's soil-erosion argument therefore does not present a basis for reversal.

D. Ice-Rink Refrigerants

ARD contends that an EIS is necessary to review the risk of toxic chemicals used in rink refrigeration. Outlining the health risks associated with the chemicals used in ice rinks, ARD maintains that the chemicals could leak into the Mississippi River, harming the waterway and posing a danger to people and wildlife. ARD asserts that the city acted arbitrarily and capriciously by adopting the updated EAW without requiring an EIS to evaluate the environmental risk posed by the ice-rink refrigerants.

The record reflects that the city considered this issue and determined that it did not require an EIS. The updated EAW observed that the project has adopted "preventative measures," including subfloor heating in the arena to reduce the risk of permafrost, a sealant for any rooms storing potentially hazardous materials, a zero-permeable vapor barrier, an emergency-exhaust system, a spill-prevention plan, an ammonia-plant safety program, and reliance on trained professionals. The city also addressed the likelihood that refrigerants could leak into the water, finding that there are no surface waters within the project site. And the city explained that the university would obtain the appropriate permits from the Minnesota Pollution Control Agency and would dispose of any hazardous waste materials "in the manner specified by local or state regulation."

Because it articulated reasons for its decision that are sufficiently supported by the record, we conclude that they city's decision is neither arbitrary nor capricious. *See id.*

E. Building Height and Setback Area

Finally, ARD argues that the city failed to address the environmental effects of the arena's building height and development within the setback area from the Mississippi River

Bluff. The city and the university counter that these issues are outside the scope of our certiorari review because these arguments challenge legislative decisions by the city to adopt or amend zoning ordinances, which may be brought only in district court. The city and university further respond that ARD is already seeking such review in its parallel Ramsey County District Court action.

"Decisions by local government bodies are generally legislative rather than judicial in nature, and are not subject to immediate appellate review." *Dead Lake Ass'n, Inc. v. Otter Tail County*, 695 N.W.2d 129, 134 (Minn. 2005). Thus, unless such decisions are quasi-judicial in nature, "parties wishing to challenge these decisions must first litigate the question of their validity in district court." *Id.* And Minnesota Statutes section 462.361, subdivision 1, provides that a party "aggrieved by an ordinance, rule, regulation, decision or order of a governing body or board of adjustments and appeals . . . may have such ordinance, rule, regulation, decision or order, reviewed by an appropriate remedy in the district court." Minn. Stat. § 462.361, subd. 1 (2024); *see also Interstate Power Co. v. Nobles County Bd. Of Comm'rs*, 617 N.W.2d 566, 574 (Minn. 2001) ("Legislative acts are not reviewable by certiorari in the court of appeals, but by a direct action in district court."). The Minnesota Supreme Court has explained that, while "decisions about granting [conditional-use permits (CUPs)] are quasi-judicial in nature[,] . . . the adoption or amendment of a zoning ordinance is a legislative act." *Dead Lake Ass'n*, 695 N.W.2d at 134–35 (citations omitted).

Regarding building height, ARD contends that the arena lies in the H2 residential zoning district—which sets the maximum building height at 39 feet—and that the arena

will exceed that limit by rising to a height of 75 feet. The city counters that the height restrictions in the H2 zoning district are subject to a CUP granted to the university in 1990, which sets the maximum building height at 75 feet in the project area. But ARD maintains that the city improperly attempted to use the CUP to supersede or alter the limitations set forth in the relevant zoning regulations. In the updated EAW, the city addressed this issue and determined that "[t]he facility's structure heights do not exceed the maximum height allowance, as defined by the University of St. Thomas'[s CUP] using the City of Saint Paul building height calculations."

As for setback area, ARD asserts that the project is located in the Mississippi River Corridor Critical Area (MRCCA), which is a designation that seeks to "protect and preserve the natural, scenic, recreational, and transportation resources" along the Mississippi River. ARD argues that, although the MRCCA prohibits development within 40 feet of the bluff line, the university is developing the land near the Mississippi River Bluff, which will degrade groundwater beneath the site, harm vegetation and wildlife, and cause erosion.

We conclude that both of ARD's arguments as to building height and setback area challenge legislative acts by the city about the adoption or amendment of zoning regulations and ordinances. *See* Minn. Stat. § 462.3595, subd. 1 (2024) (authorizing municipalities to issue CUPs under zoning regulations); *see also* Minn. R. 6106.0060, subp. 3 (2023) (providing that "[l]ocal governments within the [MRCCA] must adopt, administer, and enforce plans and ordinances" consistent with zoning regulations). Because these decisions are "legislative rather than judicial in nature," they "are not subject to

immediate appellate review" and ARD must "first litigate the question of their validity in district court." *Dead Lake Ass'n*, 695 N.W.2d at 134; *see also* Minn. Stat. § 462.361, subd. 1.

Indeed, ARD has sued the city and the university in Ramsey County District Court, pursuing these very land-use claims. Among other things, ARD alleges in the lawsuit that the city and the university violated various provisions of St. Paul's legislative code with respect to the building height of the arena and construction along the bluff line that does not comply with the MRCCA. ARD seeks declaratory judgment that the arena exceeds the maximum building height restrictions and that it does not meet the city's setback requirements.

Consistent with the supreme court's decision in *Dead Lake Ass'n*, and given that these issues are being litigated in Ramsey County District Court as provided by Minnesota Statutes section 462.361, subdivision 1, we conclude that ARD's building-height and setback-area arguments are outside the scope of our review in this certiorari appeal.[7]

Affirmed.

[7] In connection with its argument that this court "should require an EIS with instructions to address all issues included in ARD's [appellate] brief," ARD requests that we "stay[] the construction of the phased action pending the completion of environmental review," that the "stay . . . begin immediately (regardless of whether [the university] seeks review from the [Minnesota] Supreme Court)," and that the stay "extend to include any period in which an appeal of the EIS is taken." Because we affirm the city's negative EIS declaration for the reasons discussed above, ARD's request for a stay is moot.