



**September 26, 2023**

Jesse Krzenski  
Environmental Review Program Administrator  
MN Environmental Quality Board

Petitioner's Representative  
Gary R. Todd  
682 Summit Ave.  
St. Paul, MN 55105

Dear Mr. Krzenski,

On August 15, 2023, the Minnesota Environmental Quality Board ("EQB") notified the City that EQB had received a citizen's petition requesting preparation of an Environmental Assessment Worksheet ("EAW") for the Summit Avenue Regional Trail ("SART"). The EQB notification designated the City as the "responsible governmental unit" ("RGU") for the EAW petition and contained a copy of the petition evidence submitted to support the EAW petition.

Under Minnesota law, EQB's designation of an RGU does not compel the RGU to undertake the EAW sought by the petition. Instead, the law requires the RGU to evaluate the evidence submitted with the petition to determine whether a project "may [or may not] have the potential for significant environmental effects." If the RGU determines that the evidence presented with the petitioner demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects, then the RGU is required to order preparation of an EAW. However, if the RGU determines that the presented evidence fails to demonstrate that the project may have the potential for significant environmental effects, then the RGU is required to deny the petition.

When considering whether to grant a petition to require an EAW, the RGU reviews the petition evidence to determine whether the evidence indicates that there "may be potential for significant environmental effects" utilizing the following factors:

- A. type, extent, and reversibility of environmental effects;
- B. cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures

specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;

- C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
- D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EIS's."

(Minn. R. 4410.1700, subp. 7)

The citizen petition specifies two areas of "environmental harm" concern:

1. Destruction of the Summit Avenue Tree Canopy.

The petition evidence alleges that SART will result in an "undisputed and devastating impact on the tree canopy currently lining Summit Avenue." The substance of this claim appears to relate to the "type, extent, and reversibility of environmental effects" criteria under Minn. R. 4410.1700, subp.7. However, while construction of the SART may result in irreversible damage to some *existing* trees currently lining Summit Avenue, the extent of this tree damage is neither absolute nor must it be permanent. Furthermore, measures to mitigate tree loss and tree damage through construction measures enforced during and after construction are easily implemented.

The City has stressed, should the SART receive funding, that tree replacement and protection will be initiated and controlled during and after construction. The petition presupposes that the City will make no effort to protect or replace trees and implies that the City has dismissed the notion that some trees might be damaged during construction of the SART. The petition position is no more than speculation. This position is not supported by the City's present forestry policies or the City's specific commitment to sustain the tree canopy through mitigation measures for the SART. It also cannot be overlooked that the present Summit Avenue tree canopy which the petition purportedly seeks to preserve is the undisputed product of the City's current urban forestry practices. The City has pledged to continue these general forestry practices and further pledges to specifically fine-tune its overall tree canopy protection and mitigation measures for the SART in keeping with Minn. R. 4410.1700, subps. 7(c) and (d). Should the SART receive funding so that it is an actual "project," the City's commitment to sustaining the tree canopy along Summit Avenue through tree canopy protection and mitigation measures will be implemented. Accordingly, the City finds that the petitioners' claim of "significant environmental effect" with respect to the current tree canopy is speculative at best.

As to the petitioners' claim that "an EAW would fulfill the regulatory goal of understanding the impact which a proposed project will have on the environment," the City reemphasizes its pledge to implement tree canopy protection and mitigation measures specific to the SART for the purpose of preserving the long-term health of the Summit Avenue tree canopy. This is an easily met goal as the City has the demonstrated technical knowledge, expertise and assets to implement urban forestry best practices on a City-wide basis which obviates the need for an EAW for the SART as proposed. As such, the City finds the petitioners' claim that an EAW is

necessary is unfounded, and that an EAW to understand the impact of the SART project on the environment of the present tree canopy along Summit Avenue is unnecessary.

2. Irreversible Demolition of the Nationally Protected Historic Streetscape on Summit Avenue.

The petition alleges the “proposed Project” - presumably the SART although any distinction between the SART and potential work specific to Summit Avenue is not made clear from the context of the petition language – will impact Summit Avenue in that “the curb lines will be significantly and irreversibly altered (the historic granite curbs will be destroyed), and dramatically so East of Lexington Avenue” and that the impact on the “greenspace that is a character defining feature to the historic districts would be catastrophic.”

Based upon a review of the petition materials which refer to the Summit streetscape as a “nationally protected historic streetscape”, the City finds that this claim is unfounded. The National Register Nomination Narratives for the West Summit Avenue Historic District and the Historic Hill District makes no reference to the “streetscape on Summit avenue” being “nationally protected.” Neither Nomination Narrative lists Summit Avenue as an “historic streetscape.” Neither Nomination Narrative list Summit Avenue as a “contributing” element to either Historic District. Therefore, the petition’s reference to a “Nationally Protected Historic Streetscape” is either a misunderstanding of the historic elements which actually contribute to the Historic Districts along Summit Avenue as specified in the National Park Service documentation forms or it is a misapprehension of a statement made by the City’s own consultant which had recommended maintaining the “symmetry” of Summit Avenue’s present alignment. Simply put, there is no evidence for the notion that the Summit Avenue streetscape is a “nationally protected historic streetscape” to support undertaking a discretionary EAW to evaluate the potential of significant environmental effects on what is a non-existent “nationally protected historic streetscape.”

Notwithstanding the aforementioned review as the basis to deny the EAW petition, the City further notes that the SART is a “project” in name only. Minn. R. 4410.0200, subp. 65 defines “Project” as a “governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly. 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.” Further, Minn. R. 4410.0200, subp. 33 defines the term “Governmental action” as “activities including projects wholly or partially conducted, permitted, assisted, financed, regulated, or approved by governmental units, including the federal government.” Presently, there is no funding source for the SART which would result in physical manipulation of the environment as a result of “governmental action” as that term is defined under Minn. R. 4410.0200m subp. 65.

Without a funding source, the SART is not “substantially certain to be undertaken.” On this basis alone, the EAW petition could be denied as there is no “project” to evaluate the potential for significant environmental effects per Minn. R. 4410.1100, subp.5. Minnesota law 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). The “definiteness” of a project 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). Without a funding source, the SART is not sufficiently definite to constitute a project for the purposes of environmental review. Simply undertaking a

study and submitting it for approval does not create a “project.” As noted under Minn. R. 4410.0200, subp. 65, “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.” SART was studied because a study was a governmental process prerequisite to potentially obtain funds from the Metropolitan Council. Therefore, without a funding source there can be no physical activity related to SART as a “project.” At best, the SART is no more than an indefinite plan which does not warrant preparation of an EAW at this juncture. For all the above stated reasons, the City of Saint Paul, as the designated RGU in this matter denies the citizen petition request for an EAW for the Summit Avenue Regional Trail dated.

Sincerely,

*Nicolle Goodman*

Nicolle Goodman (Sep 26, 2023 16:09 CDT)

Nicolle Goodman  
Director of Planning and Economic Development