STATE OF MINNESOTA

IN SUPREME COURT

A19-0999

Court of Appeals — Moore, III, J.

State of Minnesota by Smart Growth Minneapolis, et al.,

Appellants,

vs.

City of Minneapolis,

Respondent.

Filed: February 10, 2021
Office of Appellate Courts

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S Y L L A B U S

1. The district court erred in dismissing appellants' claim challenging the adoption of a municipal comprehensive plan under the Minnesota Environmental Rights Act, Minn. Stat. §§ 116B.01–.13 (2020), because that claim is not barred by an

administrative rule promulgated under the Minnesota Environmental Policy Act, Minn. Stat. §§ 116D.01–.11 (2020).

2. The district court erred in dismissing appellants' claim because the complaint adequately alleged a causal link between the City of Minneapolis's adoption of its 2040 Comprehensive Plan and the purported materially adverse environmental effects and, therefore, stated a claim upon which relief can be granted under the Minnesota Environmental Rights Act.

Reversed.

O P I N I O N

MOORE, III, Justice.

This appeal concerns a claim challenging the City of Minneapolis's (City) 2040 Comprehensive Plan (Plan), which alleges that adoption of the Plan violates Minnesota environmental law. We are asked to decide whether a challenge to the adoption of a comprehensive plan can be the proper subject of a claim under the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01–.13 (2020), when such a plan is exempted from environmental review by an administrative rule promulgated under the Minnesota Environmental Policy Act (MEPA), Minn. Stat. §§ 116D.01–.11 (2020). We are also asked to decide what showing is necessary to overcome a motion to dismiss for failure to state a claim under MERA, particularly as to an allegation that certain conduct is likely to cause materially adverse environmental effects.

In early December 2018, before the vote of the Minneapolis City Council to approve the Plan, appellants Smart Growth Minneapolis, Audubon Chapter of Minneapolis, and

Minnesota Citizens for the Protection of Migratory Birds (collectively, Smart Growth) filed a complaint against the City, asserting a claim that challenged the Plan under MERA. The City responded with a motion under Minnesota Rule of Civil Procedure 12.02(e) to dismiss Smart Growth's complaint for failure to state a claim upon which relief can be granted. The district court granted that motion, finding that Smart Growth's claim under MERA was barred by an administrative rule, Minn. R. 4410.4600, subp. 26 (2019), adopted under MEPA. The district court held that because comprehensive plans are specifically exempt from environmental review under rule 4410.4600, comprehensive plans are, therefore, also exempt from judicial review under MERA. The district court also dismissed Smart Growth's claim based on a second, independent conclusion: that Smart Growth "fail[ed] to establish a prima facie showing under MERA."[1] The court of appeals affirmed. Because we hold that adoption of a comprehensive plan can be the subject of a MERA claim and that appellants' allegations are sufficient to state a claim for which relief can be granted under MERA, we reverse.

FACTS

Local governmental units in the metropolitan area are required to create and adopt comprehensive plans under the Metropolitan Land Planning Act, Minn. Stat. §§ 473.851–.871 (2020). Comprehensive plans "provide guidelines for the timing and sequence of the

[1] In Section II of this opinion, we address the framing of the issue by the parties and the district court at the Rule 12.02(e) stage: whether Smart Growth established a prima facie showing under MERA. The issue, however, is more properly framed under Rule 12.02(e) as whether Smart Growth alleged sufficient facts in its complaint to state a claim upon which relief can be granted.

adoption of official controls to ensure planned, orderly, and staged development and redevelopment." Minn. Stat. § 473.858, subd. 1. Governmental units are required to "review and, if necessary, amend" these plans at least once every 10 years. Minn. Stat. § 473.864, subd. 2. The Metropolitan Council reviews, and may require modification to, any proposed comprehensive plan or plan amendments. Minn. Stat. § 473.858, subd. 3; Minn. Stat. § 473.864, subds. 1, 2(b)(1).

In March 2018, consistent with the ten-year plan review requirement, the City released its proposed 2040 Plan for public comment.[2] The proposed Plan contained substantial amendments to the City's existing comprehensive plan, which would result in the elimination of single-family zoning and a city-wide increase in permissible building density.[3] Following the comment period, the City scheduled a vote for December 7, 2018, on whether to submit the Plan to the Metropolitan Council for review.

On December 4, 2018, three days before the scheduled vote, Smart Growth served a complaint seeking a declaration that Smart Growth had satisfied the required prima facie

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[2] This appeal arises in the context of a motion to dismiss for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e); thus, all of the facts are taken from Smart Growth's complaint and are accepted as true. *Radke v. County of Freeborn*, 694 N.W.2d 788, 791 n.1 (Minn. 2005).

[3] Smart Growth attached to its complaint an article published in late 2018 in Curbed, an online publication under the umbrella of New York Magazine. The article characterized the City's Plan as an ambitious effort to address deep and challenging disparities around climate change, housing choice and affordability, and racial equity and as "the furthest-reaching" proposal from a municipality in the United States that would "upzone nearly the entire city." The points made in the article relate to the merits of the Plan and whether the objectives of the Plan are good policy for the City; these issues are not relevant to our decision. The only question before us is whether Smart Growth has stated a viable claim under Minn. R. Civ. Rule 12.02(e) for a violation of MERA.

showing under MERA that the Plan "is likely to cause the pollution, impairment, or destruction of the air, water, land or other natural resources located within the state" and that the City had no affirmative defenses. Smart Growth also sought to enjoin the City's approval of the Plan until the City offered a rebuttal to or affirmative defense against Smart Growth's prima facie showing, "presumably through a voluntary environmental review." Along with the complaint, Smart Growth also filed a motion for a temporary restraining order to enjoin the City from holding the vote on December 7.

Smart Growth alleged in the complaint that implementation of the Plan would cause increased density and related complications that are "likely to materially adversely affect the environment." The complaint also stated that an "immediate and full build-out" of the Plan would likely result in a "[d]ramatic" (1) increase in the amount of impervious surface area, thus resulting in the material increase in the rate and volume of stormwater runoff; (2) increase in the number of residents, thus resulting in the material increase in domestic wastewater generation, potable water usage, and parking needs/vehicles/traffic; and (3) loss of the amount of tree coverage/green space, thus resulting in the material decrease in aesthetic livability and bird and other wildlife habitat. Smart Growth further alleged that the "potential and likely environmental effects" of the build-out include (1) threats to the adequacy of existing public infrastructure, including storm and sanitary sewer systems and

water supply; (2) threats of traffic congestion; (3) threats to air quality; and (4) threats to aesthetic livability, tree coverage, and wildlife habitat.

Smart Growth attached to the complaint, and incorporated by reference, an environmental analysis of the Plan by Sunde Engineering, PLLC.[4] Sunde describes the Plan as a "dramatic shift in land use policy" that will "inherently impact the environment as well as existing infrastructure." The report calculates a number of projections under the Plan, including increased residential density, traffic trips per day, volume of water runoff, and contaminant loads on the storm sewer system.

The day before the City's scheduled vote on whether to approve the Plan for consideration by the Metropolitan Council, the district court denied Smart Growth's motion for a temporary restraining order. Two weeks later, the City filed a motion to dismiss the complaint for failure to state a claim under Minn. R. Civ. P. 12.02(e). It argued that Smart Growth's MERA claim is barred by rule 4410.4600, subp. 26, even though that administrative rule was promulgated under MEPA, not MERA. The City also argued that Smart Growth did not satisfy MERA's prima facie requirement. Specifically, the City claimed that because the Plan does not implement any specific project causing or likely to

[4] The Sunde report is attached to and quoted extensively throughout Smart Growth's complaint; thus, the district court's consideration of the report in ruling on the motion to dismiss did not convert the motion into a motion for summary judgment. *See N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004) (holding that documents referenced in a complaint are not "matters outside the pleadings" and, thus, may be considered by a district court in ruling on a Rule 12.02(e) motion to dismiss).

cause pollution, impairment, or destruction of the environment, Smart Growth cannot establish a prima facie showing.

Smart Growth then filed a motion for summary judgment pursuant to Minnesota Rule of Civil Procedure 56.01. It contended that its MERA claim is not barred by the MEPA exemption in rule 4410.4600, that it satisfied MERA's prima facie showing, and that the City failed to satisfy its own burden of rebutting or asserting an affirmative defense against that showing.[5]

The district court granted the City's motion to dismiss and denied Smart Growth's motion for summary judgment. The district court found that Smart Growth's claims "are barred by Minnesota law" and, therefore, do not state a claim upon which relief can be granted. The district court reasoned that because comprehensive plans are exempt from MEPA environmental review under the exemption in rule 4410.4600, Smart Growth's claim asking that the City be ordered to engage in environmental review under MERA, must be procedurally barred. The district court also found, as an independent basis for dismissal, that Smart Growth failed to make a prima facie showing under MERA because

[5] MERA provides that when a plaintiff makes a prima facie showing that a defendant's conduct caused, or is likely to cause, pollution, impairment, or destruction of natural resources, "the defendant may rebut the prima facie showing by the submission of evidence to the contrary" or "show, by way of an affirmative defense, that there is no feasible and prudent alternative." Minn. Stat. § 116B.04(b).

it did not identify any City project or action that would "itself cause any pollution, impairment, or destruction of natural resources."

Smart Growth appealed, and the court of appeals affirmed the district court on both grounds. *State by Smart Growth Minneapolis v. City of Minneapolis*, 941 N.W.2d 741 (Minn. App. 2020). The court of appeals first held that allowing Smart Growth to obtain environmental review of the Plan under MERA would be contrary to MEPA, which exempts the City from conducting an environmental review under rule 4410.4600, and would create conflict between the two acts. *Id.* at 745. The court of appeals next held that Smart Growth failed to plead a prima facie case under MERA because the complaint did not sufficiently allege "any specific facts to support [its] allegations that the approval of the plan is likely to materially and adversely affect the environment." *Id.* at 746. The court of appeals concluded that the City's mere approval of the Plan is too attenuated to support Smart Growth's claim. *Id.* at 746–47.

The concurring judge agreed that Smart Growth's complaint failed to plead sufficient facts to state a claim under MERA, but disagreed that the exemption in rule 4410.4600 precluded Smart Growth from pursuing relief under MERA as a matter of law. *Id.* at 748 (Johnson, J., concurring specially). The concurrence noted that "there is nothing in the text of MEPA or the MEPA exemption rule to suggest that the MEPA exemption rule extends to a cause of action arising under MERA" and concluded that the "district court applied an administrative rule outside the context for which it was intended." *Id*.

We granted Smart Growth's petition for review.

ANALYSIS

Before we turn to the two issues before us, we begin with a review of the relevant Minnesota environmental laws that govern this dispute. Enacted in 1971, MERA was Minnesota's first piece of environmental legislation and was a significant change in the law. Act of June 7, 1971, ch. 952, 1971 Minn. Laws 2011, 2011–19; *People for Env't Enlightenment & Resp. (PEER), Inc. v. Minn. Env't Quality Council* (*PEER*), 266 N.W.2d 858, 865, 868 (Minn. 1978). The purpose of MERA is to provide every person with "an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction" so that present and future generations may enjoy the state's natural resources. Minn. Stat. § 116B.01. MERA defines "pollution, impairment, or destruction" to include "any conduct by any person . . . which materially adversely affects or is likely to materially adversely affect the environment." Minn. Stat. § 116B.02, subd. 5. A "person" includes "any state, municipality or other governmental or political subdivision." *Id.*, subd. 2.

The relief available under MERA is broad in scope. A court "may grant declaratory relief, temporary and permanent equitable relief, or may impose such conditions upon a party as are necessary or appropriate." Minn. Stat. § 116B.07. The Legislature intended that the rights and remedies of MERA be "*in addition to* any administrative, regulatory, statutory, or common law rights and remedies *now or hereafter available*." Minn. Stat. § 116B.12 (emphasis added). Nothing in MERA limits the discretion of courts in fashioning appropriate relief.

Two years after enacting MERA, the Legislature passed three other environmental acts "to complement MERA," one of which was MEPA. *PEER*, 266 N.W.2d at 865; Act of May 19, ch. 412, §§ 1–7, 1973 Minn. Laws 895, 895–902. Although MERA and MEPA each have a slightly different focus, "they are part of a coherent legislative policy." *PEER*, 266 N.W.2d at 865. MEPA requires that governmental units "contemplating taking action . . . on a proposed project must first consider the project's environmental consequences." *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817, 823 (Minn. 2006). Specifically, MEPA requires governmental units to prepare "a detailed environmental impact statement" when there is the "potential for significant environmental effects resulting from any major governmental action." Minn. Stat. § 116D.04, subd. 2a(a).

I.

We now turn to the issue of whether the rule exempting comprehensive plans from environmental review under MEPA also exempts comprehensive plans from actions brought under MERA. This is primarily a question of statutory interpretation—specifically, whether the two Acts can be construed together without conflict—but also whether and how an administrative rule promulgated under one act affects the other act.

We review questions of statutory interpretation de novo. *Binkley v. Allina Health Sys.*, 877 N.W.2d 547, 550 (Minn. 2016). The goal of all statutory interpretation "is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2020). If the legislative intent "is clear, we apply the statute according to its plain meaning." *Fish*

v. Ramler Trucking, Inc., 935 N.W.2d 738, 741 (Minn. 2019). Each law is to be construed, where possible, "to give effect to all its provisions." Minn. Stat. § 645.16.

"When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both." Minn. Stat § 645.26, subd. 1 (2020). "If the conflict between the two provisions [is] irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision was enacted" later in time. *Id.* And if the provisions of two or more laws passed at different sessions are irreconcilable, the law latest in date of final enactment prevails. *Id.*, subd. 4. We have a general policy of "harmonizing statutes dealing with the same subject matter." *PEER*, 266 N.W.2d at 866. And MERA and MEPA especially must be read in harmony because "they are part of a coherent legislative policy." *Id.* at 865.

The City argues that allowing Smart Growth's MERA challenge to proceed would create "irreconcilable inconsistency" between MERA and MEPA because Smart Growth could obtain environmental review of the Plan under MERA that it could not obtain under MEPA. The City contends that MERA's more general provision is superseded by MEPA and its exemption rule because MEPA was passed later in time and specifically addresses environmental review of activity by governmental units. Finally, the City argues that our description of the relationship between the two acts in *PEER* —that MERA provides private citizens with a method to ensure governmental units comply with the mandates of MEPA—identified the *only* manner in which MERA can apply to government conduct. *See PEER*, 266 N.W.2d at 865.

Smart Growth argues that rule 4410.4600 can only apply to the act under which it was promulgated, MEPA, and not to MERA. Further, Smart Growth asserts that our broad holding in *PEER* makes clear that, absent express statutory language, other environmental legislation will not be exempt from having to comply with MERA.

We begin by considering the text of MEPA, codified at chapter 116D. MEPA requires environmental review of certain "governmental action," defined as "activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated, or approved by units of government." Minn. Stat. § 116D.04, subd. 1a(d). MEPA directs the Environmental Quality Board (Board) to "promulgate rules *in conformity with this chapter* and the provisions of chapter 15."[6] *Id.*, subd. 5a (emphasis added). MEPA expressly authorizes the Board to establish by rule "categories of actions for which environmental impact statements and for which environmental assessment worksheets must be prepared as well as categories of actions for which no environmental review is required *under this section*." *Id.*, subd. 2a(b) (emphasis added). Nowhere does the text of MEPA provide any indication that the Legislature intended for MEPA to limit the rights created under MERA. Instead, the instructions contained in MEPA are all *expressly limited* to chapter 116D. *See id.*, subds. 2a(b), 5a.

Pursuant to the authority granted under MEPA, the Board promulgated a set of detailed rules addressing which governmental actions require which level of environmental

[6] Chapter 15 governs state agencies as a whole and addresses general matters of interagency relationships, administrative boards and committees, and appointments.

review. Rule 4410.4600 establishes categories of actions for which no environmental review is required.[7] The exemption for comprehensive plans is found in subpart 26, the "governmental activities" category:

> Proposals and enactments of the legislature, rules or orders of governmental units, adoption and amendment of comprehensive and other plans, zoning ordinances, or other official controls by local governmental units . . . are exempt.

Minn. R. 4410.4600, subp. 26. Projects covered by subpart 26 are *always* exempt from MEPA environmental review unless the project proposer initiates or agrees to review.[8]

We turn next to the text of MERA, codified at chapter 116B, which expressly provides that the remedies under MERA are "in addition to" any rights "now or hereinafter available." Minn. Stat. § 116B.12. In our very first decision under MERA, we noted that "[w]here a statute such as this is drafted in broad and comprehensive language, we are not justified in engrafting exceptions upon it." *County of Freeborn by Tuveson v. Bryson*, 210

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[7] The Board's rules apply to 24 other categories of actions in addition to the governmental activities category at issue here. *See* Minn. R. 4410.4600, subps. 2–27. The City's argument—that the exemption in subpart 26 applies to bar a MERA claim based on adoption of a comprehensive plan—would inevitably mean that the actions governed by the other 24 categories contained in rule 4410.4600 would also be exempt from MERA. These categories include actions such as construction of certain electric generating plants, particular mining projects, specific expansions of existing paper or pulp processing facilities, construction of certain new wastewater treatment facilities, and some airport and highway projects. *Id.*, subps. 3, 8, 9, 11, 13, 14.

[8] Under rule 4410.4600, subpart 1: "Projects within subparts 2 and 26 are exempt from parts 4410.0200 to 4410.6500." Thus, rule 4410.4600 exempts comprehensive plans from environmental assessment worksheets (parts 4410.1000 to 4410.1700), environmental impact statements (parts 4410.2000 to 4410.3100), and any alternative forms of review (parts 4410.3600 and 4410.3610). Further, a governmental unit may perform discretionary review of an exempted project only if the project proposer agrees. *See* Minn. R. 4410.1000, subp. 3(D); Minn. R. 4410.2000, subp. 3(B).

N.W.2d 290, 296 (Minn. 1973). Since *Tuveson*, we have continued to reject attempts to find exceptions to the "broad and comprehensive" scope of MERA without clear direction from the Legislature—a principle reiterated in *White Bear Lake Restoration Ass'n, ex rel. State v. Minnesota Department of Natural Resources*, our most recent decision under MERA. *See* 946 N.W.2d 373, 380 (Minn. 2020).

In *PEER*, we rejected an argument very similar to that made by the City here. 266 N.W.2d at 866. The issue in *PEER* was whether administrative proceedings under the Power Plant Siting Act (PPSA) are subject to the provisions of MERA. In determining that the proceedings are *not exempt* from MERA, we concluded that the Legislature, "being aware of the existence of MERA when it passed the PPSA, cannot be assumed to have exempted PPSA proceedings from having to comply with MERA" because there was no "express statutory language to that effect." *Id.* In light of the broad scope of MERA, we saw no reason to limit the application of MERA by exempting PPSA proceedings without "express legislative direction." *Id.*

Additionally, the Legislature has shown on at least two occasions that it knows how to expressly exempt statutes from the scope of MERA when it desires to do so. First, the Legislature expressly exempted conduct taken in accordance with the Waste Management Act from a MERA action brought under section 116B.03. *See* Minn. Stat. § 115A.30 (2020) ("No civil action shall be maintained pursuant to section 116B.03 with respect to conduct taken by a person pursuant to [the regulatory authority of] the Pollution Control

Agency under sections 115A.18 to 115A.30.").[9] Similarly, the Legislature explicitly limited the reach of MERA when establishing the Minnesota Agricultural and Economic Development Board. *See* Minn. Stat. § 41A.04, subd. 3 (2020) ("No action is allowable under section 116B.03, subdivision 1, with respect to acts of any person authorized or required in order to execute the resolution.").

We disagree with the City's argument that allowing a MERA challenge to a comprehensive plan that is exempt from environmental review under MEPA creates an irreconcilable inconsistency between the two acts. It is not inconsistent to recognize that a MERA challenge might result in environmental review that would not be required under MEPA, given that MERA is broader in scope than MEPA and applies to "any conduct" of "any person"—including municipal governments. Minn. Stat. §§ 116B.03, subd. 1, 116B.02, subds. 2, 5; *White Bear Lake Restoration Ass'n*, 946 N.W.2d at 379–80.

We also disagree with the City's characterization of our opinion in *PEER*, in which we identified one way that the two laws interact. In *PEER*, we noted that MERA provides private citizens with a method to ensure that governmental units comply with MEPA's mandates. 266 N.W.2d at 865. We did not, however, indicate that the *only* purpose of MERA is to act as an enforcement mechanism for MEPA. Such a construction would severely limit the broad protections clearly intended by MERA. Minn. Stat. §§ 116B.01, 116B.02, subd. 5. Further, this limitation is also illogical considering that MERA created

[9] The Waste Management Act also restricts the applicability of MERA actions under section 116B.10, but does not exempt the Act from those claims entirely. Minn. Stat. § 115A.30.

individual rights to protect the environment from harm and that MERA existed as a standalone environmental act for 2 years before MEPA was enacted.[10]

In sum, our precedent dictates that an exemption from the broad scope of MERA is not presumed absent *express* statutory language to that effect. MEPA contains no express language exempting it from the reach of MERA. Instead, MEPA *expressly limits* application of its provisions, including the administrative rules promulgated under it, to only that Act. The City presents no compelling reasons why the allegations in Smart Growth's complaint are exempt from review under MERA. MERA and MEPA can be read in harmony and their provisions can be given full force without resulting in conflict.[11] Therefore, we hold that the district court erred in concluding that Smart Growth's claims

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[10] The City's emphasis on the court of appeals' opinion in *Holte v. State* is unpersuasive. 467 N.W.2d 346 (Minn. App. 1991), *rev. denied* (Minn. May 16, 1991). In addition to not being binding on us, the facts of *Holte* are inapposite to the case before us for the reasons noted by Judge Johnson in his special concurrence. *State by Smart Growth Minneapolis*, 941 N.W.2d at 748–49.

[11] We likewise disagree with the City's argument that MERA cannot apply to comprehensive plans because those plans are governed instead by the Metropolitan Land Planning Act (MLPA). We construe statutes, where reasonably possible, "to avoid irreconcilable difference and conflict with another statute." *Erickson v. Sunset Mem'l Park Ass'n*, 108 N.W.2d 434, 441 (Minn. 1961). The MLPA, passed five years after MERA, lays out the procedures for and content required of comprehensive plans. Act of April 2, 1976, ch. 127, §§ 1–20, 1976 Minn. Laws 292, 292–304 (codified as amended at Minn. Stat. §§ 473.851–.869 (2020)); *see* Minn. Stat. §§ 473.858–.59. The MLPA concerns land-use planning and does not address environmental protection. MERA concerns environmental protection and does not address land-use planning. While both acts concern land use broadly, they have separate, non-conflicting objectives. The provisions of the MPLA and MERA are not in conflict with one another and can, therefore, be given full effect.

are barred under Minnesota law, because rule 4410.4600 does not exempt comprehensive plans from environmental review under MERA.

II.

We next consider whether Smart Growth's complaint "sets forth a legally sufficient claim for relief." *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008).[12] We review a district court's grant of a motion to dismiss for failure to state a claim de novo. *Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 68 (Minn. 2020). We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the plaintiff.[13] *Hansen v. U.S. Bank Nat'l Ass'n*, 934 N.W.2d 319, 325 (Minn. 2019). "[I]t is immaterial whether or not the plaintiff can prove the facts alleged." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000). "[A] pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963). "The showing a plaintiff must make in order to survive a

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[12] In *Walsh v. U.S. Bank, N.A.*, we explicitly declined to incorporate a heightened "plausibility" pleading requirement into the standard for claim sufficiency under Minnesota Rule of Civil Procedure 8.01. 851 N.W.2d 598, 603 (Minn. 2014). We did so with the understanding that "[o]ne of the fundamental changes intended by the adoption of Rule 8.01 was 'to permit the pleading of events by way of a broad general statement which may express conclusions rather than, as was required under code pleading, by a statement of facts sufficient to constitute a cause of action.' " *Id.* at 604 (quoting *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963)).

[13] Smart Growth urges us, without providing relevant support, to give special deference to its expert environmental analysis report, which was attached to and incorporated in its complaint. We decline to do so because there is no precedent or persuasive justification for such treatment. Instead, we apply the Rule 12 standard to the complaint and the report as a whole.

motion to dismiss under Minn. R. Civ. P. 12.02(e) is minimal." *Noske v. Friedberg*, 670 N.W.2d 740, 742 (Minn. 2003).

MERA provides a burden-shifting framework in which the plaintiff must make a prima facie showing that a defendant's conduct "has, or is likely to cause the pollution, impairment, or destruction of the air, water, land or other natural resources located within the state." Minn. Stat. § 116B.04(b). To satisfy the burden of making a prima facie showing, a plaintiff must prove "(1) [a] protectable natural resource, and (2) pollution, impairment or destruction of that resource." *Tuveson*, 210 N.W.2d at 297. MERA defines "pollution, impairment, or destruction" as, in relevant part, "any conduct which materially adversely affects or is likely to materially adversely affect the environment." Minn. Stat. § 116B.02, subd. 5. If the plaintiff makes a prima facie showing of these elements, the burden shifts to the defendant to either rebut the prima facie showing or assert an affirmative defense. Minn. Stat. § 116B.04(b).

The City does not challenge the sufficiency of Smart Growth's allegations that protectable natural resources are at stake,[14] that the City's adoption of the Plan is "conduct,"[15] or that the effects of that conduct would materially adversely affect the

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[14] Smart Growth averred in its complaint that the Plan is likely to have materially adverse environmental impacts on a number of natural resources, including water (stormwater runoff and wastewater generation), land (wildlife habitat), and air (air quality). MERA defines "natural resources" as including, but not limited to, "all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources." Minn. Stat. § 116B.02, subd. 4.

[15] "Any conduct" is not defined by MERA, but we have interpreted the phrase broadly, giving it an "all-inclusive application." *Tuveson*, 210 N.W.2d at 296. We reaffirmed this

environment.[16] Rather, the City contends that Smart Growth has not alleged sufficient facts showing that the City's adoption of the Plan *is likely to cause* the type of environmental damage that MERA aims to prevent.

The City argues that the Plan is a high-level planning document—simply a statement of policies, goals, and intentions for future development—and that adoption of the Plan does not in and of itself *cause* environmental effects. Rather, the City argues that it would need to take subsequent actions to implement any part of the Plan before environmental effects might occur. The City's position is that the appropriate time for a MERA challenge is when a specific, discrete project is approved, and that Smart Growth's reliance on the alleged environmental damage from a projected full build-out of the Plan is too speculative and tenuous. Smart Growth argues that challenging individual projects fails to capture the full scope of the environmental effects of the Plan, and that its MERA action is the "exclusive" opportunity for review of the entire scope of the Plan. Smart Growth relies heavily on its expert report to support its claim that the adoption of the Plan is "likely to cause" the environmental harm it alleges.

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broad interpretation in *White Bear Lake Restoration Ass'n*, defining conduct as "activities," "behavior," or "the action or manner of managing an activity or organization." 946 N.W.2d at 379–80 (citations omitted). Given the procedural posture of this dispute, we assume without deciding that the City's act of adopting the Plan is conduct under MERA.

[16] We use a non-exclusive set of factors to determine whether conduct "materially adversely affects" the environment, or is likely to. *See State by Schaller v. County of Blue Earth*, 563 N.W.2d 260, 267 (Minn. 1997). In its complaint, Smart Growth identified a number of "[s]ignificant environmental impacts" likely to result from the Plan, including increased noise impacts, increased pedestrian and vehicle traffic, decreased air quality, increased pollutant loads to local surface waters, reduced groundwater recharge, stream widening and bank erosion, and degradation of aquatic structure.

We have not previously had the opportunity to consider a MERA claim at the Rule 12.02(e) dismissal stage. Thus, this issue is one of first impression in the procedural posture presented here. On review of a Rule 12.02(e) dismissal of a MERA action, the question is not whether the plaintiff has established a prima facie showing under MERA, but rather whether the plaintiff has alleged sufficient facts, such that the facts alleged and the inferences drawn from those facts can support each element of the required prima facie showing. *See Hansen*, 934 N.W.2d at 325 (stating that "a motion to dismiss should be denied if the court can infer from the allegations a factual basis to support each element of the plaintiff's claim"). In this case, we need not decide whether Smart Growth has established a prima facie showing to survive a motion to dismiss because the question is solely whether Smart Growth's allegations are sufficient to support the contested causation element in order to state a claim that adoption of the Plan is likely to cause materially adverse environmental effects.

MERA itself does not set forth a causation standard. We have addressed questions of MERA causation only once before, at the summary judgment stage. In *State by Schaller v. County of Blue Earth*, we considered allegations that challenged the construction of a portion of new highway based on projected traffic levels 16 years into the future. 563 N.W.2d 260, 262, 268 (Minn. 1997). We were persuaded that these allegations were "simply too speculative" to establish that MERA would be violated by noise generation in excess of state standards because the noise level projections assumed there would be no change in the existing noise standards and that a four-lane highway would eventually be

built even though the project under construction at the time was a two-lane highway. *Id*. at 267–68. Therefore, we affirmed the grant of summary judgment. *Id.* at 268.

Here, we must determine whether Smart Growth's allegations based on the future projected implementation of the 2040 Plan, if true, state a legally sufficient claim for relief. Comprehensive plans are "a compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the municipality." Minn. Stat. § 462.352, subd. 5 (2020). The conduct of adopting a comprehensive plan has the direct effect of controlling a city's land use development because the plan becomes supreme vis-à-vis zoning ordinances. Minn. Stat. § 473.858, subd. 1 ("If the comprehensive municipal plan is in conflict with the zoning ordinance, the zoning ordinance shall be brought into conformance with the plan . . . ."). A "comprehensive plan constitutes the primary land use control for cities and supersedes all other municipal regulations." *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 175 (Minn. 2006).

Although the Plan is a planning document for the City that can be amended, it will, under the current state of the law, control the City's land use because any zoning ordinances in conflict with the Plan will have to be brought into compliance with it.[17] The projections

[17] There is some validity to Smart Growth's argument that a MERA challenge to the Plan itself is the only way to consider the potential environmental effects of the entire Plan rather than individual projects, the effects of which would necessarily be only a portion of what Smart Growth alleges the cumulative effects of the Plan will be. However, we express caution regarding Smart Growth's assertion that comprehensive plans are the incontestable instrument of land-use planning, given the uncertainty in the statutory framework and our case law. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 79–88 (Minn. 2015) (Anderson, J., concurring).

supporting Smart Growth's allegations are based on a full build-out, but that build-out is what the actual land-use criteria contained in the Plan allows for; Smart Growth is not speculating about the type of actions that will result from other future comprehensive plans that would follow the 2040 Plan. And the Rule 12.02(e) standard assesses only the adequacy of the allegations, accepting the allegations as true. *Hansen*, 934 N.W.2d at 325.

Smart Growth alleges in its complaint that a presumed full build-out of the Plan is likely to materially adversely affect the environment in a number of ways, such as increasing the rate and volume of stormwater runoff, threatening sanitary sewer systems and water supply, reducing wildlife habitat, and diminishing air quality. The question before us is whether these claims are sufficient to allege causation at the Rule 12.02(e) stage. We conclude that, accepting all of Smart Growth's allegations as true and construing all reasonable inferences in its favor, the allegations are sufficient.

To be clear, we do not address whether Smart Growth did or did not establish a prima facie showing under MERA. Although the parties debated this issue at great length in both briefing and argument to our court, that question is premature at the Rule 12.02(e) stage. We hold only that the allegations contained in the complaint, if true, and any evidence that Smart Growth could introduce consistent with those allegations, is sufficient to state a claim upon which relief can be granted. A Rule 12.02(e) dismissal for failure to state a claim precludes only those cases where it appears "to a certainty" that the plaintiff can introduce no facts consistent with the complaint to support the claim for relief. *N. States Power Co.*, 122 N.W.2d at 29. Because it is not *certain* that Smart Growth could

not introduce any evidence in support of its claim, a dismissal under Rule 12.02(e) is not appropriate.

Accordingly, the district court erred in dismissing Smart Growth's complaint because the facts alleged in the complaint, if true, state a claim upon which relief can be granted. Although it remains to be seen whether Smart Growth can prove the facts it has alleged, whether Smart Growth can prove those facts is immaterial at the Rule 12.02(e) stage. Therefore, we hold that dismissal of the complaint was premature and Smart Growth must be permitted to proceed with its claim.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals. On remand, the district court shall reinstate Smart Growth's complaint.

Reversed.