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Forest  
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File Code: 1570-1

Date: May 9, 2008

Mr. Frank Jeff Verito  
350-1/2 East Ridge Street  
Marquette, MI 49855

RE: Appeal of the Decision Notice and Finding of No Significant Impact for the Trans Superior Resources, Inc. – Private Minerals Exploration in the Matchwood Tower Road Area Environmental Assessment Project, Bergland Ranger District, Ottawa National Forest, Appeal # 08-09-07-0047 A215

Dear Mr. Verito:

On March 25, 2008, you filed a notice of appeal pursuant to 36 CFR 215.11 on the Trans Superior Resources, Inc. – Private Minerals Exploration in the Matchwood Tower Road Area Environmental Assessment Project (also known as the Trans Superior Project). District Ranger Darla Lenz signed the Decision Notice on February 14, 2008, and the legal notice was published in *The Ironwood Daily Globe* on February 15, 2008. I have reviewed the Appeal Record and have also considered the recommendation of the Appeal Reviewing Officer (ARO), Midewin National Tall Grass Prairie Supervisor Logan Lee regarding the disposition of your appeal. The ARO's review focused on the decision documentation developed by the Responsible Official, District Ranger Darla Lenz, and the issues in your appeal. The ARO's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

### **FOREST ACTION BEING APPEALED**

The project area for this decision encompasses approximately 3,086 acres of National Forest System lands. The purpose of this proposal is to implement Forest Service policy, by documenting concerns, effects, design criteria and stipulations, and conditions of access and surface occupancy for exploration of private minerals in the analysis area. The design criteria and stipulations would be used to protect the National Forest system surface estate.

### **APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The ARO found no evidence that the Responsible Official's decision violated law, regulation, or policy. She found the decision responded to comments raised during the analysis process and public comment period and adequately assessed the environmental effects of the selected action. In addition, she found the issues raised in your appeal ("Impacts from Mining", "Range of Alternatives", "Public Input", "Controversy", "Design Features", "Topography", "Roads", among others) were addressed, where appropriate, in the decision documentation. Based on this



review, the ARO recommended that District Ranger Darla Lenz's Trans Superior Decision Notice and Finding of No Significant Effect be affirmed.

**DECISION**

After careful review of the Project Record and the appeal, I agree with the ARO's analysis and findings regarding your appeal issues. To avoid repetition, I adopt the ARO's rationale as my own, and refer you to the enclosed ARO recommendation letter, dated May 5, 2008, for further details. It is my decision to affirm District Ranger Darla Lenz's Decision Notice and Finding of No Significant Effect for the Trans Superior Project on the Ottawa National Forest.

This project may be implemented on, but not before, the 15th business day following the date of this letter (36 CFR § 215.9(b)). Pursuant to 36 CFR § 215.18(c), this decision constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

*/s/Susan J. Spear*  
SUSAN J. SPEAR  
Appeal Deciding Officer  
Forest Supervisor

Enclosure

cc: Darla Lenz, Logan Lee, Karen E Dunlap, Patricia R Rowell



Forest  
Service

Midewin National Tallgrass Prairie

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**File Code:** 1570-1  
**Route To:**

**Date:** May 5, 2008

**Subject:** Appeal of the Decision Notice and Finding of No Significant Impact for the Trans Superior Resources, Inc. - Private Minerals Exploration in the Matchwood Tower Road Area Project Environmental Assessment, Appeal 08-09-07-0047 A215 (Verito aro recommendation)

**To:** Forest Supervisor, Ottawa NF, Appeal Deciding Officer

This letter constitutes my recommendation for the subject appeal filed by Frank Jeff Verito of the Trans Superior Resources, Inc. – Private Mineral Exploration in the Matchwood Tower Road Area Project Decision Notice (also known as the Trans Superior Project), Bergland Ranger District, Ottawa National Forest (ONF). District Ranger Darla Lentz signed this Decision Notice on February 14, 2008. A legal notice of the decision was published on February 15, 2008 in the *Ironwood Daily Globe*.

My review was conducted pursuant to 36 CFR 215, “Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities.” To ensure the analysis and decision are in compliance with applicable laws, regulations, policies and orders, I have reviewed and considered the issues raised by the Appellant and the decision documentation submitted by the ONF. My recommendation is based upon review of the Project Record (PR) including but not limited to the scoping letter, public comments, Environmental Assessment (EA) and the Decision Notice (DN).

The project proposes access for Trans Superior Inc. to explore for minerals. The area is a split-estate with the State of Michigan holding mineral rights and the Federal government surface rights managed as part of the Ottawa National Forest. The State sold a lease to Trans Superior and Trans Superior has requested to occupy areas of the Ottawa to explore for 50 minerals. Exploration activities on the Ottawa will include 13 acres of linear brush clearing to allow geophysical surveys; exploratory drilling on approximately 50 areas, each 50x50 feet in size, adjacent to existing and closed roads; and construction of temporary roads to some sites. All sites will be rehabilitated upon completion of the exploration activities.

Exploratory drilling is overseen by the State of Michigan and will be monitored and managed consistent with the Michigan Department of Environmental Quality Mineral Well Operations Regulations (MDEQ). Project implementation will occur based on results of geophysical surveys and individual sites will be reviewed by appropriate Forest Service and MDEQ staff.



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**Appeal Issues:**

Mr. Verito raised ten issues in his appeal of the Trans-Superior Project. All issues were submitted to the Responsible Official during the scoping or 30-day comment period unless otherwise noted. As I reference documents in the Project Record it is important to note there are two Environmental Assessments (EAs), Decision Notices (DNs), and Findings of No Significant Impacts (FONSI). Unless specifically stated otherwise, I am referring to the versions of the decision dated February 14, 2008. Any reference to the earlier versions is prefaced with “original.”

**Issue 1: Impacts from mining** – Mr. Verito claims, ““*Therefore, we must analyze the impact of a mining operation, not merely exploration—and do so at this early stage of the game.*” (NOA, p. 1). “*I emphasize that impacts of exploration must be measured against the effects of all-out mining.*” (NOA, p. 4). “*The potential impact must take full-scale mining into consideration, because if mining will have excessive impact, then it’s not worth inflicting the lesser impact caused by exploration.*” (NOA, p. 4).

**Response:** The National Environmental Policy Act (NEPA) requires consideration of direct, indirect and cumulative effects/impacts on any proposed action. The Council of Environmental Quality (CEQ) has defined what types of actions constitute the scope of analysis required. Actions include those that may be connected to the proposed activity. 40 CFR § 1508.25 defines a connected action when it:

- (i) Automatically triggers other actions which may require environmental impact statements.
- (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
- (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.”

The stated purpose and need for the Trans Superior Project is (EA, p. 3):

“... [T]o implement Forest Service Policy, by documenting concerns, effects, design criteria and stipulations, and conditions of access and surface occupancy for exploration of private minerals in the analysis area. The design criteria and stipulations would be used to protect the National Forest System surface estate.”

The effects discussions in the EA focused on exploration activities only. Future mining is not a connected action for it is not a foregone conclusion as a result of exploration activities. As such it is not analyzed as part of the NEPA process. Should results of these explorations merit additional activity; a new proposal will be developed and submitted, initiating a new and separate NEPA review. This is clearly stated in the EA (p. 10):

“Exploratory drilling does not automatically trigger mining. Similarly, mining is not a reasonably foreseeable action if no valuable ore body is discovered. In the past 10 years, there have been other special use permits and letters of concurrence issued for reserved and outstanding mineral rights on the ONF. These have not resulted in mining proposals. The issues and effects of occupancy and access related to developmental drilling and/or mining development cannot be considered at this time since there is no evidence that they would occur and no site-specific information available. A separate Forest Service, site-specific analysis to determine stipulations for surface occupancy would occur if mineral development is proposed.”

These points are reiterated in the DN (p. 5) and in the Response to Comments (RTC), specifically the 2a Response (p. 3) and 4h Response (p. 8).

Based on my review of the EA, DN, and RTC, the scope of the EA appropriately considered and analyzed potential impacts of exploratory drilling, and additional analysis of potential impacts of mining or other activities is not warranted.

**Issue 2: Range of Alternatives:** Mr. Verito claims, *“Of 28 comment letters received, mostly against the proposal, ‘no major issues were identified that would change the alternatives of cause a new alternative to be considered.’ Obviously, the ID Team members all share the same objective, primarily to keep their personal paychecks coming in, by facilitating mining interests...Again, the public ownership fell by the wayside.”* (NOA, p. 1). *“On comment 5s, regarding the lack of a range of alternatives, I was again referred to the EA, where the explanation was not adequate and generated my complaint.”* (NOA, p. 6).

**Response:** First it should be noted that Mr. Verito is incorrect in his assertion that comments were *“mostly against the proposal”*. There were 28 commenters, of which 21 were favorable and only 7 were opposed to the decision.

NEPA requires federal agencies to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts of alternative uses of available resources (42 U.S.C. 4332). The Council on Environmental Quality (CEQ) regulations implementing NEPA discusses alternative development. Agencies are to rigorously explore and objectively evaluate all reasonable alternatives, and briefly discuss the reasons for eliminating alternatives from detailed study (40 CFR 1502.14(a)). While regulations require that a range of alternatives be analyzed, the “No Action” alternative is the only alternative specifically required as an option to the proposed action (40 CFR 1502.14(d)). There is no set number of alternatives required in order to reflect a reasonable range. Agencies have discretion to determine appropriate alternatives based upon the purpose of the proposal.

Courts have found numerous times that the range of alternatives may be limited to those alternatives that meet the purpose of the proposed action. For example, see Allegheny Defense Project v. Forest Service, No 01-895 (W. D. Pa 2003) [Forest limited the scope of a T&E Amendment to requirements of a Biological Opinion – Court upheld the narrow purpose and need -- Forest did not need to consider in detail alternatives that did not accomplish the purpose

and need for the action.]; Krichbaum v. Kelley, 844 F. Supp. 1107, 1109 (W.D. Va. 1994), aff'd 61 F.3d 900 (4<sup>th</sup> Cir. 1995) [Forest need not consider a “no logging” alternative that does not meet forest plan goals]; Sierra Club v. Robertson, 810 F. Supp. 1021, 1029 (W.D. Ark. 1992), aff'd 28 F.3d 753 (8<sup>th</sup> Cir. 1994) [NEPA does not require an agency to consider alternatives that do not meet the purpose of the proposed action].

The Revised EA for the Trans Superior Project analysis evaluated two alternatives in detail, including a “no action” alternative and the proposed action (Alternative B), which are described at length in the EA (pp. 3-5, 7-9, and Appendix A) (PR, H-5) and summarized in the DN (pp. 2-3 and Appendix A) (PR, K-2). One additional alternative was considered but eliminated from further study (EA, p. 7) – “Accept Plan of Operations with No Additional Stipulations”. It was dropped because it did not adequately protect the surface resources and did not meet the purpose and need for the project (EA, p. 7 and DN, p.3)

The overall purpose and need for the Trans Superior Project is to assess occupancy requirements for exploration of private minerals in the analysis area. Design criteria and operating stipulations would be placed upon the project proponent to protect the National Forest System surface estate (EA, p. 3). In developing the alternatives the EA states, “This decision only relates to the type of stipulations to be included in the surface occupancy permit or authorized in a letter of concurrence.” Our options were limited due to the nature of the project. Since someone other than the federal government owns the mineral rights, we can only issue or deny “[a] special use permit and road use permit ... permitting the access and surface occupancy on the National Forest System land in accordance with the applicable Secretary of Agriculture’s Rules and Regulations.” (EA, p. 2). “As a general rule, the Forest Service does not have authority to deny the exercise of a mineral reservation or outstanding mineral rights.” (FSM 2830.1) (EA, p. 2)

Thus, under these restrictions our range of alternatives is to deny the permit (“No Action” Alternative), issue the permits with design criteria and stipulations that protect the surface resources (Alternative B), or issue the permits with other stipulations or design criteria (not developed). Mr. Verito suggested that we craft a “gentler alternative” in his e-mail of January 18, 2008 (PR, H-31 and response to this comment in K-3). He does not however explain what this alternative should contain. When the Proposed Action is looked at in light of the purpose and need for the project, the Responsible Official clearly evaluated the appropriate range of alternatives. I find no violation in the NEPA.

**Issue 3: Public Input** – Mr. Verito claims, “*Apparently, the ID Team didn’t digest the public comments.*” (NOA, p. 2). “*Writing that ‘public involvement occurred for this project’ and ‘the local community was notified of this project,’ does not imply that any of the above was given the slightest opportunity to impact the procedures. In fact, as evident from the public comments and responses, no one was given any opportunity other than to waste our time, responding to a done deal.*” (NOA, pp. 2).

**Response:** My review clearly indicates that public scoping and the formal comment period were conducted pursuant to 36 CFR § 215.5 and Forest Service Handbook (FSH) 1909.15, Section 10. Comments were analyzed, categorized, addressed, and clearly documented in the Project Record, EA, and DN/FONSI. The formulation of specific alternatives, design criteria, analysis of the affected environment, and environmental consequences all considered public comments and concerns derived from them. The February 14, 2008 DN/FONSI (p. 3) summarizes the public involvement for this project. The Trans Superior EA project has been included in the Ottawa NEPA Quarterly since July of 2007.

A letter describing the project, including the draft EA and maps, was sent to 68 potentially interested parties on July 3, 2007 for the combined scoping and 30-day Public Comment Period (PR, B-7, B-8, B-9, and B-11) (Original EA, pp. 5-6) (Original DN, p.3). The Legal Notice was published on July 5, 2007, in the *Ironwood Daily Globe*, the paper of record for the Kenton Ranger District (PR, B-10 and B-13). A second legal notice was published on July 17, 2007 to correct a telephone number (PR, B-20). Four (4) comments were received from this public involvement effort (PR, B-25/31, B-27/31, B-28/29/30, and B-33/38). The response to these four comments is found in the Project Record (PR, E-2).

The original DN/FONSI was signed on September 4, 2007 and sent with cover letter and errata sheet to 47 interested parties (PR, E-1 and E-3 to E-7). The legal notice was published on September 6, 2007 (PR, E-8 and E-9). The original DN stated, "The comments were reviewed by the interdisciplinary team (ID team) and no major issues were identified that would change the alternatives or cause a new alternative to be considered. Documentation of review of public comment is located in the project file." (Original DN, p. 2) (PR, E-3 and E-4). This decision was appealed and on December 4, 2007 the decision was withdrawn in order to allow further public comment (PR, H-1, H-2, and H-3).

A second formal 30-day Public Comment Period was initiated on December 20, 2007 with a cover letter and the Revised EA sent to 77 interested parties (PR, H-4, H-5, and H-6). The legal notice was published on December 22, 2007 (PR, H-7 and H-8). The revised December 20, 2007 EA stated, "The ID Team reviewed the comments received (from the July 2007 Public Comment Period and the appeal) and no issues resulting in the development of an additional alternative were determined through this review." In response to this letter and EA, 29 comments were received (PR, H-10 to H-12, H-16, H-18 to H-28, H-31 to H-41, H-43, and H-45). The response to these comments is also found in the Project Record (PR, K-3).

The DN/FONSI for the Revised EA was signed on February 14, 2008 and sent with cover letter and errata sheet to 67 interested parties (PR, K-1, K-2, K-4, and K-5). The legal notice was published on February 15, 2008 (PR, K-6 and K-7). The DN stated, "The comments were reviewed by the interdisciplinary team (ID team) and no major issues were identified that would change the alternatives or cause a new alternative to be considered. Documentation of review of public comment is located in the project file." (DN, p. 3) (PR, K-2 and K-3).

Based on review of the documentation in the Project Record, it is apparent that all public comments from the two 30-day periods and the appeal were reviewed, answered, and used in the analysis. Mr. Verito is correct that the comments received from the public did not result in new alternatives and did not stop the project; however they were influential in some changes to the Revised EA and second DN. For example, the Revised EA clarified that uranium was one of the target minerals for exploration (PR, K-2; DN, p. 2). Likewise, comments resulted in an additional literature search (PR, K-3; RTC 1a, 4e, and 4g), additional heritage resource surveys, additional explanations, and the clarification of some design criteria and stipulations (PR, K-3; RTC 1c) (i.e., addition of a new Stipulation 2 under Project Coordination (PR, K-2; DN, Appendix B) (PR, K-3; RTC 1b, 3e, 4a, 4e, and 4g). Further communications were also initiated with the MDEQ and Trans Superior, Ltd. (EA, pp. 5-6) (PR, H-5).

Based on my review of the EAs, DN, and the Project Record I find no violation in law, regulation or policy. Mr. Verito's comments were received, analyzed, and incorporated into the analysis as were those from other members of the public. The DN discloses the results of the public involvement efforts and cites the Project Record for further information.

**Issue 4: Controversy** - Mr. Verito asserts, *“There is huge public controversy when an unwanted private entity is given free run of our public forest under public protest. The Ranger is untrue when stating the decision is ‘not likely to be highly controversial.’”* (NOA, p. 2). *“There is controversy whether ONF personnel wish to admit it or not.”* (NOA, p. 5). *“No way can all these statements from unrelated parties be so insignificant as suggested in the responses. It’s obvious that exploration is not wanted on public lands.”* (NOA, p. 5).

**Response:** Mr. Verito claims the public opposition associated with the Trans Superior Project constitutes controversy as it relates to findings within the FONSI. Implementing regulations for NEPA (40 CFR 1508.27) contain significance criteria that must be addressed in order to determine whether a FONSI may be issued. One of these criteria, 1508.27(b) (4), requires consideration of “[t]he degree to which the effects on the human environment are likely to be highly controversial.” The regulation is clear that the controversy involved here concerns **the degree of the effects on the human environment** rather than opposition to the project.

Numerous courts have held that public opposition to a proposal is not “controversy” as it is referred to in Section 1508.27(b) (4). The Ninth Circuit, for example, has held that scientific controversy regarding the degree of environmental effect may not be manufactured by project opponents, that is, “controversy” is not synonymous with public opposition. Northwest Environmental Defense Ctr. V. BPA, 117 F. 3d 1520, 1526 (1997); Greenpeace Action v. Franklin, 14 F3d 1324, 1333-1335 (9<sup>th</sup> Cir. 1993), see also North Carolina v. FAA, 957 F.2d 1125, 1133 (4<sup>th</sup> Cir. 1992). For over 30 years, numerous courts have rejected the view expressed by Mr. Verito and made it abundantly clear that public opposition does not equate to NEPA “controversy” requiring the preparation of an EIS. Society Hill Towers Owners’ Ass’n v. Rendell, 210 F.3d 168, 183 (3<sup>rd</sup> Cir. 2000), citing Hanly v. Kleindienst, 471 F.2d 823, 830 (2<sup>nd</sup> Cir. 1972); Fener v. Hunt, 971 F.Supp. 1025, 1033 (W.D. Va 1997) (noting that in the Fourth Circuit opposition is not controversy).



While it is certainly true that there is public opposition to the proposed exploration for hardrock minerals (including uranium) in this part of the Ottawa National Forest; Mr. Verito has not shown this to be scientific controversy under NEPA. Likewise my review of the associated documents does not indicate any scientific controversy as defined by the NEPA.

Mr. Verito's view that Trans Superior has "free run" is also incorrect. Trans Superior has a legal right to explore for these minerals (see [page 1](#) and [Issue 10](#)). Resource impacts will be minimized with the protection of specific design features (see [Issue 5](#) and [6](#)).

My review of the EA, DN, and Project Record indicate the Responsible Official appropriately evaluated the potential effects of this project (DN/FONSI, p. 5) (PR, K-2) and concluded these effects were not "highly controversial".

**Issue 5: Design Features** – Mr. Verito contends, "*Throughout the Design Features section 'maximum extent possible' and 'whenever possible' are mentioned, for example, 'Minimize soil disturbance to the maximum extent practical, consistent with exploration objectives.' Such wording gives industry total leeway to impact our resources as they deem necessary.*" (NOA, p. 2).

**Response:** The Ottawa National Forest's 2006 Forest Plan includes Goals, Objectives, Standards, and Guidelines that provide management direction for protection of surface resources. Potential impacts to the Forest's surface resources clearly were considered throughout the analysis and decision process for the Trans Superior Project. The Decision Notice (DN, p. 2) states:

"Alternative B was chosen because this alternative allows the Forest Service to apply design criteria and stipulations to the conditions of access and surface occupancy permits for exploration of private mineral rights. These stipulations will protect the surface resources of the National Forest."

Further, an alternative with no provisions for additional stipulations designed by the ONF was considered but not analyzed in detail (EA, p. 7). A Plan of Operations with no additional stipulations would not meet the purpose and need for this project.

Design Features for Alternative B (EA, pp. 8-9) demonstrate concern and provide protection for surface resources on the Forest. Stipulations for Exploration Drilling (EA, Appendix A) reiterate protections and concerns, including cultural resources, wetlands, floodplains, streams, wildlife and plants, roads, revegetation, and invasive species. Stipulation 1 (EA, Appendix A, p. 1), in particular, states:

"As stated in the plan of operations the permittee will coordinate with Forest Service officials for the following; location of road construction, location of drill sites, and location of water sources to be used for drafting. The Forest Service would provide guidelines that considers the following; soil resources, heritage sites, water quality, wetlands, NNIS [non-native invasive species], TE&S [threatened and endangered species] and safety."

Stipulations of the Metallic Minerals Lease (F-8 in the Project Record, p. 93) require that “all operations must be in compliance with the standards and guidelines outlined in the Ottawa National Forests Land and Resource Management Plan,” and use of “Best Management Practices along wetlands, waterways, or steep slopes.”

Mr. Verito’s concern appears to be rooted largely in the qualification of Design Features with phrases like “to the maximum extent possible” and “whenever possible,” as he perceives this allows exploration operations to circumvent or dismiss these design criteria. The intent of such statements clearly is to provide the greatest possible protection for surface resources on the Forest, while acknowledging that some disturbance will take place due to the proposed activities. For example, due to the nature of this project, some soil disturbance will take place. Design Feature 1 (EA, p. 8) states that the Forest Service Official administering the permit would see that operations “Minimize soil disturbance to the maximum extent practical, consistent with exploration objectives.” .

After reviewing the DN, EA, and the Project Record, I find that the NEPA analysis, Design Features, and Stipulations for Exploration Drilling appropriately addressed potential impacts to surface resources of the ONF. I see no reason why the industry will circumvent or dismiss these protective measures as Mr. Verito implies.

**Issue 6: Topography** – Mr. Verito claims, “*Item 4 states ‘Locate drilling, sump construction and storage of fuel or equipment in areas beyond 100 feet of rivers, perennial or intermittent streams, ponds, seeps or springs.’ The buffer’s adequacy depends upon the topography, which doesn’t appear accounted for in the design criteria.*” (NOA, pp. 2-3).

**Response:** Mr. Verito’s concerns are understandable; however I find ample evidence in the Project Record showing that the area’s aquatic resources were considered in the evaluation of effects and in the creation of specific design criteria. Topography within the Project Area is described within the EA (p. 11), and in the Soils Specialist Report (PR, J-8, pp.1-2) as “nearly level clayey lake plain with slopes dominantly 2 to 6 percent or gently undulating to knobby ground moraine landform ... [with slopes of] commonly 2 to 6 percent and primarily less than 12 percent.” Topographic maps included in the Project Record (e.g., C-1, C-2, and C-5) reveal a low degree of topographic variation.

As Mr. Verito correctly points out, Design Feature 4 (DN Appendix A, p. 1; EA, p. 8) requires drilling equipment and operations to be at least 100 feet from rivers, perennial or intermittent streams, ponds, seeps or springs. The last sentence of this Design Feature (i.e., “If questions arise consult with the Forest Hydrologist”) implies that if operational stipulations (EA, Appendix A) are inadequate or inappropriate due to some features of a specific drill site, which would include topography, the Forest Service Official administering the permit will consult with the Forest Hydrologist.

Likewise, a stipulation of the Metallic Minerals Lease (PR, F-8, p. 93) requires adherence to “Best Management Practices along wetlands, waterways, or steep slopes.” The Responsible Official also states in the DN (p.6):

“The integrity of the decision area’s water and riparian features will be maintained. The project’s design features and stipulations will provide additional site-specific measures to assure riparian areas retain their ecological function. The analysis also indicates that implementation of this decision will not produce appreciable impacts on aquatic resources (EA pages 15-20). The Clean Water Act and State Water Quality Standards will be met.”

Lastly, the DN and EA include several Stipulations for Exploration Drilling that are relevant to wetlands and other water resources (DN, Appendix B, pp. 1-2; EA, Appendix A, pp. 1-2):

- “4. Wetlands are identified as sites dominated by poorly or very poorly drained soils as defined by and depicted by Ecological Landtype Phase (ELTP) mapping (Refer to Map B). A Forest Service Official will determine if any other site-specific analysis is needed for wetland determination.
5. No dredging or permanent placement of fill will be permitted within a wetland.
6. If temporary fill is needed in a wetland, filter fabric will be used as a base, and necessary permits will be obtained. Fill material and fabric would be removed upon completion of drilling.
7. No fuel will be stored in wetlands or floodplains.
12. Absorbent mats or other absorbent materials will remain under the drill rig and other equipment, in case of oil or hydraulic leaks during the operations and be available for on-site refueling and servicing of all the machinery used in the operation. Additional absorbent materials, such as a standard spill kit, shall be on-site as directed by the Forest Service Official.
13. Any spills or releases of oils, fuels, or other toxic or hazardous materials must be reported and remediated per applicable State and Federal Laws.”

I find that the NEPA analysis, Design features, and Stipulations for Exploration Drilling appropriately addressed potential impacts to rivers, perennial or intermittent streams, ponds, seeps, springs or other water resources. Topography does not appear to be a physical feature of the project area that is likely to require special attention. Additional, specific features or stipulations to address site-specific topography are not necessary.

**Issue 7: Roads** – Mr. Verito claims, “*Item 5 states ‘roads temporarily constructed for exploration purposes will be stabilized and maintained during use and closed after activities are completed.’ By then the damage has been done. The terrain is obliterated. Closing the entrance with a berm or other closure device detracts visually from the forest. Also, pulling logs onto the roadbed causes additional impact to the terrain adjacent to roads.*” (NOA, p. 3).

**Response:** The Record and DN document that stipulations applied to the permit will require the operator to restore temporary roads to the landscape using on-site topsoil. A berm will be used where needed to prevent off-highway vehicle (OHV) use in any openings created by those temporary roads.

The Interdisciplinary Team (IDT) analyzed the impacts of the proposed 3 miles of temporary roads and found that there would be an effect on soils (EA, p. 21) but those effects would “encompass a minimal area and be localized to the immediate areas of activity.” The analysis further disclosed that there would be “...no long-lasting or widespread damaging effects to the soil resource....”

The recreation specialist analyzed the effects of the proposed activity on the visual quality and recreational objectives for the area (EA, pp. 24-25). Although closing a temporary road with a berm may be visible, it will still be within the visual quality guidelines established for the area (EA, p. 25). The Visual Quality Objectives (VQOs) within the project area are modification and maximum modification. The visual characteristics of the project area would not dramatically change (PR J-2, p. 7).

I find the Responsible Official appropriately evaluated the effects of road development on the visual and recreation resources. I find no violation in law, regulation or policy.

**Issue 8: EIS required:** Mr. Verito states, “*An EIS is definitely necessary before this proposal proceeds any further, and a failure to do so constitutes either laziness or suggests a done deal on the part of ONF management.*” (NOA, p. 4).

**Response:** The NEPA requires that Federal agencies follow certain procedures to examine the environmental impact of their proposed actions. If an agency proposes a "major Federal action [that] significantly affect[s] the quality of the human environment," NEPA requires the agency prepare an environmental impact statement (EIS) that, among other things, details "the environmental impact of the proposed action" (42 U.S.C. § 4332(C)). An EIS, however, is not required if the agency first prepares an environmental assessment (EA) providing "sufficient evidence and analysis" that no EIS is necessary because the proposed action will not significantly affect the quality of the human environment (See 40 CFR § 1508.9). In those circumstances, the agency issues a “Finding of No Significant Impact” (FONSI) rather than preparing an EIS (40 C.F.R. § 1508.13).

The CEQ has promulgated regulations detailing how agencies should fulfill these NEPA obligations. CEQ's regulations require a discussion of context (significance of an action) and intensity (severity of impact). Intensity is further subdivided into ten items that agencies should consider when taking a "hard look" at whether a project will have "significant" environmental impacts. These include: beneficial and adverse impacts, the degree to which the proposed action affects public health and safety, the degree to which the action may adversely affect an endangered or threatened species, the degree to which the effects on the quality of the human environment are likely to be highly controversial, the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks, the degree to which the action may establish a precedent for future actions, whether the action results in cumulatively significant impacts, the degree to which the action may adversely affect scientific, cultural, or historical resources, whether the action threatens a violation of Federal, State, or local law, and the unique characteristics of the geographic area such as proximity to park lands or wild/scenic rivers. (40 CFR § 1508.27). If an agency takes a "hard look" at these items and

determines that the proposed action has no "significant" environmental impact, an EIS is unnecessary.

The Trans Superior Project treats about 20 acres within a 3,086 acre unit out of the nearly one million acre Ottawa National Forest (far less than one percent). This includes about four acres in temporary roads (up to three miles of road), clearing for drill sites on about three acres (up to 50 sites), and about 13 acres cleared for survey lines (PR, H-5, pp. 3-5). The 2006 ONF Forest Plan allows for all of these types of activities: Minerals Management (Forest Plan (FP), Chapter 2, pp. 2-10 and 2-35) with uranium known to be present (FP, Appendix A – Summary of the Analysis of the Management Situation, p. A-20), Temporary Roads (FP, Chapter 2, p. 2-37), and Vegetation Management (FP, Chapter 2, pp. 2-2 to 2-7 and 2-23). The impacts of such actions were cumulatively considered in the Forest Plan EIS over multiple decades. The Trans Superior Project decision would implement a very small part of this Forest-wide program. The project site-specifically assures that effects fall within the program anticipated by the 2006 Forest Plan's Final EIS (DN/FONSI, p. 6).

The FONSI specifically addresses both context and intensity. It states, "This project is a site-specific action that by itself does not have international, national, region-wide, or statewide importance." and "After considering the environmental effects described in the Revised EA (Pages 10-33), I have determined that these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared." (PR, K-2; DN, pp. 4-6). The FONSI also states, "After thorough consideration, I have determined that actions selected do not constitute a major federal action, individually or cumulatively, and these actions will not significantly affect the quality of the human environment. The site-specific actions of Alternative B, in both the short and long-term, are not significant. Therefore, the preparation of an environmental impact statement is not needed." (PR, K-2; DN, p. 7). In support of these statements, it cites numerous locations in the EA and DN where the intensity of impacts are shown to be minor, not apparent, or minimized by required mitigation measures. For example from the FONSI, the selected actions:

- are at localized sites (e.g., EA, pp. 12-14, 15-16, 19, 21-22, 23, 24);
- have short term impacts minimized and/or avoided by using the design criteria and stipulations (e.g., EA, pp. 8-9, 12-14, 18-19, 21-22, 26, 28, 32-33, and Appendix A);
- will not significantly affect public health and safety (e.g., EA, p. 19);
- are not likely to be highly controversial (e.g., RTC, 1a);
- will not pose any unknown risks to the human environment (e.g., EA, pp. 10-31);
- does not set a precedent for future actions;
- will not have significant cumulative effects (e.g., EA, pp. 14, 15, 18-19, 23, 24, 25, 25-29, 30-32, and 33); and
- do not threaten a violation of federal, state, or local environmental protection laws (e.g., EA, pp. 25-27).

Mr. Verito's subjective opinion of the significance of the project does not provide sufficient evidence or information to contradict the information and analysis in the Project Record as summarized in the revised DN/FONSI (PR, K-2). I find the Responsible Official addressed context and intensity in the FONSI for the Trans Superior Project and reached the appropriate conclusion. The FONSI does not identify any actions which would result in "significant" environmental effects or any that significantly affect the quality of the human environment. I find Mr. Verito's claim that the Trans Superior Project will have a significant effect on the quality of the human environment as unsubstantiated.

**Issue 9: Cumulative Effects:** Mr. Verito contends, "*Response 3a, regarding the concern on cumulative effects, is unacceptable. Cumulative effects need to be analyzed on every proposal. It cannot be outside the scope of the project as the "response" suggests.*" (NOA, p. 4).

**Response:** The comment and response to which Mr. Verito refers is as follows:

Comment 3a: "We believe that an EIS should be conducted to adequately assess the cumulative impacts all the past, present and planned future mineral exploration actions have on the environment of the western UP and the Ottawa. Cumulative effects of mineral exploration have never been assessed." (PR, H-28, Comment 1.)

Response 3a: "A larger scale analysis of mineral exploration across the Upper Peninsula is outside the scope of this project. The effects of exploration are temporary and do not overlap in a spatial way. Exploration is speculative and future mineral exploration actions are unknown unless we receive a plan of operations or an application for a permit." (PR, K-3)

The Forest Service is not required to take a hard look at all past, present, and reasonably foreseeable future projects. The Agency has discretion to identify the environmental issues deserving study and de-emphasize insignificant issues, narrowing the scope at an early stage of agency planning. The agency can focus on the extent to which information is relevant to significant adverse impacts or is essential to a choice among alternatives (40 CFR 1501.1, 1501.7). The NEPA process should produce information that is useful to decision-makers and determine the extent and form of information needed to analyze appropriately the cumulative effects of an action and its alternatives.

Cumulative effects were discussed for individual resources throughout Chapter 3 of the Trans Superior EA on pages 14 to 34 (PR, H-5). However, this analysis deals only with cumulative effects of one particular treatment (mineral exploration). Whether or not to do a cumulative effects analysis for the impacts of mineral exploration across the Upper Peninsula depends on three items: 1) whether or not such exploration is reasonably foreseeable, 2) whether or not such exploration could lead to cumulative effects when combined with the proposed action in the Trans Superior Project, and 3) whether or not there are past or present cumulative effects that need to be considered.

1. Response 3a indicates that future exploration is not reasonably foreseeable by stating, “Exploration is speculative and future mineral exploration actions are unknown unless we receive a plan of operations or an application for a permit.” Until a proposal is received from a company or agency, we do not know where such exploration would occur, when it would occur, or how large an area would be affected. Until these questions can be answered, there is no way to reasonably foresee the effects on which to do a good site-specific cumulative effect analysis.
2. Response 3a states there are no future cumulative effects by stating, “The effects of exploration are temporary and do not overlap in a spatial way.” Until a proposal is received from a company or agency, we do not know what type of exploration would be done (e.g. seismic, drilling, visual), how extensive it would be, or if the effects of such exploration are even similar to those proposed in the Trans Superior EA project. Until these questions can be answered, there is no way to determine if the two sets of effects overlap or cumulatively lead to larger effects. Thus there is no way to do a good site-specific cumulative effect analysis for the whole Upper Peninsula.
3. Response 3a documents that there are no past or present cumulative effects by stating, “The effects of exploration are temporary and do not overlap in a spatial way.” Based on the EA, “The general area has had periodic mineral exploration within the past ten years [through 2006]. These past projects have been completed and the areas affected have either regenerated successfully or are in the process of regenerating successfully, and no long-term detrimental vegetative impacts have occurred. ... the scope and intensity of the proposed exploration projects will be very confined and minor ... .” (PR, H-5; EA, pp.14 and 19).

My review of the Project Record finds the EA and DN/FONSI adequately considered past, present, and reasonably foreseeable effects from both agency and non-agency actions. I therefore find the analysis and Response to Comments correctly stated that, “A larger scale analysis of mineral exploration across the Upper Peninsula is outside the scope of this project.”

**Issue 10: Response to Comments:** Mr. Verito’s appeal reflects dissatisfaction with a number of the responses to his comments as documented in the Response to Comments (PR, K-3, pp 8-11). His appeal points appear primarily to reflect dissatisfaction with the decision. My review follows:

Mr. Verito claims, “*On my comment 5a, the response refers me to EA documentation that I disagreed with prior to writing my previous comments.*” (NOA, p. 5).

**Response:** While I can understand Mr. Verito’s disagreement with the Responsible Official, I find that she developed the scope of the analysis based on the proponent’s “Plan of Operations.” That plan was developed based on the lease granted by the State of Michigan, holder of the mineral interest. I concur with the Responsible Official that they do not have the discretion to deny the State access to their mineral interests and that the Forest Service decision is limited to an analysis of access for the lessee to explore those mineral interests.

The “Uranium in Michigan Report to the Governor” indicates that “exploration programs in Michigan over the last 30 years have not been successful in locating a commercial uranium deposit (p. 22). It also states that it is “realistic to assume that there is a potential for uranium deposits of economic value and grade exist in Michigan Precambrian rocks (p. 23).” The decision to limit project scope is discretionary and reasonable because the exploration is very speculative. Any subsequent development would require additional analysis, public comment, and appeal opportunities.

*“Response 5c refers me to 2a, that states no mining is planned under the proposal. My retort to this “response” is explained four paragraphs above. We are tired of having our concerns circumvented this way by ONF management.” (NOA, p. 5).*

**Response:** Again, while I can understand Mr. Verito’s frustration, the time to protest the issuance of a mineral lease is when the State provides notification of intent to offer a mineral lease. The State provides a public notice and comment period that informs the decision to lease, and how to condition the leases. The Michigan Department of Natural Resources (MDNR) staff review public comment and complete analysis to determine appropriate lease stipulations. Once the State has leased the mineral interest, the Forest Service has a legal obligation to provide “reasonable access” which it is doing through this decision. This is not a discretionary decision by the Forest Service related to an agency interest in leasing Federal minerals. Like the previous issue, I find that the decision to limit the scope is discretionary and reasonable. Mr. Verito is looking for a remedy to the decision to allow potential mineral development in the wrong place.

*“Item 5g is not responded to at all, on the impact of fifty drill sites. Again, I am referred to the EA documentation that led to my comments against the proposal. Please answer our concerns and restart the appeals comment period. I don’t appreciate the impact as stated in the EA regarding drill sites and sump pits. I commented accordingly and did not receive responses based on my disagreement with the EA.” (NOA, p. 5).*

**Response:** Item 5g disputes the way the IDT chose to analyze the proposed ground disturbance. I find that the analysis approach is reasonable and consistent with the permittee’s “Plan of Operations” which proposes a four phased exploration process (EA, p. 3-4): 1) removal of approximately 13 acres of underbrush in three foot linear corridors to complete geophysical survey lines; 2) based on the outcome of the geophysical surveys, construct core drilling pads adjacent to existing or abandoned roads; 3) construct up to three miles of temporary roads where drill pads cannot be located adjacent to existing or abandoned roads; and 4) rehabilitate and restore disturbed sites.

The IDT analyzed three acres as potentially affected by drill pads based on 50 sites with an average size of 50x50 feet (EA, p. 3). Per the Report to the Governor, the average drill site is 2,000 square feet. The IDT used 2,500 square feet to assure potential impacts are recognized. The IDT analyzed three miles of temporary road with a 12 foot width. The total acres with a potential for direct effect from the proposed exploration is 20 across a total project area of 3,086 acres (EA, p. 4). The findings of the IDT are reasonable considering the scope of the analysis.



In addition, the finding of the recreation specialist that the proposed action will not change the Visual Quality Objectives of modification and maximum modification (EA, pp. 24-25) is supported by the classification for the area in the Ottawa Forest Plan.

*“Response 5k refers me to guidelines for “minimizing” disturbance, again without answering my concern that the way the guidelines are written gives the exploration a free ticket to do whatever is necessary to fulfill their exploration objectives.”* (NOA, p. 5).

**Response:** This comment appears to reflect a lack of confidence in the ability or willingness of Michigan Departments of Environmental Quality and Natural Resources, as well as the Forest Service, to provide appropriate administration. Per the Plan of Operations (PR, B-36), final location and design of proposed temporary roads and drill sites will be determined in consultation with the administering agencies. I am confident that the DNR lease; Forest Service Stipulations and Design Features; and MDEQ regulations provide adequate controls for exploration to occur with minimum impacts. I see nothing in the Record or historical monitoring reports to indicate any lack of confidence in the State’s management of mining activities on the Ottawa National Forest.

*“I was also concerned about remnants of the exploration process being left behind (liners, cement). All the response tells me is that the procedure is prescribed by the MDEQ. I am concerned about the impact, not what the DEQ prescribes.”* (NOA, p. 6).

**Response:** The MDEQ oversees the actual drilling operations and has standards in place to assure resource protection. Cementing materials are allowed in the sump pit as well as other materials only after they have been tested. In addition, the sump pit shall be buried no less than four feet below original ground grade level per MDEQ Regulations.

Cement materials are commonly used to “stiffen” the sump pit liner as a standard well closing protocol and it effectively “minimizes any potential for groundwater contamination” (EA, p. 16 and PR, J-4 p. 5). The Core drillings are assayed and, if needed, the “...cuttings from the drill sites, the contents and liners would be removed and disposed of at an appropriate location. (PR, J-4, p. 6). The IDT reviewed existing information regarding the potential impacts of such activity, mitigations required by MDEQ, the proposed Design Features and Stipulations and determined that there was not a potential for significant effects. MDEQ regulations specifically prohibit leaving any waste on-site. I find that adequate mitigations are in place and that it is reasonable to believe that those mitigations will be applied and effective.

*“My concern is identical on 5t, regarding dispersed recreation. The EA explanation was not adequate.”* (NOA, p. 6).

**Response:** This issue was specifically addressed in the Recreation Specialist Report (PR, J-2) The specialist reviewed the impacts of the proposed activity on camping and found that there might be short term displacement during actual drill pad development and operation, but these interruptions were expected to be short term and have no long term impacts.

*“Concern 5u, is “responded” to the same way, regarding NNIP.”* (NOA, p. 6).

**Response:** The IDT analyzed the potential to impact NNIS through the geophysical survey activities, drill pad site and road construction activities, and addressed it by requiring the cleaning of all off-road equipment. Both prevention of introduction and response to new infestations are addressed (EA, pp. 32-34). The only remedy that would appear responsive to Mr. Verito’s concern as expressed in the Public Comments (PR, H-32) about people coming and going would be to close the forest to public use.

*“The change to the visual characteristics of the PA is also of concern. Page 11 of the EA, in a description of the PA, does not address the concern of how the area will appear after all exploration activities are complete.”* (NOA, p. 6).

**Response:** The analysis disclosed that the VQOs for the project area are modification and maximum modification and that the proposed activities were “consistent with the visual quality objectives (EA, p. 25). VQOs provide objective and measurable standards used to describe the degree of alteration that may occur to the visual resource on lands within management areas (Forest Plan, Appendix G). The disclosure in the EA reflects that the “management activities may visually dominate the original characteristic landscape” consistent with a modification objective. Since the project area status is already in the identified VQO, and the activities do not change the VQO, I find that the disclosure is adequate. The EA findings are a result of the Specialist Report prepared by the Recreation Staff assigned to the project and documented in the Record (PR, J-2).

**RECOMMENDATION:**

I find the project decision is based on a reasonable determination of scope and that the Project Record reflects that the Responsible Official had adequate information available to make an informed decision. After reviewing the Project Record for the Trans Superior Project, and considering the issues brought by the Appellant, I recommend District Ranger Darla Lenz's February 14, 2008, Decision Notice be affirmed.

*/s/ Logan Lee*

LOGAN LEE

Appeal Reviewing Officer

Prairie Supervisor, Midewin National Tallgrass Prairie

cc: Susan Carmody,  
Patricia R Rowell  
Joel Strong