



## Minnesota Department of Natural Resources

REGIONAL OPERATIONS  
2115 Birchmont Beach Road NE  
Bemidji MN 56601  
218.755.3623

October 16, 2006

Kevin Rose  
Federal Highway Administration  
21400 Ridgetop Circle  
Sterling VA 20166

Dennis Parker, Technical Team Leader  
Chippewa National Forest  
200 Ash Avenue Northwest  
Cass Lake, MN 5663

Jim Worcester, County Engineer  
Beltrami County Highway Department  
2493 Adams Avenue Northwest  
Bemidji, MN 56601

Re: Comments on draft Environmental Assessment (EA) for CSAH 39/Forest Highway 3,  
Beltrami County,

Dear Messrs. Rose, Parker, and Worcester:

Department of Natural Resources staff appreciated the opportunity to meet on September 26th with Beltrami County, US Forest Service, Federal Highway Administration, and URS Corporation staff and discuss some of the key issues remaining before publication of the EA on this project. It was helpful to review the specific proposed design at key locations, as well as to discuss the overall project. This resulted in a productive meeting, and it appears most issues have been resolved.

In the Attachment to this letter, staff summarize our understanding of results of the meeting and site visit, including subsequent follow-up review of several issues. They have focused on those issues most relevant to impact significance as it is used in state and federal environmental review and on compatibility of the EA with Minnesota's Environmental Quality Board (MEQB) pertaining to preparation of an Environmental Assessment Worksheet (EAW) rules. We feel it was in everybody's interest that one document be prepared rather than having one federal document and one state document.

One new issue has been identified and is described in Item #6 of the Attachment. Recommendations for addressing this issue are provided.

We feel some points in the draft EA should be modified or corrected. These are listed in Item #8. We also suggest some language to be used in the EA regarding the Showy Lady slipper populations along the route adjacent to the Pennington Bog SNA. We will provide specific comments in this EA when it comes out for public review. However, knowing that the project will be constructed to Natural Preservation Route III design standards, and having viewed approximate construction limits on-site, we don't anticipate additional major comments.

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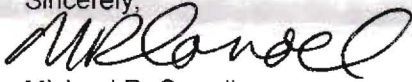
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It would be appropriate that the resolutions arrived at during the meeting be reflected as much as possible in the EA before publication. The references in this letter to the draft EA refer to the pre-publication July 2006 version we received from Kevin Rose.

Our comments are attached. When the EA is sent out for public review, please submit three copies to Steve Colvin, Program Supervisor, Environmental Review Program, Ecological Services Division, Minnesota DNR, 500 Lafayette Road, St. Paul, MN 55155; and three copies to this office. The review of the public review EA will be handled out of the DNR's St. Paul office.

If you have any questions, please call, Paul Stolen, Regional Environmental Assessment Ecologist, at 755-4068-4068.

Sincerely,



Michael R. Carroll  
Regional Director

c: Kelly Urbanek, US Corps of Engineers  
Dan Thul  
Katie Haws  
Gary Barnard  
Rochelle Gorham  
Sarah Hoffman  
Peter Buesseler  
Ron Rabe  
Matthew Langan  
Steve Colvin  
Ted Hogan, URS Corporation  
Regional File



LETTER ATTACHMENT

OCTOBER 16, 2006

Minnesota Department of Natural Resources

Beltrami County CSAH 39/Forest Highway 3 project

Resolution of items from September 26, 2006 site visit and meeting, and review of draft Environmental Assessment

1. Main issues prior to the site visit. We had indicated three primary concerns. We feel that these have been resolved sufficiently because of the September 26 meeting and site visit (See Items 2, 3, and 4 below.) These concerns were:

--We had indicated verbally that the information in the draft EA supported a finding that there was at least one mandatory EAW category for the project (One acre or more of any state Protected Water or Wetland, 4410.4300, Subp. 27. A.) If this were to be the case, it would mean a mandatory EAW under the MEQB process, with Beltrami County being the Responsible Governmental Unit, and add to the review time.

In addition, normal practice for an EAW is for it to include a specific design to be proposed, since the primary purpose of an EAW is to determine whether an EIS is needed. MEQB rules have no provision for an alternative analysis in an EAW. The draft EA we reviewed did not have a preferred design selected. We do understand that the FHA environmental process involves indicating several alternatives in the EA plus possible mitigation, and that the Record of Decision would indicate the final decision and required mitigation. However, because of MEQB rules, the draft EA would not meet the requirements of a mandatory EAW, but the EA plus a record of decision would do so.

--At least two of the alternatives described in the draft EA would involve road encroachment into the Pennington Bog Scientific and Natural Area. As mentioned in our earlier letter on this project "Therefore, road construction along this SNA could have the potential for significant environmental effects, and would thus require the preparation of an EIS for the project." (February 13, 2004 letter to Satvinder Sandhu, Federal Highway Administration, from Tom Balcom, Supervisor, MDNR Environmental Policy and Review Section.) The draft EA listed possible mitigation measures in the area of the SNA; however, there wasn't any commitment to use them. Therefore, if the draft EA were intended to be used as an EAW, we would likely be recommending an EIS for both the state and federal environmental review.

-- There were several especially significant locations along the route where we wished to be able to view the proposed construction limits so that we could make accurate assessment of impacts, and to see if resolution of problems could occur and be documented in the EA prior to public release. Also, Beltrami County had indicated to us a road design that seemed likely to mitigate or come close to mitigating the impacts of most concern to us. We felt the EA should reflect this.

2. Preferred alternative design. During the meeting and site visit, Beltrami County indicated an acceptable design would be as Natural Preservation Route III standard, with six-foot shoulders (four foot paved, 2 foot gravel) and a 15-foot clear zone. The site visit indicated that in a number of locations, including sensitive areas such as the SNA, this would involve rather minimal expansion of the road top, and a corresponding minimal extension of the inslope footprint.

Resolution. There was general agreement on September 26 that the EA would approach this by adding another alternative; a variant of Alternative 3, that also included specific design limitations and/or fill limits at certain locations such as the SNA and PW 458 (see next item.) In effect, this

alternative includes specific required mitigation measures that reduce impacts at areas where there was a potential for significant impact.

3. Protected Water 458. The draft EA indicated that one acre of this wetland would be filled, which would mean that this aspect of the project would trigger a mandatory EAW under Minnesota's MEQB rules (one acre or more of a state protected wetland.)

Resolution. During the site visit, because of the minimal road widening that was indicated, the new estimate was that approximately 1/4 of an acre of this wetland would be impacted. This means that this is not an applicable mandatory EAW category. Fill limits in this area will be included in the new alternative.

DNR's review of the draft EA did not indicate any other potential mandatory categories at this time.

4. Pennington Bog Scientific and Natural Area. The draft EA indicated potential impacts to the SNA, which we had concluded indicated the need for an EIS.

Resolution. Beltrami County indicated that the proposed design (#2 above) would result in a small amount of road widening through this area, but that the use of guardrail, which they are proposing, would allow steeper in-slopes. The guardrail would be placed one foot beyond the top of the new in-slope. During the site visit, this was demonstrated to mean that the new road construction would not result in extending the current toe of the in-slope. In other words, there would be no additional encroachment into the SNA, and wetlands, and, in fact, very little or no wetland fill. Beltrami County indicated that they are proposing to use guardrail on both sides through the Pennington Bog SNA area.

These measures are to be included in the new alternative as requirements on the design. This would resolve our concerns about impacts to the SNA.

One remaining issue that wasn't specifically discussed at the meeting—and that can be deferred until final design/wetland permitting—is to determine the location of the northern extension of the guardrail. We recommend that it extend as far north as possible in this wetland complex (considering constraints of construction) rather than end it at the SNA property boundary. This would reduce impacts to this contiguous wetland.

5. Showy Ladyslippers in the Pennington Bog SNA area. This topic was discussed at the September 26th meeting. Forest Service staff indicated that they had taken GPS data of all locations this last season. There is agreement that efforts should be made to retain these plants as much as possible. DNR indicated we would suggest language for the EA on this topic. Here is some preliminary suggested language:

"The Pennington Bog SNA area, because of its importance and sensitivity, is one of the locations where numerous showy ladyslippers are currently growing along the road edge, and contributing to the scenic quality of the road. Construction in this area will result in the current toe of the in-slope remaining the same. Some of the clumps of ladyslippers are at or below this point, and some are up from the toe 2 or 3 feet. The Forest Service has data on these locations. Efforts should be made as much as possible to retain these groups of plants when possible. Construction in this area should not occur until later in the summer. Plant locations should be flagged earlier that year, and the County, Forest Service, and contractor will work together to retain as many clumps as possible and use construction equipment and techniques (such as equipment operation on the road edge rather than down in the wetland) to avoid damage. Where



damage to the plants cannot be avoided, clumps could be transplanted to other locations where construction has already been completed, at the direction of the Forest Service botanist."

6. Road construction in the vicinity of Barott Bog, both sides of the road. (Section 8, T147, R30) Road construction in this area needs to be closely examined, since, after the site visit, we checked our Natural Heritage database and found that the Ram's Head Lady's-slipper (*Cypripedium arietinum*), a state-listed threatened species, occurs in the cedar bog on both sides of the road. Minnesota's endangered species law (MS 84.0895) and associated rules (Chapter 6212.1800 - 6212.2300 and 6134) prohibit the taking of endangered or threatened plants and animals, including their parts or seeds, without a permit. For plants, taking includes picking, digging, or destroying.

Based on Figure II-6 of the draft EA and the information provided during the site visit, we understand that the proposed realignment would result in the road moving west into the mature cedar bog. Because orchids have been documented on both sides of the road, any construction outside the existing alignment has the potential for a direct taking of Ram's Head Lady's-slippers. If a taking cannot be avoided consultation with our Natural Heritage and Nongame Research Program regarding the endangered species permitting process will be necessary (see below).

Proposed resolution of this issue. We recommend the following for addressing the proposed construction in this area and for addressing potential impacts; we also feel this information should be included in the EA:

– Conduct a botanical survey of the realignment area no more than 2 years prior to construction to determine the extent of impact to the Ram's Head Lady's-slipper population. Surveys would need to be conducted when the plants are in bloom and should be conducted by individuals with previous experience doing rare plant surveys. We can provide a list of potential contractors if needed. We understand that some survey work may have been done in this area. Please submit this information to us, including methodology, and the qualifications of the individuals regarding conducting rare plant surveys.

--Determine whether there are any modifications of the road design to reduce the area of disturbance. This perhaps could include making the curve longer so the centerline won't shift as far west, such as a slight shift of the centerline to the east before the shift back to the west. (However, we do note that impacts on the east side are to be closely examined if such a design is practical)

–Examine the use of guardrails as is planned in the Pennington Bog area.

– Assess whether road construction could change groundwater movement in the area of the curve and in turn indirectly impact the cedar bog community and Ram's Head Lady's-slipper population.

--For impacts to Ram's Head Lady's-slipper that cannot be avoided, a takings permit application must be submitted. The application must include a description of alternatives that were evaluated for avoiding/minimizing impacts, and a proposal for mitigation that compensates for the taking of plants. We have enclosed a fact sheet on the permitting process for your reference. Please note that issuance of permits is discretionary, and negotiations can take several months. (Contact Bonita Eliason, Endangered Species Coordinator, 651-259-5090.)

7. Road construction in the vicinity of Rabideau Lakes. This location is a difficult construction area because of existing residences, an intersection, and the steep drop to the lake on the east.

It is currently a very unsafe area. Discussions at this stop indicated that the proposed design will avoid fill into the lake; there are not issues of potential adverse environmental impacts to natural resources that are significant, based on our review of the proposal.

8. Specific comments on the text of the draft EA. We gave the draft EA a cursory review, and recommend at least the following parts of the draft EA be modified and/or corrected:

a. Table S-1 Generally. We are quite uncomfortable with the presentation of impacts of the differing alternatives in this table. For instance, this table simply states that "no impacts anticipated" in the category of "Birds, Fish and Wildlife" for any of the alternatives. This is incorrect, and inconsistent with the text, which, for example, indicates complete loss of as much as 10 acres of wetlands

b. References to rare species and communities. There are a number of problems, including outright inaccuracies, with the sections of the draft EA that characterize Minnesota's classification of these important natural resources, and the approach to how these potential impact to them should be assessed. The following are some of the examples where corrections and modifications need to be made:

--Some portions of the draft EA rely on field surveys of rare species that were specifically done in one field season in selected locations to determine whether or not there will be impacts to rare species. This approach is insufficient for determining impacts. In fact, there have been repeated surveys in some of these locations (Such as the Pennington Bog SNA and Barott Bog areas) that do indicate the present of these species. Our experience is that populations of rare species often fluctuate from year to year. The DNR's Natural Heritage database reflects these repeated surveys and data, and we rely on it as well as its staff when we comment on projects subject to environmental review.

--Table S-1. This table indicates no impact to rare species for any of the alternatives, yet the text indicates specific impacts to the wetlands of the Pennington Bog SNA. If the wetlands are impacted, rare species will be impacted, and the impacts could be significant.

--Section 8 of the draft EA (pages III-32 through III - 46, and Table III-12. The text of this section is inaccurate, in that it refers to some species listed by Minnesota as being "Special Concern" when in reality they are threatened or endangered on the Minnesota lists. In addition, the text is not consistent with Table III-2, which is more accurate with respect to these distinctions.

--Page III-28 of the draft EA Section 7 of the text concerning rare, threatened, and endangered species says that no state-listed threatened or endangered species were found during the surveys conducted in 2003 and 2004, yet page III-41 says that Ram's head ladyslipper, a state-listed threatened species, was found.

--Page S-8, references to Minnesota laws on wetlands and public waters. There are a couple of errors on this page. BWSR and counties, not the DNR, administer Minnesota's Wetland Conservation Act. With respect to the DNR's responsibilities, section 3 should note the word "work" should be removed from the program title, and also the DNR's Division of Waters administers the program.

9. Scenic overlook at Protected Water 458. During the meeting and site visit, there was discussion of incorporation of a viewing area to overlook Protected Water 458. We regard this as worth examining, since this wetland complex is a fairly dramatic landscape feature with no signs of the natural community being disturbed except near the road edge. Also, it appears as if a



viewing area and small parking lot could be relatively easily constructed. Such a site fits with the scenic values of the road. A relatively low platform with a few (4 or 5) parking spots could be examined, with it being located either on the north or south side of the wetland. Some of the wetland area along the road is already partially disturbed; and if the wetland impacts were confined to be the disturbed area, it would likely be acceptable. We would expect only a small area of wetland impact, at most. The area along the south edge of the wetland is State of Minnesota land.

## State of Minnesota Endangered Species Permits

Minnesota's endangered species law (MS 84.0895) and associated rules (Chapter 6212.1800 - 6212.2300 and 6134) impose a variety of restrictions, a permit program, and several exemptions pertaining to species designated as endangered or threatened. The current list of species designated under MS 84.0895 can be found at [http://files.dnr.state.mn.us/natural\\_resources/ets/endlist.pdf](http://files.dnr.state.mn.us/natural_resources/ets/endlist.pdf). The law and rules prohibit taking, purchasing, importing, possessing, transporting, or selling endangered or threatened plant or animal, including their parts or seeds, without a permit. For animals, taking includes pursuing, capturing, or killing. For plants, taking includes picking, digging, or destroying. The law and rules specify conditions under which the Commissioner of the Department of Natural Resources may issue permits to allow taking and possession of endangered or threatened species. In order to understand all regulations pertaining to species that are designated as endangered, threatened or species of special concern, persons are advised to read the full text of the law and rules, which can be accessed at <http://www.leg.state.mn.us/leg/statutes.htm>.

### PERMITS

Permits may be issued for taking only under certain conditions:

- for scientific study,
- for educational programs,
- to enhance propagation or survival of the species,
- to prevent injury to people or property, or
- when the social and economic benefit of the taking outweigh the harm caused by it.

Permitting decisions must be consistent with the intent of the law, which is to retain or restore healthy populations of native plants and animals. The responsibility for making permitting decisions has been delegated by the Commissioner to the Division of Ecological Services. **Permit issuance is discretionary and based on DNR's assessment of all relevant information.**

Some species listed under Minnesota law are also listed under the Federal Endangered Species Act. If species that are federally listed as endangered or threatened are to be taken, the USFWS should be contacted at 612/725-3276, ext. 250 or see <http://www.fws.gov/endangered/esasum.html>.

### APPLYING FOR PERMITS

Permit requests must be submitted in writing to:

Minnesota Department of Natural Resources  
Attn. Endangered Species Permits  
500 Lafayette Rd., Box 25  
St. Paul, MN 55155.

For species to be taken from the wild in Minnesota, the applicant must document the **justification for the taking, location, species, number of individuals** to be taken or possessed, that there are **no feasible alternatives to the taking**, and provide assurance that **the taking will not negatively affect the species' status in Minnesota**.

**When taking is proposed in connection with a scientific study**, the request must be accompanied by a research proposal that outlines the **justification, methodology** (including the **species and number of individuals** to be taken), the **location** of the project, and the **qualifications** of the researcher. If the research is judged to provide important information about the species that will foster its conservation, the researcher is qualified to do the work, and the proposed taking will not have a significant negative effect on the species population in the state, a permit may be issued. Permits will specify that final disposition of specimens acquired for the purposes of scientific study is to the University of Minnesota Bell Museum of Natural History. Alternative repositories may be considered if compelling justification is provided.

**For permits to possess living or dead specimens for scientific or educational purposes**, the request must indicate that the permittee is **currently conducting scientific or educational programs** in the field of biology or natural history, and that they or their institution **have appropriate and adequate facilities for the care**,



**exhibition, or storage of the particular species** that are sought to be taken, acquired or possessed. The request must also indicate the **proposed source of the specimens**, and for specimens to be acquired from a secondary source, **documentation that they were legally acquired**. For **possession of living specimens**, the request must indicate **the qualifications and experience of the person(s) who will be caring for the species**, and demonstrate **an understanding of the specific needs of the species, and how they will be met**.

Requests for **permits for propagation** must be accompanied by a project proposal that outlines the **justification, methodology** (including the **species and number of individuals or their parts or propagules** to be taken), the **locations** of both the proposed collection and propagation facilities, and the **qualifications** of the permittee relevant to propagation of endangered or threatened species. The proposal should also describe in detail the **methods of propagation and conditions under which it will occur**, and plans for **disposition of offspring** propagated under the permit. If offspring are to be released into the wild, the proposal must include **coordinates of locations for release, quantitative information about pre-release habitat and species populations at the release site, a risk analysis** of potential negative effects on habitat and species populations at the release site, and a **post-release monitoring plan** for evaluating both the target species populations, and the health of the community into which the release is done. Permits for propagation for conservation purposes will be considered only when the proposal provides convincing justification that propagation is required for the recovery of the species, the protocol is judged to be appropriate, and the permittee is qualified to do the work.

**When taking is proposed in connection with a development project**, the request can be in the form of a letter that outlines the **nature of the project**, the **location** and the **species and number of individuals** that would be taken. Before a permit can be issued, **the project proposer is asked to explore project alternatives**, including other locations or designs, which would avoid or minimize taking.

#### **MITIGATION**

**If it is determined that there are no feasible alternatives to taking in connection with a development project**, the applicant must propose compensatory mitigation to reduce the impact of the taking to an acceptable level. The magnitude of the compensation required is related to the degree of impact on the species, (for example, will the whole population at a site be destroyed, or just a few individuals?), and also to the statewide significance of the population on the site. Examples of types of compensatory mitigation that have been done for taking endangered or threatened species in Minnesota include:

- funding state acquisition of another site where the species occurs that is currently unprotected and vulnerable to destruction,
- funding additional survey work to locate other sites, and/or
- funding research to improve our understanding of the habitat requirements or protection needs of the species.

**Transplantation generally has not been considered by MNDNR to be acceptable mitigation** for taking of endangered or threatened species for several reasons. First, conservation of species in their native habitats is our first priority. Transplantation into an artificial habitat is not a sustainable strategy for native plant and animal conservation. Second, it is necessary to understand the life history, habitat requirements, and genetic structure of natural populations in order to determine the feasibility and advisability of transplantation. This information is unknown for most rare species, and acquiring it is the responsibility of the applicant. Third, transplantation may have unanticipated effects on other organisms on the new site through disturbance or competition. Finally, it would be necessary to establish the species on the new site and monitor it for several years to determine whether the species survived and persisted on the new site before taking on the project site could proceed. Most project proposers are not willing or able to defer their projects to determine the success of such an experiment.

**For further information contact: Bonita Eliason** at 651/259-5090, or [bonita.eliason@dnr.state.mn.us](mailto:bonita.eliason@dnr.state.mn.us)