

## **MN DNR Response to Corrective Action Request 1.b., Response to Public Comment**

**CAR 2005 FSC 1.b.:** Within 6 months of certification, DNR must review all of the stakeholder concerns on motorized access (as reported in the SCS Assessment Report) and demonstrate to SCS and concerned stakeholders how DNR's designation process, enforcement capabilities and other management of motorized access addresses or will address these concerns. The audit team recognizes the difficulty in meeting the needs of all user groups and understands the challenges of the DNR multi-use mandate. However the auditors find that many stakeholders concerns are relevant to DNR's conformance with the Lake States Standard. Thus, a genuine response and active effort to address these concerns is warranted.

**Response to Multi-Stakeholder Concerns on Motorized Access on State Forests:** There were fifty-four individual comments of which we summarized into twelve categories of concern. These comments and the responses will be sent to those listed as making comments and will be on the DNR website for information to all interested parties.

**Comment:** The DNR has been slow to react to the rapid growth of OHV use on public lands.

**Response:** The DNR has been actively managing this issue since 1984 (see Attachment A). Considerable progress has been made, on a variety of fronts, during this period. Still, the exponential growth in vehicle registrations, especially over the past decade, has proven challenging for state, and national, policy makers and for land managers alike. However, after several very active legislative sessions, the department now believes that it has the tools it needs to effectively manage OHV use of state lands. Federal and County forest land managers are also taking steps to better regulate motor use of public lands in Minnesota.

**Comment:** Some County Commissioners are circumventing the DNR's motor route designation process by unduly influencing the outcome of local planning efforts.

**Response:** DNR Planning Teams are working closely with county, federal and tribal land managers to foster greater consistency in the application of motorized access/use rules and regulations across the sometimes confusing 'checkerboard' of public and tribal land ownerships in northern Minnesota. A more logical, understandable and enforceable system of regulations is hoped to result, along with an inter-connected system of off-road riding opportunities.

All stakeholders have equal access to this very public planning process, and none have greater influence or carry greater weight than any other. Under state law, Counties may ultimately accept or reject the application of DNR classification decisions to county-administered lands that lie within State Forest statutory boundaries.

**Comment:** The DNR Commissioner's Office is politicizing this planning process, and is providing too much / too little guidance to OHV field planning teams.

**Response:** The DNR Commissioner's Office has provided basic process direction and field guidance through a series of memoranda dated 2003, 2004 and 2005 (see Attachments B, C, and D). These memoranda, coupled with guidance materials produced by the Project Implementation Team (PIT), are intended to assist teams in making forest classification, route evaluation and road/trail designation decisions, consistent with authorizing legislation and legislative policy direction.

Planning Team proposals are subject to review first by Regional Management Teams (RMTs), and then by the DNR's OHV Policy Committee (OHVPC) before proceeding to the Commissioner for his review. The Commissioner's Office intervenes only when intractable differences arise between RMT or OHVPC members. Then, following public review and comment steps (as per MR 6100.1950, see Attachment E), the Commissioner revisits the final draft plans and orders, to ensure that they appropriately address public issues and concerns. At that point, the Commissioner must either approve or remand the plans and orders to the team for additional modifications. (see Attachment F).

**Comment:** Unmanaged OHV use is displacing & devaluing non-motor recreation.

**Response:** The DNR provides a mix of designated OHV trails and motor vehicle routes that provide vehicular access to state forest lands. In so doing, it recognizes the needs and desires of non-motorized constituents to use state forest lands absent motor influences. Clearly, there is no state land allocation formula likely to satisfy all interests. Adjustments can and will be made in consultation with affected stakeholders.

The forest classification and motor route planning exercise currently underway will result in a substantial statewide reduction in motorized forest access route miles (see Attachment G). Of the first eight forests to be completed, two were closed to off-highway vehicles. Inventoried route miles open to motorized use declined by more than half. Substantial (de facto) non-motor areas have also resulted from undesignated route closures.

Additionally, legislative authority granted to the DNR in 2005 now enables planning teams to propose 'closed' areas within 'managed' state forests north of U.S. Highway 2 (see Attachment H). It also authorizes the Commissioner to designate areas within 'limited' or 'managed' forests where hunter/trapper motor use exceptions do not apply (de facto 'closed'). Planning Teams have already proposed invoking both of these new authorities.

Forest classification and route designation are powerful tools, and are the first real steps towards achieving 'managed use on managed trails'. This very high-profile public process helps the agency set priorities, secure funding and structure field implementation. It also establishes clear expectations for trail users, instilling order and fostering compliance with rules, regulations and accepted trail user etiquette.

**Comment:** OHV use is damaging natural resources on public lands.

**Response:** The DNR acknowledges that OHV use carries with it the potential for unintended environmental effects. With proper trail alignment, design, construction and regular maintenance, the DNR believes that it can sustainably provide for OHV use of state forest lands. However, where damage occurs, or the potential for damage exists, the DNR Commissioner can impose temporary or seasonal road and/or trail closures, or impose other restrictions (e.g., vehicle weight limits, area-wide closures) to protect public safety and natural resources. Roads or trails may be signed or gated until suitable for public use. For past three years DNR has instituted a seasonal road and trail closure program to prohibit vehicle use during wet periods when warranted. Reduction of OHV use during these wet periods has visibly decreased forest road and trail damage. Users now check the DNR website in the spring to find out if a State Forest or portion of is open for use and compliance has been improving.

Regular trail monitoring, maintenance and field enforcement help ensure that (even well-designed) trails do not fall into disrepair or generate unacceptable social or environmental impacts. A forthcoming (October 2006) DNR response to CAR 2005 1.a. Phase II will detail the department's trail monitoring and enforcement strategy. See [www.dnr.state.mn.us](http://www.dnr.state.mn.us) for details on Minnesota's Off-highway Vehicle Damage Account that provides for reimbursement for public and/or private landowners who have experienced natural resource or property damage resulting from the unauthorized use of OHVs in an un-permitted area (see Attachments I and J).

In addition to these safeguards, MN DNR has adopted a rigorous internal departmental trail review process that provides for early interdisciplinary review of proposed DNR or GIA trail projects (see Attachments K and L). This evaluation process is being used as a tool to identify potential environmental issues, and to suggest projects changes or improvements that address these issues. Together, these safeguards ensure that potentially unsound projects or practices are not approved or implemented without modification.

Minnesota's Environmental Quality Board also recently adopted rules regarding required environmental review of proposed recreational trail projects (see Attachment M). These rules now apply to all proposed public trail projects. Implicit in the rules, is the recognition that motorized trails, especially during unfrozen soil conditions, pose a greater risk for deleterious environmental effects. These rules also address the review of OHV Recreation Areas or OHV Parks, like the Iron Range OHVRA at Gilbert, MN.

Finally, the department will soon complete work on new "Trail Planning, Design and Development Guidelines", which will replace current guidelines, and begin the training of DNR Field Staff in their application. This 300+ page, full-color guidance manual, which has been under development for the past several years, provides new and detailed step-by-step instructions for trail builders in sustainable trail design, construction, maintenance, and management methods. A broad national audience eagerly awaits the release of this best management practices publication – now scheduled for fall 2006.

**Comment:** Off-trail OHV use is permitted in Minnesota, unlike surrounding states.

**Response:** Off-trail or cross-country OHV travel is not permitted on state forest lands in Minnesota, except pursuant to MS 84.926 (see Attachment N), which provides for certain hunting and trapping exceptions. These exceptions apply only to licensed individuals who operate ATVs or Highway-Licensed Vehicles (HLVs) in the course of legitimate hunting or trapping activities during specified, legal seasons. All other off-trail use is illegal and subject to enforcement action. MR 6100.1950, Subd 5-8 provides additional restrictions and prohibitions (e.g., rutting, damage to surface water, wetlands, trees or growing crops, use on non-motor trails) on the use of off-highway vehicles on Minnesota forest lands (see Attachment E).

MS 84.775 provides civil citation authority for OHV violations conservation officers and other licensed peace officers in the enforcement of OHV rules and regulations (see Attachment O). The process is similar to the civil authority in current law for trespass, litter or exotic species. Penalty amounts of \$100 for a first offense, \$200 for a second offense, and \$500 for subsequent offenses are deposited in the OHV accounts, or are payable to the unit of government employing the officer issuing the citation. Restitution for public and private property damage is required in addition to the civil penalty amount. This new authority is already being used by DNR Conservation Officers.

**Comment:** Non-native or 'exotic' species are spread by, especially off-trail OHV use.

**Response:** The introduction of non-native species is perhaps the most recognized and disruptive type of chronic vegetative impact. Timber harvesters, hunters, trappers, recreational trail users and others can introduce these exotic species through the transportation of firewood, or via contaminated (with seeds and spores) clothing, shoes, boots, backpacks, bicycles or vehicle tires. Exotics may also be transported via wind, rain, surface waters, wildfire, birds and animals.

MN DNR is committed to minimizing new routes through the forest, and by strictly enforcing prohibitions on off-trail OHV use. The vast majority of new road and trail designations, for example, occur along previously inventoried routes through the forest. The DNR is also committed to controlling or eradicating known infestations of invasive non-native species on state lands, regardless of their origin or means of introduction.

**Comment:** Users can create their own trails that then become legal riding trails.

**Response:** The DNR acknowledges that legal OHV use, especially in 'Managed' forests, pursuant to the hunting / trapping exceptions (MS 84.926) can create user-developed routes that may remain (see Attachment N). While OHV use of forest access routes in a managed forest is legal, the DNR intends to minimize the potential for the development of new, permanent routes.

Steps are being taken to stem the development of new user-developed trails, and to establish a reliable process for tracking both legal and unauthorized access routes on a continuing basis. An automated database for storing such data, along with the statewide route inventory data collected in 2004, is currently being developed. It will be completed in late 2006 (see Attachments P, Q, and R).

State Forest Resource Management Plans (SFRMP) also identify desired future forest conditions, including future timber harvest (motorized) access needs. New timber sale and harvest requirements will specify whether skid trails shall remain, or be closed and obliterated. The Division of Forestry is heading-up the SFRMP process.

**Comment:** The DNR should promote the development of OHV trails on private lands, especially lands already damaged or disturbed by mining or other extractive land-uses.

**Response:** The DNR administers an OHV grant-in-aid trail system that receives a direct line-item legislative appropriation annually. Its purpose is to encourage OHV clubs and their County sponsors to develop OHV trails on private lands, or to ‘adopt’ trails on DNR or county lands. This program leverages public dollars and harnesses volunteer energy and enthusiasm for trail development and long-term maintenance activities. It is a very efficient and effective means of providing quality OHV trail riding opportunities. The Minnesota Trails Assistance (or GIA) Programs were recently revamped to improve fiscal accountability and administrative controls over the use of public dollars by participating clubs and sponsors.

Each year, dedicated OHV funds are specifically earmarked for acquisition, maintenance, and the development of new off-highway vehicle trails and use areas. Among the many projects currently proposed is a request for \$1.5 million to acquire a private parcel needed to build a public Off-Road Vehicle (ORV) Recreation Area in Southeastern Minnesota. This proposal involves user financing from the Off-Road Vehicle Account; all debt service from the sale of state bonds will be re-paid by user fees.

**Comment:** We fear that the DNR will ‘outsource’ some monitoring, maintenance and enforcement responsibilities to GIA volunteers.

**Response:** The DNR bears responsibility for these and other critical functions of the Recreational Trails Program. The department sets the program goals, policies, standards and performance measures for DNR staff, clubs, sponsors and volunteers who assist with day-to-day implementation. Regular monitoring and program audits help ensure that goals are being met, work is getting done, and instructions are being followed. Annual work planning and budgeting exercises ensure that program direction is consistent with legislative intent and public policy goals.

**Comment:** DNR has suppressed the Ecological Services Staff Report on OHV impacts..

**Response:** Several years ago an employee in Ecological Services spent time reviewing literature on the potential impacts of all terrain vehicles. The specific purpose was to describe: 1) the potential impacts of trails themselves as physical entities; 2) the potential impacts associated with the use of the trails; and 3) the potential impacts to nearby areas when ATVs are driven off-trail. The draft was sent to a small number of staff in the Division of Fish & Wildlife for their review and comments.

About a year later, another Ecological Services employee was asked to review and editorially improve the draft (i.e. organization and presentation, not substance). That effort was completed on October 3, 2002. The title of the internal white paper was:

“Assessing the ecological impacts of ATV trail construction and use on public lands: factors to consider and a review of the literature”; it was also referred to as “internal peer review draft #5”. This draft was still somewhat incomplete as the literature cited section was still missing some references.

The document was not an official document of the department. It was compiled by staff within Ecological Services and had only very limited review by a handful of staff in Fish & Wildlife. Staff elsewhere in the department have not reviewed it or provided comments on it; nor has anyone external to the department been asked to review it. It was meant only as a working draft of information to help guide internal discussion about the review of trail proposals and their potential impacts.

Some of the issues raised in the draft helped to guide the discussion and development of the department’s internal “Rapid Environmental Assessment Checklist” (see Attachments S and T). This was developed as a tool for OHV field teams to use in the department-wide effort to develop OHV trail plans for state forest lands. The tool was designed to help outline potential environmental issues that should be addressed as new trail proposals were considered as well as formal designation of existing trails.

**Comment:** The DNR has failed to assess (motorized) recreational trail densities and evaluate the effect that high trail densities have on forest flora, fauna and other forest users.

**Response:** The DNR has not adopted a trail density standard for state forest lands. Uncertainty exists regarding the precise relationship between road/trail density and effects on terrestrial and/or aquatic ecosystems. A direct cause-effect relationship has not been established for most species; nor have threshold density values beyond which specific impacts can be anticipated. The effects of trail density on other (human) forest users are even less well understood.

Even when roads or trails have large local effects, landscape-level consequences may be negligible if these roads or trails are confined to limited areas of the forest. The spatial distribution of routes can, in many cases, be a better predictor of landscape changes than is either road/trail density or the extent and distribution of forest disturbance. It is therefore, important to evaluate potential roads and trails, and potential effects, at the appropriate scale, and within the proper management context, in order to produce sound, defensible analytical results.

#### List of Attachments:

- A. Off-Highway Vehicle Management Program, June 5, 2006.
- B. Memo “Direction for OHV Trail designation and Forest Classification Review”, July 11, 2006.
- C. Memo “Additional Direction for OHV Trail Designation and Forest Classification Review”, June 8, 2004.
- D. Memo “Update on Forest Road / Trail Designation and Classification Review and Field Direction for FY 06”, August 22, 2005.

- E. Minnesota Rule 6100.1950.
- F. Forest Classification & Road / Trail Designation Organizational Chart, October 5, 2005.
- G. Motor Route Designation – Summary of Completed State Forests, June 2006.
- H. Classification of Forest Lands North of US Highway 2, no date.
- I. Off-highway vehicle damage account, no date.
- J. Off-Highway Vehicle Damage Account ACTIVE CLAIM LOG, February 10, 2006.
- K. GIA Trail Proposal Review Process, December 1, 2005.
- L. GIA New Trail Project Review and Development Process, November 27, 2005.
- M. Minnesota Environmental Quality Board, Adopted permanent Rules relating to Mandatory EAW Categories and Exemptions, November 28, 2005.
- N. Minnesota Statutes 2005, 84.926.
- O. Minnesota Statutes 2005, 84.775.
- P. Project Charter for the Forest Access Road, Route and trail Data Management, July 26, 2005.
- Q. Service Agreement, Division of Forestry – Division of Trails and Waterways, Forest Roads and Trails Data Maintenance Application Development, August 31, 2005.
- R. Wheels – Monthly Status Report, March 31, 2006.
- S. OHV Trail Designation Rapid Environmental Assessment Checklist, March 30, 2004.
- T. Off-Highway Vehicle Route Designation / Decommissioning Environmental Evaluation of Routes Proposed for an Open Designation Guidance on Using the Rapid Environmental Assessment Checklist, March 30, 2004.