

Minnesota's Endangered Species Law: Guidance for Road Authorities

October 2, 2025

MS, section 84.0895: Protection of Threatened and Endangered Species

Minnesota's Endangered Species Statute and the associated Rules impose a variety of restrictions, a permit program, and several exemptions pertaining to species designated as endangered or threatened.

Subdivision 1

Minnesota Statutes, section 84.08995 prohibits the take of state-listed endangered or threatened animals or plants, except as provided in subdivisions 2 and 7*.

Subdivision 2

Minnesota Statutes, [section 84.0895, subdivision 2](#) states that the prohibition on take does not apply to the following:

- Plants on a ditch or on an existing public road right-of-way as defined in [section 84.92, subdivision 6a](#), except for ground not previously disturbed by construction or maintenance
 - *DNR's position is that ground disturbance means disturbance of the **soil**, and not disturbance of **solely the surface vegetation**. For example, the construction of ditches, culverts, and/or areas that have been graded, all involve disturbance of the soil and would likely be exempt from the take prohibition. However, areas that have only experienced disturbance to the surface vegetation —through, for example, activities like mowing or tree/shrub removal—are **not** exempt from the take prohibition.*

Minnesota Statutes, [section 84.0895, subdivision 2](#) also states the following:

- If needed, control of noxious weeds takes priority over the protection of endangered or threatened plant species provided a reasonable effort is taken to preserve the species first.
 - *DNR's position is that it is reasonable to target herbicidal treatment at noxious weeds in areas likely to have protected species i.e. not use broadcast herbicide application in these areas.*
- The accidental take of a plant, where the existence of the plant is not known at the time of the take, is not a violation of subdivision 1.
 - *DNR's position is that a take would not be accidental if available information suggests it is likely that threatened and endangered species would be found in the area. The NHIS data is available to all road authorities through a Natural Heritage Review or License Agreement (see below).*

Subdivision 7

Minnesota Statutes, [section 84.0895, subdivision 7](#) lists exceptions to the prohibition of take:

- The DNR may issue permits for the take under certain conditions.
- A person may capture or destroy protected species without a permit to avoid an immediate and demonstrable threat to human life or property.

- *For example, an unstable diseased butternut tree that poses an immediate risk of falling and injuring people or property may be removed without a permit.*

Tools Available to Identify Potential Presence of State-protected Species

The [Minnesota Conservation Explorer](#) (MCE) is an online tool that can be used by road authorities for planning and early coordination purposes to determine if state-protected species are likely to be present within their project or maintenance areas. The earlier a road authority can identify that there may be state-protected species concerns associated with road construction, the earlier those issues can be addressed and potential delays can be minimized.

Planning Stage: License Agreements

Any road authority can enter into a license agreement with the DNR to view locations of known occurrences of state-listed plants and animals within MCE. The DNR will also consider “umbrella” licenses that cover multiple jurisdictions.

- Submit a [License Application Form](#) to gain access to the state-listed species data
- Fee is waived for government agencies
- Data are updated quarterly in MCE
- If desired, road authorities can screen road projects (DNR provides training) early in the planning process and request Natural Heritage Reviews (see below) only for those projects that meet the screening criteria
- Road authorities can use the license agreement to proactively identify areas with state protected species in their ROWs and flag them to avoid or minimize impacts during maintenance activities in the ROW (e.g. mowing and culvert replacement).

Early Coordination: Natural Heritage Reviews

A Natural Heritage Review is required if a road project meets the threshold for Minnesota’s formal environmental review process (per EQB’s [Guide to Minnesota Environmental Review Rules](#) and Minnesota Rules, [chapter 4410](#)). A Natural Heritage Review is encouraged for all road projects that meet the screening criteria as due diligence for following state law and considering impacts to Minnesota’s natural heritage. Some permitting/licensing/funding authorities also require a Natural Heritage Review as part of their process. Any road authority can request a Natural Heritage Review within MCE and receive a DNR assessment of the potential for a proposed project to impact rare features, including state-protected species.

- Create an account and log in to gain access to the Natural Heritage Review option
- Fee is typically \$90-\$140 for each project
- Determines likelihood of presence and likelihood of take of state-protected species on a case-by-case basis, considering the exemptions to take

- Identifies potential impacts to rare features, recommendations to avoid or minimize disturbance, surveys that may be warranted, and whether a permit to take is needed
- To complete the NH Review, DNR staff may request that the road authorities provide evidence of previous ground disturbance within the road-right-of-way, if needed in order to concur that take is exempt. Given that the road authorities are the jurisdiction of record and possess all documentation concerning construction and maintenance in the road right-of-way, road authorities will delineate road rights-of-way and areas that have experienced previous ground disturbance (as described above), subject to DNR review.

Options for Compliance when Take is not Exempt

If the Natural Heritage Review determines that take of a state endangered or threatened species is likely, avoidance is the goal. If avoidance is not feasible, the project proposer will need to apply for a permit to take with mitigation.

Avoidance

In many cases, project proposers can demonstrate avoidance by determining that suitable habitat is not present, avoiding existing suitable habitat, limiting work to certain seasons, or identifying other measures that result in avoidance. When avoiding suitable habitat is not feasible, a survey is often the best way to demonstrate avoidance (or the need for a permit to take). If warranted, surveys must take place during the appropriate time of the year, follow the standards in the DNR's [Rare Species Survey Process](#), and be completed by a qualified surveyor on the DNR List of Surveyors ([Animal Surveyors](#), [Plant Surveyors](#)). The Natural Heritage Review will identify if a survey is warranted. If state-protected species are documented during a survey, an avoidance plan may be needed. Additional detail on the survey process is available at [Natural Heritage Review](#).

Permit to Take with Mitigation

Minnesota Statutes, [section 84.0895](#) and Minnesota Rules, [part 6212.1800](#) allow DNR to issue permits and prescribe conditions for take of an endangered or threatened species if the take will not be detrimental to the species, if the social and economic benefits of the act outweigh the harm caused by it, and all alternatives have been evaluated and rejected. For instructions on applying for a permit, see:

[Permit for the Take of Endangered or Threatened Species Incidental to a Development Project](#)

Compensatory Mitigation

State statute and rules (Minn. Stat. section 84.0895 and Minn. Rules Part 6212.1800) allow DNR to issue permits for take of endangered or threatened species if the taking will not be detrimental to the species. If the proposed act is detrimental to the species, DNR may prescribe permit conditions for compensatory mitigation to offset to the harm caused by the taking. The harm caused by a taking, and therefore mitigation need, is dependent on the species' rarity, life history, and threats, as well as the project impact.

Mitigation can be achieved through in-kind actions, or in some cases an in-lieu fee can support implementation of conservation actions for the species by another party. Activity proposers are encouraged to propose mitigation projects. DNR can provide technical assistance on the development of mitigation projects, if requested. Mitigation needs are determined on a case-by-case basis. When determining mitigation needs the DNR considers 1) the scale of the impact (detriment) relative to the rarity of the species and 2) the current conservation needs of the species that may provide benefit.

Scale of the impact

The impact of a take to a species can vary widely depending on the number of individuals taken and its local and statewide abundance. Potential impacts and offsets include, but are not limited to:

- If a project will take an entire population (occurrence), the majority of a population, or enough of a population that it will risk the viability of the remaining individuals, it may be necessary to provide substantially more mitigation than if the population likely remains viable. For example, to offset loss of an entire population may require identification and habitat protection of an either previously unknown population or known population occurring on unprotected land, whereas loss of a small portion of a population could potentially be offset by improved habitat management that increases the viability of a population.
- If a project will temporarily impact a small portion of a population but the habitat will not be destroyed, and the population is known to be large enough to naturally recover, mitigation may not be needed.
- If the population taken is one of few known populations, it may be necessary to provide substantially more mitigation than if there are many known populations. For example, if there are many known populations but they are occurring on unprotected habitat, habitat protection may be adequate to offset the impact, but if there are few known populations, extensive survey effort *and* habitat protection may be needed to offset the impact.
- If a species has very few populations, it may not be possible to offset loss of one of the populations and DNR will not be able to authorize take as it would be detrimental to the species.

Conservation Needs

Conservation needs of a species can vary widely depending on its life history and threats to its survival. Potential conservation needs and actions include, but are not limited to:

- If there are few known populations of a species and there is additional suitable habitat that has not been surveyed, a high priority conservation need may be to develop species distribution models and conduct surveys to identify additional populations with potential to protect and manage habitat.
- If the species is threatened by habitat loss and there are few populations of the species that occur on protected habitat, a high priority conservation need may be protecting habitat. The area of habitat to be protected should ensure population viability. Area considerations include the species and plant community dynamics, the landscape context that drives or prevents natural system processes, the planned habitat management actions, and landowner constraints.
- If the species is threatened by habitat degradation and there are populations on protected lands, a high priority conservation need may be to conduct habitat management to maintain suitable species habitat.
- If the species main threats are not habitat destruction and degradation, there may be other high priority needs, such as research, propagation, or threat abatement efforts.

- If the species is impacted by unknown threats, a high priority conservation need may be to conduct research to identify threats and actions needed to conserve the species.

In-kind mitigation

The DNR also considers the permittees ability to provide benefit to the species through in-kind mitigation actions, including but not limited to habitat protection, enhancement, or restoration on other lands owned or managed by the permittee. We encourage permittees to consider their unique position as a landowner or land manager to conduct mitigation actions or to partner with conservation organizations to conduct mitigation actions. For example, county parks may contain natural habitats that are suitable for rare species. These areas could potentially be surveyed, protected, and managed to provide conservation benefit and offset take. LGUs should consider identifying and conducting actions within their existing natural resource management plans that provide conservation benefit to the species. In these cases, specific management actions or protection measures are written into permits as mitigation, and a mitigation fee is not part of the permit. This can be an attractive option for applicants because of the lower price tag, but it requires more coordination and requires applicants to obtain DNR approvals of management plans or easement documents.

In-lieu fee mitigation

In some cases, DNR may be able to accept funds to conduct the conservation actions that will offset the impact. This type of compensatory mitigation is generally based on the cost of conducting the highest priority conservation need of the species, such as habitat acquisition and protection, habitat enhancement, targeted surveys, or research. Permit applicants often choose in-lieu fee mitigation to expedite the permit process. However, applicants should understand that the value of the in-lieu fee mitigation (and whether it is available at all) is based on the real cost of conducting conservation actions. For example, the DNR land acquisition process is unlikely to approve of acquisition of isolated parcels of land that are too small to provide viable habitat without intensive management or that are located in contexts that will severely limit land management options. This can mean, for example, that DNR is unlikely to acquire and manage small outlots within residential or industrial areas.

Examples of Successful Implementation

License Agreements

- Many counties, cities, and other local governments have entered into license agreements. Most of these licensees renew their license every two years because they find the information valuable.

Natural Heritage Review

- Since March 2022, 196 transportation projects have submitted a request for Natural Heritage Review using the Minnesota Conservation Explorer. Approximately 40% of requests receive a response within five minutes. The turnaround time for requests that do not receive an automated response is typically 3-4 weeks.

Endangered Species Permitting Examples

- 2002: Special Permit #11073 to MnDOT to take E/T plants for roadwork at I35W x CSAH52
Mitigation: conservation easement on 22.3 acres of land
- 2002: Special Permit #11075 to MnDOT to take E/T plants for roadwork at TH316

Mitigation: experimental restoration and monitoring of *C. jamesii* habitat

- 2012: Special Permit #17954 to Beltrami County to take E/T plants for roadwork at CSAH39
Mitigation: \$4,000
- 2016: Special Permit #20818 to City of Blaine to take E/T plants for roadwork at CSAH14
Mitigation: \$15,000
- 2016: Special Permit #20819 to Anoka County to take E/T plants for roadwork at CSAH116
Mitigation: \$27,733
- 2017: Special Permit #20834 to MnDOT to take E/T plants for roadwork at TH56
Mitigation: \$15,099
- 2018: Special Permit #23222 to Deerwood Twp to take E/T plants for roadwork at Placid Drive
Mitigation: \$2,000
- 2018: Special Permit #23246 to City of St. Cloud to take E/T plants for roadwork at 33rd St S.
Mitigation: \$20,000
- 2019: Special Permit #23240 to MnDOT to take E/T plants for Bridge No. 6862
Mitigation: in-kind
- 2021: Special Permit #32107 to Anoka County to take E/T plants for CSAH 14 East Expansion
Mitigation: in-kind
- 2024: Special Permit 32809 to MN DOT to take E/T mussels for Stone Arch Bridge Repair Project
Mitigation: \$81,250
- 2024: Special Permit #36535 to Crow Wing County to take E/T plants for CR 133 Improvement
Mitigation: \$7,500
- 2025: Special Permit 35124 to City of Ham Lake to take E/T plants for TH 65 East Frontage Road
Mitigation: In kind
- 2025: Special Permit #36046 to MN DOT to take E/T animal for Trunk Highway 14 Improvement
Mitigation: \$61,000

The statements in this document do not have the force and effect of law. This document is informational only and should not be interpreted as creating new criteria or requirements beyond what is already established in relevant statute and rule. The application and enforce of Minnesota's threatened and endangered species law will be determined on a case-by-case basis. Nothing in this document should be considered legal advice.
