

**STATE OF MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES**

**RECORD OF DECISION**

In the Matter of the Determination  
of Need for an Environmental  
Assessment Worksheet for the  
Border To Border Touring Route

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
ORDER**

**FINDINGS OF FACT**

1. On or about March 2, 2021, the Minnesota Environmental Quality Board (EQB) received a petition requesting the preparation of an Environmental Assessment Worksheet (EAW) for the proposed Border to Border Touring Route, located in in the Minnesota Counties of Kittson, Marshall, Pennington, Lake of the Woods, Itasca, Beltrami, St. Louis, and Lake (Petition).
2. The EQB determined that the Petition met the threshold requirements set forth in Minn. R. 4410.1100, subp. 1 and 2.
3. The EQB determined the Department of Natural Resources (DNR) was the Responsible Governmental Unit (RGU) for making the decision on the need for an EAW. Minn. Stat. § 116D.04, subd. 2a(c) and Minn. R. 4410.0500, subp. 1. Pursuant to the requirements of Minn. R. 4410.1100, subp. 5, the Petition was transmitted to the DNR on March 4, 2021 for a determination of the need for an EAW. Notice of the assignment of the petition to the DNR was published in the EQB Monitor on March 9, 2021.
4. On March 24, 2021, the DNR requested a 15 day extension on its need decision. The EQB granted the extension the same day.
5. Pursuant to Minn. R. 4410.1100, subp. 2, a petition for an EAW must contain the following information:
  - a. a description of the proposed project;
  - b. the proposer of the project;
  - c. the name, address, and telephone number of the representative of the petitioners;
  - d. a brief description of the potential environmental effects which may result from the project; and
  - e. material evidence indicating that, because of the nature and location of the project, there may be potential for significant environmental effects.
6. The project identified in the petition is the Border to Border Touring Route (Proposed Project), proposed by the Minnesota Department of Natural Resources. The Proposed Project creates a border to border touring route across northern Minnesota using existing roadway. In essence the

Proposed Project is the creation of a map delineating interconnected roadways that a motorist might use to traverse northern Minnesota. The route is 764 miles long between St. Vincent, Minnesota and Silver Bay on the shore of Lake Superior. No new road construction is anticipated as part of the Proposed Project although there may be some work undertaken by others to maintain the condition of some roadways, if needed.

7. The petition alleges that this Proposed Project may have the potential for the following environmental effects:
  - a. Water pollution to four watersheds, including Great Lakes, Rainy River, Upper Mississippi River and Red River, due to sediment load, fugitive dust, human waste, and car tire chemicals.
  - b. Air pollution due to fugitive dust and vehicle exhaust.
  - c. An increase in the likelihood of fire damage.
  - d. Environmental effects to rare species, including endangered and threatened species.
  - e. Environmental effects to existing vegetation and animals, including areas of outstanding biodiversity and conservation priority areas.
  - f. Contribute to the spread of invasive species.
  - g. Noise pollution, causing secondary habitat degradation.
8. Minnesota Rules 4410.1100, subp. 2E requires that the petition contain material evidence indicating “that, because of the nature and location of the project, there may be potential for significant environmental effects.” It must also physically accompany the petition and may not be included as merely a reference or citation to where the material evidence can be found. In short the evidence should accompany the petition and the RGU should not be required to search for the evidence.
9. In this instance the Petition contained the following material evidence:
  - a. Maps:
    - i. Maps showing water crossings anticipated by the Proposed Project located within Lake County and associated regulatory classifications and watersheds.
    - ii. Maps of locations of biodiversity significance in the vicinity of the Proposed Project and an explanation of biodiversity significance ranking and definition of all ranks.
    - iii. Maps of the Minnesota Conservation Priorities Areas with the Proposed Project superimposed over the maps.
    - iv. Maps showing the location the range and presence of rare species, including the Canada Lynx, the Gray Wolf, the Wood Turtle, the American Bald Eagle, the Rusty Patch Bumblebee, and the Northern Long-eared Bat.
  - b. Emails:
    - i. Email with notes from meetings between DNR staff and United States Forest Service (USFS) staff; transmitted from DNR Division of Parks and Trails Project

Manager Andrew Brown, to Don Pietrick, (Citizens for Sustainable Off Roding) and Emily Creighton (USFS), dated June 15, 2020.

c. Letters:

- i. A letter to MPCA Commissioner Bishop and DNR Commissioner Strommen from the office of Minnesota State Representative John Persell, Minnesota House of Representatives, dated June 12, 2020 regarding the Proposed Project.
- ii. A letter to DNR Commissioner Strommen from Margaret Levin, State Director of the Sierra Club North Star Chapter, dated August 5, 2020 and a letter to DNR Parks and Trails staff dated March 25, 2018, regarding the Proposed Project.
- iii. A letter to whom it may concern from Ted Suss, President of the Minnesota Division of the Izaak Walton League, dated May 17, 2019, and an adopted resolution opposing funding to the Border to Border project from the 2019 Izaak Walton League Annual Meeting.
- iv. A letter to DNR Commissioner Strommen from John Rust, President of the Minnesota Division of the Izaak Walton League, dated August 10, 2020 regarding the Proposed Project.
- v. A letter to DNR Commissioner Strommen, from Ellen Hawkins, Board and Policy Committee Member of Northeastern Minnesotans for Wilderness, dated October 5, 2020 regarding the Proposed Project.
- vi. A letter to DNR Environmental Review Planning Director Bill Johnson from Mike Hofer, Don Pietrick and Susan Schubert of Citizens for Sustainable Off Roding, dated May 27, 2020 regarding the DNR Environmental Review Unit's Determination on the need for an Environmental Assessment Worksheet for the Border to Border project.
- vii. A letter to DNR Commissioner Strommen from Mike Hofer, Don Pietrick and Susan Schubert of Citizens for Sustainable Off Roding, dated August 3, 2020 regarding the Border to Border project.
- viii. A letter to DNR Division of Parks and Trails project Manager Mary Straka from Thomas Kerr, Refuge Supervisor for Minnesota and Iowa for the United States Fish and Wildlife Service, regarding the Border to Border project.
- ix. A letter from DNR Division of Parks and Trails project Manager Mary Straka to Jean Chadwick, President of the Clearwater Lake Area Association, describing the Project Proposal, dated March 13, 2018.

d. Articles:

- i. Fech, Kaley. "The Outsized Impact Small Streams have on Lake Superior." *Great Lakes Echo*, December 27, 2018.
- ii. Gunderson, Dan. "Border-spanning adventure trail in the works for northern Minn." *MPR News*, August 2, 2017.

- iii. Johnson, Alissa. “Climate Change in the Northwoods Part II: What Climate Change Means for the Boundary Waters Region.” *Quetico Superior Wilderness News*, July 30, 2016.
  - iv. “Just a Few Bad Apples: Research Shows Many Off-Roaders Break the Law.” Accessed: [https://www.biologicaldiversity.org/programs/public\\_lands/off-road\\_vehicles/travelmanagementplanning/pdfs/Appendix\\_N\\_Kiel\\_Kassar\\_2007\\_Few\\_bad\\_apples.pdf](https://www.biologicaldiversity.org/programs/public_lands/off-road_vehicles/travelmanagementplanning/pdfs/Appendix_N_Kiel_Kassar_2007_Few_bad_apples.pdf) (undated).
  - v. Kennedy, Tony. “More off-road vehicles, reckless drivers create surge in Minnesota deaths.” *Star Tribune*, September 29, 2020.
  - vi. Keyel, Alexander, et al. “Modeling Anthropogenic noise impacts on animals in natural areas.” *Landscape and Urban Planning* 2018, Vol 180: pp76-84.
  - vii. Larsen, Brian. “B2B route running into opposition.” *Cook County Grand Marais Herald*, July 19, 2019.
  - viii. Larsen, Brian. “Border to Border Touring Route will start in Lake County.” *Cook County News Herald*, Feb 21, 2020.
  - ix. Myers, John. “New Prospector ATV spur joins growing Northland trail network.” *Duluth News Tribune*, July 5, 2020.
  - x. Padgett, Pamel, et al. “Monitoring fugitive dust emissions from off-highway vehicles traveling on unpaved roads and trails using passive samplers.” *Environ Monit Assess*, 2008. vol144:pp93-103.
  - xi. Res, Lisa, et al. “Hitching a ride: Seed accrual rates on different types of vehicles.” *Journal of Environmental Management*, November 8, 2017.
  - xii. Salmon and Trout Conservation. *The Impact of excess fine sediment on invertebrates and fish in riverine systems: Literature Review*. 2017.
  - xiii. Sietz, Greg. “Federal Funds will support fight against invasive plants in northern Minnesota.” *Quetico Superior Wilderness News*, July 24, 2020.
  - xiv. Sietz, Greg. “Large Swath of Superior National Forest lands protected from development.” *Quetico Superior Wilderness News*, October 7, 2020.
  - xv. Sietz, Greg. “Small human-caused wildfire contained on Crooked Lake in Boundary Waters.” *Quetico Superior Wilderness News*, June 8, 2020.
  - xvi. Switalski, T. Adam and Allison Jones. “Off-road vehicle best management practices for forestlands: a review of scientific literature and guidance for managers.” *Journal of Conservation Planning*, 2012 Vol 8:p12-24.
  - xvii. Xia, Rosanna. “Scientists solve mystery of mass coho salmon deaths. The killer? A chemical from car tires.” *Los Angeles Times*, December 3, 2020.
- e. Agency documents:
- i. Minnesota Department of Natural Resources. “DNR to host virtual summit to discuss off-road vehicle opportunities.” *Minnesota DNR News*, (Nov 10, 2020).

- ii. Minnesota Department of Natural Resources. “Border to Border Touring Route: project Description.” Internal document, (undated).
  - iii. United States Bureau of Land Management. *Environmental Effects of Off-Highway Vehicles on Bureau of Land Management Lands* (2007). Sections 2.7 Socioeconomic Implications of OHV Use and 3.0 Potential Indicators for Evaluating and Monitoring OHV Effects.
  - iv. United States Forest Service. *Travel Management; Designated Routes and Areas for Motor Vehicle Use: Final Rule* (Undated).
  - v. United States Forest Service. *Motorized Travel Management Final Environmental Impact Statement* (February 2010). Appendix I: Analysis of Public Comment, pp. I-182, I-184, I-185.
- f. Presidential Executive Order 11,644 text regarding land management agencies adopting procedures for designating trails to be open or closed to ORV use. (Undated.)
  - g. Minnesota Court of Appeals Opinion: *Trout Unlimited, Inc., et al., v. The Minn. Department of Agriculture*, 528 N.W. 2d 903 (Minn. Ct. App. 1995).
  - h. List of roads and mileage proposed for inclusion in the project within the Superior National Forest and their existing maintenance levels.
  - i. Description and photos of recreational vehicle events from Wisconsin as examples of expected events to occur along the project route.
10. The Petition also contained additional anecdotal information that did not meet the definition of material evidence per Minn. R. 4410.1100, subp. 2E. Because that information did not meet the definition of material evidence, a listing is not contained herein. This information has been maintained as part of the administrative record for this matter.
11. Minnesota Statute § 116D.04, subd. 2a(c) requires the RGU to prepare an EAW where a petition signed by not less than 100 individuals who reside or own property in the state “demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects.” *See also*, Minn. R. 4410.1100, subp. 6 and *Carl Bolander & Sons Co. v. Minneapolis*, 448 N.W. 2d N.W. 2d 804, 810 (Minn. Ct. App. 1992).
12. Both Minnesota Statutes and Minnesota Rules describe what an RGU must consider in response to a petition when it determines whether, because of the nature and location of the project, there may be a potential for significant environmental effect and thus require an EAW. Minn. Stat. § 116D.04, subd. 2a(c). The factors that must be considered are the nature and location of the project and the criteria for potentially significant environmental effects described in Minn. R. 4410.1700, subp. 7. *Id.* and Minn. R. 4410.1100, subp. 6.
13. The RGU shall deny the petition if the evidence presented fails to demonstrate that the project may have the potential for significant environmental effects. In considering the evidence, the RGU must take into account the following factors:
- a. type, extent, and reversibility of environmental effects;
  - b. cumulative potential effects of related or anticipated future projects;

- c. the extent to which environmental effects are subject to mitigation by ongoing public regulatory authority; and
- d. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other Environmental Impact Statements (EISs).

Minn. R. 4410.1100, subp. 6 and Minn. R. 4410.1700, subp. 7.

14. An RGU is not required to undertake environmental review on the basis of speculative information. *Reserve Mining Co. v. Herbst*, 256 N.W. 2d 808, 829-30 (Minn. 1977).
15. In the first special session of 2019 the Minnesota Legislature directed the DNR Commissioner to “design and provide a system of state touring routes and trails for off-road vehicles by identifying sustainable, legal routes suitable for licensed four-wheel drive vehicles and a system of recreational trails for registered off-road vehicles.” *Act of May 30, 2019*, ch. 4, Art. 1 §3, subd. 5(l), 2019 Minn. Laws 21 (funding touring routes).
16. In determining whether to order a discretionary EAW, including in response to a citizens’ petition, the governmental unit need only find “that there *may* be the potential for environmental effect.” *Carl Bolander & Sons Co. v. Minneapolis*, 448 N.W. 2d N.W. 2d 804, 810 (Minn. Ct. App. 1992) (emphasis in the original) and Minn. R. 4410.1000, subp. 3A.
17. The Proposed Project at issue in the present Petition is the DNR proposal to designate the Border to Border Touring Route. As proposed, the touring route would use existing roads, including state highways, county roads, township roads, forest roads, and minimum maintenance roads. All route segments that are included in the proposal are currently open to highway-licensed vehicles.
18. The Proposed Project does not include new vehicle or new authorizations for use. The Proposed Project does not include any off-road routes or loops or the construction of any new roads. While some of the roads along the Proposed Project’s route also currently allow all-terrain vehicle or off-highway vehicle use, these uses are not part of the Proposed Project and will not be extended to other segments of the route that do not allow these uses. The purpose of the Proposed Project is solely for the use of the route by highway licensed vehicles.
19. Minnesota Rules 4410.0200 subpart 65 defines a “project” as a governmental action, the results of which would cause physical manipulation of the environment. The petition identifies the project as DNR’s proposed Border to Border Touring Route.
20. An action can only be considered a “project” under Minnesota Rule chapter 4410 if the action requires a governmental approval. The DNR approval authority for the Proposed Project, as identified in the petition, is limited to the identification of touring routes. Minnesota Rules 4410.0200 subpart 4 defines “approval” as a decision by a unit of government to issue a permit or otherwise authorize the commencement of a proposed project. The DNR can authorize commencement of the Proposed Project.
21. Minnesota Rules 4410.0200, subpart 60 defines a phased action as one that “involves two or more projects to be undertaken by the same proposer that a... [responsible governmental unit] ... determines: will have environmental effects on the same geographic area; and are substantially certain to be undertaken sequentially over a limited period of time.”

22. There are no other DNR proposed projects in the same geographic area that would likely have environmental impacts that would interact with the Proposed Project to produce cumulative potential effects.
23. The Proposed Project does not fall within any of the exemptions to environmental review as set forth in Minn. R. part 4410.4600.
24. The Proposed Project does not fall within any of the mandatory EAW or EIS categories requiring the preparation of an EAW. Minn. R. 4410.4300 and 4410.4400.
25. The Petition alleges that the Proposed Project will result in water pollution to four watersheds, including Great Lakes, Rainy River, Upper Mississippi River and Red River, due to sediment load, fugitive dust, human waste and car tire chemicals.
26. The Proposed Project would primarily be promoted on a seasonal basis to avoid wet conditions in spring, or other inclement conditions in fall and winter. The overall route would be subject to a management plan that could direct segments of the route to be closed temporarily to avoid erosion or other environmental impacts.
27. The Proposed Project only includes segments of existing roadways that are already open to licensed highway vehicles. No material evidence provided with the Petition demonstrates that the Proposed Project may result in significant environmental effects due to human waste or car tire chemicals.
28. The Petition alleges that the Proposed Project will result in air pollution due to fugitive dust and vehicle exhaust.
29. Route segments across the state that will be used for this Proposed Project include state highways, county roads, township roads, forest roads and minimum maintenance roads. Detailed use patterns are unknown but have been estimated by DNR staff to be approximately 15 vehicles per week, which would occur primarily during non-frozen conditions. Routes segments chosen for inclusion in the Proposed Project were chosen, in part, because they had additional use capacity. If at any time, traffic exceeds appropriate use for a road authority, individual segments may be closed.
30. The Petition alleges that the Proposed Project will increase the likelihood of fire damage.
31. The Proposed Project does not include any new campgrounds, parking areas, or other recreational features that would facilitate or encourage activities that would increase the likelihood of recreational fires.
32. The Petition alleges that the Proposed Project will result in environmental effects to rare species, including endangered and threatened species, and that the Project will result in environmental effects to existing vegetation and animals, including areas of outstanding biodiversity and conservation priority areas.
33. The Proposed Project does not include new route segments, route expansions, or new loops away from the existing roadways. No new construction is needed for this Project. As such, no physical encroachment into existing surrounding habitat, including areas of outstanding biodiversity or conservation priority areas will occur as a result of the Proposed Project.
34. The Petition alleges that the Proposed Project will contribute to the spread of the invasive species. In support of this claim Petitioners cite a 2017 *Journal of Environmental Management* article provided, "Hitching A Ride: Seed accrual rates on different types of vehicles".

35. The 2017 article cited by Petitioners finds that of the vehicles studied, off-road vehicles were found to carry greater numbers and varieties of seed than small and large four-wheel-drive vehicles. It also finds that transport of these seeds were greatly increased during wet conditions. The Proposed Project does not designate nor authorize any off road areas along the route. Every part of this route is on existing roadbed. In addition, the Proposed Project does not include any authorizations for new vehicle uses along the route. Only those vehicles currently authorized to use these routes could continue to use the routes. Finally, upon completion, the Management Plan for the Project provides that routes could be closed temporarily during wet spring conditions to prevent seed and terrestrial invasive species movement.
36. The Petition alleges that the Proposed Project will cause noise pollution, resulting in secondary habitat degradation.
37. There is no material evidence provided with the Petition that demonstrates that the Project, due to its nature and location, may have the potential to cause significant noise pollution or secondary habitat degradation.
38. The Proposed Project includes multiple types of roadways that would be and currently are subject to a variety of state laws and local land-use decisions. Minnesota Statute § 116.07, subd. 2a exempts roads managed by the Minnesota Department of Transportation (MnDOT) state noise standards provided that “all reasonably available noise mitigation measures, as approved by the commissioners of the Department of Transportation and Pollution Control Agency, are employed to abate noise”. Noise levels on roads not administered by MnDOT are subject to the state noise standards set forth in Minn. R. 7030.1000-1060. These provisions apply to the state highways, county roads, township roads, forest roads and minimum maintenance roads that are included in this Project. Finally, noise on many of these roads is governed by local nuisance sound ordinances. These existing regulatory controls currently mitigate the sounds on the roads incorporated into the Proposed Project and would continue to do so after the project route is designated.
39. In determining whether to order an EAW, a RGU should consider whether, as a result of a proposed project, there may be the potential for cumulative environmental effects caused by the project. A cumulative potential effect is "the effect on the environment that results from the incremental effects of a project in addition to other projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resource." Minn. R. 4410.0200, subp. 11a.
40. The potential contribution of the Proposed Project to environmental effects that were identified as concerns in the Petition (e.g., water pollution, dust, noise and invasive species) is small. These small contributions from the Proposed Project do not have the potential to create any significant environmental effects beyond those that may already occur due to the existing roadway. Therefore the Proposed Project does not have the potential to cause significant cumulative environmental effects.

## **CONCLUSIONS**

1. DNR has determined that the Border to Border Touring Route Project is subject to the Petition.
2. When determining whether a proposed project may have the potential for significant environmental effects, the RGU considers the evidence from the petition and other information known to the RGU in the context of the following factors:



- a. type, extent, and reversibility of environmental effects;
- b. cumulative potential effects of related or anticipated future projects;
- c. extent to which the environmental effects are subject to mitigation by on-going regulatory authority; and
- d. the extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by agencies or the project proposer, including other EISs.

See Minn. R. 5510.1100, subp. 6 (directing the RGU to consider the factors set forth in Minn. R. 4410.1700, subp. 7 in determining whether a project may have the potential for significant environmental effect).

3. *Type, extent, and reversibility of environmental effects.*

The Proposed Project would designate a route for licensed highway vehicles to use existing roads to traverse the northern portion of the state. As set forth in Paragraphs 25 through 40, additional use of these roads would have limited direct environmental effects on water quality, invasive species, rare species (including threatened and endangered species), and fire risk. Potential environmental effects related to noise, dust and fugitive emissions are reversible.

4. *Cumulative potential effects of related or anticipated future projects.*

Based on the Findings of Fact set forth in Paragraphs 22 and 39-40, the DNR is unaware of any past, present, or reasonably foreseeable projects, for which a basis on expectation has been laid, that combined with environmental effects of the Proposed Project may result in significant potential for environmental effects.

5. *Extent to which environmental effects are subject to mitigation by on-going public regulatory authority.*

DNR Division of Parks and Trails will be developing a Management Plan for the Proposed Project that will be used to manage the Project and avoid potential adverse impacts. Maintenance would remain the responsibility of the existing roadway authority, but an ongoing maintenance fund would be set up to reimburse costs associated with elevated use of road segments associated with the Proposed Project. This Management Plan will act as a guide to oversight of the Proposed Project by DNR and roadway authorities. Additionally, noise impacts associated with all road uses is currently subject to ongoing regulation as set forth in Paragraph 38.

6. *Extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or other EISs.*

The following documents provide information that can be used to anticipate and control environmental effects of the Border to Border Touring Route project:

State of Minnesota, Department of Natural Resources, Border to Border Touring Route Management Plan, forthcoming. This plan will provide detailed guidance on management of the Proposed Project to avoid potential impacts.

9. The RGU is required to deny a petition for an EAW if the evidence presented by the petitioner fails to demonstrate the project may have the potential for significant environmental effects. Minn. R. 4410.1100, subp. 6. As demonstrated in Paragraphs 25 through 40, the Proposed Project does not have the potential for significant environmental effects.
10. Any Findings that might be properly termed Conclusions and any Conclusions that might properly be termed Findings are hereby adopted as such.

### **ORDER**

Based on the above Findings of Fact and Conclusions:

The Department of Natural Resources determines that an Environmental Assessment Worksheet will not be prepared for the proposed Border to Border Touring project, as requested by the petition submitted to the EQB.

Dated this \_\_15\_\_ day of April 2021.

STATE OF MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES



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JESS RICHARDS  
Assistant Commissioner