

RECORD OF DECISION

In the Matter of the Request to Add
a Parking Area and Travel Corridor in the
Prairie Smoke Dunes Scientific and Natural Area
Norman County, Sundahl Township

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

PROCEDURAL BACKGROUND

1. In 2010 and 2016, Norman County Board of Commissioners (Board) asked that the Minnesota Department of Natural Resources (DNR) create an additional travel corridor and parking area on the north end of the Prairie Smoke Dunes Scientific and Natural Area (SNA) (See Figures #1-3). Below is a timeline of the SNA designation and Norman County Commissioners' request.
 - 1994 – Prairie Smoke Dunes SNA was designated to protect sand dunes, oak savanna, oak forest and threatened and endangered plant species.
 - 1994 – The first parking area and public access was constructed along a 2-mile stretch of township road, 310th Ave.
 - 1995–Prairie Smoke Dunes SNA was re-designated to allow hunting for management purposes only. Deer hunting was allowed by special permit as needed for population management (max. 20 hunters).
 - 2008 –SNA was opened to a regular deer hunting season without a special permit, as needed for population management (all public).
 - 2003-2009 –Conflicts occurring between individual SNA users and neighboring property owners lead to “road” closures on the west and north property lines.
 - 2010 – Sundahl Township verified that the roadway along north boundary was not a township road. A gate along Hwy 32 was installed, with cooperation of adjacent landowners.
 - 2013 – A second parking area was developed along Hwy 32.
 - 2016 – The Board voiced concerns about the locked gate on Hwy 32 limiting public access and requested that it be opened.
 - 2016-2017 – DNR discussed the gate issue with Norman County and adjacent landowners.
 - 2017-2018 – DNR surveyor and attorney verified that the north “road” ownership is split between DNR and an adjacent landowner (See Figure #3). The gate is located within Minnesota Department of Transportation (MNDOT) right-of-way. DNR presented several options for additional access to the Board.
 - April 19, 2018 – The Board passed a resolution to support opening the road on the north end of Prairies Smoke Dunes SNA “...including going as far west as possible, preferably to the adjacent land owner’s field approach providing seasonal entrance for the months of September through December.”
 - October 15, 2018 – DNR sent Norman County a letter informing them that the agency would be holding a public meeting and providing information on how to obtain the date and time for the meeting.

- October 30, 2018 – DNR held a public hearing regarding the proposed project.
- October 30 through November 20, 2018 – DNR held an open comment period regarding the proposed project.

FINDINGS OF FACT

2. The proposal is to relocate a gate that is currently on MNDOT right-of-way onto DNR property. A road approximately ¼ mile along the northern boundary of the SNA would be relocated to be entirely on SNA property and the northern boundary would either be signed or potentially fenced by either DNR or the adjacent landowner. A parking area would be constructed approximately ¼ mile west along that northern road. The project would cost approximately \$16,500. The project would also require an amendment to the Designation Order.
3. Minnesota Statutes and Rules provide requirements for administration of scientific and natural areas.

Minn. Stat. § 86A.05, subd. 5(c) states:

State scientific and natural areas shall be administered by the commissioner of natural resources, in consultation with qualified persons, in a manner which is consistent with the purposes of this subdivision to preserve, perpetuate and protect from unnatural influences the scientific and educational resources within them. Interpretive studies may be provided for the general public. Physical development shall be limited to the facilities absolutely necessary for protection, research, and educational projects, and, where appropriate, for interpretive services.

Minn. Stat. § 86A.05, Subd. 5(d) states:

An area designated as a state scientific and natural area shall not be altered in designation or use without holding a public hearing on the matter at a time and place designated in the notice of the hearing, which shall be published once in a legal newspaper in each county in which the lands are situated at least seven days in advance of the hearing. At the hearing the commissioner shall provide an opportunity for any person to be heard. The commissioner may designate these areas by written order published in the State Register.

Minn. R. 6136.0550, Subp. 1 GENERAL RESTRICTIONS states:

The following activities are prohibited in scientific and natural areas unless specifically authorized by written permit under subpart 5 or commissioner's designation order under subpart 6:

- A. camping and picnicking;
- B. burning of any kind;
- C. disposal of garbage, refuse, sewage, or trash;
- D. swimming, boating, or use of any type of watercraft;
- E. fishing;
- F. hunting, trapping, or possession of an uncased or loaded firearm, an uncased and strung bow, a trap, a slingshot, or explosives;
- G. operation of a bicycle or motorized vehicle, except in designated parking areas;
- H. landing aircraft;
- I. possession of horses or other pet animals or allowing entry of horses or other pet animals;
- J. consumption of alcoholic beverages;
- K. commercial activities, including peddling, soliciting, and advertising; and
- L. private events or group activities, including orienteering, geo-caching, and athletic or social events, which are advertised or organized for purposes other than nature observation, education, or research.

Minn. R. 6136.0550, Subp. 6B states:

A designation order may allow exceptions to prohibited activities to enhance public use of a scientific and natural area or surrounding areas, if the activities are compatible with the purposes for which the scientific and natural area was acquired. The following criteria shall be considered to determine if exceptions to the prohibited activities should be allowed:

- (1) the activity occurred prior to designation;*
- (2) the designation of specific areas for activities will help prevent damage to more sensitive areas;*
- (3) the activity is needed to use a preexisting travel corridor to access land adjacent to a scientific and natural area for a special purpose;*
- (4) the activity will enhance access to or interpretation of the scientific and natural area;*
- (5) allowing the activity will provide consistency with regulations of adjacent public lands;*
and
- (6) the activity will help achieve management objectives for the scientific and natural area."*

4. As required by Minn. Stat. § 86A.05, Subd. 5(d), a public notice of the hearing was published in the Norman County Index on October 23, 2018. Additionally, the Norman County Board of Commissioners was informed of the upcoming public hearing via a letter sent on October 15, 2018 explaining how to obtain the information about the hearing date and time.
5. A public comment period opened on October 30, 2018 and closed on November 20, 2018. The public notice provided the time and place of the hearing, the purpose of the hearing, notification of the comment period, and instructions for making public comments. The DNR webpage also provided notice of the hearing, the purpose of the hearing, and provided instructions on how to send written comments.
6. On October 30, 2018 the DNR held a public hearing to gather public testimony about whether a new parking lot and travel corridor should be constructed along the north boundary of Prairie Smoke Dunes SNA approximately 0.2 of a mile west of the northeast corner of the SNA. This SNA currently has two constructed parking areas located along the east and south sides of the SNA (See Figure #1 and #2).

7. The public hearing was attended by Shelley Hedtke, who represented the Northwest Region SNA Program; Theresa Ebbenga, the Division of Ecological and Water Resources (EWR) Assistant Northwest Regional Manager and Judy Schulte, Acting SNA Program Supervisor, who served as recorders; Nathan Kestner, EWR Northwest Regional Manager, who gave a presentation; Carrie Graf, Northwest Region SNA Natural Areas Specialist, who helped with the audio recording and sign up; and Shawn Donais, Area 1B Division of Parks and Trails Supervisor, who served as the hearing officer. Also in attendance were Tom Hutchins, Northwest Region District 2 Conservation Officer and Rob Baden, Detroit Lakes Area Wildlife Manager.
8. Six (6) members of the public attended the public hearing and gave oral comments in opposition to the proposed parking lot addition and travel corridor.
9. The DNR received 28 individual pieces of correspondence including: 19 emails, 7 written statements and 2 facsimiles. Two of the written statements were from individuals who were at the hearing and their comments were captured in both the hearing minutes and in written format but not counted twice. One person submitted a comment and then amended it. This was captured in the total number of email correspondences above (19) and was only counted as 1 submission. In addition, 2 emails received before or during the comment period requested clarification of information in the legal notice or about the on-line comment process. Those inquiries are not reflected in this summary.
10. All written public comments received (see FOF #9) during the comment period were compiled and are included as Attachment 2 to the FOF.
11. Oral and written comments were compiled and summarized by Shelley Hedtke, Regional SNA.
12. Of the 28 individual comments received both at the hearing and via written and emailed comments, 0 responses were in favor of allowing the addition of a parking area and travel corridor, 27 were in opposition, and 1 had no comment regarding allowing the addition of a parking area and travel corridor on Prairie Smoke Dunes SNA. No representatives from the Norman County Board of Commissioners attended the public hearing or provided written or emailed comments supporting or opposing the proposal.
13. Operation of motorized vehicles is prohibited under Minn. R. 6136.0550, Subp. 1G except in designated parking areas. Vehicular travel through the SNA to get to the proposed new designated parking area is prohibited unless an exception is authorized by written permission or a Commissioner's designation order. The Commissioner's designation order may allow exceptions to prohibited activities to enhance public use of the SNA or surrounding areas if the activities are compatible with the purposes for which the SNA was acquired. An exception must both enhance the public use of the SNA and be compatible with the purpose for which the SNA was established.
14. Twenty-one comments expressed concern that adding a parking lot and travel corridor would not enhance public use and was not the purpose for which this SNA was established, which is to protect and perpetuate in an undisturbed natural state, the features for which the site was originally protected. There were no comments that the proposed travel corridor and parking area would be compatible with the purposes for which the SNA was acquired during the hearing or in comment correspondence.

15. In the original designation order in 1994, the site was specifically designated to preserve dry barrens oak savanna (*Northern sub-type*) and habitat for rare plant and animal species including purple sand-grass (Minnesota special concern), annual skeletonweed (Minnesota threatened), Indian ricegrass (Minnesota special concern), northern singlespike sedge (Minnesota special concern), western prairie fringed orchid (federal threatened), and plains hog-nosed snake (Minnesota special concern).

This SNA was designated to protect rare resources and wildlife habitat as identified in the designation order. An amended designation order in July 1995 allows for hunting for management purposes only. The addition of a parking lot and travel corridor in the proposed location would allow additional access for hunters.

A parking area and travel corridor in this location may result in some impacts to prairie that has been restored since designation. In addition, though the proposal would not directly impact the above species, the parking lot and corridor may result in increased use of the site, which increases the risk of impacting the native plant communities (See Figure #1).

16. As listed in Finding 3 above, Minn. R. 6136.0550, subp. 6B includes six criteria the Commissioner must consider to determine if exceptions to prohibited activities should be allowed. Findings 18-30 below are specific to these individual criteria.
17. Two people made comments on the consideration of Minn. R. 6136.0550, subp. 6B(1): *"the activity occurred prior to designation."* The commenters indicated that the proposed motor vehicle access road and parking did not occur prior to SNA designation.
18. Though the parking was not in place prior to designation, there was likely some use of the roadway prior to designation. The Norman County Board of Commissioners had stated previously, at the August 8, 2017 Board meeting, that the road was publically used prior to installation of the gate. DNR determined that the field road was not a County or township road, but was instead owned by the two landowners on either side (DNR and Mr. Tim Jagol).
19. Prior to installation of the gate in 2010, members of the public would use the field road to access the SNA though it was not a public road. Evidence of the field road is clear from a 1939 aerial photo. The road appears, from aerial photography, to have been improved around 2007 – 2008. This improvement was done by the adjacent private landowners on the north side of the SNA. A gate was erected in 2010 by DNR and the adjacent landowners to reduce conflicts and trespass onto private land.
20. Six people commented on the consideration of Minn. R. 6136.0550, subp. 6B(2): *"the designation of specific areas for activities will help prevent damage to more sensitive areas."* The commenters stated that the proposed parking area and travel corridor would potentially cause damage to sensitive areas. Some comments included the following concerns: motor vehicle access and parking lot will not help prevent damage, they provide an entryway for illegal vehicle and snowmobile use creating an attractive nuisance; the parking lot would pose the possibility of harming rare resources; and orchids and other rare plants might be at risk with the construction of this parking area. There were no comments that the proposed travel corridor and parking area would help prevent damage to more sensitive areas in the SNA during the hearing or in comment correspondence.
21. A designated parking lot and travel corridor in this location is separate from and will not cause direct impacts to sensitive areas within the SNA for which the SNA was designated, but may result in

impacts to areas of restored prairie created since designation. A designated parking lot and travel corridor may result in increased use of the site, which could indirectly impact sensitive areas within the SNA for which the SNA was designated and other native plant communities (See Figure #2). Wetlands exist along the route and would need to be avoided.

22. Two people commented on the consideration of Minn. R. 6136.0550, subp. 6B(3): *“the activity is needed to use a preexisting travel corridor to access land adjacent to a scientific and natural area for a special purpose.”* The commenters stated that the parking lot and travel corridor are not needed. One commenter stated there is no need to change the topography of the land in question to allow the adjacent landowners to access their land. The commenter stated that adjacent landowners can access their property without the development of the new travel corridor and parking lot. There were no comments that the proposed travel corridor and parking area is needed to use a preexisting travel corridor to access land adjacent to the SNA during the hearing or in comment correspondence.
23. There are two other areas that can be used to provide public access to the SNA. One is located approximately ½ mile to the south of the SNA and includes a parking lot. The second is located on the southern end of the SNA and also includes a parking lot. The existing north field road provides access to a land locked neighbor’s farm fields. Further development of this roadway and the addition of a parking lot is not necessary for this neighbor to reach his or her farm fields, as the neighbor currently accesses the farm fields through the locked gate and over the existing roadway.
24. Eighteen people commented on the consideration of Minn. R. 6136.0550, subp. 6B(4): *“the activity will enhance access to or interpretation of the SNA.”* The commenters did not believe that the proposed parking lot and travel corridor would enhance access to or interpretation of the SNA. There were no comments that the proposed travel corridor and parking would enhance access to or interpretation of the SNA during the hearing or in comment correspondence.
25. The addition of a parking lot and travel corridor would provide additional access to the northeast corner of the SNA.
26. Three people commented on the consideration of Minn. R. 6136.0550, subp. 6B (5): *“allowing the activity will provide consistency with regulations of adjacent public lands.”* These commenters stated that the proposed activities will not provide consistency with regulations of adjacent public lands. There were no comments that the proposed travel corridor and parking area is needed to provide consistency with regulations of public lands adjacent to the SNA during the hearing or in comment correspondence.
27. There are no known adjacent public lands with the possible exception of the Wild Rice Watershed District property located northwest of the SNA. Access to the Watershed District’s impoundment structure adjacent to the SNA is through a private easement; the proposed travel corridor and parking area is not needed to access the Watershed District property. Other adjacent lands are privately owned.
28. Seven comments were received regarding the consideration of Minn. R. 6136.0550, subp. 6B (6): *“The activity will help achieve management objectives for the scientific and natural area.”* All of these comments were critical of the proposed parking area and travel corridor. Comments included: Management objectives including deer hunting are already being met without the addition of a parking lot and road; the new parking lot could be a dumping ground and may result in hunters violating the antlerless deer restriction as it would be out of sight and not easily monitored

from a public road; the long-standing management objectives of the SNA program are to minimize negative impacts to these areas, providing only the most basic access, and keeping the sites in their utmost natural state, for the benefit of both wildlife and people; roads and parking areas add barriers to wildlife and increase intrusion points for non-native plant species; and the off-highway, out of site location may result in increased illicit or nuisance activities. There were no comments that the proposed travel corridor and parking area will help achieve management objectives for the SNA during the hearing or in comment correspondence.

29. An additional parking lot and travel corridor would create additional management responsibilities including, but not limited to, building and maintaining infrastructure, refuse/trash clean up, barriers that would need to be mowed, and implementation of measures to prevent damage to parking access during prescribed burning operations.

CONCLUSIONS

30. DNR complied with Minn. Stat. § 86A.05, Subd. 5(d) as a public notice of the hearing was published in the Norman County Index on October 23, 2018. Additionally, the Norman County Board of Commissioners was informed of the upcoming public hearing via a letter sent on October 15, 2018 explaining how to obtain the information about hearing date and time.
31. Minn. Stat. § 86A.05, Subd. 5(c) states that in SNAs, physical development shall be limited to the facilities absolutely necessary for protection, research, and educational projects, and, where appropriate, for interpretive services. Adding a third constructed access and parking area is not absolutely necessary as the two existing parking areas provide sufficient access to the site.
32. Minn. R. 6136.0550, Subpart 1(G) prohibits vehicular use unless specifically authorized by a written permit or Commissioner's designation order.
33. Minn. R. 6136.0550, Subpart 6 (B) states "*A designation order may allow exceptions to prohibited activities to enhance public use of a scientific and natural area or surrounding areas, if the activities are compatible with the purposes for which the scientific and natural area was acquired.*" This subpart also provides specific criteria that must be considered to determine if exceptions are compatible with the purpose for which the SNA was acquired and therefore should be allowed.
34. The project would not enhance public use of the SNA and is not compatible with the purposes for which the SNA was acquired.
35. Minn. R. 6136.0550, subp. 6B includes itemized criteria the Commissioner must consider to determine if exceptions to prohibited activities should be allowed. DNR has reviewed the project against all six (6) criteria and concludes that only two of the criteria weigh in favor of allowing the prohibited use:
 - a. Minn. R. 6136.0550, subp. 6B(1): "*the activity occurred prior to designation*" – Prior to gate installation in 2010, members of the public would use the field road to access the SNA.
 - b. Minn. R. 6136.0550, subp. 6B(2): "*the designation of specific areas for activities will help prevent damage to more sensitive areas*" – A designated parking lot and travel corridor in this location would not help avoid direct impacts to sensitive areas within the SNA for which the SNA was designated. A designated parking lot and travel corridor in this location may

result in impacts to areas of restored prairie created since designation. It also may result in increased use of the site, which could indirectly impact sensitive areas within the SNA and other native plant communities (See Figure #1 and 2).

- c. Minn. R. 6136.0550, subp. 6B(3): *“the activity is needed to use a preexisting travel corridor to access land adjacent to a scientific and natural area for a special purpose”* – The activity is not needed to use a preexisting travel corridor to access land adjacent to a scientific and natural area for a special purpose. The existing north field road provides adequate physical access to a land-locked neighbor’s farm fields.
 - d. Minn. R. 6136.0550, subp. 6B(4): *“the activity will enhance access to or interpretation of the SNA”* – The addition of a parking lot and travel corridor would provide additional access to the northeast corner of the SNA.
 - e. Minn. R. 6136.0550, subp. 6B(5): *“allowing the activity will provide consistency with regulations of adjacent public lands”* – Allowing the activity would not help provide consistency with regulations of adjacent public lands. There are no known adjacent public lands with the possible exception of the Wild Rice Watershed District property located northwest of the SNA. Access to the Watershed District’s impoundment structure adjacent to the SNA is through a private easement. Other adjacent lands are privately owned.
 - f. Minn. R. 6136.0550, subp. 6B(6): *“The activity will help achieve management objectives for the scientific and natural area.”* – The activity would not help achieve management objectives for the scientific and natural area. The activity has the potential to impact restored prairie and increases SNA management work associated with maintenance of the access road, additional parking lot and increased human traffic. Costs of implementing this project would be approximately \$16,500.
36. DNR concludes that the proposed parking area and travel corridor would not enhance public use of the SNA, and is not compatible with the purposes for which the SNA was acquired. Two parking lots are already available and provide access to the SNA. Adding an access road and additional parking lot increases the risks to rare plant and animal habitat – habitat that the SNA was acquired in order to protect. In addition, the proposed project would not prevent damage to more sensitive areas of the SNA, is not needed to access adjacent land for a special purpose, would not provide consistency with regulation of adjacent public lands, and would not help achieve management objectives for the SNA.

ORDER

Based on the above Findings of Fact and Conclusions:

The Minnesota Department of Natural Resources determines that construction of a new parking area and travel corridor on the north side of Prairie Smoke Dunes Scientific and Natural Area in Norman County, Minnesota is not authorized.

Any Findings that might properly be termed Conclusions and any Conclusions that might properly be termed Findings are hereby adopted as such.

Dated this 13th day of December, 2019.

**STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES**



Jess Richards
Assistant Commissioner

Figure 1: Ecological Features of Prairie Smoke Dunes SNA

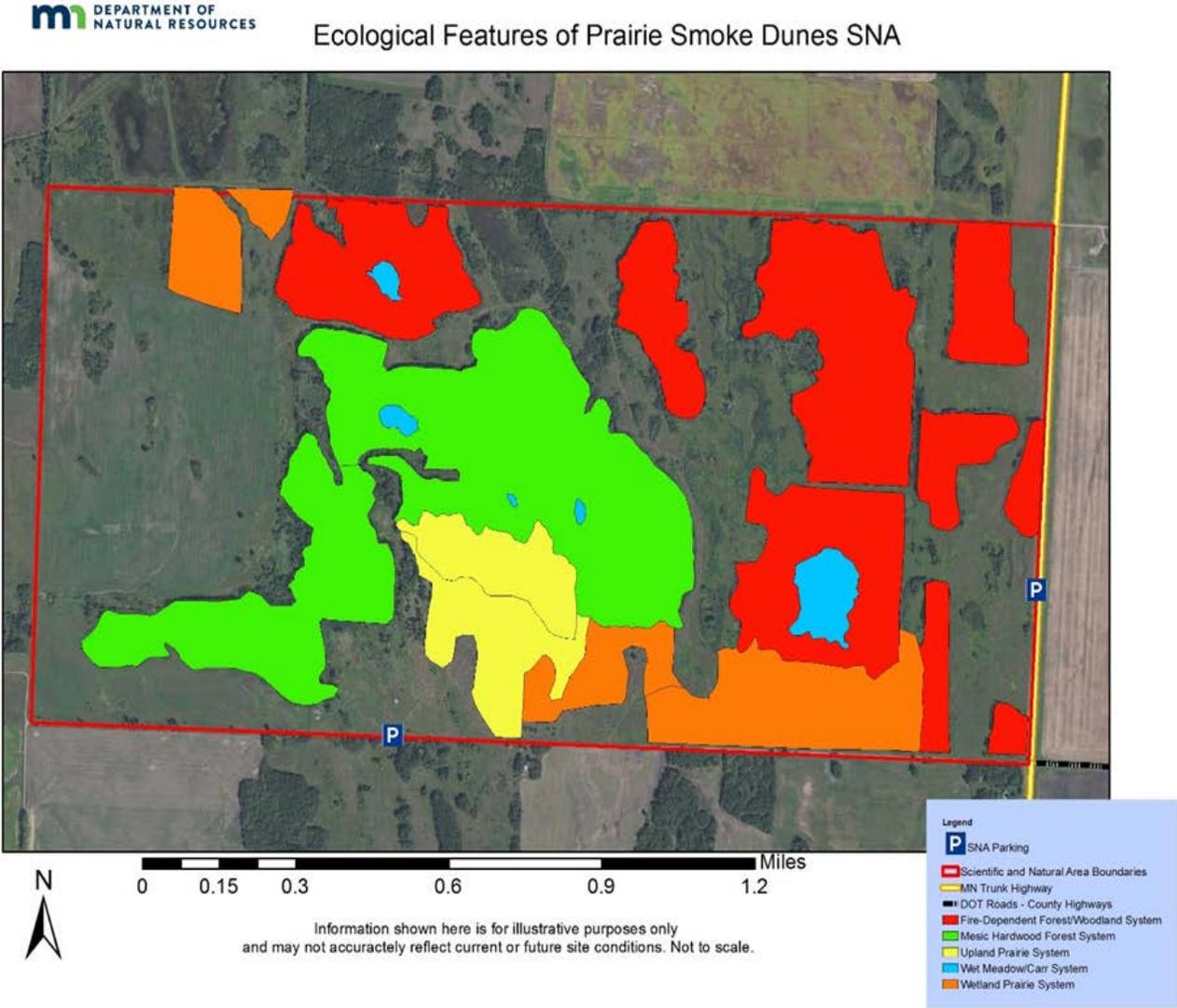


Figure 2: Proposed Project Map (Option 3C Parking Lot 1/4 mile from County Hwy 32)

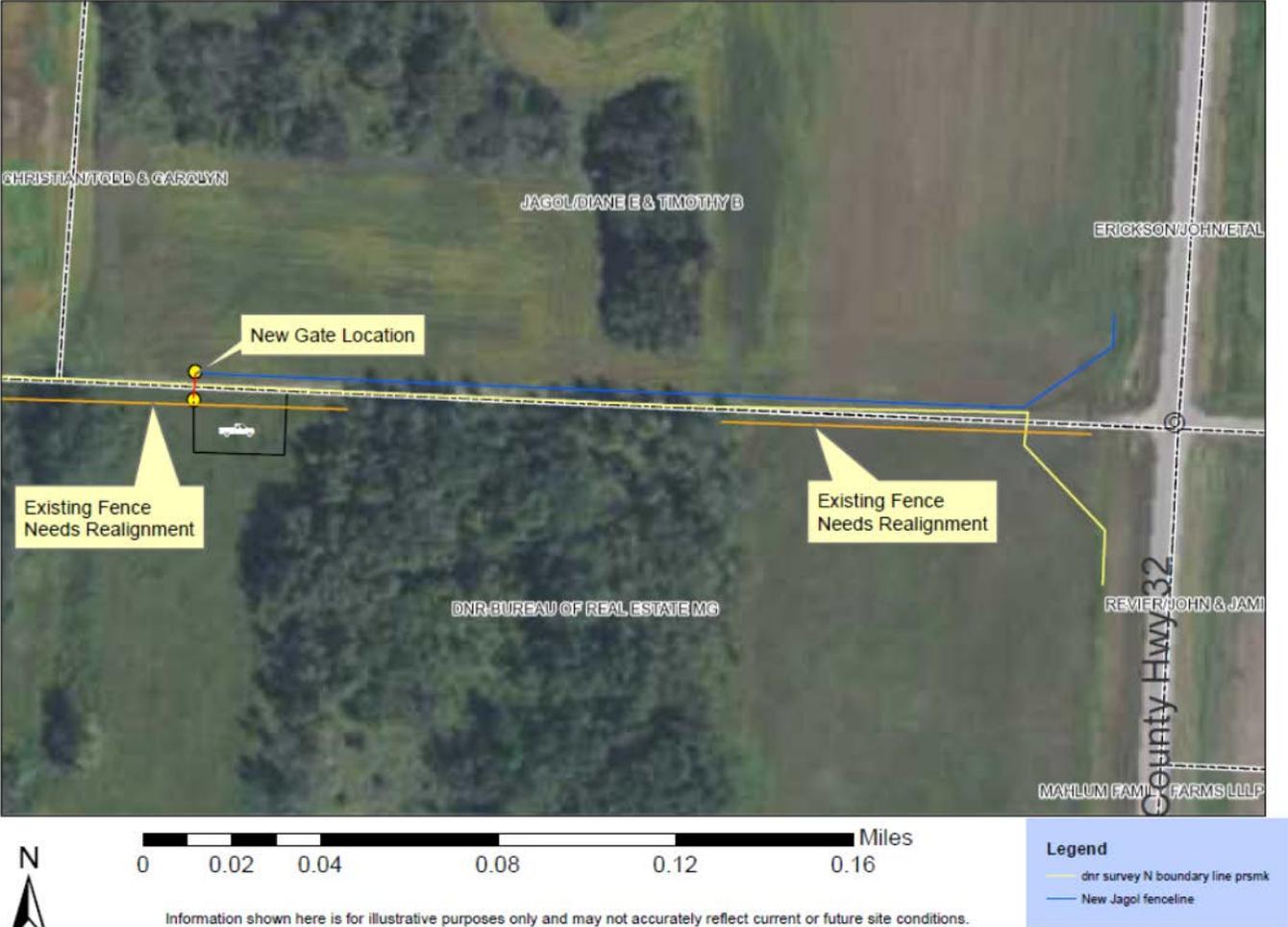
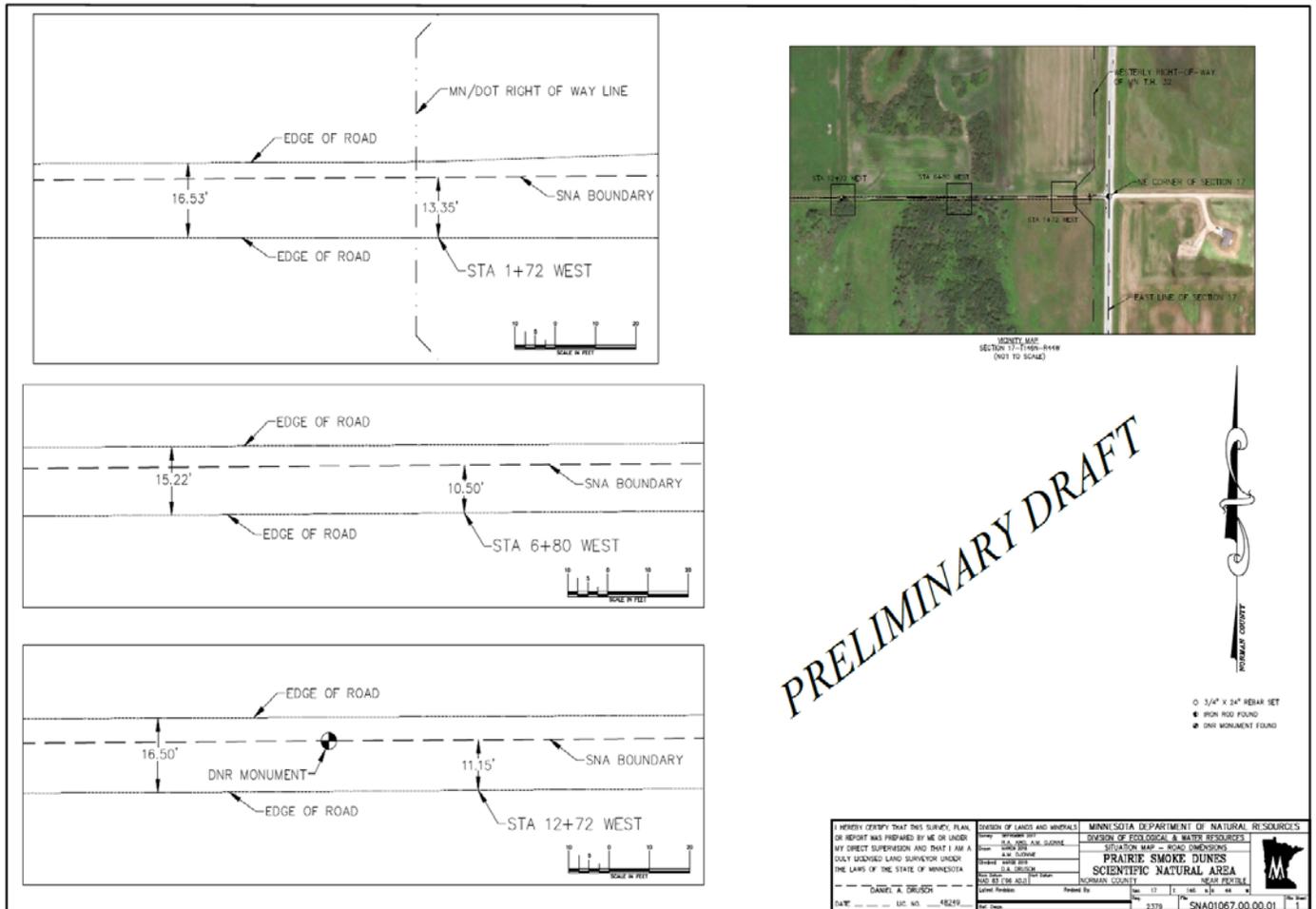


Figure 3: Boundary Survey of Prairie Smoke Dunes SNA



List of Attachments:

1. Prairie Smoke Dunes 1995 Designation Order
2. Consolidated Public Comments