UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 17 2010

REPLY TO THE ATTENTION OF:
WW-16J

Ms. Colleen O'Keefe
Land and Water Management Division
Michigan Department of Natural Resources and the Environment
P.O. Box 30028
Lansing, Michigan 48909

Re: Public Notice No. 09-52-0086-P, Woodland Road LLC

Dear Ms. O'Keefe:

This letter is being sent in response to the Michigan Department of Natural Resources and the Environment's (MDNRE) above referenced Public Notice dated December 17, 2009 and subsequent revisions in which the Woodland Road LLC is proposing to construct a road between US-41 in Humbodlt Township and AAA Road in Champion Township. The road project would include the construction of 23 stream crossings, which include crossings at the Middle Branch of the Escanaba River, Second River, Koops Creek, Voelkers Creek, Dead River, Wildcat Canyon Creek, Mulligan Creek, Yellow Dog River, and several unnamed tributaries. The proposed project would directly impact 27.1 wetland acres (this is decreased from 31.1 acres proposed in the Public Notice). The proposed project site is located in Champion, Ely, Michigamme and Humboldt Townships, Marquette County, Michigan. The proposed Woodland Road would directly impact both wetlands and streams within the Michigamme, Escanaba, and Dead-Kelsey Watersheds (8-digit HUCs).

The U.S. Fish and Wildlife Service (FWS) and the U.S. Army Corps of Engineers (Corps) have provided this office with comments pursuant to Section 404(j) of the Clean Water Act, the regulations in 40 CFR §233, and further prescribed in the Memorandum of Agreement between the State of Michigan and EPA. The comments that follow are the combined federal comments of EPA, the FWS, and the Corps. Please see attachments for complete Corps and FWS comments and recommendations.

Because road construction is not a water-dependent activity, the 404(b)(1) Guidelines require an applicant to demonstrate that alternatives do not exist which are less damaging to the aquatic environment. The alternatives analysis should demonstrate that the preferred alternative is the least environmentally damaging practicable alternative (LEDPA) while still meeting the project purpose. Once the LEDPA is selected, the applicant must then demonstrate that they have avoided and minimized impacts to the maximum extent possible and finally, compensate for any unavoidable impacts.

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Impacts Analysis

The proposed direct impacts of the preferred Woodland Road route include 27.1 acres of direct impacts to wetlands as well as 23 stream crossings. Within the supporting document, the observation is made that many portions of the proposed route currently serve as ATV and snow mobile trails but aren't suitable for 4-wheel drive vehicles. Although the proposed Woodland Road route does follow some existing roads, the proposed road will be all-season, several times wider (32 feet wide) and will accommodate much more traffic than the current trails.

We are concerned that the quality of the aquatic resources being impacted is not appropriately quantified. The Supporting Documentation identifies rare wetland communities such as bogs, bog lakes, and wet meadows within the project area, but there is no mention of the amounts of these rare aquatic resources. An alternative that minimizes impacts to high quality and rare wetland types would be preferable; the information provided does not allow for this level of comparison.

In addition, the preferred alternative follows a portion of snowmobile Trail 5, which will have to be relocated. The impacts of this relocation are directly connected to the Woodland Road project; must be included in the impact analysis as direct, indirect, and cumulative impacts; and should be considered when selecting the LEDPA and avoiding and minimizing impacts.

We are concerned that the development of the road will indirectly impact the remaining wetlands along the road corridor. FWS, in their letter to us, has specifically expressed concern about the Porcupine Wetland (Station 538+00). At this wetland fill site, as well as several others, there will be significant fill (>10 feet) or excavation (>5 feet) from the original ground elevation. We share this concern regarding degradation of the remaining wetlands due to hydrology and habitat fragmentation. Other indirect impacts that require more detailed consideration include: increased runoff, the introduction of pollutants from vehicular traffic, pollution related to winter road maintenance, the introduction of development along a new all-season route, and the introduction of invasive species to adjacent wetland areas. The Corps has specifically expressed concern regarding future mining and land-use alteration within the region, which may be facilitated by the proposed Woodland Road. These indirect and cumulative impacts are not sufficiently described as related to the aquatic resources, nor are they fully considered in regard to the alternatives analysis.

Alternatives Analysis

The stated project purpose of the project is "to construct a multi-purpose road to connect key industrial, commercial, and recreational areas in northwest Marquette County to US-41." There is concern that this does not adequately depict the purpose of the project. In their letter to EPA, the Corps demonstrates several places in the applicant's supporting documentation that indicate that the main project purpose is to haul ore between the Kennecott Eagle Minerals Company mine site and the Humboldt

Mill ore processing site (see attached letter dated March 12, 2010). Without an accurate project purpose, we are unable to conclude that the preferred alternative is the LEDPA, and the apparent connection between Humboldt Mill and the proposed Woodland Road may warrant a more holistic review of the project.

Within the alternatives analysis, we are concerned that the application does not provide an adequate comparison of impacts from the preferred route to that of the alternative routes. The scope of the analysis was insufficient. For example, the delineation of wetlands at the preferred alternative was field delineated, yet these proposed impacts are compared to un-verified NWI data at the other alternative routes. In regard to streams, the smaller stream crossings are not listed within the Woodland Road Route Alternatives section. All aquatic resources must be considered when selecting the LEDPA.

The applicant should also consider the indirect and cumulative impacts before eliminating alternatives. The marginal increase of aquatic impacts from expanding an existing road may be preferable to impacts to relatively undisturbed aquatic systems. We recommend that alternatives that include existing routes such as Wolf Lake Road and County Roads 510 and 550 be reconsidered. Please refer to attached Corps and FWS letters. From our analysis of the project area and application materials, we have concluded that the full range of alternatives for providing a route between AAA road and US-41 has not been considered.

Fish and Wildlife Coordination Act and Endangered Species Act Comments

Please refer to the attached March 15, 2010 FWS letter to EPA in regard to migratory birds and possible impact to listed species. FWS has suggested that permit conditions may be required to eliminate impacts to listed species, and we request that you coordinate further with FWS and this office to specify appropriate conditions.

Mitigation

Under the 404(b)(1) Guidelines, our review of a project must follow the sequence of avoidance, minimizing unavoidable impacts, and, only when the impacts have been avoided and minimized to the maximum extent practicable, compensation for those unavoidable impacts to the aquatic resources.

The proposed mitigation includes 10 acres of wetland preservation, 3.52 acres of wetland restoration, and 52.85 acres of wetland creation. No compensation is currently proposed for impacts to streams, but stream mitigation must be required to offset the impacts from the crossings to both large rivers and headwater streams.

FWS and the Corps have provided us with several concerns regarding the current mitigation proposal. We agree with their analysis (see attached letters). Specifically, the Corps indicates that without an adequate impact analysis, we cannot determine if those impacts will be compensated for. Please note the requirements within the 2008 Federal

Mitigation Rule (the Rule). For compensation by preservation the applicant must verify the functions that the wetland will provide and identify that the site is threatened. (§230.93 Part (h)(1)). The Rule also includes a preference for wetland re-establishment and rehabilitation over wetland establishment or creation. Given the high acreage planned for creation, the applicant must consider other opportunities for wetland restoration.

Summary

The applicant has not demonstrated that they have avoided and minimized wetland impacts nor would the proposed mitigation compensate for the wetland losses associated with the project. The project, as proposed, would result in significant degradation of the aquatic ecosystem by directly impacting 23 streams and 27.1 wetland acres, which include rare wetland types and high quality habitat. For these reasons, the proposed project does not comply with the 404(b)(1) Guidelines and we object to the issuance of a permit for this project.

This letter constitutes a federal objection to the issuance of a permit for this project. Pursuant to Federal regulations, the MDNRE has 90 days from the date of this letter to either deny the permit or work with the applicant and to resolve the issues raised above. If the federal objections are satisfactorily addressed, within the 90 days of the date of this letter, the EPA will withdraw our objection and a MDNRE permit may be issued. In the event the permit is not denied by MDNRE and the federal objection is not withdrawn, the applicant must go to the Corps of Engineers to obtain a Section 404 Clean Water Act permit for the proposed project before any work is undertaken in Waters of the U.S. Thank you for the opportunity to provide comments on this public notice. If you have any questions regarding these comments, please feel free to contact Melanie Haveman of my staff at 312-886-2255.

Sincerely,

Wendy L. Melgin

Wendy L. Melgin, Deputy Chief
Watershed and Wetlands Branch

cc (with Enclosure):

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United States Department of the Interior

FISH AND WILDLIFE SERVICE
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2651 Coolidge Road, Suite 101
East Lansing, Michigan 48823-6316

IN REPLY REFER TO:

March 15, 2010

Ms. Melanie Haveman
U.S. Environmental Protection Agency
Wetlands and Watersheds (WW-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: State of Michigan File No. 09-52-0086-P, applicant Woodland Road LLC

Dear Ms. Haveman:

We have reviewed the above referenced Public Notice (PN) for a Michigan Department of Natural Resources and Environment (MDNRE) permit under the authority of Part 301, Wetlands Protection, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended. The proposed project would occur in Marquette County, Michigan in Champion Township (T49N, R29W, Sections 2, 11, 14, 23, 25, 26, and 36; T49N, R28W, Sections 31 and 32; T48N R29W Sections 1, 25, 26, and 35; T50N, R28W, Section 18), Ely Township (T48N, R28W, Sections 5, 7, 8, 18, 19 and 30), Michigamme Township (T50N, R29W, Sections 13, 23, 24, 26, and 35), and Humboldt Township (T47N, R29W, Section 2). We provide these comments under the authority of the Fish and Wildlife Coordination Act, the Endangered Species Act of 1973, as amended (Act) and in accordance with the Service's Mitigation Policy.

According to the information provided with the Public Notice and on the MDNRE permit website, the applicant proposes to construct a 22.3 mile long road from Triple A Road south to US-41 identified as Woodland Road. The primary purpose of the proposed road is to facilitate transport of mining, timber, and aggregate products. The proposed road would be constructed primarily through private land with a small portion traversing state owned land. It is our understanding that the proposed road would be a private road, but would allow public use. With public use, the road may allow easier access to state, federal, and private properties for recreational use.

The proposed road would require the upgrading or construction of several river, stream or wetland crossings. Crossings would be located on the Middle Branch Escanaba River, Second River, Koops Creek, Voelkers Creek, Dead River, Wildcat Canyon Creek, Mulligan Creek, Yellow Dog River and several un-named tributaries. In addition, filling of wetlands is necessary to allow the proposed road to traverse these areas. A total of 23 stream crossings and the direct impact of 27.1 acres of wetlands would result from the proposed project. The applicant proposes to mitigate for wetland impacts by completing a combination of wetland preservation, restoration, and creation.

Application materials state that 90% of the proposed road alignment would follow existing roads and trails. Based on our review, only about 3.5 miles of the proposed road would utilize an existing public road which can accommodate consistent two way vehicle traffic. Some portions of the proposed road would cross upland and wetland areas which are currently free of road or trail impacts. Much of the proposed road, however, would utilize a snowmobile trail (Trail 5). The upgrading of this trail to accommodate large two-way tractor-trailer transportation will greatly alter the landscape. The proposed road, at 32 feet in width, is several times wider than the current trail. In addition, the trail will require significant excavation or fill to create a 32 foot wide road base and to maintain a <5% grade along most of the road corridor. Although the proposed road will not traverse a "road-less" area, it will change the conditions along the proposed corridor appreciably.

Fish and Wildlife Coordination Act Comments

ON-SITE RESOURCES

A biologist from our office inspected the proposed road corridor with you, MDNRE, and a representative from A. Lindberg and Sons, Inc. on February 24 and 25, 2010. Observations of flora and fauna were limited due to time of year and several feet of snow covering the ground. Based on trees present, it appears that the proposed corridor consists of a diversity of habitats from upland northern hardwood forests to cedar swamp. The corridor is primarily forested and relatively un-developed. During our site visit, we were able to observe most of the stream crossings. Due to the size of the project, remoteness of some sites, and time limitations, we did not visit all of the wetland crossings.

The proposed project would affect a diversity of stream and wetland habitats. Based on our observations, the proposed road would cross a variety of stream types from small intermittent streams to larger perennial streams or rivers. Wetland types affected ranged from open sedge meadows to forested cedar swamps. The majority of wetlands, however, are forested wetlands. Based on the wetland impacts provided with the application, 20.6 of the 27.1 acres involve forested wetlands. These streams and wetlands provide a diversity of habitat for a variety of migratory birds, mammals, fish, amphibians, reptiles, and invertebrates.

Migratory Birds

Migratory birds receive protection under the Migratory Bird Treaty Act and are Federal trust resources. The applicant's consultant surveyed birds along the entire length of the proposed road corridor in fall 2007, spring 2008 and summer 2008. Results from these efforts identified 41 species during fall migration, 70 species during spring migration, and 65 species during the breeding season. Surveys in 2007, 2008, and 2009, as part of the Breeding Birds of Michigan revision, found a similar number of breeding species along Wolf Lake Road. The locations of the surveys correspond fairly well with the southern 1/3 of the proposed road corridor. These surveys identified over 50 species of breeding birds in this area (Brian Johnson, bird surveyor, pers. comm. 2010). Many of the species identified breed in or adjacent to wetlands and streams.

POTENTIAL IMPACTS AND ALTERNATIVES ANALYSIS

Adverse impacts to wildlife and fisheries resources would likely result from the proposed project. From the information provided, the applicant has not avoided and minimized wetland and stream impacts to the maximum extent practicable. Our mitigation policy states that applicants should first avoid then minimize wetland impacts before compensatory mitigation is proposed.

Direct Impacts

In addition to the 27.1 acres of wetland impact and 23 stream crossings as described above, direct stream and wetland impacts may result from the relocation of Trail 5. As the proposed Woodland Road corridor would utilize the Trail 5 alignment, the snowmobile trail would need to be relocated. The impacts associated with this relocation were not included in the permit application or discussion of alternatives. As the snowmobile trail relocation is a direct result of the proposed road construction, wetland impacts associated with the relocation should be included in this project.

Indirect Impacts

We are concerned that development of the proposed road would not only directly impact wetlands, but indirectly impact the remaining wetlands along the corridor by significantly altering wetland hydrology and causing habitat fragmentation. Alteration of hydrology and fragmentation could result in permanent habitat degradation of remaining on-site wetlands. For example, at the Porcupine Swamp crossing (Station 538+00 on the design drawings) the proposed road will cross a cedar swamp and directly impact 1.04 acres of wetland. Construction at this location includes both excavation of a 7 foot layer of peat and placement of fill 30 feet above the ground surface. This excavation and fill will indirectly impact the remaining wetland in two ways. First, the removal of peat along a linear strip will likely impact the wetland's hydrology. The two remaining wetland areas on either side of the road may be degraded if hydrologic connection between them is severed or if the road materials change sub-surface water flow. Second, the addition of 30 feet of fill above the original ground elevation will create a barrier and severely inhibit animal movement. This is especially true of amphibians, turtles, and reptiles which are unlikely to successfully climb up a steep 30 foot embankment, cross the road, and descend the 30 foot embankment back to the wetland.

Although a relatively small direct impact to wetlands is predicted at sites like Porcupine Swamp (1.04 acres), a larger indirect impact to wetlands is expected and of concern. These types of indirect impacts may occur at multiple locations along the road corridor where significant fill (> 10 feet) or excavation (>5 feet) would be necessary. We believe the 27.1 acres of direct wetland impact does not capture the larger indirect impacts to wetlands associated with this project.

In addition to hydrologic changes and wetland habitat fragmentation, several other indirect impacts to wetlands and streams were articulated in comment letters provided by the Wildlife and Fisheries Divisions of the Michigan Department of Natural Resources and Environment (dated January 15, 2010 and January 19, 2010, respectively). We agree that these additional

indirect impacts could further impact wildlife and aquatic resources along the proposed road corridor.

Alternatives

To avoid and minimize direct and indirect impacts, we recommend reconsidering alignment with existing transportation routes such as County Road 510 and County Road 550. Using existing routes which require less modification than the Woodland Road corridor would greatly reduce "new" indirect effects on streams and wetlands. Because these roads are already in place, we expect that hydrologic modification and habitat fragmentation have already occurred in wetlands and streams associated with these routes.

Based on the alternatives analysis, tractor-trailers currently use several existing roads that connect Triple A to US-41. Upgrading these roads as outlined in Alternatives 2, 3, and 4 would allow for all-season use and would appear to meet the purpose identified. Compared to the proposed Woodland Road corridor, Alternative #2 appears to have fewer wetland impacts (~0.4 acres) and fewer stream crossings (4 crossings). This route would require 600 feet of stream re-location in an area where the current road is adjacent to the stream. The analysis concluded that Alternative #2 ".... will be used if a more prudent alternative is not considered." This suggests not only that Alternative #2 has less impacts to wetlands and streams, but also is a viable alternative.

MITIGATION

The applicant proposes to mitigate wetland impacts with 10 acres of wetland preservation, 3.52 acres of wetland restoration, and 52.85 acres of wetland creation. We believe that the proposed mitigation is not adequate for the following reasons:

Wetland Preservation

- For preservation of wetlands to qualify for mitigation a threat to the 10 acres of proposed wetland preservation must be present. The applicant has not demonstrated that this site is currently threatened.

- Inadequate information is provided to evaluate whether the entire 10 acres is forested wetland.

Wetland Restoration

- Restoration of wetland by removing road fill and culverts provides limited ecological value, especially when completed adjacent to new wetland and stream impacts. Although we agree the removal of fill and culverts associated with abandonment of Trail 5 is necessary, we disagree with its use as wetland mitigation.

Wetland Creation

- Small, scattered wetlands created in borrow pit areas is unlikely to replace the ecological values associated with the forested, emergent, and scrub-shrub wetlands impacted by the project.

- The specific acreage of emergent, scrub-shrub, and forested wetlands identified at each site may not be realistic. An explanation is necessary to demonstrate how each site provides the appropriate topography, hydrology, soils, and other characteristics to create forested, emergent, or scrub-shrub wetlands.

- At locations where created wetlands adjoin existing wetlands, impacts to existing wetlands could occur via sub-surface and surface drainage. In these instances, the applicant should implement measures to protect the hydrology of the existing wetlands.

- Several wetland creation sites are currently intact forest communities. Conversion of these sites from upland forest to wetland would result in further fragmentation and habitat loss.

Stream Mitigation

- The applicant should incorporate stream mitigation into the project to offset impacts associated with the 23 stream crossings.

Endangered Species Act Comments

Three species protected under the Act may be present within the proposed road corridor: gray wolf, Kirtland's warbler, and Canada lynx. According to the permit application materials, two packs of gray wolves likely exist along the proposed route. During our site visit, we observed one stand of young jack pine observed near the Second River stream crossing. Application materials confirm that several potential Kirtland's warbler habitat areas occur near the proposed road. Additionally, we recommend analyzing potential impacts of the proposed road to the threatened Canada lynx. Recent observations of lynx in the Eastern Upper Peninsula in 2003 and 2010 indicate that dispersing lynx could occur along the road corridor.

Based upon the information provided in the public notice and our knowledge of listed species, we suggest that the proposed Woodland Road project may affect listed resources. Prior to permit issuance, you should coordinate with our office. Through this coordination appropriate permit conditions may be identified which reduce or eliminate impacts to listed species.

Summary Comments

We recommend that MDNRE not issue a permit for the project. Adverse impacts to fish and wildlife resources are expected as a result of direct and indirect impacts on wetland and streams. Alternative transportation routes that utilize existing main roads should be reconsidered. In addition, the proposed mitigation may not adequately replace the functions and values of the impacted wetlands.

We appreciate the opportunity to provide our resource protection recommendations. If you have any questions regarding our comments, please contact Christie Deloria of our U.P. sub-office at 906/226-1240.

Sincerely,

David Gordon
Acting Field Supervisor

cc: Michigan Department of Natural Resources and Environment, Land & Water Management Division, Gwinn, MI (Attn: Mike Smolinski)
Michigan Department of Natural Resources and Environment, Land & Water Management Division, Crystal Falls , MI, (Attn: Cary Gustafson)
Michigan Department of Natural Resources and Environment, Land & Water Management Division, Lansing, MI (Attn: Colleen O'Keefe)

DEPARTMENT OF THE ARMY
DETROIT DISTRICT, CORPS OF ENGINEERS
477 MICHIGAN AVENUE
DETROIT, MI 48226-2550

March 12, 2010

REPLY TO ATTENTION OF:
Engineering & Technical Services
Regulatory Office
File No. LRE-2010-00098-252

Kevin Pierard
Chief, Watersheds and Non-Point Source Programs Branch
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard, WW-16J
Chicago, Illinois 60604-3507

Dear Mr. Pierard:

We are writing in response to Michigan Department of Natural Resources and Environment's (MDNRE) Public Notice No. 09-52-0086-P, for proposed work by Woodland Road LLC, located in Marquette County, Michigan. According to the application dated August 4, 2009, and recent revisions, the project as proposed would impact over 27 acres of wetlands, and would require 79 culverted crossings, 17 stream crossings, enlargement of 3 bridges, and construction of 6 new bridges. The project crosses through headwaters and wetlands in the Escanaba, Michigamme, Dead, and Yellow Dog River watersheds.

Our comments are being submitted pursuant to Section 404(j) of the Clean Water Act, the regulations in 40 CFR §233, and further prescribed in the Memorandum of Agreement between the State of Michigan and the U.S. Environmental Protection Agency. We have also received correspondence from the Keweenaw Bay Indian Community concerning the proposed project, and a copy is enclosed for your review.

Project Purpose/Alternatives Analysis:

There are reasonable questions as to whether the purpose of the project is adequately portrayed. The applicant's stated purpose is "to construct a multi-purpose road to connect key industrial, commercial, and recreational areas in northwest Marquette County to US-41." The regulatory agency is responsible for defining the purpose and need in accordance with NEPA Regulations (Appendix B, 7.), the objective of the project (33 CFR 320.4(a)(2)(ii)), and the "overall project purpose" under the 404(b)(1) Guidelines, subsequent guidance, and corresponding MDNRE regulations.

Portions of the Supporting Documentation indicate that the main purpose of the proposed road is to haul ore from the proposed Kennecott Eagle Minerals Company (Kennecott) mine at Eagle Rock. Ore transport trucks will make an average of 50-75 round trips per day (or 12,000-18,000 per year) on whichever road alternative is chosen, compared to approximately 1700 trips per year by logging trucks. The preferred alternative also appears to be the most direct route

from the proposed mine to the proposed processing site at Humboldt, Michigan. MDNRE has granted a separate permit to Kennecott for work at the Humboldt site associated with ore processing and disposal. In our view, a more accurate project purpose would be "to deliver ore from the proposed Kennecott mine at Eagle Rock for processing."

The relationship of the road to the mine extraction and processing facilities begs the question of whether the proposed road is an integral part of the overall Kennecott mining operation. If the road is required to connect the proposed nickel mine at Eagle Rock with the milling operation and tailings disposal facility at Humboldt, these actions should be evaluated under one project. The Corps' regulations at 33 CFR, Part 325.1(d)(2) state that all activities which the applicant plans to undertake which are reasonably related to the same project should be included in the same permit application. There appear to be sufficient ties between the road and the ore processing facility to warrant review of these actions together. If permits are required for the mine itself, these also should be included. Our regulations require a holistic view of a project, and the public and the process are best served by evaluating projects in their entirety.

In the Economics section of the Wolf Lake Road South Alternative, the applicant states that factors to be considered in a review of feasible and prudent alternatives should include the applicant's prior purchase of several "key parcels of land" to provide borrow material, mitigation acreage, and road access for the Woodland Road alternative. The section goes on to state that "If the proposed Woodland Road route in this segment is not permitted as proposed, the economic impacts of these acquisitions should be considered..." Permit applicants may not bias permit application reviews by making substantial resource commitments in advance of permit decisions. This is one of the basic tenets of the National Environmental Policy Act, outlined in their regulations in Section 1506.1.

<u>Impacts Analysis:</u>

Water Quality/Wetlands

The proposed road will result in the loss of over 27 acres of wetlands in the Escanaba, Michigamme, Dead, and Yellow Dog River watersheds. The application quantifies the losses in the preferred alternative route, but does not provide an adequate comparison to impacts which would occur if one of the proposed alternative routes were chosen. The aquatic impacts resulting from a new road alignment crossing undisturbed wetlands and streams, differs from aquatic impacts caused by expanding existing roads and stream crossings which currently support commercial traffic. Areas with existing road crossings have already been degraded by the road footprint, increased runoff, and the introduction of pollutants from vehicular traffic. The marginal increase in aquatic impacts by altering existing roads versus aquatic impacts in relatively undisturbed aquatic systems requires a more detailed analysis.

The preferred alternative may result in the relocation of a portion of the snowmobile trail known as Trail 5, which appears to be within the proposed road footprint, however there is no

discussion of these foreseeable impacts, which would likely involve new wetland and stream crossings. A Kennecott map dated September 5, 2007 (not included in the application materials) shows proposed alternate snowmobile routes. None of the potential impacts of any of the routes are mentioned, nor is the need for the reroute discussed.

Potential impacts on aquatic resources resulting from ore and particulates lost during transport from the mine is not discussed for any of the alternatives. Furthermore, the alternatives do not evaluate the type and extent of impacts equally. Wetland acreages and types for all but the preferred alternative are taken from the National Wetlands Inventory maps with no field verification, which does not allow for meaningful comparison of wetland impacts across all alternatives. Under the Woodland Road Route Alternatives section, the Supporting Documentation states "...the stream crossings listed for each region described in the following text are only the primary stream crossings; the smaller stream crossings are not listed." A complete application requires all aquatic impacts to be listed and quantified. Impact assessment must be addressed in a manner which allows for meaningful comparison across all alternatives.

Biotic Impacts

In the alternatives analysis, the Supporting Documentation does not adequately compare the direct impacts of a new, year-round commercial traffic road, and upgrading existing commercial roads. It does mention that roads provide travel corridors for wildlife, and that the preferred alternative will create edge habitat, which benefits some wildlife species. However it fails to put this in context: ongoing logging operations in the surrounding area currently provide an abundance of edge habitat, and an existing snowmobile path provides a travel corridor along much of the proposed route, without the risks to wildlife of steady year-round traffic. The impacts analysis does not adequately address the difference in impacts on wildlife along the Woodland routes from the current vehicular use level and the proposed use (50-75 round trips per day by ore trucks, mine employee traffic, etc.). Impacts from increased noise levels, light, dust, and vibrations are not adequately addressed.

The Supporting Documentation identifies rare plant species, and mentions that bogs, bog lakes, and sedge meadows were encountered within the proposed impact area, but does not document the acreage of impacts to these rare communities. The alternatives analysis fails to compare the potential impacts of introducing invasive non-native plant species to rare plant

communities via a new road, versus limiting the introduction of invasive plant species by utilizing existing roads.

Secondary Impacts

In order to adequately address impacts, the MDNRE should request information from the applicant about other potential mining projects which could be expected to be served by the proposed Woodland Road in the foreseeable future, including expansion of the current proposed mine at Eagle Rock. Impact assessment must include a review of foreseeable impacts to areas which would be made accessible for development or resource extraction by the proposed road. In order to be complete the impacts analysis must describe in detail how current land use will alter along the preferred Woodland Road route. Over 80% of the preferred alternative route crosses land owned by GMO Renewable Resources LLC, Plum Creek Timberlands LP, and Kennecott Eagle Minerals Company, and Kennecott Eagle Land LLC. These companies should be able to supply current resource extraction figures and projections of how resource extraction will change on their properties accessible by the preferred Woodland Road route.

Section 404(b)(1) Analysis:

The Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material in CFR 40 Part 230 requires that the applicant overcome the presumption that a practicable, less environmentally damaging alternative site, outside special aquatic sites, exists. The project as proposed does not appear to accomplish this. Utilizing existing routes would limit additional aquatic impacts to areas which are already impacted by road crossings. Establishing appropriate speed limits, installing additional traffic lights, adding turn lanes, or widening intersections are some of the possible improvements to current county and local 4-season roads which would reduce safety concerns and provide an alternative for hauling ore, while continuing to provide existing access to US-41 for ongoing logging operations. Difficult grades, cited at 6% in some alternatives, are comparable to the 6-8% grades in the preferred alternative. Though it is not explored in the Supporting Documentation, the preferred alternative, like the other alternatives, would require road construction sufficient to support year-round use over steep terrain. Reconstruction of some existing commercial routes may offer an option of redesigning stream crossings to minimize some of the current crossing impacts, as is noted for portions of Triple A Road.

Objections by the public to upgrading public roads to accommodate ore truck traffic may be considered, but do not in themselves result in the removal of an alternative from consideration. After interstate and state highways, county roads are primary transportation routes and are used to transport commercial traffic. Current logging operations (which according to the Supporting Documentation, are not expected to increase), already use these routes. The argument that it is beneficial to locate truck traffic so as to bypass major transportation corridors lacks support.

Compensatory Mitigation:

Compensatory mitigation must be directly related to the impacts of the proposed activity and appropriate to the degree and scope of the impacts. The goal of compensatory mitigation is to replace aquatic resource functions lost as a result of a permitted activity. A portion of the lost aquatic functions occur in headwaters, and impacts occur across 4 watersheds. The mitigation plan states that 25.34 of the 37.51 acres of wetland rehabilitation and establishment in the Dead River and Michigamme River watersheds must occur in the Escanaba River watershed because adequate sites are not available. Proposed wetland establishment sites were chosen based in part on the location of sand and gravel borrow areas for construction of the proposed Woodland Road alternative. This is not a reasonable method to select mitigation sites.

33 CFR Part 332.3, Compensatory Mitigation for Losses of Aquatic Resources, states in part:

> When evaluating compensatory mitigation options, the district engineer will consider what would be environmentally preferable. In making this determination, the district engineer must assess the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project... In general, the required compensatory mitigation should be located within the same watershed as the impact site, and should be located where it is most likely to successfully replace lost functions and services, taking into account such watershed scale features as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources (including the availability of water rights), trends in land use, ecological benefits, and compatibility with adjacent land uses. When compensating for impacts to marine resources, the location of the compensatory mitigation site should be chosen to replace lost functions and services within the same marine ecological system (e.g., reef complex, littoral drift cell).

The application must quantify aquatic impacts, especially the following: the loss of headwaters and wetlands associated with headwaters, in each watershed; the loss of rare wetland plant communities, including bogs, fens, and wet meadows; and water quality degradation due to runoff containing pollutants, and clearly indicate how the loss of each of these features would be compensated. This is necessary to allow the MDNRE to fully evaluate whether compensation is possible for the unique functions lost within each of the four watersheds (i.e. headwaters areas, rare wetland types, etc.)

Conclusion:

The Woodland Road application is deficient in several areas, including reasonable comparison of alternative routes, an adequate 404(b)(1) analysis, and an adequate compensatory mitigation proposal. However, as a basis, the applicant should reexamine the purpose and scope of the project so that it includes all attendant features and is a single and complete project. This will allow reviewers to fairly consider aquatic impacts of the entire project, and reach fully

informed conclusions.

We appreciate the opportunity to comment on the proposed project. If you have any questions, please contact Jean Battle by telephone at (906) 228-2833, or by e-mail at Jean.M.Battle2@usace.army.mil.

Sincerely,

John Konik
Chief, Regulatory Office
Engineering and Technical Services

Enclosure

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Keweenaw Bay Indian Community, Warner