

Decision I.D. # 39167

Service Date: June 30, 2008

POST ENVIRONMENTAL ASSESSMENT

Finance Docket No. 34992

Itasca County Regional Rail Authority

Construction and Operation of a Rail Line in Itasca County, Minnesota



Prepared by:

Surface Transportation Board, Section of Environmental Analysis (Lead Agency)

United States Army Corps of Engineers (Cooperating Agency)

Information Contact:

Kenneth Blodgett, Project Manager

Surface Transportation Board

Patriots Plaza

395 E Street, SW

Washington, DC 20423

Telephone: 202-245-0305

CONCLUSION

Based on the Section of Environmental Analysis' (SEA) review of all information available to date and its independent analysis of the proposed rail line construction and operation, comments received on the Environmental Assessment (EA), mitigation imposed by various Federal, state, and local agencies, as well as other concerned parties, and the mitigation required from Itasca County Regional Rail Authority (ICRRA), SEA concludes that the construction and operation of the proposed rail line would have no significant environmental impact if the Surface Transportation Board (Board) imposes, and ICRRA implements, the mitigation measures recommended in this Post Environmental Assessment. Therefore, SEA recommends that the Board impose on any final decision approving the proposed rail line construction and operation, conditions requiring ICRRA to implement the mitigation measures contained in this document.

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1.0 INTRODUCTION AND ENVIRONMENTAL REVIEW PROCESS

On March 9, 2007, the Itasca County Regional Rail Authority (ICRRA), a political subdivision established under Minnesota law for the purpose of owning, constructing, and operating railroads in Itasca County, Minnesota, filed a petition with the Surface Transportation Board (Board), pursuant to 49 U.S.C. 10502, for authority to construct approximately 9 miles of new railroad line in Itasca County, Minnesota.

The primary purpose of the proposed project is to provide an efficient means of transporting finished product via rail from a taconite mine and steel mill to be constructed by Minnesota Steel Industries, LLC (Minnesota Steel) by connecting to an existing rail line, providing dual rail-line access. A connection at Taconite would allow rail access to two rail carriers (BNSF and CN), promoting competition for rail freight rates. The proposed rail line would be used to transport small shipments of construction materials¹ and large shipments of steel slabs and taconite pellets associated with the steel mill operation.

The primary customer for the rail line would be Minnesota Steel. ICRRA anticipates that additional rail-based industry might locate along the rail line in the future, providing employment opportunities for nearby residents. It is expected that up to 90 percent of the finished product leaving Minnesota Steel would be shipped via rail.

Itasca County is located in the Iron Range of northern Minnesota approximately 80 miles northwest of Duluth and approximately 205 miles northwest of Minneapolis. The population of Itasca County was approximately 44,700 in 2006. The principal economic activities of Itasca County include timber harvesting, iron mining, farming, and tourism.

¹ Construction activities associated with Minnesota Steel are anticipated to start in 2008. However, preliminary construction would be limited to earth-moving activities for site preparation. It is anticipated that when actual construction of the mill and ancillary structures begins, the proposed rail line could be used to deliver construction materials and supplies.

The Board's Section of Environmental Analysis (SEA) conducted an environmental review to ensure that the proposed action complies with the statutory requirements under the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4331-4335), the Board's environmental regulations (49 CFR Part 1105), and other applicable rules and regulations. SEA, in cooperation with the U.S. Army Corps of Engineers (a cooperating agency) prepared an Environmental Assessment (EA), to provide an independent analysis of the potential effects of the proposed construction and operation, as well as the no-build alternative. SEA performed land use, habitat, surface water, and wetland surveys; assessed effects to biological resources; and performed a cultural resources survey. In addition, SEA visited the area of the proposed rail line to document existing conditions and further assess the potential effects of the proposed action on the environment.

SEA served the EA on March 28, 2008. SEA concluded in the EA that the proposed action would have no significant environmental impacts if certain mitigation measures were implemented. The EA was served on all parties to the proceeding; appropriate Federal, state, and local agencies; and any party requesting copies of the document. In its service of the EA, SEA requested comments on all aspects of the document, including the scope and adequacy of the recommended mitigation measures. The 36-day comment period closed on May 2, 2008. Comments on the EA were filed by five agencies and concerned parties and are attached as Appendix A.

SEA carefully reviewed the comments submitted in preparing its final recommendations to the Board contained in this Post EA. If the mitigation measures recommended in this Post EA are imposed by the Board, SEA believes that any potential environmental impacts resulting from construction and operation of the proposed rail line would not be significant; therefore, preparation of an EIS is not necessary.

2.0 COMMENTS AND RESPONSES

Copies of the Environmental Assessment (EA) were sent to approximately 50 agencies and interested parties for review and comment. Comments were submitted by the United States Department of the Interior National Park Service (NPS), Itasca County Regional Rail Authority (ICRRA), Minnesota Historical Society's State Historic Preservation Office (SHPO), Minnesota Department of Natural Resources (MNDNR), and the Leech Lake Band of Ojibwe (see Appendix A for copies of these five comment letters). Summaries of the comments received and SEA's responses to the comments are provided below.

NPS Comment Summary: The NPS indicated that they had no official comment regarding the project.

Response: Comment noted.

ICRRA Comment Summary: ICRRA has determined, based on further engineering design, that the westerly terminus of the proposed rail line should be located 0.5 mile east of County Road 7. This eliminates the needs to cross the unnamed tributary of Holman Lake as discussed in the EA or modify the existing CN bridge over County Road 7. The alignment would be shortened by approximately 0.5 miles. A more favorable alignment has been studied that would encroach on the northwest corner of Hill Annex State Park. The revised alignment was studied to reduce wetland impacts and avoid an abandoned iron-ore mine. ICRRA has been in discussions with the MNDNR and SHPO about leasing approximately one acre of Park land for the rail alignment.

Response: Comments from ICRRA have been noted. A 0.5 miles decrease in rail line length would further reduce potential environmental impacts, as does the elimination of a crossing of a tributary to Holman Lake and bridge modification over County Road 7. A

letter from the MNDNR regarding Hill Annex State Park accompanied the comment letter from ICRRRA, and is found in Appendix A. MNDNR indicated that the proposed alignment would have minimal operational impacts to the park. MNDNR further indicated that it has contacted the SHPO regarding this project. MNDNR is aware that the SHPO and STB are in consultation regarding a Section 106 review, which would include the portion of the rail line traversing Hill Annex State Park. If the Board approves the line, the National Historic Preservation Act (NHPA) concerns will be addressed by the Section 106 process and the MNDNR would be able to grant a lease or easement for the rail corridor through the park. The revised rail line alignment is shown in Figure 1 in Appendix C.

Minnesota SHPO Comment Summary: Minnesota SHPO concurs with the discussion in the EA describing the initiative to incorporate STB's Section 106 responsibilities into the Programmatic Agreement for the project that has been developed by the U.S. Army Corps of Engineers (Corps). The SHPO also notes that previously-identified historic properties are acknowledged in the EA, but portions of the discussion of cultural resource issues on pages 3-6 and 4-10 in the EA leaves the impression that the project will have no effect on any cultural resources.

Response: Discussion on pages 3-6 and 4-10 addresses known historic and archaeological sites within the project area. Historic sites (3) within the project area that are listed or eligible for listing on the National Register of Historic Places (NRHP) are not expected to be impacted by the proposed rail line. Other properties (45) appear in the SHPO databases but have not been evaluated by the state. There are no recorded archaeological sites within the project area. For clarification, SEA would note that the proposed project is not expected to have any effects on known cultural resources eligible for the NRHP. However, other resources yet to be identified may be effected by the project. The Programmatic Agreement satisfies Section 106 of the NHPA and addresses the identification and handling of potential archaeological and cultural resources, known or unknown, before and during construction to avoid or reduce any effects on these sites.

MNDNR Comment Summary: MNDNR noted that the Preferred Alternative (2) described in the EA directly crosses or comes very near the ordinary high water level (OHWL) of three protected waters: the unnamed stream connected to Holman Lake in Section 22; Big Diamond Lake in Section 23; and the unnamed lake/tailing basin in Section 9. Proposed work near these areas will require a Public Waters Work Permit if below OHWL in these areas. MNDNR also requested that once the botanical survey described in mitigation measure #10 is completed, a copy of the report be sent to Lisa Joyal, Endangered Species Environmental Review Coordinator for MNDNR.

Response: The Surface Transportation Board, Section of Environmental Analysis (SEA) has revised mitigation measure #12 to include the requirement of a Public Waters Work Permit in affected areas near the OHWL for the above-mentioned protected waters. Mitigation measure #10 has been revised to require that a copy of the botanical survey report be sent to Lisa Joyal of MNDNR upon completion.

Leech Lake Band of Ojibwe Comment Summary: The Leech Lake Band of Ojibwe (Band) reviewed the EA and determined that the Band does not have any concerns regarding sites of religious or cultural importance in the project area. The Band requests that should any human remains or culturally affiliated objects be encountered, all work should cease and the County Sheriff's Office and Office of the State Archaeologist should be notified. This will initiate the process informing the Band of the discovery.

Response: Comment noted. The Programmatic Agreement and associated amendment executed between the U.S. Army Corps of Engineers, Minnesota SHPO, and SEA will serve to initiate the appropriate processes ensuring that the Band would be notified should any remains or culturally affiliated objects be encountered during construction of the rail line.

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3.0 ADDITIONAL REVISIONS

This section includes discussion of additional topics and information identified since release of the EA. This section includes discussion of topics identified by the U.S. Army Corps of Engineers (Corps) as part of its environmental review of the project.

No-Action Alternative

SEA included an evaluation of the potential environmental impacts of the No-Action alternative in the EA. The No-Action alternative was described as no rail line construction. Under the No-Action alternative SEA considered, the proposed taconite mine and steel mill would still be constructed; however, no rail service would be provided and the transportation needs of the mine and mill would be met by truck transport.

Upon further consideration, SEA has identified another possible consequence of choosing the No-Action alternative. This would include construction of a private rail line to serve the mine and mill, instead of the common carrier rail line considered in the EA. The STB would have no decision-making authority in the construction and operation of a private rail line. SEA would not be required to conduct an environmental review because there would be no action before the STB.

SEA determined in the EA that the No-Action alternative of no rail line construction to serve the transportation needs of the mine and mill would have its own environmental impacts associated with the use of trucks required to meet the transportation needs of the facility. Likewise, construction and operation of a private rail line would have environmental impacts. ICRRA would still be required to obtain various permits, including a Clean Water Act Section 404 permit from the Corps for the construction and operation of a private rail line. Evaluation of the potential environmental impacts of a private rail line construction would still be required. In considering these potential environmental impacts, including those to wetlands, the most likely alternative to be selected would be the least environmentally impacting practicable alternative. SEA

identified and selected the least environmentally impacting practicable alternative as part of its EA. The potential environmental impacts of the construction and operation of a private rail line would be the same as those identified and discussed in the EA for SEA’s environmentally preferred alternative.

Wetlands

The Corps requested that wetland impacts discussed in the EA be displayed using the Eggers & Reed classification system. The Eggers & Reed evaluation has been completed. Below is a detailed table of delineated wetlands within the designed construction limits of the environmentally preferred rail line alignment using the Eggers & Reed classification system.

Summary of Wetland Impacts

Wetland Area Impacted (Square Feet)	Wetland Area Impacted (Acres)	Dominant Type per Eggers/Reed Classification
237,191.30	5.4452	Sedge Meadow (13A)
197,264.08	4.5286	Alder Thicket (8A)
28,500.67	0.6543	Shallow Open Water
104,807.49	2.4060	Deep Marsh (12B)
30,656.82	0.7038	Shallow Marsh (13B)
23,801.80	0.5464	Hardwood Swamp (3B)
75,170.04	1.7257	Shrub Swamp (6B)
TOTAL = 697,392.19	TOTAL = 16.01	

Mineral Rights

SEA indicated in the EA that the preferred alignment for the proposed rail line – Alternative 2 – would cross areas of iron-ore resources. These resources were not in areas included in Minnesota Steel’s mining plan. SEA further noted in the EA that ICRRA had not identified any land ownership issues associated with acquisition of property for construction and operation of the rail line. For clarification, SEA notes in this Post EA that Minnesota Steel does not intend to mine the mineral resources crossed by the proposed rail line and no plans are known with respect to the intention of others to mine these resources. As part of its land acquisition for the rail line, ICRRA would need

to reach agreements with the land owners and the mineral rights holders for the area occupied by the rail line. Because the land owner and mineral rights owner may be different, ICRRA would most likely be required to obtain separate agreements from each party prior to construction of the rail line.

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4.0 SEA RECOMMENDATIONS FOR MITIGATION

Based on the information available to date, SEA's independent analysis of the proposed rail line construction and operation, all comments received and mitigation requested by various Federal, state, and local agencies, and the mitigation offered by ICRRA, SEA recommends that any final decision by the Board approving the proposed rail line construction and operation be subject to the following mitigation measures:

Physical Resources – Geology and Soils, Surface and Ground Water, and Air Quality

1. ICRRA shall limit construction activities and vegetation clearing to the railroad right-of-way in order to minimize fugitive dust generation, and employ best management practices in the control and suppression of fugitive dust emissions.
2. ICRRA shall comply with all applicable Federal, state, and local regulations regarding open burning and the control of fugitive dust related to rail line construction activities. ICRRA shall take reasonable measures to maximize combustion and minimize smoke during any open burning activities.
3. To address the concerns of the Minnesota Department of Health (MDH), ICRRA will employ best management practices to prevent surface and groundwater contamination during construction and operation of the rail line.
4. To address the concerns of the U.S. Department of Agriculture, Natural Resources Conservation Service, should Federal funds be used by ICRRA during construction of the rail line, ICRRA shall identify farmland soils as determined by the Itasca County Soil Survey, obtain all evaluations, and comply with reasonable requirements of the Farmland Protection Policy Act.

Biological Resources – Vegetation, Wetlands, and Wildlife

5. ICRRA shall re-seed the railroad right-of-way outside the subgrade slope with native grass species and other appropriate native vegetation to minimize impacts on wildlife and wetland areas after construction is completed.

6. ICRRA shall minimize sedimentation and erosion in the project area by employing best management practices to reduce soil erosion during construction. In addition, ICRRA shall re-seed disturbed areas with appropriate native species immediately following construction to establish ground cover and minimize soil exposure.
7. ICRRA shall avoid or minimize disturbance to wetland areas whenever possible during construction.
8. ICRRA shall adhere to the reasonable mitigation measures as imposed by the United States Army Corps of Engineers (USACE) in any Section 404 permit(s) issued by USACE for construction of the line.
9. ICRRA shall minimize disturbance to wildlife by restricting construction activities to the proposed rail line right-of-way and immediate surrounding area.
10. ICRRA shall conduct a botanical survey of the proposed rail line right-of-way prior to construction to determine the presence or absence of any threatened or endangered plant species. Upon completion of the botanical survey and report, ICRRA will provide a copy to Lisa Joyal, Endangered Species Environmental Review Coordinator for MNDNR. If threatened or endangered species are found, ICRRA shall coordinate with the Minnesota Department of Natural Resources (MNDNR) to develop appropriate mitigation.
11. ICRRA shall apply for and obtain from the Minnesota Board of Water and Soil Resources or Itasca County, as appropriate, a permit under the Wetland Conservation Act. ICRRA shall adhere to the reasonable compensatory wetland mitigation measures as imposed in any Wetland Conservation Act permits issued.
12. ICRRA shall apply for and obtain a Public Waters Work Permit from Minnesota Department of Natural Resources (MNDNR), as appropriate, for any work below the ordinary high water level (OHWL) areas for three protected waters: the unnamed stream connected to Holman Lake, located in Section 22, Township 56 North, Range 24 West; Big Diamond Lake, located in Section 23, Township 56 North, Range 24 West; and the unnamed lake/tailing basin located in Section 9, Township 56 North, Range 23 West.

Noise

13. ICRRA shall maintain construction and maintenance vehicles in good working order to minimize air emissions, noise, and fluid leaks.
14. ICRRA shall conduct construction activities in accordance with all Federal, state, and local ordinances pertaining to noise and air emissions.

Cultural Resources

15. To protect cultural and historic resources, ICRRA shall comply with the provisions of the Programmatic Agreement as incorporated by addendum and executed between USACE, Minnesota SHPO, and SEA with ICRRA's concurrence.
16. ICRRA shall cease construction activities and notify the Minnesota SHPO immediately if any cultural or archaeological resources are inadvertently discovered during construction of the rail line.

Hazardous Materials/Waste Sites

17. ICRRA shall observe all applicable Federal, state, and local regulations regarding the handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the rail line. Should a spill occur during construction or operation of the rail line, ICRRA shall follow the appropriate emergency response procedures outlined in its Emergency Response Plan, and ensure that any spills are cleaned up in accordance with all applicable Federal, state, and local regulations.

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APPENDIX A
COMMENT LETTERS

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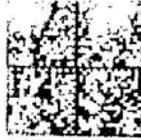
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Environmental Coordinator
National Park Service
Midwest Regional Office
601 Riverfront Drive
Omaha, NE 68102



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US PC

EI - 7218



Kenneth Blodgett, Project Manager
Surface Transportation Board
Patriots Plaza
395 E Street SW
Washington, DC 20423



Re: Environmental Assessment, Itasca County Regional Rail Authority Exemption, Itasca County, MN

We have received your document of March 28, 2008 concerning the above referenced project.

- We have no comment on your proposed actions.
- Please address any further correspondence about this project or any project to the following address:

Regional Environmental Coordinator
National Park Service
Midwest Regional Office
601 Riverfront Drive
Omaha, NE 68102

Due to limited staff and the number of requests we receive for early coordination, we ask that companies/agencies assume we will have no comments on projects if they have not heard from us within 30 days of our receipt of the request.

Thank you,

Regional Environmental Coordinator

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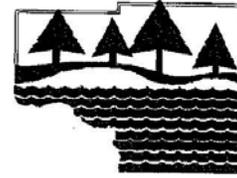
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ITASCA COUNTY**GARRETT OUS
LAND COMMISSIONER**

Itasca County Land Department
1177 LaPrairie Avenue
Grand Rapids, MN 55744-3322
218-327-1855 – Fax 218-327-4160



April 14, 2008

RE: Itasca County Regional Rail Authority
Finance Docket No. 34992
Decision I.D. #38849

Kenneth Blodgett
Project Manager
Surface Transportation Board
Patriots Plaza, 395 E Street SW
Washington DC 20433

Dear Mr. Blodgett:

Itasca County (IC) and the Itasca County Regional Rail Authority (ICRRA) wish to comment on the Environmental Assessment for the ICRRA Petition for Exemption Construction of a Line of Railroad in Itasca County, Minnesota. This project and the Minnesota Steel Industries, LLC (MSI) project near Nashwauk, Minnesota are important economic developments for Itasca County and northeastern Minnesota. Itasca County and its Rail Authority have been supportive of these projects for several years and look forward to seeing construction started.

MSI has completed their environmental investigation and have secured the necessary permits to begin construction in June of 2008. The STB's EA is an important step in the ICRRA process of getting their necessary permits.

We have the following comments on the Environmental Assessment, dated March 28, 2008:

- 1) The County and the Rail Authority are in agreement that Alternative 2 is the least environmentally damaging alternative. The County and the Rail Authority will continue during the design process to use the best practices and design features to further reduce the environmental impact during construction and operation.
- 2) The County and Rail Authority support your recommendation that an Environmental Impact Statement will not be needed.
- 3) Based on further engineering design that has been running parallel to the EA process, the westerly terminus will be located one half mile east of County Road 7. This will eliminate the need to cross the unnamed tributary of Holman Lake (page 2-12), eliminate the need to modify the CN bridge over County Road 7 and the track will be shortened by approximately .5 miles.
- 4) Based on further engineering, a more favorable alignment is being studied that will encroach on a northwest corner of the Hill Annex State Park. ICRRA have been in discussions with the Minnesota Department of Natural Resources (MnDNR) about leasing approximately 1 acre of Park land for the Railroad track. Attached is a letter from the MnDNR regarding these discussions. The revised alignment is being studied to reduce wetland impacts and avoiding an abandoned iron ore mine. The Hill Annex State Park is a unique in the Minnesota State Park system because the land is a former iron ore mine and future mining is an approved activity. MSI has approximately 160 acres of Park land under their mining lease.

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Kenneth Blodgett
April 14, 2008
Page 2

- 5) Itasca County and the Rail Authority appreciate the efforts of the STB and the Section of Environmental Analysis in getting this project approved and look forward to a final authorization to construct the project.

Sincerely,



Mark Mandich, Chairman
Itasca County Regional Rail Authority (ICRRA)
And
Chairman,
Itasca County Board of Commissioners

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Minnesota Department of Natural Resources
500 Lafayette Road • St. Paul, MN • 55155-4037



March 25, 2008

RECEIVED
MAR 26 2008

Itasca County Regional Rail Authority
Chairman Mark Mandich, Commissioner
c/o Itasca County Board Clerk
123 North East 4th Street
Grand Rapids, MN 55744

REGISTRATION OFFICE
ST. PAUL, MINN.

Dear Chairman Mandich:

My staff has informed me that the Department of Natural Resources has been asked whether it will be feasible for a section of rail line to cross through the northeast corner of Hill Annex State Park (see attached map) and extend into the Minnesota Steel mine permit area.

The Division of Parks has reviewed this proposal and finds that there would be minimal operational impacts to park property. We have connected with the State Historic Preservation Office regarding this project. They are aware of the proposal and are in consultation with the Surface Transportation Board on its progress. The process will include a Section 106 review, to include the portion traversing Hill Annex State Park, as indicated in the National Historic Preservation Act. If the Surface Transportation Board approves the line, the National Historic Preservation Act concerns will have been addressed and it would be possible to grant a lease or easement for the rail corridor through the park.

The DNR's Northeast Regional Office is currently reviewing resource concerns in the crossing of all state-owned lands by the proposed rail line, and consistent with Laws of Minnesota, 1988; Ch. 686, Art. 1, Sec. 53, the lease or easement will address compensation for the encumbrance of mineral rights to the school trust fund lands.

Sincerely,

Mark Holsten
Commissioner

- c Jack Muhar, Itasca County Attorney
- Dave Christy, Itasca County Engineer
- Marty Vadis, LAM Director
- Courtland Nelson, Parks & Recreation Director
- Craig Engwall, Northeast Regional Director

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MINNESOTA HISTORICAL SOCIETY

State Historic Preservation Office

April 29, 2008

Mr. Kenneth Blodgett
Project Manager
Surface Transportation Board
Patriots Plaza
395 E Street SW
Washington, D.C. 20423

Re: Itasca Regional Rail Authority – Construction of a 9 mile line of railroad
Minnesota Steel Industries, Butler Taconite Mine Reactivation
Itasca County
SHPO Number: 2005-2320PA

Dear Mr. Blodgett:

Thank you for forwarding a copy of the Environmental Assessment for the above referenced project.

The discussion of Cultural Resource issues on pages 3-6 and 4-10 accurately describes the initiative to incorporate the STB's Section 106 responsibilities into the Programmatic Agreement for the project that has been developed by the U.S. Army Corps of Engineers. By way of an amendment to the USACE's agreement, this approach should facilitate an integrated program to address cultural resource issues.

We note that portions of the above-referenced sections of the EA may be somewhat misleading. Previously identified historic properties are acknowledged; the discussion leaves the impression that the project will have no effect on any cultural resources. If that were the case, no further work or agreement would be needed. Indeed, the above referenced Programmatic Agreement addresses the fact that there may be other historic properties in the area, and it outlines a strategy for identification, evaluation, and treatment.

We look forward to working with the STB and the USACE in the completion of the terms of the agreement. Contact us at 651-259-3456 with questions or concerns.

Sincerely,

Dennis A. Gimmestad
Government Programs & Compliance Officer

345 Kellogg Boulevard West/Saint Paul, Minnesota 55102-1906/Telephone 651-296-6126

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Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, Minnesota • 55155-4025



May 2, 2008

Kenneth Blodgett
Surface Transportation Board
395 E Street SW
Washington, DC 20423
Attn: Docket No. FD 34992

Re: Draft Environmental Assessment (Draft EA) for Itasca County Regional Rail Authority's (ICRRA) proposed construction and operation of an approximately 9-mile long rail line

Dear Mr. Blodgett:

The Department of Natural Resources (DNR) has reviewed the Draft Environmental Assessment (Draft EA) for Itasca County Regional Rail Authority's (ICRRA) proposed construction and operation of an approximately 9-mile long rail line in Itasca County, Minnesota. The DNR is offering the following comments for your consideration.

The Preferred Alternative (Alt. 2) either directly crosses or comes very near the ordinary high water level (OHWL) of three protected waters: the unnamed stream connected to Holman Lake in Section 22; Big Diamond Lake in Section 23 (31-0223P); unnamed lake/tailing basin in Section 9 (31-0105P). The proposed work will require a Public Waters Work Permit if below OHWL in these areas.

Section of Environmental Analysis Recommendations for Mitigation (page ES-11, no. 10)

Once the botanical survey, as described in point no. 10, has been completed, the DNR would like to receive a copy of the report. The address of the officer to receive the report is listed below.

Lisa Joyal, Endangered Species Environmental Review Coordinator lisa.joyal@dnr.state.mn.us
Natural Heritage and Nongame Research Program, Minnesota Department of Natural Resources
500 Lafayette Road, Box 25, St. Paul, Minnesota 55155

Thank you for the opportunity to provide comments on the Draft Environmental Assessment and for your consideration of these comments. The DNR looks forward to reviewing responses to comments when they become available. Please feel free to contact me with any questions or comments.

Sincerely yours,

Ronald Wieland, Senior Planner
Environmental Review and Planning Unit
Division of Ecological Resources
(651) 259-5157

cc: Bob Leibfried, Susan Backe, Lisa Joyal, Steve Colvin, Erika Herr, Steve Moberg

ERDB# 20080654-0001

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DNR Information: 651-296-6157 • 1-888-646-6367 • TTY: 651-296-5484 • 1-800-657-3929

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Leech Lake Band of Ojibwe



District I Representative
Robbie Howe

George Goggeye, Chairman
Arthur "Archie" LaRose, Secretary/Treasurer

District II Representative
Lyman L. Losh

District III Representative
Donald "Mick" Finn

April 15, 2008

Surface Transportation Board
Attn: Kenneth Blodgett
395 E Street SW
Washington, DC 20423

RE: **Proposed construction and operation of approx. 9 mile rail line**
Itasca County, Minnesota
Docket No. FD 34992
LLBO Land Claim Area
LL-THPO Number: 08-059-NCRI

Dear Mr. Blodgett:

Thank you for the opportunity to comment on the above-referenced project. It has been reviewed pursuant to the responsibilities given the Tribal Historic Preservation Officer (THPO) by the National Historic Preservation Act of 1966, as amended in 1992 and the Procedures of the Advisory Council on Historic Preservation (38CFR800).

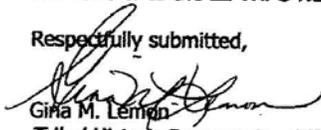
I have reviewed the documentation; after careful consideration of our records, I have determined that the Leech Lake Band of Ojibwe does not have any concerns regarding sites of religious or cultural importance in this area.

Should any human remains or suspected human remains be encountered, all work shall cease and the following personnel should be notified immediately in this order: County Sheriff's Office and Office of the State Archaeologist. If any human remains or culturally affiliated objects be inadvertently discovered this will prompt the process to which the Band will become informed.

Please note: The above determination does not "exempt" future projects from Section 106 review. In the event of any other tribe notifying us of concerns for a specific project, we may re-enter into the consultation process.

You may contact me at (218) 335-2940 if you have questions regarding our review of this project. Please refer to the LL-THPO Number as stated above in all correspondence with this project.

Respectfully submitted,


Gina M. Lemmon
Tribal Historic Preservation Officer

Leech Lake Tribal Historic Preservation Office * Established in 1996
An office within the Division of Resource Management
115 Sixth Street NW, Suite E * Cass Lake, Minnesota 56633
(218) 335-2940 * FAX (218) 335-2974
llthpo@hotmail.com or www.nathpo.org

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**APPENDIX B
AMENDMENT TO PROGRAMMATIC AGREEMENT**

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Itasca County Regional Rail Authority Rail Line Connected Action - 3/13/08
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**AMENDMENT #1 TO THE
MINNESOTA STEEL PROJECT PROGRAMMATIC AGREEMENT
AMONG
THE ST. PAUL DISTRICT, CORPS OF ENGINEERS,
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,
AND THE SURFACE TRANSPORTATION BOARD
CONCERNING THE
MINNESOTA STEEL INDUSTRIES, LLC RAIL LINE CONNECTED ACTION
PROPOSED BY THE ITASCA COUNTY REGIONAL RAIL AUTHORITY
NEAR NASHWAUK, ITASCA COUNTY, MINNESOTA**

WHEREAS, the St. Paul District, U.S. Army Corps of Engineers (Corps) issued a Clean Water Act Section 404 permit on August 30, 2007, for the discharge of fill material into jurisdictional waters of the U.S., including wetlands, to Minnesota Steel Industries, LLC (Minnesota Steel) to facilitate the construction and operation of a taconite mine and steel production plant near Nashwauk in Itasca County, Minnesota; and

WHEREAS, the Minnesota Steel project will also require construction of the following infrastructure improvements; a 10 mile access road to the new facility, rail service that would include 8 miles of track to the facility and 6 to 10 miles of auxiliary track, a natural gas pipeline along a 21 mile route between the Blackberry source point and the mining facility, water and sanitary sewer services from the City of Nashwauk to the facility, and a power transmission line to the new facility; and

WHEREAS, construction of the rail service infrastructure improvement involves a separate application to be submitted by the Itasca County Regional Rail Authority (ICRRA) for a Department of the Army permit under Section 404 of the Clean Water Act, and the rail service infrastructure improvement is directly related to the Minnesota Steel Industries LLC project described above and does not have utility independent of that project. Therefore, the rail service infrastructure improvement is addressed in this amendment to the Minnesota Steel project Programmatic Agreement (Amendment #1). The five proposed alternative rail line alignments that are under review are located in Sections 2, 3, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, and 21, T. 56N., R. 23W., Sections 13, 23, and 24, T. 56N., R. 24W., and Section 35, T. 57N., R. 23W., Itasca County, Minnesota; and

WHEREAS, the Corps invited the Advisory Council on Historic Preservation (Council) to participate in the development of the Minnesota Steel project Programmatic Agreement and the Council declined to participate; and

WHEREAS, the Corps invited the Minnesota Ojibwe Tribes, who are located in Northern Minnesota, to participate in consultation regarding the Minnesota Steel project permit review, and the Grand Portage Chippewa, the Red Lake Band of Chippewa, the Bois Forte Band of Chippewa, and the Fond du Lac Band of Lake Superior Chippewa expressed interest in consultation. However, those tribes declined to sign the Minnesota Steel project Programmatic Agreement as concurring parties; and

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WHEREAS, Minnesota Steel declined to sign the Minnesota Steel project Programmatic Agreement as an invited signatory; and

WHEREAS, the Surface Transportation Board (STB) is the lead federal agency in the preparation of an Environmental Assessment (EA) to support its decision making associated with the construction and operation of the proposed ICRRRA rail line to provide rail service to the Minnesota Steel project; and

WHEREAS, the Corps is a cooperating agency in the preparation of the EA to support its decision making associated with the construction and operation of the proposed ICRRRA rail line to provide rail service to the Minnesota Steel project; and

WHEREAS, the STB has contacted the Minnesota State Historic Preservation Office and the Office of the State Archaeologist, and based on a records search of the Minnesota Archaeological Inventory and Historic Structures Inventory, no previously recorded archaeological sites were identified within the project area; and

WHEREAS, based upon an archaeological review, Corps cultural resources staff has concluded that none of the five proposed alternative rail line alignment routes have a significantly greater or lesser likelihood of impacting archaeological sites; and

WHEREAS, to ensure that identification activity is adequate, an archaeological survey of the rail line alignment selected by the STB shall be conducted by the ICRRRA before construction work begins; and

WHEREAS, Amendment #1 has no impact on the Clean Water Act Section 404 permit issued to Minnesota Steel by the Corps;

NOW THEREFORE, the Corps, the Minnesota State Historic Preservation Office, and the Surface Transportation Board agree that construction of the rail service infrastructure improvement must be subject to the following provisions.

STIPULATIONS

Should a Department of the Army permit be issued under Section 404 of the Clean Water Act to the ICRRRA for the construction of a rail line to the Minnesota Steel project site, the Corps shall incorporate the requirements of Amendment #1 as a special permit condition.

Should a Department of the Army permit not be required for the construction of a rail line to the Minnesota Steel project site, Minnesota Steel Industries, LLC shall be responsible for review pursuant to the provisions of 36 CFR Part 800 as specified in the original Programmatic Agreement that was executed on August 16, 2007.

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I. IDENTIFICATION OF CULTURAL PROPERTIES

- A. The ICRRRA shall provide plans and specifications to the Corps for the rail line infrastructure improvement to the Minnesota Steel project site.
- B. The Corps shall consult with the Minnesota State Historic Preservation Office (SHPO) and the STB to determine the Area of Potential Effects and the scope of identification efforts after plans and specifications are submitted.
- C. If concurrence between the Corps, the SHPO, and the STB on the scope of identification efforts cannot be reached, the dispute will be handled under the provisions of Stipulation V, Dispute Resolution, below.
- D. The Corps shall coordinate the scope of identification efforts with the ICRRRA, and the ICRRRA shall conduct a Phase I survey to identify properties that may be eligible for inclusion on the National Register of Historic Places (NRHP) and to collect adequate information to determine the scope of further data collection, if needed.
- E. The Phase I survey report shall provide a description of all cultural properties identified, a discussion that addresses the properties' potential eligibility for listing on the NRHP and recommended actions for further investigation of these properties.
- F. The ICRRRA shall provide the draft Phase I report to the Corps. The Corps shall review and comment on the draft report and any subsequent submittals of the report within 14 days. The ICRRRA shall revise the draft report, consistent with the Corps' comments, within 7 days of receipt of the comments and submit four (4) copies of the revised draft report to the Corps.
- G. The Corps shall provide the revised draft report, along with the Corps' recommendations and/or determinations, to the SHPO and the STB for review and comment. If the Corps does not receive comment within 30 days, the Corps may assume concurrence with any determinations or recommendations.
- H. If the Corps receives comments from the SHPO or the STB on the draft report, the Corps shall consider those comments, and if the Corps agrees with those comments, the ICRRRA shall revise the report in accordance with those comments, within 14 days of receiving comments from the Corps. If revised, the ICRRRA shall provide the Corps with a minimum of four (4) copies of the revised report.
- I. Should the Corps have an objection to comments received from the SHPO or the STB, or there is an objection to any Corps recommendation, or a request for consultation to resolve concerns pertaining to survey coverage, the Corps will consult to resolve the objection or satisfy the concerns. If the Corps determines that further consultation is not productive, the Corps will request the Council's comments in accordance with Stipulation V, Dispute Resolution, below.

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II. EVALUATION OF NHRP ELIGIBILITY OF IDENTIFIED CULTURAL PROPERTIES

- A. The ICRRA shall conduct a Phase II evaluation of the properties identified as potentially eligible for the NRHP under Section I above, in order to determine whether they are in fact eligible for the NRHP.
- B. The Corps shall define the scope of the Phase II evaluation effort in consultation with the SHPO and the STB.
- C. Where the Phase II evaluation concludes that a property is eligible for the NRHP, the evaluation report shall include a preliminary evaluation of the Project's effects on the property and an evaluation of possible measures to avoid or reduce any identified adverse effects.
- D. The ICRRA shall provide the draft Phase II report to the Corps. The Corps shall review and comment on the draft report and any subsequent submittals of the report within 14 days. The ICRRA shall revise the draft report, consistent with the Corps' comments, within 7 days of receipt of the comments and submit four (4) copies of the revised draft report to the Corps.
- E. The Corps shall provide the revised report, along with the Corps' determination of which properties are eligible for the NRHP, to the SHPO and the STB for review and comment.
- F. If the Corps receives comments from the SHPO or the STB on the draft report, the Corps shall consider those comments and if the Corps agrees with those comments, the ICRRA shall revise the report in accordance with those comments, within 14 days of receiving the comments from the Corps. If revised, the ICRRA shall provide the Corps with a minimum of four (4) copies of the revised report.
- G. If the Corps determines that a property is not eligible for the NRHP and does not receive comment within 30 days from the SHPO or the STB, the Corps will assume concurrence with the determination, and the Corps will provide written authorization to the ICRRA to construct the project without further consultation.
- H. If the Corps determines that a property is eligible for the NHRP and does not receive comment within 30 days from the SHPO or the STB, the Corps will assume concurrence with the determination. The Corps shall conduct an assessment of adverse effects on the property as described in Section III below, and the ICRRA shall not construct the project without further consultation as described below.
- I. If the SHPO or the STB disagrees with a determination by the Corps about a property's eligibility for the NRHP and further consultation pertaining to the property's eligibility is not productive, the ICRRA shall obtain a formal Determination of Eligibility from the National Park Service's Keeper of the National Register, whose decision shall be final.

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III. TREATMENT OF HISTORIC PROPERTIES

If historic properties are identified and deemed eligible for inclusion on the NHRP, the Corps will follow the procedures described in 36 CFR §§ 800.5 through 800.7 to assess the project's effects on them and to identify measures to avoid or reduce adverse effects.

IV. APPROVAL TO PROCEED

The ICRRA may not proceed with construction of the rail line until notified in writing by the Corps that construction may proceed, and that there are no unresolved concerns pertaining to the Corps' assessment of effects on any identified historic properties or measures required to avoid, reduce, or mitigate adverse effects on those properties. The Corps may require the ICRRA to conduct additional evaluation or assessment of effects to resolve any concerns as necessary.

V. DISPUTE RESOLUTION

A. Should the SHPO or the STB have objections within 30 days after the receipt of any plans, documents, or reports submitted to them under the terms of Amendment #1, the Corps shall consult with the objecting party to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation for review of the findings within the procedures and time periods defined in 36 CFR § 800.5(c)(3). The Corps will take into account any comment or recommendation received from the Council in reaching a final decision regarding the dispute.

B. Any recommendation or comment provided by the Advisory Council on Historic Preservation will pertain only to the subject of the dispute. The responsibility of the Corps to carry out all actions under this agreement that are not the subject of the dispute will remain unchanged.

VI. AMENDMENTS

Any party to Amendment #1 may request that it be amended, whereupon the parties will consult in accordance with 36 CFR § 800.6(c)(7) to consider such amendment.

VII. TERMINATION

Any signatory party to Amendment #1 may withdraw from it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to withdrawal to seek agreement on amendments or other actions that would avoid withdrawal. In the event of termination, or withdrawal, the Corps will comply with 36 CFR Part 800, Protection of Historic Properties.

VIII. ANTI-DEFICIENCY PROVISION

Any obligation of the Government set forth in this agreement is subject to and dependent on the appropriation and allocation of sufficient funds for that purpose.

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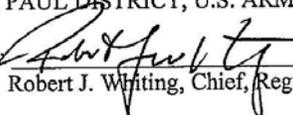
IX. SUNSET CLAUSE

Amendment #1 shall terminate if the ICRRA withdraws its Section 404 permit application, or it shall terminate five years after the date of the Corps' permit decision regarding the proposed rail line project.

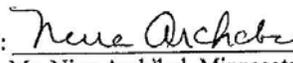
Execution and implementation of Amendment #1 evidences that the U.S. Army Corps of Engineers and the Surface Transportation Board have satisfied their Section 106 responsibilities.

SIGNATORY PARTIES

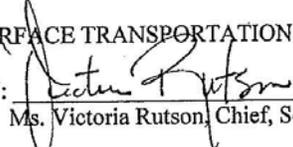
ST. PAUL DISTRICT, U.S. ARMY CORPS OF ENGINEERS

BY:  DATE: April 1, 2008
Robert J. Whiting, Chief, Regulatory Branch

MINNESOTA STATE HISTORIC PRESERVATION OFFICER

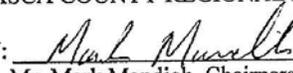
BY:  DATE: 4/07/08
Ms. Nina Archibal, Minnesota State Historic Preservation Officer
NMA

SURFACE TRANSPORTATION BOARD

BY:  DATE: April 24, 2008
Ms. Victoria Rutson, Chief, Section of Environmental Analysis

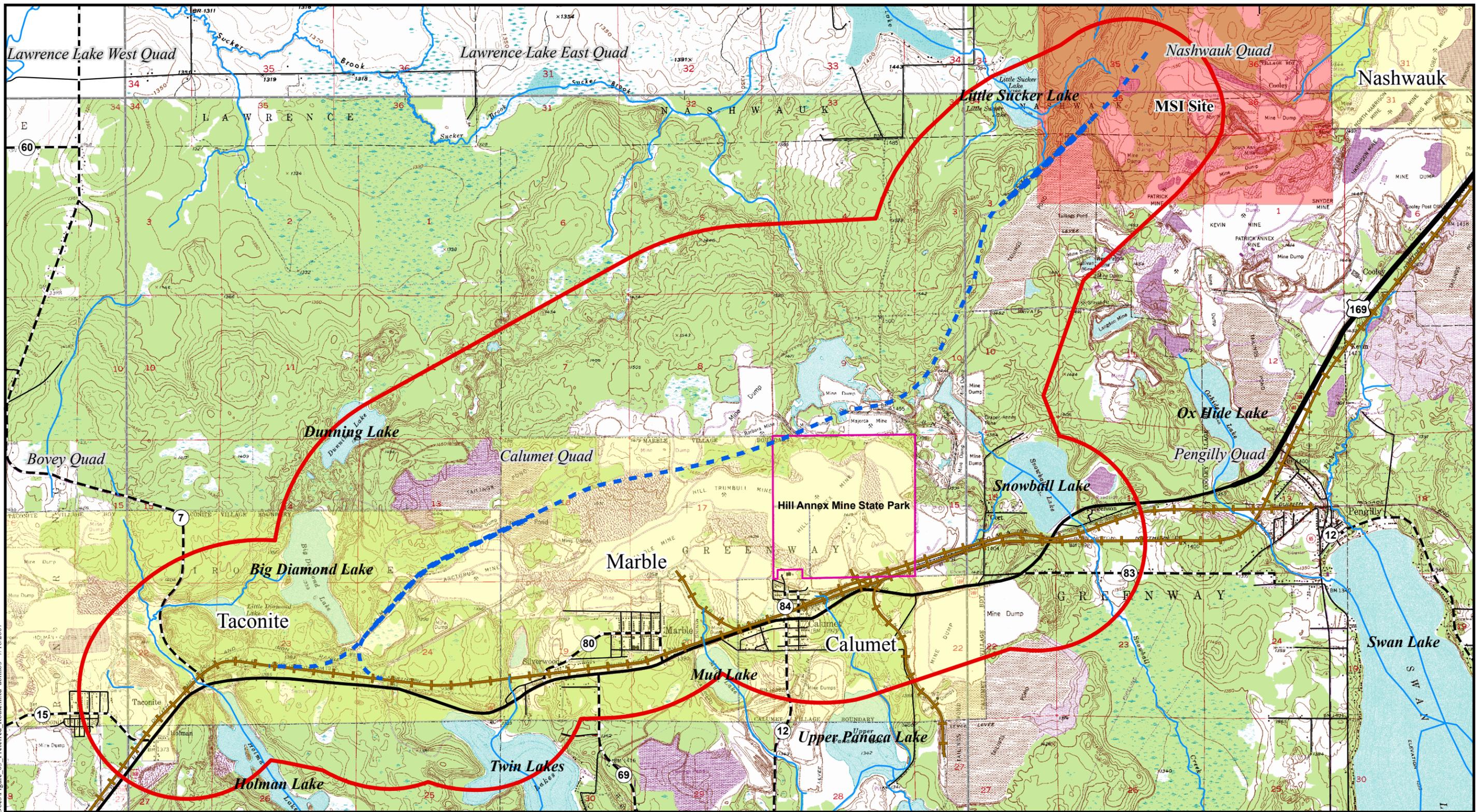
INVITED SIGNATORY

ITASCA COUNTY REGIONAL RAIL AUTHORITY

BY:  DATE: MAY 5, 2008
Mr. Mark Mandich, Chairperson

APPENDIX C
Figure 1 - REVISED RAIL LINE ALIGNMENT

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LEGEND

- Minnesota Steel Site Boundary
- Municipality Areas
- Study Limits
- Existing Railroad
- Preferred Alternative - Revised Alignment
- Hill Annex Mine State Park

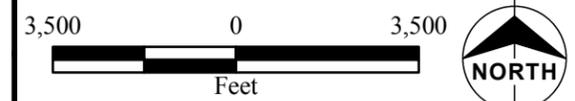


Figure 1
Itasca County
Regional Railroad Authority
Preferred Rail Line Alternative
Revised Alignment

Source: AMEC; Minnesota DNR - Division of Fish & Wildlife.