



**State of Wisconsin / DEPARTMENT OF NATURAL RESOURCES**

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February 21, 2020

Eric Quigley  
Badger Minerals LLC  
414 10th Ave., Suite 1  
Menominee, WI 59858

SUBJECT: Endangered Resources Review (ERR Log # 20-076)  
Proposed CM - Project, Oneida County, WI (T35N R11E S09, T35N R11E S04)

Dear Eric Quigley,

The Bureau of Natural Heritage Conservation has reviewed the proposed project described in the Endangered Resources (ER) Review Request received February 11, 2020. The complete ER Review for this proposed project is attached and follow-up actions are summarized below:

Required Actions: 0 species

Recommended Actions: 2 species

No Follow-Up Actions: 0 species

Additional Recommendations Specified: No

This ER Review may contain Natural Heritage Inventory data (<http://dnr.wi.gov/topic/NHI>), including specific locations of endangered resources, which are considered sensitive and are not subject to Wisconsin's Open Records Law. Information contained in this ER Review may be shared with individuals who need this information in order to carry out specific roles in the planning, permitting, and implementation of the proposed project. **Specific locations of endangered resources may not be released or reproduced in any publicly disseminated documents.**

The attached ER Review is for informational purposes and only addresses endangered resources issues. **This ER Review does not constitute DNR authorization of the proposed project and does not exempt the project from securing necessary permits and approvals from the DNR and/or other permitting authorities.**

Please contact me at 608-264-8968 or via email at [anna.rossler@wi.gov](mailto:anna.rossler@wi.gov) if you have any questions about this ER Review.

Sincerely,

*Anna Rossler*

Endangered Resources Review Program

cc:

**Endangered Resources Review for the Proposed CM - Project, Oneida County**  
**(ER Log # 20-076)**

**Section A. Location and brief description of the proposed project**

Based on information provided by the ER Review Request form and attached materials, the proposed project consists of the following:

<b>Location</b>	Oneida County - T35N R11E S09, T35N R11E S04
<b>Project Description</b>	The project includes drilling up to 10 drillholes from 10 drillsites (~50'x50'). Minor clearing of underbrush, smaller trees, and limited grading of uneven ground will be required at the drillsites and to access drillsites from existing roads and trails. Maximum disturbance is estimated to not exceed 0.5-0.7 acres.
<b>Project Timing</b>	Late Feb 2020- End of March 2020
<b>Current Habitat</b>	All drill hole locations within section 4 (owned by Heartwood) are forestlands currently enrolled in the Managed Forest Law program. Drill sites within this section are located in an upland environment dominated by hardwoods (maple, basswood, ash, oak, birch) and to a lesser extent pine plantation consisting of red pine and white spruce.  Drillsites located in section 9 are located on land owned by Badger Minerals LLC and are located on upland mixed coniferous/deciduous forest.
<b>Impacts to Wetlands or Waterbodies</b>	Drill holes and access paths are located between ~100' to 800' from wetlands. Stockley creek runs to the west and south of the planned drill holes and is located ~650' from the nearest drill hole location. The Wolf River is located to the east of the proposed project area and is located ~1,600' from the nearest proposed drillhole.
<b>Property Type</b>	Private
<b>Federal Nexus</b>	No

*It is best to request ER Reviews early in the project planning process. However, some important project details may not be known at that time. Details related to project location, design, and timing of disturbance are important for determining both the endangered resources that may be impacted by the project and any necessary follow-up actions. Please contact the ER Review Program whenever the project plans change, new details become available, or more than a year has passed to confirm if results of this ER Review are still valid.*

**Section B. Endangered resources recorded from within the project area and surrounding area**

	<b>Group</b>	<b>State Status</b>	<b>Federal Status</b>
	Bird	SC/M	SOC
Bald Eagle ( <i>Haliaeetus leucocephalus</i> )	Bird~		EAG

*For additional information on the rare species, high-quality natural communities, and other endangered resources listed above, please visit our Biodiversity (<http://dnr.wi.gov/topic/EndangeredResources/biodiversity.html>) page. For further definitions of state and federal statuses (END=Endangered, THR=Threatened, SC=Special Concern), please refer to the Natural Heritage Inventory (NHI) Working List (<http://dnr.wi.gov/topic/nhi/Wlist.html>).*

**Section C. Follow-up actions**

**Actions that need to be taken to comply with state and/or federal endangered species laws:** None

## Actions recommended to help conserve Wisconsin's Endangered Resources:

### • [REDACTED] - Bird

State Status: SC/M Federal Status: SOC

Impact Type	Impact possible
Recommended Measures	Time of year restriction
Description of Recommended Measures	<p>Suitable nesting habitat for [REDACTED] may be present in all three of the project areas. While not required, it is recommended to avoid disturbance within or adjacent to suitable habitat from [REDACTED] to avoid impacting this species.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

### • Bald Eagle (*Haliaeetus leucocephalus*) - Bird~

Federal Status: EAG

Impact Type	Impact possible
Recommended Measures	Time of year restriction
Description of Recommended Measures	<p>While the known Bald Eagle nests are not within or adjacent to the project site, the southern project area is within 1 mile of Bald Eagle nests and suitable habitat for the eagle may be present. If an eagle nest is present and active, then human activity should be avoided from January 15 – July 30 within 660ft of the nest.</p> <p>Please note, that the bald eagle is federally protected by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Visit the USFWS Bald Eagle Management website (<a href="https://www.fws.gov/midwest/eagle/permits/baeatake/step1.html">https://www.fws.gov/midwest/eagle/permits/baeatake/step1.html</a>) for detailed guidelines and conservation measures for your specific project activity.</p>

*Remember that although these actions are not required by state or federal endangered species laws, they may be required by other laws, permits, granting programs, or policies of this or another agency. Examples include the federal Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, State Natural Areas law, DNR Chapter 30 Wetland and Waterway permits, DNR Stormwater permits, and Forest Certification.*

**No actions are required or recommended for the following endangered resources: None**

## Section D. Next Steps

1. Evaluate whether the **'Location and brief description of the proposed project'** is still accurate. All recommendations in this ER Review are based on the information supplied in the ER Review Request. If the proposed project has changed or more than a year has passed and you would like your letter renewed, please contact the ER Review Program to determine if the information in this ER Review is still valid.
2. Determine whether the project can incorporate and implement the **'Follow-up actions'** identified above:
  - o 'Actions that need to be taken to comply with state and/or federal endangered species laws' represent the Department's best available guidance for complying with state and federal endangered species laws based on the project information that you provided and the endangered resources information and data available to us. If the proposed project has not changed from the description that you provided us and you are able to implement all of the 'Actions that need to be taken to comply with state and/or federal endangered species laws', your project should comply with state and federal endangered species laws. Please remember that if a violation occurs, the person responsible for the taking is the liable party. Generally this is the landowner or project proponent. For questions or concerns about individual responsibilities related to Wisconsin's Endangered Species Law, please contact the ER Review Program.
  - o If the project is unable to incorporate and implement one or more of the 'Actions that need to be taken to comply with state and/or federal

endangered species laws identified above, the project may potentially violate one or more of these laws. Please contact the ER Review Program immediately to assist in identifying potential options that may allow the project to proceed in compliance with state and federal endangered species laws.

- o 'Actions recommended to help conserve Wisconsin's Endangered Resources' may be required by another law, a policy of this or another Department, agency or program; or as part of another permitting, approval or granting process. Please make sure to carefully read all permits and approvals for the project to determine whether these or other measures may be required. Even if these actions are not required by another program or entity for the proposed project to proceed, the Department strongly encourages the implementation of these conservation measures on a voluntary basis to help prevent future listings and protect Wisconsin's biodiversity for future generations.

3. If federally-protected species or habitats are involved and the project involves federal funds, technical assistance or authorization (e.g., permit) and there are likely to be any impacts (positive or negative) to them, consultation with USFWS will need to occur prior to the project being able to proceed. If no federal funding, assistance or authorization is involved with the project and there are likely to be adverse impacts to the species, contact the USFWS Twin Cities Ecological Services Field Office at 612-725-3548 (x2201) for further information and guidance.

## Section E. Standard Information to help you better understand this ER Review

**Endangered Resources (ER) Reviews** are conducted according to the protocols in the guidance document Conducting Proposed Endangered Resources Reviews: A Step-by-Step Guide for Wisconsin DNR Staff.

**How endangered resources searches are conducted for the proposed project area:** An endangered resources search is performed as part of all ER Reviews. A search consists of querying the Wisconsin Natural Heritage Inventory (NHI) database for endangered resources records for the proposed project area. The project area evaluated consists of both the specific project site and a buffer area surrounding the site. A 1 mile buffer is considered for terrestrial and wetland species, and a 2 mile buffer for aquatic species. Endangered resources records from the buffer area are considered because most lands and waters in the state, especially private lands, have not been surveyed. Considering records from the entire project area (also sometimes referred to as the search area) provides the best picture of species and communities that may be present on your specific site if suitable habitat for those species or communities is present.

**Categories of endangered resources considered in ER Reviews and protections for each:** Endangered resources records from the NHI database fall into one of the following categories:

- Federally-protected species include those federally listed as Endangered or Threatened and Designated Critical Habitats. Federally-protected animals are protected on all lands; federally-protected plants are protected only on federal lands and in the course of projects that include federal funding (see Federal Endangered Species Act of 1973 as amended).
- Animals (vertebrate and invertebrate) listed as Endangered or Threatened in Wisconsin are protected by Wisconsin's Endangered Species Law on all lands and waters of the state (s. 29.604, Wis. Stats.).
- Plants listed as Endangered or Threatened in Wisconsin are protected by Wisconsin's Endangered Species Law on public lands and on land that the person does not own or lease, except in the course of forestry, agriculture, utility, or bulk sampling actions (s. 29.604, Wis. Stats.).
- Special Concern species, high-quality examples of natural communities (sometimes called High Conservation Value areas), and natural features (e.g., caves and animal aggregation sites) are also included in the NHI database. These endangered resources are not legally protected by state or federal endangered species laws. However, other laws, policies (e.g., related to Forest Certification), or granting/permitting processes may require or strongly encourage protection of these resources. The main purpose of the Special Concern classification is to focus attention on species about which some problem of abundance or distribution is suspected before they become endangered or threatened.
- State Natural Areas (SNAs) are also included in the NHI database. SNAs protect outstanding examples of Wisconsin's native landscape of natural communities, significant geological formations, and archeological sites. Endangered species are often found within SNAs. SNAs are protected by law from any use that is inconsistent with or injurious to their natural values (s. 23.28, Wis. Stats.).

**Please remember** the following:

1. This ER Review is provided as information to comply with state and federal endangered species laws. By following the protocols and methodologies described above, the best information currently available about endangered resources that may be present in the proposed project area has been provided. However, the NHI database is not all inclusive; systematic surveys of most public lands have not been conducted, and the majority of private lands have not been surveyed. As a result, NHI data for the project area may be incomplete. Occurrences of endangered resources are only in the NHI database if the site has been previously surveyed for that species or group during the appropriate season, and an observation was reported to and entered into the NHI database. As such, absence of a record in the NHI database for a specific area should not be used to infer

that no endangered resources are present in that area. Similarly, the presence of one species does not imply that surveys have been conducted for other species. Evaluations of the possible presence of rare species on the project site should always be based on whether suitable habitat exists on site for that species.

2. This ER Review provides an assessment of endangered resources that may be impacted by the project and measures that can be taken to avoid negatively impacting those resources based on the information that has been provided to ER Review Program at this time. Incomplete information, changes in the project, or subsequent survey results may affect our assessment and indicate the need for additional or different measures to avoid impacts to endangered resources.
3. This ER Review does not exempt the project from actions that may be required by Department permits or approvals for the project. Information contained in this ER Review may be shared with individuals who need this information in order to carry out specific roles in the planning, permitting, and implementation of the proposed project.