



United States Department of the Interior
KENAI NATIONAL WILDLIFE REFUGE

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COMPATIBILITY DETERMINATION

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee) states that “The Secretary is authorized, under regulations as [s]he may prescribe, to – (A) permit the use of any area within the [National Wildlife Refuge] System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access wherever [s]he determines that such uses are compatible’ and that “... the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety.” A compatible use is defined as “A proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge.” The compatibility determination is to be a written determination signed and dated by the Refuge Manager and Regional Chief of the National Wildlife Refuge System, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use.

Applicable compatibility regulations in 50 CFR Parts 25, 26, and 29 were published in the Federal Register October 18, 2000 (Vol. 65, No. 202, pp 62458 – 62483).

Use: Homer Electric Transmission Line, Right of Way Permit E-48, Quartz Creek to Bernice Lake

Refuge: Kenai National Wildlife Refuge

Establishing and Acquisition Authorities: The Refuge was first established as the Kenai National Moose Range by Executive Order 8979 on December 16, 1941. The boundaries were modified, purposes expanded, and name changed to Kenai National Wildlife Refuge under the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) on December 2, 1980 (Public Law 96-487 Stat. 2371).

Refuge Purposes: The Executive Order purpose was primarily to “... protect the natural breeding and feeding range of the giant Kenai moose on the Kenai Peninsula, Alaska...”. ANILCA purposes for the Refuge include: “(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to moose, bear, mountain goats, Dall sheep, wolves and other furbearers, salmonids and other fish, waterfowl and other migratory and nonmigratory birds; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to ensure to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity with the refuge; (iv) to provide in a manner consistent with subparagraphs (i) and (ii), opportunities for scientific research, interpretation, environmental

education, and land management training; and (v) to provide, in a manner compatible with these purposes, opportunities for fish and wildlife oriented recreation.” The Wilderness Act of 1964 (Public Law 88-577) purposes are to secure an enduring resource of wilderness, to protect and preserve the wilderness character of areas within the National Wilderness Preservation System, and to administer this wilderness system for the use and enjoyment of the American people in a way that will leave them unimpaired for future use and enjoyment as wilderness.

Policy (FWS 603 2.8) directs that pre-ANILCA purposes remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, and that such purposes only apply to those areas of the Refuge in existence prior to ANILCA. The Executive Order purpose to protect Kenai moose, however, is treated as complimentary to the broader ANILCA purpose of conserving fish and wildlife populations; therefore, no special attention is given the Executive Order purpose in this compatibility review process.

Sec. 4(a) of the Wilderness Act provides that the purposes of the Act are to be within and supplemental to the purposes for which national wildlife refuges are established and administered. These purposes are applied to the approximately 1.3 million acres of Congressionally designated wilderness within the Refuge. While these purposes do not apply to the remaining approximately 700,000 acres of Refuge lands that are not designated as wilderness, we must consider the effects of uses on any Refuge lands that might affect the wilderness areas.

National Wildlife Refuge System Mission: The National Wildlife Refuge System Mission is “To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

Description of Use: Homer Electric Association has requested renewal of an existing right-of-way for their 20 year permit issued March 28, 1984. The permit grants permission to enter and occupy lands within the Refuge to install, operate, and maintain an overhead electric transmission line.

The 115 KV electric transmission is a 100 foot right-of-way with a small ROW section of only 25 feet in section 33, T5N R4W near the Russian River confluence. E-48-KE is a three phase 115 KV transmission line with typical wooden “H”, double pole structures with a 25’ cross-arm. The transmission line was applied for in April 1969 following Bureau of Land Management (BLM) application AA5644. FWS did not object to the line and provided twelve conditions and guidelines for the transmission line’s construction. Included in the conditions were vegetation buffers and screening at critical visitor facilities and stream crossings. BLM never acted on the application as jurisdiction for issuing such right of way permits had already been transferred to the US Fish and Wildlife Service (FWS). The power line was constructed under local Refuge guidelines in 1970 without a right of way permit issued by either BLM or FWS. On July 23, 1981 the BLM forwarded the case file on the application to the FWS. A FWS permit was eventually issued on March 28, 1984 in accordance with 50CFR 29.21. It has received routine maintenance over its life and continues to serve an important purpose of delivering electricity from the Cooper Lake hydro electric generation facility as well as an inter-tie within the Kenai Peninsula and between the Kenai Peninsula and Anchorage.

The total length of the transmission line on Refuge lands is 142,471 feet, 26.98 miles, encompassing 322.92 acres. Of the total, 2,882 feet, .55 miles and encompassing 1.66 acres

is a 25 foot right of way; and 139,589 feet, 26.44 miles, and encompassing 321.26 acres are a 100 foot right of way.

The transmission line enters the Refuge boundary at the Russian River near the Kenai River-Russian River confluence, Section 33, T 5 N, R 4 W, Seward Meridian, crosses the Kenai River and then runs parallel to the north side of the Sterling Highway, crossing and re-crossing the highway once, then running parallel to the Sterling Highway before exiting the Refuge in Section 7, T 5 N, R 7 W, Seward Meridian near Three Johns Road. Right of way E-48-KE branches north while off Refuge lands, re-entering Refuge lands north of Strawberry Road in 21, then proceeds through Sections 16, 17, 7 and 12, T 6 N, 10 W, Seward Meridian, and re-exiting the Refuge in Section 12, T 6 N, 11 W, Seward Meridian, in route to Bernice Lake.

Maintenance of the right-of-way varies in duration and impact depending on the nature of the task. Right-Of-Way maintenance ordinarily involves periodic vegetation re-clearing for overhead transmission line clearance, line inspection access, pole and insulator repair and replacement and maintenance. Vegetation clearing is generally on a seven to ten year cycle with a combination of hand and mechanical clearing. Re-clearing, pole re-setting, insulator maintenance and other monitoring generally occur with notice and the issuance of a project specific permit or impact on the Refuge. Occasionally, exigent repairs and entry by surface vehicles have occurred with no notification of the Refuge with temporary impacts occurring. Clearing in excess of historically approved limits and within buffers has also occurred, however, historical buffers and clearing limits are being re-established.

Availability of Resources: No new construction or operational changes are proposed with the requested permit renewal. Current administrative costs incurred by the Refuge in permit administration and monitoring are minimal, generally limited to a request for right-of-way maintenance every 7 to 10 years. These requests are generally covered with a special use permit following discussion with Refuge staff, and are followed-up with one or more site inspections. Since there is no proposed change in route, pole structures, or operations that would significantly impact Refuge staff or resources, it is determined that adequate resources continue to exist to properly manage this Refuge use.

Anticipated Impacts of the Use: Congressional intent in applying compatibility reviews to existing rights-of-way (at the time of the National Wildlife Refuge System Administration Act 1997 amendments) dictates that no new interpretation of compatibility requirements established by the Act should be interpreted as finding existing long-term permitted uses of refuges not compatible –presuming no significant changes have occurred to when they were initially permitted (and determined to be compatible). Regulations (50 CFR 25.21 (h)) prescribe that when evaluating compatibility in the re-authorization of these historic rights-of-way, that the analysis of impacts will be based on existing conditions with the use in place, not from a pre-use perspective. In other words, only modifications from the historic permitted use are to be analyzed for impacts. An example of this would be if the proposed renewal requested replacing the existing pole structures with taller and wider structures, or if the request required a wider cleared area than historically authorized, etc. Since the request for permit renewal includes no modifications over the existing operational conditions, there are no significant issues to analyze.

Ongoing impacts to the area would continue through vegetation management within the primarily 100 foot right-of-way. Scenic vistas will continue to be impacted and altered by necessary vegetation clearing. Vegetation buffers near roads, streams, boundaries and scenic vistas will

continue to mitigate many impacts. Transmission line repairs also may occur within the life of the renewed permit that could require equipment and crews entering and repairing or replacing portions of the line or pole structures. The cleared right-of-way encourages illegal ATV trespass adjacent to and within Refuge lands where such use is not authorized. Industrial use of hydro-axe tractors, ATVs and snowmobile provide a regular, though and possibly significant temporary level of motorized disturbance in the area via routine right-of-way inspections. Equipment and crews conducting maintenance operations can impact Refuge and adjacent Wilderness values with noise, unnatural appearing vistas, and surface disturbance. Machinery use and the potential of spills from equipment may also be possible during significant re-clearing projects. Past recurrent vegetation clearings are prone to excessive clearing and new growth of hardwood vegetation may attract browsing moose to roadside conflicts with highway vehicles. Risk of wildfires from vegetation contact with trees is also possible and occurs from time to time.

Public Review and Comment: This compatibility determination was subject to a 15-day public comment period. A public notice was published in the Legal Notices section of the Anchorage Daily News on August 8, 2006 and in the Kenai Peninsula Clarion on August 4, 2006. No comment letters were received.

Determination (check one below):

Use is Not Compatible

Use is Compatible With Following Stipulations

Stipulations Necessary to Ensure Compatibility: The original BLM application, Kenai National Moose Range construction permit terms and conditions included a Fish And Wildlife "Special Conditions" addendum including twelve terms and conditions and numerous sub-conditions to ensure compatibility and appropriate vegetation screening and buffers. The 1984 right of way permit issued by the US Fish and Wildlife Service contained twelve conditions. The intent and scope of these original stipulations were to protect Refuge resources and values and mitigate impacts; and are being included either by reference or text in the permit renewal, unless modified to address changes in regulations or policy, or to address new conservation or administrative concerns. Additionally, regulations require that any re-authorized rights-of-way permits must have a condition that allows for permit modification at any future time to ensure compatibility. This allows for additional permit stipulations to be added over the life of the permit because of new information, technologies, or concerns, and does not require waiting for the permit to expire (as is the case with historic permits). See attached R-O-W permit for a full set of conditions.

Justification: The request for renewal of a long-standing right-of-way use has no new operational aspects that would impact the original compatibility determination for the use. Industrial standards and regulatory oversight have increased over the years as well. The proposed new permit conditions address Refuge concerns and include the ability to modify the permit conditions at any time to ensure compatibility.

Signature (Refuge Manager): /s/ *Robin L. West* 1/9/09
Signature and Date

Concurrence (Regional Chief): /s/ *Todd J. Logan* 2/11/09
Signature and Date

Mandatory 10-year Re-evaluation Date: N/A - Rights-of-Way often are approved for extended periods of time. The National Wildlife Refuge System Administration Act of 1966, as amended, treats Refuge uses that are approved for longer than 10 years differently than other uses. During the life of the permit only compliance with the terms and conditions of the authorization are to be examined, not the authorization itself. After expiration of the permit, the use is to be re-evaluated for compatibility.