



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 Association Buried Distribution Line, Right of Way Permit E-170-KE, Soldotna

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 November 9, 1984. The permit grants permission to enter and occupy lands within the Refuge to install, operate, and maintain a buried electrical distribution line.

E-170-KE runs east to west inside and directly adjacent the Refuge boundary within Section 5 and 6, T 4 N, R 10 W, Seward Meridian, near the Refuge headquarters.

This 25 KV buried distribution line is a 30 foot right-of-way. The transmission line was constructed in 1984. The buried power line was constructed under Refuge guidelines, under a right of way permit issued by FWS. A FWS permit was issued on November 9, 1984 in accordance with 50CFR 29.21. It has received routine maintenance over its life and continues to serve an important purpose of delivering local electricity to consumers.

The total length of the 30 foot distribution line on Refuge lands is 3,778 feet, .72 miles, encompassing 2.63 acres.

Maintenance of the right-of-way is relatively minimal and varies in duration and impact depending on the nature of the task. Right-Of-Way maintenance ordinarily involves periodic vegetation clearing for the underlying buried line, line inspection, replacement, and maintenance. Vegetation clearing is generally on a seven to ten year cycle with a combination of hand and mechanical clearing. Re-clearing, relocation, 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.

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 30 foot right of way. Scenic vistas will continue to be impacted and altered by necessary vegetation clearing adjacent Ski Hill Road and behind several neighboring residences along Funny River Road. Vegetation buffers near roads, boundaries and scenic vistas will continue to somewhat mitigate many impacts. Distribution 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. Chronic opportunistic illegal ATVs and snowmobile use of the ROW also result in a regular, and possibly significant level of motorized disturbance in the area. Industrial use of hydro-axe tractors and other maintenance vehicles provide an infrequent and temporary disturbance. Equipment and crews conducting maintenance operations can impact Refuge and adjacent wildland 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.

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 1984 right of way permit issued by the US Fish and Wildlife Service terms and conditions to ensure compatibility and appropriate vegetation screening and buffers. The intent and scope of these original construction 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.