

Draft Compatibility Determination

Title

Compatibility Determination for Right-of-Way for the construction of buried fiber optic line on Lehr Waterfowl Production Area in Logan County, North Dakota.

Refuge Use Category

Rights-of-way and Rights to Access

Refuge Use Type(s)

Rights-of-way (utility). The right to use and possibly alter the landscape through construction, maintenance, and operation of water or fuel pipeline, power line, telecommunications line or tower, or other utility.

Refuge

Kulm Wetland Management District

Refuge Purpose(s) and Establishing and Acquisition Authority(ies)

Refuge Purpose(s):

“...as Waterfowl Production Areas” subject to “...all of the provisions of such Act [Migratory Bird Conservation Act] ...except the inviolate sanctuary provisions...” 16 U.S.C. 718(c) (Migratory Bird Hunting and Conservation Stamp)

“...for any other management purpose, for migratory birds.” 16 U.S.C. § 715d (Migratory Bird Conservation Act)

Establishing and Acquisition Authorities:

Migratory Bird Conservation Act, as amended (16 U.S.C. 715d(2));

Migratory Bird Hunting and Conservation Stamp Act, as amended (16 U.S.C. 718(c))

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System, otherwise known as Refuge System, 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 (Pub. L. 105-57; 111 Stat. 1252).

Description of Use

Is this an existing use?

No

What is the use?

This compatibility determination (CD) covers the subsurface installation of approximately 1,584 feet of fiber optic cable across the Lehr Waterfowl Production Area (WPA) by the Intermountain Infrastructure Group and Read iTech (IIG). The fiber optic cable will be installed below the ground surface.

This project is part of a larger utility route from Seattle, WA to Minneapolis, MN, and aims to enhance telecommunications infrastructure while maintaining minimal impact on the environmental integrity of the Lehr WPA, ensuring that the land is primarily preserved for its natural and wildlife-related purposes.

Is the use a priority public use?

No

Where would the use be conducted?

The fiber optic line will cross through 1,584 feet of the Lehr WPA, which is located 1.2 miles west of Lehr, ND. This portion of the Lehr WPA has previously been permitted and disturbed as a transportation Right-of-Way (ROW) for 78th St SE.

When would the use be conducted?

Construction is slated to commence in late September 2025 and is anticipated to conclude by December 2025. Installation will be completed in a short period of time, likely one or two days, minimizing any potential disturbance to wildlife using the area. Upon the completion of the fiber optic line installation, a ROW permit will enable operation and maintenance of the infrastructure for a duration of 50 years.

Following the initial construction phase, occasional inspections and minimal maintenance may be necessary within the proposed ROW to access and repair any lines or infrastructure that may sustain damage or degradation.

How would the use be conducted?

The fiber optic line will be installed in a previously disturbed transportation ROW using a tractor-crawler with a friction-type vibrating plow blade through the uplands. The installation will typically include all mandatory warning signage, splice handholes and locate posts. The design includes installation of a minimum of three 2-inch SDR

11-HDPE conduits along the path with a 432 count Fiber Optic cable into one of the conduits.

The plowing, trenching and boring techniques minimize disturbance and aid in the avoidance of sensitive areas. Following construction, any disturbed areas will be reclaimed and reseeded by IIG. To mitigate damage to grasslands, the contractor will restrict movement within the project corridor. Preservation of grassland will be prioritized wherever feasible. Soil protection, along with erosion and sediment control measures, will be implemented prior to construction and maintained throughout the process. In areas where vegetation is removed, revegetation will occur promptly using an approved seed mix to minimize erosion and restore grassland habitat.

A Special Use Permit (SUP) will be provided for temporary construction activities and surveys in the area surrounding the ROW site. This area will be restored to native grass seed mix immediately following construction. Additional special conditions will be included in the SUP.

A 50-year ROW permit will be granted that authorizes the subsurface occupation of the land for the telecommunications infrastructure. Following the installation, the operation and maintenance of the fiber optic line will not require any further land disturbance, excepting unforeseen repairs, as the system will be fully integrated and functioning without ongoing physical interference with the surrounding environment. Future repairs would require an additional SUP for any work not covered by the 50-year ROW permit.

Ongoing communication and coordination will be maintained between the U.S. Fish and Wildlife Service (Service) and IIG throughout the construction and reestablishment phases. This collaboration will help ensure that any impacts to the WPA are minimized wherever possible.

The proposed project will be assessed and analyzed through federal policies, regulations, National Environmental Policy Act (NEPA) protocols, National Historic Preservation Act (NHPA) protocols, and other environmental review. The Service will retain the flexibility to approve or reject the proposal accordingly and may determine that only portions of proposals are feasible according to these guidelines.

Should future construction be necessary for maintenance repairs or replacements, access will occur and be authorized through a SUP. That permit would be required to authorize the temporary access and/or impacts occurring outside of the designated ROW. All construction, monitoring, and maintenance must be done in compliance with the “Stipulations Necessary to Maintain Compatibility” below.

Why is this use being proposed or reevaluated?

IIG is working to address the deficit of competitive and up-to-date broadband infrastructure across the Northwestern United States. Their goal is to build state-of-the-art networks enabling competitive, high-quality broadband access to local service providers, businesses, and government entities by connecting them to content rich environments, improving the cost and quality of expanding internet demand.

During this project, IIG has made significant efforts to minimize impacts to Service and other lands by following and installing the line in previously disturbed road ROW. The complexity of the landscape presents challenges that make it practical to follow the previously contoured and maintained road ROW and minimize effects on Service interests. In this particular section of installation, IIG was denied ROW easements on adjacent properties, leading to this assessment. Going around the WPA would increase the length of the project and would result in disturbance to previously undisturbed native sod prairie areas on private land.

IIG's initiative aims to enhance broadband internet access to stakeholders, accounting for future capacity in the initial construction phase to help eliminate future disturbances.

Availability of Resources

To effectively administer this project, resources such as staff time will be essential for reviewing, communicating, and coordinating with IIG throughout the planning, installation, and restoration phases. This will ensure that any impacts on Service interests are either avoided or minimized. We anticipate that the preparation of the CD and associated compliance documents, along with coordination with other offices, public involvement, SUP and ROW permit processing, and monitoring, will require approximately 50 to 60 hours of Service staff time. Following project completion, no ongoing resource needs are expected. Currently, staff availability and funding are adequate to support this endeavor.

All costs associated with the monitoring and maintenance of the ROW will be the responsibility of IIG.

Anticipated Impacts of the Use

Potential impacts of a proposed use on the refuge's purpose(s) and the Refuge System mission

The effects and impacts of the proposed use to refuge resources, whether adverse or beneficial, are those that are reasonably foreseeable and have a reasonably close causal relationship to the proposed use. This CD includes the written analyses of the environmental consequences on a resource only when the impacts on that resource could be more than negligible and therefore considered an “affected resource.” Threatened and Endangered species and other special status species, air quality, floodplains, visitor use and experience, cultural resources, and refuge management and operations will not be more than negligibly impacted by the action and have been dismissed from further analyses.

No significant beneficial or adverse short-term, long-term, or cumulative impacts are associated with the proposed use as outlined in this CD. The short-term temporary impacts and any long-term impacts are considered negligible with respect to the mission of the Service and the established purpose for which the WPA was purchased.

Short-term impacts

Temporary wildlife disturbance due to construction activity will be minimal as installers will be present for only a short amount of time. Due to the noise levels and human presence during construction, wildlife may temporarily be displaced to adjacent similar habitats but are expected to resume full use of the area, once construction is complete (Beale 2007, Berger 2010).

The Lehr WPA will be impacted in the short-term from the surface disturbance required to install the fiber optic line. Most impacts resulting from traffic and trampling will recover on their own by the next growing season. If activity results in removal of vegetation, the area will be reseeded by IIG at the earliest opportunity with a seed mix approved by the Wetland Management District Manager. Reseeded areas typically recover within a growing season or two, depending on moisture and other natural variables. Use of the vibrating plow for installation will minimize potential habitat loss and disturbance. Vegetation in the ROW is required to be mowed short by the landowner or county authority for traveler safety, visibility, and winter roadway maintenance according to North Dakota Century Code and Logan County proclamation each October 1.

The ground-based monitoring and potential maintenance activities could introduce short-term impacts to the grasslands, primarily due to traversing the highway ROW, which is already a permitted use.

Long-term impacts

The subsurface installation of the fiber optic line will have no long-term impacts on the WPA. Once installed, the fiber optic line will not hinder management, recreation, or disturb the use of uplands by species for which the unit was established. While the fiber optic line is in place, we anticipate that its presence will have no impacts on the

mission of the Service and the intended objectives for which the WPA was originally established. The fiber optic line will be installed approximately 5 feet into the ROW from the existing fence line. The fence is placed on the approximate boundary of the ROW and assists in grassland management on the WPA. It also serves as predator corridors, making nesting efforts in that area highly susceptible to predation (Fritzell, 1978; Camp, 1994).

Public Review and Comment

The draft compatibility determination will be available for public review and comment for 15 days from September 18, 2025 to October 2, 2025. The public will be made aware of this comment opportunity through postings on the Kulm Wetland Management District website and local county newspapers. A hard copy of this document will be posted at the respective District Office. Concerns expressed during the public comment period will be addressed in the final determination.

Determination

Is the use compatible?

Yes

Stipulations Necessary to Ensure Compatibility

1. Issuance of an SUP does not preclude the requirements for obtaining a Service ROW permit or any necessary permits or approvals from other County, State, or federal agencies and from local landowners.
2. The permit is issued subject to the revocations and appeals procedure contained in Title 50, Part 25 of the Code of Federal Regulations.
3. The proposed activity will result in no impacts to wetlands owned by the Service.
4. Upland impacts to areas owned by the Service will be temporary and restricted to the area already disturbed as a transportation ROW. Any disturbed areas will be leveled, seeded, and restored to pre-work condition as specified by the Wetland Management District Manager. Spoil will be discarded off site.
5. Sec. 106 will have SHPO Concurrence and Sec. 7 Consultation shall be completed before construction commences.
6. The authorization under the SUP issued in accordance with this determination is for the initial construction only; any future maintenance or repairs will require additional consultation with the Wetland Management District office

and will require a supplemental permit issued prior to the initiation of any remedial work not covered by the ROW permit to be acquired.

7. District staff will monitor installation and restoration activities for compliance with conditions of the SUP. At any time, district staff may accompany the surveyors to determine potential impacts.
8. IIG will survey the area for active bird nests prior to installation and avoid destroying any nests with eggs or chicks.
9. The Wetland Management District Manager can terminate or modify the terms of a SUP if the permittee is out of compliance or to ensure wildlife and habitat protection.
10. In accordance with the Archeological Resources Protection Act (16 U.S.C. 470aa), the removal or disturbance of archeological or historic artifacts is prohibited. The excavation, disturbance, collection, or purchase of historical or archaeological specimens or artifacts on refuge lands is prohibited. If evidence of historical, archaeological, or paleontological sites are discovered during the activities authorized by the SUP, the permittee shall immediately stop activities and contact the Wetland Management District Manager.
11. Additional stipulations may be added to address specific concerns with individual projects.

Justification

The stipulations mentioned above will ensure compatibility of usage within Lehr WPA. The installation of this fiber optic line will not conflict with the national policy aimed at preserving the biological diversity, integrity, and environmental health of this WPA. Based on available science and expert judgment, the Service has concluded that this project, when conducted in accordance with the outlined stipulations, will not significantly interfere with or undermine the objectives of the National Wildlife Refuge System or the WPA's purpose.

If this fiber optic line had existed at the time of WPA acquisition, the ecosystem's beneficial grassland attributes would still qualify, as the property is within an approved county and holds high potential value for wildlife. Current management objectives, as outlined in the Comprehensive Conservation Plan will not be affected and will proceed as planned.

This project is expected to result in minimal and temporary disturbances to the affected WPA. At present, the anticipated effects are considered minor and temporary, with complete site restoration anticipated by the next growing season.

As proposed, the project will not lead to any long-term adverse effects on the interests for which the WPA was acquired, nor will it detract from or materially interfere with the mission of the National Wildlife Refuge System. It is crucial that,

where feasible and without compromising any preservation goals or adversely affecting the land interests held by the Service, the Service accommodates proposed uses aimed at enhancing broadband internet distribution, improving quality of life, and ensuring safety for residents in rural America.

Signature of Determination

Wetland Management District Manager Signature and Date

Signature of Concurrence

Assistant Regional Director Signature and Date

Mandatory Reevaluation Date

Literature Cited/References

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Camp, M., & Best, L. B. (1994). Nest Density and Nesting Success of Birds in Roadsides Adjacent to Rowcrop Fields. *The American Midland Naturalist*, 131(2), 347–358.
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