

Draft Compatibility Determination

Title

Draft Compatibility Determination for Massey Way Road Pavement Improvement Right-of-Way and Special Use permit on Massey Way Road, Lower Rio Grande Valley National Wildlife Refuge.

Refuge Use Category

Rights-of-way and Rights to Access

Refuge Use Type(s)

Road

Refuge

Lower Rio Grande Valley National Wildlife Refuge, Cameron County, TX

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

As excerpted from the enabling legislation used to authorize acquisition of the Lower Rio Grande Valley National Wildlife Refuge (refuge), the following are the refuge's purposes:

"... for the development, advancement, management, conservation, and protection of fish and wildlife resources ..." [16 U.S.C. 742f(a)(4)] *"... for the benefit of the United States Fish and Wildlife Service, in performing its activities and services. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude ..."* [16 U.S.C. 742f(b)(1)] (Fish and Wildlife Act of 1956)

"... particular value in carrying out the national migratory bird management program." [16 U.S.C. 667b] (An Act Authorizing the Transfer of Certain Real Property for Wildlife, or other purposes)

"... suitable for: (1) incidental fish and wildlife-oriented recreational development, (2) the protection of natural resources, (3) the conservation of endangered species or threatened species ..." [16 U.S.C. 460k-1] *"... the Secretary ... may accept and use ...real ... property. Such acceptance may be accomplished under the terms and conditions of restrictive covenants imposed by donors ..."* [16 U.S.C. 460k-2] (Refuge Recreation Act [16 U.S.C. 460k-460k-4], as amended)

"... for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." [16 U.S.C. 715d] (Migratory Bird Conservation Act)

The Lower Rio Grande Valley and Santa Ana National Wildlife Refuges Comprehensive Conservation Plan (CCP) of 1997 satisfies the CCP requirement of the National Wildlife Refuge System Improvement Act of 1997 and identifies the following five goals of the Refuge:

- To restore, enhance, and protect biological diversity.
- To protect and obtain additional water rights, improve water management, and protect, restore, and enhance wetlands.

- To improve water quality and reduce contaminant related fish and wildlife resource losses.
- To protect, maintain, and plan for cultural resources.
- To offer compatible wildlife dependent public uses, recreational opportunities, and interpretation and education.

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. The current Massey Way Road Right-Of-Way (ROW) was issued in 2023 to accommodate the non-paved road maintenance, repair, operation and for fiber optics, and electrical utilities on Massey Way Road. This use is being expanded to allow an improved concrete pavement road within the existing Massey Way Road ROW. This use will support refuge staff access and facilities owned and operated by Space Exploration and Technologies Corporation (SpaceX).

What is the use?

The proposed use is a Special Use Permit that is required to construct and maintain an improved concrete road within the Massey Way Road right-of-way. The improved concrete road would consist of an approximately 0.8-mile long by 40-foot-wide road improvement, located entirely within the existing 60-foot-wide Massey Way ROW. SpaceX has an existing ROW on Massey Way for utilities including a waterline and communication lines.

A ROW is defined in 340 FW 3 as *“a use that will encumber real property by granting a right to use and possibly alter the landscape through the construction of a facility such as a road, power line, pipeline, or building”* on lands under control by the United States Fish and Wildlife Service (Service). The Service’s Southwest Regional Director is authorized to permit the use of a ROW on national wildlife refuges in accordance with applicable authorities and regulations (e.g., 16 U.S.C. 715s and 50 CFR § 29). The issuance of a ROW across units of the National Wildlife Refuge System (Refuge System) is governed by the provisions of 50 CFR § 29.21. ROW permits of this nature are issued for terms of 50 years, or so long as it used for the purpose granted, or for a lesser term when considered appropriate.

Is the use a priority public use?

No

Where would the use be conducted?

The project extends approximately 0.8 linear miles along the Massey Way Road right-of-way within the refuge’s Boca Chica tract in Cameron County, Texas. The proposed improved concrete

road ROW is entirely within the already disturbed Massey Way Road right-of-way. No impacts to interior Refuge lands are proposed or anticipated. Deviations from the proposed project, if any, will be discussed with and approved by the Refuge manager. A map of the proposed improved concrete road ROW is attached in the “Figures” section.

When would the use be conducted?

The proposed improved concrete road would be permanently installed after a special use permit is issued to initiate construction within the existing Massey Way Road ROW. Construction would take approximately 4-6 months after the special use permit is issued. To the extent practical, vegetation clearing will occur outside of the migratory bird nesting season (March – September) during daylight hours. Maintenance within the ROW would occur periodically as needed after the installation. The improved concrete road would be operational for refuge staff, SpaceX employees and contractors.

How would the use be conducted?

Project proponents and contractors, such as SpaceX, would conduct all construction or maintenance activities. Work crews are typically two groups of 7-10 individuals at a time. All of the construction will be within the existing Massey Way Road ROW.

The existing Massey Way Road is closed to the public. Wildlife-dependent recreational uses including wildlife observation and photography, environmental education and interpretation, fishing, as well as other recreational uses such as beachcombing or picnicking do not occur within the project area and would not be affected by the project. Therefore, the proposed project would not affect or impair the Refuge System mission or Refuge goals and objectives.

Why is this use being proposed or reevaluated?

The purpose of the Massey Way Road improved concrete road ROW is to provide a road that will reduce dust and erosion and provide safe conditions for vehicle transport to and from Massey Test Site. The improved concrete road ROW will provide improved and reliable access along Massey Way Road.

Anticipated Impacts of the Use

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

The proposed project would not affect or impair the Refuge System mission or Refuge goals and objectives because there would not be adverse impacts to the conservation and recreational goals of the refuge. No adverse cumulative impacts are anticipated from the project. The right of way should provide safer, more reliable access for SpaceX to the Massey Way test site and reduce dust, erosion, and maintenance needs.

Short-term impacts

Impacts due to the improved concrete road construction would be temporary and negligible. All

construction will be completed within the existing Massey Way Road right-of-way. Disturbance impacts during construction (e.g., emissions, noise from construction equipment, vehicular traffic, etc.) will be localized and short in duration (e.g., 4-6 months) and will occur during daylight hours. All new work will be conducted within the disturbed Massey Way Road right-of-way. No new impacts to refuge habitats, including federally listed species, will occur. Material stockpiles will be located within the current 60-foot ROW or on SpaceX property. The road is closed to the public. A cultural resources survey was performed in June 2023 for the entire Massey Way Road ROW, and it was determined the project would not impact cultural resources. Best management practices would be implemented to reduce the potential for erosion or sediment runoff into Refuge lands and reduce the potential for water quality impacts. These best management practice include methods described in a Storm Water Pollution Prevention Plan (SWPPP) submitted to Texas Commission on Environmental Quality and spill prevention and control measures. The short-term impacts are therefore insignificant and discountable because the project does not detract from the five goals of the Refuge, as stated above.

Long-term impacts

The project would not result in long-term visual impacts since the improved concrete road would be installed entirely within the existing Massey Way Road ROW area that has already been developed. Long-term impacts on the Refuge’s purpose and the System missions are not expected as operation of the improved concrete road would not require public access restrictions of the Refuge. The improved concrete road will be located within the existing, disturbed Massey Way Road right-of-way and outside of native Refuge habitat. Overall, no long-term impacts to Refuge lands would occur with the proposed use.

The existing ROW on Massey Way has been operational since 2023 with no observable impacts to the refuge. Once constructed, the ROW will be used similarly to the current gravel road with a posted speed limit of 25 MPH and traffic control measures to avoid harm to wildlife and ensure the safety of workers and visitors.

Availability of Resources

Table 1. Costs to Administer and Manage Massey Way Road Pavement ROW

Category and Itemization	One-time Cost	Recurring Annual Expenses
Develop Plan/NEPA document/opening package	\$6,700	--
Construct facilities	\$0.00	--
<u>Supplies and equipment</u>	<u>\$0.00</u>	--
Develop <u>and print</u> signage and brochures	\$0.00	--
Survey and post use area boundary	\$0.00	--
Staff time (LE, administration and management)	\$0.00	\$520
Maintenance	--	--
Monitoring	--	\$520

Category and Itemization	One-time Cost	Recurring Annual Expenses
Total one-time expenses	\$6,700	
Total recurring annual expenses		\$1,040
Offsetting revenues	-\$0.00	-\$0.00
Total expenses	\$6,700	\$1,040

The resources needed to administer this use are currently available. However, adequate levels of refuge staffing, funding, and facilities are necessary to administer this use in a manner that ensures continued compatibility (603 FW2 2.11(A.2)). Therefore, a reduction in any of these resources may prompt the Refuge Manager or Project Leader to reevaluate the compatibility of this use, and the Refuge Manager or Project Leader may decide to modify or discontinue the use.

The Refuge Manager or Project Leader will use sound professional judgement to determine the funding and staffing needed to perform the functions necessary to ensure compatibility. These functions include Annual monitoring of the ROW as well as to ensure that the stipulations are met, and to monitor and evaluate impacts of the refuge use. If the refuge does not have the resources to carry out these functions, compatibility of the refuge use may be re-evaluated and discontinued at that time.

Public Review and Comment

The draft compatibility determination will be available for public review and comment for 14 days: Massey Way Road Pavement Improvement Right of Way Permit and Special Use Permit, Cameron County, Texas from June 16, 2025, to June 30, 2025. A copy of the CD and request for public comment was also published on the Refuge’s main website and posted at the Refuge Headquarters for review and comment.

Determination

Is the use compatible?

Yes

Stipulations Necessary to Ensure Compatibility

1. All activities associated with the proposed use would occur within the already disturbed Massey Way Road right-of-way. No brush clearing or other impacts to interior refuge habitats will occur during the project.
2. Materials stockpiles and equipment staging areas would not be placed on Refuge lands.
3. Best management practices would be used during construction to avoid or reduce potential impacts to water quality from erosion or sediment runoff.
4. Construction boundaries would be clearly demarcated to avoid inadvertent impacts to Refuge lands.
5. Work will only occur during daylight hours from 6 am to 8 pm to the extent practical.
6. Equipment to be used in construction would be cleaned and free of dirt or grass prior to arrival onsite to prevent the spreading of invasive plants or noxious weeds.

7. The right-of-way permit request must be reviewed by the Southwest Region Division of Realty and approved by the Regional Director to ensure compliance with Service regulations and policy concerning right-of-way permits on national wildlife refuges.
8. Compliance with Endangered Species Act, Migratory Bird Treaty Act, NEPA, and all other applicable federal statutes and regulations would be met.
9. The project proponent would coordinate with the refuge manager or refuge liaison during construction to ensure no unanticipated impacts occur and that the project is being carried out as proposed.
10. SpaceX and/or contractors must contain or clean up any contaminants or hazardous substances spills from any equipment to prevent any contamination of adjacent Refuge habitats.
11. The above stipulations will be required to be included in all contractor work plans as specified in the refuge SUP.

Justification

The National Wildlife Refuge Improvement Act of 1997 prohibits any new use of a refuge or any expansion, renewal, or extension of an existing use without a finding it is compatible with the purposes of the Refuge. 16 U.S.C. § 668dd(d)(3)(A)(i); 50 CFR 26.41; *see also* 50 CFR Part 29 (FWS Refuge right of way regulations). 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 purpose(s) of the national wildlife refuge.” 50 CFR 25.12(a).

Through the compatibility determination process, the Refuge has determined the construction and operation of an improved concrete road within the Massey Way Road ROW would not materially interfere with or detract from the fulfillment of the Refuge System mission or the purposes for which the Refuge was established. The Service has assessed the impacts and the potential for the use to be conducted off of refuge lands and has determined that the use cannot be implemented without traversing Refuge lands as described herein. As discussed above, this activity will not conflict with any other priority public uses of the refuge, and no or minimal impacts to Service trust resources are anticipated. Through this compatibility determination, the refuge manager has determined that this construction, implemented with the stipulations provided above, is a compatible use that will not materially interfere with or detract from the fulfillment of the Refuge System mission or purpose of the refuge.

The Service has prepared a Determination of NEPA adequacy (DNA) that incorporates the analysis in the Environmental Assessment and Finding of No Significant Impact prepared in 2023 for the unpaved Massey Way Right of Way and Special Use Permit. This DNA ensures that no new environmental conditions or parts of the proposed use will lead to environmental conditions that were not considered in the original EA and Right of Way permit.

Signature of Determination

Refuge Manager Signature and Date

Signature of Concurrence

Assistant Regional Director Signature and Date (acting)

Mandatory Reevaluation Date

2040

Literature Cited/References

U.S. Fish and Wildlife Service. 2021. Final Environmental Assessment: Magic Valley Electric Cooperative Power Line Right of Way Permit and Special Use Permit Along State Highway 4, Cameron County Texas.

U.S. Fish and Wildlife Service. 2025. Draft Categorical Exclusion: State Highway 4 Utility Bundle Right of Way Permit and Special Use Permit, Cameron County, Texas.

U.S. Fish and Wildlife Service. 2023. Environmental Assessment SpaceX Special Use and Right-of-Way Permit for Access, Road Maintenance, and Underground Utilities at Massey Way Road, Cameron County, Texas

Figures

