

Draft Compatibility Determination

Title

Draft Compatibility Determination for American Transmission Company Power Line Right-of-Way, Horicon National Wildlife Refuge.

Refuge Use Category

Rights-of-way and Rights to Access

Refuge Use Type(s)

Right-of-way, Utility

Refuge

Horicon National Wildlife Refuge

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

“...for the use as an inviolate sanctuary or for any other management purpose, for migratory birds” 16 U.S.C. § 715d (Migratory Bird Conservation Act)

“...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, 460k-460k-4 (Refuge Recreation Act)

... conservation, management, and restoration of the fish, wildlife, and plant resources and their habitats for the benefit of present and future generations of Americans... [16 U.S.C. § 668dd(a)(2) (National Wildlife Refuge System Administration Act)]

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?

Yes, the Service is currently administering refuge lands subject to the existing 20-foot-wide perpetual easement.

What is the use?

This project includes the issuance of a right-of-way permit for the operation and maintenance of an existing transmission power line located on Horicon National Wildlife Refuge lands. The existing power line was on the refuge at the time the land was acquired, and the Service is currently administering refuge lands subject to the existing 20-foot-wide perpetual easement. The applicant, American Transmission Company, has requested to expand their existing 20-foot easement to include an additional 20 feet of new ROW on the northern edge of the project footprint, making the existing easement and proposed ROW addition equal to a 40-foot corridor. This requested addition is intended to accommodate the swing of the power line wires and allow for vegetation removal within the swing space.

Is the use a priority public use?

No

Where would the use be conducted?

The existing transmission power line is located on Horicon National Wildlife Refuge lands in Fond Du Lac County, Wisconsin, Section 31, Township 14N, Range 16E. The existing easement that the power line runs adjacent and parallel with the Wild Goose State Trail and encompasses 0.38 acres of rare mesic prairie. The Wisconsin Department of Natural Resources Natural Heritage Inventory (NHI) considers this grassland community type to be critically imperiled in Wisconsin due to a restricted range, few occurrences, steep declines, and severe threats. The prairie natural community is identified between Structures 127379-127386 along the Wild Goose State Trail. The proposed right-of-way would encompass an additional 1.22 acres of the same habitat directly north of the existing easement. Natural communities may contain rare or declining species, and their protection should be incorporated into the project design as much as possible. Any required access for future maintenance activities will be from Wild Goose State Trail to avoid negative impacts to the rare prairie community. American Transmission Company will be responsible for gaining permission to access the State Trail from the Fond du lac County Parks Department.

Would the use be conducted?

This power line has already been installed and operational for over 60 years. The right-of-way footprint would continue to be maintained by the applicant throughout the entirety of the 50-year permit timeframe. Even though a mandatory compatibility

re-evaluation will not be required for 50 years, refuge managers have the option to re-evaluate the permitted action when conditions under which the use is permitted change significantly, or if there is new information regarding the effects of the use, or concurrently with the preparation or revision of a comprehensive conservation plan.

How would the use be conducted?

The issuance of this expanded right-of-way for an existing power line is not a wildlife-dependent public use. The existing 20-foot-wide easement has been in place for over 60 years and the utility is currently owned by the American Transmission Company.

A Special Use Permit will be required for any maintenance that would create disturbance that includes ground disturbance, tree cutting or the use of pesticides. Special Use Permits are typically issued by the refuge manager. American Transmission Company would be responsible for obtaining any other permits needed for maintenance projects and other ongoing environmental compliance.

Why is this use being proposed or reevaluated?

This use is being proposed for a 50-year permit to expand the existing perpetual easement as requested by the American Transmission Company to continue maintenance and monitoring of the existing power line as well as allow for additional 20 feet of new ROW on the northern edge of the project footprint, making the existing easement and proposed ROW addition equal to a 40-foot corridor. This requested addition is intended to accommodate the swing of the power line wires and allow for vegetation removal within the swing space. Issuance of a right-of-way permit will ensure the applicant maintains the ability to operate the line as needed as well as provide the refuge the ability to protect the natural resources around the right-of-way. This would also ensure the applicant and refuge staff have a clear understanding and improved communication of the work limits for future projects.

Availability of Resources

Refuge staff responsibilities for projects by non-Service entities will be primarily limited to the following: determining appropriateness and compatibility through compatibility determinations, co-preparation of Special Use Permit(s) and other compliance documents (e.g., Section 7 of the Endangered Species Act of 1973, Section 106 of the National Historic Preservation Act, National Environmental Policy Act), and monitoring of project implementation to ensure impacts and conflicts remain within acceptable and compatible levels over time. Facilities and staff are currently available to provide access, maintain public use facilities, manage hunting and fishing opportunities/resources, as well as to issue Special Use Permits for activities such as, but not limited to, archeological investigations, commercial recording, special events, and work outside of the issuance of right-of-way permit. Staff resources are deemed

adequate to manage this use at anticipated use levels.

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.”

Wildlife, aquatic species, threatened and endangered species, water quality, habitat and vegetation will not be more than negligibly impacted by the proposed action and have been dismissed from further analyses.

Short-term impacts

Habitats in the existing permit area include a variety of native prairie upland grasses and forbs. Current impacts to the right-of-way area will continue with maintenance of the power line as required. To minimize impacts to the rare mesic prairie community, we recommend the implementation of invasive species Best Management Practices and/or conducting work under frozen ground conditions when working within or adjacent to this natural community. Maintenance of the power line over the history of the refuge has retained the 20-foot right-of-way clear of trees and it is not anticipated that any additional clearing will be needed on FWS fee-title lands within the expanded 40-foot-wide corridor.

Through an Intra-Service Section 7 Biological evaluation, it has been concluded that the right-of-way permit and access will have no effect on the eastern prairie fringed orchid and whooping crane and will not likely adversely affect the rusty-patched bumble bee and monarch butterfly. There are no critical habitats within the project area. The applicant will be required to obtain a Special Use Permit from the refuge manager in advance of any maintenance tasks to ensure compliance with refuge Federal policies and regulations and particularly those associated with disturbance to wildlife, habitat, and other resources.

No historic sites or cultural resources are known to exist within the right-of-way footprint, and as there are no proposed modifications to the power line, it has been determined that there is no potential to effect historic sites or cultural resources within the right-of-way in the short term. The Midwest Regional Historic Preservation Officer has concurred with this determination.

Long-term impacts

Regulations (50 CFR §25.21 (h)) prescribe that when evaluating compatibility in the reauthorization of this historic right-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.

In this case, the existing power line is being maintained with no expected modifications or changes to the existing infrastructure, and the existing right-of-way is not deviating from the historic easement alignment. In the long-term, potential power line repairs and maintenance activities may be required in the expanded right-of-way and will be handled on a case-by-case basis with a Special Use Permit. Maintenance activities are activities necessary to allow for continued, safe operation of the existing infrastructure. Special use permits include stipulations that are intended to be more specific to species and habitat that may be impacted by actions not covered in the broader right-of-way permit. A stipulation of any future Special Use Permit will include a review of the environmental policy compliance (e.g., Section 7 of the Endangered Species Act of 1973, Section 106 of the National Historic Preservation Act, National Environmental Policy Act) developed with the compatibility determination to be sure it is still current.

Public Review and Comment

The draft compatibility determination will be available for public review and comment for 15 days from February 24 to March 11. A hard copy of this document will be posted at the Refuge Headquarters (W4279 Headquarters Road Mayville, WI, 53050). It will be made available electronically on the refuge website (<https://www.fws.gov/refuge/horicon>). Please let us know if you need the documents in an alternative format. Concerns expressed during the public comment period will be addressed in the final.

Determination

Is the use compatible?

Yes

Stipulations Necessary to Ensure Compatibility

1. Adhere to all applicable terms and conditions set forth in the right-of-way permit as granted and referenced in 50 CFR §29.21.
2. American Transmission Company shall apply to obtain a Special Use Permit from the refuge manager in advance of any maintenance tasks to ensure

compliance with Federal policies and regulations and to ensure disturbances to wildlife, habitat, and other resources are avoided or minimized. Maintenance activities are those activities necessary to allow for continued, safe operation of the existing power line, including those that would create ground disturbance, tree cutting or the use of pesticides. Any increase in pole height, related infrastructure or number of lines would be considered beyond the scope of maintenance. In cases of emergencies, that notification will be done as soon as reasonably practicable.

3. Any areas of vegetation disturbed by maintenance work will be reseeded in accordance with the seed mixture identified by the refuge manager in the Special Use Permit.
4. Use of herbicides or pesticides is prohibited unless previously coordinated and a Special Use Permit is issued. The use of pesticides on the refuge is only completed under an integrated pest management plan, and any treatments applied on the refuge would need to align with an approved Pesticide Use Proposal.
5. Any equipment used during maintenance activities will be cleaned prior to entry on the refuge, so as to avoid the spread of noxious weeds.
6. No equipment or storage tanks will be stored on the right-of-way without prior written approval.
7. The permit holder shall immediately report any cultural and/or paleontological resources (historic or prehistoric sites or object including burials or skeletal material) discovered by the permit holder, or any person working on its behalf, on public or Federal land to the refuge manager. The permit holder, or its representative shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer or a Service approved Archeologist to determine the appropriate actions to take pursuant to the provisions of law and 36 CFR § 800.7 to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of the evaluation. Any decision as to proper mitigation measures will be made after consulting the holder.
8. The permit is for the specific use described and may not be construed to authorize any other use within the permit area unless approved in writing by the Regional Director upon determination by the Service project manager that the additional use is a compatible use. This includes any actions that may require modification of the permit.
9. The Service will continue habitat management as required within the

permitted right-of-way; the permit holder would need to advise if Service management operations would interfere with their permitted work.

Justification

The stipulations outlined above would help ensure that the use is compatible at Horicon National Wildlife Refuge. Issuance of a utility right-of-way permit, as outlined in this compatibility determination, would not conflict with the national policy to maintain the biological diversity, integrity, and environmental health of the refuge. Based on available science and best professional judgement, the Service has determined that the issuance of a utility right-of-way permit at Horicon National Wildlife Refuge, in accordance with the stipulations provided here, would not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose of the refuge.

Signature of Determination

Refuge Manager Signature and Date

Signature of Concurrence

Assistant Regional Director Signature and Date

Mandatory Reevaluation Date

2075

Literature Cited/References

Department of the Interior and the U.S. Fish and Wildlife Service. 2024. Code of Federal Regulations - *Permitting of Rights-of-Way Across National Wildlife Refuges and Other U.S. Fish and Wildlife Service-Administered Lands*. § 50 CFR Part 29 (B). Retrieved from <https://www.ecfr.gov/current/title-50/chapter-I/subchapter-C/part-29/subpart-B>.

U.S. Fish and Wildlife Service. 2007, 2006. Horicon and Fox River National Wildlife Refuges Comprehensive Conservation Plan and associated Environmental Assessment.

U.S. Fish and Wildlife Service. 2023. Horicon National Wildlife Refuge Habitat Management Plan in Draft.

U.S. Fish and Wildlife Service. 2006. Service Manual Chapter: Refuge Management - *National Wildlife Refuge System Mission and Goals and Refuge Purposes*. 601 FW 1. Division of Conservation, Planning and Policy. Retrieved from <https://www.fws.gov/policy/601fw1.html>.

U.S. Fish and Wildlife Service. 1993. Service Manual Chapter: Logistics - *Rights of Way and Road Closures*. 340 FW 3 Division of Realty. Retrieved from <https://www.fws.gov/policy-library/340fw3>.

Figure(s)

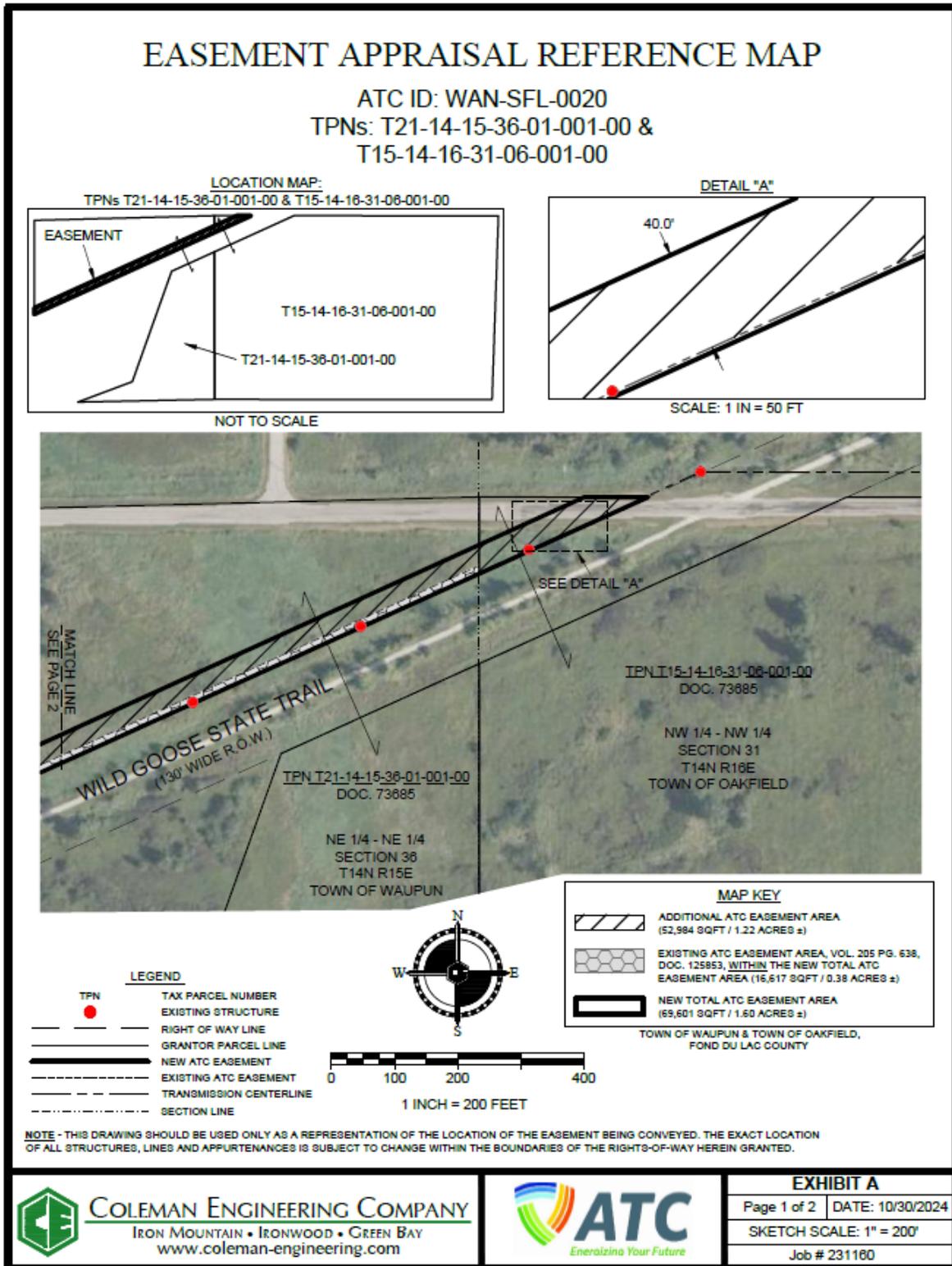
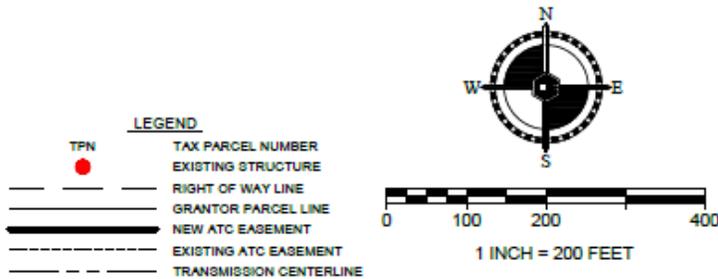


Figure 1: Northern end of expanded right-of-way

EASEMENT APPRAISAL REFERENCE MAP

ATC ID: WAN-SFL-0020
 TPNs: T21-14-15-36-01-001-00 &
 T15-14-16-31-06-001-00



NOTE - THIS DRAWING SHOULD BE USED ONLY AS A REPRESENTATION OF THE LOCATION OF THE EASEMENT BEING CONVEYED. THE EXACT LOCATION OF ALL STRUCTURES, LINES AND APPURTENANCES IS SUBJECT TO CHANGE WITHIN THE BOUNDARIES OF THE RIGHTS-OF-WAY HEREIN GRANTED.



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EXHIBIT A

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 SKETCH SCALE: 1" = 200'
 Job # 231160

Figure 2: Southern end of expanded right-of-way