

Draft Compatibility Determination

Title

Right-of-way (operating and maintaining the Tien-Chai Hsu, Andy Hsu, and Che-Wei Hsu water pipeline), James Campbell National Wildlife Refuge.

Refuge Use Category

Rights-of-way and Rights to Access

Refuge Use Type(s)

Right-of-way (Utility)

Refuge

James Campbell National Wildlife Refuge

Refuge Purpose and Establishing and Acquisition Authority

“... to conserve (A) fish or wildlife which are listed as endangered species or threatened species ... or (B) plants ...” 16 U.S.C. § 1534 (Endangered Species Act of 1973).

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. This is a new use to establish a right-of-way (ROW) to allow the operation, maintenance, and repair of a water pipeline that was installed prior to the establishment of the Refuge in 1976.

What is the use?

The use is issuance of a Right-of-Way Permit, defined as the “right to use and possibly alter the landscape through construction, maintenance, and operation of a water... pipeline ...” on lands under control by the U.S. Fish and Wildlife Service (Service.) The Secretary of the Interior, through his/her authorized representative,

the Regional Director, United States Fish and Wildlife Service (Service), in accordance with applicable authorities, and regulations published in 50 CFR 29.21 et. seq., will grant a Right-of-Way Permit to Tien-Chai Hsu, Andy Hsu, and Che-Wei Hsu, herein referred to as the Permittee. The permit would grant the Permittee the right to use certain lands within the James Campbell National Wildlife Refuge (James Campbell NWR, Refuge) for up to 50 years solely for the purpose of operating, maintaining, and repairing a single two-inch above-ground water line (Figure 1).

Is the use a priority public use?

No

Where would the use be conducted?

The existing above-ground waterline originates from the southwest corner of the Refuge near the intersection of Marconi Road and Kamehameha Highway (Figure 2), running parallel to the highway through dense shrub primarily comprised of invasive koa haole (*Leucaena leucocephala*) and indigenous hau (*Hibiscus tilaceus*). The waterline transects Plantation Road / Nudist Camp Road before continuing through the Refuge, southeast towards the Tien-Chai Hsu, Andy Hsu, and Che-Wei Hsu business.

While parts of the Refuge are utilized by waterbirds, seabirds, and shorebirds, it's unlikely that birds will occur in the ROW area due to the proximity to the highway as well as invasive vegetation in the area. Any restoration or habitat improvements done in the future will assess effects to waterbirds, seabirds, and shorebirds to minimize impacts to these species.

When would the use be conducted?

Operation and maintenance of the waterline will occur year-round, during daylight hours. The Refuge reserves the right to temporarily restrict access upon notice, for reasons of safety or resource sensitivity.

How would the use be conducted?

A Right-of-Way Permit would be issued by USFWS to Tien-Chai Hsu, Andy Hsu, and Che-Wei Hsu (the Permittee) to authorize the operation and maintenance of a two-inch water line that was installed prior to Refuge establishment. The use would be conducted according to the terms and conditions set forth in the right-of-way easement authorization and stipulations identified below. All routine maintenance activities will occur during daylight hours.

Occasional and infrequent maintenance of the waterline over the permit term may be necessary to address any breaks or leaks associated with the line. Any ground disturbing actions must be done by the Refuge staff or with prior written approval so

that the Refuge Manager can complete any necessary ESA Section 7 or NHPA Section 106 consultation. Any trimming of vegetation over 15 feet tall will be done by Refuge staff, or under the direction of Refuge staff to ensure that no 'ōpe'ape'a (Hawaiian hoary bats, *Aeroestes semotus*) are negatively impacted. Refuge staff will limit trimming, removing, or disturbing of trees over 15 feet tall during the pupping and lactation season (June 1 to September 15) to avoid impacts to non-volant pups.

Why is this use being proposed or reevaluated?

The use would grant Tien-Chai Hsu, Andy Hsu, and Che-Wei Hsu legal access to maintain and operate a waterline that crosses Refuge property (See figure 2) on its southwest boundary, parallel to Kamehameha Highway. The waterline is an existing feature that was installed prior to establishment of the Refuge. The line connects to small businesses, which help to support the local community and economy.

Availability of Resources

The analysis of cost for administering and managing each use will only include the incremental increase above general operational costs that we can show as being directly caused by the proposed use. Twenty hours of staff time would be expended through the Finding of Appropriateness and Compatibility Determination process, and there would be essentially no cost to administer the ROW once it is in place.

Anticipated Impacts of the Use

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

Impacts of operating and repairing the water line are likely to be minor to negligible, and would not materially interfere with or detract from the Refuge's ability to meet its purpose of conserving fish, wildlife, or plant species which are listed as endangered or threatened under the ESA, or the Refuge System mission.

Short-term impacts

There are no anticipated short-term impacts from this use. The waterline is existing and requires no additional work to complete as the line has been in use for several decades. The line is in an area dominated by invasive shrubs that runs parallel to a busy highway and is therefore unlikely to be occupied by 'ōpe'ape'a. There are three species of waterbirds listed under the Endangered Species Act (ESA) that occur at the Refuge including the endangered 'alae ke'oke'o (Hawaiian coot, *Fulica alai*), the endangered 'alae 'ula (Hawaiian gallinule, *Gallinula galeata sandvicensis*), and the endangered ae'o (Hawaiian stilt, *Himantopus mexicanus knudseni*), hereafter

collectively referred to as waterbirds. While known to occupy wetland areas of the Refuge, the dense shrub habitat that encompasses the waterline is unlikely to be utilized by waterbirds. There are two ESA-listed species of yellow-faced bees that are known to occupy the Refuge (*Hylaeus longiceps* and *Hylaeus anthracinus*) but are coastal species that occur scattered along a roughly 1 Kilometer of stretch of beach that includes portions of the Refuge (Magnacca and King 2013). The waterline is approximately 0.9 miles from the coastline at its nearest point, making any interaction or foraging by yellow-faced bees around the waterline highly unlikely.

Occasional and infrequent maintenance of the waterline over the permit term may be necessary to address any breaks or leaks associated with the line. Any ground disturbing actions must be done by the Refuge or with written approval so that the Refuge manager can address any ESA Section 7 or Cultural Resource issues. Any trimming of vegetation over 15 feet tall will be done by Refuge staff, or under the direction of Refuge staff to ensure that no 'ōpe'ape'a are negatively impacted. To avoid impacts to non-volant pups, refuge staff will not trim, remove, or disturb trees over 15 feet tall during the pupping and lactation season (June 1 to September 15) unless this is necessary to repair damage to the water line (e.g. from fallen trees after a storm). The risk to 'ōpe'ape'a is greatest when lactating females are caring for pups, who are unable to fly away (Bogan 1972).

Long-term impacts

No negative long-term impacts to wildlife are expected because of this action. By avoiding trimming trees and foliage over 15 feet tall to times outside of the 'ōpe'ape'a pupping season, it's unlikely that any long-term impacts will occur. Additionally, recent studies show that the overall population of 'ōpe'ape'a is increasing on the island of O'ahu, making it unlikely that this project could impact the population trajectory (Starcevich et al. 2020).

There are tentative long-term plans to continue to improve habitat along Kamehameha Highway, including in the Punamano Unit, and possibly to construct visitor service amenities in this area. Improvement activity will need to avoid and/or accommodate the waterline's integrity and location.

Public Review and Comment

The draft compatibility determination will be available for public review and comment for 14 calendar days to provide comments following the day the notice is published. The public will be made aware of this comment opportunity through a posting on the refuge website. It will be made available electronically on the refuge website (<https://www.fws.gov/refuge/james-campbell>). ~~Let~~ us know if you need the documents in an alternative format by contacting the Refuge at 808-688-6376. Concerns expressed during the public comment period will be addressed in the final

version of this document.

Determination

Is the use compatible?

Yes

Stipulations Necessary to Ensure Compatibility

1. The Refuge manager or designated staff member must be informed in advance when the Permittee will enter the Refuge to conduct activities including maintenance or repair of the line. Activity on the refuge shall be restricted to only those areas necessary for line maintenance and repair.
2. The Permittee must notify the Refuge manager (for the purpose of these stipulations, the Refuge manager is the Project Leader of the O'ahu National Wildlife Refuge Complex) for approval of any proposed changes to the system that may affect Refuge wildlife or operations.
3. To avoid impacts to 'ōpe'ape'a, the Permittee and Refuge staff will refrain from vegetation trimming or removal during the 'ōpe'ape'a pup rearing season (June 1 to September 15) where vegetation is over 15 feet tall.
4. Any ground disturbing actions are prohibited unless undertaken by the Refuge, or with the prior written permission of the Refuge manager.

Justification

The stipulations outlined above would help ensure that the use is compatible at James Campbell National Wildlife Refuge. The right-of-way access, 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 right-of-way access at James Campbell 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 James Campbell National Wildlife Refuge.

Signature of Determination

Refuge Manager Signature and Date

Signature of Concurrence

Assistant Regional Director Signature and Date

Mandatory Reevaluation Date

2073.

Literature Cited/References

Bogan, B. A. 1972. Observations on parturition and development in the hoary bat, *Lasiurus cinereus*. *Journal of Mammalogy* 53:611-614.

Magnacca, K.N., King, C.B.K. 2013. Assessing the presence and distribution of 23 Hawaiian yellow-faced bee species on lands adjacent to military installations on O‘ahu and Hawai‘i Island. Technical Report No. 185. Pacific Cooperative Studies Unit, University of Hawai‘i. Honolulu, Hawai‘i. 39 pp.

Starcevich, L. A., J. Thompson, T. Rintz, E. Adamczyk, D. Solick. 2020. O‘ahu Hawaiian hoary bat occupancy and distribution study. Project update and second year analysis prepared for the Hawai‘i Endangered Species Recovery Committee by Western EcoSystems Technology, Inc. 40 pp.

Figure(s)



Figure 1. A map depicting the borders of the James Campbell National Wildlife Refuge (outlined in red).



Figure 2. A map displaying the western portion of the James Campbell National Wildlife Refuge (Refuge boundary in red) and the proposed waterline right-of-way easement depicted by the blue line beginning at Marconi Road and running parallel to Kamehameha Highway.