

Compatibility Determination

Use: Reauthorize the 2009 Compatibility Determination for the Multi-Use Pathway

Refuge Name: National Elk Refuge

Counties: Teton County, WY

Establishing and Acquisition Authorities:

“...the establishment of a winter game (elk) reserve...” Stat. 293, August 10, 1912

“For the establishment and maintenance of a winter elk refuge in the state of Wyoming...” Stat 847, March 4, 1913

“...all lands that now or may hereafter be included within the boundaries of...the Elk Refuge, Wyoming...are hereby further reserved and set apart for the use of the Department of [Interior] as refuges and breeding grounds for birds.” Exec. Order 3596, December 22, 1921

“...for use of the Secretary of [the Interior] as a refuge and breeding ground for birds...” Exec. Order 3741, September 20, 1922

“...for grazing of, and as a refuge for, American elk and other big game animals...” Stat 1246, February 25, 1927

“...for the development, advancement, management, conservation, and protection of fish and wildlife resources...” Fish and Wildlife Act of 1956

“...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 USC 460-k-1 (Refuge Recreation Act of 1962)

“...(B) ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans...” National Wildlife Refuge System Administration Act of 1966, as amended (16 USC 668dd-eee)

Refuge Purpose(s):

The National Elk Refuge was established in 1912 as a “winter game (elk) reserve” (37 Stat 293, 16 USC 673), and the following year Congress designated the area as “a winter elk refuge” (37 Stat 847). In 1921 all lands included in the refuge or that might be added on the future were reserved and set apart as “refuges and breeding grounds for birds” (Executive Order 3596), which was affirmed in 1922 (Executive Order 3741). In 1927 the refuge was expanded to

provide “for the grazing of, and as a refuge for, American Elk and other big game animals” (44 Stat 1246, USC 673a).

National Wildlife Refuge System Mission:

The mission of the 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.

Other Applicable Laws, Regulations and Policies:

- Antiquities Act of 1906 (34 Stat. 225)
- Migratory Bird Treaty Act of 1918 (15 U.S.C. 703-711; 40 Stat. 755)
- Migratory Bird Conservation Act of 1929 (16 U.S.C. 715r; 45 Stat. 1222)
- Migratory Bird Hunting Stamp Act of 1934 (16 U.S.C. 718-178h; 48 Stat. 451)
- Criminal Code Provisions of 1940 (18 U.S.C. 41)
- Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d; 54 Stat. 250) Refuge Trespass Act of June 25, 1948 (18 U.S.C. 41; 62 Stat. 686)
- Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j; 70 Stat.1119) Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4; 76 Stat. 653)
- Wilderness Act (16 U.S.C. 1131; 78 Stat. 890) Land and Water Conservation Fund Act of 1965
- National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, et seq.; 80 Stat. 915)
- National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd, 668ee; 80 Stat. 927)
- National Environmental Policy Act of 1969, NEPA (42 U.S.C. 4321, et seq; 83 Stat. 852) Use of Off-Road Vehicles on Public Lands (Executive Order 11644, as amended by
- Executive Order 10989)
- Endangered Species Act of 1973 (16 U.S.C. 1531 et seq; 87 Stat. 884)
- Refuge Revenue Sharing Act of 1935, as amended in 1978 (16 U.S.C. 715s; 92 Stat. 1319)
- National Wildlife Refuge Regulations for the Most Recent Fiscal Year [50 Code of Federal Regulations (CFR) Subchapter C; 43 CFR 3101.3-3]
- Emergency Wetlands Resources Act of 1986 (S.B. 740)
- North American Wetlands Conservation Act of 1990
- Food Security Act (Farm Bill) of 1990 as amended (HR 2100)
- The Property Clause of the U.S. Constitution Article IV 3, Clause 2 The Commerce Clause of the U.S. Constitution Article 1, Section 8
- The National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57, USC668dd)

- Executive Order 12996, Management and General Public Use of the National Wildlife Refuge System, March 25, 1996
- Title 50, Code of Federal Regulations, Parts 25-33 Archaeological Resources Protection Act of 1979
- Native American Graves Protection and Repatriation Act of 1990

Description of Use:

What is the use? Is the use a wildlife-dependent public use?

The purpose of the Multi-Use Pathway is to provide a safe, accessible, and connected facility for non-motorized (pedestrian and bicycle) recreation and transportation in proximity to a major highway and the National Elk Refuge. The pathway provides a vital connection between the Town of Jackson and Grand Teton National Park while simultaneously providing users with a safe, educational, enjoyable, and alternative form of travel and recreation.

For additional clarification we define bicycles to include: traditional bicycles, unicycles, tricycles and tandem bicycles powered only by the pedals, and two or three-wheeled electric bicycles (e-bikes) with fully operational pedals and an electric motor of not more than 750 watts (1 hp) and meets the requirements of Class 1, 2 or 3 electric bicycles as defined in 50 Code of Federal Regulations (CFR) Part 27.31. The motorized features of an electronic bike cannot be used to exclusively propel the bike for extended periods of time upon areas where their use is allowed (50 CFR Part 27.31).

This use supports four of the six wildlife dependent National Wildlife Refuge Priority Public Uses, including: Wildlife Observation, Wildlife Photography, Environmental Interpretation and Environmental Education.

Where would the use be conducted?

This 6.2-mile pathway is located on Refuge property between the west Refuge boundary fence and North Highway 89. The southern most 3.6 miles of the pathway is located within an existing Wyoming Highway Department Right-of-Way (ROW).

When would the use be conducted?

May 1st through October 31st, annually.

How would the use be conducted?

In accordance with the rules set forth in the Memorandum of Understanding between the United States Department of the Interior, Fish and Wildlife Service, National Wildlife Refuge System, National Elk Refuge and Teton County, Wyoming (2010).

Why is this use being proposed?

The purpose of this Compatibility Determination is to re-authorize this use in accordance with The National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57, USC668dd). An Environmental Assessment and associated Finding of No Significant Impact for the Multi-Use Pathway was completed on March 30, 2009. No substantial environmental changes regarding the Multi-Use Pathway have occurred since the original Compatibility Determination was authorized on May 6, 2009, therefore no new analysis is required.

Availability of Resources:

Resources involved in the administration and management of the use: All associated development, restoration, signage, maintenance and law enforcement are the responsibility of Teton County, WY. Minimal and limited law enforcement monitoring and assistance will be provided by the National Elk Refuge law enforcement officer. Similarly, minimal administration in the form of monitoring the MOU will be required.

Special equipment, facilities, or improvements necessary to support the use: None

Maintenance costs: None.

Monitoring costs: Minor and insignificant.

Offsetting revenues: None

Anticipated Impacts of the Use:

See Finding of No Significant Impact, North Highway 89 Pathway Project, Environmental Assessment. Teton County, Wyoming, 2009 and Compatibility Determination for Shared-Use Pathway, 2009.

Public Review and Comment:

See Finding of No Significant Impact, North Highway 89 Pathway Project, Environmental Assessment. Teton County, Wyoming, 2009 and Compatibility Determination for Shared-Use Pathway, 2009.

A public comment period for this re-authorization took place from November 19 through December 10, 2020. Twenty-eight written comments were received. Twenty-five of those comments supported the re-authorization of the Compatibility Determination, one requested speed limit signs for bicycles, one was concerned with the timing of plowing the pathway and one stated that the “elk don’t care” likely in regard to potential disturbance of elk by pedestrian and bicycle traffic use of the pathway. Approximately half of the twenty-five that supported the

reauthorization also requested that the Service consider either being more flexible with the opening and closing dates or simply have it open year round.

The proposed use in the original Compatibility Determination was compatible based on the need to seasonally close the pathway during the critical wintering period to reduce disturbance to wintering and migrating elk and other ungulates. The need to continue this seasonal closure has not changed. Elk GPS collar data and visual observations from an area currently open to year-round to pedestrian and cycling (the 3.5 mile section of the Elk Refuge Road north of the junction with East Broadway Ave) suggest that elk are disturbed by these activities and that elk habitat use in these areas is reduced. This is why there is a seasonal closure of the north portion of the North Elk Refuge Road and associated Forest Service roads. Continuing the seasonal closure of the multi-use pathway will reduce wildlife disturbance on the west side of the Refuge, reduce winter stress, maximize habitat use by wintering elk, facilitating elk dispersal on the Refuge, reduce the potential for disease transmission and prevent conflict with other compatible uses.

Determination:

Use is compatible.

Stipulations Necessary to Ensure Compatibility:

See the rules set forth in the Memorandum of Understanding between the United States Department of the Interior, Fish and Wildlife Service, National Wildlife Refuge System, National Elk Refuge and Teton County, Wyoming (2010).

Justification:

Re-authorization of the CD for the Multi-Use Pathway continue the opportunities on the National Elk Refuge for four of the six wildlife dependent National Wildlife Refuge Priority Public Uses, including: Wildlife Observation, Wildlife Photography, Environmental Interpretation and Environmental Education.

Signatures:

Frank Durbian, Project Leader

Date

Review:

Lisa Talcott, Refuge Supervisor

Date

Approval:

Stacy Armitage, Refuge Chief

Date

Mandatory 10 Year Re-Evaluation Date: _____