

DRAFT COMPATIBILITY DETERMINATION

USE: Upland Disturbance for U.S. Highway 12 Construction Project on Hillman Waterfowl Production Area (Existing Rights-of-Way)

REFUGE NAME: Morris Wetland Management District

ESTABLISHING AND ACQUISITION AUTHORITY(IES):

Waterfowl Production Areas - Migratory Bird Hunting Stamp Act of March 16, 1934 as amended by section 3 of the Act of August 1, 1958 (72 Stat.486, 16 U.S.C. sec. 716 d(c)), authorized the Secretary of Interior to acquire small wetland or pothole areas suitable as Waterfowl Production Areas.

REFUGE PURPOSE(S):

Waterfowl Production Areas - “...as Waterfowl Production Areas” subject to “...all of the provisions of such Act [Migratory Bird Conservation Act]...except the inviolate sanctuary provisions...” and “...for any other management purpose, for migratory birds”

NATIONAL WILDLIFE REFUGE SYSTEM MISSION: 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.

DESCRIPTION OF USE:

What is the use?

The Minnesota Department of Transportation (MN DOT) currently has an existing rights-of-way easement for Highway 12 that is located on Hillman Waterfowl Production area. As part of the maintenance of this rights-of-way the Highway Department needs to meet minimum safety requirements by adjusting the slope of the road and widen road shoulders. Maintenance of an existing right-of-way includes minor expansion or minor realignment to meet safety standards. The Morris Wetland Management District has been asked to allow temporary disturbance on Hillman Waterfowl Production Area (WPA) outside of the existing rights-of-way permit area for purpose of U.S. Highway 12 road rehabilitation. Approximately 0.83 acres of native prairie and wetland habitat on the WPA outside of the existing road Rights-of-way will be impacted by the construction project. Disturbance will include removal of vegetation and reshaping of slopes followed by reseeding of high diversity native seed mix.

This use is considered a new use as it occurs outside of an existing rights-of-way and is not a priority public use. This use would typically be found compatible under the “Short-term Upland Disturbance for Highway or Other Public Interest Projects with Now ROW Expansion and Full Restoration”, however as it results in permanent loss of wetlands or native prairie a site-specific compatibility determination is being completed as described in stipulation number 4.

Where would the use be conducted?

Hillman Waterfowl Production Area is located in Big Stone County. Area to be disturbed is located along the north side of the existing highway 12 rights-of-way and extending 20 feet into the WPA in the uplands and 10 feet into Horseshoe Lake for a total distance of 2,640 feet, all along the south boundary of the SE1/4 of Section 9, T121N, R45W. However, Horseshoe Lake is a meandered water body and is thus not subject to Fish and Wildlife Service ownership or jurisdiction and as a result is not subject to compatibility. See attached map of the project area.

When would the use be conducted?

Construction would occur spring-fall 2021 when construction conditions are optimal (when the ground is not frozen or too wet). Construction will occur during daylight hours.

Restoration would occur after the project construction has been completed.

How would the use be conducted?

Minnesota Department of Transportation (MN DOT), or contractors under their direction, would use heavy equipment such as bulldozer and earth hauling equipment to reshape road slopes. Construction will follow MNDOT plans to achieve minimum safety requirements on the highway. This will include widening of the road shoulder to allow disabled vehicles to get off the road and grading to create a more gentle ditch in-slope to allow for vehicle correction. The design adopts appropriate measures to avoid resource impacts when possible. After construction project is complete restorable areas will be reseeded with native seed mixes. See stipulations for information about post construction requirements.

Why is this use being proposed?

The Minnesota Department of Transportation is requesting to maintain their existing rights-of-way in order to improve highway safety for the traveling public. Road improvement will create longer and more gradual slopes which will more readily allow for vehicle correction and reduce snow drifting.

Availability of Resources:

Minimal expense is required of the Service for these projects. There is a modest administrative cost to issuing the permit and monitoring this work. Existing refuge resources are adequate to properly and safely administer this use. The refuge will not provide any special equipment to complete this use.

ANTICIPATED IMPACTS OF THE USE:

Habitat loss of 0.83 acres of native prairie and wetlands will occur outside of the existing road right-of-way. The native prairie area will be reseeded to a high diversity native seed mix which will reduce long term negative impacts to prairie wildlife.

However, native prairie cannot be fully restored to the original quality even with high quality restoration efforts and filled wetland areas do not function as wetlands. For this reason, a land exchange is proposed to provide restored or replacement acres which are permanently protected. This is consistent with Compatibility Determination Policy, 603 FW 2.3 D, "We will not make a compatibility determination and will deny any request for maintenance of an existing right-of-way that will affect a unit of the National Wildlife Refuge System, unless (1) the design adopts appropriate measures to avoid resource impacts and includes provisions

to ensure no net loss of habitat quantity and quality; (2) restored or replacement areas identified in the design are afforded permanent protection as part of the national wildlife refuge or wetland management district affected by the maintenance; and (3) all restoration work is completed by the applicant prior to any title transfer or recording of the easement, if applicable. Maintenance of an existing right-of-way includes minor expansion or minor realignment to meet safety standards. Examples of minor expansion or minor realignment include: expand the width of a road shoulder to reduce the angle of the slope; expand the area for viewing on-coming traffic at an intersection; and realign a curved section of a road to reduce the amount of curve in the road.”

The existing right-of-way already authorizes disturbance within the right-of-way so the larger impact of creating a disturbance adjacent to quality habitat will likely occur regardless of Service actions.

How does the use affect Refuge purposes and the NWRS mission?

Improved public safety is an important Refuge system goal. Expansion of the road shoulders and slopes will negatively impact native prairie and wetland habitat on the refuge. Short term impacts will occur during the construction season which will start in spring of 2021 and extend through the end of the year. The direct impact on nesting birds will be in the strip of land 20 feet wide located along the edge of the existing ROW. There may be some displacement of nests based on this impact but MN DOT has the pre-existing right to work within the ROW and therefore disturbance impacts will occur regardless of the decision to issue a Special Use Permit (SUP).

The SUP is an effort to balance public safety with protecting and providing habitat to meet the intent of the Waterfowl Production Area. The decision to issue the SUP will slightly increase the magnitude of the disturbance but will result in a loss of native prairie habitat.

How does the use affect Fish, wildlife, plants, and their habitats; and the biological integrity, diversity, and environmental health of the refuge/NWRS?

Service policy calls for maintaining or restoring refuge habitats to historic conditions if doing so does not conflict with refuge purposes (U. S. Fish and Wildlife Service 2001). The decision to issue the permit will result in increased disturbance to nesting waterfowl and will also result in the loss of a small area of remnant native prairie. Stipulations are included below to assure that the loss of native prairie is replaced through a land exchange.

PUBLIC REVIEW AND COMMENT:

This Compatibility Determination will be available for public review from March 17, 2021 through March 31, 2021. A hard copy of this document will be posted at the Refuge Headquarters (see address below). As a public health precaution, the District’s office is temporarily closed for the safety of staff and visitors, because of this the document will be posted on the front door. It will also be made available electronically on the refuge website (https://www.fws.gov/refuge/morris_wmd). Please let us know if you need the documents in an alternative format. All comments can be sent to Morris Wetland Management District,

43875 230th St, Morris, MN 56267 or emailed to bruce_freske@fws.gov. Concerns expressed during the public comment period will be addressed in the final draft.

DETERMINATION:

- Use is not compatible
- Use is compatible with stipulations

STIPULATIONS NECESSARY TO ENSURE COMPATIBILITY:

1. Work done outside of the existing rights-of-way must be approved by the Project Leader through the issuance of a Special Use Permit (SUP).
2. Conditions stipulated in the SUP such as project design, seeding mixes and weed control must be followed to remain a compatible use.
3. Restored or replacement areas will be identified and afforded permanent protection as part of the wetland management district affected by the maintenance. The exact replacement areas will be defined through the realty process at a later date and must result in no net loss of habitat quantity and quality. These replacement acres will be managed as part of the National Wildlife Refuge System.
4. All restoration work on both the work outside the existing rights-of-way and the exchanged properties is completed by the applicant prior to any title transfer or recording of the easement, if applicable.

JUSTIFICATION:

This use will not materially interfere with or detract from the purposes for which Hillman Waterfowl Production Area was established with the above stipulations in place. Almost all WPAs are constrained by one or more rights-of-way that were in place before acquisition by the federal government. Temporary disturbance to the adjacent rights-of-way will not have long term harmful effects to Service trust species as habitat losses will be replaced through the exchange resulting in no net loss of habitat quantity and quality. Work within rights-of-way is beyond the authority of the Fish and Wildlife Service to regulate other than to possibly influence the timing, scope of the work and seed mixes used to minimize wildlife harm. Allowing small scale temporary work outside the right-of-way does minimal long term harm to Service trust species, when conducted with the above stipulations, and allows the road authority to provide essential services for the public.

SIGNATURE:

Refuge Manager Signature and Date

CONCURRENCE:

Regional Refuge Chief Signature and Date

Mandatory 10- or 15-year Re-Evaluation Date: 2031