

DRAFT COMPATIBILITY DETERMINATION

Use: Right-Of-Way – Winona Bike Trail Connector

Refuge Name: Trempealeau National Wildlife Refuge (Refuge).

Establishing and Acquisition Authorities:

Trempealeau National Wildlife Refuge was established by Executive Order 7437, dated August 21, 1936.

Refuge Purpose(s):

The purposes come from the authority under which Trempealeau National Wildlife Refuge (refuge) was established and from authorities under which subsequent major land additions to the Refuge were made. Purposes for Trempealeau National Wildlife Refuge are:

“ ...a Refuge and breeding ground for migratory birds and other wildlife@
Executive Order 7437, dated August 21, 1936.

“ suitable for-(1) incidental fish and wildlife oriented recreational development,
(2) the protection of natural resources, (3) the conservation of endangered species ...@
Refuge Recreation Act(16 U.S.C 460k-460k-4), as amended

“...for the development, advancement, management, conservation, and protection of fish
and wildlife resources.@
6 U.S.C. 742f(a)(4)(Fish and Wildlife Act of 1956.)

National Wildlife Refuge System Mission: The mission of the National Wildlife 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.

Goals of the National Wildlife Refuge System:

- a. To fulfill our statutory duty to achieve refuge purpose(s) and further the System mission.
- b. Conserve, restore where appropriate, and enhance all species of fish, wildlife, and plants that are endangered or threatened with becoming endangered.
- c. Perpetuate migratory bird, interjurisdictional fish, and marine mammal populations.
- d. Conserve a diversity of fish, wildlife, and plants.
- e. Conserve and restore, where appropriate, representative ecosystems of the United States, including the ecological processes characteristic of those ecosystems.
- f. To foster understanding and instill appreciation of fish, wildlife, and plants, and their conservation, by providing the public with safe, high quality, and compatible wildlife dependent public use. Such use includes hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

Description of Use: This easement is for construction, use, maintenance, operation and repair of a public recreational trail facility and slopes that occupies 0.25 acres of Trempealeau National Wildlife Refuge lands and is along and adjacent to the existing Wisconsin State Highway (STH) 54/35 right-of-way. The recreational trail and slopes will rest on lands owned in fee title by the U.S. Fish and Wildlife Service and managed as part of Trempealeau National Wildlife Refuge. The trail is an expansion of the current STH 54/35 right-of-way and construction plans utilize the existing right-of-way where possible. The length and width of the proposed right-of-way are 1212 feet in length and 2 feet minimum to 15 feet maximum in width. Steps were taken during the planning process to minimize the impacts to refuge resources and wetlands by creating steeper side slopes and reducing the width of the trail. Refuge staff have been engaged with the planning, development, and location of this recreational trail. The trail will be an extension of the Great River State Trail, which currently passes through part of the refuge and ends at the Marshland Access. This extension will assist in connecting Winona, Minnesota with the Great River State Trail at the Marshland Access. The trail will provide increase hiking and biking access to the refuge and provide a safe and convenient interstate trail connection. Hiking and biking are a low impact way for visitors to observe wildlife, refuge habitats, and scenic views. Increased recreational access will allow more visitors to foster an appreciation for the refuge and the resources it protects.

What is the use? Expansion of an existing right-of-way for use as a recreational bike trail.

Is the use a wildlife-dependent public use? This recreational trail is not a wildlife-dependent public use. However, bicycling and hiking in the refuge is usually not disruptive and is a low impact way of observing wildlife. Increased safe recreational access to the refuge would allow more visitors the opportunity to observe wildlife and foster an appreciation for the refuge and the resources it protects.

Where is the use conducted? The use would be conducted along and adjacent to the existing right-of-way within the refuge boundary. The trail will occupy U.S. Fish and Wildlife Service lands located along and adjacent to the highway right-of-way of STH 35 in the following Tracts: 3c TNWR, and 21 TNWR. The Tracts are within Sections 31 & 32, T 19 N, R 10 Win the Town of Buffalo, Buffalo County, Wisconsin. The length and width of the proposed right-of-way are 1212 feet in length and 2 feet to 15 feet in width. The proposed coordinates for the entire project both on and off U.S. Fish and Wildlife Service owned lands are as follows: Begin Coordinate: Y=212021.429 X=619254.873 End Coordinate: Y=214386.448 X=626720.795

How and when would the use be conducted? The use would be conducted continually under these specific terms and conditions referenced in 50 CFR 29.21-4:

- (a) Any right-of-way easement or permit granted will be subject to outstanding rights, if any, in third parties.
- (b) An applicant, by accepting an easement or permit agrees to such terms and conditions as may be prescribed by the Regional Director in the granting document. Such terms and conditions shall include the following, unless waived in part by the Regional Director, and may include additional special stipulations at his discretion. See § 29.21-8 for special requirements for electric powerlines and § 29.21-9 for special requirements for oil and gas pipelines.

(1) To comply with State and Federal laws applicable to the project within which the easement or permit is granted, and to the lands which are included in the right-of-way, and lawful existing regulations there under.

(2) To clear and keep clear the lands within the easement or permit area to the extent and in the manner directed by the project manager in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such a manner as to decrease the fire hazard and also in accordance with such instructions as the project manager may specify.

(3) To prevent the disturbance or removal of any public land survey monument or project boundary monument unless and until the applicant has requested and received from the Regional Director approval of measures the applicant will take to perpetuate the location of aforesaid monument.

(4) To take such soil and resource conservation and protection measures, including weed control on the land covered by the easement or permit as the project manager in charge may request.

(5) To do everything reasonably within his power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near, lands to be occupied under the easement or permit area, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(6) To rebuild and repair such roads, fences, structures, and trails as may be destroyed or injured by construction work and upon request by the Regional Director, to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right- of-way.

(7) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising :from the occupancy or use of the lands under the easement or permit, except where the easement or permit is granted hereunder to a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages. Where the easement of permit involves lands which are under the exclusive jurisdiction of the United States, the holder or his employees, contractors, or agents of the contractors, shall be liable to third parties for injuries incurred in connection with the easement or permit area. Grants of easements or permits involving special hazards will impose liability without fault for injury and damage to the land and property of the United States up to a specified maximum limit commensurate with the foreseeable risks or hazards presented. The amount of no-fault liability for each occurrence is hereby limited to no more than\$ 1,000,000.

(8) To notify promptly the project manager in charge of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States in advance of construction such

sum of money as the project manager may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(9) That all or any part of the easement or permit granted may be terminated by the Regional Director, for failure to comply with any or all of the terms or conditions of the grant, or for abandonment. A rebuttable presumption of abandonment is raised by deliberate failure of the holder to use for any continuous 2-year period the easement or permit for which it was granted or renewed. In the event of noncompliance of abandonment, the Regional Director will notify in writing the holder of the easement or permit of his intention to suspend or terminate such grant 60 days from the date of the notice, stating the reasons therefore, unless prior to that time the holder completes such corrective actions as are specified in the notice. The Regional Director may grant an extension of time within which to complete corrective actions when, in his judgment, extenuating circumstances not within the holder's control such as adverse weather conditions, disturbance to wildlife during breeding periods or periods of peak concentration, or other compelling reasons warrant. Should the holder of a right-of-way issued under authority of the Mineral Leasing Act, as amended, fail to take corrective action within the 60-day period, the Regional Director will provide for an administrative proceeding pursuant to 5 U.S.C. 554, prior to a final Departmental decision to suspend or terminate the easement or permit. In the case of all other right-of-way holders, failure to take corrective action within the 60-day period will result in a determination by the Regional Director to suspend or terminate the easement or permit. No administrative proceeding shall be required where the easement or permit terminates under its terms.

(10) To restore the land to its original condition to the satisfaction of the Regional Director so far as it is reasonably possible to do so upon revocation and/or termination of the easement or permit, unless this requirement is waived in writing by the Regional Director. Termination also includes permits or easements that terminate under the terms of the grant.

(11) To keep the project manager informed at all times of his address, and, in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.

(12) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(13) That the grant of the easement or permit shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the land affected thereby. The applicant agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the easement or permit area not actually occupied for the purpose of the granted rights to the extent that it does not interfere with the full and safe utilization thereof by the holder. The holder of an easement or permit also agrees that authorized representatives of the United States shall have the right of access to the easement or permit area for the purpose of making inspections and monitoring the construction, operation and maintenance of facilities.

(14) That the easement or permit herein granted shall be subject to the express covenant

that any facility constructed thereon will be modified or adapted, if such is found by the Regional Director to be necessary, without liability or expense to the United States, so that such facility will not conflict with the use and occupancy of the land for any authorized works which may hereafter be constructed thereon under the authority of the United States. Any such modification will be planned and scheduled so as not to interfere unduly with or to have minimal effect upon continuity of energy and delivery requirements.

(15) That the easement or permit herein granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easement or permit area unless approved in writing by the Regional Director.

Special terms and conditions:

(1) Any cultural and/or paleontological resources (historic or prehistoric sites or objects including burials or skeletal material) discovered by the easement holder, or any person working on its behalf, on public or Federal land shall be immediately reported to the authorized officer, Refuge Manager, Trempealeau National Wildlife Refuge (608-539-2311). 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 Service approved Archeologist to determine the appropriate actions to take pursuant to the provisions of law and 36 Code of Federal Regulations 800.7 (resources discovered during construction) 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 by the authorized officer after consulting the holder.

Why is the use being proposed? The purpose is to accommodate grading and slope impacts of a new recreational trail along STH 35. The trail will connect Winona, MN with the Great River State Trail. The Great River State Trail currently passes through the refuge and ends at the refuge's Marshland Access. The extension of the trail would promote greater opportunity to enjoy Trempealeau National Wildlife Refuge through increased bicycling and hiking access. It will assist in fostering an appreciation for the refuge, its scenic values, and wildlife. Additionally, the extension would address the lack of a safe and convenient interstate trail between the Marshland Access and Winona, Minnesota. Currently, pedestrians and cyclists who attempt to use the shoulders of STH 35 and STH 54 encounter large volumes of high-speed traffic. Refuge staff have been involved in the planning process for the development and location of this recreational trail.

Availability of Resources: In most cases, minimal expense is required of the Service for these projects. However, on occasion, the scope of a project may be such that a major commitment in staff and/or resources is required. In these cases, the Service may opt to require the permittee to reimburse the agency for administrative costs. Authorization of the projects will require the requesting organization to cover habitat restoration costs. There may be a modest administrative cost for issuing and monitoring the special use permit.

The refuge staff have been engaged in the planning process for this trail. Current and planned future staffing will be sufficient to manage this right of way and planned use. Current resources are adequate to supply the needed informational and directional signs for the proposed trail.

Anticipated Impacts of the Use: **Anticipated** impacts have been evaluated at 0.25 acres of Permanent Limited Easement included in these impacts is 0.16 acres of wetlands on refuge lands. Fill will be placed upon and along the toe of existing slopes inside Wisconsin Department of Transportation right-of-way, extending onto U.S. Fish and Wildlife Service lands in several sections along the trail. The length and width of the proposed right-of-way are 1212 feet in length and 2 feet minimum to 15 feet maximum in width. Steps were taken during the planning process to minimize the impacts to refuge resources and wetlands by creating steeper side slopes and reducing the width of the trail. The anticipated impacted wetlands are currently altered due to past highway and railroad right-of-ways development. Placing fill in wetlands along the toe of the existing slopes may have minor impacts to vegetation, but otherwise will not impede the hydrology or habitat qualities of the larger wetland system in Trempealeau National Wildlife Refuge. The USFWS understands that all wetland impacts will be mitigated using the appropriate wetland mitigation procedures.

Most impacts will be along and adjacent to existing roads and railroads in areas already subject to disturbance and impacts due to the existing transportation right-of-way. Ongoing impacts to the area would continue through bicycle use and maintenance of the public recreational trail within the right-of-way but would be temporary and short duration. Bicycling is a low impact use and a way to observe wildlife and scenic views. Road and trail repairs and rehabilitation would occur within the life of the renewed permit that could require equipment and crews.

Public Review and Comment: The Wisconsin Department of Transportation started the environmental impact process on April 9, 2009 including a 4(f) determination (de minimis impact) statement and concluded with a Categorical Exclusion being prepared on September 20, 2018. The Wisconsin DOT held a public involvement meeting on April 2, 2014 from 5:00 p.m.-7:00 p.m. at the Buffalo Town Hall. They held a second meeting on August 23, 2017 from 5:00 p.m.-7:00 p.m.. Additionally, they sent out a tribal notification letter on July 17, 2018.

Determination:

Use is Not Compatible

Use is Compatible with the Following Stipulations

Stipulations Necessary to Ensure Compatibility:

1. All work done in the right-of-way must be approved by the appropriate Refuge Manager in the form of a letter of authorization or a Special Use Permit depending upon the scope of the project.
2. Conditions stipulated in a letter of authorization such as seeding mixes, weed control, etc. must be followed to remain a compatible use.
3. All vegetation removal along road right-of-way will either be accomplished by mechanical means or if herbicides are used submitted for approval to the Refuge Manager, Trempealeau National Wildlife Refuge.
4. No herbicides, pesticides, solvents or fuel storage tanks may be stored on the right-of-way.

