

COMPATIBILITY DETERMINATION FOR SHARED-USE PATHWAY

DRAFT

February 6, 2009

Use: Shared-Use (Bicycle and Foot access) Trail

Refuge Name: National Elk Refuge, Teton County, Wyoming

Establishing and Acquisition Authorities:

“...the establishment of a winter game (elk) reserve...” Stat. 293, Aug. 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 are 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, Dec. 22, 1921.

“...for the use of the Secretary of [the Interior] as a refuge and breeding grounds 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, Feb. 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 460k-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-ee).

Refuge Purpose(s):

The National Elk Refuge (NER) 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 in the future were reserved and set apart as “refuges and breeding grounds for birds” (Executive Order [EO] 3596), which was affirmed in 1922 (EO 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, 16 USC 673a) [Final Bison and Elk Management Plan and Environmental Impact Statement, January 2007, pg. 13].

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 of the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended [16 USC 668dd-668ee]).

Additionally, the National Wildlife Refuge System Act specifically addresses wildlife-dependent recreation:

“compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System and the purposes of many refuges, and which generally fosters refuge management and through which the American public can develop an appreciation for fish and wildlife.” 16 USC 668dd(a)(3)(B)

“when the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated, subject to such restriction or regulations as may be necessary, reasonable, and appropriate.” 16 USC 668dd(a)(3)(D)

“the terms ‘wildlife-dependent recreation’ and ‘wildlife-dependent recreational use’ mean a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation.” 16 USC 668ee(2).

Description of Use:

The purpose of the proposed North Highway 89 pathway is to provide a safe, accessible, and connected facility for non-motorized recreation and transportation in proximity to a major highway and the National Elk Refuge. The pathway would provide a vital connection between the Town of Jackson and Grand Teton National Park while simultaneously providing users with a safe, scenic, educational, enjoyable, and alternative form of travel and recreation.

A no-action alternative and three alternative pathway alignments were evaluated in the North Highway 89 Pathway Project Environmental Assessment. Alternative B was selected as the preferred alternative because it provides the greatest opportunity to expand quality wildlife observation/photograph and environmental interpretation/education on the NER. It is also considered the safest alternative for pathway users (see Jackson Hole Community Pathways letter, February 2, 2009).

This 6.2 mile pathway will be located on National Elk Refuge property between the west Refuge boundary fence and North Highway 89 (see EA Figure 2, Sheets 1-6). The southern most 3.6 miles of this pathway is located within an existing Wyoming Highway Department Right of Way (ROW), a similar ROW does not exist for the balance of the pathway. Bicycle and foot traffic will be restricted to the pathway and

informational/educational/interpretive sites. An estimated maximum of 100,000 users will utilize the pathway each year.

Designated sites along the pathway will be equipped with environmental education and interpretive signage. These sites will also provide wildlife observation and photography opportunities.

Availability of Resources:

An analysis of available resources was completed in the North Highway 89 Pathway Project EA. It is anticipated that initial development of this shared-use trail system will cost about \$4,313,935. This cost includes mitigation measures to reduce impacts to habitat and wildlife resources. It also includes educational/interpretive signage. Maintenance of these trails is estimated to cost between \$43,750 and \$56,250 per year. Currently Teton County has enough funding to complete approximately half of the project. Additional funds have been applied for through various funding sources.

All associated development, restoration, educational signage, maintenance and law enforcement costs will be the responsibility of Teton County. These costs and responsibilities will be specifically outlined in a Highway 89 Pathway Management Plan and Cooperative Agreement between the National Elk Refuge and Teton County.

Development of the Highway 89 Pathway Management Plan and Cooperative Agreement along with an annual coordination between the NER and Teton County will require NER staff time resulting in personnel costs. Funds are anticipated to be available for the coordination and operation of this program based on the Refuge staffing levels and future budgets.

Anticipated Impacts:

Less than 0.2% of the NER land base is expected to receive minor to negligible impacts from the pathway.

This pathway alignment is adjacent to habitat disturbed during highway construction and reseeded to western wheatgrass (*Pascopyrum smithii*) and smooth brome (*Bromus intermis*). Habitats south of the National Fish Hatchery which can be observed from the pathway are palustrine scrub-shrub and emergent wetlands. Pathway users can observe non-mesic shrub communities dominated by sagebrush and upland grasses north of the National Fish Hatchery. Approximately 15.15 acres of vegetation will be temporarily impacted and 7.58 acres of vegetation will be permanently impacted by the establishment of the 10 foot-wide, hard surface pathway.

This pathway will focus visitor access and travel along the western-most edge of the NER. This provides visual access to nearly all NER habitats and wildlife from a zone where some habitat and wildlife disturbance already occurs due to the existing highway. An alignment along the western edge of the refuge prevents greater intrusion and disturbance into the heart of the NER while providing visual access and expanded wildlife dependent public use opportunities which are not currently available. This trail

will provide access that is highly desired by the public for wildlife-dependent recreation, and makes priority public uses accessible to people with limited mobility.

The impacts to NER soils will be negligible. Approximately 15.15 acres would be temporarily disturbed and approximately 7.58 acres would be permanently impacted by the hard service trail.

Impacts to upland vegetation will occur but are considered minor. Temporary, direct impacts to NER vegetation would occur on approximately 15.15 acres. About half of this acreage would be restored through vegetation re-seeding. Direct permanent impacts would occur on approximately 7.58 acres where vegetation would be covered by the hard surface trail. Direct temporary and permanent impacts will occur on 0.06% and 0.03% of the NER respectively. Indirect impacts to vegetation would be negligible. Considering the relatively small quantity of permanent disturbance and the extent of previous disturbance within the project area, direct and indirect vegetation impacts would be negligible and the contribution to cumulative vegetation impacts from recent, current and reasonably foreseeable projects in the area would be negligible.

The pathway alignment avoids all wetland habitats. No adverse direct impacts are anticipated. Small, localized indirect impacts related to runoff, erosion/sedimentation could occur but are anticipated to be insignificant.

Trail use will result in some wildlife disturbance, and the level of disturbance resulting from various modes of transportation (bicycle, foot) will vary depending on the species present and season.

Elk traditionally cross the proposed pathway as they enter the NER from lands west of HWY 89 during the mid-October through December migration. A seasonal pathway closure from October 1 to May 1 would eliminate virtually all potential disturbance and conflict between pathway users and migrating elk and other ungulates. It is essential to avoid conflict between pathway users and migrating elk to prevent startled elk from bolting west, back across HWY 89 where vehicle collisions could damage vehicles and injure the occupants. This seasonal closure would be a mandatory requirement in the Highway 89 Pathway Management Plan and Cooperative Agreement between the NER and Teton County. Should migration patterns change in the future, pathway closure dates could be amended to avoid conflict with migrating ungulates.

The pathway would have negligible direct and indirect adverse impacts to common mammals such as coyotes, long-tailed weasel, red fox and skunks. These mammals may display greater avoidance to the pathway area due to disturbance by users, which may help reduce mortality from vehicle strikes on HWY 89.

No adverse direct, indirect or cumulative impacts to grey wolves would result from this project. The existing and anticipated future use, operation and maintenance of Hwy 89 would continue to function as a barrier to grey wolf movement and hunting activity in the vicinity of the project.

Direct, indirect and cumulative adverse impacts to sage grouse would be negligible due to the existing level of disturbance from HWY 89 and the resulting sage grouse avoidance of this area.

Adverse direct, indirect and cumulative impacts to waterfowl, shorebirds, cranes and their habitats would be negligible. At one wetland site, trumpeter swans have been known to nest as close as 300 feet to the NER boundary fence. Disturbance impacts to nesting swans would be minimized by augmenting a natural visual barrier along the NER boundary fence with native shrubs. Also, interpretive signs and information would be strategically located to avoid prolonged pathway use close to this nesting site.

Direct, indirect and cumulative adverse impacts to migratory birds, eagles and other raptors would be negligible. Available wildlife research suggests the existing HWY 89 noise effect zone would exceed additional disturbance created by pathway related use.

Reptile and amphibian habitat is extremely limited in the project area. Direct, indirect and cumulative adverse impacts to reptiles and amphibians would be negligible due to their limited populations along the pathway.

Public Review & Comment:

Two internal scoping meetings and a public open house were conducted between March 11 and June 25, 2008 to identify issues and concerns associated with this pathway project. A total of 37 individuals attended the open house and were asked to submit comments.

Six relevant issues were identified during the scoping process and addressed in the Environmental Assessment. These issues include: 1) access to area businesses and other facilities; 2) safety concerns; 3) general impacts to natural resources; 4) the need for educational opportunities; 5) shared-use pathway conflicts; 6) the need for coordination to connect this project with future Grand Teton National Park pathways on the north and Town of Jackson roadside improvements on the south.

This Compatibility Determination was presented for public review and comment in conjunction with the public comment period for the draft North HWY 89 Pathway Project EA from February 6, 2009 through March 6, 2009.

Compatibility Determination:

Using sound professional judgment (603 FW 2.6U., and 2.11A), place an "X" in appropriate space to indicate whether the use would or would not materially interfere with or detract from the NWRS Mission or the Purposes of Rocky Flats NWR.

- Use is Not Compatible
- Use is Compatible with the Following Stipulations

Stipulations necessary to insure Compatibility:

1. Agreement between NER and Teton County that commits each organization to the following:

Teton County:

- Provide funding for all construction, restoration and maintenance activities.
- Provide funding for educational and interpretive signage and site development.
- Enforce all use restrictions and regulations identified by the NER.
- Provide an Annual Use Report which identifies user conflicts with wildlife and habitat.

NER:

- Annually review pathway use report, evaluate conflicts and implement corrective measures to mitigate adverse effects to wildlife and their habitats.
- If corrective measures are insufficient to adequately mitigate significant, unforeseen conflicts, NER will be compelled to cancel the Cooperative Agreement with Teton County and prohibit the public's use of the pathway.

2. A seasonal closure from October 1 through May 1 will be required to prevent conflicts with migrating elk and other ungulates. Closure dates may be adjusted by the Refuge Manager as needed.

3. No dogs or other pets will be allowed on the pathway.

4. Pathway construction would be restricted to the time period of May 1 through September 30 to minimize disturbance to ungulates and other wildlife. A dormant seeding to re-vegetate disturbed soils may occur after September 30.

Justification:

This pathway will considerably increase the opportunities on the National Elk Refuge for four of the six wildlife dependent National Wildlife Refuge System Priority Public Uses, which include:

- Wildlife Observation
- Wildlife Photography
- Environmental Interpretation
- Environmental Education

This pathway alignment provides access to representative samples of all major NER habitat types, except aspen habitat, for environmental interpretation and education. It also provides potential wildlife observation and photography opportunities for all wildlife species found on the NER. This significantly improved and expanded access for wildlife compatible recreation eliminates the need for additional pathways to be located on the refuge in the future

Mandatory Re-evaluation Date:

This is not a priority public use. The Compatibility Determination for this use is subject to mandatory re-evaluation in 10 years, on the Anniversary of the final Compatibility Determination in 2019.

NEPA Compliance:

This use is addressed in the North Highway 89 Pathway Project Environmental Assessment.

Approval/Concurrence

Prepared/Approved:

Refuge Manager: Steven W. Kallin

Signature: _____ Date: _____

Concurrence:

Regional Chief: Richard Coleman

Signature: _____ Date: _____

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