

Draft Compatibility Determination

Title

Draft Compatibility Determination for Saginaw Bay Pipeline Company Right-of-way-Renewal, Kirtland's Warbler Wildlife Management Area under Seney National Wildlife Refuge management.

Refuge Use Category

Rights-of-way and Rights to Access

Refuge Use Type(s)

Right-of-way renewal for existing Pipeline by Saginaw Bay Pipeline Company.

Refuge

Kirtland's Warbler Wildlife Management Area

Refuge Purpose and Establishing and Acquisition Authority

Kirtland's Warbler Wildlife Management Area was established in 1980:

"... 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?

Yes, the use of the pipeline right-of-way and access has been authorized and conducted on the refuge since a right-of-way permit was issued to the Saginaw Bay Pipeline Company (formerly known as the Shell Michigan Pipeline Company). The permit was issued by the regional director as an authorized representative of the Secretary of the Interior on Aug 7th, 1990. This use is being evaluated for compatibility concurrently with the completion of National Environmental Policy Act

documentation.

What is the use?

Renewal of the right-of-way permit for the operation and maintenance of an existing 16-inch natural gas pipeline located within a 25-foot right-of-way located in Ogemaw County.

Is the use a priority public use?

No, this use is not considered one of the legislated priority wildlife-dependent public uses of the National Wildlife Refuge System (i.e., hunting, fishing, wildlife observation and photography or environmental education and interpretation).

Where would the use be conducted?

Kirtland's Warbler Wildlife Management Area, Tract 32 (Figure 1) and Tract 17 (Figure 2)

The existing pipeline right-of-way provided for herein shall be 25 feet wide, being 20 feet North and 5 feet South of the following described centerline:

(Tract 32) T. 23 N., R. 1 E., Section 32, NE ¼ NE ¼, Ogemaw County, Michigan:
Beginning at a point in the east line of the NE ¼ of section 32, T. 23 N., R. 1. E., said point being located south along said east line, a distance of 1,238 feet from the northeast corner of the NE ¼; thence, from said Point of Beginning, proceed N.63°47' W., 2,892 feet to a Point of Termination in the north line of the NE ¼, said Point of Termination being located west along said north line, a distance of 2,607 feet from the northeast corner of the NE ¼ of section 32.

Tract 32 is a young, high-density upland jack pine plantation that is common to the Kirtland Warbler Wildlife Management Area. It exhibits low species diversity. Groundcover is predominantly moss with some vascular species such as hair grass and rice-grass. The right-of-way footprint has been designated as 25-feet wide for approximately 1600 ft on Tract 32, and the renewed permit will retain this designation. The use of this permit impacts approximately 0.92 acres on Tract 32.

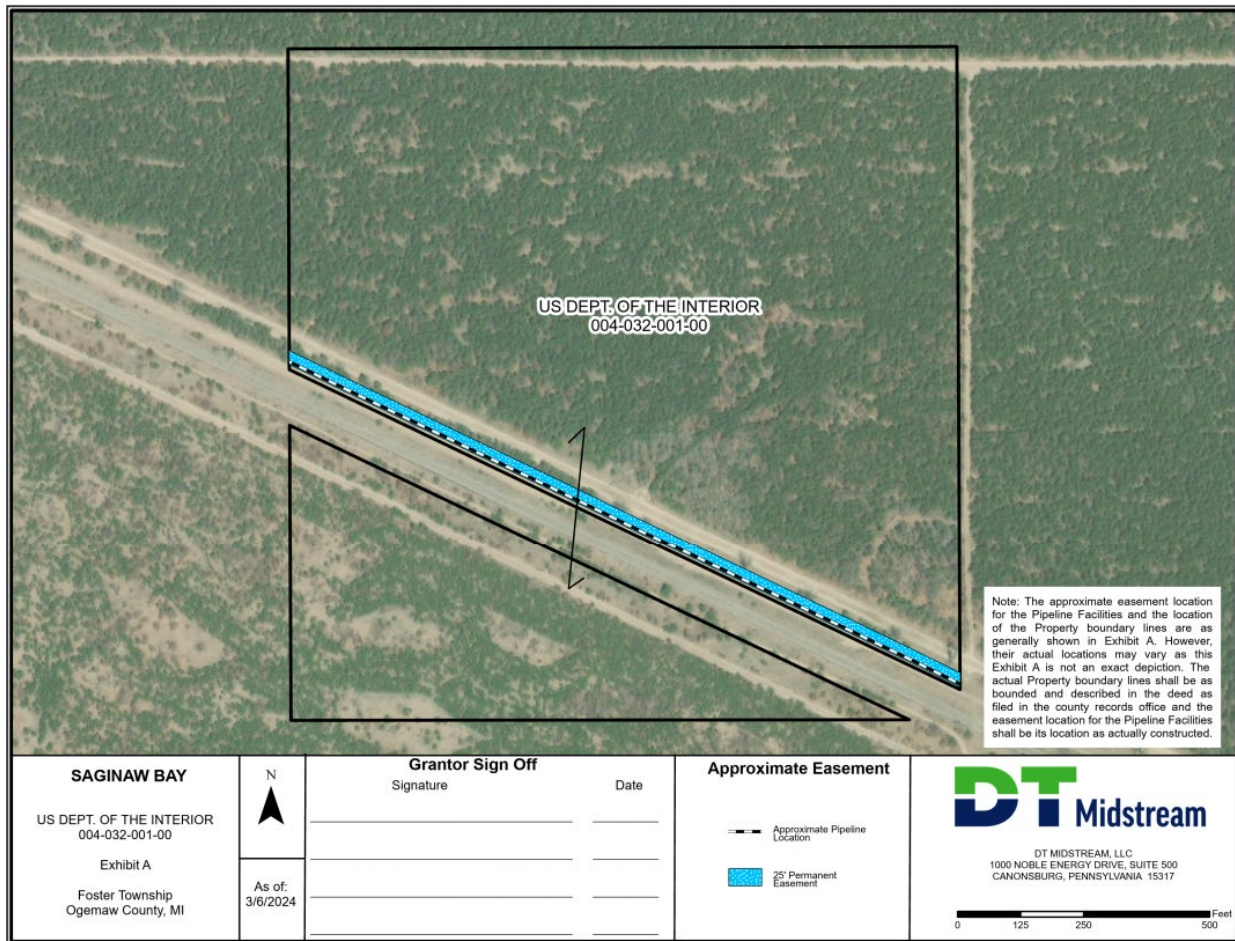


Figure 1 Tract 32

(Tract 17) T. 23 N., R. 1 E., Section 29 E ½ SW ¼, Ogemaw County, Michigan: Beginning at a point in the east line of the E ½ of the SW ¼ of section 29, T. 23 N., R. 1 E., said point being located north along said east line, a distance of 22 feet from the southeast corner of the E ½ of the SW ¼; thence, from said Point of Beginning, proceed N.63°49' W., 1,467 feet to a Point of Termination in the west line of the E ½ of the SW ¼, said Point of Termination being located north along said west line, a distance of 650 feet from southwest corner of the E ½ of the SW ¼ of section 29.

Tract 17 is an upland tract divided into three parts. The southwestern portion is young jack pine plantation that was recently masticated to begin site conversion to pine barrens habitat. It does not exhibit high floristic diversity or conservation value at this time. This stand is separated from the next “middle” portion by a railroad corridor and an improved road. The middle and northern parts are mature, well-spaced mixed wood stand that are beginning to exhibit decadence. The ground is covered by a dense moss layer with limited shrub, herb, and forb cover. Characteristic species include jack pine, black cherry, low sweet blueberry, and Pennsylvania sedge. It is surrounded on the west, north, and east by DNR land. The right-of-way footprint

has been designated as 25-feet wide for approximately 1500 feet on Tract 17. The use of this permit impacts approximately 0.86 acres on Tract 17.

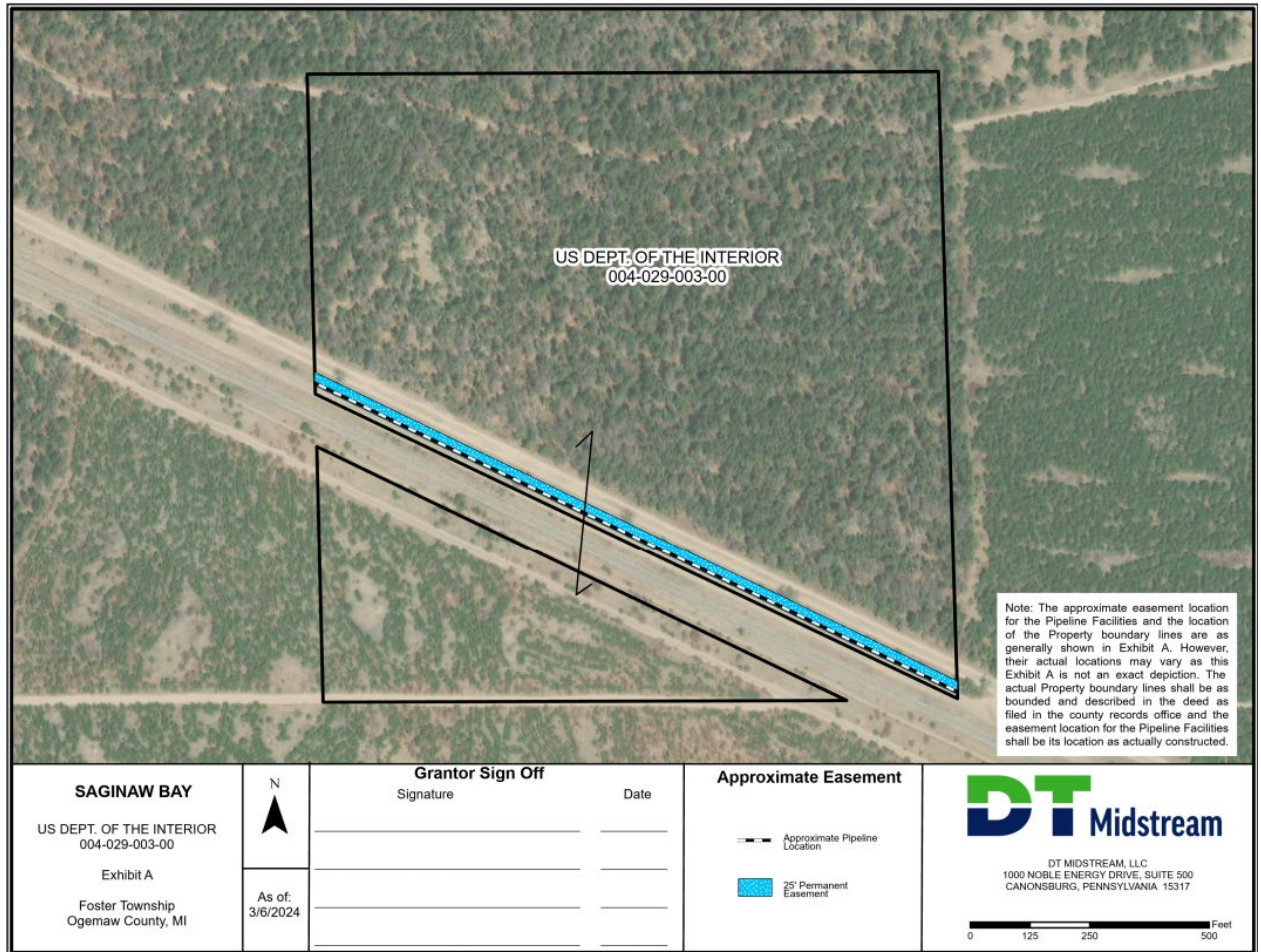


Figure 2 Tract 17

When would the use be conducted?

The issuance of right-of-way permits across units of the National Wildlife Refuge System is governed by the provisions of 50 CFR §29.21. As referenced in **50 CFR §29.21-3**: rights-of-way granted under authority of section 28 of the Mineral Leasing Act of 1920, as amended, for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, the grant may be for a term not to exceed 30 years and the right-of-way may not exceed 50 feet, plus the area occupied by the pipeline and its related facilities unless the Regional Director finds, and records the reasons for his finding, that, in his judgment, a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety.

This use would be conducted continually under 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 § 29.21-9 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 their 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 them or by their 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 or 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 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 or 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 their 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, they 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.

Additionally, per **50 CFR § 29.21-9**, any portion of the facility occupying land of the National Wildlife Refuge System will be subject to the provisions of these regulations.

Right-of-way grants under this section will be subject to the special requirements of section 28 of the Mineral Leasing Act of 1920 ([30 U.S.C. 185](#)), as amended, as set forth below. Gathering lines and associated structures used solely in the production of oil and gas under valid leases on the lands administered by the Fish and Wildlife Service are excepted from the provisions of this section.

- (1) **Pipeline safety.** Rights-of-way or permits granted under this section will include requirements that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline. An applicant must agree to design, construct, and operate all proposed facilities in accordance with the provisions of parts 192 and/or 195 of [title 49 of the CFR](#) and in accordance with the Occupational Safety and Health Act of 1970, Pub. L. 91-596, including any amendments thereto.
- (2) **Environmental protection.** An application for a right-of-way must contain environmental information required by § 29.21-2(a)(4) of this subpart. If the Regional Director determines that a proposed project will have a significant effect on the environment, there must also be furnished a plan of construction, operations, and rehabilitation of the proposed facilities. In addition to terms and conditions imposed under § 29.21-4, the Regional Director will impose such stipulations as may be required to assure:
 - (i) Restoration, revegetation and curtailment of erosion of the surface;

- (ii) that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards in related facilities siting standards established by law;
- (iii) control or prevention of damage to the environment including damage to fish and wildlife habitat, public or private property, and public health and safety; and
- (iv) protection of the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

Disclosure. If the applicant is a partnership, corporation, association, or other business entity it must disclose the identity of the participants in the entity. Such disclosure shall include where applicable;

- (1) the name and address of each partner,
- (2) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and
- (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

Technical and financial capability. The Regional Director may grant or renew a right-of-way or permit under this section only when he is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the facility. At the discretion of the Regional Director, a financial statement may be required.

Reimbursement of costs. In accordance with § 29.21-2(a)(3) of this subpart, the holder of a right-of-way or permit must reimburse the Service for the cost incurred in monitoring the construction, operation, maintenance, and termination of any pipeline or related facilities as determined by the Regional Director.

Public hearing. The Regional Director shall give notice to Federal, State, and local government agencies, and the public, and afford them the opportunity to comment on right-of-way applications under this section. A notice will be published in the Federal Register and a public hearing may be held where appropriate.

Bonding. Where appropriate the Regional Director may require the holder of a right-of-way or permit to furnish a bond, or other security satisfactory to him, to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or permit or by any rule or regulation, not to exceed the period of construction plus one year or a longer period if necessary for the pipeline to stabilize.

Suspension of right-of-way. If the Project Manager determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health and safety or the environment, he may issue an emergency suspension order to abate such activities prior to an administrative proceeding. The Regional Director must make a determination and notify the holder in writing within 15 days from the date of suspension as to whether the suspension should continue, and list actions needed to terminate the suspension. Such suspension shall remain in effect for only so long as an emergency condition continues.

Joint use of rights-of-way. Each right-of-way or permit shall reserve to the Regional Director the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way or permit areas granted under this section after giving notice to the holder and an opportunity to comment.

Common carriers.

- (1) Pipelines and related facilities used for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom shall be constructed, operated, and maintained as common carriers.
- (2)
 - (i) The owners or operators of pipelines subject to this subpart shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.
 - (ii) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipelines, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased.
- (3)
 - (i) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under

the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

- (ii) Where natural gas not subject to state regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.
- (4) The Regional Director shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to:
- (i) Conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;
 - (ii) conditions for adding or abandoning intake, offtake, or storage points or facilities; and
 - (iii) minimum shipment or purchase tenders.

Limitations on export. Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28 of the Mineral Leasing Act of 1920, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitation and licensing requirements of the Export Administration Act of 1969.

State standards. The Regional Director shall take into consideration, and to the extent practical comply with, applicable State standards for right-of-way construction, operation, and maintenance.

Congressional notification. The Secretary shall promptly notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate upon receipt of an application for a right-of-way for pipeline 24 inches or more in diameter, and no

right-of-way for such a pipeline shall be granted until 60 days (not including days on which the House or Senate has adjourned for more than three days) after a notice of intention to grant the right-of-way, together with the Secretary's detailed findings as to the terms and conditions he proposes to impose, has been submitted to such committees.

How would the use be conducted?

The use of this right-of-way for a natural gas pipeline is not a wildlife-dependent public use. The existing 16-inch pipeline has been in place for 30+ years and are currently owned by the Saginaw Bay Pipeline Company.

A Special Use Permit will be required for any maintenance that would create disturbance that includes ground disturbance, tree cutting or the use of pesticides. Special Use Permits are typically issued by the refuge manager. Saginaw Bay Pipeline Company would be responsible for obtaining any other permits needed for maintenance projects and other ongoing environmental compliance.

Why is this use being proposed or reevaluated?

This use is being proposed and reevaluated for 30-year permit renewal being requested by the Saginaw Bay Pipeline Company to continue maintenance and monitoring of an existing pipeline. See FWS policy (603 FW 2.11 H). Issuing a right-of-way permit renewal will provide assurance to the pipeline company of their ability to maintain and operate the line as needed as well as provide the refuge the ability to protect the natural resources around the right-of-way. This would also ensure the pipeline company and the refuge have a clear understanding and improved communication of the work limits for future projects.

Availability of Resources

Refuge staff responsibilities for projects by non-Service entities will be primarily limited to the following: determining appropriateness and compatibility through compatibility determinations, co-preparation of Special Use Permit(s) and other compliance documents (e.g., Section 7 of the Endangered Species Act of 1973, Section 106 of the National Historic Preservation Act, National Environmental Policy Act), and monitoring of project implementation to ensure impacts and conflicts remain within acceptable and compatible levels over time. Facilities and staff are currently available to provide access, maintain public use facilities, manage hunting and fishing opportunities/resources, as well as to issue Special Use Permits for activities such as, but not limited to, archeological investigations, commercial recording, special events, and work outside of the issuance of right-of-way permit. Staff resources are deemed adequate to manage this use at anticipated use levels.

Anticipated Impacts of the Use

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

The effects and impacts of the proposed use to refuge resources, whether adverse or beneficial, are those that are reasonably foreseeable and have a reasonably close causal relationship to the proposed use. This CD includes the written analyses of the environmental consequences on a resource only when the impacts on that resource could be more than negligible and therefore considered an "affected resource." Wildlife, aquatic species, threatened and endangered species, water quality, habitat and vegetation will not be more than negligibly impacted by the action and have been dismissed from further analyses.

Short-term impacts

Habitats in the existing permit area are primarily moss and a variety of grasses. Maintenance of the pipeline over the last 30+ years has retained the 25-foot right-of-way clear of trees and it is not anticipated that any additional clearing will be needed on FWS fee-title lands.

Current impacts to the right-of-way area will continue with maintenance of the pipeline as required. Given the long history of the existing pipeline within its current alignment and the normalization of the uses surrounding it, no additional short-term impacts are expected.

Through an Intra-Service Section 7 Biological evaluation, it has been determined that there is a total of 4 threatened, endangered, or candidate species in the proposed project area. The conclusion of the evaluation is that the Right-of Way permit and access will have no effect on the Northern Long-eared bat and the Eastern Massasauga. It has also been determined that the proposed Right-of Way permit renewal and any future maintenance access is not likely to jeopardize the Tri-Color bat, and the Monarch butterfly. There are no critical habitats within the project area. Additionally, no historic sites or cultural resources are known to exist within the right-of-way footprint, and as there are no proposed modifications to the pipeline, so it has been determined that there is no potential to effect historic sites or cultural resources within the right-of-way in the short term. The Midwest Regional Historic Preservation Officer has concurred with this determination.

Long-term impacts

Congressional intent in applying compatibility reviews to existing right-of-way permits (at the time of the National Wildlife Refuge System Administration Act 1997 amendments) dictates that no new interpretation of compatibility requirements

established by the Act should be interpreted as finding existing long-term permitted uses of refuges not compatible, presuming no significant changes have occurred to when they were initially permitted (and determined to be compatible). Regulations (50 CFR §25.21 (h)) prescribe that when evaluating compatibility in the reauthorization of these historic right-of-way, that the analysis of impacts will be based on existing conditions with the use in place, not from a pre-use perspective. In other words, only modifications from the historic permitted use are to be analyzed for impacts.

In this case, the 16-inch pipeline is being maintained with no expected modifications or changes to the existing infrastructure, the right-of-way is not deviating from the historic easement alignment, and no additional acres of FWS fee-title lands will be impacted by this right-of-way permit. In the long-term, potential pipeline repairs and maintenance activities may be required in the right-of-way and will be handled on a case-by-case basis with a Special Use Permit. A stipulation of any future Special Use Permit will include a review of the environmental policy compliance (e.g., Section 7 of the Endangered Species Act of 1973, Section 106 of the National Historic Preservation Act, National Environmental Policy Act) developed with the compatibility determination to be sure it is still current.

Public Review and Comment

The draft compatibility determination will be available for public review and comment for more than 30 days from 10/18/2024 to 11/25/2024. The public will be made aware of this comment opportunity through a news release to local media. A hard copy will be posted at the office headquarters/visitor center at Seney NWR (1986 River Road, Germfask, MI 49836, Phone 906-586-9851) with copies available upon request. It will be made available electronically on the refuge website (<https://www.fws.gov/refuge/seney>). Please contact the refuge if you need the documents in an alternative format. The Saginaw Chippewa Indian Tribe has been provided a copy of this draft compatibility determination. Concerns expressed during the public comment period will be addressed in the final.

Determination

Is the use compatible?

Yes

Stipulations Necessary to Ensure Compatibility

1. Adhere to all terms and conditions set forth in the right-of-way permit as granted.
2. Saginaw Bay Pipeline Company shall obtain a Special Use Permit from the

refuge manager in advance of any maintenance tasks to ensure compliance with refuge regulations particularly those associated with disturbance to nesting bald eagles, migratory waterfowl, and public uses like hunting and wildlife observation. In cases of emergencies that notification will be done as soon as reasonably practicable.

3. In circumstances of maintenance that will alter the re-established grassland habitat or alter soils a Special Use Permit outlining parameters and stipulations will be required and will include provision that ensure disturbance to wildlife and public use, impacts to habitat and other resources, is avoided or minimized.
4. Any areas of disturbed vegetation will be reseeded in accordance with the seed mixture identified to Saginaw Bay pipeline Company by the refuge manager.
5. Use of herbicides or pesticides is prohibited unless previously coordinated and a Special Use Permit is issued. No equipment or storage tanks will be stored on the right-of-way without prior written approval.
6. The permit holder shall immediately report any cultural and/or paleontological resources (historic or prehistoric sites or object including burials or skeletal material) discovered by the permit holder, or any person working on its behalf, on public or Federal land to the authorized officer, refuge manager, Kirtland's Warbler Wildlife Management Area (906-586-9851). The 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 a Service approved Archeologist to determine the appropriate actions to take pursuant to the provisions of law and 36 CFR § 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.
7. Wetland hydrology may not be altered. Silt fencing and other erosion control measures will be employed wherever erosion and sedimentation threaten wetlands. All spoil from temporary coffer damming must be removed immediately and completely after construction activities. Dam material must also be placed back into the original borrow area.
8. No work that leads to permanent loss of wetlands, springs, or stream habitat will be allowed without a site-specific compatibility determination.
9. The Service will continue habitat management as required within the

permitted right-of-way; the permit holder would need to advise if Service management operations would interfere with their permitted work.

Justification

The stipulations outlined above would help ensure that the use is compatible at Kirtland's Warbler Wildlife Management Area. The Saginaw Bay Pipeline Company ROW permit and access for maintenance and repairs, 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 and rights to access at Kirtland's Warbler Wildlife Management Area, 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 Kirtland's Warbler Wildlife Management Area.

Signature of Determination

Refuge Manager Signature and Date

Signature of Concurrence

Assistant Regional Director Signature and Date

Mandatory Reevaluation Date

2054

Literature Cited/References

United States Fish and Wildlife Service. 2009. Comprehensive Conservation Plan, Kirtland's Warbler Wildlife Management Area

United States Fish and Wildlife Service Policy 603 FW 2. Compatibility

Code of Federal Regulations. 50 CFR § 29.21