

Draft Compatibility Determination

Use: Issuance of a Special Use and Right-of-Way Permit to SpaceX for Road Improvement, Maintenance, Repair, and Underground Utilities at Massey Way Road, Cameron County, Texas

Refuge Name: Lower Rio Grande Valley National Wildlife Refuge (Refuge)

Establishing and Acquisition Authorities:

- Fish and Wildlife Act of 1956 [16 U.S.C. 742f(a)(4)], [16 U.S.C. 742f(b)(1)]
- An Act Authorizing the Transfer of Certain Real Property for Wildlife, or other purposes [16 U.S.C. 667b]
- Refuge Recreation Act, as amended [16 U.S.C. 460 k-1], [16 U.S.C. 460k-2]
- Migratory Bird Conservation Act [16 U.S.C. 715d]
- National Wildlife Refuge System Improvement Act of 1997
- National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended.
- United States of America v. 11,950 Acres of Land, More or Less, Located in Cameron County Texas; First Heights Bank, FSB; Et. Al., Order for Delivery of Possession; Warranty Deed, James C. Brady et. al; Warranty Deeds, the Nature Conservancy of Texas, Inc.

Refuge Purpose(s): As excerpted from the enabling legislation used to authorize the acquisition of the Refuge, the following are the Refuge purposes:

“... for the development, advancement, management, conservation, and protection of fish and wildlife resources ...” [16 U.S.C. 742f(a)(4)] *“... for the benefit of the United States Fish and Wildlife Service, in performing its activities and services. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude ...”* [16 U.S.C. 742f(b)(1)] (Fish and Wildlife Act of 1956)

“... particular value in carrying out the national migratory bird management program.” [16 U.S.C. 667b] (An Act Authorizing the Transfer of Certain Real Property for Wildlife, or other purposes)

“... 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 U.S.C. 460k-1] *“... the Secretary ... may accept and use ... real ... property. Such acceptance may be accomplished under the terms and conditions of restrictive covenants imposed by donors ...”* [16 U.S.C. 460k-2] (Refuge Recreation Act [16 U.S.C. 460k-460k-4], as amended)

“... for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.” [16 U.S.C. 715d] (Migratory Bird Conservation Act)

The Lower Rio Grande Valley and Santa Ana National Wildlife Refuges Comprehensive Conservation Plan (CCP) of 1997 satisfies the CCP requirement of the National Wildlife Refuge System Improvement Act of 1997 and identifies the following five goals of the Refuge:

- To restore, enhance and protect biological diversity.
- To protect and obtain additional water rights, improve water management, and protect, restore and enhance wetlands.
- To improve water quality and reduce contaminant related fish and wildlife resource losses.
- To protect, maintain and plan for cultural resources.
- To offer compatible wildlife dependent public uses, recreational opportunities, and interpretation and education.

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.”*

Description of Use:

a) **What is the use?**

Space Exploration Technologies Corporation (SpaceX) is proposing to improve, maintain, repair, and operate a road and for fiber optic and electrical utilities on, across and through the Boca Chica Tract of the Lower Rio Grande Valley National Wildlife Refuge. A right-of-way (ROW) permit would be required as the proposal would encumber Refuge lands. A Special Use Permit (SUP) will be required for installation of utilities (e.g., power and telecommunications) and to survey a proposed 60-foot road width for Massey Way Road. The use of Refuge lands and the installation of utilities within Massey Way Road will require the Service to issue a ROW permit to SpaceX. A right-of-way is defined in 340 FW 3 as “a use that will encumber real property by granting a right to use and possibly alter the landscape through construction of a facility such as a road, power line, pipeline, or building” on lands under control by the U.S. Fish and Wildlife Service (Service). The Service’s Southwest Regional Director is authorized to permit the use of rights-of-way on national wildlife refuges in accordance with applicable authorities and regulations (e.g., 16 U.S.C. 715s and 50 CFR § 29). The issuance of a right-of-way across units of the National Wildlife Refuge System (Refuge System) is governed by the provisions of 50 CFR §29.21. Right-of-way permits of this nature are issued for terms of 50 years, or so long as it is used for the purpose granted, or for a lesser term when considered appropriate.

b) Where is the use conducted?

The project extends approximately 0.9 miles along the length of Massey Way Road and all utilities will be located entirely within a proposed 60-foot road width along Massey Way Road. Refuge lands will be minimally affected during installation of utilities. Deviations from the proposed project, if any, will be discussed with and approved by the refuge manager (Figure 1).

c) When is the use conducted?

The proposed utilities would be permanently installed after a ROW permit is issued to initiate construction. Construction would occur during daylight hours and is anticipated to take one to two months after the permit is issued. Maintenance would occur periodically as needed after the installation. The power line and telecommunications lines would be operational 24 hours a day and 365 days a year after the installation.

d) How is the use conducted?

SpaceX would conduct all construction and maintenance activities. Three four-inch conduits would be directionally bored underground in an approximately nine-inch cylinder. Directional boring, also known as horizontal directional drilling, is a trenchless method of installing underground utilities. A drill rig would install conduit carrying the utility lines underground. Vaults would be installed to provide access to the lines for maintenance and/or repair. Three sizes of vaults would be installed along the project with the following approximate dimensions: 7 ft x 7 ft x 8 ft, 5 ft x 5 ft x 5 ft, and 3 ft x 2 ft x 2.5 ft. Maintenance would occur periodically as needed after construction. There is no refuge infrastructure near the project area. Wildlife-dependent recreational uses at Boca Chica Tract such as wildlife observation and photography would not be affected. Therefore, the proposed project would not affect or impair the Refuge System mission or Refuge goals and objectives because the public would continue to have access to the Boca Chica Tract for these uses.

e) Why is the use being proposed?

The purpose of the utility construction is to provide improved and reliable utilities via underground lines to the SpaceX Testing site at Massey's. The purpose of the proposed 60-foot width is to define the boundaries of Massey Way Road to protect the refuge from further encroachment and to limit improvements, repair, maintenance, operations, and utility placement within that defined corridor. Currently, there is no existing fiber-optic cable to the site and telecommunications equipment only provides network coverage in a very limited area. Connection outside of the site is provided via receiver/transmitter antennae, which can be blocked by physical obstructions and poor connectivity. Power is currently provided via overhead lines that are insufficient to support operations at the Site. Underground power lines are needed to reduce outages as a result of inclement weather, downed trees or bushes, and other service limiting factors. Installing utilities underground is a common practice nationwide to 'harden' utilities against storms and other natural disasters and to provide more resilient infrastructure.

Availability of Resources: No additional Refuge resources (i.e., financial, personnel, facilities, and other infrastructure) are needed for the Refuge to administer or manage these utilities. All work for the operation and maintenance of Massey Way Road and the installation of utilities and any protective requirements or stipulations would be conducted by SpaceX. Refuge staff regularly monitor and inspect these refuge tracts. Therefore, the Refuge will not have to spend its funds or require additional personnel, facilities or other infrastructure to administer or manage this use.

Reasonably Anticipated Impacts of the Use:

Short-term Impacts:

Impacts due to construction would be minimal. Disturbance impacts during construction (e.g., noise from construction equipment, vehicular traffic, etc.) would occur during daylight hours, and will be temporary in nature. As directional boring would be used for underground installation, above-ground disturbance would be primarily limited to where vaults are proposed. No brush clearing would occur for this project. It is therefore unlikely to adversely affect any federally listed species from that area. Any vegetation disturbance on the Refuge would be minor and occur within the already disturbed road corridor. Construction material stockpiles and equipment staging would not occur on Refuge lands. Best management practices would be implemented to reduce the potential for erosion or sediment runoff into Refuge lands and reduce the potential for water quality impacts. Two cultural resource surveys (March 2022 and May 2023) and it was determined the project would not impact cultural resources. The Texas Historical Commission reviewed the proposed action and concurred on July 24, 2023, that the project will have “*no effect on historic properties.*” In addition, tribal consultation letters were sent out in June 2023 to tribal interests for Cameron County (Apache, Comanche, Tonkawa, Wichita and affiliated tribes). No comments were received from these tribes regarding any cultural concerns for this proposed use. The short-term impacts are therefore insignificant and discountable because the project does not detract from the five goals of the refuge, as stated above.

Long-term impacts:

Long term impacts on the Refuge’s purposes and the Refuge System mission are not expected beyond the existing footprint for the following reasons: 1) The utilities will be located underground outside of native habitats on the Refuge and within previously disturbed road right-of-way; 2) The project does not require public access restrictions and therefore will not impact public uses of the Boca Chica tract, and 3); The ROW permit would clearly define right-of-way use and restrictions beyond that of a prescriptive easement. Overall, no long-term impacts to Refuge lands are anticipated with the proposed use.

Cumulative Impacts:

SpaceX is the sole end user of the utility construction and so the proposed use will not result in additional development beyond what is already existing at the Massey Way site. It is reasonable to assume that SpaceX would continue its current, established operations

as the facilities are already in place. Site operations currently use the existing overhead power which is primarily to support an existing AT&T cell tower at the Massey Site. Portable generators, and unreliable point-to-point communication are currently being used in place of the needed underground utilities. No additional projects were identified because of the proposed utility lines. Regardless of the proposed use, these utilities are not expected to result in continued development beyond those facilities tied to the already established Massey Test site. Therefore, this analysis is limited to reasonably foreseeable impacts and linked actions related to the relocation of the installation of proposed underground power and telecommunications lines. Wildlife-dependent recreational uses include wildlife observation and photography, environmental education and interpretation as well as other recreational uses would not be affected by the proposed use. Therefore, the proposed project will not affect or impair the Refuge System mission or Refuge goals and objectives because the public will continue to have access to Refuge lands for these uses. No other adverse cumulative impacts are anticipated from the installation of these utilities.

Public Review and Comment: A Public Notice announcing the availability for a 30-day review and comment on this Compatibility Determination was published in the Valley Morning Star and Brownsville Herald on **August 15, 2023**. A copy of the CD and request for public comment was also published on the Refuge’s main website and posted at the Refuge Headquarters for review and comment on August 15, 2023. The comment period closed on **[date here]**. A total of **xxxx** comments were received.

[comments narratives here].

[Service response here]

Determination (check one below):

Use is Not Compatible

Use is Compatible with the Following Stipulations

Stipulations Necessary to Ensure Compatibility:

- All activities associated with the proposed use would occur within the already disturbed Massey Way Road corridor. No brush clearing or other impacts to Refuge habitats will occur during these installations.
- Cable and bollard fencing would be installed as a pre-requisite to this project to prevent further encroachment onto the Refuge.
- Materials stockpiles and equipment staging areas for this project will not be placed on any Refuge lands outside of the 60-foot road width.
- Construction boundaries would be clearly demarcated to avoid inadvertent

impacts to Refuge lands.

- Best management practices would be used during construction to avoid or reduce potential impacts to water quality from erosion or sediment runoff.
- Work will only occur during daylight hours from 8 am to 6 pm local time.
- The proposed use and associated ROW permit request must be reviewed by Southwest Region Division of Realty and approved by the Regional Director to ensure compliance with Service regulations and policy concerning ROW permits on national wildlife refuges.
- Surveys for nesting birds will be required prior to any vegetation disturbance if within March through August for compliance with Migratory Bird Treaty Act. If any nesting birds are detected, vegetation disturbance will be suspended in nesting areas until all nesting activities are complete.
- Compliance with Endangered Species Act, NEPA, Cultural Resources, and all other applicable federal statutes and regulations.
- Proposed Use is for SpaceX only and no other end users.
- SpaceX and/or all contractors would coordinate with the refuge manager or designee during construction to ensure no unanticipated impacts occur and that the project is being carried out as proposed.
- All equipment used in construction must be cleaned and free of dirt or materials prior to use to prevent the spread of invasive or noxious plants.
- SpaceX and/or contractors must contain or clean up any contaminants or hazardous substances spills from any equipment to prevent any contamination of adjacent Refuge habitats.
- The above stipulations will be required to be included in all contractor work plans as specified in the refuge SUP.

Justification: Through the compatibility determination process, the Refuge has determined [final determination here]

Signature: Refuge Manager _____
(Signature and Date)

Concurrence: Regional Chief _____
(Signature and Date)

Mandatory 10-15-year Re-evaluation Date: _____ **2033**



Figure 1: Proposed Utility Area within Massey Way Road

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