

Compatibility Determination

Title

Compatibility Determination for Saginaw Bay Pipeline Company Right-of-way-Renewal, Kirtland's Warbler Wildlife Management Area

Refuge Use Category

Rights-of-way and Rights to Access

Refuge Use Type(s)

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

Refuge

Kirtland's Warbler Wildlife Management Area under Seney National Wildlife Refuge management

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 Midwest 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 the required 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?

The permit would be renewed for the existing right-of-way footprint within 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. Although the survey mapping provided by the applicant indicates that the land connected to this tract south of the railroad belongs to the Service, Service records indicate that this portion of the tract is not in Federal ownership.

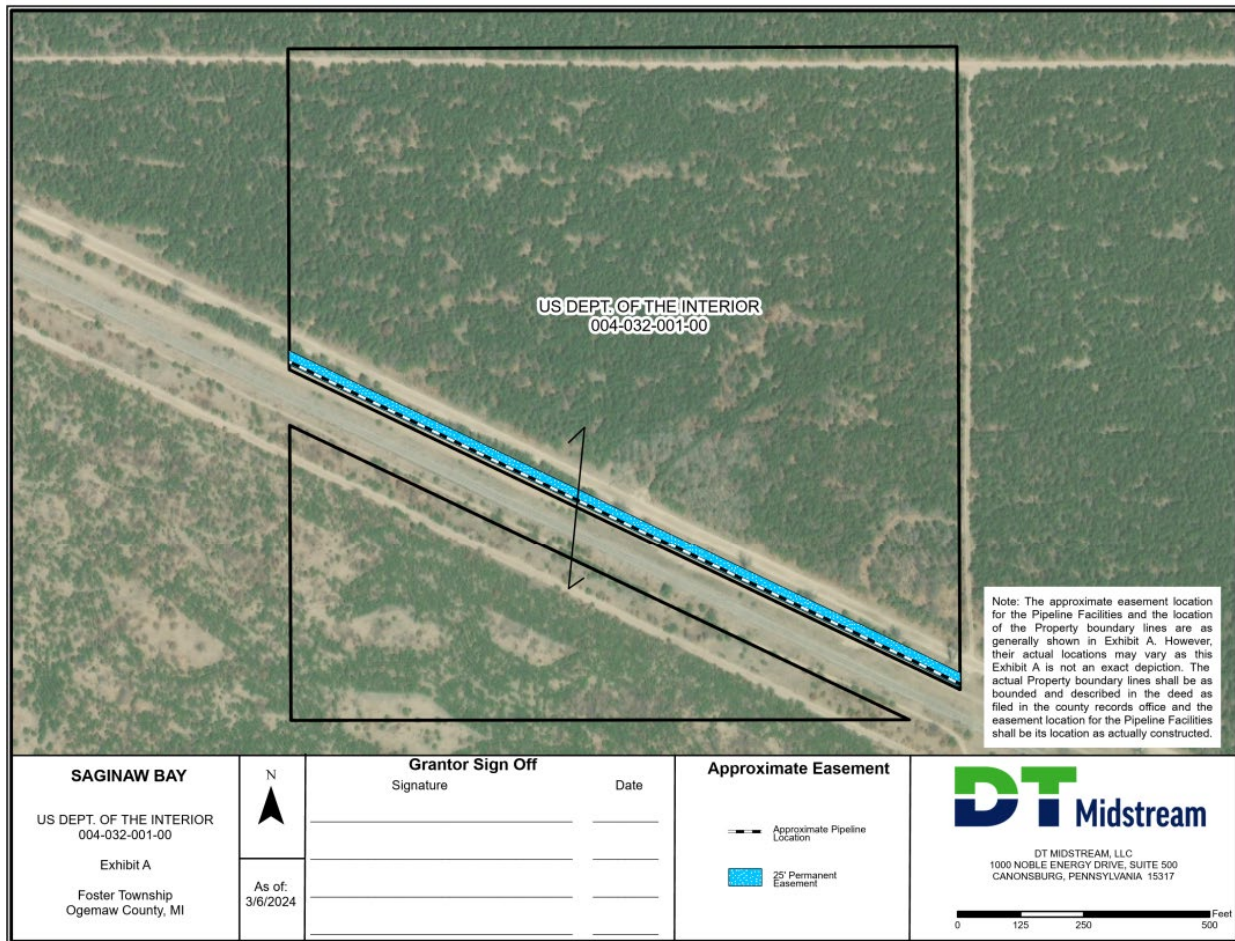


Figure 1 Tract 32

(Tract 17) T. 23 N., R. 1 E., Section 29 E $\frac{1}{2}$ SW $\frac{1}{4}$, Ogemaw County, Michigan: Beginning at a point in the east line of the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ 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 $\frac{1}{2}$ of the SW $\frac{1}{4}$; 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 $\frac{1}{2}$ of the SW $\frac{1}{4}$, said Point of Termination being located north along said west line, a distance of 650 feet from southwest corner of the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ 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.

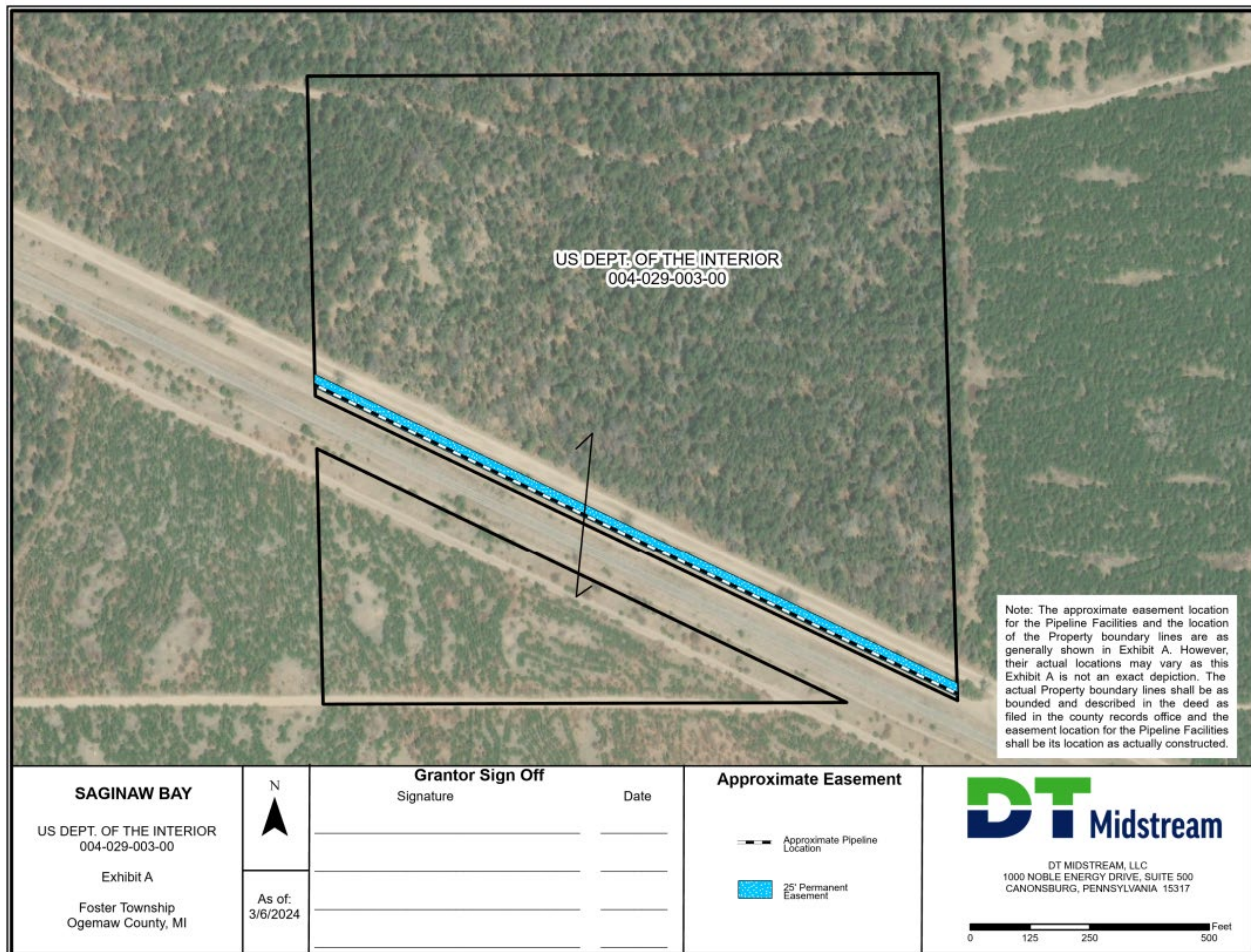


Figure 2 Tract 17

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 their finding, that, in their judgment, a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. The previous permit for this right-of-way was a 30-year permit, and the applicant has not indicated any need for a shorter term. If changes to the permit or the permitted structure are required, a

new compatibility determination will be completed as indicated in the following stipulations. Even though a mandatory compatibility re-evaluation will not be required for 30 years, refuge managers have the option to re-evaluate the permitted action when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a comprehensive conservation plan.

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 applicant 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. The applicant will be required to obtain a Special Use Permit from the refuge manager in advance of any maintenance tasks to ensure compliance with refuge Federal policies and regulations and particularly those associated with disturbance to wildlife, habitat, and other resources. 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

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. Maintenance activities are activities necessary to allow for continued, safe operation of the existing 16-inch pipeline. 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 was available for public review and comment for 30 days from October 18, 2024 to November 17, 2024. The public was made aware of this comment opportunity through a news release to local media. A hard copy was posted at the office headquarters/visitor center at Seney National Wildlife Refuge (1986 River Road, Germfask, MI 49836, Phone 906-586-9851) with copies available upon request. It was also made available electronically on the refuge website (<https://www.fws.gov/refuge/kirtlands-warbler-wildlife-management-area>). The Saginaw Chippewa Indian Tribe was provided a copy of the draft compatibility determination.

The Service received one comment on the proposed action requesting clarification on Service policy and the drafted compatibility stipulations. Response to this comment has not caused significant modifications to the draft compatibility before finalization. Changes included removal of the restated regulations and modification of the stipulations to provide increased clarity. Detail of the Service response is available below.

Comment part A: The Draft CD should clarify the standard for renewal of existing rights-of-way.

The draft language pertaining to the intent of the compatibility determination was removed from the final document to prevent potential confusion. The Service

confirms that this compatibility determination is intended to reevaluate the permit renewal being requested by the Saginaw Bay Pipeline Company for continued maintenance and monitoring of the existing pipeline (see Description of Use, pages 1-5).

Comment part B: The Service should explain why it is adopting the maximum 30-year term for renewing and extending the Saginaw Bay pipeline.

The Service has clarified that the previous permit for this right-of-way was a 30-year permit, and the applicant has not indicated any need for a shorter term. If changes to the permit or the permitted structure are required, a new compatibility determination will be completed as indicated in the following stipulations. Even though a mandatory compatibility re-evaluation will not be required for 30 years, refuge managers have the option to re-evaluate the permitted action when conditions under which the use is permitted change significantly, or if there is new information regarding the effects of the use, or concurrently with the preparation or revision of a comprehensive conservation plan (see Description of Use, pages 4-5).

Comment part C: The Draft CD should adopt clearer stipulations to protect wildlife and habitat over the full term of the proposed use.

In an attempt to provide clarity, the Service has utilized some of the suggested language to update the draft stipulations. These stipulations include a requirement for special use permitting to protect wildlife and habitats. Special use permits include stipulations that are intended to be more specific to species and habitat that may be impacted by actions not covered in the broader right-of-way permit (see Stipulations, pages 8-9).

Determination

Is the use compatible?

Yes

Stipulations Necessary to Ensure Compatibility

1. Adhere to all applicable terms and conditions set forth in the renewed right-of-way permit as granted and referenced in 50 CFR §29.21.
2. Saginaw Bay Pipeline Company shall submit an application to obtain a Special Use Permit from the refuge manager in advance of any maintenance tasks to ensure compliance with Federal policies and regulations and to ensure

disturbances to wildlife, habitat, and other resources are avoided or minimized. Maintenance activities are those activities necessary to allow for continued, safe operation of the existing 16-inch pipeline. In cases of emergencies, that notification will be done as soon as reasonably practicable.

3. Any areas of disturbed vegetation will be reseeded in accordance with the seed mixture identified to Saginaw Bay pipeline Company by the refuge manager.
4. Use of herbicides or pesticides is prohibited unless previously coordinated and a Special Use Permit is issued. The use of pesticides on the refuge is only completed under an integrated pest management plan, and any treatments applied on the refuge would need to align with an approved Pesticide Use Proposal.
5. 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. The permit is for the specific use described and may not be construed to authorize any other use within the permit area unless approved in writing by the Regional Director upon determination by the Service project manager that the additional use is a compatible use. This includes any actions that may require modification of the permit.

9. No work that leads to permanent loss of wetlands, springs, or stream habitat will be allowed without a site-specific compatibility determination.
10. 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

2055

Literature Cited/References

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

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

Code of Federal Regulations. 50 CFR § 29.21