

# Draft Compatibility Determination

## Title

Draft Compatibility Determination for issuance of road rights-of-way permit to the Hennepin County Transportation Department to allow for transportation safety and mobility improvements to 3.7 miles of County State Aid Highway 61, also known as Flying Cloud Drive, impacting 8.02 acres of refuge land.

## Refuge Use Category

Rights-of-way and Rights to Access

## Refuge Use Type(s)

Rights-of-way (Road).

## Refuge

Minnesota Valley National Wildlife Refuge

## Refuge Purpose(s) and Establishing and Acquisition Authority(ies)

The purposes of the refuge are to (1) provide habitat for a large number of migratory waterfowl, fish and other wildlife species; (2) provide environmental education, wildlife recreational opportunities and interpretive programs for hundreds of thousands of Twin City residents; (3) protect important natural resource areas from degradation; and (4) protect the valley's unique social, educational and environmental assets.

“The secretary shall develop and administer...the refuge, in accordance with the National Wildlife Refuge System Act...The Secretary may also exercise any other authority available to him for the conservation and management of wildlife and natural resources, the development of wildlife recreational opportunities wildlife interpretation, and environmental education, to the extent deemed by him to be appropriate...The secretary shall construct, administer, and maintain, ...a wildlife interpretation and education center. ...to promote environmental education and to provide an opportunity for the study and enjoyment of wildlife in its natural habitat.” (Minnesota Valley National Wildlife Refuge [Public Law No. 94-466, 94<sup>th</sup> Congress 1976 and 1986 Amendment expansion for refuge])

"...for the development, advancement, management, conservation, and protection of fish and wildlife resources... 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 ..."  
(Fish and Wildlife Act of 1956 [16 U.S.C. § 742(a)(4)] and (16 U.S.C. § 742(b)(1))

"... for any other management purpose, for migratory birds." (16 U.S.C. § 715d)

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

"The conservation of wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions..." (Emergency Wetlands Resources Act of 1986 [16 U.S.C. §3901(B), 100 Stat 3583])

## **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?

No. Although the roadway, County State Aid Highway 61/Flying Cloud Drive, existed prior to refuge establishment, the roadway expansion will be a new right-of-way permit for the U.S. Fish and Wildlife Service. This project was completed in 2018, including the portions that were widened on lands owned by Minnesota Valley National Wildlife Refuge. The implementation of the road widening project was permitted on refuge lands through a Special Use Permit. The purpose of this Compatibility Determination is to complete the right-of-way application.

During the original pre-project planning period from 2012-2015, refuge staff prepared a draft Environmental Assessment for these purposes. The purpose of this Environmental Assessment was to analyze the State Environmental Assessment Worksheet that was completed in 2014 (Hennepin County 2014). The State

Environmental Assessment Worksheet found in their Findings of Facts and Conclusions that there was a Negative Declaration on the Need for a State Environmental Impact Statement. Completion of this package was paused due to staff turnover. New refuge staff began further review of the project and later determined the project was suitable for a Categorical Exclusion under 516 DM 8.5 C4, and the Environmental Assessment was left in draft and never published. This Compatibility Determination addresses the right-of-way permit requirements needed to continue the maintenance and operation of the Hennepin County Transportation Department and to allow for retroactive transportation safety and mobility improvements to 3.7 miles of County State Aid Highway 61/Flying Cloud Drive, impacting 8.02 acres of refuge land.

### What was the use?

Right-of-way (road). The right to use and alter the landscape through construction, maintenance, and operation of a road. This use includes retroactive evaluation of construction activities on the roadway.

Hennepin County requested a right-of-way for widening County State Aid Highway 61/Flying Cloud Drive. This compatibility determination retroactively evaluates the widening and enhancement of County State Aid Highway 61/Flying Cloud Drive on the Upgrala Unit of the Minnesota Valley National Wildlife Refuge. The existing roadway on Highway 101 to Charlson Road was widened from a two-lane segment to a three-lane section with shared center turn lane. This widening project included safety and mobility improvements, as well as reconstruction raising the profile of the transportation corridor above the 100-year flood elevation of the Minnesota River. This compatibility determination also evaluates maintenance activities.

### Is the use a priority public use?

No. Roadway safety improvements are not a priority public use; however, the roadway improvements provided safer pullouts for all visitor users including wildlife-dependent recreation users. Improved access facilitated opportunity for priority wildlife-dependent outdoor recreational uses such as wildlife observation, photography, environmental education, interpretation, fishing and hunting.

### Where was the use conducted?

Hennepin County has completed transportation improvements on approximately 3.7 miles of County State Aid Highway 61/Flying Cloud Drive, running from State

Trunk Highway 101 in the west to Charlson Road in the east, totaling 66 acres. This Compatibility Determination establishes a new right-of-way permit for portions that occurred on 8.02 acres of refuge land and will allow the county to conduct future maintenance activities. The right-of-way area includes seven strips of refuge property located immediately adjacent to the highway. This area, a small part of over 15,056 acres that encompass the refuge, is comprised of floodplain forest and wetland habitats, and includes natural surface trails and parking lots for visitors. As a result of this project, turning lanes were added creating safer access points to refuge lands. The roadway was also raised in several locations in order to locate the roadway above the 100-year flood elevation of the Minnesota River. See Figures 1, 2 and 3 for maps of the right-of-way permit area.

The entire 66-acre project area, is comprised of property between the Minnesota River floodplain and the river bluffs. Hennepin County's Ecologically Significant Natural Areas database revealed the larger area in proximity to the project construction limits include the following: Dry Prairie Sand-Gravel subtype (remnant short grass prairie); Floodplain Forest; Lowland Hardwood Forest; Mixed Emergent Marsh; Native Dominated Disturbed Upland Shrubland; Oak Woodland-Brushland; Seepage Meadow; Wet Meadow; and Willow Swamp. Furthermore, several wetlands and intermittent streams/creeks in the area exhibit diverse emergent and submergent aquatic vegetation. These plant communities and habitats support an array of wildlife species including a rich diversity of birds, mammals, fish, reptiles and amphibians.

#### When was the use conducted?

Short-term use of refuge lands occurred during the construction phase of the project in 2018. Tree clearing had a seasonal restriction of April 1 through October 1 after coordination between the applicant and a consultation with the U.S. Fish and Wildlife Service's Twin Cities Ecological Services Field Office recommended a seasonal restriction which would prevent tree removal. These restrictions were in areas of potential northern long-eared bat habitat to reduce any potential impacts during pup rearing season.

Other road construction activities were not seasonally restricted due to no other identified conflicts to species or waterways identified by the Environmental Assessment Worksheet, other agencies or by refuge staff (Hennepin County 2014). The Special Use Permit authorizing road work restricted work periods to Monday through Saturday, 7am to 7pm, however the permittee was given the option with

concurrence of the Refuge Manager to work up to 24 hours a day, 7 days a week upon notification.

The road safety improvements are long term and will remain in place for 50 years. The right-of-way is already being maintained by Hennepin County and will continue with reissuance of Special Use Permits as required. The activities requiring Special Use Permits include periodic maintenance such as vegetation removal, trash and graffiti removal and general cleanup. All described maintenance activities are restricted to Monday through Saturday, 7am-7pm and will be regulated by use of a Special Use Permit. Seasonal restrictions will be enforced for any vegetation removal on the highway corridor to reduce impacts to wildlife, these restrictions will be determined situationally based on activity type proposed.

### How was the use conducted?

During the construction of the road expansion, the refuge manager restricted construction and staging of equipment to specific areas. Special needs were considered on a case-by-case basis and were subject to the manager's approval. To avoid impact to listed species, construction activities were completed with appropriate timeframes and techniques consistent with permits, approvals and applicable avoidance plans in coordination with Minnesota Department of Natural Resources nongame wildlife and U.S. Fish and Wildlife Service. Special Use Permits were required since access through U.S. Fish and Wildlife Service lands were necessary to get equipment to right-of-way permit areas. The necessary permits covered all the specifications of construction, operation, and management to minimize effects to wildlife and habitat.

Periodic maintenance activities will occur, including trash pickup and vegetation removal. Activities that occur on refuge easements will require issuance of a Special Use Permit with special conditions that dictate frequency and type of access compatible with refuge management. Snow removal activities will continue on the highway itself, and all snow removal on roadways, access areas and pull ins will continue to be the responsibility of Hennepin County. No Special Use Permit will be required for snow removal activities on County State Aid Highway 61/Flying Cloud drive. To avoid impact to listed species and other special status species such as the bald eagle, maintenance activities will be completed within appropriate timeframes and using techniques consistent with permits, approvals and applicable non-avoidance plans in coordination with Minnesota Department of Natural Resources Nongame Wildlife Program and U.S. Fish and Wildlife Service. Special Use Permits will be required if access to U.S. Fish and Wildlife Service lands is necessary for

maintenance activities. The necessary permits will cover all the specifications of construction, operation, and management to minimize effects to wildlife and habitat.

County State Aid Highway 61/Flying Cloud drive is a frequently used roadway in Hennepin County. The Environmental Assessment Worksheet found that no additional traffic would be generated resulting from the road widening, but that the project was necessary in order to address the existing mobility and safety issues on the roadway (Hennepin County 2014). The speed limit on County State Aid Highway 61/Flying Cloud drive is 50 mph. There is a separate bike trail north of the roadway that is not on refuge lands. None of these uses occur within the footprint of the proposed right-of-way.

### Why was this use proposed or reevaluated?

Hennepin County proposed reconstruction of the two-lane segment of roadway from Highway 101 to Charlson Road to a three-lane section with a shared center left turn lane, and a multi-use trail along the north side of the highway for safety and to provide increased recreational opportunities. The project was completed in 2018 and the administrative portion of the project to issue the right-of-way permit was not. This compatibility determination is being completed to finalize the issuance of the right-of-way permit.

Portions of County State Aid Highway 61/Flying Cloud drive are prone to seasonal flooding within the project area. The project purpose and need were to improve safety, maintain mobility and mitigate safety and operational concerns due to the closure of the previously existing roadway during periods of flooding. The project improvements raised the roadway profile above the 100-year flood elevation and provided safe access points to refuge lands, enhancing accessibility for visitor recreational uses and refuge management and operations.

The project resulted in widening of the roadway and was found to be the preferred alternative in an Environmental Assessment Worksheet drafted by the Hennepin County Transportation authority in 2014. During the development of the Environmental Assessment Worksheet, Hennepin County did not identify any potentially significant cumulative potential effects to the resources affected by the project (Hennepin County 2014). The refuge prepared a draft Environmental Assessment to further examine impacts of the road expansion onto refuge, although later determined that the project was better suited to a Categorical Exclusion under 516 DM 8.5 C4 and never published. Other alternatives that were considered and dismissed included expansion of the roadway to a four-lane rural

section that would have had larger impacts and required a larger right-of-way expansion onto refuge lands.

The National Wildlife Refuge System Improvement Act of 1997 identified six priority public uses that support the mission of the U.S. Fish and Wildlife Service when appropriate and compatible with the purposes for refuge establishment. Those priority public uses are hunting, fishing, wildlife observation, photography, environmental education and interpretation. Minnesota Valley National Wildlife Refuge Act, Public Law 94-966 included the refuge uses listed above, but also addressed the potential for land-use conflict with an urban refuge. Therefore, Congress included a “continued public services” section in the refuge’s establishing legislation. This section allows for vital public services to be implemented on refuge lands (16 U.S.C. 668kk). Safety corridor improvements, removal of the roadway from the 100-year floodplain and enhanced access points to the refuge constitutes a continued vital public service for these activities and other recreational uses of the refuge.

### **Availability of Resources**

No costs were incurred by the refuge beyond staff time spent issuing Special Use Permits and drafting an Environmental Assessment. In addition, refuge staff spent five days preparing supporting information and issuing the right-of-way permit. Refuge staff will periodically spend time issuing Special Use Permits with special conditions for maintenance activities. No additional law enforcement needs are anticipated because of this project as traffic occurs on a County State Aid Highway and law enforcement staff do not enforce off-refuge traffic violations.

Hennepin County has covered all construction costs and will continue to pay maintenance costs on the expansion of County State Aid Highway 61/Flying Cloud Drive. The maintenance and operation of the road are the responsibility of Hennepin County and the Minnesota Department of Transportation, therefore the existing refuge resources are adequate to administer any use properly and safely. The annual administrative cost of monitoring Hennepin County use of the right-of-way will also be minimal. Refuge staff frequent the area during normal refuge operations. Therefore, no special monitoring activity will be required.

### **Impacts of the Use**

The effects and impacts of the proposed use to refuge resources, whether adverse or beneficial, are reasonably foreseeable and have a reasonably close causal relationship to the proposed use. This compatibility determination 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.” For more in-depth information, see the draft Environmental Assessment for the Hennepin County State Aid Highway 61/Flying Cloud Drive Reconstruction Project (U.S. Fish and Wildlife Service 2016).

Air quality, geology and soils, cultural resources and socioeconomics will not be more than negligibly impacted by the action and have been dismissed from further analyses.

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

The refuge was established pursuant to the Minnesota Valley National Wildlife Refuge Act of 1976 (16 U.S.C. 668kk). The primary purposes of the refuge are to (1) provide habitat for a large number of migratory waterfowl, fish and other wildlife species; (2) to provide environmental education, wildlife recreational opportunities and interpretive programs for hundreds of thousands of Twin Cities residents; (3) to protect important natural resource areas from degradation; and to (4) protect the valley's unique social, educational and environmental assets.

The mission of the National Wildlife Refuge System also guides the refuge. As outlined by the National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd et seq.), 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” As part of the National Wildlife Refuge System Administration Act compatible wildlife-dependent recreational uses are recognized as the priority general public uses of the National Wildlife Refuge System through which the American public can develop an appreciation for fish and wildlife.

Although there were minimal impacts to refuge natural resources, issuance of the right-of-way permit will further achieve the purposes of the refuge and the refuge system by allowing for improved access for priority public use activities as well as other recreational uses.



## Short-term impacts

### *Migratory Birds and Other Wildlife Resources*

Wildlife and associated habitat were temporarily affected by project-related construction. The project entailed changes in ground habitat due to limited removal of trees and understory vegetation along the road. Impacts that occurred through accidental introduction of invasive species and human-related disturbance during construction, operation and maintenance were mitigated at time of construction by habitat restoration actions after road installation. Although there were temporary disturbances to wildlife during construction, there was adequate habitat adjacent to the construction area for displaced wildlife. The construction of the project resulted in no permanent negative impacts to migratory birds and other wildlife resources. The refuge will issue Special Use Permits with special conditions to ensure minimal negative impacts during continued maintenance activities.

The County State Aid Highway 61/Flying Cloud Drive Reconstruction Project study area was screened for nesting activity under existing structures. No nesting colonies of migratory birds were identified during the construction period. It was considered likely that migratory birds, mostly passerines or songbirds, occupied the project area during nesting season. Tree removal periods were restricted to when nesting activities would not be occurring and there would be no loss of active nests. The refuge has monitored for eagle nests annually since 2010, the first documented nest within close proximity was documented in 2022. It is 1/10 of a mile from the right of way of the road and will be incorporated into any future Special Use Permits, any new nests discovered during monitoring activities will be noted and tree cutting restrictions time periods will be incorporated into future Special Use Permits.

Where reasonable and feasible, the county incorporated modifications (minor alignment shifts, retaining walls, steep side slopes, use of guardrail, etc.) into the design of the proposed roadway improvements to avoid and minimize impacts to wildlife habitat, rare plant communities, and sensitive ecological resources (Hennepin County 2014). There were also measures in place to minimize and mitigate any effects to wildlife and habitat. These measures included erosion control measures; surveys of existing nesting bird populations to ensure no nesting in the project area; aligning the road to the existing centerline to reduce impacts outside of the total project area; minimizing impacts to ecologically significant areas to the extent practicable; and controlling the potential introduction and spread of invasive plant species. Bald Eagle nest surveys have occurred annually on

the refuge since 2010, three nests have been documented within the larger 478-acre Upgrala unit of the refuge, one nest is in close proximity to the project area but was not documented until 2021 and therefore was not impacted by construction activities. The new nest will be included in all future Special Use Permits for maintenance activities.

The County State Aid Highway 61/Flying Cloud Drive project widened the existing roadway, impacting 8.02 acres of refuge land. Because the roadway was already in place, and there is adequate habitat adjacent, impacts of continued use and operations of the right-of-way are expected to be minimal and should have no impacts to the overall populations or continuation of species.

### ***Threatened and Endangered Species***

Prior to construction, a “State Aid for Local Transportation Threatened and Endangered Species Review Request” was submitted to the Minnesota Department of Transportation Natural Resource Specialist. The proposed action was reviewed, and a determination of *no effect* was made (Hennepin County 2014).

An after-the-fact Intra-service Section 7 determined that the project will have *No Effect* on the rusty patched bumble bee since there were no detections in the project area or the adjacent Upgrala prairie during surveys in 2017. It *May Affect but Not Likely to Adversely Affect* the northern long-eared bat and is *Not Likely to Jeopardize* the monarch butterfly (candidate post-project) or tricolored bat (proposed post project) (U.S. Fish and Wildlife Service 2022).

The expansion of County State Aid Highway 61/Flying Cloud Drive caused some temporary disruption of habitats. However, the road expansion area occurred in a Low Potential Zone for rusty patched bumble bees. Also, the design of the project was modified by narrowing the construction limits and restoring impacted areas back to native prairie. The construction limits of the project also minimized any potential impacts to northern long-eared bats during construction and long-term maintenance by implementing a seasonal restriction on tree removal between April 1 through October 1 in many areas of potential northern long-eared bat habitat. The design of the roadway was modified to minimize overall impacts by narrowing the construction limits in forested habitat areas.

As a part of Hennepin County’s Environmental Assessment Worksheet, a query of the Minnesota Natural Heritage Information System was requested to determine if any rare species or other significant natural features are known to occur within an approximate one-mile radius of the proposed project (Hennepin County 2014). Based on this query, the gophersnake (*Pituophis catenifer*), a state-listed species of

special concern, had been documented in the vicinity of the proposed project with the potential to be encountered on site. Prior to construction, Hennepin County coordinated with the Minnesota Herpetological Society on potential project impacts and possible mitigation opportunities. In addition, state-listed fish and mussels have been documented in the Minnesota River in the vicinity of the project. Due to this, effective erosion prevention and sediment control practices were implemented and maintained during construction and best management practices were incorporated into any associated stormwater plans/permits (Hennepin County 2014).

### ***Habitat and Water Quality***

County State Aid Highway 61/Flying Cloud Drive was an expansion of an existing roadway corridor, although this is a new right-of-way permit. As such, we expected the project area would have minimal additional fragmentation impacting wildlife. The road did not shift alignment, but rather widened along the existing centerline to reduce impacts along the roadway. Since the previously existing County State Aid Highway 61/Flying Cloud Drive alignment was expanded, we expected continued exposure to items that were already impacting the area (U.S. Fish and Wildlife Service 2016). To ensure that the construction and maintenance of the proposed action would not cause adverse effects to habitat and water quality, measures such as slight alignment shifts, steep side slopes, installation of guardrail and storm water treatment best management practices were included in the design to avoid and minimize additional impacts (U.S. Fish and Wildlife Service 2016). To protect vegetation that lies outside of the construction limits, Hennepin County consulted with the Minnesota Department of Transportation's Standard Specification for Construction. Standard 2572, Protection and Restoration of Vegetation was followed, including, but not limited to, measures such as the use of temporary fence for tree protection and unique/rare vegetation protection (Minnesota Department of Transportation 2014).

Ground disturbance may have increased risk of invasive species introduction during the construction phase. Avenues of invasion may have included bringing equipment to the project area, bringing fill materials to the project area, movement of seeds and plant fragments within the site and through soil disturbance, which can provide an opportunity for invasive plants to take hold. Within the County State Aid Highway 61/Flying Cloud Drive right-of-way permit area, natural resources could have been affected by invasive species such as purple loosestrife, reed canary grass, buckthorn and leafy spurge. To minimize impacts, Hennepin County followed construction best management practices to control and prevent the spread of

invasive species. It is not anticipated that invasive species will increase during maintenance activities as maintenance will occur on paved areas of the roadway and not on refuge lands.

Water Quality Certification was coordinated with the Minnesota Pollution Control Agency, and Section 404 of the Clean Water Act permitting was authorized by the U.S. Army Corps of Engineers for the project area. All wetland and water quality impacts were either avoided, minimized or mitigated as a result of the consultation with lead agencies regulating water quality within the permit area. As such, no long-term impacts to water quality were, or are anticipated.

### ***Visitor Use and Experience***

Visitor experiences were temporarily affected within the project area during the widening as temporary road closures occurred. Several handicap accessible activities are featured within the refuge including paved nature trails and wheelchair accessible hunting blinds. The handicap accessible hunting blinds on the refuge are located immediately adjacent to project lands and access roads to these accessible hunting areas are located off County State Aid Highway 61/Flying Cloud Drive within the segment of highway that was reconstructed. Hennepin County maintained accommodation to the extent practicable for handicap accessible hunt areas during the project. Maintenance that will occur in the future will be completed in every effort to minimize impacts to hunters trying to gain access to accessible hunting areas as these areas are limited.

Access to the refuge property is gained from many locations including County State Aid Highway 61/Flying Cloud Drive. Access drives, pull-offs and parking areas are provided for walk-in access to areas that can be used by the public for wildlife-dependent recreational uses. The access points are also used by the refuge staff for refuge operation and maintenance purposes.

### **Long-term impacts**

This compatibility determination includes the written analyses of the environmental consequences on a resource only when long-term impacts on that resource could be more than negligible and therefore considered an “affected resource.” Threatened and endangered species, geology and soils, air quality, floodplains, wilderness, cultural resources, refuge management and operations, and socioeconomics will not be more than negligibly impacted long-term by the action and have been dismissed from further analyses.

### ***Migratory Birds and Other Wildlife Resources***

While construction-related effects to the project area were considered temporary, there is long-term disturbance affiliated with expansion of the road corridor. The presence of people on the roadways and additional visitor use from improved access points is anticipated. However, this use is primarily observational as it does not actively facilitate additional foot or bicycle traffic onto refuge lands. The presence of additional people can lead to some displacement of animals around these areas. However, disturbance usually is a negligible influence on large mammal distributions and movements (Purdy et al. 1987, Boyle and Samson 1985). Since the road corridor existed previously and the high-quality habitat next to the roadway has remained undisturbed, there should not be any long-lasting impacts to migratory birds or wildlife.

### ***Habitat and Water Quality***

Roadway expansion and granting of the right-of-way widened the existing roadway corridor. No alignment change was proposed. The expansion of the existing linear corridor avoided dividing intact habitat by restricting impacts to the fringe edges of habitat. The additional best management practices of protecting vegetation, limited tree removal and aligning the road along the existing centerline all minimized habitat fragmentation resulting from this project.

The proposed 8.02-acre right-of-way resulted in 2.2 acres of direct wetland impact on the refuge. Based on preliminary design review, these acres were not expected to result in a significant impact to the refuge or surrounding wetlands (U.S. Fish and Wildlife Service 2016). These wetlands were considered low-quality due to proximity to the roadway. All wetland impacts were mitigated through appropriate regulatory agencies. On-site mitigation of wetland impacts was determined to not be feasible within the project area, wetland credits were purchased to mitigate wetland impacts within the same watershed as the project impacts. Wetlands in Minnesota are protected by federal law (the Clean Water Act – Section 404) and state law (Minnesota Wetland Conservation Act and Executive Orders) that mandate “no net loss” of wetland functions and values. These federal and state laws require the avoidance of wetland impacts when possible, and when avoidance is not possible, impacts must be minimized and compensated. Hennepin County previously consulted with, and was permitted by, federal and state laws for the wetland impacts that occurred resulting from this project. The Minnesota Wetland Conservation Act requires mitigation of wetland impacts be provided at a minimum 2:1 ratio of functional wetland to impact area.

Prior to expansion of County State Aid Highway 61/Flying Cloud Drive the storm water runoff from impervious roadway surfaces drained into waterbodies within the refuge and the Minnesota River. The project resulted in additional impervious surface due to the expansion of the lanes, as well as the off-refuge multi-use trail on the north side of the project, design features to collect, convey and treat roadway runoff in accordance with state and local requirements. Infiltration and wet ponds were installed to mitigate wetland loss by creating new wetlands with the purposes of improving overall water quality of the current highway runoff, so additional impacts resulting from the impervious surface are not anticipated due to improved designs. Permitting for this project was provided by a Water Quality Certification by Minnesota Pollution Control Agency.

### ***Visitor Use and Experience***

The County State Aid Highway 61/Flying Cloud Drive expansion improved access points to the refuge along the highway corridor through safety and mobility improvements. Visitor experience was enhanced by providing more suitable access off the roadway onto refuge lands. It is not anticipated that visitor numbers increased or decreased to this unit resulting from this improvement project as no further improvements, hiking trails or parking lots were created. No visitor conflicts are anticipated resulting from this improvement project either.

## **Public Review and Comment**

The County State Aid Highway 61/Flying Cloud Drive Reconstruction Project development process included a public and agency involvement program that was initiated at the on-set of the study and was ongoing and active throughout the project development process. There were several elements to the involvement program, each of which is summarized below.

### **Open House Meetings**

Three open houses regarding the project were held on the following dates:

- Open house #1: April 18th, 2013
- Open house #2: August 14th, 2013
- Open house #3: December 10, 2013

The purpose was to provide information to the public, receive comments and answer questions regarding the proposed project.

Press releases, one-on-one property owner meetings, a project web page and agency meetings were all coordinated by Hennepin County for the project.

This draft compatibility determination will be available for public review and comment for 15 days from (insert date) to (insert date). The public will be made aware of this opportunity to comment through refuge social media. A hard copy of this document will be posted the Bloomington Education and Visitor Center at 3815 American Boulevard East, Bloomington, MN 55425. It will be made available electronically on the refuge website <https://www.fws.gov/refuge/minnesota-valley>. Concerns expressed during the public comment period will be addressed in the final Compatibility Determination.

## **Determination**

Is the use compatible?

Yes

### **Stipulations Necessary to Ensure Compatibility**

To ensure compatibility with the National Wildlife Refuge System and refuge goals and objectives and to minimize or exclude adverse impacts as described above, the activity was given authorization to occur only occur under a number of stipulations:

1. The project complied with other Federal, State and local permitting requirements and regulations relating to environmental and cultural resource protection. Specifically, the project was in compliance with the permit requirements from other federal and state entities and after the fact Intra-Service Section 7 (U.S. Fish and Wildlife Service 2022).
2. Hennepin County followed guidelines outlined in the right-of-way permit for maintenance. Terms and conditions of the right-of-way permit will allow for modifications to ensure compatibility (603 Compatibility Determination 4 FW 2.11(H)(3)).
3. Refuge lands temporarily disturbed during the construction process were revegetated with native species appropriate for floodplain habitats.
4. The project was constructed as designed and is maintained by Hennepin County.
5. Any future maintenance activities will require a Special Use Permit signed by the Refuge Manager. These activities must comply with permit requirements from other federal and state entities and if required, an updated Intra-Service Section 7.

## **Justification**

The stipulations outlined above would help ensure that the use is compatible at Minnesota Valley National Wildlife Refuge. Granting a right-of-way permit to Hennepin County for the construction, operation and maintenance of the expansion of County State Aid Highway 61/Flying Cloud Drive on Minnesota Valley National Wildlife Refuge, 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. Where able, the county incorporated modifications into the design of the proposed roadway improvements to avoid and minimize impacts to wildlife habitat, rare plant communities, and sensitive ecological resources (Hennepin County 2014). Measures were also put in place to minimize and mitigate any effects to wildlife and habitat.

Based on available science and best professional judgement, the Service has determined that granting a right-of-way to Hennepin County for the construction, operation and maintenance of County State Aid Highway 61/Flying Cloud Drive at Minnesota Valley National Wildlife Refuge, 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 Minnesota Valley National Wildlife Refuge. Rather, appropriate and compatible granting a right-of-way permit to Hennepin County for the construction, operation and maintenance of expansion of County State Aid Highway 61/Flying Cloud Drive would meet the Minnesota Valley National Wildlife Refuge purpose and authorizing legislation.

The Minnesota Valley National Wildlife Refuge Act, which established the refuge, includes a “continued public services” section. This section allows vital public service activities to be implemented on refuge lands, including “the construction, improvement, and replacement of highways and bridges, whether or not the highway is a Federal-aid highway” (16 U.S.C. 668kk). Safety corridor improvements, removal of the roadway from the 100-year floodplain and enhanced access points to the refuge constitutes a continued vital public service for these activities and other recreational uses of the refuge.

## **Signature of Determination**

Refuge Manager Signature and Date



## Signature of Concurrence

Assistant Regional Director Signature and Date

## **Mandatory Reevaluation Date**

2073. The compatibility determination will be reevaluated 50 years from the date the right-of-way permit is signed.

## **Literature Cited/References**

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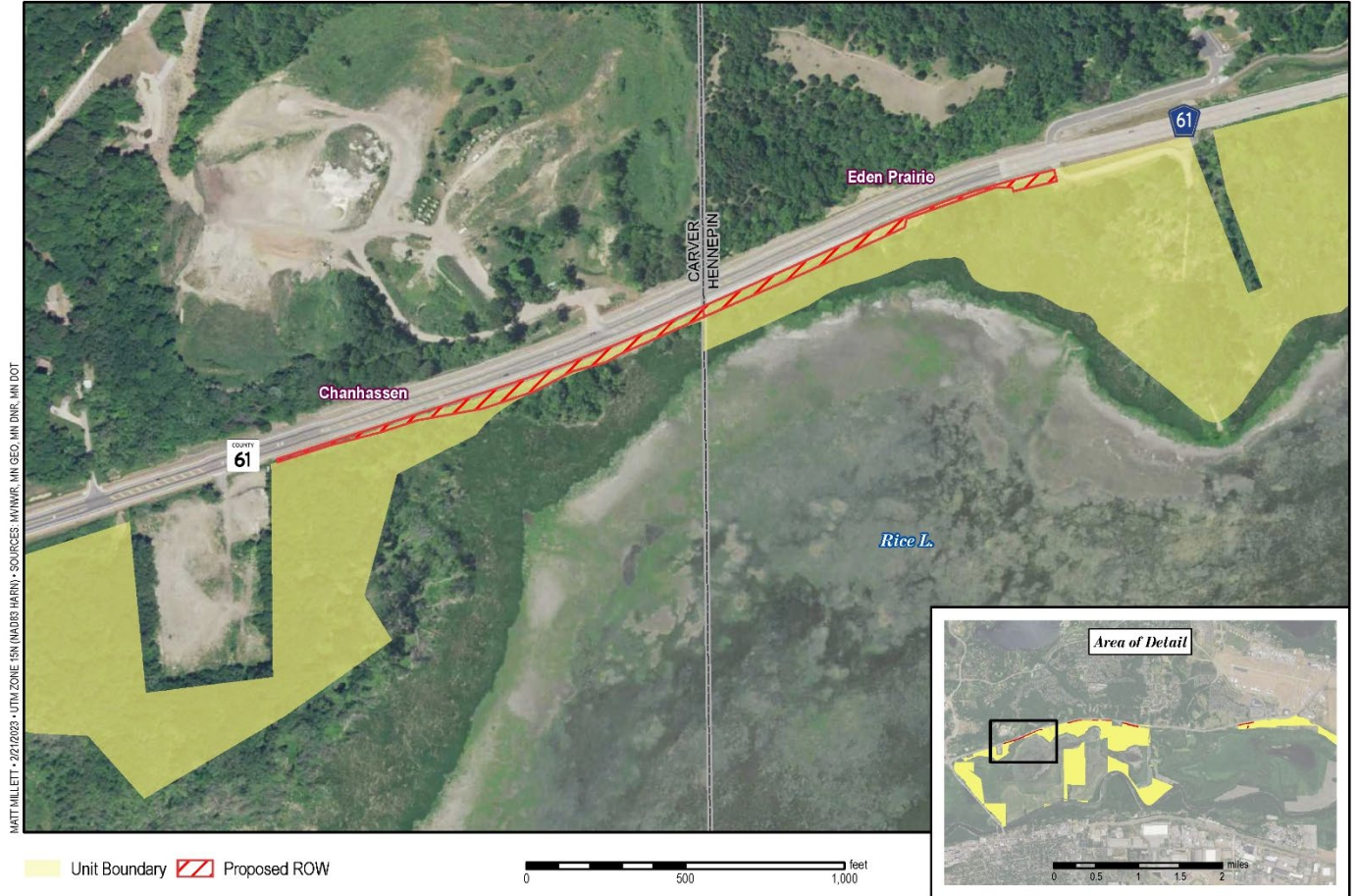
# Figures



NATIONAL  
**WILDLIFE**  
REFUGE SYSTEM

Minnesota Valley National Wildlife Refuge

Upgrala Unit



*Figure 1: Western Portion of County State Aid Highway 61/Flying Cloud Drive  
Proposed Right-of-way Estimated Project Area*

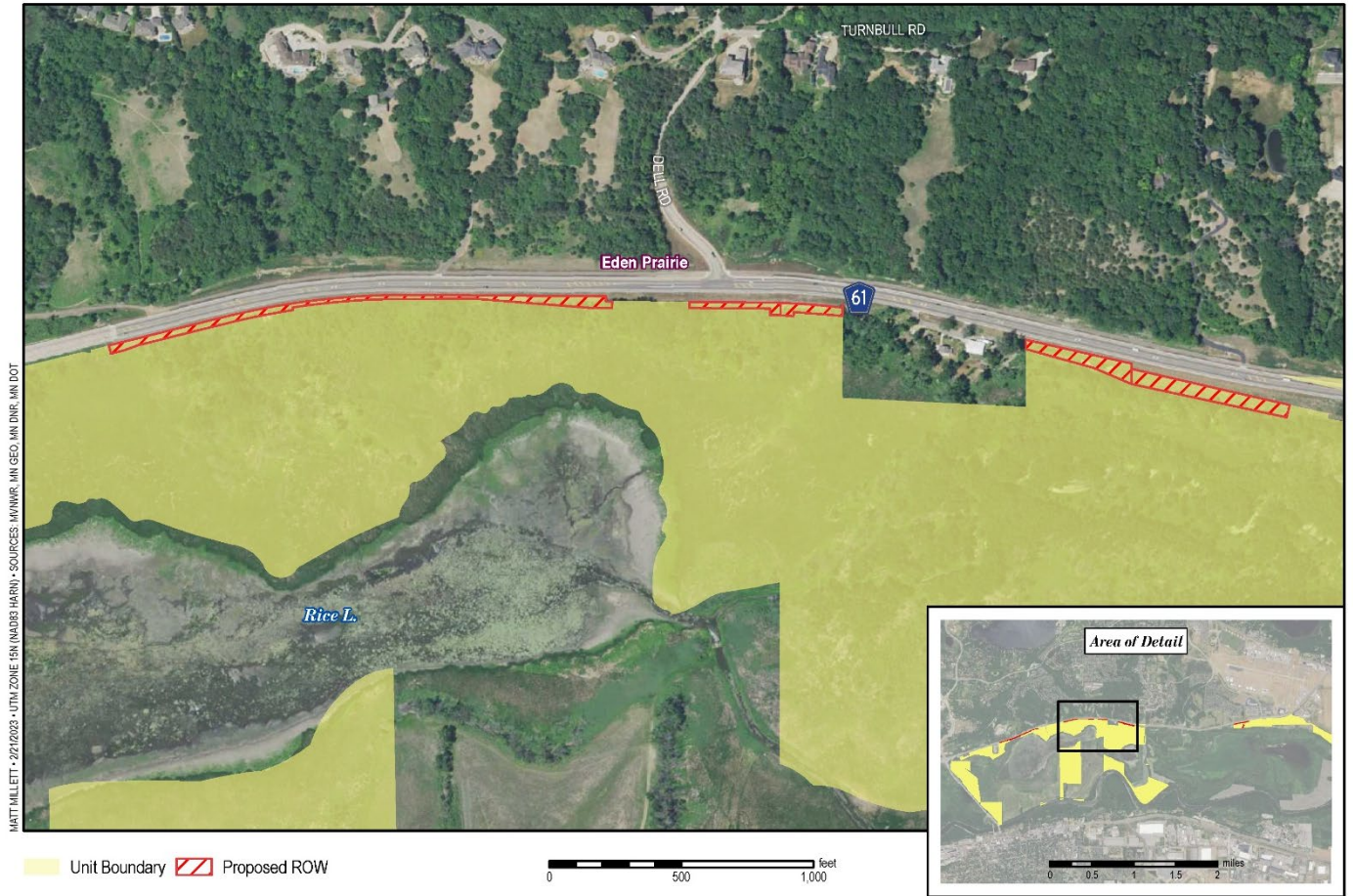


Figure 2: Central Portion of County State Aid Highway 61/Flying Cloud Drive  
Proposed Right-of-way Estimated Project Area



Figure 3: Eastern Portion of County State Aid Highway 61/Flying Cloud Drive Proposed Right-of-way Estimated Project Area