



*City Council Memorandum*

**To: Mayor Fasbender & City Councilmembers**  
**From: Chris Jenkins, Parks & Recreation Director**  
**Date: June 5, 2023**  
**Item: MnDOT Limited Use Permit**

**Council Action Requested:** Adopt Resolution approving an updated Limited Use Permit for the Vermillion River Greenway Trail under Hwy 61 Vermillion River bridge.

**Background Information:** The City has an existing Limited User Permit (LUP) for the trail segment passing under the Hwy 61 Vermillion River bridge since 2004, however MnDOT and federal requirements for LUP's have changed. The updated LUP is, at its core, a language update to ensure compliance with current laws and requirements.

**Financial Impact:** None

**Advisory Commission Discussion:** N/A

**Council Committee Discussion:** N/A

**Attachments:**

- Termination Letter
- Resolution
- Updated Limited Use Permit



Metro District Right of Way  
1500 W. County Road B2  
Roseville, MN 55113

Office Tel: 651-234-7500  
Fax: 651-234-7708

May 19, 2023

Mayor Mary Fasbender  
City of Hastings  
Hastings City Hall  
101 E 4th Str  
Hastings, MN 55033

Subject: C.S. 1913 (T.H. 61)  
LUP # 1913-013  
Limited Use Permit for Non-Motorized Trail  
Termination Notice

Dear Mayor Fasbender:

This letter serves as MnDOT's formal notice to terminate the Limited Use Permit referred to as #1913-013 by and between the State of Minnesota, Department of Transportation (MnDOT) and the City of Hastings.

Since it's issuance in 2004, Federal and State policy regarding Limited Use Permits has changed. To bring the City into compliance with current Federal and State regulations and policies, MNDOT will issue LUP # 1913-0119, included with this letter.

Effective on issuance of Limited Use Permit # 1913-0119, MnDOT terminates Limited Use Permit and such permit is null and void effective on such date.

If you have any questions or concerns, please contact me at: 651-234-7586 or e-mail [Lisa.Dircks@state.mn.us](mailto:Lisa.Dircks@state.mn.us).

Sincerely,

Lisa Dircks  
Limited Use Permit Coordinator

**CITY OF HASTINGS**  
Dakota Count, Minnesota

Resolution No. 06- -23

**RESOLUTION TO ENTER INTO AND EXECUTE A LIMITED USE PERMIT WITH THE MINNESOTA DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF MAINTAINING AND OPERATING A NONMOTORIZED TRAIL WITHIN THE RIGHT-OF-WAY CROSSING BENEATH THE TH 61 VERMILLION RIVER BRIDGE**

**WHEREAS**, the City of Hastings requests to work cooperatively with MnDOT to maintain and operate a nonmotorized trail within the right of way of Trunk Highway 61 crossing beneath the Vermillion River bridge; and,

**WHEREAS**, said trail is a 12ft. wide concrete trail with a safety rail through the MnDOT right of way beneath the Trunk Highway 61 Vermillion River bridge; and

**WHEREAS**, the Minnesota Department of Transportation requires Limited Use Permits for trails within their rights-of-way:

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HASTINGS AS FOLLOWS;** that the Mayor and the City Clerk are authorized to execute the Limited Use Permit and its amendments, and that the City of Hastings enter into Limited Use Permit No. 1913-0119 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for maintenance and use by the City of Hastings upon, along and adjacent to Trunk Highway No. 61 and the limits of which are defined in said Limited Use Permit.

**ADOPTED BY THE CITY COUNCIL OF HASTINGS, MINNESOTA, THIS 5<sup>TH</sup> DAY OF JUNE, 2023.**

\_\_\_\_\_  
Mary D. Fasbender, Mayor

Attest:

\_\_\_\_\_  
Kelly Murtaugh, City Clerk

**CERTIFICATION**

I certify that the above Resolution is an accurate copy of the Resolution adopted by the City Council of the City of Hastings, Minnesota at an authorized meeting held on the 5th day of June, 2023, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2023

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_

NOTARY  
STAMP

C.S. 1913 (T.H. 61)  
LUP # 1913-0119

**STATE OF MINNESOTA  
DEPARTMENT OF TRANSPORTATION**

**LIMITED USE PERMIT**

C.S. 1913 (T.H. 61)  
County of Dakota  
LUP # 1913-0119  
Permittee: City of Hastings  
Expiration Date: 05/19/2033  
Coop./Const. Agmt #N/A

In accordance with Minnesota Statutes Section 161.434, the State of Minnesota, through its Commissioner of Transportation, ("MnDOT"), hereby grants a Limited Use Permit (the "LUP") to City of Hastings, ("Permittee"), to use the area within the right of way of Trunk Highway No. 61 as shown in red on Exhibit "A", (the "Area") attached hereto and incorporated herein by reference. This Limited Use Permit is executed by the Permittee pursuant to resolution, a certified copy of which is attached hereto as Exhibit B.

**Non-Motorized Trail**

The Permittee's use of the Area is limited to only the constructing, maintaining and operating a nonmotorized trail ("Facility") and the use thereof may be further limited by 23 C.F.R. 652 also published as the Federal-Aid Policy Guide.

The permittee agrees that this permit totally replaces and supersedes the previously issued Limited Use permit affecting the Area, specifically: Permit, #1913-013, was issued on January 29, 2004 on CS 1913 (TH 61). Upon issuance of this permit the earlier issued permits is cancelled.

In addition, the following special provisions shall apply:

**SPECIAL PROVISIONS**

1. **TERM.** This LUP terminates at 11:59PM on 05/19/2033 ("Expiration Date") subject to the right of cancellation by MnDOT, with or without cause, by giving the Permittee ninety (90) days written notice of such cancellation. This LUP will not be renewed except as provided below.

Provided this LUP has not expired or terminated, MnDOT may renew this LUP for a period of up to ten (10) years, provided Permittee delivers to MnDOT, not later than ninety (90) days prior to the Expiration Date, a written request to extend the term. Any extension of the LUP term will be under the same terms and conditions in this LUP, provided:

- (a) At the time of renewal, MnDOT will review the Facility and Area to ensure the Facility and Area are compatible with the safe and efficient operation of the highway and the Facility and Area are in good condition and repair. If, in MnDOT's sole determination, modifications and repairs to the Facility and Area are needed, Permittee will perform such work as outlined in writing in an amendment of this LUP; and
- (b) Permittee will provide to MnDOT a certified copy of the resolution from the applicable governmental body authorizing the Permittee's use of the Facility and Area for the additional term.

If Permittee's written request to extend the term is not timely given, the LUP will expire on the Expiration Date.

Permittee hereby voluntarily releases and waives any and all claims and causes of action for damages, costs, expenses, losses, fees and compensation arising from or related to any cancellation or termination of this LUP by MnDOT. Permittee agrees that it will not make or assert any claims for damages, costs, expenses, losses, fees and compensation based upon the existence, cancellation or termination of the LUP. Permittee agrees not to sue or institute any legal action against MnDOT based upon any of the claims released in this paragraph.

2. **REMOVAL.** Upon the Expiration Date or earlier termination, at the Permittee's sole cost and expense Permittee will:

- (a) Remove the Facility and restore the Area to a condition satisfactory to the MnDOT District Engineer; and
- (b) Surrender possession of the Area to MnDOT.

If, without MnDOT's written consent, Permittee continues to occupy the Area after the Expiration Date or earlier termination, Permittee will remain subject to all conditions, provisions, and obligations of this LUP, and further, Permittee will pay all costs and expenses, including attorney's fees, in any action brought by MnDOT to remove the Facility and the Permittee from the Area.

3. **CONSTRUCTION.** The construction, maintenance, and supervision of the Facility shall be at no cost or expense to MnDOT.

Before construction of any kind, the plans for such construction shall be approved in writing by the MnDOT's District Engineer. Approval in writing from MnDOT District Engineer shall be required for any changes from the approved plan.

The Permittee will construct the Facility at the location shown in the attached Exhibit "A", and in accordance with MnDOT-approved plans and specifications. Further, Permittee will construct the Facility using construction procedures compatible with the safe and efficient operation of the highway.

Upon completion of the construction of the Facility, the Permittee shall restore all disturbed slopes and ditches in such manner that drainage, erosion control and aesthetics are perpetuated.

The Permittee shall preserve and protect all utilities located on the lands covered by this LUP at no expense to MnDOT and it shall be the responsibility of the Permittee to call the Gopher State One Call System at 1-800-252-1166 at least 48 hours prior to performing any excavation.

Any crossings of the Facility over the trunk highway shall be perpendicular to the centerline of the highway and shall provide and ensure reasonable and adequate stopping sight distance.

4. MAINTENANCE. Any and all maintenance of the Facility shall be provided by the Permittee at its sole cost and expense, including, but not limited to, plowing and removal of snow and installation and removal of regulatory signs. No signs shall be placed on any MnDOT or other governmental agency sign post within the Area. MnDOT will not mark obstacles for users on trunk highway right of way.
5. USE. Other than as identified and approved by MnDOT, no permanent structures or no advertising devices in any manner, form or size shall be allowed on the Area. No commercial activities shall be allowed to operate upon the Area.

Any use permitted by this LUP shall remain subordinate to the right of MnDOT to use the property for highway and transportation purposes. This LUP does not grant any interest whatsoever in land, nor does it establish a permanent park, recreation area or wildlife or waterfowl refuge. No rights to relocation benefits are established by this LUP.

This LUP is non-exclusive and is granted subject to the rights of others, including, but not limited to public utilities which may occupy the Area.

6. APPLICABLE LAWS. This LUP does not release the Permittee from any liability or obligation imposed by federal law, Minnesota Statutes, local ordinances, or other agency regulations relating thereto and any necessary permits relating thereto shall be applied for and obtained by the Permittee.

Permittee at its sole cost and expense, agrees to comply with, and provide and maintain the Area, Facilities in compliance with all applicable laws, rules, ordinances and regulations issued by any federal, state or local political subdivision having jurisdiction and authority in connection with said Area including the Americans with Disabilities Act ("ADA"). If the Area and Facilities are not in compliance with the ADA or other applicable laws MnDOT may enter the Area and

perform such obligation without liability to Permittee for any loss or damage to Permittee thereby incurred, and Permittee shall reimburse MnDOT for the cost thereof, plus 10% of such cost for overhead and supervision within 30 days of receipt of MnDOT's invoice.

7. **CIVIL RIGHTS.** The Permittee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event improvements are constructed, maintained, or otherwise operated on the Property described in this Limited Use Permit for a purpose for which a MnDOT activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Permittee will maintain and operate such improvements and services in compliance with all requirements imposed by the Acts and Regulations relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation, Federal Highway Administration, (as may be amended) such that no person on the grounds of race, color, national origin, sex, age, disability, income-level, or limited English proficiency will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said improvements.
8. **SAFETY.** MnDOT shall retain the right to limit and/or restrict any activity, including the parking of vehicles and assemblage of Facility users, on the highway right of way over which this LUP is granted, so as to maintain the safety of both the motoring public and Facility users.
9. **ASSIGNMENT.** No assignment of this LUP is allowed.
10. **IN WRITING.** Except for those which are set forth in this LUP, no representations, warranties, or agreements have been made by MnDOT or Permittee to one another with respect to this LUP.
11. **ENVIRONMENTAL.** The Permittee shall not dispose of any materials regulated by any governmental or regulatory agency onto the ground, or into any body of water, or into any container on the State's right of way. In the event of spillage of regulated materials, the Permittee shall notify in writing MnDOT's District Engineer and shall provide for cleanup of the spilled material and of materials contaminated by the spillage in accordance with all applicable federal, state and local laws and regulations, at the sole expense of the Permittee.
12. **MECHANIC'S LIENS.** The Permittee (for itself, its contractors, subcontractors, its materialmen, and all other persons acting for, through or under it or any of them), covenants that no laborers', mechanics', or materialmen's liens or other liens or claims of any kind whatsoever shall be filed or maintained by it or by any subcontractor, materialmen or other person or persons acting for, through or under it or any of them against the work and/or against said lands, for or on account of any work done or materials furnished by it or any of them under any agreement or any amendment or supplement thereto.



13. NOTICES. All notices which may be given, by either party to the other, will be deemed to have been fully given when served personally on MnDOT or Permittee or when made in writing addressed as follows: to Permittee at:

Mayor  
City of Hastings  
101 4th Street  
Hastings, MN 55033

and to MnDOT at:

State of Minnesota  
Department of Transportation  
Metro District Right of Way  
1500 W. County Road B2  
Roseville, MN 55113

The address to which notices are mailed may be changed by written notice given by either party to the other.

14. INDEMNITY. Permittee shall indemnify, defend to the extent authorized by the Minnesota Attorney General's Office, hold harmless and release the State of Minnesota, its Commissioner of Transportation and employees and any successors and assigns of the foregoing, from and against:
- (a) all claims, demands, and causes of action for injury to or death of persons or loss of or damages to property (including Permittee's property) occurring on the Facility or connected with Permittee's use and occupancy of the Area, except when such injury, death, loss or damage is caused solely by the negligence of State of Minnesota, but including those instances where the State of Minnesota is deemed to be negligent because of its failure to supervise, inspect or control the operations of Permittee or otherwise discover or prevent actions or operations of Permittee giving rise to liability to any person;
  - (b) claims arising or resulting from the temporary or permanent termination of Facility user rights on any portion of highway right of way over which this LUP is granted;
  - (c) claims resulting from temporary or permanent changes in drainage patterns resulting in flood damages;
  - (d) any laborers', mechanics', or materialmens' liens or other liens or claims of any kind whatsoever filed or maintained for or on account of any work done or materials furnished; and
  - (e) any damages, testing costs and clean-up costs arising from spillage of regulated materials attributable to the construction, maintenance or operation of the Facility.

MINNESOTA DEPARTMENT  
OF TRANSPORTATION  
RECOMMENDED FOR APPROVAL

By: \_\_\_\_\_  
District Engineer

Date \_\_\_\_\_

APPROVED BY:  
COMMISSIONER OF TRANSPORTATION

By: \_\_\_\_\_  
Director, Office of Land Management

Date \_\_\_\_\_

CITY OF HASTINGS

By \_\_\_\_\_

Its Mayor

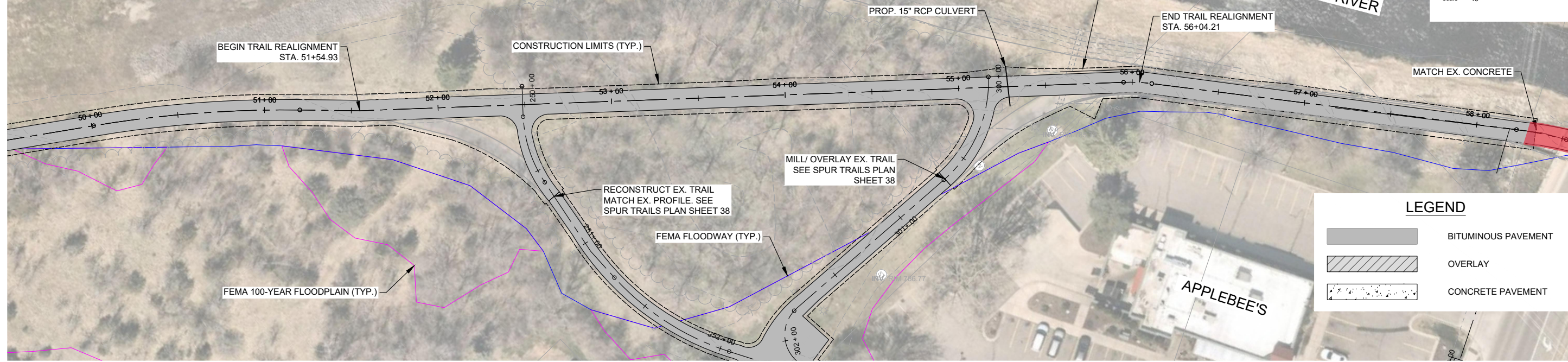
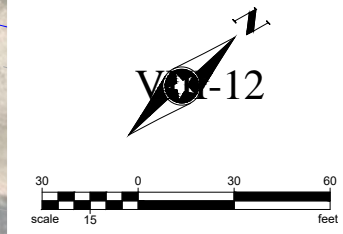
And \_\_\_\_\_

Its City Clerk

The Commissioner of Transportation  
by the execution of this permit  
certifies that this permit is  
necessary in the public interest  
and that the use intended is for  
public purposes.

- GENERAL NOTES:
1. TRAIL RUNNING SLOPE SHALL NOT EXCEED 5.0% UNLESS OTHERWISE SHOWN ON PLANS.
  2. TRAIL TARGET CROSS SLOPE SHALL NOT EXCEED 2.0%.
  3. CONTRACTOR SHALL BE RESPONSIBLE FOR CORRECTING ALL NON-COMPLIANT RUNNING AND CROSS SLOPES.

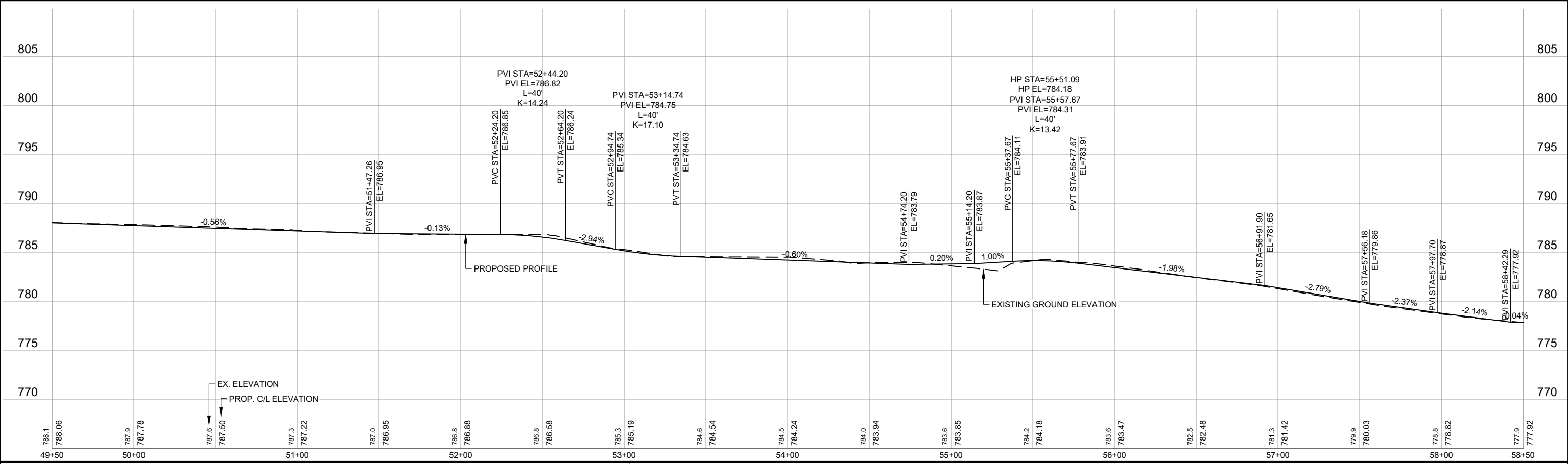
# LUP 1913-0119 Exhibit A Sheet 1 of 2



**LEGEND**

- BITUMINOUS PAVEMENT
- OVERLAY
- CONCRETE PAVEMENT

## VERMILLION RIVER GREENWAY



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SEH Project	DAKOT 167882	Rev.#	Revision Issue Description	Date	Rev.#	Revision Issue Description	Date
Drawn By	SS29	.	.	.	.	.	.
Designed By	NMB	.	.	.	.	.	.
Checked By	WB	.	.	.	.	.	.

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

**PRELIMINARY**

BLAKE K. HENSEN, P.E.  
DATE: XX-XX-XX LICENSE NO. 58904

**VERMILLION RIVER GREENWAY**  
HASTINGS, MN

**TRAIL PLAN & PROFILE**  
**VERMILLION RIVER LINEAR PARK TO FALLS PARK**

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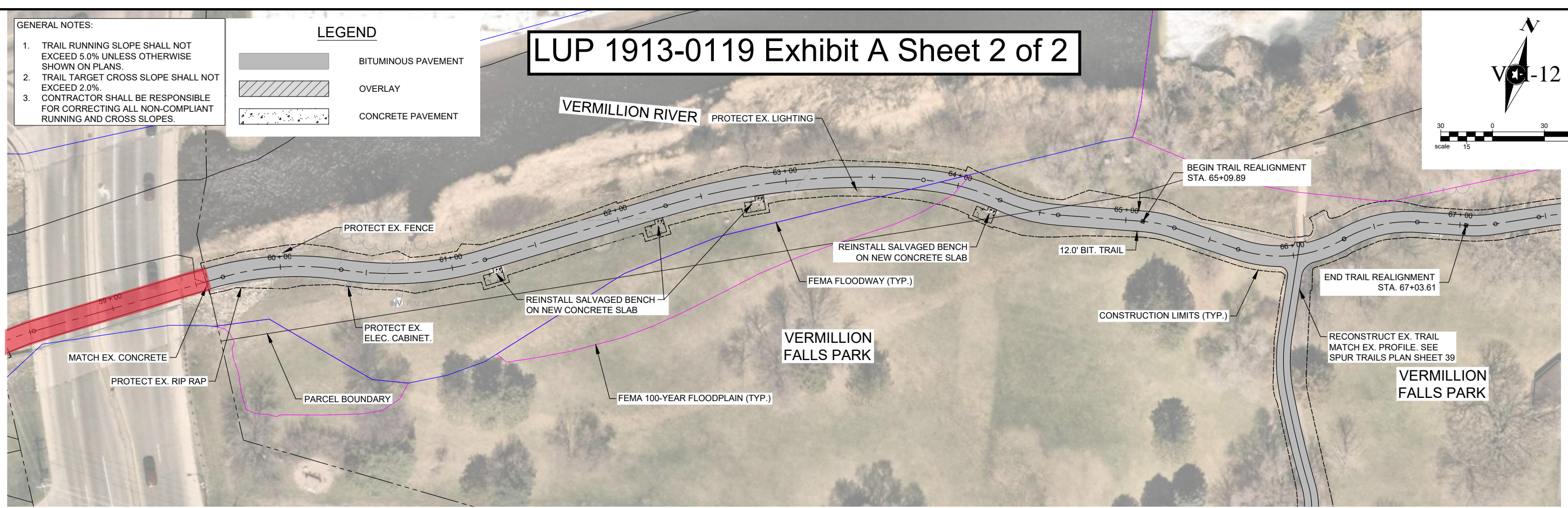
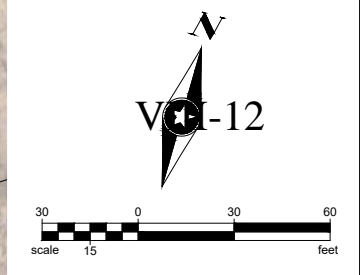


# LUP 1913-0119 Exhibit A Sheet 2 of 2

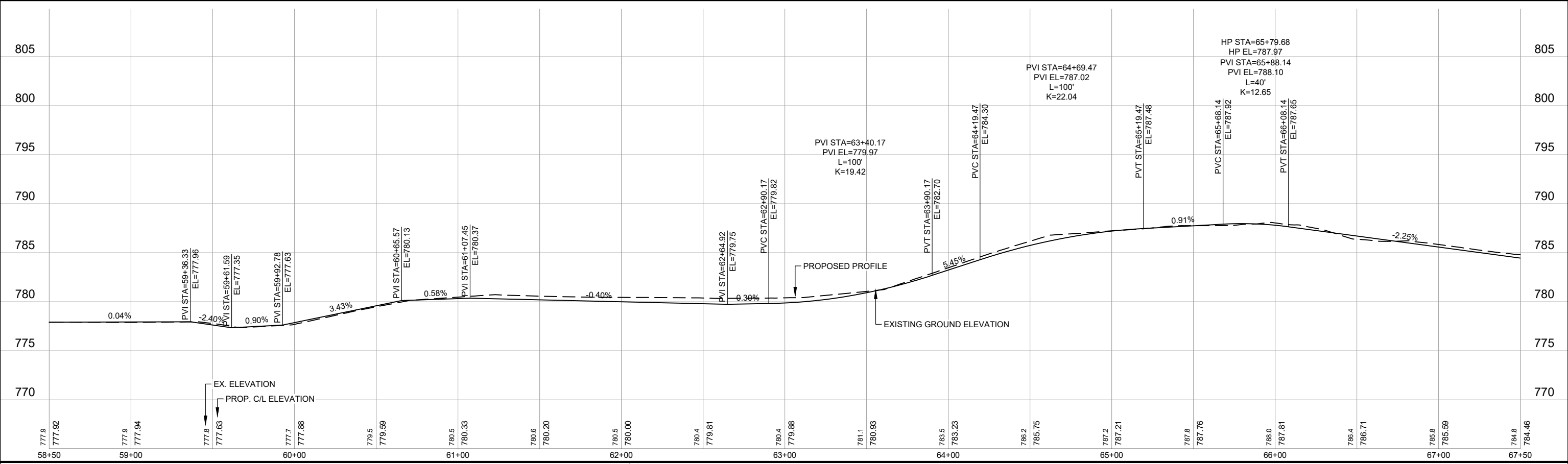
- GENERAL NOTES:**
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  - TRAIL TARGET CROSS SLOPE SHALL NOT EXCEED 2.0%.
  - CONTRACTOR SHALL BE RESPONSIBLE FOR CORRECTING ALL NON-COMPLIANT RUNNING AND CROSS SLOPES.

**LEGEND**

- BITUMINOUS PAVEMENT
- OVERLAY
- CONCRETE PAVEMENT



## VERMILLION RIVER GREENWAY



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SEH Project	DAKOT 167882	Rev.#	Revision Issue Description	Date	Rev.#	Revision Issue Description	Date
Drawn By	SS30	.	.	.	.	.	.
Designed By	NMB	.	.	.	.	.	.
Checked By	WB	.	.	.	.	.	.

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

**PRELIMINARY**

BLAKE K. HENSEN, PE  
DATE: XX-XX-XX LICENSE NO. 58904

**VERMILLION RIVER GREENWAY**  
HASTINGS, MN

**TRAIL PLAN & PROFILE**  
**VERMILLION RIVER LINEAR PARK TO FALLS PARK**

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