

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: July 11, 2013 Agenda Item # 2

Company: Stoneray Power Partners, LLC / EDF Renewable Energy, LLC

Docket Nos. IP-6646/WS-13-216

In the Matter of the Application of Stoneray Power Partners, LLC for a Large Wind Energy Conversion (LWECS) Site Permit for a 105 MW Wind Project in Pipestone and Murray Counties

Issue(s): Should the Commission find the application complete and accept, conditionally accept, or reject the application? Should the Commission provide any other procedural guidance? Should the Commission vary Minnesota Rule 7854.0800 to allow more time for a preliminary determination that a Site Permit may be issued or should be denied? Should the Commission appoint a Public Advisor?

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Relevant Documents

Minn. Stat. §216F - Wind Energy Conversion Systems

Minn. Rules, part 7854 – Site Permit; Large Wind Energy System

Stoneray Power Partners, LLC – Site Permit Application (20136-88015-02) June 10, 2013
Department of Commerce – Comments on Completeness June 21, 2013

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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I. Statement of Issues

1. Should the Commission find the application complete and accept, conditionally accept, or reject the application?
2. Should the Commission provide any other procedural guidance?
3. Should the Commission vary Minnesota Rule 7854.0800 to allow more time for a preliminary determination that a Site Permit may be issued or should be denied?
4. Should the Commission appoint a Public Advisor?

I. Procedural Background

Stoneray Power Partners, LLC (Stoneray or the Applicant) is proposing a 105 megawatt (MW) LWECs facility in Pipestone and Murray Counties.

On June 11, 2013 Stoneray filed an application for a LWECs Site Permit. On the same day, the Commission issued a notice soliciting comments on the completeness of the application. The initial comment period ended on June 21 and the reply comment period ended on June 28.

On June 21, 2013 the Department of Commerce Energy Facilities Permitted Staff (DOC EFP) filed comments on the completeness of the application.

No reply comments were received.

II. Laws and Rules

Site Permit and Certificate of Need

The proposed wind project is considered a large wind energy conversion facility pursuant to Minn. Stat. 216F and subject to the Minn. Rules found in Chapter 7854. Therefore a Site Permit is required to be obtained from the Commission prior to construction. A Certificate of Need is required since it qualifies as a large energy facility as defined by Minnesota Statute (see staff briefing paper for Item Number 1 on the same agenda).

Content Requirements

The Site Permit application content requirements are found in Minn. Rule 7854.0500. Pursuant to Rule, the Commission could accept, conditionally accept, or reject the application. If the Commission conditionally accepts the application, the Commission must advise the applicant of the deficiencies to be addressed.

Public Advisor

Minnesota Rule, part 7854.0700 requires the Commission to designate a staff person to act as the public advisor on the Project upon acceptance of the Site Permit Application.

Draft Site Permit

Minnesota Rule 7854.0800 provides that the Commission shall make a preliminary determination on whether a permit may be issued or should be denied within 45 days after acceptance of the application. If the preliminary determination is to issue a permit, the Commission shall prepare a draft Site Permit for the Project. The draft Site Permit must identify the Permittee, the proposed LWECS, and proposed permit conditions. Issuance of a draft Site Permit provides no authorization to construct an LWECS and does not restrict the Commission in any way from changing the terms and conditions of the permit at final issuance, if issued.

III. *Stoneray Power Partners, LLC Site Permit Application*

On June 10, 2013 Stoneray filed an application with the Commission for a LWECS Site Permit for the 105 MW Stoneray Wind Project. The proposed site is located near the community of Woodstock and the majority of the project is to be located in Rock and Burke Townships, however parts of the project footprint encompass Chanarambie and Cameron Townships. The total project area is approximately 29,500 acres and the Applicant and EDF Renewables have over 18,000 acres under site control. The project will consist of up to 62 wind turbines. Four turbine types are still under consideration which range in size from 1.7 to 3.2 MW, the project will have a maximum total nameplate capacity of 105 MW. Associated facilities to the project include gravel access roads, an electrical collection system, temporary and permanent meteorological towers, a step-up substation, and possibly an operations and maintenance building.

Stoneray Power Partners, LLC is a wholly owned subsidiary of EDF Renewable Energy, which was formerly enXco Development Corporation.

The Applicant stated its intent to offer the electricity generated by the Project on the wholesale market to utilities or other entities that need energy generated from a renewable resource. The project is being developed to provide renewable energy and capacity to Minnesota utilities or other wholesale purchasers to aid utilities in meeting state renewable mandates in the region. Stoneray intends to begin construction by 2014 and commercial operation by the end of 2014.

As the Department provided in its comments, enXco Development Corporation was granted a site permit by the Environmental Quality Board in 2005 for the ‘105 MW Stoneray Wind Project’ in the same general vicinity. EDF has abandoned that approval and project and instead has applied for a new Site Permit from the Commission. At the time of the original Stoneray Wind Application, a CN was not required as the power sales agreements will result from Xcel’s Energy’s Wind Mandate and therefore, pursuant to 216B at that time, Stoneray believed that a CN was not required.

IV. *Comments*

A. Department of Commerce, Energy Facilities Permitting – Initial Comments

Completeness Review

The DOC EFP reviewed the application for completeness considering the rule requirements and DOC EFP’s application guidance document available on the DOC’s website. DOC EFP indicated it

had reviewed the Applicant's draft Site Permit Application that was received in March of 2013. The DOC EFP had a meeting with the Applicant in April of 2013, and the updated, official, June 2013 filing generally addresses the issues discussed. However, DOC EFP brings three areas to the Commission attention.

First, DOC EFP believes that the decommissioning section of the Site Permit application needs to be further developed. DOC EFP acknowledged that Site Permits contain a condition that requires that a final decommissioning plan shall be filed prior to the pre-construction meeting, however, the DOC EFP noted that Minnesota Rule 7854.0500 requires five specific application content requirements regarding decommissioning (anticipated project life, estimated decommission cost in current dollars, method and schedule for updating the decommissioning costs, method to ensure funds will be available, and anticipated manner in which the project will be decommissioned). DOC EFP believes that the information provided is scant on detail, specifically information on the cost of decommission in current dollars and the method of ensuring that funds will be available.

Second, DOC EFP noted that the application does not include an Avian and Bat Protection Plan (ABPP) or Bird and Bat Conservation Strategy (BBCS) and instead, the Applicant indicated that a plan would be completed prior to operation of the Project. DOC EFP staff noted that while an ABPP, or BBCS, is not anticipated to be filed at the time of initial application, the DOC EFP does believe that it has been the Commission's intention that, at a minimum, a plan would be developed and available at the Commission's draft permit issuance.

Third, DOC EFP requested two application clarifications be made. One, that the Applicant refiles their turbine layout maps with better descriptions of the turbine types on each map. And two, that the Applicant resubmit Figure 9 to the application with the map information overlaid onto a topographic background, the application filing had no background frame of reference. The original version presented to the DOC EFP staff used an aerial background which was in DOC EFP's opinion too much detail and the Applicant was asked to rectify.¹

DOC EFP concluded that the Application is complete, except for the considerations mentioned above. EFP staff requested that the Commission direct the applicant to honor requests for additional information as necessary. DOC EFP recommended the Commission conditionally accept the Application, to be considered complete upon receipt of the additional information on a Decommissioning Plan and when updated maps as described above have been efiled and mailed those persons who received hard copies of the application.

B. Reply Comments

No reply comments were received.

V. Staff Comment

Completeness

Staff has reviewed the Site Permit Application against the content requirements in Rule and has reviewed the DOC EFP comments. Staff agrees with the DOC EFP's recommendation that the application be conditionally accepted pending receipt of further information, at a minimum, further

¹ Two maps are attached to this briefing paper for Commissioner reference.

information regarding the decommissioning requirements as outlined in Minn. Rule 7854.0500 Subp. 13.

Plans for decommissioning are important aspects of a Site Permit Application. Staff believes it is important that more comprehensive information on decommissioning plans be provided by developers, rather than less.

Regarding the discussion on whether and when to submit a draft ABPP or BBCS during the permitting process, staff believes that DOC EFP is correct, in that in order for the Commission to determine whether a preliminary determination on whether a Site Permit can be issued the Applicant must provide the range of potential impacts and proposed mitigation measures prior to that determination. Providing a draft ABPP at this stage in the process allows time for the public, other governmental agencies and the DOC EFP the opportunity to comment on the mitigation measure proposed by the Applicant for the life of the project. This has not been a stringent requirement for previous wind cases due to the guidance materials on these issues being in a greater state of flux. At this time, however, guidance on bird and bat impacts has been issued by almost all relevant agencies and staff believes that the state of knowledge on these issues are at least minimally sufficient to provide this information early on during the permitting process.

As always, if further information is necessary to process the Application, it will be requested by the DOC EFP or Commission staff.

Process Guidance – Public Hearing

In most all joint CN and Site Permit Applications, the Commission has expanded the CN Public Hearing to encompass issues related to siting. Staff believes that practice is appropriate here and should be applied. Staff believes the public hearing is an important piece to fulfill Minn. Stat. § 216F.05 (5) which requires “the Commission to adopt rules governing the consideration of an application for a site permit for an LWECS that addresses the procedures for notification to the public of the application and for the conduct of a public information meeting and a public hearing on the proposed LWECS.”

Process Guidance – Referral to Office of Administrative Hearings (OAH)

In previous wind cases, it has been typical practice to not refer the matter to the OAH, but instead request the OAH to preside over the public hearing and provide a summary of comments received. However, recent past practice in all high voltage transmission line (HVTL) cases has been to refer the docket to the OAH for a “summary proceeding” and request that the Administrative Law Judge (ALJ) provide a summary of comments, proposed findings of fact, a recommendation to the Commission and a proposed Site Permit conditions. If the Commission elects to refer this matter to the OAH for this docket, staff suggests that the issue to be addressed is whether the proposed project meets the selection criteria established in Minn. Stat. 216F, and Minn. Rules Chapter 7854.

Further, if the matter is referred, staff recommends that the Commission request the ALJ to adapt the existing procedural framework set forth in Minn. Rule 7854 to include the following features, which will facilitate comprehensive factual development and informed decision-making:

1. The ALJ assigned to this matter emphasizes the statutory time frame for the Commission to make final decisions on applications and the ALJ strongly encourage the Applicant and others to adhere to a schedule that conforms to the statutory timeframe.
2. Directs Commission staff to formally contact relevant state agencies, and request their participation in the development of the record and public hearings.
3. Throughout the course of the proceedings, the Commission encourages the Administrative Law Judge to ask parties, participants, and the public to address whether the proposed project meets the selection criteria established in Minn. Stat. § 216F and Minn. Rules Chapter 7854.
4. The Commission requests that the DOC EFP submit any comments on the merits of the application and the record, as well as any recommendation(s), modifications to the draft permit language, under timelines established by the OAH.
5. The Commission requests the Administrative Law Judge to prepare a report setting forth findings, conclusions, and recommendations on proposed permit conditions and the merits of the project, applying the criteria set forth in statute and rule.

Project Timeframe

In its CN Application, Stoneray requested expedited processing by the Commission in order to qualify for the Production Tax Credit. Currently staff views the joint project schedule as follows:

| Estimated Timeframe | CN Application | Estimated Timeframe | Site Permit Application |
|----------------------------|---------------------------------|----------------------------|---|
| April 2013 | Application Submitted | June 2013 | Application Submitted |
| July 2013 | Commission Action on Acceptance | July 2013 | Commission Action on Acceptance |
| July 2013 | Comment Period on Merits Begins | July 2013 | Comment Period on Issues for Draft Permit Begins |
| Early August 2013 | Scoping Meeting | Early August 2013 | Information Meeting |
| August 2013 | Comment Period Closes | August 2013 | Initial Comment Period Closes |
| September 2013 | Scope Issued | Sept/Oct 2013 | Reply Comment Period Closes: DOC files technical analysis of Application and Files Draft Site Permit Language |
| Nov/Dec 2013 | Environmental Report Issued | Oct/Nov 2013 | Commission Decision on Draft Issuance |
| December 2013 | Public Hearing | December 2013 | Public Hearing |
| Dec/Jan 2013 | Comment Periods Close | Dec/Jan 2013 | Initial Comment Periods Close |
| | | January 2014 | Reply Comment Period Close: DOC files Post Hearing Technical Analysis, Applicant files response to hearing comments |
| Febraury 2014 | ALJ Report | February 2014 | ALJ Report |
| February 2014 | Exceptions | February 2014 | Exceptions |
| Feb/Mar 2014 | Commission Decision on Issuance | Feb/Mar 2014 | Commission Decision on Issuance |

Staff needs to add a few disclaimers to the schedule:

1. DOC EFP nor the Applicant has provided input or reviewed this schedule.
2. Staff does not believe this schedule should be 'approved' and it is provided here for discussion purposes only.
3. This assumes that the Commission agrees on that the CN Application is considered complete as of June 21 (date supplemental info filed from Stoneray),
4. The Environmental Report issuance date is a projection by Commission staff which may need to be adjusted by DOC.
5. This assumes that the Commission would like to expand the CN Public Hearing to encompass issues regarding siting, as has been typical practice for several years.
6. The Public Hearing comment periods closing may encompass both initial and reply comments periods if the Commission elects to request further analysis be completed by the ALJ.
7. This assumes the ALJ will issue a report in 30 days.

Assuming the CN Application is considered complete as of June 21, 2013, the optimistic schedule outlined above provides for a CN processing time of eight to nine months. Assuming the Site Permit Application is considered complete upon the Commission's Order accepting the application (anticipated to be issued in July 2013) the process outlined above allows seven to eight months.

Staff believes this schedule is already condensed (and optimistic) compared to how other wind energy projects have progressed in the past several years. Unfortunately, staff is unaware of how this schedule could be shortened and is not confident that it could be shortened to the point where the project could begin construction by the end of 2014. Staff does not mean for this scheduling to be in any binding, acknowledging that Minn. Stat. allows for up to 12 months for the Commission to process a CN application, which is required prior to issuance of Site Permit.

Template Permit

Moving forward in LWECs Site Permit dockets (as well as other Energy Facility cases) it is staff's intention to provide a template permit into the record at the Commission meeting on application acceptance. Submittal of general permit language is intended to provide the public and other government agencies with a basis upon which site specific permit language will be drafted. Commission staff is currently working on clarifying certain LWECs Site Permit conditions with DOC EFP staff and will submit a template Site Permit into this record prior to the public meeting. Template language is in no way intended to be binding, and the template language can and may be modified during the proceeding.

Staff will submit a template Site Permit into the record prior to the public meeting on this docket.

Rule Variance – Draft Permit Issuance

Staff is requesting that the Commission vary the procedural requirement in Minn. Rule 7854.0800 that requires a preliminary determination on whether to issue a Site Permit within 45 days of application acceptance. Staff believes additional time is appropriate to accommodate a public informational meeting and to allow interested persons to comment on the application and on issues that should be considered in developing a draft Site Permit for the project.

Minnesota Rule 7829.3200 allows the Commission to grant a variance when the following three conditions are met:

- A. Enforcement of the rule would impose an excessive burden upon the applicant or other affected by the rule;
- B. Granting the variance would not adversely affect the public interest; and
- C. Granting the variance would not conflict with standards imposed by law.

Staff believes the conditions for a variance are met in this case, and the Commission has previously found, over the past several years, that this variance is appropriate, beneficial and in compliance with the three-factor variance test in this context.

First, the enforcement of the rule would impose an excessive burden on staff because of the short time available between application review and the time when a draft Site Permit must be addressed by the Commission. DOC EFP staff, over the past several years, has found it beneficial to the record to insert an additional comment period to allow for governmental agencies and the public to provide input prior to the Commission's preliminary determination that a Site Permit should be issued, and if issued, any considerations should be made. DOC EFP has found in the past that 45 days is inadequate to allow a reasonable comment period and an opportunity to review any comments received, and, where appropriate, incorporate them in the draft Site Permit for consideration by the Commission.

Second, granting the variance would not adversely affect the public interest. The public interest would be better served by allowing adequate opportunity for comments on the application. Additionally, public interest would be better served by allowing for more timely coordination and sequencing under the CN and Site Permit procedural requirements, including the possibility of combining the draft permit public meeting with the public hearing in the CN docket.

Third, staff is not aware that the variance would conflict with standards imposed by law.

Staff is unaware of any opposition to the draft Site Permit variance. The variance has been a typical practice of the Commission in the most recent wind dockets before the Commission. However, the Commission may want to provide the applicant, the DOC EFP, or other interested persons the opportunity to address this issue.

VI. Decision Alternatives

A. Completeness / Acceptance of Application

1. Find the application complete and accept the application.
2. Conditionally accept the application, to be considered complete upon the Applicant's filing of:
 - i. Further information on the project decommissioning plan and costs, as outlined by DOC EFP staff.
 - ii. An indication that a draft ABPP (or BBCS) will be filed by the Applicant by the end of the Public Meeting comment period and prior to the Commission's decision on draft Site Permit issuance.
 - iii. Require the Applicant to clarify the turbine layout maps as requested by the DOC EFP.
 - iv. Require the Applicant to provide Map 9 on a topographic background.
3. Reject the Application.

B. Procedural Guidance – Public Hearing

1. Require that a public hearing be held on issues related to the Site Permit Application.
2. Do not expand the CN public hearing to include issues related to the Site Permit Application.
3. Take some other action.

C. Procedural Guidance – Referral to OAH

1. Refer the matter to the OAH, providing the issues outlined above be considered by the ALJ.
2. Do not refer the matter to the OAH and request that the OAH facilitate the public hearing and compile a summary of hearing comments.

D. Rule Variance

1. Vary Minnesota Rule 7854.0800 to allow more time for a preliminary determination that a Site Permit may be issued or should be denied.
2. Do not grant the variance to Minn. Rule 7854.0800.
3. Take some other action.

E. Public Advisor

1. Appoint Tracy Smetana as the Public Advisor for this project.
2. Take some other action.

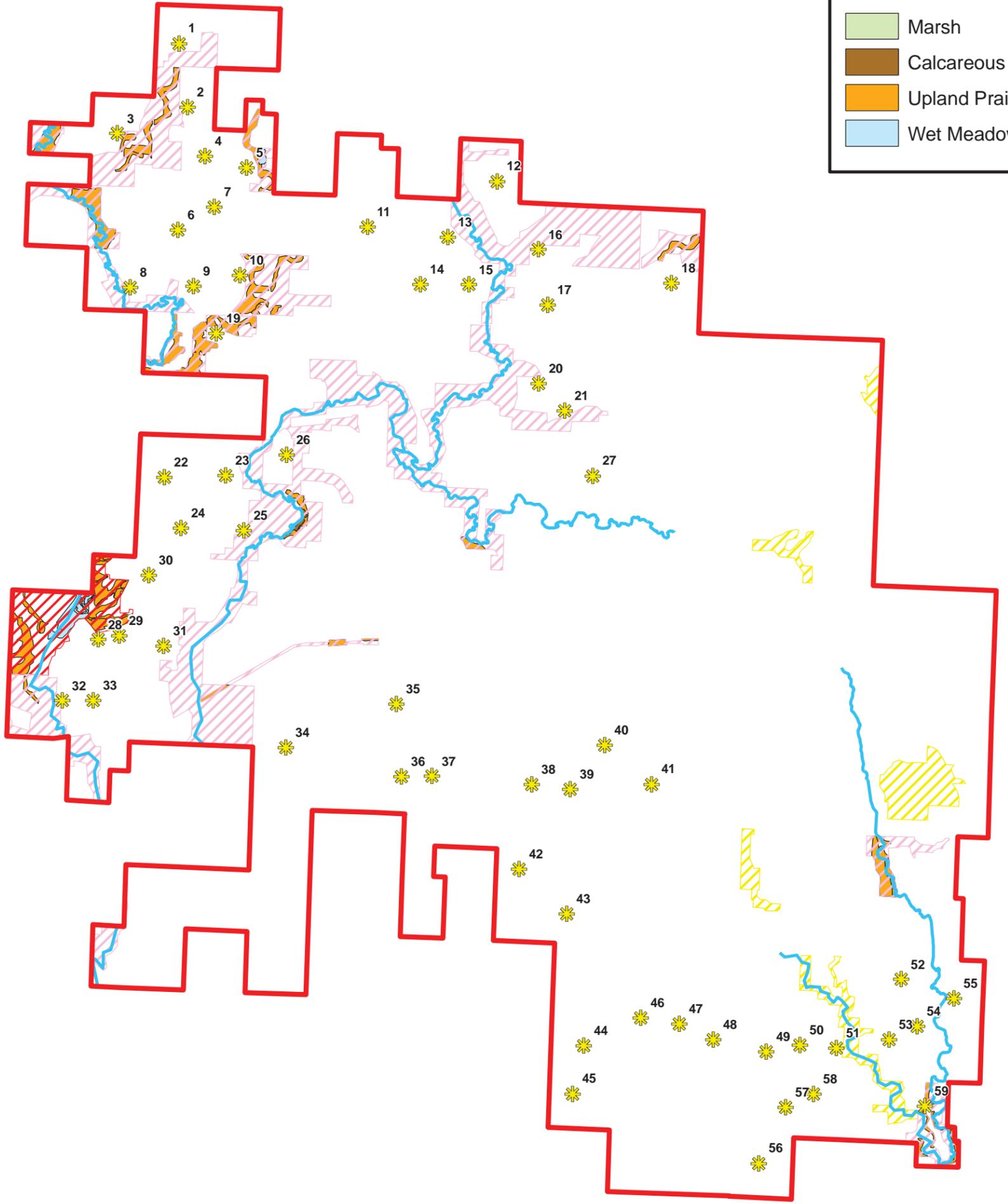
Staff Recommendation: A2 (i-iv), B2, C1, D1, and E1.

MCBS Biodiversity Sites

-  High
-  Moderate
-  Below

MCBS Native Plant Communities

-  Marsh
-  Calcareous Fen
-  Upland Prairie
-  Wet Meadow



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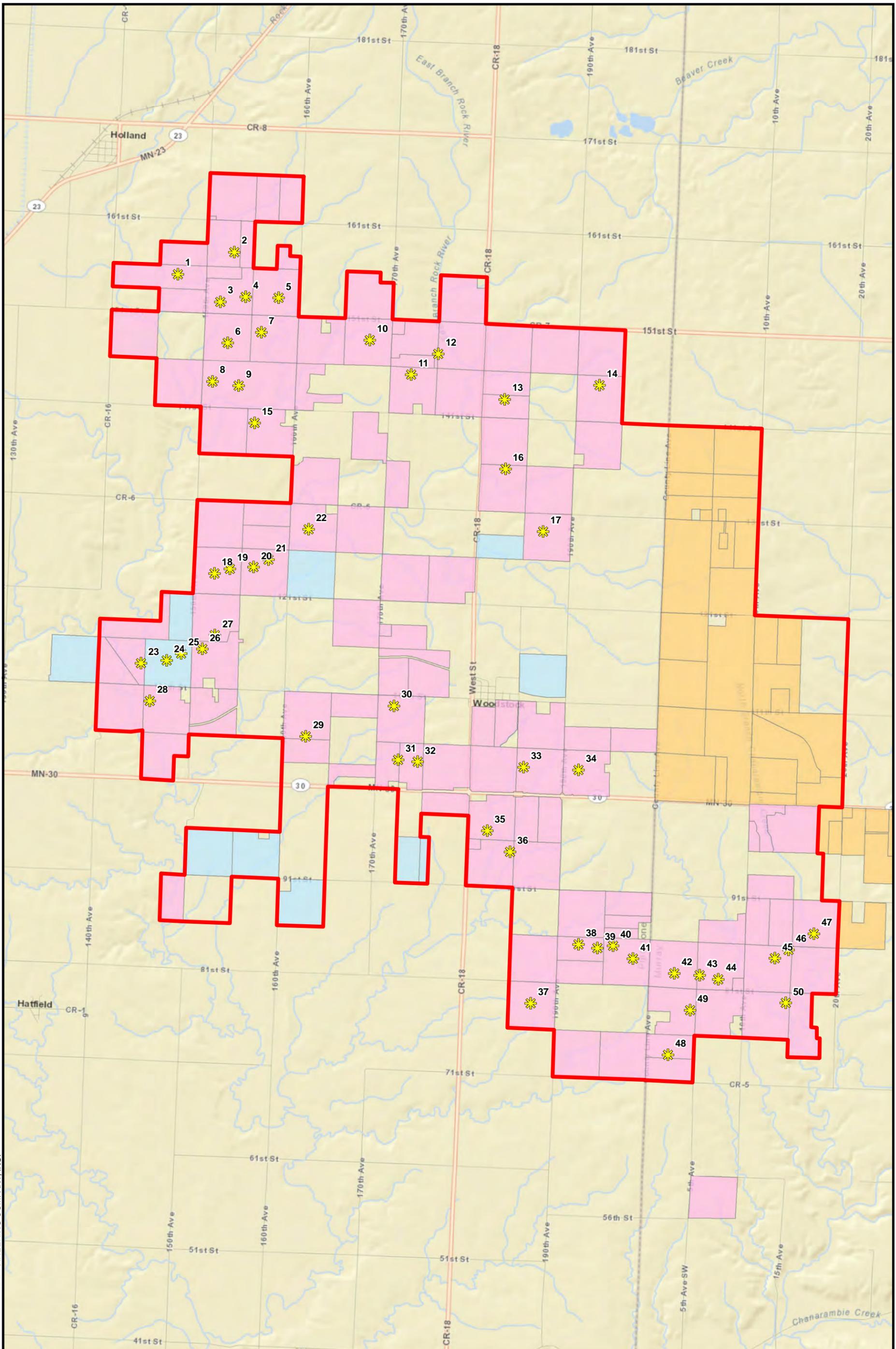
0 0.5 1 Miles

Legend

-  Proposed Project Boundary
-  Critical Habitat for Topeka Shiner
-  Proposed Turbine Array v10



Figure 9-1
Project Area & Natural Features
LWECS Application Figures
Stoneray Wind Project
Murray & Pipestone
Counties, Minnesota



0 0.5 1 Miles

Legend

-  Proposed Project Boundary
-  Proposed Turbine Array v11
-  Project Participant
-  Negotiating
-  Chanarambie Participant



Figure 11-2
Project Area & Land Parcels
LWECS Application Figures
Stoneray Wind Project
Murray & Pipestone
Counties, Minnesota