

# BRIGGS

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February 23, 2012

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## **ELECTRONIC FILING**

Dr. Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
350 Metro Square Building  
121 Seventh Place East  
St. Paul, MN 55101

**Re: *In the Matter of the Route Permit Application for the CapX2020 Hampton-Rochester-La Crosse 345 kV Transmission Line***  
**MPUC Docket No. E-002/TL-09-1448**  
**OAH Docket No. 3-2500-21181-2**

Dear Dr. Haar:

Enclosed for electronic filing by Northern States Power Company, a Minnesota corporation, in the above-captioned matter is Applicant's Exceptions to the Administrative Law Judge's Report.

Please contact me if you have any questions.

Sincerely,

*/s/ Lisa M. Agrimonti*

Lisa M. Agrimonti

LMA/jy  
Attachment

cc: Service List

**STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION**

Phyllis Reha	Vice Chair
David Boyd	Commissioner
J. Dennis O'Brien	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Route Permit  
Application for the CapX2020  
Hampton-Rochester-La Crosse 345 kV  
Transmission Line

MPUC Docket No. E-002/TL-09-1448  
OAH Docket No. 3-2500-21181-2

**APPLICANT'S EXCEPTIONS TO  
ADMINISTRATIVE LAW  
JUDGE'S REPORT**

**I. INTRODUCTION**

Northern States Power Company, a Minnesota corporation ("Xcel Energy" or the "Company"), respectfully submits the following exceptions to the Findings of Fact, Conclusions, and Recommendation ("Report") issued by the Administrative Law Judge ("ALJ") for the proposed Hampton-Rochester-La Crosse 345 kV Project ("Project"). Overall, the 93-page report provides a comprehensive analysis of the record evidence. The Company offers the following comments to clarify certain points in the Report and to support approval of the ALJ's recommend route, with the exception of Segment 1P-003 for the 345 kV transmission line.

Specifically, Xcel Energy requests that the Minnesota Public Utilities Commission ("Commission") approve a Route Permit for the 345 kV transmission line as follows: Modified Preferred Route with the 3P-Zumbro [Dam]-S crossing and Segment 3P-004 option, but without Segment 1P-003 near Cannon Falls; and for the

161 kV transmission line as follows: approve the ALJ recommended Alternative Route (2A).<sup>1</sup> With respect to clarifications, the Company notes that the ALJ's Report does not expressly state whether the Modified Preferred Route is recommended for the segment between the North Rochester Substation and Kellogg, Minnesota, although it appears implicit in the findings. In addition, the Company notes that the ALJ Report includes language regarding the Minnesota Environmental Rights Act ("MERA") and the Minnesota Environmental Policy Act ("MEPA") that the Commission may wish to modify to be consistent with the Commission's recent decision in the Hiawatha Project docket, No. E-002/TL-09-38.

Proposed changes to the findings and conclusions are included at the end of these exceptions in part II. D.

## II. DISCUSSION

### A. 345 kV Transmission Line Route

#### 1. *Modified Preferred Route v. Segment 1P-003*

The route for the 345 kV transmission line was divided into Segment 1 and Segment 3 throughout the Route Permit proceeding. The Company supports the ALJ's recommendation for Segment 3 but believes that the Modified Preferred Route, on balance, is the better route for the segment covered by Segment 1P-003 based on residential impacts, existing land use, and corridor sharing.

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<sup>1</sup> ALJ Report at Finding No. 233.

The specific area at issue is in Dakota and Goodhue Counties west of the City of Cannon Falls. The Company's Preferred Route in this area was developed and modified further during the hearing process to maximize right-of-way sharing along U.S. 52 and to minimize land use conflicts, eventually resulting in the Modified Preferred Route. **Attachment 1** is a map of the area showing both the Modified Preferred Route and Segment 1P-003. The Modified Preferred Route follows U.S. 52 which is a high traffic infrastructure corridor characterized by primarily industrial and commercial uses. In the area directly west of Cannon Falls at the Highway 19 and U.S. 52 interchange, the Company revised the proposed alignment and route width to address Minnesota Department of Transportation's ("Mn/DOT") permitting requirements which Mn/DOT advised would preclude permanent encroachment by the facilities or line "blow-out."<sup>2</sup> In the southern part of this area, at the intersection with County Road 24, the alignment was altered to follow a planned Mn/DOT access road running behind the businesses abutting the highway.<sup>3</sup>

Segment 1P-003 diverges from the Modified Preferred Route at U.S. 52 at Harry Avenue. It generally follows Harry Avenue to the south and also along Stanton Trail for 0.5 miles before turning east and following field lines and a portion of 323<sup>rd</sup> Street before returning to U.S. 52 and the Modified Preferred Route. Segment 1P-003, which is approximately 5.5 miles long, was identified in the Environmental

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<sup>2</sup> See ALJ Report at Finding No. 291.

<sup>3</sup> See ALJ Report at Finding No. 293 and Ex. 63.

Impact Statement (“EIS”) Scoping Decision and analyzed in the draft and final EIS.<sup>4</sup> Segment 1P-003 was not proposed by the Applicant. The ALJ’s Report notes that Segment 1P-003 was generally supported by some members of the public and the City of Cannon Falls.<sup>5</sup> The segment was opposed by Dakota County because of impacts to park lands and the residents living along Harry Avenue.<sup>6</sup>

The Company appreciates the ALJ’s analysis of the 1P route alternatives in this area, but believes that the following factors favor selection of the Modified Preferred Route:

**1) Human Settlement, Minn. Stat. § 216E.03 Section 7(b)(2);  
Minn. R. 7850.4100(A)**

As the ALJ recognized in her Report, there were many comments received by landowners both in support of Segment 1P-003<sup>7</sup> and in opposition of Segment 1P-003.<sup>8</sup> One landowner who expressed concern about proximity to homes along Segment 1P-003 was Ms. Barbara Dick who noted that Segment 1P-003 would cross within “40 feet” of horse arena maintained along the route.<sup>9</sup>

It appears the ALJ relied upon house impacts for total homes within 500 feet to reach her conclusion that Segment 1P-003 would “impact fewer total houses.”<sup>10</sup> However, in this case, raw numbers do not fully capture the comparative impacts of

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<sup>4</sup> The Scoping Decision does not state by whom or why the segment alternative was proposed.

<sup>5</sup> ALJ Report at Finding No. 233.

<sup>6</sup> *Id.*

<sup>7</sup> ALJ Report at n. 279.

<sup>8</sup> ALJ Report at n. 282.

<sup>9</sup> ALJ Report at n. 282; eDocket Document No. 20116-64034-01.

<sup>10</sup> ALJ Report at Finding No. 306.

the two alternatives. Moreover, the house count comparisons provided in the ALJ Report for the Modified Preferred Route do not reflect two alignment adjustments included in the Modified Preferred Route by the Highway 19 Interchange and the planned County Road 24 Interchange.<sup>11</sup> In addition, the raw numbers do not reflect the more significant impacts of homes closer to the proposed transmission line which are obscured because Modified Preferred Route follows a highway, the house counts include houses on the opposite side of U.S. 52. **Attachment 1.**

After the ALJ Report was issued, the Company undertook a site review of Segment 1P-003 and the comparable portion of the Modified Preferred Route, including the alignment adjustments at Highway 19 and County Road 24. That site review confirmed that impacts to homes in closer proximity to the transmission line would be lower if the line were constructed on the Modified Preferred Route: there are only two homes within 150 feet of the Modified Preferred Route compared to six for Segment 1P-003. **Attachment 1.** Although the raw number of houses within 500 feet of the Modified Preferred Route is higher than Segment 3P-003 (43 vs. 30), 15 of the houses along the Modified Preferred Route are separated from the line by the freeway. Another seven houses near the Highway 19 interchange are behind other houses that directly abut the proposed transmission line centerline. See **Attachment 1.**

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<sup>11</sup> The two alignment modifications are shown in detail on Exhibit 94 (Highway 19) and on Exhibit 26, Sheetmaps 10 and 11 (Highway 24). Specific impacts tables were also included in the record for the Highway 19 alignment. Ex. 95. The Company notes that the Highway 19 Interchange alignment avoids the church and school referenced in ALJ Report Finding at No. 306.

## 2) Land Use, Minn. Stat. §261E.03, subd. 7(b)(2)

The proposed 345 kV transmission line is more compatible with the industrial and commercial uses along U.S. 52. The land use along Segment 1P-003 is primarily residential and park land, for which a permit from Dakota County would be required. Additionally, Segment 1P-003 requires that the 345 kV line to be constructed cross-country or along field lines whereas the Modified Preferred Route, in this area, follows existing roads.<sup>12</sup>

During the period of public comment, Dakota County provided a letter and a County Board resolution that opposed the use of Segment 1P-003 for the Project because the Lake Byllesby Regional Park or the Byllesby Dam could be “significantly affect[ed]”.<sup>13</sup>

Segment 3P-03 also parallels Lake Byllesby Park, south of the river in Goodhue County. Funds from the Land and Water Conservation Act of 1965 (“LWCA”), established by Congress, were used to acquire portions of this recreation area as shown on **Attachment 2** (in green).<sup>14</sup>

Certain restrictions are placed on LWCA lands. The LWCA states that:

No property improved or developed with assistance under this chapter shall, without the approval of the Secretary, be converted to other than public recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the current local park and recreation recovery action program and only upon such conditions as

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<sup>12</sup> FEIS at Appendix A at Sheets NR6-NR9.

<sup>13</sup> Dakota County Letter, Dated June 21, 2011, eDocket Document ID 20117-64779-01.

<sup>14</sup> The Company researched the boundaries of the LAWCON funded portions the park in response to the ALJ Report.

he deems necessary to assure the provision of adequate recreation properties and opportunities of reasonably equivalent location and usefulness.<sup>15</sup>

While alignment adjustments may reduce park impacts, Segment 1P-003 would place the line through at least a part of Lake Byllesby Regional Park north of the river. Dakota County has objected to this route segment and it is unclear whether permission could be obtained for locating the line within park property. In addition, south of the river, in Goodhue County, the line would need to be placed in a location that does not require conversion of LWCA park land or the Company would need to go through the conversion approval process.

**3) Corridor Sharing, Minn. Stat. Sec. 216E.03, subd. 7(b)(8);  
Minn. R. 7850.4100(J)**

The alignment along the Modified Preferred Route maximizes the use of existing highway right-of-way. **Attachment 3** summarizes right-of-way sharing information from Map 8.1-26 in the Final Environmental Impact Statement and shows that the Modified Preferred Route follows transmission line or road right-of-way for 72 percent of its length compared to 56 percent for Segment 1P-003.<sup>16</sup>

Based on these factors, the Company believes that the Modified Preferred Route should be selected for the segment of the 345 kV transmission line near Cannon Falls.

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<sup>15</sup> 16 U.S.C. Ch. 45 § 2509.

<sup>16</sup> The ALJ notes that Segment 1P-003 follows transmission lines, Finding No. 306, but the specific percentage, 36 percent of the segment, is not identified.



**B. 345 kV Transmission Line Route–Clarification**

The Company also observes that the ALJ Report is unclear about whether the Modified Preferred Route is included in the recommendation for Segment 3.<sup>17</sup> The ALJ Report recommends Route 3P-Zumbro-S with the 3P-004 option for Segment 3 but is silent on whether this recommendation was intended to include the modifications Applicant made to the original Preferred Route for this segment.<sup>18</sup> As noted in the ALJ Report, based on input from the scoping process, Applicant adjusted the Preferred Route in Segment 3 to develop the Modified Preferred Route. The modification shifts the Preferred Route approximately ½ mile to the north through a two-mile segment east of U.S. 52 near the North Rochester Substation siting area.<sup>19</sup> The Company requests that the Commission clarify whether Route 3P-Zumbro-S incorporates the changes proposed by Applicant to the Preferred Route for this small section of Segment 3 near the North Rochester Substation siting area.

**C. MERA/MEPA**

Finding No. 110 in the ALJ Report discusses the obligation of state agencies to consider environmental factors when routing transmission lines “that potentially have significant environmental effect, and shall not make a decision that is likely to cause pollution, impairment, or destruction of a natural resources so long as there is a

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<sup>17</sup> ALJ Report at Finding No. 490.

<sup>18</sup> The ALJ Report defines “3P-Zumbro-S” in Finding No. 392 by citing to the FEIS. ALJ Report at Finding No. 472. The FEIS’s definition of “3P-Zumbro-S” did not incorporate Applicant’s proposed modifications to the Preferred Route. However, in another finding the ALJ Report references “Modified Preferred Route” as “3P.” ALJ Report at Finding No. 15.

<sup>19</sup> ALJ Report at Finding No. 70.

feasible and prudent alternative consistent with the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land, and other natural resources for pollution, impairment, or destruction.”

In the Hiawatha Route Permit Order,<sup>20</sup> the ALJ report contained the same provision and the Commission determined that the language “that potentially have significant environmental effect” should be deleted.<sup>21</sup> The Commission may wish to make the same change when issuing its Order in this proceeding.

#### **D. Proposed Modifications to ALJ Report**<sup>22</sup>

##### Findings

110. State agencies are required to consider environmental factors before making decisions on the matters including the routing of high-voltage transmission lines, ~~that potentially have significant environmental effect,~~ and shall not make a decision that is likely to cause pollution, impairment, or destruction of a natural resource so long as there is a feasible and prudent alternative consistent with the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land, and other natural resources from pollution, impairment, or destruction.<sup>23</sup>

[Delete in entirety and replace with:] *In the area of the route by Cannon Falls in the vicinity of Highways 19 and 24, there are several routing challenges. Along the Modified Preferred Route on US 52, there are homes and business as well as two future road projects (the railroad overpass and the County Road 24 interchange).*

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<sup>20</sup> *In the Matter of the Application of Northern States Power Company for a High Voltage Transmission Line Route Permit for the Hiawatha 115 kV Transmission Project*, Docket No. E-002/TL-09-38, ORDER ISSUING ROUTE PERMIT AS AMENDED (Feb. 10, 2012).

<sup>21</sup> *Id.* at 4.

<sup>22</sup> Minn. Stat. § 116D.04, subd. 6; *People for Environmental Enlightenment and Responsibility (PEER), Inc., v. Minnesota Environmental Quality Council*, 266 N.W.2d 858 (Minn. 1978).

<sup>23</sup> Ex. 113, Appendix A at A-11 (Map NR 9); Ex. 36 at Sheetmap 10.

*However, the US 52 corridor in this area is dominated by commercial and industrial land use and the two alignment modifications made by the Company are compatible with these planned road projects and move the line away from a church/ school that abuts US 52. When analyzing impacts to human settlement, the proximity of the homes to the line and the fact that the house counts include houses across the freeway must be considered. Option 1P-003 would bypass US 52 and use an alignment through a primarily residential area. Aerial maps of the two route options and existing homes and infrastructure demonstrate that more homes closer to the proposed alignment would be impacted on Option 1P-003. While a portion of this alternative segment would share an existing transmission line corridor, overall it would share less existing right-of-way than the Modified Preferred Route. The Modified Preferred Route, on balance, is the better route for the segment covered by Segment 1P-003 based on residential impacts, existing land use, and corridor sharing.*

#### Conclusions of Law

7. In Segment 1, ~~the Modified Preferred Route options 1P-001 and 1P-003~~ best satisfies the route permit criteria set forth in Minn. Stat. § 216E.03, subds. 7(a) & (b), and Minn. R. 7850.4000 & 7850.4100.

### **III. CONCLUSION**

Xcel Energy respectfully requests that the Commission adopt the ALJ Report with the requested modifications herein.

February 23, 2012

**BRIGGS AND MORGAN, P.A.**

By: /s/ Lisa M. Agrimonti

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MINNESOTA CORPORATION

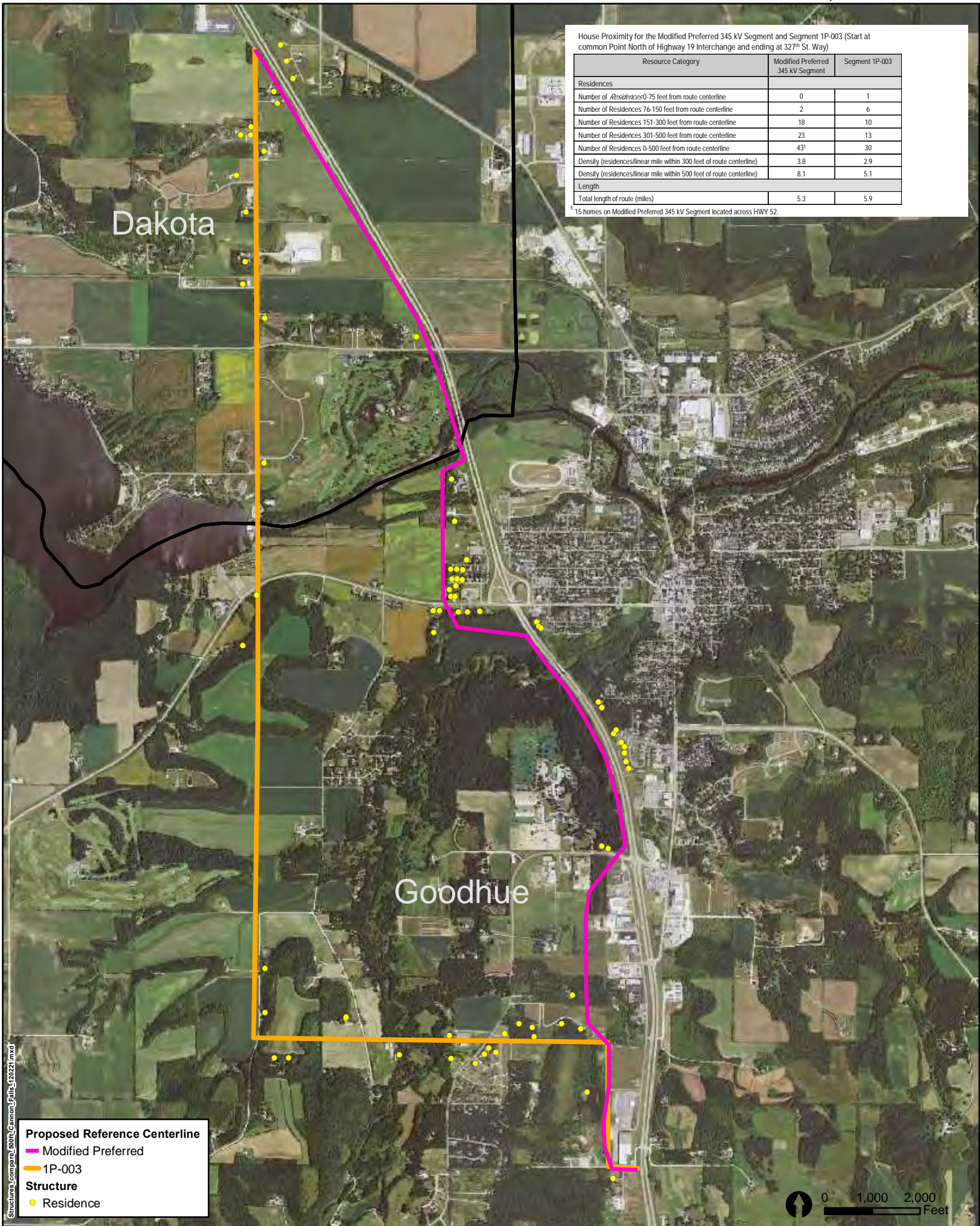
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House Proximity for the Modified Preferred 345 kV Segment and Segment 1P-003 (Start at common Point North of Highway 19 Interchange and ending at 327<sup>th</sup> St. Way)

Resource Category	Modified Preferred 345 kV Segment	Segment 1P-003
<b>Residences</b>		
Number of Residences 0-75 feet from route centerline	0	1
Number of Residences 76-150 feet from route centerline	2	6
Number of Residences 151-300 feet from route centerline	18	10
Number of Residences 301-500 feet from route centerline	23	13
Number of Residences 0-500 feet from route centerline	43 <sup>1</sup>	30
Density (residences/linear mile within 300 feet of route centerline)	3.8	2.9
Density (residences/linear mile within 500 feet of route centerline)	8.1	5.1
<b>Length</b>		
Total length of route (miles)	5.3	5.9

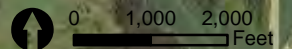
<sup>1</sup> 15 homes on Modified Preferred 345 kV Segment located across HWY 52.



Dakota

Goodhue

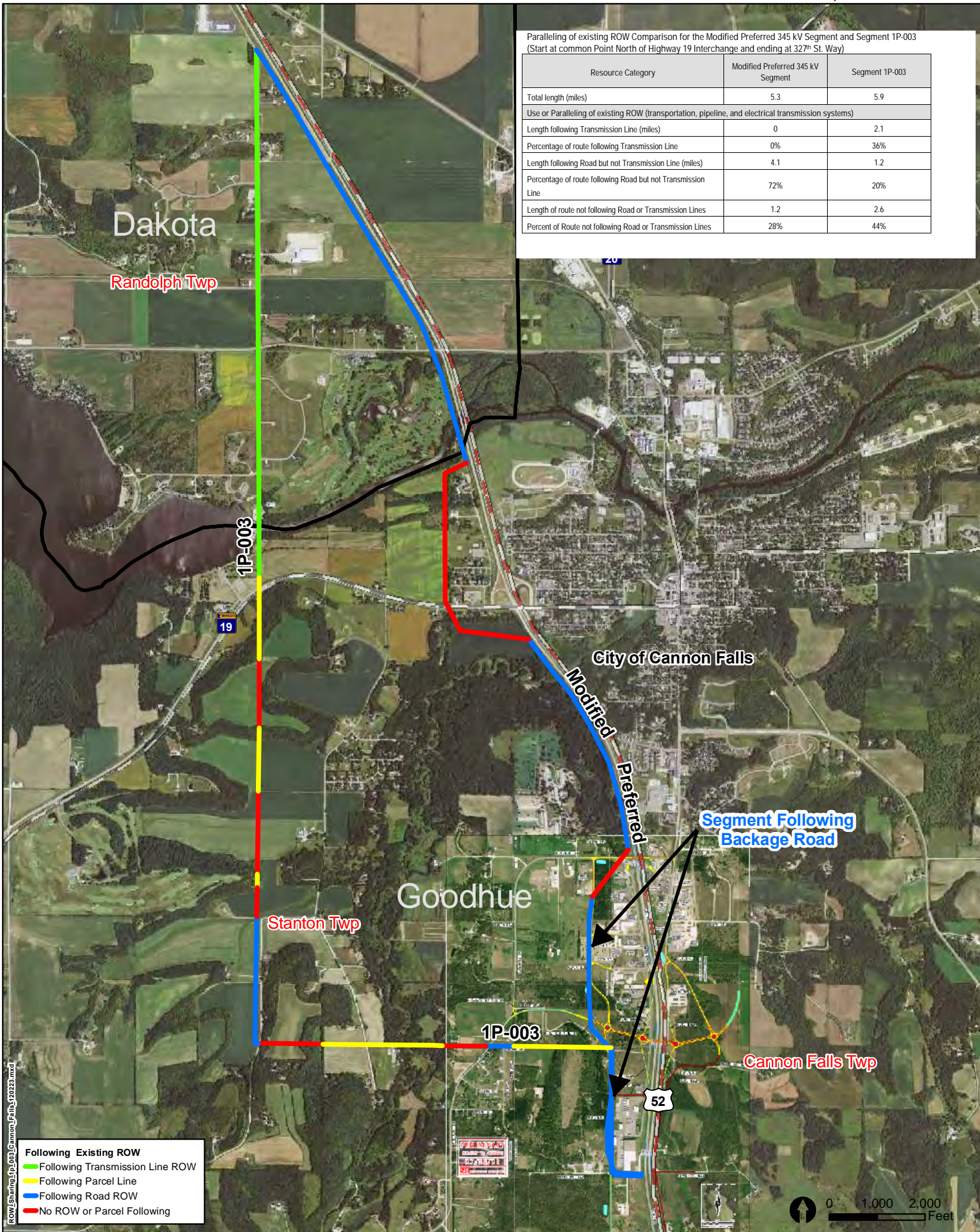
**Proposed Reference Centerline**  
 — Modified Preferred  
 — 1P-003  
**Structure**  
 • Residence





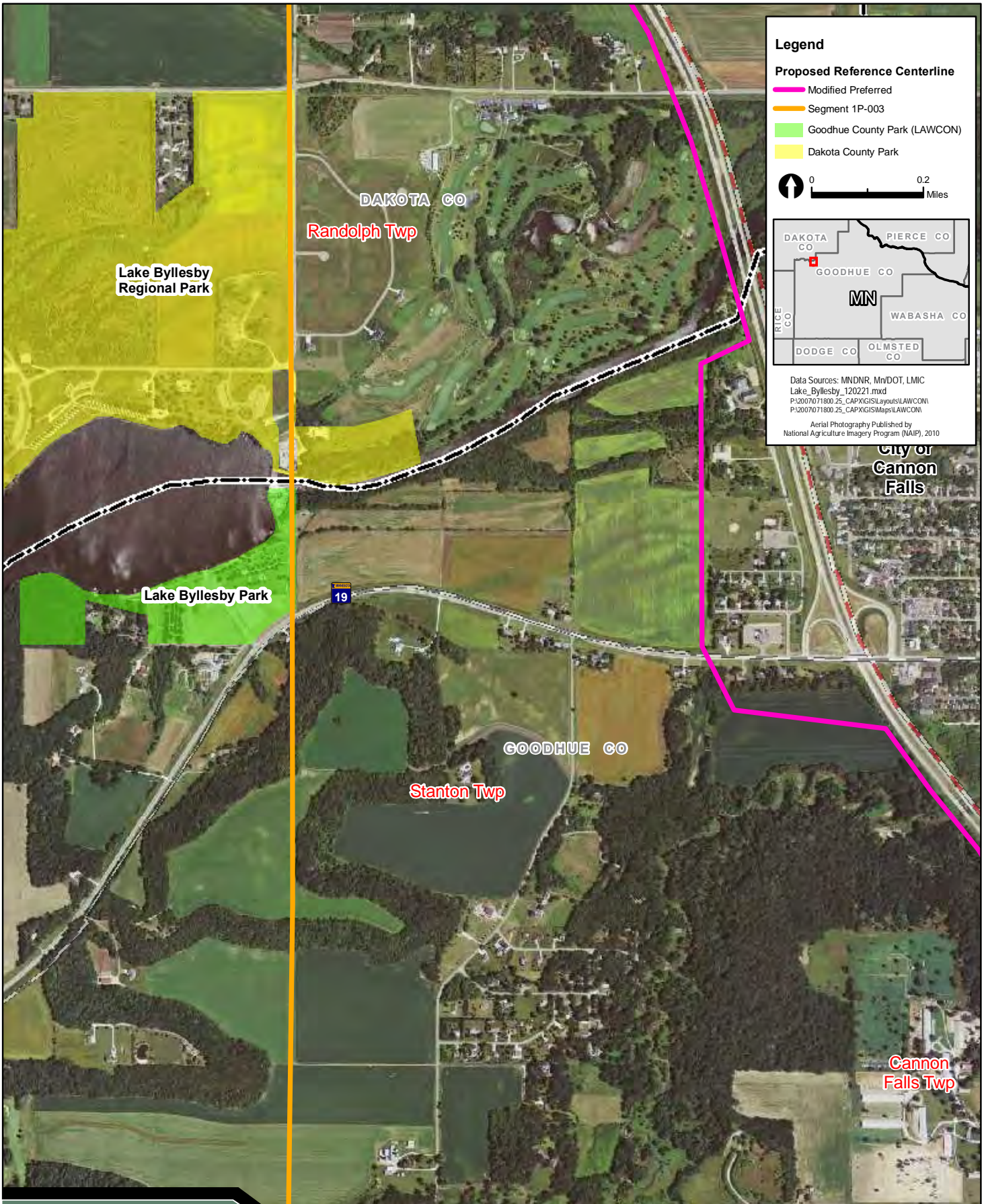
Paralleling of existing ROW Comparison for the Modified Preferred 345 kV Segment and Segment 1P-003  
(Start at common Point North of Highway 19 Interchange and ending at 327th St. Way)

Resource Category	Modified Preferred 345 kV Segment	Segment 1P-003
Total length (miles)	5.3	5.9
Use or Paralleling of existing ROW (transportation, pipeline, and electrical transmission systems)		
Length following Transmission Line (miles)	0	2.1
Percentage of route following Transmission Line	0%	36%
Length following Road but not Transmission Line (miles)	4.1	1.2
Percentage of route following Road but not Transmission Line	72%	20%
Length of route not following Road or Transmission Lines	1.2	2.6
Percent of Route not following Road or Transmission Lines	28%	44%



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*In the Matter of the Route Permit Application  
for the CapX2020 Hampton-Rochester-LaCrosse  
345 kV Transmission Line*

MPUC Docket No. E-002/TL-09-1448  
OAH DOCKET NO. 3-2500-21181-2

**CERTIFICATE OF SERVICE**

Jill N. Yeaman certifies that on the 23rd day of February, 2012, she filed a true and correct copy of the **EXCEPTIONS TO ALJ REPORT BY NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION**, by posting it on [www.edockets.state.mn.us](http://www.edockets.state.mn.us). Said document was also served via U.S. Mail and e-mail as designated on the Official Service List on file with the Minnesota Public Utilities Commission in the above-referenced docket.

*/s/ Jill N. Yeaman* \_\_\_\_\_

Jill N. Yeaman



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