

September 20, 2023

VIA E-MAIL AND FEDERAL EXPRESS

Mr. Steven Kahl
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**Re: Otter Tail Power Company
Amend – Luverne Wind Farm Upgrade Project
Siting Application – Steele County
Case No. PU-23-176**

Dear Mr. Kahl:

Enclosed for filing in connection with the above-referenced matter are an original and six (6) copies of an Application to Amend Order submitted by Otter Tail Power Company. Electronic copies of the enclosed document and this letter were filed with the Commission today via e-mail.

If you have any questions, please let me know.

Sincerely,



MOLLIE M. SMITH

MMS/80266010
Enclosures

cc: Victor Schock (w/ enclosure, via e-mail)
Robert Frank (w/ enclosure, via e-mail)
Lisa McFarland (w/ enclosure, via e-mail)
Bryce Haugen (w/ enclosure, via e-mail)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Company Amend – Luverne Wind Farm Upgrade Project Siting Application – Steele County	Case No. PU-23-176 OTTER TAIL POWER COMPANY’S APPLICATION TO AMEND ORDER
--	---

I. Introduction.

On May 8, 2023, Otter Tail Power Company (Otter Tail) submitted the Certification of Bradley E. Tollerson and supporting documentation (Certification) pursuant to N.D.C.C. § 49-22-03(3)(a)(4) regarding proposed equipment upgrades (Upgrade Project) at the Luverne Wind Farm (Facility). In the Certification, Otter Tail requested a variance from the non-participating property line setback for two turbines (Turbine 155 and 157). On August 16, 2023, the North Dakota Public Service Commission (Commission) issued an Order in which it granted the variance request conditioned upon Otter Tail submitting a copy of a written waiver from the affected landowner prior to any construction or upgrade technology installation activities at Turbines 155 and 157 (*see* Discussion paragraph no. 16 and Order paragraph no. 4).

Following issuance of the Order, Otter Tail determined that the real property adjacent to Turbines 155 and 157 is subject to a wind easement held by Otter Tail. As a result, the non-participating property line exclusion area is not applicable and a variance is not needed. Therefore, Otter Tail requests an amendment to the Order, as outlined further below.

II. Procedural History.

A brief overview of relevant procedural history is provided below:

- On October 30, 2008, the Commission issued an Order granting Certificate of Site Compatibility No. 9 to M-Power, LLC (M-Power) for the Luverne Wind Farm

consisting of up to 33 1.5 MW wind turbine generators, collection substation and associated facilities (Case No. PU-08-34).

- On December 3, 2008, the Commission issued a Certificate of Public Convenience and Necessity to Otter Tail authorizing the purchase and operation of the 49.5 MW Facility (Case No. PU-08-766).
- On February 20, 2009, Otter Tail and M-Power filed a Joint Application for Transfer of Certificate of Site Compatibility, seeking to transfer to Otter Tail the rights and obligations of Certificate of Site Compatibility No. 9 (Case No. PU-09-073).
- On May 20, 2009, the Commission issued an Order authorizing transfer of the 49.5 MW Facility to Otter Tail and issuing First Reissued Certificate of Site Compatibility No. 9 to Otter Tail (Case No. PU-09-073).
- The Facility was constructed in 2009 with the Project beginning commercial operations in 2009.
- On May 8, 2023, Otter Tail filed the Certification, as well as an Application to Amend Orders and Certificates to remove turbine and overall Facility megawatt limitations.
- On August 16, 2023, the Commission issued an Order on the application, in which it granted the requested amendment, as well as a variance from the non-participating property line setback requirement for Turbines 155 and 157.

III. Turbines 155 and 157.

After the August 16, 2023 Order was issued, Otter Tail’s external counsel further analyzed an agreement held by Otter Tail covering the real property adjacent to Turbines 155 and 157 (“Wind Farm Facilities Easement Agreement,” dated October 31, 2008 and recorded November 8, 2008 as Doc. No. 98535; transferred to Otter Tail via “Assignment and Assumption of Real Property Interests,” dated February 6, 2009 and recorded on February 10, 2009 as Doc. No. 98861). Although the agreement limits installation of infrastructure on the real property to an overhang for Turbine 147, it grants a wind non-obstruction easement across the entirety of the real property (referred to as Parcels 39 and 46). Specifically, the agreement states as follows: “Owner grants Developer an irrevocable, exclusive easement for the right and privilege to use, maintain

and capture the free and unobstructed flow of wind currents over and across the Owner's Property as described in **Exhibit A** ('Wind Non-Obstruction Easement')." Exhibit A contains the legal descriptions for Parcels 39 and 46 (in the E/2 of Section 31 and the SW/4 of Section 32, Township 145 North, Range 57 West, Steele County, North Dakota). As a result, the agreement is a "wind easement" pursuant to N.D.C.C. § 17-04-02 and Parcels 39 and 46 are participating properties for purposes of N.D.C.C. § 49-22-05.1(4). Therefore, the turbine non-participating property line setback requirement does not apply to Parcels 39 and 46, and a variance from the setback requirement is not needed for Turbines 155 and 157. Updated Figures depicting Parcels 39 and 46 as participating are provided as **Exhibit 1**.

IV. Amendment Request.

In Discussion paragraph no. 16 of the August 16, 2023 Order, it states: "Two turbines (Turbines 155 and 157) do not meet the current Exclusion Area of one and one-tenth the height of the turbine from the property line of a nonparticipating landowner. OTP plans to obtain a written waiver from the affected nonparticipating landowner, and requests that the Commission grant a variance of the nonparticipating property line setback for these two turbines conditioned on obtaining and filing a copy of the written waiver with the Commission prior to installation of upgrade technology on the affected turbine. Absent receipt of a waiver, OTP will not upgrade equipment at the affected turbine." In Order paragraph no. 4 of the same Order, it states: "A variance of the nonparticipating property line exclusion area of one and one-tenth the height of the turbine is granted for Turbines 155 and 157, conditioned upon OTP obtaining and filing with the Commission a copy of a written waiver from the affected landowner prior to any construction activities, or the installation of upgrade technology on the affected turbine(s) if OTP is unable to obtain a waiver from the affected landowner."

As noted above, the real property adjacent to Turbines 155 and 157 is participating and, as a result, a variance from the nonparticipating property line setback not needed. Therefore, Otter Tail requests that the Commission amend its August 16, 2023 Order to remove Discussion paragraph no. 16 and Order paragraph no. 4.

V. Conclusion.

For the reasons set forth above, Otter Tail respectfully requests that its application to amend the Commission's August 16, 2023 Order be granted.

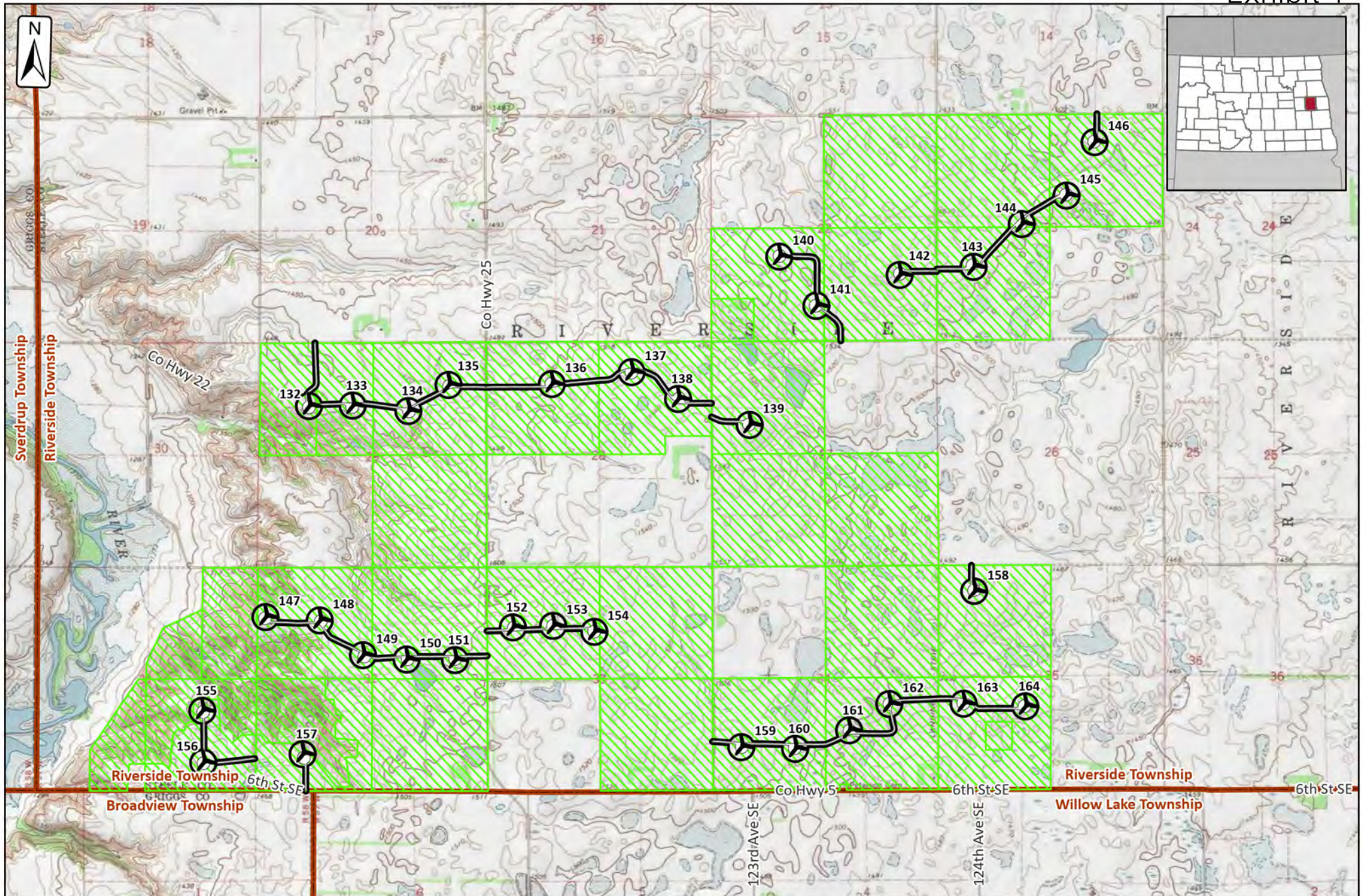
Dated this 20th day of September, 2023.

FREDRIKSON & BYRON, P.A.

By 

MOLLIE M. SMITH, ND Bar #06714
BRIDGET A. DUFFUS, ND Bar #09235
Attorneys for Otter Tail Power Company
60 South Sixth Street, Suite 1500
Minneapolis, MN 55402-4400
(612) 492-7270
msmith@fredlaw.com
bduffus@fredlaw.com


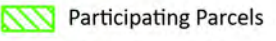
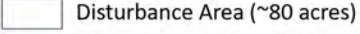
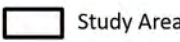
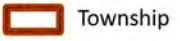
80247015



Luverne Wind Upgrade Project

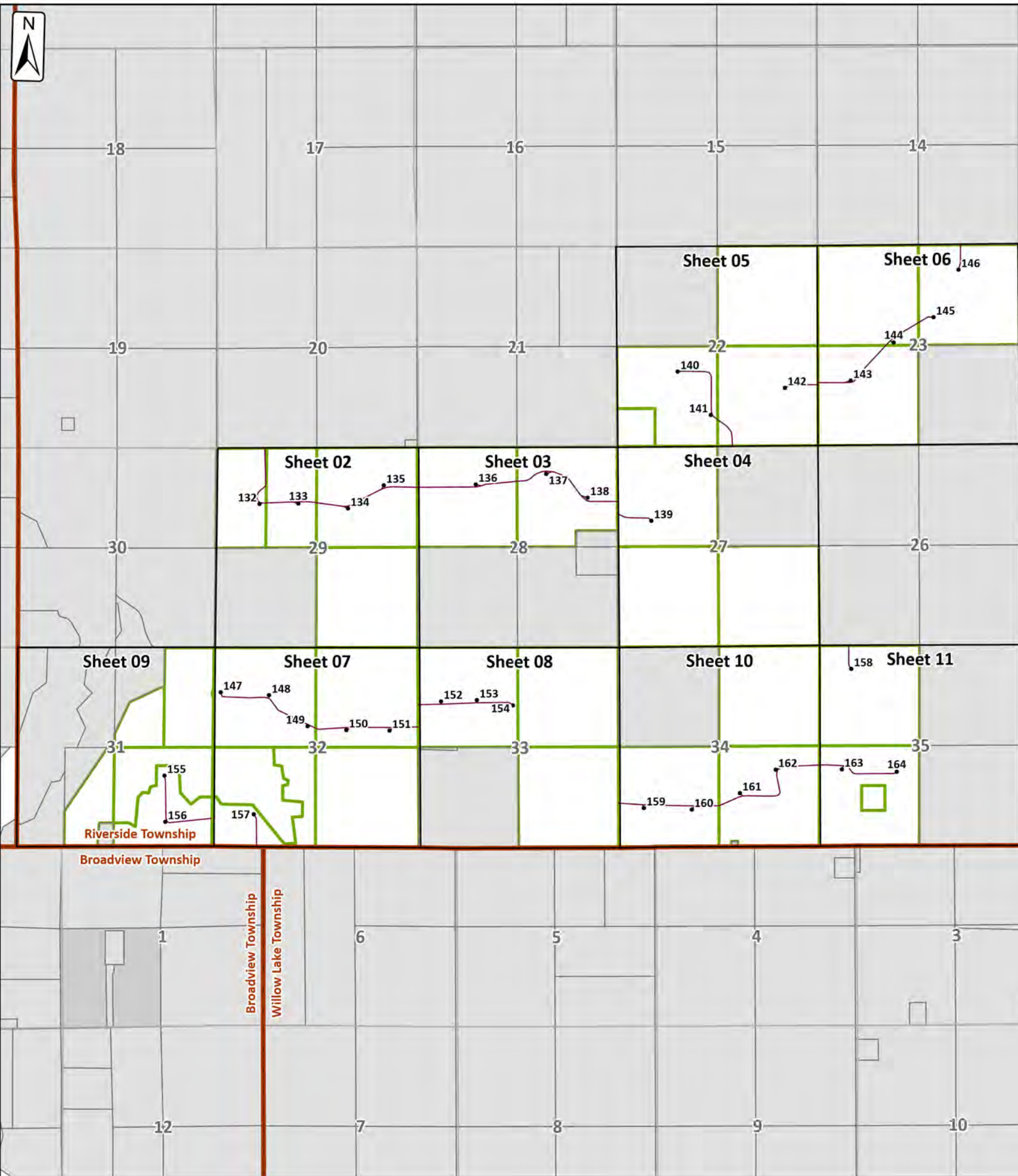
Figure 1- Site Overview
Steele County, North Dakota

Issue Date: 8/31/2023

-  Existing Turbine Locations
-  Participating Parcels
-  Disturbance Area (~80 acres)
-  Study Area
-  Township



SOURCE: USGS Topo Maps



OTP Luverne Repower Exclusions and Avoidance
Turbine Details: Hub height of 80 meters, Rotor diameter of 97 meters

Public Service Commission			
Setback Requirement	Setback Distance (m/ft)	Closest Turbine	Measured Distance (ft)
1.1x the turbine height from the nearest edge of an interstate or state roadway right-of-way (ROW).	141.4 / 463.7	146	19,361
1.1x the turbine height plus 75 feet from the centerline of any county or maintained township roadway.	164.2 / 538.7	152	606
1.1x the turbine height from the nearest edge of railroad ROW.	141.4 / 463.7	146	23,286
1.1x the turbine height from the nearest edge of a 115 kV or higher transmission line ROW.	141.4 / 463.7	164	477
1.1x the turbine height from the property line of a nonparticipating landowner.	141.4 / 463.7	164	600
3x the height of the turbine from an occupied rural residence of a non-participating landowner.	385.5 / 1,264.8	139	1,758

Previous Commitments (PU-08-034 Reissued PU-09-73)			
Setback Requirement	Setback Distance (ft)	Closest Turbine	Measured Distance (ft)
1,400 ft from Occupied Residence	1400	133	1,501
400 ft or turbine fall zone from any developed road	422	152	606
500 ft from any large (lacustrine) wetland complex (greater than 50 acres)	500	137	1,274
0.25 miles from USFWS Waterfowl Production Area	1,320	140	1,742

CLIENT: Otter Tail Power Company

Luverne Wind Upgrade Project
Figure 3: Exclusions and Avoidance

- Turbine Location
- Access Road
- Existing Paved State Road Centerline
- + Railroad
- ▭ Participating
- ▭ Non-Participating
- ▭ Mapbook Order
- ▭ Section Boundary
- ▭ Township

SCALE: 0 500 1,000 Feet

DR: - CH: -

P.M: -

BOOK: -

GIS FILE: -

DATE: 8/31/2023

FILE CODE: -

SHEET NO: **1 of 11**

ATWELL

The information contained on this map is proprietary and confidential. The use or disclosure of this information by you to third parties is prohibited by law and may give rise to civil or criminal liability.

22, 23, 27, 28, 29, 31, 32, 33, 34, 35

T145N R57W

Riverside Township

Steele County, ND

SECTIONS

TOWNSHIP

TOWNSHIPS

COUNTY, STATE



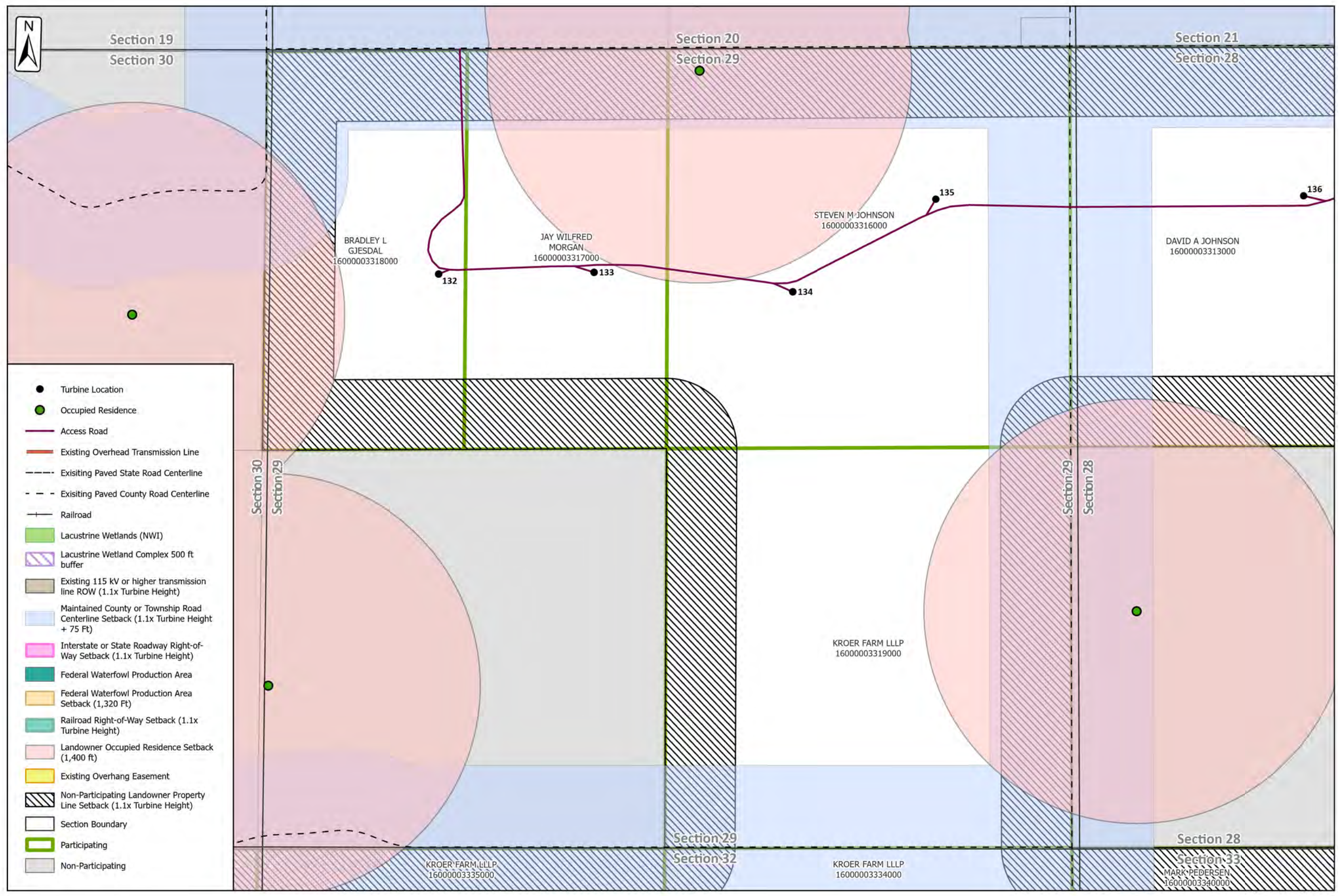
SECTIONS	22, 23, 27, 28, 29, 31, 32, 33, 34, 35
TOWNSHIP	T145N R57W
TOWNSHIPS	Riverside Township
COUNTY, STATE	Steele County, ND

CLIENT: Otter Tail Power Company

Luverne Wind Upgrade Project
Figure 3: Exclusions and Avoidance



SCALE	0 130 260
	Feet
DR.	CH.
P.M.	
BOOK:	
GIS FILE:	
DATE:	8/31/2023
SHEET NO:	2 of 11



Section 19
Section 30

Section 20
Section 29

Section 21
Section 28

BRADLEY L. GJESDAL
16000003318000

JAY WILFRED MORGAN
16000003317000

STEVEN M. JOHNSON
16000003316000

DAVID A. JOHNSON
16000003313000

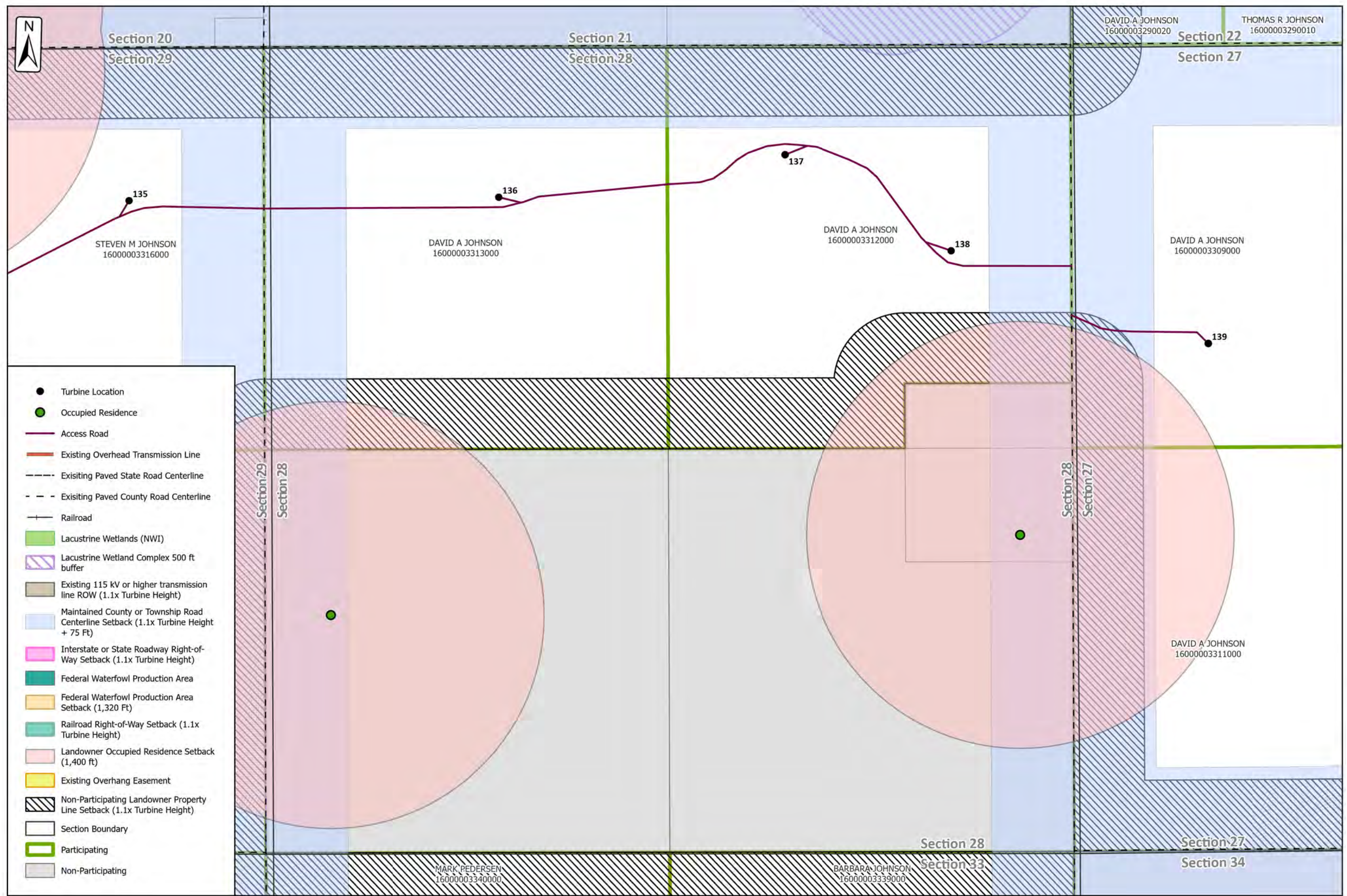
KROER FARM LLLP
16000003319000

KROER FARM LLLP
16000003335000

KROER FARM LLLP
16000003334000

MARK PEDERSEN
16000003340000

- Turbine Location
- Occupied Residence
- Access Road
- Existing Overhead Transmission Line
- Existing Paved State Road Centerline
- - - Existing Paved County Road Centerline
- Railroad
- Lacustrine Wetlands (NWI)
- Lacustrine Wetland Complex 500 ft buffer
- Existing 115 kV or higher transmission line ROW (1.1x Turbine Height)
- Maintained County or Township Road Centerline Setback (1.1x Turbine Height + 75 Ft)
- Interstate or State Roadway Right-of-Way Setback (1.1x Turbine Height)
- Federal Waterfowl Production Area
- Federal Waterfowl Production Area Setback (1,320 Ft)
- Railroad Right-of-Way Setback (1.1x Turbine Height)
- Landowner Occupied Residence Setback (1,400 ft)
- Existing Overhang Easement
- Non-Participating Landowner Property Line Setback (1.1x Turbine Height)
- Section Boundary
- Participating
- Non-Participating



- Turbine Location
- Occupied Residence
- Access Road
- Existing Overhead Transmission Line
- Existing Paved State Road Centerline
- Existing Paved County Road Centerline
- Railroad
- Lacustrine Wetlands (NWI)
- Lacustrine Wetland Complex 500 ft buffer
- Existing 115 kV or higher transmission line ROW (1.1x Turbine Height)
- Maintained County or Township Road Centerline Setback (1.1x Turbine Height + 75 Ft)
- Interstate or State Roadway Right-of-Way Setback (1.1x Turbine Height)
- Federal Waterfowl Production Area
- Federal Waterfowl Production Area Setback (1,320 Ft)
- Railroad Right-of-Way Setback (1.1x Turbine Height)
- Landowner Occupied Residence Setback (1,400 ft)
- Existing Overhang Easement
- Non-Participating Landowner Property Line Setback (1.1x Turbine Height)
- Section Boundary
- Participating
- Non-Participating



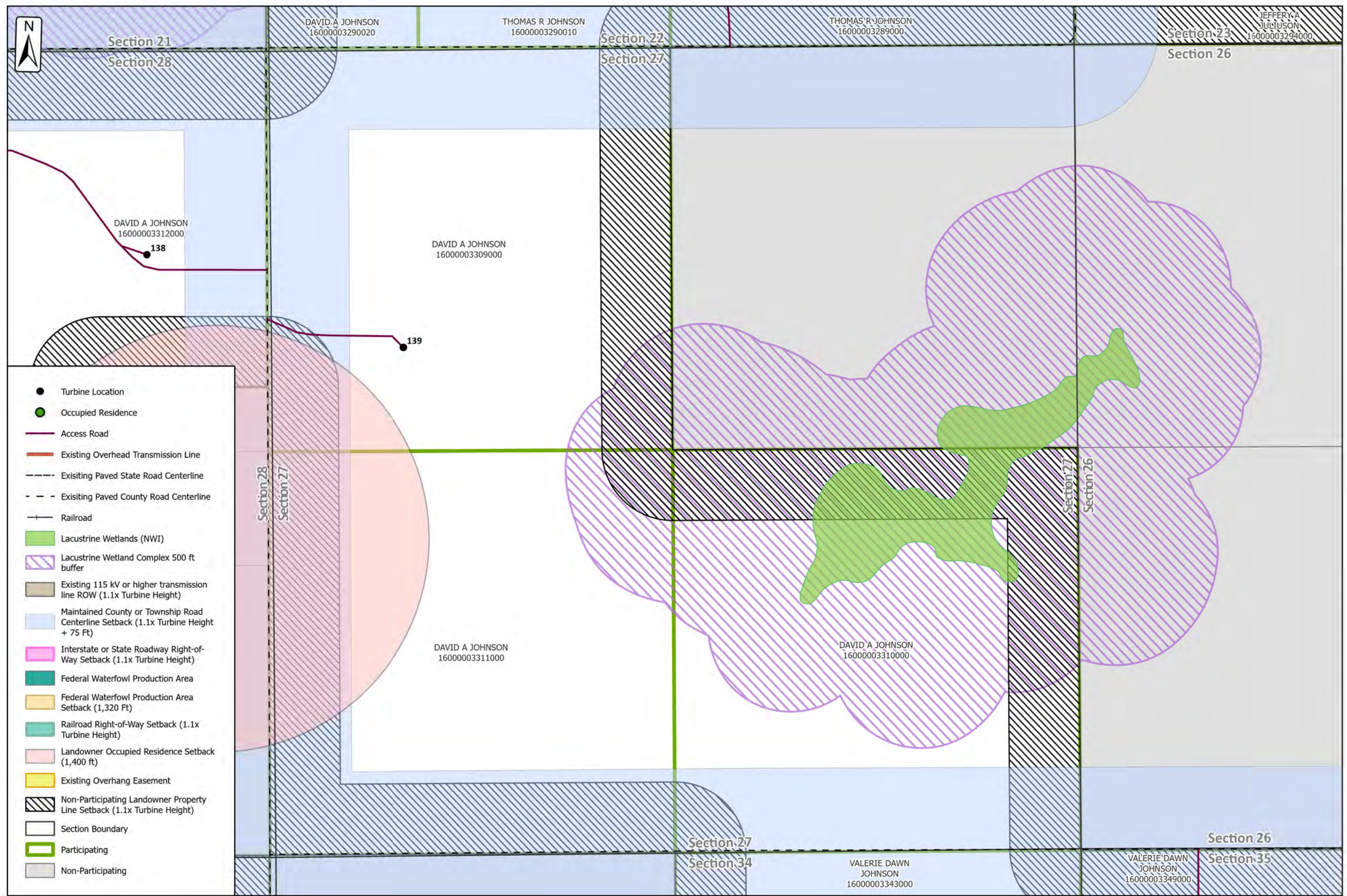
SECTIONS	22, 23, 27, 28, 29, 31, 32, 33, 34, 35
TOWNSHIP	T145N R57W
TOWNSHIPS	Riverside Township
COUNTY, STATE	Steele County, ND

CLIENT: Otter Tail Power Company

Luverne Wind Upgrade Project
Figure 3: Exclusions and Avoidance



SCALE	0 130 260
	Feet
DR.	CH.
P.M.	
BOOK:	
GIS FILE:	
DATE:	8/31/2023
SHEET NO:	3 of 11



SECTIONS	22, 23, 27, 28, 29, 31, 32, 33, 34, 35
TOWNSHIP	T145N R57W
TOWNSHIPS	Riverside Township
COUNTY, STATE	Steele County, ND

CLIENT: Otter Tail Power Company

Luverne Wind Upgrade Project

Figure 3: Exclusions and Avoidance

SCALE: 0 130 260 Feet

DR. CH.

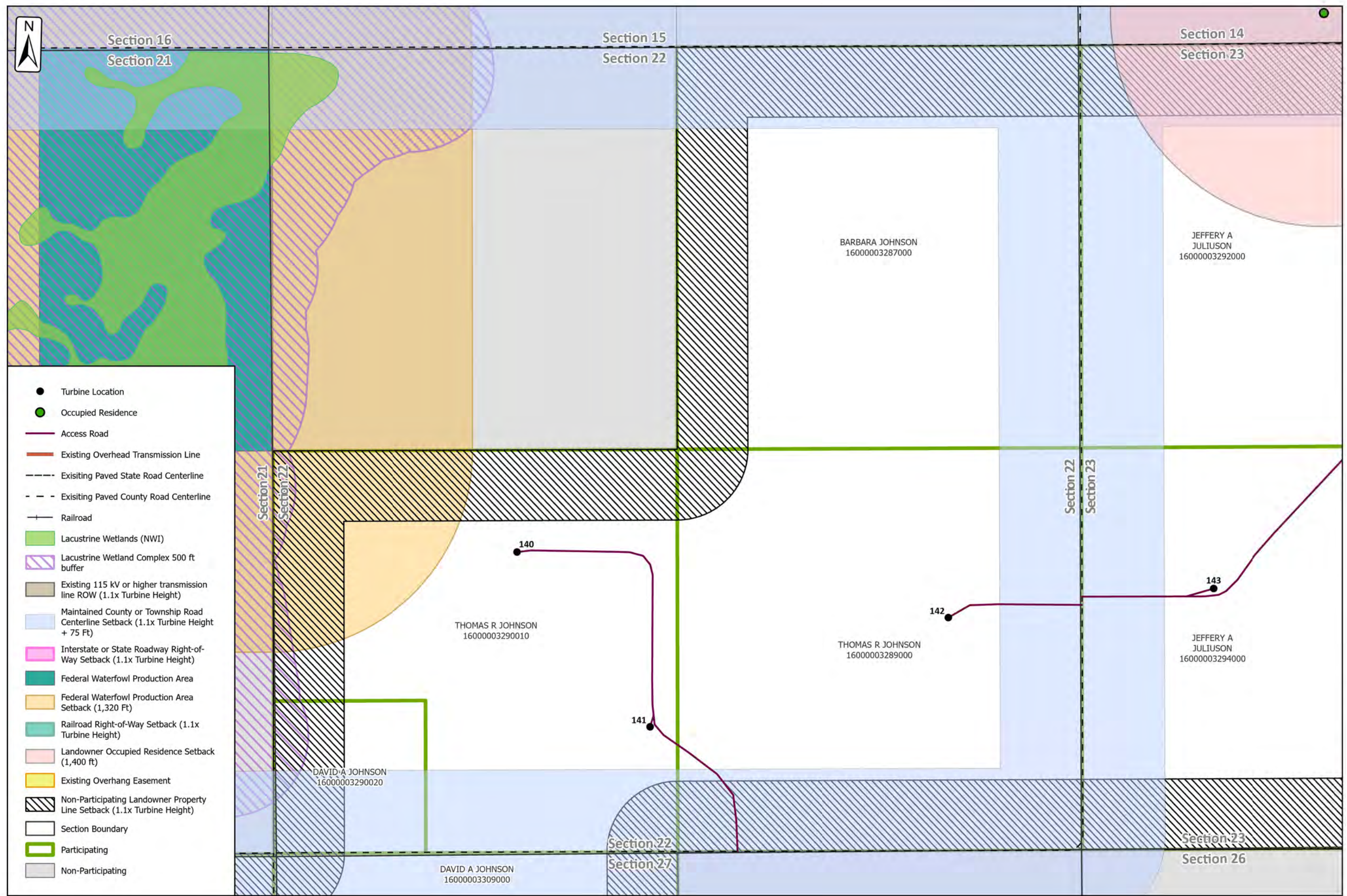
P.M.

BOOK:

GIS FILE:

DATE: 8/31/2023

SHEET NO: 4 of 11



- Turbine Location
- Occupied Residence
- Access Road
- Existing Overhead Transmission Line
- Existing Paved State Road Centerline
- - - Existing Paved County Road Centerline
- Railroad
- Lacustrine Wetlands (NWI)
- Lacustrine Wetland Complex 500 ft buffer
- Existing 115 kV or higher transmission line ROW (1.1x Turbine Height)
- Maintained County or Township Road Centerline Setback (1.1x Turbine Height + 75 Ft)
- Interstate or State Roadway Right-of-Way Setback (1.1x Turbine Height)
- Federal Waterfowl Production Area
- Federal Waterfowl Production Area Setback (1,320 Ft)
- Railroad Right-of-Way Setback (1.1x Turbine Height)
- Landowner Occupied Residence Setback (1,400 ft)
- Existing Overhang Easement
- Non-Participating Landowner Property Line Setback (1.1x Turbine Height)
- Section Boundary
- Participating
- Non-Participating



SECTIONS	22, 23, 27, 28, 29, 31, 32, 33, 34, 35
TOWNSHIP	T145N R57W
TOWNSHIPS	Riverside Township
COUNTY, STATE	Steele County, ND

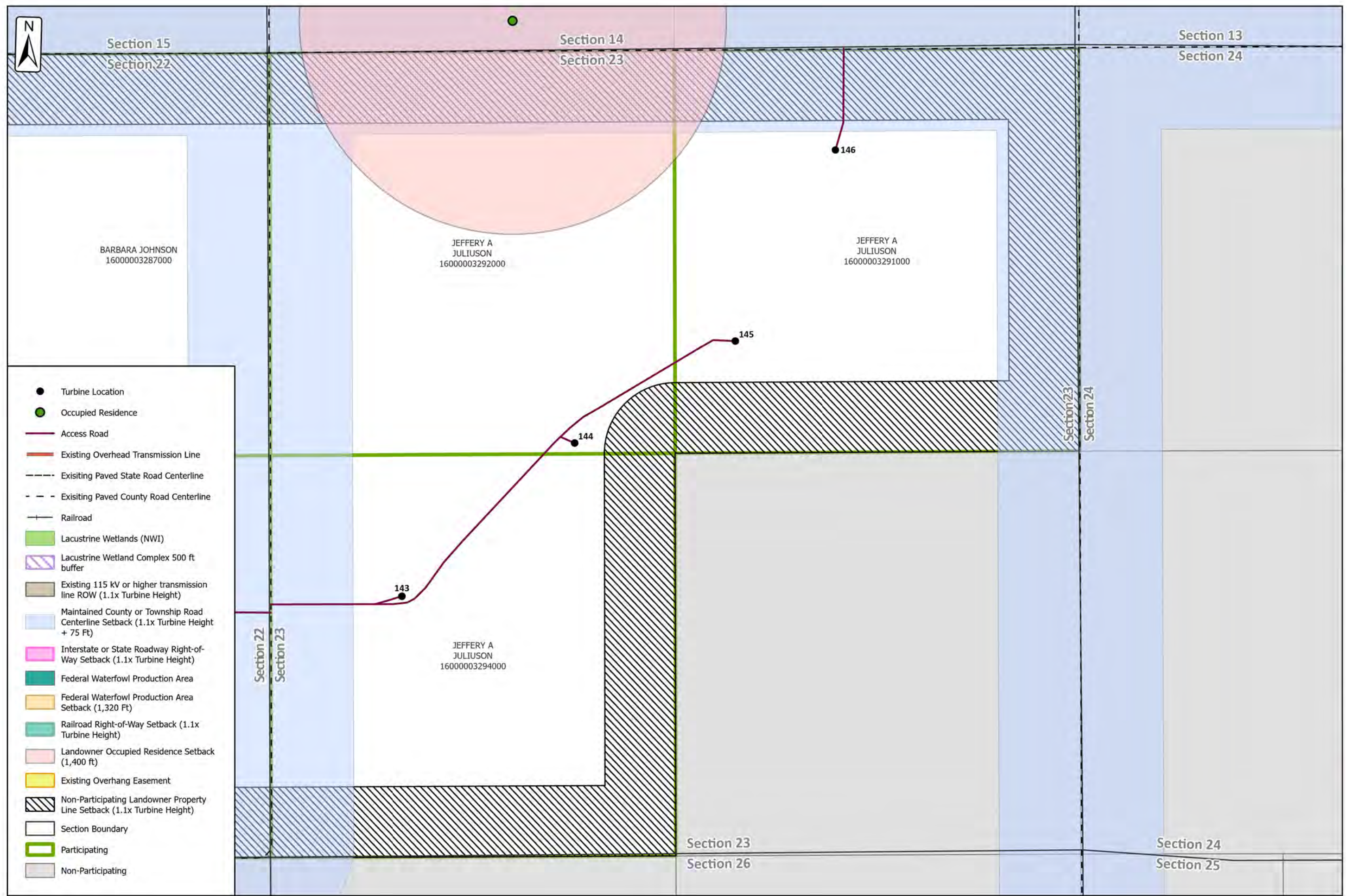
CLIENT: Otter Tail Power Company

Luverne Wind Upgrade Project

Figure 3: Exclusions and Avoidance



SCALE	0 130 260
	Feet
DR.	CH.
P.M.	
BOOK:	
GIS FILE:	
DATE:	8/31/2023
SHEET NO:	5 of 11



- Turbine Location
- Occupied Residence
- Access Road
- Existing Overhead Transmission Line
- Existing Paved State Road Centerline
- Existing Paved County Road Centerline
- Railroad
- Lacustrine Wetlands (NWI)
- Lacustrine Wetland Complex 500 ft buffer
- Existing 115 kV or higher transmission line ROW (1.1x Turbine Height)
- Maintained County or Township Road Centerline Setback (1.1x Turbine Height + 75 Ft)
- Interstate or State Roadway Right-of-Way Setback (1.1x Turbine Height)
- Federal Waterfowl Production Area
- Federal Waterfowl Production Area Setback (1,320 Ft)
- Railroad Right-of-Way Setback (1.1x Turbine Height)
- Landowner Occupied Residence Setback (1,400 ft)
- Existing Overhang Easement
- Non-Participating Landowner Property Line Setback (1.1x Turbine Height)
- Section Boundary
- Participating
- Non-Participating



SECTIONS	22, 23, 27, 28, 29, 31, 32, 33, 34, 35
TOWNSHIP	T145N R57W
TOWNSHIPS	Riverside Township
COUNTY, STATE	Steele County, ND

CLIENT: Otter Tail Power Company

Luverne Wind Upgrade Project
Figure 3: Exclusions and Avoidance



SCALE	0 130 260
	Feet
DR.	CH.
P.M.	-
BOOK:	-
GIS FILE:	-
DATE:	8/31/2023
SHEET NO:	6 of 11

The information contained on this map is proprietary and confidential. The use or disclosure of this information by you to third parties is prohibited by law and may give rise to civil or criminal liability.

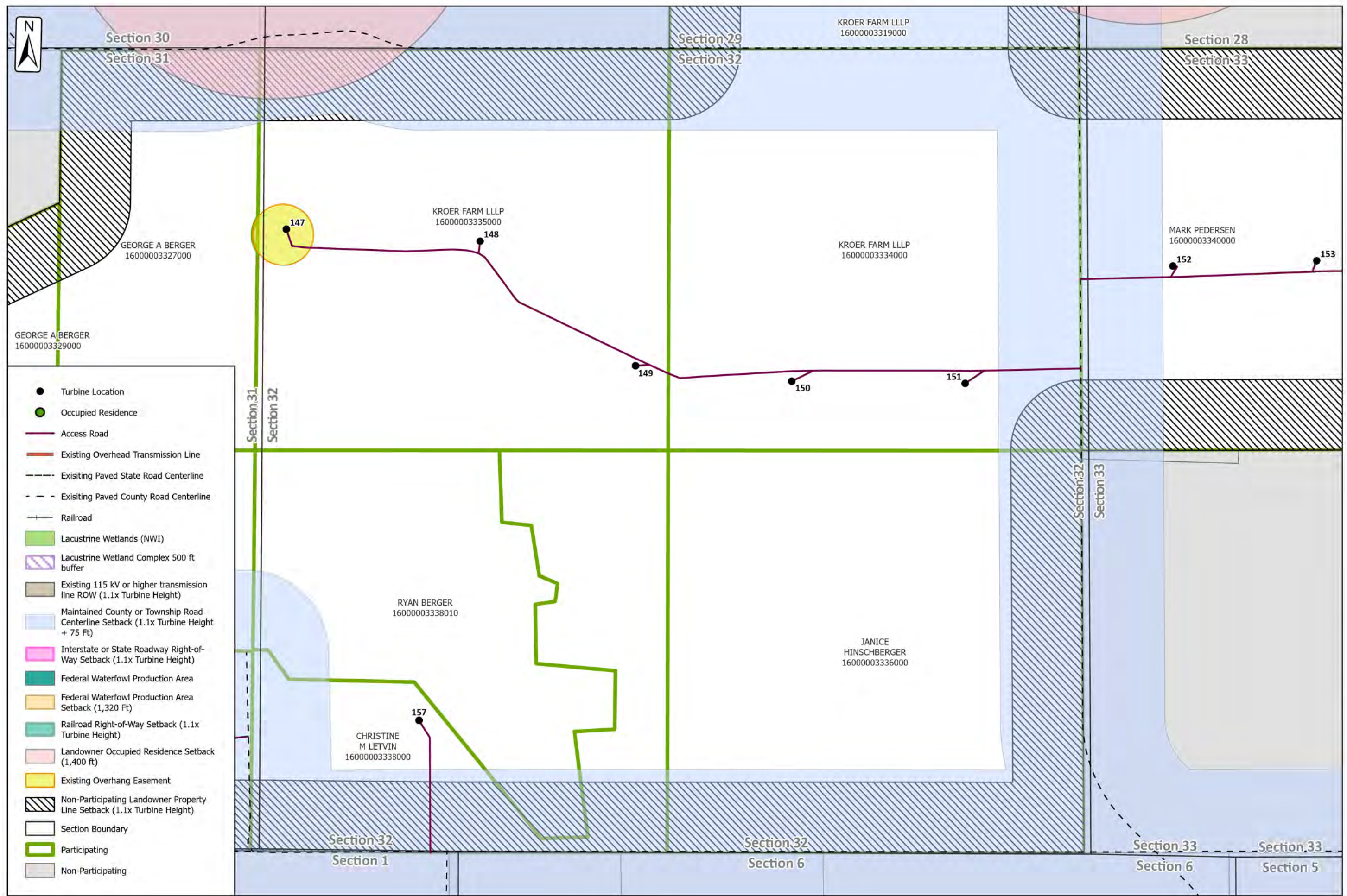


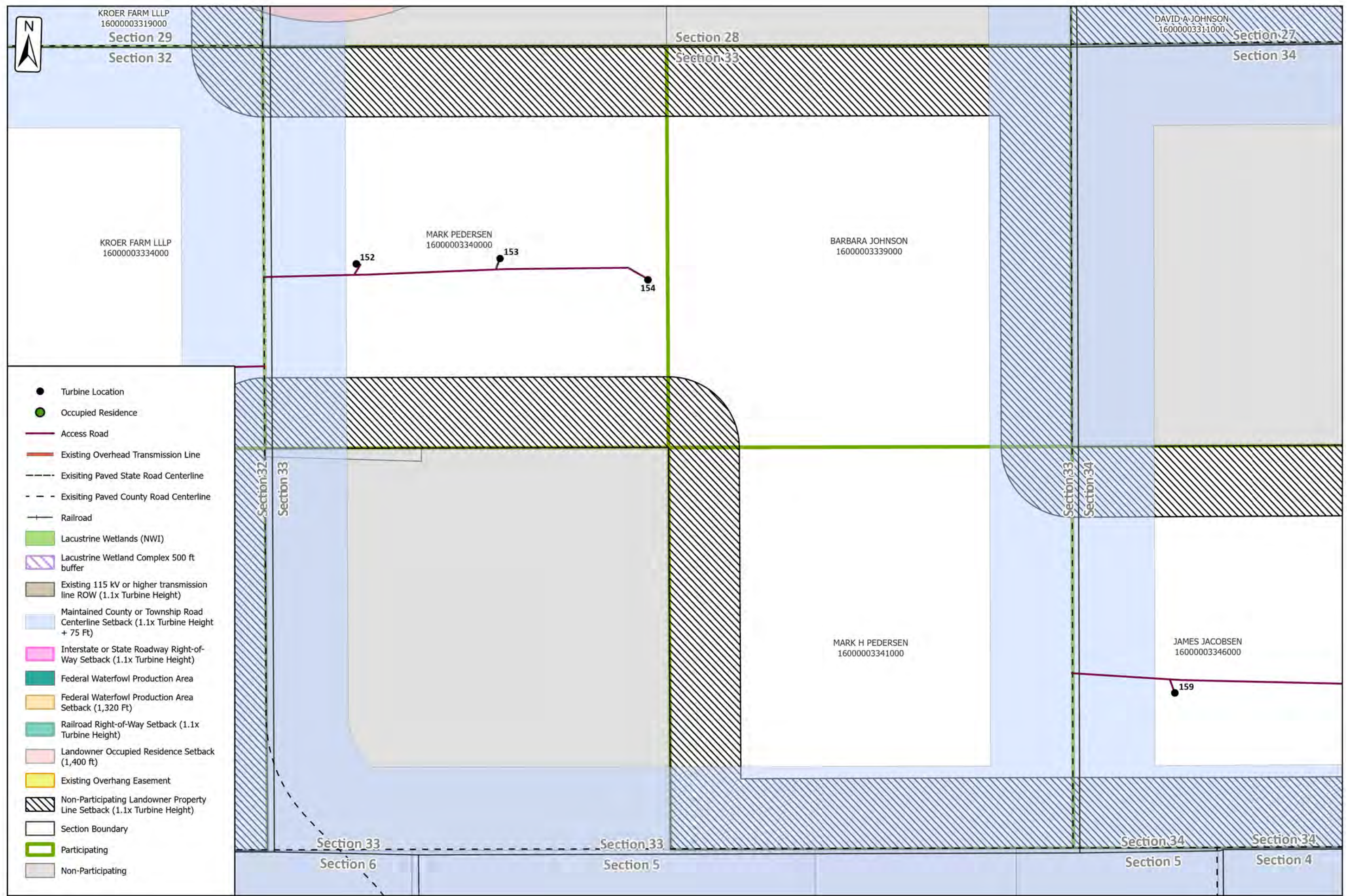
SECTIONS	22, 23, 27, 28, 29, 31, 32, 33, 34, 35
TOWNSHIP	T145N R57W
TOWNSHIPS	Riverside Township
COUNTY, STATE	Steele County, ND

CLIENT: Otter Tail Power Company
Luverne Wind Upgrade Project
Figure 3: Exclusions and Avoidance



SCALE	0 130 260 Feet
DR.	- CH. -
P.M.	- - -
BOOK:	- - -
GIS FILE:	- - -
DATE:	8/31/2023
SHEET NO.	7 of 11





SECTIONS	22, 23, 27, 28, 29, 31, 32, 33, 34, 35
TOWNSHIP	T145N R57W
TOWNSHIPS	Riverside Township
COUNTY, STATE	Steele County, ND

CLIENT:	Otter Tail Power Company
---------	--------------------------

Luverne Wind Upgrade Project
Figure 3: Exclusions and Avoidance



SCALE:	0 130 260 Feet
DR:	CH
P.M.	
BOOK:	
GIS FILE:	
DATE:	8/31/2023
SHEET NO.:	8 of 11

The information contained on this map is proprietary and confidential. The use or disclosure of this information by you to third parties is prohibited by law and may give rise to civil or criminal liability.

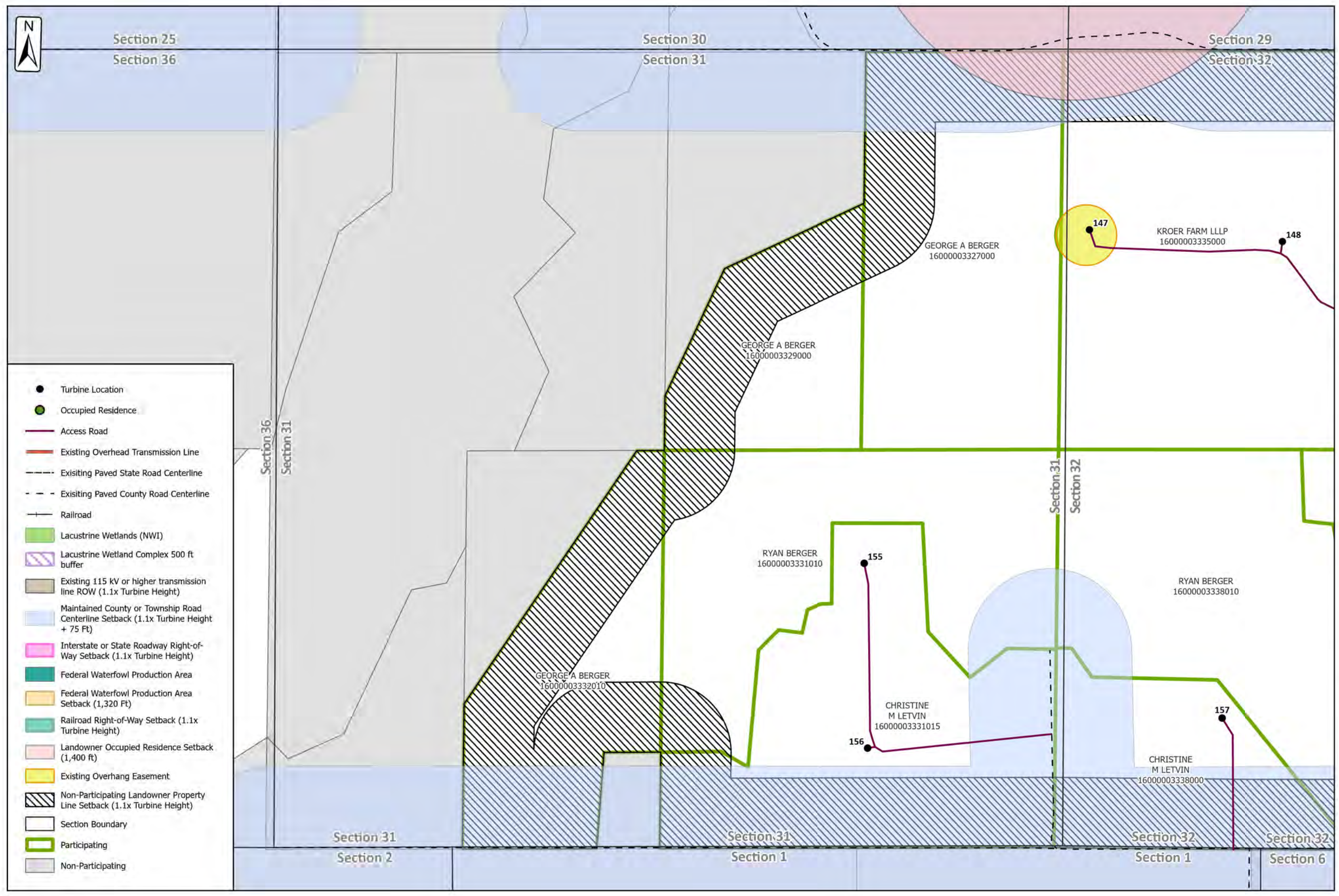


SECTIONS	TOWNSHIP	TOWNSHIPS	COUNTY, STATE
22, 23, 27, 28, 29, 31, 32, 33, 34, 35	T145N R57W	Riverside Township	Steele County, ND

CLIENT: Otter Tail Power Company
Luverne Wind Upgrade Project
Figure 3: Exclusions and Avoidance



SCALE: 0 130 260 Feet
DR. - - -
P.M. - - -
BOOK: - - -
GIS FILE: - - -
DATE: 8/31/2023
SHEET NO: 9 of 11



- Turbine Location
- Occupied Residence
- Access Road
- Existing Overhead Transmission Line
- Existing Paved State Road Centerline
- Existing Paved County Road Centerline
- Railroad
- Lacustrine Wetlands (NWI)
- Lacustrine Wetland Complex 500 ft buffer
- Existing 115 kV or higher transmission line ROW (1.1x Turbine Height)
- Maintained County or Township Road Centerline Setback (1.1x Turbine Height + 75 Ft)
- Interstate or State Roadway Right-of-Way Setback (1.1x Turbine Height)
- Federal Waterfowl Production Area
- Federal Waterfowl Production Area Setback (1,320 Ft)
- Railroad Right-of-Way Setback (1.1x Turbine Height)
- Landowner Occupied Residence Setback (1,400 ft)
- Existing Overhang Easement
- Non-Participating Landowner Property Line Setback (1.1x Turbine Height)
- Section Boundary
- Participating
- Non-Participating



SECTIONS	22, 23, 27, 28, 29, 31, 32, 33, 34, 35
TOWNSHIP	T145N R57W
TOWNSHIPS	Riverside Township
COUNTY, STATE	Steele County, ND

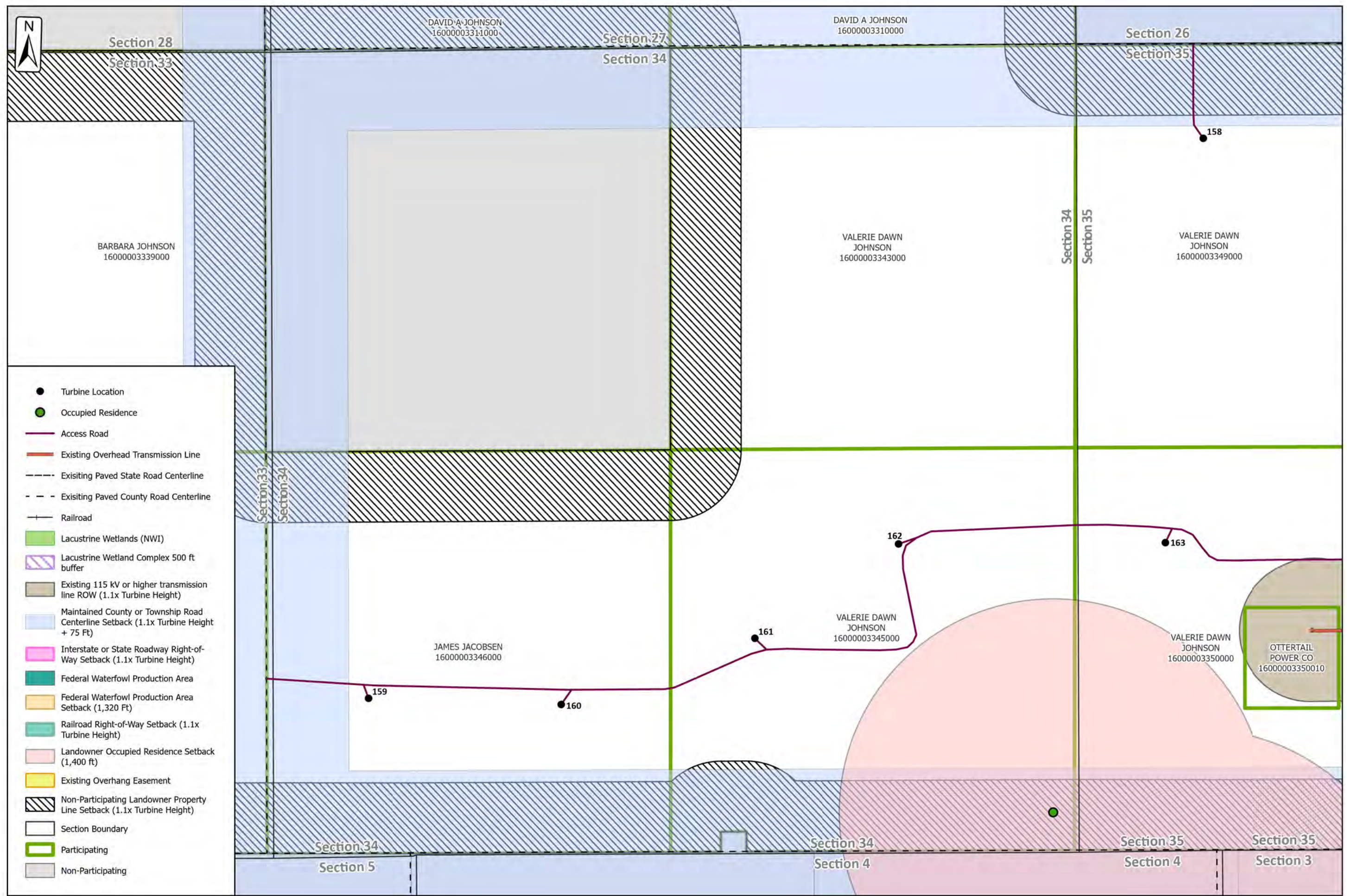
CLIENT: Otter Tail Power Company

Luverne Wind Upgrade Project

Figure 3: Exclusions and Avoidance



SCALE	0 130 260 Feet
DR.	- CH. -
P.M.	-
BOOK:	-
GIS FILE:	-
DATE:	8/31/2023
SHEET NO:	10 of 11



- Turbine Location
- Occupied Residence
- Access Road
- Existing Overhead Transmission Line
- Existing Paved State Road Centerline
- - - Existing Paved County Road Centerline
- Railroad
- Lacustrine Wetlands (NWI)
- Lacustrine Wetland Complex 500 ft buffer
- Existing 115 kV or higher transmission line ROW (1.1x Turbine Height)
- Maintained County or Township Road Centerline Setback (1.1x Turbine Height + 75 Ft)
- Interstate or State Roadway Right-of-Way Setback (1.1x Turbine Height)
- Federal Waterfowl Production Area
- Federal Waterfowl Production Area Setback (1,320 Ft)
- Railroad Right-of-Way Setback (1.1x Turbine Height)
- Landowner Occupied Residence Setback (1,400 ft)
- Existing Overhang Easement
- Non-Participating Landowner Property Line Setback (1.1x Turbine Height)
- Section Boundary
- Participating
- Non-Participating



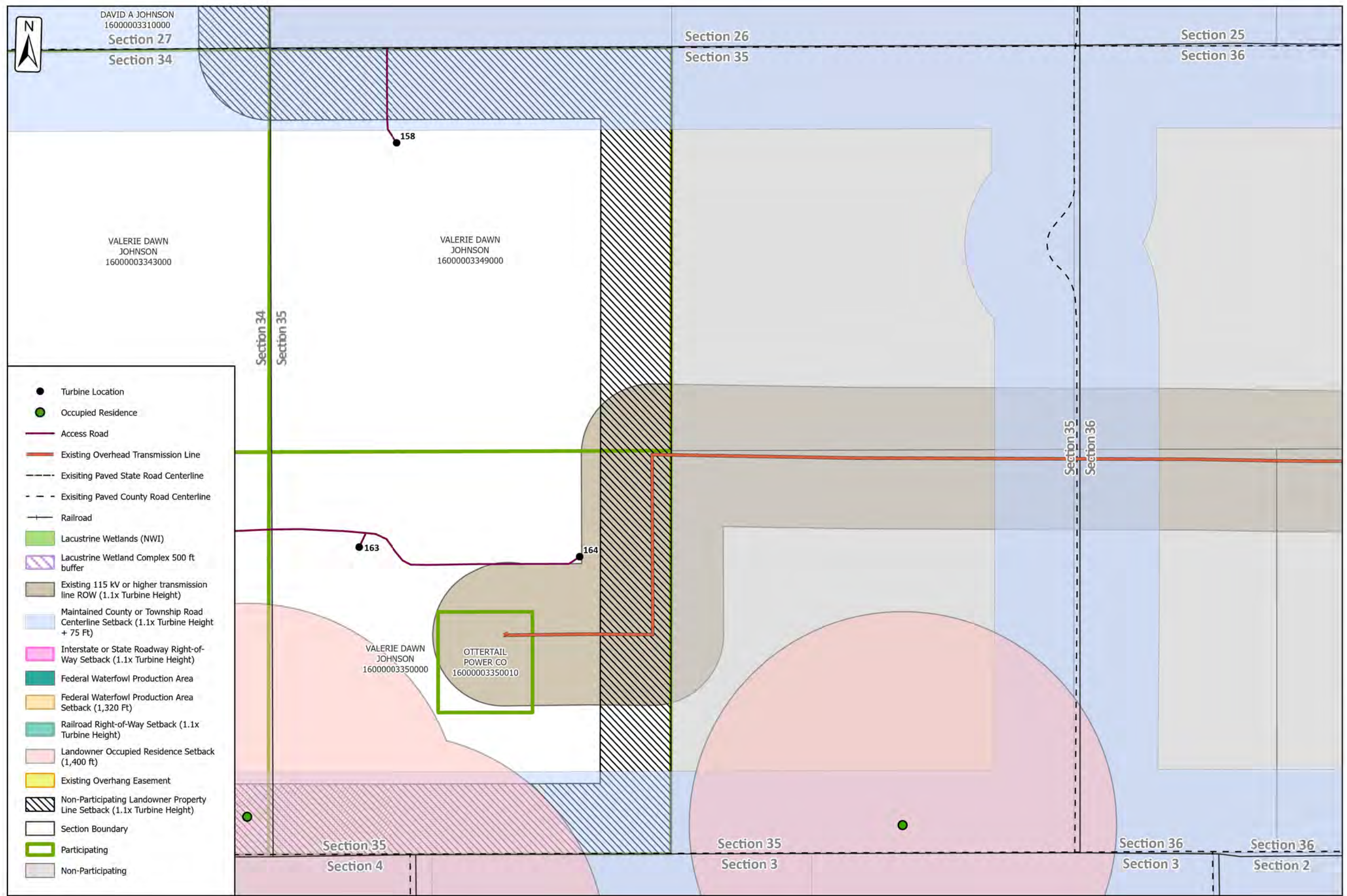


SECTIONS	22, 23, 27, 28, 29, 31, 32, 33, 34, 35
TOWNSHIP	T145N R57W
TOWNSHIPS	Riverside Township
COUNTY, STATE	Steele County, ND

CLIENT: Otter Tail Power Company
Luverne Wind Upgrade Project
Figure 3: Exclusions and Avoidance



SCALE	0 130 260 Feet
DR.	- CH -
P.M.	- - -
BOOK:	- - -
GIS FILE:	- - -
DATE:	8/31/2023
SHEET NO:	11 of 11



DAVID A JOHNSON
 16000003310000
 Section 27
 Section 34

VALERIE DAWN JOHNSON
 16000003343000

VALERIE DAWN JOHNSON
 16000003349000

VALERIE DAWN JOHNSON
 16000003350000

OTTERTAIL POWER CO
 16000003350010

Section 35
 Section 4

Section 35
 Section 3

Section 36
 Section 3

Section 36
 Section 2