

Office of Land Management

395 John Ireland Boulevard MS 678
Saint Paul, MN 55155

March 10, 2025

James Sullivan
Minnesota Department of Commerce
85 7th Place East, Suite 280
St. Paul, MN 55101

Re: In the Matter of the Joint Application of Midwater BESS, LLC for a Site Permit and Route Permit for the up to 150 MW Midwater Energy Storage Project and Associated 161 kV Transmission Line in Freeborn County, Minnesota
Docket Number: IP-7138/ESS-24-294, IP-7138/TL-24-295

Dear Mr. Sullivan,

On February 7th, 2025, the Minnesota Public Utilities Commission (Commission) and the Minnesota Department of Commerce (DOC) issued a Notice of Public Information and Environmental Assessment Scoping Meetings for Midwater BESS, LLC's (Applicant) joint application for a site permit and route permit to construct and operate an up to 150 megawatt (MW) alternating current (AC) battery energy storage system (BESS) and associated facilities (BESS Facility), and an approximately 2,668-foot long, 161 kilovolt (kV) high voltage transmission line (HVTL) and associated facilities (HVTL Facility) (Project). The Minnesota Department of Transportation (MnDOT) has reviewed the application and other materials regarding the proposed Project and submits the following comments and recommendations in response to the Notice.

Because of the Project's proximity to and potential impacts on US 65, MnDOT would like to note possible impacts on areas of concern or interest listed below. Other possible Project impacts, mitigative suggestions, recommendations, permit requirements, and guidance materials are also communicated in *Attachment 1* of this submission. Attention should be paid to MnDOT's requested deliverables as they may be required for future utility permit application approvals. Additional consultation may be required to address outstanding issues.

Project Access

Because there is a direct connection between crash rates and access density on state trunk highways, a standard MnDOT safety concern includes requesting that the Applicant utilize existing access points off trunk highways or access the Project from lower-volume township or county roads (preferred) whenever possible. The latter is not an option within the Project boundary and therefore, MnDOT prefers that the Applicant investigate utilizing/upgrading the existing access northwest of the proposed, new Project access from US 65. When requesting access from trunk highways, MnDOT's District 6 Development Review Committee may request that the Applicant install temporary or permanent turn lanes to mitigate the increased safety risk.

HVTL

During early Project coordination and review, the Applicant directly communicated that the Project's proposed HVTL will not impact MnDOT trunk highway (TH) right-of-way (ROW). A permit from MnDOT is required for physical pole placement within the TH ROW, fixed aerial encroachments of the TH ROW, and temporary aerial encroachments such as Conductor Movement Envelope (CME) or "blowout zone" over the TH ROW. MnDOT would like the Applicant to be aware of these requirements should the proposed HVTL alignment shift toward the TH ROW at any point prior to construction as additional consultation may be required.

Project Area Mapping

To accurately reflect Project boundaries and aid in assessing other potential impacts to TH ROW, MnDOT requests that the Project Area or Project Boundary mapping does not overlap TH ROW limits in any way. Specifically, regarding TH ROW areas where the Applicant does not have land rights, clear and correct land lease/ownership boundaries should be displayed.

Should the Commission issue Site Permit for the Project, continued coordination with MnDOT staff is expected. Any MnDOT permits required as a part of this Project can be coordinated at an earlier time but may not be issued until the Commission has approved all necessary permits for this Project. All applicable [permitting](#), [traffic control](#) and construction coordination efforts should be made through the appropriate MnDOT [district staff](#). MnDOT District Specialists should be given the opportunity to participate in pre-construction meetings as they apply to MnDOT- owned property.

Thank you for the opportunity to provide these comments.

Sincerely,

/s/ Stacy Kotch Eggstad

Utility Routing and Siting Coordinator
Minnesota Department of Transportation
Office of Land Management
stacy.kotch@state.mn.us

Attachment 1: MnDOT OES & Functional Group Comments and Recommendations

ec: MnDOT Utility ENM Review Staff

ATTACHMENT 1

Midwater BESS, LLC- Midwater Energy Storage Project ESS-24-294 and TL-24-295

MNDOT OES & FUNCTIONAL GROUP COMMENTS

| Resource | Boilerplate Comments |
|--|--|
| Federal and State-listed Protected Species | The Applicant should consult with the U.S. Fish and Wildlife Service (USFWS) with respect to listed species which may occur within the project area, and limit ground disturbances to the extent practical in areas of semi-natural or natural vegetation. State-listed threatened and endangered species may be located along portions of the route along MnDOT right-of-way (ROW). We recommend the Applicant consult with the Minnesota Department of Natural Resources (MDNR) to identify recorded locations and conduct species-specific surveys prior to construction to confirm locations prior to identifying pole placement and temporary workspaces. MnDOT requests copies of all biological field survey data/reports within its ROW be submitted to MnDOT. |
| Federal and State-listed Protected Species | Herbicide use must be minimized during construction and future maintenance occurring on MnDOT ROW. If used, herbicide must be applied via hand-held spot treatments applied to individual plants. Avoid broadcast applications of herbicides without further consultation to MnDOT Office of Environmental Stewardship (OES). Restrict all activities to avoid the application of insecticides and fungicides on MnDOT ROW. |
| Federal and State-listed Protected Species | The Applicant must establish native vegetation in areas that are not proposed to be mowed more than once per year and must include mowing and spot treatment control to establish seeded vegetation, as described in the MnDOT Seeding Manual (see http://www.dot.state.mn.us/environment/erosion/vegetation.html). |
| Avian Protection | The Applicant should minimize tree clearing/trimming within MnDOT ROW to extent possible. Tree clearing may be restricted to winter months (November 15 - March 31). On MnDOT ROW, additional tree clearing restrictions will typically be included in MnDOT's utility permit. If construction activities occur within the nesting season for migratory birds, conduct pre-construction nest surveys. If active nests are discovered, implement a Migratory Bird Plan to avoid and minimize impacts. |
| <i>Contaminated Materials Management</i> | It is the responsibility of the Applicant to identify the potential to encounter contaminated materials (soil/groundwater/vapor) on or within 500-feet of MnDOT ROW. The Applicant should provide to MnDOT all environmental due diligence documents (e.g., desktop review, Phase I Environmental Site Assessments, Phase II), as applicable/available. If access or sampling is proposed in MnDOT's ROW, a permit will be required (see https://www.dot.state.mn.us/utility/forms.html). Contaminated materials encountered during any work within MnDOT ROW is required to be managed in accordance with applicable federal/state and location regulations and/or guidance documents. |
| Regulated Waste and Storage Tanks | It is the responsibility of the Applicant to report the presence of aboveground storage tanks (ASTs) within project limits. If ASTs are identified, contact MnDOT's Regulated Materials staff. Asbestos, solid waste, regulated and/or hazardous waste encountered during construction activities are required to be managed in accordance with applicable federal/state and local regulations and/or guidance documents. |

| | |
|--|---|
| <p>Roadside Vegetation Management</p> | <p>Pesticides: Require Applicant to develop a Vegetation Management/Pesticide/Revegetation Plan and submit for MnDOT review/approval. Any proposed pesticides and application rates should be submitted to MnDOT for approval (NOTE: Use of herbicides or similar chemistries must be limited to spot treatments via hand tools only [i.e., no equipment mounted broadcast applications]). Other general conditions include the following:</p> <ul style="list-style-type: none"> • Herbicide used on MnDOT ROW must be labeled for use on rights-of-way. • Pesticide applicators must be MN state- licensed as a Commercial Pesticide Applicator in Categories A and J (see: https://www.mda.state.mn.us/pesticide-fertilizer/pesticide-applicator-license-types) • Herbicide records for work on MnDOT’s ROW must be provided to the local MnDOT District Office • Refer to Resource: Federally and State Listed Protected Species for further pesticide information. The more restrictive statements must be followed. <p>Noxious/Invasive Weeds: Prior to construction, the Applicant should conduct a field survey for noxious weeds in all project workspaces. If any state prohibited or county designated noxious weeds (https://www.mda.state.mn.us/plants-insects/minnesota-noxious-weed-list) are identified within installation limits on MnDOT’s ROW, the Applicant must submit its Invasive Species Prevention Plan to the OES-Roadside Vegetation Management Unit for review and approval. All efforts must be made to prevent transportation of propagative parts to new areas. Movement of propagative parts of these plants is prohibited by Minnesota Statutes, Section 18.82. If transportation of soil or plant parts from the site is necessary, a transportation permit will be required. Questions regarding noxious weed law or noxious weed transportation permits should be directed to the Minnesota Department of Agriculture at noxiousweeds.mda@state.mn.us.</p> <p>Native vegetation: Parking, staging, and operating equipment in this area should be kept to a minimum level to accomplish the installation. Parking of vehicles or equipment not directly required for the utility installation in this area should be restricted to the road surfaces. Failure to adhere to these recommendations may lead to unnecessary damage and compaction of native plants and soils. An area of native vegetation is present south of the proposed facility, and staging in the ROW should be avoided south of Shell Rock River.</p> <p>Restoration: If areas are disturbed on MnDOT’s ROW, the area must be re-established MnDOT Seed Mix: Patch Mix at a rate of 30 lbs. per acre. Patch Mix components and rates can be found in the Guide to the New 2024 MnDOT Seed Mixes (https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=38590641). Any erosion control blanket must be free of plastic netting and on the MnDOT Approved Products List for Rolled Erosion Prevention products. In addition, any hydraulic mulch used up-slope of Public Waters must be free of plastic fiber additives.</p> <p>MnDOT reserves the right to conduct its own inspection on MnDOT ROW (during and post-construction) to verify restoration status prior to the Applicant filing their Notification of Restoration Completion with the Commission.</p> |
| <p>Wetlands Coordination</p> | <p>Any ground disturbance (e.g., fill, excavation, direct or indirect drainage) of regulated aquatic resources must comply with all applicable federal Clean Water Act Section 404, Minnesota Wetland Conservation Act (WCA), and MDNR Public Waters Work requirements. If ground-disturbing activities are proposed within MnDOT ROW, MnDOT may require a Level 2 aquatic resource delineation to be performed throughout the areas of proposed disturbance. The delineation would require approval by MnDOT OES, as the Local Government Unit (LGU) responsible for administering the WCA within state TH ROW.</p> <p>The project must restore any temporary impacts and avoid, minimize, and mitigate any permanent impacts to delineated aquatic resources to the extent required by state and federal law. This includes implementing Best Management Practices (BMPs) during construction to minimize aquatic resource disturbance, including compaction, erosion, and sedimentation.</p> <p>MnDOT reserves the right to conduct field inspections within its ROW.</p> |
| <p>Water Permits - Federal Agencies, Floodplains</p> | <p>*If floodplains are crossed by the project:</p> <p>The Applicant should make efforts to avoid placement of structures or fill in floodplain areas to minimize adverse impacts and increased risk of flooding. The Applicant should engage with local floodplain permitting authorities to determine permitting and other requirements. The project may also involve work affecting waters of the US in which case a Section 404 authorization from the U.S. Army Corps of Engineers would be needed.</p> |

| | |
|--|---|
| Cultural Resources | <p>As documented in the Early Notification Memo (ENM) for Utility Projects dated November 22, 2024, the Section titled “Cultural Resources (Historic Properties and Tribal Consultation) Review” tells one to “refer to the attached supplemental information narrative for more information”. In the Supplemental Information section titled “Cultural Resources” described that a Phase Ia Literature Review was completed by Westwood Professional Services for the project; it is summarized that no previously recorded archaeological sites nor historic/architectural properties exist in the project area. Two previously inventoried architecture/history properties are noted to be “adjacent”: Trunk Highway 165 (XX-ROD-00044) and Bridge 24004 (FE-SHE-00008) that carries TH over Shell Rock River; both properties are noted to be “unevaluated” regarding their National Register of Historic Places (NRHP) Status in Table 2 of the supplemental information. Some of this information is incorrect. As documented in the Minnesota Statewide Historic Inventory Portal (MnSHIP) application and associated documents, TH 65 (XX-ROD-00178) is the correct property identification, and was previously determined not eligible for listing in the NRHP (MnSHPO No. 2022-0070). Bridge 24004 (FE-SHE-00008) was previously determined not eligible for listing in the NRHP (MnSHPO No. 2023-0700). While a copy of the report was not provided with the ENM, the supplemental information narrative notes that a Phase I archaeological field survey was completed for the project area in June 2024 that did not identify any new or previously recorded “archaeological, architectural, or historic sites.” Based upon the data provided, there are no known or suspected archaeological sites or historic properties within MnDOT ROW in the project area.</p> <p>The Applicant should provide summary of cultural field surveys and coordination with SHPO and other agencies and parties, as applicable, to date when submitting permit requests. If surveys have not been completed, provide an anticipated schedule for completion. If the Applicant is aware of or becomes aware of significant cultural resources findings in or adjacent to MnDOT ROW, please contact our office at CulturalResources.dot@state.mn.us. In addition, the Applicant shall prepare a Post Review Discovery Plan (PRDP) and submit to MnDOT for review; contact information for CRU staff must be included in the PRDP. This plan should outline the steps to be followed in the event of an unanticipated discovery of archaeological materials, human remains, or burials, and include language specific to the coordination with MnDOT when a discovery is on MnDOT ROW. MnDOT Cultural Resources Unit (CRU) staff should be notified (CulturalResources.dot@state.mn.us) within 24 hours in the event of an unanticipated find on or adjacent to MnDOT property during construction.</p> <p>Based upon the information provided in the ENM dated November 22, 2024, no additional archaeological investigations within MnDOT ROW appear warranted provided the Project is constructed as proposed. Should the area change from that proposed, additional archaeological investigations (e.g., literature reviews, reconnaissance surveys [if warranted]) may be required where the Project will intersect MnDOT ROW. Investigations should include in-field inspections to document areas of soil disturbance and to identify potentially unknown archaeological sites within areas of moderate to high archaeological potential. A PRDP should be developed for the project in advance of construction and be provided to MnDOT CRU if Project activities will occur in MnDOT ROW.</p> |
| Environmental Assessment Unit / Environmental Review | <p>If the Project will involve any construction activities within MnDOT ROW, the Applicant (and/or their Contractor) must comply with the following, relating to the conduct of work on the Project or to individuals engaged in work for the Project or employed on the Project:</p> <ul style="list-style-type: none"> (1) All applicable State and Federal laws and regulations (2) Orders and decrees of bodies and tribunals with lawful jurisdiction over the work (3) Such local ordinances as are applicable to the work <p>MnDOT's Environmental Assessment Unit reserves the right to request copies of the Applicant's environmental permits for work within its ROW as well as any inspection reports completed by the Applicant and/or its contractor.</p> |
| Soil Erosion and Sediment Control / Stormwater | <p>Given the size of the Project, we assume the Applicant will be required to obtain coverage under the Minnesota Pollution Control Agency's (MPCA) Construction Stormwater General Permit (MNR100001). If a portion of the final alignment is located within MnDOT ROW, we request that the Applicant submit a copy of its Construction Stormwater Pollution Prevention Plan (SWPPP)/erosion and sediment control details to MnDOT OES for review prior to filing its Notice of Intent for coverage under MPCA's MNR100001. In addition, MnDOT reserves the right to conduct inspections of the project for portions that are within MnDOT ROW during and/or after construction. The Applicant (and/or its contractor) will be the Owner on this permit for any work on MnDOT ROW - MnDOT will not be a co-Applicant.</p> <p>Soil compaction caused by equipment traffic and haul roads on MnDOT ROW must be mitigated using techniques described in the MnDOT Facility Design Guide Chapter 13 (https://roaddesign.dot.state.mn.us/facilitydesign.aspx).</p> <p>Temporary and permanent erosion and sediment control measures on MnDOT ROW must follow standards in the MnDOT Facility Design Guide Chapter 13 (https://roaddesign.dot.state.mn.us/facilitydesign.aspx).</p> <p>Seeding on MnDOT ROW must follow standards in MnDOT Seeding Manual (https://www.dot.state.mn.us/environment/erosion/vegetation.html).</p> <p>Any erosion control blanket must be free of plastic netting and on the MnDOT Approved Products List for Rolled Erosion Prevention products. In addition, any hydraulic mulch used up-slope of Public Waters must be free of plastic fiber additives.</p> |
| District Permitting Staff | <p>Direct coordination with applicable District Permitting Staff will be required for all downstream MnDOT utility permits. MnDOT Permitting Policy and Guidance can be found at: http://www.dot.state.mn.us/utility/guidance.html. Access permit will be required – see Project Access comments in letter and below (District Planning Staff Comments).</p> |

| | |
|--|--|
| <p>District Planning Staff</p> | <p><u>State Highway current construction projects</u>: Please note that MnDOT projects on state highways may affect travel routes to the project site, and/or may alter access points. To learn which projects might be in the area please review the current MnDOT construction projects website at https://www.dot.state.mn.us/construction/index.html and click on the district where your project is located.</p> <p><u>State Highway planned and future projects</u>: MnDOT plans projects along state highways up to 10 years in advance. Please check the district in which your project is located (District D6) at https://www.dot.state.mn.us/planning/10yearplan/district-chip.html to see which projects might coincide with your project. Note that project timing can change, particularly for projects that are identified as being planned for 5 to 10 years in the future. You may also reach out to the district Planning contact or district Project Manager for more information.</p> <p><u>Access</u>: Because there is a direct connection between crash rates and access density on state trunk highways, project proposers should plan to utilize access points on local roads whenever possible. Access from MnDOT right-of-way whether at an existing driveway or new driveway is not guaranteed, and new highway access permits will be required in either case. Please contact District Permitting staff for more information about permit applications, processes, and requirements.</p> |
| <p>Design Support / Safety and Operations Management</p> | <p><u>Powerlines</u>: Lateral placement of utility poles or non-crashworthy appurtenances must be placed outside the roadway's clear zone and should avoid the need for traffic barrier shielding. Any side slope grading within the roadway clear zone must not result in a hazardous geometry for run-off vehicles. Place poles as far out of the clear zone as possible. Additional distance from the roadway is encouraged, for roadway and driver safety. Added poles must not be placed closer to the trunk highway than existing poles. Utility poles/devices must not obstruct intersection sight lines. Appurtenances protruding more than four inches above the ground line shall be located outside the clear zone and as close to the edge of the ROW as practical and must not obstruct intersection sight lines. Appurtenances within the roadway clear zone must be crashworthy. See MnDOT's Facility Design Guide - Chapter 10 (https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=29752693) for a definition of "crashworthy" and other pertinent information.</p> <p><u>Pipelines</u>: Lateral placement of non-crashworthy appurtenances must be placed outside the roadway's clear zone and should avoid the need for traffic barrier shielding. Any side slope grading within the roadway's clear zone must not result in a hazardous geometry for run-off vehicles. Appurtenances protruding more than four inches above the ground line shall be located outside the clear zone and as close to the edge of the ROW as practical and must not obstruct intersection sight lines. Appurtenances within the roadway clear zone must be crashworthy. See MnDOT's Facility Design Guide - Chapter 10 (https://roaddesign.dot.state.mn.us/facilitydesign.aspx) for a definition of "crashworthy" and other pertinent information.</p> <p><u>Access Roads</u>: Additional access points off of the trunk highway are discouraged and should be avoided. For proposed access roads, the transverse slope design for permanent access roads connected to the trunk highway must be 1V:6H or flatter on the roadside and 1V:10 or flatter if in the median. See Transverse Slopes in the MnDOT's Facility Design Guide - Chapter 10.</p> <p>For other technical components and requirements for utility owners regarding the location, design, and methods for installing, adjusting, accommodating, and maintaining utility facilities on such rights of way, please refer to MnDOT Utility Accommodation and Coordination Manual, found here: https://www.dot.state.mn.us/utility/projectdelivery.html.</p> <p>To understand why these rules and comments exist, intersection related and roadway departure crashes are two of the leading types of fatal and serious injury crashes on Minnesota Roadways. These comments reflect measures needed to continue to prevent these types of crashes. To find out more about Minnesota safety efforts, please see our Strategic Highway Safety Plan. https://www.dot.state.mn.us/trafficeng/safety/shsp/</p> |
| <p>Blowing Snow Control / Snow Fences</p> | <p>Snow fences have been established in strategic locations across that state as a collaborative effort with landowners to trap snow from blowing across and accumulating on state highways. Based on our review, we have not identified living and/or structural snow fences in the vicinity of your project.</p> <p>If the utility project adversely impacts a snow fence causing the loss of blowing snow control functionality, the utility will must work with MnDOT to find a blowing snow control solution. Please refer to http://www.dot.state.mn.us/environment/livingsnowfence/ and Chapter 15D - Design for Blowing Snow Control found in MnDOT Facility Design Guide (https://roaddesign.dot.state.mn.us/facilitydesign.aspx) for more information.</p> |