

## **Appendix B**

## **Settlement Agreement**

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (this “Settlement”) is entered into by and among Big Bend Wind, LLC (“Big Bend Wind”), Red Rock Solar, LLC (“Red Rock Solar”), Apex Clean Energy Holdings, LLC (“Apex”), Minnesota Historical Society (“MNHS”), Lower Sioux Indian Community in the State of Minnesota (“Lower Sioux”), and Upper Sioux Community (“Upper Sioux” and, together with MNHS and Lower Sioux, the “Intervenors”). Big Bend Wind, Red Rock Solar, Apex, and the Intervenors are referred to herein each as a “Party” or, together, the “Parties.” The effective date of this Settlement is September 14, 2021 (the “Effective Date”).

### **Background on Proceedings**

A. On November 9, 2020, Big Bend Wind filed three separate applications in support of its proposed up to 308-megawatt (“MW”) wind farm and an 18-mile 161 kilovolt (“kV”) transmission line to be located in portions of Cottonwood, Martin, and Watonwan Counties (collectively, the “Wind Project”):

- a certificate of need (“CN”) application for the wind farm and the associated 161 kV transmission line (Docket No. IP-7013/CN-19-408);
- a large wind energy conversion system (“LWECS”) site permit application (the “LWECS Application”) (Docket No. IP-7013/WS-19-619); and
- a high-voltage transmission line (“HVTL”) route permit application for the proposed 161 kV transmission line (Docket No. IP-7013/TL-19-621) (collectively, the CN, LWECS, and HVTL dockets are referred to as the “Proceedings”).

B. The LWECS Application includes a proposed wind turbine layout that includes between 54 and 55 wind turbine locations to facilitate construction of one of the three wind turbine models being considered by Big Bend Wind (the “Application Layout”). These proposed wind turbine models range from 5.5 to 5.7 MWs in size and 612 feet to 656 feet in total height.

C. Also, on November 9, 2020, Red Rock Solar, an affiliate of Big Bend Wind, filed separate applications for a CN (Docket No. IP-7014/CN-19-486) and site permit (Docket No. IP-7014/GS-19-620) for its proposed solar energy conversion facility with an up to 60 MW alternating current nameplate capacity, in Midway Township, Cottonwood County, Minnesota (the “Solar Project”).

D. The Minnesota Public Utilities Commission (the “MPUC” or “Commission”) has jurisdiction over the Proceedings pursuant to Minn. Stat. § 216B.243, Minn. Stat. Ch. 216F, and Minn. Stat. Ch. 216E.

E. On March 11, 2021, the MPUC issued an order accepting Big Bend Wind’s applications as complete, ordering joint review of the Wind Project and Solar Project and determining other procedural matters. In addition, the Commission referred the Wind Project to the Office of Administrative Hearings (“OAH”) for a contested case hearing to examine the potential impacts of the Wind Project, proposed mitigative measures, and any adverse

environmental effects that cannot be avoided, related to cultural and archaeological impacts, including impacts to the Jeffers Petroglyphs Site, and other issues that may be added at a future time. The Solar Project is not part of the contested case hearing but will be considered by the MPUC in conjunction with the Proceedings.

F. On various dates, MNHS, Lower Sioux, and Upper Sioux intervened in the Wind Project contested case proceeding and were granted full party status.

G. Pursuant to Minn. Stat. § 14.59 and Minn. R. 1400.7800, the Parties met informally for settlement discussions to resolve the issues referred to OAH for a contested case hearing. This Settlement resulted.

NOW, THEREFORE, THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT in the Proceedings and recommend the Commission issue a CN and Site Permit for the proposed Wind Project, subject to this Settlement.

### **Agreement and Recommendation**

#### **1. Project Layout.**

- a. Big Bend Wind agrees to modify the proposed wind turbine layout reflected in its LWECS Application (the “Application Layout”) as follows. Big Bend Wind agrees to remove the eight wind turbines shown on the figure included in Exhibit A as T01, T04, T06, T11, T12, T13, T14, and T18 and seek alternative wind turbine locations that are at least seven miles from the Jeffers Petroglyphs Site. In addition, Big Bend Wind agrees that it will not construct one or both of the wind turbines shown on Exhibit A as T19 and T20 if the Commission grants a LWECS Site Permit that authorizes construction of one or more of the alternative wind turbine locations shown on Exhibit A as A01, A02, A03, A04, and A05 (the “Alternative Locations”). It is Big Bend Wind’s intent to construct all five Alternative Locations and not construct the wind turbines shown on Exhibit A as T19 and T20. For purposes of clarity and avoidance of doubt, the Parties provide the following illustrative hypotheticals:
  - i. If the Commission grants a LWECS Site Permit authorizing construction of only one of the Alternative Locations identified in this Paragraph 1(a), Big Bend Wind will construct the wind turbine shown on Exhibit A as T19 but not construct T20 and may construct a wind turbine on the authorized Alternative Location.
  - ii. If the Commission grants a LWECS Site Permit authorizing construction of only two of the Alternative Locations identified in this Paragraph 1(a), Big Bend Wind will not construct either of the wind turbines shown on Exhibit A as T19 and T20 and may construct wind turbines on the two authorized Alternative Locations.

- iii. If the Commission grants a LWECS Site Permit authorizing construction of three or more of the Alternative Locations identified in this Paragraph 1(a), Big Bend Wind will not construct either of the wind turbines shown on Exhibit A as T19 and T20 and may construct wind turbines on all three or more of the authorized Alternative Locations.
- b. If either or both wind turbines shown on Exhibit A as T19 and T20 must be constructed, then Big Bend Wind will use good faith efforts to position that wind turbine or those wind turbines within their respective Buildable Areas (as that term is used in Exhibit A) to minimize impact to the viewshed from the Jeffers Petroglyphs Site. Big Bend Wind also agrees to use good faith efforts to position the wind turbines shown on Exhibit A as T24 and T25 within their respective Buildable Areas to minimize impact to the viewshed from the Jeffers Petroglyphs Site.
- c. In the modified layout (the “Revised Layout”) described in this Paragraph 1, all proposed wind turbine locations would be located at least seven miles from the Jeffers Petroglyphs Site, except that if either or both wind turbines shown in Exhibit A as T19 and T20 are constructed because the Commission authorizes one or fewer Alternative Locations, then that wind turbine or those wind turbines will be located as described in Paragraph 1(b). Visual simulations of the Application Layout and the Revised Layout (both with and without the wind turbines shown in Exhibit A as T19 and T20) from key observation points at or near the Jeffers Petroglyphs Site are included in Exhibit B.<sup>1</sup>
- d. No later than thirty (30) days after the Effective Date, Big Bend Wind will file a revised LWECS Application with the MPUC reflecting the Revised Layout.

**2. Joint Effort to Coordinate with the U.S. Department of Defense for Additional Alternative Location.** The Parties agree to jointly and in good faith coordinate with the U.S. Department of Defense (the “DoD”) to gain concurrence that a wind turbine could be sited in the approximate location shown on Exhibit A as A06 without impacting military operations conducted in the area. If the Parties obtain the DoD’s concurrence for such a wind turbine location and it also meets all other siting constraints, the Parties agree to treat the approximate location shown on Exhibit A as A06 as an Alternative Location under Paragraph 1 for purposes of determining whether the wind turbines shown on Exhibit A as T19 and T20 will or will not be constructed and determining the Revised Layout.

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<sup>1</sup> Some of the visual simulations for the Revised Layout in Exhibit B depict wind turbines constructed at Alternative Locations with the wind turbines shown on Exhibit A as T19 and T20 remaining constructed in their respective Buildable Areas. The Parties understand that these visual simulations do not supersede the terms of Paragraph 1 and that one or both of the wind turbines shown on Exhibit A as T19 and T20 will not be built if the Commission grants a LWECS Site Permit that authorizes construction of one or more of the Alternative Locations, as provided in Paragraph 1.

**3. Support for Waiver of the Wind Access Buffer Setback.** To facilitate the wind turbine location changes described in Paragraph 1 and shown in Exhibit A, it will be necessary for the MPUC to waive the wind access buffer setback for Alternative Locations A01, A02, A03, and A04. The MPUC typically includes a wind access buffer setback condition in LWECS site permits that requires a permittee to setback a wind turbine at least three (3) rotor diameters in the direction of the non-prevailing winds and five (5) rotor diameters in the direction of the prevailing winds from the boundary of nonparticipating parcels. The Parties agree to support a waiver of the wind access buffer setback for the Alternative Locations through stakeholder engagement, written or oral testimony, written briefs, and comments, as reasonably requested by Big Bend Wind.

**4. Potential Effects on Jeffers Petroglyph Site.** If permitted and constructed in accordance with this Settlement and the LWECS Application, as revised, the Parties agree that they will not dispute a finding by the MPUC that the Wind Project will not have a significant adverse effect on the Jeffers Petroglyph Site that cannot be avoided and that appropriate treatments will be in place to avoid and mitigate any adverse effects.

**5. Commission Action.** The Parties recommend the MPUC issue a CN and LWECS site permit for the Wind Project consistent with this Settlement and the LWECS Application, as revised.

**6. Wind Turbine Lighting.** To minimize impacts to nighttime ceremonies and programs at the Jeffers Petroglyphs Site, Big Bend Wind agrees that, subject to obtaining all necessary regulatory approvals and authorizations, including approval from the Federal Aviation Administration, any lights installed on the wind turbines for the Wind Project will utilize an Aircraft Detection Lighting System (“ADLS”) radar system. Big Bend Wind will in good faith pursue all necessary regulatory approvals and authorizations to utilize an ADLS radar system.

**7. Future Wind Turbines.** Big Bend Wind, Red Rock Solar, and Apex agree not to develop, construct, or own any future wind turbines, other than the wind turbines planned for the Wind Project as provided in the Revised Layout, within 8 miles of the Jeffers Petroglyphs Site (located at N ½ NW ¼ 9-107-35) as shown on Exhibit A. By this Settlement, the Intervenors do not concede that additional wind turbines beyond 8 miles from the Jeffers Petroglyphs Site will not have avoidable and significant adverse impacts on the Jeffers Petroglyphs Site, members of Lower Sioux and Upper Sioux, other Native Americans, and MNHS, and expressly reserve the right to object to any applications to construct future wind turbines near the Jeffers Petroglyphs Site.

**8. Assignment of Leases.** Big Bend Wind, Red Rock Solar, and Apex agree not to assign any of their existing wind leases or easements located within 8 miles of the Jeffers Petroglyphs Site to any other party for purposes of constructing wind turbines other than the wind turbines planned for the Wind Project as provided in the Revised Layout.

**9. Minnesota State Historic Preservation Office.** The Parties acknowledge and agree that MNHS does not have authority to bind the Minnesota State Historic Preservation Office (the “SHPO”), that the SHPO is not a party to this Settlement, and that the signature of the MNHS on this Settlement, does not constitute a fulfillment of the requirements outlined in Minnesota

Statutes, Chapter 138 (including but not limited to Minnesota Statutes § 138.665) related to consultation with the SHPO.

**10. Tribal Monitors.**

- a. Lower Sioux and Upper Sioux will each identify and contract one tribal monitor (totaling two tribal monitors) recognized as having experience in the identification of traditional and cultural resources, to be present for all ground disturbing activities (e.g., clearing, grading, excavating, and trenching) during construction of the Wind Project. Lower Sioux and Upper Sioux may from time to time identify and contract successor tribal monitors at their discretion.
- b. Lower Sioux and Upper Sioux will ensure that their respective tribal monitors have adequate training to work in an active construction site and follow all safety and construction protocols as implemented by the lead construction contractor.
- c. The tribal monitors' role will be to alert Lower Sioux, Upper Sioux, and the lead construction contractor of any traditional and cultural resources uncovered during construction activities and implement the Unanticipated Discoveries Plan (see Exhibit C), if necessary. To facilitate alerts to the lead construction contractor, Big Bend Wind will establish clear lines of communication between the tribal monitors and the lead construction contractor.
- d. The tribal monitors will be required to keep detailed records of their activities through daily reports. The tribal monitors will also be required to thoroughly document all findings related to traditional and cultural resources uncovered during construction activities. The tribal monitors must provide their daily reports, documentation of findings, and all other data, communications, records, and work product that they create or collect to Lower Sioux, Upper Sioux, and the lead construction contractor.
- e. Big Bend Wind and Red Rock Solar agree to fully subsidize Lower Sioux's and Upper Sioux's respective compensatory obligations with their respective tribal monitors (at a rate not to exceed \$50/hour).
- f. Big Bend Wind agrees to provide Lower Sioux and Upper Sioux with at least 14 days' written notice of the start of each and every ground-disturbing construction activity.

**11. Community Education.** Big Bend Wind and the Intervenors agree to use good faith efforts to develop educational and interpretive materials around renewable energy, tribal culture, and historic preservation in southwest Minnesota that may be utilized at the Jeffers Petroglyphs Site. The Parties agree that all tribal cultural educational and interpretive materials must be approved by Lower Sioux and Upper Sioux.

## **General Terms and Conditions**

**12. Confidentiality.** It is understood and agreed that all offers of settlement and discussions related to this Settlement are confidential and may not be used in any manner in connection with the Proceedings or otherwise, except as provided by law. In the event the Commission does not approve this Settlement, this Settlement shall not constitute part of the record in this proceeding and no part of it may be used by any Party for any purpose in this case or in any other proceeding.

**13. Complete Agreement.** This Settlement, along with any exhibits, appendices, schedules, and amendments hereto, encompasses the entire agreement of the Parties.

**14. Acceptance of Settlement.** The Parties agree that this Settlement has been entered into as a resolution to all disputed issues between them in order to minimize litigation, regulatory costs, and controversy. The Parties further agree that, unless expressly stated herein or in pre-filed testimony or other exhibits as part of the record, this Settlement may not represent the position, in total or on any individual issue, that the Parties would have taken had the issues been fully litigated, nor does the Settlement represent the position of a Party on any issue for which it did not take a position in writing in the Proceedings. Whether or not adopted by the Commission, this Settlement shall not be cited or otherwise used to imply what the Parties' positions were, shall have no precedential effect in this or any other proceeding, and shall in no way prejudice the Parties' rights to take different positions in the future.

In the event the Commission disapproves this Settlement or takes other action inconsistent with this Settlement, or changes materially the terms of this Settlement as a condition to its acceptance, or if the Commission does not approve the CN or LWECS Site Permit for the Wind Project, or the Wind Project is not constructed for any reason pursuant to the LWECS Site Permit, all Parties retain the right to treat this Settlement as null and void, or to seek reconsideration to modify their positions. Each Party shall notify the other Parties and the Commission of its intention regarding this Settlement in such event.

**15. Support and Defense of Settlement.** The Parties agree to, in good faith, support and defend this Settlement in its entirety and without modification, which may include submitting written or oral testimony, written briefs, and comments in support of the Settlement.

**16. Amendment.** No amendment to this Settlement is effective unless in writing and signed by all Parties.

**17. Authority.** The signatory or signatories for each Party entering into this Settlement has the necessary authority to bind the Party, and where indicated, its subsidiaries, affiliates, and parents, and agrees to be bound by the Settlement in the future.

**18. No Other Representations.** Each of the Parties acknowledges and agrees that they have not relied on any representations or statements by any other party, whether oral or written, other than the express statements contained in this Settlement.

**19. Preparation of the Settlement.** The Parties to this Settlement agree and acknowledge that this Settlement shall be considered to have been drafted equally by each of the Parties. Accordingly, no rule of strict construction shall be applied against any Party.

**20. Headings.** The headings of all of the paragraphs and subparagraphs of this Settlement are inserted for convenience of reference only and shall not affect the construction or interpretation of this Settlement.

**21. No Waiver.** No breach or alleged breach of any provision of this Settlement can be waived by any Party unless done in writing. Moreover, the waiver of any one breach or alleged breach shall not be deemed to be a waiver of any other breach.

**22. Assignment.** This Settlement and all provisions hereof are binding upon and inures to the benefit of the Parties and their respective successors and assigns.

**23. Counterparts.** This Settlement may be executed in any number of counterparts (including by means of electronically transmitted signature pages), each of which, taken together, shall constitute one agreement.

**24. Acknowledgment.** Each Party acknowledges and agrees that it carefully read and understands all provisions of this Settlement and has entered into this Settlement knowingly and voluntarily. Each Party further acknowledges that it has been advised to consult, and has in fact consulted, with legal counsel of its choice before signing this Settlement and that each Party is responsible for its own attorneys' fees, costs, disbursements, and expenses incurred in connection with this Settlement.

**25. Sovereign Immunity.** Nothing herein shall be construed as a waiver of the sovereign immunity of the Lower Sioux Indian Community in the State of Minnesota or the Upper Sioux Community.

*[Signatures follow on next pages]*

IN WITNESS WHEREOF, the Parties have executed this Settlement as follows:

**Big Bend Wind, LLC**

**By: Apex Clean Energy Finance, LLC**  
**Its: Sole Member**

**By: Apex GBR, LLC**  
**Its: Sole Member**

**By: Apex Clean Energy Holdings, LLC**  
**Its: Manager**

Dated: September 9, 2021



By: Ken Young  
Its: COO

**Red Rock Solar, LLC**

**By: Apex Clean Energy Finance, LLC**  
**Its: Sole Member**

**By: Apex GBR, LLC**  
**Its: Sole Member**

**By: Apex Clean Energy Holdings, LLC**  
**Its: Manager**

Dated: September 9, 2021



By: Ken Young  
Its: COO

**Apex Clean Energy Holdings, LLC**

Dated: September 9, 2021

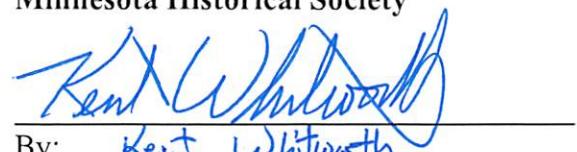


By: Ken Young  
Its: COO

*[Signatures continued on next page]*

Minnesota Historical Society

Dated: September 13, 2021

  
By: Kent Whitworth  
Its: Director + CEO

*[Signatures continued on next page]*

## Lower Sioux Indian Community in the State of Minnesota

Dated: 9/13, 2021

John  
By: Robert Carlson  
Its: President

*[Signatures continued on next page]*

# BIG BEND SETTLEMENT AGREEMENT

Upper Sioux Community

Dated: 9/13, 2021

Joe M  
By: KEVIN JENSOUL  
Its: TRIBAL CHAIRMAN

73635995

## **Exhibit A**

Big Bend Wind, LLC  
Docket Nos. IP-7013/CN-19-408,  
IP 7013/WS-19-619 and  
IP 7-013/TL-19-621; and  
OAH Docket No. 60-2500-37376  
September 2021

# Big Bend

- Original Proposed Turbines
- Turbines Removed
- Added Turbines

**KOP : Symbol Color**

- Modeled by Big Bend
- Modeled by Big Bend; duplicate requested by MNHS
- Requested by MNHS; not modeled by Big Bend

- Big Bend Project Boundary
- Red Rock Project Boundary

- Buildable Area
- Jeffers Petroglyph

## Jeffers Petroglyph Distances

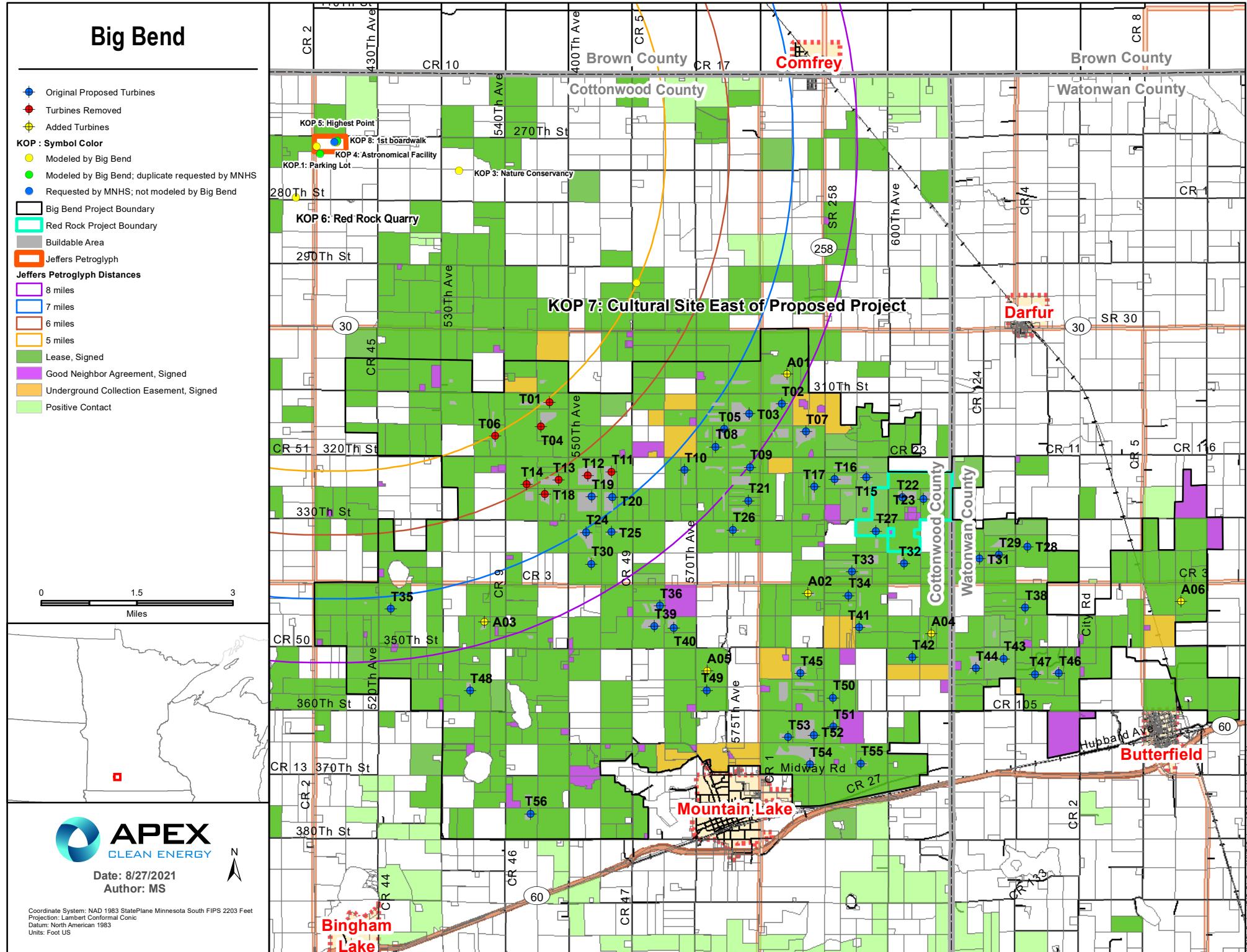
- 8 miles
- 7 miles
- 6 miles
- 5 miles
- Lease, Signed
- Good Neighbor Agreement, Signed
- Underground Collection Easement, Signed
- Positive Contact

A horizontal scale from 0 to 1 with a double-headed arrow below it.



Date: 8/27/2021  
Author: MS

Coordinate System: NAD 1983 StatePlane Minnesota South FIPS 2203  
Projection: Lambert Conformal Conic  
Datum: North American 1983  
Units: Foot US



**Exhibit B**  
**Big Bend Wind**  
**Visual Simulations Representing**  
**Proposed Project Layout August**  
**2021**

Big Bend Wind, LLC  
Docket Nos. IP-7013/CN-19-408,  
IP 7013/WS-19-619 and  
IP 7-013/TL-19-621; and  
OAH Docket No. 60-2500-37376  
September 2021

Big Bend Wind  
Visual Simulations Representing  
Proposed Project Layout August 2021



Big Bend Wind  
August 2021

## **Big Bend Wind Visual Simulations Representing the Proposed August 2021 Project Layout**

On August 10, 2021, Big Bend representatives were invited to meet with representatives of the Minnesota Historical Society, the Upper Sioux, and Lower Sioux communities (intervenors to the Big Bend LWECS permit hearing) at the Jeffers Petroglyphs site to discuss modifications to the Big Bend project layout that would address concerns the agency and tribes raised regarding potential impacts to the Jeffers Site. The outcome of this consultation is a Settlement Agreement that the intervenors agree addresses their concerns about potential impacts to the Jeffers site if the turbines are sited a minimum of 6.5 miles from viewpoints on the Jeffers site. In response to this Settlement, Big Bend revised the permit application layout, removing the 8 turbines located in the zone between 5 and 6.5 miles from the Jeffers site and replacing some of the lost generation by siting 5 turbines at new locations within the project site that are farther than 7 miles from viewpoints on the Jeffers site. The Big Bend engineers also created a variant of this layout that removes not only the 8 turbines in the 5 to 6.5 mile zone, but also Turbines T19 and T20 located in the zone between 6.5 to 7 miles, which were also identified by the agency and tribes as additional locations they would prefer to be removed, if Big Bend's proposed alternate locations are approved by the MN PUC.

The set of figures presented in this document are intended to provide a basis for understanding the proposed changes to the project layout and the implications of these changes for the views looking toward the project from the Jeffers Petroglyphs site (Key Observation Points 1, 2, 4, and 5) and from three additional viewpoints on nearby locations on Red Rock Ridge (Key Observation Points 3, 6, and 7).

For each Key Observation Point (KOP), a set of four figures is presented that include:

- a. Photo that represents the existing view from the KOP
- b. Simulation of the view as it would appear with the layout proposed in the site application
- c. Simulation of the view as it would appear with the proposed August 2021 layout, including Turbines T19 and T20, which are located within the 6.5 to 7-mile distance zone.
- d. Simulation of the view as it would appear with the proposed August 2021 layout, removing turbines T19 and T20 from the 6.5 to 7-mile distance zone.



a. Existing view to the southeast towards the site of the proposed project from the Jeffers Petroglyphs parking lot.  
The entrance to the visitor center is visible on the left side of the photo.

Figure 1a  
KOP 1 View from the Jeffers Petroglyphs Parking Lot  
Big Bend Wind  
Proposed Project Layout August 2021





b. View from the parking lot as it would appear with the layout proposed in the permit application.

**Figure 1b**  
KOP 1 View from the Jeffers Petroglyphs Parking Lot  
Big Bend Wind  
Proposed Project Layout August 2021



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**Jacobs**



c. View from the parking lot as it would appear with the proposed August 2021 layout, including Turbines 19 and 20, which are located in the 6.5 to 7-mile distance zone.

**Figure 1c**  
**KOP 1 View from the Jeffers Petroglyphs Parking Lot**  
Big Bend Wind  
Proposed Project Layout August 2021



d. View from the parking lot as it would appear with the proposed August 2021 layout, removing turbines 19 and 20 from the 6.5 to 7-mile distance zone.

**Figure 1d**  
**KOP 1 View from the Jeffers Petroglyphs Parking Lot**  
Big Bend Wind  
Proposed Project Layout August 2021



a. Existing view to the southeast towards the site of the proposed project from the second boardwalk at Jeffers Petroglyphs.

**Figure 2a**  
KOP 2 View from the Second Boardwalk at Jeffers Petroglyphs  
Big Bend Wind  
Proposed Project Layout August 2021



D3247600 Figure\_2a\_KOP2.ai ldaus 08.26.2021

**Jacobs**