

IN THE SUPREME COURT OF OHIO

In the Matter of the Application) Case No. 2022-0053
of Alamo Solar I, LLC, for a)
Certificate of Environmental) On Appeal from the Ohio Power Siting
Compatibility and Public Need) Board, Case No. 18-1578-EL-BGN

**MERIT BRIEF OF APPELLANTS CONCERNED CITIZENS OF
PREBLE COUNTY, LLC, ERIC AND KELLY ALTOM, MARY BULLEN,
CAMDEN HOLDINGS, LLC, JOANNA AND JOHN CLIPPINGER,
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INTRODUCTION

R.C. 4906.03(C) requires the Ohio Power Siting Board (“OPSB” or “Board”) to adopt rules establishing criteria for evaluating the impacts on nearby communities and the environment from the construction and operation of industrial solar projects and other major energy production facilities. OPSB has promulgated Ohio Admin.Code Chapter 4906 to serve that purpose. The paramount issue in this case is whether the OPSB is required to follow its own rules or whether the board is free to ignore them in part or in whole.

This is one of the earliest industrial-scale solar facilities approved in Ohio. In this case, the board approved an application (“Application”) to the board for a certificate of environmental compatibility and public need (“certificate” or “certification”) that lacked the analytical data and mitigation measures required by rule to protect nearby homes, yards, and land from annoying noise, visual impacts, wildlife damage, stream pollution, and flooding. This poorly designed solar project will destroy the livability of the surrounding community. The Court should vacate the OPSB’s certification in this case and remand it to the board with instructions to follow its rules in processing the Application.

STATEMENT OF FACTS

A. Course of Proceedings Below

On December 10, 2018, Alamo Solar I, LLC (“Alamo”) submitted its Application to the board for a certificate to construct and operate a solar-powered electric generation facility (“Project”) on 1002.5 acres (the “Project Area”) in Preble County, Ohio. (ICN 4, Applic., pp. 1, 6)¹ On January 31, 2019, Alamo filed a Supplement to the Application. (ICN 23)

¹ The following abbreviations are used for citations: (1) references to the transcript of verbal testimony at the hearing are cited to the witness’ last name, the abbreviation “Tr.,” transcript volume, page number, and line numbers; (2) “Exh.” means exhibit; (3) “A.” refers to an answer

The Concerned Citizens of Preble County and 21 of its members (collectively, “CCOPC” or “Citizens”) filed a petition for leave to intervene on May 15, 2019, which the board granted on June 10, 2019. (ICN 39, 59) The Concerned Citizens of Preble County are 67 persons and family-owned farm companies that live, work, and own property in the surrounding community that will be harmed by both this Project and another solar project proposed by an Alamo affiliate, Angelina Solar I, LLC. (ICN 80, Clippinger Testimony, p. 2, lines 21-22, p. 3, lines 7-21) Seventeen CCOPC members own and/or occupy land adjacent to the Project Area. (*Id.*, p. 3, line 7 – p. 4, line 8, and Exh. A (map of their locations))

Alamo, the board’s Staff (“Staff”), and some intervenors filed a Joint Stipulation and Recommendation (“Stipulation”) on July 5, 2019, asking the board to issue the certificate with a number of conditions proposed to govern the Project’s construction and operation. (ICN 61) The board then conducted an evidentiary hearing on July 17-19, 2019 (“initial hearing”). Subsequently, the parties filed post-hearing briefs and reply briefs summarizing the evidence.

On July 30, 2020, about eight months after the initial hearing, Alamo filed a motion to reopen the hearing (ICN 94), along with an “Amended and Restated Joint Stipulation and Recommendation” (ICN 95, “Amended Stipulation”) signed by Alamo, the Staff, and some intervenors. The Amended Stipulation served as a pretext for Alamo to change some Project design details and to introduce new studies in an attempt to address some of the data gaps exposed in the initial hearing.

On October 26, 2020, OPSB reopened the hearing (“supplemental hearing”) to take testimony on the Amended Stipulation. After the parties again briefed the issues, OPSB issued its

in written direct testimony; (4) “Applic.” is a reference to the Application; (5) references to prefiled written testimony are cited to the witness’ last name prior to the word “Testimony”; and (6) the page numbers of the Opinion match the Bates numbers in the Appendix.

Opinion, Order and Certificate (“Opinion”) granting the certificate on June 24, 2021. (ICN 114) The Opinion authorizes Alamo to construct and operate the Project in accordance with the promises made in the Application, as well as Conditions (1) through (30) contained in the Amended Stipulation and on Pages 30-41 of the Opinion. (ICN 95, Amended Stipulation, pp. 6-12; Opinion, p. 30, ¶ 1)

The Citizens filed an application for rehearing with OPSB on July 23, 2021. (ICN 116) On August 20, 2021, the board granted the application for rehearing to give the board more time to consider the issues pursuant to Ohio Admin.Code 4906-2-32(E). (ICN 118) On November 18, 2021, OPSB denied the application for rehearing without changing the substance of its Opinion. (ICN 119) The Citizens brought this appeal on January 14, 2022. (ICN 122, Notice of Appeal)

B. Project Description

Although Alamo attempted in its Application to portray the Project as harmless, the Project is not a benign collection of solar panels typical of those installed on the roofs of homes or in school yards. Alamo proposes to develop up to 1002.5 acres of the Project Area, most of which is valuable farmland used for food production, into an industrial facility. (ICN 4, Applic., pp. 1, 6) Arrays of solar panels will be grouped into large clusters called “solar fields” that will occupy 919 acres. (ICN 64, Herling Testimony, p. 4, lines 8-14) Alamo expects to operate the Project for at least 40 years, after which time it will remove its equipment or install new solar equipment to extend the Project. (ICN 4, Applic., p. 13) Because Alamo also has the right to buy land in the Project Area, it can choose to remove land from food production permanently. (*Id.*, p. 25)

Alamo’s Application provides only preliminary locations for its structures and equipment, subject to whatever changes Alamo wishes to make so long as the facility’s

components do not encroach on the Project's setbacks and are not moved outside of the boundaries of the Project Area mapped out in the Application. (ICN 4, Applic., pp. 1, 15-16) The preliminary maps of the Project's components "are illustrative only; the final locations will be determined in the final design of the Project" after certification. (*Id.*, p. 16, n. 3) Thus, the Application does not provide OPSB or the public with a final Project design, but only outlines the Project's boundaries, with the actual locations and designs of solar arrays, inverters, fences, roads, and other facility components to be determined after certification. (*Id.*, pp. 1, 15-16; Opinion, p. 30, ¶¶ 2, 3) This backwards process leaves the community without recourse to be heard regarding the Project's final design.

Based on its preliminary design, the Project will contain approximately 186,400 to 279,600 solar panels mounted on metal racks, with the final number of panels dependent on whatever final design Alamo eventually chooses. (ICN 4, Applic., p. 8) The panels' size has not been determined, but the Application states that their height when fully tilted towards the sun will be between 8 to 14 feet. (*Id.*) The solar arrays will be surrounded by 7-foot tall chain link fences or 6-foot tall chain link fences with three strands of barbed wire at the top, bringing the total height to 7 feet. (ICN 21, Applic. Exh. I, p. 6)

The solar panels will be connected to inverters, which are cabinets containing power control components that convert the solar panels' energy from direct current ("DC") to alternating current ("AC") so it can be transmitted in a collection line. (ICN 4, Applic., p. 9) Alamo's preliminary design contains central inverters, but after certification Alamo could decide to use either central inverters and/or string inverters in its final design. (Herling, Tr. IV 592:5-8) Central inverters receive power from multiple rows of solar panels, while string inverters convert the electricity on a single string (row) of solar panels. (Herling, Tr. V 592:14-20).

The inverters will send power through collection lines to a new substation in the Project Area. (ICN 4, Applic., p. 9) The substation then will deliver the power to the electric grid. (*Id.*)

C. Setbacks

The Application proposed a series of setbacks between the Project and the community that are so minimal as to offer no meaningful isolation from the Project's harmful impacts:

- (1) 10 feet between the Project's perimeter fence and the land of any neighbor who is not leasing land to the Project (a "nonparticipating landowner");
- (2) 25 feet between aboveground solar equipment (e.g., solar panels and inverters) and a nonparticipating landowner's land;
- (3) 25 feet between the Project's perimeter fence and the edge of a public road;
- (4) 40 feet between aboveground solar equipment and the edge of a public road;
- and
- (5) 100 feet between aboveground solar equipment and the habitable residence of any nonparticipating landowner.

(ICN 4, Applic., pp. 54-55) Following the initial hearing, Alamo proposed, and the board adopted, a 25-foot setback between the Project's perimeter fence and nonparticipating landowners' land, a 150-foot setback between a solar fence and the habitable residence of any nonparticipating landowner, and a 500-foot setback between any central inverter and the habitable residence of any nonparticipating landowner. (ICN 95, Amended Stipulation, p. 6, ¶ 3)

D. Noise

The construction and operation of industrial solar facilities generates noise from construction activities, the substation, and inverters. Alamo hired David Hessler of Hessler Associates, Inc. to prepare a report for the Application on the impacts of Project noise. Mr.

Hessler prepared Exhibit E (ICN 11) in the original version of the Application; that exhibit was replaced by a new version of Exhibit E in a Supplemental Application filed on January 31, 2019 (Exh. E, starting at pdf p. 37 of ICN 23 (“Hessler’s Report”). That report measured the current sound levels in the Project Area and compared them to the new noise that the Project will generate.

Hessler’s Report measures the ambient sound using the L90 metric, which the report characterizes as the “parameter of primary relevance and importance to this kind of survey.” (ICN 23, p. 4 (pdf p. 40)) This metric identifies the sound level exceeded during 90% of time. *Id.* Mr. Hessler’s acoustic measurements of the Project Area revealed that the existing average L90 background sound level (also known as the L90 “ambient” sound level) in daytime is “extremely quiet” at “only 34 dBA.” (*Id.*, p. 2 (pdf p. 38)) The background sound level is important, because it “can provide some masking where it covers up the sound from some plant or source if it’s high enough.” (Hessler, Tr. II 251:21 to 252:2) Mr. Hessler testified that the “very low” 34 dBA average daytime L90 background sound level in the Project Area “means the background level is insignificant; there’s no ability for it to cover anything up.” (Hessler, Tr. II 252:3-7)

During operation, most of the Project’s noise will originate from the inverters. The inverters generate a humming noise and sometimes a high frequency ringing noise. (ICN 23, Hessler’s Report, p. 12 (pdf p. 48)) This hum is constant whenever the sun shines (ICN 4, Applic., p. 58), and it will last for the duration of the Project’s operation (at least 40 years).

Although Mr. Hessler performed a computer model to predict the decibel levels of the substation’s noise, the Application contained no modeling to determine how much inverter noise would reach neighboring land and houses. (ICN 11, Applic. Exh. E; ICN 23, Hessler’s Report, Exh. E, starting at pdf p. 37)

Alamo project manager Doug Herling testified that the solar arrays are “near-silent,” and Mr. Hessler testified that inverter sound is “barely audible.” (ICN 64, Herling Testimony, p. 8, lines 21-23; Hessler, Tr. II 249:21-25) Alamo tried to excuse its lack of acoustics data for the inverters by representing in the Application that a solar facility “comes close to operating silently.” (ICN 4, Applic., p. 57) Alamo stated that this position is based on the report from Hessler Associates in Exhibit E of the Application, i.e., the first version of Mr. Hessler’s report that was replaced by Hessler’s Report in the Supplemental Application. (*Id.*, p. 58; Herling, Tr. I 101:8-17) Hessler’s Report also contends that inverter sound “is rarely audible at the perimeter fence of typical solar fields.” (ICN 23, Hessler’s Report, pp. 2, 15 (pdf pp. 37, 51))

At the initial hearing, Mr. Hessler failed to provide any modeling data for inverter noise. However, he appeared at the supplemental hearing with modeling data for central inverters. By that time, he had obtained a manufacturer’s sound test report for a commonly used inverter. (ICN 100, Hessler Suppl. Testimony, p. 2, lines 11-20) He then used the manufacturer’s data to model the noise from the central inverters for the Project. (*Id.*, lines 8-23) He discovered that central inverter noise is 38 dBA at a distance of 500 feet. (*Id.*, p. 4, lines 3-4)

Mr. Hessler’s written direct testimony for the supplemental hearing also references a map of the Project Area showing central inverter locations with sound contours around them. (ICN 100, Hessler Suppl. Testimony, p. 2, line 4 to p. 3, line 2, and Exh. DMH-S1) The map represents that central inverters at these mapped locations will generate noise of up to 35 dBA at some nonparticipants’ homes. (ICN 100, Hessler Suppl. Testimony, p. 2, line 23 to p.3, line 2) The map’s contours of noise levels show that central inverter noise will be as high as 40 dBA at neighboring property lines. (Hessler, Tr. IV 636:17-22; ICN 100, Hessler Suppl. Testimony,

Exh. DMH-S1 (with blue lines showing that 40 dBA from four inverters intersect or cross the project area's boundaries))

However, the Application does not identify the final locations for the inverters. Because the Project's current layout is only preliminary and is subject to change (ICN 4, Applic., pp. 1, 15-16), the central inverter sites can be moved anywhere in the Project Area as long as they stay 500 feet away from a neighbor's house as required by the 500-foot setback. Thus, the central inverter sites on Mr. Hessler's map are subject to change in the Project's final design. The sound level contours on Mr. Hessler's map are based on the assumption that the closest distance between an inverter site and a nonparticipant's residence is 600 feet. (Hessler, Tr. IV 635:3-10)

The same principles apply to Mr. Hessler's projections of 40 dBA of inverter noise on neighboring yards/land. At 40 dBA, the inverter noise will increase the 34 dBA ambient level on non-participating yards/land by six dBA, compared to the five dBA threshold. More importantly, however, as long as the inverters are at least 500 feet from neighboring houses, they can be sited as close as 25 feet to people's yards and land -- and thus increase the noise by more than six dBA. The actual increase is presently unknown. Alamo did not model the noise at the neighbors' property boundaries for inverters as close as 25 to 499 feet to the property lines to find out how loud the inverter noise will be at those boundaries.

E. Visual Impacts

Alamo's Application admits that the solar equipment will be highly visible to the Project's neighbors:

Foreground: 0 to 0.5 mile. At these distances, a viewer is able to perceive details of an object with clarity. Surface textures, small features, and the full intensity and value of color can be seen on foreground objects.

(ICN 21, Applic. Exh. I, p. 18) The Application also admitted:

Local Residents: Local residents include those who live and work within the visual study area. They generally view the landscape from their yards, homes, local roads and places of employment. . . . Except when involved in local travel, residents are likely to be stationary and have frequent or prolonged views of the landscape. Local residents may view the landscape from ground level or elevated viewpoints (typically upper floors/stories of homes). Residents' sensitivity to visual quality is variable, however, it is assumed that residents may be more sensitive to changes in particular views that are important to them.

(*Id.*, p. 19)

The neighbors within a half mile of the Project will bear the brunt of its visual impacts. Robinson's initial testimony states: "Visual simulations from selected viewpoints where the Project is proposed in open agricultural fields adjacent to the viewer, indicate a high degree of visibility and appreciable visual contrast with the existing landscape." (ICN 67, Robinson Testimony, p. 4, lines 18-20) At the hearing, he stated: "The effect really is for adjacent properties. . . . For adjacent resources or adjacent public roadways, seeing panels in the field is certainly going to be a contrast to what is used to being seen." (Robinson, Tr. II 355:16-20) Even the Application admits that the visual effect will be "adverse" when largely unscreened and viewed in the immediate foreground. (ICN 4, Applic., p. 89)

The Project will potentially be visible from 73.4 % of the area within a half mile of the project, even if obstacles of vegetation, structures and topography are taken into consideration. (Robinson, Tr. II 364:23 to 365:2; ICN 21, Applic. Exh. I, p. 22, Table 1) This is of particular concern to the Citizens, as evidenced by Joanna Clippinger's testimony that "[s]eeing hundreds of acres of solar panels near our properties and on nearby public roads will spoil the visual and aesthetic enjoyment of living and working there." (ICN 80, Clippinger Testimony, p. 4, lines 11-13) Alamo's viewshed report advises that, within a half mile, "a viewer is able to perceive details of an object with clarity. Surface textures, small features, and the full intensity and value of color can be seen on foreground objects." (ICN 21, Applic. Exh. I, p. 18) Even if Alamo were planning

to plant trees and shrubs designed to completely blocked the neighbors' views of the Project at ground level, some of CCOPC's members would still have unobstructed views of the solar panels from the second floor of their houses.

Alamo's Application sought to disguise the Project's negative visual impacts by depicting solar panels in photographic simulations as being eight feet high instead of 14 feet high, by showing them at distances of 300, 600, and 900 feet away instead of 25 feet from neighbors' yards and 150 feet from neighbors' houses as allowed by the setbacks, and by showing them as viewed by motorists on the roads instead of homeowners in their houses or yards. (ICN 21, Applic. Exh. I, Fig. 9, pdf p. 59)

F. Lack Of Wildlife Surveys

The ecological assessment included in the Application advises that wildlife may utilize the Project Area for foraging, migratory stopover, breeding, and/or shelter in its agricultural fields, pasture grasslands, isolated woodlots, and wetlands. (ICN 13, Applic. Exh. G, p. 4-5, § 4.4) The board's rule, Ohio Adm. Code 4906-4-08(B), required Alamo to conduct literature searches and field surveys to identify the plants and wildlife in an near the Project Area in order to find out whether the Project will harm wildlife or cause the wildlife to harm the community. Nevertheless, Alamo did a partial literature search only for rare, threatened, endangered, recreationally valuable, and commercially valuable species. (ICN 13, Applic. Exh. G, pp. 1-1 & 4-5, § 4.4) Alamo's ecological consultant, Cardno, did no field surveys at all, except to note the presence of squirrels and deer while Cardno was looking at wetlands and streams. (ICN 4, Applic., p. 71; ICN 13, Applic. Exh. G, p. viii & p. 6-2, § 6.1.2; Rupprecht, Tr. II 278:8-18, 280:8-21) Consequently, the ecology report in Application Exhibit G contains no lists of plant, bird, and mammal species found in the Project Area.

G. Threats Of Flooding

The Ohio EPA guidance on storm water controls for solar panel arrays states that solar panels “alter the volume, velocity and discharge pattern of storm water runoff.” (Marquis, Tr. IV 666:24 to 667:5, 667:25 to 668:12, 669:12-25) Alamo drainage expert Matt Marquis agreed with this statement. (*Id.*, 670:5-10) Any increase in the amount or speed of stormwater flows from the Project could cause flooding problems in the community. Drainage swales are common in fields to be used for solar panels in the Project Area, and they flow onto neighboring land. (Rupprecht, Tr. II 292:16-19, 293:6-9; Waterhouse, Tr. I 205:2-5; ICN 84, DeLuca Testimony, pp. 2-3, A.7)

The Application reveals that Project construction will alter drainage flows by changing slopes, moving dirt, and modifying the drainage patterns to keep the construction sites dry. (ICN 12, Applic. Exh. F, p. 6) Alamo provided no numeric data on the quantity of water runoff during the construction or operation of the Project to find out what if any measures are necessary to avoid the worsening of the area’s flooding problems. Noah Waterhouse, Alamo’s hydrology expert, admitted that no efforts have been made to model or otherwise quantify the amount of water that will flow from the Project Area. (Waterhouse, Tr. I 203:19-22, 204:14-20) Alamo did not calculate the amount of water that will flow from the Project Area.

H. Pollution From Soil Erosion And Runoff

The Application represents that the Project Area is level and will require only “some minor grading.” (ICN 4, Applic., pp. 8, 12) The Project’s construction will disturb 51 acres of soil, including 19.1 acres for roads, 28.6 acres for installing collection lines, 3 acres for the substation, and 0.3 acre for inverter pads. (ICN 5, Applic., Fig. 17, pdf p. 29) Earthmoving during construction allows soil to erode and to run off during precipitation events into nearby streams.

The Application acknowledges that a storm water runoff permit and physical controls for soil erosion and sedimentation will be needed for the construction areas. (ICN 4, Applic., p. 45; ICN 13, Applic. G, pp. 1-4 to 1-5, § 1.1.1) Although Ohio Admin.Code 4906-4-07(C) requires applicants to provide information about the quality and flow patterns of the stormwater running off the construction site and to identify runoff control measures to prevent water pollution from soil erosion, Alamo provided no such data in the Application or at the hearings.

As explained above, the evidentiary record is missing many of the studies needed to evaluate the Project's threats and the mitigation of those threats. Consequently, the record lacks specific, legally enforceable commitments for mitigation. The concerns raised by the Citizens are the inevitable outgrowth of Alamo's incomplete investigation of the Project's adverse impacts, its lack of communication with the citizens affected by its Project, and its failure to design and commit to mitigation for these impacts.

ARGUMENT

Standards for Certification Of Major Utility Facilities

No person may construct a major utility facility without first obtaining a certificate for the facility. R.C. 4906.04. The Project is a "major utility facility" as defined by R.C. 4906.01(B)(1)(a), because it is designed to generate in excess of 50 megawatts (MW) of electricity. (ICN 4, Applic., p. 1) In order for the board to issue a certificate for a major utility facility, OPSB must hold a hearing on the application. R.C. 4906.07. The board must render a decision on the record either granting or denying the certificate based on the application as filed, or granting it on such terms, conditions, or modifications as the board considers appropriate. R.C. 4906.10(A). The board may not grant a certificate unless it finds and determines the following:

- (a) “The nature of the probable environmental impact” (R.C. 4906.10(A)(2));
- (b) “That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations” (R.C. 4906.10(A)(3)).

R.C. 4906.10(A)(3) prohibits OPSB from issuing a certificate, unless “the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.” (Emphasis added.) The dictionary meaning of “minimum” is “the least quantity assignable, admissible, or possible.” The Merriam-Webster Dictionary, “Minimum,” <https://www.merriam-webster.com/dictionary/minimum> (accessed April 8, 2022). As explained below, Alamo has not demonstrated that its Project achieves the minimum adverse environmental impact with respect to the many harms that the Project will cause. Alamo also has not provided the information required by the board’s rules that is necessary for the board to determine the nature of the Project’s probable environmental impact.

Standards Applicable To Judicial Review Of OPSB Orders

R.C. 4903.13, which applies to OPSB via R.C. 4906.12, provides that this Court will reverse, vacate, or modify an OPSB order that is unlawful or unreasonable. The board’s factual determination is unreasonable if it is manifestly against the weight of the evidence or so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty. *Chester Twp. v. Power Siting Comm.*, 49 Ohio St.2d 231, 361 N.E.2d 436 (1977). Furthermore, an order must show, “in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed * * * in reaching its conclusion.” *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195 ¶30 (referring to its review of

a PUCO order under the same statute). A “legion of cases” establishes that the board “abuses its discretion if it renders an opinion on an issue without record support.” *Id.*

The Court has complete and independent power of review as to all questions of law in appeals from the board. *In re Application of Middletown Coke Co.*, 127 Ohio St.3d 348, 351, 2010-Ohio-5725, 939 N.E.2d 1210, ¶ 14. Administrative regulations issued pursuant to statutory authority have the force and effect of law, so an administrative agency such as OPSB is required to follow its own rules. *State ex rel. Cuyahoga Cty. Hosp. v. Ohio Bureau of Workers' Comp.*, 27 Ohio St.3d 25, 27–28, 500 N.E.2d 1370, 1372–73 (1986); *Parfitt v. Columbus Corr. Facility*, 62 Ohio St.2d 434, 436, 437, 402 N.E.2d 528, 530 (1980); *Clark v. Ohio Dep't of Mental Retardation and Developmental Disabilities*, 55 Ohio App.3d 40, 42, 562 N.E.2d 497, 500 (6th Dist. 1988). A citizen is entitled to enforce such an agency’s rule against the agency if the citizen is a member of the class which the rule was intended to benefit. *Parfitt*, 62 Ohio St.2d at 436.

Ohio Admin.Code Chapter 4906-4 is an integral component of the process set up by R.C. 4906.06 and R.C. 4906.07 to provide members of the public with the information they need to provide the board with informed input on a project that could impact them. R.C. 4906.06(A)(2) requires the Application to contain “[a] summary of any studies that have been made by or for the applicant of the environmental impact of the facility.” The application must include the information required by Ohio Admin.Code Chapter 4906-4 in order to determine whether the criteria of R.C. 4906.10(A) have been met. Ohio Admin.Code 4906-2-04(B). The applicant is further required to publish public notices notifying the public about the application and where to find a copy of the application for review. R.C. 4906.06(C); Ohio Admin.Code 4906-3-06(C)(4) & (5), 4906-3-07, & 4906-3-09. Section 4906.07(A) instructs OPSB to schedule the hearing only after receiving a complete application “complying with section 4906.06 of the Revised Code.”

Thereafter, the board conducts a hearing to obtain evidence from the parties and the public, including intervenors. R.C. 4906.07(A).

In this case, the evidentiary record lacks much of the information required by Ohio Admin.Code Chapter 4906-4. The board may not issue a certificate without this information. The missing information is necessary for the Citizens to participate meaningfully in the hearing process. This information is also needed for the board to make sound decisions under the R.C. 4906.10(A) criteria, namely, whether to approve the Project, and if so, how it should be designed to minimize the Project's impacts on the Citizens. The Citizens are prejudiced by OPSB's failure to comply with these rules, and they have standing to seek OPSB's compliance with its rules.

PROPOSITION OF LAW NO. 1:

The Ohio Power Siting Board Acted Unlawfully and Unreasonably By Issuing A Certificate To A Solar Energy Utility Without Receiving The Operational Noise Data Required By Rule And R.C. 4906.10(A)(2) And Without Requiring Noise Reduction Controls Required By Rule And R.C. 4906.10(A)(3).

Inverters convert the energy from solar panels from direct current to alternating current and step up the voltage so it can be transmitted in a larger collection line. (Herling, Tr. I 99:8-18) In that process, cooling fans in the inverters produce a humming noise with high pitched ringing tones. (ICN 23, Hessler's Report, p. 12 (pdf p. 48)) Anyone who has experienced flies or mosquitos buzzing near their ears recognizes how annoying a humming noise can be at any decibel level.

During the initial hearing, the written direct testimony of Alamo's acoustic consultant David Hessler treated inverter noise dismissively, devoting just one sentence to the topic. (ICN 65, Hessler Testimony, p. 4 (inverter noise "is only perceptible at short distances")) When he returned for the supplemental hearing with actual modeling data, he was forced to admit otherwise. Even then, however, his data fell short of what is necessary to determine the Project's

anticipated noise impacts on its neighbors or to satisfy the board's noise rule. The testimony on the Project's expected noise levels is a vivid illustration about why the board's rules require an applicant to provide objective data about a Project's potential impacts rather than relying solely on expert opinions unsupported by Project-specific data.

A. Alamo Intends To Install Its Solar Project In An Extremely Quiet Community In Which New Noises Will Be Easily Heard.

Alamo wants to construct its solar project in a quiet rural community, as it discovered when Mr. Hessler measured the background sound level in the Project Area. Mr. Hessler's report indicated that his acoustic measurements revealed that the average L90 background (ambient) sound level in daytime is "extremely quiet" at "only 34 dBA." (ICN 23, Hessler's Report, p. 2 (pdf p. 38))

The background sound level is important, because it "can provide some masking where it covers up the sound from some plant or source if it's high enough." (Hessler, Tr. II 251:21 to 252:2) In the Project Area, the average L90 background sound level in daytime is "very low" at "only 34 dBA," which "means the background level is insignificant; there's no ability for it to cover anything up." (Hessler, Tr. II 252:3-7) *See also* Hessler, Tr. II 242:9-12; ICN 23, Hessler's Report, p. 2 (pdf. p. 38); ICN 65, Hessler Testimony, p. 3, Answer 7.) If a new project produces noise no higher than five dBA above the background sound level, the board's Staff expects the project to have "minimal adverse noise impacts on the adjacent community." (ICN 41, Staff Report, p. 20)

As outlined below, Alamo did not submit much of the data necessary to satisfy its burden under OPSB's rule to demonstrate the Project's noise impacts, and OPSB's approval of the Project violated its own rule and its duty under R.C. 4906.10(A)(2) to determine the Project's "probable environmental impact" under R.C. 4906.10(A)(2). In addition, the incomplete data that

Alamo did provide was sufficient to demonstrate that the Project will produce noise higher than the five dBA threshold above background sound at which a new source produces noise objectionable to the community. The board’s approval of the Project notwithstanding this data violates the board’s duty to approve only a facility that “represents the minimum adverse environmental impact” under R.C. 4906.10(A)(3).

B. The Application Lacks Data On Inverter Noise As Required By Ohio Admin.Code 4906-4-08(A)(3).

Ohio Admin.Code 4906-4-08(A)(3) describes the information that the Application must provide about the anticipated noise impacts from the Project:

(3) Noise. The applicant shall provide information on noise from the construction and operation of the facility.

(b) Describe the operational noise levels expected at the nearest property boundary. The description shall address:

(i) Operational noise from generation equipment...

(c) Indicate the location of any noise-sensitive areas within one mile of the facility, and the operational noise level at each habitable residence, school, church, and other noise-sensitive receptors, under both day and nighttime operations. Sensitive receptor, for the purposes of this rule, refers to any occupied building.

(Emphasis added.) Accurately quantifying the decibel levels of the noise from Alamo’s inverters is critical because the Application provides for only miniscule setbacks between the solar equipment, including inverters, and neighboring land, yards, and homes. (ICN 4, Applic., pp. 54-55)

Alamo plans to construct central inverters and may install an unknown number of string inverters. (Herling, Tr. IV 592:5-8) However, the Application contains no modeling for inverter noise to determine how such noise would affect neighboring land and houses.

Thus, the Application does not “[d]escribe the operational noise levels expected at the nearest property boundary,” as required by Ohio Admin.Code 4906-4-08(A)(3)(b). Nor does it comply with Ohio Admin.Code 4906-4-08(A)(3)(c), which requires the Application to “[i]ndicate ... the operational noise level at each habitable residence, school, church, and other noise-sensitive receptors, under both day and nighttime operations.” (Emphasis added.)

C. Hearing Testimony Established That Alamo’s Central Inverters Will Increase Noise On Neighboring Land Above The Five dBA Threshold Harmful To The Community, But The Actual Noise Impact Is Unknown Due To Alamo’s Failure To Model This Noise.

The Application represents that “the noise that inverters and their associated step-up transformers generate is inaudible at a distance of 50 to 150 feet from the source.” (ICN 4, Applic., p. 58) In the initial hearing, Mr. Herling reassured everyone that the solar arrays are “near-silent,” and Mr. Hessler testified that inverter sound is “barely audible.” (ICN 64, Herling Testimony, p. 8, lines 21-23; Hessler, Tr. II 249:21-25) Alamo tried to excuse its lack of acoustics data for the inverters by representing in the Application that a solar facility “comes close to operating silently.” (ICN 4, Applic., p. 57) Alamo stated that this position is based on the original report by Mr. Hessler in Exhibit E of the Application. (*Id.*, p. 58; Herling, Tr. I 101:8-17) Hessler’s Report also contends that inverter sound “is rarely audible at the perimeter fence of typical solar fields.” (ICN 23, Hessler’s Report, pp. 2, 15 (pdf. pp. 38, 51))

At the initial hearing, Mr. Hessler failed to provide any modeling data for inverter noise. However, he appeared at the supplemental hearing with modeling data for central inverters. Having run a noise model based on manufacturer’s data for a commonly used inverter, Mr. Hessler testified that the central inverters for the Project will generate a noise level of 38 dBA at a distance of 500 feet. (ICN 100, Hessler Suppl. Testimony, p. 2, lines 8-23, p. 4, lines 3-4)

Mr. Hessler's written direct testimony for the supplemental hearing also references a map of the Project Area showing central inverter locations with sound contours around them. (ICN 100, Hessler Suppl. Testimony, p. 2, line 4 to p. 3, line 2, and Exh. DMH-S1) The map represents that central inverters at these mapped locations will generate noise of up to 35 dBA at some nonparticipants' homes. (ICN 100, p. 2, line 23 to p.3, line 2) The map's contours of noise levels show that central inverter noise will be as high as 40 dBA at neighboring property lines. (Hessler, Tr. IV 636:17-22; ICN 100, Hessler Suppl. Testimony, Exh. DMH-S1 (with blue lines showing that 40 dBA from four inverters intersect or cross the project area's boundaries))

However, the Application does not identify the locations for the inverters. (Herling, Tr. I 102:5-8, 109:10-12) Because the Project's current layout is only preliminary and is subject to change (ICN 4, Applic., pp. 1, 15-16), the central inverter sites can be moved anywhere in the Project Area as long as they stay 500 feet away from a neighbor's house as required by the 500-foot setback. Thus, the central inverter sites on Mr. Hessler's map are subject to change in the Project's final design. The sound level contours on Mr. Hessler's map are based on the assumption that the closest distance between an inverter site and a nonparticipant's residence is 600 feet. (Hessler, Tr. IV 635:3-10)

The same principles apply to Mr. Hessler's projections of 40 dBA of inverter noise on neighboring yards/land. At 40 dBA, the inverter noise will increase the 34 dBA ambient level on non-participating yards/land by six dBA, compared to the five dBA threshold. More importantly, however, as long as the inverters are at least 500 feet from neighboring houses, they can be sited as close as 25 feet to people's yards and land--and thus increase the noise by more than six dBA. Alamo did not model the noise at the neighbors' property boundaries for inverters as close as 25 to 499 feet to the property lines to find out how loud the inverter noise will be at those

boundaries. Alamo's failure to model those noise levels violates the mandate in Ohio Admin.Code 4906-4-08(A)(3)(b) to "[d]escribe the operational noise levels expected at the nearest property boundary." This data gap also deprives the board of the information necessary to determine the Project's "probable environmental impact" under R.C. 4906.10(A)(2), and the board's mandate to approve only a facility that "represents the minimum adverse environmental impact" under R.C. 4906.10(A)(3).

Furthermore, Alamo has not proposed to equip the inverters with noise controls, such as cabinet damping or ventilation silencers, even though these devices are effective and available. (ICN 23, Hessler's Report, p. 13 (pdf. p. 48); Co. Exh. 15, p. 4, lines 13-15) Nor did Alamo introduce any evidence that noise controls are unavailable or uneconomical, despite the applicant's burden under R.C. 4906.10(A)(3) to prove that it is not able to further minimize noise "considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations." By failing to require these controls, the board violated its mandate to approve a facility only if it "represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations" under R.C. 4906.10(A)(3). Noise controls are "available technology" that would "minimize" the inverters' "adverse environmental impact," and the board should have required their installation.

D. Alamo's Failure To Produce Noise Data For String Inverters Violates The Requirements In Ohio Admin.Code 4906-4-08(A)(3)(b) & (c) To Provide The "Operational Noise Levels" At Adjoining Property Boundaries And Residences.

The 500-foot setback in Condition 3 of the Amended Stipulation applies only to central inverters. (ICN 95, p. 6, ¶ 3) However, Alamo also is considering the use of string inverters. (Herling, Tr. IV 592:5-8) Like central inverters, string inverters produce noise. (Hessler, Tr. IV

625:9-23) Nevertheless, no noise modeling was conducted for string inverters, because Alamo did not tell Mr. Hessler that string inverters might be used or ask him to model the noise from the string inverters. (Herling, Tr. IV 611:23 – 612:11; Hessler, Tr. IV 624:20-24 (stating that “[t]oday was the first day I’ve even heard string inverters mentioned”))

This provides Alamo with a large loophole in the proposed 500-foot setback, since Condition 3 of the Amended Stipulation specifically applies that setback only to any “central inverter” and it does not apply to string inverters (ICN 95, p. 6, ¶ 3; Hessler, Tr. IV 619:5-10) Since string inverters can be sited “pretty much anywhere along a string of panels” (Herling, Tr. IV 607:9-13), string inverters can be located close to the project border. However, nothing in the Application, Opinion, or Amended Stipulation prevents Alamo from placing string inverters as close as 25 feet from a neighbor’s yard/land, so long as this complies with the insignificant 150-foot setback from houses. (ICN 4, Applic., p. 55 (setting a 150-foot setback for aboveground solar equipment))

Confronted during the supplemental hearing with its failure to model string inverter noise, Alamo fell back on the discredited strategy it employed in the original hearing to excuse its failure to model central inverter noise. Once again, its witnesses simply argued that the noise is barely audible. Mr. Herling represented that he had observed some string inverters to be quiet, just as he claimed in the original hearing that solar arrays are “barely audible.” (Herling, Tr. IV 608:10 – 609:3) Mr. Hessler used the same ploy after learning during the supplemental hearing that the Project may use string inverters, claiming that noise from string inverters is significantly lower than noise from central inverters. (Hessler, Tr. IV 624:24 – 625:8) These statements are reminiscent of the discredited statements in the Hessler’s Report, also made without the benefit of noise modeling, that inverter sound “is rarely audible at the perimeter fence of typical solar

fields.” (ICN 23, Hessler’s Report, pp. 2, 15 (pdf. pp. 38, 51)) There is no reason to believe the same type of testimony for string inverters in the absence of noise modeling. As a legal requirement by rule, the record must include modeling data for string inverters.

Ohio Admin.Code 4906-4-08(A)(3)(b) and (c) require applicants to quantify the “operational noise levels” at adjoining property boundaries and residences for all project noise sources. The board’s rules call for actual data because accurate scientific opinions require it. Dogmatic statements from experts paid to offer them are unreliable substitutes for actual data. Alamo’s Application contains no such data for string inverters.

The identification of noise levels from string inverters is mandatory. The board’s failure to require Alamo to provide this noise data violates Ohio Admin.Code 4906-4-08(D)(4)(e), the board’s duty to determine the Project’s “probable environmental impact” under R.C. 4906.10(A)(2), and the board’s mandate to approve only a facility that “represents the minimum adverse environmental impact” under R.C. 4906.10(A)(3).

E. Summary Of The Board’s Errors Concerning The Project’s Noise

The board has committed the following errors with respect to the Project’s noise:

a. The board acted unreasonably and unlawfully by approving the Project without requiring Alamo to accurately model the noise levels from the Project’s central inverters at neighboring property lines, and without requiring Alamo to provide any noise modeling data for string inverters at neighboring property lines, in violation of the requirement in Ohio Admin.Code 4906-4-08(A)(3)(b) to “[d]escribe the operational noise levels expected at the nearest property boundary” and in violation of the mandate in R.C. 4906.10(A)(2) to determine the Project’s “probable environmental impact.”

b. The board acted unreasonably and unlawfully by approving the Project without requiring Alamo to accurately model the noise levels from the Project's string inverters at neighboring property lines, and without requiring Alamo to accurately model the noise levels from the string inverters in violation of the requirement in Ohio Admin.Code 4906-4-08(A)(3)(c) to "[i]ndicate ... the operational noise level at each habitable residence" and in violation of the mandate in R.C. 4906.10(A)(2) to determine the Project's "probable environmental impact."

c. Because a five dBA increase in the noise level harms a community, the board acted unreasonably and unlawfully by approving a Project that will increase the noise by six dBA or more on neighbors' land (with that dBA level being unknown due to the lack of modeling data as stated in a. above). Such a Project does not "[represent] the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations" under R.C. 4906.10(A)(3).

d. Since noise control technology is available and effective, the board's failure to direct Alamo to incorporate noise controls into the Project's design is unreasonable and unlawful under the requirement in R.C. 4906.10(A)(3) that the Project "[represent] the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations."

PROPOSITION OF LAW NO. 2:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Issuing A Certificate To A Solar Energy Utility Without Receiving The Information Required By Rule And R.C. 4906.10(A)(2) About The Project's Visual Impacts And Without Receiving The Information Required By Rule And R.C. 4906.10(A)(3) For Minimizing The Project's Adverse Visual Impacts.

Despite the fact that the solar panels may be as high as 14 feet and surrounded by a 7-foot chain link fence, Condition 3 of the Amended Stipulation requires only miniscule setbacks of 25 feet between solar fences and neighbors' yards/land and 150 feet between solar fences and neighbors' houses. (ICN 95, Amended Stipulation, p. 6, ¶ 3) Under these conditions, the Project will be a visual blight on the landscape views of the unfortunate neighbors who live nearby. This will especially harm the 17 Citizens who are located adjacent to the proposed Alamo Project Area, 12 of whom would be bordered on two or three sides by Alamo's solar panels. (ICN 80, Clippinger Testimony, p. 4, A.11, p. 3, A.10, and Exh. A (map of their locations); Clippinger, Tr. III 493:6-8)

To address a project's visual impacts, Ohio Admin.Code 4906-4-08(D)(4) requires:

(4) Visual impact of facility. The applicant shall evaluate the visual impact of the proposed facility within at least a ten-mile radius from the project area....The applicant shall:

(a) Describe the visibility of the project, including a viewshed analysis and area of visual effect, shown on a corresponding map of the study area. The viewshed analysis shall not incorporate deciduous vegetation, agricultural crops, or other seasonal land cover as viewing obstacles.

(e) Provide photographic simulations or artist's pictorial sketches of the proposed facility from public vantage points that cover the range of landscapes, viewer groups, and types of scenic resources found within the study area. The applicant should explain its selection of vantage points, including any coordination with local residents, public officials, and historic preservation groups in selecting these vantage points.

(f) Describe measures that will be taken to minimize any adverse visual impacts created by the facility, including, but not limited to, project area location, lighting, turbine layout, visual screening, and facility coloration. In no event shall these measures conflict with relevant safety requirements.

(Emphasis added.) The board's Opinion violates this rule in two respects, as explained below.

A. The Evidentiary Record Does Not Adequately And Accurately Describe The Project's Visual Impacts.

Ohio Admin.Code 4906-4-08(D)(4)(e) requires Alamo to “[p]rovide photographic simulations or artist's pictorial sketches of the proposed facility from public vantage points.” Alamo chose to provide photographic simulations for this purpose. However, Alamo’s simulations distort the true extent of the solar panels’ visual impact.

First, Alamo’s simulations depict eight-foot panels even though Alamo can select panels up to 14 feet high. (ICN 4, Applic., p. 8; ICN 21, Applic. Exh. I, pp. 28-33, & Figures 11 & 13 at pdf pp. 61-70; Robinson, Tr. II 346:16-24, 348:3-24, 349:13 to 350:5.) The simulations should have shown the panels to be almost double the height that was inaccurately depicted in the simulations. These simulations do not comply with the mandate in Ohio Admin.Code 4906-4-08(D)(4)(e) for photographic simulations or artist sketches to show the board and public what the Project will look like.

Second, the simulations are designed to conceal how the Project will appear to the closest, most impacted neighbors. Condition 3 allows solar fences to be constructed as near as 25 feet to neighbors’ yards/land and allows solar arrays to be as close as 150 feet from neighbors’ houses. (ICN 95, Amended Stipulation, p. 6, ¶ 3) However, the simulations do not depict even a single view from these distances. Instead, the simulations depict views from 300, 600, and 900 feet away. (ICN 21, Applic. Exh. I, pdf p. 59.) This deception violates Ohio Admin.Code 4906-4-08(D)(4)(e), which requires simulations “from public vantage points that cover the range of landscapes, viewer groups, and types of scenic resources found within the study area.” (Emphasis added.) The term “range” means “the amount, number, or type of something between an upper and a lower limit.” The Cambridge Dictionary, “Range,” <https://dictionary.cambridge.org/us/dictionary/english/range> (accessed April 8, 2022). Thus,

Alamo must cover the entire range of landscapes, viewer groups, and scenic resources. At the very least, Alamo must simulate the worst-case view in that range -- and that was the view that Alamo omitted from the Application and the record. The rule does not allow Alamo to skip the landscapes, viewer groups, and scenic resources that will suffer the greatest visual impacts from the Project.

In fact, the Application contains no simulations of any views from neighbors' yards or houses, which further violates the mandate in Ohio Admin.Code 4906-4-08(D)(4)(e) to "cover the range of landscapes [and] viewer groups." (Emphasis added.) Alamo attempts to circumvent this purpose by providing just five simulations: Simulations 1, 2, 3, and 4 show solar panels along public roads from the vantage point of motorists driving on the roads; Simulation 5 depicts a distant solar field across a large soybean field from the vantage point of a public road (ICN 21, Applic. Exh. I, pp. 29-33) Simulation 3 of the assessment simulates a distant view of the solar panels and fence adjacent to a resident's backyard, but deceptively portrays the solar equipment from the vantage point of someone standing on the public road to the front and side of the resident's yard, with a soybean field between the road and the yard, rather than the up-close view the resident will be forced to endure from the house or the backyard. (*Id.*, p. 31) The simulations include no views from the perspective of persons located in nearby residences or yards. Thus, the simulations omit the most impacted "viewer group" (residents living nearby) and the most impaired "landscapes" and "types of scenic resources" (these residents' views from their houses and yards). Some nearby residents will be exposed to panels and fences on two or three sides of their residences, which is another scenario not simulated. To allow Alamo to simulate only the least impacted views defeats the rule's purpose of enabling the board and the public to evaluate the extent of the Project's impacts.

While the board's Opinion summarizes without comment the parties' arguments on simulations, the Opinion does not address the merits of these arguments or determine whether the simulations comply with its rule. Although the Opinion states that the Project's visibility beyond 0.5 miles will be minimal, it does not acknowledge that there are neighbors who live closer. (Opinion, p. 57, ¶ 167)

Accurate and complete simulations are important visual aids for evaluating the Project's adverse impact on its neighbors. That is why the board's rule requires them. The board's failure to require Alamo to provide these simulations violates Ohio Admin.Code 4906-4-08(D)(4)(e), the board's duty to determine the Project's "probable environmental impact" under R.C. 4906.10(A)(2), and the board's mandate to approve only a facility that "represents the minimum adverse environmental impact" under R.C. 4906.10(A)(3).

B. The Evidentiary Record Does Not Include Measures That Would Minimize The Project's Adverse Visual Impacts.

Contrary to Ohio Admin.Code 4906-4-08(D)(4)(f), the record does not "[d]escribe measures that will be taken to minimize any adverse visual impacts created by the facility, including, but not limited to, project area location, lighting, turbine layout, visual screening, and facility coloration." The Application merely lists three types of visual mitigation that are theoretically available:

Situations such as these will be accounted for in the development of a landscape plan for the Project, which will be included as part of the final design. A number of cost-effective options are available to address specific issues in limited circumstances. First, in some cases, full screening with short trees, native hedges or low-growing vegetation outside a portion of the fence may be employed. Second, portions of the perimeter fence can be designed with different materials or colors to enhance its visual appeal. Finally, native pollinator habitat outside a portion of the fence can provide a partial screen that "softens" the visual differences between the Project and the rural character of the area.

(ICN 4, Applic., p. 90) (Emphasis added.) Elsewhere, the Application states that it “is considering” pollinator plants and wildflowers and “is considering” the installation of native shrubs and trees in selected sensitive areas. (ICN 21, Applic., Exh. I, p. 40)

Noticeably absent from this Application language are any commitments to actually mitigate the adverse visual impacts. Instead, the Application states only that Alamo “may” or “can” implement these measures. (ICN 4, Applic., p. 90) The Application defers any actual commitment to a future time when Applicant submits a post-certificate landscaping plan to the Staff. This lack of specificity violates the mandate in Ohio Admin.Code 4906-4-08(D)(4)(f) that the Application describe the measures that “will be taken” to minimize adverse visual impacts.

Alamo attempted to remedy this shortcoming in the Application by agreeing to Condition 15 instructing Alamo to submit a post-certificate landscape plan that contains “planting of vegetative screening designed by the landscape architect to enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area.” (ICN 95, Amended Stipulation, pp. 8-9, ¶ 15) However, a post-certificate condition does not cure Alamo’s failure to include the measures that “will be taken” as required by Ohio Admin.Code 4906-4-08(D)(4)(f).

Condition 15 would deprive non-participating neighbors of any right of comment or input concerning visual mitigation proposed to be implemented for their residential properties or surrounding areas. Condition 15 directs Alamo to prepare a landscape plan after certification with vegetative screening between neighboring homes and solar panels, but Condition 15 does not even require Alamo to consult with any such owners to learn about their screening preferences or to accommodate them. Nothing in the condition provides the neighbors with any rights of approval for the visual mitigation near their homes and land; instead, neighbors are

completely at the mercy of Alamo to design and the Staff to approve the landscaping plan as they wish.

Affected neighbors would have rights of meaningful comment and review if Alamo had included a landscape plan in the Application and if the board had made it binding in the Opinion. A binding landscaping plan should have been included in the record as required by Ohio Admin.Code 4906-4-08(D)(4)(f) so that the neighbors could adjudicate the details and adequacy of the vegetative designs chosen for their homes and land.

It was feasible for Alamo to do so. At the supplemental hearing, Alamo submitted a preliminary landscape plan containing maps and plant lists showing where the screening plants could be located along the borders of three nonparticipants' properties. (ICN 105, Robinson Suppl. Testimony, Attachment 1) The detail on these pages is sufficient for nonparticipating neighboring landowners to tell whether the proposed screening is adequate. Had Alamo included a final, binding plan in the record for every affected nonparticipating neighbor, those neighbors could have consented to or contested the sufficiency of the vegetative screens during the hearing. However, this preliminary plan is not incorporated into or referenced by the Amended Stipulation, so it is entirely unenforceable as a means to minimize visual impacts. (Conway, Tr. IV 682:7-12) Instead, the plan is subject to post-certificate revisions or even replacement altogether at Alamo's whim.

Moreover, neither the Application nor the Opinion requires Alamo to completely screen the neighbors' homes from the intrusive views of solar panels and fences. Such a requirement is critical to the Citizens. A complete screen between solar panels and houses/yards is reasonable and should be installed for affected homeowners who prefer not to see any of the panels from their homes. But Alamo's viewshed consultant, Mathew Robinson, testified that his goal is never

to install 100 % screening, not even around residential yards. (Robinson, Tr. II 377:16 to 379:1) He said that a person “certainly” will see the solar equipment through the hedgerow that he would want to install near neighbors’ homes. (Robinson, Tr. II 378:1-6) Nor does Condition 15 give the neighbors the option to insist on complete screening, or anything else. Condition 15 vaguely requires the planting of vegetative screening to “enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area.” (ICN 95, Amended Stipulation, pp. 8-9, ¶ 15) But it does not provide any detail on how wide the row of vegetation must be or how far apart the plants will be planted and maintained.

Alamo contends that expanding the yard/land setback from 10 feet to 25 feet (about two car lengths or the length of a typical homeowner’s garage) will provide more room for planting screening vegetation. This is not reassuring, since Alamo plans only to use a limited number of plants with gaps between them to “soften” the view of chain-link/barbed wire fence surrounding a seemingly endless sea of solar panels and inverters. Moreover, the limited number of shrubs and trees grudgingly promised by Alamo will take many years to grow wide enough or tall enough to provide even the partial screen envisioned by the developer. In particular, that partial screen will not help with the views from neighbors’ “elevated viewpoints (typically upper floors/stories of homes)” as acknowledged in the Application. (ICN 21, Applic. Exh. I, p. 19)

The adjudicatory and public hearing process set up by R.C. Chapter 4906 was designed to provide the public with meaningful input on design details such as landscaping. Alamo and the Staff are attempting to circumvent that process by formulating the landscape plan after certification instead of including it in the record. This scheme leaves only Alamo and the Staff, and not the public, with a voice in these decisions.

Submitting a post-certificate landscaping plan pursuant to a certificate condition is not a lawful substitute for a rule-compliant evidentiary record that would give affected neighbors a fair opportunity to adjudicate the adequacy of the Applicant's screening plans. Instead of providing an enforceable standard, such as complete screening for neighboring residences, Condition 15 does little more than state that Alamo and the Staff will later determine in secret, without Board or public input, what screening will be required. A binding landscaping plan should have been included in the record as required by Ohio Admin.Code 4906-4-08(D)(4)(f) so that the neighbors could have had a voice in the landscaping plan in the board proceeding. The board's decision allows Alamo to bypass this process and leaves this important work to the unfettered post-certificate collaboration of Alamo and the Staff. The Opinion should be remanded with instructions to reopen the record to add a landscaping plan that will be vetted during the adjudicatory process.

Just as importantly, the Application and Opinion fail to provide for the only mitigation measure that would make the Project represent the minimum adverse visual environmental impact--that is, place the Project's fences and equipment far enough away from people's residences and public roads so that they blend into the background. These setbacks would make the Project actually comport with the Project's appearance described in the Application's simulations.

Alamo's Project does not satisfy R.C. 4906.10(A)(3), because Alamo has not provided a Project design that represents the minimum adverse environmental impact with regards to visual impairment considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations. As explained above, "minimum" means the least possible, considering the state of available technology and the nature and economics of

the various alternatives, and other pertinent considerations. It is not enough for the Opinion to reduce the visual impacts by just a little. Cheap, half-hearted measures to plant some trees and bushes with gaps between them in narrow setbacks does not attain a “minimum” impact. Nor is this standard achieved by siting ugly fences and solar panels so close to neighboring yards, land, and residences.

The board’s Opinion states (at Pages 57-58) that Condition 15 will mitigate and limit the visual impact of the Project by requiring the preparation of a landscape plan. However, the short setbacks provided in the Application aggravate the situation by allowing solar fences and equipment to be placed right next to non-participants’ properties. Alamo proposes to install fences and equipment only 25 feet from non-participants’ properties. (ICN 4, Applic., pp. 54-55; ICN 95, Amended Stipulation, p. 6, ¶ 3) And, in fact, Condition 15 only ambiguously requires planting between the Project and neighbors’ homes “to enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area.” (ICN 95, Amended Stipulation, pp. 8-9, ¶ 15) At this short distance and with the foregoing vague directive, the neighbors will have no respite from the views of solar panels and fences.

Condition 15 offers only ambiguous, poorly worded parameters for mitigation, and the preliminary landscape plan is not part of the Application or enforceable under the Opinion. Without enforceable requirements for visual mitigation, the board has no way of knowing what the visual impacts will be once the promised landscaping plan is prepared and implemented. The board cannot make a determination of minimum adverse impact based on a vague promise that Alamo and the Staff will address these visual impacts. Thus, the board erred by finding that the evidentiary record contains the information required by Ohio Admin.Code 4906-4-08(D)(4)(f), by failing to determine the nature of the Project’s environmental impact under R.C.

4906.10(A)(2), and by opining that the Project represents the minimum adverse environmental impact under R.C. 4906.10(A)(3).

PROPOSITION OF LAW NO. 3:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Issuing A Certificate To A Solar Energy Utility Without Receiving The Information Required By Rule And R.C. 4906.10(A)(2) & (3) Concerning The Project's Potential Impacts On Wildlife And Plants.

According to the Application's ecological assessment prepared by consultant Cardno, wildlife may utilize the Project Area for foraging, migratory stopover, breeding, and/or shelter in its agricultural fields, pasture grasslands, isolated woodlots, and wetlands. (ICN 13, Applic. Exh. G, p. 4-5, § 4.4)

Ohio Admin.Code 4906-4-08(B) requires an applicant to conduct surveys of the plant and animal species in the Project Area to assess and mitigate a project's potential ecosystem impacts:

(B) The applicant shall provide information on ecological resources.

(1) Ecological information. The applicant shall provide information regarding ecological resources in the project area.

(c) Provide the results of a literature survey of the plant and animal life within at least one-fourth mile of the project area boundary. The literature survey shall include aquatic and terrestrial plant and animal species that are of commercial or recreational value, or species designated as endangered or threatened.

(d) Conduct and provide the results of field surveys of the plant and animal species identified in the literature survey.

(Emphasis added.) Without this information, OPSB can neither determine the nature of the probable environmental impact under R.C. 4906.10(A)(2) nor find that a project represents the minimum adverse environmental impact under R.C. 4906.10(A)(3).

Alamo performed only a partial literature search for plant and animal life and conducted no field surveys. The results of Cardno's partial literature search are provided in Appendix C of

Cardno’s ecological assessment provided in Application Exhibit G. That appendix is entitled “RTE Species Information.” “RTE” stands for rare, threatened, and endangered. (ICN 13, Applic. Exh. G, p. 1-4 (stating that Appendix C contains information about rare, threatened, and endangered species potentially located in the Project Area)) Cardno’s ecological assessment admits that Alamo’s “desktop” literature search was limited to “[m]ajor species, including Federal and State-listed threatened and endangered species.” (*Id.*, p. 1-1) These “major species” included only species of recreational or commercial value and federal and state-listed threatened or endangered species. (*Id.*, p. 4-5, § 4.4)

Thus, Alamo did not provide a literature survey for all plant and animal life in and near the Project Area as required by the first sentence of Ohio Admin.Code 4906-4-08(B)(1)(c). Alamo searched the literature only for RTE species and species of commercial and recreational value as required by the second sentence of Ohio Admin.Code 4906-4-08(B)(1)(c). Although Alamo and the board contend that the second sentence limits the scope of the first sentence, such an interpretation is contrary to established rules of statutory construction. The word “include” in the second sentence of subsection (B)(1)(c) is a term of enlargement, not limitation. 2A Singer, *Sutherland Statutes and Statutory Construction*, Section 47:7 (7th Ed). In other words, “the verb *to include* introduces examples, not an exhaustive list.” Scalia & Garner, *Reading Law: The Interpretation of Legal Texts*. Section 15, p. 116 (Thomson/West 2012, Kindle Ed.). *See also Kish v. Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, 846 N.E.2d 811, ¶ 20 (the word “includes” is an indication of expansion rather than constriction, restriction, or limitation); *Diller v. Diller*, 2021-Ohio-4252, 182 N.E.3d 370 ¶ 38 (3rd Dist. 2021). Limiting Alamo’s literature search to just those species in the second sentence of the rule provision would render the first sentence superfluous. The failure to catalogue and evaluate all other species in the area left a huge gap in

the record's "information regarding ecological resources in the project area" contrary to Ohio Admin.Code 4906-4-08(B)(1). The board's failure to require Alamo to perform a complete literature survey fails to comply with this rule.

Alamo also failed to conduct the required field surveys for plant and animal species in accordance with Ohio Admin.Code 4906-4-08(B)(1)(d). In fact, the report from Alamo's ecology consultant Cardno expressly admits:

Energy projects commonly include pre-construction and post-construction monitoring of the Project Area. Surveys include (but are not limited to) researching the biological resources within the Project Area (wetland, waterbodies, etc.), migration patterns of birds/bats passing through the Project Area, and the protective status of migratory and nesting/resident species in an area where Project infrastructure is being considered. At this time, no species-specific surveys have been conducted for the Alamo Solar Project.

(ICN 13, Applic. Exh. G, p. viii) (Emphasis added.)

Alamo witness Ryan Rupprecht, Cardno's project manager, also admitted that Alamo did not perform wildlife surveys:

Q. Were you focused on wildlife observations in your visit of May 2019?

A. I was not.

Q. Now, did any other employees of Cardno visit the site for the purpose of looking for bird species or mammals?

A. There's no direct bird surveys conducted for the Project by Cardno.

Q. And what about mammal surveys, were any of those done?

A. They were not.

(Rupprecht, Tr. 278:8-18) The Cardno employees who visited the Project Area were not even experts on bird identification. (Rupprecht, Tr. II 276:24 to 277:6, 277:13-18) Consequently, the Application's narrative admits that "these field observations did not constitute formal presence/absence surveys for specific species." (ICN 4, Applic., p. 71) Cardno did not record the

species of birds or mammals seen in the Project Area. (Rupprecht, Tr. II 280:8-21) Confirming the lack of field surveys, Application Exhibit G contains no lists of plant, bird, and mammal species found in the Project Area.

The sum total of Cardno's field survey activity was to casually note the RTE species they happened to see during their visit for the different purpose of studying the wetlands and streams in the Project Area. (Rupprecht, Tr. II 278:19 – 279:3) Those observations, which state that deer and squirrels were seen, are set forth in Section 6.1.2 of Application Exhibit G. (ICN 13, Applic. Exh. G, Page 6-2) As Mr. Rupprecht admitted, this is not a wildlife survey. Even if Cardno's observers happened to see some species during their wetland and stream visit, Alamo did not "provide the results of field surveys" as required by Ohio Admin.Code 4906-4-08(B)(1)(d). And even if Alamo were required to conduct a field survey only for RTE species and species of commercial and recreational value, Alamo failed to comply with that requirement, because it performed no field survey at all.

Thus, while Alamo contends its Project will not seriously harm wildlife or cause the wildlife to harm the community, it has no data to support those claims. The half-hearted effort to search for just some wildlife species, combined with the failure to report the sighted species, leaves the board with little information about the wildlife in the Project Area. Because the board should not have granted a certificate without the information necessary to determine the Project's effects on wildlife and to identify mitigation measures necessary to address those effects, the board's issuance of the Certificate violated Ohio Admin.Code 4906-4-08(B), R.C. 4906.10(A)(2), and R.C. 4906.10(A)(3).

PROPOSITION OF LAW NO. 4:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Issuing A Certificate To A Solar Energy Utility Without Receiving Information Required By Rule And R.C. 4906.10(A)(2) & (3) About The Project's Drainage Impacts And Associated Mitigation To Prevent Flooding.

The Ohio EPA guidance on storm water controls for solar panel arrays states that solar panels “alter the volume, velocity and discharge pattern of storm water runoff.” (Marquis, Tr. IV 666:24 to 667:5, 667:25 to 668:12, 669:12-25) Alamo drainage expert Matt Marquis agreed with this statement. (*Id.*, 670:5-10) Any increase in the amount or speed of stormwater flows from the Project could cause flooding problems in the community. Drainage swales are common in fields to be used for solar panels in the Project Area, and they flow onto neighboring land. (Rupprecht, Tr. II 292:16-19, 293:6-9; Waterhouse, Tr. I 205:2-5; ICN 84, DeLuca Testimony, pp. 2-3, A.7)

Ohio Admin.Code 4906-4-07(C) requires the board to obtain data about a project’s potential surface water runoff from an applicant prior to approving a project, so that potential drainage problems can be diagnosed prior to construction. Rather than making uninformed guesses about whether the Project’s design and construction will increase the runoff of stormwater from a site by altering the terrain, the board has promulgated this rule to answer this question ahead of construction rather than finding out after flooding damages the community.

Ohio Admin.Code 4906-4-07(C) provides:

(C) The applicant shall provide information on compliance with water quality regulations.

(2) The applicant shall provide information regarding water quality during construction.

(b) Provide an estimate of the quality and quantity of aquatic discharges from the site clearing and construction operations, including runoff and siltation from dredging, filling, and construction of shoreside facilities.

(c) Describe any plans to mitigate the above effects in accordance with current federal and Ohio regulations.

(d) Describe any changes in flow patterns and erosion due to site clearing and grading operations.

(3) The applicant shall provide information on water quality during operation of the facility.

(d) Provide a quantitative flow diagram or description for water and water-borne wastes through the proposed facility, showing the following potential sources of pollution, including:

(vii) Run-off from soil and other surfaces.

(Emphasis added.) The underlined language requires Alamo to quantify the amount of water that will flow off the Project Area during construction and operation. For construction, Ohio Admin.Code 4906-4-07(C)(2)(b) requires “an estimate of the ... quantity of aquatic discharges from the site clearing and construction operations.” (Emphasis added.) For operation, Ohio Admin.Code 4906-4-07(C)(3)(d) requires “a quantitative flow diagram or description for water ... through the proposed facility.” (Emphasis added.) These water flow estimates are necessary to determine whether site clearing and the existence of impervious solar panels will increase stormwater runoff that could flood downstream properties.

Ohio Admin.Code 4906-4-07(C)(2)(c) requires the applicant to “[d]escribe any plans to mitigate” runoff. Yet the record contains no numeric data on the quantity of water runoff during construction or operation of the Project. Noah Waterhouse, Alamo’s hydrology expert, admitted that no efforts have been made to model or otherwise quantify the amount of water that will flow from the Project Area. (Waterhouse, Tr. I 203:19-22, 204:14-20) He even acknowledged that hydrology studies are typically prepared for government agencies to provide surface water data. (Waterhouse, Tr. I 200:8-20) He further acknowledged that a hydrology study will be necessary

for this Facility. (Waterhouse, Tr. I 200:13-20, 201:15-23, 202:3-23) Nevertheless, Alamo has not done the study.

Instead of performing the required calculations, Alamo just assumed that no drainage problems will occur. The Application claims, without support from any data, that Alamo does not have to comply with this rule because Alamo does not anticipate “changes in flow patterns and erosion.” (ICN 4, Applic., p. 46) The Application asserts that the Project Area “already is level and very little, if any, grading will be needed.” (*Id.*)

However, Alamo has done no work to find out whether grading will be necessary. (Herling, Tr. I 65:19 to 66:20) So the record lacks the information necessary to ascertain how much grading will actually occur. The record does not contain a grading plan to show where grading will occur; that plan will be discussed with the Staff and submitted after the certificate is issued. (Herling, Tr. I 64:24 to 66:20) That is, Alamo merely asserts that its activities will not increase the amount of stormwater flow from the Project Area, rather than proving it as required by rule.

Moreover, soil compaction increases stormwater runoff into the streams. (Waterhouse, Tr. I 200:8-13) Alamo admitted that soil compaction will occur during construction, especially in access road areas. (*Id.*; Herling, Tr. I 71:23 to 72:1) Traffic has the potential to compact the roads. (Herling, Tr. I 76:20 to 77:2) The project will contain 12.19 acres of permanent roads with gravel on them. (Herling, Tr. I 76:5-14) There may be an additional 6.88 acres of temporary roads during construction. (Herling, Tr. I 76:8-11) After construction is finished, the access roads inside the Facility will still be compacted during Facility operation. (Waterhouse, Tr. I 198:5-8) Some compaction also is likely in the solar fields. (Herling, Tr. I 72:7-10)

Alamo has not yet determined whether it will slope the land in the Project Area. (Herling, Tr. I, 70:10-19) However, the Application reveals that Project construction will alter drainage flows:

Adequate surface water run-off drainage should be established at each solar array, access road, and the switchyard location to minimize any increase in the moisture content of the subgrade material. Positive drainage of each solar array site and access road location should be created by gently sloping the surface toward existing or proposed drainage swales. Surface water runoff should be properly controlled and drained away from the work area.

(ICN 12, Applic. Exh. F., p. 6) These instructions direct Alamo to drain its construction sites into drainage swales, thus changing slopes, moving dirt, and modifying the drainage patterns of the Project Area. Alamo's Route Evaluation Study reveals that construction will require the use of earthmoving equipment such as "excavators, bull dozers, and wheel tractor-scrappers" that need to be transported to the site. (ICN 10, Applic. Exh. D, p. 2, § 1.4) Thus, stormwater flows could increase during construction and operation. Certainly, Alamo has not conducted the study necessary to determine whether flows will increase or not.

To comply with Ohio Adm. Code 4906-4-07(C), Alamo needed to perform a hydrology study to quantify the flows from the Project Area, including increased runoff from road building. A hydrology study is a common requirement in projects of this nature, as revealed in Noah Waterhouse's testimony:

Q. Okay. Will the compaction of that road increase the amount of flow into that – into that ditch?

A. Yes, the runoff from the road, from the area of the roads would increase compared to the existing or pre-project conditions, but we do a full site-wide hydrology analysis and we will compare existing conditions pre-project to post-conditions for the single purpose of being able to show that we're not increasing any rate or any volume of runoff after the Project is completed. That's a typical requirement of most permitting agencies at state or local levels.

(Waterhouse, Tr. I 200:8-20) “[T]he purpose would typically be to show how the Project itself impacts runoff from the site to where the runoff is going.” (Waterhouse, Tr. I 202:15-17) “[O]ne of the goals is to figure out how it impacts and if it was going to be increased or decreased.” (Waterhouse, Tr. I 202:21-23)

Despite the necessity of this study, Alamo has no plans to conduct it before the certificate is issued. (Waterhouse, Tr. I 200:21-23) And even then, Mr. Waterhouse was not sure whether Alamo would share the study’s results with the board. (Waterhouse, Tr. I 201:5-9) Condition 29 requires a hydrology study, but this does not cure Alamo’s failure to quantify surface water flows in the Application.

The board’s Opinion ignores the lack of statistical data in the record on the quantity of runoff. The board simply accepted, without supporting data, Noah Waterhouse’s statements that solar facilities generally do not cause drainage problems. (Opinion, p. 63, ¶ 182) However, there is only a thin basis for his opinion, since Mr. Waterhouse has been involved in troubleshooting drainage tile problems at only one small operating solar facility. (Waterhouse, Tr. I 179:9 to 180:14) Without meaningful statistical data on this Project, the board no basis to conclude that it will cause a flooding problem.

Instead of obtaining and evaluating data to find out whether the Project will cause drainage problems, the board stated that drainage concerns are “premature” and can be addressed later. (Opinion, pp. 62-63, ¶ 182) By doing so, the board violated Ohio Admin.Code 4906-4-07(C) by ignoring its explicit mandate to make a pre-certification judgment about the Project’s drainage impacts by obtaining and evaluating “an estimate of the ... quantity of aquatic discharges from the site clearing and construction operations” and “a quantitative flow diagram or description for water ... through the proposed facility.” (Emphasis added.) Instead of

preventing flooding as required by this rule, the effect of the board's decision is to wait for flooding to occur before addressing the issue.

The board's Opinion also violates Ohio Admin.Code 4906-4-07(C)(2)(c), which requires the applicant to describe "any plans to mitigate" runoff from construction activities. Instead of properly adjudicating this issue with public input, the board's Opinion requires Alamo to follow Ohio EPA's Construction Storm Water General Permit and two tools used to implement that permit: a Storm Water Pollution Prevention Plan ("SWPPP") and Ohio EPA's "Guidance on Post-Construction Storm Water Controls." (Opinion, p. 63, ¶ 183, p. 94, ¶ 260)

However, neither of the foregoing tools are designed to address flooding. They only reduce pollution from soil erosion, as stated in the Ohio EPA rule authorizing the issuance of the storm water general permit:

No person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without applying for and obtaining an individual NPDES permit in accordance with Chapter 3745-33 of the Administrative Code or obtaining authorization to discharge under a general NPDES permit in accordance with this chapter.

Ohio Admin.Code 3745-38-02(A)(1) (emphasis added). Similarly, Ohio Admin.Code 3745-38-02(B)(2) provides: "The general NPDES permit may be written to regulate ... any of the following: (a) Storm water point sources...." A "point source" is any pipe or other conveyance "from which pollutants are or may be discharged." Ohio Admin.Code 3745-38-01(Q). Thus, the Construction Storm Water General Permit and its implementation tools regulate pollutants from construction discharges, not the quantity of the water being discharged. Consequently, Conditions 16 and 30 do nothing to prevent flooding. Even if the permit were designed to prevent flooding, requiring Alamo to obtain the permit after certification does not satisfy OPSB's

duty under Ohio Admin.Code 4906-4-07(C) and R.C. 4906.10(A)(2) to determine the nature of the probable environmental impact.

If an applicant's general assurances about drainage were considered adequate to guard against drainage problems, Ohio Admin.Code 4906-4-07(C) would not have been promulgated to require detailed water quantity data and mitigation measures on the record. Alamo had the legal obligation to include data in the record to prove its conclusions, and the board has the duty to enforce this requirement. Without this data, the record does not and cannot identify any mitigation measures that may be necessary to protect neighbors from flooding and drainage problems caused by Alamo's activities as required by Ohio Admin.Code 4906-4-07(C)(2)(c). This violates the board's responsibilities to implement Ohio Admin.Code 4906-4-07(C), determine the nature of the Project's environmental impact under R.C. 4906.10(A)(2), and determine whether the Project represents the minimum adverse environmental impact under R.C. 4906.10(A)(3).

PROPOSITION OF LAW NO. 5:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Issuing A Certificate To A Solar Energy Utility Without Receiving Information Required By Rule And R.C. 4906.10(A)(2) & (3) Concerning The Project's Pollution Impacts And Associated Mitigation.

The Application reveals that 51 acres of land will be disturbed, including 28.6 acres for the collection line system, 19.1 acres of roads, 0.3 acres for inverter pads, and three acres for the substation. (ICN 5, Applic., Fig. 17, pdf p. 29) Disturbing all of this ground will increase the potential for soil erosion and the runoff of soil-laden water into streams.

The Application admits that soil erosion and sedimentation controls are needed for these areas. (ICN 13, Applic. Exh. G, pp. 1-4 to 1-5, § 1.1.1) Alamo also acknowledged that its Project construction necessitates an Ohio EPA construction stormwater permit that "requires

development of a proposed storm-water pollution prevention plan ('SWPPP') for erosion control and storm-water management." (ICN 4, Applic., p. 45)

Ohio Admin.Code 4906-4-07(C) requires the board to obtain data about a project's potential for water pollution from an applicant prior to approving a project, so that potential pollution problems can be diagnosed prior to construction. Rather than making uninformed guesses about whether the Project's disturbance of the soil will increase the runoff of soil-laden water into streams, the board promulgated this rule to answer this question ahead of construction rather than finding out after water pollution damages the streams and the community.

Ohio Admin.Code 4906-4-07(C)(1)(d) and 4906-4-07(C)(2)(b), (c), (d), and (e) require Alamo to provide water quality data so the board can evaluate these discharges' impacts:

(C) The applicant shall provide information on compliance with water quality regulations.

(1) The applicant shall provide information regarding preconstruction water quality and permits.

(d) Describe the existing water quality of the receiving stream based on at least one year of monitoring data, using appropriate Ohio environmental protection agency reporting requirements.

(2) The applicant shall provide information regarding water quality during construction.

(b) Provide an estimate of the quality and quantity of aquatic discharges from the site clearing and construction operations, including runoff and siltation from dredging, filling, and construction of shoreside facilities.

(c) Describe any plans to mitigate the above effects in accordance with current federal and Ohio regulations.

(d) Describe any changes in flow patterns and erosion due to site clearing and grading operations.

(e) Describe the equipment proposed for control of effluents discharged into bodies of water and receiving streams.

(Emphasis added.) The emphasized language requires an applicant to submit information about the quality of surface water flows from the Project Area during construction and operation, such as sediment from erosion carried into the streams.

The information required by this rule falls into three categories. Alamo has not provided the necessary information for any of these categories.

First, Ohio Admin.Code 4906-4-07(C)(1)(d) requires Alamo to sample and analyze the water quality in streams receiving runoff from the Project Area for one year to establish a baseline for existing water quality. The record contains no such sampling data, nor has Alamo represented that it collected any data. Instead, the Application claims that Alamo does not need to implement this rule. (ICN 4, Applic., p. 45)

Second, Ohio Admin.Code 4906-4-07(C)(2)(b) and (d) require Alamo to “[p]rovide an estimate of the quality ... of aquatic discharges from the site clearing and construction operations” and to “[d]escribe any changes in flow patterns and erosion due to site clearing and grading operations.” As noted above, the Application reveals that Project construction will change the drainage flows. (ICN 12, Applic. Exh. F., p. 6) Ohio Admin.Code 4906-4-07(C)(2)(d) requires Alamo to estimate the quality and flow patterns of the stormwater running off the construction site, but the record contains no such data. Instead, the Application claims that Alamo does not need to implement this rule. (ICN 4, Applic., pp. 45-46)

Third, Ohio Admin.Code 4906-4-07(C)(2)(c) and (e) require Alamo to identify “plans to mitigate,” and equipment to control, erosion discharges into streams. Instead of identifying these plans and equipment during the proceeding as required, Alamo merely promises to do so after the board issues a certificate. The Application generally promises that “soil erosion and sedimentation control measures will be installed within and along the proposed construction

area, equipment laydown areas, access roads, and other work areas, as applicable, in accordance with approved Preble Soil & Water Conservation District’s soil erosion and sediment control (SESC) Plans.” (ICN 13, Applic. Exh. G, pp. 1-4 to 1-5, § 1.1.1) The Application further promises to employ best management practices (“BMPs”) to minimize sedimentation and erosion. (*Id.*, p. 1-5) These statements about the necessity for erosion and sedimentation controls acknowledge that the Project will cause erosion and sedimentation into the vicinity streams, but they fail to describe the necessary corrective measures.

Like it did with Alamo’s failure to provide water quantity data, the board Opinion has overlooked Alamo’s refusal to provide water quality data and mitigation measures. (Opinion, p. 63, ¶ 183). Rather than requiring Alamo to produce any data so that the board can determine whether Project construction will harm the streams, the board assumes that these tasks will be undertaken when Alamo applies for a post-certificate stormwater permit under certificate Conditions 16 and 29. In doing so, the board has violated Ohio Admin.Code 4906-4-07(C), the board’s mandate in R.C. 4906.10(A)(2) to determine the nature of the Project’s environmental impact, and its mandate in R.C. 4906.10(A)(3) to determine whether the Project represents the minimum adverse environmental impact.

PROPOSITION OF LAW NO. 6:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Issuing A Certificate To A Solar Energy Utility Without The Setbacks Necessary To Minimize The Project’s Adverse Environmental Impact Under R.C. 4906.10(A)(3).

R.C. 4906.13(B) preempts the application of local zoning to utilities subject to OPSB authority. As a substitute for local zoning, R.C. 4906.10 entrusts the OPSB with the authority and responsibility to require regulated utilities to responsibly site and design their facilities.

To implement this mandate, the board should not have accepted the unreasonably narrow setbacks between Alamo's industrial facility and its neighbors' land and homes requested by Alamo. The most egregious of these setbacks is the 25-foot setback between the Project's seven-foot chain-link and barbed wire fences and nonparticipating landowners' yards and land. (ICN 95, Amended Stipulation, p. 6, ¶ 3) This setback is approximately equivalent to two car lengths or the standard length of a homeowner's garage. Just as unsettling is the 25-foot setback between the 14-foot high solar panels and nonparticipating landowners' yards and land. (ICN 4, Applic., pp. 54-55) Little better is the 150-foot setback between the Project and neighboring homes (ICN 95, Amended Stipulation, p. 6, ¶ 3), which is equivalent to half the length of a football field.

These stingy setbacks will especially damage the 17 Citizens who own and/or occupy land adjacent to the Project Area, 12 of whom will be entrapped in a claustrophobic setting bordered on two or three sides by solar panels. (ICN 80, Clippinger Testimony, p. 4, A.11, p. 3, A.10, and Exh. A (map of their locations); Clippinger, Tr. III 493:6-8) At those short distances, the neighbors will be constantly exposed to unwanted and unpleasant views from their yards and houses for at least 40 years. And, as explained above, Alamo's miserly plans for vegetative screening between its industrial facility and neighbors' homes will do little to conceal these views. Alamo states that this setback expansion will provide room for greater vegetative screening. In fact, an eight-yard sliver of land – about two car lengths – provides little room for trees and bushes.

Adding a 500-foot setback between central inverters and non-participants' residences is better than nothing, but it still falls short of protecting neighbors from inverter noise, for several reasons. First, the noise from central inverters can reach 38 dBA at 500 feet. Second, the 500-foot setback does not apply to non-participants' yards or land. And third, the setback does not

apply to string inverters. This omission allows string inverters to be sited directly behind Project fences that can be as close as 25 feet from yards and 150 feet from residences.

Alamo has no good justification for such short setbacks. Alamo needs up to 919 acres for the Project, but it has about 1002.5 acres available. (ICN 4, Applic., p. 6) Alamo presented no evidence of an inability to reduce its panel acreage or to accommodate longer, more reasonable setbacks by using the spare land it has available. Either way, building an industrial facility so close to other people's land in an agriculturally zoned area is inexcusable, and the board should not have approved such behavior.

Alamo has the burden to prove compliance with R.C. 4906.10(A)(3) by demonstrating that the Project represents the minimum environmental adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, under R.C. 4906.10(A)(3). That is, under the common meaning of "minimum," Alamo must prove that the project's impacts are "the least quantity assignable, admissible, or possible" under the dictionary meaning of that word. If Alamo wanted to argue that its larger setbacks are infeasible to reduce the Project's adverse effects, it had a duty to introduce the evidence to make this demonstration. The Court should direct OPSB to revisit its miniscule setbacks in order to comply with R.C. 4906.10(A)(3).

CONCLUSION

OPSB's rules in Ohio Admin.Code Chapter 4906-4 are intended to provide the board with sufficient information to determine the nature of a project's environmental impact under R.C. 4906.10(A)(2), and to further determine whether a project represents the minimum environmental adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives under R.C. 4906.10(A)(3). The board has a

mandatory duty to comply with these rules but has failed to do so. The Alamo Project as approved by the board does not comply with R.C. 4906.10(A)(2) or R.C. 4906.10(A)(3). For these reasons, the Citizens request that the Court vacate the board's Opinion and remand for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on April 15, 2022, a copy of the foregoing Merit Brief was served upon the following counsel of record by electronic mail:

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IN THE SUPREME COURT OF OHIO

In the Matter of the Application) Case No. 2022-0053
of Alamo Solar I, LLC, for a)
Certificate of Environmental) On Appeal from the Ohio Power Siting
Compatibility and Public Need) Board, Case No. 18-1578-EL-BGN

**APPENDIX TO MERITS BRIEF OF APPELLANTS CONCERNED
CITIZENS OF PREBLE COUNTY, LLC, ERIC AND KELLY ALTOM,
MARY BULLEN, CAMDEN HOLDINGS, LLC, JOANNA AND JOHN
CLIPPINGER, JOSEPH AND LINDA DELUCA, DONN KOLB AS THE
TRUSTEE FOR THE DONN E. KOLB REVOCABLE LIVING TRUST, DORIS
JO ANN KOLB AS THE TRUSTEE FOR THE DORIS JO ANN KOLB
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VOLUME I

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THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
ALAMO SOLAR I, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 18-1578-EL-BGN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on June 24, 2021

I. SUMMARY

{¶ 1} The Ohio Power Siting Board approves and adopts the amended stipulation and recommendation between Alamo Solar I, LLC, the Preble County Commissioners, the Preble County Engineer, the Preble County Planning Commission, the Preble Soil and Water Conservation District, Gasper Township, Washington Township, the Ohio Farm Bureau, and the Board Staff, and directs that a certificate be issued to Alamo Solar I, LLC for the construction, operation, and maintenance of a solar-powered electric generation facility in Preble County, Ohio.

II. PROCEDURAL BACKGROUND

{¶ 2} All proceedings before the Ohio Power Siting Board (Board) are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 3} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board. In seeking a certificate, an applicant must comply with the filing requirements outlined in R.C. 4906.06, as well as Ohio Adm.Code Chapters 4906-2 and 4906-4.

{¶ 4} On October 22, 2018, Alamo Solar I, LLC (Alamo or Applicant) filed a pre-application notification letter with the Board regarding its proposed solar electric generating facility in Gasper and Washington Townships, Preble County, Ohio.

{¶ 5} Alamo held a public information meeting to discuss the proposed project with interested persons and landowners on November 13, 2018, at the Toney Building on the Preble County Fairgrounds in Eaton, Ohio.

{¶ 6} On December 10, 2018, as supplemented on January 31, 2019, Alamo filed an application with the Board for a Certificate of Environmental Compatibility and Public Need to construct a solar-powered electric generation project in Preble County, Ohio (Project). The proposed project is a solar photovoltaic generating facility capable of producing 69.9 megawatt (MW). (Staff Ex. 1 at 24.)

{¶ 7} Additionally, on December 10, 2018, Alamo filed a motion for protective treatment pursuant to Ohio Adm. Code 4906-2-21(D) and a motion for a waiver, in whole or in part, from Ohio Adm.Code 4906-4-03(A)(1)(a), 4906-4-03(B)(4)(b), 4906-4-08(A)(5), 4906-4-08(B)(1)(a)(i), 4906-4-08(C)(1)(a)(i), and 4906-4-08(E)(1), which all pertain to the submission of maps showing the proposed facility. Alamo also sought a waiver of Ohio Adm.Code 4906-4-08(A)(1)(c) regarding the manufacturers' safety manual documents and recommended setbacks from the manufacturer, Ohio Adm.Code 4906-4-08(A)(5)(c) regarding the description of its plan for test borings, including appropriate closure plans, and Ohio Adm.Code 4906-4-08(D)(2) though (4) regarding the reduced study area relative to the impact on landmarks. The motion for protective treatment and the motion for a waiver were granted on April 3, 2019.

{¶ 8} By letter dated February 8, 2019, the Board notified Alamo that its application was sufficiently complete to permit the Board's Staff (Staff) to commence its review and investigation. The letter directed the Applicant to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Alamo to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 9} On March 20, 2019, Alamo filed proof that it submitted its application fee and filed a certificate of service of its accepted, complete application as required by Ohio Adm.Code 4906-3-07.

{¶ 10} By Entry dated April 3, 2019, the administrative law judge (ALJ) established the effective date of the application as March 27, 2019. The Entry also set forth a procedural schedule under which a local public hearing would be conducted on June 12, 2019, and an evidentiary hearing would commence on June 26, 2019. The ALJ directed Alamo to issue public notices of the application and hearings in accordance with Ohio Adm.Code 4906-3-09 and indicated that petitions to intervene would be accepted up to 30 days following publication of that notice or by May 15, 2019, whichever was later.

{¶ 11} Pursuant to the April 3, 2019 Entry, the ALJ granted the motions to intervene filed by the Eaton Community School District (Eaton CSD) and the Ohio Farm Bureau Federation (OFB).

{¶ 12} By Entry dated May 13, 2019, the procedural schedule was amended due to the need for a change in venue of the local public hearing.

{¶ 13} By Entry issued on June 10, 2019, the ALJ accepted the notices of intervention filed by the Preble County Engineer, Washington Township, Gasper Township, the Preble Soil and Water Conservation District (Preble Soil and Water), the Preble County Planning Commission and the Preble County Commissioners. The ALJ also granted the motions to intervene filed by Preble Shawnee Local School District (Shawnee Local) and the Concerned Citizens of Preble County, LLC (CCPC) on behalf of its members who own and/or live on properties that are adjacent to the project area. CCPC are 67 persons and companies that live, work, and own property near the Alamo and nearby Angelina solar projects (CCPC Initial Br. at 2). The following CCPC members were also individually granted intervention: Eric and Kelly Altom, Mary Bullen, Camden Holdings, LLC, John and Joanna Clippinger, Joseph and Linda DeLuca, Jason and Tonya Heggs, Donn Kolb as trustee for the Donn E. Kolb Revocable Living Trust, Doris Jo Ann Kolb as the trustee for the Doris Jo Ann Kolb

Revocable Living Trust, Kenneth and Elaine Kolb, James and Carla Lay, Clint and Jill Sorrell, John and Linda Wambo, John Frederick Winter, and Michael and Patti Young (collectively, CCPC Members).

{¶ 14} On May 28, 2019, Staff filed its Report of Investigation (Staff Ex. 1) pursuant to R.C. 4906.07(C).

{¶ 15} The local public hearing was conducted as scheduled on June 12, 2019.

{¶ 16} Pursuant to the Entries of June 10, 2019, and July 11, 2019, the evidentiary hearing was rescheduled to commence on July 17, 2019.

{¶ 17} On July 5, 2019, Alamo, Staff, OFB, Preble County Commissioners, the Preble County Engineer, Preble Soil and Water, Gasper Township, Washington Township, and the Preble County Planning Commission (collectively, Signatory Parties) filed a joint stipulation and recommendation (Initial Stipulation or Joint Ex. 1). Eaton CSD, Shawnee Local, CCPC and CCPC Members did not join in the Initial Stipulation.

{¶ 18} Beginning on July 17, 2019, the ALJ conducted the evidentiary hearing where the Initial Stipulation was presented for the Board's consideration.

{¶ 19} Initial and reply briefs were filed on September 13, 2019, and September 27, 2019, respectively.

{¶ 20} On July 30, 2020, the Signatory Parties filed an amended and restated joint stipulation and recommendation (Amended Stipulation or Joint Ex. 2). With the Amended Stipulation, the parties also filed a joint motion to reopen the hearing record and to schedule a prehearing conference. Eaton CSD, Shawnee Local, CCPC and CCPC Members did not join in the Amended Stipulation

{¶ 21} By Entry dated September 14, 2020, the ALJ granted the motion to reopen the record upon finding that the Signatory Parties demonstrated good cause to reopen the

record for the purpose of considering the Amended Stipulation and any testimony in support of, or in opposition to, the same. By Entry of September 24, 2020, a supplemental evidentiary hearing was scheduled for the purpose of considering the Amended Stipulation.

{¶ 22} A supplemental evidentiary hearing was held on October 26, 2020, consistent with the Entry of September 24, 2020.

{¶ 23} Substitute initial and reply briefs were filed on December 9, 2020, and December 23, 2020, respectively.¹

III. PROJECT DESCRIPTION

{¶ 24} Alamo intends to own the Alamo Solar Farm as a 69.9 MW solar-powered generating facility. The Project will consist of large arrays of ground-mounted photovoltaic modules (solar panels). The Project will also include associated support facilities, such as access roads, up to five meteorological stations, pyranometers, buried electrical collection lines, inverter pads, and a substation. (Staff Ex. 1 at 6.)

{¶ 25} The Applicant plans to install an underground collector system made up of a network of electric and communication lines that will transmit the electric power from the solar arrays to inverters and then to a common substation. Alamo proposes to install up to 20.5 miles of buried cable. The facility substation would occupy approximately three acres of land adjacent to the proposed point of interconnection. The major components of the Applicant's substation are collection line feeders and breakers, a 34.5 kilovolt (kV) bus, a main power transformer to step up the voltage to 69 kV, a high-voltage breaker, metering/relaying transformers, disconnect switches, an equipment enclosure, and a lightning mast that would be approximately 70 feet in height. (Staff Ex. 1 at 7.) A 69 kV electric gen-tie line, approximately 300 feet in length, would connect the Project substation

¹ The citations in this Order pertain to the substitute initial and reply briefs.

to the Dayton Power and Light Company's Camden-Crystal I 69 kV electric line between the Crystal and Camden substations (Staff Ex. 1 at 7, 24).

{¶ 26} The Facility would be in Gasper and Washington townships and would occupy up to 919 acres within a 1,002.5-acre project boundary. The solar panels would be attached to metal racking with either fixed-tilt or tracking. The solar arrays would be grouped in large clusters that would be fenced, with locked gates at all entrances. (Staff Ex. 1 at 6.) The Applicant has not yet selected the final solar panel technology to be utilized for the Project but has limited its consideration to two commonly used solar technologies that are substantially similar in design: crystalline or thin-film. Both racking systems can accommodate either crystalline or thin-film solar panel modules. (Staff Ex. 1 at 6.) The Applicant has not selected the specific module vendor but has indicated that it intends to use a manufacturer that has the capability and experience to provide approximately 186,400 to 279,600 modules for this Project (Staff Ex. 1 at 6, 7).

{¶ 27} The Applicant proposes to use up to 11.7 miles of access roads for construction, operation, and maintenance of the solar farm. The roads would consist of aggregate material and/or grass and would be up to 25 feet wide during construction and then reduced to 16 feet wide during operation. Alamo proposes up to approximately 16 acres of temporary equipment laydown area within the Project boundary, three acres of which would be maintained as permanent gravel areas for vehicle parking and equipment storage. (Staff Ex. 1 at 7.)

{¶ 28} The Project will include up to five meteorological stations that would be up to 15 feet tall and enclosed with a gated fence. The Project will also include permanent lighting only at gates, inverters, and the collection yard. All lights would be shielded downward- or inward-facing and motion-activated. There would be no permanent lighting associated with the solar panels, the access roads, or any other components of the Project. (Staff Ex. 1 at 8.)

{¶ 29} The Applicant will not construct or operate the Project but, instead, will select a company to construct and operate the solar farm (Staff Ex. 1 at 5).

{¶ 30} The Applicant expected to finalize design and commence construction of the solar farm in the fourth quarter of 2019 and start commercial operations in December 2020. According to the Applicant, the postponement of the start of construction could affect the Project's eligibility for certain incentives, such as the full value of the federal investment tax credit. (Staff Ex. 1 at 8.)

IV. SUMMARY OF THE EVIDENCE

{¶ 31} The Board will review the evidence presented regarding each of the eight criteria by which we are required to evaluate this application. Any evidence not specifically addressed herein has, nevertheless, been considered and weighed by the Board in reaching its final determination.

A. *Public Input*

{¶ 32} Twenty-nine individuals testified at the local public hearing held on June 12, 2019, in Eaton, Ohio.

{¶ 33} Twenty witnesses opposed the proposed project. They raised concerns regarding the adverse effects that the Project will have on farm drain tiles and flooding; the potential for the leakage of chemicals from the solar panels; glare; and the impact on cell phone signals, GPS readings and satellite signals (June 12, 2019 Tr. at 10-13, 19, 20, 44, 45, 73, 93). Witnesses also expressed concerns regarding the actual economic benefit that will result from the Project, including the lack of job creation, and the specifics of any Payment in Lieu of Taxes (PILOT) arrangement (June 12, 2019 Tr. at 14, 15, 50, 80, 81, 88-92, 103). Witnesses expressed uncertainty over the Project due to the fact that Alamo will not be the entity actually operating the Project and that it may ultimately sell the certificate that is the subject of this proceeding, similar to what occurred in Brown County with the Hillcrest Project (June 12, 2019 Tr. at 15, 16, 41, 55, 56). Concern was also expressed regarding the

economic viability of solar energy companies. Witnesses questioned the value of constructing a solar farm in the state of Ohio and expressed the belief that the energy produced will not be utilized in Preble County but, instead, will be sent elsewhere via the grid. (June 12, 2019 Tr. 16, 18, 19, 88.) Witnesses also questioned the economic value of taking land out of agricultural production for the purpose of constructing the proposed solar farm, including the impact on industries related to agriculture. Concerns were also raised about the detrimental effect that the proposed project will have on wildlife with the loss of habitat and grazing, as well as the adverse effect on the environment once the solar farm is decommissioned. (June 12, 2019 Tr. at 24, 29, 30, 35-38, 42, 46, 68-70, 73, 88, 89.)

{¶ 34} Witnesses also expressed concern that the proposed project is not consistent with the Preble County Comprehensive Economic Development Strategy and Land Use Plan adopted by the Preble County Commissioners in 2017 (June 12, 2019 Tr. at 24-28; 62-64). Some witnesses were uncertain as to the structural stability of the solar panels and their ability to withstand storms, as well as whether the local fire department could handle emergencies that may result from the presence of the solar panels (June 12, 2019 Tr. 31-33, 41, 46, 47, 94, 95). Other witnesses raised the concern of a decrease in property value as a result of the proposed project (June 12, 2019 Tr. at 12, 13, 21, 55, 66).

{¶ 35} Nine witnesses expressed their support for the proposed project, recognizing the importance of solar energy as an alternative, renewable energy source due to the environmental and economic benefits to the community, including the farmers who receive lease payments. Witnesses in support of the Project also asserted that they should have the ability to decide how to utilize their property. They disputed the concerns raised regarding the alleged impacts on wildlife and on drain tiles. (June 12, 2019 Tr. at 53, 54, 58-60, 67, 74-77, 82-86 96-101, 105, 106.)

B. Staff Report

{¶ 36} Pursuant to R.C. 4906.07(C), Staff completed an investigation into the application, which included recommended findings regarding R.C. 4906.10(A). The Staff

Report was filed on May 28, 2019. The following is a summary of Staff's findings regarding each criterion.

1. BASIS OF NEED

{¶ 37} R.C. 4906.10(A)(1) requires an applicant for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. As the Project is a proposed electric generating facility and neither an electric transmission line nor a gas pipeline, Staff recommends that the Board find that this consideration is inapplicable to this application (Staff Ex. 1 at 11).

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 38} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed facility. As a part of its investigation, Staff evaluated the application to determine the nature of the probable environmental impact of the proposed solar project. The following is a summary of Staff's findings and whether the proposed facility represents the minimum adverse environmental impact.

{¶ 39} In its report, Staff discussed a number of factors regarding the nature of the probable environmental impact of the construction and operation of the proposed solar-powered electric generation facility. These factors include the socioeconomic impacts encompassing land use, aesthetics, cultural and archaeological resources, economics, glare, and decommissioning. Staff also analyzed the ecological impacts including public and private water supply, geological features, slopes and soil suitability, surface waters, threatened and endangered species, and vegetation. Further, Staff considered public services, facilities, and safety factors including wind velocity, road and bridges, and noise. (Staff Ex. 1 at 12-21.)

a. Socioeconomic Impacts

{¶ 40} The Project will be located on previously disturbed land that has mostly been cleared for agriculture and is extremely level. Existing features in the project area include electric transmission lines, a communications tower, public roads, single-family homes, and farm buildings. (App. Ex. 7 at 3, 4). Due to restrictions on parcel sizes (typically between 10 and 40 acres minimum), residential density in the project area is low (Staff Ex. 1 at 12).

{¶ 41} The project area is rural and characterized by medium to large-sized farms with interspersed pockets of trees (App. Ex. 7 at 4). No residences would be located within the confines of the fenced project boundaries and as currently designed; the nearest nonparticipating residence would be 62 feet from the closest solar panel. According to the Staff Report, the Applicant intends to relocate one participating landowner residence and potentially remove a few farm-related structures on other participating landowner properties. (Staff Ex. 1 at 12.)

{¶ 42} Woodland Trails is a state wildlife management area located approximately 0.25 miles south of the project boundary. Staff found that no residences, parks, or recreational areas would be within the Project boundaries; nor would any commercial structures, places of worship, medical facilities, schools, or other institutional land uses be located near the project area. (Staff Ex. 1 at 12.)

{¶ 43} With respect to aesthetics, Staff indicates that the project area predominantly consists of agricultural land. Staff notes that traffic volume on the roads is typically light, therefore abating the potential number of viewers (Staff Ex. 1 at 12). An anti-glare coating would be installed on solar panels to maximize the amount of solar energy captured by the panels, which could also have the aesthetic benefit of glare reduction (Staff Ex. 1 at 12). Staff also points out that potential impacts from glare may result in a brief reduction in visibility, afterimage, a safety risk to pilots, or a perceived nuisance to neighbors. According to Staff, the Applicant has stated that the Project will have a low reflectivity. Staff believes that the

use of anti-glare coating and a tracking array system will both reduce the potential for glare. (Staff Ex. 1 at 15.)

{¶ 44} The solar panels will not be higher than 15 feet above ground level. Staff notes that based on the results of the Applicant's Visual Resources Report, the solar panels would not likely be visible at locations beyond two miles of the perimeter of the Project (Staff Ex. 1 at 12). Staff avers that landscape and vegetative screening and the use of minimal lighting necessary to satisfy safety requirements could be used to minimize visual impacts (Staff Ex. 1 at 12). Staff recommends that in areas where an adjacent nonparticipating parcel contains a residence with a direct line of sight to the Project, the Applicant should incorporate a landscape and aesthetics plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project. Staff recommends that aesthetic impact mitigation could include native vegetative plantings, alternate fencing, good neighbor agreements, or other methods in consultation with affected properties and subject to Staff review. (Staff Ex. 1 at 12, 15.)

{¶ 45} According to Staff, the Applicant enlisted a consultant to complete a cultural record review for the area within two miles of the project boundary. Further, Staff states that the Applicant conducted a literature review and an evaluation of cultural resource surveys previously performed in the area. The literature review was based on data provided by the Ohio Historic Preservation Office's (OHPO) online geographic information system mapping, as well as other map collections and resources. (Staff Ex. 1 at 13.) According to Staff, based on a literature review, the cultural resources consultant retained by the Applicant determined that there are four resources listed on the National Register of Historic Places (NRHP) within two miles of the Project, including a covered bridge located within 1.3 miles of the project area. Additionally, one archeological site and two bridge structures have previously been determined to be eligible for a NRHP listing. There are no designated National Historic Landmarks within two miles of the Project. (Staff Ex. 1 at 13.)

{¶ 46} There are 171 Ohio Historic Inventory properties that were identified within two miles of the project area. The Applicant's consultant also identified that 14 Ohio Archaeological Inventory recorded sites were located within two miles of the Project, with the nearest site being located approximately 0.2 miles from the project area. There are 15 mapped cemeteries within two miles of the project area, six of which are within 1 mile. According to the Applicant's consultant, mapping from the early 1900s indicates that there may be three mound sites within two miles of the Project, one of which could be close to the boundary of the Project and will need to be confirmed and avoided. (Staff Ex. 1 at 13.)

{¶ 47} According to Staff, because there is the potential for indirect visual impacts to cultural resources within two miles, and to verify that the site does not contain unknown cultural resources, a Phase I cultural resource study should be performed. This study should include an archeological survey limited to areas of significant ground disturbance. A reconnaissance survey for architectural resources in the two-mile viewshed should also be developed, in coordination with OHPO and Staff. (Staff Ex. 1 at 13.)

{¶ 48} Alamo will own all of the assets that will comprise the Project or that would be used to construct, own, and operate the Project. Additionally, it owns the land development rights for 90 percent of the project area and rights of access for the remainder. Although it will own the facility, Alamo plans to hire a third party for construction and operation. (Staff Ex. 1 at 13.)

{¶ 49} The Project is not expected to have any significant adverse effect on regional development but, instead, it will advance the goals espoused in the Preble County's 2011 Comprehensive Economic Development Strategy and Land Use Plan (App. Ex. 1 at 81). The Project will positively contribute to employment, as well as providing secondary and induced effects of increased wages and will contribute significant new annual revenue to the tax base for Preble County and townships both during the construction and operation of the Facility. (Staff Ex. 1 at 15.)

{¶ 50} The Project will generate an estimated \$490,000 annually for the Preble County taxing district, area schools, as well as Gasper and Washington Townships. This estimate is based on a PILOT plan in which Open Roads Renewables (one of the joint owners of Alamo) will pay \$7,000/MW annually for a 69.9 MW facility. The revenue would be distributed on a pro rata basis. (Staff Ex. 1 at 15.)

{¶ 51} In addition to the PILOT plan, the state of Ohio is estimated to receive between \$1 million and \$2.5 million in sales and earnings taxes during the construction of the facility and nearly \$40,000 in sales and earning taxes during its operation. The Preble County school district is expected to receive \$200,000 in earnings taxes and local municipalities are expected to receive nearly \$150,000 in sales and earnings tax revenues during construction. During operation of the facility, local municipalities are expected to receive \$7,000 and the school district is expected to receive \$9,000. (Staff Ex. 1 at 15.) Additionally, the Preble County Commissioners passed a resolution that will require Alamo to make annual service payments totaling \$9,000 per megawatt to local government amounting to at least \$629,100 per annum (App. Ex. 7 at 7; App. Ex. 14 at 14).

{¶ 52} According to Staff, the Applicant holds land rights to, and expects to operate, the solar farm for up to 40 years. Staff states that the Applicant has represented that it will prepare a comprehensive decommissioning plan, which will specify the responsible parties, outline a nine-month or shorter decommissioning schedule, outline projected decommissioning/restoration costs, require restoration of the project area, and require proper disposal of all project components. (Staff Ex. 1 at 15, 16; App. Ex. 1 at 39) According to Staff, the decommissioning plan for the proposed project calls for restoring the affected land to original or similar conditions and includes the repairing of drainage tiles and de-compaction of soil. Staff notes that the repurposed land could be restored for agricultural use when the project is decommissioned. (Staff Ex. 1 at 31.)

{¶ 53} The Applicant has also stated that it will provide the financial security to ensure that funds are available for decommissioning and land restoration (Staff Ex. 1 at 16.)

b. Ecological Impacts

{¶ 54} Ecological impacts are broadly divided into six categories: public and private water supply, geological features, slopes and soil suitability, surface waters, threatened and endangered species, and vegetation (Staff Ex. 1 at 16-19).

{¶ 55} According to Staff, the Applicant does not anticipate adverse impacts to public or private water supplies. Staff notes that solar energy facilities are constructed and generate electricity without impacts to surface or groundwater. (Staff Ex. 1 at 16). In response to a well study conducted by the Applicant relative to 10 property owners in the project area, the property owners indicated that the wells on their property are used for potable water and irrigation. Staff points out that private groundwater wells will not be impacted because the construction in the project area would not extend beyond 10 feet below the surface. Staff agrees with the Applicant's analysis that the construction of the solar energy facility would not be considered an activity that would be restricted within either a surface water or groundwater Source Water Protection Area. (Staff Ex. 1 at 16.)

{¶ 56} Staff submits that there are no geological features that exist within the project area that would restrict or limit the construction of the solar energy facility (Staff Ex. 1 at 17). Staff points out that, geologically, Preble County is located within the Till Plains Section of the Central Lowlands Physiographic Province and that the rocks that outcrop in the county consist of limestone, dolomite, and calcareous shales. Staff indicates that karst limestone occurs principally south of the project area and the Applicant did not identify any karst features within the proposed project area. (Staff Ex. 1 at 16.) According to Staff, the Applicant has not identified any active oil and gas operations or any active or abandoned coal or industrial mineral surface or underground mines in the project area. Additionally, there is no seismic activity within the project area (Staff Ex. 1 at 17).

{¶ 57} With respect to slopes and soil suitability, the Applicant will conduct a geotechnical drilling investigation at the project site to obtain further site-specific detailed information and engineering properties for the soils for design and construction purposes

and to ensure that structures will be installed in locations that are suitable based on soil and/or rock properties. (Staff Ex. 1 at 17.) Additionally, the Applicant will implement a stormwater pollution and prevention plan to ensure, both during and after construction, the long-term stability of the solar facility. Any drain tile damage incurred during construction or operation of the facility would be repaired or replaced with an equivalent or superior drainage system by the Applicant. Staff concludes that although there are potential land use limitations related to surface water drainage, erosion, shrink/swell and high moisture content, with proper design and construction methods, these limitations should not adversely affect or restrict the construction of the facility. (Staff Ex. 1 at 17.)

{¶ 58} Regarding surface waters, Staff notes that the Applicant delineated 28 streams, including 11 perennial streams, 11 ephemeral streams, and 6 intermittent streams. The installation of collection lines would result in seven stream crossings. The Applicant has included a frac-out contingency plan that details the monitoring, containment measures, cleanup and restoration in the event of inadvertent return of drilling fluid. (Staff Ex. 1 at 17.) The Applicant also delineated 13 wetlands, including nine Category 2 wetlands and four Category 1 wetlands. The Applicant has represented to Staff that no wetlands, ponds, or lakes will be impacted by the construction, operation, or maintenance of the Project. Additionally, the Project will not impact any 100-year floodplains. (Staff Ex. 1 at 17.)

{¶ 59} According to Staff, the project area includes the historic range of the endangered Indiana bat and threatened northern long-eared bat, state threatened Sloan's crayfish, and the federal threatened/state endangered eastern massasauga rattlesnake. Staff notes that the Applicant did not identify any listed plant or animal species during field surveys and the Ohio Department of Natural Resources (ODNR) and the United States Fish and Wildlife Services (USFWS) did not identify any concerns regarding impacts to listed plant species. (Staff Ex. 1 at 18.)

{¶ 60} Staff identifies the number of acres of the different vegetative communities (forestland, residential properties, agricultural lands) present in the project area. The vast

majority of the project area consists of agricultural land with 818 of the total 919 acres falling in this classification. Staff also recognizes that the estimated impact to forestland is 1.37 acres. (Staff Ex. 1 at 19.)

c. Public Services, Facilities, and Safety

{¶ 61} With respect to wind velocity, relying on the representations of the Applicant, Staff states that components of the proposed facility are not susceptible to damage from high winds except for tornado-force winds. Staff notes that in order to mitigate any potential damage from high wind velocities, the Applicant proposes to install the project support equipment at sufficient depths based on the site-specific soil conditions. (Staff Ex. 1 at 19.)

{¶ 62} In regard to roads and bridges, Staff indicates that the Applicant has not yet finalized its delivery route, although it is expected that deliveries to the project site will be from the north by way of Interstate 70 and US Route 127. The Applicant will also use State Route 725 to access the Project from the east. Once near the project site, State Route 177, local township roads, county roads, and a new private gravel access road would be used to deliver equipment and construction materials to the project site. (Staff Ex. 1 at 20.) According to Staff, no active railroads that would be crossed by construction material deliveries were identified. With respect to bridges, those along Antioch Road will be avoided and the Applicant will limit traffic on the bridges located on Camden, Call, and Gasper Road due to overall poor conditions. Post-construction and operation of the solar facility, the Applicant does not anticipate any additional traffic for the Project beyond routine maintenance. (Staff Ex. 1 at 20.)

{¶ 63} The Applicant will obtain all necessary permits from Ohio Department of Transportation (ODOT) and the County Engineer prior to construction. (Staff Ex. 1 at 20.) Any damaged public roads and bridges should be repaired promptly to their previous condition by the Applicant under the guidance of the appropriate regulatory authority. Any

temporary improvements will be removed unless the appropriate regulatory authority requests that they remain in place (Staff Ex. 1 at 20.)

{¶ 64} Regarding noise impacts from construction activities, Staff identifies that these will include site clearing, installation of mechanical and electrical equipment, and commissioning and testing of equipment. According to Staff, the adverse impact of noise construction will be temporary and intermittent and will be limited to daylight hours. They will also occur away from most residential structures. The Applicant will use mitigation practices such as maintaining engines and mufflers in good operating order and establishing a complaint resolution process. Operational noise impacts for a solar generating facility will be relatively minor and occur only during the day. The noise will consist of inverters, the step-up transformer at the new substation, and tracking motors. (Staff Ex. 1 at 20.)

{¶ 65} Staff describes that the Applicant conducted an ambient noise level study in order to understand the existing noise levels near the proposed facility. The study modeled noise impacts to non-participating receptors. The results reflect that operational noise levels will be approximately the same as or less than ambient noise levels. Specifically, no non-participating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus 5 dBA. (Staff Ex. 1 at 20.)

{¶ 66} Staff recommends that the Board find that the Applicant has determined the nature of the probable environmental impact for the proposed facility and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report (Staff Ex. 1 at 21.)

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 67} Pursuant to R.C. 4906.10(A)(3), the proposed facility must represent the minimum adverse environmental impact considering the state of available technology and

the nature and economics of the various alternatives along with other pertinent considerations.

{¶ 68} In determining the location of the Project, the Applicant relied upon four criteria. First, the land needed to be relatively level, previously disturbed and dry. Second, the parcels to be used for the Project needed to be contiguous to or in proximity to other similarly suitable parcels. Third, there had to be minimal impacts to sensitive features such as streams, wetlands, and potential wildlife habitat. Fourth, there had to be willingness of property owners to lease land for solar panels and other components of the Project. (Staff Ex. 1 at 22.)

{¶ 69} According to Staff, the Applicant is currently in the process of conducting a systematic Phase I survey program for the Project in conjunction with input from the OHPO to assure that potential impacts to cultural resources are minimized (Staff Ex. 1 at 22).

{¶ 70} Staff submits that the proposed facility will have an overall positive impact on the state and local economy due to the increase in construction spending, wages, purchasing of goods and services, annual lease payments to the local landowners, increased tax revenues and PILOT revenue (Staff Ex. 1 at 22).

{¶ 71} Staff indicates that the geology of Preble County does not present conditions that will limit or negatively impact the construction and future operation of the solar energy facility (Staff Ex 1 at 22).

{¶ 72} According to Staff, no direct wetland impacts are anticipated, and no significant in-water work is proposed. Impacts to any state or federal listed species can be avoided by following seasonal restriction for construction in certain habitat types as detailed by USFWS and the ODNR. The Project will not impact any 100-year floodplain. Noise impacts are expected to be limited to construction activities. Staff recommends that the hours of construction be limited, and that the Applicant have a complaint resolution plan in place. (Staff Ex. 1 at 22.)

{¶ 73} Staff notes that during construction, local, state, and county roads will experience a temporary increase in truck traffic due to deliveries of equipment and materials. A transportation management plan will be finalized once the engineering layout is determined. A final delivery route will be developed through discussions with local officials. The Applicant intends to enter into a road use agreement with the county engineer. (Staff Ex. 1 at 22, 23.)

{¶ 74} Staff believes that in order to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project, the Applicant should develop an aesthetic and lighting plan that addresses the potential impacts of the facility. Staff also believes that the Applicant should submit a decommissioning plan, which includes the costs to properly dispose of the Project's components at the end of their useful life, plans to restore the land to original conditions, and financial instruments to fund the decommissioning of the solar facility. (Staff Ex. 1 at 23.)

{¶ 75} Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact and, therefore, complies with the requirements of R.C. 4906.10(A)(3) provided that any certificate issued by the Board include conditions specified in the Staff Report (Staff Ex. 1 at 23.)

4. ELECTRIC POWER GRID

{¶ 76} Pursuant to R.C. 4906.10(A)(4), the Board must determine that the proposed facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems. Under the same authority, the Board must also determine that the proposed facility will serve the interest of the electric system economy and reliability.

{¶ 77} The North American Electric Reliability Corporation (NERC) is responsible for the development and enforcement of the federal government's approved reliability

standards, which are applicable to all owners, operators, and users of the bulk power system (BPS). As an owner, operator, and/or user of the BPS, the Applicant is subject to compliance with various NERC reliability standards. These standards are included as part of the system evaluations conducted by PJM Interconnection, LLC (PJM). PJM is the regional transmission organization charged with planning for upgrades and administering the generation queue for the regional transmission system in Ohio. PJM reviews applications for expansions and upgrades of the PJM transmission system to ensure compliance with reliability criteria. (Staff Ex. 1 at 24.)

{¶ 78} PJM analyzed the bulk electric system, with the facility interconnected to the BPS, for compliance with NERC reliability standards and PJM reliability criteria. The PJM studies indicate that no reliability violations would occur during single and multiple contingencies and no potential violations were found during the short circuit analysis. Based on PJM's analysis, the facility would provide additional electrical generation to the regional transmission grid, would be consistent with plans for expansion of the regional power system, and would serve the interests of the electric system economy and reliability. (Staff Ex. 1 at 25.)

{¶ 79} Staff recommends that the Board find that the proposed facility is consistent with regional plans for the expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the facility would serve the interests of electric system economy and reliability. Accordingly, Staff recommends that the Board find that the facility complies with the requirements of R.C. 4906.10(A)(4) provided any certificate issued for the proposed facility includes the conditions specified in the Staff Ex. 1. (Staff Ex. 1 at 25, 26.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 80} Pursuant to R.C. 4906.10(A)(5), the facility must comply with Ohio law regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation.

a. Air

{¶ 81} Staff contends that while air quality permits are not required for construction or operation of the proposed facility, fugitive dust rules adopted under R.C. Chapter 3704 may be applicable to the construction of the proposed facility. The Applicant will control temporary and localized fugitive dust by hiring a licensed construction firm with knowledge and experience in dust minimization, ensuring construction vehicles are in proper working condition, and using water and/or dust suppressant. Staff notes that the Project will not include any stationary sources if air emissions and, therefore, will not require air pollution control equipment. (Staff Ex. 1 at 27.)

b. Water

{¶ 82} According to Staff, because neither construction nor operation of the proposed facility will require the use of significant amounts of water, the requirements under R.C. 1501.33 and 1501.34 are not applicable. According to Staff, the Applicant intends on obtaining national pollutant discharge elimination system (NPDES) construction storm water general permits from the Ohio EPA with submittal of a stormwater pollution prevention plan to direct the implementation of construction-related storm water best management practices. The Applicant also intends to pursue the U.S. Army Corps. of Engineers Section 404 or nationwide permit for stream crossings and wetland impacts. (Staff Ex. 1 at 27.)

{¶ 83} Staff agrees with the Applicant that the need for a spill prevention, control, and countermeasure plan is unlikely. Additionally, Staff does not believe that the Project would not require a NPDES permit for operation of the facility because solar panels generate electricity without water discharge. Water will be used for occasional cleaning of solar panels a few times per year as needed. (Staff Ex. 1 at 27.) Staff represents that the Applicant expressed it will obtain the necessary permits for construction and operations sufficient to comply with the requirements of R.C. Chapter 6111 (Staff Ex. 1 at 27.).

c. Solid Waste

{¶ 84} According to Staff, although the project area is located in a rural setting with very little solid waste present, the Applicant stated it will retain the services of an experienced and qualified firm to perform a Phase 1 environmental site assessment. Of the project area prior to construction. Staff notes that the Applicant stated that the final design of the Project will avoid any recognized environmental condition identified in Phase 1 of the environmental site assessment. Materials with reuse or salvage value will be removed for such use. All construction-related debris will be disposed of at a licensed municipal landfill. (Staff Ex. 1 at 28.)

d. Aviation

{¶ 85} According to Staff, the height of the tallest above ground structure, a single lightning mast, would be approximately 70 feet. Staff represents that there are no public-use airports, helicopter pads, or landing strips within five miles of the Project, and no aeronautical study regarding glare is needed for this project because the Project area is approximately 10 miles away from the closest public-use airport, Richmond Indiana Municipal Airport. Furthermore, Staff states that the Ohio DOT Office of Aviation identified no impacts on local airports. (Staff Ex. 1 at 28.)

{¶ 86} Staff recommends that the Board find that the proposed facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued include the conditions specified in the Staff Report (Staff Ex. 1 at 28).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 87} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the facility will serve the public interest, convenience, and necessity.

{¶ 88} In addition to providing the availability of copies of its application consistent with the Board's rules, Alamo hosted a public informational open house on November 13,

2018, where attendees were given the opportunity to provide feedback (Staff Ex. 1 at 29). The Applicant served copies of the complete application on the Preble County Commissioners, the Gasper and Washington township trustees, the Preble County Planning Commission, the Preble Soil and Water, and the Preble County Engineer. A copy of the complete application was also sent to the Preble County District Library and is also available for public inspection at the Board's offices and on its Docketing Information website. (Staff Ex. 1 at 29.) Staff notes that the Applicant has committed to notify, via mail, affected property owners and tenants who were provided notice of the public informational meeting, as well as anyone who requests updates regarding the project, no later than seven days prior to the start of construction. Staff recommends that a similar notice be mailed to these same individuals at least seven days prior to the start of the facility operation. (Staff Ex. 1 at 29.)

{¶ 89} Staff highlights that Alamo has committed to complying with the applicable safety standards established by the Occupational Safety and Health Administration and the National Fire Protection Association. Staff notes that the Applicant has also committed to use equipment compliant with the applicable Underwriters Laboratories, Institute of Electrical and Electronics Engineers, National Electrical Code, National Electrical Safety Code, and American National Standards Institute standards (Staff Ex. 1 at 29). Staff also points out that Alamo has committed to design its facility with setbacks from the fence to public roads, from the above-ground equipment to public roads, from its fence and adjacent property lines, from the above-ground equipment to property lines and from above-ground equipment and habitable residences (Staff Ex. 1 at 29). Additionally, Staff points out that the Applicant will use warning signs, fencing, and locked gates to restrict access to the Project, and will work with local emergency responders to provide training for response to emergencies related to the solar farm (Staff Ex. 1 at 29).

{¶ 90} Staff highlights the Applicant's commitment that during facility operation, it will ensure that a point of contact be established for complaints. Staff recommends that the Applicant formalize a complaint resolution process for use during the construction and operation period. (Staff Ex. 1 at 30.)

{¶ 91} As of the date of the Staff Report, the Board had received 17 public comments regarding this case (Staff Ex. 1 at 30).

{¶ 92} Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and therefore, complies with the requirements specified in R.C. 4906.10(A)(6) provided that any certificate issued include the conditions specific in the Staff Report (Staff Ex. 1 at 30).

7. AGRICULTURAL DISTRICTS AND AGRICULTURAL LAND

{¶ 93} Pursuant to R.C. 4906.10(A)(7), the Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project area of the proposed utility facility. The agricultural district program was established under R.C. Chapter 929. Agricultural district land is exempt from sewer, water, or electrical service tax assessments. (Staff Ex. 1 at 31.)

{¶ 94} According to Staff, as a result of the construction of the proposed facility, eight agricultural district parcels will be impacted. The construction will result in the loss of 802 acres of cultivated lands and 39 acres of pasture, including the loss of 505 acres of agricultural district land. The repurposed land could be restored for agricultural use when the project is decommissioned. (Staff Ex. 1 at 31.)

{¶ 95} Staff recommends that the Board find that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, complies with the requirements specified in R.C. 4906.10(A)(7), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Ex. 1. (Staff Ex. 1 at 31).

8. WATER CONSERVATION PRACTICE

{¶ 96} Pursuant to R.C. 4906.10(A)(8), the proposed facility must incorporate maximum feasible water conservation practices, considering available technology and the nature and economics of the various alternatives.

{¶ 97} According to Staff, construction of the proposed facility would not require the use of significant amounts of water. Water may be utilized for dust control during earthwork activities as needed. Operation of the proposed facility would not require the use of significant amounts of water, and nearly no water or wastewater discharge is expected. The Project will use water for occasional cleaning of panels a few times each year as needed. Therefore, the requirements under R.C. 1501.33 and 1501.34 are not applicable to this Project. (Staff Ex. 1 at 32.)

{¶ 98} Staff recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and, therefore, complies with the requirements specified in R.C. 4906.10(A)(8). Staff further recommends that any certificate issued by the Board for the certification of the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 32.)

9. RECOMMENDATIONS

{¶ 99} In addition to making various findings throughout its report, Staff recommends that the 27 conditions set forth in the Staff Report be made part of any certificate issued by the Board for the proposed facility (Staff Ex. 1 at 33-37). Many of the recommended conditions found in the Staff Report are adopted in the Amended Stipulation. The conditions are discussed below in our consideration of the Amended Stipulation.

V. EVIDENTIARY HEARINGS

{¶ 100} As detailed below, Alamo presented eight witnesses, CCPC presented three witnesses, and Staff presented eight witnesses.

{¶ 101} Alamo presented the testimony of Douglas Herling in support of the Initial Stipulation and the Amended Stipulation. Mr. Herling also testified regarding the amended application and the company's exhibits identified at the initial adjudicatory hearing. (Alamo Exs. 7 and 14.)

{¶ 102} Alamo presented the testimony of Noah Waterhouse for the purpose of describing the methodology of the drain tile assessment to be performed on behalf of the Applicant and to summarize the anticipated impacts of the Project on drain tile, drainage, and runoff in the area in which the Project will be located. Mr. Waterhouse also discussed Condition 16 of the Initial Stipulation and the Amended Stipulation pertaining to drain tile. (Alamo Exs. 8 and 14.)

{¶ 103} Alamo presented the testimony of Mark Bonifas for the purpose of describing the studies performed to evaluate the anticipated impact of the Project on roads, bridges and any needed improvements prior to construction or likely repairs needed following construction. Mr. Bonifas also discussed the evaluation of any needed transportation-related permits and potential impact on local traffic. Finally, Mr. Bonifas also addressed Conditions 25 and 28 of the Amended Stipulation pertaining to the need for a road use agreement and the submission of a decommissioning plan to Staff. (Alamo Exs. 9 and 19.)

{¶ 104} Alamo presented the testimony of David Hessler for the purpose of describing the noise assessment study included as part of the amended application (App. Ex. 10). Mr. Hessler also testified regarding Condition 3 of the Amended Stipulation (App. Ex. 15.)

{¶ 105} Alamo presented the testimony of Ryan Rupprecht for the purpose of describing the ecological assessment studies performed on behalf of the Applicant and to summarize the permits that the Applicant expects to obtain prior to initiating construction in or near surface waters. Mr., Rupprecht also provided an overall assessment of the potential environmental impacts of the Project. (App. Ex. 11.)

{¶ 106} Alamo presented the testimony of Andrew Lines for the purpose of evaluating the potential impact of the Project on property values in the area surrounding the Project (App. Ex. 12).

{¶ 107} Alamo presented the testimony of Matthew Robinson for the purpose of describing the visual resource assessment in order to identify the visually sensitive resources and potential visual impacts associated with the installation of the proposed facility (App. Ex. 13). Mr. Robinson also testified regarding Conditions 3 and 15 of the Amended Stipulation (App. Ex. 16).

{¶ 108} Alamo presented the testimony of Matt Marquis for the purpose of describing stormwater management during construction. Mr. Marquis also testified regarding Condition 29 in the Amended Stipulation. (App. Ex. 18.)

{¶ 109} CCPC presented the testimony of Donn Kolb for the purpose of identifying concerns about the procedures outlined in the Initial Stipulation related to the finding and repairing of field tiles broken during the construction of the Project (CCPC Ex. 4).

{¶ 110} CCPC presented the testimony of Joseph DeLuca for the purpose of identifying concerns about the expected impacts of the Project on his plans to use his property (CCPC Ex. 3).

{¶ 111} CCPC presented the testimony of Joanna Clippinger for the purposes of identifying concerns regarding the Project and the lack of protection provided by specific provisions of the Initial Stipulation (CCPC Ex. 2).

{¶ 112} Staff presented the testimony of James O'Dell, the Staff project lead on this case (Staff Ex. 4). Mr. O'Dell sponsored Staff Ex. 1.

{¶ 113} Staff presented the testimony of Jason Cross for the purpose of sponsoring portions of Staff Ex. 1 pertaining to whether the proposed project is consistent with regional plans for expansion of the electric power grid of electric systems serving the state of Ohio

and interconnected utility systems, and that the Facility will serve the interests of the electric system economy and reliability (Staff Ex. 6). Mr. Cross was also responsible for Conditions 26 and 27 of Staff Ex. 1.

{¶ 114} Staff presented the testimony of Robert Holderbaum for the purpose of sponsoring portions of the Staff Ex. 1 pertaining to the impact of the Project on surface waters, threatened and endangered species, and vegetation (Staff Ex. 2). Mr. Holderbaum was also responsible for Conditions 18-23 of Staff Ex. 1.

{¶ 115} Staff presented the testimony of Matthew Butler for the purpose of sponsoring portions of the Staff Ex. 1 pertaining to the history of the application and public interaction and participation (Staff Ex. 3). Mr. Butler was also responsible for Conditions 9-12 of Staff Ex. 1.

{¶ 116} Staff presented the testimony of Mark Bellamy for the purpose of sponsoring portions of the Staff Ex. 1 pertaining to noise and agricultural district sections (Staff Ex. 8). Mr. Bellamy was also responsible for Conditions 13 and 16 of Staff Ex. 1.

{¶ 117} Staff presented the testimony of Derek Collins for the purpose of sponsoring portions of the Staff Ex. 1 pertaining to ecological impacts. Specifically, witness Collins testified regarding the public and private water supply; geological features; slopes and soil suitability; and public services, facilities, and safety conditions, with a focus on roads and bridges (Staff Ex. 9). Mr. Collins was also responsible for Condition 25 of Staff Ex. 1.

{¶ 118} Staff presented the testimony of Jon Pawley for the purpose of sponsoring portions of the Staff Ex. 1 pertaining to cultural resources (Staff Ex. 5). Mr. Pawley was also responsible for Condition 14 of Staff Ex. 1.

{¶ 119} Staff presented the testimony Andrew Conway for the purpose of sponsoring portions of the Staff Ex. 1 pertaining to the Project description, glare, decommissioning, wind velocity, aviation, and safety (Staff Ex. 7). Mr. Conway also testified regarding Staff's support for the Amended Stipulation (Staff Ex. 10).

VI. STIPULATION AND CONDITIONS

{¶ 120} At the July 17, 2019 evidentiary hearing, Alamo presented the Initial Stipulation entered into by Signatory Parties that purports to resolve all matters pertinent to the certification and construction of the proposed solar farm (Joint Ex. 1; Tr. I at 2, 15, 18). While Eaton CSD and Shawnee Local were not signatory parties to the Initial Stipulation, the school districts offered no testimony in opposition to the Initial Stipulation and conducted no examination of any of the witnesses offered during the hearing. CCPC opposed the Initial Stipulation.

{¶ 121} As noted above, the Amended Stipulation was filed on July 30, 2020, and the record in this proceeding was reopened for its consideration. Thereafter, a second adjudicatory hearing took place on October 26, 2020, regarding changes between the Initial Stipulation and the Amended Stipulation.

{¶ 122} At the October 26, 2020 evidentiary hearing, Alamo presented the Amended Stipulation entered into by the Signatory Parties that purports to resolve all matters pertinent to the certification and construction of the proposed solar farm (Joint Ex. 2 at 1). As with the Initial Stipulation, while Eaton CSD and Shawnee Local were not signatory parties to the Amended Stipulation, the school districts offered no testimony in opposition and conducted no examination of any of the witnesses offered during the hearing. CCPC also opposed the Amended Stipulation.

{¶ 123} The Amended Stipulation includes both new and revised conditions that the Stipulating Parties assert are more protective and detailed than the conditions in the Initial Stipulation (Staff Initial Br. at 5). The Amended Stipulation incorporates a new condition (Condition 29) related to the management of potential post-construction stormwater flows and a new condition (Condition 30) regarding certificate authority that has recently incorporated by the Board into other certificates (Staff Initial Br. at 11, citing App. Ex. 14 at 12). Further, the Amended Stipulation also revised 10 previously proposed conditions, including conditions addressing project setbacks, cultural resources, visual screening and

lighting, complaint resolution, drainage and drain tile, road maintenance, and decommissioning (Joint Ex. 2 at 5-11, Conditions 1, 3, 10, 14, 15, 16, 18, 20, 25 and 28).

{¶ 124} The following is a summary of the conditions agreed to by the Signatory Parties in the Amended Stipulation and is not intended to replace or supersede the actual Amended Stipulation. The parties agree as follows:

- (1) The Applicant shall install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report, as modified by the Amended Stipulation.
- (2) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the Project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review. The Applicant may conduct separate preconstruction meetings for each stage of construction.
- (3) The Applicant shall submit one set of detailed engineering drawings of the final project design to Staff at least 30 days before the preconstruction conference. The final project layout should reflect the specified minimum setbacks.

- (4) If any changes to the project layout are made after the submission of final engineering drawings, the Applicant shall provide all such changes to Staff in hard copy and as geographically referenced electronic data.
- (5) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (6) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate, unless the Board grants a request for waiver or an extension of time.
- (7) As the information becomes known, the Applicant shall file in this proceeding, the date on which construction will begin, the date on which the construction was completed, and the date on which the facility begins commercial operation.
- (8) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of

permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.

- (9) At least 30 days before the preconstruction conference, the Applicant shall provide Staff with a copy of its public information program, for confirmation that it complies with this condition, that informs affected property owners and tenants of the nature of the Project, and that provides specific contact information of Applicant personnel who are familiar with the Project, the proposed time frame for the Project construction, and a schedule for restoration activities.
- (10) At least 30 days before the preconstruction conference, the Applicant shall provide Staff with a copy of the complaint resolution process for confirmation that it complies with this condition, to address potential public complaints resulting from facility construction and operation. Pursuant to the complaint resolution process the Applicant must acknowledge receipt of a complaint within 48 hours and promptly respond to such complaint.
- (11) At least seven days prior to the start of facility operation, the Applicant shall notify via mail affected property owners and tenants who were provided notice of the public informational meeting, as well as anyone who has requested updates regarding the Project, and all intervening parties to the certification process.

This notice shall provide information about the start of operations and describe how the public can contact the facility.

- (12) During the construction and operation of the facility, the Applicant shall submit to Staff a complaint summary report by the fifteenth of April, July, October, and January of each year of the first five years of operation.
- (13) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving shall be limited to the hours between 9:00 a.m. and 7:00 p.m. Monday through Friday; hoe ram and blasting operations, if required shall be limited to the hours between 10:00 a.m. and 4:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction.
- (14) If the resulting survey work from the Historic Resource Survey Research Design for the project dated January 14, 2020 and the Phase 1 Archeological Survey Research Design for the project dated January 16, 2020, each as approved by the OHPO by letter dated February 19, 2020, discloses a finding of cultural or archaeological significance, or a site that could be eligible for inclusion in the NRHP, then the Applicant shall submit a modification or mitigation plan to Staff. Any such mitigation effort, if needed, shall be developed in coordination with the

OHPO and submitted to Staff for review that it complies with this condition.

- (15) Prior to commencement of construction, the Applicant shall prepare a landscape and lighting plan, in consultation with a landscape architect licensed by the Ohio Landscape Architects Board, that addresses the aesthetic and lighting impacts of the facility with emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area and also includes a plan describing the methods to be used for fence repair. The plan shall include measures such as fencing, vegetative screening or good neighbor agreements. Unless alternative mitigation is agreed upon with the owner of any adjacent, non-participating parcel containing a residence within with a direct line of sight to the fence of the facility, the plan shall provide for the planting of vegetative screening designed by the landscape architect to enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area. The Applicant shall maintain vegetative screening for the life of the facility and shall replace any failed plantings so that after five years at least 90 percent of the vegetation has survived. The Applicant shall maintain all fencing along the perimeter of the project in good repair for the term of the project. Lights shall be motion-activated and designed to narrowly focus light inward toward the facility. The Applicant shall provide the landscape and lighting plan to Staff for review and confirmation that it complies with this condition.

(16) The Applicant shall avoid, where possible, or minimize to the extent practicable, any damage to functioning surface and subsurface field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas, whether such drainage systems are publicly or privately maintained. Benchmark conditions of surface and subsurface drainage systems shall be documented prior to construction, including the location of mains and grassed waterways, and efforts to contact the owners of all parcels adjacent to the project area to request drainage system information on those parcels. Such documentation shall be provided to the County Engineer. Any tile installation or repairs shall be performed in accordance with applicable provisions of Standard Practice for Subsurface Installation of Corrugated Polyethylene Pipe for Agricultural Drainage of Water Table Control, ASTM F499-02 (2008), to the extent practicable. If uncertainty arises concerning the proper procedures for tile repair, Applicant may consult with the local Soil and Water Conservation District or a United States Department of Agriculture Natural Resources Conservation Service representative for privately maintained tile and shall consult with the County Engineer for tile located in a county maintenance /repair ditch. Damaged filed tile systems shall be promptly repaired no later than 30 days after such damage is discovered and be returned to at least original conditions or their modern equivalent at the Applicant's expense. When repairing tiles in a county maintenance repair ditch, the Applicant shall give reasonable notice of the repairs to the County Engineer and Staff. The Applicant will develop a stormwater pollution

prevention plan that will require the utilization of silt fences during construction and the prompt removal of construction silt from drainage ditches where necessary for continued efficient drainage.

- (17) Within 30 days after the issuance or receipt, the Applicant shall provide Staff with a copy of any arrangements or resolution adopted by Preble County relating to the PILOT program.
- (18) Prior to the preconstruction conference the Applicant shall submit a vegetation management plan to Staff for review and confirmation that it complies with this condition. The plan should identify all areas of proposed vegetation clearing for the project, specifying the extent of clearing and describing how such clearing work would be done as to minimize removal of woody vegetation. The plan should describe how trees and shrubs along access routes, at construction staging areas, during maintenance operations, and in proximity to any other project facilities would be protected from damage. The plan should also describe the implementation and maintenance of vegetative ground cover for the solar fields and any vegetative screening, including any pollinator-friendly plantings and describe any planned herbicide use. Additionally, the plan should address the steps to be taken to prevent the establishment and/or further propagation of noxious weed during the implementation of pollinator-friendly plantings. The Applicant should consult with the Ohio Seed Improvement Association prior to the purchase of seed stock regarding the names of reputable vendors and shall purchase seed stock used on this project from such recommended sources to the extent practicable.

- (19) The Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for removal of any trees greater than or equal to three inches in diameter to avoid impacts with Indiana Bats and Northern Long-Eared Bats, unless coordination efforts with the ODNR and the USFWS allow a different course of action.
- (20) The Applicant shall have an environmental specialist on site during construction activities that may affect sensitive areas as shown on the Applicant's final approved construction plan as approved by Staff. The environmental specialist selected by the Applicant shall be authorized to report any issues simultaneously to Staff and the Applicant.
- (21) The Applicant shall contact Staff, ODNR, and USFWS within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by the Applicant, Staff, and the appropriate agencies.
- (22) The Applicant shall provide a construction access plan for review prior to the preconstruction conference. The plan should consider the location of streams, wetlands, wooded areas, and sensitive wildlife and plant species, and explain how impacts to all sensitive resources will be avoided or minimized during construction. The plan should include the measures to be used for restoring the area around all temporary access points and a description of any long-term stabilization required along permanent access routes.

- (23) The Applicant will minimize, to the extent practicable, the clearing of wooded areas, including scrub/shrub areas that would lead to fragmentation and isolation of woodlots or reduce connecting corridors between one woodlot and another.
- (24) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. Consistent with the terms of the Stipulation, the Applicant shall coordinate with the appropriate authority regarding any temporary road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. The Applicant shall detail this coordination as part of a final traffic plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition.
- (25) The Applicant shall provide Staff with a copy of the transportation management plan and any changes to the Road Use and Maintenance Agreement (RUMA) for Solar Projects and Infrastructure dated January 15, 2020, between the Applicant and Preble County Commissioners, the Preble County Engineer, Gasper Township and Washington Township 30 days prior to the preconstruction conference.
- (26) The Applicant shall not commence any construction of the facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM Interconnection consistent with the terms of the Stipulation. The Applicant shall docket in the case record a letter stating that the Agreement has been signed or a copy of the

executed Interconnection Service Agreement and Interconnection Construction Service Agreement.

- (27) Consistent with the terms of the Stipulation, local fire and the specified EMS providers will be trained regarding how to respond to emergency/fire situations that could occur at the Project. At least one in-service emergency training shall be conducted prior to the commencement of construction. As part of this training, safety meetings shall be held with emergency service personnel on an on-going basis, including training relative to emergency procedures specific to the solar array model used for the project. If local fire and EMS responders lack any specialized equipment needed to appropriately respond to an emergency at the Project, the Applicant shall provide such equipment to the local fire and EMS service providers when construction commences.
- (28) Consistent with the terms of the Stipulation at least 60 days prior to construction, the Applicant shall submit a comprehensive decommissioning plan for review and approval by Staff. The plan will specify the responsible parties, outline a decommissioning schedule of fewer than 12 months, estimate full decommissioning and restoration costs net of salvage value, require restoration of the project area, and require proper disposition of all project components. The plan shall be prepared by a professional engineer registered with the State Board of Registration for Professional Engineers and Surveyors. Prior to construction, the Applicant will, if applicable, post financial security in the form of a performance bond with the Board as obligee to ensure that funds are available to pay for the net

decommissioning costs, which will be calculated by an independent, registered professional engineer retained by the Applicant. The net decommissioning estimate will be recalculated at least every five years by an engineer retained by the Applicant and the financial security adjusted to reflect any increase in the net decommissioning costs, but will not be adjusted to reflect any decrease in such costs. The Board will maintain the authority to accept or reject the engineer chosen by the Applicant to conduct such analysis.

- (29) If one acre or more of ground is disturbed, the Applicant shall obtain from the Ohio EPA a General Permit Authorization for Storm Water Discharges Construction Associated with Construction Activities. Following completion of final project engineering design, the Applicant shall perform pre- and post-construction stormwater calculations to determine if post-construction best management practices are required, based on the requirements contained in the Ohio EPA's Construction General Permit. The calculations along with a copy of any stormwater submittals made to the Ohio EPA shall be submitted to the Preble County Office of Land Use Management and the Preble Soil and Water. The Applicant shall also provide confirmation that it incorporated guidance from the Ohio EPA's document "Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays" dated October 2019 to the Preble County Office of Land Use Management and Preble Soil and Water. If post construction storm water best management practices are required, the Applicant will submit construction drawings detailing any stormwater control measures to the

Preble County Office of Land Management and the Preble Soil and Water, as applicable no less than seven days prior to the applicable construction activities.

- (30) The certificate authority provided in this case shall not exempt the facility from any other applicable and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.

(Joint Ex. 2 at 5-11.)

VII. CERTIFICATE CRITERIA

{¶ 125} Pursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The Applicant shall install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report, as modified by the Amended Stipulation;
- (2) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline;
- (3) The nature of the probable environmental impact;
- (4) The facility represents the minimum adverse environmental impact, considering the state of available technology and the

nature and economics of the various alternatives, and other pertinent considerations;

- (5) In the case of an electric transmission line or generating facility, the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and the facility will serve the interests of electric system economy and reliability;
- (6) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 1501.33, 1501.34, and 4561.32;²
- (7) The facility will serve the public interest, convenience, and necessity;
- (8) The impact of the facility on the viability as agricultural land or any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternative site of the proposed major facility; and
- (9) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

VIII. CONSIDERATION OF CERTIFICATE CASE

{¶ 126} Consistent with R.C. 4906.10(A), the Board has reviewed the record and made determinations regarding each of the statutory criterion.

² The Board notes that R.C. 4906.10 was recently amended, effective October 17, 2019, such that all references to R.C. 1501.33 and 1501.34 were removed.

{¶ 127} As a general matter, CCPC argues that Alamo's application is incomplete and lacks the information required by the Board's rules detailed in Ohio Adm.Code 4906-1, et seq. Without this information, CCPC represents that the Board lacks the authority to approve the application and issue a certificate. To that end, the Commission has attempted to address CCPC's concerns with Alamo's application and the requirements of Ohio Adm.Code 4906-1, et seq., by addressing those concerns within the Board's specific analysis of the requirements of R.C. 4906.10.

A. *Basis of Need*

{¶ 128} R.C. 4906.10(A)(1) requires that the Board consider the basis of the need for the facility if the facility is a gas pipeline or an electric transmission line.

{¶ 129} Staff concluded that R.C. 4906.10(A)(1) is not applicable in this proceeding, given that the project is not a gas pipeline or an electric transmission line (Staff Ex. 1 at 11). The Signatory Parties agree that this criterion is not applicable to this proceeding (Joint Ex. 2 at 17).

{¶ 130} Because the Project is not a gas pipeline and does not include approval of an electric transmission line, the Board finds that R.C. 4906.10(A)(1) is not applicable under the circumstances (Staff Ex. 1 at 11; Joint Ex. 2 at 17).

B. *Nature of Probable Environmental Impact*³

{¶ 131} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed facility.

³ Staff Ex. 1 reflects that Staff performed a separate analysis of the nature of probable environmental impact pursuant to R.C. 4906.10(A)(2) and an analysis of the minimum adverse environmental impact pursuant to R.C. 4906.10(A)(3). However, Applicant combined the discussion of R.C. 4906.10(A)(2) and 4906.10(A)(3) in its briefs and did not distinguish between these two sections.

{¶ 132} Signatory Parties represent that adequate data regarding the proposed project has been provided to determine the nature of the probable environmental impact as required by R.C. 4906.10(A)(2) (Joint Ex. 2 at 17).

{¶ 133} To the extent intervenors have raised an issue regarding the nature of the probable environmental impact or the proposed facility's minimum adverse environmental impact, the Board will address only the more significant issues in this order. Where a party has raised an issue as to the nature of the environmental impact or the minimum adverse environmental impact, and the Board does not specifically address the issue in this decision, it is hereby denied.

{¶ 134} The Signatory Parties submit that the record in this proceeding sufficiently provides the Board with enough information to determine the nature of the probable environmental impact of the project. According to Alamo and Staff, the Application, in conjunction with the Amended Stipulation, allows the Board to assess the project's socioeconomic impacts, public service and safety impacts, and ecological impacts.

1. SOCIOECONOMIC IMPACTS

{¶ 135} The dominant land use in proximity to the project area is agricultural, along with limited rural residential uses (Staff Ex. 1 at 12). In its application, Alamo states that the Project will be located on previously disturbed land that has been mostly cleared for agriculture and, therefore, is extremely level. Alamo explains, and as Alamo witness Herling testified, the predominant industry in the project area is agriculture and that the existing features include electric transmission lines, a communications tower, public roads, single-family homes, and farm buildings. Due to restrictions on parcel sizes, residential on parcel sizes (typically between 10 and 40 acres minimum), residential density in the project area is low. The Project area is rural and is largely characterized by medium- to large-sized farms with interspersed pockets of trees. Further, population densities in the townships composing the Project area range from 45 to 351 people per square mile. No residences would be located within the confines of the fenced project boundaries and, as currently

designed, the nearest nonparticipating residence would be 62 feet from the closest solar panel. The Applicant intends to relocate one participating landowner residence and potentially remove a few farm-related structures on other participating landowner properties. (App. Ex. 1 at 12, 78, Ex. C at 10; App. Ex. 7 at 3, 4.)

{¶ 136} Alamo represents that it will own all of the assets that will comprise the Project or that would be used to construct, own, and operate the Project. Additionally, it owns the land development rights for 90 percent of the project area and rights of access for the remainder. Although it will own the facility, Alamo plans to hire a third party for construction and operation. (Staff Ex. 1 at 13.)

{¶ 137} Alamo avers that the Project is not expected to have any significant adverse effect on regional development but, instead, it will positively contribute to employment, as well as providing secondary and induced effects of increased wages and will contribute significant new annual revenue to the tax base for Preble County both during the construction and operation of the facility. Similarly, Alamo believes that the Project also advances goals espoused in Preble County's 2011 Comprehensive Economic Development Strategy and Land Use Plan because the Project allows farms to diversify income, preserve land for future generations, increase township and county tax revenues, and creates temporary and permanent jobs in Preble County. (App. Ex. 1 at 81; Staff Ex. 1 at 15.) Additionally, Alamo witness Herling testified that there would not be any long-term impacts from the Project that would preclude use for farming after the useful life of the Project (App. Ex. 7 at 15).

{¶ 138} According to Alamo, the Project will generate an estimated \$490,000 annually for the Preble County taxing district, area schools, as well as Gasper and Washington Townships. This estimate is based on a PILOT plan in which Open Roads Renewables (one of the joint owners of Alamo) will pay \$7,000/MW annually for the 69.9 MW facility. Additionally, Alamo witness Herling testified that the separate taxing authorities would "receive the disbursements (of PILOT payments) as a pro-rata based on

how they currently receive taxes,” and that the PILOT payments would be “far in excess of the current property taxes paid on those parcels.” Moreover, witness Herling testified that, to the extent that the Applicant’s understanding of the PILOT program was incorrect, the Applicant would “ensure that the disbursements go on as they exist now.” (Tr. I at 85, 86, and 88.) At the time of the hearing on the Amended Stipulation, Alamo updated the record to reflect that on August 26, 2020, the Preble County Commissioners passed a resolution to approve the Applicant’s application for the Ohio Qualified Energy Project Tax Exemption. Specifically, the Applicant is to make a payment of \$9,000/MW, as well as an additional annual service payment in the amount of \$2,000/MW to the Preble County Treasurer. (App. Ex. 14 at 14, 15).

{¶ 139} Staff submits that while there was considerable discussion of the benefits of the PILOT payments throughout the hearing, there was no evidence that any entity would experience any negative impact (Staff Initial Br. at 9). Rather, the individual taxing authorities would not be harmed by the PILOT and that PILOT payments would be “far in excess of the current property taxes” paid on the parcels. (Tr. I at 85). Staff notes that according to the Applicant, to the extent that its understanding of the PILOT program was incorrect, the Applicant would “ensure that the disbursements go on as they exist now.” (Tr. I at 88).

{¶ 140} Staff asserts that, in addition to the PILOT plan, the state of Ohio is estimated to receive between \$1 million and \$2.5 million in sales and earnings taxes during the construction of the facility and nearly \$40,000 in sales and earning taxes during its operation. The Preble County school district is expected to receive \$200,000 in earnings taxes and local municipalities are expected to receive nearly \$150,000 in sales and earnings tax revenues during construction. During operation of the facility, local municipalities are expected to receive \$7,000 and the school district is expected to receive \$9,000. (Staff Ex. 1 at 15.)

{¶ 141} Alamo explains that the Project will have minimal impact on cultural and historic resources. Alamo performed an analysis of the Project area identifying registered

landmarks of historic religious, archaeological, scenic, natural, or other cultural significance within two miles of the Project area and concluded that no such cultural resources occur within the Project area, and there will be no direct effects from construction or operation on any landmarks outside of the Project area. (App. Ex. 7 at 10; App. Ex. 1 at 85.)

{¶ 142} Additionally, Alamo avers that it will conduct a limited archaeological survey for those portions of the Project where substantial, direct ground disturbance is proposed in order to confirm the findings that have already been made, and, prior to finalizing the Project layout, Alamo will conduct a limited Phase I archeological survey to identify any potential resources not previously identified by Environmental Design & Research, Landscape Architecture, Engineering, & Environmental Services, D.P.C. (EDR) (App.Ex. 7 at 11).

{¶ 143} Staff found no evidence that any cultural resources would be impacted (Staff Initial Br. at 8). On February 19, 2020, OHPO issued correspondence to Alamo approving its proposed work plans for the cultural resource survey program for the purpose of identifying any cultural resources that were not already identified (App. Ex. 14 at 7). According to the Amended Stipulation, if the survey work from the Historic Resource Survey Research Design dated January 14, 2020, and the Phase 1 Archeological Survey Research Design for the Project dated January 16, 2020, identifies cultural resources eligible for inclusion on the National Register of Historic Places, Alamo must present a modification or mitigation plan detailing how such sites will be avoided or impacts minimized (Joint Ex. 2 at 8). According to Alamo, the Board has previously approved similar conditions for mitigation of cultural resources in *In re Willowbrook Solar I, LLC*, Case No. 18-1024-EL-BGN, Joint Stipulation filed on February 2, 2019 (Alamo Initial Br. at 17).

{¶ 144} Staff found that no residences, parks, or recreational areas would be within the Project boundaries; nor would any commercial structures, places of worship, medical facilities, schools, or other institutional land uses be located near the Project area. Additionally, Staff avers that landscape and vegetative screening would be used to

minimize visual impacts, and the panels would be installed with anti-glare coating. (Staff Ex. 1 at 12, 13.)

a. Visual Impact

{¶ 145} In regard to visual resources, Alamo explained that EDR performed a Visual Resource Assessment (VRA) on Alamo's behalf which showed that solar panels could only be potentially visible from approximately 11.8 percent of the 5-mile visual study area, the proposed substation could potentially be visible from only 6.3 percent of the study area, at distances beyond 0.5 miles any view of the Project would be minimal, and that at distances of 2.0 miles the Project would not be visible at all (App. Ex. 13 at 4, 8; Tr. II at 344, 345). Furthermore, Alamo witness Robinson testified that the VRA is a conservative estimate of visibility, and if it were to be performed again after the final design of the Project is complete, it would likely show less visibility (Tr. II at 346). Additionally, Mr. Robinson clarified that the use of the term "visible" in the context of the VRA does not mean the entire Project is visible from a particular area (Tr. II at 386, 387).

{¶ 146} Pursuant to the Amended Stipulation, Alamo will implement visual mitigation measures to minimize any potential impact, especially with respect to non-participating adjacent properties (Joint Ex. 2 at 9). These measures encompass the development of a landscape and lighting plan that includes the use of vegetative buffers to screen the project area for owners of non-participating parcels, fencing, and good neighbor agreements (Joint Ex. 2 at 9; App. Ex. 16 at 4). The landscape plan, which must be approved by an Ohio-licensed landscape architect, will also be included as part of the final design for the Project and will be submitted to Staff prior to the start of construction). The plan should include measures such as fencing/fence repair, vegetative screening, or good neighbor agreements. (Joint Ex. 2 at 8, Condition 15.) Alamo has already prepared a Preliminary Landscape Plan showing how the setbacks and vegetative screening will be incorporated into the final plan (App. Ex. 16 at 5 and Att. 1). These screening modules provide, depending on the character and sensitivity of the adjacent land use: (a) roadside pollinator habitat with

native seed, (b) vertical softening of views through clustered arrangements of native shrubs and trees, or (3) adjacent resource screening that creates a hedgerow of mixed deciduous and evergreen material (App. Ex. 16 at Att. 1). Unless alternative mitigation is agreed upon with the owner of an adjacent, non-participating parcel containing an residence with a direct line sight to the fence of the facility, the plan shall provide for the planting of vegetative screening designed by the landscape architect to enhance the view from the residence and be in harmony with the existing vegetation and viewshed. (Joint Ex. 2 at 8, Condition 15; App. Ex. 16 at 3.)

{¶ 147} As noted by Alamo witness Robinson, Condition 15 ensures that the Applicant will maintain the vegetative screening for the life of the Project and replace any failed plantings to ensure that after five years at least 90 percent of the vegetation has survived. This commitment will help ensure that the visual impact remains mitigated and does not degenerate over time. Additionally, Condition 15 ensures that that the project's perimeter lighting shall be motion-activated, downward facing, and/or fitted with side shields in order to limit any lighting impacts. (App. Ex. 16 at 3, 4.) Alamo submits that Condition 15 serves the public interest by establishing measures to mitigate and limit the visual impact of the Project through a variety of measures (App. Ex. 16 at 5). The different plantings and vegetation recommended for this Project are similar to those used to reduce the visual impact of substations and new construction, which in general are taller than solar panels and more visually impactful before the use of screening and mitigation. Alamo witness Robinson testified that he has had good success mitigating the impacts of substations and that he would expect similar mitigation to be successful for this Project as well. (App. Ex. 13 at 7.)

{¶ 148} CCPC argues that the application fails to provide information about the Project's visual impacts and mitigation measures required by Ohio Adm.Code 4906-4-08(D)(4). For example, CCPC claims that although the Stipulation promises a fence repair plan, there are no details to allow for an evaluation of the plan's effectiveness (CCPC Reply Br. at 32).

{¶ 149} According to CCPC, the Project is not a typical, benign collection of solar panels that might be installed on the roofs of homes or in school yards but, rather, will consist of up to 919 acres of mostly prime farmland and will cover entire farm fields of 40 to 300 acres in size (CCPC Initial Br. at 1 citing App. Ex. 1 at 6, 92; Tr. I at 40, 55). CCPC asserts that if the Facility is approved, it will impose a serious blight on the scenic views in Preble County and will result in CCPC members viewing hundreds of acres of solar panels near their properties that will spoil the visual and aesthetic enjoyment of living and working in the area (CCPC Initial Br. at 10, 11 citing CCPC Ex. 2 at 4).

{¶ 150} CCPC submits that the viewshed analysis reflects that the solar equipment will be potentially visible for most of the area surrounding the project area. (CCPC Initial Br. at 10; App. Ex. 16, Attach. 1). Additionally, CCPC highlights that while Alamo's VRA simulations are based on 8-foot tall panels, they do not accurately portray the Project because Alamo's statistics regarding the visibility of the panels are premised on 14-foot panels. CCPC also notes that according to the application, the panels may be as high as 15 feet, while the fences around the solar equipment will take the form of a 7-foot tall chain link fence or a 6-foot tall chain link fence with three strands of barbed wire at the top, bringing the total height to 7 feet (Tr. II at 346, 348, 349, 350, 353; App. Ex. 1, Ex. I at 14). Therefore, CCPC opines that the application fails to provide the information about the Project's visual impacts as required by Ohio Adm.Code 4906-4-08(D)(4). (CCPC Initial Br. at 10).

{¶ 151} Additionally, CCPC notes that based on Alamo's viewshed analysis, the Project's panels will be visible from 73.4 percent of the surrounding area within a half mile of the Project, even if obstacles of vegetation, structures and topography are taken into consideration (Tr. II at 364, 365). CCPC argues that Alamo represents that its analysis of visibility includes locations from which perhaps only one panel could be seen but does not quantify how many of the viewpoints in 73.4 percent of the surrounding half-mile have only partial views (CCPC Reply Br. at 8). Furthermore, CCPC contends that Alamo is attempting to disguise the Project's actual visual impact by focusing on its visibility within five miles,

instead of the actual area of concern within a half-mile where the solar equipment is visible from 73.4 percent of the area. (CCPC Reply Br. at 8) CCPC believes that, to accurately portray the solar Project's view, Alamo should have simulated the close-up views from neighbors' homes, such as the homes where the solar panels will be located directly across the road (CCPC Reply Br. at 9, 10).

{¶ 152} Staff asserts that the proposed Project need not be impact free or without risk. Instead Staff contends that the purpose of the adjudicatory process is to identify expected impacts and adopt measures that reasonably address and mitigate those impacts to the Project area and environment. Staff asserts that the application, as modified by the Staff Report conditions, and as further modified by the Amended Stipulation, adequately accomplishes this objective and should be adopted. (Staff Initial Br. at 2.)

{¶ 153} In response to CCPC's assertions, Alamo states that CCPC offers no evidence to support the conclusory assertion that the Project would impose serious blight on the scenic views of Preble County (Alamo Reply Br. at 15). Alamo represents that, as part of its evaluation of the Project, the Company commissioned a VRA by a professional firm. *See* App. Ex. 13 at 1-2. The conclusion of the VRA was that the proposed Project does not have an undue adverse effect on aesthetic resources of a significant number of viewers within the study area (App. Ex. 1 at Ex. I at 36).

{¶ 154} Alamo states that CCPC is conflating the precise percentages of potential visibility in the viewshed analysis, based on a 14-foot panel height, with the visual simulation results, which depict eight-foot tall solar panels (Alamo Reply Br. at 16). Alamo states that Mr. Robinson testified that, if the visual simulations depicted a panel height of 14 feet, his conclusions in the VRA would not change (Tr. II at 388; App. Ex. 1 at 36). Alamo argues that the application clearly states that the high end of the panels, regardless of the racking technology used, will be "8 to 14 feet above ground surface" and that an eight-foot panel is a "typical" height (Alamo Reply Br. at 16; App. Ex. 1 at 7, 8; Tr. II at 353). On the same note, Staff agrees with Alamo, and states that CCPC's sole basis for this argument is

that the simulations are based on eight-foot tall panels, when panels may be as high as 15 feet (Staff Reply Br. at 4).

{¶ 155} CCPC avers that Alamo's landscape plan should have been included in the Application consistent with Ohio Adm.Code 4906-4-08(D)(4)(f) so that neighbors could adjudicate the details and adequacy of the vegetative designs. While Alamo has now provided a preliminary landscape plan, CCPC notes that is just a proposal and subject to change by Staff and Alamo. (CCPC Initial Br. at 20, 21.) Additionally, CCPC highlights that Alamo does not make any commitment to actually mitigate any adverse visual impacts as required by Ohio Adm.Code 4906-4-08(D)(4)(f). Rather, CCPC states that Alamo's application and Amended Stipulation Condition 15 describe mitigation efforts that could be undertaken to mitigate the visual impacts, rather than committing to efforts that will be undertaken and defers mitigation details to the future when the Applicant submits a post-certificate landscaping plan to Staff consistent with Amended Stipulation Condition 15. CCPC believes that a post-certificate landscape plan provides little assurance that the Facility's visual blight will be satisfactorily managed. As a result, CCPC argues that the public is deprived of a meaningful opportunity to influence the choice of mitigation measures. CCPC identifies the fact that Alamo will not commit to the complete screening of the Project from view. (CCPC Initial Br. at 14-16; Tr. I at 125; Tr. II 377, 378.)

{¶ 156} Additionally, CCPC objects to Alamo's plans to use deciduous vegetation instead of evergreens and planted hedges due to the contention that evergreens and planted hedges are not in keeping with the existing rural and agricultural character of the project area. CCPC opines that this approach will leave the solar panels and fences highly visible during much of the year. CCPC also objects to the fact that Condition 15 only requires Alamo to keep only 90 percent of plants alive for five years and does not address years 6-40. Based on Condition 15, Alamo does not believe that there will be adequate screening for each of the non-participating landowners. (CCPC Initial Br. at 17 citing App. Ex. 1, Ex. I at 41.) Based on the testimony provided at the hearing, CCPC believes that there is uncertainty as to the manner in which Condition 15 will be implemented. Therefore, CCPC submits that

Condition 15 should be amended to remove any loopholes and properly ensure that adequate screening exists for the duration of the Project, including better clarifying how the 90 percent vegetation requirement is to be applied relative to the non-participating landowners and ensuring that the height of the vegetation be tall enough to provide adequate screening (CCPC Initial Br. at 18, 19). Finally, CCPC points out that although Alamo witness Herling indicated that Alamo will consult with neighbors regarding vegetative screening options, there is no such requirement in the application or the Amended Stipulation (CCPC Initial Br. at 20).

{¶ 157} As a final matter regarding visual impacts, CCPC argues that although the application reflects that lights be on at gates, it does not provide the actual locations of lights because the location of the gates is unknown. As a result, CCPC does not know how the lights will impact its members' homes. CCPC states that the lack of this information violates the requirement in Ohio Adm.Code 4906-4-08(D)(4) to evaluate the visual impact of the proposed facility. CCPC also points out that Alamo fails to identify mitigation measures that will be taken relative to adverse visual impacts of lighting. CCPC raises similar concerns regarding Condition 15 of the Amended Stipulation. (CCPC Initial Br. at 22; CCPC Reply Br. at 10, 11.)

{¶ 158} In response to CCPC's concerns that the application is deficient because it did not specifically describe the visual mitigation to be implemented and accurately portray the facility, Staff states that CCPC's objective requires solar equipment to be completely screened from their homes by vegetation. Staff argues that the Board's rules do not require such an undertaking and that a fully developed plan is simply not practical until a project plan is finalized. Staff represents that the rules require measures to be taken to minimize, not eliminate, visual impacts and that such measures include visual, but not necessarily vegetative screening. Staff avers that both the application and Condition 15 of the Amended Stipulation include fencing as a means of addressing aesthetic impacts. Additionally, Staff points out that the rules do not require that mitigation efforts be pleasing or acceptable to affected adjacent landowners. (Staff Reply Br. at 6- 7.) To that end, Staff avers that Alamo

has committed to consulting with neighbors to find out whether they want vegetative screening and to present different options (Tr. I at 104). Pursuant to Condition 15 within the Amended Stipulation, Alamo has offered to provide agreeable alternative measures if it varies from its described plan. As an additional point, while the Board's rules do not address how long the visual mitigation measures must remain either viable or efficacious, Staff and Alamo have provided that Alamo will maintain vegetative screening for the life of the project, ensuring that at least 90 percent of the vegetation has survived after five years (Staff Reply Br. at 8). Staff posits that if there are concerns about whether Alamo has failed to honor this condition in future years, including the concerns raised by CCPC, there is a complaint process in place to address those concerns. Staff represents that not only has Alamo satisfied the Board's requirements, it has gone well beyond them.

{¶ 159} Staff represents that Ohio Adm.Code 4906-4-08(D)(4)(f) requires that the Applicant describe measures to minimize any adverse visual impacts created at the facility. Staff highlights that Condition 15 requires Alamo to prepare a lighting plan to address those impacts prior to construction. (Joint Ex. 1 at 8.) Staff argues that both the application and the Staff Report note that all lights will be shielded, downward- or inward-facing, and motion activated (Staff Reply Br. at 5; App. Ex. 1 at 90; Staff Ex. 1 at 8; Joint Ex. 1 at 8.) Staff contends that the Board's rules do not require that an application specify where all lights will be located. Rather, Staff represents that the Board's rules require that an application describe how it will minimize the impact of lighting, wherever located. Staff opines that the conditions are designed to minimize the impact of lighting.

{¶ 160} Alamo agrees with Staff that the application and associated exhibits provide sufficient detail on the mitigation to be performed both to meet regulatory requirements and to provide sufficient evidence for the Board to find and determine that there will be minimal visual impact (App. Ex. 1 at Exhibit I at 39-41.) In support of its position, Alamo states that the VRA makes several commitments to minimize light visual impacts and that these commitments meet the relevant regulatory requirements to describe and evaluate lighting impact and provide the Board with sufficient evidence to find that the Project will have a

minimal impact on lighting in the area surrounding the project area (Alamo Reply Br. at 21). On the same note, Alamo witness Robinson testified that “the use of an opaque ‘green wall’ approach is generally not desirable or effective, because it tends to contrast with the existing visual character of the surrounding area and actually draws viewer attention because it looks out of place” (Alamo Reply Br. at 21 citing to App. Ex. 13 at 9). Alamo contends that CCPC fails to argue that lighting from the Project does not meet the applicable statutory standard in R.C. 4906.10 for certificate issuance; rather, Alamo believes that CCPC claims, without support, that the Application’s description of lighting mitigation was somehow deficient and ignores the VRA as well as Condition 15 of the Amended Stipulation (Alamo Reply Br. at 21-22). Alamo avers that its commitments clearly meet the relevant regulatory requirements to describe and evaluate lighting impact and provide the Board with sufficient evidence to find that the Project will have minimal impact on lighting in the area surrounding the Project area (Alamo Reply Br. at 21; Joint Ex. 2 at 9).

b. Decommissioning

{¶ 161} At least 60 days prior to construction, the Applicant shall submit a comprehensive decommissioning plan for review and approval of Staff. The plan will be prepared by a professional engineer registered with the State Board of Registration for Professional Engineers and Surveyors (Joint Ex. 2 at 12, Condition 28). Alamo notes that it has already prepared a preliminary decommissioning plan that outlines how the Project will be restored to its prior use and estimates the costs to do so (App. Ex. 19 at Att. 3). Alamo avers that the decommissioning plan will require that the project area be restored to use for cultivation, unless circumstances prevailing shortly in advance of the start of decommissioning indicate that another use is more appropriate or explicitly desired by the landowner (App. Ex. 1 at 39; App. Ex. 19, Att. 3 at 8). Mr. Herling testified that the decommissioning process will include a return to the same or functionally similar preconstruction drainage patterns, de-compaction of soil, and seeding with an appropriate, low-growing vegetative cover, such as clover, to stabilize soil, enhance soil structure, and increase soil fertility (App. Ex. 7 at 15, 16). Restoration will include the removal of all solar

panels, all electrical equipment, all buried cables less than three feet deep, all concrete foundations and support pads, and all access roads unless a participating landowner chooses to retain the road (App. Ex. 19 at Att. 3 at 5-7).

{¶ 162} Staff acknowledges CCPC's concern that the Stipulation does not adequately guarantee that funds will be available to decommission the Project; however, Staff points out that CCPC does not argue that the Applicant's proposal, or the Stipulation, fail to satisfy any statutory or regulatory provision. Staff believes that Alamo's decommission proposal, while not a failsafe proposal, is a reasonable plan to preserve the agricultural nature of the community by restoring the land to agricultural purposes at the end of the facility's useful life. (Staff Reply Br. at 14-15.)

{¶ 163} Consistent with the Amended Stipulation, the preliminary decommissioning plan includes an estimate of the net commissioning costs. The Amended Stipulation provides that the net decommissioning estimates shall be recalculated at least every five years by an engineer retained by the Applicant. The Board retains the authority to accept or reject the engineer chosen by Alamo to perform the analysis. Alamo is required, if necessary, to provide financial security in the form of a performance bond with the Board named as obligee, and which will be adjusted to reflect any increases in the net decommissioning costs (Joint Ex. 2 at 12.)

{¶ 164} Consistent with the Staff Report, the Board finds that the probable impact of the Project on socioeconomic conditions has been evaluated and determined. We observe the positive economic impact that the construction and operation of the project will have on the local community. We recognize that the Project is expected to positively contribute to employment and will contribute significant new annual revenue to the tax base for Preble County both during the construction and operation of the facility. Specifically, Alamo estimates the Project will generate an estimated \$490,000 for the Preble County taxing district, area schools, as well as Gasper and Washington Townships. (Staff Ex. 1 at 15). Additionally, at the time of the hearing on the Amended Stipulation, Alamo updated the

record to reflect that on August 26, 2020, the Preble Count Commissioners passed a resolution to approve the Applicant's application for the Ohio Qualified Energy Project Tax Exemption. Specifically, the Applicant is to make a payment of \$9,000/megawatt, as well as an additional annual service payment in the amount of \$2,000/megawatt to the Preble County Treasurer Company Ex. 7 at 7; Company Ex. 14 at 14). To the extent that Applicant's understanding of the PILOT program was incorrect, Alamo witness Herling clarified that Applicant would "ensure that the disbursements go on as they exist now" (Tr. I at 88).

{¶ 165} In addition to the PILOT plan, Staff represents that the state of Ohio is estimated to receive between \$1 million and \$2.5 million in sales and earnings taxes during the construction of the facility and nearly \$40,000 in sales and earning taxes during its operation. With respect to the regional area, the Preble County school district is expected to receive \$200,000 in earnings taxes and local municipalities are expected to receive nearly \$150,000 in sales and earnings tax revenues during construction. During operation of the facility, local municipalities are expected to receive \$7,000 and the school district is expected to receive \$9,000. (Staff Ex. 1 at 15.)

{¶ 166} We additionally recognize that the Project is expected to minimally affect recreational activities in the area as well as any cultural or historical resources. The site location was specifically chosen to minimize impacts on recreational activities, among other things. (App. Ex. 7 at 10; App Ex. 1 at 85). Furthermore, Staff found no evidence that any cultural responses would be impacted (Staff Initial Br. at 8).

{¶ 167} Regarding the visual impact of the project, the VRA demonstrated that, the solar panels could potentially be visible from approximately 11.8 percent of the 5-mile visual study area while the proposed substation could potentially be visible from only 6.3 percent of the study. Additionally, the VRA indicates that at distances beyond .5 miles, any view of the Project would be minimal, and that at distances of 2.0 miles, the Project would not be visible at all. (App. Ex. 13 at 4, 8; Tr. II at 344, 345). As noted by Alamo witness Robinson and represented by Staff witness Conway, Condition 15 ensures that the Applicant will

maintain the vegetative screening for the life of the Project and replace any failed plantings to ensure that after five years at least 90 percent of the vegetation has survived. We find that Condition 15 serves the public interest by establishing measures to mitigate and limit the visual impact of the Project through a variety of measures (App. Ex. 16 at 5).

{¶ 168} Finally, we find that the decommissioning process, outlined in Condition 28, satisfies the decommissioning requirements outlined in Ohio Adm.Code 4906-4-09(I) and will be overseen by the Board and Staff. We specifically note that the preliminary decommissioning plan includes an estimate of the net commissioning costs. The Amended Stipulation, however, provides that the net decommissioning estimates shall be recalculated at least every five years by an engineer retained by the Applicant. We note that the Board maintains the authority to ultimately accept or reject the engineer chosen by the Applicant to conduct such an analysis, further fulfilling our obligation to ensure the decommissioning requirements set forth in Ohio Adm.Code 4906-4-09(I) are observed. Furthermore, Alamo is required, if necessary, to provide financial security in the form of a performance bond with the Board named as obligee, and which will be adjusted to reflect any increases in the net decommissioning costs.

2. ECOLOGICAL IMPACT

{¶ 169} Ecological impacts are broadly divided into six categories: public and private water supply, geological features, slopes and soil suitability, surface waters, threatened and endangered species, and vegetation (Staff Ex. 1 at 16-19). Alamo submits that it has designed the Project to avoid and minimize impacts to wetlands, waterbodies, woodlots, and aquatic and terrestrial wildlife species where possible (App. Ex. 11 at 7, 8).

a. Water, Geology, and Soil

{¶ 170} According to Alamo, its preliminary investigation concluded that the soils in the project area are suitable for drainage for the Project and there are no soil-related inadequacies to remedy in connection with the Project (App. Ex. 1 at 63). Additionally,

Alamo represents that the Project should not have an impact on drainage, nor should it result in an increase in runoff (App. Ex. 8 at 5). Alamo believes that, in actuality, there will be a reduction in runoff due to the vegetation coverage in and around the project area (App. Ex. 8 at 5; Tr. I at 203, 204; Tr. IV at 670). Additionally, Alamo commits to satisfying a General Permit Authorization for Storm Water Discharges Construction Associated with Construction Activities (Construction General Permit) issued by the Ohio EPA and will perform pre-and post-construction stormwater calculations to determine if post-construction best management practices are required per the Construction General Permit (Joint Ex. 2 at 12).

{¶ 171} Alamo explains that the proposed Project will have a minimal impact on surface waters, further elaborating that there are 4.71 acres of wetland located within the proposed project area, but there will be no wetland impacts resulting from the proposed project. Additionally, Alamo states that a total of 30 waterbodies are located in the proposed project area, but the proposed project will have a minimal impact on 95 linear feet of stream. Lastly, Alamo represents that mitigation measures, including the use of horizontal directional drilling, will be used to avoid impacts to other streams in the proposed project area. (App. Ex. 11 at 4-6.)

{¶ 172} CCPC argues that the application provides no data of the quantity and quality of mitigation measures for surface water draining from the Facility during construction and operation, thus violating Ohio Adm.Code 4906-4-07(C) (CCPC Initial Br. at 53, 56). CCPC contends that Alamo's hydrology expert admitted that no efforts have been made to model or otherwise quantify the amount of water that will flow from the project area. (CCPC Initial Br. at 54 citing Tr. I at 203, 204). CCPC calls attention to Alamo's unsupported representation that it does not have to comply with this rule because it does not anticipate "changes in flow patterns and erosion" and that the application asserts that the project area "already is level and very little, if any, grading will be needed" (App. Ex. 1 at 46). CCPC rejects Alamo's contention that its activities will not increase the amount of stormwater flow from the project area. In support of its position, CCPC highlights the

requirement in Amended Stipulation Condition 29 that Alamo must obtain a General Permit Authorization for Storm Water Discharges (App. Ex. 18 at 3, 4).

{¶ 173} CCPC notes that Alamo witness Marquis acknowledged that solar panels alter volumes, velocity, and discharge pattern stormwater runoff (CCPC Ex. 9 at 1; Tr. IV at 669). Specifically, CCPC avers that Alamo's planting of vegetation in solar fields does not address potentially increased flows during construction (CCPC Initial Br. at 54 citing App. Ex. 1 at Ex. D). Further, CCPC submits that Alamo has done no work to determine if grading will be necessary. Additionally, CCPC argues that compacted roads will increase the amount of flow into existing ditches (Tr. I at 200). Therefore, CCPC submits that stormwater flows could increase during construction and operation, which would require the establishment of adequate surface water drainage (CCPC Initial Br. at 55 citing App. Ex. 1, Ex. F).

{¶ 174} CCPC also notes that a grading plan will be discussed with Staff and submitted subsequent to the issuance of a certificate and a hydrology study will be subsequently performed to determine the amount of surface water flow increases as a result of the Project. (CCPC Initial Br. at 38, 58 citing Tr. I at 64-66, 200, 201).

{¶ 175} Furthermore, CCPC takes issue with Condition 16 of the Amended Stipulation, which requires Alamo to submit a Stormwater Pollution Prevention Plan (SWPPP) for erosion control and storm-water management, but only after a certificate is issued (Tr. I at 146). Absent this information, CCPC contends that the application does not identify any mitigation measures that may be necessary to protect neighbors' and the public's surface waters as required by Ohio Adm.Code 4906-4-07(C)(2) and (E). CCPC asserts that because the application lacks information required by Ohio Adm.Code 4906-4-07(C) in order to evaluate the quantity and quality of water from the Facility, the Board cannot issue the certificate based on the current application. (CCPC Initial Br. at 43, 44.).

{¶ 176} In response to surface water drainage concerns raised by CCPC, Alamo points to Alamo witness Waterhouse's testimony: "[t]he Project should not have an impact

on drainage, nor should it result in an increase in runoff from the project area” (App. Ex. 8 at 5). Staff reiterates this message and avers that Staff found that solar facilities are constructed and generate electricity without impacts to surface or groundwater and that construction would generate very little wastewater discharges at the Project site (Staff Ex. 1 at 16). Furthermore, Alamo witness Waterhouse testified that, although modeling of runoff has yet to be performed, in a typical type of project condition, such as the one Alamo is creating with the vegetation that it is planting in conjunction with the Project, modeled results always show a reduction in runoff. (App. Ex. 8 at 51; Tr. I at 203, 204.) Alamo witness Herling also stated that “almost no grading will occur” (Tr. I at 62).

{¶ 177} Alamo further explains that it does not appear that the construction of the proposed solar array will have a significant impact on the local geology and/or hydrogeology of the project area (Alamo Reply Br. at 32 citing App. Ex. 1 at Ex. F at 7). With regard to water quality, Alamo argues that given the limited nature of the construction activities associated with the Project, and the fact that no discharge to water bodies and receiving streams are expected to occur, the Board has adequate evidence to find that impacts on water quality will be minimal, if any (App. Ex. 1 at 46). In response to CCPC’s position that that the application is deficient of requisite information, Alamo contends that pursuant to Ohio Adm.Code 4906-4-07(C)(1)(e), it is only required to provide available data for completion of the construction stormwater permit application. Therefore, Alamo opines that if no data is currently available, none will be provided. (Alamo Reply Br. at 23 citing App. Ex. 1 at 46.)

{¶ 178} Additionally, Alamo states that there will be no changes in flow patterns and erosion (App. Ex. 1 at 46). Further, the Project will follow established Ohio EPA regulator programs for the management of stormwater and that it will implement a SWPP) as part of its Ohio EPA construction stormwater permit and the Amended Stipulation Condition 16 (Tr. I at 205-208; Joint Ex. 2 at 9, Condition 16). Alamo explains that this commitment does not signify that discharges are expected to occur. Instead, Alamo explains that the SWPPP is an example of Alamo’s due diligence in this case (Alamo Initial Br. at 33).

{¶ 179} Staff contends that the project will not adversely impact public or private water supplies and that there are no geological features that would restrict construction of the facility. Staff further states that no wetlands, ponds, or lakes would be affected. With respect to the ecological impacts, Staff states that the Project would not adversely impact public or private water supplies and that there are no geological features that would restrict construction of the facility. Further, Staff points out that the conditions set forth in the Initial Stipulation attempts to minimize the adverse impacts of the Project (Staff Ex. 1 at 22, 23).

{¶ 180} Staff believes that CCPC overstates the requirements of the surface water provision of Ohio Adm.Code 4906-4-07(C). According to Staff, this rule section is specifically concerned with water quality regulations, not the quantification of water that will flow from the project area. Specifically, Staff states that the three subparagraphs of the rule address preconstruction water quality and permits, water quality during construction, and water quality during operation of the facility (Staff Reply Br. at 20.) Lastly, Staff claims that while CCPC points to the possible use of dirt moving machinery and the ground compaction necessary for installing access roads and solar arrays, it does not provide any evidence to support its claims that water flows will likely increase. Staff also believes that solar facilities are constructed and generate electricity without impacts to surface or groundwater. Staff also opines that construction will generate very little wastewater discharges at the project site (Staff Reply Br. at 21 citing Staff Ex. 1 at 16.)

{¶ 181} Finally, Staff notes that Alamo intends to perform a hydrology study after the Project is complete. Due to the fact that the Applicant expects no changes in flows, Staff believes that performing such a study once the facility is operational is reasonable to determine what mitigations may be necessary to comply with water quality regulations (Staff Reply Br. at 21.)

{¶ 182} The Board determines that Alamo should not be prohibited from moving forward with this project based on the concerns raised by CCPC in this proceeding, as these concerns are premature and can be properly addressed through the conditions set forth in

this Order. While reaching this determination, the Board is not overlooking the potential adverse ramifications resulting from the construction of solar panels in the project area. As noted by Alamo witness Waterhouse's testimony: "[t]he Project should not have an impact on drainage, nor should it result in an increase in runoff from the project area" (Company Ex. 8 at 5). Staff reiterates this message and avers that Staff found that solar facilities are constructed and generate electricity without impacts to surface or groundwater and that construction would generate very little wastewater discharges at the Project site (Staff Ex. 1 at 16). Furthermore, Alamo witness Waterhouse testified that, although modeling of runoff has yet to be performed, in a typical type of project condition, such as the one Alamo is creating with the vegetation that it is planting in conjunction with the Project, modeled results always show a reduction in runoff. (App. Ex. 8 at 5l; Tr. I at 203, 204.)

{¶ 183} Integral to the Board's decision is the requirement that Alamo comply with Amended Stipulation Condition 16 and Condition 29. Specifically, the Project will follow established Ohio EPA regulator programs for the management of stormwater and Alamo will implement a SWPPP as part of its Ohio EPA construction stormwater permit and the Amended Stipulation Condition 16 (Tr. I at 205-208; Joint Ex. 2 at 9, Condition 16). Additionally, pursuant to Amended Stipulation Condition 29, if an acre or more of ground is disturbed, Alamo will obtain a Construction General Permit from the Ohio EPA and determine if whether post-construction stormwater best practices are required. Condition 29 also obligates the Applicant to submit documentation of its supporting calculations to the Preble County Office of Land Use Management and to Preble Soil and Water and requires the Applicant to provide confirmation that it has incorporated guidance from Ohio EPA's "Guidance on Post-Construction Storm Water Controls" to the two local agencies.

b. Threatened and Endangered Species

{¶ 184} Alamo utilized an environmental consultant, Cardno, to study the potential impact of the proposed facility on rare, threatened, and endangered (RTE) species. According to the Staff Report, the historic range of the endangered Indiana bat and threatened

northern long-eared bat, state threatened Sloan's crayfish, and federal threatened/state endangered eastern massasauga rattlesnake includes the proposed project area (Staff Ex.1 at 18).

{¶ 185} Alamo witness Rupprecht testified that, based on a review of publicly available data, the proposed project area, and the surrounding area within a quarter-mile buffer are not expected to provide significant or permanent habitat for any listed or other RTE species. Furthermore, during Cardno's November 2017, April 2018, and October 2018 field surveys, no RTE species were identified. (App. Ex. 11 at 4.) To avoid any adverse impact to the Indiana Bat and Northern Long-Eared Bats, and in compliance with Condition 19 of the Amended Stipulation, Alamo will adhere to seasonal cutting dates unless coordination with the ODNR and USFWS allows a different course of action. (Joint Ex. 1 at 9.) Regarding other wildlife, Cardno found that the proposed project would not significantly impact wildlife or wildlife habitat. Additionally, the Project is designed to locate the majority of infrastructure on active agricultural land, which only provides habitat for a limited number of wildlife species. (App. Ex. 11 at 6.)

{¶ 186} Alamo witness Rupprecht testified that on a landscape scale, there is abundant availability of similar agricultural fields within the proposed project area that can be used as similar habitat. Additionally, the proposed project area and the quarter-mile buffer are not known to provide significant habitat for sensitive bird species, and that due to this lack of adequate habitat in the immediate project area, it is likely many birds and wildlife will opt for higher quality habitat nearby for roosting, foraging, and breeding. (App. Ex. 11 at 6; Tr. II at 271, 272.) Alamo witness Rupprecht testified that deer in the surrounding area would increase by less than five percent (0.01 deer per acre) as a result of the construction of the proposed project. Mr. Rupprecht testified that Cardo derived this figure by using Habitat Utilization Factors. Additionally, although Cardno used deer population as the basis for the estimate, other wildlife would likely have the same reaction as deer to the construction of the proposed project. (App. Ex. 11 at 2, 7; Tr. II at 297, 298, 311.)

{¶ 187} CCPC asserts that Alamo failed to appropriately conduct literature and field surveys of species in the project area, and that Alamo did not provide data to show that no harm to wildlife will occur. Specifically, CCPC states that Alamo did not comply with Ohio Adm.Code 4906-4-08(B) when it only performed a partial literature search for animal life in the vicinity of the project area and did not conduct and provide the results of any field surveys for the animal species identified in the literature survey as required by Ohio Adm.Code 4906-4-08(B)(1)(d). CCPC notes that Alamo provided a literature survey for only plant and animal species that are endangered, threatened, of concern, or of special interest. CCPC claims that Alamo did not provide a literature survey for all plant and animal life within at least one-fourth mile of the project area as required by Ohio Adm.Code 4906-4-08(B)(1)(c). (CCPC Initial Br. at 48, 49.) In support of its position, CCPC references the acknowledgement of Alamo's ecology consultant, Cardno that no species-specific surveys have been conducted for the Project (CCPC Initial Br. at 49, 50 citing App. Ex. 1 at Ex. G at viii). CCPC alleges that the failure to catalog and evaluate all other species in the area leaves a huge gap in the application's information regarding ecological resources in the project area (CCPC Initial Br. at 49).

{¶ 188} Staff disagrees with CCPC's reading of Ohio Adm.Code 4906-4-08(B)(1)(c) and explains that while the rule does not restrict the survey solely to certain species stating that logic and reason would militate against reading the rule to require the identification of each and every plant and animal species. Staff believes such a requirement would be overly burdensome and unnecessarily broad and represents the Board has never imposed such a requirement on an applicant. Staff avers that the Applicant reasonably conducted a survey of those species designated as endangered or threatened; specifically, Alamo requested information from ODNR and USFWS regarding state and federally listed threatened or endangered plant and animal species. Additionally, Staff states that the signatory parties agreed to include Condition 21 of the Stipulation to protect those potentially threatened or endangered species of plant and animals that may be encountered during construction. Staff argues that, while CCPC witnesses acknowledge that wildlife currently encroach on

their properties and destroy their crops, CCPC failed to introduce expert testimony to support their allegations that the Project will increase those losses.

{¶ 189} Further, Staff states that CCPC's concerns about bats has also been addressed in Condition 19 which restricts tree removal to seasonable guidelines intended to avoid impacts to bats. Staff concludes that the Applicant has satisfied the requirements of Ohio Adm.Code 4906-4-08(B). (Staff Reply Br. at 18-20.)

{¶ 190} Alamo avers that the ecological assessment conducted by Cardno includes information regarding RTE species and also includes a discussion of other species including common game species in southwestern Ohio. Furthermore, Cardno concluded that, other than the agricultural crops and livestock in the area, no commercially valuable species are anticipated to be present in the project area. Regarding the field studies conducted by Cardno, the ecological assessment specifically noted that wildlife observations during the field surveys were limited to common species including white-tailed deer and gray squirrels. Furthermore, Cardo reported that the visual reconnaissance surveys observed minimal wildlife use in the project area and did not observe RTE species due to the project area being relatively low quality and highly disturbed. (App. Ex. 1, Ex. G at 4, 5.) With regard to avoiding any adverse impact to the Indiana bat and northern long-eared bat, and in compliance with Condition 19 of the Amended Stipulation, Alamo states that it will adhere to seasonal cutting dates unless coordination with ODNR and USFWS allows a different course of action (Joint Ex. 2 at 910).

{¶ 191} CCPC also argues that the application fails to provide information required by Ohio Adm.Code 4906-4-08(B)(3) to assess, avoid, and mitigate impacts on wildlife that will result in crop and livestock damage on nearby farms. Specifically, CCPC claims that, because Alamo did not conduct the literature search and field surveys necessary to identify the plant and animal species in the area, the application also fails to evaluate the Facility's potential impacts on these species during operation and the mitigation measures necessary to minimize them. In addition, CCPC contends that the application fails to evaluate the

potential impacts on deer, raccoon, and coyote populations excluded from the project area by fencing solar fields and believes that the fenced project area will reduce the area available for animals to roam and forage, which will force them to roam on surrounding lands where they will inevitably eat the CCPCs' crops, attack and cause illness to livestock and will be more prone to vehicle collisions on public roads. (CCPC Initial Br. at 52 citing CCPC Ex. 2 at 9.) According to CCPC, although Cardno saw deer during its surface water survey, Alamo witness Rupprecht did not know how many deer were seen (Tr. II at 278, 279, 311, 312).

{¶ 192} Of similar note, CCPC states that, because the application lacks the data necessary to determine whether wildlife displacement from the project area will damage CCPCs' crops or endanger their calves, the application fails to determine what mitigation may be necessary to address this problem pursuant to Ohio Adm.Code 4906-4-08(B)(3)(b). As a final note, CCPC argues that the application also fails to provide for the post-construction monitoring of wildlife impacts to determine what damaged the displaced animals are wreaking on the neighbors' crops and calves as required by Ohio Adm.Code 4906-4-08(B)(3)(c). (CCPC Initial Br. at 53.)

{¶ 193} Regarding CCPC's concern about wildlife encroaching on properties and destroying crops, Staff states that there is no expert testimony supporting CCPC's allegations that the Project will increase those losses. Staff avers that the only expert testimony on the subject on the impact of displaced wildlife on surrounding properties came from Alamo witness Rupprecht who testified that deer in the surrounding area would increase by less than five percent and should not have a negative effect on surrounding properties (Tr. II at 296).

{¶ 194} Alamo agrees with Staff, and further argues that CCPC ignored large segments of the testimony of Alamo witness Rupprecht, as well as sections of the application discussing the lack of impact on wildlife. Alamo witness Rupprecht testified, both in written direct testimony and at hearing, that the Project will have minimal, if any impact, with

respect to the exclusion of wildlife from the project area. (App. Ex. 1 at Ex. G at 7-5, 7-6; App. Ex. 11 at 2, 7).

{¶ 195} Based on its review of the record, the Board concludes that Alamo has made an adequate demonstration of the nature of the probable environmental impact relative to threatened and endangered species. In support of our determination, the Board relies on the undisputed representation that the Applicant consulted with ODNR and USFWS in preparing wildlife study plans prior to conducting the studies. As discussed in the Staff Report, the findings and recommendations set forth by Staff were a result of coordination with the Ohio EPA, the Ohio Department of Health, the Ohio Development Services Agency, ODNR, and the Ohio Department of Agriculture. Additionally, Staff coordinated with ODOT, OHPO, and USFWS (Staff Ex. 1 at ii, 1).

{¶ 196} In making our determination, we acknowledge that, in accordance with the Board's rules, Alamo conducted a literature survey as well as field surveys of animal species in the Project Area. (Company Ex. 1 at Exhibit G at 4-5 to 4-6). The Ecological Assessment conducted by Cardno includes information regarding rare, threatened, and endangered species, as acknowledged by CCPC (Alamo Reply Br. at 38). We note that the Cardno field studies included "[h]abitat observations and sensitive species assessment" (App. Ex. 1 at Exhibit G at 1-1). The Ecological Assessment specifically notes that "[w]ildlife observations during the field surveys were limited to common species in agricultural areas, including white tailed deer (*Odocoileus virginianus*) and gray squirrels (*Sciurus carolinensis*)." (App. Ex. 1 at Exhibit G at 6-2). Importantly, the Ecological Assessment did not observe rare, threatened, or endangered species, and during the field studies, Cardno staff observed minimal wildlife use in the Project Area and observed no RTE species due to the Project Area being relatively low quality and highly disturbed." (App. Ex. 1 at Exhibit G at 6-2)

{¶ 197} The Board is persuaded by Alamo witness Rupprecht, who testified that, based on a review of publicly available data, the proposed project area, and the surrounding area within a quarter-mile buffer are not expected to provide significant or permanent

habitat for any listed or other RTE species. Furthermore, during Cardno's November 2017, April 2018, and October 2018 field surveys, no RTE species were identified. (App. Ex. 11 at 4.) Regarding other wildlife, Cardno found that the proposed project would not significantly impact wildlife or wildlife habitat. Specifically, Alamo witness Rupprecht testified that on a landscape scale, there is abundant availability of similar agricultural fields within the proposed project area that can be used as similar habitat. Additionally, the proposed project area and the quarter-mile buffer are not known to provide significant habitat for sensitive bird species, and that due to this lack of adequate habitat in the immediate project area, it is likely many birds and wildlife will opt for higher quality habitat nearby for roosting, foraging, and breeding. (App. Ex. 11 at 6; Tr. II at 271, 272.) Alamo witness Rupprecht testified that deer in the surrounding area would increase by less than 5 percent (0.01 deer per acre) as a result of the construction of the proposed project. Mr. Rupprecht testified that Cardo derived this figure by using Habitat Utilization Factors. Additionally, although Cardno used deer population as the basis for the estimate, other wildlife would likely have the same reaction as deer to the construction of the proposed project. (App. Ex. 11 at 2, 7; Tr. II at 297, 298, 311.)

{¶ 198} CCPC claims that Alamo failed to evaluate the Project's impacts on wildlife and nearby crops and livestock in its Application. We are not persuaded by CCPC witness Clippinger's testimony to attempt to argue that the displacement of wildlife will be harmful to local citizens (CCPC Brief at 52). For example, Ms. Clippinger testifies both that that "[i]f the coyotes' range is reduced by the fences, they are more likely to congregate near our farm and attack our calves" and "[t]he reduction of space for deer to occupy will pack them closer together, making the spread of disease easier among them. Lepto and Tuberculosis are two diseases common in deer that also infects cattle." (CCPC Ex. 2 at 9). However, there is no evidence in the record to support any of the above claims. Nothing in Ms. Clippinger's testimony, or in the remainder of the record, actually supports CCPC's arguments. We heavily rely our decision on the Ecological Assessment and field studies conducted by

Cardno which determined that the proposed project would not significantly impact wildlife or wildlife habitat (Company Ex. 11 at 6).

{¶ 199} As a final matter, we note that Condition 19 of the Amended Stipulation addresses CCPC's concern about any adverse impact to the Indiana Bat and Northern Long-Eared Bats. Furthermore, Condition 19 of the Amended Stipulation requires Alamo to adhere to seasonal cutting dates unless coordination with ODNR and USFWS allows a different course of action. (Joint Ex. 1 at 9.)

{¶ 200} Consistent with the above analysis, the Board finds that the nature of probable environmental impact on wildlife has been determined for the proposed facility in accordance with R.C. 4906.10(A)(2) provided that the certificate issued includes Staff's recommendations set forth in the Staff Report, as modified in the Conclusion and Conditions Section of this Order.

c. Vegetation Impacts

{¶ 201} In regard to impacts on vegetation, Alamo avers that construction of the proposed facility will involve a minimal amount of tree clearing of approximately 1.37 acres of the 1,002 acres making up the project area, and large woodlots in the project area will be maintained (App. Ex. 1 at 12; Staff Ex. at 18, 19). Alamo states that construction will necessitate little earth-moving and grading because the project area is relatively level and will include only the occasional clearing of trees (App. Ex. 1 at 46; App. Ex. 16 at Attach. 1 at 7.)

{¶ 202} As discussed above, Alamo witness Robinson testified that Alamo will be adding vegetation to the project area, preserving existing trees and topsoil, and returning the land to agricultural use following the Project's useful life. (Company Ex. 19 at Attach. 1). Alamo also represents that it is committed to the control of noxious weeds, primarily through mechanical means (as opposed to commercially-available herbicides) and stresses that it, like others near the project area, will also be bound by R.C. 5579.05 requiring the

removal or destruction of noxious weeds upon notice. (Alamo Initial Br. at 21 citing App. Ex. 7 at 9; App. Ex. 1 at 76; Tr. at 106). Further, Alamo highlights that its Vegetation Management Plan makes clear that the project area will be monitored post-construction for the presence of noxious weeds, as identified in Ohio Adm.Code 901:5-37. Additionally, Alamo notes Condition 18 of the Amended Stipulation, which requires it, to the extent practicable, to purchase seed stock from a vendor recommended by the Ohio Seed Improvement Association (Joint Ex. 2 at 910, Condition 18.). Alamo witness Herling testified that, if Alamo is unable to purchase seed stock from such a vendor, it will seek a source of seed that would not have noxious or invasive weed species. (App. Ex. 1 at 12, 73, 76, 86; App. Ex. 7 at 9; Staff Ex. 1 at 18, 19; Tr. I at 106, 151.)

{¶ 203} CCPC contends that the application does not provide for the control of noxious and invasive weeds as required by Ohio Adm.Code 4906-4-08(E). CCPC witness Clippinger avers that crop farmers continually have to fight against weeds that damage their crops and that noxious and invasive plant species, if allowed to grow in the project area, will spread to the farmers' land, damage their crops, and increase their work to eliminate said weeds (CCPC Ex. 2 at 7). CCPC states that it has already experienced problems with noxious plant species, and that the application provides no procedures for ensuring that its plant seeds do not include weeds that can invade surrounding farm fields and natural areas, nor does it provide for eradicating invasive or noxious plant species that may sprout in the project area (CCPC Ex. 2 at 7). Rather, the application states that operating personnel "may" use herbicides to control noxious weeds, without any enforceable commitment to do so (Alamo Initial Br. at 31 citing App. Ex. 1 at 76). CCPC avers that Alamo should be required to use only native seeds and plants that are certified to be free of noxious and invasive plant species and should additionally be required to promptly eliminate any noxious or invasive plants that are in the project area so that they do not spread to nearby farmland. (CCPC Ex. 2 at 7, 8.) Additionally, CCPC states Stipulation Condition 18 is deficient because it requires Alamo to plant seeds from certified vendors only if "practicable" and Alamo witness Herling would not agree, at hearing, to a condition requiring the Applicant to seek another

source of seeds without noxious or invasive weed species, if the circumstances were impracticable (Tr. I at 149, 151, 152). Further, CCPC claims that Condition 18 fails to address procedures for controlling invasive and noxious weeds at the Facility, and that the post-certificate vegetation plan fails to satisfy Ohio Adm.Code 4906-4-08(E)(2)(c) since it does not allow for scrutiny and public comment. Lastly, CCPC contends that the preliminary vegetation plan attached to witness Robinson's testimony does not cure this defect because it was not included in the application or made enforceable by the Amended Stipulation. (CCPC Initial Br. at 48 citing Tr. IV at 602, 682).

{¶ 204} Staff avers that the Applicant will take adequate measures to prevent noxious and invasive weed species from spreading to neighboring farmland as required by Stipulation Condition 18. Staff also submits that the vegetative management plan required by Condition 18 addresses vegetative management issues during construction and maintenance operations. Additionally, Staff represents that Condition 18 significantly modifies the recommendation made in Staff Ex. 1, with guidance from local officials and the OFB. Lastly, Staff explains that Condition 18 is required to consult with the Ohio Seed Improvement Association, Ohio's Noxious Weed Free Forage and Mulch Certification agency, to limit the spread of noxious weeds. (Staff Reply Br. at 18.)

{¶ 205} Based on a review of the arguments presented, the Board finds that the nature of probable environmental impact on vegetation has been determined for the proposed facility in accordance with R.C. 4906.10(A)(2) provided that the certificate issued includes Staff's recommendations set forth in the Staff Report, as modified in the Conclusion and Conditions section of this Order. In making this determination, the Board finds that Condition 18, which has been significantly modified from the recommendation made in the Staff Report, ensures that the Applicant will take adequate measures to prevent noxious and invasive weed species from spreading to neighboring farmland. Specifically, to address CCPC's concerns regarding noxious weeds, Alamo is to consult with the Ohio Seed Improvement Association, Ohio's Noxious Weed Free Forage and Mulch Certification agency, to limit the spread of noxious weeds. (Joint Ex. 1 at 18, Condition 18.)

3. PUBLIC SERVICES, FACILITIES, AND SAFETY

{¶ 206} While recognizing that state and local roads in the vicinity of the project area will experience increased traffic during Project construction due to the delivery of materials and equipment, Alamo does not believe that the Project will significantly contribute to traffic on local roads once operational (App. Ex. 1 at 36, 76; App. Ex. 9 at 4). Additionally, Alamo submits that only a small percentage of the loads to be brought to the project area will be overweight or oversized loads, which are loads that exceed measurements established by ODOT and require a special permit (July 17, 2019 Tr. at 216). U.S. Route 127 will be the primary road to access the project area vicinity (App. Ex. 9 at 3). Where possible, deliveries on single lane roads to the Project will be limited (App. Ex. 1 at 36).

{¶ 207} Based on the preliminary route evaluation study performed for the Project by Alamo's consultant, while local roads are generally in good condition, the use of certain roads should be minimized due to their condition (App. Ex. 1 at 36). Although these roads could be used for the Project, they would likely need to be repaired post-construction or improved prior to construction if they are to be used (Tr. I at 215; App. Ex. 9 at 4). Alamo will work with local officials to repair any damage to roads resulting from construction (App. Ex. 1 at 36). On January 15, 2020, Alamo entered into a RUMA for Solar Projects and Infrastructure with Preble County local authorities, including the Board of County Commissioners and the Trustees of Gasper and Washington Townships (App. Ex. 19 at Attach. 2). The RUMA requires Alamo to work with the Preble County Engineer to repair all portions of the impacted roads that may be damaged by Alamo's activity, at Alamo's expense, to a level consistent with the condition of such roads at the commencement of Alamo's use. The RUMA also requires Alamo to deliver a bond in an acceptable form prior to beginning any on-site construction work on the Project. (App. Ex. 19 at Attach. 2.) According to the Applicant, the RUMAs to be entered into in this matter are common practice for large construction projects and are effective at minimizing damage to local roads and ensuring repairs are made in a timely manner (App. Ex. 19 at 3, 4).

{¶ 208} The Applicant also intends to implement a traffic management plan as required by Conditions 24 and 25 of the Stipulation. Specifically, Alamo commits to working with the Preble County Engineer, the trustees for the impacted townships, and ODOT to ensure that any impacts to traffic flow are accounted for and rectified (App. Ex. 1 at 36). The traffic management plan would determine the routes that can be used by the construction contractor and would be shared with all the impacted local authorities. (Tr. I at 224, 225.) Alamo highlights the testimony of CCPC witness Clippinger, who acknowledged that agricultural traffic codes do not have priority over traffic on a road and that in all the years that she has been farming in Preble County, she has not had an issue with a blockage of a road because of equipment going against each other (Tr. III at 475, 477).

{¶ 209} CCPC submits that the application fails to satisfy Ohio Adm.Code 4906-4-06(F)(3) and the requirement that the Applicant must describe the measures that will be taken to improve inadequate roads and repair roads and bridges to at least the condition present prior to the Project. CCPC contends that the application does not describe the measures that will be taken to improve inadequate roads and repair roads and bridges to at least the condition present prior to the Project. (CCPC Initial Br. at 64.) CCPC also points out that Alamo's transportation consultant cautioned that unless upgrades occur ahead of time, construction traffic should be avoided on certain routes due to steep road grades, poor bridge conditions, the existence of culverts, or being single lane roads (App. Ex. 9 at 3; Tr. I at 213-215; App. Ex. 1, Ex. D at 12.). Despite this representation, CCPC asserts that the application does not indicate whether or not Alamo will use the identified roads and bridges for Alamo's construction traffic but leaves that issue for later determination. CCPC also notes that the application lacks information regarding how road damage from the Project will be addressed (CCPC Initial Br. at 65). While the Amended Stipulation now reflects that Alamo and local officials have drafted a RUMA, CCPC raises concern that the agreement was not included in the application and tested by the public hearing and adjudicatory process (CCPC Initial Br. at 65).

{¶ 210} According to CCPC about 1,190 to 1,260 loads of equipment and construction materials will be brought in during Facility construction via semi-trailers, flatbeds, or tractor-trailer vehicles (Tr. I at 216-218; App. Ex. 1, Ex. D at 2). CCPC points out that although Ohio Adm.Code 4906-4-06(F)(4) requires the application to describe any necessary coordination with local authorities for road/lane closures necessary for the construction and operation of the proposed facility, Condition 24 allows Alamo to study these issues at a later point in time and provide its findings to Staff in the form of a transportation plan and traffic management plan for the purpose of determining whether farm machinery and Alamo's trucks can occupy the roads simultaneously. (CCPC Initial Br. at 68 citing Tr. I at 93.) Typically, the plan will also explain how the farmers access to the public roads during planting and harvesting seasons would be protected and how to accommodate school buses (Tr. I at 156, 222, 223). According to CCPC, the transportation plan and traffic management plan has not yet been prepared (Tr. I at 93, 94, 95, 154, 223). CCPC submits that without this information, any finding that the Project represents the minimum adverse environmental impact with respect to public roads is speculation (CCPC Reply Br. at 16). For example, CCPC focuses on the fact that while Alamo witness Bonifas discussed that a transportation management plan typically provides for escort vehicles and flaggers for oversized loads to organize traffic, there is no specific commitment for the utilization of escort vehicles and flaggers. Rather, Condition 24 only generically requires a transportation plan to be submitted to Staff after certification and does not even require Staff's approval of the plan. CCPC raises similar concerns regarding the deferral of the issue of road damage to future road use agreements that are to be submitted to Staff for review at a future point in time. (CCPC Reply Br. at 27.)

{¶ 211} Alamo rejects CCPC's arguments that the Applicant has not described the measures that will be taken to improve inadequate roads. Rather, Alamo asserts that the application clearly describes the measures that will be taken to improve roads and repair roads and bridges if necessary. Specifically, Alamo points to the route evaluation study (App. Ex. 1 at Ex. D), which has an entire section devoted to mitigation measures.

Additionally, Alamo focuses on its commitment to work with local officials to repair any damage to roads resulting from construction and its commitment to work with the Preble County Engineer, the trustees for the impacted townships, and ODOT to ensure that any impacts to road surface conditions and traffic flow are accounted for and rectified. Alamo also notes its commitment that, where possible, deliveries on single lane roads to the Project will be limited despite low traffic volumes in and around the project area. (App. Ex. 1 at 36.)

{¶ 212} Staff represents that Condition 25 of the Initial Stipulation requires the Applicant to enter into a road use agreement with local authorities to ensure the removal of unwanted temporary improvements and prompt repair of any damage caused. Staff points out, as CCPC acknowledged, Alamo and local officials have drafted a RUMA that is included in the record of this case. In response to CCPC's concerns that Alamo is not prohibited by the Stipulation from using certain roads that are in poor condition or in need of repair, Staff argues that to the extent that the Applicant chooses to use such roads, it must either fit them to its purposes or repair any damage done. Additionally, Staff opines that Farmers' access to the public roads is not the only use that must be protected, and there is no requirement that the Applicant be prohibited from using the roads during planting and harvest seasons as CCPC demands. (Staff Reply Br. at 22.)

{¶ 213} Staff believes that Condition 24 of the Initial Stipulation balances the aforementioned interests because it requires the Applicant to develop a transportation and traffic management plan. Therein, Alamo is required to coordinate with the county engineer, ODOT, local law enforcement, and health and safety officials and others regarding any temporary road closures, lane closures, road access restrictions and traffic controls necessary for construction and operation of the proposed facility. (Staff Reply Br. at 24.)

{¶ 214} Alamo disagrees that its use of public roads for construction will be problematic for farmers. Instead, Alamo relies on the requirement to implement a traffic management plan as set forth in Conditions 24 and 25 of the Amended Stipulation (Joint Ex.

2 at 11). This plan would determine the routes that can be used by the contractor that is building the Project. During spring and harvest time, a flagger would be used to allow for the orderly flow of traffic (Alamo Reply Br. at 46 citing Tr. I at 224, 225). Alamo notes that CCPC witness Clippinger acknowledges that agricultural traffic does not have priority over traffic on a road and that she has not previously had an issue with a blockage on the road because of equipment going against each other (Alamo Reply Br. at 47 citing Tr. III at 475, 477).

{¶ 215} Staff believes that although traffic will be affected, it will occur almost exclusively during the construction phase. According to Staff, although the impact may be inconvenient, there is no evidence that it will be any greater than the traffic caused by current farming operations. Staff highlights that Condition 24 requires the Applicant to develop a transportation and traffic management plan in conjunction with the county engineer, ODOT, local law enforcement, health and safety officials and others, regarding any temporary road closures, lane closures, road access restrictions, and traffic controls necessary for construction and operation of the of the proposed facility. (Staff Initial Br. at 10; Staff Reply Br. at 23.) Staff also opines that while Alamo must be mindful of the impact that its activities will have on the local roads, those limitations do not necessarily require that Alamo be prohibited from using the roads during planting and harvest seasons. (Staff Reply Br. at 22.)

{¶ 216} Based on a noise report produced by its noise consultant, Alamo submits that construction noise associated with the Project will have minimal impact. Alamo points out that while some unavoidable disturbance is possible when mounting posts are driven in or when trenching and road building, these activities will be short in duration and will progress from place to place avoiding prolonged exposure at any specific location. (App. Ex. 1 at 57; App. Ex. 2 at Noise Report at 125; Tr. I at 97.) Alamo also highlights that existing noise generating equipment is already utilized near the Project area (Tr. III at 481, 482). Alamo will mitigate construction noise by employing best management practices, including limiting the hours of construction, maintaining vehicles in proper working condition, and

working with the local community to advise residents of those periods when sustained construction activity is expected to take place in relatively close proximity to their homes. (App. Ex. 1 at 57, 59.) Alamo references language in the Amended Stipulation that delineates the permitted hours for specific types of construction activities (Joint Ex. 2 at 8, Condition 13).

{¶ 217} In regard to construction noise, CCPC points out that according to the application, numerous piles will be driven into the ground to serve as posts for the solar panels and that the facility will include between 186,400 and 279,600 solar panels and each solar panel has its own post (App. Ex. 1 at 8, 57; App. Ex. 1 at Ex. I; CCPC Initial Br. at 33, 34). CCPC asserts that the pile driver and/or drill rig tuck used to drive the posts into the ground will produce a noise that is 84 dBA at a distance of 50 feet, which is conservatively interpreted as the distance to the Project's boundary. CCPC notes that the noise at this level approximates that of a bulldozer (CCPC Initial Br. at 34 citing App. Ex. 1 at 57; Tr. II at 253-255). While Alamo represents that that the pile driving noise will be short-lived for a week or two in any particular location, CCPC avers that Alamo has provided no information to identify how long this activity will take with respect to a 300-acre solar field that adjoins properties owned by at least six-non-participating families. Based on the required number of posts, CCPC asserts that simply adopting the provisions of Condition 13 of the Initial Stipulation prohibiting the pounding of posts at dusk will not provide the facility's neighbors with adequate relief from the noise. Instead, consistent with Ohio Adm.Code 4906-4-08(A)(3)(d), CCPC believes that Alamo should be required to devise a more effective mitigation measures to address the resulting noise. (Tr. I at 96; CCPC Initial Br. at 34, 35; CCPC Reply Br. at 13-14.)

{¶ 218} In response to CCPC's concerns regarding the duration of construction, Alamo highlights its prior representations that construction or pile driving in any particular area will be brief and that driving a post into the ground will take a matter of minutes (July 17, 2019 Tr. at 97). Alamo also clarifies that although there will be between 186,400 and 379,600 solar panels installed, throughout the entirety of the Project area approximately

40,731 posts will be used (Alamo Reply Br. at 28 citing App. Ex. 1 at Ex. G at 7-4; Tr. I at 42, 43; CCPC Reply Br. at 17).

{¶ 219} Alamo responds that it is already committed to adequate mitigation measures that will result in the Project having minimal impact on noise during construction. Specifically, Alamo commits to utilizing best management practices including limiting the hours of construction, maintaining vehicles in proper working condition, and working with the local community to advise residents of those periods when sustained construction activity is expected to take place in relatively close proximity to their homes. (Alamo Reply Br. at 16 citing App. Ex. 1 at 59.) Alamo also points out that Condition 13 in the Initial Stipulation restricts the hours of construction activities in a manner similar to the Board decisions in *In re Hecate Energy Highland LLC*, Case No. 18-1334-EL-BGN, Opinion, Order and Certificate, May 16, 2019, at 18; Case No. 17-1189-EL-BGN, *In re Harrison Power LLC*, Opinion, Order and Certificate, June 21, 2018 at 33 (Alamo Reply Br. at 27).

{¶ 220} Staff avers that construction noise cannot be avoided. Staff also notes that construction noise is often louder, more intermittent, and shorter in duration than operational noise. According to Staff, the signatory parties, pursuant to Condition 13 of the Initial Stipulation, have recommended reasonable restrictions as to when construction activities can occur. Specifically, Staff notes that the Stipulation limits construction activities generally to daylight hours, with louder activities such as pile driving and blasting even further restricted. (Staff Reply Br. at 10).

{¶ 221} Relative to operational noise, Alamo states that the only operational noise from the Project will be the substation and associated transformer (App. Ex. 1 at 58). According to the noise modeling study performed by Alamo's noise consultant, Alamo witness David Hessler, at the nearest residence to the substation location, modeled noise from the substation would be below the existing environmental sound level. Therefore, Alamo's consultant opines that there will be no significant change in what is audible at the houses and that the operational sound emissions from the Project should not have any

negative impact on the surrounding community. (Alamo. Ex. 10 at 1, 3, 5.) With respect to the substation, Alamo witness Hessler concluded that any noise from the new transformer will be insignificant at the nearest non-participating residences and beyond both in the daytime and nighttime (Alamo. Ex. 2 at Noise Report at 4, 5; Tr. II at 238, 239).

{¶ 222} Relative to noise from inverters located at the Project, Alamo submits that this sound is only perceptible at short distances and, therefore, it is highly unlikely to be problematic at any residences, which would generally be hundreds of feet from any given inverter (App. Ex. 10 at 4). Additionally, Alamo's witness testified that sound from inverters is barely audible and disappears as you walk away (Tr. II at 249, 250). Alamo also points out that the inverters evaluated in the 2012 Massachusetts Study was likely different than current technology (Tr. II at 259; Alamo Initial Br. at 29). Further, Alamo points out that if there is a concern regarding sound from an inverter, remedies such as cabinet damping and ventilation silencers would be available to retroactively mitigate the noise from these devices and resolve the issue (App. Ex. 2 at Noise Report at 13). Finally, Alamo highlights its commitment to site inverters within the solar fields to ensure that they do not cause material impacts to any sensitive off-site receptor (App. Ex. 1 at 58.)

{¶ 223} Regarding the operational noise, CCPC submits that the background sound level in the daytime is very low and, therefore, does not have the ability to cover the operational sound (CCPC Initial Br. at 11; Tr. II at 242, 252).

{¶ 224} CCPC points out that although at the initial hearing Alamo used the L90 metric to measure ambient background sound, at the supplemental hearing Alamo witness utilized the Leq metric to measure average sound levels. CCPC objects to the use of average measurements due to the concern that it will end up with skewed results for particular sections of the project area. (CCPC Initial Br. at 23, 24.) CCPC contends that Alamo's application is missing operational noise information required by Ohio Adm.Code 4906-4-08(A)(3) relative to the inverters to be utilized by the Applicant for the purpose of converting solar panel energy from direct current to alternating current and step up the voltage so that

it can be it can be transmitted in a larger collection line. According to CCPC, during this process, the inverters generate a humming noise and sometimes a high frequency noise (Tr. I at 99; App. Ex. 2 at 12).

{¶ 225} Although Ohio Adm.Code 4906-4-08(A)(3) requires that the application describe the operational noise levels expected at the nearest property boundary and at each habitat, CCPC contends that the application is missing important information required for inverters that Alamo plans to install in the solar fields. CCPC points out that although the application states that the Facility comes close to operating silently and that the operating noise generated is inaudible at a distance of 50 to 150 feet from the source, Alamo modified this representation to reflect that the inverter sound fades to insignificance relative to normal background levels at a distance of 150 feet. (CCPC Initial Br. at 24, 25 citing App. Ex. 1 at 58; App. Ex. 2 at 2, 15). According to CCPC, while the Applicant estimates that there will be a distance of 50 feet between the solar equipment and the project site boundary and setbacks from the solar equipment to non-participating property lines and homes of 25 feet and 150 feet respectively, Alamo has presented no noise data showing the amount of inverter noise that will travel 50 feet or 150 feet (CCPC Initial Br. at 26, 27 citing Tr. II 259-263).

{¶ 226} CCPC questions the experience of Alamo sound witness Hessler's knowledge in measuring sound from a solar inverter and contends that Mr. Hessler has measured sound from a solar inverter only once in his career (CCPC Reply Br. at 4, 11 citing July 18, 2019 Tr. 249, 250). CCPC argues that rather than actually knowing the sound level of a solar inverter at 150 feet, Alamo's sound witness Hessler cited to a 2012 study performed for the Massachusetts Clean Energy Center (Massachusetts Study) which Alamo believes stands for the proposition that inverter noise fades to insignificance relative to normal background levels at a distance of 150 feet (CCPC Reply Br. at 5 citing to App. Ex. 2 at 13; Tr. II at 251). CCPC submits that the Massachusetts Study did not identify the inverter's sound volumes at 150 feet away but, instead, found that the inverter sound at three study sites did not exceed the background sound levels at that distance which ranged from 41.6 to

50 dBA. (CCPC Reply Br. at 5 citing to Tr. I at 256, 257, 259-263). These measurements were considerably higher than the 34 dBA average L90 background sound level in the Alamo project area (CCPC Reply Br. at 5 citing to Tr. II at 256, 257).

{¶ 227} CCPC highlights that at the supplemental hearing, Alamo acknowledged that the central inverters emit noise at a level of 38 dBA at a distance of 500 feet (App. Ex. 15 at 4). CCPC believes that based on the contour map of noise levels in witness Hessler's testimony, the noise from the central inverters will be as high as 40 dBA at the property lines of non-participating neighbors (CCPC Initial Br. at 28 citing Tr. IV at 636; App. Ex. 15, Ex. DMH-S1). Although no calculation was performed for the setback distance of 500 feet, CCPC concludes that the inverter noise level at 50 feet is higher than at 500 feet. Based on an ambient L90 ambient noise level of 34 dBA, CCPC concludes that the central inverters will increase the community's average noise level by 4 to 38 dBA at 500 feet, and raise the sound level to 40 dBA on neighboring land, which is closer than 500 feet. (CCPC Initial Br. at 28, 29). Additionally, CCPC notes that the Project may use string inverters, which convert electricity on a single string of solar panels. According to CCPC, neither the application nor the amended Stipulation identify noise levels for string inverters. (Tr. IV at 592.) Consistent with Ohio Adm.Code 4906-4-08(A)(3), CCPC believes that Alamo should have performed modeling at locations where noise from string converters will be combined with noise from central inverters. CCPC believes that no modeling was performed because its witness was unaware that string inverters might be utilized (Tr. IV at 624). While Alamo believes that string inverters are quiet, CCPC insists that the applicable modeling should have been performed (CCPC Initial Br. at 30).

{¶ 228} Although the Amended Stipulation institutes a 500-foot setback between central inverters and the homes of non-participating neighbors and the supplemental testimony of Alamo witness Hessler includes a map indicating the locations of non-participating homes in relation to this new setback, CCPC submits that these measures do not comply with the requirement of Ohio Adm.Code 4906-4-04(B)(1) to include the setback in a constraint map as part of the application that shows the locations of the non-

participating homes in relation to the Facility. According to CCPC, due to the absence of the map, there is no commitment to adhere to it. Similar to its arguments discussed earlier in this Order, CCPC claims this information should have been included in the application so that it could have been subject to the adjudicatory process, including public comment and discovery, and made enforceable as a condition of the certificate.

{¶ 229} According to CCPC, Ohio Adm.Code 4906-4-08(A)(3)(d) requires that the application must describe the equipment and procedures to mitigate the effects of noise emissions from the proposed facility during construction and operation. CCPC believes that Alamo's application fails to identify the mitigation measures that will be used to address noise problems from inverters. Additionally, CCPC submits that mitigation is a poor substitute for Alamo's failure to employ proper siting to prevent the noise problem altogether. (CCPC Initial Br. at 32, 33.)

{¶ 230} Alamo responds that CCPC has attempted to make inverter noise an issue in this proceeding despite not having presented any testimony on operational noise. Specific to CCPC's claim that the Massachusetts Study provides no information regarding inverter noise, Alamo points out that the Massachusetts Study does present noise measurements at 150 feet distance from an inverter and that these measurements would include both background noise and any inverter noise or other source that is measurable at the 150 feet distance. Alamo notes that in the Massachusetts Study one of the three sites studies analyzed sound at 150 feet perpendicular from an inverter measured 41 dBA. (Alamo Reply Br. at 25 citing Tr. II at 251, 262.) Relying on the Massachusetts Study, Alamo states that noise from inverters approached background levels at 150 feet from the inverter pad. Analogizing the Massachusetts Study results to this case, Alamo asserts that the daytime noise from inverters will be well below the Board's previous accepted noise standards for exterior residences as set forth in *In re Champaign Wind*, Case No. 12-160-EL-BGN, Opinion and Order and Certificate, May 28, 2013 at 88 (allowing a sound level of 5 dBA over a nighttime Leq of 39 dBA); *In re Blue Creek*, Case No. 11-3644-EL-BGA, Order on Certificate Amendment, November 28, 2011 at 5 (allowing a sound level of 5 dBA over a

nighttime Leq of 43.6 dBA) (Alamo Reply Br. at , Tr. II 256; App. Ex. 2 at Noise Report at 13). Alamo also points to the Noise Report which addressed information about low level inverter noise (Alamo Reply Br. at 26 citing Alamo. Ex. 1 at Ex. E, Noise Report at 13). Additionally, Alamo references its sound witness' testimony regarding low level inverter noise (Alamo Reply Br. at 25 citing Tr. II at 249, 250).

{¶ 231} Staff submits that the operational noise will be relatively minor and will occur only during daytime hours. Staff relies upon the Applicant's sound consultant, who indicated that sound from the substation would be inaudible at homes near the Project area. (Staff Ex. 1 at 20; Tr. II at 265.). Staff notes Alamo's sound expert witness testified that there would be no significant change in what is audible at the adjoining residences (Staff Reply Br. at 6). Staff believes that CCPC appears to be concerned about noise created by inverters in the event that the setback between the solar equipment and neighboring homes is only 100 feet (Staff Reply Br. at 10 citing CCPC Initial Br. at 13). Staff also identifies that there is disagreement regarding the reliance of Alamo witness Hessler on the Massachusetts Study which focused on sound levels at a distance of 150 feet from the inverters (Staff Reply Br. at 6, 7). According to Staff, this issue is no longer a concern because Alamo witness Herling testified that no inverter will be located within 150 feet of a residence (Tr. I at 103). Staff also notes that, based on input from the public, Alamo supplemented its application to move the substation farther away from neighboring residences. Specifically, Staff states that the distance between the substation and the residence nearest to the point of interconnection was increased from approximately 1,000 feet to approximately 1,700 feet, which Staff contends is far greater than any distance from which audible inverter generated noise has been measured. Therefore, Staff opines that CCPC's concerns are unfounded. (Staff Reply Br. at 7)

{¶ 232} With respect to any electromagnetic field (EMF) generated by the Project, Alamo asserts that it will dissipate rapidly within short distances and will not impact signals or electronic devices (App. Ex. 1 at 66.) According to Alamo, any electric field generated by the inverters or substation at the Project will be shielded by other aspects of the Project (July

17, 2019 Tr. at 100, 128). Any magnetic field generated will dissipate rapidly, and at 150 feet will be at background levels (Tr. I at 128). Therefore, Alamo contends that EMF from the Project will have no impact on the area surrounding the project area (Alamo Initial Br. at 31, 32).

{¶ 233} Upon a review of the arguments raised, the Board also finds that the probable impact of the project on public services, facilities, and safety has been evaluated and determined. In doing so, we note that Condition 24 and 25 properly address many issues argued by CCPC. We disagree with CCPC's argument that the Application does not describe the measures that will be taken to improve inadequate roads and repair roads and bridged to at least the condition present prior to the Project.

{¶ 234} We observe that Alamo is taking necessary precautions to minimize damage to local roads in the vicinity of the Project area and ensuring repairs are made in a timely manner. For example, Alamo already performed a preliminary route evaluation to determine if the use of certain roads should be minimized due to their condition (Company Ex. 1 at 36). Additionally, Alamo entered into a RUMA with local authorities which requires Alamo to work with the Preble County Engineer to repair all portions of the impacted roads that may be damaged by Alamo's activity, at Alamo's expense, to a level consistent with the condition of such roads at the commencement of Alamo's use. Furthermore, the RUMA also requires Alamo to deliver a bond in an acceptable form prior to beginning any on-site construction work on the project. (Company Ex. 19 at Attachment 2.)

{¶ 235} The Board notes that Alamo intends to implement a traffic management plan as required by Conditions 24 and 25. As part of Condition 24 of the Initial Stipulation, Alamo commits to working with the Preble County Engineer, the trustees for the impacted townships, and ODOT to ensure that any impacts to road surface conditions and traffic flow are accounted for and rectified. We agree with CCPC witness Clippinger's testimony that acknowledged agricultural traffic codes do not have priority over traffic on a road (Tr. III at 475, 477). To minimize any potential road use impacts to farmers, Alamo relies on its traffic

management plan which would determine the routes that can be used by the contractor that is building the Project. During spring and harvest time, a flagger would be used to allow for the orderly flow of traffic (Tr. I at 224, 225).

{¶ 236} The Board understands that construction noise cannot be avoided, especially so when mounting posts are driven into the ground or when trenching and road building take place. We are, however, satisfied with Alamo's commitments, as delineated in Condition 13 of the Initial Stipulation, to mitigate construction noise by employing best management practices, including limiting the hours of construction, maintaining vehicles in proper working condition, and working with the local community to advise residents of those periods when sustained construction activity is expected to take place in relatively close proximity to their homes. (App. Ex. 1 at 57, 59).

{¶ 237} With respect to operational noise, Alamo conducted noise modeling studies at the nearest residence to the substation location. The Board found that Alamo witness David Hessler's expert testimony was persuasive that there will be no significant change in what is audible at the houses and that the operational sound emissions from the Project should not have any negative impact in the surrounding community, day or night. With respect to the noise from inverters located at the Project, Alamo witness David Hessler testified that sound from inverters is barely audible and disappears as you walk away (Tr. II at 249, 250). Alamo commits that if there is a concern regarding sound from an inverter, remedies such as cabinet damping and ventilation silencers would be available to retroactively mitigate the noise from these devices and resolve the issue. CCPC appears to be concerned about noise created by inverters in the event that the setback between the solar equipment and neighboring homes is only 100 feet. However, Alamo witness Herling testified that no inverter will be located within 150 feet of a residence (Tr. I at 103). In response to input from the public, we also recognize that Alamo supplemented its application to move the substation further away from neighboring residence; specifically, the distance from the substation and the residence nearest to the point of interconnection was increased by 700 feet (Company Ex. 2).

{¶ 238} Finally, the Board relies on the undisputed representation that any EMF generated by the Project will dissipate rapidly within short distances and will not impact signals or electronic devices (App. Ex. 1 at 66).

C. Minimum Adverse Impact

{¶ 239} R.C. 4906.10(A)(3) requires that the Facility represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations.

{¶ 240} Signatory Parties represent that adequate data on the proposed project has been provided to determine that the facilities described in the application and supplemental filings and subject to the conditions in the Amended Stipulation represent the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by R.C. 4906.10(A)(3) (Joint Ex. 2 at 18).

{¶ 241} In response to CCPC's contention that the setbacks in Condition 3 should have been included in the initial application, Alamo contends that the Board is not constrained by the application and can, consistent with R.C. 4906.10(A), approve such terms, conditions or modifications that it considers appropriate (Alamo Reply Br. at 47).

{¶ 242} Alamo also focuses on the revised setback set forth in Condition 3 of the Amended Stipulation. Alamo submits that the agreed upon setbacks are more than adequate to allow for robust visual screening for non-participating adjacent property owners (Joint Ex. 2 at 6, App. Ex. 16 at 1, Tr. IV at 653). Specifically, Alamo explains that a minimum setback of 150 feet will now be required between the facility fence and any residence on a non-participating parcel. Alamo avers that due to this expanded setback, the perceived scale of the Project will be reduced. According to Alamo, the larger setback provides more room for vegetation to grow and become an established part of the existing landscape (App. Ex. 16 at 2.) Additional aesthetic benefits resulting from Condition 3 relate

to the final stage of landscape design, and the choice and size of the install material (App. Ex. 16 at 3).

{¶ 243} CCPC believes that the application does not represent the minimum environmental impact as required by R.C. 4906.10(A)(3) (CCPC Initial Br. at 71). According to CCPC, it is inexcusable to build an industrial facility along the perimeters of other people's land in an agriculturally zoned area. CCPC contends that the setbacks proposed in this Project do not represent the minimum adverse environmental impact to serve the public interest. Specifically, CCPC contends that Condition 3 of the Amended Stipulation provides for egregiously short setbacks of 25 feet between solar fences and neighbors' yards and 150 feet between solar equipment. (CCPC Initial Br. 68-70.) Based on these setbacks, CCPC asserts that Alamo's VRA simulations do not comply with the requirements of Ohio Adm.Code 4906-4-08(D)(4)(e) in order to properly reflect the views that non-participating residents will experience, especially from 25 and 150 feet away. (CCPC Initial Br. at 12, 13). CCPC states that this concern is particularly relevant for its 17 members who are located adjacent to the proposed project area, 12 of whom would be bordered on two or three sides by Alamo's solar panels (CCPC Ex. 2 at 4; CCPC Ex. 2 at Ex. A; Tr. III at 493).

{¶ 244} CCPC also raises a concern over what will happen to the vegetation commitment after five years. Additionally, CCPC submits that Alamo should have larger setbacks in light of the fact that it has approximately 1,002.5 acres available for Facility construction/operations and needs up to 919 acres (App. Ex. 1 at 6). Further, CCPC submits that the proposed setbacks have not been lawfully adjudicated since they have not been included on a constraint map in the application as required by Ohio Adm.Code 4906-04(B)(1) and were not subject to discovery (CCPC Initial Br. at 70).

{¶ 245} The Board is not persuaded as to CCPC's philosophy is that it is inexcusable to build an industrial facility along the perimeters of other people's land in an agriculturally zoned area. CCPC argues that the setbacks proposed in this project do not represent the minimum adverse environmental impact to serve the public interest. Specifically, CCPC

takes issue with Condition 3 of the Amended Stipulation which provides for setbacks of 25 feet between solar fences and neighbors' yards and 150 feet between solar equipment. Staff correctly points out that whilst the Board's enabling statutes contain provisions to setbacks, all of those provisions pertain solely to wind-powered generation facilities, not to solar generation. R.C. 4906.20(B). More specifically, R.C. 4906.201 applies these requirements to wind turbines and associated facilities designed for or capable of operation at an aggregate capacity of fifty megawatts or more. Notwithstanding, Ohio Adm.Code 4906-4-08(B)(1) requires an applicant to provide a constraint map showing setbacks but establishes no minimum setback. We differentiate wind-powered generation facilities from solar-powered generation facilities. For example, solar farms do not present the impacts of shadow flicker, ice throw, or blade shear, which can exist in wind-powered generation facilities. The issue of setbacks has legitimately been raised in Board cases involving wind turbines where a risk of incidents such as blade shear and ice throw exists. The Ohio Supreme Court, in considering such cases, has stated that "[w]hether the setbacks were sufficient to protect the public . . . [is] an evidentiary issue, and we have 'consistently refused to substitute [our] judgment for that of the commission on evidentiary matters.'" *In re Application of Champaign Wind, L.L.C.*, 146 Ohio St.3d 489, 2016-Ohio-1513 at ¶30. We are persuaded by Company witness Herling's testimony on cross examination: "[t]he [county] engineer was comfortable that those distances would allow for adequate room to avoid drifting of snow or inadequate room to store snow in the winter, those are some of the primary concerns, and to allow for sight lines at any intersections." Tr. I at 133-4. The evidence of record in this application indicates that the setbacks required by the application and Amended Stipulation are sufficient and reasonable.

{¶ 246} Based on the above analysis, our discussion relative to R.C. 4906.10(A)(2), and the Initial and Amended Stipulation, the Board therefore determines that the minimum adverse environmental impact has been satisfied and that the proposed facility has been sited such that it represents the minimum adverse environmental impact on the cultural and socioeconomic resources and on public services, facilities, and safety considering the state

of available technology and the nature and economics of the various alternatives, provided that the certificate issued includes Staff's recommendations set forth in the Staff Report.

{¶ 247} In reaching this decision, the Board references its determination set forth above in its discussion of R.C. 4906.10(A)(2) regarding the allegation concerning visual blight and setbacks and the fact that the purpose of R.C. 4906.10(A)(3) is not to eliminate all adverse consequences of the proposed project in order that no individuals are impacted by the Project but, instead, to establish that the proposed facility represents the minimum adverse environmental impact considering the state of available technology and the nature and economics of the various alternatives, along with other pertinent considerations.

D. Consistent with Regional Plans

{¶ 248} R.C. 4906.10(A)(4) provides that, in the case of an electric transmission line or generating facility, the Board must ensure that such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that such facility will serve the interests of electric system economy and reliability.

{¶ 249} The unrefuted evidence provided by Staff and Alamo regarding the various PJM system studies persuades us to also find this criterion has been satisfied. Thus, the record establishes that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state of Ohio and interconnected utility systems, and will serve the interest of electric system economy and reliability, in accordance with R.C. 4906.10(A)(4).

E. Air, Water, Solid Waste, and Aviation

{¶ 250} Pursuant to R.C. 4906.10(A)(5), the facility must comply with Ohio law regarding air and water pollution control, withdrawal of waters of the state, solid and Hazardous wastes, and air navigation.

1. AIR

{¶ 251} Alamo represents that small amounts of fugitive dust will be generated during construction, and therefore, the fugitive dust rules set forth in R.C. Chapter 3704, may apply. Alamo contends that it will use best management practices to minimize emissions, including: (1) retention of licensed construction firms that are knowledgeable about the importance of minimizing dust creation during construction activities; (2) maintenance of construction vehicles in proper working condition; and (3) use of water and/or dust suppressant on unpaved roads as needed to reduce dust creation. Both Alamo and Staff represent that air quality permits are not required for construction and operation of the proposed facility, and that because the Project will generate electricity without releasing pollutants into the atmosphere, air-related regulations are not triggered during operation. Additionally, Staff concluded that both the construction and operation of the Project, as described and as subject to the conditions set forth by Staff, will be in compliance with the air emission regulations in Chapter 3704, Revised Code, and the rules and laws adopted thereunder, (App. Ex. 1 at 42, 43; Staff Ex. 1 at 28.)

{¶ 252} Based on the record in this case, the Board finds that both the construction and operation of the Project, subject to the conditions set forth by the Amended Stipulation, will be in compliance with the air emission regulations in Chapter 3704, Revised Code, and the rules and laws adopted thereunder, (App. Ex. 1 at 42, 43; Staff Ex. 1 at 28.)

2. WATER

{¶ 253} Alamo and Staff aver that construction and operation of the Project will require virtually no water, and that, although it will cover a relatively large area, construction will involve only limited activities requiring the management of stormwater related pollutants. Because the Project has near-zero water consumption requirements, Alamo avers that no permits under R.C. 1501.33 and 1501.34 will be required. Alamo represents that the Project will obtain Ohio National Pollutant Discharge Elimination System permits for general stormwater and construction discharge, including a SWPPP for

erosion control and the management of stormwater. (App. Ex. 1 at 45-48; Staff Ex. 1 at 27.) Furthermore, Alamo witness Rupprecht testified that there will be no impacts resulting from the Project on the 4.71 acres of wetlands located within the project area. Mr. Rupprecht testified that 30 non-wetland waterbodies are located in the project area, and of those 30 non-wetland waterbodies, 95 linear feet of streams or ditches will have a minimal impact. (App. Ex. 11 at 4, 5; App. Ex. 1 at Ex. G, Table 6-4; App. Ex. 1 at Ex. G, Appendix E, Table E-2.) Staff represents that the Applicant will obtain the necessary permits for construction and operations sufficient to comply with the requirements of R.C. Chapter 6111 (Staff Ex. 1 at 27).

{¶ 254} Relative to the issue of water contamination, Alamo explains that there is no risk of either soil or water contamination from the panels to be used for the Project. Specifically, Alamo represents that the panels are composed primarily of readily recyclable materials such as glass, aluminum, and copper. Furthermore, Alamo states that, while there are some chemicals used in the panel manufacturing process, suppliers of solar panels that will be used for the Project have demonstrated that their products pass U.S. EPA's "Toxicity Characteristic Leaching Procedure," qualifying them as routine "solid" waste. (App. Ex. 1 at 39; App. Ex. 7 at 17; Tr. I at 129, 130.) Furthermore, Alamo witness Herling testified that if a solar panel is damaged, there is nothing liquid or gaseous that can leak out of it. Additionally, Mr. Herling testified that, if a panel at the Project is damaged, Alamo will quickly become aware of the issue due to the constant monitoring provided by a supervisory control and data acquisition system that will be used at the Project. Lastly, the panels will be periodically inspected by on-site staff. (Tr. I at 46, 47, 54, 55.)

{¶ 255} Alamo commits to mitigating any potential effect that the Project may have on stormwater. Specifically, Alamo references Condition 29 of the Amended Stipulation which provides that if an acre or more of ground is disturbed, Alamo will obtain a Construction General Permit from the Ohio EPA and determine if whether post-construction stormwater best practices are required. The condition also obligates the Applicant to submit documentation of its supporting calculations to the Preble County

Office of Land Use Management and to Preble Soil and Water. Condition 29 further requires the Applicant to provide confirmation that it has incorporated guidance from Ohio EPA's "Guidance on Post-Construction Storm Water Controls" to the two local agencies. Alamo asserts that a similar condition was adopted by the Board in the Nestlewood solar project (Joint Ex. 2 at 12; App. Ex. 18 at 5; App. Ex. 14 at 11). Alamo also contends that the vegetation beneath the panels will be more than adequate for the management of stormwater (Tr. IV at 670).

{¶ 256} With respect to water, CCPC argues that the application fails to evaluate the impact to groundwater from contaminants that might be released from solar panels by natural disasters or human destruction, as required by Ohio Adm.Code 4906-4-08(A)(4). Specifically, CCPC witness Clippinger testified that CCPC is concerned that the Stipulation does not adequately protect soil and water from contamination that could occur if severe weather arises, a fire starts in the solar field, lightning strikes the field, or thieves break or damage the solar panels. According to Ms. Clippinger, all of these events can release contaminants onto the ground and consequently into the groundwater and into the surface water run-off. CCPC requests that the company managing the solar facility fund jointly select with CCPC an independent, third-party company to analyze the entire chemical composition of the well water on farms adjacent to the solar farm and in Gasper and Washington Townships. CCPC believes that testing should be conducted (a) prior to the start of any construction, (b) annually during every year of facility operation, (c) annually during decommissioning, site clearance, and return of the land to productive farm use, and (d) at the end of all activity on the site. Further, CCPC believes that the Stipulation should require the facility to immediately remediate any abnormalities in the chemical composition of the water and to supply replacement water to all impacted individuals so long as the water quality is impacted (CCPC Ex. 2 at 11.)

{¶ 257} CCPC argues that Alamo should be required to provide an accurate and complete listing of all water wells and their locations in the vicinity of the project area, and

that failing to include witness Clippinger's water well as a supplement in the application constitutes a violation of Ohio Adm.Code 4906-4-08(A)(4) (CCPC Ex. 2 at 11).

{¶ 258} In response to CCPC's argument that a variety of events can release contaminants onto the ground and consequently into the groundwater and into the surface water run-off, Alamo states that there is no evidence in the record that solar panels in general, or with respect to any aspect of their installation, would include any material that could contaminate soil or water (Alamo Reply Br. at 36). Alamo notes that the panels are composed primarily of readily recyclable materials such as glass, aluminum, and copper and that the suppliers of the solar panels to be used have demonstrated that their products pass U.S. EPA's "Toxicity Characteristic Leaching Procedure qualifying them as a routine solid waste (App. Ex. 7 at 17; Tr. I at 129, 130). With respect to Ms. Clippinger's water well, Alamo responds that she did not identify where her water well is or how it could be affected by the Project. Further, Alamo asserts that the record establishes that the Project will have no impact on groundwater (Alamo Reply Br. at 37).

{¶ 259} Staff, in agreement with Alamo, alleges that, aside from the fact that CCPC witness Clippinger is not a qualified expert in solar panels, chemistry, or environmental impacts, there is no evidence that such chemicals would have any adverse impact whatsoever on soil and water. Lastly, Staff notes that the Preble County Soil and Water Conservation District, an intervening party and expert in relative water quality and soil protection is a signatory party to the Amended Stipulation. (Staff Reply Br. at 13, 14.)

{¶ 260} Based on a review of the record, the Board finds that the Project will comply with Ohio law regarding water pollution control. As noted by Staff, Alamo will mitigate potential water quality impacts associated with aquatic discharges by the NPDES construction stormwater general permits from the Ohio EPA with submittal of a stormwater pollution prevention plan to direct the implementation of construction-related stormwater best management practices. It will also pursue the U.S. Army Corps of Engineers Section 404 or nationwide permit for stream crossing and wetland impact. With these measures,

construction and operation of this facility will comply with the requirements of R.C. Chapter 6111, and the rules and laws adopted under that chapter. (Staff Ex. 1 at 27.)

{¶ 261} While CCPC witness Clippinger expressed a general concern regarding the potential adverse impact of solar panels on her well water, no expert testimony presented to regarding the specifics of this concern. Additionally, the Board agrees with Staff and recognizes that the Preble County Soil and Water Conservation District, an expert in relative water quality and soil protection is a signatory party to the Amended Stipulation.

3. SOLID WASTE

{¶ 262} Alamo states that the project area is relatively free of debris and solid waste presently and that during construction some solid waste will be generated, but it will be minimal. This waste may include package-related materials, such as crates, nails, boxes, containers, and packaging materials, damaged or otherwise unusable parts or materials, and occasional litter and miscellaneous debris generated by workers. During operation, Alamo maintains that only exceedingly small amounts of waste will be generated, which will be of the same general nature as the waste generated during construction Staff believes that Alamo's solid waste disposal plans will comply with the solid waste disposal requirements of R.C. Chapter 3734 (Staff Ex. 1 at 27, 28).

{¶ 263} Furthermore, Alamo represents that no licenses or permits will be required for waste generation, storage, treatment, transportation, and disposal. (App.Ex. 1 at 48-51.) Alamo opines that solid waste that cannot be reused or recycled will be disposed of in a municipal landfill (Alamo Initial Br. at 39 citing App. Ex. 1 at 49.)

{¶ 264} CCPC argues that the application contains no estimate of the volume of solid waste generated during construction, or its disposal destination, as required by Ohio Adm.Code 4906-4-07(D) (Tr. I at 162). CCPC notes that the project construction will generate solid waste as defined by R.C. 3734.01(E) and as contemplated in Ohio Adm.Code 490-4-07(D)(2)(a), including but not limited to crates, nails, boxes, containers, and packaging

materials. CCPC also contends that the application does not estimate the amount of construction and demolition waste that the Project will generate, as defined in R.C. 3734.01(E) and as contemplated in Ohio Adm.Code 4906-4-07(D)(2)(a)(Tr. I at 162). Additionally, CCPC contends that, although the application states the types of solid waste that will be dumped at a municipal landfill, the application does not explain what will be done with the demolition waste from the old buildings (Tr. I at 162; App. Ex. 1 at 78).

{¶ 265} In response to CCPC's contention that the application fails to estimate the amount of debris and solid waste generated by the Project, Alamo argues that it identified the kinds of waste that would be generated and how each type would be appropriately disposed (Alamo Reply Br. at 44).

{¶ 266} With regard to CCPC's concern about demolition waste, Alamo states that the Board's rule that CCPC cites refers to Ohio's solid waste regulations, and that demolition debris, like that resulting from the demolition of a house, is not regulated as solid waste under R.C. Chapter 3734, nor under any solid waste regulations. Rather, according to Alamo, demolition debris is regulated under R.C. Chapter 3714. Alamo represents that it is not required to show compliance with R.C. Chapter 3714 for the Board to issue a certificate; but, if it was required to provide the Board sufficient evidence to show compliance with R.C. Chapter 3714, Alamo submits that based on Mr. Herling's testimony, any waste from the demolition of a building would be "disposed of in a typical fashion that you dispose of that kind of waste and debris * * *" (Tr. I at 162).

{¶ 267} Staff represents that, although CCPC raised concerns about hazardous materials associated with the solar panels, CCPC offered no evidence that the panels contain any such materials (Staff Reply Br. at 21). Furthermore, Staff avers that Condition 8 of the Initial Stipulation requires Alamo to obtain and comply with all permits or authorizations required by federal or state laws and regulations, including those of the Ohio EPA relating to construction and demolition debris (Staff Reply Br. at 21).

{¶ 268} Based in its review of the record, the Board finds that Alamo has properly demonstrated that the Project will comply with Ohio law regarding solid and hazardous waste. Specifically, as noted by Staff, the Applicant's solid waste disposal plans will comply with the solid waste disposal requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 28.)

4. AVIATION

{¶ 269} Alamo explains that the highest point of the Project will be a single lightning mast located at the Project substation, which will be approximately 70 feet in height. Additionally, Alamo states that the solar panels themselves will be no more than 15 feet above ground level. (App. Ex. 1 at 83.) Staff represents that there are no public-use airports, helicopter pads, or landing strips within five miles of the Project, and no aeronautical study regarding glare was needed because the project area is approximately 10 miles away from the closest public-use airport, Richmond Indiana Municipal Airport. Furthermore, Staff states that the Ohio DOT Office of Aviation identified no impacts on local airports. (Staff Ex. 1 at 28.)

{¶ 270} Based in its review of the record, the Board finds that Alamo has properly demonstrated that the Project will comply with Ohio law regarding air navigation. Furthermore, the Board finds that the proposed facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate includes the conditions specified in the Amended Stipulation.

F. *Public Interest, Convenience, and Necessity*

{¶ 271} Pursuant TO R.C. 4906.10(A)(6), the Board must determine that the facility will serve the public interest, convenience, and necessity.

{¶ 272} In addition to providing the availability of copies of its application consistent with the Board's rules, Alamo hosted a public informational open house on November 13, 2018, where attendees were given the opportunity to provide feedback (Staff Ex. 1 at 29).

According to the Applicant, it has involved the public in the development of the Project and has met with a variety of public officials, including township and fire/emergency medical service (EMS) providers beginning in March 2017. (Tr. I at 21, 22, 24.) Additionally, beginning in 2016, the Applicant reached out to area landowners to gauge their interest in participating in the Project or to attempt to understand any concerns related to the Project (Tr. I at 24, 25).

{¶ 273} In regard to the public information aspect of the proposed project, CCPC contends that there has been a lack of transparency from the beginning stages. Specifically, CCPC contends that while Alamo discussed its plans early and often with local officials and solicited landowners of farmland it wanted to lease, it made no effort to inform the other citizens until such time as required by the Board's rules (Tr. I at 21, 24, 25, 114). CCPC submits that as a result of Alamo's reluctance to communicate with the Project's neighbors and its incomplete investigation of the Project's adverse impacts, the application is deficient in the details necessary to identify and address the threats to neighbors regarding issues such as visual impacts and the spread of noxious and invasive weeds. Further, CCPC asserts that due to the application's incompleteness, the neighbors have been deprived of a complete evaluation of the Project's harm. Finally, CCPC contends that the Amended Stipulation insulates the public from involvement and input into the decision-making process and relies on 12 post-certificate plans that will be proposed and approved in secret. (CCPC Initial Br. at 4.)

{¶ 274} Alamo has prepared a complaint resolution program to ensure a clear process is in place to allow for identification and resolution of concerns voiced by members of the community during Project construction and operation (App. Ex. 14 at Attach. DH-4). During the operation of the Project, the Applicant has committed to establishing a point of contact for complaints, concerns, or comments, and that reasonable efforts would be made to resolve complaints. Staff recommends that Alamo formalize a complaint resolution process for use during the construction and operation period. (Staff Ex. 1 at 30.)

{¶ 275} In regards to a communication plan for the proposed project, no later than seven days prior to the start of construction, the Applicant will provide notice via mail to any affected property owners and tenants who were provided notice of the public informational meeting, as well as anyone who requests updated regarding the Project. This notice will provide information about construction and will include the contact information of a representative who will receive complaints, concerns, or comments during construction. Staff recommends that a similar notice be mailed to these same individuals at least seven days prior to the start of facility operation. (Staff Ex. 1 at 29).

{¶ 276} According to Alamo, the results of a study performed by the firm of consultant, Andrew Lines of Cohn Reznick LLP, reflect that “no consistent and measurable negative impact had occurred to adjacent property that could be attributable to proximity to adjacent, commercial-scale, solar energy use, with regard to unit sale prices or other influential market indicators such as marketing time” (App. Ex. 12 at 6). Based on these results, the Applicant submits that the Project will not have an impact on local property values (App. Ex. 12 at 7).

{¶ 277} Staff highlights that Alamo has committed to complying with the applicable safety standards established by the Occupational Safety and Health Administration and the National Fire Protection Association. Staff also points out that Alamo will use warning signs, fencing, and locked gates to restrict access to the Project, and will work with local emergency responders to provide training for response to emergencies related to the solar farm. Specifically, Staff references Stipulation Condition 27 regarding Alamo’s agreement to provide multiple training opportunities, on-going safety meetings, and any specialized equipment that responders may require to appropriately respond to an emergency at the Project. (Staff Initial Br. at 13, 14).

{¶ 278} Staff notes that the Preble County Commissioners, the Board of Trustees of Gasper and Washington Townships, the Preble County Planning Commission, the Preble Soil and Water Conservation District, and the Preble County Engineer were actively

involved in negotiations and are signatory parties to the Initial Stipulation. (Staff Initial Br. at 14.)

{¶ 279} In regard to the issue of emergency services, Alamo intends to develop an emergency response plan for local officials and emergency personnel (App. Ex. 1 at 55). Citing to the Condition 27 of the Amended Stipulation, the Applicant commits to provide initial in-service, pre-construction training to local fire and EMS providers, as well as providing ongoing safety meetings, and any specialized equipment to local fire and EMS service providers. (Joint Ex. 2 at 11, 12, Condition 27.) Alamo believes that the initial training will educate fire and EMS personnel regarding solar farms and how to respond and help to design any kind of emergency plan (Tr. I at 159). Alamo submits that the ongoing safety meetings will contribute to and maintain the local fire and EMS service providers' institutional knowledge regarding the Project (Tr. I at 159, 160).

{¶ 280} The fields hosting solar arrays for the Project will be enclosed with fencing and locked gates (App. Ex. 1 at 7). Alamo intends to have safety measures in place for the Project, including personnel being onsite every day (Tr. I at 54). Additionally, the Project may also be monitored remotely via motion-activated security cameras and personnel visiting the Project will be checking gates and fences (Tr. I at 127, 128). With respect to the relationship of the Project and criminal activity, Alamo states that except for the mere conjecture by CCPC, there is no evidence to support the contention that the Project will lead to an increase of crime in the project area or that criminals will be stealing wire and other recyclable components. Specifically, Alamo submits that the County Sheriff has not indicated any issues out of the norm near the project area. (Tr. I at 164.)

{¶ 281} CCPC requests that the Board require Alamo to perform a complete risk assessment and review of Alamo's risk mitigation plans regarding issues such as chemicals, weather, fire, and theft and that the risk assessment should be conducted before the Board acts on the application. (CCPC Ex. 2 at 11; CCPC Initial Br. 42.) CCPC finds the commitment regarding emergency services to be insufficient to safeguard the neighbors from crime, fires,

and other emergencies. CCPC argues that the commitment fails to provide sufficient training for fire and emergency personnel on how to deal with the particular hazards for the facility (CCPC Initial Br. at 29.). Further, CCPC contends that the volunteer firefighters and emergency responders serving the area have a high turnover rate and, therefore, training limited to prior to facility construction and periodic safety meetings is not sufficient (CCPC Ex. 2 at 159, 160; Tr. I at 150, 158, 159). Instead, CCPC believes that the trainings should be held annually during the Project construction and operation (CCPC Initial Br. at 45.) While Stipulation Condition 27 requires Alamo to pay for any specialized equipment necessary to fight fires or respond to emergencies at the Facility, CCPC believes that Alamo should also commit to funding any additional fire and/or emergency response personnel necessary to adequately service the facility. (CCPC Initial Br. at 44, 45.)

{¶ 282} CCPC avers that the application does not describe or evaluate the reliability of the Project's equipment for preventing criminal access to the facility as required by Ohio Adm.Code 4906-4-08(A). Rather, CCPC contends that the application only identifies "perimeter fencing with locked gates" and "warning signage." (App. Ex. 1 at 54.) CCPC also points out that the application indicates that "[o]nly a few operational personnel will be needed for the Project, and they will be present at any given location in the Project only occasionally." Additionally, CCPC asserts that on most days, at any particular location at the Project, no operating personnel will be present". (App. Ex. 1 at 75.) Further, CCPC points out that while there will be fences and locked gates surrounding the solar fields and operational personnel will conduct periodic security checks and there will likely be security cameras, Alamo does not know the type of fences or locks to be used and does not plan to have security personnel in the project area at night to deter crime(Tr. I at 40-42, 127, 128, 163). As a result, CCPC submits that the application inadequately addresses the issue of security to prevent criminals from stealing wire and other recyclable components at the project area, and potentially cause harm to the community and CCPC. (CCPC Initial Br. at 41, 42.) CCPC also highlights that the county sheriff's office provides law enforcement services to Gasper Township but does not have enough deputies to regularly patrol the

township (CCPC Initial Br. at 44 citing CCPC Ex. 2 at 10). Because the county lacks the funding necessary to hire deputies necessary to patrol the project area, CCPC believes that Alamo should be required to provide the county with the funding necessary to hire a deputy for that purpose (CCPC Ex. 2 at 15).

{¶ 283} CCPC states that neither the application nor the Stipulation address Alamo's representation that its personnel will visit the Project on a daily basis and will check its gates and fences and install security cameras in order to prevent crime (CCPC Reply Br. at 21). In response to Alamo's representation that the Sheriff did not indicate any kind of issues out of norm, CCPC submits that it is unclear as to whether Alamo witness Herling actually asked the Sheriff about crime in the area. (CCPC Reply Br. at 21.)

{¶ 284} While acknowledging that there will be turnover in the local emergency services providers, Alamo responds that there will be people in charge of training who are constantly training each other and there will be institutional knowledge being passed down over time (Tr. I at 159, 160).

{¶ 285} In response to CCPC's concerns about emergency services, Staff points out that the Stipulation provides that Alamo will train local fire and EMS personnel to respond to emergency situations. Specifically, Condition 27 requires pre-construction in service training and multiple training dates to ensure that all responders have adequate training. (Staff Reply Br. at 15.)

{¶ 286} Responding to the CCPC's concerns regarding a possible increase in crime due to the proposed project, Alamo avers that there is no testimony indicating that there will be a crime concern associated with the Project (Alamo Initial Br. at 42). Rather, Alamo contends that CCPC's argument is based solely on conjecture and speculation (Alamo Reply Br. at 24). Alamo highlights that that the County Sheriff has not identified any problems of theft or burglary being experienced in the areas near the project area (Tr. I at 164).

{¶ 287} Staff opines that while Alamo is required to provide information on the safety and reliability of and to include a description of the measures to restrict public access to the facility, the rule does not require that all measures be absolutely foolproof and that it will prevent criminal access. Staff believes that consistent with the terms of the Amended Stipulation, the Applicant has demonstrated that adequate measures will be taken to restrict public access and keep the facility safe, including fences, locked gates, lighting, and possibly security cameras. (Staff Reply Br. at 13, 15.) Further, Staff avers that there is no evidence that the facility will contain anything of value that would result in increased criminal activity. Therefore, Staff asserts that there is no basis to require Alamo to hire and train additional law enforcement personnel. Staff also recognizes that the affected county and townships are signatory parties to the Initial Stipulation and, therefore, must be reasonably satisfied that no additional funding for security is necessary. (Staff Reply Br. at 13, 15.)

{¶ 288} Relative to the issue of the Project's impact on motorists' visibility, CCPC notes that the application provides for a 25-foot setback between the Project perimeter and the public roads (App. Ex. 1 at 54; Tr. I 16-18; CCPC Initial Br. at 45, 46). Although Condition 3 of the Stipulation would expand the setback by applying it to the rights-of-way instead of the edges of the road, CCPC contends that Alamo's and Staff's witnesses do not know how much additional distance this will add to the setback, the amount of space necessary to view the crossroads, or the size of the setback necessary to preserve the motorists' line of sight at crossroads (Tr. I at 132, 133; Tr. II at 360; CCPC Initial Br. at 45, 46; CCPC Reply Br. at 22). CCPC submits that without knowing the distance between the solar fences and the public roads, there is no way for the Board to determine whether the solar Project will obstruct motorists' views of crossroads at intersections or whether Condition 3 of the Stipulation will prevent traffic accidents. Therefore, CCPC believes that the application must be supplemented to supply this information. (CCPC Initial Br. at 29, 30.) Without knowing how much extra space is added by the Amended Stipulation and how much space is necessary for motorist visibility, CCPC avers that the Board lacks the information necessary

to determine whether this belated change will prevent traffic accidents or not (CCPC Reply Br. at 23).

{¶ 289} In response to CCPC's concerns that the Board has no way of determining whether the solar Project will obstruct motorists' views, Alamo submits that its witness Robinson clearly indicated that the setback distances in the application will provide adequate distance for motorist visibility at road intersections at edges of the project area and that the additional setback distance provided in Stipulation Condition 3 will serve to further improve motorist visibility at those intersections, while maintaining effective screening. Additionally, Alamo opines that the setback distance in the Initial and Amended Stipulations was expanded from that detailed in the application, so it is measured from the right-of-way instead of the roadway. (Alamo Reply Br. at 22-23; App. Ex. 13 at 10; Joint Ex. 2 at 6, Condition 3.) Alamo explains that this change means that the setbacks would be greater than 25 feet to the roadway (Alamo Reply Br. at 22, 23 citing Tr. I at 133).

{¶ 290} Staff agrees with Alamo's position that the Stipulation expands the project setbacks. Staff also states that there is no evidence indicating that any view will be obstructed by these setbacks. Staff states that while the Board's enabling statutes do contain provisions relating to setbacks, all of those provisions pertain solely to wind-powered generation facilities, not to solar generation. Ohio Adm.Code 4906-4-08(A)(1)(c) requires that an applicant provide a constraint map showing setbacks but established no minimum setback. Staff submits that CCPC fails to cite to any Board precedent for requiring any setbacks whatsoever for solar facilities; nor has CCPC demonstrated any reason, either by evidence or policy, as to why such setbacks should be required. (Staff Reply Br. at 15-18.) Staff points out that while CCPC complains that there is no way of determining whether motorist view of crossroads at intersections will be obstructed, Alamo witness Herling did testify on cross-examination that the county engineer was comfortable with the current setback of 25-feet from the public road right-of-way and that the distance would allow for adequate room to avoid drifting of snow and snow storage in the winter and allows for sight lines at any intersection (Staff Reply Br. at 17 citing Tr. I at 133-134).

{¶ 291} Based on a review of the record, the Board finds that the proposed facility satisfies the public interest, convenience, and necessity as specified in R.C. 4906.10(A)(6), provided that the certificate issued includes the applicable conditions specified in the Amended Stipulation. Public interest, convenience, and necessity should be examined through a broad lens. For example, this factor should consider the public's interest in energy generation that ensures continued utility services and the prosperity of the State of Ohio. At the same time, this statutory criterion regarding public interest, convenience, and necessity, must also encompass the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion and impact to natural resources. As part of the Board's responsibility under R.C. 4906.10(A)(6) to determine that all approved projects will serve the public interest, convenience, and necessity, we must balance projected benefits against the magnitude of potential negative impacts on the local community. As discussed below, the Board determines that the application, as modified by the Amended Joint Stipulation benefits the public in multiple ways.

{¶ 292} Although CCPC requests that the Board require Alamo to perform a complete risk assessment and a review of Alamo's risk mitigation plans prior to approving the pending application, the Board concludes that the review of the record as set forth in this Order is reasonable. Further, as discussed below in Section X of this Order, the Board finds that the subsequent submission of the specified plans to Staff is not an improper delegation of authority but, instead, is necessary for the ongoing monitoring of Alamo's activities and compliance with the conditions set forth in this Order. Further, as discussed in this Order, the Board's focus is to minimize, and not eliminate, all adverse impacts of the Project.

{¶ 293} Specific to CCPC's concerns and requested remedies relative to perceived criminal activities and the need for an initial risk assessment, the Board does not believe that a sufficient demonstration has been made to warrant the requested remedies at this time. In particular, the Board determines that there is no evidence to support the contention that

the Project will lead to an increase of crime in the project area or that criminals will be stealing wire and other recyclable components. In support of this determination, the Board notes that the Applicant was unaware of problems regarding theft near the project area. Additionally, the County Sheriff did not indicate any issues out of the norm near the project area. (Tr. I at 164.) Further, the Board recognizes that the fields hosting solar arrays for the Project will be enclosed with fencing, locked gates, and security signage and the Project may also be monitored remotely by motion-activated security cameras and personnel visiting the Project will be periodically checking the gates and fences (App. Ex. 1 at 9; App. Ex. 7 at 14; Tr. I at 127, 128). Regarding the training of emergency service providers, the Board notes that, pursuant to Condition 27 of the Amended Joint Stipulation, safety meetings will be held with emergency service personnel on an ongoing basis and will include any emergency procedures which may be specific to the solar array model used for the Project.

{¶ 294} In regard to CCPC's concerns regarding setbacks, the Board finds that the Condition 3 of the Amended Stipulation reasonably addresses the issue of setbacks and motorist visibility. As noted, by Applicant witness Robinson, while the setback distances set forth in the application would provide adequate distance for motorist visibility at road intersections at the edges of the project area, additional setback distance will serve to further improve motorist visibility at those intersections. (App. Ex. 13 at 10). As a result of the setback distance being expanded by Condition 3 of the Amended Joint Stipulation, motorist visibility should be improved relative to that proposed in the application (Joint Ex. 2 at 6, Condition 3).

G. Agricultural Districts

{¶ 295} Pursuant to R.C. 4906(A)(7), the Board must determine the facility's impact on agricultural viability of any land in an existing agricultural district within the project area of the proposed facility.

{¶ 296} Both Staff and the Applicant recognize that agricultural districts will be disturbed as a result of the Project. According to Staff, eight agricultural district parcels will be impacted by the construction of the proposed facility. The construction of the proposed facility will result in the loss of 802 acres of cultivated lands and 39 acres of pasture, including the loss of 505 acres of agricultural district land. The repurposed land can be restored for agricultural use when the Project is decommissioned. (Staff Ex. 1 at 31.) The Applicant has committed to take steps in order to address such potential impacts to farmland, including repairing all drainage tiles damaged during construction and restoring temporarily impacted land to its original use. In order to avoid impacts to drain tiles, the Applicant commits to locate drain tiles as accurately as possible prior to construction. (Staff Ex. 1 at 31.) The decommissioning plan for the proposed project calls for returning the affected land to original or similar conditions and repairing any drainage tiles and the decompaction of the soil (Staff Ex. 1 at 31).

{¶ 297} Alamo states that the Project will impact up to 504.6 acres of agricultural district land (App. Ex. 3 at 1). After the conclusion of the Project's useful life, it will be decommissioned and be restored to potential use as an agricultural area. The decommissioning plan requires that the project area be restored to use for cultivation, unless circumstances prevailing shortly in advance of the start of decommissioning indicate that another use is more appropriate or explicitly desired by the landowner (App. Ex. 1 at 39; App. Ex. 19, Attach. 3 at 8). According to Alamo, the restoration will include a return to the same or functionally similar preconstruction drainage patterns, including farm drainage tiles, decompaction of soil and seeding with a low-growing vegetation cover to stabilize the soil and increase soil fertility (App. Ex. 7 at 15, 16). The restoration process is outlined in the preliminary decommissioning plan prepared by Hull & Associates (App. Ex. at 19, Attach. 3).

{¶ 298} Alamo represents that the Project will have only modest impacts to the surrounding area, specifically noting that the solar panels and racking will be installed on simple posts driven or rotated into the ground; inverters and pyranometers will be installed

on gravel pads or prefabricated foundations which can be lifted out of place. The Project's substation will be installed on poured concrete and will not cover a large area. Roads will be constructed of aggregate material or covered in grass but will not be paved. Participating landowners may choose to retain roads for their own use following decommissioning. (App. Ex. 7 at 15; App. Ex. 1 at 37, 38; App. Ex. 19, Attach. 3 at 7.) Alamo maintains that there will not be any long-term impacts from the Project that would preclude its use for farming after the Project's useful life. In support of its position, Alamo notes that CCPC witness Kolb acknowledged that it was possible that the project area could be returned to agriculture (App. Ex. 1 at 92; CCPC Ex. 3 at 1; July 19, 2019 Tr. at 501, 502).

{¶ 299} Although Alamo believes that the likelihood of damage is remote, Alamo is committed to avoiding damage to drain tile in the project area, where possible, or minimize to the extent practicable, any damage to functioning surface or subsurface field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas, whether such drainage systems are publicly or privately maintained. If any tile is damaged in the project area, Alamo will repair it promptly no later than 30 days after the damage is discovered and it will be returned to at least original conditions or their modern equivalent at the Applicant's expense. (Tr. I at 179, 182; App. Ex. 1 at 93; Joint Ex. 2 at 9.)

{¶ 300} Alamo witness Waterhouse testified as to the specific efforts undertaken by the Applicant to identify and avoid drain tile in the project area (Tr. I at 57, 185, 186). Additionally, prior to construction, Alamo states that additional analysis of data gathered will be reviewed and an action plan determined for each property in the project area (App. Ex. 8 at 6). Further, Alamo witness Herling testified that starting in February 2020, Alamo conducted a targeted mailing campaign seeking information from adjoining landowners regarding drain tile or other drain infrastructure on their property. (App. Ex. 14 at 9; Tr. IV at 586; Joint Ex. 2 at 9). The purpose of this endeavor was to identify all drain tile information that exists within the community to ensure that it is considered in the mapping and assessment efforts (App. Ex. 14 at 8, 9; Joint Ex. 2 at 9).

{¶ 301} Alamo believes that CCPC's suggestion that the Applicant should consult with all landowners, whose land drains into the project area and all landowners who land receive drainage from the project area, regardless of whether they are adjacent to the project area, is unnecessary and potentially unworkable (Alamo Reply Br. at 30, 31 citing App. Ex. 8 at 4). Specifically, Alamo witness Waterhouse testified that if advanced identification of drain tile is not possible, it should be possible to identify damaged drain tile and repair it at the time of construction (App. Ex. 8 at 4).

{¶ 302} CCPC contends that although the purpose for agricultural districts is to set aside farmland exclusively for and to encourage farmland preservation, landowners in the project area have agreed to lease this land to Alamo for 40 years (Alamo Initial Br. at 2). CCPC believes that destroying the capacity of 504.6 acres for agricultural uses by converting the land into an industrial facility for four decades is hardly a minimal impact (CCPC Reply Br. at 38). While Alamo asserts that the Project will advance the goals of Preble County's 2011 Comprehensive Economic Development Strategy and Land Use Plan, CCPC believes that the goal of said plan is to preserve agriculture, not destroy it. CCPC concludes that the Board has no basis to find that the Project represents the minimum adverse environmental impact with respect to the agricultural district in question. (CCPC Reply Br. at 38-39.) CCPC argues that the application lacks the procedures necessary to comply with the requirements of Ohio Adm.Code 4906-4-08(E)(2) for avoiding and repairing damage to field drainage tiles. Specifically, CCPC believes that the application does not provide for the "timely repair of damaged field tile systems to at least original conditions", and that the application states only that Alamo will "use commercially reasonable efforts" to repair tiles (App. Ex. 1 at 93). CCPC believes that Alamo will not repair damaged tiles if it deems the repairs to be too costly or difficult. CCPC acknowledges Alamo witness Herling's disclaimer of any such intent, but insists that there is a potential that Alamo may interpret "use commercially reasonable efforts" to excuse the company from making repairs in the future (CCPC Initial Br. at 36 citing Tr. I at 119).

{¶ 303} CCPC contends that the timing of repairs is at issue because the application indicates that repairs will be made “promptly” (CCPC Initial Br. at 36 citing App. Ex. 1 at 93). CCPC argues that Condition 16 of the Amended Stipulation creates confusion regarding the meaning of this commitment by requiring tiles to be “promptly repaired no later than 30 days after such damaged is discovered” (Joint Ex. 2 at 9, Condition 16). Further, CCPC represents that the witnesses had various interpretations as to the meaning of this requirement. Specifically, CCPC witness Kolb believes that the condition could allow up to 30 days of flooding to occur. Staff witness Bellamy believes the provision requires repairs “as quickly as feasible” or “as soon as possible.” Alamo witness Herling believes that the provision allowed up to 30 days where earlier repairs were not necessary to prevent damage to a neighboring property (CCPC Ex. 4 at 4; Tr. I at 142-144; Tr. III at 539, 540). CCPC states that, if a certificate is issued, Condition 16 should include the following statement: “[d]amaged field tile systems shall be replaced as quickly as feasible, but in no event later than 30 days after the damage is discover.” Additionally, CCPC avers that Condition 16 should use the term “replaced” throughout its language instead of “repaired” since broken tiles or sections of tiles must be replaced; they cannot be repaired by patching them. Further CCPC states that if broken tiles are not replaced early enough to prevent damage, the certificate should require that the Applicant reimburse the damaged landowner for the resulting loss based on the estimate of loss provided by a Certified Crop Advisor. (CCPC Initial Br. at 37; CCPC Ex. 4 at 4; Tr. I at 118.)

{¶ 304} CCPC also contends that the application fails to provide procedures for avoiding and mitigating damage to field tiles. CCPC avers that the application fails to identify any procedures that will be used to determine whether tiles have been broken, damaged, or deteriorated during Project operation, even though tiles reach the end of their usable lives over time. (CCPC Initial Br. at 37, 38, citing Tr. I at 60, 61; App. Ex. 1 at 93; CCPC Ex. 4 at 4.) CCPC believes that the application must provide a procedure for detecting tile damage caused by construction, and the application must be amended to provide a procedure for detecting tile damage at the time it occurs, rather than waiting for flooding to

occur to look for the damage (CCPC Initial Br. at 38). Lastly, CCPC avers that the application fails to provide procedures for the avoidance or minimization to the maximum extent practicable of any damage to field tile drainage systems. CCPC believes that Alamo must obtain the most accurate available information about the location of tiles by consulting with all upstream and downstream landowners, whether or not they are adjacent to the project area, whose land drains into the project area and all landowners whose land receives drainage from the project area. CCPC recognizes that the Amended Stipulation now requires Alamo to contact non-participating landowners to obtain tile location information. (CCPC Initial Br. at 38, 39, citing Tr. I at 186, 187, CCPC Ex. 4 at 2, 3.)

{¶ 305} Staff represents that the construction and operation of the proposed facility would disturb the existing soil and could lead to broken drainage tiles. Staff believes broken drainage tiles is one of the most significant issues in this case because CCPC and its members operate farms in the area adjacent to the Project boundary and are susceptible to impacts caused by broken drainage tiles. Staff further believes that Alamo will endeavor to avoid damaging drainage tiles by attempting to accurately locate existing drainage tiles prior to construction (Staff Initial Br. at 15 citing Tr. I at 57, 59). While recognizing that Alamo witness Herling represented that Alamo worked with an external consultant in collaboration with the Project landowners and the Preble County Soil and Water Conservation District to help identify all of the drain tile, pattern, main or otherwise, Staff notes that problems arise when tiles are unknowingly damaged and acknowledges CCPC's concerns that damaged tiles untimely identified and repaired could have a negative impact on farming operation. (Staff Initial Br. at 15).

{¶ 306} Staff states that Condition 16 of the Amended Stipulation relates to the repair of damaged drain tile (Staff Initial Br. at 15, 16). Staff witness Bellamy testified that much of Condition 16 was changed during negotiations, specifically relating to how drain tiles are to be fixed and who would approve drain tile repairs. Staff denotes that, as comprehensive as Condition 16 is, it obviously cannot contemplate every possible circumstance. Mr. Bellamy clarified that it is Staff's understanding that the phrase "promptly repaired no later

than 30 days after such damage is discovered” signifies that if the conditions will allow a repair and a repair company is available, Staff expects the repairs to be done as soon as possible. However, if there is heavy rain, flooding for two weeks, and a repair cannot be completed immediately, Staff expects Alamo to complete repairs as quickly as feasible. (Staff Initial Br. at 17 citing Tr. III at 510; 539, 540; Joint Ex. 2 at 8, Condition 16.) Lastly, Staff explains that, upon decommissioning, Alamo will return the land to its original or similar condition, and this obligation specifically includes repairing any drainage tiles and the de-compaction of the soil (Staff Ex. 1 at 23).

{¶ 307} In response to CCPC’s averments, Staff reiterates that the Applicant has identified the steps that it is taking to identify all tile drainage systems that might be affected, both to avoid impacts and to be able to identify where damage may have occurred. Alamo will do so in conjunction with the Preble County Engineer, the Preble County Soil and Water Conservation District, landowners, and on-site inspections (Staff Reply Br. at 11).

{¶ 308} Staff disagrees with CCPC’s assumption that the Applicant is required to make repairs only if not too costly or difficult (Staff Reply Br. at 12). Staff notes that Condition 16 of the Initial Stipulation requires Alamo to repair all drainage tile damage resulting from the construction, operation, and/or maintenance of the facility in agricultural areas and that all repairs be made promptly, and in no event later than 30 days after discovery. Further, Staff witness Bellamy testified that Staff’s understanding of this provision is that repairs would be performed as quickly as feasible, or as soon as possible (Tr. III at 539). Staff points out that CCPC’s own witness’s testimony attested that such repairs may actually be quicker than those that currently occur (Staff Reply Br. at 12 citing Tr. III at 498, 505). Staff believes this commitment may actually improve current experiences with tile damage. (Staff Reply Br. at 12 citing Tr. at 536, 539.) Lastly, Staff states that the evidence of record indicates that damage to tile drainage systems is not common in the installation of solar arrays (Staff Reply Br. at 12 citing Tr. I at 179).

{¶ 309} Alamo echoes Staff's beliefs regarding CCPC's interpretation of Condition 16 of the Amended Stipulation. Alamo argues that there is no "commercially reasonable" qualifier in Condition 16, and that Condition 16 also requires the Applicant to return damages field tile systems to at least original conditions or their modern equivalent at the Applicant's expense. Alamo also expresses its commitment that to promptly repair drain tile damage no later than 30 days after such damage is discovered. Alamo highlight's Staff witness Bellamy's testimony that the requirement to repair tile "promptly" is synonymous with as quickly as feasible or as soon as possible. Alamo explains that this term does not mean that Alamo, in all instances, can wait 30 days to repair tile and still have that repair be considered prompt. (Joint Ex. 2 at 9, Condition 16 Tr. III at 539, 540; 550.) In support of its position, Alamo referenced the testimony of CCPC witness Kolb regarding the fact that drain tile repair could take a prolonged period of time to complete (Alamo Initial Br. at 36 citing Tr. III at 498, 499, 505, 506).

{¶ 310} Upon a review of the record, Board finds that the requisite analysis has been performed as to the Project's impact on the viability as agricultural land of any land in an existing agricultural district. As discussed below, the Board concludes that the Project satisfies the requirements specified in R.C. 4906.10(A)(7), provided the certificate issued incorporates the applicable provisions of the Amended Stipulation, as amended by this Order.

{¶ 311} In reaching this determination, the Board recognizes that the eight agricultural district parcels will be impacted by the construction of the proposed facility and will result in the loss of 802 acres of cultivated lands and 39 acres of pasture. These losses include the loss of 505 acres of agricultural district land. The repurposed land could be restored for agricultural use when the Project is decommissioned. (Staff Ex. 1 at 31.) The Board also recognizes that the major concern raised in the context of R.C. 4906.10(A)(7) is that the construction and operation of the proposed facility will disturb the existing soil and could lead to broken drainage tiles. Specific to the issue of drain tiles, Alamo has represented that it will locate drain tile as accurately as possible prior to construction and

will promptly repair any drain tile found to be damaged by the Project during its operational life. (Staff Ex. 1 at 31.)

{¶ 312} Condition 16 of the Amended Stipulation is an attempt to mitigate the potential adverse impact of the Project on drainage tiles. Specifically, it requires that benchmark conditions of surface and subsurface drainage systems shall be documented prior to construction and efforts shall be made to contact the owners of all parcels adjacent to the project area to request drainage system information on those parcels. Pursuant to Condition 16, damaged field tile systems shall be promptly repaired no later than 30 days after such damage is discovered and be returned to at least original conditions or their modern equivalent at the Applicant's expense.

{¶ 313} With respect to CCPC's concerns regarding the efforts to identify the benchmark conditions of existing drainage tile systems, the Board finds that the proposed plan, including contacting the owners of all parcels adjacent to the project area, is a reasonable approach for the purpose of establishing the baseline condition of existing field tile in the project area. As noted by Alamo, it will be engaged in a number of endeavors to identify all drain tile in the area including: (a) working with the Preble County Engineer and the Preble Soil and Water Conservation District to obtain maps of any drain tile in the area, (b) communications with landowners in the project area, and (c) onsite reviews to identify drain tile indicators. (Alamo Ex. 8 at 6; Alamo Ex. 14 at 9; Tr. IV. At 586; Jt. Ex. 2 at 9).

{¶ 314} With respect to the requirement that damaged field tile systems be promptly repaired no later than 30 days after such damage is discovered, the Board agrees that additional clarification is necessary in order to comport with the intent of the parties as reflected by the testimony provided in this case. Specifically, the Board believes that Condition 16 should be amended to require that "[d]amaged field tile systems shall be promptly repaired after such damaged is discovered. Repair activities shall commence as soon as possible following discovery and shall be completed no later than 30 days following discovery and returned to at least original conditions or their modern equivalent at the

Applicant's expense. The impacted landowner should be promptly notified in the event of an unforeseen delay in the commencement of the repair services." The Board also notes that pursuant to Condition 16, Alamo is required to make all field tile repairs, and that this condition is not qualified with respect to degree of difficulty or cost. Through the implementation of Condition 16, the continuation of agricultural activity will be protected. Additionally, the Board notes that the decommissioning plan addresses how the project area will be returned to agricultural use at the end of its useful life. (App. Ex. 19, Attach. 3).

H. Water Conservation Practice

{¶ 315} Pursuant to R.C. 4906.10(A)(8), the proposed facility must incorporate maximum feasible water conservation practices, considering available technology and the nature of and economics of the various alternatives.

{¶ 316} Alamo represents that the Project will only use an extremely small volume of water for the purpose of the occasional cleaning of solar panels (App. Ex. 1 at 10). According to Alamo, no wastewater discharge is expected from the Project, and there will be minimal impacts to water quality due to construction or operation of the Project (App. Ex. 1 at 45, 46). Finally, Alamo submits that because of the minimal water demands, the Project incorporates maximum feasible water conservation practices (Alamo Initial Br. at 47).

{¶ 317} According to Staff, construction of the proposed facility would not require the use of significant amounts of water. Water may be utilized for dust control during earthwork activities as needed. Operation of the proposed facility would not require the use of significant amounts of water, and nearly no water or wastewater discharge is expected. The Project will use water for occasional cleaning of panels a few times each year as needed. Therefore, the requirements under R.C. 1501.33 and 1501.34 are not applicable to this Project. (Staff Ex. 1 at 32.)

{¶ 318} Upon a review of the record, Board finds that the proposed facility incorporates the maximum feasible water conservation practices, and, therefore, satisfies with the requirements specified in R.C. 4906.10(A)(8), provided the certificate issued incorporates the applicable provisions of the Amended Stipulation. In reaching this determination, the Board recognizes that construction of the proposed facility would not require the use of significant amounts of water and that the operation of the proposed facility would not require the use of significant amounts of water, and that nearly no water or wastewater discharge is expected (Staff Ex. 1 at 32).

IX. CONCLUSION

{¶ 319} Ohio Adm.Code 4906-2-24 authorizes parties to Board proceedings to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-2-24(D), the terms of such an agreement are accorded substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of Board proceedings. *See, e.g., In re Hardin Wind, LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?

- (c) Does the settlement package violate any important regulatory principle or practice?

A. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

{¶ 320} According to Alamo, the Initial Stipulation filed on July 5, 2019, and signed by the vast majority of the parties, was the product of serious bargaining among capable parties all of whom were represented by counsel (App. Ex. 7 at 18; Tr. I at 110, 134, 168, 169). Alamo witness Douglas Herling testified that the Amended Stipulation also meets the criteria for Board approval. The witness testified that the Amended Stipulation resulted from serious negotiations among capable, knowledgeable parties represented by counsel (App. Ex. 14 at 12). As evidence of this representation, Alamo focuses on the fact that for nearly 12 months following the filing of the Initial Stipulation, plans for the Project continued to be developed and revised, resulting in the Amended Stipulation. Alamo represents that the Amended Stipulation presents both revised and new conditions that are more protective than the conditions in the Initial Stipulation. (Alamo Initial Br. at 47 citing July 30, 2020 Joint Motion to Reopen the Hearing Record at 3.)

{¶ 321} Similarly, Staff supports the Amended Stipulation (Staff Ex. 10 at 1). Staff submits that the Amended Stipulation is the product of an open process in which all intervenors were given the opportunity to participate and were represented by experienced and competent counsel. Staff describes that after the record was closed, settlement discussions were reopened. According to Staff, the Applicant provided additional information about details of the Project, including agreements reached with public officials. Staff represents that serious bargaining between the parties resulted in additional conditions being added and greater detail and increased protections added to existing proposed conditions (Staff Initial Br. at 19, 20).

{¶ 322} Upon review, the Board finds that the Amended Stipulation is the product of serious bargaining among capable, knowledgeable parties. Initially, we note that all

parties were represented by knowledgeable, competent counsel. The Board additionally observes that the evidentiary proceedings were reopened, and the vast majority of the parties were engaged in ongoing negotiations resulting in the Amended Stipulation (App. Ex. 14 at 12; Staff Ex. 10 at 1; Joint Ex. 2 at 21). Thus, the Board finds that the first criterion is met.

B. Does the settlement, as a package, benefit ratepayers and the public interest?

{¶ 323} Alamo submits that the Amended Stipulation is in the public interest because its signatories are the elected officials and appointed bodies that represent the public in the project area (Alamo Initial Br. at 57).

{¶ 324} Alamo posits that the Amended Stipulation will benefit the public interest by requiring Alamo to meet certain requirements during the construction and operation of the Project to minimize impacts (Alamo Initial Br. at 48). Alamo points out that through the Amended Stipulation, a project with substantial benefits would be constructed. (Alamo Initial Br. at 48.) According to Alamo, these benefits include the generation of emission-free power, which will assist in attainment of air quality goals in southwestern Ohio (App. Ex. 1 at 42). Additionally, Alamo represents that as a result of the Project, it will make payments to local government, including, Preble County, Gasper and Washington Townships and the local school districts and that these payments will far exceed the property taxes currently being paid on the parcels forming the project area (Tr. I at 85, 86, Tr. IV at 605). Specifically, the Preble County Commissioners recently passed a resolution that will require Alamo to make annual service payments totaling \$9,000 per megawatt to local government amounting to at least \$629,100 per annum (App. Ex. 7 at 7; App. Ex. 14 at 14).

{¶ 325} Alamo also points out that the Project is expected to create approximately 515 to 986 direct and indirect construction jobs with a corresponding payroll of \$24 million to \$49 million (App. Ex. 1 at 31, Ex. C; Staff Ex. 1 at 14, 15). Further, Alamo states that for

the operation phase, depending on the percentage of locally-sourced content for maintenance activities, the Project will create approximately 13 direct and indirect jobs with corresponding annual payroll of approximately \$673,000 (App. Ex. 1 at 31, Ex. C). According to Alamo, the Project is expected to generate new economic output of approximately \$58 million to \$151 million during construction and \$1.2 million to \$1.5 million annually from operation. (App. Ex. 1 at 32). Alamo highlights the benefits of some of the Amended Stipulation's specific conditions as set forth below.

{¶ 326} Alamo contends that Condition 3 of the Amended Stipulation is in the public interest because it establishes clear setback distances from public roadways, which address concerns expressed regarding visibility from roads. Specifically, Condition 3 requires the following: (a) 25 feet between the Project fence and any property line of a non-participating property or any edge of right-of-way of a public road; (b) 150 feet between the Project fence and any residence of a non-participating parcel; and (c) 500 feet between any central inverter and any residence on a non-participating parcel (Joint Ex. 2 at 3). According to Alamo, these setbacks are more expansive than those in the original application (Alamo Reply Br. at 47, 48 citing App. Ex. 1 at 54, 55; Joint Ex. 2 at 6; Tr. IV at 589, 590). Alamo submits that the greater setback distances benefit both vegetative screening and the potential noise from any central inverter. Further, Alamo opines that that the increased space will allow the proposed modules to achieve the goals set forth in the Landscape Mitigation Plan (Alamo Initial Br. at 50 citing App. Ex. 16 at 1-3). In support of its position, Alamo notes that its sound consultant witness Hessler modeled the sound from the central inverters using the 500-foot setback, and he concluded that all non-participating residences are either close to, or in outside of the of 35 dBA contour, which is generally considered inconsequential in rural environments (App. Ex. 15 at 2, 3).

{¶ 327} Alamo opines that the Condition 13 of the Amended Stipulation is in the public interest because it limits the hours of construction activities and, therefore, limits the hours of construction noise (Alamo Initial Br. at 50 citing App. Ex. 10 at 4; Joint Ex. 2 at 7).

{¶ 328} Alamo states that Condition 15 of the Amended Stipulation is in the public interest because it requires the preparation of a landscape and lighting plan and the maintenance of fencing in good repair in order to reduce the aesthetic and lighting impacts of the Project on adjacent non-participating residential parcels. Alamo notes that the Amended Stipulation goes beyond Staff's recommendations and requires that the landscape and lighting plan be developed in consultation with a landscape architect licensed by the Ohio Landscape Architects Board, ensuring that the plan is developed by an individual who is professionally certified (Joint Ex. 2 at 9). Unless alternative mitigation is agreed upon, Alamo also emphasizes that the Amended Stipulation requires the planting of vegetative screening, commits Alamo to ensure that at least 90 percent of the plantings have survived after five years, and commits Alamo to maintain the vegetative screening for the entire life of the Project. (Joint Ex. 2 at 9.)

{¶ 329} Further, Alamo points out that the lighting plan under the Amended Stipulation exceeds Staff's recommendations and requires that any lights shall be motion-activated and designed to narrowly focus light inward toward the facility, such as being downward-facing and/or fitted with side shields (Joint Ex. 2 at 9). According to Alamo, these additional measures will improve Alamo's ability to effectively screen and mitigate the Project's visual impact (App. Ex. 16 at 3). With respect to the issue of fencing, Alamo references the requirement in Condition 15 for Alamo to submit a plan describing methods of fence repair and the requirement to maintain perimeter fencing for the Project (Joint Ex. 2 at 9). Alamo opines that this requirement will help ensure the security of the Project, as well as minimizing any negative visual impact that may be created by a damaged fence (App. Ex. 7 at 19).

{¶ 330} Alamo opines that Condition 16 of the Amended Stipulation is in the public interest because it requires Alamo to avoid and minimize damage to drain tile and repair damaged drain tile in the project area at its expense and to promptly repair damaged field tile systems no later than 30 days after such damage is discovered. Alamo submits that this condition is in the public interest by ensuring the protection of drain tile and existing

drainage in the project area. (Joint Ex. 2 at 9; App.t Ex. 17 at 2.) Alamo shall consult with the Preble County Engineer and Staff prior to repairing tiles in a county maintenance/repair ditch. If the County Engineer does not approve the repair work in a timely manner, Staff shall have the right to visually inspect and approve the repair work prior to backfill. (Joint Ex. 2 at 9; Tr. III at 503, 504.) Further, Alamo is committed to working with adjoining landowners to secure all available information the project area's drainage systems in order to effectively minimize potential damage and to determine the benchmark conditions of the affected drainage systems by measuring both surface and subsurface drainage (App. Ex. 17 at 2).

{¶ 331} According to Alamo, Conditions 18 and 23 of the Amended Stipulation are in the public interest because it requires Alamo to develop a vegetation management plan, minimize the clearing of wooded areas, where possible, and take steps to avoid the propagation of noxious weeds. Alamo represents that it has already prepared a draft vegetation management plan that addresses the issue of noxious weeds. (Alamo Initial Br. at 53 citing App. Ex. 19, Attach. 1 at 8). Alamo also points out that Condition 18 of the Amended Stipulation requires Alamo, to the extent practicable, to purchase seed stock from a vendor recommended by the Ohio Seed Improvement Association (Joint Ex. 2 at 10).

{¶ 332} Alamo represents that Conditions 24 and 25 of the Amended Stipulation are in the public interest because it requires Alamo to provide Staff with a traffic management plan and address the road use maintenance agreement with local authorities. According to Alamo, it has already entered into a road use maintenance agreement with local authorities (App. Ex. 19, Attach. 2, Appx. A). Alamo submits that the transportation management plan would determine the routes that can be used by the contractor that is building the Project and that would be shared with the local authorities as well as submitted to Staff (Tr. I at 224, 225). According to Alamo, Condition 25 of the Amended Stipulation is in the public interest and will help ensure that the Project will not have a negative impact on local roads after construction of the Project and decommissioning (App. Ex. 19 at 4).

{¶ 333} Alamo believes that Condition 27 of the Amended Stipulation is in the public interest because it requires the training of local EMS and fire organizations and the provisions of specialized equipment if needed, and to hold safety meetings with fire and EMS providers on an ongoing basis. According to Alamo, this condition will assist local fire and EMS service providers in being prepared to respond to any emergency at the Project. (App. Ex. 7 at 19, 20; July 17, 2019 Tr. I at 156-160.)

{¶ 334} Alamo avers that Condition 28 of the Amended Stipulation is in the public interest because it requires Alamo to implement a decommissioning plan, including financial assurance requirements. The Applicant submits that this condition will ensure that the Project does not become an inconvenience to the surrounding community at the end of its useful life and will allow it to be converted to another use, including potentially returned to agricultural production. (App. Ex. 7 at 20; App. Ex. 9 at 5.) Alamo notes that it has already prepared a preliminary decommissioning plan outlining how the Project will be returned to agricultural use at the end of its useful life and detailing the initial estimate of decommissioning costs (App. Ex. 19, Attach. 3). Condition 28 also requires Alamo to post financial security in the form of a performance bond with the Board as obligee in order to ensure that there are funds available to pay for the net decommissioning cost). Condition 28 accounts for the expected life of the Project by requiring the net decommissioning costs to be recalculated every five years with the bond increased accordingly. (Joint Ex. 2 at 12.) Alamo believes that this approach will ensure that the Board has greater oversight and control over the decommissioning plan and that the plan will be adequately and appropriately funded. (App. Ex. 19 at 5.)

{¶ 335} Condition 29 of the Amended Stipulation requires Alamo to obtain a General Construction Permit from the Ohio EPA if one or more acres of ground are disturbed (Joint Ex. 2 at 12). Alamo believes that this condition serves the public interest because the General Construction Permit will require Alamo to perform pre- and post-construction stormwater calculations to determine if any post-construction best management practices are required (Tr. IV at 667). These calculations along with a copy of any stormwater submittals made to

the Ohio EPA shall be submitted by Alamo to the Preble County Office of Land Use Management and Preble County Soil and Water (Joint Ex. 2 at 12). According to Alamo, Condition 29 will help to ensure that post-construction stormwater flows are appropriately managed and if post-construction measures are required, they will be designed in accordance with Ohio EPA regulations (Tr. IV at 665).

{¶ 336} Staff references Applicant witness Herling's testimony regarding the creation of jobs as a result of the Project and the resulting tax as a result of the PILOT (App. Ex. 7 at 7). Staff also highlights the clean and quiet renewable energy that will be created as a result of the Project (App. Ex. 7 at 18). Staff contends that the Project satisfies the public interest standard of R.C. 4906.10 (Staff Initial Br. at 20).

{¶ 337} In support of its position, Staff submits that the Staff Report provides the Board with a sound, objective, evidentiary basis for determining the existence of the R.C. 4906.10 criteria, and that through negotiations, the majority of the parties have agreed to conditions even more stringent than the Staff Report and that these conditions will further minimize the environmental impact of the Project and satisfy the criteria set forth in R.C. 4906.10(A). Specifically, Staff contends that the Amended Stipulation improved provisions for security of the facility, minimization of visual impacts, increased cooperation and involvement by local officials, and training and equipment for local responders. Therefore, Staff supports the issuance of a certificate conditioned as set forth in the Amended Stipulation (Staff Initial Br. at 7, 20, 21).

{¶ 338} Consistent with its position relative to issues discussed above, CCPC avers that the Project will harm the public for the following reasons:

- (a) The solar equipment will spoil the neighborhood's scenic views.
- (b) The unsightly equipment will be located in close proximity to neighboring residences and land, and Alamo has not provided

meaningful assurances that the views will be adequately mitigated via effective screening designs acceptable to neighbors.

- (c) The project lighting may be annoying and intrusive to neighbors.
- (d) The inverters may produce annoying and intrusive noises that reaches neighboring homes and land.
- (e) The provisions for preventing and replacing damaged field tiles are inadequate and could result in the flooding of neighboring land and damaged crops.
- (f) The unguarded recyclable materials in the solar equipment will attract criminals to the area.
- (g) Solar panels damaged by vandals or disasters may leak contaminants into the groundwater, thus polluting the neighbors' wells.
- (h) The Project may be a drain on emergency services thus depriving the residents of adequate emergency services.
- (i) The solar equipment may obstruct motorists' view of crossroads at intersections.
- (j) The Project does not provide adequate controls for noxious and invasive weeds.
- (k) The Project will harm area wildlife.
- (l) The Project will force wildlife to congregate in the neighbors' fields and yard and damage crops and livestock.

- (m) The Project may increase stormwater runoff and flood neighbors' fields and homes.
- (n) Erosion from project construction may pollute the streams.
- (o) The application lacks sufficient detail about solid waste and debris generation and disposal.
- (p) Project construction will negatively impact the neighborhood roads and delay the movement of farm equipment.

(CCPC Initial Br. at 71, 72.)

{¶ 339} The Board concludes that the second element is satisfied and that as a package, the Amended Stipulation benefits the public interest in multiple ways. The Board highlights that the proposed electric generation facility will generate clean and quiet solar-powered renewable electricity that will provide “on peak” power during the high demand period of mid-day and late afternoon (App. Ex. 14 at 13). Additionally, the Project will have a positive effect on the Ohio economy through the creation of jobs and a significant positive impact on the local tax base, including local school districts and other taxing districts that serve the project area. (Staff Ex. 1 at 15). The Board agrees with Alamo that the Amended Stipulation further benefits the public interest by requiring the Project to take steps and meet certain requirements during the construction and operation of the Project that minimize its impacts (App. Ex. 14 at 13). While CCPC raises a number of concerns regarding the Project's adverse impact on the public interest, the majority of these concerns are addressed in the conditions set forth in the Amended Stipulation and in our above analysis of R.C. 4906.10(A)(1) through (8). For example, the Board points to the various plans required by the Amended Stipulation such as the landscape and lighting plan, the vegetation maintenance plan, and the decommissioning plan, in order to address identified concerns (App. Ex. 14, App. Ex. 19). The Board also focuses on agreements, such as the RUMA, and programs, such as Alamo Solar complaint resolution program (App. Ex. 14). Additionally, the

Board highlights requirements of the Amended Stipulation, such as the increased project setbacks established pursuant to Condition 3, the efforts to minimize damage to field tile drainage systems as set forth in Condition 16, and the required EMS training in accordance with Condition 27. Based on this analysis, we determine that the Amended Stipulation is in the public interest.

C. Does the settlement package violate any important regulatory principle or practice?

{¶ 340} Alamo witness Herling opined that the Amended Stipulation does not violate any regulatory principle or practice (App. Ex. 14 at 15). Staff believes that there is no evidence to dispute the Applicant's representation that the Amended Stipulation does not violate any important regulatory principle or practice (Staff Initial Br. at 21).

{¶ 341} From CCPC's perspective, there is a scarcity of information in the application for evaluating the threats caused by the Project to the quality of life and livelihood of nearby residents and for identifying measures to avoid or minimize these threats. CCPC also believes that the application is incomplete as it fails to provide much of the information about the Project's impacts and proposed mitigation measures required by the Board's rules. In particular, CCPC asserts that the Project's impacts are unknown and are not accurately or adequately evaluated. According to CCPC, while the conditions proposed in the Amended Stipulation seek to fill in some of the missing information by requiring the filing of numerous studies to Staff after the certificate is issued, CCPC submits that this approach is an insufficient substitute for informed decision-making on whether to grant the certificate and what conditions to include in it. (CCPC Initial Br. at 2, 3.) CCPC also believes that Alamo's reluctance to communicate with the Project's neighbors on issues such as screening of visual impacts has resulted in an application that is wholly deficient in the details necessary to identify and address the threats to the neighbors and provides no meaningful enforceable commitments to protect the neighbors against these intrusions (CCPC Initial Br. at 4).

{¶ 342} CCPC believes that the Amended Stipulation is an unlawful attempt to circumvent the Board's statutory and regulatory mandates to base its proceedings on complete applications so that neighbors surrounding the Project can provide meaningful input on siting decisions that affect them. CCPC argues that the application is missing many of the studies and information needed to evaluate the Project's threats and the mitigation of those threats. CCPC recognizes that by the time of the reopening of this proceeding, Alamo had completed a number of the studies that had been slated for completion pursuant to the Initial Stipulation. These include a noise study to model the sound from the Project's central inverters (App. Ex. 15, Ex. DMH-S1), a preliminary site plan (App. Ex. 14, Attach. DH2), a letter from OHPO about Alamo's proposed cultural resources survey (App. Ex. 14, Attach. DH3), a complaint resolution program (App. Ex. 14, Attach. DH4), a RUMA (App. Ex. 14, Attach. DH5), a preliminary landscape plan for mitigating the visual impacts on the neighborhood (App. Ex. 16, Att. 1), a preliminary vegetation management plan (App. Ex. 19, Attach. 1; App. Ex. 16 at 5). With respect to the completed studies, CCPC notes that they were not part of the application (CCPC Initial Br. at 6 citing Tr. IV at 682). CCPC also states that the supplemental filings are not subject to the entire vetting through the adjudicatory process, including a Board Staff investigation via a Staff Report, the public and adjudicatory hearings, and discovery. In support of its position, CCPC notes that these plans were revealed to CCPC only 17 days prior to the supplemental hearing. (CCPC Initial Br. at 5, 8, 9.) Further, CCPC submits that the Amended Stipulation does not require Alamo to incorporate any of the supplemental testimonies' language into the final studies submitted pursuant to the Amended Stipulation (CCPC Initial Br. at 7).

{¶ 343} Additionally, CCPC contends that the Amended Stipulation attempts to compensate for the lack of information in the Application by requiring 12 other studies to be performed and submitted to Staff after the certificate is issued. Specifically, CCPC expresses concern that that the 12 studies will not be properly tested in the adjudicatory process. (CCPC Initial Br. at 5, 6.) These studies include:

- (a) Detailed engineering drawings of the final project design under Condition 3;
- (b) Any changes to project layout after the submission of final engineering drawings under Condition 4;
- (c) A public information program under Condition 9;
- (d) A modification or mitigation plan for avoiding cultural resources or minimizing impacts on them under Condition 14;
- (e) A landscape and lighting plan under Condition 15;
- (f) A Storm Water Pollution Prevention Plan under Condition 16;
- (g) A vegetation management plan under Condition 18;
- (h) A construction access plan under Condition 22;
- (i) A final traffic plan under Condition 24;
- (j) A transportation management plan under Condition 25;
- (k) A comprehensive decommissioning plan under Condition 28;
and
- (l) Pre- and post -construction stormwater calculations under Condition 29.

(Joint Ex. 2 at 6-12.)

{¶ 344} CCPC opines that acceptance of studies without first incorporating them into the application and the acceptance of the Amended Stipulation with its arrangement for the multitude of post-certificate studies would violate the Board's enabling statute and its own rules. In support of its position, CCPC references R.C. 4906.06(A)(2) which requires

the application to contain “[a] summary of any studies that have been made by or for the applicant of the environmental impact of the facility.” Additionally, CCPC notes that to implement R.C. 4906.06, Ohio Adm.Code 4906-2-04(B) requires an application include the information required by Ohio Adm.Code Chapter 4906-4, including the requisite studies that must be included. Further, CCPC avers that Ohio Adm.Code 4906-3-06(A) requires the Board’s chairman to determine whether an application is complete and complies with the content requirements of the Board’s rules, before the application can be processed. (CCPC Initial Br. at 7.)

{¶ 345} CCPC submits that the Board is required to follow its own rules, as well the applicable statutes, citing *State ex rel. Cuyahoga Cty. Hosp. v. Ohio Bureau of Workers’ Comp.*, 27 Ohio St.3d 25, 27-28 (1986) and *Parfitt v. Columbus Corr. Facility*, 62 Ohio St.2d 434, 436, 437 (1980), (CCPC Initial Br. at 8). Based on its concerns regarding the aforementioned studies, CCPC believes that the application does not contain any of the studies required by Ohio Adm.Code Chapter 4906-4, Ohio Adm.Code 4906-2-04(B), 4906-3-06(A), and R.C. 4906.06 (CCPC Initial Br. at 8). Additionally, CCPC alleges that the Board violated R.C. 4906.06(A)(2) and Ohio Adm.Code 4906-3-06(A) by erroneously determining that the application is complete and complies with the content requirements of the Board’s rules, including Ohio Adm.Code 4906-4. Further, CCPC posits that the Board violated R.C. 4906.07(A) by scheduling the hearing without receiving a complete application. As a result of the alleged violations, CCPC argues that it is being prejudiced and deprived of its right to provide the Board with input regarding the proposed facility that could seriously impact them. (CCPC Initial Br. at 8.)

{¶ 346} CCPC recommends that the Board reopen the application with instructions to supply the missing information in order to allow the Board to make an informed decision (CCPC Reply Br. at 44). CCPC asserts that to do otherwise will result in the Board unlawfully delegating to Staff the responsibility to make the required findings and determinations to resolve the issues are required by R.C. 4906.10(A) and deprives CCPC of its statutory and procedural due process rights to provide the Board with input on decisions

that affect their lives and to call and examine witnesses at the hearing. (CCPC Initial Br. at 76.) CCPC recommends that the Board should vacate its prior finding under Ohio Adm.Code 4906-3-06(A) that the application is complete and, instead, require that Alamo supplement its application to correct the deficiencies (CCPC Initial Br. at 9). At a minimum, CCPC advocates that the Board should take steps to remove some of the secrecy from Staff's decision-making on the on the post-certificate plans and Staff's oversight of the operation of the Project. These steps include that:

- (a) Alamo should be required to post notices of and copies on its website of all permit applications, permits, plan submittals, and other correspondences to and from public agencies about the design, construction, and operation of the Project and provide the public with a mechanism by which the public can obtain more information about and comment on issues associated with these actions.
- (b) At least 15 days prior to submission to the government, Alamo should post on its website any facility requests for permits and other governmental action so that the public can provide Alamo and the pertinent government agency with comments on the proposals. These notices should identify a contact person and email address for Alamo and for the appropriate government official so that the public can submit comments to them.
- (c) Notices of the preconstruction meeting and other meetings between Alamo and Staff about the Project should be posted on Alamo's website at least 14 days prior to the meetings and should be open to the public.

- (d) Alamo should be required to send all of the aforementioned notices to the owners and occupants of land adjoining the project area.
- (e) Alamo's complaint summaries should be posted on the Applicant's website.

(CCPC Initial Br. at 77, 78.)

{¶ 347} Responding to CCPC's contention that various studies and plans should have been included in the application, Alamo avers that CCPC's position is contrary to the Board's rules, the Board's prior decisions, and the decisions from the Supreme Court of Ohio. Additionally, Alamo submits that the Project is currently only a proposal and that final engineering design and design studies are not yet complete. (Alamo Reply Br. at 1 citing App. Ex. 1 at 15, 16; Tr. I at 166).

{¶ 348} The Applicant argues that the Supreme Court of Ohio determined that the Board did not improperly delegate its responsibility to grant or deny the provisional certificate when it allowed for further fleshing out of the certain conditions of the certificate, referencing the Ohio Supreme Court's decision in *In re Buckeye Wind, LLC*, 131 Ohio St.3d 449 (*In re Buckeye Wind*) (Alamo Reply Br. at 8). Specifically, the Applicant notes that the conditions set forth in the certificate issued in Case No. 08-666-EL-BGN (08-666), *In the Matter of the Application of Buckeye Wind, LLC for a Certificate to Construct Wind-powered Electric Generation Facilities in Champaign County, Ohio*, Opinion, Order and Certificate, March 22, 2010, at 82-96, required Buckeye Wind to submit to the following to Staff following the issuance of the certificate:

- (a) A final equipment delivery route and transportation routing plan;

- (b) One set of detailed drawings for the proposed project so that Staff can confirm that the final design is in compliance with the terms of the certificate;
- (c) A stream crossing plan;
- (d) A detailed frac-out contingency plan;
- (e) A tree clearing plan;
- (f) A final access plan;
- (g) A fire protection and medical emergency plan;
- (h) An avian and bat mortality survey plan;
- (i) A Phase I cultural resources survey program;
- (j) An architectural survey work program;
- (k) A screening plan for one specific property;
- (l) A determination of the probable hydrologic consequences of the decommissioning and reclamation operations;
- (m) A study identifying any prime farmlands;
- (n) Engineering techniques proposed to be used in decommissioning and a reclamation and description of the major equipment.

(Alamo Reply Br. at 7-9.)

{¶ 349} The Applicant submits that based on the Court's allowance of the aforementioned post-certificate plans and information in *In re Buckeye Wind*, it is clear that the permitted information goes beyond the limitations claimed by CCPC. The Applicant

asserts that because the proposed plans submitted to Staff post-certificate issuance are no different from plans allowed to be submitted post-issuance in other Board decisions, and as affirmed by the Supreme Court of Ohio, CCPC has no basis for opposing the appropriateness of the post certificate submittals. In support of its position, Alamo avers that the post-certificate issuance submissions required pursuant to Conditions 3 (engineering drawings), 9 (public information program), 10 (complaint resolution process), 14 (Phase 1 cultural resources survey program), 15 (landscape and lighting plans), 18 (vegetation management plan), 22 (construction access plan), 24 (traffic management plan), and 28 (decommissioning plan) are no different from plans allowed to be submitted post-issuance in other Board decisions (Alamo Reply Br. at 10, 11 referencing Case Nos. 17-773-EL-BGN, 17-774-EL-BGN, 17-1152-EL-BGN, 18-1024-EL-BGN, 18-1334-EL-BGN).

{¶ 350} In response to CCPC's argument that the Application is incomplete and that the Board cannot grant a certificate if the application does not include information required by the Board's application rules, Alamo contends that pursuant to R.C. 4906.10(A), the Board is required to determine whether the record as a whole provides sufficient evidence to determine each applicable element of R.C. 4906.10. (Alamo Reply Br. at 2, 11). Alamo submits that the issue of whether the application complies with Ohio Adm.Code 4906-4 is not one of the eight criteria of R.C. 4906.10(A) deemed relevant by the Ohio Supreme Court. (Applicant Reply Br. at 11 citing *In re Buckeye Wind*). Alamo notes that its application was found to be complete on February 8, 2019, and that CCPC did not challenge this determination. Alamo also points out that CCPC did not object to the admission of Alamo's application into the record (Alamo Reply Br. at 14 citing Tr. I at 174). Not only does Alamo consider CCPC's arguments to be factually incorrect, but it also contends that based on *In re Black Fork Wind Energy, LLC*, 138 Ohio St.3d 43, 2013-Ohio-5478, 3 N.E.3d 173, the Board should reject CCPC's arguments as being untimely (Alamo Reply Br. at 14).

{¶ 351} Citing R.C. 4906.07 and 4906.08, as well as Ohio Adm.Code 4906-3-06(A), Alamo asserts that the determination that an application complies with the Ohio Adm.Code is merely a check to confirm that the application addresses the information topics set forth

in the Board's rules. According to Alamo, it serves merely as a preliminary step to initiate the process of holding a public hearing and creating the record. Alamo submits that the substantive decision to issue a certificate is unrelated to the early approval of the application's procedural compliance, except insofar as that the approval sets the record-making process into action (App. Reply Br. at 11). Based on its reliance on R.C. 4906.07(C), Alamo avers that the purpose of Staff's subsequent analysis is not to evaluate the evidence in relation to the relevant rules, but to make recommended findings with regard to R.C. 4906.10(A) (App. Reply Br. at 11, 12).

{¶ 352} Additionally, Alamo rejects CCPC's claim that Alamo is attempting to supplement the application with additional studies referenced in the Amended Stipulation and attached to witness testimony during the October 26, 2020 hearing. Alamo contends that these documents are not studies but are plans representing work supporting the construction and operation of the Project. For example, Alamo references the preliminary site plan (App. Ex. 14 at Att. DH2), the draft complaint resolution plan (App. Ex. 14 at Att. DH4), the Preble County Commission Resolution approving the PILOT Program (App. Ex. 14 at Att. DH6), the preliminary landscape management plan (App. Ex. 16 at Att. 1), the road use and maintenance Agreement (App. Ex. 19 at Att. 1), the preliminary vegetative management plan (App. Ex. 19 at Att. 2), the preliminary decommissioning plan (App. Ex. 19 at Att. 3) (Alamo Reply Br. at 4).

{¶ 353} Similarly, Alamo opines that the following Amended Stipulation's recommended post-certificate submittals are not studies but relate to the construction and operation of the Project: (a) detailed first engineering drawings, (b) drawings showing changes to the project layout after the submission of final engineering drawings, (c) a public information program, (d) a plan for avoiding cultural resources, (e) a landscape and lighting plan; (f) a Storm Water Pollution Prevention Plan; (g) a vegetation management plan; (h) a construction access plan; (i) a final traffic plan; (j) a transportation management plan, (k) a decommissioning plan; and (l) pre-and post-construction stormwater calculations (App. Reply Br. at 5). As noted by Alamo, pursuant to the Amended Stipulation, the plans will be

submitted to Staff, who will confirm that the plans comply with the Amended Stipulation conditions. (App. Reply Br. at 5, 6 citing Conditions 10, 14, 15, 18, 24, and 28).

{¶ 354} In response to CCPC's argument that it has been deprived of its procedural due process rights, the Applicant avers that CCPC replicates the arguments made by the citizens-intervenors, Union Neighbors United in Case No. 08-666, that were ultimately rejected by the Court in *In re Buckeye Wind*. Additionally, the Applicant submits that the fact that it will submit information to the Board and/or its Staff as a condition of a future certificate does not rise to the level of a government decision warranting the protections of due process. Alamo notes that the Board has already held an evidentiary hearing, which CCPC was a party, and will issue its decision based on the statutory criteria under R.C. 4906.10(A). Alamo submits that the submission of the additional information required in the Amended Stipulation is intended to ensure compliance with the future certificate. Alamo argues that ensuring future compliance is not the equivalent of a governmental decision ensuring CCPC to the right of an evidentiary hearing. Alamo opines that that requiring an evidentiary hearing on information submitted in compliance with Certificate Conditions would impose significant fiscal and administrative burdens on the Board and its Staff. Finally, Alamo points out that CCPC may still utilize the informal complaint resolution process recommended in the Amended Stipulation and avail itself of the formal complaint process provided under R.C. 4906.97 and 4906.98 and Ohio Adm.Code 4906-7 if the complaint is not resolved informally (Alamo Reply Br. at 48-50). Alamo references the protections set forth in R.C. 4906.04, which provides that "[n]o person shall commence a major utility facility without first having obtained a certificate for the facility," and R.C. 4906.10, which requires that the Board evaluate the estimated impacts of a proposed project and may impose any terms and conditions that it believes are necessary. Additionally, Alamo notes that the Board held an evidentiary hearing at which CCPC had the opportunity to present its own testimony regarding its concerns regarding the Project's impacts and cross-examine Staff and Alamo witnesses. Therefore, Alamo believes that CCPC has received the requisite due process. According the Applicant, the post-certificate information

is designed to protect the private interest by making sure that the Applicant has complied with the conditions that will be imposed. (Alamo Reply Br. at 49, 50.)

{¶ 355} Alamo dismisses CCPC's arguments that the Alamo witness testimony exhibits are improper. Alamo notes that CCPC did not object to the admission of the documents as part of the record and did not pursue cross-examination regarding the road use and maintenance agreement, the decommissioning plan, the vegetation management plan, the preliminary site plan, the complaint resolution plan, or the PILOT approval. (Tr. IV at 600, 601, 635, 636, 649-652, 674, 675). Alamo also argues that CCPC had ample opportunity but did not serve any formal discovery requests on the Applicant (Alamo Reply Br. at 6, 7).

{¶ 356} Alamo rejects CCPC's request to participate in the pre-construction meetings. In support of its position, Alamo indicates that there is no role for the public to play at the pre-construction meeting inasmuch as the purpose of the meeting is for Staff to make sure that the Applicant is aware of its responsibilities. (Alamo Reply Br. at 51 citing Tr. II at 420, 421.) Additionally, Alamo emphasizes that Staff, and not CCPC, is obligated to continue to review the Project and the plans submitted post-certificate issuance to ensure that it is in compliance with the conditions of the certificate (Alamo Reply Br. at 51 citing Joint Ex. 2 at 7-12; Tr. II at 422). Similar to the discussion above, Alamo points out that any member of the public that is concerned about any activity related to the Project's certificate may still utilize the informal complaint resolution process recommended in the Amended Stipulation and avail itself of the formal complaint process provided under R.C. 4906.97 and 4906.98 and Ohio Adm.Code 4906-7 if the complaint is not resolved informally (Alamo Reply Br. at 50, 51).

{¶ 357} Staff disputes CCPC's claim that the application is incomplete and fails to satisfy the statutory criteria. Specifically, Staff states that "[t]he Board does not, nor has it ever, required that an application include all design details, nor is that the purpose of the power siting process. Rather, the Board has required that its Staff evaluate the possible

impacts of the proposed project, and whether reasonable steps have been taken to minimize-not eliminate- such impacts. To the extent that Staff is unable to determine that impacts will be adequately mitigated, the Staff recommends conditions to be implemented in the final planning.” (Staff Reply Br. at 1.) According to Staff, in this case Staff followed this procedure and together with a number of the interested and knowledgeable parties, modified and expanded on Staff’s proposed conditions in the context of the Stipulation and recommended that the Project be approved (Staff Reply Br. at 1). Staff represents that the Amended Stipulation results in modified and strengthened conditions. (Staff Reply at 2.) Staff believes that continuing Board jurisdiction and oversight, together with proven complaint resolution processes are more than sufficient to ensure compliance with any certificate issued by the Board (Staff Reply Br. at 2).

{¶ 358} Staff rejects CCPC’s claim that the certificate approval process proposed in the Stipulation, whereby Alamo will submit 12 plans to the Staff after the certificate is issued, is an insufficient substitute for informed decision-making on whether to grant the certificate and what conditions to include in it. Staff also rejects CCPC’s claim that this approach constitutes an unlawful delegation of responsibility to Staff. (Staff Reply Br. at 5).

{¶ 359} Specifically, Staff cites to *In re Buckeye Wind* at ¶¶13-14 in which the Court stated:

We stated in *In re Application of Am. Transm. Sys., Inc.*, 125 Ohio St.3d 333, 2010-Ohio-1841, 928 N.E.2d 427, ¶¶20-2: R.C. Chapter 4906, the board’s enabling statute expressly allows the board to delegate many responsibilities to subordinates * * * R.C. 4906.02(C) states, “The chairman of the public utilities commission may assign or transfer duties among the commission’s staff.” * * * One responsibility, however, cannot be delegated: “the board’s authority to grant certificates under section 4906.10 of the Revised Code shall not be exercised by any officer, employee, or body other than the board

itself.” R.C. 4906.02(C). Appellants argue that the board improperly delegated its decision-making authority * * * The issues characterized as improperly deferred, however, simply require additional submissions * * * to staff before the preconstruction conference.

(Staff Reply Br. at 4, 5.)

{¶ 360} Staff also cites to *In re Buckeye Wind* at ¶¶16-18 in which the Court stated:

R.C. 4906.10(A) allows a certificate to be issued upon such conditions as the board considers appropriate. The statutes authorize a dynamic process that does not end with the issuance of a construction certificate. The General Assembly vested the board with authority to allow its staff to monitor * * * compliance with conditions that the board has set, conditions upon which the neighbors already had a chance to be heard. [S]imply because certain matters are left for further review and possible public comment does not mean that they have been improperly delegated to staff.

(Staff Reply Br. at 5.)

{¶ 361} Staff submits that none of the plans that CCPC contends constitute improper delegation grant any certificate or authority to Alamo. Therefore, consistent with *In re Buckeye Wind* at ¶18, Staff argues that “the Board does not improperly delegate its responsibility or authority when it allows for the further fleshing out of certain conditions of the certificate’ by ordering post certificate submissions to its Staff.” (Staff Reply Br. at 5.)

{¶ 362} Of the 12 plans that CCPC raises concern, Staff asserts that only the pre- and post-construction stormwater calculations set forth in Condition 29 were added to the Amended Stipulation. According to Staff, all of the other plans are routine conditions regularly approved by the Board, many of which were modified in this case to include

stricter conditions. (Staff Reply Br. at 4). Staff rejects CCPC's argument that the plans in this case provide for design and operational procedures that go well beyond the activities that passed muster in the Court's decision in *In re Buckeye Wind*. In support of its position, Staff points out that similar to this case, the appellants in *In re Buckeye Wind*, raised four separate propositions of law alleging improper delegation to Staff, which include disputing the propriety of post-certificate review of transportation routing plans, location of collection lines, a determination of blade throw potential, and the relocation of turbines. Consistent with the Court's rejection of the arguments in *In re Buckeye Wind*, Staff avers that CCPC's arguments in this case should be denied. (Staff Reply Br. at 6.)

{¶ 363} Additionally, Staff believes that CCPC was provided with full due process rights relative to the application and the Amended Stipulation. Specifically, Staff notes that CCPC did not object to the reopening of the proceeding or to the admission of the new information during the hearing. Further, Staff notes that CCPC made no effort to engage in discovery. (Staff Reply Br. at 4).

{¶ 364} The Board finds that Staff's ongoing role is not unlawful. As stated in *In re Buckeye Wind*, the Supreme Court of Ohio has found that the Board is statutorily authorized to allow Staff to monitor compliance with the conditions enumerated in this decision. As further explained by the Court " * * * proper facility siting is subject to modification as the process continues—proposals are tested and matched to the defined conditions." *In re Buckeye Wind* at ¶ 17. Thus, CCPC is incorrect to describe Staff's continued involvement as an improper delegation of authority. Rather, Staff's ongoing duties are a necessary component in a dynamic process.

{¶ 365} Above, we made our determinations regarding the statutory requirements of R.C. 4906.10. In order to ensure that Alamo continues to comply with those requirements, ongoing monitoring is required. Such monitoring includes the convening of pre-construction conferences and the submission of follow-up plans by the Applicant. As noted by Staff, the plans to be subsequently provided are similar in nature to those addressed in

the *In re Buckeye Wind* decision. With respect to the pre-construction conference, the Board agrees with Staff that, in light of the fact that the purpose of a pre-construction conference is to ensure that the Applicant is aware of its responsibilities relative to compliance with the conditions of the certificate, there is no role for the public at the conference.

{¶ 366} Staff has experience monitoring the development of Ohio's solar generation projects and is eminently qualified to oversee Alamo's compliance with this order. The Board is not persuaded by CCPC's argument that Alamo's compliance with the conditions is not subject to additional review or public comment. First, we recognize that any material changes to the Project requires an application to amend the certificate. In addition, as acknowledged in *In re Buckeye Wind*, pursuant to R.C. 4905.07 all of Staff's records are open to inspection. *In re Buckeye Wind* at ¶ 25. The Board would be required to hold a hearing in accordance with R.C. 4906.07, in the same manner where an amendment application involves any material increase in any environmental impact or substantial change in the location of all or a portion of the facility. Additionally, as with all certificates, the Board emphasizes if Staff should discover, through its continued monitoring and review of the progress of the Project, that Alamo is not complying with any of the conditions adopted in this Order, it should bring such concern to the attention of the Board and the Board may take the appropriate action to ensure compliance, in accordance with R.C. Chapter 4906. Further, CCPC or any other entity may pursue the filing of a formal complaint if it believes that a violation of law has occurred or avail itself of the informal complaint resolution process set forth in the Amended Stipulation. Considering these procedural safeguards, the Board reiterates its conclusion that the criteria established in accordance with R.C. 4906 are satisfied.

{¶ 367} Although CCPC now appears to argue that the application is not complete as required by Ohio Adm.Code 4906-3-06, the Board notes that the determination of completeness was issued pursuant to the letter of February 8, 2019. As noted by this letter, this determination signified that the Board Staff had received sufficient information to begin

its review. As evidenced by the Staff Report, this subsequent review focused on the application and the compliance with R.C. 4906.10(A)(1)-(8).

{¶ 368} The Board also agrees with Staff and Alamo that the provisioning of plans via supplemental testimony and the submission of post-certificate plans to Staff is not a violation of due process and is consistent with the decision in *In re Buckeye Wind*, which provides for the submission of post-certificate plans to Staff. Additionally, as noted by Alamo, CCPC was afforded the opportunity to participate in the evidentiary hearings held in this proceeding, including the issuance of discovery requests, the presentation of evidence, and the ability to engage in cross-examination of Alamo's witnesses. Further, the Board recognizes that CCPC did not object to the admission of the various plans submitted as part of prefiled testimony during the reopening of this proceeding, including the road use maintenance agreement, decommissioning plan, vegetation management plan, preliminary landscaping plan, and the complaint resolution plan. (Tr. IV at 614, 663, 676). Finally, the Board recognizes that CCPC did not file any motions to compel alleging that Alamo had failed to comply with discovery requests.

{¶ 369} However, given the public interest in this proceeding, we direct that all required submissions to be provided to Staff, including, but not limited to, plans, studies, programs, and letters, shall also be docketed in this case. The Board, therefore, finds that the Amended Stipulation, as revised by this Order, does not violate any important regulatory principle or practice. Based upon the record in these proceedings, the Board concludes that all of the elements established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the facility as described in the application filed in this case, subject to the conditions set forth in the Amended Stipulation, as revised by this his Order. Accordingly, based upon all of the above, the Board approves and adopts the Amended Stipulation, subject to the conditions set forth in this Order, and hereby issues a certificate to Alamo in accordance with R.C. Chapter 4906.

X. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 370} Alamo is a person under R.C. 4906.01(A) and is licensed to do business in the state of Ohio.

{¶ 371} The proposed electric generation facility is a major utility facility, as defined in R.C. 4906.01(B).

{¶ 372} On October 22, 2018, Alamo filed a pre-application notification letter regarding its proposed project.

{¶ 373} On November 5, 2018, in accordance with Ohio Adm.Code 4906-3-03, Alamo filed proof that legal notice was published in the *Eaton Register-Herald* a newspaper of general circulation in Preble County, regarding the public informational meeting on its application.

{¶ 374} The Applicant held a public information meeting to discuss the Project with interested persons and landowners on November 13, 2018.

{¶ 375} On December 10, 2018, as amended on January 31, 2019, Alamo filed an application to construct and operate a solar-powered electric generation facility.

{¶ 376} By letter filed February 8, 2019, the Board notified Alamo that its application had been found to be sufficiently complete pursuant to Ohio Adm.Code 4906-1, et seq.

{¶ 377} In a filing docketed on March 20, 2019, the Applicant certified that on that date it served copies of the accepted and complete application upon the requisite entities in accordance with Ohio Adm.Code 4906-3-07.

{¶ 378} In filings docketed on June 10, 2019, and June 21, 2019, the Applicant filed proofs of its public notice that appeared in *Dayton Daily News and Eaton Register-Herald* as well as a list of the names and addresses of those persons who received a copy of written notice pursuant to Ohio Adm.Code 4906-3-09(A)(1).

{¶ 379} Pursuant to the Entries of April 3, 2019, May 13, 2019, June 10, 2019, and July 11, 2019, the ALJ scheduled a local public hearing for June 12, 2019, an evidentiary hearing to begin on July 17, 2019, and found the effective date of the filing of the application to be March 27, 2019.

{¶ 380} Pursuant to the Entry of April 3, 2019, waivers were granted relative to Ohio Adm.Code 4906-4-03(A)(1)(a), 4906-4-03(B)(4)(b), 4906-4-08(A)(1)(c), 4906-4-08(A)(5), 4906-4-08(B)(1)(a)(i), 4906-4-08(C)(1)(a)(i), 4906-4-08(D)(2) through (4), and 4906-4-08(E)(1).

{¶ 381} On March 22, 2019, the Eaton Community School District filed a motion to intervene.

{¶ 382} On March 26, 2019, the OFB filed a motion to intervene.

{¶ 383} On April 3, 2019, the ALJ issued an Entry granting the Eaton Community School District Ohio and the OFB's motions to intervene.

{¶ 384} On May 9, 2019, the Preble Shawnee Local School District filed a motion to intervene.

{¶ 385} On May 15, 2019, CCPC and a number of its members filed a motion to intervene.

{¶ 386} Notices of intervention were timely filed by the Preble County Engineer, Washington Township, Gasper Township, the Preble Soil and Water, the Preble County Planning Commission, and the Preble County Commissioners.

{¶ 387} By Entry issued on June 10, 2019, the ALJ accepted the notices of intervention filed by the Preble County Engineer, Washington Township, Gasper Township, the Preble Soil and Water Conservation District (Preble Soil and Water), the Preble County Planning Commission and the Preble County Commissioners. The ALJ also granted the motions to

intervene filed by Shawnee Local and CCPC on behalf of its members who own and/or live on properties that are adjacent to the project area.

{¶ 388} On May 28, 2019, Staff filed a Report of Investigation of the Project proposed in the application.

{¶ 389} In compliance with Ohio Adm.Code 4906-3-09, on June 10, 2019, Alamo filed proof of publication showing that notice was published in the *Eaton Register-Herald*, a newspaper of general circulation in Preble County, on May 29, 2019.

{¶ 390} A local public hearing was held on June 12, 2019, in Eaton, Ohio. Twenty-nine witnesses testified at the local public hearing.

{¶ 391} On July 5, 2019, Alamo, Staff, OFB, Preble County Commissioners, the Preble County Engineer, Preble Soil and Water, Gasper Township, Washington Township, and the Preble County Planning Commission filed the Initial Stipulation. Eaton CSD, Shawnee Local, CCPC and CCPC Members did not join in the Stipulation.

{¶ 392} An evidentiary hearing was held beginning on July 17, 2019. Witnesses for Alamo and Staff offered testimony in support of the Initial Stipulation. CCPC offered testimony in opposition to the Initial Stipulation.

{¶ 393} The Amended Stipulation and the second evidentiary hearing on the proposed generation facility has evaluated to make the applicable determination required by R.C. 4906.10(A). The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

{¶ 394} The Amended Stipulation satisfies the criteria established by the Board for review and consideration of stipulations.

{¶ 395} Based on the record, the Board finds that Alamo's application should be approved and a certificate should be issued, pursuant to R.C. Chapter 4906, for the

construction, operation, and maintenance of the electric generation facility, subject to the conditions set forth in the Amended Stipulation, as revised by this Order.

XI. ORDER

{¶ 396} It is, therefore,

{¶ 397} ORDERED, That the Amended Stipulation, as revised by this Order be approved and adopted. It is, further,

{¶ 398} ORDERED, That a certificate be issued to Alamo for the construction, operation, and maintenance of the electric generation facility, subject to the conditions set forth in the Amended Stipulation, as revised by this Order. It is, further,

{¶ 399} ORDERED, That all required submissions to be provided to Staff, shall also docketed in this case. It is further,

{¶ 400} ORDERED, That a copy of this Opinion, Order, and Certificate be served upon all parties.

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Matt McClellan, Designee for Lydia Mihalik, Director
Ohio Development Services Agency

Mary Mertz, Director
Ohio Department of Natural Resources

W. Gene Phillips, Designee for Stephanie McCloud, Director
Ohio Department of Health

Drew Bergman, Designee for Laurie Stevenson, Director
Ohio Environmental Protection Agency

Sarah Huffman, Designee for Dorothy Pelanda, Director
Ohio Department of Agriculture

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Case No(s). 18-1578-EL-BGN

Summary: Opinion & Order approving and adopting the amended stipulation and recommendation between Alamo Solar I, LLC, the Preble County Commissioners, the Preble County Engineer, the Preble County Planning Commission, the Preble Soil and Water Conservation District, Gasper Township, Washington Township, the Ohio Farm Bureau, and the Board Staff, and directs that a certificate be issued to Alamo Solar I, LLC for the construction, operation, and maintenance of a solar-powered electric generation facility in Preble County, Ohio. electronically filed by Ms. Mary E Fischer on behalf of Ohio Power Siting Board

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CERTIFICATE OF SERVICE

I hereby certify that, on April 15, 2022, a copy of the foregoing Volume I of the

Appendix to the Merit Brief was served upon the following counsel of record by electronic mail:

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