

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
REPUBLIC WIND, LLC for a Certificate of)	
Environmental Compatibility and Public Need)	
for a Wind-Powered Electric Generating)	Case No. 17-2295-EL-BGN
Facility in Seneca and Sandusky Counties,)	
Ohio)	

**REPUBLIC WIND, LLC’S MEMORANDUM CONTRA
ADDITIONAL SENECA COUNTY LOCAL RESIDENTS’ PETITION TO INTERVENE¹**

I. INTRODUCTION

Pursuant to Ohio Administrative Code (“OAC”) Rule 4906-2-27(B)(1), Republic Wind, LLC (“Republic”) respectfully submits this Memorandum Contra (“Memo Contra”) the Petition to Intervene (“Additional Petition to Intervene”) of the Additional Seneca County Local Residents (“Additional Local Residents”). Republic opposes intervention of the following Additional Local Residents²:

- | | |
|---|----------------|
| • Keith & Jane Fox | • Jason Smith |
| • Randall & Louise Ladd | • Robert Voska |
| • J. Dian West, Executor
of the Estate of Ellen A.
Gibson | |

¹ On August 29, 2018, Republic filed an unopposed motion to suspend the procedural schedule. Because the motion has yet to be ruled upon, Republic files this memo contra to preserve its rights.

² Based upon current information, it is unclear whether Steven Miller is outside of or adjacent to the project area. Therefore, Republic is not opposing Steven Miller’s intervention at this time. However, Republic reserves the right to raise any arguments regarding Steven Miller’s interest in this proceeding once more information regarding the location of Mr. Miller’s property is discovered. Also, Republic is not opposing intervention of Linda Niederkohr. Although Ms. Niederkohr’s residence is outside the project area, it appears she may own a vacant lot which is within the project area.

These Additional Local Residents' properties are not located within the project area and do not abut the project area. As such, these landowners do not have a direct interest in the outcome of this case. Based on the Attorney Law Judge's ("ALJ") August 21, 2018 Entry, these particular residents should be denied intervention.

II. BACKGROUND

On February 2, 2018, as amended on March 27, 2018, Republic filed its Application for a Certificate of Environmental Compatibility and Public Need for a wind-powered electric generating facility in Seneca and Sandusky Counties, Ohio ("Application"). On June 19, 2018, as amended on June 22, 2018, a group of local residents filed a petition to intervene ("First Petition to Intervene"). On July 3, 2018, Republic filed a memorandum contra the local residents First Petition to Intervene. Republic opposed intervention of those local residents who live outside the project area.

On August 17, 2018, the Additional Local Residents filed the Additional Petition to Intervene. Except for adding new local residents, the Additional Petition to Intervene is the same as the First Petition to Intervene. The Additional Petition to Intervene does not identify any new or additional interest in this proceeding which was not already discussed in the First Petition to Intervene.

The ALJ issued an Entry on August 21, 2018 denying in part and granting in part the local residents' petition to intervene. Although the ALJ allowed a number of the local residents to intervene, he denied intervention for six (6) individuals because they resided outside of the project area. Entry at ¶21. The ALJ determined that "these individuals reside outside of the project area and do not have property that abuts the project area." *Id.* The ALJ denied these individuals' petition to intervene because they "failed to demonstrate a sufficiently direct interest at stake in the outcome of this case." *Id.*

III. LAW AND ARGUMENT

A. Standard of Review

Petitions to intervene are governed by OAC Rule 4906-2-12. Under that rule, the Additional Local Residents must show good cause for their intervention. OAC Rule 4906-2-12(B). Whether good cause exists depends upon a discretionary determination of: (a) the nature and extent of the Additional Local Residents' interest; (b) the extent to which the Additional Local Residents' interest is represented by existing parties; (c) the Residents' potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and (d) whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party. *Id.*

B. **Some of the Additional Local Residents have no interest in this proceeding because they do not live in the project area and their properties do not abut the project area.**

Based on the ALJ's August 21, 2018 Entry, the following Additional Local Residents should be denied intervention:

- Keith & Jane Fox
- Jason Smith
- Randall & Louise Ladd
- Robert Voska
- J. Dian West, Executor
of the Estate of Ellen A.
Gibson

In the Entry, the ALJ denied intervention for six (6) individuals because they did not reside in the project area and did not have a property that abuts the project area. Entry at ¶21. The ALJ's decision to deny intervention for residents that do not reside in the project area was consistent with Board precedent. *See In the Matter of the Application Harrison Power, LLC*, Case No. 17-1189-BGN, Entry ¶21(March 30, 2018) (denying intervention because "living in the county of a proposed project is not enough on its own to warrant intervention."); *In the Matter of*

the Application of South Field Energy, LLC, 15-1716-EL-BGN, Opinion, Order and Certificate at pg. 5 (September 22, 2016) (denying intervention by resident that lived in the same county of the proposed project because he failed to claim how he specifically would be impacted by the project); and *In the Matter of the Application of Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry ¶13 (March 2, 2010) (denying intervention because “[i]t is not enough for a person seeking to intervene...to merely state that he or she resides in the county wherein the project under consideration is proposed to be sited.”).

Attachment A to the Memo Contra is a map of the project area which demonstrates that the above-listed Additional Local Residents do not live in the project area. Nor do their properties abut the project boundary. Further, these Additional Local Residents live a substantial distance away from any of the proposed turbine locations. Jason Smith lives more than two miles from any proposed turbine location. Robert Voska lives over a mile away from any proposed turbine location. J. Dian West, Executor of the Estate of Ellen A. Gibson, also lives more than a mile away from any proposed turbine location. Both the Fox and Ladd families live approximately half a mile from any proposed turbine. Because these residents live far away from any potential turbine locations, they do not have a direct interest in this proceeding.

Further, these Additional Local Residents who live outside the project area should not be allowed to intervene for a generalized purpose of addressing issues such as noise and shadow flicker. The Additional Local Residents cannot represent the interest of other land owners, and they can only intervene to protect their specific interest. *In the Matter of the Application of Black Fork Wind Energy, LLC*, 10-2865-EL-BGN, Entry ¶12 (Aug. 30, 2011) (allowing Ms. Davis to intervene to the extent her property was within the boundaries of the proposed project but not to assert general objections to energy policy or to represent other affected landowners).

In addition, the Additional Petition to Intervene is almost exactly the same as the First Petition to Intervene. The Additional Petition to Intervene does not provide any additional rationale which would support intervention of individuals that live outside the project area. The Additional Local Residents did not identify any new facts which were not already discussed in the First Petition to Intervene. Because the Additional Local Residents failed to present any additional basis for intervention, the ALJ should follow his prior ruling and deny intervention for those individuals who live outside the project area.

To the extent residents who reside outside the project area have concerns regarding the project, these residents can voice their opinion at the local public hearing. Entry at ¶21. As the ALJ suggested in his Entry, the local public hearing is a more appropriate forum for these residents to voice their concerns than the adjudicatory hearing. *Id.*

C. The interests of Additional Local Residents who live outside the project area will be adequately represented by other parties to this proceeding.

The Board should deny the Additional Petition to Intervene with respect to those Additional Local Residents who live outside the project area because they do not have real or relevant interests in this proceeding. *See In the Matter of the Application of South Field Energy, LLC*, 15-1716-EL-BGN, Opinion, Order, and Certificate at pgs. 4-5 (September 22, 2016); *In the Matter of the Application of Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry ¶13 (March 2, 2010). Assuming, *arguendo*, that the Board believes these Additional Local Residents have any interests in this proceeding (which they do not); those alleged interests would be adequately addressed by other parties to this proceeding. The Staff will perform a thorough investigation of the Application to determine the potential environmental impacts of the project. Staff will also issue a report with proposed conditions addressing any potential impacts. The

Staff report and conditions will presumably address the alleged issues raised in the Additional Petition to Intervene.

Further, the Board has granted intervention for Adams, Scipio, Reed, Pleasant, and York Townships in this proceeding. Each local government presumably will address the interests of its local residents. Moreover, those residents that live within the project area (and their counsel and purported “experts”) will be able to adequately address the alleged concerns raised by those residents that do not live in the project area. In these circumstances, petitions/motions to intervene have been denied in prior cases. See, e.g., *In the Matter of the Application of Ohio Power Company*, No. 14-1693-EL-RDR, Entry ¶20 (Feb. 9, 2005) (denying motion to intervene because, among other reasons, the movant did not have a unique interest that was not adequately represented by other parties); *In the Matter of the Application of The Cincinnati Gas & Electric Company*, No. 04-1820-EL-ATA, Finding and Order ¶20 (Feb. 9, 2005) (denying motions to intervene because intervention was not necessary to consider movants’ concerns); and *In the Matter of the Application of Ohio Power Company*, No. 93-01-EL-EFC, Entry ¶6 (March 11, 1993) (denying motion to intervene of residential customers because their interest was adequately represented by the Office of the Ohio Consumers Counsel).³

D. The Additional Local Residents who do not live in the project area will not contribute to a just and expeditious resolution of the issues involved in the proceeding.

The Additional Local Residents who do not live in the project area have no actual interest that will be affected by the proposed facility. They will not provide any relevant evidence or information regarding the proposed facility. Alleged concerns regarding the proposed facility

³ These cases address motions to intervene in Public Utilities of Commission of Ohio (“Commission”) cases, which involve OAC Rule 4901-1-11. Under OAC Rule 4901-1-11(A)(2) the Commission may deny intervention if the movants “interest is adequately represented by existing parties.” When determining whether to grant intervention, the Commission will consider “the extent to which the person’s interest is represented by existing parties.” OAC Rule 4901-1-11(B)(5). Because of the similarity between the Board’s and the Commission’s intervention standards, the Board should look to Commission cases for guidance.

should be raised by those parties who have a vested interest in the proceeding, not individuals who have generalized concerns or theoretical objections to the proposed project. Allowing the Additional Local Residents who do not live in the project area to intervene in this case will result in irrelevant, duplicative evidence, which will only serve to delay this proceeding.

E. The Additional Local Residents who do not live in the project area should not be allowed to intervene because they will unduly delay the proceeding and unjustly prejudice Republic.

As previously stated, the Additional Local Residents who do not live in the project area have no actual interest that will be affected by the proposed facility. However, the Additional Petition to Intervene clearly demonstrates that these various individuals who have no interest in the proceeding will likely be litigating various aspects of Republic's Application. This will cause unnecessary delay and prejudice to Republic because it will incur more costs in discovery, negotiations, and preparation for hearing. Considering that Staff, local governments, and/or other residents can adequately address the alleged concerns presented in the Additional Petition to Intervene. The Board should deny the intervention of those Additional Local Residents who do not live in the project area.

IV. CONCLUSION

For the foregoing reasons, the Board should deny intervention of the following Additional Local Residents:

- Keith & Jane Fox
- Jason Smith
- Randall & Louise Ladd
- Robert Voska
- J. Dian West, Executor
of the Estate of Ellen A.
Gibson

Respectfully submitted on behalf of
REPUBLIC WIND, LLC



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Memo Contra Additional Petition to Intervene has been served upon the following parties listed below by electronic mail, this 4th day of September 2018.



Devin D. Parram

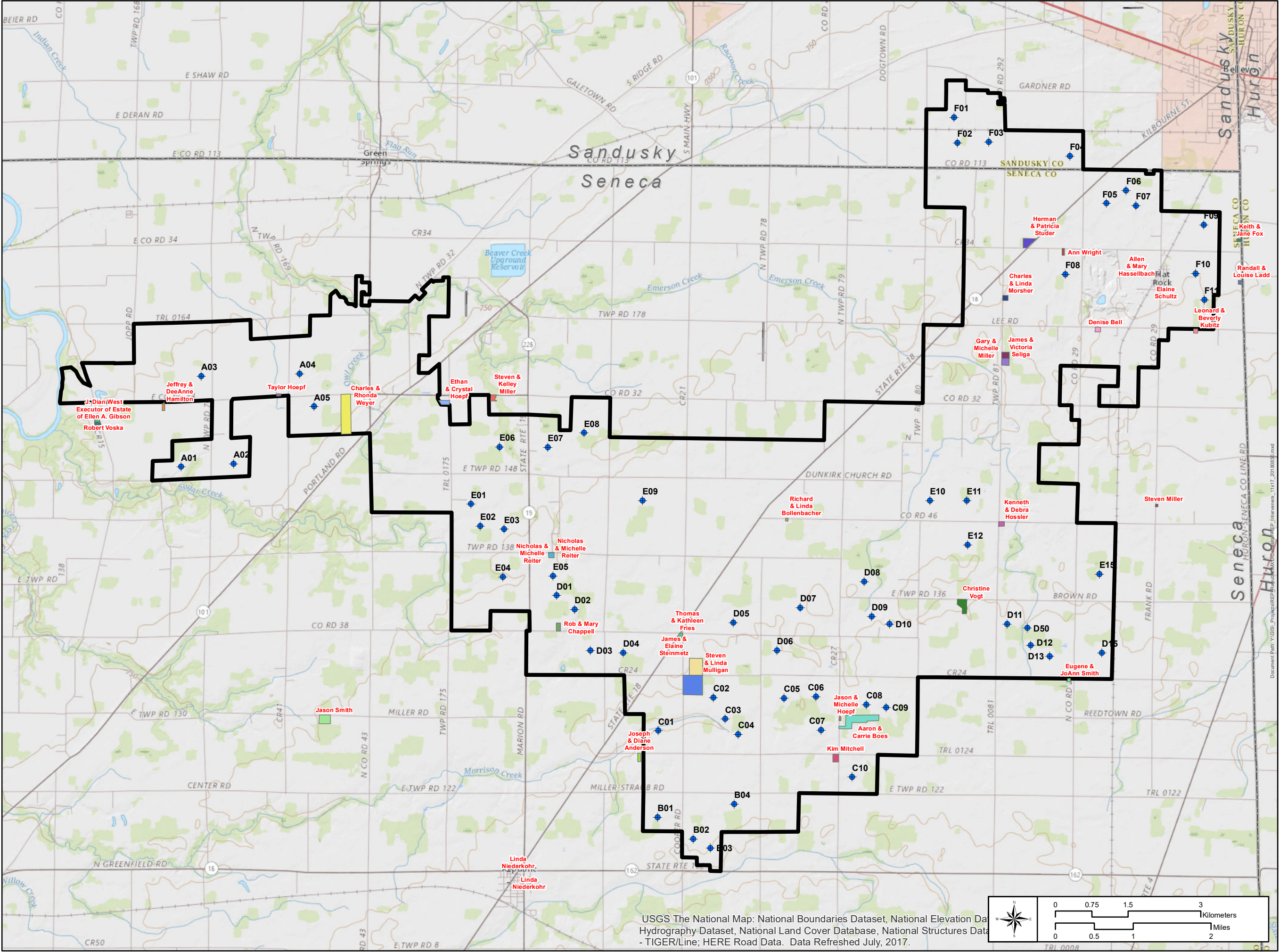
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cendsley@ofbf.org
lcurtis@ofbf.org
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mleppla@theoec.org
tdougherty@theoec.org
ctavenor@theoec.org



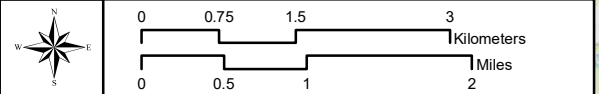
Intervenor
List (08/30/2018)

- ◆ Turbine - REP_LAY_055
REP_Intervenors_20180830_FINAL
Intervenor
- Aaron & Carrie Boes
 - Allen & Mary Hassellbach
 - Ann Wright
 - Charles & Linda Morsher
 - Charles & Rhonda Weyer
 - Christine Vogt
 - Denise Bell
 - Elaine Schultz
 - Ethan & Crystal Hoepf
 - Eugene & JoAnn Smith
 - Gary & Michelle Miller
 - Herman & Patricia Studer
 - J. Dian West Executor of Estate of Ellen A. Gibson
 - James & Elaine Steinmetz
 - James & Victoria Seliga
 - Jason & Michelle Hoepf
 - Jason Smith
 - Jeffrey & DeeAnne Hamilton
 - Joseph & Diane Anderson
 - Keith & Jane Fox
 - Kenneth & Debra Hossler
 - Kim Mitchell
 - Leonard & Beverly Kubitz
 - Linda Niederkoeh
 - Nicholas & Michelle Reiter
 - Randall & Louise Ladd
 - Richard & Linda Bollenbacher
 - Rob & Mary Chappell
 - Robert Voska
 - Steven & Kelley Miller
 - Steven & Linda Mulligan
 - Steven Miller
 - Taylor Hoepf
 - Thomas & Kathleen Fries
 - Project Boundary
 - County Boundary

Date: 8/30/2018 Author: MR
Coordinate System: NAD 1983 2011 StatePlane Ohio North FIPS 3401 F1 US
Projection: Lambert Conformal Conic
Datum: NAD 1983 2011
Units: Foot US



USGS The National Map: National Boundaries Dataset, National Elevation Data
Hydrography Dataset, National Land Cover Database, National Structures Data
- TIGER/Line; HERE Road Data. Data Refreshed July, 2017.



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Case No(s). 17-2295-EL-BGN

Summary: Memorandum Contra Additional Seneca County Local Residents' Petition to Intervene electronically filed by Teresa Orahod on behalf of Devin D. Parram