

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE OHIO POWER
SITING BOARD'S REVIEW OF RULE 4906-4-
08 OF THE OHIO ADMINISTRATIVE CODE.

CASE NO. 16-1109-GE-BRO

SECOND FINDING AND ORDER

Entered in the Journal on March 15, 2018

I. SUMMARY

{¶ 1} The Ohio Power Siting Board finds that Ohio Adm.Code 4906-4-08(C)(3) should be amended to reflect the exact language utilized in R.C. 4906.20.

II. DISCUSSION

A. *Procedural History*

{¶ 2} R.C. 111.15(B) requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules.

{¶ 3} R.C. 106.03(A) requires that the Ohio Power Siting Board (Board) determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
- (b) Need amendment or rescission to give more flexibility at the local level;
- (c) Need amendment or rescission to eliminate unnecessary paperwork;
- (d) Incorporate a text or other material by reference and, if so, whether the text or other material incorporated by reference is

deposited or displayed as required by R.C. 121.74, and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;

- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determine under R.C. 107.52; and
- (g) Contain words or phrases having meanings that, in contemporary usage, are understood as being derogatory or offensive.

{¶ 4} In addition, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Board must: review its rules to determine the impact that a rule has on small businesses; attempt to balance the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative, unintended consequences, or unnecessarily impede business growth.

{¶ 5} The Board initiated the above-captioned rulemaking docket to formally consider Staff's proposed revisions to Ohio Adm.Code 4906-4-08, resulting from an informal stakeholder workshop held for a previous rulemaking proceeding. *In re the Board's Review of Ohio Adm.Code Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13, 4906-15, and 4906-17*, Case No. 12-1981-GE-BRO, Second Finding and Order (Nov. 12, 2015) at 5-12.

{¶ 6} Staff evaluated Ohio Adm.Code 4906-4-08, as well as the comments received at the June 9, 2016 workshop, and recommended certain amendments to Ohio Adm.Code 4906-4-08, as well as a newly proposed rule, Ohio Adm.Code 4906-4-09.

{¶ 7} On September 22, 2016, the Board issued Staff's recommendations for amending Ohio Adm.Code 4906-4-08 and the proposed new rule under Ohio Adm.Code 4906-4-09, and requested comments to assist in the review. Comments were filed by several stakeholders.

{¶ 8} In considering the comments filed in response to the September 22, 2016 Entry, the Board issued its Finding and Order on May 4, 2017, finding that Ohio Adm.Code 4906-4-08 should be amended and the newly proposed Ohio Adm.Code 4906-4-09 should be adopted.

{¶ 9} Subsequently, by Entry on Rehearing issued August 17, 2017 (Second Entry on Rehearing), the Board revised the previously adopted rule language to reflect changes recommended by various stakeholders in their respective applications for rehearing.

{¶ 10} By Entry issued January 18, 2018 (Entry), the Board requested comments on an additional revision on the first sentence of Ohio Adm.Code 4906-4-08(C)(3) to further assist in the review required by R.C. 111.15 and Executive Order 2011-01K, and directed that such comments be filed by February 1, 2018. Specifically, the Board sought comment on modifying the language of Ohio Adm.Code 4906-4-08(C)(3) as follows:

“Setback waivers. The owner(s) of all property adjacent to any wind farm property may waive the minimum setback requirements by signing a waiver of their rights.”

{¶ 11} Comments were filed by the following: Katie Elsasser; Deb Hay; Greenwich Neighbors United (GNU); Kimberly Kaufman, Kenneth J. Mauer, and Mark Shieldcastle (collectively, Conservationists); Union Neighbors United, Inc. (UNU); Renewable Energy

Systems Americas Inc., Avangrid Renewables, LLC, and 6011 Greenwich Windpark, LLC (collectively, Greenwich); the Ohio Environmental Council (OEC); Black Fork Wind Energy, LLC (Black Fork); and Mid-Atlantic Renewable Energy Coalition (MAREC).

B. *Summary of the Comments*

{¶ 12} The overwhelming majority of comments opposed the inclusion of the word “all” into the rule language, recommending that the Board either maintain the waiver language adopted in the August 17, 2017 Entry on Rehearing, amend the language to follow the statutory language verbatim, or include additional clarifying language to the rule. Only two commenters openly supported the inclusion of the word “all” into the rule language.

{¶ 13} MAREC initially argues that the Board correctly found that a rulemaking proceeding such as this one is not the appropriate public forum to debate the proper interpretation of the statutory language and should not entertain such arguments now. However, by suggesting to include the word “all” in the rule language, MAREC contends that the Board is not only deviating from that finding, but proposing rule language which contradicts the statutory language and creates an excessive burden on wind developers to obtain waivers from virtually every single property owner located in or around a wind farm. In support of this assertion, MAREC attached a map to its comments illustrating the fact that the proposal would require a wind developer to obtain a substantial number of additional waivers from property owners before proceeding, which may result in a cost-prohibitive project. Further, MAREC claims this absurd result also runs contrary to the objectives of the Common Sense Initiative, namely due to the cost attributed to the additional required waivers. MAREC explains that the industry has consistently interpreted the word “all”, as used in the statute, to modify “owners” and ensure that every owner of multi-owner property located adjacent to a proposed wind turbine is required to waive a setback that encroaches the minimum setback distance on their parcel of land. MAREC also argues that the proposed inclusion of the word “all” is also

unconstitutional, as the United States Supreme Court has struck down state laws that require the consent of all adjoining landowners in order to obtain zoning variances. As such, MAREC recommends either maintaining the current rule language, amending the language to quote the statute verbatim, or amending the language to clarify from whom waivers are required as follows: "The owner(s) of all property adjacent to any wind farm property within the minimum setback for a wind turbine may waive the minimum setback requirements by signing a waiver of their rights."

{¶ 14} Greenwich recommends that the Board should exercise its authority and adopt a reasonable interpretation of R.C. 4906.20(B)(2)(c) consistent with the current language found in Ohio Adm.Code 4906-4-08(C)(2)(d) which states that "[m]inimum setbacks from property lines and residences may be waived in the event that all owners of property adjacent to the turbine agree to such waiver." Greenwich contends that the Board maintains the requisite expertise and authority to make such a determination, adding that this language leads to the most reasonable result.¹ OEC adds that the inclusion of the word "all" into the proposed rule language will further complicate the interpretation and implementation of the rule and should, therefore, not be included.

{¶ 15} As an alternative, Greenwich suggests, and OEC agrees, that the Board should utilize the exact language of the statute, thereby avoiding unnecessary confusion. Further, Greenwich and OEC state that the purpose of R.C. 4906.20, in part, is to "prescribe a minimum setback for wind turbine" from "the property line of the wind farm property" and, therefore, argue that the statutory language clearly intends for setbacks to apply to a particular turbine as it relates to specific property. By including the word "all" in the proposed rule language, these commenters are concerned that the rule could be interpreted to require developers to obtain waivers of the minimum setback

¹ Greenwich also incorporated its earlier comments submitted in Case Nos. 16-1109-GE-BRO and 12-1981-GE-BRO.

distance from each and every owner of property adjacent to the property on which the turbine will be sited, contrary to the General Assembly's intent and Board precedent.

{¶ 16} Given the fact that the Board has already held that the statutory language is unambiguous on this issue, Black Fork also agrees that inserting the word "all" into the proposed language would contradict the statute and create ambiguity. Black Fork suggests either maintaining the language as originally proposed or amending the rule further to state "[t]he owner(s) of a property adjacent to any wind farm property may waive the minimum setback requirements as to the owner(s)'s property by signing a waiver of the minimum setback requirements."

{¶ 17} Conservationists also oppose the adoption of the proposed addition. They initially argue that the comment period was insufficient to provide reasonable notice to the public and request that the period be extended to allow additional time and a more thorough response. Secondly, Conservationists contend that the Board has exceeded its authority and is attempting to circumvent the legislative process as the rule could "essentially write out of existence any setback requirements whatsoever." Finally, Conservationists claim that the proposed amendment provides an opportunity for wind developers to take advantage of the citizens of Ohio, namely elderly residents.

{¶ 18} GNU first alleges that the Board's proposed revision is yet another attempt to provide wind farm developers an opportunity to evade statutory minimum setback requirements. Rather than utilize the language contained in R.C. 4906.20(B)(2)(c) and note that all owners of property must agree to waive the statutory minimum setback requirements, GNU asserts that the Board is now trying to attach the word "all" to some undefined property, thus, resulting in a rule which conflicts with the underlying statute. GNU also raises several issues with the fact that the Board's rule allows for a permissive minimum setback waiver, rather than a mandatory waiver for the project developer. Finally, GNU contends that the Board's rule runs afoul of the void-for-vagueness doctrine advanced in the United States and Ohio Constitutions. In addition to reiterating its earlier

recommendations for the Board's waiver procedure, GNU suggests that the Board adopt the controlling language of R.C. 4906.20(B)(2)(c).

{¶ 19} Ms. Elsasser and Ms. Hay support the inclusion of the word "all," noting that by adding this clarification to the rule language, the Board is effectively preserving the property rights of all landowners adjacent to the wind farm property, instead of just those wishing to waive the setback requirements.

{¶ 20} While UNU does not appear to object to the inclusion of the word "all" into the rule language, as it views the inclusion as the Board's attempt to follow the statute, it does agree with GNU in that the rule does not accurately reflect the statute's clear requirement that the setback waivers *must* be obtained from all adjacent property owners to be effective. Moreover, UNU and Greenwich state that there is already a contradiction in the language used in the rule and the underlying statute, noting that the statute states "all owners of property adjacent to *the* wind farm property," while the rule references "all property adjacent to *any* wind farm property." (emphasis added). UNU suggests that the Board adopt the following language in order to provide clarity to the rule: "The owner(s) of all property adjacent to a wind farm property may waive the minimum setback requirements with respect to that wind farm property by signing a written waiver of their rights. In order for the waiver to be effective with respect to the wind farm property, the Applicant must file with the Board written waivers signed by every owner of real property adjacent to the wind farm property."

C. *Board Conclusion*

{¶ 21} As an initial matter, the Entry was clear that only comments discussing the proposed modification would be considered by the Board. To the extent submitted comments exceed the scope of that Entry, the Board will not consider them in this Second Finding and Order. However, we do find it necessary to dismiss certain comments

regarding our process and components of the rule that remained unchanged in the Entry before addressing the Board's proposed modification.

{¶ 22} In response to some of the comments relating to our process and the deadline for providing comments, the Board notes that the only issue raised in the Entry is the inclusion of the word "all" in the rule language. The Board's rulemaking process provides ample opportunity to receive comments from interested stakeholders and we felt that, given the extremely limited scope of this round of comments, that an expedited deadline was appropriate. Again, any other issues relating to the waiver procedure, including those general concerns forwarded by Conservationists, are beyond the scope of our Entry and would have been more appropriate to raise during the initial comment period. We have an obligation to provide due process to all interested stakeholders, as well as generate reasonable regulations in a timely manner, pursuant to R.C. 4906.20. However, we do note that many of their concerns were addressed in our prior decisions. Finding and Order at ¶36; Second Entry on Rehearing at ¶26.

{¶ 23} As to the constitutional arguments, GNU contends that our rule language violates the void-for-vagueness doctrine. In support of its claim, GNU asserts that the Board created a "standardless standard" when it failed to identify what "rights" would be covered by the waiver. While the Board continues to believe the rule is clear as to this matter, we have not suggested any changes as to the inclusion of the phrase "their rights" or the required contents of the waiver, and thus, find that these arguments should have also been raised in the initial comment period and fall outside the scope of the Board's Entry.

{¶ 24} As a final matter, in response to several of GNU's and UNU's claims, the Board is not suggesting that obtaining waivers of the applicable statutory minimum setback requirements is a permissive act for wind developers. Rather, consistent with the statute, and as MAREC correctly points out, the Board was merely identifying that this is the procedure in which wind developers and particular property owners may engage in

order to effectuate a waiver of applicable minimum setback requirements as to their properties. Furthermore, this argument exceeds the scope of the Board's directive in its Entry.

{¶ 25} Moving on to the proposed modification, upon review of the responsive comments, the Board finds that the word "all" should not be added to the rule language, as proposed in the Entry. Consistent with our prior decisions in this proceeding, the Board has found the statute to be unambiguous as to from whom waivers are required. Finding and Order at ¶35. When drafting Ohio Adm.Code 4906-4-08(C)(3), it has always been the intent of the Board to simply provide guidance as to the appropriate procedure to obtain a waiver, as well as prescribe the minimum necessary contents therein. The Board agrees that the proposed inclusion of the word "all" is contrary to that intended by the General Assembly and exceeds our objective to provide procedural guidelines. The statute will continue to provide the applicable standard establishing from whom wind developers must obtain waivers of the setbacks.

{¶ 26} Accordingly, while we initially found in our earlier decisions that it was unnecessary for us to quote the statute in our rule, we are persuaded by the comments requesting further modification and find that it is appropriate to amend the rule to incorporate the exact statutory language set forth in R.C. 4906.20 at this time. Finding and Order at ¶36; Second Entry on Rehearing at ¶27. We find the amended language is necessary to alleviate confusion and clarify that the Board will continue to proceed with the statutory setback waiver requirements originally contemplated by the General Assembly, as has been our practice since the statute's inception. We also note that the overwhelming majority of comments were supportive of utilizing the exact statutory language. Thus, Ohio Adm.Code 4906-4-08(C)(3), in pertinent part, shall read as follows:

"Setback waivers. The setback shall apply in all cases except those in which all owner(s) of property adjacent to anythe wind farm

property ~~may waive the minimum application of the setback to that~~
~~property requirements by signing a waiver of their rights."~~

{¶ 27} In conclusion, the Board finds that Ohio Adm.Code 4906-4-08 should be amended. Furthermore, we find that Ohio Adm.Code 4906-4-08 and 4906-4-09, which are attached to this Second Finding and Order, should be refiled with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with R.C. 111.15.

III. ORDERED

{¶ 28} It is therefore,

{¶ 29} ORDERED, That Ohio Adm.Code 4906-4-08 be amended as set forth herein.
It is, further,

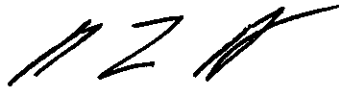
{¶ 30} ORDERED, That the newly proposed Ohio Adm.Code 4906-4-09 remain unchanged from the version approved by the Board in its Second Entry on Rehearing. It is, further,

{¶ 31} ORDERED, That Ohio Adm.Code 4906-4-08 and 4906-4-09 be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with R.C. 111.15. It is, further,



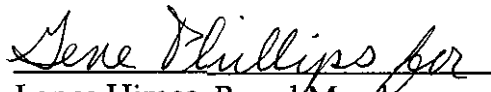

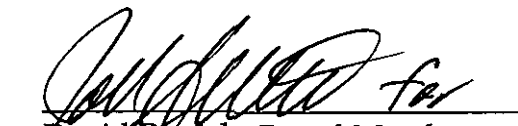
{¶ 32} ORDERED, That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Board, the five-year review date for Ohio Adm.Code 4906-4-08 and 4906-4-09 shall be in compliance with R.C. 119.032. It is, further,

{¶ 33} ORDERED, That a copy of this Second Finding and Order be served upon all commenters and interested persons of record in this matter.

THE OHIO POWER SITING BOARD



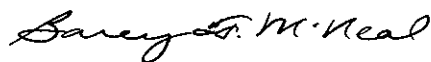
Asim Z. Haque, Chairman
Public Utilities Commission of Ohio


David Goodman, Board Member
and Director of the Ohio
Development Services Agency
James Zehnjinger, Board Member
and Director of the Ohio
Department of Natural Resources
Lance Himes, Board Member
and Director of the Ohio
Department of Health
Craig Butler, Board Member
and Director of the Ohio
Environmental Protection Agency
David Daniels, Board Member
and Director of the Ohio
Department of Agriculture

Board Member
and Public Member

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Entered in the Journal


MAR 15 2018
Barcy F. McNeal
Secretary

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AMENDED

4906-4-08 Health and safety, land use, and ecological information.

- (A) The applicant shall provide information on health and safety.
- (1) Equipment safety. The applicant shall provide information on the safety and reliability of all equipment.
 - (a) Describe all proposed major public safety equipment.
 - (b) Describe the reliability of the equipment.
 - (c) Provide the generation equipment manufacturer's safety standards. Include a complete copy of the manufacturer's safety manual or similar document and any recommended setbacks from the manufacturer.
 - (d) Describe ~~any~~the measures that will be taken to restrict public access to the facility.
 - (e) Describe the fire protection, safety, and medical emergency plan(s) to be used during construction and operation of the facility, and how such plan(s) will be developed in consultation with local emergency responders.
 - (2) Air pollution control. Except for wind farms, the applicant shall describe in conceptual terms the probable impact to the population due to failures of air pollution control equipment.
 - (3) Noise. The applicant shall provide information on noise from the construction and operation of the facility.
 - (a) Describe the construction noise levels expected at the nearest property boundary. The description shall address:
 - (i) Blasting activities.
 - (ii) Operation of earth moving equipment.
 - (iii) Driving of piles, rock breaking or hammering, and horizontal directional drilling.

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- (iv) Erection of structures.
 - (v) Truck traffic.
 - (vi) Installation of equipment.
- (b) Describe the operational noise levels expected at the nearest property boundary. The description shall address:
- (i) Operational noise from generation equipment. In addition, for a wind ~~facility~~farm, cumulative operational noise levels at the property boundary for each ~~non-participating~~ property adjacent to or within the project area, under both day and nighttime operations. Non-participating property, for the purpose of this rule, refers to properties not under lease or agreement with the applicant regarding any components of the facility or project. The applicant shall use generally accepted computer modeling software (developed for wind turbine noise measurement) or similar wind turbine noise methodology, including consideration of broadband, tonal, and low-frequency noise levels.
 - (ii) Processing equipment.
 - (iii) Associated road traffic.
- (c) Indicate the location of any noise-sensitive areas within one mile of the ~~proposed~~ 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.
- (d) Describe equipment and procedures to mitigate the effects of noise emissions from the proposed facility during construction and operation, including limits on the time of day at which construction activities may occur.
- (e) Submit a preconstruction background noise study of the project area that includes measurements taken under both day and nighttime conditions.
- (4) Water impacts. The applicant shall provide information regarding water impacts.
- (a) Provide an evaluation of the impact to public and private water supplies due to construction and operation of the proposed facility.

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- (b) Provide an evaluation of the impact to public and private water supplies due to pollution control equipment failures.
 - (c) Provide existing maps of aquifers, water wells, and drinking water source protection areas that may be directly affected by the proposed facility.
 - (d) Describe how construction and operation of the facility will comply with any drinking water source protection plans near the project area.
 - (e) Provide an analysis of the prospects of floods for the area, including the probability of occurrences and likely consequences of various flood stages, and describe plans to mitigate any likely adverse consequences.
- (5) Geological features. The applicant shall provide a map of suitable scale showing the proposed facility, geological features of the proposed facility site, topographic contours, existing gas and oil wells, and injection wells. The applicant shall also:
- (a) Describe the suitability of the site geology and plans to remedy any inadequacies.
 - (b) Describe the suitability of soil for grading, compaction, and drainage, and describe plans to remedy any inadequacies and restore the soils during post-construction reclamation.
 - (c) Describe plans for the test borings, including closure plans for such borings. Plans for the test borings shall contain a timeline for providing the test boring logs and the following information to the board:
 - (i) Subsurface soil properties.
 - (ii) Static water level.
 - (iii) Rock quality description.
 - (iv) Percent recovery.
 - (v) Depth and description of bedrock contact.
- (6) High-winds Velocity. The applicant shall provide an analysis of the prospects of high wind velocities for the area, including the probability of occurrences and likely consequences of various wind velocities, and describe plans to mitigate any likely adverse consequences.

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- (7) Blade shear. For a wind farm, tThe applicant shall evaluate and describe the potential impact from blade shear at the nearest property boundary and public road, ~~including its plans to minimize potential impacts and instruct workers of potential hazards.~~
 - (8) Ice throw. For a wind farm, tThe applicant shall evaluate and describe, by providing a site-specific ice throw risk analysis and assessment study, the potential impact from ice throw at the nearest property boundary and public road, ~~including its plans to minimize potential impacts and instruct workers of potential hazards.~~
 - (9) Shadow flicker. For a wind farm, tThe applicant shall evaluate and describe the potential cumulative impact from shadow flicker at the property boundary and habitable residencesensitive receptors within a distance of ten rotor diameters or at least one-half mile, whichever is greater, of a turbine, including its plans to minimize potential impacts.
 - (10) Radio and TV reception. The applicant shall evaluate and describe the potential for the facility to interfere with radio and TV reception and describe measures that will be taken to minimize interference.
 - (11) Radar interference. The applicant shall evaluate and describe the potential for the facility to interfere with military and civilian radar systems and describe measures that will be taken to minimize interference.
 - (12) Navigable airspace interference. The applicant shall evaluate and describe the potential for the facility to interfere with navigable airspace and describe measures that will be taken to minimize interference. The applicant shall coordinate such efforts with appropriate state and federal agencies. microwave communication paths and systems and describe measures that will be taken to minimize interference. Include all licensed systems and those used by electric service providers and emergency personnel that operate in the project area.
 - (13) Communication interference. The applicant shall evaluate and describe the potential for the facility to interfere with microwave communication paths and systems and describe measures that will be taken to minimize interference. Include all licensed systems and those used by electric service providers and emergency personnel that operate in the project area.
- (B) The applicant shall provide information on ecological resources.
- (1) Ecological information. The applicant shall provide information regarding ecological resources in the project area.

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- (a) Provide a map of at least 1:24,000 scale containing a one-half mile radius from the project area, showing the following:
 - (i) The proposed facility and project area boundary.
 - (ii) Undeveloped or abandoned land such as wood lots or vacant fieldtracts of land subject to past or present surface mining activities, not used as a registered game preserve or in agricultural production.
 - (iii) Wildlife areas, nature preserves, and other conservation areas.
 - (iv) Surface bodies of water, including wetlands, ditches, streams, lakes, reservoirs, and ponds.
 - (v) Highly-erodible soils and slopes of twelve percent or greater.
 - (b) Provide the results of a field survey of the vegetation and surface waters within one hundred feet of the potential construction impact area of the facility. The survey should include a description of the vegetative communities, and delineations of wetlands and streams. Provide a map of at least 1:12,000 scale showing all delineated resources.
 - (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 pProvide the results of field surveys of the plant and animal species identified in the literature survey.
 - (e) Provide a summary of any additional studies which have been made by or for the applicant addressing the ecological impact of the proposed facility.
- (2) Ecological impacts. The applicant shall provide information regarding potential impacts to ecological resources during construction.
- (a) Provide an evaluation of the impact of construction on the resources surveyed in response to paragraph (B)(1) of this rule. Include the linear feet and acreage impacted, and the proposed crossing methodology of each stream and wetland that would be crossed by or within the footprint of any part of the facility or construction equipment. Specify the extent of vegetation clearing, and describe how such clearing work will be done so as to minimize removal of woody vegetation. Describe potential impacts to wildlife and their habitat.

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- (b) Describe the mitigation procedures to be utilized to minimize both the short-term and long-term impacts due to construction, including the following:
- (i) Plans for post-construction site restoration and stabilization of disturbed soils, especially in riparian areas and near wetlands. Restoration plans should include details on the removal and disposal of materials used for temporary access roads and construction staging areas, including gravel.
 - (ii) A detailed frac out contingency plan for stream and wetland crossings that are expected to be completed via horizontal directional drilling.
 - (iii) Methods to demarcate surface waters and wetlands and to protect them from entry of construction equipment and material storage or disposal.
 - (iv) Procedures for inspection and repair of erosion control measures, especially after rainfall events.
 - ~~(v) Measures to divert storm water runoff away from fill slopes and other exposed surfaces.~~
 - (vi) Methods to protect vegetation in proximity to any project facilities from damage, particularly mature trees, wetland vegetation, and woody vegetation in riparian areas.
 - (vii) Options for disposing of downed trees, brush, and other vegetation during initial clearing for the project, and clearing methods that minimize the movement of heavy equipment and other vehicles within the project area that would otherwise be required for removing all trees and other woody debris off site.
 - (viii) Avoidance measures for major state or federally listed and protected species and their habitat, in accordance with paragraph (D) of rule 4906-4-09 of the Administrative Code.
- (3) Operational ecological impacts. The applicant shall provide information regarding potential impacts to ecological resources during operation and maintenance of the facility.
- (a) Provide an evaluation of the impact of operation and maintenance on the undeveloped areas shown in response to paragraph (B)(1) of this rule.

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- (b) Describe the procedures to be utilized to avoid, minimize, and mitigate both the short- and long-term impacts of operation and maintenance. Describe methods for protecting streams, wetlands, and vegetation, particularly mature trees, wetland vegetation, and woody vegetation in riparian areas. Include a description of any expected use of herbicides for maintenance.
 - (c) Describe any plans for post-construction monitoring of wildlife impacts.
- (C) The applicant shall provide information on land use and community development.
- (1) Existing land use. The applicant shall provide information regarding land use in the region and potential impacts of the facility through the following maps and related information.
 - (a) Provide a map of at least 1:24,000 scale showing the following within one mile of the project area boundary:
 - (i) The proposed facility.
 - (ii) Land use, depicted as areas on the map. Land use, for the purposes of paragraph (C) of this rule, refers to the current economic use of each parcel. Categories should include residential, commercial, industrial, institutional, recreational, agricultural, and vacant, or as classified by the local land use authority.
 - (iii) Structures, depicted as points on the map. Identified structures should include residences, commercial centers or buildings, industrial buildings and installations, schools, hospitals, churches, civic buildings, and other occupied places.
 - (iv) Incorporated areas and population centers.
 - (b) Provide, for the types of structures identified on the map in paragraph (C)(1)(a) of this rule, a table showing the following:
 - (i) For all structures and property lines within one thousand five hundred feet of the generation equipment or wind turbine, the distance between both the structure or property line and the equipment or nearest wind turbine.
 - (ii) For all structures and property lines within two hundred fifty feet of a collection line, access road, or other associated facility, the distance between both the structure or property line and the associated facility.

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- (iii) For each structure and property in the table, whether the ~~structure is on a property that~~ is being leased by the applicant for the proposed facility.
 - (c) Provide an evaluation of the impact of the proposed facility on the above land uses identified on the map in ~~paragraph (C)(1)(a)~~ of this rule. Include, for each land use type, the construction impact area and the permanent impact area in acres, in total and for each project component (e.g., turbines, collection lines, access roads), and the explanation of how such estimate was calculated.
 - (d) Identify structures that will be removed or relocated.
- (2) Wind farm maps. For wind farms only, the applicant shall provide a map(s) of at least 1:24,000 scale showing the proposed facility, habitable residences, and parcel boundaries of all parcels within a half-mile of the project area. Indicate on the map, for each parcel, the parcel number and whether the parcel is being leased by the applicant for the proposed facility, as of no more than thirty days prior to the submission of the application. Include on the map the setbacks for wind turbine structures in relation to property lines, habitable residential structures, electric transmission lines, gas pipelines, gas distribution lines, hazardous liquid(s) pipelines, and state and federal highways, consistent with no less than the following minimum requirements:
- (a) The distance from a wind turbine base to the property line of the wind farm property shall be at least one and one-tenth times the total height of the turbine structure as measured from its tower's base (excluding the subsurface foundation) to the tip of a blade at its highest point.
 - (b) The wind turbine shall be at least one thousand, one hundred, twenty-five feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the property line of the nearest adjacent property, including a state or federal highway, at the time of the certification application.
 - (c) The distance from a wind turbine base to any electric transmission line, gas pipeline, gas distribution line, hazardous liquid(s) pipeline, or state or federal highway public road shall be at least one and one-tenth times the total height of the turbine structure as measured from its tower's base (excluding the subsurface foundation) to the tip of a blade at its highest point.

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- (d) ~~Minimum setbacks from property lines and residences may be waived in the event that all owners of property adjacent to the turbine agree to such waiver pursuant to the procedures set forth in paragraph (C)(3) of this rule.~~
- (3) Setback waivers. The setback shall apply in all cases except those in which all owner(s) of property adjacent to any the wind farm property may waive the minimum application of the setback to that property requirements by signing a waiver of their rights. The waiver(s) must meet the following requirements:
- (a) Content of Waiver. The waiver shall: Describe formally adopted plans for future use of the project area and surrounding lands for anything other than the proposed facility.
- (i) Be in writing;
- (i)(ii) Provide a brief description of the facility;
- (ii)(iii) Notify the applicable property owner(s) of the statutory minimum setback requirements;
- (iii)(iv) Describe the adjacent property subject to the waiver through a legal description;
- (iv)(v) Describe how the adjacent property is subject to the statutory minimum setback requirements; and
- (v)(vi) Advise all subsequent purchasers of the adjacent property subject to the waiver that the waiver of the minimum setback requirements shall run with the land.
- (b) Required Signature. The waiver shall be signed by the applicant and the applicable property owner(s), indicating consent to construction activities without compliance with the minimum setback requirements. Describe the applicant's plans for concurrent or secondary uses of the site.
- (c) Recordation of Waiver. The waiver shall be recorded in the recorder of deeds office for the county recorder's office where the adjacent property that is the subject of the waiver is located. Describe the impact of the proposed facility on regional development, including housing, commercial and industrial development, schools, transportation system development, and other public services and facilities.

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- ~~(d) — Assess the compatibility of the proposed facility and the anticipated resultant regional development with current regional plans.~~
- ~~(e) — Provide current population counts or estimates and ten year population projections for counties and populated places within five miles of the project area.~~
- (34) Land use plans. The applicant shall provide information regarding land use plans.
 - (a) Describe formally adopted plans for future use of the project area and surrounding lands for anything other than the proposed facility.
 - (b) Describe the applicant's plans for concurrent or secondary uses of the site.
 - (c) Describe the impact of the proposed facility on regional development, including housing, commercial and industrial development, schools, transportation system development, and other public services and facilities.
 - (d) Assess the compatibility of the proposed facility and the anticipated resultant regional development with current regional plans.
 - (e) Provide current population counts or estimates, current population density, and ten-year population projections for counties and populated places within five miles of the project area.
- (D) The applicant shall provide information on cultural and archaeological resources.
 - (1) Landmark mapping. The applicant shall indicate, on a map of at least 1:24,000 scale, any formally adopted land and water recreation areas, recreational trails, scenic rivers, scenic routes or byways, and registered landmarks of historic, religious, archaeological, scenic, natural, or other cultural significance within ~~five-ten~~ miles of the project area. Landmarks to be considered for purposes of paragraph (D) of this rule are those districts, sites, buildings, structures, and objects that are recognized by, registered with, or identified as eligible for registration by the national registry of natural landmarks, the ~~Ohio state historical society~~ historical society preservation office, or the Ohio department of natural resources.
 - (2) Impacts on landmarks. The applicant shall provide an evaluation of the impact of the proposed facility on the preservation and continued meaningfulness of these landmarks and describe plans to avoid or mitigate any adverse impact.
 - (3) Recreation and scenic areas. The applicant shall describe the identified recreation and scenic areas within ~~five-ten~~ miles of the project area in terms of their proximity

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to population centers, uniqueness, topography, vegetation, hydrology, and wildlife. Provide an evaluation of the impact of the proposed facility on identified recreational and scenic areas within five-ten miles of the project area and describe plans to mitigate any adverse impact.

- (4) Visual impact of facility. The applicant shall evaluate the visual impact of the proposed facility within at least a ten five-mile radius from the project area. The evaluation shall be conducted or reviewed by a licensed landscape architect or other professional with experience in developing a visual impact assessment. 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. If the viewshed analysis includes atmospheric conditions, it shall incorporate the atmospheric conditions under which the facility would be most visible.
 - (b) Describe the existing landscape and evaluate its scenic quality. This description shall include documentation of a review of existing plans, policies, and regulations of the communities within the study area, and list all references to identified visual resources or other indications of the visual preferences of the community.
 - (c) Describe the alterations to the landscape caused by the facility, including a description and illustration of the scale, form, and materials of all facility structures, and evaluate the impact of those alterations to the scenic quality of the landscape.
 - (d) Evaluate the visual impacts to the resources identified in paragraph (D)(4) of this rule, and any such resources within ten miles of the project area that are valued specifically for their scenic quality.
 - (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.

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- (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.
- (E) The applicant shall provide information regarding agricultural districts and potential impacts to agricultural land.
- (1) Mapping of agricultural land. The applicant shall identify on a map of at least 1:24,000 scale the proposed facility, all agricultural land, and separately all agricultural district land existing at least sixty days prior to submission of the application located within the project area boundaries. Where available, distinguish between agricultural uses such as cultivated lands, permanent pasture land, managed woodlots, orchards, nurseries, livestock and poultry confinement areas, and agriculturally related structures.
 - (2) Agricultural information. The applicant shall provide, for all agricultural land, and separately for agricultural uses and agricultural districts identified under paragraph (E)(1) of this rule, the following:
 - (a) A quantification of the acreage impacted.
 - (b) An evaluation of the impact of the construction, operation, and maintenance of the proposed facility on the land and the following agricultural facilities and practices within the project area:
 - (i) Field operations such as plowing, planting, cultivating, spraying, aerial applications, and harvesting.
 - (ii) Irrigation.
 - (iii) Field drainage systems.
 - (iv) Structures used for agricultural operations.
 - (v) The viability as agricultural district land of any land so identified.
 - (c) A description of mitigation procedures to be utilized by the applicant during construction, operation, and maintenance to reduce impacts to agricultural land, structures, and practices. The description shall illustrate how avoidance and mitigation procedures will achieve the following:

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- (i) Avoidance or minimization to the maximum extent practicable of any damage to field tile drainage systems and soils in agricultural areas.
- (ii) Timely repair of damaged field tile systems to at least original conditions, at the applicant's expense.
- (iii) Segregation of excavated topsoil, and decompaction and restoration of all topsoil to original conditions unless otherwise agreed to by the landowner.