

BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of)	
of Alamo Solar I, LLC, for a)	
Certificate of Environmental)	Case No. 18-1578-EL-BGN
Compatibility and Public Need)	

POST HEARING REPLY BRIEF OF CONCERNED CITIZENS OF PREBLE COUNTY, LLC, ERIC AND KELLY ALTOM, MARY BULLEN, CAMDEN HOLDINGS, LLC, JOHN AND JOANNA 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 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

The opening brief of Alamo Solar I, LLC (“Alamo”) opens (at 2) by disparaging the Concerned Citizens of Preble County and its membership as “a small number of residents and private entities oppose[d] to the Project.” But 23 of these citizens are participating in this case as intervenors, while the Concerned Citizens have 67 members who are understandably opposed to this mammoth, poorly designed Project due to the harm it would cause to them and the community. And even if only one intervenor had sought protection from the Project’s hazards from the Ohio Power Siting Board (“Board” or “OPSB”), the Board has the statutory duty to conscientiously evaluate those hazards, to require mitigation of the hazards to limit them to the minimum adverse environmental impact, and if failing to accomplish that goal, to deny the certificate.

Alamo repeatedly touts its support from local officials, and much of Alamo’s brief is devoted to boasting about the amount of money that the Project will make for Alamo and Preble County’s local governments. The two are undoubtedly linked: the local governments’

misgivings about the Project's adverse impacts have been muted by their expectations of a financial windfall. Nevertheless, this proceeding is not a popularity contest. It is the Board's mandate to make sure that the Project's environmental impacts are not overlooked in the enthusiasm over profits, whether this protection is needed for just one person or many persons.

I. Alamo's Experts' Lack Of Knowledge And Experience About The Facts Critical For Evaluating The Solar Facility's Threats Has Contributed To The Deficiencies In Alamo's Application.

While Alamo's witnesses may be generally experienced in their professional fields, they have little or no experience or knowledge pertinent to the issues in this case. Since many of them contributed to the reports in the Application, their inexperience has contributed to the lack of necessary information in the Application. Their inexperience is summarized below.

Doug Herling, project manager. Mr. Herling has worked on only six solar projects during his entire career, including Alamo. Herling, Tr. 26:8-17. Only one of these projects has started operation, and it has operated for only two years. Herling, Tr. 27:23 to 28:7. Neither Mr. Herling nor his company has participated in the operation of any solar facility, since his company does not own or operate solar facilities. Herling, Tr. 28:18-24, 31:9-16. He also has had no involvement in constructing solar facilities, other than selecting construction contractors. Herling, Tr. 29:14-23. He has had no experience in dealing with problems arising at solar facilities. Herling, Tr. 32:7-10. The only knowledge of Mr. Herling, and his company about the operation of solar facilities comes from reading, hearing, and talking about solar operations. Herling, Tr. 31:1 to 32:6. That is, he has no more knowledge about the potential problems in constructing and operating solar facilities than does any other person who is interested in solar facilities.

Noah Waterhouse, drainage. Mr. Waterhouse has been involved in troubleshooting drainage tile problems at only one operating solar facility. Waterhouse, Tr. 179:9 to 180:11. That facility is only about 20 acres in size (*id.*, Tr. 180:12-14), compared to Alamo's project size of more than 900 acres of solar panels.

Mark Bonifas, transportation. Mr. Bonifas said that he has prepared route evaluation studies prior to the construction of some solar facilities for permitting purposes. Bonifas, Tr. 223:9-16, 224:2-9. However, his testimony is bereft of any information about whether construction traffic for those solar facilities harmed the public, in particular, farmers during planting and harvesting seasons. Without that information, his testimony has no utility.

David Hessler, noise. Mr. Hessler knew almost nothing about the noise levels expected from solar inverters. What he did know was deceptively presented and of no value in this proceeding.

Mr. Hessler's inexperience with solar facilities was revealed even before cross-examination started, when he had to correct his written direct testimony to state that a solar substation will hum at night. Hessler, Tr. 238:7-20. If he had had significant solar experience, he would have known that fact when he wrote his direct testimony instead of opining at that time that "the Project won't create any noise whatsoever at night." Hessler, Tr. 238:14-15.

Mr. Hessler has measured sound from a solar inverter only once in his entire career. Hessler, Tr. 249:11-18. This occurred in New York State, at a location "[r]ight near" a cooling fan. Hessler, Tr. 249:25 to 250:5. Mr. Hessler did not produce any written documentation of the noise measurements on that single occasion, and could not remember them. Hessler, Tr. 250:6-8. Nor did he reveal the level of background noise from the nearby cooling fan that was masking the inverter's noise. Hessler, Tr. 250:6-17. He said that he measured only background noise at

100 feet from the inverter (Hessler, Tr. 250:16-17), i.e., the background noise was louder than the inverter. However, without knowing the background sound level, a statement that the inverter noise was below the background level means nothing.

Nor did Mr. Hessler have any inverter noise data from other persons' measurements. Mr. Hessler's report in the Application relied solely on a report for the Massachusetts Clean Energy Center (hereinafter referred to as the "Massachusetts Report"), which was the basis for his statement that "field measurements indicate that inverter sound fades to insignificance relative to normal background levels at a distance of 150 ft." Co. Exh. 2, Hessler's Report, p. 13; Hessler, Tr. 251:3-10, Tr. 259:9-14.

When called on to find information in the Massachusetts Report revealing the volume of inverter noise at a distance of 150 feet away, Mr. Hessler confessed that the Massachusetts Report contained no such data. Hessler, Tr. 259:15 to 263:3. He admitted that the report "tells you nothing about inverter noise really." Hessler, Tr. 261:9-13. Even after taking a 20-minute intermission in the hearing to discuss the report with Alamo's counsel, Mr. Hessler was unable to identify any such data in the report as revealed by the lack of redirect examination on the issue. Tr. 263:11-18, 264:4 to 267:17.

The Massachusetts Report did not identify the inverters' sound volumes at 150 feet away. Instead, it only found that the inverter sound at three study sites did not exceed the background sound levels at that distance, which ranged from 41.6 dBA to 50 dBA. Hessler, Tr. 256:16 to 257:17, 259:15 to 263:3. The Application was calculated to mislead the Board into thinking that Mr. Hessler knew the sound level of a solar inverter at 150 feet.

With regard to construction noise, Mr. Hessler did know the decibel level for the equipment used to install solar panel posts. He admitted that the pile driver used to install solar

panel posts “does make a disagreeable noise.” Hessler, Tr. 255:9-16. However, he again displayed his ignorance about solar facilities when he asserted that this activity will be “fairly short-lived in any particular location.” Co. Exh. 2, Hessler Report, p. 2. Mr. Hessler guessed that posts are typically installed in a particular area within “I would speculate, a week or two.” Hessler, Tr. 243:15-24 (emphasis added). That is, Mr. Hessler had no idea about how long the families living near a solar field will have to endure this loud, unpleasant noise, and thus was reduced to speculating about it. Nor does Alamo, as revealed by Mr. Herling’s admission that he could not estimate how long it would take to install the posts in a 300-acre solar field located adjacent to at least six non-participating families. Herling, Tr. 95:24 to 97:20. With Mr. Hessler’s and Mr. Herling’s inexperience with solar field construction, the record contains no information about how much harm this disagreeable construction noise will cause in the community.

Ryan Rupprecht, wildlife. Mr. Rupprecht and the other Cardno employees involved in this Project had no knowledge or experience about the wildlife issues identified by the Concerned Citizens. The Cardno employees who visited the Project Area, including Mr. Rupprecht, were not experts on bird identification. Rupprecht, Tr. 276:24 to 277:6, 277:13-18. Cardno has no bat experts. Rupprecht, Tr. 286:14-16. Cardno performed no bird or mammal surveys to find out what bird and mammal species populate the Project Area. Rupprecht, Tr. 278:11-18. Cardno did not record the species of birds or mammals seen in the Project Area. Rupprecht, Tr. 280:8-21. Thus, Cardno’s employees not only lacked expertise in conducting bird and mammal surveys, but they did not even try to conduct the surveys.

On an issue of great importance to the Concerned Citizens, Cardno had no data on the size of the deer, raccoon, and coyote populations that will be displaced from the Project Area.

Rupprecht did not know how many deer were noticed by Cardno's employees. Rupprecht, Tr. 278:24 to 279:6. Cardno visited during planting and harvesting seasons, which employ noisy farm equipment that would scare away the deer. Rupprecht, Tr. 289:10-11, 290:12 to 291:13. Cardno did not ask the area residents about their observations of deer in the area. Rupprecht, Tr. 311:25 to 312:6.

Mr. Rupprecht attempted to fill the data gap by concocting a desktop calculation with internet records to predict the number of deer that would be diverted from the Project Area into the surrounding crop fields and community. Rupprecht, Tr. 296:7-23. He assumed that the results of his deer calculation also would apply to other species. Rupprecht, Tr. 311:16-24. However, Rupprecht declared, twice, that he is not a deer expert. Rupprecht, Tr. 288:2, 306:15. He is not a raccoon expert. Rupprecht, Tr. 283:8. He is not a coyote expert. Rupprecht, Tr. 282:6, 14. Without any expertise about these animals, he did not have the qualifications necessary to calculate the additional number of deer, raccoons, and coyotes that will afflict the surrounding neighborhood due to displacement from the Project Area.

Matthew Robinson, visual impacts. Mr. Robinson has experience in conducting visual impact studies, but he erred in his analysis by basing his simulations on eight-foot solar panels instead of 15-foot panels. Robinson, Tr. 349:13 to 350:5. Nevertheless, his viewshed analysis demonstrates that the Project will be visually devastating to the adjacent neighbors, with the panels being visible from 73.4% of the surrounding area within a half mile. Robinson, Tr. 364:23 to 365:2.

Mr. Robinson also has experience in designing landscaping plans for other solar projects. What is missing from his testimony is any indication that the neighbors of the other solar projects are actually satisfied with the resulting views from their homes and neighborhoods once those

solar projects implemented Mr. Robinson's landscaping plans. Based on Mr. Robinson's testimony, it is unlikely that they are, as explained below.

As a matter of common sense, any sensible neighbor of a solar project would insist on having no view of the solar facilities rather than a "softened" view. Yet Alamo, at Mr. Robinson's direction, refuses to entertain any meaningful commitment to block the view of the solar facility from the neighbors' homes. Certainly, Mr. Robinson did not make any demonstration that the neighbors of other solar facilities were satisfied with such a half-hearted effort.

Much of the testimony cited in Alamo's brief consists of its expert witnesses' opinions that have no data or other objective evidence to support them. For example, Mr. Hessler opined that solar inverters cannot be heard beyond 150 feet, but he has no sound data or personal observations on which to base this opinion. Mr. Waterhouse stated that the Project will not cause drainage, flooding, or pollution from sediment, but he did not conduct the hydrology study necessary to support this opinion. Mr. Herling even offered a legal opinion that the Project would not violate any important regulatory principle or practice, in a statement on which both Alamo (at 45) and the Staff (at 17) rely. Co. Exh. 7, p. 21, A.33. These opinions, and others like them, are pure speculation. The Board's rules on the contents of applications are designed to avoid the reliance on such untrustworthy testimony by requiring actual data and objective evidence that the Board and the public can weigh and evaluate during an adjudication. Alamo's incomplete Application violates these rules.

Thus, while Alamo's consultants may have generally broad experience in their fields of occupation, they lack the experiences and data about solar impacts that actually matter to this Project. This inexperience is compounded by the absence of details in the Application about

how Alamo plans to mitigate the impacts of the Project, with all of the mitigation plans being delayed until after certification. This has left the Concerned Citizens, and the Board, in the dark as to the facility's actual impacts and the effectiveness of the promised mitigation measures.

II. The Alamo Solar Project Does Not Represent The Minimum Adverse Environmental Impact And Does Not Serve the Public Interest, Convenience, And Necessity.¹

A. Without The Data On The Project's Visual Impacts And Mitigation Measures Required By OAC 4906-4-08(D)(4), The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Visual Impacts.

The neighborhood views of the solar project will be anything but “modest” as proclaimed (at 16) in Alamo's brief. Figure 7, Sheet 2 of the viewshed analysis in the Application disproves that characterization, showing that the solar equipment will be potentially visible for most of the area surrounding the Project Area. *See* the green colored area around the Project Area in this figure. Applic., Exh. I. Alamo states that its analysis of visibility includes locations from which perhaps only one panel could be seen, but it does not quantify how many of the viewpoints in 73.4% of surrounding half mile have only partial views. Is it just one? Without a quantification of this point, the Board should not rely on it as a factual matter. As a legal matter, the Board cannot rely on this argument, because OAC 4906-4-08(D)(4)(a) states that “[t]he viewshed analysis shall not incorporate deciduous vegetation, agricultural crops, or other seasonal land cover as viewing obstacles.”

Alamo attempts (at 16) to disguise the Project's actual visual impact by focusing on its visibility within five miles, instead the actual area of concern within a half mile where the solar equipment is visible from 73.4% of the area. Alamo's simulations also attempt to disguise the

¹ The letters for the titles in Section II correspond to the title letters of the same subject matter in Section II of the Concerned Citizens' opening brief to assist the reader in correlating them.

visual impacts. None of the simulations portrays the view from a non-participating neighbor's home. One of the simulations focuses on the view from a road in front of a neighbor's home at an angle that skews the actual view to make it look less intrusive. *Applic.*, Exh. I, Figure 11, Simulation 3, Sheet 5 of 10; Robinson, Tr. 368:23 to 370:10. 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, but it did not do so. Consequently, Alamo's simulations do not satisfy the requirement in OAC 4906-4-08(D)(4)(e) to provide photographic simulations or artist's pictorial sketches of the proposed facility from public vantage points that cover the range of landscapes and viewer groups.

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 and 40 feet respectively from the edge of public roads, plus whatever unknown distance is added by measuring the setback from the road rights-of-way. *Applic.*, p. 54; Stip. Condition 3. The solar equipment would be allowed within only 25 feet and 100 feet from a non-participant's land and residence, respectively. *Applic.*, p. 55. Incredibly, a solar fence could be constructed with a mere 10 feet of a non-participant's land. *Id.*, pp. 54-55. At these short distances, the neighbors will have no respite from the views of solar panels and fences.

After trying, unsuccessfully, to minimize the intrusive appearance of the solar equipment, Alamo fills an entire page of its brief (at 17) with promises to mitigate this visual impact. Tellingly, this page does not include a single record citation to the Application. Nor could Alamo cite its Application for commitments on mitigation, because the Application contains no such commitments, as explained in the Concerned Citizens' opening brief (at 7-10). Nor does

the Stipulation compensate for the Application's deficiencies, because it leaves all of the mitigation details to a future landscaping plan that has not yet been written and is not subject to adjudicatory review in the hearing process.

While the Application states that Alamo will "work closely with nearby residents and local officials to identify those locations that may be best suited for landscaping treatments," the Application does not commit Alamo to accepting any landscaping requests from them. Applic., p. 90. Elsewhere, the Application repeatedly avoids making any actual commitments for visual screening, using terms like "may" and "can" to describe what Alamo might do. *See* the lengthy quote on Page 7 of the Concerned Citizens' opening brief, which is taken from Page 90 of the Application. The landscaping plan should have been included in the Application as required by OAC 4906-4-08(D)(4)(f) to provide the neighbors with a meaningful voice in addressing the Facility's visual impacts.

Alamo's Project does not represent the minimum adverse environmental impacts with regard to visual impacts, because the Application reveals that the impacts are severe. Moreover, the Application and Stipulation provide no enforceable details on how these visual impacts will be minimized. Without knowing those details, the Board has no way of knowing what the visual impacts will be once the unfinished, 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.

B. Without The Data On The Project's Visual Impacts From Project Lighting And The Mitigation Measures Required By OAC 4906-4-08(D)(4)(f), The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Lighting.

Alamo's opening brief makes only one passing reference (at 47) to the need to prevent the Facility's lights from bothering the neighbors, stating that a lighting plan will be prepared

after certificate issuance. Without any information in the Application to identify the lights' locations or the mitigation measures required by OAC 4906-4-08(D)(4), the Board has no information to find that the Facility represents the minimum adverse environmental impact with respect to lighting.

C. Without The Decibel Data And Mitigation Measures For Operational Noise From The Inverters Required By OAC 4906-4-08(A)(3), The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Operational Noise.

Notwithstanding Mr. Hessler's inexperience with solar substations that had led to his mistaken opinion that they make no noise at night, at least he modeled the daytime noise level to include it in the Application. In contrast, he did not model the noise from the solar inverters, depriving the Board and the Concerned Citizens with the sound data necessary to determine whether the inverters' noise will bother the Project's neighbors. Nor, as explained above in Section I, did he offer any measurements of sound levels from solar inverters in other facilities.

Mr. Hessler has measured sound from a solar inverter only once in his entire career. Hessler, Tr. 249:11-18. This occurred in New York State, at a location "[r]ight near" a cooling fan. Hessler, Tr. 249:25 to 250:5. Mr. Hessler did not produce any written documentation of the noise measurements on that single occasion, and he could not remember them. Hessler, Tr. 250:6-8. Nor did he reveal the level of background noise from the nearby cooling fan that was masking the inverter's noise. Hessler, Tr. 250:6-17. He said that he measured only background noise at 100 feet from the inverter (Hessler, Tr. 250:16-17), *i.e.*, the background noise was louder than the inverter. However, without knowing the background sound level, a statement that the inverter noise was below the background level means nothing.

Nor did Mr. Hessler have any inverter noise data from other persons' measurements. Mr. Hessler's report in the Application relied solely on the Massachusetts Report, which was the

basis for his statement that “field measurements indicate that inverter sound fades to insignificance relative to normal background levels at a distance of 150 ft.” Co. Exh. 2, Hessler’s Report, p. 13; Hessler, Tr. 251:3-10, Tr. 259:9-14.

When called on to find information in the Massachusetts Report revealing the volume of inverter noise at a distance of 150 feet away, Mr. Hessler confessed that the Massachusetts Report contained no such data. Hessler, Tr. 259:15 to 263:3. He admitted that the report “tells you nothing about inverter noise really.” Hessler, Tr. 261:9-13. Even after taking a 20-minute intermission in the hearing to discuss the report with Alamo’s counsel, Mr. Hessler was unable to identify any such data in the report as revealed by the lack of redirect examination on the issue. Tr. 263:11-18, 264:4 to 267:17.

The Massachusetts Report did not identify the inverters’ sound volumes at 150 feet away. Instead, it only found that the inverter sound at three study sites did not exceed the background sound levels at that distance, which ranged from 41.6 dBA to 50 dBA. Hessler, Tr. 256:16 to 257:17, 259:15 to 263:3. The Application calculated to mislead the Board into thinking that Mr. Hessler knew the sound level of a solar inverter at 150 feet.

Although Mr. Hessler’s admissions on cross-examination discredited his use of the Massachusetts Report, Alamo continues (at 28-29) to rely on it to contend that operational noise will be minimal. However, if the inverters’ noise in the Alamo Facility is as loud as the background sound of 41.6 dBA to 50 dBA in the Massachusetts Report, it will be a serious nuisance in a community that has a background level of only 34 dBA. Moreover, the Application would allow Alamo to place its inverters a mere 100 feet from neighboring houses. Applic., p. 55.

Alamo offers (at 29) to install noise mitigation features on the inverters such as cabinet damping and ventilation silencers if they prove to be too loud, thus tacitly admitting that the Application did not produce the sound data required by OAC 4906-4-08(A)(3) necessary to determine whether the inverters will be too noisy. For the same reason, Alamo promises to install the inverters in the middle of the solar fields to put some undisclosed distance between the inverters and the public. But the Application and Stipulation provide no such mitigation measures. In fact, the Application specifically allows solar equipment to be located within only 100 feet from a non-participant's residence. Applic., p. 55.

Thus, the Application does not “[d]escribe the operational noise levels expected at the nearest property boundary,” as required by OAC 4906-4-08(A)(3)(b). Nor does the Application comply with OAC 4906-4-08(A)(3)(c), which requires the Application to “[i]ndicate 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.” Emphasis added. Without this information, OPSB has no evidence that the project represents the minimum adverse environmental impact.

D. Without Effective Measures To Minimize Disagreeable Construction Noise As Required by OAC 4906-4-08(3)(d), The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Construction Noise.

Alamo's argument that construction noise is minimal in volume and duration ignores several facts elicited during the hearing. First, according to Mr. Hessler, the noise from post installation is “disagreeable” and as loud as a bulldozer. Hessler, Tr. 254:6-8, 255:9-16; Co. Exh. 2, Hessler's Report, p. 14, Table 6.0.1. Second, while Mr. Herling opined that driving one post into the ground takes “minutes,” the Project requires more than one post. There will be between 186,400 and 279,600 of them. Applic., p. 8. Even in the unlikely event that each post

could be driven in two minutes, the neighbors will have to endure this obnoxious activity for 6213 to 9320 hours. With the 10-hour days of pile pounding being allowed by Stipulation Condition 13, this amounts to 621 to 932 days of mind-numbing racket. If more than one post is pounded at a time to shorten the construction period, the noise level will be raised accordingly. Given these statistics, it is no wonder that Mr. Herling was reluctant to estimate how long the six families living adjacent to the 300-acre solar field will suffer from that noise. Herling, Tr. 95:24 to 97:20.

Alamo attempts (at 26) to deflect attention from its planned noisy activities by asserting that “existing noise-generating farming equipment, such as grain dryers, are already utilized near the Project Area.” However, Alamo’s own acoustics expert found that the average existing sound level in the Project Area during the 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. 252:3-7. *Also see* Hessler, Tr. 242:9-12; Co. Exh. 2, Supplemental Application, Hessler Report, p. 6.

The objective facts in the record demonstrate that Alamo’s construction noise will be minimal in neither volume nor duration. Simply requiring Alamo to warn the neighbors in advance of impending noisy activities and to stop pounding the metal posts at dusk, as suggested by proposed Condition 13 of the Stipulation, will not provide the Facility’s neighbors with adequate relief from pounding on 186,400 to 279,600 posts. The Board cannot find that the Project represents the minimum adverse environmental impact with regard to construction noise. Pursuant to OAC 4906-4-08(A)(3)(d), OPSB should not issue a certificate without first instructing Alamo to devise more effective mitigation measures to address this noise, or the Board should deny the certificate altogether.

E. Without The Procedures Necessary To Comply With The Requirements In OAC 4906-4-08(E)(2) For Avoiding And Repairing Damage To Field Drainage Tiles, The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Drainage Tiles.

Alamo's opening brief offers three points about drainage tiles.

First, Alamo discusses (at 33) its ongoing efforts to put together the report on benchmark conditions for drainage tiles required by Stipulation Condition 16. Alamo also mentions (at 33-34) its intent to prepare action plans in the future to protect the tiles. These efforts should have been included in the Application as required by OAC 4906-4-08(E)(2), not performed afterwards, so that the Board and the public could determine during the hearing process whether the Project will represent the minimum adverse environmental impact with regard to drainage tiles.

Compounding Alamo's strategy to bypass public scrutiny during the hearing process is the fact that Alamo is making no effort to consult with and work with the Project's neighbors to improve these reports and plans.

Alamo's second point (at 34) is that it is not always feasible or necessary to fix drainage tiles immediately. Alamo also acknowledges (at 34) that Stipulation Condition 16 is intended to require tile repairs to be made as quickly as feasible or as soon as possible, as stated by Mark Bellamy. Curiously, though, Alamo does not offer to accept a clarification in the language of proposed Condition 16 even though it has had ample time since the hearing to consider the Concerned Citizens' request that it do so. If Alamo had a genuine intent to repair tiles as quickly as feasible or as soon as possible, it would agree to this clarification.

Alamo's third point (at 35) is that Mr. Waterhouse has been not been involved in troubleshooting tile breakage at a solar project. This points to Mr. Waterhouse's lack of

experience with post-construction drainage conditions at solar projects, not the solar facilities' lack of drainage problems. Indeed, if post-construction problems did develop at solar facilities for which Mr. Waterhouse had prepared the strategy for avoiding drainage problems, the solar operators would be unlikely to again request his help to fix the problems he should have prevented.

As explained in the Concerned Citizens' opening brief (at 18-23), Alamo has not included the information in the Application required by OAC 4906-4-08(E)(2) for avoiding, mitigating, and repairing damage to drainage tiles. Instead, Alamo and the Staff seek the Board's leave to bypass the rule's requirements and substitute post-certification activities for them. Without including this information in the Application, the Board has no basis for determining that the Project represents the minimum adverse environmental impact as to drainage tiles.

F. Without The Information Necessary To Describe Or Evaluate The Reliability Of The Project's Equipment For Preventing Criminal Access To The Facility As Required By OAC 4906-4-08(A), The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Crime That The Facility Could Attract To The Community.

OAC 4906-4-08(A)(1) requires the Application to "[d]escribe all proposed major public safety equipment," "[d]escribe the reliability of the equipment," and "[d]escribe the measures that will be taken to restrict public access to the facility." Alamo assures everyone (at 41) that its personnel will visit the Project every day, check its gates and fences, and install security cameras in order to prevent crime. The problem is that none of these measures are included in the Application, in violation of the rule. The Stipulation does not contain them either. Thus, the unenforceable promises in Alamo's testimony merely highlight its failure to include measures for public safety in its Application.

Alamo shrugs off (at 42) the need for safeguarding its Facility against crime, citing Mr. Herling's testimony that "[w]hen speaking with the Sheriff, he didn't indicate any kind of issues out of the norm." Herling, Tr. 164:15-16. However, Mr. Herling did not reveal whether he actually asked the sheriff about crime in the area, and Alamo has the duty to investigate this potential hazard so that the Application can propose appropriate precautions. So this conversation does not indicate whether or not crime is a problem there.

The Concerned Citizens' opening brief explains (at 24-25) why Alamo's crime prevention measures fall short of what is necessary to prevent the increase of crime in the area. Whether or not crime is higher than the norm in this area, Alamo has a duty to use effective measures so that its Facility does not attract crime. The Application does not contain these measures as required by OAC 4906-4-08(A)(1), and without them there is no evidence that it represents the minimum adverse impact with regard to crime.

G. Without The Information Required By OAC 4906-4-08(A)(4) To Evaluate The Impact To Groundwater From Contaminants That Might Be Released From Solar Panels By Vandals And Disasters, The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To These Contaminants.

Alamo has offered no data about the contaminants in solar panels or their ability to escape into the environment upon destruction of the solar panels. Simply having Mr. Herling say he does not think this is a problem does not satisfy Alamo's burden of proof on this issue.

H. Because The Application Does Not Provide Adequate Assurance Of Funding For Decommissioning, The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Decommissioning.

Alamo's opening brief does not address the issues raised about the deficiencies in the Application and Stipulation about decommissioning. The Concerned Citizens refer the Board to Pages 27-28 of their opening brief for a description of those concerns.

I. Because The Application Does Not Contain Adequate Provision For Emergency Services As Required by OAC 4906-4-08(A)(1)(e), The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Emergency Services.

As explained (at 28-29) in the Concerned Citizens' opening brief, Alamo's bare-bones promise to develop a post-certificate emergency response plan does not provide the necessary assurances that emergencies will be adequately handled. Alamo's reference (at 41-42) adds no new information to this discussion. Without these assurances, the Board cannot find that the Project represents the minimum adverse environmental impact with respect to crime, fire, and medical emergencies.

J. Because The Application Fails To Show Whether Solar Equipment Will Obstruct Motorist Visibility at Intersections, The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Traffic Safety.

Alamo represents (at 46) that measuring the setbacks from road rights-of-way instead of the roadway edges will provide for enough visibility at the crossroads. But neither Alamo nor the Staff knew how much additional distance this adds to the setback. Herling, Tr. 132:2 to 133:23; Robinson. Tr. 360:21-24; O'Dell, Tr. 420:8-11. Nor did Alamo produce any information on the size of the setback necessary to preserve the motorists' line of sight at crossroads.

Alamo should have anticipated this visibility problem when it submitted the Application. After all, the Application provides for only a 25-foot buffer between the Facility fences and the roads' edges. Applic., p. 54. Without knowing how much extra room is added by the Stipulation and how much room is necessary for motorist visibility, the Board lacks the information necessary to determine whether this belated change will prevent traffic accidents or not.

K. Because The Application Does Not Provide For The Control Of Noxious and Invasive Weeds Required By OAC 4906-4-08(E), The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To These Weeds.

Alamo attempts (at 21) to convey the impression that its Project will add a greater amount of beneficial vegetation than it will destroy. Alamo states that it will plant the Project Area with “a vegetative ground cover.” This is a pretentious reference to mowed grass, which will cover the solar fields. Herling, Tr. 105:1-17; Applic., p. 75. But exchanging crop fields and trees for 900 acres of mowed lawn is hardly a beneficial trade for wildlife or the environment in general. In addition, Alamo’s vague promise to plant pollinator-friendly plants and hedgerows is meaningless without the details necessary to find out where and how much of these plants will be grown. For instance, rather than providing the public with an enforceable commitment to install a meaningful amount of vegetation, the Application states that pollinator-friendly plants will be used only “in selected locations along the perimeter.” Applic., p. 76. Alamo and the Staff want the Board to let them make those determinations instead of the Board.

Alamo also claims (at 22) that it will control noxious weeds primarily through mechanical means instead of herbicides. But that promise is not in the Application, or required by the Stipulation. To the contrary, the Application emphasizes the use of herbicides without mentioning mechanical removal. Applic., p. 76.

Alamo contends (at 22) that Stipulation Condition 18 will prevent the area’s infestation with noxious and invasive weeds. But Condition 18 has loopholes that make it ineffective, as explained in the Concerned Citizens’ opening brief (at 31-32). For example, Alamo promises (at 22) that, if no seed is available from sources recommended by the Ohio Seed Improvement Association, it will buy seed from other sources that is free of noxious and invasive weed species. However, Alamo is not willing to agree to a condition requiring the company to do this,

so this is just another unenforceable promise not included in the Application or Stipulation.

Herling, Tr. 151:19 to 152:18.

Thus, Alamo's Project does not pose the minimum adverse environmental impact on vegetation, because (1) Alamo has made no meaningful commitment to plant and maintain new vegetation to replace the crops and trees it will destroy, (2) Alamo has plenty of loopholes to evade enforceable requirements for preventing the spread of noxious and invasive weeds, and (3) the procedures and standards for clearing existing, beneficial vegetation and preventing the growth of undesirable weed species are left to the future unfettered discretion of Alamo and the Staff through a vegetation management plan.

L. Because The Application Does Not Provide The Data Required By OAC 4906-4-08(B)(1) To Evaluate The Project's Potential Adverse Impacts on Wildlife, The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Its Effects On Wildlife.²

OAC 4906-4-08(B) provides:

(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.

² The title and quoted rule language at the beginning of Section II. L of the Concerned Citizens' opening brief should have cited OAC 4906-4-08(B)(1) instead of 4906-4-08(B)(2). The relevant text of the rule is set forth below with the correct numbering. The rule references throughout the argument in Section II. L of the opening brief are correct.

Alamo contends (at 19-21) that the Project's adverse impacts on wildlife will be minimal, stating that Cardno did not find much wildlife in the Project Area. Of course, that conclusion has no basis, because Alamo did not actually look for wildlife. Cardno only made note of species it happened to casually notice while performing its wetlands and waterbody surveys. In fact, the report from Alamo's ecology consultant, Cardno, Inc., 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.

Applic., Exh. G, p. viii (emphasis added). Consistent with this statement, Application Exhibit G contains no checklists of bird, bat, and mammal species and numbers found in the Project Area. Thus, unlike other energy projects that routinely conduct field surveys for wildlife, Alamo chose not to do them even though required by OAC 4906-4-08(B). Nor did Alamo conduct a complete literature survey on plant and animal species as required by OAC 4906-4-08(B)(1)(c). All that Cardno's employees did was to perform a partial literature search and to note any species that they happened to notice as they were otherwise occupied in studying the waterbodies and wetlands in the area (the references to "surveys" in Application Exh. G refer to the wetland and surface water surveys). And, as explained above, these Cardno employees had no expertise in identifying birds, bats, or other mammals. Alamo did not perform any of the wildlife surveys required by OAC 4906-4-08(B). Alamo conducted no survey of birds, bats, or other mammals.

Alamo also argues that the Project Area lacks the habitat conducive to supporting wildlife. But Alamo also failed to perform the plant survey required by OAC 4906-4-08(B) in order to find and evaluate the habitat.

Alamo does not dispute that the Project Area contains habitat for endangered and threatened species of bats. Instead, Alamo promises (at 19) that it will cut down trees that may host endangered Indiana bats only during the seasons when the bats are hibernating elsewhere “[t]o avoid any adverse impact to the Indiana bat.” This is akin to stating that demolishing a family’s house while they are away on vacation has no adverse impact on them, because the house did not fall down on them. Habitat loss has a serious negative impact on endangered species such as the Indiana bat.

OAC 4906-4-08(B)(1)(c) and (d) require the Application to contain reliable survey data on wildlife so that the Board can determine whether a proposed facility will have the minimum adverse environmental impact on wildlife. Alamo has not provided OPSB with this necessary data, instead choosing to argue that the Board does not need it. But the Board is not free to ignore its own rules, and Alamo is compelled to comply with them. Without this information, the Board cannot determine that the Facility will have the minimum adverse environmental impact.

M. Because The Application Fails To Provide Information Required By OAC 4906-4-08(B)(3) To Assess, Avoid, And Mitigate Impacts On Wildlife That Will Result In Crop And Livestock Damage On Nearby Farms, Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To This Problem.

While Alamo argues that the Project Area lacks the habitat conducive to supporting wildlife, Alamo failed to perform the plant survey required by OAC 4906-4-08(B). Consequently, except for some limited plant identification in wetlands and waterbodies, the Application contains no data for the Board’s scrutiny to determine whether the plants in and along the Project Area’s ditches, hedgerows, and woods are capable of hosting wildlife that may be using the soon-to-be-destroyed crop fields for consuming insects (a necessary activity for

birds and bats), foraging on and among the crops, or other uses. Nor did Alamo look to see if wildlife is actually using this habitat or the fields themselves for feeding, living, or reproduction, including the foraging of grain left on the fields after harvest that feeds resident and migratory birds, raccoons, deer, and other animals. While Alamo quotes Mr. Rupprecht for the proposition that the fields provide habitat for a limited number of species, Mr. Rupprecht had neither the survey data nor the wildlife expertise to render such an opinion. *See* Section I above, recounting that Mr. Rupprecht disavowed any expertise with birds, bats, coyotes, raccoons, or deer.

Mr. Rupprecht attempted to compensate for the absence of wildlife data in the Application by concocting a desktop calculation with internet records to predict the number of deer that would be diverted from the Project Area into the surrounding crop fields and community. Rupprecht, Tr. 296:7-23. He even went so far as to assume that the results of his deer calculation also would apply to other species, even though he has no expertise to make such a judgment. Rupprecht, Tr. 311:16-24. However, Rupprecht declared, twice, that he is not a deer expert. Rupprecht, Tr. 288:2, 306:15. Nor is he an expert on raccoons or coyotes. Rupprecht, Tr. 282:6, 14, 283:8. Without any expertise about these animals, he did not have the qualifications necessary to calculate the additional number of deer, raccoons, and coyotes that will afflict the surrounding neighborhood due to displacement from the Project Area. The Board should not accept as accurate a calculation from someone without the expertise to perform it.

Moreover, Mr. Rupprecht's description of his calculation reveals that it is not a credible estimate of the number of animals that will be diverted from the fenced Project Area into the Concerned Citizens' crop fields and livestock pens. Mr. Rupprecht based his calculation on data for average populations in Preble County, without accounting for population variations in areas in which deer populations may be higher. Rupprecht, Tr. 297:19-21, 307:16-23. For instance,

the calculation did not account for the fact that the nearby Woodland Trails Wildlife Area may be a source of a large deer population that forages in the Project Area. Rupperecht, Tr. 307:16-23. In addition, the records supplying the internet data used in the calculation contain no indication that the data is suitable for making such a calculation. Rupperecht, Tr. 300:2-9.

Alamo's understandable lack of confidence in this calculation is betrayed by its decision to withhold it from the Application rather than subjecting it to Staff and public scrutiny. The calculations were summarized in an internal Alamo memorandum in fall 2018 or early 2019 that was not shared with the public. Rupperecht, Tr. 296:21 to 297:10. The memorandum was not included in the Application, Supplemental Application, or the hearing record. Rupperecht, Tr. 297:1-8, 298:15-17. Even though the memorandum was belatedly prepared after Alamo filed its Application, Alamo could have added the memorandum to the Application prior to hearing. The memorandum also was not shared with the Staff, who learned about it at the hearing. Holderbaum, Tr. 402:5-18. The Board should not trust a calculation done without objective data on animal populations from a survey of the Project Area by an individual with no expertise to perform it.

OAC 4906-4-08(B)(3)(b) requires the Application to contain information about potential impacts to ecological resources during the operation and maintenance of a facility, including measures to mitigate the Project's adverse impacts. Alamo has not provided OPSB with the information necessary to evaluate and mitigate damage to the neighbors' crops from wildlife diverted from the Project Area into the neighbors' fields. Without this information, the Board cannot determine that the Facility will have the minimum adverse environmental impact.

N. **Without The Data On The Quantity Of And Mitigation Measures For The Surface Water Draining From The Facility Required By OAC 4906-4-07(C), The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Drainage And Flooding.**

As explained in the Concerned Citizens' opening brief (at 37-41), the Application lacks the information required by OAC 4906-4-07(C). The Application also does not contain the information required by OAC 4906-4-08(A)(4)(e) for analyzing the prospects of floods for the area, including the probability of occurrences and likely consequences of various flood stages, along with plans to mitigate any likely adverse consequences. For these reasons, Alamo's opening brief does not cite the Application in its argument about the Facility's effects on surface water drainage and runoff.

Instead, Alamo relies (at 32-33) solely on Noah Waterhouse's statements that solar facilities generally do not cause drainage problems, citing his general experience. However, this is a thin basis for such an opinion, since Mr. Waterhouse has been involved in troubleshooting drainage tile problems at only one small operating solar facility. Waterhouse, Tr. 179:9 to 180:14.

Even Mr. Waterhouse acknowledged that hydrology studies are typically prepared for government agencies to provide surface water data. Waterhouse, Tr. 200:8-20. He acknowledged that a hydrology study will be necessary for this Facility. Waterhouse, Tr. 200:13-20, 201:15-23, 202:3-23. If a generic prediction, such as the Waterhouse statements quoted in Alamo's brief, were adequate to evaluate surface water drainage, then hydrology studies would not be routinely performed.

Moreover, if such generic statements were adequate to guard against drainage problems, then OAC 4906-4-07(C) and OAC 4906-4-08(A)(4)(e) would not have been promulgated to

require detailed water quantity data and mitigation measures in the applications. Neither Alamo nor the Board is free to bypass these requirements. And without this data, the Board has no basis to determine that the Project represents the minimum adverse environmental impact with regard to surface water issues.

O. Without The Data Required By OAC 4906-4-07(C) To Be Included In The Application About The Quality Of And Mitigation Measures For The Surface Water Draining From The Facility, The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Sediment Pollution From The Facility.

Alamo admits (at 38) that it will be required to obtain pollution control permits for the discharges of eroded sediment from its construction activities. Nevertheless, Alamo's opening brief does not point to any water quality data in the Application meant to satisfy the requirements in OAC 4906-4-07(C). The Application is entirely devoid of this required information. Instead, Alamo dismissively states (at 37-38) that not much pollution is expected from its construction activities. This argument entirely misses the point of the mandates in this rule. This rule requires the Application to contain the water quality data so that the Board can determine whether polluted runoff will be a problem. Alamo's ungrounded assertion that it will not be a problem does not enable the Board to independently evaluate this issue rather than deferring to Alamo's unsupported assertion. Without this data, the Board lacks the information necessary to determine whether the Project represents the minimum adverse environmental impact with regard to the water quality of its discharges.

- P. **Since The Application Contains No Estimate Of The Volume Of Solid Waste Generated During Construction, Or Its Disposal Destination, As Required By OAC 4906-4-07(D), The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Solid Waste Disposal.**

Alamo's opening brief does not point to any information in the Application that satisfies the requirements of OAC 4906-4-07(D)(2)(a) to estimate the amount of solid waste, including demolition waste, that the Project will generate. Herling, Tr. 162:4-7, 162:20-24. Nor does Alamo note any information in the Application that complies with the requirement of OAC 4906-4-07(D)(2)(b) to explain what will be done with the demolition waste from the old building(s). Without this required information, the Board cannot determine whether the Project represents the minimum adverse environmental impact with respect to solid waste.

- Q. **Because The Application Does Not Provide The Information Required by OAC 4906-4-06(F)(3) For Improving Or Repairing Public Roads and Bridges To Address Damage By Alamo's Construction Traffic, The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Road And Bridge Damage.**
- R. **Because The Application Contains Inadequate Detail To Explain How Its Construction Traffic Will Avoid Interference With Local Farming Operations, School Buses, And Other Public Road Traffic, The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Traffic Interference.**

These two sections are discussed together, because Alamo's discussion of these issues suffers from the same deficiency. Alamo's discussion (at 23-25) about repairing road damage and avoiding traffic obstructions is full of promises about future plans and studies that should have been included in the Application. Without this information, any finding that the Project represents the minimum adverse environmental impact with respect to public roads is speculation. This information should have been included in the Application.

A good example of this deficiency in the Application is demonstrated by the quote from Mark Bonifas' testimony on Page 25 of Alamo's opening brief. That testimony explains that a transportation management plan would typically provide for escort vehicles and flaggers to organize the traffic. The problem is that this plan does not yet exist, so there is no commitment to use any of these measures. Instead, Stipulation Condition 25 requires a transportation plan to be submitted to the Staff after certification, and Alamo is not even required to obtain Staff approval for the plan.

The Application has the same deficiency about preventing and repairing road damage. The Application and Stipulation leave this problem to a future road use agreement that does not yet exist.

Alamo states (at 25) that road blockage should not be a problem, since the farmers have not had an issue with farm equipment "going against each other." The Staff goes so far as to inaccurately represent (at 8) that there is no evidence that traffic impacts "would be any greater than that caused by current farming operations." However, Alamo intends to send about 1,190 to 1,260 loads of equipment and construction materials onto these narrow roads. Bonifas, Tr. 216:24 to 217:3, 218:7-11. Since the Application contains no traffic plan to figure out how these loads can be accommodated without hindering the farmers' planting and harvesting activities, the Board has no basis to find that that the Project represents the minimum adverse environmental impact on the public's road usage. Mr. Bonifas' statement that construction contractors are usually courteous to local landowners and the public is hardly adequate to conclude that no problems will occur.

The Application does not contain meaningful information about mitigation measures to prevent and repair road and bridge damage or to prevent interference with local traffic.

Consequently, the Board lacks the information necessary to determine that the Project represents the minimum adverse environmental impact with respect to these issues.

S. The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact With Respect To Its Destruction Of Prime Farm Land In An Agricultural District.

Alamo argues (at 43-44) that the Project will have a minimal impact on the viability of the 504.6 acres of agricultural land in the Project Area that are in an agricultural district established under R.C. Chapter 929. The owners of this land have committed to preserving its agricultural uses in exchange for tax breaks. Bellamy, Tr. 520:4-16. The owners of the 504.6 acres are reneging on that pledge.

Alamo proposes to convert this large stretch of farmland into an industrial facility. Destroying the capacity of 504.6 acres for agricultural uses for four decades is hardly a minimal impact. The Board cannot find that this impact is minimal just because there is a chance that it might return to agriculture in 40 years.

Alamo also asserts (at 15) that the Project will advance the goals of Preble County's 2011 Comprehensive Economic Development Strategy and Land Use Plan. However, the goal of this plan is to preserve agriculture, not destroy it. Removing more than 900 acres of prime farmland from food production for 40 years hardly serves that purpose.

T. Summary

The Application does not contain the information required by the Board's rules. As constituted, the incomplete Application does not provide the Board with a basis for issuing a certificate or for identifying and designing mitigation protections for the public. Alamo's 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. Without this

information, the Board lacks the authority to approve the Application and issue a certificate. A government agency cannot grant an approval based on an application that does not contain the information required by law. *Anderson v. Vandalia*, 159 Ohio App.3d 508 (2nd Dist. 2005).

The incompleteness of the Application prevents the Board from determining the nature of the probable environmental impact under R.C. 4906.10(A)(2). The Board also cannot find that the Project represents the minimum adverse environmental impact under R.C. 4906.10(A)(3), because the Application fails to provide adequate information for that determination and because the evidence at the hearing actually dictates the conclusion that the Project does not represent the minimum adverse environmental impact. The Concerned Citizens have identified about 20 hazards from the Project that will harm them and that have not been satisfactorily addressed in the Application or Stipulation. *See* Section II of their opening brief. For all of those reasons, the Project also fails to serve the public interest, convenience, and necessity under R.C. § 4906.10(A)(6). The Board should deny Alamo's application for a certificate.

III. The Proposed Stipulation Cannot Be Used To Delegate The Board's Authority And Responsibility For Certification Decisions To The Staff, Nor It Does Provide For A Facility That Represents The Minimum Adverse Environmental Impact.

The Stipulation, if accepted, would grant a certificate for the Facility based on an Application that violates the Board's rules in a multitude of ways as described herein and in the Concerned Citizens' opening brief. The Board cannot circumvent its own rules by approving a deficient application. Nor can it accept a Stipulation that proposes to approve a Project that does not meet the statutory criteria under R.C. 4906.10 for representing the minimum adverse environmental impact under R.C. 4906.10(A)(3) and serving the public interest, convenience, and necessity under R.C. § 4906.10(A)(6). For these reasons, the Stipulation violates important regulatory principles and practices and is contrary to the public interest.

The Stipulation would provide for an unlawful and unconstitutional delegation of power to the Staff for the reasons explained in Section III of the Concerned Citizens' opening brief. Most of the Stipulation's supposed accomplishments touted (at 47-51) by Alamo are future submittals of plans that should have been included in the Application, but which now are proposed to be delivered after certification by Alamo and approved in secret by the Staff. The Stipulation mostly just postpones, until after certification, the Applicant's evaluations of the Facility's potential threats to the public and the Applicant's identification of mitigation measures work that should have been included in the Application.

The Stipulation also is carelessly worded to provide loopholes by which Alamo can avoid its responsibilities. Those loopholes are identified herein and in the Concerned Citizens' opening brief. The deficiencies in the stipulated conditions praised on Pages 46 to 52 of Alamo's brief are briefly recapped in the paragraphs below.

First, Alamo represents that measuring the setback from a road's right-of-way instead of the road's edge under Condition 3 addresses the concern that limited visibility at crossroads will cause traffic accidents, but no witnesses identified the amount of space this adds to the setbacks or the amount of space necessary to view the crossroads.

The lack of knowledge about the distance of this setback also makes it impossible to know whether the number of extra plants can be added to the setback under Condition 18 is meaningful, or negligible.

While Condition 13 prohibits noisy construction activities after dark, the neighbors will still be subjected to 10 hours of pounding pile driving per day for five days a week and 12 hours or more of other loud construction activities.

Condition 15 promises a landscape and lighting plan, but the lack of detailed requirements provides no assurance to the neighbors that it will give them any relief from ugly solar equipment views and intrusive lights. In fact, Mr. Robinson's testimony almost guaranteed incomplete relief by predicting the complete screening from objectionable views will not be provided.

Condition 15 also promises a fence repair plan, but again no details are available to enable an evaluation of its effectiveness.

Condition 16 contains ambiguous language that casts doubt on how soon Alamo is required to repair its damaged field tiles, which could threaten downstream crops. The condition does not require Alamo to work with affected non-participating landowners, which restricts the effectiveness of the tile location and repair activities. The conditions suffers from other deficiencies described on Page 23 of the Concerned Citizens' opening brief.

Condition 18 requires a vegetation management plan, but the condition contains no prescriptions about what and how much trees and other vegetation can be destroyed or damaged.

Condition 18 offers Alamo a giant loophole to avoid the requirement that weed-free seed be used for the Facility's plantings, a loophole that Alamo refuses to relinquish.

Condition 18 requires growing noxious and invasive weeds to be removed only from the Facility's pollinator habitat, and not from the rest of the Facility.

Condition 25 allows Alamo to develop the transportation management plan and road use agreement after the certificate is issued, to insulate them from public and Board evaluation during the hearing process.

Condition 27 lacks adequate training for first responders who join the emergency crews after the initial emergency training sessions are finished. The condition provides no funding for

extra emergency response personnel that may be needed to handle the extra demands posed by the Facility, especially law enforcement personnel.

The language of Condition 28 does not provide sufficient funding for decommissioning, for the reasons expressed on Pages 27-28 of the Concerned Citizens' opening brief.

The scarcity of the Application's analysis of the hazards and damage threatened by the Alamo solar project has deprived the Concerned Citizens thus far of their right to comment on and test the Project's impacts and the proposed certificate conditions. For the same reason, the Staff and the Board have not had the information necessary to make informed decisions about issuing a certificate for this Project. The Stipulation does not seek to correct this situation. The Board should not issue a certificate based on this inadequate record, but instead should reopen the Application with instructions to supply the missing information to allow the Board to make an informed decision.

For a second time in its brief, Alamo again extols (at 46) the money that Alamo and local officials will enjoy from the Facility. But the nonparticipating neighbors will pay the highest price for this Project in the form of health and safety impacts and the reduction of their quality of life. Since neither Alamo's officers nor the county's local officials have to live with these hazards, their signatures on the Stipulation were not difficult to obtain. It is the Board's statutory responsibility to make sure Alamo has provided a complete and honest assessment of the Project's hazards and has designed the Project to reduce those hazards to a minimum. Adopting the Stipulation will not fulfill this responsibility.

IV. Conclusion

Alamo's proposed Project has been poorly evaluated by Alamo and inadequately investigated by the Staff, who have unquestioningly accepted Alamo's representations about the

Project's impacts without independent research. Alamo's strategy has been to refrain from looking for evidence of its Project's adverse impacts, and then claim that the Project will have no adverse impacts. Alamo, the Staff, and some local government intervenors have compounded these errors by proposing a Stipulation that asks the Board to issue a certificate despite the Application's deficiencies. These parties urge the Board to compensate for the Application's failures by requiring Alamo to submit a dozen mitigation plans after certification in order to cut the Board, Concerned Citizens, and general public out of the decision-making process.

But the Board is not free to ignore its own rules, and Alamo is compelled to comply with them. OPSB has no authority to issue a certificate based on an Application that does not contain the information required by the Board's rules. Nor can OPSB issue a certificate to a Facility that has not presented the evidence necessary to determine that the Facility represents the minimum adverse environmental impact under R.C. 4906.10(A)(3) and serves the public interest, convenience, and necessity under R.C. § 4906.10(A)(6). Lacking this evidence, the Board must deny Alamo's application for a certificate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On September 27, 2019, the docketing division's e-filing system will electronically serve notice of the filing of this document on the following parties: Michael Settineri at mjsettineri@vorys.com, MacDonald Taylor at mwtaylor@vorys.com, W. Joseph Scholler at jscholler@fbtlaw.com, Thaddeus Boggs at tboggs@fbtlaw.com, Amy Milam at amilam@ofbf.org, Leah Curtis at lcurtis@ofbf.org, Chad Endsley at cendsley@ofbf.org, Kathryn West at kwest@prebco.org, Werner Margard at werner.margard@ohioattorneygeneral.gov, and Dylan Borchers at dborchers@bricker.com. A courtesy copy of this document has also been sent to these persons by electronic mail.

/s/ Jack A. Van Kley
Jack A. Van Kley

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