

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
Yellowbud Solar, LLC for a Certificate of)	Case No. 20-0972-EL-BGN
Environmental Compatibility and Public)	
Need)	

**MOTION FOR A PROTECTIVE ORDER
OF YELLOWBUD SOLAR, LLC
AND
MEMORANDUM IN SUPPORT**

Pursuant to Rule 4906-2-21 of the Ohio Administrative Code, Yellowbud Solar, LLC (“Yellowbud” or “the Applicant”) respectfully moves for a protective order to keep confidential and not part of the public record the updated Phase I Archeological Reconnaissance Report dated July 29, 2020 (including Appendices A-D) which was filed with a supplement to the Application in this proceeding in an updated Exhibit U. Pursuant to Ohio Adm.Code 4906-4-08(D), a Phase 1 Archeological Reconnaissance Report is not required as part of the Application; however, Applicant prepared this study and previously submitted it with the Application in this proceeding. Applicant is now supplementing the Application with an updated report and related State Historic Preservation Office (“SHPO”) correspondence, among other items.

Yellowbud believes that public disclosure of this confidential and sensitive information will have an adverse effect. Yellowbud, therefore, respectfully moves for a protective order to keep the updated Phase I Archeological Reconnaissance Report confidential and not part of the public record. The reasons supporting this motion are detailed in the attached Memorandum in Support. Pursuant to Ohio Adm.Code 4906-2-21(D), three unredacted confidential copies of the

updated Phase I Archeological Reconnaissance Report are being submitted separately under seal in this proceeding.

Respectfully submitted,

/s/ Gretchen L. Petrucci

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**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

On July 21, 2020, Yellowbud Solar, LLC (“Yellowbud” or “Applicant”) submitted a Phase I Archeological Reconnaissance Report (marked as Application Exhibit U) under seal and requested that it be protected from public disclosure.¹ Coincident with the filing of this motion, Yellowbud is filing a supplement to the Application which includes an updated Phase I Archeological Reconnaissance Report dated July 29, 2020 (the “Report”) to be included in an updated Exhibit U.

The report contains details of archeological sites and finds in and around the Yellowbud Project area. A Phase 1 Archeological Reconnaissance Report is not a required part of the Application and traditionally has been submitted post-certificate. *See* Ohio Adm.Code 4906-4-08(D), wherein an applicant is required to include in its application a map, a general evaluation of the impact of the proposed facility on landmarks, and a description of a plan to avoid/mitigate any adverse impact. *See also, In the Matter of the Application of Hillcrest Solar I, LLC for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility in Green Township, Brown County, Ohio*, Case No. 17-1152-EL-BGN, Opinion, Order and Certificate at ¶ 67(13) (February 25, 2018) (Condition 13 of the approved stipulation requires “[p]rior to the commencement of construction, Hillcrest shall prepare a Phase I cultural resources survey program for archeological work for the project area. The survey program shall include consideration of post locations, access roads, electric collection lines, and the project substations, in consultation with Staff and the Ohio Historic Preservation Office...”); and *In the Matter of the Application of Paulding Wind Farm IV LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Wind-Powered Electric Generation Facility in*

¹ A ruling on that motion for protective order has not been issued yet.

Paulding County, Ohio, Case No. 18-91-EL-BGN, Opinion, Order and Certificate at ¶ 146(9) (February 21, 2019) (Condition 9 of the approved stipulation requires “[p]rior to the commencement of construction, the Applicant shall finalize coordination of the assessment of potential effects of the proposed facility on cultural resources, if any, with Staff and the [Ohio State Historic Preservation Office]...”).

Yellowbud, however, prepared a Reconnaissance Report and submitted it under seal as Application Exhibit U. At this time, Applicant is submitting an updated Reconnaissance Report dated July 29, 2020 (Supplemental Exhibit U) but is doing so under seal to continue to protect the archeological sites/finds, deter unauthorized field investigations, and protect the resources and locational information in the updated report. The Board should grant confidential treatment of the Report to protect the archeological sites and information in the project study area for these fundamental policy reasons. Federal laws also seek to protect and limit harm to archeological resources on federal land and American Indian sacred sites for these same reasons. *See* 16 USC § 470hh; 54 USC § 307103; 36 CFR § 296.18 and 43 CFR § 7. Likewise, other state laws and guidelines restrict public disclosure of archeological site information for similar reasons. *See, e.g.*, New Hampshire RSA 227-C:11; and “Cultural Resources Confidentiality Guidelines” in the Environmental Procedural Manual of the Alaska Department of Transportation and Public Facilities at <http://dot.alaska.gov/stwddes/desenviron/resources/enviromanual.shtml> (accessed August 26, 2020).

The Board should protect the archeological information in the Report. Protective treatment will allow the Board and Staff to examine the information without risk of harm to the archeological sites. The Board should maintain Supplemental Exhibit U and the related SHPO correspondence dated August 5, 2020, under seal as the disclosure of this information could risk

harm to archeological sites. At the same time, public disclosure of this information is not likely to either assist the Board in carrying out its duties under the rules, or serve any other public policy.

In sum, revealing the archeological information in the Report will disclose sensitive information and unnecessarily risk harm in those areas. Therefore, Yellowbud seeks a protective order under Rule 4906-2-21 to keep the above-identified information confidential.

Respectfully submitted,

/s/ Gretchen L. Petrucci

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 28th day of August 2020 upon all persons/entities listed below:

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/s/ Gretchen L. Petrucci
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Summary: Motion for a Protective Order and Memorandum in Support electronically filed by Mrs. Gretchen L. Petrucci on behalf of Yellowbud Solar, LLC