BEFORE
THE OHIO POWER SITING BOARD

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

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

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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 is not entitled to earn its profits at the expense of harming anyone, not to mention 67 citizens.

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.

Alamo also contends (at 4) that the Concerned Citizens are determined to keep the Project out of Preble County regardless of "whether the Project causes any harm" and notwithstanding "Alamo's genuine efforts to address all of CCPC's concerns." But the Concerned Citizens would not undergo the expense of intervention if the Project was not harmful. And Alamo has been anything but cooperative in addressing the Citizens' concerns. First, Alamo discussed its plans for the Facility early, often, and secretly with local officials and participating landowners while keeping non-participating residents in the dark. Then Alamo submitted an Application that is so utterly devoid of meaningful detail that even Alamo realized it had to submit an Amended Stipulation in an attempt to fill some of the holes. Subsequently, at the original hearing and its post-hearing briefs, Alamo repeatedly rebuffed the Citizens' reasonable requests for opportunities to provide input into the Facility's design. Now Alamo is pushing an Amended Stipulation that would allow Alamo and the Staff to collaborate in secret, without public input, on numerous studies to be submitted after certification. Alamo's behavior in this process has left the surrounding community justifiably angered and distrustful of Alamo, its Project, and the Staff's acquiescence to Alamo's attempts to evade meaningful public input into the Facility's design.

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. I 26:8-17. Only one of these projects has started operation, and it has operated for only two years. Herling, Tr. I 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. I 28:18-24, 31:9-16. He also has had no involvement in constructing solar facilities, other than selecting construction contractors. Herling, Tr. I 29:14-23. He has had no experience in dealing with problems arising at solar facilities. Herling, Tr. I 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. I 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. I 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. I 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 during the original hearing, and not much more in the supplemental hearing. 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 in the original hearing, when he had to correct his written direct testimony to state that a solar substation will hum at night. Hessler, Tr. II 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. II 238:14-15.

Mr. Hessler has measured sound from a solar inverter only once in his entire career. Hessler, Tr. II 249:11-18. This occurred in New York State, at a location "[r]ight near" a cooling fan. Hessler, Tr. II 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. II 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. II 250:6-17. He said that he measured only background noise at 100 feet from the inverter (Hessler, Tr. II 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. II 251:3-10, 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. II 259:15 to 263:3. He admitted that the report "tells you nothing about inverter noise really." Hessler, Tr. II 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. II 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. II 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.

The supplemental hearing produced additional evidence about how little Mr. Hessler knows about solar panel noise. The modeling that he provided, based on a manufacturer's sound report, revealed that Mr. Hessler had completely misjudged the level of inverter noise that he had so confidently expressed in the original hearing.

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. II 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. II 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 know this information, 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. I 95:24 to 97:20. With Mr. Hessler's and Mr. Herling's inexperience with solar field construction, the record contains inadequate information about how much harm this disagreeable construction noise will cause in the community.

Mr. Hessler's ignorance of solar facility noise was compounded by the fact that Alamo kept him in the dark about Alamo's potential plans to install string inverters in the Project. As a result, Mr. Hessler did not evaluate the string inverters' noise at all.

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. II 276:24 to 277:6, 277:13-18. Cardno has no bat experts. Rupprecht, Tr. II 286:14-16. Cardno performed no bird or mammal surveys to find out what bird and mammal species populate the Project Area. Rupprecht, Tr. II

278:11-18. Cardno did not record the species of birds or mammals seen in the Project Area. Rupprecht, Tr. II 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. II 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. II 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. II 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. II 296:7-23. He assumed that the results of his deer calculation also would apply to other species. Rupprecht, Tr. II 311:16-24. However, Rupprecht declared, twice, that he is not a deer expert. Rupprecht, Tr. II 288:2, 306:15. He is not a raccoon expert. Rupprecht, Tr. II 283:8. He is not a coyote expert. Rupprecht, Tr. II 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. II 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. II 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. Mr. Robinson displayed a lack of common sense in advocating for Alamo's mitigation measures, opining that local residents would be happier with gapped lines of vegetation screening near their yards that merely "soften" the solar panels' appearance instead of blocking these disturbing views.

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. Much of the "facts" cited in Alamo's briefs are based only on self-serving statements in its Application. 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. Alamo Solar's Application Is Incomplete And Lacks The Information Required By Statute And The Board's Rules, And The Alamo Solar Project Does Not Represent The Minimum Adverse Environmental Impact And Does Not Serve the Public Interest, Convenience, And Necessity.

As discussed in the Concerned Citizens' initial brief and below, Alamo's Application lacks the information necessary to comply with the Board's rules and its statutory mandates in R.C. Chapter 4906. See Sections II and III of the Concerned Citizens' initial brief. In addition, the discussion in this Section II below also demonstrate that Alamo has failed to prove that its Facility complies with the criteria in R.C. 4906.10(A)(3) and (6).

A. The Application Fails To Provide The Information About The Project's Visual Impacts And Mitigation Measures Required By OAC 4906-4-08(D)(4).

The neighborhood views of the solar project will be anything but "limited" as proclaimed (at 18) in Alamo's brief. Sheets 1 and 2 of Figure 7 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 these figures. 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 the 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 17) to disguise the Project's actual visual impact by focusing on its visibility between a half mile and five miles, instead the dominant area of concern within a half mile where the solar equipment is visible from 73.4% of the area. Of course, the views within a half mile are of the greatest concern to the Concerned Citizens, since that is where they live and farm. Answer 8 of Mr. Robinson's testimony states: "[f]ield review suggested that the Project will be clearly visible from nearby roadways and residences directly adjacent to the Project, particularly where the proposed panels are situated in open fields directly adjacent to public roadways that are void of screening vegetation." Co. Exh. 12, Robinson Testimony, p. 4, A.8, lines 13-16. Even the Application admits that the visual effect will be "adverse" when largely unscreened and viewed in the immediate foreground. Applic., p. 89. Alamo's statistics for the percentage of viewers impacted at longer distances are a rank attempt to divert the Board's attention from the Project's actual visual impacts within a half mile.

The visibility statistics in Alamo's brief also neglect to mention that the Facility equipment will potentially be visible from 26.3% of the area between a half mile and one mile.

Robinson, Tr. II 365:3-6; Applic. Exh. I, p. 22, Table 1. These disturbing views also will harm the Concerned Citizens.

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. Applic., p. 54. Amended Stipulation Condition 3 does little to correct this intolerable situation, allowing ridiculously short setbacks of 25 feet between solar fences and neighbors' yards/land and 150 feet between solar equipment and neighbors' houses. At these short distances, the neighbors will have no respite from the views of solar panels and fences.

Alamo tried to hide the extent of its solar panels' intrusiveness at these short distances by including simulations of eight-foot panels in its Application instead of the 15-foot panels allowed by the Application. Fifteen-foot panels are a probable feature of the Facility, as revealed by the preliminary site plan attached to Mr. Herling's supplemental testimony depicting the solar panels to be a maximum of 15 feet high. Co. Exh. 14, Attachment DH2, Sheet C.601, pdf p. 70.

After trying, unsuccessfully, to minimize the intrusive appearance of the solar equipment, Alamo promises (at 18-19) to mitigate this visual impact. The Concerned Citizen's initial brief explains (at 14-21) why these promises, as enunciated in the Application and Amended Stipulation, are wholly inadequate.

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 <u>any</u> landscaping requests from them. Applic., p. 90. The Amended Stipulation does not correct this unfriendly, arrogant approach. 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 provides no enforceable details on how these visual impacts will be minimized. Amended Stipulation 15 offers only ambiguous, poorly worded parameters for mitigation, while the preliminary landscape plan is not part of the Application or enforceable under the Amended Stipulation. Without locking in more details for the mitigation, 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. The Application Fails To Provide The Information About The Visual Impacts Of Project Lighting And Mitigation Measures Required By OAC 4906-4-08(D)(4)(f).

Alamo's opening brief makes only one passing reference (at 51) to the need to prevent the Facility's lights from bothering the neighbors, stating that the lights will be motion-activated and focus inwardly into the Facility. Amended Stipulation Condition 15 just provides that Alamo and the Staff will work out the details of mitigation in a future secret deal effectuated by a lighting plan submitted after certification.

Alamo could have provided maps in the Application that identify the locations for its lights. In fact, the preliminary site plan attached to Doug Herling's second supplemental site plan does that. Co. Exh. 14, Attachment DH2, pdf pp. 51-70 (see the symbol for lighting in the legend on each map). If Alamo had included this information in the Application, where it would be binding on Alamo upon issuance of a certificate, then the Concerned Citizens and other

affected members of the public could have figured out whether the lighting would annoy them in their homes. However, the preliminary site plan is not in the Application, nor does the Amended Stipulation make it binding on Alamo. The preliminary site plan is subject to revision at Alamo's whim.

Without any information in the Application to identify the lights' locations or to provide additional mitigation measures (such as intervening vegetation) 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. The Application Lacks The Decibel Data And Mitigation Measures For Operational Noise From The Inverters Required By OAC 4906-4-08(A)(3).

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 modeled the noise from central inverters only after the original hearing. He failed altogether to model the noise from string inverters, depriving the Board and the Concerned Citizens with the sound data necessary to determine whether the string 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.

During the original hearing, Mr. Hessler had no relevant decibel data for inverters from either modeling or field measurements. The Concerned Citizens' initial brief discuss this fact in detail (at 25-27). Mr. Hessler could have obtained this data for the Application by measuring the sounds from inverters in operational solar projects. In lieu of this data, the Application and Mr. Hessler defaulted to making general statements about how quiet inverters are. But the modeling actually shows that Mr. Hessler's original statements about the inverters' quietness were entirely inaccurate. Similarly, now that Mr. Hessler belatedly modeled the sound from central inverters

after the original hearing, Alamo's initial brief contends (at 30-31) that the modeling shows the central inverters are quiet. Alamo's initial brief (at 30-31) and Mr. Hessler also represent that, even though central inverter noise at a property boundary will be 40 dBA, this is quiet. These representations are false. The annoyance experienced from noise increases is based not solely on a new sound's decibel level, but is based substantially on how much noisier the new sound is compared to the pre-existing ambient level. At 40 dBA, the central inverter noise will be six dBA above the average L90 background noise level, and 12 dBA above the ambient level during the neighborhood's quietest periods. See Co. Exh.2, Suppl. Applic., Hessler's Report, pp. 5-6 (recounting that the community's ambient daytime L90 noise level is only 34 dBA with a range of 28 to 40 L90 dBA). A modeled noise level of 40 dBA conflicts with Mr. Hessler's blanket statements at the original hearing that central inverter noise is barely audible. This noise level is reached at boundary lines at four locations, not just one as stated (at 30-31) in Alamo's brief. Co. Exh. 15, Hessler Suppl. Testimony, Attachment DMH-S1.

The map of central inverter noise levels in the map attached to Mr. Hessler's supplemental testimony represents that the noise from the central inverters will be up to 35 dBA at some nonparticipants' homes. *Id.*; Co. Exh. 15, p. 2, line 20 – p. 3, line2. However, these are the projected noise levels if the central inverters are sited at the locations shown in Exhibit DMH-S1 of Company Exhibit 15. Alamo is not required by the Application or the Amended Stipulation to place its central inverters at those locations. Alamo could move them closer to the Facility boundary, as long as they were at least 500 feet from neighboring non-participants' houses. Mr. Hessler represented that his model showed that the noise from central inverters will be 38 dBA at a distance of 500 feet. Co. Exh. 15, p. 4, lines 1-4. At 500 feet from neighboring houses, the central inverters would expose non-participants' to up to 38 dBA of noise at their

houses, which is four dBA above the 34 dBA daytime background sound level and 12 dBA above 28 dBA at the low end of the normal range of L90 background sounds. Co. Exh.2, Suppl. Applic., Hessler's Report, pp. 5-6.

Neither the Application nor Alamo's exhibits in the supplemental hearing contain any information about the noise levels for string inverters. Although the Amended Stipulation proposes a setback of 500 feet for central inverters, it has no setback for string inverters other than the insignificant setback of 25 feet between solar facility fences and neighboring land/yards and the insubstantial setback of 150 feet between solar equipment (including string inverters) and neighboring homes. In light of these small setbacks, the accurate quantification of string inverter noise from Alamo's string inverters is all the more important. Knowing the string inverters' decibel levels is critical, since these string inverters will be operating in a "very quiet" rural area in which the existing average daytime L90 noise level is only 34 dBA with a range of 28 to 40 L90 dBA. Co. Exh.2, Suppl. Applic., Hessler's Report, pp. 5-6. Even more important is the combined noise from the string inverter and the central inverters, since their noise fields can overlap. Alamo has no good excuse for not modeling the string inverters' noise. Nor should the Board issue a certificate based on Mr. Hessler's and Alamo's self-serving statements, without any supporting scientific evidence, that string inverters are quiet. Mr. Hessler may be an acoustician, but his generalized statements about how noisy an inverter might be are not trustworthy without actual data to support them. Alamo and Mr. Hessler made these types of unsupported statements about central inverters during the original hearing, and Mr. Hessler's subsequent modeling has proven those statements to be utterly inaccurate. That is why the Board's rules require decibel data in the Application, where it can be vetted during a full-blown adjudicatory process. And it is Alamo's duty to provide this data, not the Concerned Citizens.

No certificate should be issued as long as the Application lacks noise modeling data for the string inverters.

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.

Alamo points out (at 31) that the Amended Stipulation requires mitigation for noise problems. However, the Amended Stipulation fails to identify the noise level at which mitigation will be employed. Although the Amended Stipulation provides for a complaint procedure, this begs the question about the sound level necessary for such a complaint to be considered successful in obtaining mitigation. The failure to determine when mitigation will be required does not satisfy OAC 4-08(A)(3)(d), which requires the Application to proactively describe the "procedures to mitigate the effects of noise emissions from the proposed facility during construction and operation."

D. The Application Lacks Effective Measures To Minimize Disagreeable Noise From Construction Required by OAC 4906-4-08(3)(d).

Alamo argues (at 28) that construction noise is minimal in volume and shorter in duration than the solar farm's operation. With respect to duration, it is hardly comforting that construction noise will not last as long as the 40-year life expectancy of the solar project. As to the actual time a neighbor will have to endure this racket, Alamo offered only self-serving statements that it would not be all that long.

The construction noise level will be anything but minimal. Even Mr. Hessler admitted that using a pile driver to pound solar panel posts into the ground "does make a disagreeable noise." Hessler, Tr. II 255:9-16. At 50 feet away, this noise is as loud as a bulldozer. Co. Exh. 2, Hessler's Report, p. 14, Table 6.0.1; Hessler, Tr. II 254:6-8.

Alamo also contends (at 28) that pile driving will be intermittent, even though "numerous piles will be driven." Although Mr. Herling guessed that driving one post into the ground takes "minutes," the Project requires more than one post. The project will contain between 186,400 and 279,600 solar panels. Applic., p. 8. The visual impact study of the Application contains a diagram of the solar panel unit showing that each solar panel has its own post. Applic., Exh. I, Figure 2, Sheet 1. Since the purpose of this diagram is to depict the appearance of the solar equipment so the Board and the public can judge its adverse impact, it would mislead the Board and the public if the diagram shows the wrong number of posts per panel. With one post per solar panel, the Facility will install between 186,400 and 279,600 posts. 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.

In an apparent inconsistency with Application Exhibit I, another Application exhibit states that 40,731 posts will be installed. Applic., Exh. G, p. 7-4. Even at that number, pile driving will take 1,358 hours, which at 10 hours per day would amount to 135 days of mind-numbing pounding. 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. I 95:24 to 97:20.

Alamo attempts (at 28) to deflect attention from its planned noisy activities by asserting that "agricultural equipment such as grain dryers" "can be loud," quoting Joanna Clippinger's testimony. This statement mischaracterizes Ms. Clippinger's testimony. She did not say that "agricultural equipment" other than grain dryers can be loud; she limited that statement to grain dryers. In addition, she qualified her statement by also saying that grain dryers are not "very loud." Clippinger, Tr. III 482:11-14. Moreover, 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. II 252:3-7. *Also see* Hessler, Tr. II 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 Amended Stipulation, will not provide the Facility's neighbors with adequate relief from metallic post pounding. 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. The Application Lacks The Procedures Necessary To Comply With The Requirements In OAC 4906-4-08(E)(2) For Avoiding And Repairing Damage To Field Drainage Tiles.

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

First, Alamo discusses (at 35-36) its ongoing efforts to put together the report on benchmark conditions for drainage tiles required by Stipulation Condition 16. Alamo also mentions (at 36) 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.

Alamo's second point (at 36) is that it is not always feasible or necessary to fix drainage tiles immediately. Alamo also acknowledges (at 36) that Amended 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. But then Alamo contradicts itself (at 36), stating that tile repair is subject to a 30-day deadline in Condition 16. Alamo argues (at 36) that in some situations it may not be feasible or necessary to fix broken tiles right away, relying on Donn Kolb's testimony. That Alamo ascribes great weight to Mr. Kolb's testimony is understandable, since he is a member of the Concerned Citizens of Preble County, he has had substantial experience with drainage issues and drainage tiles in his work with road construction as a civil engineer for 26 years for the Ohio Department of Transportation and as a farmer, and he has farmed land adjacent to the Project Area for 50 years. CCPC Exh. 4, Kolb Testimony, p. 1, line 31 – p. 2, line 2 & p. 2, lines 11-16. The Concerned Citizens also respect Mr. Kolb's opinions given his expertise. As Mr. Kolb testified, the immediate repair of tiles is essential to prevent crop damage in some situations

while taking a longer time is okay in other situations where no damage to crops or property is imminent. No party, not even Alamo, disagrees with this position. But the language of Condition is so poorly drafted that it does not state this simple concept. That is why the Concerned Citizens have requested that the Board reword Condition 16 as explained in their initial brief (at 37). There is no reason why the Board should not accommodate this request.

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 37) 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 35-40), 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. The Application Does Not 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).

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 44) 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 Amended 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.

Solar panels contain wire, and thieves love to steal wire. Nevertheless, Alamo shrugs off (at 45) 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. I 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 40-42) 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. The Application Fails to Evaluate The Impact To Groundwater From Contaminants That Might Be Released From Solar Panels By Vandals And Disasters As Required By OAC 4906-4-08(A)(4).

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. The Application Does Not Contain Adequate Provision For Emergency Services As Required by OAC 4906-4-08(A)(1)(e).

As explained (at 44-45) 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 brief (at 44) 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.

I. The Application Fails To Determine Whether Solar Equipment Will Obstruct Motorist Visibility at Intersections.

The original Stipulation and the Amended Stipulation provide that the miniscule 25-foot setback will be between the solar project's fences and road rights-of-way instead of the roads themselves, but neither Alamo nor the Staff knew how much additional distance this adds to the setback. Herling, Tr. I 132:2 to 133:23; Robinson, Tr. II 360:21-24; O'Dell, Tr. II 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.

Matthew Robinson opined that the added distance, whatever it is, provides enough space for motorists to see the oncoming traffic from the intersections. Co. Exh. 13, Robinson Testimony, p. 10, lines 10-13. But Mr. Robinson is not a traffic engineer; his specialty is to

evaluate aesthetic impacts of seeing things. *Id*., p. 1, lines 6-11. His lack of expertise on traffic impacts, plus his failure to provide any data or evidentiary support for his opinion, render his opinion to be of no value whatever.

Alamo should have anticipated the road intersection 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 Amended 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.

J. The Application Does Not Provide For The Control Of Noxious and Invasive Weeds, Contrary To OAC 4906-4-08(E).

Alamo attempts (at 23) 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. I 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 introduced a preliminary landscape plan as an exhibit during the supplemental hearing, but as explained in the Concerned Citizens' initial brief, that tentative plan is not made binding on Alamo in the Application or Amended Stipulation and can be changed at Alamo's will and

whim after certification. Alamo and the Staff want the Board to let them make those determinations instead of the Board.

Alamo also claims (at 23) 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 Amended Stipulation. To the contrary, the Application emphasizes the use of herbicides without mentioning mechanical removal. Applic., p. 76.

Alamo contends (at 22) that Amended 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 47-48). For example, Alamo promises (at 23-24) 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. I 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.

K. 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.[1]

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.

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. In doing so, Alamo concentrates its discussion (at 20-21) on rare, threatened, and endangered (RTE) species while ignoring its duty to also evaluate the Facility's potential impacts on other wildlife species. Alamo's conclusion about the lack of the project's impacts on wildlife has no factual basis, because Alamo did not actually look for most wildlife species either in the available literature or in field surveys.

Cardno's summary of its "desktop" review of species reveals that Cardno did a literature search only for "[m]ajor species, including Federal and State-listed threatened and endangered species." Applic., Exh. G, p. 1-1. This stunted literature search did not even satisfy the

[1] The title and quoted rule language at the beginning of this tile on Page 51 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 this section of the opening brief are correct.

requirement in the second sentence of OAC 4906-4-08(B)(1)(c) to search for species of "recreational value," not to mention its bypass of the first sentence's mandate to search for all species. For example, all bird species, not just RTE species, are of recreational value to bird watchers, yet Alamo failed to perform the simple task of looking at the internet to find lists of them in the vicinity of the Project Area.

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. <u>At this time, no species-specific surveys have been conducted for the Alamo Solar Project</u>.

Applic., Exh. G, p. viii (emphasis added).

If the Application's admissions are not convincing enough, Alamo's wildlife witness <u>admitted</u> that Cardno performed <u>no</u> bird or mammal surveys. Rupprecht, Tr. II 278:11-18. That is, Alamo did not even look for RTE species in the field. Nor did Cardno record the species of birds or mammals seen in the Project Area. Rupprecht, Tr. II 280:8-21. The Cardno employees who visited the Project Area were not even experts on bird identification. Rupprecht, Tr. II 276:24 to 277:6, 277:13-18. Although Alamo contends that its staff noted minimal wildlife and no RTE species in the Project Area during their visits, Alamo never sent anyone with the pertinent expertise to look for wildlife.

Consistent with these admissions, 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 21) 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.

Alamo contends (at 21) that, based on Mr. Rupprecht's testimony, relatively few birds and mammals are inhabiting the Project Area and environs due to poor wildlife habitat. Mr. Rupprecht's self-serving opinion is a poor substitute for the actual data required by the Board's rules to prove the veracity or inaccuracy of his unsupported statement. OAC 4906-4-08(B)(1)(c)

and (d) require the Application to contain reliable literature and field survey data on wildlife so that the Board can determine whether a proposed facility will have the minimum adverse environmental impact on wildlife or cause the wildlife to harm the community. The half-hearted effort to search for wildlife, combined with the failure to report the sighted species, leaves the Board with little information about the wildlife in the Project Area. 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. And if the Board interprets the first sentence of OAC 4906-4-08(B)(1)(c) to require surveys of only RTE and commercially and recreationally valuable species, that interpretation would violate R.C. 4906.10(A)(2) and leave the Board without the information necessary to determine compliance with R.C. 4906.10(A)(3). Without this information, the Board cannot determine that the Facility will have the minimum adverse environmental impact.

L. 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. II 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. II 311:16-24. In fact, Rupprecht declared, twice, that he is not a deer expert. Rupprecht, Tr. II 288:2, 306:15. Nor is he an expert on raccoons or coyotes. Rupprecht, Tr. II 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. II 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. Rupprecht, Tr. II 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. Rupprecht, Tr. II 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. Rupprecht, Tr. II 296:21 to 297:10. The memorandum was not included in the Application, Supplemental Application, or the hearing record. Rupprecht, Tr. II 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. II 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.

M. The Application Provides No Data On The Quantity Of And Mitigation Measures For The Surface Water Draining From The Facility, Thus Violating OAC 4906-4-07(C).

As explained in the Concerned Citizens' opening brief (at 53-58), 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. The Application contains no data on the quantity of stormwater flows during construction or operation of the Facility. 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.

Alamo continues to ignore the requirements in OAC 4906-4-07(C) to quantify stormwater flows regardless of whether stormwater flows are expected to increase, arguing (at 34-35) that runoff will not increase. For example, OAC 4906-4-07(C)(3)(d) requires an applicant to quantify the stormwater runoff from the soil and other surfaces that have the potential to wash soil into a stream, and this requirement applies regardless of whether the flow will increase, decrease, or stay the same. In fact, the flows have to be quantified in order to figure out whether the flows will increase, decrease, or stay the same. Alamo can avoid the requirements of this rule only if no stormwater runoff will occur during Facility construction and operation, and this runoff will occur during both the construction and operation phases of the project.

In the supplemental hearing, Alamo promised to conduct its construction in accordance with Ohio EPA's General Permit for Stormwater Discharges Associated with Construction Activities. Amended Stipulation Condition 29 would not require Alamo to obtain such a permit if its construction activities were not going to discharge storm water into waters of the state. Matt Marquis' supplemental testimony admits this fact, since Alamo would not be required to obtain a permit authorizing discharges if it were not going to discharge. Co. Exh. 18, Marquis Suppl. Testimony, p. 3, line 19 to p. 4, line 3.

Stormwater runoff also will occur during Facility operation. Mr. Marquis' supplemental testimony states that "Condition 29 will help to ensure that post-construction stormwater flows are appropriately managed," which acknowledges that stormwater flows will occur. Co. Exh. 18, p. 5, lines 5-6. The Ohio EPA guidance on storm water controls for solar panel arrays marked as CCPC Exhibit 9 states that solar panels "alter the volume, velocity and discharge pattern of storm water runoff." CCPC Exh. 9, p. 1. Mr. Marquis agreed with this statement. Marquis, Tr. IV 670:5-10. The operating Facility also will discharge storm water from rainfall through the tiles.

Most notably, Amended Stipulation Condition 29 requires Alamo to perform pre- and post-construction stormwater calculations if construction will disturb more than one acre of ground. That is, this condition requires Alamo to collect some of the information about the quantity of flows, but only after certification, that OAC 4906-4-07(C) requires be included in the Application. Obviously, if no stormwater will run off the land in the Project Area during construction and operation, then there would be no need for an Amended Stipulation Condition 29 to calculate the flows. Without runoff, no such calculations could be made. This is persuasive evidence that all stipulating parties realized that stormwater runoff will occur.

Since solar facility construction activities and operating solar facilities discharge storm water, Alamo's Application was required to contain water quantity data about both under OAC 4906-4-07(C)(2). To quantify flows, Alamo needed to perform a hydrology study to quantify the flows from the Project Area. Alamo has failed to quantify surface water flows in the Application, and that failure is not cured by the Amended Stipulation.

Instead, Alamo relies (at 34-35) 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. I 179:9 to 180:14.

Like Mr. Waterhouse, Matt Marquis offered general statements in lieu of actual data to assert that the Facility will not cause drainage problems. Alamo recites (at 34) his testimony that vegetation beneath the solar panels will manage stormwater, but this statement admits that stormwater flows will occur, and it says nothing about stormwater impacts during construction before that vegetation starts growing.

In the supplemental hearing, Alamo promised to conduct its construction in accordance with Ohio EPA's General Permit for Stormwater Discharges Associated with Construction Activities, but this promise does not add any data on the quantity of stormwater discharges to the Application for the Board's evaluation of potential flooding or water quality impacts. It only promises to collect that data after certification.

The generalized opinions of Alamo's witnesses that stormwater is not expected to cause problems do not satisfy the Board's rules for the contents of applications. The Board's rules are designed to elicit scientific data from applicants, not rely on guesswork. Even Mr. Waterhouse acknowledged that hydrology studies are typically prepared for government agencies to provide surface water data. Waterhouse, Tr. I 200:8-20. He acknowledged that a hydrology study will be necessary for this Facility. Waterhouse, Tr. I 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.

N. The Application Provides No Data On The Quality Of And Mitigation Measures For The Surface Water Draining From The Facility, Contrary To OAC 4906-4-07(C).

Alamo admits (at 40) 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 implies (at 40-41) 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.

Alamo promises (at 40) to apply for a General Permit for Stormwater Discharges Associated with Construction Activities from Ohio EPA pursuant to Amended Condition 29, including the development of a Stormwater Pollution Prevention Plan "for erosion control and the management of stormwater." This is consistent with the Application's statement that "soil erosion and sedimentation control measures will be installed within and along the proposed construction area, equipment laydown areas, access roads, and other work areas." Applic., Exh.

G, p. 1-4. The Application further promises to employ best management practices ("BMPs") to minimize sedimentation and erosion. *Id*., p. 1-5. These statements in Amended Condition 29, Alamo's initial brief, and the Application about the necessity for erosion and sedimentation controls betray Alamo's realization that the Project will cause erosion and sedimentation into the vicinity streams. The Application and the Amended Stipulation fail to describe these changes in erosion in any fashion.

Although Alamo represents (at 40) that little earth-moving and grading will occur during construction, the Facility's construction actually will disturb the soil on 48 acres of soil. Applic., Exh. G, p. 7-3, Tables 7-2 and 7-3. So stormwater from the Project Area obviously will flow into nearby streams. OAC 4906-4-07(C)(1)(d) & (e) and 4906-4-07(C)(2)(b), (c), (d), & (e) require Alamo to provide water quality data so the Board can evaluate the impact of these discharges.

While Alamo may point out that only the "available" data needs to be provided under OAC 4906-4-07(C)(1)(e), Alamo has not bothered to find out what data is available for that purpose. Note also that the water quality data required by the other provisions of this rule are not limited to "available" data. *See* OAC 4906-4-07(C)(1)(e) and 4906-4-07(C)(2)(b), (c), (d), & (e).

OPSB's rule requires the Application to contain pre-construction data and post-construction data on water quality so that the water quality effects of the Project's construction on the receiving streams can be assessed. The Application contains neither pre-construction nor post-construction data. The Application does not describe the existing water quality of the receiving streams based on at least one year of monitoring data using appropriate Ohio environmental protection agency reporting requirements as required by OAC 4906-4-07(C)(2)(d).

Although Alamo promises (at 40) to develop a SWPPP to comply with Amended Stipulation Condition 29 after certification, the Application does not contain pre-construction data and post-construction data on water quality so that the water quality effects of the Project's construction on the receiving streams can be assessed. Nor does the Application or the Amended Stipulation contain the information about how Alamo will prevent harm to the receiving streams from its stormwater discharges as required by OAC 4906-4-07(C)(2)(c). Instead, Alamo just promises to obtain this information after certification by developing a SWPPP with a hydrology study. Thus, the Application is deficient and must be rejected.

O. The Application Contains No Estimate Of The Volume Of Solid Waste And Debris Generated During Construction, Or Its Disposal Destination, As Required By OAC 4906-4-07(D).

Alamo's initial 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 that the Project will generate. Herling, Tr. I 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 debris from the old building(s). If Alamo or the Staff argues that this rule does not require information to demonstrate that Alamo will properly handle its demolition debris, then that interpretation would leave the Board without the information necessary to comply with R.C. 4906.10(A)(2), (3), and (6). Without this required information, the Board cannot determine whether the Project represents the minimum adverse environmental impact with respect to solid waste.

P. <u>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</u>.

Q. <u>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</u>.

These two sections are discussed together, because Alamo's discussion of these issues suffers from the same deficiency. Alamo's discussion (at 25-27) 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 27 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.

Alamo states (at 27) 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 10) 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. I 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.

R. 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 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. III 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.

S. The Setbacks Proposed For This Project Have Not Been Included In The Application, Nor Do They Represent The Minimum Adverse Environmental Impact Or Serve The Public Interest.

Alamo argues (at 49-50) that the setbacks in the Amended Stipulation are in the public's interest. But Alamo provides no evidence that a 25-foot setback between the Facility's seven-foot chain-link and barbed wire fences and nonparticipants' yards and land -- approximately equivalent to the standard length of a homeowner's garage – is adequate or responsible, and common sense knows better. Siting such an obtrusive structure up against a neighbor's yard and fields is the height of greed, and the Board should not allow it. Little better is the 150-foot setback between the 15-foot tall solar panels and neighboring homes, which is equivalent to only half the length of a football field. Alamo has no need to place its solar project so close to neighboring properties.

The 500-foot setback in the Amended Stipulation between central inverters and neighboring houses is an improvement, but it is not large enough, as explained earlier in this brief. This setback also contains a large loophole, as it does not apply to string inverters, which can be sited on the edge of the solar panels close to neighbors' yards houses.

Alamo's proposed setbacks are not in the public interest. The Board can do better to protect the public.

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.

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 17 hazards from the Project that will harm them and that have not been satisfactorily addressed in the Application or Stipulation. *See* Section III 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 Amended 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 Amended Stipulation, if accepted, would grant a certificate for the Facility based on an Application that violates R.C. Chapter 4906 and 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 an Amended Stipulation that proposes to approve a Project that does not meet the statutory criteria under R.C. 4906.10(A) 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 Amended Stipulation violates important regulatory principles and practices and is contrary to the public interest.

Although Alamo and Staff will tell the Board that it should defer to the Amended Stipulation and approve the Project with the Amended Stipulation's conditions, a stipulation signed by allied parties over the objections of other parties is not entitled to deference. If it were, any two or more aligned parties (*e.g.*, two Concerned Citizen intervenors) could sign a stipulation over other parties' objection and obtain the Board's blessing for it. Moreover, the parties signing the Amended Stipulation do not have to live next door to the Project's hazards, so they do not represent the Concerned Citizens' interests and that fact is reflected in the Amended Stipulation's failure to address these hazards. It is the Board's statutory responsibility to make sure Alamo has provided a complete and honest assessment of the Facility's hazards and has designed the Facility to reduce those hazards to a minimum. Adopting the Amended Stipulation will not fulfill this responsibility.

The Amended Stipulation, if accepted, would provide for an unlawful and unconstitutional delegation of power to the Staff for the reasons explained in the Concerned Citizens' initial brief. Most of the Amended 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. Some of the deficiencies in the stipulated conditions praised on Pages 48 to 56 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. And, of course, if Alamo is unwilling to plant enough plants to provide suitable screening to block unpleasant views of the solar equipment and fences, it does not matter how much space is provided to plant them.

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. Alamo touts the fact that this condition provides more relief to neighbors on screening and lights than the Staff recommended, but that just demonstrates the Staff's unwillingness to protect the public without first receiving Alamo's blessing.

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 on tile repairs, which restricts the effectiveness of the tile repair activities. The condition suffers from other deficiencies described in the Concerned Citizens' initial 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 after the certificate is issued, to insulate it 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.

Condition 29 requires Alamo to calculate pre- and post-construction stormwater flows, but only after certification when it is too late for the public to review and comment on the mitigation that might be necessary to protect against flooding and pollution from soil erosion.

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 Amended 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.

The preliminary site plan attached to Mr. Herling's supplemental testimony reveals that Alamo could have provided substantially more detail in its Application than it did. Co. Exh. 14, Attachment DH2. The Concerned Citizens do not expect the Application to include every minute detail of design or construction, such as the color of the screws in the control room as expressed by the Ohio Supreme Court. *In re Application of Buckeye Wind, L.L.C.,* 2012-Ohio-878, ¶ 30, 131 Ohio St.3d 449. However, the Concerned Citizens are entitled to enough detail in the Application to inform them of the Facility's prospective harms to them and the environment and to commit to the measures that will prevent and mitigate those harms. Alamo's Application falls well short of those objectives, and the Amended Stipulation does nothing to correct this problem.

For a second time in its brief, Alamo again extols (at 48-49) the money that Alamo and local officials will enjoy from the Facility. But the non-participating 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 Amended 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 Amended 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. Nevertheless, Alamo and the Staff insisted in briefs filed after the original hearing that the Application was sufficient to comply with legal requirements and protect the public.

Recognizing the vulnerability of their position, Alamo and the Staff have requested a "do over" by submitting an Amended Stipulation and requesting a supplemental hearing in an attempt to plug some of the gaps in the Application. This is an unusual deviation from the Board's usual procedures, and it attempts to circumvent the application, discovery, Staff investigation, and adjudicatory processes mandated by R.C. Chapter 4906 and the Board's rules to allow the informed consideration of the evidence. In addition, Alamo's shortcut through these processes has deprived the public, including the 67 members of the Concerned Citizens, of their right to attend and comment at a public session of the hearing to express their views on the Amended Stipulation. Alamo and the Staff have compounded their errors in the original hearing by proposing an Amended Stipulation that again asks the Board to issue a certificate despite the Application's deficiencies.

Alamo urges the Board to compensate for the Application's failures by allowing Alamo instead to submit a dozen mitigation studies after certification in order to cut the Board, Concerned Citizens, and general public out of the decision-making process. Alamo also asks the Board to accept some studies as exhibits during the supplemental hearing as evidence of Alamo's mitigation plans, instead of properly incorporating them in the Application to make them enforceable.

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 incomplete 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).

Alamo, not the Concerned Citizens, has the burden of proof to demonstrate that it has complied with these criteria. The Board must not flip this burden of proof onto the Concerned Citizens, despite Alamo's and the Staff's repeated invitations to rule in their favor whenever the record is devoid of evidence on a contested issue. Alamo has the burden to prove its Facility will minimize harm to the public; the Concerned Citizens do not have the burden to prove harm on issues Alamo has failed to address in its Application or at hearing.

Lacking the necessary information in the Application and the evidence to satisfy the criteria of R.C. 4906.10(A), the Board must deny Alamo's application for a certificate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On December 23, 2020, the docketing division's e-filing system will electronically serve notice of the filing of this document on all counsel of record In addition, a courtesy copy of this document has also been sent to the following persons by electronic mail: Michael Settineri at mjsettineri@vorys.com, Gretchen Petrucci at glpetrucci@vorys.com, Clifford Lauchlan at cwlauchlan@vors.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, and Werner Margard at werner.margard@ohioattorneygeneral.gov.

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Summary: Brief (Post-Hearing Reply) electronically filed by Mr. Jack A Van Kley on behalf of Concerned Citizens of Preble County, LLC