

BEFORE  
THE OHIO POWER SITING BOARD

In the Matter of the Application	)	
of Kingwood Solar I LLC, for a	)	
Certificate of Environmental	)	Case No. 21-0117-EL-BGN
Compatibility and Public Need	)	

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**PETITION FOR LEAVE TO INTERVENE OF CITIZENS FOR GREENE  
ACRES, INC., JENIFER ADAMS, P. CHANCE BALDWIN, JACOB CHURCH,  
VERITY DIGEL, RONALD DOWLING, JED HANNA, KRAJICEK FAMILY  
TRUST, JAMES JOSEPH KRAJICEK, KAREN LANDON, NICOLE MARVIN,  
CHAD MOSSING, KAREN MOSSING, NICHOLAS PITSTICK, KYLE SHELTON,  
MARLIN VANGSNESS, JEAN WEYANDT, AND JERALD WEYANDT**

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Pursuant to R.C. 4906.08(A)(3) and Ohio Administrative Code (“OAC”) § 4906-2-12,  
this Motion to Intervene is submitted by the following Petitioners:

Citizens of Greene Acres, Inc. (“CGA”),  
P.O. Box 237  
Cedarville, OH 45314

Jenifer Adams  
3258 Harbison Road  
Cedarville, OH 45314

P. Chance Baldwin  
2819 Harbison Road  
Cedarville, OH 45314

Jacob Church  
2986 Harbison Road  
Cedarville, OH 45314

Verity Digel  
3523 Wilberforce Clifton Road  
Cedarville, OH 45314

Ronald Dowling  
3711 State Route 72 North  
Cedarville, OH 45314

Jed Hanna  
3251 Wilberforce Clifton Road  
Cedarville, OH 45314

Krajicek Family Trust  
James Joseph Krajicek, Trustee  
2369 Tarbox Cemetery Road  
Cedarville, OH 45314  
(also owns property at 3380 Larkins Road  
Cedarville, OH 45314)

Karen Landon  
3761 Wilberforce Clifton Road  
Cedarville, OH 45314

Nicole Marvin  
1334 Bradfute Road  
Xenia, OH 45385

Chad and Karen Mossing  
3390 Wilberforce Clifton Road  
Cedarville, OH 45314

Nicholas Pitstick  
951 Clifton Road  
Xenia, OH 45385

Kyle Shelton  
3076 Harbison Road  
Cedarville, OH 45314

Marlin Vangsness  
2303 Clifton Road  
Yellow Springs, OH 45387

Jean and Jerald Weyandt  
3333 Harbison Road  
Cedarville, OH 45314

A memorandum in support of this petition is provided below.

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**MEMORANDUM IN SUPPORT OF  
PETITION FOR LEAVE TO INTERVENE**

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OAC 4906-2-12(B) provides that the Ohio Power Siting Board (“Board”) or administrative law judge may consider the following criteria when considering petitions to intervene:

- (a) The nature and extent of the person’s interest;
- (b) The extent to which the person’s interest is represented by existing parties;
- (c) The person’s potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and
- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

For the following reasons, there is good cause under these criteria to grant intervenor status to the Petitioners in these proceedings.

**Nature and extent of interest:**

CGA’s purpose is to advocate for its members in order to address the problems posed by the solar project (“Project”) proposed by Kingwood Solar I LLC (“Kingwood Solar”), including the participation in this proceeding at the Board. CGA has 57 members who will be directly and adversely affected by the Project, which will be constructed and operated near their homes and properties:

Forty-seven CGA members, including all of the Petitioners, own and/or live on properties that are adjacent to the project area (“Project Area”) for the Project. Except for James Krajicek, all of the Petitioners reside on the land they own adjacent to the Project Area. Other CGA members live in close proximity to the Project Area and/or can see the Project Area from their properties. CGA has standing to participate as an intervenor through associational standing,

because one or more of its members have standing to participate as intervenors. See *Fraternal Order of Police v. City of Columbus*, 10 Ohio App.3d 1 (10<sup>th</sup> Dist. 1983) (ruling that an association has the right to bring legal action on behalf of its members).

The Project will have a serious adverse impact on the Petitioners' homes and properties that will spoil the enjoyment of living and working there. In that regard, the Petitioners will present evidence about the issues described below, among others, with respect to which the application ("Application") for the Project fails to protect their properties and their enjoyment of living and working there.

1. The Petitioners' views of hundreds of acres of solar panels surrounding the Petitioners' properties and on the public roads near the Petitioners' properties will spoil their visual and aesthetic enjoyment of living and working there. The Application fails to commit to specific measures that will be taken to protect the Petitioners' views, but instead leaves those details to be determined after the certificate is issued rather than properly and fairly adjudicating them in this proceeding. The Application does not provide adequate or sufficiently detailed commitments for planting vegetation barriers between the Project structures and equipment and Petitioners' properties to minimize visual impacts. Nor does the Application provide for adequate measures to sustain the vegetation or keep it alive.

2. Noise, dirt tracked on the public roads, airborne dust, and traffic will be intrusive during the Project's construction.

3. Kingwood Solar failed to conduct an adequate study of the Project's adverse effects on wildlife. The applicant's study also failed to evaluate the adverse effects of the Project's fences on wildlife species that currently travel from their places of residence inside and outside of the Project Area (including those living on the Petitioners' wooded land) throughout

the Project Area to forage and hunt. The study failed to evaluate the adverse effects on wildlife that will no longer be able to travel from one pocket of wildlife-friendly habitat to another due to the obstructions from the Project's fences.

4. The Application fails to identify reasonable measures that are necessary to protect birds and other wildlife. The proliferations of fencing in the Project, by preventing wildlife movement, will congregate and cause the overpopulation of wildlife on the Petitioners' land, and other habitat areas inside and outside of the Project Area. The crowding of wildlife, such as deer, in smaller areas will increase adverse impacts such as grazing on the crops and plants in Petitioners' fields and yards.

5. The Application does not sufficiently provide for the protection and repair of drainage tiles that are damaged by the Project's construction.

6. The Application fails to protect the groundwater supplies on which the Petitioners rely.

7. The Application does not protect the existing storm water drainage patterns that protect the Petitioners' land from being flooded by runoff from the Project Area.

8. The Application fails to identify the specific locations for the solar panels, night lights, and other Project components, leaving this task to a later day subsequent to the certificate's issuance. This failure deprives the Board and the Petitioners of the opportunity to determine whether the panels and other components will displace or injure streams, wildlife habitat, and other natural resources, whether the night lights will be an annoyance to the Petitioners, and whether the Project's components will be in the line of sight from the Petitioners' land and home.

9. The economic impact study in the Application is incomplete and marred with flaws. The study does not identify or quantify the adverse economic impacts of the Project, such as the reduced values of neighborhood properties, the adverse economic impact of the proposed facility on local commercial and industrial activities, or the loss of property taxes to schools and other governmental entities from the potential application of the Payment in Lieu of Tax (“PILOT”) program, thus violating OAC 4906-4-06(E)(4).

10. The setbacks proposed between the neighboring properties (including the Petitioners’) and the Project’s fences and components are too short to protect the neighboring properties, yards, and homes.

11. The Application fails to identify measures to protect the solar panels from high wind, hail, lightening, fire, and other natural disasters, as well as to protect Petitioners from flying debris and toxic materials that could be released by these disasters.

12. The Application does not account for or provide for adequate emergency services to address emergencies at the Project.

13. The Application does not evaluate and protect against increased temperatures resulting from the Project’s many acres of solar panels.

14. The Application does not adequately provide for decommissioning upon the closure of the Project, including financial assurance (e.g., bonding) and the disposal of solar panels and other equipment or structures.

15. The Application fails to adequately and accurately evaluate, and fails to protect the neighbors from, the noise impacts of Project construction and operation.

16. The Application fails to provide the information necessary for the Board to examine the nature and economics of the various alternatives to the Project as required by R.C. 4906.10(A)(3).

17. Kingwood Solar has not complied with the public information requirements of OAC 4906-3-03, including but not limited to the following:

18. Kingwood Solar has not held a public information meeting “in the area in which the project is located,” but instead held a web-based virtual and phone-based meeting on March 30, 2021.

19. The preapplication notification letter lacked the information about the equipment size required by OAC 4906-3-03(A)(1).

20. Because a public information meeting has not been held in the area in which the Project is located, the Application does not contain a summary of the number and types of comments received from the public at or after such a meeting. Moreover, the Application does not even summarize how many and what types of comments were received at or after the web-based virtual and phone-based meeting on March 30, 2021.

21. The Application does not provide a description or design of the equipment and structures in the interconnection of the solar facility to the regional electric power grid that is required by OAC 4906-4-05.

22. The Application contains no commitments for financial assurance to guarantee the decommissioning of the Project, nor does it identify the type of financial assurance mechanism that will be used.

23. The Application fails to describe the necessary coordination with appropriate authorities for temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction of the Project as required by OAC 4906-4-06(F)(4).

24. The Application does not contain the information on water quantity and water quality required by OAC 4906-4-07(C)(1)(b), (1)(d), (1)(e), (2)(a), (2)(b), (2)(c), 2(d), 2(e), 3(a), 3(b), and 3(d).

25. The Application contains no estimate of the volume of solid waste and debris generated during construction, or the debris' disposal destination, as required by OAC 4906-4-07(D).

26. The Application does not describe how the proposed facility incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives that is required by OAC 4906-4-07(C)(3)(e).

27. The Application fails to comply with OAC 4906-4-08(A)(1)(e), because it does not describe the fire protection, safety, and medical emergency plan(s) to be used during construction and operation of the facility and the Application does not describe how such plan(s) will be developed in consultation with local emergency responders.

28. The Application does not contain descriptions of equipment and procedures that will mitigate the effects of noise emissions from the proposed facility during construction and operation as required by OAC 4906-4-08(A)(3)(d).

29. The Application fails to provide the adequate and accurate preconstruction background noise study of the Project Area required by OAC 4906-4-08(A)(3)(e).

30. The Application does not provide an evaluation of the impact to public and private water supplies due to construction and operation of the proposed facility as required by



OAC 4906-4-08(A)(4)(a). The Application does not estimate the amount of water to be used for each round of solar panel, it does not identify the source of the water to be used for solar panel cleaning, and it provides no study on the adverse impact of this water usage on water wells or other water supplies used as the source of this water. In particular, the Application fails to demonstrate whether groundwater use by the Project will adversely impact the neighbors' wells.

31. The Application does not contain the literature surveys of plant and animal life within the Project Area and within one-fourth mile of the Project Area that is required by OAC 4906-4-08(B)(1)(c).

32. The Application does not contain the field surveys of plant and animal life within the Project Area and within one-fourth mile of the Project Area that is required by OAC 4906-4-08(B)(1)(d).

33. The Application does not provide information regarding potential impacts to ecological resources such as deer and other animals during operation and maintenance of the facility as required by OAC 4906-4-08(B)(3). In particular, while the Application asserts at Page 96 of its narrative that the Project will not displace wildlife based on a vague reference to unidentified studies, the Application provides no actual evidence to support this assertion as required by OAC 4906-4-08(B)(3).

34. The Application does not contain much of the information required by OAC 4906-4-08(C)(1)(b). The Application does not provide a table showing the distances between the solar equipment and all structures (e.g., residences and other buildings) within 250 feet and 1500 feet. The Application does not provide a table showing the distances between the solar equipment and the property lines associated with all structures within 250 feet and 1500 feet. Appendix P of the Application contains tables that fail to comply with OAC 4906-4-08(C)(1)(b),

since they lack the information described in the foregoing two sentences above. These tables also fail to identify the locations or owners of the structures listed in the tables, thus defeating the main purpose of OAC 4906-4-08(C)(1)(b) to advise neighboring landowners about how close their land and structures are to the proposed solar equipment.

35. The Application does not include the investigations of cultural and archaeological resources required by OAC 4906-4-08(D). The Application does not describe and evaluate the Project's visual impacts on the cultural and archaeological resources surrounding the Project Area.

36. The Application fails to provide much of the information required by OAC 4906-4-08(D)(4) about the Project's visual impacts. The Application does not comply with the mandate in OAC 4906-4-08(D)(4) to "[p]rovide photographic simulations or artist's pictorial sketches of the proposed facility from public vantage points that cover the range of landscapes, viewer groups, and types of scenic resources found within the study area. In particular, the Application fails to include photographic simulations or artist sketches of the proposed facility that reveal the facility's appearance to the Petitioners and other nearby neighbors as seen from their homes and yards.

37. While OAC 4906-4-08(D)(4)(f) requires Kingwood Solar to describe measures that will be taken to minimize any adverse visual impacts created by the facility, including but not limited to visual screening, the Application provides inadequate visual screening or other minimization measures to reduce the neighbors' and the public's views of solar equipment.

38. The Application fails to evaluate the visual impact of the Project's lightning as required by OAC 4906-4-08(D)(4) and fails to commit to implementing measures required by OAC 4906-4-08(D)(4)(f) to minimize adverse visual impacts of the Project's lighting.

39. The Application does not contain a description of mitigation procedures required by OAC 4906-4-08(E)(2)(c) to be utilized by the applicant during construction, operation, and maintenance to reduce impacts to agricultural land, structures, and practices, because it fails to provide for the prevention and eradication of invasive plant species and weeds in the Project Area.

40. The Application violates OAC 4906-4-08(E)(2), because it does not contain a description of mitigation procedures to be utilized during construction, operation, and maintenance to avoid and minimize damage to field tile drainage systems and to timely repair damaged field tile systems to their original condition.

41. The Project will not serve the public interest, convenience, and necessity, nor does it represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.

The Petitioners should be granted intervention so that they can address these and other problems with the Application.

**Extent to which interests are represented by existing parties and potential contribution to the just and expeditious resolution of these proceedings:**

No other party represents, or can represent, the Petitioners' interests in protecting themselves and their property from the impacts of the Project. As adjacent landowners surrounded by and near the Project Area, their participation in the case is necessary to the just and expeditious resolution of this proceeding.

**Potential for undue delay or unjust prejudice:**

Granting intervenor status to the Petitioners will not unduly delay the proceedings or cause unjust prejudice to the Applicant. The Petitioners will comply with whatever case

management schedule that the Board establishes. Moreover, the Petitioners will be represented in these proceedings by counsel experienced in practice before the Board.

For the foregoing reasons, the Petitioners request the Board to grant this Petition for Leave to Intervene.

Respectfully submitted,

/s/ Jack A. Van Kley  
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(willing to accept service by email)

#### **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 in the service list of the docket card who have electronically subscribed to this case. In addition, I hereby certify that, on June 25, 2021, a copy of the foregoing document also is being served by electronic mail on the following: Jodi Bair at [Jodi.Bair@ohioattorneygeneral.gov](mailto:Jodi.Bair@ohioattorneygeneral.gov); Daniel A. Brown at [dbrown@brownlawdayton.com](mailto:dbrown@brownlawdayton.com); Kevin Dunn at [kdd@planklaw.com](mailto:kdd@planklaw.com); John Hart at [jehartlaw@gmail.com](mailto:jehartlaw@gmail.com); Werner Margard III at [Werner.Margard@ohioattorneygeneral.gov](mailto:Werner.Margard@ohioattorneygeneral.gov); Nathaniel B. Morse at [nbmorse@vorys.com](mailto:nbmorse@vorys.com); Michael Settineri at [mjsettineri@vorys.com](mailto:mjsettineri@vorys.com); Lee Slone at [lee.slone@dinsmore.com](mailto:lee.slone@dinsmore.com); Charles Swaney at [cswaney@woh.rr.com](mailto:cswaney@woh.rr.com); David Watkins at [dww@planklaw.com](mailto:dww@planklaw.com); and Anna Sanyal at [aasanyal@vorys.com](mailto:aasanyal@vorys.com).

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

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Summary: Petition to Intervene by Citizens for Greene Acres electronically filed by Mr. Jack A Van Kley on behalf of Citizens for Greene Acres, Inc.