

BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application)
of Yellow Wood Solar Energy LLC,)
for a Certificate of Environmental) Case No. 20-1680-EL-BGN
Compatibility and Public Need for)
The Construction of a Solar-Powered)
Electric Generation Facility in)
Clinton County, Ohio)

**PETITION FOR LEAVE TO INTERVENE OF BRAD COCHRAN/BRAD
COCHRAN FARMS LLC, BRIAN AND JANET COLLINS, MARGARET AND
STEPHEN ELAM, G. ROBERT AND JOYCE GRIFFITH, ALAN AND DEBORAH
HERTLEIN, BRETT HERTLEIN, JWP FAMILY FARMS LLC, DARLA AND
MATTHEW LONG, BENJAMIN AND K. NICOLE OBERRECHT, DIANE
RHONEMUS, JAMIE AND MATTHEW ROBERTS, JANICE ROWLANDS, CHARLES
W. SIMPSON, JR. AND PAMELA MCCONNELL, AND CHARLES THOMPSON**

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

Brad Cochran Farms LLC and Brad Cochran (its sole member), 3308 Martinsville Road,
Martinsburg, OH 45146;

Brian and Janet Collins, 4461 Glady Road, Lynchburg, OH 45142;

Margaret and Stephen Elam, 3445 Oak Grove Road, Lynchburg, OH 45142;

G. Robert and Joyce Griffith, 3826 Glady Road, Lynchburg, OH 45142;

Alan and Deborah Hertlein, in their personal capacity and as trustees for the Hertlein
Family Revocable Living Trust, 3208 Townsend Road, Lynchburg, OH 45142;

Brett Hertlein, 7035 Lynchburg Road, Lynchburg, OH 45142;

JWP Family Farms LLC, 758 Cemetery Road, Martinsville, OH 45146;

Darla and Matthew Long, 4362 Glady Road, Lynchburg, OH 45142;

Benjamin and K. Nicole Oberrecht, 2908 Oak Grove Road, Lynchburg, OH 45142;

Diane Rhonemus, 2277 Canada Road, Lynchburg, OH 45142;

Jamie and Matthew Roberts, 1258 Canada Road, Lynchburg, OH 45142;

Janice Rowlands, 6400 Lynchburg Road, Lynchburg, OH 45142;

Charles W. Simpson, Jr. and Pamela McConnell, 1512 Turner Road, Lynchburg, OH 45142;
and

Charles Thompson, 2537 Canada Road, Martinsville, OH 45156.

A memorandum in support of this petition is provided below.

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

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:

The Petitioners will be directly and adversely affected by the Yellow Wood Solar Project (“Project”), which Yellow Wood Solar Energy LLC (“Yellow Wood Solar”) plans to construct

and operate near their homes and land. All of the Petitioners¹ own and/or live on properties that are adjacent to or inside of the project area (“Project Area”) for the Project. Except for Brad Cochran/Brad Cochran Farms LLC and JWP Family Farms LLC, all of the Petitioners reside on land adjacent to or inside of the Project Area. Brad Cochran Farms LLC and JWP Family Farms LLC own and farm land adjacent to or inside of the Project Area. Solar arrays in the Project are proposed for land bordering the properties of most Petitioners on two, three, or four sides. The parcels of land owned by the Hertlein Family Revocable Living Trust, on which Alan, Brett, and Deborah Hertlein live and farm, has 12 borders adjacent to proposed solar arrays.

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.

¹ Brad Cochran’s home is not on a parcel of land adjacent to the Project Area, but he farms land adjacent to the Parcel Area in his capacity as the sole member of Brad Cochran Farms LLC.

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

3. Yellow Wood 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' 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, the loss of crop production on the local economy, 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, lightning, 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 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.

14. The Application fails to adequately and accurately evaluate, and fails to protect the Petitioners from, the noise impacts of Project construction and operation, including inverter noise.

15. 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).

16. Contrary to the Application, the Project is not consistent with local land use plans, including Clinton County's Comprehensive Plan and Jefferson Township's zoning.

17. Yellow Wood Solar has not complied with the public information requirements of OAC 4906-3-03, including but not limited to the information described in Paragraphs 18 through 36 below.

18. 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.

19. 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.

20. 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), including procedures necessary to prevent the interference with the movement of farm machinery on the roads.

21. 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).

22. 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).

23. 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).

24. 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.

25. 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).

26. 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).

27. 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).

28. 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 are required by OAC 4906-4-08(B)(1)(d).

29. 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).

30. 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 the property lines within 1500 feet. The Application does not provide a table showing the distances between the solar collection lines, access roads and other associated solar facilities and the property lines and neighbors' structures within 250 feet. The Application also fails to identify the locations or owners of the structures listed in the tables provided under 4906-4-08(C)(1)(b), 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.

31. 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.

32. 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)(e) 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.

33. While OAC 4906-4-08(D)(4)(f) requires Yellow Wood 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.

34. 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 lightning.

35. 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.

36. 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.

37. 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 and residents 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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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 September 30, 2021, a copy of the foregoing document also is being served by electronic mail on the following:

Christine M.T. Pirik at cpirik@dickinsonwright.com; William V. Vorys at wvorys@dickinsonwright.com; Matthew C. McDonnell at mmcdonnell@dickinsonwright.com; Jodi Bair at jodi.bair@ohioattorneygeneral.gov; Chelsea R. Fletcher at chelsea.fletcher@ohioattorneygeneral.gov; Thaddeus M. Boggs at tboggs@fbtlaw.com; Chad A. Endsley at cendsley@ofbf.org; Leah F. Curtis at lcurtis@ofbf.org; and Amy M. Milam at amilam@ofbf.org.

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

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Summary: Petition to Intervene electronically filed by Mr. Jack A. Van Kley on behalf of Brad Cochran Farms LLC and Cochran, Brad and Collins, Brian and Janet and Elam, Margaret and Stephen and Hertlein, Alan and Deborah and Hertlein, Brett and Hertlein Family Revocable Living Trust and JWP Family Farms LLC and Long, Darla and Matthew and Griffith, G. Robert and Joyce and Oberrecht, Benjamin and K. Nicole and Rhonemus, Diane and Roberts, Jamie and Matthew and Rowlands, Janice and Simpson, Jr., Charles W. and McConnell, Pamela and Thompson, Charles