

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Border Basin I,	)	
LLC for a Certificate of Environmental	)	
Compatibility and Public Need to Construct a Solar-	)	Case No. 21-277-EL-BGN
Powered Electric Generation Facility in Hancock	)	
County, Ohio.	)	

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**INITIAL BRIEF OF BORDER BASIN I, LLC  
IN SUPPORT OF THE  
JOINT STIPULATION AND RECOMMENDATION AND  
ISSUANCE OF THE CERTIFICATE**

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## I. INTRODUCTION

In this proceeding, Border Basin I, LLC (“Border Basin” or “Applicant”) seeks a certificate of environmental compatibility and public need (“Certificate”) from the Ohio Power Siting Board (“Board”) to construct a solar-powered electric generation facility on leased land in Cass, Township, Hancock County, Ohio (“Project”) with a generating capacity of up to 120 megawatts (“MW”) alternative current (“AC”).<sup>1</sup> Border Basin, the Board’s Staff (“Staff”), the Ohio Farm Bureau Federation (“OFBF”), the Board of County Commissioners of Hancock County (“Hancock County Commissioners”), and the Board of Township Trustees of Cass Township (“Cass Township Trustees”) (jointly referred to herein as “Signatory Parties”) filed a Joint Stipulation and Recommendation (“Stipulation”) on April 13, 2022. Border Basin, Staff, OFBF, the Hancock County Commissioners, and the Cass Township Trustees recommend the Board adopt the Stipulation and issue a Certificate to Border Basin subject to the 44 Conditions set forth in the Stipulation.<sup>2</sup> Pro se intervenors Jeff Overmyer, Deidra Noel, Sarah Lewis, Richard Lewis, and Robin Gardner were the only parties to this case that made appearances at the evidentiary hearing and they were the only witnesses to testify in opposition to the Project at the evidentiary hearing.

As proven on the record in this proceeding, the conditions in the Stipulation ensure that all of the requirements set forth in Ohio Revised Code (“R.C.”) 4906.10 that are required to be met for the Board to approve the Stipulation and issue the Certificate to Border Basin have been met. These requirements include, but are not limited to, the fact that the Board can determine: the nature of the probable environmental impact; that the facility represents “the minimum adverse environmental impact, considering the available technology and the nature and economics of the various alternatives, and other pertinent considerations;” and that the facility serves “the public interest, convenience, and necessity.” In addition, the Stipulation satisfies the three-part test utilized by the Board for the review and consideration of stipulations, namely it: is the product of serious bargaining among all parties in this case; benefits the public interest; and does not violate any important regulatory principle or policy.

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<sup>1</sup> App. Ex. 1 at 1.

<sup>2</sup> Jt. Ex. 1 at 2-10.

At the evidentiary hearing, the only evidence presented on the record in opposition to the Project was presented by the five pro se intervenor as lay witnesses. These witnesses expressed the following concerns regarding the Project: view from their properties and interference with recreation on their properties because of the view; location of the substation; flooding; aesthetic and lighting issues; property values; traffic safety and road plans; the need for local zoning; company profit; impacts to wildlife; need for a vegetation management plan that addresses prevention of noxious weeds; notice to the community; use of groundwater; dust control; and use of prime agricultural land.<sup>3</sup> The Application<sup>4</sup> in this case, as enhanced by the Stipulation, addresses and resolves all of these concerns.

As summarized below, the record in this case supports adoption of the Stipulation and the issuance of the Certificate to Border Basin.

## **II. SUMMARY OF THE PROCEEDING**

The proceedings in this matter were conducted by the Board in accordance with the provisions in R.C. 4906 and Ohio Administrative Code (“O.A.C.”) 4906.

On June 15, 2021, as supplemented, Border Basin filed its Application with the Board for a Certificate to construct the proposed Project. Prior to filing the Application, in addition to numerous informal public outreach activities as explained in detail below, the Applicant held two public information meetings on May 13, 2021, and August 16, 2021. The Board held a local public hearing in this matter on March 31, 2022, in accordance with the Administrative Law Judge (“ALJ”) entry issued January 7, 2022.

On April 13, 2022, Border Basin, Staff, OFBF, the Hancock County Commissioners, and the Cass Township Trustees filed a Stipulation. The evidentiary hearing in this matter commenced on April 19, 2022, and concluded on April 20, 2022. At the evidentiary hearing, the ALJ determined that the briefs and reply briefs would be due by June 10, 2022, and July 1, 2022, respectively.

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<sup>3</sup> Overmyer Exs. 9 and 9A; Sarah Lewis Ex. 1; Richard Lewis Ex. 1; Noel Ex. 1; Tr. I at 178-180.

<sup>4</sup> On June 15, 2021, Border Basin filed its Application for a Certificate with the Board. Since that time, there have been four supplements to the Application and nine responses to data requests from Staff filed in the docket (App. Exs. 2- 17). Together, those documents are referred to herein as the “Application.”

### III. PROJECT DESCRIPTION

Border Basin proposes to construct and operate an electric generating facility that uses photovoltaic (“PV”) technology. The Project area consists of approximately 1,378 acres of private land secured under option agreements for long-term leases in Cass Township, Hancock County. The facility will occupy up to 966 acres of agricultural land on all or part of 25 parcels of private land.<sup>5</sup> The general purpose of the facility is to meet the requirements of industrial and commercial businesses in Ohio that are demanding zero emission from solar within the state’s borders.<sup>6</sup> Upon receipt of the Certificate, construction of the facility is expected to begin as early as the first quarter of 2023.<sup>7</sup>

The components of the facility will include PV solar panels (modules) mounted on a racking system, inverters, collector lines, a Project substation, and access roads, all of which will be encompassed by a security fence.<sup>8</sup> The electricity generated by the modules will be sent to the inverters and converted from direct current (“DC”) to AC. Collector lines will then transfer the electricity to a collector substation and a Project substation, which will then deliver the electricity to the point of interconnection (“POI”). The POI will be a new switching station that will connect to the Ebersole to Fostoria Central #2 138 kilovolt (“kV”) transmission line and interconnection substation that are owned and operated by American Electric Power (“AEP”), which connects to the greater PJM Interconnection, LLC (“PJM”) grid.<sup>9</sup>

As summarized below, and extensively documented on the record in this case, the facility is designed to comply with all applicable state and federal regulations. Further, the Project will, among other things:

- employ significant minimum setbacks from roads, neighboring properties, and residences;<sup>10</sup>
- use virtually no fuels or water, and emit zero emissions;<sup>11</sup>

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<sup>5</sup> App. Ex. 1 at 2, 6, 18-19; App. Ex. 25 at 6.

<sup>6</sup> App. Ex. 1 at 1; App. Ex. 25 at 7.

<sup>7</sup> App. Ex. 25 at 6.

<sup>8</sup> *Id.*

<sup>9</sup> App. Ex. 1 at 7, 9-10; App. Ex. 25 at 6.

<sup>10</sup> App. Ex. 1 at 16; App. Ex. 6.

<sup>11</sup> App. Ex. 1 at 1; App. Ex. 25 at 7.

- help reduce Ohio’s reliance on out-of-state power generators;<sup>12</sup>
- keep investment and tax dollars local;<sup>13</sup>
- provide economic benefits to local schools and the community;<sup>14</sup>
- not anticipated to have any sound impacts at nearby residences or sensitive receptors during operation;<sup>15</sup>
- require very few changes to the land surface, with limited grading because the area is relatively level;<sup>16</sup>
- provide employment opportunities throughout the region and the state;<sup>17</sup> and
- productively use farm fields to diversify the income sources of many area families and local taxing units.<sup>18</sup>

In addition, the facility will not:

- use any appreciable amount of water;<sup>19</sup>
- generate air or water pollution;<sup>20</sup> or
- produce hazardous waste.<sup>21</sup>

Moreover, the Applicant is committed to ensuring that the final layout of the Project adheres to all applicable regulations and the conditions in the Stipulation. The Applicant is committed to obtaining all necessary state and federal approval.<sup>22</sup>

## IV. STANDARD OF REVIEW

### A. CERTIFICATION CRITERIA

Pursuant to R.C. 4906.10, the Board shall not grant a certificate for the construction, operation, and maintenance of a solar-powered electric generation facility, such as the Project proposed by Border Basin, unless it finds and determines all of the following:

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<sup>12</sup> *Id.*

<sup>13</sup> App. Ex. 25 at 7.

<sup>14</sup> App. Ex. 1 at Ex. G.

<sup>15</sup> *Id.*, Ex. N, Table 9; App. Ex. 29 at 6.

<sup>16</sup> App. Ex. 1 at 35.

<sup>17</sup> *Id.*, Ex. G; App. Ex. 25 at 11.

<sup>18</sup> App. Ex. 1 at 1-2, 13, 43.

<sup>19</sup> *Id.* at 1; App. Ex. 25 at 7.

<sup>20</sup> App. Ex. 1 at 36; App. Ex. 25 at 13.

<sup>21</sup> App. Ex. 1 at 1, 33.

<sup>22</sup> *Id.* at 13; App. Ex. 25 at 7.

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline.<sup>23</sup>
- (2) The nature of the probable environmental impact.
- (3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.
- (4) That the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability.
- (5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.
- (6) That the facility will serve the public interest, convenience, and necessity.
- (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.
- (8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available **technology** and the nature and economics of the various alternatives.

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<sup>23</sup> Since this Project is a proposed electric generating facility, this criterion is not applicable to this Application.

The evidentiary record in this matter supports a finding by the Board that the criteria under R.C. 4906.10 are satisfied.

## **B. STIPULATION CRITERIA**

O.A.C. 4906-2-24 authorizes parties to Board proceedings to enter into stipulations. Pursuant to O.A.C. 4906-2-24(D), the terms of the stipulation are accorded substantial weight by the Board. *See, e.g., In re the Application of Amer. Transm. Systems, Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013); *In re the Application of Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re the Application of AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re the Application of Wheatsborough Solar, LLC*, Case No. 20-1529-EL-BGN (Sept. 16, 2021); *In re the Application of Clearview Solar, LLC*, Case No. 20-1362-EL-BGN (Oct. 21, 2021); *In re the Application of Marion County Solar Project, LLC*, Case No. 21-36-EL-BGN (Nov. 18, 2021). In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

As set forth herein, the evidentiary record in this matter supports a finding by the Board that the criteria used by the Board to determine the reasonableness of a stipulation have been satisfied.

## **V. ARGUMENTS IN SUPPORT OF ADOPTION OF THE STIPULATION AND APPROVAL OF CERTIFICATION**

The Stipulation and the record in this proceeding support a finding and determination by the Board that all of the criteria in R.C. 4906.10 have been met; therefore, the Stipulation should be adopted and a Certificate should be issued to Border Basin. The Stipulating Parties have presented a strong and all-inclusive Stipulation that is supported by the record in this proceeding. Of particular importance is Condition 1 in the Stipulation, which requires that the Applicant:



... shall install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the *Staff Report of Investigation*.<sup>24</sup>

As detailed herein, this condition in the Stipulation includes extensive and significant commitments and conditions by which Border Basin must monitor, construct, and operate the facility. Throughout the Application, the Applicant makes substantial commitments regarding all facets of the construction, operation, and maintenance of the facility. From landscape screening to setbacks, sound, fencing, drain tile, lighting, and decommissioning, just to name a few, these commitments are set in stone and cannot be decreased or reduced. For example, the final landscape and lighting plan that must be provided prior to construction<sup>25</sup> cannot be any less than what is set forth in the Application and committed to by the Applicant through the Stipulation. Thus, the Stipulation and the record provide strong support for a finding by the Board that all of the requisite criteria set forth in R.C. 4906.10 have been met and that Border Basin should be issued a Certificate.

**A. The record in this proceeding supports the finding and determination by the Board that the basis of need criterion in R.C. 4906.10(A)(1) does not apply to this Application.**

Pursuant to R.C. 4906.10(A)(1), prior to granting a certificate, the Board must determine the basis of the need for the facility *if the facility is an electric transmission line or gas pipeline*. However, the facility proposed in this matter is an electric generation facility.<sup>26</sup> Therefore, “the basis of need” as specified under R.C. 4906.10(A)(1) is not applicable to the facility proposed in this case.

**B. The Stipulation and the record in this proceeding enable the Board to determine the nature of the probable environmental impact and, therefore, the Application and Stipulation comply with R.C. 4906.10(A)(2).**

As summarized below, the record in this proceeding provides an abundant amount of information and documentation to enable the Board to determine the nature of the probable

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<sup>24</sup> Jt. Ex. 1 at 3.

<sup>25</sup> *Id.* at 5-6, Condition 23

<sup>26</sup> App. Ex. 1 at 2.

environmental impact of the facility, including the public/safety, land use, geological and hydrogeology, cultural, and ecological impacts. The Application includes detailed and extensive surveys, assessments, and reports related to the probable impacts of the facility.<sup>27</sup> Further, each of these topics are supported on the record by the testimony of expert witnesses.

### ***1. Public and Safety***

The Project is not expected to negatively impact housing, the transportation system, or other public services and facilities.<sup>28</sup> Solar facilities are safe and do not pose safety or health risks to the community.<sup>29</sup> Further, the Applicant will implement the following minimum setbacks:

- 300 feet from non-participating residences in locations where there is a roadway between the Project and the residence
- 500 feet from non-participating residences in areas not separated by a roadway
- 40 feet from roadways
- 50 feet from and existing domestic use water supply well<sup>30</sup>
- 50 feet from identified well-like magnetic anomalies<sup>31</sup>

A Visual Impact Analysis (“VIA”) was conducted to review the potential of visual impacts that may result from development of the Project.<sup>32</sup> The review of potential visual resources within 10 miles of the Project area included, but was not limited to, recreation areas, local community resources (e.g., schools, libraries, places of worship), and other scenic resources.<sup>33</sup> There are no National Parks, National Forests, National Wildlife Refuges, or National Natural Landmarks present in the study area.<sup>34</sup> The Project will introduce low vertical, geometric elements that are gray in color into a relatively flat terrain landscape dominated by agricultural lands with strips of green grasses and patches and strips of trees and shrubs. The visual impacts of the Project depend on several factors, including: the distance of the viewer from the Project; whether the views toward the Project are unobstructed or screened with vegetation, terrain, or development; the attitudes of

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<sup>27</sup> App. Ex. 25 at 11.

<sup>28</sup> App. Ex. 1 at 62.

<sup>29</sup> *Id.* at 38.

<sup>30</sup> App. Ex. 6; App. Ex. 25 at 15; Jt. Ex. 1 at 9, Condition 38.

<sup>31</sup> App. Ex. 11; App. Ex. 34 at 6.

<sup>32</sup> App. Ex. 1, Ex. T; App. Ex. 32 at 3.

<sup>33</sup> App. Ex. 1, Ex. T; App. Ex. 13 at 2-4; App. Ex. 32 at 4.

<sup>34</sup> App. Ex. 1, Ex. T; App. Ex. 32 at 4.

the viewer towards solar energy; and atmospheric conditions (such as weather).<sup>35</sup> These factors that can diminish visibility under actual field conditions were not accounted for in the VIA; thus, the VIA took a very conservative approach.<sup>36</sup> Views from surrounding places (e.g., Findlay and Fostoria) will generally be screen by vegetation and structures. Roads and rural residential development around the built communities would have limited views given the relatively flat terrain.<sup>37</sup> The portions of the Project that would be visible would be seen in the context of existing development and landscape modifications. The Project is likely to be visible in the immediate vicinity from locations where vegetation does not screen the views. However, the difference in visual effects from viewpoints greater than 0.1 mile from the Project area shows that visual effect is greatly decreased with distance.<sup>38</sup>

A glare analysis was conducted using the Solar Glare Hazard analysis Tool, which is considered an industry best practice and a conservative model that effectively models the potential for glare at defined receptors from solar facilities. The analysis found that, for the typical first and second story heights, the commuter vehicle height, and the tractor trailer receptor heights, no glare was predicted from the Project.<sup>39</sup> Further, the Federal Aviation Administration (“FAA”) Notice Criteria Tool did not show airports in the vicinity of the Project.<sup>40</sup>

Although there are no applicable noise limits, an appropriate benchmark that has been used to assess solar energy projects in Ohio is that the facility’s daytime noise contribution during operation does not result in noise levels at any non-participating sensitive receptors within one mile of the project boundary that exceeds the ambient daytime sound levels (“ $L_{eq}$ ”).<sup>41</sup> The method used to analyze operational sound is an industry standard that considered the worst-case scenario.<sup>42</sup> Consistent with Stipulation Condition 41, the operational sound levels do not exceed ambient

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<sup>35</sup> App. Ex. 1, Ex. T; App. Ex. 13 at 2; App. Ex. 32 at 5-6.

<sup>36</sup> App. Ex. 13 at 2.

<sup>37</sup> App. Ex. 1, Ex. T; App. Ex. 13 at 2; App. Ex. 32 at 6.

<sup>38</sup> App. Ex. 1, Ex. T; App. Ex. 32 at 6.

<sup>39</sup> App. Ex. 1, Ex. M; App. Ex. 28 at 3-4.

<sup>40</sup> *Id.* at 3.

<sup>41</sup> App. Ex. 29 at 3; *In re Application of Hecate Energy Highland LLC*, Case No. 18-1334-EL-BGN, Opinion, Order, and Certificate (May 16, 2019); *In re Application of Cadence Solar Energy, LLC*, Case No. 20-1677-EL-BGN, Opinion, Order, and Certificate (Nov. 18, 2021); *In re Application of Hardin Solar Energy II, LLC*, Case No. 18-1360-EL-BGN, Opinion, Order, and Certificate (May 16, 2019); *In re Application of Fox Squirrel Solar, LLC*, Case No. 20-931-EL-BGN, Opinion, Order, and Certificate (July 15, 2021).

<sup>42</sup> App. Ex. 29 at 4-5.

sound levels plus 5 A-weighted decibels (“dBA”) during the daytime at non-participating receptors.<sup>43</sup>

The model used to evaluate the construction sound conservatively assumed all pieces of construction equipment associated with an activity would operate simultaneously for the duration of that activity. An additional level of conservatism was built into the construction sound model by excluding potential shielding effects due to intervening structures along the path from the Project site to the receiver locations.<sup>44</sup> Construction sound levels are predicted to range from 42 to 91 dBA.<sup>45</sup> All reasonable efforts will be made to minimize the impact of noise resulting from construction activities including implementation of standard noise reduction measures. Consistent with Stipulation Condition 35, construction is limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Pile Driving is limited to shorter hours and only construction activities that do not generate significant sound above background levels will occur outside daylight hours.<sup>46</sup>

The Applicant provided a Culvert and Bridge Inventory Report that assessed the anticipated impact of construction on the roadway culverts and bridges, and any needed improvements prior to or during construction. This assessment reviewed 5 bridges and 89 culverts in and around the Project area. No noteworthy defects were observed in any of the 5 bridges. Of the 89 culverts inspected, 74 were in good condition, 1 was in poor condition, 1 was in fair condition, and 13 were in unknown condition due to obstructions.<sup>47</sup>

The minimal amount of electromagnetic fields (“EMF”) generated by the Project is comparable to the EMF generated by home appliance, which has not been shown to result in negative health impacts. The Applicant will only utilize Tier 1 equipment suppliers and will require solar panels to pass Toxicity Characteristic Leaching Procedure (“TCLP”) testing regulated by the United States (“U.S.”) Environmental Protection Agency (“USEPA”). Solar panels that pass the USEPA’s TCLP will be used for the Project and, therefore, they will be non-hazardous under federal law.<sup>48</sup>

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<sup>43</sup> App. Ex. 1, Ex. N, Table 9; App. Ex. 29 at 6; Jt. Ex. 1 at 9.

<sup>44</sup> App. Ex. 1, Ex. N; App. Ex. 29 at 4.

<sup>45</sup> App. Ex. 29 at 6

<sup>46</sup> App. Ex. 1 at 26; App. Ex. 29 at 7; Jt. Ex. 1 at 8.

<sup>47</sup> App. Ex. 1 at 26, Ex. J; App. Ex. 27 at 3-4.

<sup>48</sup> App. Ex. 1 at 38.

Border Basin provided a property valuation study, the Real Estate Adjacent Property Value Impact Report, which determined whether existing solar energy uses have had any measurable impact on the value of adjacent properties.<sup>49</sup> As confirmed in the site-specific study, the Real Estate Adjacent Property Value Impact Report Site-Specific Analysis Addendum, the established solar farms studied are comparable to the Project.<sup>50</sup> As part of the study, utility-scale solar farms in the Midwest, Southwest, and East, as well as the property value trends of adjacent land uses, including agricultural, single family, and residential properties were examined.<sup>51</sup> The basic premise of this comparative “paired data analysis” is that, if there is any impact on the value of adjacent properties by virtue of their proximity to a solar energy use, it would be reflected by such factors as the range of sale prices, differences in unit sale prices, conditions of sale, and overall marketability.<sup>52</sup> The paired data analysis is “a quantitative technique used to identify and measure adjustments to the sale prices or rents of comparable properties; to apply this technique, sales of rental data on nearly identical properties is analyzed to isolate a single characteristic’s effect on value or rent.”<sup>53</sup> The difference in sale price is considered to be the impact of the proximity to the solar farm. The property value analysis concluded that no consistent and measurable negative impact had occurred to adjacent property that could be attributed to proximity to the adjacent, commercial-scale, solar energy use, with regard to unit sale prices or other influential market indicators. In addition, interviews with local real estate assessors and brokers reaffirmed that there was no difference in price, marketing periods, or demand for property directly adjacent to existing solar energy uses when compared to similar properties locationally removed from any solar energy use’s influence.<sup>54</sup>

## **2. *Land Use/Agriculture***

Agricultural land comprises 93% (1,283) of the land use in the Project area. The remaining land use is: forest, 0.7% (10.3 acres); mature forest, 2.1% (29.3 acres); wetlands, 2.1% (29.4 acres); shrubland, 1.4% (19.1 acres); and treeline, 6.4% (0.5 acres).<sup>55</sup> During operation of the facility,

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<sup>49</sup> App. Ex. 36, Att. ARL-2.

<sup>50</sup> *Id.* at 4, Att. ARL-3.

<sup>51</sup> *Id.* Ex. 36 at 4-5, Att. ARL-2.

<sup>52</sup> *Id.* Ex. 36 at 5.

<sup>53</sup> The Appraisal of Real Estate 14<sup>th</sup> Edition, Chicago, IL: Appraisal Institute, 2013; App. Ex. 36 at 5.

<sup>54</sup> App. Ex. 36 at 5-7, Att. ARL-2, Att. ARL-3.

<sup>55</sup> App. Ex. 1 at 50, 68.

approximately 952.7 acres of agricultural land will be taken out of production, which represents 0.4% of the land currently used for farming in Hancock County.<sup>56</sup>

A Drain Tile Assessment and Impact Report (“Drain Tile Assessment”) was performed to identify, to the extent practicable, the location (or probable location) of existing agricultural field drainage systems so that they can be avoided, repaired, or moved when designing and constructing the Project. Information for the Drain Tile Assessment was obtained from historic aerial photographs and detailed maps provided by the landowner. This information was all compiled into a comprehensive Project map illustrating the approximate location of the drain tiles in the Project Area.<sup>57</sup>

### ***3. Geological and Hydrogeology***

The Geotechnical Report concluded that the site is suitable for the development of a solar project.<sup>58</sup> The soils and bedrock found in the 18 soil test boring reflected in the Geotechnical Report indicated that standard methods can be used at the Project site reducing the design and cost of risk of the foundation systems at the Project. The results of the chemical testing did not present any design or cost risk to the Project. The geotechnical investigation found that, based on the soils data, a driven pile system is the most appropriate foundation system to support the modules and conventional shallow foundation systems may be used to support any auxiliary structures and equipment pads utilized for the Project. The geotechnical investigation did not identify any ground conditions that would present an obstacle to the design and construction of a solar facility in the Project area.<sup>59</sup>

The soil beneath the Project area is expected to consist predominately of clay and other fine-grained soil to a depth of approximately 70 feet below the ground surface (“fbg”), below which lies the water-bearing limestone. Based on the observed difference between the depth at which groundwater is first encountered to static water depths, the overlying clay deposits may act as a confining layer. The uppermost known exploited oil/gas bearing zone is at a depth of approximately 1,100 fbg; 1,000 feet below the base of the domestic supply wells.<sup>60</sup> In addition, subsurface land disturbance for the Project is expected to extend less than 10 fbg. Thus,

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<sup>56</sup> App. Ex. 1 at 69.

<sup>57</sup> App. Ex. 1 at 68-70, Ex. U; App. Ex. 26 at 6.

<sup>58</sup> App. Ex. 1 at 46-47, Ex. L; App. Ex. 35 at 5.

<sup>59</sup> App. Ex. 1, Ex. L; App. Ex. 35 at 5.

<sup>60</sup> App. Ex. 11 at 4; App. Ex. 34 at 7.

groundwater will likely only be encountered for a small percentage of the construction activities and the subsurface land disturbance is unlikely to impact local groundwater conditions.<sup>61</sup> Further, a Hydrologic Assessment was completed to ascertain information relating to the existing hydrologic conditions of the Project area.<sup>62</sup>

A detailed review of the Ohio Department of Natural Resources (“ODNR”) historical oil/gas well records was conducted and additional research, studies, and consultation with ODNR resulted in the development of an Engineering Constructability Report (“ECR”) for the Project.<sup>63</sup> The ECR evaluated historical oil/gas wells and their potential impact. The ODNR records identified 98 historical oil/gas wells within the Project infrastructure area; however, based on available historical information and interviews with ODNR, these locations presented in the ODNR database are only approximate.<sup>64</sup> Thus, Border Basin had an electromagnetic (“EM”) survey, which is a best practice for precisely locating historical wells, completed. The survey was conducted by systematically covering the total survey distance of 58.4 miles with an unmanned aerial vehicle. Through the aerial survey, any well-like structures were likely to be detected up to approximately 52 feet fbg surface.<sup>65</sup> If wells exist in the Project area that were not identified by the EM surveys, there should be no remaining metal casing within approximately 60 feet of the surface, based on the detection capability of the EM survey equipment. These wells, should they exist, have well caps formed from soil and debris that has accumulated throughout the years.<sup>66</sup> The aerial EM survey identified 90 well-like anomalies. Following the aerial survey, a ground-based EM survey of the 90 anomalies was conducted to pinpoint their locations.<sup>67</sup>

The ECR provided that, by avoiding potential historical well locations in construction and operation of the Project, the risk of potential adverse impacts is minimized.<sup>68</sup> The Applicant notes that the risk associated with the historic oil/ gas wells is lower than with the current farming practices, which do not actively avoid the ground over the locations.<sup>69</sup> It is important to also note that, in the case of solar construction, the limited subsurface disturbances (i.e., piles being driven

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<sup>61</sup> App. Ex. 11; App. Ex. 34 at 7.

<sup>62</sup> App. Ex. 1, Ex. O; App. Ex. 11; App. Ex. 27 at 4.

<sup>63</sup> App. Exs. 11, 12; App. Ex. 32 at 3.

<sup>64</sup> App. Ex. 34 at 4-5.

<sup>65</sup> App. Exs. 11; App. Ex. 34 at 5-6.

<sup>66</sup> App. Ex. 11 at 3-4.

<sup>67</sup> App. Ex. 34 at 6.

<sup>68</sup> App. Ex. 11 at 14.

<sup>69</sup> App. Ex. 34 at 6.

no more than 6 to 10 fbg, underground collection lines no more than 4 fbg, and minor grading for the Project substation) when the well casing is 60 or more fbg should have negligible impact on the “sealing effect” provided by the soil above the well.<sup>70</sup>

The ECR noted that only a few of the well locations had possible localized residual contamination in near-surface soil near the above-ground feature. As explained in the ECR, localized residual contamination in near-surface soil around orphaned wells, such as those few wells, is classified on the ODNR Risk Evaluation Matrix as low risk.<sup>71</sup>

In addition, given the depleted nature of the Findlay-Lima Trenton Field, it is very unlikely that any disturbance to an existing orphaned well in the Project area will result in meaningful hydrocarbon releases to the surface. Thus, the historical wells present low risk. Further, ODNR’s Risk Evaluation Matrix confirms that the historical wells identified in the Project area are considered low risk wells.<sup>72</sup> Moreover, ODNR indicated that none of the identified oil/gas wells in the Project area require immediate abandonment.<sup>73</sup>

#### **4. Cultural**

The Project will have no impact to archaeological resources.<sup>74</sup> A Phase 1 Archaeological Survey was conducted to provide an inventory of archaeological resources within the Project’s direct area of potential effect (“APE”).<sup>75</sup> The survey identified: 34 new archaeological sites; 20 prehistoric period sites; 9 historic period sites; and 5 sites with prehistoric and historic period components.<sup>76</sup> Of the 34 new sites identified, 24 sites exhibited limited research potential and, therefore, were recommended not eligible for listing in the National Register of Historic Places (“NRHP”). After the fieldwork was completed, Border Basin reduced the Project area to avoid the 6 sites that exhibited potential to contain significant information for archaeological resources.<sup>77</sup> The Applicant received a concurrence letter from the State Historic Preservation Office (“SHPO”) in response to the archaeological survey on August 2, 2021.<sup>78</sup>

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<sup>70</sup> App. Ex. 11 at 4; App. Ex. 34 at 6-7.

<sup>71</sup> App. Ex. 12 at 3.

<sup>72</sup> App. Ex. 11; App. Ex. 34 at 7.

<sup>73</sup> *Id.* at 8.

<sup>74</sup> App. Ex. 1, Ex. S; App. Ex. 31 at 5. Att. JM-2.

<sup>75</sup> App. Ex. 31 at 3.

<sup>76</sup> App. 1, Ex. S; App. Ex. 31 at 4-5, Att. JM-2.

<sup>77</sup> *Id.* at 5.

<sup>78</sup> App. Ex. 4.



There are no direct impacts to history/architecture resources that were identified as potentially eligible for the NRHP.<sup>79</sup> A review of the known cultural resources within the study area revealed that the study area contained no historic/architecture resources previously documented on the Ohio Historic Site or on the NRHP. There were no resources within the study area that had been previously identified as Determination of Eligibility Properties or listed as National Historic Landmarks. An Architecture Survey was conducted to determine any existing historical/architectural cultural resource records in the study area. The Architecture Survey identified 47 history/architectural locations with resources over 50 years old. Of those 47 locations, 4 were recommended as eligible for the NRHP and it was determined that there were potential indirect visual impacts to these properties. It was also concluded that there would be indirect visual impacts to the Baker-Hamlin Cemetery and avoidance or mitigation was recommended for this property.<sup>80</sup> The Applicant received a concurrence letter from SHPO in response to the architectural survey on June 18, 2021.<sup>81</sup>

## **5. *Ecological***

The Project was designed to avoid all impacts to wetlands; however, there are a few locations where the Project infrastructure may cross a stream. In addition, there are no point source aquatic discharges anticipated during construction, and any non-point source storm water impacts would only be temporary.<sup>82</sup> The Applicant conducted biological resources and wildlife investigations of the Project area. The investigations did not discover any issues that would deter Border Basin from constructing and operating the facility in the Project area.<sup>83</sup> These investigations identified 4 streams; all 4 streams were relatively permanent waters with poor to very poor Qualitative Habitat Evaluation Index narrative ratings. They also identified 23 wetlands within the Project area; of the wetlands, 8 were palustrine forested (“PFO”), 14 were palustrine emergent, and 1 was a palustrine emergent/palustrine scrub-shrub wetland complex. All identified wetlands were categorized as either Category 1, Modified Category 2, or Category 2 wetlands according to their assessed Ohio Rapid Assessment Method for Wetlands scores.<sup>84</sup>

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<sup>79</sup> App. Ex. 1, Ex. R; App. Ex. 2; App. Ex. 33 at 4.

<sup>80</sup> App. Ex. 1, Ex. R; App. Ex. 33 at 4-5.

<sup>81</sup> App. Ex. 2.

<sup>82</sup> App. Ex. 1 at 31-32.

<sup>83</sup> App. Ex. 30 at 5.

<sup>84</sup> App. Ex. 1, Ex. P (Tables 1-2, Figures 4-1 to 4-22); App. Ex. 30 at 5.

With regard to threatened and endangered (“T&E”) species, the record reflects that actively managed agricultural fields, and the palustrine emergent wetlands that occur within those fields, likely do not provide suitable habitat for the T&E species identified in the Project area. Potentially suitable habitat for several T&E and birds of conservation concern (“BCC”) species may occur in the forested areas, palustrine forested wetlands, and within the streams. However, no T&E or BCC species were identified during the onsite survey investigation.<sup>85</sup>

**C. The Stipulation and record in this proceeding support a finding and determination by the Board that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives in compliance with R.C. 4906.10(A)(3).**

As discussed herein, the Applicant has committed to a number of measures through its Application and the Stipulation in order to ensure the Project has the minimum adverse environmental impact. The commitments noted herein include, but are not limited to:

- increasing beneficial vegetation and pollinator habitat within the Project fence;<sup>86</sup>
- installing wildlife-friendly fencing;<sup>87</sup>
- having a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas;<sup>88</sup>
- having a notification and education plan for site workers, instructions for screening of potential contaminants, and process for handling and disposal of contaminated soil as part of the Soil Management Plan (“SMP”);<sup>89</sup>
- having an environmental specialist experienced in drinking water quality protection sources on site during construction activities that may impact public or private water supplies;<sup>90</sup>

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<sup>85</sup> App. Ex. 1, Ex. P.

<sup>86</sup> Jt. Ex. 1 at 7, Condition 32.

<sup>87</sup> *Id.* at 6, Condition 24.

<sup>88</sup> *Id.*, Condition 25.

<sup>89</sup> App. Ex. 12 at 5.

<sup>90</sup> Jt. Ex. 1 at 6, Condition 26.

- constructing and operating an electricity generation technology that does not produce harmful emissions and will not introduce harmful chemicals into the environment;<sup>91</sup>
- avoiding the field abutting the Salem United Methodist Church;<sup>92</sup>
- avoiding 16 residences on Township Road 215 and County Road 216;<sup>93</sup> and
- coordinating any construction within the Federal Emergency Management Administration delineated 100-year floodplain with the local floodplain program administrator.<sup>94</sup>

### ***1. Public and Safety***

As stated previously, only a limited area within the Project area would have views of the Project and a limited number of homes are located in those areas. Existing vegetation between the solar modules and the homes will be left in place, to the extent practicable, to help screen and reduce visual impact. In addition, potential mitigation measures, in the form of vegetative screening, can be offered to obstruct or soften views of the Project.<sup>95</sup>

Consistent with Stipulation Condition 23, Border Basin is committed to prepare a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board. This plan will address the aesthetic and lighting impacts of the facility with an emphasis on location where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project area. Unless alternative mitigation is agreed to with the owner of such adjacent parcel, the plan will provide for the planting of vegetative screening to enhance the view from the residence and be in harmony with the existing vegetation and viewshed.<sup>96</sup>

The Applicant has committed to obtain any applicable transportation permits or authorizations prior to commencement of construction. Border Basin will coordinate with the appropriate authority regarding temporary road closures, road use agreements, driveway permits, land closures, road restrictions, and traffic control necessary to construct and operate the facility.

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<sup>91</sup> App. Ex. 1 at 1, 8, 69.

<sup>92</sup> App. Ex. 25 at 6.

<sup>93</sup> *Id.*

<sup>94</sup> App. Ex. 1 at 8, Condition 34.

<sup>95</sup> App. Ex. 1, Ex. T; App. Ex. 32 at 6-7.

<sup>96</sup> App. Ex. 25 at 6-7; Jt. Ex. 1 at 5-6.

Further, this coordination will be included in the final transportation management plan that will be provided prior to the preconstruction conference.<sup>97</sup> The Applicant has committed to work with Hancock County and Cass Township to execute a road use agreement, which will provide that any updates, repairs, and transportation routes are completed in coordination with the local entities and up to the local entities' standards of repair.<sup>98</sup>

The Applicant will prepare an Emergency Response Plan for the Project so that on-site staff and first responders are able to navigate potential emergencies at the site. Equipment will be available to construction and maintenance personnel, and local responders will also be trained on how to respond to any emergencies related to the Project prior to the Project commencing operations.<sup>99</sup>

## **2. *Land Use/Agriculture***

As stated previously, over 93% of the Project area is agricultural fields. The remaining 7% includes: immature forest, 1.2%; mature forest, 4.1%; and scrub-shrub, 1.4%. Some invasive plant species were identified as potential to be present in the area based on a desktop study, but they are not likely persistent due to the historic and continued use of the land for agricultural purposes.<sup>100</sup> Border Basin will continue to monitor the Project area for invasive species and use of any herbicides to control invasive species will be conducted in accordance with Stipulation Condition 33 and state regulations.<sup>101</sup>

The Applicant's goal with the Vegetation Management Plan is to address the management of vegetation within the fence line of the Project during the operational period of the facility. An added benefit from the facility is that there will be no disturbance of the ground surface that can cause sediment runoff and will help to maintain continuous vegetative cover that will promote nitrogen and phosphorus uptake.<sup>102</sup> Consistent with Stipulation Condition 32, the goals of the vegetation management plan will include planting a minimum of 70% of the Project area in beneficial vegetation using plant species from ODNR's most current Recommended Requirements

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<sup>97</sup> App. Ex. 1 at 26; Jt. Ex. 1 at 5, Condition 18.

<sup>98</sup> App. Ex. 1 at 26.

<sup>99</sup> *Id.* at 39.

<sup>100</sup> App. Ex. 26 at 4.

<sup>101</sup> *Id.*; Jt. Ex. 1 at 7-8.

<sup>102</sup> App. Ex. 26 at 4.

for Proposed Solar Energy Facilities in Ohio.<sup>103</sup> In addition, Border Basin will seek to follow the Ohio Solar Site Pollinator Habitat Planning and Assessment Form with a minimum score of 80 points.<sup>104</sup>

Using the information in the Drain Tile Assessment, Border Basin will be able to identify potential impacted areas and plan accordingly to identify and repair inadvertently impacted drainage tiles.<sup>105</sup> In addition, the Applicant has committed to avoid, where possible, or minimize to the extent practicable, any damage to functioning field drainage systems and soils. Further, Border Basin will promptly repair or reroute drain tile to at least the original conditions or modern equivalent at Border Basin's expense to ensure proper drainage. Moreover, the Applicant has committed that, if an affected landowner agrees to not have damaged field drain tile system repaired, they may do so only if the field tile systems of adjacent landowners remains unaffected by the non-repair of the landowner's field tile and the damaged field tile does not route directly onto or into an adjacent parcel.<sup>106</sup> In addition, the Complaint Resolution Plan will be in place during construction and operation of the facility to address any landowner complaints that may be made about the Project's effect on drain tile.<sup>107</sup>

### ***3. Geological and Hydrogeology***

The Geotechnical Report concluded that the subsurface conditions encountered indicate the Project area is suitable for construction of the Project with some consideration to engineering practices to mitigate risks from soft soils, silty soils, and soil corrosively.<sup>108</sup> Border Basin has committed to provide a final geotechnical engineering report prior to the preconstruction conference that will address geologic and soil suitability and will be based on the final design of the facility.<sup>109</sup> Border Basin will also conduct additional geotechnical borings and soil corrosion testing at varying depths to further identify any potential for corrosion. Further, the Applicant will conduct pile load testing to determine lateral and uplift load capacities.<sup>110</sup>

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<sup>103</sup> App. Ex. 12; App. Ex. 26 at 4-5; Jt. Ex. 1 at 7.

<sup>104</sup> App. Ex. 13; Jt. Ex. 1 at 7, Condition 26; App. Ex. 22 at 4.

<sup>105</sup> App. Ex. 26 at 6.

<sup>106</sup> Jt. Ex. 1 at 9, Condition 42.

<sup>107</sup> App. Ex. 1 at 25; Jt. Ex. 1 at 10, Condition 44.

<sup>108</sup> App. Ex. 35 at 5.

<sup>109</sup> *Id.* at 6; Jt. Ex. 1 at 3, Conditions 4, 5.

<sup>110</sup> App. Ex. 35 at 6; Jt. Ex. 1 at 3, Conditions 12, 13, 14.

In addition, the Applicant has committed to adhere to the Ohio Environmental Protection Agency's ("Ohio EPA's") Guidance on Post-Construction Storm Water Controls of Solar Panel Arrays and will coordinate with the Ohio EPA's Division of Drinking and Groundwater to identify any additional measures needed during construction to ensure public water supplies are not impacted.<sup>111</sup>

Consistent with Stipulation Condition 38, all water wells within the Project area will be "ground-truthed" to determine the exact locations prior to construction. In addition, the Applicant has committed to adhere to a minimum solar facility equipment setback of 50 feet from and existing domestic use water supply well.<sup>112</sup>

Border Basin will comply with the Ohio EPA's National Pollutant Discharge Elimination System Construction General Permit (Permit No. OH000005 issued on April 23, 2018) ("General Permit"). The General Permit requires Border Basin to submit a Notice of Intent to the Ohio EPA that it will invoke the General Permit, and prepare and implement pursuant to the General Permit a Storm Water Pollution Prevention Plan ("SWPPP"). Under the General Permit and SWPPP, Border Basin will be required to implement certain best management practices ("BMPs") to reduce and control erosion and sedimentation during construction, and implement post-construction storm water management of the Project. Regular inspections will be required and documented.<sup>113</sup> Border Basin will also incorporate into the design of the Project and the SWPPP the Ohio EPA's guidelines for Post-Construction Storm Water Controls for Solar Panel Arrays.<sup>114</sup>

With regard to the historical oil/gas well evaluation, the ECR described mitigation efforts to minimize potential impacts and contingency measures in the form of an Unanticipated Discovery Plan ("UDP").<sup>115</sup> For the known well locations identified in the EM surveys and reported in the ECR, the best way to avoid potential adverse environmental impacts from construction is to avoid activities that disturb the ground or sub-surface within 50 feet of well-like magnetic anomalies.<sup>116</sup> The Applicant has committed to a 50-foot setback from each well-like magnetic anomaly identified in the EM survey and no Project infrastructure will be located within

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<sup>111</sup> App. Ex. 1 at 34; Jt. Ex. 1 at 7, 9, Conditions 28 and 39, respectively.

<sup>112</sup> App. Ex. 6; App. Ex. 25 at 15; Jt. Ex. 1 at 9, Condition 38.

<sup>113</sup> App. Ex. 1 at 30, 32; App. Ex. 27 at 4-5; Jt. Ex. 1 at 7, Condition 28.

<sup>114</sup> App. Ex. 1 at 30; App. Ex. 27 at 5.

<sup>115</sup> App. Ex. 11, 12; App. Ex. 32 at 4.

<sup>116</sup> App. Ex. 11; App. Ex. 34 at 6.

this setback area.<sup>117</sup> This setback commitment will ensure that equipment can access the location to plug a well, if necessary. In addition, the solar panel layout includes a separation of no less than 15 feet between rows of panels, which allows well plugging equipment access throughout the Project area in the event an historical oil/gas well requires mitigation in the future.<sup>118</sup>

Border Basin will provide a final UDP and the final Soil Management Plan (“SMP”) at least 30 days prior to the preconstruction conference.<sup>119</sup> The UDP will provide that construction activities will not proceed in the vicinity of an inspected structure until the Applicant has coordinated with ODNR and Staff. Should site construction identify soils with petroleum odors or staining, the SMP will be triggered and appropriate steps will be taken to address the waste pursuant to the Ohio EPA’s protocols and applicable regulatory requirement. The final UDP will also require the Applicant to provide notification to ODNR of an incident in accordance with the incident reporting requirements set forth in O.A.C. 1501:9-8-02, and Staff will be notified as soon as possible, but no later than 24 hours from the incident occurrence.<sup>120</sup> In addition, the Applicant will visually monitor the identified historical oil/gas well locations within the Project area at least once every 90 days during construction of the Project, operation, and maintenance for the life of the Project.<sup>121</sup>

#### **4. Cultural**

Avoidance plans were provided by the Applicant to ensure no archaeological sites will be impacted.<sup>122</sup> With regard to the Architecture Survey, due to the possible indirect visual impact to the Baker-Hamlin Cemetery, avoidance or and mitigation was recommended. Potential mitigation options include earthen mounding and/or vegetation screening to reduce visual impacts.<sup>123</sup>

In addition, Border Basin has committed to enter into a Memorandum of Understanding (“MOU”) with the SHPO, which will define the roles and responsibilities of SHPO and Border Basin with respect to addressing potential impacts to cultural resources resulting from the Project.<sup>124</sup>

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<sup>117</sup> App. Ex. 34 at 8-9; Jt. Ex. 1 at 4, Condition 7.

<sup>118</sup> App. Ex. 11; App. Ex. 34 at 8.

<sup>119</sup> App. Ex. 8; App. Ex. 12 at 4; App. Ex. 17; App. Ex. 34 at 9; Jt. Ex. 1 at 4, Conditions 6, 11, 40.

<sup>120</sup> App. Ex. 11; App. Ex. 12 at 2-3.

<sup>121</sup> App. Ex. 34 at 8-9; Jt. Ex. 1 at 4, Condition 9.

<sup>122</sup> App. Ex. 1, Ex. S, Appendix E.

<sup>123</sup> App. Ex. 1, Ex. R; App. Ex. 33 at 4-5.

<sup>124</sup> App. Ex. 31 at 6; App. Ex. 33 at 5; Jt. Ex. 1 at 10, Condition 43.

## 5. *Ecological*

Any potential impacts to waters of the U.S., isolated wetlands, and T&E species will be avoided to the maximum extent possible during development of the Project.<sup>125</sup>

Potential impacts to T&E and BCC species, and habitats that exhibit potential suitability to support sensitive species, can be reduced by avoiding and minimizing impacts to forested areas, PFOs, and streams present in the Project area.<sup>126</sup> Although relatively minor tree removal will occur, the Applicant will adhere to seasonal cutting dates of October 1 through March 31, unless coordination with ODNR and the United State Fish and Wildlife Service (“USFWS”) allows a different course of action. In addition, Border Basin will not conduct in-water work in perennial streams from April 15 through June 30 to reduce impacts to indigenous aquatic species and their habitat, unless coordination efforts with ODNR allows a different course of action.<sup>127</sup> Border Basin has also committed to contact Staff, ODNR, and USFWS within 24 hours if state or federal listed species are encountered in the Project area during construction activities.<sup>128</sup>

If the final design results in any impacts to streams, the Applicant will obtain the necessary permits prior to construction.<sup>129</sup> As designed, the buried lines for the Project will be installed by open-ditch trenching, which is the most economical and practicable means of installation. However, if open-trenching is not feasible or allowed in situations that require avoidance of roads or sensitive resources, such as wetlands and streams, horizontal directional drilling (“HDD”) will be employed.<sup>130</sup> The Applicant has prepared a Horizontal Directional Drilling Inadvertent Return Response and Contingency Plan that provides procedures to address inadvertent return of drilling fluid used in HDD crossings for the Project.<sup>131</sup>

While point source aquatic discharges to streams or wetlands will not occur during construction, to minimize the potential for accidental spills during construction, a Spill Prevention, Control, and Countermeasure (“SPCC”) Plan will be developed to manage the storage of hazardous materials on site (which consists solely of diesel fuel for construction trucks and equipment).<sup>132</sup>

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<sup>125</sup> App. Ex. 30 at 5.

<sup>126</sup> App. Ex. 1, Ex. P; App. Ex. 30 at 6.

<sup>127</sup> Jt. Ex. 1 at 7, Conditions 29, 30.

<sup>128</sup> *Id.*, Condition 31.

<sup>129</sup> App. Ex. 1 at 31.

<sup>130</sup> App. Ex. 1 at 33-34; App. Ex. 26 at 5.

<sup>131</sup> App. Ex. 1 at 33-34, Ex. K; App. Ex. 26 at 5.

<sup>132</sup> App. Ex. 1 at 32.



**D. The Stipulation and record in this proceeding support the finding and determination by the Board that the facility is consistent with regional plans for expansion of the electric power grid in compliance with R.C. 4906.10(A)(4).**

The regional plans for expansion of the electric power grid serving Ohio are determined by PJM. PJM and AEP performed studies analyzing the Project, its proposed POI to the electric power grid, and the related impacts on the grid, as well as for compliance with PJM and the North American Electric Reliability Corporation reliability criteria.<sup>133</sup> PJM issued its Feasibility Report and Revised System Impact Report (“SIS”) for the Project.<sup>134</sup> Although PJM and AEP concluded that one multiple contingency impact existed for the Project, the SIS states that “...only minimal upgrades are required, not exceeding \$1 million.” No violations were found in the short circuit analysis.<sup>135</sup> The results of the Feasibility Report and the SIS supports that the facility is consistent with the regional plans for expansion of the electric grid serving Ohio and the interconnected utility systems, and that the facility will serve the interest of the electric system’s economy and reliability.<sup>136</sup> Moreover, Border Basin has committed to not commence construction of the facility until it has an executed Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM.<sup>137</sup>

**E. The Stipulation and record in this proceeding support the finding and determination by the Board that the facility complies with the air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation requirements under R.C. 4906.10(A)(5).**

The Project: will not produce any air pollution, with the exception of controllable dust emissions during construction; is not expected to generate hazardous waste and will produce only modest amounts of solid waste, all of which will be handled and disposed of in accordance with applicable law; will use relatively little water compared to other forms of electric generation; will generate non-point source wastewater; and will adhere to federal and Ohio law to properly manage storm water flows.<sup>138</sup> In addition, the Applicant has committed to adhere to the Ohio EPA’s

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<sup>133</sup> App. Ex. 1, Ex. F; App. Ex. 25 at 12.

<sup>134</sup> PJM Queue No. AE-146 (Feasibility Report, June 2019; Revised System Impact Report, May 2021); See App. Ex. 1 at 17, Ex. F; App. Ex. 25 at 12.

<sup>135</sup> App. Ex. 1, Ex. F; App. Ex. 25 at 12.

<sup>136</sup> *Id.* at 13.

<sup>137</sup> Jt. Ex. 1 at 5, Condition 22.

<sup>138</sup> App. Ex. 1 at 36; App. Ex. 25 at 13.

Guidance on Post-Construction Storm Water Controls of Solar Panel Arrays and will coordinate with the Ohio EPA's Division of Drinking and Groundwater to identify any additional measure needed during construction to ensure public water supplies are not impacted.<sup>139</sup> Post-construction runoff control will be implemented with BMPs, in order to ensure that the Project does not generate more storm water runoff than existed during preconstruction conditions.<sup>140</sup>

Border Basin has also committed that, at the time of solar panel end of life disposal, any retired panel material that is not recycled and that is marked for disposal, will be sent to an engineered landfill.<sup>141</sup> Further, the Applicant is not subject to any aeronautical requirements.<sup>142</sup>

**F. The Stipulation and record in this proceeding support the finding and determination by the Board that the facility will serve the public interest, convenience, and necessity in compliance with R.C. 4906.10(A)(6).**

The Application addresses public interest, convenience, and necessity through analysis on topics such as, but not limited to:

- The positive socioeconomic impacts;
- The extensive public engagement efforts made throughout the development of the Project;
- The guarantee for liability insurance;
- The establishment of a decommissioning bond ensuring the financial means to remove the equipment and return the land to substantially its current condition; and
- implementation of a complaint resolution process.<sup>143</sup>

Border Basin undertook extensive public engagement efforts throughout the development of the Project. The Project has been under development since mid-2018. Over the course of development, representatives of the Project have met with multiple landowners and residents to discuss the Project. Border Basin has held meetings with local stakeholders and the general public to provide information regarding the Project. The Applicant created a Project website to engage the public, provide Project information, answer questions, and solicit feedback.<sup>144</sup>

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<sup>139</sup> Jt. Ex. 1 at 7, 9, Conditions 28 and 39, respectively.

<sup>140</sup> App. Ex. 1 at 34.

<sup>141</sup> Jt. Ex. 1 at 9, Condition 37.

<sup>142</sup> App. Ex. 25 at 13.

<sup>143</sup> *Id.* at 14.

<sup>144</sup> App. Ex. 1 at 24-25.

Border Basin issued notices of the public information meeting that is required to be held prior to filing the Application pursuant to the Board's O.A.C. rules. The virtual public information meeting was held on May 13, 2021. The Project's website continues to maintain the recording of this meeting available for viewing, as well as additional information about the Project and solar energy in general.<sup>145</sup> While the Board's rules only require applicants to host one public information meeting, Border Basin voluntarily held a second in-person public information meeting on August 16, 2021, prior to filing the Application.<sup>146</sup> Notice of the second meeting was sent to a broader service list. Based on feedback from abutting landowners at the meetings and via in-person meetings, Border Basin modified its setback and fence line, and these modifications were reflected in the Application.<sup>147</sup>

The Project will provide positive socioeconomic impacts to the local community and greater region in numerous ways.<sup>148</sup> The Hancock County Commissioners approved Border Basin's application to be designated a Qualified Energy Project ("QEP") under R.C. 5727.75 and a payment in lieu of taxes ("PILOT") of \$9,000 per MWac annually, the maximum allowed by statute.<sup>149</sup> Assuming the Project is constructed and operated at the maximum capacity of 120 MW and because the Project is a QEP, the resulting payments that will be distributed to the taxing units will be approximately \$1,080,000 million annually over the estimated 30-year life span of the Project.<sup>150</sup> This is money the local taxing units will not have if the Project is not constructed.

Landowners participating in the Project will also receive annual lease payments for hosting the facility. It is probable that portions of those payments will be used to purchase goods and services in the local community and surrounding region, which will further stimulate the economic activities.<sup>151</sup>

Construction and operation of the facility will create both short and long-term jobs and economic benefits for the local community, as well as the region and state of Ohio. The expected direct, indirect, and induced<sup>152</sup> labor impact is 329 jobs and \$21.3 million in income during

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<sup>145</sup> App. Ex. 25 at 7.

<sup>146</sup> O.A.C. 4906-3-03; App. Ex. 25 at 8.

<sup>147</sup> *Id.*

<sup>148</sup> App. Ex. 1, Ex. G; App. Ex. 20 at 11, 16.

<sup>149</sup> App. 25 at 10.

<sup>150</sup> App. Ex. 1 at 21, 24; App. Ex. 25 at 10.

<sup>151</sup> *Id.*

<sup>152</sup> Induced economic benefits are those effects that result from the spending of households associated either directly or indirectly with the Project. (See App. Ex. 1, Ex. G at 6-7).

construction of the Project.<sup>153</sup> The Project is expected to create 14 total direct, indirect, and induced jobs during operation and associated earnings of those employees of approximately \$0.8 million.<sup>154</sup> Because Border Basin is a QEP, at least 80% of the full-time equivalent employees who are employed for the construction or installation for the Project will be domiciled in Ohio.<sup>155</sup>

The public interest is served by the Project because it: enables the area to maintain its rural character; supports local farmers; enables the farmers to use their land to provide clean, domestic energy for the region, while creating a new and predictable revenue stream for their farming businesses; and provides a long-term support and financial security for family farming businesses.<sup>156</sup>

Border Basin is committed to securing appropriate levels of liability insurance at all times during development, construction, operation, and decommissioning of the Project.<sup>157</sup> Further, the Applicant will obtain a performance bond for decommissioning of the Project at the end of its useful life.<sup>158</sup> Border Basin will submit an updated decommissioning plan that includes provisions, among others, that: set forth a timeline for removal of the equipment; secure Border Basin's commitment to monitor the Project site for at least one additional year to ensure successful vegetation and rehabilitation; ensure Border Basin will coordinate repair of public roads damaged or modified during decommissioning and reclamation process; ensure the performance bond will be posted prior to construction; ensure the performance bond is for the total decommissioning cost and excludes salvage value; and commit that the performance bond will be recalculated every five years by an engineer.<sup>159</sup>

Moreover, the Applicant has developed a Complaint Resolution Plan that will be implemented during the construction and operation of the Project. No fewer than 7 days prior to commencing construction and operation, Border Basin will mail a copy of the plan to: all affected property owners and tenants; all residents, airports, schools, and libraries located within one mile of the Project Area; all parties to this case; Hancock County Commissioners; Cass Township Trustees; emergency responders; and any other person who requests updates regarding the

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<sup>153</sup> App. Ex. 1 at 23-24, Ex. G; App. Ex. 25 at 10-11.

<sup>154</sup> *Id.* at 11.

<sup>155</sup> App. Ex. 1 at 23.

<sup>156</sup> App. Ex. 25 at 11.

<sup>157</sup> App. Ex. 1 at 25, Ex. I.

<sup>158</sup> App. Ex. 1 at 27; App. Ex. 25 at 14; Jt. Ex. 1 at 8, Condition 36.

<sup>159</sup> App. Ex. 1 at 27, Ex. J; App. Ex. 5; App. Ex. 25 at 14-15; Jt. Ex. 1 at 8, Condition 36.

Project.<sup>160</sup> Border Basin will maintain detailed records of all complaints and will submit to Staff a complaint summary on a quarterly basis through the first five years of operation.<sup>161</sup>

**G. The Stipulation and the record in this proceeding enable the Board to determine the impact of the facility on the viability as agricultural land of any land in an existing agricultural district, therefore, the Application and Stipulation comply with R.C. 4906.10(A)(7).**

Within the Project area, approximately 952.7 acres of land is currently located within agricultural districts. Approximately 848.2 acres of the land utilized for the facility are currently enrolled in the Agricultural District Program. However, all impacts to the land is temporary and at the end of the facility's life once it is decommissioned, the land will be returned to its preconstruction condition.<sup>162</sup> In fact, the presence of the solar facility will help preserve agricultural land and support future generations of farming families so that they will have the option to return the land to agricultural use following the decommissioning of the Project.<sup>163</sup>

Moreover, the record reflects that Border Basin has committed to numerous measures to avoid impacts to the viability of agricultural lands, including, but not limited to: maintaining functioning drain tile systems;<sup>164</sup> implementation of a soils management plan;<sup>165</sup> planting a substantial amount of beneficial vegetation;<sup>166</sup> and implementing erosion and sediment controls during construction.<sup>167</sup>

**H. The Stipulation and record in this proceeding support the finding and determination by the Board that the facility incorporates the maximum feasible water conservation practices under R.C. 4906.10(A)(8).**

The Project incorporates maximum feasible conservation practices.<sup>168</sup> Due to the temperate climate of the Project's locations, it is anticipated that rain is sufficient to keep the solar modules clean. However, if cleaning of the modules is necessary, Border Basin will arrange for a

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<sup>160</sup> App. Ex. 1 at 25, Ex. H; Jt. Ex. 1 at 10, Condition 44.

<sup>161</sup> App. Ex. 1, Ex. H; Jt. Ex. 1 at 10, Condition 44.

<sup>162</sup> App. Ex. 25 at 14.

<sup>163</sup> *Id.* at 11

<sup>164</sup> Jt. Ex. 1 at 9, Condition 42.

<sup>165</sup> *Id.*, Conditions 11, 40.

<sup>166</sup> Jt. Ex. 1 at 8, Condition 32.

<sup>167</sup> App. Ex. 1 at 32-33.

<sup>168</sup> App. Ex. 25 at 15.

water truck to provide water for cleaning purposes. It is anticipated that one gallon of water per module would be needed for cleaning.<sup>169</sup>

## **VI. THE STIPULATION SATISFIES THE THREE-PART TEST UTILIZED BY THE BOARD FOR REVIEW AND CONSIDERATION OF STIPULATIONS**

### **A. The Stipulation satisfies the first part of the three-part test for evaluation of contested settlements and is the product of serious bargaining among capable knowledgeable parties.**

Counsel for all of the parties represented by counsel and all pro se intervenors were invited to all settlement negotiations. During the deliberations leading up to the Stipulation, representatives of all the parties were aware of and knowledgeable about the issues addressed in the Stipulation and were kept informed on the progress of the deliberations.<sup>170</sup>

### **B. The Stipulation satisfies the second part of the three-part test for evaluation of contested settlements and, as a package, benefits ratepayers and the public interest.**

As demonstrated throughout the record and summarized herein, as a package, the Stipulation ensures that the construction and operation of the facility benefits the public interest, convenience, and necessity. The record evidence, together with the commitments in the Stipulation, ensures that the Project will represent the minimum adverse environmental impact for both construction and operations. The Project will further benefit the local and regional economy through jobs created during construction and operation, in addition to new sources of revenue. The Stipulation further benefits the state economy by adding low cost electricity to the supply of energy for decades to come.<sup>171</sup>

As a result of the negotiations between the parties to the Stipulation, several of the conditions recommended in the Staff Report were enhanced to further the public interest, including but not limited to:

- the goal of planting a minimum of 70% of the Project Area in beneficial vegetation utilizing plant species in ODNR's recommended requirements and following the

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<sup>169</sup> App. Ex. 1 at 36.

<sup>170</sup> App. Ex. 25A at 5.

<sup>171</sup> *Id.*

Ohio Solar Site Pollinator Habitat Planning and Assessment Form with a minimum score of 80 points;

- additional protections against the establishment and propagation of noxious weeds and invasive species; and
- additional assurances that field tile drainage systems will be accounted for in the design and construction of the Project and that adjacent landowners' drainage will remain unaffected by the presence of the Project.<sup>172</sup>

The Stipulation further benefits the public interest by requiring Border Basin to meet certain requirements specifically designed to minimize impacts of the facility during construction and operation. One unique aspect of the Project is that it is located in the vicinity of historic orphaned oil/gas wells. The Stipulation requires the Project to monitor these wells on a regular basis. Without the presence of the Project, there would be no monitoring of these wells.<sup>173</sup>

In addition, many of the Signatory Parties to the Stipulation are public entities and their participation in the negotiations that resulted in the Stipulation is indicative of the balancing of interests that resulted in the Stipulation, thus, demonstrating a benefit to the public interest. Those entities are:

- (1) The Hancock County Commissioners
- (2) The Cass Township Trustees

**C. The Stipulation satisfies the third part of the three-part test for evaluation of contested settlements and does not violate any important regulatory principle or practices.**

The Board has jurisdiction under R.C. 4906 to review the record in this case and determine if the record, as a whole, supports a finding that the Stipulation meets the requisite criteria in R.C. 4906.10. The record reflects that the Applicant has complied with every requirement, both statutory and regulatory, that is necessary in proceedings requesting a certificate to site a generation facility in Ohio. It is further well-documented that all of the important regulatory principles and practices – both substantive and procedural – have been met and, in some situations, exceeded. No regulatory principle will be violated by virtue of the Board acknowledging the

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<sup>172</sup> Jt. Ex. 1 at 5-6, 9, Conditions 32, 33, 42.

<sup>173</sup> App. Ex. 25A at 5

expansive record that supports adoption of the Stipulation submitted by the Stipulating Parties. Therefore, the third and final test supporting the Board's adoption of the Stipulation has been met.

In fact, the Project is consistent with Ohio's legislative desire for driving economic benefits, jobs, and the infrastructure investment for the clean energy industry. Ohio currently imports approximately 25% of its electricity from out of state and Canada according to the U.S. States Energy Information Agency. This Project's interconnection and transmission upgrades will contribute to a more robust electrical grid in Ohio.<sup>174</sup>

## VII. CONCLUSION

As thoroughly set forth herein, all of the criteria in R.C. 4906.10 have been addressed by the Applicant and the Stipulating Parties in the Stipulation. In addition, all 3 prongs of the test utilized by the Board in its consideration of a stipulation have been met. Therefore, for the foregoing reasons, the Board should adopt the Stipulation without modification and issue a Certificate to Border Basin.

Respectfully submitted,

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<sup>174</sup> App. Ex. 25 at 7.



## 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 these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 10<sup>th</sup> day of June, 2022.

/s/ Christine M.T. Pirik

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Stipulation and Recommendation and Issuance of the Certificate electronically filed  
by Christine M.T. Pirik on behalf of BORDER BASIN I LLC, GALEHEAD  
DEVELOPMENT LLC CEO