

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Birch Solar)
1, LLC for a Certificate of Environmental)
Compatibility and Public Need to Construct a) Case No. 20-1605-EL-BGN
Solar-Powered Electric Generation Facility in)
Allen and Auglaize Counties, Ohio.)

**INITIAL BRIEF OF BIRCH SOLAR 1, LLC
IN SUPPORT OF THE
JOINT STIPULATION AND RECOMMENDATION AND
ISSUANCE OF THE CERTIFICATE**

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I. INTRODUCTION

In this proceeding, Birch Solar 1, LLC (“Birch Solar” 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 privately-leased land in Shawnee Township, Allen County and Logan Township, Auglaize County, Ohio (“Project”) with a generating capacity of up to 300 megawatts (“MW”) alternative current (“AC”).¹ Birch Solar, the Allen Auglaize Coalition for Reasonable Energy (“Local Community Coalition”), the Ohio Farm Bureau Federation (“OFBF”), the Board of County Commissioners of Auglaize County (“Auglaize County Commissioners”), the Board of Township Trustees of Logan Township (“Logan Township Trustees”), and the International Brotherhood of Electrical Workers, Local Union 32 (“IBEW Local 32”) (jointly referred to herein as “Signatory Parties”) filed a Joint Stipulation and Recommendation (“Stipulation”) on May 16, 2022. Birch Solar, the Local Community Coalition, OFBF,² and IBEW Local 32 recommend the Board adopt the Stipulation and issue a Certificate to Birch Solar subject to the 40 conditions set forth in the Stipulation.³ The Auglaize County Commissioners and the Logan Township Trustees took no position on whether a Certificate should be issued for the facility, but requested the inclusion of the conditions in the Stipulation in any Certificate that is issued by the Board.⁴ In the Staff Report of Investigation (“Staff Report”), the Board’s Staff (“Staff”) recommended that, should the Board issue a Certificate, the conditions in the Staff Report should become part of the Certificate,⁵ and as a result, the Stipulating Parties incorporated all of the conditions recommended by Staff in the Staff Report into the Stipulation.⁶

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

¹ App. Ex. 1 at 1.

² OFBF’s recommendation was based on the inclusion of the recommended conditions, and OFBF took no position on the statutory findings of fact and conclusions of law in Part III of the Stipulation (*See* Jt. Ex. 1 at 2).

³ Jt. Ex. 1 at 3-12.

⁴ *Id.* at 2-3.

⁵ Staff Ex. 1 at 50.

⁶ The only conditions from the Staff Report that were not included addressed the need for the Engineering Constructability Report (“ECR”) and the Programmatic Agreement (“PA”) with the State Historic Preservation Office (“SHPO”) because those documents have been submitted on the record in this case (App. Exs. 4 and 22). Thus, as verified by Staff witness O’Dell, those conditions have been met and are no longer necessary (Staff Ex. 2 at 5).

for the Board to approve the Stipulation and issue the Certificate to Birch Solar 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.”⁷ 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.

When the Ohio General Assembly created the Board almost 50 years ago, it charged the Board with finding the appropriate balance between the growth and advancement in energy development, and the preservation and protection of ecological and sociological interests. The mission of the Board is to “support sound energy policies that provide for the installation of energy capacity and transmission infrastructure for the benefit of the Ohio citizens, promoting the state’s economic interests, and protecting the environment and land use (*emphasis added*).”⁸ The value of a statewide process enables to the Board to objectively make a determination with respect to a given project based on the evidence of record and the interests and benefits to the entire state of Ohio, avoiding circumstances where a faction of a given community might allow a project to proceed that could be harmful to the environment or might prevent a project from being constructed that would be beneficial to the state of Ohio as a whole.

To ensure that the interests of the state of Ohio are protected, the voting members of the Board are comprised of the directors from the 6 state agencies with the expertise to carry out the mission for the advancement of the state, as well as an engineer appointed by the governor.⁹ In addition, there are 4 nonvoting members of the Board from the General Assembly that sit on the Board.¹⁰ Each of the 7 voting Board members plays a vital role in every decision made by the

⁷ R.C. 4906.10(A)(2), (3) and (6), respectively.

⁸

<https://opsb.ohio.gov/#:~:text=Our%20mission%20is%20to%20support,the%20environment%20and%20land%20use>

⁹ R.C. 4906.02. The voting Board member agencies are: the Public Utilities Commission of Ohio; the Department of Agriculture; the Ohio Department of Development (“ODOD”); the Ohio Department of Natural Resources (“ODNR”); the Ohio Environmental Protection Agency (“Ohio EPA”); and the Ohio Department of Health (“ODH”).

¹⁰ R.C. 4906.02. The nonvoting Board members are: one legislative member chosen by the Speaker of the House of Representatives; one legislative member chosen by the President of the Senate; and one legislative member chosen by the minority leaders in each house.

Board and must use their specific expertise (i.e., economic development, environmental protection, health, natural resources, agricultural, electric grid and reliability, and technical engineering) to review each matter and the evidence of record to ensure that the welfare of the entire state of Ohio is taken into consideration when determining if a proposed project meets the criteria required to issue the Certificate.

Recently, the General Assembly passed Substitute Senate Bill 52 (“SB 52”), which modified certain procedural requirements for obtaining a certificate of environmental compatibility and public need, namely by requiring review of the project at the county level before an applicant could apply to the Board. However, the General Assembly determined that as a matter of public policy, certain solar projects (including Birch Solar) are not subject to the requirements of SB 52, and should instead continue to be evaluated and approved by the Board in accordance to the standards and procedures historically undertaken by the Board.¹¹

A review of the record reflects that there is no dispute on the record by any party or Staff that the Applicant has complied with 7 of the 8 criteria in R.C. 4906.10(A) utilized by the Board in considering an application. Thus, it is undisputed that:

- (1) 4906.10(A)(1): The basis of need for the facility substation, is not applicable in this proceeding.¹²
- (2) 4906.10(A)(2): There is enough information to determine the probable environmental impact of the facility.
- (3) 4906.10(A)(3): The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives, and other pertinent considerations.
- (4) 4906.10(A)(4): 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.”

¹¹ Birch Solar is grandfathered and exempt from the requirements of SB 52 because: the Project was pending at the Board before Oct. 11, 2021, and received its letter of in compliance before that date; and the Project was in the PJM Interconnection, LLC (“PJM”) new service queue, and received its System Impact Study (“SIS”) from PJM and paid the PJM Facilities Study application fee by Oct. 11, 2021 [See 2021 Sub. S.B. No. 52, Sections 4(A) and 4]. By grandfathering these projects, as a matter of policy, the legislature determined that these projects should proceed under the criteria set forth in the statute and Board precedent prior to October 11, 2021.

¹² This criterion only applies to electric transmission line and gas pipeline facilities.

- (5) 4906.10(A)(5): The facility complies with the requirements for air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation.
- (6) 4906.10(A)(7): The Board can determine the impact of the facility on agricultural land.
- (7) 4906.10(A)(8): The facility incorporates the maximum feasible water conservation practices.

The only criterion in dispute on the record is the public interest, convenience, and necessity criterion in R.C. 4906.10(A)(6).

The Board has previously stated that “[p]ublic interest, convenience, and necessity should be examined through a broad lens.”¹³ Analyzing the facts at hand through a broad lens, the record shows that the potential benefits of the Project, as further described below, vastly outweigh any potential downfalls. In fact, in light of the benefits the Project will bring to the local communities and the state of Ohio, Staff initially stated that the Project is in the public interest in the Staff Report.¹⁴ Further, by engaging in constructive conversations with local entities and community members, Birch Solar has resolved the concerns of these parties, as evidenced by the withdrawal of the Kalnins and ABS¹⁵ from the proceeding and the execution of the Stipulation by the Signatory Parties.¹⁶ Not only does the Stipulation address the concerns of the intervenors in this proceeding, the Stipulating Parties incorporated all of the conditions recommended by Staff in the Staff Report into the Stipulation.¹⁷ In fact, the Stipulation further augments the Staff’s recommended conditions to ensure the Project is in the public interest and meets all of the statutory criteria.

¹³ *In re Application of American Transmission Systems, Inc.*, Case No. 19-1871-EL-BTX, Opinion, Order, and Certificate (May 19, 2022) (“*ATSI Case*”) at 31 ¶ 79.

¹⁴ See Staff Ex. 1 at 47, where Staff states “pending the submission of [the ECR and PA with SHPO], Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6), provided that any certificate issued by the Board for the proposed facility include the conditions” in the Staff Report.

¹⁵ On April 26, 2022, local residents Ryan and Michelle Kalnins (the “Kalnins”) withdrew from this case stating that they had “come to a mutually satisfactory agreement and have resolved any prior disagreements or objections to the Project” (See Kalnins Notice of Withdrawal, Apr. 26, 2022). On May 16, 2022, Against Birch Solar, Inc. (“ABS”) withdrew from this proceeding (See ABS Notice of Withdrawal, May 16, 2022).

¹⁶ As discussed below, all parties in this matter were made aware of and were invited to all discussions related to the Stipulation, however, the Board of Trustees of Shawnee Township (“Shawnee Township Trustees” has chosen to not participate in any discussions with Birch Solar.

¹⁷ The only conditions from the Staff Report that were not included in the Stipulation addressed the need for the ECR and the PA with SHPO because those documents have been submitted on the record in this case (App. Exs. 4 and 22). Thus, as verified by Staff witness O’Dell those conditions have been met and are no longer necessary (Staff Ex. 2 at 5).

However, despite the foregoing, at the evidentiary hearing, with no record support, Staff witness O'Dell contested the fact that the facility will serve the public interest, convenience, and necessity pursuant to R.C. 4906.10(A)(6) alleging “overwhelming public opposition,”¹⁸ an allegation which the record simply does not support. At the evidentiary hearing:

- 8 expert witnesses provided testimony on the record on behalf of the Applicant supporting the Application¹⁹ and the Stipulation - requesting that the Board issue Birch Solar a Certificate;²⁰
- 5 witnesses provided testimony on the record on behalf of the Local Community Coalition supporting the Application and the Stipulation - requesting the Board issue Birch Solar a Certificate;²¹
- 9 witnesses provided testimony on the record on behalf of Staff verifying the findings of the Staff Report;²²
- NONE of the parties from the local community provided testimony on the record opposing the Application, the Stipulation, or the issuance of the Certificate.

As further demonstrated below, Staff overlooks the fact that the concerns of the community, as expressed at the off-the-record meetings the Applicant attended, as well as in the off-the-record letters filed in the comment section of the docket, where taken into consideration and addressed by Birch Solar in revising the Project layout and making the commitments for the Project that are memorialized in the Application and Stipulation. Commitments addressing these concerns have also been memorialized with local residents through good neighbor agreements and with the governmental officials through documents such as the Drainage and Road Use Maintenance Agreement (“DRUMA”) entered into with Auglaize County and Logan Township.²³ As summarized herein and detailed in the record, contrary to Staff’s unsubstantiated opinion, the Application in this case, as heightened by the Stipulation, does support and serve the public

¹⁸ Staff Ex. 2 at 4-5. Note, Staff witness O'Dell verified that the Applicant submitted the ECR and the PA with SHPO and that Staff was satisfied that sufficient information was provided.

¹⁹ On February 12, 2021, Birch Solar filed its Application for a Certificate with the Board. Since that time, there have been 6 supplements to the Application and 13 responses to data requests from Staff filed in the docket (App. Exs. 2- 22). Together, those documents are referred to herein as the “Application.”

²⁰ App. Exs. 30-37, 30A-34A, 36A.

²¹ Local Community Coalition Exs. 1-5.

²² Staff Ex. 1. Note the Staff Report recommended the Applicant submit an ECR and a PA with SHPO to enable the Board to determine the probable environmental impact of the facility and that the facility represents the minimum environmental impact. Since the issuance of the Staff Report, the ECR and the PA with SHPO have been submitted (App. Exs. 4 and 22).

²³ App. Ex. 30 at 3; Jt. Ex. 1, Att. A.

interest. Accordingly, the Stipulation should be adopted by the Board, and a Certificate should be issued to Birch Solar.

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 (“Ohio Adm.Code”) 4906.

On June 15, 2021, as supplemented, Birch Solar 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 three public information meetings, pursuant to the Board’s rules, on November 20, 2020, November 23, 2020, and August 19, 2021.²⁴ The Staff filed its Staff Report on October 20, 2021.²⁵ The Board held a local public hearing in this matter on November 4, 2021, in accordance with the Administrative Law Judge (“ALJ”) entry issued August 13, 2021.

On May 16, 2022, Birch Solar, the Local Community Coalition, OFBF, the Auglaize County Commissioners, the Logan Township Trustees, and IBEW Local 32 filed a Stipulation. On April 26, 2022 and May 16, 2022, the Kalnins and ABS, respectively, withdrew from this proceeding.²⁶ The evidentiary hearing in this matter was called and continued on November 30, 2021, and then recommenced and concluded on May 18, 2022. At the evidentiary hearing, the ALJ determined that the briefs and reply briefs would be due by July 15, 2022 and July 29, 2022, respectively.

III. PROJECT DESCRIPTION

Birch Solar proposes to construct and operate an electric generating facility that uses photovoltaic (“PV”) technology. The Project Area will encompass approximately 2,345 acres of land, with the area needed for the Project infrastructure including PV solar panels (modules), trackers (racking system), inverters, collector lines, internal access roads, and a Project substation

²⁴ Note Ohio Adm.Code 4906-3-03(B) only required the Applicant to hold one public information meeting; however, the Applicant held three official Board public information meetings, in addition to the other numerous meetings held with community members and public officials.

²⁵ Staff Ex. 1.

²⁶ On April 26, 2022, the “Kalnins withdrew from this case stating that they had “come to a mutually satisfactory agreement and have resolved any prior disagreements or objections to the Project” (*See* Kalnins Notice of Withdrawal, Apr. 26, 2022). On May 16, 2022, ABS, withdrew from this proceeding (*See* ABS Notice of Withdrawal, May 16, 2022).

totaling approximately 1,410 acres of private land secured under option agreements for long-term leases with local farmers in Shawnee Township, Allen County and Logan Township, Auglaize County, Ohio.²⁷ The general purpose of the facility is to generate renewable energy that will be distributed over the electric grid operated by PJM and used in a private power purchase agreement with a corporate offtaker that has multiple facilities throughout the state of Ohio.²⁸ It is expected that the Project will operate for a period of 35 years.²⁹

Birch Solar has been working with the community for many years and has listened and addressed any valid concerns that have been raised. For example, the Project boundary originally depicted at the November 2020 public information meetings reflected a larger boundary. However, based on public feedback and ongoing conversations with landowners, the Applicant adjusted the Project boundary to reflect a smaller and more condensed Project site design that was less impactful to the local community. This new Project Area, which is committed to in the Application and the Stipulation, removed parcels north of Breese Road and includes a 300-foot setback from Breese Road, reducing proximity to homes and also limiting the boundary to the area east of Bowsher Road and north of National Road. This result of this reduction reflects a new Project Area of 2,345 acres of privately-owned land.³⁰

The components of the facility will include modules mounted on a racking system, inverters, collector lines, a Project substation, and internal access roads, all of which will be encompassed by a security fence.³¹ The electricity generated by the modules is collected and will be sent to the inverters and converted from direct current (“DC”) to AC. Collector lines will then transfer the electricity from the inverters to a Project substation, which will then deliver the electricity to the point of interconnection (“POI”). The POI will be the existing American Electric Power (“AEP”) Southwest Lima Substation that connects to the regional PJM transmission grid through a short generation tie-line (“gen-tie”).³² The Project may have an on-site operations and maintenance (“O&M”) building that will be located within the Project Area, likely adjacent to the Project substation.³³

²⁷ App. Ex. 1 at 2, 6; App. Ex. 30 at 6.

²⁸ *Id.* 30 at 8.

²⁹ App. Ex. 1 at 1.

³⁰ *Id.* at 2, 17, 19.

³¹ *Id.* 1 at 2.

³² *Id.* at 2, 7, 13, 21.

³³ *Id.* at 7.

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

- Benefit the state of Ohio by increasing generation capacity, increasing emission-free energy generation, and diversifying sources of generation;³⁴
- Employ 300-foot panel setbacks from Breese Road and panel setbacks starting at 300 feet from homes, in addition to extensive evergreen screening;³⁵
- Provide a Neighboring Landowner Financial Benefit program for any home within 500 feet of the solar panels with the benefits ranging from \$10,000 to \$50,000 depending on proximity, and a Home Value Agreement for homes most affected by the Project; neither of these landowner benefit programs require endorsement, confidentiality, or support of the Project by the landowner;³⁶
- Provide discreet 6-foot cedar post farm fence around the Project to match the aesthetics of the surrounding area;³⁷
- Plant evergreen trees and shrubs around the Project in external facing areas that will protect residents' viewsheds, eliminating or limiting Project visibility;³⁸
- Maintain the natural environment of the area and conserve habitats by not removing wooded areas or wetlands, with generous setbacks from any wetland areas to ensure they are undisturbed;³⁹
- Optimize the Project engineering to maintain 300 MW capacity while reducing the land needed for the facility to 1,410 acres, which remains inside the original planned pre-application boundary, which is a reduction of 1,190 acres from the acreage presented at the public information meetings in November 2020;⁴⁰
- Employ the Applicant's customary best project practices that are beyond industry standards or permit requirements and that address other community concerns;⁴¹

³⁴ *Id.* at 1, 33-35.

³⁵ App. Ex. 30 at 7.

³⁶ *Id.*; App. Ex. 13.

³⁷ App. Ex. 1 at 19; App. Ex. 30 at 7.

³⁸ App. Ex. 1 at 8, 19, 82, Ex. U; App. Ex. 11 at 8; App. Ex. 30 at 7.

³⁹ App. Ex. 1 at 6, 19; App. Ex. 30 at 7.

⁴⁰ App. Ex. 1 at 2; App. Ex. 30 at 7.

⁴¹ *Id.*

- Recycle all solar panels, which includes any panels damaged during construction, operations, and all panels left at the end of their useful life and decommissioning of the Project;⁴²
- Only use modules that pass the United States (“U.S.”) Environmental Protection Agency (“USEPA”) Toxicity Characterization Leaching Procedure (“TCLP”) to ensure modules do not contain toxic metals or waste defined as hazardous. Passing the TCLP tests classifies any remaining unrecyclable panel materials as universal waste;⁴³
- Create pollinator habitat to boost local biodiversity and foster wildlife habitat and a sheep grazing program, if acceptable to the local community and nearby landowners;⁴⁴
- Partner with The Ohio State University, College of Food, Agricultural and Environmental Sciences on research relating to honey bee foraging in the Ohio agroecosystem;⁴⁵
- Fund a \$500,000 community fund for Allen and Auglaize Counties;⁴⁶
- Use virtually no fuels or water, and emit zero emissions;⁴⁷
- Improve air quality and decrease premature deaths due to increased emission-free generation;⁴⁸
- Decrease breathing problems caused by carbon emissions;⁴⁹
- Keep investment and tax dollars local;⁵⁰
- Provide tax benefits, including approximately \$94.5 million during the life of the Project, compared to other hypothetical uses of the property within the Project Area;⁵¹

⁴² *Id.*

⁴³ App. Ex. 1 at 9, 42-44; App. Ex. 30 at 7.

⁴⁴ App. Ex. 1 at 11, 83; App. Ex. 30 at 7.

⁴⁵ App. Ex. 1 at 63.

⁴⁶ App. Ex. 30 at 7.

⁴⁷ App. Ex. 1 at 1, 11, 33-35.

⁴⁸ *Id.* at 1, 33-35.

⁴⁹ *Id.* at 33-35.

⁵⁰ *Id.* at 28.

⁵¹ *Id.* at 28, 73.

- Provide economic benefits to the state of Ohio, local schools, and the local community;⁵²
- Require very few changes to the land surface, with limited grading because the area is relatively level;⁵³
- Benefit the long-term soil health of the Project Area;⁵⁴
- Create jobs and provide employment opportunities throughout the region and the state;⁵⁵
- Enable landowners to choose the productive use of their private property;⁵⁶
- Productively use farm fields to diversify the income sources of many area families and provide them with consistent and dependable revenue;⁵⁷
- Lower energy prices for consumers;
- Positively impact the state of Ohio's economic competitiveness for attracting business and investment.⁵⁸

In addition, the Project will not:

- use any appreciable amount of water;⁵⁹
- generate air or water pollution;⁶⁰ or
- produce hazardous waste.⁶¹

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, and is in compliance with all necessary state and federal approvals.⁶²

⁵² *Id.* at 73.

⁵³ *Id.* 1 at 85.

⁵⁴ *Id.* at 83.

⁵⁵ *Id.* at 1, 26; App. Ex. 30 at 9.

⁵⁶ *Id.* at 2, 6.

⁵⁷ *Id.* at ix.

⁵⁸ *Id.* at 73.

⁵⁹ *Id.* 16.

⁶⁰ *Id.* at 40.

⁶¹ *Id.* at 41.

⁶² App. Ex. 30 at 8; Jt. Ex. 1 at 5, Conditions 10-11.

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 Birch Solar, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline.⁶³
- (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

⁶³ Since this Project is a proposed electric generating facility, this criterion is not applicable to this Application.

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.

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 Birch Solar. The Stipulating Parties have presented a strong and all-inclusive Stipulation that is supported by the evidentiary record in this proceeding. Of particular importance is Condition 1 in the Stipulation, which requires that the Applicant:

... 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*.⁶⁴

As detailed herein, this condition in the Stipulation includes extensive and significant commitments and conditions by which Birch Solar 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 to ensure the Project enhances, and does not detract, from the natural aesthetic of the area. These commitments came from precedent of past Board decisions, as well as from local community and neighbor requests. From installing visually appealing fencing, planting thousands of trees for landscape screening, and ensuring adequate setbacks from property boundaries, roads and homes, to limiting noise and lighting, repairing and updating drain systems, and ensuring proper decommissioning of the Project, 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 construction⁶⁵ 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 Birch Solar should be issued a Certificate.

⁶⁴ Jt. Ex. 1 at 3.

⁶⁵ *Id.* at 6, Condition 16.

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*. The facility in this matter is an electric generation facility.⁶⁶ 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).

Staff confirmed that this criterion has been met and the Board can determine the nature of the probable environmental impact of the facility.⁶⁷ Further, 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 environmental impact of the facility, including the public/safety, land use, geological and hydrogeology, cultural, and ecological impacts. The Application includes detailed surveys, assessments, and reports related to probable socioeconomic impacts, environmental and ecological impacts, visual impacts, and public services, facilities, and safety. The Application narrative and exhibits and figures, along with subsequent data request responses, provides all of the information necessary to determine the probable impacts. Further, each of these topics are supported by witnesses in the case.⁶⁸

1. Public and Safety

The Application and the record in this case confirm that the Board can determine the probable impacts of the facility with regard to the public and safety considerations.

Birch Solar provided a Visual Resources Technical Report (“VIA”), which described the: visibility of the Project based on a viewshed analysis; existing landscape and its scenic quality of the area; alterations to the landscape caused by construction and operation of the Project; and visual impacts to landmarks and recreation and scenic areas within 10 miles of the Project. The VIA also

⁶⁶ App. Ex. 1 at 2.

⁶⁷ Staff Ex. 2 at 4.

⁶⁸ App. Ex. 30 at 12.

provided photosimulations of the proposed Project and measures taken to avoid or minimize adverse visual impacts resulting from the Project.⁶⁹ Although the VIA concluded that the Project would be visually unique to the local landscape and would alter the existing visual character, which is defined by the transition from flat agricultural lands to suburban development, views of mechanical structures, such as those associated with the Lima Substation, are already prevalent throughout the Project Area, particularly in the eastern portion of the Project Area near the residential subdivisions. Similarly, while the solar modules would be visible and identifiable to viewers in the areas immediately adjacent to the Project, visibility of the Project would decrease over relatively short distances as the photosimulations show that the Project would be barely detectable from about 0.4 miles away. The Applicant's commitment to plant vegetation along the main roadways in the Project Area to screen the Project from nearby residences and drivers will also limit views of the Project.⁷⁰ Moreover, Birch Solar continues to work diligently with the local residents to address their concerns regarding the viewshed, which includes even larger setbacks and more vegetative screening than what was presented in the Application, recommended by the Staff report, or committed to in the Stipulation.⁷¹ These additional good neighbor commitments ensure that there will much less, if any, views of the Project from adjacent homes.

Ambient sound monitoring was conducted at locations across the Project Area to characterize existing sound levels in the Project Area.⁷² Sound measurements were continuously recorded at each monitoring location for a period of 7 days. An onsite weather station was also deployed at one of the monitoring locations to record wind speeds during the ambient survey period. The resulting sound level and weather data was analyzed and sound measurements were filtered out if they were found to be anomalous such as during periods of high wind or rain. For the calculation of operational sound, the manufacturer's specifications for sound pressure levels for the proposed inverter model were used to model operational sound resulting from each of the 95 inverter locations. Additionally, the operational sound from the transformer at the Project substation location was modeled using an industry standard assumption for sound pressure levels.

⁶⁹ App. Ex. 1 at 76-82, Ex. U; App. Ex. 32 at 7.

⁷⁰ App. Ex. 1 at 79, Ex. U; App. Ex. 32 at 9.

⁷¹ App. Ex. 1 at 19.

⁷² *Id.*, Ex. X; App. Ex. 32 at 10-11.

The ambient data measured in the Project Area was utilized, along with the predicted operational sound, to then determine the total sound expected at all sensitive receptors within 1 mile of the Project.⁷³

With respect to sound during construction, heavy construction equipment may be present and operational at different points during the first phase of the construction period. The second phase of construction at each array site will include impact drivers to set piles for the tracking system. Noise levels from equipment will vary by type, age of equipment, and overall condition. Sound levels associated with the type of equipment expected to be used will vary from approximately 79 to 90 A-weighted decibels (“dBA”) at 50 feet, but at a distance of 300 feet will range from approximately 65 to 74 dBA and will be reduced to between 54 and 64 dBA at a distance of 1,000 feet. At times, construction activities will be audible to nearby sensitive receptors; however, sound will vary over time, not all equipment will be operating at the same time, and activities will be spread throughout the Project Area and temporary in duration. Construction will occur mostly in the daytime hours and will generate sounds that are familiar to residents due to other construction, industrial, and agricultural activities in the area. The overall noise impact on nearby sensitive receptors during construction of the Project is not expected to be significant.⁷⁴

The average ambient nighttime sound level recorded at the Project, after filtering out anomalous data points, was 45.1 dBA. The operational sound level at the two residences nearest to the Project was modeled to be 45.9 and 44.0 dBA, combined with the average ambient nighttime sound level, resulted in a total expected sound of 48.5 and 47.6 dBA. The total expected sound at the two nearest residences is less than the average ambient nighttime sound level plus 5.0 dBA or 50.1 dBA. Nighttime noise from the Project will be substantially less, because all equipment will be operating in stand-by mode, as the sun is not shining and power is not being produced.⁷⁵ Further, as documented by ODH, the information on solar facilities “does not indicate a public health burden from noise generated by the typical operation and maintenance of a solar farm. While some noise is anticipate and unavoidable, it is not expected to create off-site health issues.”⁷⁶

⁷³ App. Ex. 1, Ex. X; App. Ex. 32 at 11.

⁷⁴ App. Ex. 1, Ex. X; App. Ex. 32 at 11-12.

⁷⁵ App. Ex. 1, Ex. X; App. Ex. 32 at 12.

⁷⁶ Ohio Department of Health Solar Farm and Photovoltaics Summary and Assessments (Apr. 2022) at 8; <https://odh.ohio.gov/know-our-programs/health-assessment-section/media/summary-solarfarms>

The Construction Route Study and Road Condition Report summarized the visual inspection of roadways and infrastructure within and surrounding the Project Area and provided an assessment of the suitability of the current infrastructure to support the expected construction traffic, as well as the O&M traffic throughout the life of the Project. The report analyzed the annual average daily traffic volumes for the state and county roads along the Project construction routes and, combined with field observations, it was determined that the roadways have adequate sight distance and do not carry high traffic volumes. The report concluded that, generally, all roads are in good to fair condition and are not anticipated to cause any major issues during construction or operation. Further, no concerns related to overhead vehicle clearance were identified. In addition, the report concluded that permanent access drives can be constructed on the nearest roadways without creating significant safety hazards and that construction access drives should be placed on township and county roads where feasible. Neither culvert damage nor road pavement damage is expected to be significant based on the documented conditions and anticipated vehicle/equipment usage during construction.⁷⁷

Birch Solar provided a Drain Tile Assessment, which documented the approximate location of agricultural drain tiles in the agricultural fields to be used for the Project. For the assessment, information about the location of drain tiles within their fields was requested from Project landowners to support the mapping effort. For farm fields where landowners did not have mapping, aerial imagery from multiple years was reviewed and drain tile lines were manually digitized when drain tile signatures were identified. The last method employed to identify main drain tile lines was documentation of the outfall locations by survey crews.⁷⁸

On May 5, 2022, the Auglaize County Commissioners adopted the DRUMA and the agreement was executed between Birch Solar and Auglaize County. Attachment A to the Stipulation is a letter from Auglaize County dated May 12, 2022, memorializing that the Auglaize County Commissioners and the Logan Township Trustees request that, should the Certificate be issued to Birch Solar by the Board, the conditions contained in the Stipulation be part of the permit.⁷⁹

In addition, Birch Solar entered into a Memorandum of Understanding (“County MOU”) with the Board of Commissioners of Allen County (“Allen County Commissioners”), which was

⁷⁷ App. Ex. 1 at 30, Ex. J.

⁷⁸ App. Ex. 1 at 31, Ex. W; App. Ex. 32 at 9.

⁷⁹ App. Ex. 30 at 3; Jt. Ex. 1, Att. A.

approved by the Allen County Commissioners by resolution dated May 12, 2022. Throughout discussions with Auglaize County on the DRUMA, Allen County also expressed an interest in a DRUMA and often, jointly, both the Auglaize and Allen County Engineers and staff would meet to review the potential drafts and provide edits. As of May 15, 2022, the Allen County Commissioners were continuing to review the draft agreement in a similar version as was passed by the Auglaize County Commissioners. Birch Solar recognizes that the DRUMA is important to Allen County, as was expressed in the letter to the Board dated May 10, 2022, from Allen County. Therefore, in response to the concerns of the Allen County Commissioners, Birch Solar executed the County MOU with the Allen County Commissioners confirming both parties' intent to execute a mutually agreed upon DRUMA.⁸⁰

Birch Solar provided a Glare Hazard Assessment, which analyzed the potential for glare from the Project to affect pilots, drivers, and/or residents near the Project.⁸¹ The assessment evaluated the potential for glare impacts at airports and heliports within a 10-mile radius of the Project, drivers driving through the Project Area, train engineers using the railroad tracks that cross through the Project Area, and residents adjacent to the Project. All routes and homes were analyzed using 5-foot, 10-foot, and 15-foot panel heights to document a full range of panel heights to ensure the worst-case scenario was captured. The glare assessment concluded that the Project is not expected to result in glare for pilots landing at two airports within 10 miles of the Project Area or for helicopter pilots hovering at 500 feet over three heliports that are located within 10 miles. Further, glare from the Project is not predicted to occur for: drivers of vehicles on 14 roadways adjacent to the Project; train engineers on the railroad tracks crossing through the Project Area; or any residences that were analyzed within proximity to the Project Area.⁸² Further, as documented by ODH, the information on solar facilities “does not indicate a public health burden from glare....glare generated by solar farms is no more than that which is generated by windows and calm bodies of water.”⁸³

The minimal amount of electromagnetic fields (“EMF”) generated by the Project is comparable to the EMF generated by a home appliance, which has not been shown to result in

⁸⁰ App. Ex. 30 at 4, Att. SM-1.

⁸¹ App. Ex. 1 at 42.

⁸² *Id.* at 42-43, 54, Ex. N; App. Ex. 19; App. Ex. 32 at 6.

⁸³ Ohio Department of Health Solar Farm and Photovoltaics Summary and Assessments (Apr. 2022) at 7; <https://odh.ohio.gov/know-our-programs/health-assessment-section/media/summary-solarfarms>

negative health impacts. As part of the final site layout, the nearest nonparticipating residence will be more than 300 feet from the nearest solar module, and even further from the nearest inverter, negating any EMF exposure to residents.⁸⁴ Further, as documented by ODH, the information on solar facilities “does not indicate a public health burden from EMFs generated by components, including power lines, at solar farms.”⁸⁵

Birch Solar 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.⁸⁶ 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 Birch Solar Project.⁸⁷ 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.⁸⁸ 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.⁸⁹ 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.”⁹⁰ The difference in sale price is considered to be the impact of the proximity to the solar farm.⁹¹ Based upon the review of other academic studies noted in the report, as well as interviews with real estate assessors and market participants familiar with sales of property adjacent to solar farms and the studies conducted for the report by CohnReznick for Birch Solar, there is no evidence that solar farms negatively impact adjacent real estate property values.⁹² 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-

⁸⁴ App. Ex. 1 at 43.

⁸⁵ Ohio Department of Health Solar Farm and Photovoltaics Summary and Assessments (Apr. 2022) at 9; <https://odh.ohio.gov/know-our-programs/health-assessment-section/media/summary-solarfarms>

⁸⁶ App. Ex. 37, Att. ARL-2.

⁸⁷ *Id.* at 3, 6, Att. ARL-3.

⁸⁸ *Id.* at 5, Att. ARL-2.

⁸⁹ *Id.* at 5.

⁹⁰ The Appraisal of Real Estate 14th Edition, Chicago, IL: Appraisal Institute, 2013; App. Ex. 37 at 5.

⁹¹ *Id.*

⁹² *Id.* at 6, Att. ARL-2.

scale, solar energy use, with regard to unit sale prices or other influential market indicators. Therefore, there should be no negative impact to the real estate surrounding the proposed Birch Solar Project.⁹³

It is important to note that, regardless of the results of the property value analysis, Birch Solar offered the Neighboring Landowner Financial Benefit program for any home within 500 feet of the solar panels with the benefits ranging from \$10,000 to \$50,000 depending on proximity, and a Home Value Agreement for homes most affected by the Project; neither of these landowner benefit programs require endorsement, confidentiality, or support of the Project by the landowner.⁹⁴ Thus, regardless of the lack of negative impact on the local real estate market, the Applicant continues to be committed to the Neighboring Landowner Financial.

2. *Land Use/Agriculture*

The Application and the record in this case confirm that the Board can determine the probable impacts of the facility with regard to land use and agricultural considerations.

Within the 2,345 acre Project Area, which is currently row crop agricultural, only 1,410 acres will host facility infrastructure (i.e., solar modules, trackers, inverters, collector lines, access roads, and a Project substation).⁹⁵ The remaining acreage will continue to be row cropped, grazed, or managed through the Vegetative Management Plan to create additional biodiversity. In addition, Birch Solar has committed to setbacks that are sufficient to allow stormwater and sewage infrastructure to be placed near the Project so the Project does not have negative impacts on county infrastructure improvements.⁹⁶ After the Project is decommissioned, the Project Area can again be used for row crops or other agricultural projects. All impacts of the Project are temporary. The use of this land for a solar project is optimal because of its ability to maintain and create dual income streams for farmland within the community.⁹⁷ Moreover, during the 35-year life of the Project: the soil on the previously cultivated land will be allowed to rest; there will be reduction in soil erosion; and fewer chemicals and fertilizers will be utilized on the land compared to farming practices.⁹⁸

⁹³ *Id.* at 6.

⁹⁴ App. Ex. 13; App. Ex. 30 at 7.

⁹⁵ App. Ex. 1 at 2; App. Ex. 30 at 17.

⁹⁶ App. Ex. 1 at 6, 17.

⁹⁷ App. Ex. 30 at 17.

⁹⁸ App. Ex. 1 at 83.

The habitat within the Project Area is predominately composed of cultivated agricultural croplands totaling approximately acres, which is approximately 91.0% of the Project Area.⁹⁹ The remainder of the land use in the Project Area is: second growth deciduous forest, 4.5%; new field, 3%; developed open space, residential, 0.7%; existing roadway, 0.7%; old field, less than 0.1%; open water, less than 0.1%; and wetlands, less than 0.1%.¹⁰⁰

3. Geological and Hydrogeology

The Application and the record in this case confirm that the Board can determine the probable impacts of the facility with regard to the geological and hydrogeology considerations.

The geotechnical investigation included a subsurface exploration consisting of: soil borings; test pits and in-situ (in place) field tests; laboratory testing from field samples that were collected; engineering analysis related to those activities; and pile load testing to directly measure soil properties that inform foundation engineering.¹⁰¹ The Geotechnical Report concluded that the site appears to be suitable for the intended development of the Project.¹⁰²

There are 338 water wells that occur within the one-mile radius of the Project Area and 7 water wells that occur within the Project Area. The Project proposes minimal excavation and the installation of steel tracker posts are anticipated to be driven to a depth of 7.5 feet below grade. There are three water source protection areas located within the one-mile radius of the Project Area and, while a small portion of one of the areas overlaps the Project Area, it is not within the limits of the facility. Because the Project is not expected to require excavation for construction, and posts for the trackers will only be installed to a depth of approximately 7.5 feet, it is not expected that groundwater resources will be impacted.¹⁰³

Portions of the Project Area fall within a Federal Emergency Management Agency (“FEMA”) designated 100-year floodplain. However, all Project infrastructure is located outside the 100-year floodplain areas.¹⁰⁴ The Applicant provided a Hydrology and Flood Inundation that modeled the peak flow rates and runoff volumes of pre-development conditions under a variety of storm types. The 100-year 24-hour flood depths and velocities associated with pre-development

⁹⁹ *Id.* at 55.

¹⁰⁰ *Id.* at 57, 71.

¹⁰¹ *Id.* at 51, Ex. K; App. Ex. 31 at 5.

¹⁰² *Id.* at 6.

¹⁰³ App. Ex. 1 at 49.

¹⁰⁴ *Id.* at 51.

conditions were also modeled.¹⁰⁵

The Applicant submitted its ECR, which evaluates and sets forth mitigation commitments related to the potential oil and gas well locations in the Project Area.¹⁰⁶ To provide some background to the ECR and oil and gas well program in Ohio, Applicant witness Stewart explained that, while it is the responsibility of the state of Ohio to locate and properly plug and remediate historic wells, the records identifying such wells are often missing, inadequate or ambiguous. In an effort to identify the location of historic wells within the Project Area, Birch Solar made extensive efforts to survey and accurately plotted the locations of oil and gas wells in the Project Area, which the witness emphasized is a significant benefit to the state of Ohio.¹⁰⁷ The result of Birch Solar's efforts relating to the oil and gas wells was the ECR that reviewed and investigated the oil and gas wells in the Project Area.¹⁰⁸ It is noteworthy that the effort put into the ECR by Birch Solar represents one of the first attempts whereby a developer provided the state of Ohio with important information concerning the location of the oil and gas wells in an area of the state that spans thousands of acres – but for this effort put forth by Birch Solar the state of Ohio would not have benefitted from the information gathered and reported in the ECR. The investigation of the oil and gas wells reported in the ECR included, among other techniques: initial location information from the ODNR database of well information; a targeted electromagnetic survey in the vicinity of the documented well locations; and a survey conducted by UAV Exploration (“UAVEX”) using aerial magnetometer survey technology and methodology.¹⁰⁹ The methodology used by UAVEX was validated by ODNR resulting in a high degree of confidence in the results and conclusions.¹¹⁰

The ECR revealed that nearly all the orphan wells in the Project Area have no wellhead containment controlling the well; thus, verifying the state of Ohio's plugging program methodology that assigns a low-risk ranking to the wells within the Project Area. Thus, as explained by Applicant witness Stewart, driving a pile for the Project 10 feet into the ground from the setback distance committed to by Birch Solar of at least 50 feet away from an orphaned well

¹⁰⁵ *Id.* at 51, Ex. O; App. Ex. 15.

¹⁰⁶ App. Ex. 22.

¹⁰⁷ App. Ex. 35 at 6.

¹⁰⁸ App. Ex. 22; App. Ex. 31.

¹⁰⁹ App. Ex. 22; App. Ex. 31 at 7.

¹¹⁰ *Id.* at 8.

will not alter the conditions of a possible oil and gas hole that is 1,300 feet deep.¹¹¹ In the event a previously unidentified well is discovered, the Unanticipated Discovery Plan (“UDP”) that is part of the mitigation proposed and committed to by Birch Solar in the ECR will minimize or eliminate any risk.¹¹² Applicant witness Stewart verified that it is “unlikely that any surface construction proximate to existing wellbores will result in the release of meaningful quantities of oil and gas and therefore the Project presents negligible risk.”¹¹³

4. Cultural

The Application and the record in this case confirm that the Board can determine the probable impacts of the facility with regard to the cultural considerations.

The History/Architecture Reconnaissance Survey of the study area identified 486 architectural locations within what was determined to be the area of potential effects (“APE”). Of the architectural locations identified: most of them were not regarded as significant; 8 resources were regarded as significant; 7 were previously recorded and determined significant resources within the APE; and 1 was a potential historic district within the APE, the Village of Hume.¹¹⁴ The survey concluded that the Project will have no direct impact on known architectural cultural resources.¹¹⁵ This finding was confirmed by SHPO.¹¹⁶

The Phase I Archaeological Survey Report identified 22 archaeological sites in the direct APE, including prehistoric period components and 1 historic period site. The types of sites that were encountered are commonly identified in the region of the Project and are not types that are considered significant resources or landmarks. Thus, the Project will not have any direct impact on any significant archaeological resources.¹¹⁷ This finding was confirmed by SHPO.¹¹⁸

¹¹¹ App. Ex. 35 at 7.

¹¹² App. Ex. 22; App. Ex. 35 at 7; Jt. Ex. 1 at 10, Condition 33. The Applicant notes that Stipulation Condition 33 enhances Staff Report Condition 37 (Staff Ex. 1 at 56) by requiring Birch Solar to include incident notification procedures as outlined in the Ohio One Call Emergency Notification System for oil and gas related occurrences in the UDP.

¹¹³ App. Ex. 35 at 7.

¹¹⁴ App. Ex. 3; App. Ex. 34 at 4-5.

¹¹⁵ App. Ex. 3; App. Ex. 34 at 5.

¹¹⁶ App. Ex. 6.

¹¹⁷ App. Ex. 22; App. Ex. 34 at 5-6.

¹¹⁸ App. Ex. 8.

5. *Ecological*

The Application and the record in this case confirm that the Board can determine the probable impacts of the facility with regard to the ecological considerations.

The site design for the Project was developed to avoid impacts to all identified stream and wetland features within the Project Area.¹¹⁹ Streams were documented pursuant to the protocols outlined in the U.S. Army Corps of Engineers (“USACE”) Guidance on Ordinary High Water Mark Identification.¹²⁰ Functional assessments for all identified streams and wetlands were completed using Ohio EPA Headwater Habitat Evaluation Index and/or Qualitative Habitat Evaluation Index (“HHEI/QHEI”), and the Ohio Rapid Assessment Method (“ORAM”) version 5.0. Based on this assessment, 3 wetlands, totaling 0.50 acres were identified within the Project Area. ORAM scores ranged between 16 (poor quality) and 41 (fair-moderate quality) for the wetlands. Further, 14 streams were identified within the Project Area, totaling 27,007 linear feet. HHEI/QHEI scores for the streams ranged from 34.75 (poor quality) to 59 (good quality).¹²¹

The Threatened and Endangered Species Habitat Survey Report found potentially suitable habitat for state-listed and federally-listed threatened and endangered species within the Project Area, including: lark sparrow; Indiana bat; northern long-eared bat; eastern tri-colored bat; little brown bat; pirate perch; greater redhorse; and pondhorn.¹²² Birch Solar consulted with the U.S. Fish and Wildlife Service (“USFWS”) and ODNR. Birch Solar received a response from USFWS that noted that all projects in the state of Ohio lie within range of the federally endangered Indiana bat and the federally threatened northern long-eared bat. USFWS also noted that through avoidance of tree clearing, impacts to these species would be avoided. Further, due to the Project type, size, and location, USFWS did not anticipate effects to any other federally endangered, threatened, or proposed species, or proposed or designated critical habitat. USFWS recommended the Applicant avoid and minimize water quality impacts and impacts to high quality fish and wildlife habitat (e.g., forests, streams, wetlands) and that best management practices (“BMPs”) be utilized to minimize erosion, especially on slopes. ODNR stated that a number of species are potentially present within the Project Area, including the: greater redhorse; little brown bat; Indiana bat; northern long-eared bat; eastern tri-colored bat; clubshell; northern riffleshell;

¹¹⁹ App. Ex. 1 at 6, 36, Ex. P; App. Ex. 32 at 7.

¹²⁰ App. Ex. 1, Ex. P; App. Ex. 32 at 7 (*See* Regulatory Guidance Letter, No. 05-05; USACE 2005).

¹²¹ App. Ex. 1 at 57, Ex. P; App. Ex. 32 at 7.

¹²² App. Ex. 1 at 58, 60, Ex. Q; App. Ex. 33 at 5.

pondhorn; pirate perch; lark sparrow; and the upland sandpiper.¹²³ No impacts are expected with implementation of suggested avoidance measures and compliance with the Stipulation conditions for each of these species.¹²⁴

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).

Staff confirmed that this criterion has been met and the Board can determine that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives.¹²⁵ As discussed in detail herein, the Applicant has committed to numerous measures through its Application and the Stipulation in order to ensure the Project has the minimum adverse environmental impact.

The Application narrative and exhibits and figures, along with subsequent supplements and responses to Staff's data requests and the commitments in the Stipulation, provide the information necessary to determine that the facility represents the minimum adverse environmental impact. In addition, due to the past history of the area and the multiple oil and gas wells located on site, the Project represents optimal land use when compared to other potential uses, including farming and residential/commercial development, which are more intensive or involve greater human activity.¹²⁶

Moreover, the Applicant's commitment to comply with all conditions recommended by the Staff in the Staff Report, as enhanced by the Stipulation, further supports a determination 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.¹²⁷

¹²³ App. Ex. 1, Ex. R; App. Ex. 33 at 5.

¹²⁴ *Id.* at 6.

¹²⁵ Staff Ex. 2 at 4.

¹²⁶ App. Ex. 30 at 13.

¹²⁷ *Id.*

1. Public and Safety

The Application and the record in this case confirm the Board can determine that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives regarding the public and safety considerations.

The Visual Impact Mitigation and Lighting Plan (“Visual/Lighting Plan”) details the important attributes of the Project.¹²⁸ In working to ensure that the Project fits in with the surrounding community, Birch Solar minimized the size of the Project Area and increased setbacks from homes and heavily travelled roads, like Breese Road, to minimize views. Because of the setbacks on Breese Road, the participating landowners will be able to continue to farm the land in that area, further reducing the views of the Project during the growing season.¹²⁹ Likewise, crops on all adjacent lands can continue to be planted and will provide additional screening of the Project for those areas as well.¹³⁰ In addition, as illustrated in the VIA, the Applicant will implement vegetative screening that will further block any visual impact of the Project.¹³¹ The proposed fencing around the perimeter of the facility will be cedar pressure treated wood posts with metal welded wire fencing, which will blend into the existing agricultural landscape.¹³² The trackers to be used by the Project are single axis low profile trackers that are located close to the ground to minimize viewshed. The trackers have a height of approximately 4 feet above the ground. When the modules are attached to the trackers and are at their maximum height, the total height of the structures will be no more than 10 feet above the ground.¹³³

To limit the impact of sound from construction, pursuant to Stipulation Condition 27, Birch Solar has committed to various conditions including that: general construction activities will be 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.; impact pile driving will be limited to the hours between 9:00 a.m. and 7:00 p.m. or until dusk when sunset occurs after 7:00 p.m.; impact pile driving may occur between 7:00 a.m. and 9:00 a.m. if the noise impact at nonparticipating receptors is not greater than daytime ambient L_{eq} plus 10 dBA;

¹²⁸ App. Ex. 1, Ex. V.

¹²⁹ App. Ex. 30 at 8.

¹³⁰ App. Ex. 1 at 79.

¹³¹ *Id.* at 8, 19, 82, Ex. U; App. Ex. 11 at 8; App. Ex. 30 at 8.

¹³² App. Ex. 1 at 19; App. Ex. 16 at 2; App. Ex. 30 at 8; Jt. Ex. 1 at 6, Condition 15. The Applicant notes that Stipulation Condition 15 is identical to Staff Report Condition 15 (Staff Ex. 1 at 52).

¹³³ App. Ex. 1 at 8.

if impact pile driving is required between 7:00 a.m. and 9:00 a.m.; Birch Solar will install a noise monitor in a representative location to catalog that this threshold is not being exceeded; and Birch Solar will notify property owners or affected tenants of upcoming construction activities including potential for nighttime construction.¹³⁴

With regard to transportation construction for activities that require transportation permits, the Applicant has committed obtain all such permits and coordinate with the appropriate authority regarding any temporary road closures, road use agreements, driveway permits, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility.¹³⁵ As detailed further herein, Birch Solar has committed to work with the community and the local government officials and coordinate any updates, repairs, and transportation routes with the local entities to ensure that all is up to the local government standards of repair.¹³⁶ Consistent with that commitment, Birch Solar executed a DRUMA with Auglaize County that specifies any updates, repairs and transportation routes, and the standards for repair for any roadways damaged during construction of the Project.¹³⁷ In addition, Birch Solar entered into the County MOU with the Allen County Commissioners confirming that both Birch Solar and Allen County intend to execute a mutually agreed upon DRUMA.¹³⁸

The Applicant has committed to using crystalline silicon modules from a Tier I manufacturer that have passed the TCLP test.¹³⁹ Federal waste management laws¹⁴⁰ require that PV modules, like any other commercial/industrial waste, be disposed of properly, which first requires that the waste be identified as either hazardous or non-hazardous waste. The method for determining whether a specific model of PV modules is hazardous or non-hazardous waste is the TCLP test. This test was developed by the USEPA to simulate landfill conditions and determine if the waste leaches unsafe levels of 8 toxic metals and 32 organic compounds. In the TCLP test, samples from a PV module are broken into pieces smaller than a centimeter and tumbled in an acid bath for several days. The tested PV module passes the test if the level of all 8 toxic metals and all 32 organic compounds in the acid solution are under the thresholds defined by the TCLP test

¹³⁴ Jt. Ex. 1 at 9, Condition 27

¹³⁵ *Id.* at 8, Condition 25. The Applicant notes that Stipulation Condition 25 is identical to Staff Report Condition 26 (Staff Ex. 1 at 54).

¹³⁶ App. Ex. 1 at 31.

¹³⁷ App. Ex. 30A at 3; Jt. Ex. 1, Att. A.

¹³⁸ App. Ex. 30A at 4, Att. SM-1.

¹³⁹ App. Ex. 1 at 9, 42-44; App. Ex. 36 at 4.

¹⁴⁰ Resource Recovery and Conservation Act, 42 U.S.C. §6901 et seq. (1976).

standard. Through its commitment, Birch Solar, before purchasing any specific model of PV module, will require that the model pass a TCLP test at an approved testing laboratory. Modules that have passed a TCLP test are defined as non-hazardous waste and may be disposed of in a regular landfill, also called a sanitary landfill or an engineered landfill. This means that, if all the PV modules at the Project are disposed of in a regular landfill, they would not harm groundwater or other local water sources.¹⁴¹ While all modules for the Project could be disposed of in a regular landfill, it is noteworthy that Birch Solar has committed to recycling all solar modules, including any modules damaged during construction, operations, and all modules at the end of their useful life and decommissioning of the Project. Pursuant to Stipulation Condition 39, if Birch Solar is unable to recycle the PV modules at the end of their useful life, it has committed to retire panels marked for disposal in an engineered landfill with various barriers.¹⁴² Further, as documented by ODH, the information on solar facilities “does not indicate a public health burden from the use of crystalline silicone in solar farms....”¹⁴³

A Decommissioning Plan was prepared to provide for the removal of the Project and estimate the total cost, excluding salvage value, to retire the Project at the end of its useful life.¹⁴⁴ The final decommissioning plan will be prepared by a professional engineer registered with the state of Ohio board of registration for professional engineers and surveyors and submitted to Staff for review prior to construction, in accordance with Stipulation Condition 38. The decommissioning costs include the costs to return the site to substantially the same conditions that existed before construction of the Project. The Decommissioning Plan reviews the decommissioning sequence and presents a 12 to 18 month plan to begin within 12 months of ceasing operations. Stipulation Condition 38 provides a timeline of one year for removal of the majority of equipment, with all decommissioning to be finished within 18 months after the facility ceases operations.¹⁴⁵ While some components may be sold as scrap or resold completely, as the Decommissioning Plan indicates, all damaged or end of life panels will be recycled.¹⁴⁶ As stated

¹⁴¹ App. Ex. 36 at 4.

¹⁴² *Id.* at 5; Jt. Ex. 1 at 12, Condition 39. The Applicant notes that Stipulation Condition 39 is identical to Staff Report Condition 42 (Staff Ex. 1 at 57).

¹⁴³ Ohio Department of Health Solar Farm and Photovoltaics Summary and Assessments (Apr. 2022) at 4; <https://odh.ohio.gov/know-our-programs/health-assessment-section/media/summary-solarfarms>

¹⁴⁴ App. Ex. 1, Ex. B; App. Ex. 11 at 2; App. Ex. 30 at 17.

¹⁴⁵ Jt. Ex. 1 at 11, Condition 38. The Applicant notes that Stipulation Condition 38 enhanced Staff Report Condition 41 by including a specific timeframe for component removal (Staff Ex. 1 at 57).

¹⁴⁶ App. Ex. 1 at 9.

previously, in accordance with Stipulation Condition 39, Birch Solar has 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, shall be sent to an engineered landfill with various barriers.¹⁴⁷ Further, soil will be decompacted as needed and returned to original condition to be farmed, if decided by the landowner.¹⁴⁸

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.¹⁴⁹

2. *Land Use/Agriculture*

The Application and the record in this case confirm that the Board can determine that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives regarding land use and agriculture considerations.

As reflected throughout the record, it is evident that the Applicant has “balanced the desire of local farmers to use their farmland of a solar project, the goals of the state of Ohio for additional clean energy development and infrastructure, and the requests of the community surrounding the Project to screen, offset the Project from major roads, and reduce changes to the current environment of the Project Area.” The farmland in the Project Area will have a chance to once again create a native biodiverse ecosystem, which will increase biodiversity in the area surrounding the Project and establish root structures that will help with flooding and drainage in and around the Project Area.¹⁵⁰

The Vegetation Management Plan submitted with the Application and the Revegetation Plan developed with the community, as well as the conditions set forth in the Stipulation, will ensure that, throughout the life of the Project, a mix of native and pollinator seeding will increase

¹⁴⁷ Jt. Ex. 1 at 12, Condition 39. The Applicant notes that Stipulation Condition 39 is identical to Staff Report Condition 42 (Staff Ex. 1 at 57).

¹⁴⁸ App. Ex. 1 at 32.

¹⁴⁹ *Id.* at 44-45; App. Ex. 11.

¹⁵⁰ App. Ex. 30 at 6, 10.

biodiversity and soil nutrients of the soil under the Project site and has the potential to increase pollinators on adjacent farmed parcels.¹⁵¹ The Vegetation Management Plan ensures the vegetation within the Project Area is protected during construction and operations to the extent possible. The plan provides guidance for how areas temporarily disturbed by construction of the Project will be stabilized and vegetation restored as quickly and effectively as possible to meet applicable Ohio EPA construction stormwater permit requirements for the Project.¹⁵² Birch Solar's plan focuses on curating a seed mix, which stabilizes soil when disturbance and construction is completed. The seed mix contains uniform perennial vegetative cover and is crafted to also be used for grazing operations. When the plan is implemented, a more biodiverse landscape and ecosystem will exist around the Project Area, which creates numerous environmental benefits.¹⁵³

Birch Solar has also established revegetation goals in collaboration with various stakeholders including the Local Community Coalition, the Tri-Moraine Audubon Society (the Allen/Auglaize local Audubon Chapter), the American Solar Grazing Association, and Agri-Voltaic Solutions, LLC. The site Revegetation Plan has two focused areas: inside the solar facility fences and the perimeter areas that include the screening plantings ("Project Area"). Per the Revegetation Plan, Birch Solar has committed that:

- A revegetation seed mix will be developed that prioritizes native plants to increase ecosystem services, will be nutritious and non-toxic for sheep, provides wildlife habitat, as well as meet height requirements for the safe and efficient operation of the Project;
- For the screening plantings and perimeter, regional seed suppliers and plant nurseries will be consulted and native plants given preference in the supply of plant materials for the site;
- There will be a ratio of at least 70:30, native plants to nonnative plants in these plantings;
- Regional ecotypes will be used if available;
- Noxious or invasive species as listed by the state of Ohio's Invasive Plants Council will not be purchased;

¹⁵¹ App. Ex. 1, Ex. D; App. Ex. 9; App. Ex. 30 at 17.

¹⁵² App. Ex. 1, Ex. D; App. Ex. 33 at 3.

¹⁵³ *Id.* at 3-4.

- An invasive species prevention and management plan will be implemented and followed for the duration of the facility life; and
- A regional ecologist and/or ecological services firm will be retained to monitor for any noxious or invasive species.¹⁵⁴

Further, Birch Solar has committed to vegetative conditions through Stipulation Condition 24, which requires that Birch Solar prevent establishment or propagation of noxious and invasive weeds identified in Ohio Adm.Code 901:5-37 and 901:5-30, during the implementation of pollinator-friendly plantings or other revegetation, as well as during construction, operation, and decommissioning.¹⁵⁵ Additionally, the Applicant will provide annual proof of weed control for the first four years of operations, with the goal of weed eradication to be significantly completed by year three of operation.¹⁵⁶

As set forth in the Application and enhanced by the Stipulation, Birch Solar has committed to ensure functional drain tile both on and off the Project, control stormwater runoff, and install beneficial vegetation for the Project to ensure that neighboring residents and farm operations experience no adverse impacts due to the operation of the Project.¹⁵⁷ Birch Solar has committed to, at a minimum, employ the construction considerations set forth in the Preliminary Drain Tile Assessment that will minimize impacts to the field drainage system during construction, operation, and maintenance of the facility. The Preliminary Drain Tile Assessment identifies methods to be used during design, construction, and operation to avoid impacting drain tile to the extent practicable, as well as methods to repair drain tile that might be damaged.¹⁵⁸ Birch Solar has committed to avoid, where possible, or minimize to the extent practicable, any damage to functioning field drainage systems and soils. Further, Birch Solar will promptly repair or reroute drain tile to at least the original conditions or modern equivalent at Birch Solar's expense to ensure proper drainage.¹⁵⁹ Moreover, the Applicant has committed that, if an affected landowner agrees

¹⁵⁴ App. Ex. 9; App. Ex. 33 at 4-5.

¹⁵⁵ Jt. Ex. 1 at 8, Condition 24. The Applicant notes that Stipulation Condition 24 enhanced Staff Report Condition 24 (Staff Ex. 1 at 53).

¹⁵⁶ *Id.* at 7-8, Condition 22. The Applicant notes that Stipulation Condition 22 enhances Staff Report Condition 22 (Staff Ex. 1 at 53) by including the Landscape and Revegetation Goals in App. Ex. 9.

¹⁵⁷ App. Ex. 1 at 83, Ex. W; App. Ex. 32 at 9-10; Jt. Ex. 1 at 6-7, 9-10, Conditions 16, 21, 29-30. The Applicant notes that Stipulation Conditions 16, 21, and 29-30 are identical to Staff Report Conditions 16, 21, and 29-30 (Staff Ex. 1 at 52-53, 55), respectively.

¹⁵⁸ App. Ex. 1, Ex. W.

¹⁵⁹ Jt. Ex. 1 at 9-10, Condition 29. The Applicant notes that Stipulation Condition 29 is identical to Staff Report Condition 30 (Staff Ex. 1 at 55).

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 nonrepair of the landowner's field tile and the damaged field tile does not route directly onto or into an adjacent parcel. Birch Solar has further committed to ensure that parcels near the Project are protected from unwanted drainage problems due to construction and operation of the Project by either:

- Documenting benchmark conditions of surface and subsurface drainage systems prior to construction, including the location of laterals, mains, grassed waterways, and county maintenance/repair ditches. Birch Solar will make efforts to conduct a perimeter dig utilizing a tile search trench and consult with owners of all parcels adjacent to the Project site, the county soil and water conservation district, and the county to request drainage system information over those parcels. Birch Solar will consult with the county engineer for tile located in a county maintenance/repair ditch; or
- Locating and replacing all field tile drainage systems; or
- In addition to prompt repair, agreeing to compensate parcels owners affected by damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas for damage to crops or other agricultural activities.¹⁶⁰

The stormwater and erosion controls in place for the Project during construction will also serve to mitigate any offsite water flow that may result from broken drain tiles.¹⁶¹ In addition, the Complaint Resolution Plan described below 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.¹⁶²

3. Geological and Hydrogeology

The Application and the record in this case confirm that the Board can determine that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives regarding geological and hydrogeology considerations.

¹⁶⁰ Jt. Ex. 1 at 10, Condition 30. The Applicant notes that Stipulation Conditions 29-30 are identical to Staff Report Conditions 30-31 (Staff Ex. 1 at 55); however, Stipulation Condition 30 enhanced the Staff Report Condition 31 (Staff Ex. 1 at 55).

¹⁶¹ App. Ex. 32 at 9-10.

¹⁶² App. Ex. 1, Ex. H.

While aquatic discharges are not anticipated, Birch Solar has committed to take measures to ensure water quality protection consistent with applicable federal and state requirements, including development of: a Stormwater Pollution Prevention Plan (“SWPPP”); a Spill Prevention, Control, and Countermeasure (“SPCC”) Plan; and a Horizontal Directional Drilling Inadvertent Return Contingency Plan (“Frac-out Plan”).¹⁶³ Birch Solar has also committed to comply with the Ohio EPA’s National Pollutant Discharge Elimination System (“NPDES”) Construction General Permit (Permit No. OH000005 issued on April 23, 2018) (“General Permit”).¹⁶⁴ The General Permit requires the applicant to submit a Notice of Intent to the Ohio EPA that it will invoke the General Permit, and to prepare and implement the SWPPP. Under the General Permit and SWPPP, Birch Solar will be required to implement certain BMPs to reduce and control erosion and sedimentation during construction, and implement post-construction storm water management of the Project.¹⁶⁵ Regular inspections will be required and documented. In addition, the Applicant has committed to construct the facility in a manner that incorporates post-construction management under the General Permit in accordance with the Ohio EPA’s Guidance on Post-Construction Storm Water Controls of Solar Panel Arrays.¹⁶⁶

If it is not possible to use open-trenching to install collector lines, the Applicant will use horizontal directional drilling (“HDD”). For example, HDD will be used under roads and wetlands.¹⁶⁷ Birch Solar prepared a Frac-out Plan that establishes procedures for the prevention, containment, and clean-up of drilling fluid (a slurry) that emerges on the ground surface or other undesirable location due to the loss of fluid used to form the bore hole.¹⁶⁸ Prevention measures are addressed through the explicit design of the HDD profile, design documents, and specific procedures involved with the drilling operation for each location where HDD is employed.¹⁶⁹ All erosion and sedimentation controls included in the SWPPP will be installed and inspected by a qualified environmental inspector prior to any drilling operations. Before any HDD construction activity on the Project, the provisions of the Frac-out Plan, the location of sensitive environmental resources at the site, drilling procedures for release prevention, site-specific monitoring

¹⁶³ *Id.* at 37, 49-50, 61, Ex. L.

¹⁶⁴ *Id.* at 35-36.

¹⁶⁵ *Id.* at 37, 49-50.

¹⁶⁶ *Id.* at 5; Jt. Ex. 1 at 6, Condition 22.

¹⁶⁷ App. Ex. 1 at 39, Ex. L.

¹⁶⁸ *Id.*; App. Ex. 31 at 6.

¹⁶⁹ *Id.*

requirements, the location and operation of release control equipment and materials, and protocols for reporting an observed inadvertent return will be reviewed by the team completing the HDD.¹⁷⁰

With regard to the oil and gas wells reflected in the ECR, the mitigation plan contained in the ECR, which Birch Solar has committed to, “avoids risk by bringing a rationale development process to an area impaired by historic irrational development,” according to Applicant Witness Stewart.¹⁷¹ Birch Solar has committed that:

- All facility components will be setback a minimum of 50 feet from any oil and gas well or oil and gas well related features;¹⁷²
- Any well identified as an unplugged idle or orphan will be managed in accordance with the applicable laws established by the ODNR Division of Oil and Gas. Construction at an unplugged idle or orphan well site must include set back considerations that would allow well access by standard service equipment, and be at least 14 feet wide leading to the well with 50-foot setback established in Stipulation Condition 34.¹⁷³
- Birch Solar will visually monitor identified historical oil and gas well locations within the Project Area at least once every 90 days during construction, operation, and maintenance of the Project for the duration of the Project term. Any observations that may be indicative of an oil and gas well related release shall be reported as outlined by the Ohio One Call Emergency Notification System.¹⁷⁴

The mitigation plan set forth in the ECR that will be implemented by Birch Solar adopts a health and safety policy like that which ODNR applies when permitting and siting a new oil and gas well.¹⁷⁵ Further, Birch Solar’s mitigation plan avoids historic wells using a setback policy appropriate to the risk associated with historic wells.¹⁷⁶ In the event a previously unidentified well

¹⁷⁰ App. Ex. 1 at 39, Ex. L.

¹⁷¹ App. Ex. 22; App. Ex. 35 at 6.

¹⁷² Jt. Ex. 1 at 11, Condition 34. The Applicant notes that Stipulation Condition 34 is identical to Staff Report Condition 38 (Staff Ex. 1 at 56).

¹⁷³ *Id.*, Condition 35. The Applicant notes that Stipulation Condition 35 is identical to Staff Report Condition 39 (Staff Ex. 1 at 56-57).

¹⁷⁴ *Id.*, Condition 36. The Applicant notes that Stipulation Condition 36 is not required by the Staff’s recommendation in the Staff Report; thus, Stipulation Condition 36 enhances the requirements recommended by Staff.

¹⁷⁵ App. Ex. 22; App. Ex. 35 at 7.

¹⁷⁶ *Id.*

is discovered, the UDP that is part of the mitigation proposed and committed to by Birch Solar in the ECR will minimize or eliminate any risk.¹⁷⁷

4. Cultural

The Application and the record in this case confirm that the Board can determine that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives regarding cultural considerations.

As stated previously, a PA between the Applicant and the SHPO was initially executed in 2021.¹⁷⁸ The PA memorializes the roles and responsibilities of Birch Solar and SHPO regarding the archaeological and cultural resource review in the Project Area.¹⁷⁹ Pursuant to Stipulation Condition 31, Birch Solar has committed that, prior to construction, it will finalize a memorandum of understanding with SHPO (“SHPO MOU”) to mitigate for and/or avoid cultural resources with potential adverse effects due to the Project and will outline procedures to be followed if previously unidentified sites are discovered during construction.¹⁸⁰ Within the SHPO MOU, the Applicant has agreed to commit to implementing a Visual Impact Mitigation Plan, which consists of vegetative screening planted on Project land to limit views of the Project from the 5 potentially impacted resources, thereby mitigating the Project’s impact. Birch Solar has also committed that the SHPO MOU will memorialize that Birch Solar will use wildlife friendly, agricultural fencing along the perimeter rather than chain-link fencing to further limit the Project’s visual impact.¹⁸¹

5. Ecological

The Application and the record in this case confirm that the Board can determine that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives regarding ecological considerations.

¹⁷⁷ App. Ex. 22; App. Ex. 35 at 7; Jt. Ex. 1 at 10, Condition 33. The Applicant notes that Stipulation Condition 33 enhances Staff Report Condition 37 (Staff Ex. 1 at 56) by requiring Birch Solar to include incident notification procedures as outlined in the Ohio One Call Emergency Notification System for oil and gas related occurrences in the UDP.

¹⁷⁸ App. Exs. 4, 7.

¹⁷⁹ App. Ex. 4.

¹⁸⁰ Jt. Ex. 1 at 10, Condition 31. The Applicant notes that Stipulation Condition 31 is identical to Staff Report Condition 32 (Staff Ex. 1 at 56).

¹⁸¹ App. Ex. 32 at 13.

The Project was developed to minimize impacts to ecological resources and is not anticipated to have any adverse effects on state or federally listed species as a result of careful site design. There will be no clearing of trees that could serve as potential habitat for federal and state-listed bat species and no impacts to streams or wetlands that could provide habitat for federal and state-listed aquatic species.¹⁸²

Birch Solar has committed to avoid impacts to any threatened and endangered species with the implementation of avoidance measures.¹⁸³ Birch Solar 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.¹⁸⁴ In addition, in accordance with the recommendations from ODNR and USFWS, Birch Solar commits to avoid impacts to grasslands/pasturelands between April 15 and July 31 in order to avoid impacts to the state endangered Upland Sandpiper during its nesting period.¹⁸⁵

Further, if the Applicant encounters any new listed plant or animal species or suitable habitat of these species prior to construction, Birch Solar has committed to include the location in the final engineering drawings, avoid impacts to these species, and explain how impacts would be avoided during construction.¹⁸⁶ In addition, Birch Solar will have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas, which include, but are not limited to, wetlands and streams, and locations of threatened or endangered species. The environmental specialist will have authority to stop construction to assure that unforeseen environmental impacts do not progress and recommend procedures to resolve the impact.¹⁸⁷

As stated previously, the site was designed to avoid all impacts to stream and wetland features.¹⁸⁸ However, the Applicant has committed that, if the final site design were to change and wetland or stream impacts are anticipated, it would obtain: a USACE permit under Section 404 of the Clean Water Act (“CWA”) for disturbances to waters of the U.S.; the Ohio EPA Water Quality

¹⁸² App. Ex. 1 at 62.

¹⁸³ App. Ex. 33 at 5.

¹⁸⁴ App. Ex. 1 at 62; Jt. Ex. 1 at 7, Condition 20. The Applicant notes that Stipulation Condition 20 is identical to Staff Report Condition 20 (Staff Ex. 1 at 53).

¹⁸⁵ *Id.* at 6-7, Condition 17. The Applicant notes that Stipulation Condition 17 is identical to Staff Report Condition 17 (Staff Ex. 1 at 53).

¹⁸⁶ *Id.* at 8, Condition 23. The Applicant notes that Stipulation Condition 23 is identical to Staff Report Condition 23 (Staff Ex. 1 at 52).

¹⁸⁷ *Id.*, Condition 18. The Applicant notes that Stipulation Condition 18 is identical to Staff Report Condition 18 (Staff Ex. 1 at 53).

¹⁸⁸ App. Ex. 1 at 36, Ex. P; App. Ex. 32 at 7.

Certification under Section 401 of the CWA; and an Ohio EPA Isolated Wetland/Ephemeral Stream Permit under R.C. 6111.021 and 6111.03 (J).¹⁸⁹

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).

Staff confirmed that this criterion has been met and the Board can determine that the facility is consistent with regional plans for expansion of the electric power grid.¹⁹⁰

The regional plans for expansion of the electric power grid serving Ohio are determined by PJM. PJM performed studies analyzing the Project, the proposed POI to the electric power grid, and the related impacts on the grid, as well as for compliance with reliability criteria.¹⁹¹ PJM issued its Feasibility Report and System Impact Report for the Project on January 31, 2020 and August 2020, respectively. The Feasibility Report determined that the extension of the 345 kilovolt (“kV”) bus, installation of one 345 kV circuit breaker, and installation of protection and control equipment will be necessary to accommodate the interconnection of the Project at the AEP substation, with the Applicant’s costs estimated to total \$2.8 million. The System Impact Report confirmed the expansions specified in the Feasibility Report and updated the anticipated total interconnection cost for the Project to \$3.5 million.¹⁹² Birch Solar will pay these costs and has committed to ensure that these improvements are made prior to initial generation of the Project.

The results of PJM’s reports shows that the facility’s operation will be consistent with the regional plans for expansion of the electric grid and the interconnected utility systems, and that the facility will serve the interest of the electric system’s economy and reliability.¹⁹³ Though perhaps not as visible to the public, electric grid expansion serves the local, state, and regional public.

The record reflects that the facility will connect to the regional electric grid through AEP’s existing Southwest Lima Substation.¹⁹⁴ The large size of the Southwest Lima Substation and surrounding infrastructure is due to the current manufacturing and industrial nature of the existing areas including a large petrochemical industry. Birch entered into an Interim Interconnection

¹⁸⁹ *Id.*

¹⁹⁰ Staff Ex. 1 at 40.

¹⁹¹ App. Ex. 1 at 21, Ex. F; App. Ex. 30 at 13.

¹⁹² App. Ex. 1 at 21-22

¹⁹³ App. Ex. 30 at 13.

¹⁹⁴ App. Ex. 1 at 7, 13, 21.

Service Agreement (“ISA”) with PJM and AEP in August 2021. The final ISA will be executed once the Facilities Study is complete, which is anticipated in the third quarter of 2022.¹⁹⁵ Birch Solar will not commence construction of the facility until it has an executed Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM.¹⁹⁶

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).

Staff confirmed that this criterion has been met and the Board can determine that the facility complies with the air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation.¹⁹⁷

The Application addresses air pollution topics and demonstrates that there is no pollutant emissions associated with the Project and no emissions are created by the operations of the Project.¹⁹⁸ In fact, the Project will lend toward improving the overall air quality as it facilitates a shift from polluting generation facilities to non-polluting clean energy.¹⁹⁹

Further, there are no aviation facilities located within a 5-mile radius of the Project Area. Therefore, the Project is not subject to any aeronautical requirements.²⁰⁰

In addition, the Project will generate only small amounts of non-hazardous waste such as cardboard or packaging, which will be recycled or disposed of offsite.²⁰¹ The Project will only utilize Tier 1 equipment suppliers to ensure the solar modules are not hazardous to people or the environment. The Project requires the panels to have passed TCLP testing to ensure the modules are categorized as non-hazardous under federal law and could be disposed of in regular landfills just like household garbage.²⁰² However, the Applicant is committed to recycling all solar panels from the Project, which includes any panels damaged during construction, operations, and all

¹⁹⁵ App. Ex. 30 at 13.

¹⁹⁶ Jt. Ex. 1 at 5-6, Condition 13. The Applicant notes that Stipulation Condition 13 is identical to Staff Report Condition 13 (Staff Ex. 1 at 52).

¹⁹⁷ Staff Ex. 1 at 43.

¹⁹⁸ App. Ex. 1 at 1, 33-35.

¹⁹⁹ *Id.* at viii, 1.

²⁰⁰ *Id.* at 42, 54; App. Ex. 30 at 14.

²⁰¹ App. Ex. 1 at 11, 42; App. Ex. 30 at 14.

²⁰² App. Ex. 1 at 9, 42-44; App. Ex. 30 at 14.

panels at the end of their useful life/decommissioning of the Project.²⁰³ In accordance with Stipulation Condition 39, at the time of solar panel end of life and if the Applicant is unable to recycle the panels, retired panels marked for disposal shall be sent to an engineered landfill with various barriers.²⁰⁴

The Project has no water pollutants associated with the operations of the Project.²⁰⁵ Given the non-toxic nature of solar energy facilities and the low impact construction will have on the soil and groundwater features, Birch Solar does not anticipate any impacts to public or private wells or water supplies during the construction and operation of the Project.²⁰⁶

Point source aquatic discharges to streams or wetlands will not occur during construction of the Project. To minimize the potential for accidental spills during construction, the Applicant has committed to develop a SPCC Plan to manage the storage of hazardous materials on site, which consists solely of diesel fuel for construction trucks and equipment. The SPCC Plan will describe the proper methods to contain and mitigate a spill, and the agencies to notify, in the rare event that a spill occurs. The Applicant will implement the measures described in the SPCC Plan and monitor for aquatic discharges during construction.²⁰⁷

There is no point source water discharge associated with the operation of the Project; therefore, no NPDES permits will be necessary for operations. While there is no NPDES permit needed for operation of the Project, Birch Solar has still committed, as memorialized in Stipulation Condition 21, to implement Ohio EPA Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays to minimize storm water runoff during operation of the Project.²⁰⁸ The SWPPP BMPs will also minimize groundwater impacts from the Project.²⁰⁹

While there will be some particulate emissions from engine exhaust and fugitive dust generation during construction from the operation of heavy construction equipment and travel of vehicles on unpaved roads during construction, these situations will be temporary and limited to active areas of construction. Therefore, this will not significantly impact air quality. Fugitive dust

²⁰³ *Id.*

²⁰⁴ *Id.*; Jt. Ex. 1 at 12, Condition 39. The Applicant notes that Stipulation Condition 39 is identical to Staff Report Condition 42 (Staff Ex. 1 at 57).

²⁰⁵ App. Ex. 1 at 50; App. Ex. 30 at 14.

²⁰⁶ App. Ex. 1 at 49-50; App. Ex. 30 at 14.

²⁰⁷ App. Ex. 1 at 37-38.

²⁰⁸ *Id.* at 38, 40; App. Ex. 30 at 14; Jt. Ex. 1 at 7, Condition 21. The Applicant notes that Stipulation Condition 21 is identical to Staff Report Condition 21 (Staff Ex. 1 at 53).

²⁰⁹ App. Ex. 1 at 38.

emissions during site preparation and construction will be mitigated using BMPs, including using water to wet down bare soil surfaces.²¹⁰

Post-construction runoff control will be implemented with BMPs, as required, in order to ensure that the Project does not generate more storm water runoff than existed during pre-construction conditions. The vegetation planted under the solar panels, coupled with the spacing of the trackers and gaps in between the solar modules creates a pervious surface that allows storm water to infiltrate back into the ground rather than creating sheet flow as can occur from impervious surfaces like paved roads or parking lots.²¹¹

Further, as detailed above, Birch Solar will comply with Stipulation Conditions 29 and 30 addressing repair and replacement of drain tile.²¹² As detailed further herein, as part of Birch Solar's commitment to work with the community and the counties, Birch Solar has executed a DRUMA with Auglaize County that addresses drainage.²¹³ In addition, Birch Solar entered into the County MOU with Allen County confirming that both Birch Solar and Allen County intend to execute a mutually agreed upon DRUMA.²¹⁴

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).

As the Board recently confirmed in the *ATSI Case*:

consideration of public interest, convenience, and necessity requires a balancing analysis as to the public's interest in energy generation that ensures continued utility service and the prosperity of the state versus the local public's interest in ensuring a process that allows for local citizen input, and the consideration of impacts to natural resources. As part of the Board's responsibility under R.C. 4906.10(A)(6) to determine that all approved projects will serve the public interest, convenience, and necessity, we must balance projected benefits against the magnitude of potential negative impacts on the local community. (*emphasis added*)²¹⁵

²¹⁰ *Id.* at 35.

²¹¹ *Id.* at 38.

²¹² App. Ex. 30 at 14; Jt. Ex. 1 at 9-10, Conditions 29-30. The Applicant notes that Stipulation Conditions 29-30 are found in Staff Report Conditions 30-31 (Staff Ex. 1 at 55-56); however, Stipulation Condition 30 enhances Staff Report Condition 31 (Staff Ex. 1 at 55-56).

²¹³ App. Ex. 1 at 31; App. Ex. 30A at 3; Jt. Ex. 1, Att. A.

²¹⁴ App. Ex. 30A at 4, Att. SM-1.

²¹⁵ *ATSI Case* at 16 ¶ 58.

In the *ATSI Case*, the Board emphasized that the “[p]ublic interest, convenience, and necessity should be examined through a broad lens.”²¹⁶

Notwithstanding that support for the Project is not unanimous, Birch Solar has gone above and beyond any commitments made by companies in previous cases heard by the Board by addressing and mitigating any valid concerns about the Project. Thus, when carrying out its mission to “support sound energy policies ... for the benefit of the Ohio citizens, promoting the state’s economic interests, and protecting the environment and land use (*emphasis added*),”²¹⁷ there is no doubt that the positive benefits from this Project that will be realized by the community and the state of Ohio at large far outweigh the baseless informal complaints.

Importantly, with the numerous commitments made by Birch Solar, the realization of the Birch Solar Project will bring innumerable benefits to the local community and the state of Ohio. Those benefits include, but are not limited to:

- Neighboring Landowner Financial Benefit program for any home within 500 feet of the solar panels with the benefits ranging from \$10,000 to \$50,000 depending on proximity, and a Home Value Agreement for homes most affected by the Project, in each case to protect neighbors against even the *potential* loss in property values due to the proximity of the Project to their homes; neither of these landowner benefit programs require endorsement, confidentiality, or support of the Project by the landowner;²¹⁸
- Maintaining the natural environment of the area and conserving habitats by not removing wooded areas or wetlands, with generous setbacks from any wetland areas to ensure they are undisturbed;²¹⁹
- Partnering with The Ohio State University, College of Food, Agricultural and Environmental Sciences on research relating to honey bee foraging in the Ohio agroecosystem;²²⁰
- Optimizing the Project engineering to maintain 300 MW capacity while reducing the land needed for the facility to 1,410 acres, which remains inside the original planned pre-application boundary, which is a reduction of 1,190 acres from the acreage presented at the public information meetings in November 2020;²²¹

²¹⁶ *Id.* at 31 ¶79.

²¹⁷

<https://opsb.ohio.gov/#:~:text=Our%20mission%20is%20to%20support,the%20environment%20and%20land%20use.>

²¹⁸ App. Ex. 13; App. Ex. 30 at 7.

²¹⁹ App. Ex. 1 at 19.

²²⁰ *Id.* at 63.

²²¹ *Id.* at 2.

- Consistency with the regional plans for expansion of the electric grid and the interconnected utility systems, thus, the facility will serve the interest of the electric system's economy and reliability;²²²
- A safe use of acreage which currently houses dozens of abandoned wells that could pose a threat to the local community if developed for uses with more human density, including housing, commercial, or industrial use;²²³
- Positive economic and socioeconomic impacts of development to the state of Ohio and the local community;²²⁴
- Increased tax base and school funding;²²⁵
- Providing tax benefits, including approximately \$94.5 million during the life of the Project;²²⁶
- Cleaner electric grid;
- Improved air quality and decreased premature deaths due to increased emission-free generation;²²⁷
- Decreased breathing problems caused by carbon emissions;²²⁸
- Benefits to the state of Ohio by increasing generation capacity, increasing emission-free energy generation, and diversifying sources of generation;²²⁹
- Enabling Ohio corporations to satisfy their corporate renewable goals and initiatives, making Ohio a more attractive location to do business leading to job creation and increased economic activity, and an overall stronger economy, in Ohio;
- Funding a \$500,000 community fund for Allen and Auglaize Counties;²³⁰

²²² App. Ex. 30 at 13.

²²³ App. Ex. 22; App. Ex. 35 at 6.

²²⁴ App. Ex. 1 at 73.

²²⁵ *Id.*

²²⁶ *Id.* at 28, 73, Ex. G.

²²⁷ *Id.* at 1, 33-35.

²²⁸ *Id.* at 33-35.

²²⁹ *Id.* at 1.

²³⁰ App. Ex. 30 at 7.

- Continuing agricultural use of the land, instead of additional housing or commercial development, as desired in the Shawnee Comprehensive Plan;²³¹
- Expanding grazing and farming operations on the Project Area, which furthers the agricultural nature of the area and allows for additional economic income to local farmers;²³²
- Because of the setbacks on Breese Road, the participating landowners will be able to continue to farm the land, further reducing the views of the Project during the growing season, and crops on adjacent lands can continue to be planted and will provide additional screening of the Project during the growing season;²³³
- Benefitting the long-term soil health of the Project Area;²³⁴
- Maintaining vegetation and revegetation plans that focus on biodiversity of plant and pollinator species and will ensure that, throughout the life of the Project, a mix of native and pollinator seeding will increase biodiversity and soil nutrients of the soil under the Project site and has the potential to increase pollinators on adjacent farmed parcels;²³⁵
- Supporting farmer's property rights and enabling landowners to choose the productive use of their private property;²³⁶
- Working with the community and local officials and coordinate any updates, repairs, and transportation routes with the local entities to ensure that all is up to the local government standards of repair.²³⁷ Consistent with the Birch Solar/Auglaize County DRUMA and the County MOU with Allen County;²³⁸
- Using farm fields productively to diversify the income sources of many area families and provide them with consistent and dependable revenue;²³⁹
- Creating jobs and provide employment opportunities throughout the region and the state;²⁴⁰

²³¹ App. Ex. 1 at 72.

²³² *Id.* at 11, 63.

²³³ *Id.* at 2, 17, 19.

²³⁴ *Id.* at 83.

²³⁵ *Id.* at 11, Ex. D; App. Ex. 9; App. Ex. 30 at 17.

²³⁶ *Id.* at 10.

²³⁷ App. Ex. 1 at 31.

²³⁸ App. Ex. 30A at 3-4, Att. SM-1; Jt. Ex. 1, Att. A.

²³⁹ App. Ex. 1 at ix.

²⁴⁰ *Id.* at 1, 26; App. Ex. 30 at 9.

- Lowering energy prices for consumers; and
- Positively impacting the state of Ohio’s economic competitiveness for attracting business and investment.²⁴¹

Specifically, construction of the Project will create indirect and direct benefits, including over 400 full-time jobs.²⁴² During the operational phase of the Project, Birch Solar estimates that the 5 to 10 full-time onsite jobs could result in an additional 19 to 33 indirect and induced jobs annually.²⁴³ Further, the Applicant’s estimated annual O&M budget of between \$348,000 and \$697,000 will result in an annual estimated economic output of between \$1.1 and \$1.3 million.²⁴⁴

It is also significant to emphasize the benefit that the Project will engender by “allow[ing] farmers to use their land in a more sustainable way both environmentally and economically.” The owners of those family farms in the Project Area will not continue to be subject to the ups and downs of farming and will have a consistent income for the life of the Project.²⁴⁵ In the Staff Report, Staff agrees, stating:

[i]mportantly, the project is consistent with agricultural industry support, in that the facility would provide supplemental income to farmers and the land could be returned to agricultural production upon decommissioning. Additionally, the Applicant is planning a sheep grazing program to control vegetation at the site; thus, maintaining agricultural land use concurrent with electrical energy production. By installing the facility onto leased land, the opportunity for agricultural preservation is maintained. Associated farming activities would require only minor land use modifications, aside from temporary disruptions that would occur during construction.²⁴⁶

Since day one, Birch Solar’s approach with the Project has been to “work with the local community and neighbors to ensure that it develops and constructs the Project as a good neighbor and long-term member of the local community.” After Birch Solar’s initial determination on the possibility of interconnection with the grid, it began speaking with local farmers and, over the course of a year, created the initial Project boundary. Birch Solar spoke with the local community members, as well as government officials and other stakeholders, and met with the local

²⁴¹ App. Ex. 1 at 73.

²⁴² *Id.* at 27, Ex. G; App. Ex. 30 at 10.

²⁴³ App. Ex. 1 at 27, Ex. G; App. Ex. 32 at 5.

²⁴⁴ App. Ex. 1 at 27, Ex. G; App. Ex. 32 at 5.

²⁴⁵ App. Ex. 30 at 10.

²⁴⁶ Staff Ex. 1 at 13.

community in both in-person and virtual meetings on numerous occasions.²⁴⁷ In addition, throughout the development of the Project, the Applicant spoke at over a dozen county or local government and stakeholder meetings.²⁴⁸ The questions and concerns raised at the local meetings were very important to Birch Solar and they were taken into consideration by Birch Solar in determining the facility design and layout that would be included in the Application filed with the Board.²⁴⁹ Birch Solar implemented numerous requests from the community subsequent to their feedback, including, but not limited to: additional setbacks from residences and well-traveled roads; additional screening; revisions to the Project layout; a home value guarantee program, compensation to adjacent neighbors for potential impacts; and aesthetic fencing styles.

Moreover, increased setbacks along roadways such as Breese Road do not interfere with any County infrastructure plans for sewer or water extensions.²⁵⁰ In reality, the Project layout balances Shawnee Township's Comprehensive Plan's desire for a continued agricultural aesthetic – through setbacks, agricultural fencing, and grazing - as well as the desire for growth, but continues to allow the land to be agricultural in nature, and fully revert back to row cropping, at the end of the life of the Project. Most other uses for this land, homes or industrial, would not allow for the continued farm presence after the life of the Project.²⁵¹ In the Staff Report, Staff agreed that the Project was consistent with the Shawnee Township's Comprehensive Plan, stating:

Staff opines that the construction and operation of the proposed solar facility is consistent with the comprehensive plan's general goals in several respects, namely that: agricultural land use will coexist with the proposed facility, agricultural land is preserved for future use, urban and residential expansion are aided by expected economic inputs and simultaneously not hindered by significant increases in demand for public services.²⁵²

Since 2020, Birch Solar has been communicating and working with the Auglaize County Commissioners, the Logan Township Trustees, the Allen County Commissioners, and the Shawnee Township Trustees. Initial outreach began with introductions, sharing of boundaries and target areas for development, and walking through typical development timelines. The government officials were invited to the November 2020 Open House Birch Solar held for the community.

²⁴⁷ App. Ex. 30 at 6, 10.

²⁴⁸ *Id.* at 9.

²⁴⁹ *Id.* at 6.

²⁵⁰ *Id.* at 15.

²⁵¹ App. Ex. 1 at 72; App. Ex. 30 at 15-16.

²⁵² Staff Ex. 1 at 13.

Additionally, Birch Solar attended county commissioner meetings at general milestones of the permitting process. Feedback from the counties was that drainage changes, updates, and concerns were a top priority for the county commissioners, as well as the public. To address these issues, on May 5, 2022, the Auglaize County Commissioners adopted the DRUMA and the agreement was executed between Birch Solar and Auglaize County.²⁵³ Attachment A to the Stipulation is a letter from Auglaize County dated May 12, 2022, memorializing that the Auglaize County Commissioners and the Logan Township Trustees request that, should the Certificate be issued to Birch Solar by the Board, the conditions contained in the Stipulation be part of the permit.²⁵⁴ In addition, Birch Solar entered into the County MOU with the Allen County Commissioners, which was approved by the Allen County Commissioners by resolution dated May 12, 2022.²⁵⁵

Similar to all government entities listed above, the Project had initial outreach to the Shawnee Township Trustees, meeting with Trustees in person and virtually. While all other affected local government entities have continued to engage with Birch Solar, offering changes to layout, construction practices, or other Project feedback, Shawnee Township has not participated. While Logan Township participated in DRUMA negotiations through Auglaize County, Shawnee Township did not agree to engage in any negotiations on a DRUMA. Birch Solar, both within and outside of the Stipulation process, asked to meet with Shawnee Township Trustees numerous times; however, each time, it received either no response or a decline of the outreach offer. This is a very unfortunate outcome and not the preference of Birch Solar. While Birch Solar has continued to try to address any concerns raised and engage in constructive conversations with all local entities and community members, Shawnee Township has continued to oppose the Project without any attempt to remedy its concerns. Despite the refusal of Shawnee Township Trustees to participate in any negotiations with Birch Solar, many concerns that were originally raised by Shawnee Township were remedied through additional setbacks, visual barriers from vegetation, drainage commitments in the Application and with local entities, along with other Project adaptations. As evidenced by the other intervenors and the Stipulation, Birch Solar has shown that it is willing to negotiate, change, and adapt the Project to mitigate impacts to the local community and would welcome such conversation with the Shawnee Township Trustees whenever they are willing to communicate and contribute to the conversation.

²⁵³ App. Ex. 30A at 3.

²⁵⁴ App. Ex. 30 at 3; Jt. Ex. 1, Att. A.

²⁵⁵ App. Ex. 30A at 4, Att. SM-1.

As detailed above, Birch Solar believes that the views of the community are very important; thus, Birch Solar has worked diligently with all stakeholders in the community to respond to and address any issues and concerns that were raised. As reflected through the commitments made by Birch Solar in the Application and the Stipulation, the voice of the community has time and time again been taken into consideration when crafting the Project details and arriving at the Certificate conditions contained in the Stipulation. Due to Birch Solar's extensive track record of working with the community, and the record as reflected in the hearing testimony by community members and the Local Community Coalition, it is proven that the Project serves the public interest.²⁵⁶ Legitimate local concerns should be, and have been, considered and closely evaluated; however, baseless local opposition without supporting evidence on the record should not determine the outcome of the Board's decision in this matter. Particularly when the local opposition's concerns are remedied by the Project's Application, Stipulation, commitments to the local community, and guidance by the state of Ohio Department of Health.

Prior to filing the Application, Birch Solar had polling studies conducted to determine the views of the community on the Project.²⁵⁷ The results of the polling indicated that 2 in 3 Ohio voters agree that it is important for the state of Ohio to bring new sources of clean energy and attract major businesses to the state, and 3 in 4 Ohio voters say investing in renewable energy like wind or solar can help Ohio reduce emissions and benefit the local economy.²⁵⁸ When polling the Lima, Ohio area, 7 in 10 voters agreed it is important to bring new sources of clean energy to Ohio and nearly three quarters of local voters in the community saw solar farms as beneficial to the economy and environment. In addition, 59% of voters support solar development and welcome it in their community.²⁵⁹

As reflected in the Application and the Stipulation, the evidentiary record in this case supports a determination that all valid concerns, issues, and impacts raised with regard to the Project have been addressed and fully mitigated. In fact, Birch Solar has gone above and beyond the commitments made by other projects when working with the community and the parties in this case. These commitments that are noted throughout the Application and Stipulation and are summarized herein include, but are not limited to:

²⁵⁶ *Id.* at 6.

²⁵⁷ *Id.* at 5-6, Att. SM-2, Att. SM-3

²⁵⁸ App. Ex. 1 at 1, 33-35; App. Ex. 30A, Att. SM-2.

²⁵⁹ App. Ex. 30A, Att. SM-3.

- Maintaining the reduced Project Area that was designed based on public feedback to reflect a smaller, more condensed design that was less impactful to the local community, resulting in: removing parcels north of Breese Road; 300-foot panel setbacks from Breese Road; and panel setbacks starting at 300 feet from homes;²⁶⁰
- Ensuring the maximum height of the modules will be no more than 10 feet;²⁶¹
- Using only crystalline silicon modules from a Tier I manufacturer that has passed the USEPA TCLP;²⁶²
- Using discreet 6-foot cedar post farm fence around the Project to match the aesthetic of the surrounding area;²⁶³
- Planting tens of thousands of evergreen trees and shrubs around the Project in external facing areas to protect residents' viewsheds and eliminate or limit Project visibility;²⁶⁴
- Employing the Applicant's customary best project practices that are beyond industry standards or permit requirements and that address other community concerns;
- Recycling all solar panels;
- Funding a \$500,000 community fund for Allen and Auglaize Counties;²⁶⁵
- Expanding grazing and farming operations on the Project Area, which furthers the agricultural nature of the area and allows for additional economic income to local farmers;²⁶⁶
- Maintaining liability insurance;²⁶⁷
- Providing a decommissioning plan and bond ensuring the financial means to remove the equipment and return the land to substantially its current condition;²⁶⁸

²⁶⁰ App. Ex. 30 at 8.

²⁶¹ App. Ex. 1 at 8.

²⁶² *Id.* at 9, 42-44; App. Ex. 36 at 4

²⁶³ App. Ex. 1 at 9, 19, 42.

²⁶⁴ *Id.* 8, 19, 82, Ex. U; App. Ex. 11 at 8; App. Ex. 30 at 8.

²⁶⁵ App. Ex. 30 at 7.

²⁶⁶ App. Ex. 1 at 11, 63.

²⁶⁷ *Id.* at 30, Ex. I.

²⁶⁸ *Id.* at 32, Ex. B; App. Ex. 30 at 17; Jt. Ex. 1 at 11, Condition 38. The Applicant notes that Stipulation Condition 38 is identical to Staff Report Condition 41 (Staff Ex. 1 at 57); however, the Stipulation Condition enhanced the Staff Report Condition to include a specific timeframe for removal of the equipment during decommissioning.

- Maintaining vegetation and revegetation plans that focus on biodiversity of plant and pollinator species and will ensure that, throughout the life of the Project, a mix of native and pollinator seeding will increase biodiversity and soil nutrients of the soil under the Project site and has the potential to increase pollinators on adjacent farmed parcels;²⁶⁹
- Preventing establishment or propagation of noxious and invasive weeds during the implementation of pollinator-friendly plantings or other revegetation, as well as during construction, operation, and decommissioning;²⁷⁰
- Ensuring: functional drain tile both on and off the Project; control of stormwater runoff; installation of beneficial vegetation; avoiding, where possible, or minimize to the extent practicable, any damage to functioning field drainage systems and soils; drain tile is promptly repaired or rerouted to at least the original conditions or modern equivalent; 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 nonrepair of the landowner's field tile and the damaged field tile does not route directly onto or into an adjacent parcel; and ensuring parcels near the Project are protected by either documenting benchmark conditions of surface and subsurface drainage systems prior to construction, locating and replacing all field tile drainage systems, or, in addition to prompt repair, compensating parcel owners affected by damage;²⁷¹
- Developing a SWPPP, a SPCC, and a Frac-out Plan;²⁷²
- Complying with the Ohio EPA's National Pollutant Discharge Elimination System Construction General Permit;²⁷³
- Constructing the facility in a manner that incorporates post-construction management under the General Permit in accordance with the Ohio EPA's Guidance on Post-Construction Storm Water Controls of Solar Panel Arrays;²⁷⁴

²⁶⁹ App. Ex. 1 at 11, Ex. D; App. Ex. 9; App. Ex. 30 at 17.

²⁷⁰ Jt. Ex. 1 at 8, Condition 24. The Applicant notes that Stipulation Condition 24 enhanced Staff Report Condition 22 (Staff Ex. 1 at 53).

²⁷¹ Jt. Ex. 1 at 9-10, Conditions 29-30. The Applicant notes that Stipulation Conditions 29-30 are identical to Staff Report Conditions 30-31 (Staff Ex. 1 at 55); however, Stipulation Condition 30 enhanced the Staff Report Condition 31 (Staff Ex. 1 at 55).

²⁷² App. Ex. 1 at 37, 49-50, 61, Ex. L.

²⁷³ *Id.* at 35-36.

²⁷⁴ *Id.* at 5; Jt. Ex. 1 at 6, Condition 22.

- Maintaining setbacks that are sufficient to allow stormwater and sewage infrastructure to be placed near the Project so the Project does not have negative impacts on county infrastructure improvements;
- Maintaining a minimum setback of 50 feet from any oil and gas well or oil and gas well related features and visually monitor identified historical oil and gas well locations within the Project Area at least once every 90 days;²⁷⁵
- Avoiding impacts to any threatened and endangered species with the implementation of avoidance measures;²⁷⁶
- Limiting construction activities as set forth in Stipulation Condition 27;²⁷⁷
- Working with the community and local officials and coordinate any updates, repairs, and transportation routes with the local entities to ensure that all is up to the local government standards of repair, consistent with the Birch Solar/Auglaize County DRUMA and the County MOU with Allen County;²⁷⁸
- Maintaining an Emergency Response Plan for the Project and training and equipping local responders;²⁷⁹
- Providing tax benefits, including approximately \$94.5 million during the life of the Project;²⁸⁰
- Implementing a complaint resolution process;²⁸¹
- Creating jobs and providing employment opportunities throughout the region and the state.²⁸²

Birch Solar has also committed to applying to be a Qualified Energy Project eligible for a payment in lieu of taxes (“PILOT”) with the ODOD. If approved, 80% of the employees hired to

²⁷⁵ *Id.* 11, Conditions 34, 36. The Applicant notes that Stipulation Conditions 34 is identical to Staff Report Condition 38 (Staff Ex. 1 at 56). The Applicant notes that Stipulation Condition 36 is not required by the Staff’s recommendation in the Staff Report; thus, Stipulation Condition 36 enhances the requirements recommended by Staff.

²⁷⁶ App. Ex. 1 at 62; App. Ex. 33 at 5; Jt. Ex. 1 at 7, Conditions 18 and 20. The Applicant notes that Stipulation Conditions 18 and 20 are identical to Staff Report Conditions 18 and 20 (Staff Ex. 1 at 53).

²⁷⁷ Jt. Ex. 1 at 9, Condition 27.

²⁷⁸ App. Ex. 1 at 31; App. Ex. 30A at 3-4, Att. SM-1; Jt. Ex. 1, Att. A.

²⁷⁹ App. Ex. 1 at 44-45; App. Ex. 11.

²⁸⁰ App. Ex. 1 at 28, 73, Ex. G.

²⁸¹ *Id.* at 29, Ex. H; App. Ex. 30 at 15; Jt. Ex. 1 at 8-9, Condition 26. The Applicant notes that Stipulation Condition 26 is identical to Staff Report Condition 27.

²⁸² App. Ex. 1 at 1, 26; App. Ex. 30 at 9.

construct the Project will live in the state of Ohio.²⁸³ Moreover, with the PILOT, the tax revenues received within the Project Area will increase over 10 times to approximately \$2.7 million annually for approximately \$94.5 million throughout the life of the Project.²⁸⁴

Shawnee Township resident, Frank Caprilla, a Capital Campaign Manager of the Shawnee Football Parents Association, a member of the Community Advisory Team for the Shawnee Local Schools Building Project, and a parent and volunteer at Shawnee Local Schools in Shawnee Township, provided details in his testimony provided at the evidentiary hearing emphasizing the specific benefits the PILOT money will have on the local school district. Mr. Caprilla stated that:

the Project is estimated to increase annual revenues to the school system by approximately \$1 million per year, the benefit to the district will be approximately \$30 million over 30 years. However, if the money is used for building new facilities, which is a legitimate use of the funds, the impact would be even greater. The State of Ohio provides a 29% match to local funds designated for these building projects. This means that the full impact of the Project on the school system will be in excess of \$42 million. Again, these are significant sums, and given the state of our buildings, greatly needed.²⁸⁵

At the local public hearing, the superintendent of the Shawnee School District explained the district's support of the PILOT stating the "money would go directly to the school, we wouldn't lose any of our local state funding, and that money would be able to be allocated for gifted [students], for programs that meet student needs, for additional resources that our kids desperately need."²⁸⁶

Moreover, Birch Solar has developed and will implement a Complaint Resolution Plan throughout construction and operation of the Project. The Complaint Resolution Plan provides a framework where community members can voice their concerns directly to Birch Solar. The plan establishes an effective process for the identification and resolution of complaints, concerns, or comments voiced by members of the community and provides that Birch Solar will receive complaints via hotline, at the Project's O&M office, and in written form through mail or email.²⁸⁷ Further, consistent with Stipulation Condition 26, no less than 14 days prior to start of construction,

²⁸³ App. Ex. 1 at 27, Ex. G; App. Ex. 30 at 10.

²⁸⁴ App. Ex. 1 at 28, 73, Ex. G; App. Ex. 30 at 10; App. Ex. 32 at 5.

²⁸⁵ Local Community Coalition Ex. 5 at 3.

²⁸⁶ November 4, 2021, Public Hearing Transcript (filed Nov. 10, 2021) at 93.

²⁸⁷ App. Ex. 1 at 29, Ex. H; App. Ex. 30 at 11.

Birch Solar will send notification and the Complaint Resolution Plan to: affected property owners and tenants, including those individuals who were provided notice of the public informational meetings; residences, airports, schools, and libraries located within one mile of the Project Area; parties to this case; county commissioners, township trustees, and emergency responders; and anyone who has requested updates regarding the Project. These notices will provide an overview of construction schedules and contact information for Birch Solar.²⁸⁸ Similar notices will also be sent out prior to commencement of facility operation. Any complaints received will be entered into an electronic complaint log and assigned a point of contact within one week of receipt. The Project will resolve complaints within 30 days, unless extenuating circumstances exist.²⁸⁹ Birch Solar will submit to Staff and file in the docket, a complaint summary on a quarterly basis through the first five years of operation.²⁹⁰

Birch Solar is committed to securing appropriate levels of liability insurance during development, construction, operation, and decommissioning of the Project.²⁹¹ In addition, the terms of the leases with the participating landowners require Birch Solar to provide insurance for all Project components and to indemnify the landowner and other third parties from liability claims resulting from any gross negligence, willful misconduct, or breach of the lease agreement by Birch Solar or its agents during construction and operation of the Project.²⁹²

Further, Birch Solar committed to obtaining a performance bond for decommissioning of the Project at the end of its useful life, where Birch Solar is the principal, the insurance company is the surety, and the Board is the obligee.²⁹³ Birch Solar will submit an updated decommissioning plan that includes provisions, among others, that:

- Require a timeline for removal of the majority of the equipment as defined by 60% of the panel and racking equipment quantities, with all decommissioning to be finished within 18 months after the facility ceases operations; require the performance bond be posted prior to construction;

²⁸⁸ *Id.*; Jt. Ex. 1 at 8-9, Condition 26. The Applicant notes that Stipulation Condition 26 is identical to Staff Report Condition 27 (Staff Ex. 1 at 54).

²⁸⁹ *Id.*

²⁹⁰ App. Ex. 1, Ex. H; Jt. Ex. 1 at 8-9, Condition 26. The Applicant notes that Stipulation Condition 26 is identical to Staff Report Condition 27.

²⁹¹ App. Ex. 1 at 30, Ex. I.

²⁹² *Id.* at 30.

²⁹³ *Id.* at 32, Ex. B; App. Ex. 30 at 17; Jt. Ex. 1 at 11, Condition 38. The Applicant notes that Stipulation Condition 38 is identical to Staff Report Condition 41 (Staff Ex. 1 at 57); however, the Stipulation Condition enhanced the Staff Report Condition to include a specific timeframe for removal of the equipment during decommissioning.

- Secure Birch Solar’s commitment to monitor the Project site for at least one additional year after completion of decommissioning to ensure successful vegetation and rehabilitation;
- Ensure Birch Solar will coordinate repair of public roads and return the land to substantially its preconstruction condition;
- 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 retained by Birch Solar.²⁹⁴

At the outset of the procedural schedule and prior to the issuance of the Staff Report, several stakeholders, including the Auglaize County Commissioners, the Logan Township Trustees, the Shawnee Township Trustees, the Kalnins, and ABS, intervened in the case stating their concerns. However, despite concerns by some of those in the local community, the Staff Report did not recommend denial of the Certificate based on the public interest criterion.²⁹⁵ The record shows that, before the evidentiary hearing commenced, all but one of these intervenors had either withdrawn from the case or were neutral Signatory Parties on the Stipulation.²⁹⁶ The one remaining intervenor, Shawnee Township Trustees, while intervenors in the case, remained silent throughout the pendency of the case and did not submit an issues list or any evidence on the record opposing the Project. Nonetheless, Staff witness O’Dell testified at the evidentiary hearing that there was “overwhelming public opposition” and thus, the public interest was not met, despite there being no change in circumstances between Staff Report and the evidentiary hearing that justifies Staff’s reversal from the Staff Report.²⁹⁷ For example, when questioned by the ALJ at the

²⁹⁴ App. Ex. 1 at 32, Ex. B; App. Ex. 30 at 17; Jt. Ex. 1 at 11, Condition 38. The Applicant notes that Stipulation Condition 38 is identical to Staff Report Condition 41 (Staff Ex. 1 at 57); however, the Stipulation Condition enhanced the Staff Report Condition to include a specific timeframe for removal of the equipment during decommissioning.

²⁹⁵ Staff Ex. 1 at 47.

²⁹⁶ On April 26, 2022, the Kalnins withdrew from this case stating that they had “come to a mutually satisfactory agreement and have resolved any prior disagreements or objections to the Project” (*See* Kalnins Notice of Withdrawal, Apr. 26, 2022). On May 16, 2022, ABS withdrew from this proceeding (*See* ABS Notice of Withdrawal, May 16, 2022). As Signatory Parties, the Auglaize County Commissioners and the Logan Township Trustees took no position on whether a Certificate should be issued for the facility, but requested the inclusion of the conditions in the Stipulation in any Certificate that is issued by the Board (*See* Jt. Ex. 1 at 2-3).

²⁹⁷ Staff Ex. 2 at 5.

hearing, Staff witness O'Dell confirmed that, at the time of filing the Staff Report, he had heard from the local government officials, but had not had any direct contact with them since the Staff Report was issued.²⁹⁸ So, the local government position was not a determining factor in the public interest determination for the Staff Report, but by the time the testimony was filed, it was, even though Staff had done no further investigation into the local officials' positions? Staff's position in their testimony at the evidentiary hearing must be mistaken as they also claim that the community was "one sided" in opposition to the Project.²⁹⁹ However, the Local Community Coalition that is comprised of numerous members of the community and IBEW Local 32 that is comprised of numerous stakeholders that work and reside in the area signed the Stipulation supporting approval of the Project. It is clear that Staff's decision to change its recommendation on the public interest criterion is neither looking at the Project with a "broad lens," as it is obligated to do, nor supported by the record in this case.

In his May 11, 2022 testimony, Staff witness O'Dell supported his recommendation that the Certificate be denied alleging opposition from elected officials serving the communities and claiming that "considering the above opposition filed in the docket and expressed at local public hearings, Staff recognizes that in this proceeding it has been especially prominent, one sided, and compelling."³⁰⁰ In truth, the only basis for Staff's recommendation of denial is the fact that local opposition, including letters from government officials, exists. However, recommending denial of the Project based solely on the existence of letters in opposition is contrary to the grandfathering provisions of SB 52. Moreover, as reflected in the testimony at the local hearing held on November 4, 2021, views from the community on the Project are not prominently one sided against the Project.³⁰¹ In fact, 5 local community witnesses provided testimony at the evidentiary hearing on behalf of the Local Community Coalition supporting the Project.³⁰² While concerns have been shared by government officials through letters filed in the comments section of the docket, those concerns have been responded to and mitigated by the commitments in the Application, as further heightened by the conditions in the Stipulation.

²⁹⁸ Tr. 1 at 63.

²⁹⁹ Staff Ex. 2 at 5.

³⁰⁰ *Id.*

³⁰¹ November 4, 2021, Public Hearing Transcript (Nov. 10, 2021).

³⁰² Local Community Coalition Exs. 1-5.

Staff’s recommended denial based on public interest is unfounded and without merit. Staff appears to be relying on a novel interpretation of R.C. 4906.10(A)(6). However, the Supreme Court of Ohio and the Board have held that R.C. 4906.10(A)(6) requires a broad analysis and consideration of whether a facility benefits the general public.³⁰³ In reviewing the public’s interest, to determine whether a particular project benefits the general public, the Board has considered various factors, including public interaction, economic benefits, public safety, energy generation, sound, electrical interference, and visual impacts.³⁰⁴ The Board has made it clear that it needs to consider the public’s interest in energy generation that ensures continued utility services and the prosperity of the state of Ohio. In doing so, the Board considers the impact on prosperity throughout Ohio and the public interest in reliable energy generation.³⁰⁵ Importantly, the Board has recently granted certificates to projects where local opposition outnumbered project proponents.³⁰⁶ In addition, the Board has granted certificates to projects even when unsubstantiated views from intervening township trustees are raised in opposition.³⁰⁷

An objective and thorough review of the record, including the findings in the Staff Report, the proponent testimony at the local public hearing, and the vast commitments made by Birch Solar both in the Application and through the comprehensive Stipulation, support a determination by the Board that the Project serves the public interest, convenience, and necessity.

³⁰³ *In re Application of Duke Energy Ohio, Inc.*, 158 Ohio St.3d 1501, 2020-Ohio-2803, 144 N.E.3d 438, at ¶ 30 (determining that division (A)(6) requires the Board to account for the “public” not in division (A)(1).); *See also In re Application of Duke Energy Ohio, Inc.*, Case No. 16-253-GA-BTX, Entry on Rehearing (Feb. 20, 2022) at ¶ 35 (“[t]he interests of the general public are fully considered under the public interest, convenience, and necessity criterion found in R.C. 4906.10(A)(6)”). *In re Application of Duke Energy Ohio, Inc.*, 166 Ohio St.3d 438, 2021-Ohio-3301, 187 N.E.3d 472.

³⁰⁴ *See, e.g., Cadence Solar Energy LLC*, 20-1677-EL-BGN, Opinion, Order, and Certificate (Nov. 18, 2021) at ¶¶ 107-111 (noting setbacks of 300 feet to nonparticipating homes, public safety, and public engagement efforts while also noting that roughly two-thirds of comments were opposed to the project but finding that many of subject areas addressed by commenters were addressed in Staff Report).

³⁰⁵ *In re Alamo Solar I, LLC*, Case No. 18-1578-EL-BGN, Opinion, Order, and Certificate (June 24, 2021) at ¶ 291 (“For example, this factor should consider the public’s interest in energy generation that ensures continued utility services and the prosperity of the State of Ohio”).

³⁰⁶ *See, e.g., Cadence Solar Energy LLC*, 20-1677-EL-BGN, Opinion, Order, and Certificate (Nov. 18, 2021) at ¶¶ 107-111 (noting setbacks of 300 feet to nonparticipating homes, public safety, and public engagement efforts while also noting that roughly two-thirds of comments were opposed to the project but finding that many of subject areas addressed by commenters were addressed in the Staff Report).

³⁰⁷ *See, e.g. In re Ross County Solar*, Case No. 20-1380-EL-BGN, Opinion, Order, and Certificate (Oct. 21, 2021) at ¶¶ 129, 135-36 (holding that despite the intervening township concerns about reduced property values, the project was not expected to decrease property values in the project area).

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).

The Application and the record in this case confirm that the Board can determine the impact of the facility on the viability as agricultural land of any land in an existing agricultural district.³⁰⁸

During operation of the Project, approximately 1,405 acres of agricultural land (approximately 1,036 acres within Allen County and 369 acres in Auglaize County) will be taken out of production in order to accommodate the Project facilities. This acreage represents approximately 0.5% of the land currently used for farming in Allen County and 0.3% of the land currently used for farming in Auglaize County. Of the agricultural land utilized for the Facility, approximately 784 acres is currently enrolled in the Agricultural District Program.³⁰⁹

The Applicant may incorporate sheep grazing into the operational phase of the Project. Sheep grazing is used in conjunction with native grass planting to provide additional agricultural opportunity on the land.³¹⁰ Pursuant to Stipulation Condition 12, Birch Solar will file its grazing plan, which will include: a map of the area to be utilized for sheep grazing; the seed mix for the site; the times of year when sheep grazing will occur; the stocking rate; how manure and deceased livestock will be managed; and to plan to comply with any applicable and lawful local, state, or federal rules or regulations.³¹¹

Further, Birch Solar is partnering with The Ohio State University, College of Food, Agricultural and Environmental Sciences on research relating to honey bee foraging in the Ohio agroecosystem. To facilitate this study, honey bee colonies will be established on the landscape in the Project Area by The Ohio State University and managed in collaboration with local beekeepers. Studies have shown that co-locating solar with pollinator friendly groundcover can expand habitat for the dwindling bee population and can also benefit local agriculture.³¹²

After the Project is decommissioned, the area can be returned to cultivated land. Compared to the current farming practices, during the life of the Project: the soil on the previously cultivated land will be allowed to rest; there will be reduction in soil erosion; and fewer chemicals and

³⁰⁸ Staff Ex. 1 at 48.

³⁰⁹ App. Ex. 1 at 82.

³¹⁰ *Id.* at 11, 62-62.

³¹¹ *Id.* at 83; Jt. Ex. 1 at 5, Condition 12. The Applicant notes that Stipulation Condition 12 is identical to Staff Report Condition 12 (Staff Ex. 1 at 52).

³¹² App. Ex. 1 at 63.

fertilizers will be utilized. Further, grazing and pollinator planting can increase biomass production, nitrogen content, soil carbon storage, and soil moisture – all beneficial to crop production when the land returns to cultivated lands.³¹³

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 Application and the record in this case confirm that the Board can determine the facility incorporates the maximum feasible water conservation practices.³¹⁴

The O&M building will install modern, efficient water fixtures based on local plumbing codes.³¹⁵ The only water used during operation of the Project for the facility components will be for limited cleaning of the solar modules. Due to the temperate climate in the area of the Project, it is anticipated that rain is sufficient to keep the solar modules clean. However, if cleaning of the modules is necessary, Birch Solar will work with O&M staff to arrange for a water truck to provide water for the cleaning effort.³¹⁶

With regard to the sheep grazing operation, water use and storage on site may be necessary during such operations and will be held in standard-sized agricultural troughs.³¹⁷

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 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.³¹⁸

³¹³ *Id.* at 83.

³¹⁴ Staff Ex. 1 at 49.

³¹⁵ App. Ex. 1 at 40-41.

³¹⁶ *Id.*; App. Exs. 11, 16.

³¹⁷ App. Ex. 1 at 41; App. Ex. 20.

³¹⁸ App. Ex. 30A at 7.

Serious deliberations and bargaining occurred during the discussions of the parties as evidenced by the all-inclusive Stipulation conditions that enhance and improve the recommendations made by Staff in the Staff Report. Serious deliberation and resolution of the issues and concerns raised by opponents of the Project are also evidenced by the withdrawal of the Kalnins and ABS from the proceeding. The only intervening party to the case that remains is Shawnee Township Trustees who chose to not engage despite the continued efforts of the Signatory Parties, and who did not file testimony or cross-examine any witnesses at the adjudicatory hearing.

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 extensively summarized herein, as a package, the Stipulation ensures that the construction and operation of the facility benefits the public interest, convenience, and necessity. Since the beginning of development, the Project has encouraged feedback, discourse, and engagement from the local community in Allen and Auglaize Counties. This feedback was used to change and adjust the Project. From the layout, to the well above average setbacks, to the Revegetation Plan, it is clear that Birch Solar has developed a Project that reflects the values and desires of the surrounding community. Additional contribution from Birch Solar in the form of non-profit contributions, agreement with the local governments and community involvement, also shows Birch Solar's long-term commitment to the local community. The Project will benefit the local and regional economy through jobs created during construction and operation in addition to new sources of tax revenue.³¹⁹ As detailed herein and throughout the record, the Stipulation mimics and enhances the recommended conditions proposed by Staff in the Staff Report; thus further benefitting the public interest by requiring the Project to meet certain requirements during construction and operation of the Project specifically designed to minimize impacts of the Project.³²⁰

Importantly, the Project is supported by a large contingency of the local community in Allen and Auglaize Counties. Those members of the community should be applauded for stepping forward and having their voices heard both at the local public hearing and through their

³¹⁹ App. Ex. 1 at 26.

³²⁰ App. Ex. 30A at 7.

involvement as intervenors in the proceeding. The Staff Report and Staff testimony ignores the positions and opinions so eloquently expressed by the proponent witnesses at the local public hearing, the Local Community Coalition, and IBEW Local 32, apparently valuing the opinion of the opponents of the Project over those of its advocates. Those who oppose the Project do not do so because of any technical, environmental, or safety reason – all of those concerns have been addressed or shown to be unfounded. Indeed, after addressing any valid technical, environmental, or safety concerns, the only remaining valid concern the opponents of the Project shared were around the aesthetics of the Project – but those too have been mitigated and addressed through the significant commitments made by Birch Solar.

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 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.

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. Importantly, this Project is not subject to SB 52 and is fully grandfathered. Regardless, the Project accomplishes the purpose of SB 52 and meets the requirements established in the new law, which emphasize that projects must demonstrate they will be community partners. Birch Solar has worked diligently with all stakeholders in the community to respond to and address any issues and concerns that were raised. As reflected through the commitments made by Birch Solar in the Application and the Stipulation,

the community voice has time and time again been taken into consideration when crafting the Project details and arriving at the Certificate conditions contained in the Stipulation. Analyzing the facts at hand through a broad lens, the record shows that the potential benefits of the Project, as described herein, vastly outweigh any potential downfalls. Therefore, for the foregoing reasons, the Board should adopt the Stipulation without modification and issue a Certificate to Birch Solar.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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/s/ Christine M.T. Pirik

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and Recommendation and Issuance of the Certificate electronically filed by
Christine M.T. Pirik on behalf of Birch Solar 1, LLC