

**BEFORE
THE OHIO POWER SITING BOARD**

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

**INITIAL BRIEF OF YELLOW WOOD SOLAR ENERGY, LLC
IN SUPPORT OF THE
JOINT STIPULATION AND RECOMMENDATION AND
ISSUANCE OF THE CERTIFICATE**

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I. INTRODUCTION

In this proceeding, Yellow Wood Solar Energy LLC (“Yellow Wood” or “Applicant”) seeks a certificate of environmental compatibility and public need (“Certificate”) from the Ohio Power Siting Board (“Board”) to construct a solar-powered electric generation facility on leased land in Clark and Jefferson Townships, Clinton County, Ohio (“Project”) with a generating capacity of up to 300 megawatts (“MW”) alternative current (“AC”).¹ Yellow Wood, the Ohio Farm Bureau Federation (“OFBF”), and the Board’s Staff (“Staff”) (jointly referred to herein as “Signatory Parties”) filed a Joint Stipulation and Recommendation (“Stipulation”) on August 8, 2022.

As proven on the record in this proceeding, the conditions in the Stipulation ensure that all of the requirements set forth in Ohio Revised Code (“R.C.”) 4906.10 that are required to be met for the Board to approve the Stipulation and issue the Certificate to Yellow Wood 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.”² In addition, the Stipulation satisfies the three-part test utilized by the Board for the review and consideration of stipulations, namely all parties in this case were invited to the discussions, which resulted in the Stipulation that: is the product of serious bargaining among capable and knowledgeable 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 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

¹ App. Ex. 1 at 2.

² R.C. 4906.10(A)(2), (3), and (6).

interests, and protecting the environment and land use.”³ 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 less harmful and impactful than other forms of generation or private development and is beneficial to the local community and 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 necessary to carry out the mission for the advancement of the state, as well as an engineer appointed by the governor.⁴ In addition, there are 4 nonvoting members of the Board from the General Assembly that sit on the Board.⁵ Each of the 7 voting Board members plays a vital role in every decision made by the 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 Yellow Wood) are not subject to the requirements of SB 52, and should instead continue to be evaluated and approved by the Board in accordance with the standards and procedures historically undertaken by the Board.⁶

³<https://opsb.ohio.gov/#:~:text=Our%20mission%20is%20to%20support,the%20environment%20and%20land%20use>

⁴ 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; the Ohio Department of Natural Resources (“ODNR”); the Ohio Environmental Protection Agency (“Ohio EPA”); and the Ohio Department of Health (“ODH”).

⁵ 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.

⁶ Yellow Wood 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, received its System Impact Study from PJM, and paid

A review of the evidentiary record reflects that the Application, as enhanced by the Stipulation, complies with all 8 criteria in R.C. 4906.10(A) utilized by the Board in considering an application. In fact, there is no authenticated evidence on the record that disputes that:

- the basis of need for the facility is not applicable in this proceeding;
- there is enough information to determine the probable environmental impact of the facility;
- 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;
- 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;
- the facility supports the public interest, convenience, and necessity;
- 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;
- the impact of the facility on agricultural land can be determined; and
- the facility incorporates the maximum feasible water conservation practices.⁷

Rather, the official record reflects that, at the evidentiary hearing:

- 11 expert witnesses provided testimony on the record on behalf of the Applicant supporting the Application⁸ and the Stipulation – verifying that a Certificate should be issued to Yellow Wood;⁹
- 9 witnesses from Staff provided testimony on the record verifying the findings of the Staff Report and supporting approval of the Stipulation and issuance of the Certificate;¹⁰

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 Oct. 11, 2021.

⁷ R.C. 4906.10(A)(1)-(8).

⁸ On February 24, 2021, Yellow Wood filed its Application for a Certificate with the Board. Since that time, there have been 4 supplements to the Application and 6 responses to data requests from Staff filed in the docket (App. Exs. 2-12). Together, those documents are referred to herein as the “Application.”

⁹ App. Exs. 18-28, 18A, 28A.

¹⁰ Staff Exs. 2-10.

- 1 residential witness submitted written testimony that referred to maps of the Project Area that were attached to the testimony that noted the locations of the properties of the resident intervenors; however, the testimony **did not state any objections or concerns** related to the Project..
- 1 exhibit was submitted by the Board of Commissioners of Clinton County (“Clinton County”) that provided a May 25, 2022, Clinton County resolution authorizing the release of a press release concerning the Yellow Wood Project that contained the Commissioners’ objections to the Project, specifically alleging:
 - solar projects in other counties lack accountability (Contrary to concern, Yellow Wood is not an affiliate or otherwise associated with other nearby solar projects and Yellow Wood has committed to more stringent conditions than older nearby projects.);¹¹
 - noise during construction (The facts of the case show that Yellow Wood has committed to limit hours for construction and maintain limited noise levels during construction and operation.);¹²
 - ongoing drainage and erosion that affect neighboring properties (The facts of this case show Yellow Wood has made extensive commitments regarding drainage, including, but not limited to: not adversely impacting nonparticipating parcels; obtaining approval from the Clinton County Soil and Water Conservation District [“Clinton County S&W District”] for ditch or tile work within the County maintenance program; and a \$50,000 fund to inspect perceived drainage issues, along with the commitment to fix any issues that are found.);¹³
 - reduction in neighboring property values (Contrary to this concern, studies by experts conclude that the Project, if developed as proposed, would not have a negative impact on adjoining property value.);¹⁴
 - lack of oversight over life of the Project (Contrary to this concern, the Board’s compliance division will be responsible for monitoring the Project and enforcing all Certificate conditions and, as detailed in the Stipulation conditions, Yellow Wood will work closely with the local government officials and community.);¹⁵
 - decommissioning and disposal of the facility (The facts in this case show that the Project will be bonded at all times for the decommissioning, removal, and restoration of the Project Area back to its existing condition

¹¹ App. Ex. 18 at 4.

¹² Jt. Ex. 1 at 9, Conditions 28-29.

¹³ *Id.* at 10-11, Conditions 30-31.

¹⁴ App. Ex. 1, Ex. E; App. Ex. 23 at 5.

¹⁵ App. Ex. 18 at 4-5; Jt. Ex. 1.

as it stands today and yellow has committed to proper disposal of the facility components.);¹⁶

- agreement has not been reached with Clinton County regarding its authority to approve or deny stormwater mitigation plans (The facts in this case show that, while the Board has plenary jurisdiction over the Project, Yellow Wood made significant commitments including: design and construction coordination with the S&W District; obtaining an Ohio EPA Stormwater Pollution Prevention Plan (“SWPPP”) and permit for the design and construction of its earthwork and drainage infrastructure components; and setting up a third-party investigatory fund for any future drainage issues while also completely reimbursing any damages from any issues discovered as a result of the Project.);¹⁷
- the need for increased setbacks (The facts in this case show that Yellow Wood will implement the following increased setbacks: at least 300-foot panel setbacks from nonparticipating residences; at least 150-foot setbacks from nonparticipating parcel boundaries; and at least 150-foot setbacks from the edge of pavement of any state, county, or township road.);¹⁸ and
- taking farmland out of production (Contrary to this concern, the Project represents approximately only 2,397 acres of land use compared to approximately 896,600,000 acres of total farm land in the state, which is a .000267 percent use of the approximate total and is not sited within an area that is designated as Farmland of Statewide importance.).¹⁹

As reflected and supported throughout the evidentiary record and as summarized in this brief, all of the concerns express in the May 25, 2022 resolution have been addressed through the Application and the Stipulation.

It is important to emphasize that, in determining whether a project is in the public interest, convenience, and necessity, it is the Board’s obligation to “balance projected benefits against the magnitude of potential negative impacts on the local community.”²⁰ The Board uses a broad lens to make this determination.²¹ An objective review of the record supports a finding that the benefits to the community and the State of Ohio far outweigh any possible negative impacts. Any claims

¹⁶ App. Ex. 18 at 6; Jt. Ex. 1 at 11-12, Conditions 32-33.

¹⁷ App. Ex. 18 at 5-6.

¹⁸ App. Exs. 12 and 18 at 6.

¹⁹ App. Ex. 18 at 6.

²⁰ *In re Application of Republic Wind, LLC*, Case No. 17-2295-EL-BGN, Opinion, Order, and Certificate (June 24, 2021) at 28 ¶ 91.

²¹ *In re Application of Amer. Transm. Systems, Inc.*, Case No. 19-1871-EL-BTX, Opinion, Order, and Certificate (May 19, 2022) at 31 ¶ 79.

of potential negative impacts have either been resolved or fully mitigated through the all-encompassing commitments from Yellow Wood in the Application and the Stipulation.

Thus, as summarized herein and detailed in the record, the Application in this case, as enhanced by the Stipulation, supports issuance of a Certificate to Yellow Wood.

II. SUMMARY OF THE PROCEEDING

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

On February 24, 2021, as supplemented, Yellow Wood 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 a public information meeting on December 17, 2020. The OFBF, Clinton County, a group of 23 residents/entities²² were granted intervention in this case. The Board held a local public hearing in this matter on October 21, 2021. On August 8, 2022, Yellow Wood, OFBF, and Staff filed a Stipulation. On September 23, 2022, 19 of the 23 residents/entities withdrew from this proceeding as a result of the execution of an agreement between these parties and Yellow Wood.²³ These 19 residents/entities withdrew after Yellow Wood addressed their concerns, including, but not limited to:

- The creation of increased vegetative screening buffer zones between the Project’s fencing and the residents; and
- Increased requirements regarding setbacks, noise, dust, dirt and gravel on roads, and water usage.

The evidentiary hearing in this matter was called and continued on November 17, 2021, and then recommenced on September 26, 2022. At the evidentiary hearing, the ALJ determined

²² The 23 residents granted intervention are: Brad Cochran/Brad Cochran Farms LLC, JWP Family Farms LLC, Diane Rhonemus, Charles W. Thompson, Brian and Janet Collins, Margaret and Stephen Elam, G. Robert and Joyce Griffith, Alan and Deborah Hertlein, Hertlein Family Revocable Living Trust, Brett Hertlein, Darla and Matthew Long, Benjamin and K. Nicole Oberrecht, Jamie and Matthew Roberts, Janice Rowlands, Charles Simpson, Jr., and Pamela McConnell.

²³ The 19 residents/entities that withdrew from this case are: Brian and Janet Collins, Margaret and Stephen Elam, G. Robert and Joyce Griffith, Alan and Deborah Hertlein, Hertlein Family Revocable Living Trust, Brett Hertlein, Darla and Matthew Long, Benjamin and K. Nicole Oberrecht, Jamie and Matthew Roberts, Janice Rowlands, Charles Simpson, Jr., and Pamela McConnell.
The 4 remaining residents/entity intervenors are Brad Cochran/Brad Cochran Farms LLC, JWP Family Farms LLC, Diane Rhonemus, and Charles W. Thompson.

that the briefs and reply briefs would be due by November 18, 2022, and December 9, 2022, respectively.

III. PROJECT DESCRIPTION

Yellow Wood proposes to construct and operate an electric generating facility that uses photovoltaic (“PV”) technology. As fenced, the total Project Area will be less than 2,500 acres of land, with the area needed for the Project infrastructure including access roads, fencing, racking posts, a racking system, PV panels (or modules), inverters/transformers, an underground alternating current AC collection system, and a collector substation on private land secured through long-term leases with local farmers in Clark and Jefferson Townships, Clinton County, Ohio.²⁴ The Applicant may choose to purchase or rent an existing building to utilize as an operations and maintenance (“O&M”) facility for the Project. However, if this is not feasible, the Applicant will construct an O&M building.²⁵ The general purpose of the facility is to produce clean, renewable, reliably-priced, low-cost electricity to the Ohio bulk power transmission grid operated by PJM or under a power purchase agreement.²⁶

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

- Submit construction and operations plans to the Clinton County S&W District;²⁷
- Design and construct the facility in coordination with the Clinton County S&W District;²⁸
- Fund a \$50,000 fund to inspect perceived drainage issues, along with the commitment to fix any issues that are found;²⁹
- Employ at least 300-foot panel setbacks from nonparticipating residences; at least 150- foot setbacks from nonparticipating parcel boundaries; and at least 150-foot

²⁴ App. Ex. 1 at 2, 5; App. Ex. 18 at 6.

²⁵ App. Ex. 1 at 15.

²⁶ *Id.* at 2.

²⁷ App. Ex. 18 at 11.

²⁸ *Id.*

²⁹ *Id.*

setbacks from the edge of pavement of any state, county, or township road;³⁰

- Fence the facility with locally aesthetic-looking agricultural fencing or deer fencing that will be a composition of wood posts and woven metal mesh;³¹
- Utilize bi-facial, Toxicity Characteristic Leaching Procedure (“TCLP”) certified, solar panels to ensure the solar modules are not hazardous to people or the environment;³²
- Install vegetative screening modules at locations where there are sensitive receptor points (homes. etc.);³³
- Install and manage a mix of diverse native planting in array areas that will promote soil stability, soil health, and area pollinator resources;³⁴
- No water wells will be located within the fence line of the Project;³⁵
- Create over 300 new jobs in Clinton County and 1,235 new jobs in the State of Ohio;³⁶ and
- Result in direct and in-direct economic benefits, including over: \$24.8 million in new local earnings during construction for Clinton County; \$102.4 million in new local earnings during construction for the State of Ohio; \$1 million in new local long-term earnings for Clinton County annually; and \$1.9 million in new local long-term earnings for the State of Ohio annually.³⁷

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 obtaining all necessary state and federal approval.³⁸

³⁰ App. Exs. 12 and 18 at 6.

³¹ App. Ex. 18 at 6; Jt. Ex. 1 at 5, Condition 16.

³² App. Ex. 1 at 55; App. Ex. 18 at 6; Jt. Ex. 1 at 12, Condition 33.

³³ App. Ex. 18 at 6.

³⁴ *Id.*.

³⁵ App. Ex. 6 at 10.

³⁶ App. Ex. 24 at 4.

³⁷ *Id.*

³⁸ Jt. Ex. 1 at 5, Conditions 12-13.

IV. STANDARD OF REVIEW

A. CERTIFICATION CRITERIA

Pursuant to R.C. 4906.10, the Board must base its decision to grant a certificate for the construction, operation, and maintenance of a solar-powered electric generation facility, such as the Project proposed by Yellow Wood, on the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline.³⁹
- (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 section 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.
- (6) That the facility will serve the public interest, convenience, and necessity.
- (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.

³⁹ Since this Project is a proposed electric generating facility, this criterion is not applicable to this Application.

- (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 Application of Amer. Transm. Systems, Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013); *In re Application of Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re Application of AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re Application of Wheatsborough Solar, LLC*, Case No. 20-1529-EL-BGN (Sept. 16, 2021); *In re Application of Clearview Solar, LLC*, Case No. 20-1362-EL-BGN (Oct. 21, 2021); *In re Application of Marion County Solar Project, LLC*, Case No. 21-36-EL-BGN (Nov. 18, 2021); *In re Application of Pleasant Prairie Solar LLC*, Case No. 20-1679-EL-BGN (Oct. 20, 2022). 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 Yellow Wood. The Stipulating Parties have

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

... shall install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the *Staff Report of Investigation*.⁴⁰

As detailed herein, this condition in the Stipulation includes extensive and significant commitments and conditions by which Yellow Wood must monitor, construct, and operate the facility. Throughout the Application and the Stipulation, the Applicant makes substantial commitments regarding all facets of the construction, operation, and maintenance of the facility. From landscape screening to setbacks, sound, fencing, drain protections and monitoring, lighting, and decommissioning, just to name a few, these commitments are set in stone and cannot be decreased or reduced. For example, the final landscape and lighting plan that must be provided prior to construction⁴¹ 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 Yellow Wood should be issued a Certificate.

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

Pursuant to R.C. 4906.10(A)(1), prior to granting a certificate, the Board must determine the basis of the need for the facility *if the facility is an electric transmission line or gas pipeline*. However, the facility proposed in this matter is an electric generation facility.⁴² Therefore, “the basis of need” as specified under R.C. 4906.10(A)(1) is not applicable to the facility proposed in this case.

⁴⁰ Jt. Ex. 1 at 3.

⁴¹ *Id.* at 6, Condition 17.

⁴² App. Ex. 1 at 1.

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

As summarized below, the record in this proceeding provides an abundant amount of information and documentation to enable the Board to determine the nature of the probable environmental impact of the facility, including the public/safety, land use, geological and hydrogeology, cultural, and ecological impacts. The Application includes detailed and extensive surveys, assessments, and reports related to the probable impacts of the facility. Further, each of these topics are supported on the record by the testimony of expert witnesses.

It is important to emphasize that, while the studies and surveys conducted by the experts in this case provide the information required for the Board to make the necessary determinations under the statute, the actual impact will depend greatly on one's personal perception. What might seem to be impactful for one person may not be impactful for someone else. For example, this is especially true for the perceived visual impact of the Project. With Yellow Wood's extensive commitments for the Project, including, but not limited to, enhanced setbacks and vegetative screening, utilization of deer fencing, and implementation of native grasses, any perceived impact would be greatly reduced compared to the industrial agricultural operations that are currently occurring in the Project Area.

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.

One of the primary misconceptions that experts have disproven is that property values close to a solar project will be reduced. The Property Value Impact Study submitted by Yellow Wood with the Application, evaluated what impact, if any, the Project would have on property values in the area surrounding the Project.⁴³ The study concluded that, overall, the Project, if developed as proposed, would not have a negative impact on adjoining property value.⁴⁴ The study found that the primary methods for addressing the potential visual impacts of the solar farm through setbacks that keep the closest home at least 300 feet from the nearest panel and visual

⁴³ *Id.*, Ex. E.

⁴⁴ *Id.*; App. Ex. 23 at 5.

buffering/screening support this conclusion.⁴⁵

With regard to the methodology used for determining there will be no negative impact on property values, the expert evaluated the external obsolescence associated with the solar farm, which is a “use of property that, because of its characteristics, might have a negative impact on the value of adjacent or nearby properties because of identifiable impacts.”⁴⁶ The property value expert explained that the factors used by appraisers to evaluate external obsolescence include traffic, odor, noise, and environmental. The property value study found that **solar farms do not**: generate traffic; produce odor; generate noise concerns; or, for the environment, produce toxic or hazardous waste (in fact, the vegetation under the PV panels provide for minimal impervious surface area).⁴⁷

Moreover, the expert confirmed that “some of the positive implications of a solar farm that have been expressed by people living next to solar farms include protection from future development of residential developments or other more intrusive used, reduced dust, odor and chemicals from former farming operations, protection from light pollution at night, it’s quiet, and there is minimal traffic.”⁴⁸ In fact, the study revealed that the “criteria that typically correlates with downward adjustments on property values such as noise, odor, and traffic all confirm that a solar farm is a compatible use for rural/residential transition areas and that it would function in a harmonious manner in this area.”⁴⁹

The property study also found that the mix of adjoining uses around the Yellow Wood Project is very consistent with the mix of adjoining uses found around other solar farms in Ohio, adjoining states, and the majority of solar farms. Likewise, the demographics around the Project were found to be very typical in terms of population density, median income, and home values. Furthermore, the closest home will be 300 feet from the closest panel with the average distance being 918 feet. The study reflected that the data researched from comparable solar farms showed no impact for homes as close as 100 feet from home to panel. With residences adjacent to Yellow Wood being 300 feet to the closest panel, there is a significantly greater buffer, which further supports that there will be no impact. In fact, as the record reflects, a home adjoining the Project

⁴⁵ *Id.*

⁴⁶ App. Ex. 23, Att. RCK-2 at 3.

⁴⁷ *Id.*

⁴⁸ *Id.* at 1-2.

⁴⁹ *Id.* at 1.

Area recently sold – 2908 Oak Grove Road – and the seller’s broker indicated that the Project was well known in the area. The seller’s broker also indicated that the property received multiple offers and eventually closed for well above the asking price.⁵⁰ Applicant witness Kirkland emphasized that this sale:

...supports a conclusion of no impact on property value and that there are numerous buyers willing and able to purchase homes adjoining solar farms. The primary reason why this would be is assurance of privacy and no future homes in that area. Many buyers of homes adjoining solar farms in my study have asserted the privacy and quietness of being next to a solar farm as opposed to future housing as an incentive to buy, and that was also mentioned by the seller’s broker in connection with the recent sale on Oak Grove Road.⁵¹

There is no dispute that the Project may be seen by neighbors and those traveling on the roadways. However, any perceived visual impact of the facility will vary greatly depending on one’s viewpoint. As illustrated in the visual simulations provided with the Application, Project visibility and potential visual impact will diminish rapidly at greater distances. For this reason, it is anticipated that the potentially perceived impacts will be localized to a limited number of areas adjacent to the Project. Additionally, these impacts will be greatly mitigated by the presence of seasonal crops in actively farmed fields and the robust landscape screening proposed by the Applicant.⁵²

The Visual Resource Assessment (“VRA”), which was accompanied by a Mitigation Plan, provides a comprehensive analysis of the visual/aesthetic characteristics of the landscape in the vicinity of the Project Area and the possible effect of the visible components of the Project on

⁵⁰ App. Ex. 23 at 4.

⁵¹ *Id.* Applicant witness Kirkland also noted that:

...since completing the initial study for the Project area, I have identified a number of sales and development data adjoining a 500 megawatt (“MW”) solar farm in Spotsylvania, Virginia. The data shows adjoining lots selling for significantly higher amounts than lot sales prior to the solar farm being completed. I have interviewed local appraisers, brokers, and an investor who was selling the lots, and all indicated that the positive increases were not because of the solar farm but just increases in the market, but they all agreed that the solar farm was not having a negative impact on the property values. I have attached as Attachment RCK-2 a summary of my research data along with maps showing where new lots are being developed adjoining that solar farm for homes to be sold between \$600,000 and \$800,000.

⁵² App. Ex. 1, Ex. N; App. Ex. 21 at 12.

resource/receptors within the visual study area (“VSA”).⁵³ The results of this analysis indicate that the Project’s solar arrays will be screened from view in approximately 73.7% of the 5-mile radius VSA. Visibility is concentrated within the Project Area and adjacent open fields. The viewshed analysis also suggests that panel visibility substantially diminishes beyond the near-foreground distance zone (0.5 mile). The viewshed analysis of the 69 identified visually sensitive resources (“VSRs”), including landmarks and recreation areas within the VSA, indicates that 50 (72%) have potential Project visibility. Viewshed results suggest that views from VSRs will generally be small and/or include only a limited number of Project components.⁵⁴ Beyond 0.5 mile, Project visibility will be reduced due to screening provided by topography and hedgerows in combination with the low height of the solar panels. Additionally, discernibility of panels that are visible in the outer extent of the 0.5 mile range will be diminished due to visual blending with the background at these distances.⁵⁵ During the growing season, visibility of the Project from residences and roadways will be limited by the growth of cultivated crops in the foreground agricultural fields. The combination of relatively low panel height, along with existing hedgerows, gently rolling topographic relief, the atmospheric effects of distance, and the landscape screening committed to by the Applicant will significantly limit visibility of the Project from the majority of the VSA.⁵⁶ Although the proposed substation and interconnection structures will result in some minimal visual impacts in their immediate vicinity, their location is in close proximity to an existing substation and overhead power line corridor and will comprise a footprint considerably smaller than the proposed solar panels.⁵⁷

Yellow Wood provided a ForgeSolar glare assessment with the Application that assessed the glare detected across 10 discreet observation receptor points and 4 route receptors.⁵⁸ Subsequently, Yellow Wood provided an assessment on an additional parcel in the Project Area, which modeled the glare across 7 discreet observation receptor points and 3 route receptors from the new parcel.⁵⁹ The models assumed a single axis tracking system with a maximum height of 15 feet above the ground and a module surface material of light textured glass with anti-reflective

⁵³ App. Ex. 1, Ex. N; App. Ex. 21 at 6.

⁵⁴ App. Ex. 1, Ex. N; App. Ex. 21 at 11-12, 14.

⁵⁵ App. Ex. 1, Ex. N; App. Ex. 21 at 12.

⁵⁶ *Id.* at 13.

⁵⁷ *Id.* at 10.

⁵⁸ App. Ex. 1, Ex. N, App. B; App. Ex. 19 at 4.

⁵⁹ App. Ex. 4, Att. 3; App. Ex. 19 at 4.

coating. These analyzes were conservative as they did not incorporate vegetative screening, land obstructions, or any additional screening methods, all of which would likely reduce the amount of glare detected. Furthermore, the models assumed a clear-day irradiance profile; however, actual irradiance on any given day can be affected by cloud cover, atmospheric attenuation, and other environmental factors, which would also likely reduce the amount of glare detected.⁶⁰

As detailed below, the Application and Stipulation ensure that any noise from the construction and operation of the Project will be minimized. As is true with any construction site, the construction phase of the facility will require the use of typical construction equipment, such as bull dozers, forklifts, dump trucks, and solar pile drivers. Noise levels from the construction of the facility were predicted at each of the 264 noise-sensitive receptors identified within one-half mile of the Project and also at one worst-case location along the Project boundary. The study reflects that construction noise levels range from 37 to 75 A-weighted decibels (“dBA”) for most activities, with up to 82 dBA (instantaneous) when pile driving is taking place in the immediate area.⁶¹ At the Project boundary, construction noise levels are predicted to be up to 93 dBA during solar pile driving.⁶² Yellow Wood notes that these are the levels expected when construction equipment is nearby and fully operational.⁶³

The primary noise sources associated with the operation of the Project include 81 pad-mounted inverters located throughout the Project Area and the two 178 megavolt-amperes (“MVA”) step-up transformers located at the substation.⁶⁴ The Sound Analysis assumed that all of the equipment would operate simultaneously at full acoustic output during the daytime, but only the substation step-up transformers would operate at night. The range of predicted daytime noise levels, including participating and non-participating residences, is 22 to 44 dBA, with 97% of the residences having levels of 40 dBA or less. All of the levels are less than the daytime limit of 47 dBA. The predicted nighttime noise levels at non-participating residences are 35 dBA or less, all of which are below the limit of 38 dBA established for the Project. Along the Project boundary, the predicted worst-case operational noise levels could exceed 47 dBA, but only in areas adjacent to agricultural or undeveloped land uses which are not considered noise-sensitive.⁶⁵

⁶⁰ *Id.*

⁶¹ App. Ex. 4; App. Ex. 6, Att. 5; App. Ex. 27 at 5-6.

⁶² App. Ex. 4; App. Ex. 6, Att. 5; App. Ex. 27 at 6.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ App. Ex. 1, Ex. K; App. Ex. 4; App. Ex. 27 at 6.

Yellow Wood also conducted a Conceptual Construction Route Study to evaluate the anticipated impact of the construction of the Project on roads and bridges, reviewed the need for improvements prior to construction or likely repairs needed following construction, and evaluated the need for any transportation-related permits and the potential impact on local traffic. The information gained through this evaluation will be beneficial when coordinating with the local government officials on how to support and maintain the roads that will be utilized for the Project construction. Per the study, there are no significant environmental concerns for use of the existing roads for the Project from a transportation perspective.⁶⁶ The study also reflected that the roadways within the study area are generally well-maintained rural routes, are in fair to good condition, and are wide enough to handle two-way construction traffic.⁶⁷ Special hauling permits, with the exception of transformer delivery, are not anticipated for the Project because the proposed construction vehicles will be legal heights, widths, and weights; however, an overweight permit will likely be required for delivery of the transformer. All Project impacts, including construction access permits, will be included in the Road Use Maintenance Agreement (“RUMA”) the Applicant will develop with Clinton County.⁶⁸

The Project will not pose an electromagnetic field (“EMF”) health risk. While modern society is safely exposed to EMF on a daily basis (from cell phones to household appliances and the existing distribution and transmission grids), such exposure can conceivably pose a health risk only if it exceeds health-based thresholds developed by the International Commission on Non-Ionizing Radiation Protection (“ICNIRP”).⁶⁹ It is notable that a typical solar PV inverter creates a power frequency magnetic field of about 3 milligauss⁷⁰ at a distance of 10 feet, which is comparable to a household appliance at a distance of just 3 feet. A 2009 National Renewable Energy Laboratory (“NREL”) report also indicates that EMF measured at the perimeter of solar PV installations is indistinguishable from background EMF and is lower than household appliances like televisions and refrigerators.⁷¹ Further, as documented by ODH, the information

⁶⁶ App. Ex. 1 at 32, Ex. B; App. Ex. 20 at 3.

⁶⁷ App. Ex. 1, Ex. B; App. Ex. 20 at 3-4.

⁶⁸ App. Ex. 1 at 32.

⁶⁹ *Id.* at 63.

⁷⁰ ICNIRP has set a threshold for acute exposure of 830 milligauss for power frequency magnetic fields (created by AC electricity) and 4 million milligauss for static magnetic fields (created by direct current [“DC”] electricity).

⁷¹ App. Ex. 1 at 63.

on solar facilities “does not indicate a public health burden from EMFs generated by components, including power lines, at solar farms.”⁷²

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.

Approximately 2,397 acres of land will have solar facilities; however, the actual PV panel footprint will be smaller.⁷³ The VRA reflects that the Project components are proposed to be built principally within the Planted/Cultivated landscape types (“LTs”), which makes up 78.60% of the VSA. Because agricultural land typically lacks mature vegetation or other screening structures, this LT offers the greatest opportunities for views of PV panels from within the Project and its surrounding vicinity. The Developed LT makes up 5.01% of the VSA and includes the villages of Blanchester, Lynchburg, Martinsville, and Midland. The Developed LT typically provides limited outward views due to the presence of buildings and closely situated houses, landscaped yards/planted vegetation, utility poles, and other visual clutter. The Forest LT makes up 15.67% of the VSA, and includes the Indian Creek and Oldaker wildlife areas. By its very nature, views from within the Forest LT are typically limited by the presence of dense vegetation. The Open Water and Wetlands LTs are scattered throughout the VSA and collectively make up only 0.45% of the land area. These LTs are often associated with river or stream corridors, the most notable the East and West Fork Little Miami River, where long distance views are typically limited due to the presence of tree-lined riverbanks and adjacent forested slopes.⁷⁴

Yellow Wood provided a Drain Tile Mitigation Plan along with the Application that identifies known and potential drain tile within the Project Area and what Yellow Wood would do if during construction tile was accidentally damaged or impacted.⁷⁵ To identify known tile within the Project Area, Yellow Wood sent questionnaires, requested maps and descriptions of known tile on participating landowners land, used GIS imagery and data, and coordinated with Clinton County S&W District to request information on County maintained tile. The plan provides the tile

⁷² 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>

⁷³ App. Ex. 18 at 17;

⁷⁴ App. Ex. 1, Ex. N; App. Ex. 21 at 8-9.

⁷⁵ App. Ex. 1, Ex. Q; App. Ex. 21 at 15.

repair approach and a construction approach typical for tile repair, as well as a how potential complaints would be resolved and a timeframe for the repairs.⁷⁶ Additionally, like any construction project where earthwork is involved, the project will have to comply with, and obtain the Ohio EPA SWPPP, National Pollutant Discharge Elimination System (“NPDES”) OH000005 general permit. Further, Yellow Wood has committed to not substantially change drainage running off of the Project Area.

Grading during construction will be limited due to the fact that the Project Area is relatively flat.⁷⁷ Grading may require excavation, soil redistribution, and soil compaction in order to achieve desired grades and elevations and to ensure proper soil compaction and site drainage as identified in the detailed design. Grading will likely be most extensive in areas for the access roads and Project substation yard, while grading and vegetation removal will be minimized to the extent practicable for the rest of the components.⁷⁸

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 Report submitted with the Application concluded that the site is suitable for the development of a solar project.⁷⁹ The subsurface conditions encountered in the borings included topsoil underlain by soft to medium stiff cohesive soils which were in-turn underlain by stiff to hard cohesive soils intermittently interbedded with loose to very dense granular soils. Cobbles and boulders were encountered at variable depths in the subsurface profile at the site.⁸⁰

There are no Source Water Protection Areas associated with the Project Area; therefore, construction and operation of the facility will not affect local water sources.⁸¹ Given that minimal excavation is associated with the Project and pile driving will only occur to depths of 10 to 15 feet below grade, Yellow Wood does not anticipate impacts to public and private water supplies.⁸²

Based on the borings and pile load tests reflected in the Geotechnical Report, steel piles

⁷⁶ App. Ex. 21 at 15.

⁷⁷ App. Ex. 1 at 15, 58.

⁷⁸ *Id.* at 16.

⁷⁹ *Id.*, Ex. L.

⁸⁰ *Id.*, Ex. L; App. Ex. 28 at 4.

⁸¹ App. Ex. 1 at 55, Ex. S.

⁸² *Id.* at 55, Ex. S, App. A.

will provide suitable support for the proposed steel racking systems with solar array panels. Excavations for trenches for electrical cable and conduit, and for shallow foundations, may encounter groundwater and require dewatering.⁸³ Consistent with Stipulation Condition 8, Yellow Wood submitted the Final Geotechnical Report that was finalized on September 23, 2022.⁸⁴ The final study included additional geotechnical soil borings, field resistivity testing, laboratory thermal resistivity testing, corrosivity testing, and geotechnical laboratory testing. The study also reflected that three field verified karst features were identified in various areas of the site. However, these features comprise less than 1 acre of the approximate 2,397-acre Project Area and are classified as very low to low risk. As further detailed below, Yellow Wood has committed that, based on the risk assessment of the karst features, the areas categorized as very low risk sites will be graded per the construction plans and monitored, and the locations of these features will be marked with survey grade GPS prior to grading activities.⁸⁵

As reported in the Site Characterization Study Report, the Project is located in the Level III Eastern Corn Belt Plain Ecoregion, more specifically the Pre-Wisconsinan Drift Plains, characterized by deeply leached, acidic till and thin loess, with widespread and nearly flat, poorly drained soils. Elevation within the Project Area ranges between 900 and 1,150 feet above mean sea level. The predominant land use in the Project Area is agricultural row crops, which are a mix of harvested, standing soybean and corn crops, and planted with winter wheat. Many of the cultivated areas and roadsides have grassy swales designed to maintain drainage and control runoff to facilitate proper growing conditions in the surrounding fields. The herbaceous vegetation helped to reduce erosion and to stabilize the ditches.⁸⁶

Wooded areas in the Project Area have isolated occurrences of relatively large, mature trees that are dominated by younger second growth forest and saplings. The woodlots are generally small and isolated from each other beyond narrow riparian and/or windrow corridors. Vegetation in the woodlots and windrows consisted primarily of native vegetation.⁸⁷ Further, as explained below, Yellow Wood has committed to limit tree clearing to less than one acre.⁸⁸

⁸³ *Id.* at 58, Ex. L; App. Ex. 28 at 4.

⁸⁴ App. Ex. 28A, Att. RS-1; Jt. Ex. 1 at 4, Condition 8.

⁸⁵ App. Ex. 28A at 3-4, Att. RS-1.

⁸⁶ App. Ex. 21 at 4-5.

⁸⁷ *Id.* at 5.

⁸⁸ App. Ex. 6 at 14.

The Site Characterization Study Report reflected that there was no evidence during the survey of listed plant or animal species, or species of concern; except a northern harrier, which is known to be a common migrant species. However, no nesting behavior or evidence of a nest was observed.⁸⁹

The delineated waterbodies in the Project Area are not likely to provide habitat to support listed aquatic species. Overall, the waterbodies delineated within the Project Area appear to be recovering streams, previously channelized for agricultural use, and larger perennial streams traversing the landscape. Wetlands are primarily depressional, occurring along agriculture field edges, and bordering woodlots.⁹⁰

There are 6 water wells within the Project Area; however, there are no water wells within the fence line of the Project.⁹¹ Local private well systems are typically located near residences and Project construction is not anticipated to physically damage private wells or affect well yields. Given that minimal excavation is associated with the Project and pile driving will only occur to depths of 10 to 15 feet below grade, the Applicant does not anticipate impacts to the water supply.⁹² In addition, approximately 16.4 acres of the Project Area are located within the Federal Emergency Management Agency (“FEMA”) 100-year floodplain; however, the fence line and all of the Project infrastructure contained within the fence line are located outside of the floodplain.⁹³

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.

Yellow Wood studied the Project site and surrounding area for both architectural and archaeological cultural resources. Records provided by Ohio State Historic Preservation Office (“SHPO”) revealed that within the Study Area there are: 3 previous archaeological surveys; 26 previously identified archaeological sites; 11 cemeteries; and 5 historic structures, 1 of which is listed in the National Register of Historic Places (“NRHP”). However, none of these resources or

⁸⁹ App. Ex. 1, Ex. C; App. Ex. 21 at 5.

⁹⁰ *Id.* at 5-6.

⁹¹ App. Ex. 6.

⁹² App. Ex. 1 at 38; App. Ex. 6.

⁹³ *Id.*

surveys are located within the Project Area.⁹⁴ Yellow Wood provided an Historic Architectural Reconnaissance Survey as part of the Application.⁹⁵ Through this survey, a total of 5 properties were previously documented on SHPO forms within the 2-mile study area. Of these properties, 2 are located within the Project's area of potential effect ("APE"), and 3 are situated outside the APE in the 2-mile architectural study area. The previously recorded properties are located north of the APE or within the town of Lynchburg, Ohio. The Yellow Wood survey recorded 293 properties, of which 18 are recommend eligible for listing to the NRHP. Of these 18, 7 properties had potential Adverse Effects from the Project and 11 had No Effects as a result of the Project.⁹⁶ Through consultation with SHPO of the 7 NRHP eligible properties with Potential Adverse Effects: 5 were determined to have no adverse impacts from the Project due to their distance from the Project, existing vegetation in the direct vicinity of these resources that assist with screening, existing vegetation at greater distances from the resources that help to obscure portions of the Project's aboveground infrastructure from view, and the continued traditional agricultural use of the surrounding landscape; and 2 properties were determined to have visual impacts.⁹⁷ Yellow Wood received a concurrence letter on the architectural survey from SHPO on June 3, 2021.⁹⁸

In addition, Yellow provided a Phase I Archaeological Reconnaissance Report as part of the Application, which reviewed the entire Project Area.⁹⁹ The archaeological field investigations included visual inspection, controlled surface survey, and shovel testing. The survey revealed 78 new archaeological sites: 20 of these sites consist of prehistoric isolate finds; 9 sites consist of small prehistoric lithic scatters; 1 site consists of a prehistoric lithic scatter with a historic isolate; 26 sites consist of historic scatters; 10 sites consist of historic scatters with prehistoric isolates; 3 historic wells were identified; and 9 multicomponent prehistoric and historic scatters were identified. In addition, The Big Onion (a flag-stop on the B&O NW Railway line) was identified within the Project Area. There were no standing structures or NRHP-eligible archaeological sites documented in the area. Six Archaeological sites were identified within the boundaries of the Project and were determined, through consultation with SHPO to be potentially eligible for

⁹⁴ App. Ex. 1, Ex. O; App. Ex. 22 at 4.

⁹⁵ App. Ex. 1, Ex. P.

⁹⁶ *Id.*

⁹⁷ App. Ex. 22 at 7.

⁹⁸ App. Ex. 2.

⁹⁹ App. Ex. 3; App. Ex. 22 at 5.

NRHP.¹⁰⁰ Yellow Wood received a concurrence letter on the archaeological survey from SHPO.¹⁰¹

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 Project has been designed to avoid and minimize impacts to wetlands, waterbodies, woodlots, and aquatic and terrestrial wildlife species wherever possible.¹⁰² Overall, the Project will have limited environmental impacts, in part due to the minimization of potential impacts to habitats that may support significant wildlife by avoiding large, contiguous woodlots. Impacts to trees are limited to windrows and other isolated woody vegetation.¹⁰³ Once the proposed Project is decommissioned, the landscape will be returned to the current agricultural condition.¹⁰⁴

The Wetland and Waterbody Delineation Report submitted with the Application reflects that a total of 24 wetlands were delineated, for a total of 4.54 acres of wetlands within the survey area. Of the 24 wetlands delineated, 23 were considered Category 1 wetlands, and one was considered Category 2 wetlands. No Category 3 wetlands were delineated.¹⁰⁵ No wetlands will be permanently impacted during construction or operation.¹⁰⁶ One pond with an acreage of 0.26 acres was also delineated within the survey area.¹⁰⁷ A total of 29 streams were delineated in the survey area. Of the 29 streams, 11 were perennial, 10 were intermittent, and 8 were ephemeral. During the survey, the turbidity levels of the streams did not appear to be elevated, indicating minimal runoff from surrounding fields.¹⁰⁸

Most perennial streams are proposed for horizontal directional drilling (“HDD”) crossing, but two crossings will require open cut for the collection line crossing. All intermittent and ephemeral streams are also proposed for open cut crossing methods. The Project is proposed to be primarily built on land that has already been disturbed seasonally/annually for agriculture with

¹⁰⁰ App. Ex. 3; App. Ex. 22 at 5.

¹⁰¹ App. Ex. 2.

¹⁰² App. Ex. 21 at 20.

¹⁰³ App. Ex. 1, Ex. S; App. Ex. 21 at 19.

¹⁰⁴ *Id.* at 20.

¹⁰⁵ App. Ex. 1 at 65, Ex. R; App. Ex. 21 at 16.

¹⁰⁶ App. Ex. 1 at 70.

¹⁰⁷ *Id.*, Ex. R; App. Ex. 21 at 17.

¹⁰⁸ App. Ex. 1, Ex. R; App. Ex. 21 at 17.

limited identified habitat of significant value to rare, threatened, or endangered (“RTE”) species and other wildlife.¹⁰⁹

The Ecological Assessment submitted with the Application reflects that the Project’s proposed infrastructure is anticipated to temporarily impact up to 124.4 acres through soil disturbance during construction and permanently impact up to 70 acres during operation to support the 1,983-acre solar array area. The total acres of permanent impact may be reduced with revised Project siting and micro-siting of facilities to further minimize or avoid potential impacts.¹¹⁰

The conversion of agricultural fields to solar panels is expected to have a negligible environmental impact. Agriculture fields provide minimal habitat for floral and faunal communities and are disturbed on a seasonal and/or annual basis by farming activities such as plowing, planting, spraying, and harvesting.¹¹¹

No endangered or threatened species were observed in the Project Area while conducting surveys.¹¹² Short-term and long-term impacts to area ecology and threatened and endangered species from the construction of the solar facility will be effectively avoided because the Applicant does not plan construction activities in the habitats of threatened and endangered species.¹¹³ The Applicant consulted with both the Ohio Department of Natural Resources (“ODNR”) and the United States Fish and Wildlife Service (“USFWS”) and no additional ecological studies were recommended.¹¹⁴

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

As discussed herein, the Applicant has committed to a number of measures through its Application and the Stipulation in order to ensure the Project has the minimum adverse environmental impact.

¹⁰⁹ App. Ex. 1, Ex. R; App. Ex. 21 at 19.

¹¹⁰ App. Ex. 1, Ex. S; App. Ex. 21 at 18-19.

¹¹¹ *Id.* 19.

¹¹² App. Ex. 1 at 69, Ex. S.

¹¹³ *Id.* at 70.

¹¹⁴ *Id.* at 69, Ex. S and App. B.

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. Moreover, the Applicant's commitment to comply with all conditions in 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.

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 facility's arrays of solar panels will be fenced in with locally aesthetic looking agricultural fencing or deer fencing that will be a composition of wood posts and woven metal mesh.¹¹⁵ Further, the Applicant is committed to the following minimum setbacks from the Project's solar modules:

- at least 150 feet from nonparticipating parcel boundaries;
- at least 300 feet from nonparticipating residences existing as of the filing of the Application; and
- at least 150 feet from the edge of pavement of any state, county, or township road within or adjacent to the Project Area.¹¹⁶

The Applicant has committed to using crystalline silicon modules from a Tier I manufacturer that have passed the TCLP test.¹¹⁷ Federal waste management laws¹¹⁸ 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 United States Environmental Protection Agency

¹¹⁵ App. Ex. 18 at 6; Jt. Ex. 1 at 5, Condition 16.

¹¹⁶ App. Ex. 12.

¹¹⁷ App. Ex. 1 at 55; App. Ex. 18 at 6; Jt. Ex. 1 at 12, Condition 33.

¹¹⁸ Resource Recovery and Conservation Act, 42 U.S.C. §6901 et seq. (1976).

(“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 standard. Through its commitment, Yellow Wood, 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. While all modules for the Project could be disposed of in a regular landfill, it is noteworthy that, pursuant to Stipulation Condition 33, Yellow Wood has committed that retired panels and their components that are not recycled or repurposed, which are then marked for disposal, shall be sent to an engineered landfill with various barriers.¹¹⁹ Further, as documented by the Ohio Department of Health, the information on solar facilities “does not indicate a public health burden from the use of crystalline silicone in solar farms....”¹²⁰

The Applicant will have vegetative screening modules installed at locations where there are sensitive receptor points (homes, etc.).¹²¹ In accordance with Stipulation Condition 17, Yellow Wood has committed to prepare a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic and lighting impacts of the facility. The plan will: place an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project Area; address potential aesthetic impacts to nearby communities, the travelling public, and recreationalists by incorporating appropriate landscaping measures such as shrub plantings or enhanced pollinator plantings; and include measures such as fencing, vegetative screening, or good neighbor agreements. Further, Yellow Wood will: maintain vegetative screening for the life of the facility and replace any failed plantings so that, after five years, at least 90% of the vegetation has survived; maintain all fencing along the perimeter of the Project; ensure that lights in the array will narrowly focus light inward toward the solar equipment, be downlit and shielded, be motion-activated, and result in a maximum horizontal illuminance level of 1 foot-candle; ensure that substation lights

¹¹⁹ Jt. Ex. 1 at 12, Condition 33.

¹²⁰ ODH Solar Farm and Photovoltaics Summary and Assessments (Apr. 2022) at 4; <https://odh.ohio.gov/know-our-programs/health-assessment-section/media/summary-solarfarms>

¹²¹ App. Ex. 18 at 7.

will narrowly focus light inward toward the solar equipment, be downlit and fully shielded, be motion-activated, and result in a maximum horizontal illuminance level of 1 foot-candle, except at times of necessary or emergency.¹²² The Project will also have a local and onsite staff to manage the facility, perform vegetative management and weed control duties, and ensure the facility is in good working order.¹²³

Yellow Wood will implement best management practices (“BMPs”) for sound abatement during construction and operation of the facility, including use of appropriate mufflers, proper vehicle maintenance, and adherence of all local speed limits.¹²⁴ Noise from construction activities will be controlled primarily through the time-of-day restrictions outlined in Stipulation Condition 28, which requires that general construction and decommissioning activities 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 be limited to the hours between 9:00 a.m. and 6:00 p.m.; and construction and decommissioning activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary.¹²⁵ To alleviate any concerns regarding sound at the Project site, the Applicant has committed to use of ambient controlled broadband backup alarms versus tonal alarms, using well-maintained equipment (particularly with respect to mufflers), and maintaining communication with affected residents.¹²⁶

The Sound Analysis Reports described daytime and nighttime noise limits for the facility that were calculated based on the measured existing sound levels. The basis for the limits was the average of the sound levels measured by the four monitors deployed around the Project Area. Stipulation Condition 29 requires that the limits at any one receptor location shall be based on the average daytime and nighttime noise levels from the nearest single noise monitor, versus the average of the levels from all four monitors.¹²⁷ Thus, Yellow Wood has committed that it will operate the facility so that the sound levels emitted to non-participating receptors is no higher than the closest Long-Term Monitoring Station’s area ambient Leq level plus 5 dBA as referenced in Application Exhibit K Table 4-3.¹²⁸ If the facility is found to be above these limits, the Applicant

¹²² Jt. Ex. 1 at 6, Condition 17.

¹²³ App. Ex. 18 at 7.

¹²⁴ App. Ex. 1 at 53-54.

¹²⁵ App. Ex. 27 at 5; Jt. Ex. 1 at 9, Condition 28.

¹²⁶ App. Ex. 27 at 5.

¹²⁷ *Id.* at 6.

¹²⁸ App. Ex. 1, Ex. K, Table 4-3; App. Ex. 27 at 6.

has committed to install additional noise mitigation measures to maintain compliance with Stipulation Condition 29.¹²⁹ With the Complaint Resolution Plan, if adverse sound impacts are identified, the process set forth in the plan will ensure that any complaints regarding construction or operational sounds are adequately investigated and resolved.¹³⁰

With regard to the limited potential for glare, based on the conservative assessments from the ForgeSolar model, in order to ensure the minimum adverse environmental impact from the facility, Applicant has committed to incorporate additional screening for the observations points of the Grove Road, Townsend Road, and Gladys Road locations in order to provide suitable concealment of the Project site and mitigate any predicted glare at those locations.¹³¹

To minimize and adverse impact from traffic, the Applicant has committed that, to the maximum extent possible, construction traffic will utilize County Route 6 (Lynchburg Road), County Route 47 (Canada Road), and County Route 48 (Oak Grove Road).¹³² Further, pursuant to the recommendation of Adam J. Fricke, P.E., P.S., Deputy Engineer, Clinton County Engineer's Office, Yellow Wood commits to pursue a RUMA with Clinton County to address possible construction issues with the existing roads.¹³³ Further, in accordance with Stipulation Condition 26, Yellow Wood will produce a Traffic Management Plan that will act as a single record document containing documentation of the required coordination with the state and local authorities, copies of agreements, copies of access permits, and an Ohio Department of Transportation compliant Maintenance of Traffic Plan.¹³⁴

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.¹³⁵ 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 32.¹³⁶ The decommissioning costs include the costs to return the site to substantially the same conditions that

¹²⁹ App. Ex. 27 at 7; Jt. Ex. 1 at 9-10, Condition 29.

¹³⁰ App. Ex. 1 at 54.

¹³¹ App. Ex. 19 at 5; Jt. Ex. 1 at 16, Condition 17(a).

¹³² App. Ex. 1, Ex. B; App. Ex. 20 at 3.

¹³³ App. Ex. 1 at 32; App. Ex. 20 at 3.

¹³⁴ App. Ex. 20 at 4; Jt. Ex. 1 at 8, Condition 26.

¹³⁵ App. Ex. 1 at 32, Ex. J; App. Ex. 6; App. Ex. 26 at 3.

¹³⁶ App. Ex. 6; Jt. Ex. 1 at 11-12, Condition 32.

existed before construction of the Project. Stipulation Condition 32 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.¹³⁷ At the time of solar panel end of life disposal, any retired panel material that is not recycled and that is marked for disposal, will be sent to an engineered landfill with various barriers.¹³⁸ Further, soil will be decompacted as needed and returned to original condition to be farmed, if decided by the landowner.

Yellow Wood will implement an Emergency Response Plan and provide the final plan to Staff prior to the preconstruction conference.¹³⁹ Local fire and emergency medical service providers will be trained in how to respond to emergency/fire situations that could occur at the facility and will be provided the Emergency Action Plan.¹⁴⁰

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.

A mix of diverse native plantings will be installed and managed throughout the array areas that will promote soil stability, soil health, and area pollinator resources.¹⁴¹ Further, Yellow Wood proposes to plant vegetation along the perimeter of the Project to reduce or screen views of the PV panels.¹⁴² The Vegetation Management Plan gives an overview of the design methodology and location of areas that would require vegetative screening and revegetation. The plan describes the potential direct impacts to vegetation during construction and provides guideline plans for restoration of disturbed areas. These guidelines include a list of the planting materials that would likely be used and focuses on native and pollinator species. It also provides examples of the 3 different screening modules with details on vegetation type and density, as well as the criteria that would determine which areas will utilize the different types of modules. This description of the

¹³⁷ Jt. Ex. 1 at 11, Condition 32.

¹³⁸ *Id.* at 12, Condition 33.

¹³⁹ App. Ex. 1 at 47; App. Ex. 6.

¹⁴⁰ App. Ex. 1 at 47.

¹⁴¹ App. Ex. 18 at 7.

¹⁴² App. Ex. 21 at 13.

different modules includes computer simulations to show how these areas may appear after establishment. The Vegetation Management Plan also provides an overview on how the revegetation and screening will be established and maintained during the operation of the facility.¹⁴³ The experts agree that, at the end of its useful life span of approximately 35 years, once the Project is decommissioned, it is feasible to convert the Project Area back to agricultural use.¹⁴⁴

With regard to drain tile, Stipulation Condition 30 requires Yellow Wood to ensure neighboring non-participating drainage (including tile) that is connected to the Project Area drainage be maintain or improved as part of the overall Project stormwater and drainage management.¹⁴⁵ If any county maintained or private tile that was not previously known or found to connect to the Project Area is discovered, it must be mapped, inspected (visually), and incorporated into the design, the updated design must be provided to the Engineer of Record for approval. Thus, if Yellow Wood changes, alters, or improves site drainage, it must maintain inflow and outflows and ensure non-participating neighbors drainage is not negatively impacted by Project construction or operation.¹⁴⁶

Further, as a function of designing the facility, Yellow Wood has committed to: incorporate benchmark conditions of surface and subsurface drainage systems prior to construction, including the location of laterals, mains, grassed waterways, and county maintenance/repair ditches into the civil design calculations for the Project; make efforts to conduct a perimeter dig utilizing a tile search trench and consult with owners of all parcels adjacent to the property, the Clinton County S&W District, and Clinton County to request drainage system information over those parcels; and consult with the County engineer for tile located in a county maintenance/repair ditch.¹⁴⁷

Moreover, with regard to drainage and the complaint resolution plan, for the 5 years of operations of the Project, Yellow Wood has committed to set aside a fund of \$50,000.00 for the purpose of investigating claims regarding drain tile. As stated in the Stipulation, the \$50,000 fund represents an initial commitment and is not be construed as a cap. If a claim is submitted through the complaint resolution plan process regarding potentially modified drainage properties on to an adjacent, non-participating parcel, this fund will be used to hire a civil engineer that has done previous work in Clinton County, or an adjacent county, and who is not the Engineer of Record

¹⁴³ App. Ex. 1, Ex. M; App. Ex. 21 at 6.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 15-16; Jt. Ex. 1 at 10-11, Conditions 30-31.

¹⁴⁶ *Id.* at 10, Condition 30.

¹⁴⁷ *Id.*, Condition 31(a).

for the Project, to assess the validity of the claim. If it is found that the design or improvements of the Project have adversely modified drainage properties to the detriment of the non-participating landowner, Yellow Wood will immediately correct the drainage configuration and will compensate parcel owners affected for any damage to crops or other agricultural.¹⁴⁸

Yellow Wood has committed that, during construction and operation of the facility, measures will be included to prevent, where possible, and to mitigate, where prevention is not possible: damage to soils including soil compaction and contamination; and disturbance to woodland and wetlands. To achieve these objectives, the Applicant shall submit to the Clinton County S&W District for review, the construction and operations plans.¹⁴⁹ Construction activities will be in stages as much as possible in order to minimize dust generation and decrease the time for site soils stabilization. After construction of the Project, all areas outside the Project perimeter fence impacted by construction and not needed for on-going operations will be reclaimed to the state prior to construction.¹⁵⁰

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.

The Geotechnical Report concluded that the site is suitable for development of the facility provided that the findings and geotechnical engineering recommendations presented in the report are included in the Project design and construction.¹⁵¹ Yellow Wood has committed to implementing the recommendations of the Geotechnical Report, including requiring that the contractor implement adequate dewatering measures.¹⁵² Based on the risk assessment of the karst features, the areas categorized as very low risk sites will be graded per the construction plans and monitored, and the three locations of the karst features will be marked with survey grade GPS prior

¹⁴⁸ *Id.* at 11, Condition 31(b).

¹⁴⁹ *Id.*, Condition 3.

¹⁵⁰ App. Ex. 1 at 16.

¹⁵¹ *Id.*, Ex. L; App. Ex. 28 at 4.

¹⁵² App. Ex. 1, Ex. L; App. Ex. 28 at 4.

to grading activities.¹⁵³ Should karst features be identified during additional geotechnical exploration or during construction, in accordance with Stipulation Condition 9, the Applicant has committed to avoid construction in these areas when possible.¹⁵⁴

The facility will obtain an Ohio EPA SWPPP and NPDES OH000005 permit to ensure earthwork and drainage improvements associated with the Project are done properly. The Project is prevented from affecting the area drainage and has committed to rectifying any such potential issues.¹⁵⁵

During construction, the Project will implement a Spill Prevention, Control and Countermeasure (“SPCC”) Plan, which will ensure that contractors maintain equipment so that it does not leak oil, hydraulic fluids, petroleum fuels, greases, cutting oils, anti-freeze, or other chemicals. If leaks or spills of these or other similar materials occur, contractors will promptly clean up the spill and will promptly notify the Applicant’s site manager of the incident. Furthermore, because solar modules do not contain hazardous materials, no impacts to runoff are expected.¹⁵⁶ The Applicant is committed to only using modules that are considered non-toxic pursuant to the USEPA TCLP test.¹⁵⁷

Fuel storage and dispensing of liquid fuels, if any are required, will comply with applicable law, including: Occupational Safety and Health Administration (“OSHA”); USEPA and Ohio EPA; the SPCC Plan; and other applicable regulations, as well as the National Fire Protection Association (“NFPA”) standards. Yellow Wood will comply with requirements in the NPDES storm water permit and will ensure the contractor used for the Project implements appropriate BMPs to prevent erosion and control sediment in the areas of construction. BMPs will be included in the SWPPP that will be completed prior to construction.¹⁵⁸

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.

¹⁵³ App. Ex. 28A at 3-4, Att. RS-1.

¹⁵⁴ Jt. Ex. 1 at 4, Condition 9.

¹⁵⁵ App. Ex. 18 at 7; Jt. Ex. 1 at 10-11, Conditions 30 and 31.

¹⁵⁶ App. Ex. 6.

¹⁵⁷ App. Ex. 1 at 55; App. Ex. 6; Jt. Ex. 1 at 12, Condition 33.

¹⁵⁸ App. Ex. 1 at 40.

With regard to the archaeological sites reflected in the studies, Yellow Wood has committed to avoid ground disturbance in the designated avoidance areas for 3 of the archaeological sites. Prior to construction, temporary construction fencing will be placed within the 50-foot buffer of these resources, near the buffer edge, to physically demarcate the area from construction personnel, indicating avoidance. Yellow Wood has committed to maintain the fencing in good condition throughout the duration of construction and the fencing will be included in the plan notes of the final design plans. In addition, Yellow Wood has committed to conduct geophysical investigation and manual coring at 3 archaeological sites and the results of the investigation will be submitted to SHPO for review and comment.¹⁵⁹

The historical location of a wooden boarding house/train depot “The Big Onion” was identified with 3 locations that were not determined to be eligible for the NRHP. However, due to the potential association of these sites with The Big Onion, Yellow Wood has delineated an avoidance area out of caution and local interest in preserving this resource.¹⁶⁰ Yellow Wood will also utilize the Vegetation Management Plan submitted with the Application to address visual impacts to resources from the Project in order to mitigate adverse impacts.¹⁶¹

Yellow Wood and SHPO entered into a Memorandum of Understanding (“MOU”) for the purpose of defining the roles and responsibilities of SHPO and Yellow Wood with respect to addressing potential impacts to cultural resources resulting from the Project. The MOU ensures that Yellow Wood will continue consultation with SHPO and mitigate for and/or avoid potential adverse effects upon cultural resources due to the Project prior to and throughout construction. The MOU will ensure that no direct impacts from the Project will occur on known cultural resources.¹⁶²

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.

¹⁵⁹ App. Ex. 22 at 6.

¹⁶⁰ *Id.*

¹⁶¹ App. Ex. 1, Ex. M; App. Ex. 22 at 6.

¹⁶² App. Ex. 5; App. Ex. 22 at 7-8.

In accordance with Stipulation Condition 21, Yellow Wood has committed to construct the facility in a manner that fully incorporates all construction and operations phase requirements of the construction stormwater management permit OHC000005, General NPDES permit, in accordance with the Ohio EPA requirements, including the supplemental Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.¹⁶³ Any ecological impacts will be managed through the Ohio EPA OHC000005 permit.¹⁶⁴ Furthermore, in addition to engagement with the Ohio EPA and third-party inspectors, the Applicant has committed to: hold an in-progress design review meeting with the Clinton County S&W District to solicit design feedback and commentary of the Project's civil engineering design and the landscape architect design components; and include qualified local drainage and earthwork contractors on solicitations for bids on applicable project scopes of work to be performed. The Applicant has also committed to engage with the Clinton County S&W District periodically throughout construction to ensure conformance with the design documents.¹⁶⁵

Further, Yellow Wood will employ the following procedures to avoid, minimize, and mitigate short-term and long-term impacts from construction: the development of a SWPPP under the Ohio EPA Permit No. OHC000005 for erosion control, storm water management, and post construction site stabilization; HDD will be utilized for all perennial stream crossings to avoid and minimize impacts; the inadvertent fluid release plan¹⁶⁶ will be followed; the boundaries of streams and wetlands within and immediately adjacent to the construction limits of disturbance will be surrounded by silt/exclusionary fencing to demarcate avoidance areas and on-site workers will be trained; limiting areas of disturbance to the smallest size practicable; preserving mature trees to the maximum extent practicable; employing BMPs; and following construction activities, temporarily disturbed areas will be re-established with native vegetation.¹⁶⁷

During operation of the facility, aside from minor disturbances associated with routine maintenance and occasional repair activities, no additional disturbance to plants, vegetative communities, wetlands, or surface waters are anticipated. Further, the facility will not result in physical disturbance or impacts to recreational areas, parks, wildlife areas, nature preserves, or

¹⁶³ App. Ex. 1 at 37; Jt. Ex. 1 at 7, Condition 21.

¹⁶⁴ App. Ex. 1, Ex. S; App. Ex. 21 at 19.

¹⁶⁵ Jt. Ex. 1 at 7, Condition 21.

¹⁶⁶ App. Ex. 1, Ex. S, App. F.

¹⁶⁷ *Id.* at 71-74.

other conservation areas. The deep-rooted ground cover will provide ecological improvement over current cropped conditions by increasing plant and wildlife diversity, decrease impacts to soils as seasonal tilling would no longer be needed, and reduce runoff into streams and wetlands from tilled cropland.¹⁶⁸

The Project's Vegetation Management Plan provides details on stabilization, and the planting of native, low growing, herbaceous vegetation.¹⁶⁹ The proposed herbaceous vegetation will provide a denser and year-round vegetative cover as compared to existing crop. The new plant cover will be maintained year-round, as opposed to seasonal disturbance during crop harvest, providing continuous ground covering and stabilization. This maintained ground cover will reduce runoff and sedimentation to local waterbodies in comparison to an agricultural field. Solar fields are also managed to stabilize the surrounding area to reduce soiling of the solar PV panels, which can come from dust, snow, and other particles that can settle on the arrays.¹⁷⁰

Yellow Wood has committed to adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid impacts to Indiana bats, Northern Long-eared bats, Little Brown bats, and Tricolored bats, unless coordination with the ODNR and the USFWS allows a different course of action.¹⁷¹ Further, if, during construction, Yellow Wood encounters state or federally listed species, it will contact Staff, the ODNR, and the USFWS within 24 hours. In addition, construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon.¹⁷²

Yellow Wood has also committed that, unless coordination with the ODNR reflects a different course of action, it will: conduct no in-water work in perennial streams from April 15 through June 30 to reduce impacts to aquatic species and their habitat; avoid construction in upland sandpiper preferred nesting habitat types shall during the species' nesting period of April 15 through July 31; and avoid construction in Northern Harrier preferred nesting habitat types during the species' nesting period of April 15 through July 31.¹⁷³

¹⁶⁸ *Id.* at 76.

¹⁶⁹ *Id.*, Ex. M; App. Ex. 21 at 19.

¹⁷⁰ *Id.* at 19-20.

¹⁷¹ Jt. Ex. 1 at 6, Condition 18.

¹⁷² *Id.* at 7, Condition 19.

¹⁷³ *Id.* at 7-8, Conditions 22-24.

Yellow Wood has committed to take steps through appropriate seed selection and annual vegetative surveys to prevent the establishment and/or further propagation of invasive plant species and noxious weeds during implementation of any pollinator-friendly plantings, as well as during construction, operations, and decommissioning activities. If noxious and invasive weeds are found to be present, the Applicant shall remove and treat them with herbicide as necessary and allowed by law.¹⁷⁴

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

The Board can determine that the facility is consistent with regional plans for expansion of the electric power grid.

The regional plans for expansion of the electric power grid of the electric systems serving the state are determined by PJM. The Applicant submitted an interconnection request to PJM within the AE2 grouping. The Feasibility Study for the Project was received in July 2019, and the subsequent System Impact Study Report from PJM was received April 2021.¹⁷⁵

In accordance with Stipulation Condition 15, Yellow Wood has committed that it will not commence any construction of the facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM that includes the construction, operation, and maintenance of system upgrades necessary to integrate the proposed facility into the regional transmission system reliably and safely.¹⁷⁶

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

The 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.

¹⁷⁴ *Id.* at 8, Condition 25.

¹⁷⁵ App. Ex. 1 at 16-17, Ex. D; App. Ex. 18 at 15.

¹⁷⁶ Jt. Ex. 1 at 5, Condition 15.

There are no pollutant emissions associated with the Project and no emissions are created by the operations of the Project. Further, the Project has no water pollutants associated with the operations of the Project. The Project does not anticipate any impacts to public or private wells or water supplies during the construction and operation of the Project, as the Project allows for rainwater to clean the panels and will not have a well to obtain water from at the site. In addition, the Project is not subject to any aeronautical requirements.¹⁷⁷

In accordance with Stipulation Condition 33, the Project will only utilize Tier 1 equipment suppliers to ensure the solar modules are not hazardous to people or the environment as Tier 1 equipment passes TCLP USEPA testing standards.¹⁷⁸ TCLP is designed to determine the mobility of both organic and inorganic analytes present in liquid, solid, and multiphasic wastes. In accordance with Stipulation Condition 33, at the time of Project decommissioning and removal, retired panels and their components that are not recycled or repurposed, which are then marked for disposal, shall be sent to an engineered landfill. Yellow Wood has also committed to adhering to the Ohio EPA's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays, in accordance with Condition 21 of the Stipulation. Moreover, Yellow Wood will comply with Stipulation Conditions 30 and 31 in the Stipulation addressing repair and replacement of drain tile.¹⁷⁹

Further, with regard to aviation, Yellow Wood received 14 Determinations of No Hazard from the Federal Aviation Administration ("FAA").¹⁸⁰

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

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

- The socioeconomic benefits of the Project;¹⁸¹
- Increased tax revenues that are significantly higher than the current revenues that will benefit the taxing units in the Project Area. For example, assuming the

¹⁷⁷ App. Ex. 1 at 33-37; App. Ex. 18 at 16.

¹⁷⁸ App. Ex. 1 at 55; Jt. Ex. 1 at 12, Condition 33.

¹⁷⁹ App. Ex. 18 at 16; Jt. Ex. 1 at 10-11, Conditions 30-31.

¹⁸⁰ App. Exs. 6 and 8.

¹⁸¹ App. Ex. 18 at 16; App. Ex. 24.

maximum \$9,000 Payment-in-Lieu-of-Taxes (“PILOT”) under Ohio Revised Code Section 5727.75, a total **\$2,700,000 in annual revenues from the Project will benefit the taxing units in the Project Area** as follows:

- County General Fund - **\$713,581**
- Blanchester School District - **\$194,040**
- Lynchburg-Clay School District - **\$747,278**
- Wilmington School District - **\$516,059**
- Great Oaks JV School District - **\$154,140**
- Clark Township Road and Bridge - **\$29,970**
- Jefferson Township - **\$94,935**
- Clark Township - **\$130,605**
- Warren-Clinton Community Health - **\$57,060**
- Blanchester Library District - **\$10,970**
- Wilmington Public Library - **\$51,360**¹⁸²

These annual revenues from the PILOT would continue over the life of the Project. Note, if the PILOT is not utilized, while the overall tax payment and the initial annual revenue may be greater than that shown above for the PILOT scenario, due to the depreciation factor, the annual revenues would decrease over the life of the Project.

- Drain tile commitment and \$50,000 commitment Stipulation Condition 31(b);¹⁸³
- The guarantee for liability insurance;¹⁸⁴
- A decommissioning bond ensuring the financial means to remove the equipment and return the land to substantially its current condition;¹⁸⁵
- A complaint resolution process;¹⁸⁶
- The implementation of community requests and feedback, including, but not limited to, setback, screening, drainage protections, noise limitations, vegetation management protocols, and fencing styles;¹⁸⁷
- Coordination with the County on perceived concerns – as explained below, all of Clinton County’s concerns have been addressed and resolved through the comprehensive and all-encompassing Stipulation – regardless of the fact that Clinton County did not join in the Stipulation, throughout the Stipulation

¹⁸² App. Ex. 1, Ex. F.

¹⁸³ App. Ex. 18 at 17; Jt. Ex. 1 at 11, Condition 31(b).

¹⁸⁴ App. Ex. 1 at 31-32, Ex. I; App. Ex. 18 at 17.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

conditions, the Stipulating Parties honored the County's request that it play a significant role in coordination and communication regarding Yellow Wood's compliance with the condition requirements – the only exception to this is that the Stipulation does not circumvent the statute that provides the Board with the sole approval authority over the siting, construction, operation, and maintenance of electric generation facilities by surrendering the Board's approval authority to Clinton County;¹⁸⁸

- Meeting subsequent local design standards for such projects as explained above;¹⁸⁹
- Stipulation Condition 25 - pollinator friendly – no noxious weeds;¹⁹⁰
- Stipulation Condition 17 – 90% vegetation survived;¹⁹¹ and
- The creation of over 300 new jobs in Clinton County and 1,235 new jobs in the State of Ohio. These workers, and the Project, have direct and in-direct (ancillary services) economic benefits.¹⁹²

It is important to note that the Board uses a broad lens to make the determination regarding public interest, convenience, and necessity.¹⁹³ An objective review of the record supports a finding that the benefits to the community and the State of Ohio far outweigh any possible negative impacts. Any claims of potential negative impacts have either been resolved or fully mitigated through the all-encompassing commitments from Yellow Wood in the Application and the Stipulation.

Yellow Wood engaged the community and local public officials, holding and participating in numerous meetings with the Clinton County Commissioners, the Clinton County S&W District, the Clinton County Regional Planning Commission, and Clark and Jefferson Township Trustees. Comments submitted in the docket in this case are fairly even between those supporting and those with concerns about the Project. It is noteworthy that supporters of the Project include the Clinton County Trails Coalition and Wilmington-Clinton Chamber of Commerce.¹⁹⁴

¹⁸⁸ *Id.* at 10-13; R.C. 4906.13.

¹⁸⁹ App. Ex. 18 at 17;

¹⁹⁰ *Id.*; Jt. Ex. 1 at 8, Condition 25.

¹⁹¹ App. Ex. 18 at 17; Jt. Ex. 1 at 6, Condition 17.

¹⁹² App. Ex. 18 at 17; App. Ex. 24.

¹⁹³ *In re Application of Amer. Transm. Systems, Inc.*, Case No. 19-1871-EL-BTX, Opinion, Order, and Certificate (May 19, 2022) at 31 ¶ 79.

¹⁹⁴ App. Ex. 18 at 8-9.

At the local hearing in this case held on October 20, 2021, 36 individuals offered testimony – 25 residents spoke in support of the Project and only 9 residents spoke against the Project.¹⁹⁵ Those testifying in support of the Project cited to benefits including the economic development and increased tax base and school funding, the desire for a cleaner electric grid, minimal impact to community resources, the support of farmer’s private property rights, and the jobs created by the Project, to name a few. Comments in opposition questioned the need for the Project, potential perceived health impacts, and the perceived aesthetic the Project would create.¹⁹⁶

The below is a summary of concerns heard along with responses and ways in which the concerns have been responded to and addressed through the Application and Stipulation:

- The perception that the Project would not have setbacks is false as Yellow Wood has committed to the minimum setbacks from the Project’s solar modules of:
 - 150 feet from nonparticipating boundary lines
 - 300 feet from nonparticipating residences
 - 150 feet from rights-of-ways (“ROWS”)¹⁹⁷
- The comparison of the Yellow Wood Project to other nearby projects that are not aesthetically pleasing or do not have setbacks was resolved because Yellow Wood Project is being developed by the Applicant who is not an affiliate or associated with any nearby projects. Further, to support the public interest, the Application and Stipulation reflect that Yellow Wood has committed to significantly more than older nearby projects including, but not limited to: significant minimum setbacks; extensive landscape screening; additional noise limitation provisions; aesthetically pleasing “deer fencing” (not institutional chain link and barbed wire fencing); and a drain tile plan that includes funding for perceived drainage issues.¹⁹⁸
- In response to the perception that the Board lack accountability and the County commissioners should have approval rights Yellow Wood committed to and will work closely with the local government officials and the community, as enhanced and codified in the Stipulation, including, but not limited to:
 - Condition 2 – the County may participate at preconstruction meetings;
 - Condition 3 – the Applicant will submit construction and operations plans to the Clinton County S&W District;

¹⁹⁵ *Id.* at 9; Local Public Hearing Tr. filed Nov. 1, 2021.

¹⁹⁶ App. Ex. 18 at 9-10.

¹⁹⁷ App. Ex. 12; App. Ex. 18 at 10; App. Ex. 18A at 4.

¹⁹⁸ App. Ex. 18 at 10-11; App. Ex. 18A at 4; Jt. Ex. 1 at 5, 11, Conditions 16, 31(b).

- Condition 4 – the Applicant will submit as-built specifications for the entire facility to the County and the Clinton County S&W District after operation;
 - Condition 5 – the Applicant will submit detail engineering drawings to the County;
 - Condition 7 – the Applicant will submit the corrosion analysis to the Clinton County S&W District;
 - Condition 11- the Applicant will provide information to the County on dates when construction begins, when construction is completed, and when commercial operation begins;
 - Condition 12 – the Applicant will provide the County copies of all permits received within 7 days of receipt;
 - Condition 21 – the Applicant will hold in-progress design meetings with the Clinton County S&W District on stormwater and engage with the Clinton County S&W District periodically through construction;
 - Condition 26 – the Applicant will coordinate with the County on road agreements;
 - Condition 30 – for the County maintenance program of County easements, the Applicant will obtain design approvals and rights to construct or modify the ditch/tile from the Clinton County S&W District;
 - Condition 31 – the Applicant will fund a \$50,000 fund to inspect perceived drainage issues, along with the commitment to fix any issues that are found; and
 - Condition 32 – the Applicant will send the decommissioning plan to County.¹⁹⁹
- The Applicant has made significant commitments to address the concerns regarding the existing area drainage disruption, including, but not limited to:
 - Design and construction coordination with the Clinton County S&W District Manager;
 - By Ohio law precedence, a construction project cannot cause stormwater/drainage damage on neighboring land;
 - The Project will obtain an Ohio EPA SWPPP permit for the design and construction of its earthwork and drainage infrastructure components; and

¹⁹⁹ App. Ex. 18 at 11-12; App. Ex. 18A at 5; Jt. Ex. 1 at 3-12.

- Setting up a third-party investigatory fund for any future drainage issues while also completely reimbursing any damages from any issues discovered as a result of the Project.²⁰⁰
- The perception that Yellow Wood significantly reduces productive farmland and contributed to a global food crisis assuaged by the fact that the Yellow Wood Project represents approximately 2,397 acres of land use compared to approximately 896,600,000 acres of total farm land in the state, which is a .000267 percent use of the approximate total.²⁰¹ Additionally, the Project is not sited within an area that is designated as Farmland of Statewide importance as designated by the Natural Resources Conservation Service and the U.S. Department of Agriculture.²⁰² Moreover, it is noteworthy that 33% of Ohio's corn crop goes to the production of ethanol – not for the provision of food products.²⁰³
- The concern that the Project be decommissioned responsibly is properly addressed by Stipulation Condition 32, the Project which required that the facility be bonded at all times for the decommissioning, removal, and that the Project Area be restored back to its existing condition as it stands today.²⁰⁴

In addition to all of the above commitments that benefit the community and ensure the Applicant engages with the County during construction and operation of the facility, the Project will bring many benefits to the community and the State of Ohio. These benefits include, but are not limited to, increased tax revenues, jobs, improvements to the components of the local PJM transmission grid, and diversity of generation assets on the grid.²⁰⁵

Yellow Wood employed many avenues for reaching out to the community and obtaining input from them on the Project, and to provide Project information to the landowners and community. Yellow Wood's consultant, Calvert Street ("Calvert"), engaged adjacent landowners to share Project information and meet with Project landowners and local coalitions and organizations. In addition, the Yellow Wood team frequently attended Clark and Jefferson Township meetings throughout the preparation and filing of the Application. Calvert also executed

²⁰⁰ App. Ex. 18 at 12; App. Ex. 18A at 5-6.

²⁰¹ App. Ex. 18 at 12;
https://www.nass.usda.gov/Statistics_by_State/Ohio/Publications/Ag_Across_Ohio/2021/aao2103.pdf

²⁰² App. Ex. 18 at 12.

²⁰³ <https://ohiocornandwheat.org/corn-checkoff/ethanol/#::~:~:text=A%20thriving%20ethanol%20industry%20is,percent%20of%20Ohio's%20corn%20crop.rop.>

²⁰⁴ App. Ex. 18 at 13; Jt. Ex. 1 at 11-12.

²⁰⁵ App. Ex. 18 at 13.

a series of outreach efforts for the Project, including a phone survey in November 2020, which took place over the course of three days. During the phone survey, residents were asked about their familiarity with utility-scale solar projects, knowledge of the Yellow Wood Project, and their interest in learning more about the Project. 3,966 phone numbers were called and 82% of residents supported or had no opinion of a solar energy project in the area, while 18% opposed. Also, in November 2020, Calvert mailed 103 packets containing information and a fact sheet about the Project to neighbors of the Project and community leaders.²⁰⁶ Further, in July 2021, Yellow Wood conducted a phone campaign of Clinton County residents to determine whether they supported solar energy farms in Clinton County. Of those households responding, 60.6% responded yes and 39.4% responded no.²⁰⁷

Calvert reviewed and analyzed all 273 public comments posted on the docket as of September 18, 2022. When all of the comments that were electronically filed from a given household were combined with the individual comments that were not filed electronically, a total of 77 independent comments were submitted in the docket in support of the Yellow Wood Project. The 77 comments are representative of household comments, rather than every individual comment. If households are combined and repetitive or duplicative comments are removed (while still maintaining one comment per person and/or household), only 72 households and individuals submitted comments that can be characterized as opposing the Yellow Wood Project. Furthermore, it is significant that the Clinton County Trails Coalition and Wilmington-Clinton Chamber of Commerce each submitted a letter/comment in support of the Project.²⁰⁸

At the October 20, 2021 local public hearing, 36 people offered sworn testimony and 25 of the residents testified in support of the Project. Those who spoke in favor of the Project included: the President of the Clinton County Park Board; a member of Local Union 18; a substitute teacher and school bus driver for Wilmington City Schools; a first grader; and Bruce Saunders of the Clinton County Trails Coalition who expressed appreciation, stating the trails group is “forever grateful that Yellow Wood is interested in partnering with us to provide an additional health and wellness benefit to a currently underserved part of our county.”²⁰⁹

²⁰⁶ App. Ex. 25 at 3.

²⁰⁷ *Id.* at 5.

²⁰⁸ *Id.* at 4.

²⁰⁹ Local Public Hearing Tr. filed Nov. 1, 2021; App. Ex. 25 at 4-5.

Yellow Wood 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 Yellow Wood. 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 Yellow Wood will receive complaints via its hotline, at its operations and maintenance facility, or in written form through mail or email. During construction, there will be a hotline number available 24/7 for emergency and complaint notices. During operations, site staff will be qualified to attend to requests and complaints with the necessary corporate support. Surrounding landowners will be provided with contact information for site staff.²¹⁰ Further, consistent with Stipulation Condition 27, no less than 7 days prior to start of construction and 7 days prior to operation, Yellow Wood will send notification and the Complaint Resolution Plan via certified mail to: affected property owners and tenants including those individuals who were provided notice of the public informational meeting, residences located within one mile of the Project Area, parties to this case, County Commissioners, township trustees, emergency responders, airports, schools, and libraries, as well as anyone who has requested updates regarding the project.²¹¹ Individuals who register a complaint will be contacted by Yellow Wood no later than 48 hours after registering the complaint. Yellow Wood will initiate reasonable action to resolve legitimate interference or disturbance that is a direct result of the facility within 30 days of the complaint being received.²¹² Yellow Wood will submit to Staff and file in the docket, a complaint summary on a quarterly basis through the first five years of operation.²¹³

The Yellow Wood Project will create or support the following full-time equivalent jobs during the construction phase and during the long-term operational life of the Project:

- 300 new local jobs during construction for Clinton County;
- 1,235 new local jobs during construction for the State of Ohio;
- Over 20 new local long-term jobs for Clinton County; and
- Over 34 new local long-term jobs for the State of Ohio.²¹⁴

²¹⁰ App. Ex. 1 at 30.

²¹¹ App. Ex. 18 at 13; Jt. Ex. 1 at 8-9, Condition 27.

²¹² App. Ex. 1, Exhibit G.

²¹³ App. Ex. 18 at 13-14; Jt. Ex. 1 at 9, Condition 27.

²¹⁴ App. Ex. 1 at 29, Ex. F; App. Ex. 24 at 4.

The jobs identified above from the Yellow Wood Project will result in the following earnings for those employees, to the benefit of the local and state economy:

- Over \$24.8 million in new local earnings during construction for Clinton County;
- Over \$102.4 million in new local earnings during construction for the State of Ohio;
- Over \$1 million in new local long-term earnings for Clinton County annually; and
- Over \$1.9 million in new local long-term earnings for the State of Ohio annually.²¹⁵

Yellow Wood is committed to securing appropriate levels of liability insurance during development, construction, operation, and decommissioning of the Project.²¹⁶ All solar panels will be installed on property under lease or easement to the Yellow Wood. Terms of the leases or easements include requirements to minimize impacts on the landowner's current use of the property and to remove the solar panels upon termination of the land agreement. In addition, the terms of the leases require the Yellow Wood to provide insurance for all solar facility components and to indemnify the landowner and other third parties from liability claims resulting from the solar facility's construction and operation.²¹⁷

Further, Yellow Wood committed to obtaining a performance bond for decommissioning of the Project at the end of its useful life, where Yellow Wood is the principal, the insurance company is the surety, and the Board is the obligee.²¹⁸ Yellow Wood will submit an updated decommissioning plan that includes provisions, among others, that:

- Require a timeline of up to one year for removal of the equipment, with all decommissioning to be finished within 18 months after the facility ceases operations;
- Secure Yellow Wood's commitment to monitor the Project site for at least one additional year after completion of decommissioning to ensure successful vegetation and rehabilitation;
- Ensure Yellow Wood will coordinate with the County, and provide for the Applicant's or Applicant's successor's, repair, at the sole expense of Applicant or Applicant's successor, of public roads damaged or modified during the decommissioning and reclamation process;
- Ensure the performance bond will be posted prior to construction;

²¹⁵ App. Ex. 1 at 29-30, Ex. F; App. Ex. 24 at 4.

²¹⁶ App. Ex. 1 at 31-32, Exhibit I.

²¹⁷ *Id.* at 31.

²¹⁸ Jt. Ex. 1 at 11-12, Condition 32.

- 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 Yellow Wood.²¹⁹

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).

Approximately 2,397 acres that are currently being farmed in row crops will have solar facilities on them. The Vegetation Management Plan contained in Exhibit M to the Application filed on February 24, 2021, as well 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 biodiversity and soil nutrients and has the potential to increase pollinators on adjacent farmed parcels. 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 farmland within the community.²²⁰

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.

The Facility will not require the use of water for cooling or any other activities, nor will the Facility operation involve the discharge of water or waste into streams or water bodies and is not expected to impact water quality.²²¹ However, water will be used for site preparation and grading activities. During earthwork for the grading of roads and other components, the main use of water will be for compaction and dust control. All water will be brought in from off-site sources

²¹⁹ *Id.*

²²⁰ App. Ex. 18 at 17-18.

²²¹ App. Ex. 1 at 10, 37, 41.

as needed. Water for site preparation, grading, concrete, and dust control will be brought by 3,500-gallon water trucks.²²²

Yellow Wood will follow Ohio EPA BMPs for stormwater pollution prevention, stormwater management, and erosion and sedimentation control. The O&M facility will use water at a rate comparable to a typical small business office. No other Facility components will use measurable quantities of water.²²³

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

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

Counsel for all of the parties represented by counsel and all 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.²²⁴

All of the issues and proposals raised by all of the parties were taken into consideration and appropriate safeguards addressing the all of the parties' issues were included in the final Stipulation. Unfortunately, despite the good faith negotiations by the Signatory Parties, which resulted in a Stipulation that resolved and addressed all concerns consistent with the statutory framework solely reserved to the Board for the siting of electric generation facilities in Ohio, for reasons beyond the statute, Clinton County chose to not join the Stipulation.

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. The record evidence, together with the commitments in the Stipulation, ensures that the Project will represent the minimum adverse environmental impact for

²²² *Id.* at 11.

²²³ *Id.* at 42.

²²⁴ App. Ex. 18A.

both construction and operations. The added aesthetic components to the Project (setbacks, landscape screening, and ‘deer fencing’), along with other robust commitments and obligations (pollinators with significant weed management, drainage protection, noise limits), allow the Project to benefit the local and regional economy through jobs created during construction and operation in addition to new sources of tax revenue. These benefits do not just serve the public interest – but they are a **public necessity**. They include, but are by far not limited to:

- Yellow Wood’s payment of at least **\$2,700,000 in much needed annual tax revenues** that will greatly benefit the taxing units in the Project Area as follows:
 - County General Fund - **\$713,581**
 - Blanchester School District - **\$194,040**
 - Lynchburg-Clay School District - **\$747,278**
 - Wilmington School District - **\$516,059**
 - Great Oaks JV School District - **\$154,140**
 - Clark Township Road and Bridge - **\$29,970**
 - Jefferson Township - **\$94,935**
 - Clark Township - **\$130,605**
 - Warren-Clinton Community Health - **\$57,060**
 - Blanchester Library District - **\$10,970**
 - Wilmington Public Library - **\$51,360**²²⁵
- Yellow Wood’s creation or support of full-time equivalent jobs during the construction phase and during the long-term operational life of the Project:
 - 300 new local jobs during construction for Clinton County;
 - 1,235 new local jobs during construction for the State of Ohio;
 - Over 20 new local long-term jobs for Clinton County; and
 - Over 34 new local long-term jobs for the State of Ohio.²²⁶
- The jobs identified above because of the Yellow Wood Project will result in the following earnings for those employees, to the benefit of the local and state economy:
 - Over \$24.8 million in new local earnings during construction for Clinton County;
 - Over \$102.4 million in new local earnings during construction for the State of Ohio;
 - Over \$1 million in new local long-term earnings for Clinton County annually; and
 - Over \$1.9 million in new local long-term earnings for the State of Ohio annually.²²⁷

²²⁵ App. Ex. 1, Ex. F.

²²⁶ *Id.* at 29, Ex. F; App. Ex. 24 at 4.

²²⁷ App. Ex. 1 at 29-30, Ex. F; App. Ex. 24 at 4.

The Stipulation further benefits the public interest by requiring the Project to meet certain requirements during construction of the Project specifically designed to minimize the temporary construction impacts of the Project.²²⁸ The Project will further benefit the local and regional economy through jobs created during construction and operation, in addition to new sources of revenue. The Stipulation further benefits the state economy by adding low cost electricity to the supply of energy for decades to come.

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.

²²⁸ App. Ex. 18 at 18-19; Jt. Ex. 1.

VII. CONCLUSION

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

Respectfully submitted,

/s/ Christine M.T. Pirik

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 18th day of November, 2022.

/s/ Christine M.T. Pirik

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Joint Stipulation and Recommendation and Issuance of the Certificate electronically
filed by Christine M.T. Pirik on behalf of Yellow Wood Solar Energy LLC