

**COMMONWEALTH OF KENTUCKY  
BEFORE THE KENTUCKY STATE BOARD  
ON ELECTRIC GENERATION AND TRANSMISSION SITING**

**In the Matter of:**

**In the Matter of the Application of Dogwood Corners, )  
LLC for a Certificate of Construction for an )  
Approximately 125 Megawatt Merchant Electric Solar ) Case No. 2023-00246  
Generating Facility in Christian County, Kentucky )  
Pursuant to KRS 278.700 and 807 KAR 5:110 )**

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**DOGWOOD CORNERS LLC’S POST-HEARING BRIEF**

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Dogwood Corners LLC (“Dogwood Corners”), by counsel, and pursuant to 807 KAR 5:110, Section 7 and Kentucky State Board on Electric generation and Transmission Siting (“Siting Board”) order dated February 9, 2024, submits this Brief in support of its post-hearing position. Dogwood Corners believes the record in this matter demonstrates that the Siting Board should approve a construction certificate for its application to construct a 125-megawatt merchant electric solar generating facility with reasonable conditions as discussed throughout the record.

**LEGAL STANDARD**

The Siting Board, within 180 days of receipt of an application and upon evaluation of the record, including an evidentiary hearing, shall grant or deny a construction certificate based upon the criteria contained in KRS 278.710(1).

**ANALYSIS**

Dogwood Corners has satisfied the criteria for a construction certificate pursuant to KRS 278.710. The project is well-suited for the site on which it is planned in Christian County, as confirmed by the Siting Board’s third-party consultant, BBC Research & Consulting (“BBC”). In its Site Assessment Review, BBC acknowledged that the site for the Dogwood Corners’ project

“appears to generally be well selected in terms of compatibility with the surrounding area and access to transmission infrastructure.”<sup>1</sup> BBC noted “that the proposed facility would not be incompatible with its surroundings,” particularly with the implementation of Dogwood Corners’ proposed setbacks and vegetative screening.<sup>2</sup> Further, the consulting firm expects that the facility will not adversely affect most adjacent property values, and vegetative screening around adjacent properties will further reduce any possibility of a negative impact to neighboring property values.<sup>3</sup> BBC concluded that the Siting Board should approve a certificate to construct the facility, subject to certain conditions.<sup>4</sup>

Ultimately, the Dogwood Corners’ project comports with local surroundings and will generate economic benefit for the community without causing harm to neighboring properties. It satisfies all criteria contained in KRS 278.710 for approval of its application for a construction certificate.

**I. Compliance with Local Planning and Zoning Requirements that Existed on the Date the Application Was Filed**

Based on prior filings and its testimony at the evidentiary hearing, it appears that Christian County’s only opposition to the Siting Board’s approval of a construction certificate relates to KRS 278.710(1)(e), which requires the Siting Board to consider “[w]hether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed.”

No applicable local planning and zoning ordinance exists to serve as criteria by which Dogwood Corners must comply. The Siting Board accepted Dogwood Corners’ application for a

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<sup>1</sup> BBC Site Assessment Review for Song Sparrow Solar at Section B, Page 7.

<sup>2</sup> *Id.* at Section B, Page 3.

<sup>3</sup> *Id.* at Section B, Page 4.

<sup>4</sup> *Id.* at Section B, Page 10.

construction certificate for filing as of September 11, 2023.<sup>5</sup> Prior to the filing of application, Christian County attempted to enact Ordinance 22-04. In its application materials,<sup>6</sup> Dogwood Corners alerted the Siting Board about the invalidity of Ordinance 22-04.

**A. Christian County has agreed that there are no planning and zoning requirements.**

Based on Christian County's own arguments, Dogwood Corners is in compliance with all planning and zoning requirements that existed as of the date the application was filed because, as Christian County asserts, there were no planning and zoning requirements in the unincorporated areas of Christian County as of the date the application was filed. As conceded by the Christian County Fiscal Court in multiple court filings, "Christian County does not have any zoning ordinance in the unincorporated areas of the County."<sup>7</sup> In addition, at the Siting Board's evidentiary hearing on February 7, 2024, County Judge/Executive Jerry Gilliam testified that he was unaware of any local ordinances the Christian County Fiscal Court has ever adopted pursuant to KRS Chapter 100, which is the Kentucky law governing planning and zoning regulations.<sup>8</sup> In fact, the County maintains that Ordinance 22-04 is not a planning and zoning ordinance. The County has stated, "It cannot be overemphasized this is not a Zoning Ordinance."<sup>9</sup> It also explicitly stated, "Christian County Fiscal Court did not adopt this ordinance pursuant to planning and zoning statutes of KRS Chapter 100."<sup>10</sup> Because Christian County readily admits that it did not enact a

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<sup>5</sup> Application for a Certificate of Construction for an Approximately 125 Megawatt Merchant Electric Solar Generating Facility in Christian County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110 at 7.

<sup>6</sup> *Id.*

<sup>7</sup> Defendant's Supplemental Brief in Support of the Validity of Ordinance No. 22-04, Case No. 2022-CI-01010, Christian Cir. Ct., Ky., (filed October 25, 2023) at 3. A copy of this Supplemental Brief was filed with the Siting Board in response to Staff's Second Request for Information, Item 7.

<sup>8</sup> VR: 2/7/24, 5:00:40-5:02:24.

<sup>9</sup> Defendant's Response to Plaintiff's Motion for Judgment on the Pleadings, Case No. 2022-CI-01010, Christian Cir. Ct., Ky. (filed August 15, 2023) at 1. A copy of this Response Brief was filed with the Siting Board in response to Staff's Second Request for Information, Item 7.

<sup>10</sup> Defendant's Response to the Plaintiff's Motion for Judgment on the Pleadings, Case No. 2022-CI-01010, Christian Cir. Ct., Ky., (filed August 15, 2023) at 3. A copy of this Response was filed with the Siting Board in response to Staff's Second Request for Information, Item 7.

planning and zoning ordinance, the requirement to consider local planning and zoning requirements found in KRS 278.710(1)(e) does not apply to Ordinance 22-04.<sup>11</sup>

**B. If Ordinance 22-04 was a planning and zoning regulation, the Siting Board need not consider it because it has been repealed by the County.**

Dogwood Corners filed an declaratory judgment action in Christian Circuit Court, Case No. 22-CI-01010, challenging the validity of the Ordinance as it was not enacted under KRS 100.<sup>12</sup> During the pendency of that litigation the Christian County Fiscal Court voted to repeal Ordinance 22-04 and approve a new ordinance, Ordinance 23-05 on November 28, 2023.<sup>13</sup> On January 9, 2024, the Christian Circuit Court dismissed the declaratory judgment action finding that the underlying action was moot because the repeal of the Ordinance eliminated any justiciable issue surrounding the Ordinance’s validity.<sup>14</sup>

The repeal of Ordinance 22-04 further supports the fact that the Siting Board should not consider Ordinance 22-04 when it evaluates Dogwood Corners’ application for a construction certificate. Kentucky law considers “the term repeal [to be] synonymous with abolish, rescind, and annul.”<sup>15</sup> Consequently, when an ordinance repealed another ordinance, the repealed ordinance is “annulled, abrogated, and put [to] an end.”<sup>16</sup> Black’s Dictionary defines “annul” as the “act of nullifying or making void.”<sup>17</sup> In fact, the Kentucky Court of Appeals held that “if the ordinance is

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<sup>11</sup> To the extent the County attempts to argue that the Siting Board should consider Ordinance 23-05, this argument is contrary to the plain reading of KRS 278.710(a)(1), which requires the Siting Board to consider only planning and zoning regulations that existed at the time the application was filed.

<sup>12</sup> Dogwood Corners Response to Consultant’s Report, Exhibit 3.

<sup>13</sup> *Id.*, Exhibit 2. (This ordinance was also made an exhibit to the evidentiary hearing.)

<sup>14</sup> *Id.*, Exhibit 1. (This order was also made an exhibit to the evidentiary hearing.)

<sup>15</sup> *City of Owensboro v. Bd. of Trustees, City of Owensboro Emp. Pension Fund*, 190 S.W.2d 1005, 1008 (1945).

<sup>16</sup> *Id.* at 1009.

<sup>17</sup> BLACK’S LAW DICTIONARY, (11th Ed. 2019) An earlier version of Black’s Dictionary defines “similarly annul” as “To cancel; make void; destroy. To annul a judgment or judicial proceeding is to deprive it of all force and operation, either ab initio or prospectively as to future transactions.” BLACK’S LAW DICTIONARY, (2d Ed. 1910), available at <https://thelawdictionary.org/annul/>.

not valid, it is a nullity, and, if it is a nullity, there is no law . . . **for a void law is of no more effect after it is passed than if it had never been passed.**”<sup>18</sup>

Similarly, the former Kentucky Court of Appeals held that when an ordinance expires, the expiration is the equivalent of a repeal, and the County may not continue to pursue the enjoining of a property owner from constructing on his land.<sup>19</sup> In addition, the Court in *Higdon* stated, “Where a suit is founded on an ordinance and, before it has been concluded, the ordinance is repealed by statute or ordinance which contains no clause saving rights accruing under the repealed ordinance, the suit must stop where the repeal finds it.”<sup>20</sup>

Kentucky courts have said that when an ordinance is a nullity, it can have no force in *any* judicial proceeding.<sup>21</sup> When an ordinance is considered a nullity, no rights can arise from the ordinance and no rights can be affected by it.<sup>22</sup>

The Christian Circuit Court’s order dismissing its Case No. 22-CI-01010 confirms that the Siting Board should not give any weight to Ordinance 22-04. The Court held that “[t]he repeal of the ordinance in question obviates the controversy cited as the basis for the Declaratory Judgment action and requires dismissal.” In its Petition for Declaratory Judgment, Dogwood Corners specifically averred that Ordinance 22-04 was “invalid and has no legal effect.”<sup>23</sup> The only rational reason why repealing of the ordinance would obviate the underlying controversy is if the ordinance’s repeal served as a vehicle whereby the original ordinance would not have any force or effect in any proceeding, including this Siting Board case.

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<sup>18</sup> *United Fuel & Gas Co. v. Commonwealth*, 166 S.W. 783, 784 (Ky. 1914)(emphasis added).

<sup>19</sup> *Higdon v. Campbell Cnty. Fiscal Court*, 374 S.W.2d 511, 513 (Ky. 1964).

<sup>20</sup> *Id.* (holding “no law prohibited the trailer park activities.”).

<sup>21</sup> *United Fuel & Gas Co. v. Commonwealth*, 166 S.W. 783, 784 (1914) (explaining “if the ordinance is not valid, it is a nullity, and, if it is a nullity, there is no law authorizing a fine to be imposed upon the defendant, for a void law is of no more effect after it is passed than if it had never been passed.”).

<sup>22</sup> See *City of Owensboro*, 190 S.W.2d at 1008-09.

<sup>23</sup> Dogwood Corners Response to Consultant’s Report, Exhibit 3..

The County asserts in its Reply to Dogwood Corners' Response to the Consultant's Report that Dogwood Corners is asking the Siting Board to "disregard an ordinance that was in effect during a critical procedural step" of the Siting Board application process.<sup>24</sup> The County's position ignores well-settled law that a repealed ordinance is nullified and affords the County no legal rights. The repeal of the Ordinance eradicated the existence of the Ordinance, and, as a result, eliminates any vested rights it carried when enacted. More plainly stated, for the purposes of the Siting Board's evaluation of Dogwood Corners' application, no relevant ordinance existed at the time of the project application.

**C. If Ordinance 22-04 was an attempt to adopt planning and zoning regulation, it is void because it was not adopted pursuant to KRS Chapter 100.**

As discussed above, the County admits that Ordinance 22-04 was not adopted pursuant to KRS Chapter 100. To the extent that it is a planning and zoning regulation, Ordinance No. 22-04 is void *ab initio*, as the Fiscal Court was without statutory authority to enact a zoning ordinance without first holding a public hearing and allowing the joint planning commission to offer a recommendation, among other reasons. As stated by the Court of Appeals, "If the ordinances are void ab initio, the City had not yet obtained planning and zoning authority, a prerequisite to jurisdiction to regulate the appellant's road as was being done (KRS 100.113, KRS 100.187(3), and KRS 100.201)."<sup>25</sup> As such, the Ordinance is void ab initio as the Fiscal Court lacked the lawful authority to enact Ordinance No. 22- 04.

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<sup>24</sup> Intervenor's Reply to Dogwood Corners LLC's Response to the Consultant's Report at 1.

<sup>25</sup> *Bellafonte Land Inc. v. Bellefonte, Kentucky*, 864 S.W.2d 315, 316 (Ky. App. 1993).

## II. Other provisions of KRS 278.710(a)

Consideration of the other factors identified in KRS 278.710(a) demonstrate that the Siting Board should approve a construction certificate for Dogwood Corners.

### **(a) Impact of the facility on scenic surroundings, property values, the pattern and type of development of adjacent property, and surrounding roads;**

Dogwood Corners' proposed project will not negatively impact scenic surroundings or property values of neighboring parcels. Dogwood Corners retained Kirland Appraisals, LLC ("Kirkland") to conduct a Property Value Impact Report, which revealed the project will have minimal to no impact on the adjoining property values of agricultural and residential parcels surrounding the project.<sup>26</sup> Kirkland focused on matched analysis methodology to compare the Dogwood Corners' project to other comparable projects in Kentucky and around the United States. This analysis showed that the Dogwood Corners' project will have "no impact on home values due to abutting or adjoining a solar farm as well as no impact to abutting or adjacent vacant residential or agricultural land where the solar farm is properly screened and buffered."<sup>27</sup>

Kirkland used six key elements that influence property values to reach this conclusion. First, the project will not generate or use hazardous materials.<sup>28</sup> Solar farms do not have known environmental impacts that will cause residual harm to neighboring property owners via the creation of hazardous material.<sup>29</sup> Similarly, solar farms do not generate odor during either the construction or operational phases of development that could negatively impact adjacent properties.<sup>30</sup>

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<sup>26</sup> Site Assessment Report, Appendix A at 1.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> *Id.* at 103.

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

<sup>30</sup> *Id.*

Next, the project is not expected to have a noise effect on neighboring properties during the operation of the project.<sup>31</sup> As indicated in the Noise Assessment for the project, noise is expected to increase temporarily and intermittently during the construction phase of the project due to increases in vehicular traffic, construction equipment and assembly of the solar facility components.<sup>32</sup> This increase in noise is expected to be within accepted ranges and of short duration at any given location within the project with the majority of the noise producing activities to occur many hundreds to thousands of feet from the nearest noise sensitive receptors.<sup>33</sup> At the nearest receptors, besides intermittent and infrequent pile driver activity, no elevated and prolonged noise levels above background levels are expected either during construction or operation of the project site.<sup>34</sup> Any noise generated during construction is temporary and will not create an enduring harm on neighboring property values.<sup>35</sup>

Kirkland also examined traffic patterns. Kirkland found that no traffic impact will negatively affect neighboring property values.<sup>36</sup> This conclusion is supported by the Traffic Impact Study that stated that the construction period will not produce significant operational changes to existing roadways and that all roadways within the project area will continue to operate at LOS A during peak construction traffic.<sup>37</sup>

The other two factors Kirkland evaluated are stigma and appearance. Citing other studies and similar projects, Kirkland found that no stigma exists with solar projects like it attaches to other kinds of facilities.<sup>38</sup> Though individuals may express opposition to solar operations, the presence

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<sup>31</sup> *Id.*

<sup>32</sup> Site Assessment Report, Appendix D at 7.

<sup>33</sup> *Id.* at 8.

<sup>34</sup> *Id.*

<sup>35</sup> Site Assessment Report, Appendix A at 103.

<sup>36</sup> *Id.*

<sup>37</sup> Site Assessment Report, Appendix F at 8.

<sup>38</sup> *Id.* at 103-04.



of the solar facility does not carry the same stigmatizing weight on property values as would an adult institution, prison, or rehabilitation facility.<sup>39</sup> Often, solar projects around the nation are placed near churches or schools and homeowners will put solar panels on their homes or private buildings, both of which indicate a lack of stigma around solar energy generation.<sup>40</sup>

Finally, solar projects do not have an appearance that will negatively influence adjacent property values. The Dogwood Corners' project will be located on land that is currently used for residential and agricultural purposes. As is the case with any piece of property, the use and the view of the property may change over time. For example, property can continue to be used for agriculture even if the owner places poultry facilities or greenhouses on the land. In addition, land in the unincorporated areas of Christian County can be developed into a residential subdivision or neighborhood.<sup>41</sup> Not only would this change the property's use, but it would also change the property's appearance. The presence of solar panels and the BESS system will be a passive use of the land that is congruent with the current use of the land.<sup>42</sup> The visual impact from placing solar panels, infrastructure, and battery systems on the property would be comparable to that of a large agricultural operation constructing greenhouses on the property as part of a farming operation.<sup>43</sup> The solar panels will be less than 15 feet tall, which is equivalent to many greenhouse structures.<sup>44</sup>

What differentiates this passive use project from other potential uses that could significantly alter neighboring properties' viewshed of the current parcels is Dogwood Corners' assurance to using vegetative screening to protect neighboring residential views. Dogwood Corners has committed to planting a double row of staggered evergreen trees around the perimeter

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

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

<sup>41</sup> *Id.* at 104.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

where residential neighbors abut the project parcels if existing trees and vegetation do not sufficiently provide screening.<sup>45</sup> These trees will be a minimum of five feet tall at the time of planting and will mature to a height of at least 15 feet. The buffer should achieve opacity of 90% and a height of eight feet within three years of planting.<sup>46</sup> Landscaping and screening efforts will obscure neighboring properties' views of the solar facility and insulate neighbors from any unwanted views of the new use of the project's parcels.<sup>47</sup>

Further, to safeguard against any potential negative visual impacts, Dogwood Corners makes good use of setbacks. The closest non-participating residence around the project will be 518 feet from the residential structure to the nearest panel. The average distance from the nearest solar panel to residential building will be 1,633 feet.<sup>48</sup> The BESS component of the project is even significantly further from neighboring residences than solar panels, which further protects adjoining property values from any possible negative impact.<sup>49</sup> Around all portions of the project where neighboring residences have views of the project, supplemental vegetation and screening will be used where existing trees do not currently provide a proper screen.<sup>50</sup>

BBC reviewed the Site Assessment Report and determined the project is located in a rural area where "population density is low."<sup>51</sup> While the site's topography lacks much natural vegetative buffering, BBC found:

The visual impact of the facility components on the landscape, as seen in the illustrations, is fairly typical of other proposed solar projects that BBC has reviewed for the Siting Board. The vegetative screen can require a few years to fully establish, but from that point offers substantial mitigation for visual impact.<sup>52</sup>

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<sup>45</sup>Site Assessment Report, Appendix B at 4; Site Assessment Report, Appendix A at 125; Response to KSB DR 1-27.

<sup>46</sup> *Id.*

<sup>47</sup> Site Assessment Report, Appendix A at 105.

<sup>48</sup> *Id.* at 4.

<sup>49</sup> *Id.* at 125.

<sup>50</sup> *Id.* at 4.

<sup>51</sup> BBC Site Assessment Review at 18.

<sup>52</sup> *Id.*

BBC noted that the proposed 500-foot setbacks “are **greater** than setbacks proposed in most of the other applications BBC has reviewed for the Siting Board” (emphasis added).<sup>53</sup> BBC concluded that the proposed facility was unlikely to have measurable adverse property value impacts on most adjoining properties.<sup>54</sup>

BBC recommended mitigation measures for protecting scenic surroundings from any potential adverse impact that include preserving existing vegetative screening around the boundary of the project, executing Dogwood Corners’ proposed screening and maintaining vegetative screening once planted, and continuing communication efforts with adjacent landowners regarding viewshed impacts and the implementation of strategic additional vegetative screening.<sup>55</sup> Vegetative screenings, BBC found, have potential to mitigate any adverse impact on neighboring residential property values.<sup>56</sup>

Members of the local public have expressed concern about the project’s suitability on the proposed site based on concern for viewshed impact, property values, and site compatibility.<sup>57</sup> Dogwood Corners has communicated with representatives of Christian County and local residents about the project and has incorporated adjustments to the project design to alleviate potential concerns.<sup>58</sup>

To accommodate neighboring residents worries about visual impact, Dogwood Corners increased its initial project setbacks from residential structures from 200 feet to at least 500 feet, although most non-participating residences will experience significantly larger setbacks from solar

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<sup>53</sup> *Id.* at 34.

<sup>54</sup> *Id.* at 40.

<sup>55</sup> *Id.* at 34.

<sup>56</sup> *Id.* at 40.

<sup>57</sup> Letter Filing January 29, 2024 Public Meeting Minutes Into the Record; VR: 2/7/24, 19:30-58:00.

<sup>58</sup> Response to KSB DR 1-8.

panels.<sup>59</sup> Dogwood Corners moved the proposed location of the substation and inverter within the project boundary to a less visible area.<sup>60</sup> Dogwood Corners also increased its planned areas of vegetative screening to accommodate concerns of viewshed impact.<sup>61</sup> Dogwood Corners provided Christian County officials information on vegetative screening and setback plans on November 1, 2022.<sup>62</sup> Dogwood Corners also commissioned a property value impact analysis study that it sent to Christian County in March 2023 for local review.<sup>63</sup>

Dogwood Corners has worked to ensure the project is located on a suitable site for development. First, Dogwood Corners planned the project to avoid interfering with natural resources on site. All project facilities are located outside of streams and wetlands, and the site was selected to avoid large-scale tree clearing.<sup>64</sup> Addressing concerns about wildlife access to a natural habitat,<sup>65</sup> Dogwood Corners adjusted project fencing to maintain open wildlife corridors throughout the project to allow normal migration and wildlife movement.<sup>66</sup> The project will use wildlife permeable fencing that will allow small mammals to pass through the project.<sup>67</sup> Additionally, the project will contain two acres of native pollinator species and will create foraging habitat as a part of the project.<sup>68</sup>

Dogwood Corners considered other locations for the project site within Christian County, including abandoned mine locations. When selecting the site for the project, of utmost concern were the minimization of environmental and landowner impacts and proximity to existing

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*; Response to KSB DR 2-1.

<sup>61</sup> Response to KSB DR 1-8.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Letter Filing January 29, 2024 Public Meeting Minutes Into the Record; VR: 2/7/24, 22:13-23:53; VR: 2/7/24, 34:32-35:10.

<sup>66</sup> Response to KSB DR 1-8; VR: 2/7/24, 2:12:35-2:13:53.

<sup>67</sup> Response to DR 1-8; VR: 2/7/24, 2:12-35-2:13:53.

<sup>68</sup> Site Assessment Report at 8-11.

transmission infrastructure.<sup>69</sup> Using a mine site would have required Dogwood Corners to construct a high voltage transmission line that would exceed 10 miles in length to connect to Tennessee Valley Authority (“TVA”) transmission infrastructure. This would cause significant disruption to landowners and the environment throughout Christian County.<sup>70</sup> The proposed site for the project has sparse vegetation and is agricultural,<sup>71</sup> meaning the topography is well suited for the project and Dogwood Corners will not have to make major changes to the current land composition. Overall, the site is well-suited for the project and Dogwood Corners has made appropriate steps to ensure limited visual, environmental, and property impacts to the surrounding areas. Based on professional studies and mitigation measures, the project will not cause adverse impact to scenic surroundings, property values, or the use of surrounding properties or roads.

**(b) Anticipated noise levels expected as a result of construction and operation of the proposed facility;**

The Dogwood Corners’ project will not cause substantial or prolonged noise impact to nearby sensitive noise receptors. Stantec generated a Noise Assessment indicating that sensitive noise receptors within a 1,000 foot buffer from the project boundary consisted of three churches and 106 residences,<sup>72</sup> with the nearest non-participating residence being 518 feet from the closet panel and 634 feet from an inverter.<sup>73</sup> These receptors are already subject to noise generated by current agricultural activities. Common farm-related noise sources include tractors, trucks, other farm equipment, and natural wildlife.<sup>74</sup> The solar facility will not greatly modify the current noise levels neighbors experience from agricultural operations. Dogwood Corners anticipates only doing minimal tree clearing and earth moving activities during construction because the site is clear and

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<sup>69</sup> Response to KSB PHDR 1-7.

<sup>70</sup> *Id.*

<sup>71</sup> BBC Site Assessment Review at 15.

<sup>72</sup> Site Assessment Report, Appendix D at 3.

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

<sup>74</sup> *Id.* at 1.

well suited for the solar project. Other typical construction activity is anticipated for site preparation and infrastructure installation.<sup>75</sup> The highest noise generating activity occurring during construction will be pile driving. These construction activities produce noise levels at the nearest non-participating residence of approximately 80 dBA, which is comparable to a lawn mower.<sup>76</sup> Pile drivers are only expected to be used during brief periods in construction, approximately 30 seconds to one minute per pile.<sup>77</sup> The equivalent continuous sound level during construction for noise sensitive receptors, excluding pile driving activities, will be at most like a washing machine or air conditioner.<sup>78</sup>

Dogwood Corners, in effort to prevent any noise sensitive receptor from experiencing unnecessary noise disturbance from construction and pile driving activities, will limit construction activities to prevent noise pollution. First, Dogwood Corners will restrict construction activities to 8 a.m. and 6 p.m. Monday through Saturday, and limit pile driving activities to Monday through Friday from 9 a.m. to 5 p.m.<sup>79</sup> Additionally, Dogwood Corners proposed a mitigation measure that if pile-driving activity occurred within 500 feet of a noise sensitive receptor, it would implement a noise suppression method.<sup>80</sup> Should additional noise mitigation be required during pile driving, Dogwood Corners will mitigate noise effects by placing temporary noise barriers near the perimeter of areas where active pile driving occurs and move the barriers congruent with the flow of work around the project site or use similar methods to mitigate noise levels.<sup>81</sup>

Noise generated during the operational phase will be approximately 20dBA within 100 feet of the panels resulting in an inaudible noise disturbance for sensitive noise receptors outside the

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<sup>75</sup> *Id.* at 5.

<sup>76</sup> *Id.* at 1.

<sup>77</sup> *Id.* at 1.

<sup>78</sup> Site Assessment Report at 6.

<sup>79</sup> *Id.* at 9.

<sup>80</sup> *Id.*

<sup>81</sup> Response to KSB DR 1-31.

project boundaries.<sup>82</sup> Any additional noise generated from traffic or operational maintenance is anticipated to be limited to brief periods and will not cause long-term noise impacts to nearby noise sensitive receptors.<sup>83</sup>

The BBC Consultant's report found that Dogwood Corners will use "typical equipment" for construction that is "similar to all other solar facility applications in Kentucky that it has reviewed."<sup>84</sup> Dogwood Corners will manage noise through time limitations and project setbacks. The proposed 500-foot setbacks are "larger than the setbacks seen in most other applications we (BBC) have reviewed. This level of noise emission is unlikely to cause excessive disturbance."<sup>85</sup>

As Dogwood Corners has already suggested to the Siting Board in its Response to the BBC Consultant's Report, time limitations are sufficient to manage any noise impact to noise-sensitive receptors. If pile driving occurs within 500 feet of a noise-sensitive receptor, Dogwood Corners will implement a noise suppression method. Dogwood Corners designed this project with larger setbacks than other projects that have come before the Siting Board, and its noise impact from construction and operation will be minimal and temporary to noise-sensitive receptors.

**(c) The economic impact of the facility upon the affected region and the state;**

The Dogwood Corners' project will have a two-fold positive economic impact in Christian County and regionally. Dogwood Corner expects to invest approximately \$192 million in the project.<sup>86</sup> Dogwood Corners anticipates the project will generate an estimated 371 new construction jobs from the project. These jobs will likely endure for a one-year period and are estimated to generate labor compensation totaling \$22.1 million during that year.<sup>87</sup> Though not

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<sup>82</sup> Site Assessment Report, Appendix D at 6-7.

<sup>83</sup> *Id.* at 8.

<sup>84</sup> BBC Site Assessment Review at 42.

<sup>85</sup> *Id.*

<sup>86</sup> Application, Attachment G at 6.

<sup>87</sup> *Id.* at 1.

quantifiable, Dogwood Corners also expects the project to generate positive economic spin-off because construction workers will spend earned money from the project in Christian County and throughout the region.<sup>88</sup> Additionally, the project is projected to generate \$5.2 million in property taxes over a 36-year period.<sup>89</sup> Local government jurisdictions in which the project sits would receive an average tax revenue generation of \$144,000 per year for the life of the project.<sup>90</sup> Currently, the parcels on which the project sits generate less than \$10,000 per year in property tax revenue.<sup>91</sup> The Dogwood Corners' project would generate 14 times the amount of property tax revenue for this site for the Christian County government.<sup>92</sup>

In completing the Consultant's Report, BBC reviewed the Economic Impact Analysis Dr. Paul Coomes prepared for the project. BBC noted the facility will "enhance local government revenue while requiring very few services . . ."<sup>93</sup> through the \$5.2 million projected property tax revenues<sup>94</sup> and the creation of 371 construction jobs over a 12-month period, both direct and indirect jobs.<sup>95</sup> BBC found that this economic impact is consistent with industry standards.

BBC noted that the largest impact the project will have on employment around the project will be construction jobs generated at the beginning of the life of the project.<sup>96</sup> BBC recommended that Dogwood Corners commit to prioritizing the hiring of Christian County residents to fill open construction jobs.<sup>97</sup> This mitigation measure echoed the sentiments of individuals who provided public comment.<sup>98</sup>

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<sup>88</sup> *Id.* at 9-10.

<sup>89</sup> *Id.* at 1.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> VR: 2/7/24, 4:27:40-4:28:22.

<sup>93</sup> BBC Site Assessment Review at 52.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 51.

<sup>96</sup> *Id.* at 52.

<sup>97</sup> *Id.* at 52.

<sup>98</sup> Letter Filing January 29, 2024 Public Meeting Minutes Into the Record.



Throughout the pendency of this application, Dogwood Corners has committed to hiring as many qualified local workers as practicable to perform construction work during the construction and operation of the solar project.<sup>99</sup> Direct hiring of employees will be conducted by the engineering, procurement, and construction (“EPC”) firm that Dogwood Corners will contract with for the construction of the project,<sup>100</sup> but Dogwood Corners will impose its commitment to hiring as many local construction workers on the EPC firm to ensure to the extent possible that local workers will be hired to construct the project.

**(d) Whether the facility is proposed for a site upon which existing generating facilities, capable of generating ten megawatts (10MW) or more of electricity, are currently located;**

The Dogwood Corners’ project is not co-located with existing electricity generating infrastructure. The project is located near existing transmission infrastructure and will interconnect to an on-site transmission line that TVA owns.<sup>101</sup> The existing transmission infrastructure is shown on the site layout plan.<sup>102</sup>

**(e) Whether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed;**

Please refer to Section I above.

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<sup>99</sup> Response to KSB DR 1-42.

<sup>100</sup> VR: 2/7/24, 2:57:10-2:57-43.

<sup>101</sup> Application at 13.

<sup>102</sup> Application, Attachment B; Response to KSB DR 2-1.

**(f) Whether the additional load imposed upon the electricity transmission system by use of the merchant electric generating facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the Public Service Commission;**

The TVA conducted a System Impact Study (“SIS) of the Dogwood Corners’ project.<sup>103</sup> The objective of the SIS is to identify all Adverse System Impacts on TVA’s transmission system in order to maintain system reliability as a result of the Interconnection Request.<sup>104</sup> The SIS also determines the facility additions, modifications, and upgrades that are needed to maintain a reliable interconnection.<sup>105</sup> The Dogwood Corners’ SIS indicated that Dogwood Corner would need to construct Direct Assignment Facilities that will be part of the project’s construction to connect with existing TVA infrastructure.<sup>106</sup> Dogwood Corners will construct a substation along the 161kV Hopkinsville-Lost City transmission line, which will connect the project to the TVA grid near the intersection of the 161kV Hopkinsville-Lost City and 69kV transmission lines.<sup>107</sup> Dogwood Corners does not anticipate that the project will have any negative impact on the reliability of service of retail customers in Christian County or in the region.

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<sup>103</sup> See Supplemental Response to KSB DR 1-16.

<sup>104</sup> *Id.* at 2.

<sup>105</sup> *Id.*

<sup>106</sup> Application at 15.

<sup>107</sup> Response to KSB DR 2-2.

**(g) Except where the facility is subject to a statewide setback established by a planning and zoning commission as provided in KRS 278.704(3) and except for a facility proposed to be located on a site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, whether the exhaust stack of the proposed merchant electric generating facility and any wind turbine is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and all proposed structures or facilities used for generation of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility, unless a different setback has been requested and approved under KRS 278.704(4). If a planning and zoning commission has established setback requirements that differ from those under KRS 278.704(2), the applicant shall provide evidence of compliance. If the facility is proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, the applicant shall provide evidence of compliance with the setback requirements provided in KRS 278.704(5);**

Dogwood Corners has proposed to implement setbacks that far exceed many proposed setbacks for solar generating projects that have previously come before the Siting Board.<sup>108</sup> The closest a non-participating residence will be 518 feet from a solar panel, which is nearly twice the distance of a football field from the home, and the average distance from non-participating residences to solar panels will be 1,633 feet.<sup>109</sup> Battery storage components will be even further from neighboring residences.<sup>110</sup> Dogwood Corners originally proposed a 200-foot setback from non-participating residences but later modified the proposal to 500 feet after ongoing discussions with non-participating landowners and other community members.<sup>111</sup> As discussed in Section I above, no planning and zoning regulations existed at the time of Dogwood Corners' application, and as such all setback requirements are to be determined by KRS 278.704 and mitigation measures the Siting Board implements.

As previously noted, BBC highlighted that the proposed 500-foot setbacks from non-participating residential structures are some of the largest that have been presented to the Siting

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<sup>108</sup> BBC Site Assessment Review at 34; Site Assessment Report, Appendix A at 4.

<sup>109</sup> *Id.*; Response to KSB DR 2-1.

<sup>110</sup> Site Assessment Report, Appendix A at 125; Response to KSB DR 2-1.

<sup>111</sup> Response to KSB DR 1-8; Response to KSB DR 1-13.

Board.<sup>112</sup> Kirkland reviewed other solar facility projects the Siting Board has approved in the Property Value Impact Analysis, and those setbacks range from 120-feet to 345-feet.<sup>113</sup> Kirkland mentions the following projects that have received Siting Board approval that have substantially smaller setbacks from non-participating residential structures to solar panels than those Dogwood Corner proposes: Crittenden Solar with 345-foot setbacks,<sup>114</sup> Glover Creek Solar with 175-foot setbacks,<sup>115</sup> Mount Olive Creek Solar with 150-foot setbacks,<sup>116</sup> and Ashwood Solar I, LLC with 170-foot setbacks.<sup>117</sup>

In fact, the Siting Board commonly approves construction certificates for solar projects with 150 foot setbacks from panels to residences.<sup>118</sup> These decisions further demonstrate that Dogwood Corners' proposed 500-foot setbacks from panels to non-participating residences are reasonable.

The project will not be on the site of a former coal processing plant nor use waste coal as a fuel source, and no existing electricity generating facilities are on site at the project location. The project will not include any exhaust stacks or wind turbines. The project does not have residential neighborhood, school, hospital, or nursing home facility within 2,00 feet from facilities to be used for generation of electricity. There are no populated areas within 2,000 feet of five or more acres in relevant parcels containing at least one residential structure per acre. As the ordinance Christian County enacted at the time of the application, though invalidly adopted, has been repealed, no deviation from local or statutory setbacks is required.<sup>119</sup> Dogwood Corners has proposed ample

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<sup>112</sup> BBC Site Assessment Review at 34.

<sup>113</sup> Site Assessment Report, Appendix A at 4.

<sup>114</sup> *Id.* at 37.

<sup>115</sup> *Id.* at 38.

<sup>116</sup> *Id.* at 41.

<sup>117</sup> *Id.* at 47.

<sup>118</sup> *See, e.g., Pine Grove Solar LLC*, Case No. 2022-00262 (KSB May 26, 2023); *Thoroughbred Solar LLC*, Case No. 2022-00115 (Apr. 10, 2023)

<sup>119</sup> Application at 9.

setbacks from non-participating residences to ensure that no negative visual, noise, or property impacts are imposed on non-participating neighbors.

**(h) The efficacy of any proposed measures to mitigate adverse impacts that are identified pursuant to paragraph (a), (b), (e), or (f) of this subsection from the construction or operation of the proposed facility;**

Dogwood Corners provided the Siting Board with a list of mitigation measures to alleviate any adverse effects from the project to neighboring properties and property owners. The mitigation measures align with communication and collaboration Dogwood Corners has had with local property owners and Christian County officials and expert reports provided to study the project. The mitigation measures Dogwood Corner proposes were submitted with the Site Assessment Report.<sup>120</sup> BBC also provided various mitigation measures to alleviate additional potential harms to neighbors as a result of the project. Dogwood Corners believes the mitigation measures it proposed and the mitigation measures BBC suggested are well taken and will minimize any potential adverse impacts from the presence of the solar facility in Christian County.

**(i) Whether the applicant has a good environmental compliance history; and**

Dogwood Corners is a subsidiary of Steel City Energy LLC and Oriden LLC. Both entities operate in the solar electric generation and electricity generation industry,<sup>121</sup> and both companies have no violation of state or federal laws or regulations with no pending violations allegations against either entity.<sup>122</sup> Dogwood Corners similarly has incurred no previous environmental violation and does not have any pending environmental violation actions against it.<sup>123</sup>

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<sup>120</sup> Site Assessment Report at 8.

<sup>121</sup> VR: 2/7/24, 2:57:45-2:58:52.

<sup>122</sup> Application at 17.

<sup>123</sup> *Id.*

Dogwood Corners submitted a Cumulative Environmental Assessment in its application to the Siting Board. The report evaluates the project's potential impact to air and water pollutants, waste management, and water withdrawal.<sup>124</sup> To preserve air quality in the area, Dogwood Corners' EPC will use best management practices to mitigate dust and preserve air quality.<sup>125</sup> Dogwood Corners has also committed to implementing ridesharing when feasible for all construction workers to both manage traffic and reduce air pollutants from vehicles.<sup>126</sup> Dogwood Corners will require the EPC to use best management practices to avoid grading that could cause erosion and sedimentation into surrounding water features.<sup>127</sup> Dogwood Corners will also develop a Stormwater Pollution Prevention Plan to preclude any disturbance of groundwater from construction or operational activities.<sup>128</sup> Dogwood Corners does not expect to negatively impact groundwater as it will use best management practices to avoid contamination of groundwater.<sup>129</sup> Dogwood Corners will manage waste according to best management practices and according to the Spill Prevention, Containment, and Countermeasures Plan it will develop.<sup>130</sup> The project will utilize rain for any washing of the panels during the operation or promoting growth of planted vegetation. In the event of drought, Dogwood Corners may use additional water from an offsite supplier to manage the project.<sup>131</sup>

During the evidentiary hearing, members of the Dogwood Corners community expressed concern about environmental impact of the project because five natural springs are located behind the Dogwood Corners Baptist Church.<sup>132</sup> While no geological or other site study has yet revealed

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<sup>124</sup> Application, Attachment J at 1.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 2.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 3.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> VR: 2/7/24, 33:50-34:32.

the existence of these springs to Dogwood Corners,<sup>133</sup> upon development of the project Dogwood Corners will conduct additional geological and site assessments to avoid harm to the springs.<sup>134</sup>

**(j) Whether the decommissioning plan is complete and complies with the requirements of KRS 278.706(2)(m) and any other local requirements that may apply.**

Dogwood Corners provided the Siting Board with a decommissioning plan that sets forth the restoration of the project site including dismantling and removing facilities and restoring the site to pre-construction conditions to the greatest extent practicable.<sup>135</sup> The decommissioning plan abides the requirements set forth in KRS 278.706(2)(m).<sup>136</sup> The project is anticipated to have a useful life of 30 to 35 years, and at the end of the project's life the modules, batteries, and other components will be removed from the project site.<sup>137</sup> Consistent with Kentucky law, decommissioning activities will be completed within 18 months of the project's cessation of electrical generation for sale.<sup>138</sup> Upon decommissioning, the steel piles supporting the solar modules tracking system will be removed and properly disposed;<sup>139</sup> inverters and transformers will be deactivated, disassembled, and removed;<sup>140</sup> cabling at a depth of three feet or less will be removed unless landowner contractual agreements otherwise dictate;<sup>141</sup> all battery storage components and enclosures will be totally removed, including concrete foundations; the substation transformer will be removed;<sup>142</sup> perimeter fencing will be removed;<sup>143</sup> and access roads will be removed unless the landowner requests they remain on the site and Dogwood Corners can ensure

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<sup>133</sup> VR: 2/7/24, 2:28:34-50.

<sup>134</sup> VR: 2/7/24, 1:40:45-1:40:54.

<sup>135</sup> Application, Attachment I at 1.

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

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 2.

<sup>139</sup> *Id.* at 4.

<sup>140</sup> *Id.* at 5.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 6.

<sup>143</sup> *Id.* at 7.

they are in compliance with relevant regulations.<sup>144</sup> Any land that was excavated and backfilled will be graded and restored to preconstruction condition to the greatest extent practicable.<sup>145</sup> Dogwood Corners, in compliance with Kentucky law regarding decommissioning will provide financial assurance that decommissioning will occur at the end of the project's useful life.<sup>146</sup>

BBC reviewed the Dogwood Corners decommissioning plan and deemed it "adequate and details the installation placement and subsequent removal of each type of project equipment at the facility."<sup>147</sup> BBC recommended as mitigation measures that Dogwood Corners follow the decommissioning plan that it submitted in its application and work with Christian County to address any concerns that may arise around decommissioning.<sup>148</sup>

Neighboring landowners and local residents expressed concerns regarding decommissioning of the project.<sup>149</sup> To assuage local concerns about the end of the project's useful life, Dogwood Corners prepared the above-referenced decommissioning plan and provided that plan to Christian County for review by email on May 10, 2023.<sup>150</sup> Further, Dogwood Corners prepared packets of information for local residents that contained information about all facets of the project – including decommissioning.<sup>151</sup> Consistent with proposed mitigation measures and the BBC consultant's recommendations, Dogwood Corners has a plan to both carry out and finance decommissioning activities for the project at the end of the Dogwood Corners' project. The land will be restored to its original state at the end of generation of electricity for sale.

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<sup>144</sup> *Id.* at 6.

<sup>145</sup> *Id.* at 8.

<sup>146</sup> *Id.* at 12.

<sup>147</sup> BBC Site Assessment Review at 53.

<sup>148</sup> BBC *Id.* at 54.

<sup>149</sup> VR: 2/7/24, 49:50-50:38.

<sup>150</sup> Response to KSB DR 1-8

<sup>151</sup> PHDR 1-1



## CONCLUSION

For the foregoing reasons, Dogwood Corners has satisfied the criteria for the Siting Board to approve granting a construction certificate for its merchant generating solar electricity facility in Christian County.



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