

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

In the Matter of:

ELECTRONIC APPLICATION OF CRAB	)	
RUN SOLAR PROJECT, LLC FOR A	)	
CERTIFICATION OF CONSTRUCTION FOR	)	Case No. 2025-00276
AN UP TO 45 MEGAWATT MERCHANT	)	
ELECTRIC SOLAR GENERATING	)	
FACILITY IN MARION COUNTY,	)	
KENTUCKY	)	

**CRAB RUN SOLAR PROJECT, LLC’S**  
**MOTION FOR DEVIATION FROM SETBACK REQUIREMENTS**

Comes now Crab Run Solar Project, LLC (“Crab Run Solar” or “Applicant”), by counsel, and respectfully requests the Kentucky State Board on Electric Generation and Transmission Siting (“the Board”) to grant a deviation from the setback requirements of KRS 278.706(2)(e), as allowed under KRS 278.704(4), for its proposed merchant solar electric generating facility (“the Project”). In support of this motion, Applicant states as follows:

**I. STATUTORY AUTHORITY**

1. KRS 278.706(2)(e) establishes setback requirements for merchant generating facilities, such as the Project, by requiring that “all proposed structures or facilities used for generation of electricity [be] two thousand (2,000) feet from any residential neighborhood, school, hospital or nursing home facility.” Because Marion County has no planning and zoning ordinances governing relevant setback requirements, these statutory setback requirements apply. KRS 278.704(4) authorizes the Board to grant a deviation from setback requirements to allow a shorter distance upon “a finding that the proposed facility is designed to and, as located, would meet the

goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than [statutorily prescribed].”

## **II. PROPERTIES WITHIN 2,000 FEET OF THE PROJECT**

2. **Exhibit A** to this Motion shows by a solid green line a buffer distance of 2,000 feet from the Project’s outer boundary (“Project Area”). There are no schools, hospitals, churches, or nursing homes within 2,000 feet of Applicant’s proposed location of structures or facilities used for generating electricity.

3. KRS 278.700(6) defines “residential neighborhood” as “a populated area of five (5) or more acres containing at least one (1) residential structure per acre.” Using this definition, there are three groupings of residences that have been identified as “residential neighborhoods,” as shown in **Exhibit A**, that are within 2,000 feet of the Project Area. Crab Run Solar identified these Residential Neighborhoods conservatively for inclusion in this Motion by calculating the distance from the Project Area to the boundary of the parcel closest to the Project. The distances detailed below delineate the distance from the nearest proposed Project structure or feature to the residence closest to the Project in each Residential Neighborhood. The three Residential Neighborhoods are as follows and as depicted in the chart attached hereto as **Exhibit B**:

- Residential Neighborhood 1 is to the west of the Project and includes 35 residences. The nearest proposed structures or facilities used for the generation of electricity are solar panel arrays located approximately **335 feet** away from the boundary of Residential Neighborhood 1.
- Residential Neighborhood 2 is located to the east of the Project and includes 5 residences. The nearest proposed structures or facilities used for the generation of electricity are solar panel arrays located approximately **891 feet** away from the boundary of Residential Neighborhood 2.
- Residential Neighborhood 3 is located to the north of the Project. While it includes 80 residences, none of them are located within the 2,000-foot buffer. Only the southernmost portion of the Residential Neighborhood is located less than 2,000 feet from the Project and consists of one large, approximately 133-acre parcel.

While the parcel boundary abuts the Project Area and the parcel boundary is located approximately 73 feet away from the nearest proposed structure or facilities used for generation of electricity (solar panels), the residence on that parcel is located approximately 2,915 feet away. Due to the distance of the nearest residence and the Board's past practices<sup>1</sup>, Crab Run Solar need not include Residential Neighborhood 3 in this Motion. However, Crab Run Solar has included it here to ensure transparency, but omitted it from discussion in the remainder of this Motion.

As set forth in more detail in Exhibits E and F to the Application, Crab Run Solar will mitigate potential visual impacts from the Project by utilizing existing vegetation and implementing additional vegetative screening buffers along the east and west boundaries of the Project Area, in between the Project and Neighborhoods 1 and 2. Further, the distances to Neighborhoods 1-3, while closer than 2,000-feet to the Project Area, are in accordance with general guidelines established and prior deviations granted by this Board.<sup>2</sup>

### **III. REQUEST FOR DEVIATION**

4. The Board should grant a deviation from the 2,000-foot setback requirement from Residential Neighborhoods because the Project “is designed to and, as located, would meet the

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<sup>1</sup> See Case No. 2024-00406, *Application of Lost City Renewables LLC for a Certificate of Construction for an Approximately 250 Megawatt Merchant Electric Solar Generating Facility in Muhlenberg County, Kentucky* (Order 7/28/25 at 27) (calculating the setback distance from the **residence** to any generating equipment).

<sup>2</sup> Case No. 2023-00360, *Application of Fron Bn, LLC (Frontier Solar) for a Certificate of Construction for an Approximately 120 Megawatt Merchant Solar Electric Generating Facility and Nonregulated Electric Transmission Line in Marion and Washington Counties* (Order 6/25/24) (approving a setback from residences of 270 feet from any panel or string inverter and establishing general setback guidelines for solar panels and string inverters of 150 feet from a residence, 25 feet from non-participating adjoining parcels, and 50 feet from adjacent roadways); Case No. 2024-00406, *Application of Lost City Renewables LLC for a Certificate of Construction for an Approximately 250 Megawatt Merchant Electric Solar Generating Facility in Muhlenberg County, Kentucky* (Order 7/28/25) (establishing same general guidelines for setbacks); Case No. 2023-00361, *Application of Kentucky Utilities Company and Louisville Gas and Electric Company for a Site Compatibility Certificate for the Construction of a Solar Facility in Mercer County, Kentucky* (Order 7/12/24) (approving setback of 150 feet (residences) and 50 feet (non-participating adjoining parcels and adjacent roadways) from all solar facilities); Case No. 2024-00105, *Application of Pike County Solar Project, LLC for a Certificate of Construction for an up to 100 Megawatt Merchant Electric Solar Generating Facility in Pike County, Kentucky* (Order 11/15/24) ((approving setback of 150 feet (residences), 25 feet (non-participating adjoining parcels) and 50 feet (adjacent roadways) from all solar facilities); Case No. 2024-00104, *Application of Lynn Bark Energy Center, LLC for a Certificate of Construction for an up to 200 Megawatt Merchant Electric Solar Generating Facility in Martin County, Kentucky* (Order 11/27/24) (same).

goals of [the cited provisions in KRS Ch. 224 and 278] at a distance closer than those provided” by statute. KRS 278.704(4).

5. In the first 15 years of its history, the Board only considered several requests from setback requirements.<sup>3</sup> Since 2020 when applications for construction certificates for solar facilities began to be filed, the Board has regularly considered and permitted deviations from the statutory setback requirements for merchant solar energy projects like the Project, subject to certain mitigation measures.<sup>4</sup>

6. To allow a deviation, the Board must make a finding that the proposed facility is designed to and, as located, would meet the goals of the designated statutes. (KRS 278.704(4)). Included in the listed statutes are the setback requirements themselves, *i.e.*, KRS 278.706(2)(e). In the *ecoPower* decision, Case No. 2009-00530, the Board stated regarding the similar setback requirements found in KRS 278.704(2), that they “were enacted to afford some level of protection for persons occupying a property adjacent to a property where a merchant generating plant is to be constructed and operated.”<sup>5</sup> Therefore, “it is the effects of the planned facility on adjoining

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<sup>3</sup> See Case No. 2002-00149, *Application of Kentucky Mountain Power, LLC/Enviropower, LLC for a Merchant Power Plant Construction Certificate in Knott County, Kentucky near Talcum* (Order 9/5/2002); Case No. 2009-00530, *Application of ecoPower Generation-Hazard, LLC for a Certificate to Construct and Operate a Merchant Electric Generating Facility and a 69kV Transmission Line in Perry County* (Order 4/22/2010 denying deviation without prejudice and Order 5/18/2010 granting deviation request); Case No. 2014-00162, *Application of SunCoke Energy South Shore, LLC for a Certificate to Construct a Merchant Electric Generating Facility and Non-Regulated Transmission Line* (Order 2/20/2015).

<sup>4</sup> See Case No. 2020-00040, *Turkey Creek* (Order 9/23/2020); Case No. 2020-00043, *Glover Creek* (Order 9/23/2020); Case No. 2020-00190, *Horseshoe Bend* (Order 6/11/2021); Case No. 2020-00206, *AEUG Fleming* (Order 5/24/2021); Case No. 2020-00208, *Northern Bobwhite* (Order 6/18/2021); Case No. 2020-00280, *Ashwood Solar I, LLC* (Order 6/21/2021); Case No. 2020-00272, *Flat Run Solar, LLC* (Order 10/7/2021); Case No. 2021-00029, *Martin County Solar Project, LLC* (Order 11/15/2021); Case No. 2020-00226, *Mt. Oliver Creek Solar, LLC* (Order 11/3/2021); Case No. 2020-00370, *Fleming Solar, LLC* (Order 11/24/2021); Case No. 2020-00244, *Caldwell Solar, LLC* (Order 4/8/2022); Case No. 2022-00274, *Bright Mountain Solar, LLC* (Order 3/6/2024); Case No. 2022-00272, *Hummingbird Solar, LLC* (Order 12/13/2023); Case No. 2022-00131, *Sebree Solar II, LLC* (Order 10/12/2023); Case No. 2022-00115, *Thoroughbred Solar, LLC* (Order 4/10/2023); Case No. 2023-00360, *Fron Bn, LLC (Frontier Solar)*; Case No. 2023-00361, *Kentucky Utilities Company and Louisville Gas and Electric Company*; Case No. 2024-00104, *Lynn Bark Energy Center, LLC* (Order 11/27/2024); Case No. 2024-00105, *Pike County Solar Project, LLC* (Order 11/15/2024), and Case No. 2024-00406, *Lost City Renewables, LLC*.

<sup>5</sup> Case No. 2009-00530, *ecoPower* (Order 5/18/2010 at 31).

residents that the Siting Board must consider when determining whether to grant a deviation pursuant to KRS 278.704(4).”<sup>6</sup> By its express words, KRS 278.704(4) simply requires a showing that the goals of the statutes cited therein can be met with facilities at a distance less than what is statutorily provided in KRS 278.706(2)(e).

7. In the circumstances presented by this Project, the question is whether the statutory goals are met even though some structures or facilities used for generating electricity will be closer to a Residential Neighborhood than 2,000 feet. For the reasons set forth below, and as more completely detailed in Crab Run Solar’s Application, filed on December 19, 2025, the answer is yes, and the requested deviation should be granted.

#### **IV. COMPLIANCE WITH STATUTORY GOALS**

8. **KRS 224.10-280** requires submission of a Cumulative Environmental Assessment (“CEA”) to the Kentucky Energy and Environment Cabinet (“the Cabinet”) before beginning construction of an electric power plant. Applicant included a copy of its CEA as part of its Application (Tab 5, Attachment C) and submitted it to the Cabinet contemporaneously. Applicant’s CEA includes a discussion of potential impacts and mitigation plans for air pollutants, water pollutants, wastes, and water withdrawal, which will protect nearby property owners from potential negative impacts from the Project. By submitting a CEA to the Cabinet, the goals of KRS 224.10-280 have been met. The elements of the CEA are briefly discussed as follows:

a. Regarding air pollutants, the CEA concludes that construction of the Project will result in minimal quantities of emissions. Further, because the Project will not produce any emissions during operation, no air permit is required for operation of the Project. Construction activities may release fugitive air pollutant emissions (dust and other suspended particles), but

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<sup>6</sup> *Id.* at 32 (referring to the 1,000-foot standard, which is inapplicable here).

these emissions will be localized and temporary in nature. Impacts to air quality will be mitigated using Best Management Practices (“BMPs”) such as wetting areas to reduce dust, covering loads, etc. Any emissions from the operation of the Project would be generated by worker vehicles and maintenance equipment and would be negligible.

b. Regarding water pollutants, the Project will employ BMPs and have a Storm Water Pollution Prevention Plan (“SWPPP”) to avoid increased erosion and sedimentation. During operation, the Project is expected to have little to no impact to surface water. Additionally, the Project is not expected to negatively impact groundwater sources. While natural hydrology is expected to be altered during construction, no resources on or directly adjacent to the site have been designated as Kentucky special-use waters by the Division of Water (“DoW”) or require a special use or cold-water habitat designation from the DoW.

i. The Project will minimize impacts to surface waters during construction by adhering to the requirements of the general construction permit KYR10, issued by the DoW. Additionally, the Project will minimize impacts by utilizing the existing landscape to avoid grading, when possible.

ii. The Project will minimize impacts from stormwater runoff by implementing BMPs, such as utilizing silt fences, creating temporary sediment basins and traps, and creating buffers around streams, wetlands, and open waters in and around the Project. Prior to the commencement of construction activities, the Applicant will develop a SWPPP to further minimize impacts to surface waters because of construction.

iii. After construction is completed, the Project will return all disturbed areas not occupied by facility components to its pre-construction state via reclamation and

revegetation. Soil will be re-stabilized through re-seeding and all erosion controls will be inspected and maintained until the site is re-stabilized.

iv. Project operations may require the occasional use of fertilizers and herbicides. All such materials will be use in accordance with the manufacturer's instructions and in limited quantities near waters of the United States and the Commonwealth of Kentucky to avoid contaminating surface or ground waters.

v. Any hazardous materials used during construction, such as petroleum-based lubricants and hydraulic fluids, will be properly stored and used following proper techniques. The potential for leaks and spills of such materials will be minimized through utilization of BPMs and implementation of procedures to address any leaks or spills that do occur.

c. Regarding wastes, Applicant's CEA notes that Project construction is anticipated to generate minimal construction waste consisting primarily of wood crates and pallets, cardboard, miscellaneous packing materials, and general refuse. Sewage waste will be generated from the portable toilets placed on the site during construction but will be taken away from the site and properly disposed of by a licensed contractor. During operation, waste is only expected to be generated through maintenance activities. No adverse impacts from waste or wastewater treatment and disposal are anticipated. Waste materials will be recycled if possible, and non-recyclable solid materials will be removed from the Project Site and disposed of at a licensed solid waste disposal facility. Waste generated from hazardous materials, such as cleaning fluids, degreasers, herbicides, pesticides, oils, fuels, and lubricants will be stored on-site temporarily in small quantities. The Project will implement a Spill Prevention, Control, and Countermeasure Plan ("SPCC"), provide personal protective equipment to facility staff, and train facility staff in the handling, use, and

clean-up of hazardous materials to minimize the risk of adverse environmental impacts from use of these materials.

d. Finally, regarding water withdrawal, construction and operation of Applicant's solar electric generating facilities are not anticipated to be water intensive. During construction, water will be used for site preparation purposes, such as dust control and grading activities. During operation, water will be used for vegetation management, such as screening vegetation installation and during extended periods of drought. It is anticipated that normal precipitation in the region will be sufficient to remove dust and debris from the solar panels, so panel washing generally will not be required. The Project plans to obtain water from several potential sources, including an on- or off-site groundwater well or an offsite water purveyor.

9. **KRS 278.010** sets forth definitions to be used for KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and 278.990 — none of which directly apply to the Applicant or the Project. To the extent relevant,<sup>7</sup> Applicant has satisfied any goals of KRS 278.010 by preparing and presenting its Project proposal and Application in terms consistent with the statutory definitions.

10. **KRS 278.212** requires the filing of plans and specifications for electrical interconnection with merchant electric generating facilities and imposes the obligation upon a merchant electric generating developer for any costs or expenses associated with upgrading the existing electricity transmission grid due to the additional load caused by the merchant electric generating facility. Applicant anticipates having an executed interconnect agreement with East Kentucky Power Company to connect to the existing transmission grid via the point of

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<sup>7</sup> As the first section in the chapter, KRS 278.010 may have been mistaken for a “purposes and goals” statement for Chapter 278. Or its inclusion in the KRS 278.704(4) list may have been to help discern the goals of the other Chapter 278 sections listed.



interconnection (“POI”), a newly-constructed switchyard, with the existing Sulphur Creek-Loretto 69 kV line. The Applicant initiated its PJM queue position on March 31, 2021 and completed its Phase I Study Report on October 29, 2025. As designed and as located, Applicant’s proposed Project therefore meets the goals of KRS 278.212.

11. **KRS 278.214** governs the curtailment of service and establishes the progression of entities whose service may be interrupted or curtailed pursuant to an emergency or other event. To the extent this section applies to the operation of Applicant’s proposed generation or the Project, Applicant commits to following all appropriate and legally binding operating procedures. The Project is thus designed and located to meet the goals of KRS 278.214.

12. **KRS 278.218** governs certain transfers of utility assets having an original book value of \$1 million or more. Applicant is not a utility as defined in KRS 278.010(3), and therefore, this statute does not apply to Applicant. However, to the extent Board approval may at some time be required for change of ownership or control of assets owned by Applicant or its parent company, Applicant will comply with the applicable rules and regulations that govern its operation.

13. **KRS 278.700 – KRS 278.716** governs the Board’s jurisdiction and process. Applicant’s application and timely participation in the present proceeding demonstrates that the Project is designed to, and as located, would meet the goals of KRS 278.700 *et seq.*, including the allowance for deviation from setback requirements in KRS 278.704(4). Moreover, the mitigation measures discussed in the Application relative to noise, traffic, and other impacts of the proposed Project are additional steps Applicant has committed to take to minimize the effects of the Project on the potential Residential Neighborhoods discussed herein (as well as on the broader surrounding community). Each of these factors demonstrate “the proposed facility is designed to and, as

located, meets the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than [statutorily prescribed].”<sup>8</sup>

## **V. MITIGATION EFFORTS**

14. The Noise Assessment Report included with Applicant’s Site Assessment Report (Tab 12, at Exhibit D) concludes that noise associated with the Project during operation will be less than the ambient sound level in the area and less than the sound level in a very quiet, sparse suburban or rural area. (*Id.* at pp. 5-8). Operational noise from the Project also falls well below the U.S. EPA’s protective guideline for sound levels. (*Id.* at pp. 2, 7-8). The highest predicted operational sound level at a residence is 35.7 A-weighted decibels (“dBA”) and will occur in the daytime when the Project’s inverters are operating at full capacity (*Id.* at p. 7). Pile driving will be the loudest construction activity and will cause noise to increase above ambient sound levels at certain residences. However, the modeled noise levels only represent the sound level when pile installation is occurring nearest to the NSA, and the installation of each pile will occur very quickly (*Id.* at pp. 11-12). Given the Project’s large area, residents will not experience the same or a constant noise level during the construction period. Noise from other construction related equipment may rise above ambient sound levels at certain residences, as well. (*Id.* at p. 13). However, as for pile driving, these activities will not occur continuously and will vary depending on the location of the activity within the Project Area. (*Id.* at pp. 13-14). The upper ranges of the modeled sound levels included in the Noise Assessment Report only represent the noise from the construction activity when it occurs closest to the NSA. (*Id.* at p. 14).

15. The Glare Analysis Memorandum concludes that the solar arrays will not generate glare at the evaluated viewpoints surrounding the Project at any time throughout the year. (Tab 12,

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<sup>8</sup> KRS 278.704(4).

at Exhibit G). The “evaluated viewpoints” consist of (1) nine locations around the Project at which the Project may be visible to human receptors and were selected as representative of the viewpoints around them and (2) two flightpaths from the Lebanon Springfield Airport-George Hoerter Field, located 6 miles east of the Project. (*Id.* at p. 2). Regarding the locations surrounding the Project, this conclusion is due to the topographical setting, existing forest vegetation, distances between the surrounding area and the Project infrastructure, and vegetative screening measures the Applicant intends to employ. Regarding the flightpaths, this conclusion is due to the distance and direction of the airport from the Project (*Id.* at p. 4).

16. As discussed in the Traffic Study included in the Applicant’s Site Assessment Report (Tab 12, at Exhibit H), traffic will not be adversely impacted during construction or operation of the Project. Further, certain BMPs, such as ridesharing between construction workers, traffic controls, and flexible work hours, can be implemented to minimize any impacts during peak hours. (*Id.* at p. 11).

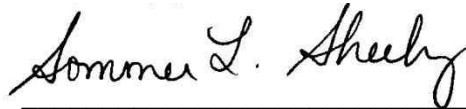
## **VI. CONCLUSION**

The Project, as designed and located, and including the proposed mitigation measures, will protect residents in Residential Neighborhoods 1 and 2 from any potential adverse impacts that may result from the proposed Project infrastructure being located closer than 2,000 feet.

Therefore, because the proposed Project as designed and located, with proposed mitigation measures, would meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716, at a distance closer to the two residential groupings than 2,000

feet, the Applicant respectfully requests and the Board should grant a deviation the from the setback requirements of KRS 278.706(2)(e).

Respectfully submitted,

A handwritten signature in black ink, reading "Sommer L. Sheely". The signature is written in a cursive style with a horizontal line underneath it.

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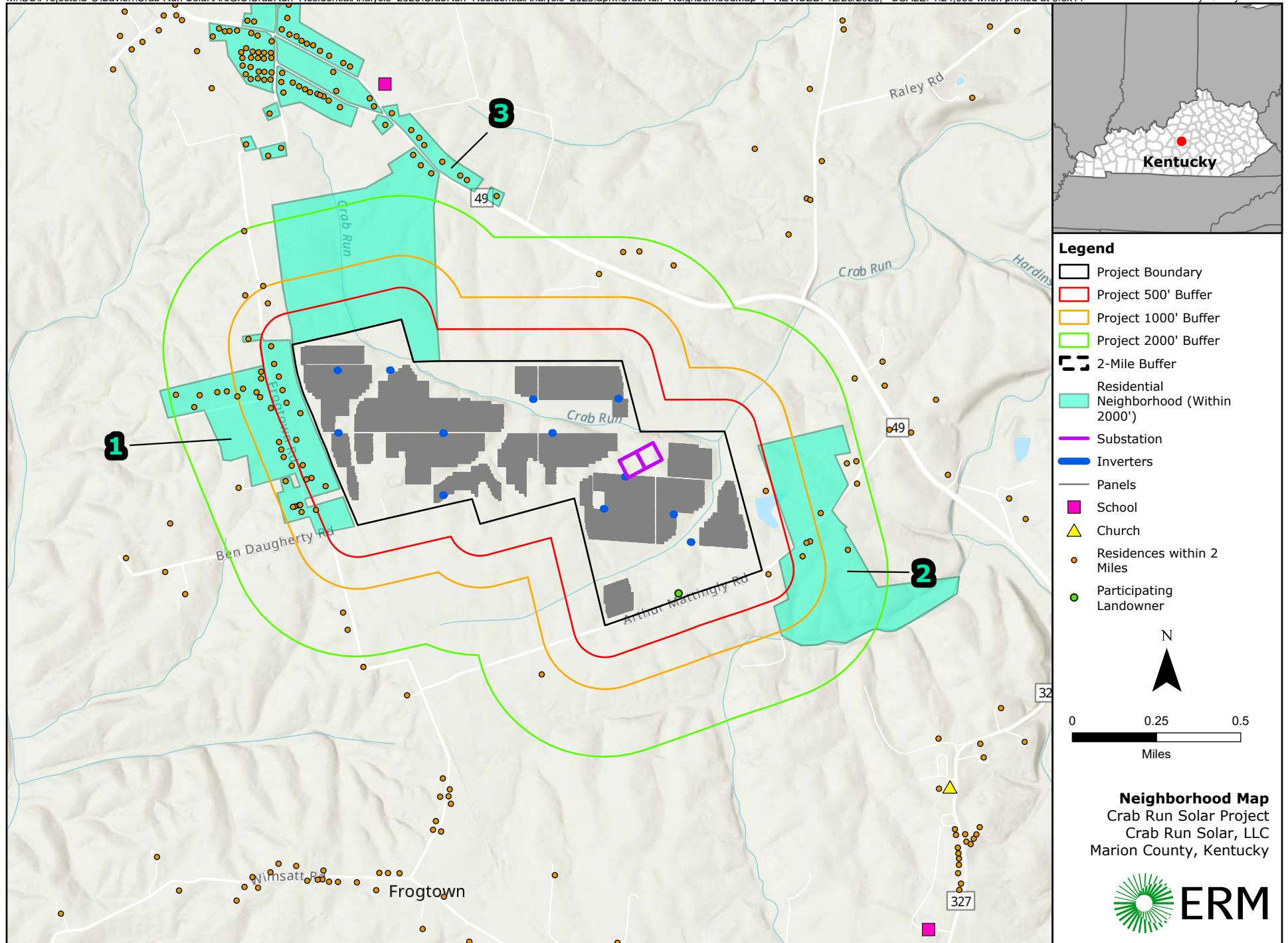
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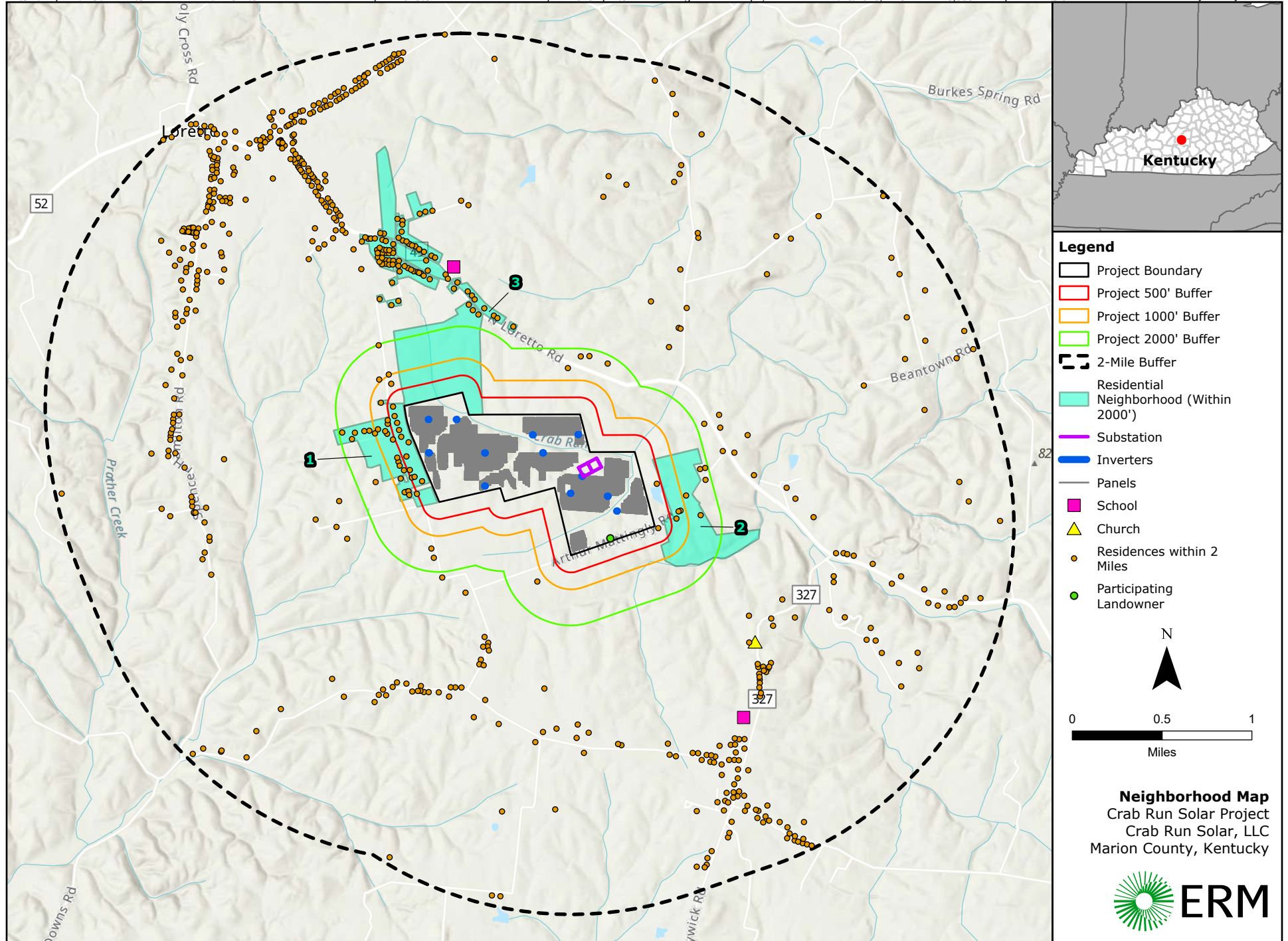


Source: Esri - World Topographic Map; NAD 1983 StatePlane Kentucky South FIPS 1602 Feet

No hospitals or airports identified within the 2 Mile Buffer.

EXHIBIT A





Source: Esri - World Topographic Map; NAD 1983 StatePlane Kentucky South FIPS 1602 Feet

No hospitals or airports identified within the 2 Mile Buffer.