

# Solar Development in Ohio

*Trends, Processes, and Legal Issues with Solar Energy Development*

## Session 4: Solar Project Approval in Ohio

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Spring Webinar Series

March 30, 2023

# Presenters

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# What is your role in this webinar today?

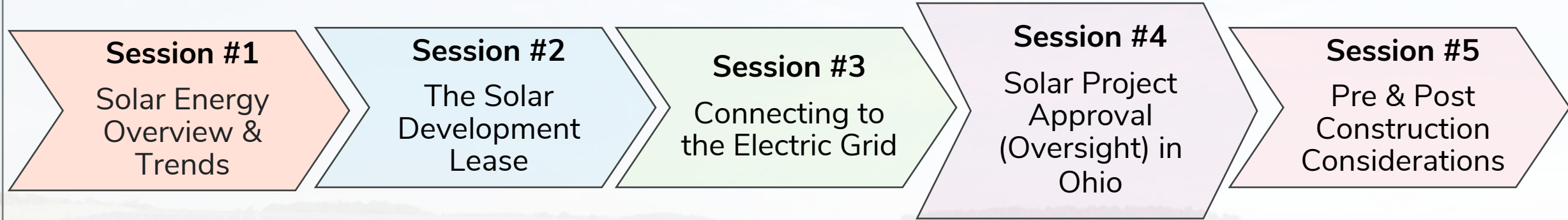
- Local government leader
- State government leader
- State or local government agency professional
- Interested local resident
- Landowner considering a lease
- Extension professional
- Solar industry official/worker
- Attorney
- Agricultural professional
- Other



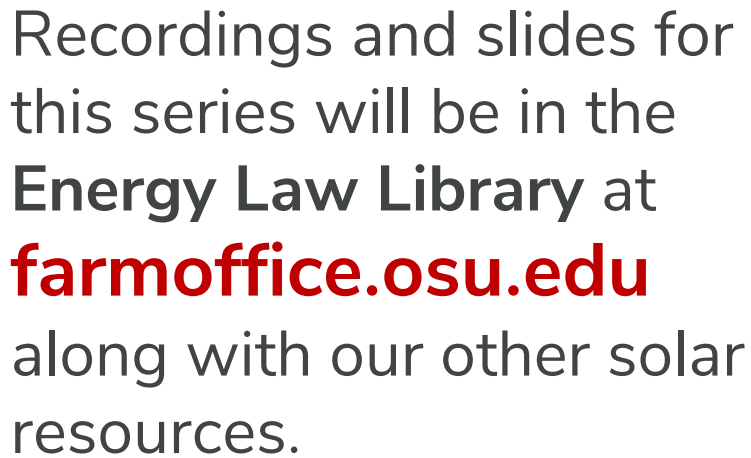


# OSU Extension Ohio Solar Development 2023 Webinar Series

CFAES



Solar project application procedures, state oversight, and new laws allowing county and township oversight of solar development.



CFAES

Give Today

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Animal Law

**Energy Law**

Environmental Law

Farm Finance Law

Estate & Transition Planning

Farm Leasing Law

Farmland Preservation Law

Food Law

Line Fence Law

Nuisance Law

Premises Liability Law

Property Law

Roadway and Equipment Law

Tax Law

Water Law

Zoning Law

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### RENEWABLE ENERGY

**Utility-Scale Wind and Solar Facility Siting: Ohio's New Law** -- Hall and Romich, 2021

**Decommissioning Large Wind and Solar Utilities: Ohio's New Law** -- Romich and Hall, 2021

**Land Use Conflicts Between Wind and Solar Renewable Energy and Agricultural Uses**, A National Agricultural Law Center Report - Hall, Morgan and Richardson, 2021

**Farmland Owner's Guide to Solar Leasing** -- Hall, Bachelor and Romich, 2019

**The Farmland Owner's Solar Leasing Checklist** -- Hall and Bachelor, 2019

### VIDEO SERIES ON SENATE BILL 52, OHIO'S NEW RENEWABLE ENERGY SITING LAW

Senate Bill 52: Ohio's...  
Ohio's New Laws  
for Wind and Solar Facilities

Restricted Area Desi...  
Restricted Area Designations  
for Wind and Solar Facilities

Local Involvement in...  
Local Involvement in Project Review  
for Wind and Solar Facilities



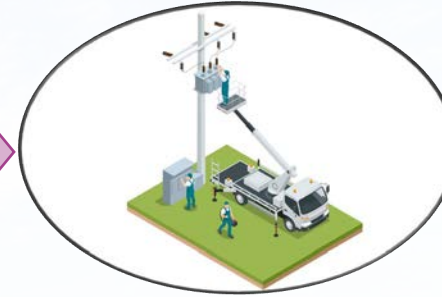
**Lease Agreement:** Developer must show evidence of **site control**.

## Critical Layers of Solar Development Regulatory Oversight

1

Approval to  
**Interconnect**  
to the Power  
Grid

- Public Utilities Commission of Ohio
- PJM



2

Permit to  
**Construct,**  
Own, and  
Operate

- Ohio Power Siting Board
- County Restricted Zone
- Local Zoning



3

Qualified  
Energy Facility  
**Tax** Exemption

- Ohio Department of Development
- County Commissioners





## Session #4: The Solar Development Approval (Oversight) Process

1. Large “utility-scale” solar facilities.
  - County “restricted areas” designation.
  - County authority to prohibit or limit.
  - OPSB application procedures.
2. “Small-scale” solar facilities.
  - New authority for local zoning.
  - Zoning regulations.



# Solar project oversight differs

## *Based on the scale of the project*

### UTILITY-SCALE

- Ohio Power Siting Board application process.
- County authority to restrict or reject.

### SMALL-SCALE

- County or township zoning regulations.

### "COMMUNITY

- Legislation to authorize this type of development did not pass last year



# Defining “utility-scale” and “small-scale” solar

## UTILITY-SCALE

(B)(1) "Major utility facility" means:

(a) Electric generating plant and associated facilities designed for, or capable of, operation at a capacity of **fifty megawatts or more.**

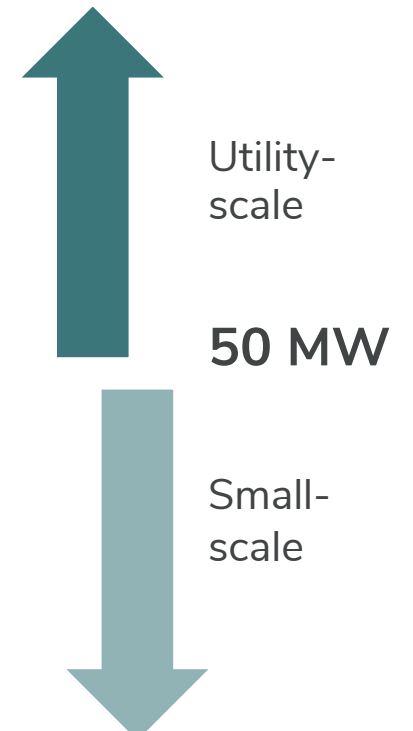
(G) "Large solar facility" means an electric generating plant that consists of solar panels and associated facilities with a **single interconnection** to the electrical grid that is a **major utility facility.**

*Ohio Revised Code 4906.01 – Power siting definitions*


## SMALL-SCALE

(2) "Small solar facility" means solar panels and associated facilities with a **single interconnection** to the electrical grid and designed for, or capable of, operation at an aggregate capacity of **less than fifty megawatts.**

*Ohio Revised Code Sections 303.213, 519.213, 713.081*



Ohio laws  
have  
changed  
recently...



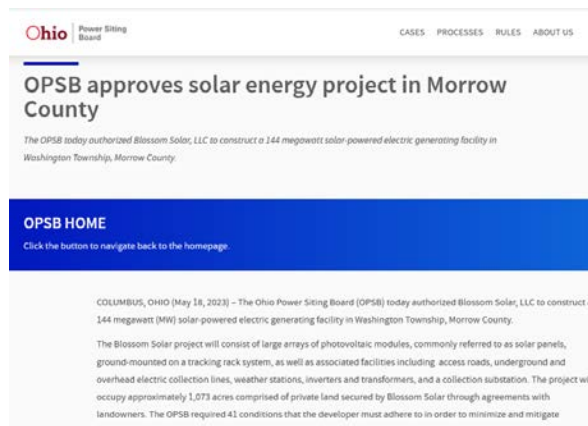
# Approval to construct a “utility-scale” solar facility

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# Approval to construct a solar facility



①

COUNTY AUTHORITY TO  
DESIGNATE AREAS RESTRICTED  
FROM SOLAR OR WIND FACILITIES

②

COUNTY PRE-APPLICATION  
REVIEW OF PROPOSED  
SOLAR FACILITY

③

OHIO POWER SITING BOARD  
APPLICATION PROCESS

# 1. County authority to designate areas restricted from solar or wind facilities

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- Ohio law now grants a board of county commissioners the authority to designate **all or part** of the unincorporated area of a county as a restricted area where solar or wind facilities may not locate.
- The Ohio Power Siting Board shall not accept an application for a solar or wind facility within a restricted area.

*Senate Bill 52 – Ohio Revised Code 303.58*



# But ... restricted area designations are subject to the referendum process

A **petition for referendum** can require the designation of a restricted area to be submitted to a public vote.

**1**

At least **8%** of the total vote cast for governor in the county in the most recent governor election must sign the petition.

**2**

Circulators must present the petition to county commissioners within **30 days** of the adoption of a restricted area.

**3**

If the board of elections certifies a petition as valid, the restricted area designation goes to a vote at the next election that is more than 120 days from petition filing.

**4**

The restricted area designation is **not effective unless** a majority of the voters approve it.

*Senate Bill 52 - Ohio Revised Code Section 303.59*



ENERGY & ENVIRONMENT

POLITICS & GOV

## Ten Ohio counties ban wind, solar projects under new state law

BY: JAKE ZUCKERMAN - AUGUST 23, 2022 3:55 AM



Photo by Xuanyu Han/Getty Images.

At least 10 Ohio counties have passed resolutions blocking the development of new utility scale wind and solar projects within all or part of their jurisdictions in the last year.

The counties' moves come after the October 2021 enactment of a [state law](#) giving the locals the veto power over renewable energy generation sites – a veto power that doesn't exist for fossil fuel developments.

At least two more counties are actively considering such a prohibition. In Crawford County, meanwhile, citizens are pushing to reverse their commission's ban by placing the issue on the 2022 ballot.

## 2. County pre-application review of proposed facility

**Before** applying or amending for a certificate to operate a utility facility from the Ohio Power Siting Board, a developer must hold a **public meeting in each county** where the facility would be located.

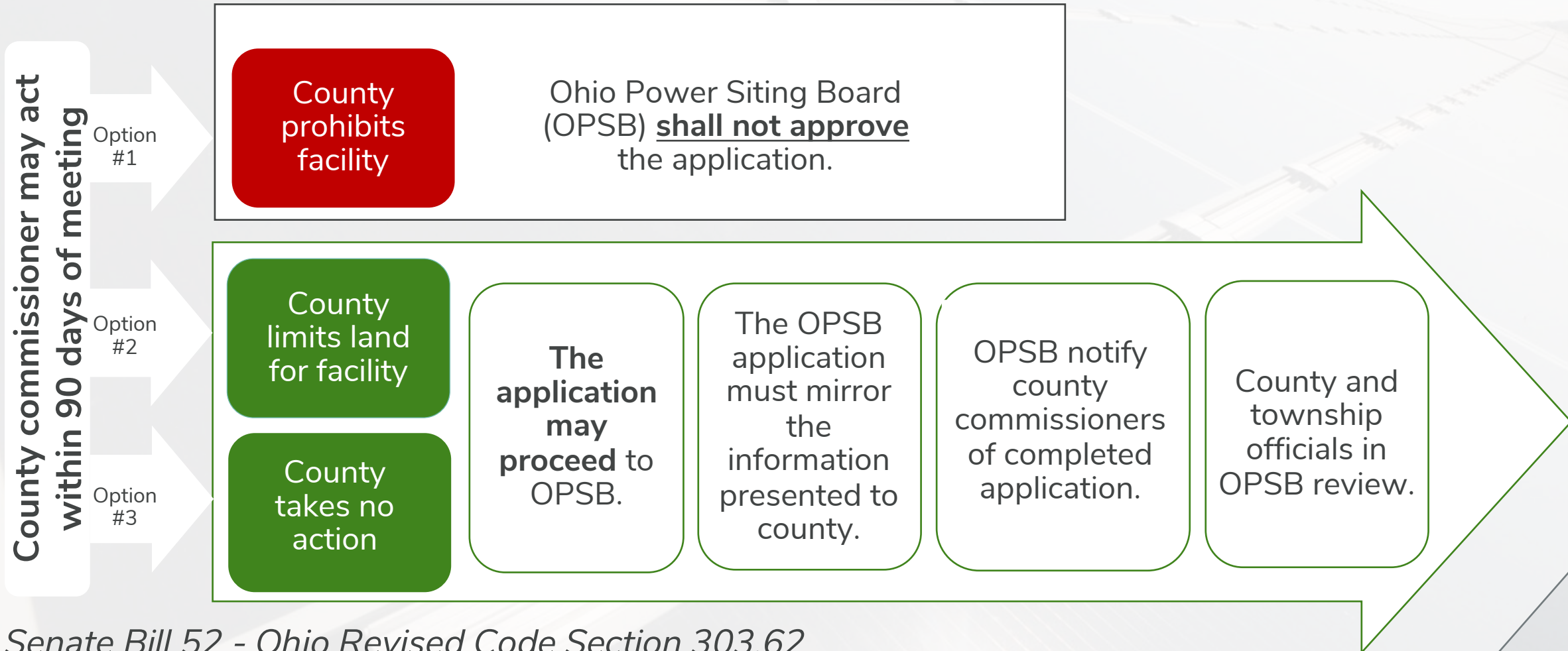
At least **90** but no more than **300 days** prior to applying for OPSB certificate.

Must give **written notice** of the public meeting to commissioners and trustees at least **14 days** prior to meeting.

Must also submit written **information about type of utility facility**, its maximum nameplate capacity, and a map of its geographic boundaries.

*Ohio Revised Code Section 303.61*


## 2. County pre-application review of proposed facility



*Senate Bill 52 - Ohio Revised Code Section 303.62*



### 3. Ohio Power Siting Board application process




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## Welcome to the Ohio Power Siting Board


How can we help you today?




Pre-Application




Pending Cases



Approved Cases




Operational Cases




### Featured Resources

Find more information about the Ohio Power Siting Board.




#### OPSB Solar Facilities Mapping Application

Map shows the locations and status of solar facilities before the OPSB.




#### Wind Facilities Map and Statistics

Map shows the locations and status of wind facilities before the OPSB.



#### OPSB annual reports

The Ohio Power Siting Board issues an annual report of its accounting each calendar year.



#### Battery Storage Facilities Map and Statistics

Map shows the locations and status of battery storage projects before the OPSB.



## Chapter 4906 | Power Siting

Ohio Revised Code / Title 49 Public Utilities

[Expand All](#)[Close All](#)

### Section

Section 4906.01 | Power siting definitions.

Section 4906.02 | Power siting board organization.

Section 4906.021 | Ad hoc member requirement, qualifications.

Section 4906.022 | Ad hoc member designation.

Section 4906.023 | Limitation on ad hoc member of intervening township or county.

Section 4906.024 | Ex parte communication exemption and requirements for ad hoc members.

Section 4906.025 | Ad hoc member confidentiality requirements.

Section 4906.03 | Powers and duties of power siting board.

Section 4906.04 | Certificate required for construction of major utility facility.

Section 4906.05 | Certificate exemptions.

Section 4906.06 | Certificate application.

Section 4906.07 | Public hearing on application.

Section 4906.08 | Parties - testimony.



# OHIO LAWS & ADMINISTRATIVE RULES

LEGISLATIVE SERVICE COMMISSION

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This website publishes administrative rules on their effective dates, as designated by the adopting state agencies, colleges, and universities.

## 4906 | Power Siting Board

Ohio Administrative Code

### Chapter

[Chapter 4906-1 | General Provisions](#)

[Chapter 4906-2 | Procedure in Cases before the Board](#)

[Chapter 4906-3 | Certificate Applications Generally](#)

[Chapter 4906-4 | Certificate Applications for Electric Generation Facilities](#)

[Chapter 4906-5 | Certificate Applications](#)

[Chapter 4906-6 | Accelerated Certificate Applications](#)

[Chapter 4906-7 | Procedure](#)



# The Ohio Power Siting Board

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- An independent body within the Public Utilities Commission.
- Reviews applications to determine whether to grant a “certificate of environmental compatibility and public need” that allows a proposed facility to be constructed.
- OPSB review must assure that a proposed facility:
  - Meets the public need.
  - Promotes the state’s economic interests.
  - Protects the environment and land use.

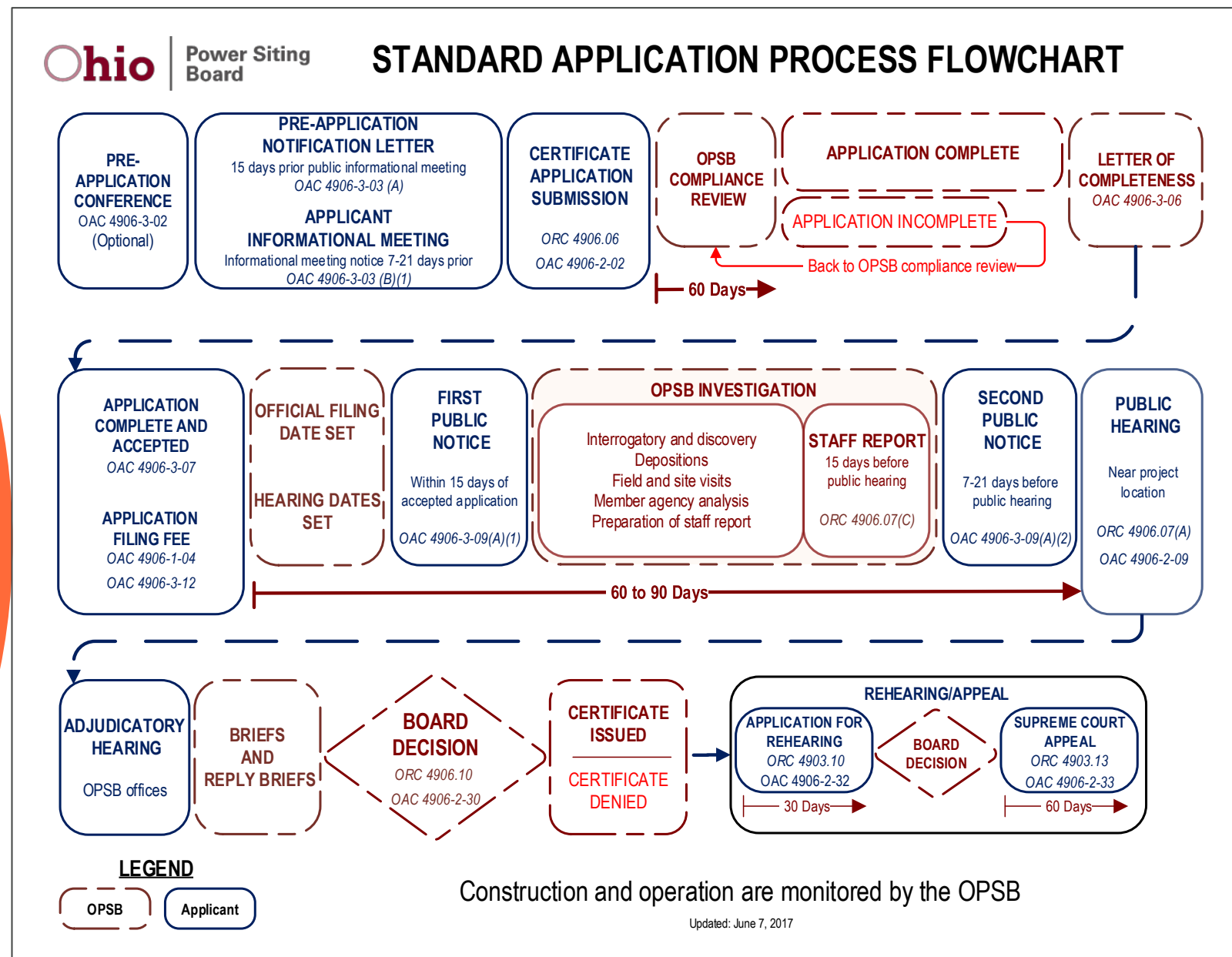
## Voting Members

- Chair of PUCO (serves as Chair of OPSB)
- Environmental Protection Agency Director
- Department of Agriculture Director
- Department of Development Director
- Department of Health Director
- Department of Natural Resources Director
- Public Representative Engineer (appointed)
- Local County Commissioner (wind/solar)
- Local Township Trustee (wind/solar)

## Non-Voting Members

- Two members of House of Representatives
- Two members of Senate

# Ohio Power Siting Board Application Process



Source: Ohio Power Siting Board

# Ohio Power Siting Board Application Process



Source: Ohio Power Siting Board



## Cases

Find information about approved, operational, pending and pre-application cases.

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## Case Record 22-0151-EL-BGN For:

[File a Public Comment](#)

Case Title:	In the Matter of the Application of Blossom Solar, LLC for a Certificate of Environmental Compatibility and Public Need
Status:	OPEN-OPEN
Industry Code:	EL-ELECTRIC
Purpose Code:	BGN-Application for a certificate/ generating station
Date Opened:	3/1/2022 9:08:48 AM
Date Closed:	

### Case Documents

### Public Comments

### Parties of Record

### Related Cases

[Printable Docket Card](#)

[Service List](#)

1 - 15 of 83 documents

[View All](#)

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Date Filed	Summary	Pages
05/18/2023	Opinion & Order issuing a certificate of environmental compatibility and public need to Blossom Solar, LLC for the construction, operation, and maintenance of the solar-powered electric generation facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion and Order electronically filed by Ms. Mary E. Fischer on behalf of Ohio Power Siting Board.	59
05/18/2023	Service Notice.	4
03/14/2023	PUCO Exhibit Filing - Company Exhibits 4 and 5 filed by Karen Sue Gibson on behalf of Armstrong & Okey.	201
03/13/2023	Transcript for Hearing Held on March 7, 2023 at 10:03 a.m. before Administrative Law Judge Ms. Greta See, at the Public Utility Commission of Ohio, Ohio Power Siting Board, 180 E. Broad Street, Room 11-C, Columbus, Ohio 43215 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.	19
02/27/2023	Direct Testimony of Patrick Buckley electronically filed by Ms. Anna Sanyal on behalf of Blossom Solar, LLC.	30
02/27/2023	Direct Testimony of Mark Bonifas electronically filed by Ms. Anna Sanyal on behalf of Blossom Solar, LLC.	19
02/27/2023	Direct Testimony of John Woods electronically filed by Ms. Anna Sanyal on behalf of Blossom Solar, LLC.	9
02/27/2023	Direct Testimony of Brooke Harrison electronically filed by Ms. Anna Sanyal on behalf of Blossom Solar, LLC.	9
02/27/2023	Prefiled Testimony of James S. O'Dell on Behalf of the Public Utilities Commission of Ohio, Power Siting Department, electronically filed by Mrs. Kimberly M. Naeder on behalf of OPSB.	7
02/13/2023	Service Notice.	4
02/13/2023	Administrative Law Judge Entry that the hearing shall resume on March 7, 2023, at 10:00 a.m., at the offices of the Commission, 180 E. Broad Street, Hearing Room C, 11th Floor, Columbus, Ohio 43215 electronically filed by Ms. Donielle M. Hunter on behalf of Greta N. See, Administrative Law Judge, Ohio Power Siting Board.	5
02/03/2023	Joint Stipulation and Recommendation electronically filed by Ms. Anna Sanyal on behalf of Blossom Solar, LLC.	23
12/28/2022	Transcript for hearing held on 12/19/22 at 10:00 am at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Hearing Room 11-C, Columbus, Ohio before Administrative Law Judge Greta See electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.	7
12/12/2022	Service Notice.	4
12/12/2022	Administrative Law Judge Entry ordering that Movants' motion to continue the procedural schedule as discussed in Paragraph 15. be	4

## Section 4906.06 | Certificate application.

[Ohio Revised Code](#) / [Title 49 Public Utilities](#) / [Chapter 4906 Power Siting](#)

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**Effective:** September 10, 2012   **Latest Legislation:** Senate Bill 315 - 129th General Assembly   **PDF:** [Download Authenticated PDF](#)

(A) An applicant for a certificate shall file with the office of the chairperson of the power siting board an application, in such form as the board prescribes, containing the following information:

- (1) A description of the location and of the major utility facility;
- (2) A summary of any studies that have been made by or for the applicant of the environmental impact of the facility;
- (3) A statement explaining the need for the facility;
- (4) A statement of the reasons why the proposed location is best suited for the facility;
- (5) A statement of how the facility fits into the applicant's forecast contained in the report submitted under section [4935.04](#) of the Revised Code;
- (6) Such other information as the applicant may consider relevant or as the board by rule or order may require. Copies of the studies referred to in division (A)(2) of this section shall be filed with the office of the chairperson, if ordered, and shall be available for public inspection.

# Application contents

## Rule 4906-4-08 | Health and safety, land use and ecological information.

[Ohio Administrative Code / 4906 / Chapter 4906-4 | Certificate Applications for Electric Generation Facilities](#)

[Previous](#)

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*Effective: April 26, 2018   Promulgated Under: 111.15   PDF: Download Authenticated PDF*

(A) The applicant shall provide information on health and safety.

(1) Equipment safety. The applicant shall provide information on the safety and reliability of all equipment.

(a) Describe all proposed major public safety equipment.

(b) Describe the reliability of the equipment.

(c) Provide the generation equipment manufacturer's safety standards. Include a complete copy of the manufacturer's safety manual or similar document and any recommended setbacks from the manufacturer.

(d) Describe the measures that will be taken to restrict public access to the facility.

(e) Describe the fire protection, safety, and medical emergency plan(s) to be used during construction and operation of the facility, and how such plan(s) will be developed in consultation with local emergency responders.

(2) Air pollution control. Except for wind farms, the applicant shall describe in conceptual terms the probable impact to the population due to failures of air pollution control equipment.

(3) Noise. The applicant shall provide information on noise from the construction and operation of the facility.

(a) Describe the construction noise levels expected at the nearest property boundary. The description shall address:

(i) Blasting activities.

(ii) Operation of earth moving equipment.

(iii) Driving of piles, rock breaking or hammering, and horizontal directional drilling.

(iv) Erection of structures.

(v) Truck traffic.

(vi) Installation of equipment.



For:

CFAES

Case Title:	In the Matter of the Application of Blossom Solar, LLC for a Certificate of Environmental Compatibility and Public Need
Status:	OPEN-OPEN
Industry Code:	EL-ELECTRIC
Purpose Code:	BGN-Application for a certificate/ generating station
Date Opened:	3/1/2022 9:08:48 AM

[Case Documents](#) [Public Comments](#) [Parties of Record](#) [Related Cases](#)[Printable Docket Card](#)[Service List](#)[View All](#)

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Date Filed	Summary	Pages
05/27/2022	Application Figures 16-18 electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC	34
05/27/2022	Application Figures 13-15 electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC	16
05/27/2022	Application Figures 6-12 electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC	24
05/27/2022	Application Figures 1-5 electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC	18
05/27/2022	Application Exhibit Z (Landscaping Plan) electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC.	48
05/27/2022	Application Exhibit Y (Visual Assessment) electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC.	48
05/27/2022	Application Exhibit X (SHPO Concurrence Cultural Report) electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC.	3
05/27/2022	Application Exhibit W (Cultural Report - Redacted) electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC	377
05/27/2022	Application Exhibit V (SHPO Concurrence History Report) electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC	3
05/27/2022	Application Exhibit U (Historic Report) electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC.	476
05/27/2022	Application Exhibit T (SHPO Concurrence Cultural Workplan) electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC.	3
05/27/2022	Application Exhibit S (Phase IA Cultural Workplan) electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC.	17
05/27/2022	Application Exhibit R (Preliminary HDD Return Plan) electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC.	30
05/27/2022	Application Exhibit Q (Ecological Report) electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC.	65
05/27/2022	Application Exhibit P (Wildlife Report) electronically filed by Mr. Michael J. Settineri on behalf of Blossom Solar, LLC.	78

Application  
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# Comprehensive Decommissioning Plan

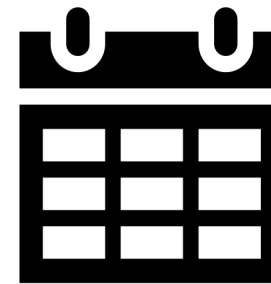
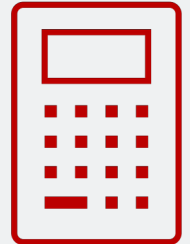
At least 60 days **prior to construction**, the applicant (developer) must submit a **comprehensive decommissioning plan** to the OPSB for review and approval.

# Comprehensive Decommissioning Plan

“An estimate of the full cost of decommissioning the utility facility, including the proper disposal of all facility components and restoration of the land on which the facility is located to its preconstruction state. The estimate shall not take into account the salvage value of any materials from the facility.”

*Ohio Revised Code 4906.211*

Full Decommissioning Cost  
—  
Decommissioning Revenue  
—————  
~~“Net” Decommissioning Cost~~



Recalculate  
Decommissioning  
Cost Every

**5 - Years**





# Decommissioning Performance Bonds

---

A common concern of farmland owners considering a solar lease agreement is what happens if the developer or project **owner is not able to** properly **complete** the required **decommissioning** and site remediation?



Prior to starting construction, the applicant must post a performance bond equal to the decommissioning plan estimate.



**OPSB**

Must name the OPSB as the bond obligee



Required to update the decommissioning costs every 5 years.



*Ohio Revised Code Section(s) 4906.22, 4906.221, and 4906.222*

# The right of intervention

Rule 4906-2-12 | Intervention.

[Ohio Administrative Code](#) / [4906](#) / [Chapter 4906-2](#) | [Procedure in Cases before the Board](#)

[Previous](#) [Next](#)

*Effective:* December 11, 2015 *Promulgated Under:* 111.15 *PDF:* [Download Authenticated PDF](#)

(B) The board or the administrative law judge shall grant petitions for leave to intervene only upon a showing of good cause.

(1) In deciding whether to permit intervention under this paragraph, the board or the administrative law judge may consider:

- (a) The nature and extent of the person's interest.
- (b) The extent to which the person's interest is represented by existing parties.
- (c) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.
- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.



# OPSB criteria for application review – ORC 4906.10(A)

The board shall not grant a certificate unless it finds and determines all of the following:

---

1. For electric transmission and gas pipelines, the basis of need;
2. The nature of the probable environmental impact;
3. That the facility represents the minimum adverse environmental impact;
4. The facility is consistent with regional plans for expansion of the electric power grid;
5. Compliance with laws for air and water pollution, solid waste disposal, and air navigation.
6. The facility satisfies the public interest, convenience, and necessity.
7. What the facility's impact will be on the viability as agricultural land in an existing agricultural district located within the proposed site;
8. The facility incorporates maximum water conservation practices.



# Investigation and Staff Report

CFAES

## Staff Report of Investigation

Blossom Solar Project  
Blossom Solar, LLC

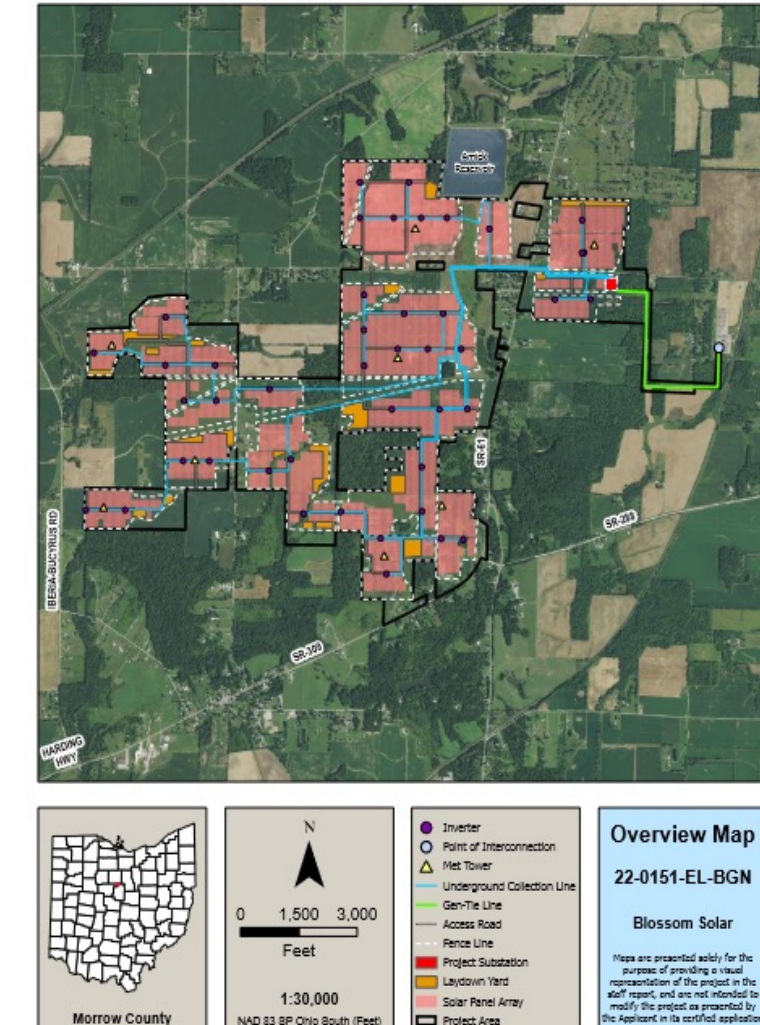
Case No. 22-0151-EL-BGN

October 31, 2022



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# Investigation and Staff Report

## Considerations for R.C. 4906.10(A)(2)

### NATURE OF PROBABLE ENVIRONMENTAL IMPACT

Pursuant to R.C. 4906.10(A)(2), the Board must determine the nature of the probable environmental impact of the proposed facility. Staff has found the following with regard to the nature of the probable environmental impact.

#### Overview

As described above, membership of the Board is specified in R.C. 4906.02(A) and its voting membership is comprised of leadership from the PUCO, Ohio EPA, ODH, ODOD, ODA, ODNR, and a member of the public specified as an engineer. Also as described above, the Board's Staff consists of career professionals from member agencies of the Board and their areas of expertise. Therefore, consideration of the nature of the probable environmental impact of a proposed facility incorporates such areas of expertise, as described below.

#### Community Impacts<sup>18</sup>

##### Land Use

The Applicant states the primary land use within one mile of the project area is agricultural, with lesser residential, commercial, industrial, open water, forested, and wetlands. Structures within one mile of the project include residences, commercial buildings, and schools. The Applicant states the only land use type that would be permanently impacted by this project is agricultural land. The total permanent impact to agricultural land would be approximately 25 acres. Impacts to land use would be contained to the project area. Impacts from construction would be contained to participating properties and would be temporary in nature. The Applicant plans to remove a house as part of this project. The Applicant confirmed in a response to a data request that this house currently stands vacant, and therefore would not be considered a change from residential land use, but rather from vacant land use. The Applicant has designed the project layout such that all non-participating residences are at least 250 feet from the project fence line. There would be three non-participating residences approximately 250 feet from the project fence.

In a response to Staff data requests questions, the Applicant states the main permanent impacts to the land would be where piles, unpaved roads, inverter foundations, buried lines, and the substation occur, and the remaining land under and around the panels would be planted with "deep rooted

## Considerations for R.C. 4906.10(A)(6)

### PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

Pursuant to R.C. 4906.10(A)(6), the Board must determine that the facility will serve the public interest, convenience, and necessity.

#### Safety

The Applicant stated that it would use reliable equipment. The current equipment under consideration is compliant with applicable Underwriters Laboratories and Institute of Electrical and Electronics Engineers standards. The Applicant intends to select leading suppliers, particularly a Tier 1 solar panel manufacturer and that all of the primary components of the solar facility will have standard industry warranties.<sup>76</sup> The Applicant has also planned for the expenses of O&M for the solar facility to keep the facility in a safe and reliable status.<sup>77</sup>

The Applicant intends to use warning signs, fencing, and gates to restrict access to the potential hazards within the solar project area. Additionally, the Applicant intends to design its facility with setbacks from its fence line to non-participating residences, non-participating properties, and public roads. Specifically, the Applicant would implement the following setbacks: 250 feet from the project fence to a non-participating residence, 25 feet from the property line of any non-participating property to the solar project's perimeter fence, road right-of-way to solar project perimeter fence, and 500 feet from an inverter to neighboring residence. The Applicant would also incorporate any manufacturer recommended setbacks into its final site plan. As noted in this section and above in the aesthetics section, Staff has recommended additional setback distances.

Staff has consulted with ODOT personnel who indicated that in roadway design a roadway requires a clear zone width beyond the edge line. Ideally, there should be no obstructions within that road's clear zone. Frangible objects that breakaway when or if an errant vehicle crashes into them, and that would not cause significant damage, can be placed in the clear zone. A clear zone is a safety precaution area for vehicles to lessen the severity of crashes. In the event the Board determines a lesser setback than the aforementioned setback recommended by Staff is appropriate, Staff recommends that the Applicant implement a setback of at least 30 feet from the solar facility fence line to the public roads edge line or demonstrate that its solar fence is outside the clear zone of the nearest public road.

The Applicant stated that it intends to restrict public access to the facility by enclosing the project area with a perimeter fence. The Applicant has proposed an agricultural-style metal fence from six to seven feet high with no barbed wire. Staff has recommended that, except for the substation fencing, the solar panel perimeter fence type be both wildlife permeable and aesthetically fitting for a rural location. Prior to construction, the Applicant also intends to develop and implement an emergency response plan in further consultation with potentially affected emergency response

## V. RECOMMENDED CONDITIONS OF CERTIFICATE

Following a review of the application filed by the Applicant and the record compiled to date in this proceeding, Staff recommends that a certificate be issued for the proposed facility. Staff recommends that a number of conditions become part of such certificate. These recommended conditions may be modified as a result of public or other input received subsequent to the issuance of this report. At this time, Staff recommends the following conditions:

- (1) 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 this *Staff Report of Investigation*.
- (2) The Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review and shall file a copy of the agenda on the case docket. The Applicant may conduct separate preconstruction conferences for each stage of construction.
- (3) Within 60 days of commencement of commercial operation of the solar facility, point-of-interconnection switchyard, the Applicant shall submit to Staff a copy of the as-built specifications for that facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.
- (4) In the event that the federal requirements for a SPCC doesn't apply to the proposed facility, the Applicant shall develop and implement a Spill Prevention Plan or comparable plan that will address prevention of, response to, and notification to the appropriate authorities in the event of any spills.
- (5) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate unless the Board grants a waiver or extension of time.
- (6) As the information becomes known, the Applicant shall file on the public docket the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
- (7) The Applicant shall obtain transportation permits prior to the commencement of construction activities that require them. The Applicant shall coordinate with the appropriate authority regarding any temporary road closures, road use agreements, driveway permits, lane closures, road access restrictions, and traffic control necessary for

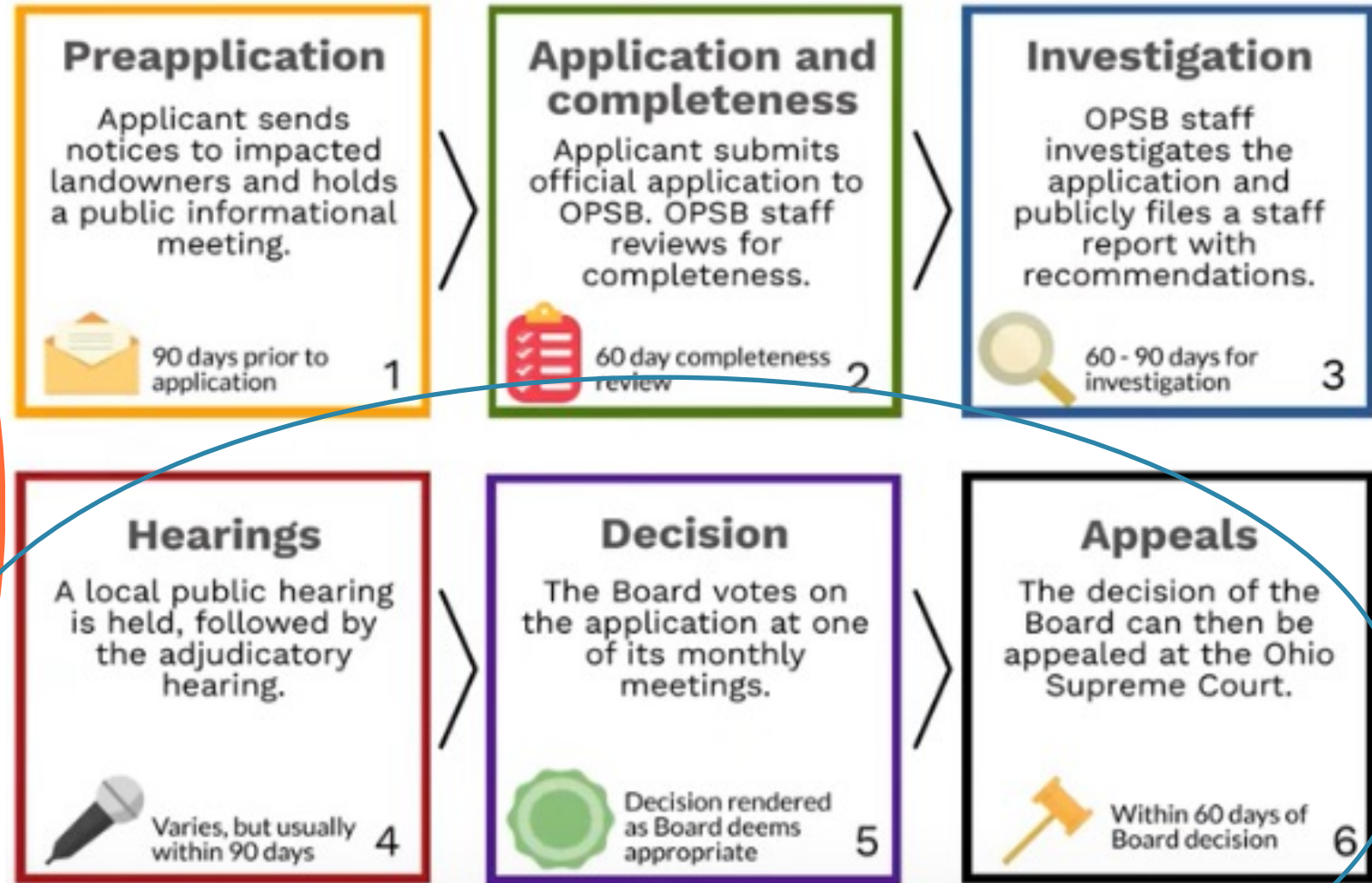
18. "The Ohio Department of Development is committed to creating jobs and building strong communities, while ensuring accountability and transparency of taxpayer money and exceptional customer service." (Ohio.gov, Department of Development, <https://development.ohio.gov/what/whatsnew.htm>). R.C. 122.011(A)(6) states, in part, that the department of development shall develop and promote plans and programs designed to assure that state resources are efficiently used, economic growth is properly balanced, community growth is developed in an orderly manner, and local governments are coordinated with each other and the state, and for such purposes may, among other things, cooperate with and provide technical assistance to state departments, regional and local planning commissions, and other appropriate organizations for the solution of community problems. According to R.C. 122.01(B)(1), "community problems" includes, but is not limited to, taxation, fiscal administration, governmental structure and organization, intergovernmental cooperation, education and training, employment needs, community planning and development, air and water pollution, public safety and the administration of justice, housing, mass transportation, community facilities and services, health, welfare, recreation, open space, and the development of human resources."

76. Application at page 48. Blossom Solar, LLC's July 15, 2022 Responses to Staff's July 1, 2022 Data Requests (Question #11).

77. Application at page 26.



# Ohio Power Siting Board Application Process



Source: Ohio Power Siting Board

# Public hearing requirement

## Rule 4906-2-09 | Hearings.

[Ohio Administrative Code](#) / [4906](#) / [Chapter 4906-2](#) | [Procedure in Cases before the Board](#)

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(A) Unless otherwise ordered, all hearings shall be held at the principal office of the board. However, where practicable, the board shall schedule a session of the hearing for the purpose of taking public testimony in the vicinity of the project. Reasonable notice of each hearing shall be provided to all parties.


(B) The administrative law judge shall regulate the course of the hearing and conduct of the participants. Unless otherwise provided by law, the administrative law judge may without limitation:

- (1) Administer oaths and affirmations.
- (2) Determine the order in which the parties shall present testimony and the order in which witnesses shall be examined.
- (3) Issue subpoenas.
- (4) Rule on objections, procedural motions, and other procedural matters.
- (5) Examine witnesses.
- (6) Grant continuances.
- (7) Require expert or factual testimony to be offered in board proceedings to be reduced to writing, filed with the board, and served upon all parties and the staff prior to the time such testimony is to be offered and according to a schedule to be set by the administrative law judge.
- (8) Take such actions as are necessary to:
  - (a) Avoid unnecessary delay.
  - (b) Prevent the presentation of irrelevant or cumulative evidence.
  - (c) Prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The administrative law judge may, upon motion of any party, direct that a portion of the hearing be conducted in camera and that the corresponding portion of the record be sealed to prevent public disclosure of trade secrets, proprietary business information or confidential research, development, or commercial materials and information. The party requesting such protection shall have the burden of establishing that such protection is required.
  - (d) Assure the hearing proceeds in an orderly and expeditious manner.

(C) Members of the public to offer testimony may be sworn in or affirmed at the portion or session of the hearing designated for the taking of public testimony.



# OPSB Decision



## OHIO LAWS & ADMINISTRATIVE RULES

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### Rule 4906-2-30 | Decision by the board.

[Ohio Administrative Code](#) / [4906](#) / [Chapter 4906-2](#) | [Procedure in Cases before the Board](#)

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Within a reasonable time after the conclusion of the hearing, the board shall issue a final decision based only on the record, including such additional evidence as it shall order admitted. The board may determine that the location of all or part of the proposed facility should be modified. If it so finds, it may condition its certificate upon such modifications. Persons and municipal corporations shall be given reasonable notice thereof. The decision of the board shall be entered on the board journal and into the record of the hearing. Copies of the decision or order shall be served on all attorneys of record and all unrepresented parties in the proceedings by ordinary mail.

# Rehearing request



## OHIO LAWS & ADMINISTRATIVE RULES

LEGISLATIVE SERVICE COMMISSION

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### Rule 4906-2-32 | Applications for rehearing.

[Ohio Administrative Code](#) / [4906](#) / [Chapter 4906-2 | Procedure in Cases before the Board](#)

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*Effective:* December 11, 2015 *Promulgated Under:* 111.15 *PDF:* [Download Authenticated PDF](#)

(A) Any party or any affected person, firm, or corporation may file an application for rehearing, within thirty days after the issuance of a board order, in the manner and form and circumstances set forth in section [4903.10](#) of the Revised Code. An application for rehearing must set forth the specific ground or grounds upon which the applicant considers the board order to be unreasonable or unlawful. An application for rehearing must be accompanied by a memorandum in support, which sets forth an explanation of the basis for each ground for rehearing identified in the application for rehearing and which shall be filed no later than the application for rehearing.


(B) Any party may file a memorandum contra within ten days after the filing of an application for rehearing.

(C) As provided in section [4903.10](#) of the Revised Code, all applications for rehearing must be submitted within thirty days after an order has been journalized by the secretary of the board, or in the case of an application that is subject to automatic approval under the boards procedures, an application for rehearing must be submitted within thirty days after the date on which the automatic time frame has expired, unless the application has been suspended by the board.

(D) A party or any affected person, firm, or corporation may only file one application for rehearing to a board order within thirty days following the entry of the order upon the journal of the board.

(E) The board, the chairman of the board, or the administrative law judge may issue an order granting rehearing for the purpose of affording the board more time to consider the issues raised in an application for rehearing.

# Appeal to Ohio Supreme Court



## OHIO LAWS & ADMINISTRATIVE RULES

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The Legislative Service Commission staff updates the Revised Code on an ongoing basis, as it completes its act review of enacted legislation. Updates may be slower during some times of the year, depending on the volume of enacted legislation.

### Section 4903.13 | Reversal of final order - notice of appeal.

[Ohio Revised Code](#) / [Title 49 Public Utilities](#) / [Chapter 4903 Public Utilities Commission - Hearings](#)

[< Previous](#) [Next >](#)

*Effective:* October 1, 1953 *Latest Legislation:* House Bill 1 - 100th General Assembly *PDF:* [Download Authenticated PDF](#)

A final order made by the public utilities commission shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable.

The proceeding to obtain such reversal, vacation, or modification shall be by notice of appeal, filed with the public utilities commission by any party to the proceeding before it, against the commission, setting forth the order appealed from and the errors complained of. The notice of appeal shall be served, unless waived, upon the chairman of the commission, or, in the event of his absence, upon any public utilities commissioner, or by leaving a copy at the office of the commission at Columbus. The court may permit any interested party to intervene by cross-appeal.

# OPSB Solar Certificates Recently Denied

1. **Birch Solar 1 LLC** - 300 MW facility on 1,410 acres in Allen and Auglaize counties.
2. **Kingwood Solar LLC** - 175 MW facility on 1,200 acres in Greene County.
3. **Cepheus LLC** - 68 MW facility on 649 acres in Defiance County.

**Basis for denials:** Due to general opposition by local governmental bodies and citizens, applicants did not satisfy Ohio Revised Code 4906.10(A)(6), which requires showing that a facility "will serve the public interest, convenience, and necessity."

**Appeals.** All applicants have requested re-hearings on their applications, and the Kingwood application is on appeal to the Ohio Supreme Court.



# Small- scale solar facilities

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# Ohio zoning law before Ohio HB 501

Counties and townships have no zoning authority “in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utilities.”

*ORC 303.211 (counties)  
and 519.211 (townships)*



# Ohio House Bill 501

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As of April 6, 2023,  
counties,  
townships, and  
municipalities have  
authority to  
regulate “small”  
solar facilities of  
less than 50 MW.

(134th General Assembly)  
(Substitute House Bill Number 501)

## AN ACT

To amend sections 148.061, 303.213, 307.204, 503.01, 505.10, 505.266, 507.02, 507.021, 519.213, 713.081, 4113.52, 5709.41, 5709.74, 5709.75, 5709.78, and 5709.85 and to enact section 505.882 of the Revised Code to make various township law changes, to subject small solar facilities to local regulation, and to make an exception to the Uniform Depository Act for the treasurer and governing board that is a member of the Little Miami Joint Fire and Rescue District for certain investments of interim funds.

# Ohio House Bill 501

As of April 6, 2023,  
counties,  
townships, and  
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authority to  
regulate “small”  
solar facilities of  
less than 50 MW.

## Section 519.213 | Township small wind farm zoning regulations.

[Ohio Revised Code](#) / [Title 5 Townships](#) / [Chapter 519 Township Zoning](#)

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*Effective:* April 6, 2023   *Latest Legislation:* House Bill 501 - 134th General Assembly   *PDF:* [Download Authenticated PDF](#)

(A) As used in this section:

- (1) “Small wind farm” means wind turbines and associated facilities that are not subject to the jurisdiction of the power siting board under sections [4906.20](#) and [4906.201](#) of the Revised Code.
- (2) “Small solar facility” means solar panels and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than fifty megawatts.

(B) Notwithstanding division (A) of section [519.211](#) of the Revised Code, sections [519.02](#) to [519.25](#) of the Revised Code confer power on a board of township trustees or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any small wind farm or small solar facility, whether publicly or privately owned, or the use of land for that purpose. With regard to a small wind farm, the regulations may be more strict than the regulations prescribed in rules adopted under division (B)(2) of section [4906.20](#) of the Revised Code.

(C) The designation under this section of a small wind farm or a small solar facility as a public utility for purposes of sections [519.02](#) to [519.25](#) of the Revised Code shall not affect the classification of a small wind farm, a small solar facility, or any other public utility for purposes of state or local taxation.

(D) Nothing in division (C) of this section shall be construed as affecting the classification of a telecommunications tower as defined in division (B) or (E) of section [519.211](#) of the Revised Code or any other public utility for purposes of state and local taxation.

*Last updated January 17, 2023 at 12:39 PM*





# Small-scale solar zoning regulations

Some cities, counties, and townships in Ohio have already adopted model zoning provisions for small-scale solar systems.

Common approaches:

- Distinguish between integrated, rooftop, and ground mounted systems.
- Determine zoning districts where a type of system is a “permitted use.”
- Determine zoning districts and systems that require a “conditional use” permit that might be allowed, with conditions, if the use is consistent with the character of the zoning district.

Important question:

- Do the regulations address current issues with “larger” small-scale solar leased to solar developers?

# General zoning standards for small-scale solar

- Height
- Lot/structure coverage
- Visual buffers
- Lighting
- Noise
- Setbacks
- Maintenance
- Ceased operations
- Building permits
- Prohibited advertising use

# Zoning standards for conditional use permit

- Road use maintenance agreement (RUMA)
- Available safety services
- Location
- Height
- Buffers and setbacks from residences
- Glare
- Lighting
- Fencing

# Zoning permit application requirements

- Engineering report
  - Showing total size, height, generating capacity.
  - Hazardous materials containment and disposal plan.
- Site drawing showing location.
- Maintenance schedule and dismantling plan.



# Additional considerations for solar zoning

- Protection of prime/unique/locally important soils
- Brownfield redevelopment
- Grading and soil removal standards
- Drainage system mitigation
  - Surface and subsurface
- Noxious weed management
- Co-location with agriculture, other land uses
- Pollinator habitat provisions
- Historic or culturally significant sites
- Residential density
- Decommissioning plans
  - Bonding, salvage, site restoration

*Photo of Jack's Solar Garden in CO by Kirk Siegler, NPR*

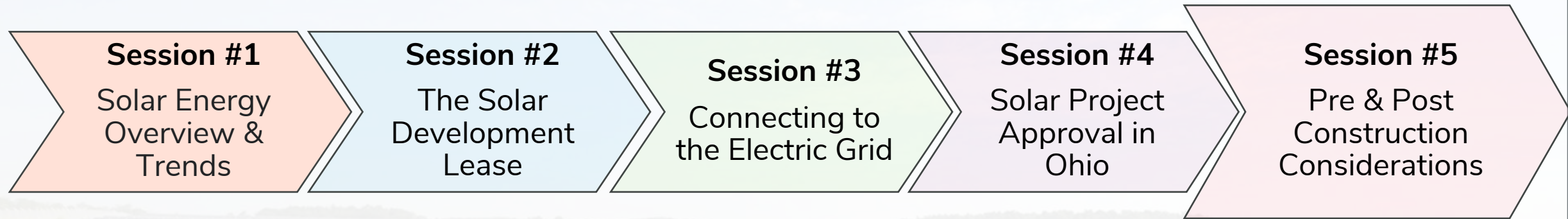




## What about “community solar” in Ohio?

- Not the same as “community-scale” or “small-scale.”
- Energy from the project goes to “subscribers” who would receive net metering benefits.
  - Current Ohio law only allows net metering if generation is on the ratepayer’s property.
- **Legislation is required to allow community solar arrangements.**
  - Ohio House Bill 450 (last session) proposed authorizing community solar but was not adopted.
  - Limited size, encouraged on distressed sites.
  - Opposed for rate fairness issues.

# Coming up next: our final webinar



The construction process, common construction issues, regulatory oversight of construction, and requirements for decommissioning a project in the future.



# Questions and Discussion

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