

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

Save Ohio Parks, <i>et al.</i> ,	:	Case No. 23-CV-8540
<i>Appellants,</i>	:	Judge: JAIZA PAGE
v.	:	Magistrate: MARK PETRUCCI
Oil and Gas Land Management Commission,	:	
<i>Appellee.</i>	:	

**APPELLANTS' MERITS BRIEF AND
MOTION FOR JUDGMENT IN APPELLANTS' FAVOR**

I. INTRODUCTION

This case is about the Oil and Gas Land Management Commission (“Commission” or “Appellee”) illegally committing state lands to oil and gas drilling without considering factors required by statute, without providing opportunity for a hearing, and by relying on extra-statutory considerations in issuing its leasing approvals. On November 15, 2023, for the first time in the State’s history, the Commission approved nominations to lease public lands managed by the Ohio Department of Natural Resources (“ODNR”). The seven nominations (Nomination Nos. 23-DNR-0001; 23-DNR-0002; 23-DNR-0003; 23-DNR-0004; 23-DNR-0005; 23-DNR-0006; 23-DNR-0007, collectively, “Nominations”) include the entirety of Salt Fork State Park—Ohio’s largest state park—the entirety of Valley Run Wildlife Area, and portions of Zepernick Wildlife Area (“Nominated Lands”). Appellants’ members rely on the existing qualities of the Nominated Lands to enjoy the peace and quiet of their own homes; to earn a living through rental property; and to hunt, fish, and otherwise recreate in these public lands. Appellants’ Memo Contra at 12–15. The leasing of the Nominated Lands for oil and gas development threatens to take away these benefits enjoyed by Appellants’ members. *Id.* at 13–15.

II. PROCEDURAL HISTORY

The Commission is a young agency, and the Nominations are among the very first it is considering. While the Ohio Legislature established the nomination process in 2011, the State had not used the process until 2023. The State’s adoption of House Bill 507 (“H.B. 507”) precipitated this change, kick-starting the Commission into action. H.B. 507 contained a time-limited mandatory leasing provision that required oil and gas leasing of public lands to bypass the Commission’s nomination process and forced state agencies to lease public lands within their control to any interested party meeting minimum statutory requirements. *See R.C. 155.33(A)(1).* Importantly, the mandatory leasing provision was temporary, beginning on the legislation’s

effective date of April 7, 2023 and ending once rules promulgated by the Commission took effect. *Id.* The Commission's rules containing a form lease took effect May 28, 2023. Ohio Adm.Code 1501:155-1-01. Thus, the mandatory leasing provision is no longer in effect, and the nominations process now governs the leasing of Ohio's public lands.

Under the nominations process, for anyone to obtain an oil and gas lease on Ohio's public lands, an applicant must first submit a nomination to the Commission requesting to lease specific parcels. R.C. 155.33(A)(2). The nomination identifies the desired lands, basic information about the nominator, and a proposed leasing bonus. *Id.* Statute places the Commission in the role of a gatekeeper; it must consider nine enumerated factors, and on this basis, either approve or disapprove the sought-after parcels for leasing. R.C. 155.33(B)(1). If the Commission approves a nomination, that nomination then serves as the opening bid for a bidding process, where the highest and best bidder receives the oil and gas lease for the nominated parcels. R.C. 155.33(A)(4) & (E).

The Commission received the Nominations on May 30, 2023, and posted notice of them to its website on June 5, beginning a 45-day comment period. *See Memo Contra at Ex. A.* During the comment period, Appellants and their members described numerous substantive concerns regarding the Nominations and requested a hearing. *See e.g. Memo Contra at Ex. I ¶ 18, 20–21, Ex. L ¶ 24, 28.* These concerns included harms to human health, reduced or eliminated recreational benefits, reduced quality of life, public safety concerns, impacts to wildlife, and adverse environmental impacts. *See e.g. Id. at Ex. H.*

The Commission first discussed the Nominations during its September 18, 2023 meeting (“September Meeting”).¹ The Commission did not allow any public comment, questions, or testimony at this meeting. The Commission did not discuss objections submitted by citizens of the state or users of the Nominated Lands at this meeting. At several points, the Commission Chair instructed the Commission that the legislature had directed the Commission “to open these lands up” for oil and gas development. Sept. Mtg. 35:37; 57:48. During the meeting, members of the public cried out that the Commission had not discussed any of the nine statutory factors it is required to discuss. *Id.* 25:22; 1:30:20.

The Commission again discussed the Nominations during its November 15, 2023 meeting (“November Meeting”) and, again, the Commission did not allow public comments, questions, or testimony. Nov. Mtg 1:00. During this meeting, the Commission discussed the terms and conditions broadly proposed by ODNR for all ODNR-controlled properties and an economic addendum. *Id.* 12:56; 22:50. Again, the Commission did not discuss objections submitted by citizens of the state or users of the Nominated Lands. The Commission also did not discuss environmental and geologic impacts to the Nominated Lands or impacts of leasing on existing uses of Salt Fork State Park, Valley Run Wildlife Area, and Zepernick Wildlife Area. The Commission, in rapid succession, then moved to approve each of the Nominations, seconding each motion, and taking a roll call vote for each motion to approve. *Id.* 25:54–37:36. Each motion carried, and the Chair stated that each of the Nominations had been approved (“Approvals”). *Id.* After verbally issuing the Approvals during the November Meeting, the

¹ A recording of the September Meeting is a part of the Certified Materials located at the URL provided by the Commission. See Commission Cert. The Court can also take judicial notice of the recording made available by the Commission on its website at <https://ohiodnr.gov/business-and-industry/municipalities-and-public-entities/commissions-and-councils/oil-gas-land-management-commission> (accessed Feb. 6, 2024). See e.g. *Lamar Advantage GP Co., LLC v. City of Cincinnati*, 114 N.E.3d 805 (C.P.), fn. 4 (taking judicial notice of audiovisual recordings of city council meetings published on a government website).

Commission never issued a written order of decision and expressed its belief that it is under no obligation to do so. Memo Contra at Ex. B. Thus, these Approvals, as described in Appellants' Notice of Appeal and documented in the November Meeting recording, are the agency orders now before this Court.

The Commission issued the Approvals: (1) without considering five of the nine factors that R.C. 155.33(B)(1) requires it to consider in making its decision to approve or disapprove a nomination; (2) without providing the opportunity for a public hearing as required by R.C. 119.07; and (3) by relying on extra-statutory considerations in direct contradiction to its statutory mandate under R.C. 155.33(B). Appellants, organizations whose missions include the protection of Ohio's public lands, timely filed a Notice of Appeal with the Commission and this Court on November 30, 2023, alleging the Approvals were not in accordance with law and were not supported by reliable, probative, and substantial evidence.

On January 25, 2024, after receiving a 30-day extension to certify the record, the Commission filed a document titled, "Certification by the Oil and Gas Land Management Commission" where it "certifies that true and accurate copies of the materials relevant to its November 15, 2023 meeting ... are located and publicly available at: <https://ohiodnr.gov/business-and-industry/municipalities-and-public-entities/commissions-and-councils/oil-gas-land-management-commission>." The Commission also included with its filing copies of six documents and one video available at that government website. This brief will refer to those materials located at the listed URL as the "Certified Materials."

The Commission commenced bidding on the Nominations on January 3, 2024, and the deadline for the submission of bids passed on February 4, 2024. Memo Contra at Ex. D.

III. MOTION FOR JUDGMENT IN APPELLANTS' FAVOR UNDER R.C. 119.12(J)

As an initial matter, the Commission refused to certify a complete record of proceedings for the Approvals, warranting a ruling in Appellants' favor under R.C. 119.12(J). *See* Commission Cert. (“the Commission maintains there is no record . . .”).

R.C. 119.12(J) requires an agency to “prepare and certify to the court a complete record of the proceedings in the case,” within 30 days of receipt of the notice of appeal and allows for one 30-day extension of that time “when it is shown that the agency has made substantial effort to comply.” R.C. 119.12(J). An agency’s certification that the record it submits is complete is sufficient compliance with R.C. 119.12 “unless it affirmatively appears that the record so certified is not a complete record of the proceedings.” *Checker Realty Co. v. Ohio Real Est. Comm.*, 41 Ohio App.2d 37, 44, 322 N.E.2d 139, 143 (10th Dist.1974). Moreover, “the record shall be prepared and *transcribed*.” R.C. 119.12(J) (emphasis added).

The Commission concedes it has not filed a complete record of the proceedings for the Approvals. *See* Commission Cert. Instead, the Commission gave this Court a hyperlink to the general Commission website, where one can access a plethora of materials, many of which are outside the scope of this appeal, such as information for other nominations and Commission meetings that did not involve any nominations. *See id.* With its filing, the Commission included seven attachments, six documents and one video, also available at the URL. These attachments cannot constitute the full record because they fail to include thousands of public comments, including comments from Appellants and their members,² the Nominations themselves, and the September Meeting. Statute requires the Commission to consider these missing materials in its

² These comments are part of the Certified Materials available at the URL provided by the Commission. A subset of these comments demonstrating some of the objections submitted to the Commission by citizens of the state and users of the Nominated Lands is attached herein as Exhibit A.

decision making and these materials are known to exist. *See* R.C. 155.33(B)(1); Ex. A; Memo Contra at Ex. A, Ex. H-M; *supra* at fn. 1. Thus, the Commission’s January 25, 2024 filing is not a complete record of proceedings for the Approvals.

R.C. 119.12(J) provides that the agency’s failure to comply with the timeframe for certifying the record “shall cause the court to enter a finding in favor of the party adversely affected.” Appellants hereby move this Court for a judgment in their favor on the basis that the Commission has not complied with the requirement under R.C. 119.12(J), and the Court’s January 24 scheduling order, requiring the Commission to file a complete certified record with this Court by January 25, 2024.

The Commission’s refusal to certify the complete record, and to prepare and transcribe that record, has prejudiced Appellants. *See Goudy v. Tuscarawas Cnty. Pub. Def.*, 2022-Ohio-4121, 170 Ohio St. 3d 173, 209 N.E.3d 681 (requiring a showing of prejudice for an appellant to receive relief under 119.12(J)). “[P]rejudice deals with an impediment to presenting a claim under review.” *Ohio Div. of Real Estate v. Knight*, 8th Dist. Cuyahoga No. 98160, 2013-Ohio-2896, ¶ 18. Ohio courts have found the filing of an incomplete record to prejudice appellants. *See e.g. Royer v. Ohio Real Est. Comm.*, 131 Ohio App. 3d 265, 269, 722 N.E.2d 172 (3rd Dist. 1999) (finding prejudice to appellant where commission’s exclusion of procedural documents from the certified record denied the trial court the ability to determine if procedures complied with statute and stating “the trial court must have access to everything that the commission was permitted to view ... Otherwise, the trial court is not able to make a proper determination of whether the final order was in compliance with the law.”).

The Commission’s refusal to prepare, transcribe, and certify a complete record has impeded Appellants’ ability to present their claims. The Commission hand selected six

documents to provide the Court, while omitting other known written materials and refusing to provide a transcript of proceedings for the two Commission meetings that addressed the Nominations. The Commission’s skewed and incomplete presentation of materials distorts the universe of written materials before the Court, painting an inaccurate picture of the proceedings. The Commission’s refusal to prepare a transcript deprives Appellants of the ability to refer the Court to written evidence regarding the two Commission meetings, both of which contain critical evidence regarding the Commission’s decision making. Further, the Commission’s sharing of a URL, where the materials present can change at any given moment without notice to the Court or Appellants, creates ambiguity as to what constitutes the record and cannot satisfy the requirements of R.C. 119.12(J).

For the foregoing reasons, Appellants request judgment in their favor under R.C. 119.12(J).

Pending the limitations of briefing without a complete certified record, Appellants proceed with arguing the merits of this appeal, relying on the Certified Materials available at the URL provided by the Commission in its January 25, 2024 filing.

IV. STANDARD OF REVIEW

This Court reviews agency actions appealed under R.C. 119.12 to determine whether they are “in accordance with law” and “supported by reliable, probative, and substantial evidence.” R.C. 119.12(N); *Izzo v. Ohio Dept. of Edn.*, 2019-Ohio-1008, 132 N.E.3d 1307, ¶ 13 (10th Dist.). If they are not, the Court “may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.” R.C. 119.12(N). In making its determination, the Court looks to the “entire record and any additional evidence the court has admitted.” R.C. 119.12(N). “To a limited extent,” the Court must “substitute its judgment for that of the administrative agency.” *Columbia Gas Transm. Corp. v.*

Ohio Dept. of Transp., 104 Ohio App.3d 1, 4, 660 N.E.2d 1225 (10th Dist.1995). The Court “must give due deference to the administrative resolution of evidentiary conflicts,” but “the findings of the agency are by no means conclusive.” *CHS-Lake Erie, Inc. v. Ohio Dept. of Medicaid*, 2020-Ohio-505, 145 N.E.3d 335, ¶ 40 (10th Dist.).

Reliable evidence is “dependable, with reasonable assurance of its probability, as not only truthful but also true.” *Ohio Real Est. Comm. v. Cohen*, 187 N.E.2d 641, 646, 25 O.O.2d 165 (C.P. 1962); *see also CHS-Lake Erie* at ¶ 39; *JG City LLC v. State Bd. of Pharmacy*, 2021-Ohio-4624, ¶ 21, 183 N.E.3d 522, 530. Probative evidence “relates to the evidentiary value of the testimony and other evidence in an analytical sense, having depth and being more than merely superficial or speculative.” *Ohio Real Est.* at 646. Substantial evidence “would appear to mean that the evidence has body or substance of sufficient degree to be as some weight, as well as quality, that gives it standing and credence, as well as dependable and testworthy.” *Id.* Accordingly, “an order by an administrative agency is one not lightly arrived at but resulting from strongly supported claims that can be resolved without serious doubt of the correctness, as well as the justice, of the order made.” *Id.*

V. ARGUMENT

The Commission’s leasing Approvals are not supported by reliable, probative, and substantial evidence and are not in accordance with law because the Commission issued them (1) without considering five of the nine enumerated factors that R.C. 155.33(B)(1) requires it to consider when deciding whether to approve or disapprove a nomination; (2) without providing the opportunity for a public hearing as required by R.C. 119.06; and (3) by relying on extra-statutory considerations in direct contradiction to its statutory mandate under R.C. 155.33(B).

a. The Approvals are not in Accordance with the Law and are not Supported by Reliable, Probative, and Substantial Evidence Because the Commission did not Consider Five of the Nine Statutory Factors Enumerated in R.C. 155.33(B)(1).

The Certified Materials show the Commission failed to consider five of the nine statutory factors required under R.C. 155.33(B)(1). While the statute does not define “consider,” the Ohio Supreme Court has stated that “consider means ‘to reflect on: think about with a degree of care or caution.’” *In re A.M.*, 166 Ohio St.3d 127, 2020-Ohio-5102, 184 N.E.3d 1, ¶ 25. Where a statute requires consideration of enumerated factors, “a reviewing court must be able to discern ... from the decision” that the enumerated factors have been considered. *See id.* at ¶ 31.

Ohio courts have struck down agency orders that failed to contain details of findings of fact or law. *See e.g. Ohio Real Est.*, 25 O.O.2d 165, 187 N.E.2d 641, 644 (overturning an order by the Ohio Real Estate Commission that contained no details of the Commission’s findings of fact or law and describing the decision as “unusual and is so vague and general that it affords and provides no precise premise or basis whatever from which to reason in seeking to apply the provision of law governing the determination and action of the Commission.”); *Meslat v. Ohio Liquor Control Comm.*, 164 Ohio App.3d 13, 2005-Ohio-5491, 840 N.E.2d 1133, ¶ 1 (10th Dist.) (overturning a one-sentence order of the Ohio Liquor Control Commission, noting that the order did not contain any findings of fact or conclusions of law); *Sharp on Behalf of Sharp v. Ohio Dept. of Job & Fam. Servs.*, 2019-Ohio-5397, 138 N.E.3d 1212, ¶ 45 (5th Dist.) (invalidating an order of Ohio Department of Job and Family Services because there was no evidence in the record indicating that private duty nursing was not the lowest cost alternative to ensure recipient’s health and welfare, noting that a simple “statement by counsel is not reliable, probative, or substantial evidence on the issue...”).

R.C. 155.33(B)(1) requires the Commission to consider “all of the following” nine factors in deciding whether to approve or disapprove a nomination:

- (a) The economic benefits, including the potential income from an oil or natural gas operation, that would result if the lease of a formation that is the subject of the nomination were approved;
- (b) Whether the proposed oil or gas operation is compatible with the current uses of the parcel of land that is the subject of the nomination;
- (c) The environmental impact that would result if the lease of a formation that is the subject of the nomination were approved;
- (d) Any potential adverse geological impact that would result if the lease of a formation that is the subject of the nomination were approved;
- (e) Any potential impact to visitors or users of a parcel of land that is the subject of the nomination;
- (f) Any potential impact to the operations or equipment of a state agency that is a state university or college if the lease of a formation within a parcel of land owned or controlled by the university or college that is the subject of the nomination were executed;
- (g) Any comments or objections to the nomination submitted to the commission by the state agency that owns or controls the parcel of land on which the proposed oil or natural gas operation would take place;
- (h) Any comments or objections to the nomination submitted to the commission by residents of this state or other users of the parcel of land that is the subject of the nomination;
- (i) Any special terms and conditions the state agency included in its comments or objections that the state agency believes are appropriate for the lease of the parcel of land because of specific conditions related to that parcel of land.

R.C. 155.33(B)(1).

The Certified Materials demonstrate that the Commission did not consider (1) whether the proposed oil and gas operation is compatible with current uses of the Nominated Lands; (2) the environmental impact and (3) potential adverse geological impact that would result from leasing the Nominated Lands; (4) potential impact to visitors or users of the Nominated Lands; and (5) comments or objections submitted by residents of the state and other users of the Nominated Lands.

The Certified Materials show over 2,700 comments submitted by state residents and users of the Nominated Lands objecting to the Nominations. These comments raise serious concerns about the impacts of fracking on the existing uses of the Nominated Lands and on the environment. These impacts include, among others, harm to inner forest species, introduction of invasive species, dangerous levels of hazardous air pollutants, increased health risks including heart attacks, childhood leukemia, asthma attacks, headaches, fatigue, reduced physical and mental wellbeing, reduced quality of life and public safety, light and noise pollution that harms wildlife, making travel to and from the park congested and dangerous, reduced or eliminated recreational qualities for hikers, swimmers, runners, and any visitor enjoying the outdoors, and contributing to catastrophic climate change. *See e.g.* Memo Contra at Ex. H (Ex. A-G), Ex. I (Ex. 1, p. 5-13), Ex. L (Ex. 1), Ex. M; Ex. A at 7-8, 14-15, 17-21, 26, 35-36, 57, 65, 68-102, 118, 120-122, 124-126, 131, 135-137 of pdf. Notably, the Commission did not include any public comments with its certification filing, further evincing the Commission's total disregard for objections submitted by state residents and users of the Nominated Lands. *See* Commission Cert.

There was no discussion of any of these objections during the September or November Meeting. There is nothing in the Certified Materials to indicate the Commission even reviewed them, no follow-up question or a response to comments, not even a public acknowledgement of these grave concerns. There is nothing in the Certified Materials to show the Commission in any way reflected on or thought about the comments submitted by state residents and users of the Nominated Lands with a degree of care or caution.

Similarly, nothing in the Certified Materials shows the Commission reflected on or thought about the other four factors with any degree of care or caution: (1) whether the proposed oil and gas operation is compatible with current uses of the Nominated Lands; (2) the

environmental impact and (3) potential adverse geological impact that would result from leasing the Nominated Lands; (4) potential impact to visitors or users of the Nominated Lands. The Commission devoted no time to these factors during their two meetings on the Nominations. Moreover, the Commission refused to issue *any* decision document, so there is no indication of consideration of these factors in the Approvals themselves.

The Certified Materials show an egregious lack of evidence regarding five of the nine factors. “Determining whether an agency order is supported by reliable, probative, and substantial evidence is essentially a question of the presence or absence of the requisite quantum of evidence.” *Pour House, Inc. v. Ohio Dept. of Health*, 185 Ohio App.3d 680, 2009-Ohio-5475, 925 N.E.2d 621, ¶ 11 (10th Dist.). The Certified Materials, void of any evidence indicating consideration of five of the nine statutory factors, do not contain the requisite quantum of evidence to support the Approvals.

b. The Approvals are not in Accordance with the Law Because the Commission did not Provide the Opportunity for a Hearing as Required by R.C. Chapter 119.

An adjudication order is not valid “unless an opportunity for a hearing is afforded in accordance with sections 119.01 to 119.13 of the Revised Code.” R.C. 119.06; *see Goldman v. State Med. Bd. of Ohio*, 110 Ohio App.3d 124, 129, 673 N.E.2d 677, 680 (10th Dist.1996) (holding order was not in accordance with the law “because of the absence of a meaningful hearing”). To provide opportunity for a hearing, the agency must provide notice in accordance with R.C. 119.05 informing the party that they are entitled to a hearing if they request one within thirty days of service; that they may appear in person or by their legal representative or may present their arguments in writing; and that at the hearing they may present evidence and examine witnesses. R.C. 119.07. The Commission did none of these things. An agency’s failure to provide notice in accordance with R.C. 119.05 invalidates any order issued pursuant to the

hearing. R.C. 119.07; *Porter v. State Med. Bd. of Ohio*, 10th Dist. Franklin No. 05AP-1339, 2006-Ohio-5296, ¶ 14 (invalidating order pursuant to R.C. 119.07); *see also* R.C. 119.06.

The Certified Materials show that the Commission never sent any notice informing parties that they were entitled to a hearing should they request one within thirty days of receiving notice. Instead, the Commission held two Commission meetings attended by the public, where it prohibited comments, questions, and testimony. *See* Sept. Mtg.; Nov. Mtg. 1:00. Because the Commission did not provide notice of the opportunity for a hearing, the Approvals are invalid under R.C. 119.07 and R.C. 119.06.

c. The Approvals are not in Accordance with the Law Because the Commission Improperly Relied on Extra-Statutory Considerations.

The Certified Materials demonstrate that the Commission unlawfully relied on extra-statutory factors in deciding to approve the Nominations. Specifically, the Commission relied on the legislative intent behind a statutory provision that is no longer in effect.

As an administrative agency, the Commission's power is limited by the authority given to it by statute. *See Spellman Outdoor Advert. Servs., LLC v. Ohio Dept. of Transp.*, 2017-Ohio-950, 86 N.E.3d 883, ¶ 25-34 (10th Dist.). Statute confers authority on the Commission to approve or disapprove nominations based on consideration of nine enumerated factors. R.C. 155.33(B)(1). Relying on factors outside of this statutory mandate to approve a nomination is an abuse of discretion and not in accordance with law. *See Spellman* at ¶ 34-35 (holding the Ohio Department of Transportation lacked the authority to deny a permit for a billboard based on allegations of a lack of site control because ODOT's analysis was expressly limited to enumerated statutory factors that did not include this basis); *Buckeye Relief, L.L.C. v. Ohio Bd. of Pharmacy* 2020-Ohio-4916, 160 N.E.3d 767, ¶ 21 (8th Dist.) (finding the trial court abused its discretion when it upheld a decision by the Board of Pharmacy where the Board had strayed

from its standard scoring scale because the “board cannot ignore its own criteria and administrative regulations”).

During the September Meeting Chair Richardson stated the following:

In terms of these provisions, I think we saw in * * * amendments from the legislature * * * that came through last year that it is the intent that these will be opened up for leasing, so I don’t think we have the ability to simply say no. It is our responsibility as a commission created by statute to effectuate the intent of the general assembly.

Sept. Mtg. 35:37. Chair Richardson then went on to state, “our job is to try to balance the fact that we’ve been directed to open these lands up, but given the ability to impose restrictions suggested by the agencies to mitigate the impact * * *.” *Id.* 57:44.

Chair Richardson’s reference to “amendments from the legislature * * * that came through last year” can only be a reference to the mandatory leasing provision of H.B. 507—the only amendment that came through in 2022 pertaining to oil and gas development on Ohio’s public lands. As explained *supra*, H.B. 507’s mandatory leasing provision is no longer in effect and should have had no bearing on the Commission’s decision making regarding the Nominations. *See* R.C. 155.33. Yet, Chair Richardson told the Commission during the September Meeting that it lacked the ability to deny a nomination due to the intent expressed by the General Assembly in passing the mandatory leasing provision.

After significant public outcry expressing that the Commission did in fact have a duty to consider all nine statutory factors and then decide to approve or *disapprove* a nomination, Chair Richardson attempted to walk back her prior remarks at the beginning of the November Meeting by stating that the Commission did indeed have authority to deny nominations. *See* Sept. Mtg. 25:22 (meeting attendee states “you didn’t discuss any of the nine things you’re supposed to discuss”), 1:30:20 (meeting attendee states “you did not discuss the mandated considerations, not one of them”); Nov. Mtg. 4:15. However, following the Chair’s brief remarks, the Commission

still rushed to issue all approvals of the Nominated Lands without any discussion of five of the nine factors. *See* Nov. Mtg. 25:54; *see also supra* Section V.a.

With no discussion of five of the nine factors and repeated discussion of the extra-statutory factor that the Commission believes it is the legislature's intent to "open these lands up" for drilling, the Commission's approval of the Nominations demonstrates that the Commission relied on this extra-statutory factor in issuing the Approvals, in violation of R.C. 155.33(B)(1).

VI. CONCLUSION

For the reasons explained herein, the Commission's oil and gas leasing nomination Approvals are not supported by substantial, reliable, and probative evidence and are not in accordance with law. Therefore, they must be vacated. Further, because Appellees have refused to timely file a complete record of proceedings in this matter, Appellants request that the Court enter judgment in Appellants' favor pursuant to R.C. 119.12(J).

Respectfully submitted this 8th day of February, 2024 by,

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CERTIFICATE OF SERVICE

I, Megan Hunter, certify that a copy of the foregoing **MERITS BRIEF AND MOTION FOR JUDGMENT** was served on this 8th day of February, 2024 via the Court's electronic filing system on the following counsel for the Appellee:

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