BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

REPUBLIC SERVICES, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 24-65
	)	
	)	(Third-Party Pollution Control
McLEAN COUNTY, ILLINOIS,	)	Facility Siting Appeal)
McLEAN COUNTY BOARD, and	)	
LAKESHORE RECYCLING	)	
SYSTEMS, LLC,	)	
	)	
Respondents.	)	

RESPONDENTS' POST-HEARING BRIEF

Respondents Lakeshore Recycling Systems, LLC ("LRS"), McLean County, Illinois and McLean County Board ("County Board"), by and through their attorneys, hereby file their post-hearing briefing opposing Petitioner Republic Services, Inc.'s ("Republic") Petition for Review ("Petition") and in support thereof state as follows:

I. INTRODUCTION

The County Board correctly exercised its jurisdiction and authority in approving LRS' application for local siting approval of a proposed waste transfer station (the "Application"). LRS provided the required pre-Application written notice to property owners in accordance with statutory requirements, and the proposed site of the waste transfer facility is more than 1,000 feet from the nearest dwelling or residentially zoned property. Additionally, LRS supplied the County Board with evidence sufficient to demonstrate compliance with the statutory criteria for siting and the County Board's decision to approve LRS' request for local siting was supported by substantial record evidence.

The County Board's proceedings were also fundamentally fair—the public and parties were offered ample opportunity to participate in the proceedings and comment on the Application

prior to, during, and following the public hearing. The County Board understood the importance of its decision and appropriately utilized its discretion and authority to grant the request for local siting approval. The Illinois Pollution Control Board ("ICPB") should deny Republic's Petition for Review and uphold the siting decision of the IPCB.

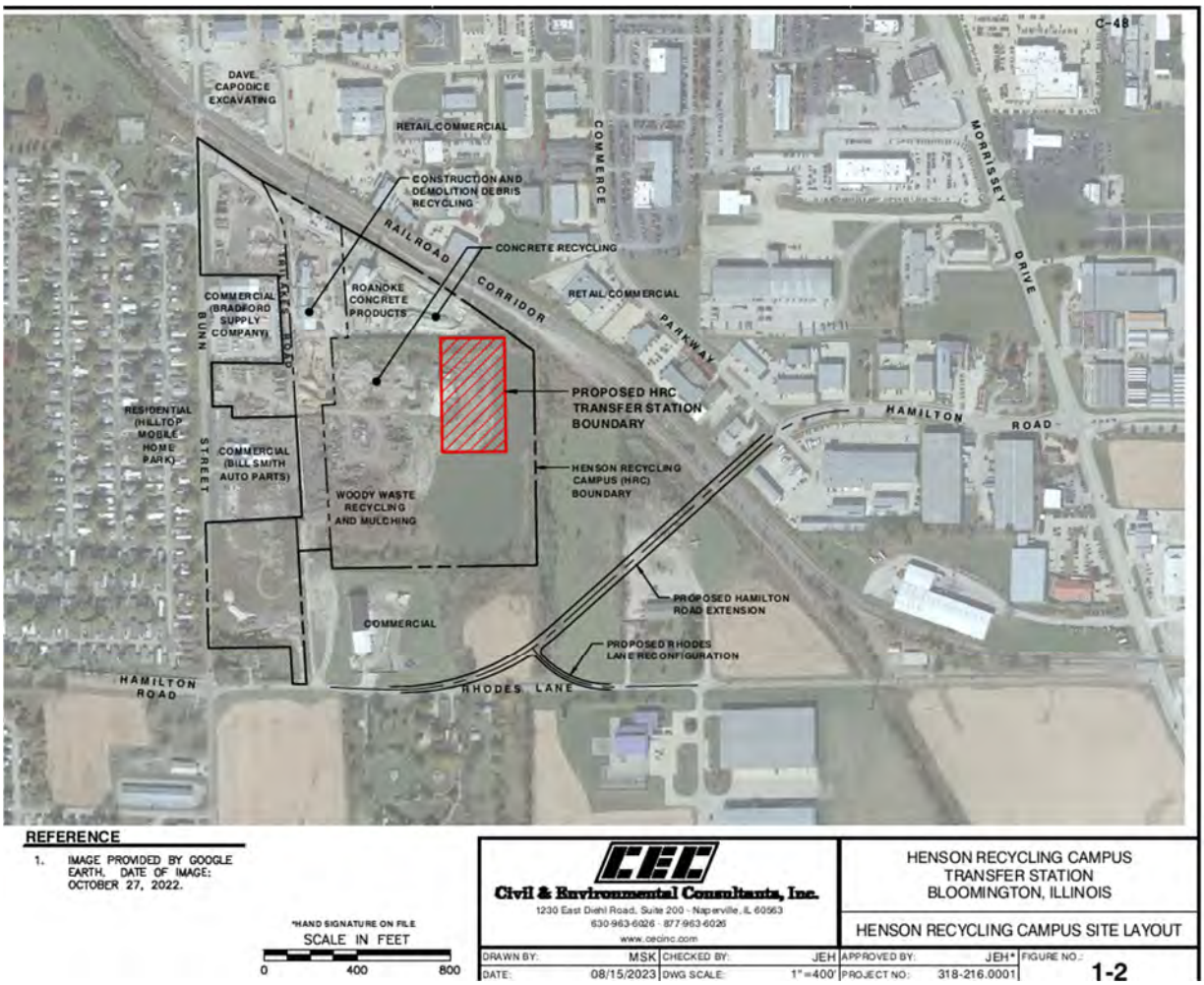
II. FACTUAL BACKGROUND

LRS has been in operation for over 20 years and provides a variety of different recycling and waste management services for the communities it serves, including municipal solid waste collection, single stream and construction and demolition recycling, and solid waste landfilling. (R. C-9). Additionally, LRS operates more than 20 waste transfer facilities across 5 states, including Illinois. *Id*.

A. LRS Complied with All Statutory Siting Requirements, Including Pre-Filing Notice, Set-Back Distances and Siting Criteria

On August 18, 2023, LRS filed its Application with McLean County seeking siting approval of a new solid waste transfer facility. (R. C-1 to C-892). The Application provided evidence supporting each of the nine (9) criteria for local siting approval. *Id*. The proposed waste transfer facility would accept non-hazardous waste (general municipal solid waste, recyclables, and construction/demolition debris) for temporary storage, sorting, consolidation, and further transfer to approved waste disposal or treatment facilities. (R. C-9 to C-10). The proposed location for the facility was a 3.09-acre site in an industrial area just south of the City of Bloomington, Illinois within an area known as the Henson Recycling Campus ("HRC"). (R. C-10, C-16). The 42-acre HRC houses several different operations, including a construction and demolition debris recycling facility, a mulch and recycling operation, a concrete recycling facility, and a concrete batch plant. *Id*. Those operations are separate from the waste transfer facility proposed to be operated by LRS. (R. C-48).

LRS proposed to site the new waste transfer facility on the northeast corner of the HRC. *Id*. The specific boundaries of the 3.09-acre site were defined by survey conducted by David Brown, a licensed surveyor, who also prepared a legal description specific to the proposed facility site. (PCB Tr. 131:4-12, 135:20-136:2, 137:7-10). The site's boundaries were also described on an Assessment Plat which was recorded in the McLean County Recorder's Office and a Preliminary Plan of Subdivision which was presented to and approved by the McLean County Board in February 2023 and subsequently recorded prior to the filing of the Application. (R. C-238 to C-239, LRS Ex. 18 (Ex. 2)). Separate parcel identification numbers (PINs), for tax-related purposes, were also assigned by the County tax assessor. (Republic Ex. 1, LRS Ex. 18 at 2, 4). Below is a map depicting the boundaries of the HRC and proposed waste transfer facility site (in red). (C-48).



Mr. Brown also conducted field surveys to measure the distance from the surveyed boundaries of the proposed site to the nearest dwelling and property zoned for primarily residential uses. (PCB Tr. 146:5-147:7). Mr. Brown confirmed that the site was not within 1000 feet of any dwelling or property zoned for residential use. *Id.*; *see also* R.C-1313, Republic Ex. 9.

Access to the site will be provided via roadway extending from Bunn Street through the HRC to the east. (R. C-134, C-167). The roadway, after construction, will be dedicated for public use and used by other facilities located within the HRC. (R. C-905 (46:7-47:3), C-1254). The access road is not part of the 3.09-acre site, LRS does not propose to conduct any waste management activities on the access road and the road will be used to access other facilities in the HRC. (PCB Tr. 136:3-24, C-1254).

On July 25, 2023, more than 14 days prior to filing its application, LRS served a written Notice of Intent to File a Request for Local Siting Approval of a New Pollution Control Facility ("Notice of Intent") with the County of McLean, Illinois, on owners of all property within the subject area not owned by LRS and on owners of all property within 250 feet in each direction of the surveyed boundaries of the proposed site. (R. C-857 to C-879). To ensure proper notice, LRS extended its notice radius to a distance of 400 feet, and in some cases up to 500 feet, from the surveyed boundaries of the proposed site. (LRS Ex. 18 at 5-6). LRS used McLean County's authentic tax records to identify the owners of the properties entitled to receive notice and served the Notice of Intent by registered mail, return receipt requested. (R. C-857 to C-879). LRS's Notice of Intent described the site of the proposed facility (i.e., the subject property) as "approximately 3.09 acres" and further identified the subject property using its legal description as well as a metes and bounds description. (R. C-859 to C-860). LRS also published the Notice of Intent in the local newspaper, The Pantagraph. (R. C-881 to C-884).

B. The County Board Proceedings on Siting Were Fundamentally Fair and Offered the Parties and Public Ample Opportunity to Speak, Comment, or Otherwise Participate

The County Board scheduled a public hearing on the Application to commence on November 29, 2023, and to continue on scheduled dates between November 30 – December 15, 2023, as needed, to accommodate the presentation of evidence by the parties and for public comment. (R. C-1780). The County Board published notice of the hearing in the Pantagraph, the local newspaper, for four (4) consecutive weeks (November 4, 14, 20, and 27, 2023). (R. C- 1781-1796). The notice informed the public of the date and time of the hearing, the opportunity to provide oral comment during the public hearing, and the opportunity to provide written comment. The notice further advised that persons wishing to participate in the hearing should register online or in person.

Pursuant to Chapter 289-10 of the McLean County Code, the McLean County Pollution Control Site Hearing Committee (the "Committee"), a committee of the County Board, conducted the public hearing on the Application. The Committee appointed Derke Price as its Hearing Officer. In explaining the hearing process, Hearing Officer Price stated that review of the Application was governed by Section 39.2 of the Illinois Environmental Protection Act (the "Act") as well as the County's own siting ordinance, "which sets forth the specific procedures we will also follow." (R. C-895).

With respect to public comment, Hearing Officer Price stated, "when we're done here with the evidence of the hearing, there will be a point for public comment, oral public comment." *Id.* Hearing Officer Price noted that some members of the public had already signed up to provide public comment, and also explained that a signup sheet for public comment would be made available at the door. *Id.* He further explained that public comment would be taken following

presentation of the testimony by the interested parties (LRS and Republic). *Id.* He also advised attendees that there would an additional 30-day period following the hearing to provide public comment and that all oral and written comments would be considered by the County Board. (R. C-896). Republic participated during the hearing but did not object to the announced schedule, including the timing of oral public comments, at the hearing.

After explaining the process, Hearing Officer Price again emphasized that attendees could still sign up to provide oral comment during the hearing and that signups were requested to ensure adequate time for public comment as the County had scheduled additional days to facilitate public comment if needed. (R. C-897 at 13-14). Hearing Officer Price also stated that additional accommodations could be made for those not available to provide oral comment during the scheduled hearing dates on November 29 and 30. (R. C-897 at 14). At the midafternoon break and again at the end of the day on November 29, Hearing Officer Price reminded attendees of the opportunity to sign up for oral comments. (R. C-915 at 87; R. C-942 at 193). He further stated that public comment the next day would "go until there isn't anybody standing up at the microphone." (R. C-942 at 193).

During the public hearing, LRS presented evidence in support of its Application, including expert testimony on each of the nine (9) statutory siting criteria, as well as proof of notice and adequate set-back distances. (R. C-857 to C-884, C-1245 to C-1416). Republic cross-examined LRS' witnesses and presented evidence from a competing expert. After the conclusion of testimony on November 30, the Hearing Officer reiterated the opportunity to provide comment and also stated that there was no hard stop at 6 p.m. (R. C-1006, at 330; R. C-1007, at 331). Hearing Officer Price then called the names of every person who had signed up to provide oral comment and several individuals provided oral comment. (R. C-1007 to C-1018). The hearing

was then adjourned, initiating a 30-day period for written comment, which ended on January 2, 2024. (R. C-1017 at 377).

On January 5, 2024, LRS and Republic submitted their respective proposed findings of fact and conclusions of law to Hearing Officer Price. (R. C-1054 to C-1098). Shortly thereafter, Hearing Officer Price submitted his report to the County Board, which included recommended findings of fact and conditions of approval for the Application. (R. C-1099 to C-1117). On January 29, 2024, the Committee met and adopted Hearing Officer Price's findings of fact and recommended that the County Board approve the Application with several conditions. (R. C-1770 to C-1772). The County Board met in regular session on February 15, 2024 and adopted the Committee's recommendations, conditionally approving LRS' Application. (R. C-1773 to C-1779).

C. Republic's Appeal of the Approval of LRS' Application for Siting

On March 20, 2024, Republic filed its Petition for Review with the IPCB asserting several grounds for appeal, including allegations related to (1) pre-application notice to property owners (Pet., ¶¶ 8-13); (2) set-back distance requirements (Pet., ¶¶ 14-16); and (3) fundamental fairness (Pet., ¶¶ 17(a), (c) and (d))[1]. The Petition for Review included several other alleged grounds for appeal; however, Republic has since abandoned or waived those arguments. During discovery, Republic voluntarily withdrew its allegation that the County Board considered evidence outside the record (Pet. ¶ 17(f)) and that the Application did not show that the proposed facility would comply with Criterion (xi). Republic abandoned or waived certain other claims by failing to

[1] Petitioner also asserted that residents of the manufactured home community "were deprived of their right to speak publicly at the County Board proceedings when the owner of said community was not notified of said proceedings." (Pet. ¶17(a)). This allegation is without merit for the reasons set forth sections III.a. and III.c.

present any evidence on these allegations during the IPCB hearing held on July 29, 2024, or in its post-hearing briefing.[2]

III. ARGUMENT

a. LRS Provided Notice to Property Owners Located Within 250 Feet and Up to 500 Feet of the Subject Property as Required by 415 ILCS 5/39.2(b)

Prior to filing its application for local siting approval with McLean County, LRS served written notice of its intent to request siting approval to the property owners and stakeholders specified in Section 39.2(b) of the Act. (R. C-857 to C-879). Under the statute, notices must be served "on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located." 415 ILCS 5/39.2(b). Such notices must be served either in person or by registered mail, return receipt requested, at least 14 days before submitting the application for local siting approval. *Id*.

Here, the subject property was defined by LRS in both its Notice of Intent and Application as a 3.09-acre site. (R. C-9 to C-10, C-859 to C-860). The location of the subject property was described through both a legal and metes and bounds description. *Id*. The specific boundaries or lot lines of the subject property were determined according to a survey and were depicted on a Plat of Survey (R. C-105), Assessment Plat (Lot 1) (R. C-239), and Preliminary Plan of Subdivision

[2] The claims abandoned or waived by Republic include allegations that the County Board, "relied on the report and recommendations of a hearing officer who had prejudged this matter" (Pet. ¶ 17(e)), that LRS failed to show that the proposed facility would comply with Criteria (i), (ii), (iii), and (ix) of Section 39.2 of the Act, and the County Board's approval of the Application was against the weight of the evidence (Pet. ¶ 18). Republic also abandoned or waived its allegation that the public was not permitted to provide further comment on the Application during the February 15, 2024 County Board meeting (Pet. ¶ 17(c)). *See* McLean County Code §20-13G(3) ("The Chair may provide a clarifying statement prior to public comment and may act to...exclude discussion of matters which have had a previous public hearing conducted according to law").

(Lot 3) (R. C-220 to C-225). Both the Assessment Plat and Preliminary Plan were recorded in the McLean County Recorder's Office. In identifying the owners of properties located within 250 feet of the proposed site and compiling its list of notice recipients, LRS referenced and relied upon McLean County's authentic tax records. LRS Ex. 18 at 5-6, ¶¶ 14-15. LRS mapped the distance from the surveyed boundaries of the proposed site using a radius map and confirmed the measured distances through the use of field surveys. *Id*. In fact, LRS exceeded the minimum statutory requirements and served written notice to owners of properties located within 400 feet and as far as 500 feet from the lot lines of the subject property. *Id*.

The Hilltop Mobile Home Park (Parcel No. 21-16-276-003) is not located within 250 feet, 400 feet, or even 1,000 feet of the site of the proposed facility (PCB Tr. 106:1-14, 146:5-18; Republic Exhibit 9) and therefore, under Section 39.2, LRS was not required to provide notice to the record owner of that property. LRS provided the appropriate notices to all persons required under the statute and the McLean County Board was empowered with jurisdiction to grant LRS' application for siting approval.

There is no dispute that LRS provided written notice to all property owners within 250 feet (and up to 500 feet) of the surveyed boundaries of the 3.09-acre area identified by LRS as the site of the proposed waste transfer facility. There is also no dispute that LRS served these notices via registered mail, return receipt requested, on July 25, 2023, more than 14 days prior to submission of the request for site approval, and therefore complied with the statutory service requirements.

Rather, Republic refuses to acknowledge the actual boundaries of the proposed site as surveyed, recorded, and described in LRS' notice and application and instead argues that the larger, 30+ acre HRC should be used for purposes of providing notice and determining setback distances. To support its argument, Republic adopts and advocates an exceedingly narrow reading of the term

"lot line." Specifically, Republic argues that the only relevant lot lines are those that appear in the county's authentic tax records and that a lot does not exist unless it is assigned a PIN and receives a tax bill. Republic's interpretation is incorrect, is not supported by the statutory language, and reads additional requirements into the statute that simply are not there. Republic's arguments are also contrary to and inconsistent with past precedent.

The requirements for local siting review are set forth in 415 ILCS 5/39.2. With respect to notice, Section 39.2(b) requires an applicant to provide written notice to "owners of all property within 250 feet in each direction of *the lot line of the subject property*, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located." 415 ILCS 5/39.2(b).

Republic asserts that the lot lines of the subject property (the site of the proposed facility) can only be determined by referencing the authentic tax records of the County and the only taxable parcel in existence at the time LRS filed its application was Parcel No. 21-15-152-010, a 30+ acre parcel corresponding to the larger HRC. Republic dedicates a significant portion of its brief addressing various parcel records and tax bills; however, Republic's arguments miss the mark—Section 39.2(b) does not require that the subject property be identified as a separate, taxable parcel, nor must the lot lines of the subject property appear on a final plat or subdivision. While tax records certainly represent one method of identifying the lot lines of the subject property, they are not the exclusive or required method for determining the boundaries of the subject property for purposes of notice or setback.

Under the Act, the "authentic tax records" are to be used for determining the *owners* to whom notice must be provided, *not* for defining the boundaries or lot lines of the subject property. 415 ILCS 5/39.2(b) (notice to be provided to "owners of all property within 250 feet in each

direction of the lot line of the subject property, *said owners being such persons or entities which appear from the authentic tax records of the County*") (emphasis added). The statute's reference to the "authentic tax records" provides direction to the applicant in determining who to serve—it does not specify the manner by which the lot lines of the subject property (*i.e.*, the site of the proposed waste transfer facility) are to be determined. *See COAL v. Laidlaw Waste Systems*, PCB 92-131, 1993 WL 105675, at *2 (March 25, 1993) ("Section 39.2(b) defines 'owners' as those persons or entities which appear on the county's authentic tax records"); *County of Kankakee v. City of Kankakee, Illinois*, PCB 03-31, -33, -35, 2003 WL 137451, at *14 (Jan. 9, 2003) ("Owners are 'such persons or entities which appear from the authentic tax records of the County.'").

Notably, the term "lot line" is not defined in the statute. Where a term is not defined, courts are to assume that "the legislature intended the term to have its ordinary and popularly understood meaning." *Landis v. Marc Realty, L.L.C.*, 919 N.E.2d 300, 304 (Ill. 2009). Such meaning can be determined through the use of dictionaries or other reliable sources. *Id.* With respect to real property, Webster's Dictionary defines the term "lot" as "a portion of land" or "a measured parcel of land having fixed boundaries and designated on a plot or survey." Webster's Ninth New Collegiate Dictionary 706 (1984). Black's Law Dictionary defines "lot" as "[a] share; one of several parcels into which property is divided. Any portion, piece, division or parcel of land. Fractional part or subdivision of block, according to plat or survey…portion of platted territory measured and set apart for individual and private use and occupancy." Black's Law Dictionary, 853 (5th ed. 1979). In its County Code, McLean County defines "lot line" as "[a] line dividing one lot from another or from the street right-of-way" and defines a "lot" as "[a] quantity of land described with such specificity that its location and boundaries may be established and which is designated by its owner or developer as land to be conveyed, used or developed as a unit, including

any easements appurtenant thereto." *See* McLean County Code §317-7. The Illinois Supreme Court has further noted that "there is no fixed or inflexible rule which gives this word an exact meaning." *Lehmann v. Revell*, 188 N.E. 531, 537 (1933) (interpreting the term "lots"). In short, the term "lot" is often used generically to refer to some defined portion or area of land.

Here, the subject property, as described by LRS in both its application and Notice of Intent, is a 3.09-acre site. (R. C-10, C-859 to C-860). The boundaries or lot lines of the site were defined by survey and are identifiable both by legal and metes and bounds descriptions. *Id*. Further, the subject property was defined as a separate lot with clearly defined lot lines on an Assessment Plat (Lot 1) (C-239) and Preliminary Plan of Subdivision (Lot 3) (R. C-220-225), both of which were recorded in the McLean County Recorder's Office. Although not required, a separate PIN for the subject property was also requested and assigned (Parcel No. 21-15-151-022). (LRS Exhibit 17 at 2, 4; Republic Exhibit 1). In short, the 3.09-acre subject property is a defined portion of land whose location and boundaries are clearly ascertainable. The surveyed lot lines of the subject property were properly used in determining the owners to whom written notice was provided and in measuring the setback distance.

That the subject property had not yet been separately assessed taxes or that a Final Plat of Subdivision[3] has not yet been approved is immaterial—these steps are not required to create a lot or to delineate the lot lines of the subject property. Ans more importantly, Section 39.2(b) does not require that the lot lines of the subject property be documented in a final plat or subdivision or that the property be assigned its own PIN for tax assessment purposes.

[3] After approval of the Preliminary Plat, which was completed in February 2023, the recording of the Final Plat is essentially a ministerial task. See County Code Section 317-17. The Final Plat has been already been prepared and submitted to the County Plat Officer. (C-1058).

The testimony of the County witnesses during the July 29, 2024, hearing was not to the contrary.[4] Mr. Bounds, the McLean County Recording Program Administrator, testified that property owners may choose to divide their property into smaller lots or parcels (PCB Tr. 47:24-48:4) and that multiple different lots can be included as part of a single parcel and identified by a single PIN number (PCB Tr. 49:15-50:3). Similarly, multiple different tracts or lots can be assigned a single PIN number (PCB Tr. 53:20-54:24). While a lot and tax parcel may be one and the same, that is not necessarily or always the case. A tax parcel, even one that is assigned a single PIN, may be made up of or include multiple different lots or parts of lots. *Id*. PINs are identifiers used by the County to track various parcels within its internal system (and for tax purposes); however, they do not define what constitutes a lot. (PCB Tr. 50:24-51:13, 107:17-108:14). In fact, Mr. Bounds admitted that the best way to determine the actual boundaries of an individual lot would be to perform a survey. (PCB Tr. at 51:6-13).[5]

And that is exactly what LRS did here—it surveyed the specific boundaries of the lot on which the proposed transfer facility would sit, created a separate legal description for the subject property and recorded a map of the surveyed lot and legal description with McLean County. (PCB Tr. 133:8-23, 135:18-136:2, 137:7-10; LRS Ex. 14 Recorded Assessment Plat). The PIN number assigned to or associated with the subject property is immaterial—the subject property is the 3.09-

[4] Notably, the testimony of the County officials is not authoritative as to the interpretation of the meaning of terms used in a statute. In interpretating a statute, including the siting statute, it is the legislative intent that is determinative. *See, e.g.*, *Landis*, 919 N.E.2d at 303 ("The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature."); *City of Des Plaints v. SWANCC*, PCB 92-127, 1993 WL 196207, *7 (May 20, 1993) ("The ZBA and Cook County Board's zoning authority notwithstanding, those bodies do not define what constitutes a site; that is determined pursuant to the Act and Board regulations.")

[5] Republic mischaracterizes the actual substance of Mr. Bounds testimony on the creation and designation of a lot. Mr. Bounds clarified that lots require legal descriptions (PCB Tr. 50:12-19, 55:7-9) and for purposes of recording, the legal description must be associated with a parcel identification number (PCB Tr. 50:12-23); however, it is not required for each legal description to have its own parcel identification number—several lots or legal descriptions may be associated with a single PIN (53:20-54:24).

acre lot described in LRS' application and notice of intent, not the larger HRC. In fact, treating Parcel 21-15-152-010 (representing the bulk of the HRC) as the subject property is itself a fiction which does not accurately represent the actual area for which LRS stated it was seeking siting approval (and would subsequently seek an Illinois Environment Protection Act development permit).

The Board's prior decision in *City of Des Plaines v. SWANCC* is instructive on this point. In that case, SWANCC sought to develop and construct a solid waste transfer station on a 7.1-acre parcel located within a larger 43-acre site. *City of Des Plaines v. SWANCC*, PCB 92-127, 1993 WL 196207, *7 (May 20, 1993). Although the entire 43-acre site had been zoned to allow use for construction of a waste transfer station, only a 7.1-acre portion of the site was proposed and permitted for development of the waste transfer station. *Id*. Petitioners in that case, like here, argued that the boundaries of the entire 43-acre site should be used in measuring the distance to the closest residential property. *Id*. at *6. The Board rejected the petitioner's arguments and held that the correct measuring point was from the boundary of the smaller, 7.1-acre site of the waste transfer station. *Id*. at *7 ("The transfer station as proposed by SWANCC and permitted by the Agency is limited to 7.1 acres of the larger 43 acres…. It is this 7.1 acres that is clearly the transfer station site as referenced in the Act.").

The holding in *Environmental Control Systems, Inc. v. Long* does not compel a different result, nor does it stand for the proposition which Republic represents. The key question in that case was whether the notice distance should be calculated from the boundary of the facility itself (i.e., the waste transfer station structure) or the subject property—i.e., the boundaries of the site for which the applicant sought siting approval. *Env't Control Sys., Inc. v. Long*, 301 Ill.App.3d 612, 620, 622 (5th Dist. 1998) ("The underlying issue on appeal was whether the 250-foot rule

applied to the [regional pollution control facility] RPCF or to the larger plot of land upon which the RPCF was situated."). In *ECS*, unlike here, the only "lot lines" evidenced in the record were the county's tax records—ECS did not present any additional evidence to support or document any subdivision of the parcel or identify any separate lot lines. *Id*. at 623; *see also Madison County Conservation Alliance v. Madison County and Environmental Control Systems, Inc.*, PCB 90-239, 1991 WL 143884, at *7 (Apr. 11, 1991) ("The only 'lot line' is that shown in the authentic tax records or assessor's map for parcel 005").

Significantly, in its application for siting approval, ECS described the subject property as the entirety of the 210-acre parcel. *Madison County Conservation Alliance v. Madison County and Environmental Control Systems, Inc.*, PCB 90-239, 1991 WL 143884, at *3 (Apr. 11, 1991) ("The description of the property, on which the regional pollution control facility will be located, refers to 210 acres and includes the parcel of property identified by the permanent parcel number 17-1-20-33-00-000-005"). The legal description included in the notice further identified the subject property as "approximately two hundred ten acres" and specifically included Parcel 005 as part of the subject property for which siting approval was requested. *Id*. at *3. ECS' description of the subject property as including the entirety of the 210-acre parcel was a key factor in the Board's decision. *Id*. at *7 ("ECS' own notice refers to 210-acres, and lists parcel 005 as including parcels it references with the numbers 1, 2, and 3…. The application also corroborates that parcel 005, in its entirety, is part of the 210-acre assemblage of land."). Further, ECS argued that only a portion of the subject property, smaller than the area described in its application and notice, should be used in determining notice distances. Id. at *6-7 ("the Board cannot interpret the Section 39.2(b) language 'lot line of the subject property' to mean that only certain portions of the subject property are relevant").

The same is not true here. In both its application and Notice of Intent, LRS explained that it was seeking approval to construct a waste transfer facility on a specifically defined 3.09-acre site. (R. C-10, C-859-861). For purposes of the statute, this 3.09-acre area is the "subject property"—this 3.09-acre site (which includes both the footprint of the proposed waste transfer building and surrounding property to be used for waste management purposes) is the only area which LRS sought siting approval or would conduct waste transfer activities. The record here demonstrates that the subject property is distinct and distinguishable from the larger HRC parcel—a separate legal description was prepared for the subject property (C-241) and the subject property is described as a separate lot in the recorded Assessment Plat (C-238-39; LRS Exhibit 14) (Lot 1) and recorded Preliminary Plan HDI Subdivision (LRS Exhibit 18 (attached as Exhibit 2); R. C-220-225 (Lot 3)).

Although not required, a separate PIN number for the subject property was also requested and assigned on August 17, 2023. (Republic Exhibit 2—Parcel Control Change Request; PCB Tr. 81:5-82:22). In accordance with Illinois law (35 ILCS 200/9-65), subdivided parcels are not assessed for taxes until the following year; however, that does not mean that the lot lines of the subject property were indefinite or had not yet come into effect—assignment of a separate tax ID and assessment of taxes are not statutory prerequisites. *See, e.g.*, 35 ILCS 200/9-55 (an owner who divides property into separate parcels shall have the property surveyed and platted into lots, which shall be a valid property description); PCB Tr. 75:2-76:1.

If the legislature had intended that the lot lines of the subject property be determined according to the authentic tax records of the county it could have so stated; however, it did not do so. The siting statute does not, either explicitly or implicitly, require use of the authentic tax records in determining the lot lines of the subject property or establish such records as the only

source of the subject property's lot lines and the boundaries of the subject property are clearly defined and ascertainable.

LRS properly provided notice to all property owners located within 250 feet (and up to 500 feet) of the lot lines of the subject property and therefore complied with its notice obligations under the local siting statute, 415 ILCS 5/39.2(b).

b. The Subject Property is More Than 1,000 Feet From the Nearest Dwelling or Property Zoned for Primarily Residential Uses

In Illinois, waste transfer stations typically may not be "located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling." 415 ILCS 5/22.14(a) ("No person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling"). LRS' proposed waste transfer station complies with the specified setback distance—the proposed site is not located within 1000 feet of any dwelling or property zoned for residential use, including the Hilltop Mobile Home Park.

Prior to filing its Application, David Brown, a licensed surveyor, was engaged to perform field surveys and measure the distance from the lot lines of the proposed site to the nearest dwelling and residentially zoned properties. During the PCB hearing, Mr. Brown testified that the subject property (identified as Lot 1 on the recorded Assessment Plat (C-239) and Lot 3 on the Preliminary Plan of Subdivision (LRS Exhibit 18 (attached as Exhibit 2); R. C-220-225) was located more than 1,000 feet from the closest property zoned for primarily residential use and the closest dwelling. (PCB Tr. 146:5-147:7).[6] Mr. Brown testified that he measured and confirmed these distances "by

[6] McLean County GIS Specialist Joshua Schuster, also measured the distance between the proposed facility site (Parcel 21-15-151-022) and the closest property zoned for primarily residential uses and confirmed that the distance was "around a thousand feet" as measured by the GIS system; however, he agreed that field survey work would more accurately measure the exact distance. (PCB Tr. 106:1-107:7).

field survey and mathematical calculation." (*Id*. at 146:16-147:7). A radius map depicting the setback distance was also prepared which further confirmed that the proposed facility site was located more than 1,000 feet from any dwelling or properties zoned for primarily residential uses, including the Hilltop Mobile Home Park. (*See* C-165; Republic Exhibit 9, LRS Exhibit 18 at 6-7).

Again, the proper measuring point is from the boundary of the proposed 3.09-acre facility site, not the larger HRC. *See City of Des Plaines v. SWANCC*, PCB 92-127, 1993 WL 196207, *7 (May 20, 1993). The Board's prior decision in *City of Des Plaines v. SWANCC* is again instructive:

> "Des Plaines is further correct in observing that parts of the full 43 acres are located less than 800 feet from residential property. From these two observations, Des Plaines would have us conclude that development of a transfer station anywhere within the full 43 acres is prohibited. The Board cannot accept this argument. **The transfer station as proposed by SWANCC and permitted by the Agency is limited to 7.1 acres of the larger 43 acres**; all of the 7.1 acres are located beyond the 800–foot setback distance (Joint Exh. 2). **It is this 7.1 acres that is clearly the transfer station site as referenced in the Act**. …. **It has not been shown that SWANCC intends to use the entire 43 acre site for the transfer station; rather SWANCC intends to use the 7.1 acres permitted by the Agency for development of a transfer station. In fact; SWANCC would be prevented here from using areas in addition to those permitted by the Agency for development of a transfer station**."

Here, LRS only intends to use the 3.09-acres specified in its application for the transfer station. LRS similarly would be prevented from using areas outside the 3.09-acre site referenced in its siting application for developing a transfer station.

Under the Illinois solid waste statutes, a transfer station is "a site or facility that accepts waste for temporary storage or consolidation and further transfer to a waste disposal, treatment or storage facility." 415 ILCS 5/3.500. The term does not include "a site where waste is not removed from the transfer container" or "a site that stores waste on a refuse motor vehicle or in the vehicle's detachable refuse receptable for no more than 24 hours." 415 ILCS 5/3.500.

The roadway described in LRS' application and depicted on the Assessment Plat (C-239) was not designated or intended for use as part of the transfer station or for conducting any waste management activities (PCB Tr. 136:3-19), nor would LRS be permitted to use the road for such

purposes since it is not part of the subject property described in LRS' siting application. Rather, the roadway would merely provide access to the subject property, as well as other operations within the HRC. *Id*.; C-905 at 47:1-3, C-1245. The roadway is separately described to facilitate future dedication of the roadway as a public road, not to sidestep the setback or notice requirements. *See* PCB Tr. 136: 3-19; C-905 at 36:7-24. Whether and when the proposed roadway will become public is immaterial—the roadway is not a "location, place or tract of land used for waste management." 35 Ill. Adm. Code 807.104. In fact, the regulatory definition of "waste management" specifically excludes hauling or transport. *Id*. ("'Waste management' means the process of storage, treatment or disposal of waste, not including hauling or transport.").

The site of LRS' proposed waste transfer station complies with 415 ILCS 5.22.14(a) as it is located more than 1,000 feet from both the nearest dwelling and property zoned for primarily residential uses. The Board appropriately exercised its jurisdiction in approving LRS' siting application.

c. The County Board's Process in Reviewing, Considering and Approving the Application Was Fundamentally Fair

Republic's claim that the County Board violated principles of fundamental fairness in its review and consideration of the Application is meritless. The County Board offered the parties and public ample opportunities to meaningfully participate in the process and provide comment and adhered to all statutory and regulatory due process requirements for local siting review.

In the siting context, courts have interpreted the "right to fundamental fairness as incorporating minimal standards of procedural due process." *Roxana Landfill, Inc. v. Ill. Pollution Control Bd.*, No. 5-15-0096, 2016 IL App (5th) 150096-U, ¶ 85 (*quoting Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017, ¶ 60); *see also Timber Creek Homes, Inc. v. Ill. Pollution Control Bd*., 2015 IL App (2d) 140909-U, ¶ 56. However, the protections afforded

by the due process clauses of the federal and Illinois Constitutions "do not apply to proceedings to create a pollution control facility." *Id.; E&E Hauling, Inc. v. Pollution Control Bd.*, 116 Ill.App.3d 586, 594-95 (1983). Courts have held that "although a local siting proceeding more closely resembles an adjudicatory proceeding than a legislative one, the local governing body is not held to the same standards as a judicial body." *Sw. Energy Corp v. PCB*, 275 Ill. App. 3d 84, 91 655 N.E.2d 304 (4th Dist. 1995). "An administrative body possesses broad discretion in conducting its hearings." *Roxana Landfill*, 2016 IL App (5th) 150096-U at ¶ 88 (*quoting Petersen v. Plan Comm'n of the City of Chicago*, 302 Ill.App.3d 461, 469 (1998)). "All that is required is that 'the procedures be tailored, in light of the decision to be made, to the capacities and circumstances of those who are to be heard, to insure [sic] that they are given a meaningful opportunity to present their case." *Id.*

When an appeal challenges the fairness of the proceedings, the petitioner must demonstrate some actual harm as a result of the challenged procedures. *See Stop the Mega-Dump v. Cnty. Bd of Dekalb County, Ill.*, PCB 10-103, 2011 WL 986687, at *30 (Mar. 17, 2011) ("The Board cannot give credence, in the absence of any evidence, to [petitioner's] bald speculation that the County's adopted procedures may have chilled or dampened participation by the public."). Republic has failed to prove any such harm here.

i. Republic Waived Any Right to Appeal the Timing of Oral Public Comment or Statements by Hearing Officer Price on the IPCB's Role in the Review of a Local Siting Decision.

First, Republic waived any right to appeal the fairness of the timing of oral comment by failing to object to the Hearing Officer Price's decision during the hearing. It "is well-settled that a failure to object at the original proceeding generally constitutes a waiver of the right to raise an issue on appeal." *Peoria Disposal Co. v. Peoria County Board*, PCB 06-184, (June 21, 2007),

citing E & E Hauling, Inc., 481 N.E.2d at 666. "A party can, by inaction in the proceeding before the local siting board, waive its right to raise the issue on appeal to the Board." Material Recovery Corp. v. Village of Lake in the Hills, PCB 93-11, 1993 WL 267876, at *4 (July 1, 1993). The reason for requiring objections during trial to preserve error is so that there can be a "timely resolution of evidentiary questions at trial." *People v. Carlson*, 404 N.E.2d 233, 238 (Ill. 1980).

At the outset of the County Board's public hearing, Hearing Officer Price clearly stated that evidence and witnesses by the parties (i.e., LRS and Republic) would be presented first and that public comment would be taken at the end. At no point during the hearing did Republic object to this schedule or ask that attendees be permitted to offer their oral comments first. Because Republic did not object, it has waived its right to challenge Hearing Officer Price's decision on the scheduling of public comment.[7] See *Waste Mgmt of Ill., Inc. v. Pollution Control Board*, 175 Ill. App. 3d 1023, 1038 (2nd Dist. 1988); *see also E &E Hauling, Inc.*, 481 N.E.2d at 666; *A.R.F. Landfill, Inc. v. Pollution Control Board*, 528 N.E.2d 390, 394 (1988).

Republic also waived any right to appeal based on the statements made by Hearing Officer Price on the finality and potential review of the siting decision by the ICPB. Although there was, in fact, no error or unfairness that stemmed from his statements, Republic waived any such arguments by failing to object at the public hearing. Additionally, Republic did not raise this issue in its closing arguments, nor does it appear as a ground for appeal in its Petition for Review.

[7] As discussed below, Republic's claim also fails on the merits because Hearing Officer Price offered to accommodate any members of the public who wished to speak but were unable to remain until after the conclusion of evidence by the parties. (R. C-897 at 14).

ii. The County Board Provided Ample Opportunity for Public Comment and the Process Used Complied with Applicable Statutory and Local Requirements

Republic asserts that the public hearing violated fundamental fairness and the County Board's siting approval should be overturned because in person public comments were not taken during the first day of the public hearing.[8] Republic's contention is not supported by the applicable statutes, regulations, or caselaw. The siting statute establishes certain minimum procedural requirements, including minimum timeframes for filing written comments and the requirement to hold at least one public comment. 415 ILCS 5/39.2(c) and (d). While stakeholders and members of the public have the right to provide public comment, the statute does not prescribe the timing or sequence of public comment during the public hearing, nor does it, in fact, require that the public be offered an opportunity to present oral comment during public hearing. *Id*. Regardless, the facts here clearly establish that the public had ample opportunity to offer comment prior to, during, and after the public hearing on the Application.

As recognized by multiple courts, the Act does not specify the procedures that must be used in conducting a local siting hearing. *See Waste Mgmt of Ill., Inc. v. Pollution Control Board*, 530 N.E.2d 682, 692 (2d Dist. 1988). Further, "the Act does not prohibit a county board from establishing its own rules and procedures governing conduct of a local siting hearing so long as those rules and procedures are not inconsistent with the Act and are fundamentally fair." *Id*. at

[8] Republic asserts that the "[a] siting authority's decision may be overturned if the manifest weight of the evidence demonstrates its proceedings were fundamentally unfair" citing *Envt' Recycling and Disposal Services, Inc., Petitioner v. Will County et al.*, 2016 WL 4506920, at *3 (PCB No. 1676 Aug. 19, 2016); however, the recognized remedy for a lack of fundamental fairness is remand to the county board to allow them to cure the procedural deficiency. See *Hediger v. D & L Landfill, Inc.*, PCB 90163, slip op. at 5 (Dec. 20, 1990), PCB 90163, slip op. at 5 (Dec. 20, 1990*); see also City of Rockford v. Winnebago County Board*, PCB 87-92, 83 PCB 47 (Nov. 19, 1987). Neither remedy is warranted here because the County Board's processes were fundamentally fair.

693. McLean County has adopted its own procedures for local siting review (Chapter 289 of the McLean County Code) and the County Board followed those procedures here.

Under the County Board's siting procedures (Chapter 289, Section 10), the Hearing Committee conducts the public hearing on applications for new pollution control facilities. Under § 289-10(B), the Hearing Committee is authorized to appoint a nonmember to serve as a hearing officer. In addition to serving as the presiding officer during hearing, the hearing officer may also determine the manner by which public comment will be received. *See* McLean County Code § 289-11(N) and (O) (presiding officer may "determine whether public comment shall be received during each meeting of the Committee or shall be limited to one or more meetings of the Committee" and may "exclude and otherwise limit testimony, questioning, cross-examination, and comments as necessary"). Republic's allegation that the County's procedures amounted to a due process violation is unsupported by either statute or case law, including the IPCB's prior opinions. *See, e.g., Sierra Club, Madison County v. City Wood River,* PCB 95-175 (1995) (hearing officer's decision requiring that all public comment be sworn and subject to cross-examination did not render the proceedings fundamentally unfair). Rather, the procedures used by Hearing Officer Price were consistent with the siting statute and specifically authorized by the McLean County's local procedures.

Hearing Officer Price's decision on the timing of public comment also did not prevent members of the public from offering comment. Importantly, Hearing Officer Price offered to make accommodations for any attendees who wished to speak but were unable to attend during the scheduled date or timeframe. (R. C-859). Attendees also had the option of providing written comments. (*Id.).* Hearing Officer Price adhered to the County's established procedures for oral

comment, and he extended greater flexibility in the scheduling of oral comment than the ordinance required. There is no basis for a finding of fundamental unfairness here.

Moreover, Republic has failed to meet even a minimal showing that the timing of the public comment period caused any harm or prejudice to any party or the public. Republic participated as a party, offered testimony and cross-examined witnesses during the public hearing. The timing of oral comment did not impact Republic's ability to present evidence or cross-examine witnesses. Rather, Republic seems to be asserting a position on behalf of the public generally. While Republic may have an economic interest in protecting its monopoly, such an interest does not confer standing to act on the public's behalf or otherwise represent the public interest. Republic also did not present any evidence that would support its allegation that any member of the public who wished to speak during the public hearing was actually prevented from doing so. Republic's allegations are nothing more than assumption and "bald speculation." *Stop the Mega-Dump,* 2011 WL 986687, at *30. Further, the public was provided the opportunity to provide written comment on the Application from August 19, 2023, until January 2, 2024, a total of 137 days.[9] And, as stated above, the Hearing Officer offered to accommodate oral comments on alternate dates and times, if needed. (R. C-897 at 14:9-15).

In summary, Republic has not demonstrated that the proceedings were anything but fundamentally fair. The County Board's proceedings provided all interested parties and the public a meaningful opportunity to be heard before, during and after the public hearing. The County Board provided ample opportunity for public participation and comment, and the County's process complied with applicable statutory and local requirements.

[9] Any written comment that was postmarked by January 2, 2024 was accepted. (R. C-1017 at 377).

iii. The Statement of County Board Chairwoman Metsker Did Not Impact the Board's Decision

Republic asserts that County Board Chairwoman Metsker made certain "misleading statements" at the February 2024 Board meeting concerning the County Board's role in the siting process, based on her statement that the vote during the February 15, 2024 Board meeting "was not a final decision on the Application and that a final decision would be made by the PCB."[10] Republic does not allege the Chairwoman's statements[11] violated the County Board rules, nor does Republic cite any cases that would demonstrate any fundamental unfairness based on these facts. And more importantly, there is no evidence that any Board member's vote was, in any way, affected by these statements.

In her written testimony, Chairwoman Metsker clarified the context and reasons for her statement during the February 15, 2024 County Board meeting. She explained that "applications for a new pollution control facility are typically highly contested–an observation that proved accurate during the public hearings on the LRS application on November 29 and 30, 2023." McLean Ex. 17, lines 96-98. Chairwoman Metsker further stated that "[g]iven Republic Services' participation in the public hearings, I anticipated an appeal of the County Board's decision, regardless of whether local siting approval was granted or denied" and thus "considered an appeal

[10] Republic similarly attacks certain preliminary statements made by Hearing Officer Price during the public hearing in which he explained that after the Board makes its decision, "it goes...for review at the Pollution Control Board"; however, this statement was made in the context of explaining potential next steps in the context of an appeal. *See* R. C-986 at 11 ("if there are appeals, they get decided there" (i.e., at the IPCB)). Regardless, this statement did not impact the fairness of the proceedings, Republic did not object to the statement during hearing, and did not raise the statement as an issue for review in its Petition for Review. Any arguments on this point have thus been waived.

[11] The Board is also subject to their own "high standard of ethical behavior in exercising their duties, responsibilities and judgment as Board members." *See* McLean Cunty Board Rules Section 20-8.A. There is no allegation by Republic that the Board members acted in conflict with their ethical duties.

of the County Board's local siting decision and subsequent review by the Illinois Pollution Control Board to be imminent." *Id*. at lines 101-104.[12] Of course, Chairwoman Metsker's statements were ultimately correct – Republic appealed the Board's siting approval decision shortly after the County Board's meeting.

Hearing Officer Price, and thereafter the Committee, which was comprised of 11 of the 20 board members, both recommended conditional siting approval of the LRS waste transfer facility prior to the full County Board meeting. (R. C-1770-1772). During the February 15, 2024 meeting, the County Board approved, by a vote of 11-6, the Committee's recommendation to grant local siting approval. Significantly, the County Board is required to limit their consideration to evidence and comments previously considered and made part of the record. *See* McLean Ex. 17, lines 42-49 and Exs. A and B; *see also Waste Management of Illinois, Inc.,* 530 N.E.2d at 697–98 ("The county board members were informed numerous times that they had to base their decision on the evidence and the record indicates that they did that to the best of their abilities").

The case law, including that cited by Republic, recognizes a "presumption that administrative officials are objective and capable of fairly judging a particular controversy." *Waste Management*, at 1040 (citations omitted). "Moreover, the fact that an administrative official has taken a public position or expressed strong view on an issue before the administrative agency does not overcome the presumption." *Id.* (citations omitted).

[12] Republic did not cross-examine Ms. Metsker on this point at the July 29, 2024 hearing. Also, Mr. Price's statement at the hearing is consistent with the Chairwoman's statement. Mr. Price stated that once the board made its decision "it goes from here to down to Springfield, for review at the Pollution Control Board. If there are appeals, they get decided there and it is all based on the record." C-986 at 11. Republic did not object to this statement.

The statements made by Chairwoman Metsker do not demonstrate any bias, do not suggest or advocate any specific outcome, and did not relate to the substance of the Application.[13] Rather, they reflected the reality that an appeal of the Board's decision was likely, which was correct. The County Board based its decision on the substantial record developed over the previous six-month period. The purpose of the February Board Meeting was to vote based on the record and recommendations before them. There is no evidence in the record or otherwise that Chairwoman Metsker's statements swayed the County Board or impacted the fundamental fairness of the proceedings, and Republic has not proven otherwise. The County Board is presumed to be objective and capable of fairly judging the Application for local siting. There was no fundamental unfairness here.

CONCLUSION

For the foregoing reasons, the Illinois Pollution Control Board should deny Republic's Petition for Review and uphold the County Board's decision conditionally approving local siting of LRS' proposed waste transfer station.

Dated: September 3, 2024

Respectfully submitted,

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[13] The Board is also subject to their own "high standard of ethical behavior in exercising their duties, responsibilities and judgment as Board members." *See* McLean Cnty Board Rules Section 20-8.A. There is no allegation by Republic that the Board members acted in conflict with their ethical duties.

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CERTIFICATE OF SERVICE

I, Sara L. Chamberlain, an attorney with Thompson Coburn LLP, certify that on September 3, 2024, I electronically submitted for filing the foregoing with the Pollution Control Board by using the Clerk's Office On-Line (COOL) eFile system. I further certify that I served the other parties in this case with a copy of the same by transmitting the document by e-mail to the individuals identified on the Clerk's Service List, including the following:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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