

*Appendix L  
Programmatic Agreement Among the  
United States Fish and Wildlife Service, The  
Ohio Historic Preservation Office, and  
Buckeye Wind, LLC Regarding  
Construction of the Buckeye and Buckeye II  
Wind Power Projects to be Located in  
Champaign County, Ohio and Mitigation  
for Take of Indiana Bats to be Implemented  
in Ohio*

**PROGRAMMATIC AGREEMENT (PA)**  
among  
**The U.S. Fish and Wildlife Service (USFWS),  
The Ohio Historic Preservation Office (SHPO), and  
Buckeye Wind LLC (Buckeye)**  
regarding  
**Construction of the Buckeye and Buckeye II Wind Power Projects (Projects)  
to be located in Champaign County, Ohio  
and  
Mitigation for Take of Indiana Bats  
to be implemented in Ohio**

**WHEREAS**, issuance of an Incidental Take Permit (ITP) by USFWS to Buckeye for incidental take of Indiana bats during construction, operation and decommissioning of the Projects triggers review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470 *et seq.*, § 470f, and its implementing regulations “Protection of Historic Properties” (36 CFR Part 800) and;

**WHEREAS**, USFWS has determined that construction of the proposed Projects to be located in Champaign County, Ohio, and implementation of Indiana bat mitigation, to be implemented within Ohio, may potentially cause an adverse effect on historic properties and;

**WHEREAS**, the proposed Projects will include construction of up to 100 turbines each with a nameplate capacity of 1.6 to 2.5 megawatts (MW) resulting in a total generating capacity of up to 250 MW, and construction of a substation, an operations and maintenance (O&M) building (should it be needed), access roads, staging areas and collection and communications lines, and;

**WHEREAS**, mitigation required of Buckeye to compensate for the impact of taking Indiana bats during operation of Projects, as described in the Habitat Conservation Plan (HCP) and required pursuant to the ITP, will include the purchase or easement acquisition and subsequent restoration and/or enhancement (if necessary), with permanent preservation, of up to 87.8 ha (217.0 ac) of suitable Indiana bat habitat within 11.2 km (7 mi) of a Priority 2 Indiana bat hibernaculum in Ohio, or purchase credits from a USFWS approved Indiana bat mitigation bank, and;

**WHEREAS**, USFWS has determined the Area of Potential Effect (APE) for the undertaking will include the project area (direct APE) including up to 100 turbine locations, access roads and buried interconnect lines, construction staging areas, substation, an O&M building, and the substation location; the area within 5.0 miles of the Projects where the Projects may have indirect visual effects to aboveground historic resources (indirect APE); and Indiana bat mitigation sites including approved areas within 11.2 km (7 mi) of a Priority 2 Indiana bat hibernaculum in Ohio, and;

**WHEREAS**, USFWS, in consultation with SHPO and Buckeye, has completed studies to identify any buildings, structures, non-archaeological districts, and objects meeting the criteria for listing on the National Register of Historic Places (NRHP) within the Projects' indirect APE (Doyon and Heavrin 1010; Heavrin et al. 2011); and

**WHEREAS**, USFWS, in consultation with the SHPO and Buckeye, has initiated but not completed the studies necessary to identify within the Projects' direct APE any archaeological sites and districts meeting the criteria for listing in the NRHP (Church et al. 2010; Nelson and Meece 2011); and

**WHEREAS**, USFWS has consulted with the SHPO to address potential effects of the Projects on historic properties in accordance with Section 106 of the NHPA (16 U.S.C. 470) and its implementing regulations, 36 CFR Part 800; and

**WHEREAS**, it is agreed among the signatories that adverse effects to above ground historic resources in the indirect APE may occur as a result of the Projects, but that no adverse effects to above ground historic resources will occur as a result of the Projects within the direct APE, and;

**WHEREAS**, USFWS is phasing identification and evaluation of historic properties and application of the criteria of effects in accordance with 36 CFR Part 800.4(b)(2) and 36 CFR Part 800.5(a)(3), respectively, because final siting of project infrastructure and Indiana bat mitigation is not complete and;

**WHEREAS**, in accordance with 36 CFR Part 800.14(b)(1)(ii), execution of a Programmatic Agreement (PA) is appropriate because effects on historic properties cannot be fully determined prior to USFWS issuance of the ITP to Buckeye; and

**WHEREAS**, Buckeye has agreed to complete its stipulations, listed below, regarding the identification, evaluation of eligibility and assessment of effects regarding archaeological resources within the direct APE as elaborated below, as a condition of receiving the ITP and;

**WHEREAS**, the terms used in this PA are defined in 36 CFR Part 800.16;

**NOW, THEREFORE**, USFWS, SHPO and Buckeye agree that the above-referenced construction and mitigation will be implemented in accordance with the following stipulations in order to take into account the effect of said undertakings on historic properties.

## **STIPULATIONS**

USFWS will ensure that the following stipulations are carried out:

## **I. CONDITIONS**

USFWS will ensure that the terms of this PA within its control are implemented prior to the start of construction and prior to the start of implementation of any Indiana bat mitigation.

## **II. PROFESSIONAL STANDARDS**

The studies and work required under the terms of this PA will be carried out by or under the direct supervision of a professional, hired and paid by Buckeye, who, at a minimum, meets the U.S. Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44716, September 29, 1983) in archeology or architectural history, as appropriate.

## **III. IDENTIFICATION AND TREATMENT**

### **A. Mitigation of Effects to Above Ground Historic Resources**

Previously, Buckeye commissioned an architectural field survey of above ground historic resources (Heavrin et al., 2011). The survey strategy was based on a work plan developed in consultation with USFWS and SHPO (Doyon and Heavrin, 2010). The architectural field survey was completed in 2010 based on the proposed 52 turbine locations established during development of the Buckeye Wind Farm. The survey documented 1,475 individual properties located in the rural areas and crossroads communities of the survey area, and an additional 44 blocks in Mechanicsburg and 283 blocks in Urbana were assessed. Based on the archival research, field survey, and public involvement, it was determined that the agricultural heritage of the survey area is what makes the historic landscape unique and that historic farmsteads and farmhouses, one-room schoolhouses, churches, cemeteries, and crossroads communities are character-defining property types that contribute to one's appreciation of the area's historic landscape. The number and size of the proposed turbines could affect the perception of the traditional rural historic landscape, changing important qualities of the setting in which many of the character-defining historic property types are located.

While the proposed project will not affect any above-round historic resources in the direct APE, given the presence of known historic properties within the indirect APE, as well as the results of the field survey that suggest the presence of many other likely historic properties and potential historic landscapes within the indirect APE, USFWS has determined that the proposed project will result in an Adverse Effect to historic properties as defined in 36 CFR 800.5. Based on the nature of the proposed project, avoidance or minimization of these indirect impacts is impractical. Consequently, creative mitigation measures will be employed in order to promote the continued preservation and meaningfulness of the survey area's rural history. As outlined in their letter of October 27, 2011, SHPO concurs with this finding and supports such a mitigation approach. Given the landscape level approach employed for the architectural survey, the Buckeye

Wind Farm findings of the project were anticipated to be applicable to Buckeye II Wind Farm.

A supplementary field survey was completed in 2013 to take into consideration the proposed Buckeye II Wind Farm turbine locations. The survey strategy and methods were based on a work plan developed in consultation with USFWS and SHPO (Heavrin 2011). The survey confirmed that the findings of the Buckeye Wind Farm survey are applicable to the Projects (Heavrin 2013).

To address the indirect Adverse Effect of the Projects, Buckeye will hire and pay a professionally qualified historian or architectural historian to complete the two following mitigation projects, as approved by USFWS and SHPO:

- a. Development of a National Register of Historic Places Multiple Property Listing for historic one-room schoolhouses in Champaign County, Ohio, including completion of a Multiple Property Documentation Form and one individual nomination of a schoolhouse.
- b. Development of a Teaching with Historic Places Lesson Plan focusing on the history of the Underground Railroad in Champaign County, Ohio.

Once completed, the Multiple Property Listing and Teaching with Historic Places Lesson Plan shall be submitted to the USFWS and SHPO for review and comment and shared with the public according to the methods outlined in the mitigation plan.

## **B. Identification and Mitigation Efforts for Archaeological Resources**

1. Previously, Buckeye commissioned a Phase I archaeological survey of the direct APE for 52 proposed turbine locations and associated facilities established during development of the Buckeye Wind Farm (Nelson and Meece, 2011). The survey strategy and methods were based on a work plan developed in consultation with USFWS and SHPO (Church et al. 2010). Four historic-period archaeological sites, five prehistoric sites, and five prehistoric isolated finds were identified during the survey. All sites were either recommended as not eligible for inclusion on the NRHP or, in the case of site 33CH0415 that was recommended as potentially eligible for inclusion, Buckeye proposes to avoid the site through alteration of the Projects' layout. Additional archaeological work will be performed to identify an alternative route for the direct APE that avoids the site, or if avoidance proves infeasible, a Phase II NRHP evaluation will be conducted on the portion of the site within the direct APE. The USFWS and SHPO have concurred with these recommendations.
2. Prior to the initiation of any construction or mitigation activities that could potentially disturb or damage archaeological resources within the direct APE, Buckeye shall carry out archaeological investigations in accordance with the strategy and methods presented in the work plan approved by USFWS and SHPO (Pullins et al., 2012),

1994 *Archaeology Guidelines* of the Ohio Historic Preservation Office, and in accordance with the methodology set forth in this PA. USFWS shall ensure that all scopes of work for archaeological identification and evaluation produced by Buckeye include a plan for the treatment of human remains and funerary objects that might be encountered.

- a. Additional Phase I Archaeological Survey. Phase I archaeological survey of the direct APE for development of the Buckeye II Wind Farm will follow the strategy and methods presented in the work plan approved by USFWS and SHPO (Pullins et al., 2012). Phase I work will be designed to provide information regarding the significance of all identified archaeological sites to the NRHP. This work will be done in consultation with SHPO and all deliverables will be submitted by USFWS to SHPO for review and comment.
  - 1) If USFWS determines and SHPO concurs that a “site is not eligible” for the NRHP, then no further investigations of that site will be conducted.
  - 2) If USFWS determines and SHPO concurs that a site with indeterminable eligibility can and will be avoided, which would be the preferred option, then no further investigation of that site will be conducted, unless avoidance no longer becomes feasible.
  
- b. Phase II Archaeological Testing. If all parties agree that the “eligibility of a site is indeterminable” and avoidance is not feasible, USFWS shall ensure that a Phase II Research Design will be developed by Buckeye in consultation with the SHPO. This document will be consistent with SHPO guidelines. Phase II work will be designed to provide information regarding the significance of an archaeological site as “site is not eligible” or “site is eligible” to the NRHP. This work will be done in consultation with SHPO and all deliverables will be submitted by USFWS to SHPO for review and comment.
  - 1) If USFWS determines and SHPO concurs that a “site is not eligible” for the NRHP, then no further investigations of that site will be conducted.
  - 2) If USFWS determines but SHPO will not concur regarding eligibility, all appropriate information regarding the site will be submitted by USFWS to the Keeper of the National Register, National Park Service, for review. The Keeper’s determination of eligibility will be final.
  - 3) If USFWS determines and SHPO concurs that an eligible site can and will be avoided, which would be the preferred option, then no further investigation of that site will be conducted, unless avoidance no longer becomes feasible.

- c. Application of Criteria of Adverse Effects. If USFWS determines and SHPO concurs that the “site is eligible”, but through discussions with Buckeye, USFWS determines avoidance is not a feasible alternative, then USFWS will consult with SHPO to apply the criteria of adverse effects. This work will be completed in consultation with SHPO guidelines and all deliverables will be submitted for SHPO review and comment by USFWS.
- 1) If following the application of the criteria of adverse effects, USFWS determines and SHPO concurs that the Projects and the mitigation will have “no effect” or “no adverse effect” on an eligible site then no further investigations of that site will be conducted.
  - 2) If USFWS determines and SHPO concurs that the Projects and/or the mitigation will have an “adverse effect” on an eligible site, but the construction and/or mitigation project is subsequently redesigned by Buckeye to avoid adverse effects, then the finding would be changed to “no effect”. USFWS shall provide written documentation demonstrating avoidance for SHPO concurrence.
  - 3) If avoidance of adverse effects is still not feasible after redesign of the construction and/or mitigation project by Buckeye , the scope of the adverse effects will be reassessed.
- d. Phase III Archaeological Data Recovery. If all parties agree that the Projects and/or mitigation will have an “adverse effect” on an eligible site and avoidance is not a feasible option, then USFWS will consult with SHPO to identify measures to minimize and mitigate the adverse effect to the site. USFWS shall ensure that the PA will be amended to include a Treatment (Data Recovery) Plan developed by Buckeye in consultation with SHPO. The plan will be consistent with SHPO guidelines and all deliverables will be submitted by USFWS to SHPO for review and comment.

Following SHPO review and concurrence of proposed Phase III deliverables, no further investigations of that site will be conducted, unless an unanticipated post-review discovery is made.

- e. Post-review discoveries. In the event of any unanticipated discoveries of archaeological sites, unmarked cemeteries, or human remains and associated funerary objects during the implementation of the Projects and/or mitigation, all activities will be suspended in the area of discovery. Buckeye will contact USFWS and SHPO within 48 business hours of the discovery, via telephone at the following numbers: For USFWS, Regional Historic Preservation Officer James Myster at 612-713-5439 and Megan Seymour, NEPA Projects Manager at

614-416-8993 ext. 16, and for SHPO David Snyder at 614-298-2000. If the discovery is of human remains, local law enforcement will be contacted as well.

In consultation with SHPO, USFWS shall ensure that, if necessary, a qualified archaeologist, hired and paid by Buckeye (if applicable), will visit and assess the discovery, anticipated to be within 72 hours of the initial notification, or as soon as practicable. Based upon that verbal or written assessment and through consultation, USFWS and SHPO shall agree upon the appropriate treatment of the discovery prior to resumption of construction activities in the area of discovery. If human remains are determined to be of Native American origin, SHPO, in consultation with USFWS shall determine the treatment and disposition of human remains. Buckeye affirms that all human remains will be avoided by direct construction impacts where feasible.

If the construction contractor for Buckeye believes that a discovery contains human remains and the discovery is not on federal lands, USFWS and Buckeye will notify the SHPO within two (2) days. Prior to the start of construction and mitigation Buckeye will remind its contractor, in writing, that finding unknown sites and/or human remains are still possible even if the project has been cleared and outline to them the process of inadvertent discovery notification as described above.

### **C. Curation**

Buckeye will return all artifacts and materials recovered through implementation of the terms of this PA to the respective private landowner, unless Buckeye has obtained signed gift agreements deeding artifacts and materials to the state of Ohio. Buckeye will request the landowners to donate the cultural material whenever possible and appropriate.

If Buckeye obtains signed gift agreements from private landowners deeding artifacts and recovered materials to the state of Ohio, then Buckeye will submit such artifacts, materials or records for permanent curation at a repository that meets federal standards under 36 CFR 79.

### **D. Dispute Resolution**

Should any signatory to this PA object in writing at any time to any actions proposed or the manner in which the terms of this PA are implemented, USFWS, within the limits of its authority, will consult with such party to resolve the objection. If USFWS determines that the objection cannot be resolved, that agency will:

- 1) Forward all documentation relevant to the dispute, including the resolution proposed by USFWS, to the Advisory Council on Historic Preservation (ACHP). ACHP will

provide USFWS with its advice, pursuant to 36 CFR Part 800.2(b)(2), on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, USFWS will prepare a written response that takes into account any timely advice or comments from the ACHP, signatories and consulting parties regarding the dispute, and provide a copy of this written response. USFWS will then proceed according to its final decision.

- 2) Any ACHP comments provided in response to such a request will be taken into account in accordance with 36 CFR 800.7(c)(4).
- 3) If ACHP does not provide its advice regarding the dispute within thirty (30) days, USFWS may make a final decision and proceed accordingly. Prior to reaching a final decision, USFWS will prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties to the PA and provide them and ACHP with a copy of the written response.

The responsibilities of USFWS to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

If at any time during the implementation of the measures stipulated in this PA an objection should be raised by the public, USFWS will notify the signatories to this PA and consult with the objecting party to seek resolution. If USFWS determines that the objection may be valid and cannot be resolved, it will decide if the objection is of such magnitude to seek the advice or comment of ACHP (as described above).

#### **E. Reporting**

Should there be an interruption of activity associated with the construction and/or mitigation for any significant length of time, Buckeye will provide to the signatories, at the minimum every six (6) months, a project status letter regarding the completion of work associated with the above stipulations.

### **IV. TERMS OF AGREEMENT**

- A.** The term of this PA will be 30 years from the date of execution by the last signatory, unless the parties agree to extend its term. If its stipulations have not been carried out, and prior to work continuing on the proposed Projects and/or mitigation, USFWS, SHPO or Buckeye, as appropriate, will either (a) amend the agreement pursuant to 36 CFR 800.6, (b) execute another agreement pursuant to 36 CFR 800.6 or 800.14, or (c) request, take into account, and respond to the comments of ACHP under 36 CFR 800.7.
- B.** Six (6) months prior to the PA's expiration date, USFWS will notify the other signatories of the impending expiration. USFWS, SHPO or Buckeye as appropriate, may consult

with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation V. USFWS, SHPO or Buckeye as appropriate, will notify the parties as to the course to be pursued.

## V. AMENDMENT

- A. Any party to this PA may withdraw from it by providing thirty (30) days' notice to the other parties, provided that the parties will consult during the period prior to withdrawal to seek agreement on amendments or other actions that would avoid withdrawal.
- B. In the event of an early termination of the agreement pursuant to Paragraph V.A, and if construction is ongoing, construction that may result in an adverse effect to a historic property will cease, until either (a) USFWS executes an amendment to the agreement pursuant to 36 CFR 800.6, (b) executes another agreement pursuant to 36 CFR 800.6 or 800.14, or (c) USFWS requests, takes into account, and responds to the comments of ACHP under 36 CFR 800.7. USFWS will notify the signatories and consulting parties as to the course of action it will pursue.

## VI. NOTICES

Any notice permitted or required by this PA shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States Mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail, and such electronic notices shall thereafter be deemed effective upon receipt. Notices shall be transmitted so that they are received within the specified deadlines.

**Buckeye:** Michael Speerschneider, Buckeye Wind LLC, 1251 Waterfront Place, 3<sup>rd</sup> Floor, Pittsburgh, PA 15222 Phone: (412) 253-9400, mspeerschneider@everpower.com

**USFWS:** Megan Seymour, Ohio Field Office, 4625 Morse Road, Suite 104, Columbus, Ohio 43230, 614-416-8994 (fax), megan\_seymour@fws.gov.

**SHPO:** David Snyder, Archaeological Reviews Manager, Ohio Historic Preservation Office, 800 E. 17<sup>th</sup> Avenue, Columbus, OH 43211-2474, Fax: (614) 298-2037, dsnyder@ohiohistory.org.

**EXECUTION** of this PA by USFWS, SHPO, and Buckeye, and implementation of its terms evidences that USFWS has taken into account the effects of this undertaking on historic properties and afforded ACHP a reasonable opportunity to comment.

Signatories

U.S. FISH AND WILDLIFE SERVICE

By \_\_\_\_\_ Date \_\_\_\_\_  
Tom Melius, Midwest Regional Director

OHIO STATE HISTORIC PRESERVATION OFFICE

By \_\_\_\_\_ Date \_\_\_\_\_  
[Insert Name and Title]

BUCKEYE WIND, LLC

By \_\_\_\_\_ Date \_\_\_\_\_  
Michael Speerschneider, Senior Director

## REFERENCES CITED

Church, Flora J., Stevan C. Pullins, and C. Michael Anslinger  
2010 Work Plan for Completing a Phase I Archaeological Survey for the Buckeye Wind Farm in Champaign County, Ohio, Submitted to EverPower Wind Holdings, Inc. Prepared by Cultural Resources Analysts, Inc.

Doyon, Ann Marie P., and Elizabeth G. Heavrin  
2010 Work Plan for Completing an Architectural Survey for the Proposed Buckeye Wind Farm in Champaign County, Ohio, Submitted to EverPower Wind Holdings, Inc. Prepared by Cultural Resources Analysts, Inc.

Heavrin, Elizabeth G.  
2011 Work Plan for Completing An Architectural Survey for Phase II of the Proposed Buckeye Wind Farm in Champaign County, Ohio. Contract Publication Series WV11-108, Submitted to EverPower Wind Holdings, Inc. Prepared by Cultural Resources Analysts, Inc.

Heavrin, Elizabeth G.,  
2013 Addendum to the Architectural Survey for the Proposed Buckeye Wind Farm in Champaign County, Ohio. Contract Publication Series 13-013, Submitted to EverPower Wind Holdings, Inc. Prepared by Cultural Resources Analysts, Inc.

Heavrin, Elizabeth G., Robert C. Whetsell, and Ann Marie P. Doyon  
2011 Architectural Survey for the Proposed Buckeye Wind Farm in Champaign County, Ohio. Contract Publication Series WV10-045, Submitted to EverPower Wind Holdings, Inc. Prepared by Cultural Resources Analysts, Inc.

Nelson, Christopher L., and Jamie S. Meece  
2011 Phase I Archaeological Survey for the Proposed Buckeye Wind Farm in Champaign County, Ohio. Contract Publication Series WV10-006, Submitted to EverPower Wind Holdings, Inc. Prepared by Cultural Resources Analysts, Inc.

Pullins, Stevan C., Flora Church, and James H. Kompanek  
2012 Work Plan for Completing a Phase I Archaeological Survey for the Proposed Phase II Development of the Buckeye Wind Farm in Champaign County, Ohio. Contract Publication Series WV11-107, Submitted to EverPower Wind Holdings, Inc. Prepared by Cultural Resources Analysts, Inc.