

**Exhibit K**  
**Programmatic Agreement**

**APEX and Ohio State Historic Preservation  
Office**

**Executed June 2021**

**PROGRAMMATIC AGREEMENT**  
**Between**  
**Firelands Wind, LLC**  
**and the**  
**Ohio State Historic Preservation Office**  
**for the Administration of**  
**Wind Energy Projects in Ohio**

**WHEREAS**, Firelands Wind, LLC, (“Firelands Wind”) has proposed to construct the Emerson Creek Wind Project (“Emerson Creek”) in Huron and Erie Counties;<sup>1</sup> and

**WHEREAS**, Firelands Wind filed an Application for a Certificate of Environmental Compatibility and Public Need with the Ohio Power Siting Board (“OPSB”) on February 2, 2018 (OPSB Case No. 18-1607-EL-BGN) (“Emerson Creek Wind Generation”) and an Application for a Certificate to Build and Operate an Electric Transmission Line (“Emerson Creek T-Line”) on August 27, 2019 for Emerson Creek (OPSB Case No. 19-1073-EL-BTX);<sup>2</sup> and

**WHEREAS**, Firelands Wind may modify or amend the certificates for the Emerson Creek Wind Generation and Emerson Creek T-Line projects; and

**WHEREAS**, constructing the Emerson Creek Wind Generation and T-Line projects may affect archaeological and cultural resources, including “landmarks” as that term is defined in Ohio Administrative Code (“OAC”) 4906-4-08(D), 4906-4-09(C), and 4906-5-07(E); and

**WHEREAS**, applicants for certificates for electric generation and transmission facilities, and modifications and amendments thereto, under OAC 4906-4 and 4906-5 must identify architectural and cultural resources, provide an evaluation of impacts by such facilities on such resources, and describe plans to avoid or to mitigate any adverse impacts to such resources; and

**WHEREAS**, OPSB is coordinating with the Ohio State Historic Preservation Office (“SHPO”) pursuant to Ohio Revised Code (“R.C.”) § 149.53, and Firelands Wind is working with SHPO to fulfill its duties under the OAC as a certificate applicant to provide plans to avoid or to mitigate any adverse effects of Firelands Wind on archaeological and cultural resources, including “landmarks” under the OAC.

**NOW, THEREFORE**, Firelands Wind and SHPO have agreed to carry out their respective duties under R.C. § 149.53, and OAC 4906-4 and 4906-5, in accordance with the following stipulations:

**STIPULATIONS**

**I. Roles and Responsibilities**

- A.** SHPO shall be responsible for providing technical assistance and guidance as needed and reviewing project documentation, in accordance with SHPO’s assigned duties under the Ohio Revised Code and Ohio Administrative Code.

---

<sup>1</sup> A map of the area is attached and incorporated into the Programmatic Agreement as Appendix 1.

<sup>2</sup> Collectively, these projects shall be referred to as “Emerson Creek.”

- B. Firelands Wind shall be responsible for consulting with consulting parties and preparing documentation for the SHPO and maintaining records on projects.
- C. Firelands Wind shall utilize persons meeting the applicable Professional Qualification Standards set forth in the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* to conduct identification of cultural resources.

## II. Archaeological and Cultural Resource Review Phasing

### A. Phase 1: Complete archaeological and historic/architectural surveys

Archaeological surveys for the Emerson Creek Wind Generation certificate application were initiated in December 2019 and completed in July 2020. Firelands Wind submitted a final technical report based on these surveys to SHPO on March 23, 2021, and received a concurrence letter from SHPO on April 8, 2021.

Historic/architectural surveys for the Emerson Creek Wind Generation certificate application were initiated in January 2020 and completed in March 2020. Firelands Wind submitted a final technical report based on these surveys to SHPO on January 5, 2021, and received a concurrence letter from SHPO on February 4, 2021.

Archaeological surveys for the Emerson Creek T-Line certificate application have been completed. Firelands Wind submitted a final technical report based on these surveys to SHPO on February 28, 2020, and received a concurrence letter from SHPO on March 25, 2020.

Historic/architectural surveys for the Emerson Creek T-Line certificate application were initiated in January 2020 and completed in February 2020. Firelands Wind submitted a final technical report based on these surveys to SHPO on May 13, 2020, and received a concurrence letter from SHPO on June 11, 2020.

Firelands Wind may file a modification or amendment to Emerson Creek; therefore, additional archaeological field surveys are planned for Q2/Q3 2021 within areas of the revised facility design not previously surveyed. Firelands Wind anticipates submitting an addendum to the original report based on these surveys to SHPO in June 2021. No additional architectural surveys are anticipated.

### B. Phase 2: Evaluate “landmarks” through research and analysis

As part of Firelands Wind’s compliance efforts before the OPSB regarding consultation and coordination with SHPO, the cultural resources identified by surveys described in Section II.A of this PA will be recorded as stipulated in the SHPO-approved survey plans and subsequently evaluated according to the eligibility criteria for listing in the National Register of Historic Places (NRHP). See 36 C.F.R. § 60.4. Technical reports will include recommendations for NRHP eligibility, as well as evaluations of the effects of Emerson Creek on identified cultural resources, if any. If a cultural resource is determined to be eligible for listing in the NRHP and avoidance of adverse impacts is not feasible, a mitigation plan will be submitted for SHPO review.

**C. Phase 3: Develop a plan for avoiding, minimizing, or mitigating adverse effects to cultural resources, including “landmarks.”**

Firelands Wind will make every effort to avoid adverse effects on cultural resources, including “landmarks” as that term is used in OAC 4906-5-07(E), by adjusting project facilities. If avoidance is impossible, Firelands Wind will work with SHPO to develop a minimization/mitigation plan that will be memorialized in a Memorandum of Agreement (MOA) and may include the following mitigation treatment strategies: additional survey work, thematic or multiple property studies, NRHP nominations, offset funding for restoration of local landmarks, or support for local preservation organizations, heritage tourism projects, development of education materials and lesson plans, and website development. It is anticipated that these or similar mitigation treatment strategies will be appropriate for Emerson Creek. Nevertheless, the results of the surveys and evaluations described above in Stipulation II.A and II.B will be used to develop appropriate and meaningful mitigation for adverse impacts to cultural resources eligible for listing on the NRHP. See OAC 4906-5-07(E)(4).

**III. Project Review and Concurrence**

Provided that Firelands Wind follows the phasing approach in Section II of this PA, and subject to this PA’s terms, SHPO’s execution of this PA constitutes its concurrence regarding avoidance or mitigation of adverse impacts to cultural resources by the Projects.

**IV. Technical Assistance and Educational Activities**

Staff in SHPO’s Resource Protection and Review (RPR) Department will provide technical assistance and consultation as requested by Firelands Wind, or as proposed by the SHPO, in order to assist Firelands Wind in carrying out the terms of this PA.

**V. Post-Review Discovery**

- A.** An Unanticipated Discoveries Plan will be developed and implemented, to be used if archaeological or cultural resources, including human skeletal remains or funerary objects are discovered during construction or if unanticipated effects to cultural resources occur after project construction.
- B.** The Unanticipated Discoveries Plan shall provide that if cultural resources are discovered during or unanticipated effects on such resources found after project construction, Firelands Wind will follow the process established at 36 CFR § 800.13. In all cases of discovery of unanticipated effects, Firelands Wind will contact SHPO as soon as practicable and provide sufficient information so that SHPO can provide meaningful comments and recommendations.
- C.** The Unanticipated Discoveries Plan shall also provide that if human remains are discovered during the development or construction of Emerson Creek, construction will cease in the area of the discovery. Firelands Wind will contact the County Sheriff and/or County Coroner immediately and will contact the SHPO within 48 hours of discovery. Firelands Wind will also consult with SHPO, the County Sheriff, and/or the County Coroner to develop and carry out a treatment plan for the care and disposition of human remains.

- D. When human remains are determined to be of American Indian origin, the treatment plan will also be developed in consultation with appropriate federally recognized American Indian tribes. Firelands Wind shall request assistance from SHPO to arrange with appropriate federal authorities to conduct meaningful and respectful discussion with tribal representatives.

## **VI. Dispute Resolution**

Should any signatory to this PA object to actions proposed herein or dispute the meaning of this PA's terms, the disputing signatory shall serve all other signatories with notice of its objection or dispute and shall consult to resolve the objection or dispute. If the objection or dispute cannot be resolved within 30 days of service of the notice of objection or dispute, then SHPO may make a final decision on the dispute and advise Firelands Wind to proceed accordingly.

## **VII. Duration, Amendment, and Effect**

This PA will continue in full force until December 31, 2022, provided that its cessation shall not affect the continued application of the Unanticipated Discoveries Plan referenced in Stipulation V above. At the request of any signatory, this PA may be reviewed for amendments at any time. This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with SHPO. Execution of this PA by Firelands Wind and SHPO constitutes final concurrence by SHPO for purposes of OPSB review of the Projects' certificate applications, and modifications and amendments thereto, and implementation of this PA's terms is evidence that Firelands Wind has fulfilled its duties as an applicant with respect to cultural resources under the Ohio Revised Code and Ohio Administrative Code.

**SIGNATORIES:**



6/8/21

---

**Ken Young**  
**COO of Apex Clean Energy Holdings, LLC**  
**Sole member of Apex GCL, LLC, sole member**  
**of Firelands Wind, LLC**

**Date**

Contact Information:

310 4<sup>th</sup> St. NE, Suite 300  
Charlottesville, VA 229302  
(434) 260-6982

[jennie.geiger@apexcleanenergy.com](mailto:jennie.geiger@apexcleanenergy.com)

**Diana Welling**

Digitally signed by Diana Welling  
DN: cn=Diana Welling, o=Ohio History  
Connection, ou=State Historic Preservation  
Office, email=dwelling@ohiohistory.org, c=US  
Date: 2021.06.09 11:06:52 -0400

6/9/2021

---

**Diana Welling**  
**Department Head & Deputy State Historic Preservation Officer for**  
**Resource Protection & Review**  
**Ohio State Historic Preservation Office**

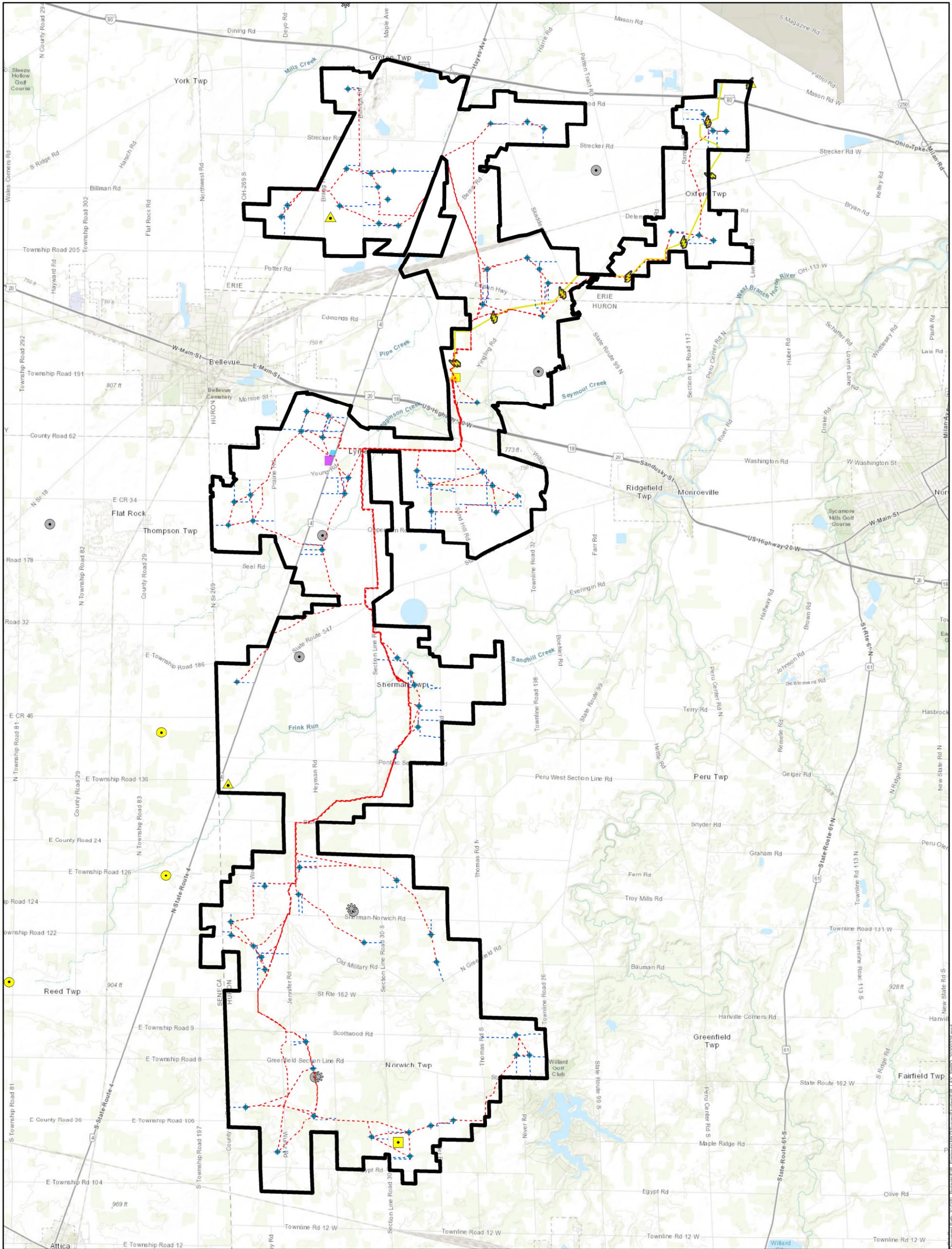
**Date**

Contact Information:

800 E. 17<sup>th</sup> Ave.  
Columbus, OH 43211  
(614) 298-2000

[dwelling@ohiohistory.org](mailto:dwelling@ohiohistory.org)

4825-5194-8510 v5 [59714-18]



Project Boundary	Project Substation
Turbine	Gentie Line
Collection	MetTower, Decommissioned
Private Access Road	MetTower, Proposed
Laydown Yard	PermanentMet, Proposed
O and M	PwrPerformanceTower, Proposed
Substation	Sodar, Decommissioned
Point of Interconnect	

## Emerson Creek Wind

Date: 6/17/2021 Author: GIS CONFIDENTIAL

Coordinate System: NAD 1983 2011 StatePlane Ohio North FIPS 3401 Ft US  
 Projection: Lambert Conformal Conic  
 Datum: NAD 1983 2011  
 Units: Foot US

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**10/28/2021 11:29:11 AM**

**in**

**Case No(s). 21-1055-EL-BGA**

Summary: Application - 13 of 13 (Exhibit K – Programmatic Agreement)  
electronically filed by Christine M.T. Pirik on behalf of Firelands Wind, LLC