

## **Exhibit E**

# **Programmatic Agreement**

Note, the attached exhibit was also provided with the application filed in Cadence Solar's application in 21-1003-EL-BLN.

**PROGRAMMATIC AGREEMENT**  
**Between**  
**Cadence Solar Energy LLC**  
**and the**  
**Ohio State Historic Preservation Office**  
**for the Administration of The Cadence Solar Energy Center Project**  
**Union County, Ohio**

**WHEREAS**, Cadence Solar Energy LLC, ("Cadence Solar") has proposed to construct the Cadence Solar Energy Center ("Project") in Union County;<sup>1</sup> and

**WHEREAS**, Cadence Solar will need to file an Application for a Certificate of Environmental Compatibility and Public Need to construct a solar-powered electric generation Facility with the Ohio Power Siting Board ("OPSB") (OPSB Case No. 20-1677-EL-BGN); and

**WHEREAS**, constructing the Cadence Solar Energy Center may affect cultural resources, including "landmarks" as that term is defined in Ohio Administrative Code ("OAC") Rules 4906-4-08(D) and 4906-5-07(E); and

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

**WHEREAS**, OPSB is coordinating with the Ohio State Historic Preservation Office ("SHPO") pursuant to Ohio Revised Code ("RC") Section 149.53, and Cadence Solar is working with SHPO to fulfill its duties under the OAC as a certificate applicant to provide plans to avoid, minimize, or mitigate any adverse effects of the Cadence Solar Energy Center on cultural resources, including "landmarks" under the OAC.

**NOW, THEREFORE**, Cadence Solar and SHPO have agreed to carry out their respective duties under RC Section 149.53 and OAC Chapters 4906-4 and 4906-5, in accordance with the following stipulations set forth in this Programmatic Agreement (PA):

## **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 OAC and RC.
- b) Cadence Solar shall be responsible for preparing cultural resources documentation for SHPO and maintaining cultural resources records on the Cadence Solar Energy Center.
- c) Cadence Solar shall utilize persons meeting the applicable Professional Qualifications Standards set forth in the *United States 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 survey**

Archaeological surveys for the Cadence Solar Energy Center certificate application were initiated in October 2020 and approximately 303 acres (16 percent) of high and moderate probability areas, where facilities are proposed, have been surveyed to date. Cadence Solar plans to complete the surveys in Spring 2021 and anticipates submitting a technical report documenting these surveys for both the electrical generation and transmission facilities to SHPO by June 2021.

#### **b) Phase 2: Evaluate "landmarks" through research and analysis**

As part of Cadence Solar's compliance efforts before the OPSB regarding consultation and coordination with SHPO, the cultural resources identified by the survey described in Section II.a of this PA will be recorded as

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

stipulated in the SHPO-approved survey plan<sup>2</sup> and subsequently evaluated according to the eligibility criteria for listing in the National Register of Historic Places (NRHP). See Code of Federal Regulations Title 36 Part 60.4 (36 CFR § 60.4). Cultural resources evaluated as eligible for the NRHP will be treated as landmarks. Technical reports will include recommendations for NRHP eligibility, as well as evaluations of the effects of Cadence Solar on identified cultural resources. If a cultural resource is determined to be eligible for listing in the NRHP and avoidance of adverse effects is recommended, additional archaeological testing will be required to determine better defined site boundaries. If avoidance of adverse effects are not feasible, a mitigation plan will be submitted for SHPO review, with measures for minimization of impacts included where feasible.

**c) Phase 3: Develop a plan for avoiding, minimizing, or mitigating adverse effects to NRHP-eligible cultural resources, including “landmarks”**

Cadence Solar will make every effort to avoid adverse effects on NRHP-eligible cultural resources, including "landmarks" as that term is used in OAC Rules 4906-4-08(D) and 4906-5-07(E), by adjusting project facilities to a minimum distance of 50 meters from the well-defined site boundaries. If avoidance is not feasible, Cadence Solar will work with SHPO to develop a minimization/mitigation plan that will be memorialized in a Memorandum of Understanding (MOU) 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, 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 Cadence Solar, should they be necessary. Nevertheless, the results of the surveys and evaluations described above in Sections II.A and II.B will be used to develop appropriate and meaningful mitigation for adverse effects to cultural resources eligible for listing on the NRHP.

**III. Project Review and Concurrence**

Provided that Cadence Solar 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 effects to cultural resources by the Cadence Solar Energy Center.

**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 Cadence Solar, or as proposed by SHPO, in order to assist Cadence Solar in carrying out the terms of this PA.

**V. Post-Review Discovery**

In the event that Cadence Solar discovers a previously unidentified site within the area of potential effect (APE) that may be eligible for listing in the NRHP that would be affected by the Project, Cadence Solar shall promptly stop work in the immediate vicinity of the site and notify OPSB and SHPO within 48 hours of the discovery.

If Cadence Solar and SHPO concur that the discovered resource is eligible for listing in the NRHP, Cadence Solar will consult with SHPO to evaluate measures that will avoid, minimize, or mitigate any adverse effects. Upon agreement regarding such measures, Cadence Solar shall implement them and notify OPSB of its action.

If Cadence Solar and SHPO cannot reach agreement regarding the eligibility of a post-review discovery, the matter will be referred to OPSB for review. If Cadence Solar and SHPO cannot reach agreement on measures to avoid, minimize, or mitigate adverse effects, the matter shall be referred to OPSB for appropriate action.

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<sup>2</sup> Libbon, Jonathan. 2020. *Cultural Resource Surveys for the Initial Phase of Development on the Cadence Solar Energy Center (2020-UNI-49350)*. SWCA Environmental Consultants.

If Cadence Solar discovers any human or burial remains during implementation of the Project, Cadence Solar shall cease work immediately, notify SHPO and OPSB, and adhere to applicable state and federal laws regarding the treatment of human or burial remains.

**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 Cadence Solar to proceed accordingly.

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

This PA will continue in full force until December 31, 2021, provided that its cessation shall not affect the continued application of Section V of this PA. At the request of any signatory party, 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 submitted to SHPO. Execution of this PA by Cadence Solar and SHPO constitutes final concurrence by SHPO for purposes of OPSB review of the Projects' certificate application and implementation of this PA's terms is evidence that Cadence Solar has fulfilled its duties as an applicant with respect to cultural resources under the RC and OAC.

**VIII. Counterparts**

This PA may be executed in two or more counterparts, each of which shall be deemed to be an original and taken together shall be deemed to be one and the same instrument.

**IX. Execution and Electronic Signatures**

This PA is not binding upon the signatory parties unless executed in full, and is effective on the last date of signature by the signatory parties.

Any signatory party hereto may deliver a copy of its counterpart signature page to this PA electronically pursuant to RC Chapter 1306. Each signatory party hereto shall be entitled to rely upon an electronic signature of any other signatory party delivered in such a manner as if such signature were an original.

**SIGNATORY PARTIES:**

DocuSigned by:  
  
9FF3157597F0439... 1/21/2021

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**Michael Kaplan** **Date**  
**Vice President**  
**Cadence Solar Energy LLC**

Contact Information

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**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: 2021.01.25 10:25:59 -05'00' 1/25/2021

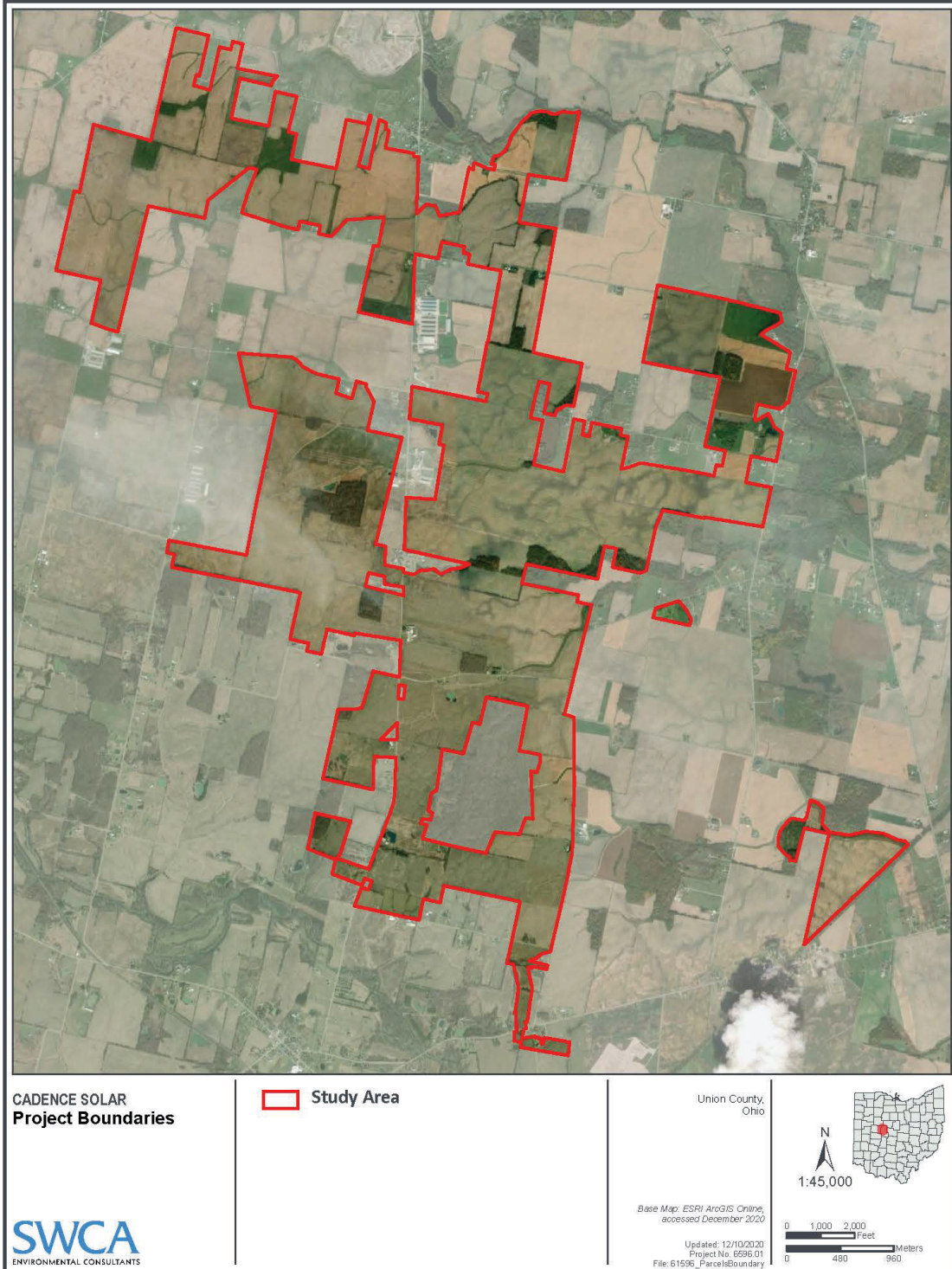
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**Diana Welling** **Date**  
**Department Head & Deputy State Historic Preservation Officer for**  
**Resource Protection & Review**  
**Ohio State Historic Preservation Office**

Contact Information

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Appendix 1



**This foregoing document was electronically filed with the Public Utilities  
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**in**

**Case No(s). 23-0557-EL-BLN**

Summary: Application - Application 7 of 15 (Exhibit E – Programmatic Agreement)  
electronically filed by Christine M.T. Pirik on behalf of CADENCE SOLAR ENERGY  
LLC.