

OHIO DEPARTMENT OF NATURAL RESOURCES TERRESTRIAL WIND
ENERGY VOLUNTARY COOPERATION AGREEMENT WITH
INSERT COMPANY NAME

The Ohio Department of Natural Resources (ODNR) seeks to coordinate wind energy projects with the wind energy developer **insert company name** (Cooperator) in order to work collaboratively to ensure that wind-energy development project sites are developed in both an environmentally conscientious manner and with best regard to the conservation of the State's wildlife resources.

Whereas, the ODNR under its jurisdiction from Ohio Revised Code §§ 1531.08, 1533.07, 1533.08, and 1518.02 (Powers of Division of Wildlife, Protection of Non-game Birds, Permits, and Powers of Division of Natural Areas and Preserves Endangered Species) has authority to protect, propagate, manage and preserve the game or wildlife and native plants of this State and to enforce, by proper actions and proceedings, the laws of this State relating thereto.

Whereas, both the ODNR and Cooperator support renewable energy initiatives and are dedicated to arriving at uniform guidance, in the absence of comprehensive state regulations, on how best to avoid, minimize, and/or mitigate potentially adverse impacts to wildlife and native plant resources.

Whereas, the ODNR and Cooperator, in an effort to best avoid, minimize, and/or mitigate potential adverse impacts with specific intent to birds and mammals, have entered into this Cooperation Agreement in an effort to standardize wildlife monitoring protocols and wildlife impact review methods associated with wind-energy development projects in a mutually beneficial and flexible manner and with high regard to both parties goals, objectives, and purviews.

This Cooperation Agreement applies specifically to birds and bats throughout the entire lifetime of wind power projects from pre-construction through end of operations, as these animals are of concern for all wind power projects. Impacts to other State- or Federally-listed species will be addressed principally during the siting and pre-construction phase of wind projects, and possibly during later phases depending on the project location and onsite habitat. Any necessary measures or surveys to address impacts to other listed species will be provided by ODNR through the ODNR Environmental Review Process.

Therefore, the ODNR and Cooperator enter into this Cooperation Agreement based on the following terms and conditions:

1. (a) The Cooperator will notify the ODNR of any potential wind energy development sites of or above 10MW or 5 turbines (or an expansion of an existing site with the addition of 5 or more turbines or 10MW), at least eighteen months, preferably as early as possible, prior to construction. The notification prior to the initiation of construction at the site will allow the ODNR to review and provide as much known information on bird and mammal resources, as well as other information such as impacts on other wildlife, plants, wetlands, streams, coastal areas, and geologic substrate and slope stability, which may be present and/or potentially impacted by the development of the proposed wind-energy project. The notification should include a brief narrative of the project's planned development and proposed construction times and include as much detailed information as available such as: an original copy of the U.S.G.S. topographic map(s) depicting the proposed project area boundary limits with the quadrangle name and associated county identified on it, the proposed project site's general infrastructure delineations (both known and planned) to include access roads, electric transmission lines, wind turbine locations, planned surface impact areas needed to support construction, development and future maintenance of the project, and any known wetland areas or predetermined wildlife habitat regimes which are deemed to be of critical importance or high value.
- (b) The Cooperator shall request a scientific collectors permit at least fourteen months, preferably as early as possible, prior to construction. ODNR agrees to issue a scientific collectors permit in accord with Ohio Revised Code §1533.08 (and further defined under Ohio Administrative Code Section 1501:31-25-01 and 02), defining the terms and conditions for use throughout the project area by the Cooperator's designated biologist(s) for all bats, birds, and state-listed threatened or endangered species which are collected while conducting the ODNR's approved monitoring plan and mortality protocol. The scientific collectors permit may be automatically renewed upon the anniversary date of the permit, providing further that the permit terms and conditions have been strictly adhered to and this Cooperation Agreement remains in effect.
- (c) For those projects which the Cooperator has already initiated prior to the effective date of this agreement and are planned for construction prior to the eighteen-month time frame noted herein, the Cooperator shall submit the required information as requested in Paragraph 1 (a) and request a permit as

required by Paragraph 1 (b), within ninety days (90) from the date of this Agreement, preferably as early as possible.

- (d) For those projects which are currently under construction prior to the date of this Agreement, the Cooperator shall only be required to comply with the monitoring efforts referenced within Paragraph 6 that pertain to assessing post-construction bird & bat mortality. Further, within 90 days of the Agreement date, the Cooperator shall provide to the ODNR a listing of all other projects or phases of projects that are planned for construction to begin within 18 months from the date of this Agreement. The listing will include all available site-specific project information as more clearly specified within this paragraph for each project identified on the list. For each project identified on the list where construction commences within 18 months from the date of this Agreement, the Cooperator shall be required to comply with the monitoring efforts referenced within Paragraph 1 (a) and 6 that pertain to assessing post-construction bird & bat mortality.
2. It is understood between the Cooperator and ODNR that both parties may support the use of other potential funding mechanisms or processes which directly or indirectly reduce the overall costs associated with the Cooperator's monitoring requirements as identified herein providing further the intent of those monitoring requirements remain the same.
3. The ODNR and Cooperator will share all relevant information concerning wildlife and resources under the jurisdiction of the ODNR in and around the project area and the potential adverse impact to those resources. Shared information will include all known publicly available data from past/current/future monitoring efforts and pre- and post-construction study results relative to the subject project area. The ODNR further agrees to consider all existing relevant wildlife resource information provided by the Cooperator and the ODNR will reduce to the fullest extent possible any further requests made to the Cooperator to provide additional relevant data and/or monitoring results which can be ascertained from known existing data regarding potential known wildlife impacts.
4. The ODNR will provide the Cooperator with the results of all its internal reviews and provide written comment and/or meet with the Cooperator within 45 days of receiving the information specified in Paragraph 1, as well as the results of the Ohio Natural Heritage Database, and all pre- and post-construction monitoring methods and recommendations on how best to avoid and reduce direct and indirect impacts to wildlife. Additional coordination will occur from the ODNR for actions needed in regards to

species listed in the Ohio Comprehensive Wildlife Conservation Strategy (CWCS) to include all state threatened and endangered wildlife species known to occur or determined to exist within or adjacent to the project area.

5. The ODNR in consultation with the Cooperator will determine the risk level for monitoring and survey efforts. The Cooperator agrees to conduct monitoring according to the attached protocol, unless otherwise directed by the ODNR. The ODNR may request the Cooperator conduct an additional year's post-construction monitoring if a state or federally listed threatened or endangered species is killed or other mortality is deemed to be at an unacceptable level for any species. The Cooperator may request a reduction in the mortality monitoring effort for the second year based on the first year's mortality results. Such a request by either party for additional or reduced monitoring shall be made in writing by the party requesting a change and an informal meeting will be arranged between the parties to discuss and mutually agree upon any changes in monitoring efforts.
6. All suggested pre-construction and some post-construction monitoring protocol are designed to reduce the exposure of state-listed species in order to avoid, minimize or mitigate potential adverse risk to species of special concern, through the collaborative efforts of both the Cooperator and ODNR. Attached to this Agreement, and included by reference herein, are protocols for monitoring bird and bat populations in and around wind-energy development project sites during both pre- and post-construction time periods and protocols for assessing bird and bat mortality at wind-energy facilities after they begin operating (Exhibit A, version dated May 4, 2009). The ODNR will use all available information, including site-specific project plans provided by the Cooperator as described in Paragraph 1, to identify the level of monitoring needed for a proposed project where the intensity or duration of monitoring described in Exhibit A is associated with site priority or other assessment of risk. In general, Cooperators will be expected to monitor site use by wildlife, primarily raptors, breeding and migratory birds and bats. Project-specific information will be used to determine the intensity or necessity of such surveys with the goal to provide reliable biological data to define wildlife use of the project area and make recommendations to decrease or eliminate potential adverse impacts to wildlife resources. The goals of post-construction bird and bat mortality monitoring are to (1) determine if project operations are causing an unacceptable level of impact so that additional minimization or mitigation measures can be employed if needed, and (2) assess the predictive value of pre-construction monitoring, minimization and avoidance measures by comparing those results with post-construction mortality.

If requested, include: The ODNR and Cooperator have agreed to a scope of work based on the protocols in Exhibit A for all wind energy projects currently in development (Exhibit B) and mutually agree to review details of the scope of work for any future modifications proposed by the Cooperator for these projects.

7. Cooperator agrees to utilize to the greatest extent possible, all reasonable and feasible generally accepted wind industry and ODNR best management practices relevant to the conservation of wildlife resources during construction and subsequent operation of the wind-energy facility. The ODNR shall provide URL links to or copies of all known and updated best management practices to the Cooperator on an annual basis.
8. The ODNR agrees not to pursue liability against the Cooperator due to any incidental takings of the State's bird, mammal or native plant resources for which it has purview under Ohio Revised Code §§ 1531.08, 1533.07, 1533.08 and 1518.02 (Powers of Division of Wildlife, Protection of Non-game Birds, Permits, and Injury to Endangered Native Plants) as a result of the Cooperator's wind-energy development and operations within the State of Ohio providing further such incidental takings were not malicious in their intent and the Cooperator remains in compliance with the terms and conditions of this Agreement and has with a good faith effort avoided and minimized potential adverse impacts by way of implementing best management practices and ODNR guidance as noted herein.

The ODNR and Cooperator agree to work cooperatively in the future to avoid, and minimize further impacts to the State's bird and mammal resources as new relevant project information becomes available. In the event that an incidental take occurs upon an Ohio listed threatened or endangered species of bird or mammal during the operation of any of the Cooperator's wind-energy facilities, the Cooperator agrees to take all reasonable best management practices, including: painting turbine blades, feathering, minimizing lighting, burying collection lines, curtailing during high risk periods, decommissioning turbines no longer in operation, and enhancing off-site habitat areas; as deemed appropriate by the ODNR and the Cooperator to further avoid, minimize and/or mitigate such wildlife losses in the future.

9. ODNR recommendations or decisions under the Cooperation Agreement do not supersede any comments, decisions, or recommendations of the United States Fish & Wildlife Service.

10. The Cooperator agrees to provide coordinated access to ODNR, upon 24-hour prior notice during normal business hours, to all its wind-energy facilities, during the pre-construction and operational life of the wind-energy facility, as deemed necessary by ODNR staff in order to ensure both parties' compliance to this Agreement. All ODNR access shall be subject to all the normal safety measures implemented by the Cooperator with regard to access to the facility.
11. Either party upon their own discretion and reason can terminate this Agreement in its entirety after having first provided the other party written notification of such termination forty-five (45) days in advance of such termination date. Said written notification to be sent certified mail to the respective parties' place of address as noted herein. Termination can be conditioned to exclude those projects identified, which remain in compliance with the Agreement.
12. It is understood between the parties that information resulting from the Cooperator's compliance with this Agreement shall be treated with the highest affordable level of confidentiality available unless otherwise agreed to in writing by both parties, or if it is necessary to support the ODNR's waiver of liability set forth in Paragraph 8 hereof. It is the intent of both parties to release to the general public relevant project monitoring & mortality information deemed to be in the best interest of both the ODNR and Cooperator. Release of information will be by mutual consent only in accordance with applicable law.
13. Assignment: The Cooperator may assign this Agreement, or any project covered under the terms of this Agreement, to any affiliate (as defined below) without the approval or consent of the ODNR provided that (i) the Cooperator is not in default of this Agreement with respect to the project(s) being so assigned at the time of the proposed assignment and (ii) the Cooperator notifies the ODNR of any proposed assignment in accordance with this Agreement. The Cooperator may assign this Agreement, or any project covered under the terms of this Agreement, to any non-affiliate (as defined below) provided that (a) the Cooperator is not in default of this Agreement with respect to the project(s) being so assigned at the time of the proposed assignment, (b) the proposed assignee has agreed in writing to be bound by all of the terms and conditions of this Agreement, (c) the ODNR has met with the proposed assignee and the Cooperator, after being notified of the proposed assignment, to discuss the terms and conditions of the project(s) covered by the assignment, and (d) the ODNR consents to the

proposed assignment in writing, which consent shall not be unreasonably withheld, conditioned or delayed. For purposes of this section, an "affiliate" of the Cooperator refers to any person, corporation or entity that (i) has a direct or indirect ownership interest in the Cooperator or vice versa or (ii) is subject to common operating control and is operated as part of the same system or enterprise as the Cooperator. Any person, corporation or entity that is not an "affiliate" as defined above shall be a non-affiliate for purposes of this section. At the request of the Cooperator, the ODNR and the assignee shall execute, after said assignment is approved if required, a new Agreement with terms identical to the terms of the Agreement at the time of the assignment.

14. Notices. All notices, demands or requests required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by certified United States mail (postage prepaid, return receipt requested), overnight express mail, courier service, facsimile transmission or electronic mail with confirming receipt (in the case of facsimile transmission and electronic mail with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to ODNR to:

Ohio Department of Natural Resources
Office of Legal Services
Building D-3
2045 Morse Road
Columbus, OH 43229

and

If to Cooperator to:

Add address for Company

or to such other person at such other address as a Party shall designate by like Notice to the other Party. Unless otherwise provided herein, all Notices hereunder shall be effective at the close of business on the Day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the first Business Day after the Day on which received.

15. No Third-Party Beneficiaries. This Agreement is not intended to, and does not confer upon any Person other than the Parties hereto and their respective successors and permitted assigns, any rights or remedies hereunder.
16. Entire Agreement. This Agreement, including all Protocols hereto, constitutes the entire agreement between the Parties hereto with respect to the matters contained herein and therein, and all prior agreements with respect to the matters covered herein are superseded, and each Party confirms that it is not relying upon any representations or warranties of the other Party, except as specifically set forth herein or incorporated by reference hereto.
17. Amendment. This Agreement and the attached protocols may only be amended or modified in writing by the mutual consent of the Parties hereto.

IN WITNESS WHEREOF, ODNR and Cooperator have caused this Agreement to be duly executed and have caused their seals to be hereto affixed and attached by their proper officers, all hereunto duly authorized, on the date first above written.

STATE OF OHIO
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WILDLIFE

ATTEST:

Director, Department of Natural Resources Date

Chief, Division of Wildlife Date

Chief, Division of Natural Areas & Preserves Date

COOPERATOR

ATTEST:

Name of Executive Date
Title
Company Name