Programmatic Agreement
Among the United States Army Corps of Engineers, the Illinois Historic Preservation Agency, the Advisory Council on Historic Preservation, and Walnut Ridge Wind, LLC, Regarding the Walnut Ridge Wind Farm

WHEREAS, the project proponent, Walnut Ridge Wind, LLC, (WRW), has proposed to construct a wind farm, consisting in part of approximately 150 wind turbine generators and associated substation(s), transmission line(s), and appurtenances, in portions of Bureau, Lee, and Whiteside counties of north-central Illinois under Rock Island District Corps of Engineers Permit No. CEMVR-OD-P-2008-772; and

WHEREAS, pursuant to General Condition No. 18 of the permit regarding Historic Properties that states, "In cases where the district engineer determines that the activity may affect properties listed, or, eligible for listing, in the National Register of Historic Places, the [United States Army Corps of Engineers (USACE) permitted] activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied;" and

WHEREAS, the USACE has consulted with the Illinois Historic Preservation Agency (IHPA), and the Advisory Council on Historic Preservation (ACHP), in accordance with Section 106 of the NHPA (16USC 470f), and its implementing regulations, *Protection of Historic and Cultural properties* (36 CFE Part 800), and USACE regulations at 33 CFR 325, Appendix C; and

WHEREAS, the USACE has coordinated its compliance with Section 106 and National Environmental Policy Act (NEPA), pursuant to 36 CFR 800.8 for the Undertaking; and

WHEREAS, pursuant to Section 106 of NHPA, USACE in consultation with IHPA, identified the Undertaking's Areas of Potential Effect (APE) for Historic Properties and determined that the APE includes the areas where potential effects on Historic Properties caused by the Undertaking may occur; and

WHEREAS, the identification and evaluation of Historic Properties within the Undertaking's APE will be conducted by Midwest Archaeological Research Services, Inc. (MARS) in consultation with IHPA; and

WHEREAS, generally Historic Properties can be categorized as archaeological or architectural (36 CFR 800.16[1]), and this Programmatic Agreement specified the appropriate approaches for Archaeological and Architectural Properties in the APE separately, due to different issues presented by each category; and

WHEREAS, pursuant to Section 106 of the NHPA, the USACE has determined that the Undertaking may have an effect on Historic Properties listed on or eligible for listing on the National Register of Historic Places (NRHP); and

WHEREAS, the USACE has determined that in regards to archaeologically sensitive areas, the Undertaking may have an effect on Archaeological Properties that may be eligible for listing on the NRHP; and

WHEREAS, this Programmatic Agreement sets forth measures that will be implemented for all Archaeological and Architectural Properties or archaeologically sensitive areas within the Undertaking's current or future APE;

NOW, THEREFORE, the USACE, the IHPA, and the Council have consulted and agree that implementation of the Undertaking covered by this Agreement shall take into account effects on Historic Properties and shall be administered in accordance with the following stipulations to avoid, minimize, or mitigate adverse effects to Historic Properties and to satisfy the USACE's Section 106 responsibilities. The USACE will condition any permit it may release regarding the Undertaking to ensure that the following stipulations are met.

Stipulations

The lead agency, the USACE, will ensure that the following measures are carried out by WRW:

Part I – Architectural Properties

Documentation

Prior to initiation of construction, WRW will consult with the IHPA and the USACE to determine what level and kind of State-level photographic and narrative recordation is required to document the existing conditions, settings, and view sheds of affected Historic Properties (see Attachment A). Unless otherwise agreed, WRW shall ensure that all documentation is completed and accepted by the IHPA prior to beginning construction of the wind farm. WRW shall ensure that copies of the documentation are made available to local repositories identified by the USACE.

Project Design

WRW shall ensure that the final design of the Walnut Ridge Wind Farm minimizes adverse visual impacts to Historic Properties through the number, height, and color of the wind turbine generators, and other considerations, and shall consult with the IHPA regarding future plan developments that would change these conditions or introduce potential new adverse effects to Historic Properties.

Review of Submitted Materials

Within 30 days of receipt of material requiring review, comments, and/or approval by the IHPA, the IHPA shall notify the USACE and WRW in writing of its approval of said material or, if the material is not approved, of the specific deficiencies of the material. Failure by the

IHPA to respond within 30 days of the receipt of any material or document from the USACE or WRW shall be deemed to constitute full approval of said documents under the stipulations of this agreement.

Public Information Programs

WRW shall ensure that the documentation prepared is made available to the widest possible public audience, including but not limited to preparing electronic copies of any images and text prepared as State-level documentation and providing the documentation to local repositories, as designated by the USACE.

Part II – Archaeological Properties

For the subsurface areas that will be impacted by the Undertaking and that have not been included in previous archaeological investigations and reports, including but not limited to areas where modifications to project plans and specifications may occur during the completion of design or during construction AND those areas identified as having the potential to contain deeply buried cultural resources, WRW shall:

1. Submit information on the location of new project areas to the USACE, who shall, in consultation with the IHPA, determine the need for a Phase I archaeological reconnaissance survey.
2. For the areas that have the potential to contain deeply buried cultural resources where impacts cannot be avoided, a geomorphological assessment in a manner consistent with the IHPA's guidelines shall be performed.
3. The USACE shall evaluate any resources identified through Phase I survey in accordance with 36 CFR 800.4 (c). If the resources are determined to be Historic Properties eligible for inclusion on the NRHP, the USACE shall consult with the IHPA to determine whether effects from the Undertaking can be prudently and feasibly avoided.
4. If avoidance is not prudent or feasible, a Data Recovery Plan to minimize or mitigate the effects of the Undertaking shall be developed. The Data Recovery Plan shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42), and the Advisory Council on Historic Preservation's publication, *Treatment of Archaeological Properties: A Handbook.*

Part III – Unanticipated Discoveries

While WRW will make good faith efforts to identify Historic Properties during the Undertaking's planning process, additional previously unidentified historic and archaeological resources may be discovered that my be affected by the Undertaking. In the event that any unanticipated archaeological resources or human remains are encountered in areas previously cleared for construction, the requirements set forth in the *Procedures Guiding*

the Unanticipated Discovery of Cultural Resources and Human Remains shall be followed (see Attachment B).

Part IV – Dispute Resolution

In the event that any party to this Programmatic Agreement objects to any plan or report pursuant to the agreement within 30 calendar days of its receipt or requests a formal dispute resolution with respect to any other material issue of non-compliance, the USACE shall meet and consult in good faith with the objecting party to attempt to resolve the matter prior to undertaking formal dispute resolution.

Following such consultation, the USACE shall determine whether such issue has been resolved. If not, the USACE shall forward within 15 calendar days of determination all documentation relevant to the dispute to the ACHP, including the USACE's proposed resolution of the dispute.

The ACHP will respond to the USACE's request for recommendations and comments within 30 calendar days of receiving all documentation. The USACE will take such recommendations or comments into account in resolving the dispute, per 36 CFR 800.6

In the event that the ACHP fails to respond to the USACE's request for comment within 30 calendar days of receiving all pertinent documentation, the USACE may proceed with resolving the dispute.

Part V – Amendment

Any signatory party to this Programmatic Agreement may request amendments by providing notice of such request in writing to the other signatories. In such event, the USACE shall consult with the other signatories to consider such amendment. No such amendment shall be effective unless all signatories execute it.

Part VI – Terms of Agreement

This agreement shall remain in force during the design and construction of the Undertaking. If, at the end of that period, any signatory to this agreement requests that the term be extended, notification of the request in writing shall be made to the USACE.

Upon receipt of a request to extend the term of this agreement, the USACE shall consult with all signatories, and the term shall be extended for such additional period as may be concurred on by the signatories.

In the event that the signatories do not concur on a requested extension, the matter shall be treated as a dispute and resolved per Part IV (see above).

EXECUTION of this Programmatic Agreement and implementation of its terms evidences that the USACE has engaged in consultation as required under Section 106 of the NHPA, that the ACHP has been afforded an opportunity to comment on the Undertaking and its effects on Historic Properties, and that the USACE has taken into account the effects of the Undertaking on Historic properties in connections with the issuance of an USACE permit for the Walnut Ridge Wind Farm, in accordance with Section 106 of the NHPA.

U.S. ARMY CORPS OF ENGINEERS, ROCK ISLAND DISTRICT

By: _____ Date: 12 OCT 08

Robert A. Sinkler
Colonel, U.S. Army
District Engineer
U.S. Army Corps of Engineers

ILLINOIS HISTORIC PRESERVATION AGENCY

By: _____ Date: 11-10-08

Anne Haaker
Deputy State Historic Preservation Office
Illinois Historic Preservation Agency

CONCUR:

Walnut Ridge Wind, LLC

By: _____ Date: 11/17/08

Stefan A. Noe (Print Name)

Director (Print Title)