

Memorandum of Agreement (MOA)
Between the
Department of Homeland Security
and the
Department of Defense
On Mitigation of Wind-farm Effects on Long Range Radar

I. PARTIES. The “Parties” to this Memorandum of Agreement (MOA) are the Department of Homeland Security (DHS), acting through its Office of Operations Coordination and Planning (OPS), and the Department of Defense (DoD), acting through its Siting Clearinghouse. OPS, as the DHS delegated authority, evaluates the impact of wind farm turbines on DHS missions. The Siting Clearinghouse was established to coordinate, among other missions, DoD’s review of applications for projects submitted to the Federal Aviation Administration pursuant to 49 U.S.C. § 44718.

II. AUTHORITIES and REFERENCES.

1. 31 U.S.C. § 1535, The Economy Act.
2. 31 U.S.C. § 1341, Anti-Deficiency Act.
3. 49 U.S.C. § 44718, Structures Interfering with Air Commerce.
4. Part 211 of Title 32, Code of Federal Regulations (CFR).
5. Part 77 of Title 14, CFR.
6. DHS Policy for Evaluation of Wind Farms as They Impact Homeland Security Memorandum, dated August 17, 2012.
7. DHS Directive 211-02 on the Evaluation of Wind Farms As They Impact Homeland Security, dated February 26, 2013.
8. Memorandum of Agreement between DHS Customs and Border Protection Office of Air and Marine and DoD United States Air Force Air Combat Command, dated June 30, 2005.

III. PURPOSE. This MOA constitutes the Parties' agreement on the handling and disposition of funds provided to DoD to pay for measures taken to mitigate the adverse impacts of wind farms on military operations and readiness.

IV. BACKGROUND. The DoD/DHS Long Range Radar, Joint Program Office (LRR JPO) was formed in 2005 to jointly ensure a reliable, primary long range radar system and associated air navigation, surveillance, and communications systems are maintained in order to provide airspace security and defense throughout the continental United States and adjacent regions as required by National Security authorities. LRR JPO operates as a joint effort between DHS and DoD, and both departments share the costs.

V. TERMS and CONDITIONS.

1. DHS (supported by the LRR JPO) agrees to:
 - a. Review each Federal Aviation Administration (FAA) Aeronautical Study Number (ASN) for potential radar obstruction.
 - b. Identify obstructions and respond to the FAA that DHS has specific radar obstruction concerns.
 - c. Report to the DoD Siting Clearinghouse as soon as possible the radar obstructions that may have an impact upon military operations and readiness.
 - d. At the direction of the DoD Siting Clearinghouse, negotiate a mitigation agreement with the sponsor/developer which addresses identified hazards.
 - e. Upon completing a negotiation with the sponsor/developer, deliver to the DoD Siting Clearinghouse the following for review and mutual approval by DoD and DHS:
 - i. Case ID.
 - ii. The proposed negotiated mitigation agreement.
 - iii. Total dollar amount of any voluntary contribution to be made by the sponsor/developer to DoD to offset the cost of measures undertaken at DoD expense to mitigate adverse impacts of such project on military operations and readiness.
 - iv. A schedule of voluntary funding for ongoing operations and maintenance.
 - v. A draft statement of work (SOW) to implement the mitigation measures pursuant to the negotiated mitigation agreement.
 - f. After execution of an Interagency Agreement (IAA)/Military Interdepartmental Purchase Request (MIPR) with the DoD Siting Clearinghouse, DHS will enter into contracts or IAAs, as needed to fulfill the negotiated mitigation agreement, in accordance with the SOW.

- g. Provide DoD with periodic reports, no less often than once every two months on execution of funds and contract performance.

2. DoD agrees to:

- a. In response to 1.c above, acknowledge via the DoD Siting Clearinghouse the need for mitigation.
- b. Within 10 business days of receipt of the items listed in 1.e above, via the DoD Siting Clearinghouse, sign the negotiated mitigation agreement or return it to DHS with changes.
- c. Upon receipt of a draft SOW from the LRR JPO, the DoD Siting Clearinghouse will review the SOW and, if approved, provide funds to the DHS LRR JPO via an IAA/MIPR to perform the taskings in the approved SOW in accordance with the Economy Act.

VI. OTHER PROVISIONS.

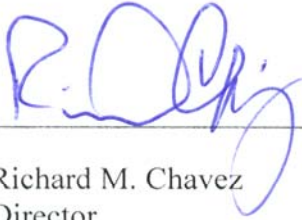
1. Severability: Nothing in this MOA shall be construed to conflict with current law, regulation, or directive of DHS or DoD. If a term of this MOA is inconsistent with such authority, that term shall be invalid to the extent of the inconsistency. The remainder of that term and all other terms of this MOA shall remain in effect.
2. Rights and Benefits: Nothing in this MOA is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory, or other official functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies or offices, State agencies, or officers carrying out programs authorized under Federal law or any other person.
3. Amendment: This MOA may be amended at any time with the written agreement of DHS OPS and the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L).
4. Review: The Parties agree that this MOA will be reviewed, as needed, to evaluate its effectiveness and make any necessary changes.
5. Effective Date: This MOA is effective upon the signature of all Parties.
6. Period of Agreement/Termination: This MOA will remain in effect until terminated by the Parties. Either Party may terminate this MOA 90 days after written notice.

7. This MOA in and of itself does not result in the transfer of funds or other financial obligations between the Parties. No provision of this MOA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. This MOA is subject to the availability of funds.

VII. POINTS of CONTACT (POC):

The POC at DHS for OPS is Randy Talley at 202-447-4131. The POC at DoD for the Siting Clearinghouse is William Van Houten at 703-571-9068.

For DHS:

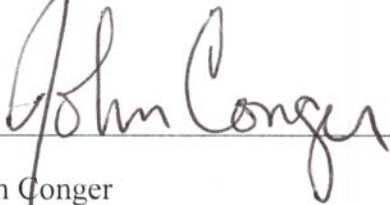


5/14/14

Richard M. Chavez
Director
Office of Operations Coordination and Planning
Department of Homeland Security

Date

For DoD:



4/4/2014

John Conger
Acting Deputy Under Secretary of Defense for
Installations and Environment
Department of Defense

Date