

AGREEMENT
BETWEEN DEPARTMENT OF DEFENSE, DEPARTMENT OF THE AIR FORCE,
AND SCANDIA WIND SOUTHWEST, LLC

Subject: Mitigation of Development Impacts of a Wind Turbine Energy Project in Parmer County, Texas, in the vicinity of Cannon Air Force Base, New Mexico

Parties: Department of Defense (“DoD”) but not the U.S. Army Corps of Engineers, Department of the Air Force (“Air Force”) Scandia Wind Southwest, LLC (“Scandia”)

References: (a) Section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended
(b) Part 211 of title 32, Code of Federal Regulations (CFR)

Attachment: (A) *Federal Aviation Administration Filings: Mariah 4*

Section 1. Preamble and Purpose

- A. Pursuant to references (a) and (b), it is an objective of the DoD to ensure that the robust development of renewable energy sources and the increased resiliency of the commercial electrical grid may move forward in the United States, while minimizing or mitigating any adverse impacts on military operations and readiness. The Parties have worked cooperatively to meet the desired goals of supporting military operations and readiness simultaneously with the production of renewable energy.
- B. A potential conflict exists between the Air Force’s operation of Cannon Air Force Base (AFB), NM, and wind turbines associated with the Mariah 4 project. The Parties have focused on de-conflicting these activities and agree that the terms below will allow the respective goals of the Parties to be met.
- C. The Parties recognize that the purpose of this Agreement is to document actions needed to ensure that the Mariah 4 project can be constructed and operated without having an impact on DoD military operations and readiness activities.

Section 2. Terms and Provisions

- A. This Agreement is structured to enable the Phase 4 project to proceed with construction and operation. Scandia agrees to restrict the construction of the Mariah 4 project’s wind turbines to the specific geographic coordinates, to an accuracy of +/- 500 feet, listed in Attachment (A) to this Agreement.
- B. The Mariah 4 Project: The 114 Proposed Turbine Locations Listed in Attachment (A)
 - 1. Subsequent to the effective date of this Agreement, Scandia will amend each of its Federal Aviation Administration Filings listed in Attachment (A) such that each filing includes as a provision of the filing this Agreement in its entirety as a condition of the filing. Within five (5) days of the completion of Scandia’s

amending its filings pursuant to the previous sentence, the DoD and the Air Force agree to transmit "No Objections" to the ASNs, as amended, corresponding to the wind turbine locations listed on Attachment (A) to this Agreement. Further, the DoD and the Air Force agree not to posit any objection to the construction and operation of the Mariah 4 project under the OE/AAA system or with any other federal, state, or local regulatory entity with jurisdiction over the Mariah 4 project, provided that Scandia carries out the terms of this Agreement. The phrase "agree not to posit any objection" above does not limit the authority of permit-issuing agencies to issue, condition, or deny a permit for the Mariah 4 Project.

2. Scandia agrees to limit the number of wind turbines in the Mariah 4 project to 114, and the wind turbine blade tip heights for Mariah 4 project to 497 feet above ground level.
3. No changes greater than 500 feet in any direction on the ground are permitted to the location of the wind turbines listed in Attachment (A) to this Agreement without prior written agreement from the DoD and the Air Force.

Section 3. Disclosure. The Parties may freely share this Agreement with any person or entity.

Section 4. Assignment

- A. This Agreement shall be binding upon the successors and assigns of Scandia. Scandia and its successors or assigns have the right to sell, convey, mortgage, assign, or otherwise transfer all or any part of its interests and obligations in the assets comprising the Mariah 4 project (Assignment) to any third party (Assignee), without the prior consent of the DoD or Air Force, provided that such Assignment expressly acknowledges the existence of this Agreement and a copy of this Agreement is provided to the Assignee. Though consent is not required, Scandia will notify the DoD or the Air Force ten work days prior to any transfer of interests and obligations.
- B. Upon such Assignment, Scandia shall be relieved of any obligations or liabilities under this Agreement, other than the obligations under Section 2.B.1, to the extent that the Assignee has assumed in writing such obligations or liabilities and provided that Scandia has given written notice 30 days in advance of the Assignment to the DoD and the Air Force.
- C. Notwithstanding Section 2.B.1, nothing in this Agreement shall relieve Scandia or its successors or assigns of complying with 31 CFR Part 800 (Mergers, Acquisitions, and Takeovers By Foreign Persons) nor prevent or limit the Parties from communicating in any form with the Committee on Foreign Investment in the United States (CFIUS).

Section 5. Effective Date and Expiration

- A. This Agreement will be effective on the date that all Parties have signed this Agreement.

B. This Agreement shall expire and have no further force or effect upon the occurrence of:

1. Termination or expiration of the ASNs identified in Attachment (A).
2. The Mariah 4 Project is decommissioned;
3. Cannon AFB ceases operations; or
4. Termination by written mutual agreement of the Parties.

Section 6. Points of Contact and Notification. The following persons shall be the primary points of contact (Point of Contact) for the Parties for purposes of this Agreement. Any Party may change its Point of Contact provided that e-mail notification of any such change must be provided to the other Parties at least thirty (30) days in advance.

- A. DoD – Executive Director, DoD Siting Clearinghouse, 3400 Defense Pentagon, Room 5C646, Washington, DC 20301-3400, osd.dod-siting-clearinghouse@mail.mil
- B. Air Force – Director, Air Force Encroachment Management, Office of the Assistant Secretary of the Air Force for Installations, Environment, and Energy, 1665 Air Force Pentagon, Room 4B941, Washington, DC 20330-1665, steven.zander.civ@mail.mil
- C. Scandia – Jim Swafford, CEO, P.O. Box 783, 201 North Street, Bovina, TX 79009

Section 7. Breach. If a Party believes that another Party has breached this Agreement, it must provide notice of the breach to the breaching party and provide an opportunity to cure the breach. If there is a dispute between the involved Parties as to whether a breach has occurred, the involved Parties agree to attempt to resolve the dispute beginning with Scandia and representatives of the Air Force at Cannon AFB. Disputes may be elevated, on the part of the Air Force, to SAF/IEI, and then to the Executive Director of the DoD Siting Clearinghouse, as required. If the breach is not cured or resolved after this initial dispute resolution process, any Party may seek to enforce this Agreement. Each Party specifically reserves any and all rights or causes of action it may have both at law and in equity to require compliance with any provision of this Agreement. Each Party reserves the right to enforce or refrain from enforcing against another Party the terms of this Agreement as it sees fit under applicable state or federal law.

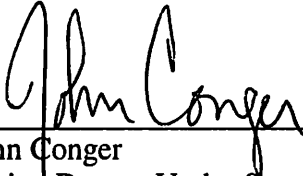
Section 8. Amendments. Any Party to this Agreement may request that it be amended, whereupon the Parties agree to consult to consider such amendments. Any amendment to this Agreement shall be effective if executed in writing and signed by the Parties.

Section 9. Signature/Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, all of which shall constitute but one and the same instrument. The following signatures pages are part of this Agreement.

**AGREEMENT
BETWEEN DEPARTMENT OF DEFENSE, DEPARTMENT OF THE AIR FORCE, and
SCANDIA WIND SOUTHWEST, LLC**

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the effective date.

U.S. DEPARTMENT OF DEFENSE



John Conger
Acting Deputy Under Secretary of Defense
Installations and Environment

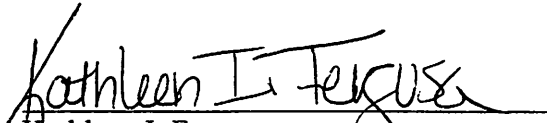
12/30/2014

Date

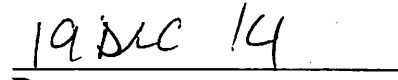
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IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

U.S. DEPARTMENT OF THE AIR FORCE:



Kathleen I. Ferguson
Principal Deputy Assistant Secretary
(Installations, Environment, and Energy)




Date

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IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

SCANDIA WIND SOUTHWEST, LLC



Jim Swafford, CEO
Authorized Representative

12/19/2014
Date