

**AGREEMENT
AMONG THE DEPARTMENT OF DEFENSE,
THE DEPARTMENT OF THE AIR FORCE, AND
BLUE SUMMIT II WIND, LLC,
ADDRESSING THE BLUE SUMMIT II WIND PROJECT NEAR CHILLICOTHE, TX**

This is an agreement among the Department of Defense (DoD), acting through the Military Aviation and Installation Assurance Siting Clearinghouse, the Department of the Air Force (MILDEP), acting through the Deputy Assistant Secretary of the Air Force for Installations (collectively the “DoD parties”), and Blue Summit II Wind, LLC (“Project Owner” or “Owner”). Together, these three entities are referred to as “parties” and individually as a “party.” Any reference to “DoD parties” means both parties and does not indicate that one party acts for or on behalf of the other. In this agreement, DoD does not include the United States Army Corps of Engineers when engaged in its civil works program, including any permitting actions.

This agreement is entered into pursuant to section 183a of title 10, United States Code, and part 211 of title 32, Code of Federal Regulations.

Attachments A, *Federal Aviation Administration Filings for Blue Summit II Wind Project*, and B, *Blue Summit II Wind Turbines Map and Project Area*; are attached to this agreement and made a part hereof.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

SECTION 1. PURPOSE.

A. Objective. The objective of this agreement is to mitigate any potential adverse impact and to minimize risks to national security while allowing the Blue Summit II wind energy project (project) to proceed with development.

B. De-confliction. Analysis suggests that a conflict exists between the MILDEP’s operations at Altus Air Force Base, Oklahoma (installation) and spinning wind turbines associated with the project. As originally filed, the project included proposed turbine locations with potential to degrade aviation training in VFR Military Training Route 144 (VR-144). This agreement preserves a 6 nautical mile-wide corridor free of obstacles through the affected portion of VR-144, which the MILDEP requires for effective training. The parties have focused on de-conflicting these activities and agree the terms below will allow the mutual goals of the parties to be met.

SECTION 2. DEFINITIONS.

A. Actual Curtailment Hours. [RESERVED]

- B. ASN.** Federal Aviation Administration Aeronautical Study Number.
- C. Banked Hours.** [RESERVED]
- D. CFIUS.** Committee on Foreign Investment in the United States.
- E. CFR.** Code of Federal Regulations.
- F. Curtailment.** [RESERVED]
- G. Day.** A calendar day, unless indicated otherwise.
- H. DoD.** The Department of Defense, an executive department of the United States.
- I. FAA.** Federal Aviation Administration.
- J. Fiscal Year.** [RESERVED]
- K. Hour.** [RESERVED]
- L. MILDEP.** The Department of the Air Force, a military department of the United States.
- M. National Security or Defense Purpose.** An emergency circumstance where the President of the United States, the Secretary of Defense, or a combatant commander under 10 U.S.C section 164 directs a change to the mission of the Installation in support of emergency circumstances. An emergency circumstance does not include routine changes to the mission of the Installation.
- N. Project.** The proposed wind turbines identified on Attachment A by ASN. The location, but not the height or number, of the turbines may be altered in accordance with the terms specified in section 3.A of this agreement.
- O. Project Owner.** The terms “Project Owner” or “Owner” mean Blue Summit II Wind, LLC, and its successors and assigns.
- P. Siting Clearinghouse.** The Military Aviation and Installation Assurance Siting Clearinghouse established pursuant to 10 U.S.C. section 183a.
- Q. U.S.C.** United States Code.

SECTION 3. MITIGATION .

A. In General. This agreement is structured to ensure Project Owner may construct and operate the project without adversely impacting DoD military operations and readiness. Project Owner agrees to limit the total number of project wind turbines to 41 with a maximum height of

499 feet above ground level (AGL) for each turbine. Project Owner agrees to limit the total number of meteorological towers to 10 with a maximum height of 292 feet AGL for each meteorological tower. Project Owner agrees to restrict the construction of the project wind turbines and meteorological towers to the specific geographic coordinates designated as the Project Area, as shown in Attachment B. Project Owner agrees to install night vision goggle-compatible lighting on all turbines associated with the project that are required to have lighting pursuant to FAA requirements.

B. Amendment of Applications. Project Owner agrees to amend its applications before the FAA, listed on Attachment A, by incorporation of this agreement into each of those applications.

C. Withdrawal of Objections.

1. Within 10 calendar days of the execution of this agreement, the DoD parties shall deliver to the FAA "No Objections with Provisions" for the ASNs corresponding to the wind turbine locations listed on Attachment A. The "Provisions" will incorporate by reference this agreement, referring to it by its title, the date executed, and its signatories.

2. If the Project Owner submits any substitute ASNs to FAA within 12 months of the execution of this agreement, the DoD parties agree not to object to those substitute ASNs, provided that the substitute ASNs do not exceed the maximum height specified in Section 3.A, that the substitute ASNs are located within the siting parameters of the project area specified in this agreement or any amendments to this agreement, that the total number of ASNs after substitution does not exceed 51, and that this agreement is incorporated into the substitute ASN filings.

3. All parties agree that, if the Project Owner requests to extend the effective period of FAA's Determination of No Hazard to Air Navigation in accordance with 14 C.F.R. section 77.35, then the DoD Parties will not object to such an extension as requested, provided that the affected ASNs are listed on Attachment A or are substitute ASNs that were submitted within 12 months of the execution of this agreement, that do not exceed the maximum height specified in Section 3.A and are located within the siting parameters of the project area specified in this agreement or any amendments to this agreement, that the total number of ASNs for the project (wind turbines and meteorological towers) still does not exceed 51, and that this agreement is incorporated into the ASN filings affected by the extension.

4. The DoD parties agree not to object to the construction and operation of the project before any other federal, state, or local regulatory entity with jurisdiction over the project (except as provided in sections 6.B and 10.H of this agreement), provided that Project Owner is in material compliance with the terms of this Agreement and that Project Owner has disclosed to the DoD parties in writing all material facts necessary to fully assess potential adverse impacts and all material facts relevant to other federal, state, or local regulatory entity jurisdictional matters.

D. Other Regulatory Actions. This agreement shall not prevent or limit the DoD parties from communicating in any form with any other regulatory body or agency with jurisdiction or possible jurisdiction over matters affecting the Installation beyond the project.

SECTION 4. CURTAILMENT.

[RESERVED]

SECTION 5. REVIEW OF BUSINESS ENTITIES.

A. Protection of Defense Capabilities. It is a priority for the MILDEP to protect national defense capabilities and military operations, including military installations, research, development, test and evaluation activities, and military readiness activities from compromise and exploitation that may occur due to an activity under foreign control operating in the vicinity of those national defense capabilities and military operations.

B. Advance Notice.

1. Project Owner has provided advance written notice to the MILDEP of:
 - a. The names of business entities having a direct ownership interest in the project.
 - b. The business entity name of the material vendors with which the Project Owner, subsequent to signature of this Agreement, executes a contract to perform construction, supply turbines, or conduct operation activities at the location of the Project.
2. For those business entities identified under paragraph 5.B.1, the MILDEP agrees to identify to Project Owner, no later than 30 days after the effective date of this agreement, any business entity posing a security concern. Project Owner agrees to enter into negotiations with the DoD parties in order to mitigate any such concern. Any such security concern must be resolved prior to allowing access to the site by representatives of such a business entity or the use of wind turbines or other permanent on-site equipment manufactured by such a business entity.
3. Project Owner agrees to provide advance written notice to the MILDEP of Project Owner's use of any material vendor not previously screened pursuant to this section. The term "material" used in this subsection means "significant, influential, or relevant." Project Owner shall allow the MILDEP 15 days following such a notice to conduct a security review and assess any security concern. Project Owner will provide advance written notice of a potential new material vendor, but need not wait 15 days if an unexpected situation arises for which employing services or vendors immediately is prudent for the operation of the project.

SECTION 6. ASSIGNMENT.

A. Right to Assign. This agreement shall be binding upon the Project Owner and its successors and assigns. If Project Owner or its successors or assigns (assignors) sell, convey, mortgage, assign, or otherwise transfer all or any part of its interests and obligations in the assets comprising the project (assignment) to any third party (assignee), the assignor shall cause such assignee to expressly acknowledge the existence of this agreement. The assignor shall provide a copy of this agreement to the assignee. The assignee shall provide new point of contact information (as in Section 8) to the DoD parties.

B. Notice of Assignment to CFIUS. If the prospective assignee is a foreign national or foreign-owned or -controlled business entity, assignor and the proposed assignee shall jointly provide notice of the proposed transaction to CFIUS in accordance with applicable regulations (subpart D of 31 CFR part 800) and provide a copy of the notice to the MILDEP. Nothing in this agreement shall prohibit or limit DoD from objecting to the transaction before CFIUS, nor limit communications with CFIUS during national security reviews and investigations, and, should mitigation result, during mitigation, tracking, and post-consummation monitoring and enforcement, pursuant to 50 U.S.C. section 2170.

C. Effect of Assignment. Upon an assignment, assignor shall be relieved of any obligations or liabilities under this agreement to the extent that the assignee has assumed in writing such obligations or liabilities and provided that Project Owner has provided a copy of the assignment, including the assumption of obligations and liabilities, to the DoD parties.

SECTION 7. EFFECTIVE DATE AND EXPIRATION.

A. Effective Date. This agreement becomes effective on the date when all parties have signed it.

B. Expiration. This agreement shall expire and have no further force and effect upon the occurrence of the earlier of the following:

1. Construction of the project has not commenced within the 36-month time period prescribed under 14 CFR sections 77.33 and 77.35.
2. The project is decommissioned.
3. The DoD ceases to use the low-level route permanently and takes appropriate action accordingly.
4. Termination of the agreement by written mutual agreement of the parties.

SECTION 8. POINTS OF CONTACT AND NOTIFICATION.

A. Points of Contact (POCs). The following persons shall be the primary POCs for the parties for purposes of this agreement. Any notice, request, or other communication to be provided pursuant to this agreement shall be delivered to the POCs. Any party may change its POC by providing written notification of the change to the other parties at least 30 days in advance of the change taking effect. POC changes take effect the sooner of all the receiving parties acknowledging receipt of the change notice or the expiration of the 30 days.

1. DoD – Executive Director, Military Aviation and Installation Assurance Siting Clearinghouse, 3400 Defense Pentagon, Room 5C646, Washington, DC 20301-3400

2. MILDEP – Director, Air Force Encroachment Management, Office of the Deputy Assistant Secretary of the Air Force, Installations, 1665 Air Force Pentagon, Suite 5E1000, Washington, DC 20330-1665; usaf.pentagon.saf-ie.mbx.saf-ieim-workflow@mail.mil

3. Project Owners – Blue Summit II Wind, LLC, 700 Universe Boulevard, Juno Beach FL, 33408, Attention: Vice President, Development; email: Kevin.Gildea@nexteraenergy.com

B. Notification. Any written notice shall be sent by registered or certified mail, postage prepaid, sent by a nationally recognized overnight delivery service that provides a receipt for delivery, or hand delivered. A notice shall be deemed to be received when delivered to the recipient's address.

SECTION 9. BREACH.

A. Dispute Resolution. If a party believes that another party has breached this agreement, it shall provide written notice of the breach within 30 days of discovery of the breach to all other parties and provide the breaching party an opportunity to cure the breach. If there is a dispute between the involved parties as to whether a breach occurred, the involved parties agree to attempt to resolve the dispute beginning with Project Owner and representatives of the MILDEP at the Installation. Disputes may be elevated, on the part of the DoD parties, to the MILDEP headquarters and then to the Executive Director of the Siting Clearinghouse. 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 and failure to enforce does not act to excuse future breaches.

SECTION 10. GENERAL PROVISIONS.

A. 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 become effective when signed by all of the parties unless its terms provide for a different effective date. Amendments only providing replacements of expired ASNs without any other change to the FAA filing need only be signed by the MILDEP's and Project Owner's designated project officers.

B. Integration. This agreement contains the entire agreement and understanding between the parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the parties with respect to such subject matter.

C. Governing Law. This agreement shall be governed by and construed in accordance with the laws of the United States and the State of Texas, as may be applicable.

D. Interpretation. In the event an ambiguity or question of intent or interpretation arises, this agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this agreement. Any reference to any Federal, state, interstate, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, as they may have been amended from time to time, unless the context requires otherwise.

E. Headings and Titles. The headings or section titles contained in this agreement are inserted solely for convenience and do not constitute a part of this agreement between the parties, nor should they be used to aid in any manner in the construction of this agreement.

F. Severability. If any term, provision, or condition of this agreement is held to be invalid, void, or unenforceable by a governmental authority and such holding is not or cannot be appealed further, then such invalid, void, or unenforceable term, provision, or condition shall be deemed severed from this agreement and all remaining terms, provisions, and conditions of this agreement shall continue in full force and effect. The parties shall endeavor in good faith to replace such invalid, void, or unenforceable term, provision, or condition with valid and enforceable terms, provisions, or conditions which achieve the purpose intended by the parties to the greatest extent permitted by law.

G. Waivers; Remedies Cumulative. There is no implied waiver of rights under this agreement. No failure or delay on the part of a party in exercising any of its rights under this agreement or in insisting upon strict performance of provisions of this agreement, no partial exercise by either party of any of its rights under this agreement, and no course of dealing between the parties shall constitute a waiver of the rights of any party under this agreement, other than the requirement to raise a matter of breach within 30 days of discovery. Any waiver shall be effective only by a written instrument signed by the party granting such waiver, and such waiver shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply with this agreement. The remedies provided in this agreement are cumulative and not exclusive of any remedies provided by law.

H. CFIUS. Nothing in this agreement shall relieve Project Owner or its successors or assigns from 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 CFIUS.

I. Anti-Deficiency. For the DoD parties, this agreement may be subject to the availability of appropriated funds and sufficient resources. No provision in this agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. section 1341.

J. Disclosure. The parties may freely disclose this agreement with any person or entity. DoD will post the agreement on the Siting Clearinghouse website. Project Owner may mark any part of any document it believes to be proprietary or competition sensitive and that it wants DoD or the MILDEP to exempt from disclosure. The DoD parties will only disclose any such marked information in accordance with the provisions of 5 U.S.C. section 552 (the Freedom of Information Act).

K. No Third-Party Beneficiaries. Nothing in this agreement, express or implied, is intended to give to, or shall be construed to confer upon, any person not a party any remedy or claim under or by reason of this agreement. This agreement shall be for the sole and exclusive benefit of the parties and their respective successors and assigns.

L. Full and Complete Satisfaction. The completion of the obligations of each of the parties under this agreement constitute the full and complete satisfaction of those obligations.

M. Other Federal Agencies. This agreement does not bind any Federal agency, other than the DoD parties, nor waive required compliance with any law or regulation.


N. As-Built Drawings. Within 60 days of the completion of construction of the project, the Project Owner shall deliver a set of "as-built" drawings for the project wind turbines to the MILDEP.

O. Signature/Counterparts. The parties represent and warrant that the signatories below have authority to sign on behalf of and bind each respective party, and that no other signature is required to bind that party. This agreement may be executed in several counterparts, each of which shall be deemed an original, all of which shall constitute the same instrument.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed and delivered this agreement.

FOR THE DEPARTMENT OF DEFENSE:



Peter J. Potochny
Acting Assistant Secretary of Defense
(Sustainment)

25 JAN 2020
Date

FOR THE DEPARTMENT OF THE AIR FORCE:



Jennifer L. Miller
Deputy Assistant Secretary
of the Air Force (Installations)

1/14/2020
Date

FOR BLUE SUMMIT II WIND LLC:



John DiDonato
Vice President

January 7, 2020
Date

ATTACHMENT A:

Federal Aviation Administration Filings for Blue Summit II Wind Project

ASN	City	State	Structure Type	AGL	Latitude	Longitude
2018-WTW-4863-OE	Chillicothe	TX	Wind Turbine	499	34.268269	-99.457511
2018-WTW-4864-OE	Chillicothe	TX	Wind Turbine	499	34.267644	-99.451886
2018-WTW-4865-OE	Chillicothe	TX	Wind Turbine	499	34.270419	-99.444444
2018-WTW-4873-OE	Chillicothe	TX	Wind Turbine	499	34.237239	-99.478097
2018-WTW-4890-OE	Chillicothe	TX	Wind Turbine	499	34.202625	-99.482436
2018-WTW-4891-OE	Chillicothe	TX	Wind Turbine	499	34.205417	-99.478078
2018-WTW-13235-OE	Chillicothe	TX	Wind Turbine	499	34.247561	-99.480422
2018-WTW-13236-OE	Chillicothe	TX	Wind Turbine	499	34.231003	-99.503617
2018-WTW-13237-OE	Chillicothe	TX	Wind Turbine	499	34.232561	-99.499044
2018-WTW-13238-OE	Chillicothe	TX	Wind Turbine	499	34.234858	-99.494878
2018-WTW-13239-OE	Chillicothe	TX	Wind Turbine	499	34.236786	-99.482369
2018-WTW-13240-OE	Chillicothe	TX	Wind Turbine	499	34.218744	-99.467283
2018-WTW-13241-OE	Chillicothe	TX	Wind Turbine	499	34.219544	-99.462556
2018-WTW-13242-OE	Chillicothe	TX	Wind Turbine	499	34.221875	-99.457022
2018-WTW-13243-OE	Chillicothe	TX	Wind Turbine	499	34.2235	-99.447497
2018-WTW-14001-OE	Chillicothe	TX	Wind Turbine	499	34.220128	-99.500511
2018-WTW-14002-OE	Chillicothe	TX	Wind Turbine	499	34.221236	-99.495939
2018-WTW-14003-OE	Chillicothe	TX	Wind Turbine	499	34.22855	-99.492225
2018-WTW-14004-OE	Chillicothe	TX	Wind Turbine	499	34.233356	-99.469264
2018-WTW-14005-OE	Chillicothe	TX	Wind Turbine	499	34.229986	-99.465761
2018-WTW-14006-OE	Chillicothe	TX	Wind Turbine	499	34.230394	-99.461589
2018-WTW-14007-OE	Chillicothe	TX	Wind Turbine	499	34.229425	-99.457203
2018-WTW-14008-OE	Chillicothe	TX	Wind Turbine	499	34.218347	-99.486281
2018-WTW-14010-OE	Chillicothe	TX	Wind Turbine	499	34.214342	-99.481614
2018-WTW-14011-OE	Chillicothe	TX	Wind Turbine	499	34.214044	-99.47715
2018-WTW-14012-OE	Chillicothe	TX	Wind Turbine	499	34.213789	-99.471439
2018-WTW-14013-OE	Chillicothe	TX	Wind Turbine	499	34.226389	-99.453267
2018-WTW-14014-OE	Chillicothe	TX	Wind Turbine	499	34.208928	-99.508589
2018-WTW-14015-OE	Chillicothe	TX	Wind Turbine	499	34.210797	-99.4907
2018-WTW-14347-OE	Chillicothe	TX	Wind Turbine	499	34.281939	-99.431953
2018-WTW-14348-OE	Chillicothe	TX	Wind Turbine	499	34.283064	-99.427397
2018-WTW-14349-OE	Chillicothe	TX	Wind Turbine	499	34.284469	-99.422628
2018-WTW-14350-OE	Chillicothe	TX	Wind Turbine	499	34.285811	-99.418308
2018-WTW-14351-OE	Chillicothe	TX	Wind Turbine	499	34.207556	-99.500289
2018-WTW-14352-OE	Chillicothe	TX	Wind Turbine	499	34.198097	-99.497681
2018-WTW-14353-OE	Chillicothe	TX	Wind Turbine	499	34.1999	-99.493653
2018-WTW-14354-OE	Chillicothe	TX	Wind Turbine	499	34.185197	-99.498689
2018-WTW-14355-OE	Chillicothe	TX	Wind Turbine	499	34.187547	-99.492908

2018-WTW-16074-OE	Chillicothe	TX	Wind Turbine	499	34.267292	-99.461947
2018-WTW-16075-OE	Chillicothe	TX	Wind Turbine	499	34.257106	-99.473081
2018-WTW-16076-OE	Chillicothe	TX	Wind Turbine	499	34.258781	-99.466625

ATTACHMENT B:
Blue Summit II Wind Turbines Map and Project Area

