

**AGREEMENT
AMONG THE DEPARTMENT OF DEFENSE,
THE DEPARTMENT OF THE AIR FORCE, AND
GLASS SANDS WIND ENERGY, LLC,
ADDRESSING THE GLASS SANDS WIND PROJECT**

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 Glass Sands Wind Energy, 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, U.S.C., and part 211 of title 32, Code of Federal Regulations.

Attachment A, *Federal Aviation Administration Filings for Glass Sands Wind Project (2019-WTW-3829-OE thru 3858-OE)*; and Attachment B, *Glass Sands Wind Turbines Project Area and Coordinates*; 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 Glass Sands Wind Project (project) to proceed with development.

B. De-confliction. Based on DoD analysis, a potential conflict may exist between the MILDEP's operation of Sheppard Air Force Base (Installation) and spinning wind turbines associated with the project. The Glass Sands Wind Project's proposed turbines could obstruct low-level flight training in the southern corridor of Visual Flight Rules Military Training Route (VR) 1145 and portions of the southern corridor of Slow Speed Military Training Route (SR) 271. VR-1145 and SR-271 are essential for student pilot training, including two-plane formation training. Impacts related to this project are mitigated by the presence of adjacent existing avoidance areas and obstacles that already preclude usage of the portions of these training routes impacted by the project. The parties have focused on de-conflicting these activities and agree that the terms set forth in Section 5.A 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.** Department of the Air Force, a military department of the United States.
- M. National Security or Defense Purpose.** [RESERVED]
- 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 5.A of this agreement.
- O. Project Owner.** Glass Sands Wind Energy, 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. VOLUNTARY CONTRIBUTION.

[RESERVED]

SECTION 4. CURTAILMENT.

[RESERVED]

SECTION 5. MITIGATION TERMS.

A. In General. This agreement is structured and intended to enable Project Owner to proceed immediately with the construction and operation of the project. Project Owner agrees to limit the total number of project wind turbines to 30 with a maximum height of 682 feet above ground level. Project Owner agrees to restrict the construction of the project wind turbines to the designated Project Area, as shown in Attachment B. Project Owner agrees to install Night Vision Goggle (NVG) compatible lighting on all turbines associated with the project that are required by the FAA to have lighting.

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 5.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 30, 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 5.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 still does not exceed 30, 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 under any other federal, state, or local regulatory entity with jurisdiction over the project (except as provided in sections 7.B and 11.H of this agreement), provided that Project Owner

3 of 11

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 6. 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 material vendors with which Project Owner will potentially execute a contract to perform construction, supply turbines, or conduct operations activities at the location of the project.

2. For those business entities identified under paragraph 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 7. ASSIGNMENT.

A. Right to Assign. This agreement shall be binding upon the Project Owner and its successors and assigns. If Project Owner and its successors or assigns (assignors) elect to 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), assignor shall cause such assignee to expressly acknowledge the existence of this agreement and a copy of this agreement shall be provided to the assignee, and notice of the new point of contact information (as in Section 9) shall be provided 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 8. 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 military training routes permanently and takes appropriate action with FAA accordingly.
4. Termination of the agreement by written mutual agreement of the parties.

C. Actions Prior to Expiration. Any activities engaged in by the parties that occurred prior to expiration of this agreement shall remain valid and continue in effect, notwithstanding the expiration of the agreement.

SECTION 9. 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 Owner** – Glass Sands Wind Energy, LLC, Legal Counsel, 11101 W. 120th Way, Suite 400, Broomfield, CO 80021

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 10. 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 11. 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

6 of 11

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 Oklahoma, 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 is 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 and 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. Grid Operator Protocols. [RESERVED]

P. 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 but one and the same instrument.

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

FOR THE DEPARTMENT OF DEFENSE



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

6 Dec 2019
Date

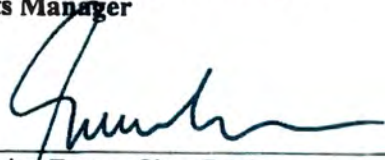
FOR THE DEPARTMENT OF THE AIR FORCE:



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

13 NOV 2019
Date

FOR GLASS SANDS WIND ENERGY, LLC
By: Roaring Fork Wind, LLC
Its Manager



Brian Evans, Class B Manager

10/17/19
Date

ATTACHMENT A:
Federal Aviation Administration Filings for Glass Sands Wind Project
(2019-WTW-3829-OE thru 3858-OE)

ASN	City	State	Structure Type	AGL	Latitude	Longitude
2019-WTW-3829-OE	Sulphur	OK	Wind Turbine	682'	34.55058333	-96.92911944
2019-WTW-3830-OE	Sulphur	OK	Wind Turbine	682'	34.54593611	-96.92143333
2019-WTW-3831-OE	Sulphur	OK	Wind Turbine	682'	34.54598611	-96.91638611
2019-WTW-3832-OE	Sulphur	OK	Wind Turbine	682'	34.54532222	-96.90978889
2019-WTW-3833-OE	Sulphur	OK	Wind Turbine	682'	34.54296389	-96.90423611
2019-WTW-3834-OE	Sulphur	OK	Wind Turbine	682'	34.54205278	-96.89996389
2019-WTW-3835-OE	Sulphur	OK	Wind Turbine	682'	34.53971944	-96.89108889
2019-WTW-3836-OE	Sulphur	OK	Wind Turbine	682'	34.52903889	-96.90699167
2019-WTW-3837-OE	Sulphur	OK	Wind Turbine	682'	34.52585	-96.901375
2019-WTW-3838-OE	Sulphur	OK	Wind Turbine	682'	34.52649444	-96.89491944
2019-WTW-3839-OE	Sulphur	OK	Wind Turbine	682'	34.527625	-96.88876944
2019-WTW-3840-OE	Sulphur	OK	Wind Turbine	682'	34.53289444	-96.88441111
2019-WTW-3841-OE	Sulphur	OK	Wind Turbine	682'	34.52856111	-96.87156944
2019-WTW-3842-OE	Sulphur	OK	Wind Turbine	682'	34.51986111	-96.87013333
2019-WTW-3843-OE	Sulphur	OK	Wind Turbine	682'	34.53157222	-96.86484444
2019-WTW-3844-OE	Sulphur	OK	Wind Turbine	682'	34.5186	-96.92452778
2019-WTW-3845-OE	Sulphur	OK	Wind Turbine	682'	34.51636389	-96.91936667
2019-WTW-3846-OE	Sulphur	OK	Wind Turbine	682'	34.514925	-96.91061389
2019-WTW-3847-OE	Sulphur	OK	Wind Turbine	682'	34.51453611	-96.90623333
2019-WTW-3848-OE	Sulphur	OK	Wind Turbine	682'	34.51313056	-96.90210833
2019-WTW-3849-OE	Sulphur	OK	Wind Turbine	682'	34.51525833	-96.89367778
2019-WTW-3850-OE	Sulphur	OK	Wind Turbine	682'	34.51581111	-96.88866389
2019-WTW-3851-OE	Sulphur	OK	Wind Turbine	682'	34.51555556	-96.88426111
2019-WTW-3852-OE	Sulphur	OK	Wind Turbine	682'	34.51692778	-96.87825556
2019-WTW-3853-OE	Sulphur	OK	Wind Turbine	682'	34.50882222	-96.87510833
2019-WTW-3854-OE	Sulphur	OK	Wind Turbine	682'	34.50936111	-96.86563611
2019-WTW-3855-OE	Sulphur	OK	Wind Turbine	682'	34.49751389	-96.92421944
2019-WTW-3856-OE	Sulphur	OK	Wind Turbine	682'	34.49732778	-96.91061667
2019-WTW-3857-OE	Sulphur	OK	Wind Turbine	682'	34.50228056	-96.90247778
2019-WTW-3858-OE	Sulphur	OK	Wind Turbine	682'	34.52986667	-96.85966944

ATTACHMENT B:
Glass Sands Wind Turbines Project Area and Coordinates

