

AGREEMENT
BETWEEN DEPARTMENT OF DEFENSE, DEPARTMENT OF THE AIR FORCE,
AND MARIAH PHASE 2 ENERGY HOLDINGS 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”)
Mariah Phase 2 Energy Holdings LLC (“Mariah Phase 2 LLC”)

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 PHASE 2*
(B) *Federal Aviation Administration Filings: MARIAH PHASE 3*

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 Phase 2 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 Phase 2 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 2 project to proceed with construction and operation. Mariah Phase 2 LLC agrees to restrict the construction of the Phase 2 project’s wind turbines to the specific geographic coordinates, to an accuracy of +/- 500 feet, listed in Attachment (A) to this Agreement.
- B. The Phase 2 Project: The 125 Proposed and 32 Alternate Turbine Locations Listed in Attachment (A)

1. Within five (5) days of the Effective Date of this Agreement, the DoD and the Air Force agree to transmit “No Objections With Provisions” to the ASNs corresponding to the wind turbine locations listed on Attachment (A) to this Agreement; the “Provisions” shall consist of this Agreement in its entirety. Further, the DoD and the Air Force agree not to posit any objection to the construction and operation of the Phase 2 project under the OE/AAA system or with any other federal, state, or local regulatory entity with jurisdiction over the Phase 2 project, provided that Mariah Phase 2 LLC 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 Wind Project.
2. Mariah Phase 2 LLC agrees to limit the number of wind turbines in the Phase 2 project to 125, and the wind turbine blade tip heights for Phase 2 project to 438 feet above ground level.
3. No changes greater than 500 feet in any direction 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.
4. This Agreement may be amended by the Parties to address additional turbine locations, such as the Mariah Phase 3 project as identified in Appendix (B), to site turbine locations below the line of sight of the Cannon AFB-operated Air Surveillance Radar (also known as the “ASR-11”).

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 Mariah Phase 2 LLC. Mariah Phase 2 LLC 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 Phase 2 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, Mariah Phase 2 will notify DoD or Air Force ten days prior to any transfer of interests and obligations.
- B. Notwithstanding Section 2.B.1, nothing in this Agreement shall relieve Mariah Phase 2 LLC 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).
- C. Upon such Assignment, Mariah Phase 2 LLC 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 Mariah Phase 2 LLC has given written notice 30 days in advance of the Assignment to the DoD and the Air Force.

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 Wind 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. Mariah Phase 2 LLC – Mariah Phase 2 Energy Holdings LLC, 100 Congress Ave, Suite 2000, Austin TX, 78701, ATTN: Monty Humble, mhumble@humble.us.com.

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 Mariah Phase 2 LLC 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.

**[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK:
SIGNATURE PAGES FOLLOW]**

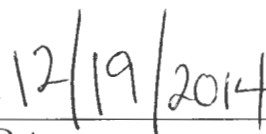
AGREEMENT
BETWEEN DEPARTMENT OF DEFENSE, DEPARTMENT OF THE AIR FORCE, and
MARIAH PHASE 2 ENERGY HOLDINGS LLC

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

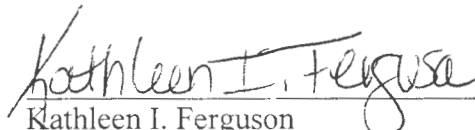


Date


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U.S. DEPARTMENT OF THE AIR FORCE:



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



Date

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MARIAH PHASE 2 ENERGY HOLDINGS LLC



Michael Rucker
Authorized Representative

12/19/2014
Date