

**AGREEMENT BETWEEN
THE DEPARTMENT OF DEFENSE, AND THE DEPARTMENT OF THE NAVY,**

AND

**E.ON CLIMATE, RENEWABLES, NORTH AMERICA, AND
PETRONILA WIND FARM, LLC (AGREEMENT)**

Subject: DEVELOPMENT OF A WIND TURBINE FARM PROJECT IN NUECES COUNTY,
TEXAS

Parties: Department of Defense (**DoD**)
Department of the Navy (**Navy**)
E.ON CLIMATE AND RENEWABLES, NORTH AMERICA (**ECRNA**) &
Petronila Wind Farm, LLC (**Petronila Wind**)
(the DoD, Navy, and Petronila Wind are referred herein each as a **Party** and collectively
as the **Parties**; ECRNA is joining this Agreement for the purposes outlined in Section
C).

Ref: (a) Section 358 of the Ike Skelton National Defense Authorization Act (NDAA) for Fiscal
Year 2011, as amended by Section 331 of Public Law 112-81
(b) 32 CFR Part 211

Attachments: A. Diagram Showing Geographic Boundary (Latitude/Longitude) of Wind Project
(**Project Boundary**)
B. Curtailment Communication Protocol

A. Purpose. Pursuant to references (a) and (b), one of the objectives of the DoD is to ensure the robust development of renewable energy sources and the increased resiliency of the commercial grid in the United States while simultaneously mitigating any adverse impacts on military operations and readiness. Petronila Wind, currently owned by ECRNA, is developing a wind farm project in Nueces County, Texas within the boundaries indicated in Attachment A, attached hereto and made a part hereof (**Wind Project**). In order to mitigate the potential impact of the Wind Project upon the operations and readiness of the Navy, the Parties have worked cooperatively and will continue to work cooperatively to meet the desired goals of supporting military operations and readiness simultaneously with the production of renewable energy. The Parties have agreed that the terms below allow for the mutual goals of the Parties to be met,

including the protection of the Navy's aviator training mission at Naval Air Station Kingsville (NASK) and at Naval Air Station Corpus Christi (NASCC).

B. Terms and Provisions.

1. Petronila Wind will provide a voluntary contribution of funds in the amount of \$750,000.00 to the DoD in accordance with reference (a). Petronila Wind will transfer these funds, in the manner to be specified by DoD, prior to the start of ground disturbing activity (exclusive of any surveying, geotechnical surveying, or environmental testing) within the Project Boundary (**Commencement of Construction**). These funds are being offered and will be accepted in accordance with Section 358(g) of reference (a) as amended. The DoD will accept the offered funds and will transfer the funds to appropriate Navy accounts for execution.

2. The Navy will use the funds to offset the cost associated with the necessary steps required to research, conduct technical reviews of, analyze, test, and implement measures to mitigate identified impacts of the Wind Project on military operations and readiness in one or more of the following ways (to the extent that the below measures require approval and/or action on the part of the FAA, the Navy shall use reasonable measures to work with the FAA to implement the same):

a. Optimization of the NASK Airport Surveillance Radar-11 (ASR-11) defined to include measures such as range-azimuth gate mapping of the wind turbines, adjustments to the Target Beam and STC Map, Doppler Filter Editing, False Plot Censor, Plot Amplitude Thresholding, Track Eligibility, and weather optimization settings before the date the Wind Project begins commercial operations (**Generation Commencement Date**);

b. If acceptable to the Federal Aviation Administration (FAA), integration of the Corpus Christi International Airport (CRP) ASR-11 into the NASK Standard Terminal Automation Replacement System (**STARS**) to enhance NASK's surveillance capabilities;

c. Implementation of FUSION tracking within the NASK STARS;

d. Evaluation and implementation of concurrent beam processing to allow for the simultaneous processing of the high and low antenna beams used in the NASK and CRP ASR-11s;

e. Evaluation and implementation of gap filler radar technology;

f. Optimization of the NASK ASR-11 Radar after the Generation Commencement Date;

g. Implementing mitigation for any other navigational aid determined to be affected by operation of the Wind Project;

h. Implement any other appropriate measure to mitigate the impact of the Wind Project's wind turbines on NASK or CRP ASR-11s.

If the mitigation measures listed above are considered by the Navy to be sufficient to prevent the use of curtailment described in Section 10 below, and if funds are still available, the Navy may use remaining funds in the following ways:

i. Enhancements and validation of the radar toolbox wind farm analysis functionality; and/or

j. Improve models for predicting the impact of additional wind turbines, given a baseline of existing wind turbines.

3. It is the responsibility of the Navy to determine the priority in expenditure of the funds; however, it is agreed that neither the Navy nor the DoD shall request to curtail the Wind Project (outside of the test parameters in Section (B)(9)) until such time as Sections (B)(2)(a) and (B)(2)(b) are implemented, to the extent they can reasonably be implemented by Navy. Upon receipt of funds, the Navy, DoD, and Petronila Wind will form a joint working group (**Working Group**). Each Party, at its election, may designate at least one representative to be part of the Working Group to study the effectiveness of the mitigation measures implemented; to recommend the mitigation measures to be prioritized moving forward; and, if the curtailment provisions have not been waived pursuant to Section (B)(11), to review the need for curtailment other than for test purposes as described in Section (B)(9).

The Working Group, which will be chaired by Commanding Officer, NASK, shall first meet within thirty (30) days after Commencement of Construction to discuss the mitigation measures that have been implemented and to identify which mitigation measures shall be implemented moving forward. Within thirty (30) days after the Generation Commencement Date, the Working Group shall meet again to discuss the findings of mitigation and optimization efforts, and to determine if any future mitigation measures are required. Following such meeting, the Working Group shall continue to meet on an as needed basis or upon request of any one of the Working Group members to discuss the effectiveness of the mitigation measures. The

Navy, DoD, and Petronila Wind agree to provide all Parties to this Agreement with copies of any studies of the effects of the Wind Project on NASK and CRP immediately upon completion of such studies. Although the Navy has the final authority to determine how to allocate the funds to mitigate the Wind Project, the Navy shall consult with the Working Group and take Petronila Wind's recommendations under consideration, so long as the funds are still available, when making such determination.

Additionally, if within the first two years following the Generation Commencement Date all technical mitigations to either or both ASR-11s at NASK and CRP have been adopted pursuant to FAA approval, within the funding limits described in Section (B)(1), and the local procedures for air traffic control services conducted within guidelines of established FAA regulations fail to provide for the repeated and safe handling of cooperating aircraft within the National Airspace System, the Navy and Petronila Wind agree to discuss via the Working Group the establishment of preemptive curtailment, if required, under specified meteorological conditions.

4. DoD and the Navy agree not to posit any objection to the construction and operation of the Wind Project under the FAA Obstruction Evaluation/ Airport Airspace Analysis (OE/AAA) system, or as they relate to NASK or CRP, to any regulatory entity with cognizance over the Wind Project, provided Petronila Wind carries out the terms of this Agreement. This Agreement may be shared freely with any person or entity.

5. Notwithstanding Section (B)(4), Petronila Wind agrees to abide by the Safe, Efficient Use, and Preservation of the Navigable Airspace Subpart C, as delineated in 14 C.F.R. Part 77. Violation of these airspace protections may lead to the DoD or the Navy filing an "objection" to the Wind Project.

6. Petronila Wind agrees to confine the placement of all Wind Project turbines to the area indicated in Attachment A. Petronila Wind also agrees not to construct more than 100 wind turbines within the area indicated in Attachment A and to limit the height of all turbines to not more than 500 feet. No changes are permitted to Attachment A without prior written agreement from DoD and Navy.

7. Any measures agreed to by the DOD or the Navy pursuant to this Agreement shall not be binding upon any other Federal agency, nor waive required compliance with any other law or regulation.

8. Petronila Wind agrees to provide the Navy, within 30 days of completion of construction of the Wind Project, a final “as built” drawing including actual wind turbine coordinates post construction and will notify the Navy and DoD of the Generation Commencement Date.

9. **Curtailment for Test Purposes:** Upon request by the Navy, in accordance with the Attachment B protocol, attached hereto and made a part hereof, Petronila Wind agrees to curtail (i.e. temporarily shut down) wind turbine operations for a period of up to 10 hours during the first year of operations (which will commence as of the Generation Commencement Date) for actions such as establishing baselines, performing flight checks, or conducting tests identified by the Navy.

10. **Curtailment for Non-Test and Emergency Purposes:**

Curtailment for Non-Test Purposes: Upon completion of the mitigation measures identified in Sections (B)(2)(a), and (B)(2)(b), the Navy may request and Petronila Wind agrees to curtail wind turbine operations using the Attachment B protocol to communicate the need to curtail if either of the following preconditions is met (each a **Precondition** or collectively **Preconditions**):

a) if the Navy at NASK or NASCC loses both primary and secondary radar contact for aircraft with operating transponders as a result of impacts from the wind turbines in the Wind Project (**Lost Target**); provided, however, curtailment shall not be required for one single Lost Target or for wind turbines in the Wind Project that did not directly cause a repeated Lost Target if such turbines can be identified, or

b) if the FAA modifies Navy flight handling at NASCC in a way that is detrimental to Navy’s ability to train, as a result of impacts from the wind turbines in the Wind Project; provided, however, curtailment shall not be required for wind turbines in the Wind Project that did not directly cause the negative impact if such turbines can be identified.

If the Preconditions in either Section (B)(10)(a) or (B)(10)(b) have occurred, but the Navy can implement reasonable mitigation measures that do not adversely impact the Navy’s training mission at NASK and NASCC, including but not limited to re-routing aircraft, the Precondition(s) shall have not been met for purposes of this Section B(10) and curtailment shall not be required. It is understood that Navy’s responsibility to relocate training will be limited to the extent it can do so without negatively impacting Navy’s ability to safely train.

If either of the Preconditions is met, the Navy agrees to notify Petronila Wind in accordance with the Attachment B protocol, when the need for curtailment exists and no longer exists. In the event of such curtailment and within 14 days of a request from Petronila Wind, the Navy will provide verifiable documentation showing that the need for curtailment was as result of impacts from the wind turbine(s) in the Wind Project.

Curtailment for in Emergency Circumstances: Notwithstanding the foregoing, the Navy may request and E.ON agrees to curtail wind turbine operations in the event of vital, urgent national security measures or mobilization plans significantly impacting the mission requirements at NASK and NASCC (**Emergency**).

11. Except for events of an Emergency, if the Precondition as to either NASK or NASCC has not been met or if curtailment has not been sought as to either NASK or NASCC under Section (B)(10) for a period of any two consecutive years following the Generation Commencement Date, then the curtailment provisions within Section (B)(10) shall be deemed waived and of no further force and effect as to the respective facility (NASK or NASCC). Notwithstanding any waiver, the Parties agree to work together in good faith to address the reasonable concerns of either Party with respect to the Wind Project's impact on NASK or NASCC through the Working Group.

12. The Parties agree and acknowledge that Petronila Wind is subject to and required to comply with the protocols of Electric Reliability Council of Texas (**ERCOT**) and such protocols will control how quickly Petronila Wind can curtail and un-curtail its generation. The Parties further agree and acknowledge that a request for curtailment under Section (B)(10) shall constitute a force majeure event as currently addressed in Sections 2 and 6.7.5.10 of the ERCOT Nodal Protocols dated 29 August 2012 and will be governed by such force majeure protocols.

13. The DoD will provide quarterly reports indicating the expenditure of the funds provided under Section (B)(1) of this Agreement until such funds are expended.

C. Joinder of ECRNA. ECRNA joins this Agreement to guarantee the performance of Petronila Wind with its obligations within this Agreement.

D. Assignment. If Petronila Wind its successors or assigns (**Assignor**) sells, conveys, mortgages, assigns or otherwise transfers all or any part of its interest in the assets comprising

the Wind Project (**Assignment**) to any third party (**Assignee**), the Assignor shall be permitted, without the prior consent of the DoD or Navy required, to assign this Agreement in whole or in part to the Assignee; provided however that such Assignment expressly acknowledges the existence of this Agreement and a copy of this Agreement is provided to the Assignee. Upon such Assignment, the Assignor and ECRNA shall be automatically relieved of any obligations or liability under this Agreement to the extent that the Assignee has assumed in writing such obligations or liabilities under this Agreement, provided that Petronila Wind has given written notice of the Assignment to the DoD and the Navy.

E. Effect & Effective Date. This Agreement will be effective as against all Parties, including any future owner, lessee, operator, transferee, purchaser, assignee or any successor-in-interest of the Wind Project, for the life of the Wind Project or until modified or terminated by mutual agreement of the Parties, subject to the provisions of Section I. This Agreement will be effective upon the date that all Parties below have signed.

F. 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:

1. Navy - Naval Air Station Corpus Christi:
Commanding Officer
11001 Avenue D, Suite 101
Corpus Christi, Texas 78419
Office: 361-961-2331
2. Navy - Naval Air Station Kingsville:
Commanding Officer
311 N. Mitscher Ave, ste 212
Kingsville, TX 78363-5002
Office: 361-516-6481
3. ECRNA and Petronila Wind:
Paul Bowman
Sr. VP of Development
EC&R Development, LLC

DOD – DON – E.ON CLIMATE/PETRONILA WIND MEMORANDUM OF AGREEMENT
Transmitted for Signature on 20121031

353 N. Clark St, 30th Floor
Chicago, IL 60654
Office General: 312- 923-9463
Office Direct: 312-245-5938
paul.bowman@eon.com

Communication and notifications regarding this Agreement shall be directed to the Point of Contact, except in the event of a request for curtailment under Sections (B)(9) or (B)(10) from the Navy to Petronila Wind in which case the request shall be from and directed to the points of contact designated in Attachment B (**Curtailment Contact**). Any Party may change its Point of Contact or its Curtailment Contact(s) or the contact information to which contact shall be directed, provided that written notification of any such change must be provided to the other Parties 30 days in advance.”

G. Breach. If a Party believes that another Party has breached this Agreement, it must provide notice of the breach to the breaching party and an opportunity to cure the breach. If there is a dispute between the involved Parties as to whether breach occurred, the involved Parties agree to attempt to resolve the dispute at the lowest level possible. Any disputes will be initially handled between Petronila Wind and representatives of the Navy at NASK and NASCC. Disputes may be elevated to the Chief of Naval Operations, Director for Energy and Environmental Readiness, and then to the Executive Director of the Defense Siting Clearinghouse, as required. If the breach is not cured or resolved after any attempt at initial dispute resolution, 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 the terms of this Agreement, as it sees fit under applicable state or federal law.

H. Funds limitations. Notwithstanding any other provision of this Agreement, the not-to-exceed grand total amount that Petronila Wind will voluntarily contribute towards the mitigation of any potential adverse impact from the Wind Project on NASK or NASCC is seven-hundred and fifty thousand dollars (\$750,000.00). In the event that actual costs incurred by the DoD and

Navy under this Agreement exceed the contribution provided for herein, Petronila Wind will not be responsible for funding any or all such excess amounts unless it so elects.

I. Amendments. Any Party to this Agreement may request that it be amended, whereupon the Parties shall consult to consider such amendments. Amendments to this Agreement shall be formalized by an appropriate written document that shall specify the change. Any amendment to this Agreement shall be effective if executed in writing and signed by the DoD, Navy, Petronila Wind and ECRNA, or their successors and assigns; provided, however, that the joinder of the DoD shall not be required as to any amendment to Attachment A or Attachment B of this Agreement.

J. Signature/Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

[To be followed by signatures on separate signature pages.]

DOD – DON – E.ON CLIMATE/PETRONILA WIND MEMORANDUM OF AGREEMENT
Transmitted for Signature on 20121031

AGREED:

For the **U.S. DEPARTMENT OF DEFENSE:**

John Conger
Acting Deputy Under Secretary of Defense
Installations and Environment

date

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For the **U.S. DEPARTMENT OF THE NAVY**:

Joseph Ludovici
Principal Deputy (Acting)
Assistant Secretary of the Navy
Energy, Installations and Environment

date

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Also for the **U.S. DEPARTMENT OF THE NAVY**:

John P. Quinn
Deputy Director
Chief of Naval Operations
Energy & Environmental Readiness

date

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Also for the **U.S. DEPARTMENT OF THE NAVY**:

VADM William D. French
Commander
Navy Installations Command

date

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Also for the **U.S. DEPARTMENT OF THE NAVY**:

RDML John C. Scorby
Commander
Navy Region Southeast

date

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Also for the **U.S. DEPARTMENT OF THE NAVY**:

CAPT David Edgecomb
Commanding Officer
NAS Corpus Christi

date

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Also for the **U.S. DEPARTMENT OF THE NAVY**:

CAPT Mark McLaughlin
Commanding Officer
NAS Kingsville

date

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For **PETRONILA WIND, LLC**

Paul Bowman
Sr. Vice President

date

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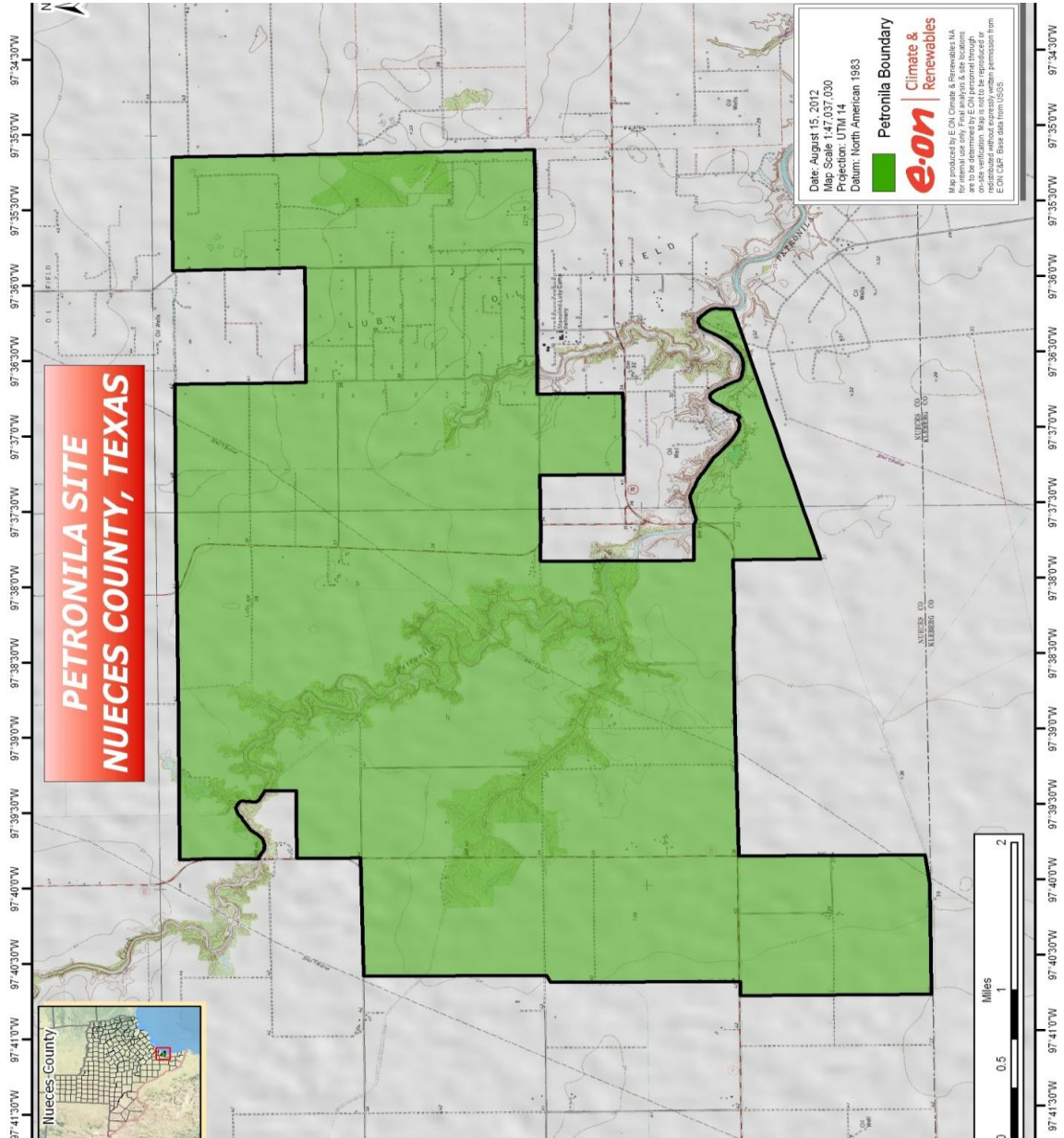
For **E.ON CLIMATE AND RENEWABLES NORTH AMERICA, LLC**

Steve Trenholm
Chief Executive Officer

date

ATTACHMENT A

Diagram Showing Geographic Boundary (Latitude/Longitude) of Wind Project (Project Boundary)



ATTACHMENT B

**TO THE AGREEMENT BETWEEN
THE DEPARTMENT OF DEFENSE, AND THE DEPARTMENT OF THE NAVY,**

AND

**E.ON CLIMATE, RENEWABLES, NORTH AMERICA, AND
PETRONILA WIND FARM, LLC (AGREEMENT)¹**

Curtailment Communication Protocol

1. Purpose and scope. This Attachment B establishes the protocol for communication between Petronila Wind and the U.S. Navy at NAS Kingsville (NASK) and NAS Corpus Christi (NASCC) in the event curtailment of wind turbine operations is required.

2. Criteria for curtailment. The Agreement provides for three circumstances under which curtailment may be required. Curtailment for **Test** purposes is delineated in paragraph 9 of the Agreement; curtailment for **Non-Test** and for **Emergency** purposes is spelled out in paragraph 10 of the Agreement. Regarding curtailment for **Non-Test** purposes, the Agreement provides that before requesting curtailment, Navy must attempt to implement reasonable mitigation measures that do not adversely impact the Navy's training mission at NASK or NASCC, including, but not limited to, the re-routing of aircraft. The measures to be implemented before requesting curtailment are delineated in directives issued by NASK and NASCC, respectively.

3. Parties Authorized to Request Curtailment and Receive Curtailment Requests (Curtailment Contact).

a. NASK: The duty Facility Watch Supervisor (FWS) is supervised by the NASK Air Traffic Control Facility Officer (ATCFO), who is supervised by the NASK Air Operations Officer (AOO). These three are the only persons authorized to request curtailment for NASK. The FWS is the primary point of contact for all real-time communications between NASK and Petronila Wind for NASK.

b. NASCC: The duty Facility Watch Supervisor (FWS) is supervised by the NASCC Air Traffic Control Facility Officer (ATCFO), who is supervised by the NASCC Air Operations Officer (AOO). These three are the only persons authorized to request curtailment for NASCC. The FWS is the primary point of contact for all real-time communications between NASCC and Petronila Wind for NASCC.

c. The duty Dispatch Center Supervisor (**DCS**) of Petronila Wind is the only party authorized to receive a request by NASK or NASCC for curtailment.

¹ Capitalized terms used but not otherwise defined within Attachment B shall have the meanings specified in the Agreement.

4. Procedures for Requesting Curtailment and Reporting that Curtailment Is No Longer Required.

- a. **NAS Kingsville:** After all local procedures have been exhausted and the FWS, ATCFO, or AOO has decided to request curtailment, the FWS, ATCFO, or AOO shall contact the Petronila Wind DCS. The FWS, ATCFO, or AOO will identify himself/herself and state that he/she is calling to request curtailment of operations at the Petronila Wind site and specify if the request is for test, non-test, or emergency purposes. The requesting official shall indicate the anticipated length of time that curtailment is expected to be required, inform Petronila Wind that Navy is logging the request as effective at the time of the call, and inform Petronila Wind which wind turbines (if such wind turbines can be identified) are required to be curtailed to address the negative impact. This logged time allows the Navy to find the time stamp on RADAR tapes if required.
- b. **NAS Corpus Christi:** After all local procedures have been exhausted or when informed by the Federal Aviation Administration (FAA) that Navy Aircraft requiring services to/from NASCC will be altered or terminated, to which the loss of training sorties will be incurred, the NASCC FWS, ATCFO, or AOO shall contact Petronila Wind's DCS and state that he/she is the FWS, ATCFO, or AOO at NASCC calling to request curtailment of operations and specify if the request is for test, non-test, or emergency purposes. The requesting official shall indicate the anticipated length of time that curtailment is expected to be required, inform Petronila Wind that Navy is logging the request as effective at the time of the call, and inform Petronila Wind which wind turbines (if such wind turbines can be identified) are required to be curtailed to address the negative impact. For both NASK and NASCC, as soon as conditions have changed such that the curtailment is no longer required, the NASK or NASCC FWS, ATCFO, or AOO shall immediately contact the Petronila Wind DCS to report that curtailment is no longer required.
- c. If NASCC requests curtailment, it shall inform the CRP FAA Air Traffic Control Facility that curtailment operations will be in effect as agreed in paragraph 4b.

5. Verification of Curtailment. When Petronila Wind has completed the curtailment process, the Petronila Wind DCM will contact the Navy official who requested the curtailment to inform him/her that curtailment is completed.

6. Contact listing.

- a. NAS Kingsville:
 - 1. **FWS Primary:** (361) 516-4494
 - 2. Air Operations Secondary: (361) 516-6108
 - 3. Tertiary: (361) 516-4100 (NASK Tower; emergency use only)
- b. NAS Corpus Christi:
 - 1. **FWS Primary:** (361) 961-5513
 - 2. ATCFO Secondary: (361) 961-5511
 - 3. Duty Operations Tertiary: (361) 533-7909
- c. Petronila Wind Operations Center:
 - 1. **Primary:** (512) 482-8008
 - 2. Secondary: (512) 482-8093
 - 3. Tertiary: (512) 482-4035

7. Process Reviews. To ensure that curtailment is requested only when absolutely necessary, within 14 days after any curtailment request, NASK or NASCC representatives shall review with the appropriate Petronila Wind officials the curtailment request and how it was executed. The purpose of the review is to ensure that proper procedures were followed and identify any lessons learned. In advance of the review, Navy shall provide documentation indicating why the curtailment was requested, and Petronila Wind shall provide documentation indicating the time of curtailment, turbines affected, and duration of the curtailment.