

Receive information on the Settlement and Release Agreement between Sacramento Municipal Utility District (SMUD) and the County of Solano regarding the Solano 4 Wind Turbine Project

RECOMMENDATION:

Receive information on the Settlement and Release Agreement between Sacramento Municipal Utility District (SMUD) and the County of Solano regarding the Solano 4 Wind Turbine Project.

SUMMARY:

Background

On May 20, 2021, the Solano County Airport Land Use Commission (ALUC) conducted a public hearing to consider an application (ALUC-21-03) from SMUD for a consistency determination for the Solano 4 Wind Turbine Project at 1786 Toland Lane in unincorporated Solano County. The project involved replacing 23 existing wind turbines having blade tip elevations ranging from 242' to 291' above ground level (AGL) with 19 new wind turbines with tower heights of 360 feet AGL and highest blade tip elevations ranging from 493' to 591' AGL.

The ALUC determined the project was not consistent with Section 5.6.1 criteria in the Travis Air Force Base Land Use Compatibility Plan for wind turbines and that the project did not meet the requirements for an exception under Section 6.2.4 (c)(6) Other Special Conditions.

On August 19, 2021, SMUD's governing board adopted findings to override the ALUC's findings of inconsistency, certified a final Environmental Impact Report (EIR), and approved the Solano 4 Wind Project.

On September 20, 2021, County of Solano filed a Petition with the Solano County Superior Court for a Writ of Mandate and a Complaint for Declaratory Relief. The case was transferred to Contra Costa County Superior Court.

Current

On December 14, 2022, SMUD and the County of Solano entered into a Settlement and Release Agreement, resolving the litigation before the Contra Costa Superior Court

The key components of the settlement agreement are:

- Limiting the number of wind turbines in the Solano 4 Wind Project to 19
- Requiring SMUD to measure the actual impact to Travis Air Force Base (AFB) air traffic control (ATC) radar system after construction of the Solano 4 Project and comparing actual impact to forecasted impact. If the actual exceeds the forecast, SMUD will be required to (1) assist Travis AFB to improve the radar performance, and (2) adjust its model to better forecast impacts to radar from any future wind project.
- No development of any new wind projects in currently undeveloped sites in Solano County.

- No repowering of SMUD's existing Solano County projects for at least 5 years.
- If SMUD repowers any currently developed sites, SMUD will prepare and certify an EIR prior to approving the repowering.
- Prior to issuing a draft EIR for any future projects in Solano County, SMUD shall evaluate the radar to verify no net increase in Travis AFB radar interference. The results of the modeling will be in the draft EIR and used for other repowering projects in Solano County.
- Prior to approval of any repowering project SMUD must find that the project will cause no measurable decrease in ATC ability to detect targets.

Future

Ongoing development of new technologies through the Department of Defense's Pilot Mitigation Program (PMP), which Travis AFB has been a part of, is working to enhance radar technology that effectively blocks out the interference from wind turbines. The development and implementation of the technology is a few years away and the validating and certifying of the new system will take a minimum of 5 years according the Federal Aviation Administration.

The ALUC liaison to Travis AFB and staff will stay in contact with Travis air traffic control staff to receive updates as the work on the radar system progresses.

Attachment:

[Attachment A - Settlement and Release Agreement](#)

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into on December 14, 2022 (the “Effective Date”), by and between the Sacramento Municipal Utility District (“SMUD”) and the County of Solano (“County”) (all referred to collectively as the “Parties” and, individually, a “Party”).

RECITALS

This Agreement is made with reference to, and in consideration of, the following facts and representations, which the Parties agree are true and correct:

WHEREAS, on August 19, 2021 SMUD’s governing board certified a final Environmental Impact Report (EIR) and approved the Solano 4 Wind Project (“Project”);

WHEREAS, on September 2, 2021, the County filed a Petition for Writ of Mandate and Complaint for Declaratory Relief, *County of Solano v. Sacramento Municipal Utility District*, Solano County Superior Court Case No. FCS057089, challenging SMUD’s approval of the Project under the State Aeronautics Act (SAA) and State planning and zoning laws (the “Action”);

WHEREAS, on September 20, 2021, the County filed a First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief adding a cause of action under the California Environmental Quality Act (CEQA);

WHEREAS, on October 29, 2021, SMUD filed a Motion for Order Transferring venue pursuant to the mandatory venue transfer provisions of Code of Civil Procedure section 394(a). On January 26, 2022, the Solano County Superior Court issued a notice of transfer of the case to the Contra Costa County Superior Court;

WHEREAS, each Party believes that it is in its best interests to resolve the claims asserted in the First Amended Petition in order to avoid the burden, expense, uncertainty, risk, and delay associated with further litigation; and

WHEREAS, this Agreement is the product of arms-length negotiations between the Parties, and the Parties enter this Agreement to resolve all claims asserted in the First Amended Petition.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions, and releases set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Project Development Parameters: The Project shall comply with the following development parameters:

- (a) The Solano 4 Wind Project shall include no more than nineteen (19) wind turbine generators (WTG) and the location and operation of the WTGs shall not deviate substantially from that described in the EIR and Federal Aviation Administration (FAA) determinations referenced in Appendix B of the EIR. In no event shall SMUD alter the Project or the location or operation of the WTGs in a manner that materially and adversely impacts radar performance at Travis AFB or surrounding airports.
- (b) Prior to construction of the Solano 4 Wind Project, SMUD shall work with Travis Air Force Base (AFB) to collect a dataset, using the methodology described in Section 3(a) below, to establish the radar performance baseline over the Project area and the Solano Wind Resource Area (WRA).
- (c) SMUD shall dismantle all Phase 1 WTGs prior to the vertical erection of any Solano 4 WTGs.
- (d) Once the Project is operational, SMUD and its consultant shall work with Travis AFB to analyze a second dataset to quantify the change in performance of the Travis AFB's air traffic control radar system relative to the radar performance baseline established pursuant to Section 1(b) above as a result of the operating Solano 4 Project's WTGs, using the methodology described in Section 3(a) below. Results from this study and analysis shall be compared with the impacts modeled for the Project as part of the Project's CEQA process. SMUD shall share the analysis and results with the County and Travis AFB.
- (e) If the study and analysis shows that the resulting impacts to radar performance are greater than the modeled impacts, SMUD will implement the following: (1) revise the modeling methodology so that the modeled impact is equal to or exceeds the actual measured impact under reasonably anticipated conditions; and (2) consult with Travis AFB to help calibrate, improve settings, troubleshoot, and optimize radar functionality. In no event shall SMUD be obligated to remove WTGs, alter operations, or purchase software or equipment to increase radar functionality at Travis AFB or surrounding airports.

2. Other SMUD Project Development Parameters: SMUD properties within Solano County shall comply with the following development parameters:

- (a) SMUD shall not develop a WTG project on any currently undeveloped sites within Solano County. "Currently undeveloped sites" refers to any parcel or parcels of real property not previously included, in whole or in part, within a project area that has housed industrial level WTGs.
- (b) SMUD shall not repower any currently developed sites for at least five years from the Effective Date of this Agreement, including sites currently owned by SMUD or that may be acquired by SMUD in the future.

- (c) Because SMUD's repowering of any currently developed sites may have potentially significant impacts on the environment, including potentially significant impacts on Travis AFB and its radar operations, SMUD shall prepare and certify an EIR prior to approving any such repowering project(s).
- (d) Prior to issuing a Draft EIR for any future projects in Solano County, SMUD shall evaluate the existing radar baseline and model anticipated impacts to verify that there will be no net increase in Travis AFB radar interference using the study methodologies described in Section 1(e)(1) above and Section 3(b) below. The results of the modeling will be presented in the Draft EIR for any repowering project in Solano County.
- (e) Prior to approval of any particular repowering project, SMUD must find, based on the modeling methodologies specified herein, that the project will cause no measurable decrease in the ability of Travis AFB to detect targets.

3. Radar Impact Methodology and Study:

- (a) Prior to construction of the Project, SMUD will work with Travis AFB to evaluate and quantify, to the extent feasible, the impact of all existing commercial wind development within the Project area and WRA on Travis AFB radar and suggest feasible corrective measures to improve radar operation. If Travis AFB cooperates, the methodology will include the collection of a dataset on existing radar performance, a review of the current Travis AFB Airport Surveillance Radar (ASR-11) and Standard Automation Replacement System (STARS) settings, and optimization of the radar system if needed. The dataset will include at least one month of data from the ASR-11, STARS, and applicable meteorological evaluation towers.
- (b) After construction of the Project, SMUD will review the current Travis AFB ASR-11 and STARS settings and conduct optimizations, including an update of the Range Azimuth Gate (RAG) map to account for WTG location changes as a result of the Project. SMUD will collect a second dataset to establish post-construction Project impacts to radar performance, if any, over the Project area and the entire Solano WRA. If needed, SMUD will cause its consultant, at SMUD's expense, to revise the study methodology and help identify feasible corrective measures to improve radar performance and operations in consultation with Travis AFB.

4. Dismissal. No later than five (5) business days after the Effective Date, the County shall file with the Contra Costa County Superior Court, and shall serve on all parties to the Lawsuit, a Notice of Settlement and Request for Dismissal of the Lawsuit.

5. No Opposition. The County agrees that it will not initiate, file, or assist any new lawsuit asserting claims under the SAA, CEQA, or State or County land use and zoning law against SMUD with regard to the Project. The County further agrees that it will not initiate or file any lawsuit challenging any SMUD repowering project, described in Section 2 above, based

on allegations that such project would have adverse impacts on Travis AFB radar, provided SMUD has fully complied with its obligations described in Section 2, above.

6. Legal Expenses. Each party shall bear its own attorneys' fees and costs, except as otherwise stated in this Agreement.

7. Enforcement. The Contra Costa Superior Court shall retain jurisdiction over this settlement pursuant to Code of Civil Procedure section 664.6. Before any action is taken in court to enforce or resolve any dispute or claim under the Agreement ("Dispute"), the Parties shall promptly meet and confer in good faith in an attempt to resolve the Dispute. If meet and confer efforts do not resolve the Dispute, any party may seek enforcement of the Agreement, to the fullest extent allowed by law and equity, from the Contra Costa County Superior Court, either pursuant to a motion under Code of Civil Procedure section 664.6 or pursuant to a new civil action.

8. Releases.

- (a) Except as provided in Paragraph 8(c) of this Agreement, each Party, on its own behalf and on behalf of its officers, directors, employees, shareholders, parents, subsidiaries, affiliates, predecessors, successors, assigns, estates, heirs, agents, attorneys, consultants, insurers, and other representatives, hereby releases, acquits, and forever discharges all other Parties and their officers, directors, employees, shareholders, parents, subsidiaries, affiliates, predecessors, successors, assigns, estates, heirs, agents, attorneys, consultants, insurers, and other representatives from any and all claims, actions, causes of action, liabilities, obligations, demands, and losses related to fees, costs, and other expenses arising from the Action, including, without limitation, all equitable relief, damages, penalties, fees (including fees of attorneys, experts, and others), costs, expenses, and any other sums incurred or claimed or which could have been claimed in the Action by any Party.
- (b) It is understood and agreed by the Parties that the claims released in Paragraph 8(a) of this Agreement include all claims of every nature and kind whatsoever, whether known or unknown, suspected, or unsuspected, and all rights under California Civil Code section 1542 are hereby expressly waived. Section 1542 provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those which they now know or believe to be true with respect to the released claims, and the Parties agree that this Agreement, including, without limitation, the releases contained herein, shall be and remain effective in all

respects notwithstanding such different or additional facts or the discovery thereof.

- (c) Notwithstanding any other provision of this Agreement, the releases specified in this Paragraph 8 of the Agreement shall not extend to any claims arising out of or related to enforcement of this Agreement.

9. No Assignment. Except as provided in this Agreement, the obligations of the Parties under this Agreement may not be assigned, or otherwise transferred, except by operation of law, without the prior written consent of the Parties, which consent shall not be unreasonably withheld. In no event shall any Party's approved assignment of any aspect of this Agreement relieve such Party of its obligations under this Agreement.

10. Sole and Final Agreement. The Parties acknowledge and represent that no promise or inducement not expressed in this Agreement has been made in connection with this Agreement. This Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this Agreement, namely, the settlement of any claim to attorneys' fees and costs incurred with respect to the Action. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the Parties hereto relating to the terms and conditions of this Agreement that are not fully expressed herein. Accordingly, this Agreement supersedes, and fully and completely extinguishes, any prior understandings or agreements by or between the Parties, whether oral or written, express, or implied. This is an integrated agreement.

11. Waiver and Estoppel. No waiver will be implied by delay or any other act or omission of a Party. No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party, and any such waiver shall not be deemed a waiver of any other provision or breach of this Agreement. No Party shall be estopped from enforcing any provision of this Agreement, unless the Party has agreed to such estoppel in a writing signed by the Party.

12. Amendment. Neither this Agreement, nor any of its provisions, may be waived, modified, amended, or terminated except by an instrument in writing signed by the Parties, and then only to the extent set forth in such writing.

13. Mutual Cooperation. Each Party shall execute and deliver to the other Parties all such other further instruments and documents, and take all other such actions, as may be reasonably necessary to carry out the terms and provisions of this Agreement and secure to the other Parties the full and complete enjoyment of their respective rights and privileges hereunder. The Parties agree not to take positions inconsistent with the terms of this Agreement and to exercise care in raising issues that may be contentious by first attempting to meet and resolve such issues with the other Parties in good faith.

14. Invalidity. If any portion of this Agreement as applied to any Party or to any circumstance is adjudged by a court to be void or unenforceable, such adjudication shall in no way affect any other provision of this Agreement, the application of any such provision in another circumstance, or the validity or enforceability of this Agreement as a whole.

15. Notices. Except as otherwise specifically set forth herein, all notices or other communications specifically required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by certified mail, return receipt requested and postage prepaid, or sent by reputable overnight courier (such as Federal Express) to the addresses set forth below, with a courtesy copy of the notice provided by electronic mail. Any Party may at any time change its address for the delivery of notice upon five (5) days written notice to the other Parties.

County of Solano

Bernadette Curry, County Counsel
 James Laughlin, Deputy County Counsel
 Solano County Counsel
 675 Texas Street, Suite 6600
 Fairfield, California 94533
 (707) 784-6140
BSCurry@solanocounty.com
JWLaughlin@solanocounty.com

Sacramento Municipal Utility District

Laura O. Lewis, Chief Legal Officer and General Counsel
 Joseph S. Schofield, Deputy General Counsel
 6201 S Street
 Sacramento, California 95817
 (916) 732-6119
Laura.Lewis@smud.org
Joe.Schofield@smud.org

16. Headings and Cross-References. The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand, or limit the terms of this Agreement. All cross-references in this Agreement, unless specifically directed to another agreement or document, shall refer to provisions in this Agreement and shall not be deemed to be references to any other agreements or documents.

17. No Duress. This Agreement is executed voluntarily by each of the Parties and without being subjected to any duress or undue influence. Each of the Parties to this Agreement has read and fully understands the meaning of each provision of this Agreement and has relied on the independent advice and representation of legal counsel in entering into this Agreement.

18. Successors and Assigns. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties as well as the agents, heirs, successors, assignees, and transferees of the Parties.

19. Interpretation; Governing Law. This Agreement shall be interpreted, and the rights and the duties of the Parties shall be determined, in accordance with the laws of the State of California as applied to contracts entered into and performed (or capable of performance) in California by California persons or entities, without regard for choice-of-law principles.

20. Construction. The Parties acknowledge that this is a legally binding Agreement and that the Parties have had an opportunity to have an attorney review this Agreement. The language in all parts of this Agreement shall be construed as a whole according to its fair meaning, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or application of this Agreement.

21. Remedies/Enforcement. Because the amount of damages in the event of a breach of this Agreement may be difficult or impossible to determine, the obligations of the Parties under this agreement shall be enforceable by specific performance only.

22. No Admission; Denial of Wrongdoing and Liability. Nothing in this Agreement shall be deemed an admission of any issue of fact or law, except for the limited purpose of enforcing this Agreement. Neither the negotiation of this Agreement, nor any action taken to carry out this Agreement, is, or may be construed or used as, an admission or concession by, or against, any Party of any fault, wrongdoing, or liability whatsoever.

23. Warranty of Authority. Each signatory of this Agreement represents and warrants that he or she has full authority to enter into this Agreement on behalf of the respective Parties and to settle and compromise all claims that are the subject matter of this Agreement.

24. Counterparts and Electronic Signatures. This Agreement may be executed in duplicate or counterparts, each of which is deemed an original. Electronic signatures and copies of handwritten signatures transmitted by facsimile, email, or other form of reproduction shall be deemed original signatures.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed.

DATED: December 14, 2022

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: 
Paul Lau, Chief Executive Officer
and General Manager

By: 
Laura Lewis, Chief Legal Officer
and General Counsel

DATED: December 13, 2022

COUNTY OF SOLANO

By: Bill Emlen
Bill Emlen, County Administrator

By: Bernadette Curry
Bernadette Curry, County Counsel