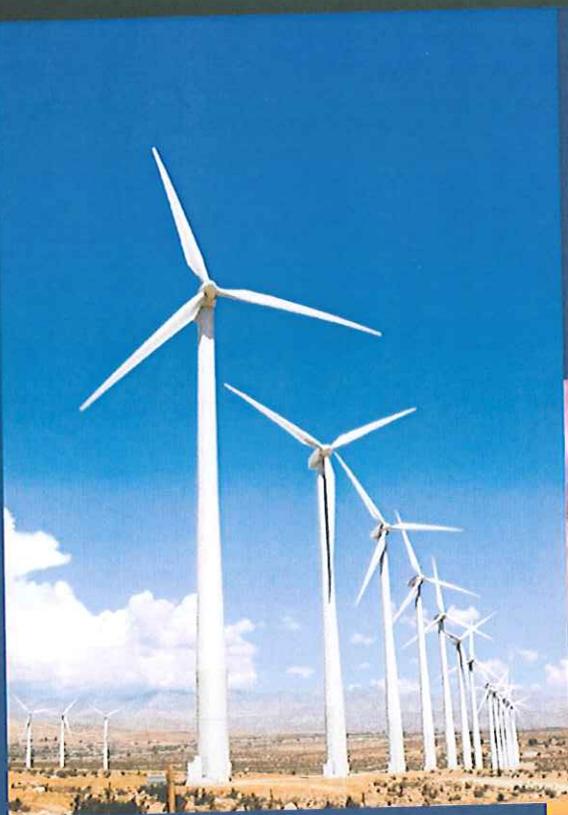


**FINDINGS OF THE BRACKETT  
INDEPENDENT SCHOOL DISTRICT BOARD  
OF TRUSTEES  
UNDER THE  
TEXAS ECONOMIC DEVELOPMENT ACT  
ON THE  
APPLICATION SUBMITTED  
BY  
EC&R DEVELOPMENT, LLC**



December 21, 2009

---

**FINDINGS  
OF THE  
BRACKETT INDEPENDENT  
SCHOOL DISTRICT BOARD OF TRUSTEES  
UNDER THE  
TEXAS ECONOMIC DEVELOPMENT ACT  
ON THE APPLICATION SUBMITTED BY  
EC&R DEVELOPMENT, LLC**

---

**DECEMBER 21, 2009**

Board Findings of the Brackett Independent School District

FINDINGS OF THE BRACKETT INDEPENDENT  
SCHOOL DISTRICT BOARD OF TRUSTEES UNDER THE  
TEXAS ECONOMIC DEVELOPMENT ACT  
ON THE APPLICATION SUBMITTED BY  
EC&R DEVELOPMENT, LLC

STATE OF TEXAS

§

COUNTY OF KINNEY

§

On the 21st day of December, 2009, a public meeting of the Board of Trustees of the Brackett Independent School District was held. The meeting was duly posted in accordance with the provisions of the Texas Open Meetings Act, Chapter 551, Texas Government Code. At the meeting, the Board of Trustees took up and considered the application of the EC&R Development, LLC (EC&R) for an Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code. The Board of Trustees solicited input into its deliberations on the Application from interested parties within the District. After hearing presentations from the District's administrative staff, and from consultants retained by the District to advise the Board in this matter, the Board of Trustees of the Brackett Independent School District makes the following findings with respect to the application of EC&R, and the economic impact of that application:

On October 14, 2009, the Superintendent of Schools of the Brackett Independent School District, acting as agent of the Board of Trustees, and the Texas Comptroller of Public Accounts received a completed Application from EC&R for an Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code. A copy of the Application is attached as **Attachment A**.

The Applicant, EC&R (Texas Taxpayer Id. 32039451532) is an entity subject to Chapter 171, Texas Tax Code and is certified to be in good standing with the Texas Comptroller of Public Accounts. See **Attachment B**.

The Board of Trustees has acknowledged receipt of the Application, along with the requisite application fee, as established pursuant to Texas Tax Code § 313.025(a)(1) and Local District Policy.

Board Findings of the Brackett Independent School District

The Application was delivered to the Texas Comptroller's Office for review pursuant to Texas Tax Code § 313.025(d).

A copy of the Application was delivered to the Kinney County Appraisal District for review pursuant to 34 Tex. Admin. Code § 9.1054.

The Application was reviewed by the Texas Comptroller's Office pursuant to Texas Tax Code § 313.026, and a favorable recommendation was issued on November 23, 2009. A copy of the Comptroller's letter is attached to the findings as **Attachment C**.

After receipt of the Application, the Texas Comptroller of Public Accounts caused to be conducted an economic impact evaluation pursuant to Texas Tax Code § 313.026 and the Board of Trustees has carefully considered such evaluation. A copy of the economic impact evaluation is attached to these findings as **Attachment D**.

The Board of Trustees also directed that a specific financial analysis be conducted of the impact of the proposed value limitation on the finances of the Brackett Independent School District. A copy of a report prepared by Moak, Casey & Associates, Inc. is attached to these findings as **Attachment E**.

The Board of Trustees has confirmed that the taxable value of property in the Brackett Independent School District for the preceding tax year, as determined under Subchapter M, Chapter 403, Government Code, is as stated in **Attachment F**.

After receipt of the Application, the District entered into negotiations with EC&R, over the specific language to be included in the Agreement for an Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code, including appropriate revenue protection provisions for the District. The proposed Agreement is attached to these findings as **Attachment G**.

After review of the Comptroller's recommendation, and in consideration of its own economic impact study the Board finds:

**Board Finding Number 1.**

**There is a strong relationship between the Applicant's industry and the types of qualifying jobs to be created by the Applicant and the long-term economic growth plan of this State as described in the strategic plan for economic development (ED Plan) submitted by the Texas Strategic Economic Development Planning Commission under Section 481.033, Texas Government Code.**

In support of Finding 1, the economic impact evaluation states:

The Texas Economic Development Plan does not mention renewable energy specifically. However, one theme of the plan is attracting and fostering industries in Texas using advanced technology. Renewable energy technology is an expanding industry and the skilled workers that the project requires appear to be in line with the focus and themes of the plan. Texas identified energy as one of six target clusters in the Texas Cluster Initiative. The plan stresses the importance of technology in all sectors of the energy industry.

**Board Finding Number 2.**

**The economic condition of Kinney County, Texas, is in need of long-term improvement.**

Based on information provided by the Comptroller's Office, Kinney County's population growth has kept pace with the state in recent years. The state population grew by 2.0 percent between 2007 and 2008, while the population of Kinney County increased by 2.1 percent over the same period.

September 2009 employment for Kinney County was down 1,316, or 1.6 percent, from September 2008. The unemployment rate in Kinney County was 9.2 percent in September 2009, higher than the current state average of 8.2 percent.

Kinney County continues to have a lower per capita personal income than the state as a whole. In terms of per capita income, Kinney County's \$22,984 in 2007 ranked 227<sup>th</sup> among the 254 counties in Texas, while the Texas average was \$37,083 for the same period.

Board Findings of the Brackett Independent School District

In the first quarter of 2009, taxable sales totaled \$2.9 million in Kinney County. This figure reflects 6.4 percent increase from the year-earlier first quarter, although the volume of sales tax activity is relatively small.

Given recent population trends and income levels, Kinney County will benefit from economic activity like that associated with the EC&R project. Major capital investments like this project are beneficial to the community on a number of fronts, including employment, expanded opportunities for existing businesses, increased local tax bases, and in this case, benefits for landowners.

**Board Finding Number 3.**

**The average salary level of qualifying jobs is expected to be at least \$29,538 per year. The review of the application by the State Comptroller's Office indicated that this amount—based on Texas Workforce Commission data—complies with the requirement that qualifying jobs must pay 110 percent of the county average manufacturing wage. EC&R indicates that total employment will be approximately six (6) new jobs.**

In support of Finding 3, the economic impact evaluation states:

After construction, the project will create six new jobs when fully operational. All six jobs will meet the criteria for qualifying jobs as specified in Tax Code Section 313.021(3). According to the Texas Workforce Commission (TWC), the regional manufacturing wage for the Middle Rio Grande Council of Governments Region, where Kinney County is located was \$26,853 in 2007. The average manufacturing wage for the most recent four quarters for Kinney County is \$22,074. In addition to an annual average salary of \$29,538, each qualifying position will receive benefits such as health insurance and training.

**Board Finding Number 4.**

**The level of the applicant's average investment per qualifying job over the term of the Agreement is estimated to be approximately \$14.25 million on the basis of the goal of six (6) new positions for the entire EC&R project.**

In support of Finding 4, the economic impact evaluation states:

Board Findings of the Brackett Independent School District

The project's total investment is \$85.5 million, resulting in a relative level of investment per qualifying job of \$14.25 million.

**Board Finding Number 5.**

**Based upon the information provided to the District with regard to the industry standard for staffing ratios of similar projects in the State of Texas, the District has determined that if the job creation requirement set forth in Texas Tax Code § 313.021(2)(A)(iv)(b) was applied, for the size and scope of the project described in the Application, the required number of jobs would exceed the industry standard for the number of employees reasonably necessary for the operation of the facility.**

Based on previously approved Texas Economic Development Act wind energy applications and industry standards, the typical wind project employs one person per 15 wind turbines. This project is consistent with this ratio.

**Board Finding Number 6.**

**Subsequent economic effects on the local and regional tax bases will be significant. In addition, the impact of the added infrastructure will be significant to the region.**

Table 1 depicts the project's estimated economic impact to Texas. It depicts the direct, indirect and induced effects to employment and personal income within the state. The Comptroller's office calculated the economic impact based on 16 years of annual investment and employment levels using software from Regional Economic Models, Inc. (REMI). The impact includes the construction period and the operating period of the project.

Board Findings of the Brackett Independent School District

**Table 1: Estimated Statewide Economic Impact of Investment and Employment in EC&R**

Year	Employment			Personal Income		
	Direct	Indirect + Induced	Total	Direct	Indirect + Induced	Total
2009	0	0	0	\$0	\$0	\$0
2010	0	0	0	\$0	\$0	\$0
2011	106	138	244	\$3,131,028	\$11,868,972	\$15,000,000
2012	6	15	21	\$177,228	\$2,822,772	\$3,000,000
2013	6	14	20	\$177,228	\$2,822,772	\$3,000,000
2014	6	10	16	\$177,228	\$1,822,772	\$2,000,000
2015	6	8	14	\$177,228	\$1,822,772	\$2,000,000
2016	6	10	16	\$177,228	\$1,822,772	\$2,000,000
2017	6	7	13	\$177,228	\$1,822,772	\$2,000,000
2018	6	8	14	\$177,228	\$1,822,772	\$2,000,000
2019	6	9	15	\$177,228	\$1,822,772	\$2,000,000
2020	6	8	14	\$177,228	\$1,822,772	\$2,000,000
2021	6	8	14	\$177,228	\$1,822,772	\$2,000,000
2022	6	8	14	\$177,228	\$1,822,772	\$2,000,000
2023	6	8	14	\$177,228	\$1,822,772	\$2,000,000
2024	6	8	14	\$177,228	\$1,822,772	\$2,000,000

Source: CPA, REMI, EC&R

The statewide average ad valorem tax base for school districts in Texas was \$1.6 billion in 2008. Brackett ISD's ad valorem tax base in 2008 was \$148.8 million. The statewide average wealth per WADA was estimated at \$352,755 for fiscal 2009-2010. During that same year, Brackett ISD's estimated wealth per WADA was \$142,162.

Table 2 examines the estimated direct impact on ad valorem taxes to the school district and Kinney County with all property tax incentives sought being granted using estimated market value from EC&R's application. EC&R has applied for both a value limitation under Chapter 313, Tax Code and a county tax abatement under Tax Code, Chapter 312 seeking 70 percent abatement per year for eight years. Table 3 illustrates the estimated tax impact of the project on the region if all taxes are assessed.

Board Findings of the Brackett Independent School District

**Table 2 Estimated Direct Ad Valorem Taxes with all property tax incentives sought**

Year	Estimated Taxable value for I&S	Estimated Taxable value for M&O	Tax Rate <sup>1</sup>	Brackett ISD I&S Levy	Brackett ISD M&O Levy	Kinney County	Kinney County Groundwater Conservation District	School, County and Water District Property Taxes
				0.0000	1.0400	0.6558	0.0612	
2009	\$0	\$0		\$0	\$0	\$0	\$0	\$0
2010	\$0	\$0		\$0	\$0	\$0	\$0	\$0
2011	\$0	\$0		\$0	\$0	\$0	\$0	\$0
2012	\$82,080,000	\$1,000,000		\$0	\$10,400	\$376,796	\$35,163	\$422,360
2013	\$78,790,000	\$1,000,000		\$0	\$10,400	\$361,693	\$33,754	\$405,847
2014	\$75,640,000	\$1,000,000		\$0	\$10,400	\$347,233	\$32,404	\$390,037
2015	\$72,600,000	\$1,000,000		\$0	\$10,400	\$333,278	\$31,102	\$374,779
2016	\$69,700,000	\$1,000,000		\$0	\$10,400	\$319,965	\$29,859	\$360,224
2017	\$66,920,000	\$1,000,000		\$0	\$10,400	\$307,203	\$28,669	\$346,271
2018	\$64,240,000	\$1,000,000		\$0	\$10,400	\$294,900	\$27,520	\$332,821
2019	\$61,670,000	\$1,000,000		\$0	\$10,400	\$283,102	\$26,419	\$319,922
2020	\$59,210,000	\$59,210,000		\$0	\$615,784	\$271,809	\$25,366	\$912,959
2021	\$56,840,000	\$56,840,000		\$0	\$591,136	\$260,930	\$24,350	\$876,416
2022	\$54,560,000	\$54,560,000		\$0	\$567,424	\$357,804	\$33,391	\$958,619
2023	\$52,380,000	\$52,380,000		\$0	\$544,752	\$343,508	\$32,057	\$920,317
2024	\$50,290,000	\$50,290,000		\$0	\$523,016	\$329,802	\$30,777	\$883,595
			<b>Total</b>	\$0	\$2,925,312	\$4,188,024	\$390,831	\$7,504,167

Source: CPA, EC&R

\*Assumes Chapter 313 Value Limitation and 70% Abatement with County and Water District

<sup>1</sup>Tax Rate per \$100 Valuation

**Table 3 Estimated Direct Ad Valorem Taxes without property tax incentives**

Year	Estimated Taxable value for I&S	Estimated Taxable value for M&O	Tax Rate <sup>1</sup>	Brackett ISD I&S Levy	Brackett ISD M&O Levy	Kinney County	Kinney County Groundwater Conservation District	School, County and Water District Property Taxes
				0.0000	1.0400	0.6558	0.0612	
2009	\$0	\$0		\$0	\$0	\$0	\$0	\$0
2010	\$0	\$0		\$0	\$0	\$0	\$0	\$0
2011	\$0	\$0		\$0	\$0	\$0	\$0	\$0
2012	\$82,080,000	\$82,080,000		\$0	\$853,632	\$538,281	\$50,233	\$1,442,146
2013	\$78,790,000	\$78,790,000		\$0	\$819,416	\$516,705	\$48,219	\$1,384,340
2014	\$75,640,000	\$75,640,000		\$0	\$786,656	\$496,047	\$46,292	\$1,328,995
2015	\$72,600,000	\$72,600,000		\$0	\$755,040	\$476,111	\$44,431	\$1,275,582
2016	\$69,700,000	\$69,700,000		\$0	\$724,880	\$457,093	\$42,656	\$1,224,629
2017	\$66,920,000	\$66,920,000		\$0	\$695,968	\$438,861	\$40,955	\$1,175,784
2018	\$64,240,000	\$64,240,000		\$0	\$668,096	\$421,286	\$39,315	\$1,128,697
2019	\$61,670,000	\$61,670,000		\$0	\$641,368	\$404,432	\$37,742	\$1,083,542
2020	\$59,210,000	\$59,210,000		\$0	\$615,784	\$388,299	\$36,237	\$1,040,320
2021	\$56,840,000	\$56,840,000		\$0	\$591,136	\$372,757	\$34,786	\$998,679
2022	\$54,560,000	\$54,560,000		\$0	\$567,424	\$357,804	\$33,391	\$958,619
2023	\$52,380,000	\$52,380,000		\$0	\$544,752	\$343,508	\$32,057	\$920,317
2024	\$50,290,000	\$50,290,000		\$0	\$523,016	\$329,802	\$30,777	\$883,595
			<b>Total</b>	\$0	\$8,787,168	\$5,540,985	\$517,091	\$14,845,244

Source: CPA, EC&R

<sup>1</sup>Tax Rate per \$100 Valuation

**Board Finding Number 7.**

**The revenue gains that will be realized by the school district if the Application is approved will be significant in the long-term, with special reference to revenues used for supporting school district debt.**

In support of this finding, the analysis prepared by Moak, Casey & Associates projects that the project would initially add \$85 million to the tax base for debt service purposes at the peak investment level for the 2010-11 school year. The EC&R project remains fully taxable for debt services taxes. Brackett ISD, however, currently does not levy an I&S rate. If voters approve a bond issue at a future date, the tax base increase from the E,C&R project could be beneficial for the first year or two, although state facilities funding would remain as an important component in compressing the I&S tax rate. The value of the EC&R project is expected to remain relatively stable over the course of the agreement. The District's wealth per ADA is expected to be \$145,700 per WADA.

**Board Finding Number 8.**

**The effect of the applicant's proposal, if approved, on the number or size of needed school district instructional facilities is not expected to increase the District's facility needs, with current trends suggest little underlying enrollment growth based on the impact of the EC&R project.**

The Summary of financial impact prepared by Moak, Casey & Associates, Inc., demonstrates that there will be little to no impact on school facilities created by the wind energy project. This finding is confirmed by the TEA evaluation of this project's impact on the number and size of school facilities in Brackett ISD as stated in **Attachment D**.

**Board Finding Number 9.**

**The ability of the applicant to locate the proposed facility in another state or another region of this state is substantial, as a result of the highly competitive marketplace for economic development.**

Board Findings of the Brackett Independent School District

In support of Finding 9, the economic impact evaluation states:

According to EC&R's application, "they are an international developer of wind projects and has operations in several regions and states within the U.S. ...and have the ability to locate projects of this type to the Southwest, Northwest, and Northeast as well as Canada and several European sites."

**Board Finding Number 10.**

**During the past two years, no projects in the Middle Rio Grande Council of Governments Region applied for value limitation agreements under Tax Code, Chapter 313.**

**Board Finding Number 11.**

**The Board of Trustees hired consultants to review and verify the information in the Application from EC&R. Based upon the consultants' review, the Board has determined that the information provided by the Applicant is true and correct.**

**Board Finding Number 12.**

**The Board of Trustees has determined that the Tax Limitation Amount requested by Applicant is currently One Million Dollars, which is consistent with the minimum values currently set out by Tax Code, §§ 313.022(b).**

According to the Texas Comptroller of Public Accounts' School and Appraisal Districts' Property Value Study 2008 Final Findings made under Subchapter M, Chapter 403, Government Code for the preceding tax year, **Attachment F**, the total 2008 industrial value for Brackett ISD is **\$1,000**. Under the provisions on Texas Tax Code Sec. 313.052, a rural school district with state industrial values of less than a \$100,000 is a Category 5 rural district, which permits the District to grant a value limitation of \$1,000,000.

**Board Finding Number 13.**

**The Applicant (Taxpayer Id. 32039451532) is eligible for the limitation on appraised value of qualified property as specified in the Agreement based on its "good standing" certification as a franchise-tax paying entity.**

**Board Finding Number 14.**

**The Agreement for an Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code, attached hereto as Attachment G, includes adequate and appropriate revenue protection provisions for the District.**

In support of this finding, the report of Moak, Casey & Associates, Inc. shows that the District will incur an initial revenue loss without the proposed Agreement, especially in the third year of the Agreement. However, with this Agreement, the negative consequences of granting the value limitation are offset through the revenue protection provisions agreed to by the Applicant and the District. Additional revenue protection measures are also in place for the duration of the Agreement.

**Board Finding Number 15.**

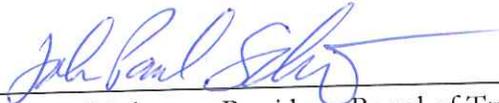
**Considering the purpose and effect of the law and the terms of the Agreement, that it is in the best interest of the District and the State to enter into the attached Agreement for Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes, pending approval by the Texas Comptroller pursuant to Texas Tax Code § 313.026.**

It is therefore Ordered that the Agreement attached hereto as **Attachment G** is approved and hereby authorized to be executed and delivered by and on behalf of the Brackett Independent School District. It is further ORDERED that these findings and the Attachments referred to herein be attached to the Official Minutes of this meeting, and maintained in the permanent records of the Board of Trustees of the Brackett Independent School District.

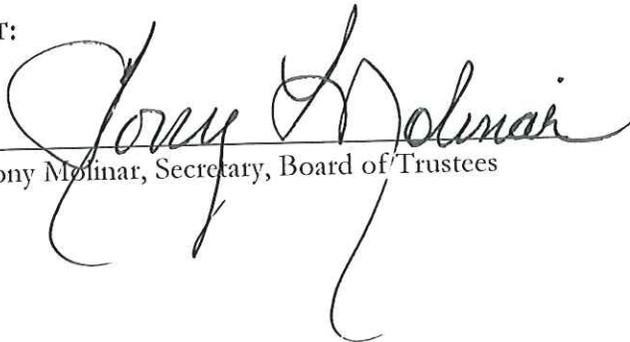
Board Findings of the Brackett Independent School District

Dated the 21st day of December 2009.

*BRACKETT INDEPENDENT SCHOOL DISTRICT*

By:   
John Paul Schuster, President, Board of Trustees

ATTEST:

By:   
Tony Molinar, Secretary, Board of Trustees





Attachment A

Application



# APPLICATION FOR APPRAISED VALUE LIMITATION ON QUALIFIED PROPERTY (Tax Code, Chapter 313, Subchapter B or C)

Supplemented 8/4/09

School district name <b>Brackett I.S.D.</b>	Date application filed with district (To be filled in by school district) <b>7-13-09</b>
Address <b>400 Ann Street, P.O. Box 586, Brackettville, TX 78832</b>	Phone (area code and number) <b>(830) 563-2491</b>

This form applies to property that meets the requirements of Tax Code Chapter 313. This completed application must be filed with the school district. If the governing body decides to consider this application, the school district must immediately forward three copies of the application to the Comptroller of Public Accounts and request that the Comptroller provide an economic impact evaluation of the application to the school district. The governing body may, at its discretion, allow the applicant to supplement or amend the application after the filing date, subject to the restrictions in Texas Administrative Code Rule 9.1054, to provide information required by the application form that was unavailable prior to the filing date. The school district must forward the supplemental or amended information to the comptroller and the appraisal district. The school board shall approve or disapprove this application before the 121st day from the application filing date, unless an extension is granted.

<b>Step 1: Applicant name and address</b>	Only entities to which Tax Code Chapter 171 applies are eligible for appraised value limitations on qualified property.		
	Applicant name: <b>EC&amp;R Development, LLC</b>		
	Mailing address: <b>812 San Antonio Street, Suite 201, Austin, TX 78701</b>		
	Texas Taxpayer I.D. Number of entity subject to Tax Code, Chapter 171 (11 digits): <b>32039451532</b>	City, State: <b>Austin, TX</b>	ZIP code + 4: <b>78701-2224</b>
	Name of person preparing this application: <b>Greg Buis</b>		Title: <b>Development Manager</b>
	Phone (area code and number): <b>(512) 517-8199</b>		

<b>Step 2: Describe the property.</b>	(A) Attach the following items to this application: <ol style="list-style-type: none"> <li>A specific description of all property for which you are requesting an appraised value limitation as defined by Tax Code §313.021(2). Include a description of the land, describe each proposed improvement, and each proposed item of personal property for which you are seeking a limitation. Include each existing appraisal district account number and the legal description of the land, attach a detailed map showing the actual or proposed location of the land and proposed improvements and showing the actual or proposed boundaries and size of the reinvestment zone or enterprise zone in which the property will be located. Attach the order, resolution or ordinance establishing the zone, and the guidelines and criteria for creating the zone (if applicable).</li> <li>A fully detailed description of the scope of the proposed project, including, at a minimum, the type and planned use of real and tangible personal property, the nature of the business, a timeline for property construction or installation, and any other relevant information.</li> <li>A map of the reinvestment zone boundaries, certified to be accurate by either the governmental entity creating the zone, the local appraisal district, or a licensed surveyor.</li> </ol>
	(B) Answer the following questions: <ol style="list-style-type: none"> <li>What is the first tax year of your proposed qualifying time period (as defined by Tax Code §313.021(4))? ..... <u>2010</u></li> <li>What is the amount of qualified investment, as defined by Tax Code §313.021(1), that will be made during the 2-year qualifying time period? .... <u>\$ 85,500,000</u></li> <li>What is the amount of appraised value limitation for which you are applying? . . . <u>\$ 1,000,000</u></li> </ol>
	NOTE: The minimum amount of qualified investment required to qualify for an appraised value limitation and the minimum amount of appraised value limitation vary depending on whether the school district is classified as rural, and the school district's property value. For assistance in determining these minimums, access the comptroller's Web site at <a href="http://www.window.state.tx.us/taxinfo/proptax/hb1200/values.html">http://www.window.state.tx.us/taxinfo/proptax/hb1200/values.html</a> .

**Step 3:**  
**Answer these questions about property and job qualifications.**

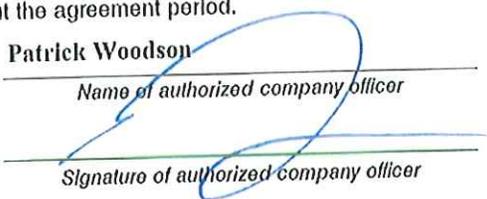
1. Do you propose to construct a new building or to erect or affix a new improvement after the date you submit this application?  Yes  No
2. Will all of the property for which you are requesting an appraised value limitation be free of a tax abatement agreement entered into by a school district for the duration of the qualifying time period, and for the duration of the appraised value limitation?  Yes  No
3. Is the land on which you propose new construction or improvement currently located in an area designated as a reinvestment zone under Tax Code Chapter 311 or 312 or as an enterprise zone under Government Code Chapter 2303?  Yes  No
  - 3(a) If you answered "no" to the question above, are you seeking an agreement with a taxing unit that, prior to the first day of the qualifying time period, will result in a reinvestment zone with boundaries encompassing the land on which you propose new construction or improvement?  Yes  No  
 Date of anticipated agreement? \_\_\_\_\_
4. Do you intend to make at least the minimum qualified investment required by Tax Code §313.023 (or 313.053 for rural school districts) for the relevant school district category?  Yes  No
5. On the land and in connection with the new building or other improvement, do you plan to create at least 25 new jobs (at least 10 new jobs for rural school districts)?  Yes  No
6. Will at least 80 percent of all the new jobs created by the property owner be qualifying jobs as defined by Tax Code §313.021(3)?  Yes  No
  - 6(a) If you answered "yes" to the question above, attach documentation from the Texas Workforce Commission that the new qualifying jobs meet the requirements of Tax Code §313.021(3)(E) or 313.051(b).
7. Do you intend to request that the governing body waive the minimum jobs creation requirement, as provided under Tax Code §313.025(f-1)?  Yes  No
  - 7(a) If you answered "yes" to the question above, attach evidence documenting that the job creation requirement (5) above exceeds the number of employees necessary for the operation, according to industry standards.
8. Except for new equipment described in Tax Code §151.318(q) or (q-1), is the proposed tangible personal property to be placed in service for the first time
  - a) in or on the new building or other new improvement for which you are applying for an appraised value limitation, or
  - b) if not in or on the new building or other new improvement for which you are applying for an appraised value limitation, is the personal property necessary and ancillary to the business conducted in the new building or other new improvement, and is the personal property on the same parcel of land as the building for which you are applying for an appraised value limitation?  Yes  No  N/A  
 ["First placed in service" means the first use of the property by the taxpayer.]
9. The property will be used as an integral part, or as a necessary auxiliary part, in one of the following activities as defined by Tax Code §313.024(b):
  - manufacturing;  Yes  No
  - research and development  Yes  No
  - a clean coal project;  Yes  No
  - an advanced clean energy project  Yes  No
  - renewable energy electric generation;  Yes  No
  - electric power generation using integrated gasification combined cycle technology; or  Yes  No
  - nuclear electric power generation  Yes  No
10. Are you an entity to which Tax Code, Chapter 171 applies?  Yes  No

<p><b>Step 4:</b> Answer these questions about investment, property value and employment.</p>	<ol style="list-style-type: none"> <li>1. Will the investment in real or personal property you propose to be counted toward the minimum qualified investment required by Tax Code §313.023, (or 313.053 for rural school districts) be first placed in service in this state during the applicable qualifying time period? ..... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</li> <li>2. Does the investment in tangible personal property meet the requirements of Tax Code §313.021(1)? ..... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</li> <li>3. If the proposed investment includes a building or a permanent, non-removable component of a building, does it house tangible personal property described above? ..... <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</li> <li>4. Will you own the property or lease the property under a capitalized lease? If leased, attach a copy of the lease agreement..... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</li> <li>5. Are you including property that is owned by a person other than the applicant and that is pooled or proposed to be pooled with property owned by the applicant in determining the amount of your qualified investment? ..... <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</li> </ol>
<p><b>Step 5:</b> Economic Impact</p>	<p>Please answer the following questions.</p> <ol style="list-style-type: none"> <li>1. Applicant's 6-digit North American Industry Classification System (NAICS) code: ..... <u>221,119</u></li> <li>2. Is Schedule A completed for all years and attached? ..... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</li> <li>3. Is Schedule B completed for all years and attached? ..... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</li> <li>4. Is Schedule C completed for all years and attached? ..... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</li> <li>5. Total number of new jobs that will have been created when fully operational: ..... <u>6</u></li> <li>6. Total number of new jobs identified in (5) above that will have wages greater than 110 percent of the county average weekly wage for manufacturing jobs*: ..... <u>6</u></li> <li>7. Total number of new jobs identified in (5) above that will meet all the criteria for "qualifying jobs" as specified in Tax Code §313.021(3): ..... <u>6</u></li> <li>8. Describe each type of benefits to be offered to qualifying jobholders. Explain.  <u>Employees will have full benefits including health insurance, competitive salaries, and training.</u> </li> </ol> <p><u>NOTE: Exhibit C-1 explains E.ON's request for a waiver of the minimum job requirement.</u></p> <p><u>Exhibits C-2 and C-3 address the county average weekly wage for manufacturing jobs.</u></p> <ol style="list-style-type: none"> <li>8(a) Will the jobs created offer at least 80 percent of the premiums or other charges assessed for employee-only coverage under the group health benefit plan for qualifying jobholders? ..... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</li> <li>9. Describe the ability of your company to locate or relocate in another state or another region of the state.  <u>E.ON Climate &amp; Renewables is an international developer of wind projects and has operations in several regions and states within the U.S. We have the ability to locate projects of this type in the Southwest, Northwest, and Northeast, as well as Canada and several European sites.</u> </li> <li>10. Describe the current economic condition of the region of the state where the property is located.  <u>The project is expected to add more than \$75 million in investment to the local tax base and create jobs in the area. The project should improve economic conditions locally and within the region. The region is rural, with an emphasis on agriculture. Some oil and gas production exists.</u> </li> </ol> <p><small>* Applicants to rural school districts that are not located in an SIA (see §313.051(a)(2)) must meet the regional wage standard described in 313.051(b).</small></p>

**Step 6:**  
Applicant sign and date application.

By signing this application, you certify that this information is true and correct to the best of your knowledge and belief. Also by signing this application, you agree to respond promptly to all information requests made by the comptroller under Tax Code §313.032 and to send updated contact information to the comptroller throughout the agreement period.

**print here** ▶ Patrick Woodson  
*Name of authorized company officer*

**sign here** ▶   
*Signature of authorized company officer*

Sr. Vice President  
*Title*

July 13, 2009  
*Date*

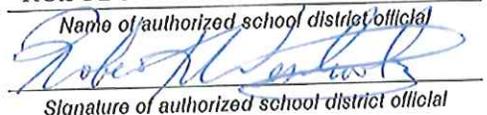
On behalf of EC&R Development, LLC  
*Name of corporation/company*

If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under Texas Penal Code §37.10.

**Step 7:**  
School district official sign and date application.

By signing below, I affirm that I have been delegated the authority by the school district governing body to act on its behalf with regard to this application for a limitation on appraised value.

**print here** ▶ Robert Westbrook  
*Name of authorized school district official*

**sign here** ▶   
*Signature of authorized school district official*

Superintendent  
*Title*

7/13/09  
*Date*

On behalf of Brackett I.S.D.  
*Name of school district*

**SCHEDULE A-3676 (Temporary - July 2009): INVESTMENT & TAXES**

(Brackett I.S.D.)

		PROPERTY INVESTMENT AMOUNTS (\$) (In millions)					TAX INFORMATION			
		(Estimated investment in each year. Do not put cumulative totals.)								
	Year	Column A: Tangible Personal Property: the amount of new investment (original cost) placed in service during this year	Column B: Building or nonremovable component of building (annual amount only)	Column C: Sum of A and B—Qualifying Investment (during the qualifying time period)	Column D: Other investment that is not qualified investment but investment affecting economic impact and total value	Column E: Total Investment (A+B+D)	Column F: Estimate of total annual expenditures* subject to state sales tax	Column G: Estimate of total annual expenditures* made in Texas NOT subject to sales tax	Column H: Estimate of Franchise tax due from (or attributable to) the applicant	
The year preceding the first complete tax year of the qualifying time period (assuming no deferrals)	Investment made before filing application with district (neither qualified property nor eligible to become qualified investment)	0.00	0.00	0.00	0.00	0.00				
	Investment made after filing application with district, but before application approval (eligible to become qualified property)	0.00	0.00	0.00	0.00	0.00				
	1 of first complete tax year of qualifying time period (qualified investment and eligible to become qualified property)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Tax Credit Period (with 50% cap on credit)	Complete tax years of qualifying time period	2010	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
		2011	0.00	85.50	85.50	0.00	85.50	25.65	102.50	
		2012	0.00	0.00	0.00	0.00	0.00	0.14	5.99	
		2013	0.00	0.00	0.00	0.00	0.00	0.14	5.02	
		2014	0.00	0.00	0.00	0.00	0.00	0.13	5.28	
		2015	0.00	0.00	0.00	0.00	0.00	0.12	4.98	
		2016	0.00	0.00	0.00	0.00	0.00	0.13	5.32	
		2017	0.00	0.00	0.00	0.00	0.00	0.15	6.27	
		2018	0.00	0.00	0.00	0.00	0.00	0.15	6.43	
		2019	0.00	0.00	0.00	0.00	0.00	0.16	6.57	
		2020	0.00	0.00	0.00	0.00	0.00	0.16	6.72	
		2021	0.00	0.00	0.00	0.00	0.00	0.16	6.90	
		2022	0.00	0.00	0.00	0.00	0.00	0.19	7.87	
		2023	0.00	0.00	0.00	0.00	0.00	0.19	7.91	
		2024	0.00	0.00	0.00	0.00	0.00	0.20	8.28	
Credit Settle-Up Period										
Post-Settle-Up Period										

Qualifying Time Period usually begins with the approval of the application and extends generally for the following two complete tax years.

Column A: This represents the total dollar amount of planned investment in tangible personal property the applicant considers qualified investment-as defined in Tax Code §313.021(1)(A)-(D). For the purposes of investment, please list amount invested each year, not cumulative totals.

Column B: For the years outside the qualifying time period, this number should simply represent the planned investment in tangible personal property. Include estimates of investment for "replacement" property-property that is part of original agreement but scheduled for probable replacement during limitation period.

Column C: The total dollar amount of planned investment each year in buildings or nonremovable component of buildings that the applicant considers qualified investment under Tax Code §313.021(1)(E). For the years outside the qualifying time period, this number should simply represent the planned investment in new buildings or nonremovable components of buildings.

Column D: Dollar value of other investment that may not be qualified investment but that may affect economic impact and total value. The most significant example for many projects would be land. Other examples may be items such as professional services, etc. Note: Land can be listed as part of investment during the "pre-year 1" time period. It cannot be part of qualifying investment.

\* For planning, construction and operation of the facility.

Note: Information related to taxes in Columns F through H, for the year preceding the first complete year of the qualifying time period, need not be broken out by the time periods used for the requested investment information in Columns A through E. Note: For advanced clean energy projects, nuclear projects, projects with deferred qualifying time periods, and projects with lengthy application review periods, insert additional rows as needed.

The information on this schedule is required pursuant to the provisions of HB 3676, 81st Legislature, effective June 19, 2006. Additionally, the Comptroller is authorized by 34 TAC § 9.1057(b) to request information from the school district or applicant that is reasonably necessary to complete the recommendation or economic impact evaluation at any time during the application review period.

**SCHEDULE B-3676 (Temporary - July 2009): ESTIMATED MARKET AND TAXABLE VALUE (In millions)**  
**(Brackett I.S.D.)**

All figures here are to be cumulative

	Year	Qualified Property			Reductions from market value (exemptions, etc)		Estimated Taxable Value	
		Column A: Estimated Market Value of Land	Column B: Estimated Total Market Value of new buildings or other new improvements	Column C: Estimated Total Market Value of tangible personal property in the new building or "in or on the new improvement"	D: Due to pollution control property (estimated or actual as appropriate)	E: Due to other exemptions	F: Estimated total taxable value for I&S: (A+B+C)-(D+E)	G: Estimated total taxable value for M&O: (Column F amount with the limitation value in years 3-10)
	pre-year 1	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Complete tax years of qualifying time period	1	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	2	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Tax Credit Period (with 50% cap on credit)	3	0.00	82.08	0.00	0.00	0.00	82.08	1.00
	4	0.00	78.79	0.00	0.00	0.00	78.79	1.00
	5	0.00	75.64	0.00	0.00	0.00	75.64	1.00
	6	0.00	72.60	0.00	0.00	0.00	72.60	1.00
	7	0.00	69.70	0.00	0.00	0.00	69.70	1.00
	8	0.00	66.92	0.00	0.00	0.00	66.92	1.00
	9	0.00	64.24	0.00	0.00	0.00	64.24	1.00
	10	0.00	61.67	0.00	0.00	0.00	61.67	1.00
	11	0.00	59.21	0.00	0.00	0.00	59.21	59.21
	12	0.00	56.84	0.00	0.00	0.00	56.84	56.84
Credit Settle-Up Period	13	0.00	54.56	0.00	0.00	0.00	54.56	54.56
Post-Settle-Up Period	14	0.00	52.38	0.00	0.00	0.00	52.38	52.38
	15	0.00	50.29	0.00	0.00	0.00	50.29	50.29

The information on this schedule is required pursuant to the provisions of HB 3676, 81st Legislature, effective June 19, 2009. Additionally, the Comptroller is authorized by 34 TAC § 9.1057(b) to request information from the school district or applicant that is reasonably necessary to complete the recommendation or economic impact evaluation at any time during the application review period.

**SCHEDULE C-3676 (Temporary - July 2009): EMPLOYMENT INFORMATION**

**(Brackett I.S.D.)**

	Year	Tax Year (fill in actual tax year)	Existing Jobs		Construction		Permanent New Jobs		Qualifying Jobs	
			Column A: Number of permanent existing full time jobs prior to application	Column B: Number of Construction FTE's or man-hours (specify) <b>FTE's</b>	Column C: Average annual wage rates for construction workers	Column D: Total number of permanent full-time new jobs applicant commits to create	Column E: Average annual wage rate for all permanent new jobs for each year	Column F: Number of qualifying jobs applicant commits to create meeting all criteria of Sec. 313.021(3)	Column G: Avg. annual wage of qualifying jobs	
	pre- year 1	2009	0	0	N/A	0	0	0	0	0
	1	2010	0	0	N/A	0	0	0	0	0
	2	2011	0	100	29,538	6	29,538	6	29,538	29,538
	3	2012	0	0	N/A	6	29,538	6	29,538	29,538
	4	2013	0	0	N/A	6	29,538	6	29,538	29,538
	5	2014	0	0	N/A	6	29,538	6	29,538	29,538
	6	2015	0	0	N/A	6	29,538	6	29,538	29,538
	7	2016	0	0	N/A	6	29,538	6	29,538	29,538
	8	2017	0	0	N/A	6	29,538	6	29,538	29,538
	9	2018	0	0	N/A	6	29,538	6	29,538	29,538
	10	2019	0	0	N/A	6	29,538	6	29,538	29,538
	11	2020	0	0	N/A	6	29,538	6	29,538	29,538
	12	2021	0	0	N/A	6	29,538	6	29,538	29,538
	13	2022	0	0	N/A	6	29,538	6	29,538	29,538
	14	2023	0	0	N/A	6	29,538	6	29,538	29,538
	15	2024	0	0	N/A	6	29,538	6	29,538	29,538
Complete tax years of qualifying time period										
Value Limitation Period										
Tax Credit Period (with 50% cap on credit)										
Credit Settle-Up Period										
Post-Settle-Up Period										

The information on this schedule is required pursuant to the provisions of HB 3676, 81st Legislature, effective June 19, 2009. Additionally, the Comptroller is authorized by 34 TAC § 9.1057(b) to request information from the school district or applicant that is reasonably necessary to complete the recommendation or economic impact evaluation at any time during the application review period.

Note: Section 313.024(d) Tax Code requires that, to be eligible for a limitation, 80 percent of all new jobs must be qualifying jobs.

**Temporary Addendum to Application for Appraised Value Limitation on  
Qualified Property - July 2009**

The 81<sup>st</sup> Legislature passed HB 3676, which made changes to Texas Tax Code, Chapter 313<sup>1</sup>, including more information required to be analyzed in the Comptroller's economic impact evaluation (§313.026(a)). In order to facilitate completion of the evaluation, please provide the following, including temporary supplemental schedules A, B & C to collect information needed for HB 3676. The information on this addendum and additional schedules is required pursuant to the provisions of HB 3676, 81st Legislature, effective June 19, 2009. Additionally, the Comptroller is authorized by 34 TAC § 9.1057(b) to request information from the school district or applicant that is reasonably necessary to complete the recommendation or economic impact evaluation at any time during the application review period. (Note: Should the applicant anticipate the need to keep any of the requested information in the application, addendum or supplemental schedules confidential, please read the attachment entitled 'Confidential Information submitted to the Comptroller' at the end of this addendum.)

Applicant name: EC&R Development, LLC

Please describe the general nature of the applicant's investment:

The investment will consist of a wind power generation facility located in Kinney County, Texas. The improvements will include wind turbines and towers and also any other property in the Reinvestment Zone that will be used to produce wind power and perform other functions related to the production, distribution, and transmission of electric power.

Taxing entities that have jurisdiction for the property:

County: Kinney

Are you seeking property tax abatements or other favorable tax treatment from this entity? If so, please describe the request (typically the percentage abatement and the length of time the abatement would be in effect).

Yes. 70% abatement requested for 10 years.

City: Not seeking any tax abatements or favorable tax treatment from the City.

Are you seeking property tax abatements or other favorable tax treatment from this entity? If so, please describe the request (typically the percentage abatement and the length of time the abatement would be in effect)

Hospital District: Not aware of any relevant hospital district for this county.

---

<sup>1</sup> All references are to Texas Tax Code, Chapter 313 as amended by HB 3676, 81<sup>st</sup> Legislature, unless otherwise noted.

Are you seeking property tax abatements or other favorable tax treatment from this entity? If so, please describe the request (typically the percentage abatement and the length of time the abatement would be in effect).

Other (describe): Water Conservation District

Are you seeking property tax abatements or other favorable tax treatment from any of these entities? If so, please describe the request (typically the percentage abatement and the length of time the abatement would be in effect).

Yes. Seeking 70% abatement for 10 years from the Water Conservation District.

Are you seeking any other state or local economic development incentives? Examples could include road or public infrastructure improvements, job training grants, loan guarantees, special financing, etc.) No If yes, please describe, attaching documentation as necessary.

The locally collected sales tax rate is: 2%

Will the land upon which the new building or new improvement be built be part of the qualified property described by §313.021(2)(A)? No If yes, please attach complete documentation: legal description, parcel ID, current taxable value, owner, etc.

Will the project be on leased land? Yes

If there are any other payments made in the state or economic information that you believe should be included in the economic analysis, please attach a separate schedule showing the amount for each year affected, including an explanation.

What is the anticipated date of application approval? December 11, 2009

What is the anticipated date of beginning of the qualifying time period? December 11, 2009

What is the approximate date the proposed facility or new improvement is expected to be fully operational? March 31, 2012

What is the minimum required annual wage for each qualified job in this school district? [See new §§313.021(5)(A) or 313.021(5)(B) or 313.021(3)(E)(ii), or 313.051(b).] Please specify method of computation and attach documentation from TWC web site. (Note that applicants to school districts subject to Subchapter C because of demographic characteristics must meet the regional wage standard described in §313.051(b) )

Brackett ISD is a rural district and therefore the minimum required wage is 110% of the annual wage for the Middle Rio Grande Valley Council of Governments (See Exhibit C-3). The annual wage for the MRGVCG is \$26,853. Therefore, the minimum required annual wage for the qualifying jobs in this school district is \$29,538.

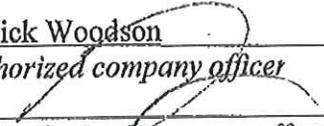
What is the minimum annual wage you will be paying for each qualified job in this school district?

\$29,538

What is the maximum number of qualifying jobs meeting all criteria of §313.021(3) you are committing to create? (Use Schedule C-3676, Column F to indicate number of qualifying jobs in specific years.)

6.

By signing this addendum, you certify that this information is true and correct to the best of your knowledge and belief.

Patrick Woodson  
*Name of authorized company officer*  
  
*Signature of authorized company officer*

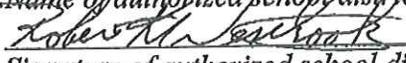
Sr. Vice President  
*Title*  
10/9/09  
*Date*

On behalf of EC&R Development, LLC  
*Name of corporation/company*

**If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under Texas Penal Code §37.10.**

**School district official sign and date application.**

By signing below, I affirm that I have been delegated the authority by the school district governing body to act on its behalf with regard to this application for a limitation on appraised value.

Robert K. Westbrook  
*Name of authorized school district officer*  
  
*Signature of authorized school district official*

Superintendent  
*Title*  
10/14/09  
*Date*

*Name of school district* Brackett I.S.D.

## ATTACHMENT:

### Property Tax Limitation Agreement Applications Texas Government Code Chapter 313 Confidential Information submitted to the Comptroller

Generally, an application for property tax value limitation, the information provided therein, and documents submitted in support thereof, are considered public information subject to release under the Texas Public Information Act. There is an exception, outlined below, by which information will be withheld from disclosure:

The Comptroller's office will withhold information from public release if it 1) describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property covered by the application; 2) the information has been segregated in the application from other information in the application; and 3) the party requesting confidentiality provides the Comptroller's office specific reasons, including any relevant legal authority, stating why the material is believed to be confidential. All applications and parts of applications which are not segregated and marked as confidential as outlined above will be considered public information.

Such information properly identified as confidential will be withheld from public release unless and until the governing body of the school district acts on the application or we are directed to do so by a ruling from the Attorney General. Other information in the custody of a school district or the comptroller in connection with the application, including information related to the economic impact of a project or the essential elements of eligibility under Texas Tax Code, Chapter 313, such as the nature and amount of the projected investment, employment, wages, and benefits, will not be considered confidential business information if the governing body of the school district agrees to consider the application.

All documents submitted to the Comptroller, as well as all information in the application once the school district acts thereon, are subject to public release unless specific parts of the application or documents submitted with the application are identified as confidential. Any person seeking to limit disclosure of such submitted records is advised to consult with their legal counsel regarding disclosure issues and also to take the appropriate precautions to safeguard copyrighted material, trade secrets, or any other proprietary information. The Comptroller assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by respondents. A person seeking to limit disclosure of information must submit in writing specific detailed reasons, including any relevant legal authority, stating why that person believes the material to be confidential.

The following outlines how the Comptroller's office will handle requests for information

submitted under the Texas Public Information Act for application portions and submitted records appropriately identified as confidential. This office shall forward the request for records and a copy of the documents at issue to the Texas Attorney General's office for an opinion on whether such information may be withheld from disclosure under the Texas Public Information Act. The Comptroller will notify the person who submitted the application/documents when the information is forwarded to the Attorney General's office. Please be aware that this Office is obligated to comply with an Attorney General's decision, including release of information ruled public even if it was marked confidential.

All §references are to Texas Tax Code, Chapter 313 as amended by HB 3676, 81<sup>st</sup> Legislature, unless otherwise noted.

**Exhibit A-1**  
**Legal Description of Property**

1. A description of all property for which you are requesting an appraised value limitation (qualified property) as defined by Tax Code Section 313.021 (2). Include land, improvements and any personal property. Include any existing appraisal district account number and legal description of the land, a survey and a map showing the actual or proposed location of the land and proposed investment, and the actual or proposed boundaries of the reinvestment zone or enterprise zone. Include any existing resolution or ordinance establishing the zone.
  - All of the real property contained in Sections 10, 11, 12, 15, and 17 of Block 9, of the I. & G.N. RR. CO. Surveys.
  - All of the real property contained in the Sisto Saminiego Survey 618.
  - All of the real property contained in the 558.7 acres of the East ½ of the JOHN ERWIN Survey 607.
  - All of the real property contained in the 234.1 acres of the East ½ of the R. W. Gilpin Survey 329, North of the Railroad.
  - All of the real property contained in the 684.8 acres of the R. W. Gilpin Survey 329, South of the Railroad.
  - All of the real property contained in the 2637.7 acres of the Adam Byerly Survey 327, South of State Highway 90.
  - All of the real property contained in the 462.8 acres of the Northwest ¼ of the E.A. Pullam Survey 326, North of State Highway 10.
  - All of the real property contained in the 2076.7 acres of the E.A. Pullam Survey 326, South of State Highway 90.
  - All of the real property contained in the Ramon Manchaca Survey 330.
  - All of the real property contained in the Jose Ignacio Espinosa Survey 328.
  - All of the real property contained in the William Morris Survey 843.
  - All of the real property contained in the John C. Knox Survey 11.
  - All of the real property contained in Section 621 of the G.C. & S.F. Survey.
  - All of the real property contained in Sections 129, 130, 131, of Block 6 of the I. & G.N. RR. CO. Surveys.

- All of the real property contained in the R.J. Calder Survey 877.
- All of the real property contained in Section 839 of the H.C. Willyard Survey.
- All of the real property contained in Section 841 of the N.K. Crow Survey.
- All of the real property contained in the Lem C. Cartwright Survey 842.
- All of the real property contained in the A.C. Pingenot Survey 848.
- All of the real property contained in the M.R. Perez Survey 9.
- All of the real property contained in the 335.9 acres of the West ½ of Section 845 of the GC & F Survey.
- All of the real property contained in the Mrs. Nancy Coursey Survey 838.
- All of the real property contained in the Mrs. Sophonia E. Cone Survey 836.
- All of the real property contained in the G.L. Bledsoe Survey 835.
- All of the real property contained in the Mrs. M.J. Briscoe Survey 834.
- All of the real property contained in the W.B. Rome Survey 840.
- All of the real property contained in the Pacificia Bustamente Survey 10.
- All of the real property contained in Section 621 of the G.C. & S.F. RY. CO. Surveys.

## Exhibit A-2

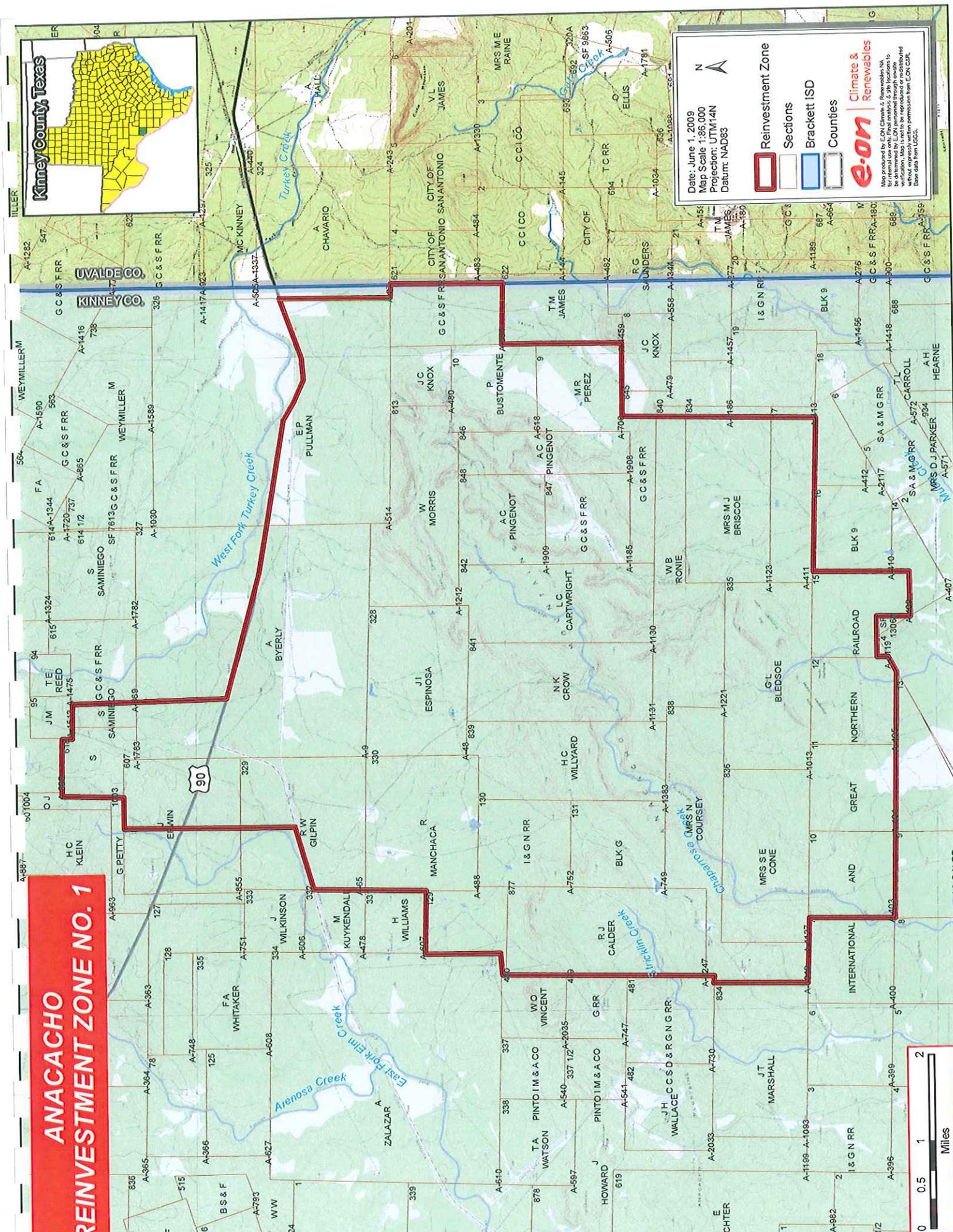
1. A description of all property for which you are requesting an appraised value limitation (qualified property) as defined by Tax Code Section 313.021 (2). Include land, improvements and any personal property. Include any existing appraisal district account number and legal description of the land, a survey and a map showing the actual or proposed location of the land and proposed investment, and the actual or proposed boundaries of the reinvestment zone or enterprise zone. Include any existing resolution or ordinance establishing the zone.

The applicant is requesting an appraised value limitation on all of the property constructed or placed upon the real property described in Exhibit A-1, which is located in Kinney County, Texas and in the Brackett Independent School District. The property for which the applicant is requesting an appraised value limitation shall include, but is not limited to, the following: 85 MW wind power generation facility containing 57 General Electric 1.5 MW turbines, towers, transformers, transmission lines, and associated ancillary equipment necessary to safely operate, maintain and transmit power to the ERCOT grid, and meteorological equipment to measure and test wind speed and direction. The facility will require a relatively insubstantial amount of personal property. None of the above property is covered under an existing appraisal account number.

**Exhibit A-3**

**Map of Reinvestment Zone**

# ANACACHO REINVESTMENT ZONE NO. 1



Date: June 1, 2009  
 Map Scale: 1:86,000  
 Projection: UTM14N  
 Datum: NAD83

- Reinvestment Zone
- Sections
- Brackett ISD
- Counties

**E.ON** Climate & Renewables  
Map produced by E.ON Climate & Renewables. No warranty is made by E.ON for the accuracy of the information. Map is to be used for informational purposes only. Map is not to be reproduced or used for any other purpose without the prior written permission from E.ON USA. Base data from USGS.



**Exhibit A-4**

**Resolution Establishing the Reinvestment Zone**

Resolution re Eligibility to  
Participate In Tax Abatement  
Agreements and Adopting  
Guidelines and Criteria

§  
§  
§  
§

Commissioners' Court  
Kinney County, Texas

## RESOLUTION

### Declaring Kinney County, Texas Eligible to Participate in Tax Abatement Agreements and Adopting Tax Abatement Guidelines and Criteria

The Commissioners' Court of Kinney County, Texas, meeting in regular session on the 18 day of May, 2009, considered the following resolution:

WHEREAS the Kinney County Commissioners' Court desires to create the proper economic and social environment to induce the investment of private resources in productive business enterprises located in the County and to provide employment to residents of such area, and

WHEREAS, tax abatement is an accepted and proven tool for economic development which can result in long-term positive economic impacts for the community, and

WHEREAS, it is necessary and in the best interest of the County to offer abatement to qualified owners or lessees of new, expanded, or modernized buildings and structures.

WHEREAS, pursuant to section 312.002 (a) of the Texas Tax Code, Kinney County intends to establish Guidelines and Criteria to provide a uniform procedure for the review and approval of tax abatements.

NOW THEREFORE, BE IT RESOLVED, AS FOLLOWS:

THAT the Commissioners' Court of Kinney County, Texas elects to become eligible to participate in tax abatement agreements as authorized by section 312 of the Texas Tax Code, and

THAT Kinney County adopts the Tax Abatement Guidelines and Criteria in substantially the form of Exhibit A attached hereto and incorporated herein by reference.

OFFERED AND ADOPTED this 18 day of May 2009

Woody Massingill  
Woody Massingill  
Commissioner Precinct 1

Joe Montalvo  
Joe Montalvo  
Commissioner Precinct 2

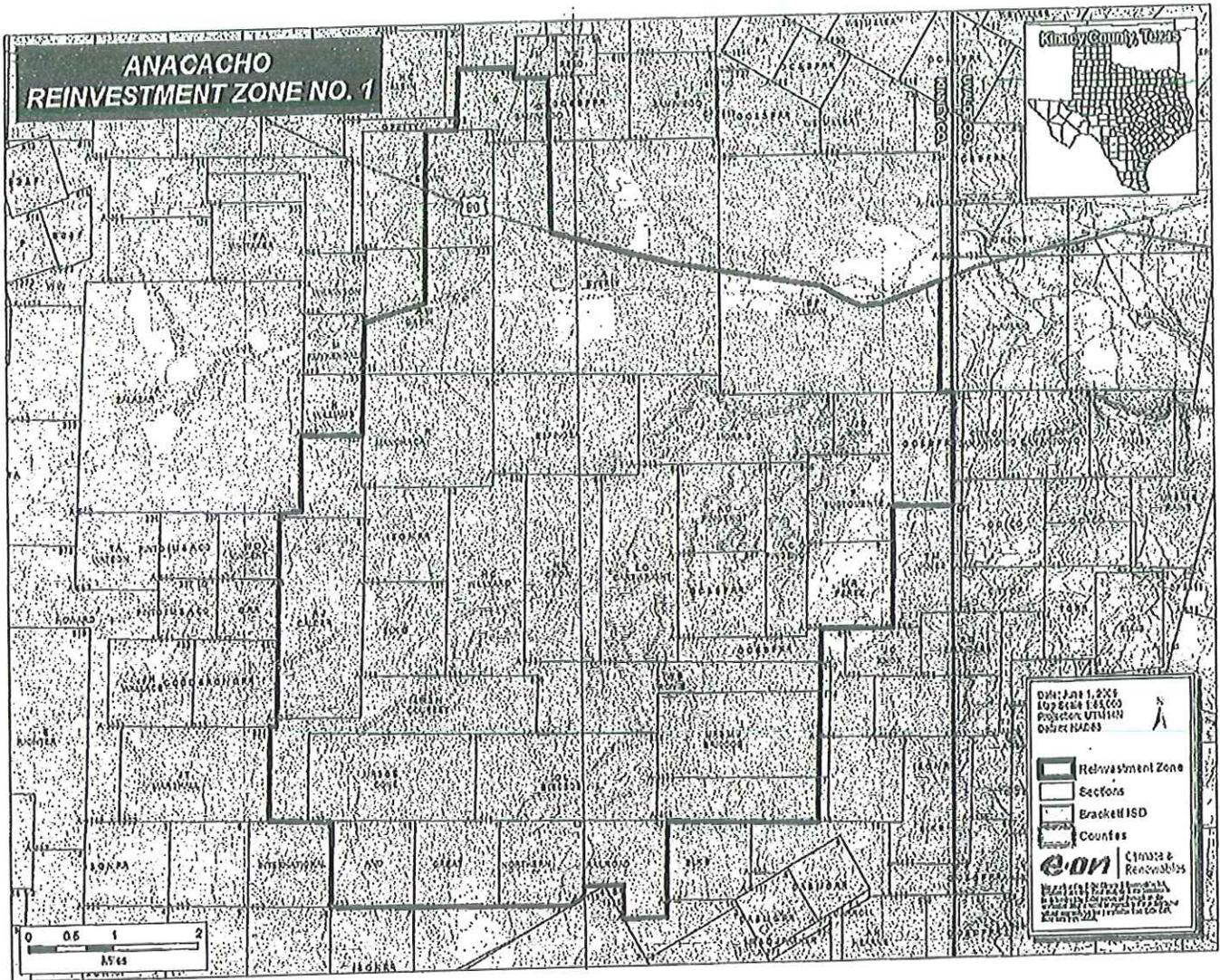
Dennis Dodson  
Dennis Dodson  
Commissioner Precinct 3

Pat Melancon  
Pat Melancon  
Commissioner Precinct 4

The foregoing Resolution is a true and correct copy of the actual Resolution passed by the Commissioner's Court in open and regular session at the Kinney County Courthouse at 10:00 on the 18 day of May 2009.  
A.M.

Dora Elia Sandoval  
Dora Sandoval, County Clerk  
Kinney County, Texas

Exhibit B  
Map of Reinvestment Zone



**KINNEY COUNTY  
STATE OF TEXAS  
TAX ABATEMENT GUIDELINES AND CRITERIA**

The purpose of this document is to establish guidelines, criteria, and a uniform policy of tax abatement for owners or lessees of eligible facilities willing to execute tax abatement contracts designed to provide long-term significant positive economic impact to the community by utilizing the area contractors and work force to the maximum extent feasible, and by developing, redeveloping, and improving property. Except as otherwise provided, all contracts will be identical.

In order to be eligible for designation as a reinvestment zone and receive tax abatement, the planned improvement:

1. Must be reasonably expected to have an increase in positive net economic benefit to Kinney County of at least \$100,000.00 over the life of the abatement, computed to include (but is not limited to) new sustaining payroll and/or capital improvement. The creation of (number and type) of new jobs will also factor into the decision to grant an abatement; and
2. Must not be expected to solely or primarily have the effect of transferring employment from one part of Kinney County to another without a super-majority vote of approval from the Commissioners' Court.

In addition to the criteria set forth above, the Kinney County Commissioners' Court reserves the right to negotiate a Tax Abatement Agreement in order to compete favorably with other communities.

Only that increase in the fair market value of the property directly resultant from the development, redevelopment, and improvement specified in the contract will be eligible for abatement and then only to the extent that such increase exceeds any reduction in the fair market value of the other property of the applicant located within the jurisdiction creating the reinvestment zone.

All abatement contracts will be no longer than allowed by law.

This policy is effective as of \_\_\_\_\_, 2009 and shall at all times be kept current with regard to the needs of Kinney County and reflective of the official views of the County Commissioners' Court and shall be reviewed every two years.

The adoption of these guidelines and criteria by the Kinney County Commissioners' Court does not:

- (1) limit the discretion of the governing body to decide whether to enter into a specific tax abatement agreement;

(2) limit the discretion of the governing body to delegate to its employees the authority to determine whether or not the governing body should consider a particular application or request for tax abatement; or

(3) create any property, contract, or other legal right in any person to have the governing body consider or grant a specific application or request for tax abatement.

### DEFINITIONS-SECTION 1

- (a) "**Abatement**" means the full or partial exemption from ad valorem taxes of certain property in a reinvestment zone designated by Kinney County for economic development purposes.
- (b) "**Agreement**" means a contractual agreement between a property owner and/or lessee and Kinney County.
- (c) "**Base year value**" means the assessed value on the eligible property as of January 1 preceding the execution of the agreement.
- (d) "**Deferred maintenance**" means improvements necessary for continued operation which do not improve productivity or alter the process technology.
- (e) "**Eligible Facilities**" means new, expanded, or modernized buildings and structures, including fixed machinery and equipment, which is reasonably likely as a result of granting abatement to contribute to the retention or expansion of primary employment or to attract major investment in the reinvestment zone that would be a benefit to the property and that would contribute to the economic development of Kinney County, but does not include Facilities which are intended to be primarily to provide goods or services to residents for existing businesses located in Kinney County such as, but not limited to, restaurants and retail sales establishments.
- (f) "**Expansion**" means the addition of buildings, structures, machinery, equipment, or payroll for purposes of increasing production capacity.
- (g) "**Facility**" means property improvement completed or in the process of construction which together comprise an interregional whole.
- (h) "**Modernization**" means a complete or partial demolition of Facilities and the complete or partial reconstruction or installation of a Facility of similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of buildings, structures, machinery, or equipment, or both.
- (i) "**New Facility**" means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.

- (j) **"Productive Life"** means the number of years a property improvement is expected to be in service in a facility.

## ABATEMENT AUTHORIZED - SECTION 2

(a) **Eligible Facilities.** Upon application, Eligible Facilities shall be considered for Tax Abatement as hereinafter provided.

(b) **Creation of New Values.** Abatement may only be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between Kinney County and the property owner or lessee, subject to such limitations as Kinney County may require.

(c) **New and Existing Facilities.** Abatement may be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between Kinney County and the property owner or lessee, subject to such limitations as Kinney County may require.

(d) **Eligible Property.** Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements, and related fixed improvements necessary to the operation and administration of the Facility.

(e) **Ineligible Property.** The following types of property shall be fully taxable and ineligible for Tax Abatement: land; supplies; tools; furnishings, and other forms of movable personal property; housing; Deferred Maintenance; property to be rented or leased except as provided in Section 2(f); property which has a productive life of less than 10 years.

(f) **Owned/Leased Facilities.** If a leased Facility is granted abatement, the agreement shall be executed with the lessor and the lessee.

(g) **Economic Qualification.** In order to be eligible for designation as a reinvestment zone and receive tax abatement, the planned improvement:

(1) Must be reasonably expected to have an increase in positive net economic benefit to Kinney County of at least \$100,000.00 over the life of the abatement, computed to include (but is not limited to) new sustaining payroll and/or capital improvement.. The creation of (number and type) of new jobs will also factor into the decision to grant an abatement; and

(2) Must not be expected to solely or primarily have the effect of transferring employment from one part of Kinney County to another without a super-majority vote of approval from the Commissioners' Court.

(h) **Standards for Tax Abatement.** The following factors, among others, shall be considered in determining whether to grant Tax Abatement:

- (1) Value of existing improvements, if any;
- (2) Type and value of proposed improvements;
- (3) Productive Life of proposed improvements;
- (4) Number of existing jobs to be retained by proposed improvements;
- (5) Number and type of new jobs to be created by proposed improvements;
- (6) Amount of local payroll to be created;
- (7) Whether the new jobs to be created will be filled by persons residing or projected to reside within affected taxing jurisdictions;
- (8) Amount of local sales taxes to be generated directly;
- (9) Amount which property tax base valuation will be increased during term of Abatement and after Abatement, which shall include a definitive commitment that such valuation shall not, in any case, be less than \$100,000;
- (10) The costs to be incurred by Kinney County to provide facilities or services directly resulting from the new improvements;
- (11) The amount of ad valorem taxes to be paid to Kinney County during the Abatement period considering (a) the existing values, (b) the percentage of new value abated, (c) the Abatement period, and (d) the value after expiration of the Abatement period;
- (12) The population growth of Kinney County that occurs directly as a result of new improvements;
- (13) The types and values of public improvements, if any, to be made by applicant seeking Abatement;
- (14) Whether the proposed improvements compete with existing businesses to the detriment of the local economy;
- (15) The impact on the business opportunities of existing business;
- (16) The attraction of other new businesses to the area;

(17) The overall compatibility with the zoning ordinances and comprehensive plan for the area;

(18) Whether the project obtains all necessary permits from the applicable environmental agencies.

Each Eligible Facility shall be reviewed on its merits utilizing the factors provided above. After such review, Abatement may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.

(i) **Denial of Abatement.** Neither a reinvestment zone nor Abatement Agreement shall be authorized if it is determined that:

(1) There would be substantial adverse affect on the provision of government services or tax base;

(2) The applicant has insufficient financial capacity;

(3) Planned or potential use of the property would constitute a hazard to public safety, health, or morals;

(4) Violation of other codes or laws; or

(5) Any other reason deemed appropriate by Kinney County.

(j) **Taxability.** From the execution of the Abatement to the end of the Agreement period, taxes shall be payable as follows:

(1) The value of ineligible property as provided in Section 2(e) shall be fully taxable; and

(2) The base year value of existing eligible property as determined each year shall be fully taxable.

The additional value of new eligible property shall be fully taxable at the end of the Abatement period.

### APPLICATION - SECTION 3

(a) Any present or potential owner of taxable property in Kinney County may request the creation of a reinvestment zone and tax abatement by filing a written application with the County Judge.

(b) The application shall consist of: a general description of the new improvements to be undertaken; a descriptive list of the improvements for which an abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a map

and property description; a time schedule for undertaking and completing the proposed improvements. In the case of modernization a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The County may require such financial and other information as deemed appropriate for evaluating the financial capacity and other factors pertaining to the applicant, to be attached to the application. The completed application must be accompanied by the payment of a non-refundable application fee for administrative costs associated with the processing of the tax abatement request. All checks in payment of the administrative fee should be made payable to Kinney County. For abatement requests for improvements with a planned value equal to or in excess of \$1,000,000.00 the fee shall be ONE THOUSAND AND 00/100 DOLLARS (\$1,000.00). For abatement requests for improvements with a planned value of \$999,999.00 or less, the fee shall be FIVE HUNDRED AND 00/100 DOLLARS (\$500.00).

(c) Kinney County shall give notice as provided by the Property Tax Code, *i. e.*, written notice to the presiding officer of the governing body of each taxing unit in which the property to be subject to the agreement is located not later than the seven days before the public hearing and (2) publication in a newspaper of general circulation within such taxing jurisdiction not later than the seventh day before the public hearing. Before acting upon the application, Kinney County shall through public hearing, afford the applicant and the designated representative of any governing body referenced hereinabove opportunity to show cause why the Abatement should or should not be granted.

(d) If a city within Kinney County designates a reinvestment zone within its corporate limits and enters into or proposes to enter into an Abatement Agreement with a present or potential owner of a taxable property, such present or potential owner of taxable property may request Tax Abatement by Kinney County by following the same application process described in Section 3 (a) hereof. No other notice or hearing shall be required except compliance with the Open Meetings Act, unless the Commissioners' Court deems them necessary in a particular case.

#### **AGREEMENT - SECTION 4**

(a) After approval, the Commissioners' Court of Kinney County shall formally pass a resolution and execute an Agreement with the owner of the Facility and lessee as required which shall:

- (1) include a list of the kind, number, and location of all proposed improvements to the property;
- (2) provide access to and authorize inspection of the property by the taxing unit to ensure compliance with the agreement;
- (3) limit the use of the property consistent with the taxing unit's development goals;

(4) provide for recapturing property tax revenues that are lost if the owner fails to make the improvements as provided by the agreement;

(5) include each term that was agreed upon with the property owner and require the owner to annually certify compliance with the terms of the agreement to each taxing unit; and

(6) allow the taxing unit to cancel or modify the agreement at any time if the property owner fails to comply with the terms of the agreement.

(b) Such agreement shall normally be executed within sixty (60) days after the applicant has forwarded all necessary information and documentation to the Commissioners' Court.

#### **RECAPTURE - SECTION 5**

(a) In the event that the company or individual (1) allows its ad valorem taxes owed Kinney County to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or (2) violates any of the terms and conditions of the Abatement Agreement and fails to cure within sixty (60) days from the date of notice of the violation ("Cure Period") the agreement then may be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination.

(b) Should Kinney County determine that the company or individual is in default according to the terms and conditions of its Agreement, Kinney County shall notify the company or individual in writing at the address stated in the Agreement, and if such is not cured within the Cure Period, then the Agreement may be terminated.

#### **ADMINISTRATION - SECTION 6**

(a) The Chief Appraiser of the Kinney County Appraisal District will annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving abatement shall furnish the Appraiser with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser will notify the Commissioners' Court of Kinney County of the amount of the assessment.

(b) Kinney County may execute a contract with any other jurisdiction(s) to inspect the Facility to determine if the terms and conditions of the Abatement Agreement are being met. The Abatement Agreement shall stipulate that employees and/or designated representatives of Kinney County will have access to the reinvestment zone during the term of the Abatement to inspect the Facility to determine if the terms and conditions of the Agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the Facility. All

inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.

(c) Upon completion of construction, the designated representative of Kinney County shall annually evaluate each Facility receiving Abatement to ensure compliance with the agreement, a formal annual report shall be made to the Commissioners' Court.

#### **ASSIGNMENT - SECTION 7**

Abatement may be transferred and assigned by the holder to a new owner or lessee of the same Facility upon the approval by resolution of the Commissioners' Court of Kinney County subject to the financial capacity of the assignee and provided that all conditions and obligations in the Abatement Agreement are guaranteed by the execution of a new contractual Agreement with Kinney County. No assignment or transfer shall be approved if the parties to the existing Agreement, the new owner or new lessee are liable to any jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably delayed or withheld.

#### **SUNSET PROVISION - SECTION 8**

These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years, unless amended by three-quarters vote of the Commissioners' Court of Kinney County, at which time all reinvestment zones and Tax Abatement Agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed, or eliminated.

Adopted \_\_\_\_\_, 2009  
Kinney County Commissioners' Court

## Exhibit B

2. A description of the scope of the proposed project, including the type and planned use of real and tangible personal property, the nature of the business, a timeline for property construction or installation, and any other relevant information.

The proposed project will consist of a facility designed to use wind power to generate electricity (commonly referred to as a wind farm). The applicant expects to build the proposed project to be operational in first quarter 2012, with 100% of the construction to be in the Brackett Independent School District. The applicant will commence construction on or before December 1, 2010. The applicant intends to complete construction within one (1) year and expects to meet the minimum qualified investment threshold referenced in Step 2, Question 3 by the end of 2011 and in any event prior to the expiration of the qualifying period. All of the property for which the applicant is seeking a limitation on appraised value will be owned by the applicant.



Ms. Alison Gilliam  
Research Analyst  
Economic Analysis  
Local Government Assistance and Economic Development Division  
Texas Comptroller of Public Accounts  
LBJ State Office Building  
111 E. 17th Street  
Austin, TX 78774

*Re: Proposed Turbine Placement*

Dear Ms. Gilliam:

Due to the nature of the project, at this time, we are unable to precisely pinpoint the location of the 57 turbines listed on the Chapter 313 Application for Appraised Value Limitation on Qualified Property.

The property for which EC&R Development, LLC is requesting an appraised value limitation, as defined by Tax Code Section 313.021(2), includes approximately 57 MW GE turbines, towers, transformers, transmission lines, and associated ancillary equipment necessary to safely operate, maintain and transmit power to the ERCOT grid, and meteorological equipment to measure and test wind speed and direction. The facility will require a relatively insubstantial amount of personal property, which will be placed within the Kinney County Reinvestment Zone, which was created by the Kinney County Commissioner's Court on June 15, 2009, as stated in our application. The project boundaries are wholly contained within the reinvestment zone boundaries.

The proposed project will consist of a facility designed to use wind power to generate electricity (commonly referred to as a windfarm). The applicant expects to build the proposed project within one year, with 100% of the construction to be in the Brackett Independent School District. The applicant will commence construction on or before December 1, 2010. The applicant intends to complete construction prior to the end of 2012 and expects to meet the minimum qualified investment threshold referenced in Step 2, Question 3 by the end of 2011 and in any event prior to the expiration of the Qualifying Period. All of the property for which the applicant is seeking a limitation on appraised value will be owned by the applicant.

Sincerely,



Greg Buis  
EC&R Development, LLC

## Exhibit C-1

### Request for Waiver of Jobs Creation Requirement

Pursuant to Section 313.025 (f-1) of the Texas Tax Code, the governing body of a school district may waive the new jobs creation requirement in Section 313.021(2)(A)(iv)(b) or 313.051(b) and approve an application if the governing body makes a finding that the jobs creation requirement exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility of the property owner that is described in the application.

The operations and maintenance demands of the project will be sufficient to create a total of 6 full-time jobs. This number of jobs is consistent with the total jobs created by other recent E.ON projects in the previous year, and E.ON believes this number to be consistent with (and possibly higher than) the industry standard number of full-time jobs created by projects of this scale. According to econometric projections, and based on E.ON's experience with existing wind projects in proximity to the proposed project, E.ON's investments in the District will result in substantially increased local economic activity, which, in addition to creating new jobs, will have a positive effect on existing jobs.

The proposed project cannot sustain the 10-job minimum required the District, as set forth in Section 313.051(b) of the Texas Tax Code. Accordingly, E.ON hereby requests that Brackett I.S.D. waive its requirement that E.ON's project create a minimum number of jobs within the District.

**Exhibit C-2  
Average Weekly Wage Data**

Brackett ISD is a rural district pursuant to the State Comptroller School District Economic Development Categories. Therefore, the average project wage must exceed 110% of the county average manufacturing wage figures found at the Texas Workforce Commission's ("TWC") "Tracer" website at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>. Based on the information provided by the TWC, EON estimates the Kinney County average weekly wage for construction jobs to be \$364.25.

Note that these figures are for "construction" jobs. The "manufacturing" jobs designation is not listed as a searchable category for Kinney County on this website.

Period	Area	Ownership	Division	Level	Ind Code	Industry	Avg Weekly Wages
2008 1st Qtr	Kinney County	Total All	23	2	23	Construction	\$363
2008 2nd Qtr	Kinney County	Total All	23	2	23	Construction	\$375
2008 3rd Qtr	Kinney County	Total All	23	2	23	Construction	\$389
2008 4th Qtr	Kinney County	Total All	23	2	23	Construction	\$330

Based on these statistics, EON calculates the average weekly wage for the 4 quarters of 2008 to be \$364.25. Based on the statistics from Texas Data Center and Office of the State Demographer (see Exhibit C-3) the average weekly wage for counties that are members of the Middle Rio Grande Development Council is \$516.40. The average wage to be paid on the project is \$568.04, 110% of the manufacturing wages for counties that are members of the Middle Rio Grande Development Council.

**Exhibit C-3**  
**Average Weekly Wage Data**

Based on an average 40-hour work week and an average hourly rate of \$12.91, EON estimates that the Kinney County average weekly wage for manufacturing jobs to be \$516.40. This figure is calculated using information published by the agencies listed below.

The Texas Data Center and Office of the State Demographer has provided the following county cross-reference information:

- Kinney County is associated with the Middle Rio Grande Valley Council of Governments;
- Council of Government Code:
- Economic Region Code: 08
- Economic Region: South Texas
- This regional data is available at:  
[http://www.txsdcd.utsa.edu/reference/georef/county\\_master.php](http://www.txsdcd.utsa.edu/reference/georef/county_master.php)

The 2007 regional wage information for the Middle Rio Grande Valley Council of Governments is shown on the following list, available at:  
<http://www.tracer2.com/admin/uploadedPublications/COGwages.pdf>

**2007 Manufacturing Wages by Council of Government Region**  
**Wages for All Occupations**

<b>COG</b>	<b>Hourly</b>	<b>Annual</b>
Texas	\$19.80	\$41,184
1. Panhandle Regional Planning Commission	\$17.49	\$36,379
2. South Plains Association of Governments	\$14.48	\$30,118
3. NORTEX Regional Planning Commission	\$16.97	\$35,298
4. North Central Texas Council of Governments	\$21.72	\$45,178
5. Ark-Tex Council of Governments	\$15.05	\$31,304
6. East Texas Council of Governments	\$15.40	\$32,032
7. West Central Texas Council of Governments	\$15.35	\$31,928
8. Rio Grande Council of Governments	\$14.41	\$29,973
9. Permian Basin Regional Planning Commission	\$16.36	\$34,029
10. Concho Valley Council of Governments	\$13.49	\$28,059
11. Heart of Texas Council of Governments	\$15.65	\$32,552
12. Capital Area Council of Governments	\$23.66	\$49,213
13. Brazos Valley Council of Governments	\$14.86	\$30,909
14. Deep East Texas Council of Governments	\$14.86	\$30,909
15. South East Texas Regional Planning Commission	\$22.73	\$47,278
16. Houston-Galveston Area Council	\$21.06	\$43,805
17. Golden Crescent Regional Planning Commission	\$17.91	\$37,253
18. Alamo Area Council of Governments	\$16.09	\$33,467
19. South Texas Development Council	\$12.37	\$25,730
20. Coastal Bend Council of Governments	\$21.78	\$45,302
21. Lower Rio Grande Valley Development Council	\$12.66	\$26,333
22. Texoma Council of Governments	\$18.23	\$37,918
23. Central Texas Council of Governments	\$15.94	\$33,155
24. Middle Rio Grande Development Council	\$12.91	\$26,853



Attachment B

Certificate of Account Status



# TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

SUSAN COMBS • COMPTROLLER • AUSTIN, TEXAS 78774

December 9, 2009

## CERTIFICATE OF ACCOUNT STATUS

THE STATE OF TEXAS  
COUNTY OF TRAVIS

I, Susan Combs, Comptroller of Public Accounts of the State of Texas, DO HEREBY CERTIFY that according to the records of this office

E&R DEVELOPMENT, III

is, as of this date, in good standing with this office having no franchise tax report or payments due at this time. This certificate is valid through the date that the next franchise tax report will be due May 17, 2010

This certificate does not make a representation as to the state of the entity's registration, if any, with the Texas Secretary of State

This certificate is valid for the purpose of conversion when the converted entity is subject to franchise tax as required by law. This certificate is not valid for any other filing with the Texas Secretary of State

GIVEN UNDER MY HAND AND  
SEAL OF OFFICE in the City of  
Austin, this 9th day of  
December 2009 A.D

Susan Combs  
Texas Comptroller

Taxpayer number: 3203945153  
File number: 0801119001



Attachment C

State Comptroller's Recommendation

S U S A N

C O M B S

TEXAS COMPTROLLER *of* PUBLIC ACCOUNTS

P.O. Box 13528 • AUSTIN, TX 78711-3528



November 23, 2009

Mr. Robert Westbrook  
Superintendent  
Brackett Independent School District  
P.O.Box 586  
Brackettville, Texas 78832-0586

Dear Superintendent Westbrook:

On Oct. 14, 2009, the agency received the completed application for a limitation on appraised value originally submitted to the Brackett Independent School District (Brackett ISD) by EC&R Development, LLC (EC&R) in July 2009, under the provisions of Tax Code Chapter 313. This letter presents the Comptroller's recommendation regarding EC&R's application as required by Section 313.025(d), using the criteria set out by Section 313.026. Our review assumes the truth and accuracy of the statements in the application and that, if the application is approved, the applicant would perform according to the provisions of the agreement reached with the school district. Filing an application containing false information is a criminal offense under Texas Penal Code Chapter 37.

According to the provisions of Chapter 313, Brackett ISD is currently classified as a rural school district in Category 5. The applicant properly applied under the provisions of Subchapter C, as applicable to rural school districts, and the amount of proposed qualified investment (\$85.5 million) is consistent with the proposed appraised value limitation sought (\$1 million). The property value limitation amount noted in this recommendation is based on property values available at the time of application and may change prior to the execution of any final agreement.

EC&R is proposing the construction of wind power electricity generating facility in Kinney County. EC&R is an active franchise taxpayer, as required by Tax Code Section 313.024(a), and is in good standing. After reviewing the application using the criteria listed in Section 313.026, and the information provided by EC&R, the Comptroller's recommendation is that EC&R's application under Tax Code Chapter 313 be approved.

Our recommendation does not address whether the applicant has complied with all Chapter 313 requirements. Chapter 313 places the responsibility to verify that all requirements of the statute have been fulfilled on the school district. Section 313.025 requires the school district to determine if the evidence supports making specific findings that the information in the application is true and correct, the applicant is eligible for a limitation and that granting the application is in the best interest of the school district and state. When approving a job waiver requested under Section 313.025(f-1), the school district must also find that the statutory jobs creation requirement exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility. As stated above, we prepared the recommendation by generally reviewing the application and supporting documentation in light of the Section 313.026 criteria and a cursory review of the industry standard evidence necessary to support the waiver of the required number of jobs.

Mr. Robert Westbrook  
November 23, 2009  
Page Two

The Comptroller's recommendation is based on the final, completed application that has been submitted to this office, and may not be used to support an approval if the application is modified, the information presented in the application changes, or the limitation agreement does not conform to the application. This recommendation is contingent on the district approving and executing a limitation agreement within a year from the date of this letter, and is valid only for a qualifying time period that begins in accordance with the approved application and a conforming limitation agreement. As required by Comptroller Rule 9.1055 (34 T.A.C. 9.1055), the signed limitation agreement must be forwarded to our office as soon as possible after execution. During the 81st Legislative Session, House Bill 3676 made a number of changes to the chapter. Please visit our Web site at [www.window.state.tx.us/taxinfo/proptax/hb1200](http://www.window.state.tx.us/taxinfo/proptax/hb1200) to find an outline of the program and links to applicable rules and forms.

Should you have any questions, please contact Robert Wood, director of Local Government Assistance and Economic Development, by e-mail at [robert.wood@cpa.state.tx.us](mailto:robert.wood@cpa.state.tx.us) or by phone at (800) 531-5441, ext. 3-3973, or direct in Austin at (512) 463-3973.

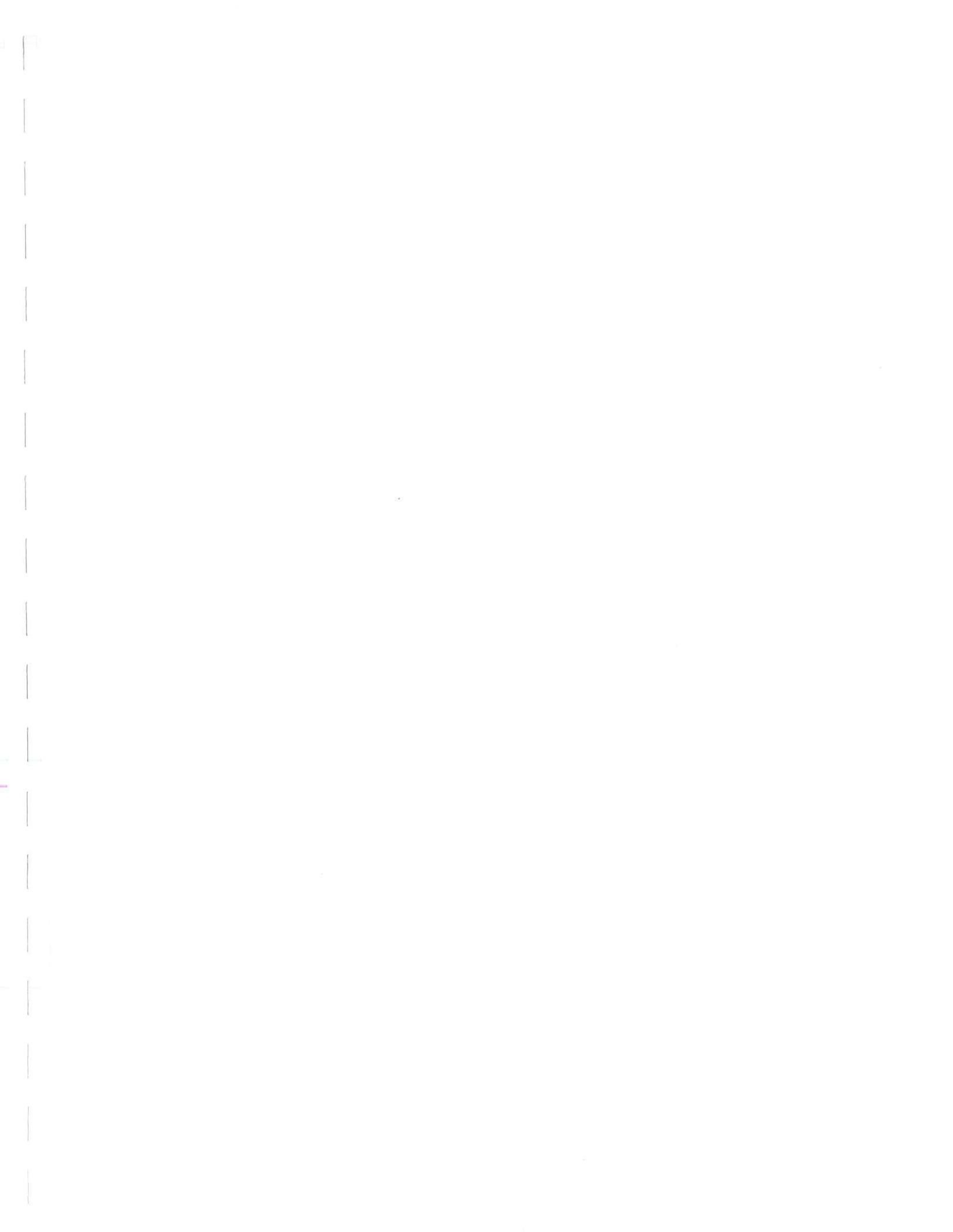
Sincerely,



Martin A. Hubert  
Deputy Comptroller

Enclosure

cc: Robert Wood



Attachment D

Economic Analysis

Economic Impact for Chapter 313 Project

Applicant	EC&R Development
Tax Code, 313.024 Eligibility Category	Renewable energy electric generation - Wind
School District	Brackett Independent School District
2007-08 Enrollment in School District	598
County	Kinney
Total Investment in District	\$85,500,000
Qualified Investment	\$85,500,000
Limitation Amount	\$1,000,000
Number of total jobs committed to by applicant	6
Number of qualifying jobs committed to by applicant	6*
Average Weekly Wage of Qualifying Jobs committed to by applicant	\$568
Minimum Weekly Wage Required Tax Code, 313.025(A)	\$568
Minimum Annual Wage committed to by applicant for qualified jobs	\$29,538
Investment per Qualifying Job	\$14,250,000
Number of Turbines	57
Megawatts	86
Start of Construction	on or before December 2010
End of Construction	End of 2011
Estimated 15 year total levy without any limit or credit:	\$8,787,168
Estimated 15 year total tax benefit/levy loss	\$5,861,856
Estimated 15 year total tax benefit (after deductions for estimated school district revenue protection--but not including any deduction for yet-to-be negotiated supplemental payments or extraordinary educational expenses):	\$5,243,817
Tax Credits Paid (estimated - part of total tax benefit in the two lines above - appropriated through Foundation School Program)	\$0
Net Tax Paid After Limitation, Credits and Revenue Protection:	\$3,543,351
Tax benefit as a percentage of what applicant would have paid without value limitation agreement (percentage exempted)	59.7%
Percentage of tax benefit due to the limitation	100.0%
Percentage of tax benefit due to the credit.	0.0%
* Applicant is requesting district to waive requirement to create minimum number of qualifying jobs pursuant to Tax Code, 313.025 (f-1).	

This presents the Comptroller's economic impact evaluation of EC&R Development (the project) applying to Brackett Independent School District (the district), as required by Tax Code, 313.026. This evaluation is based on information provided by the applicant and examines the following criteria:

- (1) the recommendations of the comptroller;
- (2) the name of the school district;
- (3) the name of the applicant;
- (4) the general nature of the applicant's investment;
- (5) the relationship between the applicant's industry and the types of qualifying jobs to be created by the applicant to the long-term economic growth plans of this state as described in the strategic plan for economic development submitted by the Texas Strategic Economic Development Planning Commission under Section 481.033, Government Code, as that section existed before February 1, 1999;
- (6) the relative level of the applicant's investment per qualifying job to be created by the applicant;
- (7) the number of qualifying jobs to be created by the applicant;
- (8) the wages, salaries, and benefits to be offered by the applicant to qualifying job holders;
- (9) the ability of the applicant to locate or relocate in another state or another region of this state;
- (10) the impact the project will have on this state and individual local units of government, including:
  - (A) tax and other revenue gains, direct or indirect, that would be realized during the qualifying time period, the limitation period, and a period of time after the limitation period considered appropriate by the comptroller; and
  - (B) economic effects of the project, including the impact on jobs and income, during the qualifying time period, the limitation period, and a period of time after the limitation period considered appropriate by the comptroller;
- (11) the economic condition of the region of the state at the time the person's application is being considered;
- (12) the number of new facilities built or expanded in the region during the two years preceding the date of the application that were eligible to apply for a limitation on appraised value under this subchapter;
- (13) the effect of the applicant's proposal, if approved, on the number or size of the school district's instructional facilities, as defined by Section 46.001, Education Code;
- (14) the projected market value of the qualified property of the applicant as determined by the comptroller;
- (15) the proposed limitation on appraised value for the qualified property of the applicant;
- (16) the projected dollar amount of the taxes that would be imposed on the qualified property, for each year of the agreement, if the property does not receive a limitation on appraised value with assumptions of the projected appreciation or depreciation of the investment and projected tax rates clearly stated;
- (17) the projected dollar amount of the taxes that would be imposed on the qualified property, for each tax year of the agreement, if the property receives a limitation on appraised value with assumptions of the projected appreciation or depreciation of the investment clearly stated;
- (18) the projected effect on the Foundation School Program of payments to the district for each year of the agreement;
- (19) the projected future tax credits if the applicant also applies for school tax credits under Section 313.103; and
- (20) the total amount of taxes projected to be lost or gained by the district over the life of the agreement computed by subtracting the projected taxes stated in Subdivision (17) from the projected taxes stated in Subdivision (16).

**Wages, salaries and benefits [313.026(6-8)]**

After construction, the project will create six new jobs when fully operational. All six jobs will meet the criteria for qualifying jobs as specified in Tax Code Section 313.021(3). According to the Texas Workforce Commission (TWC), the regional manufacturing wage for the Middle Rio Grande Council of Governments Region, where Kinney County is located was \$26,853 in 2007. The average manufacturing wage for the most recent four quarters for Kinney County is \$22,074. In addition to an annual average salary of \$29,538 each qualifying position will receive benefits such as health insurance and training. The project's total investment is \$85.5 million, resulting in a relative level of investment per qualifying job of \$14.25 million.

**Ability of applicant to locate to another state and [313.026(9)]**

According to EC&R's application, "they are an international developer of wind projects and has operations in several regions and states within the U.S. ...and have the ability to locate projects of this type to the Southwest, Northwest, and Northeast as well as Canada and several European sites."

**Number of new facilities in region [313.026(12)]**

During the past two years, no projects in the Middle Rio Grande Council of Governments Region applied for value limitation agreements under Tax Code, Chapter 313.

**Relationship of applicant's industry and jobs and Texas's economic growth plans [313.026(5)]**

The Texas Economic Development Plan does not mention Renewable Energy specifically. However, one theme of the plan is attracting and fostering industries in Texas using advanced technology. Renewable energy technology is an expanding industry and the skilled workers that the project requires appear to be in line with the focus and themes of the plan. Texas identified energy as one of six target clusters in the Texas Cluster Initiative. The plan stresses the importance of technology in all sectors of the energy industry.

**Economic Impact [313.026(10)(A), (10)(B), (11), (13-20)]**

Table 1 depicts the project's estimated economic impact to Texas. It depicts the direct, indirect and induced effects to employment and personal income within the state. The Comptroller's office calculated the economic impact based on 16 years of annual investment and employment levels using software from Regional Economic Models, Inc. (REMI). The impact includes the construction period and the operating period of the project.

**Table 1: Estimated Statewide Economic Impact of Investment and Employment in EC&R**

Year	Employment			Personal Income		
	Direct	Indirect + Induced	Total	Direct	Indirect + Induced	Total
2009	0	0	0	\$0	\$0	\$0
2010	0	0	0	\$0	\$0	\$0
2011	106	138	244	\$3,131,028	\$11,868,972	\$15,000,000
2012	6	15	21	\$177,228	\$2,822,772	\$3,000,000
2013	6	14	20	\$177,228	\$2,822,772	\$3,000,000
2014	6	10	16	\$177,228	\$1,822,772	\$2,000,000
2015	6	8	14	\$177,228	\$1,822,772	\$2,000,000
2016	6	10	16	\$177,228	\$1,822,772	\$2,000,000
2017	6	7	13	\$177,228	\$1,822,772	\$2,000,000
2018	6	8	14	\$177,228	\$1,822,772	\$2,000,000
2019	6	9	15	\$177,228	\$1,822,772	\$2,000,000
2020	6	8	14	\$177,228	\$1,822,772	\$2,000,000
2021	6	8	14	\$177,228	\$1,822,772	\$2,000,000
2022	6	8	14	\$177,228	\$1,822,772	\$2,000,000
2023	6	8	14	\$177,228	\$1,822,772	\$2,000,000
2024	6	8	14	\$177,228	\$1,822,772	\$2,000,000

Source: CPA, REMI, EC&R

The statewide average ad valorem tax base for school districts in Texas was \$1.6 billion in 2008. Brackett ISD's ad valorem tax base in 2008 was \$148.8 million. The statewide average wealth per WADA was estimated at \$352,755 for fiscal 2009-2010. During that same year, Brackett ISD's estimated wealth per WADA was \$142,162. The impact on the facilities and finances of the district is presented in Attachment 2.

Table 2 examines the estimated direct impact on ad valorem taxes to the school district and Kinney County with all property tax incentives sought being granted using estimated market value from EC&R's application. EC&R has applied for both a value limitation under Chapter 313, Tax Code and a county tax abatement under Tax Code, Chapter 312 seeking 70 percent abatement per year for eight years. Table 3 illustrates the estimated tax impact of the project on the region if all taxes are assessed.

**Table 2 Estimated Direct Ad Valorem Taxes with all property tax Incentives sought**

Year	Estimated Taxable value for I&S	Estimated Taxable value for M&O	Tax Rate	Brackett ISD I&S	Brackett ISD M&O	Kinney County	Kinney County Groundwater Conservation District	Total Taxes
				0.0000	1.0400	0.6558	0.0612	
2009	\$0	\$0		\$0	\$0	\$0	\$0	\$0
2010	\$0	\$0		\$0	\$0	\$0	\$0	\$0
2011	\$0	\$0		\$0	\$0	\$0	\$0	\$0
2012	\$82,080,000	\$1,000,000		\$0	\$10,400	\$376,796	\$35,163	\$422,360
2013	\$78,790,000	\$1,000,000		\$0	\$10,400	\$361,693	\$33,754	\$405,847
2014	\$75,640,000	\$1,000,000		\$0	\$10,400	\$347,233	\$32,404	\$390,037
2015	\$72,600,000	\$1,000,000		\$0	\$10,400	\$333,278	\$31,102	\$374,779
2016	\$69,700,000	\$1,000,000		\$0	\$10,400	\$319,965	\$29,859	\$360,224
2017	\$66,920,000	\$1,000,000		\$0	\$10,400	\$307,203	\$28,669	\$346,271
2018	\$64,240,000	\$1,000,000		\$0	\$10,400	\$294,900	\$27,520	\$332,821
2019	\$61,670,000	\$1,000,000		\$0	\$10,400	\$283,102	\$26,419	\$319,922
2020	\$59,210,000	\$59,210,000		\$0	\$615,784	\$271,809	\$25,366	\$912,959
2021	\$56,840,000	\$56,840,000		\$0	\$591,136	\$260,930	\$24,350	\$876,416
2022	\$54,560,000	\$54,560,000		\$0	\$567,424	\$357,804	\$33,391	\$958,619
2023	\$52,380,000	\$52,380,000		\$0	\$544,752	\$343,508	\$32,057	\$920,317
2024	\$50,290,000	\$50,290,000		\$0	\$523,016	\$329,802	\$30,777	\$883,595
						<b>Total</b>		\$7,504,167

Source: CPA, EC&R  
 \*Assumes Chapter 313 Value Limitation and 70% Abatement with County and Water District  
 †Tax Rate per \$100 Valuation

**Table 3 Estimated Direct Ad Valorem Taxes without property tax Incentives**

Year	Estimated Taxable value for I&S	Estimated Taxable value for M&O	Tax Rate	Brackett ISD I&S	Brackett ISD M&O	Kinney County	Kinney County Groundwater Conservation District	Total Taxes
				0.0000	1.0400	0.6558	0.0612	
2009	\$0	\$0		\$0	\$0	\$0	\$0	\$0
2010	\$0	\$0		\$0	\$0	\$0	\$0	\$0
2011	\$0	\$0		\$0	\$0	\$0	\$0	\$0
2012	\$82,080,000	\$82,080,000		\$0	\$853,632	\$538,281	\$50,233	\$1,442,146
2013	\$78,790,000	\$78,790,000		\$0	\$819,416	\$516,705	\$48,219	\$1,384,340
2014	\$75,640,000	\$75,640,000		\$0	\$786,656	\$496,047	\$46,292	\$1,328,995
2015	\$72,600,000	\$72,600,000		\$0	\$755,040	\$476,111	\$44,431	\$1,275,582
2016	\$69,700,000	\$69,700,000		\$0	\$724,880	\$457,093	\$42,656	\$1,224,629
2017	\$66,920,000	\$66,920,000		\$0	\$695,968	\$438,861	\$40,955	\$1,175,784
2018	\$64,240,000	\$64,240,000		\$0	\$668,096	\$421,286	\$39,315	\$1,128,697
2019	\$61,670,000	\$61,670,000		\$0	\$641,368	\$404,432	\$37,742	\$1,083,542
2020	\$59,210,000	\$59,210,000		\$0	\$615,784	\$388,299	\$36,237	\$1,040,320
2021	\$56,840,000	\$56,840,000		\$0	\$591,136	\$372,757	\$34,786	\$998,679
2022	\$54,560,000	\$54,560,000		\$0	\$567,424	\$357,804	\$33,391	\$958,619
2023	\$52,380,000	\$52,380,000		\$0	\$544,752	\$343,508	\$32,057	\$920,317
2024	\$50,290,000	\$50,290,000		\$0	\$523,016	\$329,802	\$30,777	\$883,595
						<b>Total</b>		\$14,845,244

Source: CPA, EC&R  
 †Tax Rate per \$100 Valuation

Attachment 1 includes schedules A, B, and C provided by the applicant in the application. Schedule A shows proposed investment and tax expenditures. Schedule B is the projected market value of the qualified property and Schedule C contains employment information.

Attachment 2, provided by the district and reviewed by the Texas Education Agency, contains information relating to the financial impact of the proposed project on the finances of the district as well as the tax benefit of the value limitation. "Table 5" in this attachment shows the estimated 15 year total tax levy without the value limitation agreement would be \$8,787,168. The estimated gross 15 year total tax benefit, or levy loss, is \$5,861,856.

Attachment 3 is an economic overview of Kinney County.

**Disclaimer:** This examination is based on information from the application submitted to the school district and forwarded to the comptroller. It is intended to meet the statutory requirement of Chapter 313 of the Tax Code and is not intended for any other purpose.

## Kinney County Overview Report

### Population

Total county population in 2008 for Kinney County: 3,233 down 1.9 percent from 2007.  
State population increased 2.0 percent in the same time period.

Kinney County was the state's 220th largest county in population in 2008 and the 240th fastest growing county from 2007 to 2008.

Kinney County population in 2008 was:

45.5 percent White	(below the state average of 47.4 percent.)
2.2 percent Black	(below the state average of 11.3 percent.)
50.9 percent Hispanic	(above the state average of 36.5 percent.)

2008 population of the largest cities and places in Kinney County:

<b>Brackettville:</b>	1,818
<b>Spofford:</b>	74

### Economy and Income

#### *Employment*

September 2009 total employment in Kinney County: 1,316, down 1.6 percent from September 2008.  
State total employment decreased 0.7 percent during the same period.

September 2009 Kinney County unemployment rate was 9.2 percent, up from 5.2 percent in September 2008.  
The statewide unemployment rate for September 2009 was 8.2 percent, up from 5.1 percent in September 2008.

September 2009 unemployment rate in the city of:

N/A

**(Note: County and State unemployment rates are adjusted for seasonal fluctuations, but the Texas Workforce Commission City unemployment rates are not. Seasonally-adjusted unemployment rates are not comparable with unadjusted rates.)**

#### *Income*

Kinney County's ranking in per capita personal income in 2007: 227th with an average per capita income of \$22,984, up 5.8 percent from 2006.

Statewide average per capita personal income was \$37,083 in 2007 up 5.5 percent from 2006.

#### *Industry*

Agricultural cash values in Kinney County averaged \$18.9 million annually from 2005 to 2008. County total agricultural values in 2008 were down 8.7 percent from 2007. Major agriculture related commodities in Kinney County during 2008 included:

Beef Total	Goats	Hunting	Sheep	Wool
------------	-------	---------	-------	------

2007 preliminary oil and gas production in Kinney County: None.

In February 2009, there were no producing oil wells and no producing gas wells.

### Taxes

#### *Sales Tax - Taxable Sales*

Quarterly (January through March 2009)

Taxable sales in Kinney County during the first quarter of 2009: \$2,909,717, up 6.4 percent from the same quarter in 2008.

Taxable sales during the first quarter in the city of:

Brackettville        \$2,737,856, up        7.6 percent from the same quarter in 2008.

**Annual (2008)**

Taxable sales in Kinney County during 2008: \$12,268,239, up 14.0 percent from 2007.

Taxable sales during 2008 in the city of:

Brackettville        \$11,631,582, up        13.1 percent from 2007.

"-" represent amounts subject to state sales tax values that are suppressed for confidentiality reasons.

***Sales Tax - Local Sales Tax Allocations***

**Monthly (September 2009)**

Statewide payments based on the sales activity month of September 2009: , down 8.7 percent from September 2008.

Payments based on the sales activity month of September 2009 in the city of:

**Annual (2008)**

Statewide payments based on the sales activity months of 2008: \$6,026,220,888, up 5.8 percent from 2007.

***Property Tax***

As of 2007, property values in Kinney County: \$838,697,987, up 35.5 percent from 2006 values.

The property tax base per person in Kinney County is \$259,418, above the statewide average of \$77,317.

A negligible percentage of the property tax base is derived from oil, gas and minerals.

**State Expenditures**

Kinney County's ranking in state expenditures by county in state fiscal year (FY) 2008: 220th. State expenditures in the county for FY 2008: \$13,998,489, up 24.2 percent from FY 2007.

In Kinney County, 6 state agencies provide a total of 30 jobs and \$198,714 in annualized wages (as of 1st quarter 2009).

Major state agencies in the county (as of 1st quarter 2009):

- AgriLife Extension Service
- Health & Human Services Commission
- Parks & Wildlife Department
- Department of Transportation

**School Districts**

Kinney County had 1 school district with 4 schools and 598 students in the 2007-2008 school year.

( Statewide, the average teacher salary in school year 2007-2008 was \$46,179. The percentage of students, statewide, meeting the 2008 Texas Assessment of Knowledge and Skills (TAKS) passing standard for all 2007-2008 TAKS tests was 72 percent.)

BRACKETT ISD

had 598 students in the 2007-2008 school year. The average teacher salary was \$41,008. The percentage of students meeting the 2008 TAKS passing standard for all tests was 72 percent.

### Higher Education

( Fall 2008 enrollment)

Community Colleges in Kinney County:

None

Kinney County is in the service area of the following:

Southwest Texas Junior College with a fall 2008 enrollment of 4,910 Students.  
Counties in the service area include

Dimmit

Edwards

Frio

Kinney

La Salle

Maverick

Medina

Real

Uvalde

Val Verde

Zavala

Institutes of Higher Education in Kinney County with a fall 2008 enrollment

None

## References

Population uses data from the following source:  
U.S. Census Bureau, as of 10/1/09

Employment uses data from the following sources:  
Texas Workforce Commission, as of 11/19/09  
Texas Comptroller of Public Accounts, as of 8/21/09

Income uses data from the following source:  
U.S. Department of Commerce-Bureau of Economic Analysis, as of 6/11/09

Industry uses data from the following sources:  
Texas AgriLife Extension Service, as of 6/29/09  
Railroad Commission of Texas, as of 8/21/08

Taxable Sales uses data from the following source:  
Texas Comptroller of Public Accounts, as of 10/8/09

Sales Tax Allocation uses data from the following source:  
Texas Comptroller of Public Accounts, as of 11/20/09

Property Tax uses data from the following source:  
Texas Comptroller of Public Accounts, as of 10/27/09

State Expenditures uses data from the following source:  
Texas Comptroller of Public Accounts, as of 8/21/09

Higher Education uses data from the following source:  
Texas Higher Education Coordinating Board, as of 5/14/09

School Districts uses data from the following source:  
Texas Education Agency, as of 1/21/09

This report was generated by Texas EDGE on 11/20/09



# TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512/463-9734 ★ FAX: 512/463-9838 ★ <http://www.tea.state.tx.us>

Robert Scott  
Commissioner

November 16, 2009

Mr. Robert Wood  
Director, Local Government Assistance and Economic Development  
Texas Comptroller of Public Accounts  
Lyndon B. Johnson State Office Building  
111 East 17th Street  
Austin, Texas 78774

Dear Mr. Wood:

As required by the Tax Code, §313.025 (b-1), the Texas Education Agency (TEA) has evaluated the impact of the proposed EC&R Development, LLC, project on the number and size of school facilities in Brackett Independent School District (BISD). Based on the analysis prepared by Moak, Casey and Associates for the school district and conversations with the BISD superintendent, Mr. Robert Westbrook, the TEA has found that the EC&R development, LLC, project would not have a significant impact on the number or size of school facilities in BISD.

Please feel free to contact me by phone at (512) 463-9268 or by email at [helen.daniels@tea.state.tx.us](mailto:helen.daniels@tea.state.tx.us) if you need further information regarding this issue.

Sincerely,

Helen Daniels  
Director of State Funding

HD/hd



# TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512/463-9734 ★ FAX: 512/463-9838 ★ <http://www.tea.state.tx.us>

Robert Scott  
Commissioner

November 16, 2009

Mr. Robert Wood  
Director, Local Government Assistance and Economic Development  
Texas Comptroller of Public Accounts  
Lyndon B. Johnson State Office Building  
111 East 17th Street  
Austin, Texas 78774

Dear Mr. Wood:

The Texas Education Agency has analyzed the revenue gains that would be realized by the proposed EC&R Development, LLC, project for the Brackett Independent School District (BISD). Projections prepared by our Forecasting and Fiscal Analysis Division confirm the analysis that was prepared by Moak, Casey and Associates and provided to us by your division. We believe their assumptions are valid and their estimates of the impact of the EC&R Development, LLC, project on BISD are correct.

Please feel free to contact me by phone at (512) 463-9268 or by email at [helen.daniels@tea.state.tx.us](mailto:helen.daniels@tea.state.tx.us) if you need further information regarding this issue.

Sincerely,

Helen Daniels  
Director of State Funding

HD/hd



Attachment E

Summary of Financial Impact

**SUMMARY OF FINANCIAL IMPACT OF THE PROPOSED EC&R  
DEVELOPMENT, LLC PROJECT ON THE FINANCES OF THE  
BRACKETT ISD UNDER A REQUESTED CHAPTER 313  
PROPERTY VALUE LIMITATION**

**November 6, 2009**

**Final Report (Revised)**

**PREPARED BY**



# Estimated Impact of the Proposed EC&R Development, LLC Project on the Finances of the Brackett ISD under a Requested Chapter 313 Property Value Limitation

## Introduction

EC&R Development, LLC (EC&R) has requested that the Brackett ISD (BISD) consider granting a property value limitation under Chapter 313 of the Tax Code for a new renewable electric wind generation project. An application was submitted to BISD on July 13, 2009. EC&R proposes to invest \$85.50 million to construct a new wind energy project in BISD.

The revision incorporated in this report reflects changes in the estimates of lost revenue to BISD in the third year of a value limitation agreement. A correction has been made to our school finance model that permits an annual increase of \$350 per WADA in additional revenue for what are known as “formula” school districts. The model was previously limiting this increase to a one-time gain of \$350 per WADA, which we determined to be incorrect under the gain-limitation provisions of Section 42.008 of the Education Code, as amended recently by House Bill 3646. For this project, the revenue-loss estimates in the third year increased from \$618,039 to \$675,645, which would be covered by the hold-harmless provisions of the value limitation agreement. As was the case with the original estimates, no formula losses are currently estimated for years 4-10 under the agreement.

The EC&R project is consistent with the state’s goal to “encourage large scale capital investments in this state.” When enacted as House Bill 1200 in 2001, the original language in Chapter 313 of the Tax Code made companies engaged in manufacturing, research and development, and renewable electric energy production eligible to apply to school districts for property value limitations. Subsequent legislative changes expanded eligibility to clean coal projects, nuclear power generation and data centers, among others.

## School Finance Mechanics

Under the provisions of Chapter 313, BISD may offer a minimum value limitation of \$1 million, which is the lowest amount that may be approved by a rural school district. Based on the application, the qualifying time period would begin with the 2010-11 school year. The full taxable value of the investment is expected to reach \$82.1 million in 2012-13, with depreciation expected to reduce the taxable value of the project over the course of the value limitation agreement.

The provisions of Chapter 313 call for the project to be fully taxable in the 2010-11 and 2011-12 school years, unless the District and the Company agree to an extension of the start of the qualifying time period. For the purpose of this analysis, it is assumed that the qualifying time period will be the 2010-11 and 2011-12 school years. Beginning in 2012-13, the project would go on the local tax roll at \$1 million and remain at that level of taxable value for eight years for maintenance and operations (M&O) taxes. The full taxable value of the project could be assessed for debt service taxes on voter-approved bond issues throughout the limitation period and after. BISD currently does not levy an I&S tax, since it has no outstanding voter-authorized debt.

Under the current school finance system, the property values established by the Comptroller's Office that are used to calculate state aid and recapture lag by one year, a practical consequence of the fact that the Comptroller's Office needs this time to conduct their property value study and now the planned audits of appraisal district operations in alternating years. A taxpayer receiving a value limitation pays M&O taxes on the reduced value for the project in years 3-10 and receives a tax bill for I&S taxes based on the full project value throughout the qualifying and value limitation period. The school funding formulas use the Comptroller's property values that reflect a reduction due to the property value limitation in years 4-11 as a result of the one-year lag in property values.

For the school finance system that operated prior to the approval of House Bill 1 (HB 1) in the 2006 special session, the third year was typically problematical for a school district that approved a Chapter 313 value limitation. EC&R indicates in its value limit application that no new taxable value would be in place in either the first or second years under the agreement, although it would meet its minimum required investment in the second year of the qualifying time period. In year three (2012-13) of the agreement, the project would reach \$82.1 million in total taxable value but go on the tax roll at \$1 million for M&O taxes or, if applicable, a higher value limitation amount approved by the BISD Board of Trustees. Given that there would be no value from the project in place for the 2011-12 school year, the impact of the value limitation would be reduced since the state 2011 property value used to calculate state aid in 2012-13 would not reflect project values prior to the implementation of the \$1 million value limitation. In years 4-10, little in the way of revenue losses would be anticipated because the state property values are aligned at the minimum value established by the Board on both the local tax roll and the corresponding state property value study, assuming a similar deduction is made in the state property values.

HB 1 established a "target" revenue system per student that has the effect of largely neutralizing the third-year revenue losses associated with Chapter 313 property value limitations, at least up to a district's compressed M&O tax rate. The additional four to six cents of tax effort that a district may levy are subject to an enriched level of equalization (or no recapture in the case of Chapter 41 school district) and operate more like the pre-HB 1 system. A value limitation must be analyzed for any potential revenue loss associated with this component of the M&O tax levy. For tax effort in excess of the compressed plus six cents rate, equalization and recapture occur at the level of \$319,500 per weighted student in average daily attendance (WADA). BISD has a relatively low target revenue level of \$4,437 per WADA under the HB 1 system, which establishes the foundation for the newest school finance bill.

Under HB 3646—the school finance system changes approved by the Legislature in 2009—the starting point is the target revenue from HB 1, that is then expanded through the addition of a series of school funding provisions that had operated previously outside of the basic allotment and the traditional formula structure. Under these provisions, BISD has a new adjusted target revenue level of \$4,653 per WADA. An additional \$120 per WADA guarantee is also provided for under HB 3646.

A school district districts does have the potential to earn revenue above the \$120 per WADA level, up to a maximum of \$350 per WADA above current law. Initial estimates indicate that about 700 school districts are funded at the minimum \$120 per WADA level, while approximately 300 school districts are expected to generate higher revenue amounts per WADA. This is significant because changes in property values and related tax collections under a Chapter 313 agreement once again have the potential to affect a school district's base revenue, although probably not to the degree experienced prior to the HB 1 target revenue system.

One key element in any analysis of the school finance implications is the provision for revenue protection in the agreement between the school district and the applicant. In the case of the EC&R project, the agreement calls for a calculation of the revenue impact of the value limitation in years 3-10 of the agreement, under whatever school finance and property tax laws are in effect in each of those years. This meets the statutory requirement under Section 313.027(f) (1) of the Tax Code to provide school district revenue protection language in the agreement.

### **Underlying Assumptions**

There are several approaches that can be used to analyze the future revenue stream of a school district under a value limitation. Whatever method is used, a reasonable analysis requires the use of a multi-year forecasting model that covers the years in which the agreement is in effect. The Chapter 313 application now requires 15 years of data and analysis on the project being considered for a property value limitation.

The approach used here is to maintain static enrollment and property values in order to isolate the effects of the value limitation under the school finance system. While the new target revenue system appears to limit the impact of property value changes for a majority of school districts, changes in underlying property value growth have the potential to influence the revenue stream of a number of school districts.

Student enrollment counts are held constant at 552 students in average daily attendance (ADA) in analyzing the effects of the EC&R project on the finances of BISD. A weighted average daily attendance (WADA) count of 1,039 is maintained for the forecast period. The District's local tax base reached \$165.1 million for the 2009 tax year. The underlying \$165.1 million taxable value for 2009-10 is maintained for the forecast period in order to isolate the effects of the property value limitation. BISD is not a property-wealthy district, with wealth per WADA of approximately \$145,700 for the 2010-11 school year. These assumptions are summarized in Table 1.

### **School Finance Impact**

A baseline model was prepared for BISD under the assumptions outlined above through the 2024-25 school year. Beyond the 2010-11 school year, no attempt was made to forecast the 88<sup>th</sup> percentile or Austin yield that influence future state funding. In the analyses for other districts and applicants on earlier projects, these changes appeared to have little impact on the revenue associated with the implementation of the property value limitation, since the baseline and other models incorporate the same underlying assumptions.

Under the proposed agreement, a second model is established to make a calculation of the "Baseline Revenue" by adding the value of the proposed EC&R facility to the model, but without assuming that a value limitation is approved. Under this scenario, BISD becomes a formula district and receives the full \$350 per WADA maximum revenue gain. The results of this model are shown in Table 2.

A third model is developed which adds the EC&R value but imposes the proposed property value limitation effective in the third year, which in this case is the 2012-13 school year. The results of

this model are identified as “Value Limitation Revenue Model” under the revenue protection provisions of the proposed agreement (see Table 3). An M&O tax rate of \$1.04 is used throughout this analysis. When the value limitation is imposed, BISD reverts to being a hold-harmless district with the minimum revenue gain of \$120 per WADA.

A summary of the differences between these models is shown in Table 4. The model results show approximately \$5.7 million a year in net General Fund revenue, after equalization of the local share and other adjustments have been made.

Under these assumptions, BISD would experience a revenue loss as a result of the implementation of the value limitation in the 20102-13 school year (-\$364,650). There are three components to the projected revenue loss to BISD, all of which is covered by the hold-harmless provisions under the value limitation agreement proposed for this project.

Based on the provisions of the HB 3646 school finance system, BISD would be classified as a “formula” district with the project value added in 2012-13 but no corresponding value limitation reduction. With the value limitation in place, BISD drops down to a hold-harmless basis for funding, this results in a reduction of approximately \$230 per WADA—from the maximum \$350 to the minimum \$120 per WADA. Given the estimated WADA count of 1,039, the \$230 per WADA reduction accounts for about \$296,498 of the \$675,645 loss calculation. For the six cents equalized up to the Austin ISD yield—BISD is eligible for the full six cents since its compressed 2005-06 tax rate was well below a \$1.00 at \$0.865—the additional tax effort with the full value of the projected added in would have increased Tier II, Level 2 revenue by \$187,626, which is lost with the value limitation going into effect that year. Finally, the additional tax effort associated with the \$82.1 million project in the absence of a limitation agreement would bolster Tier II, Level 3 revenue by \$191,520, all of which is foregone when the value limitation takes effect. Given the comparison of the project value added at full value in 2012-13 at the anticipated \$1.04 M&O tax rate versus the \$1 million value limitation approved for that year, these three components result in a revenue difference of \$675,645 that must be made up by the Applicant under a hold-harmless agreement. Beyond the third year, there are no additional hold-harmless amounts estimated under this model and its underlying assumptions.

One change that has been incorporated into these models is a more precise estimate of the deduction from the property value study conducted by the Comptroller’s Office. At the school district level, a taxpayer benefiting from a property value limitation has two property values assigned by the local appraisal district for their property covered by the limitation: (1) a reduced value for M&O taxes, and (2) the full taxable value for I&S taxes, if applicable. This situation exists for the eight years that the value limitation is in effect.

Under the property value study conducted by the Comptroller’s Office, a single deduction amount is calculated for a property value limitation and the same value is assigned for the M&O and I&S calculations under the school funding formulas. Given the absence of an I&S tax levy by BISD, the calculation method used in the property value study should not adversely impact the state aid offset for a Chapter 313 property value limitation for the District. In the event that voters approve a future bond issue that results in an I&S tax levy during the course of the value limitation agreement, there is the potential that the state offset would only partially compensate BISD and additional hold-harmless payments could be required of EC&R.

### **Impact on the Taxpayer**

Table 5 summarizes the impact of the proposed property value limitation in terms of the potential tax savings under the property value limitation agreement. The focus of this table is on the M&O tax rate only. (BISD does not currently levy an I&S tax, as noted previously.) While the property associated with the project is fully taxable in the first two years, EC&R does not anticipate having any taxable value in place in the first two years, so it will not be eligible for tax credits for the M&O taxes paid on value in excess of the \$1 million in the first two years.

Under the assumptions used here, the potential tax savings from the value limitation total \$5.9 million over the life of the agreement. The key BISD revenue losses are associated with its change from formula to hold-harmless status and the loss of potential revenue under the Tier II formula provisions. The third-year revenue loss is expected to total approximately -\$675,645, with no additional losses projected under these assumptions. The potential net tax benefits are estimated to total \$5.2 million over the life of the agreement.

### **Facilities Funding Impact**

The EC&R project remains fully taxable for debt services taxes, although BISD currently does not levy an I&S tax. The value of the EC&R project is expected to depreciate over the life of the agreement and beyond, but full access to the additional value from the project will add to the District's projected wealth per ADA. It is expected that the expanded tax base for I&S purposes would have the potential to generate local revenue above that provided for in the Instructional Facilities Allotment (IFA) and Existing Debt Allotment (EDA) programs currently funded at a \$35 yield per ADA per penny of tax effort, which equates to a \$350,000 per ADA tax base.

The EC&R project is not expected to affect BISD in terms of enrollment. Continued expansion of the renewable energy industry could result in additional employment in the area and an increase in the school-age population, but this project is unlikely to have much impact on a stand-alone basis.

### **Conclusion**

The proposed EC&R wind energy project enhances the tax base of BISD. It reflects continued capital investment in renewable electric energy generation, one of the goals of Chapter 313 of the Tax Code, also known as the Texas Economic Development Act.

Under the assumptions outlined above, the potential tax benefits under a Chapter 313 agreement could reach an estimated \$5.2 million over the course of the agreement. This amount is net of any anticipated revenue losses for the District. The additional taxable value also enhances the tax base of BISD, should its voters consider a future bond issue.

**Table 1 – Base District Information with EC&R Development, LLC Project Value and Limitation Values**

School Year	ADA	WADA	M&O Tax Rate	I&S Tax Rate	CAD Value with Project	CAD Value with Limitation	CPTAD with Project	CPTAD With Limitation	CPTAD Value with Project per WADA	CPTAD Value with Limitation per WADA
2010-11	552.18	1,038.66	\$1.0400	\$0.0000	\$165,086,772	\$165,086,772	\$151,333,700	\$151,333,700	\$145,700	\$145,700
2011-12	552.18	1,038.66	\$1.0400	\$0.0000	\$165,086,772	\$165,086,772	\$153,427,417	\$153,427,417	\$147,716	\$147,716
2012-13	552.18	1,038.66	\$1.0400	\$0.0000	\$247,166,772	\$166,086,772	\$153,427,417	\$153,427,417	\$147,716	\$147,716
2013-14	552.18	1,038.66	\$1.0400	\$0.0000	\$243,876,772	\$166,086,772	\$235,507,417	\$154,427,417	\$226,741	\$148,679
2014-15	552.18	1,038.66	\$1.0400	\$0.0000	\$240,726,772	\$166,086,772	\$232,217,417	\$154,427,417	\$223,573	\$148,679
2015-16	552.18	1,038.66	\$1.0400	\$0.0000	\$237,686,772	\$166,086,772	\$229,067,417	\$154,427,417	\$220,541	\$148,679
2016-17	552.18	1,038.66	\$1.0400	\$0.0000	\$234,786,772	\$166,086,772	\$226,027,417	\$154,427,417	\$217,614	\$148,679
2017-18	552.18	1,038.66	\$1.0400	\$0.0000	\$232,006,772	\$166,086,772	\$223,127,417	\$154,427,417	\$214,822	\$148,679
2018-19	552.18	1,038.66	\$1.0400	\$0.0000	\$229,326,772	\$166,086,772	\$220,347,417	\$154,427,417	\$212,145	\$148,679
2019-20	552.18	1,038.66	\$1.0400	\$0.0000	\$226,756,772	\$166,086,772	\$217,667,417	\$154,427,417	\$209,565	\$148,679
2020-21	552.18	1,038.66	\$1.0400	\$0.0000	\$224,296,772	\$224,296,772	\$215,097,417	\$154,427,417	\$207,091	\$148,679
2021-22	552.18	1,038.66	\$1.0400	\$0.0000	\$221,926,772	\$221,926,772	\$212,637,417	\$212,637,417	\$204,722	\$204,722
2022-23	552.18	1,038.66	\$1.0400	\$0.0000	\$219,646,772	\$219,646,772	\$210,267,417	\$210,267,417	\$202,440	\$202,440
2023-24	552.18	1,038.66	\$1.0400	\$0.0000	\$217,466,772	\$217,466,772	\$207,987,417	\$207,987,417	\$200,245	\$200,245
2024-25	552.18	1,038.66	\$1.0400	\$0.0000	\$215,376,772	\$215,376,772	\$205,807,417	\$205,807,417	\$198,146	\$198,146

\*Tier II Yield: \$48.19; AISD Yield: \$59.97; Equalized Wealth: \$481,900 per WADA

**Table 2– “Baseline Revenue Model”--Project Value Added with No Value Limitation**

School Year	M&O Taxes @ Compressed Rate	State Aid	Additional State Aid-Hold Harmless	Excess Formula Reduction	Recapture Costs	Additional Local M&O Collections	State Aid From Additional M&O Tax Collections	Recapture from the Additional Local Tax Effort	Total General Fund
2010-11	\$1,328,273	\$3,289,743	\$359,916	\$0	\$0	\$268,646	\$497,633	\$0	\$5,744,211
2011-12	\$1,328,273	\$3,271,631	\$378,028	\$0	\$0	\$268,646	\$487,176	\$0	\$5,733,754
2012-13	\$2,002,799	\$3,271,631	\$0	\$0	\$0	\$405,070	\$734,575	\$0	\$6,414,075
2013-14	\$1,975,762	\$2,561,604	\$440,566	\$0	\$0	\$399,602	\$332,826	\$0	\$5,710,361
2014-15	\$1,949,876	\$2,590,064	\$437,993	\$0	\$0	\$394,366	\$338,707	\$0	\$5,711,005
2015-16	\$1,924,893	\$2,617,313	\$435,726	\$0	\$0	\$389,314	\$344,319	\$0	\$5,711,564
2016-17	\$1,901,061	\$2,643,610	\$433,261	\$0	\$0	\$384,493	\$349,801	\$0	\$5,712,226
2017-18	\$1,878,215	\$2,668,696	\$431,021	\$0	\$0	\$379,873	\$355,026	\$0	\$5,712,831
2018-19	\$1,856,191	\$2,692,745	\$428,996	\$0	\$0	\$375,418	\$360,026	\$0	\$5,713,377
2019-20	\$1,835,071	\$2,715,928	\$426,933	\$0	\$0	\$371,147	\$364,882	\$0	\$5,713,961
2020-21	\$1,814,855	\$2,738,159	\$424,918	\$0	\$0	\$367,058	\$369,559	\$0	\$5,714,550
2021-22	\$1,795,379	\$2,759,439	\$423,114	\$0	\$0	\$363,119	\$374,024	\$0	\$5,715,075
2022-23	\$1,776,642	\$2,779,941	\$421,349	\$0	\$0	\$359,329	\$378,342	\$0	\$5,715,604
2023-24	\$1,758,727	\$2,799,664	\$419,541	\$0	\$0	\$355,706	\$382,532	\$0	\$5,716,170
2024-25	\$1,741,551	\$2,818,522	\$417,859	\$0	\$0	\$352,232	\$386,540	\$0	\$5,716,704

Table 3-- "Value Limitation Revenue Model"--Project Value Added with Value Limit

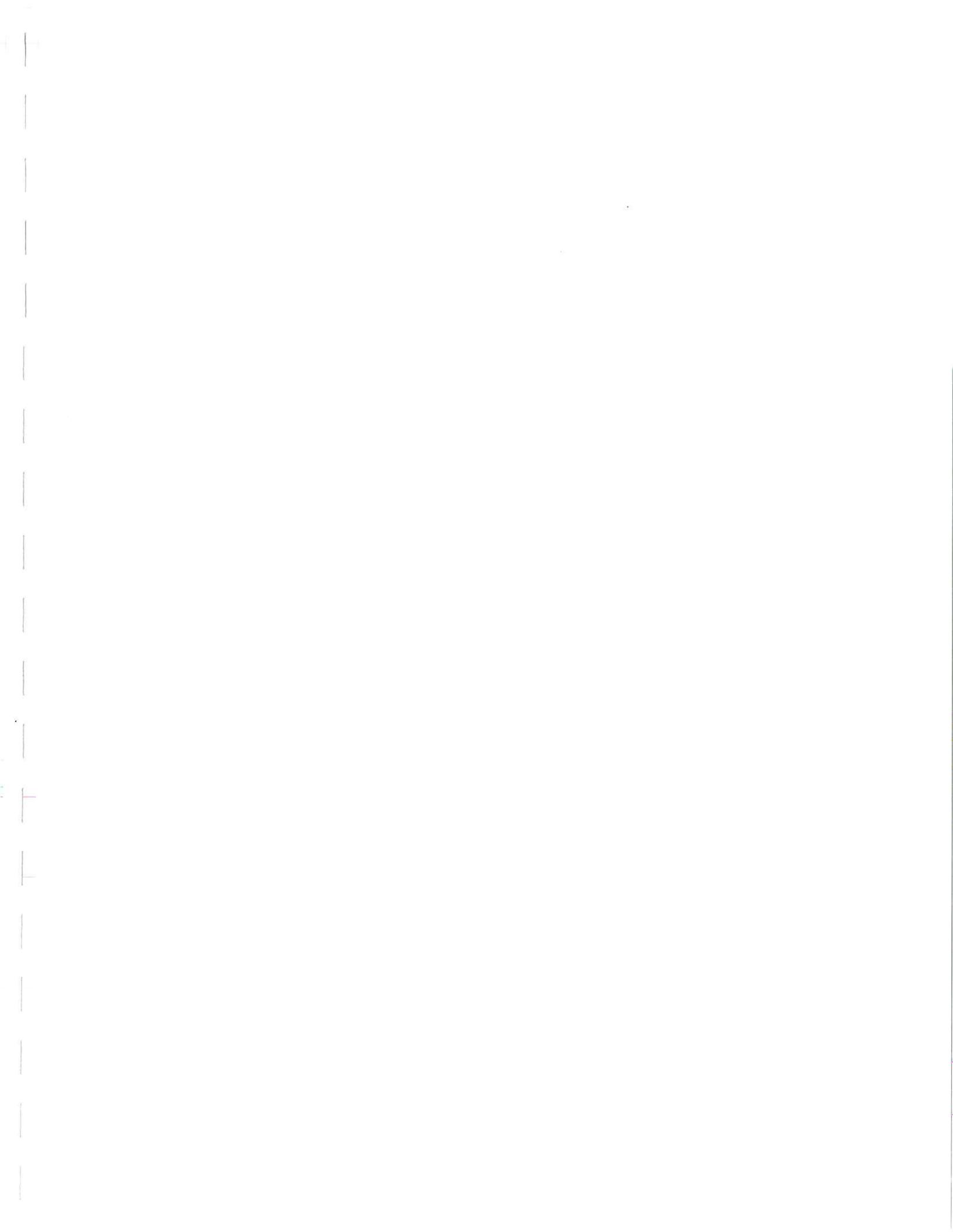
School Year	M&O Taxes @ Compressed Rate	State Aid	Additional State Aid-Hold Harmless	Excess Formula Reduction	Recapture Costs	Additional Local M&O Collections	State Aid From Additional M&O Tax Collections	Recapture from the Additional Local Tax Effort	Total General Fund
2010-11	\$1,328,273	\$3,289,743	\$359,916	\$0	\$0	\$268,646	\$497,633	\$0	\$5,744,211
2011-12	\$1,328,273	\$3,271,631	\$378,028	\$0	\$0	\$268,646	\$487,176	\$0	\$5,733,754
2012-13	\$1,336,491	\$3,271,631	\$369,810	\$0	\$0	\$270,308	\$490,190	\$0	\$5,738,430
2013-14	\$1,336,491	\$3,262,981	\$378,460	\$0	\$0	\$270,308	\$485,265	\$0	\$5,733,506
2014-15	\$1,336,491	\$3,262,981	\$378,460	\$0	\$0	\$270,308	\$485,265	\$0	\$5,733,506
2015-16	\$1,336,491	\$3,262,981	\$378,460	\$0	\$0	\$270,308	\$485,265	\$0	\$5,733,506
2016-17	\$1,336,491	\$3,262,981	\$378,460	\$0	\$0	\$270,308	\$485,265	\$0	\$5,733,506
2017-18	\$1,336,491	\$3,262,981	\$378,460	\$0	\$0	\$270,308	\$485,265	\$0	\$5,733,506
2018-19	\$1,336,491	\$3,262,981	\$378,460	\$0	\$0	\$270,308	\$485,265	\$0	\$5,733,506
2019-20	\$1,336,491	\$3,262,981	\$378,460	\$0	\$0	\$270,308	\$485,265	\$0	\$5,733,506
2020-21	\$1,814,855	\$3,262,981	\$0	\$0	\$0	\$367,058	\$658,954	\$0	\$6,103,849
2021-22	\$1,795,379	\$2,759,439	\$423,114	\$0	\$0	\$363,119	\$374,024	\$0	\$5,715,075
2022-23	\$1,776,642	\$2,779,941	\$421,349	\$0	\$0	\$359,329	\$378,342	\$0	\$5,715,604
2023-24	\$1,758,727	\$2,799,664	\$419,541	\$0	\$0	\$355,706	\$382,532	\$0	\$5,716,170
2024-25	\$1,741,551	\$2,818,522	\$417,859	\$0	\$0	\$352,232	\$386,540	\$0	\$5,716,704

Table 4 – Value Limit less Project Value with No Limit

School Year	M&O Taxes @ Compressed Rate	State Aid	Additional State Aid-Hold Harmless	Excess Formula Reduction	Recapture Costs	Additional Local M&O Collections	State Aid From Additional M&O Tax Collections	Recapture from the Additional Local Tax Effort	Total General Fund
2010-11	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2011-12	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2012-13	-\$666,308	\$0	\$369,810	\$0	\$0	-\$134,762	-\$244,385	\$0	-\$675,645
2013-14	-\$639,271	\$701,377	-\$62,106	\$0	\$0	-\$129,294	\$152,439	\$0	\$23,145
2014-15	-\$613,385	\$672,917	-\$59,532	\$0	\$0	-\$124,058	\$146,559	\$0	\$22,500
2015-16	-\$588,402	\$645,668	-\$57,266	\$0	\$0	-\$119,006	\$140,947	\$0	\$21,941
2016-17	-\$564,570	\$619,371	-\$54,801	\$0	\$0	-\$114,186	\$135,465	\$0	\$21,279
2017-18	-\$541,725	\$594,285	-\$52,560	\$0	\$0	-\$109,565	\$130,239	\$0	\$20,675
2018-19	-\$519,701	\$570,236	-\$50,535	\$0	\$0	-\$105,111	\$125,239	\$0	\$20,129
2019-20	-\$498,581	\$547,053	-\$48,472	\$0	\$0	-\$100,839	\$120,384	\$0	\$19,545
2020-21	\$0	\$524,822	-\$424,918	\$0	\$0	\$0	\$289,395	\$0	\$389,299
2021-22	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2022-23	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2023-24	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2024-25	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**Table 5 - Estimated Financial impact of the EC&R Development, LLC Project Property Value Limitation Request Submitted to BISD at \$1.04 M&O Tax Rate**

School Year	Project Value	Estimated Taxable Value	Value Savings	Assumed M&O Tax Rate	Taxes Before Value Limit	Taxes after Value Limit	Tax Savings @ Projected M&O Rate	Tax Credits for First Two Years Above Limit	Tax Benefit to Company Before Revenue Protection	School District Revenue Losses	Estimated Net Tax Benefits
2010-11	\$0	\$0	\$0	\$1.040	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2011-12	\$0	\$0	\$0	\$1.040	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2012-13	\$82,080,000	\$1,000,000	\$81,080,000	\$1.040	\$853,632	\$10,400	\$843,232	\$0	\$843,232	-\$675,645	\$167,587
2013-14	\$78,790,000	\$1,000,000	\$77,790,000	\$1.040	\$819,416	\$10,400	\$809,016	\$0	\$809,016	\$0	\$809,016
2014-15	\$75,640,000	\$1,000,000	\$74,640,000	\$1.040	\$786,656	\$10,400	\$776,256	\$0	\$776,256	\$0	\$776,256
2015-16	\$72,600,000	\$1,000,000	\$71,600,000	\$1.040	\$755,040	\$10,400	\$744,640	\$0	\$744,640	\$0	\$744,640
2016-17	\$69,700,000	\$1,000,000	\$68,700,000	\$1.040	\$724,880	\$10,400	\$714,480	\$0	\$714,480	\$0	\$714,480
2017-18	\$66,920,000	\$1,000,000	\$65,920,000	\$1.040	\$695,968	\$10,400	\$685,568	\$0	\$685,568	\$0	\$685,568
2018-19	\$64,240,000	\$1,000,000	\$63,240,000	\$1.040	\$668,096	\$10,400	\$657,696	\$0	\$657,696	\$0	\$657,696
2019-20	\$61,670,000	\$1,000,000	\$60,670,000	\$1.040	\$641,368	\$10,400	\$630,968	\$0	\$630,968	\$0	\$630,968
2020-21	\$59,210,000	\$59,210,000	\$0	\$1.040	\$615,784	\$615,784	\$0	\$0	\$0	\$0	\$0
2021-22	\$56,840,000	\$56,840,000	\$0	\$1.040	\$591,136	\$591,136	\$0	\$0	\$0	\$0	\$0
2022-23	\$54,560,000	\$54,560,000	\$0	\$1.040	\$567,424	\$567,424	\$0	\$0	\$0	\$0	\$0
2023-24	\$52,380,000	\$52,380,000	\$0	\$1.040	\$544,752	\$544,752	\$0	\$0	\$0	\$0	\$0
2024-25	\$50,290,000	\$50,290,000	\$0	\$1.040	\$523,016	\$523,016	\$0	\$0	\$0	\$0	\$0
					<b>\$8,787,168</b>	<b>\$2,925,312</b>	<b>\$5,861,856</b>	<b>\$0</b>	<b>\$5,861,856</b>	<b>-\$675,645</b>	<b>\$5,186,211</b>
							<b>Tax Credit for Value Over Limit in First 2 Years</b>	<b>2010</b>	<b>2011</b>	<b>Max Credits</b>	
								\$0	\$0	\$0	
							Credits Earned			\$0	
							Credits Paid			\$0	
							Excess Credits Unpaid			\$0	



Attachment F

Taxable Value of Property

DATE: 08/28/2009  
 TIME: 10:18:29

COMPTROLLER OF PUBLIC ACCOUNTS - PROPERTY TAX ASSISTANCE DIVISION  
 2008 ISD SUMMARY WORKSHEET  
 136/Kinney  
 136-901/Brackett ISD

PAGE: 001  
 REPT: PTS265  
 VRSN: F

CATEGORY	LOCAL TAX ROLL VALUE	2008 WTD MEAN RATIO	2008 PTD VALUE ESTIMATE	2008 VALUE ASSIGNED
A. SINGLE-FAMILY RESIDENCES	66,509,716	1.0057	66,132,759	66,509,716
B. MULTIFAMILY RESIDENCES	932,678	N/A	932,678	932,678
C. VACANT LOTS	4,632,001	N/A	4,632,001	4,632,001
D. RURAL REAL (TAXABLE)	62,130,426	.9469	65,612,401	62,130,426
F1. COMMERCIAL REAL	9,429,382	.9749	9,672,153	9,429,382
F2. INDUSTRIAL REAL	1,000	N/A	1,000	1,000
G. OIL, GAS, MINERALS	0	N/A	0	0
J. UTILITIES	24,573,480	.9972	24,642,479	24,573,480
L1. COMMERCIAL PERSONAL	8,329,789	N/A	8,329,789	8,329,789
L2. INDUSTRIAL PERSONAL	0	N/A	0	0
M. MOBILE HOMES	27,160	N/A	27,160	27,160
N. INTANGIBLE PERS/UNCERT	0	N/A	0	0
O. RESIDENTIAL INVENTORY	0	N/A	0	0
S. SPECIAL INVENTORY	0	N/A	0	0
<b>SUBTOTAL</b>	<b>176,565,632</b>		<b>179,982,420</b>	<b>176,565,632</b>
<b>LESS TOTAL DEDUCTIONS</b>	<b>27,297,078</b>		<b>27,159,346</b>	<b>27,297,078</b>
<b>TOTAL TAXABLE VALUE</b>	<b>149,268,554</b>		<b>152,823,074</b>	<b>149,268,554 T2</b>

CATEGORY D DETAIL	LOCAL TAX ROLL	RATIO	PTD VALUE
MARKET VALUE NON-QUALIFIED ACRES & FARM/RANCH IMP	24,526,153	.9731	25,206,200
PROD VALUE QUALIFIED ACRES	37,602,273	.9305	40,406,201
<b>TAXABLE VALUE</b>	<b>62,130,426</b>		<b>65,612,401</b>

THE TAXABLE VALUES SHOWN HERE WILL NOT MATCH THE VALUES REPORTED BY YOUR APPRAISAL DISTRICT  
 SEE THE ISD DEDUCTION REPORT FOR A BREAKDOWN OF DEDUCTION VALUES

DATE: 08/28/2009  
 TIME: 10:18:29

COMPTROLLER OF PUBLIC ACCOUNTS - PROPERTY TAX ASSISTANCE DIVISION  
 2008 FINAL VALUES WORKSHEET  
 136/kinney  
 136-901/Brackett ISD

PAGE: 002  
 REPT: PTS265  
 VRSN: F

GOVERNMENT CODE SUBSECTIONS 403.302 (J) AND (K) REQUIRE THE COMPTROLLER TO CERTIFY ALTERNATIVE MEASURES OF SCHOOL DISTRICT WEALTH (T1, T3, T4, T5 AND T6) IN ADDITION TO THE TRADITIONAL MEASURE (T2). QUESTIONS ABOUT THE EXTENT TO WHICH ANY OF THESE WEALTH MEASURES AFFECT SCHOOL FUNDING SHOULD BE DIRECTED TO THE DIVISION OF STATE FUNDING AT THE TEXAS EDUCATION AGENCY, TELEPHONE #512-463-9238.

T1	T2	T3	T4	T5	T6
158,747,908	149,268,554	158,747,908	149,268,554	149,268,554	149,268,554
	LOSS TO THE ADDITIONAL \$10,000 HOMESTEAD EXEMPTION		50% OF THE LOSS TO THE LOCAL OPTIONAL PERCENTAGE HOMESTEAD EXEMPTION		
	<u>9,479,354</u>		<u>0</u>		

T1 = SCHOOL DISTRICT TAXABLE VALUE BEFORE THE LOSS TO THE ADDITIONAL \$10,000 HOMESTEAD EXEMPTION  
 T2 = SCHOOL DISTRICT TAXABLE VALUE AFTER THE LOSS TO THE ADDITIONAL \$10,000 HOMESTEAD EXEMPTION AND THE TAX CEILING REDUCTION  
 T3 = T1 MINUS 50% OF THE LOSS TO THE LOCAL OPTIONAL PERCENTAGE HOMESTEAD EXEMPTION  
 T4 = T2 MINUS 50% OF THE LOSS TO THE LOCAL OPTIONAL PERCENTAGE HOMESTEAD EXEMPTION  
 T5 = T3 BEFORE THE LOSS TO THE TAX CEILING REDUCTION  
 T6 = T5 MINUS 50% OF THE LOSS TO THE LOCAL OPTIONAL PERCENTAGE HOMESTEAD EXEMPTION

THE TAXABLE VALUES SHOWN HERE WILL NOT MATCH THE VALUES REPORTED BY YOUR APPRAISAL DISTRICT

THE PVS FOUND YOUR LOCAL VALUE TO BE VALID, AND LOCAL VALUE WAS CERTIFIED

\*\*\*\* END OF REPORT \*\*\*\*



Attachment G

Participation Agreement

**AGREEMENT FOR LIMITATION ON APPRAISED VALUE  
OF PROPERTY FOR SCHOOL DISTRICT  
MAINTENANCE AND OPERATIONS TAXES**

---

by and between

**BRACKETT INDEPENDENT SCHOOL DISTRICT**

and

**EC&R DEVELOPMENT, LLC**

*(Texas Taxpayer ID # 32039451532)*

---

Dated

December 21, 2009

**AGREEMENT FOR LIMITATION ON APPRAISED VALUE OF PROPERTY FOR  
SCHOOL DISTRICT MAINTENANCE AND OPERATIONS TAXES**

*STATE OF TEXAS* §

*COUNTY OF KINNEY* §

THIS AGREEMENT FOR LIMITATION ON APPRAISED VALUE OF PROPERTY FOR SCHOOL DISTRICT MAINTENANCE AND OPERATIONS TAXES, hereinafter referred to as this "Agreement," is executed and delivered by and between **BRACKETT INDEPENDENT SCHOOL DISTRICT**, hereinafter referred to as the "District," a lawfully created independent school district within the State of Texas operating under and subject to the Texas Education Code, and **EC&R DEVELOPMENT, LLC**, Texas Taxpayer Identification Number 32039451532 hereinafter referred to as the "Applicant." The Applicant and the District are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties." Certain capitalized and other terms used in this Agreement shall have the meanings ascribed to them in Section 1.3.

**RECITALS**

*WHEREAS*, on July 13, 2009, the Superintendent of Schools of the Brackett Independent School District, acting as agent of the Board of Trustees of the District (the "Board of Trustees"), received from the Applicant an Application for Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code; and,

*WHEREAS*, on August 4, 2009, the Superintendent of Schools of the Brackett Independent School District, acting as agent of the Board of Trustees of the District (the "Board of Trustees"), received from the Applicant a Supplement to the Application for Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code; and,

*WHEREAS*, the Board of Trustees has acknowledged receipt of the Application and the Supplemented Application along with the requisite application fee as established pursuant to Texas Tax Code § 313.025(a)(1) and Local District Policy CCG (Local); and,

*WHEREAS*, the Application was delivered to the Texas Comptroller's Office for review pursuant to Texas Tax Code § 313.025(d); and,

*WHEREAS*, the Application was reviewed by the Texas Comptroller's Office pursuant to Texas Tax Code § 313.025(d), and on November 23, 2009 the Comptroller's Office, via letter, recommended that the Application be approved; and,

**WHEREAS**, the Texas Comptroller of Public Accounts conducted an economic impact evaluation pursuant to Chapter 313 of the Texas Tax Code; and,

**WHEREAS**, the Board of Trustees has reviewed the economic impact evaluation pursuant to Texas Tax Code § 313.026 and has carefully considered such evaluation; and,

**WHEREAS**, the Application was reviewed by the Kinney County Appraisal District established in Kinney County, Texas (the "Kinney County Appraisal District"), pursuant to Texas Tax Code § 6.01; and,

**WHEREAS**, on December 21, 2009, the Board of Trustees conducted a public hearing on the Application at which it solicited input into its deliberations on the Application from all interested parties within the District; and,

**WHEREAS**, on December 21, 2009, the Board of Trustees made factual findings pursuant to Texas Tax Code § 313.025(f), including, but not limited to findings that: (i) the information in the Application is true and correct; (ii) this Agreement is in the best interest of the District and the State of Texas; (iii) the Applicant is eligible for the Limitation on Appraised Value of the Applicant's Qualified Property; (iv) each criterion listed in Texas Tax Code § 313.025(e) has been met; and, (v.) if the job creation requirement set forth in Texas Tax Code § 313.051(b) (*i.e.*, 10 jobs) was applied, for the size and scope of the project described in the Application and in **EXHIBIT 3**, the required number of jobs would exceed the industry standard for the number of employees reasonably necessary for the operation of the facility; and,

**WHEREAS**, on December 21, 2009, the Board of Trustees determined that the Tax Limitation Amount requested by Applicant, and as defined in Sections 1.2 and 1.3, below, is consistent with the minimum values set out by Tax Code, §§ 313.022(b) and 313.052, as such Tax Limitation Amount was computed for the effective date of this Agreement; and,

**WHEREAS**, on December 21, 2009, pursuant to the provisions of Texas Tax Code § 313.025(f-1), the Board of Trustees waived the job creation requirement set forth in Texas Tax Code § 313.051(b); and,

**WHEREAS**, on December 21, 2009, the Board of Trustees approved the form of this Agreement for a Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes, and authorized the Board President and Secretary to execute and deliver such Agreement to the Applicant;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants and agreements herein contained, the Parties agree as follows:

**ARTICLE I**

**AUTHORITY, TERM, DEFINITIONS, AND GENERAL PROVISIONS**

**Section 1.1. AUTHORITY**

This Agreement is executed by the District as its written agreement with the Applicant pursuant to the provisions and authority granted to the District in Texas Tax Code § 313.027.

**Section 1.2. TERM OF THE AGREEMENT**

This Agreement shall commence and first become effective for the ad valorem property valuations of the Qualified Property and Qualified Investments made pursuant to this Agreement beginning with the tax appraisals to be made as of January 1, 2010, which date is referred to herein as the "Commencement Date." The Parties acknowledge that the limitation on the local ad valorem property values shall not commence until the valuations are made as of January 1, 2012, the second anniversary of the Commencement Date. These first two Tax Years that begin on the Commencement Date (*i.e.*, the 2010 and 2011 Tax Years), which together with the period from the date of approval until January 1, 2010 are collectively referred to herein as the "Qualifying Time Period," as that term is defined in Texas Tax Code § 313.021(4). Unless sooner terminated as provided herein, the limitation on the local ad valorem property values shall terminate on December 31, 2019. Except as otherwise provided herein, this Agreement will terminate, in full, on December 31, 2022. The termination of this Agreement shall not (i) release any obligations, liabilities, rights and remedies arising out of any breach of, or failure to comply with, this Agreement occurring prior to such termination, or (ii) affect the right of a Party to enforce the payment of any amount to which such Party was entitled before such termination or to which such Party became entitled as a result of an event that occurred before such termination, so long as the right to such payment survives said termination.

Except as otherwise provided herein, the Tax Years for which this Agreement is effective are as set forth below and set forth opposite each such Tax Year are the corresponding year in the term of this Agreement, the date of the Appraised Value determination for such Tax Year, and a summary description of certain provisions of this Agreement corresponding to such Tax Year (it being understood and agreed that such summary descriptions are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement):

<b>Year of Agreement</b>	<b>Date of Appraisal</b>	<b>School Year</b>	<b>Tax Year</b>	<b>Summary Description of Provisions</b>
1	January 1, 2010	2010-11	2010	No limitation on value. Tax credit in future years.

<b>Year of Agreement</b>	<b>Date of Appraisal</b>	<b>School Year</b>	<b>Tax Year</b>	<b>Summary Description of Provisions</b>
2	January 1, 2011	2011-12	2011	No limitation on value. Tax credit in future years.
3	January 1, 2012	2012-13	2012	\$ 1 million property value limitation.
4	January 1, 2013	2013-14	2013	\$ 1 million property value limitation. Possible tax credit due to Applicant.
5	January 1, 2014	2014-15	2014	\$ 1 million property value limitation. Possible tax credit due to Applicant.
6	January 1, 2015	2015-16	2015	\$ 1 million property value limitation. Possible tax credit due to Applicant.
7	January 1, 2016	2016-17	2016	\$ 1 million property value limitation. Possible tax credit due to Applicant.
8	January 1, 2017	2017-18	2017	\$ 1 million property value limitation. Possible tax credit due to Applicant.
9	January 1, 2018	2018-19	2018	\$ 1 million property value limitation. Possible tax credit due to Applicant.
10	January 1, 2019	2019-20	2019	\$ 1 million property value limitation. Possible tax credit due to Applicant.
11	January 1, 2020	2020-21	2020	No tax limitation. Possible tax credit due to Applicant. Applicant obligated to Maintain Viable Presence if no early termination.
12	January 1, 2021	2021-22	2021	No tax limitation. Possible tax credit due to Applicant.

Year of Agreement	Date of Appraisal	School Year	Tax Year	Summary Description of Provisions
				Applicant obligated to Maintain Viable Presence if no early termination.
13	January 1, 2022	2022-23	2022	No tax limitation. Possible tax credit due to Applicant. Applicant obligated to Maintain Viable Presence if no early termination.

### Section 1.3. DEFINITIONS

Wherever used herein, the following terms shall have the following meanings, unless the context in which used clearly indicates another meaning, to-wit:

“*Act*” means the Texas Economic Development Act set forth in Chapter 313 of the Texas Tax Code, as amended.

“*Affiliate*” means any entity that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Applicant. For purposes of this definition, control of an entity means (i) the ownership, directly or indirectly, of fifty (50) percent or more of the voting rights in a company or other legal entity or (ii) the right to direct the management or operation of such entity whether by ownership (directly or indirectly) of securities, by contract or otherwise.

“*Affiliated Group*” means a group of one or more entities in which a controlling interest is owned by a common owner or owners, either corporate or non-corporate, or by one or more of the member entities.

“*Agreement*” means this Agreement, as the same may be modified, amended, restated, amended and restated, or supplemented from time to time in accordance with Section 8.3.

“*Applicant*” means EC&R Development, LLC, (*Texas Taxpayer ID # 32039451532*), the company listed in the Preamble of this Agreement who, on July 13, 2009, filed the Original Application and on August 4, 2009 filed a Supplement to the Application with the District for an Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code. The term “Applicant” shall also include the Applicant’s assigns and successors-in-interest.

“*Appraised Value*” shall have the meaning assigned to such term in Section 1.04(8) of the Texas Tax Code.

“Applicable School Finance Law” means Chapters 41 and 42 of the Texas Education Code, the Texas Economic Development Act (Chapter 313 of the Texas Tax Code), Chapter 403, Subchapter M, of the Texas Government Code applicable to the District, and the Constitution and general laws of the State applicable to the independent school districts of the State, including specifically, the applicable rules and regulations of the agencies of the State having jurisdiction over any matters relating to the public school systems and school districts of the State, and judicial decisions construing or interpreting any of the above. The term also includes any amendments or successor statutes that may be adopted in the future that could impact or alter the calculation of the Applicant’s ad valorem tax obligation to the District, either with or without the limitation of property values made pursuant to this Agreement.

“Application” means collectively the Application for Appraised Value Limitation on Qualified Property (Chapter 313, Subchapter B or C, of the Texas Tax Code) initially filed with the District by the Applicant on July 13, 2009, and the August 4, 2009 Supplement to the Application filed with the District.

“Appraisal District” means the Kinney County Appraisal District.

“Comptroller” means the Texas Comptroller of Public Accounts.

“Comptroller’s Rules” means the applicable rules and regulations of the Comptroller set forth at Chapter 34 Texas Administrative Code, together with any court or administrative decisions interpreting same.

“County” means Kinney County, Texas.

“District” or “School District” means the Brackett Independent School District, being a duly authorized and operating independent school district in the State, having the power to levy, assess, and collect ad valorem taxes within its boundaries and to which Subchapter C of the Act applies. The term also includes any successor independent school district or other successor governmental authority having the power to levy and collect ad valorem taxes for school purposes on the Applicant’s Qualified Property or the Applicant’s Qualified Investment.

“Force Majeure” means a failure caused by (a) provisions of law, or the operation or effect of rules, regulations or orders promulgated by any governmental authority having jurisdiction over the Applicant, the Applicant’s Qualified Property or the Applicant’s Qualified Investment or any upstream, intermediate or downstream equipment or support facilities as are necessary to the operation of the Applicant’s Qualified Property or the Applicant’s Qualified Investment; (b) any demand or requisition, arrest, order, request, directive, restraint or requirement of any government or governmental agency whether federal, state, military, local or otherwise; (c) the action, judgment or decree of any court; (d) floods, storms, hurricanes, evacuation due to threats of hurricanes, lightning, earthquakes, washouts, high water, fires, acts of God or public enemies, wars (declared or undeclared), blockades, epidemics, riots or civil disturbances, insurrections, strikes, labor disputes (it being understood that nothing contained in this Agreement shall require the Applicant to settle any such strike or labor dispute), explosions,

breakdown or failure of plant, machinery, equipment, lines of pipe or electric power lines (or unplanned or forced outages or shutdowns of the foregoing for inspections, repairs or maintenance), inability to obtain, renew or extend franchises, licenses or permits, loss, interruption, curtailment or failure to obtain electricity, gas, steam, water, wastewater disposal, waste disposal or other utilities or utility services, inability to obtain or failure of suppliers to deliver equipment, parts or material, or inability of the Applicant to ship or failure of carriers to transport electricity from the Applicant's facilities; or (e) any other cause (except financial), whether similar or dissimilar, over which the Applicant has no reasonable control and which forbids or prevents performance.

"Land" shall have the meaning assigned to such term in Section 2.2.

"Maintain Viable Presence" means the operation over the term of this Agreement of the facility or facilities for which the tax limitation is granted, as the same may from time to time be expanded, upgraded, improved, modified, changed, remodeled, repaired, restored, reconstructed, reconfigured, and/or reengineered and (ii) the retention over the term of this Agreement of not fewer than six (6) Qualifying Jobs to be located and performed within Applicant's entire Wind Energy Project that includes, but is not limited to, Applicant's Qualified Property, as set forth in the Application, with the minimum salaries required by Texas Tax Code § 313.021(3)(E).

"Maintenance and Operations Revenue" or "M&O Revenue" means (i) those revenues which the District receives from the levy of its annual ad valorem maintenance and operations tax pursuant to Texas Education Code § 45.002 and Article VII § 3 of the Texas Constitution, plus (ii) all State revenues to which the District is or may be entitled under Chapter 42 of the Texas Education Code or any other statutory provision as well as any amendment or successor statute to these provisions, plus (iii) any indemnity payments received by the District under other agreements similar to this Agreement to the extent that such payments are designed to replace District M&O Revenue lost as a result of such similar agreements, less (iv) any amounts necessary to reimburse the State of Texas or another school district for the education of additional students pursuant to Chapter 41 of the Texas Education Code.

"Market Value" shall have the meaning assigned to such term in Section 1.04(7) of the Texas Tax Code.

"Qualified Investment" has the meaning set forth in Chapter 313 of the Texas Tax Code, as interpreted by the Comptroller's Rules, as these provisions existed on the date of this Agreement, applying any specific requirements for rural school districts imposed by Subchapter C of Chapter 313 of the Texas Tax Code and by the Comptroller's Rules.

"Qualified Property" has the meaning set forth in Chapter 313 of the Texas Tax Code, as interpreted by the Comptroller's Rules and the Texas Attorney General, as these provisions existed on the date of this Agreement, applying any specific requirements for rural school districts imposed by Subchapter C of Chapter 313 of the Texas Tax Code and by the Comptroller's Rules.

"Qualifying Time Period" means the period that begins on the date of approval of this Agreement by the District's Board of Trustees and ends on December 31<sup>st</sup> of the second Tax Year that begins after such date of approval, as is defined in Texas Tax Code § 313.021(4)(A).

"Revenue Protection Amount" means the amount calculated pursuant to Section 3.2 of this Agreement.

"State" means the State of Texas.

"Tax Credit" means the tax credit, either to be paid by the District to Applicant, or to be applied against any taxes that the school district imposes in Qualified Property, as computed under the provisions of Subchapter D of the Act, and rules adopted by the Comptroller and/or the Texas Education Agency, provided that Applicant complies with the requirements under such provisions, including the timely filing of a completed application under Texas Tax Code § 313.103 and the duly adopted administrative rules.

"Tax Limitation Amount" means the maximum amount which may be placed as the Appraised Value on Qualified Property/Qualified Investment for years three (3) through ten (10) of this Agreement pursuant to Texas Tax Code § 313.054. That is, for each of the eight (8) Tax Years 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019, the Appraised Value of the Applicant's Qualified Investment for the District's maintenance and operations ad valorem tax purposes shall not exceed, and the Tax Limitation Amount shall be, the lesser of:

- (a) the Market Value of the Applicant's Qualified Investment; or
- (b) One Million Dollars (\$1,000,000.00).

This Tax Limitation Amount is based on the limitation amount for the category that applies to the District on the effective date of this Agreement, as set out by Tax Code, §313.022(b) or §313.052.

"Tax Year" shall have the meaning assigned to such term in Section 1.04(13) of the Texas Tax Code (*i.e.*, the calendar year).

"Taxable Value" shall have the meaning assigned to such term in Section 1.04(10) of the Texas Tax Code.

"Texas Education Agency Rules" means the applicable rules and regulations adopted by the Texas Commissioner of Education in relation to the administration of Chapter 313, Texas Tax Code, which are set forth at Chapter 19, Texas Administrative Code, together with any court or administrative decisions interpreting same.

"Wind Energy Project" means a renewable wind energy electric generation project as defined by Tex. Tax Code § 313.024(b)(5) that enters into an agreement for a limitation on

appraised value pursuant to the Texas Economic Development Act (Chapter 313 of the Texas Tax Code).

## **ARTICLE II**

### **PROPERTY DESCRIPTION**

#### **Section 2.1. LOCATION WITHIN A QUALIFIED REINVESTMENT OR ENTERPRISE ZONE**

The Applicant's Qualified Property upon which the Applicant's Qualified Investment will be located is within an area designated as a reinvestment zone under Chapter 311 or 312 of the Texas Tax Code, or as an enterprise zone under Chapter 2303 of the Texas Government Code. The legal description of the reinvestment or enterprise zone in which the Applicant's Qualified Property is located is attached to this Agreement as **EXHIBIT 1** and is incorporated herein by reference for all purposes.

#### **Section 2.2. LOCATION OF QUALIFIED PROPERTY**

The location of the Applicant's Qualified Property upon which the Applicant's Qualified Investment will be located is described in the legal description which is attached to this Agreement as **EXHIBIT 2** and is incorporated herein by reference for all purposes. The Parties expressly agree that the boundaries of the Land may not be materially changed from its configuration described in **EXHIBIT 2** without the express authorization of each of the Parties.

#### **Section 2.3. DESCRIPTION OF QUALIFIED INVESTMENT**

The Qualified Investment and/or Qualified Property that is subject to the Tax Limitation Amount is described in **EXHIBIT 3**, which is attached hereto and incorporated herein by reference for all purposes ("Applicant's Qualified Investment"). Property which is not specifically described in **EXHIBIT 3** shall not be considered by the District or the Appraisal District to be part of the Applicant's Qualified Investment for purposes of this Agreement, unless pursuant to Texas Tax Code § 313.027(e) and Section 8.3 of this Agreement, the Board of Trustees, by official action, provides that such other property is a part of the Applicant's Qualified Investment for purposes of this Agreement.

#### **Section 2.4. QUALIFYING USE**

The Applicant's Qualified Investment described above in Section 2.3 qualifies for a tax limitation agreement under Texas Tax Code § 313.024(b)(5) as a renewable energy generation facility.

#### **Section 2.5. APPRAISED VALUE LIMITATION**

So long as Applicant makes a Qualified Investment in the amount One Million Dollars (\$1,000,000.00), or greater, during the Qualifying Time Period; and unless this Agreement has been terminated as provided herein before such Tax Year, for each of the eight (8) Tax Years 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019, the Appraised Value of the Applicant's Qualified Investment for the District's maintenance and operations ad valorem tax purposes shall not exceed the lesser of:

- (a) the Market Value of the Applicant's Qualified Investment; or
- (b) One Million Dollars (\$1,000,000.00).

This Tax Limitation Amount is based on the limitation amount for the category that applies to the District on the effective date of this Agreement, as set out by Tax Code, §313.022(b) or §313.052.

### **ARTICLE III**

#### **PROTECTION AGAINST LOSS OF FUTURE DISTRICT REVENUES**

##### **Section 3.1. INTENT OF THE PARTIES**

Subject to the limitations contained in this Agreement (including Section 5.1), it is the intent of the Parties that the District shall, in addition to the receipt of payments as set forth below in Article IV of this Agreement, be compensated by the Applicant for any loss that the District incurs in its Maintenance and Operations Revenue as a result of, or on account of, entering into this Agreement, after taking into account any payments to be made under this Agreement, other than payments as set forth in Article IV. Subject to the limitations contained in this Agreement (including Section 5.1), it is the intent of the Parties that the risk of any negative financial consequence to the District in making the decision to enter into this Agreement will be borne by the Applicant and not by the District.

##### **Section 3.2. CALCULATING THE AMOUNT OF LOSS OF REVENUES BY THE DISTRICT**

Subject to the provisions of Sections 5.1 and 5.2, the amount to be paid by the Applicant to compensate the District for loss of Maintenance and Operations Revenue resulting from, or on account of this Agreement for each year during the term of this Agreement shall be determined in compliance with the Applicable School Finance Law in effect for such year and according to the following formula:

The M&O amount owed by the Applicant to District means the Original M&O Revenue *minus* the New M&O Revenue;

Where:

- i. Original M&O Revenue means the total State and local Maintenance & Operations Revenue that the District would have received for the school year under the Applicable School Finance Law had this Agreement not been entered into by the Parties and the Qualified Property and/or Qualified Investment been subject to the ad valorem maintenance & operations tax.
- ii. New M&O Revenue means the total State and local Maintenance & Operations Revenue that the District actually received for such school year.

In making the calculations required by this Section 3.2:

- i. The Taxable Value of property for each school year will be determined under the Applicable School Finance Law.
- ii. For purposes of this calculation, the tax collection rate on the Applicant's Qualified Property and/or the Applicant's Qualified Investment will be presumed to be one hundred percent (100%)
- iii. If, for any year of this Agreement, the difference between the Original M&O Revenue and the New M&O Revenue as calculated under this Section 3.2 results in a negative number, the negative number will be considered to be zero.
- iv. All calculations made for years three (3) through ten (10) of this Agreement under Section 3.2, Subsection *ii* of this Agreement will reflect the Tax Limitation Amount for such year.

### **Section 3.3. COMPENSATION FOR LOSS OF OTHER REVENUES**

In addition to the amounts determined pursuant to Section 3.2 above, and to the extent provided in Section 6.3, the Applicant, on an annual basis, shall also indemnify and reimburse the District for the following:

- a. all non-reimbursed costs it incurred by the District in paying or otherwise crediting to the account of Applicant, any applicable tax credit to which Applicant may be entitled pursuant to Chapter 313, Subchapter D of the Texas Tax Code, and for which the District does not receive reimbursement from the State pursuant to Texas Educ. Code § 42.2515, or other similar or successor statute.
- b. all non-reimbursed costs, certified by the District's external auditor to have been incurred by the District for extraordinary education-related expenses related to the project that are not directly funded in state aid formulas, including expenses for the purchase of portable

classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment attributable to the project.

- c. all non-reimbursed charges to the District which are attributable to the payment by Applicant to or on behalf any other third party beneficiary.

#### **Section 3.4. CALCULATIONS TO BE MADE BY THIRD PARTY**

All calculations under this Agreement shall be made annually by an independent third party (the "Third Party") jointly approved each year by the District and the Applicant. If the Parties cannot agree on the Third Party, then the Third Party shall be selected by the mediator provided in Section 7.8 of this Agreement.

#### **Section 3.5. DATA USED FOR CALCULATIONS**

The calculations for payments under this Agreement shall be initially based upon the valuations placed upon the Applicant's Qualified Investment and/or the Applicant's Qualified Property by the Kinney County Appraisal District in its annual certified tax roll submitted to the District pursuant to Texas Tax Code § 26.01 on or about July 25 of each year of this Agreement. Immediately upon receipt of the valuation information by the District, the District shall submit the valuation information to the Third Party selected under Section 3.4. The certified tax roll data shall form the basis of the calculation of any and all amounts due under this Agreement. All other data utilized by the Third Party to make the calculations contemplated by this Agreement shall be based upon the best available current estimates. The data utilized by the Third Party shall be adjusted from time to time by the Third Party to reflect actual amounts, subsequent adjustments by the Kinney County Appraisal District to the District's certified tax roll or any other changes in student counts, tax collections, or other data.

#### **Section 3.6. DELIVERY OF CALCULATIONS**

On or before November 1 of each year for which this Agreement is effective, the Third Party appointed pursuant to Section 3.4 of this Agreement shall forward to the Parties a certification containing the calculations required under Sections 3.2 and/or 3.3 of this Agreement in sufficient detail to allow the Parties to understand the manner in which the calculations were made. The Third Party shall simultaneously submit his, her or its invoice for fees for services rendered to the Parties, if any fees are being claimed. Upon reasonable prior notice, the employees and agents of the Applicant shall have access, at all reasonable times, to the Third Party's offices, personnel, books, records, and correspondence pertaining to the calculation and fee for the purpose of verification. The Third Party shall maintain supporting data consistent with generally accepted accounting practices, and the employees and agents of the Applicant shall have the right to reproduce and retain for purpose of audit, any of these documents. The Third Party shall preserve all documents pertaining to the calculation and fee for a period of three (3) years after payment. The Applicant shall not be liable for any of Third Party's costs resulting from an audit of the Third Party's books, records, correspondence, or work papers

pertaining to the calculations contemplated by this Agreement or the fee paid by the Applicant to the Third Party pursuant to Section 3.7, if such fee is timely paid.

### **Section 3.7. PAYMENT BY APPLICANT**

The Applicant shall pay any amount determined to be due and owing to the District under this Agreement on or before the January 31 next following the tax levy for each year for which this Agreement is effective. By such date, the Applicant shall also pay any amount billed by the Third Party plus any legal expenses paid by the District to its attorneys, auditors, or financial consultants for the preparation and filing of any financial reports, disclosures, or tax credit or other reimbursement applications filed with or sent to the State of Texas which are, or may be required under the terms or because of the execution of this Agreement. In no year shall the Applicant be responsible for the payment of any total expenses under this Section in excess of Ten Thousand Dollars (\$10,000.00).

### **Section 3.8. RESOLUTION OF DISPUTES**

Pursuant to Section 3.4 and Section 3.6, should the Applicant disagree with the certification containing the calculations, the Applicant may appeal the findings, in writing, to the Third Party within fifteen (15) days of receipt of the certification. Within fifteen (15) days of receipt of the Applicant's appeal, the Third Party will issue, in writing, a final determination of the certification containing the calculations. Any appeal by the Applicant of the final determination of the Third Party may be made, in writing, to the Brackett Independent School District Board of Trustees within fifteen (15) days of the final determination.

### **Section 3.9. EFFECT OF PROPERTY VALUE APPEAL OR OTHER ADJUSTMENT**

In the event that the Taxable Value of the Applicant's Qualified Investment and/or the Applicant's Qualified Property is changed after a final appeal of the valuation or is otherwise changed, once the determination of a new value becomes final, the calculations required by Sections 3.2 and 3.3 of this Agreement will be recomputed by the Third Party using the new valuations. Upon completion of the new calculations, the Third Party shall transmit the new calculations to the Parties. The Party owing funds to the other signatories to this Agreement shall pay any amounts owed within thirty (30) days of receipt of the new calculations from the Third Party.

### **Section 3.10. EFFECT OF STATUTORY CHANGES**

Notwithstanding any other provision in this Agreement, but subject to the limitations contained in Section 5.1, in the event that, by virtue of statutory changes to the Applicable School Finance Law, administrative interpretations by the Comptroller, Commissioner of Education, or the Texas Education Agency, or for any other reason attributable to statutory change, the District will receive less Maintenance and Operations Revenue, or, if applicable, will be required to increase its payment of funds to the State, because of its participation in this Agreement, Applicant shall make payments to the District, up to the revenue protection amount

limit set forth in Section 5.1, that are necessary to offset any negative impact on the District as a result of its participation in this Agreement. Such calculation shall take into account any adjustments to the amount calculated for the current fiscal year that should be made in order to reflect the actual impact on the District.

## ARTICLE IV

### SUPPLEMENTAL PAYMENTS

#### **Section 4.1. AMOUNTS EXCLUSIVE OF INDEMNITY AMOUNTS**

In addition to undertaking the responsibility for the payment of all of the amounts set forth under Article III, and as consideration for the execution of this Agreement by the District, the Applicant shall also be responsible for the Supplemental Payments set forth in Section 4.2 of this Article IV. It is the express intent of the Parties that the obligation for Supplemental Payments under this Article IV are separate and independent of the obligation of the Applicant to pay the amounts described in Article III; provided, however, that payments under Article III and Section 4.2 are subject to the limitations contained in Section 5.1.

#### **Section 4.2. SUPPLEMENTAL PAYMENTS TO THE DISTRICT**

Beginning with year one (Tax Year 2010) of this Agreement and continuing thereafter through thirteen (Tax Year 2022) of this Agreement, the District shall not be entitled to accrue as Supplemental Payments an annual amount that exceeds Fifty-Six Thousand One Hundred Thirty Three Dollars (\$56,133.00) per year, determined by Brackett ISD's 2008-09 ADA of 561.33.

- a. The accrued payments, due to the District during Tax Years 2010 and 2011 in the amount of Fifty-Six Thousand One Hundred Thirty Three Dollars (\$56,133.00) per year, shall be deferred and carried forward until Tax Year 2012, resulting in a combined amount for Tax Year 2012 of One Hundred Sixty-Eight Thousand Three Hundred Ninety-Nine Dollars (\$168,399.00).

Beginning in Tax Year 2013, and for each year thereafter through Tax Year 2022, the annual Supplemental Payment amount shall be Fifty-Six Thousand One Hundred Thirty Three Dollars (\$56,133.00) per year. The amounts set forth above shall be payable to Brackett ISD according to the following schedule:

<b>Tax Year</b>	<b>Payment Due Date</b>	<b>Amount</b>
2012	January 31, 2013	\$168,399.00

2013	January 31, 2014	\$56,133.00
2014	January 31, 2015	\$56,133.00
2015	January 31, 2016	\$56,133.00
2016	January 31, 2017	\$56,133.00
2017	January 31, 2018	\$56,133.00
2018	January 31, 2019	\$56,133.00
2019	January 31, 2020	\$56,133.00
2020	January 31, 2021	\$56,133.00
2021	January 31, 2022	\$56,133.00
2022	January 31, 2023	\$56,133.00

## ARTICLE V

### ANNUAL LIMITATION OF PAYMENTS BY APPLICANT

#### SECTION 5.1. ANNUAL LIMITATION AFTER FIRST THREE YEARS

Notwithstanding anything contained in this Agreement to the contrary, and with respect to each Tax Year during the term of this Agreement after the 2012 Tax Year, in no event shall (i) the sum of the maintenance and operations ad valorem taxes paid by the Applicant to the District for such Tax Year, plus the sum of all payments otherwise due from the Applicant to the District under Articles III and IV with respect to such Tax Year, exceed (ii) the amount of the maintenance and operations ad valorem taxes that the Applicant would have paid to the District for such Tax Year (determined by using the District's actual maintenance and operations tax rate for such Tax Year) if the Parties had not entered into this Agreement. The calculation and comparison of the amounts described in clauses (i) and (ii) of the preceding sentence shall be included in all calculations made pursuant to Section 3.4, and in the event the sum of the amounts described in said clause (i) exceeds the amount described in said clause (ii), then the payments otherwise due from the Applicant to the District under Articles III and IV shall be reduced until such excess is eliminated.

## **Section 5.2. OPTION TO CANCEL AGREEMENT**

In the event that any payment otherwise due from the Applicant to the District under Article III and IV with respect to a Tax Year is subject to reduction in accordance with the provisions of Section 5.1 above, then the Applicant shall have the option to terminate this Agreement. The Applicant may exercise such option to cancel this Agreement by notifying the District of its election in writing not later than the July 31 of the year next following the Tax Year with respect to which a reduction under Section 5.1 is applicable. Any cancellation of this Agreement under the foregoing provisions of this Section 5.2 shall be effective immediately prior to the second Tax Year next following the Tax Year in which the reduction giving rise to the option occurred. Upon such termination this Agreement shall terminate and be of no further force or effect; provided, however, that the Parties respective rights and obligations under this Agreement with respect to the Tax Year or Tax Years (as the case may be) through and including the Tax Year during which such notification is delivered to the District, shall not be impaired or modified as a result of such termination and shall survive such termination unless and until satisfied and discharged.

## **ARTICLE VI**

### **TAX CREDITS**

#### **Section 6.1. APPLICANT'S ENTITLEMENT TO TAX CREDITS**

The Applicant shall be entitled to tax credits from the District under and in accordance with the provisions of Subchapter D of the Act and Comptroller Rules, provided that the Applicant complies with the requirements under such provisions, including the filing of a completed Application under Section 313.103 of the Texas Tax Code and Comptroller Rules.

#### **Section 6.2. DISTRICT'S OBLIGATIONS WITH RESPECT TO TAX CREDITS**

The District shall timely comply and shall cause the District's collector of taxes to timely comply with their obligations under Subchapter D of the Act and Comptroller Rules, including, but not limited to, such obligations set forth in Section 313.104 of the Texas Tax Code and either Comptroller and/or Texas Education Agency Rules.

#### **Section 6.3. COMPENSATION FOR LOSS OF TAX CREDIT PROTECTION REVENUES**

If after the Applicant has actually received the benefit of a tax credit under Section 6.1, the District does not receive aid from the State pursuant to Texas Education Code § 42.2515 or other similar or successor statute with respect to all or any portion of such tax credit for reasons other than the District's failure to comply with the requirements for obtaining such aid, then the District shall notify the Applicant in writing thereof and the circumstances surrounding the State's failure to provide such aid to the District. The Applicant shall pay to the District the amount of such tax credit for which the District did not receive such aid within thirty (30) calendar days after receipt of such notice, and such payment shall be subject to the same

provisions for late payment as are set forth in Section 7.5 and 7.6. If the District receives aid from the State for all or any portion of a tax credit with respect to which the Applicant has made a payment to the District under this Section 6.3, then the District shall pay to the Applicant the amount of such aid within thirty (30) calendar days after the District's receipt thereof.

## **ARTICLE VII**

### **ADDITIONAL OBLIGATIONS OF APPLICANT**

#### **Section 7.1. DATA REQUESTS**

During the term of this Agreement, and upon the written request of one Party (the "Requesting Party"), the other Party shall provide the Requesting Party with all information reasonably necessary for the Requesting Party to determine whether the other Party is in compliance with its obligations, including any employment obligations which may arise under this Agreement. The Applicant shall allow authorized employees of the District and/or the Kinney County Appraisal District to have access to the Applicant's Qualified Property and/or business records during the term of this Agreement, in order to inspect the project to determine compliance with the terms hereof or as necessary to properly appraise the Taxable Value of the Applicant's Qualified Property and any other tangible property on the premises. All inspections will be made at a mutually agreeable time after the giving of not less than forty-eight (48) hours prior written notice, and will be conducted in such a manner so as not to unreasonably interfere with either the construction or operation of the Applicant's Qualified Property. All inspections may be accompanied by one or more representatives of the Applicant, and shall be conducted in accordance with the Applicant's safety, security, and operational standards. Notwithstanding the foregoing, nothing contained in this Agreement shall require the Applicant to provide the District or the Kinney County Appraisal District with any technical or business information that is private personnel data, proprietary, a trade secret or confidential in nature or is subject to a confidentiality agreement with any third party.

#### **Section 7.2. REPORTS TO OTHER GOVERNMENTAL AGENCIES**

Applicant shall timely make any and all reports that are or may be required under the provisions of law or administrative regulation, including but not limited to the annual report or certifications that may be required to be submitted by the Applicant to the Texas Comptroller of Public Accounts under the provisions of Texas Tax Code § 313.032. Applicant shall forward a copy of all such required reports or certifications to the District contemporaneously with the filing thereof. The obligation to make all such required filings shall be a material obligation under this Agreement.

#### **Section 7.3 SUPPORT FOR DISTRICT TECHNICAL TRAINING PROGRAM**

Applicant shall, during the entire course of this Agreement, provide support for the District's technical training program for the education and development of technical skills

necessary for individuals seeking employment in the wind energy industry. Such support shall, at a minimum, consist of:

- (a) Conferring with the District for the purpose of identifying opportunities for employees of Applicant to participate in technical training programs operated by the District for the benefit of its students, and programs sponsored by the District;
- (b) Disseminating technical information, at conferences with Applicant's employees to enhance the relevance of the District's training program;
- (c) Providing a reasonable opportunity for groups of students of the District to make Applicant sponsored tours of its facilities at times convenient to Applicant and the District and consistent with Applicant's safety and security policies; and,
- (d) Considering qualified graduates of the District's technical training program and/or graduates of programs sponsored by the District for available positions with Applicant.

#### **Section 7.4. APPLICANT'S OBLIGATION TO MAINTAIN VIABLE PRESENCE**

By entering into this Agreement, the Applicant warrants that:

- (a) it will abide by all of the terms of the Agreement;
- (b) it will Maintain Viable Presence in the District through the termination date of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Applicant shall not be in breach of, and shall not be subject to any liability for failure to Maintain Viable Presence to the extent such failure is caused by Force Majeure (as hereinafter defined), provided the Applicant makes commercially reasonable efforts to remedy the cause of such Force Majeure; and,
- (c) it will meet minimum eligibility requirements under Tax Code, Chapter 313 throughout the value limitation and tax-credit settle-up periods.

#### **Section 7.5. CONSEQUENCES OF EARLY TERMINATION OR OTHER BREACH BY APPLICANT**

(a) In the event that the Applicant terminates this Agreement without the consent of the District, except as provided in Section 5.2, or in the event that the Applicant or its successor-in-interest fails to comply in any material respect with the terms of this Agreement or to meet any material obligation under this Agreement, after the notice and cure period provided by Section 7.7, then the District shall be entitled to the recapture of all ad valorem tax revenue lost as a result of this Agreement together with the payment of penalty and interest, as calculated in accordance with Section 7.6, on that recaptured ad valorem tax revenue. For purposes of this recapture calculation, the Applicant shall be entitled to a credit for all payments made to the

District pursuant to Article III. Applicant shall also be entitled to a credit for any amounts paid to the District pursuant to Article IV.

(b) Notwithstanding Section 7.5(a), in the event that the District determines that the Applicant has failed to Maintain Viable Presence and provides written notice of termination of the Agreement, then the Applicant shall pay to the District liquidated damages for such failure within thirty (30) days after receipt of such termination notice. The sum of liquidated damages due and payable shall be the sum total of the District ad valorem taxes for all of the Tax Years for which a Tax Limitation was granted pursuant to this Agreement prior to the year in which the default occurs that otherwise would have been due and payable by the Applicant to the District without the benefit of this Agreement, including penalty and interest, as calculated in accordance with Section 7.6. For purposes of this liquidated damages calculation, the Applicant shall be entitled to a credit for all payments made to the District pursuant to Article III. The Applicant shall also be entitled to a credit for any amounts paid to the District pursuant to Article IV. Upon payment of such liquidated damages, Applicant's obligations under this Agreement shall be deemed fully satisfied, and such payment shall constitute the District's sole remedy.

#### **Section 7.6. CALCULATION OF PENALTY AND INTEREST**

In determining the amount of penalty or interest, or both, due in the event of a breach of this Agreement, the District shall first determine the base amount of recaptured taxes owed less all credits under Section 7.5 for each Tax Year during the term of this Agreement since the Commencement Date. The District shall calculate penalty or interest for each Tax Year during the term of this Agreement since the Commencement Date in accordance with the methodology set forth in Chapter 33 of the Texas Tax Code, as if the base amount calculated for such Tax Year less all credits under Section 7.5 had become due and payable on February 1 of the calendar year following such Tax Year. Penalties on said amounts shall be calculated in accordance with the methodology set forth in Texas Tax Code § 33.01(a), or its successor statute. Interest on said amounts shall be calculated in accordance with the methodology set forth in Texas Tax Code § 33.01(c), or its successor statute.

#### **Section 7.7. DETERMINATION OF BREACH**

Prior to making a determination that the Applicant has failed to Maintain Viable Presence in the District as required by Section 7.4 of this Agreement, or has otherwise committed a material breach of this Agreement, the District shall provide the Applicant with a written notice of the facts which it believes have caused the material breach of this Agreement, and if cure is possible, the cure proposed by the District. After receipt of the notice, Applicant shall be given sixty (60) days to present any facts or arguments to the Board of Trustees showing that it is not in material breach of its obligations under the Agreement, or that it has cured or undertaken to cure any such material breach.

If the Board of Trustees is not satisfied with such response and/or that such breach has been cured, then the Board of Trustees shall, after reasonable notice to the Applicant, conduct a

hearing called and held for the purpose of determining whether such breach has occurred and, if so, whether such breach has been cured. At any such hearing, the Applicant shall have the opportunity, together with their counsel, to be heard before the Board of Trustees. At the hearing, the Board of Trustees shall make findings as to whether or not a material breach of this Agreement has occurred, the date such breach occurred, if any, and whether or not any such breach has been cured. In the event that the Board of Trustees determines that such a breach has occurred and has not been cured, it shall also determine the amounts of recaptured taxes under Section 7.5 (net of all credits under Section 7.5), and the amount of any penalty and/or interest under Section 7.6 that are owed to the District.

After making its determination regarding any alleged breach, the Board of Trustees shall cause the Applicant to be notified in writing of its determination.

#### **Section 7.8. DISPUTE RESOLUTION**

After receipt of notice of the Board of Trustee's determination of a material breach under Section 7.7, the Applicant shall have sixty (60) days in which either to tender payment or evidence of its efforts to cure, or to initiate mediation of the dispute by written notice to the District, in which case the District and the Applicant shall be required to make a good faith effort to resolve, without resort to litigation and within sixty (60) days after the Applicant's receipt of notice of the Board of Trustee's determination of breach under Section 7.7, such dispute through mediation with a mutually agreeable mediator and at a mutually convenient time and place for the mediation. If the Parties are unable to agree on a mediator, a mediator shall be selected by the senior state district court judge then residing in Kinney County, Texas. The Parties agree to sign a document that provides the mediator and the mediation will be governed by the provisions of Chapter 154 of the Texas Civil Practice and Remedies Code and such other rules as the mediator shall prescribe. With respect to such mediation, (i) the District shall bear one-half of such mediator's fees and expenses and the Applicant shall bear one-half of such mediator's fees and expenses, and (ii) otherwise each Party shall bear all of its costs and expenses (including attorneys' fees) incurred in connection with such mediation.

In the event that any mediation is not successful in resolving the dispute or that payment is not received before the expiration of such sixty (60) days, the District shall have the remedies for the collection of the amounts determined under Section 7.7 as are set forth in Texas Tax Code Chapter 33, Subchapters B and C, for the collection of delinquent taxes. In the event that the District successfully prosecutes legal proceedings under this section, the Applicant shall also be responsible for the payment of attorney's fees and a tax lien on the Applicant's Qualified Property and the Applicant's Qualified Investment pursuant to Texas Tax Code § 33.07 to the attorneys representing the District pursuant to Texas Tax Code § 6.30.

In any event where a dispute between the District and the Applicant under this Agreement cannot be resolved by the Parties, after completing the procedures required above in this Section, either the District or the Applicant may seek a judicial declaration of their respective rights and duties under this Agreement or otherwise, in any judicial proceeding, assert

any rights or defenses, or seek any remedy in law or in equity, against the other Party with respect to any claim relating to any breach, default, or nonperformance of any covenant, agreement or undertaking made by a Party pursuant to this Agreement.

#### **Section 7.9. LIMITATION OF OTHER DAMAGES**

Notwithstanding anything contained in this Agreement to the contrary, in the event of default or breach of this Agreement by the Applicant, the District's damages for such a default shall under no circumstances exceed the greater of either any amounts calculated under Sections 7.5 and 7.6 above, or the monetary sum of the difference between the payments and credits due and owing to the Applicant at the time of such default and the District taxes that would have been lawfully payable to the District had this Agreement not been executed. In addition, the District's sole right of equitable relief under this Agreement shall be its right to terminate this Agreement.

The Parties further agree that the limitation of damages and remedies set forth in this Section 7.9 shall be the sole and exclusive remedies available to the District, whether at law or under principles of equity.

#### **Section 7.10. BINDING ON SUCCESSORS**

In the event of a merger or consolidation of the District with another school district or other governmental authority, this Agreement shall be binding on the successor school district or other governmental authority.

### **ARTICLE VIII**

#### **MISCELLANEOUS PROVISIONS**

##### **Section 8.1. INFORMATION AND NOTICES**

Unless otherwise expressly provided in this Agreement, all notices required or permitted hereunder shall be in writing and deemed sufficiently given for all purposes hereof if (i) delivered in person, by courier (e.g., by Federal Express) or by registered or certified United States Mail to the Party to be notified, with receipt obtained, or (ii) sent by facsimile transmission, with "answer back" or other "advice of receipt" obtained, in each case to the appropriate address or number as set forth below. Each notice shall be deemed effective on receipt by the addressee as aforesaid; provided that, notice received by facsimile transmission after 5:00 p.m. at the location of the addressee of such notice shall be deemed received on the first business day following the date of such electronic receipt.

Notices to the District shall be addressed as follows:

Robert Keith Westbrook, Superintendent  
**BRACKETT INDEPENDENT SCHOOL DISTRICT**  
P. O. Box 586  
Brackettville, Texas 78832-0586  
Fax (830) 563-9264  
E-mail: [robertw@brackett.k12.tx.us](mailto:robertw@brackett.k12.tx.us)

Or at such other address or to such other facsimile transmission number and to the attention of such other person as the District may designate by written notice to the Applicant.

Notices to the Applicant shall be addressed to:

Patrick Woodson  
Senior Vice President  
**EC&R DEVELOPMENT, LLC**  
**IN RE: ANACACHO MOUNTAIN WIND FARM**  
812 San Antonio Street, Suite 201  
Austin, TX 78701  
Fax: (512) 494-9581  
E-mail: [patrick.woodson@econ.com](mailto:patrick.woodson@econ.com)

or at such other address or to such other facsimile transmission number and to the attention of such other person as the Applicant may designate by written notice to the District.

### **Section 8.2. EFFECTIVE DATE, TERMINATION OF AGREEMENT**

- (a) This Agreement shall be and become effective on the date of final approval of this Agreement by the District's Board of Trustees.
- (b) The obligation to Maintain Viable Presence under this Agreement shall remain in full force and effect through the termination in full date established in Section 1.2 of this Agreement.
- (c) In the event that Applicant fails to make a Qualified Investment in the amount of One Million Dollars (\$1,000,000.00), or greater, during the Qualifying Time Period, this Agreement shall become null and void on December 31, 2011.

### **Section 8.3. AMENDMENTS TO AGREEMENT; WAIVERS**

This Agreement may not be modified or amended except by an instrument or instruments in writing signed by all of the Parties. Waiver of any term, condition or provision of this Agreement by any Party shall only be effective if in writing and shall not be construed as a

waiver of any subsequent breach of, or failure to comply with, the same term, condition or provision, or a waiver of any other term, condition or provision of this Agreement. By official action of the Board of Trustees, this Agreement may be amended to include, in the Applicant's Qualified Investment, additional or replacement Qualified Property not specified in **EXHIBIT 3**, provided that the Applicant reports to the District, the Comptroller, and the Appraisal District, in the same format, style, and presentation as the Application, all relevant investment, value, and employment information that is related to the additional property. Any amendment of the Agreement adding additional or replacement Qualified Property pursuant to this Section 8.3 shall, (1) require that all property added by amendment be eligible property as defined by Tax Code, §313.024; (2) clearly identify the property, investment, and employment information added by amendment from the property, investment, and employment information in the original Agreement; and (3) define minimum eligibility requirements for the recipient of limited value. This Agreement may not be amended to extend the value limitation time period beyond its eight year statutory term.

#### **Section 8.4. ASSIGNMENT**

The Applicant may assign this Agreement, or a portion of this Agreement, to an Affiliate or a new owner or lessee of all or a portion of the Applicant's Qualified Property and/or the Applicant's Qualified Investment, provided that the Applicant shall provide written notice of such assignment to the District. Upon such assignment, Applicant's assignee will be liable to the District for outstanding taxes or other obligations arising under this Agreement. A recipient of limited value under Tax Code, Chapter 313 shall notify immediately the District, the Comptroller, and the Appraisal District in writing of any change in address or other contract information for the owner of the property subject to the limitation agreement for the purposes of Tax Code §313.032. The assignee's or its reporting entity's Texas Taxpayer Identification Number shall be included in the notification.

#### **Section 8.5. MERGER**

This Agreement contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence, and preliminary understandings between the Parties and others relating hereto are superseded by this Agreement.

#### **Section 8.6. MAINTENANCE OF COUNTY APPRAISAL DISTRICT RECORDS**

When appraising the Applicant's Qualified Property and the Applicant's Qualified Investment subject to a limitation on Appraised Value under this Agreement, the Chief Appraiser of the Kinney County Appraisal District shall determine the Market Value thereof and include both such Market Value and the appropriate value thereof under this Agreement in its appraisal records.

### **Section 8.7. GOVERNING LAW**

This Agreement and the transactions contemplated hereby shall be governed by and interpreted in accordance with the laws of the State of Texas without giving effect to principles thereof relating to conflicts of law or rules that would direct the application of the laws of another jurisdiction. Venue in any legal proceeding shall be in Kinney County, Texas.

### **Section 8.8. AUTHORITY TO EXECUTE AGREEMENT**

Each of the Parties represents and warrants that its undersigned representative has been expressly authorized to execute this Agreement for and on behalf of such Party.

### **Section 8.9. SEVERABILITY**

If any term, provision or condition of this Agreement, or any application thereof, is held invalid, illegal or unenforceable in any respect under any Law (as hereinafter defined), this Agreement shall be reformed to the extent necessary to conform, in each case consistent with the intention of the Parties, to such Law, and to the extent such term, provision or condition cannot be so reformed, then such term, provision or condition (or such invalid, illegal or unenforceable application thereof) shall be deemed deleted from (or prohibited under) this Agreement, as the case may be, and the validity, legality and enforceability of the remaining terms, provisions and conditions contained herein (and any other application such term, provision or condition) shall not in any way be affected or impaired thereby. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement in an acceptable manner so as to effect the original intent of the Parties as closely as possible to the end that the transactions contemplated hereby are fulfilled to the extent possible. As used in this Section 8.9, the term "Law" shall mean any applicable statute, law (including common law), ordinance, regulation, rule, ruling, order, writ, injunction, decree or other official act of or by any federal, state or local government, governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, or judicial or administrative body having jurisdiction over the matter or matters in question.

### **Section 8.10. PAYMENT OF EXPENSES**

Except as otherwise expressly provided in this Agreement, or as covered by the application fee, each of the Parties shall pay its own costs and expenses relating to this Agreement, including, but not limited to, its costs and expenses of the negotiations leading up to this Agreement, and of its performance and compliance with this Agreement.

### **Section 8.11. INTERPRETATION**

When a reference is made in this Agreement to a Section, Article or Exhibit, such reference shall be to a Section or Article of, or Exhibit to, this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall

not affect in any way the meaning or interpretation of this Agreement. The words "include," "includes" and "including" when used in this Agreement shall be deemed in such case to be followed by the phrase ", but not limited to,". Words used in this Agreement, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context shall require. This Agreement is the joint product of the Parties and each provision of this Agreement has been subject to the mutual consultation, negotiation and agreement of each Party and shall not be construed for or against any Party.

#### **Section 8.12. EXECUTION OF COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

#### **Section 8.13. PUBLICATION OF DOCUMENTS**

The Parties acknowledge that the District is required to publish the Application and its required schedules, or any amendment thereto; all economic analyses of the proposed project submitted to the District; the approved and executed copy of this Agreement or any amendment thereto; and each application requesting tax credits under Tex. Tax Code § 313.103, as follows:

- a. Within seven days of such document, the school district shall submit a copy to the Comptroller for Publication on the Comptroller's Internet website.
- b. District shall provide on its website a link to the location of those documents posted on the Comptroller's website.
- c. This Section does not require the Publication of information that is confidential under Tex. Tax Code § 313.028.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties in multiple originals on this 21<sup>st</sup> day of December, 2009.

**EC&R DEVELOPMENT, LLC**

**BRACKETT INDEPENDENT SCHOOL DISTRICT**

By:

  
\_\_\_\_\_

**PATRICK WOODSON**  
Senior Vice President

By:

  
\_\_\_\_\_

**JOHN PAUL SCHUSTER**  
President  
Board of Trustees



ATTEST:   
\_\_\_\_\_

**TONY MOLINAR**  
Secretary  
Board of Trustees

## EXHIBIT 1

### DESCRIPTION OF QUALIFIED REINVESTMENT ZONE

The *Anacacho Reinvestment Zone No. 1* was originally created on July 27, 2009 by action of the Kinney County Commissioner's Court. A map of the *Anacacho Reinvestment Zone No. 1* is attached as the last page of this **EXHIBIT 1**.

As a result of the action of the Kinney County Commissioner's Court, the *Anacacho Reinvestment Zone No. 1* includes real property within unincorporated Kinney County, Texas, more specifically the following property and tracks.

- All of the real property contained in Sections 10, 11, 12, 15, and 17 of Block 9, of the I.& G.N. RR. CO. Surveys.
- All of the real property contained in the Sisto Saminiego Survey 618.
- All of the real property contained in the 558.7 acres of the East ½ of the JOHN ERWIN Survey 607.
- All of the real property contained in the 234.1 acres of the East ½ of the R. W. Gilpin Survey 329, North of the Railroad.
- All of the real property contained in the 684.8 acres of the R. W. Gilpin Survey 329, South of the Railroad.
- All of the real property contained in the 2637.7 acres of the Adam Byerly Survey 327, South of State Highway 90.
- All of the real property contained in the 462.8 acres of the Northwest ¼ of the E.A. Pullam Survey 326, North of State Highway 10.
- All of the real property contained in the 2076.7 acres of the E.A. Pullam Survey 326, South of State Highway 90.
- All of the real property contained in the Ramon Manchaca Survey 330.
- All of the real property contained in the Jose Ignacio Espinosa Survey 328.
- All of the real property contained in the William Morris Survey 843.

- All of the real property contained in the John C. Knox Survey 11.
- All of the real property contained in Section 621 of the G.C. & S.F. Survey.
- All of the real property contained in Sections 129, 130, 131, of Block 6 of the I. & G.N. RR. CO. Surveys.
- All of the real property contained in the R.J. Calder Survey 877.
- All of the real property contained in Section 839 of the H.C. Willyard Survey.
- All of the real property contained in Section 841 of the N.K. Crow Survey.
- All of the real property contained in the Lem C. Cartwright Survey 842.
- All of the real property contained in the A.C. Pingnot Survey 848.
- All of the real property contained in the M.R. Perez Survey 9.
- All of the real property contained in the 335.9 acres of the West ½ of Section 845 of the GC & F Survey.
- All of the real property contained in the Mrs. Nancy Coursey Survey 838.
- All of the real property contained in the Mrs. Sophonia E. Cone Survey 836.
- All of the real property contained in the G.L. Bledsoe Survey 835.
- All of the real property contained in the Mrs. M.J. Briscoe Survey 834.
- All of the real property contained in the W.B. Rome Survey 840.
- All of the real property contained in the Pacificia Bustamente Survey 10.
- All of the real property contained in Section 621 of the G.C. & S.F. RY. CO. Surveys.

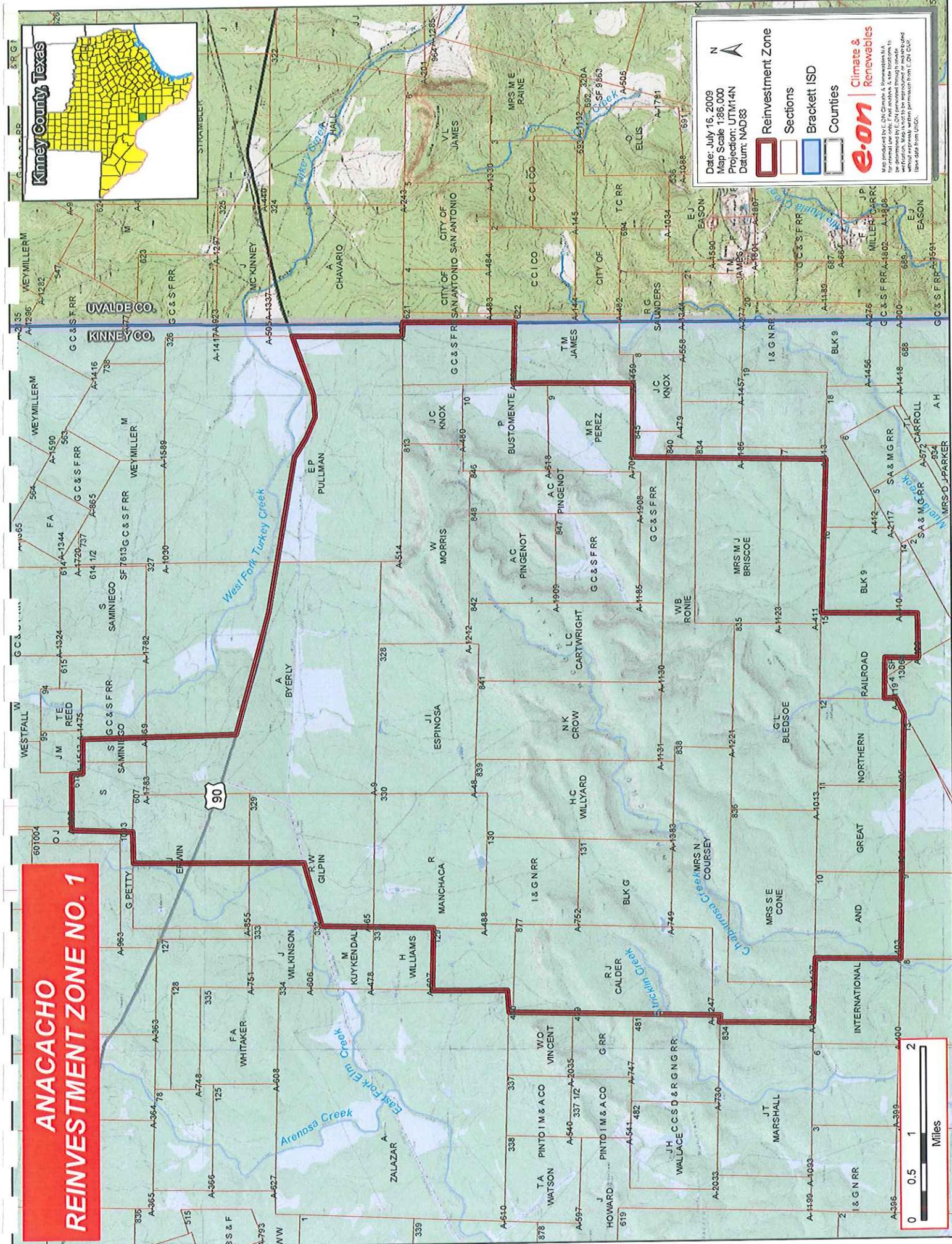
# ANACACHO REINVESTMENT ZONE NO. 1



**Reinvestment Zone**  
 Date: July 16, 2009  
 Map Scale: 1:86,000  
 Projection: UTM14N  
 Datum: NAD83

**Sections**  
**Brackett ISD**  
**Counties**

**e-on** Climate & Renewables  
Map produced by E.ON Climate & Renewables N.A. for the City of San Antonio, Texas. All rights reserved. No warranty is made by E.ON for the information or materials provided herein. Map is not to be reproduced or modified without the written permission from E.ON G&S.



## EXHIBIT 2

### LOCATION OF QUALIFIED PROPERTY

All Qualified Property owned by Applicant and located within the boundaries of both the Brackett Independent School District and *Anacacho Reinvestment Zone No. 1* will be included in and subject to this Agreement. Specifically, all Qualified Property of Applicant located in the following sections of land is included, to wit:

- All of the real property contained in Sections 10, 11, 12, 15, and 17 of Block 9, of the I.& G.N. RR. CO. Surveys.
- All of the real property contained in the Sisto Saminiego Survey 618.
- All of the real property contained in the 558.7 acres of the East ½ of the JOHN ERWIN Survey 607.
- All of the real property contained in the 234.1 acres of the East ½ of the R. W. Gilpin Survey 329, North of the Railroad.
- All of the real property contained in the 684.8 acres of the R. W. Gilpin Survey 329, South of the Railroad.
- All of the real property contained in the 2637.7 acres of the Adam Byerly Survey 327, South of State Highway 90.
- All of the real property contained in the 462.8 acres of the Northwest ¼ of the E.A. Pullam Survey 326, North of State Highway 10.
- All of the real property contained in the 2076.7 acres of the E.A. Pullam Survey 326, South of State Highway 90.
- All of the real property contained in the Ramon Manchaca Survey 330.
- All of the real property contained in the Jose Ignacio Espinosa Survey 328.
- All of the real property contained in the William Morris Survey 843.

- All of the real property contained in the John C. Knox Survey 11.
- All of the real property contained in Section 621 of the G.C. & S.F. Survey.
- All of the real property contained in Sections 129, 130, 131, of Block 6 of the I. & G.N. RR. CO. Surveys.
- All of the real property contained in the R.J. Calder Survey 877.
- All of the real property contained in Section 839 of the H.C. Willyard Survey.
- All of the real property contained in Section 841 of the N.K. Crow Survey.
- All of the real property contained in the Lem C. Cartwright Survey 842.
- All of the real property contained in the A.C. Pingnot Survey 848.
- All of the real property contained in the M.R. Perez Survey 9.
- All of the real property contained in the 335.9 acres of the West ½ of Section 845 of the GC & F Survey.
- All of the real property contained in the Mrs. Nancy Coursey Survey 838.
- All of the real property contained in the Mrs. Sophonia E. Cone Survey 836.
- All of the real property contained in the G.L. Bledsoe Survey 835.
- All of the real property contained in the Mrs. M.J. Briscoe Survey 834.
- All of the real property contained in the W.B. Rome Survey 840.
- All of the real property contained in the Pacificia Bustamente Survey 10.
- All of the real property contained in Section 621 of the G.C. & S.F. RY. CO. Surveys.

### **EXHIBIT 3**

#### **DESCRIPTION OF THE APPLICANT'S QUALIFIED INVESTMENT**

The proposed project will consist of a facility designed to use wind power to generate electricity (commonly referred to as a wind farm). The property will include, but is not limited to, the following: up to approximately 57 – 1.5 megawatt wind power turbine generators; or equivalent; a reinforced concrete slab supporting the weight of each turbine tower; equipment and towers used to gather meteorological data; buried and overhead electrical conductor cables (including poles) used to transport electricity from each turbine tower to an electrical substation; the electrical substation and electrical conductor cables used to transport electricity off of the project site; one or more buildings used to hold maintenance supplies, replacement parts, and related equipment; and various appurtenant equipment and small items related to the above. All of the property for which the Applicant is seeking a limitation on appraised value will be owned by the Applicant or a valid assignee pursuant to this Agreement. The facility will also require a relatively insubstantial amount of personal property.