

Sample LWA Operating Agreement

Operating Agreement

Somewhere Wind Energy Association, LLC

The undersigned parties own land in the Somewhere, Wyoming, area. Recently, wind energy developers have contacted several area land owners regarding the possibility of developing a wind farm in the Somewhere, Wyoming, area. The undersigned parties (“members”) wish to market their wind resources and have agreed to create an association that can collectively bargain on behalf of the members. Accordingly, the undersigned hereby create the Somewhere Wind Energy Association, LLC (“SWEA”).

The purpose of the SWEA is to enhance the marketability of the wind energy resources on land owned by the members by combining those resources into a single marketing package. In order to give the collective bargaining strategy an opportunity to work, the members commit the wind resources on their property to the SWEA for a period of two years. During that two year period, the members agree that they will not encumber or otherwise commit their wind resources without the agreement of the SWEA.

It is also the purpose of the association to hold forums that educate the members and other interested parties regarding the wind energy industry.

THEREFORE: The parties agree as follows:

I. Name, Duration and Purpose

1. The limited liability company shall be Somewhere Wind Energy Association, LLC (“SWEA”).
2. The term of this agreement shall be two years.
3. The primary intent the SWEA is to use collective bargaining practices to reach agreement with wind developers and/or investment companies.

II. board Of Managers

1. The SWEA shall have a board of managers (“board”) consisting of three managers elected by a majority vote. The board shall serve until the first annual meeting or until their successors are elected. Elections shall be in November of each year and shall be conducted by mail ballot. Interested candidates must submit their names 30 days prior to the November election. A chairman and a secretary/treasurer shall be appointed by the board. The board shall serve without compensation.
2. The purpose of the board is to represent the SWEA in business matters, provide guidance, generate ideas, schedule meetings, negotiate in conjunction with legal counsel, and assist in carrying out the purpose of the SWEA.
3. A quorum at a board meeting shall require that at least one half of the board be present.

III. Membership

1. Except as specifically provided otherwise, matters before membership shall be decided on a majority vote of the eligible votes. A quorum at a regular membership meeting shall require the presence of members or proxies representing 51 percent of the eligible votes.
2. Each member will be entitled to one vote for each 320 acres owned, rounded to the nearest 320. If the number of acres owned by a member is exactly in the middle of the nearest 320 acre multiples, the number shall be rounded up to the nearest multiple of 320.
3. Landowners owning less than 320 acres shall be entitled to one vote.
4. Acres shall be deeded and shall not include state or BLM leases.
5. The number of votes per membership interest shall be based on number of acres and not the number of individuals who jointly own the land or have entered into a partnership/corporation to manage the land. For example, a husband and wife or corporation shall vote as one even though they jointly own land within the project boundary.

6. A member may vote by written proxy.
7. If the board reaches a potential agreement regarding the development of wind resources, the board shall recommend the agreement to the members. A lease agreement shall be deemed accepted by the association when the board makes a formal proposal to the membership recommending acceptance of the negotiated terms and 51% of the eligible vote approves the board's recommendation.
 - a) Upon acceptance of the negotiated agreement of the SWEA, each member shall accept or reject the proposal on an individual basis. Each member will be required to negotiate with the developer the individual terms applicable to their property without change to the financial terms. Negotiation of the special financial terms must be approved by the board.
 - b) Individual members are not obligated to accept a development proposal even if the proposal is accepted by a majority membership.
8. This agreement is binding on the heirs, assigns, personal representatives, or successors of each member. If a member transfers a portion of his land that is covered by this agreement, the new owner shall be a member and entitled to a prorated share of the voting privileges of the selling member's voting privileges.

IV. Wind Development Boundaries

1. Wind energy development boundaries will be determined by current members and will be subject to change upon a majority vote of members. Additional members may join upon approval of a majority vote of the members. New members shall contribute \$.10 per acre of their privately owned land (minimum land payment of \$50.00) located within the current or newly formed wind energy development boundary. Each member contributes to the SWEA the wind resources of the property that is covered by this agreement. The contribution to capital of wind resources shall be for two years. The commitment of wind resources only includes land owned by a member that is located within the boundaries of the SWEA.

V. Restriction On Members

1. No member shall independently enter into a separate agreement with wind energy developer(s) within established boundaries without consent of the SWEA and the members during the term of this agreement.
2. No member shall act on behalf of the SWEA without the written consent of board.
3. Any member who violates the provision of Section V shall be in breach of contract and fully liable for damages to the SWEA and to its individual members.
4. No member shall incur indebtedness on behalf of the SWEA.

VI. Assessments And Liability

1. Each member shall be assessed \$.10 per acre of their privately owned land (minimum land payment of \$50.00) located within the proposed wind energy development boundary. *Additional assessments shall be made by 75% vote of eligible members not to exceed \$1.00 per acre.* Members shall have 30 days from the date they are notified of a call for capital contribution to make such contribution. Notification can be by phone, email, facsimile, letter or in person. If a member fails to make the required contribution, the member shall be notified by certified mail.
2. *Failure to make said contribution will terminate the member's standing in the association.* A member more than 30 days in arrears of a contribution of capital shall not have voting privileges until their capital account is current.
3. Assessments and contributions will be used for attorney fees, meeting space, printing, postage, and other purchases deemed necessary.
4. The liability of the members to the company shall be limited to their respective capital contribution except as provided in Section V.

VII. Termination Of Agreement

- 1. This agreement may be terminated prior to July 30, 2010, under either of the two conditions below:
 - a) When 51% of the eligible membership votes to accept the board’s recommendation and 75% of the eligible voters have signed the contract; or
 - b) Upon a vote where members representing 75% of the voting privileges of the SWEA vote for early termination.

VIII. Expiration And/Or Continuation Of Agreement

- 1. This agreement shall expire on July 30, 2010.
- 2. Any unspent fees will be returned back to members on a prorated basis.
- 3. After July 30, 2010, the remaining members may carry on with the SWEA under the terms agreed upon at that time.

IX. Legal description of your property to be included in the Somewhere Wind Energy Association, LLC:

Signature:

(Name of Entity, if any)

(Signature - must be notarized)

State of _____)
 _____) ss.
 County of _____)

The foregoing Agreement was signed before me by _____ (name), on _____ (date).

Notary Signature: _____