

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation**

**Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

WHEREAS, the Outer Continental Shelf Lands Act grants the Secretary of the Interior (Secretary) the authority to issue leases, easements, or rights-of-way (ROWs) on the Outer Continental Shelf (OCS) for the purpose of renewable energy development, including wind energy development (*see* 43 United States Code [U.S.C.] § 1337(p)(1)(C)), and to promulgate regulations to carry out this authority (*see* 43 U.S.C. § 1337(p)(8)); and,

WHEREAS, the Secretary delegated this authority to the former Minerals Management Service, now the Bureau of Ocean Energy Management (BOEM), and the promulgated final regulations implementing this authority are found at 30 CFR part 585; and,

WHEREAS, OCS means all submerged lands lying seaward and outside of the area of lands beneath navigable waters, as defined in Section 2 of the Submerged Lands Act (*see* 43 U.S.C. § 1301), whose subsoil and seabed appertain to the United States and are subject to its jurisdiction and control (*see* 43 U.S.C. § 1331(a) and 30 CFR § 585.113); and,

WHEREAS, under the renewable energy regulations the issuance of leases and subsequent approval of wind energy development on the OCS is a staged decision-making process that includes planning and analysis, leasing, site assessment, and construction and operation; and,

WHEREAS, under the BOEM-implemented renewable energy regulations, BOEM will review and may approve, approve with modifications, or disapprove Construction and Operations Plans (COP) which a Lessee must submit to BOEM and BOEM must approve before the Lessee implements its COP (*see* 30 CFR §§ 585.620(c) and 585.628(f)); and,

WHEREAS, BOEM determined that future COP approvals are undertakings subject to Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. § 306108), and its implementing regulations (36 CFR part 800); and,

WHEREAS, BOEM is consulting pursuant to Stipulation II of the *Programmatic Agreement Among The U.S. Department of the Interior, Bureau of Ocean Energy Management, The State Historic Preservation Officers of New Jersey and New York, The Shinnecock Indian Nation, and The Advisory Council on Historic Preservation Regarding Review of Outer Continental Shelf Renewable Energy Activities Offshore New Jersey and New York Under Section 106 of the National Historic Preservation Act* (NJ-NY PA) which was executed in 2016; and,

WHEREAS, the approval of a COP includes the approval of activities that have the potential to affect historic properties insofar as they may lead to the Lessee constructing and operating facilities and renewable energy structures, including placing, operating, and removing transmission cables, pipelines, and associated facilities that involve transportation or transmission of electricity or other energy products from renewable energy projects; and,

WHEREAS, BOEM may approve COPs for six commercial wind energy lease areas (OCS-A 0537, 0538, 0539, 0541, 0542, and 0544) in the New York Bight (NY Bight); and,

WHEREAS, BOEM determined that the implementation of the Offshore Renewable Energy Programs is complex, that BOEM will consider multiple COP approvals, and that the effects on historic properties may be regional in scope; and,

WHEREAS, 36 CFR § 800.14(b)(3) provides for developing programmatic agreements for complex or multiple undertakings and 36 CFR § 800.14(b)(1) provides for using such agreements when effects on historic properties are similar and repetitive or are multi-State or regional in scope (36 CFR § 800.14(b)(1)(i)); and,

WHEREAS, BOEM is preparing a Programmatic Environmental Impact Statement (EIS) for these lease areas (OCS-A 0537, 0538, 0539, 0541, 0542, and 0544) pursuant to the National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.) (NEPA) and is coordinating this NEPA review with its Section 106 consultation pursuant to 36 CFR § 800.8(a); and,

WHEREAS, these lease areas (OCS-A 0537, 0538, 0539, 0541, 0542, and 0544) were subject to previous NHPA Section 106 reviews by BOEM regarding issuance of the commercial leases, the Section 106 reviews were conducted pursuant to the NJ-NY Programmatic Agreement (PA) and concluded with No Historic Properties Affected for these lease issuances on August 30, 2021; and,

WHEREAS, the Section 106 consultations described in this Agreement will establish a process to identify historic properties located within the undertakings' area(s) of potential effects (APE); to assess potential effects; and to avoid, minimize, or mitigate any adverse effects; and,

WHEREAS, the APE, as described in Stipulation II of the NJ-NY PA and consistent with the definition of APE in the Section 106 regulations (36 CFR § 800.16(d)), means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE for an individual undertaking may include areas of the OCS and areas outside of the OCS, and therefore may encompass areas broader than BOEM's jurisdiction for development; and,

WHEREAS, BOEM's guidelines specify that surveys will: (1) meet or exceed the Secretary of the Interior's standards for identification surveys; (2) be carried out by professionals meeting the Secretary of the Interior's professional qualification standards (available online at: <https://www.nps.gov/articles/sec-standards-prof-quals.htm>); and (3) follow BOEM's established guidelines, including BOEM's most recent *Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585* (available online at: https://www.boem.gov/Guidelines_for_Providing_Archaeological_and_Historic_Property_Information_Pursuant_to_30CFR585/); and,

WHEREAS, BOEM invited the New Jersey State Historic Preservation Officer (SHPO), the New York SHPO, and the Advisory Council on Historic Preservation (ACHP) to consult on this Agreement, and they are signatories to this Agreement, pursuant to 36 CFR § 800.14(b)(2)(i); and,

WHEREAS, throughout this document the term 'Tribal Nation' has the same meaning as a federally recognized 'Indian Tribe,' as defined at 36 CFR § 800.16(m); and,

WHEREAS, BOEM recognizes that it has a unique legal relationship with Tribal Nations set forth in the Constitution of the United States, treaties, statutes, and court decisions, and therefore, consultation with a Tribal Nation must recognize the government-to-government relationship between the federal government and Tribal Nations; and,

WHEREAS, BOEM invited the following Tribal Nations to consult on this Agreement: Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Mashantucket (Western) Pequot Tribal Nation; Mashpee Wampanoag Tribe; Mohegan Tribe of Connecticut; Seneca-Cayuga Nation; Shawnee Tribe; Stockbridge-Munsee Community Band of Mohican Indians; The Delaware Nation; The Narragansett Indian Tribe; The Shinnecock Indian Nation; Tuscarora Nation; Wampanoag Tribe of Gay Head (Aquinnah); and,

WHEREAS, the following Tribal Nations accepted the invitation to consult on this Agreement: Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Mashantucket (Western) Pequot Tribal Nation; Mashpee Wampanoag Tribe; Mohegan Tribe of Connecticut; Stockbridge-Munsee Community Band of Mohican Indians; The Delaware Nation; The Narragansett Indian Tribe; The Shinnecock Indian Nation; Tuscarora Nation; Wampanoag Tribe of Gay Head (Aquinnah); and, on September 26, 2022, the Seneca-Cayuga Nation declined to participate in consultation; and, on April 10, 2023, the Shawnee Tribe declined to participate in consultation; and,

WHEREAS, BOEM acknowledges that Tribal Nations possess special expertise in assessing the National Register of Historic Places (NRHP) eligibility of properties with religious and cultural significance to the Tribal Nations pursuant to 36 CFR § 800.4(c)(1); and,

WHEREAS, BOEM will continue to consult with Tribal Nations and, as appropriate, their representatives, including the Tribal Historic Preservation Officer (THPO), to identify properties of religious and cultural significance to Tribal Nations that may be located on or off of Tribal lands and that may be eligible for listing in the NRHP, including cultural landscapes and Traditional Cultural Places (TCPs), and that may be affected by these undertakings; and,

WHEREAS, BOEM invited the Bureau of Safety and Environmental Enforcement (BSEE) to consult on this Agreement: BSEE is responsible for enforcing compliance of renewable energy projects on the OCS, including safety and environmental compliance, with all applicable laws, regulations, leases, grants, and approved plans through notices of noncompliance, cessation orders, civil penalties, and other appropriate means; and,

WHEREAS, BSEE designated BOEM as the Lead Federal Agency pursuant to 36 CFR § 800.2(a)(2) to act on its behalf for purposes of compliance with Section 106 for this Agreement, and BSEE has accepted the invitation to sign this Agreement as a concurring party; and,

WHEREAS, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 406) and Section 404 of the Clean Water Act (33 U.S.C. § 1344), Department of the Army permits and/or Section 408 permission pursuant to 33 U.S.C. § 408 may be required from the United States Army Corps of Engineers (USACE) for this Project and BOEM invited USACE to consult on this Agreement; and,

WHEREAS, USACE designated BOEM as the Lead Federal Agency pursuant to 36 CFR § 800.2(a)(2) to act on its behalf for purposes of compliance with Section 106 for this Agreement and USACE has accepted the invitation to sign this Agreement as a concurring party; and,

WHEREAS, historic sunken military craft may be present in the APE that are subject to the Sunken Military Craft Act (Public Law 108–375 Title XIV) administered by the Department of the Navy for the protection of these craft and associated remains, BOEM has invited the Department of the Navy to consult on this Agreement, and they accepted the invitation to sign this Agreement as a concurring party, and if BOEM identifies sunken military craft then BOEM and the Department of the Navy will consult under the Sunken Military Craft Act through the Section 106 review process established in this Agreement to ensure compliance with that act; and,

WHEREAS, BOEM has invited the six Lessees to consult on this Agreement and to sign as concurring parties, and consulted with the Lessees in their capacities as future applicants seeking federal approval of a COP; and,

WHEREAS, BOEM invited additional individuals and entities including state-recognized Tribes, federal and state agencies, local governments, and preservation organizations to consult on this Agreement (*see* Appendix I for list of invited consulting parties), in accordance with 36 CFR § 800.3, and those who accepted the invitation to consult BOEM invited to sign this Agreement as concurring parties, and has taken any comments received into account; and,

WHEREAS, BOEM conducted four Section 106 consulting party meetings on March 13, 2023, July 11, 2023, February 15, 2024, and June 20, 2024; and,

WHEREAS, BOEM sought and considered the views of the public regarding Section 106 for this consultation coordinated through the NEPA process by holding virtual public scoping meetings when initiating the NEPA and NHPA Section 106 review on July 28, 2022, August 2, 2022, and August 4, 2022, virtual public meetings related to the Draft Programmatic EIS on January 31, 2024, and February 13, 2024, and in-person public meetings related to the Draft Programmatic EIS on February 5, 2024, February 7, 2024, and February 8, 2024; and,

WHEREAS, BOEM provided as part of the Draft Programmatic EIS a Section 106 Summary for public review and comment on January 12, 2024, and BOEM received comments from the public on the Section 106 Summary that are addressed in the Final Programmatic EIS; and,

WHEREAS, BOEM made Draft(s) of this Agreement available to the public for review and comment on BOEM’s project website; and,

WHEREAS, BOEM, the SHPOs, and the ACHP are hereafter referred to as “Signatories” and there are no Invited Signatories for this Agreement; and,

NOW, THEREFORE, BOEM, the SHPOs, and the ACHP agree that Section 106 review will be conducted in accordance with the following stipulations to take into account the effects of the undertakings on historic properties.

STIPULATIONS

BOEM will ensure that the following measures are implemented and will not authorize an individual COP until the project-specific Section 106 review is completed pursuant to this Agreement.

I. COP APPROVAL

For all COPs on each of the six leases included in the NY Bight, BOEM will implement the following steps:

- A. Initiation of Section 106: BOEM will identify and invite Tribal Nations, relevant SHPO(s), the ACHP (if the agency elects to participate early in consultation), and other potential consulting parties to consult on an undertaking, pursuant to 36 CFR § 800.3(f). BOEM will include the Tribal Nations, relevant SHPO(s), the ACHP, and potential consulting parties who accept the invitation to consult in the following steps and referred to as “Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties” for the remainder of the Agreement. The identification of Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties will include those that consulted on this Agreement.
- B. Identification of Historic Properties:
 1. Procedures constituting a reasonable and good faith effort to carry out appropriate identification of historic properties within the APE are presented in BOEM’s *Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585 (36 CFR § 800.4(b)(1))*, hereinafter referred to *Guidelines*. Should BOEM wish to substantially alter information (e.g., methodology) included in the *Guidelines*, BOEM will first consult with the Tribal Nations and Signatories.
 2. BOEM defines the APE as the depth and breadth of the seabed potentially impacted by any bottom-disturbing activities, constituting the marine archaeological resources portion of the APE (marine APE); the depth and breadth of terrestrial areas potentially impacted by any ground-disturbing activities, constituting the terrestrial archaeological resources portion of the APE (terrestrial APE); the viewshed from which offshore or onshore renewable energy structures would be visible, constituting the visual portion of the APE (visual APE); and any temporary or permanent construction or staging areas or associated operations and maintenance facilities that fall into any of the aforementioned portions of the APE. This is consistent with the NJ-NY PA and BOEM’s *Guidelines*.
 3. The Lessee will submit a preliminary APE (PAPE) based on BOEM’s *Guidelines* to BOEM for review. At the time of submission, the PAPE will include all proposed offshore project components, construction locations, and onshore work typically associated with renewable energy projects. These components typically include construction staging or stockpiling areas, cable landing locations, switching or converter stations, substations, transmission lines or cables routes, export cables routes, any alternative routes, or other construction sites.
 - i. BOEM will review the PAPE, and the Lessee will base their historic property identification surveys on an agreed-upon PAPE.

- ii. The Lessee will use this PAPE for preliminary identification surveys prior to BOEM initiating Section 106 consultation for an undertaking.
 - iii. The Lessee will conduct all preliminary identification surveys in accordance with Stipulation I.B.5, below.
4. BOEM will delineate the draft APE, which will include a description and maps, and will consult with the Tribal Nations, relevant SHPO(s), the ACHP (if participating), and consulting parties on the draft APE.
- i. After consultation on the draft APE, BOEM will incorporate comments and recommended changes to the APE, as applicable, and notify the Tribal Nations, relevant SHPO(s), the ACHP (if participating), and consulting parties of the final APE.
 - ii. Should any modifications to the undertaking affect the size, scope, or location of the project areas after BOEM's delineation of the APE, appropriate changes to the APE will be made, and BOEM will provide the Tribal Nations, relevant SHPO(s), the ACHP (if participating), and consulting parties an updated APE description and map.
5. In accordance with 36 CFR § 800.4(b)(1), BOEM will identify historic properties using a reasonable and good faith effort, as described below:
- i. Within all portions of the APE, BOEM will conduct historic property identification in accordance with state (or Tribal Nations, if on tribal lands as defined by 36 CFR § 800.16(x)) guidelines and based on recommendations presented in BOEM's most recent *Guidelines*. BOEM, with the assistance of the Lessee, will coordinate with the SHPO(s) or THPO(s), or their Tribal representative(s), during the development and prior to the initiation of any such efforts to identify any historic properties, including survey planning and the presence of any sites of religious and cultural significance to Tribal Nations, as described in Stipulation IV. CONSULTATION WITH TRIBAL NATIONS
 - ii. BOEM will require that marine archaeology, terrestrial archaeology, and aboveground historic resources be documented in separate technical reports for the marine APE, terrestrial APE, and visual APE, which will address the identification of historic properties, including, but not limited to, sites of religious and cultural significance to Tribal Nations and cultural landscapes, and include an evaluation of effects from the undertaking. The Lessee will submit these reports with the COP. The content of these reports will follow appropriate state (or tribal, if on tribal lands) guidelines and recommendations presented in BOEM's most recent *Guidelines*.
 - iii. When the Lessee uses the PAPE for identification efforts documented in the technical reports, they will discuss any differences between the PAPE and the final APE. Lessees will be responsible for identification efforts in areas that are included in the final APE that were not included in the PAPE and BOEM will require the Lessee to update the relevant technical reports based on those efforts.

- iv. If there are any proposed activities as part of a project proposed in a COP located on lands managed by the National Park Service (NPS), BOEM will coordinate with the appropriate representatives of the subject Park unit, including the Park Superintendent, regarding survey methods, and the Lessee will coordinate with the Park unit representatives regarding all necessary permits and approvals to conduct the surveys.
 - v. If BOEM deems that phased identification is appropriate for terrestrial archaeological investigations, BOEM will notify the appropriate SHPO(s) and THPO(s), or their Tribal representative(s). BOEM will require that the Lessee prepare supplemental reports in accordance with appropriate state (or tribal, if on tribal lands) guidelines and recommendations presented in BOEM's most recent *Guidelines* and pursuant to Stipulation III. PHASED IDENTIFICATION SECTION 106 PROCESS FOR THE TERRESTRIAL AREA OF POTENTIAL EFFECT of this Agreement.
6. BOEM will treat all potential historic properties, as defined in BOEM's most recent *Guidelines*, as eligible for inclusion in the NRHP unless it is determined in consultation with Tribal Nations, relevant SHPO(s), the ACHP (if participating), and consulting parties that a property lacks integrity or does not meet the NRHP criteria, consistent with 36 CFR § 800.4(c). This consultation and any determination resulting from it should be documented within the technical reports. BOEM will incorporate Tribal expertise and indigenous knowledge in assessing eligibility of sites of religious and cultural significance, as described in Stipulation IV. CONSULTATION WITH TRIBAL NATIONS
- 7.
8. If a SHPO or THPO, or designated Tribal representative, disagrees with BOEM's determination regarding whether a potentially affected property is eligible for inclusion in the NRHP, or if the ACHP or the NPS (the Secretary has delegated this authority to the NPS) so request, the SHPO, THPO or designated tribal representative, will obtain a determination of eligibility from the NPS pursuant to 36 CFR part 63 (36 CFR § 800.4(c)(2)). If a Tribal Nation that attaches religious and cultural significance to a property off tribal lands does not agree with BOEM's determination, the Tribal Nation may ask the ACHP to request BOEM to obtain a determination of eligibility from the NPS.
9. *No Historic Properties Affected*: If BOEM determines that all identified archaeological and aboveground historic resources are ineligible for inclusion in the NRHP or that all eligible properties can be avoided, and the SHPO(s) or THPO(s), or designated Tribal representative(s) agree, BOEM will make a finding of *No Historic Properties Affected* for the proposed COP, consistent with 36 CFR § 800.4(d)(1).
- i. BOEM will notify the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties about the finding of *No Historic Properties Affected* and provide supporting documentation. BOEM will post the finding documentation on BOEM's website. BOEM will document in the annual report for this Agreement any findings of *No Historic Properties Affected* made pursuant to this Stipulation.

- ii. If a Tribal Nation, relevant SHPO(s), the ACHP (if participating), or consulting party disagrees with BOEM's finding of *No Historic Properties Affected*, BOEM will consult to resolve the disagreement following the procedures outlined in STIPULATION X. DISPUTE RESOLUTION.

C. Assessment of Effects:

1. BOEM will require the Lessee to assess the effects of an undertaking on historic properties identified within the APEs and make preliminary effect recommendations within the technical reports pursuant to 36 CFR § 800.5.
2. BOEM will review the reports to make the final determination of effects. BOEM will prepare a Finding of Effect document and will consult as follows:
 - i. BOEM, in consultation with Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties, will apply the criteria of adverse effect to historic properties within the APEs. BOEM will consider any views concerning effects on historic properties provided by these parties.
 - ii. *No Adverse Effect*: If BOEM, in consultation with Tribal Nations, relevant SHPO(s), the ACHP (if participating), and consulting parties, determines that no historic properties will be adversely affected, including through the development of avoidance measures, BOEM will issue a finding of *No Adverse Effect* for the undertaking. BOEM will notify the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties about the finding of *No Adverse Effect* and provide supporting documentation. BOEM will post the finding documentation on BOEM's website. BOEM will document in the annual report for this Agreement any findings of *No Adverse Effect* made pursuant to Stipulation I.C of this Agreement.
 - iii. *Adverse Effect*: If BOEM determines there will be adverse effects on historic properties, BOEM will issue a finding of *Adverse Effect* for the undertaking and will consult with the Tribal Nations, relevant SHPO(s), the ACHP (if participating), and consulting parties. BOEM will invite the ACHP to consult on the resolution of adverse effects, pursuant to 36 CFR § 800.6(a)(1). If ACHP has elected to participate earlier in consultation, then BOEM will notify ACHP of the *Adverse Effect* finding. BOEM will resolve adverse effects in accordance with Stipulation I.D of this Agreement.
 - iv. If a Tribal Nation, relevant SHPO(s), the ACHP (if participating), or consulting party disagrees with BOEM's finding of *No Adverse Effect* or *Adverse Effect*, BOEM will consult to resolve the disagreement following the procedures outlined in STIPULATION X. DISPUTE RESOLUTION.

D. Resolution of Adverse Effects:

BOEM will determine, through consultation with Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties, measures for avoidance, minimization, and mitigation in order to resolve adverse effects as follows:

1. *Avoidance*: Where practicable, BOEM will resolve adverse effects by avoiding historic properties and recording a finding of *No Historic Properties Affected*, or *No Adverse*

Effect consistent with 36 CFR §§ 800.4(d) and 800.5(b), respectively, and pursuant to Stipulation I.C.2.b. If BOEM cannot avoid all adverse effects to historic properties, then it will consult with the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties on avoidance measures that may be applicable to individual historic properties.

2. *Minimization and Mitigation Measures:* If BOEM cannot avoid adverse effects, BOEM will consult with Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties on minimization and mitigation measures where possible, reasonable, and appropriate in accordance with 36 CFR § 800.6.
 - i. BOEM will require Lessees to include proposed avoidance, minimization, mitigation, and monitoring plans in their technical reports or COP. BOEM will review the proposed measures and consult with Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties.
3. BOEM will resolve adverse effects for each undertaking by documenting avoidance, minimization, and mitigation measures in a Memorandum of Agreement (MOA), in accordance with 36 CFR § 800.6(c).
 - i. Measures to resolve adverse effects may include the Potential Resolution Measures described in Appendix IV of this Agreement.
 - ii. BOEM will make fulfillment of such measures by the Lessees conditions of COP approval.
4. BOEM will consult with the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties on avoidance, minimization, and mitigation measures, pursuant to Stipulation IX. REVIEW PROCESS FOR DOCUMENTS of this Agreement.
 - i. BOEM will consult with the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties on the development of the MOA and stipulations for resolving adverse effects. Appendix V of this Agreement serves as a reference for the development of an MOA.
 - ii. BOEM, in consultation with the Lessee, Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties, will document avoidance, minimization, and mitigation measures to resolve the adverse effects caused by an undertaking in resource-specific treatment plans. Appendix IV of this Agreement serves as a reference for potential resolution measures. Appendix VI of this Agreement serves as a reference for the development of treatment plans.

II. NEPA SUBSTITUTION

BOEM will use NEPA substitution to fulfill its Section 106 review obligations, in accordance with 36 CFR § 800.8, for COP approvals (Stipulation I. COP APPROVAL). BOEM will follow the following steps in a manner that is consistent with the standards at 36 CFR §§ 800.3 through 800.6 for historic property consultation, identification, assessment of effects, and resolution of adverse effects:

- A. BOEM will provide notice to the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties that it intends to use the process and documentation for preparing an EIS to fulfill its Section 106 review obligations when BOEM distributes the Notice of

Intent to draft an EIS. BOEM will identify Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties in accordance with Stipulation I.A of this Agreement.

- B. BOEM will consult with the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties during NEPA scoping, environmental analysis, and preparation of NEPA and Section 106 documents. BOEM will involve the public in accordance with the agency's published NEPA procedures.
- C. BOEM will identify historic properties and assess effects as described in Stipulation I.B of this Agreement beginning before the publication of the Notice of Availability for the draft EIS.
- D. BOEM will assess the effects of a proposed undertaking and determine if there are adverse effects on historic properties in the APE for the undertakings, as described in Stipulation I.C of this Agreement.
- E. BOEM, in consultation with Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties, will develop NEPA alternatives and proposed measures to avoid, minimize, or mitigate any adverse effects of the undertakings on historic properties and describe them in the final EIS. BOEM will document the measures to resolve adverse effects as described in Stipulation I.D of this Agreement.

III. PHASED IDENTIFICATION SECTION 106 PROCESS FOR THE TERRESTRIAL AREA OF POTENTIAL EFFECT

BOEM will determine if a phased identification approach is appropriate for the terrestrial APE as early in the consultation as possible for each undertaking. BOEM will notify the Lessee if it finds a phased identification approach acceptable, and if the Lessee may proceed with a Phased Identification Plan, as outlined in the body of this Agreement (Stipulation III.A). Note that the Phased Identification Section 106 Process does not apply to historic properties within the marine portion of the APE nor the visual portion of the APE.

If BOEM determines that a phased identification approach is acceptable, the final identification and evaluation of historic properties may occur after the approval of a COP. The Lessee should submit results of this phased identification in accordance with BOEM's most recent *Guidelines*. In this circumstance, BOEM, with the assistance of the applicable Lessee for that particular lease area and in consultation with Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties, will conduct phased identification, pursuant to 36 CFR § 800.4(b)(2), as described below:

- A. The Lessee will prepare a Phased Identification Plan including the following components:
 - 1. A geographic description and maps of the APE, as defined in Stipulation I.A of this Agreement, with highlights indicating areas where survey is outstanding within the APE.
 - 2. A brief description of the survey methodology.
 - 3. A description of the reasoning for phased identification.
 - 4. A schedule for anticipated survey, report completion, and consultation activities.

- B. The definition of a reasonable and good faith effort to carry out appropriate identification of historic properties (*see* 36 CFR § 800.4(b)(1)), as described in Stipulation I.B of this Agreement, will be followed.
- C. BOEM will document the phased identification and evaluation process in an MOA.

IV. CONSULTATION WITH TRIBAL NATIONS

The Signatories agree that consultation with Tribal Nations will follow these guidelines:

- A. BOEM will continue to consult with Tribal Nations throughout the implementation of this Agreement in a government-to-government manner consistent with Executive Order 13175, Presidential memoranda, the Department of the Interior Policy on Consultation with Indian Tribes (512 DM 4) and Procedures for Consultation with Indian Tribes (512 DM 5), and BOEM's Tribal Consultation Guidance.
- B. BOEM Acknowledgement of the Special Expertise of Tribal Nations. BOEM recognizes that all tribal participants and knowledge need not conform to the SOI's standards, acknowledging that Tribal Nations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to Tribal Nations, pursuant to 36 CFR § 800.4(c)(1).
 - 1. To further apply this expertise, BOEM, with the assistance of the Lessee, will incorporate indigenous knowledge into the documents and review processes, as outlined in Stipulations I, II, and III of this Agreement, when such knowledge is received from Tribal Nations in consultation and during implementation of this Agreement and subsequent Section 106 consultations for each COP.
 - 2. Such incorporation of indigenous knowledge will be consistent with the Office of Science and Technology Policy and Council on Environmental Quality memorandums (Executive Branch policy) on indigenous traditional ecological knowledge and federal decision making (November 15, 2021) and on guidance for federal departments and agencies on indigenous knowledge (November 30, 2022), as well as the ACHP's Policy Statement on Indigenous Knowledge and Historic Preservation (March 21, 2024).
 - 3. Tribal Nations are also afforded the opportunity to review the application of their knowledge in documents produced under this Agreement and subsequent Section 106 consultations for each COP.
- C. Lessees, in coordination with BOEM, will work with Tribal Nations to identify information on known or potential sites of religious and cultural significance to Tribal Nations within the PAPE for the undertaking, and based on this information, BOEM will consider effects on sites of religious and cultural significance or historic properties from all proposed or potential components of the undertaking.
 - 1. Meetings with Tribal Nations to discuss the identification of sites of religious and cultural significance to Tribal Nations should occur early in the undertaking's planning and design process and may occur prior to historic property investigations or surveys. Lessees should notify Tribal Nations that this early information gathering is not a part of BOEM's government-to-government consultation.
 - 2. Lessees' initial correspondence with Tribal Nations should include the name of the Lessee and project, indicate their project is governed by the NY Bight Programmatic

Agreement, the general location of both offshore and onshore components, a clear summary of the project's status, and what the Lessee is asking the Tribe to review.

- D. Based on the information collected by the Lessee, BOEM will consult with Tribal Nations on the identification and assessment of effects on historic properties, including sites of religious and cultural significance to Tribal Nations.
- E. BOEM, after consultation with Tribal Nations, will make final NRHP-eligibility determinations and findings of effect.

V. NATIONAL HISTORIC LANDMARKS

If, during the course of the procedures for COP approval outlined in Stipulation I, any National Historic Landmarks (NHLs) are identified within the APEs, the Signatories agree:

- A. BOEM will comply with Section 110(f) of the NHPA, which requires agencies, to the maximum extent possible, to undertake such planning and actions as may be necessary to minimize harm to NHLs (54 U.S.C. § 306107; 36 CFR § 800.10(a)).
- B. BOEM will consider all prudent and feasible alternatives to avoid adverse effects on NHLs in accordance with the Secretary of the Interior's *Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act* (1998; available online: <https://www.nps.gov/fpi/Section110.html>).
- C. If BOEM anticipates that NHLs could be adversely affected and subject to harm from activities conducted under COPs, BOEM will notify the Secretary of any consultation involving NHLs, as required in 36 CFR § 800.10(c), and will invite the Secretary to participate in consultation where there may be an adverse effect and will request the ACHP to participate in any consultation to resolve adverse effects on NHLs (*see* 36 CFR § 800.10(b)).
- D. BOEM will also consider if it should include other concerned parties in consultation and whether additional opportunities for public involvement are appropriate.

VI. POST-REVIEW DISCOVERIES AND UNANTICIPATED EFFECTS

For COPs, the Signatories agree:

- A. BOEM requires that Lessees follow post-review discovery procedures stipulated in the lease agreements.
- B. BOEM will ensure that Lessees prepare post-review discoveries plans for each COP in accordance with Appendix III to address any unanticipated discoveries of, or unanticipated effects on, cultural resources during the construction, operation, and decommissioning of any undertakings reviewed under this Agreement.
- C. The post-review discovery plan for each COP will describe protocols and standards to follow if burial sites, human remains, or funerary objects are discovered during onshore or offshore construction, operation, or decommissioning activities. As appropriate, the protocols and standards will follow the ACHP's *Policy Statement Regarding Burial Sites, Human Remains, and Funerary Objects* (March 1, 2023). These protocols will assist BOEM in fulfilling its obligations under the Native American Graves Protection and Repatriation Act (NAGPRA).

1. If investigations identify that human remains or funerary items are present and associated with Tribal Nations, then BOEM will implement a treatment plan consistent with NAGPRA. BOEM will consult with Tribal Nations prior to the development or execution of a treatment plan, consistent with the provisions of NAGPRA at 25 U.S.C. §§ 3001-3013 and related law at 18 U.S.C. § 1170.

- D. If additional resources are discovered that may be historically significant, unanticipated effects on historic properties are found, or if any archaeological materials or sites are encountered prior to or during onshore or offshore construction, operation, or decommissioning activities, BOEM and the Lessee will implement the post-review discoveries plans as outlined in the lease and COP.

VII. PUBLIC PARTICIPATION

- A. Because BOEM and the Signatories recognize the importance of public participation in the Section 106 process, BOEM will continue to provide opportunities for public participation and will consult with the Signatories on possible approaches for keeping the public involved and informed throughout the term of this Agreement.

- B. BOEM will keep the public informed and may produce reports on historic properties and on the Section 106 process that may be made available to the public on the BOEM website and through other reasonable means insofar as the information shared conforms to the confidentiality clause of this Agreement (Stipulation VIII. CONFIDENTIALITY).

VIII. CONFIDENTIALITY

BOEM and the Signatories agree that it is important to withhold from disclosure sensitive information such as that which is protected by NHPA Section 304 (54 U.S.C. § 307103) (e.g., the location, character, and ownership of a historic resource, if disclosure would cause a significant invasion of privacy, risk harm to the historic resources, or impede the use of a traditional religious site by practitioners). BOEM will:

- A. Arrange for the Signatories to consult, as needed, on how to protect such information collected or generated under this Agreement.

- B. Follow, as appropriate, 36 CFR § 800.11(c) for authorization to withhold information pursuant to NHPA Section 304, and otherwise withhold sensitive information, as determined by BOEM, to the extent allowable by laws including the Freedom of Information Act, 5 U.S.C. § 552, through the Department of the Interior regulations at 43 CFR part 2.

- C. Request that the Signatories agree that materials generated during consultation be treated by the Signatories as internal and pre-decisional until the materials are formally released, although the Signatories understand that such materials may need to be released by one of the Signatories if required by law.

IX. REVIEW PROCESS FOR DOCUMENTS

The following process will be used for any documents produced in accordance with Stipulations of this Agreement:

- A. *Standard Review*: The Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties will have a standard review period of at least thirty (30) calendar days for

commenting on all documents developed under the terms of this Agreement from the date they are sent by BOEM via electronic media (email or secure website).

- B. *Expedited Request for Review*: The Signatories recognize the time-sensitive nature of reviews related to COPs and will attempt to expedite comments or concurrence when BOEM so requests. The expedited review and comment period for Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties will not be less than fifteen (15) calendar days from the date BOEM sends such a request via electronic media.
 - 1. If a Tribal Nation, relevant SHPO(s), or consulting party cannot meet BOEM's expedited review period request, it will notify BOEM in writing before the end of the 15-calendar-day expedited review period.
- C. If a Tribal Nation or consulting party fails to provide comments or to respond within the time frame requested by BOEM (either standard or expedited), then BOEM will proceed. BOEM will consider all comments received within the review period.
- D. All submittals to the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties will be electronic unless a specific request is made for an alternate format. If BOEM transmits the review materials by an alternate method as requested and identified by a Signatory or consulting party, the review period will begin on the date they are or would have otherwise been sent via electronic media.

X. DISPUTE RESOLUTION

- A. If any Tribal Nation, relevant SHPO(s), or consulting party object in writing to BOEM regarding an action carried out in accordance with this Agreement, or lack of compliance with the terms of this Agreement, the Signatories will consult to resolve the objection. If the Signatories are unable to resolve the disagreement, BOEM will forward the dispute, its background information on the dispute, and its proposed resolution of the dispute to the ACHP and other Signatories.
- B. Within forty-five (45) calendar days after receipt of all pertinent documentation, the ACHP will either: (1) provide BOEM with written recommendations, which BOEM will take into account in reaching a final decision regarding the dispute; or (2) notify BOEM that it will comment pursuant to 36 CFR § 800.7(c), and proceed to comment. BOEM will take this ACHP comment into account, in accordance with 36 CFR § 800.7(c)(4).
- C. Any ACHP recommendation or comment will be understood to pertain only to the subject matter of the dispute; BOEM's responsibility to carry out all actions under this Agreement that are not subjects of dispute will remain unchanged.
- D. BOEM will provide the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties with a written copy of its final decision regarding any dispute addressed pursuant to this Stipulation.
- E. If any member of the public object in writing to implementation of the Agreement's terms, BOEM will notify the Signatories in writing and take the objection into consideration. Any Signatory may choose to comment on the objection. BOEM will establish a reasonable time frame for this comment period. In reaching its decision regarding the objection, BOEM will consider the objection and take into consideration all comments from other Signatories. Within fifteen (15) calendar days after closure of this

comment period, BOEM will provide the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties with its final decision in writing.

XI. AMENDMENT

Any Signatory, or any potential future Invited Signatory added under Stipulation XIV, may propose to BOEM in writing that this Agreement be amended, whereupon BOEM will consult with the Signatories and Invited Signatories to consider such amendment. This Agreement may be amended when agreed to in writing by all Signatories and Invited Signatories, becoming effective on the date that the amendment is executed by the Signatories, Invited Signatories, and with the ACHP as the last Signatory. BOEM will notify the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties when the Agreement has been amended.

XII. ANNUAL REPORTING

BOEM will prepare an annual report that will summarize actions taking place pursuant to this Agreement between October 1 and September 30 and make this report available to Signatories, Tribal Nations, and consulting parties by January 31 of each year this Agreement is in effect.

- A. The annual report will summarize or include the following information: summary and update of Section 106 reviews conducted for COPs under this Agreement; a list of any objections and uses of the dispute clause; any changes in lease names; the number and names of approved COPs; the number of government-to-government meetings for specific COPs; status of implementation of mitigation measures, as applicable; and BOEM invitations to additional consulting parties to participate in this Agreement. BOEM may modify the content of this report through consultation with Signatories if adjustments to the information included are requested.
- B. At the time the report is distributed, any Signatory or Tribal Nation may request a meeting with BOEM to discuss the contents of the report and the use of this Agreement to review undertakings. BOEM will invite all Signatories and Tribal Nations to this meeting.

XIII. ADDING CONCURRING PARTIES

If BOEM receives a written request from another consulting party to sign this Agreement as a Concurring Party, BOEM will determine if it will invite the party to sign as a Concurring Party and will notify the party of the agency's decision. BOEM will notify the Signatories and Tribal Nations of this request and the agency's decision in the Annual Report as described in Stipulation XII. ANNUAL REPORTING of this Agreement. This Agreement will not require an amendment if BOEM invites an additional consulting party to sign as a Concurring Party.

XIV. COORDINATION WITH OTHER FEDERAL AGENCIES

- A. In the event that another federal agency receives an application for funding/license/permit for an undertaking that falls under this Agreement, BOEM may invite that agency to fulfill its Section 106 responsibilities by agreeing in writing with the terms of this Agreement and notifying the Signatories, Tribal Nations, and consulting parties that it intends to do so. The federal agency may become an Invited Signatory or a Concurring Party, as defined in 36 CFR § 800.6(c)(2), to this Agreement as a means of complying with its responsibilities under Section 106 and based on its level of involvement in the undertaking.

1. To become an Invited Signatory or a Concurring party to this Agreement, BOEM will ask the federal agency official to provide written notice to the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties that the federal agency agrees to the terms of this Agreement. The participation of the federal agency is subject to approval by the Signatories who must respond to the written notice within thirty (30) calendar days, or the approval will be considered implicit. Any necessary amendments to this Agreement as a result will be considered in accordance with Stipulation XI. AMENDMENT of this Agreement.
2. Should the Signatories approve the federal agency's request to be a signing party to this Agreement, an amendment under Stipulation XI. AMENDMENT will not be necessary if the federal agency's participation does not change the Agreement in a manner that would require any modifications to the stipulations. BOEM will document these conditions and involvement of the federal agency in a written notification to the Signatories, Tribal Nations, and consulting parties, and include a copy of the federal agency's executed signature page, which will codify the addition of the federal agency as a Signatory or Concurring Party in lieu of an amendment.

XV. DURATION

This Agreement will remain in full force for (40) years from the date this Agreement is executed by all the Signatories unless otherwise extended by amendment in accordance with Stipulation XI. AMENDMENT of this Agreement.

XVI. TERMINATION

If any Signatory or Invited Signatory determines that the terms of this Agreement cannot or are not being carried out, that Signatory or Invited Signatory will notify the other Signatories in writing and consult with them to seek amendment of the Agreement. If within sixty (60) calendar days of such notification, an amendment cannot be made, any Signatory or Invited Signatory may terminate the Agreement upon written notice to the other Signatories. In the event of termination of this Agreement, prior to work continuing on any undertaking to which this Agreement applies, BOEM will either execute a new Agreement pursuant to 36 CFR § 800.14(b), or implement the stipulations including Stipulation II pursuant to the NJ-NY PA regarding consultation for specific COPs, or comply with the provisions of 36 CFR part 800 if the NJ-NY PA is no longer in effect. BOEM will notify the Tribal Nations, relevant SHPO(s), the ACHP, and consulting parties as to the course of action it will pursue.

XVII. ANTI-DEFICIENCY ACT

BOEM's obligations under this Agreement are subject to the availability of appropriated funds, and the stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act. BOEM will make reasonable and good faith efforts to secure the necessary funds to implement this Agreement in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the BOEM's ability to implement the stipulations of this agreement, BOEM will consult in accordance with the amendment and termination procedures found at Stipulations XI and XVI of this Agreement.

Execution of this Agreement by BOEM, the SHPOs, and the ACHP, and the implementation of its terms, are evidence that BOEM has fulfilled its responsibilities pursuant to Section 106 of the National Historic Preservation Act.

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

SIGNATORY

U.S. Department of the Interior, Bureau of Ocean Energy Management

By:

KAREN BAKER Digitally signed by KAREN BAKER
Date: 2024.10.24 16:11:13 -04'00

Date: **October 24, 2024**

Karen J. Baker
Chief, Office of Renewable Energy Programs
Bureau of Ocean Energy Management

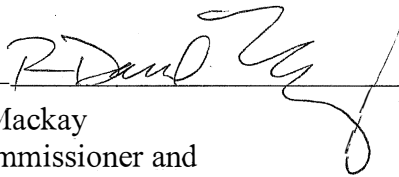
**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation**

**Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

SIGNATORY

New York State Historic Preservation Officer (SHPO)

By:



Date: 11/6/27

R. Daniel Mackay
Deputy Commissioner and
State Historic Preservation Officer
New York Office of Parks, Recreation and Historic Preservation

PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act

SIGNATORY

New Jersey State Historic Preservation Officer (SHPO)

By:



Katherine J. Marcopul, Ph.D., CPM
Administrator and
Deputy State Historic Preservation Officer
New Jersey Department of Environmental Protection

Date: 11/15/2024

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

SIGNATORY

Advisory Council on Historic Preservation

By:



Date: 11/21/2024

Reid Nelson
Executive Director
Advisory Council on Historic Preservation

bc:

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

Bureau of Safety and Environmental Enforcement

By:

**GERARD
MOORE**

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GERARD MOORE
Date: 2024.11.13 08:18:01
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Date: _____

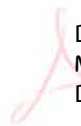
Gerard Moore
Deputy – Renewable Energy and Regulatory Compliance
Bureau of Safety and Environmental Enforcement

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

By:

**JONATHAN
MEADE**



Digitally signed by JONATHAN
MEADE
Date: 2024.11.15 11:51:28 -05'00'

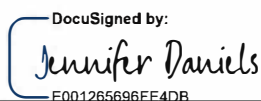
Date: _____

Jonathan Meade
Associate Regional Director
Resource Stewardship & Science
United States National Park Service
Interior Region 1 – North Atlantic Appalachian

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

By:

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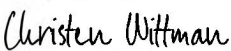
Date: 11/15/2024

Jennifer Daniels
Vice President
Atlantic Shores Offshore Wind Bight, LLC

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

By:

DocuSigned by:

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Date: November 15, 2024 | 8:56 PM CET

Christen Wittman
Director
Attentive Energy LLC

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

By:



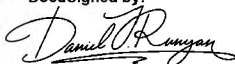
Date: 11/15/2024

John Dempsey
Chief Executive Officer
Bluepoint Wind, LLC

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

By:

DocuSigned by:

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Date: 11/7/2024


Daniel Runyan
Senior Vice President, Offshore Wind Development
Invenergy Wind Offshore LLC

DS


**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

By:

Signed by:

CEFADD74E3254C1...

Date: 11/18/2024

Rachel Pachter
Chief Development Officer
Vineyard Offshore

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

By:

Lori Devlin

Date: October 25, 2024

Lori B. Devlin
Village Clerk
Inc. Village of Patchogue

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Six Renewable Energy Projects (Leases OCS-A 0537, 0538, 0539, 0541, 0542, and 0544)
Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act**

LIST OF APPENDICES TO THE AGREEMENT

APPENDIX I – LISTS OF INVITED AND PARTICIPATING CONSULTING PARTIES

APPENDIX II – DEFINITIONS

APPENDIX III – POST-REVIEW DISCOVERIES

APPENDIX IV – STANDARD MITIGATION MEASURES

APPENDIX V – MEMORANDUM OF AGREEMENT SAMPLE/TEMPLATE

APPENDIX VI – HISTORIC PROPERTY TREATMENT PLAN OUTLINE

APPENDIX I
PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Review of Six Projects Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act

**LIST OF PARTIES INVITED TO PARTICIPATE IN NHPA SECTION 106
CONSULTATION**

Participants in the Section 106 Process	Invited Consulting Parties
Federally Recognized Tribal Nations	Absentee-Shawnee Tribe of Indians of Oklahoma
	Delaware Tribe of Indians
	Eastern Shawnee Tribe of Oklahoma
	Mashantucket Pequot Tribal Nation
	Mashpee Wampanoag Tribe
	Mohegan Tribe of Connecticut
	Seneca-Cayuga Nation
	Shawnee Tribe
	Stockbridge-Munsee Community Band of Mohican Indians
	The Delaware Nation
	The Narragansett Indian Tribe
	The Shinnecock Indian Nation
	Tuscarora Nation
	Wampanoag Tribe of Gay Head (Aquinnah)
Federal Agencies	U.S. Advisory Council on Historic Preservation
	U.S. Army Corps of Engineers
	U.S. Bureau of Safety and Environmental Enforcement
	U.S. Coast Guard
	U.S. Environmental Protection Agency
	U.S. Fish and Wildlife Service
	U.S. National Oceanic and Atmospheric Administration
	U.S. National Park Service
Lessees	Atlantic Shores Offshore Wind
	Attentive Energy (TotalEnergies)
	Invenergy
	Bluepoint Wind, LLC (formerly Ocean Winds East ¹)

¹ Ocean Winds East changed to Bluepoint Wind after the Section 106 invitations to consult were sent out. The current name is included in the list of participating consulting parties that follows this list of invited parties.

Participants in the Section 106 Process	Invited Consulting Parties
	RWE (Community Offshore Wind)
	Vineyard Mid-Atlantic Offshore Wind
State Recognized Tribal Nations	Lenape Indian Tribe of Delaware
	Nanticoke Indian Association, Inc.
	Nanticoke Lenni-Lenape Tribal Nation
	Powhatan Renape Nation
	Ramapough Lenape Indian Nation
	Ramapough Mountain Indians
	Unkechaug Tribal Nation
State Historic Preservation Offices (SHPOs)	New Jersey Department of Environmental Protection, Historic Preservation Office
	New York State Historic Preservation Office
State Government	Gilgo State Park
	Jones Beach State Park
	Long Island State Parks Region 9
	New Jersey Commission on Indian Affairs
	New Jersey Cultural Trust
	New Jersey Division of Archives and Record Management
	New Jersey Historic Trust
	New Jersey Historical Commission
	New Jersey Office of Planning Advocacy
	New Jersey State Museum
	New Jersey State Parks, Forests and Historic Sites
	New York State Council of Parks
	New York State Parks, Recreation and Historic Preservation
	New York State Parks, Recreation and Historic Preservation, Region 9, Gilgo State Park
	New York State Parks, Recreation and Historic Preservation, Region 9, Jones Beach State Park
	New York State Parks, Recreation and Historic Preservation, Region 9, Robert Moses State Park
	Robert Moses State Park
Local Government	Aberdeen Township
	Allenhurst Borough
	Atlantic City
	Atlantic County
	Atlantic Highlands Borough
	Avalon Borough
	Avon-by-the-Sea Borough
	Barnegat Light Borough

Participants in the Section 106 Process	Invited Consulting Parties
	Barnegat Township
	Bass River Township
	Belmar Borough
	Berkeley Township
	Borough of Bay Head
	Borough of Beach Haven
	Borough of Brooklyn
	Borough of Harvey Cedars
	Borough of Highlands
	Borough of Lavallette
	Borough of Manasquan
	Borough of Manhattan
	Borough of Mantoloking
	Borough of Ocean Gate
	Borough of Point Pleasant Beach
	Borough of Queens
	Borough of Sea Bright
	Borough of Sea Girt
	Borough of Seaside Park
	Borough of Spring Lake
	Borough of Staten Island
	Borough of Surf City
	Borough of The Bronx
	Borough of Tuckerton
	Borough of Woodbine
	Bradley Beach Borough
	Bronx County
	Cape May City
	Cape May County
	Cape May Point Borough
	City of Absecon
	City of Asbury Park
	City of Bayonne
	City of Bayonne Planning Board
	City of Brigantine Beach
	City of Hoboken
	City of Hoboken Historic Preservation Commission
	City of Jersey City
	City of Linwood

Participants in the Section 106 Process	Invited Consulting Parties
	City of Long Beach
	City of North Wildwood
	City of Northfield
	City of Pleasantville
	City of Port Republic
	City of Somers Point
	City of Wildwood
	Deal Borough
	Dennis Township
	Eagleswood Township
	Egg Harbor City
	Egg Harbor Township
	Galloway Township
	Hamilton Township
	Hammonton Town
	Hudson County
	Hudson County Register
	Incorporated Village of Lindenhurst
	Keyport Borough
	Kings County
	Lacey Township
	Lake Como Borough
	Little Egg Harbor Township
	Loch Arbour Village
	Long Beach Township
	Long Branch
	Longport Borough
	Lower Township
	Manchester Township
	Margate City
	Middle Township
	Middlesex County
	Monmouth Beach Borough
	Monmouth County
	Monmouth County Park System
	Nassau County
	Neptune Township
	New York City
	New York City Department of Parks & Recreation

Participants in the Section 106 Process	Invited Consulting Parties
	New York City Landmarks Commission
	Ocean City
	Ocean County
	Ocean Township
	Old Bridge Township
	Queens County
	Richmond County
	Sea Isle City
	Ship Bottom Borough
	Stone Harbor Borough
	Suffolk County
	Suffolk County
	Toms River Township
	Town of Babylon
	Town of Brookhaven
	Town of Hempstead
	Town of Islip
	Town of Oyster Bay
	Township of Brick
	Township of Hamilton
	Township of Lakewood
	Township of Middletown
	Township of Stafford
	Union Beach Borough
	Upper Township
	Ventnor City
	Village of Amityville
	Village of Bellport
	Village of Brightwaters
	Village of Hempstead
	Village of Mastic Beach
	Village of Patchogue
	Wall Township
	West Cape May Borough
	West Wildwood Borough
	Wildwood Crest Borough
Preservation Organization	Absecon Historical Society
	Absecon Lighthouse
	American Irish Historical Society

Participants in the Section 106 Process	Invited Consulting Parties
	American Jewish Historical Society
	Amityville Historical Society
	Asbury Park Historical Society
	Atlantic County Historical Society
	Atlantic Highlands Historical Society
	Avalon Historical Society (Avalon History Center)
	Barnegat Historical Society
	Barnegat Light Historical Society (Barnegat Light Museum)
	Barnegat Lighthouse State Park
	Bay Shore Historical Society
	Bayonne Community Museum, Inc.
	Bellport-Brookhaven Historical Society
	Belmar Historical Society
	Berkeley Township Historical Society and Museum
	Bradley Beach Historical Society
	Brick Township Historical Society
	Brigantine Beach Historical Museum
	Bronx County Historical Society
	Bronx County Historical Society
	Brooklyn Historical Society
	Cape May Lighthouse
	Crossroads of the American Revolution in New Jersey
	Eagleswood Historical Society
	East Islip Historical Society
	Friends of Asbury Park ESTC
	Friends of Barnegat Lighthouse
	Friends of the Cape May Lighthouse
	Friends of the World War II Tower
	Galloway Township Historical Society
	Greater Cape May Historical Society
	Greater Egg Harbor Township Historical Society
	Greater Patchogue Historical Society
	Hereford Inlet Lighthouse
	Hispanic Society of America
	Historic Cold Spring Village
	Historic Districts Council
	Historic House Trust of New York City
	Historical Society for the Preservation of the Underground Railroad
	Historical Society of East Rockaway and Lynbrook

Participants in the Section 106 Process	Invited Consulting Parties
	Historical Society of Highlands
	Historical Society of Islip Hamlet
	Historical Society of Ocean Grove
	Hoboken Historical Museum
	Hudson County Historical Society
	Huntington Historical Society
	Italian Historical Society of America (Brooklyn)
	Jersey City Landmarks Conservancy
	Keyport Historical Society
	Lacey of Historical Society
	Lakewood Historical Society c/o Taylor
	Linwood Historical Society
	Long Beach Historical and Preservation Society
	Long Beach Island Historical Association
	Long Branch Historical Museum Association
	Long Island Maritime Museum
	Malverne Historical and Preservation Society
	Margate Historical Society
	Mastic Peninsula Historical Society
	Matawan Historical Society
	Middletown Township Historical Society
	Monmouth County Historical Society
	Museum of Cape May County
	Nassau County Historical Society
	National Maritime Historical Society
	New Jersey Historical Society
	New Jersey Lighthouse Society
	New Jersey Maritime Museum
	New York Central System Historical Society
	New York Historical Society
	Ocean City Historical Museum
	Ocean County Historical Society
	Old Wall Historical Society
	Oyster Bay Historical Society
	Preservation Alliance of Spring Lake
	Preservation League of New York
	Preservation New Jersey
	Queens County Historical Society
	Richmond County Historical Society

Participants in the Section 106 Process	Invited Consulting Parties
	Romer Shoal Light Roosevelt Island Historical Society Save Long Island Beach Inc. Sea Bright Historical Society Seaside Heights Historical Society Spring Lake Historical Society Squan Village Historical Society Staten Island Historical Society at Historic Richmond Town Suffolk County Historical Society The Archaeological Society of New Jersey The League of Historical Societies of New Jersey The Museum of Cape May County The Noyes Museum of Art The Sandy Hook Foundation Thomas Warne Museum/Madison-Old Bridge Township Historical Society Tuckerton Historical Society Twin Lights Historical Society Village of Babylon Historical Society Waretown Historical Society West Bank Lighthouse West Islip Historical Society Wildwood Crest Historical Society Wildwood Historical Society
Other Potentially Interested Parties	Alliance for Coney Island Atlantic City Convention Center Caribbean Motel Converse Cottage Dr. Edward H. Williams House Emlen Physick Estate Friends of Monmouth County Parks Friends of Sunset Park Garden State Seafood Association Green-Wood Cemetery Lucy The Margate Elephant Madison Hotel New Jersey Future Ocean City Music Pier

Participants in the Section 106 Process	Invited Consulting Parties
	Patriots for the Somers Mansion
	Point O'Woods Association
	Raphael-Gordon House
	Ritz-Carlton Hotel/Condominium Association
	The Flanders Hotel
	Vassar Square Condominiums

LIST OF PARTICIPATING CONSULTING PARTIES

Participants in the Section 106 Process	Participating Consulting Parties
<i>Federally Recognized Tribal Nations</i>	
Absentee-Shawnee Tribe of Indians of Oklahoma	Devon Frazier; John Raymond Johnson
Delaware Tribe of Indians	Brad Kills Crow; Susan Bachor
Eastern Shawnee Tribe of Oklahoma	Brett Barnes; Pul Barton; Glenna Wallace
Mashantucket (Western) Pequot Tribal Nation	Michael Kickingbear Johnson; Stormy Hay
Mashpee Wampanoag Tribe	David Weeden
Mohegan Tribe of Connecticut	James Gessner; James Quinn
Stockbridge-Munsee Community Band of Mohican Indians	Dr. Jeffrey C. Bendremer
The Delaware Nation	Carissa Speck; Deborah Dotson; Katelyn Lucas
The Narragansett Indian Tribe	Anthony Dean Stanton; Dinalyn Spears; John Brown
The Shinnecock Indian Nation	Bianca Collins; Jeremy Dennis; Rebecca Genia; Bryan Polite; Jason Cofiled, T. Rainbow Chavis, Shavonne Smith; Tela Troge
Tuscarora Nation	Tom Jonathan
Wampanoag Tribe of Gay Head (Aquinnah)	Cheryl Andrews-Maltais; Al Clark; Kevin Devine; Lael Echo-Hawk; Barbara Spain; Bettina Washington; Tara Thomas
<i>Federal Agencies</i>	
U.S. Advisory Council on Historic Preservation	Chris Koepfel; Christopher Daniel; Jamie Lee Marks
U.S. Army Corps of Engineers	Naomi Handell; Jared Pritts
U.S. Bureau of Safety and Environmental Enforcement	W. Shawn Arnold; Daniel "Herb" Leedy
U.S. Department of the Navy	Jennifer Harty; Alexis Catsambis; Juliana Henkel
U.S. Environmental Protection Agency	Mark Austin
U.S. National Park Service	Mark Austin; Mary Krueger; Kristin Andel; Jennifer Maver
<i>Lessees</i>	
Atlantic Shores Offshore Wind	Jennifer Daniels; Vince Esposito; Megan Hayes
Attentive Energy	Isabel Kaubisch; Laura Klewicki; Lauren Cleeland
Bluepoint Wind	Lauren Fletcher; Michael Brown; John Dempsey; Lia Howard
Community Offshore Wind	Justin Bedard; Katherine Miller; Daniel Sieger
Invenegy	Carmen Bernett; Hope E. Luhman; Shannon Stewart
Vineyard Mid-Atlantic Offshore Wind	Geri Edens; Laura George; Nate Mayo; Jacob Miller; Esther Siskind

Participants in the Section 106 Process	Participating Consulting Parties
<i>State-Recognized Tribal Nations</i>	
Lenape Indian Tribe of Delaware	Dennis J. Coker
<i>State Historic Preservation Offices (SHPOs)</i>	
New Jersey Department of Environmental Protection, Historic Preservation Office	Meghan Baratta; Jennifer Leynes; Katherine Marcopul; Jesse West-Rosenthal
New York State Historic Preservation Office	Nancy Herter; Tim Lloyd; Daniel Mackay
<i>State Government</i>	
New Jersey State Museum	Nicole Jannotte
New York State Parks, Recreation & Historic Preservation	Erik Kulleseid
New York State Parks, Recreation & Historic Preservation, Long Island State Parks Region 9	Jill Dietrich; George Gorman, Jr.
<i>Local Government</i>	
Atlantic County	Frances Brown; Gerald DelRosso; Ranae Fehr
Avon-by-the-Sea Borough	Ed Bonanno; Anna Bongiorno
Borough of Beach Haven	Catherine Snyder; Jamie Baumiller; Robert Stern
Borough of Highlands	Donald Melnyk; Karen Chelak
Borough of Point Pleasant Beach	Paul Kanitra; Kristen O'Rourke
Borough of Sea Bright	Brian Kelly
Borough of Seaside Park	Sandy Martin; John Peterson, Jr.
Borough of Spring Lake	Bryan Dempsey; Jennifer Naughton
Cape May County	Rita M. Rothberg
City of Absecon	Carie Crone; Kim Horton
City of Asbury Park	Jason D. Harzold
City of Hoboken	Ravi Bhalla; Christopher A. Brown; James J. Farina
City of North Wildwood	Patrick Rosenello
Monmouth County	Joseph Barris; David Schmetterer
Monmouth County Park System	Paul Gleitz; Gail Hunton; Anna Luiten
Nassau County	Kenneth Arnold
Neptune City	Brian Thomas
Suffolk County	Lisa Broughton
Town of Babylon	Rachel Scelfo

Participants in the Section 106 Process	Participating Consulting Parties
Town of Islip	James C. Brennan; Ela Dokonal
Town of Oyster Bay	George Baptista, Jr.; Julia Schneider
Township of Brick	Keith Rella
Township of Hamilton	Erin Crean; Joseph Kostecki
Township of Middletown	Tony Perry
Township of Stafford	Matthew von der Hayden
Village of Bellport	Mary Pontieri
Village of Patchogue	Lori B. Devlin; Dennis Smith
<i>Preservation Organization</i>	
Bay Shore Historical Society	Barry Dlouhy
Greater Cape May Historical Society	Harry Bellangy; Kathleen Wyatt
Historic Districts Council	Lucie Levine; Diego Robayo; Frampton Tolbert
Historical Society of Highlands	Rita Moles; Shelia Weinstock
Monmouth Hills Inc. (Water Witch)	Bob Kellner; Don Claussen; Derek DeBree; Martin McHugh
Ocean City Historical Museum	John Loeper
Preservation Alliance of Spring Lake	Joseph Rizzo
Romer Shoal Light	Keith Kilgannon
Save Long Island Beach Inc.	Robert Stern
The Noyes Museum of Art	Michael Cagno
West Bank Lighthouse	Keith Kilgannon
<i>Other Interested Parties</i>	
Green-Wood Cemetery	Joseph Charap; Richard Moylan
Hempstead Harbor Protection Committee	Eric Swenson
Point O' Woods Association	William Cook

APPENDIX II
PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Review of Six Projects Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act

DEFINITIONS

Commercial activities mean, for renewable energy leases and grants, all activities associated with the generation, storage, or transmission of electricity or other energy products from a renewable energy project on the Outer Continental Shelf (OCS), and for which such electricity or other energy product is intended for distribution, sale, or other commercial use, except for electricity or other energy products distributed or sold pursuant to technology-testing activities on a limited lease. This term also includes activities associated with all stages of development, including initial site characterization and assessment, facility construction, and project decommissioning (*see* 30 Code of Federal Regulations [CFR] § 585.113).

Commercial lease means a lease, issued under the renewable energy regulations, that specifies the terms and conditions under which a person can conduct commercial activities (*see* 30 CFR § 585.113).

Cultural resources means historic resources, archeological sites, and sites of religious and cultural significance to Tribes.

Developer means a renewable energy developer holding a lease that allows them to explore, develop, and, potentially, produce energy from renewable energy resources.

Geophysical survey means a marine remote-sensing survey using, but not limited to, such equipment as side-scan sonar, magnetometer, shallow and medium (seismic) penetration subbottom profiler systems, narrow beam or multibeam echo sounder, or other such equipment employed for the purposes of providing data on geological conditions, identifying shallow hazards, identifying archaeological resources, charting bathymetry, and gathering other site characterization information.

Geotechnical testing means the process by which site-specific sediment and underlying geologic data are acquired from the seafloor and the sub-bottom and includes, but is not limited to, such methods as borings, vibracores, and cone penetration tests.

Grantee means renewable energy developer holding a grant from the Bureau of Ocean Energy Management (BOEM).

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP) maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional

religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the NRHP criteria (*see* 30 CFR § 800.16(l)(1)).

Lessee means renewable energy developer holding a lease from BOEM.

Limited lease means a lease, issued under the renewable energy regulations, that specifies the terms and conditions under which a person may conduct activities on the OCS that support the production of energy, but do not result in the production of electricity or other energy products for sale, distribution, or other commercial use exceeding a limit specified in the lease (*see* 30 CFR § 585.113).

Research lease means an OCS lease, right-of-way (ROW) grant, or right-of-use and easement (RUE) grant, issued under the renewable energy regulations at 30 CFR § 585.239, to a federal agency or a state for renewable energy research activities that support the future production, transportation, or transmission of renewable energy.

ROW grant means an authorization issued under the renewable energy regulations to use a portion of the OCS for the construction and use of a cable or pipeline for the purpose of gathering, transmitting, distributing, or otherwise transporting electricity or other energy product generated or produced from renewable energy. An ROW grant authorizes the holder to install on the OCS cables, pipelines, and associated facilities that involve the transportation or transmission of electricity or other energy products from renewable energy projects (*see* 30 CFR § 585.113).

RUE grant means an easement issued under the renewable energy regulations that authorizes use of a designated portion of the OCS to support activities on a lease or other use authorization for renewable energy activities. An RUE grant authorizes the holder to construct and maintain facilities or other installations on the OCS that support the production, transportation, or transmission of electricity or other energy products from any renewable energy resource (*see* 30 CFR § 585.113).

Tribal land means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities (*see* 36 CFR § 800.16(x)).

Qualified archaeologist means a person who meets the Secretary of the Interior's Professional Qualification Standards for Archaeology (48 *Federal Register* [FR] 44738-44739), and has experience researching and analyzing North American archaeological data.

Qualified architectural historian means a person who meets the Secretary of the Interior's Professional Qualification Standards for architectural history (48 FR 44738-44739), and has experience analyzing structures, historic districts, and landscapes.

Qualified historian means a person who meets the Secretary of the Interior's Professional Qualification Standards for History (48 FR 44738-44739), and has experience in historic research, writing, teaching, interpretation, or other demonstrable professional activity.

Qualified marine archaeologist means a person who meets the Secretary of the Interior's Professional Qualification Standards for Archaeology (48 FR 44738-44739), and has experience analyzing marine geophysical data.

ABBREVIATIONS AND ACRONYMS

Acronym/Abbreviation	Definition
§	Section
3D	three-dimensional
ACHP	Advisory Council on Historic Preservation
Agreement	Programmatic Agreement
APE	Area(s) of Potential Effects
ASLF	Ancient Submerged Landforms Features
AUV	autonomous underwater vehicle
BOEM	Bureau of Ocean Energy Management
BSEE	Bureau of Safety and Environmental Enforcement
CFR	Code of Federal Regulations
COP	Construction and Operations Plan
DEIS	Draft Environmental Impact Statement
DPO	Deputy Preservation Officer
EIS	Environmental Impact Statement
FAA	Federal Aviation Administration
FEIS	Final Environmental Impact Statement
FPO	Federal Preservation Officer
GCPM	General Contractor Project Manager
GIS	geographic information system
GPS	global positioning system
<i>Guidelines</i>	<i>Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585</i>
HABS	Historic American Buildings Survey
HAER	Historic American Engineering Record
HALS	Historic American Landscapes Survey
HPPP	Historic Properties Protection Plan
HPTP	Historic Property Treatment Plan
HRG	high resolution geophysical
HSR	Historic Structure Report
MARA	Marine Archaeological Resources Assessment
MOA	Memorandum of Agreement
NAGPRA	Native American Graves Protection and Repatriation Act
NEPA	National Environmental Policy Act
NHL	National Historic Landmark
NHO	Native Hawaiian Organization

Acronym/Abbreviation	Definition
NHPA	National Historic Preservation Act
NJ	New Jersey
NPS	National Park Service
NRHP	National Register of Historic Places
NY	New York
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
PA	Programmatic Agreement
PAPE	Preliminary Area(s) of Potential Effects
PDE	Project Design Envelope
PEIS	Programmatic Environmental Impact Statement
QA	Qualified Archaeologist
QMA	Qualified Marine Archaeologist
ROD	Record of Decision
ROV	remotely operated vehicle
ROW	right-of-way
RPO	Regional Preservation Officer
RUE	right-of-use and easement
SHPO	State Historic Preservation Officer
SOI	Secretary of the Interior
TARA	Terrestrial Archaeological Resources Assessment
TCP	Traditional Cultural Place
THPO	Tribal Historic Preservation Officer
Tribes	Federally Recognized Native American Tribal Nations
UDP	Unanticipated Discoveries Plan
USACE	U.S. Army Corps of Engineers
USBL	Ultra-Short Base Line
USCG	U.S. Coast Guard
U.S.C.	United States Code
WDA	Wind Development Area
WTG	wind turbine generator

APPENDIX III
PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Review of Six Projects Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act

POST-REVIEW DISCOVERIES PLANS

Pursuant to Stipulation VI, POST-REVIEW DISCOVERIES AND UNANTICIPATED EFFECTS, BOEM will require lessees to develop post-review discovery plans in accordance with this appendix. The lessee will include a section in the project-specific Post-Review Discoveries Plan detailing the roles and responsibilities of their contractor, their subcontractors, or any agents acting on their behalf (hereinafter, “Contractor”). The lessee will ensure the procedures outlined in this appendix are adhered to in the event of a post-review discovery of, or unanticipated effect on, cultural resources during the construction, operation, and decommissioning of their project.

ONSHORE POST-REVIEW DISCOVERIES PROCEDURES

The following protocol presents the steps to be followed when potential terrestrial archaeological resources or human remains are discovered during the execution of any undertaking under this Programmatic Agreement.

Purpose

The purpose of the Onshore Post-Review Discoveries Plan is to provide the lessee and the contractor with a step-by-step procedure to address unanticipated discoveries of cultural resources during the construction, operation, and decommissioning of offshore wind-energy projects for portions of the project located within the terrestrial areas of potential effect.

The Bureau of Ocean Energy Management (BOEM) developed the Onshore Post-Review Discoveries Plan to align the projects with the following federal and state standards and guidelines.

Federal Standards and Guidelines

- Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. § 306108)
- Secretary of the Interior’s Standards for Archeology and Historic Preservation (48 Code of Federal Regulations [CFR] 44716-42)
- Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §§ 3001 et seq.)

- Advisory Council on Historic Preservation (ACHP) *Policy Statement on Burial Sites, Human Remains, and Funerary Objects*, March 2023
- ACHP *Policy Statement on Indigenous Knowledge and Historic Preservation*, March 2024
- BOEM, Office of Renewable Energy Programs: Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585, May 2020

New Jersey Standards and Guidelines

- Guidelines for Phase I Archaeological Investigations: Identification of Archaeological Resources (<https://www.nj.gov/dep/hpo/1identify/arkeoguide1.htm>)
- Guidelines for Preparing Cultural Resources Management Archaeological Reports (<https://www.nj.gov/dep/hpo/1identify/culreso.pdf>)

New York Standards and Guidelines

- Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State (<https://nysarchaeology.org/wp-content/uploads/2013/12/NYACStandards.pdf>)
- Phase I Archaeological Report Format Requirements (<https://parks.ny.gov/documents/shpo/environmental-review/PhaseIReportStandards.pdf>)
- Human Remains Discovery Protocol (<https://parks.ny.gov/documents/shpo/environmental-review/HumanRemainsProtocol.pdf>)

BOEM recognizes that despite the intensive cultural resource field investigations that will be performed prior to project construction, it is possible that as-yet unrecorded cultural resources sites could be encountered during project ground-disturbing activities. The lessee will implement the following procedures in the event that previously undiscovered cultural resources are encountered during any project-related ground-disturbing activities.

Unanticipated Discovery of Cultural Resources

The lessee will implement the following protocol if a potential archaeological resource is discovered while conducting approved or permitted activities or any other activity related to their project, excepting cultural resources identification survey activities.

1. The discovering party will immediately suspend all ground-disturbing activities extending 164 feet (50 meters) from the outer boundary of the potential archaeological resource while considering whether stabilization and further protections are warranted to keep the discovered resource from further degradation and impact. No activity or disturbance of a potential resource will occur without approval from BOEM.
2. The discovering party will install temporary site protection measures (e.g., flagging, fencing) around the potential archaeological resource and take appropriate measures to secure the discovery and prevent unauthorized access by project personnel or the public.
3. The discovering party will notify the contractor of the discovery of a potential archaeological resource within 12 hours of the discovery. The contractor will notify the lessee of the potential archaeological resource within 12 hours of the discovery. The discovering party, the

contractor, and the lessee will keep the location of the potential archaeological resource confidential and will not take any action that may adversely affect the resource until BOEM or its designee has made an evaluation and instructs the lessee on how to proceed.

4. The lessee will be responsible for notifying BOEM Cultural Resources Staff and the Bureau of Safety and Environmental Enforcement (BSEE) within 48 hours of the discovery (36 CFR § 800.13(b)(3)).
 - a. The lessee will notify any responsible agency or agencies and/or the property owner as appropriate and as directed by BOEM.
5. Once notified, BOEM will notify the appropriate State Historic Preservation Office (i.e., the New Jersey State Historic Preservation Office [NJ SHPO] or the New York State Historic Preservation Office [NY SHPO]) and Native American Tribal Nations (Tribal Nations) within 72 hours of the discovery.
6. The lessee will arrange for a Qualified Archaeologist (QA)¹ to visit the potential archaeological resource within 72 hours of discovery. During the site visit, the QA will determine if the discovery is an archaeological resource. If the discovery is determined to be an archaeological resource, the QA will document the resource, evaluate the significance of the resource, including potential National Register of Historic Places (NRHP) eligibility, assess potential project impacts on the resource, and prepare a brief report with recommendations for additional actions to address the discovery (i.e., preliminary findings). The QA will coordinate with BOEM on any requests to refine the initial 164-foot (50-meter) buffer, as appropriate, and obtain approval from BOEM.
7. The lessee will submit the QA's preliminary findings to BOEM and BSEE within 72 hours after the site visit is completed.
8. Upon receiving the QA's preliminary findings, BOEM and BSEE will determine if additional actions to evaluate the resource, or to avoid, minimize, or mitigate impacts on the archaeological resource are required.
 - a. If BOEM determines that any discoveries do not require further consideration, BOEM will notify the appropriate Tribal Nation(s) and relevant SHPO(s).
 - b. If BOEM determines that additional actions are required, BOEM and BSEE will immediately notify the appropriate Tribal Nation(s), relevant SHPO(s), and any responsible agency or agencies and/or the property owner as appropriate, within 72 hours of receiving the preliminary findings report.
9. Based on consultation, BOEM and BSEE may require additional investigations and will determine any emergency measures necessary to protect the discovered archaeological resource. BOEM will notify the lessee of any required emergency measures necessary to protect the archaeological resource.

¹ The QA will meet the minimum professional qualifications in archaeology as defined in the *Secretary of the Interior's Standards and Guidelines Professional Qualification Standards* (36 CFR Part 61).

10. BOEM and the lessee will consult with the appropriate Tribal Nation(s) and relevant SHPO(s) on any additional actions, including, but not limited to, additional investigations, site visits if requested, proposed avoidance measures, and development of a treatment plan for the discovery.
11. Once measures and/or a treatment plan are determined through consultation, as described in Step 9 above, the lessee will be responsible for implementing these measures and/or treatment plan, and will provide regular updates to BOEM, BSEE, appropriate Tribal Nation(s), and the relevant SHPO(s).
12. The lessee will notify BOEM and BSEE, the relevant SHPOs, and the Tribal Nation(s) when the measures have been completed. The contractor will not resume activities at the discovered site until BOEM and BSEE authorize work to resume.

Failure of the lessee, contractor, their subcontractors, or agents to report a post-review discovery may result in civil or criminal penalties.²

Unanticipated Discovery of Human Remains Protocol

The following procedure is intended to provide the lessee, contractor, their subcontractors, or any agent acting on their behalf with a step-by-step process to be enacted in the event that potential human remains are encountered during the construction, operation, or decommissioning of the project.

The treatment of any human remains or funerary items encountered during the project will comply with the policy statement adopted by the ACHP (see “Policy Statement on Burial Sites, Human Remains, and Funerary Objects,” March 2023). The ACHP policy statement recommends that, when burial sites, human remains, or funerary objects will be or are likely to be encountered in the course of NHPA Section 106 review, a federal agency should adhere to the following principles:

- **Principle 1:** Burial sites, human remains, and funerary objects should be treated with dignity and respect in all circumstances regardless of National Register eligibility or the circumstances of the action. This includes, but is not limited to, all times prior to and during consultation, during field surveys, when handling must occur, in documenting and/or reporting, if treatment actions occur, and in all other forms of interaction.
- **Principle 2:** Disturbing or disinterring burial sites, human remains, or funerary objects, when not requested by descendants, associated Indian Tribes or Native Hawaiian Organizations (NHOs), or required by applicable law or regulation, should not be pursued unless there are

² BSEE is authorized to assess a civil penalty of up to \$42,017 per violation per day if the violation resulted in a threat of serious harm or damage to the environment, including cultural resources. Criminal violations are covered under Section 24(c) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. § 1350(c)). Criminal violations are those that are knowing and willful and may include: violation of any provision of the OCSLA, any lease term, license, or permit pursuant to the Act, or any regulation or order issued under the Act designed to protect health, safety, or the environment or to conserve natural and cultural resources; any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under the Act; falsifying, tampering with, or rendering inaccurate any monitoring device or method of record required to be maintained under the Act; and disclosure of any data or information required to be kept confidential by the Act. The Office of the Inspector General is authorized to investigate violations of OCSLA under Section 2 of the Inspector General Act (5 U.S.C. App §§ 2 and 4 (1998)).

no other alternatives available and only after consultation with descendants or associated communities and fully considered avoidance of impact and preservation in place.

- **Principle 3:** Only through consultation, which includes the early and meaningful exchange of information and a concerted effort to reach consensus, can informed decisions be made about the identification, documentation, National Register eligibility, and treatment of burial sites, human remains, and funerary objects.
- **Principle 4:** To the maximum extent possible, decision making should give deference to the treatment requests of descendants or associated communities. Where known, and in accordance with applicable law, cultural practices of the descendants or associated communities should be followed if burial sites, human remains, or funerary objects may be encountered, are inadvertently identified, impacted, or must be disinterred.
- **Principle 5:** The Indigenous Knowledge held by an Indian Tribe, NHO, or other Indigenous Peoples is a valid and self-supporting source of information. To the fullest extent possible, deference should be provided to the Indigenous Knowledge and expertise of Indian Tribes, NHOs, and Indigenous Peoples in the identification, documentation, evaluation, assessment, and treatment of their burial sites, human remains, and funerary objects.
- **Principle 6:** Burial sites, human remains, and funerary objects are important in and of their own right. They may also constitute or be part of a sacred site and may include or incorporate several possible elements of historic significance including religious and cultural significance. The integrity of burial sites, human remains, and funerary objects is best informed by those who ascribe significance to them.
- **Principle 7:** Burial sites, human remains, and funerary objects are frequently associated with cultural practices, sacred sites, Indigenous Knowledge, and other forms of culturally sensitive actions and/or information unique to a people. Maximum effort should be taken to limit the disclosure of confidential or sensitive information through all available mechanisms including, but not limited to, the proper handling and labeling of records, limiting documentation to necessary information, and through the application of existing law.
- **Principle 8:** The federal Indian boarding school system directly targeted American Indian, Alaska Native, and Native Hawaiian children in the pursuit of a policy of cultural assimilation that coincided with territorial dispossession. In partnership with the historic preservation community, federal agencies should seek to implement the recommendations identified in the Department of the Interior's Federal Indian Boarding School Investigative Report by supporting community-driven identification, documentation, interpretation, protection, preservation, reclamation, and co-management of burial sites, human remains, and funerary objects across that system, including marked and unmarked burial areas, and supporting repatriation where appropriate.
- **Principle 9:** The legacies of colonization, including cultural assimilation, forced relocation, and slavery, have led to an uneven awareness of where and why practitioners are likely to encounter burial sites, human remains, and funerary objects across the United States and its territories. The historic preservation community has a key role in expanding public education to support greater awareness of and consideration for the histories and lifeways of Indian Tribes, Native Hawaiians, enslaved Africans and their descendants, and Indigenous Peoples

including recognizing and respecting the historical trauma that these groups and individuals may experience.

- **Principle 10:** Access to and/or repatriation of burial sites, human remains, and funerary objects should be enabled through fair, transparent, and effective mechanisms developed in conjunction with descendant communities to the fullest extent of the law.
- **Principle 11:** Human remains and funerary objects may be relocated or removed from a location by or at the request of descendant communities for a variety of reasons. The continued presence of human remains or funerary objects may not be essential to the ongoing significance and integrity of a site or its relevance to a broad theme in history. The historic significance and integrity of such sites are best determined in consultation with lineal descendants and/or associated communities.
- **Principle 12:** Climate change can impact the burial sites, sacred sites, cemeteries, and associated cultural practices significant to Indian Tribes, NHOs, and other groups of people. Climate plans should be developed in consultation and should include mechanisms to support the advanced identification and protection or treatment of these locations.
- **Principle 13:** Respectful consideration of burial sites, human remains or funerary objects may require additional assistance from consulting parties to properly identify, document, evaluate for National Register eligibility, and/or conduct treatment actions. If a federal agency requests or relies on an Indian Tribe, NHO, or other party to carry out activities that are the federal agency's responsibility under the NHPA, the Indian Tribe, NHO, or other consulting party should be reimbursed or compensated.

The lessee, contractor, their subcontractors, or any agent acting on their behalf will implement the following protocol if potential human remains are discovered while conducting approved or permitted activities, or any other activity related to their project.

1. The discovering party (e.g., the lessee's construction supervisors, field personnel, or contractor staff) will immediately suspend all ground-disturbing activities extending a minimum of 164 feet (50 meters) from the outer boundary of the potential human remains.
 - a. All potential human remains will be left in their original location, and no remains or associated artifacts will be collected until appropriate consultation has taken place and a plan of action has been developed, as described in the subsequent steps. No photographs of the potential remains will be allowed.
 - i. If potential human remains are discovered during offshore activities that result in their inadvertent disturbance or removal, potential remains shall be protected, which may include keeping the remains submerged in an onboard tank of sea water or other appropriate material.
 - b. The discovering party will immediately install temporary site protection measures (e.g., flagging, fencing) around the potential human remains, as applicable, and take appropriate measures to secure the discovery and prevent unauthorized access by project personnel or the public.

2. The discovering party will immediately notify the lessee of the discovery of potential human remains. The discovering party and the lessee will keep the location of the potential human remains confidential and will not take any action that may adversely affect the remains.
3. The lessee will be responsible for immediately notifying the appropriate Office of the Chief Medical Examiner and local law enforcement if discovered onshore or in state waters or the U.S. Coast Guard if discovered in federal waters, as well as BOEM, and BSEE of the discovery.
 - a. The lessee will be responsible for adhering to the chain of custody and management of the discovery as outlined in their project-specific Post-Review Discoveries Plan.
 - b. The lessee will also notify the responsible agency or agencies and/or the property owner as appropriate and as directed by BOEM and BSEE.
4. Once notified, BOEM and BSEE will notify the appropriate SHPO and Tribal Nation(s) as soon as possible and no later than 72 hours of the discovery.
5. The lessee will provide an opportunity for a representative of the Office of the Medical Examiner/delegated authority, local law enforcement, or the U.S. Coast Guard, as applicable, to visit and inspect the site to determine whether the site constitutes a crime scene.
 - a. If the human remains are declared a criminal matter, the relevant SHPO will have no further involvement, and BOEM or BSEE will defer to the relevant state or federal legal authorities to declare the area cleared for construction.
 - b. If the Office of the Chief Medical Examiner/delegated authority or U.S. Coast Guard determines the human remains are not a criminal matter, the lessee will arrange for a QA³/QMA to visit the site. During the site visit, the QA/QMA will document the human remains using non-destructive visual analysis only, attempt to determine if the remains are Native American or non-Native American, assess potential project impacts on the site of the remains, and prepare a brief report with recommendations for additional actions to address the discovery (i.e., preliminary findings).
6. The lessee will submit the preliminary findings of the QA/QMA to BOEM and BSEE within 48 hours after the site visit or the QA/QMA analysis of the discovery.
7. Upon receiving the preliminary findings, BOEM and BSEE will consult with the appropriate Tribal Nation(s), SHPO, and the lessee to determine if additional actions including, but not limited to, additional investigations, site visits, avoidance and protection measures, or a treatment plan are required. The remains will be left in place and protected from further disturbance until a plan for their treatment is developed through consultation, as described in subsequent steps.

³ A qualified cultural resources professional is defined as an individual that meets the minimum professional qualifications in archaeology as defined in the *Secretary of the Interior's Standards and Guidelines Professional Qualification Standards* (36 CFR Part 61).

- a. If the remains are determined to be Native American or could potentially be Native American, BOEM and BSEE will coordinate all subsequent activities with the appropriate Tribal Nation(s) and SHPO. Any measures or treatment plans developed through this coordination to address the discovery will be aligned with the Native American Graves Protection and Repatriation Act (NAGPRA) guidance and applicable laws in New York and New Jersey.
 - b. If the remains are determined to be non-Native American, BOEM and BSEE will coordinate with the appropriate SHPO to develop any appropriate measures or treatment plans. Any measures or treatment plans developed through this coordination to address the discovery will be aligned with applicable laws in New York and New Jersey. If possible, BOEM, or the lessee will work to identify the potential descendants of the deceased individual(s) in order to involve them in the development of any measures or treatment plans for the discovery.
8. Once measures and/or a treatment plan are determined through consultation as described in Step 7 above, the lessee will be responsible for implementing the measures and/or treatment plan.
 9. The lessee will notify BOEM, BSEE, the appropriate Tribal Nation(s), and relevant SHPO(s) when the measures and/or treatment plan has been completed. The lessee will not resume activities at the discovered site until BOEM, and BSEE as applicable, authorize work to resume.

Failure of the lessee, their contractors, subcontractors, or agents to report a post-review discovery, may result in civil or criminal penalties.⁴

Costs to Protect Resources

If BOEM/BSEE incurs costs in protecting the resource, under Section 110(g) of the NHPA (54 U.S.C. § 306109), BOEM/BSEE may charge the applicant reasonable costs for carrying out preservation responsibilities under the Outer Continental Shelf Lands Act as a condition to the issuance of the approval or permit.

Requirement to Conduct Additional Investigations

While BOEM/BSEE, in consultation with the NJ SHPO or NY SHPO, may assume a newly discovered property to be eligible for the NRHP for purposes of Section 106 (36 CFR § 800.13(c)), BOEM/BSEE, in consultation with the appropriate Tribal Nation(s) and relevant SHPO(s), may require the applicant to conduct additional investigations to determine if the

⁴ BSEE is authorized to assess a civil penalty of up to \$42,017 per violation per day if the violation resulted in a threat of serious harm or damage to the environment, including cultural resources. Criminal violations are covered under Section 24(c) of the OCSLA (43 U.S.C. § 1350(c)). Criminal violations are those that are knowing and willful and may include: violation of any provision of the OCSLA, any lease term, license, or permit pursuant to the Act, or any regulation or order issued under the Act designed to protect health, safety, or the environment or to conserve natural and cultural resources; any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under the Act; falsifying, tampering with, or rendering inaccurate any monitoring device or method of record required to be maintained under the Act; and disclosure of any data or information required to be kept confidential by the Act. The Office of the Inspector General is authorized to investigate violations of OCSLA under Section 2 of the Inspector General Act (5 U.S.C. App §§ 2 and 4 (1998)).

resource is eligible for listing in the NRHP under 36 CFR § 60.4. BOEM/BSEE will do this if the site cannot be avoided by or already has been impacted by project activities.

BOEM/BSEE, in consultation with the appropriate Tribal Nation(s) and relevant SHPO(s), may also require the lessee to conduct additional excavations for the purposes of data recovery and mitigation of adverse effects on the historic property. BOEM/BSEE will do this if the site cannot be avoided by or already has been impacted by project activities. Any additional investigations proposed for properties located on lands managed by the NPS must be coordinated with the NPS.

OFFSHORE POST-REVIEW DISCOVERIES PROCEDURES

The following protocol presents the steps the lessee will follow when potential marine archaeological resources, ancient submerged landform features, or human remains are discovered during the execution of any undertaking under this Programmatic Agreement.

Purpose

The purpose of the Offshore Post-Review Discoveries Plan is to provide the lessee, the contractor, or any agent acting on their behalf with a step-by-step procedure to address unanticipated discoveries of cultural resources during the construction, operation, and decommissioning of offshore wind-energy projects for portions of the project located on the Outer Continental Shelf (OCS) offshore of New York and New Jersey.

BOEM developed the Offshore Post-Review Discoveries Plan in order to align the project with the following federal and state standards and guidelines.

Federal Standards and Guidelines

- Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. § 306108)
- Secretary of the Interior's Standards for Archeology and Historic Preservation (48 Code of Federal Regulations [CFR] 44716-42)
- Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §§ 3001 et seq.)
- Advisory Council on Historic Preservation (ACHP) *Policy Statement on Burial Sites, Human Remains, and Funerary Objects*, March 2023
- ACHP *Policy Statement on Indigenous Knowledge and Historic Preservation*, March 2024
- BOEM, Office of Renewable Energy Programs: Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585, May 2020

New Jersey Standards and Guidelines

- Guidelines for Phase I Archaeological Investigations: Identification of Archaeological Resources (<https://www.nj.gov/dep/hpo/1identify/arkeoguide1.htm>)
- Guidelines for Preparing Cultural Resources Management Archaeological Reports (<https://www.nj.gov/dep/hpo/1identify/culreso.pdf>)

New York Standards and Guidelines

- Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State (<https://nysarchaeology.org/wp-content/uploads/2013/12/NYACStandards.pdf>)
- Phase I Archaeological Report Format Requirements (<https://parks.ny.gov/documents/shpo/environmental-review/PhaseIReportStandards.pdf>)
- Human Remains Discovery Protocol (<https://parks.ny.gov/documents/shpo/environmental-review/HumanRemainsProtocol.pdf>)

Discovery of a Potential Resource

The lessee will implement the following protocol if a potential cultural resource is discovered while conducting approved or permitted activities or any other activity related to their project, excepting cultural resources identification survey activities.

1. If a potential archaeological find is identified during remote-sensing or remotely operated vehicle (ROV)/autonomous underwater vehicle (AUV) video surveys, or if cultural resource material is inadvertently brought to the surface during construction or any other offshore activities, the contractor will cease work temporarily near the discovery by a distance of no less than 164 feet (50 meters) from the known extent of the discovery. No activity or disturbance of a potential resources will occur without approval from BOEM.
2. The discovering party will notify the contractor of the discovery of a potential archaeological resource within 12 hours of the discovery. The contractor will notify the lessee of the potential archaeological resource within 12 hours of the discovery. The discovering party, the contractor, and the lessee will keep the location of the potential archaeological resource confidential and will not take any action that may adversely affect the resource until BOEM or its designee has made an evaluation and instructs the lessee on how to proceed.
3. The lessee will notify the BOEM and BSEE within 24 hours of the discovery (36 CFR § 800.13(b)(3)).
 - a. The lessee will notify any responsible agency or agencies as appropriate and as directed by BOEM.
4. Once notified, BOEM and BSEE will notify the appropriate Tribal Nation(s) and relevant SHPO(s) within 48 hours of the discovery.
 - a. BOEM and BSEE, in consultation with the appropriate Tribal Nation(s) and relevant SHPO(s), will determine the emergency measures necessary to protect the discovered archaeological resource. BOEM and BSEE will notify the lessee of any measures necessary to protect the archaeological resource.
5. The lessee will notify a Qualified Marine Archaeologist (QMA)⁵ within 12 hours of the discovery.

⁵ The qualified marine archaeologist will meet the minimum professional qualifications in archaeology as defined in the Secretary of the Interior's *Standards and Guidelines Professional Qualification Standards* (36 CFR Part 61).

- a. After receiving approval from BOEM and/or BSEE, the discovering party and the lessee will make every attempt to document and preserve as much information as possible for the QMA to review.
 - i. For potential resources identified during remote-sensing surveys, the lessee, with the assistance of the QMA, will process the data and provide an assessment of the discovery as described in Step 6 below. Examples include three-dimensional renderings of multi-beam echo sounder anomalies and composite side scan sonar imagery. Data collection methods should include non-invasive, non-destructive measures with no additional excavation or object recovery at this point in the discovery in order to ensure that any potential historic property is not further damaged.
6. For potential archaeological resources discovered during ROV/AUV surveys, the operators will attempt to collect as many high-resolution photographs or video images of the potential find as possible. This could include performing additional surveys of the potential resource and its immediate area or increasing the amount of time spent at the location.
 - i. For material inadvertently brought to the surface, the lessee, with the assistance of the QMA, will document the potential archaeological resource and preserve it in water from the discovery site.
7. The QMA will perform a preliminary evaluation of the data provided to determine whether the discovery is a potential cultural resource. The QMA will also attempt to assess whether the discovery is isolated or part of a larger site or feature.
 - a. The discovering party or lessee will provide the QMA with all available data related to the potential resource to support this preliminary evaluation. This may include processed remote sensing data, such as side scan sonar, multi-beam echo sounder imagery, or sub-bottom profiler data; ROV/AUV/Diver video of the potential resource; and/or photographs of the material inadvertently brought to the surface or the actual material, if possible.
 - b. If the discovery is determined to be an archaeological resource, the QMA will document the resource, evaluate the significance of the resource, including potential NRHP eligibility, assess potential project impacts on the resource, and prepare a brief report with recommendations for additional actions to address the discovery (i.e., “preliminary findings”).
8. The QMA will submit the preliminary findings to BOEM and BSEE within 72 hours of the discovery.
 - a. The QMA will prepare and maintain reports for all archaeological resources, including the preliminary findings and any additional reports resulting from consultation described in Step 9. This will include the data collected in Step 5, remote sensing data, interviews with contractor staff, notes, technical reports, and spatial data for use in the project’s

geographic information system (GIS) database. This report will be updated upon completion of a treatment plan, if required, and submitted to the relevant authority in accordance with agreed timelines. The type and timing of reporting depends upon the results of the archaeological find assessment performed by the QMA.

9. Upon receiving the QMA's preliminary findings, BOEM and BSEE will determine if additional actions to evaluate the resource, or to avoid, minimize, or mitigate impacts on the resource are required.
 - a. If BOEM determines that any discoveries do not require further consideration, BOEM will notify the appropriate Tribal Nation(s) and relevant SHPO(s).
 - b. If BOEM determines that additional actions are required, BOEM and BSEE will immediately notify the appropriate Tribal Nation(s), relevant SHPO(s), and any responsible agency or agencies and/or the property owner as appropriate, within 72 hours of receiving the preliminary findings report.
 - i. Based on consultation, BOEM and BSEE may require additional investigations and will determine any emergency measures necessary to protect the discovered archaeological resource. BOEM will notify the lessee of any measures necessary to protect the archaeological resource if any emergency measures are required.
10. BOEM and BSEE, with the assistance of the lessee and the QMA, will consult with the appropriate Tribal Nation(s) and relevant SHPO(s) on any additional actions, including, but not limited to, additional investigations, site visits if requested, proposed avoidance measures, and development of a treatment plan for the discovery.
 - a. Based on consultation, the QMA and lessee will prepare a report that includes recommendations for the treatment of the archaeological resource (i.e., treatment plan). Options to be considered in the treatment plan include the following, as well as options provided in Appendix IV, POTENTIAL RESOLUTION MEASURES:
 - i. **Avoidance.** This option prevents impacts on the resource through partial or complete project redesign or relocation. This is the preferred option from a cultural resource management perspective and aligns with international standards.
 - ii. **In-Situ Protection or Management.** This option includes the application of resource protection measures to protect the resource during project activities.
 - iii. **Additional Documentation.** For resources in deep water that cannot be avoided, extensive documentation may be a valid mitigation option. Detailed documentation could involve more intensive remote sensing survey data collection, additional video and photographic documentation using a ROV or AUV, or other specialized studies.
 - iv. **Data Recovery/Excavation.** This recovery option is site-destructive and can delay construction and is only practicable in nearshore settings.

- v. **Documentation.** If a site is assessed as having limited archaeological significance, construction activities may resume once a complete photographic and geophysical record has been made of the resource.

11. Once measures and/or a treatment plan are determined through consultation as described above, the lessee will be responsible for implementing these measures and/or treatment plan, and will provide regular updates to BOEM, BSEE, appropriate Tribal Nation(s), and the relevant SHPO(s).
12. The lessee will notify BOEM and BSEE, the appropriate Tribal Nation(s), and the relevant SHPO(s) when the measures have been completed. The lessee will not resume activities at the location of the discovery until BOEM authorize work to resume.

Failure of the contractor to report a post-review discovery may result in civil or criminal penalties.⁶

Costs to Protect Resources

If BOEM/BSEE incurs costs in protecting the resource, under Section 110(g) of the NHPA (54 U.S.C. § 306109), BOEM/BSEE may charge the applicant reasonable costs for carrying out preservation responsibilities under Outer Continental Shelf Lands Act as a condition to the issuance of the approval or permit.

Requirement to Conduct Additional Investigations

While BOEM/BSEE, in consultation with the NJ SHPO or NY SHPO, may assume a newly discovered resource to be eligible for the NRHP for purposes of Section 106 (36 CFR § 800.13(c)), BOEM/BSEE, in consultation with the appropriate Tribal Nation(s) and relevant SHPO(s), may require the lessee to conduct additional investigations to determine if the resource is eligible for listing in the NRHP under 36 CFR § 60.4. BOEM/BSEE will do this if the site cannot be avoided by or already has been impacted by project activities.

BOEM/BSEE, in consultation with appropriate Tribal Nation(s) and relevant SHPO(s), may also require the lessee to conduct additional investigations for the purposes of data recovery and mitigation of adverse effects on the historic property. BOEM/BSEE will do this if the site cannot be avoided by or already has been impacted by project activities. Any additional investigations proposed for properties located on lands managed by the NPS must be coordinated with the NPS.

⁶ BSEE is authorized to assess a civil penalty of up to \$42,017 per violation per day if the violation resulted in a threat of serious harm or damage to the environment, including cultural resources. Criminal violations are covered under Section 24(c) of the OCSLA (43 U.S.C. § 1350(c)). Criminal violations are those that are knowing and willful and may include: violation of any provision of the OCSLA, any lease term, license, or permit pursuant to the Act, or any regulation or order issued under the Act designed to protect health, safety, or the environment or to conserve natural and cultural resources; any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under the Act; falsifying, tampering with, or rendering inaccurate any monitoring device or method of record required to be maintained under the Act; and disclosure of any data or information required to be kept confidential by the Act. The Office of the Inspector General is authorized to investigate violations of OCSLA under Section 2 of the Inspector General Act (5 U.S.C. App §§ 2 and 4 (1998)).

**UNANTICIPATED DISCOVERIES PLAN FOR SUBMERGED ARCHAEOLOGICAL
SITES, HISTORIC PROPERTIES, AND CULTURAL RESOURCES INCLUDING
HUMAN REMAINS: [PROJECT NAME] FOR LEASE AREA [NUMBER]
CONSTRUCTION AND OPERATIONS PLAN**

REPORT

**PRIME CONTRACT: [CONTRACT NUMBER]
SUBCONTRACT: [SUBCONTRACT NUMBER]**

PREPARED FOR

[LESSEE AND ADDRESS] AND [SUBCONTRACTOR AND ADDRESS]

AUTHORED BY

[NAMES]

[MONTH YEAR]

INTRODUCTION

Include:

- Lessee name and lease number
- Project components and number of WTGs
- Lessee subcontractors
- Include relevant compliance with NHPA and NAGPRA

ROLES AND RESPONSIBILITIES

Intro

LESSEE

Text

- Text

QUALIFIED MARINE ARCHAEOLOGIST

Text

- Text

TRIBAL NATION(S)

If the UDP is implemented, Tribal Nation(s) may participate as:

- text

TRAINING AND ORIENTATION

To include:

- Who will be required to complete training(s)
- Who is responsible for ensuring project and contractor staff complete training program(s) prior to start of marine disturbing activities
- What the training(s) will include
- Recordkeeping protocols of who has taken the training(s)
- The training program(s) will be provided to BOEM and SHPO(s) for review and comment before training is finalized and implemented
- Any additional written or visual tools to be produced and supplement the training program(s) and where those resources will be employed
- Where/how this UDP will be available during construction activities

Archaeological and Tribal Monitors

To include:

- Define Archaeological Monitor and Tribal Archaeological Monitor
- Process for determining if monitoring a construction activity is necessary
- Process for Archaeological Monitor weekly and monthly reporting to BOEM, SHPO(s), consulting Tribal Nations, and Lessee
- Protocol when a Tribal Archaeological Monitor requests to be onsite
- What training(s) will be provided to the monitor(s)
- Notification timeline and procedure for Tribal representatives/THPOs regarding planned construction activities

PROCEDURES WHEN CULTURAL MATERIAL ARE OBSERVED

Include:

- Reference Marine Archaeological Resources Assessment (MARA) and findings
- Incorporate relevant requirements from the lease agreement
- Any avoidance and minimization commitments
- Need for a UDP
- Steps that will be taken, and relevant regulations that will be followed, if unanticipated submerged cultural resources are discovered. This should include notification procedures. Clearly define different responsibilities for military vs. non-military wreck sites
- Steps that will be taken, and relevant regulations that will be followed, if suspected human remains are encountered. This should include notification procedures

ARCHAEOLOGICAL INVESTIGATION OF A SUBMERGED UNANTICIPATED DISCOVERY

Include:

- Summary explaining why a marine UDP is necessary (in order to evaluate the discovery, determine eligibility for listing in the NRHP, and/or assess any construction impacts that may have occurred).
- Procedure for complying with the UDP and providing BOEM and SHPO(s) with necessary information to make informed decisions to approve continuation of bottom disturbing activities.
- Mention that after each step, consultation with appropriate consulting parties will occur.

FEDERAL/OUTER CONTINENTAL SHELF LANDS

Include what happens if artifacts and material culture associated with the pre-contact periods within the coastal and marine environments are identified and recovered from federal property/outer continental shelf lands during pre-construction, construction, operation, maintenance, and decommissioning of the proposed Project including for mitigation.

Include collection and curation procedures.

If there are any proposed activities located on lands managed by National Park Service units, include contact information for Park Superintendents should an unanticipated discovery occur NPS-managed lands.

STATE LANDS

Include what happens if artifacts and material culture associated with the pre-contact periods within the coastal and marine environments are identified and recovered from state property during pre-construction, construction, operation, maintenance, and decommissioning of the proposed Project, including for mitigation.

Include collection and curation procedures.

NOTIFICATION LIST*

General Contractor Project Manager (GCPM)

(To be filled out upon selection of general contractor)

Name:
Street address:
City, state ZIP:
Phone:
Email:

General Contractor Project Manager (GCPM) - Alternate

(To be filled out upon selection of general contractor)

Name:
Street address:
City, state ZIP:
Phone:
Email:

Bureau of Ocean Energy

Sarah Stokely
Section 106 Team Lead
Bureau of Ocean Energy Management
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Bureau of Safety and Environmental Enforcement Office of Environmental Compliance

1201 Elmwood Park Boulevard
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Shawn Arnold, FPO, Senior Marine
Archaeologist
Phone: (504) 736-2416
Email: William.arnold@bsee.gov

Barry Bleichner, Marine Archaeologist
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Email: barry.bleichner@bsee.gov

New Jersey Historic Preservation Office

Katherine Marcopul
Administrator and Deputy State Historic
Preservation Officer
New Jersey Historic Preservation Office
501 East State Street
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New Jersey State Archaeologist

Dr. Gregory Lattanzi
State Archaeologist
New Jersey State Museum
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New Jersey State Police

Office of Forensic Sciences
Forensic Anthropology Unit
NJ Forensic Technology Center
1200 Negron Drive - Horizon Center

Hamilton, NJ 08691
Phone: (609) 584-5054 x5656

Bergen County Medical Examiner Office

Dr. Zhongxue Hua.
County Medical Examiner
351 E Ridgewood Avenue
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Phone: (201) 634-8940

New York State Parks, Recreation and Historic Preservation

Mr. Erik Kulleseid
State Historic Preservation Officer
Commissioner
OPRHP, PO Box 189,
Waterford, NY 12188
Phone: (518) 474-0443

Dr. Nancy Herter
Coordinator - Archaeology Unit
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Waterford, NY 12188
Phone: (518) 268-2179

Dr. Tim Llyod
Archaeologist for Kinds, Nassau, and Queens counties
OPRHP, PO Box 189,
Waterford, NY 12188
Phone: (518) 268-2186

New York State Police

Forensic Investigation Center
Building #30
1220 Washington Avenue
Albany, VY 12226-3000
Phone: (518) 457-1208

Kings County Office of Chief Medical Examiner

Dr. Jason Graham
Appointed Acting Chief Medical Examiner
599 Winthrop Street
Brooklyn, NY 11203
Phone: (718) 221-0600

Queens County Medical Examiner Office

Dr. Jason Graham
Appointed Acting Chief Medical Examiner
160-15 82nd drive
Queens, NY 11432
Phone: (212) 447-2030

Nassau County Medical Examiner

Dr. Tamara Bloom
Chief Medical Examiner
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East Meadow, NY 11554
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Delaware Tribe of Indians

Ms. Susan Bachor
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The Delaware Nation

Ms. Deborah Dotson
President of Executive Committee
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ec@delawarenation-nsn.gov

The Mashantucket Western Pequot Tribal Nation

Mr. Michael Kicking Bear Johnson
Deputy Tribal Historic Preservation Officer
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The Mashpee Wampanoag Tribe

Councilman David Weeden
Tribal Historic Preservation Officer
483 Great Neck Road, South
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The Shinnecock Indian Nation

Ms. Shavonne Smith
Director, Shinnecock Environmental
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ShavonneSmith@shinnecock.org

The Stockbridge-Munsee Community Band of Mohican Indians

Dr. Jeffery Bendremer
Tribal Historic Preservation Officer
86 Spring Street
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thpo@mohican-nsn.gov

The Wampanoag Tribe of Gay Head (Aquinnah)

Ms. Bettina Washington
Tribal Historic Preservation Officer
20 Black Brook Road
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thpo@wampanoagtribe-nsn.gov

REFERENCES CITED

Include citations as well as an Attachment of any State or local organization guidance related to the discovery of human remains.

**UNANTICIPATED DISCOVERIES PLAN FOR TERRESTRIAL ARCHAEOLOGICAL
SITES, HISTORIC PROPERTIES, AND CULTURAL RESOURCES INCLUDING
HUMAN REMAINS: [PROJECT NAME] FOR LEASE AREA [NUMBER]
CONSTRUCTION AND OPERATIONS PLAN**

REPORT

**PRIME CONTRACT: [CONTRACT NUMBER]
SUBCONTRACT: [SUBCONTRACT NUMBER]**

PREPARED FOR

[LESSEE AND ADDRESS] AND [SUBCONTRACTOR AND ADDRESS]

AUTHORED BY

[NAMES]

[MONTH YEAR]

INTRODUCTION

Include:

- Lessee name and lease number
- Project components and number of WTGs
- Lessee subcontractors
- Include relevant compliance with NHPA and NAGPRA, as well as State and local laws and regulations

ROLES AND RESPONSIBILITIES

Intro

LESSEE

Text

- Text

PROJECT ARCHAEOLOGIST

Text

- Text

TRIBAL NATION(S)

If the UDP is implemented, Tribal Nation(s) may participate as:

- text

TRAINING AND ORIENTATION

To include:

- Who will be required to complete training(s)
- Who is responsible for ensuring project and contractor staff complete training program(s) prior to start of ground disturbing activities
- What the training(s) will include
- Recordkeeping protocols of who has taken the training(s)
- The training program(s) will be provided to BOEM and SHPO(s) for review and comment before training is finalized and implemented
- Any additional written or visual tools to be produced and supplement the training program(s) and where those resources will be employed
- Where/how this UDP will be available during construction activities

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To include:

- Define Archaeological Monitor and Tribal Archaeological Monitor
- Process for determining if monitoring a construction activity is necessary
- Process for Archaeological Monitor weekly and monthly reporting to BOEM, SHPO(s), consulting Tribal Nations, and Lessee
- Protocol when a Tribal Archaeological Monitor requests to be onsite
- What training(s) will be provided to the monitor(s)
- Notification timeline and procedure for Tribal representatives/THPOs regarding planned construction activities

PROCEDURES WHEN CULTURAL MATERIAL ARE OBSERVED

Include:

- Reference to Terrestrial Archaeological Resources Assessment (TARA) and findings
- Any avoidance and minimization commitments
- Need for a UDP
- Steps that will be taken, and relevant regulations that will be followed, if unanticipated terrestrial cultural resources are discovered. This should include notification procedures.
- Steps that will be taken, and relevant regulations that will be followed, if suspected human remains are encountered. This should include notification procedures.

FEDERAL LANDS

Include what happens if artifacts and material culture associated with the pre-contact periods are identified and recovered from federal property during pre-construction, construction, operation, maintenance, and decommissioning of the proposed Project, including for mitigation.

Include collection and curation procedures.

If there are any proposed activities located on lands managed by National Park Service units, include contact information for Park Superintendents should an unanticipated discovery occur NPS-managed lands.

STATE LANDS

Include what happens if artifacts and material culture associated with the pre-contact periods are identified and recovered from state property during pre-construction, construction, operation, maintenance, and decommissioning of the proposed Project, including for mitigation.

Include collection and curation procedures.

NOTIFICATION LIST

General Contractor Project Manager (GCPM)

(To be filled out upon selection of general contractor)

Name:
Street address:
City, state ZIP:
Phone:
Email:

General Contractor Project Manager (GCPM) - Alternate

(To be filled out upon selection of general contractor)

Name:
Street address:
City, state ZIP:
Phone:
Email:

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The Delaware Nation

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REFERENCES CITED

Include citations as well as an Attachment of any State or local organization guidance related to the discovery of human remains.

APPENDIX IV
PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Review of Six Projects Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act

POTENTIAL RESOLUTION MEASURES

This appendix presents a framework for resolving adverse effects on aboveground cultural resources, marine and terrestrial archaeological sites, Traditional Cultural Places (TCPs), and properties of religious and cultural significance to Tribal Nations that are listed on or eligible for listing on the National Register of Historic Places (NRHP) within the area(s) of potential effects (APE) for renewable energy developments on the Outer Continental Shelf (OCS) offshore New Jersey and New York. Adverse effects on these types of resources could occur from individual undertakings or cumulatively from multiple undertakings that will be reviewed and consulted upon under this Programmatic Agreement (Agreement). BOEM will consult with Tribal Nations, the relevant State Historic Preservation Officer(s) (SHPO[s]), Advisory Council on Historic Preservation (ACHP), the consulting parties, and the Lessees or developers pursuant to Section 106 of the National Historic Preservation Act (NHPA) to resolve adverse effects through a Memorandum of Agreement (MOA) as described in Stipulation I.D of this Agreement.

The first section describes the underlying assumptions that will guide the development of resolutions for adverse effects on these types of resources when those effects cannot be avoided. The remainder of this document presents potential approaches to avoidance, minimization, and mitigations that will form the basic framework for resolving adverse effects from individual undertakings.

DEFINING THE NATURE AND SCALE OF MITIGATION

Mitigation would be required any time adverse effects on NRHP-listed or NRHP-eligible aboveground cultural resources, terrestrial or submerged archaeological sites, landform features, TCPs, or properties of religious and cultural significance to Tribal Nations cannot be avoided. In instances where mitigation measures are required, the Bureau of Ocean Energy Management (BOEM) may implement potential resolution measures documented in this appendix. As needed, BOEM may also elect to incorporate other actions that would be specifically outlined in each undertaking's MOA to minimize the adverse effect where possible, reasonable, and appropriate. Mitigation measures will be scaled appropriately based on the effects on historic properties and available documentation and evaluation. Mitigation measures may be property-specific or may involve a broader context or resource-type focus. BOEM will require that any treatment plans developed to resolve adverse effects should follow the Secretary of the Interior's Standards for the Treatment of Historic Properties (2017; available online at: <https://www.nps.gov/orgs/1739/secretary-standards-treatment-historic-properties.htm>) and appropriate state, or Tribal if on tribal lands, guidelines.

POTENTIAL RESOLUTIONS FOR ADVERSE EFFECTS ON TERRESTRIAL ARCHAEOLOGICAL SITES

The following list includes potential avoidance, minimization, and mitigation measures for adverse effects on terrestrial archaeological sites. Depending upon the nature of the project's effects on terrestrial archaeological sites, other approaches not identified in this list may be used to mitigate for adverse effects on these types of sites and should be developed in coordination with the Tribal Nations, relevant SHPO(s), ACHP, and consulting parties for each individual undertaking. At a minimum, and as a condition of the Construction and Operations Plan (COP) approval, BOEM may apply the following measures.

Avoidance and Minimization

Temporary Avoidance Measures During Construction. Protective measures during project construction can include archaeological and tribal monitoring, training, and temporary fencing or other barriers to demarcate avoidance areas. BOEM will provide guidance on the development and content of the monitoring plan.

Historic Properties Protection Plans (HPPP). An HPPP is used to facilitate site-specific measures to minimize project effects (such as design revisions that would decrease the total area of a site that would be disturbed) and/or protection measures for ongoing operations and maintenance. BOEM will provide guidance on the development and content of the HPPP.

Mitigation

1. **Data Recovery.** The level of effort will be dependent on consultation but could include non-intrusive geophysical or remote sensing investigations, test excavations, or data recovery of selected sections of the archaeological site. BOEM will provide guidance on the development and content of data recovery plans, which may also be called Historic Property Treatment Plans (HPTP).

Tribal Capacity. In consultation with the Tribal Nations, the Lessee may fund Tribal capacity activities associated with archaeological or other monitoring activities, or other areas of Tribal interest. This may include, but is not limited to, technology upgrades and training associated with interpretation and analysis of non-proprietary or otherwise regulatory protected GIS data; and funding for Tribal historic preservation participation and collaboration in relevant studies (such as ethnographic studies).

2. Additional mitigation measures that may be included in the HPTP as part of a larger mitigation package that considers supplemental or alternative measures as developed through consultation are described below under **OTHER POTENTIAL MITIGATION OPTIONS FOR ADVERSE EFFECTS ON HISTORIC PROPERTIES**.

POTENTIAL RESOLUTIONS FOR ADVERSE EFFECTS ON MARINE ARCHAEOLOGICAL SITES

The following list includes potential avoidance, minimization, and mitigation measures for adverse effects on marine archaeological sites. Depending on the nature of the project's effects on marine archaeological sites, other approaches not identified in this list may be used to mitigate for adverse effects on these types of sites, and they should be developed in coordination with the Tribal Nations, relevant SHPO(s), ACHP, and consulting parties for each individual

undertaking. At a minimum, and as a condition of COP approval, BOEM may apply the following measures.

Avoidance and Minimization

1. **Additional Identification and Evaluation of Potential Historic Properties.** These surveys may consist of additional identification and evaluation of targets and site boundary delineation of targets identified as potential cultural resources in the Marine Archaeological Resources Assessment (e.g., side-scan sonar targets, magnetometer anomalies, sub-bottom profiler targets). These surveys may include high resolution geophysical (HRG) survey and identification, significance evaluation, and delineation of the target sources accomplished with a Remotely Operated Vehicle (ROV) or diver visual investigations, depending upon HRG survey characteristics. This information will be used to adjust an avoidance buffer, if warranted. Efforts will include coordination with BOEM regarding recommended NRHP eligibility and further consultation with Tribal Nations, relevant SHPO(s), ACHP, and consulting parties if the properties are determined eligible for listing in the NRHP.
 - a. The Lessee will provide documentation demonstrating that these features as identified through the Section 106 process were not impacted during construction activities, and/or any impacts were successfully minimized according to all necessary approvals. This documentation will include as-laid cable and as-built WTG foundation maps with the horizontal and vertical APE depicted. BOEM will require a post-construction seafloor inspection to verify compliance with documented avoidance and minimization and identify possible impacts to marine archaeological sites based on the as-built/as-laid map review.

Mitigation

1. **Data Recovery.** This may also be conducted and may be accomplished through diver investigation. The level of effort will be dependent on consultation but could include: limited excavation and data recovery of selected sections of the archaeological site; recovery and conservation of select diagnostic artifacts for potential use in exhibit or other public outreach program; alternative mitigation to offset full data recovery (offsite; may include a robust archival research project or HRG survey designed to locate vessel loss); development of a public outreach component (e.g., digital/media products, education materials, non-technical report) in coordination with BOEM, Tribal Nations, relevant SHPO(s), ACHP, and consulting parties; and a technical report or reports for peer review and dissemination of data at professional conferences or for publication.

Additional mitigation measures that may be included in the HPTP as part of a larger mitigation package that considers supplemental or alternative measures as developed through consultation are described below under **OTHER POTENTIAL MITIGATION OPTIONS FOR ADVERSE EFFECTS ON HISTORIC PROPERTIES.**

POTENTIAL MITIGATION FOR ADVERSE EFFECTS ON ANCIENT SUBMERGED LANDFORM FEATURES

The following list includes potential mitigation measures for adverse effects on Ancient Submerged Landform Features (ASLFs). Depending upon the nature of the project's effects on ASLFs, other approaches not identified in this list may be used to mitigate for adverse effects on these resources, and they should be developed in coordination with the Tribal Nations, relevant

SHPO(s), ACHP, and consulting parties for each individual undertaking. At a minimum, and as a condition of COP approval, BOEM may apply the following measures.

Mitigation

1. **Analysis and Paleoenvironmental Reconstruction.** In consultation with Tribal Nations, BOEM, with the assistance of the Lessee or developer, will design a testing approach for ancient submerged landform analysis and for the implementation of the paleoenvironmental reconstruction of the submerged landscape analysis approach. The testing approach and implementation approach will follow the protocols and procedures outlined in BOEM's guidance document.
2. **Preconstruction Geoarchaeology for ASLFs.** This may include collaborative review of existing geophysical and geotechnical data with Tribal Nations; selection of coring locations in consultation with Tribal Nations; collection of vibracores within each affected ASLF that has not been previously sampled, with a sampling focus on areas that will be disturbed by project construction activities; written verification to BOEM that the samples collected are sufficient for the planned analyses and consistent with the agreed scope of work; collaborative laboratory analyses; screening of recovered sediments for debitage or micro-debitage associated with indigenous land uses; third-party laboratory analyses, including micro- and macro-faunal analyses, micro- and macro-botanical analyses, radiocarbon dating of organic subsamples, and chemical analyses for potential indirect evidence of indigenous occupations; temporary curation of archival core sections; draft and final reports for review by participating parties; completion of a NRHP Multiple Property Documentation Form (NPS 10-900-b), as appropriate; and public or professional presentations summarizing the results of the investigations, developed with the consent of the consulting Tribal Nations.
3. **Additional Investigation and Documentation.**
 - a. **Assessment.** The Lessee will assess seafloor impacts within the affected portions of identified ASLFs and analyze the ASLFs for the presence of archaeological materials, including but not limited to chipped stone tools, flakes, modified wooden implements, and bone. The post-construction seafloor assessment may consist of a Qualified Marine Archaeologist (QMA) conducting or overseeing a ROV or diver visual investigation of the seafloor in the areas where previously identified ASLFs exist and where construction activities will permanently disturb the ASLFs and displace material culture.
 - i. **Three-Dimensional (3D) Model.** The Lessee will develop a 3D model to define the spatial relationship of project components and installation methodology (e.g., cable installation via trenching or jetting) relative to the ASLFs. The 3D model will identify portions of ASLFs within the vertical APE that will be impacted and that possess a high potential for preserved evidence of human occupation. The Lessee will complete the 3D model prior to the post construction seafloor inspection.
 - b. **Documentation.** The QMA will document the impacts immediately following the installation of any inter-array cables, wind turbine generators (WTGs), service platforms, and export cables that impact the previously identified ASLFs. Documentation of the impacted ASLFs will include the use of standard archaeological methodologies, including, but not limited to, ROV or diver investigation.

- c. **Methods.** This inspection will cover not only the immediate physical impacts to the seafloor but also any berms created during trenching activities, anchoring activities, and scour or berms made during pile driving and installation of WTGs. These methodologies may include, but are not limited to, establishing a permanent datum, mapping, photo, video, 3D photogrammetry, and collecting a limited number of artifacts. For position accuracy, the ROV should be tracked using an Ultra- Short Base Line (USBL) positioning system.
 - d. **Reporting.** In the final report for each of these investigations, the QMA will note the seafloor conditions (visibility), environmental conditions (e.g., sandy, mud, shell hash bottom), sea state, and how much time has passed since the construction activities have concluded in the area of the ASLF. The Lessee will produce a series of as-laid or as-placed plats that will show the location of the infrastructure in relation to the ASLF and should include both horizontal and vertical penetration into the ASLF. The maps will also include the location of any sites and artifacts identified as a result of the visual inspection. If sites are identified on state-owned submerged bottomlands, a copy of the notification to the state, a copy of the site file, and the site trinomial will be provided as part of the final report. The QMA will include all logs and other data associated with the visual inspection of the seafloor.
 - i. Identification of potential cultural material during the ROV inspection would not constitute a “discovery” nor trigger the reporting and consultation requirements established in the Marine Unanticipated Discovery Plan (UDP). In the event that human remains or potential human remains are identified during the ROV inspections, the Lessee will adhere to the offshore UDP, inclusive of the statutory, regulatory, and policy requirements incorporated, therein. The Lessee will provide Tribal Nations and BOEM with draft and final technical reports, including 3D models and resulting seafloor impact assessments. The Lessee will notify signatories and Tribal Nations of completion of this measure through annual reporting, per the Monitoring and Reporting stipulation.
 - e. **Timing.** The Lessee will complete this mitigation measure no later than 60 calendar days post-final cable burial. If unanticipated issues arise during the course of offshore construction that prevent this measure from being completed within 60 calendar days post-final cable burial, the Lessee will notify BOEM, propose an alternate completion timeframe, and reach agreement with BOEM on the timeframe.
 - f. **Tribal Monitors.** The Lessee will work with Tribal Nations to provide them with an opportunity to participate as monitors during the post-construction seafloor inspection of the previously identified ASLFs in the APE (as described above). The Lessee will compensate Tribal Nations for the monitoring activities.
4. **Tribal Capacity.** In consultation with the Tribal Nations, the Lessee may fund Tribal capacity activities associated with archaeological or other monitoring activities, or other areas of Tribal interest. This may include, but is not limited to, technology upgrades and training associated with interpretation and analysis of non-proprietary or otherwise regulatory protected GIS data; and funding for Tribal historic preservation participation and THPO collaboration in relevant studies (such as ethnographic studies).

5. Additional mitigation measures that may be included in the HPTP as part of a larger mitigation package that considers supplemental or alternative measures as developed through consultation are described below under **OTHER POTENTIAL MITIGATION OPTIONS FOR ADVERSE EFFECTS ON HISTORIC PROPERTIES**.

POTENTIAL RESOLUTIONS FOR ADVERSE EFFECTS ON ABOVEGROUND CULTURAL RESOURCES

The following list includes potential avoidance, minimization, and mitigation approaches for adverse effects on these properties, which may include direct (e.g., visual, physical, atmospheric) effects or indirect effects. Depending upon the nature of the project's effects on aboveground cultural resources, other approaches not identified in this list may be best suited to resolve adverse effects for these types of resources, and they should be developed in coordination with Tribal Nations, relevant SHPO(s), ACHP, and consulting parties for each individual undertaking. At a minimum, and as a condition of COP approval, BOEM may apply the following measures.

Avoidance and Minimization

1. **Visual Screening of Onshore Facilities.** BOEM, with the assistance of the Lessee and as the first preferred resolution measure, will identify adversely affected aboveground cultural resources that could effectively be avoided or minimized through visual screening. Visual screening would only be an appropriate avoidance and minimization measure for adverse effects resulting from onshore activities. Visual screening located at proposed onshore project components and installed by the Lessee or developer consisting of plant or other material would minimize the view of the project from the property subject to mitigation. The method would consist of the Lessee or developer installing visual screening on portions of the undertaking itself, so that it is shielded or partially obscured from the aboveground cultural resource.
2. **Offshore Component Visual Minimization Measures.**
 - a. **Lighting.** To minimize lighting effects, offshore project components, including wind turbine generators and offshore substations, would be lit and marked in accordance with Federal Aviation Administration (FAA) and U.S. Coast Guard (USCG) lighting standards and consistent with BOEM's *Guidelines for Lighting and Marking of Structures Supporting Renewable Energy Development* (April 28, 2021) to reduce light intrusion.
 - b. **Paint color.** To minimize visibility, offshore components would be painted light gray or an off white/gray color (e.g., no lighter than RAL 9010 pure white and no darker than RAL 7035 light gray) that will reduce the contrast between the components and the sea and sky.
 - c. **Design.** To minimize visual contrast and visual clutter, offshore components would use uniform WTG design, spacing, speed, height, and rotor diameter.
3. **Aircraft Detection and Lighting System (ADLS) or Similar System.** This resolution measure would reduce nighttime lighting. The FAA-approved ADLS system employs sensors that detect aircraft as they approach an obstruction and would enable aviation warning lights only when an aircraft is in the vicinity of the Wind Development Area (WDA) or Lease Area, reducing nighttime visibility of the project from adversely affected historic properties.

Mitigation

1. **Recordation or Documentation.** The scope of these measures will be developed in consultation with Tribal Nations, relevant SHPO(s), ACHP, and consulting parties. These measures may include any of the following activities or products to document the status, history, current setting, and ocean views of properties, districts, landscapes, or resource-types:
 - a. Digital Photography
 - i. This should follow standards for the NRHP.
 - b. Historic Property Inventories
 - c. State-level or Historic American Buildings Survey/Historic American Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS) Documentation
 - d. Historic Structures Reports
2. **Repair, Rehabilitation, and Maintenance.** The scope of these measures will be developed in consultation with SHPOs/THPOs, Tribal Nations, and consulting parties. As noted above, all plans to repair, restore, rehabilitate, or maintain aboveground cultural resources should adhere to the most recent Secretary of the Interior's Standards for the Treatment of Historic Properties (currently 2017; available online at: <https://www.nps.gov/orgs/1739/secretary-standards-treatment-historic-properties.htm>) and relevant state guidelines or standards. These measures may include any of the following activities or products:
 - a. Repair, restoration, rehabilitation, maintenance, or preservation of exterior or interior features, including landscape features
 - b. Conditions assessments to inform repair, rehabilitation, or maintenance work
 - c. Development and implementation of renovation or expansion projects to improve visitor experiences or interpretation of aboveground cultural resources
 - d. Development and implementation of cyclical maintenance plans
 - e. Development and implementation of plans to combat sea level rise or other climate change conditions
3. Additional mitigation measures that may be included in the HPTP as part of a larger mitigation package that considers supplemental or alternative measures as developed through consultation are described below under **OTHER POTENTIAL MITIGATION OPTIONS FOR ADVERSE EFFECTS ON HISTORIC PROPERTIES.**

OTHER POTENTIAL MITIGATION OPTIONS FOR ADVERSE EFFECTS ON HISTORIC PROPERTIES

The measures provided in this section are examples of supplemental or alternative strategies for mitigation, to be developed for specific historic properties in consultation with Tribal Nations, relevant SHPO(s), ACHP, and consulting parties. Details of the content of any mitigation measures described will be developed in consultation with Tribal Nations, relevant SHPO(s), ACHP, and consulting parties. In addition to any example measures documented in this appendix, BOEM may also elect to incorporate other actions that would be specifically outlined in each undertaking's MOA to minimize the adverse effect where possible, reasonable, and

appropriate. The following describes other potential mitigation approaches for adverse effects on aboveground cultural resources or archaeological resources:

1. **Public Education Measures** include the development of information designed to educate the public about the cultural resource in question or developing broader measures that include a creative approach to educating the community about aboveground cultural resources affected via a landscape approach. When deemed appropriate through consultation, public education measures addressing multiple cultural resources may be developed using a thematic perspective that may address historic properties in the context of a broader historic built environment landscape in addition to providing information on individual properties. The scope of these efforts will be developed in consultation with Tribal Nations, relevant SHPO(s), ACHP, and consulting parties. These may include the following:
 - a. Interpretive Displays or Signage
 - b. Presentations or Public Outreach Programs
 - c. Books or Periodicals
 - d. Storyboards or Story Maps
 - e. Websites or Mobile Applications
 - f. Heritage Trails or Walking Tours
 - g. Events
2. **Community-Focused Measures** include efforts to provide community access to cultural resources or to assist in preserving or restoring historic communities and landscape features. The scope of these efforts will be developed in consultation with Tribal Nations, relevant SHPO(s), ACHP, and consulting parties. These may include the following:
 - a. Ethnobotanical/First Foods Plant Survey and Revegetation
 - b. Restoration of Traditional Fishing Habitats
 - c. Plant Gathering or Field Trips
 - d. Youth Opportunities, such as funding elder-youth engagement programs or culture camps to facilitate the transmission of cultural information
 - e. Site Accessibility for Non-Public Lands
 - i. This pertains to arranging site access agreements between Tribal Nations and private landowners for the purposes of Tribal education and fostering of traditional cultural and/or ecological practices.
 - f. Coastal Resiliency/Climate Action
 - g. Support for certification and training in related fields for community members
3. **Documentation and Other Measures** include efforts to document historic properties, landscapes, communities, or other features. The scope of these efforts will be developed in consultation with Tribal Nations, relevant SHPO(s), ACHP, and consulting parties. These may include the following:
 - a. Digital Modeling

- b. Historical Context Statements/Narratives
 - c. Oral History and Ethnographic Recordation
 - d. National Register of Historic Places or National Historic Landmark Nominations
 - e. Cultural Landscape Inventory or Reports
 - f. Articles for Publication in Peer-Reviewed Journals
 - g. Site Patrol to Prevent Vandalism and Looting and Monitor Recreational Use
4. **Physical Treatments** include funding preservation or rehabilitation projects for historic properties. All work will be reviewed and approved by the relevant SHPO(s) and will meet the Secretary of the Interior Standards for the Treatment of Historic Properties. The scope of these efforts will be developed in consultation with Tribal Nations, relevant SHPO(s), ACHP, property owners, and consulting parties.
5. **Mitigation Fund.** This approach consists of utilizing a Mitigation Fund to be used after efforts to avoid and minimize adverse effects have been exhausted; the Mitigation Fund would not be used in lieu of avoidance measures. The approach for use of a mitigation fund and appropriate scale of such a fund will be determined through Section 106 consultation for each individual COP. The Mitigation Fund may be property-specific or be of a scale to resolve adverse effects across multiple properties with a single mitigative activity. A Lessee or developer may work with BOEM, Tribal Nations, relevant SHPO(s), ACHP, and consulting parties during the Section 106 process to determine if this approach is applicable and to develop the process for implementation and specific uses of the fund.

APPENDIX V
PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Review of Six Projects Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act

Memorandum of Agreement Template

This appendix provides an example of the contents for a Memorandum of Agreement (MOA) that may be developed to resolve adverse effects for offshore wind projects. The sample stipulations are examples and may not account for all effects on all types of historic properties.

**Memorandum of Agreement
Among the Bureau of Ocean Energy Management,
The [State] State Historic Preservation Officer,
And the Advisory Council on Historic Preservation
Regarding the [Project] Offshore Wind Project**

WHEREAS, the Bureau of Ocean Energy Management (BOEM) plans to authorize construction and operation of the [PROJECT] Offshore Wind Project (Project) pursuant to Section 8(p)(1)(C) of the Outer Continental Shelf (OCS) Lands Act (43 United States Code [U.S.C.] 1337(p)(1)(C)), as amended by the Energy Policy Act of 2005 (Public Law No. 109-58) and in accordance with Renewable Energy Regulations at 30 Code of Federal Regulations (CFR) Part 585; and

WHEREAS, BOEM determined that the Project constitutes an undertaking subject to Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. 306108), and its implementing regulations (36 CFR Part 800); and

WHEREAS, BOEM plans to approve/approve with conditions/disapprove the Construction and Operations Plan (COP) submitted by the Lessee([PROJECT]); and

WHEREAS, BOEM determined the construction, operation, maintenance, and eventual decommissioning of the Project, planned for up to XX offshore wind turbine generators (WTGs), [LIST ALL ELEMENTS, e.g.: up to XX offshore substations, XX onshore substations, offshore and onshore export cables], could potentially adversely affect historic properties as defined under 36 CFR 800.16(l); and

WHEREAS, BOEM is preparing an Environmental Impact Statement (EIS) for the Project pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.) (NEPA) and elected to use the NEPA substitution process with its Section 106 consultation pursuant to 36 CFR 800.8(c); and

WHEREAS, BOEM notified in advance the [STATE] State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) on [DATE] of their decision to use NEPA substitution and followed the standards for developing environmental documents to comply with the Section 106 consultation for this Project pursuant to 36 CFR 800.8(c), and ACHP responded with acknowledgement on [DATE]; and

WHEREAS, BOEM notified and invited the Secretary of the Interior (SOI) (represented by the National Park Service (NPS)) to consult regarding this Project pursuant to the Section 106 regulations, including consideration of the potential effects on National Historic Landmarks (NHLs) as required under NHPA Section 110(f) (54 U.S.C. 306107) and 36 CFR 800.10; and

WHEREAS, in accordance with 36 CFR 800.3, BOEM invited [STATE] SHPO to consult on the Project on [DATE], and [STATE] SHPO accepted on [DATE]; and

WHEREAS, in accordance with 36 CFR 800.3, BOEM invited ACHP to consult on the Project on [DATE], and ACHP accepted on [DATE]; and

WHEREAS, the Project is within a commercial lease area that was subject to previous NHPA Section 106 review by BOEM regarding the issuance of the commercial lease and approval of site assessment activities. Both Section 106 reviews for the lease issuance and the approval of the site assessment plan were conducted pursuant to the Programmatic Agreement (PA) and concluded with [SECTION 106 FINDING] on [DATE] consistent with the PAs regarding the review of OCS renewable energy activities offshore [STATES] (*TITLE OF PA IF APPLICABLE*); and

WHEREAS, consistent with 36 CFR 800.16(d) and BOEM's *Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585* (May 27, 2020), BOEM defined the Area of Potential Effects (APE) for the undertaking as the depth and breadth of the seabed potentially impacted by any bottom-disturbing activities, constituting the marine archaeological resources portion of the APE (marine APE); the depth and breadth of terrestrial areas potentially impacted by any ground-disturbing activities, constituting the terrestrial archaeological resources portion of the APE (terrestrial APE); the viewshed from which offshore or onshore renewable energy structures would be visible, constituting the visual portion of the APE (visual APE); and any temporary or permanent construction or staging areas that may fall into any of the aforementioned offshore or onshore portions of the APE (see Attachment 1, APE Maps); and

WHEREAS, BOEM identified XX historic districts and XX aboveground historic properties in the Offshore Project components' portion of the visual APE and XX historic properties in the Onshore Project components' portion of the visual APE; XX submerged historic properties and XX Ancient Submerged Landforms and Features (ASLFs) in the marine APE; and XX historic properties in the terrestrial APE; and

WHEREAS, BOEM identified XX NHLs in the Offshore Project components' portion of the visual APE, [NAMES OF NHLs], and BOEM determined there would be [no] visual adverse effect on these XX NHLs because ocean views are not character-defining features of these historic properties; and

WHEREAS, within the range of Project alternatives analyzed in the EIS, BOEM determined that XX aboveground historic properties would be subject to visual adverse effects from WTGs, XX submerged historic properties [NAMES/DESIGNATIONS OF PROPERTIES] may be potentially adversely affected by physical disturbance from export cable and/or inter-array cable construction within the avoidance buffers of these resources, XX ASLFs may be potentially adversely affected by [e.g.: physical disturbance in the lease area and from export cable construction], and XX historic properties in the terrestrial APE would be adversely affected with implementation of the undertaking; and

WHEREAS, BOEM determined that the implementation of the avoidance measures identified in this MOA will avoid adverse effects on XX historic districts and XX aboveground historic properties in the offshore visual APE, on XX historic properties in the onshore visual APE, and on XX submerged historic properties in the marine APE that include XX submerged cultural resources and XX ASLFs; and

WHEREAS, under each of the Project alternatives analyzed in the EIS, BOEM determined the Project would visually adversely affect these XX aboveground historic properties in [STATE]: [NAMES OF HISTORIC PROPERTIES]; and

WHEREAS, under each of the Project alternatives analyzed in the EIS, BOEM determined the project would avoid Targets [INSERT ASLF TARGET NUMBERS] and adversely affect Targets [INSERT ASLF TARGET NUMBERS]; and

WHEREAS, [STATE] SHPO concurred with BOEM's finding of adverse effect on [DATE]; and

WHEREAS, throughout this document the term "Tribal Nation" has the same meaning as "Indian Tribe" as defined at 36 CFR 800.16(m); and

WHEREAS, BOEM invited the following federally recognized Tribal Nations to consult on this Project: [NAMES OF TRIBAL NATIONS]; and

WHEREAS, the [TRIBAL NATIONS] accepted BOEM's invitation to consult, and BOEM invited these Tribal Nations to sign this MOA as concurring parties; and

WHEREAS, in accordance with 36 CFR 800.3, BOEM invited other federal agencies, state and local governments, and additional consulting parties with a demonstrated interest in the undertaking to participate in this consultation, the list of those accepting participation and declining to participate by either written response or no response to direct invitations is provided in Attachment 2, Lists of Invited and Participating Consulting Parties; and

WHEREAS, BOEM has consulted with the Lessee in its capacity as applicant seeking federal approval of the COP, and, because the Lessee has responsibilities under the MOA, BOEM has invited the applicant to be an invited signatory to this MOA; and

WHEREAS, the Bureau of Safety and Environmental Enforcement (BSEE) is responsible for enforcing compliance of renewable energy projects on the OCS, including safety and environmental compliance, with all applicable laws, regulations, leases, grants, and approved plans through notices of noncompliance, cessation orders, civil penalties, and other appropriate means; and

WHEREAS, BOEM invited BSEE to consult, BSEE designated BOEM as the Lead Federal Agency pursuant to 36 CFR 800.2(a)(2) to act on its behalf for purposes of compliance with Section 106 for this Project (in a letter dated [DATE]), BOEM invited BSEE to sign this MOA as a concurring party, and BSEE accepted the invitation to sign this MOA as a concurring party; and

WHEREAS, construction of the Project requires a Department of the Army permit from the United States Army Corps of Engineers (USACE) for activities that result in the discharge of dredged or fill material into jurisdictional wetlands and/or other waters of the United States pursuant to Section 404 of the Clean Water Act, and activities occurring in or affecting navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act; and

WHEREAS, BOEM invited USACE to consult as USACE will be issuing permits for this Project under Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. 403); and

WHEREAS, the USACE designated BOEM as the Lead Federal Agency pursuant to 36 CFR 800.2(a)(2) to act on its behalf for purposes of compliance with Section 106 for this Project (in a letter dated [DATE]), BOEM invited the USACE to sign this MOA as a concurring party, and the USACE accepted the invitation to sign this MOA as a concurring party; and

[ONLY INCLUDE IN MOA IF APPLICABLE] WHEREAS, USACE as the Lead Federal Agency, reviewed and authorized a separate project for marine upgrades at the [CITY], [STATE] Operations and Maintenance facility, which will be used by the Project but not dependent on the Project; and

[ONLY INCLUDE IN MOA IF SECTION 106 CONSULTATION INCLUDES A NATIONAL HISTORIC LANDMARK] WHEREAS, BOEM notified and invited the Secretary of the Interior (represented by the National Park Service [NPS]) to consult regarding this Project pursuant to the Section 106 regulations, including consideration of the potential effects on the NHLs as required under NHPA Section 110(f) (54 U.S.C. 306107) and 36 CFR 800.10, the NPS accepted BOEM's invitation to consult, and BOEM invited the NPS to sign this MOA as a concurring party; and]

WHEREAS, BOEM has consulted with the signatories, invited signatories, and consulting parties participating in the development of this MOA regarding the definition of the undertaking, the delineation of the APEs, the identification and evaluation of historic properties, the assessment of potential effects on the historic properties, and on measures to avoid, minimize, and mitigate adverse effects on historic properties; and

WHEREAS, pursuant to 36 CFR 800.6, BOEM invited the Lessee to sign as invited signatory and the consulting parties as listed in Attachment 2 to sign as concurring parties; however, the refusal of any consulting party to sign this MOA or otherwise concur does not invalidate or affect the effective date of this MOA, and consulting parties who choose not to sign this MOA will continue to receive information if requested and have an opportunity to participate in consultation as specified in this MOA; and

WHEREAS, the signatories agree, consistent with 36 CFR 800.6(b)(2), that adverse effects will be resolved in the manner set forth in this MOA; and

WHEREAS, BOEM sought and considered the views of the public regarding Section 106 for this Project through the NEPA process by holding virtual public scoping meetings when initiating the NEPA and NHPA Section 106 review on [DATES] and virtual public hearings related to the Draft EIS on [DATES]; and

WHEREAS, BOEM made the first Draft MOA available to the public for review and comment from [DATE], to [DATE], and made an updated version of the Draft MOA available to the public from [DATE], to [DATE], using BOEM's Project website, and BOEM [DID/DID NOT RECEIVE ANY COMMENTS FROM THE PUBLIC]; and

NOW, THEREFORE, BOEM, the [STATE] SHPO, and the ACHP agree that the undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

BOEM, with the assistance of the Lessee, will ensure that the following measures are carried out as conditions of its approval of the undertaking:

I. MEASURES TO AVOID ADVERSE EFFECTS ON IDENTIFIED HISTORIC PROPERTIES

A. Marine APE

1. BOEM will include the following avoidance measures for adverse effects within the marine APE as conditions of approval of the [PROJECT] COP:
 - a. The Lessee will avoid known shipwrecks previously identified during marine archaeological surveys by a distance of no less than XXX feet (XXX meters) from the known extent of the resource for placement of Project structures and when conducting seafloor-disturbing activities.
 - b. The Lessee will avoid potential shipwrecks and potentially significant debris fields previously identified during marine archaeological surveys by a distance of no less than XXX feet (XXX meters) from the known extent of the resource, unless the buffer would preclude the installation of facilities at their engineered locations, but in no event would the buffer be less than XXX feet (XXX meters) from the known extent of the resource.
 - c. The Lessee will avoid ASLFs previously identified during marine archaeological resource assessments for the Project by a distance of no less than XXX feet (XXX meters) from the known extent of the resource for placement of Project structures and when conducting seafloor-disturbing activities, to the extent practicable. The Lessee will provide documentation demonstrating that these features [as identified through the consultation process] were not impacted and/or impact was successfully minimized according to all necessary approvals. This documentation will include as-laid cable and as-built WTG foundation maps with the horizontal and vertical APE depicted. BOEM will require a post-construction seafloor inspection to verify compliance with documented avoidance and minimization and identify possible impacts to marine archaeological sites based on the as-built/as-laid map review.

B. Visual APE

1. BOEM will include the following avoidance measures for adverse effects within the visual APE as conditions of approval of the [PROJECT] COP:
 - a. To maintain avoidance of adverse effects on historic properties in the visual APE where BOEM determined no adverse effects or where no effects would occur, BOEM will require the Lessee to ensure Project structures are within the design envelope, sizes, scale, locations, lighting prescriptions, and distances that were used by BOEM to inform the definition of the APE for the Project and for determining effects in the Finding of Effect (see the COP: [PROJECT] Offshore Wind Project, [DATE]).

C. Terrestrial APE

1. BOEM will include the following avoidance measures for adverse effects within the terrestrial APE as conditions of approval of the [PROJECT] COP:
 - a. The Lessee will avoid known archaeological resources identified during terrestrial archaeological surveys by a distance of XXX feet (XXX meters) from the known extent of the resource when conducting ground-disturbing activities, to the extent practicable.

II. MEASURES TO MINIMIZE ADVERSE EFFECTS ON IDENTIFIED HISTORIC PROPERTIES

A. Marine APE

1. BOEM has undertaken planning and actions to minimize adverse effects on marine archaeological resources, including ancient submerged landforms, in the marine APE. BOEM will include these minimization measures for adverse effects within the marine APE as conditions of approval of the [PROJECT] COP:
 - a. The Lessee will [INSERT MINIMIZATION MEASURES]

B. Visual APE

1. BOEM has undertaken planning and actions to minimize adverse effects on aboveground historic properties in the visual APE. BOEM will include these minimization measures for adverse effects within the visual APE as conditions of approval of the [PROJECT] COP:
 - a. The Lessee will use uniform WTG design, speed, height, and rotor diameter to reduce visual contrast and decrease visual clutter.
 - b. The Lessee will use uniform spacing to decrease visual clutter, aligning WTGs to allow for safe transit corridors.
 - c. The Lessee will reserve the option to reduce the number of constructed WTGs from a maximum proposed number of XX positions.
 - d. The Lessee will apply a consistent paint color to the WTGs no lighter than RAL 9010 pure white and no darker than RAL 7035 light gray to help reduce potential visibility of the turbines against the horizon during daylight hours.
 - e. The Lessee will implement an Aircraft Detection Lighting System (ADLS) [or related system] to automatically activate lights when aircraft approach. The WTGs and offshore substations would be lit and marked in accordance with Federal Aviation Administration and United States Coast Guard lighting standards and consistent with BOEM's *Guidelines for Lighting and Marking of Structures Supporting Renewable Energy Development* (April 28, 2021) to reduce light intrusion.

C. Terrestrial APE

1. BOEM has undertaken planning and actions to minimize adverse effects on terrestrial archaeological resources in the terrestrial APE. BOEM will include these

minimization measures for adverse effects within the terrestrial APE as conditions of approval of the [PROJECT] COP:

- a. The Lessee will conduct archaeological monitoring of construction activities in the following areas of the Terrestrial APE: [INSERT MINIMIZATION MEASURES INFORMATION]

III. MEASURES TO MITIGATE ADVERSE EFFECTS ON IDENTIFIED HISTORIC PROPERTIES

A. Marine APE (EXAMPLE MEASURES):

1. [PROJECT] will encroach on the avoidance buffers for [NUMBER] submerged archaeological resources. To resolve the adverse effects on these resources, BOEM will include the following as conditions of approval of the [PROJECT] COP and require the Lessee to fulfill the following as mitigation measures prior to construction: [BOEM will require the Lessee to develop a treatment plan with more mitigation measures details and consultation specificity if [STATE] SHPO, ACHP, and the consulting parties agree to these proposed mitigation measures for the potentially adversely affected historic properties]
 - a. Phase IB identification/Phase II NRHP evaluation and site boundary delineation, including:
 - i. Additional high resolution geophysical (HRG) survey to further refine [Names/Designations] (i.e., increased data density for reassessment of target and dive planning).
 - ii. Identification, significance evaluation, and delineation of the target sources accomplished with a remotely operated vehicle or, subject to satisfaction of internal health, safety, and environment (HSE) requirements and protocols, surface-supplied diver investigations, depending upon HRG survey characteristics. This could include limited investigation.
 - iii. Archival research.
 - b. Revisited avoidance recommendation and adjust avoidance buffer, if warranted, based on Phase IB/Phase II results, allowing BOEM to make final determination if the avoidance buffers will need to be adjusted.
 - c. Coordination with BOEM regarding recommended NRHP eligibility, to allow BOEM to make the final determination and consult further with interested consulting parties [these will be identified through future consultation on this MOA and associated treatment plan], if the properties are determined eligible for listing in the NRHP.
 - d. If NRHP-eligible, consultation among BOEM, with the assistance of the Lessee, and the [STATE] SHPO, ACHP, and interested consulting parties [these will be identified through future consultation on this MOA and associated treatment plan] to develop a limited data recovery research design and alternative mitigation.

- e. Subject to satisfaction of internal HSE requirements and protocols, Phase III data recovery accomplished through surface-supplied diver excavation. Level of effort dependent on consultation but could include:
 - i. Limited excavation and data recovery of selected sections of the archaeological site.
 - ii. Recovery and conservation of select diagnostic artifacts for potential use in exhibit or other public outreach program. This would be based on opportunity determined during excavation and mapping.
 - iii. Alternative mitigation to offset full data recovery (offsite). Examples include a robust archival research project or HRG survey designed to locate vessel loss.
 - f. Coordination with BOEM on consultation with interested consulting parties [these consulting parties will be identified through future consultation on this MOA and associated treatment plan] to develop public outreach component (e.g., digital/media products, education materials, non-technical report, etc.).
 - g. Technical report for peer review and dissemination of data at professional conferences or for publication.
 - h. The Lessee will fulfill these commitments in accordance with [RELEVANT TREATMENT PLAN] that will be completed within [TO BE DETERMINED THROUGH CONSULTATION] years after the MOA is executed.
2. The Lessee cannot avoid [NUMBER] ASLFs ([NAMES/DESIGNATIONS]). To resolve the adverse effects on the ASLFs, BOEM will include the following as conditions of approval of the [PROJECT] COP and require fulfillment of the following as mitigation measures prior to construction. The Lessee will fund mitigation measures in accordance with Attachment 3, Treatment Plan for Ancient Submerged Landform Features:
- a. Preconstruction Geoarchaeology. The Lessee will fulfill the following commitments in accordance with Attachment 3, Treatment Plan for Marine Archaeological Resources: [Examples: collaborative review of existing geophysical and geotechnical data with Tribal Nations; selection of coring locations in consultation with Tribal Nations; collection of [NUMBER] vibracores within each affected ASLF that has not been previously sampled, with a sampling focus on areas that will be disturbed by Project construction activities; written verification to BOEM that the samples collected are sufficient for the planned analyses and consistent with the agreed scope of work; collaborative laboratory analyses at a laboratory located in [STATE OR STATES]; screening of recovered sediments for debitage or micro-debitage associated with indigenous land uses; third-party laboratory analyses, including micro- and macro-faunal analyses, micro- and macro-botanical analyses, radiocarbon dating of organic subsamples, and chemical analyses for potential indirect evidence of indigenous occupations; temporary curation of archival core sections; draft reports for review by participating parties; final reporting; completed NRHP Multiple Property Documentation Form (NPS 10-900-b) for [NAMES/DESIGNATIONS]; and

public or professional presentations summarizing the results of the investigations, developed with the consent of the consulting Tribal Nations.]

- b. Open-Source Geographic Information System (GIS) and Story Maps. The Lessee will fulfill the following commitments in accordance with Attachment 4: [Examples: consultation with the Tribal Nations to determine the appropriate open-source GIS platform; review of candidate datasets and attributes for inclusion in the GIS; data integration; development of custom reports or queries to assist in future research or tribal maintenance of the GIS; work sessions with Tribal Nations to develop Story Map content; training session with Tribal Nations to review GIS functionality; review of Draft Story Maps with Tribal Nations; delivery of GIS to Tribal Nations; and delivery of Final Story Maps.]
- c. Additional Investigation and Documentation. The Lessee will fulfill the following commitments in accordance with Attachment 4: [Example: standard mitigation measure text below.]
 - i. Assessment. The Lessee will assess seafloor impacts within the affected portions of identified ASLFs and analyze the ASLFs for the presence of archaeological materials, including but not limited to chipped stone tools, flakes, modified wooden implements, and bone. The post-construction seafloor assessment may consist of a Qualified Marine Archaeologist (QMA) conducting or overseeing a Remotely Operated Vehicle (ROV) investigation of the seafloor in the areas where previously identified ASLFs exist and where construction activities will permanently disturb the ASLFs and displace material culture, if material culture is present.
 - ii. Three-Dimensional (3D) Model. The Lessee will develop a 3D model to define the spatial relationship of project components and installation methodology (e.g., cable installation via trenching or jetting) relative to the ASLFs. The 3D model will identify portions of ASLFs within the vertical APE that will be impacted and that possess a high potential for preserved evidence of human occupation. The 3D model will be completed prior to the post construction seafloor inspection.
 - iii. Documentation. The QMA will document the impacts immediately following the installation of any inter-array cables, wind turbine generators (WTGs), service platforms, and export cables that impact the previously identified ASLFs. Documentation of the impacted ASLFs will include the use of standard archaeological methodologies, including ROV investigation.
 - iv. Methods. This inspection will cover not only the immediate physical impacts to the seafloor but also any berms created during trenching activities, anchoring activities, and scour or berms made during pile driving and installation of WTGs. These methodologies may include, but are not limited to, establishing a permanent datum, mapping, photo, video, 3D photogrammetry, and collecting a limited number of artifacts. For position accuracy, the ROV should be tracked using an Ultra- Short Base Line (USBL) positioning system.

- v. Reporting. In the final report for each of these investigations, the QMA will note the seafloor conditions (visibility), environmental conditions (e.g., sandy, mud, shell hash bottom), sea state, and how much time has passed since the construction activities have concluded in the area of the ASLF. The Lessee will produce a series of as-laid or as-placed plats that will show the location of the infrastructure in relation to the ASLF and should include both horizontal and vertical penetration into the ASLF. The maps will also include the location of any sites and artifacts identified as a result of the visual inspection. If sites are identified on state-owned submerged bottomlands, the Lessee will provide a copy of the notification to the state, a copy of the site file, and the site trinomial as part of the final report. The QMA will include all logs and other data associated with the ROV visual inspection of the seafloor.
 - vi. Identification of potential cultural material during the ROV inspection would not constitute a “discovery” nor trigger the reporting and consultation requirements established in the Marine Unanticipated Discovery Plan (UDP). In the event that human remains or potential human remains are identified during the ROV inspections, the Lessee will adhere to the offshore UDP, inclusive of the statutory, regulatory, and policy requirements incorporated therein. The Lessee will provide Tribal Nations and BOEM with draft and final technical reports, including 3D models and resulting seafloor impact assessments.
 - vii. The Lessee will notify signatories and Tribal Nations of completion of this measure through annual reporting, per the Monitoring and Reporting stipulation.
 - viii. Timing. The Lessee will complete this mitigation measure no later than 60 calendar days post-final cable burial. If unanticipated issues arise during the course of offshore construction that prevent this measure from being completed within 60 calendar days post-final cable burial, the Lessee will notify BOEM, propose an alternate completion timeframe, and reach agreement with BOEM on the timeframe.
 - ix. Tribal Monitors. The Lessee will work with Tribal Nations to provide them with an opportunity to participate as monitors during the post-construction seafloor inspection of the previously identified ASLFs in the APE (as described above). The Lessee will compensate Tribal Nations for the monitoring activities.
- d. The Lessee will fulfill these commitments in accordance with [RELEVANT TREATMENT PLAN] that will be completed within [TO BE DETERMINED THROUGH CONSULTATION] years after the MOA is executed.

B. Visual APE (EXAMPLE MEASURES):

1. BOEM will include the following as conditions of approval of the [PROJECT] COP and as mitigation measures to resolve the adverse effects on the [NUMBER] historic properties that will be visually adversely affected ([PROPERTY NAMES]). The Lessee will fund fulfillment mitigation measures in accordance with Attachment 5

(Treatment Plan for Aboveground Historic Properties that Will Be Adversely Affected) and the following:

- a. Historic American Building Survey (HABS) Level II documentation, [PROPERTIES]. The Lessee will document the [PROPERTIES] to HABS Level II standards to record the historic properties' significance for the Prints and Photographs Division of the Library of Congress, whose holdings illustrate achievements in architecture, engineering, and landscape design in the United States and its territories. This will include: collect and review materials and drawings relating to the construction and history of the property; draft a historical report of the property; photograph the property using large-format photography; compile draft HABS documentation for review and comment by interested consulting parties [these will be identified through future consultation on this MOA and associated treatment plan]; develop final HABS documentation, incorporating comments from the consulting parties; and upon acceptance of HABS documentation by NPS, distribute HABS documentation packages to the NPS and agreed-upon repositories, such as Library of Congress and state and local repositories, as appropriate.
- b. HABS-like Level II documentation, [PROPERTIES]. The Lessee will document the [PROPERTIES] to HABS Level II standards, substituting digital photography for the HABS-standard large-format photography, to record the historic properties' significance for state and local repositories. This will include: collect and review materials and drawings relating to the construction and history of the property; draft a historical report of the property; photograph the property using digital photography; compile draft documentation for review and comment by interested consulting parties [these will be identified through future consultation on this MOA and associated treatment plan]; develop final documentation, incorporating comments from the consulting parties; and upon acceptance of documentation by [STATE] SHPO, distribute documentation packages to the [STATE] SHPO and agreed-upon state and local repositories, as appropriate.
- c. Historic Structure Reports (HSR), [PROPERTIES]. The Lessee will prepare HSRs, including in-depth history of the building as well as immediate, short-term, and long-range preservation objectives based on the current condition of the building. This will include: review the existing conditions of the property; document and photograph the existing conditions; consult with the property owner to determine physical concerns, possible future plans; compile relevant documentation collected for Mitigation Measures B.1.a–b; draft an HSR to be distributed to the interested consulting parties [these will be identified through future consultation on this MOA and associated treatment plan] for review and comment; develop a final HSR, incorporating any comments from the consulting parties; and distribute the final HSR to the property owner.
- d. [STATE] Register of Historic Places/NRHP Nomination for Historic Property or Properties based on owner preference. The Lessee will prepare nomination for listing in the [STATE] Register of Historic Places and NRHP based on owner preference and consistency with [STATE] SHPO and NPS standards. This will include: compile relevant documentation collected for Mitigation Measures

B.1.a–c; draft an NRHP nomination to be distributed to the interested consulting parties [these will be identified through future consultation on this MOA and associated treatment plan] for review and comment; develop a final NRHP nomination, incorporating any comments from the consulting parties; distribute the NRHP nomination to [STATE] SHPO; and present NRHP nomination to [STATE] State Review Board for Historic Sites.

- e. Educational Content to Interpret the History Property or Properties. The Lessee will compile information prepared under Mitigation Measures B.1.a–d and coordinate with BOEM to consult with [STATE] SHPO, ACHP, interested consulting parties [these will be identified through future consultation on this MOA and associated treatment plan], and property owners to determine what information is appropriate for creation of educational content to interpret the history of properties. Consultation will also include identification of an existing website to host the educational content. This may include existing property-specific website or local museum website. Content agreed-upon by [STATE] SHPO, ACHP [if ACHP chooses to participate], interested consulting parties, and property owners will be provided to website administrator identified through consultation.
- f. The Lessee will fulfill these commitments in accordance with [RELEVANT TREATMENT PLAN] that will be completed within [TO BE DETERMINED THROUGH CONSULTATION] years after the MOA is executed.

C. Terrestrial APE (EXAMPLE MEASURES):

- 1. The Lessee will encroach on the avoidance buffers for [NUMBER] terrestrial archaeological resources: [NAMES/DESIGNATIONS]. To resolve the adverse effects on these resources, BOEM will include the following as conditions of approval of the [PROJECT] COP and require the Lessee to fulfill the following as mitigation measures prior to construction [BOEM will require the Lessee to develop a treatment plan with more mitigation measures details and consultation specificity if [STATE] SHPO, ACHP, and the consulting parties agree to these proposed mitigation measures for the potentially adversely affected historic properties]:
 - a. [INSERT MITIGATION MEASURES]
 - b. The Lessee will fulfill these commitments in accordance with [RELEVANT TREATMENT PLAN] that will be completed within [TO BE DETERMINED THROUGH CONSULTATION] years after the MOA is executed.

IV. PHASED IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

- A. BOEM will implement the following consultation steps for phased identification of historic properties in accordance with BOEM’s *Guidelines for Providing Archaeological and Historic Property Information Pursuant to Title 30 Code of Federal Regulations Part 585*. The final identification of historic properties related to the Terrestrial APE may occur after publication of the Draft EIS, but prior to the initiation of construction. BOEM will conduct phased identification of historic properties, pursuant to 36 CFR 800.4(b)(2) and following the steps below:

1. The Lessee will complete Phase IB archaeological resource identification in the remainder of the terrestrial APE not previously investigated in archaeologically sensitive areas. The Phase IB surveys will proceed under the current *Terrestrial Archaeology Survey Plan* previously submitted to [STATE] SHPO and BOEM.
2. If archaeological sites that exhibit potential for listing in the NRHP are identified during phased terrestrial site identification for onshore components of the Project, then additional site-specific evaluation and mitigation may be warranted.
3. For identification of historic properties within the APE, the Lessee will conduct supplemental technical studies in accordance with state guidelines and recommendations presented in BOEM's most recent *Guidelines*. The Lessee will coordinate with the SHPO prior to the initiation of any such identification efforts.
4. BOEM will consult on the results of historic property identification surveys for any portions of the APE that were not previously addressed.
5. If effects on identified resources cannot be avoided, BOEM will evaluate the NRHP eligibility of the potentially affected properties, in accordance with 36 CFR 800.4(c).
6. If BOEM identifies no additional historic properties or determines that no historic properties are adversely affected, BOEM, with the assistance of the Lessee, will notify and consult with the signatories, invited signatories, and consulting parties following the consultation process set forth here in this stipulation.
 - a. The Lessee will notify all the signatories, invited signatories, and consulting parties about BOEM's determination by providing a written summary of the alternative including any maps, a summary of the surveys and/or research conducted to identify historic properties and assess effects, and copies of the surveys.
 - b. BOEM will allow the signatories, invited signatories, and consulting parties 30 calendar days to review and comment on the survey reports, the results of the surveys, BOEM's determination, and the documents.
 - c. After the 30-calendar day review period has concluded and if no comments require additional consultation, The Lessee will notify the signatories and consulting parties that the SHPO has concurred with BOEM's determination, if they received any comments, and provide a summary of the comments and BOEM's responses.
 - d. BOEM, with the assistance of the Lessee, will conduct any consultation meetings if requested by the signatories or consulting parties.
 - e. The MOA will not need to be amended if no additional historic properties are identified and/or adversely affected.
7. If BOEM determines new adverse effects on historic properties will occur, BOEM with the assistance of the Lessee will notify and consult with the signatories, invited signatories, and consulting parties regarding BOEM's finding and the proposed measures to resolve the adverse effect(s) including the development of a new treatment plan(s) following the consultation process set forth here in this stipulation.

- a. The Lessee will notify all signatories, invited signatories, and consulting parties about BOEM's determination by providing a written summary including any maps, a summary of the surveys and/or research conducted to identify historic properties and assess effects, copies of the surveys, BOEM's determination, and the proposed resolution measures for the adverse effect(s).
 - b. The signatories, invited signatories, and consulting parties will have 30 calendar days to review and comment on the documents including the adverse effect finding and the proposed resolution of adverse effect(s), including a draft treatment plan(s).
 - c. BOEM, with the assistance of the Lessee, will conduct additional consultation meetings, if necessary, during consultation on the adverse effect finding and during drafting and finalization of the treatment plan(s).
 - d. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.
 - e. The Lessee will send the revised draft final documents to the other signatories, invited signatories, and consulting parties for review and comment during a 30-calendar day review and comment period. With this same submittal of draft final documents, the Lessee will provide a summary of all the comments received on the documents and BOEM's responses.
 - f. BOEM, with the assistance of the Lessee, will respond to the comments on the draft final documents and make necessary edits to the documents.
 - g. After BOEM has received concurrence from the SHPO on the finding of new adverse effect(s) and BOEM has accepted the final treatment plan(s), the Lessee will notify all the signatories, invited signatories, and consulting parties, and provide the final document(s) including the final treatment plan(s) and a summary of comments and BOEM's responses to comments, if BOEM receives any comments on the draft final documents.
 - h. The MOA will not need to be amended after the treatment plan(s) is accepted by BOEM.
8. If a SHPO disagrees with BOEM's determination regarding whether an affected property is eligible for inclusion in the NRHP, or if the ACHP or the SOI so request, the agency official will obtain a determination of eligibility from the SOI pursuant to 36 CFR Part 63 (36 CFR 800.4(c)(2)).

V. PROJECT MODIFICATIONS

- A. If the Lessee proposes any modifications to the Project that expands the Project beyond the Project Design Envelope (PDE) included in the COP or that occur outside the defined APES, or that have the potential to change BOEM's final determinations and findings for this Project, the Lessee will notify and provide BOEM with information concerning the proposed modifications. BOEM will determine if these modifications require alteration of the conclusions reached in the Finding of Effect and, thus, will require additional consultation with the signatories, invited signatories, and consulting parties. If BOEM determines additional consultation is required, the Lessee will provide the signatories,

invited signatories, and consulting parties with the information concerning the proposed changes, and they will have 30 calendar days from receipt of this information to comment on the proposed changes. BOEM will take into account any comments from signatories, invited signatories, and consulting parties prior to agreeing to any proposed changes. Using the procedure below, BOEM will, as necessary, consult with the signatories, invited signatories, and consulting parties to identify and evaluate historic properties in any newly affected areas, assess the effects of the modification, and resolve any adverse effects.

1. If the Project is modified as described in Stipulation V.A (Project Modification Stipulation) and BOEM identifies no additional historic properties or determines that no historic properties are adversely affected due to the modification, the Lessee will notify all the signatories, invited signatories, and consulting parties about this proposed modification and BOEM's determination, and allow the signatories, invited signatories, and consulting parties 30 calendar days to review and comment. This MOA will not need to be amended if no additional historic properties are identified or adversely affected.
2. If BOEM determines new adverse effects on historic properties will occur due to a Project modification, the Lessee will notify and consult with the relevant signatories, invited signatories, and consulting parties regarding BOEM's finding and the resolution of the adverse effect and develop a new Historic Property Treatment Plan (HPTP) following the consultation process set forth in Stipulation IV. Relevant signatories, invited signatories, and consulting parties will have 30 calendar days to review and comment on the adverse effect finding and the proposed resolution of adverse effects, including a draft HPTP. BOEM, with the assistance of the Lessee, will conduct additional consultation meetings, if necessary, during drafting and finalization of the HPTP. The MOA will not need to be amended after the HPTP is finalized.
3. If any of the signatories, invited signatories, or consulting parties object to determinations, findings, or resolutions made pursuant to these measures (Stipulation V.A.1 and V.A.2), BOEM will resolve any such objections pursuant to the dispute resolution process set forth in Stipulation XIII.

VI. REVIEW PROCESS FOR DOCUMENTS

- A. The following process will be used for any document, report, or plan produced in accordance with Stipulations I–V of this MOA:
 1. Draft Document:
 - a. The Lessee will provide the document to BOEM for technical review and approval.
 - i. BOEM has 15 calendar days to complete its technical review.
 - ii. If BOEM does not provide approval, it will submit its comments back to the Lessee, who will have 15 calendar days to address the comments.
 - b. BOEM, with the assistance of the Lessee, will provide the draft document to consulting parties, except the ACHP, for review and comment.

- i. Consulting parties will have 30 calendar days to review and comment.
 - ii. BOEM, with the assistance of the Lessee, will coordinate a meeting with consulting parties to facilitate comments on the document if requested by a consulting party.
 - iii. BOEM will consolidate comments received and provide them to the Lessee within 15 calendar days of receiving comments from consulting parties.
 - iv. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.
2. Draft Final Document:
 - a. The Lessee will provide BOEM with the draft final document for technical review and approval.
 - i. BOEM will have 15 calendar days to complete its technical review.
 - ii. If BOEM does not provide approval, it will submit its comments back to the Lessee, who will have 15 calendar days to address the comments.
 - b. BOEM, with the assistance of the Lessee, will provide the draft final document to consulting parties, except the ACHP, for review and comment. With this same submittal of draft final documents, the Lessee will provide a summary of all the comments received on the documents and BOEM's responses.
 - i. Consulting parties will have 30 calendar days to review and comment.
 - ii. If requested by a consulting party, BOEM, with the assistance of the Lessee, will coordinate a meeting with consulting parties to facilitate comments on the document.
 - iii. BOEM will consolidate comments received and provide them to the Lessee within 15 calendar days of receiving comments from consulting parties.
 - iv. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.
3. Final Document:
 - a. The Lessee will provide BOEM with the final document for approval.
 - i. BOEM will have 15 calendar days to complete its technical review.
 - ii. If BOEM does not provide approval, it will submit its comments back to the Lessee, who will have 15 calendar days to address the comments.
 - iii. BOEM, with the assistance of the Lessee, will provide the final document to consulting parties, except the ACHP, within 30 calendar days of approving the final document. With this same submittal of final documents, the Lessee will provide a summary of all the comments received on the documents and BOEM's responses.

VII. SUBMISSION OF DOCUMENTS

- A. All documents will be submitted to the Tribal Nations, SHPOs, ACHP, and consulting parties electronically unless a specific request is made for the submittal to be provided in an alternate format.

VIII. CURATION

- A. Collections from federal lands or the OCS:
 1. Any archaeological materials removed from federal lands or the OCS as a result of the actions required by this MOA will be curated in accordance with 36 CFR Part 79, “Curation of Federally Owned and Administered Archaeological Collections,” ACHP’s “Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites” published in the *Federal Register* (64 FR 27085-27087 [May 18, 1999]), or other provisions agreed to by the consulting parties and following applicable state guidelines. No excavation should be initiated before acceptance and approval of a curation plan.
- B. Collections from state, local government, and private lands:
 1. Archaeological materials from state or local government lands in the APE and the records and documentation associated with these materials will be curated within the state of their origin at a repository preferred by the SHPO, or an approved and certified repository, in accordance with the standards and guidelines required by the appropriate SHPO. Lands, as described here, may include the seafloor in state waters. No excavation should be initiated before acceptance and approval of a curation plan.
 2. Collections from private lands that would remain private property: In cases where archaeological survey and testing are conducted on private land, any recovered collections remain the property of the landowner. In such instances, BOEM and the Lessee, in coordination with the SHPOs, and affected Tribal Nation (s), will encourage landowners to donate the collection(s) to an appropriate public or tribal entity. To the extent a private landowner requests that the materials be removed from the site, the Lessee will seek to have the materials donated to the repository identified under Stipulation VIII.B.1 through a written donation agreement developed in consultation with the consulting parties. BOEM, assisted by the Lessee, will seek to have all materials from each state curated together in the same curation facility within the state of origin. In cases where the property owner wishes to transfer ownership of the collection(s) to a public or tribal entity, BOEM and the Lessee will ensure that recovered artifacts and related documentation are curated in a suitable repository as agreed to by BOEM, SHPOs, and affected Tribal Nation (s), and following applicable state guidelines. To the extent feasible, the materials and records resulting from the actions required by this MOA for private lands will be curated in accordance with 36 CFR Part 79. No excavation should be initiated before acceptance and approval of a curation plan.

IX. PROFESSIONAL QUALIFICATIONS

- A. SOI’s Standards for Archaeology and Historic Preservation. The Lessee will ensure that all work carried out pursuant to this MOA will meet the SOI’s Standards for Archaeology

and Historic Preservation, 48 FR 44716 (September 29, 1983), taking into account the suggested approaches to new construction in the SOI's Standards for Rehabilitation.

- B. SOI's Professional Qualifications Standards. The Lessee will ensure that all work carried out pursuant to this MOA is performed by or under the direction supervision of historic preservation professionals who meet the SOI's Professional Qualifications Standards (48 FR 44738-44739). A "qualified professional" is a person who meets the relevant standards outlined in such SOI's Professional Qualification Standards. BOEM, or its designee, will ensure that consultants retained for services pursuant to the MOA meet these standards.
- C. Investigations of ASLFs. The Lessee will ensure that the additional investigations of ASLFs will be conducted and reports and other materials produced by one or more qualified marine archaeologists and geological specialists who meet the SOI's Professional Qualifications Standards and have experience both in conducting HRG surveys and processing and interpreting the resulting data for archaeological potential, as well as collecting, subsampling, and analyzing cores.
- D. Tribal Consultation Experience. The Lessee will ensure that all work carried out pursuant to this MOA that requires consultation with Tribal Nations is performed by professionals who have demonstrated professional experience consulting with Tribal Nations.

X. DURATION

- A. This MOA will expire at (1) the decommissioning of the Project in the Lease Area, as defined in [LESSEE]'s lease with BOEM (Lease Number OCS-XXXX) or (2) XX years from the date of COP approval, whichever occurs first. Prior to such time, BOEM may consult with the other signatories and invited signatories to reconsider the terms of the MOA and amend it in accordance with the Amendments Stipulation (Stipulation XIV).

XI. POST-REVIEW DISCOVERIES

- A. Implementation of Post-Review Discovery Plans. If properties are discovered that may be historically significant or unanticipated effects on historic properties found, BOEM will implement the post-review discovery plans found in Attachments 6, Terrestrial Unanticipated Discovery Plan, and 7, Unanticipated Discoveries Plan for Submerged Archaeological Resources.
 - 1. The signatories acknowledge and agree that it is possible that additional historic properties may be discovered during implementation of the Project, despite the completion of a good faith effort to identify historic properties throughout the APEs.
- B. All Post-Review Discoveries. In the event of a post-review discovery of a property or unanticipated effects on a historic property prior to or during construction, operation, maintenance, or decommissioning of the Project, the Lessee will implement the following actions, which are consistent with the post-review discovery plan:
 - 1. Immediately halt all ground- or seafloor-disturbing activities within the area of discovery.
 - 2. Notify BOEM in writing via report within 72 hours of the discovery.

3. Keep the location of the discovery confidential and take no action that may adversely affect the discovered property until BOEM, or its designee, has made an evaluation and instructs the Lessee on how to proceed.
4. Conduct any additional investigations as directed by BOEM or its designee to determine if the resource is eligible for listing in the NRHP (30 CFR 585.702(b)). BOEM will direct the Lessee to complete additional investigations, as BOEM deems appropriate, if:
 - a. The site has been impacted by Project activities; or
 - b. Effects on the site from Project activities cannot be avoided.
5. If investigations indicate that the resource is eligible for the NRHP, BOEM, with the assistance of the Lessee, will work with the other relevant signatories, invited signatories, and consulting parties to this MOA who have a demonstrated interest in the affected historic property and on the further avoidance, minimization, or mitigation of adverse effects.
6. If there is any evidence that the discovery is from an indigenous society or appears to be a preserved burial site, BOEM will contact the Tribal Nations as identified in the notification lists included in the post-review discovery plans within 72 hours of the discovery with details of what is known about the discovery and consult with the Tribal Nations pursuant to the post-review discovery plan.
7. If BOEM incurs costs in addressing the discovery, under Section 110(g) of the NHPA, BOEM may charge the Lessee reasonable costs for carrying out historic preservation responsibilities, pursuant to its delegated authority under the OCS Lands Act (30 CFR 585.702(c)-(d)).

XII. MONITORING AND REPORTING

At the beginning of each calendar year by [DATE], following the execution of this MOA until it expires or is terminated, the Lessee will prepare and, following BOEM's review and agreement to share this summary report, provide all signatories, invited signatories, and consulting parties to this MOA a summary report detailing work undertaken pursuant to the MOA. Such report will include a description of how the stipulations relating to avoidance and minimization measures (Stipulations I and II) were implemented, any scheduling changes proposed, any problems encountered, and any disputes and objections received in BOEM's efforts to carry out the terms of this MOA. The Lessee can satisfy its reporting requirement under this stipulation by providing the relevant portions of the annual compliance certification required under 30 CFR 285.633.

XIII. DISPUTE RESOLUTION

- A. If any signatory, invited signatory, or consulting party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, they will notify BOEM in writing of their objection. BOEM will consult with such party to resolve the objection. If BOEM determines that such objection cannot be resolved, BOEM will take the following actions:
 1. Forward all documentation relevant to the dispute, including BOEM's proposed resolution, to the ACHP. The ACHP will provide BOEM with its advice on the

resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, BOEM will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, invited signatories, and/or consulting parties, and provide them with a copy of this written response. BOEM will make a final decision and proceed accordingly.

2. If the ACHP does not provide its advice regarding the dispute within the 30 calendar-day time period, BOEM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, BOEM will prepare a written response that takes into account any timely comments regarding the dispute from the signatories, invited signatories, or consulting parties to the MOA, and provide them and the ACHP with a copy of such written response.
- B. BOEM's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.
 - C. If, at any time during the implementation of the measures stipulated in this MOA, a member of the public object in writing to the signatories regarding the manner in which the measures stipulated in this MOA are being implemented, that signatory will notify BOEM. BOEM will review the objection and may notify the other signatories as appropriate and respond to the objector.

XIV. AMENDMENTS

- A. This MOA may be amended when such an amendment is agreed to in writing by all signatories and invited signatories. The amendment will be effective on the date a copy signed by all the signatories and invited signatories is filed with the ACHP.
- B. Revisions to any attachment may be proposed by any signatory or invited signatory by submitting a draft of the proposed revisions to all signatories and invited signatories with a notification to the consulting parties. The signatories and invited signatories will consult for no more than 30 calendar days (or another time period agreed upon by all signatories and invited signatories) to consider the proposed revisions to the attachment. If the signatories and invited signatories unanimously agree to revise the attachment, BOEM will provide a copy of the revised attachment to the other signatories, invited signatories, and consulting parties. Revisions to any attachment to this MOA will not require an amendment to the MOA.

XV. TERMINATION

If any signatory or invited signatory to this MOA determines that its terms will not or cannot be carried out, that party will immediately consult with the other signatories, invited signatories, and consulting parties to attempt to develop an amendment per Stipulation XIV. If within 30 calendar days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory or invited signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, BOEM will either (a) execute an MOA pursuant to 36 CFR 800.6 or (b) request, take into account, and

respond to the comments of the ACHP under 36 CFR 800.7. BOEM will notify the signatories and invited signatories as to the course of action it will pursue.

XVI. COORDINATION WITH OTHER FEDERAL AGENCIES

- A. In the event that another federal agency not initially a party to or subject to this MOA receives an application for funding/license/permit for the undertaking as described in this MOA, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this MOA and notifying the signatories and invited signatories that it intends to do so. Such federal agency may become a signatory, invited signatory, or a concurring party (collectively referred to as signing party) to the MOA as a means of complying with its responsibilities under Section 106 and based on its level of involvement in the undertaking. To become a signing party to the MOA, the agency official will provide written notice to the signatories and invited signatories that the agency agrees to the terms of the MOA, specifying the extent of the agency's intent to participate in the MOA. The participation of the agency is subject to approval by the signatories and invited signatories who will respond to the written notice within 30 calendar days or the approval will be considered implicit. Any necessary amendments to the MOA as a result will be considered in accordance with Stipulation XIV, Amendments.
- B. If the signatories and invited signatories approve the federal agency's request to be a signing party to this MOA, an amendment under Stipulation XIV will not be necessary if the federal agency's participation does not change the undertaking in a manner that would require any modifications to the stipulations set forth in this MOA. BOEM will document these conditions and involvement of the federal agency in a written notification to the signatories, invited signatories, and consulting parties, and include a copy of the federal agency's executed signature page, which will codify the addition of the federal agency as a signing party in lieu of an amendment.

XVII. ANTI-DEFICIENCY ACT

Pursuant to 31 U.S.C. 1341(a)(1), nothing in this MOA will be construed as binding the United States to expend in any one fiscal year any sum in excess of appropriations made by Congress for this purpose, or to involve the United States in any contract or obligation for the further expenditure of money in excess of such appropriations.

Execution of this MOA by BOEM, the [STATE] SHPO, and the ACHP, and implementation of its terms evidence that BOEM has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

Memorandum Of Agreement
Among the Bureau of Ocean Energy Management,
The [State] State Historic Preservation Officer,
and The Advisory Council on Historic Preservation
Regarding the [Project] Offshore Wind Project

Signatory:

Bureau of Ocean Energy Management (BOEM)

[Name]
Director
Bureau of Ocean Energy Management

Date: _____

Memorandum Of Agreement
Among the Bureau of Ocean Energy Management,
The [State] State Historic Preservation Officer,
and The Advisory Council on Historic Preservation
Regarding the [Project] Offshore Wind Project

Signatory:

[STATE] State Historic Preservation Officer (SHPO)

Date: _____

[Name]
State Historic Preservation Officer
[State Department]

Memorandum Of Agreement
Among the Bureau of Ocean Energy Management,
The [State] State Historic Preservation Officer,
and The Advisory Council on Historic Preservation
Regarding the [Project] Offshore Wind Project

Signatory:

Advisory Council on Historic Preservation (ACHP)

Date: _____

[Name]
Executive Director
Advisory Council on Historic Preservation

Memorandum Of Agreement
Among the Bureau of Ocean Energy Management,
The [State] State Historic Preservation Officer,
and The Advisory Council on Historic Preservation
Regarding the [Project] Offshore Wind Project

Invited Signatory:

[PROJECT], LLC

Date: _____

[Name]
[Title]
[PROJECT], LLC

Memorandum Of Agreement
Among the Bureau of Ocean Energy Management,
The [State] State Historic Preservation Officer,
and The Advisory Council on Historic Preservation
Regarding the [Project] Offshore Wind Project

Concurring Party:

[Organization/Tribal Nation]

Date: _____

[Name]

[Title]

[Organization/Tribal Nation]

Memorandum Of Agreement
Among the Bureau of Ocean Energy Management,
The [State] State Historic Preservation Officer,
and The Advisory Council on Historic Preservation
Regarding the [Project] Offshore Wind Project

Concurring Party:

[Organization/Tribal Nation]

Date: _____

[Name]

[Title]

[Organization/Tribal Nation]

Memorandum Of Agreement
Among the Bureau of Ocean Energy Management,
The [State] State Historic Preservation Officer,
and The Advisory Council on Historic Preservation
Regarding the [Project] Offshore Wind Project

LIST OF ATTACHMENTS TO THE MOA

Attachment 1 APE Maps

Attachment 2 Lists of Invited and Participating Consulting Parties

Attachment 3 Treatment Plan for Ancient Submerged Landform Features

Attachment 4 Treatment Plan for Terrestrial Archaeological Resources

Attachment 5 Treatment Plan for Aboveground Historic Properties that Will Be Adversely
Affected

Attachment 6 Terrestrial Unanticipated Discovery Plan

Attachment 7 Unanticipated Discoveries Plan for Submerged Archaeological Resources

**ATTACHMENT 1
APE MAPS**

ATTACHMENT 2
LISTS OF INVITED AND PARTICIPATING CONSULTING PARTIES

Table 1. Parties Invited to Participate in NHPA Section 106 Consultation

Participants in the Section 106 Process	Participating Consulting Parties
SHPOs and State Agencies	
Federal Agencies	
Federally Recognized Tribal Nations	
Non-Federally Recognized Tribes	
Local Government	
Nongovernmental Organizations or Groups	

Table 2. Consulting Parties Participating in Section 106 Consultation

Participants in the Section 106 Process	Participating Consulting Parties
SHPOs and State Agencies	
Federal Agencies	
Federally Recognized Tribal Nations	
Non-Federally Recognized Tribes	
Local Government	
Nongovernmental Organizations or Groups	

Table 3. Parties Invited to Consult under Section 106 and that Did Not Participate in Consultation

Participants Invited	Parties Who Did Not Participate
SHPOs and State Agencies	
Federal Agencies	
Federally Recognized Tribal Nations	
Non-Federally Recognized Tribes	
Local Government	
Nongovernmental Organizations or Groups	

**ATTACHMENT 3
TREATMENT PLAN FOR ANCIENT SUBMERGED LANDFORM
FEATURES**

**ATTACHMENT 4
TREATMENT PLAN FOR TERRESTRIAL ARCHAEOLOGICAL
RESOURCES**

**ATTACHMENT 5
TREATMENT PLAN FOR ABOVEGROUND HISTORIC PROPERTIES
THAT WILL BE ADVERSELY AFFECTED**

ATTACHMENT 6
TERRESTRIAL UNANTICIPATED DISCOVERY PLAN

**ATTACHMENT 7
UNANTICIPATED DISCOVERIES PLAN FOR SUBMERGED
ARCHAEOLOGICAL RESOURCES**

APPENDIX VI
PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of New York and New Jersey; and
The Advisory Council on Historic Preservation
Regarding
Review of Six Projects Offshore New York and New Jersey
Under Section 106 of the National Historic Preservation Act

HISTORIC PROPERTY TREATMENT PLAN OUTLINE

This appendix provides an outline for the contents of Historic Property Treatment Plans (HPTPs) that may be developed during BOEM's Section 106 consultations for the New York Bight Construction and Operations Plans (COPs).

HPTP CONTENTS:

I. EXECUTIVE SUMMARY

II. BACKGROUND INFORMATION

- Project Overview
- Section 106 and 110(f) of the National Historic Preservation Act (NHPA) [Section 110(f) of the NHPA reference is only required if the Section 106 consultation includes a National Historic Landmark(s)]
 - Municipal Regulations, if applicable
 - Preservation Easements and Restrictions, if applicable
 - Participating NHPA Section 106 Consulting Parties
 - Resolution of Adverse Effects Measures in the Record of Decision (ROD) or Memorandum of Agreement (MOA) (include details specific to the historic property or properties addressed in the treatment plan)

III. EXISTING CONDITIONS AND HISTORIC SIGNIFICANCE OF THE HISTORIC PROPERTY

- Historic Context and Significance
- National Register of Historic Places (NRHP) Criteria and Aspects of Integrity Affected by the Undertaking
- Physical Description and Existing Conditions

IV. MITIGATION MEASURES

- Name of the Specific Historic Property [repeat this information if more than one historic property is included in the Treatment Plan]

- Treatment
- Purpose
- Intended Outcomes
- Scope of Work
- Methodology
- Secretary of the Interior’s Standards for the Treatment of Historic Properties and other applicable standards
- Documentation/Deliverables
- Schedule
- Annual Summary Report (timing, contents)
- Funds and Accounting

V. IMPLEMENTATION

- Timeline
- Reporting
- Organizational Responsibilities
 - Bureau of Ocean Energy Management (BOEM)
 - Lessee
 - State Historic Preservation Officer (SHPO[s])
 - Federally Recognized Tribes/Tribal Nations
 - Advisory Council on Historic Preservation
 - Others may be listed depending on the type of mitigation measure

VI. FINALIZATION

- Notification to BOEM and applicable consulting parties that the Treatment Plan has been implemented and it is complete.

VII. REFERENCES

VIII. APPENDIX A – MITIGATION MEASURE SPECIFICATIONS, IF APPLICABLE