

PROGRAMMATIC AGREEMENT
AMONG
THE U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF OCEAN ENERGY MANAGEMENT,
THE STATE HISTORIC PRESERVATION OFFICER OF OREGON,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
REGARDING REVIEW OF OUTER CONTINENTAL SHELF
RENEWABLE ENERGY ACTIVITIES OFFSHORE OREGON
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 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 Bureau of Ocean Energy Management (BOEM), and promulgated final regulations implementing this authority at 30 CFR § Part 585; and,

WHEREAS, under BOEM's renewable energy regulations, BOEM may issue commercial leases, limited leases, research leases, ROW grants, or rights of use and easement (RUE) grants on the OCS (*see* Appendix A); and,

WHEREAS, BOEM may issue multiple renewable energy leases and grants and approve multiple Plans associated with each lease or grant issued on the OCS; 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 occurs in distinct phases (*see* 30 CFR § 585.238); and,

WHEREAS, commercial leases, limited leases, ROW grants, and RUE grants by themselves do not authorize the lessee or grantee to perform any activities on the lease or construct any facilities on the lease; rather, the lease or grant authorizes the lessee or grantee the right to submit plans for BOEM's consideration, which must be approved by BOEM before the lessee or grantee implements its plans (*see* 30 CFR § 585.600 and § 585.601); and,

WHEREAS, under BOEM's renewable energy regulations, BOEM is required to review and may approve, approve with modifications, or disapprove Site Assessment Plans (SAPs), Construction and Operations Plans (COPs), General Activities Plans (GAPs), or other plans, collectively "Plans" (*see* 30 CFR § 585.613(d), § 585.628(e), and § 585.648(d)); and,

WHEREAS, the issuance of a commercial lease, limited lease, ROW grant, RUE grant, or research lease, or approval of a Plan represent undertakings subject to Section 106 of the National Historic Preservation Act (NHPA) as amended (54 U.S.C. Part 306108), and its implementing regulations (36 CFR Part 800) with the potential to affect historic properties insofar as they may lead to the lessee conducting geophysical survey and geotechnical testing and exploration; constructing and operating site assessment facilities and renewable energy

structures; and placing, operating, and removing transmission cables, pipelines, and/or associated facilities that involve transportation or transmission of electricity or other energy products from renewable energy projects; and,

WHEREAS, BOEM determined that geotechnical testing and construction and operations of renewable energy facilities have the potential to affect historic properties; and,

WHEREAS, BOEM determined that the implementation of offshore wind energy development on the OCS offshore Oregon requires multiple undertakings that are associated with discreet steps in the leasing and plan review process, and the effects on historic properties are broad in scope, pursuant to 36 CFR § 800.14(b)(2); and,

WHEREAS, BOEM determined that the identification of historic properties and assessment of effects may be conducted through a phased approach, pursuant to 36 CFR § 800.14(b), such that completion of the identification of historic properties, determinations of effect on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out in phases, as set forth in this Agreement; and,

WHEREAS, the identification of historic properties that may be affected by the issuance of a lease or grant and the assessment of effects will occur subsequent to the issuance of that lease or grant; and

WHEREAS, following the requirements for the identification and evaluation of historic properties at 36 CFR § 800.4(c)(1), BOEM recognizes that federally recognized Tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them; and,

WHEREAS, BOEM determined that the identification and evaluation of historic properties for these undertakings will be conducted through a phased approach, pursuant to 36 CFR § 800.4(b)(2), where the final identification of historic properties may occur after the issuance of a lease or grant and before the approval of a Plan because lessees conduct site characterization surveys in preparation for Plan submittal (*see* 30 CFR § 585); and,

WHEREAS, BOEM's phased identification of historic properties could result in the discovery of previously unknown historic properties that could significantly impact project planning, siting, implementation, and timelines; and,

WHEREAS, in any instances of unexpected discoveries of cultural resources potentially eligible to the National Register of Historic Places (NRHP) by a lessee or their agents conducting activities approved by BOEM, the lessee or grantee are required to adhere to 30 CFR § 585.702 and follow the State of Oregon's Inadvertent Discovery Plan (Appendix B); and,

WHEREAS, BOEM invited the Oregon State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) to consult on this Agreement, pursuant to 36 CFR § 800.14; and,

WHEREAS, BOEM invited the following federally recognized Tribes to consult: the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians, the

Confederated Tribes of the Umatilla Indian Reservation, the Coquille Indian Tribe, Elk Valley Rancheria, California, and Tolowa Dee-Ni' Nation; and,

WHEREAS, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Umatilla Indian Reservation, and the Coquille Indian Tribe have chosen to consult with BOEM and participate in development of this Agreement; and,

WHEREAS, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Coquille Indian Tribe, the Confederated Tribes of the Grand Ronde Community of Oregon, and the Confederated Tribes of Siletz Indians attach religious and cultural significance to historic properties that may be affected by an undertaking covered by this Agreement; and,

WHEREAS, BOEM, pursuant to 36 CFR § 800.6(c)(2)(ii), has invited the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Umatilla Indian Reservation, and the Coquille Indian Tribe to sign this Agreement as Invited Signatories and collectively referred to as Invited Signatory Tribes; and,

WHEREAS, one or more of the tribes invited to sign this agreement have adopted Tribal laws governing consultations covered by this Agreement and the parties hereto intend that such Tribal laws shall guide their efforts under this Agreement and otherwise;

WHEREAS, for undertakings covered by this Agreement BOEM will follow the policy principles outlined in Advisory Council on Historic Preservation's (ACHP) *Policy Statement on Indigenous Knowledge and Historic Preservation*, dated March 21, 2024 and continue to consult with any Tribe that may attach religious or cultural significance to a potentially affected historic property regardless of whether a Tribe is or is not an Invited Signatory or concurring party to this Agreement, due to their specific Tribal expertise in identifying properties of religious and cultural significance 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, this Agreement does not alter the existing Government-to-Government relationship between the Federal government and any federally recognized Tribe. Tribes may request consultation with BOEM at any time. Additionally, nothing in this Programmatic Agreement (Agreement) is intended to repeal, supersede, or modify any right, privilege, or immunity granted, reserved, or established pursuant to treaty, statute, Executive Order or any other lawful authority pertaining to any Tribe, nor is it intended to confer any additional right, privilege, or immunity not otherwise granted, reserved, or established pursuant to treaty, statute, Executive Order or other lawful authority pertaining to any Tribe; and,

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), BOEM has notified the Advisory Council on Historic Preservation (ACHP) of its intent to develop an Agreement, and the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and,

WHEREAS, the Section 106 consultations described in this Agreement will be used to 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, all consulting parties who enter into this Agreement will do so in good faith with the sincere intent to implement the Agreement with honesty, integrity, and transparency. All consulting parties will support the use of cultural resources management principles that are ethically, scientifically, and professionally sound and culturally appropriate, and which meet the preservation and management ethic underlying the National Historic Preservation Act (NHPA). All consulting parties recognize and respect the unique and specialized perspectives and knowledge of historic properties that each party contributes. Consulting parties will proactively collaborate and consult to ensure effective and holistic management of cultural resources that fall under the purview of this Agreement. All consulting parties will assume good intent on behalf of the other parties to this Agreement and expect the same civility in return; and,

WHEREAS, BOEM involves the public and identifies other consulting parties through notifications, requests for comments, existing renewable energy task forces, contact with the Oregon State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officers (THPO), and National Environmental Policy Act (NEPA) scoping meetings and communications for these proposed actions; and,

WHEREAS, BOEM provided the public the opportunity to review and comment on the Agreement by posting a draft version of the Agreement on BOEM's website for thirty (30) calendar days; and

NOW, THEREFORE, BOEM, the Oregon SHPO, the ACHP, and the Invited Signatory Tribes (collectively referred to as Signatories) agree that all applicable BOEM OCS undertakings related to wind energy activities will be implemented in accordance with the following stipulations in order to take into account the effect of the undertakings on historic properties.

STIPULATIONS

BOEM will ensure that the following measures are carried out:

- I. **Scope and Applicability:** The intent of this programmatic agreement (Agreement) is to detail the BOEM's Section 106 process under the NHPA for undertakings associated with wind energy activities on the Outer OCS offshore Oregon. These activities may include issuance of commercial, limited, and/or research leases; ROW, or RUE grants; and approval of GAPS, SAPs, COPs, or other plans. This Agreement describes a procedure for the phased identification of historic properties (as defined at 36 CFR § 800.16(I)(1)), which includes properties of traditional religious and cultural importance to an Indian Tribe (collectively referred to as Tribes) that meet the National Register criteria, associated with wind energy activities, and will help BOEM consider effects to historic properties pursuant to the NHPA. All undertakings to which this Agreement is applicable, as identified under Stipulations I and II, below, will be reviewed in accordance with the Stipulations and Appendices of this Agreement.
- II. **Lease or Grant Issuance:** For a commercial lease, limited lease, research lease, ROW grant, or RUE grant, except activities that have minimal or no potential to affect a

historic property as described in Stipulation III of this Agreement, and subject to the process outlined in duly adopted Tribal consultation laws, the following steps will be implemented:

- A. *APE Identification*: BOEM will establish a draft APE, through consultation pursuant to 36 CFR § 800.4(a), to include the depth and breadth of the seabed that could potentially be impacted by any direct or indirect effects of activities including, but not limited to geotechnical testing. Geotechnical testing, or sampling, involves seafloor disturbing activities, and therefore has the potential to cause effects to historic properties. Geotechnical investigation may include the use of equipment such as gravity cores, piston cores, vibracores, deep borings, and Cone Penetration Tests (CPT), among others. Some of these methods require the use of anchored vessels or multi-point anchored barges.
- B. *Identification of Historic Properties*: BOEM will ensure a reasonable and good faith effort to carry out appropriate identification of historic properties within the APE is conducted by the lessee, consistent with BOEM's Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585 (May 2020; Guidelines; see 36 CFR § 800.4(b)(1)). Traditional Cultural Properties (TCP) will be identified by appropriate Tribes through consultation, and if required by the Tribe, all information will be held confidential, other than information the Tribe deems releasable. If BOEM wishes to alter any archaeological survey-related information included in the Guidelines, BOEM will first consult with the Signatories. BOEM will also ensure that submerged archaeological site identification surveys in the APE are carried out using the best available geophysical survey technologies. Properties that may be of religious or cultural significance to Tribes within the APE will be identified through consultation, pursuant to 36 CFR § 800.4(a)(4).
- C. *Identification of Consulting Parties and Conducting Consultations*: Prior to lease or grant issuance under this part, BOEM will identify consulting parties, pursuant to 36 CFR § 800.2(c) and 36 CFR § 800.3(c). BOEM will consult on existing, non-proprietary, information regarding the proposed undertaking and the geographic extent of the draft APE, as defined in Stipulation I.A. BOEM also will solicit additional information on potential historic properties within the draft APE from consulting parties and the public, pursuant to 36 CFR § 800.3(f).
- D. *National Register of Historic Places (NRHP) Eligibility Determinations*: After consultation with the Tribes, BOEM will treat all identified cultural resources as eligible for inclusion in the National Register unless BOEM determines through application of NRHP criteria, and the Oregon SHPO concurs, that a property is ineligible, pursuant to 36 CFR § 800.4(c).
- E. *Determination of Effects*: BOEM will prioritize avoidance and minimization of adverse effects and, where practicable, BOEM will require lessees and grantees

to avoid effects to historic properties through lease stipulations, resulting in BOEM making a finding of *no historic properties affected*, consistent with 36 CFR § 800.4(d)(1). If it is determined that there will be effects to historic properties, BOEM will follow 36 CFR § 800.5. Any adverse effects will be resolved by following 36 CFR § 800.6 and 36 CFR § 800.10 for National Historic Landmarks. All finding documents will follow the review process outlined in Stipulation X.

III. Plan Approval: Prior to approving any Plan, and informed by any duly adopted Tribal consultation laws, BOEM will conduct the following review process for activities associated with the undertakings and their potential effects, except as described under Stipulation IV below:

- A. *Identification of Consulting Parties and Conducting Consultations:* BOEM will identify consulting parties, pursuant to 36 CFR § 800.2. BOEM will consult on existing, non-proprietary information regarding the proposed undertaking (including the results of historic property identification surveys) and the geographic extent of the draft APE, as defined in Stipulation II.B. BOEM also will solicit from the consulting parties and the public additional information on potential historic properties within the draft APE.
- B. *Delineation of Area of Potential Effects:* BOEM, in consultation with the Oregon SHPO and Tribes, pursuant to 36 CFR § 800.4(a), will delineate the APE as the area potentially impacted by the undertaking, including, but not limited to, the depth and breadth of the seabed that could potentially be impacted by seafloor/bottom-disturbing activities associated with the undertaking; if applicable, the airspace surrounding proposed offshore wind turbines; the offshore and onshore viewshed from which renewable energy structures would be visible; and, if applicable, the depth, breadth, and viewshed of onshore locations from where transmission cables or pipelines come ashore to the point where they connect to existing power grid structures.
- C. *Identification of Historic Properties:* The following constitute a reasonable and good faith effort to carry out appropriate identification of historic properties (see 36 CFR § 800.4(b)(1)):
 - 1. For the identification of historic properties within the seabed portion of the APE located on the OCS, BOEM will use historic property identification survey results generated in accordance with BOEM's *Guidelines* and in consultation with SHPO and Tribes that request to consult on these surveys.
 - 2. For the identification of historic properties, pursuant to 36 CFR 800.4, within the seabed portion of the APE located in state submerged lands or within the onshore terrestrial portion of the APE, BOEM's historic property identification will be conducted in accordance with the state's (or Tribal, if on Tribal lands) most current guidelines. BOEM will request the developer to coordinate with the Oregon SHPO, or THPO/Tribe if on

or affecting historic properties on Tribal lands, prior to the initiation of any such identification efforts.

3. For the identification of historic properties, pursuant to 36 CFR § 800.4, within the viewshed portion of the APE, BOEM's historic property identification will be conducted in accordance with the state's (or Tribal, if on Tribal lands) most current guidelines. BOEM will request the developer to coordinate with the Oregon SHPO and Tribes who have expressed an interest to consult on the visual portion of the APE prior to the initiation of any such identification efforts.
4. For the identification of properties that may be of religious and cultural significance to Tribes within the APE, BOEM's historic property identification will be conducted in close consultation with affected Tribes. The identification of properties that may be of religious and cultural significance to Tribes shall take place during development of the APE. When applicable, the BOEM will follow the principles within the ACHP's Policy Statement on Indigenous Knowledge and Historic Preservation to aid identification efforts.
5. BOEM will treat all identified cultural resources as eligible for inclusion in the National Register unless BOEM determines through application of NRHP criteria, and the SHPO, or THPO/Tribe if on or affecting historic properties on Tribal lands, agrees, that a property is ineligible, pursuant to 36 CFR § 800.4(c). BOEM will follow Oregon state law, pursuant to ORS 358.905(1)(b)(B), which gives legal authority to Tribes to determine site significance regardless of where the site is located.

D. Assessment of Effects and Resolution of Adverse Effects:

1. BOEM will prioritize avoidance and minimization of adverse effects, and where practicable, as a condition of any Plan approval, BOEM will require the lessee to relocate elements of the proposed project that may affect potential historic properties that were agreed to be treated as eligible, resulting in BOEM making a finding of *no historic properties affected*, consistent with 36 CFR § 800.4(d)(1).
2. If BOEM, through consultation with SHPO, or THPO/Tribe if on or affecting historic properties on Tribal lands, determines all of the properties affected are ineligible for inclusion in the NRHP, BOEM will make a finding of *no historic properties affected*, consistent with 36 CFR § 800.4(d)(1). BOEM will follow Oregon state law, pursuant to ORS 358.905(1)(b)(B), which gives legal authority to Tribes to determine site significance regardless of where the site is located. All finding documents will follow the review process outlined in Stipulation X.
3. If BOEM determines any of the properties affected are eligible for inclusion in the National Register, and the SHPO, or THPO/Tribe if on

or affecting historic properties on Tribal lands, concurs, and if it is determined that there will be effects to historic properties, BOEM will follow 36 CFR § 800.5. Any adverse effects will be resolved by following 36 CFR § 800.6 and 36 CFR § 800.10 for National Historic Landmarks.

4. BOEM will resolve adverse effects for each undertaking by documenting avoidance, minimization, and mitigation measures in a Memorandum of Agreement (MOA) or using a Record of Decision under 36 CFR § 800.8(c)(4).

IV. No Exempted Activities: BOEM will require separate Section 106 review, pursuant to 36 CFR § 800.3-7, for any additional activities/undertakings, not mentioned in this Agreement that require BOEM's approval. The review process will follow the outline described below in Stipulation X.

V. Archaeological Resources and Inadvertent Discovery: BOEM will require that lessees include an Inadvertent Discovery Plan, consistent with the current template available through Oregon's Legislative Commission on Indian Services (LCIS) (Appendix B), in all survey plans that involve geotechnical survey activities. BOEM shall require the lessee to provide notification to the SHPO and appropriate Tribes concurrently with all notifications to BOEM in the event of inadvertent discovery of archaeological or cultural resources. Notification by lessees to BOEM, SHPO, and appropriate Tribes should be immediate in the event of discovery of human or funerary remains.

VI. Geotechnical Survey Coordination with Tribes and SHPO: If Tribes or SHPO indicate they have staff that wish to be onboard vessels as observers during bottom disturbing activities, lessees must make all reasonable efforts to accommodate these requests and coordinate activity schedules to allow their presence. BOEM will encourage lessees to compensate Tribes for the utilization of such observers. Upon request by Tribes, geotechnical cores collected shoreward of 130 m water depth or from areas that may have been above sea level during the Last Glacial Maximum (approximately 20,000 bp) shall be brought to shore and opened in the presence of a qualified marine archaeologist with special expertise outlined in Stipulation XII and a Tribal observer.

VII. Tribal Consultation Standards

- A. BOEM will continue to consult with Tribes throughout the implementation of this PA in a government-to-government manner consistent with Executive Order 13175, 301DM7 (Department of the Interior's Manual, "Departmental Responsibilities for Consideration and Inclusion of Indigenous Knowledge in Departmental Actions and Scientific Research"), Presidential memoranda, the Department of the Interior Policy on Consultation with Indian Tribes, and BOEM's Tribal Consultation Guidance.
- B. BOEM Acknowledgement of the Special Expertise & Indigenous Knowledge 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 identifying, assessing the eligibility of, evaluating project effects on, and

developing mitigation for historic properties that may possess religious and cultural significance to Tribal Nations, pursuant to 36 CFR 800.4(c)(1).

To further apply this expertise, BOEM with the assistance of the Lessee, will incorporate Indigenous knowledge and Indigenous Traditional Ecological Knowledge (ITEK) that is conveyed by traditional knowledge keepers of the applicable Tribal Nation into the documents and review processes when such knowledge is received from Tribal Nations in consultation and during implementation of the PA, consistent with the Office of Science and Technology Policy and Council on Environmental Quality memorandums (Executive Branch policy) on ITEK and Federal decision making (November 15, 2021) and “Guidance for Federal Departments and Agencies on Indigenous Knowledge” (November 30, 2022), “301 DM 7 Departmental Responsibilities for Consideration and Inclusion of Indigenous Knowledge in Department Actions and Scientific Research” (December 5, 2023); and ACHP’s Policy Statement on Indigenous Knowledge and Historic Preservation (March 21, 2024). Tribal Nations will also be afforded the opportunity to review the application of their knowledge in documents produced under the MOAs developed pursuant to Stipulation II.D.4.

- C. BOEM will coordinate with the lessee to work with Tribes to identify information on known or potential sites of religious and cultural significance to Tribes or other historic properties with significance to Tribes within the preliminary APE for their undertaking. Lessees will consider effects on these sites or historic properties from all proposed or potential components. BOEM will require Lessees to make reasonable efforts to demonstrate two-way dialogue (engagement) with federally recognized Oregon Tribes that could be affected by future development associated with a lease on all elements of the Lessees’ project development process, including, but not limited to, a workforce plan, survey plan and SAPs, and a COP. BOEM will require Lessees to develop an engagement framework with Tribes, to retain a qualified Tribal liaison with knowledge of local Tribal law, indigenous cultures, Tribal ecological science, and other traditional knowledge. More specifically, as part of any survey plan or SAP, BOEM will require Lessees to work with Tribes to develop a protocol for communication directly with Tribes in the event of an unanticipated discovery of a potential Tribal resource as well as a post-discovery process for evaluation of a discovery.
- D. Coordination with Tribes regarding the identification of sites of religious and cultural significance to Tribes should occur early in the undertaking’s planning and design process and may occur prior to historic property investigations or surveys. Lessees should notify Tribes that this early information gathering is not a part of BOEM’s government-to-government consultation.
- E. As part of this early information gathering, Lessees are encouraged to engage with Tribes on other topics of interest to the Tribes that relate to or address impacts that wind-related development will have on the Tribes, which may include the potential to strengthen energy infrastructure on tribal lands and development of Tribal economic enterprise related to offshore wind. Engagement with Tribes should be coordinated to the maximum extent practicable with other Lessees in the region to reduce the time and logistical burden on Tribes. To add capacity for Oregon Tribes to participate in

these processes, BOEM will strongly encourage the Lessee to compensate members of Tribes for their time participating in engagement activities, events, and archaeological resource monitoring activities. Development of any engagement plan should be conducted in coordination with Tribes.

F. Additional specific stipulations related to Tribal engagement include:

1. BOEM will: 1) Provide to Tribes who request it, access to the Lessee's survey plans, unless BOEM determines, upon the Lessee's request for a determination, that any portion of the survey plan is exempt from disclosure under FOIA (5 USC § 552) and/or the regulations contained in 43 CFR part 2 and at 30 CFR § 585.114. In that case, lessee will provide interested Tribes a redacted copy of the survey plan.
2. Tribes who receive survey plan drafts will have 30 days from receipt of a survey plan to provide comments to the lessee, and the Lessee will make every effort to resolve all Tribal comments on the survey plan. The Lessee will list any unresolved comments from the Tribes in required progress reports.
3. The Native American Tribal Communication Plan will contain a data and information sharing plan that addresses survey-related information valuable to Tribes, as identified by Tribes.

G. Based on the information collected by the lessee, BOEM will consult with Tribes on the identification methods and results and the assessment of effects on historic properties, including sites of religious and cultural significance to Tribes.

H. BOEM, through consultation with Tribes, will make the final eligibility determinations and findings of effect. If BOEM and Tribes do not agree on eligibility determinations, BOEM will follow the process outlined in Stipulation #.

I. BOEM will consult with Tribes on avoidance, minimization, and mitigation measures to resolve adverse effects.

VIII. **Public Participation:** The Signatories agree that public participation will follow these guidelines:

A. *Public Participation:* 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, pursuant to 36 CFR § 800.2(d). Public opportunities may include comment periods during National Environmental Policy Act (NEPA) reviews, public meetings both virtual and in-person, and through subsequent Section 106 consulting parties review of Plans.

B. *Public Information:* BOEM will keep the public informed and will produce reports on historic properties and on the Section 106 process that may be made available to the public at BOEM's Pacific Regional office, on the BOEM

website, and through other reasonable means insofar as the information shared conforms to the confidentiality clause of this Agreement.

IX. Confidentiality: Because BOEM and the Signatories agree that it is important to withhold from disclosure sensitive information, such as that 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. Request that each Signatory inform the other Signatories if, by law, regulation, or policy, it is unable to withhold sensitive data from public release.
- B. Arrange for the Signatories to consult with Tribes on their data sovereignty for how they wish to protect such information collected or generated under this Agreement.
- C. Follow, as appropriate, 36 CFR §800.11(c) for authorization to withhold information pursuant to NHPA Section 304, and otherwise withhold sensitive information 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.
- D. Request that the Signatories treat all documents generated during consultation as internal and pre-decisional, to the extent allowed by applicable law, until BOEM releases those materials publicly.

X. Review Process: In coordinating reviews, BOEM will follow this process:

- A. Standard Review: The Signatories will have a standard review period of thirty (30) calendar days for commenting on all documents that are developed under the terms of this Agreement, from the date they are received by the Signatory. This includes technical reports of historic property identification and eligibility determinations, as well as agency findings. The Standard review process shall not substitute for government-government consultation with affected Tribes, under Tribal consultation laws and otherwise.
- B. If a Signatory fails to provide comments or respond within the standard 30-day review requested by BOEM, then BOEM may proceed as though it received no objection. BOEM will consider all comments received within the review period.
- C. If a consulting party, identified through 36 CFR § 800.3, disagrees with a document developed under the terms of this Agreement, BOEM will follow 36 CFR § 800.4(d)(1) for a finding of *no historic properties affected* and consult with the objecting party or forward the finding to the ACHP (or Keeper) with a request to review. For a disagreement to a finding of *no adverse effect*, BOEM will follow 36 CFR § 800.5(c)(2). If a SHPO disagrees with BOEM's determination regarding whether a potentially affected property is eligible for inclusion in the NRHP, or if the ACHP or the National Park Service (NPS) (the

Secretary has delegated this authority to the NPS) so request, BOEM, 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 NPS.

- D. All Signatories will send correspondence and materials for review via electronic means, or an alternate method specified by a Signatory for a particular review. If BOEM transmits the review materials by the alternate method, the review period will begin on the date the materials were received by the Signatory, as confirmed by delivery receipt. All submissions to the Oregon SHPO will follow the GoDigital process, or any subsequent process developed during the life of this Agreement.
- E. Each Signatory will designate a point of contact for carrying out this Agreement and provide the contact's information to the other Signatories, updating it as necessary while this Agreement is in force. BOEM shall annually seek information from other consulting parties on updating a point of contact, and this information alone will not necessitate an amendment to this Agreement.

XI. Expertise and Qualifications

- A. Secretary of the Interior's Standards for Archaeology and Historic Preservation. The Lessee must ensure that all work carried out pursuant to this PA meets the SOI's Standards for Archaeology and Historic Preservation, 48 Fed. Reg. 44,716 (September 29, 1983).
- B. SOI Professional Qualifications Standards. The Lessee must ensure that all work carried out pursuant to this PA is performed by or under the direct supervision of historic preservation professionals who meet the SOI's Professional Qualifications Standards (48 Fed. Reg. 44,738-44,739). A "qualified professional" is a person who meets the relevant standards outlined in such SOI's Standards. The Lessee must provide documentation to BOEM demonstrating that consultants retained for services pursuant to the PA meet these standards prior to any work within their lease.
- C. Investigations of Submerged Landforms (SLFs). The Lessee must ensure that the additional investigations of SLFs will be conducted, and reports and other materials produced, by one or more QMAs 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. BOEM, with the assistance of the Lessee, will ensure that all work carried out pursuant to this PA that requires consultation with Tribes is performed by professionals who have demonstrated professional experience consulting with Federally recognized

Tribal Nations. This is not referring to formal government-to-government consultation between Tribes and BOEM, but rather the discussions between Lessees and Tribes where they are developing a Tribal Communication Plan or any discussions where the Tribes wish to speak directly to a Lessee.

E. Professional Standards for the Treatment of Human Remains. The Lessee will ensure that all work carried out pursuant to this PA is performed by professionals who adhere to the principles of the Society for American Archaeology's *Statement Concerning the Treatment of Human Remains* (April 14, 2021) and the ACHP's *Policy Statement on Burial Sites, Human Remains, and Funerary Objects* (March 2023).

F. BOEM Acknowledgement of the Special Expertise of Tribes. BOEM recognizes that all Tribal participants and knowledge need not conform to the SOI's standards, acknowledging that Tribes possess special expertise in identifying, assessing the eligibility of, evaluating project effects on, and developing mitigation for historic properties that may possess religious and cultural significance to Tribes, pursuant to 36 CFR 800.4(c)(1). To further apply this expertise, BOEM with the assistance of the Lessee, will incorporate Indigenous knowledge and Indigenous Traditional Ecological Knowledge (ITEK) that is conveyed by traditional knowledge keepers of the applicable Tribe into the documents and review processes when such knowledge is received from Tribes in consultation and during implementation of the MOA, consistent with the Office of Science and Technology Policy and Council on Environmental Quality memorandums (Executive Branch policy) on ITEK and Federal decision making (November 15, 2021) and "Guidance for Federal Departments and Agencies on Indigenous Knowledge" (November 30, 2022), "301 DM 7 Departmental Responsibilities for Consideration and Inclusion of Indigenous Knowledge in Department Actions and Scientific Research" (December 5, 2023); and ACHP's *Policy Statement on Indigenous Knowledge and Historic Preservation* (March 21, 2024). Tribes will also be afforded the opportunity to review the application of their knowledge in documents produced under this PA.

XII. **Dispute Resolution ~~Agreement~~ Objections:** If any Signatory to this Agreement objects at any time to any actions proposed or the way the terms of this Agreement are implemented, BOEM will consult with that party to resolve the objection. If BOEM or any Signatory determines that the objection cannot be resolved, BOEM will:

A. For the purpose of this dispute resolution process, afford the objecting party a reasonable opportunity to provide objections including citations to any relevant facts and authorities.

B. Forward all documentation relevant to the dispute, including BOEM's proposed resolution and the objecting party's objection materials, to the ACHP and all Signatories to this Agreement. The ACHP will provide BOEM with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, BOEM will prepare a written response that considers any timely advice or comments

regarding the dispute from the ACHP, SHPO, and other Signatories and provide them with a copy of this written response. BOEM will then proceed according to its final decision.

- C. If the objecting party is a Tribal Nation that has chosen not to be a Signatory, BOEM will consult with the Tribe either through formal government-to-government consultation or however the Tribe wishes to discuss resolutions. The dispute resolution process outlined in this Agreement does not replace or diminish BOEM's responsibility to consult with Tribal Nations on a government-to-government for any objection to any action or activity covered under this Agreement. BOEM will proceed to a final decision only after concurrence to the resolution has been reached with the affected Tribe(s).
- D. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day 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 considers any timely comments regarding the dispute from the Signatories to the Agreement and provide them and the ACHP with a copy of the written response.
- E. BOEM's responsibility to carry out all actions subject to the terms of this Agreement that are not subject of dispute will remain unchanged.

XIII. **Amendments:** Any Signatory may propose to BOEM in writing that this Agreement be amended, whereupon BOEM will consult with the Signatories to consider the amendment. This Agreement may then be amended when agreed to in writing by all Signatories, becoming effective on the date that the amendment is executed by the ACHP as the last Signatory.

XIV. **Annual Reporting:** BOEM will prepare an annual fiscal year report that will summarize actions that took place between October 1st of a given calendar year through September 30th of the following calendar year and will make this report available to Signatories and Concurring Parties by December 31st of each year this Agreement is in effect. The annual fiscal year report will summarize any actions taken to implement the terms of this Agreement.

XV. **Terms and Duration:**

- A. Unless terminated, pursuant to Stipulation XIII. or amended, pursuant to Stipulation IX., this Agreement will remain in effect for ten (10) years from the date this Agreement is executed, defined as the date the ACHP signs.
- B. Upon BOEM's final decision on the last Plan considered under the renewable energy regulations (final COP for last lease offshore Oregon), this Agreement will expire and BOEM will notify the Signatories and the public, in writing.

XVI. **Termination of this Agreement:**

- A. If any Signatory determines that the terms of this Agreement cannot be carried out

or are not being carried out, that 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 the notification, an amendment cannot be made, any Signatory may terminate the Agreement upon written notice to the other Signatories.

B. Once the Agreement is terminated, and prior to work continuing on the undertaking, BOEM will either (a) execute a new Agreement pursuant to 36 CFR § 800.14 or 36 CFR § 800.6 or (b) consult on each undertaking individually, pursuant to 36 CFR Part 800. BOEM will notify the Signatories as to the course of action it will pursue.

XVII. **Anti-Deficiency Act:** Pursuant to 31 U.S.C. § 1341(a)(1), nothing in this Agreement 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.

XVIII. **Existing Law and Rights:** Nothing in this Agreement will abrogate existing laws or the rights of any consulting party or Signatory to this Agreement. Moreover, nothing in this Agreement shall otherwise limit any legal rights of any consulting party or Signatory or limit the obligation of any federal agency to engage in consultation with Tribal governments. This Agreement shall not be construed as an endorsement of any project authorized by BOEM.

Execution of this Agreement by BOEM, the Oregon SHPO, and the ACHP, and the implementation of its terms are evidence that BOEM has considered the effects of these undertakings on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES

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

By:

Date:

Douglas P. Boren
Director, Pacific Regional Office
Bureau of Ocean Energy Management

State Historic Preservation Office, Oregon Parks and Recreation Department

By:

Date:

Christine Curran
Deputy State Historic Preservation Officer
State Historic Preservation Office
Oregon Parks and Recreation Department

Advisory Council on Historic Preservation

By:

Date:

Reid Nelson
Executive Director
Advisory Council on Historic Preservation

APPENDIX A
DEFINITIONS FOR
PROGRAMMATIC AGREEMENT

Among

The U.S. Department of the Interior,
Bureau of Ocean Energy Management,
The State Historic Preservation Officer of Oregon,
The Advisory Council on Historic Preservation
Regarding Review of Outer Continental Shelf
Renewable Energy Activities Offshore Oregon
Under Section 106 of the National Historic Preservation Act

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).

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 CFR § 585.113).

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, and/or Right-of-Use (RUE) grant, issued under the renewable energy regulations at 30 CFR § 585.238, 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. A 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. A 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).

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.

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 sub-bottom 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.

Historic property means any pre-contact or historic period district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (*see* 36 CFR § 800.16(I)(1)). Historic properties of traditional religious and cultural significance to Indian Tribes may also be eligible for inclusion in the NRHP.

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 meets the SHPO or THPO professional qualification standards, and has experience identifying Tribal cultural resources and analyzing structures, historic districts, and landscapes.

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

Tribal land as defined in this Agreement means all lands within the exterior boundaries of any Indian reservation, Tribal trust lands, and all dependent Indian communities (*see* 36 CFR § 800.16(x)).

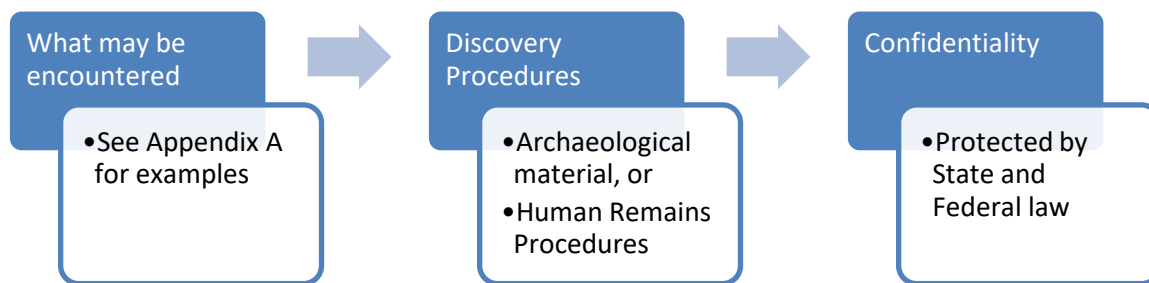
APPENDIX B
THE STATE OF OREGON'S ARCHAEOLOGICAL INADVERTENT DISCOVERY PLAN
(IDP)

ARCHAEOLOGICAL INADVERTENT DISCOVERY PLAN (IDP)

[Project Name]

[Project Manager] [Date] [SHPO case number]

HOW TO USE THIS DOCUMENT



Archaeology consists of the physical remains of the activities of people in the past. This IDP should be followed should any archaeological sites, objects, or human remains are found. These are protected under Federal and State laws and their disturbance can result in criminal penalties.

This document pertains to the work of the Contractor, including any and all individuals, organizations, or companies associated with [the project].

WHAT MAY BE ENCOUNTERED

Archaeology can be found during any ground-disturbing activity. If encountered all excavation and work in the area MUST STOP. Archaeological objects vary and can include evidence or remnants of historic-era and precontact activities by humans. Archaeological objects can include but are not limited to:

- **Stone flakes, arrowheads, stone tools, bone or wooden tools, baskets, beads.**
- Historic building materials such as **nails, glass, metal** such as cans, barrel rings, farm implements, **ceramics, bottles, marbles, beads.**
- Layers of **discolored earth** resulting from hearth fire
- Structural remains such as **foundations**
- **Shell Middens**
- **Human skeletal remains** and/or **bone fragments** which may be whole or fragmented.

For photographic examples of artifacts, please see Appendix A. (Human remains not included)

If there is an inadvertent discovery of any archaeological objects see procedures below.

If in doubt call it in.

DISCOVERY PROCEDURES: WHAT TO DO IF YOU FIND SOMETHING

1. Stop ALL work in the vicinity of the find
2. Secure and protect area of inadvertent discovery with 30 meter/100 foot buffer—work may continue outside of this buffer
3. Notify Project Manager and Agency Official
4. Project Manager will need to contact a professional archaeologist to assess the find.
5. If archaeologist determines the find is an archaeological site or object, contact SHPO. If it is determined to *not* be archaeological, you may continue work.

HUMAN REMAINS PROCEDURES

1. If it is believed the find may be human remains, stop ALL work.
2. Secure and protect area of inadvertent discovery with 30 meter/100 foot buffer, then work may continue outside of this buffer with caution.
3. Cover remains from view and protect them from damage or exposure, restrict access, and leave in place until directed otherwise. **Do not take photographs. Do not speak to the media.**
4. Notify:
 - Project Manager
 - Agency Official
 - Oregon State Police **DO NOT CALL 911**
 - SHPO
 - LCIS
 - Appropriate Native American Tribes
5. If the site is determined not to be a crime scene by the Oregon State Police, do not move anything! The remains will continue to be *secured in place* along with any associated funerary objects, and protected from weather, water runoff, and shielded from view.
6. Do not resume any work in the buffered area until a plan is developed and carried out between the State Police, SHPO, LCIS, and appropriate Native American Tribes and you are directed that work may proceed.

CONTACT INFORMATION

- Project Manager, [Name]: [555-555-5555]
- Agency Official, [Name]: [555-555-5555]
- Contracted Archaeologist, [Name]: [555-555-5555]
- Oregon State Police, Lt. Craig Heuberger: 503-508-0779 cheuber@osp.oregon.gov
- Oregon State Historic Preservation Office (SHPO),
 - [SHPO archaeologist who reviewed submission]: [number]
 - Asst. State Archaeologist, John Pouley: 503-480-9164
 - GIS Archaeologist, Jamie French: 503-979-7580
- LCIS, Mitch Sparks: 503-986-1086
- Appropriate Tribes
 - [add tribes as provided by LCIS]

CONFIDENTIALITY

[The project] and employees shall make their best efforts, in accordance with federal and state law, to ensure that its personnel and contractors keep the discovery confidential. The media, or any third-party member

or members of the public are not to be contacted or have information regarding the discovery, and any public or media inquiry is to be reported to [lead agency]. Prior to any release, the responsible agencies and Tribes shall concur on the amount of information, if any, to be released to the public.

To protect fragile, vulnerable, or threatened sites, the National Historic Preservation Act, as amended (Section 304 [16 U.S.C. 470s-3]), and Oregon State law (ORS 192.501(11)) establishes that the location of archaeological sites, both on land and underwater, shall be confidential.

APPENDICES AND SUPPLEMENTARY MATERIALS

A. Visual reference and examples of archaeology

[B. Relevant maps such as APE and monitoring areas if relevant]