

Attachment J-1. Memorandum of Agreement (provided under separate cover)

**DRAFT**  
**MEMORANDUM OF AGREEMENT**  
**AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,**  
**THE DELAWARE STATE HISTORIC PRESERVATION OFFICER,**  
**THE MARYLAND STATE HISTORIC PRESERVATION OFFICER,**  
**THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER,**  
**AND THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER,**  
**AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**REGARDING THE US WIND/MARYLAND WIND OFFSHORE WIND ENERGY PROJECT**  
**(LEASE NO. OCS-A 0490)**

**WHEREAS**, the Bureau of Ocean Energy Management (BOEM) is considering whether to authorize construction and operations of the US Wind/Maryland Wind Project (Project) pursuant to Section 8(p)(1)(C) of the Outer Continental Shelf (OCS) Lands Act (43 U.S. 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. § 30618), and its implementing regulations (36 CFR Part 800); and

**WHEREAS**, BOEM is considering whether to approve with conditions the Construction and Operations Plan (COP) submitted by US Wind Inc., hereafter referred to as the Lessee; and

**WHEREAS**, BOEM determined the construction, operations, maintenance, and eventual decommissioning of the Project, designed for up to 121 offshore wind turbine generators (WTGs), up to 4 offshore substations (OSSs), offshore export cables within an offshore export cable corridor (OECC), onshore export cables in an onshore export cable route (OECR), three onshore substations with buried connection line to the existing Indian River Substation near Millsboro, Delaware, and Operations and Maintenance facility in Ocean City, Maryland have the potential to adversely affect historic properties as defined under 36 CFR § 800.16(l)(1); and

**WHEREAS**, BOEM is preparing an Environmental Impact Statement (EIS) for the Project pursuant to the National Environmental Policy Act (NEPA; 42 USC § 4321 et seq.) and elected to use the NEPA substitution process with its Section 106 consultation pursuant to 36 CFR § 800.8(c); 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 its government-to-government obligation to consult with Tribal Nations that may attach religious and cultural significance to historic properties that may be affected by the proposed undertaking; in addition BOEM will comply with the American Indian Religious Freedom Act (AIRFA), Native American Graves Protection and Repatriation Act (NAGPRA), Executive Orders 13007 and 13175; and the Memorandum of Understanding to Protect Sacred Sites (November 2021); and

**WHEREAS**, BOEM invited the following federally recognized Tribal Nations (Tribal Nations) to consult on this Project: the Absentee Shawnee Tribe of Oklahoma, the Chickahominy Indian Tribe – Eastern Division, the Chickahominy Indian Tribe, the Delaware Nation, the Delaware Tribe of Indians, the Eastern Shawnee Tribe of Oklahoma, the Mashpee Wampanoag Tribe, the Mashantucket (Western)

Pequot Tribal Nation, the Monacan Indian Nation, the Nansemond Indian Nation, the Narragansett Indian Tribe, the Pamunkey Indian Tribe, the Rappahannock Indian Tribe, the Shinnecock Indian Nation, the Tuscarora Nation, the Upper Mattaponi Indian Tribe, and the Wampanoag Tribe of Gay Head (Aquinnah); and

**WHEREAS**, BOEM invited Absentee Shawnee Tribe of Indians of Oklahoma, Chickahominy Indian Tribe, Chickahominy Indian Tribe – Eastern Division, Delaware Nation, Delaware Tribe of Indians, Eastern Shawnee Tribe of Oklahoma, Mashantucket (Western) Pequot Tribal Nation, Mashpee Wampanoag Tribe, Monacan Indian Nation, Narragansett Indian Tribe, Pamunkey Indian Tribe, Shinnecock Indian Nation, Tuscarora Nation, Upper Mattaponi Indian Tribe, and Wampanoag Tribe of Gay Head (Aquinnah) to sign as concurring parties; and

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

**WHEREAS**, BOEM consulted with Tribal Nations to identify properties of religious and cultural significance to Tribal Nations that may be eligible for listing in the NRHP, including sacred sites, cultural landscapes, and Traditional Cultural Places (TCPs), and that may be affected by this undertaking; and

**WHEREAS**, BOEM notified in advance the Tribal Nations and the Tribal Historic Preservation Officers (THPOs), State Historic Preservation Officers (SHPO) of Delaware, Maryland, New Jersey, and Virginia, and the Advisory Council on Historic Preservation (ACHP) on June 8, 2022, of its decision to use NEPA substitution and followed the standards for developing environmental documents to comply with Section 106 consultation for this Project pursuant to 36 CFR § 800.8(c), and posted this decision in the *Federal Register* (87 Fed. Reg. 34,901) with BOEM's Notice of Intent to prepare an EIS for the Project on June 8, 2022; and

**WHEREAS**, BOEM notified and invited the Secretary of the Interior (SOI), as represented by the National Park Service (NPS) to consult regarding this Project pursuant to the Section 106 regulations, including consideration of the potential effects to National Historic Landmarks (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 on July 8, 2022, and BOEM invited NPS to sign this MOA as a concurring party; and

**WHEREAS**, in accordance with 36 CFR § 800.3, BOEM invited the Delaware SHPO, Maryland SHPO, the New Jersey SHPO, and the Virginia SHPO to consult on the Project on June 8, 2022, and the Maryland SHPO formally accepted on June 21, 2022, the Delaware SHPO formerly accepted on July 8, 2022, and the New Jersey SHPO and Virginia SHPO accepted through participation in consultation following those dates; 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 No Historic Properties Affected for the lease issuance on December 1, 2014 (OCS-A 0490), and site assessment approval on June 25, 2012, consistent with the PA regarding the review of the OCS renewable energy activities offshore Atlantic Wind Energy Initiative (*Programmatic Agreement Among the U.S. Department of the Interior, Bureau of Ocean Energy Management, The State Historic Preservation*

*Officers Of Delaware, Maryland, New Jersey, and Virginia; The Advisory Council on Historic Preservation; The Narragansett Indian Tribe; and The Shinnecock Indian Nation regarding the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities offshore within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia)* and this PA was executed on January 31, 2012; 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 has defined the undertaking’s area of potential effects (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 viewshed 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 where direct, indirect, or cumulative effects could occur (see Attachment 1 APE Maps); and

**WHEREAS**, BOEM identified 162 aboveground historic properties in the offshore Project components’ portion of the visual APE and 75 historic properties in the onshore Project components’ portion of the visual APE; 18 submerged historic properties and 14 ancient submerged landforms and features (ASLFs) in the marine APE; and one historic property in the terrestrial APE; and

**WHEREAS**, BOEM identified one National Historic Landmark (NHL) within the visual APE for offshore development, the Cape May Historic District, and through BOEM’s planning determined any proposed alternative action it decides to take would avoid adverse effects on this NHL; and

**WHEREAS**, within the range of the Project alternatives analyzed in the EIS (EIS Chapter 2, Table 2-1), BOEM determined three aboveground historic properties would be subject to visual adverse effects from WTGs (see Attachment 3 and EIS Appendix J), no submerged historic properties, and no ASLFs would be adversely affected by physical disturbance in the lease area and from export cable construction in the marine APE, and one historic property in the terrestrial APE would be physically adversely affected with implementation of the undertaking; and

**WHEREAS**, BOEM determined that the implementation of the project design and avoidance measures identified in this MOA would avoid adverse effects on 159 aboveground historic properties in the offshore visual APE (including one NHL), 75 aboveground historic properties in the onshore visual APE, and 18 submerged historic properties and 14 ASLFs in the marine APE; and

**WHEREAS**, under each of the Project alternatives analyzed in the EIS, BOEM determined the Project would visually adversely affect three aboveground historic properties in Delaware and Maryland, one of which is listed in the NRHP; and two of which are eligible for listing in the NRHP; and

**WHEREAS**, under each of the Project alternatives analyzed in the EIS, BOEM determined the Project would physically adversely affect one terrestrial archaeological historic property in Delaware that is eligible for listing in the NRHP; and

**WHEREAS**, the Delaware SHPO, Maryland SHPO, the New Jersey SHPO, and the Virginia SHPO [insert date of SHPO concurrence] with or not objected to BOEM’s finding of adverse effect; 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 or declining to participate by either written response or no response to direct invitation are listed in MOA Attachment 2; and

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

**WHEREAS**, construction of the Project requires a Department of the Army permit from the U.S. Army Corps of Engineers (USACE) for activities that result in the discharge of dredged or fill material into waters of the U.S. pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344), and work and structures in navigable waters of the U.S. and structures from the mean high water mark to the seaward limit of the OCS pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and BOEM invited USACE to consult; and

**[TBD: 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 NHPA Section 106 for this Project (in a letter dated [MONTH, XX, 20XX]), 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]**

**WHEREAS**, BOEM has consulted with all signatories and consulting parties participating in the development of this MOA regarding 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 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 dates of this MOA, and consulting parties who choose not to sign this MOA will continue to receive information if requested and will have an opportunity to participate in consultation and implementation as specified in this MOA; and

**WHEREAS**, required signatories and invited signatories (hereafter referred to as “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 conducted four consulting party meetings, on December 5, 2022, November 2, 2023, February 20, 2024, June 27, 2024; and

**WHEREAS**, BOEM sought and considered the views of the public regarding NHPA 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 June 21, 23, and 27, 2022, and virtual and in-person public hearings related to the Draft EIS October 19, 23, 26, and 30, 2023; and

**WHEREAS**, BOEM made the first Draft MOA available to the public for review and comment from October 6, 2023, to November 20, 2023, using BOEM’s Project website, and BOEM did receive comments from the public; and

**NOW, THEREFORE**, BOEM, the Delaware SHPO, the Maryland SHPO, the New Jersey SHPO, Virginia SHPO, and the ACHP agree that the undertaking shall be implemented in accordance with the following stipulations to consider the adverse effects of the undertaking on historic properties and resolve those adverse effects, pursuant to 36 CFR § 800.6(c).

## **STIPULATIONS**

BOEM, with the assistance of the Lessee, must 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 measures to avoid adverse effects within the marine APE as conditions of approval of the Lessee's COP.
  - i. The Lessee will avoid known shipwrecks and potential cultural resources (Targets 1-18) identified during marine archaeological surveys by a distance of no less than 164 feet (50 meters) from the known extent of the resource for placement of Project structures and when conducting seafloor-disturbing activities.
  - ii. The Lessee will avoid 11 Ancient Submerged Landform Features (ASLFs) previously identified during marine archaeological resources assessments for the proposed project by a distance of no less than 164 feet (50 meters) from the known extent of the resource for placement of proposed Project structures and when conducting seafloor-disturbing activities.
  - iii. The Lessee will avoid three ASLFs (UA-01, UA-03, and UD-03) by implementing micro-siting. These ASLFs cannot be avoided by 164-foot (50-meter) buffers. The lessee must shift all turbines in the UA row to the north-northeast up to 5 percent of the inter-turbine distance ( $\pm 246$  feet [75 meters] in the east-west direction and approximately 312 feet [95 meters] in the north-south direction). The lessee must shift the wind turbine generator (WTG) foundation at UD-03 up to 5 percent of the inter-turbine spacing distance ( $\pm 246$  feet [75 meters] in the east-west direction and approximately 312 feet [95 meters] in the north-south direction).
  - iv. The Lessee will follow the Notification of the Discovery of Shipwrecks on the Seafloor per 30 CFR 250.194(c), 30 CFR 250.1009(c)(4), and 30 CFR 251.7(b)(5)(B)(iii).
  - v. To demonstrate the avoidance of archaeological sites (identified in Stipulation I.A.1.i) and submerged historic properties (identified in Stipulation I.A.1.ii and I.A.iii), the Lessee must provide as-placed and as-laid maps with both the horizontal and vertical extents of all seafloor impacts. These seafloor impacts may include anchoring activities (location of all anchors, anchor chains, cables, and wire ropes, including sweep but excluding the vertical extent of anchor penetration on the seafloor), cable installation (including trenching depths and seafloor footprint of the installation vessel), and WTG installation (anchoring and spudding/jack-up vessel placement) but exclude the vertical extent of anchor penetration on the seafloor. The as-built or as-laid position plats must be submitted at a scale of 1 in. = 1,000-ft., with Differential Global Positioning System (DGPS) accuracy demonstrating that these seafloor disturbing activities complied with the avoidance criteria applied to the archaeological sites or historic properties established in this MOA. These documents and maps must be submitted to BOEM for consulting parties to review no later than 90 days after completion of all the seafloor disturbing/construction activities.

- vi. The Lessee must prepare and submit annual reports to BOEM during construction of the Project that describe implementation of avoidance buffers.

#### B. Visual APE

1. BOEM will include the following measure to avoid adverse effect within the visual APE as a condition of approval of the Lessee's COP:
  - i. To maintain avoidance of adverse effects on historic properties in the visual APE where BOEM determined there would be no adverse effects or where no effects would occur, the Lessee must ensure Project structures are within the Project design envelope (PDE), sizes, scale, locations, lighting prescription, and distances that were used to inform the definition of APE for the Project and for determining effects in the Finding of Effect (see the Project COP). If the Project is modified, BOEM will follow Stipulation V (Project Modifications).

## II. MEASURES TO MINIMIZE ADVERSE EFFECTS ON IDENTIFIED HISTORIC PROPERTIES

#### A. Visual APE

1. BOEM has undertaken planning and actions to minimize adverse effects on aboveground historic properties in the visual APE. BOEM will include the following measures to minimize adverse effects within the visual APE as conditions of the approval of the Lessee's COP:
  - i. The Lessee will use uniform WTG design, speed, height, and rotor diameter to reduce visual contrast and decrease visual clutter.
  - ii. The Lessee will use uniform WTG spacing to decrease visual clutter.
  - iii. The Lessee will paint the WTGs in accordance with Federal Aviation Administration Advisory Circular 70/7460-1M (2020) and BOEM's *Guidelines for Lighting and Marking of Structures Supporting Renewable Energy Development* (2021) to help reduce potential visibility of the turbines against the horizon during daylight hours.
  - iv. The Lessee will equip all WTGs and ESPs with an aircraft detection lighting system (ADLS) to reduce the duration of nighttime lighting. The system will activate aviation warning lights only when an aircraft is in the vicinity of the Lease Area. The WTGs and ESPs will be lit and marked in accordance with Federal Aviation Administration and U.S. Coast Guard lighting standards, consistent with BOEM's *Guidelines for Marking of Structures*, to reduce light intrusion.

#### B. Terrestrial APE

1. BOEM will include the following measures to minimize adverse effects within the terrestrial APE as conditions of approval of the Lessee's COP:
  - i. The Lessee will conduct archaeological monitoring of construction activities such that an archaeological monitor will be present at Site **REDACTED** and the Indian River to Burton's Island HDD corridor during subsurface disturbance, as described in the terrestrial archaeological monitoring plan (Attachment 5).
  - ii. The Lessee will avoid the portions of archaeological Site **REDACTED** that are outside of the APE during construction. These minimization measures would include protective barriers such as snow fencing and cultural and tribal monitoring in order to ensure avoidance during construction as described in the terrestrial archaeological monitoring plan (MOA Attachment 5) to ensure site protection of Site **REDACTED** during construction.
  - iii. The Lessee will implement protection measures during ongoing operations and maintenance, which are outlined in the Archaeological Historic Property Protection Plan for Site **REDACTED** (MOA Attachment 6).

### III. MEASURES TO MITIGATE ADVERSE EFFECTS ON IDENTIFIED HISTORIC PROPERTIES

[The Historic Property Treatment Plans described below and attached to this MOA are in draft form and are provided as potential mitigation measures that may be completed as conditions of approval of the Project COP. BOEM will develop mitigation measures based on the interests of federally recognized Tribal Nations and consulting parties and anticipates that additional mitigation will be required to resolve adverse effects on historic properties.]

#### A. Visual APE

1. BOEM will include the following as conditions of approval of the Lessee's COP and as mitigation measures to resolve the adverse effects including direct, indirect, and cumulative effects, to the following historic properties that will be visually adversely affected:

Fort Miles Historic District (Delaware);

U.S. Coast Guard Tower (Maryland); and

U.S. Life Saving Station Museum (Maryland).

See **Attachment X [forthcoming]** for funding amounts for each mitigation effort, reflecting good faith estimates, based on the experience of qualified consultants with similar activities and comparable historic properties. The Lessee must fund mitigation measures in accordance with **Attachment X** and pursuant to the following measures.

- i. The Lessee will fulfill mitigation measures prior to initiating offshore construction in accordance with Attachment 3, Historic Property Treatment Plan, for the Fort Miles Historic District:
  - a. [NOTE: US Wind and BOEM are currently meeting with DNREC to further develop preferred mitigation measures. Under the potential mitigation, subject to change following consultation, US Wind will provide funds for the following:]
  - b. Improvements to the Orientation Building: The Lessee will provide funds to DNREC to improve and upgrade the Orientation Building at Fort Miles.
- ii. The Lessee will fulfill mitigation measures prior to initiating offshore construction in accordance with Attachment 3, Historic Property Treatment Plan, for the U.S. Coast Guard Tower:
  - a. **Development of a combined National Register Nomination Form: The Lessee will provide financial support to hire a contractor that meets the Secretary's Professional Qualifications to develop a combined National Register Nomination form for the U.S. Coast Guard Tower and U.S. Life-Saving Station Museum, with a draft form submitted to Maryland Historical Trust (MD SHPO) by an approved upon date between MD SHPO, the Lessee, and BOEM.**
  - b. The Lessee will develop the nomination package in consultation with the MD SHPO's National Register program, [mht.nationalregister@maryland.gov](mailto:mht.nationalregister@maryland.gov). The documentation will be prepared in accordance with the documents detailed in Attachment 3, and other applicable NPS and MD SHPO guidance.
  - c. The Lessee will submit the completed National Register nomination, including the accompanying documentation, to the MD SHPO for review and approval and shall revise the nomination to address any MD SHPO comments if applicable.



- d. Once approved by the MD SHPO, the MD SHPO shall forward the nomination form to the Keeper of the National Register of Historic Places for listing, within one (1) year of receipt of the nomination package.

iii. The Lessee will fulfill mitigation measures prior to initiating offshore construction in accordance with Attachment 3, Historic Property Treatment Plan, for the U.S. Life Saving Station Museum:

- a. Development of a combined National Register Nomination Form: The Lessee will provide financial support to hire a contractor that meets the Secretary's Professional Qualifications to develop a combined National Register Nomination form for the U.S. Coast Guard Tower and U.S. Life-Saving Station Museum, with a draft form submitted to Maryland Historical Trust (MD SHPO) by an approved upon date between MD SHPO, the Lessee, and BOEM.
- b. The Lessee will develop the nomination package in consultation with the MD SHPO's National Register program, [mht.nationalregister@maryland.gov](mailto:mht.nationalregister@maryland.gov). The documentation will be prepared in accordance with the documents detailed in Attachment 3, and other applicable NPS and MD SHPO guidance.
- c. The Lessee will submit the completed National Register nomination, including the accompanying documentation, to the MD SHPO for review and approval and shall revise the nomination to address any MD SHPO comments if applicable.
- d. Once approved by the MD SHPO, the MD SHPO shall forward the nomination form to the Keeper of the National Register of Historic Places for listing, within one (1) year of receipt of the nomination package.

## B. Terrestrial APE

1. BOEM will include the following as conditions of approval of the Lessee's COP and as mitigation measures to resolve the adverse effects to Site **REDACTED**:
  - i. The Lessee will complete the following mitigation actions detailed in the HPTP [**pending updates-new HPTP will be provided during next review period**]: acquire a State Archaeology Permit and approvals from Delaware SHPO (as applicable); conduct background research; complete Phase II evaluation testing investigations (Phase II investigation) within the impacted site areas; complete Phase III data recovery investigations of a portion of the impacted site areas to be determined through the Phase II investigation results and consultation; implement temporary avoidance measures at portions of the site that will not be impacted by construction activities; prepare draft and final data recovery report; prepare updated site forms; prepare Historic Property Archaeological Protection Plan; prepare construction monitoring report; curate materials at a long-term curation facility agreed upon by consulting Tribal Nations pursuant to Stipulation VIII; and prepare a summary report detailing the mitigation measures undertaken pursuant to the HPTP.
    - a. The Lessee will develop the Phase II investigation plan and the Phase III data recovery program consistent with DE SHPO's Archaeological Survey in Delaware (2015, or its successor) (the Guidelines).
    - b. The Lessee will develop the Phase II investigation plan to be submitted to BOEM for technical review and approval. Once BOEM approves the plan, BOEM will submit the

plan to consulting Tribal Nations and DE SHPO for review and approval. The Phase II investigation will be limited to site areas impacted by the Project.

- c. The Lessee will develop a Phase III Data Recovery Plan (DRP) based on the results of the Phase II investigation. The DRP will be submitted to BOEM for technical review and approval. Once the BOEM approves the DRP, BOEM will submit the plan to consulting Tribal Nations and DE SHPO for review and approval.
  - d. The Lessee will submit the Phase III Data Recovery Report (drafts and final); Archaeological Construction Monitoring Report (drafts and final); updated site forms; and Historic Property Archaeological Protection Plan (drafts and final), to BOEM for technical review prior to submittal to the consulting Tribal Nations and DE SHPO for review. The reports will be prepared in accordance with the *Guidelines*.
- ii. Following the completion of the Phase III archaeological data recovery and before construction, the Lessee will implement temporary site avoidance measures to protect the portions of the site that will not be impacted by construction. This will include the installation of temporary site protective fencing and identifying the sensitive resource areas to construction work crews as areas where no ground-disturbing activities can take place. Archaeologists and Tribal monitors will be onsite during any construction in proximity to Site **REDACTED** to monitor construction activities and ensure compliance with the HPTP (MOA Attachment 7).

#### **IV. REVIEW PROCESS FOR DOCUMENTS PRODUCED UNDER MOA STIPULATIONS**

A. The following process will be used for any document, report, or plan produced in accordance with Stipulations I through III of this MOA:

##### **1. Draft Document**

- i. The Lessee must provide the document to BOEM for technical review and approval.
  - a. BOEM will have 15 calendar days to complete its technical review.
  - b. 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.
- ii. After BOEM has reviewed and approved the document, BOEM, with the assistance of the Lessee, will provide the draft document to consulting parties, except the ACHP, for review and comment.
- iii. Signatories and consulting parties will have 30 calendar days, or another time frame agreed upon by the signatories and consulting parties, to review and comment.
  - a. 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.
  - b. BOEM will consolidate comments received and provide them to the Lessee within 15 calendar days of receiving comments from consulting parties.
  - c. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.
- iv. If BOEM requires substantial edits to the draft document, the Lessee must make those revisions and resubmit the document as a draft for revision under Stipulation VII (Submission of Documents).

##### **2. Draft Final Document**

- i. The Lessee must provide BOEM with the draft final document and response to consulting party comments for technical review and approval.
    - a. BOEM has 15 calendar days to complete its technical review.
    - b. 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.
  - ii. BOEM, with the assistance of the Lessee, will provide the draft final document to the signatories and consulting parties, except the ACHP, for review and comment. With this same submittal of draft final documents, BOEM, with the assistance of the Lessee, will provide a summary of all comments received on the documents and BOEM's responses.
    - a. Signatories and consulting parties will have 30 calendar days, or another time frame agreed upon by the signatories and consulting parties, to review and comment.
    - b. BOEM, with the assistance of the Lessee, will coordinate a meeting with signatories and consulting parties to facilitate comments on the document if requested by a consulting party.
    - c. BOEM will consolidate comments received and provide them to the Lessee within 15 calendar days of receiving comments from consulting parties.
    - d. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.
3. Final Document
- i. The Lessee must provide BOEM with the final document and response to consulting party comments for approval.
    - a. BOEM will have 15 calendar days to complete its technical review.
    - b. 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.
    - c. BOEM, with the assistance of the Lessee, will provide the final document to signatories and consulting parties, except the ACHP, within 30 calendar days of approving the final document. With this same submittal of final documents, the Lessee must provide a summary of all the comments received on the documents and BOEM's responses.

## **V. PHASED IDENTIFICATION**

- A. BOEM will defer and phase the identification of historic properties, assessment of effects, and resolution of adverse effects within the Alternate Onshore Export Cable Routes (1a, 1b, 1c, 2) portion of the terrestrial APE in Delaware (depicted in **Figure X** in Attachment 1), pursuant to 36 CFR §§ 800.4(b)(2) and 800.5(a)(4). BOEM determined that deferred and phased identification for Alternate Onshore Export Cable Routes 1a, 1b, 1c, and 2 will be necessary if one or more of these alternatives is selected for the final Project design. The final identification of historic properties, assessment of effects, and resolution of adverse effects within the select areas of the terrestrial APE will occur after the Final EIS and ROD. The following measures will be implemented.
  1. BOEM, with the assistance of the Lessee, will invite any additional consulting parties that may want to consult on this phased identification based on any new information regarding the specific location of the onshore cable route to the selected areas within the terrestrial APE.
  2. The Lessee must conduct the phased identification of historic properties within the Alternate Onshore Export Cable Routes (1a, 1b, 1c, 2) portion of the terrestrial APE, as applicable, in

accordance with state guidelines and BOEM's most recent Guidelines for Providing Archaeological and Historic Property Information Pursuant to Title 30 Code of Federal Regulations Part 585. The Lessee must coordinate with the consulting Tribal Nations, Delaware SHPO, and consulting parties prior to the initiation of any such identification efforts.

- i. BOEM will delineate any terrestrial portions of the APE for the alternate onshore cable route, if selected.
  - ii. BOEM requires that identification efforts be documented in technical reports that address the identification of historic properties and sites of religious and cultural significance and include an evaluation of effects applying the criteria of adverse effect pursuant to 36 CFR § 800.5(a).
3. BOEM will consult with Tribal Nations, Delaware SHPO, the ACHP, and consulting parties on the results of historic property identification surveys that were not addressed prior to the execution of this MOA.
4. BOEM will treat all identified potential historic properties as eligible for inclusion in the NRHP unless BOEM determines, and the Delaware SHPO concurs, that a property is ineligible, pursuant to 36 CFR § 800.4(c).
5. If BOEM identifies no additional historic properties or determines that no historic properties are adversely affected as a result of this deferred and phased identification, BOEM, with the assistance of the Lessee, will notify and consult with the signatories and consulting parties following the consultation process set forth here in this stipulation.
  - iii. BOEM, with the assistance of the Lessee, will notify all the signatories and consulting parties about the surveys of portions of the terrestrial APE and BOEM's determination by providing a written summary of the surveys including any maps, a summary of the surveys and/or research conducted to identify historic properties and assess effects, and copies of the surveys.
  - iv. BOEM, with the assistance of the Lessee, will provide Tribal Nations, the Delaware SHPO, the ACHP, and consulting parties with 60 calendar days to review and comment on the survey reports, the results of the surveys, BOEM's determination, and the documents.
  - v. After the 60-calendar day review period has concluded and if no comments require additional consultation, BOEM, with the assistance of the Lessee, will notify the signatories and consulting parties that the Delaware SHPO has concurred with BOEM's determination. If comments are received, the Lessee will provide a summary of comments and BOEM's responses to signatories and consulting parties.
  - vi. BOEM, with the assistance of the Lessee, will conduct any consultation meetings if requested by the signatories or consulting parties during this 60-calendar day review period.
  - vii. This MOA will not need to be amended if no additional historic properties are identified and/or determined to be adversely affected.
6. If BOEM determines new adverse effects to historic properties will occur, BOEM, with the assistance of the Lessee, will notify and consult with the signatories and consulting parties regarding BOEM's finding. BOEM will determine through consultation with the signatories and consulting parties and the Lessee measures for avoidance, minimization, and mitigation in order to resolve adverse effects following the consultation process set forth in this stipulation.
  - i. BOEM, with the assistance of the Lessee, will notify all signatories and consulting parties about the surveys and BOEM's determination by providing a written summary of the results 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).

- ii. The signatories and consulting parties will have 60 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).
  - iii. BOEM, with the assistance of the Lessee, will conduct a consultation meeting during this 60-calendar review period and conduct any additional consultation meetings as necessary or requested.
  - iv. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.
  - v. BOEM, with the assistance of the Lessee, will send the revised draft final documents to the 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, BOEM, with the assistance of the Lessee, will provide a summary of all the comments received on the documents and BOEM's responses.
  - vi. BOEM, with the assistance of the Lessee, will respond to the comments on the draft final documents and make necessary edits to the documents.
  - vii. BOEM, with the assistance of the Lessee, will notify all signatories and consulting parties and provide the final document(s), including treatment plan(s) and a summary of comments and BOEM's responses thereto, if BOEM receives any comments on the draft final documents, after BOEM has received concurrence from the Delaware SHPO on the finding of new adverse effect(s), and BOEM has accepted the final treatment plan(s).
  - viii. The Lessee must implement the final measures to resolve adverse effects per the final treatment plan(s) as applicable and based on consultation.
  - ix. The MOA will not need to be amended after the treatment plan(s) is accepted by BOEM.
7. If the 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)).
  8. If a Tribal Nation that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the ACHP to request the agency official to obtain a determination of eligibility pursuant to 36 CFR Part 63 (36 CFR § 800.4(c)(2)).
  9. If any of the consulting parties object to the findings or resolutions made pursuant to these measures, BOEM will resolve any such objections pursuant to the dispute resolution process set forth in Stipulation XIV, Dispute Resolution.

## **VI. PROJECT MODIFICATIONS**

- A. If the Lessee proposes any modifications to the Project that expand the Project beyond the PDE included in the COP and/or occur outside the defined APEs, or the proposed modifications would change BOEM's final Section 106 determinations and findings for this Project, the Lessee must notify and provide BOEM with information concerning the proposed modifications. The Lessee will not proceed with the proposed modifications until the following process under Stipulation VI.A is concluded. BOEM will notify consulting parties within 60 calendar days and consult on whether these modifications require alteration of the conclusions reached in the Finding of Effect and, thus, may require additional consultation with the signatories and consulting parties. The Lessee will provide the 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 consider any comments from signatories and consulting parties prior to agreeing to any proposed changes. Using the procedure below, BOEM will, as necessary, consult with the 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. Any project modification followed pursuant to Stipulation VI would not require an amendment to the MOA.

1. If, for the proposed Project modification, BOEM identifies no additional historic properties or finds that no historic properties are adversely affected due to the modification, BOEM, with the assistance of the Lessee, will notify and consult with the signatories and consulting parties following the consultation process set forth in this Stipulation VI.A.1.
  - i. BOEM, with the assistance of the Lessee, will notify all the signatories and consulting parties about this proposed change and BOEM's finding by providing a written summary of the Project modification including any maps, a summary of any additional surveys and/or research conducted to identify historic properties and assess effects, and copies of the surveys.
  - ii. BOEM and the Lessee will provide the signatories and consulting parties with 30 calendar days to review and comment on the proposed change, BOEM's finding, and the documents.
  - iii. 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 BOEM has approved the Project modification and, if the Lessee received any comments, provide a summary of the comments and BOEM's responses.
  - iv. BOEM, with the assistance of the Lessee, will conduct any consultation meetings if requested by the signatories or consulting parties.
  - v. BOEM will require the lessee to document Project modifications and the consultation process described in this Stipulation (VI.A.) in the annual report pursuant to Stipulation XIII.
2. If BOEM finds new adverse effects to historic properties will occur due to a proposed Project modification, BOEM, with the assistance of the Lessee, will notify and consult with the 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 in this Stipulation VI.A.2.
  - i. The Lessee will notify all signatories and consulting parties about this proposed modification, BOEM's finding, and the proposed resolution measures for the adverse effect(s).
  - ii. The consulting parties will have 30 calendar days to review and comment on the adverse effect finding and the proposed resolution of adverse effect(s), including a draft treatment plan(s).
  - iii. 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).
  - iv. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.
  - v. The Lessee will send the revised draft final documents to the 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.
  - vi. BOEM, with the assistance of the Lessee, will respond to the comments on the draft final documents and make necessary edits to the documents.
  - vii. Once BOEM has received concurrence from the appropriate SHPO(s) on the finding of new adverse effect(s), BOEM has accepted the final treatment plan(s), and the Project modification has been accepted, then the Lessee will notify all the consulting parties that

the Project modification has been accepted. With this notification, the Lessee will provide the final document(s), including the final treatment plan(s) and a summary of comments and BOEM's responses to comments (if they receive comments on the draft final documents).

viii. BOEM will require the lessee to document Project modifications and the consultation process described in this Stipulation (VI.A.) in the annual report pursuant to Stipulation XIII.

3. If any of the consulting parties object to the findings or resolutions made pursuant to these measures (Stipulation VI.A.1 and 2), BOEM will resolve any such objections pursuant to the dispute resolution process set forth in Stipulation XIV.

## **VII. SUBMISSION OF DOCUMENTS**

### **A. Tribal Nations, ACHP, NPS, and Consulting Parties**

1. All submittals to Tribal Nations, ACHP, NPS, and Consulting Parties will be submitted electronically unless a specific request is made for the submittal to be provided in paper format.

### **B. Delaware, Maryland, New Jersey, and Virginia SHPOs**

1. All submittals to Delaware SHPO, Maryland SHPO, the New Jersey SHPO, and the Virginia SHPO will be submitted electronically unless a specific request is made for the submittal to be provided in paper format.

## **VIII. CURATION**

### **A. BOEM, with the assistance of the Lessee, will ensure that for 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 must 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 Fed. Reg. 27,085-087 [May 18, 1999]), or other provisions agreed to by the consulting parties and following applicable State guidelines. Other provisions may include curating materials of Native American heritage with Tribal Nations. No excavation may be initiated before acceptance and approval of a curation plan developed through consultation with the Tribal Nations, agencies, and property owners, and the plan must be finalized within one year after completion of the associated construction activities.
  - i. In the event artifacts and material culture associated with the Pre-Contact periods within the coastal and marine environments are identified and recovered during pre-construction, construction, operation, maintenance, and decommissioning of the proposed Project under this MOA, including for mitigation or resulting from post-review discovery including but not limited to vibracore sampling, those materials, if they are not replaced on the seafloor, will be housed at a curatorial facility in consultation with the Tribal Nations. These collection and curation directions do not apply to the post-construction seafloor inspection mitigation.

### **B. BOEM, with the assistance of the Lessee, will ensure that for 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 must be curated within the state of their origin at a repository preferred by the respective SHPO, or an approved and certified repository, in accordance with the standards and guidelines required by the SHPO. Curating materials of

Native American heritage with Tribal Nations should be considered as an acceptable option. Lands as described here may include the seafloor in state waters. No excavation may be initiated before acceptance and approval of a curation plan developed through consultation with the Tribal Nations, agencies, and property owners, and the plan must be finalized within one year after completion of the associated construction activities.

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 SHPO(s) and affected Tribal Nations(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, Delaware, Maryland, New Jersey, and Virginia SHPO, 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 must be curated in accordance with 36 CFR Part 79. The Lessee will not initiate excavation before acceptance and approval of a curation plan developed through consultation with the Tribal Nations, agencies, and property owners.
- C. When applicable, BOEM will follow the principles within the ACHP's *Policy Statement Regarding Burial Sites, Human Remains, and Funerary Objects*, dated March 1, 2023.

## **IX. PROFESSIONAL QUALIFICATIONS**

- A. SOI Standards for Archaeology and Historic Preservation. The Lessee will ensure all work carried out pursuant to this MOA meets the Secretary of the Interior's *Standards for Archaeology and Historic Preservation* (48 Fed. Reg. 44,716, September 29, 1983) and considers the suggested approaches to new construction in the Standards for Rehabilitation.
- B. SOI Professional Qualification Standards. The Lessee will ensure that all work carried out pursuant to this MOA is performed by or under the direct supervision of historic preservation professionals who meet the *Secretary of the Interior'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 will provide documentation to BOEM demonstrating that the consultants retained for services pursuant to the MOA meet these standards prior to the implementation of mitigation measures.
- C. Tribal Consultation Experience. BOEM, with the assistance of 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 federally recognized Tribal Nations.
- D. 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 and acknowledges 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). To further apply this expertise, BOEM, with the assistance of the Lessee, will incorporate indigenous knowledge and Indigenous Traditional Ecological Knowledge (ITEK) into the documents and



review processes when such knowledge is received from Tribal Nations 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), “Guidance for Federal Departments and Agencies on Indigenous Knowledge” (November 30, 2022), and “301 DM 7 Departmental Responsibilities for Consideration and Inclusion of Indigenous Knowledge in Department Actions and Scientific Research” (December 5, 2023). Tribal Nations are also afforded the opportunity to review the application of their knowledge in documents produced under the MOA pursuant to Stipulation VI (Project Modifications).

## **X. DURATION**

- A. This MOA will expire at (1) the decommissioning of the Project in the lease area, as defined in the lease with BOEM (Lease Number OCS-A 0490) or (2) 25-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 Stipulation XV.

## **XI. POST REVIEW DISCOVERIES**

- A. Implementation of Post Review Discovery Plans. If historic properties are discovered that may be historically significant or unanticipated effects on historic properties found, BOEM and BSEE, with the assistance of the Lessee, will implement the post-review discovery plans found in Attachment 4 US Wind Terrestrial Post Review Discovery Plan, and Attachment 7, US Wind Post Review Discovery 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 historic property or unanticipated effects on a historic property prior to or during construction, operations, maintenance, or decommissioning of the Project, the Lessee will implement the following actions, which are consistent with the post review discovery plans (MOA Attachments 4 & 7):
  1. Immediately halt all ground- or seafloor-disturbing activities within the area of discovery while taking into account whether stabilization and further protections are warranted to keep the discovered resource from further degradation and impact;
  2. Notify BOEM and BSEE in writing via report within 72 hours of the discovery, including any recommendations on need and urgency of stabilization and additional protections for the discovered resource;
  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; and
  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:
    - i. The site has been impacted by Project activities; or
    - ii. Impacts to the site from Project activities cannot be avoided.
  5. If investigations indicate that the resource is eligible for listing in the NRHP, BOEM, with the assistance of the Lessee, will work with the other relevant signatories and consulting parties to this MOA who have a demonstrated interest in the affected historic property on the further avoidance, minimization, or mitigation of adverse effects.

6. If investigations identify that human remains or funerary items are present and associated with Tribal Nations or Native American occupations, as defined at 25 U.S.C. § 3001(9), then BOEM, assisted by the Lessee, will implement the treatment process consistent with the Native American Graves Protection and Repatriation Act (NAGPRA) and ACHP guidance through their Policy Statement on Burial Sites, Human Remains, and Funerary Objects (March 1, 2023). BOEM will consult with Tribal Nations prior to the development or execution of an action plan, consistent with the provisions of NAGPRA at 25 U.S.C. § 3001-3013 and related law at 18 U.S.C. § 1170. The Lessee will assist BOEM in the development and execution of an action plan at BOEM's request that is responsive to Tribal Nation concerns that might be expressed in the consultation.
7. If there is any evidence that the discovery is from an indigenous society or appears to be a preserved burial site, the Lessee will contact [TBD through consultation] 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.
8. 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. EMERGENCY SITUATIONS**

- A. In the event of an emergency or disaster that is declared by the U.S. President or the Governor of Delaware, Maryland, New Jersey, or Virginia, which represents an imminent threat to public health or safety, or creates a hazardous condition, BOEM will immediately notify the Tribal Nations, SHPOs, and the ACHP of the condition which has initiated the situation and the measures taken to respond to the emergency or hazardous condition. If the Tribal Nations, SHPOs, or the ACHP want to provide technical assistance to BOEM, they will submit comments within seven calendar days from notification if the nature of the emergency or hazardous condition allows for such coordination.

## **XIII. MONITORING AND REPORTING**

- A. By January 31, 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 and consulting parties to this MOA a summary report detailing work undertaken pursuant to the MOA. Such report will include:
  1. A description of how the stipulations relating to avoidance, minimization, and mitigation measures (Stipulations I, II, and III) were implemented;
  2. Any scheduling changes proposed, any project modifications including consultations conducted pursuant to Stipulation VI, any amendments to the MOA pursuant to Stipulation XV, any changes to the attachments of the MOA, and any problems encountered; and
  3. Any disputes and objections received in BOEM's efforts to carry out the terms of this MOA.
- B. The Lessee can satisfy its reporting requirement under this stipulation by providing the relevant portions of the annual compliance certification required under 30 CFR § 585.633.
- C. BOEM with the assistance of the Lessee will hold annual meetings with the required signatories and invited signatories, to review work undertaken pursuant to the MOA for the first five calendar years of the MOA implementation.

#### **XIV. DISPUTE RESOLUTION**

- A. If any signatory or consulting party to this MOA objects at any time to any actions proposed or the manner in which the terms of this MOA are implemented, it must notify BOEM in writing of its objection. BOEM must consult with such party to resolve the objection, and may amend the MOA to resolve the objection if necessary pursuant to the Amendment Stipulation (Stipulation XV). If BOEM determines that such objection cannot be resolved, BOEM will:
  1. Forward all documentation relevant to the dispute, including BOEM's proposed resolution, to the ACHP. The ACHP will provide BOEM 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 considers any timely advice or comments regarding the dispute from the ACHP, signatories, and/or consulting parties, and provide them with a copy of the written response. BOEM will then make its final decision and proceed accordingly.
    - i. 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 considers any timely comments regarding the dispute from the signatories, invited signatories, and/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. At any time during the implementation of the measures stipulated in this MOA, should 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.

#### **XV. 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 of the signatories is filed with the ACHP.
- B. Revisions to any attachment may be proposed by any signatory by submitting a draft of the proposed revisions to all signatories and invited signatories with a notification to the consulting parties. The signatories will consult for 30 calendar days (or another time period agreed upon by all signatories) to consider the proposed revisions to the attachment. If the signatories unanimously agree to revise the attachment, BOEM will provide a copy of the revised attachment to the other signatories and consulting parties. Revisions to any attachment to this MOA will not require an amendment to the MOA. Revisions to any attachment that will result in the modification of the main body of the MOA will require an amendment.

#### **XVI. COORDINATION WITH OTHER FEDERAL AGENCIES**

- A. If 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 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 must 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 must 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 the Amendment Stipulation (Stipulation XV).

- B. If the signatories approve the federal agency's request to be a signing party to this MOA, an amendment under Stipulation XV 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 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. TERMINATION**

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

## **XVIII. ANTI-DEFICIENCY ACT**

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

Execution of this MOA by BOEM, the Delaware, Maryland, New Jersey, and Virginia SHPOs, 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 on resolution of effects of this undertaking on historic properties.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF OCEAN ENERGY MANAGEMENT,  
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, THE MARYLAND  
STATE HISTORIC PRESERVATION OFFICER, THE NEW JERSEY STATE HISTORIC  
PRESERVATION OFFICER, AND THE VIRGINIA STATE HISTORIC PRESERVATION  
OFFICER, US WIND, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE US WIND/MARYLAND WIND OFFSHORE WIND ENERGY PROJECT**

Signatory:

Bureau of Ocean Energy Management (BOEM)

\_\_\_\_\_  
Elizabeth Klein

Director

Bureau of Ocean Energy Management

Date: \_\_\_\_\_

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**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF OCEAN ENERGY MANAGEMENT,  
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, THE MARYLAND  
STATE HISTORIC PRESERVATION OFFICER, THE NEW JERSEY STATE HISTORIC  
PRESERVATION OFFICER, AND THE VIRGINIA STATE HISTORIC PRESERVATION  
OFFICER, US WIND, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE US WIND/MARYLAND WIND OFFSHORE WIND ENERGY PROJECT**

Signatory:

Delaware State Historic Preservation Officer (SHPO)

\_\_\_\_\_ Date: \_\_\_\_\_  
Suzanne Savery, State Historic Preservation Officer

DRAFT

**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF OCEAN ENERGY MANAGEMENT,  
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, THE MARYLAND  
STATE HISTORIC PRESERVATION OFFICER, THE NEW JERSEY STATE HISTORIC  
PRESERVATION OFFICER, AND THE VIRGINIA STATE HISTORIC PRESERVATION  
OFFICER, US WIND, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE US WIND/MARYLAND WIND OFFSHORE WIND ENERGY PROJECT**

Signatory:

Maryland State Historic Preservation Officer (SHPO)

\_\_\_\_\_  
Elizabeth Hughes, State Historic Preservation Officer

Date: \_\_\_\_\_

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**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF OCEAN ENERGY MANAGEMENT,  
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, THE MARYLAND  
STATE HISTORIC PRESERVATION OFFICER, THE NEW JERSEY STATE HISTORIC  
PRESERVATION OFFICER, AND THE VIRGINIA STATE HISTORIC PRESERVATION  
OFFICER, US WIND, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE US WIND/MARYLAND WIND OFFSHORE WIND ENERGY PROJECT**

Signatory:

New Jersey State Historic Preservation Officer (SHPO)

\_\_\_\_\_  
Shawn LaTourette, State Historic Preservation Officer

Date: \_\_\_\_\_

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**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF OCEAN ENERGY MANAGEMENT,  
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, THE MARYLAND  
STATE HISTORIC PRESERVATION OFFICER, THE NEW JERSEY STATE HISTORIC  
PRESERVATION OFFICER, AND THE VIRGINIA STATE HISTORIC PRESERVATION  
OFFICER, US WIND, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE US WIND/MARYLAND WIND OFFSHORE WIND ENERGY PROJECT**

Signatory:

Virginia State Historic Preservation Officer (SHPO)

\_\_\_\_\_  
Julie Langan, State Historic Preservation Officer

Date: \_\_\_\_\_

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**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF OCEAN ENERGY MANAGEMENT,  
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, THE MARYLAND  
STATE HISTORIC PRESERVATION OFFICER, THE NEW JERSEY STATE HISTORIC  
PRESERVATION OFFICER, AND THE VIRGINIA STATE HISTORIC PRESERVATION  
OFFICER, US WIND, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE US WIND/MARYLAND WIND OFFSHORE WIND ENERGY PROJECT**

Signatory:

Advisory Council on Historic Preservation (ACHP)

Date: \_\_\_\_\_

\_\_\_\_\_  
Reid J. Nelson

Executive Director

Advisory Council on Historic Preservation

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**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF OCEAN ENERGY MANAGEMENT,  
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, THE MARYLAND  
STATE HISTORIC PRESERVATION OFFICER, THE NEW JERSEY STATE HISTORIC  
PRESERVATION OFFICER, AND THE VIRGINIA STATE HISTORIC PRESERVATION  
OFFICER, US WIND, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE US WIND/MARYLAND WIND OFFSHORE WIND ENERGY PROJECT**

Invited Signatory:

US Wind

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]

[Title]

[Affiliation]

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**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF OCEAN ENERGY MANAGEMENT,  
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, THE MARYLAND  
STATE HISTORIC PRESERVATION OFFICER, THE NEW JERSEY STATE HISTORIC  
PRESERVATION OFFICER, AND THE VIRGINIA STATE HISTORIC PRESERVATION  
OFFICER, US WIND, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE US WIND/MARYLAND WIND OFFSHORE WIND ENERGY PROJECT**

Concurring Party:

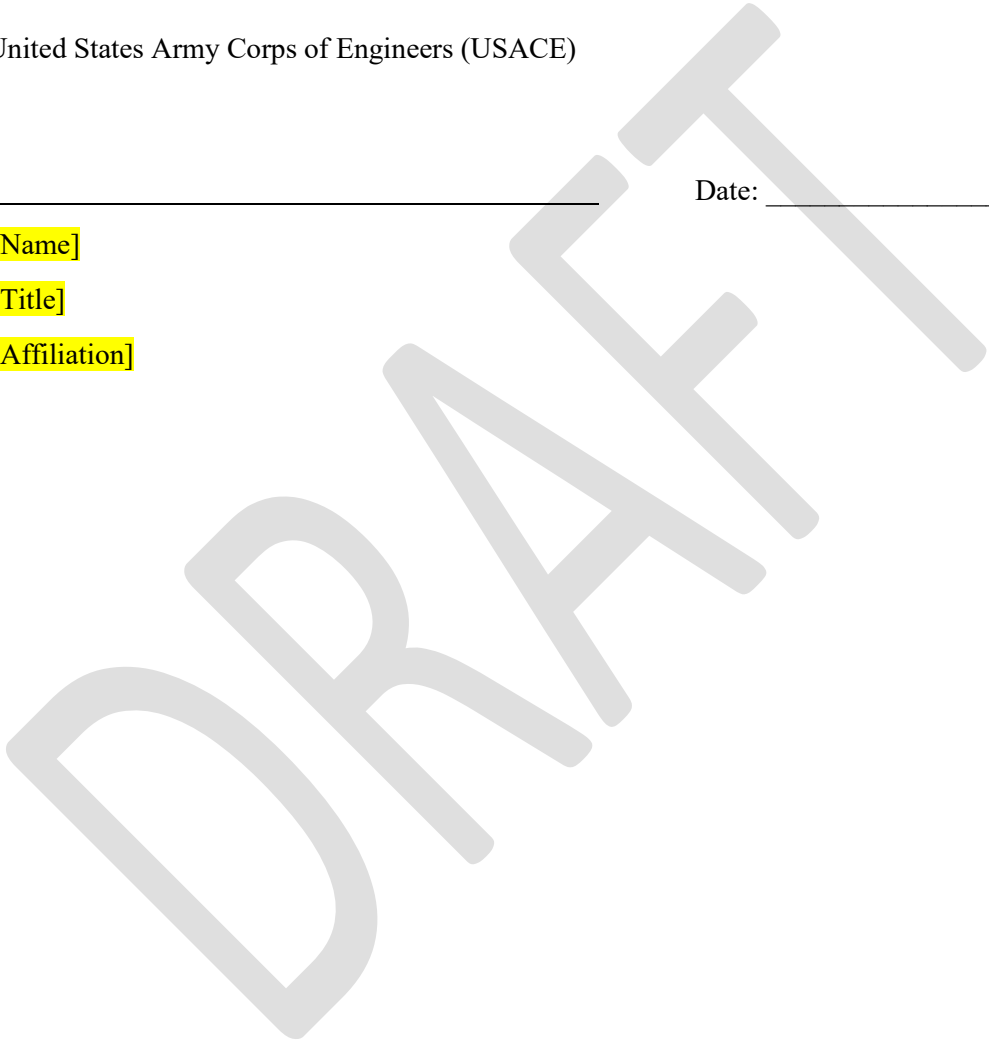
United States Army Corps of Engineers (USACE)

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]

[Title]

[Affiliation]



**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF OCEAN ENERGY MANAGEMENT,  
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, THE MARYLAND  
STATE HISTORIC PRESERVATION OFFICER, THE NEW JERSEY STATE HISTORIC  
PRESERVATION OFFICER, AND THE VIRGINIA STATE HISTORIC PRESERVATION  
OFFICER, US WIND, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE US WIND/MARYLAND WIND OFFSHORE WIND ENERGY PROJECT**

Concurring Party:

National Park Service (NPS)

Date: \_\_\_\_\_

\_\_\_\_\_  
Jonathan Meade

Interior Region I Associate Regional Director, Resource Stewardship and Science

National Park Service

DRAFT

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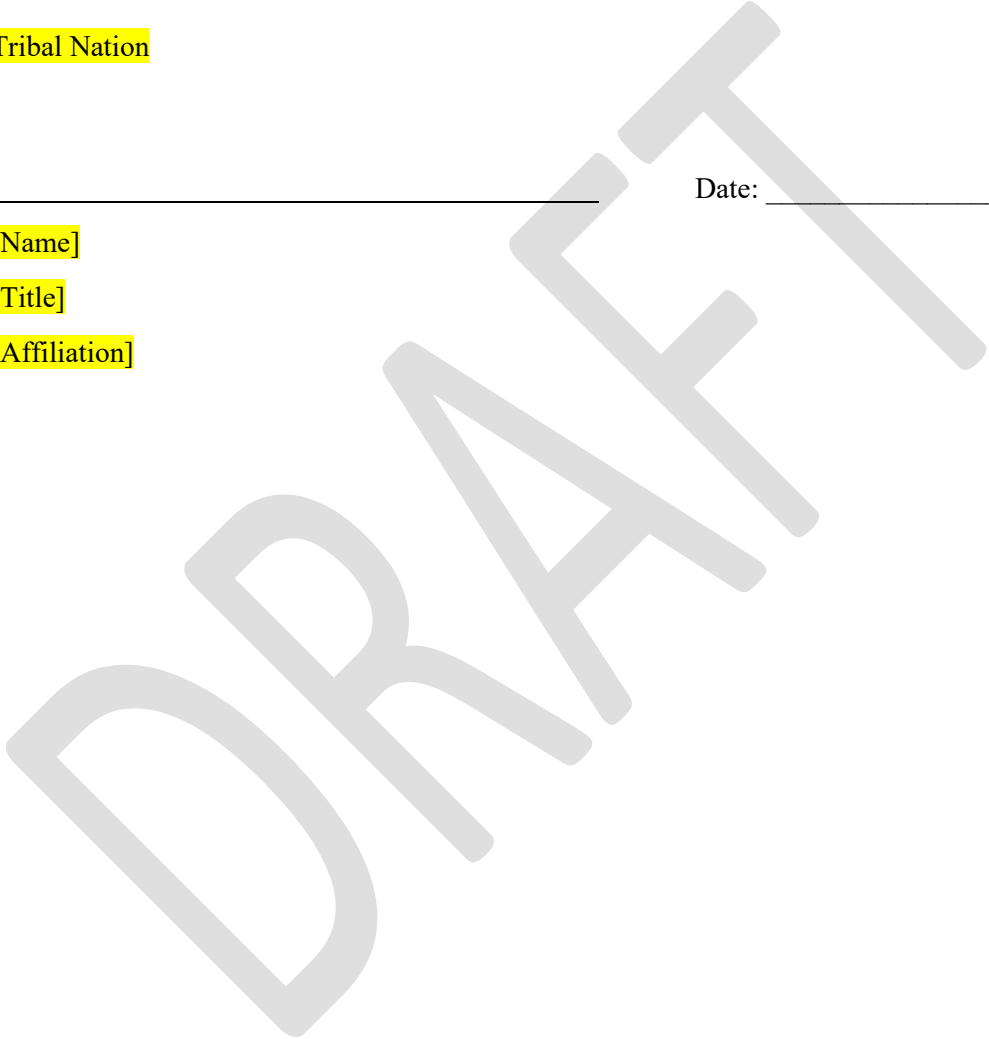
Concurring Party:

**Tribal Nation**

\_\_\_\_\_ Date: \_\_\_\_\_  
**[Name]**

**[Title]**

**[Affiliation]**



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PRESERVATION OFFICER, AND THE VIRGINIA STATE HISTORIC PRESERVATION  
OFFICER, US WIND, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE US WIND/MARYLAND WIND OFFSHORE WIND ENERGY PROJECT  
LIST OF ATTACHMENTS TO THE MOA**

ATTACHMENT 1 – AREA OF POTENTIAL EFFECTS (APE) MAPS

ATTACHMENT 2 - LISTS OF INVITED AND PARTICIPATING CONSULTING PARTIES

ATTACHMENT 3 – HISTORIC PROPERTY TREATMENT PLAN FOR HISTORIC PROPERTIES

ATTACHMENT 4 – US WIND/MARYLAND WIND TERRESTRIAL POST REVIEW DISCOVERY  
PLAN

ATTACHMENT 5 – US WIND/MARYLAND WIND TERRESTRIAL MONITORING PLAN

ATTACHMENT 6 - US WIND/MARYLAND WIND ARCHAEOLOGICAL HISTORIC PROPERTY  
PROTECTION PLAN [PENDING]

ATTACHMENT 7 – US WIND/MARYLAND WIND MARINE POST REVIEW DISCOVERY PLAN

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