

**DRAFT PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

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

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

WHEREAS, OCS means all submerged lands lying seaward and outside of the area of lands beneath navigable waters, as defined in Section 2 of the Submerged Lands Act (*see* 43 U.S.C. Part 1301), whose subsoil and seabed appertain to the United States and are subject to its jurisdiction and control (*see* 30 CFR § 585.112); 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 steps in the leasing and plan review process, including planning and analysis, leasing, site assessment, and construction and operation; and,

WHEREAS, BOEM may issue commercial leases, limited leases, research leases, ROW grants, or right-of-use and easement (RUE) grants on the OCS (*see* Appendix II); and,

WHEREAS, commercial leases, limited leases, ROW grants, and RUE grants do not authorize the lessee or grantee to construct any facilities; rather, the lease or grant gives the lessee or grantee the exclusive right to use the leased area to perform site characterization activities and develop plans, which must be submitted to and 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 will 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 (*see* Appendix II), collectively "Plans," which must be submitted to and approved by BOEM before the lessee or grantee implements its plans (*see* 30 CFR §§ 585.613(e), 585.628(f), and 585.648(e)); and,

WHEREAS, BOEM determined that issuing leases and grants and approving Plans are 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); and,

WHEREAS, BOEM previously executed the *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*

Programmatic Agreement Among The U.S. Department of the Interior, Bureau of Ocean Energy Management; The State Historic Preservation Officers of Delaware, Maryland, and Virginia; The Advisory Council on Historic Preservation Regarding Review of Outer Continental Shelf Renewable Energy Activities Offshore Delaware, Maryland, and Virginia Under Section 106 of the National Historic Preservation Act

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 within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia in 2012 and it expired on January 31, 2022; and,

WHEREAS, the issuance of a commercial lease, limited lease, ROW grant, RUE grant, or research lease, or approval of a Plan includes activities that have the potential to affect historic properties insofar as they may lead to the lessee or grantee 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 associated facilities that involve transportation or transmission of electricity or other energy products from renewable energy projects; 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, BOEM’s renewable energy regulations also allow the development of a lease in multiple steps (*see* 30 CFR § 585.629); and,

WHEREAS, BOEM determined that the implementation of the Offshore Renewable Energy Program (the Program) in the Mid-Atlantic region, including offshore Delaware, Maryland, and Virginia, is complex, as wind energy development on the OCS requires multiple undertakings that are associated with discreet steps in the leasing and plan review process, and the effects on historic properties are regional 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, the phasing of the identification and evaluation of historic properties could result in the discovery of previously unknown historic properties that could significantly impact project planning, siting, and timelines; 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, the APE, as defined in the regulations implementing Section 106 (36 CFR § 800.16(d)), means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE for an individual undertaking may include areas of the OCS and areas outside of the OCS, and therefore may encompass areas broader than BOEM’s jurisdiction for development; and,

WHEREAS, for COPs, BOEM defines the APE for the undertaking as the depth and breadth of the seabed potentially impacted by any bottom-disturbing activities, constituting the marine archaeological resources portion of the APE (marine APE); the depth and breadth of terrestrial areas potentially impacted by any ground-disturbing activities, constituting the terrestrial archaeological resources portion of the APE (terrestrial APE); the viewshed from which offshore or onshore renewable energy structures would be visible, constituting the visual portion of the APE (visual APE); and any temporary or permanent construction or staging areas that may fall into any of the aforementioned offshore or onshore portions of the APE; and,

WHEREAS, BOEM's guidelines specify that surveys will: (1) meet or exceed the Secretary of the Interior's Identification Standards; (2) be carried out by professionals meeting the Secretary of the Interior's Professional Qualification Standards (available online as of 2024 at: <https://www.nps.gov/articles/sec-standards-prof-quals.htm>); (3) follow BOEM's established guidelines, including BOEM's most recent *Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585 (Guidelines)*; available online as of 2024 at: https://www.boem.gov/Guidelines_for_Providing_Archaeological_and_Historic_Property_Information_Pursuant_to_30CFR585/); and (4) follow all applicable standards and guidelines as described in 36 CFR § 800.4(b)(1); and,

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

WHEREAS, this Agreement will not be applicable to leases, grants, and Plans for which Section 106 review was initiated before the execution of this Agreement, including, the Coastal Virginia Offshore Wind Commercial Project (Lease Number OCS-A 0483), the Kitty Hawk North Wind Project (portion of Lease Number OCS-A 0508), and US Wind/Maryland Offshore Wind Project (Lease Number OCS-A 0490) as these reviews are independent of this Agreement; and,

WHEREAS, throughout this document the term "Tribe" 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 Tribes 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; 301DM7 (Department of the Interior's Manual, "Departmental Responsibilities for Consideration and Inclusion of Indigenous Knowledge in Departmental Actions and Scientific Research"); and

WHEREAS, BOEM invited the following Tribes to consult on this Agreement: Catawba Indian Nation; Chickahominy Indian Tribe - Eastern Division; Cherokee Nation; Chickahominy Tribe; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Mashantucket (Western) Pequot Tribal Nation; Monacan Indian Nation; Nansemond Tribe; Pamunkey Tribe; Rappahannock Tribe; Seneca-Cayuga Nation (of Oklahoma); Shawnee

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Tribe; Stockbridge-Munsee Community Band of Mohican Indians; The Delaware Nation; The Narragansett Indian Tribe; The Shinnecock Indian Nation; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Mattaponi Indian Tribe; Wampanoag Tribe of Gay Head (Aquinnah); and,

WHEREAS, the following Tribes accepted the invitation to consult on this Agreement: Chickahominy Indian Tribe - Eastern Division; Chickahominy Tribe; Delaware Tribe of Indians; Monacan Indian Nation; Nansemond Tribe; Rappahannock Tribe; Stockbridge-Munsee Community Band of Mohican Indians; The Delaware Nation; The Shinnecock Indian Nation; and Upper Mattaponi Indian Tribe; and,

WHEREAS, the Shawnee Tribe declined to participate in consultation on April 10, 2023; and,

WHEREAS, BOEM continued to notify and inform federally recognized Tribes who did not respond to the initial invitation of consultation meetings and review periods and provide opportunity to comment on draft documents; and

WHEREAS, BOEM will continue to consult with Tribes to identify properties of religious and cultural significance to Tribes and that may be eligible for listing in the NRHP, including cultural landscapes and Traditional Cultural Places (TCPs), and that may be affected by these undertakings; and,

WHEREAS, BOEM invited the Delaware State Historic Preservation Officer (SHPO), the Maryland SHPO, the Virginia SHPO, and the Advisory Council on Historic Preservation (ACHP) to consult on this Agreement, and they are signatories to this Agreement, pursuant to 36 CFR § 800.14; and,

WHEREAS, the Delaware SHPO has jurisdiction as established in the NHPA for historic properties in Delaware and in Delaware state waters; the Maryland SHPO has jurisdiction as established in the NHPA for historic properties in Maryland and in Maryland state waters; and the Virginia SHPO has jurisdiction as established in the NHPA for historic properties in Virginia and in Virginia State waters; and,

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

WHEREAS, BSEE designated BOEM as the Lead Federal Agency pursuant to 36 CFR § 800.2(a)(2) to act on its behalf for purposes of compliance with Section 106 for this Agreement (in an electronic communication dated February 29, 2024), and BSEE has accepted the invitation to sign this Agreement as a concurring party; and,

WHEREAS, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, Department of the Army permits may be required from the United States Army Corps of Engineers (USACE) for undertakings reviewed under this Agreement and BOEM invited USACE to consult on this Agreement; and,

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

WHEREAS, BOEM invited 100 additional individuals and entities, including state-recognized Tribes, federal and state agencies, local governments, preservation organizations, and lessees (*see* Appendix I for list of invited consulting parties), in accordance with 36 CFR § 800.3(f); BOEM has requested their comments on this Agreement, and has taken any comments received into account; 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.

NOW, THEREFORE, BOEM, the SHPOs, and the ACHP, collectively referred to as “Signatories,” agree that Section 106 review for the Program will be conducted in accordance with the following stipulations.

STIPULATIONS

BOEM will ensure the following measures are carried out:

I. LEASE AND GRANT ISSUANCE

For any commercial lease, limited lease, research lease, ROW grant, or RUE grant, except as described under Stipulation 1)V. ACTIVITIES WITH MINIMAL POTENTIAL TO ADVERSELY AFFECT HISTORIC PROPERTIES of this Agreement, BOEM will implement the following steps:

- A. BOEM will establish the APE for each undertaking as the depth and breadth of the seabed that could potentially be affected by geotechnical testing or exploration.
- B. BOEM will carry out a reasonable and good faith effort to identify historic properties within the APE as presented in the current version of BOEM’s *Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585 (Guidelines; 36 CFR § 800.4(b)(1))*.
 1. As described in the *Guidelines*, the extent of the geographic areas surveyed for historic properties should be commensurate with the scale of the proposed activities. BOEM requires each lessee to conduct pre-survey coordination with Tribes as a condition of the lease and grant agreements. Pre-survey coordination can help identify known historic properties and the results of previous surveys or environmental studies within an applicant’s project area.
 2. Lessees, in consultation with BOEM and affected states, will design and execute surveys in compliance with state survey guidelines within each state’s jurisdictional boundaries.

3. Prior to conducting any bottom-disturbing activities, including geotechnical testing, lessees will demonstrate to BOEM that they have survey data for the proposed locations where geotechnical activities will take place.
- C. BOEM will include the following in its Renewable Energy leases stipulations:
1. A commitment to avoid known and potential historic properties.
 2. A good faith effort to identify historic properties that follows the latest version of BOEM's *Guidelines* performed prior to geotechnical testing and exploration activities.
 3. A Qualified Marine Archaeologist's (QMA) review of marine geophysical survey data prior to geotechnical testing or exploration to identify potential historic properties.
 4. A consultation procedure for addressing post-review discoveries of potential archaeological resources as determined by a Qualified Marine Archaeologist, such as the presence of a shipwreck (e.g., a sonar image or visual confirmation of an iron, steel, or wooden hull, wooden timbers, anchors, concentrations of historic objects, piles of ballast rock), pre-contact artifacts, and/or relict landforms.
- D. Prior to lease or grant issuance, BOEM will identify consulting parties for each undertaking, pursuant to 36 CFR § 800.3(f). BOEM will identify Tribes, agencies, organizations, and individuals with a demonstrated interest in an undertaking and will invite them to consult. BOEM will evaluate written requests by individuals, organizations, and agencies to become consulting parties on a case-by-case basis.
- E. BOEM will consult on existing, non-proprietary information regarding the proposed undertaking and the geographic extent of the APE, as defined in Stipulation I.A. BOEM will solicit additional information on known and potential historic properties within the APE from consulting parties and the public.
- F. BOEM will treat all identified potential historic properties as eligible for inclusion in the NRHP unless it is determined in consultation with the appropriate Tribes, Tribal Historic Preservation Officers (THPO(s)), and SHPOs that a property lacks integrity or does not meet the NRHP criteria, consistent with 36 CFR § 800.4(c).
- G. BOEM will require Lessees and Grantees to avoid effects on historic properties through lease stipulations, resulting in BOEM making a finding of *No Historic Properties Affected* consistent with 36 CFR § 800.4(d)(1).
1. BOEM will notify and consult with Tribes and appropriate SHPOs about the finding of *No Historic Properties Affected* and provide supporting documentation per Stipulation XII. REVIEW PROCESS. Following any requested consultation with Tribes, THPOs, or SHPOs, BOEM will post the finding documentation on BOEM's website and notify Tribes and SHPOs. BOEM will document in the annual report for this Agreement all findings of *No Historic Properties Affected* made pursuant to this Stipulation.

- H. If inadvertent effects to historic properties occur, BOEM will require the Lessee or Grantee to follow appropriate lease stipulations regarding post-review discoveries.

II. PLAN APPROVAL

For a Plan, such as a SAP, COP, or GAP, except as described under Stipulation V. ACTIVITIES WITH MINIMAL POTENTIAL TO ADVERSELY AFFECT HISTORIC PROPERTIES of this Agreement, BOEM will implement the following steps:

A. Initiation of Section 106:

1. If state permits or approval are required for historic property investigations in support of a Plan, BOEM will notify SHPOs via electronic communication prior to surveys to indicate that the Plan will also be used for future NHPA Section 106 review.
2. BOEM will identify and invite Tribes, SHPOs, the ACHP, and potential consulting parties to consult on an undertaking, pursuant to 36 CFR § 800.3(f). The Tribes, SHPOs, THPO(s), ACHP (if participating), and potential consulting parties who accept the invitation to consult will be included in the following steps and referred to as “consulting parties” for the remainder of the Agreement unless otherwise specified.

B. Identification of Historic Properties:

1. The lessee will submit a preliminary APE (PAPE) based on BOEM’s *Guidelines* to BOEM for review. The PAPE will include all offshore project components and construction locations as well as onshore work typically associated with renewable energy projects. These components typically include, but are not limited to, construction staging or stockpiling areas, cable landing locations, switching or converter stations, substations, transmission lines or cables routes, offshore foundations locations, export cables routes, any alternative routes, or other construction sites.
 - a. BOEM will review the PAPE, and the lessee will base their historic property identification surveys on an agreed-upon PAPE.
 - b. This PAPE will be used for preliminary identification surveys prior to BOEM initiating Section 106 consultation for an undertaking.
 - c. BOEM will delineate the final APE through consultation, pursuant to Stipulation II.B.2. BOEM may require lessees to complete additional or refined identification surveys if the final APE differs from the PAPE.
 - d. If the lessee changes the proposed project after BOEM’s APE delineation, BOEM will consider if changes constitute a change in the APE and if additional identification surveys and consultation are required.
2. BOEM will establish the APE as the depth and breadth of the seabed that could potentially be affected by seafloor/bottom-disturbing activities; the depth and breadth of terrestrial areas that could be potentially affected by any ground-disturbing activities; the viewshed from which renewable energy structures or facilities, whether located offshore or onshore, would be visible; and any temporary or permanent construction or staging areas, both offshore and onshore.

- a. BOEM will delineate the final APE, which will include a description and maps, and will consult with Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties on the APE as early as possible in Section 106 consultation.
 - b. Should any modifications to the undertaking affect the size, scope, or location of the project areas after BOEM's delineation of the APE, BOEM will make appropriate changes to the APE and will provide an updated APE description and map to Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties.
3. In accordance with 36 CFR § 800.4(b)(1), BOEM will identify historic properties using a reasonable and good faith effort, as described below:
- a. For the identification of historic properties within all portions of the APE, BOEM and the lessee will conduct historic property identification in accordance with state or Tribal guidelines and recommendations presented in BOEM's most recent *Guidelines*. The lessee will coordinate with the Tribes, THPO(s), and SHPO(s) during the development and prior to the initiation of any such identification efforts to identify any historic properties, including survey planning and the presence of any sites of religious and cultural significance to Tribes, as described in Stipulation VI. CONSULTATION WITH TRIBES. BOEM will comply with all Tribal confidentiality, coordination, and consultation protocols as described in Appendices VII and VIII of this Agreement.
 - b. BOEM will require that marine archaeology, terrestrial archaeology, and aboveground historic resources be documented in separate technical reports for the marine archaeological portion of the APE, terrestrial portion of the APE, and visual portion of the APE. Each report will address the identification of historic properties, including, but not limited to, sites of religious and cultural significance to Tribes and cultural landscapes, and include an assessment of effects due to the undertaking. These reports should be submitted to BOEM with the COP. The content of these reports should follow appropriate state or Tribal guidelines and recommendations presented in BOEM's most recent *Guidelines*.
 - i. The lessee will use the PAPE for the identification efforts documented in the technical reports.
 - ii. If BOEM deems that phased identification is appropriate for terrestrial archaeological investigations, BOEM will require that supplemental reports will be prepared in accordance with appropriate state or Tribal guidelines and recommendations presented in BOEM's most recent *Guidelines* and pursuant to Stipulation IV. PLAN APPROVAL: PHASED IDENTIFICATION SECTION 106 PROCESS of this Agreement.
 - c. BOEM will treat all potential historic properties, as defined in BOEM's most recent *Guidelines*, as eligible for inclusion in the NRHP unless it is determined in consultation with the appropriate Tribes, SHPO(s), and THPO(s), that a property lacks integrity or does not meet the NRHP criteria, consistent with 36 CFR § 800.4(c). This consultation should be documented within the technical reports.

- d. BOEM will provide all identification and evaluation reports to Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties for review and comment per Stipulation 1)XII. REVIEW PROCESS.
 - e. If a SHPO, or THPO if on tribal lands, 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, the agency will obtain a determination of eligibility from the NPS pursuant to 36 CFR Part 63 (36 CFR § 800.4(c)(2)). If any Tribe 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 § 800.4(c)(2).
 - f. *No Historic Properties Affected*: If BOEM determines that all identified archaeological and aboveground historic resources are ineligible for inclusion in the NRHP or that all eligible properties can be avoided, BOEM will make a finding of *No Historic Properties Affected*, consistent with 36 CFR § 800.4(d)(1).
 - i. BOEM will notify the appropriate Tribes, THPO(s), and SHPO(s) about the finding of *No Historic Properties Affected* and provide supporting documentation. BOEM will post the finding documentation on BOEM's website. BOEM will document in the annual report for this Agreement any findings of *No Historic Properties Affected* made pursuant to this Stipulation.
- C. Assessment of Effects:
1. BOEM will require the lessee to assess the effects of an undertaking on historic properties identified within the APE and make preliminary effect recommendations within the technical reports pursuant to 36 CFR § 800.5.
 2. BOEM, in consultation with Tribes, appropriate SHPO(s), THPO(s), ACHP (if participating earlier in consultation), and consulting parties, will apply the criteria of adverse effect to historic properties within the APE. BOEM will consider any views concerning effects on historic properties provided by these parties.
 3. BOEM will review the reports to make a finding of effect. BOEM will prepare a Finding of Effect document and will consult as follows:
 - a. BOEM will follow the review process for all documents, including the finding of effect, as outlined in Stipulation XII. REVIEW PROCESS.
 - b. *No Adverse Effect*: If BOEM, in consultation with Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties, determines that no historic properties will be adversely affected, including through the development of avoidance measures, BOEM will issue a finding of *No Adverse Effect*.
 - c. *Adverse Effect*: If BOEM determines there will be adverse effects on these historic properties, BOEM will issue a finding of *Adverse Effect*. BOEM will invite the ACHP to consult on the resolution of adverse effects. If ACHP has elected to participate earlier in consultation, then BOEM will notify ACHP of the

Adverse Effect finding. BOEM will resolve those effects in accordance with Stipulation II.D of this Agreement.

D. Resolution of Adverse Effects:

BOEM will determine, through consultation with Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties, measures for avoidance, minimization, and mitigation to resolve adverse effects as follows:

1. *Avoidance*: Where practicable, BOEM will resolve adverse effects by avoiding historic properties and recording a finding of *No Historic Properties Affected*, or *No Adverse Effect* consistent with 36 CFR Parts 800.4(d) and 800.5(b), respectively.
2. *Minimization and Mitigation Measures*: If BOEM cannot avoid adverse effects, BOEM will consult with Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties, on minimization and mitigation measures to mitigate or lessen the impact of adverse effects where possible and reasonable.
 - a. BOEM will require lessees to include proposed avoidance, minimization, mitigation, and monitoring plans in their technical reports or Plans. BOEM will review the proposed measures and consult with Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties.
3. BOEM will resolve adverse effects for each undertaking by documenting avoidance, minimization, and mitigation measures by either developing a Memorandum of Agreement (MOA) pursuant to 36 CFR 800.6; or if BOEM has chosen to use National Environmental Policy Act (NEPA) Substitution for the Section 106 process for the undertaking, pursuant to Stipulation III. NEPA SUBSTITUTION of this Agreement, in an MOA or Record of Decision (ROD), or by implementing Standard Mitigation Measures as described below.
 - a. BOEM will ensure that fulfillment of such measures by the lessees are made conditions of Plan approval.
4. BOEM, through consultation, will select one of the following options to resolve adverse effects and will notify Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties on which option BOEM will use to resolve adverse effects:
 - a. *MOA*: If BOEM chooses to use a MOA, BOEM will consult with Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties on the development of the MOA and stipulations for resolving adverse effects. Appendix V of this Agreement serves as a reference for the development of an MOA.
 - b. *NEPA Substitution*: If BOEM chooses to use a ROD to resolve adverse effects under NEPA substitution (36 CFR § 800.8(c)), then BOEM will consult with Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties on the resolution of adverse effects and will include the avoidance, minimization, and selected mitigation measures as binding conditions in the ROD.
 - c. *Standard Mitigation Measures*: If BOEM, in consultation with the lessee, Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties, determines

that standard avoidance, minimization, and mitigation measures are appropriate to resolve the adverse effects caused by an undertaking, BOEM will document these measures in a comprehensive avoidance, minimization, and mitigation plan or resource-specific treatment plans. Appendix IV of this Agreement serves as a reference for the development of standard mitigation measures. Appendix VI of this Agreement serves as a reference for the development of treatment plans.

5. BOEM will consult on the measures to resolve adverse effects, including associated documentation, pursuant to Stipulation XII. REVIEW PROCESS of this Agreement.

III. NEPA SUBSTITUTION

If BOEM chooses to use NEPA substitution to fulfill Section 106 review obligations for an undertaking, in accordance with 36 CFR § 800.8(c), for Plan approvals (Stipulation II. PLAN APPROVAL), the following steps will be followed in a manner that is consistent with the standards at 36 CFR §§ 800.3 through 800.6 for consultation and historic property identification, assessment of effects, and resolution of adverse effects:

- A. BOEM will provide advance notice to Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties that it intends to use the process and documentation for preparing an Environmental Impact Statement (EIS) for Section 106 purposes when BOEM distributes the Notice of Intent to draft an EIS. BOEM will identify consulting parties in accordance with Stipulation II.A of this Agreement.
- B. BOEM will consult with Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties during NEPA scoping, environmental analysis, and preparation of NEPA and Section 106 documents. BOEM will involve the public in accordance with the BOEM's published NEPA procedures.
- C. BOEM will identify historic properties and assess effects as described in Stipulation II.B of this Agreement and will begin before the Notice of Availability for the draft EIS (DEIS).
- D. BOEM will assess the effects of a proposed undertaking and determine if there is a potential for adverse effects to historic properties in the APE for the undertaking, as described in Stipulation II.C of this Agreement.
- E. BOEM, in consultation with Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties, will develop alternatives and propose measures to avoid, minimize, or mitigate any adverse effects of the undertaking to historic properties and describe them in the final EIS (FEIS). The measures to resolve adverse effects will be documented via one of the options as described in Stipulation II.D.4. of this Agreement.

IV. PLAN APPROVAL: PHASED IDENTIFICATION SECTION 106 PROCESS FOR TERRESTRIAL ARCHAEOLOGY

If proposed by a lessee with submission of a Plan, BOEM will determine if a phased and deferred identification approach is appropriate for identification and evaluation of historic properties in the terrestrial APE, pursuant to 36 CFR Parts 800.4(b)(2) and 800.5(a)(3), and the resolution of adverse effects to these identified historic properties as appropriate, pursuant to

Stipulation II.D.3. BOEM will notify the lessee if a phased and deferred identification approach is acceptable, and, if acceptable, BOEM will require the lessee to prepare a Phased Identification Plan, as outlined in Stipulation IV.A. The Phased Identification Plan will be provided to Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties for review and comment per 1)XII. REVIEW PROCESS. The Phased Identification Section 106 Process cannot be used to identify historic properties within the marine APE or the visual APE.

The final identification and evaluation of historic properties may occur after the approval of a Plan. BOEM's most recent *Guidelines* provide details on how this phased identification should be conducted. In this circumstance, BOEM, in consultation with Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties, will require the lessee to conduct phased identification, as described below:

- A. The Phased Identification Plan will include the following components:
 1. A geographic description and maps of the APE, as defined in Stipulation II.A of this Agreement, and areas where survey is outstanding within the APE.
 2. A brief description of the survey methodology.
 3. A description of the reasoning for phased identification.
 4. An anticipated schedule table for survey, report completion, and consultation.
- B. A reasonable and good faith effort to identify historic properties (*see* 36 CFR § 800.4(b)(1)), as described in Stipulation II.B of this Agreement, will be followed.
- C. Under the phased and deferred identification process for Plan approval undertakings, the phased activities will occur as described in Stipulation II.B of this Agreement and may be completed before or after the approval of a Plan.
- D. BOEM will document the phased identification and evaluation process in an MOA, or, if BOEM chooses to use NEPA substitution, in an MOA or ROD, or a programmatic agreement executed pursuant to 36 CFR § 800.14(b).

V. ACTIVITIES WITH MINIMAL POTENTIAL TO ADVERSELY AFFECT HISTORIC PROPERTIES

The Signatories agree that the following activities will not require any further Section 106 review because they have minimal or no potential to adversely affect a historic property. BOEM will document all activities reviewed under this Stipulation in the annual report for this Agreement, per Stipulation XV.

- A. *Marine Archaeological Sampling*: Provided that the Qualified Marine Archaeologist (QMA) has reviewed geophysical survey data at each sampling location and determined that there is minimal potential for the investigation to adversely affect archaeological resources, vibracores or other direct samples may be collected, by or under the supervision of a QMA, for the purposes—at least in part—of historic property identification or NRHP eligibility testing and evaluation.

- B. *Meteorological Buoys*: Proposed installation, operation, and removal of meteorological buoys when the results of geophysical data collected meet the standards established in BOEM's *Guidelines* and either: (1) resulted in the identification of no archaeological site within the seabed portion of the APE for the buoy, or (2) if the project can be relocated so that the APE does not contain an archaeological site, if any such sites are identified during geophysical survey. The Signatories agree that offshore meteorological buoys have no effect on onshore historic properties as they are temporary in nature and indistinguishable from lighted vessel traffic.
- C. *Meteorological Towers*: Proposed construction, installation, operation, and removal of meteorological towers when the following conditions are met:
 - 1. The results of archaeological survey within the offshore APE meet the standards established in BOEM's *Guidelines* and either:
 - a. Resulted in the identification of no archaeological site within the seabed portion of the APE for the tower, or
 - b. If the project can be relocated so that the offshore APE does not contain an archaeological site, if any such sites are identified during geophysical survey.
 - 2. BOEM will determine, based on the lessee's documentation, that there will be no potential for onshore visibility of the meteorological tower and therefore, no onshore APE or the results of historic property identification within the visual APE meet the standards outlined by the SHPO(s), or THPO(s) if on tribal lands, and no historic properties are identified.

VI. CONSULTATION WITH TRIBES

The Signatories agree that consultation with Tribes will follow these guidelines:

- A. BOEM will continue to consult with Tribes throughout the implementation of this Agreement 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 will continue to consult with Tribes according to the protocols outlined in Appendix VII, Tribal Confidentiality Protocols and Appendix VIII, Tribal Coordination and Consultation Protocols.
- 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.
 - 1. 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, and will

- occur pursuant to Appendices VII and VIII. Lessees should notify Tribes that this early information gathering is not a part of BOEM's government-to-government consultation.
- D. 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.
 - E. 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 outlines in Stipulation II.B.3.e.
 - F. BOEM will consult with Tribes on avoidance, minimization, and mitigation measures to resolve adverse effects.

VII. NATIONAL HISTORIC LANDMARKS

BOEM will comply with the following steps if, during the course of the procedures for Plan approval outlined in Stipulation II, any National Historic Landmarks (NHLs) are identified within the APEs for Plans:

- A. BOEM will comply with Section 110(f) of the NHPA for each undertaking reviewed under this Agreement, which requires agencies, to the maximum extent possible, to undertake such planning and actions as may be necessary to minimize harm to NHLs (36 CFR § 800.10(a)).
- B. BOEM will consider all prudent and feasible alternatives to avoid adverse effects on NHLs in accordance with the Secretary of the Interior's *Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act* (1998; available online as of 2024 at: <https://www.nps.gov/fpi/Section110.html>).
- C. If BOEM anticipates that NHLs could be adversely affected from activities proposed to be conducted under Plans, BOEM will notify the Secretary of the Interior of any consultation involving NHLs, as required in 36 CFR § 800.10(c), and will invite the Secretary to participate in consultation where there may be an adverse effect and will request the ACHP to participate in any consultation to resolve adverse effects on NHLs (see 36 CFR § 800.10(b)).
- D. BOEM will also consider if additional consulting parties should be invited and if additional Section 106 consultation is appropriate.

VIII. POST-REVIEW DISCOVERIES

For leases, grants, and Plans, the Signatories agree:

- A. BOEM will ensure that lessees follow BOEM's policy for post-review discoveries to ensure that the identification and evaluation of historic properties, assessment of effects, and development of treatment and mitigation plans for unforeseen effects on previously identified historic properties or historic properties discovered during implementation of the undertaking are properly coordinated and implemented (See *Guidelines for Providing Geological and Geophysical, Hazards, and Archaeological Information Pursuant to 30*

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CFR Part 285, Section IV.B, “Unanticipated Discoveries [Chance Finds]” available online as of 2024 at: http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx#Notices_to_Lessees,_Operators_and_Applicants).

- B. BOEM will ensure that lessees prepare post-review discoveries plans for each Plan in accordance with Appendix III to address any unanticipated discoveries of cultural resources during the construction, operation, and decommissioning of any undertakings reviewed under this Agreement.
- C. If resources are discovered that may be eligible for the NRHP or unanticipated effects on historic properties are found, or if any archaeological materials or sites are encountered during onshore or offshore construction, operation, or decommissioning activities, BOEM and the lessee will implement the post-review discoveries plans as outlined in the lease or Plans.
- D. 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, and any subsequent versions.

IX. PUBLIC PARTICIPATION

- A. BOEM recognizes the importance of public participation in the Section 106 process. BOEM will notify the public of proposed undertakings in a manner that reflects the nature, complexity, significance of historic properties likely affected by the undertaking, the likely public interest given BOEM’s specific involvement and any confidentiality concerns of Tribes, private individuals, and businesses in accordance with the confidentiality clause of this Agreement (Stipulation X. CONFIDENTIALITY). BOEM will 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 the Agreement.
- B. When BOEM is using NEPA substitution, BOEM will provide the opportunity for public comment or participation in an undertaking through BOEM’s NEPA public participation process and through BOEM’s website.
- C. BOEM may produce reports on historic properties and on the Section 106 process that may be made available to the public on the BOEM website and through other reasonable means insofar as the information shared conforms to the confidentiality clause of this Agreement (Stipulation X. CONFIDENTIALITY).

X. CONFIDENTIALITY

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

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

- B. Follow, as appropriate, 36 CFR § 800.11(c) for authorization to withhold information pursuant to NHPA Section 304, and otherwise withhold sensitive information to the extent allowable by laws including the Freedom of Information Act, 5 U.S.C. Part 552, through the Department of the Interior regulations at 43 CFR Part 2.
- C. Request that the Signatories agree that materials generated during consultation be treated by the Signatories as internal and pre-decisional until they are formally released, although the signatories understand that they may need to be released by one of the Signatories if required by law.

XI. BOEM SURVEY GUIDELINES

BOEM will make a reasonable and good faith effort to carry out appropriate identification of historic properties within the APE as presented in BOEM's *Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585* (36 CFR § 800.4(b)(1)). Should BOEM wish to substantially alter information (e.g., methodology) included in the *Guidelines*, BOEM will first consult with the Signatories.

XII. REVIEW PROCESS

The following process will be used for any document, report, or plan produced in accordance with Stipulations of this Agreement:

- A. *Standard Review*: The consulting parties will have a standard review period of at least thirty (30) calendar days for commenting on all documents, resource evaluations of significance, treatment plans, and specifications that are developed under the terms of this Agreement from the date they are sent by BOEM via electronic media (email or secure website).
- B. *Expedited Request for Review*: The Signatories recognize the time-sensitive nature of reviews related to Plans and will attempt to expedite comments or concurrence when BOEM so requests. The expedited comment period will not be less than fifteen (15) calendar days from the date BOEM sends such a request via electronic media.
 - 1. If a Signatory cannot meet BOEM's expedited review period request, it will notify BOEM in writing within fifteen (15) calendar days.
- C. If a Signatory fails to provide comments or to respond within the time frame requested by BOEM (either standard or expedited), then BOEM will proceed. BOEM will consider all comments received within the review period.
- D. Once BOEM has determined that any document, report, or plan is sufficient, BOEM will distribute the final version to Tribes, SHPO(s), THPO(s), ACHP (if participating), and consulting parties.
- E. All submittals to the Signatories of this Agreement and consulting parties will be submitted electronically unless a specific request is made for the submittal to be provided in an alternate format. Should BOEM transmit the review materials by an alternate method as identified by a Signatory or consulting party, the review period will begin on the date they are or would have otherwise been sent via electronic media.

- F. Each Signatory will designate a point of contact for carrying out this Agreement and provide this contact's information to the other Signatories, updating it as necessary while this Agreement is in force. Updating a point of contact alone will not necessitate an amendment to this Agreement.

XIII. DISPUTE RESOLUTION

- A. Should any Signatory, Tribe, or consulting party object in writing to BOEM regarding an action carried out in accordance with this Agreement, or lack of compliance with the terms of this Agreement, the Signatories will consult to resolve the objection.
- B. 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, with a copy to other Signatories, within ninety (90) calendar days (or another time period agreed to by all Signatories). The ACHP will provide BOEM with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, BOEM will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, and consulting parties, and provide them with a copy of the written response within ninety (90) calendar days (or another time period agreed to by all Signatories). BOEM will then proceed according to its final decision.
 - 2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar 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 takes into account any timely comments regarding the dispute from the Signatories and Concurring Parties to this Agreement and provide them and the ACHP with a copy of the written response. BOEM will respond within ninety (90) calendar days (or another time period agreed to by all Signatories).
 - 3. BOEM's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.
- C. Any resolution will be understood to pertain only to the subject matter of the dispute; BOEM's responsibility to carry out all actions under this Agreement that are not subjects of dispute will remain unchanged.
- D. BOEM will provide all Signatories with a written copy of its final decision regarding any dispute addressed pursuant to this Stipulation.
- E. Should any member of the public object in writing to implementation of the Agreement's terms, BOEM will notify the Signatories in writing and take the objection into consideration. Any Signatory may choose to comment on the objection. BOEM will establish a reasonable time frame for this comment period. In reaching its decision regarding the objection, BOEM will consider the objection and take into consideration all comments from other parties. Within fifteen (15) calendar days after closure of this comment period, BOEM will provide the objecting party, and the Signatories, Tribes, and consulting parties with its final decision in writing.

XIV. AMENDMENT

Any Signatory may propose to BOEM in writing that the Agreement be amended, whereupon BOEM will consult with the Signatories to consider such amendment for no more than ninety (90) calendar days or another time period agreed to by the Signatories. This Agreement may 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. BOEM will notify the Signatories, Tribes, and consulting parties when the Agreement has been amended.

XV. ANNUAL REPORTING

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

- A. The annual report will summarize or include the following information: any activities exempted from review under this Agreement; the number of Section 106 reviews conducted for leases or Plans under this Agreement; a list of any objections and uses of the dispute clause; any changes in lease names; lease segregations; the number and names of approved COPs; the number of government-to-government meetings for specific leases or Plans; status of implementation mitigation measures, as applicable; BOEM invitations to additional consulting parties to participate in this Agreement; and recommend amendments to improve the effectiveness of the Agreement as needed. The content of this report may be modified through consultation with Signatories if adjustments to the information included are requested.
- B. At the time the report is distributed, any Signatory or Tribe may request a meeting with BOEM to discuss the contents of the report and the use of this Agreement to review undertakings. All Signatories and Tribes will be invited to this meeting.

XVI. ADDING CONCURRING PARTIES

If another consulting party requests to sign this Agreement as a Concurring Party, that party must make the request in BOEM in writing. BOEM will determine if the party will be invited to sign as a Concurring Party and will notify the party of the agency's decision. BOEM will notify the Signatories and Tribes of the request and the agency's decision in the Annual Report as described in Stipulation XV. ANNUAL REPORTING of this Agreement. This Agreement will not require an amendment if BOEM invites an additional consulting party to sign as a Concurring Party.

XVII. COORDINATION WITH OTHER FEDERAL AGENCIES

- A. In the event that another federal agency receives an application for funding/license/permit for an undertaking that falls under this Agreement, that federal agency may fulfill its Section 106 responsibilities by agreeing in writing with the terms of this Agreement and notifying the Signatories, Tribes, and consulting parties that it intends to do so. The federal agency will become a signatory in accordance with the process below, if approved by the other Signatories.
 1. To become a signing party to the Agreement, BOEM will ask the agency official to provide written notice to the Signatories, Tribes, and consulting parties that the

agency agrees to the terms of this Agreement. The participation of the agency is subject to approval by the Signatories who must respond to the written notice within thirty (30) calendar days, or the approval will be considered implicit. Any necessary amendments proposed to the Agreement as a result will be considered in accordance with Stipulation XIV. AMENDMENTS of this Agreement.

2. Should the Signatories approve the federal agency's request to be a signing party to this Agreement, an amendment under Stipulation XIV. AMENDMENTS will not be necessary if the federal agency's participation does not change the Agreement in a manner that would require any modifications to the stipulations. BOEM will document these conditions and involvement of the federal agency in a written notification to the Signatories, Tribes, 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.

XVIII. DURATION

This Agreement will remain in full force for twenty-five (25) years from the date this Agreement is executed, defined as the date the last Signatory signs, unless otherwise extended by amendment in accordance this Agreement. If termination is occasioned by BOEM's final decision on the last Plan considered under the Renewable Energy Regulations, BOEM will notify the Parties and the public, in writing.

XIX. TERMINATION

If any Signatory determines that the terms of the Agreement cannot 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 such notification, an amendment cannot be made, any Signatory may terminate the Agreement upon written notice to the other Signatories. Prior to work continuing on any undertaking that would have been subject to this Agreement, BOEM will comply with 36 CFR Part 800, or develop and execute a new programmatic agreement pursuant to 36 CFR § 800.14(b)(2). BOEM shall notify the Signatories and consulting parties of the path it will pursue.

XX. ANTI-DEFICIENCY ACT

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

Execution and implementation of this Agreement evidences that BOEM has satisfied its Section 106 responsibilities for the undertakings identified in this Agreement by taking into account the

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effects of the Program and the individual undertakings on historic properties and affording the ACHP a reasonable opportunity to comment with regard to the undertakings.

DRAFT

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Under Section 106 of the National Historic Preservation Act**

SIGNATORY

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

By:

Date: _____

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

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Review of Outer Continental Shelf Renewable Energy Activities Offshore
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Under Section 106 of the National Historic Preservation Act**

SIGNATORY

Delaware State Historic Preservation Office

By:

Date: _____

Suzanne Savery
Delaware State Historic Preservation Officer
Delaware Division of Historical and Cultural
Affairs

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
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Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
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Under Section 106 of the National Historic Preservation Act**

SIGNATORY

Maryland Historical Trust

By:

Date: _____

Elizabeth Hughes
Maryland State Historic Preservation Officer
Maryland Historical Trust

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The Advisory Council on Historic Preservation
Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
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Under Section 106 of the National Historic Preservation Act**

SIGNATORY

Virginia Department of Historic Resources

By:

Date: _____

Julie Langan
Virginia State Historic Preservation Officer
Virginia Department of Historic Resources

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The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
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Review of Outer Continental Shelf Renewable Energy Activities Offshore
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Under Section 106 of the National Historic Preservation Act**

SIGNATORY

Advisory Council on Historic Preservation

By:

Date: _____

Sara Bronin
Chairman
Advisory Council on Historic Preservation

DRAFT

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The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
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Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

Catawba Indian Nation

By:

Date: _____

Bill Harris
Chief
Catawba Indian Nation

DRAFT

**PROGRAMMATIC AGREEMENT Among
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The Advisory Council on Historic Preservation
Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
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Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

Cherokee Nation

By:

Date: _____

Chuck Hoskins, Jr.
Chief
Cherokee Nation

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
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Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
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Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

Chickahominy Indian Tribe - Eastern Division

By:

Date: _____

Gerald A. Stewart
Chief
Chickahominy Indian Tribe - Eastern Division

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Review of Outer Continental Shelf Renewable Energy Activities Offshore
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CONCURRING PARTY

Chickahominy Tribe

By:

Date: _____

Stephen Adkins
Chief
Chickahominy Tribe

DRAFT

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Review of Outer Continental Shelf Renewable Energy Activities Offshore
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CONCURRING PARTY

Delaware Tribe of Indians

By:

Date: _____

Brad Killscrow
Chief
Delaware Tribe of Indians

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CONCURRING PARTY

Eastern Band of Cherokee Indians

By:

Date: _____

Richard Sneed
Principal Chief
Eastern Band of Cherokee Indians

DRAFT

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Review of Outer Continental Shelf Renewable Energy Activities Offshore
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CONCURRING PARTY

Eastern Shawnee Tribe of Oklahoma

By:

Date: _____

Glenna Wallace
Chief
Eastern Shawnee Tribe of Oklahoma

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CONCURRING PARTY

Mashantucket (Western) Pequot Tribal Nation

By:

Date: _____

Rodney Butler
Chairman
Mashantucket (Western) Pequot Tribal Nation

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Review of Outer Continental Shelf Renewable Energy Activities Offshore
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CONCURRING PARTY

Monacan Indian Nation

By:

Date: _____

Diane Shields
Tribal Chief
Monacan Indian Nation

**PROGRAMMATIC AGREEMENT Among
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The Advisory Council on Historic Preservation
Regarding
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CONCURRING PARTY

Nansemond Tribe

By:

Date: _____

Keith Anderson
Chief
Nansemond Tribe

DRAFT

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The Advisory Council on Historic Preservation
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Review of Outer Continental Shelf Renewable Energy Activities Offshore
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CONCURRING PARTY

Pamunkey Tribe

By:

Date: _____

Robert Gray
Chief
Pamunkey Tribe

DRAFT

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Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
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Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

Rappahannock Tribe

By:

Date: _____

G. Anne Richardson
Chief
Rappahannock Tribe

DRAFT

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Review of Outer Continental Shelf Renewable Energy Activities Offshore
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Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

Seneca-Cayuga Nation (of Oklahoma)

By:

Date: _____

Charles Diebold
Chief
Seneca-Cayuga Nation (of Oklahoma)

**PROGRAMMATIC AGREEMENT Among
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Regarding
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CONCURRING PARTY

Stockbridge-Munsee Community Band of Mohican Indians

By:

Date: _____

Shannon Holsey
President
Stockbridge-Munsee Community Band of Mohican Indians

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CONCURRING PARTY

The Delaware Nation

By:

Date: _____

Deborah Dotson
President
The Delaware Nation

DRAFT

**PROGRAMMATIC AGREEMENT Among
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Review of Outer Continental Shelf Renewable Energy Activities Offshore
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CONCURRING PARTY

The Narragansett Indian Tribe

By:

Date: _____

Anthony Dean Stanton
Chief Sachem
The Narragansett Indian Tribe

**PROGRAMMATIC AGREEMENT Among
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Review of Outer Continental Shelf Renewable Energy Activities Offshore
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Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

The Shinnecock Indian Nation

By:

Date: _____

Lisa Goree
Chairwoman
The Shinnecock Indian Nation

DRAFT

**PROGRAMMATIC AGREEMENT Among
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Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
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CONCURRING PARTY

Tuscarora Nation

By:

Date: _____

Tom Jonathan
Chief Sachem
Tuscarora Nation

DRAFT

**PROGRAMMATIC AGREEMENT Among
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The Advisory Council on Historic Preservation
Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

United Keetoowah Band of Cherokee Indians in Oklahoma

By:

Date: _____

Joe Bunch

Chief

United Keetoowah Band of Cherokee Indians in Oklahoma

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

Upper Mattaponi Indian Tribe

By:

Date: _____

Frank W. Adams

Chief

Upper Mattaponi Indian Tribe

DRAFT

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

Wampanoag Tribe of Gay Head (Aquinnah)

By:

Date: _____

Cheryl Andrews-Maltais
Chairwoman
Wampanoag Tribe of Gay Head (Aquinnah)

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

Bureau of Safety and Environmental Enforcement

By:

Date: _____

[Point of Contact]

[Title]

Bureau of Safety and Environmental Enforcement

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

United States Army Corps of Engineers

By:

Date: _____

Andy Beaudet
Acting Chief, Regulatory Branch
United States Army Corps of Engineers, Norfolk District

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

United States National Park Service

By:

Date: _____

Jonathan Meade
Associate Regional Director
United States National Park Service

DRAFT

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

Virginia Department of Military Affairs – Virginia Army National Guard

By:

Date: _____

Maj. Gen. James W. Ring
Adjutant General of Virginia
Virginia Department of Military Affairs – Virginia Army National Guard

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

CONCURRING PARTY

Preservation Virginia

By:

Date: _____

Elizabeth Kostelny
Chief Executive Officer
Preservation Virginia

DRAFT

**PROGRAMMATIC AGREEMENT Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding
Review of Outer Continental Shelf Renewable Energy Activities Offshore
Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

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APPENDIX VIII – TRIBAL COORDINATION AND COORDINATION PROTOCOLS

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CONSULTING PARTIES**

DRAFT

**APPENDIX I
PROGRAMMATIC AGREEMENT**

Among

**The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;**

The Advisory Council on Historic Preservation

**Regarding Review of Outer Continental Shelf Renewable Energy Activities
Offshore Delaware, Maryland, and Virginia**

Under Section 106 of the National Historic Preservation Act

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

Invitee to the Section 106 Process	Invited Consulting Parties
Federally Recognized Tribes	Catawba Indian Nation
	Cherokee Nation
	Chickahominy Indian Tribe - Eastern Division
	Chickahominy Tribe
	Delaware Tribe of Indians
	Eastern Band of Cherokee Indians
	Eastern Shawnee Tribe of Oklahoma
	Mashantucket (Western) Pequot Tribal Nation
	Monacan Indian Nation
	Nansemond Tribe
	Pamunkey Tribe
	Rappahannock Tribe
	Seneca-Cayuga Nation (of Oklahoma)
	Shawnee Tribe
	Stockbridge-Munsee Community Band of Mohican Indians
	The Delaware Nation
	The Narragansett Indian Tribe
	The Shinnecock Indian Nation
	Tuscarora Nation
	United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Mattaponi Indian Tribe	
Wampanoag Tribe of Gay Head (Aquinnah)	
Federal Agencies	Assateague Island National Seashore
	Back Bay National Wildlife Refuge
	Colonial National Historic Park
	U.S. Advisory Council on Historic Preservation
	U.S. Army Corps of Engineers
	U.S. Bureau of Safety and Environmental Enforcement

BOEM Programmatic Agreement: Appendix I

Invitee to the Section 106	Invited Consulting Parties
	U.S. Fish and Wildlife Service
	U.S. National Park Service
	Virginia Department of Military Affairs, Virginia Army National Guard
Lessees	Avangrid Renewables
	Dominion Energy
	Ørsted
	Skipjack Offshore Energy, LLC
	U.S. Wind
State Recognized Tribes	Cheroenhaka (Nottoway) Indian Tribe
	Lenape Indian Tribe of Delaware
	Mattaponi Tribe
	Nanticoke Indian Association, Inc.
	Nottoway Indian Tribe of Virginia
	Patawomeck Indian Tribe of Virginia
	Piscataway Conoy Tribe
	The Coharie Tribe
State Historic Preservation Offices (SHPOs)	Delaware State Historic Preservation Office
	Maryland Historical Trust
	Virginia Department of Historic Resources
State Government	Maryland Commission on Indian Affairs
Local Government	Accomack County
	Accomack-Northampton Planning District Commission
	Berlin, Maryland
	Board of Supervisors Accomack County
	City of Chesapeake
	City of Hampton
	City of Lewes
	City of Newport News
	City of Norfolk
	City of Portsmouth
	City of Rehoboth Beach
	City of Suffolk
	City of Virginia Beach
	Hampton Roads Planning District Commission
	James City County
	Northampton/Accomack City
	Town of Bethany Beach
	Town of Chincoteague
	Town of Dewey Beach
	Town of Eastville

BOEM Programmatic Agreement: Appendix I

Invitee to the Section 106 Process	Invited Consulting Parties
	Town of Ocean City Town of Ocean View Town of South Bethany Worcester County Worcester County Commission
Preservation Organization	Beaches, Bays & Water Ways Council of Virginia Archaeologists Cultural Heritage Partners, PLLC Eastern Shore of Virginia Historical Society Lower Eastern Shore Heritage Council Nansemond River Preservation Alliance Outer Banks Conservationists Preservation Virginia Virginia African American Cultural Center
Other Potentially Interested Parties	Environmental Design and Research Tetra Tech

LIST OF PARTICIPATING TRIBES AND CONSULTING PARTIES, FEBRUARY 2024

Participants in the Section 106 Process	Participating Consulting Parties
Federally Recognized Tribal Nations	
Chickahominy Indian Tribe - Eastern Division	Jessica Phillips
Chickahominy Tribe	Dana Adkins
Delaware Tribe of Indians	Susan Bachor
Mashantucket (Western) Pequot Tribal Nation	Michael E. Johnson
Rappahannock Tribe	Jack Ryan
Stockbridge-Munsee Community Band of Mohican Indians	Jeff Bendremer, Shannon Holsey
The Delaware Nation	Carissa Speck, Katelyn Lucas
The Shinnecock Indian Nation	Jason Cofield, Jeremy Dennis
Upper Mattaponi Indian Tribe	Leigh Mitchell, Reggie Tupponce
Wampanoag Tribe of Gay Head (Aquinnah)	Lael Echo-Hawk, Bettina Washington
Federal Agencies	
U.S. Advisory Council on Historic Preservation	Chris Koepfel, Christopher Daniel, Kelly Fanizzo, Jamie Lee Marks
U.S. Army Corps of Engineers	Anna Lawston
U.S. Bureau of Safety and Environmental Enforcement	W. Shawn Arnold, Barry Bleichner
U.S. Fish and Wildlife Service	Virginia Rettig
U.S. National Park Service	Kristin Andel, Mary Krueger, Kathryn Schlegel
Virginia Department of Military Affairs, Virginia Army National Guard	Charlton T. Dunn, Lisa Vaughan Jordan, Susan Smead, Connor Sparks
Lessees	
Avangrid Renewables	Megan Higgins, Amanda Mayhew, Mark Roll
Dominion Energy	Jesse Collins, Jason P. Ericson, Mitchell Jabs, Silvia Stigler, Pete Sturke
Ørsted	Brook Kenline-Nyman, Madison Sanders
U.S. Wind	Laurie Jodziewicz, Todd Summer
State Historic Preservation Offices (SHPOs)	
Delaware State Historic Preservation Office	Sarah Carr
Maryland Historical Trust	Beth Cole, Troy Nowak, Becky Roman
Virginia Department of Historic Resources	Adrienne Birge-Wilson, Roger Kirchen
State Government	
Maryland Commission on Indian Affairs	Edward Keith Colston
Local Government	
Accomack-Northampton Planning District Commission	Anne Doyle
City of Chesapeake	Jessica Cosmas
City of Norfolk	Susan McBride, Paula Shea

BOEM Programmatic Agreement: Appendix I

Participants in the Section 106 Process	Participating Consulting Parties
City of Rehoboth Beach	Laurence Christian, Jay Lagree
City of Virginia Beach	Mark Reed
Town of Bethany Beach	Rosemary Hardiman
Town of Ocean City	Terence McGean
Preservation Organization	
Council of Virginia Archaeologists	Eleanor Breen
Cultural Heritage Partners, PLLC	William Cook
Outer Banks Conservationists	Meghan Agresto, Ladd Bayliss
Preservation Virginia	Sonja Ingram
Virginia African American Cultural Center	Amelia Ross-Hammond, Tamar Smithers
Other Interested Parties	
Environmental Design and Research	Daniel Forrest, Laura Mancuso
Tetra Tech	Adam S. Maskevich, Nathalie Schils

APPENDIX II – DEFINITIONS

DRAFT

**APPENDIX II
PROGRAMMATIC AGREEMENT**

Among

**The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding Review of Outer Continental Shelf Renewable Energy Activities
Offshore Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

DEFINITIONS

Affected states means Delaware, Maryland, Virginia, or any combination of these states participating in consultations and reviews pursuant to this Agreement.

Commercial activities mean, for renewable energy leases and grants, all activities associated with the generation, storage, or transmission of electricity or other energy products from a renewable energy project on the Outer Continental Shelf (OCS), and for which such electricity or other energy product is intended for distribution, sale, or other commercial use, except for electricity or other energy products distributed or sold pursuant to technology-testing activities on a limited lease. This term also includes activities associated with all stages of development, including initial site characterization and assessment, facility construction, and project decommissioning (see 30 Code of Federal Regulations [CFR] § 585.112).

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 § 585.112).

Cultural resources means aboveground historic resources, archeological sites, sites of religious and cultural significance to Tribes, and traditional ways of life.

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

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

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

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

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP) maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the NRHP criteria (*see* 30 CFR § 800.16(l)(1)).

Lessee means renewable energy developer holding a lease from BOEM.

Limited lease means a lease, issued under the renewable energy regulations, that specifies the terms and conditions under which a person may conduct activities on the OCS that support the production of energy, but do not result in the production of electricity or other energy products for sale, distribution, or other commercial use exceeding a limit specified in the lease (*see* 30 CFR § 585.112).

Research lease means an OCS lease, right-of-way (ROW) grant, or right-of-use and easement (RUE) grant, issued under the renewable energy regulations at 30 CFR § 585.238, 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. An ROW grant authorizes the holder to install on the OCS cables, pipelines, and associated facilities that involve the transportation or transmission of electricity or other energy products from renewable energy projects (*see* 30 CFR § 585.112).

RUE grant means an easement issued under the renewable energy regulations that authorizes use of a designated portion of the OCS to support activities on a lease or other use authorization for renewable energy activities. An RUE grant authorizes the holder to construct and maintain facilities or other installations on the OCS that support the production, transportation, or transmission of electricity or other energy products from any renewable energy resource (*see* 30 CFR § 585.112).

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

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

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

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

ABBREVIATIONS AND ACRONYMS

Acronym/Abbreviation	Definition
§	Section
ACHP	Advisory Council on Historic Preservation
ADLS	Aircraft detection lighting system
Agreement	Programmatic Agreement
APE	Area(s) of Potential Effects
ASLF	Ancient Submerged Landforms Features
AUV	autonomous underwater vehicle
BOEM	Bureau of Ocean Energy Management
BSEE	Bureau of Safety and Environmental Enforcement
CFR	Code of Federal Regulations
COP	Construction and Operations Plan
DE	Delaware
DEIS	Draft Environmental Impact Statement
DPO	Deputy Preservation Officer
EIS	Environmental Impact Statement
FAA	Federal Aviation Administration
FEIS	Final Environmental Impact Statement
FOIA	Freedom of Information Act
FPO	Federal Preservation Officer
GAP	General Activities Plan
GIS	geographic information system
GPS	global positioning system
<i>Guidelines</i>	<i>Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585</i>
HABS	Historic American Buildings Survey
HAER	Historic American Engineering Record
HALS	Historic American Landscapes Survey
HPPP	Historic Properties Protection Plans
HPTP	Historic Property Treatment Plan
HRG	high resolution geophysical
IK	Indigenous Knowledge
MD	Maryland
MHT	Maryland Historical Trust
MOA	Memorandum of Agreement
NAGPRA	Native American Graves Protection and Repatriation Act

BOEM Programmatic Agreement: Appendix II

NEPA	National Environmental Policy Act
NHL	National Historic Landmark
NHO	Native Hawaiian Organization
NHPA	National Historic Preservation Act
NPS	National Park Service
NRHP	National Register of Historic Places
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
PA	Programmatic Agreement
PAPE	Preliminary Area(s) of Potential Effects
POC	point of contact
QA	Qualified Archaeologist
QMA	Qualified Marine Archaeologist
ROD	Record of Decision
ROV	Remote operated vehicle
ROW	right-of-way
RPO	Regional Preservation Officer
RUE	right-of-use
SAP	Site Assessment Plans
SHPO	State Historic Preservation Officer
SOI	Secretary of the Interior
TCP	Traditional Cultural Places
THPO	Tribal Historic Preservation Officer
Tribes	Federally Recognized Native American Tribal Nations
USACE	United States Army Corps of Engineers
USBL	Ultra-Short Base Line
U.S.C.	United States Code
USCG	United States Coast Guard
VA	Virginia
VDHR	Virginia Department of Historic Resources
WDA	Wind Development Area
WTG	wind turbine generator

APPENDIX III – POST-REVIEW DISCOVERIES

DRAFT

**APPENDIX III
PROGRAMMATIC AGREEMENT**

Among

**The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding Review of Outer Continental Shelf Renewable Energy Activities
Offshore Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

POST-REVIEW DISCOVERIES PLANS

ONSHORE POST-REVIEW DISCOVERIES PROCEDURES

This plan presents the steps to be followed when potential terrestrial archaeological resources or human remains are discovered during the execution of any undertaking under this Programmatic Agreement (Agreement).

Purpose

The purpose of the Onshore Post-Review Discoveries Plan is to provide the lessee's contractor (Contractor), their subcontractors, or any agent acting on their behalf with a step-by-step procedure to address unanticipated discoveries of cultural resources during the construction, operation, and decommissioning of wind-energy projects located on the Outer Continental Shelf (OCS) offshore of Delaware, Maryland, and Virginia, for portions of the project located in onshore areas of potential effect.

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

Federal Standards and Guidelines

- Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 United States Code [U.S.C.] 306108)
- Secretary of the Interior's Standards for Archeology and Historic Preservation (48 Code of Federal Regulations [CFR] 44716-42)
- Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.)
- Advisory Council on Historic Preservation (ACHP) *Policy Statement on Burial Sites, Human Remains, and Funerary Objects*, Advisory Council, March 1, 2023.

Delaware Standards and Guidelines

- Delaware Unmarked Human Remains Act (Chapter 54, Title 7 of the Delaware Code) (<https://delcode.delaware.gov/title7/c054/index.html>)

- Trading in Human Remains and Associated Funerary Objects (§ 1333, Chapter 5, Title 11 of the Delaware Code) (<https://delcode.delaware.gov/title11/c005/sc07/index.html#1333>)

Maryland Standards and Guidelines

- Standards and Guidelines for Archaeological Investigations in Maryland, 1994 (https://mht.maryland.gov/documents/PDF/archeology/Archeology_standards_investigations.pdf) and any subsequent revisions of these standards.

Virginia Standards and Guidelines

- Guidelines for Conducting Historic Resources Survey in Virginia, September 2017 (https://www.dhr.virginia.gov/wp-content/uploads/2018/06/SurveyManual_2017.pdf) and any subsequent revisions of these standards.

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

Unanticipated Discovery of Cultural Resources

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

1. The discovering party will immediately suspend all ground-disturbing activities extending 165 feet (50 meters) from the outer boundary of the potential archaeological resource.
2. The discovering party will install temporary site protection measures (e.g., flagging, fencing) around the potential resource and take appropriate measures to secure the discovery and prevent unauthorized access by project personnel or the public.
3. The discovering party will notify the Contractor of the discovery of a potential archaeological resource within 12 hours of the discovery. The discovering party and the Contractor will keep the location of the potential resource confidential and will not take any action that may adversely affect the resource.
4. The Contractor will be responsible for notifying the BOEM Renewable Energy Program Chief, the BOEM Regional Preservation Officer (RPO), and the Bureau of Safety and Environmental Enforcement's (BSEE) Federal Preservation Officer (FPO) of the discovery within 24 hours of discovery.
 - a. BSEE is responsible for enforcing compliance of renewable energy projects on the OCS, including safety and environmental compliance, with all applicable laws, regulations, leases, grants, and approved plans through notices of noncompliance, cessation orders, civil penalties, and other appropriate means.

- b. The Contractor will also be responsible for notifying the responsible agency or agencies and/or the property owner as appropriate and as directed by BOEM or BSEE.
5. The BOEM RPO and BSEE FPO, in consultation with the Delaware State Historic Preservation Office (DE SHPO), Maryland State Historic Preservation Office (MD SHPO), and Virginia State Historic Preservation Office (VA SHPO; also Virginia Department of Historic Resources) will determine the emergency measures necessary to protect the discovered archaeological resource. The BOEM Renewable Energy Program Chief will notify the Contractor of any measures necessary to protect the archaeological resource.
6. The Contractor will arrange for a Qualified Archaeologist (QA)¹ to visit the potential resource within 72 hours of discovery. During the site visit, the QA will determine if the discovery is an archaeological resource. If the discovery is determined to be an archaeological resource, the QA will document the resource, evaluate the significance of the resource, assess potential project impacts on the resource, and prepare a brief report with recommendations for additional actions to address the discovery. The QA will coordinate with BOEM on any requests to refine the initial 165-foot (50-meter) buffer, as appropriate, and obtain approval from BOEM.
7. The Contractor will submit the QA's preliminary findings to BOEM RPO and BSEE FPO within 48 hours after the site visit is completed.
8. Upon receiving the QA's preliminary findings, the BOEM RPO and BSEE FPO, will determine if additional actions to avoid, minimize, or mitigate impacts on the archaeological resource are required. BOEM will notify the appropriate SHPO (DE SHPO, MD SHPO, or VA SHPO) of any discoveries that it determines do not require further consideration within the applicable state jurisdiction.
9. If additional actions are required, the BOEM RPO and BSEE FPO will immediately coordinate in order to notify the appropriate SHPO (DE SHPO, MD SHPO, or VA SHPO), any Native American Tribe(s) (Tribes) that might attach religious and cultural significance to the affected property, and the ACHP within 48 hours of receiving the site visit report.
10. The BOEM RPO and BSEE FPO will coordinate a site visit with relevant cultural resources stakeholders to assess the significance of the find. The site visit will include the Contractor, the BOEM RPO and BSEE FPO, and, to the extent that they are available, the DE SHPO, MD SHPO, or VA SHPO, and the affected Tribe(s).
11. Upon completion of the cultural resources stakeholder site visit, BOEM and the Contractor will meet with the DE SHPO, MD SHPO, or VA SHPO; the affected Tribe(s); and ACHP to develop a treatment plan for the discovery.
12. Once a treatment plan has been developed and agreed upon by all stakeholders, the Contractor will be responsible for implementing the treatment plan.

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

13. The Contractor will notify the BOEM RPO and BSEE FPO; the DE SHPO, MD SHPO, or VA SHPO; and the Tribe(s) when the treatment plan has been completed. The Contractor will not resume activities at the discovered site until the BOEM RPO and BSEE FPO authorize work to resume.

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

Unanticipated Discovery of Human Remains Protocol

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

The treatment of any human remains encountered during the project will be aligned with the policy statement adopted by the ACHP (see “Policy Statement on Burial Sites, Human Remains, and Funerary Objects,” Advisory Council, March 1, 2023). The ACHP policy statement recommends that, when burial sites, human remains, or funerary objects will be or are likely to be encountered in the course of NHPA Section 106 review, a federal agency should adhere to the following principles:

- **Principle 1:** Burial sites, human remains, and funerary objects should be treated with dignity and respect in all circumstances regardless of National Register eligibility or the circumstances of the action. This includes, but is not limited to, all times prior to and during consultation, during field surveys, when handling must occur, in documenting and/or reporting, if treatment actions occur, and in all other forms of interaction.
- **Principle 2:** Disturbing or disinterring burial sites, human remains, or funerary objects, when not requested by descendants, associated Indian Tribes or NHOs [Native Hawaiian Organization], or required by applicable law or regulation, should not be pursued unless there are no other alternatives available and only after consultation with descendants or associated communities and fully considered avoidance of impact and preservation in place.
- **Principle 3:** Only through consultation, which include the early and meaningful exchange of information and a concerted effort to reach consensus, can informed decisions be made about the identification, documentation, National Register eligibility, and treatment of burial sites, human remains, and funerary objects.

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

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

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

The Contractor, their subcontractors, or any agent acting on their behalf will implement the following protocol if a potential archaeological resource is discovered while conducting approved or permitted activities, or any other activity related to their project.

1. The discovering party will immediately suspend all ground-disturbing activities extending 165 feet (50 meters) from the outer boundary of the potential human remains. All potential human remains will be left in their original location, and no remains or associated artifacts will be collected.
2. The discovering party will install temporary site protection measures (e.g., flagging, fencing) around the potential human remains and take appropriate measures to secure the discovery and prevent unauthorized access by project personnel or the public.
3. The discovering party will immediately notify the Contractor of the discovery of potential human remains. The discovering party and the Contractor will keep the location of the potential resource confidential and will not take any action that may adversely affect the resource.
4. The Contractor will be responsible for immediately notifying the Office of the Chief Medical Examiner, BOEM Renewable Energy Program Chief, the BOEM RPO and BSEE FPO, and the DE SHPO, MD SHPO, or VA SHPO of the discovery. The Contractor will also be responsible for notifying the responsible agency or agencies and/or the property owner as appropriate and as directed by BOEM or BSEE.

5. The Contractor will provide an opportunity for a representative of the Office of the Medical Examiner and, if necessary, local law enforcement, to visit and inspect the site to determine whether the site constitutes a crime scene.
6. If the human remains are declared a criminal matter, the DE SHPO, MD SHPO, or VA SHPO will have no further involvement, and BOEM will defer to the relevant state or federal legal authorities to declare the area cleared for construction.
7. If the Office of the Chief Medical Examiner determines the human remains are not a criminal matter, the Contractor will arrange for a QA³ to visit the site. During the site visit, the QA will document the human remains, attempt to determine if the remains are Native American or non-Native American, assess potential project impacts on the resource, and prepare a brief report with recommendations for additional actions to address the discovery.
8. The Contractor will submit the QA's preliminary findings to the BOEM RPO and BSEE FPO within 48 hours after the site visit is completed.
9. Upon receiving the QA's preliminary findings, the BOEM and BSEE FPOs, Deputy Preservation Officer (DPO), and relevant RPO will coordinate meeting set-ups and a site visit with relevant cultural resources stakeholders:
 - If the remains are determined to be Native American or could potentially be Native American, the BOEM RPO and BSEE FPO will coordinate all subsequent activities with the DE SHPO, MD SHPO, or VA SHPO, and Tribe(s) that might attach religious and cultural significance to the remains. Any treatment plan developed to address the discovery will be aligned with the Native American Graves Protection and Repatriation Act guidance and applicable laws in Delaware, Maryland, and Virginia.
 - If the remains are determined to be non-Native American, the BOEM and BSEE FPOs will coordinate with the DE SHPO, MD SHPO, or VA SHPO to develop an appropriate treatment plan. If possible, the BOEM and BSEEFPOs, or the Contractor will work to identify the potential descendants of the deceased individual(s) in order to involve them in the development of a treatment plan for the discovery.
10. The BOEM RPO and BSEE FPO will coordinate a site visit with relevant cultural resources stakeholders to assess the significance of the find.
11. Upon completion of the cultural resources stakeholder site visit, BOEM and the Contractor will meet with the DE SHPO, MD SHPO, or VA SHPO, stakeholders, and the ACHP to develop a treatment plan for the remains.
12. Once a treatment plan has been developed and agreed upon by all stakeholders, the Contractor will be responsible for implementing the treatment plan.

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

13. The Contractor will notify the BOEM RPO and BSEE FPO; the DE SHPO, MD SHPO, or VA SHPO; and stakeholders when the treatment plan has been completed. The Contractor will not resume activities at the discovery site until the BOEM RPO and BSEE FPO authorize work to resume.

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

Costs to Protect Resources

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

Requirement to Conduct Additional Investigations

While BOEM and BSEE, in consultation with the DE SHPO, MD SHPO, or VA SHPO, may assume a newly discovered property to be eligible for the National Register of Historic Places (NRHP) for purposes of Section 106 (36 CFR 800.13(c)), BOEM and BSEE, in consultation with the appropriate SHPO/Tribal Historic Preservation Officer (THPO)(s), may require the applicant to conduct additional investigations to determine if the resource is eligible for listing in the NRHP under 36 CFR 60.4. BOEM and BSEE will do this if the site cannot be avoided by or already has been impacted by project activities.

BOEM and BSEE, in consultation with the DE SHPO, MD SHPO, or VA SHPO, may also require the Contractor to conduct additional excavations for the purposes of data recovery and mitigation of adverse effects on the historic property. BOEM and BSEE will do this if the site cannot be avoided by or already has been impacted by project activities.

OFFSHORE POST-REVIEW DISCOVERIES PROCEDURES

This plan presents the steps to be followed when archaeological resources are discovered in a project's area of potential effects (APE) during the execution of lease or plan approval undertakings.

Purpose

The purpose of the Offshore Post-Review Discoveries Plan is to provide the Contractor, their subcontractors, or any agent acting on their behalf with a step-by-step procedure to address

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

unanticipated discoveries of cultural resources during the construction, operation, and decommissioning of the Contractor's offshore wind-energy project.

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

Federal Standards and Guidelines

- Section 106 of the NHPA of 1966, as amended (16 U.S.C. 470f)
- Secretary of the Interior's Standards for Archeology and Historic Preservation (48 CFR 44716-42)
- BOEM, Office of Renewable Energy Programs: Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585

Delaware Standards and Guidelines

- Delaware Unmarked Human Remains Act (Chapter 54, Title 7 of the Delaware Code) (<https://delcode.delaware.gov/title7/c054/index.html>)
- Trading in Human Remains and Associated Funerary Objects (§ 1333, Chapter 5, Title 11 of the Delaware Code) (<https://delcode.delaware.gov/title11/c005/sc07/index.html#1333>)

Maryland Standards and Guidelines

- Standards and Guidelines for Archaeological Investigations in Maryland, 1994 (https://mht.maryland.gov/documents/PDF/archeology/Archeology_standards_investigations.pdf)

Virginia Standards and Guidelines

- Guidelines for Conducting Historic Resources Survey in Virginia, September 2017 (https://www.dhr.virginia.gov/wp-content/uploads/2018/06/SurveyManual_2017.pdf)

The Contractor and BOEM recognize that despite the intensive marine cultural resource field investigations performed prior to project construction, it is possible that previously unknown cultural resource sites could be encountered during project activities that disturb the seafloor. The following procedures are to be implemented in the event that previously undiscovered cultural resources are encountered during any project-related, seafloor-disturbing activities.

Discovery of a Potential Resource

If the Contractor, their subcontractors, or any agent acting on their behalf discovers a potential cultural resource while conducting approved or permitted activities or any other activity related to their project, they will execute the following procedures:

1. If a potential archaeological find is identified during remote-sensing or remotely operated equipment is inadvertently brought to the surface during construction or any other offshore activities, the Contractor will cease work temporarily near the find.
2. The Contractor personnel who discovered the find will make every attempt to collect and preserve as much information about the find as possible.

- For potential finds identified during remote-sensing surveys, the Contractor will process the data to provide the most readable and readily interpreted version of the information. Examples include three-dimensional renderings of multi-beam echo sounder anomalies and composite side scan sonar imagery. Data collection methods should include non-invasive, non-destructive measures with no additional excavation or object recovery at this point in the discovery in order to ensure that any potential historic property is not further damaged.
 - For potential finds made during ROV/AUV surveys, the operators will attempt to collect as many photographs or video images of the potential find as possible. This could include performing additional surveys of the find and its immediate area or increasing the amount of time spent at the location.
 - For material inadvertently brought to the surface, the Contractor personnel will document the find and preserve it in water from the find site.
3. Construction supervisors, field personnel, and staff will be notified to stop work in the vicinity of the find. Contractor work can continue 50 meters (approximately 165 feet) from the archaeological find. The Contractor will notify a Qualified Marine Archaeologist (QMA)⁵ of the potential archaeological find within 12 hours of the discovery.
 4. Contractor personnel who discovered the potential archaeological find will provide the QMA with all available data related to the find within 48 hours of the discovery. The data will be provided to the QMA either electronically or in hard copies. This could include the following:
 - Processed remote-sensing data, such as side scan sonar, multi-beam echo sounder imagery, or sub-bottom profiler data
 - ROV/AUV video of the find
 - Photographs of the material inadvertently brought to the surface or the actual material, if possible
 5. The QMA will perform a preliminary evaluation of the data provided to determine whether the potential find is a cultural resource. The QMA will also attempt to assess whether the find is isolated or part of a larger site or feature.
 6. The Contractor will notify the BOEM or BSEE FPO, DPO, and relevant RPO within 48 hours of the discovery (36 CFR 800.13(b)(3)). The BOEM and BSEE FPO, DPO, and RPO will immediately coordinate in order to notify the affected DE SHPO, MD SHPO, or VA SHPO; Tribe(s) that might attach religious and cultural significance to the archaeological find; and the ACHP within 48 hours of the QMA completing the data review.

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

7. The QMA will draft a brief archaeological find report using the photographs, global positioning system (GPS) coordinates, and maps, as appropriate, and submit the document to the BOEM and BSEE FPO, DPO, or RPO.
8. The QMA will prepare and maintain an initial report for all archaeological finds. This will include the data collected in Step 7, remote-sensing data, interviews with Contractor staff, notes, technical reports, and spatial data for use in the project's geographic information system (GIS) database. This report will be updated upon completion of a treatment plan, if required, and submitted to the relevant authority in accordance with agreed timelines. The type and timing of reporting depends upon the results of the archaeological find assessment performed by the QMA.
9. The QMA will prepare a report that includes recommendations for the treatment of the archaeological find (i.e., treatment plan). Options to be considered in the treatment plan include the following:
 - **Avoidance.** This option prevents impacts on the resource through partial or complete project redesign or relocation. This is the preferred option from a cultural resource management perspective and aligns with international standards.
 - **In-Situ Protection or Management.** This option includes the application of resource protection measures to protect the resource during project activities.
 - **Additional Documentation.** For resources that cannot be avoided, extensive documentation may be a valid mitigation option. Detailed documentation could involve more intensive remote-sensing survey data collection, additional video and photographic documentation using a ROV/AUV, diver investigations, or other specialized studies.
 - **Salvage Excavation.** This recovery option is site-destructive and can delay construction and is only practicable in nearshore settings.
 - **Documentation.** If a site is assessed as having limited archaeological significance, construction activities may resume once a complete photographic and geophysical record has been made of the resource.
10. The QMA and the Contractor; BOEM and BSEE FPO, DPO, or RPO; the DE SHPO, MD SHPO, or VA SHPO; Tribe(s) that might attach religious and cultural significance to the affected property; and the ACHP will consult to draft a final treatment plan for the archaeological find.
11. The QMA and the Contractor will implement the agreed-upon treatment plan in consultation with and provide regular updates to BOEM and BSEE FPO, DPO, or RPO; the DE SHPO, MD SHPO, or VA SHPO; Tribe(s) that might attach religious and cultural significance to the affected property; and the ACHP.
12. After the treatment plan is complete, the BOEM and BSEE FPO and DPO will notify the Contractor that construction may resume.

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

Notification of Measures to Protect Resources

The FPO/RPO, in consultation with the appropriate SHPO/THPO(s) and other consulting parties, will determine the emergency measures necessary to protect the discovered archaeological resource. The BOEM Renewable Energy Program Chief will notify the Contractor of any measures necessary to protect the archaeological resource.

Costs to Protect Resources

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

Requirement to Conduct Additional Investigations

While BOEM and BSEE may assume a newly discovered property to be eligible for the NRHP for purposes of Section 106 (36 CFR 800.13(c)), BOEM and BSEE, in consultation with the DE SHPO, MD SHPO, and VA SHPO, may require the applicant to conduct additional investigations to determine if the resource is eligible for listing in the NRHP under 36 CFR 60.4. BOEM and BSEE will do this if the site cannot be avoided by or already has been impacted by project activities.

BOEM and BSEE, in consultation with the DE SHPO, MD SHPO, and VA SHPO, may also require the Contractor to conduct additional investigations for the purposes of data recovery and mitigation of adverse effects on the historic property. BOEM and BSEE will do this if the site cannot be avoided by or already has been impacted by project activities.

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

APPENDIX IV – STANDARD MITIGATION MEASURES

DRAFT

**APPENDIX IV
PROGRAMMATIC AGREEMENT**

**Among
The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding Review of Outer Continental Shelf Renewable Energy Activities
Offshore Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

STANDARD MITIGATION MEASURES

This appendix presents a framework for mitigating adverse effects on aboveground cultural resources and marine and terrestrial archaeological sites, Traditional Cultural Places (TCPs), and properties of religious and cultural significance to Tribes that are listed on or eligible for listing on the National Register of Historic Places (NRHP) within the area(s) of potential effects (APE) for renewable energy developments on the Outer Continental Shelf (OCS) offshore Delaware, Maryland, and Virginia. Adverse effects on these types of resources could occur from individual undertakings or cumulatively from multiple undertakings that will be reviewed and consulted upon under this Programmatic Agreement (Agreement). BOEM will consult with the lessees, Advisory Council on Historic Preservation (ACHP), State Historic Preservation Officers (SHPO), federally recognized Tribes (Tribes), and consulting parties to resolve adverse effects through a Memorandum of Agreement (MOA), Record of Decision (ROD), or Programmatic Agreement, as described in Stipulation II.D of this Agreement.

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

DEFINING THE NATURE AND SCALE OF MITIGATION

Mitigation would be required any time adverse effects on a portion of NRHP-listed or NRHP-eligible aboveground cultural resources, terrestrial or submerged archaeological sites, landform features, TCPs, or properties of religious and cultural significance to Tribes cannot be avoided. In instances where mitigation measures are required, the Bureau of Ocean Energy Management (BOEM) may implement standard mitigation measures documented in this appendix. As needed, BOEM may also elect to incorporate other actions that would be specifically outlined in each undertaking's MOA or ROD to minimize the adverse effect where possible, reasonable, and appropriate. Mitigation measures will be scaled appropriately based on the effects on historic properties and available documentation and evaluation. Mitigation measures may be property-specific or may involve a broader context or resource-type focus.

**STANDARD MITIGATION FOR ADVERSE EFFECTS ON TERRESTRIAL
ARCHAEOLOGICAL SITES**

The following list includes standard avoidance, minimization, and mitigation measures for adverse effects on terrestrial archaeological sites. Depending upon the nature of the project's effects on terrestrial archaeological sites, other approaches not identified in this list may be used

to mitigate for adverse effects on these types of sites and should be developed in coordination with Tribes and consulting parties for each individual undertaking. As a condition of the Construction and Operations Plan (COP) approval, BOEM may apply the following standard measures.

Avoidance and Minimization

1. **Temporary Avoidance Measures During Construction.** Protective measures during project construction can include archaeological and tribal monitoring, training, and temporary fencing or other barriers to demarcate avoidance areas. BOEM will provide guidance on the development and content of the monitoring plan.
2. **Historic Properties Protection Plans (HPPP).** An HPPP is used to facilitate site-specific protection measures for ongoing operations and maintenance. BOEM will provide guidance on the development and content of the HPPP.

Mitigation

1. **Data Recovery.** The level of effort will be dependent on consultation but could include excavation and data recovery of selected sections of the archaeological site. BOEM will provide guidance on the development and content of data recovery plans, which may also be called Historic Property Treatment Plans (HPTP).
2. Additional mitigation measures are described below under OTHER STANDARD MITIGATION OPTIONS FOR ADVERSE EFFECTS ON HISTORIC PROPERTIES.

STANDARD MITIGATION FOR ADVERSE EFFECTS ON MARINE ARCHAEOLOGICAL SITES

The following provides the standard mitigation measures for adverse effects on marine archaeological sites. Depending on the nature of the project's effects on marine archaeological sites, approaches not identified herein may be best suited to mitigate for adverse effects on these types of sites, and they should be developed in coordination with the Tribes and consulting parties for each individual undertaking. As a condition of COP approval, BOEM may apply the following standard measures.

Avoidance and Minimization

1. **Identification and Evaluation of Potential Historic Properties.** These surveys may consist of additional identification and evaluation of targets and site boundary delineation of targets identified as potential cultural resources in the Marine Archaeological Resources Assessment (e.g., side-scan sonar targets, magnetometer anomalies, sub-bottom profiler targets). These surveys may include high resolution geophysical (HRG) survey and identification, significance evaluation, and delineation of the target sources accomplished with a Remotely Operated Vehicle (ROV) or diver visual investigations, depending upon HRG survey characteristics. This information will be used to adjust an avoidance buffer, if warranted. Efforts will include coordination with BOEM and applicable SHPOs regarding recommended NRHP eligibility and further consultation with ACHP, Tribes, and consulting parties if the properties are determined eligible for listing in the NRHP.

Mitigation

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

STANDARD MITIGATION FOR ADVERSE EFFECTS ON ANCIENT SUBMERGED LANDFORM FEATURES

Mitigation

If a project has the potential to have adverse effects on ancient submerged landform features, which may be significant to Tribes, that have the potential to contain pre-contact period sites or are contributing elements to one or more NRHP-listed or eligible sites, such as TCPs, the lessee will implement the following standard mitigation measures as a condition of COP approval:

1. **Analysis and Paleoenvironmental Reconstruction.** In consultation with Tribes, BOEM, with the assistance of the lessee, will design a testing approach for ancient submerged landform analysis and for the implementation of the paleoenvironmental reconstruction of the submerged landscape analysis approach. The testing approach and implementation will follow the protocols and procedures outlined in BOEM's guidance document and any subsequent revisions.
2. **Additional Investigation and Documentation.**
 - a. **Preconstruction Geoarchaeology for Ancient Submerged Landforms Features (ASLF).** This may include collaborative review of existing geophysical and geotechnical data with Tribes; selection of coring locations in consultation with Tribes; collection of vibracores within each affected ASLF that has not been previously sampled, with a sampling focus on areas that will be disturbed by project construction activities; written verification to BOEM that the samples collected are sufficient for the planned analyses and consistent with the agreed scope of work; collaborative laboratory analyses; screening of recovered sediments for debitage or micro-debitage associated with indigenous land uses; third-party laboratory analyses, including micro- and macro-faunal analyses, micro- and macro-botanical analyses, radiocarbon dating of organic subsamples, and chemical analyses for potential indirect evidence of indigenous occupations; temporary curation of archival core sections; draft and final reports for review by participating parties; and public or professional presentations summarizing the results of the investigations, developed with the consent of the consulting Tribes.
 - b. **Post-construction Seafloor Inspection.** The lessee will assess seafloor impacts related to adversely affected ASLFs for the presence of archaeological materials, including but

not limited to chipped stone tools, flakes, modified wooden implements, and bone. The post-construction seafloor assessment shall consist of a Qualified Marine Archaeologist (QMA) to conduct a diver or remote operated vehicle (ROV) visual inspection of the seafloor in the areas where previously identified ASLFs exist and where construction activities will permanently disturb and displace the ASLFs. The QMA, using either surface supply, Closed Circuit Rebreather, or SCUBA, will document the impacts immediately following the installation of any inter-array cables, wind turbine generators (WTGs), service platforms, and export cables that impact the previously identified ASLFs. This inspection will cover not only the immediate physical impacts on the seafloor but also any berms created during trenching activities, anchoring activities, and scour or berms made during pile driving and installation of WTGs.

- i. The lessee will document the ASLFs using standard archaeological methodologies as described in BOEM’s guidance document and any subsequent revisions, and in accordance with state guidelines, as appropriate. These methodologies may include but are not limited to establishing a permanent datum; mapping; using photographs, videographs, and 3D photogrammetry; and collecting a limited number of artifacts. If archaeological materials are identified and recovered, a conservation and curation plan must be in place before recovering any artifacts. For position accuracy, all divers and ROVs should be tracked using an Ultra-Short Base Line (USBL) positioning system.
 - a. Identification of potential cultural material during the ROV inspection would not constitute a “discovery” nor trigger the reporting and consultation requirements established in the Marine Unanticipated Discovery Plan (UDP). In the event that human remains or potential human remains are identified during the ROV inspections, the lessee will adhere to the offshore UDP, inclusive of the statutory, regulatory, and policy requirements incorporated therein.
 - ii. The lessee will prepare a final report for each of these investigations. The QMA must note the seafloor conditions (visibility), environmental conditions (e.g., sandy, mud, shell hash bottom), sea state, and how much time has passed since the construction activities have concluded in the area of the ASLF. A series of as-laid or as-placed plats should show the location of the infrastructure in relation to the ASLF and should include both horizontal and vertical penetration into the ASLF. The maps should also include the location of any sites and artifacts identified as a result of the diver's visual inspection. The QMA shall include all dive logs, dive times, and other data associated with the diver’s visual inspection of the seafloor. If sites are identified on state-owned submerged bottomlands, a copy of the notification to the state, a copy of the site file, and the site trinomial should be provided as part of the final report.
3. Additional mitigation measures are described below under **OTHER STANDARD MITIGATION OPTIONS FOR ADVERSE EFFECTS ON HISTORIC PROPERTIES.**

STANDARD MITIGATION FOR ADVERSE EFFECTS ON ABOVEGROUND CULTURAL RESOURCES

The following are standard mitigation approaches for adverse effects on these properties, which may include direct (e.g., visual, physical, atmospheric) effects or indirect effects, including to settings, ocean views, and night skies. Depending upon the nature of the project’s effects on

aboveground cultural resources, approaches not identified in this list may be best suited to mitigate for adverse effects on these types of resources, and they should be developed in coordination with Tribes and consulting parties for each individual undertaking. BOEM will require that any treatment plans developed to resolve adverse effects should follow the Secretary of the Interior's Standards for the Treatment of Historic Properties (2017; available online at: <https://www.nps.gov/orgs/1739/secretary-standards-treatment-historic-properties.htm>) and appropriate state, or Tribal if on tribal lands, guidelines. As a condition of COP approval, BOEM would implement the following standard measures:

Avoidance and Minimization

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

Mitigation

1. **Recordation or Documentation.** The scope of these measures will be developed in consultation with Tribes and consulting parties. These measures may include any of the following activities or products to document the status and history of properties, districts, landscapes, or resource-types:
 - a. Digital Photography
 - i. This should follow standards for the NRHP.
 - b. Historic Property Inventories

- c. State-level or Historic American Buildings Survey/Historic American Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS) Documentation
2. **Repair, Rehabilitation, and Maintenance.** The scope of these measures will be developed in consultation with SHPOs/THPOs, Tribes, and consulting parties. As noted above, all plans to repair, restore, rehabilitate, or maintain aboveground cultural resources should adhere to the most recent Secretary of the Interior’s Standards for the Treatment of Historic Properties (currently 2017; available online at: <https://www.nps.gov/orgs/1739/secretary-standards-treatment-historic-properties.htm>) and relevant state guidelines or standards. These measures may include any of the following activities or products:
 - a. Repair, restoration, rehabilitation, maintenance, or preservation of exterior or interior features, including landscape features
 - b. Conditions assessments to inform repair, rehabilitation, or maintenance work
 - c. Development and implementation of renovation or expansion projects to improve visitor experiences or interpretation of aboveground cultural resources
 - d. Development and implementation of cyclical maintenance plans
 - e. Development and implementation of plans to combat sea level rise or other climate change conditions

Other mitigation measures as described in the following section.

OTHER STANDARD MITIGATION OPTIONS FOR ADVERSE EFFECTS ON HISTORIC PROPERTIES

Details of the content of any mitigation measures described will be developed in consultation with Tribes and consulting parties. The following describes potential mitigation approached for adverse effects on aboveground cultural resources or archaeological resources:

1. **Public Education Measures** include the development of information designed to educate the public about the cultural resource in question or developing broader measures that include a creative approach to educating the community about aboveground cultural resources affected via a landscape approach. The scope of these efforts will be developed in consultation with Tribes and consulting parties. These may include the following:
 - a. Interpretive Displays or Signage
 - b. Presentations or Public Outreach Programs
 - c. Books or Periodicals
 - d. Storyboards or Story Maps
 - e. Websites or Mobile Applications
 - f. Heritage Trails or Walking Tours
 - g. Events
2. **Community-Focused Measures** include efforts to provide community access to cultural resources or to assist in preserving or restoring historic communities and landscape features. The scope of these efforts will be developed in consultation with Tribes and consulting parties. These may include the following:

- a. Ethnobotanical/First Foods Plant Survey and Revegetation
 - b. Restoration of Traditional Fishing Habitats
 - c. Plant Gathering or Field Trips
 - d. Youth Opportunities
 - e. Site Accessibility for Non-Public Lands
 - f. Coastal Resiliency/Climate Action
- 3. Documentation and Other Measures** include efforts to document historic properties, landscapes, communities, or other features. The scope of these efforts will be developed in consultation with Tribes and consulting parties. These may include the following:
- a. Digital Modeling
 - b. Historical Context Statements/Narratives
 - c. Oral History and Ethnographic Recordation
 - d. National Register of Historic Places and National Historic Landmark nominations, including Traditional Cultural Places
 - e. Cultural Landscape Reports
 - f. Articles for Publication in Peer-Reviewed Journals
 - g. Site Patrol to Prevent Vandalism and Looting and Monitor Recreational Use
- 4. Mitigation Fund.** This approach consists of utilizing a Mitigation Fund to be used after efforts to avoid or minimize adverse effects have been exhausted; the Mitigation Fund would not be used in lieu of avoidance or minimization measures. The Mitigation Fund may be property-specific or be of a scale to resolve adverse effects across multiple properties with a single mitigative activity. A lessee may work with BOEM, SHPOs, Tribes, and consulting parties during the Section 106 process to determine if this approach is applicable and to develop the process for implementation and specific uses of the fund.

APPENDIX V – MEMORANDUM OF AGREEMENT TEMPLATE

DRAFT

**APPENDIX V
PROGRAMMATIC AGREEMENT**

Among

**The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;**

The Advisory Council on Historic Preservation

Regarding Review of Outer Continental Shelf Renewable Energy Activities

Offshore Delaware, Maryland, and Virginia

Under Section 106 of the National Historic Preservation Act

MEMORANDUM OF AGREEMENT TEMPLATE

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

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
THE [STATE] STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE [PROJECT]**

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

WHEREAS, BOEM determined that the Project constitutes an undertaking subject to Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. 306108), and its implementing regulations (36 CFR Part 800) [IF APPLICABLE: and consistent with the requirement to consult included in Stipulation [XX] of the Programmatic Agreement (STATES PA)]; and

WHEREAS, BOEM is considering whether to approve/approve with conditions/disapprove the Construction and Operations Plan (COP) submitted by [LESSEE] hereafter referred to as the Lessee; and

WHEREAS, BOEM determined the construction, operation, maintenance, and eventual decommissioning of the Project, planned for up to [XX] offshore wind turbine generators (WTGs), [LIST ALL ELEMENTS, e.g.: up to [XX] offshore substations, [XX] onshore substations, offshore and onshore export cables], could potentially adversely affect historic properties as defined under 36 CFR 800.16(1); and

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

WHEREAS, 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 to consult on this Project: [TRIBES]; and

WHEREAS, the [TRIBES] accepted BOEM’s invitation to consult, and BOEM invited these Tribes to sign this MOA as invited signatories; and

WHEREAS, the [TRIBES] accepted BOEM’s invitation to consult, and BOEM invited these Tribes to sign this MOA as concurring parties; and

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

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

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 cultural landscapes and Traditional Cultural Places (TCPs), and that may be affected by these undertakings; and,

[INSERT RELEVANT IDENTIFICATION INFORMATION, E.G.: **WHEREAS**, the [TRIBE] identified [SITE] as a sacred site; and]

WHEREAS, BOEM notified in advance the Tribal Nations and Tribal Historic Preservation Officers (THPOs), State Historic Preservation Officers (SHPOs) of [STATES], and the Advisory Council on Historic Preservation (ACHP) on [DATE] of their decision to use NEPA substitution and followed the standards for developing environmental documents to comply with the Section 106 consultation for this Project pursuant to 36 CFR 800.8(c), and posted this decision in the Federal Register with BOEM's Notice of Intent to prepare an EIS for the Project on [DATE]; 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 USC 306107) and 36 CFR 800.10, the NPS accepted BOEM's invitation to consult, and BOEM invited the NPS to sign this MOA as a concurring party; and

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

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

WHEREAS, the Project is within a commercial lease area that was subject to previous NHPA Section 106 review by BOEM regarding the issuance of the commercial lease and approval of site assessment activities. Both Section 106 reviews for the lease issuance and the approval of the site assessment plan were conducted pursuant to the programmatic agreement (PA) and concluded with No Historic Properties Affected for lease issuance on [DATE], and site assessment approval on [DATE], consistent with the PA regarding the review of OCS renewable energy activities offshore [STATES] ([TITLE OF PA]) (Attachment 1); and

WHEREAS, consistent with 36 CFR 800.16(d) and BOEM's *Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585* (May 27, 2020), BOEM defined the Area of Potential Effects (APE) for the undertaking as the depth and breadth of the seabed potentially impacted by any bottom-disturbing activities, constituting the marine archaeological resources portion of the APE (marine APE); the depth and breadth of terrestrial areas potentially impacted by any ground-disturbing activities, constituting the terrestrial archaeological resources portion of the APE (terrestrial APE); the viewshed from which offshore or onshore renewable energy structures would be visible, constituting the visual portion of the APE (visual APE); and any temporary or permanent construction or staging areas that may fall into any of the aforementioned offshore or onshore portions of the APE (see Attachment 2, APE Maps); and

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

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

WHEREAS, BOEM identified [XX] National Historic Landmarks (NHLs) within the visual APE, [NAMES OF NHLs], and BOEM's planning and any action it decides to take would avoid adverse effects on [XX] of the [XX] NHLs in the visual APE. The avoided NHLs in the APE are [INSERT NAMES]. To the maximum extent possible, BOEM has undertaken such planning and action as may be necessary to minimize harm from adverse effects on the other [XX] identified NHLs in the APE, consisting of the [INSERT NAMES]. This includes the planning and action that would be implemented for the NHLs by BOEM under this MOA, pursuant to 36 CFR 800.10 and NHPA Section 110(f); and

WHEREAS, within the range of Project alternatives analyzed in the EIS ([INSERT EIS REFERENCE]), BOEM determined that the undertaking [XX] aboveground historic properties would be adversely affected; [XX] submerged historic properties related to shipwrecks or sunken crafts would be adversely affected; [XX] ASLFs may be potentially adversely affected; and [XX] historic properties in the terrestrial APE would be adversely affected with implementation of the undertaking; and

WHEREAS, BOEM determined that the implementation of project design and avoidance measures identified in this MOA will avoid adversely affecting [XX] submerged cultural resources ([NAMES]) and [XX] ASLFs in the marine APE ([NAMES]), [XX] historic properties in the terrestrial APE, [XX] historic districts and [XX] aboveground historic properties in the offshore visual APE, and [XX] historic properties in the onshore visual APE; and

WHEREAS, BOEM determined [XX] ASLFs identified in the marine APE are eligible for the National Register of Historic Places (NRHP) under Criteria [CRITERIA] and determined; and

WHEREAS, under each of the Project alternatives analyzed in the EIS, BOEM determined that the Project would visually adversely affect [XX] aboveground historic properties in [STATE], including [XX] NHL[s] in [STATE], and that the visual adverse effect would be cumulative with the potential adverse effects from other reasonably foreseeable offshore wind energy projects; and

WHEREAS, upon receiving the Draft EIS, including Appendix [XX] Finding of Adverse Effects, ACHP notified BOEM that it will formally participate in this Section 106 consultation via letter sent on [DATE]; and

WHEREAS, [STATE] SHPO concurred with or did not object 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 participation and declining to participate by either written response or no response to direct invitations is provided in Attachment 3, Lists of Invited and Participating Consulting Parties; and

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

WHEREAS, in accordance with 36 CFR 800.6(a)(1), BOEM has notified the ACHP of its adverse effect determination with specified documentation, including adverse effects to the NHLs, pursuant to 36 CFR 800.10(b), and ACHP is consulting on the resolution of adverse effects to the historic properties pursuant to 36 CFR 800.6(a)(1)(iii) and 36 CFR 800.10(b); and

WHEREAS, pursuant to [INSERT RELEVANT PERMITS, e.g., Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act,] Department of the Army permits will be

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

required from the United States Army Corps of Engineers (USACE) for this Project and BOEM invited USACE to consult; and

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

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

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

[If applicable: WHEREAS, BOEM invited the [FUND ADMINISTRATOR] to consult because the organization agreed to be the third-party administrator for the mitigation fund established under Stipulation [MITIGATION FUND STIPULATION REFERENCE], and this MOA assigns certain responsibilities to the [FUND ADMINISTRATOR] in administering this mitigation fund, and BOEM invited the [FUND ADMINISTRATOR] to sign this MOA as an invited signatory; and]

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

WHEREAS, pursuant to 36 CFR 800.6, BOEM invited the Lessee to sign as invited signatory and the consulting parties as listed in Attachment 3 to sign as concurring parties; however, the refusal of any consulting party to sign this MOA or otherwise concur does not invalidate or affect the effective date of this MOA, and consulting parties who choose not to sign this MOA will continue to receive information if requested and have an opportunity to participate in consultation as specified in this MOA; and

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

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

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

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

STIPULATIONS

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

I. MEASURES TO AVOID ADVERSE EFFECTS ON IDENTIFIED HISTORIC PROPERTIES

A. Marine APE

1. BOEM will include the following avoidance measures for adverse effects within the marine APE as conditions of approval of the [PROJECT] COP:
 - a. The Lessee will avoid known marine archaeological resources (Targets [TARGET IDS]), which many include shipwrecks, previously identified during marine archaeological surveys by a distance of no less than [XX] feet ([XX] meter)s from the known extent of the resource for placement of Project structures and when conducting seafloor-disturbing activities.
 - b. The Lessee will avoid potential marine archaeological resources (Targets [TARGET IDS]), which may include shipwrecks, and potentially significant debris fields previously identified during marine archaeological surveys by a distance of no less than [XX] feet ([XX] meters) from the known extent of the resource, unless the buffer would preclude the installation of facilities at their engineered locations, but in no event would the buffer be less than [XX] feet ([XX] meters) from the known extent of the resource.
 - c. The Lessee will avoid ASLFs (Targets [TARGET IDS]) previously identified during marine archaeological resource assessments for the Project by a distance of no less than [XX] feet ([XX] meters) from the known extent of the resource for placement of Project structures and when conducting seafloor-disturbing activities, to the extent practicable.

B. Terrestrial APE

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

C. Visual APE

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

by BOEM to inform the definition of the APE for the Project and for determining effects in the Finding of Effect (see the [TITLE OF PROJECT COP], [DATE]).

II. MEASURES TO MINIMIZE ADVERSE EFFECTS ON IDENTIFIED HISTORIC PROPERTIES

A. Marine APE

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

- a. The Lessee will... [INSERT MINIMIZATION MEASURES]

B. Terrestrial APE

1. BOEM has undertaken planning and actions to minimize adverse effects on terrestrial archaeological resources in the terrestrial APE. BOEM will include these minimization measures for adverse effects within the terrestrial APE as conditions of approval of the [PROJECT] COP:

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

C. Visual APE

1. BOEM has undertaken planning and actions to minimize adverse effects on aboveground historic properties in the visual APE. BOEM will include these minimization measures for adverse effects within the visual APE as conditions of approval of the [PROJECT] COP:

- a. The Lessee will use uniform WTG design, height, and rotor diameter to reduce visual contrast and decrease visual clutter.
 - b. The Lessee will use uniform spacing to decrease visual clutter, aligning WTGs to allow for safe transit corridors.
 - c. The Lessee will reserve the option to reduce the number of constructed WTGs from a maximum proposed number of [XX] positions.
 - d. The Lessee will apply a paint color to the WTGs no lighter than RAL 9010 pure white and no darker than RAL 7035 light gray to help reduce potential visibility of the turbines against the horizon during daylight hours.

III. **The Lessee will implement an Aircraft Detection Lighting System (ADLS) [or related system] to automatically activate lights when aircraft approach. The WTGs and offshore substations would be lit and marked in accordance with Federal Aviation Administration and United States Coast Guard lighting standards and consistent with BOEM's *Guidelines for Lighting and Marking of Structures Supporting Renewable Energy Development (April 28, 2021)* to reduce light intrusion.** MEASURES TO MITIGATE ADVERSE EFFECTS ON IDENTIFIED HISTORIC PROPERTIES

A. Marine APE

1. The Lessee cannot avoid [XX] submerged archaeological resources. The Lessee will fund the mitigation measures detailed in Attachment [XX] (ATTACHMENT NAME). [INSERT ADDITIONAL DETAILS AS NEEDED]. [IF APPLICABLE: Attachment [XX] contains

budgets for each mitigation effort listed in Stipulation [XX] below, reflecting good faith estimates, based on the experience of qualified consultants with similar activities and comparable historic properties.] The Lessee agrees to the following measures:

- a. [INSERT MITIGATION MEASURES ORGANIZED BY MEASURE, LOCATION, PROPERTY, OR PROPERTY GROUPINGS]

B. Terrestrial APE

1. The Lessee is unable to avoid [XX] terrestrial archaeological resources ([NAMES/DESIGNATIONS]). [INSERT ADDITIONAL DETAILS AS NEEDED]. [IF APPLICABLE: Attachment [XX] contains budgets for each mitigation effort listed in Stipulation [XX] below, reflecting good faith estimates, based on the experience of qualified consultants with similar activities and comparable historic properties.] The Lessee agrees to the following measures:

- a. [INSERT MITIGATION MEASURES ORGANIZED BY MEASURE, LOCATION, PROPERTY, OR PROPERTY GROUPINGS]

C. Visual APE

1. BOEM will include the following as conditions of approval of the [PROJECT] COP and as mitigation measures to resolve the adverse effects on the [XX] historic properties that will be visually adversely affected ([PROPERTY NAMES]). [IF APPLICABLE: Attachment [XX] contains budgets for each mitigation effort listed in Stipulation [XX] below, reflecting good faith estimates, based on the experience of qualified consultants with similar activities and comparable historic properties.] The Lessee will fund fulfillment mitigation measures in accordance with Attachment [XX] ([NAME]) and the following:

- a. [INSERT MITIGATION MEASURES ORGANIZED BY MEASURE, LOCATION, PROPERTY, OR PROPERTY GROUPINGS]

D. [IF APPLICABLE: Mitigation Fund

1. The Lessee will establish and contribute funding to a separate mitigation fund consistent with Attachment [XX] to resolve visual adverse effects to the following [XX] historic properties: [PROPERTY NAMES]. This mitigation fund is separate from and not related to the mitigation measures listed under Stipulation [XX].

- a. Fund Establishment. [INSERT DETAILED DESCRIPTION]
- b. Fund Amount and Application to Mitigation of Adverse Effects. [INSERT DETAILED DESCRIPTION]
- c. Depositing the Fund and the Allocation of Funds through Grants. [INSERT DETAILED DESCRIPTION]
- d. Unallocated Funds. [INSERT DETAILED DESCRIPTION]
- e. Fund Administration and Monitoring. [INSERT DETAILED DESCRIPTION]
- f. Mitigation Fund Operating Procedures and Reporting. [INSERT DETAILED DESCRIPTION]
- g. Grant-supported Mitigation Standards. [INSERT DETAILED DESCRIPTION]

IV. PHASED IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

- A. BOEM will implement the following consultation steps for phased identification of historic properties in accordance with BOEM's *Guidelines for Providing Archaeological and Historic Property Information Pursuant to Title 30 Code of Federal Regulations Part 585*. The final identification of historic properties related to the Terrestrial APE may occur after publication of the Draft EIS, but prior to the initiation of construction. BOEM will conduct phased identification of historic properties, pursuant to 36 CFR 800.4(b)(2) and following the steps below:
1. The Lessee will [INSERT DESCRIPTION OF IDENTIFICATION EFFORTS. *Note: BOEM has determined that Phased Identification may be appropriate for the identification of potential historic properties within the terrestrial APE. A phased identification approach will be approved by BOEM and in consultation with SHPOs and Section 106 consulting parties.*].
 2. If historic properties that exhibit potential for listing in the NRHP are identified during phased identification, then additional site-specific evaluation and mitigation may be warranted.
 3. For identification of historic properties within the APE, supplemental technical studies will be conducted by the Lessee in accordance with state guidelines and recommendations presented in BOEM's most recent *Guidelines*. The lessee will coordinate with the SHPO prior to the initiation of any such identification efforts.
 4. BOEM will consult on the results of historic property identification surveys for any portions of the APE that were not previously addressed.
 5. If effects on identified resources cannot be avoided, BOEM will evaluate the NRHP eligibility of the potentially affected properties, in accordance with 36 CFR 800.4(c).
 6. If BOEM identifies no additional historic properties or determines that no historic properties are adversely affected, BOEM, with the assistance of the Lessee, will notify and consult with the signatories, invited signatories, and consulting parties following the consultation process set forth here in this stipulation.
 - a. The Lessee will notify all the signatories, invited signatories, and consulting parties about BOEM's determination by providing a written summary of the alternative including any maps, a summary of the surveys and/or research conducted to identify historic properties and assess effects, and copies of the surveys.
 - b. BOEM will allow the signatories, invited signatories, and consulting parties 30 calendar days to review and comment on the survey reports, the results of the surveys, BOEM's determination, and the documents.
 - c. After the 30-calendar-day review period has concluded and if no comments require additional consultation, the Lessee will notify the signatories and consulting parties that the SHPO has concurred with BOEM's determination, if they received any comments, and provide a summary of the comments and BOEM's responses.
 - d. BOEM, with the assistance of the Lessee, will conduct any consultation meetings if requested by the signatories or consulting parties.
 - e. This MOA will not need to be amended if no additional historic properties are identified or adversely affected.
 7. If BOEM determines new adverse effects on historic properties will occur, BOEM with the assistance of the Lessee will notify and consult with the signatories, invited signatories, and

consulting parties regarding BOEM's finding and the proposed measures to resolve the adverse effect(s) including the development of a new treatment plan(s) following the consultation process set forth here in this stipulation.

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

V. PROJECT MODIFICATIONS

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

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

1. If the Project is modified and BOEM identifies no additional historic properties or determines 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, invited signatories, and consulting parties following the consultation process set forth in Stipulation [SUBMISSION OF DOCUMENTS STIPULATION REFERENCE].
 - a. The Lessee will notify all the signatories, invited signatories, and consulting parties about this proposed change and BOEM's determination 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.
 - b. BOEM and the Lessee will allow the signatories, invited signatories, and consulting parties 30 calendar days to review and comment on the proposed change, BOEM's determination, and the documents.
 - c. After the 30-calendar-day review period has concluded and if no comments require additional consultation, the Lessee will notify the signatories and consulting parties that BOEM has approved the project modification and, if they received any comments, provide a summary of the comments and BOEM's responses.
 - d. BOEM, with the assistance of the Lessee, will conduct any consultation meetings if requested by the signatories or consulting parties.
2. If BOEM determines new adverse effects on historic properties will occur due to a Project modification, BOEM, with the assistance of the Lessee, will notify and consult with the relevant signatories, invited signatories, and consulting parties regarding BOEM's finding and the proposed measures to resolve the adverse effect(s) including the development of a new treatment plan(s) following the consultation process set forth in this Stipulation [SUBMISSION OF DOCUMENTS STIPULATION REFERENCE].
 - a. The Lessee will notify all signatories, invited signatories, and consulting parties about this proposed modification, BOEM's determination, and the proposed resolution measures for the adverse effect(s).
 - b. The signatories, invited signatories, and consulting parties will have 30 calendar days to review and comment on the adverse effect finding and the proposed resolution of adverse effect(s), including a draft treatment plan(s).
 - c. BOEM, with the assistance of the Lessee, will conduct additional consultation meetings, if necessary, during consultation on the adverse effect finding and during drafting and finalization of the treatment plan(s).
 - d. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.

- e. The Lessee will send the revised draft final documents to the other signatories, invited signatories, and consulting parties for review and comment during a 30-calendar-day review and comment period. With this same submittal of draft final documents, the Lessee will provide a summary of all the comments received on the documents and BOEM's responses.
 - f. BOEM, with the assistance of the Lessee, will respond to the comments on the draft final documents and make necessary edits to the documents.
 - g. The Lessee will notify all the signatories, invited signatories, and consulting parties that BOEM has approved the project modification and 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 any on the draft final documents, after BOEM has received agreement from the [STATE] SHPO on the finding of new adverse effect(s), BOEM has accepted the final treatment plan(s), and BOEM has approved the Project modification.
3. If any of the signatories, invited signatories, or consulting parties object to determinations, findings, or resolutions made pursuant to these measures, BOEM will resolve any such objections pursuant to the dispute resolution process set forth in Stipulation [DISPUTE RESOLUTION STIPULATION REFERENCE].

VI. REVIEW PROCESS FOR DOCUMENTS

- A. The following process will be used for any document, report, or plan produced in accordance with Stipulations [INSERT APPLICABLE STIPULATION REFERENCES] of this MOA:
- 1. Draft Document:
 - a. The Lessee will provide the document to BOEM for technical review and approval.
 - i. BOEM has 15 calendar days to complete its technical review.
 - ii. If BOEM does not provide approval, it will submit its comments back to the Lessee, who will have 15 calendar days to address the comments.
 - b. BOEM, with the assistance of the Lessee, will provide the draft document to consulting parties, except the ACHP, for review and comment.
 - i. Consulting parties will have 30 calendar days to review and comment.
 - ii. BOEM, with the assistance of the Lessee, will coordinate a meeting with consulting parties to facilitate comments on the document if requested by a consulting party.
 - iii. BOEM will consolidate comments received and provide them to the Lessee within 15 calendar days of receiving comments from consulting parties.
 - iv. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.
 - 2. Draft Final Document:
 - a. The Lessee will provide BOEM with the draft final document for technical review and approval.
 - i. BOEM has 15 calendar days to complete its technical review.

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

VII. SUBMISSION OF DOCUMENTS

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

VIII. CURATION

- A. Collections from federal lands or the OCS:
 1. Any archaeological materials removed from federal lands or the OCS as a result of the actions required by this MOA will be curated in accordance with 36 CFR 79, "Curation of Federally Owned and Administered Archaeological Collections," ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" published in the *Federal Register* (64 FR 27085-27087 [May 18, 1999]), or other provisions agreed to by the consulting parties and following applicable state guidelines. No excavation should be initiated before acceptance and approval of a curation plan.
- B. Collections from state, local government, and private lands:
 1. Archaeological materials from state or local government lands in the APE and the records and documentation associated with these materials will be curated within the state of their origin at a repository preferred by the [STATE] SHPO, or an approved and certified repository, in accordance with the standards and guidelines required by the [STATE] SHPO.

Lands, as described here, may include the seafloor in state waters. No excavation should be initiated before acceptance and approval of a curation plan.

2. Collections from private lands that would remain private property: In cases where archaeological survey and testing are conducted on private land, any recovered collections remain the property of the landowner. In such instances, BOEM and the Lessee, in coordination with the [STATE] SHPO, and affected Tribe(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 [ABOVE STIPULATION REFERENCE] 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, [STATE] SHPO, and affected Tribe(s), and following applicable state guidelines. To the extent feasible, the materials and records resulting from the actions required by this MOA for private lands will be curated in accordance with 36 CFR 79. No excavation should be initiated before acceptance and approval of a curation plan.

IX. PROFESSIONAL QUALIFICATIONS

- A. Secretary of the Interior's Standards for Archaeology and Historic Preservation. The Lessee will ensure that all work carried out pursuant to this MOA will meet the Secretary's Standards for Archaeology and Historic Preservation, 48 FR 44716 (September 29, 1983), taking into account the suggested approaches to new construction in the Secretary's Standards for Rehabilitation.
- B. Secretary of the Interior's Professional Qualifications Standards. The Lessee will ensure that all work carried out pursuant to this MOA is performed by or under the direction supervision of historic preservation professionals who meet the Secretary's Professional Qualifications Standards (48 FR 44738-44739). A "qualified professional" is a person who meets the relevant standards outlined in such Secretary's Professional Qualification Standards. BOEM, or its designee, will ensure that consultants retained for services pursuant to the MOA meet these standards.
- C. Investigations of ASLFs. The Lessee will ensure that the additional investigations of ASLFs will be conducted and reports and other materials produced by one or more qualified marine archaeologists and geological specialists who meet the Secretary's Professional Qualifications Standards and have experience both in conducting High Resolution Geophysical (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 MOA that requires consultation with Tribal Nations is performed by professionals who have demonstrated professional experience consulting with federally recognized Tribes.
- E. BOEM Acknowledgement of the Special Expertise of Tribal Nations. BOEM recognizes that all tribal participants and knowledge need not conform to the Secretary's standards, acknowledging that Tribal Nations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to Tribal Nations, pursuant to 36 CFR 800.4(c)(1).

X. DURATION

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

XI. [IF APPLICABLE: TERRESTRIAL ARCHAEOLOGICAL MONITORING]

- A. Implementation of Terrestrial Archaeological Monitoring Plan. The Lessee will implement the archaeological monitoring plan found in Attachment [XX] ([TITLE OF ATTACHMENT]), which applies to areas identified for archaeological monitoring.
- B. In the event of a post-review discovery during archaeological monitoring, the process identified under Stipulation [POST-REVIEW DISCOVERIES STIPULATION REFERENCE] will apply.]

XII. POST-REVIEW DISCOVERIES

- A. Implementation of Post-Review Discovery Plans. If properties are discovered that may be historically significant or unanticipated effects on historic properties found, BOEM shall implement the post-review discovery plans found in [INSERT ATTACHMENT[S] NUMBER AND NAME].
1. The signatories acknowledge and agree that it is possible that additional historic properties may be discovered during implementation of the Project, despite the completion of a good faith effort to identify historic properties throughout the APEs.
- B. All Post-Review Discoveries. In the event of a post-review discovery of a property or unanticipated effects on a historic property prior to or during construction, operation, maintenance, or decommissioning of the Project, the Lessee will implement the following actions, which are consistent with the post-review discovery plan:
1. Immediately halt all ground- or seafloor-disturbing activities within the area of discovery.
 2. Notify BOEM in writing via report within 72 hours of the discovery.
 3. Keep the location of the discovery confidential and take no action that may adversely affect the discovered property until BOEM or its designee has made an evaluation and instructs the Lessee on how to proceed.
 4. Conduct any additional investigations as directed by BOEM or its designee to determine if the resource is eligible for listing in the NRHP (30 CFR 585.702(b)). BOEM will direct the Lessee to complete additional investigations, as BOEM deems appropriate, if:
 - a. The site has been impacted by Project activities; or
 - b. Effects on the site from Project activities cannot be avoided.
 5. If investigations indicate that the resource is eligible for the NRHP, BOEM, with the assistance of the Lessee, will work with the other relevant signatories, invited signatories, and consulting parties to this MOA who have a demonstrated interest in the affected historic property and on the further avoidance, minimization, or mitigation of adverse effects.
 6. If there is any evidence that the discovery is from an indigenous society or appears to be a preserved burial site, the Lessee will contact the Tribal Nations as identified in the notification lists included in the post-review discovery plans within 72 hours of the discovery

with details of what is known about the discovery and consult with the Tribal Nations pursuant to the post-review discovery plan.

7. If BOEM incurs costs in addressing the discovery, under Section 110(g) of the NHPA, BOEM may charge the Lessee reasonable costs for carrying out historic preservation responsibilities, pursuant to its delegated authority under the OCS Lands Act (30 CFR 585.702(c-d)).

XIII. EMERGENCY SITUATIONS

- A. In the event of an emergency or disaster that is declared by the President or the Governor of [STATE], which represents an imminent threat to public health or safety, or creates a hazardous condition due to impacts from this Project's infrastructure damaged during the emergency and affecting historic properties in the APEs, BOEM with the assistance of the Lessee will notify the consulting Tribal Nations, [STATE] SHPO, and the ACHP of the condition which has initiated the situation and the measures taken to respond to the emergency or hazardous condition. BOEM will make this notification as soon as reasonably possible, but no later than 48 hours from when it becomes aware of the emergency or disaster. Should the consulting Tribal Nations, [STATE] SHPO, or the ACHP desire to provide technical assistance to BOEM, they shall submit comments within seven calendar days from notification if the nature of the emergency or hazardous condition allows for such coordination.

XIV. MONITORING AND REPORTING

- A. At the beginning of each calendar year 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, invited signatories, and consulting parties to this MOA a summary report detailing work undertaken pursuant to the MOA. Such report shall include:
 1. a description of how the stipulations relating to avoidance and minimization measures (Stipulations I and II) were implemented;
 2. any scheduling changes proposed, 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 285.633.
- C. BOEM, with assistance from the Lessee, will convene an annual meeting with the other signatories, invited signatory, and consulting parties to discuss the annual report, the implementation of this MOA, and other requested topics.

XV. LEASE ASSIGNMENT AND SEGREGATION

- A. If as a result of an assignment of record title interest in any portion of Lease Number OCS-XXXX in accordance with 30 CFR 585.408 – .411 the assigned and retained portions become segregated into separate and distinct leases, BOEM will ensure that approval of any activity on the new lease includes conditions binding that lessee to the terms of this MOA as they apply to the retained portion of the original lease. The new lessee will notify the signatories in writing that it agrees to the terms of this MOA and intends to sign the MOA as an invited signatory.
- B. BOEM will consider any amendments to the MOA that become necessary as a result of the segregation of the original lease, in accordance with Stipulation XX (Amendments). However, an amendment under Stipulation XX will not be necessary if BOEM determines the new lessee's

participation does not change the undertaking in a manner that would require any modifications to the stipulations set forth in this MOA. In such a case, BOEM will document the assignment and segregation of the lease and the new lessee's becoming a signatory to the MOA in a written notification to the signatories and consulting parties and include a copy of the new lessee's executed signature page as an invited signatory.

- C. For the purposes of this MOA only, upon assignment and segregation of Lease Number OCS-XXXX, the Lessee ([LESSEE]) and the new lessee will each assume and implement all stipulations assigned to the Lessee in this MOA.

XVI. DISPUTE RESOLUTION

- A. If any signatory, invited 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, they must notify BOEM in writing of their objection. BOEM shall consult with such party to resolve the objection. If BOEM determines that such objection cannot be resolved, BOEM will take the following actions:
 - 1. Forward all documentation relevant to the dispute, including BOEM's proposed resolution, to the ACHP. The ACHP shall provide BOEM with its advice on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, BOEM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, invited signatories, and/or consulting parties, and provide them with a copy of this written response. BOEM will make a final decision and proceed accordingly.
 - 2. If the ACHP does not provide its advice regarding the dispute within the 30-calendar-day time period, BOEM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, BOEM shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories, invited signatories, or consulting parties to the MOA, and provide them and the ACHP with a copy of such written response.
- B. BOEM's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.
- C. 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 shall review the objection and may notify the other signatories as appropriate and respond to the objector.

XVII. AMENDMENTS

- A. This MOA may be amended when such an amendment is agreed to in writing by all signatories and invited signatories. The amendment will be effective on the date a copy signed by all the signatories and invited signatories is filed with the ACHP.
- B. Revisions to any attachment may be proposed by any signatory or invited signatory by submitting a draft of the proposed revisions to all signatories and invited signatories with a notification to the consulting parties. The signatories and invited signatories will consult for no more than 30 calendar days (or another time period agreed upon by all signatories and invited signatories) to consider the proposed revisions to the attachment. If the signatories and invited signatories unanimously agree to revise the attachment, BOEM will provide a copy of the revised attachment

to the other signatories, invited signatories, and consulting parties. Revisions to any attachment to this MOA will not require an amendment to the MOA.

XVIII. TERMINATION

- A. If any signatory or invited signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories, invited signatories, and consulting parties to attempt to develop an amendment per Stipulation [AMENDMENTS STIPULATION REFERENCE]. If within 30 calendar days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory or invited signatory may terminate the MOA upon written notification to the other signatories.
- B. Once the MOA is terminated, and prior to work continuing on the undertaking, BOEM must 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 shall notify the signatories and invited signatories as to the course of action it will pursue.

XIX. COORDINATION WITH OTHER FEDERAL AGENCIES

- A. In the event that another federal agency not initially a party to or subject to this MOA receives an application for funding/license/permit for the undertaking as described in this MOA, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this MOA and notifying the signatories and invited signatories that it intends to do so. Such federal agency may become a signatory, invited signatory, or a concurring party (collectively referred to as signing party) to the MOA as a means of complying with its responsibilities under Section 106 and based on its level of involvement in the undertaking. To become a signing party to the MOA, the agency official 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 Stipulation [AMENDMENTS STIPULATION REFERENCE], Amendments.
- B. Should the signatories and invited signatories approve the federal agency's request to be a signing party to this MOA, an amendment under Stipulation [AMENDMENTS STIPULATION REFERENCE] will not be necessary if the federal agency's participation does not change the undertaking in a manner that would require any modifications to the stipulations set forth in this MOA. BOEM will document these conditions and involvement of the federal agency in a written notification to the signatories, invited signatories, and consulting parties, and include a copy of the federal agency's executed signature page, which will codify the addition of the federal agency as a signing party in lieu of an amendment.

XX. ANTI-DEFICIENCY ACT

BOEM's obligations under this MOA 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 will 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 will consult in accordance with the amendment and termination procedures found at Stipulations XVI (AMENDMENTS) and XVII (TERMINATION) of this Agreement.

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

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

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

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Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
THE [STATE] STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE [PROJECT] OFFSHORE WIND PROJECT**

Signatory:

Bureau of Ocean Energy Management (BOEM)

[Name]
Director
Bureau of Ocean Energy Management

Date: _____

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
THE [STATE] STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE [PROJECT] OFFSHORE WIND PROJECT**

Signatory:

[STATE] State Historic Preservation Officer (SHPO)

Date: _____

[Name]
State Historic Preservation Officer
[State Department]

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
THE [STATE] STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE [PROJECT] OFFSHORE WIND PROJECT**

Signatory:

Advisory Council on Historic Preservation (ACHP)

Date: _____

[Name]
Executive Director
Advisory Council on Historic Preservation

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
THE [STATE] STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE [PROJECT] OFFSHORE WIND PROJECT**

Invited Signatory:

[PROJECT], LLC

Date: _____

[Name]

[Title]

[PROJECT], LLC

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
THE [STATE] STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE [PROJECT] OFFSHORE WIND PROJECT**

Concurring Party:

[Organization/Tribe]

Date: _____

[Name]

[Title]

[Organization/Tribe]

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
THE [STATE] STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE [PROJECT] OFFSHORE WIND PROJECT**

Concurring Party:

[Organization/Tribe]

_____ Date: _____

[Name]
[Title]
[Organization/Tribe]

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
THE [STATE] STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE [PROJECT] OFFSHORE WIND PROJECT**

LIST OF ATTACHMENTS TO THE MOA

ATTACHMENT 1 – Programmatic Agreement

ATTACHMENT 2 – APE Maps

ATTACHMENT 3 – Lists of Invited and Participating Consulting Parties

ATTACHMENT 4 – Historic Property Treatment Plan for Adversely Affected Ancient Submerged Landform Features and Marine Archaeological Resources

ATTACHMENT 5 – Historic Property Treatment Plan for Adversely Affected Terrestrial Archaeological Resources

ATTACHMENT 6 – Historic Property Treatment Plan for Adversely Affected Aboveground Historic Properties

ATTACHMENT 7 – Avoidance, Minimization, and Monitoring Plan for Terrestrial Archaeological Resources

ATTACHMENT 8 – Avoidance, Minimization, and Monitoring Plan for Marine Archaeological Resources

ATTACHMENT 9 – Unanticipated Discovery Plan for Terrestrial Archaeological Resources

ATTACHMENT 10 – Unanticipated Discoveries Plan for Marine Archaeological Resources

ATTACHMENT 11 – Mitigation Funding Amounts

[Note: Other relevant attachments may include the list of adversely affected properties, Avoidance, Minimization, and Monitoring Plans, and a Tribal Nations Communication Plan. All attachments should be customized through consultation.]

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**ATTACHMENT 1
PROGRAMMATIC AGREEMENT**

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**ATTACHMENT 2
APE MAPS**

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**ATTACHMENT 3
LISTS OF INVITED AND PARTICIPATING CONSULTING PARTIES**

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

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

Table 2. Consulting Parties Participating in Section 106 Consultation

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

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**ATTACHMENT 4
AVOIDANCE, MINIMIZATION, AND MONITORING PLAN FOR TERRESTRIAL
ARCHAEOLOGICAL RESOURCES**

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**ATTACHMENT 5
AVOIDANCE, MINIMIZATION, AND MONITORING PLAN FOR MARINE
ARCHAEOLOGICAL RESOURCES**

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**ATTACHMENT 6
HISTORIC PROPERTY TREATMENT PLAN FOR ADVERSELY AFFECTED ANCIENT
SUBMERGED LANDFORM FEATURES AND MARINE ARCHAEOLOGICAL RESOURCES**

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**ATTACHMENT 7
HISTORIC PROPERTY TREATMENT PLAN FOR ADVERSLY AFFECTED TERRESTRIAL
ARCHAEOLOGICAL RESOURCES**

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**ATTACHMENT 8
HISTORIC PROPERTY TREATMENT PLAN FOR ADVERSELY AFFECTED
ABOVEGROUND HISTORIC PROPERTIES**

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**ATTACHMENT 9
UNANTICIPATED DISCOVERY PLAN FOR TERRESTRIAL ARCHAEOLOGICAL
RESOURCES**

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**ATTACHMENT 10
UNANTICIPATED DISCOVERIES PLAN FOR MARINE ARCHAEOLOGICAL RESOURCES**

DRAFT

Template: Memorandum of Agreement Among The Bureau Of Ocean Energy Management, The [State] State Historic Preservation Officer, and The Advisory Council On Historic Preservation Regarding The [Project]

**ATTACHMENT 11
MITIGATION FUNDING AMOUNTS**

DRAFT

APPENDIX VI – HISTORIC PROPERTY TREATMENT PLAN OUTLINE

DRAFT

**APPENDIX VI
PROGRAMMATIC AGREEMENT**

Among

**The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding Review of Outer Continental Shelf Renewable Energy Activities
Offshore Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

HISTORIC PROPERTY TREATMENT PLAN OUTLINE

This appendix provides an outline for the contents of Historic Property Treatment Plans (HPTPs) that may be developed during the Section 106 review of Construction and Operations Plans (COPs). To minimize the number of documents needed for consultation, one HPTP should be prepared for each property type: aboveground historic properties; terrestrial archaeological resources; and marine archaeological resources. Each HPTP may address mitigation measures for multiple properties of each type.

HPTP CONTENTS:

I. EXECUTIVE SUMMARY (1 page maximum)

II. BACKGROUND INFORMATION

- Project Overview (1 page maximum)
- Section 106 and 110(f) of the National Historic Preservation Act (NHPA)
 - Municipal Regulations, if applicable
 - Preservation Easements and Restrictions, if applicable
 - Participating NHPA Section 106 Consulting Parties
 - Resolution of Adverse Effects Measures in the Record of Decision (ROD) or Memorandum of Agreement (MOA) (include details specific to the historic property or properties addressed in the treatment plan)

III. EXISTING CONDITIONS AND HISTORIC SIGNIFICANCE OF THE HISTORIC PROPERTY

- Summary of Historic Context and Significance for each property addressed in the HPTP
- National Register of Historic Places (NRHP) Criteria and Aspects of Integrity Affected by the Undertaking
- Physical Description and Existing Conditions (if applicable)

IV. MITIGATION MEASURES

- Name of the Specific Historic Property [repeat this information if more than one historic property is included in the Treatment Plan]
 - Description of the mitigation measure, including:
 - Purpose
 - Intended Outcomes
 - Scope of Work
 - Methodology
 - List of applicable standards (e.g., Secretary of the Interior’s Standards for the Treatment of Historic Properties)
 - Documentation/Deliverables
 - Funds and Accounting

V. IMPLEMENTATION

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

VI. FINALIZATION

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

VII. REFERENCES

VIII. APPENDIX A – MITIGATION MEASURE SPECIFICATIONS, IF APPLICABLE

APPENDIX VII – TRIBAL CONFIDENTIALITY PROTOCOLS

DRAFT

**APPENDIX VII
PROGRAMMATIC AGREEMENT**

Among

**The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding Review of Outer Continental Shelf Renewable Energy Activities
Offshore Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

TRIBAL CONFIDENTIALITY PROTOCOLS

BOEM will consult with federally recognized Tribes (Tribes) on undertakings reviewed under this Agreement. This Appendix provides a description of how BOEM will consult with Tribes on confidential information and how BOEM will abide by confidentiality laws and regulations.

- A. These Confidentiality Protocols are entered into pursuant to regulations implementing Section 106 of the National Historic Preservation Act (NHPA) to protect the confidentiality of information about resources on the Outer Continental Shelf (OCS) or located in Delaware, Maryland, and Virginia, including human remains, sacred sites, Traditional Cultural Places (TCP), artifacts, and sites of religious and cultural significance to Tribes (36 CFR § 800.2(c)(2)(ii)(E)).
- B. The Tribes participating in the consultation and implementation of this Agreement are federally recognized sovereign governments. Tribes have discretion whether or not to share information with Signatories, other Tribes, or consulting parties. Nothing in this protocol is intended to alter, amend, repeal, interpret, or waive Tribal sovereignty, Tribal sovereign immunity, any treaty rights, or other such rights of the Tribes, or to preempt, modify, or limit the exercise of any such rights.
- C. BOEM has committed to protect the confidentiality of information about historic properties, archaeological sites, and sites of religious and cultural significance to Tribes where necessary and as allowed by law.¹ However, BOEM can only withhold such information from disclosure under the Freedom of Information Act (FOIA) under certain circumstances,² and only in consultation with other federal agencies pursuant to Section

¹ 512 Department Manual 5, *Department of the Interior Procedures for Consultation with Indian Tribes*, p. 2. 54 U.S.C. § 307103; see also 36 CFR § 800.11(c)(1).

² BOEM can withhold information from the public under various FOIA exemptions. Exemption 3 (nondisclosure provisions contained in federal statutes other than the FOIA) and Exemption 4 (trade secrets and commercial or financial information which is obtained from a person and is privileged or confidential) are the most commonly used exemptions when it comes to protecting information received from Tribes or protecting information about historic properties. For example, Section 304 of the NHPA allows federal agencies to withhold the nature and location information about historic properties from the public; this would fall under Exemption 3. General information on FOIA is available on BOEM's website: <https://www.boem.gov/foia>.

304 of the NHPA.³ In order to minimize the risk that information considered confidential by the Tribes would be subject to release under FOIA, BOEM will:

- a. Request only such details as needed to make informed decisions about its actions;
 - b. Limit documentation maintained in or as a public record to such information as is needed to support and explain BOEM's decision, and redact, generalize or omit any details that are not necessary for this purpose; and,
 - c. Temporarily hold other documents only for as long as necessary.
- D. The Delaware, Maryland, and Virginia State Historic Preservation Offices (SHPOs):
- a. Will retain location information about historic properties, including sites of religious and cultural significance to Tribes. The DE, MD, and VA SHPOs will treat information regarding specific historic properties, including sites of religious, and cultural significance to Tribes, as sensitive information subject to Section 304 of the NHPA, 36 CFR 800.11(c), and applicable state laws;
 - b. Will consult with Tribes concerning requests for information about historic properties the Tribes have requested remain confidential; and,
 - c. Will inform Tribes if information that Tribes have requested remain confidential are subject to a FOIA or similar request and are required to be shared.
- E. **Location Information.** BOEM and the SHPOs agree not to depict the exact location of these historic properties or describe these properties in any publication or on a public website, and to protect the confidentiality of this information from disclosure in response to a request for public records to the full extent of their legal authority to do so.
- F. **Best Efforts Requirement.** BOEM and SHPOs will use their best efforts to avoid including confidential information in any materials generated by the agencies that cannot be fully protected from disclosure under public records law.
- G. **Tribal Input During Leasing and Planning Stages.** BOEM, with the assistance of the lessee, will provide Tribes with an opportunity to determine whether certain information should be treated as confidential prior to conducting surveys pursuant to Stipulations I.B.1, II.B.3.a, and VI.D of this Agreement.
- H. **General Limitations on Use/Exchanges of Confidential Information.** BOEM and SHPOs agree to limit the exchange of documents containing confidential information where possible, and to share such information in person, by telephone, or through temporary electronic file sharing (e.g., screen sharing via Zoom or Microsoft Teams)

³ Section 304 authorizes BOEM to withhold information about the location, character, or ownership of a historic property if the agency, in consultation with the Secretary of the Interior, determines that disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. To come within this protection the resource (including archeological sites, burials, and TCPs) must be listed in or eligible for the National Register of Historic Places. The Keeper of the National Register of Historic Places (Keeper), an official within the National Park Service, will consider the agency's proposed withholding and determine who may have access to the information in whole or redacted form. If the information pertains to review under Section 106 of the NHPA, the Keeper will seek the advice of the Advisory Council on Historic Preservation pursuant to 36 CFR § 800.11(c)(2).

where feasible to reduce the risk that such information is disclosed inadvertently or through a public records request.

- I. **Points of Contact – Restricted Distribution.** BOEM and SHPO(s) will determine points of contact (POCs) within the agencies who require access to materials or information known or believed to be confidential by the Tribe(s).
 - a. BOEM will notify the Tribe(s) and provide them an opportunity to provide input in situations where confidentiality is in legitimate question.
 - b. The POC will keep a record of the individuals in their respective agencies, if any, who ultimately receive copies of confidential materials or information. Those individuals who have received confidential materials or information will not forward such materials or information to others within or outside of the agency without notifying the POC.
- J. **Other Law Protections.** Records of documents that are protected from disclosure by other statutes, including the Native American Graves Protection and Repatriation Act (NAGPRA) and the NHPA, will not be made available to the general public without prior approval of the Tribe(s).
- K. **Inadvertent Disclosure.** The Tribe(s) shall be notified in writing within one working day of BOEM’s learning of any inadvertent disclosures. BOEM and SHPOs who are a member to this protocol must use best efforts to retrieve any such inadvertently disclosed materials or information and try to prevent any further distribution.

**APPENDIX VIII – TRIBAL COORDINATION AND CONSULTATION
PROTOCOLS**

DRAFT

**APPENDIX VIII
PROGRAMMATIC AGREEMENT**

Among

**The U.S. Department of the Interior, Bureau of Ocean Energy Management;
The State Historic Preservation Officers of Delaware, Maryland, and Virginia;
The Advisory Council on Historic Preservation
Regarding Review of Outer Continental Shelf Renewable Energy Activities
Offshore Delaware, Maryland, and Virginia
Under Section 106 of the National Historic Preservation Act**

TRIBAL COORDINATION & CONSULTATION PROTOCOLS

BOEM will consult with federally recognized Tribes (Tribes) on undertakings reviewed under this Agreement. BOEM will conduct consultation at various stages of the leasing process. One of the main goals is to consult early and often. This Appendix provides a description of how BOEM will coordinate and consult with Tribes.

BOEM will consult with Tribes throughout the implementation of this Agreement 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.

RESPONSIBILITIES OF BOEM

1. BOEM will maintain confidentiality, as appropriate, of all confidential and/or privileged information, including pre-decisional and deliberative information, exchanged between BOEM and the Tribe. BOEM will consult with the Tribe regarding when information should be considered confidential, and BOEM will mark any Confidential and/or privileged information prior to providing it to the Tribe, as described in Appendix VII of this Agreement.
2. BOEM will communicate with Tribes regarding the potential for re-use of Indigenous Knowledge (IK) outside of its intended or original inclusion for an undertaking and any limits on BOEM’s ability to control dissemination of IK. BOEM will ensure that any expression of consent provided by Tribes clearly states their position regarding IK being used for another BOEM undertaking.
 - a. Sites of religious and cultural significance to Tribes will be considered IK and will be treated as confidential information as described above.
3. To the fullest extent possible, and in concert with its responsibilities as the lead agency, BOEM will consider the comments, recommendations, and data provided by the Tribe and giving particular consideration to those topics for which the Tribe possesses special expertise.

4. To the fullest extent possible, BOEM will share final decisions, including determination of effects, and how considerations of Tribal knowledge were incorporated or not.
5. BOEM will provide a point of contact for correspondence, information, and distribution of materials.
6. BOEM will share schedules for the consultation and review process for each undertaking.
7. BOEM will prepare consultation materials.
8. BOEM will meet with Tribes upon their request, including establishing an annual meeting with Tribes upon their request.

TRIBES' COORDINATION AND CONSULTATION

Tribes may choose to participate in consultation with BOEM, including in the following ways.

1. Tribes may maintain confidentiality, as appropriate, of all confidential and/or privileged information, including pre-decisional and deliberative information, exchanged between BOEM and the Tribe, including information exchanged prior to the execution of this Agreement with respect to the Purpose of this Agreement.
2. Tribes may consult with the BOEM Section 106 staff prior to the release of any confidential and/or privileged information that may be protected from disclosure under federal information and public records disclosure statutes and regulations.
3. Tribes may provide BOEM a point of contact for correspondence, information, and distribution of materials.
4. When appropriate, Tribes may identify issues that are significant to the Tribe associated with an undertaking.
5. Tribes may provide appropriate information about cultural resources, historic properties, and/or sites of religious and cultural significance to Tribes that could be affected by undertakings that BOEM is considering, for which the Tribe has special expertise, and indicating what information the Tribe believes that BOEM should consider confidential.
6. Tribes may provide information to support responses to comments received during the comment period(s) in a timely manner, upon request by BOEM.
7. Tribes may provide input into the development of avoidance, minimization, monitoring, and mitigation measures for undertakings reviewed under this Agreement in a timely manner, upon request by BOEM.

RESPONSIBILITIES OF BOTH PARTIES

BOEM and Tribes will participate in the implementation of this Agreement and consultation process for each undertaking in good faith and make reasonable efforts to resolve disagreements.

CORRESPONDENCE

BOEM welcomes correspondence in a digital or hard copy format. Mailed correspondence and notices to BOEM regarding this Agreement can be addressed to:

BOEM Programmatic Agreement: Appendix VIII

Office of Renewable Energy Programs
Bureau of Ocean Energy Management
45600 Woodland Road
Sterling, Virginia 20166

All correspondence and notices to Tribes regarding this Agreement will be addressed to the appropriate Tribal points of contact as designated by the Tribes.