

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
DELAWARE NATION, DELAWARE TRIBE OF INDIANS, THE DELAWARE DEPARTMENT
OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, THE DELAWARE STATE
HISTORIC PRESERVATION OFFICER, THE MARYLAND STATE HISTORIC
PRESERVATION OFFICER, THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER,
US WIND INC., AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MARYLAND OFFSHORE WIND PROJECT
(LEASE NO. OCS-A 0490)**

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

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

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

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

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

WHEREAS, in accordance with 36 CFR § 800.3, on June 8, 2022, BOEM invited the Tribal Nations and the Tribal Historic Preservation Officers (THPOs), State Historic Preservation Officers (SHPOs) of Delaware, Maryland, New Jersey, and Virginia, and the Advisory Council on Historic Preservation (ACHP) to consult on the Project and notified them of its decision to use NEPA substitution and follow the standards for developing environmental documents to comply with Section 106 consultation for this Project pursuant to 36 CFR § 800.8(c), and posted this decision in the *Federal Register* (87 Fed. Reg. 34,901) with BOEM’s Notice of Intent to prepare an EIS for the Project on June 8, 2022; and

WHEREAS, 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 pursuant to 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 on Historic Preservation; The Narragansett Indian Tribe; and The Shinnecock Indian Nation regarding the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities offshore within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia and BOEM issued a Finding of No Historic Properties Affected for the lease issuance on December 1, 2014 (OCS-A 0490), and site assessment approval on June 25, 2012; and

WHEREAS, consistent with 36 CFR § 800.16(d) and BOEM’s *Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585* (May 27, 2020), BOEM has defined the undertaking’s area of potential effects (APE) as the depth and breadth of the seabed potentially impacted by any bottom-disturbing activities, constituting the marine archaeological resources portion of the APE (marine APE); the depth and breadth of terrestrial areas potentially impacted by any ground-disturbing activities, constituting the terrestrial archaeological resources portion of the APE (terrestrial APE); the viewshed from which offshore or onshore renewable energy structures would be visible, constituting the 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 where direct, indirect, or cumulative effects could occur (see Attachment 1 APE Maps); and

WHEREAS, BOEM identified 165 aboveground historic properties in the offshore Project components’ portion of the visual APE and 75 historic properties in the onshore Project components’ portion of the visual APE; 18 submerged historic properties and 14 ancient submerged landform features (ASLFs) in the marine APE; and one archaeological historic property in the terrestrial APE; and

WHEREAS, BOEM identified one National Historic Landmark (NHL) within the visual APE for offshore development, the Cape May Historic District, and BOEM has determined through consultation that the project would not have an adverse visual effect on this NHL; and

WHEREAS, BOEM determined that the Project design and implementation of avoidance measures identified in this MOA will avoid adverse effects on 162 aboveground historic properties in the offshore visual APE (including one NHL), 75 aboveground historic properties in the onshore visual APE, and 18 submerged historic properties and 14 ASLFs in the marine APE; and

WHEREAS, within the range of the Project alternatives analyzed in the EIS (EIS Chapter 2, Table 2-1), BOEM determined one aboveground historic property in Delaware, the Fort Miles Historic District, and two aboveground historic properties in Maryland, the U.S. Coast Guard Tower and U.S. Life Saving Station Museum, would be visually adversely affected by the Project; and one archaeological historic property in Delaware would be physically adversely affected by the Project (see Attachments 3 and 4 and EIS Appendix J); and

WHEREAS, BOEM, in consultation with Tribal Nations, SHPOs, ACHP, and consulting parties, has developed this MOA to document the resolution of the undertaking’s adverse effects, as required by NHPA Section 106 and 36 CFR § 800.6, on three historic properties in the visual APE (i.e. historic aboveground resources) and one historic property in the terrestrial APE (i.e. archaeological resource); and

WHEREAS, the Maryland SHPO, the Delaware SHPO, the Virginia SHPO, and the New Jersey SHPO have concurred with or not objected to BOEM’s Finding of Adverse Effect; and

WHEREAS, throughout this document the terms “Tribe” or “Tribal Nation” have 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, 13175, and 14112, Department Manual 512, Chapters 4 and 5 (November 2022), and the Memorandum of Understanding to Protect Sacred Sites (November 2021); and

WHEREAS, BOEM invited the following Tribal Nations to consult on this Project: the Absentee Shawnee Tribe of Oklahoma, the Chickahominy Indian Tribe – Eastern Division, the Chickahominy Indian Tribe, Delaware Nation, Delaware Tribe of Indians, the Eastern Shawnee Tribe of Oklahoma, the Mashpee Wampanoag Tribe, the Mashantucket (Western) Pequot Tribal Nation, the Monacan Indian Nation, the Nansemond Indian Nation, the Narragansett Indian Tribe, the Pamunkey Indian Tribe, the Rappahannock Indian Tribe, the Shinnecock Indian Nation, the Tuscarora Nation, the Upper Mattaponi Indian Tribe, and the Wampanoag Tribe of Gay Head (Aquinnah); and

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

WHEREAS, BOEM invited Delaware Tribe of Indians and Delaware Nation to consult on the Project, and Delaware Tribe of Indians and Delaware Nation have participated in consultation on the Project and have certain responsibilities assigned to them in this MOA related to implementation of mitigation measures for their respective Tribal Nations, and BOEM invited these Tribal Nations to sign this MOA as invited signatories; and

WHEREAS, BOEM acknowledges that Tribal Nations possess special expertise in assessing the National Register of Historic Places (NRHP) eligibility of properties of religious and cultural significance to Tribal Nations, pursuant to 36 CFR § 800.4(c)(1), and BOEM has consulted with Tribal Nations to identify historic properties of religious and cultural significance to the Tribal Nation(s) that may be eligible for listing in the NRHP and that may be affected by the undertaking; and

WHEREAS, in accordance with 36 CFR § 800.3, BOEM invited the Delaware SHPO, Maryland SHPO, the New Jersey SHPO, and the Virginia SHPO to consult on the Project on June 8, 2022, and the Maryland SHPO formally accepted on June 21, 2022, the Delaware SHPO formerly accepted on July 8, 2022, and the New Jersey SHPO and Virginia SHPO accepted through participation in consultation following those dates; and

WHEREAS, the New Jersey SHPO advised on August 13, 2024, that since BOEM determined no historic properties in New Jersey will be adversely affected by the project and the SHPO has no responsibilities under the MOA, the New Jersey SHPO will not be a signatory to this MOA; and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), BOEM has notified the ACHP, which had been previously participating through the review coordination process set forth in Title 41 of the Fixing America's Surface Transportation Act (FAST-41), of its adverse effect determination with specified

documentation, and ACHP is consulting on the resolution of adverse effects to the historic properties pursuant to 36 CFR 800.6(a)(1)(iii), and ACHP accepted the invitation to consult via letter on June 12, 2024; 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 invited and accepting participation are listed in Attachment 2; and

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

WHEREAS, BOEM notified and invited the Secretary of the Interior (SOI), as represented by the National Park Service (NPS) to consult regarding this Project pursuant to the Section 106 regulations, including consideration of the potential effects to National Historic Landmarks (NHLs), as required under NHPA Section 110(f) (54 U.S.C. § 306107) and 36 CFR § 800.10, the NPS accepted BOEM's invitation to consult on July 8, 2022, and BOEM invited NPS to sign this MOA as a concurring party; and

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

WHEREAS, the USACE designated BOEM as the lead federal agency, pursuant to 36 CFR § 800.2(a)(2), to act on its behalf for purposes of compliance with NHPA Section 106 for this Project in a letter dated June 24, 2024, BOEM invited the USACE to sign this MOA as a concurring party; and

WHEREAS, the Bureau of Safety and Environmental Enforcement (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, and BOEM invited BSEE to sign this MOA as a concurring party; and

WHEREAS, pursuant to 36 CFR § 800.6(c)(2)(iii), BOEM invited the Delaware Department of Natural Resources and Environmental Control (DNREC) to sign this MOA as an invited signatory because DNREC is assuming a responsibility under the MOA to implement mitigation measures described in Stipulation III for the Fort Miles Historic District; and

WHEREAS, pursuant to 36 CFR § 800.6, BOEM invited all other consulting parties not designated as required or invited signatories, as stated in the previous clauses of this MOA to sign as concurring parties; however, the refusal of any consulting party to sign this MOA or otherwise concur does not invalidate or affect the effective dates of this MOA, and consulting parties who choose not to sign this MOA will continue to receive information if requested and will have an opportunity to participate in consultation as specified in this MOA; and

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

WHEREAS, BOEM conducted four consulting party meetings, on December 5, 2022, November 2, 2023, February 20, 2024, and June 27, 2024; and

WHEREAS, BOEM sought and considered the views of the public regarding NHPA Section 106 for this Project through the NEPA process by holding virtual public scoping meetings when initiating the NEPA and NHPA Section 106 review on June 21, 23, and 27, 2022, and virtual and in-person public hearings related to the Draft EIS on October 19, 23, 26, and 30, 2023; and

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

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

STIPULATIONS

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

I. MEASURES TO AVOID ADVERSE EFFECTS ON IDENTIFIED HISTORIC PROPERTIES

A. Marine APE

1. BOEM will include the following measures to avoid adverse effects within the marine APE as conditions of approval of the Lessee's COP:
 - i. The Lessee must avoid known shipwrecks and potential cultural resources (Targets 1- 18) identified during marine archaeological surveys by a distance of no less than 164 feet (50 meters) from the known extent of the resource for placement of Project structures and when conducting seafloor-disturbing activities.
 - ii. The Lessee must avoid 11 ASLFs (P-03-A, P-03-B, P-03-C, P-03-D, P-03-E, P-04-B, P-05-A, P-05-B, P-05-C, P-05-D, P-05-E) previously identified during marine archaeological resources assessments for the proposed project by a distance of no less than 164 feet (50 meters) from the known extent of the resource for placement of proposed Project structures and when conducting seafloor-disturbing activities.
 - iii. The Lessee must avoid three ASLFs (P-01, P-02, and P-04-A) by implementing micro-siting. These ASLFs cannot be avoided by 164-foot (50-meter) buffers. The Lessee must shift all turbines in the UA row to the north-northeast up to 5 percent of the inter-turbine distance (± 246 feet [75 meters] in the east-west direction and approximately 312 feet [95 meters] in the north-south direction). The Lessee must shift the WTG foundation at UD-03 up to 5 percent of the inter-turbine spacing distance (± 246 feet [75 meters] in the east-west direction and approximately 312 feet [95 meters] in the north-south direction).
 - iv. The Lessee must follow the Notification of the Discovery of Shipwrecks on the Seafloor per 30 CFR § 250.194(c), 30 CFR § 250.1009(c)(4), and 30 CFR § 251.7(b)(5)(B)(iii).
 - v. To demonstrate the avoidance of archaeological sites (identified in Stipulation I.A.1.i) and submerged historic properties (identified in Stipulation I.A.1.ii and I.A.iii), the Lessee must provide as-placed and as-laid maps with both the horizontal and vertical extents of all seafloor impacts. These seafloor impacts may include anchoring activities (location of all anchors, anchor chains, cables, and wire ropes, including sweep but excluding the vertical extent of anchor penetration on the seafloor), cable installation (including trenching depths

and seafloor footprint of the installation vessel), and WTG installation (anchoring and spudding/jack-up vessel placement) but exclude the vertical extent of anchor penetration on the seafloor. The Lessee must submit the as-built or as-laid position plats at a scale of 1-in. = 1,000-ft., with Differential Global Positioning System (DGPS) accuracy demonstrating that these seafloor disturbing activities complied with the avoidance criteria applied to the archaeological sites or historic properties established in this MOA. The Lessee must submit these documents and maps to BOEM for consulting parties to review no later than 90 days after completion of all the seafloor disturbing/construction activities.

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

B. Visual APE

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

II. MEASURES TO MINIMIZE ADVERSE EFFECTS ON IDENTIFIED HISTORIC PROPERTIES

A. Visual APE

1. BOEM has undertaken planning and actions to minimize adverse effects on aboveground historic properties in the visual APE. BOEM will include the following measures to minimize adverse effects within the visual APE as conditions of the approval of the Lessee's COP:
 - i. The Lessee must use uniform WTG design, height, and rotor diameter to reduce visual contrast and decrease visual clutter.
 - ii. The Lessee must use uniform WTG spacing, subject to micro-siting, to decrease visual clutter.
 - iii. The Lessee must paint the WTGs no lighter than Pure White (RAL 9010) and no darker than Light Grey (RAL 7035) in accordance with Federal Aviation Administration Advisory Circular 70/7460-1M (2020) and BOEM's *Guidelines for Lighting and Marking of Structures Supporting Renewable Energy Development* (2021) to help reduce potential visibility of the turbines against the horizon during daylight hours.
 - iv. The Lessee must equip all WTGs, the Met Tower, and Offshore Substations, should aviation obstruction lighting be required, with an aircraft detection lighting system (ADLS) to reduce the duration of nighttime aviation obstruction lighting. The system will activate aviation warning lights only when an aircraft is in the vicinity of the Lease Area. The WTGs, Met Tower, and Offshore Substations will be lit and marked in accordance with Federal Aviation Administration and U.S. Coast Guard lighting standards, consistent with BOEM's *Guidelines for Marking of Structures*, to reduce light intrusion.

B. Terrestrial APE

1. BOEM will include the following measures to minimize adverse effects within the terrestrial APE as conditions of approval of the Lessee's COP:

- i. The Lessee must conduct archaeological monitoring of construction activities such that an archaeological monitor and, at the discretion of Tribal Nations, Tribal monitor(s) will be present at Site 7S-G-010 and the Indian River to Burton's Island HDD corridor during subsurface disturbance, as described in the terrestrial monitoring and post-review discovery plan (Attachment 5).
- ii. The Lessee must avoid the portions of archaeological Site 7S-G-010 that are outside of the Project limits of disturbance (LOD), as depicted in Attachment 4, during construction. The Lessee must implement minimization measures including protective barriers such as fencing and cultural and Tribal monitoring in order to ensure avoidance during construction as described in the terrestrial monitoring and post-review discovery plan (Attachment 5) to ensure site protection of Site 7S-G-010 during construction.
- iii. The Lessee must implement protection measures during ongoing operations and maintenance, which will be outlined in an Archaeological Historic Property Protection Plan for Site 7S-G-010, which will be developed in consultation with Tribal Nations and Delaware SHPO(DE SHPO).

III. MEASURES TO MITIGATE ADVERSE EFFECTS ON IDENTIFIED HISTORIC PROPERTIES

BOEM will include the mitigation measures and below-referenced Historic Property Treatment Plans (HPTs) listed in Stipulation III as conditions of approval of the Project COP.

A. Visual APE

1. BOEM will include the following as conditions of approval of the Lessee's COP and as mitigation measures to resolve the adverse effects including direct, indirect, and cumulative effects, to the following adversely affected aboveground historic properties in the visual APE in Delaware and Maryland:
 - Fort Miles Historic District (Delaware);
 - U.S. Coast Guard Tower (Maryland); and
 - U.S. Life Saving Station Museum (Maryland).
- i. The Lessee must fund the following mitigation measures in accordance with Attachment 3, Historic Property Treatment Plan, for the Fort Miles Historic District in Delaware:
 - a. Financial support for preservation priority project(s): The Lessee must provide financial support to DNREC, in the amount of \$272,000, 12 months prior to initiating offshore construction. The financial support will fund priority preservation project(s) including but not limited to development of new exhibits.
 - b. Once the Lessee has provided the financial support, DNREC, in coordination with the Lessee, will consult with DE SHPO and BOEM on the selected preservation priority project(s), will oversee scheduling, will oversee the hiring of contractors, and will oversee executing the selected preservation priority projects. DNREC will ensure that the mitigation measures are complete within five years of the Lessee providing the financial support, unless another timeline is agreed upon by DNREC, DE SHPO, and BOEM. The Lessee, in coordination with DNREC, will provide notification of compliance with this scope of work in the annual report pursuant to Stipulation XIV (REPORTING) of this Agreement.
 - c. All mitigation is subject to DE SHPO and BOEM review and approval prior to implementation. Mitigation measures will be consistent with DE SHPO guidelines

and will comply with the SOI Standards for the Treatment of Historic Properties, as applicable.

- ii. The Lessee must fulfill the following mitigation measures prior to, during, or after initiating offshore construction in accordance with Attachment 3, Historic Property Treatment Plan, for the U.S. Coast Guard Tower in Maryland:
 - a. Development of a combined National Register Nomination Form: The Lessee must fund and hire a contractor that meets the SOI Professional Qualifications to develop a combined National Register Nomination form for the U.S. Coast Guard Tower and U.S. Life-Saving Station Museum.
 - b. The Lessee must develop the nomination package in consultation with the Maryland SHPO's (MD SHPO) National Register program, mht.nationalregister@maryland.gov. The Lessee must prepare the documentation in accordance with the documents detailed in Attachment 3, and other applicable NPS and MD SHPO guidance.
 - c. The Lessee must submit the completed National Register nomination, including the accompanying documentation, to the MD SHPO for review and approval and, if applicable, the Lessee must revise the nomination to address any MD SHPO comments.
 - d. Once approved by the MD SHPO, the MD SHPO will forward the nomination form to the Keeper of the NRHP for listing, within one (1) year of receipt of the nomination package.
- iii. The Lessee must fulfill the following mitigation measures prior to, during, or after initiating offshore construction in accordance with Attachment 3, Historic Property Treatment Plan, for the U.S. Life Saving Station Museum in Maryland:
 - a. Development of a combined National Register Nomination Form: The Lessee must fund and hire a contractor that meets the SOI Professional Qualifications to develop a combined National Register Nomination form for the U.S. Coast Guard Tower and U.S. Life-Saving Station Museum.
 - b. The Lessee must develop the nomination package in consultation with the MD SHPO's National Register program, mht.nationalregister@maryland.gov. The documentation will be prepared in accordance with the documents detailed in Attachment 3, and other applicable NPS and MD SHPO guidance.
 - c. The Lessee must submit the completed National Register nomination, including the accompanying documentation, to the MD SHPO for review and approval and shall revise the nomination to address any MD SHPO comments if applicable.
 - d. Once approved by the MD SHPO, the MD SHPO shall forward the nomination form to the Keeper of the NRHP for listing, within one (1) year of receipt of the nomination package.

B. Terrestrial APE

1. BOEM will include the following as conditions of approval of the Lessee's COP and as mitigation measures to resolve the adverse effects to Site 7S-G-010. BOEM will require the Lessee to fulfill any on-site aspects of these mitigation efforts prior to construction or other ground disturbing activities proceeding at the applicable locations of the affected historic properties. BOEM may allow Project construction or ground-disturbing construction to proceed

outside of the locations of the affected historic properties and does not require that the Lessee complete final reports prior to the Project proceeding. The Lessee must complete mitigation measures under Stipulation III.B.1 within five (5) years of MOA execution unless different timing is agreed upon by the consulting Tribal Nations and DE SHPO and accepted by BOEM:

- i. The Lessee must fulfill mitigation measures in accordance with Attachment 4, Historic Property Treatment Plan for Terrestrial Archaeology Resources, for Site 7S-G-010 in Delaware:
 - a. Cultural context for the Indian River Bay watershed: The Lessee must establish a contract with Delaware Tribe of Indians, at the Tribe's discretion and availability, to produce a cultural context for the Indian River Bay watershed. The Lessee will use this context to inform the archaeological data recovery plan and will also incorporate the context into any data recovery report(s). The Delaware Tribe of Indians will complete the cultural context prior to the initiation of the Phase III data recovery, unless different timing is agreed upon by the Delaware Tribe of Indians and BOEM, and may develop the context concurrently with the Phase II data testing plan and field investigation.
 - b. Archaeological testing and data recovery excavation: The Lessee must conduct background research; submit a site conditions report and Phase II testing plan for review and approval by BOEM, consulting Tribal Nations, and DE SHPO; complete Phase II investigations within the portions of the site in LOD in accordance with the approved testing plan; and submit a Phase II Summary and Data Recovery Plan for review and approval by BOEM, consulting Tribal Nations, and DE SHPO. Prior to contracting an archaeological consultant to conduct any Phase III data recovery investigations, the Lessee will coordinate with interested Tribal Nations to provide an opportunity for Tribal Nations to plan, direct, or participate in the data recovery investigation at their discretion and availability. If Tribal Nations opt to plan, direct, or participate in the data recovery investigations, the Lessee must establish a contract with the Tribal Nation(s) to provide compensation, including travel and per diem costs, consistent with each Tribal Nation's standard costs for associated activities; and the Lessee must coordinate with the Tribal Nation(s) to complete Phase III data recovery investigations of a portion of the site within the LOD to be determined through the Phase II investigation results and in consultation with Tribal Nations and DE SHPO; implement temporary avoidance measures for portions of the site outside the LOD; prepare draft and final data recovery reports consistent with DE SHPO guidelines; and prepare updated archaeological site form(s). If Tribal Nations opt not to plan, direct, or participate in the data recovery investigations other than through monitoring, the Lessee must complete Phase III data recovery investigations of a portion of the site within the LOD to be determined through the Phase II investigation results and in consultation with Tribal Nations and DE SHPO; implement temporary avoidance measures at portions of the site outside the LOD; prepare draft and final data recovery reports consistent with DE SHPO guidelines; prepare updated archaeological site form(s); prepare Historic Property Archaeological Protection Plan; prepare construction monitoring report; curate materials at a long-term curation facility or rebury materials onsite in consultation

with Tribal Nations who participated in this data recovery mitigation (Stipulation III.B) and DE SHPO pursuant to Stipulation VIII; and prepare a summary report detailing the mitigation measures undertaken pursuant to the HPTP.

- c. Temporary site avoidance: Following the completion of the Phase III archaeological data recovery and prior to construction, the Lessee must implement temporary site avoidance measures to protect all areas of the site outside of the LOD from construction activities. This will include the installation of temporary site protective fencing and the identification of the sensitive resource areas to construction work crews as areas where no ground-disturbing activities can take place. Once installed, the Lessee must provide BOEM, Delaware Nation, Delaware Tribe of Indians, and DE SHPO with photo documentation of temporary protective fencing for approval prior to the start of construction activities. Archaeologists and, at the discretion of Tribal Nations, Tribal monitors, will be onsite during any construction in proximity to Site 7S-G-010 to monitor construction activities and ensure compliance with the HPTP (Attachment 4 and Attachment 5).
- d. Pre-construction training: The Lessee must coordinate with Delaware Tribe of Indians to provide an opportunity for Tribal representatives to meet with the Lessee's contractors and lead pre-construction cultural resources training. If Tribal representatives are available to lead pre-construction training, the Lessee must provide compensation, including travel and per diem costs, consistent with the Tribe's standard consultation costs.
- e. Tribal Monitors: The Lessee must coordinate with Delaware Nation and Delaware Tribe of Indians to provide them with an opportunity to participate as monitors during the archaeological investigations and construction activities at and around Site 7S-G-010 (as described above). The Lessee must provide sufficient time, as determined through consultation with Delaware Nation and Delaware Tribe of Indians, to allow Tribes to hire or train monitors if necessary. The Lessee must provide Tribal Nations with notification of any opportunity to participate in monitoring no fewer than 30 days prior to start of activities for monitoring. The Lessee must provide compensation, including travel and per diem costs, consistent with each Tribal Nation's standard costs for monitoring activities.

IV. REVIEW PROCESS FOR DOCUMENTS PRODUCED UNDER MOA STIPULATIONS

- A. The following process will be used for any document, report, or plan produced in accordance with the Stipulations of this MOA or attachments to the MOA for which a specific review process has not been defined:
 - 1. Draft Document
 - i. The Lessee must provide the document to BOEM for technical review and approval.
 - a. BOEM will have 30 calendar days to complete its technical review.
 - b. If BOEM does not provide approval, it will submit its comments back to the Lessee, who will have 30 calendar days to address the comments.

- ii. After BOEM has reviewed and approved the document, BOEM, with the assistance of the Lessee, will provide the draft document to consulting parties, except the ACHP, for review, comment, and/or approval.
 - iii. Consulting parties will have 30 calendar days, or another time frame agreed upon by the signatories and consulting parties, to review and comment.
 - a. BOEM, with the assistance of the Lessee, will coordinate a meeting with consulting parties to facilitate comments on the document if requested by a consulting party.
 - b. BOEM will consolidate comments received and provide them to the Lessee within 15 calendar days of receiving comments from consulting parties.
 - c. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.
 - iv. If BOEM requires substantial edits to the draft document, the Lessee must make those revisions and resubmit the document as a draft for revision under Stipulation VII (Submission of Documents).
2. Draft Final Document
- i. The Lessee must provide BOEM with the draft final document and response to consulting party comments for technical review and approval.
 - a. BOEM has 15 calendar days to complete its technical review.
 - b. If BOEM does not provide approval, it will submit its comments back to the Lessee, who will have 15 calendar days to address the comments.
 - ii. BOEM, with the assistance of the Lessee, will provide the draft final document to the signatories and consulting parties, except the ACHP, for review, comment, and/or approval. With this same submittal of draft final documents, BOEM, with the assistance of the Lessee, will provide a summary of all comments received on the documents and BOEM's responses.
 - a. Consulting parties will have 30 calendar days, or another time frame agreed upon by the signatories and consulting parties, to review and comment.
 - b. BOEM, with the assistance of the Lessee, will coordinate a meeting with signatories and consulting parties to facilitate comments on the document if requested by a consulting party.
 - c. BOEM will consolidate comments received and provide them to the Lessee within 15 calendar days of receiving comments from consulting parties.
 - d. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.
3. Final Document
- i. The Lessee must provide BOEM with the final document and response to consulting party comments for approval.
 - a. BOEM will have 15 calendar days to complete its technical review.
 - b. If BOEM does not provide approval, it will submit its comments back to the Lessee, who will have 15 calendar days to address the comments.
 - c. BOEM, with the assistance of the Lessee, will provide the final document to signatories and consulting parties, except the ACHP, within 30 calendar days of approving the final

document. With this same submittal of final documents, the Lessee must provide a summary of all the comments received on the documents and BOEM's responses.

V. PHASED IDENTIFICATION

- A. BOEM will defer and phase the identification of historic properties, assessment of effects, and resolution of adverse effects within the Alternate Onshore Export Cable Routes (1a, 1b, 1c, 2) portion of the terrestrial APE in Delaware (depicted in Figure 2 in Attachment 1), pursuant to 36 CFR §§ 800.4(b)(2) and 800.5(a)(4). BOEM determined that deferred and phased identification for Alternate Onshore Export Cable Routes 1a, 1b, 1c, and 2 will be necessary if one or more of these alternatives is selected for the final Project design. The final identification of historic properties, assessment of effects, and resolution of adverse effects within the select areas of the terrestrial APE will occur after the Final EIS and Record of Decision (ROD). If one or more of Alternate Onshore Export Cable Routes 1a, 1b, 1c, or 2 are selected for the final Project design, the following measures will be implemented.
1. BOEM, with the assistance of the Lessee, will invite any additional consulting parties that may want to consult on this phased identification based on any new information regarding the specific location of the onshore cable route to the selected areas within the terrestrial APE.
 2. The Lessee must conduct the phased identification of historic properties within the Alternate Onshore Export Cable Routes (1a, 1b, 1c, 2) portion of the terrestrial APE, as applicable, in accordance with state guidelines and BOEM's most recent Guidelines for Providing Archaeological and Historic Property Information Pursuant to Title 30 Code of Federal Regulations Part 585. The Lessee must coordinate with the consulting Tribal Nations, DE SHPO, and consulting parties prior to the initiation of any such identification efforts.
 - i. BOEM will delineate any terrestrial portions of the APE for the alternate onshore cable route, if selected.
 - ii. BOEM will require the Lessee to document its identification efforts in a supplemental Terrestrial Archaeological Resources Assessment that addresses the identification of historic properties and sites of religious and cultural significance and includes an evaluation of effects applying the criteria of adverse effect pursuant to 36 CFR § 800.5(a).
 3. BOEM will consult with Tribal Nations, DE SHPO, the ACHP, and consulting parties on the results of historic property identification surveys that were not addressed prior to the execution of this MOA.
 4. BOEM will treat all identified potential historic properties as eligible for inclusion in the NRHP unless BOEM determines, and the DE SHPO concurs, that a property is ineligible, pursuant to 36 CFR § 800.4(c).
 5. If BOEM identifies no additional historic properties or determines that no historic properties are adversely affected as a result of this deferred and phased identification, BOEM, with the assistance of the Lessee, will notify and consult with the signatories and consulting parties following the consultation process set forth here in this stipulation.
 - i. BOEM, with the assistance of the Lessee, will notify all the signatories and consulting parties about the surveys of portions of the terrestrial APE and BOEM's determination by providing a written summary of the surveys including any maps, a summary of the surveys and/or research conducted to identify historic properties and assess effects, and copies of the surveys.
 - ii. BOEM, with the assistance of the Lessee, will provide Tribal Nations, the DE SHPO, the ACHP, and consulting parties with 60 calendar days to review and comment on the survey reports, the results of the surveys, BOEM's determination, and the documents.

- iii. After the 60-calendar day review period has concluded and if no comments require additional consultation, BOEM, with the assistance of the Lessee, will notify the signatories and consulting parties that the DE SHPO has concurred with BOEM's determination. If comments are received, the Lessee must provide a summary of comments and BOEM's responses to signatories and consulting parties.
 - iv. BOEM, with the assistance of the Lessee, will conduct any consultation meetings if requested by the signatories or consulting parties during this 60-calendar day review period.
 - v. This MOA will not need to be amended if no additional historic properties are identified and/or determined to be adversely affected.
6. If BOEM determines new adverse effects to historic properties will occur, BOEM, with the assistance of the Lessee, will notify and consult with the signatories and consulting parties regarding BOEM's finding. BOEM will determine, through consultation with the signatories, consulting parties, and the Lessee measures for avoidance, minimization, and mitigation in order to resolve adverse effects following the consultation process set forth in this stipulation.
- i. BOEM, with the assistance of the Lessee, will notify all signatories and consulting parties about the surveys and BOEM's determination by providing a written summary of the results including any maps, a summary of the surveys and/or research conducted to identify historic properties and assess effects, copies of the surveys, BOEM's determination, and the proposed resolution measures for the adverse effect(s).
 - ii. The signatories and consulting parties will have 60 calendar days to review and comment on the documents including the adverse effect finding, the proposed resolution of adverse effect(s), and a draft treatment plan(s).
 - iii. BOEM, with the assistance of the Lessee, will conduct a consultation meeting during this 60-calendar review period and conduct any additional consultation meetings as necessary or requested.
 - iv. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.
 - v. BOEM, with the assistance of the Lessee, will send the revised draft final documents to the signatories and consulting parties for review and comment during a 30-calendar day review and comment period. With this same submittal of draft final documents, BOEM, with the assistance of the Lessee, will provide a summary of all the comments received on the documents and BOEM's responses.
 - vi. BOEM, with the assistance of the Lessee, will respond to the comments on the draft final documents and make necessary edits to the documents.
 - vii. BOEM, with the assistance of the Lessee, will notify all signatories and consulting parties and provide the final document(s), including treatment plan(s) and a summary of comments and BOEM's responses thereto, if BOEM receives any comments on the draft final documents, after BOEM has received concurrence from the DE SHPO on the finding of new adverse effect(s), and BOEM has accepted the final treatment plan(s).
 - viii. The Lessee must implement the final measures to resolve adverse effects per the final treatment plan(s) as applicable and based on consultation.
 - ix. The MOA will not need to be amended after the treatment plan(s) is accepted by BOEM.
7. If the DE SHPO disagrees with BOEM's determination regarding whether an affected property is eligible for inclusion in the NRHP, or if the ACHP or the SOI so request, the agency official will obtain a determination of eligibility from the SOI pursuant to 36 CFR Part 63 (36 CFR § 800.4(c)(2)).

8. If a Tribal Nation that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the ACHP to request the agency official to obtain a determination of eligibility pursuant to 36 CFR Part 63 (36 CFR § 800.4(c)(2)).
9. If any of the consulting parties object to the findings or resolutions made pursuant to these measures, BOEM will resolve any such objections pursuant to the dispute resolution process set forth in Stipulation XV, Dispute Resolution.

VI. PROJECT MODIFICATIONS

- A. If the Lessee proposes any modifications to the Project that expand the Project beyond the PDE included in the COP and/or occur outside the defined APEs, or the proposed modifications would change BOEM's final Section 106 determinations and findings for this Project, the Lessee must notify and provide BOEM with information concerning the proposed modifications. The Lessee must not proceed with the proposed modifications until the following process under Stipulation VI.A is concluded. BOEM, with the assistance of the Lessee, will notify consulting parties and consult on whether these modifications require alteration of the conclusions reached in the Finding of Effect. The Lessee must provide the signatories and consulting parties with the information concerning the proposed changes, and they will have 30 calendar days from receipt of this information to comment on the proposed changes. BOEM will consider any comments from signatories and consulting parties prior to agreeing to any proposed changes. Using the procedure below, BOEM will, as necessary, consult with the signatories and consulting parties to identify and evaluate historic properties in any newly affected areas, assess the effects of the modification, and resolve any adverse effects. Any project modification followed pursuant to Stipulation VI would not require an amendment to the MOA.
 1. If, for the proposed Project modification, BOEM identifies no additional historic properties or finds that no historic properties are adversely affected due to the modification, BOEM, with the assistance of the Lessee, will notify and consult with the signatories and consulting parties following the consultation process set forth in this Stipulation VI.A.1.
 - i. BOEM, with the assistance of the Lessee, will notify all the signatories and consulting parties about this proposed change and BOEM's finding by providing a written summary of the Project modification including any maps, a summary of any additional surveys and/or research conducted to identify historic properties and assess effects, and copies of the surveys.
 - ii. BOEM and the Lessee will provide the signatories and consulting parties with 30 calendar days to review and comment on the proposed change, BOEM's finding, and the documents.
 - iii. After the 30-calendar day review period has concluded and if no comments require additional consultation, the Lessee must notify the signatories and consulting parties that BOEM has approved the Project modification and, if the Lessee received any comments, provide a summary of the comments and BOEM's responses.
 - iv. BOEM, with the assistance of the Lessee, will conduct any consultation meetings if requested by the signatories or consulting parties.
 - v. BOEM will require the lessee to document Project modifications and the consultation process described in this Stipulation (VI.A.) in the annual report pursuant to Stipulation XIV.
 2. If BOEM finds new adverse effects to historic properties will occur due to a proposed Project modification, BOEM, with the assistance of the Lessee, will notify and consult with the signatories and consulting parties regarding BOEM's finding and the proposed measures to resolve the adverse effect(s), including the development of a new treatment plan(s) following the consultation process set forth in this Stipulation VI.A.2.

- i. The Lessee must notify all signatories and consulting parties about this proposed modification, BOEM's finding, and the proposed resolution measures for the adverse effect(s).
 - ii. The consulting parties will have 30 calendar days to review and comment on the adverse effect finding and the proposed resolution of adverse effect(s), including a draft treatment plan(s).
 - iii. BOEM, with the assistance of the Lessee, will conduct additional consultation meetings, if necessary, during consultation on the adverse effect finding and during drafting and finalization of the treatment plan(s).
 - iv. BOEM, with the assistance of the Lessee, will respond to the comments and make necessary edits to the documents.
 - v. The Lessee must send the revised draft final documents to the consulting parties for review and comment during a 30-calendar day review and comment period. With this same submittal of draft final documents, the Lessee must provide a summary of all the comments received on the documents and BOEM's responses.
 - vi. BOEM, with the assistance of the Lessee, will respond to the comments on the draft final documents and make necessary edits to the documents.
 - vii. Once BOEM has received concurrence from the appropriate SHPO(s) on the finding of new adverse effect(s), BOEM has accepted the final HPTP(s), and the Project modification has been accepted, then the Lessee must notify all the consulting parties that the Project modification has been accepted. With this notification, the Lessee must provide the final document(s), including the final HPTP(s) and a summary of comments and BOEM's responses to comments (if they receive comments on the draft final documents). The new HPTP will be attached to the MOA after it is accepted by BOEM. The MOA will not need to be amended after the HPTP(s) is accepted by BOEM.
 - viii. BOEM will require the lessee to document Project modifications and the consultation process described in this Stipulation (VI.A.) in the annual report pursuant to Stipulation XIV.
3. If any of the consulting parties object to the findings or resolutions made pursuant to these measures (Stipulation VI.A.1 and 2), BOEM will resolve any such objections pursuant to the dispute resolution process set forth in Stipulation XV.

VII. SUBMISSION OF DOCUMENTS

- A. Tribal Nations, ACHP, NPS, and Consulting Parties
 1. All submittals to Tribal Nations, ACHP, NPS, and Consulting Parties will be submitted electronically unless a specific request is made for the submittal to be provided in paper format.
- B. Delaware, Maryland, New Jersey, and Virginia SHPOs
 1. All submittals to Delaware SHPO, Maryland SHPO, the New Jersey SHPO, and the Virginia SHPO will be submitted electronically unless a specific request is made for the submittal to be provided in paper format.

VIII. CURATION

- A. BOEM, with the assistance of the Lessee, will ensure that for collections from federal lands or the OCS:
 1. Any archaeological materials removed from federal lands or the OCS as a result of the actions required by this MOA must be curated in accordance with 36 CFR Part 79, "Curation of Federally Owned and Administered Archaeological Collections," ACHP's "Recommended

Approach for Consultation on Recovery of Significant Information from Archaeological Sites” published in the Federal Register (64 Fed. Reg. 27,085-087 [May 18, 1999]), or other provisions agreed to by the consulting parties and following applicable State guidelines. Other provisions may include curating materials of Native American heritage with Tribal Nations or reburying materials of Native American heritage onshore at Site 7S-G-010. BOEM, with the assistance of the Lessee, will develop a curation plan through consultation with the Tribal Nations, agencies, and property owners.

- i. In the event artifacts and material culture of Native American heritage within the coastal and marine environments are identified and recovered during pre-construction, construction, operation, maintenance, and decommissioning of the proposed Project under this MOA, including for mitigation or resulting from post-review discovery including but not limited to vibracore sampling, those materials, if they are not replaced on the seafloor, may be housed at a curatorial facility or reburied onshore at Site 7S-G-010, in consultation with consulting Tribal Nations.
 2. If suspected human remains are encountered, the Lessee must comply with the ACHP’s *Policy Statement on Burial Sites, Human Remains, and Funerary Objects* (March 2023) and the post-review discovery plans for marine archaeology (Attachment 6) and terrestrial archaeology (Attachment 5).
- B. BOEM, with the assistance of the Lessee, will ensure that for collections from private lands owned by the Lessee:
1. For archaeological materials not of Native American heritage, the Lessee must coordinate and fund the curation of those materials and the records and documentation associated with the materials within the state of their origin at a repository preferred by the respective SHPO, or an approved and certified repository, in accordance with the standards and guidelines required by the SHPO. Lands as described here may include the seafloor in state waters.
 2. For archaeological materials of Native American heritage, the Lessee must coordinate with Delaware Nation and Delaware Tribe of Indians and provide an opportunity for the Tribal Nations to review the collection and identify selected materials for additional documentation. After any additional documentation is complete, the Lessee will coordinate and fund curation or reburial of the materials in a protected location within or near Site 7S-G-010 in consultation with Delaware Nation, Delaware Tribe of Indians, and DE SHPO.
 - i. In the event artifacts and material culture of Native American heritage within the coastal and marine environments are identified and recovered during pre-construction, construction, operation, maintenance, or decommissioning of the proposed Project under this MOA, including for mitigation or resulting from post-review discovery including but not limited to vibracore sampling, those materials, if they are not replaced on the seafloor, may be housed at a curatorial facility or reburied onshore at Site 7S-G-010 in consultation with Tribal Nations.
 3. If suspected human remains are encountered, the Lessee must comply with the ACHP’s *Policy Statement on Burial Sites, Human Remains, and Funerary Objects* (March 2023) and the post-review discovery plans for marine archaeology (Attachment 6) and terrestrial archaeology (Attachment 5).

IX. EXPERTISE AND QUALIFICATIONS

- A. SOI Standards for Archaeology and Historic Preservation. The Lessee must ensure all work carried out pursuant to this MOA meets the Secretary of the Interior’s *Standards for Archaeology and Historic Preservation* (48 Fed. Reg. 44,716 (September 29, 1983)), taking into account the suggested approaches to new construction in the Standards for Rehabilitation.

- B. SOI Professional Qualification Standards. The Lessee must ensure that all work carried out pursuant to this MOA is performed by or under the direct supervision of historic preservation professionals who meet the *Secretary of the Interior's Professional Qualifications Standards* (48 Fed. Reg. 44,738–44,739). A “qualified professional” is a person who meets the relevant standards outlined in such SOI’s standards. The Lessee must provide documentation to BOEM demonstrating that the consultants retained for services pursuant to the MOA meet these standards prior to the implementation of mitigation measures.
- C. Tribal Consultation Experience. BOEM, with the assistance of the Lessee, will ensure that all work carried out pursuant to this MOA that requires consultation with Tribal Nations is performed by professionals who have demonstrated professional experience consulting with Federally recognized Tribal Nations.
- D. Professional Standards for the Treatment of Human Remains. The Lessee must ensure that all work carried out pursuant to this MOA is performed by professionals who adhere to the principles of the Society for American Archaeology’s *Statement Concerning the Treatment of Human Remains* (April 14, 2021) and the ACHP’s *Policy Statement on Burial Sites, Human Remains, and Funerary Objects* (March 2023).
- E. BOEM Acknowledgement of the Special Expertise of Tribal Nations. BOEM recognizes that all Tribal participants and knowledge need not conform to the SOI’s standards and acknowledges that Tribal Nations possess special expertise in identifying, assessing the eligibility of, assessing effects to, and developing mitigation for historic properties that may possess religious and cultural significance to Tribal Nations, pursuant to 36 CFR § 800.4(c)(1). To further apply this expertise, BOEM, with the assistance of the Lessee, will incorporate Indigenous knowledge and Indigenous Traditional Ecological Knowledge (ITEK) that is conveyed by traditional knowledge keepers of the applicable Tribal Nation into the documents and review processes when such knowledge is received from Tribal Nations in consultation and during implementation of the MOA, consistent with the Office of Science and Technology Policy and Council on Environmental Quality memorandums (Executive Branch policy) on ITEK and Federal decision making (November 15, 2021), “Guidance for Federal Departments and Agencies on Indigenous Knowledge” (November 30, 2022), and “301 DM 7 Departmental Responsibilities for Consideration and Inclusion of Indigenous Knowledge in Department Actions and Scientific Research” (December 5, 2023), and *ACHP’s Policy Statement on Indigenous Knowledge and Historic Preservation* (March 21, 2024). Tribal Nations will also be afforded the opportunity to review the application of their knowledge in documents produced under the MOA pursuant to Stipulation VI (Project Modifications).

X. DURATION

- A. This MOA will expire at (1) the decommissioning of the Project in the Lease Area, as defined in the Lessee’s lease with BOEM (Lease Number OCS-A 0490) or (2) 25-years from the date of COP approval, whichever occurs first. Prior to such time, BOEM may consult with the signatories to reconsider the terms of the MOA and amend it in accordance with Amendments Stipulation (Stipulation XVI).

XI. ARCHAEOLOGICAL MONITORING

- A. Implementation of Archaeological Monitoring Plans. The Lessee must implement the archaeological monitoring plan found in the terrestrial monitoring and post-review discovery plan (Attachment 5) for the areas identified for archaeological monitoring.
- B. In the event of a post-review discovery during archaeological monitoring, the process identified under the Post-Review Discovery Stipulation (Stipulation XII) will apply.

XII. POST-REVIEW DISCOVERIES

- A. Implementation of Post-Review Discovery Plans. If historic properties are discovered that may be historically significant or unanticipated effects on historic properties found, BOEM and BSEE, with the assistance of the Lessee, will implement the post-review discovery plans found in Attachment 5 and Attachment 6.
1. The signatories acknowledge and agree that it is possible that additional historic properties may be discovered during implementation of the Project, despite the completion of a good faith effort to identify historic properties throughout the APEs.
- B. All Post-Review Discoveries. In the event of a post-review discovery of a historic property or unanticipated effects on a historic property prior to or during construction, operations, maintenance, or decommissioning of the Project, the Lessee must implement the following actions, which are consistent with the post-review discovery plans (Attachments 5 & 6):
1. Immediately halt all ground- or seafloor-disturbing activities within the area of discovery while considering whether stabilization and further protections are warranted to keep the discovered resource from further degradation and impact;
 2. Notify BOEM and BSEE in writing via report within 72 hours of the discovery, including any recommendations on need and urgency of stabilization and additional protections for the discovered resource;
 3. Keep the location of the discovery confidential and take no action that may adversely affect the discovered property until BOEM, or its designee, has made an evaluation and instructs the Lessee on how to proceed; and
 4. Conduct any additional investigations as directed by BOEM or its designee to determine, in consultation with the appropriate SHPO and consulting Tribal Nations, whether the resource is eligible for listing in the NRHP (30 CFR § 585.702(b)). BOEM will direct the Lessee to complete additional investigations, as BOEM deems appropriate, if:
 - i. The site has been impacted by Project activities; or
 - ii. Impacts to the site from Project activities cannot be avoided.
 5. BOEM, with the assistance of the Lessee and in consultation with Tribal Nations, will consider the implementation of post-review discovery protocols developed by Tribal Nations, as applicable, prior to conducting additional investigations.
 6. If investigations indicate that the resource is eligible for listing in the NRHP, BOEM, with the assistance of the Lessee, will work with the other relevant signatories and consulting parties to this MOA who have a demonstrated interest in the affected historic property on the further avoidance, minimization, or mitigation of adverse effects.
 7. If investigations identify that human remains or funerary items are present and associated with Tribal Nations or Native American occupations, as defined at 25 U.S.C. § 3001(9), then BOEM, assisted by the Lessee, will implement the treatment process consistent with the Native American Graves Protection and Repatriation Act (NAGPRA). BOEM will consult with Tribal Nations prior to the development or execution of a treatment plan, consistent with the provisions of NAGPRA at 25 U.S.C. §§ 3001-3013 and related law at 18 U.S.C. § 1170. The Lessee must assist BOEM in the development and execution of an action plan at BOEM's request that is responsive to Tribal Nation concerns that might be expressed in the consultation.
 8. If there is any evidence that the discovery is from a Native American society or appears to be a burial site, the Lessee must 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, must consult with the Tribal Nations pursuant to the post-review discovery plan, and must implement the procedures in the Delaware Nation Inadvertent

Discovery Policy, incorporated in and appended to the terrestrial monitoring and post-review discovery plan (Attachment 5)..

9. 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 U.S. President or the Governor of Delaware, Maryland, New Jersey, or Virginia, which represents an imminent threat to public health or safety, or creates a hazardous condition due to impacts from this Project's infrastructure damaged during the emergency and affecting historic properties in the APEs, the Lessee must notify BOEM and BSEE. BOEM will then, with the assistance of the Lessee, notify the Tribal Nations, SHPOs, and the ACHP of the condition that 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. If the Tribal Nations, SHPOs, or the ACHP want to provide technical assistance to BOEM, they will submit comments within seven calendar days from notification if the nature of the emergency or hazardous condition allows for such coordination.

XIV. REPORTING

- A. By January 31 of each year, following the execution of this MOA until it expires or is terminated, the Lessee must prepare and, following BOEM's review and agreement to share this summary report, provide all signatories and consulting parties to this MOA with a summary report detailing work undertaken pursuant to the MOA. Such report will include:
 1. A description of how the stipulations relating to avoidance, minimization, and mitigation measures (Stipulations I, II, and III) were implemented;
 2. Any scheduling changes proposed;
 3. Any project modifications, including consultations conducted pursuant to Stipulation VI;
 4. Any amendments to the MOA pursuant to Stipulation XVI;
 5. Any changes to the attachments of the MOA;
 6. Any problems encountered regarding the implementation of this MOA; and
 7. 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. If requested by the signatories, BOEM will convene an annual meeting with the signatories and consulting parties to discuss the annual report, the implementation of this MOA, and other requested topics.

XV. DISPUTE RESOLUTION

- A. If any signatory or consulting party to this MOA objects at any time to any actions proposed or the manner in which the terms of this MOA are implemented, they must notify BOEM in writing of its objection. BOEM will consult with such party to resolve the objection, and may amend the MOA to resolve the objection, if necessary, pursuant to the Amendment Stipulation (Stipulation XVI). If BOEM determines that such objection cannot be resolved, BOEM:

1. Will forward all documentation relevant to the dispute, including BOEM's proposed resolution, to the ACHP. The ACHP will provide BOEM its advice on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, BOEM will prepare a written response that considers any timely advice or comments regarding the dispute from the ACHP, signatories, and consulting parties, and provide them with a copy of the written response. BOEM will then make its final decision and proceed accordingly.
 2. May make a final decision on the dispute and proceed accordingly, if the ACHP does not provide its advice regarding the dispute within the 30-calendar-day time period. Prior to reaching such a final decision, BOEM will prepare a written response that considers any timely comments regarding the dispute from the signatories, invited signatories, and 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, if a member of the public objects in writing to any of the signatories regarding the manner in which the measures stipulated in this MOA are being implemented, that signatory will notify BOEM. BOEM will review the objection and may notify the other signatories as appropriate and respond to the objector.

XVI. AMENDMENTS

- A. This MOA may be amended when such an amendment is agreed to in writing by all signatories and invited signatories. The amendment will be effective on the date a copy signed by all of the signatories 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 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 and consulting parties. Revisions to any attachment to this MOA will not require an amendment to the MOA.

XVII. COORDINATION WITH OTHER FEDERAL AGENCIES

- A. If another Federal agency that is 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 that it concurs with the terms of this MOA and notifying the signatories that it intends to do so. Such Federal agency may become a signatory, invited signatory, or a concurring party (collectively referred to as signing party) to the MOA as a means of complying with its responsibilities under Section 106 and based on its level of involvement in the undertaking. To become a signing party to the MOA, the agency official must provide written notice to the signatories and invited signatories that the agency agrees to the terms of the MOA, specifying the extent of the agency's intent to participate in the MOA. The participation of the agency is subject to approval by the signatories and invited signatories who must respond to the written notice within 30 calendar days, or the approval will be considered implicit. Any necessary amendments to the MOA as a result will be considered in accordance with the Amendment Stipulation (Stipulation XVI).

- B. If the signatories and invited signatories approve the Federal agency's request to be a signing party to this MOA, an amendment under Stipulation XVI will not be necessary if the Federal agency's participation does not change the undertaking in a manner that would require any modifications to the stipulations set forth in this MOA. BOEM will document these conditions and involvement of the Federal agency in a written notification to the signatories and consulting parties and include a copy of the Federal agency's executed signature page, which will document the addition of the Federal agency as a signing party in lieu of an amendment.

XVIII. TERMINATION

- A. If any signatory to this MOA determines that its terms will not or cannot be carried out, that party will immediately consult with the other signatories and consulting parties to attempt to develop an amendment per Stipulation XVI. If within 30 calendar days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.
- B. Once the MOA is terminated, and prior to work continuing on the undertaking, BOEM will either (a) execute an MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. BOEM will notify the signatories and invited signatories as to the course of action it will pursue.

XIX. ANTI-DEFICIENCY ACT

- A. Pursuant to 31 U.S.C. 1341, 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 and XVIII of this agreement.

Execution of this MOA by BOEM, the Delaware, Maryland, and Virginia SHPOs, and the ACHP, and implementation of its terms, demonstrate that BOEM has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.


[SIGNATURES COMMENCE ON FOLLOWING PAGE]

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
DELAWARE NATION, DELAWARE TRIBE OF INDIANS, THE DELAWARE DEPARTMENT
OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, THE DELAWARE STATE
HISTORIC PRESERVATION OFFICER, THE MARYLAND STATE HISTORIC
PRESERVATION OFFICER, THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER,
US WIND INC., AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MARYLAND OFFSHORE WIND PROJECT
(LEASE NO. OCS-A 0490)**

Signatory:

Bureau of Ocean Energy Management (BOEM)

**ELIZABETH
KLEIN**

 Digitally signed by ELIZABETH
KLEIN
Date: 2024.08.21 18:09:57
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Date: August 21, 2024

Elizabeth Klein
Director
Bureau of Ocean Energy Management

MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
DELAWARE NATION, DELAWARE TRIBE OF INDIANS, THE DELAWARE DEPARTMENT
OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, THE DELAWARE STATE
HISTORIC PRESERVATION OFFICER, THE MARYLAND STATE HISTORIC
PRESERVATION OFFICER, THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER,
US WIND INC., AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MARYLAND OFFSHORE WIND PROJECT
(LEASE NO. OCS-A 0490)

Signatory:

Delaware State Historic Preservation Officer (SHPO)


Suzanne Savery Digitally signed by Suzanne
Savery
Date: 2024.08.26 10:45:05 -04'00' Date: Aug. 26, 2024

Suzanne Savery, State Historic Preservation Officer

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
DELAWARE NATION, DELAWARE TRIBE OF INDIANS, THE DELAWARE DEPARTMENT
OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, THE DELAWARE STATE
HISTORIC PRESERVATION OFFICER, THE MARYLAND STATE HISTORIC
PRESERVATION OFFICER, THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER,
US WIND INC., AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MARYLAND OFFSHORE WIND PROJECT
(LEASE NO. OCS-A 0490)**

Signatory:

Maryland State Historic Preservation Officer (SHPO)

A handwritten signature in cursive script, appearing to read "Elizabeth Hughes", is written over a horizontal line.

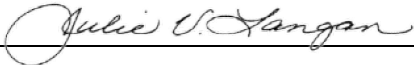
Date: 8-20-2024

Elizabeth Hughes, State Historic Preservation Officer

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
DELAWARE NATION, DELAWARE TRIBE OF INDIANS, THE DELAWARE DEPARTMENT
OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, THE DELAWARE STATE
HISTORIC PRESERVATION OFFICER, THE MARYLAND STATE HISTORIC
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US WIND INC., AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MARYLAND OFFSHORE WIND PROJECT
(LEASE NO. OCS-A 0490)**

Signatory:

Virginia State Historic Preservation Officer (SHPO)



Julie Langan, State Historic Preservation Officer

Date: August 22, 2024

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
DELAWARE NATION, DELAWARE TRIBE OF INDIANS, THE DELAWARE DEPARTMENT
OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, THE DELAWARE STATE
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US WIND INC., AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MARYLAND OFFSHORE WIND PROJECT
(LEASE NO. OCS-A 0490)**

Signatory:

Advisory Council on Historic Preservation (ACHP)




Date: 8/27/2024

Reid J. Nelson
Executive Director
Advisory Council on Historic Preservation

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
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REGARDING THE MARYLAND OFFSHORE WIND PROJECT
(LEASE NO. OCS-A 0490)**

Concurring Party:



Date: 08/26/2024

Deborah Dotson
President
Delaware Nation

**MEMORANDUM OF AGREEMENT
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REGARDING THE MARYLAND OFFSHORE WIND PROJECT
(LEASE NO. OCS-A 0490)**

Invited Signatory:

Delaware Tribe of Indians

Brad KillsCrow
Chief
Delaware Tribe of Indians

Date:_____

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
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US WIND INC., AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MARYLAND OFFSHORE WIND PROJECT
(LEASE NO. OCS-A 0490)**

Invited Signatory:

US Wind Inc.



Date: 08/21/2024

Riccardo Toto
President
US Wind Inc.

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
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US WIND INC., AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MARYLAND OFFSHORE WIND PROJECT
(LEASE NO. OCS-A 0490)**

Invited Signatory:

Delaware Department of Natural Resources and Environmental Control (DNREC)

_____ Date: _____

[Name]
[Title]
[Affiliation]

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AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
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US WIND INC., AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MARYLAND OFFSHORE WIND PROJECT
(LEASE NO. OCS-A 0490)**

Concurring Party:

United States Army Corps of Engineers (USACE)

Date: _____

[Name]

[Title]

[Affiliation]

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AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
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US WIND INC., AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MARYLAND OFFSHORE WIND PROJECT
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Concurring Party:

United States Bureau of Safety and Environmental Enforcement (BSEE)

Date: _____

[Name]

[Title]

[Affiliation]

**MEMORANDUM OF AGREEMENT
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US WIND INC., AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MARYLAND OFFSHORE WIND PROJECT
(LEASE NO. OCS-A 0490)**

Concurring Party:

National Park Service (NPS)

Jonathan Meade
Interior Region I Associate Regional Director, Resource Stewardship and Science
National Park Service

Date: _____

MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
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(LEASE NO. OCS-A 0490)

Concurring Party:

Tribal Nation

Date: _____

[Name]

[Title]

[Affiliation]

MEMORANDUM OF AGREEMENT
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Concurring Party:

Date: _____

[Name]

[Title]

[Affiliation]

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LIST OF ATTACHMENTS TO THE MOA

ATTACHMENT 1 – AREA OF POTENTIAL EFFECTS (APE) MAPS

ATTACHMENT 2 - LISTS OF INVITED AND PARTICIPATING CONSULTING PARTIES

ATTACHMENT 3 – HISTORIC PROPERTY TREATMENT PLAN FOR ABOVEGROUND
HISTORIC RESOURCES

ATTACHMENT 4 – HISTORIC PROPERTY TREATMENT PLAN FOR TERRESTRIAL
ARCHAEOLOGY RESOURCES

ATTACHMENT 5 – TERRESTRIAL MONITORING AND POST-REVIEW DISCOVERY PLAN

ATTACHMENT 6 –MARINE POST-REVIEW DISCOVERY PLAN

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