

**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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED], 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 [REDACTED]. 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 [REDACTED]:
 - 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 [REDACTED] 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 [REDACTED] (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 [REDACTED]. 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 [REDACTED], 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 [REDACTED] 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 [REDACTED] 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)

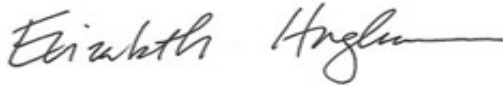
Suzanne Savery Digitally signed by Suzanne
Savery
Date: 2024.08.26 10:45:05 -04'00' Date: Aug. 26, 2024

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)



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: _____

**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)**

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,
DELAWARE NATION, DELAWARE TRIBE OF INDIANS, THE DELAWARE DEPARTMENT
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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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(LEASE NO. OCS-A 0490)**

Invited Signatory:

Delaware Tribe of Indians

Brad KillsCrow
Chief
Delaware Tribe of Indians

Date:_____

MEMORANDUM OF AGREEMENT
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(LEASE NO. OCS-A 0490)

Invited Signatory:

US Wind Inc.

Riccardo Toto
President
US Wind Inc.

Date: _____

**MEMORANDUM OF AGREEMENT
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(LEASE NO. OCS-A 0490)**

Invited Signatory:

Delaware Department of Natural Resources and Environmental Control (DNREC)

_____ Date: _____

[Name]
[Title]
[Affiliation]

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

Concurring Party:

United States Army Corps of Engineers (USACE)

Date: _____

[Name]

[Title]

[Affiliation]

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

Concurring Party:

United States Bureau of Safety and Environmental Enforcement (BSEE)

CHERI HUNTER

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HUNTER
Date: 2024.09.12 16:39:31
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Date: _____

Cheri Hunter
Renewable Energy Operations Director
United States Bureau of Safety and Environmental
Enforcement (BSEE)

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
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(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:

CRISTINA
FERNANDEZ

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CRISTINA FERNANDEZ
Date: 2025.01.13
11:16:54 -05'00'

Date:

01/13/25

Cristina Fernandez
Air & Radiation Division Director
EPA Region 3

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT,
DELAWARE NATION, DELAWARE TRIBE OF INDIANS, THE DELAWARE DEPARTMENT
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US WIND INC., AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
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(LEASE NO. OCS-A 0490)**

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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ATTACHMENT 1 – AREA OF POTENTIAL EFFECTS (APE) MAPS

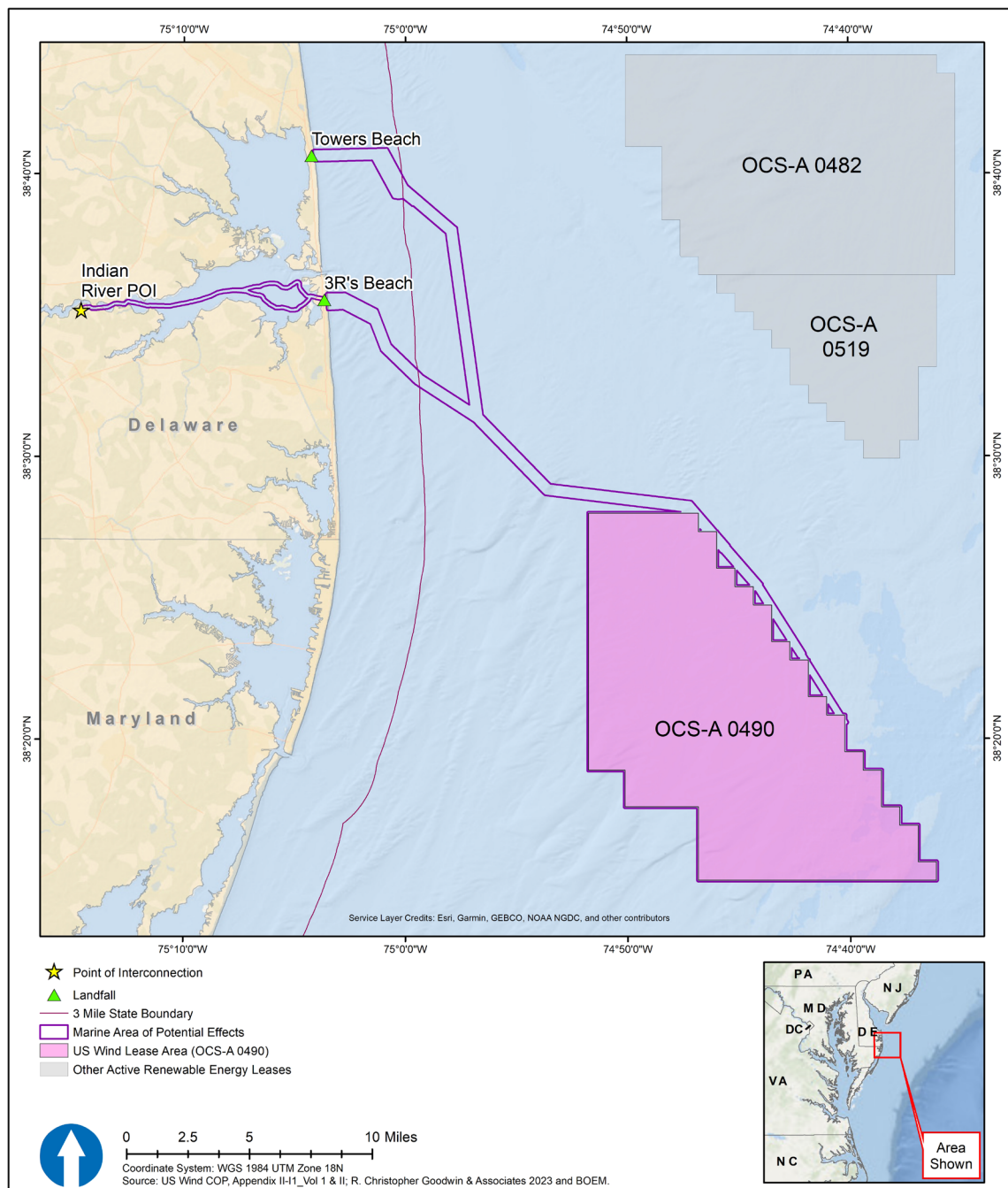
**Figure 1. Marine area of potential effects**



Figure 2. Terrestrial area of potential effects

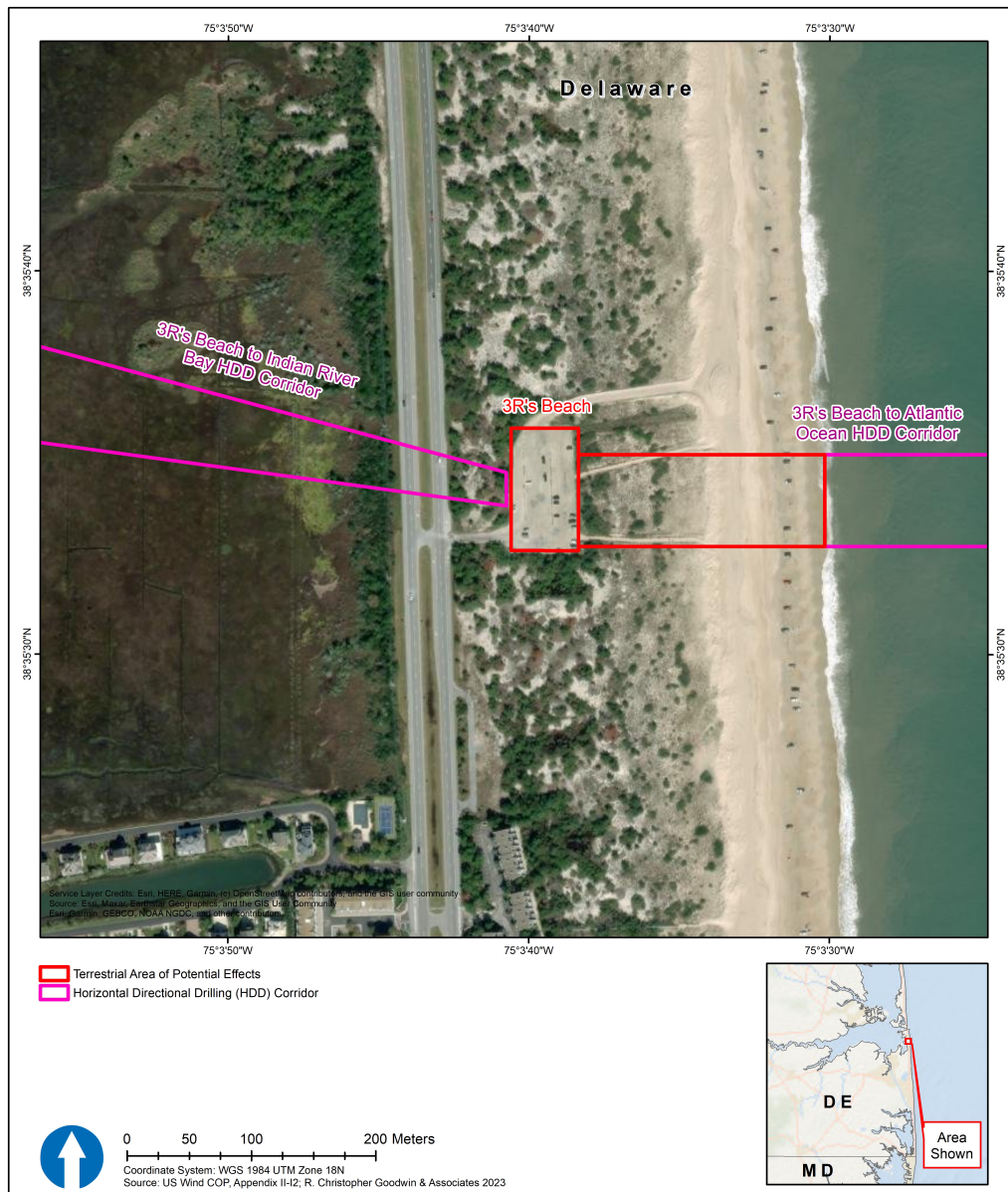


Figure 3. Terrestrial area of potential effects; landfall 3R's Beach



Figure 4. Terrestrial area of potential effects; landfall Towers Beach

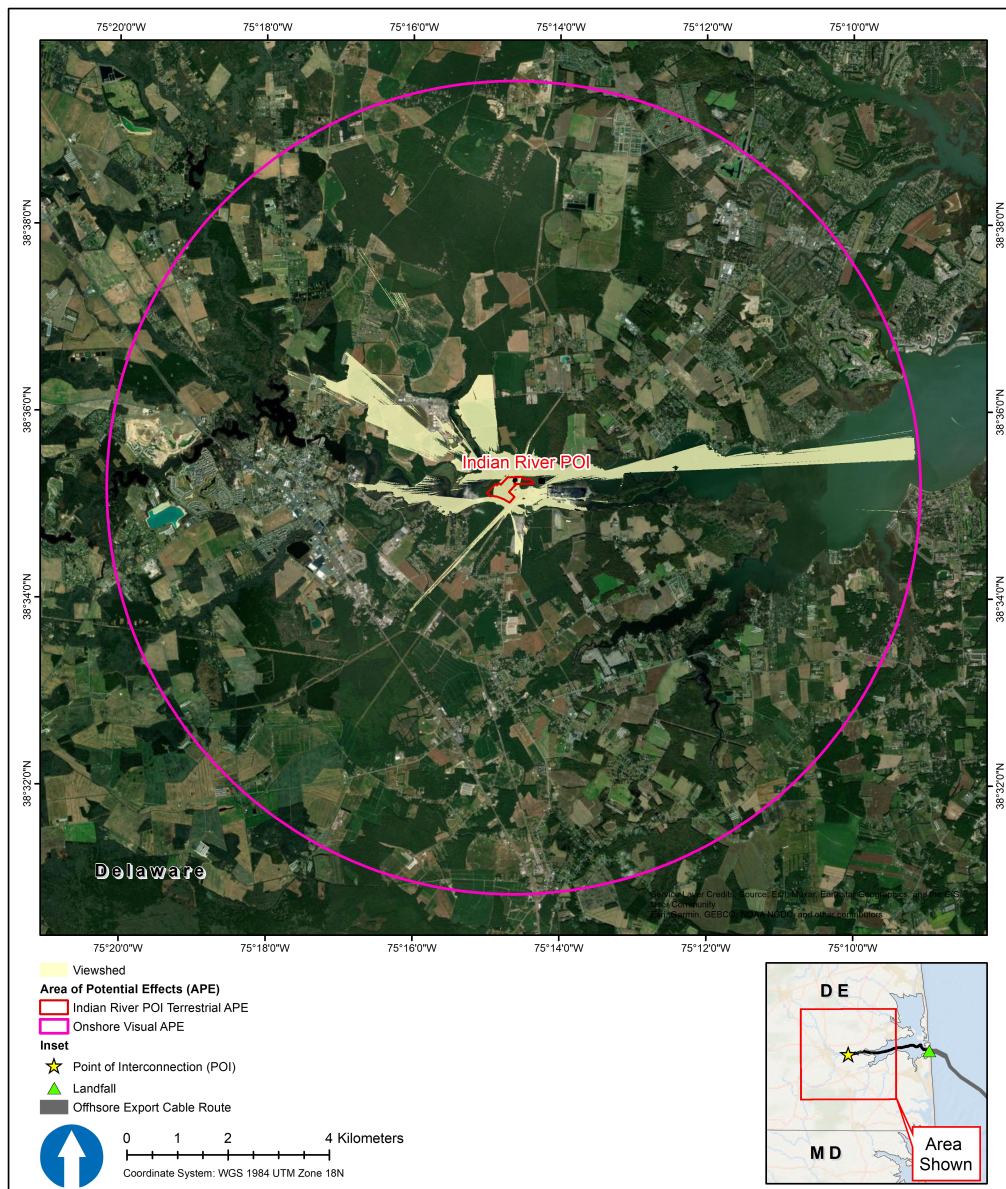


Figure 5. Terrestrial area of potential effects and onshore visual area of potential effects: Indian River Substation POI

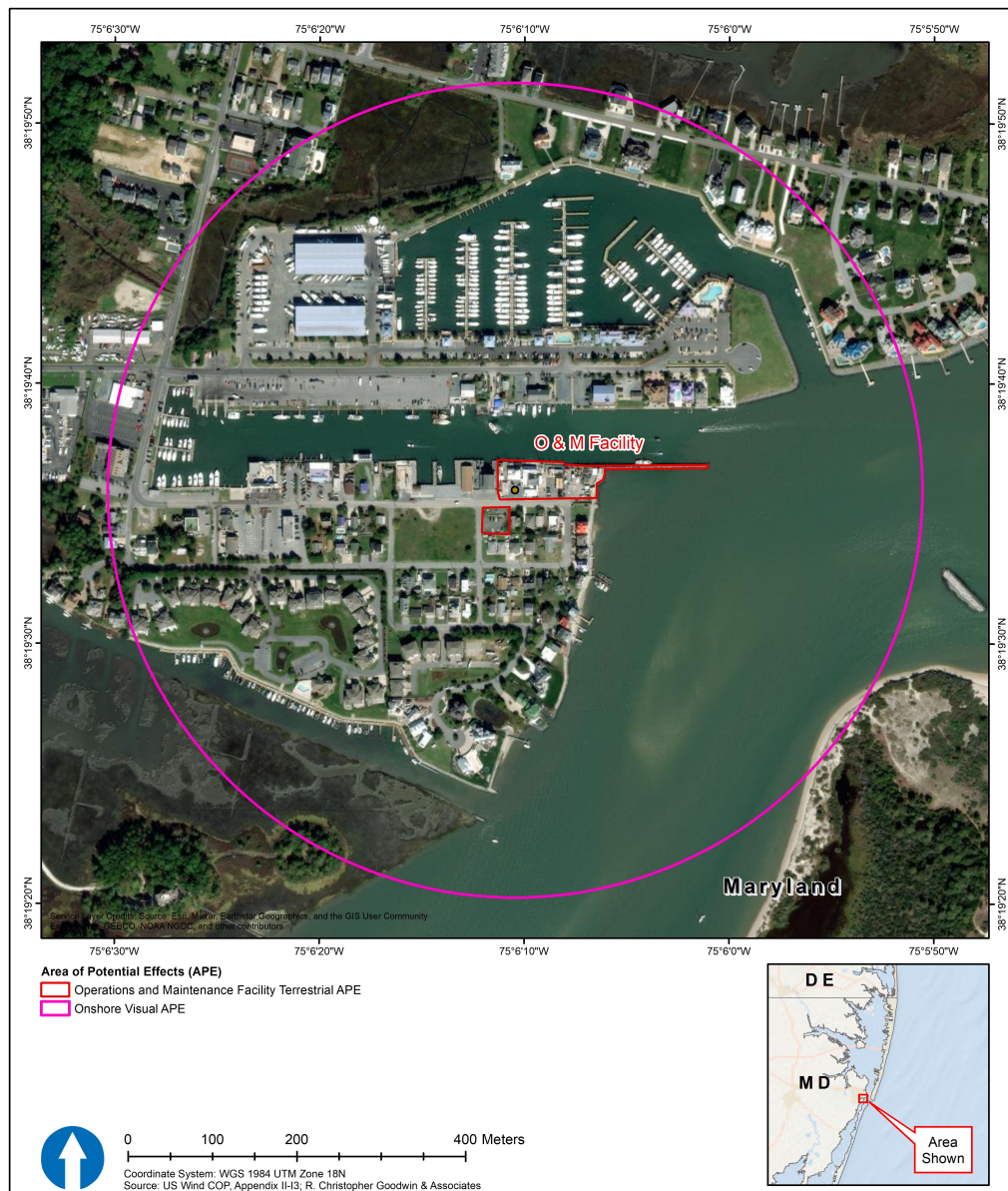


Figure 6. Onshore visual area of potential effects; O&M Facility

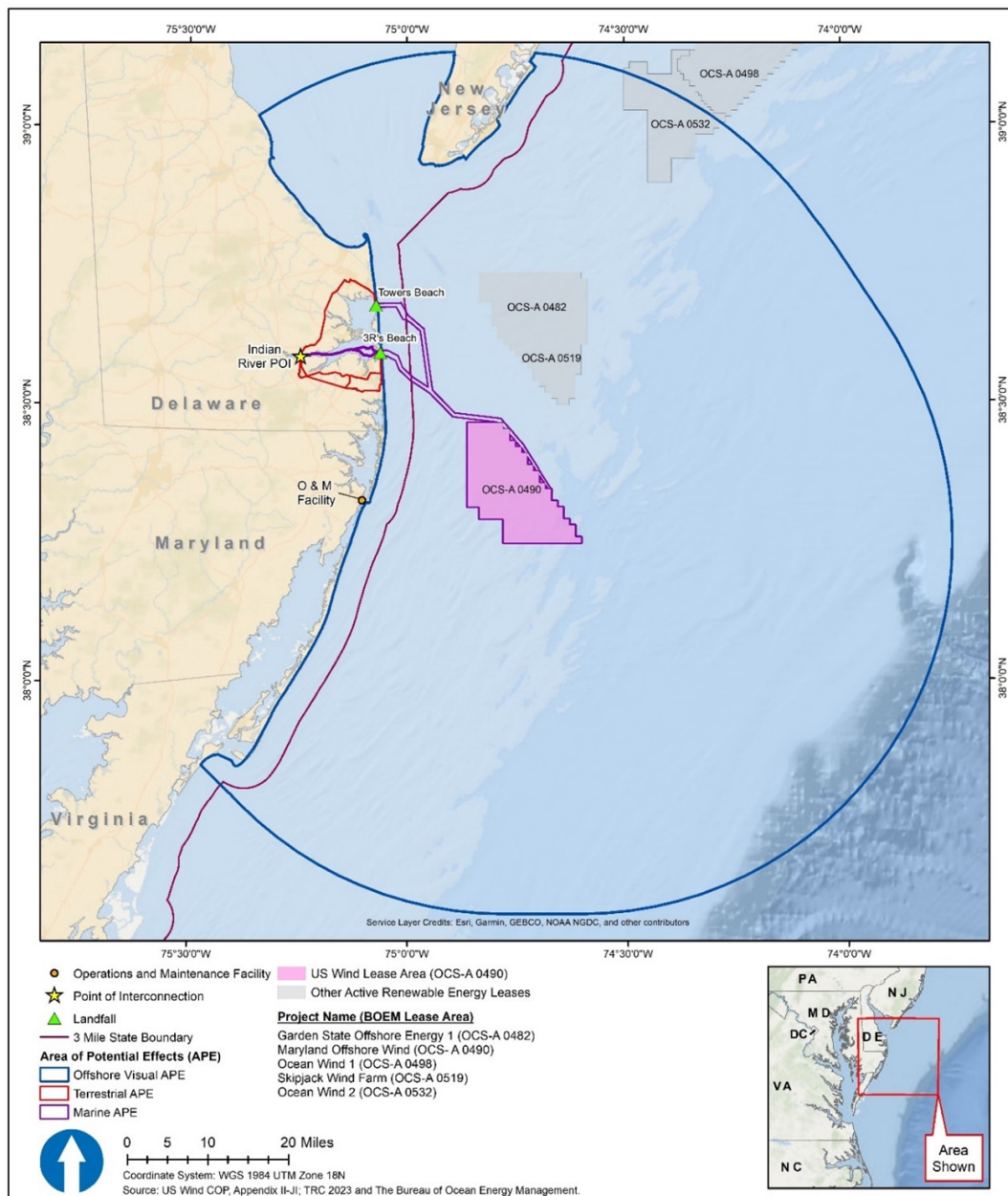


Figure 7. Offshore and Onshore Visual APE

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ATTACHMENT 2 - LISTS OF INVITED AND PARTICIPATING CONSULTING PARTIES

Attachment 2. Entities invited to be consulting parties to the US Wind/Maryland Wind Project

The following is a list of governments and organizations that BOEM contacted and invited to be a consulting party to the NHPA Section 106 review of the US Wind/Maryland Wind Offshore Project between June 2022 and July 2022. During the consultations, additional parties were made known to BOEM and were added as they were identified (Attachment J-3).

Invitee, Title	Entity
John Raymond Johnson, Governor	Absentee Shawnee Tribe of Indians of Oklahoma
Michael T. Mason, County Administrator	Accomack County, Virginia
Christopher Daniel, Program Analyst	Advisory Council on Historic Preservation
Lisa Challenger, Executive Director	Beach to Bay Heritage Area
Robert Smith, Borough Administrator	Borough of Stone Harbor, New Jersey
Irina Sorset, Federal Preservation Officer	Bureau of Safety and Environmental Enforcement
Diane F. Wieland, Director of Tourism/Culture and Heritage	Cape May County Division of Culture and Heritage
F. Nathan Doughty, Jr., President	Cape May County Historical Society
Quanette Vasser-McNeal, President	Cape May County NAACP
Michael Donohue, Administrator	Cape May County, New Jersey
Zachary Mullock, Mayor	City of Cape May, New Jersey
Stephen R. Adkins, Chief	Chickahominy Indian Tribe
Gerald A. Stewart, Chief	Chickahominy Indian Tribe – Eastern Division
Jessica Phillips, Environmental Director	Chickahominy Indian Tribe – Eastern Division
Zachary Mullock, Mayor	City of Cape May, New Jersey
Ronald C. Simone III, City Administrator	City of North Wildwood, New Jersey
Evan Miller, Interim City Manager	City of Rehoboth Beach, Delaware
Dayna Cobb, Director	Delaware Department of Natural Resources, Division of Climate, Coastal, and Energy
Gwen Davis, Deputy State Historic Preservation Officer	Delaware Division of Historical and Cultural Affairs

Invitee, Title	Entity
Melody Abbott, Archaeologist/Cultural Preservation Specialist	Delaware Division of Parks and Recreation
Sarah Carr, Specialist-Archaeologist	Delaware Division of Historical & Cultural Affairs
Dr. David W. Young, Executive Director	Delaware Historical Society
Deborah Dotson, President of Executive Committee	The Delaware Nation
Carissa Speck, Tribal Historic Preservation Director	The Delaware Nation
Katelyn Lucas, Tribal Historic Preservation Officer	The Delaware Nation
Brad KillsCrow, Chief	Delaware Tribe of Indians
Susan Bachor, Deputy Tribal Historic Preservation Officer and Archaeologist	Delaware Tribe of Indians
Capt. Michael Witherspoon	Department of Defense (Joint Expeditionary Base Little Creek - Fort Story Wallops Island, Virginia)
Amy McDowell, Environmental Protection Specialist	Department of Defense (National Guard Training Site Bethany Beach Training Site)
Glenna J. Wallace, Chief	Eastern Shawnee Tribe of Oklahoma
Cindy Whitten, OE Wind Turbine Team Manager	Federal Aviation Administration
Harry C. Bellangy, President and Historian	Greater Cape May Historical Society
Hilary Hartnett-Wilson, Executive Director	Historical Society of the Eastern Shore of Virginia
Dennis J. Coker, Principal Chief	Lenape Tribe of Delaware
Kate Patton, Executive Director	Lower Shore Land Trust (non-governmental organization)
	Lower Sussex NAACP Chapter
Michael Laffey, Township Manager	Lower Township, New Jersey
Jeannine Haddaway-Riccio, Secretary of Natural Resources	Maryland Department of Natural Resources
John Turgeon, Director	Maryland Environmental Trust (non-governmental organization)
Bethe Cole, Administrator, Project Review and Compliance	Maryland Historical Trust
Brian Weeden, Chairman	Mashpee Wampanoag Tribe

Invitee, Title	Entity
Carlton Hendricks, Vice Chairman	Mashpee Wampanoag Tribe
David Weeden, Tribal Historic Preservation Officer	Mashpee Wampanoag Tribe
Kenneth Branham, Tribal Chief	Monacan Indian Nation
	NAACP – Worcester County Branch
Keith Anderson, Chief	Nansemond Indian Nation
	Nanticoke Indian Association
Anthony Dean Stanton, Chief	Narragansett Indian Tribe
Jeremy Eggers, Wallops Office of Communications	NASA Wallops Flight Facility
Julia Brunner, External Renewable Energy Program Director (removed)	National Park Service
Sarah Quinn, External Renewable Energy Program Manager (removed)	National Park Service
Kirstin Andel	National Park Service
Katherine Schlegel, Historical Landscape Architect	National Park Service
Mary Krueger, Energy Specialist	National Park Service
Dennis Montagna, Program Manager, Monument Research and Preservations	National Park Service History and Preservation Assistance
Kasey Taylor, State Conservationist	Natural Resources Conservation Service, Delaware
Carl Jablonski, President	Navy Lakehurst Historical Society
Katherine Marcopul, Administrator and Deputy Historic Preservation Officers	New Jersey Historic Preservation Office
	New Jersey State Park Service - Cape May State Park
William Maley, Deputy Federal Preservation Officers	Office of the Deputy Assistant Secretary of the Navy for Environment
Alexis Catsambis, Underwater Archaeology Branch, Naval History and Heritage Command	Office of the Deputy Assistant Secretary of the Navy for Environment
Robert Gray, Chief	Pamunkey Indian Tribe
Shaleigh Howells	Pamunkey Indian Tribe

Invitee, Title	Entity
Nicholas A. Redding, President and Chief Executive Officer	Preservation Maryland
Emily R. Manz, Director	Preservation New Jersey
Woodie Walker, Director, Department of Environmental Services <i>(removed)</i>	Rappahannock Indian Tribe
Anne Richardson, Chief	Rappahannock Indian Tribe
Jack Ryan	Rappahannock Indian Tribe
Benjamin Barnes, Chief	Shawnee Tribe
Brian Polite, Chairman <i>(removed)</i>	Shinnecock Indian Nation
Jeremy Dennis, Tribal Historic Preservation Officer <i>(removed)</i>	Shinnecock Indian Nation
Rainbow Chavis, Tribal Historic Preservation Officer	Shinnecock Indian Nation
Shavonne Smith, Director Environmental Department	Shinnecock Indian Nation
Jason Cofield, Executive Director of Tribal Operations	Shinnecock Indian Nation
Jeff Bendremer, Tribal Historic Preservation Officer	Stockbridge-Munsee Community Band of Mohican Indians
Todd F. Lawson, County Administrator	Sussex County Delaware
Dan Parsons, Historic Preservation Planner	Sussex County Historic Preservation
Cliff Graviat, Town Manager	Town of Bethany Beach, Delaware
J. Arthur Leonard, Mayor	Town of Chincoteague, Virginia
Bill Zolper, Town Manager	Town of Dewey Beach, Delaware
Patricia J. Schuchman, Town Manager	Town of Fenwick Island, Delaware
Deborah Y. Botchie, Town Manager	Town of Millville, Delaware
Terry McGean, City Manager	Town of Ocean City, Maryland
Clifton C. Murray, Mayor	Town of Selbyville, Delaware
Maureen Hartman, Town Manager	Town of South Bethany, Delaware
Steve O'Connor, City Administrator	Town of Wildwood, New Jersey
Tom Jonathan, Chief	Tuscarora Nation
Frank W. Adams, Chief	Upper Mattaponi Indian Tribe

Invitee, Title	Entity
Christine Jacek, Regulatory Division	US Army Corps of Engineers
Shannon N. Gilreath, Commander 5 th District	US Coast Guard - Fifth Coast Guard District
Steven Sample, Executive Director, Military Aviation and installations Assurance Siting Clearinghouse	US Department of Defense - Office of the Assistant Secretary of Defense for Sustainment
Terry Bowers, Management Analyst	US Department of Defense - Office of the Deputy Assistant Secretary of Defense (Environment), Environmental Compliance and Planning
Frankie Green, FAST-41 Coordinator	US Fish and Wildlife Service
Roger Kirchen, Director, Review and Compliance Division	Virginia Department of Historic Resources
Cheryl Andrews-Maltais, Chairwoman	Wampanoag Tribe of Gay Head (Aquinnah)
Lael Echo-Hawk, General Counsel	Wampanoag Tribe of Gay Head (Aquinnah)
Barbara Spain, Executive Assistant	Wampanoag Tribe of Gay Head (Aquinnah)
Bettina Washington, Tribal Historic Preservation Officer	Wampanoag Tribe of Gay Head (Aquinnah)
Constance Mahon, Borough Administrator	Wildwood Crest Borough, New Jersey
Kirk Hastings, President	Wildwood Crest Historical Society
Taylor Henry, President	Wildwood Historical Society
Newt Weaver, President	Worcester County Historical Society
Robert Michell, LEHS, REHS, Director of Environmental Programs	Worcester County, Maryland

Consulting parties to the US Wind/Maryland Wind Project

The following is a current list of consulting parties to the NHPA Section 106 review of the US Wind/Maryland Wind Project, as of November 1, 2022.

Invitee, Title	Entity
Christopher Daniel, Program Analyst	Advisory Council on Historic Preservation
Sarah Carr, Specialist-Archaeologist	Delaware Division of Historical & Cultural Affairs
Deborah Dotson, President of Executive Committee	The Delaware Nation
Carissa Speck, Tribal Historic Preservation Director	The Delaware Nation
Brad KillsCrow, Chief	Delaware Tribe of Indians
Susan Bacher, Deputy Tribal Historic Preservation Officer and Archaeologist	Delaware Tribe of Indians
Amy McDowell, Environmental Protection Specialist	Department of Defense (National Guard Training Site Bethany Beach Training Site)
Kate Patton, Executive Director	Lower Shore Land Trust (non-governmental organization)
Bethe Cole, Administrator, Project Review and Compliance	Maryland Historical Trust
Michael Kickingbear Johnson, acting Tribal Historic Preservation Officer	Mashantucket (Western) Pequot Tribal Nation
Katherine Marcopul, Administrator and Deputy Historic Preservation Officers	New Jersey Historic Preservation Office
Brian Polite, Chairman	Shinnecock Indian Nation
Jeremy Dennis, Tribal Historic Preservation Officer	Shinnecock Indian Nation
Todd F. Lawson, County Administrator	Sussex County Delaware
Terry McGean, City Manager	Town of Ocean City, Maryland
Roger Kirchen, Director, Review and Compliance Division	Virginia Department of Historic Resources
Adrienne Birge-Wilson, Project Review Architectural Historian	Virginia Department of Historic Resources

Some of the parties consulted over the course of the NHPA Section 106 review have voluntarily withdrawn from further participation in the consultation, as indicated by the withdrawal date in parentheses for each of those parties.

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ATTACHMENT 3 – HISTORIC PROPERTY TREATMENT PLAN FOR ABOVEGROUND
HISTORIC RESOURCES

FINAL

JULY 30, 2024

**MARYLAND OFFSHORE WIND PROJECT
HISTORIC PROPERTIES TREATMENT PLAN—
ABOVEGROUND HISTORIC PROPERTIES**

PREPARED FOR:

**US WIND, INC.
401 EAST PRATT STREET
BALTIMORE, MARYLAND 21202**

**R. CHRISTOPHER GOODWIN & ASSOCIATES, INC.
241 EAST FOURTH STREET, SUITE 100 ■ FREDERICK, MD 21701**

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LIST OF ACRONYMS

ac	acre
ACHP	Advisory Council on Historic Preservation
APE	Area of Potential Effect
ADLS	Aircraft Detection Lighting System
BOEM	Bureau of Ocean Energy Management
CFR	Code of Federal Regulations
DHCA	Delaware Division of Historical and Cultural Affairs
FAA	Federal Aviation Administration
ft	foot
GIS	Geographic Information System
ha	hectare
HDD	horizontal directional drilling
HPTP	Historic Preservation Treatment Plan
HRVEA	Historic Resources Visual Effects Analysis
km	kilometer
KOP	Key Observation Point
Lease Area	the OCS-A 0490 Lease, located approximately 13 mi (11.3 nautical miles, 21 kilometers) off the coast of Maryland and includes approximately 80,000 acres of submerged lands
Lessee	US Wind
m	meter
Medusa	A historic database operated by the Maryland Historical Trust
MHT	Maryland Historical Trust
mi	mile
MPDF	Multiple Property Documentation Form
MW	megawatt
NEPA	National Environmental Policy Act
NHL	National Historic Landmark
NHPA	National Historic Preservation Act of 1966
nm	nautical mile
NPS	National Park Service
NRHP	National Register of Historic Places
OCS	Outer Continental Shelf
PAPE	Preliminary Area of Potential Effects
PDE Project	Project Design Envelope Maryland Offshore Wind Project
RCG&A	R. Christopher Goodwin & Associates, Inc.
SHPO	State Historic Preservation Office
USCG	United States Coast Guard
WEA	Wind Energy Area
WTG	Wind Turbine Generator

1 EXECUTIVE SUMMARY

This Historic Preservation Treatment Plan (HPTP) was developed to provide background data, information on historic properties, and detailed implementation steps for mitigation measures developed to resolve adverse visual effects to three historic properties identified by the Bureau of Ocean Energy Management (BOEM) through Section 106 consultation for the Maryland Offshore Wind Project (Undertaking), as identified by the Offshore Historic Resources Visual Effects Analysis (HRVEA), dated January 2024, and submitted to BOEM on January 10, 2024. The aforementioned Offshore HRVEA summarized effects from Offshore Project Components to onshore historic resources. The following HPTP is anticipated to support a Memorandum of Agreement (MOA) regarding the Undertaking among the Bureau of Ocean Energy Management (BOEM), the State Historic Preservation Officers (SHPO) of Delaware, Maryland, New Jersey, and Virginia, and the Advisory Council on Historic Preservation (ACHP). The mitigation measures within this document, and their implementation if selected, are anticipated to be developed in consultation with federally and state recognized tribes, the Delaware Division of Historical and Cultural Affairs (DHCA), Maryland Historical Trust (MHT), ACHP, and other consulting parties.

2 BACKGROUND INFORMATION

2.1 Project Overview

BOEM has determined that the Maryland Offshore Wind Project (Undertaking) constitutes an undertaking subject to Section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. § 306108) and its implementing regulations (36 CFR §800). The proposed activities to support the Project, as detailed in the US Wind, Inc. (US Wind) Construction and Operations Plan (COP), have the potential to affect historic properties. The work of the Project detailed in the COP will be performed for US Wind. The Project is located in the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Offshore Maryland (OCS-A 0490, the Lease), which was awarded to US Wind (Lessee) through the Bureau of Ocean Energy Management (BOEM) competitive renewable energy lease auction of the Wind Energy Area (WEA) offshore of Maryland in 2013. The Lease area covers approximately 80,000 acres (ac; 32,375 hectares [ha]) and is approximately 13 statute miles (mi) (11.3 nautical miles [nm], 21 kilometers [km]) off the Ocean City, Maryland, coastline. Up to 121 Wind Turbine Generators (WTGs) and up to 4 offshore substations (OSSs) would be constructed in the Lease area. The Offshore Export Cable Route Corridor will connect the Lease area to a Point of Interconnection at the Delmarva Power & Light Indian River Substation near Millsboro, Delaware.

The Offshore HRVEA (Appendix I3) that was prepared as part of the Maryland Offshore Wind Project COP evaluated effects to onshore historic properties from Offshore Project Components. Based on the results of the Offshore HRVEA, it has been determined that the Undertaking will result in an adverse visual effect to three properties that are either listed or treated as eligible for listing for purposes of this analysis. Consultation will be undertaken between federally and state recognized Native American tribes, DHCA, MHT, and other consulting parties to develop manners in which to avoid, minimize, and mitigate adverse effects to these three historic properties.

2.1.1 Section 106 of the NHPA

Under the Section 106 regulations at CFR § 800.6(b)(1)(i-iv), an undertaking that will or may adversely affect historic properties calls for the federal agency to consult with the SHPO or Tribal Historic Preservation Officer (THPO) and other parties to negotiate and execute a Section 106 agreement document that sets out the measures the federal agency will implement to resolve those adverse effects through avoidance, minimization, or mitigation. An MOA is considered appropriate for this Undertaking in order to record the agreed upon resolution for this specific undertaking, which includes a defined beginning and conclusion, where adverse effects are understood. This HPTP was developed to address adverse effects determined in the Offshore HRVEA and is intended to help mitigate the visual adverse effects from the Undertaking. These proposed mitigation measures may be appropriate for consultation and inclusion in an MOA for the Undertaking.

3 HISTORIC SIGNIFICANCE AND EXISTING CONDITIONS OF THE HISTORIC PROPERTY

Three historic resources are included in this HPTP based on analysis of visual effects to properties as outlined in the HRVEA; these properties are listed in Table 3-1. Two of these properties are located in Ocean City, Worcester County, Maryland, and one is located in Lewes, Sussex County, Delaware.

Table 3-1. Table of Effected Properties

SHPO ID Number	Name	City	State	Eligibility	Distance from Nearest Turbines
S06048	Fort Miles Historic District	Lewes	DE	NRHP Listed	20-30 mi
WO-347	U.S. Coast Guard Tower	Ocean City	MD	NRHP Eligible	12-20 mi
WO-323	U.S. Life-Saving Station Museum	Ocean City	MD	NRHP Eligible	12-20 mi

3.1 Historic Context and Significance

3.1.1 Sussex County, Delaware

Coastal development at Sussex County began with the establishment of camp meeting grounds which, over time, evolved into resort towns during the late-nineteenth and early-twentieth centuries. As such, two types of coastal development emerged: the religious camp and seasonal, recreational development. Camp meeting grounds generally were seasonal religious communities comprised of modest dwelling units or tents, a central gathering place for worship or meetings, and landscaped exteriors (University of Delaware 2014). In contrast, the resort town emerged in the late-nineteenth and early twentieth-centuries as a seasonal place of leisure, generally along the coast or mountains, with recreational amenities and lodging facilities (Ressetar 2011:8). In Delaware, camp meeting grounds often were expanded by real estate developers. These developers platted parcel lots and these camp meetings grounds evolved into resort towns between the by the early twentieth-century, catering to expanded wealth affording the American family disposable income and more time-off from work.

At the end of the nineteenth century, the predominantly agricultural economy of Sussex County began to be supplemented by the economy of seasonal, religious developments along the coast (Carter 1976:32). Rehoboth Beach was one of the earliest these communities, first established as camp meeting grounds. When Reverend Todd and the Rehoboth Beach Camp Meeting Association established their seaside retreat, the meeting grounds were placed at the west end present-day Rehoboth Beach on lands acquired from local farmers. The grounds were laid out in a fan-shaped design with wide streets, parks, and modest or narrow building lots. Instead of tents, simple frame houses had populated the meeting ground streets. Most of these buildings were standard designs comprising 300-sq ft. wooden structures divided into two rooms (Morgan 2010:29).

The area surrounding the camp meeting grounds began to develop after the New Castle Railroad had extended to Rehoboth Beach in 1878 (Morgan 2010:30). Initially, the tracks ended at the periphery of the camp. However, in 1884, the line was extended down Rehoboth Avenue to a new depot near the current-day center of town. This line extension provided vacationers from the Washington-Baltimore metropolitan

area more convenient access to Rehoboth Beach. As the camp evolved into a desirable seasonal community, it began to attract visitors unrelated to its religious purposes. These visitors constructed their own summer cottages or, in certain cases, year-round houses. In 1891, Delaware's General Assembly established the growing development a municipality, originally naming it Henlopen City; later that year it had been renamed Rehoboth Beach.

Approximately 13 mi south of Rehoboth Beach, another camp meeting ground would soon be developed. In 1898, F.D. Powers, a minister at a congregation of the Disciples of Christ in Washington, D.C., suggested a Christian meeting place be established along the Atlantic coast. The Delmarva Peninsula subsequently was chosen as a suitable location for such a settlement. An empty coastal area owned by Ezekiel Evans, a Sussex County landowner, was selected. This site would become Bethany Beach (Meehan and Dukes 1998:17). In 1900, the Disciples of Christ formed the Bethany Beach Improvement Company, which raised money to purchase the land from Evans. The company sold 150 lots in Bethany Beach, primarily to families from Washington, D.C., Pittsburgh, Pennsylvania, and Scranton, Pennsylvania. The company laid out streets and divided the blocks into 40- by 125-ft lots (Morgan 2010:24). In addition to these residential lots, the Christian Church reserved a large area near the town center to serve as the assembly grounds, which included a building known as the Tabernacle. This building was an octagonal auditorium completed in 1903 and served as the central meeting place. The octagon-shaped wooden building was designed with sides that could be opened to allow the sea breeze to cool the audience (Morgan 2010:24). The building was situated on an open field several blocks from the beachfront and would become a symbol of the town; it also held lectures and some of the first picture-shows to be shown at the beach (Morgan 2010:25).

Resort tourism did not flourish at Bethany Beach with the same speed as its northern neighbor, Rehoboth Beach. In fact, the first fifty years of Bethany Beach history generally are referred to as the "Quiet Years" by local residents, tourists, and historians (Meehan and Dukes 1998:18). Despite the Bethany Beach Improvement Company's efforts to connect the town by existing rail lines along the Delmarva Peninsula, such efforts were never realized. Therefore, traveling to Bethany Beach required greater time and more transfers between ferries, trains, and automobiles. Financial problems also contributed to the camp's slow development. Local bankers were hesitant to loan money for the development of Bethany Beach because they recently had lost money on similar camp meeting grounds. Without sufficient financial backing, the company was unable to move forward with its ambitious construction and little development occurred. Eventually, in 1903, six Pittsburgh investors agreed to purchase all of the Bethany Beach Improvement Company's stock, leaving three shares to a Delaware resident so that the company could retain local ownership (Meehan and Dukes 1998:19). This influx of capital improved the company's financial footing and allowed development of Bethany Beach to resume, albeit slowly.

As the development of Bethany Beach progressed, a series of recreational, residential, and maritime properties were constructed to support the growing seasonal community. Recreational properties included a boardwalk, modest hotels, and theaters; residential properties included summer residences; and maritime properties included life-saving stations.

The boardwalk was constructed in 1903 and later rebuilt in 1905 following a severe storm and a United States Lifesaving Service (USLSS) station was constructed and began operations in 1907. The Town of Bethany Beach was incorporated in 1909. In 1910, Bethany Beach had 56 recorded permanent residents, many of whom lived in summer houses. Unlike the tent houses of Rehoboth Beach, many of the first houses

in Bethany Beach were two-story buildings with wide porches and several rooms (Morgan 2010:26). Many families built houses north of the Tabernacle, near present-day 1st Street. As many of the early families were from western Pennsylvania, this area became known as Little Pittsburgh. Louis Drexler, who later would serve in the Delaware state legislature, built a two-story cottage with a wrap-around porch one block from the beachfront (Morgan 2010:27). This house design was representative of a domestic architecture found at Bethany Beach during the early-twentieth century.

During this period, two hotels operated at Bethany Beach: the Sussex Hotel or and the larger, Bellevue-Atlantic, which later became known as the Seaside Inn (Morgan 2010:28). These hotels did not adopt many of the luxury standards that had been implemented since the founding of Tremont House in 1830. The Tremont House in Boston, Massachusetts, often is credited as the earliest iteration of modern hotel standards in the United States. The design of the Tremont House incorporated several innovations including lobbies, indoor plumbing, lock-key rooms, and private dining or social halls.

These patterns of hotel innovations implemented over the nineteenth and early-twentieth were not realized at Bethany Beach. Most visiting Bethany Beach either had their own summer cottage or family and friends who could host them (Morgan 2010:27). As Bethany Beach was not attracting large crowds of tourists, their lodging stock represented more minimal and modest design and function (Morgan 2010:28). Bethany Beach began to offer attractions during this period as well, realized through recreational properties. Boardwalks were constructed in coastal resorts on both the east and west coasts. By the 1920s, boardwalks had expanded to include hotels and restaurants. The boardwalks at Bethany and Rehoboth followed these early trends. The Bethany Beach Boardwalk constructed in 1903 had been rebuilt several times over the years due to storm damage. Seasonal communities along the coasts built boardwalks, generally constructed of poured concrete or wood-plank, as a pedestrian path along the ocean. This pedestrian thoroughfare typically was lined with hotels, commercial buildings, and recreational facilities. The Ringler Theater opened on the boardwalk in 1923 and became one of the town's major attractions. Restaurants and new hotels began to open in the 1930s and a dirt road connected Rehoboth and Bethany in 1934 (Meehan and Dukes 1998:23).

The recreational boardwalk had been flourishing just north at Rehoboth Beach since the early twentieth century as well. Aided by the more direct transportation and access, during much of what Bethany Beach considers the "Quiet Years", was a period of recreational growth for Rehoboth Beach. The Rehoboth Boardwalk was constructed in 1905 and was credited with offering evening recreation to vacationers who, prior to its construction, had few entertainment options in the evenings (Morgan 2009:18). The boardwalk was built on elevated wood-plank pilings and was popular during both day and evening. After sundown, the pedestrian thoroughfare was gaslit until 11:00pm allowing vacationers to stroll along a protected pathway (Morgan 2009:19). Not unlike at Bethany Beach, by the 1930s the Rehoboth Beach boardwalk was lined with commercial storefronts and low-scale hotels.

After war broke out in Europe in 1939, the U.S. government took an increasing interest in defending the Delaware coast. The dirt road between Rehoboth and Bethany was paved in 1940 and both towns were blacked out at night to reduce the chances of German submarine attacks on ships offshore (Meehan and Dukes 1998:99). German prisoners of war were held in the area, a radar station was built to the west of Bethany Beach, and the U.S. Army built a gunner control tower south of town to support Coast Artillery guns at Fort Miles on Cape Henlopen (Meehan and Dukes 1997:115). A destructive storm struck Bethany and Rehoboth beaches in mid-September 1944 destroying the boardwalks in both towns and several

recreational amenities (Meehan and Dukes 1997:117). While the boardwalks were rebuilt the following year, some of the major attractions never reopened, including the Ringler Theater at Bethany Beach.

Following World War II, the Delaware coastline rapidly developed as a seasonal tourism destination. The first wave of development occurred between 1952 and 1978. During this period, Rehoboth Beach became a vacation destination and the “Quiet Years” of Bethany Beach had ended as the community expanded and was accessible by automobile. Outlying development in unincorporated areas expanded to include the areas in and around Fenwick Island and Dewey Beach. Fenwick Island, sited just north of Ocean City, Maryland, was incorporated in 1953 and Dewey Beach, just south of Rehoboth Beach, was incorporated by 1981. These communities slowly developed during early- to mid-twentieth century as collections of single-family residences. Unlike Rehoboth Beach and Bethany Beach, Fenwick Island and Dewey Beach did not follow a planned development pattern comprising platting and subdivided lots.

Rapid development of the Sussex County coastline between 1952 and 1978 was two-fold. In 1952, the Chesapeake Bay Bridge opened, beginning a pattern of accelerated construction among coastal communities. For the first time, motorists were able to drive from Washington, D.C., and Baltimore to the Delmarva Peninsula without a lengthy detour around the northern tip of the Chesapeake Bay. In addition, a growing sector of the American population had more time and money for vacations and second homes (Lasner 2012:169). As a result, condominiums were created during this period. During the 1960s, condominiums were introduced as a form of low-cost homeownership. Vacation condominiums for younger families proliferated in this era and many viewed vacation condominiums as a sound way to invest surplus equity with the possibility to rent these spaces to vacationers when not occupied (Lasner 2012:169). However, while other Mid-Atlantic coastal communities saw an increase in multi-unit buildings and high-rises along their beachfronts, such as Ocean City, Maryland, and Virginia Beach, Virginia, the Delaware communities remained low-scale and residential building heights seldom exceed 35-ft due to strict zoning. Consequently, condominiums rarely exceeded two- to three-stories in height.

3.1.2 Worcester County, Maryland

In the middle of the nineteenth century, towns such as Cape May City, New Jersey, Saratoga Springs, New York, and Newport, Rhode Island, developed as areas that wealthy citizens along the east coast of the U.S. could travel to during the summer months. Small-scale, seasonal oceanfront communities with direct access to the water were constructed to accommodate recreational activities. The “resort town” emerged during the late-nineteenth and early twentieth-centuries as seasonal places of leisure, generally along the coast or mountains, with recreational amenities and lodging facilities (Ressetar 2011:8). While Ocean City, Maryland, began its development later than the aforementioned resort towns, Ocean City’s architectural, economic, and population growth patterns closely followed those of other resort towns found along the east coast.

Stephen Taber, a speculator, purchased the land that became Ocean City in 1868 (Corddry 1991:15-16). Four years later, Taber sold ten acres of land on the barrier island to a group of five investors from Baltimore, Philadelphia, and the Eastern Shore who formed the Atlantic Hotel Company Corporation (DeVincent-Hayes & Jacob 1999:iv; Corddry 1991:17). As part of the deal, Taber agreed to expand the amount of property sold to 50-acres in order to build a town around the Atlantic Hotel once it was completed (Corddry 17:1991).

Developing Maryland's barrier island into a resort town was not a new concept by the time the Atlantic Hotel Company Corporation purchased the land from Taber. Between 1869 and 1872, Isaac Coffin built the first beachfront guest cottage on the island called the Rhode Island Inn and a guest cottage was built by James Massey at the present-day intersection of Baltimore Avenue and Wicomico Street (Walker & Sullivan 2001:xxiii). However, the opening of the Atlantic Hotel on July 4, 1875, often is considered the official founding of Ocean City (the name of the town was selected by the company's board of directors) and the beginning of the town's reputation as a resort destination (DeVincent-Hayes & Jacob 1999:iv).

When the Atlantic Hotel opened in 1875, the hotel had rooms to house 400 guests, a billiards room, and other entertainment (Oceancity.com 2017). The building extended a full city block from the ocean front to Baltimore Avenue (Craig 2023:12). After the hotel opened, the additional land Taber provided for the building of a town was subdivided into 205 lots and roads were graded. Shortly after the opening of the Atlantic Hotel, 104 of the 205 lots were sold. However, the sale of these lots did not guarantee development and many remained undeveloped for years. North-south roads were named after prominent U.S. cities, and east-west roads were named after counties in Maryland's Eastern Shore, with South Division Street and North Division Street marking the boundaries of the original town (Craig 2023:10; DeVincent-Hayes & Jacob 1999:iv).

At the end of the late-nineteenth century, many of the Ocean City parcels were sporadically developed and planned streets went unpaved. By 1913, Baltimore Avenue had only been paved to 7th Street (Sullivan 2001:74). The densest development was between present-day South Division and Caroline streets (Sullivan 2001:5). Archival photographs of the Ocean City Boardwalk, also known as Atlantic Avenue, during this period depict three-story buildings with verandas fronting directly onto the boardwalk or beach. These three-story buildings exhibited residential designs, but often were hotel or lodging facilities. Several hotels had opened along the boardwalk during the first decade of the twentieth century, including the Mt. Pleasant Hotel (Atlantic Avenue and 1st Street) and the Hamilton Hotel (Atlantic Avenue and 3rd Street) (Sullivan 2001:10). These hotels strategically fronted the boardwalk as it operated as a pedestrian thoroughfare featuring commercial and recreational buildings or amenities.

By 1938, the Maryland General Assembly approved the construction of the Chesapeake Bay Bridge; however, construction of the bridge did not begin until after World War II (Morgan 2011:29). After the Chesapeake Bay Bridge north of Annapolis opened in 1952, Ocean City changed rapidly due to the increased accessibility to residents of the greater Baltimore-Washington metropolitan area. Within four years of its opening, the bridge transported vacationers every weekend during the summer months (Morgan 2011:30).

During the 1950s, tens of thousands of visitors came to Ocean City every weekend during the summer, filling the city's hotels to capacity. Private cottages attempted to fill the excess demand for seasonal housing. Despite the additional capacity provided by cottages, there were still not enough rooms available to meet the demand. In response, local residents built cottage courts and cabin camps. These were groups of small square or rectangular wood cabins with gable roofs that were built along the roadside, often in an L or U shape (Craig 2023:71-72). However, most of these seasonal cottages were demolished to clear way for housing redevelopment, generally multi-unit condominiums between five- to ten-stories in height, during the 1960s and 1970s.

3.2 NRHP Criteria and Aspects of Integrity Affected by the Undertaking

This section details the historic and physical context of the affected properties and their character defining views to the ocean.

3.2.1 DELAWARE

3.2.1.1 DHCA ID: S06048, Fort Miles Historic District (NRHP Listed)

Located east and south of Lewes, Sussex County, Delaware, Fort Miles represents nationally significant trends in federal coastal defense policy, military landscape and post planning, and standardized military architecture. The installation was constructed between 1938 and 1941 with primary purpose to defend the Delaware Bay and protect domestic shipping between Cape May and Cape Henlopen. The historic district consists of 51 contributing buildings and 9 structures over approximately 1,165-acres. Fort Miles is exemplary of a mid-twentieth century military landscape consisting of defense and support buildings and structures. These include resources such as batteries, gun emplacements, fire control towers, a parade ground, and road layout, as well as examples of support resources such as storage buildings, barracks, and mess halls. The buildings that support the fortifications represent significant examples of buildings constructed from standard Army plans. The historic district was listed in the NRHP under Criteria A and C in 2004 (Ross and Bodo 2004). Fort Miles is strategically situated at the point where the Delaware Bay and Atlantic Ocean meet at Cape Henlopen, Delaware. Maritime setting and unobstructed ocean views are key to the significance of the property.

As a result of the Project, the integrity of location, workmanship, design, and materials would not be affected. However, the integrity of setting, feeling, and association of the lighthouse would be diminished. Unobstructed ocean views and a beachside or maritime setting are character-defining features of the property that contribute to its significance because they were integral considerations in the placement and design of the property. The introduction of modern elements would interfere with how visitors experience the historically and currently unadulterated ocean viewscape. Therefore, the Project would result in an adverse effect to the Fort Miles Historic District.

3.2.2 MARYLAND

3.2.2.1 WO-347, U.S. Coast Guard Tower (NRHP Eligible)

The U.S. Coast Guard Tower was constructed ca. 1934-1935. The property follows the standardized design used by the USCG for coastal, steel lookout towers (U.S. Department of Transportation, USCG 2002; Mattheis and Hutchinson n.d.). Archival images and available architectural plans indicate the property historically has been used as a coastal, lookout tower operated by the USCG.

The presence of the USCG played a role in the development of Ocean City with lookout towers constructed to increase safety measures along the Atlantic Ocean coastline. Due to expanded maritime activities throughout the twentieth century, purpose-built lookout towers directly benefited USCG operations. The period of significance spans ca. 1934-1935 to 1964 and correlates to the tower's operation by the USCG. The U.S. Coast Guard Tower is directly associated with documented events and recognized historic trends, specifically the development and evolution of the USCG (Criterion A). Archival research, including a

review of property deeds and newspaper articles, did not identify associations with individuals whose specific achievements or historic contributions can be identified and documented (Criterion B). Lastly, the lookout tower embodies the characteristics depicted in the standardized plans developed by the USCG for the construction of such resources and as represented in similar towers constructed along the Atlantic seaboard during the 1930s. The steel, lookout tower represents a type, period, and method of construction for such resources constructed during the period (Criterion C).

The property retains integrity of location, design, setting, materials, workmanship, feeling, and association. Despite no longer operated by the USCG, the property remains at the original location overlooking the Ocean City Inlet. A review of original plans and historic photographic suggests the building has undergone relatively few modifications. The structure maintains its appearance as an observation tower constructed during the early 1930s, and as such, maintains integrity of design, materials, and workmanship. While new construction was built adjacent to the tower, the structure still maintains its association and feeling as a lookout tower. The building retains significance for association with the standardized plans developed for the USCG for observation towers (Criterion A and C) and integrity to merit consideration for inclusion in the National Register of Historic Places. As such, the structure is recommended eligible for listing in the NRHP with MHT concurrence.

The Project will not alter the aspects of integrity of location, workmanship, design, or materials. However, the integrity of setting, feeling, and association of the U.S. Coast Guard Station would be diminished. Unobstructed ocean views and a beachside or maritime setting from the early twentieth century are character-defining features of the property integrity of setting that contribute to its significance. The Project would result in an adverse effect to the U.S. Coast Guard Station.

3.2.2.2 WO-323, U.S. Lifesaving Station Museum (NRHP Eligible)

The U.S. Life-Saving Station Museum is comprised of one ca. 1891 building. The building was operated by the United States Life-Saving Service (USLSS) from 1891 to 1915 and the United States Coast Guard (USGC) from 1915 to 1964. In 1964, the property was handed over to the General Services Administration (GSA) before being relinquished to the municipal government of Ocean City for various civic uses. The building historically was located along Atlantic Avenue between North Division Street and Caroline Street before being relocated to its current location at the south terminus of the Ocean City Boardwalk in 1977. BOEM, in consultation with MHT, has determined the U.S. Life-Saving Station Museum is eligible for inclusion in the NRHP under Criterion A and Criterion Consideration C for its role in the lifesaving state for Ocean City and its beachfront.

As a result of the Project, the integrity of location, workmanship, design, and materials would not be affected. However, the integrity of setting, feeling, and association of the U.S. Life-Saving Station Museum would be diminished. The introduction of modern elements would interfere with how visitors experience the historically and currently unadulterated ocean viewscape. Therefore, the Project would result in an adverse effect to U.S. Life-Saving Station Museum.

4 POTENTIAL MITIGATION MEASURES

The following mitigation options were developed to further preservation, preservation education, and preservation scholarship in the public interest. US Wind has met with property owners to discuss preferred mitigation measures and consultation is ongoing. Some of the following mitigations that have been developed are classified as “alternative” or “creative” mitigation—mitigation that does not prescribe the traditional documentation of the affected resources, but, rather, chooses to further the preservation needs of the community as a whole. The proposed mitigations have been informed based on the aforementioned mitigation meetings. Guidance on alternative mitigation can be found by the [Advisory Council on Historic Preservation](#).

Table 4-1. Table of Effected Properties and Associated Mitigation Proposals

SHPO ID Number	Name	City	State	Applicable Mitigation Proposal	Distance from Nearest Turbines
S06048	Fort Miles Historic District	Lewes	DE	4.2	~22 mi
WO-347	U.S. Coast Guard Tower	Ocean City	MD	4.1	~12 mi
WO-323	U.S. Life-Saving Station Museum	Ocean City	MD	4.1	~12 mi

4.1 Mitigation Measure—National Register Nomination Form for the U.S. Life-Saving Station Museum (WO-323) and U.S. Coast Guard Tower (WO-347)

4.1.1 Purpose and Intended Outcomes

US Wind will develop a combined National Register nomination form for the U.S. Life Saving Station Museum (WO-323) and the US. Coast Guard Tower (WO-347) for inclusion in the National Register of Historic Places, within one year of a signed Memorandum of Agreement (MOA).

4.1.2 Scope of Work and Methodology

The SOI-qualified contractor will 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 following documents and other applicable NPS and MD SHPO guidance:

- National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation (https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf);
- National Register Bulletin 16 A: How to Complete the National Register Registration Form (<https://www.nps.gov/subjects/nationalregister/upload/NRB16A-Complete.pdf>);
- National Register of Historic Places and National Historic Landmarks Program Consolidated and Updated Photograph Policy 2024 (<https://www.nps.gov/subjects/nationalregister/upload/NR-NHL-photo-policy-2024-01-02.pdf>);
- Standards and Guidelines for Architectural and Historical Investigations in Maryland, 2019 (https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf).

US Wind will use staff or contractors that meet the Secretary’s Professional Qualifications to prepare the nomination form.

4.1.3 Deliverables

US Wind will submit the completed National Register nomination, including the accompanying documentation, to the MD SHPO for review and approval and will revise the nomination to address any MD SHPO comments if applicable. Once approved by the MD SHPO, the MD SHPO will forward the nomination form to the Keeper of the National Register of Historic Places for listing, within one (1) year of receipt of the nomination package.

4.1.4 Funds and Accounting

US Wind will provide the funding for this project to a contractor meeting the Secretary’s Professional Qualifications. US Wind proposes up to \$40,000 for consultant fees to undertake the field survey, archival research, and technical report writing for the nomination form and an additional \$10,000 for the process to formally list the combined properties dependent on property owner approval. Fees will be negotiated between US Wind and stakeholders.

4.1.5 Minimum Standards for the Professionals Engaged to Complete the Work

All work and documentation for this mitigation measure will be completed by professionals meeting the Secretary of the Interior (SOI) professional qualification standards as outlined in the NHPA (NHPA; 54 U.S.C. § 306108) and its implementing regulations (36 CFR §800).

4.2 Mitigation Measure—Financial Support for Fort Miles Historic District Preservation Priority Projects

4.2.1 Purpose and Intended Outcomes

US Wind will contribute financial support for the Fort Miles Historic District preservation priority projects. US Wind will make funds available 12 months prior to initiating offshore construction.

4.2.2 Scope of Work and Methodology

U.S. Wind will provide funds to the Delaware Department of Natural Resources and Environmental Control (DNREC) to support preservation priority project(s) including but not limited to the development of new exhibits. DNREC will consult with SHPO and BOEM on the selected preservation priority project(s), oversee scheduling, hire contractors, and oversee execution of the selected project(s). US Wind, in coordination with DNREC, will provide notification of the compliance with this mitigation measure in the annual report pursuant to MOA Stipulation XIV (REPORTING).

4.2.3 Deliverables

DNREC will oversee any deliverables associated with this project. US Wind will provide notification to BOEM, all signatories, and consulting parties that the funding was provided.

4.2.4 Funds and Accounting

US Wind will contribute the funding in the amount of \$272,000 to DNREC, who will disperse the contributions for prioritized preservation projects.

4.2.5 Minimum Standards for the Professionals Engaged to Complete the Work

All work for this mitigation measure will be completed by licensed professionals or those meeting the Secretary of the Interior (SOI) professional qualification standards as outlined in the NHPA (NHPA; 54 U.S.C. § 306108) and its implementing regulations (36 CFR §800).

5 IMPLEMENTATION

5.1 Timeline

Mitigation measures discussed within this HPTP and selected will be implemented as follows:

- For the National Register Nomination Form for the U.S. Life-Saving Station Museum (WO-323) and U.S. Coast Guard Tower (WO-347), US Wind will make funds available upon the finalization and signature of the MOA and COP approval, with a three-year timeline for completion.
- For the Financial Support for Fort Miles Historic District, US Wind will make funds available 12 months prior to initiating offshore construction, and DNREC will ensure that the mitigation measures are complete within five years of US Wind providing the financial support, unless another timeline is agreed upon by DNREC, DE SHPO, and BOEM.

5.2 Reporting Requirements

US Wind will provide annual reports to BOEM to document the progress and completion of mitigation measures.

5.3 Organizational Responsibilities

5.3.1 BOEM

- Act as the federal agency and oversee Section 106 compliance;
- Determine if mitigation measures selected adequately address adverse effects; and
- Oversee consultation with consulting parties.

5.3.2 US Wind

- Fund mitigation measures.

5.3.3 DHCA, DNREC, and MHT

- Consult as appropriate, on the implementation of the HPTP.

5.3.4 ACHP

- Consult as appropriate, on the implementation of the HPTP.

6 FINALIZATION

6.1 Notification

Upon completion of the selected mitigation measures, US Wind will notify BOEM and signatories of the proposed MOA.

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ATTACHMENT 4 – HISTORIC PROPERTY TREATMENT PLAN FOR TERRESTRIAL
ARCHAEOLOGY RESOURCES

Historic Property Treatment Plan
for the
Maryland Offshore Wind Project
Archaeological Site [REDACTED], Sussex County,
Delaware

Prepared for

US Wind, Inc.
401 East Pratt Street, Suite 1810
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Prepared by:

R. Christopher Goodwin & Associates, Inc.
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July 30, 2024

EXECUTIVE SUMMARY

This Historic Property Treatment Plan (HPTP) for Archaeological Site [REDACTED], Sussex County, Delaware provides background data, resource-specific information, and detailed steps that will be implemented to carry out the mitigation actions to address the impacts to the site from the Maryland Offshore Wind Project (the Undertaking). The site was identified prior to field surveys and delineated through systematic testing for this undertaking in surveys conducted in September and October 2022 and February 2024. The results of these investigations were presented in the *Terrestrial Archaeological Resources Assessment for the Maryland Offshore Wind Project* (Goodwin 2024). US Wind has provided this HPTP in accordance with the Bureau of Ocean Energy Management's (BOEM) Finding of Adverse Effect (FoAE) for the Undertaking under the National Historic Preservation Act (NHPA).

BOEM has used the National Environmental Policy Act (NEPA) substitution process to fulfill its Section 106 obligations as provided for in the NHPA implementing regulations (36 CFR § 800.8(c)), and BOEM has consulted with the Advisory Council on Historic Preservation (ACHP), State Historic Preservation Officers, federally recognized Native American Tribes, and other NHPA Section 106 consulting parties in accordance with this process.

This HPTP describes the mitigation measures to resolve potential adverse effects on historic properties, the implementation steps, and timeline for actions. The mitigation measures are based on the evaluations and outreach performed by US Wind prior to the issuance of the Draft Environmental Impact Statement (DEIS) as well as outreach to consulting parties performed by BOEM. This HPTP is included in the Memorandum of Agreement (MOA) issued in accordance with 36 CFR §§ 800.8, 800.10.

Pursuant to the terms and conditions of the MOA, US Wind will implement these mitigation measures.

This HPTP is organized into the following sections:

- **Section 1.0 General Information**, briefly summarizes the Undertaking while focusing on cultural resources regulatory contexts (federal, tribal, state, and local, including preservation restrictions), identifies the historic properties discussed in this HPTP that will be adversely affected by the Undertaking, and summarizes the pertinent documents that guided the development of this document.
- **Section 2.0, Objectives and Responsibilities**, discusses the objectives of this treatment plan and the roles and responsibilities of the participants.
- **Section 3.0, Phased Assessment and Treatment**, presents specific steps in the phased approach to assessment and treatment of the portions of Site [REDACTED] that will be affected by the Undertaking.
- **Section 4.0, Protection of the Historic Property**, details the measures that will be employed to protect portions of Site [REDACTED] that will not be affected by the Undertaking.

1.0 GENERAL INFORMATION

US Wind, Inc.'s (US Wind) Maryland Offshore Wind Project (Project) is located in the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Offshore Maryland (Lease No. OCS-A 0490 [Lease Area]). Offshore wind turbine generators would be connected to the regional electric grid in Delaware by export cables to the onshore Point of Interconnection (POI) at the US Wind Substations on Burton's Island in the immediate vicinity of the Indian River Power Plant. In the preferred Preliminary Area of Potential Effect (PAPE), the export cables would exit the Lease Area through Offshore Export Cable Corridor 1 to a landfall site south of Indian River Inlet at 3R's Beach Parking Lot. From 3R's Beach Parking Lot the export cables would be located within Onshore Export Cable South Corridor through Indian River Bay to the US Wind Substation Property are located within Sussex County, Delaware. All of the export cables would be buried, and horizontal directional drilling (HDD) would bring the cables to shore from the Atlantic, from the 3R's Beach Parking Lot into Indian River Bay, and from Indian River to the US Wind Substations property on Burton's Island. US Wind's Project Design Envelope, as described in US Wind's Construction and Operations Plan, includes an alternative offshore export cable route, an alternative landfall location, and variant onshore cable routes (Figure 1). All variant cable routes terminate at the same Point of Interconnection at the US Wind Substations property. In addition, US Wind anticipates establishing an Operations and Maintenance (O&M) Facility in West Ocean City, Maryland.

This Historic Property Treatment Plan (HPTP) was developed to provide context for as well as the mitigation measures and protection efforts for Archaeological Site [REDACTED] which was identified within the Project's area of potential effect (APE) during the Project's Phase I archaeological assessment as detailed in the US Wind Terrestrial Archaeological Resource Assessment (TARA) for the Maryland Offshore Wind Project (R. Christopher Goodwin & Associates, Inc. 2024). US Wind has established this HPTP in accordance with BOEM's Findings of Adverse Effect (FoAE) for the Project under the National Historic Preservation Act (NHPA). As part of the National Environmental Policy Act (NEPA) and its Section 106 obligations detailed in the NHPA implementing regulations (36 CFR 800.8(c)), BOEM developed this document in consultation with the Advisory Council on Historic Preservation (ACHP), the Delaware State Historic Preservation Office (DE SHPO), and consulting Tribal Nations and Tribal Historic Preservation officers (THPOs).

1.1 Background

From 2021 to 2023, US Wind and R. Christopher Goodwin & Associates Inc. (RCG&A), the Consulting Archeologist, completed a Terrestrial Archaeological Resource Assessment (TARA) that included a thorough background review of all preferred and variant Project components, a Phase I survey of the US Wind Substations property and the contiguous Indian River to Burton's Island HDD corridor, and archaeological monitoring of soil boring at both landfall options for the Project. The TARA identified and retested one previously identified terrestrial archaeological site (Archaeological Site [REDACTED]) within the Project's preferred PAPE [REDACTED]. Following attempts to reconfigure the undertaking in order to avoid the site, US Wind has ultimately concluded that total avoidance is not feasible and BOEM determined that the Project will have an adverse effect to Archaeological Site [REDACTED] (Figure 2).

As for the Project's other terrestrial components, no archaeological resources were identified or are anticipated within the landfall at 3R's Beach due to the dynamic nature of the surrounding environment which significantly reduces the area's potential to retain intact archaeological sites. The O&M Facility in West Ocean City, Maryland is on artificial land and no archaeological sites are recorded or likely to be present at the location.

1.2 Section 106 of the National Historic Preservation Act (NHPA)

The regulations at 36 CFR § 800.8 provide for use of the NEPA process to fulfill a federal agency's NHPA Section 106 review obligations in lieu of the procedures set forth in 36 CFR § 800.3 through 800.6. Under these provisions, issuance of a Record of Decision (ROD) and implementation of relevant conditions will resolve adverse effects to historic properties caused by the Undertaking.

The measures to avoid and minimize adverse effects to identified historic properties are described in the Construction and Operations Plan (COP). This HPTP addresses the mitigation requirements identified by BOEM to resolve the remaining adverse effects after application of the above-referenced measures. The mitigation measures reflect consultations among consulting parties to refine a conceptual mitigation framework proposed by US Wind.

All activities implemented under this HPTP will be conducted in accordance with any conditions imposed by BOEM in its ROD and with applicable local, state and federal regulations and permitting requirements. Responsibilities for specific compliance actions are described in further detail in Section 2.2.

1.3 Confidentiality

Detailed information pertaining to archaeological sites in Delaware is considered highly confidential by the DE SHPO (7 Del. Code § 5314). As such, all of the information pertaining to Archaeological Site [REDACTED] within this HPTP is considered confidential and is not for public disclosure.

2.0 OBJECTIVES AND RESPONSIBILITIES

2.1 Objectives

US Wind acknowledges the significance of Archaeological Site [REDACTED] and is committed to avoiding and reducing the impact to the site as much as possible. The objective of this HPTP is to detail the protocols that have been developed in order to mitigate the portions of the site that will be impacted by the Project. The HPTP will also provide the avoidance and protection procedures that will be set in place to further prevent and/or reduce any potential impacts to the site throughout the Project's implementation.

2.2 Roles and Responsibilities

2.2.1 Bureau of Ocean Energy Management (BOEM)

As the lead agency, BOEM is responsible for making all federal decisions and determining compliance with Section 106. BOEM has reviewed this HPTP to ensure, at minimum, it includes the content required.

- BOEM remains responsible for making all federal decisions and determining compliance with Section 106;
- BOEM, in consultation with consulting Tribal Nations, DE SHPO, and US Wind, will ensure that mitigation measures adequately resolve adverse effects, consistent with the NHPA;
- BOEM will review and approve for consultation the deliverables associated with this HPTP;
- Once approved by BOEM for consultation, BOEM will share the deliverables associated with this HPTP with the DE SHPO and consulting Tribal Nations;
- BOEM will be responsible for reviewing and approving the annual summary report; and
- BOEM is responsible for consultation related to dispute resolution.

2.2.2 US Wind

US Wind will be responsible for the following:

- funding and implementing the Phase II Archaeological Assessment as specified in Section 3.1 and in a work plan to be approved by BOEM, DE SHPO and consulting Tribal Nations;
- coordinating with consulting Tribal Nations to provide an opportunity to plan, direct, or participate in any data recovery investigation at their discretion and availability;
- if Tribal Nations opt to plan, direct, or participate in the data recovery investigations, US Wind will be responsible for establishing 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;
- if Tribal Nations opt not to plan, direct, or participate in the data recovery investigations other than through monitoring, US Wind will be responsible for funding and implementing, as necessary, Phase III Data Recovery activities specified in Section 3.2 and in a work plan to be approved by BOEM, DE SHPO and consulting Tribal Nations;
- ensuring all archaeological investigations are conducted in accordance with *Archeology and Historic Preservation: The Secretary of the Interior's Standards and Guidelines* (48 FR 44716) and with the DE SHPO's standards presented in *Archaeological Survey in Delaware* (DHCA 2015)
- providing the Documentation in Sections 3.1 and 3.2 to BOEM for review, comment, and approval for consultation;
- preparing the Annual Report, submitting the report to BOEM for review and approval, and distributing to consulting parties once approved; and
- ensuring that all work that requires consultation with Tribal Nations is performed by professionals who have demonstrated professional experience consulting with Tribal Nations and descendant communities.

2.2.3 Delaware State Historic Preservation Office (DE SHPO)

DE SHPO will be responsible for the following:

- reviewing and providing comments on the deliverables associated with the Phase II level archaeological investigations, including any testing plans and reports;
- consulting with BOEM regarding any additional investigation or Phase III data recovery excavation required to resolve adverse effects to the site;
- reviewing and providing comments on the deliverables associated with any required Phase III data recovery excavation, including any data recovery work plan, management summary, and reports; and
- consulting, as appropriate, on the implementation of this HPTP.

2.2.4 Consulting Tribal Nations

Consulting Tribal Nations will be responsible for the following:

- providing, at their discretion and availability, Tribal monitors during onsite activities associated with Phase II testing and any required Phase III data recovery excavations to ensure implementation of this HPTP;
- reviewing and providing comments on any deliverables associated with the Phase II level archaeological investigations, including any testing plans and reports;
- consulting with BOEM regarding any additional investigation or Phase III data recovery excavation required to resolve adverse effects to the site;
- reviewing and providing comments on the deliverables associated with any required Phase III data recovery excavation, including any data recovery work plan, management summary, and reports;
- if Tribal Nations opt to plan, direct, or participate in any data recovery investigations, they will be responsible for coordinating with US Wind to complete Phase III data recovery investigations, 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); and
- consulting, as appropriate, on the implementation of this HPTP.

3.0 ARCHAEOLOGICAL ASSESSMENT AND TREATMENT

Treatment of Archaeological Site [REDACTED] will incorporate a phased approach to a refined assessment of effects and treatment of the portions of the site that will be impacted by the Project. Treatment will include enhanced Phase II Testing of the affected portions of the site, consultation to refine the assessment of effects in the impacted areas of the site, and mitigation of any impacted areas found to contribute to the site's NRHP eligibility. All evaluation and mitigation fieldwork shall be completed prior to construction at the US Wind Substations property.

3.1 Cultural Context for Indian River Bay Watershed

US Wind will 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. This context will then be used to inform the archaeological data recovery plan and will also be incorporated into any data recovery report(s) and interpretations.

3.2 Archaeological Assessment (Phase II)

Site [REDACTED] has already been recommended eligible for listing in the NRHP, and the DE SHPO indicated in a consultation meeting on January 30, 2024 that Phase II Archaeological Investigations should be conducted to assess the integrity and significance of the portions of the site that will be impacted by the Project. The larger, more controlled samples obtained during Phase II testing will allow for a refined assessment of effects to specific areas of the site by considering qualifying characteristics of the site, including any that are identified during the Phase II investigation, using the Criteria of Adverse Effect in accordance with 36 CFR 800.5(a)(1). This assessment shall take into account applicable historic contexts and management plans developed for Delaware's historic and precontact archaeological resources. The gathered data will be instrumental in formulating an effective and efficient Phase III Data Recovery Plan, if needed.

The Phase II investigation will be carried out by qualified archaeologists as defined by the *Secretary of the Interior's Professional Qualifications Standards* (36 CFR 61) and will consist of field investigations, artifact processing and analysis, and reporting. All work will comply with the DE SHPO's regulations detailed in *Archaeological Survey in Delaware* (DHCA 2015), the NHPA of 1966, as amended, the regulations of the ACHP (36 CFR Part 800.3) for the Protection of Historical and Cultural Properties, and the standards set forth in the National Park Service's 1983 publication, *Archeology and Historic Preservation: The Secretary of the Interior's Standards and Guidelines* (48 FR 44716).

The field investigation methods and goals will be determined in consultation with interested Tribal Nations, BOEM, and DE SHPO. The investigation is anticipated to incorporate refined, close-interval shovel testing as well as test unit excavations that will be large enough to sufficiently investigate the nature of the deeply buried cultural material within the site. Tribal representatives, including THPOs, will be invited to monitor the investigations and contribute to the overall interpretation of the results.

Following the field investigations, a management summary detailing the investigation's results will be produced and disseminated to consulting Tribal Nations, BOEM, and DE SHPO. If the impacted portion of the site is determined to contribute to the site's eligibility for listing in the NRHP, additional mitigation by Phase III data recovery excavation will be required and the Archaeological Data Recovery phase (Phase III) of this HPTP will be implemented.

If it is determined through consultation that the impacted portion of the site does not contribute to the site's eligibility for listing in the NRHP, data recovery mitigation will not be required and US Wind will produce a Phase II testing report for review, comment, and approval by BOEM, consulting Tribal Nations, and DE SHPO. BOEM, with the assistance of US Wind, will consult with the DE SHPO and consulting Tribal Nations regarding alternative treatment of the site and move into the Protection of the Historic Property section of this HPTP.

If additional archaeological investigations appear warranted, proceed to Section 3.3.

3.3 Archaeological Data Recovery (Phase III)

If the results of the Phase II investigation indicate that the portion of the site within the Project's limit of disturbance (LOD) contributes to the site's NRHP eligibility, a Phase III Data Recovery will be conducted.

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; and prepare updated archaeological site form(s).

The scope of the Phase III investigation will be developed by BOEM and US Wind through consultation with consulting Tribal Nations and the DE SHPO based on the results of the Phase II investigation. The Phase III treatment plan may consist minimally of block excavations but may also include mechanical stripping, geophysical testing, and other methods determined to be suitable and/or necessary to adequately mitigate the resource. Once a draft treatment plan is formulated, it will be circulated to DE SHPO and consulting Tribal Nations for a 30-day comment period. After 30 days, BOEM, with the assistance of US Wind, will review all comments and proceed with finalization of the treatment plan.

The treatment plan will incorporate:

- the research questions formulated to guide the Data Recovery methods
- a discussion of the research and field methods chosen and how they may aid in answering the research questions

- details about the post-fieldwork analytical methods including the potential for specialist analyses as well as curation and disposition procedures
- Plans for public education/interpretation

4.0 PROTECTION OF THE HISTORIC PROPERTY

The following will detail the Project's protection measures for Archaeological Site [REDACTED] that are applicable throughout the Project's implementation. These measures include educational programs for project personnel, the designation and demarcation of temporary and permanent avoidance areas, the implementation of the established Monitoring and Post-Review Discovery Plan.

4.1 Training for Developer Personnel and Contractors

Prior to mobilization to the Project site, all personnel and contractors will be required to attend cultural resources training. US Wind will 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, US Wind will provide compensation, including travel and per diem costs, consistent with the Tribe's standard consultation costs. If Tribal representatives are not available to lead pre-construction training, US Wind's Consultant Archaeologist will lead pre-construction cultural resources training. The purpose of the training program will be to:

- review state and federal regulations concerning archaeological resource compliance.
- Provide examples of potential archaeological finds including images and descriptions of cultural artifacts and features that may be encountered. An overview of the history and background of local Indigenous people may also be included.
- review the temporary avoidance measures to be implemented during construction.
- present the procedures to be followed and notification process required if an unanticipated discovery is identified during Project implementation.

While working within and in the vicinity of Archaeological Site [REDACTED], all field supervisors and their crews are required to be vigilant of potential cultural resources. All field supervisors of contractors, subcontractors, and construction crews as well as Archaeological and Tribal Monitors have Stop Work Authority if cultural resources are encountered during Project construction. Stop Work Authority enables the appropriate project personnel the ability to safely stop all ground disturbing work in the vicinity of the discovery in order to prevent further impacts and preserve the find in its original place.

4.2 Locations where Avoidance is Required

All areas outside of the Project LOD should be considered avoidance areas wherein all ground disturbing activities and vehicular traffic are strictly prohibited. Within the vicinity of Archaeological Site [REDACTED], a protective buffer will be established and explicitly marked to reinforce avoidance. These areas are designated "Avoidance Areas" on Figure 2. If the Project's LOD is expanded or adjusted in the vicinity of the site following the Project's commencement, consulting Tribal Nations, DE SHPO, and Archaeological

Monitors, in addition to BOEM, will be contacted to assess whether additional avoidance measures are required.

Portions of Archaeological Site [REDACTED] are located within the Project's LOD. These areas also will be cordoned off from unauthorized construction impacts using high-visibility fencing (e.g. blaze-orange snow fencing) and signage indicating "Monitor Required". These portions of the site within the LOD are designated "Archaeological Monitoring Zones". Ground disturbing activities within the Archaeological Monitoring Zones is strictly prohibited unless an authorized Archaeological and/or Tribal Monitor is present. Maintenance of the protective fencing is ultimately the responsibility of the Archaeological Monitor or the on-site construction supervisors if the Archaeological Monitor is not present. However, if the protective fencing is displaced whatsoever, the Archaeological Monitor alone is permitted to reestablish the fence to guarantee that it is positioned correctly on the boundary. The protective fencing will remain in place for the duration of the Project's construction phase at the location.

4.3 Types of Activities Prohibited & Allowed in Avoidance Areas

All Project activities must be confined to the Project's LOD. No ground disturbance or vehicular traffic is permitted outside of the Project LOD.

Within the Archaeological Monitoring Zone portion of the LOD, any activities involving ground disturbance are strictly prohibited unless an Archaeological Monitor and/or Tribal Monitor is present. Ground disturbing activities consist of any earth-moving processes including grading, topsoil stripping, post hole digging, hand or mechanical excavating, and trenching as well as vegetation clearing and tree felling activities that may result in uprooting and any disturbance of soils.

Due to the sensitive nature of the soils within the Archaeological Monitoring Zone, additional precaution may be necessary for activities prior to any data recovery work, if necessary, that do not have a direct subsurface impact. Examples of such activities include:

- Storage of heavy loads (i.e. equipment, back dirt, sod, materials, etc.) may require support by approved matting
- Heavy machinery storage and traffic on sod as well as exposed subsoils may require support by approved matting
- Small vehicle traffic and staging on exposed subsoils may require support by approved matting

Activities permitted within the Archaeological Monitoring Zone portion of the LOD without an Archaeological Monitor include:

- Vegetation clearing that will not disturb intact soils or result in any form of uprooting.
- Mowing
- General foot traffic
- Small vehicle traffic on sod

While traffic through the Archaeological Monitoring Zone is permitted without the presence of an Archaeological Monitor, at no time is it permissible for any Project Personnel to collect any artifacts within the Project LOD or the substation parcel. If artifacts are discovered, BOEM must be notified and the artifact(s) must remain where they were identified. The procedure for handling unexpected archaeological finds is detailed in the Terrestrial Monitoring and Post-Review Discovery Plan provided as MOA Attachment 5.

4.4 Cultural Monitoring & Proposing to Work in an Avoidance Area(s)

An Archaeological Monitor is required during any ground disturbing activities within the Archaeological Monitoring Zone. The Archaeological Monitor must meet the Secretary of the Interior's requirements for a qualified archaeologist as defined in 36 CFR 800.2(a)(1).

US Wind must notify the Archaeological Monitors at least 30 business days before the start of work in areas where their presence is required. Contractors must provide US Wind with sufficient notice of planned work within the Archaeological Monitoring Zone in order to guarantee the presence of an Archaeological Monitor.

Any activities requiring use of land outside of the Project's LOD will require consideration through BOEM's request for information (RFI) process and may be subject to additional archaeological review and/or archaeological monitoring. Potential auxiliary areas may include, but are not limited to, the use of additional land outside of the Project APE for work spaces, access roads, and staging areas.

4.5 Post Review Discovery Procedures

All on-site project personnel including contractors and construction workers are required to alert US Wind or the Archaeological Monitor if present, of any suspected cultural resources that may be encountered. The potential of encountering cultural resources is particularly high in the vicinity of Archaeological Site [REDACTED] [REDACTED] however unanticipated discoveries may occur anywhere and at any time during the Project.

The procedures for handling unanticipated discoveries are detailed in the Project's Terrestrial Monitoring and Post-Review Discovery Plan provided as MOA Attachment 5.

It is very important that if any suspected cultural resources are encountered, that the find(s) must remain as they were initially discovered. If any artifacts are uncovered, US Wind must be notified and the artifact(s) must remain in place.

Potentially significant terrestrial cultural resources may include, but are not limited to the following:

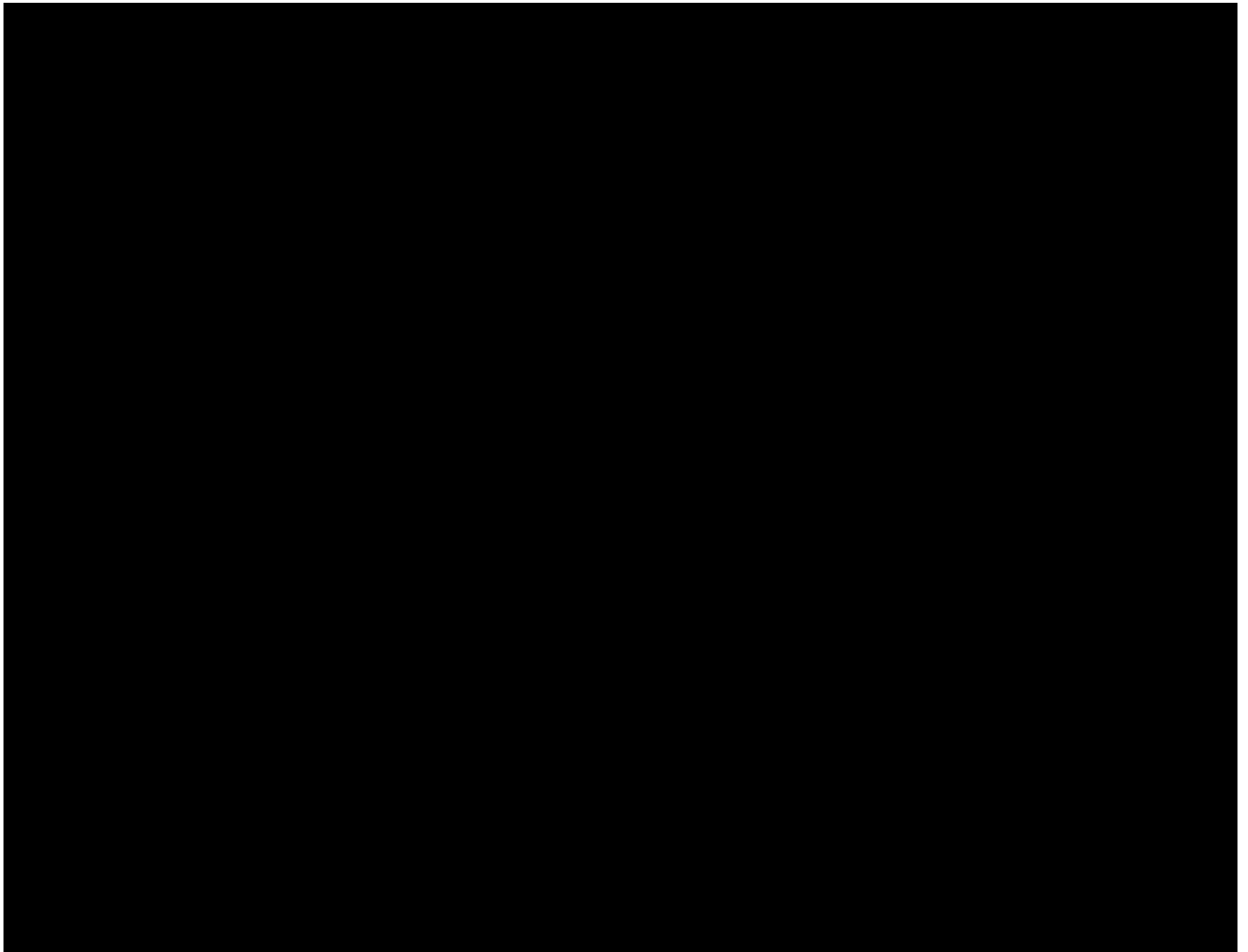
- Precontact period features (hearths, shell middens, storage pits, post molds, etc.);
- Precontact period artifacts (lithic projectile points, stone tools, debitage, ceramic artifacts, etc.);
- Historic period features (foundation, well, post hole, privy, kitchen midden, etc.)
- Historic artifacts (kitchenware, glass bottles, architectural debris, clothing, toys, farm equipment, etc.)
- Human remains, grave markers and coffin furniture;
- Animal bone, marine shell, and other food waste;

4.6 Notification Contact List.

The Project's full contact list can be found within the Project's Terrestrial Monitoring and Post-Review Discovery Plan provided as MOA Attachment 5. If and when a contact changes, all necessary personnel must be notified and the contact information within this document must be kept up-to-date.



Figure 1. Maryland Offshore Wind Project Onshore Components



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ATTACHMENT 5 - TERRESTRIAL MONITORING AND POST-REVIEW DISCOVERY PLAN

Contains Confidential Information – Not for Public Disclosure

**Archaeological Monitoring Plan
and Post-Review Discoveries Protocols
for the
Maryland Offshore Wind Project

Terrestrial Resources**

Prepared for

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Updated July 30, 2024

LIST OF ACRONYMS

ac	acres
APE	Area of Potential Effect
BOEM	Bureau of Ocean Energy Management
BSEE	Bureau of Safety and Environmental Enforcement
DHCA	Delaware Division of Historical and Cultural Affairs
DPL	Delmarva Power and Light
ft	foot/feet
ha	hectares
GPS	Global Positioning Device
HDD	Horizontal Directional Drill
LOD	Limits of Disturbance
m	meter(s)
MHT	Maryland Historical Trust
NAGPRA	Native American Graves Protection and Repatriation Act
NHPA	National Historic Preservation Act
NRHP	National Register of Historic Places
O&M	Operations and Maintenance facility
OCS	Outer Continental Shelf
OECC	Offshore Export Cable Corridor
POI	Point of Interconnection
RCG&A	R. Christopher Goodwin & Associates Inc.
RFI	Request for Information
ROW	Right-of-Way
SHPO	State Historic Preservation Office
TARA	Terrestrial Archaeological Resource Assessment
THPO	Tribal Historic Preservation Office
UDP	Unanticipated Discovery Plan

1.0 Introduction

US Wind, Inc., (US Wind) is majority owned by Renexia, a leader in renewable energy development in Italy and a subsidiary of Toto Holding S.p.A. US Wind's Maryland Offshore Wind Project (Project) is located in the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Offshore Maryland (Lease No. OCS-A 0490 [Lease Area]), by the merge of Lease Areas OCS-A 0489 and the Lease Area OCS-A 0490, with the retaining lease OCS-A 0490. The merged Lease Area was granted to US Wind by the Bureau of Ocean Energy Management (BOEM) on January 10, 2018. The Lease Area covers approximately 32,256 hectares (ha) (79,706.31 acres [ac]) off the Maryland coastline. The Offshore Export Cable Corridor (OECC) would connect the Lease Area to the onshore Point of Interconnection (POI) at the US Wind Substations property on Burton's Island via one of two proposed landfall sites south of Indian River Inlet at 3R's Beach or Tower Road Beach, Delaware.

The preliminary area of potential effect (PAPE) for the preferred route (Onshore Export Cable Corridor 1 [OnECC1]) includes the landfall location at 3R's Beach and extends through Indian River Bay to the US Wind Substations property. The terrestrial components of this route are minimal and, in addition to the substation property, include two Horizontal Directional Drill (HDD) corridors at 3R's Beach as well as the Indian River to Burton's Island HDD POI location at the US Wind Substations property adjacent to the Delmarva Power and Light (DPL) Power Plant. Several variant cable routes are being considered including three fully land-based options that extend south and then west from 3R's Beach to the US Wind Substations (OnECC1a, OnECC1b, and OnECC1c). The fourth variant option (OnECC2) is also almost entirely land-based and incorporates the proposed Tower Road Beach landfall. Variant OnECC2 would extend north of the landfall and continue west and south around Rehoboth and Indian River Bay to the US Wind Substations. All of the variant routes would be buried within or adjacent to previously disturbed Right-of-Ways (ROWs). The preferred OnECC1 route and the variants (OnECC1a-c and OnECC2) are all located within Sussex County, Delaware. In addition, US Wind anticipates installing an Operations and Maintenance (O&M) facility in West Ocean City, Maryland.

1.1 Terrestrial Archaeological Resource Assessment Overview

From 2021 to 2023, US Wind and R. Christopher Goodwin & Associates Inc. (RCG&A), the Consulting Archeologist, completed a Terrestrial Archaeological Resource Assessment (TARA) that included a thorough background review of all preferred and variant Project components, a Phase I survey of the US Wind Substations property and the contiguous Indian River to Burton's Island HDD corridor, and

archaeological monitoring of soil boring at both landfall options for the Project. The TARA identified one previously identified terrestrial archaeological site [REDACTED]

[REDACTED] No archaeological resources were identified or are anticipated within the landfall at 3R's Beach due to the dynamic nature of the surrounding environment which significantly reduces the area's potential to retain intact archaeological sites. The O&M facility in West Ocean City, Maryland is on artificial land and no archaeological sites are recorded or likely to be present at the location.

US Wind recognizes that although intensive background research and survey of the preferred PAPE is complete, there is still a potential to encounter additional terrestrial cultural resources during construction and throughout operation of the Project. US Wind also acknowledges that if a variant route is later incorporated into the preferred PAPE, additional archaeological subsurface survey would be required. Consequently, this Monitoring Plan is prepared in support of the Project.

1.2 Purpose

The purpose of this Monitoring Plan is to detail the protocols that have been developed in order to avoid, minimize, and mitigate adverse effects to any known and potentially unknown terrestrial historic properties resulting from the Project's activities. Consideration of the Project's potential adverse effects is required by Section 106 of the National Historic Preservation Act (NHPA) and is particularly relevant to historic properties, including archaeological sites, listed in or considered eligible for listing in the National Register of Historic Places (NRHP). Specifically, this Monitoring Plan identifies where monitoring is required; describes temporary avoidance measures to be employed during construction (e.g., high-visibility fencing); presents procedures for archaeological monitoring; and presents procedures for reporting the results of this work. The plan also presents procedures to be implemented in the case of an unanticipated discovery of cultural resources or human remains during the course of archaeological monitoring.

2.0 Training of Construction Crews

Basic training is required in order to recognize and identify potential archaeological resources, and to familiarize construction crews with the established protection measures. The training program will be designed to ensure that Project personnel, including contractors, understand the significance of cultural resources within the Project Area and the protocols regarding the designated archaeological monitoring zones and avoidance areas.

Prior to mobilization to the Project site, US Wind, contractor, and construction crew field supervisors will receive cultural resource training by the Consulting Archaeologist and Tribal Representatives, if consulting Tribes deem it necessary. The purpose of the training program will be to:

- review state and federal regulations concerning archaeological resource compliance.
- Provide examples of potential archaeological finds including images and descriptions of cultural artifacts and features that may be encountered. An overview of the history and background of local Indigenous people may also be included.
- review the temporary avoidance measures to be implemented during construction.
- present the procedures to be followed and notification process required if an unanticipated discovery is identified during Project implementation.

Field supervisors and their crews are required to be vigilant of potential cultural resources during work within the Project APE. All field supervisors of contractors, subcontractors, and construction crews as well as Archaeological and Tribal Monitors have Stop Work Authority if cultural resources are encountered during Project construction. Stop Work Authority enables the appropriate project personnel the ability to safely stop all ground disturbing work in the vicinity of the discovery in order to prevent further impacts and preserve the find in its original place.

2.1 Documentation

This Monitoring Plan is required to be on hand at the field site and easily accessible to all Project personnel, contractors, and construction crews during the Project's implementation. All persons working in the field will be made aware of the plan prior to mobilization to the site. US Wind will maintain documentation, via contractors and subcontractors, including construction crews, of 1) the individuals who have reviewed the Monitoring Plan, and 2) who has received cultural resources identification training.

3.0 Archaeological and Tribal Monitors

3.1 Archaeological Monitors

Archaeological Monitors will be contracted by US Wind to oversee all subsurface excavations in areas determined to be Archaeological Monitoring Zones and will have Stop Work Authority if a potential cultural resource is identified. Stop Work Authority enables the monitors the ability to safely stop all construction work in the vicinity of the discovery in order to prevent further impacts and preserve the find in its original place. The quantity of Archaeological Monitors on site will be determined by the extent of work being performed. If ground-disturbing work is being conducted in more than one area for instance, multiple Archaeological Monitors may be required. Proper notification of the extent of work anticipated will allow the Archaeological Monitor to determine monitoring needs. All Archaeological Monitors will meet the Secretary of the Interior's Professional Qualifications Standards (48 FR 44716).

US Wind must notify the Archaeological Monitors at least 30 business days before the start of work in areas where their presence is required. If cultural resources are exposed during archaeological monitoring for the Project, the Archaeological Monitor(s) will work closely with the Tribal Monitor(s) to complete their assessment of any exposed resources in a timely matter. If an identified resource is determined to be potentially significant, work within the vicinity of the find may be delayed for an extended period of time. Please refer to section 8.0 for additional information regarding the process to be implemented.

3.2 Tribal Monitors

Members or representatives of consulting Tribes may act as Tribal Monitors at the discretion of the consulting Tribal Historic Preservation Office(s) (THPO). Tribal Monitors will have the same capabilities as Archaeological Monitors, including Stop Work Authority. The Archeological Monitor will facilitate participation of Tribal Monitors in monitoring activities and coordinate daily field activities with the Tribal Monitor(s).

US Wind must notify Tribal Monitors about upcoming work within areas where the consulting THPO(s) have requested a presence at least 30 days before the start of construction. If there is no response from the Tribes within 10-days, BOEM will follow up with Tribal representatives by email and phone. If at Tribes' discretion there is no monitoring interest, US Wind will contact BOEM for approval to proceed with work.

4.0 Locations where Monitoring is Required

Archaeological monitoring is specifically required during ground disturbance activities within the Archaeological Monitoring Zone, designated ‘Area of Site [REDACTED] within LOD [Limits of Disturbance]’ in Figure 1, [REDACTED]

[REDACTED]. Monitoring of additional areas of the Project may be necessary at the request of consulting State Historic Preservation Offices (SHPO), THPOs, or other consulting parties. These areas should be identified during consultation prior to the start of the Project. If additional areas of disturbance are incorporated following the Project’s commencement, US Wind will contact, in addition to BOEM, the appropriate SHPO, THPOs, and Archaeological Monitors to assess whether monitoring is required at those locations.

Archaeological Monitors must be notified that their presence is requested at least 30 days before the start of work within areas requiring a monitor. US Wind must notify Tribal Monitors about upcoming work within areas where the consulting THPO(s) have requested a presence at least 30 days before the start of construction.

4.1 Archaeological Monitoring Zone for Site [REDACTED]

Archaeological monitoring is required within the Archaeological Monitoring Zone located directly adjacent to Site [REDACTED]

[REDACTED] during activities that will or have the potential to disturb the ground and underlying soils/subsoils. Ground disturbing activities that require monitoring include any earth-moving processes including grading, topsoil stripping, post hole digging, excavating, and trenching as well as vegetation clearing and tree felling activities that may result in uprooting and any disturbance of soils.

The Archaeological Monitoring Zone incorporates a 50-ft area around Site [REDACTED] (Figure 1). Importantly, although subsurface Phase I archaeological survey has identified the core habitation area of the site, outlying areas of activity may be present. As such, the Archaeological Monitoring Zone is a distance agreed upon through the consultation process to help ensure that the site is not impacted during construction. Any resources identified outside of the Archaeological Monitoring Zone are subject to the Project’s Post-Review Discovery Plan.

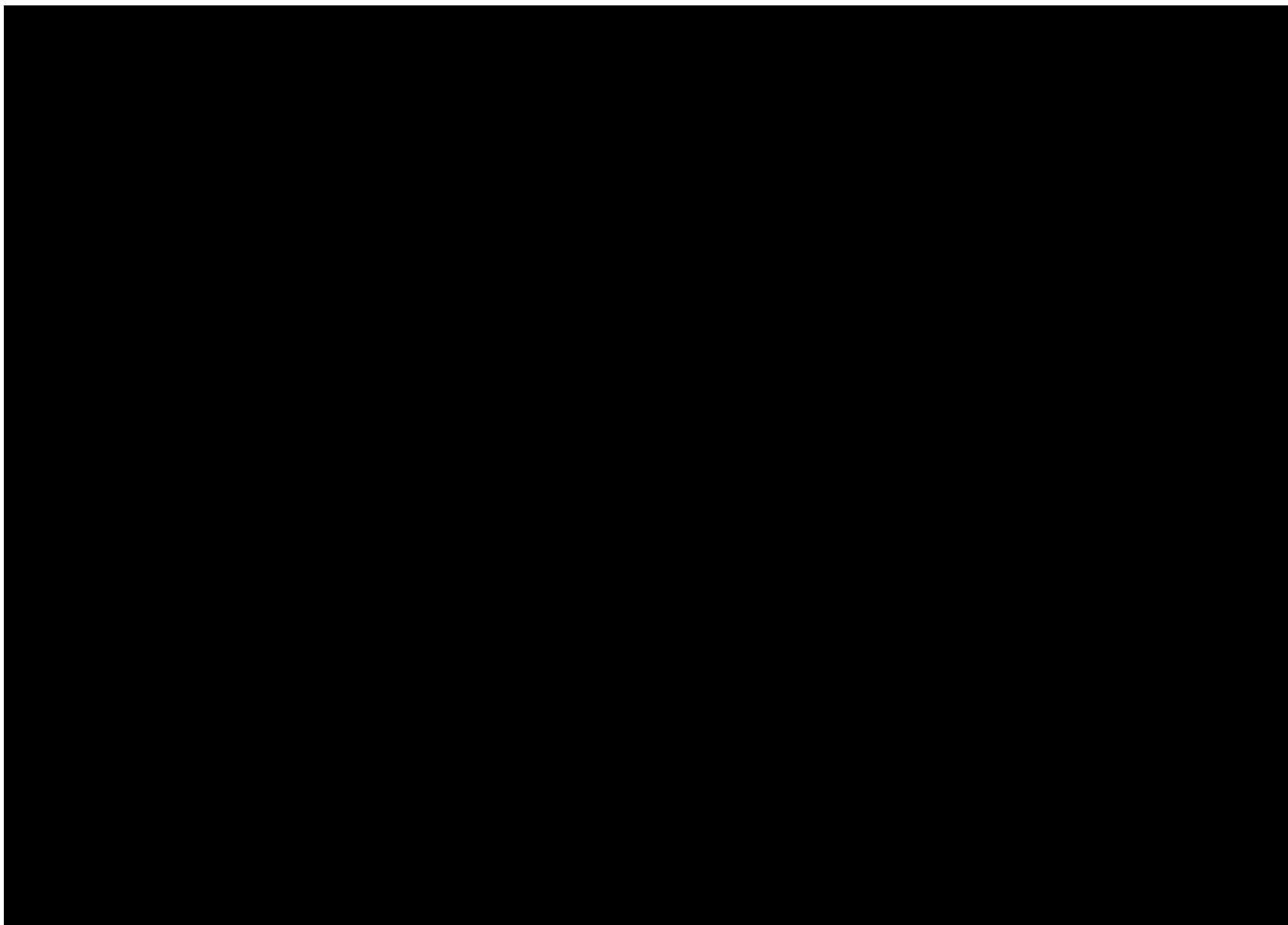


Figure . Location of [REDACTED] on the US Wind Substation Property Engineering Map

Following the initial disturbance of the designated Archaeological Monitoring Zone(s), if the Archaeological and Tribal Monitors determine that the depth of disturbance fully exceeds the horizons of potential cultural occupation, no additional monitoring may be required in that area. Determination of no further archaeological monitoring must be approved/cleared by Archaeological and Tribal Monitors, US Wind, and BOEM. If there is a potential that the supplemental work will encounter any portion of the designated Archaeological Monitoring Zone that has not been cleared by the Archaeological/Tribal Monitors, additional monitoring will be required.

5.0 Temporary Avoidance Measures

Temporary avoidance measures are specifically required prior to ground disturbance activities at Site [REDACTED]

Additional avoidance measures may be requested by the consulting parties during the consultation process prior to the start of the Project. If the Project's LOD is expanded or adjusted in the vicinity of the site following the Project's commencement, the appropriate SHPOs, THPOs, and Archaeological Monitors, in addition to BOEM, should be contacted to assess whether additional avoidance measures are required.

5.1 Site [REDACTED]

Minimization measures for Site [REDACTED] include protective fencing and signage prohibiting access to areas outside the Project LOD, as well as archaeological and Tribal monitoring in the site's vicinity.

During construction, the LOD in the vicinity of Site [REDACTED] will be delineated using high-visibility fencing (e.g. blaze-orange snow fencing). The boundary fencing will be established around portions of the site facing the construction area by the Archaeological Monitor using a GPS unit with sub-meter accuracy. Archaeological and Tribal Monitors should be notified 30 days prior to construction activities within the Archaeological Monitoring Zone to permit the monitor sufficient time to cordon off the exclusion areas of the site. These areas will subsequently be marked with signage indicating that access is strictly prohibited. Signage should state "Avoidance Area" or similar and not disclose the archaeological/cultural nature of the area. All project personnel, aside from the Archaeological Monitor and Tribal Monitor(s), will be restricted from entering the Avoidance Areas. Once installed, US Wind will 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.

Maintenance of the protective fencing is ultimately the responsibility of the Archaeological Monitor or the on-site construction supervisors if the Archaeological Monitor is not present. However, if the protective fencing is displaced whatsoever, the Archaeological Monitor alone is permitted to reestablish the fence to guarantee it is positioned correctly on the boundary. The protective fencing will remain in place for the duration of the Project's construction phase at the location.

All ground-disturbing work within the designated Archaeological Monitoring Zone in the vicinity of Site [REDACTED] will not occur unless an Archaeological Monitor is present or the area has been fully cleared by the Archaeological and Tribal Monitor(s) and approved by US Wind, and BOEM.

6.0 Process for Determining if Monitoring a Construction Activity is Necessary

Archaeological Monitors and, at the discretion of Tribal Nations, Tribal Monitors, will be required if any ground disturbance is anticipated within the Archaeological Monitoring Zone near Site [REDACTED] [REDACTED] unless the area has been fully cleared by the Archaeological and Tribal Monitor(s), BOEM, and US Wind. Ground disturbing activities consist of any earth-moving processes including grading, topsoil stripping, post hole digging, general excavations, and trenching as well as vegetation clearing and tree felling activities that may result in uprooting and any disturbance of soils. In all other terrestrial portions of the project, no archaeological monitor is required unless that area is subject to an unanticipated discovery or if any of the consulting parties have requested a monitor's presence.

If unsure of whether an Archaeological or Tribal Monitor is required, US Wind should be contacted for verification prior to any ground disturbance.

Any activities requiring use of land outside of the Project's LOD will require consideration through BOEM's request for information (RFI) process and may be subject to additional archaeological review and/or archaeological monitoring. Potential auxiliary areas may include, but are not limited to, the use of additional land outside of the Project APE for work spaces, access roads, and staging areas.

7.0 Reporting

Archaeological Monitor(s) are required to communicate regularly with US Wind during the monitoring process and are required to submit a final technical report at the completion of the Project's construction. Interim reports may be necessary if construction extends over more than two years. Daily and/or weekly reports may include the date, length of time, and locations monitored, the Archaeological and Tribal monitors present, the type of construction activities that occurred, any archaeological observations and/or finds encountered, and other relevant information/comments and photographs, as needed. If possible, the interim reports should provide an update on the work schedule and/or address the anticipated needs and schedule for upcoming work. These interim reports will be sent at the end of each working week to US Wind and BOEM, as well as SHPOs and THPOs who indicate interest in receiving the reports during the consultation process.

If archaeological deposits are encountered during the monitoring process, more thorough reporting may be required in order to provide US Wind, BOEM, SHPO's, and THPOs with sufficient information to determine the appropriate course of action to address the discovery. More information about the process of handling these situations is provided in the Post-Review Discovery Plan in Section 8.0.

The final draft monitoring report will conform to state and federal guidelines and will be submitted to US Wind for review within four (4) months following the completion of the Project's construction phase. The report will discuss the methods and results of the archaeological monitoring including the treatment of any archaeological deposits encountered. If necessary, the significance of any archaeological deposits encountered will be addressed along with recommendations for additional work or continued consultation. The draft report will be provided to BOEM for review, comment and/or approval for consultation, and subsequently to consulting Tribal Nations and DE SHPO, once approved by BOEM for consultation.

8.0 Post-Review Discoveries

During the monitoring process, Archaeological and Tribal Monitor(s) have the responsibility to oversee the construction site for potential cultural resources. Contractors and all on-site construction workers, as well, are required to alert the Archaeological/Tribal Monitor(s) of any suspected cultural resources encountered. The following summarizes the procedures to be taken in the event that a potential archaeological resource is identified. Special considerations are to be taken if human remains are encountered or if indications of a cemetery or burial ground are uncovered.

8.1 Resources Identified Outside of the Project LOD that will not be Impacted by Construction

In the event that a cultural resource (e.g. a house, structural ruins, or surface feature) is identified outside of the LOD and/or construction footprint, the Archaeological/Tribal Monitor(s) must be notified to determine the appropriate course of action. Generally, resources outside of the construction zone/LOD will not require an order to stop work considering they will not be impacted by construction activities. As a measure of good-practice, these finds may be cordoned off or flagged to notify on-site workers of the resource's location and prevent disturbance from subsequent activity in the area.

If the boundary of the resource is in question (e.g. a single gravestone that may indicate a larger cemetery), additional work may be required to delineate the potential cultural resource which may impede construction activities in the vicinity for an indefinite period of time.

8.2 Archaeological Resources Identified within the Project LOD (not including human remains)

If a potential cultural resource is encountered within the construction zone during construction activities that does not include human remains or a cemetery/burial ground, the following steps should be taken:

1. All activity within the vicinity of the potential cultural resource will stop. Workers will not disturb the suspected cultural resource and will not attempt to expose any more of the suspected find. The resource will be left in place as it was initially encountered.
2. The Archaeological/Tribal Monitor(s) will first assess whether the discovery is cultural and if it represents a potentially NRHP-eligible resource. Depending on the nature of the resource, a Stop Work Order may be required within a buffer around the find that protects the find and permits sufficient safe space for the monitor to make an assessment.

- If the find is determined to be non-cultural or cultural but modern , work may be permitted to continue. **The Post-Review Discovery process may stop here.**
- 3. If the Archaeological/Tribal Monitor(s) determine that the find is associated with a potential NRHP-eligible resource, the monitor(s) will immediately notify US Wind of the preliminary determination and BOEM will be notified within 24 hours. **Work may not resume at the given location until the field/construction crew is notified accordingly by US Wind.**
 - All US Wind personnel, contractors, and subcontractors must keep the location of any unanticipated discovery confidential.
- 4. Within 72 hours of the discovery, the Archaeological/Tribal Monitor(s) will prepare a report for US Wind detailing the information gathered about the resource and its potential eligibility for listing in the NRHP. The report will include photographs of the find and its context, hand-drawn maps, and any other items necessary to support the preliminary findings.
 - If US Wind in consultation with BOEM, DE SHPO, and consulting Tribal Nations determine that the discovery does not represent a NRHP-eligible resource, construction crews will be notified and work may be permitted to continue. **The Post-Review Discovery process may stop here.**
- 5. If US Wind, in consultation with BOEM, SHPO, and consulting Tribal Nations, determines the affected resource is eligible for listing in the NRHP, US Wind will work with the consulting Tribal Nations, SHPO, and BOEM to prepare and approve a mitigation or avoidance plan.
 - If additional archaeological work is required at the archaeological site, construction crews will be notified that work in the vicinity of the site will cease until the mitigation process is complete. Supplemental archaeological work at the site will be as efficient as possible in order to avoid lengthy project delays.
 - If construction plans are modified to avoid the archaeological resource, construction crews will be notified of the changes and the measures will be taken to protect the archaeological resource from further adverse effects. These measures may consist minimally of constructing a temporary barrier around the site and signage indicating that it is a restricted area.
- 6. Work in the vicinity of the discovery may not resume until US Wind receives written authorization from BOEM, and construction crews are explicitly notified that work may continue.

Note: a permit is required to conduct any archaeological excavations on Delaware (7 Del. Code § 5308) and Maryland (Md. State Finance and Procurement Code § 5A-342) state-owned and state-operated lands.

8.3 Human Remains Identified within the Project LOD

In the event that suspected human remains are encountered during construction activities, they will be handled in accordance with the Delaware Unmarked Human Burials and Human Skeletal Remains laws (7 Del. Code § 5301 and 5401-5411) or Maryland Burial Laws (Md. Criminal Law Code Ann. §§ 10-401 — 10-404; Md. Health-General Code Ann. § 4-215; Md. Real Property Code Ann. § 14-121.1), the Advisory Council on Historic Preservation's *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects*, and the Delaware Nation Inadvertent Discovery Policy as applicable (see Attachments 1-4)

At all times, human remains must be treated with the utmost dignity and respect. Once exposed or identified as possible human skeletal elements, the remains must not be removed or further impacted until consulting Tribal Nations, DE SHPO, and BOEM are notified and a resolution has been agreed upon through consultation. **NOTE: Photography of and providing public access to view suspected human remains, regardless of affiliation, is strictly prohibited.**

The following protocols are recommended by Delaware's Division of Historical and Cultural Affairs (DHCA), the Maryland Historical Trust (MHT), and the Delaware Nation if human remains are encountered:

1. Work in the general area of the discovery will stop immediately and the Archaeological/Tribal Monitor(s) will secure the vicinity of the finds to protect them from further damage and disturbance. Workers will not disturb the suspected remains and will not attempt to expose any more of the area around the suspected remains. The remains will be left in place as they were initially encountered. No photographs or digital recordings are to be taken of the remains.
2. The Archaeological/Tribal Monitors will contact US Wind immediately. US Wind will then contact local law enforcement along with BOEM, SHPO, and consulting Tribal Nations immediately, but no later than three days from the date of discovery. The Medical Examiner and/or local law enforcement will assess whether the remains are human and represent an accident, crime scene, or other instance that would put the remains under their jurisdiction.
3. If the remains are determined to be archaeological, the Consulting Archaeologist, an archaeologist with SHPO, and, at the discretion of Tribal Nations, a Tribal representative, will conduct a site visit within 24 hours of notification of the discovery or as soon as practicable, to determine an approximate time period for the deposition of the remains. If the remains must be removed for safekeeping, are identified as **not** potentially Native American, and were discovered in Delaware, they will be transported by the DHCA to the division's curation facility until a re-interment plan

has been made. In Maryland, the MHT will consult with US Wind and BOEM regarding the temporary disposition of remains.

4. If DHCA/MHT conclude that the remains are from the historic period:
 - US Wind and BOEM will consult with appropriate SHPO to develop a plan of action for the remains.
5. If the remains are determined to likely be Native American, US Wind will:
 - Place tobacco with human remains and/or funerary objects.
 - Cover remains and funerary objects with a natural fiber cloth such as cotton or muslin when possible.
 - Prohibit photography.
 - Seek to treat the inadvertently discovered cultural materials and/or human remains in-situ (in place) and protect them from further disturbance.
 - Use non-destructive “in-field” documentation of the remains and cultural items carried out only in consultation with Tribal Nations, who will determine appropriate methods of recordation depending upon the circumstances.
 - Fulfill the requirements of 43 CFR 10 Sections 10.4-10.6, if the remains and cultural items are to remain in-situ.
 - Withhold from disclosure (with the exception of local law officials and tribal officials as described above) and protect to the fullest extent by federal law the specific location(s) of the discovery.
 - Follow specific procedures and considerations to be determined by Tribal Nations in consultation with the federal agency, if remains and funerary objects are to be removed from the site.
6. The results of the consultation will be made in writing and, if left in place following the initial discovery, the remains will not be removed until the consultation process has been completed. Work in the vicinity of the discovery will not resume until the construction crews are given explicit notice to do so.

Note: a permit is required to conduct any archaeological excavations (including of human remains) on Delaware (7 Del. Code § 5308) and Maryland (Md. State Finance and Procurement Code § 5A-342) state lands. A permit may be required for exhumation, transport, or reburial of human remains in Delaware (16 Del. Code § 3151 to 3156) and Maryland (Md. Health-General Code Ann. § 4-215).

9.0 Notifications Contact List

US Wind	
Laurie Jodziewicz Senior Director of Environmental Affairs 401 East Pratt Street, Suite 1810 Baltimore, MD 21202 (cell) 410-340-9428 L.jodziewicz@uswindinc.com	Todd Sumner Director of Permitting 401 East Pratt Street, Suite 1810 Baltimore, MD 21202 (cell) 443-240-2824 t.sumner@uswindinc.com
BOEM	Consulting Archaeologist
Sarah Stokely Lead Historian and Section 106 Team Lead 45600 Woodland Road, VAM-OREP Sterling, VA 20166 Phone: 571-460-9954 Sarah.Stokely@boem.gov	Jeffrey Maymon, M.A. R. Christopher Goodwin & Associates, Inc. 241 East 4th Street, Suite 100 Frederick, MD 21701 (Work) 301-694-0428, ext. 217 (Cell) 540-272-7681 jmaymon@rcgoodwin.com
Bureau of Safety and Environmental Enforcement (BSEE)	
Doug Jones, M.A., RPA Gulf of Mexico Regional Tribal Liaison 1201 Elmwood Park Blvd. New Orleans, LA 70123 (504) 736-2859 Douglas.Jones@bsee.gov	Barry Bleichner Marine Archaeologist 1201 Elmwood Park Blvd. New Orleans, LA 70123 Phone: 504 736-2947 barry.bleichner@bsee.gov
Delaware State Contacts	
<u>Delaware Division of Historical and Cultural Affairs (DHCA)</u> Suzanne Savery State Historic Preservation Officer and Director of the Division of Historical and Cultural Affairs (DHCA) 29 N. State Street, Dover, DE 19901 302-736-7400 suzanne.savery@delaware.gov	<u>Sussex County, Delaware Sheriff's Office</u> Sheriff Robert T. Lee 22215 Dupont Blvd. Georgetown, DE 19947 302-855-7830
	<u>Delaware Medical Examiner</u> Sussex County Coroner 26351 Patriots Way Georgetown, DE 19947 302-933-3050

Maryland Historical Trust	
<p>Beth Cole Administrator, Review and Compliance 100 Community Place, 3rd Floor Crownsville, Maryland 21032-2023 410-697-9541 beth.cole@maryland.gov</p>	<p>Zachary L. Singer, Ph.D. Maryland State Terrestrial Archaeologist 100 Community Place, 3rd Floor Crownsville, Maryland 21032-2023 410-697-9544 Zachary.Singer@maryland.gov</p>
<p><u>Maryland State Police: Berlin Barrack</u> 9758 Ocean Gateway Berlin, MD 21811 (410) 641-3101</p>	<p><u>Office of the State's Attorney for Worcester County</u> 106 Franklin Street Snow Hill, MD 21863 (410) 632-2166 sao@co.worcester.md.us</p>
Consulting and Participating Tribal Nations	
<p><u>Delaware Tribe of Indians</u> Susan Bachor Historic Preservation Officer Delaware Tribe Historic Preservation 5100 Tuxedo Boulevard Bartlesville, OK 74006 (539) 529-1671 sbachor@delawaretribe.org</p>	<p><u>The Delaware Nation</u> Carissa Speck Historic Preservation Director The Delaware Nation 310064 US Highway 281, Building 100 PO Box 825 Anadarko, OK 73005 (405) 247-2488, Ext. 1403 cspeck@delawarenation-nsn.gov</p>
<p><u>The Delaware Nation</u> Katelyn Lucas Historic Preservation Officer The Delaware Nation 310064 US Highway 281, Building 100 P.O. Box 825 Anadarko, OK 73005 Phone: (405) 544-8115 klucas@delawarenation-nsn.gov</p>	

Consulting Tribal Nations	
<u>Absentee-Shawnee Tribe of Indians of Oklahoma</u> Ms. Devon Frazier, THPO 2025 S Gordon Cooper Dr. Shawnee, OK 74801 405-275-4030 ext. 6243 405-432-9078 dfrazier@astribe.com	<u>Chickahominy Indian Tribe</u> Wayne Adkins 8200 Lott Cary Road Providence Forge, VA 23140 804-829-2027 ext. 1002 wayne.adkins@chickahominytribe.org
<u>Chickahominy Indian Tribe- Eastern Division</u> Jessica Phillips 2895 Mt. Pleasant Road Providence Forge, VA 23140 804-966-7815 Jessica.phillips@cit-ed.org	<u>Eastern Shawnee Tribe of Oklahoma</u> Paul Barton, Cultural Preservation Director 70500 East 128 Road, Wyandotte, OK 74370 918-238-5151 ext. 1833 pbarton@estoo.net
<u>Mashantucket Pequot Tribal Nation</u> Michael Kickingbear Johnson 110 Pequot Trail Mashantucket, CT 06338 860-396-7575 MEJohnson@mptn-nsn.gov	<u>Mashpee Wampanoag Tribe</u> David Weeden Councilman/THPO 508.477.0208 Ext. 102; 106review@mwtribe-nsn.gov; David.Weeden@mwtribe-NSN.gov
<u>Monacan Indian Nation</u> Kaleigh Pollack Tribal Preservation Officer PO Box 960 Amherst, VA 24521 434-363-4864 tribaloffice@monacannation.com	<u>Nansemond Indian Nation</u> Keith Anderson Chief 1001 Pembroke Lane Suffolk, VA 23434 chief@nansemond.gov
<u>Narragansett Indian Tribe</u> John Brown Tribal Preservation Officer PO Box 268, 4425 S. County Trail Charlestown, RI 02813 401-491-9459 tashtesook@aol.com	<u>Pamunkey Indian Tribe</u> Kendall Stevens Tribal Preservation Officers 1054 Pocahontas Trail King William, VA 23086 804-843-2353 kendall.stevens@pamunkey.org
<u>Rappahannock Tribe</u> Jack Ryan Director, Department of Environmental Services 5036 Indian Neck Road Indian Neck, VA 23148 804-769-0260 x107 jryan@rappahannocktribe.org	<u>Shinnecock Indian Nation</u> Rainbow Chavis Tribal Historic Preservation Officer PO Box 2388 Southampton, NY 11969 culturalresources@shinnecock.org

<u>Upper Mattaponi Indian Tribe</u> Leigh Mitchell Natural Resources and Environmental Protection Coordinator 13476 King William Road King William, VA 23086 804-769-0041 environment@umitribe.org	<u>Wampanoag Tribe of Gay Head (Aquinnah)</u> Bettina Washington, THPO thpo@wampanoagtribe-nsn.gov
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Attachments

Attachment 1 – Delaware Unmarked Burial and Human Remains Act (Title 7, Part VI Chapter 54)

Attachment 2 – Maryland Burial Laws (compiled by MHT)

Attachment 3 – Advisory Council on Historic Preservation Policy Statement on Burial Sites, Human Remains, and Funerary Objects (June 2023)

Attachment 4 – Delaware Nation Inadvertent Discovery Policy

Attachment 1
Delaware Unmarked Human Remains Act
Title 7, Part VI Chapter 54

Part VI
Archaeological and Geological Resources

Chapter 54

Unmarked Human Burials and Human Skeletal Remains

§ 5401. Purpose.

The purposes of this chapter are:

- (1) To help provide adequate protection for unmarked human burials and human skeletal remains found anywhere within the State, including subaqueous lands, but excluding those found anywhere on federal land.
 - (2) To provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the Medical Examiner that are encountered during archaeological excavation, construction, or other ground disturbing activities.
 - (3) To provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials.
 - (4) To provide for the dignified and respectful reinterment or other disposition of Native American, African American, and all other skeletal remains, including those of enslaved individuals and individuals of undetermined cultural affiliation.
- (66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, §§ 4, 5; 83 Del. Laws, c. 142, § 1.)

§ 5402. Definitions.

As used in this chapter:

- (1) “Committee” means a body of stakeholders that inform the treatment and disposition of unmarked human burials and skeletal remains:
 - a. When burials or remains are determined to be Native American, the Committee shall be chaired by the Director or the Director’s designee, and consist of the Chief of the Nanticoke Indian Tribe and the Chief of the Lenape Indian Tribe of Delaware, or the Chiefs’ designees, 2 members appointed by each Chief, the Director of the Division of Historical and Cultural Affairs of the Department of State or the Director’s designee, 1 member appointed by the Director, and a ninth member from the private sector appointed by the Governor. Governor’s appointee shall serve 1-year, renewable terms. This is a standing committee.
 - b. When burials or remains are determined to be other than Native American, an ad hoc committee shall be formed. The committee shall include individuals well suited to ensure treatment and disposition of the human burial and skeletal remains furthers the goal of providing for the dignified and respectful reinterment or other disposition including recognition of the special consideration for African Americans, including enslaved persons, and for persons of undetermined cultural affiliation. The Committee shall be chaired by the Director or the Director’s designee, and consist of 1 member of the private sector appointed by the Governor who shall serve 1-year renewable terms and 7 members appointed by the Director, representing interested parties, which may include any of the following:
 1. Known or presumed lineal descendants.
 2. Individuals or organizations with a likely cultural affiliation to the remains.
 3. The landowner.
 4. A professional archaeologist.
 5. An historian or person of similar expertise.
- (2) “Director” means the Director of the Division of Historical and Cultural Affairs, Department of State.
- (3) “Human skeletal remains” or “remains” means any part of the body of a deceased human being in any stage of decomposition.
- (4) “Lineal descendant” means any individual tracing their ancestry directly or by proven kinship.
- (5) “Medical Examiner” means as defined in Chapter 47 of Title 29.
- (6) “Person” means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer or employee, agent, department, or instrumentality of the United States or of any state or political subdivision thereof.
- (7) “Professional archaeologist” means a person having all of the following qualifications:
 - a. A graduate degree in archaeology, anthropology, history, or another related field with a specialization in archaeology.
 - b. A minimum of 1 year’s experience in conducting basic archaeological field research, including the excavation and removal of human skeletal remains.
 - c. Has designed and executed an archaeological study and presented written results and interpretations of such study.
- (8) “Proven kinship” means the relationship among individuals that exists because of genetic descent, which includes racial descent.
- (9) “Skeletal analyst” means any individual having all of the following qualifications:
 - a. A graduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic osteology, or other relevant aspects of physical anthropology or medicine.

b. A minimum of 1 year's experience in conducting laboratory reconstruction and analysis of skeletal remains, including the differentiation of the physical characteristics denoting cultural or biological affinity.

c. Has designed and executed a skeletal analysis and presented the written results and interpretations of such analysis.

(10) "Unmarked human burial" means any interment of human skeletal remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, § 4; 83 Del. Laws, c. 142, § 1.)

§ 5403. Avoidance, protection, and preservation of remains.

All persons are encouraged to undertake due diligence to identify, demarcate, and preserve in situ, unmarked human burials to avoid encountering skeletal remains; and to share information with the Division of Historical and Cultural Affairs, including reports or studies undertaken for these purposes.

(83 Del. Laws, c. 142, § 1.)

§ 5404. Discovery of remains and notification of authorities.

(a) Any person knowing or having reasonable grounds to believe that unmarked human burials or human skeletal remains are being encountered shall notify immediately the Medical Examiner or the Director.

(b) When any person encounters unmarked burials or human skeletal remains as a result of construction, agricultural, or any other ground-disturbing activities, the person shall cease the ground-disturbing activity immediately upon discovery and notify the Medical Examiner or the Director of the discovery.

(c) Human burials or human skeletal remains which are encountered by a professional archaeologist as a result of survey or excavations must be reported to the Director. Excavation and other activities may resume after written approval is provided by the Director. The treatment, analysis, and disposition of the remains shall conform to the provisions of this chapter.

(d) The Director shall notify the Chief Medical Examiner of any reported human skeletal remains discovered by a professional archaeologist.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, § 4; 83 Del. Laws, c. 142, § 1.)

§ 5405. Jurisdiction over remains.

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the Medical Examiner shall certify in writing to the Director, as soon as possible, whether the remains come under the Medical Examiner's jurisdiction.

(b) If the Medical Examiner determines that the remains come under the Medical Examiner's jurisdiction, the Medical Examiner will immediately proceed with an investigation pursuant to Chapter 47 of Title 29.

(c) All those remains determined to be not within the jurisdiction of the Medical Examiner shall be within the jurisdiction of the Director.

(66 Del. Laws, c. 38, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 153, § 4; 83 Del. Laws, c. 142, § 1.)

§ 5406. Archaeological investigation of human skeletal remains.

All excavations not under the jurisdiction of the Medical Examiner shall be either conducted by, or under the supervision of, a professional archaeologist and shall be subject to permission from the landowner. All permissible excavations shall be conducted in accordance with the regulations promulgated for this chapter.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, § 4; 83 Del. Laws, c. 142, § 1.)

§ 5407. Consultation, analysis, and disposition.

(a) The Director shall notify the Committee of all skeletal remains determined to be Native American within 5 days of learning of the discovery of human burials or skeletal remains pursuant to § 5404 of this title. The Director shall provide the Committee with a written plan for the proposed treatment and ultimate disposition of the skeletal remains within 60 days of making the notification.

(b) For all non-Native American burials or skeletal remains, the director shall begin forming the Committee within 5 days of learning of the discovery pursuant to § 5404 of this title. The Director shall publish notice of all discoveries of human skeletal remains other than Native American on the Division's website, and at least once per week for 2 successive weeks in a newspaper of general circulation in the county where the burials or skeletal remains were situated, in an effort to determine the identity or lineal descendants or both of the deceased. Lineal descendants shall have 30 days after the last published notice to notify the Director of their ancestry or proven kinship to the skeletal remains. Within 60 days of the end of the notification period the Director shall convene the Committee to develop a written plan for treatment and disposition of human skeletal remains. Treatment and ultimate disposition of the skeletal remains shall be subject to the written permission of the lineal descendants or shall be determined by the Director if no lineal descendant is identified.

(c) All skeletal analysis conducted pursuant to this chapter shall be undertaken only by a skeletal analyst.

(d) Any previously excavated skeletal remains of Native Americans of the State which are on display or remain uncovered as of June 5, 1987, shall be reinterred within 1 year. Treatment and disposition of all Native American remains discovered after enactment shall

be determined by the Committee or, if direct descent can be determined, by a lineal descendant. In any event, Native American skeletal remains discovered after enactment shall be reinterred within 90 days unless an extension or other disposition is granted by the Committee.

(e) All reasonable efforts shall be made to maintain burials and skeletal remains in situ if that is the consensus of the Committee. Any person which is responsible, either directly or indirectly, for the unearthing of human remains deemed to be under the jurisdiction of the Division of Historical and Cultural Affairs shall be responsible for the cost of research to determine the identity, delineation of the burial ground, excavation, and reinternment, and providing a suitable marker for those remains.

(66 Del. Laws, c. 38, § 1; 68 Del. Laws, c. 290, § 84; 75 Del. Laws, c. 153, §§ 4, 7; 83 Del. Laws, c. 142, § 1.)

§ 5408. Prohibited acts.

No person, unless acting pursuant to Chapter 47 of Title 29, shall:

(1) Knowingly acquire any human skeletal remains removed from unmarked burials in Delaware, except in accordance with this title.

(2) Knowingly sell any human skeletal remains acquired from unmarked burials in Delaware.

(3) Knowingly exhibit human skeletal remains.

(4) Knowingly fail to notify the Medical Examiner or the Director of a discovery of unmarked human burials or skeletal remains pursuant to § 5404 of this title.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, § 4; 83 Del. Laws, c. 142, § 1.)

§ 5409. Exceptions.

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to this chapter.

(b) Human skeletal remains determined to be within the jurisdiction of the Medical Examiner are not subject to the prohibitions contained in this chapter.

(c) Human skeletal remains acquired through archaeological excavations under the supervision of a professional archaeologist are not subject to the prohibitions as provided in § 5408(1) of this title.

(d) Remains discovered within the known boundaries of a marked cemetery under the purview of the Department of Health and Social Services pursuant to Chapter 79A of Title 29 are not subject to this chapter.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, §§ 4, 8; 83 Del. Laws, c. 142, § 1.)

§ 5410. Criminal penalties.

Any person who violates § 5408 of this title shall upon conviction be sentenced to pay a fine of not less than \$1,000 nor more than \$10,000 or be imprisoned not more than 2 years or both. The Superior Court shall have jurisdiction of offenses under this chapter.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, §§ 4, 6, 9; 83 Del. Laws, c. 142, § 1.)

§ 5411. Rules, regulations, standards, and guidelines.

The Division of Historical and Cultural Affairs may, with the approval of the Department of State, formulate and adopt such rules, regulations, standards, and guidelines as it considers necessary for the effective execution of its purposes under this chapter.

(75 Del. Laws, c. 153, § 10; 83 Del. Laws, c. 142, § 1.)

Attachment 2
Maryland Burial Laws
(compiled by MHT)

Note: This document was compiled by staff of the Maryland Historical Trust using the Code and Rules of Maryland. It was the intent to include any Code or Rules pertaining to the treatment of burial sites or human remains. Those parts of Maryland Code that concern the business of burial and cemetery operation were excluded. This document is provided for informational purposes only and should not be relied of as accurate or comprehensive. Interested individuals should consult a current copy of the Code of Maryland procured from a trusted source. This document was updated on October 17, 2018 using LexisNexis®. and is current through the 2018 General Session.

Annotated Code of Maryland: Criminal Law
Title 10. Crimes Against Public Health, Conduct, and Sensibilities
Subtitle 4. Crimes Relating to Human Remains

§ 10-401. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

**** Revisor's Note**

This subsection is new language derived without substantive change from former Art. 27, § 265(a)(1) and the introductory language of former §§ 267(a)(1) and 267A(a)(1).

**** Revisor's Note**

In this subsection, the reference to this "subtitle" is substituted for the former references to "subheading" and this "section" to reflect the reorganization of material derived from the former subheadings on the removal of human remains from burial sites, graveyard desecration, and trading in human remains and associated funerary objects. Although this substitution applies the defined term "permanent cemetery" in § 10-404(e), which is derived from former Art. 27, § 267(d), a provision to which it did not originally apply, the term is used in a manner consistent with the term "permanent cemetery" used in the former law. No substantive change is intended.

(b) Associated funerary object. --

(1) "Associated funerary object" means an item of human manufacture or use that is intentionally placed:

(i) with human remains at the time of interment in a burial site; or

(ii) after interment, as a part of a death ceremony of a culture, religion, or group.

(2) "Associated funerary object" includes a gravestone, monument, tomb, or other structure in or directly associated with a burial site.

**** Revisor's Note**

This subsection is new language substituted for former Art. 27, §§ 265(a)(2), 267(a), and 267A(a) as they defined "associated funerary object".

**** Revisor's Note**

In this subsection and throughout this subtitle, the defined term "funerary object" is substituted for the former defined term "associated funerary object" for brevity.

**** Revisor's Note**

In this subsection, the reference to placement "after interment" is substituted for the former reference to "later" placement for clarity.

(c) Burial site. --

- (1) "Burial site" means a natural or prepared physical location, whether originally located below, on, or above the surface of the earth, into which human remains or associated funerary objects are deposited as a part of a death ceremony of a culture, religion, or group.
- (2) "Burial site" includes the human remains and associated funerary objects that result from a shipwreck or accident and are left intentionally to remain at the site.

**** Revisor's Note**

This subsection is new language substituted for former Art. 27, § 265(a)(3).

**** Revisor's Note**

In this subsection and throughout this subtitle, the former references to a death "rite" are deleted as included in the references to a death "ceremony".

(d) Permanent cemetery. -- "Permanent cemetery" means a cemetery that is owned by:

- (1) a cemetery company regulated under Title 5 of the Business Regulation Article;
- (2) a nonprofit organization; or
- (3) the State.

**** Revisor's Note**

This subsection formerly was Art. 27, § 265(a)(4).

**** Revisor's Note**

No changes are made.

History

An. Code 1957, art. 27, §§ 265(a), 267(a), 267A(a); 2002, ch. 26, § 2; 2003, ch. 21, § 1; 2009, ch. 675.

§ 10-402. Removing human remains without authority

- (a) Prohibited. -- Except as provided in subsections (b) and (f) of this section, a person may not remove or attempt to remove human remains from a burial site.
- (b) Exception. -- Subject to subsection (c) of this section, the State's Attorney for a county may authorize in writing the removal of human remains from a burial site in the State's Attorney's jurisdiction:
 - (1) to ascertain the cause of death of the person whose remains are to be removed;
 - (2) to determine whether the human remains were interred erroneously;
 - (3) for the purpose of reburial; or
 - (4) for medical or scientific examination or study allowed by law.
- (c) Exception -- Notice. --
 - (1) Except as provided in paragraph (4) of this subsection, the State's Attorney for a county shall require a person who requests authorization to relocate permanently human remains from a burial site to publish a notice of the proposed relocation in a newspaper of general circulation in the county where the burial site is located.
 - (2) The notice shall be published in the newspaper one time.
 - (3) The notice shall contain:
 - (i) a statement that authorization from the State's Attorney is being requested to remove human remains from a burial site;

- (ii) the purpose for which the authorization is being requested;
 - (iii) the location of the burial site, including the tax map and parcel number or liber and folio number; and
 - (iv) all known pertinent information concerning the burial site, including the names of the persons whose human remains are interred in the burial site, if known.
 - (4)
 - (i) The State's Attorney may authorize the temporary relocation of human remains from a burial site for good cause, notwithstanding the notice requirements of this subsection.
 - (ii) If the person requesting the authorization subsequently intends to relocate the remains permanently, the person promptly shall publish notice as required under this subsection.
 - (5) The person requesting the authorization from the State's Attorney shall pay the cost of publishing the notice.
 - (6) The State's Attorney may authorize the removal of the human remains from the burial site after:
 - (i) receiving proof of the publication required under paragraph (1) of this subsection; and
 - (ii) 15 days after the date of publication.
 - (7) This subsection may not be construed to delay, prohibit, or otherwise limit the State's Attorney's authorization for the removal of human remains from a burial site.
 - (8) For a known, but not necessarily documented, unmarked burial site, the person requesting authorization for the removal of human remains from the burial site has the burden of proving by archaeological excavation or another acceptable method the precise location and boundaries of the burial site.
- (d) Exception -- Reinterment. --
- (1) Any human remains that are removed from a burial site under this section shall be reinterred in:
 - (i)
 - 1. a permanent cemetery that provides perpetual care; or
 - 2. a place other than a permanent cemetery with the agreement of a person in interest as defined under § 14-121(a)(4) of the Real Property Article; and
 - (ii) in the presence of:
 - 1. a mortician, professional cemeterian, or other individual qualified in the interment of human remains;
 - 2. a minister, priest, or other religious leader; or
 - 3. a trained anthropologist or archaeologist.
 - (2) The location of the final disposition and treatment of human remains that are removed from a burial site under this section shall be entered into the local burial sites inventory or, if no local burial sites inventory exists, into a record or inventory deemed appropriate by the State's Attorney or the Maryland Historical Trust.

- (e) Construction of section. -- This section may not be construed to:
 - (1) preempt the need for a permit required by the Maryland Department of Health under § 4-215 of the Health - General Article to remove human remains from a burial site; or
 - (2) interfere with the normal operation and maintenance of a cemetery, as long as the operation and maintenance of the cemetery are performed in accordance with State law.
- (f) Reinterment of human remains or remains after cremation. --
 - (1) Subject to paragraphs (2) and (3) of this subsection, human remains or the remains of a decedent after cremation, as defined in § 5-508 of the Health - General Article, may be removed from a burial site within a permanent cemetery and reinterred in:
 - (i) the same burial site; or
 - (ii) another burial site within the boundary of the same permanent cemetery.
 - (2) The following persons, in the order of priority stated, may arrange for a reinterment of remains under paragraph (1) of this section:
 - (i) the surviving spouse or domestic partner of the decedent;
 - (ii) an adult child of the decedent;
 - (iii) a parent of the decedent;
 - (iv) an adult brother or sister of the decedent;
 - (v) a person acting as a representative of the decedent under a signed authorization of the decedent; or
 - (vi) the guardian of the person of the decedent at the time of the decedent's death, if one has been appointed.
 - (3)
 - (i) The reinterment under paragraph (1) of this subsection may be done without the need for obtaining the authorization of the State's Attorney under subsection (b) of this section or providing the notice required under subsection (c) of this section.
 - (ii)
 - 1. A person who arranges for the reinterment of remains within a permanent cemetery under paragraph (1)(ii) of this subsection, within 30 days after the reinterment, shall publish a notice of the reinterment in a newspaper of general circulation in the county where the permanent cemetery is located.
 - 2. The notice shall be published in the newspaper one time.
 - 3. The notice shall contain:
 - A. a statement that the reinterment took place;
 - B. the reason for the reinterment;
 - C. the location of the burial site from which remains have been removed, including the tax map and parcel number or liber and folio number;
 - D. the location of the burial site in which the remains have been reinterred, including the tax map and parcel number or liber and folio number; and
 - E. all known pertinent information concerning the burial sites, including the names of the persons whose cremated remains or human remains are interred in the burial sites, if known.

- (iii) Within 45 days after the reinterment, a person who arranges for a reinterment of remains under paragraph (1)(ii) of this subsection shall provide a copy of the notice required under this paragraph to the Office of Cemetery Oversight.
- (4) The location of a reinterment of remains under paragraph (1) of this subsection shall be entered into the inventory of the local burial sites or, if no inventory exists, into a record or inventory deemed appropriate by the Maryland Historical Trust.
- (g) Penalty. -- A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$ 10,000 or both.
- (h) Statute of limitations and in banc review. -- A person who violates this section is subject to § 5-106(b) of the Courts Article.

History

An. Code 1957, art. 27, § 265(b)-(g); 2002, ch. 26, § 2; 2009, ch. 675; 2017, ch. 214, § 7.

§ 10-403. Removal of human remains or funerary object

- (a) Scope of section. -- This section does not apply to:
 - (1) a person acting in the course of medical, archaeological, educational, or scientific study;
 - (2) a licensed mortician or other professional who transports human remains in the course of carrying out professional duties; or
 - (3) a person acting under the authority of:
 - (i) § 10-402 of this subtitle; or
 - (ii) § 4-215 or § 5-408 of the Health - General Article.
- (b) Prohibited. -- A person may not knowingly sell, buy, or transport for sale or profit, or offer to buy, sell, or transport for sale or profit:
 - (1) unlawfully removed human remains; or
 - (2) an associated funerary object obtained in violation of § 10-404 of this subtitle.
- (c) Penalty. -- A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$ 5,000 or both.
- (d) Appropriation and disposition. -- The Maryland Historical Trust may appropriate all human remains and associated funerary objects obtained in violation of this subtitle for management, care, and administration until a determination of final disposition as provided by law.
- (e) Construction of section. -- This section may not be construed to interfere with the normal operation and maintenance of a cemetery including:
 - (1) correction of improper burial siting; and
 - (2) moving the human remains within a cemetery with the consent of a person who qualifies as an heir as defined in § 1-101 of the Estates and Trusts Article.

History

An. Code 1957, art. 27, § 267A(b)-(d); 2002, ch. 26, § 2; 2003, ch. 21, § 1.

§ 10-404. Cemetery -- Destroying funerary objects; indecent conduct

- (a) Prohibited -- Destruction of funerary object; exception for repair or replacement. --
 - (1) Subject to the provisions of paragraph (2) of this subsection, a person may not willfully destroy, damage, deface, or remove:
 - (i) an associated funerary object or another structure placed in a cemetery; or
 - (ii) a building, wall, fence, railing, or other work, for the use, protection, or ornamentation of a cemetery.
 - (2) The provisions of paragraph (1) of this subsection do not prohibit the removal of a funerary object or a building, wall, fence, railing, or other object installed for the use, protection, or ornamentation of a cemetery or burial site, for the purpose of repair or replacement, either at the request of or with the permission of heirs or descendants of the deceased or the owner or manager of the cemetery or burial site.
- (b) Prohibited -- Destruction of foliage; exception for routine care and maintenance. --
 - (1) Subject to the provisions of paragraph (2) of this subsection, a person may not willfully destroy, damage, or remove a tree, plant, or shrub in a cemetery.
 - (2) The provisions of paragraph (1) of this subsection do not prohibit normal maintenance of a cemetery or burial site, including trimming of trees and shrubs, removal of weeds or noxious growths, grass cutting, or other routine care and maintenance.
- (c) Prohibited -- Indecent or disorderly conduct. -- A person may not engage in indecent or disorderly conduct in a cemetery.
- (d) Penalty. -- A person who violates this section is guilty of a misdemeanor and on conviction is subject to:
 - (1) for a violation of subsection (a) of this section, imprisonment not exceeding 5 years or a fine not exceeding \$ 10,000 or both; and
 - (2) for a violation of subsection (b) or (c) of this section, imprisonment not exceeding 2 years or a fine not exceeding \$ 500 or both.
- (e) Penalty -- Payment for restoration. -- A person who violates this section shall pay for the restoration of any damaged or defaced real or personal property in a cemetery to the owner of the property or the owner of the cemetery.
- (f) Construction of section. -- This section does not prohibit the removal of human remains or a funerary object from an abandoned cemetery if:
 - (1) the removal is authorized in writing by the State's Attorney of the county in which the cemetery containing the human remains or funerary object is located; and
 - (2) the human remains or funerary object are placed in an accessible place in a permanent cemetery.

History

An. Code 1957, art. 27, § 267(b)-(d); 2002, ch. 26, § 2; 2003, ch. 21, § 1; 2005, ch. 208; 2006, ch. 38; 2008, ch. 268.

Annotated Code of Maryland: Health-General
Title 4. Statistics and Records
Subtitle 2. Vital Statistics and Records

§ 4-215. Burial permits, final disposition, transportation, and disinterment

- (a) "Cemetery" defined. -- In this section, "cemetery" includes a crematory or other place for final disposition.
- (b) Burial-transit permit required. --
 - (1) Within 72 hours after death or after delivery in a fetal death and before final disposition or removal of the body or fetus from this State, the mortician who first takes custody of the body or fetus shall obtain a burial-transit permit.
 - (2) If the death or fetal death certificate is on a multicopy form, one copy of which is designated specifically as a "burial-transit permit" and is signed by the attending physician or medical examiner, that copy shall provide for the later entry of final disposition information and serves as a burial-transit permit.
- (c) Duty of person in charge of cemetery. --
 - (1) A person in charge of a cemetery may not permit the final disposition of a body or fetus unless it is accompanied by a burial-transit permit.
 - (2) The person in charge of a cemetery shall:
 - (i) Write on the permit the date of final disposition;
 - (ii) Sign the permit; and
 - (iii) Within 10 days after final disposition, return the permit to the Secretary.
 - (3) If there is no person in charge of the cemetery, the mortician shall fill out the burial-transit permit.
- (d) Permit is authority throughout State. -- A burial-transit permit issued by any state or a foreign country is sufficient authority for transit through this State or final disposition in any cemetery in this State.
- (e) Permit for disinterment and reinterment; inspection of permit record. --
 - (1) A permit for disinterment and reinterment is required before the disinterment of human remains if reinterment is not to be made in the same cemetery. The Secretary or a health officer shall issue the permit after receipt of an application on the form that the Secretary requires.
 - (2) If all human remains in a cemetery are to be disinterred for purposes of relocation or abandonment of the cemetery, one application is sufficient for that purpose.
 - (3) The Department shall keep a record of each permit issued for the disinterment and reinterment of human remains.
 - (4) Except as provided in paragraph (5) of this subsection, the Department may not disclose or allow public inspection of information in a permit record about the location of the site of a disinterment or reinterment if a local burial sites advisory board or the Director of the Maryland Historical Trust determines that:
 - (i) The site is historic property, as defined in § 5A-301 of the State Finance and Procurement Article; and
 - (ii) Disclosure would create a substantial risk of harm, theft, or destruction to the site.
 - (5) The Department may not deny inspection of a permit record to:
 - (i) The owner of the site of the disinterment or reinterment;

- (ii) A governmental entity that has the power of eminent domain; or
- (iii) The spouse, domestic partner, next of kin, or appointed personal representative of the deceased whose human remains have been disinterred or reinterred.

History

An. Code 1957, art. 43, § 22; 1982, ch. 21, § 2; 1995, ch. 401; 2005, ch. 44, § 1; ch. 440, § 3; 2008, ch. 590.

Maryland Code: Land Use
Division I. Single Jurisdiction Planning and Zoning.
Title 5. Subdivision.
Subtitle 1. Powers.

§ 5-102. Subdivision regulations.

- (a) Recommendation required. -- Before exercising subdivision powers under §§ 5-202 [*note: Final plat approval – Filing*] and 5-203 [*note: Final plat approval – Delegation*] of this title, the planning commission shall recommend subdivision regulations to the legislative body.
- (b) Purpose. -- The subdivision regulations shall be for the health, safety, welfare, and common interest of the citizens of the local jurisdiction.
- (c) Contents. -- The subdivision regulations may include provisions for the purposes of:
 - (1) adequately controlling shore erosion;
 - (2) controlling sediment and ensuring protection from flooding;
 - (3) arranging streets in relation to each other and to the comprehensive plan;
 - (4) adequately and conveniently placing public school sites and open spaces for traffic, utilities, access of fire-fighting apparatus, recreation, and access to light and air;
 - (5) properly managing growth and development;
 - (6) setting minimum lot widths and areas; and
 - (7) determining the extent to which the following actions shall be taken before the approval of a plat:
 - (i) the grading and improvement of streets and other ways;
 - (ii) the provision of soil erosion or sediment control; and
 - (iii) the installation of water, sewer, other utility mains, piping, or other facilities.
- (d) Burial sites. --
 - (1) Subdivision regulations shall require that an appropriate easement be provided for any burial site located on the land.
 - (2) The easement shall be subject to the subdivision plat for entry to and exit from the burial site by an individual related by blood or marriage or a person in interest, as defined in § 14-121 of the Real Property Article.
 - (3) The existing right-of-way need not be extended for any improvements on the burial site.

History

An. Code 1957, art. 66B, § 5.03(a), (b)(1), (d); 2012, ch. 426, § 2; 2013, ch. 674.

Annotated Code of Maryland: Real Property
Title 14. Miscellaneous Rules
Subtitle 1. Miscellaneous Rules

§ 14-119. Cemeteries located in Carroll County

- (a) "Cemetery" defined. -- In this section:
 - (1) "Cemetery" means the land or structures in Carroll County identified by the Carroll County Genealogical Society that are used for the interment of human remains; and
 - (2) "Cemetery" includes a grave, burial ground, monument, or gravestone.
- (b) Exemptions. -- This section does not apply to a permanent cemetery that is owned by:
 - (1) A cemetery company regulated under Title 5 of the Business Regulation Article;
 - (2) A nonprofit organization; or
 - (3) A governmental unit within the State.
- (c) Requirements. -- A person who owns land in Carroll County on which all or a part of a cemetery is located shall:
 - (1) Record the location of the cemetery without using a survey in the Office of the Clerk of the Circuit Court for Carroll County; and
 - (2) Give written notice of the location of the cemetery without using a survey to any prospective buyer of the land.
- (d) Removal of human remains, monument, or gravestone. -- A person who removes any human remains, monument, or gravestone from a cemetery located on land in Carroll County shall:
 - (1) Comply with § 10-402 or § 10-404 of the Criminal Law Article;
 - (2) Place the human remains, monument, or gravestone in a permanent cemetery in Carroll County; and
 - (3) Record the new location of the human remains, monument, or gravestone in the Office of the Clerk of the Circuit Court for Carroll County.
- (e) Recordation. -- The Clerk of the Circuit Court for Carroll County shall index and file documents received under this section in the land records under the grantor index.

History

1991, ch. 623; 1994, ch. 3, § 1; 2002, ch. 213, § 6.

§ 14-121. Burial sites -- Access

- (a) Definitions. --
 - (1) In this section the following words have the meanings indicated.
 - (2)
 - (i) "Burial site" means any natural or prepared physical location, whether originally located below, on, or above the surface of the earth into which human remains or associated funerary objects are deposited as a part of a death rite or ceremony of any culture, religion, or group.

- (ii) "Burial site" includes the human remains and associated funerary objects that result from a shipwreck or accident and are intentionally left to remain at the site.
- (3) "Cultural affiliation" means a relationship of shared group identity that can be reasonably traced historically between a present-day group, tribe, band, or clan and an identifiable earlier group.
- (4) "Person in interest" means a person who:
 - (i) Is related by blood or marriage to the person interred in a burial site;
 - (ii) Is a domestic partner, as defined in § 1-101 of the Health - General Article, of a person interred in a burial site;
 - (iii) Has a cultural affiliation with the person interred in a burial site; or
 - (iv) Has an interest in a burial site that the Office of the State's Attorney for the county where the burial site is located recognizes is in the public interest after consultation with a local burial sites advisory board or, if such a board does not exist, the Maryland Historical Trust.
- (b) Request for access -- Restoration, maintenance or viewing. -- Any person in interest may request the owner of a burial site or of the land encompassing a burial site that has been documented or recognized as a burial site by the public or any person in interest to grant reasonable access to the burial site for the purpose of restoring, maintaining, or viewing the burial site.
- (c) Request for access -- Agreements. --
 - (1) A person requesting access to a burial site under subsection (b) or (d) of this section may execute an agreement with the owner of the burial site or of the land encompassing the burial site using a form similar to the form below:

"Permission to Enter

I hereby grant the person named below permission to enter my property, subject to the terms of the agreement, on the following dates:

Signed

(Landowner)

Agreement

In return for the privilege of entering on the private property for the purpose of restoring, maintaining, or viewing the burial site or transporting human remains to the burial site, I agree to adhere to every law, observe every safety precaution and practice, take every precaution against fire, and assume all responsibility and liability for my person and my property, while on the landowner's property.

Signed"

- (2) If the owner of the burial site or of the land encompassing the burial site enters into an agreement under paragraph (1) of this subsection, the owner shall grant

access to the burial site in accordance with the terms of the agreement signed under paragraph (1) of this subsection.

- (d) Request for access -- Interments. -- In addition to the provisions of subsection (b) of this section, if burials are still taking place at a burial site, any person who is related by blood or marriage, heir, appointed representative, or any other person in interest may request the owner of the land encompassing the burial site to grant reasonable access to the burial site for the purpose of transporting human remains to the burial site to inter the remains of a person for whose burial the site is dedicated, if access has not been provided in a covenant or deed of record describing the metes and bounds of the burial site.
- (e) Liability of owner. -- Except for willful or malicious acts or omissions, the owner of a burial site or of the land encompassing a burial site who allows persons to enter or go on the land for the purposes provided in subsections (b) and (d) of this section is not liable for damages in a civil action to a person who enters on the land for injury to person or property.
- (f) Liability for property damage. -- A person who enters land for the purposes provided in subsections (b) and (d) of this section shall be responsible for ensuring that the person's conduct does not damage the land, the cemetery, or the gravesites, and shall be liable to the property owner for any damage caused as a result of the person's access.
- (g) Reporting location to Supervisor of Assessments; notation on tax maps. --
 - (1) An owner of a burial site, a person who is related by blood or marriage to the person interred in a burial site, heir, appointed representative, or any other person in interest, or any other person may report the location of a burial site to the supervisor of assessments for a county, together with supporting documentation concerning the location and nature of the burial site.
 - (2) The supervisor of assessments for a county may note the presence of a burial site on a parcel on the county tax maps maintained under § 2-213 of the Tax - Property Article.
- (h) Scope of section. -- Nothing in this section may be construed to interfere with the normal operation and maintenance of a public or private cemetery being operated in accordance with State law.

History

1994, ch. 203; 2008, ch. 590; 2018, ch. 506, § 1; ch. 507, § 1.

§ 14-121.1. Proper treatment of burial site in existence for more than 50 years

- (a) "Burial site" defined. -- In this section, "burial site" has the meaning stated in § 14-121 of this subtitle.
- (b) Owner to consult with Director of Maryland Historical Trust. -- An owner of a burial site or of the land encompassing a burial site that has been in existence for more than 50 years and in which the majority of the persons interred in the burial site have been interred for more than 50 years shall consult with the Director of the Maryland Historical Trust about the proper treatment of markers, human remains, and the environment surrounding the burial site.

- (c) Advice is not binding. -- Advice provided by the Maryland Historical Trust under this section is not binding on the owner of the burial site.

History

2018, ch. 506, § 1; ch. 507, § 1.

§ 14-122. Same - County or municipal maintenance; funding.

- (a) "Burial site" defined. -- In this section, "burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth into which human remains are deposited as a part of a death rite or ceremony of any culture, religion, or group.
- (b) County or municipal maintenance. -- Any county or municipal corporation that has within its jurisdiction a burial site in need of repair or maintenance may, upon the request of the owner or with permission of the owner of the burial site in need of repair or maintenance, maintain and preserve the burial site for the owner.
- (c) Funding. -- In order to maintain and preserve a burial site or to repair or restore fences, tombs, monuments, or other structures located in a burial site, a county or municipal corporation may:
 - (1) Appropriate money and solicit donations from individuals or public or private corporations;
 - (2) Provide incentives for charitable organizations or community groups to donate their services; and
 - (3) Develop a community service program through which individuals required to perform community service hours under a sentence of a court or students may satisfy community service requirements or volunteer their services.

[HISTORY: 1994, ch. 203.]

Annotated Code of Maryland: State Finance and Procurement
Division I. State Finance
Title 10. Board of Public Works – Miscellaneous Provisions
Subtitle 3. Sale and Transfer of Property

§ 10-309. State-owned cemeteries

- (a) Definitions. --
 - (1) In this section the following words have the meanings indicated.
 - (2)
 - (i) "Perpetual care" means the maintenance, including the cutting of grass abutting memorials or monuments, administration, supervision, and embellishments of a cemetery and its grounds, roads, and paths.
 - (ii) "Perpetual care" includes the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery.
 - (3) "State facility" means:
 - (i) a facility maintained by the Behavioral Health Administration of the Maryland Department of Health and listed in § 10-406 of the Health - General Article;
 - (ii) a State residential center for individuals with an intellectual disability in the Developmental Disabilities Administration of the Maryland Department of Health; and
 - (iii) a facility that formerly met the definition of "State facility" under item (i) or (ii) of this subsection, including:
 - 1. the former Rosewood Center; and
 - 2. the former Crownsville Hospital Center.
- (b) Prohibited sale of State-owned cemetery located on State grounds. -- A cemetery owned by the State and located on the grounds of a State facility may not be sold by the State if the State facility is downsized, consolidated, closed, or sold.
- (c) Perpetual care of State-owned cemeteries located on State grounds. -- A cemetery owned by the State and located on the grounds of a State facility shall be provided perpetual care and marked with a monument commemorating the individuals interred in the cemetery.
- (d) Consultation with the Maryland Historical Trust. -- Activities or projects undertaken under subsection (c) of this section shall be undertaken in consultation with the Maryland Historical Trust, in accordance with the consultation provisions:
 - (1) for capital projects under § 5A-325 of this article; and
 - (2) for issuance of permits or licenses or provision of financial assistance under § 5A-326(d)(2) of this article.
- (e) Easement recorded before October 1, 2004 not may be sold or transferred. -- Any easement or right of entry to a cemetery owned by the State and located on the grounds of a State facility that has been recorded among the land records of the county where the cemetery is located on or before October 1, 2004 may not be transferred or sold.
- (f) Exception to prohibition of sale. -- Notwithstanding subsections (b) and (e) of this section, a cemetery or an easement or right of entry to a cemetery owned by the State and located on the grounds of a State facility may be sold by the State if the deed for

the property includes a restrictive covenant requiring the owner and any future owner to maintain the cemetery as provided under subsection (c) of this section.

- (g) Applicability of provisions of § 5-502 of the Business Regulation Article. -- The provisions of § 5-502 of the Business Regulation Article apply to a cemetery owned by the State and located on the grounds of a State facility.
- (h) Reports. -- Beginning January 1, 2015, and on or before January 1 of each succeeding year, the Maryland Department of Health shall report, in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee and the House Health and Government Operations Committee on the implementation of this section.

History

2004, ch. 414; 2009, ch. 119; 2014, ch. 305; ch. 460, § 1; 2017, ch. 214, § 7.

Annotated Code of Maryland: Tax – Property
Title 9. Property Tax Credits and Property Tax Relief
Subtitle 2. Statewide Optional

§ 9-261. Burial ground

- (a) In general. -- The Mayor and City Council of Baltimore City or the governing body of a county or of a municipal corporation may grant, by law, a property tax credit against the county or municipal corporation property tax imposed on an improvement of real property that substantiates, demarcates, commemorates, or celebrates a burial ground.
- (b) Amount; duration; requirements. -- The Mayor and City Council of Baltimore City or the governing body of a county or of a municipal corporation may provide, by law, for:
 - (1) the amount and duration of the property tax credit under this section;
 - (2) additional eligibility criteria for the tax credit under this section;
 - (3) regulations and procedures for the application and uniform processing of requests for the credit; and
 - (4) any other provision necessary to carry out this section.

History

2018, ch. 506, § 2; ch. 507, § 2.

Maryland Court Rules: Maryland Rules
Title 14. Sales of Property
Chapter 400. Burial Ground

Rule 14-401. Sale for other use

- (a) Venue. An action for sale of a burial ground for a use other than burial purposes shall be brought in the county in which the burial ground is located. When the burial ground is located in more than one county, the action may be brought in any county in which all or any part of the burial ground is located.
- (b) Complaint. The action for sale of a burial ground shall be commenced by filing a complaint that, in addition to complying with Rules 2-303 through 2-305, shall contain:
 - (1) a description of the burial ground sufficient to enable it to be located,
 - (2) a statement that the ground has been dedicated and used for burial purposes,
 - (3) a statement that the burial ground has ceased to be used for burial purposes,
 - (4) a list of names and last known addresses of all known lot owners, or their assignees, if any, and
 - (5) a statement of the reasons why it is desirable to sell the burial ground for other uses.

Cross references. -- See Code, Business Regulation Article, § 5-505, which authorizes a proceeding for the sale of a burial ground that has ceased to be used for such purposes.

For sale of cemeteries in Baltimore City where more than 75% of acreage has been abandoned or becomes a menace, see Code, Business Regulation Article, § 5-506.

As to certain cemeteries in Carroll County, see Code, Real Property Article, § 14-119.

As to exemption of lots held only for burial from attachment or execution and insolvency laws, see Code, Business Regulation Article, § 5-503.

As to condemnation of cemeteries, see Rule 12-204.

- (c) Notice -- Publication and posting. Upon the filing of the complaint, the clerk shall issue a notice instead of a summons. The notice shall be signed by the clerk and shall (1) include the caption of the action, (2) describe the substance of the complaint and the relief sought, and (3) inform all lot owners or other persons in interest of the latest date by which a response may be filed. The notice shall be published as provided in Rule 2-122, and a copy of the notice shall be posted in a conspicuous place on the property and at all principal gates or entrances to the burial ground. Additionally, a copy of the notice shall be sent by ordinary mail to each person whose name and last known address are listed in the complaint pursuant to subsection (b) (4) of this Rule.

- (d) Proceedings when no response filed. If no party in interest appears in response to the notice, the action shall proceed ex parte. The court may order testimony to be taken and enter judgment as it deems proper.

History

(Amended Jan. 20, 1999, effective July 1, 1999.)

Source. --

This Rule is derived as follows:

Section (a) is derived from former Rule J71.

Section (b) is derived from former Rule J70.

Section (c) is derived from former Rule J72.

Section (d) is derived from former Rule J73.

Not included in this excerpt document:

Maryland Code: BUSINESS REGULATION
TITLE 5. CEMETERIES
SUBTITLE 1. DEFINITIONS – GENERAL PROVISIONS
SUBTITLE 2. OFFICE OF CEMETERY OVERSIGHT
SUBTITLE 3. REGISTRATION
SUBTITLE 4. PERMITS AND STATEMENT FILINGS
SUBTITLE 5. CEMETERY PROPERTY
SUBTITLE 6. PERPETUAL CARE
SUBTITLE 7: PRENEED BURIAL CONTRACTS
SUBTITLE 8: MISCELLANEOUS PROVISIONS
SUBTITLE 9: PROHIBITED ACTS
SUBTITLE 10: TERMINATION OF TITLE

Attachment 3
ACHP Policy Statement on
Burial Sites, Human Remains, and Funerary Objects
March 1, 2023



ADVISORY COUNCIL ON HISTORIC PRESERVATION POLICY STATEMENT ON BURIAL SITES, HUMAN REMAINS, AND FUNERARY OBJECTS

March 1, 2023

Preamble. The Advisory Council on Historic Preservation (ACHP) developed this policy statement to establish a set of principles and rules that the ACHP will encourage federal agencies to adopt as they carry out their day-to-day responsibilities under Section 106 of the National Historic Preservation Act (NHPA). This statement also establishes a set of standards and guidelines that federal and state agencies, local entities, Indian Tribes, industry applicants, and other relevant entities should, at a minimum, seek to implement in order to provide burial sites, human remains, and funerary objects the consideration and protection they deserve.

This policy statement is not bound by geography, ethnicity, political or socioeconomic status, or a system of belief and recognizes that the respectful consideration for burial sites, human remains, and funerary objects is a human rights concern shared by all. However, the burial sites, human remains, and funerary objects of certain groups of people, including but not limited to Indian Tribes, Native Hawaiians, enslaved Africans and their descendants, and other Indigenous Peoples, have a higher probability of being unmarked and undocumented and thus more likely to be affected by development projects. As such, this policy statement emphasizes the need for consultation and coordination with those communities, including seeking consensus in decision making and providing deference to their practices, protocols, and preferences, where feasible.

Section 106 requires agencies to consult and seek agreement with consulting parties on measures to avoid, minimize, or mitigate adverse effects to historic properties. Accordingly, and consistent with Section 106, this policy does not recommend a specific outcome from the consultation process. Rather, it focuses on issues and perspectives that federal agencies should consider while carrying out their consultation and decision-making responsibilities. The ACHP will incorporate these principles in its work and encourages federal agencies and other entities to apply the principles in this policy any time there is potential to encounter burial sites, human remains, or funerary objects.

In many cases, burial sites, human remains, and funerary objects are subject to other applicable federal, Tribal, state, or local laws or protocols that may prescribe a specific outcome, such as the Native American Graves Protection and Repatriation Act (NAGPRA). In those scenarios, the federal agency should identify and follow all applicable laws or protocols and implement any prescribed outcomes. NHPA and NAGPRA are separate and distinct laws, with separate and distinct implementing regulations and categories of parties that must be consulted.¹ Compliance with one of these laws does not equate to or fulfill the compliance requirements of the other. Implementation of this policy and its principles does not, in any way, change, modify, or detract from NAGPRA or other applicable laws.

Authority: The authority for this policy stems from the ACHP's statutory responsibility to advise on matters relating to historic preservation (which includes the role of Indian Tribes, Tribal Historic

¹ The ACHP's publication [Consultation with Indian Tribes in the Section 106 Process: The Handbook](#) (2021) and the National Association of Tribal Historic Preservation Officers' publication [Tribal Consultation: Best Practices in Historic Preservation](#) (2005) provide additional guidance.

Preservation Officers [THPOs], and Native Hawaiian organizations [NHOs] in that process), to advise the President and Congress regarding historic preservation matters, and to recommend methods to federal agencies to improve the effectiveness, coordination, and consistency of their historic preservation policies. While the ACHP recognizes that not all burial sites, human remains, and funerary objects may constitute or be associated with historic properties eligible for or listed in the National Register of Historic Places, the consideration and treatment of such places fall within the concerns of the historic preservation community.²

This policy statement recognizes the unique legal and political relationship between the federal government and federally recognized Indian Tribes as set forth in the Constitution of the United States, treaties, statutes, and court decisions, and acknowledges that the federal Indian trust responsibility is a legal obligation under which the United States “has charged itself with moral obligations of the highest responsibility and trust” toward Indian Tribes.³ Part of the ACHP’s trust responsibility is to ensure that the regulations implementing Section 106 incorporate the procedural requirement that federal agencies consult with Indian Tribes and NHOs that attach religious and cultural significance to historic properties that may be affected by undertakings the federal agency proposes to carry out, license, permit, or assist.⁴ In general, the trust responsibility establishes fiduciary obligations on the part of federal agencies to Tribes, including a duty to protect Tribal lands and cultural and natural resources for the benefit of Tribes and individual Tribal members.

The ACHP views its trust responsibility as encompassing all aspects of historic resources including intangible values.⁵ As part of that trust responsibility, the ACHP offers this policy statement to inform how the Section 106 consultation process should consider burial sites, human remains, and funerary objects.

Principles. The care for and consideration of burial sites, human remains, and funerary objects is of significant social and moral consequence in the United States and U.S. territories. When burial sites, human remains, or funerary objects are or have the potential to be encountered during the planning or implementation of a proposed federal undertaking, the following principles should be adhered to:

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, 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 includes the early and meaningful exchange of information and a concerted effort to reach consensus, can informed decisions be made about the identification, documentation, National Register eligibility, and treatment of burial sites, human remains, and funerary objects.

² 54 U.S.C. §§ 304102 and 304108

³ *Seminole Nation v. United States*, 316 U.S. 286 (1942)

⁴ “[The Advisory Council on Historic Preservation’s Statement on Its Trust Responsibility](#)” (Advisory Council on Historic Preservation, 2004)

⁵ “[Policy Statement Regarding the Council’s Relationship with Indian Tribes](#)” (Advisory Council on Historic Preservation, 2000)

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.⁶

Implementation of the Policy. Implementation of this policy statement is the responsibility of the ACHP's leadership and staff; however, the ACHP recognizes that appropriate expertise and experience to ensure effective implementation may also reside in other parties. Accordingly, the ACHP commits to advancing consideration of burial sites, human remains, and funerary objects in the Section 106 process with its preservation partners through the following:

- A. Train ACHP staff regarding the implementation of this policy statement.
- B. Development of informational resources that address the NHPA, Section 106, and the following:
 - i. The Federal Indian Boarding School Initiative
 - ii. The intersection of NAGPRA
 - iii. Acquiring and managing sensitive information
 - iv. Climate change and burial sites, human remains, and funerary objects
 - v. Best practices in the treatment of marked and unmarked burial sites, human remains, and funerary objects.
- C. ACHP staff will seek opportunities to implement the policy principles into Section 106 agreement documents and program alternatives to advance consideration of burial sites, human remains, and funerary objects.
- D. The ACHP will advise federal agencies, Indian Tribes, Tribal and State Historic Preservation Officers, and NHOs in their development of historic preservation protocols for appropriate consideration of burial sites, human remains, and funerary objects.
- E. Encourage federal agencies and other relevant parties to give full and meaningful consideration to burial sites, human remains, and funerary objects consistent with this policy statement.

Policy Review Period. The ACHP commits to reviewing this policy statement approximately every five years from the date of its adoption to ensure its continued applicability. The ACHP executive director will seek input regarding the need to update this policy statement through appropriate ACHP committees, including Federal Agency Programs and Native American Affairs. Amendments shall be pursued when the executive director or ACHP members determine that such action is required and/or would significantly improve the policy statement. This policy statement shall be in effect until rescinded by ACHP members.

Definitions. The definitions provided below are meant to inform the application of this policy statement. However, terms such as burial site, intact, disturbance, and human remains, among others, often require the input of associated parties to more fully understand how to interpret or apply each term. The

⁶ Consistent with ACHP's [Guidance on Assistance to Consulting Parties in the Section 106 Review Process](#), when the federal agency (or in some cases the applicant) seeks the views and advice of any consulting party in fulfilling its legal obligation to consult with them, the agency or applicant is not required to pay that party for providing its views.

definitions provided below are intended to be inclusive and to advance the preservation and protection of burial sites, human remains, and funerary items, as appropriate.

- **Burial Site:** Any location, whether originally below, on, or above the surface of the earth, where human remains are or have been located.
- **Confidential:** Information that is protected by law, regulation, or federal policy. Preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information
- **Consultation:** The process of seeking, discussing, and considering the views of other participants and, where feasible, seeking agreement with them. A foundational activity in the Section 106 review process.
- **Consulting parties:** Persons or groups the federal agency consults with during the Section 106 process. They may include the State Historic Preservation Officer; Tribal Historic Preservation Officer; Indian Tribes and Native Hawaiian organizations; representatives of local governments; applicants for federal assistance, permits, licenses, and other approvals; and/or any additional consulting parties.⁷ Additional consulting parties may include individuals and organizations with a demonstrated interest in the undertaking due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.⁸
- **Culturally sensitive:** Tangible and intangible property and knowledge which pertains to the distinct values, beliefs, and ways of living for a culture. It often includes property and knowledge that is not intended to be shared outside the community of origin or outside of specific groups within a community.⁹
- **Disturbance:** Disturbance of burial sites that are listed in or eligible for listing in the National Register of Historic Places likely would constitute an adverse effect under Section 106. An adverse effect occurs when "an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, setting, materials, workmanship, feeling, or association".¹⁰ Determination of what constitutes a "disturbance" should be defined in consultation with proper deference provided to the views and opinions of descendant individuals and/or communities.
- **Funerary objects:** Objects that, as part of the death rite or ceremony of a culture, are reasonably believed to be associated with human remains.
- **Historic property:** Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. It includes artifacts, records, and remains that are related to and located within such properties, and it includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the National Register of Historic Places criteria.¹¹
- **Human remains:** The physical remains of a human body including cremains, fragmented human remains, hair, and fluid, among other components. When human remains are believed to be comingled with other material (such as soil or faunal), the entire admixture should be treated as human remains.
- **Indian Tribe:** An Indian Tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act¹², which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.¹³
- **Indigenous Knowledge (IK):** Information provided by an Indian Tribe, Tribal member, Native Hawaiian, or other Indigenous person uniquely reflective of their knowledge, experience, understanding, or observation relating to cultural resources, practices, or actions. Indigenous Knowledge often constitutes sensitive information.

⁷ Based on 36 CFR § 800.2(c)

⁸ 36 CFR § 800.2(c)(6)

⁹ "[Native American Archival Materials](#)," (First Archivist Circle, 2007)

¹⁰ 36 CFR § 800.5(a)(1)

¹¹ 36 CFR § 800.16(1)

¹² 43 U.S.C. § 1602

¹³ 36 CFR § 800.16(m)

- **Native Hawaiian:** Any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the state of Hawaii.¹⁴
- **Native Hawaiian organization (NHO):** Any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.¹⁵
- **Preservation in place:** Taking active steps to avoid disturbing a burial site, human remains, or funerary objects including, to the maximum extent practical, any access, viewsheds, setting, and/or ongoing cultural activity that may be associated with the location.
- **Section 106:** That part of the NHPA which establishes a federal responsibility to take into account the effects of undertakings on historic properties and to provide the ACHP a reasonable opportunity to comment with regard to such action.
- **Sensitive:** Information that may be protected by law, regulation, or federal policy; information that may be identified as sensitive by the sponsoring entity/original source.
- **State Historic Preservation Officer (SHPO):** The official appointed to administer a state's historic preservation program.¹⁶
- **Tribal Historic Preservation Officer (THPO):** The official appointed or designated to administer the Tribe's historic preservation program.¹⁷
- **Treatment:** Measures developed and implemented to avoid, minimize, or mitigate adverse effects to historic properties.

¹⁴ 36 CFR § 800.16(s)(2)

¹⁵ 36 CFR § 800.16(s)(1)

¹⁶ 54 U.S.C. § 302301

¹⁷ 54 U.S.C. § 302702

Attachment 4

Delaware Nation Inadvertent Discovery Policy



Delaware Nation Inadvertent Discovery Policy

Purpose:

The purpose of this policy is to outline procedures that will be followed by all agencies, contractors, or others in the event of an inadvertent discovery of human remains or cultural materials that are identified as potentially Lenape / Delaware.

Treatment and Disposition of Human Remains and Cultural Items:

1. The federal agency or contractor shall contact Delaware Nation immediately, but no later than three days after the discovery of remains and/or artifacts including all of the contacts listed below:

Carissa Speck, *Director of Historic Preservation*
cspeck@delawarenation-nsn.gov
405-247-2448 ext. 1403

Katelyn Lucas, *Tribal Historic Preservation Officer*
klucas@delawarenation-nsn.gov
405-544-8115

2. Place tobacco with human remains and/or funerary objects.
3. Cover remains and funerary objects with a natural fiber cloth such as cotton or muslin when possible.
4. Absolutely no photographs are to be taken.
5. The preferred treatment of inadvertently discovered cultural materials and/or human remains is to leave them in-situ (in place) and protect them from further disturbance.
6. Non-destructive “in-field” documentation of the remains and cultural items shall be carried out only in consultation with Delaware Nation, who will determine appropriate methods of recordation depending upon the circumstances.
7. If the remains and cultural items are to remain in-situ, the requirements of 43 CFR 10 Sections 10.4-10.6 will have been fulfilled.
8. The specific location(s) of discovery shall be withheld from disclosure (with the exception of local law officials and tribal officials as described above) and protected to the fullest extent by federal law.
9. If remains and funerary objects are to be removed from the site, specific procedures and considerations will be determined by Delaware Nation in consultation with the federal agency.

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ATTACHMENT 6 – MARINE POST-REVIEW DISCOVERY PLAN

JULY 30, 2024

**PLANS AND PROCEDURES ADDRESSING
UNANTICIPATED DISCOVERIES OF CULTURAL
RESOURCES AND HUMAN REMAINS,
IN SUPPORT OF THE MARYLAND OFFSHORE WIND
PROJECT LOCATED ON THE OUTER CONTINENTAL
SHELF LEASE OCS-A 0490
AND OFFSHORE MARYLAND AND DELAWARE**

OUTER CONTINENTAL SHELF AND STATE WATERS

PREPARED FOR:

**US WIND, INC.
WORLD TRADE CENTER
401 E. PRATT STREET, SUITE 1810
BALTIMORE, MD 21202**

**R. CHRISTOPHER GOODWIN & ASSOCIATES, INC.
241 EAST FOURTH STREET, SUITE 100 FREDERICK, MD 21701**

**Plans And Procedures Addressing
Unanticipated Discoveries of Cultural Resources and Human Remains,
In Support of The Maryland Offshore Wind Project Located on The Outer Continental
Shelf Lease OCS-A 0490
And Offshore Maryland and Delaware**

by

**R. Christopher Goodwin & Associates, Inc.
241 East Fourth Street, Suite 100
Frederick, MD 21701**

July 2024

Prepared for:

**US Wind, Inc.
World Trade Center
401 E. Pratt Street, Suite 1810
Baltimore, Maryland 21202**

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1.0 INTRODUCTION

US Wind, Inc., (US Wind) is majority owned by Renexia, a leader in renewable energy development in Italy and a subsidiary of Toto Holding S.p.A. The US Wind Maryland Offshore Wind Project (Project) is located in the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Offshore Maryland (Lease No. OCS-A-0490 [Lease Area]), by the merge of Lease Areas OCS-A 0489 and the Lease Area OCS-A 0490, with the retaining lease OCS-A 0490. The merged Lease Area was granted to US Wind by the Bureau of Ocean Energy Management (BOEM) on January 10, 2018. The Lease Area covers approximately 32,256 hectares (ha) (79,706.31 acres [ac]) off the Maryland coastline. The OECC will connect the Lease Area to inshore locations through Indian River Bay south of Indian River Inlet at 3R's Beach and Tower Road, Delaware.

From 2021 to 2023, US Wind conducted high resolution geophysical (HRG) and geotechnical survey campaigns to inform the Project. The HRG surveys applied a remote sensing array consisting of multi-channel ultrahigh-resolution seismic, single-channel ultra-high-resolution seismic, multi-beam echo sounder, side scan sonar, magnetometer (transverse gradiometer configuration), and sub-bottom profiler during surveys. R. Christopher Goodwin & Associates Inc. (RCG&A) serving as the Qualified Marine Archaeologist (QMA) on the Project conducted an analyses and interpretation of the HRG and geotechnical datasets, which were integrated into the Marine Archaeological Resources Assessment (MARA) report.

The QMA identified 14 potential cultural resources (targets) within the Project Preliminary Area of Potential Effects: 13 targets are located in the Lease Area, and 1 target is in the Offshore Export Cable Corridor (OECC) where it intersects the Lease Area; all targets are located within the OCS. These potential cultural resources were recommended for avoidance of any potential impacts. Within the Lease Area, 14 buried Ancient Submerged Landforms (ASLFs) were identified from the HRG data sets, geotechnical and geoarchaeological investigations. These features were delineated based on their interpreted spatial extent and recommendations for avoidance incorporated larger areas beyond their mapped spatial extents. No paleolandscape features were identified within the OECC state waters.

Four (4) targets were identified within the OECC in state waters; however, all four of these targets were located outside of the Project PAPE. These potential cultural resources were recommended for avoidance in order to mitigate any inadvertent impacts. Within the state waters project area, there were no ASLFs identified with the potential to contain intact cultural resources.

US Wind recognizes that although there has been intensive background research and HRG and geotechnical surveys, there is still potential to encounter submerged cultural resources, including shipwrecks and archaeological sites, during Project construction or other bottom-disturbing activities. Consequently, this Unanticipated Discoveries Plan (UDP) is prepared in support of the Project.

To minimize the potential for the unanticipated discovery of cultural resources, a systematic review of remote sensing data was conducted for the Project. This UDP has been developed to support US Wind in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulations (36 CFR 800) entitled Protection of Historic Properties, the Archaeological and Historic Preservation Act of 1974; the Abandoned Shipwreck Act of 1987; Title 36 of the CFR, Parts 60-66 and 800, as appropriate; standards set forth in the *Secretary of the Interior's Guidelines for Archaeology and Historic Preservation*; the Native American Graves Protection and Repatriation Act (NAGPRA); the Guidelines for Providing Geophysical, Geotechnical, and Geohazard Information Pursuant to 30 CFR Part 585 (May 27, 2020); Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585 (May 27, 2020), as set forth by BOEM. The Section 106 process was coordinated at the state level by the Delaware Division of Historical and Cultural Affairs (DHCA), which serves as the State Historic Preservation Office (SHPO).

2.0 POTENTIALLY SIGNIFICANT CULTURAL RESOURCES

The archaeological potential to discover precontact period resources within the Lease Area is considered high, due to the rapid sea level rise between 16,000 and 12,000 calibrated Before Present (cal BP). This period is well within the Paleoindian and Early Archaic cultural periods, when the first human occupants of the region could have settled along this coastal plain environment. Rapid sea level rise also occurred sometime between 10,000 and 8,000 cal BP, which again increased the probability for coastal occupations from the early Holocene to have been preserved. The preservation potential for the precontact period is lower along the OECC due to a slower rate of submergence and intertidal, shoreface conditions, which would have led to a greater degree of erosion and effected any potential archaeological deposits. The abundance of maritime activity in this region can be correlated to a high potential for post-contact period maritime cultural resources.

Any of the following would be considered potentially significant submerged cultural resources:

- Precontact shell middens;
- Lithics (projectile points, stone tools) and ceramic artifacts;
- Human remains;
- Animal bone;
- Wooden ship timbers or sections of iron or steel hulls;
- Scattered cargo remains, such as ceramics, glass, wooden barrels or barrel staves;
- Any distinct mound of stones indicative of a ballast pile;
- Cannon and swivel guns and/or ammunition or any other armaments;

- Debris comprised of ship rigging, gear and fittings;
- Groups of anchors or other objects that indicate the presence of a shipwreck.

3.0 ARCHAEOLOGICAL RESOURCE IDENTIFICATION/TRAINING

The identification of cultural resources requires basic training in order to recognize potential archaeological resources. A one-day training session will be provided by the QMA for resident engineers and contractor field supervisors prior to the implementation of the Project. The purpose of this training will be to review federal and state regulations concerning archaeological resource compliance and to provide an overview of the Project-specific resources so that both US Wind and contract personnel will be aware of the kinds of unanticipated archaeological resources that may be encountered in the field and how to deal with them. The training program will present the procedures to be followed and notification required if an unanticipated discovery is identified during Project implementation. The training will be designed to ensure that Project personnel and contractors understand the archaeological survey program that has been performed for the Project and are fully informed on the resources and the avoidance areas that have previously been demarcated for Project implementation activities. New discoveries which would constitute unanticipated finds during the Project implementation process are the subject of this UDP.

4.0 PROCEDURES FOR THE DISCOVERY OF A POTENTIAL CULTURAL RESOURCE

US Wind's designated Project Representatives have the responsibility to monitor construction sites for potential cultural resources throughout construction. The QMA will inspect the discovery and provide a verbal or written notification within 24-hours of suspected discovery. The UDP includes a stop-work order and requires coordination with the Project, the QMA, BOEM, Bureau of Safety and Environmental Enforcement (BSEE), Tribes, and relevant stakeholders on the manner to proceed.

When a potential cultural resource is encountered during construction and/or bottom disturbing activities, the following steps should be taken:

- Consistent with OCS-A-0490 Lease stipulation 4.2.7.1, all bottom disturbing activities in the area of discovery will cease and every effort will be made to avoid or minimize damage to the potential submerged cultural resource(s).
- The field/construction crew that identifies an unanticipated find will immediately notify US Wind or US Wind's designated on-vessel representative of the discovery.
- US Wind will issue an order to stop work within a safe distance of the discovery pending its identification as a potential historic property or non-historic property, as determined by the QMA.

- US Wind will notify BOEM and BSEE of the discovery of a potential submerged cultural resource within 24 hours of such discovery (OCS-A-0490 Lease stipulation 4.2.7.2). US Wind will also notify DHCA and the Tribal Historic Preservation Offices (THPOs) or other designated representatives of federally and state recognized Native American Tribes (Section 7). US Wind will immediately notify the QMA concerning the potential find(s). The QMA will initiate an assessment of the find's potential to qualify as a historic property in accordance to the National Register of Historic Places (NRHP) criteria. Information shared with the QMA will include, but not be limited to, coordinates, discernable characteristics, photographs, and survey data. If necessary to support an initial assessment, the QMA may request to visit the site to inspect the find. If the QMA determines the find represents a potential historic property, the QMA will immediately advise US Wind of their preliminary determination.
- If upon further consideration of available information, the QMA determines that the find (i.e., site, feature, or potential cultural resource) is not cultural or not associated with a potential historic property, US Wind's on-site representative will be notified that the find is not a potential historic property.
- If the QMA determines that the find is associated with a potential historic property, the QMA will notify US Wind and work may not resume at the given location until the field/construction crew is notified accordingly in writing by US Wind.

For Discoveries on the OCS

- In accordance with OCS-A-0490 Lease stipulation 4.2.7.3, within 72 hours of the discovery of a potential submerged cultural resource, the QMA will prepare, and US Wind will submit to BOEM, a report summarizing the available information concerning the nature and characteristics of the resource and observed attributes relevant to the resource's potential eligibility for listing in the NRHP. US Wind and the QMA will consult, as feasible, with BOEM and BSEE during the preparation of the report and preliminary assessment of the resource's potential historic significance.
- If BOEM determines the affected resource is eligible for listing in the NRHP, US Wind will prepare a mitigation plan and submit that plan to BOEM. The mitigation plan will prioritize avoidance and minimization measures to the extent practicable based on the specific location and circumstances of the discovery. US Wind will address any BOEM comments in a revised draft mitigation plan before submitting the document to the Delaware Division of Historical and Cultural Affairs (DHCA) and THPOs. DHCA and the THPOs will provide US Wind and BOEM any comments or suggestions within one week of receipt of the mitigation plan.

- US Wind will respond to all timely comments received on the mitigation plan in preparing the final mitigation plan for submittal to BOEM. Work in the vicinity of the discovery may not resume until US Wind Energy receives written authorization from BOEM. US Wind will be responsible for implementing the final mitigation plan in such circumstances.
- If BOEM determines the potential submerged cultural resource is not eligible for listing in the NRHP, US Wind may proceed with construction activities in the vicinity of the find upon receipt of BOEM's written authorization.

For Discoveries in Delaware State Waters

- Within 72 hours of the discovery of a potential submerged cultural resource, the QMA will prepare, and US Wind will submit to BOEM and DHCA, a report summarizing the available information regarding the nature and characteristics of the resource and observed attributes relevant to the resource's potential eligibility for listing in the NRHP. US Wind and the QMA will consult, as feasible, with BOEM, BSEE and DHCA during the preparation of the report and preliminary assessment of the resource's significance.
- If BOEM, in consultation with DHCA, determines the affected resource is eligible for listing in the NRHP, US Wind will prepare a mitigation plan and submit that plan to BOEM and DHCA. The mitigation plan will prioritize avoidance and minimization measures to the extent practicable based on the specific location and circumstances of the discovery. US Wind will address any BOEM comments in a revised draft mitigation plan before submitting the document to the DHCA and THPOs. The DHCA and THPOs will provide US Wind and BOEM any comments or suggestions within one week of receipt of the mitigation plan.
- US Wind will respond to all timely comments on the mitigation plan in preparing the final mitigation plan for submittal to BOEM and DHCA. Work in the vicinity of the discovery may not resume until US Wind receives written authorization from BOEM. US Wind will be responsible for implementing the final mitigation plan in such circumstances.
- If BOEM determines the potential submerged cultural resource is not eligible for listing in the NRHP, US Wind may proceed with construction activities in the vicinity of the find upon receipt of BOEM's written authorization and DHCA's written approval of the final mitigation plan.
- The location of any unanticipated discovery will be kept confidential, and the findings will be reported within the MARA, which will be attached to the Construction and Operations Plan and submitted to the relevant federal and state agencies.

5.0 UNANTICIPATED DISCOVERY OF HUMAN REMAINS

If potential human remains are encountered during Project construction activities, different procedures are to be followed depending on whether the remains were located on the OCS or Delaware state waters.

For Discoveries on the OCS

If suspected human remains are encountered on the OCS, the below procedures, which comply with the Advisory Council on Historic Preservation's (ACHP) *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects*, should be followed.

- All work in the proximity of the human remains will cease and reasonable efforts will be made to avoid and protect the remains from further damage. Potential remains shall be protected, which may include keeping the remains submerged in an onboard tank of sea water or other appropriate material.
- The designated Project Representative will immediately notify US Wind of the discovery of potential human remains. US Wind will immediately notify BOEM, BSEE and the QMA of the discovery.
- If necessary, the QMA may request to visit the vessel to inspect the potential human remains. If the find is a cultural resource, the QMA will provide a preliminary assessment. The QMA will document and inventory the remains and any associated artifacts, and assist in coordinating with federal, state, and local officials.
- A plan for the avoidance of any further impact to the human remains and/or mitigative excavation, reinternment, or a combination of these treatments will be developed in consultation with BOEM, DHCA, and THPOs. All parties will be expected to respond with advice and guidance in an efficient time frame. Once the plan is agreed to by all parties, the plan will be implemented by US Wind. US Wind will not proceed with construction activities in the vicinity of the discovery until it has received written authorization from BOEM.

For Discoveries in Delaware State Waters

In the event human remains are encountered during Project construction activities, DHCA recommends implementing the following protocol. DHCA provides information pertaining to the discovery and protection of unmarked burials and human remains in Delaware Code Title 7, Conservation, Chapter 54, §5401-5411.

- At all times human remains must be treated with the utmost dignity and respect. Should human remains be encountered, work in the general area of the discovery will stop immediately and the location will be immediately secured and protected from damage and disturbance.
- Human remains or associated artifacts will be left in place and not disturbed. No skeletal remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed. The archaeological recovery of human remains may require a permit from the Director of the DHCA (§10.1-2305).
- The county coroner/medical examiner, local law enforcement, DHCA, the appropriate Indian Nations, and the involved agency will be notified immediately. The coroner and local law enforcement will make the official ruling on the nature of the remains, being either forensic or archaeological.
- If human remains are determined to be Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred choice of DHCA and the Indian Nations. The involved agency will consult DHCA and appropriate Indian Nations to develop a plan of action that is consistent with NAGPRA guidance.
- If human remains are determined to be non-Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred choice of DHCA. Consultation with DHCA and other appropriate parties will be required to determine a plan of action.
- Immediate notice regarding the discovery should be made to the appropriate local law enforcement agency, BOEM, BSEE and DHCA.
- Within 24-hours of the notification, DHCA shall notify any Native American Tribe that has indicated interest in the area of the discovery. The local law enforcement officials shall assess the nature and age of the human skeletal remains. If the coroner determines that the human skeletal remains are not a crime scene and are older than 50 years of age, DHCA has jurisdiction over the remains and will work out appropriate plans with appropriate Tribes, living descendants, and other interested parties to ensure compliance with existing state laws. No remains will be removed until jurisdiction is established, and the appropriate permits obtained from the Department of the Army.

6.0 GUIDANCE FOR SUPPLEMENTAL ARCHAEOLOGICAL INVESTIGATIONS OF POST-REVIEW DISCOVERIES

Targeted geophysical survey, Remotely Operated Vehicle (ROV) inspection, and/or archaeological diver-assisted observation and inspection may be necessary to evaluate and characterize a discovery and to gather sufficient information to support BOEM's determination of a find's eligibility to the NRHP. The following procedures were developed to provide for informed decision-making in the event of a post-review discovery during construction of offshore Project components. The procedures account for appropriate decisions at each step in the event of a post-review discovery. Appropriate resolution of a post-review discovery may not require completion of all the steps described below.

1. *Review available HRG and geotechnical data in the vicinity of the discovery and determine if supplemental HRG survey or ROV inspection is needed and appropriate.*
 - a. Conduct HRG survey or ROV inspection.
 - i. QMA to evaluate potential significance of find in consultation with BOEM.
 - ii. May result in BOEM's determination that the find is not associated with a NRHP-eligible resource and no further consideration or protective measures are required.
 - iii. May result in a recommendation for avoidance and/or further evaluations.
2. *Determine appropriate avoidance area based on supplemental HRG survey or ROV inspections.*
 - a. No seabed disturbance may occur within any avoidance area recommended by the QMA or determined by BOEM, until such time as BOEM provides US Wind written authorization to proceed with construction.
 - b. US Wind should assess potential micro-siting of activities to avoid seabed disturbances within the avoidance area. If so, US Wind will submit to BOEM revised design parameters and/or construction methods demonstrating the feasibility of avoiding the find.
3. *Identify the source of the find, delineate any associated elements of a potential submerged historic property, and assess potential damage or disturbance to the resource.*
 - a. May be accomplished by ROV inspections or archaeological diver observations and inspections.

- b. May result in BOEM's determination that no further conservation/preservation actions are warranted.

4. *NRHP-eligibility evaluation*

- a. Where feasible, would be supported by archaeological diving investigations.
- b. May require intrusive excavations.
- c. May require supplemental archival research.
- d. Will require consultations among BOEM, BSEE, US Wind, DHCA, and THPOs.

5. *Mitigation Plan development*

- a. Will draw upon data collected from all previous, relevant investigations and comments shared by the consulting parties to resolve adverse effects to a submerged historic property.
- b. Will prioritize feasible and practicable avoidance and minimization measures.
- c. May include on-site monitoring of seabed disturbing activities to avoid further damage to a submerged historic property.

7.0 NOTIFICATION LIST

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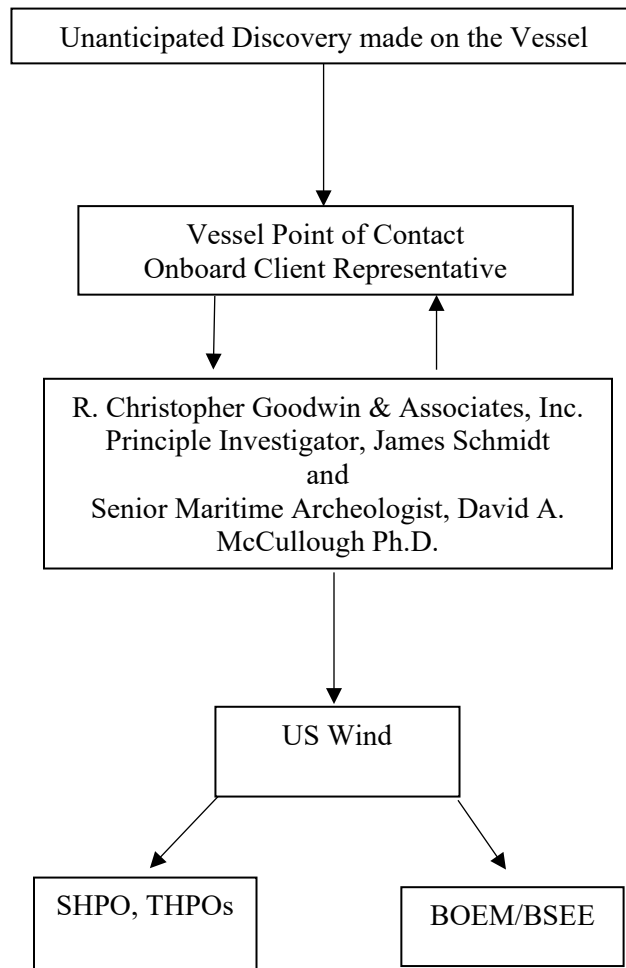
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8.0 COMMUNICATIONS AND NOTIFICATIONS PLAN FOR UNANTICIPATED DISCOVERIES



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