CULTURAL HERITAGE PARTNERS
LAW+POLICY+STRATEGY

MEMORANDUM

TO: Sarah Stokely, Bureau of Ocean Energy Management (BOEM)

FROM: Town of New Shoreham (Block Island), Southeast Lighthouse Foundation, City of Newport, Newport Restoration Foundation, Preservation Society of Newport County, and Salve Regina University, by counsel, Cultural Heritage Partners, PLLC: Marion Werkheiser, William Cook, and Greg Werkheiser, Attorneys at Law

CC: The Honorable Deb Haaland, Secretary of the Interior; Amanda Lefton, Director, BOEM; Robert Anderson, Solicitor, Department of the Interior; Jordan Tannenbaum, Chris Daniel, Chris Koeppel, Reid Nelson, and Jamie Loichinger, Advisory Council on Historic Preservation (ACHP); Kathy Schlegel, National Park Service; Christine Harada, Federal Permitting Improvement Steering Council; Jeffrey Emidy, Rhode Island State Historic Preservation Officer; Brona Simon, Massachusetts State Historic Preservation Officer; Daniel McKay, New York State Historic Preservation Officer; Chairman Rodney Butler, Mashantucket Pequot Tribal Nation; Councilman and Tribal Historic Preservation Officer David Weeden, Mashpee Wampanoag Tribe; Chairwoman Cheryl Andrews-Maltais and Tribal Historic Preservation Officer Bettina Washington, Wampanoag Tribe of Gay Head (Aquinnah); John Brown, Narragansett Tribe; Erin Paden, Delaware Nation; Samantha Skenandore, Counsel for the Chappaquiddick Tribe; Lance Gumbs, Tribal Ambassador for the Shinnecock Nation and Vice President of the National Congress of American Indians for the Northeast Region; Kitcki Carroll, Executive Director of the United South and Eastern Tribes; Pam Gasner, Block Island Historical Society; Janice Schneider and Stacey VanBelleghem, Counsel for Ørsted

RE: Inappropriateness of South Fork Historic Preservation Treatment Plans / Repeated Failures in Consultation

DATE: November 14, 2022

INTRODUCTION

Legal Counsel for the historic American communities that submit these comments have 75 cumulative years of experience working with the National Historic Preservation Act (NHPA) Section 106 and National Environmental Policy Act (NEPA) review processes. We've worked with hundreds of local governments, community preservation groups, and Tribal Nations, and other consulting parties. We have taught these laws at some of the nation's foremost law schools and universities, and we have delivered countless trainings to project developers, local

preservation commissions, Tribal Nations, and state and federal agency officials on how to conduct and participate in meaningful consultation. We have lobbied Congress successfully for increased funding for federal agencies, state historic preservation officers, and tribal historic preservation officers to conduct effective consultation, and we have provided regulatory comments on dozens of federal regulations, policies, and guidance documents with the goal of improving Section 106 and NEPA. We have also litigated when parties seek to water down or pay lip service to these vital federal laws. **We believe in the Section 106 review process and have dedicated our careers to helping it work as Congress intended: to balance preservation values and development goals. And yet we have NEVER seen a more dysfunctional process than the one BOEM has imposed on historic communities and Tribal Nations for the launch of the offshore wind industry in the United States.**

At every juncture, BOEM has failed to listen to or consider the concerns of historic communities and Tribal Nations and has repeatedly substituted the judgment of industry consultants who have never even visited the affected communities for the judgment of the actual experts on the historic properties that these industrial-scale wind farm development will adversely affect. Instead of engaging in the give and take that is the hallmark of good faith consultation, BOEM has ignored community concerns and is imposing its will on local governments in an authoritarian manner that is the antithesis of what Congress intended.

We are therefore disappointed, but not surprised, to learn that BOEM sees no value in the Advisory Council on Historic Preservation (ACHP) recommendation that another meeting to discuss our clients' concerns regarding the Historic Preservation Treatment Plans (HPTPs) would be productive. We appreciate that at least BOEM is no longer pretending to care about our clients' concerns and is finally admitting that the agency just doesn't want to hear what impacted communities have to say.

Truly, this permitting review has become a theater of the absurd. As it now seems inevitable that this whole fiasco will be examined closely by courts, the public, the media, and other stakeholders who will just be coming up to speed, we will keep with the theater theme here for just a few pages—to illustrate the sad comedy of our present situation:

> The Scene
>
> *Imagine…Block Island and Newport operate a historic movie house. This is not just any theater; it is among the world's most famous and popular. It is special because it is one of the only places in the world that shows the feature, "Pristine Atlantic Ocean Viewshed" (the Movie). The stars of the picture are sunrise and sunset, and hundreds of historic buildings and beachheads comprise the theater seats.*
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> *Humans have been coming to the theater to watch the Movie for 15,000 years. Tens of millions of people have traveled from around the globe to enjoy the film. Generations of families have built their homes and lived their entire lives in the communities around the theater. The community's robust economy is dominated by the theater. The great majority of the town's workers are employed at jobs related to the production; they collect the tickets, make the popcorn, escort visitors of all ages to their seats, clean the aisles, repair*

the cushions and the curtains, and otherwise host a five-star world-performance every day.

The entire nation is proud of the theater, so much so that it has designated the theater as among its most cherished and significant places. Congress has passed laws to ensure that the world may continue to enjoy the Movie for years to come. Federal agencies are charged with looking out for threats to the character of theater, in balance with development. It is true: because of climate change the theater parking lot floods regularly and the HVAC system is working extra hard to keep visitors cool. But the community prides itself on its willingness to be part of solutions that balance future needs with the history and culture that define the Town's character and enhance the human experience.

The Script

Ørsted: Hello. We plan to invite 12 people to stand in front of your movie screen, facing the audience. They will wave their arms. Continuously. Every minute your visitors are watching the Movie. For the next 30 years. Also, they are 3 times taller than the Statue of Liberty. They will wear jackets proudly bearing the name South Fork.

Town: Uh…that sounds like it might be harmful. Our whole economy is based on the Movie, and most of our residents rely on the Movie to support their families. Even as little as a 10% reduction in theater ticket sales will cost our community $834 million over the next 30 years. Can we talk about this?

Ørsted: No. Without our very tall people waving their arms for decades in this exact theater blocking your visitors' views of the Movie, we will ALL DIE from rising seas. You should be thanking us. We are heroes. You're welcome.

Town: So, sacrificing our community identity and economy is the *only* way to save the earth?

Ørsted: Oh, yes! Well, the only way that also earns the most billions of dollars for the government of Denmark and our Danish company, which is bigger than the entire economy of Rhode Island.

Town: Who are those additional 212 people wearing Ørsted jackets standing by the Entrance sign?

Ørsted: Who? Oh, pay them no mind. You see, they are wearing Orsted jackets bearing the names "Revolution" and "Sunrise," which are totally different words than "South Fork," So, clearly, they are unrelated to this present non-discussion we are having with you – move along.

Town: But we can *see* them waiting right there. Aren't they, too, going to stand at the front of our theater and wave their arms for thirty years? Aren't they taller than the South Fork 12? In fact, aren't they going to completely surround the South Fork 12, and so

shouldn't we talk about how soon there will hundreds of arm-wavers disrupting the Movie?

Ørsted: No, thank you. Also, moviegoers will *love* our hundreds of 70-story high arm wavers standing in front of the screen blocking the Movie. We definitely are not threatening you with the loss of hundreds of millions in ticket sales, and jobs, and property values, and the loss of your identity as the hosts of the Movie. In fact, even *more* people will come to see the Movie featuring these cool new interruptions – trust us!

Town: BOEM? NPS? Aren't you supposed to be helping Americans achieve balance between development and heritage preservation, not forcing us into a false choice between climate change and heritage preservation?

BOEM/NPS: Uh…what Ørsted says.

Town: ACHP?

ACHP: Ah, well, there will definitely be significant harms, but let's just go ahead and agree to agree that at some point in the future we'll talk about it and almost certainly agree on the appropriate steps to mitigate those harms, whatever they are, you know, down the road.

Town: That doesn't sound like the way meaningful consultation is supposed to work.

ACHP: Well, it's not, but the process will get better over time, we are quite sure. Pass the popcorn.

BOEM: OK, guess what? We've checked with Ørsted and their paid consultants, who have never actually been to your Town, and they insist that what you simple townsfolk need as balanced mitigation for us risking your Town's character and economy is…a brochure that talks about how your parking lot is floods. Those generous consultants will even allow Ørsted to pay them to design your brochure.

Town: Are you kidding us? For thirty years of adverse impacts on our primary economy and character, you are telling us we need a brochure? We know mitigation isn't always exactly proportional, but doesn't meaningful consultation require at least some semblance of balance between the harms you are doing and the mitigation you provide?

BOEM: Yes! Here's the balance: we are going to celebrate with Ørsted as they post earnings that are up more than 300% just last quarter, and as balance, you get a cool brochure!

Ørsted: Oh, wait, that's not all! We'll even throw in a few bucks to develop an exhibit inside the theater by the popcorn machine about how special the Movie used to be and how your whole character and economy have evolved around it to be the pride of the nation.

Town: We already have a brochure. And we already have such an exhibit. We've had them for years, actually. They are right here, look!

BOEM/ Ørsted: We don't believe you.

Town: Wait, what? OK, then why don't you come visit our community for the first time and see for yourselves how absurdly patronizing, insulting, and inadequate these proposals are? Ørsted, the wind company you purchased actually helped to pay for the very exhibit you forgot exists. Community experts who have lived near and worked at the theater for their entire lives have prepared a list of the *actual* mitigation items that would be helpful to us over the next decades.

BOEM/Ørsted: That's nice. If you don't mind, we'd rather pretend that you have not told us that you already have a brochure and exhibit. Also, even if you show us ten more times, we are just going to keep insisting we cannot see them, OK? Also, we are never going to explain to you how we determined that a brochure and exhibit you already have are appropriate mitigation for thirty years of adverse impacts on one of America's most treasured historic places and viewsheds. It's just so obvious we needn't bother.

Town: We get you are under political pressure, but this seems to be setting a very bad precedent, which you will just point to every time you want to put more waving people in our theater, and in the theaters in our sister historic communities, and in the traditional places of Tribal Nations. ACHP said to just trust that this process would get better and lead to real results, whenever we try to talk to you you put your fingers in your ears and exclaim "We can't hear you while we are saving the world!"

BOEM/Ørsted: You will accept the brochure. And, also, an exhibit next to the popcorn machine: the one about how awesome you once were.

ACHP: Sorry, we just woke up—catching a nap back row seats. What's going on? Did we miss anything?

End Scene

# # #

INAPPROPRIATE MITIGATION: DETAILED, AGAIN

Ms. Stokely's email dated November 4, 2022 continues the pattern of gaslighting the South Fork consulting parties by insisting they have failed to do their part in providing information that demonstrates the inappropriateness of the mitigation being forced on them by BOEM and Ørsted.

Before we provide these details, yet again, consider the following table containing a non-exhaustive list of more than two dozen times in which the South Fork consulting parties have explicitly advised BOEM and Ørsted that the mitigation they are forcing on the parties fails in one or more of 7 ways:

1. lacks explanation of any methodology by which the proposed mitigation was determined to be appropriate to resolve adverse effects;
2. is duplicative of work already completed by the consulting parties;
3. is irrelevant to the anticipated harms;
4. is so vastly unbalanced when weighed against the anticipated harms as to be clear evidence of the meaningless of the consultation to date;
5. is not feasible in light of BOEM's failure to even speak to the property-owners on whom they are foisting projects to seek their input and consent as required by law;
6. is otherwise unwanted by the community; and
7. is inconsistent with the communities' real and relevant mitigation needs, which needs have been conveyed in great detail and yet have been met with silence.

2.8.2021	Submitted formal comments regarding South Fork Cumulative Historic Resources Visual Effects Analysis (CHRVEA)	Noted CHRVEA's failure to include numerous adversely affected historic properties and the absence of explanation of methodology.
2.9.2021	BOEM Public Meeting on South Fork Wind	Attended to ensure same points made.
2.11.2021	Public Hearing on South Fork Wind on Draft Environmental Impact Statement (DEIS)	Attended to ensure same points made.
2.16.2021	BOEM Public Meeting on South Fork Wind	Attended to ensure same points made.
2.22.2021	Submitted comments regarding South Fork DEIS	Identified importance of the community identifying its own mitigation needs and the appropriateness of a genuine community benefit agreement and offshore wind mitigation funds to allow flexibility in offsetting South Fork's adverse effects over the lifetime of the project,

		instead of forcing the communities into projects up front when the harms are not fully revealed.
3.11.2021	Section 106 Consulting Party Meeting	Requested additional and more accurate visual simulations so that consulting parties and public could understand adverse effects, and requested an update on (the lack of) efforts to consider impacts of National Historic Landmarks as required by the Section 110(f) process.
3.31.2021	Submitted Comments on Updated Technical Reports	Again, pointed out the inadequacy of historic property identification (numerous adversely affected properties still absent) and unmet need to set forth a logical approach to avoid, minimize, and mitigate adverse effects.
6.1.2021	Submitted Comments to BOEM on Finding of Adverse Effect	Noted inadequacy of BOEM's Finding of Adverse Effect and premature Memorandum of Agreement (MOA) templates because of BOEM's failure to consider all adversely affected historic properties; suggested again that BOEM consider community-defined mitigation funds as the appropriate way to resolve adverse effects instead of duplicative and unneeded projects proposed by consultants who have never been to the affected communities (which ideas read like a continued-employment-plan for the consultants).
6.29.2021	Section 106 Consulting Party Meeting	Attended to ensure same points made.
8.31.2021	Section 106 Consulting Party Meeting	Attended to ensure same points made.
9.20.2021	Submitted Objection to Final Environmental Impact Statement (FEIS)	Noted continued inadequacy of visualizations, which preclude meaningful consultation and the utter absence of a meaningful cumulative effects analysis.
9.20.2021	Submitted Section 106 Comments regarding Finding of Effect and Draft MOA	Requested mitigation fund to meaningfully offset adverse effects to historic properties.
9.22.2021	South Fork NHL Consultation	Attended to ensure same points made.
11.8.2021	Submitted comments regarding South Fork MOA	Again, pointed out meaningless nature of Ørsted - proposed mitigation and lack of nexus between proposed mitigation and adverse effects; likewise requested mitigation fund as an appropriate mechanism to offset

		adverse effects to historic properties, including rationale for doing so, in contrast to absence of rationale for scheme proposed by BOEM.
1.7.2022	Submitted comments regarding South Fork MOA	Provided detailed redlines, including BOEM's failure to include the City of Newport as an impacted party, as well as irrelevant, duplicative, and inadequate proposed mitigation proposals, which BOEM submitted without input from consulting parties. (BOEM simply ignored the parties' redlines—never responded.)
11.16.2021	Written appeal to the ACHP, copying consulting parties, asking the agency to decline to sign the illegal MOA	Asked the ACHP to hold BOEM accountable and decline to sign off on the MOA because: • BOEM has not adequately identified or assessed adverse effects on historic properties, and yet is jumping to mitigation; • BOEM has not complied with Section 110(f)'s requirement to use all possible planning to minimize harm to NHLs; • BOEM has failed to adequately consider cumulative effects on historic resources, especially with respect to Newport, which BOEM has unfairly excluded; • BOEM is allowing Ørsted to illegally segment its three projects (South Fork, Revolution, and Sunrise), giving South Fork a pass because of its relatively small size (12 turbines), even though Ørsted plans to wrap an additional 200+ turbines around South Fork in its next two projects; • BOEM's proposed mitigation is ridiculously inadequate for the projected 25+ years of impacts the projects will have on cultural resources; • BOEM's (really, Ørsted's) proposed mitigation does not reflect community input; in fact, the consulting parties have expressed that they do not need or want what they are being told they will get; • BOEM took 48 hours to consider our clients' lengthy feedback on the latest draft and is now giving parties eight calendar days to sign; indeed, • BOEM's staff have openly admitted "[they] don't have the time to comply with Section 106 and 110(f)." ACHP's reply, in effect, "Yeah, this is concerning but it will get better later." [It hasn't, of course, it's gotten worse].
1.25.2022	South Fork Wind 1st HPTP Consultation Meeting	Pointed out inadequacy of BOEM/Ørsted proposed mitigation and improper use of unresolved HPTPs; noted failure of BOEM and developer to visit Block Island historic properties and their continued refusal to

		communicate directly with Block Island parties concerning inadequacy of proposed mitigation.
2.24.2022	Submitted comments regarding Southeast Lighthouse HPTP	Pointed out inadequacy of existing mitigation and improper use of unresolved HPTPs; noted failure of BOEM and developer to visit Block Island historic properties and their continued refusal to communicate directly with Block Island parties concerning inadequacy of proposed mitigation.
3.18.2022	South Fork Wind 2nd HPTP Consultation Meeting	Explained, again and with even greater detail, the communities' request for appropriate mitigation fund designed to offset adverse effects of South Fork Wind to historic properties, as well as inadequacy of proposed mitigation that is either meaningless, not requested, already completed, or not needed. Neither BOEM nor South Fork provided a response. The parties again repeatedly asked BOEM and South Fork for any justification for why the mitigation measures they propose are appropriate for the level of adverse effects; both BOEM and South Fork declined to answer.
5.17.2022	Submitted comments regarding Southeast Lighthouse Final HPTP Comments	Pointed out South Fork's lack of communication and unwillingness to discuss alternatives with SELF, as well as refusal to consult on Town's proposed mitigation fund proposal, as well as inadequacy of proposed mitigation that is either meaningless, not requested, already completed, or not needed.
5.24.2022	Submitted comments regarding Town of New Shoreham Final HPTPs	Pointed out South Fork's lack of communication and unwillingness to discuss alternatives with the Town, as well as refusal to consult on Town's proposed mitigation fund proposal, as well as inadequacy of proposed mitigation that is either meaningless, not requested, already completed, or not needed.
6.10.2022	BOEM Meeting to Discuss Disagreements with HPTPs	Pointed out South Fork's lack of communication, as well as refusal to consult directly on Town of New Shoreham's and Southeast Lighthouse Foundation's mitigation fund proposals, as well as inadequacy of proposed mitigation measures that are either meaningless, not requested, already completed, or not needed.
7.11.2022	South Fork HPTPs Disagreement Discussion with ACHP	Pointed out to ACHP inappropriate use of unresolved HPTPs to conclude the Section 106 process, as well as BOEM's refusal to consider mitigation fund proposals designed to offset adverse effects to historic properties, as well as inadequacy of proposed mitigation measures that are either meaningless, not requested, already completed, or not needed.
7.18.2022	Request to BOEM for Supplemental	Pointed out how BOEM has failed to consider new information for Revolution Wind and Sunrise Wind for

	Environmental Impact Statement (SEIS)	purposes of South Fork's EIS, even though such information is needed for South Fork's cumulative effects analysis.
8.3.2022	Met with Amanda Lefton, Director, BOEM, and BOEM's Senior Leadership	Pointed out pattern of repeated failures of BOEM with NEPA and Section 106 process, including failure to consider cumulative effects, and refusal to consider appropriate mitigation including mitigation funds designed to offset adverse effects to historic properties – and instead insisting on irrelevant, unneeded, duplicative, and wholly inadequate projects.

Here we explain, again, why the random assortment of Ørsted-consultant contrived mitigation proposals have no value to the affected communities.

Southeast Lighthouse

Section 4.1: Coastal resilience plan. BOEM and Ørsted insist that SELF needs a coastal resilience plan, repeatedly ignoring that SELF already has a plan, having thoroughly identified current and foreseeable hazards and extensively documented and photographed existing deteriorating conditions. As the attached photographs make clear, the Lighthouse sits on a fragile, eroding bluff. SELF plainly already understands the need to move the Lighthouse (again) and the need to secure substantial funding to do so. Indeed, SELF has worked for many years in concert with preservationists across Rhode Island and the region to review scientific data regarding coastal erosion (see, for example, the Keeping History Above Water symposia). SELF has obtained estimates for the cost of the move of the Lighthouse ($7 million) and provided this estimate to BOEM in our memo of March 14, 2022. SELF does not need to hire consultants to duplicate the work SELF leadership and staff have already and continue to perform. What would be meaningful is funding to actually support the next move of the Lighthouse, as SELF has made clear. *See attached photographs of cliff erosion.*

Sec. 4.2: NHL Interpretation and Education: Exhibits on cliff erosion. BOEM and Ørsted absurdly and repeatedly insist that SELF would find great value in an exhibit on cliff erosion. SELF already has such an exhibit, obvious to anyone who actually visited the Lighthouse. SELF opened a public museum of Block Island's maritime history, housed in newly restored lighthouse keepers' quarters, in the summer of 2021. This museum already includes exhibits on cliff erosion and the 1993 move of the Lighthouse. The guided tour of the Lighthouse, too, focuses in depth on the threat of cliff erosion. In addition, the museum includes exhibits on the offshore wind industry, previously funded by Deepwater Wind (purchased by Ørsted) as part of the Block Island Wind Farm mitigation settlement. SELF does *not* need even more exhibits on cliff erosion, which in any event is self-evident to anyone visiting the Southeast Lighthouse. *See attached photographs of exhibits.*

Section 4.3: Cyclical maintenance plan. BOEM and Ørsted patronizingly insist that SELF needs cyclical maintenance plan. It already has one. SELF is a responsible steward of a National Historic Landmark that fulfills its fiduciary duties to the organization's mission, the preservation of the Lighthouse. As SELF's publicly available website states, "Since its relocation, the building's exterior has undergone extensive restoration efforts to replace the roof, repoint brickwork, restore

windows and all cast iron elements of the light tower. Throughout those years of restoration, the Southeast Lighthouse received thousands of visitors who were able to enter the Light Tower, with optional tours to climb the stairs and view the first-order Fresnel lens. Current restoration efforts are focused on the building's interior to create exhibition spaces. A final phase of restoration will adapt a portion of interior space as a residential rental unit to provide income to support future maintenance needs." As a responsible steward of the Lighthouse, SELF has already completed the scope of work BOEM proposes at Section 4.3.2. in the HPTP. SELF has: documented existing conditions, including photographs and plans/drawings; reviewed existing building documentation, including existing plans, specifications, as-built documentation, and archival documents; identified the rehabilitation and/or restoration needs of the NHL; identified regular maintenance needs and the development of applicable plans and specifications. In addition, the Lighthouse has developed regular maintenance and repair schedules and associated costs. The on-site steward of the Lighthouse inspects it continuously. To suggest that SELF does not have this information and needs a wind farm developer to provide it is insulting to a sophisticated and proven steward of this important property, and *prima facie* evidence that no one at BOEM is listening.

Old Harbor Historic District

Sec. 4.1: National Register of Historic Places Nomination Form Amendment. BOEM and Orsted propose to amend the current listing of the Old Harbor Historic District in the National Register of Historic Places. No one asked for this. BOEM and Ørsted have not presented any evidence that amending the district nomination will lead to tangible benefits for the community, such as increased access to historic tax credits. The only tangible benefits will be to the consultants producing useless work. Further, this measure is not feasible because, last we heard, BOEM has still never notified or consulted the owners of the historic properties in the Old Harbor Historic District in the development of the Memorandum of Agreement or the HPTPs. Federal law requires consent of more than 50% of historic property owners for a historic district boundary alteration. 36 CFR 60-14. South Fork has not obtained this consent; indeed, it hasn't even notified the owners that it intends to amend the district's listing.

Sec. 4.2: Coastal Hazard and Resiliency Plan. BOEM and Ørsted say that the Town of New Shoreham needs a coastal hazard and resiliency plan. The Town already has a plan – what they need is the money to implement it. The Town of New Shoreham already determined in its 2016 Comprehensive Plan that "increase[ed] resiliency of the island to climate change and sea level rise impacts by implementing appropriate adaptation measures" is needed. Indeed, the Town has already identified the specific measures that will help to protect Block Island. We provided this information to South Fork Wind on March 14, 2002, including estimates for the cost for shoreline restoration. The time for "planning" has passed, and the community has identified the need for implementation. This duplicative mitigation measure is not wanted or needed.

Spring House Hotel & Spring House Cottage

Sec. 4.1: Develop an Interpretative Report. BOEM and Ørsted propose as mitigation to document the influence of seasonal tourism on Block Island's economy, built environment, and culture. This information is already known and well-documented, including in existing National Register nominations as well as information documented in determinations of eligibility for Block Island

Wind Farm. Both the Rhode Island SHPO and Ørsted already possess this information. ***NOTE: It is deeply troubling that BOEM and Ørsted are proposing such a study as mitigation, when this documentation should have been completed as part of the FEIS. This HPTP is prima facie evidence that BOEM never considered this information as it was required to do under NEPA.***

Sec. 4.2: Develop a Website, Social Media Presence, and Interpretive Exhibits. BOEM and Ørsted hilariously propose to produce public educational materials promoting understanding of the resort industry on Block Island. Block Island already enjoys numerous brochures, public education materials, websites and social media accounts documenting its historic and vitally important resort industry and related heritage tourism, see, e.g.,
https://www.blockislandinfo.com/

- https://springhouseblockisland.com/
- https://www.newshorehamri.gov/
- https://www.blockislandhistorical.org/block-island-timeline/
  https://www.tripadvisor.com/Hotels-g54061-zff8-Block_Island_Washington_County_Rhode_Island-Hotels.html
- https://www.lifeisoutside.com/us/block-island-resorts/
  https://newengland.com/today/travel/rhode-island/block-island/favorite-block-island-hotels-inns/

See also:

- virtual exhibits at https://vimeo.com/488564569
- oral history exhibits at https://www.blockislandhistorical.org/oral-history/
- and Facebook groups on aspects of Block Island's resort industry at
  https://www.facebook.com/blockislandtourism (65,000 followers)
  https://www.facebook.com/groups/blockisland (27,500 followers)
  https://www.facebook.com/groups/431925893825253/ (4,000 followers)
  https://www.facebook.com/groups/137553829753376 (2,700 followers).

This mitigation measure is not needed because such materials already exist and is not feasible because BOEM never notified the property owners or consulted with them as Section 106 requires because the property owners have a demonstrated interest in the undertaking and will have responsibilities under the Memorandum of Agreement and the HPTP.

Spring Street Historic District

Sec. 4.1: National Register of Historic Places Nomination Form. BOEM insists it is meaningful to prepare a nomination for the Spring Street Historic District and the contributing Captain Mark L. Potter House. But the district was already determined eligible for listing in the National Register during the Block Island Wind Farm permitting review. Information about this district is on file with the Rhode Island SHPO and Ørsted. This mitigation measure is also not feasible because BOEM never notified the owners of the properties in the Spring Street Historic District of the opportunity to consult and never consulted with them about the Section 106 process. The property owners must be consulted because they have demonstrated interest in the undertaking and will

have responsibilities under the MOA and the HPTP. BOEM needs the consent of more than 50% of the property owners in the proposed district to list the district on the National Register.

Vaill Cottage

Sec. 4.1 National Register of Historic Places Nomination Form. BOEM insists it is somehow meaningful to prepare a nomination for Vaill Cottage for the National Register. Vaill Cottage was previously determined eligible for listing on the National Register during the permitting process for the Block Island Wind Farm. Information about this district is on file with the Rhode Island SHPO and Ørsted. This mitigation measure is not feasible because BOEM never notified the owners of the Vaill Cottage of the opportunity to consult and never consulted with them about the Section 106 process. The property owners must be consulted because they have demonstrated interest in the undertaking and will have responsibilities under the MOA and the HPTP. Even if BOEM proceeds with the work of preparing a nomination, it may be worthless because BOEM has not received the consent of the owners as required by the NHPA for listing in the National Register. BOEM has no idea if the owners would support such a listing, and their support is crucial to the feasibility of the entire endeavor.

BROADER CONTEXT

In these comments we describe once again for the record why BOEM, the ACHP, and NPS have been derelict in their duties to protect our nation's historic properties and have failed to follow both the spirit and the letter of Section 106 and NEPA. We hope these comments will not only help the federal agencies understand where they have gone wrong, but also put other stakeholders in communities across the country where BOEM will soon be permitting projects on notice that they must be prepared for federal agencies to fail to protect their resources in the name of rubber-stamping offshore wind projects for political expediency. We also hope these comments will put the developers themselves on notice, including shareholders such as the Danish government, and all creditors and investors in Ørsted, that the US permitting process has shown itself not sufficient to protect the human rights of communities to their cultural heritage. We urge these investors, creditors, and shareholders to rethink their support of these projects that will have severe impacts to communities' international human rights to their cultural heritage.

If BOEM proceeds to accept the HPTPs as written, it will be approving mitigation that is not the product of meaningful consultation. Specifically, BOEM has been made aware on multiple occasions that its proposed mitigation plans are not wanted by the community, are duplicative of already completed work, and in many cases are not feasible. BOEM's decisions make a mockery of the Section 106 consultation process, and they have destroyed BOEM's credibility with local governments, Tribal Nations, preservation advocacy organizations, and historic property owners affected by South Fork and other proposed wind developments adjacent to and cumulative to South Fork. BOEM—and the offshore wind industry-- needs cooperation from these consulting parties to reach the Biden Administration's ambitious offshore wind goals. In the spirit of assisting the agency in repairing relationships with our clients and helping the agency to learn how to avoid offending other communities and Tribal Nations who are up next in the permitting process, we have provide herein another explanation for why BOEM's HPTPs propose mitigation measures that are not wanted by the community, duplicative of already completed work, and in many cases

are not feasible. We hope that this time you will seriously take our comments into account and direct South Fork to propose "replacement mitigation" as described in the draft HPTPs (*see, e.g.,* Section 4.4 of the HPTP for the Southeast Lighthouse.)

BOEM has failed to conduct a meaningful consultation process by hiding information from the public.

BOEM has refused to share its Historic Resources Visual Effects analysis with the public, deciding in January 2021 to insist that the document be kept confidential and only allowed to circulate among representatives of consulting parties. Restricting public access to the document means denying the public a full understanding of how terribly South Fork will pollute Block Island's viewshed. BOEM is leaving citizens in the dark about how these industrial wind developments will adversely affect them. BOEM inappropriately invoked Section 304 of the NHPA to classify its effects analysis. Section 304 protects certain sensitive information about historic properties from disclosure to the public when such disclosure could result in a significant invasion of privacy, damage to the historic property, or impede the use of a traditional religious site by practitioners. 54 U.S.C. § 307103; 10 C.F.R. § 800.11(c).

Here, BOEM has violated Section 304 by applying it in a blanket fashion to hide information from the public that does not meet these criteria. Because it is so important to share information about the impacts of a potential development on a community, Section 304 calls for a federal agency to consult with NPS and the ACHP before applying Section 304. Yet responses to our Freedom of Information Act Requests have revealed no evidence that BOEM complied with these procedural requirements in deciding to classify documents associated with South Fork Wind, its adverse effects, and how BOEM intends to resolve them.

For these reasons, we request that BOEM immediately make all technical reports public and reopen reviews pursuant to NEPA as well as Section 106 and Section 110(f) of the NHPA. Congress passed these statutes to help ensure that the public could understand the effects of government undertakings. Section 304 of the NHPA allows sensitive information to be redacted, but it does not allow blanket and indiscriminate non-disclosure. Despite our requests, BOEM has not provided any legitimate justification for keeping the reports confidential.

As counsel, we have reviewed the documents BOEM documents is hiding from the public. Contrary to BOEM's assertions, they do not contain trade secrets or privileged confidential commercial or financial information. Nor do they appear to include culturally sensitive information, which if included, could be redacted. Therefore, it is not appropriate for BOEM to keep the public from reviewing the Historic Resources Visual Effects Analysis, *inter alia*, by erroneously exempting them from disclosure. To correct this error, which has interfered with our ability to share BOEM's documents with local government constituents and our clients' memberships, BOEM must comply with Section 304, reissue the documents, and restart the review process for all the documents that BOEM inappropriately classified.

BOEM is imposing mitigation proposals on the community that are not needed, are not wanted, and are not feasible while summarily dismissing the community's proposed mitigation measures.

At every juncture, BOEM has failed to listen to or consider our clients' concerns and has substituted its judgment for the experts on the historic properties on Block Island. Instead of engaging in good faith consultation, which is defined as "the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process,"[1] BOEM has ignored our clients' comments and is imposing its will on the community in an authoritarian manner that is the opposite of what Congress intended. Instead of engaging productively with the community, BOEM has relied on mitigation proposals advanced by consultants who have never even visited Block Island or seen its resources up close.

BOEM, which still cannot even be bothered to use the correct name for the Southeast Lighthouse despite being corrected on multiple previous occasions, has substituted its judgment for that of the Southeast Lighthouse Foundation (SELF), which owns and manages this National Historic Landmark. Community members formed SELF in 1986 to steward the Southeast Lighthouse, and Dr. Gerry Abbott, the current President of SELF, was also a member of SELF's founding board. Dr. Abbott and his colleagues have more than thirty-six years of experience stewarding the Lighthouse, including successfully fundraising for and executing a complex project to move the Lighthouse back from Mohegan Bluff in 1993 to protect the Lighthouse from erosion. The 10-year campaign to move the Lighthouse required three Acts of Congress, $2,000,000, and the cooperation of local, State and National agencies.[2] A twenty-eight-minute video entitled *Beacon on the Bluff* chronicles the history of the Lighthouse, the historic erosion of the cliffs, the determined commitment of the community to responsibly steward the Lighthouse, and the remarkable technological achievement of the 1993 move. This video is available to the general public on the Lighthouse's website.[3]

BOEM's HPTP orders SELF to hire consultants to prepare new exhibits on cliff erosion, to hire consultants to develop a plan for coastal resilience, and to hire consultants to develop cyclical maintenance plan. Indeed, the HPTP says that if SELF refuses to hire these consultants to complete these projects, BOEM will insist on hiring them itself. Yet SELF has told BOEM repeatedly that it does not want or need any of these products (see above).

Similarly, the Town of New Shoreham does not want or need the mitigation proposed by BOEM, and indeed most of that mitigation is not feasible because BOEM failed to consult with property owners as the law requires. If BOEM continues down the road of imposing projects on unwitting property owners, it will have to re-open the Memorandum of Agreement to consultation and amendment.

Rather than the projects BOEM in its own judgment intends to impose on SELF and the Town of New Shoreham, **SELF and the Town of New Shoreham have suggested projects during the consultation process that would actually have value for the preservation of historic properties in the long term, such as those in our March 14, 2022 comments:**

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[1] 36 CFR Section § 800.16 (f).
[2] See https://southeastlighthouse.org/history/, last accessed November 13, 2022.
[3] See https://southeastlighthouse.org/history/, last accessed November 13, 2022.

- Funding for shoreline restoration, to counter the effects of coastal erosion;
- Funding for a sustained and sophisticated marketing campaign to counter reduced visitation caused by Ørsted's polluting of the historic viewshed;
- Funding to establish affordable housing for workers to ensure that preservation workers can continue to afford to live on Block Island when traditional sources of funding from tourism and property taxes are undermined by Ørsted's decade's long occupation of the historic viewshed;
- Funding to establish a historic preservation grant program for Block Island's historic property owners, including SELF, to address immediate and future needs over the next 30 years;
- Funding to endow SELF's operating costs for the next 30 years, considering expected harm to the lighthouse's tourism revenues; and
- Funding to relocate the lighthouse to protect it from shoreline erosion.

SELF and the Town of New Shoreham have also proposed as early as February 22, 2021 that BOEM establish **a historic preservation mitigation fund** to support the types of projects described above and also provide the community with flexibility to adjust mitigation projects to respond to project impacts in real time. Such a mitigation fund would have specific criteria for projects that are eligible for funding, and grant proposals would describe how the proposed project mitigates the impacts of the wind development. In other contexts, such mitigation funds have had advisory boards that include consulting parties, representatives of the developer, and representatives from the agency.[4]

While mitigation funds are frequently used in cases where adverse visual effects cannot be minimized, BOEM has failed to substantively engage with this proposal, even after the ACHP stated that it supports the concept of mitigation funds that are tied to resolving the adverse effects of projects on historic properties. Instead, BOEM pays lip service to this suggestion by perverting the concept of a mitigation fund and suggesting in the HPTPs that one account could be established to hold the funds allocated by BOEM for the specific projects enumerated in the MOA. This "mitigation fund" in name only would have no flexibility to respond to community needs and would just be used to reimburse community members for doing the things that BOEM orders them to do in the HPTPs. In essence, BOEM is calling an escrow account a "mitigation fund" in an attempt to look like it listened to consulting parties' suggestions—but the outcome clearly demonstrates that no listening was actually taking place. To date, we have received no justification or response from BOEM as to why it has rejected our clients' suggestion that a truly community-led mitigation fund would be appropriate in this case, other than that the Vineyard Wind mitigation fund that we used as an example was not negotiated within the Section 106 process.

We remind BOEM that other mitigation funds have been negotiated through the Section 106 process and approved by agencies and the ACHP alike. An example we have already shared with BOEM and highlight here again for its similarities to the scale of adverse visual effects of South Fork, is the Surry Skiffes Creek Whealton project in Virginia, where Dominion proposed to build a new transmission line across the James River and to visually adversely affect a significant

[4] See document provided by ACHP to Counsel entitled, "Examples of Mitigation/Preservation Funds in Section 106 Agreements."

cultural landscape and one National Historic Landmark. Block Island is also undeniably a significant cultural landscape that will experience adverse visual effects, and the Southeast Lighthouse is a National Historic Landmark that will experience adverse visual effects.

In the Dominion MOA,[5] Dominion established a $27,000,000 mitigation fund to be held by the Conservation Fund for the resolution of adverse effects; a $25,000,000 mitigation fund to be managed by the Virginia Department of Conservation and Recreation for the resolution of adverse effects; a $4,205,000 fund to be managed by the Virginia Department of Game and Inland Fisheries for the resolution of adverse effects; a $15,595,000 fund to be managed by the Virginia Environmental Endowment for resolution of adverse effects; and a $12,500,000 fund to be managed by the Virginia Land Conservation Foundation for the resolution of adverse effects. These funds were to be obligated within 10 years of the execution of the MOA, although "Any mitigation compensation funds that are not obligated or committed to a project within twelve years after the effective date of this MOA shall be transferred to a legally separate mitigation compensation fund administered by the VLCF for expenditure on projects, programs, and activities at historic properties and associated historic landscapes within or related to the indirect APE that were adversely affected by this Project." Projects to be funded by these compensatory mitigation funds include heritage tourism studies, marketing campaigns for heritage tourism, "to develop a marketing and visitation program (Program) to promote and enhance the impacted heritage tourism sites and visitor experience within the indirect APE" "Dominion's funding responsibilities shall be limited to the average annual budget for the preceding two years for marketing programs implemented by the management entities of publicly accessible sites within the Indirect APE."

The MOA also called for Dominion "to identify specific landscape and viewshed enhancement, shoreline protection, and other projects that enhance the affected setting and feeling of Carter's Grove." Carter's Grove is the NHL affected by that project. In case Dominion could not get permission from the Carter's Grove owner for any of these activities, the MOA outlines alternative measures that should be undertaken. Indeed, Dominion was not allowed to proceed with construction until the owners had been consulted and had agreed to particular projects.[6] The Block Island HPTPs do not provide any alternative should property owners refuse to consent to the projects and allows construction to move full steam ahead regardless of their participation. The Block Island HPTPs are set up to fail, and BOEM knows it.

In addition to the funding described above, Dominion provided $1,500,000 to the Chickahominy Indian Tribe to make improvements to its tribal center, to preserve historic artifacts, and to fund travel to visit archives at the Ashmolean Museum in England. The MOA left it to the

[5] https://www.nao.usace.army.mil/Portals/31/docs/regulatory/Skiffes/MOAs/FINAL_MOA_4.24.2017.pdf?ver=2017-05-01-155150-290 (Last accessed November 13, 2022.)

[6] MOA Section III, A, 3. "Dominion may not proceed with "Construction Above the James River" until the Corps has approved the final Project Narrative for projects to be carried out at Carters Grove. To facilitate this approval, Dominion shall consider all comments and submit to the Signatories of this MOA a final Project Narrative describing projects to be carried out at Carters Grove. This final Project Narrative shall include confirmation that the Dominion and/or all appropriate parties have all access and permissions necessary to complete all identified mitigation work. This final Project Narrative will be considered "approved" once the SHPO has confirmed that the projects as proposed will enhance the affected setting and feeling of Carter's Grove and the Corps has provided written approval."

Chickahominy Tribe how to allocate the funding among these initiatives. The MOA also required Dominion to provide $4,500,000 to the Pamunkey Tribe to support expansion of the Pamunkey Cultural Center, to establish a tribal historic preservation office, and to expand and operate the Pamunkey's fish hatchery. The MOA left it to the Pamunkey Tribe to determine how to allocate funding among these initiatives. In addition, the MOA required Dominion to acquire an ancestral site of the Pamunkey, donate it to the tribe, and provide $500,000 for its ongoing maintenance and $400,000 for construction of an access road to the property. Similarly, the Block Island HPTPs should give flexibility to the property owners to determine what is appropriate for their sites.

In the Dominion example, the cost of constructing the transmission line was $430 million and the towers were expected to be up for 50 years. The mitigation demanded by the Corps totaled more than $90 million. This mitigation was found appropriate for seventeen, 295-ft tall towers erected in the viewshed of historic properties and a National Historic Landmark. We remind BOEM that South Fork is 12 turbines at 894ft, to soon be followed by 212 more turbines at 960 ft. height, in the viewshed of historic properties and a National Historic Landmark. The cost of constructing the South Fork wind farm is estimated to be $640 million and South Fork is expected to be permitted for 30 years. Compared to the Dominion example, the $450,000 in funding on offer in the HPTPs for Block Island is laughable and insulting.

Even if BOEM disregarded our clients' proposed compensatory mitigation fund as an appropriate approach to mitigation, our clients have proposed alternate options with which the agency declined to engage. Our clients proposed specific mitigation measures that would better offset the impacts of the South Fork Wind Farm in consulting party meetings and in writing on March 14, 2022, but BOEM has completely ignored them. Neither BOEM nor Ørsted has ever explained their views on these proposals or why they have refused to engage with SELF regarding them, and neither the agency nor Ørsted met with SELF or the Town of New Shoreham to discuss how proposed mitigation could align with the consulting parties' requests. Rather than listen to the experts who actually steward the Lighthouse or Town officials who understand the needs of Block Island's historic properties, BOEM decided unilaterally to substitute its judgment to decide that actually it's in the public's interest for the Lighthouse to be forced to receive a new exhibit, a coastal resilience plan (with no funding to implement it), and a cyclical maintenance plan (with no funding to implement it.) To add insult to injury, the HPTP compels SELF to hire the consultants, work with them, make sure they meet standards, and yet BOEM provides zero funding to SELF for its staff time to accomplish these tasks that will take its staff time away from real efforts to preserve the Lighthouse. If SELF refuses to do this work for free, the HPTP makes it clear that BOEM will do it for them.

Our clients find it deeply disturbing that BOEM has also refused to provide any justification or reasoning as to why the agency considers its proposed mitigation to be reasonable. Our clients have asked for any justification BOEM can provide for choosing the projects and the funding amounts included in the HPTP, only to be summarily ignored. (This question was repeatedly asked on the March 18, 2022 consultation call and in written comments on May 17, 2022.) In the entire administrative proceeding for this permitting review, the only statements BOEM has made about its reasoning for deciding on certain mitigation is that, "Mitigation should replace the lost value from the diminishment of the historic property's integrity with project outcomes that are in the public interest." Yet BOEM has not explained its methodology for

determining the lost value from the diminishment of the integrity of the historic properties on Block Island, including the NHL, and has not shown why any of the projects proposed by our clients would be contrary to the public interest.

The mitigation proposed in the MOA as "baseline mitigation" was approved over the Town of New Shoreham's and SELF's adamant objections. Nonetheless, the MOA says that the mitigation in the HPTPs should be "at least" at the level of effort described in the "baseline mitigation." BOEM can still remedy their failure to mitigate the adverse effects of South Fork.

The lost value from the diminishment of the historic property's integrity will be evident in the economic harm experienced by Block Island. Block Island's heritage tourists value the Island's historic properties' integrity to the tune of $278 million per year, the annual value of the Island's heritage tourism economy. The majority of Block Island's full-time residents work in heritage tourism. If the diminution of the character of the historic viewshed caused by South Fork results in even as little as a 10% diminution of value, the impact on Block Island's economy over the next 30 years would top $834 million (not adjusted for inflation). BOEM offering Block Island projects valued at $450,000 total for the next 30 years seems ridiculous by comparison**. It's a shame that the federal agencies tasked with the responsibility of valuing and protecting our nation's historic resources do not value those resources as much as everyday Americans do.**

As important as the risks of monetary loss, residents and tourists can lose their sense of a deep connection to the natural beauty of a viewshed. Heritage tourists place a premium on maintenance of a community's historic integrity or "brand." This premium stems from the experiential and emotional connections that residents and tourists have with the viewshed. This connection is tied to the lived experience of residents and expectations of tourists. Therefore, when a viewshed is altered and interrupts tourists' expectations, tourists go elsewhere. As noted in Clean Energy States Alliance, A Visual Impact Assessment Process for Wind Energy Projects (May 2012), the significance of impacts should be determined through an understanding of how a development project is seen within important viewsheds and considering viewer expectations at specific viewing locations. For certain uses, there may be public expectations of a primitive or natural setting or for a cultural landscape. Placing a value on harm requires understanding how these expectations will be diminished. Tourists may be repelled by the altered landscape. Indeed, introducing massive offshore wind turbines conflicting with Block Island's pristine ocean views may cause tourists to experience "technological landscape guilt." Broeckel, supra. "Moreover, wind turbines may be perceived as being historically inappropriate, which contradicts the desire for consistency between the natural (original) and artificial environment." Id. In fact, today's tourists are likely to associate rural landscapes with historical periods. The technological, modern, and planned appearance of wind turbines may therefore strongly conflict with tourists' expectations of historic rural surroundings." Id. CESA also reported that the type of landscape where wind turbines are installed matters as well. Surveyed individuals were particularly sensitive to the placement of wind turbines in "landscapes of high aesthetic quality," which of course Block Island has in spades. Some studies suggest that 20% of survey respondents would expect a discount on rental housing with an offshore wind development and 54% indicated that they would not rent a home with a view of an offshore wind development at all. Sanja Lutzeryer et al., North Carolina State University, The Amenity Costs of Offshore Wind Farms: Evidence from a Choice Experiment (2016). Other studies show a

range of 6% to 26% of tourists will avoid places with wind turbines for future vacations, Broeckel, supra.

Recent European studies bolster these conclusions. For example, Anna Dora Saeborsdottir et al., Wealth of Wind and Visitors: Tourist Industry Attitudes towards Wind Energy Development in Iceland, Land (2021) reveals survey impressions of how wind farms transform the landscape from natural to anthropogenic. Key takeaways include: • Wind turbines affect how the landscape is perceived and experienced. • Landscape and nature are not only a resource for renewable energy production; they are also the main attraction for tourists. • As wind turbines affect how the landscape is perceived and experienced, it is foreseeable that the construction of wind farms will create conflicts between the energy sector and tourism industry. • Impacts are perceived as mostly negative since wind farms decrease the quality of the natural landscape. Taken together, research shows that risk to the local tourism economy is significant, and that wind development creates an increase in the uncertainty of future economic activity, which can be reasonably expected to materialize into negative net impacts to the local economy.

BOEM has also failed to take seriously the federal government's obligations to preserve and protect National Historic Landmarks.

NHPA Section 110(f) requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. In the Memorandum of Agreement for South Fork (to which SELF strenuously objects), BOEM states, "BOEM has determined that: all feasible alternatives, including all feasible WTG layouts, would result in adverse visual effects to the Block Island Southeast Lighthouse NHL; the magnitude of the visual effects on the NHL is minor given the small number of WTGs, their distance from the NHL, and the presence of existing WTGs visible from the NHL; and this undertaking contributes to the public interest in using the OCS to develop clean energy sources."

The problem with this analysis is that it shows on its face that BOEM has failed to consider the cumulative impacts of existing and reasonably foreseeable undertakings on the Southeast Lighthouse NHL. South Fork's 12 turbines will join five turbines at the Block Island Wind Farm and 212 turbines from Revolution and Sunrise. Mitigation must address cumulative effects of 229 wind turbines diminishing the historic integrity of the Lighthouse. Rather than a reason for approving such an undertaking and providing *de minimis* mitigation, BOEM's reasoning in the MOA that is carried through to the HPTP is evidence of its legal error in understanding its responsibilities under federal law.

SELF acknowledges that BOEM lacks experience mitigating direct adverse visual effects of the industrialization of the ocean on NHLs. It is disappointing that BOEM has failed to work with consulting parties to fashion mitigation proposals that are actually needed and wanted by the community and that will serve to meaningfully offset the adverse effects. BOEM has shown a failure of imagination and a failure of collaboration. There is still an opportunity for BOEM to correct this approach and to work with the community and consulting parties to fashion meaningful mitigation. We encourage BOEM to direct South Fork to propose "replacement mitigation" as described in the draft HPTPs (see, e.g., Section 4.4 of the HPTP for the Southeast Lighthouse.)

Failure to get the Section 106 process right on South Fork will hamper all future permitting efforts, as BOEM keeps using the wrong template over and over again. Our clients would prefer not to engage in decades of litigation against BOEM—we would much prefer rather to enter into the good faith consultations that Congress intended when they established the Section 106 process in the first place.

BOEM has failed to consider adverse effects to Newport at all.

We reiterate that our clients the City of Newport, Newport Restoration Foundation, Preservation Society of Newport County, and Salve Regina University object to BOEM's refusal to consider mitigation proposals for the National Historic Landmarks and other historic properties listed in the National Register of Historic Places within Newport County, Rhode Island in the APE for South Fork. BOEM's refusal to include Newport County properties is arbitrary, capricious, and contrary to law. BOEM must provide for mitigation for resources in Newport. BOEM's continued failure to do so violates Section 106 and Section 110(f) the National Historic Preservation Act.

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