



April 18, 2023

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

Karen Crawford  
ICF  
Section 106 Lead  
1903 Reston Metro Plaza  
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Re: SouthCoast Wind Draft Environmental Impact Statement, Finding of Adverse Effect,  
Technical Reports, and Proposed Memorandum of Agreement  
Docket No. BOEM-2023-0011

Dear Ms. Baker and Ms. Crawford:

We write on behalf of the Town of Nantucket (“the Town”). Our comments below address BOEM’s Draft Environmental Impact Statement (DEIS); associated technical reports including the Area of Potential Effects Memorandum, Analysis of Visual Effects to Historic Properties, Visual Impacts Assessment (VIA), Cumulative Historic Visual Effects Assessment (CHRVEA), the Seascape, Landscape, and Visual Impact Assessment (SLVIA); and Finding of Adverse Effect; and Draft Memorandum of Agreement for SouthCoast Wind.

The Town has consistently expressed its support for responsible wind energy development and the growing need for sustainable energy sources in Massachusetts as well as the United States. Its aim in consultation with BOEM is to ensure that BOEM’s permitting process follows the law, and that BOEM selects an alternative that preserves the integrity of the project’s surrounding area to the greatest extent possible. BOEM, however, has a responsibility under federal law to consider all environmental impacts and resolve all adverse effects to the historic integrity of the surrounding area, including the Town, the whole of which is a National Historic Landmark (NHL).

In our experience, due to the enormous pressure placed on BOEM to get offshore wind up and running following permit reviews of inappropriately compressed period of approximately two years, BOEM is consistently skipping steps in environmental review. Holding aside myriad unanswered questions across all wind farm projects about the effects of offshore wind on the natural environment, including sea mammals, birds, fish, and other wildlife, not to mention harm to local economies and lack of consideration to environmental justice, BOEM has developed a pattern and practice of favoring developers at every opportunity and expects adversely affected communities to absorb adverse effects even though they receive virtually nothing in return. Responsible development must ensure that externalities are avoided, minimized, and mitigated to

the greatest extent possible. BOEM’s current permitting review of SouthCoast falls far short of this goal.

In addition to demonstrating Nantucket’s significance as a one of the nation’s most well preserved historic and cultural resource, our comments address numerous deficiencies: (1) the DEIS is inadequate because it fails to take a “hard look” at impacts to historic and cultural resources by undervaluing their significance, undervaluing their connections to a pristine ocean viewshed, and downplaying adverse impacts to the Town’s economy; (2) the DEIS fails to consider all direct, indirect, and cumulative effects of SouthCoast Wind and other reasonably foreseeable wind farms; (3) BOEM has failed to comply with Section 106 of the National Historic Preservation Act; and (4) BOEM has failed to use all possible planning to minimize harm to National Historic Landmarks as required by Section 110(f). If BOEM or any other cooperating agency, such as the U.S. Army Corps of Engineers, relies on the DEIS in its current form, any decision the agency makes will be arbitrary, capricious, and contrary to law.

### **NANTUCKET IS AN UNPARALLELED HISTORIC & CULTURAL RESOURCE.**

Nantucket is one of the most significant National Historic Landmarks in the United States with close ties to the natural and maritime environment, the lens through which BOEM must evaluate SouthCoast’s adverse effects. Whereas most NHL designations apply solely to architecture, Nantucket’s designation recognizes irreplaceable cultural heritage that includes historic buildings and environmental landscapes. In 1966, the National Park Service cited Nantucket as being the “finest surviving architectural and environmental example of a late 18th-and early 19th-century New England seaport town.”<sup>1</sup> Long before the arrival of Europeans, Nantucket provided a home to the ancestors of the area’s current Wampanoag tribes, who continue to reside on adjacent islands and claim the National Register-listed Nantucket Sound as a 385,000-acre Traditional Cultural Property.

Whereas viewshed plays an important role in site integrity of many NHLs, in the case of Nantucket, the unblemished viewshed is fundamental to its designation. For some 6,000 years—since Nantucket became an island—human occupants have enjoyed the unimpeded natural view of the ocean from the island and the island from the ocean. The current view makes it possible, therefore, for a person to enjoy a connection with peoples and cultures long past, and to better understand and value one’s place and orientation in history. The viewshed plays a critical role in the enjoyment of long-time residents and visitors alike and is central to the island’s character and economy. As stated in the National Historic Landmark nomination form, “the unencumbered views of the ocean offer a balm to the soul.”<sup>2</sup>

### **THE DEIS IS INADEQUATE BECAUSE IT FAILS TO TAKE A “HARD LOOK” AT IMPACTS TO CULTURAL AND HISTORIC RESOURCES.**

By ignoring Nantucket’s significance and its historic oceanfront context, BOEM has failed to uphold its obligations to properly inform the public in the DEIS and through public meetings about the full range of SouthCoast Wind’s anticipated effects as NEPA requires. NEPA is designed to

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<sup>1</sup> [Nantucket National Register of Historic Places Inventory Nomination Form](#) (1966), at 5.

<sup>2</sup> [Nantucket National Historic Landmark Designation](#) (2018), at 57.

ensure that the public and decision-makers are provided with the information they need to make a considered decision about the best path forward. The statute is also designed to ensure that federal agencies have carefully and fully contemplated the environmental effects of a proposed action.<sup>3</sup> In addition to considering impacts on the natural environment, NEPA requires federal agencies to consider impacts on historic and cultural resources.<sup>4</sup> By focusing the permitting agency's attention on the environmental consequences of its proposed action, NEPA "ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."<sup>5</sup> In other words, NEPA requires that federal agencies take a "hard look" at the environmental consequences of a proposed action.<sup>6</sup>

In addition to assessing all impacts to the natural environment, BOEM must fully assess and consider all direct, indirect, and cumulative impacts on cultural and historic resources. But the DEIS falls short of NEPA mandates that require consideration of all adverse effects because BOEM has failed to integrate properly its NEPA and NHPA reviews, preferring instead to integrate in name only, but not in substance.<sup>7</sup>

BOEM has not taken a hard look at SouthCoast Wind's environmental impacts, but rather has placed its thumb on the scale in favor of granting approval by considering only alternatives that could best be described as supporting SouthCoast Wind's preferences. The Town of Nantucket is a longstanding steward of one of the nation's most significant NHLs, yet BOEM refuses to consider its unique history or consider adequately the Project's specific impacts to the community, including harm to its tourism economy, its financial well-being and tax base, and greater sensitivity that heritage tourists have to the loss of historic character and context.

For example, although the DEIS notes that the "scenic quality of the coastal environment is important to the identity, attraction, and economic health of many of the coastal communities,"<sup>8</sup> and that tourism in these communities is a multibillion-dollar industry, the DEIS finds the "employment and economic impact would be localized, short term, and minor."<sup>9</sup> In fact, the DEIS states falsely that the project would have a beneficial impact on tourism, with 2.5% of visitors coming to see the wind turbine generators (WTGs). The DEIS fails to contemplate the effect of the wind turbine generators (WTGs) on Nantucket's tourism economy in any serious way—or the effect that SouthCoast Wind will have on historic properties within the community that depend on visitor revenue—from adverse visual effects other than to dismiss the risk. Nor does the DEIS assess the potential for harm to the Town's tax revenues due to SouthCoast's visual blight and risk to property values. To the extent that the DEIS suggests that industrial-scale visual turbine

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<sup>3</sup> 40 C.F.R. § 1502.1; *N.C. Wildlife Fed'n v. N.C. Dep't of Transp.*, 677 F.3d 596, 601 (4th Cir. 2012) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)).

<sup>4</sup> 40 C.F.R. § 1508.27(b)(3); 40 C.F.R. § 1508.27(b)(8).

<sup>5</sup> *Robertson*, 490 U.S. at 349.

<sup>6</sup> *Citizens Against Burlington v. Busey*, 938 F.2d 190 (D.C. Cir. 1991), *cert. denied*, 502 U.S. 994 (1992).

<sup>7</sup> See *NEPA and NHPA: A Handbook for Integrating NEPA and Section 106*

*Synopsis*, Advisory Council Hist. Preservation, <https://www.achp.gov/digital-library-section-106-landing/nepa-and-nhpa-handbook-integrating-nepa-and-section-106>.

<sup>8</sup> DEIS, at 3.6.8-1

<sup>9</sup> DEIS, at 3.6.8-17

blight would benefit historic communities,<sup>10</sup> our client objects. BOEM's conclusion is not supported by credible research.

The DEIS contains no analysis of how the Town's tourism economy will be affected even though the Town and its citizens as well as workers depend on it for the current and future maintenance and preservation of the historic properties under its jurisdiction or control. Under NEPA, BOEM must consider a wide range of effects, specifically including impacts that are "historic, cultural, [and] economic."<sup>11</sup> Tourism revenue and property values are vital to the Town of Nantucket's economy. Tourism alone is a \$10 billion industry in Massachusetts, supporting over 102,100 jobs every year. Spoliation of historic landscapes increases the risk of lost tourism revenue and property taxes, which are expected to decrease after SouthCoast Wind industrializes the ocean landscape with its unavoidable visual clutter and light. Impacts to our client's tourism economy would be devastating to the economic health of the area and put thousands of jobs in danger, creating environmental justice risks. Nevertheless, the DEIS ignores these risks in contravention of NEPA.

Despite this risk, the DEIS' discussion of tourism blithely dismisses potential impacts to Nantucket's economy without any serious discussion or supporting research, preferring instead to rely on flawed, incomplete studies and ignoring industry research that shows that 15% of tourists will not return to oceanfront communities once offshore wind farms are built. Even if 2.5% of visitors travel to see the WTGs as the DEIS suggests,<sup>12</sup> the loss of 12.5% of visitors will be devastating to the tourism economy. Moreover, visits to see the wind farm are likely to be a onetime event, and will not guarantee repeat visits as the current pristine ocean views do. Thus, BOEM cannot support its conclusion that the overall impact to tourism will be "minor," especially when Project impacts at the landscape level are expected to range from "moderate" to "major adverse." BOEM must carefully consider the impacts on our client's unique character as an oceanfront community and its historic properties that qualify as a "resource" both to the area's economy and under NEPA's definition. BOEM must further analyze and quantify these potential adverse effects as BOEM develops the Final EIS.

**THE DEIS IS INCOMPLETE BECAUSE IT FAILS TO ASSESS ADEQUATELY SOUTHCOAST WIND'S CUMULATIVE IMPACTS.**

Multiple wind farms are in development off the coasts of Massachusetts and adjacent states. These offshore wind projects will have both separate and cumulative adverse visual impacts upon historic properties, sites, and districts listed or eligible for listing in the National Register of Historic Places.

This Project, and how it is evaluated and permitted, will set a precedent for upcoming projects in the area and along the entire Atlantic Coast; therefore, it is essential to apply consistent criteria to this project and subsequent future sites. Due to the historic integrity of historic properties within the Project Area and Area of Potential Effects, BOEM must establish and implement best practices. Based on the omissions described above, the DEIS should be amended to reflect—and the Final EIS should include—a complete cumulative assessment of all impacts to historic and cultural properties and include additional cumulative visual simulations for the Town of Nantucket's

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<sup>10</sup> DEIS, at 3.6.8-16.

<sup>11</sup> 40 C.F.R. § 1508.1(g)(1).

<sup>12</sup> DEIS, at 3.6.8-21

historic properties, including those reasonably foreseeable effects that adjacent wind farms will generate.

Moreover, the DEIS fails to incorporate best practices and minimum guidelines that would apply to all offshore wind developments near the Town of Nantucket. In specifically requiring cumulative impacts analyses, NEPA recognizes the significant effect that reasonably foreseeable projects can have on the surrounding landscape beyond the scope of a single development. BOEM's analysis and methodology for assessing cumulative impacts in the DEIS are confusing and unclear. Consulting parties and the public have a right to understand BOEM's conclusions and how it arrived at them. Currently, no reasonable person can interpret them.

According to the VIA, CHRVEA, and SLVIA, SouthCoast is expected to cause major adverse effects to Nantucket even though BOEM cites "NEPA's objective of providing Americans with aesthetically and culturally pleasing environments."<sup>13</sup> Adjacent wind farms will magnify SouthCoast's adverse effects and along with SouthCoast will change the ocean's undeveloped character to an industrial wind farm environment with major adverse impacts on scenic and visual resources. Although BOEM characterizes adverse effects in some cases as "minor" or "moderate," BOEM has failed to rely on worst case visual scenarios, preferring to use atmospheric haze to minimize SouthCoast's visibility. Considering the sensitivity of Nantucket's historic properties and direct connection to the ocean's viewshed as one of their character-defining features, BOEM should consider all visual effects as "major" and err on the side of caution, rather than in SouthCoast's favor even though risks are not fully known. The DEIS also fails to assess adverse effects to Tuckernuck and Muskeget Islands, even though they are part of the Nantucket NHL. Nor does the DEIS assess adverse effects—especially nighttime lighting effects—on Maria Mitchell Association's historic observatory, one of the Town's historic assets that depends on dark night skies to continue its historic use.

It is especially concerning to see the lack of minimum guidelines and best practice standards established for offshore wind projects in the United States, especially as they relate to adverse visual impacts upon National Historic Landmarks and historic properties, sites, and districts listed or eligible for listing in the National Register of Historic Places, such as Nantucket. It is essential to apply consistent criteria to this project and subsequent future sites. Due to the high cultural and historic sensitivity of our client's ocean-facing historic properties, best practice criteria must be applied. Minimum standards should include:

- Requiring the least impactful nighttime lighting, such as ADLS, as a permit condition;
- Requiring all windfarms in a specific region to use the same non-reflective paint color, determined to be most effective in minimizing the visual impacts, per specific atmospheric/geographical conditions of the lease sites;
- Establishing minimum set-back standards from land, with specific considerations for historic landmarks and areas with tourism-driven economies;
- For communities with historical significance, BOEM should help ensure that local stakeholders receive fair and direct access to any state and federal agencies or resources, which may provide critical regulatory guidance on how best to avoid, minimize, and

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<sup>13</sup> SLVIA, at H-1.

mitigate the local impacts of offshore windfarms. This support would be provided independent of the Section 106 process, and would, for example, identify and encourage dialogue between communities with their State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP); and

- Requiring—to the extent to which harm to historic and cultural resources cannot be avoided or minimized—appropriate project mitigation measures to offset the impacts to communities, such as community benefit agreements, offshore wind mitigation trust funds, or other economic development arrangements, as are standard in the offshore wind industry globally. At this critical juncture in the development of the U.S. offshore wind industry, stakeholders are open minded, if not supportive, of a successful industry that shares benefits with local communities who will bear the brunt of adverse impacts and certain risk of loss to their economies.

BOEM must correct the DEIS and related technical reports to address these errors and prepare adequate visual simulations so that consulting parties and BOEM will understand the true nature of SouthCoast’s adverse effects.

### **BOEM HAS NOT COMPLIED WITH ITS OBLIGATIONS UNDER SECTION 106 OF THE NHPA.**

Section 106 of the National Historic Preservation Act (NHPA) requires BOEM to address impacts to historic properties and find ways through consultation to avoid, minimize, or mitigate adverse effects. As part of the federal government’s policy of protecting the nation’s historic heritage and sense of orientation as an American people, Section 106 requires federal agencies to consider the effects on historic properties of projects they carry out, assist, fund, permit, license, or approve throughout the country.<sup>14</sup>

If a federal or federally-assisted project has the potential to affect historic properties listed or determined eligible for listing in the National Register of Historic Places, a Section 106 review is required.<sup>15</sup> During Section 106 review, once historic properties have been identified in coordination with the applicable State Historic Preservation Officer, the federal agency charged with permitting the proposed project must find ways to avoid, minimize, or mitigate adverse effects to those properties in consultation with parties who have a demonstrated interest in the undertaking.<sup>16</sup>

Moreover, BOEM must undertake all possible planning to minimize harm to all adversely affected National Historic Landmarks, pursuant to Section 110(f) of the NHPA.<sup>17</sup> This has not occurred. Section 110(f) provides:

Prior to the approval of any Federal undertaking which may directly and adversely affect any [NHL], the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to

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<sup>14</sup> 54 U.S.C. §§ 300101-307108; Section 1 of the NHPA, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515.

<sup>15</sup> 54 U.S.C. § 306108.

<sup>16</sup> 36 C.F.R. § 800.1(a); 36 C.F.R. § 800.4.

<sup>17</sup> 54 U.S.C. § 306107.

minimize harm to such landmark, and shall afford the Advisory Council a reasonable opportunity to comment on the undertaking.<sup>18</sup>

Notwithstanding Section 110(f)'s mandate, as discussed below BOEM has not demonstrated compliance with the heightened level of scrutiny that Section 110(f) requires.

**BOEM HAS NOT CORRECTLY ASSESSED ADVERSE EFFECTS TO ALL HISTORIC PROPERTIES OR RESOLVED THEM APPROPRIATELY.**

The documents BOEM provided for review, as drafted, fall short of the NHPA's mandates that require consideration and resolution of all adverse effects. By contrast, BOEM downplays them. In reviewing SouthCoast Wind's visual simulations, our client has serious concerns regarding the assessment of adverse effects to these properties. Without additional visualizations to and from historic properties, including all NHLs (including Nantucket Island, Muskeget Island, and Tuckernuck Islands), consulting parties cannot understand how SouthCoast Wind and projects cumulative to SouthCoast Wind will affect their historic properties' integrity, including their context, seaside character, and connection to a maritime setting that has historically depended on open views to and from the Atlantic Ocean. The number and density of SouthCoast Wind's turbines will create a visual mass that will have a presence of large-scale modern infrastructure on the horizon that cannot be avoided.

However, BOEM cannot reasonably expect consulting parties to understand the full extent of SouthCoast Wind's adverse visual effects. The visual simulations that BOEM has provided are too limited in nature and not only preclude meaningful consultation and resolution of adverse effects, but BOEM's continued reliance on them will result in decision making that is arbitrary, capricious, and contrary to law. Because current visual assessments and simulations do not show the actual impact of the SouthCoast Wind's turbines and associated infrastructure, BOEM must amend them to assess adverse impacts and to determine appropriate avoidance, minimization, or mitigation measures. Failure to do so will result in a record of decision that is arbitrary, capricious, and contrary to law.

*a. BOEM has not provided adequate visual simulations.*

The visual simulations BOEM provided for review are incomplete and inadequate. As a result, they fail to show the actual impact of SouthCoast Wind. Consequently, BOEM must include additional simulations to assess accurately adverse impacts and to determine appropriate avoidance, minimization, or mitigation measures. As the lead federal agency, BOEM must provide consulting parties and the public with adequate and easily accessible information that informs all parties of potential impacts. BOEM's adverse effect characterizations and visual simulations are too limited to show the full extent of SouthCoast Wind's aesthetic impacts. BOEM and consulting parties, therefore, are operating at an informational disadvantage that assures arbitrary and capricious decision making.

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<sup>18</sup> *Id.*

BOEM provides visualizations from only five Key Observation Points (KOPs) on Nantucket: Sanford Farm Barn, Tom Nevers Beach, Cisco Beach, Head of Plains, and Madaket Beach. However, BOEM’s visual simulations except for Cisco Beach are taken only at a single time of day during a single season. Cisco Beach is the only visualization that depicts a nighttime view, despite noting that Tom Nevers Beach at night will also have a major adverse impact. The visual simulations represent a small fraction of adversely affected historic properties since Nantucket, Muskeget, and Tuckernuck Islands form the NHL. And all simulations are from a single vantage at ground level, even though property owners, the public, and visitors to those properties experience the historic ocean viewshed from different vantage points, such as from the tops of lighthouses, church steeple balconies, widow walks, or the upper stories or verandahs of houses—spaces designed intentionally for this type of observation.

In addition, it is impossible for consulting parties to understand the full range of SouthCoast’s visual effects because of problems with BOEM’s approach to visual simulations. Contrary to what BOEM has provided, visual simulations need to be revised and presented together, rather than in separate reports that make comparisons difficult, if not impossible. Visual simulations should also refrain from using humid, hazy, or blurry conditions to minimize potential wind turbine visibility. BOEM should also revise them so that they all show what SouthCoast and additional wind farms will look like during every season at multiple times of day, including at night, rather the piecemeal approach that BOEM has adopted.

Furthermore, BOEM has not fully shown consulting parties or the public how SouthCoast Wind will address potential lighting impacts, including during the construction phase. Prolonged, constant, and bright lights will be required to construct the WTGs, as well, and this lighting will cause major impacts to our client’s views for at least close to a decade when all the projects are considered cumulatively over decades of their expected lifespans. BOEM must include construction impacts, including lighting, in its final analysis of impacts to historic properties so that consulting parties and the public can evaluate them.

Our client is especially concerned about lighting impacts to the dark night sky both during and after construction and urges BOEM to take a hard look at these impacts, with special attention paid to internationally renowned Maria Mitchell Association’s historic observatory, a contributing property within the NHL, which depends on visitation revenue for its continued maintenance and preservation. In addition, BOEM must consider the visual impacts of all light units on each turbine and their reflections on the ocean’s surface, especially during nighttime hazy conditions that will magnify their glow<sup>19</sup>—and how nighttime light pollution will further diminish the integrity of all historic properties and NHLs within the APE.

#### b. *Assessment of Adverse Effects*

BOEM’s Technical Reports include an assessment of adverse effects. The size and scale of SouthCoast Wind within our client’s historic viewshed with its constant daytime view alteration,

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<sup>19</sup> For example, see Amy Shira Teitel, *Why is the Night Sky Turning Red? Light Pollution Is Turning Our Dark Skies Red*, DISCOVER (Aug. 23, 2012), at <https://www.discovermagazine.com/the-sciences/why-is-the-night-sky-turning-red>; Joshua Sokol, *The Sky Needs Its “Silent Spring” Moment*, SCIENTIFIC AMERICAN (Oct. 1, 2022), at <https://www.scientificamerican.com/article/the-sky-needs-its-silent-spring-moment/>.



coupled with nighttime and construction lighting, will inexorably change the historic nature of Nantucket's historic properties, their feeling, their association, and the connections of these historic properties to the ocean and its unimpeded horizon.

In addition, considering the magnitude of SouthCoast Wind's adverse effects on the landscape and visual blight SouthCoast Wind will cause, BOEM should consider Nantucket for eligibility as traditional cultural property so that BOEM can assess adverse effects more accurately, rather than downplaying them. The historic properties located within the Nantucket NHL maintain ties to living communities who continue to preserve, maintain, and associate these properties with cultural practices, traditions, lifeways, and social institutions—all of which are located within the Nantucket NHL and who continue to appreciate, occupy, and use these properties.<sup>20</sup>

Descriptions about Nantucket are illustrative of the traditional, historic relationship of this community to its pristine ocean setting and the connections the living community continues to have to their settings and celebrate. BOEM, however, has not explored these connections and thus not provided the deeper level of historic property identification and analysis of adverse effects that Nantucket merits.

Distinguishing features of Nantucket's NHL designation—diversity of historic and cultural resources and their high level of integrity, overall size of the resource, and centrality of its ocean viewshed—mean that among the almost 2,600 properties designated as NHLs throughout the country, few comparators exist. Indeed, the only NHLs arguably comparable with Nantucket's significance's significance may be the French Quarter in New Orleans, Charleston Historic District in South Carolina, the Santa Fe Historic District in New Mexico. Internationally, Venice and its lagoon, a UNESCO World Heritage Site, is the most similar destination. Nevertheless, the DEIS ignores Nantucket's significance and downplays the harm that SouthCoast will cause to it.

Going forward in revising SouthCoast Wind's DEIS and technical reports, BOEM must employ common sense in its assessment of Nantucket's historic properties' character and setting, and work closely with consulting parties (as opposed to consultants) to understand how people in this community—including historic property owners who were never notified by BOEM about this permitting process—interact with these properties and how SouthCoast Wind will adversely affect these properties individually and cumulatively.

#### **BOEM HAS FAILED RESOLVE ADVERSE EFFECTS AND VIOLATED SECTION 110(F).**

As evidence of BOEM's skipping steps in the Section 106 and NEPA process, BOEM has submitted to consulting parties a draft Memorandum of Agreement (MOA) before consulting parties have had an opportunity to conclude consultation with BOEM on earlier steps in the Section 106 process. Suggested minimization measures do not qualify as such because BOEM has not used all possible planning to avoid or minimize harm, including the evaluation of scenarios with fewer turbines on SouthCoast's front rows closest to the Town.<sup>21</sup> Moreover, the MOA has proposed

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<sup>20</sup> See, e.g., NATIONAL PARK SERVICE, GUIDELINES FOR EVALUATING AND DOCUMENTING TRADITIONAL CULTURAL PROPERTIES, NATIONAL REGISTER BULLETIN 38.

<sup>21</sup> SouthCoast Wind appears to take the position that it should receive credit for minimization measures for design aspects that SouthCoast Wind would have to do anyway, such as turbine spacing and layout, which is required by the

mitigation measures to resolve adverse effects that are not adequate, have not been requested, and do not offset the magnitude of harm that SouthCoast Wind will cause. BOEM's message to consulting parties is that whatever SouthCoast Wind wants is a *fait accompli* and whatever consulting parties want does not matter.

Moreover, our client objects to the draft MOA and proposed mitigation plans since they do not meet the standard needed for mitigation to offset unavoidable adverse effects and fail to consider the creation of appropriately capitalized historic preservation mitigation funds. Nevertheless, so that all consulting parties can understand the basis of SouthCoast Wind's mitigation proposals, and so that future consultation can be productive, we request copies before the next consultation meeting of all documents on which SouthCoast Wind and BOEM have relied to show that the existing mitigation proposals are the result of all possible planning to minimize harm. This information is also needed to understand how SouthCoast Wind's proposed mitigation proposals rise to a level of "rough proportionality" relative to SouthCoast Wind's adverse effects and which would be required to offset those effects.

Consultation is 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."<sup>22</sup> Done correctly, consultation presents opportunities for the development of creative and innovative measures for the resolution of adverse effects. However, BOEM and SouthCoast Wind's reliance on undefined mitigation measures in the draft MOA is not a workable solution, especially where BOEM and SouthCoast Wind have failed to address our client's concerns.

BOEM's Draft MOA has proposed the following mitigation measures, the gist of which includes:

- Historic property surveys of neighborhoods along Nantucket Island's south coast with National Register nomination eligibility recommendations;
- possible Archaeological Overview and Assessment of the above neighborhoods to focus on the pre-contact history with an emphasis on areas subject to coastal erosion

SouthCoast Wind's proposal does not amount to acceptable mitigation for at least twenty-five to thirty years of harm to Nantucket's historic context, the risk that SouthCoast Wind might never be decommissioned, and the indirect and cumulative financial harm our client's historic properties are expected to experience.

As our client has already explained to BOEM and SouthCoast Wind, a sufficiently capitalized historic preservation mitigation fund tailored to the community, which the Town can deploy for needed historic preservation and coastal resiliency purposes to protect its historic properties, is the most appropriate and efficient way to offset SouthCoast Wind's adverse effects that cannot be avoided. Moreover, the Town and Vineyard Wind established Nantucket Offshore Wind Community Fund specifically for this purpose, and for future developers to use to offset the adverse effects that they will cause to the Town's historic properties and its economy. Therefore,

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U.S. Coast Guard. U.S. Coast requirements dictate turbine placement for reasons of navigational safety, not minimization of adverse effects under Section 106. Similarly, atmospheric conditions are not minimization measures, either. Moreover, use of nonreflective paint and Aircraft Lighting Detection Systems have become standard.

<sup>22</sup> 36 C.F.R. § 800.16(f).

our client objects globally to the proposed mitigation offers that have not developed through consultation. What BOEM has apparently endorsed undermines Section 106's legitimacy. Moreover, SouthCoast Wind's proposals are essentially meaningless and discount the value property owners and historic preservation advocates—including local governments—place on their historic oceanfront settings.

Finally, BOEM cannot demonstrate that it has complied with Section 110(f) of the NHPA. As noted above, BOEM's visual simulations are not adequate. BOEM has not prepared enough of them during different seasons and times of day for consulting parties to consider them as representative samples for understanding the adverse effects of SouthCoast Wind and cumulative offshore wind developments. BOEM has the duty to assess all adverse effects and to resolve all adverse effects; the NHPA does not place the duty on consulting parties to extrapolate, guess, or fill in the blanks. Without a comprehensive understanding of visual impacts as a starting point, BOEM cannot possibly demonstrate all possible planning to minimize harm because the full extent of SouthCoast Wind's adverse effects is unknown.

Moreover, for Section 110(f) purposes, it is not appropriate for BOEM to default to SouthCoast Wind's preferred alternative in the Draft Environmental Impact Statement, ruling out all other minimization alternatives—as well as other avoidance and minimization measures—because they do not fit with SouthCoast Wind's self-serving purpose and need. Likewise, BOEM's apparent decision that SouthCoast Wind will not significantly affect our client's NHL's historic integrity fails to consider their inseparable connection to the Atlantic Ocean or the special sensitivity that those who value NHLs have to integrity losses. Section 110(f) demands a heightened level of scrutiny that BOEM has not yet met. Finally, the DEIS contains no evidence that the National Park Service has consulted with and agrees with BOEM on its avoidance, minimization, and mitigation measures, which Section 110(f) requires.

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In conclusion, BOEM must revise the DEIS and associated technical reports for the reasons explained above. If BOEM does not address the Town's concerns, a Record of Decision based on the DEIS will be arbitrary, capricious, and contrary to law.

Respectfully submitted,



William J. Cook, Partner

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