

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE UNITED STATES ARMY CORPS OF ENGINEERS  
AND  
SUNRISE WIND, LLC**

This Memorandum of Agreement (MOA) is entered into this 15th day of March, 2023 (the "Effective Date"), between the U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, Room 16-406, New York, NY (USACE) and Sunrise Wind LLC (Sunrise Wind). The USACE and Sunrise Wind may each be referred to herein as a "Party," and may be referred to together herein as the "Parties."

**RECITALS**

WHEREAS, USACE has regulatory jurisdiction over certain activities occurring in waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act of 1972 as amended, 33 U.S.C. § 1344 (Section 404 over certain activities occurring in navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899, as amended, 33 U.S.C. § 403 (Section 10), and over certain activities occurring in USACE' water resource development projects pursuant to Section 14 of the Rivers and Harbors Act of 1899, as amended, 33 U.S.C. § 408 (Section 408);

WHEREAS, Section 214 of the Water Resources Development Act of 2000, as amended, 33 U.S.C. § 2352 (Section 214), authorizes the Secretary of Army, after public notice, to accept and expend funds contributed by non-federal public entities, public-utility companies (as defined in Section 1262 of the Public Utility Holding Company Act of 2005, 42 U.S.C. § 16451 (2005 PUHCA)), natural gas companies, and railroad carriers to expedite permit evaluation for projects of that entity, company, or carrier with a public purpose;

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 to the Assistant Secretary of the Army for Civil Works by memorandum dated January 8, 2018, and the Assistant Secretary of the Army for Civil Works has redelegated the Section 214 authority to the Chief of Engineers and his delegated representatives via memorandum dated January 19, 2018;

WHEREAS, the Chief of Engineers, by memorandum dated April 18, 2018, has delegated responsibility to the district and division engineers of USACE to accept and expend funds under Section 214 to expedite the review process for Department of Army permits, subject to certain limitations;

WHEREAS, Sunrise Wind is developing and has proposed to construct the Sunrise Wind Farm project (Project), an approximately 1,034-Megawatt (MW) offshore wind

energy generating facility located on the outer continental shelf of the United States offshore Rhode Island, Massachusetts, and New York;

WHEREAS, Sunrise Wind successfully participated in competitive solicitations for the procurement of offshore wind energy conducted by the State of New York in furtherance of the State's clean-energy and climate-change goals;

WHEREAS, Sunrise Wind executed a contract with the New York State Energy Research and Development Authority (NYSERDA) for a 25-year Ocean Renewable Energy Credit (OREC) Agreement under which the NYSERDA will purchase ORECs for up to 924 MW of energy generated by the Project and make them available for purchase by New York Load-serving entities;

WHEREAS, in addition to the 924 MW contracted to the NYSERDA, Sunrise Wind has the opportunity to enter into other potential offtake agreements or sell up to 110 MW of additional electricity on a merchant basis without an offtake contract;

WHEREAS, Section 1262 of the 2005 PUHCA, 42 U.S.C. § 16451 defines "public-utility company" to include and "electric utility company," and defines "electric utility company" as "any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale";

WHEREAS, as elaborated in the foregoing recitals, Sunrise Wind owns and proposes to operate facilities used for the generation of electric energy for sale, and, as such, Sunrise Wind may enter into this MOA;

WHEREAS, installation and operation of certain components of the Project's facilities requires permits from USACE under Section 404 of the Clean Water Act Section 10 of the Rivers and Harbors Act of 1899, and Section 14 of the Rivers and Harbors Act of 1899 (collectively the "permits");

WHEREAS, over the last couple of years, the number of electric energy generation projects, including offshore wind energy facilities, requiring USACE permits has increased substantially, and the Parties expect that these higher levels will continue for the foreseeable future;

WHEREAS, USACE has indicated that, without additional resources, it will be unable to review Sunrise Wind's application for the permits in a timely manner;

WHEREAS, it is understood and acknowledged by the Parties that USACE's timely review of Sunrise Wind's Permit application will be completely impartial and in accordance with all applicable Federal laws and regulations, and the Office of the Assistant Secretary for Civil Works January 2018 implementation guidance on the Use of Funding Agreements within the Regulatory Program (or current guidance).

NOW, THEREFORE, the Parties agree as follows:

## **AGREEMENT**

### **Article I. – Purpose and Authorities**

1. Pursuant to Section 214, this MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by Sunrise Wind to expedite the Permit review process for the Project.
2. This funding agreement shall not be interpreted to mean or imply that USACE will issue a permit to Sunrise Wind at the conclusion of its review process. This MOA is intended only to prioritize and expedite the processing of Sunrise Wind's application for a Department of Army permit. Funds from Sunrise Wind will not be used by USACE for the review of permit decision documents or final permit decision-making.
3. The USACE enters into this MOA pursuant to its authority under Section 214.
4. Sunrise Wind enters into this MOA pursuant to its corporate authority to enter into agreements of this type.

### **Article II. – Scope**

1. Activities that USACE may pursue under this MOA are restricted to actions taken under USACE's regulatory authority that will expedite the evaluation and processing of Sunrise Wind's application and other programmatic efforts to support efficient decision-making related to Project permitting. Such Permit evaluation and processing activities may include, but are not limited to, the following: preparation and distribution of public notices; preparation of correspondence, meetings, consultation and coordination with other agencies and consulting parties; public interest review; analysis of alternatives; compensatory mitigation proposal review; preparation of environmental assessments; and preparation of Permit decision documents and Permit compliance conditions. Such activities shall be subject to the following conditions.
  - a. The evaluation and processing of the Sunrise Wind Permit application shall include full consideration of all relevant and applicable environmental laws and regulations. In no way shall it be construed or implied that the Parties intend to abrogate any obligations or duties to comply with applicable Federal or state laws, regulations, guidance, policies and/or procedures by entering into this MOA.
  - b. Use of funds shall not affect the impartial decision-making of USACE either substantively or procedurally, and USACE will follow all impartiality requirements in the Office of the Assistant Secretary for Civil Works January 2018 implementation guidance

on the Use of Funding Agreements within the Regulatory Program (or current guidance).

2. As further specified in Article III.1 and Article IV, Sunrise Wind shall provide funds to USACE to expedite the Permit evaluation process for the Project in accordance with the following parameters.

a. The USACE's "Regulatory Program" is funded as a Congressionally-appropriated line item in the annual Federal budget. Funds received from Sunrise Wind will be used by USACE to augment the USACE Regulatory Program budget, in accordance with the provisions of Section 214. The USACE must have sufficient funding from Sunrise Wind on-hand prior to performing any work pursuant to this MOA; such funding will be provided to USACE pursuant to Article IV of this MOA.

b. Funds provided by Sunrise Wind pursuant to this MOA shall be used by USACE to fund one (1) full-time equivalent (FTE) (the "USACE project manager"). A single individual shall serve as the USACE project manager. The USACE may include additional project managers to supplement the evaluation based on needed expertise to effectively evaluate the proposal. The USACE project manager will possess sufficient education and experience to perform the work as outlined in this MOA, including but not limited to, a working knowledge of: Section 404; Section 10; 33 U.S.C. § 408; the National Environmental Policy Act; the Endangered Species Act; Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108 (Section 106); the identification and delineation of Federal Wetlands; and the structure of state wetland regulations. The USACE, in its sole judgment and discretion, will determine whether the applicants for the USACE project manager position meet these criteria. The USACE project manager is dedicated to the evaluation of Sunrise Wind's Project. While the USACE project manager will have working knowledge of 33 U.S.C. § 408, funds received under this MOA will not be expended by USACE for the evaluation of Sunrise Wind applications received pursuant to 33 U.S.C. § 408, unless this MOA is amended per Article XI.

c. Funds contributed by Sunrise Wind under this MOA will be expended by the USACE to defray the costs of the USACE project manager (including salary, associated benefits, overhead and travel expenses) in order to expedite the evaluation and processing of Sunrise Wind's Permit application. The costs of funding the USACE employee shall also include all employee-related costs associated with performance under this MOA assessed by the USACE including mandatory employee training, field safety equipment such as safety shoes, use of a government vehicle for offsite field work and meetings, and other miscellaneous expenses. If necessary, USACE may make staff substitutions provided that they possess comparable project manager experience, including experience processing permit applications for energy generation projects. The USACE will provide early notification in the event a change in the dedicated USACE project manager is necessary, and to develop a transition plan for the efficient exchange of information to maintain project evaluation momentum.

d. To ensure Sunrise Wind's funds are only expended for the intended purpose of this MOA, USACE will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of Sunrise Wind's Permit application. The USACE project manager will charge time and expenses against the account when performing work on the Sunrise Wind Permit application or undertaking other programmatic efforts to support efficient evaluation related to Sunrise Wind's permitting needs.

e. If the funds provided by Sunrise Wind are expended and not replenished, any remaining work on the Sunrise Wind Permit application will be handled like those of any permit applicant that does not have a dedicated USACE project manager.

### **Article III. – Responsibilities of the Parties**

#### **1. Sunrise Responsibilities.** Sunrise Wind shall:

a. Provide funding, as further specified in Article IV, for the USACE project manager position (including any additional project managers) for the purpose of expediting the evaluation and processing of Sunrise Wind's Permit application;

b. Provide to USACE an initial list of planned work to be performed by the USACE project manager in connection with the Sunrise Wind Permit, including a projected schedule, substantially in the form included as Enclosure 1 and Enclosure 2 to this MOA. Sunrise Wind shall be responsible for updating and/or revising the list of planned work to reprioritize USACE evaluation and processing as necessary. Any such updates or revisions shall not require a formal amendment of this MOA. The parties recognize the interdependence of schedule milestones and acknowledge that adjustments to schedule milestones will necessitate commensurate adjustment to the timeframe necessary to make permit decisions;

c. Provide a point person (Sunrise Wind Principal Representative) to coordinate the evaluation and processing of the Permit application, communicate priorities to the USACE project manager, and to act as the first point of contact with the USACE for the purposes of this MOA. The Sunrise Wind Principal Representative will serve as the primary contact for the Permit application and decision, including as to any issues of non-compliance;

d. Actively engage with USACE in scoping, planning and project development through various means, including, but not limited to, meetings, field visits, conference calls, video teleconferencing and email.

e. Provide all required information regarding the Project and other specific activities. Sunrise Wind shall provide sufficient information to USACE for the timely determination of Project purpose statements and range of alternatives, analysis of Project effects, determination of the least environmentally damaging practicable alternative, and

development of appropriate mitigation measures, to the extent applicable. Upon request, Sunrise Wind shall provide supplemental information necessary to ensure that USACE can effectively and timely accomplish the permit review.

f. In consultation with USACE, recommend realistic timelines for USACE involvement.

g. In a timely manner, resolve any non-compliance issues to the satisfaction of USACE. Failure to resolve non-compliance issues may interfere with the success of the performance measures as outlined in **Enclosure 2** and shall not be the responsibility of USACE. See Article III.2.I below for impartiality restrictions on the USACE resolution of non-compliance issues associated with the Project.

## **2. USACE Responsibilities.** USACE shall:

a. Expedite evaluation and processing of Sunrise Wind's Permit application in accordance with the purpose, terms and conditions of this MOA.

b. Actively participate in scoping, planning and Project development meetings and field reviews, when requested, to identify critical issues, key decision points, and potential conflicts as early as possible.

c. Participate with other federal, state and local agencies in the concurrent and proactive review of the Project, respond to any concurrence requests, and provide any recommendations, as required.

d. Provide advice and guidance on ways to avoid and minimize Project impacts, to achieve better environmental outcomes and, where possible, to improve permit processing efficiency and reduce permit processing timeframes and potential delays.

e. As appropriate, use a coordinated process to review draft and final Environmental Impact Statements, Environmental Assessments and other environmental documents as applicable, and provide timely agency comments to the Lead Agency.

f. As appropriate, use the coordinated process for Section 106 consultation developed cooperatively with Sunrise Wind to achieve timely agency comments and determinations.

g. In order to document required expenses, USACE shall submit a report of expenditures timesheets directly to the Sunrise Wind Principal Representative on a monthly basis, for the prior calendar month, documenting the actual costs incurred on behalf of this MOA. The report shall: (1) identify the time period covered, (2) identify the employee(s), hourly employee rate, Sunrise Wind work task name, Project Number/USACE File No., and number of hours spent on the respective work tasks; and

(3) explain all expenses for which funds received pursuant to this agreement were expended.

h. Process deliverables in a timely manner by attempting to meet the schedule listed in Enclosures 1 and 2. However, USACE permit decisions, and pending decisions from other agencies and consulting parties may exceed these targets even with timely USACE follow-ups with coordinating agencies, due to issues outside of USACE control. While Sunrise Wind funds will be expended to expedite USACE's evaluation of the Permit application, no Section 214 funds received under this MOA will be expended on USACE's review of Permit decision documents or Permit decision-making associated with the Project's Permit application.

i. Meet with Sunrise Wind representatives on a monthly basis, or more frequently if requested by either Party, to establish priorities and to evaluate the activities performed under this MOA.

j. Provide final permit decision and other responses to Sunrise Wind.

k. Quarterly, or upon request by the Sunrise Wind Principal Representative, obtain and share with Sunrise Wind USACE feedback about: (1) the quality of work submitted by Sunrise Wind to USACE for review and approval; (2) Sunrise Wind staff knowledge of USACE regulations, rules, and permit requirements; (3) Sunrise Wind's efforts to resolve non-compliance issues (if any); and (4) Sunrise Wind's professional conduct related to communication and coordination. The feedback should also include USACE recommendations for improving working relationships with and performance of Project staff.

l. While USACE (including the dedicated USACE project manager or other staff) may conduct compliance inspections of the Project using funds received under this MOA, USACE cannot use any Section 214 funds accepted from Sunrise Wind to resolve issues of non-compliance with the Project, including, but not limited to, evaluation of after-the-fact permit modifications. Non-compliance issues may be reviewed and resolved by someone other than the dedicated USACE project manager at USACE's discretion, and USACE non-compliance reviews and resolutions will not be funded by funding received from Sunrise Wind under this MOA.

#### **Article IV. – Funding**

1. Sunrise Wind shall provide funding for services rendered under this MOA, in advance, on an annual basis based on the Federal fiscal year (FY), *provided, however*, that that funding for the permit evaluation and construction period is \$360,000, and payment in full of such amount shall be due to USACE within thirty (30) days of the Effective Date. The USACE will carry over any unexpended and/or unobligated funds from year to year.

2. No later than August of each subsequent year that this MOA remains in effect, USACE and Sunrise Wind shall discuss the USACE anticipated costs to be incurred for the next Federal fiscal year, including the Federal Government's General Schedule increases (step- increases), locality adjustments and any carry over from the prior year and determine whether to increase the funding amount for the next FY. Revisions agreed to by the Parties will be incorporated into a revised budget estimate for the next FY, without necessitating a formal revision or amendment to this agreement.
3. If USACE's actual costs for providing the agreed upon level of service will at any time during the term of the MOA exceed the amount of funds available, USACE will notify Sunrise Wind at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. Sunrise Wind will either increase the total funding amount through an amendment to this MOA or agree, in writing, to a reduced level of service.
4. Notwithstanding the foregoing, absent written agreement of the Parties, Sunrise Wind's funding obligation under this MOA shall in no event exceed \$360,000 per year.

#### **Article V. – Performance Measures**

1. Performance measures are indicators of performance pertaining to achievement of Sunrise Wind and USACE goals for this MOA. Performance measures, results and subsequent evaluation methods can be used to determine the effectiveness of the MOA, which will help the Parties understand, manage, and allow for modification of the MOA, as necessary, to ensure that the MOA will result in the expedited evaluation and processing of Sunrise Wind's Permit application in compliance with the requirements of Section 214. Performance measures are indicated in **Enclosure 2**.
2. The performance measures identified in **Enclosure 2** may be revised based on collaborative evaluation between Sunrise Wind and USACE. The focus is on quantitative measures where data are readily available, such as permit process times and completeness of Sunrise Wind's Permit application.

#### **Article VI. – General Terms**

1. **Duration.** The duration of this MOA shall be for five years from the Effective Date, unless extended or terminated early in accordance with Article XI.2. This MOA may be extended in yearly increments by the mutual written agreement of the Parties.
2. **Impartial Decision Making.** It is understood and agreed that in order to ensure that the acceptance and expenditure of funds will not impact impartial decision making with respect to Permit evaluation and processing, or the USACE's final Permit decision(s), either substantively or procedurally, USACE will comply with the following standards, as mandated by USACE Headquarters:



a. In cases where Sunrise Wind funds are used, all final permit decisions, including all reporting general permit verifications and individual permit decisions, must be reviewed and signed by at least one level above the decision maker. For example, if the decision maker is the Chief, New York Permits & Enforcement Branch, then the reviewer would be the Chief, Regulatory Division. Sunrise Wind funds will not be used for this review.

b. All jurisdictional determinations made on the Project for which Sunrise Wind funds are used must have documentation that a USACE regulator, not funded by Sunrise Wind, reviewed, and agreed with the determination (e.g., peer review).

c. All final permit decisions, including all reporting general permit verifications and individual permit decisions, for cases where Sunrise Wind funds are used will be made available and updated monthly on the USACE HQ webpage in an area separate from any other final actions, clearly identifiable as being for application evaluation funded by and through this authority.

d. Sunrise Wind funds will not be expended for costs associated with the review of the USACE work undertaken by supervisors or others within the USACE decision making chain of command. However, funds may, subject to written approval by Sunrise Wind pursuant to Article II.2.c, be used for additional staff if found to be necessary to accomplish the permit evaluation and related workload. Notwithstanding anything herein to the contrary, the USACE, after consultation with and approval by Sunrise Wind, may expend funds provided by Sunrise Wind to hire contractors to perform select duties, including but not limited to, site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purposes of augmenting the resources available to the USACE for expediting its evaluation of Sunrise Wind's Permit application for the Projects. If such expenditures, when combined with the costs of the USACE project manager, require funding in excess of the amount available under this MOA, then USACE, as appropriate, shall not hire said contractor until and unless the Parties execute a written amendment to this MOA that provides for the payment of additional funds by Sunrise Wind.

e. Sunrise Wind funds will not be used for enforcement activities but may be used for permit compliance monitoring for the Project. See Article III.B.(12).

## **Article VII. – Notices**

1. To provide for consistent and effective communication between Sunrise Wind and the USACE, each Party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA.

For the purposes of this MOA, the Sunrise Wind Principal Representative shall be:

Sara Holmes  
Senior Environmental Permitting Specialist  
Orsted North America Inc.,  
One Park Place, Suite 400  
Annapolis, MD 21401  
Tel: (727) 565-9895  
Email: sholm@orsted.com

For the purposes of this MOA, the Principal Representative for the USACE shall be:

Stephan Ryba  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers, New York District  
26 Federal Plaza, Room 16-406  
New York, NY 10278  
Tel: (917) 790-8512  
E-mail: stephan.a.ryba@usace.army.mil

2. Any notice required by the MOA to or between the Parties shall be in writing and sent to the Principal Representatives by certified mail or recognized overnight courier with proof of delivery. In the case of Sunrise Wind, copies of any such required notices shall also be sent to:

Orsted North America Inc.  
399 Boylston Street, 12th Floor  
Boston, MA 02116  
Attention: Legal  
Email: us\_legal\_notices@orsted.com

#### **Article VIII. – Applicable Laws**

All applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by USACE will be governed by the USACE regulations, guidance, policies and procedures.

#### **Article IX. – Dispute Resolution**

The Parties agree that, in the event of a dispute between the Parties regarding implementation of this MOA (excluding any specific Permit application/decisions), Sunrise Wind and USACE shall use their best efforts to expeditiously resolve that

dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties.

If the Parties are unable to resolve their dispute regarding the implementation of this MOA, USACE shall elevate the matter to the North Atlantic Division of the United States Army Corps of Engineers (NAD), together with all documentation relevant to the dispute. NAD shall render its decision regarding the proper implementation of the MOA within thirty (30) days. Both parties agree that they will abide by the decision of NAD with respect to the implementation of this MOA.

The Parties' responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

The Parties agree that this MOA in no way guarantees a particular substantive outcome of the USACE permitting process, or the issuance of a USACE permit.

#### **Article X. – Public Information**

Justification and explanation of Sunrise Wind's programs or projects before other agencies, departments, and offices will not be the responsibility of the USACE. The USACE may provide, upon Sunrise Wind's request, assistance to support justification or explanation of activities conducted under this MOA. In general, USACE is responsible only for public information regarding USACE regulatory activities. Sunrise Wind will give USACE, as appropriate, advance notice before making formal, official statements regarding activities funded under this MOA.

#### **Article XI. – Amendment, Modification and Termination**

1. This MOA may be modified or amended only by mutual agreement in writing signed by both Parties.
2. This MOA shall terminate five years following the Effective Date, unless extended or terminated early. Notwithstanding the foregoing, either Party may terminate this MOA, without cause, upon sixty (60) days' written notice to the other Party. Following termination, neither Party shall have any further obligation under this MOA, provided, however, that Sunrise Wind shall continue to be responsible for all costs incurred by USACE under this MOA prior to the date of such termination, subject to the cap in Article IV.4.
3. Within sixty (60) days after termination of this MOA, USACE shall conduct a final accounting to determine the actual costs of the work performed pursuant to this agreement. Within thirty (30) days of completion of this accounting, USACE shall return to Sunrise Wind, subject to compliance with the Anti-Deficiency Act, 31 U.S.C. 1341 et. seq., any unobligated or unexpended funds advanced in excess of the actual costs,

## Article XII. – Miscellaneous

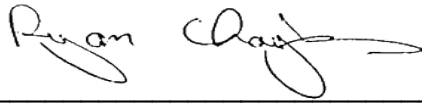
1. The following link is provided to the USACE Regulatory Informational webpage: <http://www.nae.usace.army.mil/Missions/Regulatory/WRDA214.aspx>.
2. This MOA will not affect any pre-existing or independent relationships or obligations of the Parties.
3. The USACE's participation does not imply endorsement of the Project, nor does it diminish, modify or otherwise affect USACE's statutory or regulatory authorities.
4. This MOA and enclosures constitute the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this MOA. Except to the extent set forth in this MOA, no waiver, consent, modification or change of terms of this MOA shall bind either party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any Party to enforce any provision of this MOA shall not constitute a waiver by that Party of that or any other provision.
5. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by Federal law and regulation.
6. This MOA does not preclude the Parties from entering other interagency agreements relative to their respective roles and responsibilities; however, any other agreement entered into should not contradict or otherwise undermine the intent of this MOA.
7. Except as specifically set forth herein, each Party shall bear its own costs (including attorney fees) arising out of this MOA.
8. This MOA may be executed in two or more counterparts, including by facsimile or .pdf transmission, all of which together shall constitute a single instrument.

**IN WITNESS WHEREOF**, the Parties hereto have executed this MOA as of the Effective Date.

U.S. Army Corps of Engineers, New York District

Matthew Luzzatto	Date
Colonel, Corps of Engineers	
District Engineer	

Sunrise Wind, LLC, by its agent, Orsted Wind Power North America, LLC



3/15/2023

Ryan Chaytors  
Program Development Director  
Orsted Wind Power North America, LLC



3/15/2023

Michael Evans  
Sunrise Wind Permit Manager  
Orsted Wind Power North America, LLC

## Enclosure 1

### Sunrise Wind USACE Dedicated Evaluator Preferred Workstream

INTERNAL

Project Component	2022			2023											
	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>DEIS</b> <i>USACE review and provide comment – 60 days</i>			Dec 16	Feb 14											
<b>Section 7 ESA Consultation – DOI-USFWS</b> <i>Consultation deemed complete – USACE review draft B.O. – 30 days</i> <i>Conclusion of ESA Consultation – USACE review final B.O. – 30 days</i>				Jan 16	Feb 15			May 5	Jun 4						
<b>Section 106</b> <i>Draft MOA distributed – USACE review and provide comment– 60 days</i> <i>Final MOA distributed – USACE review and provide comment– 45 days</i> <i>Completion of Section 106 Process– USACE formality review – 15 days</i>			Dec 16	Feb 14					Jun 7	Jul 22		Aug 21	Sep 1		
<b>MMPA</b> <i>Proposed ITA in Federal Register – USACE review – 30 days</i> <i>Final ITA in Federal Register – USACE review – 15 days</i>				Feb 8	Mar 10								Oct 20	Nov 4	
<b>ESA Consultation – NOAA-NMFS</b> <i>Consultation deemed completed – USACE review draft B.O. – 30 days</i> <i>Conclusion of ESA Consultation – USACE review final B.O. – 30 days</i>					Mar 1	Mar 31				Jul 17	Aug 16				
<b>EFH Consultation</b> <i>EFH Assessment Complete – USACE review/provide comment– 30 days</i> <i>EFH Recommendations – USACE review and provide comment– 30 days</i>							Apr 17	May 17				May 17	Jun 16		
<b>FEIS</b> <i>Draft FEIS provided to consulting parties – USACE review – 30 day</i> <i>FEIS released – USACE review FEIS and Conditions – 15 days</i>										Jul 7	Jul 22				
<b>ROD</b> <i>USACE will issue its final permit decision– 30 days post-ROD</i>											Aug 17	Sep 16			

Dates based on BOEM's Permitting Dashboard for the Sunrise Wind Project. Accessed 02/17/23.

 USACE FTE to provide communication of review completion to Sunrise Wind.



Encl 1

## Enclosure 2

### USACE Performance Measures

The following table identifies performance measures that USACE will compile and report on to the Sunrise Wind Project Manager monthly. These measures are indicators of performance for the MOA and are based upon national USACE goals and regulations. However, USACE permit decisions, pending decisions from other agencies and consulting parties may exceed these targets even with timely USACE follow-ups with coordinating agencies, due to issues outside USACE control. USACE will only report on the status of current USACE identified actions. Other agency actions and past USACE actions are listed as milestones, not measurable USACE actions under this MOA.

Dates provided below are based on the dates for environmental review and permitting processes currently provided on BOEM's FAST 41 Permitting Dashboard (Dashboard) for the Sunrise Wind Project and are subject to change. Sunrise Wind anticipates that BOEM will be updating the Dashboard schedule soon, but the information is not yet available. Therefore, when reading this document, focus should be placed on the time intervals (e.g., 30 days) to complete an activity, rather than the associated dates.

**A performance measure (PM) indicates that USACE should notify Sunrise Wind within 5 business days regarding status of completion following the indicated submittal.**

#### USACE MOA Execution

- USACE FTE Start (TBD)
- USACE FTE Background Research (# of days between MOA Execution and DEIS Release)
  - Meet with Sunrise Wind personnel, review workstream, performance measures, and review Sunrise Wind publicly available data (COP, ITR Application, and other applications as provided by Sunrise Wind).

#### Draft Environmental Impact Statement Released + USACE Public Notice (December 16, 2022)

- [USACE Review DEIS and Comment \(60 days\)](#) **PM**
- [USACE work concludes by February 14, 2023 – Notify Sunrise Wind](#)

#### Essential Fish Habitat Consultation (National Oceanic and Atmospheric Association)

- BOEM Request for EFH Consultation Submitted (August 8, 2022)
- NOAA Determines EFH Assessment Complete (April 17, 2023)
  - [USACE stay in touch with NOAA/BOEM, track EFH Assessment and Conditions timelines](#)
  - [USACE Review Draft Conditions when available \(30 days\)](#) **PM**
- NOAA Issues any EFH Conservation Recommendations (May 17, 2023)
  - [USACE Review Final EFH Recommendations \(30 days\)](#) **PM**
- [USACE work concludes by June 16, 2023 – Notify Sunrise Wind](#)

### **Endangered Species Act Consultation (NOAA-National Marine Fisheries Service)**

- BOEM Request for ESA Consultation Received by NOAA (August 8, 2022)
- NOAA determines Consultation Package is Complete (March 1, 2023)
  - USACE stay in touch with NMFS/BOEM, track Biological Assessment (BA) and Biological Opinion (BO) timeline
  - USACE Review Draft BO and Conditions (30 days) **PM**
- Conclusion of ESA Consultation (July 17, 2023)
  - USACE Review Final BO and Conditions (30 days) **PM**
- USACE work concludes by August 16, 2023 – Notify Sunrise Wind

### **Section 7 ESA Consultation (Department of the Interior – U.S. Fish and Wildlife Service)**

- BOEM's Request for ESA Consultation Received by USFWS (December 16, 2022)
  - USACE stay in touch with USFWS/BOEM, track BA and BO timeline
- USFWS Determines Consultation Package Complete (January 16, 2023)
  - USACE Review Draft BO and Conditions (30 days) **PM**
- Conclusion of ESA Consultation (May 5, 2023)
  - USACE Review Final BO and Conditions (30 days) **PM**
- USACE work concludes by June 4, 2023 – Notify Sunrise Wind

### **S106**

- BOEM's Draft MOA Distributed (December 16, 2022)
  - Overlaps with DEIS -- USACE Review Draft Conditions (90 days) **PM**
- BOEM Distributes Final MOA with FEIS (June 7, 2023)
  - USACE Review Final Conditions (45 days) **PM**
- S106 Consultation Complete (August 17, 2023)
  - Note – USACE will have previewed the Final Conditions so this step is a “formality” and should not require an in-depth review (15 days) **PM**
- USACE work concludes by September 1, 2023 – Notify Sunrise Wind

### **Marine and Mammal Protection Act (NOAA-NMFS)**

- NOAA Released Proposed Incidental Take Authorization (ITA) in Federal Register (February 8, 2023)
  - USACE Review (30 days) **PM**
- NOAA Posts Final ITA Regulations in Federal Register (October 20, 2023)
  - USACE Review (15 days) **PM**
- ITA Decision Rendered (November 20, 2023)
- USACE work concludes by November 4, 2023 – Notify Sunrise Wind



### Final Environmental Impact Statement<sup>1</sup>

- BOEM provides Draft FEIS to consulting parties
  - [USACE Review draft FEIS and Conditions \(30 days\)](#) **PM**
- FEIS released July 7, 2023
  - [USACE Review FEIS and Conditions \(15 days\)](#) **PM**
- [USACE work concludes by July 22, 2023– Notify Sunrise Wind](#)

### BOEM Issuance of the Record of Decision (ROD) (August 17, 2023)

- [30-day goal for USACE to finalize permit decision, following BOEM's issuance of the ROD, including USACE's review and incorporation of relevant conditions that resulted from consultations regarding NMFS ESA, USFWS ESA, MMPA, S106, and EFH.](#)

### Joint Section 10/404b/408 Permit Application

- USACE Determines Application Complete (December 1, 2022)
- Publication of PN (December 16, 2022)
- USACE Conducts Joint Public Meeting with BOEM (December 21, 2022, - February 4, 2023)
  - [USACE Reviewer attend meetings, respond to comments as needed](#)
- USACE Incorporates Consultations into Draft Permit Decision Documents and shares any Draft Conditions with Sunrise Wind (September 25, 2023)
  - [USACE utilize completed consultations for Draft Permit Decision](#)
- [USACE Permit Decision](#)

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<sup>1</sup> Coastal Consistency Review Process for New York, Rhode Island, and Massachusetts run concurrently with the NEPA process and Determinations are expected to be issued before or at the time of the FEIS release.