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**Before the House Committee on Natural Resources  
Subcommittee on Energy and Mineral Resources  
U.S. House of Representatives**

**“Power in the Pacific, Unlocking Offshore Wind Energy for  
the American West.”  
September 8, 2022**

Chairman Lowenthal, Ranking Member Stauber, and the distinguished members of the House Energy and Mineral Resources subcommittee:

Thank you for this opportunity to testify on the upcoming lease for wind power on the Outer Continental Shelf (OCS) off California near Humboldt and Morro Bay. Given our environmental justice organization’s extensive policy and legal work in clean energy, Brightline is deeply engaged and interested in the equitable development of offshore wind in California.

With California’s recent strong commitment to offshore wind, the state is poised to deliver larger economic and energy benefits for local communities. On August 10, 2022, responding to California Governor Gavin Newsom’s push for a strong offshore wind target, the California Energy Commission (CEC) adopted planning goals of 25 gigawatts (GW) by 2045.<sup>1</sup> As one of the largest offshore wind planning goals in the world, California’s 25 GW planning goal allows more opportunities for federal and state government agencies to craft a greater strategic vision focused on equity and community benefits. To this end, strong federal leadership, particularly from Congress Members Alan Lowenthal, Salud Carbajal, Jared Huffman, and Jimmy Panetta, has already called upon the Bureau of Ocean Energy Management (BOEM) to expand bid credits for Community Benefits Agreements (CBAs) as well as expanding the groups covered to include community groups, ocean users, Tribes, and underserved communities. Through continued thoughtful policies and engagement of local communities, the BOEM OCS leasing process can play an important role in bringing deep long-lasting benefits to underserved communities across the West Coast.

We appreciate and are thankful for the work of BOEM staff in hosting many workshops and hearing public comments on offshore wind leases in California. The federally-led leasing process is a critical juncture to imbue the offshore wind development process with community-centered benefits. The Proposed Sale Notice (PSN) published on May 31, 2022 to the Federal Register outlines stipulations for communication plans with key parties as well as bid credits to support

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<sup>1</sup>*Letter from Gavin Newsom, California Governor, to Liane Randolph, California Air Resources Board Chair.* (July 22, 2022),

<https://www.gov.ca.gov/wp-content/uploads/2022/07/07.22.2022-Governors-Letter-to-CARB.pdf?emrc=1054d6>.

*Commission Report: Offshore Wind Energy Development off the California Coast*, California Energy Commission, Docket 17-MISC-01 (August 1, 2022),

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=17-MISC-01>.

workforce training and domestic supply chain development.<sup>2</sup> However, extensive statutory and legal precedent allows BOEM to establish additional lease stipulations and bid credits beyond what is proposed in the PSN. In order to serve “national security interests” as stated in the Outer Continental Shelf Lands Act (OCSLA), BOEM can incentivize additional investments with offshore wind, including strong community benefits that strengthen energy resiliency throughout the region.

The OCS leases will usher in the new floating offshore wind industry to the United States, and to ensure its success, industry investment in localized supply chains and communities can support the further growth of floating offshore wind across the West Coast. This testimony also includes comments on additional proposed stipulations for Project Labor Agreements (PLAs) and bid credits for additional CBAs.

Statutory, legal, and policy precedents justify further lease stipulations and bid credits for communities

*Community-centered lease auctions furthers national security interests*

In one of his first actions in office, President Biden made clear that priority investments in clean energy are required for national security.<sup>3</sup> In turn, the overall success of offshore wind in California is tethered to the local and regional communities that host them. Executive Order 14008 specifically puts combating climate change at the forefront of the national interest by making it “an essential element of United States foreign policy and national security” and sets the following goals:

It is the policy of my Administration to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure. Successfully meeting these challenges will require the Federal Government to pursue such a coordinated approach from planning to implementation, coupled with substantive engagement by stakeholders, including State, local, and Tribal governments.<sup>4</sup>

Floating offshore wind is a unique technology that will require localized supply chains and domestic workforce to serve far beyond Humboldt and Morro Bay Wind Energy Areas (WEAs). To fulfill the CEC’s 25 GW planning goals, community benefits are essential to build out infrastructure. Especially in the North Coast, BOEM can serve the national security interest by incentivizing developers to invest in more remote and historically underfunded regional economies, and build up resilient manufacturing and installation capacity that serves the entire

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<sup>2</sup> 87 FR 32443, <https://www.govinfo.gov/content/pkg/FR-2022-05-31/pdf/2022-11537.pdf>.

<sup>3</sup> EO 14008 (January 27, 2021) (stating climate security is “an essential element of United States foreign policy and national security.”).

<sup>4</sup> Executive Order 14008 of January 27, 2021, 86 FR 7619 (Jan. 27, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-02-01/pdf/2021-02177.pdf>.

West Coast.<sup>5</sup> Without a robust domestic supply chain and workforce, OSW implementation is susceptible to supply chain and labor disruptions. These potential disruptions threaten national security not only during a project's buildout, but also after it comes online as ongoing climate change-driven catastrophes continue to affect the state. The rising frequency of disasters like wildfires on the Pacific Coast and their related power shut offs illustrate the increasing importance of localized clean energy generation and resilient infrastructure.

If ensured through stipulations and expanded in bid credits, additional regional community funds can lead to community-led programs and structures that bolster community resiliency and national energy security. Already, BOEM is doing this by proposing bidding credits related to workforce development in the PSN. Further investments to support a local skilled and trained workforce will ensure the success of this industry for the United States. PLAs and CBAs will protect national security interests by creating a reliable infrastructure for domestic power supply and reduce risk of future supply chain and labor shortage disruptions. Well-resourced community resiliency and leadership in the development of offshore wind related infrastructure can further security of a regional grid that provides energy security to the West Coast region.

*The Outer Continental Shelf Lands Act authorizes lease processes to fulfill a variety of goals*

National security interests are also just one of the twelve factors that should be considered when granting leases under OCSLA. Subsection 8(p)(1) of OCSLA authorizes BOEM to grant leases, easements, and rights-of-way for energy development “from sources other than oil and gas.” In exercising this authority, 30 CFR § 585.211(b)(2)-(3) directs BOEM to “consult to develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environment.” An included factor is the “human environment,” defined as: “physical, social and economic components, conditions and factors which interactively determine the state, condition and quality of living conditions, employment and health of those affected, directly or indirectly, by activities occurring on the Outer Continental Shelf.” Additionally, Subsection 8(p)(4) of the OCSLA requires that in undertaking “any activity” related to granting a lease, the Secretary “shall ensure” twelve enumerated factors are “provided for” including a fair return to the United States and safety.

*The Secretary of the Interior has broad discretion to design and implement lease factors and bid credits*

The Secretary of the Interior's broad discretion in designing lease auctions contributes to the policy precedents for further incentives to make investments in local communities. The case law is well-settled that OCSLA provides the Secretary with a wide berth to balance bidding factors or

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<sup>5</sup> In BOEM's proposed leasing program for further oil and gas leasing, domestic energy production is identified as a key security goal due to “the importance of the electrical grid to all aspects of the economy and people's lives” and its potential “to enhance America's national security by reducing U.S. dependence on imported oil and supplying domestic energy.”

*2023-2028 National Outer Continental Shelf Oil and Gas Leasing: Proposed Program*, Bureau of Ocean Energy Management (July 2022); *2017-2022 National Outer Continental Shelf Oil and Gas Leasing: Proposed Program*, Bureau of Ocean Energy Management (March 2016).

In the Department of the Interior's own economic analysis report, authors argued that national energy security is a significant non-monetary consideration for pursuing further oil and gas leasing.

*Draft Economic Analysis Methodology for the 2023-2028 National Outer Continental Shelf Oil and Gas Leasing Program*, Department of the Interior (July 2022).

experiment with new bid systems to reach its goals.<sup>6</sup> Moreover, in several key decisions related to the Administrative Procedures Act, courts have broadly deferred to administrative agencies for actions made under their discretionary authority.<sup>7</sup>

Utilizing bid credits would be particularly effective in the multi-factor bidding format adopted in the PSN. The multi-factor bidding format gives BOEM the authority to weigh a variety of non-monetary factors, including but not limited to “**technical merit, timeliness, financing and economics, environmental considerations, public benefits, compatibility with State and local needs**, cash bonus, rental rate, and an operating fee rate” for evaluating a winning bid.<sup>8</sup> Bid credits create incentives to potential project proponents to invest in these factors. Further, bid credits are one method to create a common denominator by which non-monetary factors can be measured at auction, and thus assist with bid evaluation. Here, bid credits should be enhanced to reflect the importance and corresponding benefits that should be invested in the public benefit, environmental considerations, compatibility with State and local needs and requirements, Tribal nations, natural resources protection, and underrepresented communities. Notably, Executive Order 14008 sets “a goal that 40 percent of the overall benefits . . . [of] investments in the areas of clean energy and energy efficiency; clean transit; affordable and sustainable housing; training and workforce development . . .” flow to disadvantaged communities.<sup>9</sup> OCSLA places no express limitation on the Secretary’s discretion to support further bid credits or stipulations which address these regulatory factors, or its twelve statutorily-mandated factors.<sup>10</sup>

Additionally, the exercise of the Secretary’s discretionary authority plays a key role in reaching the previously discussed national policy goals. For example, in the development of offshore wind projects in the United States, the Secretary’s broad discretion is already demonstrated through the establishment of large lease areas.<sup>11</sup> Given that PAWC-1’s five lease areas total over 450,000 acres, well in excess of the statutorily defined amount, the Secretary has already exercised considerable discretion under OCSLA to achieve economies of scale to maximize the public benefit.

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<sup>6</sup> In *Watt v. Energy Action Education Foundation*, 454 U.S. 151 (1981) courts determined “The receipt of fair market value . . . is only one of many general considerations” and OCSLA “requires experimentation with at least some . . . new bidding systems, but leaves the details to the Secretary’s discretion.” Furthermore, in *Commonwealth of Mass. v. Andrus*, 594 F.2d 872, 889 (1st Cir. 1979) courts found “[W]here . . . interests conflict . . . , the Secretary must determine which interests must give way, and to what degree, in order to achieve a proper balance,” a task that “rules out a policy based on sacrificing one interest to the other.”

<sup>7</sup> The Administrative Procedures Act will not disturb an agency’s discretionary authority unless found to be “arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law” *Fisheries Survival Fund v. Jewell* (D. D.C. 2018) and further discussed in *Delaware Riverkeeper Network v. FERC* 753 F.3d 1304, 1313 (D.C. Cir. 2014) (quoting *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983)).

<sup>8</sup> Bold added. 30 CFR § 585.220(a)(4).

<sup>9</sup> Executive Order 14008 Sec. 223(a).

<sup>10</sup> *Id.*; see also 43 U.S.C. § 1337(p)(4) at FN2.

<sup>11</sup> In addition to OCSLA being initially designed for oil and gas leases, 43 U.S.C. § 1337(b)(1) states that lease areas are to not exceed “five thousand seven hundred and sixty acres, as the Secretary may determine, unless the Secretary finds that a larger area is necessary to comprise a reasonable economic production unit.” 43 U.S.C. § 1337(b)(1).

*Community-centered lease designs also improve public safety interests through a trained and skilled workforce*

Stipulations and bid credits that create a local skilled and trained workforce, such as through PLAs and partnerships with local institutions and Tribes, will create and promote safety in the construction, operation, and maintenance of offshore wind infrastructure and critical support facilities. PLAs are critical to both safety and national security which are factors to consider when granting leases under OCSLA. Investments in quality training in partnership with unions can drastically improve safety and benefits underserved and Tribal communities near offshore wind sites.

The auction design of the California WEAs can uplift local and underserved communities

Lease auctions including stipulations and bid credits can ensure that local and underserved communities near wind energy areas can benefit from offshore wind development. Stipulations can include requirements for well-designed PLAs, thoughtful community engagements, and commitments to transparency and accountability. Bid credits can include incentives for developers to invest in community-driven funds and create systems to further address the impacts of offshore wind.

*Project Labor Agreements (PLAs) nurture skilled and trained workforces and jobs for communities*

A stipulation for Lessees to make every reasonable effort to enter into a Project Labor Agreement (PLA) is critical to support regional and local unionized labor and access to this growing industry. In addition to the PSN's bidding credits of 20% for investments in workforce training and supply chain development, PLAs also increase training and employment benefit opportunities for local community members with local unions. PLAs should include provisions for operators and contractors who are unable to meet the PLAs hiring requirements to invest and create pathways for a future local workforce, such as directly funding pre-apprenticeship programs with local academic institutions and/or job training service providers. Apprenticeship and pre-apprenticeship programs in partnership with Tribes should be prioritized. These off-ramp provisions are critical to nurture a local skilled and trained workforce for offshore wind.

*Local and Targeted Hire are critical to ensuring offshore wind benefits are conferred to local communities*

PLAs and workforce development programs should include Local Hire and Targeted Hire goals. Local Hiring practices can create long-term sustainable career pathways for local underemployed, hard-to-reach, and unemployed communities by allocating specific percentages of work hours to local communities and specific community groups. When coupled with mandatory minimum percentage requirements, apprenticeships, and training programs, Local and Targeted hire can be especially powerful tools to bring benefits to communities near offshore wind development. The United States Department of Transportation has used Local Hire in construction pilot programs and expanded the

programs in 2021 to promote equitable jobs and workforce development.<sup>12</sup> Providing local employment opportunities with family-sustaining quality jobs will strengthen communities and allow people to work where they live.

Local and Targeted Hire activities could bolster and benefit from activities that would support union apprenticeships, local labor management training partnerships, and supply chain developments. These activities also support disadvantaged businesses including minority- and women-owned businesses cultivating further benefits. The regions around Humboldt and Morro Bay have significant existing partnerships, local unions, institutions, and small businesses that could benefit greatly.

*Community engagement is critical to identifying and avoided environmental justice issues*

Community engagement is crucial to achieve the goals of Executive Order 13985 and 14008. BOEM should include stipulations for the engagement of local onshore communities in addition to Lease Area users. These communities should intentionally include a layered equity definition that includes, among other definitions, communities as defined by California environmental justice mapping tool, CalEnviroScreen 4.0, and federally recognized Tribal lands. Additional communities should include census tracts with median incomes at or below 80% of area median income or state median income, and households with incomes less than 80% of area median income. Additional mapping and community engagements may further reveal underserved populations that should be engaged in the offshore wind leasing and development process. The following factors should also be considered in determining underrepresented communities: educational attainment outcomes, access to housing, clean and reliable energy, broadband access, access to transportation, food justice, and access to social services.

BOEM should also stipulate the creation of regional community-led steering committees composed of representatives from underserved communities, regional Tribal nations, and community-based organizations. This committee will help create, coordinate, and advance equity-driven visions of offshore wind development. The regular engagement and reporting to Tribes and parties should be a stipulation in the leasing process for PACW-1. Semi-annual reporting throughout the planning, construction, operations, and the decommissioning of offshore wind infrastructure will be crucial for long term compliance and adaptive management of offshore wind's impacts. Additionally, the recommended content of the interviews could capture significant concerns throughout the offshore wind development process. The coordination of meetings should not indicate blanket agreement or support among the Tribes and parties for the progress of offshore wind development or content of the reports.

Community input will be critical to determining potential impacts and benefits from Lessees' projects and should inform project proposals or alter existing proposals. BOEM should regularly engage underserved communities and not exclude them from the auction and development process.

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<sup>12</sup> U.S. Department of Transportation Announces Expanded Local Hire and Workforce Development Pilot Programs, U.S. Department of Transportation (May 19, 2021), <https://www.transportation.gov/briefing-room/us-department-transportation-announces-expanded-local-hire-and-workforce-development#:~:text=FTA's%20construction%20hiring%20and%20workforce,on%20FTA%2Dfunded%20construction%20projects>.

*Community Benefits Agreements (CBAs) can bring significant funding to address community needs*

Community Benefits Agreements with local and regional communities near offshore wind sites are critical in uplifting community needs, creating strong processes to address potential impacts of offshore wind, and to bolster local and regional communities that sustain these supply chains and workforce. The strength of CBAs is in their design flexibility. For example, in addition to focusing on local hiring commitments, living wage and benefits, CBAs can be designed to support educational partnerships, vocational pipelines or local, small businesses. In addition to being accompanied by monetary credits, CBAs by themselves can provide many intangible benefits to the developer—community support for the project benefits the developer by reducing risk, and increased reliability in obtaining approvals or subsidies.

Local and regional communities will be stewards of future OSW developments, and will also feel their greatest impacts. These impacts include those on the “human, marine, and coastal environments” for which BOEM is directed to develop “measures to mitigate adverse impacts, including lease stipulations.”<sup>13</sup> CBAs, stipulations, and credits can mitigate community burden resulting from offshore wind activities, such as increased strain on the limited housing, services, and other resources, additional emissions and environmental impacts of shipping and transportation, or further depletion of Tribal resources. Past CBAs are proof of concept that investing in the health of communities that host energy infrastructure also enhances energy security, and can be done so in innovative ways.<sup>14</sup> There are several potential complex impacts of offshore wind that are of specific concern when considering Humboldt and Morro Bay WEAs that include but are not limited to:

- a. Necessary infrastructure developments for offshore wind including improvements at ports, dredging of shipping and transportation channels, sewage systems, electricity interconnections, and road improvements.
- b. Increasing affordability issues in California including housing, living expenses, and transportation.
- c. Increased burdens on local businesses and services including healthcare, childcare, and small businesses.
- d. Additional provision to combat the growing issue of Missing and Murdered Indigenous Peoples (MMIP).
- e. Barriers to access to open space for local community members.
- f. Increased capacity for underserved communities to participate in offshore wind development and related activities.
- g. The early investment into underserved communities and continued investment throughout the length of the lease.

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<sup>13</sup> 30 CFR 585.211(b)(2).

<sup>14</sup> In 2014, The City of Richmond, California and Chevron U.S.A. Inc.’s *Richmond Refinery Modernization Project* developed a Communities Investment Agreement – similar to a CBA – designed to protect the environment, enhance safety, reduce energy use and create 1,000 local construction jobs. Chevron’s \$1 billion investment to modernize the refinery will replace some of the facility’s oldest processing equipment with modern technology. Specifics include scholarships, job training and readiness programs, local hiring plans, investments to nearby schools, and community based GHG reduction programs (including community and rooftop solar).

In California’s Humboldt and Morro Bay WEA lease auctions, additional bidding credits should be set aside for a CBA addressing impacts of offshore wind development on regional communities that are not covered in the Lease Area Use Bidding Credit. Onshore impacts are present throughout site assessment, research, environmental assessments, the construction and operation of offshore wind, and eventual decommissioning of projects at the Humboldt and Morro Bay WEAs. However, with careful planning, offshore wind can also become a catalyst for growth that has widespread impacts on housing affordability, transportation, and other community resources. These should be addressed starting in the leasing process with stipulations in the lease that target growth in these sectors and appropriately-sized bid credits to incentivize bidder commitments. Stipulations and bid credits are critical to the creation of regional community benefits and Tribal capacity funds. Financial commitments are critical for ensuring that funding goes to supporting underserved and environmental justice communities and bidding credits should require at least 90% financial commitment by developers.

In their public comment letter submitted in response to the BOEM PSN on July 29, 2022, Congress members Jared Huffman, Salud Carbajal, Jimmy Panetta, and Alan Lowenthal expressed support for expanding bid credits for CBAs as well as expanding the groups covered to include community groups, ocean users, Tribes, and underserved communities.<sup>15</sup>

Brightline supports the following additional stipulations and bidding credits that uplift regional community interests and centers equity in the offshore wind development process:

1. **Regional Community Benefit Fund** stipulations and a bid credit of 10% to resource a community steering committee that will reflect regional and community priorities including underserved communities, Tribal nations, and infrastructure priorities.
2. **Regional Tribal Capacity Fund** stipulations and a bid credit of 10% to support Tribes recognizing historical disproportionate impacts on Tribal lands, cultures, economies, and livelihoods. This fund would support Tribes in overcoming capacity constraints when engaging in offshore wind-related development and infrastructure.
3. **Increasing the Lease Area Use Bid Credit** to 3%.
4. **Tribal Fisheries Benefit Fund** stipulations and a 3% bid credit to specifically address concerns and monitor issues around Tribal sustenance and cultural fishing.
5. **Environmental Monitoring and Research Fund** stipulations and a 4% bid credit to ensure and provide resources for regional environmental stewardship and the implementation of adaptive management strategies.

*Strong transparency and accountability measures are needed throughout offshore wind leasing, construction, operations, and decommissioning*

The PSN reflects BOEM’s incorporation of previous comments in the enumeration of some compliance and penalties in the offshore wind development process on the Pacific Coast.

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<sup>15</sup> Congress members Jared Huffman, Salud Carbajal, Jimmy Panetta, and Alan Lowenthal, *RE: Pacific Wind Lease Sale 1 (PACW-1) for Commercial Leasing for Wind Power on the Outer Continental Shelf in California - Proposed Sale Notice*, Bureau of Ocean Energy Management (July 29, 2022), <https://www.regulations.gov/comment/BOEM-2022-0017-0019>.

However, additional safeguards to transparency and accountability could be embedded throughout the process. While maintaining Tribal sovereignty and related protocol, additional transparency and sharing of environmental data and data acquired during site characterization and assessment, Site Assessment Plans, COPs, and any other planning activities could be valuable in the monitoring and evaluation of projects. BOEM's methodologies for environmental assessments, adaptive management, and evaluation of activities are also important pieces of information for enforcement and penalty frameworks. Public comments could advocate that these methodologies and data be made publicly available to the fullest extent possible at every development stage. The data on this industry will be novel and critical to managing and adapting to future impacts. Initial data sharing will also help shape the adaptive management needs of offshore wind's impacts and be a vital source of information on offshore wind's impacts over time.

### Conclusion

Offshore wind industry has the potential to bring significant benefits and quality jobs, and its potential to have wide scale, generational impacts on local communities should not be overlooked. The federal leasing process of Humboldt and Morro Bay WEAs is the first step toward the 25 GW offshore wind goals for California and a critical component of President Biden's 30 GW goal. The development of these wind energy areas should set strong precedent for future OCS leases and illustrate the opportunity to deliver strong benefits to not only strengthen the national renewable energy portfolio but also to the regional and local communities impacted by this development. Strong stipulations for PLAs with Local and Targeted Hiring and strong community engagement are important lease auction designs in addition to bidding credits for CBAs that include further equity-oriented measures for underserved communities, Tribes, and parties. The Pacific Wind Lease Sale 1 is an opportunity to usher in transformational change to Humboldt and Central Coast communities while setting the stage for further equity-driven offshore wind development in the United States. There is a lot of work ahead for Brightline and government agencies to do in clean energy equity, and I look forward to your questions.