

Appendix B:

Copies of Correspondence from MMS during the Section 106 Process for the Cape Wind Energy Project



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Ms. Janet Snyder-Matthews, Ph.D.
National Park Service
Keeper of the Register
National Register of Historic Places
1201 Eye Street, NW (2280)
Washington, DC 20005

NOV 18 2009

RE: National Register Eligibility Opinion for Nantucket Sound as a Traditional Cultural Property, Cape Wind Energy Project.

Dear Dr. Matthews:

On October 9, 2009, in accordance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 470f), and its implementing regulation, 36 CFR 800, the MMS submitted its "*National Register Eligibility Determination for Nantucket Sound as a Traditional Cultural Property and Historic Property*" to the Massachusetts State Historic Preservation Officer (SHPO) of the Massachusetts Historical Commission.

In its submission to SHPO, the MMS concluded that Nantucket Sound is not eligible for listing as a Traditional Cultural Property (TCP) or a historic property on the National Register of Historic Places (NRHP) because it does not meet any of the Criteria of Eligibility (36 CFR Part 60). On November 5, 2009, SHPO concluded that Nantucket Sound "is a Wampanoag Traditional Cultural Property that meets the Criteria of Eligibility for listing in the National Register of Historic Places under Criteria A, B, C, and D at the local level of significance."

The MMS disagrees with SHPO and stands by its original determination that Nantucket Sound is not eligible for listing as a TCP or historic property on the NRHP. Because of this disagreement, the MMS hereby seeks a formal Determination of Eligibility (36 CFR Part 63) from the Keeper of the National Register pursuant to 36 CFR 800.4(c)(2).

There are two attachments to this cover letter. Attachment 1 includes a brief description of the proposed Cape Wind Energy Project. Attachment 2 includes a discussion on points made in the SHPO's eligibility determination opinion with which the MMS disagrees. In addition, after consulting the regulations and talking with staff at the National Register, the MMS has included the following documentation to help the Register in its evaluation, (submitted via hard copy and electronic file):

- MMS Nantucket Sound eligibility determination, with attachments (October 9, 2009)
- SHPO Nantucket Sound opinion (November 5, 2009)
- MMS eligibility determination for Wampanoag sites on Cape Cod and Martha's Vineyard (submitted to SHPO on November 17, 2009 and currently under consideration)

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- NPS report on impacts to NHLs (October 20, 2009)
- MMS Finding of Adverse Effect (December 2008)
- Letter from the Advisory Council on Historic Preservation to MMS (June 23, 2009)
- NOAA Nautical Chart #13237 showing proposed project area (white dotted line shows Federal/State jurisdictional boundary)
- **Report No. 4.3.4-1.** Public Archeological Laboratory (PAL). 2006. Cape Wind Energy Project Visual Impact Assessment of Revised Layout on Multiple Historic Properties: Final Environmental Impact Report. Nantucket Sound: Cape Cod, Martha's Vineyard, and Nantucket, Massachusetts. PAL Report No. 1485.05. Prepared for Cape Wind Associates, L.L.C., Boston, Mass. Pawtucket, R.I. September 2006.
- **Report No. 4.3.5-2.** Robinson, D. S., B. Ford, H. Herbster, and J. N. Waller, Jr. 2003. Marine Archaeological Sensitivity Assessment, Cape Wind Energy Project, Nantucket Sound, Massachusetts. Submitted by Public Archeological Laboratory. PAL Report No. 1485. Submitted to Cape Wind Associates, L.L.C., Boston, Mass. Pawtucket, R.I.
- **Report No. 4.3.5-3.** Robinson, D. S., B. Ford, H. Herbster, and J. N. Waller, Jr. 2004. Marine Archaeological Reconnaissance Survey Cape Wind Energy Project, Nantucket Sound, Massachusetts. Submitted by Public Archeological Laboratory. PAL Report No. 1485. Submitted to Cape Wind Associates, L.L.C., Boston, Mass. Pawtucket, R.I.
- **Report No. 4.3.5-4.** Public Archeological Laboratory (PAL), 2006. Supplement Report, Cape Wind Energy Project Nantucket Sound Massachusetts, Supplemental Marine Archaeological Reconnaissance Survey of Revised Layout Offshore Project Area. PAL Report No. 1485.06. Prepared for Cape Wind Associates, L.L.C., Boston, Mass. Pawtucket, R.I.
- **Report No. 5.3.3-2.** Environmental Design & Research, P.C. 2003. Visual Simulation Methodology. Cape Wind Project. Cape Cod, Martha's Vineyard and Nantucket, Massachusetts. Prepared for Cape Wind Associates, L.L.C., Boston, Mass. Syracuse, N.Y. November, 2003.

Should you have any questions or need additional clarification on any issue, please feel free to contact me anytime by phone (504)-736-2796, email Christopher.Horrell@mms.gov, or write to 1201 Elmwood Park Blvd., New Orleans, LA 70123.

Sincerely,



Christopher E. Horrell, Ph.D. R.P.A.
MMS Federal Preservation Officer

Enclosures

ENCLOSURE 1

Cape Wind Energy Project Description

In November 2001, Cape Wind Associates, LLC applied for a permit from the U.S. Army Corps of Engineers (USACE) under the Rivers and Harbors Act of 1899 to construct an offshore wind power facility on Horseshoe Shoal in Nantucket Sound, Massachusetts. Following the adoption of the Energy Policy Act of 2005 (EPA) and its associated amendments to the Outer Continental Shelf Lands Act (OCSLA), the Department of the Interior was given statutory authority to issue leases, easements, or rights-of-way for renewable energy projects on the Outer Continental Shelf (OCS). Accordingly, Cape Wind Associates, LLC, submitted an application to MMS in 2005 to construct, operate, and eventually decommission an offshore wind power facility on Horseshoe Shoal in Nantucket Sound, Massachusetts.

The project calls for 130, 3.6± megawatt (MW) wind turbine generators, each with a maximum blade height of 440 feet, to be arranged in a grid pattern in 25 square miles of Nantucket Sound (Federal waters), just offshore Cape Cod, Martha's Vineyard, and Nantucket Island. With a maximum electric output of 468 megawatts and an average anticipated output of 182 megawatts, the facility is projected to generate up to three quarters of the Cape and Islands' electricity needs. Each of the 130 wind turbine generators would generate electricity independently. Solid dielectric submarine inner-array cables (33 kilovolt) from each wind turbine generator would interconnect within the array and terminate on an electrical service platform, which would serve as the common interconnection point for all of the wind turbines. The proposed submarine transmission cable system (115 kilovolt) from the electric service platform to the landfall location in Yarmouth is approximately 12.5 miles in length (7.6 miles of which falls within Massachusetts' territorial waters).

Nantucket Sound is a roughly triangular body of water generally bound by Cape Cod, Martha's Vineyard, and Nantucket Island.¹ Open bodies of water include Vineyard Sound to the west and the Atlantic Ocean to the east and south. Nantucket Sound encompasses between 500-600 square miles of ocean, most of which lie in Federal waters. The Cape Wind Energy Project would be located completely in Federal waters, aside from transmission cables running ashore through Massachusetts territorial waters. For reference, the northernmost turbines would be approximately 5.2 miles (8.4 km) from Point Gammon on the mainland; the southernmost turbines would be approximately 11 miles (17.7 km) from Nantucket Island (Great Point), and the westernmost turbines would be approximately 5.5 miles (8.9 km) from the island of Martha's Vineyard (Cape Poge) (see Figure 2.1.1-2). For additional information, please see the MMS Renewable Energy Projects page at:
<http://www.mms.gov/offshore/RenewableEnergy/Projects.htm>.

¹ U.S. Geological Survey. Geographic Names Phase I data compilation (1976-1981). Various editions. 31-Dec-1981. Primarily from U.S. Geological Survey 1:24,000-scale topographic maps (or 1:25K, Puerto Rico 1:20K) and from U.S. Board on Geographic Names files. In some instances, from 1:62,500 scale or 1:250,000 scale maps.

ENCLOSURE 2

MMS Response to the Massachusetts SHPO opinion on the eligibility of Nantucket Sound for listing as a Traditional Cultural Property (TCP) on the National Register of Historic Places

The Minerals Management Service (MMS) is consulting with stakeholders, including the Massachusetts State Historic Preservation Officer (SHPO), the Mashpee Wampanoag Tribe, and the Wampanoag Tribe of Gay Head (Aquinnah) in Section 106 consultations under the National Historic Preservation Act for the Cape Wind Energy Project. Section 106 consultations and Government-to-Government consultations with the Tribes are ongoing.

The Energy Policy Act of 2005 (EPAAct) amended Section 388 of the Outer Continental Shelf Lands Act (OCSLA), giving the Secretary of the Interior the authority to issue leases, easements, and rights-of-way for renewable energy development on the OCS. The Secretary has delegated this authority to the MMS. The MMS would like to clarify the distinction between Federal and State jurisdiction in and around the project area. The proposed project would be located entirely in Federal waters (with the exception of buried transmission lines running ashore), but would indirectly affect some onshore properties within the State of Massachusetts. The MMS's practice has been to assume a function similar to that of a SHPO with regard to archaeological finds resulting from MMS authorized activities where both the undertaking and the cultural resources are located wholly on the OCS (e.g. shipwrecks affected by oil and gas activities), and thus the custom has been to resolve issues of eligibility, if applicable, directly with the Keeper of the National Register. Here, Nantucket Sound falls partly in Massachusetts waters and partly on the OCS. The MMS would like to note that neither the waters of Nantucket Sound nor the project area lies on Tribal lands. Moreover, there are no Tribal lands that fall within the Area of Potential Effect (APE) of the undertaking.

In its *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook (2008)* (pg 19), the Advisory Council on Historic Preservation cites to *National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Cultural Properties (Bulletin 38)*, which makes clear that for a Traditional Cultural Property to be found eligible for the National Register, it must meet the existing criteria for eligibility as a building, site, structure, object, or district. *National Register Bulletin: How to Apply the National Register Criteria for Evaluation (Bulletin 15)* also clearly defines categories of historic property types, and both bulletins explain that the National Register is not used to list intangible values, even "significant" ones. Contrary to the established guidance, SHPO erroneously asserts that a TCP is an additional "special historic 'property type'" in and of itself. SHPO then construes language at page 11 of Bulletin 38 ("the NR discourages the nomination of natural features without sound documentation of their significance") to conclude that the general prohibition against the eligibility of waterbodies, an established tenet in Bulletin 15 at page 5 ("...the National Register excludes from the definition of 'site' natural waterways or bodies of water..."), does not apply to Nantucket Sound, or in fact to any appropriately documented TCP. We recognize that a few discrete bodies of water have, on rare occasions, been found to meet eligibility requirements. Nantucket Sound, however, is a vast, 600-square mile body of water open to the North Atlantic Ocean. It is not a small or

small or isolated waterway that possesses easily discernable boundaries. The MMS does not read the Bulletin 38 discussion at page 11 as superseding the guidance provided in Bulletin 15.²

The MMS does not disagree that Nantucket Sound is important to the Tribes, and has been throughout history, as demonstrated in the rich ethnographic/ethnohistoric documentation that SHPO cited in her opinion document. MMS appreciates the comprehensive research SHPO conducted and included in her opinion document. However, for reasons discussed herein, and those that MMS included in its original determination submitted to Massachusetts SHPO on October 9, 2009, the MMS concludes that Nantucket Sound is not eligible for listing on the National Register as a Traditional Cultural Property or as a historic property.

Criterion A

SHPO argues that Nantucket Sound qualifies as a TCP under Criterion A due to its association with the ancient and historical Native American exploration and settlement of the area, and with the central events of the Wampanoag origin story of Moshup and Squant/Squannit. While these historic activities and events involving Moshup certainly are important to the Wampanoag culture and tradition, the MMS disagrees with SHPO that the vastness of Nantucket Sound can indeed be considered a “site” or “property” in this context. Nantucket Sound is not a specific site that can be considered under this criterion. No single event or pattern of events is associated with any particular location on or within the Sound.

SHPO relies heavily upon ethnohistoric data in describing the contribution of Nantucket Sound on the development of the Wampanoag culture. It should be noted, however, that SHPO cites many maritime activities that took place outside the Sound as examples of contributing events. While Nantucket Sound’s bountiful marine resources were an important factor in the development of the Wampanoag socioeconomic culture, this impact is not in any way unique; the significance is diminished by the fact that the same argument could be made for any coastal maritime community, including that of the descendents of the Anglo-Europeans and more recent settlers, who likewise depended upon shell fishing, fishing, and whaling for subsistence and commerce. Under the SHPO’s analysis, any place that is culturally significant would also be eligible for listing. Not every TCP is eligible (as discussed in Bulletin 38, pages 1, 2, 3, 11-12). SHPO fails to draw a distinction between culturally important places and historic places.

Bulletin 38 at pp12-13 offers an example of how an appropriately designated property under Criterion A should exhibit the contributions made by the social or ethnic group in question. As stated, “...the ongoing participation of an ethnic or social group in an area’s history, reflected in a neighborhood’s buildings, streetscapes or patterns of social activity, constitutes such a series of events.” This is not the case for Nantucket Sound, however; the ongoing participation/contribution of the Tribes to the area’s history is not exhibited by, or visible upon viewing, the setting or seascape of Nantucket Sound. This illustrates once again that the water body is not the appropriate object upon which the cultural context depends.

² It is notable that natural waterways are explicitly excluded from the list in Bulletin 15 at page 5 that includes “natural features (such as a rock formation) having cultural significance” as appropriate examples of sites.

Criterion B

SHPO argues that Nantucket Sound qualifies as a TCP under Criterion B due to its association with Moshup and Squant/Squannit. Criterion B is traditionally meant to refer to historically significant human beings rather than worshiped figures, mythical creatures, Gods, or demigods, as suggested in the many examples cited in Bulletin 15. However, as discussed in Bulletin 38, a “person” under Criterion B may refer to gods or demigods who feature in the traditions of a group. While there is no doubt that Moshup and Squant are individually significant within a historic context to the Wampanoag People, and that they are associated with portions of Nantucket Sound through the Wampanoag’s story, the places associated with Moshup and Squant/Squannit in documented ethnography, folklore, and cited literature point more to how the significance of these individuals relate to a specific site on land (the Cliffs of Gay Head on the West end of Martha’s Vineyard). Importantly, although Moshup is credited with the creation of Nantucket Island and the open water that exists between Martha’s Vineyard and the Elizabeth Islands (which are actually located to the west of Nantucket Sound, between Vineyard Sound and Buzzard’s Bay, outside of the Area of Potential Effect), according to the Wampanoag story, Moshup himself is not responsible for the creation of Nantucket Sound. No archaeological sites, structures, districts, or properties associated with Moshup and Squant/Squannit are located on Nantucket Sound itself.

Criterion C

SHPO argues that Nantucket Sound qualifies as a TCP under Criterion C as a “significant and distinguishable entity” integral to the Wampanoag traditions, practices, narratives, culture and religion. Bulletins 15 and 38 make clear that Criterion C is intended to apply to “constructed entities—that is, buildings, structures, or built objects,” (i.e. man-made structures), not large geographical landscapes, seascapes or water bodies. According to the Bulletin 15 at page 17, a significant and distinguishable entity whose components may lack individual distinction is termed a “district.” Districts possess a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. SHPO has misinterpreted and misapplied this criterion to Nantucket Sound. Nantucket Sound (some 600 square miles) does not qualify as a TCP or historic property, as suggested in the SHPO’s opinion, because Nantucket Sound is not a man-made structure, and there is no evidence of any archaeological sites, buildings, structures, objects, or other archaeological features that are united historically by plan or physical development on or within the Sound.

Criterion D

SHPO argues that past and future archaeological data collected from Nantucket Sound has yielded and is likely to yield important cultural, historical, and scientific information “through archaeology, history, and ethnography,” and thus qualifies as a TCP under Criterion D. SHPO also characterizes the presence of organic material in some core samples as “a major scientific discovery.” The MMS disagrees. The MMS recognizes that humans occupied the Nantucket Shelf Region up to 12,500 BP when Nantucket Sound was dry land. However, while there may be discrete areas or spot finds (see discussion in Report 4.3.5-3) where submerged prehistoric cultural resources could be discovered, the entire seafloor under Nantucket Sound should not be considered an archaeological “site,” and the data suggests that the majority of such evidence likely has been removed through time via marine transgression, sea level rise, and other

geological processes.³ The requirement for integrity of the physical condition of the seabed is not met. Regardless, the MMS does not believe that Nantucket Sound qualifies as a TCP or historic property under Criterion D. As stated in Report 4.3.5-2, page 39, "...the data indicate that a majority of the offshore study area has a low probability for containing submerged prehistoric cultural resources, because of extensive disturbance to the formerly exposed and inhabitable pre-inundation landscape that has resulted from the marine transgression of the area." Importantly, even for a more discrete location such as the proposed project area of Horseshoe Shoal, all survey and vibracore data collected to date show no indication or evidence of human habitation nor a continuously intact preserved paleolandscape. It is important to note that SHPO's conclusions represent an inappropriate characterization of the vibracore data evaluated in the attached reports; while in certain locations contextually intact paleosols were found, this should not be interpreted as a stratigraphically and/or continuously "intact upland deciduous forest floor," and certainly not an "intact, submerged ancient landscape" as SHPO alleges. Similarly, while the discovery of organic deposits in some core samples indicate the former presence of a shallow aquatic, terrestrial, or forest environment, this in itself does not provide direct evidence of human habitation.

³ The *National Register Bulletin 15* (at pg. 49) does provide an example of sites that are considered not eligible under Criterion D (sites that have "lost [their] stratigraphic context due to subsequent land alterations"); under these circumstances the site would not possess integrity of location.



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



NOV 17 2009

Ms. Brona Simon
State Historic Preservation Officer
220 Morrissey Boulevard
Boston, Massachusetts 02125

Dear Ms. Simon:

In accordance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f), and its implementing regulation, 36 CFR 800, "Protection of Historic Properties," and as authorized by the U.S. Department of the Interior Minerals Management Service (MMS), we are hereby initiating consultation under 36 CFR 800.4(a) (2) with the State Historic Preservation Officer of the Massachusetts Historical Commission regarding our evaluation of several sites for eligibility.

Our conclusion is that two of the sites visited are eligible for listing in the National Register of Historic Places as Traditional Cultural Properties, and will be adversely affected by the proposed project. Our conclusions for the remainder of the sites visited is either that they do not lie within the Area of Potential Effect for the project, or that they do not meet the eligibility criteria (36 CFR 60.4) for listing in the National Register of Historic Places.

Please find enclosed the necessary documentation per §800.11. The MMS became aware of these sites during visits with the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) between August 3 and August 5, 2009.

The MMS kindly asks for your review of, and concurrence with, the enclosed determinations.

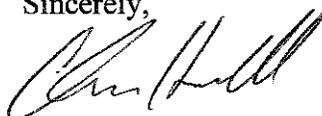
Please respond in writing to MMS within the thirty-day time period pursuant to §800.3(c) (4). The MMS respectfully requests an expedited review of this information. You may send your response to the following address:

Minerals Management Service
Attention: Christopher Horrell Ph.D. R.P.A.
1201 Elmwood Park Blvd
New Orleans, Louisiana 70123

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If your office concurs with the determinations in this submission, please sign and date on the line below and return this letter to the address listed above. If your office does not concur, we request that any concerns or objections are clearly expressed in writing so that MMS may continue the consultation process with your office. Thank you for your prompt attention to this matter.

Sincerely,



Christopher E. Horrell Ph.D. R.P.A.
Acting Federal Preservation Officer

CONCURRENCE: _____

Signed, State Historic Preservation Officer.

Date: _____

Enclosures



Mashpee Wampanoag Tribe
483 Great Neck Rd. P.O. Box 1048 Mashpee, MA 02649
Phone (508) 477-0208 Fax (508) 477-1218

November 1, 2009

Christopher Horrell Ph.D.R.P.A.
Acting Federal Preservation Officer
Minerals Management Service
Gulf of Mexico OCS region
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123-2394

Dear Dr. Horrell,

In response to your draft version of site visits among MMS and the Mashpee Wampanoag Tribe (The Tribe). The Tribe feels that the modeling done by Cape Wind is impossible to prove or predict fuel spills, we on Cape Cod are subject to loss of our home insurance because the modeling tells them we are due for a category 5 hurricane. Again MMS depends on the proponent to provide this information, but even if true, it will only effect historic property when it happens and should have been addressed" early in the undertakings planning process so a broad range of alternatives may be considered during the planning process for the undertaking" (36 CFR part 800 §800.1(c)) instead of starting the process after the release of the DEIS.

August 5, 2009-Visit with the Mashpee Wampanoag Tribe

I am pleased to say that the site visit was accurately described and can be shared with the SHPO. The Tribe does not want this information released in a public document for fear of destruction of sites and invasion of ceremonial privacy. The Tribe approved the site visits to comply with the request from the MMS, even though MMS had all ready determined adverse effect on a sacred historic burial ground listed in the FEIS. This was an expression of our good faith effort to provide the agency the information needed for their deliberations. We are always concerned when we share our sacred places with government agencies, especially with agencies that have not followed their own regulation.

Amending Determination of Adverse Effect

I was also pleased to read that "MMS recommends that the "Minerals Management Service Documentation of Adverse Effect" document be amended to include two additional Traditional Cultural Properties that are eligible for listing on the National Register and will be adversely affected by the proposed project." This makes it hard for me to understand why we cannot consider the alternatives contained in sec three to "avoid, minimize, or mitigate "as the regulation states. Avoidance of adverse effects should be first and foremost to protect religious freedoms of America's first citizens also our ancestor buried beneath the waters of Nantucket Sound

Besides the fact that our religious freedom are impacted and our ancestors may be impacted is that 26 register properties will be effected, we are sacrificing a National Treasure and shared resources for the profits of a single group of investors

Finally I look forward to continuing the 106 process.

Respectfully Yours,

A handwritten signature in cursive script that reads "George 'Chuckie' Green".

George "Chuckie" Green
Tribal Historic Preservation Authority
Mashpee Wampanoag Tribe

Cc.

Sen. Paul Kirk
Rep. William Delahunt
Assist Sec Larry Echo-Hawk
Dr. Andrew Kruegar MMS
John Fowler ACHP



United States Department of the Interior



MINERALS MANAGEMENT SERVICE

Gulf of Mexico OCS Region
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123-2394

In Reply Refer To: MS 5411

OCT 16 2009

Ms. Bettina Washington
Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head (Aquinnah)
20 Black Brook Road
Aquinnah, Massachusetts 02535-1546

Dear Ms. Washington,

The Minerals Management Service (MMS) would like to thank you and the Wampanoag Tribe of Gay Head (Aquinnah) for taking the time to meet with us on August 3-4, 2009. As you know, this was the final series of site visits and concludes the identification of historic properties process (36 CFR 800.4) of the NHPA Section 106 Process for the proposed Cape Wind Energy Project.

As promised, please find enclosed a draft copy of the assessment of the sites that were shown to the MMS during these site visits. MMS respectfully requests that you submit any comments and/or critiques of this assessment that you deem necessary. Your comments and concerns will be considered and incorporated as appropriate into the final version of the assessment to ensure that MMS fully captures the information that you and the Wampanoag Tribe of Gay Head (Aquinnah) want to convey to the MMS.

While the section 106 process requires MMS to apply information received and identify those properties that are historic (i.e., eligible for the National Register) that may be adversely affected (36 CFR 800.4(b)), and also requires that we consult with the Massachusetts State Historic Preservation Office (SHPO) to obtain concurrence with the MMS findings and determinations (36 CFR 800.4(c)), that does not mean that all of the information in the enclosed analysis must be conveyed. You may suggest redactions to the document, or request that the information be conveyed only verbally to the SHPO. The relevant portions of the NHPA statute and regulations related to confidentiality are attached (the "Secretary" is represented by the NR for these purposes). It should be noted that the NR takes the view that it can only protect information related to properties found to be eligible. Following our discussions related to confidentiality and your other comments, as part of the Section 106 Process, relevant necessary information will be conveyed to the SHPO and incorporated in the Findings Document. Unfortunately, because the affected sites within the APE are no longer on tribal lands, 36 CFR 800.3(d) does not cover our situation.

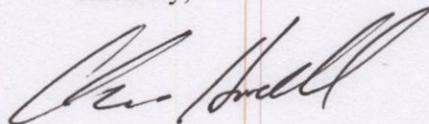
MMS respectfully requests that this information be provided to our office no later than 15 days from receipt of this letter. If no comments are received by that time, we will consider our analysis final.

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While it is much preferred to have your comments in writing, we also want to invite you to discuss this in a group call. Please contact me to set up a time at your convenience.

We look forward to continuing working with the Wampanoag Tribe of Gay Head (Aquinnah) in a manner respectful of tribal sovereignty and cooperation. Should you have any questions or wish to discuss this further, please do not hesitate to contact me at (504) 736-2796 or Christopher.Horrell@mms.gov.

Sincerely,



Christopher E. Horrell Ph.D. R.P.A.
Acting Federal Preservation Officer

Enclosures:

Site Visit Assessment

Statute and Regulation language from NHPA Section 304; 36 CFT 800.11(c)

Section 304 of NHPA

[16 U.S.C. 470w-3(a) — Confidentiality of the location of sensitive historic resources]

(a) The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may —

- (1) cause a significant invasion of privacy;
- (2) risk harm to the historic resources; or
- (3) impede the use of a traditional religious site by practitioners.

[16 U.S.C. 470w-3(b) — Access Determination]

(b) When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a) of this section, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

[16 U.S.C. 470w-3(c) — Consultation with the Advisory Council]

(c) When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f) of this Act, the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b) of this section.

* * *

36 CFR 800.11(c): (c) Confidentiality.

(1) Authority to withhold information. Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) Consultation with the Council. When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) Other authorities affecting confidentiality. Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.



United States Department of the Interior



MINERALS MANAGEMENT SERVICE

Gulf of Mexico OCS Region

1201 Elmwood Park Boulevard

New Orleans, Louisiana 70123-2394

In Reply Refer To: MS 5411

Mr. George "Chuckie" Green
Tribal Historic Preservation Officer
Mashpee Wampanoag Tribe
Post Office Box 1048
Mashpee, Massachusetts 02649

Dear Mr. Green:

The Minerals Management Service (MMS) would like to thank you and the Mashpee Wampanoag Tribe for taking the time to meet with us on August 5, 2009. As you know, this was the final series of site visits and concludes the identification of historic properties process (36 CFR 800.4) of the NHPA Section 106 Process for the proposed Cape Wind Energy Project.

As promised, please find enclosed a draft copy of the assessment of the two sites that were shown to the MMS during these site visits. MMS respectfully requests that you submit any comments and/or critiques of this assessment that you deem necessary. Your comments and concerns will be considered and incorporated as appropriate into the final version of the assessment to ensure that MMS fully captures the information that you and the Mashpee Wampanoag Tribe want to convey to the MMS.

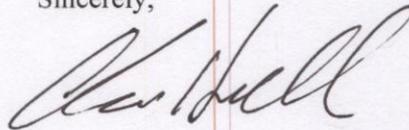
While the section 106 process requires MMS to apply information received and identify those properties that are historic (i.e., eligible for the National Register) that may be adversely affected (36 CFR 800.4(b)), and also requires that we consult with the Massachusetts State Historic Preservation Office (SHPO) to obtain concurrence with the MMS findings and determinations (36 CFR 800.4(c)), that does not mean that all of the information in the enclosed analysis must be conveyed. You may suggest redactions to the document, or request that the information be conveyed only verbally to the SHPO. The relevant portions of the NHPA statute and regulations related to confidentiality are attached (the "Secretary" is represented by the NR for these purposes). It should be noted that the NR takes the view that it can only protect information related to properties found to be eligible. Following our discussions related to confidentiality and your other comments, as part of the Section 106 Process, relevant necessary information will be conveyed to the SHPO and incorporated in the Findings Document. Unfortunately, because the affected sites within the APE are no longer on tribal lands, 36 CFR 800.3(d) does not cover our situation.

MMS respectfully requests that this information be provided to our office no later than 15 days from receipt of this letter. If no comments are received by that time, we will consider our analysis final.

While it is much preferred to have your comments in writing, we also want to invite you to discuss this in a group call. Please contact me to set up a time at your convenience.

We look forward to continuing working with the Mashpee Wampanoag Tribe in a manner respectful of tribal sovereignty and cooperation. Should you have any questions or wish to discuss this further, please do not hesitate to contact me at (504) 736-2796 or Christopher.Horrell@mms.gov.

Sincerely,



Christopher E. Horrell Ph.D. R.P.A.
Acting Federal Preservation Officer

Enclosures:

Draft Site Visit Assessment

Statute and Regulation language from NHPA Section 304; 36 CFT 800.11(c)

Section 304 of NHPA

[16 U.S.C. 470w-3(a) — Confidentiality of the location of sensitive historic resources]

(a) The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may —

- (1) cause a significant invasion of privacy;
- (2) risk harm to the historic resources; or
- (3) impede the use of a traditional religious site by practitioners.

[16 U.S.C. 470w-3(b) — Access Determination]

(b) When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a) of this section, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

[16 U.S.C. 470w-3(c) — Consultation with the Advisory Council]

(c) When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f) of this Act, the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b) of this section.

* * *

36 CFR 800.11(c): (c) Confidentiality.

(1) Authority to withhold information. Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) Consultation with the Council. When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) Other authorities affecting confidentiality. Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



OCT 09 2009

Ms. Brona Simon
State Historic Preservation Officer
220 Morrissey Boulevard
Boston, Massachusetts 02125

Dear Ms. Simon:

In accordance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f), and its implementing regulation, 36 CFR 800, "Protection of Historic Properties," and as authorized by the U.S. Department of Interior Minerals Management Service (MMS), we are hereby initiating consultation with the State Historic Preservation Officer of the Massachusetts Historical Commission regarding the proposed Cape Wind Energy Wind Project and the Determination of Eligibility of Nantucket Sound to the National Register of Historic Places. Please find enclosed the necessary documentation per §800.11.

The MMS kindly asks for your review of, and concurrence with the enclosed determination. Please respond in writing to MMS within the thirty-day time period pursuant to §800.3(c) 4.

The MMS respectfully requests an expedited review of this information as per conversations and meeting minutes taken during the Section 106 Consultation meeting on June 16, 2009.

You may send your response to the following address:

Minerals Management Service
Attention: Christopher Horrell Ph.D. R.P.A.
1201 Elmwood Park Blvd
New Orleans, Louisiana 70123

If your office concurs with the determination in this submission, please sign and date on the line below, and return the documentation as noted above.

If your office does not concur, we request that any concerns or objections are clearly expressed in writing so that MMS may continue the consultation process with your office.



In the case of non-concurrence, please indicate if there are other sources of information that should be investigated, or if there are other parties, tribes, or members of the public you believe should be included in the consultation process. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Horrell FOR". The signature is written in a cursive, somewhat stylized font.

Christopher E. Horrell Ph.D. R.P.A.
Acting Federal Preservation Officer

CONCURRENCE: _____

State Historic Preservation Officer

Date: _____

Enclosures: National Register Eligibility Determination
Mashpee Wampanoag Horseshoe Shoal Resolution
Wampanoag Tribe of Gay Head, Aquinnah letter dated September 17, 2009

**MINERALS MANAGEMENT SERVICE
NATIONAL REGISTER ELIGIBILITY DETERMINATION
FOR NANTUCKET SOUND AS A
TRADITIONAL CULTURAL PROPERTY AND HISTORIC PROPERTY**

The potential visual impact of the proposed Cape Wind Energy Project on the cultural practices of the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) was raised as a concern during government to government and Section 106 consultations. Discussions during consultations with the Native American Tribes local to the Cape Wind Project Area have involved Nantucket Sound on three levels: Nantucket Sound as an inundated prehistoric landscape (which the Tribes inhabited prior to the rise of sea level); Nantucket Sound as a water body; and Nantucket Sound as a viewshed of the eastern horizon. In determining the eligibility of Nantucket Sound for the National Register of Historic Places (NRHP) as a Traditional Cultural Property (TCP), the Minerals Management Service (MMS) has considered Nantucket Sound on all three levels using six criteria provided by the National Park Service (NPS; from National Register Bulletin 38 in the form of a worksheet), as decisive factors. The MMS has also considered the eligibility of Nantucket Sound for the NRHP as a historic property, and as a sacred site under Executive Order No. 13007. After due consideration of the guidelines for all three levels, consultation with the affected Native American Tribes, discussion with the National Park Service and the Advisory Council for Historic Preservation, and review of the applicable Executive Orders and National Historic Preservation Act (NHPA) regulations, ***the MMS has determined that Nantucket Sound is not eligible for inclusion on the NRHP as a TCP or as a historic property, on any of the three levels. Furthermore, Nantucket Sound does not qualify as a sacred site.***

This determination with regard to Nantucket Sound as a distinct entity does not, however, preclude the fact that the viewshed over Nantucket Sound may be a *contributing element* to the possible NRHP eligibility of other TCPs and/or historic properties of Native American Tribal affiliation whose locations are used for the purpose of observing this eastern viewshed. The MMS continues to work with the Tribes to learn the nature of this contributing element in order to determine the eligibility of these individual sites.

INFORMATION SOURCES FOR THIS ANALYSIS

In order to gain a better understanding of the Tribes' ties to Nantucket Sound and to adequately reflect the importance of specific locations and the associated ceremonies and traditions that take place there, the MMS conducted a series of government to government consultations, Section 106 consultations, and site visits with the Wampanoag Tribe of Gay Head (Aquinnah) and the Mashpee Wampanoag Tribe on Martha's Vineyard and Cape Cod between August 3-5, 2009. In addition to the interviews with THPO Washington and THPO Green, the MMS reviewed statements from transcripts made during NHPA Section 106 Consultation meetings and correspondence written by the Tribes. MMS has also conducted a literature search and review from various available sources of information related to both the history and culture of the Wampanoag and other New England Tribes, as well as regulations, applicable guidance (in particular, National Register Bulletins 12 and 21 (boundaries), 15 (general and water bodies) and 38 (TCPs)) and literature related to the Section 106 process, the eligibility of properties for listing on the Federal Register of Historic Places, and the evaluation of Traditional Cultural Properties (TCPs). A bibliography of literature sources reviewed is included at the end of this document. Correspondence from the Tribes is also enclosed, and was considered as a reference for this Determination.

NRHP CRITERIA FOR HISTORIC PROPERTIES¹

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects **that possess integrity of location, design, setting, materials, workmanship, feeling, and association**, and:

- A. That are associated with events that have made a **significant contribution to the broad patterns of our history**; or
- B. That are **associated with the lives of persons significant in our past**; or
- C. That **embody the distinctive characteristics** of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That **have yielded or may be likely to yield, information important in prehistory or history**.

Listed historic properties generally fall into one of five categories: buildings, historic districts, objects, sites, or structures. Other categories include rural historic landscapes, vessels and shipwrecks, and traditional cultural properties.

NRHP CRITERIA FOR TRADITIONAL CULTURAL PROPERTIES²

To be eligible for listing in the National Register, a traditional cultural property must meet all of the following six criteria (bolded sections come directly from National Register Bulletin 38):

1. **Be a tangible place.** The NRHP does not list cultural practices or beliefs. Tangible means that one must be able to physically locate the property. It does not mean that one has to have physical, man-made features or items at the place.
2. **Be important to the community today** and play the same role in the community's traditions as it did in the past.
3. **Have been important for at least 50 years.** The use of the property, however, does not have to be continuous over the last 50 years, but there should be a pattern of use or continued value.
4. **Have integrity.** By regulation integrity means integrity of **location, design, setting, materials, workmanship, feeling, and association**. The importance of each of these elements varies depending on the nature of the property. For TCPs, integrity can often be evaluated in terms of the strength of the **property's association with the traditions** of the community and the **property's condition**. The **association** between the place and the community's traditions must be strong. For example, if the traditional activity can be carried out anywhere, then there is no link between the activity and the place. The **property's condition** is just as important to consider. If commercial buildings surround a TCP that should have a pristine natural environment, then the property has little integrity of condition.
5. **Have definable boundaries.** A TCP listed in the NR **must have definable, or at least defensible, boundaries**. Defensible boundaries should be based on the **characteristics of the property, how it is used, and why it is important**.
6. **Meet NR Criteria.** Like any other property, to be listed in or eligible for listing in the NR, a TCP must meet one or more of the NR Criteria. **TCPs do not have a criteria all their own**. TCP are almost always listed under Criterion A and sometimes B (see above) for their association with

¹ This section is reproduced from the website <http://www.nps.gov/history/nr/listing.htm>

² This section is reproduced from a document entitled, *Traditional Cultural Property Worksheet*, an informal document provided to the MMS by the National Park Service as a reference to National Register Bulletin 38.

historical events or broad patterns of events or the lives persons significant in our past, but **not all TCPs are eligible for the NRHP.**

NANTUCKET SOUND AS AN INUNDATED PREHISTORIC LANDSCAPE

The MMS considered the NRHP eligibility of the seabed (the inundated prehistoric landscape) submerged below the waters of Nantucket Sound as a TCP as well as a conventional historic property. The MMS evaluated the results of a series of marine archaeological surveys that were conducted on the seabed within the offshore proposed project area (Horseshoe Shoal) by the Public Archaeology Laboratory, Pawtucket, Rhode Island. These reports include:

- *Marine Archaeological Sensitivity Assessment, Cape Wind Energy Project (June 2003)*
- *Preliminary Marine Archaeological Sensitivity Assessment: Cape Wind Energy Project Alternatives: Horseshoe Shoal; Combination New Bedford/Buzzards Bay and Reduced Horseshoe Shoal; Monomoy and Handkerchief Shoals; Tuckernuck Shoal; and South of Tuckernuck Island, Massachusetts (January 2004)*
- *Marine Archaeological Reconnaissance Survey: Cape Wind Energy Project (March 2004)*
- *Cape Wind Terrestrial Alternative: Massachusetts Military Reservation, Bourne and Sandwich, Massachusetts (March 9, 2004)*
- *Supplemental Marine Archaeological Reconnaissance Survey of Revised Layout Offshore Project Area (January 26, 2006)*

A careful evaluation of the seismic and vibracore data obtained in the above-listed studies concluded that no identifiable sites on or underlying the sea floor with material remains or artifacts were found in the proposed project area; the Massachusetts State Historic Preservation Office (SHPO) and Massachusetts Board of Underwater Archaeological Resources (in the Massachusetts Office of Coastal Zone Management) both concurred with the findings and in doing so vetted the survey sample and methodology (including depth of sample and sample location) as adequate. Therefore, the seabed cannot meet any of the criteria for eligibility of a historic “property” since there is no evidence remaining of human habitation.

A site that is a natural landscape with no observable evidence of human activity may be considered for its cultural significance as a TCP only where its historical or cultural significance can be documented. Although oral histories of habitation of the seabed area before it was inundated do survive, the requirement of integrity of condition of the seabed property (Bulletin 38 at 11-12) cannot be met because the archeological data suggests that any evidence of human habitation has been removed and scoured away by marine transgression. In addition, although the seabed of Horseshoe Shoal as a former residence is clearly important in the history of the Native American Tribes, the requirement of integrity of relationship to that location is not met because of the lack of continued access to the now-inundated area; it is not a location where cultural or spiritual practices are – or can be – currently carried out.

After review of the relevant guidance ***the MMS concludes that the submerged landform under Nantucket Sound is not eligible for listing as a TCP*** because: there is no identifiable archaeological resource; due to the lack of access it does not play the same role in the community’s traditions as it did in the past; it does not have sufficient integrity of setting, association, condition, or cultural relationship to the location; it does not have definable boundaries with regard to how it is used and why it is important. Because of lack of physical integrity, it does not meet NRHP criteria.

NANTUCKET SOUND AS A WATER BODY

The MMS closely examined the NRHP criteria and specifically referred to the following National Register Bulletins to determine whether Nantucket Sound as a water body should be considered eligible as a TCP:

- *Guidelines for Evaluating and Documenting Traditional Cultural Properties, National Register Bulletin 38.*
- *Defining Boundaries for National Register Properties (1997), National Register Bulletins 12 and 21.*
- *How to Apply the National Register Criteria for Evaluation, National Register Bulletin 15.*

Although Nantucket Sound as a water body is a tangible place; is important to the community today; and has been important for at least 50 years, it does not have sufficient integrity of cultural relationship to the location for the *entire Sound*. Furthermore, it does not have definable boundaries with regard to how it is used and why it is important. Under Bulletin 15, listing of water bodies is discouraged. “The National Register excludes from the definition of “site” natural waterways or bodies of water that served as determinants in the location of communities or were significant in the locality’s subsequent economic development. ...The features most appropriate to document this significance are the properties built [or utilized] in association with the waterways.” While it is true that the affected Native American Tribes have illustrated through oral histories their historic utilization of Nantucket Sound in traditional subsistence practices as well as in cultural and religious practices, it is consistent with NR Bulletin 15 guidelines to document the discrete individual locations of subsistence harvesting and processing (i.e., shell middens or habitation locations), or of cultural and religious practices (both archaeological and TCPs) themselves (i.e., shore-based locations rather than on portions of a water body). Both the physical proximity to Nantucket Sound as well as the viewshed of the eastern horizon across Nantucket Sound may be *contributing factors* to the potential NRHP eligibility of these individual, shore-based locations. However, the entire Nantucket Sound as a water body itself is not the appropriate entity for consideration.

After review of the relevant guidance and several consultations with personnel in the office of the NRHP discussing in general the eligibility of water bodies, ***the MMS concludes that the water body of Nantucket Sound is not eligible for listing as a TCP*** because: under Bulletin 38, sufficient integrity of the location and of cultural relationship to the location cannot be established for the entire 600-square-mile Sound; under Bulletin 21, reasonable boundaries around the entire 600-square-mile Sound cannot be established; and under Bulletin 15, “The National Register excludes from the definition of ‘site’ natural waterways or bodies of water.”

NANTUCKET SOUND AS A VIEWSHED OF THE EASTERN HORIZON

Both the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) have informed the MMS that the view of the rising eastern sun over Nantucket Sound is an integral part of the local cultural and religious practices. However, in order for the MMS to consider this view under the National Historic Preservation Act, the MMS needs to know the location of the affected property or properties from which this view is being taken – the location of the cultural practice or religious ceremony taking place while viewing – in order to consider the affects of the undertaking on the property or properties. From a specific location, the MMS will judge whether the property is 1) within the Area of Potential Effect (APE; i.e., the project is within the viewshed) and 2) whether the property qualifies as a TCP. For

purposes of this analysis, MMS has been asked to consider the entire eastern viewshed bounded only by the coastlines of Cape Cod and Martha's Vineyard, with no reference point or viewing location³.

During site visits with the local Native American Tribes, the MMS was shown a number of properties for consideration as TCPs, most of which were not within the project's APE. Two discrete properties (in addition to the one already listed in the *Finding of Adverse Impact* document) are both located within the project's APE and do meet the integrity of relationship (use and association) criteria. Since the viewshed from these properties of cultural significance will be affected, and it is likely that the viewshed is a *contributing factor* in the possible eligibility of these sites to the NRHP, these properties themselves will be considered as potential TCPs. **The Nantucket Sound, however, is not the appropriate location from which to consider the viewshed; rather, the areas of traditional cultural practice from which the view is experienced will be considered for eligibility as TCPs.**

Therefore, after review of this guidance and several consultations with personnel in the office of the NRHP, ***we conclude that the viewshed of the eastern horizon across Nantucket Sound does not meet NR eligibility criteria as an historic property, and is not eligible for listing as a TCP*** because: it is not a tangible place;⁴ it does not have integrity of location and setting; does not have definable boundaries; is without integrity of relationship; and therefore does not meet NRHP criteria. Again, the MMS will continue to consider the viewshed of the eastern horizon across Nantucket Sound as a *contributing element* in consideration of the eligibility of sites identified by the affected Native American Tribes.

FURTHER DISCUSSION⁵

Nantucket Sound (as a water body, as a viewshed, or as an inundated prehistoric landscape) does not meet the definition of "sacred site" found in Executive Order 13007. The Executive Order No. 13007 "Indian Sacred Sites" defines sacred sites:

³ The information provided by the tribes in support of this "entire viewshed" assertion as a TCP does not meet the criteria of continuity of use and association. While some Wampanoag tribal members likely practice private ceremonies at various locations along east-facing coastlines overlooking the Sound, viewing places deemed adequate for these spiritual observances could be anywhere on the island that has a view of the sunrise over the Sound. Therefore, the requirement of association with a particular site has not been met (similar to the "baptism in any water" example from Bulletin 38 at 11). In addition, the element of continuity of association and use of all of these potential sites over time by the tribal community as a whole (National Register Bulletin 38 at 11-12) has not been met, and therefore neither the entire viewshed nor the coastlines would qualify as a TCP. MMS feels that further investigation or information will not alter this conclusion; both tribes have provided all of the information they feel comfortable with releasing through interviews, transcripts and written correspondence already in the project record.

⁴ "This Bulletin does not address cultural resources that are purely 'intangible'—i.e. those that have no property referents" (Parker and King 1998:3).

⁵ This section is reproduced from an internal memorandum to Rodney Cluck, MMS Office of Alternative Energy Programs, from Tim Baker, Office of the Solicitor, Division of Mineral Resources, Branch of Petroleum Resources, dated July 18, 2008, regarding *Issues Related to Claims of Sacred Sites and Historic Properties on the Outer Continental Shelf (OCS) in Nantucket Sound*.

“Sacred site” means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.” E.O. 13007 Section 1(b)(ii).

The Executive Order expressly restricts sacred sites to those locations that are “... specific, discrete, narrowly delineated location[s]...” These Executive Order requirements exclude broadly defined locations such as Nantucket Sound as a water body and the eastern horizon and would definitely exclude the submerged landform given that it is not accessible for “ceremonial use.”

Neither the entirety of Nantucket Sound as a water body nor as a viewshed of the eastern horizon meet the definition of “historic property” found in the NHPA and in the ACHP regulations at 36 CFR 800.16. The ACHP regulations define historic properties, but link that definition to the criteria to be eligible for inclusion in the NRHP. The criteria of eligibility for inclusion in the NRHP are set out in regulation 36 CFR 60.4. To be eligible for inclusion in the NRHP, a historic site must be associated with important events or person(s), and/or embody distinctive artistic values and/or yield important information about the past. The claims that Nantucket Sound and the eastern horizon are historic properties have not been supported by any reference to the regulatory criteria to be eligible for inclusion in the NRHP such as linking these areas to an important event or person(s).

While Nantucket Sound as a water body and as a viewshed of the eastern horizon do not satisfy the criteria to be eligible for inclusion in the NRHP, they are to be excluded from such consideration according to the guidance in the “How to” publication. The regulation setting forth the criteria to be eligible for inclusion in the NRHP points to other official publications for further guidance including the “How To” publications: e.g., *How to Apply the National Register Criteria for Evaluation (Bulletin 15)*. The “How To” guidance also “...excludes from the definition of ‘site’ natural waterways or bodies of water that served as determinants in the location of communities or were significant in the locality’s subsequent economic development.”

There is the concept of “cultural landscapes” in official National Park Service literature; much like TCPs, cultural landscapes are a type of subset of “sites” potentially eligible to be included in the NRHP. According to “36 Preservation Briefs” (a National Park Service Publication authored by Charles Birnbaum), there are four types of cultural landscapes, “historic sites, historic designed landscapes, historic vernacular landscapes, and ethnographic landscapes.” According to this publication, ethnographic landscapes include “religious sacred sites.” The definition of cultural landscapes, in this publication, is generally linked to something concrete such as an important event or person. It defines cultural landscapes as “... associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values.” Consequently, neither the Nantucket Sound as a water body, as an inundated prehistoric landscape, nor as a viewshed of the eastern horizon would be considered as a religious site and ethnographic landscape, and would not likely meet this definition of cultural landscapes. There is no evidence linking these sites to a relevant historic event, activity or person. Further, even if one met the definition of a “cultural landscape,” the Nantucket Sound as a water body, as a viewshed of the eastern horizon, or as an inundated prehistoric landscape would still have to satisfy the regulatory criteria to be eligible for inclusion in the NRHP to qualify as a historic property, and none of these do.

In conclusion, the Nantucket Sound (as a water body, as a submerged landscape, or as the viewshed of the eastern horizon) does not satisfy the criteria of eligibility for inclusion in the NRHP, nor does it meet the definition of "historic property" under 36 CFR 800.16, nor does it qualify as a "sacred site" under Executive Order No. 13007 and, therefore, does not qualify as a historic property under the NHPA.

CONCLUSION

Based on a thorough and extensive assessment of the NRHP Criteria and the analysis of the results of marine archaeological surveys, ***the MMS has determined that neither the water body of Nantucket Sound itself, nor the seabed underlying Nantucket Sound, nor the viewshed of the eastern horizon as a discrete entity (devoid of a viewing location) across Nantucket Sound would be eligible for listing on the NRHP as a TCP, a historic property, or a sacred site.*** With all of these points taken together, the MMS has decided it will not at this time submit documentation to the NRHP for the purpose of seeking a formal eligibility determination of Nantucket Sound (the water body, the submerged landscape, or the eastern horizon devoid of a viewing location) as a TCP or as a historic property (pursuant to 36 CFR 800.4(c)(2)). However, the MMS will continue to consider for NRHP eligibility the locations identified by the Tribes during site visits that may be affected by the proposed project that are both within the currently defined APE and potentially possessing characteristics of historic properties or TCPs. Written permission from the Tribes will be sought prior to circulating proposed eligibility determinations or officially nominating these properties.

Sources Considered

- Thomas F. King, Places That Count: Traditional cultural properties in cultural resource management. (2003)
- Washington, D.C. U.S. Dept of the Interior, National Park Service, Cultural Resources, Park Historic Structures & Cultural Landscapes, (1998-), Landscapes Lines (2005)
- Silverman, David J., Faith and boundaries: colonists, Christianity, and community among the Wampanoag Indians of Marth's Vineyard, 1600-1871. (2005)
- Travers, Milton A., The Wampanoag Indian federal of the Algonquin Nation; Indian neighbors of the Pilgrims. (1961).
- Travers, Milton A., The Wampanoag Indian Tribes of Martha's Vineyard: the Story of the Capowacks o Nope, the Takemmy – Wampanoags, the Nunpaug-Wampanoags, the Aquinnah-Wampanoags, the Acuinah-Wampanoags of Catachukutcho (Gay Head tribe), the Chappaquiddick – Wampanoags
- John R. Swanton, The Indian Tribes of North America. Originally Published 1952 as Bureau of American Ethnology Bulletin Number 145 (Fourth Printing 1984)
- Robert S. Grumet, Historic Contact: Indian People and Colonists in Today's Northeastern United States in the Sixteenth Through Eighteenth Centuries. (1995)
- William C. Sturtevant, Handbook of North American Indians. (1978)
- Laurie Weinstein-Farson, The Wampanoag. (1989)
- Patricia L. Parker and Thomas F. King, U.S. Department of the Interior, National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties (rev. 1998)
- National Register Bulletins 12 and 21: *Defining Boundaries for National Register Properties* (1997)
- National Register Bulletin 15: *How to Apply the National Register Criteria for Evaluation*

Mashpee Wampanoag Tribe

P.O. Box 1048
Mashpee, MA. 02649
(508)477-0208

**2009-RES-022****Horseshoe Shoal Resolution**

WHEREAS, the Mashpee Wampanoag Tribe is federal recognized Tribe entitled to the immunities and privileges available to Indian tribes by virtue of their government - to -government relationship with the United States; and

WHEREAS, the Mashpee Wampanoag Tribe is a member of the Great Wampanoag Nation, known as "The People of the First Light" and have since time immemorial occupied the land and waters from Narragansett Bay to the Neponset estuaries and maintained a spiritual, cultural and traditional connection to their traditional homeland; and

WHEREAS, as the People of the First Light; one of the most important components of our religious, cultural and ceremonial practices is our ability to embrace and give prayer of thanksgiving to the first light . These ceremonial, spiritual and religious practices require an unobstructed view of the sunrise over Nantucket Sound; and

WHEREAS, the Wampanoag people have walked these lands for nine thousand years, including both upland and land under the ocean and we must preserve the spiritual integrity and sanctity of the eastern horizon, vista and horizon view-shed, central to our religion ; and

WHEREAS, our oral traditions teach us that our people lived , raised families, hunted, fished and buried our dead on this land now known as Horseshoe Shoals and their descendents still live on Cape Cod and Martha's Vineyard and carry on our culture, traditions and religion; and

WHEREAS, the Wampanoag Tribe, the Colonies, the state of Massachusetts and the United States share a long maritime history and a National Treasure that has significant spiritual, cultural, traditional and historic value to all.

NOW THEREFORE, BE IT RESOLVED that the Mashpee Wampanoag Tribe requests the National Park Service (NPS) determined that Nantucket Sound is a **Traditional Cultural Property**; and

BE IT FURTHER RESOLVED that the Mashpee Wampanoag Tribe since time immemorial has a traditional, cultural, spiritual and religious connection to the Sound and have determined that Nantucket Sound is a **Traditional Cultural Property**; and

BE IT FINALLY RESOLVED that the Mashpee Wampanoag Tribe approves and submits this resolution to the National Park Service (NPS)

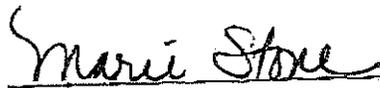
CERTIFICATION

We, the undersigned Chairman and Secretary of the Tribal Council of the Mashpee Wampanoag Tribe, hereby, certify that the Tribal Council is composed of 13 members of whom 10 constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held on the 15th day of July, 2009, and that the foregoing Resolution was duly adopted by the affirmative vote of 9 members, with 0 opposing, and with 0 not voting.

DATED THIS 15th day of July, 2009


Cedric Cromwell, Chairman
Mashpee Wampanoag Tribal Council

ATTEST:


Marie Stone, Secretary
Mashpee Wampanoag Tribal Council

Tribal Historic
Preservation Office



Protecting & Preserving
Our Culture

September 17, 2009

National Park Service
National Register of Historic Places
1201 Eye St., NW (2280)
Washington, DC 20005
Attn: Ms. Janet Snyder-Matthews, PHD

Dear Ms. Snyder-Matthews,

The Tribal Historic Preservation Officer of the Wampanoag Tribe of Gay Head (Aquinnah) being duly authorized by the governing body of the Tribe, hereby requests an official determination of eligibility for the eastern vista viewshed over Nantucket Sound, located off the coast of Cape Cod, Massachusetts, for inclusion in the National Register of Historic Places. This request is being made pursuant to the Cape Wind Project application through the Section 106 process of the National Historic Preservation Act.

Since time immemorial, the Wampanoag and/or Indigenous Northeastern Woodlands Indian People have; either traversed, fished, cultivated, interred our ancestors and/or occupied the entire area including the location currently under consideration for this undertaking.

We consider the eastern vista viewshed over Nantucket Sound, located off the coast of Cape Cod, Massachusetts, eligible for inclusion in the National Register of Historic Places as the Wampanoag People consider this viewshed a Traditional Cultural Property.

We are the Wampanoag People, "The People of the First Light or Dawn", this is how we identify ourselves and how other Tribes recognize us. The unobstructed view of this expanse of water, bordered by the south shore of Cape Cod on it's north side, by Nantucket on the southern side and Martha's Vineyard on it's western side is of utmost importance to the Wampanoag People.

The WTHPO asserts that the eastern vista viewshed is essential to the Wampanoag People for our cultural beliefs, identity and spirituality. This viewshed is one of the places where our People historically had, and continue, to have a connection in

practicing our cultural ceremony and traditions. Here is where we still arrive to greet the new day, watch for celestial observations in the night sky and follow the migration of the sun and stars in change with the seasons. This viewshed has remained undefiled; affording our People continuous use since time immemorial and it defines our place in the indigenous world; for ourselves, for our sister Mashpee Wampanoag tribe, to our extended Native families and the Peoples across Turtle Island.

Our oral history proclaims that we walked across this expanse of land, now covered by water, and our leader Moshup created Noepe, (currently called Martha's Vineyard), and it's surrounding islands, including Nantucket. This is the path the Aquinnah Wampanoag people took to arrive at our present location and defines our relationship to the rest of the Wampanoag Nation and other American Indian tribes in New England and beyond. Our history has been, and continues to be, defined by this unique placement on Mother Earth.

In addition to the designation as a Traditional Cultural Property, we consider the eastern vista viewshed over Nantucket Sound, located off the coast of Cape Cod, Massachusetts, eligible for inclusion in the National Register of Historic Places under the following criteria:

Criteria A. " Properties that are associated with events that have made a significant contribution to the broad patterns of our history"; *and*

Criteria D. "Properties that have yielded or may be likely to yield, information important in prehistory or history."

Evidence of our ancient history has been brought forth from the floor of the Nantucket Shoals, long forgotten archeological data of a time when our Peoples would have walked miles out to what is now the Continental Shelf, to carry out our ancient ceremonial practices and foraging for sustenance from the ocean. Although there have been re-discoveries of archeological evidence, the continuing advancement of archeological and scientific methodologies will yield further confirmation of our oral histories.

We respectfully submit this nomination to the Keeper to determine its eligibility for placement in the National Register of Historic Places.

In Balance, Harmony and Peace,



Bettina M. Washington
Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head (Aquinnah)

cc: Ken Salazar, Secretary of the Interior
Larry Echohawk, Asst. Secretary of the Interior
John Fowler, ACHP
John P. Eddins, ACHP
John L. Berrey, ACHP
Tobias J. Vanderhoop, Culture and Historic Commission, WTGH(A)
George Green, Jr., THPA, Mashpee Wampanoag Tribe

John Brown, THPO, Narragansett Indian Tribe
Brona Simon, SHPO, Commonwealth of Massachusetts
Senator John F. Kerry, Commonwealth of Massachusetts
Representative William D. Delahunt, Commonwealth of Massachusetts
Chris Horrell, Mineral Management Services
Andrew Kruger, Mineral Management Services



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



SEP 8 2009

Mr. Reid Nelson
Director, Office of Federal Agency Programs
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, N.W., Suite 809
Washington, D.C. 20004

Mr. George (Chuckie) Green
Tribal Historic Preservation Officer
Mashpee Wampanoag Tribe
P.O. Box 1048
Mashpee, Massachusetts 02649

Ms. Brona Simon
State Historic Preservation Officer
Massachusetts Historical Commission
The Massachusetts Archives Building
220 Morrissey Boulevard
Boston, Massachusetts 02125

Ms. Bettina Washington
Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head (Aquinnah)
20 Black Brook Road
Aquinnah, Massachusetts 02535-9701

Dr. Janet Matthews
Associate Director for Cultural Resources and
Keeper of the National Register of Historic Places
National Park Service
1849 C Street, N.W.
Washington, D.C. 20240

RE: Proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Messrs. Nelson and Green, Mss. Simon and Washington, and Dr. Matthews:

We wish to thank the Advisory Council on Historic Preservation (ACHP) for its letter of June 23, 2009, regarding the June 16, 2009, Section 106 consultation meeting held in Hyannis, Massachusetts. The Minerals Management Service (MMS) appreciates the continued support and advice that the ACHP has provided throughout the Section 106 consultation process for the proposed Cape Wind Energy Project. The ACHP has



mentioned several issues remaining to be addressed for the Section 106 process. We would like to respond to the issues raised by the ACHP in the June 23, 2009, letter, address concerns regarding the consultation thus far, and propose next steps for completion of the Section 106 consultation process.

Input from the NPS on Eligibility Determinations and Impacts to National Historic Landmarks (NHLs)

We have asked the National Park Service (NPS) to respond to the issues the ACHP raised about the potential National Register of Historic Places (NRHP) eligibility of Nantucket Sound and, separately, the eligibility of the seabed underlying the Sound, as Historic or Traditional Cultural Properties (TCP). MMS's continuing evaluation of the eligibility of the eastern viewshed over the Sound from various onshore locations following Tribal site visits that occurred August 3-5, 2009, is described below. Of course, the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) may request a formal determination of eligibility from the NRHP with assistance from the Massachusetts State Historic Preservation Officer (SHPO); so far as we are aware, no such formal request has been made.

The MMS has acknowledged the proposed project's potential to have adverse visual impacts on the Nantucket Island and Kennedy Compound NHL Districts. Please refer to the MMS's *Finding of Adverse Effect for the Cape Wind Energy Project* (December 29, 2008), henceforth referred to as "the Finding." The Finding can be found online at the following web address and has already been provided to all the consulting parties: http://www.mms.gov/offshore/AlternativeEnergy/PDFs/FAE_Final.pdf

The MMS has included the NPS in all correspondence and has invited the NPS to attend each Section 106 meeting for the proposed Cape Wind Energy Project. At the recommendation of the ACHP, the MMS sent an email on April 29, 2009, to Mr. Bill Bolger, Manager of the NPS Northeast Region's National Historic Landmarks Program, seeking his comments on the proceedings. The email also stated MMS's position that section 110(f) of the NHPA (*see* Section 36 CFR 800.10) is not applicable in situations involving effects that are only indirect. The MMS is working with the NPS to address the issues that the ACHP has raised, and we expect to receive NPS' formal analysis on impacts to the Nantucket Island and Kennedy Compound NHL Districts before the next Section 106 consultation meeting.

Tribal Consultations and Site Visits

The following summarizes coordination between the MMS, the Wampanoag Tribe of Gay Head (Aquinnah) and the Mashpee Wampanoag Tribe, as well as consultation efforts to fulfill MMS's obligations under Executive Order 13175 and under Section 106 of the National Historic Preservation Act (NHPA). We hope that this will address concerns expressed in letters to the MMS and in previous Section 106 consultation meetings, specifically that the MMS has failed to consult with the Tribes in a meaningful and good-faith manner and that there are additional TCPs that need to be included in the Finding.

E.O. 13175 – Initial Government-to-Government Consultation Meetings:

- July 26, 2006 – The MMS and the Wampanoag Tribe of Gay Head (Aquinnah) formally met at their headquarters on Martha's Vineyard. This included an initial site visit by Dr. Rodney Cluck. The Wampanoag Tribe of Gay Head (Aquinnah) showed Dr. Cluck around the Island and identified the Cliffs of Gay Head as one of their most important cultural locations.
- July 27, 2006 – The MMS and the Mashpee Wampanoag Tribe formally met at their headquarters in Mashpee, MA.
- July 25-26, 2007 – The MMS again formally met with the Mashpee Wampanoag Tribe on Cape Cod, and the Wampanoag Tribe of Gay Head (Aquinnah) on Martha's Vineyard.

These meetings included an explanation of the proposed Cape Wind Energy Project and discussion of its potential impacts on Tribal governments, and served to inform and educate MMS about Tribal concerns. Additionally, the MMS gave a presentation to the United South Eastern Tribes in February 2007, describing the proposed Cape Wind Energy Project and MMS's responsibilities in regulating offshore renewable energy.

More recently, MMS had an additional government-to-government meeting with each tribe as described below:

- August 3-4, 2009 – The MMS, the U.S Army Corps of Engineers, and the Bureau of Indian Affairs met with the Wampanoag Tribe of Gay Head (Aquinnah) at their headquarters in Aquinnah, MA, and conducted site visits to locations around the island of Martha's Vineyard.
- August 5, 2009 – The MMS met with the Mashpee Wampanoag Tribe at their headquarters in Mashpee, MA, and conducted site visits to various locations on Cape Cod.

Agency Consultation Meetings:

Agency consultation meetings were held in Boston, Massachusetts on November 2, 2005, June 27, 2006, February 28, 2007, and July 24, 2008. The purpose of the meetings was to solicit comment and concerns about the project and the scope of the draft and final environmental impact statements (EIS). Both the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) were invited to participate at these meetings as cooperating agencies on the EIS. The Wampanoag Tribe of Gay Head (Aquinnah) attended two of these meetings (November 2, 2005 and June 27, 2006). The Mashpee Wampanoag Tribe did not attend these meetings.

NHPA Section 106 Consultation Meetings (7 in total to date, 2 Tribal-only):

- July 23, 2008 – Full Section 106 consultation meeting in Boston, MA. Both Tribes were invited to participate in this meeting and all subsequent Section 106 meetings. The Mashpee Wampanoag Tribe participated, and the Wampanoag Tribe of Gay Head (Aquinnah) did not participate.
- September 8, 2008 – Tribal-only Section 106 consultation meeting in Hyannis, MA. Both the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) participated.
- September 9, 2008 – Full Section 106 consultation meeting in Hyannis, MA. The Mashpee Wampanoag Tribe participated, and the Wampanoag Tribe of Gay Head (Aquinnah) did not participate.
- January 29, 2009 – Full Section 106 consultation meeting in Boston, MA. The Wampanoag Tribe of Gay Head (Aquinnah) sent a representative to read a statement; the Mashpee Wampanoag Tribe did not participate.
- April 28, 2009 – Full Section 106 consultation meeting in Hyannis, MA. Both the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) participated.
- June 3, 2009 – Tribal-only Section 106 consultation meeting in Hyannis, MA. Both the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) participated.
- June 16, 2009 – Full Section 106 consultation meeting in Hyannis, MA. MMS presented a draft Memorandum of Agreement (MOA) at this meeting. Both the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) participated.

Site Visits:

The MMS also attempted to schedule Tribal site visits specific to the Section 106 process beginning in October 2008. After multiple postponements, final Tribal site visits were concluded August 3-5, 2009.

- October 6-7, 2008 – The Tribes were attending another Tribal meeting too close to the proposed site visit dates.
- April 14-15, 2009 – The Tribes were not willing to host site visits with certain MMS staff who prepared to make the visit, with whom the Tribes were not familiar. The Tribes indicated that they only felt comfortable with two specific staffers, neither of whom was available on these dates.

- April 27-29, 2009 – The Tribes expressed their desire to have Mr. Doug Harris of the Narragansett Tribe of Rhode Island participate. However, Mr. Harris was not available on these dates.
- July 18-21, 2009 – Per the discussion at the June 16, 2009 Section 106 consultation meeting, the MMS anticipated site visits the weekend of July 18-19, followed by a Tribal-only Section 106 meeting on July 20 and a Full Section 106 Consultation meeting on July 21. A June 23, 2009, letter from the Wampanoag Tribe of Gay Head (Aquinnah) informed MMS that the Tribes were in fact planning to have MMS staff attend a cultural event the weekend of July 18-19. The MMS Tribal/Community Liaison Officer accepted the invitation to participate in the cultural event via an email dated July 7, 2009. The Tribes indicated that they were not willing to allow the MMS Tribal/Community Liaison Officer to attend the cultural event because they did not feel comfortable with his presence; other MMS staff working on the Cape Wind Section 106 process were unable to attend the weekend's cultural event due to personal or professional obligations. MMS staff offered to be available for site visits on July 20-21, 2009, however, MMS was informed by the Tribes that they were not available on those dates.

Completing Evaluation of Additional Tribal Sites

On August 3-5, 2009, the MMS participated in final site visits with both the Wampanoag Tribe of Gay Head (Aquinnah) and the Mashpee Wampanoag Tribe to consider additional properties on Martha's Vineyard and Cape Cod that the Tribes consider would be affected by the proposed project. These site visits were productive, and the Tribes provided MMS with information about certain sites—both on and off Tribal lands—that they believe would be eligible for listing on the NRHP as TCPs and would be adversely affected by the proposed project. The MMS is in the process of reviewing the information collected to determine whether any of the sites are eligible for listing on the NRHP as TCPs, and if so, whether they would be adversely affected by the proposed project. The MMS may request additional information from the Tribes about the sites visited on August 3-5, 2009, to help evaluate whether certain sites meet the National Register eligibility criteria for TCPs (for example, details regarding the nature, frequency, and attendance in cultural/spiritual practices and observances—where having an unobstructed eastern view over the sound is integral to the cultural importance of the activity or ceremony).

Conclusion of the Section 106 Consultation Process

The MMS solicited information from all consulting parties in the summer and fall of 2008 pursuant to Section 36 CFR 800.4. All consulting parties have had ample time to submit information on properties that they believe will be impacted by the proposed project. As the ACHP noted in a letter dated April 1, 2009, "As a result of the issuance of a Finding of Adverse Effect on December 29, 2008, MMS is now formally consulting to resolve adverse effects that may result from the proposed Cape Wind project [and that]

pursuant to Section 36 CFR 800.6 this consultation should [now] address *alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects* (emphasis added).”

By this letter, the MMS is inviting all consulting parties and strongly urging them to attend a full Section 106 consultation meeting on Wednesday, September 30, 2009, in Washington, D.C., at the Department of the Interior’s Main Interior Building. We will re-locate this meeting to Boston or Hyannis, Massachusetts upon receiving a written request from the SHPO or the ACHP (email request is acceptable). The sole purpose of the meeting will be to finalize a MOA, a draft of which was provided to all consulting parties and discussed at the June 16, 2009, meeting. For convenience, the draft MOA is included in this letter as Attachment 1. Without seeing significant progress toward the final objective of completing a signed MOA by the end of the September 30, 2009, full Section 106 consultation meeting, we see little purpose in further meetings.

If you have any questions regarding the Section 106 Consultations, please contact Dr. Chris Horrell at (504) 736-2796 or Christopher.Horrell@mms.gov. It is our hope that the ACHP and Massachusetts SHPO will agree to meet on Wednesday, September 30, 2009, along with all consulting parties, to reach final consensus on a MOA.

Sincerely,



Walter D. Cruickshank
Deputy Director

Enclosure

cc: Section 106 Consulting Parties

MEMORANDUM OF AGREEMENT
AMONG THE U.S. DEPARTMENT OF THE INTERIOR,
MINERALS MANAGEMENT SERVICE
THE MASSACHUSETTS HISTORICAL COMMISSION
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
THE U.S. ARMY CORPS OF ENGINEERS
AND CAPE WIND ASSOCIATES, L.L.C.
REGARDING THE PROPOSED CAPE WIND ENERGY PROJECT

WHEREAS the U.S. Department of the Interior, Minerals Management Service (MMS) proposes to undertake the Cape Wind Energy Project (the Project), described on pages 73-104 of the Final Environmental Impact Statement titled "Cape Wind Energy Project: Final Environmental Impact Statement" and dated January 2009 (Final EIS); and

WHEREAS the MMS has established the Project's area of potential effects (APE) for historic properties, as defined at 36 CFR 15 800.16(d), to be as described on page 2 of the Finding of Adverse Effect document, dated December 2008 (Finding); and

WHEREAS the MMS has determined that the Project will have adverse visual effects on twenty-eight above-ground historic properties, and one Traditional Cultural Property (TCP); and

WHEREAS the MMS has determined that the Project will have adverse visual effects on the ceremonial practices, religion, and culture of the Gay Head/Aquinnah and Mashpee Wampanoag Tribes (as described on pages 28-30 and in Table 4.1 of the Finding); and

WHEREAS the MMS has consulted with the Massachusetts State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (Council), the Wampanoag Tribe of Gay Head/Aquinnah and the Mashpee Wampanoag Tribe, the Narragansett Indian Tribe, the United States Army Corps of Engineers (USACE), the National Park Service (NPS), the National Trust for Historic Preservation, the Cape Cod Commission, the Martha's Vineyard Commission, the Alliance to Protect Nantucket Sound, the Cape Wind Associates, L.L.C. (the Project Proponent), and other interested parties in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. § (NHPA), and its implementing regulations (36 CFR Part 800.6(b)(2)) to resolve the adverse effects of the Project on historic properties; and

WHEREAS pursuant to 36 CFR 800.6(c)(2) the MMS has invited the Wampanoag Tribe of Gay Head/Aquinnah, the Mashpee Wampanoag Tribe, the United States Army Corps of Engineers (USACE), the National Park Service (NPS), the National Trust for Historic Preservation, the Cape Cod Commission, the Martha's Vineyard Commission, and the

Alliance to Protect Nantucket Sound to concur with this Memorandum of Agreement (MOA);

NOW, THEREFORE, the MMS, the SHPO, the Council, the USACE, and the Proponent agree that should the Secretary of Interior decide to proceed with the Project, the MMS shall ensure that the following stipulations are implemented in order to take into account the effects of the Project on historic properties, and that these stipulations shall govern the Project and all of its parts until this MOA expires, is amended, or is terminated. In the event that an alternative other than the Project is chosen by the Secretary of Interior, this MOA will be considered void and the MMS will reinstate Section 106 consultation.

Stipulations

The MMS shall ensure that the following stipulations are implemented:

I. Project Design and Construction

A. The Proponent will implement the Project as presented in the FEIS, including the following efforts to reduce adverse impacts to historic properties:

1. reducing the number of turbines from 170 to 130, with the turbines closest to the Kennedy Compound being eliminated to reduce the visual effect to the Kennedy Compound National Historic Landmark (NHL);
2. omitting turbines in the northeast corner of the array to reduce the breadth of the wind park that could be seen from the Kennedy Compound NHL;
3. moving the array farther away from Nantucket Island to decrease the visual effects to the Nantucket Historic District;
4. reconfiguring the edges of the array to reduce the breadth of the array that could be seen from the Nantucket Historic District;
5. eliminating daytime lighting on the turbines, unless the US Coast Guard determines that some "day beacons" are required to ensure navigation safety;
6. reducing Federal Aviation Administration (FAA) nighttime lighting to no more than 57 lights, unless the FAA dictates otherwise;
7. painting the turbines an off-white color to reduce the contrast with sea and sky; and
8. locating the upland transmission route entirely below ground within paved roads and existing utility ROWs to avoid visual impacts and impacts to potential identified archaeological resources.

B. The MMS will consult with the signatories and concurring parties to this MOA in the event that Project plans change in a manner that would increase adverse impacts to historic properties.

C. Prior to any construction, the Proponent will collect a new series of sediment cores.

1. At least one vibracore will be located at the geographic position of each proposed turbine foundation. Core samples shall be collected at a point where the overlying sand is thinnest, and shall be taken to the deepest depth technically possible. Final scope, methodology, and results of the additional vibracore collection will be submitted to the SHPO for review and comment prior to sampling.
2. The cores will be split, described and subjected to detailed laboratory analysis by qualified technicians and archaeologists to determine whether there are any indicators of a prehistoric archaeological site present at the vibracore location.
3. Should laboratory analysis indicate the presence of a buried archaeological deposit, the procedures outlined in the *Procedures Guiding the Unanticipated Discovery of Cultural Resources and Human Remains* (Attachment A) will be implemented.
4. Provision will be made for a representative of the Wampanoag Tribe of Gay Head/Aquinnah and/or the Wampanoag Tribe of Mashpee, designated by the respective Tribal Councils, to be present on site during the collection of all vibracore samples.

D. Prior to construction, the Proponent will establish a 304.8 meter (m; 1,000 foot [ft]) no-activity buffer zone around the three identified potential shipwreck sites.

1. The Proponent will retain an MMS-approved environmental inspector to oversee compliance with the no-activity buffer zone.
2. The Proponent will provide GPS coordinates and project plan maps to all employees and contractors indicating the location of the no-activity buffer zone, but without indicating in any manner that the zone refers to protection of cultural, historic, or other resources. The onus of protecting the nature of this sensitive information is on the Proponent, in whose care the data lie.
3. No physical demarcation of the zone shall be made by the Proponent.

II. Compensatory Mitigation

A. The Proponent will provide \$XXX,XXX to WHOM for the purposes of mitigating the effects of the Project on twenty-eight above-ground historic properties, to be used in accordance with Attachment B of this document: *Procedures Guiding the Use of Compensatory Mitigation Funds*.

B. The Proponent will provide a sum of \$XXX,XXX to WHOM for the purposes of mitigating the effects of the Project on the ceremonial practices and the traditional cultural properties of the Gay Head/Aquinnah and Mashpee Wampanoag Tribes, to be used in accordance with Attachment B of this document: *Procedures Guiding the Use of Compensatory Mitigation Funds*.

III. Unanticipated Discovery

The MMS will include a “Chance Finds” clause in the lease document that, in the event of an unanticipated discovery of cultural resources or human remains, would require the Proponent to follow the procedures set forth in the *Procedures Guiding the Unanticipated Discovery of Cultural Resources and Human Remains* (Attachment A).

IV. Dispute Resolution

- A. Should any party to this agreement object in writing to the MMS regarding any action carried out or proposed with respect to the undertaking or implementation of this agreement, the MMS shall consult with the objecting party to resolve the objection. If after initiating such consultation the MMS determines that the objection cannot be resolved through consultation, the MMS shall forward all documentation relevant to the objection to the Council, including the MMS's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the Council shall exercise one of the following options:
1. Advise the MMS that the Council concurs with the proposed response to the objection, whereupon the MMS will respond to the objection accordingly;
 2. Provide the MMS with recommendations, which the MMS shall take into account in reaching a final decision regarding its response to the objection; or
 3. Notify the MMS that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. The MMS shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110(l) of NHPA.
- B. Should the Council not exercise one of the above options within 30 days after receipt of all pertinent documentation, the MMS may assume the Council's concurrence in its proposed response to the objection.
- C. The MMS shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the MMS's responsibility to carry out all actions under this agreement that are not the subject(s) of the objection shall remain unchanged.
- D. At any time during implementation of the measures stipulated in this agreement, should a new objection pertaining to this agreement or the effect of the undertaking on historic properties that has not previously been considered be raised by a member of the public, the MMS shall notify the parties to this agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this agreement to resolve the objection.

V. Reporting

- A. On or before (insert date) of each year until the MMS, the SHPO, and the Council agree in writing that the terms of this agreement have been fulfilled, the MMS shall

prepare and provide an annual report to the SHPO and all concurring parties, addressing the following topics:

1. Progress in constructing the Project;
 2. Any problems or unexpected issues encountered during the year; and;
 3. Any changes that the MMS believes should be made in implementation of this agreement;
- B. The MMS shall ensure that its annual report is made available for public inspection, that potentially interested members of the public are made aware of its availability, and that interested members of the public are invited to provide comments to the SHPO and the Council as well as to the agency.
- C. The signatories to this agreement shall review the annual report and provide comments to the MMS. Concurring parties to this agreement may review and comment on the annual report at their discretion.
- D. At the request of any party to this agreement, the MMS shall ensure that a meeting or meetings are held to facilitate review and comment, to resolve questions, or to resolve adverse comments.
- E. Based on this review, the signatories to this agreement shall determine whether this agreement shall continue in force, be amended, or be terminated.

VI. Amendments

Any party to this agreement may propose to the MMS that the agreement be amended, whereupon the agency shall consult with the other parties to this agreement to consider such an amendment. 36 CFR 800.6(c)(1) shall govern the execution of any such amendment.

VII. Termination

- A. If the MMS or the Proponent determines that it cannot implement the terms of this agreement, or if the SHPO or the Council determines that the agreement is not being properly implemented, such party may propose to the other parties to this agreement that it be terminated.
- B. The party proposing to terminate this agreement shall so notify all parties to this agreement, explaining the reasons for termination and affording them at least 30 days to consult and seek alternatives to termination. The parties shall then consult.
- C. Should such consultation fail, the agency or other signatory party may terminate the agreement by so notifying all parties.
- D. Should this agreement be terminated, the agency shall either:
1. Consult in accordance with 36 CFR 800.6 to develop a new MOA; or

2. Request the comments of the Council pursuant to 36 CFR 800.7.

E. If the terms of this agreement have not been implemented by (insert date), this agreement shall be considered null and void. In such event the MMS shall so notify the parties to this agreement, and if it chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

Execution of this MOA by the MMS, the SHPO, the Council, the USACE and the Proponent and implementation of its terms, evidence that the MMS has afforded the Council an opportunity to comment on the Project and its effects on historic properties, and that the MMS has taken into account the effects of the Project on historic properties.

MINERALS MANAGEMENT SERVICE

By: _____ Date: _____

MASSACHUSETTS HISTORICAL COMMISSION

By: _____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

US ARMY CORPS OF ENGINEERS

By: _____ Date: _____

CAPE WIND ASSOCIATES, LLC

By: _____ Date: _____

CONCUR:

WAMPANOAG TRIBE OF GAY HEAD/AQUINNAH

By: _____ Date: _____

WAMPANOAG TRIBE OF MASHPEE

By: _____ Date: _____

NATIONAL PARK SERVICE

By: _____ Date: _____

NATIONAL TRUST FOR HISTORIC PRESERVATION

By: _____ Date: _____

CAPE COD COMMISSION

By: _____ Date: _____

MARTHA'S VINEYARD COMMISSION

By: _____ Date: _____

ALLIANCE TO PROTECT NANTUCKET SOUND

By: _____ Date: _____

DRAFT

ATTACHMENT A:

PROCEDURES GUIDING THE UNANTICIPATED DISCOVERY OF CULTURAL RESOURCES AND HUMAN REMAINS

I. Introduction

The U.S. Department of the Interior, Minerals Management Service (MMS) proposes to undertake the Cape Wind Energy Project (the Project) in Nantucket Sound off the coast of Massachusetts. The purpose of this Project is to develop and operate a renewable energy facility that utilizes the unique wind resources in waters offshore of New England that can interconnect with and deliver electricity to the New England Power Pool. The following Unanticipated Discovery Plan (UDP) outlines procedures to follow, in accordance with state and federal laws, if cultural resources or human remains are discovered during the course of construction, maintenance, or decommissioning of the Project.

II. Recognizing Cultural Resources

A cultural resource discovery could be prehistoric or historic, in previously disturbed or intact contexts. As defined by the Archaeological Resources Protection Act of 1979, an archaeological resource is: "... any material remains of past human life or activities which are of archaeological interest ... at least 100 years of age" (16 U. S. C. § 470bb). The terms "material remains" is defined in the ARPA uniform regulations as: "... physical evidence of human habitation, occupation use, or activity, including the site location or context in which such evidence is found" (Section .3(a)(2)).

Examples include:

- An accumulation of shell, burned rocks, or other food related materials,
- Bones or small pieces of bone,
- An area of charcoal or very dark stained soil with artifacts,
- Stone tools or waste flakes (i.e., an arrowhead, or stone chips),
- Clusters of tin cans or bottles, logging or agricultural equipment that appears to be older than 50 years,
- Buried railroad tracks, decking, or other industrial materials,
- Submerged scatters of wood or metal,
- Shipwrecks and associated debris fields and other components (i.e. anchors, anchor chain, windlasses, capstans, etc.),
- Prehistoric fishing weirs,
- Canoes, and/or
- Historic and Prehistoric Trash Middens.

When in doubt, one should assume that the material is a cultural resource.

III. On-Site Responsibilities

STEP 1: STOP WORK ORDER. If any Cape Wind employee, contractor, or subcontractor believes that he or she has uncovered a cultural resource or human remains at any point in the project, all work adjacent to the discovery must stop.

If human remains are encountered, they shall be treated with dignity and respect at all times. Remains shall be covered with a tarp or other materials (not soil or rocks) for temporary protection in place and to shield them from being photographed. Do not call 911 or speak with the media. Do not under any circumstances photograph the remains.

STEP 2: NOTIFY PROJECT MANAGER. The individual identifying the potential cultural resource shall notify the immediate on-site supervisor, who in turn will notify the Cape Wind project manager. The on-site supervisor also will confirm with all on-site personnel that work adjacent to the discovery will remain stopped until confirmation of the nature of the resource can be obtained.

Cape Wind Project Manager:

Name

Number

STEP 3: NOTIFY MMS. The Cape Wind project manager shall notify the MMS within 24 hours of the discovery and that the discovery location has been made secure. MMS, as the lead agency, will provide guidance to Cape Wind, its contractors, and subcontractors if cultural resources are encountered during construction, maintenance, or decommissioning of the proposed action.

If the discovery is located on the Outer Continental Shelf, MMS will make a determination as to what steps must be made to protect the resource. If the cultural resource is located on State Owned Submerged Bottomlands or on State Lands, MMS will direct Cape Wind, its contractors, and subcontractors to the Massachusetts SHPO and/or the USACE to receive guidance on what steps are necessary to protect the cultural resource.

In addition, if the cultural resource and associated material culture is determined to be Native American in origin, MMS will direct Cape Wind, its contractors, and subcontractors to a Tribal Representative who shall be contacted immediately.

Cape Wind and its contractors and subcontractors shall keep the location of the discovery confidential and take no action that may adversely affect the archaeological resource until the MMS has made an evaluation and notified Cape Wind how to proceed; all media or public requests for comment shall be directed to MMS public relations.

The MMS may require Cape Wind to conduct additional investigations to determine: (1) if the resource is eligible for listing on the National Register of Historic Places under 36 CFR 60.4; (2) if the site has been impacted by Cape Wind's project activities; or (3) if impacts to the site or to the area of potential effect cannot be avoided. If

further investigations indicate that the resource is potentially eligible for the National Register of Historic Places, the MMS will notify Cape Wind on how to protect the resource, or how to mitigate adverse effects to the site. Section 110(g) of the National Historic Preservation Act authorizes the MMS to charge Cape Wind reasonable costs for carrying out preservation responsibilities under the OCS Lands Act (OCSLA).

If these steps are not followed, MMS may issue a Notice of Noncompliance to Cape Wind, its contractors, and subcontractors and may result in cessation of work or Civil and Criminal Penalties (74 FR 19638, *19674).

IV. Special Procedures for the Discovery of Human Skeletal Material

Any human skeletal remains, regardless of antiquity or ethnic origin, shall at all times be treated with dignity and respect. Remains shall be covered with a tarp or other materials (not soil or rocks) for temporary protection in place and to shield them from being photographed. Do not call 911 or speak with the media. Do not under any circumstances photograph the remains.

Cape Wind and its contractors and subcontractors will comply with applicable state and federal laws, and the following procedure:

A. Notify Law Enforcement Agency or Coroner's Office:

In addition to the actions described in Section III, the Cape Wind project manager will immediately notify the local law enforcement agency or coroner's office.

The coroner (with assistance of law enforcement personnel) will determine if the remains are human, and whether the discovery site constitutes a crime scene.

Local Law Enforcement Agency/Coroner

Name

Number

B. Further Activities:

Documentation of human skeletal remains and funerary objects will be agreed upon through the consultation process. If there exists any possibility that the remains are Native American in origin or that identified funerary objects may relate to Native American interests, the MMS shall immediately notify the Tribal Representatives for the Project.

Mashpee Wampanoag Tribal

Representative:

Name

Number

Wampanoag Tribe of Gay Head/Aquinnah

Tribal Representative:

Name

Number

V. Documentation of Archaeological Materials

Archaeological deposits discovered during construction will be assumed eligible for inclusion in the National Register of Historic Places under Criterion D.

Once Cape Wind has received guidance as to how to proceed, Cape Wind will ensure the proper documentation and assessment of any discovered cultural resources in cooperation with the federal agency, the SHPO, the USACE, and affected Tribes (if any). All fieldwork will be conducted in accordance with guidelines established by the Massachusetts Historical Commission and/or the Massachusetts Board of Underwater Archaeological Resources, as appropriate and will be sufficient to establish NRHP eligibility and to produce a full, professional, technical report.

Within 60 days of concluding fieldwork, a professional technical report of archaeological fieldwork including site maps and MHC forms, prepared in accordance with guidelines established by the Massachusetts Historical Commission and/or the Massachusetts Board of Underwater Archaeological Resources, as appropriate, will be provided to the Cape Wind Project Manager, who will forward the report to the MMS and the SHPO for review and concurrence, and delivery to the federal agency and the affected Tribe(s) (if any).

If assessment activity exposes human remains (e.g., burials, isolated teeth, or bones), the process described in Section IV above will be followed.

VI. Proceeding with Construction

Project construction outside the discovery location may continue while documentation and assessment of the cultural resources proceed as long as construction will not impact the cultural resource under investigation. Cape Wind's staff archaeologist must determine the boundaries of the discovery location, which may be greater or lesser in size than the area of protection established initially by the Project Manager. In consultation with the federal agency, the SHPO, and any affected Tribes, the archaeologist will determine the appropriate level of documentation and treatment of the resource.

Construction may continue at the discovery location only after the process outlined in this MOA is followed and the federal agency determines that compliance with state and federal laws is complete. This may include additional consultation.

VII. Summary of Responsibilities

A. Cape Wind Responsibilities:

Protect Find: The Cape Wind Project Manager is responsible for taking appropriate steps to protect the discovery site. All work will stop in an area of adequate size to provide for the total security, protection, and integrity of the resource. Vehicles, vessels, equipment, and unauthorized personnel will not be permitted to traverse the discovery site. Work in the immediate area will not resume until treatment of the discovery has been completed or measures have been taken to prevent further damage to the resource.

Contact MMS: MMS shall be notified no later than 24 hours after the discovery of the site.

Contact Law Enforcement/Coroner: if necessary.

Follow MMS Guidance: Cape Wind is responsible for implementing all guidance provided by the MMS for the protection and analysis of identified cultural resources.

B. MMS Responsibilities:

Provide Guidance: The MMS will direct Cape Wind as to necessary steps to protect and document the resource.

Consult: Depending upon the nature of the discovery, the MMS will initiate consultation with the SHPO, the USACE, and/or affected Tribes.

Approve Resuming Construction: The MMS will notify Cape Wind when it is acceptable to resume construction.

**ATTACHMENT B:
PROCEDURES GUIDING THE USE OF COMPENSATORY
MITIGATION FUNDS**

DRAFT



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



JUL 10 2009

Mr. Matthew F. Pawa, Attorney
Clean Power Now, Inc.
Law Offices of Matthew F. Pawa
1280 Centre Street, Suite 230
Newton Centre, Massachusetts 02459

RE: MMS Response to Section 106 Consultation Process for Cape Wind Project

Dear Mr. Pawa:

Thank you for your letter of June 29th, 2009, requesting that Clean Power Now Inc. ("CPN") be granted consulting party status in the ongoing Section 106 consultation process for the proposed Cape Wind Energy Project.

The Energy Policy Act of 2005 (EPAAct) entrusted the U.S. Department of the Interior, Minerals Management Service (MMS) with regulatory authority over alternative energy related uses of the Outer Continental Shelf (OCS). The MMS is the lead agency reviewing the Cape Wind Energy Project proposal. Pursuant to 36 C.F.R. Section 800.3 (f)(3), the lead agency official may invite others to participate as consulting parties as the Section 106 process moves forward. The MMS believes it is important to discuss and consider different perspectives, especially at the present stage of the Section 106 consultation process (*§ 800.6 Resolution of adverse effects*), to seek ways to avoid, minimize or mitigate adverse effects on historic and cultural properties, and in an attempt to reach consensus on a Memorandum of Agreement (MOA). The MMS therefore grants the request for CPN to have consulting party status, effective the date of this letter, and invites CPN to participate in any future Section 106 Consultation meetings. We have provided the following background and references to get CPN up to speed with the Section 106 Consultation Process.

Background Information on the Project

In November 2004, a joint draft environmental document for the Cape Wind Energy Project (Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR)/Development of Regional Impact Report (DRI)) was published by the U.S. Army Corps of Engineers (USACE), the State of Massachusetts, and the Cape Cod Commission. In August 2005, with the passage of the Energy policy Act, the MMS became the lead Federal agency for the Cape Wind Energy Project. In February 2007, the State of Massachusetts and the Cape Cod Commission published a final EIR/DRI for the Cape Wind Project while the MMS draft EIS was still in preparation.



The visual impact analysis in the final EIR/DRI concluded that the following historic properties would be subject to adverse visual effects from the proposed project:

- Falmouth:
 - Nobska Point Light Station
- Barnstable:
 - Cotcut Historic District
 - Col. Charles Codman Estate
 - Wianno Historic District
 - Wianno Club
 - Hyannis Port Historic District
 - Kennedy Compound (NHL)
- Chatham:
 - Montgomery Point Lighthouse
- Tisbury:
 - West Chop Light Station
- Oak Bluffs:
 - East Chop Light Station
 - Dr. Harrison A. Tucker Cottage
- Edgartown:
 - Edgartown Village Historic District
 - Edgartown Harbor Lighthouse
 - Cape Poge Light
- Nantucket:
 - Nantucket Great Point Light
 - Nantucket National Historic Landmark District

The MMS determination of effect was prepared using the same list of historic properties and visual simulations that were used to prepare the Determination of Effect published in the final EIR/DRI for the State of Massachusetts (PAL, *Cape Wind Energy Project Visual Impact Assessment of Revised Layout on Multiple Historic Properties: Final Environment Impact Report*, September 2006). This report can be found online at: <http://www.capewind.org/downloads/feir/Appendix3.11-C.pdf>

Using the ACHP regulations for assessment of adverse effects found at 36 CFR 800.5, the MMS outlined a methodology and list of criteria to use in assessing the visual effects of the project on historic properties within the project's Area of Potential Effect. The results of this visual analysis were published on December 29, 2008, in the *Finding of Adverse Effect for the Cape Wind Energy Project*. The document can be found online at http://www.mms.gov/offshore/AlternativeEnergy/PDFs/FAE_Final.pdf. The MMS prepared this document after consideration of comments received during formal Section 106 Consultation meetings and from written comments submitted on the draft EIS. In response to comments

received from the consulting parties, the MMS incorporated the following changes into the assessment of adverse visual effects for the project, including:

- Revising the methodology used to assess adverse visual effects to historic properties and Tribal areas of religious and cultural importance to conform to the methodology used in the original analysis completed by the U.S. Army Corps of Engineers when they were lead Federal agency for the project.
- Evaluating 30 additional specific historic properties identified to us in writing by consulting parties, which had not previously been assessed nor evaluated for National Register eligibility.
- Including a specific sacred historic site identified to us by the Mashpee Wampanoag Tribe on the list of adversely affected properties.

The *Finding of Adverse Effect for the Cape Wind Energy Project* concludes that there will be an adverse visual effect on 28 historic and one Tribal properties resulting from the proposed project. The Finding includes all documentation required pursuant to 36 CFR 800.11(e), as well as a description of alternatives to the project that have already been considered or raised by the consulting parties, and proposed modifications already included in the design or included as proposed terms and conditions of approval that could avoid, minimize or mitigate the adverse effects. Please note that the Finding effectively concludes the portions of the consultation related to 36 CFR 800.4 and 800.5.

Additional Documents for the Section 106 Consultation Process

A series of marine archaeological surveys were conducted within the offshore project area by the Public Archaeology Laboratory (PAL), Pawtucket, Rhode Island. These reports include:

1. Marine Archaeological Sensitivity Assessment, Cape Wind Energy Project (June 2003)
2. Preliminary Marine Archaeological Sensitivity Assessment: Cape Wind Energy Project Alternatives: Horseshoe Shoal; Combination New Bedford/Buzzards Bay and Reduced Horseshoe Shoal; Monomoy and Handkerchief Shoals; Tuckernuck Shoal; and South of Tuckernuck Island, Massachusetts (January 2004)
3. Marine Archaeological Reconnaissance Survey: Cape Wind Energy Project (March 2004)
4. Cape Wind Terrestrial Alternative: Massachusetts Military Reservation, Bourne and Sandwich, Massachusetts (March 9, 2004)
5. Supplemental Marine Archaeological Reconnaissance Survey of Revised Layout Offshore Project Area (January 26, 2006)

These reports are available online at the following locations:

Report No. 1, 3, and 4: <http://www.nae.usace.army.mil/projects/ma/ccwf/app510c.pdf>

Report No. 2: <http://www.nae.usace.army.mil/projects/ma/ccwf/app3i.pdf>

Report No. 5: <http://www.capewind.org/downloads/feir/Appendix3.11-B.pdf>

The Cultural Resource sections of the Cape Wind Energy Project final EIS are found in section 4.3.5 (Description of the Affected Environment) and 5.3.3.5 (Environmental and Socioeconomic Consequences).

A complete list of 106 Consulting Parties is enclosed with this letter.

Summary of Meetings

Recognizing that the proposed action could adversely affect historic and cultural properties, the MMS initiated formal consultation under Section 106 of the NHPA. To date the MMS has conducted seven separate meetings related to Section 106 Consultations for the Cape Wind Energy Project, including:

- **July 23, 2008** – first full Section 106 Consultation meeting.
- **September 8, 2008** – MMS held the first separate Tribal Section 106 Consultation meeting.
- **September 9, 2008** – second full Section 106 Consultation meeting.
- *December 29, 2008*–MMS released its *Finding of Adverse Effect (Finding) for the project.*
- **Jan 29, 2009** – third full Section 106 Consultation meeting to discuss the Finding Document and to begin discussions on possible mitigation of adverse effects, and steps towards reaching consensus on an MOA.
- **April 28, 2009** – fourth full Section 106 Consultation meeting. The meeting was devoted to discussion of mitigation and steps towards reaching consensus on a MOA.
- **June 3, 2009** – MMS held the second separate Tribal Section 106 Consultation meeting.
- **June 16, 2009** – fifth full Section 106 Consultation meeting to continue discussion on mitigation and steps towards reaching consensus on a MOA.

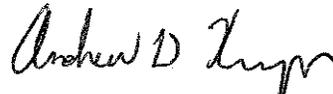
While CPN is entering the process much later than other consulting parties, CPN may participate and express its views related to resolving the adverse effects pursuant to 800.6 at or before the next Section 106 Consultation meeting, the date of which is yet to be determined. Additional details regarding the scheduling of this meeting will be sent to all the consulting parties via a separate email.

Mr. Matthew F. Pawa

5

We look forward to working with all consulting parties to reach consensus on a MOA for the proposed Cape Wind Energy Project.

Sincerely,



Andrew D. Krueger, Ph.D.
Renewable Energy Program Specialist

Enclosure

cc: Barbara Hill, Executive Director, Clean Power Now
Brona Simon, Massachusetts State Historic Preservation Officer
Dr. John Eddins, Advisory Council for Historic Preservation

bc: Official File MS 4090
ADOEMM
OAEP Chron

LMS: OAEP:AKrueger;jl:07/08/09: 703-787-1719

Filename: AEPT/Cape Wind/Section 106/MMS to CPN 070709

Enclosure

**Cape Wind Energy Project
Section 106 Consulting Parties Contact List**

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**Cape Wind Energy Project
Section 106 Consulting Parties Contact List**

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suenick1@saveoursound.org

July 7, 2009

Dear Ms. Washington,

I want to express MMS' sincere appreciation for the invitation to visit with the Wampanoag Tribe of Gay Head/Aquinnah during the weekend of July 17 -19th, 2009. As you know, those of us involved in the Cape Wind section 106 consultation process would like to visit with the Aquinnah during this time, especially since we learned that you will be holding a special cultural event.

As a measure of MMS' commitment to working with the Tribes, the MMS is accepting the invitation of the Wampanoag Tribe of Gay Head/Aquinnah to attend the meetings and cultural events on July 18th and 19th. Although I and others involved in the Cape Wind section 106 process cannot attend, the MMS would like for Mr. Albert Barros to participate. Mr. Barros is highly qualified in these matters; he is the MMS Alaska Region's Community Liaison and has worked closely during his Federal and Tribal career with American Indian & Alaska Native tribes and communities throughout the United States. Mr. Barros is familiar with the Cape Wind Project and even participated in the initial Government-to-Government meetings between MMS, the Mashpee Wampanoag, and the Wampanoag Tribe of Gay Head/Aquinnah when the MMS became the lead Federal agency. The MMS would like to learn as much as possible about your cultural and religious practices so that when MMS decisions are made that may impact your way of life, the information is reflected accurately.

We will be happy to supply any information about Mr. Barros that you may require and look forward to working with you further. Please respond to Mr. Barros by Monday, July 13, 2009, so that Mr. Barros can make the appropriate travel arrangements. He can be reached via telephone at 907-334-5209, or via email at Albert.Barros@mms.gov.

With kindest regards,

Christopher Horrell Ph.D.



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



JUN 26 2009

Ms. Bettina Washington
Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head (Aquinnah)
20 Black Brook Road
Aquinnah, Massachusetts 02535

RE: MMS Response to Tribal Concerns Regarding the Cape Wind Energy Project

Dear Ms. Washington:

This letter is in response to specific concerns that you and Mr. George (Chuckie) Green raised at the last Tribal Section 106 Consultation meeting on June 3, 2009, for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts. This letter also responds to a letter that MMS received from Mr. Green on June 17, 2009. It is our intent with this letter to respond fully to the specific issues and concerns you have raised. A similar letter is being sent to Mr. Green.

1. Request to Conduct a Balloon Test

At the Tribal Section 106 Consultation meeting, Ms. Washington requested that the MMS again consider conducting a balloon test in the proposed project area of Horseshoe Shoals, Nantucket Sound, to simulate visual impacts of erected turbines. The MMS has considered this request, weighed its merits, and has determined that it will not conduct a balloon test nor will it require the applicant to conduct a balloon test. In addition to the host of technical, environmental, and fiscal concerns discussed at the June 3 meeting, the MMS does not believe that a balloon test would accurately reflect the true nature of visual impacts from erected turbines. The Final Environmental Impact Statement (FEIS) for the Cape Wind Energy Project includes a comprehensive visual impact assessment which presents both daytime and nighttime visual simulations from various locations around the Cape and Islands. These simulations were developed using state of the art software and they were conservative in nature by representing worst case views (i.e. maximum visibility conditions) from selected historic structures and other recreational areas. The MMS believes these simulations provide the most accurate depictions of any visual effects of the proposed project. Full details on how the simulations were prepared are provided in the FEIS Report No. 5.3.3-2.

2. Request to Expand the Area of Potential Effect (APE)

At the Tribal Section 106 Consultation meeting, Ms. Washington requested that the MMS consider expanding the Area of Potential Effect (APE) in the Finding of Adverse Effect due to concerns that oil spills from construction and maintenance vessels and oil delivery vessels could impact Tribal shellfish and aquaculture grounds of Gay Head on Martha's Vineyard. The MMS has considered this request and determined that expanding the APE in this case is not warranted due to the extremely remote chances of a Cape Wind-related oil spill ever occurring or impacting Tribal areas. The FEIS presents a comprehensive and state-of-the-art oil spill analysis, and

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results indicate that most of the potential for oil spills is from vessels already transiting the Nantucket Sound area. These spills would occur regardless of the Cape Wind project ever being built. Additionally, there are unlikely to be any spills associated with maintenance and oil delivery boats for the Cape Wind Project. Modeling results show that there would be an estimated one spill in 16,677 years from work boats, and an estimated one spill in 500,000 years from oil delivery boats. For additional information please see Report No. 4.1.3-1 "Simulation of oil Spills from the Cape Wind Energy Project Electric Service Platform in Nantucket Sound" and Report No. 3.3.5-1 "Oil Spill probability analysis for the Cape Wind Energy Project in Nantucket Sound."

If additional National Register-eligible Tribal sites that would be subject to adverse effects from the proposed project are identified in subsequent consultations, the MMS will supplement its Finding of Adverse Effect to include these properties as appropriate.

3. Consideration of Alternatives

In the letter dated June 17, 2009, Mr. Green requested clarification on the consideration of alternatives to the proposed action on Horseshoe Shoals. In its initial scoping efforts under the National Environmental Policy Act (NEPA), the MMS considered over 20 alternatives to the proposed action, including nine geographic alternatives, three non-geographic alternatives, and a no action alternative. Reasonable alternatives were objectively evaluated in the development of the FEIS in accordance with the CEQ regulations. To select alternatives for detailed evaluation, the MMS first developed a screening process aimed at eliminating those project alternatives which did not meet the purpose and need statement and which were not technically feasible and economically viable. Only the alternatives that met the screening criteria, along with the proposed action and no action alternative, were subject to detailed environmental analysis in the FEIS.

Through the application of the screening criteria, seven alternatives (including the proposed action and the no action alternative) were determined to be "reasonable" and were analyzed accordingly. To answer Mr. Green's question directly, those seven alternatives remain as a viable option for the Secretary of the Interior to choose, and the MMS has consistently stated this during the Section 106 Consultations. Please refer to Section 3.0 of the FEIS "Alternatives to the Proposed Action" for a more thorough discussion of how alternatives were selected and evaluated.

4. Conducting Meaningful and Good-Faith Consultations

Through letters addressed to the MMS and in recent Section 106 Consultation meetings, both the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) have suggested that the MMS has failed to consult with the Tribes in a meaningful and good-faith manner. The MMS works on a government-to-government basis with Native American Tribes, pursuant to Executive Order 13175. As a part of the government's Treaty and Trust responsibilities, the government-to-government relationship was formally recognized by the Federal government on November 6, 2000. The following summary of meetings documents the good faith efforts that

the MMS has made in pursuing its obligations under E.O. 13175 and under Section 106 of the National Historic Preservation Act (NHPA).

- Agency consultation meetings were held in Boston, Massachusetts on November 2, 2005; June 27, 2006; February 28, 2007; and July 24, 2008. The purpose of the meetings was to solicit comment and concerns about the proposed project and the scope of the draft and final FEIS. Because of their expertise and unique viewpoints, both the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) were invited to participate. The MMS received informal comments on a host of issues including the extent of environmental resources impacts, the adequacy of data to address those impacts, and the scope of the alternatives analysis.
- Under the auspices of government-to-government consultations, the MMS formally met at the headquarters of the Wampanoag Tribe of Gay Head (Aquinnah) on July 26, 2006 and the Mashpee Wampanoag Tribe on July 27, 2006. The MMS again met with the Mashpee Wampanoag Tribe on July 25, 2007 and the Wampanoag Tribe of Gay Head (Aquinnah) on July 26, 2007. Consultation at these meetings included explanation of the proposed action and its potential impacts on the Tribes, as well as understanding Tribal concerns. Comments and concerns at these meetings were incorporated into and addressed in the FEIS.
- Recognizing that the proposed action could adversely affect historic and cultural properties, the MMS initiated formal consultation under Section 106 of the NHPA. The MMS invited the Tribal Historic Preservation Officers (THPO) of the federally recognized Wampanoag Tribes of Mashpee and Aquinnah to participate. The MMS also sent letters to the Mohegan Indian Tribe, Narragansett Indian Tribe, and the Mashantucket Indian Tribe.

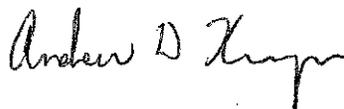
To date the MMS has conducted seven separate meetings related to Section 106 Consultations for the Cape Wind Energy Project. The Tribes have been invited to participate in each of these meetings, and two meetings were designated as Tribal-only Section 106 meetings. In the June 3, 2009 meeting the Tribes confirmed that they also consider the Tribal-only Section 106 meetings as government-to-government consultations. The MMS sent letters to the five identified Tribes, the Bureau of Indian Affairs (BIA), the United South and Eastern Tribes (USET), and the National Association of Tribal Historic Preservation Officers (NATHPO) inviting them to participate in the first Tribal Section 106 Consultation Meeting on September 8, 2008.

- The views and concerns of the Tribes will be fully documented and conveyed to the Secretary for his consideration when the Record of Decision for the proposed project is prepared. Government-to-government consultations are meant to be

ongoing over the life of a project. Should the proposed project be approved and constructed, this important relationship between the affected Tribes and the Department would continue through construction, operations, and eventual decommissioning.

If you wish to further discuss your views and concerns regarding the effects of the proposed Cape Wind Energy Project on Tribal areas of traditional cultural and religious importance, you may contact the MMS Federal Preservation Officer, Dr. Melanie J. Stright, at 703-787-1736, or by email at melanie.stright@mms.gov.

Sincerely,



Andrew D. Krueger, PhD
Minerals Management Service
Renewable Energy Program

Similar letter being sent to: Mr. George (Chuckie) Green



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



JUN 26 2009

Mr. George (Chuckie) Green
Tribal Historic Preservation Officer
Mashpee Wampanoag Tribe
P.O. Box 1048
Mashpee, Massachusetts 02649

RE: MMS Response to Tribal Concerns Regarding the Cape Wind Energy Project

Dear Mr. Green:

This letter is in response to specific concerns that you and Ms. Bettina Washington raised at the last Tribal Section 106 Consultation meeting on June 3, 2009, for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts. This letter also responds to a letter that MMS received from Mr. Green on June 17, 2009. It is our intent with this letter to respond fully to the specific issues and concerns you have raised. A similar letter is being sent to Ms. Washington.

1. Request to Conduct a Balloon Test

At the Tribal Section 106 Consultation meeting, Ms. Washington requested that the MMS again consider conducting a balloon test in the proposed project area of Horseshoe Shoals, Nantucket Sound, to simulate visual impacts of erected turbines. The MMS has considered this request, weighed its merits, and has determined that it will not conduct a balloon test nor will it require the applicant to conduct a balloon test. In addition to the host of technical, environmental, and fiscal concerns discussed at the June 3 meeting, the MMS does not believe that a balloon test would accurately reflect the true nature of visual impacts from erected turbines. The Final Environmental Impact Statement (FEIS) for the Cape Wind Energy Project includes a comprehensive visual impact assessment which presents both daytime and nighttime visual simulations from various locations around the Cape and Islands. These simulations were developed using state of the art software and they were conservative in nature by representing worst case views (i.e. maximum visibility conditions) from selected historic structures and other recreational areas. The MMS believes these simulations provide the most accurate depictions of any visual effects of the proposed project. Full details on how the simulations were prepared are provided in the FEIS Report No. 5.3.3-2.

2. Request to Expand the Area of Potential Effect (APE)

At the Tribal Section 106 Consultation meeting, Ms. Washington requested that the MMS consider expanding the Area of Potential Effect (APE) in the Finding of Adverse Effect due to concerns that oil spills from construction and maintenance vessels and oil delivery vessels could impact Tribal shellfish and aquaculture grounds of Gay Head on Martha's Vineyard. The MMS has considered this request and determined that expanding the APE in this case is not warranted due to the extremely remote chances of a Cape Wind-related oil spill ever occurring or impacting Tribal areas. The FEIS presents a comprehensive and state-of-the-art oil spill analysis, and



results indicate that most of the potential for oil spills is from vessels already transiting the Nantucket Sound area. These spills would occur regardless of the Cape Wind project ever being built. Additionally, there are unlikely to be any spills associated with maintenance and oil delivery boats for the Cape Wind Project. Modeling results show that there would be an estimated one spill in 16,677 years from work boats, and an estimated one spill in 500,000 years from oil delivery boats. For additional information please see Report No. 4.1.3-1 "Simulation of oil Spills from the Cape Wind Energy Project Electric Service Platform in Nantucket Sound" and Report No. 3.3.5-1 "Oil Spill probability analysis for the Cape Wind Energy Project in Nantucket Sound."

If additional National Register-eligible Tribal sites that would be subject to adverse effects from the proposed project are identified in subsequent consultations, the MMS will supplement its Finding of Adverse Effect to include these properties as appropriate.

3. Consideration of Alternatives

In the letter dated June 17, 2009, Mr. Green requested clarification on the consideration of alternatives to the proposed action on Horseshoe Shoals. In its initial scoping efforts under the National Environmental Policy Act (NEPA), the MMS considered over 20 alternatives to the proposed action, including nine geographic alternatives, three non-geographic alternatives, and a no action alternative. Reasonable alternatives were objectively evaluated in the development of the FEIS in accordance with the CEQ regulations. To select alternatives for detailed evaluation, the MMS first developed a screening process aimed at eliminating those project alternatives which did not meet the purpose and need statement and which were not technically feasible and economically viable. Only the alternatives that met the screening criteria, along with the proposed action and no action alternative, were subject to detailed environmental analysis in the FEIS.

Through the application of the screening criteria, seven alternatives (including the proposed action and the no action alternative) were determined to be "reasonable" and were analyzed accordingly. To answer Mr. Green's question directly, those seven alternatives remain as a viable option for the Secretary of the Interior to choose, and the MMS has consistently stated this during the Section 106 Consultations. Please refer to Section 3.0 of the FEIS "Alternatives to the Proposed Action" for a more thorough discussion of how alternatives were selected and evaluated.

4. Conducting Meaningful and Good-Faith Consultations

Through letters addressed to the MMS and in recent Section 106 Consultation meetings, both the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) have suggested that the MMS has failed to consult with the Tribes in a meaningful and good-faith manner. The MMS works on a government-to-government basis with Native American Tribes, pursuant to Executive Order 13175. As a part of the government's Treaty and Trust responsibilities, the government-to-government relationship was formally recognized by the Federal government on November 6, 2000. The following summary of meetings documents the good faith efforts that

the MMS has made in pursuing its obligations under E.O. 13175 and under Section 106 of the National Historic Preservation Act (NHPA).

- Agency consultation meetings were held in Boston, Massachusetts on November 2, 2005; June 27, 2006; February 28, 2007; and July 24, 2008. The purpose of the meetings was to solicit comment and concerns about the proposed project and the scope of the draft and final FEIS. Because of their expertise and unique viewpoints, both the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) were invited to participate. The MMS received informal comments on a host of issues including the extent of environmental resources impacts, the adequacy of data to address those impacts, and the scope of the alternatives analysis.
- Under the auspices of government-to-government consultations, the MMS formally met at the headquarters of the Wampanoag Tribe of Gay Head (Aquinnah) on July 26, 2006 and the Mashpee Wampanoag Tribe on July 27, 2006. The MMS again met with the Mashpee Wampanoag Tribe on July 25, 2007 and the Wampanoag Tribe of Gay Head (Aquinnah) on July 26, 2007. Consultation at these meetings included explanation of the proposed action and its potential impacts on the Tribes, as well as understanding Tribal concerns. Comments and concerns at these meetings were incorporated into and addressed in the FEIS.
- Recognizing that the proposed action could adversely affect historic and cultural properties, the MMS initiated formal consultation under Section 106 of the NHPA. The MMS invited the Tribal Historic Preservation Officers (THPO) of the federally recognized Wampanoag Tribes of Mashpee and Aquinnah to participate. The MMS also sent letters to the Mohegan Indian Tribe, Narragansett Indian Tribe, and the Mashantucket Indian Tribe.

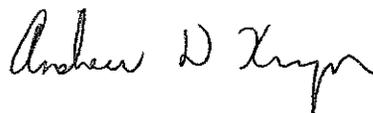
To date the MMS has conducted seven separate meetings related to Section 106 Consultations for the Cape Wind Energy Project. The Tribes have been invited to participate in each of these meetings, and two meetings were designated as Tribal-only Section 106 meetings. In the June 3, 2009 meeting the Tribes confirmed that they also consider the Tribal-only Section 106 meetings as government-to-government consultations. The MMS sent letters to the five identified Tribes, the Bureau of Indian Affairs (BIA), the United South and Eastern Tribes (USET), and the National Association of Tribal Historic Preservation Officers (NATHPO) inviting them to participate in the first Tribal Section 106 Consultation Meeting on September 8, 2008.

- The views and concerns of the Tribes will be fully documented and conveyed to the Secretary for his consideration when the Record of Decision for the proposed project is prepared. Government-to-government consultations are meant to be

ongoing over the life of a project. Should the proposed project be approved and constructed, this important relationship between the affected Tribes and the Department would continue through construction, operations, and eventual decommissioning.

If you wish to further discuss your views and concerns regarding the effects of the proposed Cape Wind Energy Project on Tribal areas of traditional cultural and religious importance, you may contact the MMS Federal Preservation Officer, Dr. Melanie J. Stright, at 703-787-1736, or by email at melanie.stright@mms.gov.

Sincerely,

A handwritten signature in black ink that reads "Andrew D. Krueger". The signature is fluid and cursive, with the first name being the most prominent.

Andrew D. Krueger, PhD
Minerals Management Service
Renewable Energy Program

Similar letter being sent to: Ms. Bettina Washington



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Ms. Brona Simon
State Historic Preservation Officer
Massachusetts Historical Commission
The MA Archives Building
220 Morrissey Boulevard
Boston, MA 02125

JUN 12 2009

Re: MMS Response to MHC Comments on the Finding of Adverse Effect for the Proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Ms. Simon:

This letter is in response to the comments submitted in your letter dated February 6, 2009, regarding the MMS Finding of Adverse Effect (Finding) for the proposed Cape Wind Energy project, Nantucket Sound, Massachusetts. It is our intent with this letter to respond fully to the specific issues and concerns you have raised in your letter. The MMS also requests the concurrence of the Massachusetts Historical Commission (MHC) on the Finding of Adverse Effect, and requests that the MHC move forward with the MMS and the Advisory Council on initial drafting of a Memorandum of Agreement (MOA).

1. NEPA Review and Finding of Adverse Effect

Regarding your concern that the MMS Final Environmental Impact Statement (FEIS) was prepared without the benefit of the Finding, please note that the FEIS presents the same information and conclusions as the Finding document of December 29, 2008. If there are specific examples where you believe this not to be the case, we would appreciate you bringing those to our attention.

Regarding your comment that the documentation provided in the Finding is "incomplete and insufficient," we respectfully disagree. All documentation required by 36 C.F.R. § 800.11 has been provided or is referenced in the Finding. Further explanation responsive to comments received on the Finding at the January 29, 2009, Section 106 Consultation meeting was provided in a supplemental report to the Finding. This February 17, 2009 report prepared by PAL, *Briefing Memorandum, Cape Wind Energy Project: Response to Section 106 Consultation Meeting, January 29, 2009*, was distributed to all consulting parties. We hope that this supplemental report and our subsequent discussions have satisfied your concerns regarding documentation. We seek your concurrence in our Finding of Adverse Effect as supplemented.

2. Method and Rationale for Historic Property Identification

The method and rationale for the historic property identification effort is explained in Section 3.0 of the Finding, and was further clarified in the supplemental report by PAL dated February 17, 2009. This supplemental report was prepared in response to your



February 6, 2009, letter and to comments, including those of Mr. Ed Bell of your office, received at the January 29, 2009, Section 106 Consultation meeting.

Section 3.1.1 of the Finding details the methods that were used in the original identification effort by the U.S. Army Corps of Engineers (USACE) in consultation with the Massachusetts Historical Commission. The MMS expanded the identification effort beyond that of the USACE to include historic properties for which National Register eligibility had not yet been evaluated. During the Section 106 Consultation process, consulting parties brought additional historic properties to the attention of the MMS. At the September 9, 2008, Section 106 Consultation meeting, the MMS asked the consulting parties to submit, in writing, the names of the additional historic properties they thought should be evaluated both for National Register eligibility and for potential adverse effects from the proposed project. A total of 30 additional properties were identified for evaluation by the consulting parties. Section 3.1.2.3 of the Finding discusses the procedures the MMS used in the evaluation of these additional 30 historic properties. There was no "sampling" methodology used in identifying historic properties within the Area of Potential Effect of the proposed project.

3. Wind Turbine Generator (WTG) Height

The (WTG) height used in the visual simulation studies was the currently proposed 440 ft. height, not the originally proposed 417 ft WTG height; therefore, the visual simulations accurately reflect the visual effect of the proposed project to onshore historic properties. The 440-foot height was the basis for the analysis contained in the October 2008 Draft EIS as well. The MMS Finding of Adverse Effect concludes that there would be adverse visual effects on 29 historic properties from the proposed project; therefore, we agree with your statement that the undertaking as a whole will have an adverse effect on National Register eligible and listed properties, including National Historic Landmarks.

4. Alternatives Analysis

Ever since scoping for the Cape Wind project was initiated by the USACE in March of 2002, consideration of effects to historic and cultural properties resulting from the undertaking has been an important topic of analysis in the NEPA process as well as the Section 106 process. Regarding the consideration of feasible project alternatives in the FEIS, all alternatives, including the proposed action, were subject to an initial set of screening criteria which included (a) **meeting the purpose and need statement**, (b) **economic viability** and (c) **technological feasibility**. First, in accordance with the CEQ regulations for implementing NEPA, the alternatives to the proposed action must be derived from the stated purpose and need. Second, to the extent that MMS considered economic feasibility in the FEIS, it was limited to determining whether potential alternatives to the proposed action were sufficiently economically viable to warrant detailed analysis as a reasonable alternative to the proposed action under NEPA. Economic viability was not determined by the potential profit margin of the developer, but rather by the projected cost to consumers per kilowatt hour of the electricity produced

by an alternative, combined with the projected level of efficiency in producing electricity from each alternative location (for example, please see Table 3.2.1-1 in the FEIS). Third, technological feasibility was determined by MMS considering existing technology utilized successfully on a commercial scale today, taking into account the physical setting within which a project can be constructed, operated and maintained. The physical screening criteria included such factors as water depth, storm wave height, wind speed, distance to an onshore transmission system, and seafloor substrate.

For example, alternatives with transmission cable lengths over 31 miles were deemed not feasible as it would result in the use of cable technology that is either too expensive or has not been proven to be commercially available technology for offshore wind facilities (see FEIS Table 3.2.1-1). Such long transmission lines would be necessary for a location 25 miles offshore such as Phelps Bank, and for the Nauset alternative. Nauset was a “deep water” alternative, and while some consulting parties have argued that deepwater and/or floating turbines are a technologically-feasible alternative to the proposed project, the fact is that such technology is not commercially available today nor has it been determined to be feasible for commercial-scale wind energy projects. While the MMS fully supports the advancement of deep water technologies, experts agree that such technology—especially floating turbines—is years and perhaps up to a decade or more away from commercial viability. This timeframe does not meet the requirements of Massachusetts’ Renewable Portfolio Standards statute; therefore, it did not meet the purpose and need for the project.

A. Geographic Alternatives Considered

The MMS FEIS for the Cape Wind Energy Project evaluated nine alternative geographic locations along the coast from Maine to Rhode Island. The sites were chosen based on geographic diversity, having at least some potential in terms of wind resources, and the necessary area required for the proposed facility size. The Phelps Bank site was chosen at the request of the Massachusetts CZM Office that an alternative be evaluated for a site located more than 25 miles offshore with water depths less than 150 feet, and the Offshore Nauset site was chosen to compare a deep water alternative. Ultimately, two of the geographic alternatives met the screening criteria and thus were fully analyzed in the FEIS—Monomoy Shoals and South of Tuckernuck Island. The geographic alternatives considered include:

- Offshore Portland, Maine
- Offshore Cape Ann, Massachusetts
- Offshore Boston, Massachusetts
- Offshore Nauset Massachusetts
- Nantucket Shoals
- Phelps Bank
- East of Block Island, Rhode Island, Monomoy Shoals
- South of Tuckernuck Island

B. Non-Geographic Alternatives Considered

Three non-geographic alternatives were considered and evaluated in the FIES, as well as a “no action” alternative:

- Smaller Alternative (half the MW capacity of the proposed action at the same location)
- Condensed Array Alternative
- Phased Development Alternative (Phase 1 and Phase 2)
- No Action Alternative

C. Other Alternatives Considered

The MMS also considered onshore, near-shore and dispersed sites, as well as other forms of renewable energy production, including:

- Near Shore Waters
- Dispersed Sites
- Tidal In-Stream Energy Conversion (TISEC) Device
- Wave Energy
- Solar (Photovoltaic and Thermal Electric)
- Ocean Thermal
- Floating Wind Turbines

Both the range of alternatives considered and the criteria for determining feasibility under NEPA, in this circumstance, provide sufficient rationale for inclusion or exclusion of the same alternatives under the section 106 process, which similarly requires that alternatives be “reasonable.” See 36 CFR §800.11.

5. Alternatives Analysis and Effects on Historic Properties

While the effects on historic properties surrounding Nantucket Sound would generally be less for the alternatives located outside the Sound, seven such alternative sites were eliminated by the application of the screening criteria and, in accordance with CEQ § 1502.14, were not subject to detailed analysis within the FEIS.

The geographical and non-geographical alternatives that were determined to be reasonable and feasible include: **Monomoy Shoals, South of Tuckernuck Island, Smaller Project, Phased Development, Condensed Array, and No Action Alternative**. These were subjected to detailed environmental analysis in the FIES, and the results are presented in Sections 3.3.5 and 3.3.6 of the FEIS.

Table 3.3.5-1 of the FEIS summarizes the impacts for the reasonable alternatives to the proposed action. The table includes categories for visual resources and cultural resources. The Monomoy Shoals and South of Tuckernuck Island Alternatives would use the same near-shore cable route, landfall site, and onshore cable route as the proposed action and, therefore, would have the same direct effect on onshore historic properties (i.e. cultural resources) as the proposed action. Since a detailed marine sensitivity assessment and marine archaeological reconnaissance survey were not undertaken for these two alternative sites, it cannot be determined if any offshore historic properties

would be affected if the proposed facilities were sited at these alternative locations. However, the preservation potential for offshore Euro-American and Native American historic properties near the South of Tuckernuck Island Alternative is expected to be low because of its exposed location to the open waters of the Atlantic Ocean, which would increase the amount of marine erosion to which the area has been subjected. Because marine archaeological surveys and appropriate mitigative measures would be required prior to development of either the Monomoy Shoals or the South of Tuckernuck alternatives, the potential impacts would be comparable to the proposed action.

The Monomoy Shoals site is expected to have less visual effects to above-ground historic properties than the proposed action since it is further from the populated and historic areas of Cape Cod. The South of Tuckernuck Island Alternative also is expected to have less visual effects to above-ground historic properties except for those on Nantucket Island and the east end of Martha's Vineyard, which would be greater than for the proposed action.

The three non-geographic alternatives all fall within the geographic confines of the proposed project at Horseshoe Shoal. The *Smaller Project Alternative* contains half the number of WTGs and thus, half the generation capacity of the proposed project. This alternative would result in a reduced breadth of visual impacts when looking out at the horizon from Nantucket or Cape Cod. The *Phased Development Alternative* would use the same site as the proposed project and would use the same transmission cable system layout. This alternative would entail two separate phases of construction; the first phase consisting of 65 wind turbines installed in the western half of the proposed project area, and the second phase consisting of the installation of the remaining 65 wind turbines in the eastern half of the proposed project area. The two phases would be separated by a period of monitoring operations. Visual impacts would be the same as for the proposed project once this alternative was fully operational. The *Condensed Array Alternative* would reduce the overall area of the array from 25 square miles to 16 square miles, reducing the overall breadth of the project. However, the concentration of structures would be increased and thus could create a different visual impact than the proposed project.

6. Continuing Tribal Consultation and Identification Efforts

The one specific Traditional Cultural Property (TCP) included in the list of adversely affected properties was identified to the MMS during a separate Section 106 Consultation meeting on September 8, 2008, with the Aquinnah Wampanoag and Mashpee Wampanoag Tribes. The MMS has evaluated this property as eligible for the National Register of Historic Places. It also has a view of the proposed project; therefore, it was included in the list of historic properties that would have an adverse effect from the proposed project, but the property is not on Tribal land, and there would be no direct physical impacts to the property from the proposed project. The property is so sensitive that the MMS was concerned that even presenting information on the nature of the property might bring it into jeopardy.

The MMS is continuing Section 106 consultations with the Aquinnah Wampanoag, Mashpee Wampanoag, and Narragansett Tribes to identify any additional Tribal areas of traditional cultural and religious importance that may be eligible for the National Register and have an adverse effect from the proposed project. This was one of the main topics of discussion at the recent Tribal-only 106 Consultation meeting on June 3, 2009. If additional National Register-eligible Tribal sites that will be subject to adverse effects from the proposed project are identified in subsequent Tribal consultations, the MMS will supplement its Finding of Adverse Effect to include any additional adversely affected historic properties that may be identified.

7. MHC Review of Vibracore Sampling

The original vibracores within the offshore project area were analyzed by the Public Archaeology Laboratory (PAL) and the results of the analysis and the recommendations for mitigation were reported in their March 2004 report, *Marine Archaeological Reconnaissance Survey, Cape Wind Energy Project, Nantucket Sound, Massachusetts*. The Massachusetts Board of Underwater Archaeological Research (MBUAR) concurred with the findings and recommendations of the report in a letter to PAL dated May 11, 2004. The MHC concurred with the report and with the MBUAR recommendations in a letter dated May 19, 2004. The mitigation recommended was incorporated into the project design.

The MMS appreciates the offer of the MHC to review and comment on the scope, methodology, and results of the additional vibracore sampling planned for the proposed project area. This proposed coordination effort can be embodied in the MOA for the proposed project. The MOA can also incorporate a plan for dealing with “unanticipated discoveries” that is acceptable to the Section 106 Consulting parties and consistent with the provisions of 36 CFR § 800.13.

8. Drafting of an MOA

The MMS has spent considerable time and effort in identifying and evaluating reasonable alternatives to the proposed action. The screening and scoping of alternatives under NEPA is valid and applicable to the NHPA 106 process. The reasonable alternatives to be considered by the Department are those identified in the FEIS and described above—the proposed action, two geographic alternatives, three non-geographic alternatives, and the no action alternative. The proposed action will be the presumed undertaking for purposes of the MOA. The MMS requests the concurrence of the MHC on the Findings Document and the Adverse Effects Determination, and requests that the MHC move forward along with the MMS and the Advisory Council on initial drafting of an MOA. The Record of Decision for the proposed project will incorporate the results of the completed Section 106 process, including any MOA negotiated by the Section 106 Consulting parties.

The MMS looks forward to working with the MHC on an MOA for the Cape Wind Energy Project. If you have additional concerns or would like further information, please feel free to contact me at 703-787-1736 or by email at melanie.stright@mms.gov.

Sincerely,

A handwritten signature in black ink that reads "Andrew D. Zuydam for MMS". The signature is written in a cursive style.

Melanie J. Stright, PhD
Federal Preservation Officer
Minerals Management Service

CC: List of Section 106 Consulting Parties



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



MAY 22 2009

Ms. Kate Atwood
U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, Massachusetts 01742-2751

Dear Ms. Atwood:

The Minerals Management Service will be holding the next Tribal Section 106 Consultation meeting on June 3, 2009, to discuss Tribal concerns and issues related to the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts. The meeting is scheduled for 10:00 a.m. to 2:00 p.m. (the meeting time can be extended until 4:00 p.m. if needed) and will be held at the following location:

Cape Cod Hyannis Marriott
707 Iyannough Road
Hyannis, Massachusetts 02601
Phone: (508) 775-6600

We look forward to meeting with you and discussing the concerns and issues you have already raised in greater detail.

Sincerely,

Melanie J. Stright, Ph.D.
Federal Preservation Officer
Minerals Management Service



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



MAY 22 2009

Ms. Karen Adams
U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, Massachusetts 01742-2751

Dear Ms. Adams:

The Minerals Management Service will be holding the next Tribal Section 106 Consultation meeting on June 3, 2009, to discuss Tribal concerns and issues related to the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts. The meeting is scheduled for 10:00 a.m. to 2:00 p.m. (the meeting time can be extended until 4:00 p.m. if needed) and will be held at the following location:

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Sincerely,

Melanie J. Stright, Ph.D.
Federal Preservation Officer
Minerals Management Service

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United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



MAY 22 2009

Ms. Valerie Hauser
Native American Program Coordinator
Advisory Council on Historic Preservation
1100 Pennsylvania Ave, N.W., Suite 803
Old Post Office Building
Washington, D.C. 20004

Dear Ms. Hauser:

The Minerals Management Service will be holding the next Tribal Section 106 Consultation meeting on June 3, 2009, to discuss Tribal concerns and issues related to the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts. The meeting is scheduled for 10:00 a.m. to 2:00 p.m. (the meeting time can be extended until 4:00 p.m. if needed) and will be held at the following location:

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Sincerely,

Melanie J. Stright, Ph.D.
Federal Preservation Officer
Minerals Management Service



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



MAY 22 2009

Ms. D. Bambi Kraus
President
NATHPO
P.O. Box 19189
Washington, D.C. 20036

Dear Ms. Kraus:

The Minerals Management Service will be holding the next Tribal Section 106 Consultation meeting on June 3, 2009, to discuss Tribal concerns and issues related to the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts. The meeting is scheduled for 10:00 a.m. to 2:00 p.m. (the meeting time can be extended until 4:00 p.m. if needed) and will be held at the following location:

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Sincerely,

Melanie J. Stright, Ph.D.
Federal Preservation Officer
Minerals Management Service



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



MAY 22 2009

Mr. Michael Cook
Executive Director
United South and Eastern Tribes, Inc.
711 Stewarts Ferry Pike, Suite 100
Nashville, Tennessee 37214

Dear Mr. Cook:

The Minerals Management Service will be holding the next Tribal Section 106 Consultation meeting on June 3, 2009, to discuss Tribal concerns and issues related to the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts. The meeting is scheduled for 10:00 a.m. to 2:00 p.m. (the meeting time can be extended until 4:00 p.m. if needed) and will be held at the following location:

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Sincerely,

Melanie J. Stright, Ph.D.
Federal Preservation Officer
Minerals Management Service



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



MAY 22 2009

Mr. David Saunders
Bureau of Indian Affairs
Eastern Regional Archaeologist
545 Marriott Drive, Suite 700
Nashville, Tennessee 37214

Dear Mr. Saunders:

The Minerals Management Service will be holding the next Tribal Section 106 Consultation meeting on June 3, 2009, to discuss Tribal concerns and issues related to the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts. The meeting is scheduled for 10:00 a.m. to 2:00 p.m. (the meeting time can be extended until 4:00 p.m. if needed) and will be held at the following location:

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707 Iyannough Road
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Sincerely,

Melanie J. Stright, Ph.D.
Federal Preservation Officer
Minerals Management Service



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



MAY 22 2009

Mr. Doug Harris
Senior Deputy Tribal Historic Preservation Officer
Narragansett Indian Tribe
Narragansett Indian Longhouse
P.O. Box 700
Wyoming, RI 02898

Dear Mr. Harris:

The Minerals Management Service will be holding the next Tribal Section 106 Consultation meeting on June 3, 2009, to discuss Tribal concerns and issues related to the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts. The meeting is scheduled for 10:00 a.m. to 2:00 p.m. (the meeting time can be extended until 4:00 p.m. if needed) and will be held at the following location:

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Sincerely,

Melanie J. Stright, Ph.D.
Federal Preservation Officer
Minerals Management Service





United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



MAY 22 2009

Mr. George (Chuckie) Green
Tribal Historic Preservation Officer
Mashpee Wampanoag Tribe
P.O. Box 1048
Mashpee, Massachusetts 02649

Dear Mr. Green:

The Minerals Management Service will be holding the next Tribal Section 106 Consultation meeting on June 3, 2009, to discuss Tribal concerns and issues related to the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts. The meeting is scheduled for 10:00 a.m. to 2:00 p.m. (the meeting time can be extended until 4:00 p.m. if needed) and will be held at the following location:

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We look forward to meeting with you and discussing the concerns and issues you have already raised in greater detail.

Sincerely,

Melanie J. Stright, Ph.D.
Federal Preservation Officer
Minerals Management Service





United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



MAY 22 2009

Ms. Bettina Washington
Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head (Aquinnah)
20 Black Brook Road
Aquinnah, Massachusetts 02535-9701

Dear Ms. Washington:

The Minerals Management Service will be holding the next Tribal Section 106 Consultation meeting on June 3, 2009, to discuss Tribal concerns and issues related to the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts. The meeting is scheduled for 10:00 a.m. to 2:00 p.m. (the meeting time can be extended until 4:00 p.m. if needed) and will be held at the following location:

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We look forward to meeting with you and discussing the concerns and issues you have already raised in greater detail.

Sincerely,

Melanie J. Stright, Ph.D.
Federal Preservation Officer
Minerals Management Service

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United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Mr. John T. Eddins, Ph.D.
Historic Preservation Specialist/Archaeologist
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, N.W., Suite 809
Washington, D.C. 20004

APR 22 2009

RE: MMS Response to Comments Received on the Finding of Adverse Effect for the Proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Dr. Eddins:

The Minerals Management Service (MMS) completed its Finding of Adverse Effect (Finding) for the proposed Cape Wind Energy Project and submitted it to the Massachusetts Historical Commission (MHC), the Advisory Council on Historic Preservation (ACHP), and the other Section 106 Consulting Parties on December 29, 2008. The MMS received comments on the Finding at the January 29, 2009, Section 106 Consultation Meeting in Boston, and subsequently received written comments from the MHC and the ACHP. The MMS's responses to the issues raised in the comments are summarized below. General comments on the Finding such as "the Finding is incomplete and insufficient" do not provide sufficient information for the MMS to respond.

Identification of Historic Properties (36CFR 800.4)

Offshore and onshore surveys conducted to identify historic properties that may be directly adversely affected by the proposed project determined that there were no historic properties that would be directly affected by ground or seabed-disturbing activities within the onshore portions of the project area or within State waters. The MHC and the Massachusetts Board of Underwater Archaeological Research concurred with these findings. The marine surveys from the Federal portion of the offshore project area found three potential shipwreck sites and limited areas of preserved land surface within the easternmost portion of the proposed project area. The MMS will require a 100-foot no-activity zone around these three potential shipwreck locations unless further investigations determine that they do not represent significant historic resources. Vibracore testing and laboratory analysis of the cores obtained from the limited areas of preserved land-surface produced no evidence of aboriginal sites; however, the proposed wind-turbine array was modified to avoid these areas to ensure that, if aboriginal cultural remains were present within these areas, they would not be directly, physically disturbed by the project. Any lease issued by MMS would contain a "chance finds" clause that would require the lessee to halt all seafloor-disturbing activity in the event that any unanticipated historic or prehistoric cultural resource is discovered during construction.

The primary focus of the Section 106 Consultation meetings has been on indirect visual effects of the proposed action to onshore historic properties. Subsequent to the Finding and January 29, 2009 consultation meeting, the Public Archaeology Laboratory (PAL) of Pawtucket, RI prepared an



extensive Briefing Memorandum (February 17, 2009) to provide additional background information and documentation regarding the methodology and rationale for the identification effort of historic properties within the proposed Cape Wind Energy Project area. A copy of this document was sent to all Section 106 Consulting Parties.

As detailed in the PAL Briefing Memorandum, in 2002 PAL developed a list and map of all historic properties in the towns on Cape Cod, Martha's Vineyard and Nantucket that had shorelines oriented toward the project. Included on the list were all historic properties that were: 1) listed or formally determined eligible for inclusion on the National Register of Historic Places; 2) in the Massachusetts Historical Commission's Inventory of Historic and Archaeological Assets of the Commonwealth for which the MHC has concurred with an eligibility recommendation; or 3) on the State Register of Historic Places, including local historic districts, which the MHC had found eligible for the National Register.

During the Section 106 Consultation process, consulting parties brought additional historic properties to the attention of the MMS. At the September 9, 2008 Section 106 Consultation meeting, the MMS asked the Consulting parties to submit, in writing, the names of the additional historic properties they thought should be evaluated both for National Register eligibility and for potential adverse effects from the proposed project. A total of 30 additional properties were identified for evaluation by the Consulting parties.

With the adoption of the specific historic property recommendations received in the written comments from the Section 106 consulting parties for the proposed Cape Wind Energy Project, the MMS has made a reasonable and good faith effort, as required under the Advisory Council on Historic Preservation's regulations at 36 CFR 800.4(b)(1), to identify historic properties that may be eligible, have been determined eligible, or that are on the National Register of Historic Places within the Area of Potential Effect (APE) of the proposed Cape Wind Energy project.

Continuing Tribal Consultation and Identification Efforts

One specific Traditional Cultural Property (TCP) was identified to the MMS during a separate Section 106 Consultation meeting on September 8, 2008, with the Aquinnah Wampanoag and Mashpee Wampanoag Tribes. The MMS has evaluated this property as eligible for the National Register of Historic Places. It also has a view of the proposed project; therefore, it was included in the list of historic properties that would have an adverse effect from the proposed project. The MMS is continuing Section 106 consultations with the Aquinnah Wampanoag, Mashpee Wampanoag, and Narragansett Tribes to identify any additional Tribal areas of traditional cultural and religious importance that may be eligible for the National Register and have an adverse effect from the proposed project. If additional National Register-eligible Tribal sites are identified in subsequent Tribal consultations that will have an adverse effect from the proposed project, the MMS will supplement its Finding of Adverse Effect to include these additional properties.

Assessment of Adverse Effects (36CFR 800.5)

Based on discussions at the September 9, 2009, Section 106 Consultation meeting and subsequent written comments submitted by the Section 106 consulting parties, the MMS has used the same approach to assessing adverse visual effects to historic properties that was employed by PAL in the original analysis completed for the U.S. Army Corps of Engineers (USACE) in 2002. The PAL approach considers the visual effect to any historic property having any view of the proposed project to be adverse because of the special historic qualities of the Nantucket Sound setting. The PAL approach also considers an adverse visual effect to any historic property within an historic district to be an adverse effect to the entire district.

In the original analysis completed in 2002, PAL identified 155 historic properties along the south side of Cape Cod, the north and east sides of Martha's Vineyard, and the north side of Nantucket. These properties were then visited to determine whether the property could reasonably have an open view of the project. Eleven historic properties were identified as having open, unobstructed views of the proposed project, and all eleven were used as points for the visual simulations. The APE was thereafter defined as historic properties meeting the stated criteria with open views of visible components of the wind park. The visual simulations were prepared using the proposed maximum turbine height of 440 feet above a datum approximating low tide. As a result of this analysis, PAL found 16 individual properties and historic districts (including the Nantucket Island National Historic Landmark and the Kennedy Compound National Historic Landmark) would be adversely affected by the visible components of the offshore wind turbines.

Subsequent field evaluation of the 30 additional properties identified to the MMS by the Section 106 Consulting parties in 2008 was conducted by PAL. Of the 30 additional properties, 12 were determined to be both potentially eligible for the National Register and to have a view of the proposed project, bringing the total number of individually-listed historic properties and districts determined subject to adverse visual effects to 28. Where an individual property within a designated historic district was found to have an adverse visual effect, all properties within the district were considered adversely affected. This approach actually results in numerous additional properties that have no view of the project being covered by an adverse effect determination.

Third-party Vantage Point Issue

During the Section 106 Consultation process, an issue was raised regarding the need to assess visual effects to an historic property from a third-party vantage point (i.e. a different vantage point from which both the historic property and the project could be viewed, even when it had been determined that the property itself had no view of the project, and thus would otherwise not be considered to be adversely affected). Visual effects to historic properties are typically determined by assessing the view from an identified historic property towards a proposed project.

The extensive Briefing Memorandum of February 17, 2009, prepared by PAL thoroughly addresses the issue of the third-party vantage point (pages 4 and 5) and concludes that such an analysis would not be reasonably required or useful in this instance given the 5 to 15 mile-distance of the proposed

project from the shoreline and the relatively even topography of the APE. PAL concludes that under these conditions, the character-defining features of the historic properties would not be distinguishable against the shoreline background in a manner that would enhance the visual analysis in any meaningful way, and that, given the almost infinite number of potential third-party viewpoints on and around the Sound, simulations of all of the potentially-available land-based views would be both infeasible and unreasonable.

Alternatives Considered

The MMS Final Environmental Impact Statement for the Cape Wind Energy Project (USDOI/MMS, 2009) evaluated nine alternative geographic locations along the coast from Maine to Rhode Island [Offshore Portland, Maine; Offshore Cape Ann, Massachusetts; Offshore Boston, Massachusetts; Offshore Nauset Massachusetts (east of Nauset Beach); Nantucket Shoals (southeast of Nantucket Island, Massachusetts); Phelps Bank (southeast of Nantucket Island, Massachusetts); East of Block Island, Rhode Island, Monomoy Shoals (east of Monomoy, Massachusetts); and South of Tuckernuck Island], three non-geographic alternatives (Smaller Project, Phased Development, and Condensed Array), the proposed action (Horseshoe Shoal), and the no action alternative. In addition, the MMS considered onshore, near-shore and dispersed sites and other forms of alternative energy production. All alternatives, including the proposed action, were subject to an initial set of screening criteria which included meeting the purpose and need statement, economic viability and technological feasibility. Technological feasibility was determined by MMS considering existing technology utilized successfully on a commercial scale. This was then used to describe criteria for the physical setting within which a project can be constructed, operated and maintained. The physical and technological criteria subjected the suite of alternatives to a practicability scale. While the impacts to historic properties surrounding Nantucket Sound would be less under the alternatives outside the Sound, seven alternative sites were eliminated by the application of technological feasibility criteria and, in accordance with CEQ § 1502.14, were not subject to detailed analysis within the EIS. The geographical and non-geographical alternatives that met the described criteria (Monomoy Shoals, South of Tuckernuck Island, Smaller Project, Phased Development, and Condensed Array) were subjected to further detailed environmental analysis with the proposed project and no action alternative. Detailed results of these analyses are presented in Sections 3.3.5 and 3.3.6 of the MMS FEIS (USDOI/MMS, 2009).

Comparison of Potential Effects of the Proposed Project to Historic Properties

The Monomoy Shoals and South of Tuckernuck Alternatives would use the same near shore cable route, landfall site, and onshore cable route as the proposed action and, therefore, would have the same direct effect on onshore historic properties (i.e. cultural resources) as the proposed action. Since a detailed marine sensitivity assessment and marine archaeological reconnaissance survey were not undertaken for these two alternative sites, it cannot be determined if any offshore historic properties would be affected if the proposed facilities were sited at these alternative locations. However, the preservation potential for offshore Euro-American and Native American historic properties near the South of Tuckernuck Island Alternative is expected to be low because of its exposed location to the open waters of the Atlantic Ocean which would increase the amount of

marine erosion to which the area has been subjected. The marine archaeological surveys and mitigative measures that would be required prior to development of either the Monomoy Shoals or the South of Tuckernuck alternatives would result in impacts comparable to the proposed action. The Monomoy Shoals site is expected to have less visual effects to above-ground historic properties than the proposed action since it is further from the populated and historic areas of Cape Cod. The South of Tuckernuck Island Alternative also is expected to have less visual effects to above-ground historic properties except for those on Nantucket Island and the east end of Martha's Vineyard, which would be greater than for the proposed action.

The three non-geographic alternatives all fall within the geographic confines of the proposed project at Horseshoe Shoal. The Smaller Project Alternative contains half the number of WTGs and thus, half the generation capacity of the proposed project. This alternative would result in a reduced breadth of visual impacts when looking out at the horizon from Nantucket or Cape Cod. The Phased Development Alternative would use the same site as the proposed project and would use the same transmission cable system layout. This alternative would entail two separate phases of construction; the first phase consisting of 65 wind turbines installed in the western half of the proposed project area, and the second phase consisting of the installation of the remaining 65 wind turbines in the eastern half of the proposed project area. The two phases would be separated by a period of monitoring operations. Visual impacts would be the same as for the proposed project once this alternative was fully operational. The Condensed Array Alternative would reduce the overall area of the array from 25 square miles to 16 square miles, reducing the overall breadth of the project. However, the concentration of structures would be increased and thus could create a different visual impact than the proposed project.

Comparison of Potential Effects of the Proposed Project to Other Environmental Resources

Alternatives to the proposed action subject to detailed analysis in the FEIS were found to have comparable or greater overall environmental impacts than the proposed action, depending upon the resource category considered. Refer to Table 3.3.5.1 in the MMS FEIS for a summary of impacts for the main alternatives relative to the proposed action.

The results of the analysis of the project alternatives indicated that the proposed action is the preferred alternative when considering multiple environmental, technical, economic and social factors. The MMS has taken every possible action to avoid and minimize adverse effects to historic properties through detailed planning carried out as part of the NEPA process. Therefore, the adverse visual effects to the twenty-eight historic properties and the ceremonial practices and the traditional cultural properties of the Gay Head/Aquinnah and Mashpee Wampanoag Tribes are considered unavoidable.

All of the documentation, analysis, and conclusions presented in the MMS Finding of Adverse Effect for the proposed project are included in the FEIS, and were used as the basis for analyzing the potential impacts of the proposed project on identified historic properties and Tribal areas of cultural and religious importance.

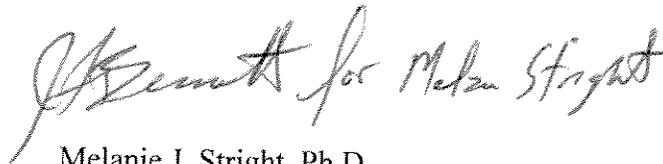
Resolution of Adverse Effects (36CFR800.6)

In their letter of April 1, 2009, the ACHP states, "As a result of the issuance of a Finding of Adverse Effect on December 29, 2008, MMS is now formally consulting to resolve adverse effects that may result from the proposed Cape Wind project. Pursuant to Section 36 CFR 800.6 this consultation should address alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects. The ACHP has concluded that the information provided by MMS to date is sufficient for the consultation process to move forward".

With this letter, the MMS believes that it has adequately responded to those outstanding concerns raised by the Section 106 Consulting parties to the MMS Finding of Adverse Effect for the proposed project and that we have made a reasonable and good-faith effort to fulfill the requirements of the Section 106 Consultation process as detailed in the ACHP regulations at 36 CFR 800.4 and 800.5. The MMS is continuing the identification process portion of its Section 106 Consultation with the affected Tribes only, to identify any additional Tribal areas of traditional cultural and religious importance that may be eligible for the National Register and have an adverse effect from the proposed project. If additional National Register-eligible Tribal sites are identified in subsequent Tribal consultations that will have an adverse effect from the proposed project, the MMS will supplement its Finding of Adverse Effect to include these additional properties.

The MMS looks forward to the discussions at the upcoming Section 106 Consultation meeting on April 28, 2009, which will focus exclusively on identifying additional ways in which the adverse effects to historic properties identified for the proposed project may be avoided, minimized, or mitigated as outlined in 36 CFR 800.6 of the ACHP regulations. Attachment 1 outlines general topical areas under which most types of project mitigation may fall. These include mitigation applied to project construction, operations and maintenance; project monitoring; compensatory mitigation; and modifications to project siting and/or project design. This outline both summarizes mitigations that have already been applied to the proposed project and will be used to guide further discussions at the upcoming consultation meeting regarding potential ways to avoid, minimize or mitigate adverse effects to historic properties and areas of traditional cultural and religious importance to the Tribes. We hope to make substantial progress at this meeting towards a consensus solution that can be embodied in a Memorandum of Agreement.

Sincerely,



Melanie J. Stright, Ph.D.
Federal Preservation Officer
Minerals Management Service

Attachment

cc: Section 106 Consulting Parties

Topical Areas of Discussion for Proposed Mitigation

Proposed Cape Wind Energy Project Nantucket Sound, Massachusetts

Project Construction, Operations and Maintenance

Mitigation the MMS will apply during construction, operation, and maintenance of the proposed project includes:

- MMS will apply a 30 m (100 ft) no-activity buffer zone around the three potential historic shipwreck sites identified during the marine archaeological remote-sensing survey of the proposed project area. The no-activity zone will be demarcated on project plans provided to contractors and detailed in construction specifications; compliance will be overseen by an environmental inspector.
- If the potential shipwreck sites cannot be avoided by project construction, operation, and maintenance activities, the MMS will require additional investigations of the locations prior to any bottom-disturbing activities in the area to determine whether they are, in fact, shipwreck sites, and if so, to evaluate their historic significance.

Project Monitoring

- The MMS will include a “chance finds” clause in the lease document that requires the lessee to halt all seafloor-disturbing activity in the event that any unanticipated historic or prehistoric cultural resource is discovered during construction.

Compensatory Mitigation.

At the January 29, 2009, Section 106 Consultation Meeting, consulting parties raised the following two possibilities for types of compensatory mitigation that might be explored to offset adverse effects of the proposed project:

- Obtaining a conservation easement to provide long-term protection for a significant historic property within the area
- Appointing a trustee to hold and oversee distribution of funds for compensatory mitigation contained in the Section 106 MOA for the project.

Modifications to Project Siting and/or Project Design

Modifications to project siting already applied to the proposed project include:

- The original project array was reduced from 170 to 130 turbines, with the turbines closest to the Kennedy Compound being omitted to reduce the visual effect to the Kennedy Compound National Historic Landmark (NHL). Turbines were omitted in the northeast corner of the array which served to reduce the breadth of the wind park that could be seen from the Kennedy Compound NHL.
- The original project siting was modified to move it farther away from Nantucket Island to decrease the visual effects to the Nantucket Island NHL.
- The edges of the original wind park layout were reconfigured twice to reduce the breadth of the array as it would be seen from the Nantucket Island NHL.
- Eight WTGs and associated cable arrays were relocated to avoid offshore areas having any potential for affect on preserved aboriginal cultural remains.

Modifications to project design already applied to the proposed project include:

- Daytime FAA lighting on the WTGs has been omitted, unless the US Coast Guard decides that some “day beacons” would be required to ensure navigation safety.
- Potential nighttime visual impacts have been lessened by the reduction in FAA nighttime lighting.
- The WTGs will be painted an off-white color to reduce the contrast with the sea and sky.
- The upland transmission route will be located entirely below ground within paved roads and existing utility ROWs to avoid visual impacts and impacts to potential unidentified cultural resources.



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Mr. Glenn Wattley
President and CEO
Alliance to Protect Nantucket Sound
4 Barnstable Rd.
Hyannis, Massachusetts 02601

APR 17 2009

Dear Mr. Wattley:

This letter is in response to your Memorandum to the Minerals Management Service (MMS) and Section 106 Consulting Parties, dated April 8, 2009, regarding a deepwater site alternative to the proposed Cape Wind Energy Project. You make two assertions in your Memorandum:

- 1) that a deepwater alternative using floating wind turbines is a viable alternative to the proposed project; and
- 2) that since the 3.6 MW GE Wind Turbine Generators (WTGs) may not be available for the project, WTGs of a different size and requiring a different project configuration will need to be analyzed.

Neither of these assertions in your Memorandum is accurate.

In conformance with the requirements of NEPA, the MMS has conducted an environmental analysis of the proposed action, as well as reasonable alternatives to the proposed action, including a no action alternative. In your Memorandum you suggest that deepwater floating WTGs are a technologically-feasible alternative to the proposed project; the fact is that such technology is neither currently available nor tested for commercial-scale wind energy projects. While the MMS fully supports the advancement of floating deepwater technologies, experts agree that such technology is years and perhaps up to a decade or more away from commercial viability.

The very documents circulated as attachments to your Memorandum confirm that commercial floating turbine technology does not yet exist, has not been demonstrated to be either technically or commercially viable, and is thus outside the range of reasonable alternatives eligible for detailed consideration. The MMS considered a deepwater alternative to the proposed Cape Wind Project and concluded that such an alternative was not technically feasible or appropriate for comparison with offshore wind projects utilizing traditional foundation structures (see FEIS, section 3.3). The MMS will not consider any further deepwater alternatives for the Cape Wind Energy Project.

Regarding the availability of the GE 3.6 MW WTG—there are, in fact, several companies that manufacture 3.6 MW WTGs. It is immaterial whether this turbine is manufactured by GE or some other company. The proposed 3.6 MW WTGs, which are 440 feet in height to the top of the rotor, are the same dimensions and array assumed for the impacts analysis in the DEIS and the FEIS, as well as in the Section 106 Findings document.



Cape Wind Associates maintains that a 3.6 MW WTG best serves their project—whether this turbine is manufactured by GE or some other company. It is not the responsibility of the Federal government to impose specific manufacturers or manufacturing specifications on private industry. If Cape Wind Associates were to choose an alternate WTG for use in the proposed project, at that time the MMS would determine whether the analyses for the proposed project would need to be revised.

This decision would depend on the degree of changes to factors such as monopile size, rotor diameter, overall height, footprint of the array, etc. The MMS is not aware of any plans to use anything other than a 3.6 MG turbine; therefore, the MMS is continuing to evaluate the project as submitted.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rodney E. Cluck', with a large, sweeping flourish at the end.

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager
Minerals Management Service

cc: Section 106 Consulting Parties

December 29, 2008

John T. Eddins, Ph.D.
Historic Preservation Specialist/Archaeologist
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, D.C. 20004

**RE: Cape Wind Energy Project, Nantucket Sound, Massachusetts
Finding of Adverse Effect**

Dear Dr. Eddins:

Enclosed please find the Minerals Management Service (MMS) Finding of Adverse Effect for the Cape Wind Energy Project, Nantucket Sound, Massachusetts. The MMS has prepared this document after consideration of comments received during formal Section 106 Consultation meetings and from written comments submitted by the Section 106 consulting parties regarding the Draft Environmental Impact Statement for the proposed project as well as those written comments submitted for this independent Section 106 process. In response to comments received from the consulting parties, the MMS has incorporated the following changes into our assessment of adverse visual effects for the project including:

- Revising the methodology used to assess adverse visual effects to historic properties and Tribal areas of religious and cultural importance to conform to the methodology used in the original analysis completed by the U.S. Army Corps of Engineers when they were lead Federal agency for the project.
- Evaluating 30 additional specific historic properties identified to us in writing by Consulting parties, which had not previously been assessed nor evaluated for National Register eligibility.
- Including a specific sacred historic site identified to us by the Mashpee Wampanoag Tribe on the list of adversely affected properties.

The MMS Finding of Adverse Effect for the Cape Wind Energy Project now concludes that there will be an adverse visual effect on 29 historic and Tribal properties resulting from the proposed project. This document, includes all documentation required pursuant to 36 CFR 800.11(e), as well as a description of alternatives to the project that have already been considered or raised by the Consulting parties, and proposed modifications already included in the design or included as proposed terms and conditions of approval that could avoid, minimize or mitigate the adverse effects.

A CD of the MMS Finding of Adverse Effect for the Cape Wind Energy Project is enclosed. The document also can be found on the MMS web page at the following address: <http://www.mms.gov/offshore/AlternativeEnergy/CapeWind.htm>. The MMS will also provide printed copies of the document upon request. This Finding of Adverse Effect concludes the portions of the consultation related to 36 CFR 800.4 and 800.5.

The MMS will continue the Section 106 Consultation process as outlined in the Advisory Council on Historic Preservation regulations at 36 CFR 800.6, to further identify strategies to avoid, minimize, or mitigate visual impacts to historic properties that may result from the proposed project. You may express your views related to resolving the adverse effects identified in the attached document at or before the next Section 106 Consultation meeting, which is proposed to be convened during the last week of January, 2009. Additional details regarding the scheduling of this meeting will be sent to the Consulting parties via a separate email.

Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager
Minerals Management Service

Enclosure: CD of MMS Documentation of Section 106 Finding of Adverse Effect



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Mr. George (Chuckie) Green
Tribal Historic Preservation Officer
Mashpee Wampanoag Tribe
PO Box 1048
Mashpee, Massachusetts 02649

AUG 27 2008

Dear Mr. Green:

The Minerals Management Service would like to schedule a Section 106 Consultation meeting to discuss tribal concerns and issues related to the proposed Cape Wind Energy Project, Nantucket Sound, MA. We are planning a meeting of all Section 106 Consulting parties on Cape Cod for Tuesday, September 9, 2008 from 10:00 am to 2:00 pm, at the Cape Cod – Hyannis Holiday Inn, 1127 Route 132, Hyannis, MA. We have also tentatively reserved a meeting room at the Holiday Inn for Monday, September 8, from 10:00 am to 2:00 pm for a separate meeting with the Tribes, focused on discussion of the Tribal issues that have been raised with regard to the proposed Cape Wind Energy Project. Please respond and let us know of your availability for this proposed September 8th meeting.

We will be scheduling our next full Section 106 Consultation meeting for sometime in early October. Please also indicate the dates you would be available in early October for a Tribal Section 106 Consultation meeting.

If you have any questions or wish to respond to this request via email or by phone, please contact:

Melanie Stright, MMS Federal Preservation Officer
381 Elden Street
Herndon, VA 20170
Ph: 703-787-1736
FAX: 703-787-1026
melanie.stright@mms.gov

We look forward to meeting with you and discussing the concerns and issues you have already raised in greater detail.

Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager
Minerals Management Service

Salutation	First Name	Last Name	Title	Tribal Name	Street Address 1	Street Address 2	City	State	Zip	Phone
Ms.	Bettina	Washington	Tribal Historic Preservation Officer	Wampanoag Tribe of Gay Head (Aquinnah)	20 Black Brook Road		Aquinnah	Massachusetts	02535	508-645-9265
Mr.	George (Chuckie)	Green	Tribal Historic Preservation Officer	Mashpee Wampanoag Tribe	PO Box 1048		Mashpee	Massachusetts	02649	508-477-0208
Mr.	John	Brown	Tribal Historic Preservation Officer	Narragansett Indian Tribe	PO Box 700		Wyoming	Rhode Island	02898	401-364-9873
Mr.	Bruce	Bozsum	Chairman	Mohegan Indian Tribe	5 Crow Hill Road		Uncasville	Connecticut	06382	860-862-6100
Mr.	Michael J.	Thomas	Chairman	Mashantucket Pequot Tribe	PO Box 3060		Mashantucket	Connecticut	06338	860-396-6554
Mr.	James T.	Kardatzke		Eastern Region, Bureau of Indian Affairs	545 Marriott Drive	Suite 700	Nashville	Tennessee	37214	615-564-6830
Mr.	Michael	Cook	Executive Director	United South and Eastern Tribes, Inc.	711 Stewarts Ferry Pike	Suite 100	Nashville	Tennessee	37214	615-872-7900
Ms.	D. Bambi	Kraus		NATHPO	PO Box 19189		Washington	D.C.	20036	202-628-8476



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Ms. Patty Daley, Director, Growth Management
Town of Barnstable
Town Hall
367 Main Street
Hyannis, Massachusetts 02601

AUG 18 2008

Dear Ms. Daley:

The U.S Minerals Management Service has begun a series of formal Section 106 consultation meetings for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, as required under the Advisory Council for Historic Preservation (ACHP) regulations at 36 CFR 800. The initial consultation meeting was held in Boston on July 23, 2008. At this initial meeting we solicited recommendations for additional parties we should invite to consult in the Section 106 process for this project.

As specified in the ACHP regulations at 36 CFR 800.2(c)(3), and in response to the specific recommendations we received at the initial Section 106 consultation meeting, we are inviting you to become a consulting party in the Section 106 process for the Cape Wind Energy Project. Please respond with an indication of your interest in becoming a consulting party on this project, and provide the name and full contact information for the person who will represent your local government in the process.

Our next Section 106 consultation meeting is tentatively being planned for September 8th or 9th on Cape Cod. We will be sending out full details of the meeting and an agenda to all consulting parties prior to the meeting. If you have any questions, please contact our Federal Preservation Officer, Dr. Melanie Stright, at 703-787-1736.

Sincerely,

Bill Worke for Rodney Cluck

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager

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United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



AUG 18 2008

Mr. Carey Murphy, Selectman
Town of Falmouth
Town Hall
59 Town Hall Square
Falmouth, Massachusetts 02540

Dear Mr. Murphy:

The U.S Minerals Management Service has begun a series of formal Section 106 consultation meetings for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, as required under the Advisory Council for Historic Preservation (ACHP) regulations at 36 CFR 800. The initial consultation meeting was held in Boston on July 23, 2008. At this initial meeting we solicited recommendations for additional parties we should invite to consult in the Section 106 process for this project.

As specified in the ACHP regulations at 36 CFR 800.2(c)(3), and in response to the specific recommendations we received at the initial Section 106 consultation meeting, we are inviting you to become a consulting party in the Section 106 process for the Cape Wind Energy Project. Please respond with an indication of your interest in becoming a consulting party on this project, and provide the name and full contact information for the person who will represent your local government in the process.

Our next Section 106 consultation meeting is tentatively being planned for September 8th or 9th on Cape Cod. We will be sending out full details of the meeting and an agenda to all consulting parties prior to the meeting. If you have any questions, please contact our Federal Preservation Officer, Dr. Melanie Stright, at 703-787-1736.

Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Mr. John J. Cahalane, Vice Chair/Selectman
Town of Mashpee
Town Hall
16 Great Neck North
Mashpee, Massachusetts 02649

AUG 18 2008

Dear Mr. Cahalane:

The U.S Minerals Management Service has begun a series of formal Section 106 consultation meetings for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, as required under the Advisory Council for Historic Preservation (ACHP) regulations at 36 CFR 800. The initial consultation meeting was held in Boston on July 23, 2008. At this initial meeting we solicited recommendations for additional parties we should invite to consult in the Section 106 process for this project.

As specified in the ACHP regulations at 36 CFR 800.2(c)(3), and in response to the specific recommendations we received at the initial Section 106 consultation meeting, we are inviting you to become a consulting party in the Section 106 process for the Cape Wind Energy Project. Please respond with an indication of your interest in becoming a consulting party on this project, and provide the name and full contact information for the person who will represent your local government in the process.

Our next Section 106 consultation meeting is tentatively being planned for September 8th or 9th on Cape Cod. We will be sending out full details of the meeting and an agenda to all consulting parties prior to the meeting. If you have any questions, please contact our Federal Preservation Officer, Dr. Melanie Stright, at 703-787-1736.

Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Ms. E. Suzanne McAuliffe, Chair/Selectperson
Town of Yarmouth
Town Hall
1146 Route 28
S. Yarmouth, Massachusetts 02664

AUG 18 2008

Dear Ms. McAuliffe:

The U.S Minerals Management Service has begun a series of formal Section 106 consultation meetings for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, as required under the Advisory Council for Historic Preservation (ACHP) regulations at 36 CFR 800. The initial consultation meeting was held in Boston on July 23, 2008. At this initial meeting we solicited recommendations for additional parties we should invite to consult in the Section 106 process for this project.

As specified in the ACHP regulations at 36 CFR 800.2(c)(3), and in response to the specific recommendations we received at the initial Section 106 consultation meeting, we are inviting you to become a consulting party in the Section 106 process for the Cape Wind Energy Project. Please respond with an indication of your interest in becoming a consulting party on this project, and provide the name and full contact information for the person who will represent your local government in the process.

Our next Section 106 consultation meeting is tentatively being planned for September 8th or 9th on Cape Cod. We will be sending out full details of the meeting and an agenda to all consulting parties prior to the meeting. If you have any questions, please contact our Federal Preservation Officer, Dr. Melanie Stright, at 703-787-1736.

Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Mr. Ronald Bergstrom, Selectman
Town of Chatham
Town Hall
549 Main Street
Chatham, Massachusetts 02633

AUG 18 2008

Dear Mr. Bergstrom:

The U.S Minerals Management Service has begun a series of formal Section 106 consultation meetings for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, as required under the Advisory Council for Historic Preservation (ACHP) regulations at 36 CFR 800. The initial consultation meeting was held in Boston on July 23, 2008. At this initial meeting we solicited recommendations for additional parties we should invite to consult in the Section 106 process for this project.

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Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Mr. James Merriam, Town Administrator
Town of Harwich
Town Hall
732 Main Street
Harwich, Massachusetts 02645

AUG 18 2008

Dear Mr. Merriam:

The U.S Minerals Management Service has begun a series of formal Section 106 consultation meetings for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, as required under the Advisory Council for Historic Preservation (ACHP) regulations at 36 CFR 800. The initial consultation meeting was held in Boston on July 23, 2008. At this initial meeting we solicited recommendations for additional parties we should invite to consult in the Section 106 process for this project.

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Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Mr. Robert Canevazzi, Town Administrator
Town of Dennis
Town Hall
P.O. Box 2060
South Dennis, Massachusetts 02660

AUG 18 2008

Dear Mr. Canevazzi:

The U.S Minerals Management Service has begun a series of formal Section 106 consultation meetings for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, as required under the Advisory Council for Historic Preservation (ACHP) regulations at 36 CFR 800. The initial consultation meeting was held in Boston on July 23, 2008. At this initial meeting we solicited recommendations for additional parties we should invite to consult in the Section 106 process for this project.

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Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Mr. Peter Bettencourt, Town Administrator
Town of Edgartown
Town Hall
70 Main Street
Edgartown, Massachusetts 02539

AUG 18 2008

Dear Mr. Bettencourt:

The U.S Minerals Management Service has begun a series of formal Section 106 consultation meetings for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, as required under the Advisory Council for Historic Preservation (ACHP) regulations at 36 CFR 800. The initial consultation meeting was held in Boston on July 23, 2008. At this initial meeting we solicited recommendations for additional parties we should invite to consult in the Section 106 process for this project.

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Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Mr. Michael Dutton, Town Administrator
Town of Oak Bluffs
Town Hall
P.O. Box 1327
Oak Bluffs, Massachusetts 02557

AUG 18 2008

Dear Mr. Dutton:

The U.S Minerals Management Service has begun a series of formal Section 106 consultation meetings for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, as required under the Advisory Council for Historic Preservation (ACHP) regulations at 36 CFR 800. The initial consultation meeting was held in Boston on July 23, 2008. At this initial meeting we solicited recommendations for additional parties we should invite to consult in the Section 106 process for this project.

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Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager

TAKE PRIDE
IN AMERICA 



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



AUG 18 2008

Mr. Andrew Vorce, Director
County of Nantucket
Nantucket Planning & Economic Development Commission
2 Fairgrounds Rd.
Nantucket, Massachusetts 02554

Dear Mr. Vorce:

The U.S Minerals Management Service has begun a series of formal Section 106 consultation meetings for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, as required under the Advisory Council for Historic Preservation (ACHP) regulations at 36 CFR 800. The initial consultation meeting was held in Boston on July 23, 2008. At this initial meeting we solicited recommendations for additional parties we should invite to consult in the Section 106 process for this project.

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Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager





United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Ms. Libby Gibson, Town Manager
Town of Nantucket
Town Building
16 Broad Street, 1st Floor
Nantucket, Massachusetts 02554

AUG 18 2008

Dear Ms. Gibson:

The U.S Minerals Management Service has begun a series of formal Section 106 consultation meetings for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, as required under the Advisory Council for Historic Preservation (ACHP) regulations at 36 CFR 800. The initial consultation meeting was held in Boston on July 23, 2008. At this initial meeting we solicited recommendations for additional parties we should invite to consult in the Section 106 process for this project.

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Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



AUG 18 2008

Mr. John R. Bugbee, Town Administrator
Town of Tisbury
Town Hall
P.O. Box 1239
Vineyard Haven, Massachusetts 02568

Dear Mr. Bugbee:

The U.S. Minerals Management Service has begun a series of formal Section 106 consultation meetings for the proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, as required under the Advisory Council for Historic Preservation (ACHP) regulations at 36 CFR 800. The initial consultation meeting was held in Boston on July 23, 2008. At this initial meeting we solicited recommendations for additional parties we should invite to consult in the Section 106 process for this project.

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Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager

June 25, 2008

Bettina Washington
Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head (Aquinnah)
20 Black Brook Road
Aquinnah, Massachusetts 02535-9701

RE: Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Ms. Washington:

The Minerals Management Service (MMS) is proposing a meeting of Section 106 Consulting Parties for the Cape Wind Energy Project for July 23, 2008, from 10:00 am to 4:00 pm at the Saltonstal Building, 2nd floor Room C, 100 Cambridge Street, Boston, MA 02114. An agenda for the meeting will be sent in a subsequent notification to all consulting parties.

Background Information on the Project

In November 2004, a joint draft environmental document for the Cape Wind Energy Project (Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR)/Development of Regional Impact Report (DRI)) was published by the U.S. Army Corps of Engineers (USACE), the State of Massachusetts, and the Cape Cod Commission.

In August 2005 with the passage of the Energy Bill, the Minerals Management Service (MMS) became the lead Federal agency for the Cape Wind Project. The MMS discussed with the State the option of becoming a partner in the preparation and publication of a Final EIS/EIR/DRI for the project but the State declined. At that point the MMS initiated its own Draft EIS effort.

In February 2007 the State of Massachusetts and the Cape Cod Commission went forward with publication of a Final EIR/DRI for the Cape Wind Project while the MMS Draft EIS was still in preparation. The visual impact analysis in the Final EIR/DRI concluded that the following historic properties would be subject to Adverse Visual Effects from the Cape Wind Project:

- Falmouth:
 - Nobska Point Light Station

- Barnstable:
 - Cotcuit Historic District
 - Col. Charles Codman Estate
 - Wianno Historic District
 - Wianno Club
 - Hyannis Port Historic District
 - Kennedy Compound (NHL)

- Chatham:
 - Montgomery Point Lighthouse
- Tisbury:
 - West Chop Light Station
- Oak Bluffs:
 - East Chop Light Station
 - Dr. Harrison A. Tucker Cottage
- Edgartown:
 - Edgartown Village Historic District
 - Edgartown Harbor Lighthouse
 - Cape Poge Light
- Nantucket:
 - Nantucket Great Point Light
 - Nantucket National Historic Landmark District

The MMS determination of effect was prepared using the same list of historic properties and visual simulations that were used to prepare the Determination of Effect published in the Final EIR/DRI for the State of Massachusetts (PAL, *Cape Wind Energy Project Visual Impact Assessment of Revised Layout on Multiple Historic Properties: Final Environment Impact Report*, September 2006). This report can be found online at: <http://www.capewind.org/downloads/feir/Appendix3.11-C.pdf>. Using the ACHP regulations for assessment of adverse effects found at 36 CFR 800.5, the MMS outlined a methodology and list of criteria for our DEIS contractor to use in assessing the visual effects of the project on historic properties within the project's Area of Potential Effect (*Enclosure 1: Procedures for Preparing the MMS Assessment of Effect for Visual Impacts to Onshore National Register or National Register-Eligible Properties*).

This analysis came to a finding of Adverse Visual Effects to the following properties:

- Barnstable:
 - Kennedy Compound (NHL)
 - Wianno Club
- Edgartown:
 - Cape Poge Light

The results of this visual analysis were published in sections 4.3.4 and 5.3.3.4 of the MMS DEIS for the Cape Wind Energy Project in January 2008. The MMS DEIS can be found online at: <http://www.mms.gov/offshore/AlternativeEnergy/CapeWindDEIS.htm>.

Additional Documents for the Section 106 Consultation Process

A series of marine archaeological surveys were conducted within the offshore project area by the Public Archaeology Laboratory (PAL), Pawtucket, Rhode Island. These reports include:

1. Marine Archaeological Sensitivity Assessment, Cape Wind Energy Project (June 2003)

2. Preliminary Marine Archaeological Sensitivity Assessment: Cape Wind Energy Project Alternatives: Horseshoe Shoal; Combination New Bedford/Buzzards Bay and Reduced Horseshoe Shoal; Monomoy and Handkerchief Shoals; Tuckernuck Shoal; and South of Tuckernuck Island, Massachusetts (January 2004)
3. Marine Archaeological Reconnaissance Survey: Cape Wind Energy Project (March 2004)
4. Cape Wind Terrestrial Alternative: Massachusetts Military Reservation, Bourne and Sandwich, Massachusetts (March 9, 2004)
5. Supplemental Marine Archaeological Reconnaissance Survey of Revised Layout Offshore Project Area (January 26, 2006)

These reports are available online at the following locations:

Report No. 1, 3, and 4: <http://www.nae.usace.army.mil/projects/ma/ccwf/app510c.pdf>

Report No. 2: <http://www.nae.usace.army.mil/projects/ma/ccwf/app3i.pdf>

Report No. 5: <http://www.capewind.org/downloads/feir/Appendix3.11-B.pdf>

The Cultural Resource sections of the MMS DEIS are found in section 4.3.5 (Description of the Affected Environment) and 5.3.3.5 (Environmental and Socioeconomic Consequences).

Section 106 Consultation: Issues for Discussion

Issues raised by the various 106 Consulting parties (*Enclosure 2: Cape Wind Energy Project, Section 106 Consulting Parties Contact List*) for the Cape Wind Energy Project include:

- The differing methodologies used in applying the ACHP regulations on assessment of adverse effects (36 CFR 800.5) which resulted in widely disparate findings between the USACE DEIS and State FEIR, and the MMS DEIS regarding which properties would be subject to adverse visual effects from the proposed project.
- The viewshed analysis prepared for the project focused on the views from specific historic properties but did not adequately consider the effect on the whole of Nantucket Sound from all vantage points.
- Two additional National Register-listed properties, both in Tisbury, have been identified that should be added to the visual effects studies:
 - William Street National Register Historic District
 - Ritter House
- Wampanoag Tribe of Gay Head (Aquinnah) and the Wampanoag Tribe of Massachusetts (Mashpee) consider the entire Nantucket Sound to be a sacred site and the unobstructed view of the eastern horizon to be sacred to their culture and religious practice.

If you need a hard copy of any of the online documents cited above, or if there are additional issues that should be included on the agenda for discussion at the July Section 106 Consultation Meeting, please provide them to:

Melanie Stright, MMS Federal Preservation Officer
Minerals Management Service
381 Elden Street
Herndon, VA 20170
Ph: 703-787-1736
FAX: 703-787-1026
melanie.stright@mms.gov

We look forward to working with all consulting parties to discuss the various issues of concern and hopefully come to agreement on ways to minimize, mitigate or avoid adverse effects to significant historic properties related to the proposed Cape Wind Energy Project.

Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager
Minerals Management Service

Enclosures:
Procedures for Preparing the MMS Assessment of Effect
Cape Wind Project: Consulting Parties Contact List

June 25, 2008

Brona Simon
Deputy State Historic Preservation Officer
Acting Executive Director
The MA Archives Building
220 Morrissey Boulevard
Boston, Massachusetts 02125

RE: Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Ms. Simon:

The Minerals Management Service (MMS) is proposing a meeting of Section 106 Consulting Parties for the Cape Wind Energy Project for July 23, 2008, from 10:00 am to 4:00 pm at the Saltonstal Building, 2nd floor Room C, 100 Cambridge Street, Boston, MA 02114. An agenda for the meeting will be sent in a subsequent notification to all consulting parties.

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The MMS determination of effect was prepared using the same list of historic properties and visual simulations that were used to prepare the Determination of Effect published in the Final EIR/DRI for the State of Massachusetts (PAL, *Cape Wind Energy Project Visual Impact Assessment of Revised Layout on Multiple Historic Properties: Final Environment Impact Report*, September 2006). This report can be found online at: <http://www.capewind.org/downloads/feir/Appendix3.11-C.pdf>. Using the ACHP regulations for assessment of adverse effects found at 36 CFR 800.5, the MMS outlined a methodology and list of criteria for our DEIS contractor to use in assessing the visual effects of the project on historic properties within the project's Area of Potential Effect (*Enclosure 1: Procedures for Preparing the MMS Assessment of Effect for Visual Impacts to Onshore National Register or National Register-Eligible Properties*).

This analysis came to a finding of Adverse Visual Effects to the following properties:

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The Cultural Resource sections of the MMS DEIS are found in section 4.3.5 (Description of the Affected Environment) and 5.3.3.5 (Environmental and Socioeconomic Consequences).

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Minerals Management Service
381 Elden Street
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Rodney E. Cluck, Ph.D.
Cape Wind Project Manager
Minerals Management Service

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Cape Wind Project: Consulting Parties Contact List

June 25, 2008

Mr. Craig Olmsted
Project Manager
Cape Wind Associates, L.L.C.
75 Arlington Street
Boston, Massachusetts 02116

RE: Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Mr. Olmsted:

The Minerals Management Service (MMS) is proposing a meeting of Section 106 Consulting Parties for the Cape Wind Energy Project for July 23, 2008, from 10:00 am to 4:00 pm at the Saltonstal Building, 2nd floor Room C, 100 Cambridge Street, Boston, MA 02114. An agenda for the meeting will be sent in a subsequent notification to all consulting parties.

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The Cultural Resource sections of the MMS DEIS are found in section 4.3.5 (Description of the Affected Environment) and 5.3.3.5 (Environmental and Socioeconomic Consequences).

Section 106 Consultation: Issues for Discussion

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- The differing methodologies used in applying the ACHP regulations on assessment of adverse effects (36 CFR 800.5) which resulted in widely disparate findings between the USACE DEIS and State FEIR, and the MMS DEIS regarding which properties would be subject to adverse visual effects from the proposed project.
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If you need a hard copy of any of the online documents cited above, or if there are additional issues that should be included on the agenda for discussion at the July Section 106 Consultation Meeting, please provide them to:

Melanie Stright, MMS Federal Preservation Officer
Minerals Management Service
381 Elden Street
Herndon, VA 20170
Ph: 703-787-1736
FAX: 703-787-1026
melanie.stright@mms.gov

We look forward to working with all consulting parties to discuss the various issues of concern and hopefully come to agreement on ways to minimize, mitigate or avoid adverse effects to significant historic properties related to the proposed Cape Wind Energy Project.

Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager
Minerals Management Service

Enclosures:
Procedures for Preparing the MMS Assessment of Effect
Cape Wind Project: Consulting Parties Contact List

June 25, 2008

Susan Nickerson
Executive Director/Nantucket Soundkeeper
Alliance to Protect Nantucket Sound
4 Barnstable Road
Hyannis, Massachusetts 02601

RE: Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Ms. Nickerson:

The Minerals Management Service (MMS) is proposing a meeting of Section 106 Consulting Parties for the Cape Wind Energy Project for July 23, 2008, from 10:00 am to 4:00 pm at the Saltonstal Building, 2nd floor Room C, 100 Cambridge Street, Boston, MA 02114. An agenda for the meeting will be sent in a subsequent notification to all consulting parties.

Background Information on the Project

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- Falmouth:
 - Nobska Point Light Station

- Barnstable:
 - Cotcuit Historic District
 - Col. Charles Codman Estate
 - Wianno Historic District
 - Wianno Club
 - Hyannis Port Historic District
 - Kennedy Compound (NHL)

- Chatham:
 - Montgomery Point Lighthouse
- Tisbury:
 - West Chop Light Station
- Oak Bluffs:
 - East Chop Light Station
 - Dr. Harrison A. Tucker Cottage
- Edgartown:
 - Edgartown Village Historic District
 - Edgartown Harbor Lighthouse
 - Cape Poge Light
- Nantucket:
 - Nantucket Great Point Light
 - Nantucket National Historic Landmark District

The MMS determination of effect was prepared using the same list of historic properties and visual simulations that were used to prepare the Determination of Effect published in the Final EIR/DRI for the State of Massachusetts (PAL, *Cape Wind Energy Project Visual Impact Assessment of Revised Layout on Multiple Historic Properties: Final Environment Impact Report*, September 2006). This report can be found online at: <http://www.capewind.org/downloads/feir/Appendix3.11-C.pdf>. Using the ACHP regulations for assessment of adverse effects found at 36 CFR 800.5, the MMS outlined a methodology and list of criteria for our DEIS contractor to use in assessing the visual effects of the project on historic properties within the project's Area of Potential Effect (*Enclosure 1: Procedures for Preparing the MMS Assessment of Effect for Visual Impacts to Onshore National Register or National Register-Eligible Properties*).

This analysis came to a finding of Adverse Visual Effects to the following properties:

- Barnstable:
 - Kennedy Compound (NHL)
 - Wianno Club
- Edgartown:
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The results of this visual analysis were published in sections 4.3.4 and 5.3.3.4 of the MMS DEIS for the Cape Wind Energy Project in January 2008. The MMS DEIS can be found online at: <http://www.mms.gov/offshore/AlternativeEnergy/CapeWindDEIS.htm>.

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Cape Wind Project Manager
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Cape Wind Project: Consulting Parties Contact List

June 25, 2008

Elizabeth Merritt
National Trust for Historic Preservation
785 Massachusetts Avenue, N.W.
Washington, D.C. 20036

RE: Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Ms. Merritt:

The Minerals Management Service (MMS) is proposing a meeting of Section 106 Consulting Parties for the Cape Wind Energy Project for July 23, 2008, from 10:00 am to 4:00 pm at the Saltonstal Building, 2nd floor Room C, 100 Cambridge Street, Boston, MA 02114. An agenda for the meeting will be sent in a subsequent notification to all consulting parties.

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Cape Wind Project Manager
Minerals Management Service

Enclosures:
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Cape Wind Project: Consulting Parties Contact List

June 25, 2008

Roberta Lane
Program Officer and Regional Attorney
Northeast Office, National Trust for Historic Preservation
7 Faneuil Hall Marketplace, 4th Floor
Boston, Massachusetts 02109

RE: Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Ms. Lane:

The Minerals Management Service (MMS) is proposing a meeting of Section 106 Consulting Parties for the Cape Wind Energy Project for July 23, 2008, from 10:00 am to 4:00 pm at the Saltonstal Building, 2nd floor Room C, 100 Cambridge Street, Boston, MA 02114. An agenda for the meeting will be sent in a subsequent notification to all consulting parties.

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Rodney E. Cluck, Ph.D.
Cape Wind Project Manager
Minerals Management Service

Enclosures:

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Cape Wind Project: Consulting Parties Contact List

June 25, 2008

Sarah Korjeff
Cape Cod Commission
3225 Main Street, P.O. Box 226
Barnstable, Massachusetts 02630-0226

RE: Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Ms. Korjeff:

The Minerals Management Service (MMS) is proposing a meeting of Section 106 Consulting Parties for the Cape Wind Energy Project for July 23, 2008, from 10:00 am to 4:00 pm at the Saltonstal Building, 2nd floor Room C, 100 Cambridge Street, Boston, MA 02114. An agenda for the meeting will be sent in a subsequent notification to all consulting parties.

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June 25, 2008

George (Chuckie) Green
Mashpee Wampanoag Tribe
P. O. Box 1048
Mashpee, Massachusetts 02649

RE: Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Mr. Green:

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 - Nantucket Great Point Light
 - Nantucket National Historic Landmark District

The MMS determination of effect was prepared using the same list of historic properties and visual simulations that were used to prepare the Determination of Effect published in the Final EIR/DRI for the State of Massachusetts (PAL, *Cape Wind Energy Project Visual Impact Assessment of Revised Layout on Multiple Historic Properties: Final Environment Impact Report*, September 2006). This report can be found online at: <http://www.capewind.org/downloads/feir/Appendix3.11-C.pdf>. Using the ACHP regulations for assessment of adverse effects found at 36 CFR 800.5, the MMS outlined a methodology and list of criteria for our DEIS contractor to use in assessing the visual effects of the project on historic properties within the project's Area of Potential Effect (*Enclosure 1: Procedures for Preparing the MMS Assessment of Effect for Visual Impacts to Onshore National Register or National Register-Eligible Properties*).

This analysis came to a finding of Adverse Visual Effects to the following properties:

- Barnstable:
 - Kennedy Compound (NHL)
 - Wianno Club
- Edgartown:
 - Cape Poge Light

The results of this visual analysis were published in sections 4.3.4 and 5.3.3.4 of the MMS DEIS for the Cape Wind Energy Project in January 2008. The MMS DEIS can be found online at: <http://www.mms.gov/offshore/AlternativeEnergy/CapeWindDEIS.htm>.

Additional Documents for the Section 106 Consultation Process

A series of marine archaeological surveys were conducted within the offshore project area by the Public Archaeology Laboratory (PAL), Pawtucket, Rhode Island. These reports include:

1. Marine Archaeological Sensitivity Assessment, Cape Wind Energy Project (June 2003)

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The Cultural Resource sections of the MMS DEIS are found in section 4.3.5 (Description of the Affected Environment) and 5.3.3.5 (Environmental and Socioeconomic Consequences).

Section 106 Consultation: Issues for Discussion

Issues raised by the various 106 Consulting parties (*Enclosure 2: Cape Wind Energy Project, Section 106 Consulting Parties Contact List*) for the Cape Wind Energy Project include:

- The differing methodologies used in applying the ACHP regulations on assessment of adverse effects (36 CFR 800.5) which resulted in widely disparate findings between the USACE DEIS and State FEIR, and the MMS DEIS regarding which properties would be subject to adverse visual effects from the proposed project.
- The viewshed analysis prepared for the project focused on the views from specific historic properties but did not adequately consider the effect on the whole of Nantucket Sound from all vantage points.
- Two additional National Register-listed properties, both in Tisbury, have been identified that should be added to the visual effects studies:
 - William Street National Register Historic District
 - Ritter House
- Wampanoag Tribe of Gay Head (Aquinnah) and the Wampanoag Tribe of Massachusetts (Mashpee) consider the entire Nantucket Sound to be a sacred site and the unobstructed view of the eastern horizon to be sacred to their culture and religious practice.

If you need a hard copy of any of the online documents cited above, or if there are additional issues that should be included on the agenda for discussion at the July Section 106 Consultation Meeting, please provide them to:

Melanie Stright, MMS Federal Preservation Officer
Minerals Management Service
381 Elden Street
Herndon, VA 20170
Ph: 703-787-1736
FAX: 703-787-1026
melanie.stright@mms.gov

We look forward to working with all consulting parties to discuss the various issues of concern and hopefully come to agreement on ways to minimize, mitigate or avoid adverse effects to significant historic properties related to the proposed Cape Wind Energy Project.

Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager
Minerals Management Service

Enclosures:
Procedures for Preparing the MMS Assessment of Effect
Cape Wind Project: Consulting Parties Contact List

June 25, 2008

Bill Bolger
National Park Service
Northeast Region
200 Chestnut Street, Room 370
Philadelphia, Pennsylvania 19106

RE: Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Mr. Bolger:

The Minerals Management Service (MMS) is proposing a meeting of Section 106 Consulting Parties for the Cape Wind Energy Project for July 23, 2008, from 10:00 am to 4:00 pm at the Saltonstal Building, 2nd floor Room C, 100 Cambridge Street, Boston, MA 02114. An agenda for the meeting will be sent in a subsequent notification to all consulting parties.

Background Information on the Project

In November 2004, a joint draft environmental document for the Cape Wind Energy Project (Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR)/Development of Regional Impact Report (DRI)) was published by the U.S. Army Corps of Engineers (USACE), the State of Massachusetts, and the Cape Cod Commission.

In August 2005 with the passage of the Energy Bill, the Minerals Management Service (MMS) became the lead Federal agency for the Cape Wind Project. The MMS discussed with the State the option of becoming a partner in the preparation and publication of a Final EIS/EIR/DRI for the project but the State declined. At that point the MMS initiated its own Draft EIS effort.

In February 2007 the State of Massachusetts and the Cape Cod Commission went forward with publication of a Final EIR/DRI for the Cape Wind Project while the MMS Draft EIS was still in preparation. The visual impact analysis in the Final EIR/DRI concluded that the following historic properties would be subject to Adverse Visual Effects from the Cape Wind Project:

- Falmouth:
 - Nobska Point Light Station

- Barnstable:
 - Cotcuit Historic District
 - Col. Charles Codman Estate
 - Wianno Historic District
 - Wianno Club
 - Hyannis Port Historic District
 - Kennedy Compound (NHL)

- Chatham:
 - Montgomery Point Lighthouse
- Tisbury:
 - West Chop Light Station
- Oak Bluffs:
 - East Chop Light Station
 - Dr. Harrison A. Tucker Cottage
- Edgartown:
 - Edgartown Village Historic District
 - Edgartown Harbor Lighthouse
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Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager
Minerals Management Service

Enclosures:
Procedures for Preparing the MMS Assessment of Effect
Cape Wind Project: Consulting Parties Contact List

June 25, 2008

Karen Adams
U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, Massachusetts 01742-2751

RE: Cape Wind Energy Project, Nantucket Sound, Massachusetts

Dear Ms. Adams:

The Minerals Management Service (MMS) is proposing a meeting of Section 106 Consulting Parties for the Cape Wind Energy Project for July 23, 2008, from 10:00 am to 4:00 pm at the Saltonstal Building, 2nd floor Room C, 100 Cambridge Street, Boston, MA 02114. An agenda for the meeting will be sent in a subsequent notification to all consulting parties.

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Sincerely,

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager
Minerals Management Service

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Cape Wind Project: Consulting Parties Contact List

May 23, 2006

Mr. Glen Marshall
Tribal Chairman
Mashpee Wampanoag Tribe
P.O. Box 1048
Mashpee, Massachusetts 02649

Dear Chairman Marshall:

I am sending this letter in compliance with Executive Order 13175, dated November 6, 2000, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments. Our current administration, on April 30, 2004, reaffirmed its commitment to Government-to-Government relations in Executive Order 13336, entitled American Indian and Alaska Native Education. The Minerals Management Service (MMS) recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination and strives to work with federally recognized tribes whenever any of our proposed activities may potentially affect a tribe, its treaty rights, sovereignty, or its members.

Section 388 of the Energy Policy Act of 2005 instructs MMS to act as the lead agency for Federal offshore renewable energy and alternate uses of the outer continental shelf. As part of that authority, MMS has reviewed and begun the application process for a wind turbine farm submitted by Cape Wind Associates. Cape Wind has chosen Horseshoe Shoal located in Nantucket Sound, Massachusetts as its proposed location for the wind turbine park.

As part of the MMS implementation of the Energy Policy Act of 2005, I would like to request a Government-to-Government meeting in Massachusetts on June ___ with the Mashpee Wampanoag Tribe to begin consultation in regards to the proposed wind turbine park on Nantucket Sound, Massachusetts. In addition to myself I will be bringing the following MMS staff...

MMS looks forward to working the Mashpee Wampanoag Tribe in a manner respectful of tribal sovereignty.

Sincerely,

Rodney Cluck, PhD

April 12, 2006

Ms. Cheryl Andrews-Maltais
Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head
20 Black Brook Road
Aquinnah, Massachusetts 02535

Dear Ms. Andrews-Maltais:

I enjoyed meeting you and discussing the Tribe's interest in the proposed Cape Wind turbine farm project last November in Boston. As discussed, the Minerals Management Service (MMS) recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination and strives to work with federally recognized tribes whenever any of our proposed activities may potentially affected a tribe, its treaty rights, sovereignty, or its members. This government-to-government relationship is outlined in Executive Order 13175, dated November 6, 2000, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments; and was reaffirmed on April 30, 2004, in Executive Order 13336, entitled American Indian and Alaska Native Education.

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As part of the MMS implementation of the Energy Policy Act of 2005, I would like to schedule a Government-to-Government meeting in Massachusetts this summer with the Wampanoag Tribe of Gay Head to begin consultation on the proposed wind turbine park on Nantucket Sound, Massachusetts. In addition to myself I plan to bring two other MMS officials.

MMS looks forward to working the Wampanoag Tribe in a manner respectful of tribal sovereignty.

Sincerely,

Rodney Cluck, PhD

