

Appendix E

Cape Wind

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November 23, 2009

The Honorable Kenneth Salazar
Secretary of the Interior
US Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dr. Janet Snyder Matthews
Associate Director for Cultural Resources,
Keeper of the National Register of Historic Places
National Park Service
1849 C Street, NW
Washington, DC 20240

Re: Request for Determination of Eligibility of Nantucket Sound for Listing on the National Register as a Traditional Cultural Property (“TCP”).

Dear Mr. Secretary and Dr. Snyder Mathews,

Cape Wind Associates, LLC (“CWA”) hereby comments on the request for a Determination of Eligibility for the listing of Nantucket Sound as a Traditional Cultural Property (“TCP”). In particular, we respond to the November 5, 2009, report of the Massachusetts State Historic Preservation Officer (“SHPO”) opining that the approximately 600 square miles of heavily utilized ocean waters of Nantucket Sound are eligible for listing as a TCP. While the SHPO correctly notes that there is “an enormous body of recognized secular scholarship” respecting the issues at hand, such sources do not support the conclusion of the SHPO. As discussed below, the bulk of the authorities cited by the SHPO in fact have little or no applicability to Nantucket Sound; rather, most of such materials apply to other bodies of water, primarily those to the west of Martha’s Vineyard, *i.e.*, Vineyard Sound, Rhode Island Sound and the waters immediately off of Gay Head. With respect to visual impacts to potential ceremonial sites, none of such impacts would, under the well-established guidelines, cause Nantucket Sound to be eligible for listing. The Keeper should thus promptly confirm the determination of the MMS that Nantucket Sound is not eligible for listing as a TCP.

I. Eligibility Requests for Natural Features Such as Nantucket Sound Face Heavy Burdens.

As an initial matter, National Register policies provide that attempts to nominate natural features for listing face a heavy burden of proof, as follows: “The National Register discourages the nomination of natural features without sound documentation of the historical or cultural significance.” Guidelines for Evaluating and Documenting Traditional Cultural Properties, National Register Bulletin (2002) (the “TCP Guidelines”) at 11. Such Guidelines further provide that “it is difficult to distinguish between properties having real significance and those whose putative significance is spurious,” and that supporting assertions should thus be questioned and “subjected to critical analysis,” including “careful analysis” of the asserting party’s motives. Id. at 3-4, 11. Additional National Register guidance also provides that a natural feature can only be eligible if its importance is documented and “if the site can be clearly defined,” as it is “critical ... that the activities be documented and that the associations not be so diffuse that the physical resource cannot be adequately defined.” How to Apply the National Register Criteria for Evaluation, National Register Bulletin (2002), at 4-5.

Nantucket Sound has not been shown to meet these demanding standards. With specific reference to the foregoing requirement of “definite borders,” it is particularly notable that the United States Supreme Court has determined that Nantucket Sound does not constitute a “coastal water body,” “inland waters,” or “internal waters” (such as a lake, bay or river), but an unenclosed portion of the territorial or “high seas.” United States v. Maine, 475 U.S. 89 (1986). The Supreme Court further found that Nantucket Sound lacks historic identity as a discrete body of water, noting, with respect to historic maps from the 17th and 18th centuries, that “none of these maps identified Nantucket Sound as a separate body of water even though they did identify other bodies of water such as Cape Cod Bay, Buzzards Bay, and, in some cases, Vineyard Sound,” and that the historic record “did not support Massachusetts’ contention that the area’s inhabitants established a special relationship with the protected waters of Nantucket Sound as opposed to the surrounding waters and ocean in general.” Id. at n.16. Nantucket Sound has thus been held to constitute approximately 600 square miles of unenclosed ocean and high seas, and is well beyond both the scale and nature of any appropriate TCP proposal.

II. Visibility from Ceremonial Sites would not Make the Sound Eligible for Listing as a TCP.

The essence of the Tribes’ claim has been that the entirety of Nantucket Sound is eligible to be listed as a Traditional Cultural Property because it is visible, under certain conditions, from other undisclosed land-based sites allegedly used for religious and cultural tribal ceremonies:

The Tribes’ practices include viewing the sun at dawn across an open and natural Sound while conducting religious ceremonies and prayers. Because of this, Nantucket Sound is eligible for the National Register of Historic Places as a Traditional Cultural Place (TCP).

Joint Letter of The Alliance to Protect Nantucket Sound and Wampanoag Tribes, June 23, 2009, at 4. The SHPO similarly relies upon religious Tribal practices “dependent on reverential viewsheds of Nantucket Sound.” SHPO at 12. However, even if the land-based ceremonial sites were deemed to be TCPs, the Tribes’ and SHPO’s fundamental premise (*i.e.*, that the boundaries of such TCPs should therefore extend into the ocean as far as the eye can see) is contrary to the published guidance and policies of the National Register, as well as the established precedent in similar cases. As discussed in detail in our letter of July 6, 2009, enclosed herewith and incorporated by reference, such authorities plainly discourage the nomination of natural features and water bodies, require substantial documentation of alleged eligibility factors, and provide that TCPs associated with ceremonial sites are properly limited to “immediate viewsheds” and within “reasonable” and “well-defined” boundaries.¹ As discussed in detail in such letter, Nantucket Sound’s 600 square miles of unenclosed and heavily utilized ocean fall far short of meeting each of such governing requirements.

III. The Ethnographic Data Relied upon by the SHPO Recounts Legendary Events Occurring Primarily Outside of Nantucket Sound and Therefore Cannot Support an Eligibility Determination Under Criterion A, B, or C.

While the SHPO further based her opinion on extensive ethnographic data regarding “the central origin story” of the Wampanoags, she repeatedly and mistakenly attributed the associated events as having taken place in Nantucket Sound. The cited legends regarding the giant known as Maushop in fact focus events in and around the far western tip of Martha’s Vineyard (*i.e.*, as might be expected, near the Tribal lands of the Acquinnah Wampanoags²), and the associated waters to the west of the Island, including Vineyard Sound and Rhode Island Sound, but not Nantucket Sound. For example, while the SHPO states that Maushop “drop[ped] rocks in

¹ See, *e.g.*, and as discussed in our attached letter of July 6 at 3-5, TCP Guidelines, at 20 (TCP boundaries of mountain-top Tribal ceremonial site limited to “immediate viewshed” of approximately one-half mile, thus excluding the significant but more remote vistas); Defining Boundaries for National Register Properties (1997), at 27 (TCP boundaries of mountain-top Tribal ceremonial site properly limited to the immediate 510 acres, thus excluding the significant but more remote viewsheds); *Id.* at 19 (TCP boundaries of oceanfront Dune Shack District on Cape Cod include only viewsheds extending to the coastline, but not the more remote ocean viewsheds of acknowledged significance); *Id.* at 22 (TCP boundaries of mountain-top scenic drive extend to a 50-foot width from the road’s center line, so as to exclude the acknowledged but more remote “scenic vistas”).

² The above-mentioned concentration of the Tribal legend events in the immediate vicinity of Gay Head, the location where the Wampanoags are proposing their own wind turbine project, should raise serious questions as to the motive and legitimacy of asserted cultural claims. As discussed in detail at pages 7-8 of our enclosed July 6th letter, the Wampanoags have filed for a \$50,000 grant to pursue a wind power project at the “preferred site” of the Gay Head Cliffs, notwithstanding the Tribe’s acknowledgement that “Gay Head Cliffs is a national monument with strong and cultural significance.” The enclosed materials indicate two proposed locations, on Tribal lands, within approximately 115 meters and 175 m of the National Historic Landmark of the Gay Head cliffs, as well as within approximately 97 m and 194 m from the “Lookout Point” designated for viewing the cliffs, within areas designated as “Scenic Landscapes” and “Protected and Recreational Open Space.” The contention that a project located some 25 miles from tribal lands would somehow undermine Tribal culture is thus severely undermined by the simultaneous proposal of the Wampanoag wind project in “designated scenic landscape” areas, in immediate vicinity to a National Historic Landmark, and at the very center of tribal life.

Nantucket Sound to create Devil's Bridge" (SHPO at 11), nautical charts indicate that Devil's Bridge is in fact located off of Gay Head at the western shore of Martha's Vineyard, and not in Nantucket Sound.

Further, one of the primary ethnographic resources cited by the SHPO (William S. Simmons 1986: 192) confirms that the Devil's Bridge legend relates to the rocky submerged structures extending westerly from Gay Head towards Cuttyhunk said to have been created by Maushop, a "mighty giant" living in the vicinity of Gay Head, at the western tip of the Island. In building his "[Devil's] bridge, Maushop is said to have excavated earth and rocks from the Gay Head cliffs (which explains the origin of the circular depression known as Devil's Den) which was carried as material in his shoe," and that "Maushop projected the bridge by which to cross over to Cuttyhunk and remain there, and laid the foundation with rocks brought from the opposite shore." Simmons further recounts a version of the Maushop legend whereby, while residing at Gay Head, in order "to facilitate the catching of fish, he threw a really large stone, in proper distances, into the sea, on which he might walk with greater ease to the South. This is now called Devil's Bridge." *Id.* Such references to legendary events in waters in and around Vineyard Sound thus offer absolutely no support for a TCP designation of an entirely different water body, *i.e.*, Nantucket Sound.

The SHPO also geographically misstates the central legend of Maushop's separating the Elizabeth Islands and Noman's Land from Martha's Vineyard by stating that he did so by dragging his toe across Nantucket Sound. SHPO at 11. Again, the geographic misstatement is obvious, as the Elizabeth Islands are separated to the west of Martha's Vineyard by Vineyard Sound, and not Nantucket Sound, and Noman's Land is located to the South of Gay Head, and not in Nantucket Sound. Simmons similarly recounts the same legend so as to confirm the event's location away from Nantucket Sound, as Maushop is said to have "dragged his toe to create the passage across the beach that joins Noman's Land to Gay Head," and that "after separating Noman's Land from Gay Head ... and throwing his wife at Saconet Point [R.I.] where she still remains a misshapen rock, he went away nobody knew whither" (Simmons 176, 178).

Similarly, while the SHPO also references the legend that the multi-colored, Miocene fossil-bearing clays at Gay Head are the "remains of Maushops ancient cooking fires," such cliffs are located at the extreme western point of Martha's Vineyard, and thus far removed from the waters of Nantucket Sound, which are located to the east of the island. (And, notably, to the extent the Cliffs were deemed to have legendary significance, they are thus in immediate proximity to the Wampanoags' own proposed wind project, as discussed in note 2 above.)

By mistakenly attributing to Nantucket Sound central legendary events occurring elsewhere, and thus affecting other bodies of water, the SHPO has made an improper application of the National Register Criteria for Evaluation. Indeed, Criteria A (association with events that have made a significant contribution to history, *i.e.*, central events of the Maushop legend) and Criteria B (association with lives of persons significant in our past, *i.e.*, Maushop) are thus not satisfied by the extensive ethnographic and ethnohistorical record referenced by the SHPO, when properly applied to Nantucket Sound. Nor do such materials satisfy Criteria C (sites that embody

a distinctive characteristics of type, or method of “construction”), a criteria that cannot be met a by a natural feature such as Nantucket Sound, irrespective of legendary events. Indeed, contrary to the understanding of the SHPO (SHPO at 15), the TCP Guidelines confirm that “this subcriterion [C] applies to properties that have construction, or contained constructed entities that is, building, structures, or built objects.” TCP Guidelines at 13. The ethnographic legend materials cited by the SHPO thus do not meet the requirements of Criteria A, B, or C, when such criteria are properly applied to Nantucket Sound.

IV. The SHPO Relies upon Historical Usages and Dependence upon Marine Resources that are either not Particular to, or not Located within, Nantucket Sound, and Therefore Cannot Support an Eligibility Determination Under Criteria A, B or C.

The SHPO similarly relies upon accounts of historic usage and dependence upon marine resources that are either not particular to, or not located within, Nantucket Sound. As an initial matter, the SHPO cites to examples of historic presence that would apply equally and broadly throughout the region, and without particular applicability to Nantucket Sound. For example, the SHPO states that “ancient Native Americans in Southern New England rely considerably on marine resources” (SHPO at 3), that they used coastal marine resources “throughout the Cape and Islands and Southeastern Massachusetts regions” (SHPO at 5), and that access to marine resources contributed to social organizations “distinctive to Southern New England” (SHPO at 5). Thus, the SHPO relies largely upon regional patterns of general and diffuse applicability that are not uniquely or particularly applicable to Nantucket Sound, and would thus not justify site-specific TCP status.

The SHPO further relies upon additional historical data on the utilization of various resources that have little or no geographical applicability to Nantucket Sound and, in any event, are not particular to Nantucket Sound. With respect to historic whaling activities, the SHPO cites to an account of a Wampanoag harpooning a whale “south of the Azores” (SHPO at 6), noting the parallel to the fictional Wampanoag character Tashtego in Herman Melville’s Moby Dick, which recounted a whaling expedition leaving from New Bedford for the whaling grounds of the Indian Ocean (SHPO at 6-7), such that in both cases the whaling events obviously occurred far away from Nantucket Sound. The SHPO further references a historic marine rescue of the 1884 wreck of the City of Columbus “on Devil’s Bridge in Nantucket Sound.” As discussed above, however, Devil’s Bridge is located off the far western end of Martha’s Vineyard and not in Nantucket Sound. And while the SHPO cites to contemporary fishing activities, she once again geographically misstates such activities as being within Nantucket Sound: “Male relatives taught [boys] where to find the best fishing spots – *Wampanoag fishing spots* – like the shoals of Devil’s Bridge [in Nantucket Sound] or the waters just off Noman’s Land Island.” SHPO at 8. Again, both of the cited locations are in the vicinity of the Aquinnah Wampanoag tribal lands at Gay Head, but not Nantucket Sound.

In any event, the mere fact that Tribal members had a historical presence in the area is insufficient to establish TCP eligibility. The National Register Bulletin, How to Apply the National Register Criteria for Evaluation, Part IV, provides that historic sites, should be established to “include only portions of the site retaining historic integrity and documented to have been directly associated with the event.” Id. at Section III, p. 42. If a general assertion of historic presence or usage would suffice to show TCP eligibility, the very same factual claim could be applied as easily to virtually all of the land areas of New England and all of the surrounding waters, an absurd result that is inconsistent with established policies and precedent. It is also notable that the extensive geophysical and geological offshore site work conducted for the Proposed Undertaking showed “no evidence of material cultural remains”. See, FEIS at 5-242. Accordingly, the general assertion of historic presence cited by the SHPO does not provide a basis to establish TCP eligibility for Nantucket Sound under Criteria A, B or C.

V. **The Sound has Not Yielded, and has Not Been Shown to be Likely to Yield, Important Prehistoric or Historic Information and is Therefore Not Eligible under Criterion D.**

The SHPO has also failed to demonstrate that Nantucket Sound has yielded, or is likely to yield, important prehistoric or historic information, as would be required by eligibility Criterion D. As set forth in CWA’s Final Environmental Impact Statements prepared by the MMS, CWA’s site has undergone extensive subsurface testing, including the taking of 87 vibracores and 22 borings, with the FEIS drawing the conclusion that testing “showed no evidence of material cultural remains.” See, FEIS at 5-242. In contrast, the SHPO merely speculates, but provide no factual support for the assertion, that significant archeological information would someday likely be discovered, notwithstanding the complete absence of any such results in connection with any studies which have been conducted. Such an undocumented claim cannot be used to justify the serious consequences of designating Nantucket Sound as a TCP.

In that regard, we also note the guidance of the TCP Guidelines to the effect that Criterion D is typically “secondary” to some other qualification: “Generally speaking, however, a Traditional Cultural Property’s history of yielding, or potential to yield, information, if relevant to its significance at all is secondary to its association with a traditional history and culture of the group that ascribes significance to it.” Id. at 14. Thus, extensive testing has not yielded indication of the likelihood of significant information, it is purely speculative to suggest that at some future date such a discovery could occur, and, in any event, and as discussed above, there has been no showing of any other basis of eligibility to which the suggested potential could have “secondary” and associated relevance.

VI. A Determination of Eligibility Would Have Far Reaching and Unpredictable Adverse Effects.

The Keeper should further consider that a determination of National Register eligibility of a highly-utilized area of unenclosed ocean as large as Nantucket Sound would have far-reaching, unpredictable and adverse consequences. First, if the unenclosed ocean could be so listed under these facts, it would be far easier to list enclosed (and thus “well-defined”) waters, for which the very same cultural and historical usage claims could as easily be made (including, for example, Vineyard Sound, Buzzards Bay, Narragansett Bay, Cape Cod Bay, Dorchester Bay, Chesapeake Bay etc.). Second, the Tribes have already indicated an intent to expand their cultural claims geographically, as recent press indicates that the WTA tribal representative now maintains that all areas around Martha’s Vineyard are “culturally significant,” including both sunrise (eastern) and sunset (western) views: “When asked during a meeting on the draft plan to indicate what areas of Martha’s Vineyard were culturally significant to the tribe [the WTA representative] said she drew a big circle around the entire island,” noting that “you can see the sun rise out of the water and see the sun set on the water.” Cape Cod Times, July 1, 2009. Third, if such highly-utilized waters themselves became TCPs, all actions in, affecting, or visible therefrom could become subject to National Historic Preservation Act (“NHPA”) review, including commercial fishing, marinas and wharves, cell towers, bridges, marine and avian transportation, and virtually all activity traditionally associated with designated port areas, a result far beyond the intended reach of the NHPA and seriously detrimental to the interests of the Commonwealth and Nation.

VII. With Respect to the Requirement of Continued Historical “Integrity,” The Keeper Should Recognize that Coastal Windmills Have Long Been an Integral Part of the Visual Heritage of Cape Cod, and that Nantucket Sound and the Surrounding Coastlines Have Become Heavily Utilized and Densely Developed Areas.

The Keeper should evaluate Nantucket Sound within a historical context that recognizes that (i) the Sound today is heavily utilized and has a densely developed shoreline, and (ii) extensive, widespread and highly visible arrays of coastal windmills have long been an integral part of the visual history and heritage of Cape Cod. The Advisory Council’s regulations in this regard identify “adverse affects” as those that alter “the characteristics of a historic property that qualify the project for inclusion in the National Register,” including changes to those physical features “within the property’s setting that contribute to its historic significance.” 36 CFR 800.5 (a)(i), a (2)(iv).

In this case, the review should thus consider the historical fact that, from the time of the Revolution through the close of the nineteenth century, wind power was an integral and defining feature of the visual character of the region’s coasts, thus altering its prior appearance. Cape Codders revolutionized American salt production in the late 18th century by utilizing wind power to pump seawater landward for evaporation, such that “soon the wooden skeletons of

rustic windmills were seen on the edge of most Cape Cod towns,” and by 1837 “Cape Cod alone had 658 salt companies producing more than 26,000 tons per year.” Kurlansky, Salt: A World History (Penguin 2002) at 223, 246. Cape historian William Quinn (The Saltworks of Historic Cape Cod: A Record of the Nineteenth Century Economic Boom in Barnstable County, Parnassus Imprints 1993) similarly described the “phenomenal growth” of wind-powered saltworks in highly visible locations all along the coast of Cape Cod:

Many changes on the peninsula were brought about by the rapid development of the saltworks. The barren seaside on Cape Cod was considered wild land by the original settlers.

The Cape’s upland beach areas had been left mostly in their natural state until the saltworks construction began. This widespread building completely changed the seaside landscape. The prolific use of these natural areas created a new rural scenery with covered vats as far as the eye could see.

The business began to multiply rapidly after several improvements had been implemented. Just before 1800, saltworks were being constructed all over Cape Cod.

Quinn, Id at 22-23 (emphasis added).

Quinn’s work further provides photographs demonstrating the prominent coastal visibility of such wind structures throughout the nineteenth century, including locations in proximity (both spatial and temporal) to many of the designated sites now of concern. Attached as Exhibit A in this regard are typical examples of historic shorefront windmills, with the author’s statement that “these structures dotted the landscapes near the shores of every Cape Cod town.” Id. With specific respect to Barnstable, Exhibit B shows the historic coastal windmills of the Crocker saltworks, as well as extensive evaporation structures which “covered a vast area of the land next to the present day Barnstable Harbor.” Id. at 111. With respect to Yarmouth, Exhibit C shows extensive coastal wind and salt structures in both South Yarmouth and East Yarmouth. With respect to the areas of Osterville, Wianno, Lewis Bay and Hyannis Harbor, Exhibit D shows that extensive wind-powered saltworks were deployed in all such coastal areas, as indicated by the 1849 U.S. Coastal Survey Map. Id. at 116-117. Exhibit E in turn shows the historic Nickerson wind and salt facilities at Chatham, which were listed by assessor’s records as including 4,400 feet of saltworks. Id. at 154.

The Keeper should also recognize that, to this day, windmills are revered as a symbol of the historical heritage of the Cape, as evidenced by the historical monument depicted on Exhibit F, commemorating the site where John Sears in 1776 revolutionized the American salt industry by utilizing the wind power of Cape Cod. Id. at 20. Thus, the historic continuity of the Sound should be evaluated within a historical context that recognizes the long standing, prominent and visible presence of wind facilities that caused substantial visual alteration of the coastal areas of the Sound.

The Honorable Kenneth Salazar
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The Keeper should also recognize that the coastline of Nantucket Sound has now been even more densely developed, and that today the Sound is itself heavily utilized for a wide range of uses, including marine transportation, shipping and commercial fishing. Indeed, project opponents now working in tandem with the Tribes describe Nantucket Sound on their website as containing “major shipping lanes,” “lucrative fishing ground,” “heavily travelled navigation and shipping lanes,” and “heavily trafficked waters.” The Keeper should thus recognize the modern reality that intense development and usage in and around Nantucket Sound has substantially altered the historical “integrity” of the area as it once existed.

VIII. Conclusion.

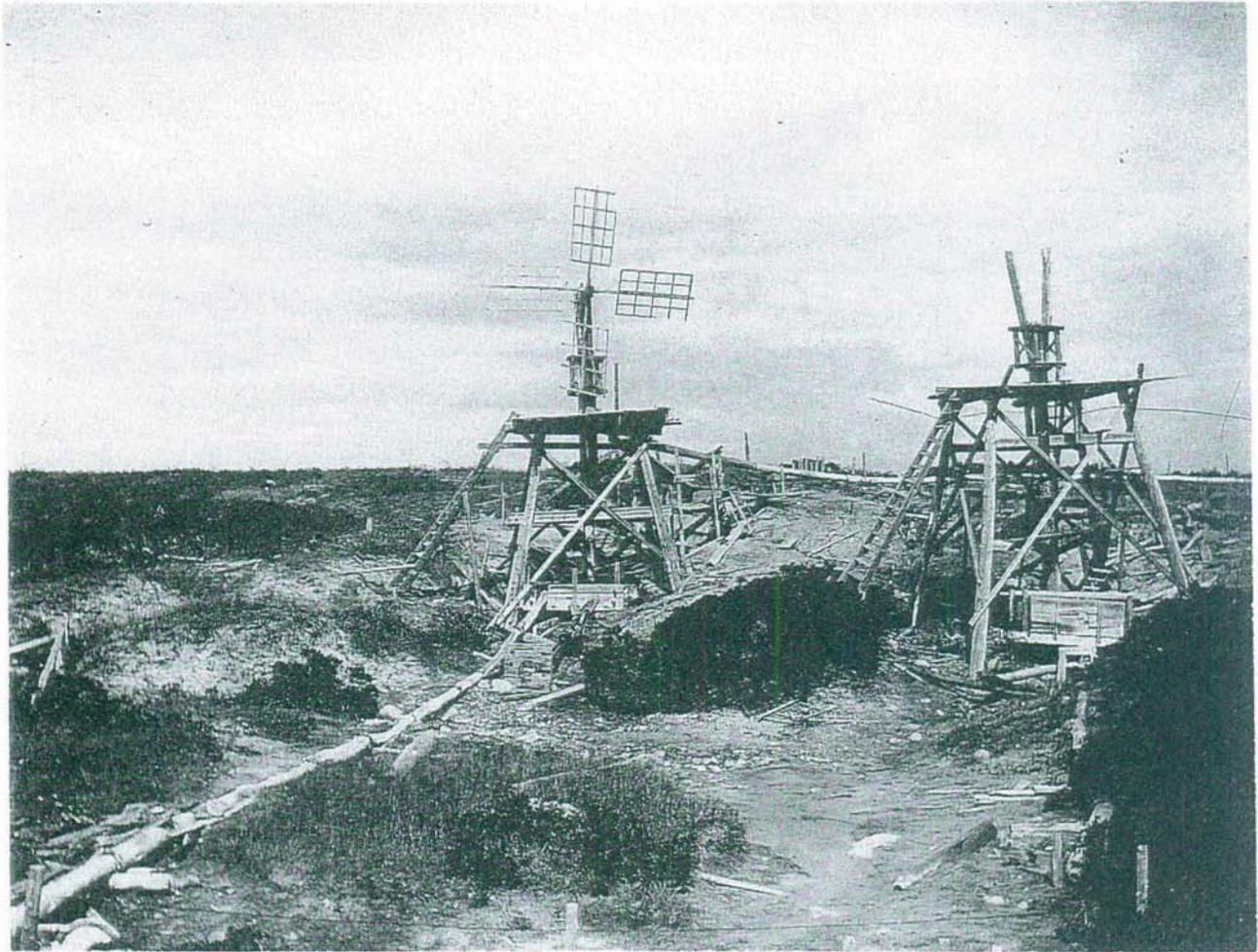
As discussed above, the Keeper should promptly confirm the non-eligibility determination of the MMS and reject the position of the SHPO that the approximately 600 square miles of unenclosed ocean known as Nantucket Sound should be determined to be eligible for listing on the National Register.

Sincerely,

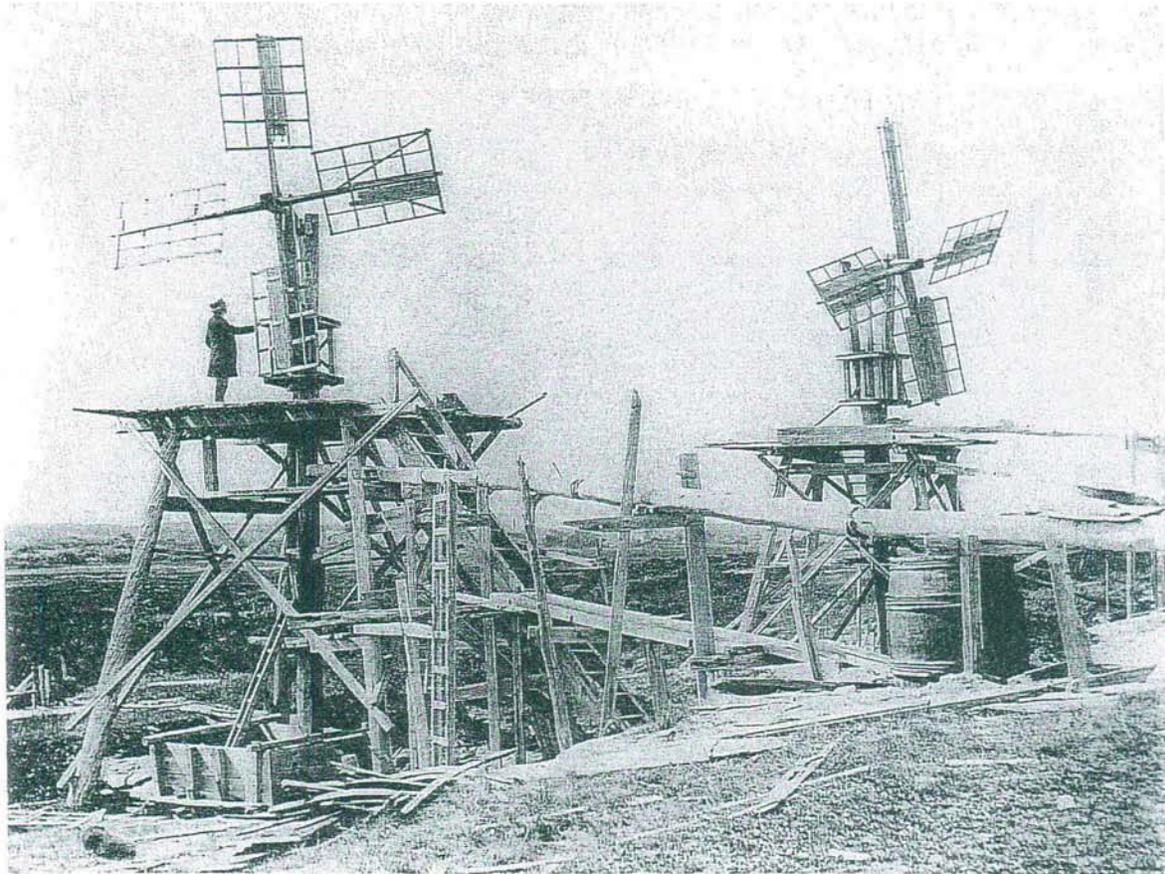
A handwritten signature in blue ink that reads "Dennis J. Duffy". The signature is written in a cursive style with a large, stylized 'D' at the beginning.

Dennis J. Duffy
Vice President of Regulatory Affairs

Exhibit A

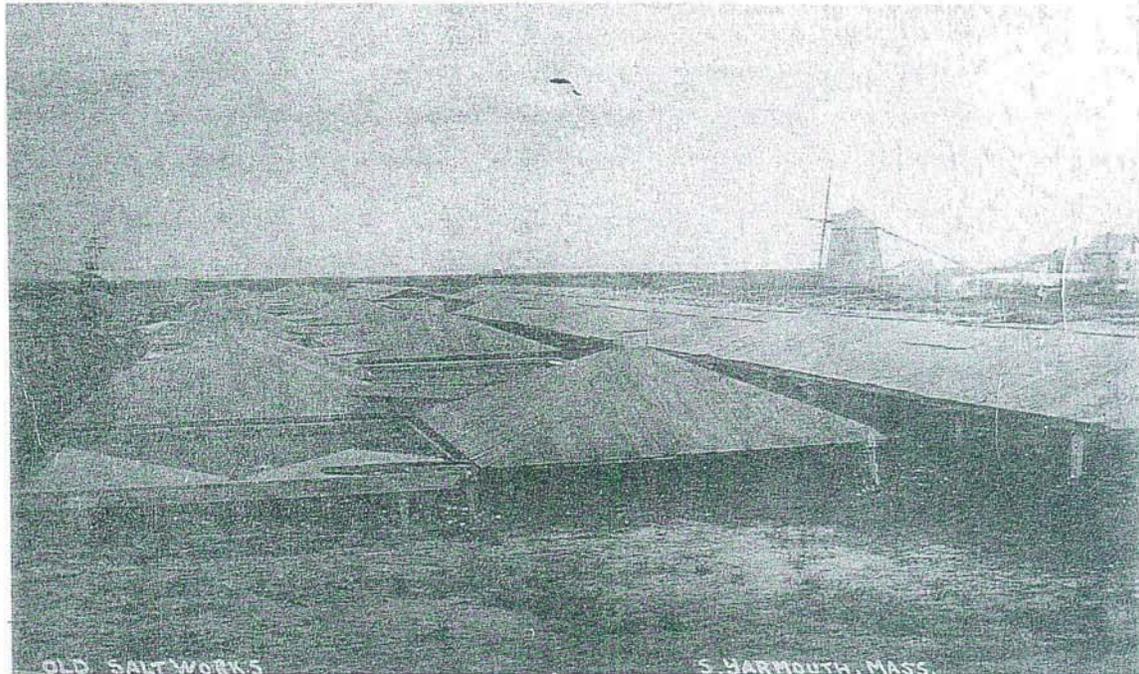


The saltworks began at the shore where windmills pumped sea water from reservoirs up to the evaporating vats to make salt. These structures dotted the landscapes near the shores of every Cape Cod town. *Photo from the H.K. Cummings Collection.*



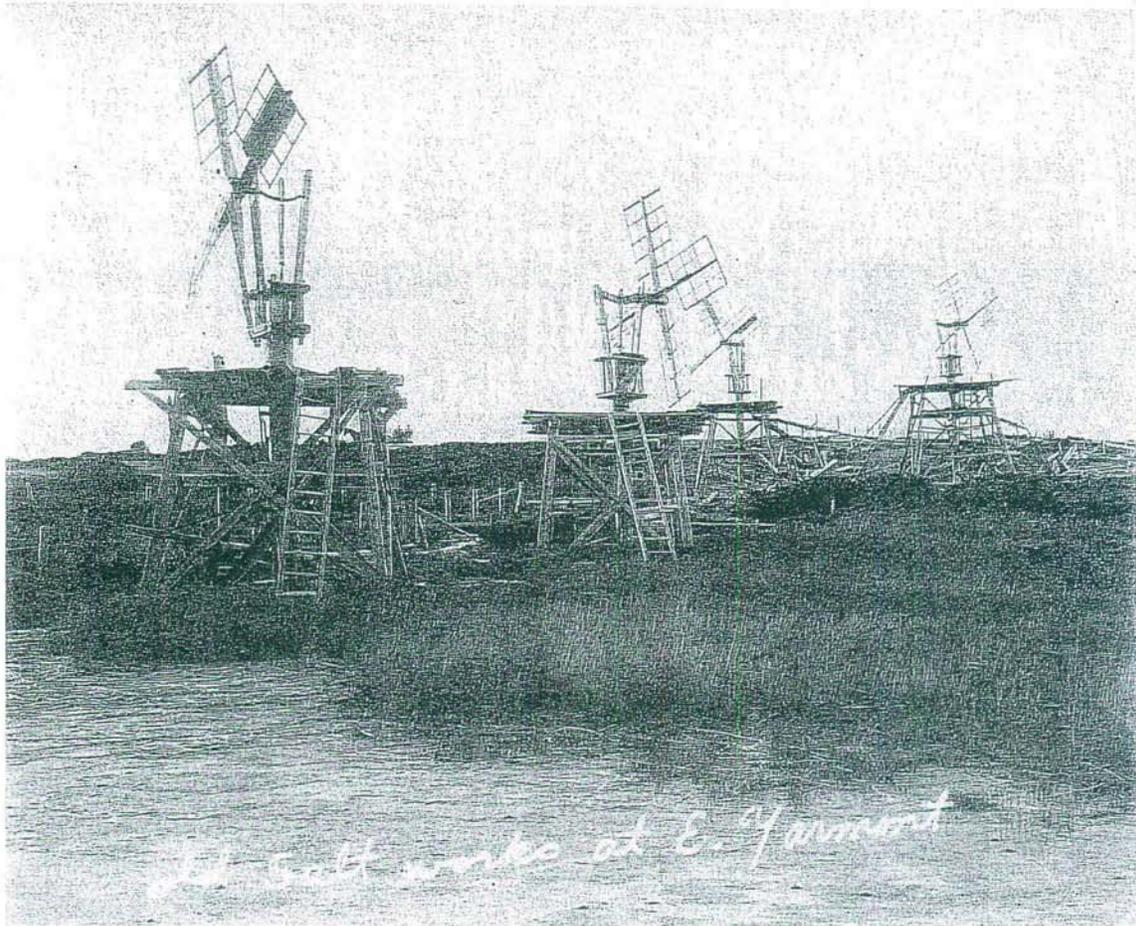
Above: The salt mills at the Crocker saltworks in Barnstable. The size of the pumps can be determined in relation to the man standing beside the wind vanes. A six-foot man would indicate that the diameter of the mill vanes is about eighteen feet with about twenty feet of vane area to catch the wind. The wooden pipes leading to the salt vats were hollowed out logs. They were either drilled or burned out. The pipes were then connected together and sealed with white lead. **Below:** The saltworks of Loring Crocker in Barnstable covered a vast area of the land next to the present day Barnstable Harbor. In this photo there are two horses and buggies. One of these may be a working rig for the man tending the saltworks. *Photos from the collection of Louis Cataldo, Barnstable, Mass.*





Above: The picture is titled "Old Saltworks, S. Yarmouth, Mass. The Judah Baker windmill is on the right side of the photo. It is still in nearly the same area today. **Below:** This photo is taken from an old post card and it is another area of the saltworks at Bass River with the salt mills near the water. Drying rooms and salt vats surround the land next to the dwelling houses in the background. *Photos courtesy of Alec & Audrey Todd, Yarmouth, Mass.*

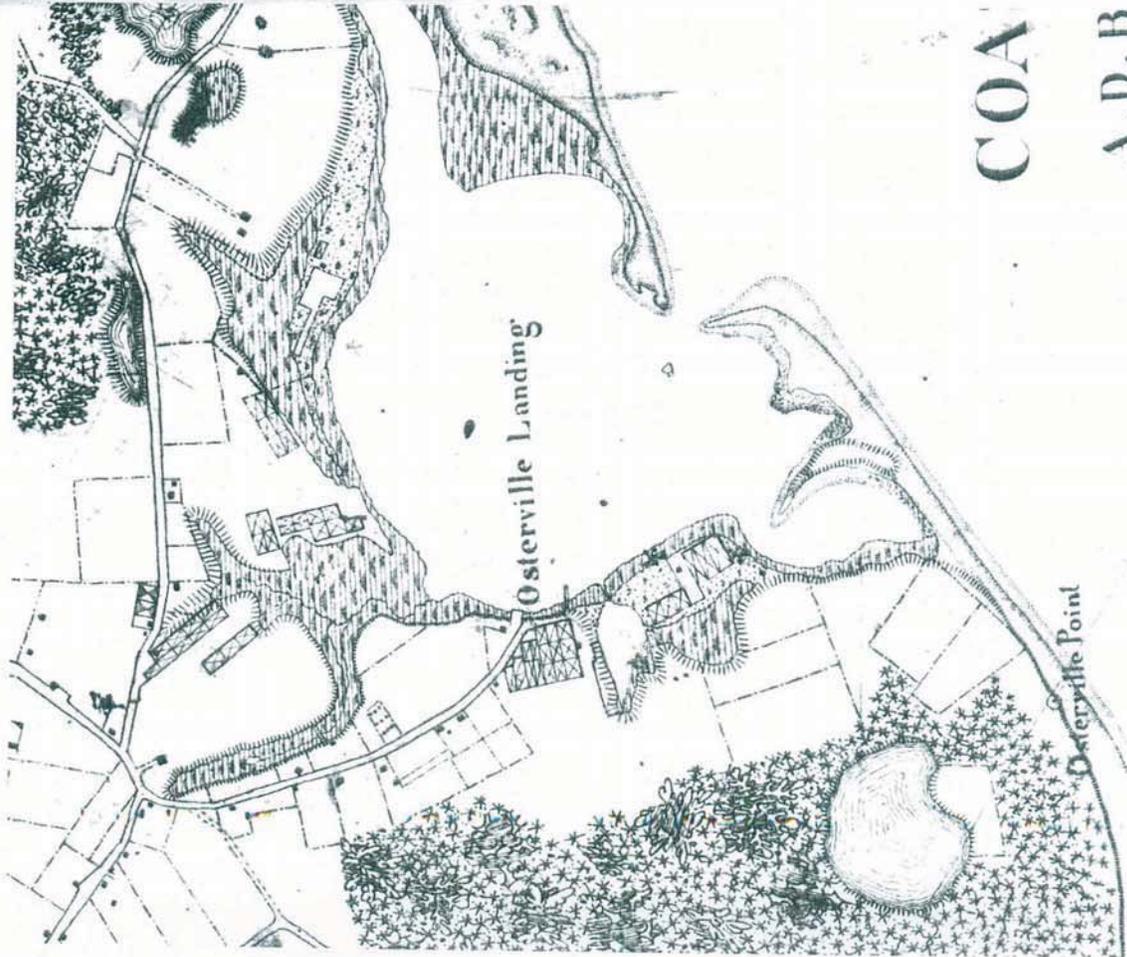




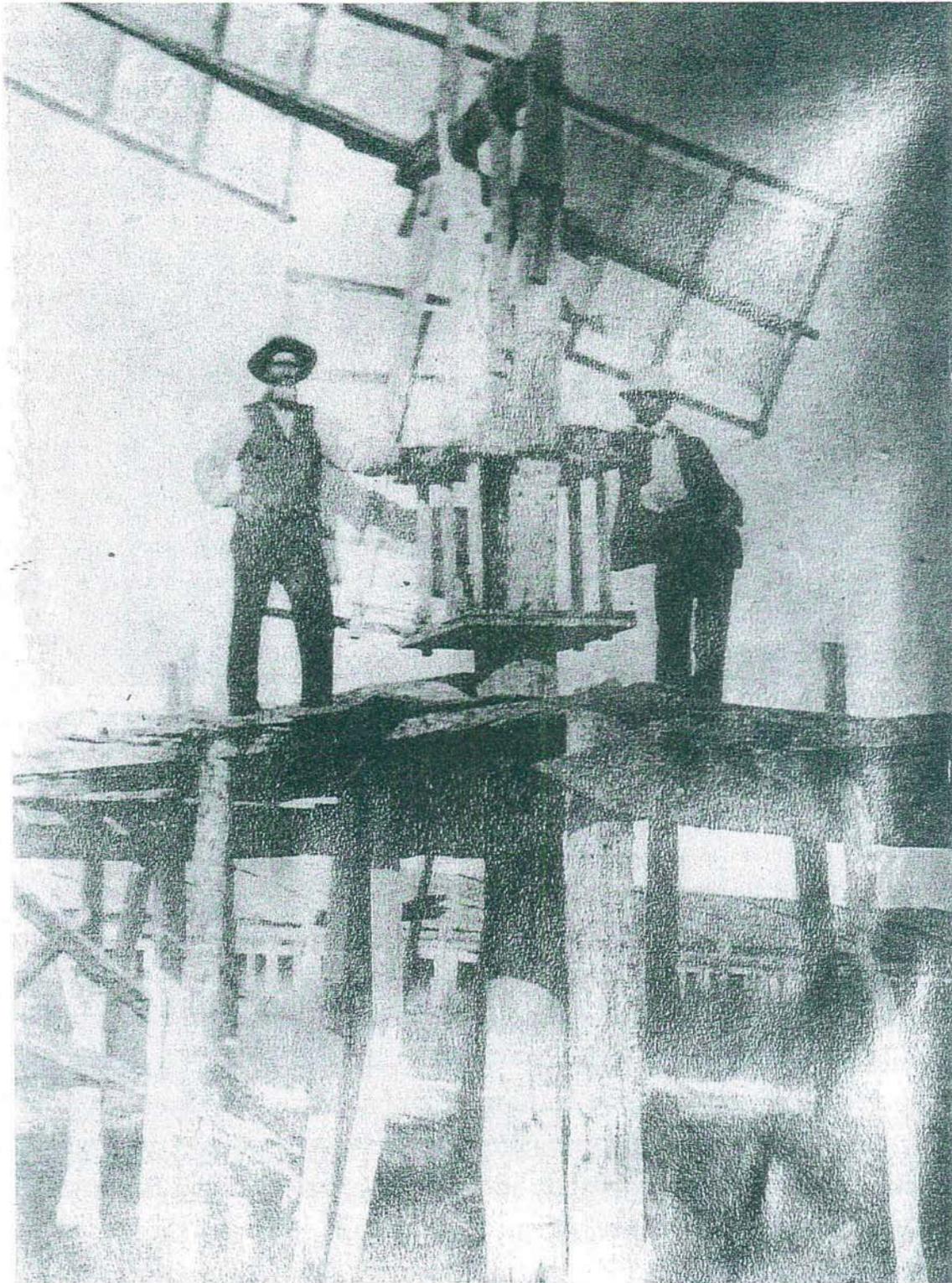
Four salt mills in a row in this photo titled "Saltworks at East Yarmouth." The title locates them near the large area of works on Bass River. *Photo from the Author's collection.*



The Hyannis saltworks were located near Dunbar Point on Lewis Bay and Hyannis harbor. The small x near the center of the map on the beach is the site of a salt mill.



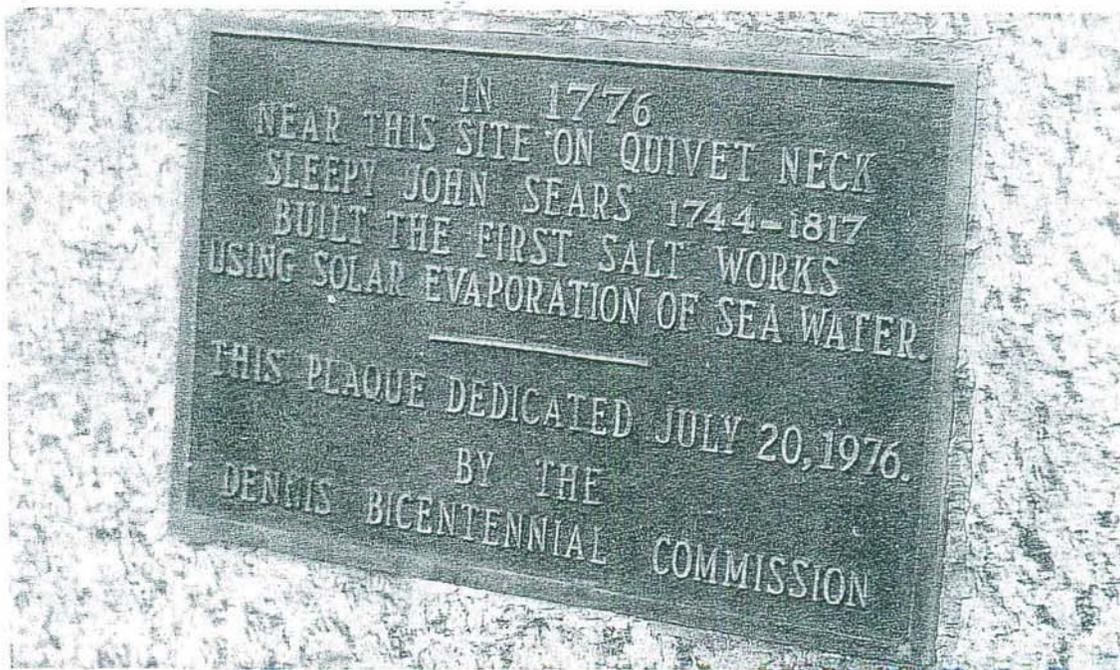
The saltworks in Osterville were located at what is the present East Bay near Wianno. There were several hundred feet of evaporators as depicted in the 1849 U.S. Coast Survey map.



The Assessors listing for the Town of Chatham for the year 1829, on page 160, lists Jesse Nickerson as owning 4,400 feet of saltworks. The men posing atop salt mill might well be his heirs. *Photo from the Library of Congress, Washington, D.C.*



Above: The Dennis Bicentennial Commission dedicated a monument to John Sears in 1976. The boulder lies in the center of a field where some of the Sears saltworks were situated. Below: The bronze plaque is about Mr. Sears who is considered the progenitor of this early industry. *Photo by William P. Quinn.*





Technical Memorandum

Cape Wind Energy Project

Nantucket Sound - Cape Cod, Martha's Vineyard, and
Nantucket, MA

National Register of Historic Places Eligibility Evaluation and Visual Impact Assessment of Additional Properties

November 14, 2008

Submitted to:
Cape Wind LLC
75 Arlington Street
Boston, MA 02116

The Minerals Management Service (MMS) has issued a draft Environmental Impact Statement (DEIS) for the Cape Wind Energy Project (the Project) that is being proposed by Cape Wind LLC (Cape Wind). During a 30-day public comment period established by MMS in Fall 2008 as part of the Section 106 process, consulting parties identified 22 properties that may be eligible for listing in the National Register of Historic Places (National Register) and may be affected by the Project. These properties were additional to those previously evaluated during earlier studies. The specific type of effect under assessment is potential views from onshore historic architectural properties of the visible components of some or all of the Project's proposed 130 offshore wind turbines. The wind park will be located at least five miles offshore of the nearest landform. This Technical Memorandum presents the results of PAL's National Register eligibility evaluation and visual impact assessment, completed at the direction of MMS and Cape Wind.

The 22 properties consisted of 1 historic district recently listed in the National Register, 2 historic districts and 1 individual resource previously evaluated as eligible by the Massachusetts Historical Commission (MHC), and 18 properties that have not been previously evaluated by the MHC. Properties are located in the communities of Falmouth, Yarmouth, Harwich, Chatham, Oak Bluffs, and Tisbury, Massachusetts. The 22 properties are listed in Table 1.

PAL historic preservation staff collected and reviewed existing MHC inventory forms for the identified properties. Staff then conducted site visits to view the existing conditions of each of the individual properties and districts, evaluate National Register eligibility based on existing inventory information and exterior visual factors, and assess the visibility of the proposed wind park area in Nantucket Sound. All field work was conducted from public ways with the exception of the Corey House on Great Island, in Yarmouth (PAL staff was accompanied to that location). Digital photographs were taken of the properties and the views towards the wind park. The results are presented in the attached Table 1, Properties



Identified by Consulting Parties for National Register Evaluation and Visual Impact Assessment, Cape Wind Energy Project.

A total of 13 out of the 18 previously unevaluated properties were recommended as National Register eligible as a result of this evaluation. One additional property may be eligible, but was not visible from a public way and therefore was not viewed (the Jonathan Higgins House in Chatham). Nine of the 13 properties recommended as eligible were found to have open, or in one case limited, views of Nantucket Sound in the direction of the proposed wind park. Nantucket Sound was found to be an element of the setting at each of the nine properties. Four properties in Yarmouth were evaluated as not eligible, due to either extensive alterations or demolition.

Views of Nantucket Sound in the direction of the proposed wind park were classified as 1) open, 2) none to very limited, and 3) none. The visual impact assessment found that 12 of the 22 properties identified by the consulting parties as part of this evaluation have a view to the wind park location and therefore an adverse effect. The 12 properties include one National Register-listed historic district (West Chop in Tisbury), two historic districts previously evaluated as eligible by MHC (Falmouth Heights and Ocean Grove historic districts in Falmouth and Harwich, respectively), and nine properties recommended as eligible as part of this evaluation. The single property previously determined National Register eligible (Seaman's Reading Room in Tisbury) has no view and thus no effect. Eight properties recommended as National Register eligible have open, direct views to the wind park location and will be adversely affected. One property recommended as eligible has a very limited view to the wind park location and will not be adversely affected. Four properties recommended as eligible have no view and will not be affected by views of the proposed wind park.

Table 1. Properties Identified by Consulting Parties for National Register Evaluation and Visual Impact Assessment, Cape Wind Energy Project.

Property	MHC No.	Comment	NRHP Evaluation	View of Wind Park Area	Finding of Effect
Properties on or Previously Identified by MHC as Eligible for the NRHP					
Falmouth Heights HD, Falmouth (approximately 500 components)	FAL.I	Shoreline bluff setting on Vineyard Sound	Eligible (Criteria A and C)	Open	Adverse Effect
Ocean Grove HD, Harwich (approximately 100 components)	HAR.L	Shoreline on Nantucket Sound	Eligible (Criteria A and C)	Open	Adverse Effect
Seaman's Reading Room, Tisbury (in William Street HD, NR listed)	TIS.135	Set back from shore in village setting	Consensus DOE (individual)	None	No Effect
West Chop HD, Tisbury (approximately 100 components)	TIS.D	Shoreline bluff setting facing Nantucket Sound on the east	Listed (Criteria A and C)	Open	Adverse Effect
Properties that have not been Previously Evaluated by MHC for NRHP eligibility					
Property	MHC No.	Comment	NRHP Recommendation	View of Wind Park Area	Finding of Effect
Cape Cod					
Maravista HD, Falmouth (approximately 25 components)	FAL.K	Shoreline on Vineyard Sound	Eligible (Criteria A and C)	Open	Adverse Effect
Menauhant HD, Falmouth (approximately 45 components)	FAL.J	Shoreline on Vineyard Sound	Eligible (Criteria A and C)	Open	Adverse Effect
Church Street HD, Falmouth (contains Nobska Light) (approximately 25 components)	FAL.M	Most of district faces Little Harbor; bluff setting facing Nantucket Sound on the east at Nobska Light	Eligible (Criteria A and C)	Open	Adverse Effect
15 Windemere Road, Yarmouth; full Cape ca. 1750-1775	YAR.304	Moved 1940s, large garage addition since 1979 survey	Not Eligible	n/a	n/a
193 Berry Ave, Yarmouth; Shingle Style summer resort hotel ca. 1900	YAR.289	Windows replaced otherwise same since 1979 survey	Not Eligible	n/a	n/a
268 South Sea Ave, Yarmouth; half-Cape	YAR.273	Replaced or completely rebuilt since 1979 survey	Not Eligible	n/a	n/a
Corey House, Great Island, Yarmouth	No MHC form	Historic house replaced by current house built ca. 1995	Not Eligible	n/a	n/a

PAL: Technical Memorandum

Table 1. Properties Identified by Consulting Parties for National Register Evaluation and Visual Impact Assessment, Cape Wind Energy Project.

Property	MHC No.	Comment	NRHP Recommendation	View of Wind Park Area	Finding of Effect
205 South Street, Yarmouth; Three-quarter Cape, ca. 1770	YAR.365	Moved early/mid 20 th century. Unaltered since 1979 survey	Eligible (Criteria A and C)	None, intervening land and buildings	No Effect
Park Ave. HD, Yarmouth (approximately 25 components)	No MHC form	Most of district set back from Hyannis Harbor	Eligible (Criteria A and C)	Open through harbor mouth	Adverse Effect
Mass. Ave. HD, Yarmouth (approximately 25 components)	No MHC form	Massachusetts Avenue and Shore Road on Hyannis Harbor	Eligible (Criteria A and C)	None, intervening land mass	No Effect
Hithe Cote, 32 Snow Inn Road, Harwich	HAR.211	High elevation above Nantucket Sound	Eligible (prior recommendation – Criteria A and B)	Open	Adverse Effect
Stage Harbor Light, Chatham	CHA.917	Viewed from beach at Hardings Beach	Eligible (prior recommendation – Criteria A and C)	Open	Adverse Effect
Capt. Joshua Nickerson House, 190 Bridge Street, Chatham	CHA.260	Viewed from bridge over Mitchell River at Bridge Street	Eligible (prior recommendation – Criteria A and C)	None, intervening land mass	No Effect
Jonathan Higgins House, 300 Stage Neck Road, Chatham	CHA.419	Not viewed as not visible from public way; on Oyster Pond River; moved here from Wellfleet 1939	Possibly Eligible (MHC requested more information in 1999)	None, intervening land mass	No Effect
Stage Harbor Road HD, Chatham (approximately 50 components)	CHA.K	Most of district set back from Stage Harbor shore	Eligible (prior recommendation – Criteria A and C)	None to very limited; intervening land mass; view through harbor mouth	No Adverse Effect
Champlain Road HD, Chatham (approximately 25 components)	CHA.J	Shoreline bluff setting on Stage Harbor	Eligible (Criteria A and C)	Open	Adverse Effect
Martha's Vineyard					
Cottage City HD, Oak Bluffs (approximately 386 components)	Multiple Area forms	Shoreline bluff setting on Nantucket Sound	Eligible (Criteria A and C)	Open	Adverse Effect
Vineyard Highlands HD, Oak Bluffs (approximately 300 components)	OAK.B	Shoreline bluff setting on Nantucket Sound	Eligible (Criteria A and C)	Open	Adverse Effect

Note: Properties on Cape Cod are presented by town clockwise, west to east

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February 12, 2010

The Honorable Kenneth Salazar
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

James F. Bennett
Minerals Management Service
381 Elden Street
Mail Stop 4042
Herndon, Virginia 20170-4817

Re: MMS-2010-0MM-0002; Notice of Availability of Revised Section 106 Finding of Adverse Effect for the Cape Wind Energy Project

Dear Gentlemen,

Cape Wind Associates, LLC (“CWA” or “the Project”) hereby submits its comments in the above referenced matter. CWA commends the action of the Secretary in exercising decisive leadership to bring this long-delayed review process to a timely closure. As discussed below, the public processes which commenced in 2001 have been extraordinarily thorough, with exceptional public involvement on historical issues, including the active engagement of the Mashpee and Aquinnah Wampanoag Tribes from the outset, as evidenced by the extensive chronology attached as Exhibit A. The review process has included a highly favorable Draft Environmental Impact Statement (“DEIS”) issued by the Army Corps of Engineers (“ACOE”) in 2004, a highly favorable Massachusetts Final Environmental Impact Report (“FEIR”) in 2007, approval of CWA’s application by the Massachusetts Energy Facilities Siting Board (“EFSB”) in 2005, a highly favorable DEIS issued by MMS in 2008, a highly favorable Final Environmental Impact Statement (“FEIS”) issued by MMS in 2009, and extensive consultation under Section 106 that has led to a substantial package of proposed historical mitigation measures. We believe that the revised Findings document fully addresses all remaining issues and urge the Secretary to determine that, on balance, any residual impacts of the project on historic properties are outweighed by the overwhelming public benefits as to climate change, clean energy, energy independence and the creation of green sector jobs.

I. The Cape Wind Project is Critical to National and State Policies on Climate Change, Energy Independence, Renewable Energy and the Creation of Green Sector Jobs.

A. Cape Wind is Critical to Federal Policy Objectives.

In balancing competing policy interests, the Secretary should recognize that CWA occupies a critical and unique position in advancing national and state policies on climate change, energy independence, renewable energy, and the creation of green sector jobs. While offshore wind energy is one of the fastest growing and most promising aspects of the global energy industry, the United States now lags two decades behind Europe. We are pleased to note, however, that both President Obama and the Secretary have recently spoken favorably as to the potential for offshore wind in the United States. The timely development of the Cape Wind Project is also consistent with a number of Federal energy policies embodied within the Energy Policy Act of 2005 (“EPAAct”), including Section 388, which added wind to those offshore resources indentified for “expeditious” development under the OCSLA, and the provisions of Section 211 urging that the Secretary “before the end of the 10-year period beginning on the date of enactment of this Act, seek to have approved non-hydropower renewable energy projects on public lands with a generation capacity of at least 10,000 megawatts of electricity.”

Cape Wind will assist the Secretary in meeting such objectives, while providing a critical “first step” for the American offshore wind industry, as confirmed by the following statement of the United States Department of Energy (“USDOE”):

As the first shallow water offshore project under review in the United States, utility-scale projects like Cape Wind are important to our national interest and a critical first step to building a domestic, globally competitive wind industry. Success in this project could also lay the foundation for a focused national investment to develop offshore wind technology in the coming years.

* * *

Projects like Cape Wind are responsive to the Administration’s policy to increase renewable energy development on Federal lands and to reduce air emissions in collaboration with the private sector. We commend the vision, leadership and action by all parties to this project and their efforts to move our nation towards a sustainable energy future.

Letter of the USDOE Asst. Secretary David K. Garman to the ACOE, March 31, 2005. The 2009 report entitled “U.S. Offshore Wind Energy: A Path Forward” issued by the U.S. Offshore Wind Collaborative under the leadership of the USDOE similarly notes the important role of offshore wind in addressing “urgent” national issues, and the need to move forward before the U.S. falls even further behind in this rapidly growing global industry:

Offshore wind energy has great potential to address the United States urgent energy and environmental needs: however, this game-changing domestic renewable energy source remains untapped. Currently, the European Union (EU) leads the world in offshore wind development. Pilot offshore wind projects were installed in Europe as early as 1990, and by the end of 2008, EU nations had installed more than 1,470 MW of offshore wind energy capacity. Additional EU projects currently under construction will bring this total capacity to 1,800 MW. China (1.5 MW) and Japan (1 MW) are also developing the technologies and know-how necessary to realize the potential of offshore wind energy resources.

The nascent U.S. offshore wind industry has arrived at a crossroads. President Barack Obama pledged to reorient the nation's energy agenda to reflect his commitment to a clean energy future. In announcing the federal administration's strategy for developing energy resources on the Outer Continental Shelf, U.S. Secretary of the Interior Ken Salazar spoke of building, "a framework for offshore renewable energy development, so that we incorporate the great potential for wind, wave, and ocean current energy into our offshore energy strategy.

Id. at 4 (emphasis added). We thus urge the Secretary to give due weight to the urgent national policy directives that would be advanced by this timely approval of Cape Wind and the resulting commencement of the U.S. offshore wind industry.

B. Cape Wind Represents the Only Opportunity for Offshore Wind in Federal Waters within the Foreseeable Future, or Within the Term of the Obama Administration.

The Secretary should take note of the fact that Cape Wind is the only offshore wind project that could proceed in federal waters within the foreseeable future, and is thus critical to any near-term progress of the industry in the U.S. It is important to note in this regard that to our knowledge no other applications for commercial wind farm leases are yet pending before the MMS and, even when any future applications are filed, the expected duration of the multi-stage review process set forth under the MMS regulations ("Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf," 30 CFR parts 250, 285 and 290) would preclude any realistic chance of another project being approved by the Secretary within the term of the Obama Administration. Indeed, based upon discussion between MMS staff and the participants in the offshore wind industry, no other offshore wind proposals in federal waters has a realistic prospect of being approved for a period well in excess of five years. A position statement released on February 9, 2010 by the major participants in the U.S. offshore wind industry entitled The Offshore Wind Industry in the United States (Challenges and Opportunities) indicates that, absent changes in regulation or agency practice, any other project would require at least seven and one half years to complete the requisite review processes¹:

¹ Industry participants jointly issuing such policy statement include The American Wind Energy Association, Bluewater Wind, Deepwater Wind, Fishermen's Energy, Offshore MW, PSEG Global and Seawind Renewable.

According to MMS, a qualified offshore wind developer who submits an initial application today for authorization to develop a project on the Outer Continental Shelf (“OCS”) and follows the methodical process defined by the new rules would need at least 7.5 years to secure the regulatory approvals needed to start construction.

Absent effective reform, the leasing and permitting timeline for wind in federal waters will severely impede development of what should be a thriving multi-billion dollar offshore wind industry in the U.S.

More specifically, the industry position paper further confirms that, under the current regime, Cape Wind is the only project that could be approved by the Secretary in the foreseeable future:

If MMS’ current timeline holds, however, only Cape Wind, which first applied for authorization in Federal waters off the coast of Massachusetts before Congress created the current leasing regime in 2005, will have any prospect of securing timely authorization to construct an offshore wind farm in federal waters.

Id. at 2. Thus, other than Cape Wind, it is highly unlikely that any offshore wind project in federal waters could be approved by the Secretary during the Obama Administration, or come online within the next decade. While we join the industry in urging a compaction of the prospective review timelines, the fact remains that, under the current regime, without Cape Wind the American offshore wind industry will fall yet another decade behind the European nations, with corresponding delays in the public benefits, as well as setbacks for American participation in the associated green technology industries, including the design and manufacture of the components for this new industry sector that, elsewhere around the globe, is advancing rapidly.

C. Cape Wind is Critical to Massachusetts State Policy Objectives.

The elected leaders of Massachusetts have similarly stressed the unique importance of Cape Wind in addressing critical state policy objectives and starting the American offshore wind industry. Representative Edward Markey (D-Mass), Chair of the House Select Committee on Energy Independence and Global Warming, stated in his November 9, 2009 letter to the Secretary that “approving the Cape Wind project will allow the United States to begin harnessing this tremendous potential off our shores,” and further noted the potential of the project to “unleash” the new American industry:

Over the last few years, the Interior Department has undertaken an exhaustive review of the environmental impact of the proposed Cape Wind Project. Since this proposal was the first offshore wind turbine development to be proposed for the U.S. coastline, I thought it was vitally important that the environmental review be done correctly. Now that the project has passed its environmental review successfully and the Department is currently undertaking its final consultations with key stakeholders, I believe the time has come to move forward with the Cape

Wind project so that we can unleash the promise of this and other offshore renewable projects. (Emphasis added.)

The Administration of Massachusetts Governor Deval Patrick, by letter to the Secretary of July 15, 2009, has similarly urged approval of Cape Wind in order to move the nation's offshore renewable energy efforts forward:

As you know, the Cape Wind renewable energy project has been the subject of exhaustive federal and state reviews for more than eight years. The Commonwealth has completed state environmental review and the project has cleared all state and local permitting hurdles. Governor Deval Patrick supports moving forward with the Cape Wind project, and believes that the time is now to move our country toward a clean energy future and into a position of international leadership in the offshore wind arena.

By letter to the Secretary of August 19, 2009, the Massachusetts House and Senate Chairs of the jurisdictional legislative committees have also urged timely approval of the Project, stressing that "the timely development [of Cape Wind] is critical to the economic and environmental objectives of the Commonwealth." The above-referenced Report of the U.S. offshore Wind Collaborative similarly acknowledged the critical role that offshore wind plays in satisfying policy objectives of coastal states such as Massachusetts:

Twenty-nine states and the District of Columbia have either goals or laws requiring that a certain percentage of their electricity be generated by renewable energy. For many states, these standards may be difficult to meet using only land-based renewable energy sources, either because local renewable resources are insufficient or because of land-use constraints. Offshore wind energy development may be the only way for some coastal states to comply with their policies.

Id. at 8.

Further, on May 5, 2005, the Massachusetts Energy Facilities Siting Board ("EFSB"), the jurisdictional body of the Commonwealth charged by the legislature with ensuring a reliable energy supply with a minimum impact on the environment and at the lowest cost, approved CWA's petition regarding its in-state facilities, finding that the full increment of power from the wind farm "is needed on reliability and economic grounds, and to meet the requirements of Massachusetts and regional renewable portfolio standards." Final Decision, EFSB 02-2, May 10, 2005. Notably, the EFSB reached such determinations after a fully-litigated 32-month adjudicatory proceeding to which the Alliance to Protect Nantucket Sound ("Alliance") and others were active parties. The EFSB proceeding involved extensive pre-hearing discovery, 21 days of evidentiary hearings, cross-examination of expert witnesses, extensive briefs and reply briefs, and an evidentiary record of 930 exhibits. Based upon the foregoing, the EFSB Final Decision included the following adjudicatory findings on behalf of the Commonwealth:

“There is a need for the capacity provided by this wind farm beginning in 2007 for reliability purposes” (EFSB 02-2 at 152);

“Overall, the Siting Board finds that the air quality benefits of the wind farm are significant, and important for Massachusetts and New England” (Id. at 189);

“The variability or the unpredictability of the energy generated by the wind farm is unlikely to adversely affect the reliability of the electric system” (Id.);

“There will be a need for the renewable resources produced by the wind farm to meet regional RPS requirements in 2006” (Id. at 156);

“The record shows that the wind farm will tend to reduce market clearing prices for electricity because it typically will be bid into that market at its marginal operating costs, which are close to zero, and displace power plants with higher marginal costs.” (Id. at 162.)

Thus, the Commonwealth of Massachusetts, acting through its jurisdictional body, has rendered its final adjudicatory determination as to each of the foregoing issues. We urge the Secretary to give due deference to the foregoing policy positions of Massachusetts officials and jurisdictional agencies, including the findings of the EFSB as to the Commonwealth’s need for the Project, particularly in light of the specialized administrative expertise of the agency, the complexity of the regional electric power issues entrusted to its jurisdiction, and the deference traditionally afforded to the States in determining the adequacy and planning of their own electrical supply resources.

D. Cape Wind is Critical to the Policy Objectives of Leading Environmental, Labor, Industry and Community Advocates.

In balancing policy interests, the Secretary should also give due weight to the fact that Cape Wind enjoys an exceptionally high level of informed public support. In particular, Cape Wind is supported by the nation’s and region’s leading environmental and health organizations, including Sierra Club, Natural Resources Defense Council, Greenpeace USA, Union of Concerned Scientists, Conservation Law Foundation, Environment Massachusetts, Environmental League of Massachusetts, Clean Water Action and the American Lung Association. Indeed, in its public comments on the project’s DEIS, the NRDC stated that Cape Wind represents “the largest single source of supply-side reduction in CO₂ currently proposed in the United States, and perhaps in the world.”

Cape Wind also has the strong support of organized labor, including the International Brotherhood of Electrical Workers and the 70,000 members of the Boston & New England Maritime Trades Council, AFL-CIO. On Cape Cod, the Project is supported by the Association to Preserve Cape Cod, Woods Hole Research Center, Clean Power Now, the Cape Cod Chapter of the League of Women Voters, and Cape and Islands Self Reliance. There is also

strong support of business and trade organizations, including the United States Chamber of Commerce, the American Wind Energy Association, Northeast Sustainable Energy Association, the New England Clean Energy Council, and National Ocean Industries Association, all which share the Administration's sense of urgency to commence a green offshore industry, an urgency that cannot be met by any other project.

We also urge the Secretary to give due deference to the informed support of the overwhelming majority of Massachusetts citizens that support Cape Wind, as confirmed by two independent polls, one commissioned by CBS News (Boston) and one by Civil Society Institute, performed by Opinion Research Corporation, which show support for Cape Wind among Massachusetts residents at 86%. More locally, an independent public opinion survey published last month by the University of Delaware showed that a clear majority of randomly selected residents on Cape Cod and the Islands of Martha's Vineyard and Nantucket also support Cape Wind. We thus urge the Secretary to consider all opinions, but give due weight to the exceptional level of well-informed public support for the Project.

II. The Extensive Consultation Processes have fully Considered All Potential Adverse Impacts Upon Historic Properties.

A. The Chronology Demonstrates Exhaustive Consideration of Potential Impacts to Historic Properties.

Attached hereto, as Exhibit A is a chronology of the extensive processes and consultation regarding historic and tribal issues extending over the years from 2001 to 2010. The ACOE's DEIS, MMS' FEIS and the Massachusetts FEIR all contain extensive analyses of potential impacts to historic and cultural properties, which have now been supplemented by the Section 106 process, resulting in the Finding of Adverse Effect (Revised) issued in January of 2010, which completes the multi-stage review conducted in full compliance with Section 106 of the National Historic Preservation Act. The Secretary thus has the full and complete informational record upon which to make a final decision. Importantly, the Section 106 consultation process has also resulted in the circulation by MMS of a proposed form of Memorandum of Agreement ("MOA"), which, subject to minor revisions, we believe would be the basis for an appropriate resolution of all remaining issues. Among other things, the MOA sets forth the following historic mitigation measures:

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 58 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.

CWA also looks forward to good faith discussion regarding additional provisions that might address residual concerns in a reasonable manner and result in a greater consensus of interested parties. Among other things, we would be open to assisting the Tribes on a pro bono basis in association with their own wind power projects. In particular, we note that the Aquinnah tribe has proposed a wind project on its tribal land (the “Uharu Wapan” project, as referenced in their funding application to Massachusetts Clean Energy Program), and we could facilitate that undertaking by providing assistance as to design, engineering, procurement and operational issues. A wind project of any scale is a complicated undertaking and we believe that our experience in the industry could greatly facilitate the Tribes’ efforts in this area.

B. The Secretary Should Subject Essential Factual Assertions Raised in the Consultation to Critical Analysis and Scrutiny.

1. The Essential Tribal Claim as to “Sunrise Ceremonies” is Subject to Serious Question and Should be Closely Scrutinized and Weighted Accordingly.

We respectfully urge the Secretary to take a critical view of certain cultural assertions from the Tribes that are at the heart of their current position. In this regard, the Guidelines for Evaluating and Documenting Traditional Cultural Properties, National Register Bulletin (2002) (the “TCP Guidelines”) provide that “it is difficult to distinguish between properties having real significance and those whose putative significance is spurious,” and that supporting assertions should thus be questioned and “subjected to critical analysis,” including “careful analysis” of the asserting party’s motives. *Id.* at 3-4, 11. In particular, we urge the Secretary to carefully question the veracity of the central allegation of the Tribes supporting their opposition to the Project, *i.e.*, that “the Tribes’ practices include viewing the sun at dawn across an open and natural sound while conducting religious ceremonies and prayers.”

In our review of the extensive ethnographic bibliography cited by the SHPO, we can find no documentation that would confirm the existence of any such tradition or cultural practice. Further, although the Tribes were actively engaged on historic issues as early as 2001, we can find no assertion in the record of any such practice until seven years later, in 2008. Indeed, early in the process, CWA's President met with Glenn Marshall, then Chairman of the Mashpee Tribe, in a meeting arranged by State Representative Matthew Patrick, where, after an extensive presentation of project, Mr. Marshall indicated that the Tribe's only concern was potential impact upon commercial fishing. Consistent with the foregoing, Mr. Marshall's written comments on behalf of the Tribe regarding the Massachusetts review of CWA attached as Exhibit B indicated support for alternative energy and referenced CWA as a "worthy" project, with the only concern noted being a potential impact upon traditional fishing areas, with no reference to any type of "sunrise ceremony" or adverse cultural impact.

More recently, and entirely consistent with the foregoing, we also note the joint letter filed with the Secretary this week from eight members of the Aquinnah Tribe attached as Exhibit C stating that they "do not agree that locating wind turbines in Nantucket Sound will materially interfere with any significant cultural activity." Most notably, one of such signatories, Beverly Wright, is the past Tribal Chairperson who in fact acted as an Aquinnah tribal representative during portions of the CWA review process.

We further call your attention to the February 9, 2010 letter to the Secretary from Jeffery Madison (former member of the Aquinnah Tribal Council, the son and grandson of the Aquinnah Tribal Medicine Man and for fifteen years Chairman of the Gay Head Board of Selectmen) attached as Exhibit D which directly refutes and characterizes the current assertions of culturally essential sunrise ceremonies as a "fiction," "just plain false," "fabricated cosmology" and "completely without foundation":

I am stating to you with complete honesty and knowledge that I never participated in, witnessed, or even heard of a sacred spot on the horizon that is relevant to any Aquinnah Wampanoag culture, history or ceremony. Nor did I see, or hear, either my father or grandfather conduct such ceremony. I do know that offerings to the Creator are made at "first light," but first light is a period of time not a place. The notion that locating wind turbines in Nantucket Sound will impose on, impact or harm any cultural tradition is just plain false. I believe it to be a fabrication, invented by a small number of Tribal members, who happened to be involved in Tribal government and who happen to be opponents of Cape Wind who wish to derail the project. I do not believe that they understand that creating ceremony to achieve political objectives undermines the credibility of our legitimate cultural values and our people as a whole. (Emphasis added.)

The Tribes have also now publicly indicated an intent to geographically expand their claims of cultural dependence upon unobstructed horizons in a manner completely unrelated to any allegation of a “sunrise ceremony.” Recent press reports indicate that the same Aquinnah tribal representative cited in the Revised Findings document as stressing eastern views now maintains that all vistas around Martha’s Vineyard are also “culturally significant,” including both sunrise (eastern) and sunset (western) views: “When asked during a meeting on a draft plan to indicate what areas of Martha’s Vineyard were culturally significant to the tribe [the Aquinnah representative] said she drew a big circle around the entire island,” noting that “you can see the sun rise out of the water and see the sun set on the water.” Cape Cod Times, July 1, 2009.

Thus, there is now serious reason to question both the veracity of and the weight that should be afforded to the current tribal assertions of an essential tradition of “sunrise ceremonies.” In sum, such assertions (i) are not supported by the referenced ethnographic literature, (ii) are inconsistent with prior tribal positions regarding the Project, (iii) were not raised, to our knowledge, in the first seven years of the record of the regulatory review, and (iv) have now been directly refuted by prominent and knowledgeable Wampanoags who have held both tribal and governmental leadership positions. At the very least, the record now shows such claims, and their importance to tribal culture, to be a matter of shifting, divided and contested opinion among Wampanoags. While we have limited ability to independently ascertain the veracity of the Tribals’ current claims, such assertions now appear to be highly questionable and, in accordance with the TCP Guidelines, should “be subjected to critical analysis” with “careful analysis” of the asserting parties’ motives, and with such disputed claims weighted accordingly in the balancing of competing policy interests.

2. The SHPO and Keeper Misstated Critically Important Facts.

CWA respectfully requests that the Secretary also critically consider and weigh certain factual assumptions of the SHPO and Keeper as to cultural claims. As an initial matter, both the SHPO and Keeper seem to have assumed the veracity of, and relied heavily upon, the now highly questionable Tribal assertions as to “sunrise ceremonies” discussed above, without the level of critical review or verification that is clearly now appropriate. Further, and as discussed in our prior letter to the Keeper and Secretary of November 23, 2009, which is incorporated herein by reference, several of the other essential facts relied upon by the SHPO’s determination of TCP status are demonstrably incorrect. As discussed in such letter, many of the facts cited by the SHPO as supporting TCP status (including the location of primary events of tribal origin stories and of cited traditional activities) in fact have little or no applicability to Nantucket Sound; rather, most of such matters apply to other bodies of water, primarily those to the west of Martha’s Vineyard, i.e., Vineyard Sound, Rhode Island Sound and the waters immediately off of Gay Head. Notwithstanding comments to that effect from several parties, including the letter of the Commonwealth of Massachusetts attached as Exhibit E, the Keeper also based its decision on many of the same factual misstatements and, further, did so without explaining its departure from prior practices and NPS Guidance documents. We also understand

that such obvious factual misstatements were an important factor in MMS' disagreement as to TCP eligibility. We thus urge the Secretary to also critically review the assumptions of the SHPO and Keeper on disputed matters of fact.

C. The Potential Impact upon Submerged Archeological Resources has been Adequately Studied and Mitigated.

As indicated in the Revised Findings document, extensive subsurface geotechnical evaluation was conducted pursuant to a protocol that was drafted by a qualified archeological expert, and then revised to incorporate comments from the Massachusetts Historical Commission ("MHC") and the Massachusetts Board of Underwater Archeological Resources (MBUAR). Cape Wind surveyed the entire APE, including turbine foundations, cables, and anchor sweep, using geophysical techniques in order to assess where cultural resources had the potential to occur, and in those locations, subsurface testing was performed to assess the nature of the indicators.² Most importantly, in all cases, no cultural artifacts of any kind were found. Further, in response to the information gained by such surveys, the Project was reconfigured to eliminate impacts to areas of potential archaeological sensitivity. Importantly, the MBUAR has agreed that the combination of extensive geophysical, geotechnical and archaeological review of the site, as well as the resulting reconfiguration of the turbine array, are adequate to address potential effects to submerged resources, as noted in its letter of March 20, 2007, as follows:

In reviewing the FEIR, the MBUAR is satisfied with the degree and results of the archaeological reconnaissance investigations undertaken in support of the proposed project. The MBUAR is pleased that the layout of the project area has been revised to avoid all areas identified as potentially archaeologically sensitive and therefore does not recommend additional investigations.

The May 11, 2004, letter of the MBUAR similarly noted that "The Board is satisfied with the overall research design and methodology of the survey....", and the SHPO by letter of July 10, 2003, similarly confirmed that "The proposed methods for the remote sensing survey appear to be adequate to meet the goals and purpose of the archaeological survey, provided however that the survey evaluates all the anticipated project-related areas." The preconstruction plan in the FEIS also calls for approximately fifty additional vibracores and twenty-two additional deep borings, and the MOA would provide further assurance pursuant to a "Chance Finds Clause."

² The submerged geophysical work done for the project consisted of a depth sounder and side-scan sonar to detect bathymetry, a magnetometer to look for ferrous objects, and both "Boomer" and "CHIRP" sub-bottom profilers. The "Boomer" and "CHIRP" profilers were used to detect sediment horizons or "reflectors." An archeologist was aboard the vessel gathering the geophysical data and reviewed the information in real time. During the geotechnical work, locations that appeared to have potential paleosols were cored and the cores were examined by the archeologist and a marine geologist/limnologist. The 87 vibracores (averaging 15 feet in depth) and 22 deep borings (averaging 100 feet) combined with the geophysical work allowed a complete picture of the geology of Horseshoe Shoal, including any potential paleosols.

We thus believe that the legitimate concerns regarding the possible existence of submerged archaeological resources has been adequately studied and mitigated.

D. Visual Impacts Upon Historic Properties Have Been Adequately Studied and Mitigated.

The FEIS and Revised Finding document both set forth a complete analysis and consideration of potential visual impacts on historic and cultural properties, as well as visual depictions from a wide range of representative coastal vantage points. As noted in the Revised Findings at page 41, the visual effects upon Traditional Cultural Properties are regarded as “temporary” and, as discussed therein at page 42, visual impacts have been mitigated by the Project modifications discussed above, including reductions in lighting, reconfiguration of the project layout that narrows the breath of visual impacts from National Historic Landmarks (“NHLs”), use of modified off-white colors, and location of upland transmission facilitated entirely below ground.

Also relevant to visual impacts is the October 16, 2009, determination of the National Park Service, which evaluated visual impacts of the Project from the coastal NHL on Cape Cod and determined that “The Project will have no direct adverse effect within or even immediately adjacent to the boundaries” of the coastal NHL, so that it would not alter the factors “most critical” to conveying a “high integrity of historic feeling and association,” as follows:

[W]hile unobstructed ocean views to the horizon enhance the compound’s historic sense of place and contribute to the NHL’s overall integrity of setting, it is the preservation of a sizable, immediate ocean waterfront setting that is most critical to the property’s overall ability to convey its significance and high integrity of historic feeling and association.

Moreover, the NPS went on to characterize visual effects on the coastal site as “limited in overall scope and impact” and “indirect rather than direct,” as follows:

[T]he Project will have no direct adverse effect within or even immediately adjacent to the boundaries of either NHL. The adverse effect involved results solely from the visual intrusiveness caused by the introduction of a concentration of modern WTGs within the historic viewshed of both NHLs. In both cases adverse effect will be limited to the partial obstruction of long-distance, open-to-the-horizon views historically associated with the resources. Given that the adverse effect to each NHL is visual only, limited in overall scope and impact, and does not diminish the core significance of either NHL, NPS concludes that the adverse effect of the undertaking that is the subject of this comment is indirect rather than direct.

Id. at 12. We urge the Secretary to conclude that visual impact to other historic properties on the coast would be similarly limited in overall scope and impact, and of indirect rather than direct effect.

Most importantly, we also call the Secretary's attention to the conclusions of the MMS on visual impacts, which were made with reference to the United States Forest Service ("USFS") handbook entitled National Forest Landscape Management, in which the USFS has established three primary zones of impact analysis defined by the distance from the object in question: foreground (0 to 0.5 miles), midground (0.5 to 4 miles), and background (4 miles to the horizon). The Handbook states that for "background" objects such as the Project, "texture has disappeared and color has flattened" due to the distance away from the object, and MMS cites the Forest Service Handbook in this regard, concluding as follows:

The proposed action is located more than 4 miles from land and thus would appear in the "background" viewing area as defined by the U.S. Forest Service. In this area, objects appear smaller than in the foreground (0 to 0.5 miles) or the midground (0.5 to 4.0 miles). The U.S. Forest Service states that in the background area "texture has disappeared and color has flattened" due to the distance away from the object. The photo simulations show that the general landscape features or landform in the vicinity of the proposed action is the flatness associated with the expanse of the ocean. The WTGs represent a new vertical element in this flat landscape, though the simulations show they appear small compared to the vastness of the ocean and sky in the midground and background.

FEIS at 5-236 (Emphasis added.) We would thus urge the Secretary to similarly evaluate visual impacts of the Project upon historic properties, in accordance with such established guidance standards, as only a "background" effect and to concur with the finding of the MMS, after years of careful review, that the Project would "appear small compared to the vastness of the ocean and sky in the midground and background." Id.

III. Consideration of Historical Impacts should also Recognize that Coastal Windmills have been an Integral Part of the Visual History and Heritage of Cape Cod.

Cape Wind also believes that the Secretary should evaluate the potential visual impacts of the proposed project upon historical resources within a context that recognizes that (i) the Sound today is heavily utilized and commercialized and has a densely developed shoreline, and (ii) extensive, widespread and highly visible arrays of coastal windmills have been an integral part of the visual history and heritage of Cape Cod, particularly with respect to those historical periods that are of significance to many of the identified historical properties. The Advisory Council's regulations in this regard identify "adverse affects" as those that alter "the characteristics of a historic property that qualify the project for inclusion in the Nation Register," including changes to those physical features "within the property's setting that contribute to its

historic significance.” 36 CFR 800.5 (a)(i), a (2)(iv).³ Thus, the evaluation of adverse visual impacts to historical properties should give due consideration to the visual conditions that existed during the time period to which the site’s historical importance relates, and which thus establishes the “setting” relevant to its historical significance.

In this case, the review should thus consider the historical fact that, from the time of the Revolution through the close of the nineteenth century, wind power was an integral and defining feature of the visual character of the region’s coasts. Cape Codders revolutionized American salt production in the late 18th century by utilizing wind power to pump seawater landward for evaporation, such that “soon the wooden skeletons of rustic windmills were seen on the edge of most Cape Cod towns,” and by 1837 “Cape Cod alone had 658 salt companies producing more than 26,000 tons per year.” Kurlansky, Salt: A World History (Penguin 2002) at 223, 246. Cape historian William Quinn (The Saltworks of Historic Cape Cod: A Record of the Nineteenth Century Economic Boom in Barnstable County, Parnassus Imprints 1993) similarly described the “phenomenal growth” of wind-powered saltworks in highly visible locations along the coast of Cape Cod:

Many changes on the peninsula were brought about by the rapid development of the saltworks. The barren seaside on Cape Cod was considered wild land by the original settlers.

The Cape’s upland beach areas had been left mostly in their natural state until the saltworks construction began. This widespread building completely changed the seaside landscape. The prolific use of these natural areas created a new rural scenery with covered vats as far as the eye could see.

The business began to multiply rapidly after several improvements had been implemented. Just before 1800, saltworks were being constructed all over Cape Cod.

Quinn, Id. 22-23.

Quinn’s work further includes photographs demonstrating the prominent coastal visibility of such wind structures throughout the nineteenth century, including locations in proximity (both spatial and temporal) to many of the designated sites now of concern. Attached as Exhibit F-1 in this regard are typical examples of historic shorefront windmills, with the author’s statement that “these structures dotted the landscapes near the shores of every Cape Cod town.” Id. With specific respect to Barnstable, Exhibit F-2 shows the historic coastal windmills of the Crocker saltworks, as well as extensive evaporation structures which “covered a vast area of the land next to the present day Barnstable Harbor.” Id. at 111. With respect to Yarmouth,

³ The Department of Interior’s Standards and Guidelines for Preservation Planning similarly provide that “the historic context is the cornerstone of the planning process,” that “evaluation uses the historic context as the framework within which to apply the criteria for evaluation,” and that the agency defining a historic context should “identify the concept, time period and geographical limits for this historical context.” (Emphasis added.)

Exhibit F-3 shows extensive coastal wind and salt structures in both South Yarmouth and East Yarmouth. With respect to the areas of Osterville, Wianno, Lewis Bay and Hyannis Harbor, Exhibit F-4 shows that extensive wind-powered saltworks were deployed in all such coastal areas, as indicated by the 1849 U.S. Coastal Survey Map. Id. 116-117. Exhibit F-5 in turn shows the Historic Nickerson wind and salt facilities at Chatham, which were listed by assessor's records as including 4,400 feet of saltworks. Id. at 154.

The Consulting Parties should also recognize that, to this day, windmills are revered as a symbol of the historical heritage of the Cape, as evidenced by the historical monument depicted on Exhibit F-6, commemorating the site where John Sears in 1776 revolutionized the American salt industry by utilizing the wind power of Cape Cod. Id. at 20. Thus, the potential impacts of proposed wind facilities should be evaluated within a historical context that recognizes the long standing, prominent and visible presence of wind facilities throughout much of the historical periods of relevance to identified historical resources, and which thus contributes to the "setting" relevant to historical significance.

IV. The Secretary Should Reject the Alliance's Latest Attempt to Disrupt and Further Delay the Process.

In its January 28, 2010 letter to Secretary Salazar, the Alliance to Protect Nantucket Sound raises spurious arguments in an attempt to dissuade the Secretary from adhering to the process articulated for completing the Section 106 process and rendering a decision on the project in April. The Alliance now claims that "the designation of Nantucket Sound as a TCP changes everything," and in effect requires "moving" the Project to another location, presumably implying the South of Tuckernuck alternative studied extensively in the FEIS. To the contrary, however, the NPS Determinations clearly states that TCP eligibility requires only that potential effects are to be considered in the project review process, as has been done in this case:

A determination that a property is eligible for the National Register assures that the values that make it significant are considered with planning a project in which the Federal Government is involved. In this instance, the Keeper is responsible for making this determination of eligibility, however, final decisions with respect to project implementation rests solely with the Federal agency funding, licensing, or assisting the project, which in this case is MMS.

NPS Determination at 2. The NPS determination thus requires no more than due consideration, which has been accomplished in the FEIS and Revised Findings document.

Further, the referenced alternative site South of Tuckernuck advanced by the Alliance has been thoroughly considered in both the FEIR and FEIS, both of which conclude that such alternative would require technology that is not yet economically or technically proven and, moreover, would present significantly greater adverse environmental effects, including increased visibility from historic properties on Martha's Vineyard and Nantucket. FEIS at 3-19. All such

matters and a summary of the relevant findings of both the FEIS and FEIR, are discussed in detail in our letter to MMS dated June 10, 2009, which is incorporated herein by reference. In any event, we also note that such an alternative would not alleviate the concerns of the Tribes, as the Aquinnah tribe publicly opposed such option when raised at the time of our consultation meeting in Washington.

The Alliance also improperly attempts to blur the requirements of the National Historic Preservation Act (“NHPA”) and NEPA in asserting that MMS must supplement the EIS after the Section 106 process is complete. To the contrary, however, the ACHP has recognized that “the NHPA and NEPA are independent statutes with separate obligations for Federal agencies.” 65 Fed. Reg. at 77709. While the Advisory Council on Historic Preservation (“ACHP”) regulations suggest that the agency’s NHPA review may be coordinated with reviews under other statutes, including NEPA, such provision is intended to benefit the agency by preventing duplication of effort so that the agency can “use information developed for other reviews” to satisfy the NHPA. Indeed, the Advisory Council has stated that agency officials “‘should coordinate,’ implying encouragement, but not a requirement.” *Id.* at 77703. In addition, the ACHP regulations provide that only when an agency opts to rely on NEPA to satisfy Section 106 do the ACHP regulations impose standards for developing the EIS. *Id.* at 77709 (noting that section 800.8 applies only when an agency “independently chooses NEPA documents/process to substitute for the regular section 106 process”).

Federal courts have similarly confirmed that the ACHP regulations “permit an agency to defer completion of the NHPA process until after the NEPA process has run its course (and the environmentally preferred alternatives chosen), but require that NHPA issues be resolved by the time that the license is issued.” Mid State Coalition for Progress v. Surface Transportation Board, 345 F.3d 520, 554 (8th Cir. 2004) (en banc); see also City of Alexandria, Virginia v. Slater, 198 F.3d 862 (D.C. Cir. 1999). MMS’s Record of Decision in this case will be informed by the information developed in both the NEPA and Section 106 processes, and there is no legal basis requiring MMS to supplement the FEIS to include information developed during the Section 106 process. To the contrary, a supplemental EIS is required only when new information presents “a seriously different picture of the likely environmental consequences of the proposed action” that has not been adequately addressed (State of Wisconsin v. Weinberger, 745 F.2d 412 (7th Cir. 1984)), and the Section 106 process has produced no such indication of any new and “seriously different” environmental consequences.

V. Conclusion.

CWA thus believes that the factual record contained in the FEIS and Revised Finding fully address all relevant issues in conformance both the NEPA and Section 106. As discussed above, the timely approval of Cape Wind is uniquely and critically important to federal and state policies as to climate change, clean energy, energy independence and the creation of green sector jobs, and it is highly unlikely that the Secretary would be able to approve any other offshore wind farm within the foreseeable future or within the term of the Obama Administration. We also urge the Secretary to recognize the judgment of the jurisdictional Massachusetts agency that the degree and results of the archeological reconnaissance

The Honorable Kenneth Salazar
James F. Bennett
February 12, 2010
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investigations undertaken, combined with the resulting project reconfiguration and proposed Chance Finds Clause, adequately address the possibility of undiscovered archeological resources. We further respectfully urge the Secretary to concur with the conclusion of the MMS that visual impacts from coastal sites present only a “background” effect that would “appear small compared to the vastness of the ocean and sky,” and to subject questionable Tribal claims to close scrutiny. Finally, we commend the Secretary for exercising decisive leadership to bring a long-delayed process to closure so as to allow American industry to finally enter this rapidly expanding green energy sector.

Sincerely,



Dennis J. Duffy
Vice President of Regulatory Affairs

**Cape Wind Energy Project
Chronology of Considerations of Impacts to Historic Properties
As of 1-18-2010**

2001

- **December 18, 2001** – Massachusetts Bureau of Underwater Archaeological Resources (BUAR) issues a letter to director of Executive Office of Environmental Affairs (EOEA) and MEPA (cc. to MHC, USACE, Naval Historical Center (NHC) commenting on need for additional survey for unknown historic and prehistoric archaeological resources by a marine archaeologist, whose survey design should be reviewed by the Board.
- **December 24, 2001** - MHC issues letter to MEPA office acknowledging expanded ENF and requesting additional reconnaissance work in the project area. MHC also requests additional visual study with respect to historic structures near the location of the proposed landing of the submarine cable.

2002

- **January 4, 2002** - BUAR sends letter to United States Army Corps of Engineers (USACE) commenting on ENF (see December 18, 2001 entry).
- **March 6 and 7, 2002** – USACE holds two public scoping meetings for the Environmental Impact Statement (EIS), one in Boston and one in W. Yarmouth.
- **April 5, 2002** – Cape Cod Commission (CCC) comments to MEPA and USACE on the scope of the ENF describing areas where Cape Wind's Expanded ENF was lacking in information.
- **April 18, 2002** – USACE initiates Section 106 consultation about the project with the Wampanoag Tribe of Gay Head (Aquinnah) (WTGHA) on Martha's Vineyard [as noted on page 11 of USACE Environmental Assessment and Statement of Findings for the project's proposed meteorological tower (SMDS tower)].
- **May 10, 2002** – ESS letter to USACE responding to comments about the permit application for the MET tower.
- **May 17, 2002** – Laurie Perry, Tribal Historic Preservation Officer (THPO) of the WTGHA emails a copy of Betty Little's bibliography regarding tribal history in the Nantucket area to USACE (Karen Adams).
- **June 20 and 25, 2002** – Letters from MHC (Brona Simon) identified certain upland resources and requested a visual assessment, and an archaeological reconnaissance survey of the underwater area.
- **July 3, 2002** – BUAR comments on the meteorological (MET) tower and Horseshoe Shoal.
- **July 10, 2002** – MHC (Brona Simon) letter to ESS (with cc to USACE) comments on the MET tower survey and proposed reconnaissance surveys and requests information on qualifications of archaeological survey team.
- **July 15, 2002** – ESS email to USACE (Karen Adams) supplying information requested regarding the qualifications of the archaeological research teams performing data acquisition and review.
- **July 23, 2002** – MHC (Brona Simon) letter to USACE commenting on MET tower assessment and proposed archaeological survey.
- **July 25, 2002** - ESS letter to MHC (Brona Simon) addressing comments in July 23, 2002 MHC letter.
- **July 30, 2002** – USACE (Christine Godfrey) letter to MHC (Brona Simon) regarding a finding of no adverse visual effect to historic properties from the installation of the MET tower.
- **July 31, 2002** - MHC, USACE, Public Archaeology Laboratory (PAL), ESS, Cape Wind Associates (CWA) meet to discuss viewshed reconnaissance and select visual simulation locations from historic properties on Cape Cod Nantucket and Martha's Vineyard.
- **August 1, 2002** – PAL (David Robinson) sends USACE (Karen Adams) results of his review of MET tower geophysical data.

- **August 5, 2002** - MHC (Brona Simon) to USACE commenting on PAL's findings.
- **August 12, 2002** – MHC (Brona Simon) to USACE commenting on MET tower installation.
- **August 14, 2002** - BUAR comments to USACE concurring with MHC recommendations.
- **August 21, 2002** - PAL reports to Cape Wind (with copies to USACE, MHC, BUAR) that it has completed the additional survey and assessment of the potential archaeological resources within the proposed offshore MET tower project area.
- **November 12, 2002** – ESS letter to USACE (cc. MHC) with plans showing proposed visual simulation locations selected at July 31, 2002 meeting, and plans showing designated historic properties identified on Cape Cod and the Islands.
- **November 19, 2002** – ESS sends USACE (Karen Adams) and MHC (Ann Lattinville) viewpoint photographs.
- **December 13, 2002** – MHC letter to USACE (Christine Godfrey) commenting on the proposed scope of visual analysis for the location of the viewpoints under consideration for simulation.
- **December 19, 2002** – USACE (Karen Adams) email response to MHC (Ann Lattinville) citing USACE regulations and clarifying the USACE's intent to evaluate effects on properties that are *known* to be eligible for the National Register of Historic Places. USACE stated that a simulation for every property under evaluation was not planned, and that eligibility determinations for properties outside the permit area also were not planned.
- **December 24, 2002** – USACE (Karen Adams) letter to Cape Wind (Craig Olmsted) states that USACE is "satisfied that the 12 proposed simulation sites... will adequately represent the potential visual affects at sensitive locations". USACE stated their "intent that these visual simulations will be used to help assess the potential impacts to known historic properties and provide a general sense of the anticipated change in the 'seascape'". USACE adds that the list should be revised to include MHC *Inventory of Historic and Archaeological Assets of the Commonwealth* that could have a view of Horseshoe Shoals and are eligible for National Register listing.
- **December 26, 2002** – MHC (Brona Simon) letter to USACE (Christine Godfrey) concurring that the 12 selected visual simulation sites are appropriate and agrees that USACE's direction to the proponent to address potential sites in the MHC *Inventory of Historic and Archaeological Assets of the Commonwealth* is responsive to MHC's request in its letter of December 13, 2002.

2003

- **May 5, 2003** – Email from USACE (Karen Adams) to ESS discussing adequacy of EDR, Inc. (EDR) field photography times (day and night) and locations for visual simulations and granting relief from nighttime work on Monomoy Island because of crew safety and restricted access.
- **May 28, 2003** – Memo from ESS to USACE (Karen Adams) informing of scope of revised geophysical and marine archaeological survey to be done by PAL because the project array has changed since the original studies.
- **May 30, 2003** – USACE (Karen Adams) by email requests a second copy of the *Scope of Proposed Marine Archaeological Survey and Plan*.
- **June 2, 2003** – ESS sends USACE (Karen Adams) a second copy of the "Scope of Proposed Marine Archaeological Survey and Plan" as requested in May 30, 2003 email and sends two copies to MHC (Ed Bell).
- **June 10, 2003** – Letter from MHC to USACE (Christine Godfrey) and ESS requesting that PAL submit a research design and methodology for proposed marine archaeological survey.
- **June 19, 2003** – ESS supplies USACE with proposed research and methodology report prepared by PAL.
- **July 9, 2003** – Email from USACE (Karen Adams) to ESS regarding MHC (Ed Bell) receipt of the PAL report on June 23, 2003.

- **July 10, 2003** – BUAR letter to USACE agreeing with report finding that the majority of area exhibits low archaeological sensitivity due to extensive previous disturbance during marine transgression and subsequent modern wave and tidal energy. Letter concurs with proposed scope for additional remote sensing survey in the eastern portion of the study area on Horseshoe Shoal.
- **July 10, 2003** – MHC letter to USACE (Christine Godfrey) stating their concurrence with BUAR recommendations that the proposed remote sensing survey appears to be adequate to meet the goals and purpose of the archaeological survey.
- **August 8, 2003** – Email between USACE (Karen Adams) and ESS referencing USACE December 19, 2002 letter to Cape Wind.
- **August 11, 2003** – Email from USACE (Kate Atwood) to ESS stating that change in text to read "Therefore, an architectural inventory of previously unidentified but potentially eligible historic properties within the Project's viewshed is not required" was acceptable. This language was based on USACE regulations.
- **August 26, 2003** – Email from ESS to USACE (Karen Adams and Kate Atwood) requesting clarification on the definition of National Historic Preservation Act (NHPA) APE and permit area.
- **September 9, 2003** - Email from USACE (Karen Adams) to ESS defining the permit area for the project.
- **November 6, 2003** – Email from ESS to USACE (Karen Adams) requesting clarification of assessment of visual effects to historic properties in the viewshed of the Project.
- **December 15, 2003** – MHC (Brona Simon) issues letter to USACE (Christine Godfrey) finding that the archaeological investigation in the area of the overland cable as submitted by PAL is adequate and that no further investigatory undertakings regarding this route are needed.

2004

- **January 7, 2004** – USACE, CWA, ESS meeting regarding scope of cultural, visual and recreational studies.
- **January 12, 2004** – ESS letter to USACE (Karen Adams) re: scope of cultural, visual, and recreational screening studies for Cape Wind alternative sites, as follow-up to January 7, 2004 meeting.
- **January 29, 2004** – ESS transmission to USACE (Karen Adams) with USACE permit areas and APE for visual effects, in advance of MHC meeting.
- **February 4, 2004** – Meeting at MHC with USACE, CWA, PAL, and ESS to review scope of Cape Wind alternatives for cultural/visual studies and the permit area/APE figures.
- **March 2, 2004** – ESS transmission to USACE (Kate Atwood) providing requested Section 3.4.3.2.11 PAL tables and figures, visual APE figures, PAL terrestrial and marine sensitivity assessments.
- **March 4, 2004** – ESS email to USACE (Karen Adams, Kate Atwood) summarizing properties to be included in the alternatives analysis as well as analysis of the preferred alternative.
- **March 29, 2004** – Letter from PAL to USACE (Karen Adams), MHC (Brona Simon), Mashpee Wampanoag Tribal Council (Glenn Marshall), and WTGHA (Beverly Wright) enclosing one copy of technical report entitled *Terrestrial Archaeology Reconnaissance Survey, Terrestrial Route Alternatives #1 and #2 Barnstable, Mashpee, and Yarmouth, Massachusetts and Intensive (locational) Archaeological Survey, Terrestrial Route Alternative #1. Cape Wind Energy Project, Barnstable and Yarmouth, Massachusetts* for review and comment.
- **April 21, 2004** – PAL letter to USACE (Kate Atwood), MHC (Brona Simon), MBUAR (Mastone), CWA, Mashpee Wampanoag Tribal Council (Glenn Marshall), and WTGHA (Beverly Wright) enclosing one copy of technical report entitled *Marine Archaeological Survey, Cape Wind Energy Project, Nantucket Sound, Massachusetts* for comment and review.
- **April 22, 2004** – Letter from MHC (Brona Simon) to PAL requesting copy of PAL technical report entitled *Terrestrial Archaeology Reconnaissance Survey, Terrestrial Route Alternatives*

#1 and #2 Barnstable, Mashpee, and Yarmouth, Massachusetts and Intensive (locational) Archaeological Survey, Terrestrial Route Alternative #1. Cape Wind Energy Project, Barnstable and Yarmouth, Massachusetts.

- **April 30, 2004** – Fax from ESS to USACE (Kate Atwood) sending PAL's scope for Historic Properties Visual Impact Assessment.
- **May 11, 2004** - BUAR states in a letter that it is satisfied with the research design and methodology and interpretation used by PAL regarding the underwater reconnaissance of Horseshoe Shoal and concurs with the report's recommendation that sections of the project be redesigned to avoid areas that reconnaissance suggested may have ancient Native American submerged cultural resources.
- **May 19, 2004** – Letter from MHC to USACE concurring with the PAL report recommendations for avoidance of specific sensitive areas.
- **May 28, 2004** – National Parks Service (NPS) (Maria Burks) sends comment letter to USACE (Col. Thomas Koning) regarding review of DEIS "Alternatives Analysis" section.
- **June 18, 2004** – PAL letter to USACE (Kate Atwood), MHC (Brona Simon), and WTGHA (Beverly Wright) sending one copy of technical report entitled *Visual Impact Assessment of Multiple Historic Properties Cape Wind Energy Project, Nantucket Sound, Cape Cod, Martha's Vineyard, and Nantucket, Massachusetts* for review and comment.
- **July 14, 2004** – USACE (Christine Godfrey) determination of effects letter to MHC (Cara Metz), finding the Project would have an adverse effect on specific properties listed or determined eligible for listing on the National Register of Historic Places. USACE requests MHC concurrence and comments on the enclosed draft Programmatic Agreement (PA) to avoid, minimize or mitigate the adverse effects.
- **July 15, 2004** – WTGHA (Cheryl Andrews Maltais, THPO) email to USACE (Kathleen Atwood), opposing the Project [as referenced in November 19, 2004 Letter from WTGHA (Cheryl Andrews-Maltais, THPO) to USACE (Karen Adams)]. **ESS does not have a copy.**
- **August 11, 2004** – MHC (Brona Simon) letter to USACE (Christine Godfrey) commenting on PAL visual assessment report; MHC concurs with determination of adverse effects on historic properties and requests marine archaeological surveys take place, suggests MBUAR be included in evaluation of archaeological surveys. MHC noted that comment on the PA was premature, but that "any mitigation program should provide permanent public benefits and directly benefit the preservation of archaeological properties."
- **October 21, 2004:** USACE sends letter to the historical commissions of local governments on Cape Cod, Martha's Vineyard and Nantucket inviting them to participate in review of the Project, under the Advisory Council on Historic Preservation (ACHP) regulations (36 CFR Part 800) and the USACE's NHPA regulations (33 CFR Part 325, Appendix C).
- **November 2004** - Copies of four-volume DEIR/DEIS provided to Cheryl Andrews, THPO for Wampanoag Tribe of Gay Head (Aquinnah), Mashpee Wampanoag Tribal Council, Jim Peters at the Massachusetts Commission on Indian Affairs.
- **November 9, 2004** – CWA hand-delivered three copies of DEIS/DEIR/DRI to MEPA Office (Sec. Herzfelder) in compliance with ENF.
- **November 19, 2004** – Letter from WTGHA (Cheryl Andrews-Maltais, THPO) to USACE (Kate Atwood) stating opposition to Cape Wind Project, taking issue with WTGHA being named in DEIS as "consulting party" and requesting additional review time. Ms. Andrews-Maltais stated that "...at no time have we (the WTHPO) conducted a site visit with the ACOE to discuss the potential impacts this project would have on the Tribe's Traditional, Cultural, Spiritual and Religious Sites..."

2005

- **February 18, 2005** - BUAR (Victor Mastone) letter to USACE (Thomas Koning) regarding BUAR's review of the DEIS/DEIR.
- **February 22, 2005** – USACE meets with Wampanoag Tribe of Aquinnah THPO Cheryl Maltais-Andrews on Martha's Vineyard to consult about project and visit sites.

- **February 22, 2005** – CCC issues comments on the adequacy of the DEIS/DEIR and requesting supplemental information in a range of topics regarding the report.
- **February 22, 2005** – MHC letter to EOE (Sec. Herzfelder) commenting that MHC has reviewed the DEIS/DEIR and requests more information on plans for mitigation.
- **February 24, 2005** – Coastal Zone Management office (CZM) issues memorandum to EOE (Sec. Herzfelder) that CZM has reviewed the Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR), and recommends additional information be provided in subsequent NEPA/MEPA documents.
- **March 2, 2005** – USDO letter to USACE (Thomas Koning) regarding USDO review of DEIR/DEIS and supplying comment matrix.
- **March 3, 2005** – Sec. of EOE issues Certificate on the DEIR offering guidance for the Final EIR visual simulations. EOE recommends further archaeological surveys be conducted in the areas of the eastern portion of the preferred alternative that exhibit moderate to high sensitivity for containing Native American deposits.
- **June 14, 2005** – Email from USACE (Karen Adams) to ESS with the most updated changes to Section 106 guidelines.
- **June 22, 2005** – USACE issues scope of work for NEPA documents for Cape Wind Energy Project.
- **June 30, 2005** – CWA files Notice of Project Change with MEPA.
- **July 15, 2005** – BUAR (Victor Mastone) letter to EOE (Stephen Pritchard) commenting that they have reviewed the Notice of Project Change issued June 30, 2005
- **July 21, 2005** – MHC (Brona Simon) letter to EOE (Stephen Pritchard) regarding the Notice of Project Change and relocation of 30 turbines.
- **July 29, 2005** – Cape Wind letter to MHC (Brona Simon) responding to MHC's letter of July 21, 2005 regarding visual impact of turbine array on Nantucket.
- **August 5, 2005** – USACE letter to local governments, federally recognized tribes, and other entities informing them of their designation by USACE as consulting parties in the Section 106 process for the Project. Letters were sent to the WTGHA (Cheryl Andrews-Maltais, THPO) and the Narragansett THPO.
- **August 5, 2005** – USACE (Karen Adams) letter to Nantucket Historic District Commission (NHDC) (Mark Voight) requesting consultation on information presented in DEIS regarding effects on designated historic properties
- **August 8, 2005** – EOE issues *Certificate of the Secretary of EOE on the Notice of Project Change*. The amended scope requires revised visual renderings and archaeological impacts based on new configuration.
- **September 6, 2005** – MHC (Brona Simon) letter to USACE (Christine Godfrey) noting that the DEIS does not contain all the information published in the Notice of Project Change (Summer of 2005).
- **November 2 (or 11), 2005** – MMS held an agency consultation meeting about the Project in Boston, to solicit comment and concerns about the Project and the scope of the draft EIS .
- **December 2005** – USACE-Minerals Management Service (MMS) meeting with agencies including the Advisory Council on Historic Preservation, Cheryl Andrews-Maltais, THPO of the WTGHA and MHC.

2006

- **February 27, 2006** – BUAR (Victor Mastone) letter to PAL concurring with the findings of the Supplemental Marine Archaeological Reconnaissance Survey of Revised Layout Offshore Project Area.
- **March 2, 2006** – PAL letter to Massachusetts Commission on Indian Affairs (MCIA) (Jim Peters) providing three copies of PAL marine archaeological report, at request of Commission.
- **March 8, 2006** – MHC (Brona Simon) letter to ESS finding that no potentially significant archaeological resources were identified in the supplemental survey area of the redesigned

layout, as reported in PAL's *Supplemental Marine Archaeological Reconnaissance Survey of Revised Layout Offshore Project Area*.

- **May 30, 2006** – MMS announces in Federal Register its intent to prepare an EIS, the commencement of a 45 day comment period, and invitation for participation by cooperating agencies.
- **June 14, 2006** – Email from MHC (Ann Lattinville) letter to USACE (Kate Atwood) referencing letters dated July 14, 2004 and August 11, 2004.
- **June 16, 2006** – ESS letter to MMS (Rodney Cluck), MCIA (Jim Peters), CWA, PAL, and Mashpee Wampanoag Tribe Council (Glenn Marshall, Cheryl Andrews-Maltais) providing PAL technical report and description of changes to Project components to avoid potentially archaeologically sensitive paleosols.
- **June 27, 2006** – MMS held an agency consultation meeting about the Project in Boston, to solicit comment and concerns about the Project and the scope of the draft EIS.
- **July 13, 2006** – CCC's comments on the Notice of Intent (NOI) to prepare the EIS. Recommendations for alternative configurations to move the turbines further from shore or the use of smaller turbines to eliminate visual impacts to the seascape.
- **July 26, 2006** – A formal Government-to-Government meeting was held between MMS and the WTGHA at Tribal headquarters on Martha's Vineyard. Prior to the meeting, the WTGHA showed MMS (Dr. Rodney Cluck, sociologist) "around the Island and identified the Cliffs of Gay Head as one of their most important cultural locations", as reported in MMS (Dr. Walter Cruickshank) letter to various parties stamped September 8, 2009.
- **July 27, 2006** – A formal Government-to-Government meeting was held between MMS and The Mashpee Wampanoag Tribe at Tribal headquarters in Mashpee.
- **July 27, 2006** – CZM comments on NOI to prepare EIS. Encourages a careful look at alternatives due to public opposition, and that "over the horizon alternative" needs to be more carefully considered to eliminate all adverse visual impacts.
- **July 27, 2006** – Town of Yarmouth requests that MMS include visual impacts due to construction in their scope.

2007

- **February 2007** – MMS gave a presentation to the United South Eastern Tribes describing the Project [as referenced in MMS (Walter Cruickshank) letter to various parties stamped September 8, 2009].
- **February 28, 2007** – MMS held an agency consultation meeting about the Project in Boston, to solicit comment and concerns about the Project and the scope of the EIS.
- **March 20, 2007** – BUAR (Victor Mastone) letter to EOEI (Ian Bowles) providing comments on FEIR. BUAR is satisfied with the degree and results of the archaeological reconnaissance investigations but expresses concern that there is no provision for the continued involvement of the BUAR and the MHC beyond the permit process.
- **March 29, 2007** – Certificate of the Secretary of EOEI for the Final EIR. Deficiencies identified in DEIR are said to have been adequately addressed. (See March 3, 2005 entry).
- **July 25, 2007** – A formal Government-to-Government meeting was held between MMS and the Mashpee Wampanoag Tribe at Tribal headquarters in Mashpee.
- **July 26, 2007** – A formal Government-to-Government meeting was held between MMS and The Wampanoag Tribe of Aquinnah at Tribal headquarters on Martha's Vineyard.

2008

- **February 14, 2008** – United South and Eastern Tribes, Inc. passes USET Resolution No. 2008:030 stating opposition to the Project.
- **March 7, 2008** – Letter from United South and Eastern Tribes, Inc. (Michael Cook) to MMS (Randall Luthi) expressing opposition to Cape Wind Farm Proposal; resolution dated February 14, 2008 attached.

- **March 10, 2008 fax** – Undated United South and Eastern Tribes, Inc. (USET) Resolution No. 2008:030 opposing the Cape Winds Wind Farm Proposal (sic).
- **March 12, 2008** – Bureau of Indian Affairs (BIA) (James T Kardatzke) letter to TRC Environmental in response to MMS announcement of DEIS availability; BIA offered comments re proper reference to tribes and the impacts Project will have on cultural resources.
- **March 14, 2008** – Email sent from NPS (Dennis Reidenbach) to MMS (James Bennett) in response to the January 8, 2008 availability of the DEIS; NPS requests that National Historic Landmark (NHL) Program be a consulting party in process; general comments regarding impacts to Cape Cod National Seashore.
- **March 16, 2008** – MMS (Rodney Cluck) letter to MHC regarding EAct and decision by MMS to prepare new draft of EIS because of broader MMS scope under EAct.
- **April 2, 2008** – Mashpee Wampanoag Tribe (MWT) (George Green) letter to MMS (Rodney Cluck) commenting on the DEIS; concerned with the limited consultation with tribe leading to inadequate information in DEIS, and the tribe's "significant cultural and religious need for us to have a clear unobstructed view of the southeast horizon."
- **April 15, 2008** – Mashpee Wampanoag Tribe passes 2008-RES-011 and "requests MMS undertake a government-to-government consultation regarding the historical, cultural, religious and other interests of the Mashpee Wampanoag Tribe in the proposed project..."
- **April 17, 2008** - Mashpee Wampanoag Tribe (MWT) (Shawn W. Hendricks, Sr.) comment letter to Bureau of Indian Affairs (BIA) (Franklin Keel) raising issue with thoroughness of Tribal consultations with MMS. Tribal Resolution 2008-RES-011 requesting consultation with MMS is attached.
- **April 17, 2008** – Wampanoag Tribe of Gay Head – Aquinnah (WTGHA) (Cheryl Andrews-Maltais) letter to MMS (Rodney Cluck) opposing the Cape Wind Project and commenting on the Regulations relative to the Rights and Religious Beliefs of Indian Tribes.
- **April 18, 2008** – MHC (Brona Simon) letter to MMS (Rodney Cluck) commenting on the DEIS and MHC's role in the Section 106 consultation process as State Historic Preservation Officer (SHPO), and concerns with the identification and inclusion of certain historic properties in the DEIS.
- **April 19, 2008** – Wampanoag Tribe of Gay Head – Aquinnah (WTGHA) letter to MMS (Rodney Cluck) opposing the Cape Wind Project and commenting on the Regulations relative to the Rights and Religious Beliefs of Indian Tribes.
- **April 21, 2008** – National Trust for Historic Preservation (NTHP) (Roberta Lane, Michael Smith) letter to MMS (Rodney Cluck) expressing comments on DEIS and concern that MMS has not met NHPA requirements and DEIS does not meet NEPA requirements.
- **April 21, 2008** – Advisory Council on Historic Preservation (ACHP) comments on the MMS EIS, noting inconsistencies between the USACE and MMS findings on adverse visual effects to historic properties.
- **April 24, 2008** – BIA (James T Kardatzke) letter to MMS (Rodney Cluck) citing the DEIS reference of a consultation with the Mashpee Wampanoag Tribe (MWT) and that the MWT felt consultation was inadequate for Section 106 consultation requirements.
- **June 16, 2008** - US House of Representatives (William Delahunt) letter to DOI (Dirk Kempthorne) on behalf of WTGHA and MWT raising concerns of insufficient consultation with all Tribes.
- **June 17, 2008** - Email from Wampanoag Tribe (George Green) to MMS (Rodney Cluck) responding to proposed dates for Government-to-Government meeting; Mashpee Wampanoag Tribe will not meet with MMS alone and requests MMS contact state representative to intervene in consultation process.
- **June 25, 2008** – MMS (Rodney Cluck) letter to MVC (Jim Powell), Mashantucket Pequot Tribe (Michael Thomas), MWT (George Green), Mohegan Indian Tribe (Bruce Bozsum), CWA (Craig Olmsted), Narragansett Indian Tribe (John Brown), Alliance to Protect Nantucket Sound (APNS) (Susan Nickerson), WTGHA (Bettina Washington), proposing a meeting of the

Section 106 Consulting Parties for July 23, 2008; letter includes background information, additional Section 106 documents and issues for discussion.

- **June 25, 2008** – MMS (Rodney Cluck) letter to CWA (Craig Olmsted) (with cc to the Section 106 consulting parties contact list) proposing a meeting of the Section 106 Consulting Parties for July 23, 2008; letter includes background information, additional Section 106 documents and issues for discussion.
- **June 30, 2008** – MMS (Rodney Cluck) letter to Wampanoag Tribe of Aquinnah (Bettina Washington) requesting a third Government-to-Government meeting during August 2008, at a time and location of Tribal convenience.
- **June 30, 2008** – MMS (Rodney Cluck) letter to The Mashpee Wampanoag Tribe (George Green) requesting a third Government-to-Government meeting during August 2008, at a time and location of Tribal convenience.
- **July 2, 2008** – MMS (Rodney Cluck) letter to The Narragansett Indian Tribe (John Brown) including the Tribe on the list of Section 106 consulting parties and requesting the Tribe's participation at a Section 106 meeting on July 23, 2008. Letter includes background information on Project and issues for discussion.
- **July 2, 2008** – MMS (Rodney Cluck) letter to The Mohegan Indian Tribe (Bruce Bozsum) including the Tribe on the list of Section 106 consulting parties and requesting the Tribe's participation at a Section 106 meeting on July 23, 2008. Letter includes background information on Project and issues for discussion.
- **July 2, 2008** – MMS (Rodney Cluck) letter to The Mashantucket Pequot Tribe (Michael Thomas) including the Tribe on the list of Section 106 consulting parties and requesting the Tribe's participation at a Section 106 meeting on July 23, 2008. Letter includes background information on Project and issues for discussion.
- **July 23, 2008** – MMS held a Full Section 106 Consultation Meeting in Boston. All consulting parties were invited (as referenced in June 25, 2008 MMS letter).
- **July 23, 2008** – MMS held a Tribal-only Government to Government Section 106 consultation meeting, inviting the following Tribal Nations and entities to consult: The Wampanoag Tribe of Aquinnah, The Mashpee Wampanoag, The Pequot, The Narragansett, The Mohegan, the Bureau of Indian Affairs, the United South and Eastern Tribes, Inc. and the National Association of Tribal Historic Preservation Officers. A representative of The Mashpee Wampanoag Tribe attended the meeting.
- **July 24, 2008** – MMS held an agency consultation meeting about the Project in Boston, to solicit comments and concerns about the Project and the scope of the EIS report.
- **July 24, 2008** – MMS held an agency consultation meeting about the Project in Boston, to solicit comment and concerns about the Project and the scope of the EIS.
- **July 29, 2008** – APNS (Susan Nickerson) letter to MMS (Rodney Cluck) as follow-up to July 23, 2008 Consultation Initiation Meeting.
- **July 30, 2008** – MMS (Melanie Stright) letter to APNS (Susan Nickerson) responding to APNS request for July 23, 2008 MMS Initial Section 106 Consultation Meeting audio recording.
- **August 27, 2008** – MMS (Rodney Cluck) letter to MWT (George Green) with distribution to the WTGHA, the Narragansetts, the Pequot, the Mohegan, the Mashantuckets, the USET, NATHPO, and the BIA, inviting these tribes and groups to a Section 106 consultation meeting to discuss tribal concerns and issues. The Tribal-only Section 106 meeting was scheduled for September 8, 2008 from 10 a.m. to 2 p.m. The Section 106 full consulting parties meeting was scheduled for September 9, 2008.
- **September 8, 2008** – MMS held a Tribal-only Government to Government Section 106 consultation meeting, inviting the same tribes listed under the July 23, 2008 entry. The Mashpee Wampanoag and the WTGHA attended the meeting.
- **September 9, 2008** – MMS held a Full Section 106 consultation meeting for all consulting parties in Hyannis, MA.

- **September 30, 2008** – Town of Yarmouth (E. Suzanne McAuliffe) letter to MMS (Rodney Cluck) requesting MMS consider above-ground historic resources, eligible resources as well as two historic districts in close proximity to Project.
- **October 6, 2008** – APNS (Susan Nickerson) letter to MMS (Melanie Stright, Rodney Cluck) expressing concerns re adverse effects on historic properties and requesting that consulting parties be provided with detailed schedule of upcoming events.
- **October 6, 2008** – CCC (Sarah Korjeff) letter to MMS (Melanie Stright) responding to request for comments from Consulting Parties and visual assessment approaches.
- **October 6, 2008** – Martha's Vineyard Commission (Jim Powell) letter to MMS (Melanie Stright) concerning the analysis neglecting to include numerous historic properties, 9 mile distance for visual effect, ACHP guidelines, and the adverse effect of site in Nantucket Sound.
- **October 8, 2008** – MHC (Brona Simon) letter to MMS (Rodney Cluck) responding to request for comments from Consulting Parties and visual assessment approaches; MHC is concerned not all adverse effects have been identified and that some analysis criteria were incorrectly applied in identifying historic properties.
- **October 8, 2008** – Neil McDonald Good letter to MMS (Melanie Stright, Rodney Cluck) responding to request for comments from consulting parties; poses argument that Horseshoe Shoal should be eligible to National Historic listing.
- **October 8, 2008** – Chatham Board of Selectman (Ronald Bergstrom) letter to MMS (Melanie Stright, Rodney Cluck) responding to comments from APNS (Susan Nickerson) on the need to re-analyze the visual impacts, using a contractor other than TRC.
- **October 14, 2008** – NTHP (Roberta Lane) letter to MMS (Rodney Cluck) responding to request for comments regarding National Registered/Eligible properties and visual assessments.
- **November 4, 2008** – MHC (Brona Simon) letter to DEP Waterways Program (Alex Strycky) stating that issuance of waterways license for installation of two submarine cables is premature.
- **November 14, 2008** – PAL Technical Memorandum entitled *National Register of Historic Places Eligibility Evaluation and Visual Impact Assessment of Additional Properties*, assessing 22 additional properties identified during a 30-day public comment period established by MMS during the Fall of 2008. Of the 22 additional properties identified (including some historic districts), adverse effects were recommended on 12 due to potential visual impacts of the Project.
- **November 20, 2008** – MMS inquires about availability of consulting parties for a Section 106 Consultation meeting on December 17 or 18, 2008.
- **November 24, 2008** – Public Archaeology Laboratory (PAL) (Deborah Cox) letter to MMS (Rodney Cluck) commenting that the wind farm will not have an effect on historic properties visited in Town of Yarmouth.
- **December 2, 2008** – MMS (Melanie Stright) emails the Section 106 consulting parties that responses indicated insufficient parties available to hold a productive meeting on December 17 or 18, 2008. Therefore, the meeting was postponed until after the holidays.
- **December 2, 2008** – Narragansett Tribe (Doug Harris, Senior Deputy THPO) emails MMS (Melanie Stright) confirming "its availability to commence government-to-government Section 106 consultation regarding the Cape Winds Project."
- **December 17, 2008** – Letter from ACHP (Don Kilma) to MMS (Rodney Cluck) outlining observations and advice to MMS regarding compliance with Section 106 guidelines.
- **December 29, 2008** – MMS releases documentation of Section 106 Finding of Adverse Effect for the Cape Wind Project (provided with letter to CWA); report concludes there will be an adverse visual effect on 29 historic and Tribal properties.

2009

- **January 23, 2009** – Massachusetts Office of Coastal Zone Management of EOEa letter to Terry Orr, ESS issued their determination, based upon review of project information including

the application for USACE authorization under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. CZM found that "all aspects of the project, including those project elements located in federal waters, and the project's effects on resources and uses in the Massachusetts coastal zone, we concur with your certification that the activity as proposed is consistent with the CZM enforceable program policies."

- **January 29, 2009** – MMS held a Full Section 106 meeting, inviting all consulting parties, in Boston.
- **February 6, 2009** – MHC (Brona Simon) letter to MMS (Rodney Cluck) commenting on, and agreeing with, the Finding of Adverse Effect and disagreeing with the findings presented in the Final EIS.
- **February 6, 2009** – ESS email to USACE (Karen Adams) requesting date of Tribal consultation.
- **February 12, 2009** – The United South and Eastern Tribes, Inc. passed USET Resolution No. 2009:026, calling for DOI to halt MMS' action on the Project. The Resolution describes Nantucket Sound as a Traditional Cultural Property and Sacred Site for the WTGHA and says the Project :will forever change the physical integrity of the Sacred Site; and will ruin the eastern vista viewshed, essential to maintaining the Tribal identify of the Wampanoag people and their spiritual well-being; ..."
- **February 17, 2009** – PAL *Briefing Memorandum* issued summarizing studies and consultations to date to assess potential Project impacts on historic properties. Distributed to MMS (Rodney Cluck) and Section 106 consulting parties.
- **February 17, 2009** – WTGHA (Bettina Washington, THPO) letter to MMS (Rodney Cluck) requesting that MMS extend the comment period for the final EIS, and "to help us protect our Traditional Cultural Property..."
- **February 18, 2009** – CWA (Dennis Duffy) letter to MMS (Rodney Cluck) commenting on MHC's February 6, 2006 letter.
- **March 5, 2009** – USACE (Karen Adams) email to ESS providing date of Tribal consultation.
- **March 19, 2009** – Letter to MMS (Rodney Cluck) from MWT (George Green) commenting on release of MMS FEIS prior to completion of Section 106 consultation. Mr. Green noted Tribes had proposed site visits which were never scheduled, and that MMS stated in the DEIS formal meetings were started with the MWT on July 26, 2006 although the Tribe was not federally recognized until February 15, 2007.
- **March 20, 2009** – Meeting of MMS, DOI and ACHP (as noted in April 1, 2009 letter Reid J. Nelson of ACHP to Andrew Krueger of MMS).
- **March 20, 2009** – MWTGHA (Bettina Washington) letter to MMS (Rodney Cluck) requesting MMS not release FEIS because of a lack of Tribal consultation (USET, Inc. Resolution attached).
- **April 1, 2009** – Advisory Council on Historic Preservation (ACHP) letter to MMS (Andrew D. Krueger) letter of follow-up from March 20, 2009 meeting with MMS, DOI and ACHP suggesting next steps advancing the process for complying with Section 106 Regulations regarding Historic Properties.
- **April 9, 2009** – ESS (Sarah Faldetta) letter to MMS (Andrew Krueger) summarizing historic preservation issues addressed in the alternatives analyses.
- **April 22, 2009** – MMS (Melanie Stright) letter to ACHP (John T. Eddins) in response to comments received on the Finding of Adverse Effect and addressing statements raised to MMS regarding outstanding concerns presented by Section 106 Consulting Parties.
- **April 28, 2009** – MMS held a Full Section 106 meeting, inviting all consulting parties, in Hyannis, MA.
- **May 5, 2009** – Alliance to Protect Nantucket Sound letter to MMS arguing termination of Section 106 process is premature (**not in ESS files**)
- **June 3, 2009** – MMS held a Tribal-only Section 106 meeting in Hyannis, MA.
- **June 10, 2009** – CWA letter to MMS responding to May 5, 2009 letter from the Alliance to Protect Nantucket Sound arguing termination of Section 106 consultation is premature.

- **June 12, 2009** – MMS (Melanie Stright) letter to MHC (Brona Simon) in response to comments submitted regarding the Finding of Adverse Effect. MMS requests the concurrence of the MHC on the Finding of Adverse Effect and requests the MHC move forward with the MMS on the initial drafting of the MOA.
- **June 16, 2009** –MMS held a Full Section 106 meeting, inviting all consulting parties, in Hyannis, MA. A draft Memorandum of Agreement (MOA) was presented at the meeting for discussion.
- **June 23, 2009** – APNS (Glenn G. Wattley), Chuckie Green (Mashpee Wampanoag THPO) and Bettina Washington (Wampanoag of Aquinnah THPO) letter to MHC (Brona Simon) requesting the MHC reject the course of action proposed by the MMS and continue to review alternative site locations.
- **July 6, 2009** - CWA letter to MMS opposing tribal request to determine Nantucket Sound eligible for listing on the National Register as a Traditional Cultural Property.
- **August 3-4, 2009** – MMS, USACE and the Bureau of Indian Affairs met with the WTGHA at their headquarters in Gay Head/Aquinnah and conducted site visits to locations around Martha's Vineyard.
- **August 5, 2009** – The MMS met with the Mashpee Wampanoag Tribe at their headquarters in Mashpee, and conducted site visits to locations on Cape Cod.
- **August 7, 2009** – CWA (Craig Olmsted) letter to MMS (Andrew Krueger) submitting comments to the Draft MOA.
- **September 8, 2009** – MMS (Walter Cruickshank) letter to Advisory Council on Historic Preservation et. al. (Brona Simon, George Green, Bettina Washington, Reid Nelson, Janet Matthews) responding to issues raised by the ACHP in a June 23, 2009 letter. MMS invites all consulting parties and strongly urges them to attend a full Section 106 Consultation meeting on September 30, 2009 in Washington D.C. (MOA is attached.)
- **October 9, 2009** – Letter from MMS (**ESS does not have copy**)
- **October 16, 2009 (or October 20)**—two date stamps) - National Park Service Director letter to MMS Director finding indirect visual effects on two NHLs.
- **November 5, 2009** – MHC (Brona Simon) letter to MMS (Christopher Horrell) regarding the National Register Eligibility Option for Nantucket Sound. Massachusetts SHPO finds Nantucket Sound historically significant but requests MMS seek a formal Determination of Eligibility from the Keeper of the National Register.
- **November 16, 2009** – WTGHA (Bettina Washington, THPO) letter to ACHP (John Nau) requesting that the Area of Potential Effect for the Project be increased to encompass the staging area at Quonset Point in Rhode Island, due to the potential for oil spills.
- **November 17, 2009** – Letter from Chris Horrell/MMS (**ESS does not have copy**)
- **December 11, 2009** – ACHP (Reid Nelson) letter to WTGHA (Bettina Washington) commenting on the expansion of the APE of the Project to include water traversed while transporting Project components with regard to the effect of potential oil spills on Historic Properties.
- **December 15, 2009** – MHC (Brona Simon) letter to MMS (Christopher Horrell) in response to letter dated November 17, 2009 making the following three points: MHC agrees with MMS opinion that two locations in Mashpee meet the criteria for eligibility for listing in the National Register of Historic Places; Several locations on Martha's Vineyard mentioned in the letter may meet the criteria for eligibility for listing in the National Register of Historic Places, but were listed as confidential and thus cannot be commented upon; The MHC will defer to the Advisory Council's December 11, 2009 letter with regards to not expanding the APE.

2010

- **January 4, 2010** – National Park Service (NPS) determination letter stating that the waters of Nantucket Sound is eligible for listing in the National Register of Historic Places as a traditional cultural property and as an historic and archaeological property.

- **January 13, 2010** – Secretary of the Department of the Interior (Kenneth Salazar) holds a series of meetings in Washington D.C. pertaining to the Section 106 consultation process for the Project.

Exhibit B

FROM : Cole Rosen Communications FAX NO. : 7710985

Dec. 20 2001 10:29AM P1

FROM : MASHPEE WAMPANOAG TRIBE COUNCIL FAX NO. : 5084771316

RE: EOE A # 12643

To: Arthur
Pugsley



December 19, 2001

To whom it may concern,

Although there have been many cries for alternative energy, and even though we as a Tribe stand in favor of saving our great Mother Earth, We have serious concerns of the proposed violation of traditional fishing areas. With the many restrictions forthcoming in the fishing industry it is very hard to fathom a project such as this doing anything but injuring an already sensitive industry and we think that this project although worthy might be better suited in a different locale.

Kindest Regards

Glenn Marshall

Glenn Marshall, President
Mashpee Wampanoag Tribal Council, Inc.

Exhibit C

Dear Secretary Salazar,

We, members of the Wampanoag Tribe of Gay Head (Aquinnah), while respecting our Tribal representatives and their efforts on our behalf in protecting our cultural interests, do not agree that locating wind turbines in Nantucket Sound will materially interfere with any significant cultural activity.

NAME:	Signature:	Roll Number
Kevin F. Belandier	Kevin F. Belandier	33
JONATHAN BELAIN	Jonathan Belain	518
Wenonah Madison	Wenonah Madison	261
Spencer A. Becker	Spencer A. Becker	899
BEVERLY WRIGHT	Beverly Wright	142
Jason Bard	Jason Bard	medicine man
Jay A. Smalley	Jay A. Smalley	474
Natalie L. Francis	Natalie L. Francis	105
Richard A. Duarte	Richard A. Duarte	504

Exhibit D

Jeffrey L. Madison
58 State Road
Aquinnah, MA 02535

February 9, 2010

The Honorable Kenneth Salazar
Secretary of the Interior
U. S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

RE: Cape Wind/Wampanoag dispute

Dear Secretary Salazar,

I am writing to provide a bit of reality to the fiction that has been presented by representatives of the Wampanoag Tribe of Gay Head (Aquinnah) in their opposition to the proposed wind turbines in Nantucket Sound. As prelude to my remarks it is important for you to know that my father (Luther Madison) and his father before him (Napoleon Madison) both served for the duration of their lives as Medicine Man of the Aquinnah Tribe. I am a former member of the Tribal Council of the Aquinnah Tribe. And I played an important role in the Tribe's effort to attain federal recognition back in 1987, having been chairman of the Gay Head Board of Selectmen for fifteen years. I was born and raised in Gay Head (Aquinnah) and live there today.

I am employed by the law firm of Wynn & Wynn, P.C. and that firm has been retained by Cape Wind. However my employer has not influenced my decision to write this letter in any manner whatsoever. I do support efforts to wean America's dependence on imported fuel and while this project is relatively small, I believe operation of Cape Wind's energy turbines in Nantucket Sound is a step in the right direction and should be approved.

That being said, I am stating to you with complete honesty and knowledge that I never participated in, witnessed, or even heard of a sacred spot on the horizon that is relevant to any Aquinnah Wampanoag culture, history or ceremony. Nor did I see, or hear, either my father or grandfather conduct such ceremony. I do know that offerings to the Creator are made at "first light," but first light is a *period of time* not a place. The notion that locating wind turbines in Nantucket Sound will impose on, impact or harm any cultural tradition is just plain false. I believe it to be a fabrication, invented by a small number of Tribal members, who happen to be involved in Tribal government and who happen to be opponents of Cape Wind who wish to derail the project. I do not believe that they understand that creating ceremony to achieve political objectives undermines the credibility of our legitimate cultural values and our people as a whole.

This past Saturday I attended a meeting of the Aquinnah Wampanoag Tribal Council in an attempt to engage Tribal leaders in a discussion on this matter. I was informed by

Chairman Maltais that the Council voted to oppose Cape Wind in 2004. Council votes on matters such as this by resolution; copies of which are kept in the Tribal archive. Search of tribal records revealed a vote was indeed taken among 7 Council members in attendance at a meeting held on July 21, 2004. The vote was 3 in favor with 4 members abstaining. The vote to oppose Cape Wind failed. I know of no other record of in the Tribal archives concerning Cape Wind.

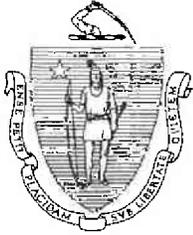
I have attached to this letter a petition signed by members of our Tribe. Among those signing is Beverly Wright, former Chairperson of the Tribe (interestingly, she, as Chairperson at the time, made the aforementioned motion to oppose the project, but now is in support). I removed the name of one signer at his request, as he felt his signature may influence others who may be asked to sign, not because he is opposed to the project, or because he agrees with Tribal officials' stated reasons for opposing the project.

Mr. Secretary, your decision on whether to allow construction of the wind turbines in Nantucket Sound should rest in scientific analysis and environmental impact. However, it would be wrong to allow your decision to be influenced by fabricated cosmology.

I thank you for including consideration of tribal interests in the Cape Wind approval process. As a Native American I know that cultural sensitivity all too often takes a back seat to industrial development. However statements made by Aquinnah Wampanoag officials purporting that the proposed facilities, in their proposed location, will adversely affect Wampanoag tribal rituals, ceremony or tradition are completely without foundation.

Respectfully,

Jeffrey L. Madison



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

IAN A. BOWLES
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

December 21, 2009

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

Dear Dr. Matthews:

On behalf of the Commonwealth of Massachusetts, we write to take issue with the opinion of the State Historic Preservation Officer (SHPO) that Nantucket Sound is eligible for listing as a Traditional Cultural Property. We believe the request is without merit and considering it further would simply serve to delay the Cape Wind renewable energy project, which has been undergoing federal, state, and local review for almost nine years. We respectfully ask you to promptly reject this request.

Nantucket Sound does not meet the federal definition of a Traditional Cultural Property for numerous reasons. First, the Department of the Interior's guidance requires that the boundaries of a Traditional Cultural Property be both reasonable and well-defined, such as the immediate boundary surrounding a ceremonial site. The U.S. Supreme Court has determined that the federal waters of Nantucket Sound are in fact an unenclosed portion of the ocean. The precedent created by such a decision would dramatically extend the scope of federal regulatory jurisdiction, with far-reaching consequences for bodies of water across Massachusetts and the nation. Second, there is little actual evidence that Nantucket Sound has the characteristics of a traditional cultural property. The primary evidence relied upon by the SHPO—the legend of the giant Maushop—does not even take place in Nantucket Sound, but in a completely separate body of water west of Martha's Vineyard. In the absence of actual evidence, the SHPO indulges in speculation, suggesting that cultural artifacts "would have been found" within Nantucket Sound if the land mass were not inundated with water. This speculation is refuted by subsurface testing conducted by Cape Wind during the lengthy environmental review process, which found no evidence of material cultural remains.



Designating 560 square miles of open water off the Massachusetts coast as a Traditional Cultural Property is not only unprecedented and contrary to the applicable guidelines, it would also cause severe unintended consequences and create unnecessary and duplicative regulatory burdens for the Commonwealth. Such a determination by the Department could impose constraints on a wide range of activities conducted in, on, or around Nantucket Sound, doing harm to the environmental and economic interests of Massachusetts. By listing the entire Sound as a Traditional Cultural Property, many longstanding commercial activities in or around the Sound could be subjected to new levels of federal regulatory oversight including: shipping and navigation, waterfront construction and development, aviation, marinas, coastal terminals, sand mining, aquaculture, renewable energy projects, commercial fishing, cell towers and traditional port functions.

Furthermore, we believe if Nantucket Sound is determined eligible for a Traditional Cultural property, then virtually the entire land mass of Massachusetts, as well as our surrounding bodies of water, would also be eligible for listing. This was surely not the intent of the Congress.

Finally, we ask you to act expeditiously, because any further delay could very well jeopardize Cape Wind's eligibility for the federal Investment Tax Credit, a stimulus-related credit that will reduce the cost of constructing the project by 30%. In order to be eligible for this credit, Cape Wind must receive its permits and commence construction before the end of next year.

Governor Deval Patrick strongly supports moving forward with the Cape Wind project, and believes the time is now to move forward a clean energy project that has undergone nearly nine years of comprehensive review on the federal and state level. The Governor believes now is the time to move this country toward a clean energy future, into a position of international leadership in the offshore wind arena – and reap the economic benefits of the thousands of clean energy jobs this industry will create.

Thank you for your time and please contact us directly if you have any questions.

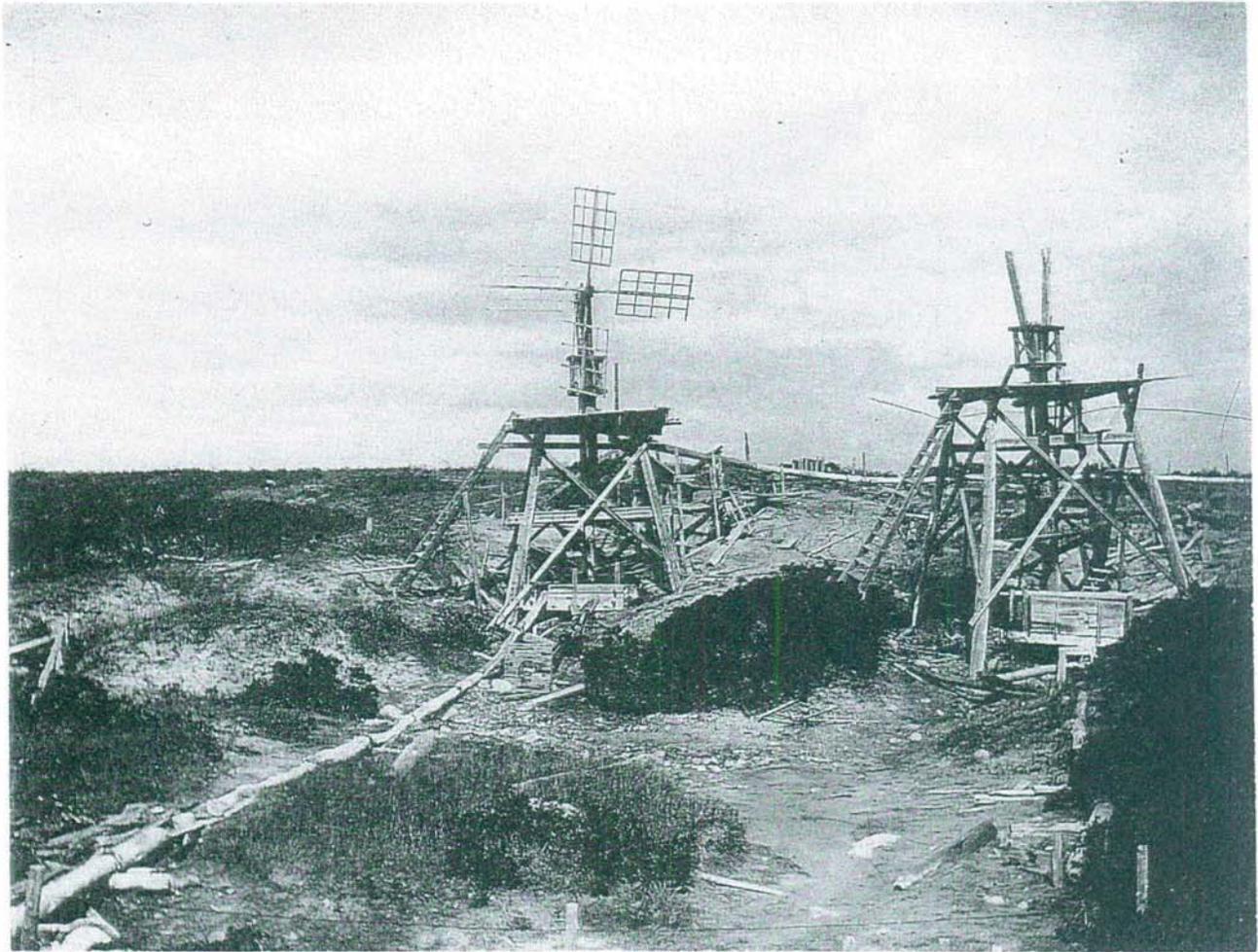
Sincerely,



Ian A. Bowles
Secretary, Executive Office
Of Energy and Environmental Affairs

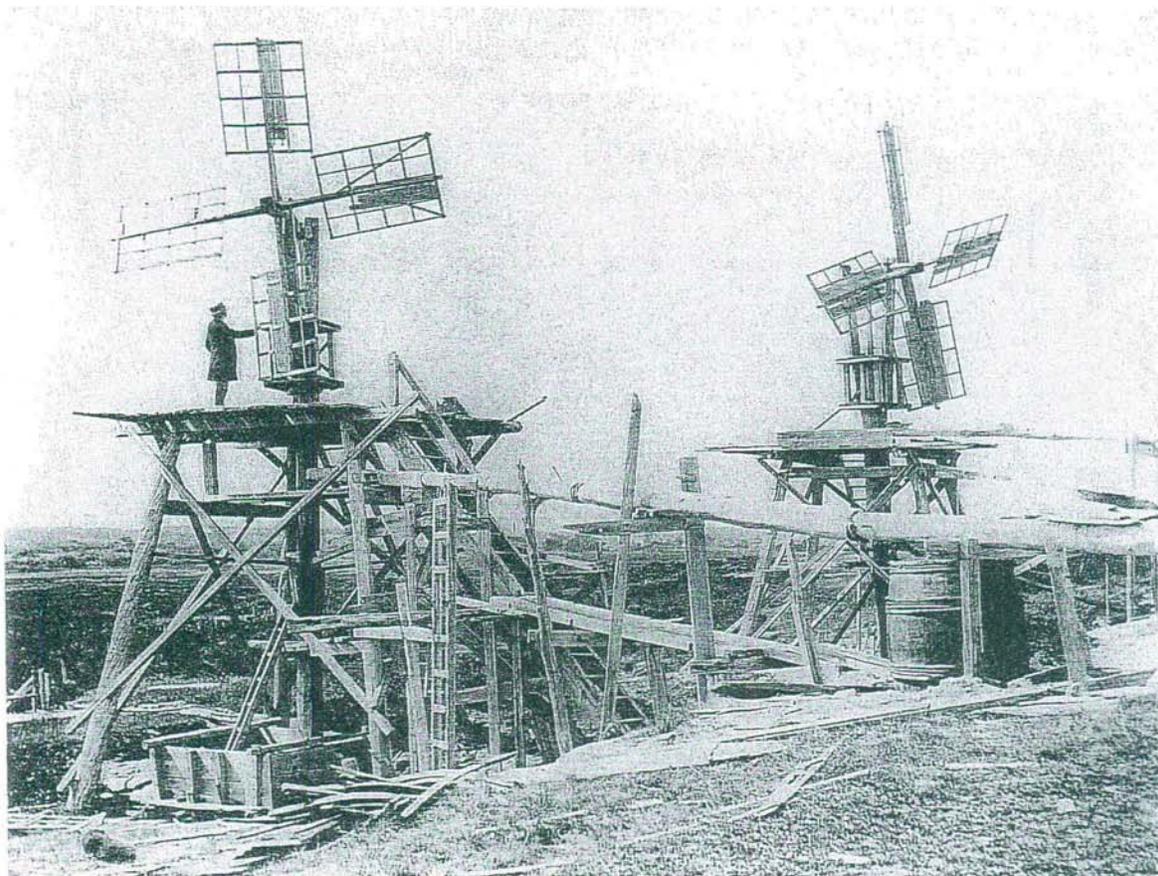


Gregory Bialecki
Secretary, Executive
Office of Housing and
Economic Development



The saltworks began at the shore where windmills pumped sea water from reservoirs up to the evaporating vats to make salt. These structures dotted the landscapes near the shores of every Cape Cod town. *Photo from the H.K. Cummings Collection.*

Exhibit F-2

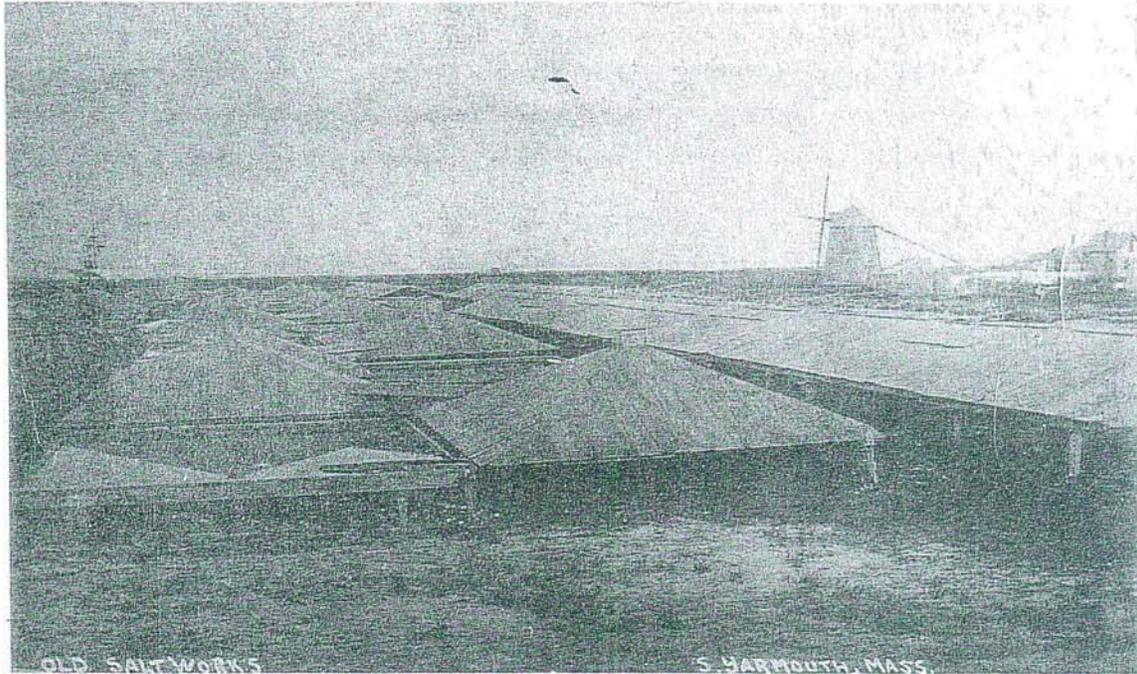


Above: The salt mills at the Crocker saltworks in Barnstable. The size of the pumps can be determined in relation to the man standing beside the wind vanes. A six-foot man would indicate that the diameter of the mill vanes is about eighteen feet with about twenty feet of vane area to catch the wind. The wooden pipes leading to the salt vats were hollowed out logs. They were either drilled or burned out. The pipes were then connected together and sealed with white lead. Below: The saltworks of Loring Crocker in Barnstable covered a vast area of the land next to the present day Barnstable Harbor. In this photo there are two horses and buggies. One of these may be a working rig for the man tending the saltworks. Photos from the collection of Louis Cataldo, Barnstable, Mass.



The Mid Cape Towns

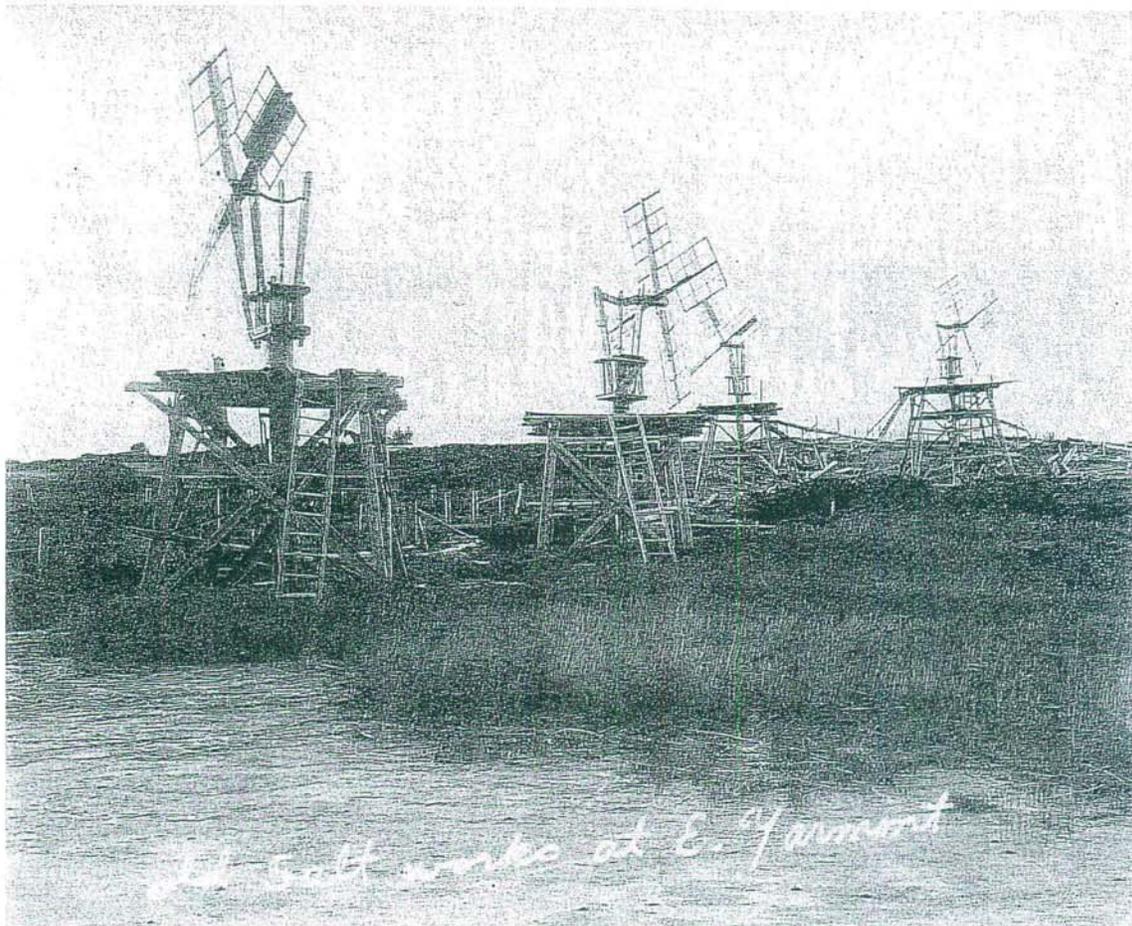
Exhibit F-3



Above: The picture is titled "Old Saltworks, S. Yarmouth, Mass. The Judah Baker windmill is on the right side of the photo. It is still in nearly the same area today. **Below:** This photo is taken from an old post card and it is another area of the saltworks at Bass River with the salt mills near the water. Drying rooms and salt vats surround the land next to the dwelling houses in the background. *Photos courtesy of Alec & Audrey Todd, Yarmouth, Mass.*



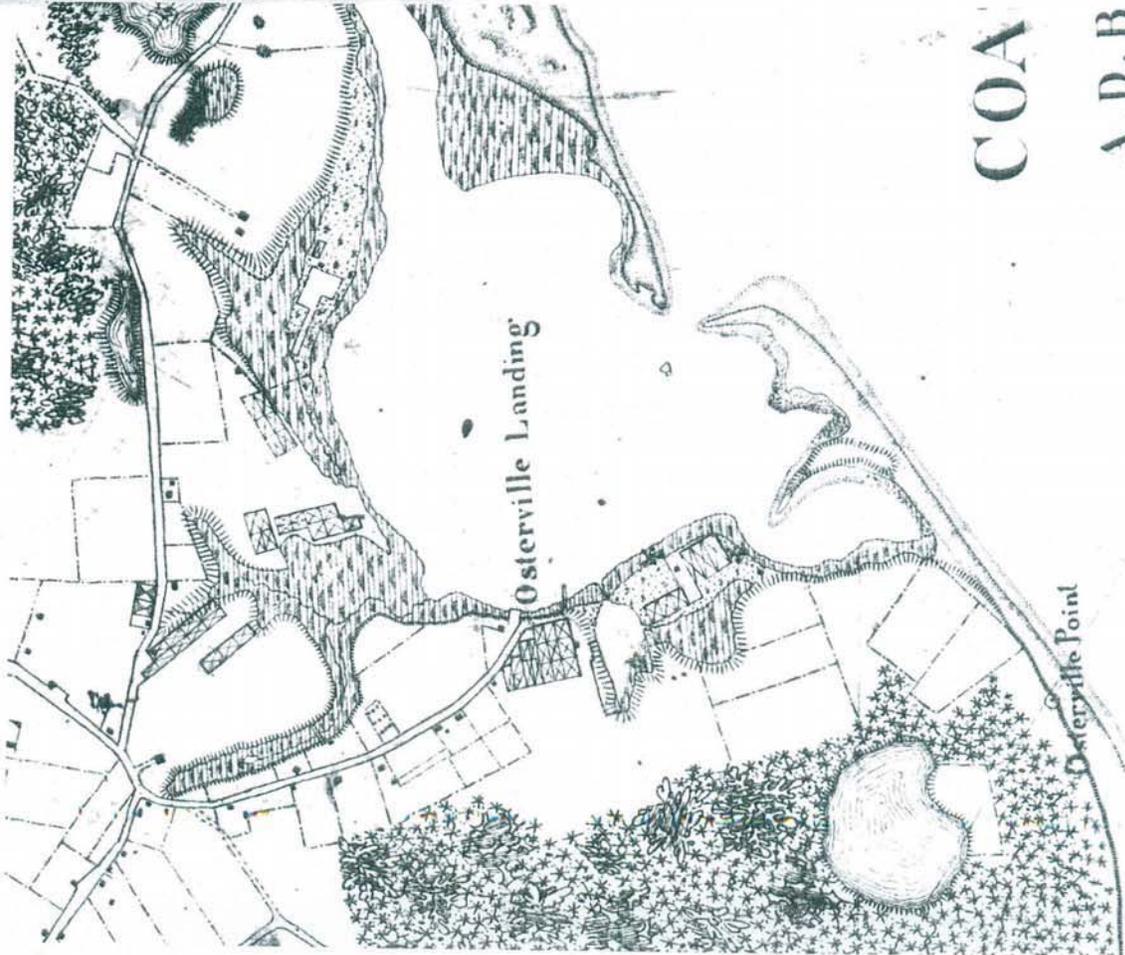
Exhibit F-3



Four salt mills in a row in this photo titled "Saltworks at East Yarmouth." The title locates them near the large area of works on Bass River. *Photo from the Author's collection.*

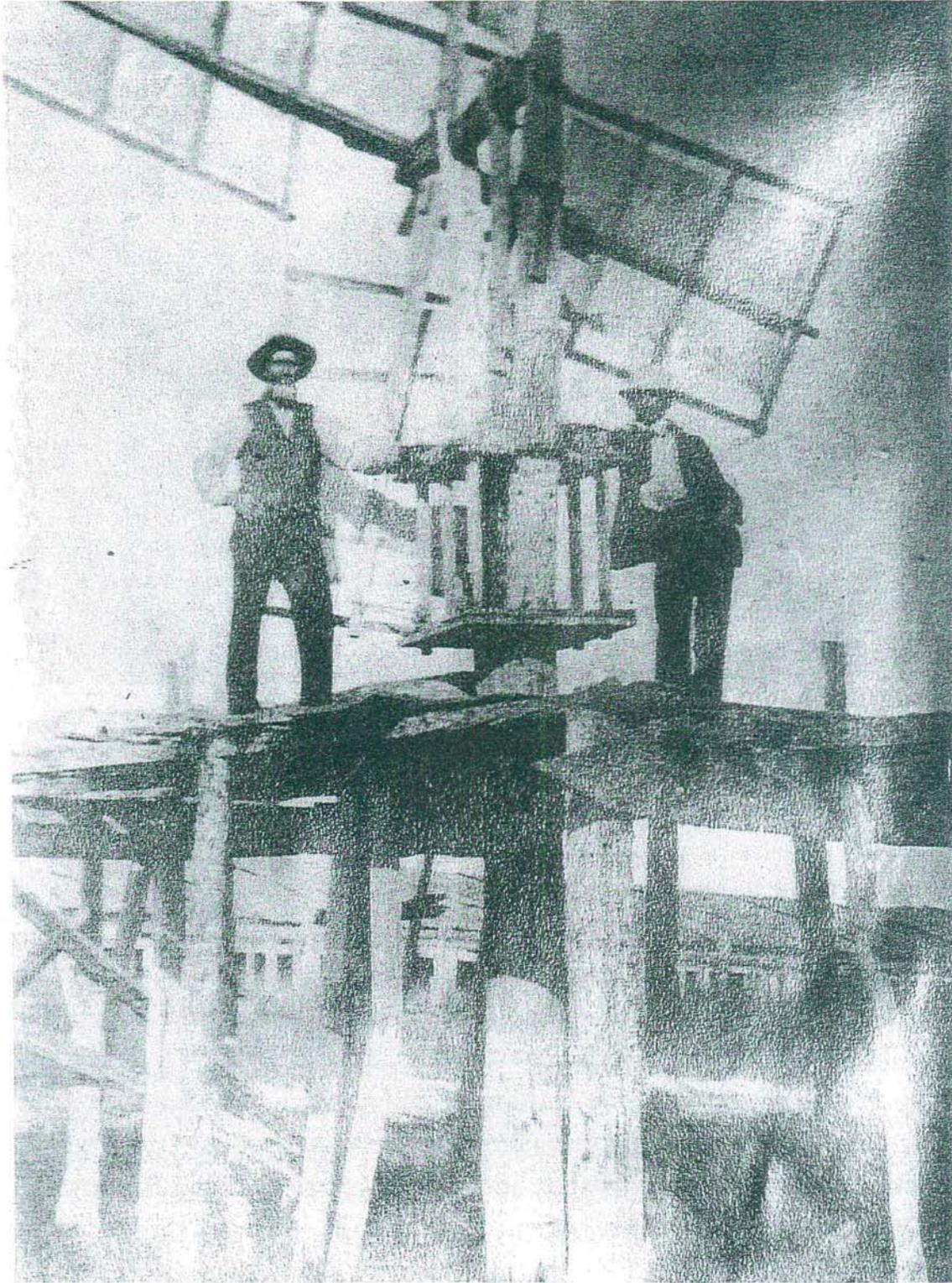


The Hyannis saltworks were located near Dunbar Point on Lewis Bay and Hyannis harbor. The small x near the center of the map on the beach is the site of a salt mill.



The saltworks in Osterville were located at what is the present East Bay near Wianno. There were several hundred feet of evaporators as depicted in the 1849 U.S. Coast Survey map.

Exhibit F-5

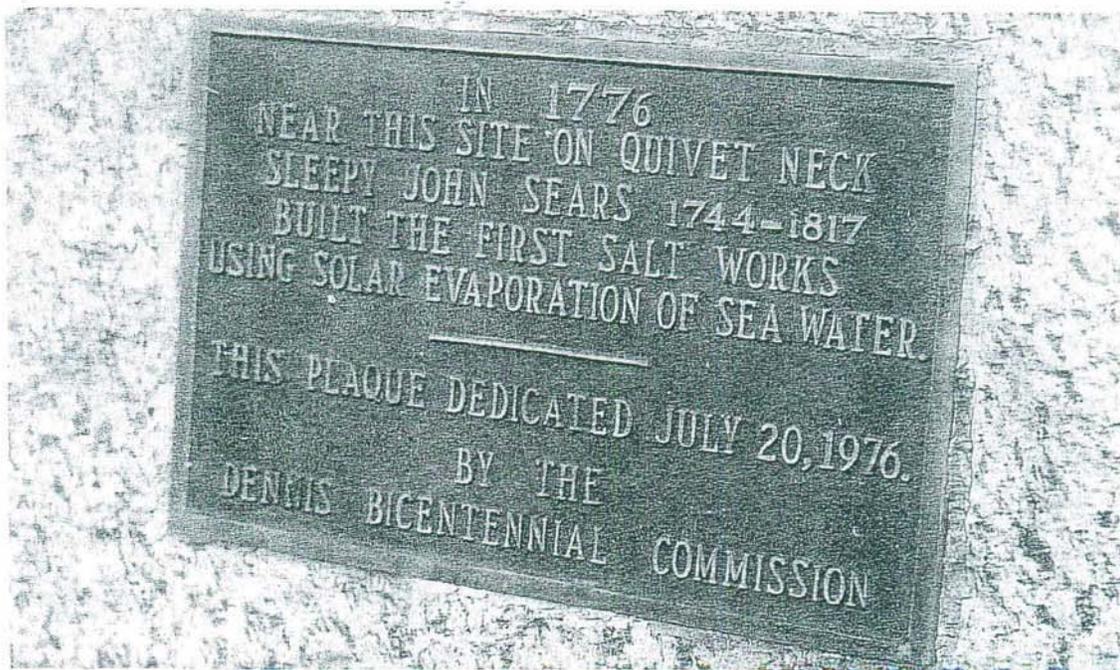


The Assessors listing for the Town of Chatham for the year 1829, on page 160, lists Jesse Nickerson as owning 4,400 feet of saltworks. The men posing atop salt mill might well be his heirs. *Photo from the Library of Congress, Washington, D.C.*

Exhibit F-6



Above: The Dennis Bicentennial Commission dedicated a monument to John Sears in 1976. The boulder lies in the center of a field where some of the Sears saltworks were situated. **Below:** The bronze plaque is about Mr. Sears who is considered the progenitor of this early industry. *Photo by William P. Quinn.*



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August 7, 2009

Andrew D. Krueger, Ph.D.
Alternative Energy Programs
U.S. Dept. of the Interior
Minerals Management Service
381 Elden Street, MS 4090
Herndon, VA 20170

Dear Dr. Krueger,

Cape Wind is pleased to submit the following comments to the draft Memorandum of Agreement (MOA) distributed to the Section 106 consulting parties on June 12, 2009.

I.A.8

Last line: *“potential identified archaeological resources.”* should read *“potential unidentified archaeological resources.”*

I.C.1

With respect to additional vibracore work, the Minerals Management Service (MMS) Final Environmental Impact Statement (FEIS) states that the proponent will take approximately 50 additional vibracores and approximately 20 additional borings prior to construction, and that all samples will be reviewed by a marine archaeologist. Cape Wind believes that this plan of work as discussed in the MMS FEIS, coupled with the extensive vibracores and borings already taken and reviewed by a marine archaeologist, provides for more than adequate data to understand the subsurface characteristics and the impact to potential buried cultural resources. Cape Wind believes that locating a vibracore at each proposed turbine foundation would be an imprudent use of resources and is unnecessary to achieve the objective.

I.C.2

All vibracores will be subject to detailed analysis by a qualified technician and an archaeologist; however, it is likely that not all cores will require laboratory analysis. The detailed analysis may include laboratory analysis, if warranted in their professional judgment.

We suggest changing *“detailed laboratory analysis by qualified technicians and archaeologists”* to *“detailed analysis by qualified technician(s) and archaeologist(s).”*

I.C.3

We suggest omitting *“laboratory.”*

Dr. Andrew D. Krueger

August 10, 2009

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I.C.4

We propose the following language:

Provision will be made available for a representative of the Wampanoag Tribe of Gay Head/Aquinnah and/or the Wampanoag Tribe of Mashpee, designated by the respective Tribal Council, to be present on site during the collection of all vibracore samples.

Cape Wind, however, notes that samples retrieved during the collection of vibracores will not be opened or reviewed aboard the vessel.

I.D

The 100 foot buffer, as included in the FEIS, has been accepted by the Massachusetts Board of Underwater Archaeological Resources (Letter to Koning, 2/18/05) and the Massachusetts Historical Commission (Letter to Herzfelder, 2/22/05). A 100 foot buffer is adequate to protect the potential resource and is appropriate given the confined location and shallow depths that result in limited potential for debris to spread. A ten-time greater buffer of 1,000 feet (304.8 meters) would require movement of cables and wind turbine monopiles that is both unduly restrictive and entirely unnecessary.

II.A&B

With respect to compensatory mitigation, Cape Wind has on two occasions so far (once at the April 28, 2009 meeting in the "compensatory mitigation" breakout group and again in a draft MOA submitted by Cape Wind to MMS on June 4, 2009) put forth a provision to provide an aggregate of \$150,000 to mitigate the finding of potential historical impacts of the proposed project.

VII.E

We propose, "*December 31, 2010*" be changed to "*the commercial operation date of the proposed project.*"

Page 6, last full sentence:

We believe the MMS intended to say, "*Execution of this MOA by the MMS, the SHPO, the Council, the USACE and the Proponent and implementation of its terms, is...*"

Page 6

The MMS may want to differentiate more clearly between Signatory Parties and Concurring Parties.

Dr. Andrew D. Krueger

August 10, 2009

Page 3

We hope that these comments will help to facilitate and expedite the execution of a MOA by the Section 106 consulting parties.

Sincerely,

A handwritten signature in blue ink, appearing to read "CO", with a long, sweeping flourish extending upwards and to the right.

Craig Olmsted
Project Manager

Cc:

Brona Simon, Massachusetts Historical Commission
John Eddins, Advisory Council on Historic Preservation
Karen Kirk Adams, U.S. Army Corps of Engineers

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July 6, 2009

Dr. Rodney E. Cluck
Project Coordinator
Minerals Management Service
Department of the Interior
United States of America
381 Eldon Street
Mail Stop 4042
Herndon, VA 20164

Re: Eligibility of Nantucket Sound for Listing on the National Register.

Dear Dr. Cluck,

Cape Wind Associates LLC (“CWA”) hereby opposes the request of the Wampanoag Tribe of Gay Head (“WTA”) and the Mashpee Wampanoag Tribe (“MWT,” collectively the “Tribes”) for the Minerals Management Service (“MMS”) to determine that Nantucket Sound is eligible for listing on the National Register as a Traditional Cultural Property (“TCP”). In particular, we respond to the June 23rd letter of the WTA (the “WTA Letter”) and the June 23rd letter of the Alliance to Protect Nantucket Sound (the “Alliance”), the WTA and the MWT (the “Joint Letter”). As set forth below, Nantucket Sound, a heavily utilized and approximately 600 square mile portion of unenclosed ocean, does not meet the basic criteria for such listing. We further note that such Letters make it abundantly clear that “the only course of action” that could satisfy the Tribes and the Alliance is either another project at a different location or the “no action” alternative, neither of which, as we have previously discussed, has any likelihood of being the basis of a consensual MOA. As such, the consultation process is at a fundamental and irreconcilable impasse, and should thus be terminated without further delay, so that the Advisory Council for Historic Preservation (“ACHP”) may proceed promptly to transmit its comments to the Secretary pursuant to 36 CFR § 800.7(c).

I. Introduction.

The essence of the Tribes' claim is that the entirety of Nantucket Sound is eligible to be listed as a Traditional Cultural Property because it is visible, under certain conditions, from other undisclosed land-based sites allegedly used for religious and cultural tribal ceremonies:

The Tribes' practices include viewing the sun at dawn across an open and natural Sound while conducting religious ceremonies and prayers. Because of this, Nantucket Sound is eligible for the National Register of Historic Places as a Traditional Cultural Place (TCP).

Joint Letter, at 4. However, even if the land-based ceremonial sites were deemed to be TCPs, the Tribes' fundamental premise (*i.e.*, that the boundaries of such TCPs should therefore extend into the ocean as far as the eye can see) is contrary to the published guidance and policies of the National Register, as well as the established precedent in similar cases. As discussed below, such authorities discourage the nomination of natural features and water bodies, require substantial documentation of alleged eligibility factors, and provide that TCPs associated with ceremonial sites be limited to within reasonable, immediate and well-defined boundaries.

II. Eligibility Requests for Natural Features Face Heavy Burdens.

As an initial matter, National Register policies provide that attempts to nominate natural features for listing face a heavy burden of proof, as follows: "The National Register discourages the nomination of natural features without sound documentation of the historical or cultural significance." Guidelines for Evaluating and Documenting Traditional Cultural Properties, National Register Bulletin (2002) (the "TCP Guidelines") at 11. Such Guidelines further provide that "it is difficult to distinguish between properties having real significance and those whose putative significance is spurious," and that supporting assertions should thus be questioned and "subjected to critical analysis," including "careful analysis" of the asserting party's motives. *Id.* at 3-4, 11. Additional National Register guidance also provides that a natural feature can only be eligible if its importance is documented and "if the site can be clearly defined," as it is "critical ... that the activities be documented and that the associations not be so diffuse that the physical resource cannot be adequately defined." How to Apply the National Register Criteria for Evaluation, National Register Bulletin (2002), at 4-5. The factual assertions of the Tribes supporting the eligibility of the Sound fall far short of the foregoing standards of documentation and definition.

With specific reference to the foregoing requirement of "definite borders," it is particularly notable that the United States Supreme Court has determined that Nantucket Sound does not constitute a "coastal water body," "inland waters," or "internal waters" (such as a lake, bay or river), but an unenclosed portion of the territorial or "high seas." United States v. Maine, 475 U.S. 89 (1986). The Supreme Court further found that Nantucket Sound lacks historic identity as a discrete body of water, noting, with respect to historic maps from the 17th and 18th centuries, that "none of these maps identified Nantucket Sound as a separate body of water even

though they did identify other bodies of water such as Cape Cod Bay, Buzzards Bay, and, in some cases, Vineyard Sound,” and that the historic maps “did not support Massachusetts’ contention that the area’s inhabitants established a special relationship with the protected waters of Nantucket Sound as opposed to the surrounding waters and ocean in general.” *Id.* at n.16. Nantucket Sound thus constitutes approximately 600 square miles of unenclosed and ill-defined ocean and high seas, and is well beyond both the scale and nature of any appropriate TCP proposal.

III. The Boundaries of TCPs Associated with Ceremonial Sites do not Properly Extend to the Limits of Human Visibility.

Contrary to the fundamental premise of the Tribes, well-established precedent and practice indicate that the boundaries of TCPs associated with ceremonial sites are properly limited to the ceremonial site and its “immediate viewshed” surroundings, with more distant viewshed impacts to be considered, but not to be included within the TCP. The TCP Guidelines provide the example of the Helkau Historic District in northern California, which included tribal religious and traditional ceremonial sites, to which the natural mountain-top viewsheds were acknowledged to be important. As set forth below, the Guidelines indicate that, as practical matter, the boundaries of the TCP were nonetheless required to be defined much more narrowly than the extent of the significant viewsheds, such that the TCP was properly limited to the extent only of the “immediate viewshed” surrounding the ceremonial sites:

Defining the boundaries of a traditional cultural property can present considerable problems. In the case of the Helkau Historic District in northern California, for example, much of the significance of the property in the eyes of its traditional users is related to the fact that it is quiet, and that i[t] presents extensive views of natural landscape without modern intrusions.

These factors are crucial to the medicine making done by traditional religious practitioners in the district. If the boundaries of the district were defined on the basis of these factors, however, the district would take in a substantial portion of California’s North coast range. Practically speaking, the boundaries of a property like the Helkau District must be defined more narrowly, even though this may involve making some rather arbitrary decisions. In the case of the Helkau District, the boundary was finally drawn along topographic lines that included all the locations at which traditional practitioners carry out medicine-making and similar activities, the travel routes between such locations, and the immediate viewshed surround this complex of locations and routes.

TCP Guidelines, at 20 (emphasis added). As shown on the map attached as Exhibit A, the resulting boundaries of the District extended only to “immediate viewshed surroundings,” and are thus within approximately one-half mile from the actual ceremonial sites, thereby excluding the significant but more remote viewsheds from inclusion within the TCP.

Notably, the TCP Guidelines then go on to clarify that visual impacts from beyond the “immediate” boundaries of a ceremonial TCP such as the Helkau District are nonetheless to be considered, not as part of the TCP itself, but as presenting potential “adverse affects” that could result in the “alteration of the character of the [TCP’s] setting” within the meaning of Section 800.9(b)(2) of the ACHP’s Regulations:

The fact that the boundaries of a traditional cultural property may be drawn more narrowly than they would be if they included all significant viewsheds or lands on which noise might be intrusive on the practices that make the property significant does not mean that visual or auditory intrusions occurring outside the boundaries can be ignored. In the context of eligibility determination or nomination, such intrusions if severe enough may compromise the property’s integrity. In planning subsequent to nomination or eligibility determination, the Advisory Council’s regulations define “isolation of the property from or alteration of the character of the property’s setting” as an adverse effect “when that character contributes to the property’s qualification for the National Register” (36 CFR 800.9(b)(2)). Similarly, the Council’s regulations define as adverse effects “introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting” (36 CFR 800.9(b)(3)).

Id. at 21. Thus, the fundamental premise of the Tribes, that the boundaries of a ceremonial TCP should extend as far as the eye can see, is directly contrary to the provisions of the TCP Guidelines, which confirm that (i) the boundaries of a ceremonial TCP are properly limited to the actual site and its “immediate” viewshed, but (ii) impacts upon significant but more remote viewsheds beyond the boundaries of the TCP are to be evaluated and considered pursuant to Section 8.00 of the Regulations (as the MMS has done here) for potential adverse impacts to the TCP.

The National Register bulletin entitled Defining Boundaries for National Register Properties (1997) (the “Boundaries Bulletin”) similarly indicates that the physical boundaries of a National Register property must be both clearly defined and within “reasonable limits,” and that site boundaries should “not exceed the extent of the significant resources and land areas comprising the property,” should “not include buffer zones or acreage not directly contributing to the significance of the property,” and “should exclude peripheral areas that no longer retain integrity.” Id. at 2, 3. The Boundaries Bulletin further indicates that boundaries should not be set arbitrarily, and encourages the usage of “current legal boundaries,” “historic boundaries,” or a “natural feature, such as a shoreline.” Id. at 3.

With specific respect to TCPs associated with traditional ceremonial sites, the Boundaries Bulletin goes on to recommend that boundaries be determined by reference to the area of ceremonial use, whereby the agency would “select boundaries that would encompass the area associated with the traditional use or practice and document the factors that were considered in the boundary’s justification.” Id. at 27. With respect to associated viewsheds, the Boundaries Bulletin provides the instructive example of the Kuchamaa Tecate Peak TCP, which involved a

mountain-top ceremonial location utilized by tribal shamans for the acquisition of knowledge, vision quests and purification ceremonies. Despite the expansive mountain-top viewshed and a tribal assertion of a “sphere of spiritual influence extending for several miles from the mountain,” the boundaries of the TCP were limited to a total of only 510 acres, delineated by the topographical elevation line of 3,000 feet above mean sea level, such that the TCP included the actual locations of ceremonial rituals and the immediate surroundings, but not the more expansive and remote landscapes visible therefrom. *Id.* at 27. Again, such result is directly contrary to the fundamental premise of the Tribes’ position.

The Boundaries Bulletin also references the limitations that were adopted to define the Dune Shacks of Peaked Hill Bars Historic District located on Cape Cod, which presents geographic and factual aspects very similar to the present case. The Dune Shacks District is described as an area including dune shacks “scattered along a 3-mile stretch of unvegetated dunes in view of the Atlantic Ocean” that was historically used as a summer retreat for a colony of artists, writers and poets, to which the natural and ocean viewsheds were acknowledged to be an important component:

The eligible property includes 17 shacks in the surrounding dune landscape. Because the natural landscape served as a setting and inspiration for the inhabitants, the appropriate boundary includes the collected extent of the visible landscape for all the dune shacks in the district. Geographic information systems (GIS) analysis techniques were used to analyze the viewshed for the purpose of defining the district boundaries. Natural features, coastal features, and viewshed were used to define the National Register boundaries of the property.

Id. at 19. Notably, the resulting District was defined by seaward boundaries set by the shoreline, but did not extend into the ocean. Thus, although scenic ocean viewsheds were acknowledged, only those immediate viewsheds within the coastline were included within the borders of the District. As a result, any impacts upon offshore views from more remote ocean activities would be considered for their potential adverse impact upon the District, but the District itself was not extended into the ocean, as the Tribes would now request. *Id.* at 19.¹

¹ Other instructive examples included in the Boundaries Bulletin include the Rocky Butte Scenic Drive Historic District in Oregon and Weyerhaeuser South Bay Log Dump Rural Historic Landscape in Washington State. The Rocky Butte District was described as a “view point on the crest of Rocky Butte,” along with scenic drive approaches to the summit, which “offers a scenic vista of the Columbia River Plain in all directions.” Consistent with the foregoing examples, the boundaries of the District were not extended to include the wide and remote expanse seen from the elevated vantage points. Rather, the District was limited to 21.48 acres “bounded by the 50-foot-wide right of way as measured from the center lines” of the lineal roadway and the referenced viewpoint, but not the associated scenic vistas that extended far below. Boundaries Bulletin at 22. In the Weyerhaeuser example, the District demonstrated a continuity of land and water usage on the Puget Sound waterfront by successive groups from Native Americans to 20th century operators, with the boundaries established to include both upland and tideland areas along an inlet of Puget Sound, as defined by established property ownership boundaries, but not extending further into the waters of Puget Sound. Once again, such boundaries were determined to include the site of significance, plus only reasonable, well-defined and immediate surroundings. *Id.*

IV. The Tribe's Allegations of Historic Usage are also Inadequate to Establish TCP Eligibility.

The additional assertion of the WTA Letter that Tribal members have historically “traversed, fished, cultivated and occupied the entire area” of Nantucket Sound is also insufficient to establish TCP eligibility. Although the National Park Service regulations at 36 CFR Section 60.3 provide that a site that is “the location of the significant event, a prehistoric or historic occupation or activity” may be eligible for listing, the proponent of such a listing must demonstrate eligibility with “sound documentation” and “scholarly search” rather than vague assertion, as indicated by the following National Register Bulletin provision:

A site may not be marked by physical remains if it is a location a prehistoric or historic event or pattern or event and if no buildings, structures, or objects mark the time of events. However, when the location of the prehistoric or historic event cannot be conclusively determined because no other cultural materials were present or survived, documentation must be carefully evaluated to determine whether the traditional recognized or intensive site is accurate.

A site may be a natural landmark strongly associated with significant prehistoric or historical events or patterns of events, if the significance of the natural feature is well documented through scholarly research. Generally, though, the National Register excludes from the definition of “site” natural waterways or bodies of water that served as determinates in the location of communities or a significant in the locality’s subsequent economic development. Or there may have been “avenues of exploration,” that features most appropriate to document the significance of the properties built in association with the waterways.

How to Apply the National Register Criteria for Evaluation, National Register Bulletin, Part IV, p. 3 (emphasis added). Such Bulletin further provides that for historic sites, boundaries should be established that “include only portions of the site retaining historic integrity and documented to have been directly associated with the event.” Id. at Section III, p. 42. The TCP Guidelines similarly instruct that “the association of the property with significant events, and its existence at the time the events took place, must be documented to accepted means of historical research.” Id. at 13.

The general assertions of historic presence and passage fall far short of such standards. Further, as a practical matter, the very same factual assertion (i.e., that members historically traversed, utilized or occupied area) could be applied as easily to virtually all of the land areas of Southeastern New England and much of the surrounding ocean, an absurd result inconsistent with established policies. It is also notable that the extensive geophysical and geological offshore site work conducted for the Proposed Undertaking showed no indication of identifiable cultural remains. See, e.g. FEIS at 5-242. The general and unsupported assertions of historic presence and passage of the WTA Letter thus do not provide a basis to establish TCP eligibility for Nantucket Sound.

V. Executive Order 13007 Does Not Apply.

The MMS should reject the assertion that the provisions of Executive Order 13007, Indian Sacred Sites, is applicable to the proposed undertaking, as such Order by its terms applies only to actions that would adversely affect the physical integrity of sacred sites. “Sacred Site” is defined to be “any specific, discrete, narrowly delineated location on federal lands” that is identified by virtue of its established religious significance to, a ceremonial use by, an Indian religion.” As discussed above, Nantucket Sound is approximately 600 square miles of unenclosed ocean and “high seas,” and not an enclosed body of water, and accordingly cannot be considered a “specific, discrete, narrowly delineated location.” As part of the ocean, it also is not “on federal land” within the meaning of the Order. Further, to the extent that the Tribes maintain that certain on-shore ceremonial sites should be regarded as TCPs or “sacred sites,” the Executive Order addresses measures that would adversely affect “the physical integrity” of such sites. As noted above, the only impact to the land-based TCPs would be potential and indirect visual impacts, and would thus not involve any issue regarding the “physical integrity” of such sites.

VI. The Wampanoags’ Own Proposal to Develop Wind Power on Tribal Lands Undermines Claims of Cultural Destruction.

The allegation of the Tribes that the distant CWA project would destroy their cultural integrity is severally undermined by the Wampanoags’ simultaneous proposal to locate a major wind power project directly on tribal land. Attached hereto as Exhibit B is the WTA’s Application for Pre-Development Financing submitted to the Massachusetts Technology Collaborative (“MTC”) seeking public funding to investigate the “viability of installing distributed wind energy at the Wampanoag Tribal land on Martha’s Vineyard.” Id. at 4. Such application goes on to state that the Wampanoag plan is for “a proposed 4 + megawatt wind energy generation facility to be located on the island of Martha’s Vineyard on land owned by the Wampanoag tribe,” with the proposed wind turbines ranging in size up to 2.1 MW, which would typically involve a height in the range of 400 feet. Id. at 6.

Attached hereto as Exhibit C is the resulting Preliminary Survey of Potential Wind Project Sites prepared for the Wampanoags pursuant to a \$50,000 grant from the MTC, which concludes that the preferred site for the project is at the Gay Head Cliffs, notwithstanding the Report’s acknowledgment that the “Gay Head Cliffs is a national monument with strong historic and cultural significance.” Id. at 22. With respect to visibility, such report indicates at Figure 2 that the proposed site is of substantially higher elevation than the rest of Martha’s Vineyard island. Figure 13 thereof further indicates that the two proposed locations at the Gay Head Cliffs are on tribal lands and, respectively, within approximately 115 meters and 175 meters of the National Historic Landmark of the Gay Head Cliffs, as well as within approximate 97 meters and 194 meters from the “Lookout Point” designated for viewing the Cliffs. Moreover, Figure 10 of the Report indicates that both of such proposed sites for the Wampanoag wind project are within areas designated as “Scenic Landscapes” and “Protected and Recreational Open Space.” Thus, the Tribes’ assertion that a project located some 25 miles away from Tribal lands would destroy

their culture is severely undermined by the simultaneous proposal of the Wampanoag wind project on tribal lands that are designated as “scenic landscape” and “open space” areas, in immediate vicinity to a National Historic Landmark, and at the very center of WTA’s tribal life.

VII. The Joint Letter Misstates the Facts Regarding the Eligibility of Nantucket Sound as a Marine Sanctuary.

The agencies should also disregard the assertion of the Joint Letter that Nantucket Sound qualifies for a National Marine Sanctuary status. To the contrary, and as the Alliance is well aware, the past nomination of Nantucket Sound for Federal Marine Sanctuary designation was rejected on the merits. As discussed in the release of the Massachusetts Coastal Zone Management (“MCZM”) Program attached as Exhibit D, the Federal Government in 1981 reviewed and rejected, on the merits, a request to place the Federal waters of the Sound on the “active candidate” list for Marine Sanctuary designation. As indicated in such release, the Federal review process involved nine months of public comment and concluded that such area “does not adequately meet site selection criteria for consideration,” and that most of the potentially eligible resources were in the state waters close to shore “and not in the [federal] area of the Sound.”

The MCZM release also notes that the Massachusetts Governor took the position that “the state Ocean Sanctuary program adequately protected the peripheral [state] waters of the Sound and that a Federal presence was not desirable in these areas.” Since that time, the Sound has never advanced to “active candidate” status, and the relevant regulations at 15 CFR 922.10 provide that “the [Site Evaluation List or “SEL”] is currently inactive.” Nor should any potential listing status have any implication upon the current proceedings, since such regulations further expressly provide that “placement of a site on the SEL, or selection of a site from the SEL as an active candidate for designation as provided for in 922.21, by itself shall not subject the site to any regulatory control under the Act.”

MMS should also give deference to the fact that Massachusetts has affirmatively confirmed that it neither asserts any sanctuary claim, nor seeks sanctuary status, regarding Nantucket Sound. In its 2004 decision regarding the proposed undertaking of CWA, the Federal Court of Appeals for the First Circuit noted that “the Massachusetts Department of Environmental Management, which is charged with implementing the Ocean Sanctuaries Act, including the ‘care, oversight and control’ of [state] ocean sanctuaries, has expressly disclaimed authority over Horseshoe Shoal.”² Ten Taxpayers, et al. v. Cape Wind Associates, LLC, 373 F.3d 183, 195 (1st Cir. 2004), cert denied, 160 L.Ed.2d 1069 (U.S. 2005). The First Circuit’s decision also cited to the statement of the Massachusetts Ocean Sanctuaries Coordinator which expressly confirmed that Massachusetts neither claims nor seeks any sanctuary jurisdiction for the Shoal, as follows:

² With respect to state sanctuary status, an adjudicatory decision of the Massachusetts Energy Facilities Siting Board to which the Alliance was a party (Cape Wind Associates, EFSB 02-2 (2005), pp. 9-13) rejected the same arguments of the Alliance and found that the Massachusetts Ocean Sanctuary Act of 1971, as then in affect, did not prohibit “facilities associated with the generation, transmission and distribution of electrical power.” G.L. c. 132A, Sec. 16.

While I appreciate your legal research ... relative to state jurisdiction claims, the Department and the Ocean Sanctuaries Program have not claimed jurisdiction over the area of the sound which includes Horseshoe Shoals, and respectfully decline to seek to expand our current jurisdiction.

Ten Taxpayers, 373 F.3d. at 196. All agencies should thus disregard the suggestion that Nantucket Sound is eligible for National Marine Sanctuary status, or that the Commonwealth seeks such status, and dismiss the matter as irrelevant to the matter at hand.

VIII. MMS Should Reject the Alliance's Restated Arguments Regarding NEPA Alternative Issues.

The MMS and other agencies should also reject the attempt of the Joint Letter to repeat the very same NEPA issues of the Alliance which have been fully rebutted, considered and rejected. Indeed, the lead agency in each case (the ACOE and then the MMS) has spent considerable time in resolving these now long-settled issues, which need not be re-opened at the eleventh hour, after the issuance of a Final EIS. While we do not intend to re-argue these issues, we would refer any interested agencies to our letter of July 28, 2006 responding to MMS's Notice of Intent to Prepare an EIS on the Cape Wind Project, which includes a summary of our position on the issues, which has remained consistent over the seven years of project review.

As a final note respecting alternatives, we also call you attention to the recent federal court decision in this Circuit which confirms that the requirement at 36 CFR 800.6 of the ACHP's regulations to consult on "alternatives or modifications to the undertaking" is properly focused upon and limiting the potential impacts of the existing proposal, rather than focusing upon other project proposals located away from any affected historic properties:

These references [in Section 800.6] to alternatives are thus more sensibly interpreted as applying only to changes in the existing proposal that could make it more compatible with its surrounding environment. If we were to adopt plaintiffs' argument that HUD must consider completely independent and different proposals for the use of federal funds, i.e., construction outside of the historic district or rehabilitation of existing housing within it, then any proposal for consideration within a historic district would always have to be rejected since the alternatives would always create less of an impact on the district. This court does not believe the NHPA was intended to go so far.

Northwest Bypass Group v. U.S. Army Corps of Engineers, 552 F. Supp.2d 97, 132 (D.N.H. 2008) (emphasis original), quoting Wicker Park Historic Dist. Pres. Fund v. Pierce, 565 F. Supp. 1066-1076 (N.D. Ill. 1982) ("This court finds that neither NHPA nor the regulations impose upon HUD a duty to consider alternative sites for construction or completely different housing proposals...." 565 F. Supp.at 1076). The agencies should thus not allow the delay of further

Dr. Rodney E. Cluck

July 6, 2009

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consultation with parties who have made it clear that they will refuse to consider any measures that would be applicable to “the existing proposal,” *i.e.*, the CWA Project.

IX. A Determination of Eligibility Would Have Far Reaching and Unpredictable Adverse Effects.

MMS should further consider that a determination of National Register eligibility of an area of unenclosed ocean as large as Nantucket Sound would have far-reaching, unpredictable and adverse consequences. First, if the unenclosed ocean could be so listed, it would be far easier to list enclosed (and thus “well-defined”) waters, for which the very same cultural and historical usage claims could be made (including, for example, Vineyard Sound, Buzzards Bay, Narragansett Bay, Cape Cod Bay, Dorchester Bay, etc.) Second, the Tribes have already indicated an intent to expand their position geographically, as recent press indicates that the WTA tribal representative now maintains that all areas around Martha’s Vineyard are “culturally significant,” including both sunrise (eastern) and sunset (western) views: “When asked during a meeting on the draft plan to indicate what areas of Martha’s Vineyard were culturally significant to the tribe [the WTA representative] said she drew a big circle around the entire island,” noting that “you can see the sun rise out of the water and see the sun set on the water.” Cape Cod Times, July 1, 2009. Third, if such waters themselves became TCPs, all actions in, affecting, or visible therefrom would become subject to the NHPA, including commercial fishing, marinas and wharves, cell towers, bridges, marine and avian transportation, and virtually all activity traditionally associated with designated port areas, a result far beyond the intended reach of the NHPA and seriously detrimental to the interests of the Commonwealth. The far more rational and established approach is to limit the boundaries of ceremonial TCPs to the area of usage and immediate surroundings, but to take into consideration remotely-located actions that could potentially affect the TCPs.

X. Conclusion.

As discussed above, the MMS should reject the position of the Wampanoag Tribe of Gay Head and the Mashpee Wampanoag Tribe that the approximately 600 square miles of unenclosed ocean known as Nantucket Sound should, in its entirety, be determined to be eligible for listing on the National Register. Finally, the latest letters of the Tribes and the Alliance have now made it perfectly clear that they had no intention of negotiating in good faith towards measures that would apply to the proposed undertaking (*i.e.*, the CWA Project), and the consultation process is thus at a fundamental and irreconcilable impasse, such that prompt termination and the transmittal of ACHP comments to the Secretary are the appropriate regulatory path.

Sincerely,



Dennis J. Duffy

Vice President of Regulatory Affairs

Dr. Rodney E. Cluck

July 6, 2009

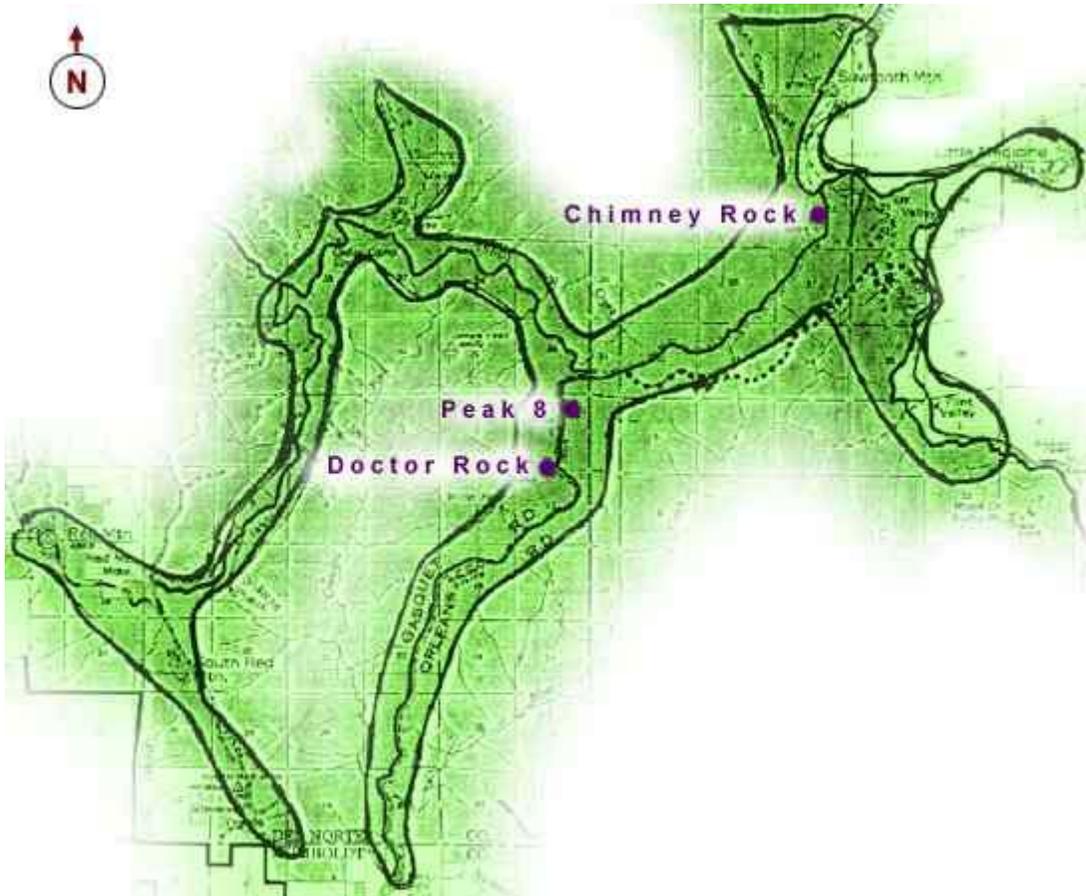
Page 11

cc: Dr. Melanie Stright
Federal Preservation Officer
Dr. Andrew D. Krueger
Alternative Energy Programs
Minerals Management Service
381 Elden Street
Herndon, VA 20170

John M. Fowler, Executive Director
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 803
Washington, DC 20004

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

Helkau District Eligible for National Register of Historic Places



Clean Energy Program
APPLICATION FOR PRE-DEVELOPMENT FINANCING

Per Solicitation No. 2004-GP-03

Exhibit B

1. Primary Applicant Wampanoag Tribe on Gay Head (Aquinnah)	2. Partners (if any) One World Energy
3. Short Title of Project Wâpan Project	4. Project Type (check one) Feasibility Study Pre-Development
5. Brief Summary of Project Will Study the feasibility of placing wind turbines on tribal lands in Aquinnah, MA	
6. Funding Sought \$50,000	7. Total Estimated Cost of Project \$100,000 (feasibility study) \$5,000,000 (total project)

Applicant Information

8. Name of Contact Individual Durwood Vanderhoop		9. Title Grantsman/Planner	
10. Mailing Address 20 Black Brook Road			
11. City Aquinnah	12. State MA	13. Mailing Zip 02535	14. Street Zip 02535
15. Telephone 508 645-9265 x116		16. Fax 508 645-3790	
17. Contact e-mail address Durwood@wampanoagtribe.net		18. Applicant Web Address www.wampanoagtribe.net	
19. Type of Entity (circle or highlight all that apply) For-profit company/corporation Not-for-profit organization Individual State govt. agency/authority Federal government Local government Manufacturer – renewable tech. Manufacturer - other technology Professional/trade association Consumer or public interest group Environmental interest/advocacy group Foundation Electric distribution company Natural gas distribution company Energy service company Power plant developer Power generator Electricity broker Competitive Power supplier Aggregator or Buyers Group Cooperative Architect Engineer Builder or real estate developer Academia: K-12, Post-secondary Research organization Financial institution/group			

Generating Facility and Site Information

20. Name of Proposed Generating Facility Uhuru Wāpan		
21. Site Address 20 Black Brook Rd		
22. City / Town Aquinnah	23. State MA	24. Mailing Zip Code 02535
25. Site Owner Contact Person Paul Reeves		26. Contact e-mail address upepo11@aol.com
27. Owner Telephone Number(s) 617 935-1386		28. Fax 617 442-6404
29. Electric Utility Service Territory or Provider NSTAR		
30. Percentage of RECs from the Generating Facility to be sold in accordance with RET Ratepayer Benefit for 10 years: 30 % See Section 4.2.5.3 of the Solicitation: Massachusetts RET Ratepayer Benefit Requirement for more information. Note: 30% will be the assumed percentage if left blank.		

1. Project Summary

The Wampanoag Tribe and One World Energy are planning to investigate the technical, community reaction and economic viability of installing distributed wind energy at the Wampanoag tribal lands on Martha's Vineyard. The wind feasibility study will analyze and evaluate the site, wind resources, permitting issues, visual and community impact and the project economics. It is envisioned that wind turbine(s) ranging from 850 kW to 2.1 MW in size would be well suited to the site and the total project size may range from 1.7 to 6 MW.

The wind resource/production research data, community reaction to the proposed wind farm permitting issues and the project economic forecasting based on collected wind resource and production data on available wind turbines will be analyzed to determine if the potential wind project is viable. The wind feasibility project will conclude with a description of the potential project's viability based on the above mentioned items and next steps in the pre development process for a successful wind project on the site.

2. Project Description

2.1. Applicant and Project Team

a. Applicant

The Wampanoag Tribe of Gay Head (Aquinnah) is Massachusetts' *only* federally acknowledged Tribe and has been since 1987. The Wampanoag people have lived for at least 10,000 years on Martha's Vineyard establishing a way of life based on fishing, hunting and agriculture.

Almost all new employment opportunities for this area are of a seasonal nature simply because of the resort community that the island has become, which has left many Tribal member no choice but to leave the island and look for more affordable housing and better paying jobs. This in numerous ways this has suppressed the Tribe's social and cultural growth but fortunately the Tribal membership continues to grow, now 1100 strong.

Over the years the Tribe has repeatedly demonstrated its ability to administer federal grants and contacts successfully from agencies including the Department of Housing and Urban Development, Environmental Protection Agency, Bureau of Indian Affairs and Indian Health Services, not to mention State and private foundations.

b. One World Energy

One World Energy was founded by Paul Reeves, a twelve-year veteran in the renewable energy industry. Mr. Reeves has extensive experience in the wind-power industry working as a consultant to Distributed Generation Systems Corporation (DISGEN) and for the US Department of Energy as liaison to Communities of Color for wind development and renewable energy utilization. He has also worked under a grant from the Massachusetts Renewable Energy Trust where he developed plans to educate and created renewable energy ownership models for communities of color. Currently Mr. Reeves is the renewable energy specialist for the American Association of Blacks in Energy and the Black Farmers Association.

c. The Productivity Factor, Inc.

As a SOMWBA-certified minority vendor and new entry into the renewable energy field, The Productivity Factor will assist One World Energy in the overall management of the assessment, and if appropriate, pre-development and development processes associated with the overall success of the project. With project development and operations experiences on several continents, over the last three decades, Ralph Jordan brings a myriad of team building, problem solving, and quantitative analyses expertise garnered in public and private endeavors. As a certified facilitator and process improvement specialist who has worked with numerous community organizations, The Productivity Factor's presence on the team assures a structured and formal approach to critical thinking and decision making.

d. Jeff Paulson & Associates

Jeff Paulson is the principal in his own law firm in Minneapolis, and has been practicing in the area of energy law for over twenty years. He was employed at NSP from 1994 to 1998 and while there worked on the development of the Lake Benton I and Lake Benton II projects, among others. Since 1998 his practice has focused on representing clients developing and owning renewable energy projects of all sizes, including most of the wind projects recently built in Minnesota. He has extensive experience in leasing and site acquisition, project ownership structures, permitting, construction and turbine contracting, PPA and interconnection agreement negotiation, and negotiation of financing terms and documents.

e. HDR

HDR is an architectural, engineering and consulting firm that excels at managing complex projects and solving challenges for clients.

As an integrated firm, HDR provides a total spectrum of services for our clients. Our staff professionals represent hundreds of disciplines and partner on blended teams nationwide to provide solutions beyond the scope of traditional A/E/C firms.

f. Wind Logics, Inc.

Wind Logics Inc. (formerly SESCO), a world leader in atmospheric modeling and analysis, has developed innovative methodologies for assessing long-term financial risk associated with wind energy development. The Wind Logics technology suite includes a range of advanced physics-based computer models that are tuned and integrated, ranging from larger-scale weather models to nonlinear wind field models to detailed models based on computational fluid dynamics when required. We can use these models in the appropriate combination to answer your questions regardless of whether your location is on a flat plain or in an area of complex terrain. The Wind Logics models are state-of-the-art, including advanced treatment of things like varying thermal effects during the day and its impact on wind steering through the detailed terrain. ind Energy.

2.2. The Proposed Generation Facility

This is a development plan for a proposed 4+ megawatt wind energy generation facility to be located on the Island of Martha's Vineyard on land owned by the Wampanoag Tribe. The facility would be owned and operated by a local community energy cooperative developed by the tribe. The project will be developed in accordance to an agreement between One World Energy and its team and the Wampanoag Tribe. One World Energy's team has had experience in developing similar small commercial wind facilities in the Midwestern U.S. and structuring their ownership to benefit local communities or charitable endeavors. A summary of wind projects developed by the One World's Energy team, including community-based projects, is attached.

2.2.1 Energy Resources and Technologies

Wind resources in Vineyard and Nantucket Sounds are very favorable. Quantitative evidence in support of this statement with respect to this specific project will be produced as part of the feasibility study being proposed in this grant application.

The feasibility study will also evaluate turbines in the 850 KW to 2.1 MW range. Such turbines are available from several manufactures including GE Wind, Suzlon, Vestas, Gemesa and Bonus/Siemans.

2.2.2 Project Location

The Wampanoag Tribe of Gay Head (Aquinnah) owns approximately 481 acres of land in twelve parcels on the island of Martha's Vineyard, Massachusetts. Most of these parcels are located in the town of Aquinnah on the western tip of the island. Figure 2.2.2 is a map of Aquinnah with tribal lands in red. One parcel is approximately 196 acres in size and is interior to the island. The Wampanoag Community Center is on this parcel at approximately 70.80 West Longitude, 41.33 North Latitude. It is on this 196 acre parcel that we plan to site wind turbines.

Wampanoag Tribal Lands

The Wampanoag Tribe has sovereignty over 483.1 acres of land on Martha's Vineyard.

Most is located on the west end of the island

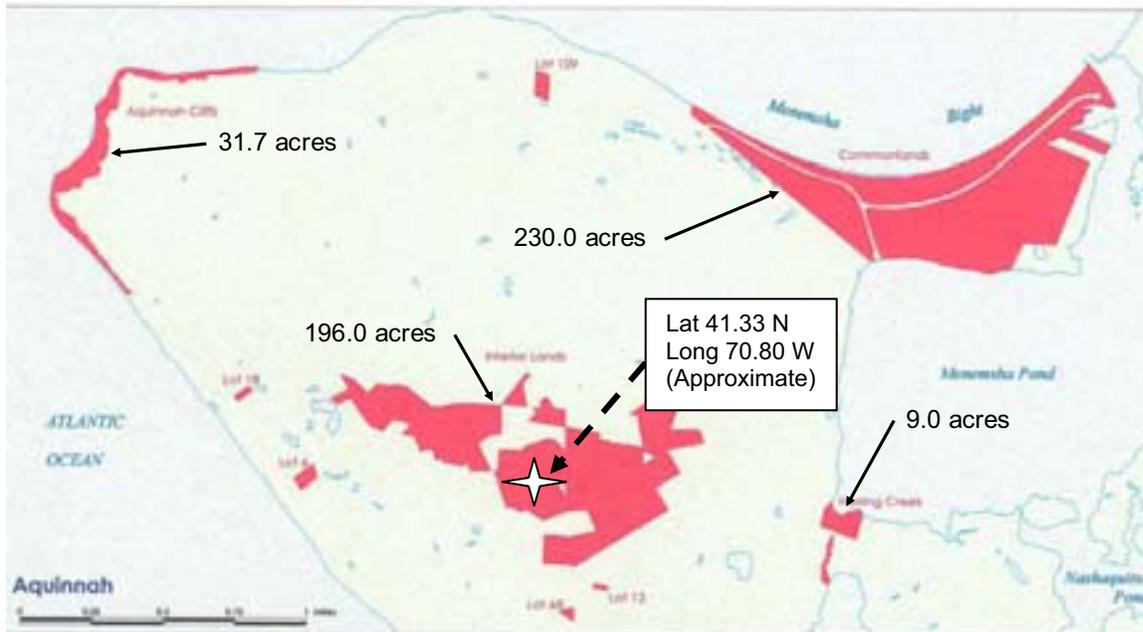


Figure 2.2.2

2.2.3 Site Owner Commitment

The Wampanoag Tribal Council adopted Resolution #2005-17 reproduced below. This resolution clearly commits the Tribe to studying the feasibility of “harnessing wind energy on tribal lands.”

2.2.4 Utility Company to be involved

The utility company is NStar and we have just opened up a dialogue with them. They would like us to come back when we have a more definitive understanding of the siting for our proposed turbine sites

2.3 Project Development Strategy and Status

2.3.1 Prior Feasibility Studies

The wind speed map available on the web site of the Massachusetts Technology Collaborative has been studied. Figure 2.3.1.a shows the section of the wind speed map for the Aquinnah area. Figure 2.2.2 shows the location of tribal lands in Aquinnah. Correlating these two maps and referring to the wind speed key in Figure 2.3.1.b, one can see that the inland tribal holdings are in an area with a mean wind speed between 16.8 and 17.9 mph.

Figure 2.3.1.a

Figure 2.3.1.b

2.3.2 Projected Development Strategy

Our development strategy the wind feasibility study consists of three main tasks each divided into subtasks.

Task 1: Wind Resource, Production and Siting Study

Subtask 1.A: NREL Tall Test Tower

The National Renewable Energy Laboratory (NREL) of the US Department of Energy sponsors an anemometer and test instrumentation loan program for Native American Tribes. With the assistance of NREL, Native American tribes can verify whether wind conditions at their proposed site will support a wind turbine facility. We already have a verbal commitment from NREL's Tony Jimenez that a tower presently in Washington state will be sent to the Wampanoag Tribe as soon as we get funding support.

(A letter formally requesting the loan of a Tall Tower has been sent to NREL. A copy is included as Attachment D.)

Subtask 1.A.1: Prepare Application to NREL for Tall Test

Subtask 1.A.2: Shipping Costs

Subtask 1.A.3: Assembly and Erection

Subtask 1.A.4: Data Recording and Maintenance

Subtask 1.A.5: Disassembly

Subtask 1.B: Wind Logics, Inc Subcontract

Wind Logics Inc. (<http://www.windlogics.com>) is a world leader in atmospheric modeling and analysis. We formally have requested Wind Logics to submit a proposal to us for analytically evaluating the wind resources at the proposed turbine site on Martha's Vineyard. Reproduced below is the proposal and quotation that Wind Logics has responded with.

Task 2: Community Outreach and Partnership Building

Subtask 2.A: Educational Materials

Produce education materials that describe the wind project to the community surrounding the proposed wind project; provide information in education materials that will empower community and tribal group members to make well-informed decisions concerning support of our wind project.

Subtask 2.B: Develop Partner Coalitions

Hold a kick-off event to introduce potential community partners to the project. Build partnerships with other organizations committed to developing wind energy on the Cape and Martha's Vineyard.

Subtask 2.C: Organize Community Forums/Meetings

Cultivate community support by encouraging community participation in the planning process; Inform and educate community on the attributes and benefits of renewable energy resources, benefits to Martha's Vineyard residents, environmental health issues, and the connection with the proposed wind project.

Task 3: Wind Resource Data and Economic Forecasting Analysis

The objectives of these activities will be to (i) identify the permitting and transmission conditions that need to be satisfied for the project to proceed and (ii) develop a project pro forma that reflects expected project costs, revenues, expenses and financing.

A series of pro formas modeling various combinations of scenarios (turbine models, revenues, financing options) will be generated to find the optimal Project components and financial structure.

Subtask 3.A: Permitting and Transmission

Subtask 3.A.1: Permitting

Permitting requirements will be identified and factored into siting and design decisions. It is expected that the pre-permitting process will likely involve the community outreach and education activities described above.

Subtask 3.A.2: Transmission

Activities will include identification of potential interconnection points with

the transmission system that will allow delivery of the Project's output to the offtaker(s), and initiation of system interconnection and transmission studies with ISO-New England and affected transmission utilities to obtain necessary interconnection approvals and estimated interconnection costs. Given the location of tribal property, the range of interconnection options will be limited.

Subtask 3.B: Projected Project Costs, Revenues, Expenses and Financing.

Subtask 3.B.1: Develop Projection of Revenues

Subtask 3.B.1.a: Wind Resource Analysis

As noted, a meteorological tower will be installed to measure site specific data. Wind Logics will be engaged to perform an analysis using publicly available wind data to assess the wind resource at the site both generally and in order to micro site turbines. Several turbine models will be analyzed by Wind Logics using the manufacturer's power curve and wind resource data to compute expected gross production from each turbine at applicable sites.

By applying expected losses for transmission and transformation of the gross production, and losses from operating conditions for each turbine, a net production estimate can be obtained that approximates the amount of energy actually deliverable to the offtaker at the point of delivery. These net production estimates for various turbines and project configurations can be used as the starting point for calculating revenues in each scenario.

Subtask 3.B.1.b: Power Sales

Potential purchasers of the electricity to be produced will be identified along with likely pricing terms based on negotiations and market data. Some research to this effect has already been conducted. Using the expected pricing stream, the revenues associated with electricity sales for each year of the Project can be established

Subtask 3.B.1.c: REC Sales

Similarly, potential purchasers of the renewable energy credits will be located. Several prospective purchasers have already been contacted, and the market is very active. An analysis of the various offers will be incorporated into various pro formas to assess the

best option for the Project.

Subtask 3.B.2: Develop projection of Ongoing Expenses

Subtask 3.B.2.a: Operating Expenses

. Wind generation facilities typically incur certain operating expenses, each of which needs to be explained and included in the expense section of the pro formas. Expense items commonly include:

- Warranty payments – payments to the manufacturer for turbine warranty service
- Operation and maintenance service – payments to the manufacturer for the first five years of O&M service and to other O&M suppliers thereafter, including any necessary reserves for replacement
- Insurance – CGL, property, mechanical breakdown and similar insurance costs
- Taxes – including applicable sales, property and production taxes
- Lease payments – if a lease is required, the expected annual payments will be negotiated
- Electrical usage – costs for station auxiliary
- Miscellaneous fees – accounting and management fees

Using these estimates, available operating cash can be calculated for each year.

Subtask 3.B.2.b: Debt Financing

Depending on the available operating cash and expected project costs and equity investments (see below) various levels of term debt can be modeled, along with possible interest costs, to ascertain the level of interest expense the Project can manage with applicable debt service coverage ratios. The resulting interest expense can be incorporated into each pro forma.

Subtask 3.B.3: Develop Projection of Capital Costs

Project costs will be estimated for all major project components, including:

Subtask 3.B.3.a: Turbines

Quotes for available turbines suitable for use at the site will be

obtained. By comparing the cost of each turbine and its associated equipment and foundation and installation to its expected production and expenses, the optimal turbine for the Project can be determined based on production relative to cost. Other factors in turbine selection will include financial strength of the manufacturer, available O&M support infrastructure and turbine availability. Turbine costs will include towers and all freight to site, as well as commissioning services.

Subtask 3.B.3.b: Foundations

Once specific sites are located, soil borings can be taken and analyzed by the civil engineers for indicative design of the foundations for the turbines. The foundation costs for required steel, concrete and labor at the site can be estimated.

Subtask 3.B.3.c: Electrical

Depending on specific turbine locations and the location of the interconnection point, and related voltage levels for transmission cable, costs for pad transformers, underground cable and related transmission (and, if applicable, substation) costs can be identified.

Subtask 3.B.3.d: Erection and Installation

The availability and cost of cranes of sufficient size, with related installation services, will be analyzed and cost estimates obtained.

Subtask 3.B.3.e: Miscellaneous Costs

Permitting, legal, environmental studies and other soft costs will be estimated based on Project requirements.

A total Project cost estimate for each turbine model and related configuration will be computed and used to assess financing options.

Subtask 3.B.4: Delineate Various Financing Options

All financing options will be explored including (i) simple ownership by the tribe or the tribe with one or two partners; (ii) broader community ownership models, including cooperative structures such as those used by

Minwind Energy and other Midwest entities; and (iii) use of the Minnesota “flip” model in which an outside equity investor is brought in for an initial period of time to capture the full value of federal production tax credits and other tax benefits prior to a “flip” date at which time majority ownership of financial benefits reverts to local owners. It is expected that, economically, the simple ownership model may be preferable in these circumstances, assuming adequate cash is available on the part of the owners. However, broader community participation may be beneficial or necessary to obtain local approvals, and an outside investor may be necessary to assure availability of turbines for the Project. As a result, all scenarios will be modeled.

NOTE: The task breakdown above is used to define the “tasks” in the budget forms of Section 5.

2.3.3 Business and Financial Structures

A specific financial structure will be developed under Subtask 3.B.4 above.

2.3.4 Anticipated Markets

One World Energy has received indication from the General Service Administration that because of One World’s 8(a) minority owned status; the GSA will buy all of the power that One World can broker to it. Also locally, the Cape Light Compact is an interested buyer of green energy. Further definition of markets will be done as part of Subtask 3.B.1.b above.

2.4 Project Risks

At this early stage of the project development cycle, there many unknowns associated with project. While initial thoughts suggest that the project is certainly worthy of further consideration and ultimately may have a bright future, the purpose of this feasibility study funding request is to put these concerns to rest:

a. Community Acceptance

To elaborate on this particular point, the history of the wind farm proposed for Nantucket Sound by Cape Wind Associates, LLC shows the opposition that a proposed wind turbine installation can encounter. Intrinsicly, the Wampanoag proposal should not elicit such vehement resistance because:

It is much smaller (at most 5 turbines compared to 130).

It will not be offshore with potential interference with marine navigation or aquatic life.

It will be owned by a community based organization rather than a for-profit corporation.

It will not be on public land.

None the less, it is only prudent to approach permitting authorities, watchdog organizations and the public thoughtfully and with an awareness of concerns these people can have. To this end, we propose allocating significant resources to Community Outreach and Partnership Building.

- b. Federal, state, and local environmental approvals
- c. Sufficient wind resources
- d. Proximity and capacity of transmission infrastructure
- e. Cooperation of the local utility company

Upon completion of this feasibility analysis portion of the project, we are highly confident that we will have had positive resolution to all of these concerns.

2.5 Project Benefits

2.5.1 Energy

There is little likelihood that electric energy demand will decrease in the future. Replacing electric energy produced by burning fossil fuel with electric energy produced from renewable resources is clearly of great benefit.

With respect to Martha's Vineyard specifically, NSTAR transmits electric energy to the island from the mainland by three 25 KV underwater cables. NSTAR has some concerns with the ability of these cables to reliably support the Vineyard's electric needs. Electricity generation on the island itself will lessen the load on these transmission cables.

2.5.2 Environmental

One graphic way to demonstrate the environmental benefit is to place next to each other a picture of the Canal Electric Generating station and a simulated picture of wind turbines on the Wampanoag's land. Gasses of various types and particulate emissions on the one hand and nothing being added to the air as it passes over the blades of the turbines on the other.

2.5.3 Economic

The technology of modern large (megawatt range) turbines produces electricity at rates that are becoming competitive with fossil fuel generation. Add to that the value of

Renewable Energy Credits and Production Tax credits and one has a profitable business.

Beyond production costs, pollution free wind generation of electricity will reduce the “hidden costs” of conventional electric generation such as medical expenses due to illnesses aggravated by air pollutants and adverse economic consequences of global warming.

3 Project Plan

3.1 Work Plan

The work plan is defined by the tasks of section **2.3.2 Projected Development Strategy**. The scope of these tasks can be seen from their costing in section **5. Budget**.

3.2 Schedule

A preliminary Microsoft Office Project Gantt Chart is included as Attachment B. Microsoft Project will be used throughout the Wâpan Project to track and manage the project.

The task of longest duration is the tall tower anemometer testing because this type of testing is done so as to cover all seasons of the year. It is expected that a positive conclusion regarding the feasibility of this project will be reached without the need for the anemometer test results thus enabling a Feasibility Study Report to be issued by about mid July, 2006.

Anemometer testing will continue for a full year and the results will be included in the project’s Final Report. The usefulness of this data is expected to be that when added to the analytic conclusions of the July Feasibility Study Report, it will make an even more powerful case to convince investors in the merits of the project.

3.3 Deliverables

Copies of educational materials as they are developed under Subtask 2.B

Quarterly reports 3/1/06, 6/1/06 and 9/1/06

Final Report 12/1/06

Feasibility Study Report 7/17/06

4 Management Plan

In order to complete this project, the team will be utilizing a thirty-step methodology. The methodology (see attached) divides the project into the following four phases:

Phase I	Planning	Grey	Steps 10 – 80
Phase II	Financing	Blue	Steps 90 – 160
Phase III	Construction	Yellow	Steps 170 – 210
Phase IV	Operation	Green	Steps 220 – 2605. Budget

The tasks of the budget are defined on section **2.3.2 Projected Development Strategy** above. Please refer to it for those definitions.

The budget itself is presented in the Excel spreadsheet format requested under the solicitation.

6. Attachments

Attachment A: Excel spreadsheet for the project budget as requested in section 5. immediately above.

Attachment B: Microsoft Office Project Gantt Chart of the project schedule

Attachment C: Detailed resumes of the principal participants.

Attachment D: Letter to NREL Requesting the Loan of a Tall Tower Anemometer

Attachment A

Budget in Excel Format

The Excel workbook for the project consists of 6 Excel “sheets”

Sheet 1: Standard Budget Form – Summary

Sheet 2: Rollup of Tasks

Sheet 3: Worksheet A - Task 1 Budget

Sheet 4: Worksheet A - Task 2 Budget

Sheet 5: Worksheet A - Task 3 Budget

Sheet 6: Worksheet B - Travel

Exhibit B
Sheet 1

Standard Budget Form - Summary
Clean Energy Program
 Massachusetts Technology Collaborative

A. Applicant Information

Applicant: Wampanoag Tribe of Gay Head (Aquinnah)	Solicitation No. 2004-GP-03 Pre-Development Financing Initiative
Address: 20 Black Brook Rd Aquinnah, MA 02535	Title of Proposed Project: Wâpan Project
	MTC Funding Requested: 49,357
	Total Project Cost: 98,277
	MTC Funding Percentage: 50.2%

B. Project Budget (from Worksheet A)

	<i>Amount</i>
I. Direct Labor	33,065
II. Subcontractors and Consultants	52,055
III. Direct Materials	3,850
IV. Other Direct Costs	1,300
V. Travel	4,700
VI. General & Admin. Expense/Overhead @ ra 10.00%	3,307
Total Project Cost	98,277
Funding Sought from MTC	49,357
Cost Share	48,920

C. Cost Share

	<i>List Sources</i>	<i>Amount</i>
	Paul Reeves	5,950
	Ralph Jordan	5,950
	Jeff Paulson	1,700
	Durwood Vanderhoop	4,505
	Joseph Turnbull	6,715
	Larry Miles	3,000
	Tribal Members	16,200
	WindLogics, Inc	2,000
	Construction Supplies	500
	Travel Meals & Lodging	2,400
Total Cost Share (should match figure in part B)		48,920

check = ok

Exhibit B



***Preliminary Survey of Potential Wind
Project Sites in Aquinnah,
Massachusetts***

FSRP0023-B

March 3, 2008

Prepared for:

**Massachusetts Technology Collaborative
75 North Drive
Westborough, MA 01581**

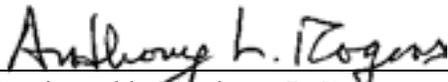
Approvals



Prepared by Mia Divine

March 3, 2008

Date



Reviewed by Anthony L. Rogers

March 3, 2008

Date



Reviewed by Kevin J. Smith

March 3, 2008

Date

Version Block

Version	Release Date	Summary of Changes
A	February 20, 2008	Original
B	March 3, 2008	Revised per client comments

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Introduction

In October 2007 the Town of Aquinnah, Massachusetts, submitted a Municipal Wind Turbine Site Survey Application to the Massachusetts Technology Collaborative (MTC) to request assistance in evaluating municipally-owned property for community-scale wind development potential. Global Energy Concepts (GEC) was contracted by MTC to conduct a preliminary assessment on behalf of the town, including the identification of potential barriers to development, the estimation of wind resource potential, and the identification of potential wind turbine locations. During this review, GEC utilized maps, aerial photos, available wind data, observations from the site visit, and GEC's in-house experience and expertise. This high-level report is not intended as a detailed feasibility study suitable for project development. Further analysis, including wind resource measurement, is recommended prior to project development.

Site Description

The Town of Aquinnah is located on the southwest portion of Martha's Vineyard Island off the southern coast of Massachusetts as shown in Figure 1. The ground elevation ranges from approximately 5 m near the water to 60 m at locations further inland (see Figure 2).

During the site visit, two sites were evaluated for the possible placement of a wind turbine: the Town Hall and Gay Head Cliffs. Aerial photos of each property are provided in Figure 3 and Figure 4. The Town Hall property consists of three parcels totaling 5.8 acres. The parcel adjacent to South Road contains the town office buildings and the fire station. The other two parcels are currently undeveloped; however, there are plans to construct affordable housing units in the northwest parcel. The Gay Head Cliffs property, at the intersection of Lighthouse Road, South Road, and Moshup Trail, consists of seven parcels totaling approximately 16 acres. Gay Head Cliffs is a national monument and the properties host a number of shops, a restaurant, public restroom, and a museum.

Three additional sites were discussed with local representatives and eliminated from further consideration. The town-owned Loran Tower site, located off of Moshup Trail, was eliminated from consideration due to the zoning regulations of this parcel, which prohibit the construction of any structures on the property. The town-owned Lot 33 near Menemsha Pond is a 14-acre parcel that is currently undeveloped and is adjacent to cranberry bogs and land bank properties. This property was eliminated from consideration due to the lack of road access, lack of an on-site electric load, and the significant number of wetlands on the property. The Town Landfill property is a single 6.4-acre parcel located on South Road. The northern portion of the property hosts the capped landfill and a parking lot, while the southern portion is undeveloped wetland. Due to the small size of this parcel and close proximity to homes, the site was eliminated from further consideration.



Figure 1. Location of Aquinnah, Massachusetts

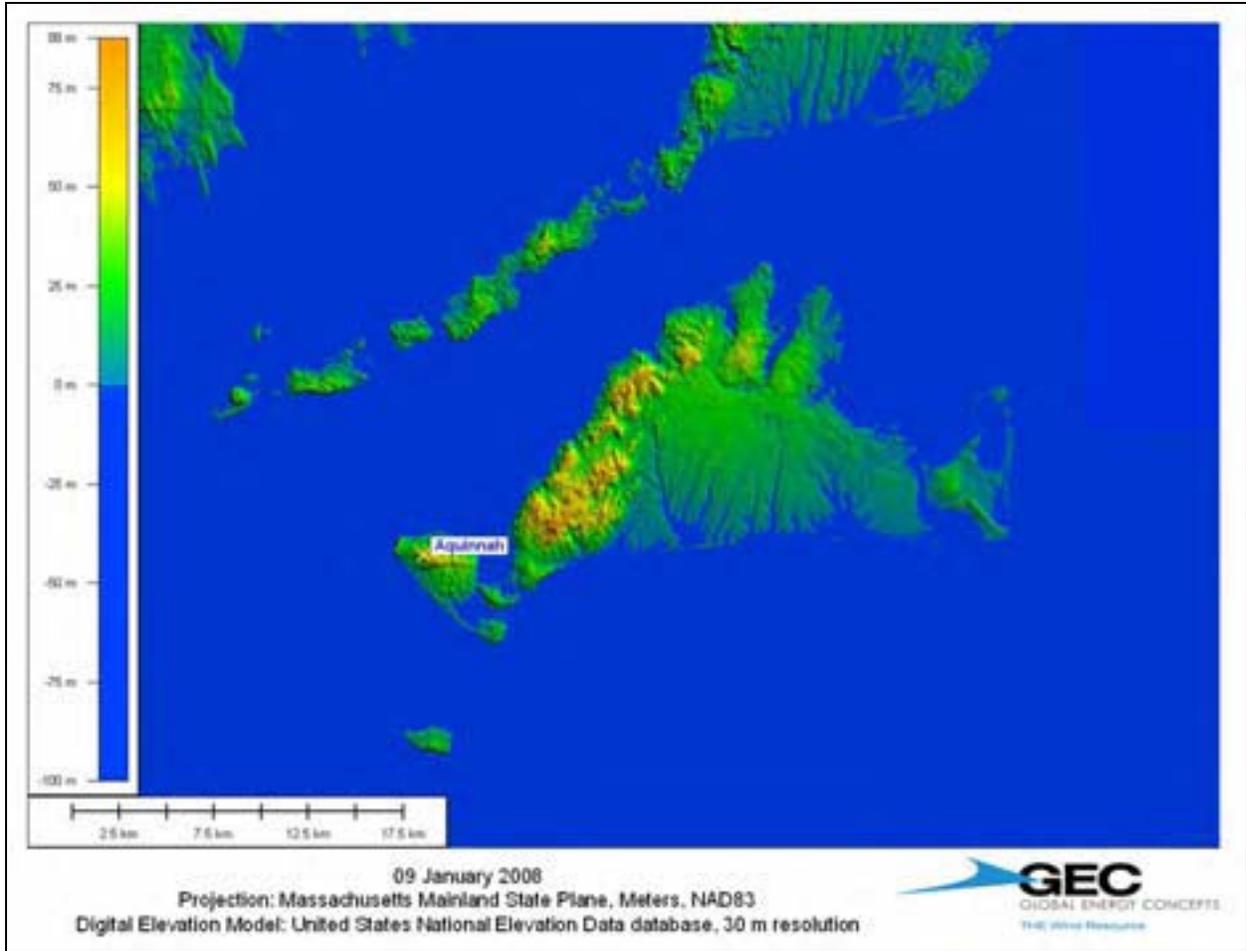


Figure 2. Elevation Map of Aquinnah Area



Figure 3. Aerial Image of the Town Hall Site



Figure 4. Aerial Image of the Gay Head Cliffs Site

Wind Resource Potential

Wind resource information for Massachusetts is available from the New England Wind Map and several weather stations and meteorological (met) towers in the area. This information is used to estimate the range of possible wind speeds in the area; however, the actual wind resource at a particular location is highly site-specific. In order to reduce uncertainty in energy estimates, on-site measurements are recommended prior to the installation of wind turbines at a particular location.

The portion of the New England Wind Map that encompasses Aquinnah is shown in Figure 5. According to the wind map, the estimated wind resource at the Town Hall site is 8.0 to 8.5 m/s at a height of 70 m above ground level. The estimated wind resource at the Gay Head Cliff site is 8.5 to 9.0 m/s at a height of 70 m above ground level. This wind resource range is considered “excellent” according to wind industry standards for developing economically viable projects.

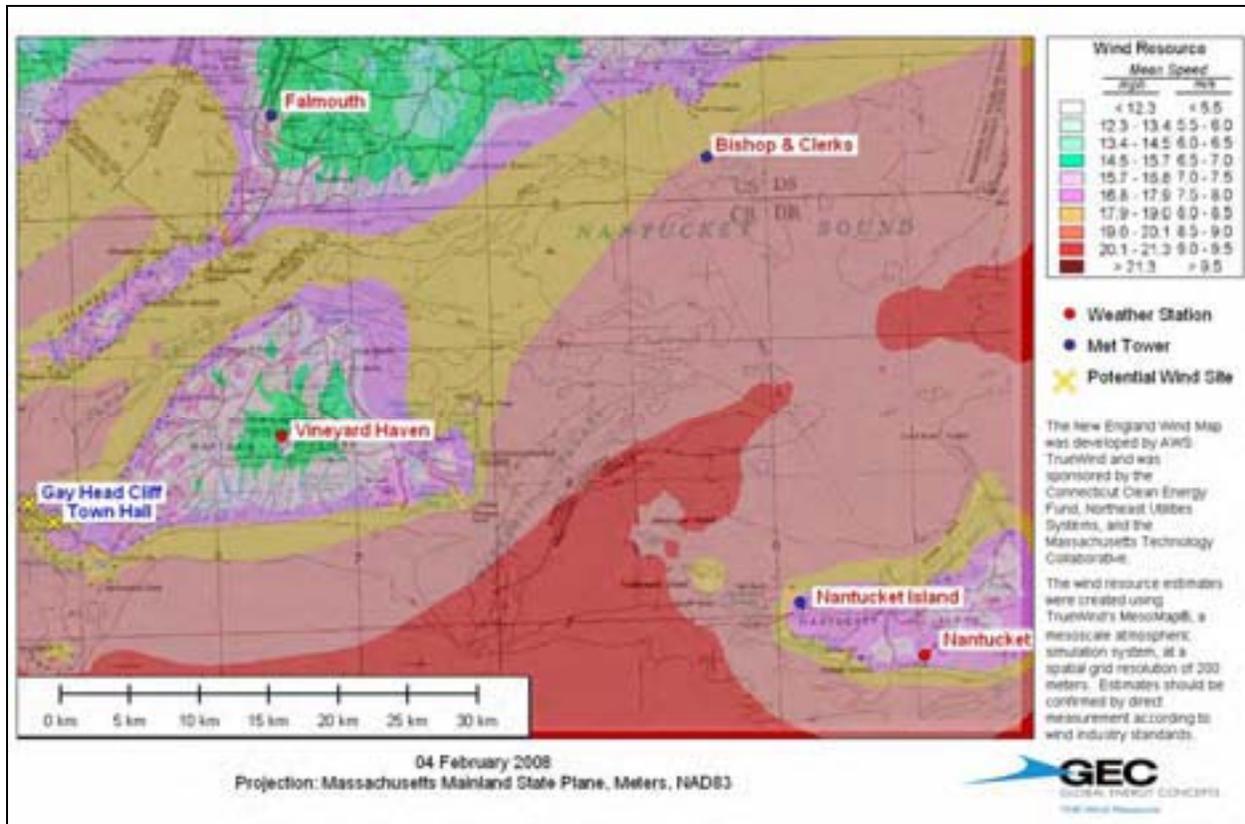


Figure 5. Wind Resource Map of Martha's Vineyard Area

The locations of weather stations and met towers in close proximity to Aquinnah are shown in Figure 5. A summary of the wind data measured at each location is provided in Table 1. Data from the Vineyard Haven and Nantucket weather stations are maintained by the National Climatic Data Center. Data loggers at these stations record hourly wind speed and direction data at a height of 10 m (33 ft) above ground level. Data from Bishop and Clerks, Falmouth, and Nantucket Island were obtained from met towers installed and maintained by the University of Massachusetts at Amherst (UMass). Data loggers at these towers record 10-minute wind speed and direction data at various heights above ground level for a period of one year. In GEC's experience the annual average wind speed in the area typically varies by up to 6% from year to year. To account for this variability, GEC has included a range of wind speeds around the one-year average recorded from the UMass met towers.

Table 1. Summary of Available Wind Data

Location	Coordinates (MA State Plane Meters, NAD83)		Elevation (m)	Measurement Height (m)	Annual Average Wind Speed (m/s)	Wind Class ⁴
	Easting	Northing				
Vineyard Haven ¹	274019	794035	18	10	4.6	2
Nantucket ¹	320613	779119	12	10	5.5	3
Bishop & Clerk's ²	304261	814555	0	15	7.1 - 8.1	7
Falmouth ²	273273	817686	40	39	5.2 – 5.8	1 - 2
Nantucket Island ²	311513	782081	3	68	8.3 – 9.3	5 - 7
Gay Head Cliffs ³	255667	788707	28	70	8.5 – 9.0	6
Town Hall ³	257534	788406	49	70	8.0 – 8.5	5

[1] Source: National Climatic Data Center, based on a 10-year period of measurement

[2] Source: University of Massachusetts Amherst Renewable Energy Research Lab. Based on a 1-year period of measurement and includes a +/- 6% range to account for inter-annual fluctuations in the average wind speed.

[3] Source: AWS Truewind New England Wind Map estimate

[4] Based on the Department of Energy's Wind Power Classification System

While the wind map suggests a Class 5 to Class 6 wind resource at the Aquinnah sites, on-site measurements from locations surrounding Aquinnah indicate that the resource varies from Class 2 to Class 7. This underscores the site-specific nature of the wind resource and the uncertainty in the wind map estimate. Collecting on-site measurements at the potential wind turbine location is the best way to determine the wind resource at a particular site and to reduce uncertainty in the energy production estimate.

The wind rose for Aquinnah according to the New England Wind Map is shown in Figure 6. The wind rose indicates a prevailing southwest wind direction. Aquinnah is located on the southwest coast of Martha's Vineyard Island and is thus well exposed to the strong winds off of the ocean. The Gay Head Cliffs site has few trees or other surrounding obstructions, as shown in Figure 7. At the Town Hall site the primary obstructions to the winds from the southwest are trees, which were observed to be up to 10 m in height, as shown in Figure 8.

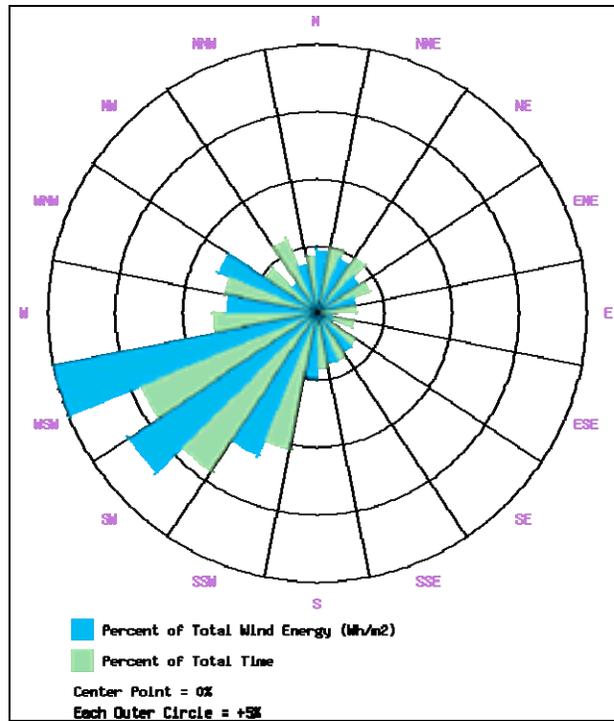


Figure 6. Area Wind Rose

(Source: New England Wind Map, AWS Truewind)



Figure 7. Gay Head Cliffs Property, Facing Southwest



Figure 8. Example of Tree Coverage at the Town Hall Site

Potential Offset of Electrical Loads and Electrical Grid Access

Under current net-metering regulations in Massachusetts, any net excess electricity generated by a wind turbine rated at 60 kW or less can be credited to the customer's next monthly utility bill at the average market rate. For a wind turbine greater than 60 kW in size, the utility is not obligated to purchase excess electricity. New net-metering legislation is currently being discussed in the Massachusetts legislature, which would increase the eligible wind turbine size to up to 2 MW and allow for virtual net-metering. Virtual net-metering would allow the Town of Aquinnah to aggregate municipal electric loads from different meters under one virtual meter that would be supplied by the wind project. Any unused wind-generated electricity would be credited towards the next month's energy consumption.

As an alternative to net metering, wind-generated electricity could be sold directly to the wholesale market through a power purchase agreement. However, the wholesale market rate is likely to be significantly less than the retail rate and will lead to a longer payback period than if the wind-generated electricity were to be used on site to displace retail electric rates. The sale of renewable energy credits (RECs) may help to improve project economics; however, the long-term market for RECs is highly uncertain.

Typically, the most cost-effective development scenario for community-scale wind projects is a behind-the-meter installation where the entire output of a wind project serves to offset the retail electric rates of on-site electric load, such as a school or wastewater treatment plant. However, in Aquinnah, the electric demand at each of the proposed wind project sites is minimal. Without an on-site electric load or virtual net-metering legislation in place, identifying a viable economic scenario for a community-scale wind project in Aquinnah is a significant barrier to development.

Table 2 provides estimated energy production from different sizes of wind turbines that may be appropriate for Aquinnah (project scale is discussed further in a later section), based on the wind resource at the Gay Head Cliffs site.

Table 2. P50 Energy Estimates from Example Wind Turbines at Gay Head Cliffs Site

Turbine Type	Rated Capacity (kW)	Hub Height (m)	Estimated Net Annual Energy Production (MWh/yr)	Estimated Net Capacity Factor ¹
Fuhrlander FL600	600	50	2,100 – 2,280	40 – 43%
Vestas RRB V47-600	600	65	1,930 – 2,100	37 – 40%
Enertech E-48	600	65	2,090 – 2,260	40 – 43%
Distributed Energy Systems NW100/21	100	32	260 – 290	30 – 33%

[1] Defined as the ratio of estimated energy production to the maximum possible energy production if the wind turbine were to operate at rated power for the entire year.

In calculating annual energy production from various wind turbines, GEC used the estimated annual average wind speed range of 8.5 to 9.0 m/s at a height of 70 m above ground level from the New England Wind Map. The wind speed is adjusted to the various turbine hub heights using the power law¹ and a wind shear exponent of 0.22 based on estimates from the New England Wind Map. An annual wind frequency distribution was created using a Weibull shape factor of 2.27 from the New England Wind Map. GEC estimated the annual average air density in Aquinnah to be 1.24 kg/m³ based on an annual average temperature of 10°C and a site elevation of 30 m. The standard wind turbine power curves provided by the manufacturers were adjusted to the site air density. GEC estimates aggregate energy losses of 18%, which includes downtime for maintenance and component repair, weather-related downtime, electrical line losses, blade soiling and degradation, turbulence, faults, and other factors.

The energy production and capacity factor estimates listed in Table 2 represent best estimates of the range of P50 values. The estimates rely solely on wind map data, which can have a high degree of uncertainty. Other sources of uncertainty, such as annual and spatial variability in the wind resource, system energy losses, the shape of the wind frequency distribution, and other factors are not included in this preliminary analysis and would further increase the range of possible capacity factor values.

¹ The power law is defined by the equation $(V_1/V_2) = (H_1/H_2)^\alpha$, where V_1 and V_2 are wind speeds at heights H_1 and H_2 , respectively (above ground level), and α is the dimensionless wind shear exponent. This is a typical method of describing the extent to which wind speeds vary with increasing height above the ground.

Electrical Grid Access

Martha's Vineyard Island currently receives power from NSTAR via undersea cables from the mainland with a total capacity of approximately 64 MW. A network of 3-phase, 460-volt power lines serves the island and passes within 200 m of the potential wind project sites in Aquinnah. Connection of a wind turbine to the electrical grid at either of the potential wind project sites does not appear to be a significant barrier to development, although a system interconnect study through NSTAR will need to be completed to confirm this initial opinion.

Transportation and Site Access

Reasonable access to a potential development area is necessary in order to receive turbine and tower components, to allow for the mobilization of cranes, and to allow for reasonable response time from service personnel. Martha's Vineyard Island is only accessible by sea or air as no bridge or tunnel exists to the mainland. The island hosts four harbors that are utilized by ferries, fishing vessels and recreational water craft. Vineyard Haven Harbor at Tisbury (located on the northeast side of the island) is the primary working port, and year-round passenger and vehicle ferry service is available. Fuel and other freight are typically delivered by barge. There are also three airstrips on the island, with Martha's Vineyard Airport being the largest and most heavily used. Local roads are paved but limited to two lanes in width, which can lead to congested traffic during the summer months. In addition to restricted turbine delivery options, the ability of service personnel to access the site will be restricted by the ferry and flight schedules and will likely lead to increased downtime (reducing energy production) and costs for maintenance.

A letter report from Black & Veatch to MTC and the Town of Tisbury summarizes a preliminary assessment of the feasibility of transporting a 600 kW wind turbine and related components onto Martha's Vineyard Island. The length of the blades and tower sections of the wind turbine would be approximately 25 m and the weight of the nacelle would be approximately 28 tons. In the report, Black & Veatch recommended that all components, including a crane large enough to erect the wind turbine, be delivered by barge to Vineyard Haven Terminal. In addition, a smaller crane located on Martha's Vineyard Island may be needed to offload the components from the barge. Once the components are on the island, transportation by truck on surface roads is feasible with some modifications. The primary obstacle is a 90° turn near the terminal at the intersection of Water Street and Beach Street, which would require the temporary removal of fencing and landscaping from the Tisbury Post Office parking lot. Some telephone lines, power lines, and parked cars would also need to be temporarily removed and traffic would need to be diverted. Black & Veatch concludes that delivery of a 600 kW wind turbine to Tisbury appears to be feasible but with additional financial burden to the project that would not be incurred by mainland projects.

When transporting wind turbine components from Tisbury to the potential wind project site in Aquinnah, additional telephone and power lines would likely need to be lifted or temporarily removed along portions of the road. There are also a number of culverts and one bridge that would need to be crossed. The weight limit of these items is currently unknown. A more detailed transportation study including a detailed cost estimate would need to be completed once a wind turbine model and dimensions have been specified.

The municipal parking lot at the Gay Head Cliffs site could be used as a staging area for the assembly of components. At the Town Hall site, an area would need to be cleared of trees.

Aviation Conflicts

Wind turbines must be installed in a manner that meets federal and local air space regulations. The actual effect of a project on air navigation is evaluated on a case by case basis and in consultation with local regulators. The Federal Aviation Administration (FAA) requires that a Notice of Proposed Construction be filed for the construction of any object that would extend more than 200 ft above ground level. For each filed project, the FAA undertakes an initial aeronautical study and issues either a Determination of No Hazard to Air Navigation (DNH) or a Notice of Presumed Hazard (NPH). If an NPH is issued, the FAA will conduct a more extensive analysis to evaluate impacts on air operations. Other local air space regulations may also apply.

Construction of a wind project within 4 miles of airports would be more likely to impact navigable airspace or aviation communications than projects located farther away. Three airport runways are located on Martha's Vineyard Island, each approximately 11 to 15 miles northeast of Aquinnah. Wind turbines in Aquinnah are not likely to pose a hazard to air navigation at these airports based on the small size of the runways and distance from the project site. However, there may be local air space restrictions that could affect turbine location or height. According to local representatives, the FAA imposed a 73.5-m (241-ft) height restriction on a proposed wind project in the Town of Tisbury, which is located closer to Martha's Vineyard Airport than the proposed wind project sites in Aquinnah. However, it is unclear whether the restriction applies to the maximum tip height or the hub height of the turbine. Possible turbine options that would satisfy this potential aviation restriction are presented in a later section.

The FAA online Long-range Radar Tool provides a preliminary estimate of the effect of a wind project on Air Defense and Homeland Security radar. As shown in Figure 9, the area surrounding Aquinnah is flagged as "yellow," which is defined as "likely to impact Air Defense and Homeland Security radars." While the presence of this equipment does not necessarily prohibit wind turbine development in the area, some restrictions in regard to wind turbine placement or height may be imposed. A more detailed aeronautical study is required to determine the extent of the impact and possible mitigation strategies. In addition, potential impacts on other types of radar must be evaluated.



Figure 9. Preliminary Results of FAA Long-range Radar Impact Evaluation

Environmental Issues and Permitting

GEC completed a geographic information system (GIS) analysis to determine the location of sensitive environmental and cultural areas relative to the proposed wind project site. Results of the GIS analysis are shown in Figure 10.

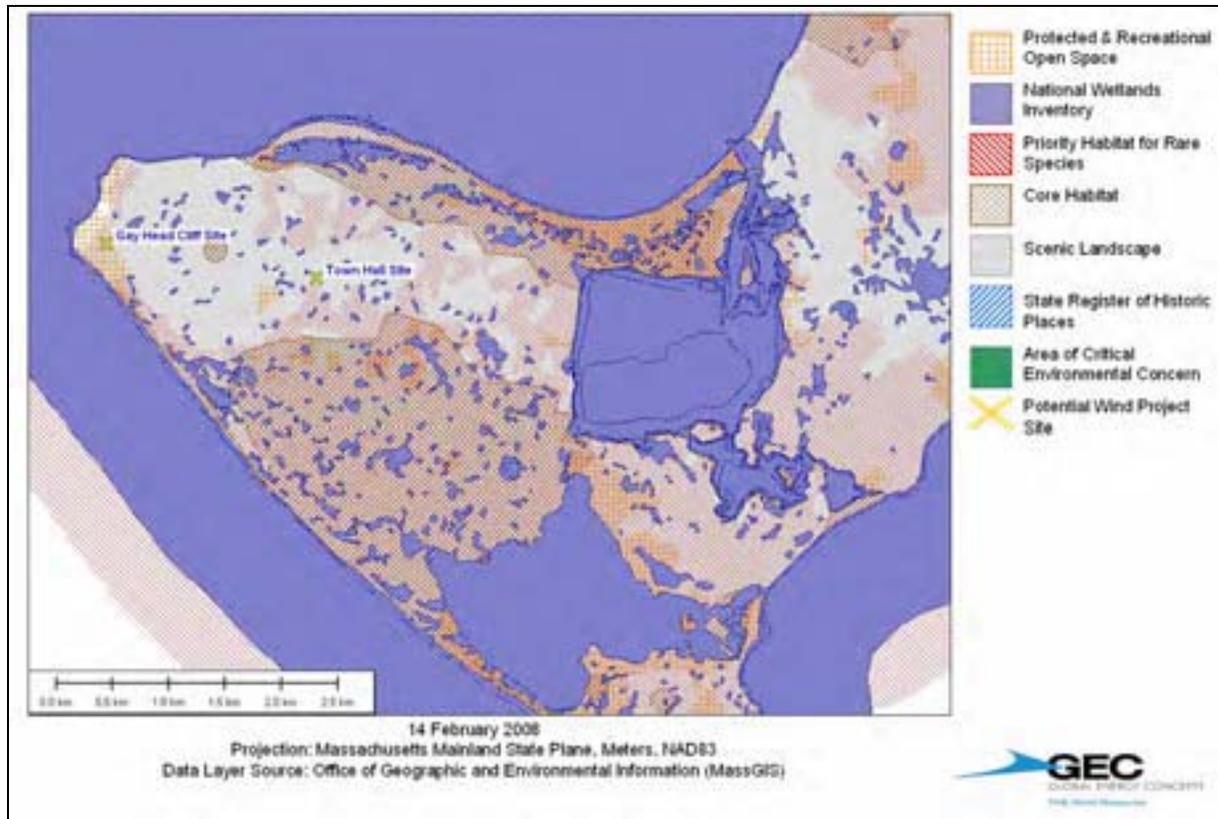


Figure 10. Areas of Potential Environmental and Cultural Concern

Each of the data layers included in the analysis was obtained from the Massachusetts Office of Geographic and Environmental Information (MassGIS) and are described below. These data layers are made available to the public for planning purposes only. More detailed site-specific analyses should be completed to verify the accuracy of these data layers.

- **Areas of Critical Environmental Concern (ACEC)**, last updated March 2007 – ACEC areas are designated by the Secretary of Environmental Affairs as “places that receive special recognition because of the quality, uniqueness and significance of their natural and cultural resources.” There are no areas designated as an ACEC within 30 km of Aquinnah; therefore, conflicts with an ACEC are expected to be minimal.
- **NHESP BioMap Core Habitat**, last updated June 2002 – Core Habitat areas are identified by the Natural Heritage and Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries and Wildlife as areas that provide “the most viable habitat for rare species and natural communities in Massachusetts.” Core Habitat areas are located within 500 m of the Town Hall and Gay Head Cliff sites. Although areas with this designation may not necessarily be prohibited from wind development, a proposed project in these areas would require an increased level of environmental review. Consultation with NHESP is recommended to determine potential impacts and mitigation strategies.
- **NHESP Priority Habitats for Rare Species**, last updated September 2006 – Priority habitats are identified based on observations documented within the last 25 years in the

database of the NHESP, as published in the 12th Edition of the Massachusetts Natural Heritage Atlas. A number of priority habitats are located adjacent to the proposed project locations and along the coast. Consultation with NHESP is recommended to determine potential impacts and mitigation strategies.

- **National Wetlands Inventory (NWI)**, last updated October 2007 – The NWI data set was created by the U.S. Fish and Wildlife Service to identify the approximate location and characteristics of wetlands and deepwater habitats. The map does not indicate any wetlands within the Town Hall or Gay Head Cliffs properties; however, a possible wetland area was observed on the northern portion of the Town Hall property. Wetlands were not observed on the Gay Head Cliffs property and conflicts are expected to be minimal at this site. A wetlands delineation should be completed to verify this conclusion.
- **Protected and Recreational Open Space**, last updated January 2007 – This data layer includes conservation land and outdoor recreation facilities, including parkways, town parks, playing fields, and walking trails owned by federal, state, county, municipal, and nonprofit enterprises. Gay Head Cliffs site is designated as a protected and recreational open space. In addition the Gay Head Cliffs are designated as a National Monument. The impact of this designation is unknown and should be discussed with local representatives.
- **Scenic Landscapes**, last updated July 1999 – Scenic landscapes are identified by the Massachusetts Landscape Inventory Project in the Department of Conservation and Recreation. The majority of Martha's Vineyard Island, including the area around Aquinnah, is designated as a scenic landscape. The implications of this designation on a wind project are not clear and depend on local public opinion.
- **State Register of Historic Places**, last updated January 2000 – This data layer, maintained by the Massachusetts Historical Commission, denotes locations or boundaries of significant historic properties and sites with legal designations under several specific local, state, and federal statutes. There are no registered sites near the potential project sites in Aquinnah. Archaeological sites are not included in this data layer; however, topographic maps indicate that an Indian burial ground is located approximately 800 m south of the Town Hall site.

A map of important bird areas around Martha's Vineyard was obtained from the Massachusetts Audubon Society as shown in Figure 11. An Important Bird Area is a site that provides essential habitat to one or more species of breeding, wintering, or migrating birds. These sites typically support high-priority species, large concentrations of birds, exceptional bird habitat or have substantial research or educational value. Chappaquidick Island, located approximately 25 km east of Aquinnah is designated as an Important Bird Area for shorebirds, waterfowl, and seabirds. Consultation with the Massachusetts Audubon Society is recommended to determine potential impacts and mitigation strategies.



Figure 11. Important Bird Areas

Source: Massachusetts Audubon Society

The permitting process and implications of each of these environmental designations is not clearly defined and can vary from site to site. Since several areas of environmental concern are located in or around the proposed wind project locations, an increased level of environmental review will likely be required. A site-specific environmental survey is recommended.

Telecommunications Conflicts

Wind turbines, like all tall structures, can create interference or degradation of certain communication signals if they are located in the line-of-sight of any communications equipment such as microwave, radio, or satellite dishes. A number of microwave communication stations are located around Martha's Vineyard, the closest of which is 8 km northeast of Aquinnah, as shown in Figure 12. Analysis of microwave line-of-sight is beyond the scope of this review. Due to the remote location of Aquinnah and the distance to known communication towers, signal interference is not expected to be a major barrier to development; however, the actual effect of a project on communications systems will need to be evaluated on a case-by-case basis and in consultation with local regulators and technicians. Such a study would take into account the proposed turbine dimensions, turbine location, and transmittal paths of various types of communication signals in the area.

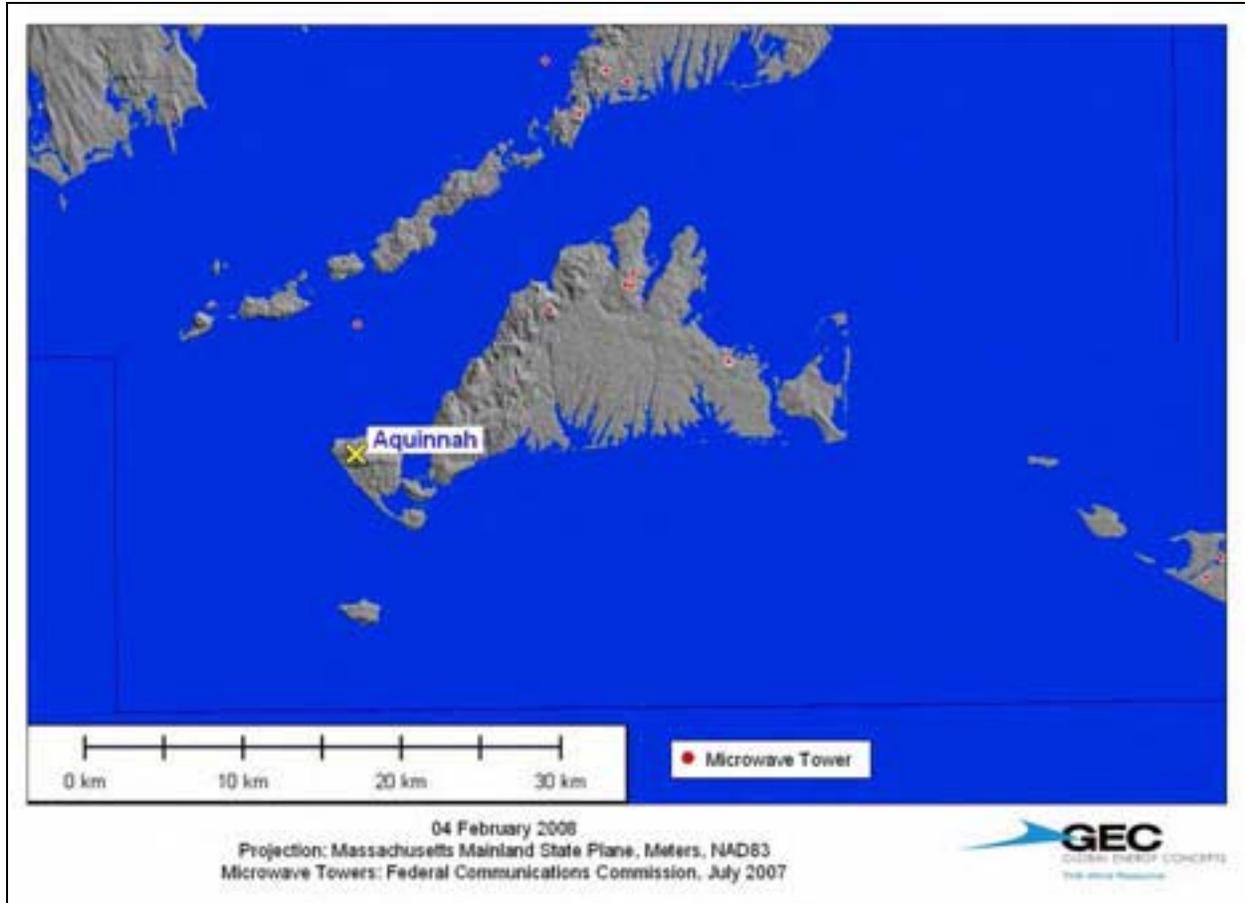


Figure 12. Location of Weather and Microwave Communication Stations near Aquinnah

Social Acceptability

Negative social perceptions of a wind project have the potential to inhibit or terminate wind project development. If neighbors of the sites under consideration are opposed to a wind energy project, the costs and time required for addressing and mitigating their concerns may increase development costs significantly. Primary social concerns include noise from the wind turbine, the visual impact of the wind turbine on the landscape, shadow flicker effects, and public safety.

When operating, wind turbines produce a “swishing” or “whooshing” sound as their rotating blades encounter turbulence in the passing air, as well as some sounds from the mechanical parts such as the gearbox, generator, and cooling fans. Wind turbines are typically quiet enough for people to hold a normal conversation while standing at the base of the tower. If mechanical sounds are significant, it usually means something in the nacelle needs maintenance or repair. At a distance, the sounds generated by a wind turbine are typically masked by the “background noise” of winds blowing through trees or moving around obstacles.

Massachusetts state regulations allow for an increase in noise levels of up to 10 dB over normal background levels at the property boundary. Typically, a distance from the property boundary equivalent to three times the maximum wind turbine tip height is required to satisfy this

regulation. Depending on the background noise levels at the site and the turbine size, a noise setback of approximately 150 to 300 m (492 ft to 984 ft) from the property boundary may be required. Due to the limited dimensions of the Town Hall property and the close proximity of residential areas, the noise setback requirement would likely eliminate this site from further consideration. The Gay Head Cliffs site has more available land area located a greater distance from residences than the Town Hall site. A single wind turbine placed in the center or on the western side of the property is likely to satisfy noise regulations. A sound impact analysis should be completed to verify this conclusion.

The proposed Cape Wind project in Nantucket Sound, located approximately 30 km northeast of Martha's Vineyard has received significant public opposition due to concerns about the aesthetic impact on the landscape. Although a wind project in Aquinnah would be much smaller in scale, a wind turbine would be highly visible and visual concerns might cause opposition to the project. As described previously, Martha's Vineyard Island is designated as a "scenic landscape." In addition, the island is a popular summer vacation destination and the Gay Head Cliffs is a popular tourist attraction and cultural landmark. Photo simulations of a potential wind project, as well as informational community meetings, can help to address any public concern about the visual impact on these areas.

Another potential concern is shadow flicker that can be generated by the rotating blades of a wind turbine during certain ambient lighting conditions. For example, the residences located to the east of the Gay Head Cliffs site may experience shadow flicker as the sun sets in the west and causes the shadow of the wind turbine to fall on the homes to the east. The shadow of the rotating blades can cause an annoyance until the sun changes position in the sky. A shadow flicker analysis can be completed once the turbine dimensions and location are specified.

Public safety concerns are usually focused on the potential for wind turbine failure and ice shedding from the blades. Although incidences of turbine failure that result in tower collapse or components falling to the ground are rare, measures can be taken to minimize the potential impact of such occurrences. Typically, wind turbines are placed a maximum-tip-height distance from the property boundary or occupied buildings. In addition, wind turbines shut down in cases of extreme wind or icing in order to minimize damage. If desired, the wind turbine can be programmed so that a visual inspection is required before restarting the turbine after icing conditions. This will minimize the likelihood that ice shedding from blades will cause damage.

Project Scale

Based on a preliminary review of transportation logistics, it appears feasible that a wind turbine of up to 600 kW in size and with a rotor diameter of up to 50 m can be delivered to sites in Aquinnah. Wind turbines larger than 600 kW in size would likely not be feasible due to the prohibitively high transportation, crane mobilization, and logistical coordination costs and due to the physical limitations of the dock, narrow streets, and tight corners. Table 3 summarizes the dimensions of example wind turbines with rated capacities of up to 600 kW.

Table 3. Example Wind Turbine Models

Turbine Model	Rated Capacity (kW)	Rotor Diameter (m)	Hub Height (m)	Maximum Tip Height (m)	Other
Fuhrlander FL600	600	50	50, 75	75, 100	CS, VP
Vestas RRB V47-600	600	47	50, 65	73.5, 88.5	CS, VP
Enertech E-48	600	48	50, 65	74, 89	CS, FP
Distributed Energy Systems NW100/21	100	21	32	42.5	FP, SG, DD

CS = constant speed

FP = fixed pitch blades

SG = synchronous generator

VS = variable speed

VP = variable pitch blades

DD = direct drive

The Town of Aquinnah is considering a zoning by-law regarding wind turbines; however, it is not yet available. For the purposes of identifying potential wind turbine locations, GEC calculated a fall-zone setback from the property boundary equivalent to the maximum tip height of the potential turbines. The minimum fall-zone setback for the shortest wind turbine option is 42.5 m and the largest setback based on the tallest wind turbine option is 100 m. Based on these setbacks, potential wind turbine locations are identified for the Gay Head Cliffs site and the Town Hall site in Figure 13 and Figure 14, respectively.

The proposed wind turbine locations were selected based on currently available information on the project boundary and setback requirements. Additional factors may influence the final wind turbine location, such as a surveyor's verification of the property boundary, subsurface conditions, constructability of the site, environmental permitting, FAA restrictions, conflicts with communications equipment, noise and shadow flicker impact analysis, or other factors.



Figure 13. Setback Zones and Potential Wind Turbine Locations at Gay Head Cliffs



Figure 14. Setback Zones and Potential Wind Turbine Location at Town Hall Site

Conclusions

Based on a preliminary review, GEC concludes that the Gay Head Cliffs site in Aquinnah has wind development potential; however, key concerns need to be addressed. The primary barrier to development at this site is social acceptability. Gay Head Cliffs is a national monument with strong historic and cultural significance. Although some may consider a wind turbine a positive development for increased tourism in the community, others may place higher value on the preservation and minimal development of the area. Whether or not the community will support a wind turbine at the Gay Head Cliffs site is a primary concern and should be resolved prior to moving forward.

Another significant barrier to development is the lack of on-site electric load at the Gay Head Cliffs site. It is unclear if selling electricity into the local power market is likely to yield a sufficient return on the investment for a community-scale wind project. A subsequent feasibility study should evaluate this and other economic factors in more detail. Enactment of the proposed net-metering law in Massachusetts might improve the economics of the project significantly.

Other potential project barriers are expected to be minimal but should be addressed in a more detailed feasibility study. A communications interference study that includes microwave, radar, and radio signals would determine whether or not a wind turbine at the Gay Head Cliffs site would cause interference with nearby communications towers. To address potential public nuisance concerns, a detailed feasibility study should include photo simulations from viewpoints of concern, a sound impact analysis on nearby residences, and a shadow flicker analysis on surrounding areas. An environmental impact analysis is recommended to determine potential impact of a wind turbine on avian and wildlife species in the area. Finally, a geotechnical investigation is required to confirm the viability of the proposed turbine location and to determine the design and cost of the turbine foundation.

The recommended wind turbine size for the Gay Head Cliffs site is 600 kW or smaller. A turbine of this size could feasibly be delivered to the site. In addition, preliminary analysis of airspace and flight navigation indicates that a turbine of this size in Aquinnah should be approvable following further analysis by the FAA.

The wind resource potential at the Gay Head Cliffs site is estimated to be 8.5 to 9.0 m/s at a height of 70 m above ground level. If the key concerns listed above are addressed, GEC recommends the installation of a met tower on site to verify the wind resource and to collect data necessary for a detailed economic analysis.

Other municipally-owned property was evaluated during the site visit; however, GEC concludes that the wind development potential at these sites is not sufficient to warrant further consideration. The Town Hall site also has a good wind resource potential; however, space constraints at this site would limit the size of a wind turbine to 100 kW or less.

Met Tower Recommendations

In order to collect on-site wind resource data necessary for a detailed feasibility study, GEC recommends the installation of a 50-m met tower at the Gay Head Cliffs site. Ideally, a met tower would be placed at the exact location of the future wind turbine to collect wind resource information for a period of one year. However, the met tower footprint is larger than the wind turbine footprint and the potential wind turbine location at the Gay Head Cliffs site has limited area for the placement of the met tower anchors and guy wires. Therefore, the met tower could be placed in the municipal parking lot, in the backyard of the museum building, or in the circle park. At each of these locations, fencing should be placed around the base of the tower as well as each anchor. Wind resource information collected at these sites would be representative of the expected wind resource at the potential wind turbine location.

NEWSLINES

Massachusetts Coastal Zone Management Program

December 28, 1981

MCZM APPROVES ARCO AND SHELL OCS DRILLING PLANS....

On Thursday, December 3rd, the Massachusetts Office of Coastal Zone Management announced the approval of oil and gas exploration plans and environmental reports for Arco Oil and Gas Company and Shell Oil Company. Arco Oil Company submitted an Exploration Plan and Environmental Report for Blocks 258, 259 and 138 on July 29, 1981. Shell Oil Company submitted an Exploration Plan and Environmental Report for Block 357 on the same date. Both Arco and Shell received approvals for these Blocks over a month in advance of the deadline.

In addition, the Army Corps of Engineers permit applications to place drilling structures and the EPA NPDES permit applications for discharge activities at the specified Blocks have been approved for both Arco and Shell.

MCZM Director Richard Delaney notified both companies that "CZM will monitor the exploratory drilling and related activities to ensure that they are conducted in a manner consistent with the Commonwealth's Coastal Zone Management Program.

...AND CONTINUES NEGOTIATIONS WITH INTERIOR

On Tuesday, December 15th, Governor Edward J. King dispatched Environmental Affairs Secretary John Bewick to Washington to argue the Commonwealth's concerns over oil drilling activities on Georges Bank. Massachusetts Coastal Zone Management Director Richard Delaney and Outer Continental Shelf (OCS) Coordinator Patricia Hughes accompanied Bewick on the trip.

Bewick, Delaney and Hughes met with Interior Department officials to reiterate Governor King's desire for a four-month delay in proposed OCS Lease Sale # 52. In addition, the contingent of Massachusetts environmental officials requested modifications in the Interior Department's proposed five-year leasing program.

"While no policy decisions were made, the meeting succeeded in opening the lines of communication between the Commonwealth and Interior," Delaney observed following the meeting.

"The Department of Interior now has a better understanding of the Commonwealth's position on Lease Sale # 52 and the five-year leasing program. We hope this understanding will result in an OCS leasing process acceptable to the states, Interior and the oil industry," Delaney added.

Delaney expressed grave concern over the Reagan Administration's apparent attempts to lessen the role of coastal states in pre-lease activities and decisions.

"First, the Commerce Department attempted to remove pre-lease activities from the state's federal consistency provisions. Second, the Interior Department proposes a five-year leasing program that not only shortens the time allowed for state review of proposed lease sales but greatly increases the area leased. Finally, the Reagan Administration has proposed a phase-out of federal funding for state coastal programs which will result in zero-funding in fiscal year 1984," Delaney noted.

Referring to CZM's extensive review of federal pre-lease activities, oil company exploration plans and federal permits required for drilling during Lease Sale # 42, Delaney concluded: "Just as we become familiar with both the steps leading up to drilling and the drilling itself, the federal government proposes massive and far-reaching changes in the entire OCS leasing process. We do not oppose oil and gas exploration off our coast. We only require that it take place in an environmentally sound and politically balanced manner."

NANTUCKET SOUND MARINE SANCTUARY UPDATE

After almost nine months of public comment, inter-agency consultation and state-federal discussions, the Office of Coastal Zone Management (OCZM) in Washington has declined to advance Governor King's nomination of the central portion of Nantucket Sound to "Active Candidate" status for a federal Marine Sanctuary designation. This administrative step almost certainly means the end of the line for the nomination.

In a letter dated 27 November 1981, OCZM states that the central Sound area "does not adequately meet site selection criteria for consideration." They further note that "adequate resources exist in Nantucket Sound, however, the majority of these resources are more readily definable in state waters and not in the central area of the Sound." Early in November, Governor King had indicated his belief that the state Ocean Sanctuary program adequately protected the peripheral waters of the Sound and that a federal presence was not desirable in these areas.

The Governor's Marine Sanctuary nomination of the central Sound grew out of a boundary dispute over "stewardship" of those waters. In the past, the Commonwealth had considered them to be under state control and as part of the Cape and Islands Ocean Sanctuary. When a subsequent boundary demarcation indicated that they were federal

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Re: Section 106 Consultation for the Cape Wind Associates (“CWA”) Project

Dear Consulting Parties:

I. Introduction

We are writing in response to the May 5, 2009, letter of the Alliance to Protect Nantucket Sound (the “Alliance”) arguing that it is premature to terminate the ongoing consultation process under Section 106 of the National Historic Preservation Act. The Alliance letter, however, fails to make reference to the sole issue relevant to termination, i.e., whether there is a factual basis to “determine that further consultation would not be productive.” 36 CFR 800.7(a). In this regard, while CWA at the April 28th consultation session indicated willingness to consider meaningful mitigation concessions regarding the proposed project on Horseshoe Shoal, we reconfirmed that we could not consent (after eight years of extensive alternative site analyses, as discussed in detail at Section 3 and 5 of the Minerals Management Service (“MMS”) Federal Environmental Impact Statement (“FEIS”)) to now undertake a different project located outside of Nantucket Sound, a proposition which, as explained below, we do not regard as feasible. Thus, the controlling question seems to be whether the consulting parties can agree (as we hope) upon a Memorandum of Agreement (“MOA”) on terms that do not include our agreement to relocate the proposed project outside of Nantucket Sound; if not, we are unlikely to achieve consensus and further consultation would thus not be productive.

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II. The Agencies should not Tolerate Deliberate Delay Tactics Regarding Continuing Alternative Analyses.

With respect to the further assertions of the Alliance letter regarding alternative sites located outside of Nantucket Sound, the consulting parties should take notice of the fact that the Alliance's stated aim regarding continuing alternative analyses is to delay the review process. With specific respect to alternative site analyses, its own documents confirm that the Alliance's demands are for the improper purpose of causing delay, as indicated by the following provision in its request for proposals (attached as Exhibit A) seeking consultants to review the EIS prepared by the Army Corps of Engineers ("ACOE"): "The identification and analysis of alternative locations are key issues to delay the environmental review process..." The Alliance's words speak for themselves, and agencies should not tolerate the admitted objective of misusing the review process for the improper purpose of delay.¹

III. Practical Limitations Preclude the Suggested Alternative Projects Located Outside of Nantucket Sound.

A. Floating turbines have not yet been demonstrated to be technically or commercially viable.

The consulting parties should not accept the continued assertions of the Alliance that floating turbine technologies have been demonstrated to be technically and commercially viable for use in the open waters of the North Atlantic. Such issue has been dealt with in great detail in the FEIS prepared by the MMS (as well as the Draft Environmental Impact Statement ("DEIS") prepared by the ACOE), and we will not attempt to reargue the matter here. We do note, however, that the documents recently circulated by the Alliance to the Section 106 parties rebut the Alliance's assertions regarding the viability of floating turbines. Blue H's letter of March 23, 2009, as circulated by the Alliance, in fact concedes that its commercial floating turbine does not yet exist; to the contrary, such letter of Blue H explains that only now is it "currently manufacturing" its first commercial unit.

Blue H's February 2, 2009 press release, as also circulated by the Alliance, similarly confirms that even its non-commercial "prototype" was only tested in the summer of 2008, and was only an 80 kilowatt demonstration unit (the output of which equals approximately 1/45 of each of Cape Wind's turbines.) Blue H's April 10 power point at page 10 further confirms that such prototype was "not intended to be connected to the grid." Further, the prototype testing did not involve marine conditions remotely comparable to those of the open

¹ Notably, the Alliance letter also now argues for delay of the consultation on other grounds wholly unrelated to historic preservation, including delay pending a resolution of a national "energy and marine spatial planning process," while its website similarly states that "The Alliance continues to maintain that no decision can be made on Cape Wind until a comprehensive ocean program is in place..." (i.e., requests for continuing delays based upon multiple preconditions that are unrelated to historic preservation issues, and none of which may ever occur.)

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waters of the North Atlantic. Blue H's additional circulated materials also make it clear that it regards the development of commercial-scale floating units as a future prospect, which it consistently expresses in the future tense. In the circulated February press release, for example, Blue H describes its "plans to develop a hybrid concrete/steel 3.5 mw floating wind turbine," while its power point states that "The project aims to design and determine the feasibility and potential of an integrated solution for a 5 mw floating offshore wind turbine....," express acknowledgements by Blue H that such units have not yet been either developed or determined to be commercially feasible.

I would also like to make brief reference to the third party authorities supporting such conclusion which I mentioned at our last session. In a March 3, 2008 story regarding floating turbines, The Boston Globe reported that "There's only one problem; no one knows whether a floating wind farm will work." After interviewing National Renewable Energy Laboratory ("NREL") personnel and Dr. James Manwell, the Director of the UMASS Renewable Energy Laboratory, the Globe further reported that "wind specialists say that it is unlikely that a [floating] commercial-scale wind farm will be operating anytime soon." The Globe goes on to quote Professor Manwell as follows: "Nobody's even talking about floating," he said. "You're going to have to go through testing, verification. It's going to take years." In another recent article addressing the prospect of floating turbines, The Oregonian on October 10, 2008, similarly reported, based upon its interview with Walt Musial, Principal Engineer of the NREL, regarding the potential for deepwater sites, as follows: "Floating foundations appear to be the best option, Musial says, but more research needs to be done. Realistically, commercial projects are a decade away." And, with particular relevance to this consultation, the Martha's Vineyard Gazette on March 14, 2008 reported the following statement of Mr. Musial:

"Blue H ... cannot yet be viewed as an alternative to the kind of reliable energy Cape Wind would be able to produce." "It hasn't been proven yet," he said of the floating turbine technology. "It's very important people's expectations don't get beyond the demonstration project level."

There is thus substantial evidence, including the statements of Blue H circulated by the Alliance, that supports and validates the conclusion of the MMS that floating wind turbines have not yet achieved the demonstrated technical and commercial status that would allow them to be a viable alternative, as summarized by MMS Section 3.3.4.8 of the FEIS:

A variety of platform, mooring, and anchoring technologies have been proposed for floating wind turbine systems. This technology remains in its infancy and is not expected to be commercially viable for at least ten to fifteen years. As such, development of a marine wind energy project compliant with foundation technology is not consistent with the purpose and need of the proposed action as described in Section 1.1.

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B. The seabed-based technology required for the South of Tuckernuck Island (“STI”) site has not yet been demonstrated to be either a viable or preferable alternative.

i. The deeper water and greater wave exposure of the STI site would require materially different and unproven technology.

To the extent that the consulting parties engage in further discussion regarding the alternative project location at the STI site, they should be aware of the record evidence documenting serious obstacles and disadvantages of such a proposal. The STI alternative site is located outside of Nantucket Sound, approximately 3.79 miles southwest of Tuckernuck Island, with water depths to approximately 100 feet and an extreme storm wave height of approximately 52.5 feet, and is discussed in detail at Section 3.3.5.2 of the FEIS. Most importantly, and as the FEIS explains, such substantially greater water depth and storm wave exposure would require a multi-caisson foundation design materially different from the industry-proven technology of monopile foundations applicable to CWA’s proposed project, as follows:

The quad-caisson foundation, a fabricated steel structure, would be utilized for all WTGs installed on a water depth greater than 65 feet (20 m). This structure would consist of four tower foundation that support the tower interface (see Figure 3.3.5-2). This structure will require fabrication and installation due to its large size and the more challenging sea conditions off the southern coast of Nantucket Island.

Id. at 3-16. MMS further explained why the state-of-the-art monopile technology would not be viable in the 100 foot depths of the STI site:

The monopile is the current state of the art for offshore foundations, and this technology is limited by deeper water depths because of the horizontal loading forces of waves and wind. At water depths greater than about 70 ft (21.3 m) the monopile diameter becomes so large and the wall thickness so great in order to withstand the loading over greater height above the bottom, that it is not technologically feasible to manufacture, transport and install a monopile of this design, and a different type of foundation design is required (e.g., multi-legged foundation). Water depths in the 65 to 147 ft (20 to 45 m) range are currently being pursued on several demonstration projects (such as the Beatrice Demonstration Project).

Id. at 3-3. Thus, the FEIS acknowledges that “state-of-the-art” technology would not be suitable for the conditions of the STI alternative site, which would require technology described to still be in the experimental and “demonstration” stages.

- ii. **The record indicates that such a STI alternative would be neither feasible nor financeable.**
 - a. **The deeper waters and higher waves of the STI site would require technology that has not yet been demonstrated to be viable.**

The available information further indicates that the equipment required for the deeper water and greater wave profile of the STI site has not yet been demonstrated to be technically or commercially feasible, and would thus not be likely to be financed within the current horizon. As indicated above, the FEIS concludes that such alternative could not be completed with today's "state-of-the-art" technology, and would thus require technology that has not yet been shown to be commercially viable:

Foundations for 65 to 147 ft (20 to 45 m) water depths are currently being explored in order to determine their technological feasibility within the requirements for a commercial scale project to be economically viable. Typically, it is expected that to go to these greater water depths would require tri-pod or quadra-pod foundations in order to get the anchoring and stability necessary in deeper water. ... The economic viability for large scale commercial application of this technology has yet to be determined and most estimates place this design at least 5 to 10 years into the future (see Table 3.2.1-1).

FEIS at 3-5 (emphasis added).

Moreover, the Final Environmental Impact Report ("FEIR") prepared pursuant to the Massachusetts Environmental Policy Act ("MEPA") specifically addressed such issue and similarly determined that such technology, even if promising for the future, has not yet been commercially deployed or tested in a comparable marine environment, such that it would be unlikely that the STI alternative could be financed or economically feasible in the foreseeable commercial marketplace:

As previously discussed in the DEIR, two of the primary considerations for design of a foundation type are the water depth and the wave regime. The South of Tuckernuck Island site has average water depths of approximately 75 feet and estimated extreme storm waves of approximately 52 feet. Greater water depth and storm waves require taller foundations resulting in greater bending moments at the point of fixity, at the seabed interface and in the tower. In addition, the foundation would need to be designed to avoid the occurrence of excitation frequencies from the wave regime. In order to properly install WTGs in this environment, and to insure that the dynamic response of the structure and its interaction with the wave loading do not result in

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catastrophic failure due to system resonance (see Appendix 3.2-E), significantly larger foundations would be required. Such technology has not been demonstrated over any significant period of time. Although a demonstration of two lattice type foundations in deeper water is underway off the coast of the UK, it is located in an environment that is measurably less severe than that South of Tuckernuck Island. Results from this UK demonstration would not be directly relevant to a site with different environmental conditions. The stress, strain and fatigue measurements would not be comparable. It is unlikely that foundations of a design required for a wind farm at the South of Tuckernuck Island alternative will be commercially proven in the foreseeable future.

Even if the technology was commercially proven, the mass of monopiles and quad caisson pile structures envisioned to be necessary at the South of Tuckernuck Island alternative is estimated to be approximately a third to one half greater than for the shallow water alternative within Nantucket Sound at Horseshoe Shoal.

When combined with other technical factors such as installation equipment requirements, site access and availability, the installation cost at the South of Tuckernuck alternative would be substantially greater than the Preferred Alternative at Horseshoe Shoal. Further, because no other offshore wind installation has been sited in a similar environment (and there is thus no demonstrated field performance), is unlikely that such a project would be financeable in the commercial marketplace.

FEIR at 3-54, 55.

Numerous third parties also support the foregoing conclusion that the technology required for the STI site has not yet been demonstrated to be either technically or commercially viable, but that lessons learned from initial projects utilizing today's technology, such as Cape Wind, could foster the development of technological advances that would allow future deployment in deeper waters. In his written comments to the MMS, Professor Manwell of the UMass Renewable Energy Laboratory offered the following summary to that effect:

It is quite understandable that Cape Wind proposes its project in the relatively shallow and protected waters of Nantucket Sound ... The possibility of eventually going further and deeper will be enhanced by the experience that will be gained with the turbines in Nantucket Sound. It should also be noted that, although there is much benefit to be had by learning from offshore wind experience in Europe, there is no substitute for experience here as well. The northeast coast of the United States is not the same as either the Baltic or the North Sea. It is prudent that the first projects be relatively close to shore, and in relatively shallow water before moving further out. Nantucket Sound is a good place to begin.

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The following portion of an NREL presentation to the 2007 Cape & Islands Energy Technology Workshop at the Woods Hole Research Center similarly indicated that while Cape Wind's proposed technology "is here today," technologies for deeper water are still only an "experimental" prospect, but could be advanced by experiences gained in more shallow waters:

Technology Summary

- Shallow water offshore wind (<25m) is here today but will need experience in US waters to bring down costs and establish infrastructure.
- Transitional and deep water wind is experimental but will grow from shallow offshore experience and sustained R&D.
- A fully funded R&D effort for deep water wind would take 10-20 years to commercialize.
- Ocean Energy systems are in a nascent stage but may be accelerated by wind experience.

NREL Slide, attached as Exhibit B. Greg Watson, Vice President of the Massachusetts Technology Collaborative, concurred similarly, as reported in the regional press:

For Greg Watson, vice president for sustainable development and renewable energy for the Massachusetts Technology Collaborative, the deepwater question is both a challenge and an opportunity. Watson said that, whether it be off Hull, Cape Cod, Long Island or somewhere else, the nation would need practical experience in near-shore wind farms before it literally ventured into deeper waters. The deepwater solution, if there is one, is still in the future. "We could be talking 10 to 15 years but it all depends on the resources we put into it," said Watson, referring to the need for "an Apollo mentality" from the nation and its leaders.

The Cape Codder, 8/25/06 (emphasis added). Thus, extensive information and informed opinion supports the proposition that the technology required for the deeper water and extreme waves of the STI alternative site has not yet been demonstrated to be technically or commercially viable.

b. The attributes of the STI site would also present financial obstacles and uncertainties that would seriously undermine project revenues, financial certainty, and financial viability.

In addition to the lack of demonstrated operating performance of the required technology, the consulting parties should recognize that the attributes of the STI site would also place substantial revenue-related obstacles to economic viability. First, as noted above, the larger foundations that would be required would present substantially higher capital costs, as noted in the FEIS:

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Also, with greater wave heights the foundation has to extend further above the sea surface before the connection with the tower can be made, since the foundation is the component designed for wave impact and contact with sea water. The larger the foundation, the more costly it becomes. Foundations generally make up roughly 1/4th to 1/3rd the cost of an offshore wind project.

Id. at 3-3 (emphasis added).² Second, the combination of greater depth and wave exposure also indicate substantially higher wear and tear, maintenance and replacement costs, and/or increased fatigue and failure that would raise serious concerns as to unpredictable costs and reductions in operating ability, and thus operating revenues:

Waves affect an offshore wind turbine in two primary ways. Either a large wave exerts tremendous horizontal loading on the foundation as it passes by, with the worst case scenario being failure of the structural integrity and collapse of the tower (Report No. 3.2.1-1) or, large waves cause repetitive horizontal movement of the tower, nacelle and rotors that creates excessive wear and tear of moving parts and necessitating increased maintenance and replacement, or a worse case scenario being fatigue of moving parts so that the turbine breaks down more frequently and does not operate enough to cover costs.

Id. Third, the wave heights at the STI site occurring during substantial periods of the year would prohibit operations and maintenance personnel from accessing the offshore units from their vessels, thereby leading to further uncertainty as to resulting reductions in operating ability, and thus in operating revenues:

A secondary aspect of wave heights that can affect offshore wind project operations and maintenance is the number of days out of the year when wave heights exceed the ability to get maintenance personnel transferred from vessels to the tower in order to do required maintenance. While multiple maintenance crews can be deployed simultaneously to make up for missed days, at some point there is a diminishing return on performing maintenance. If extended periods of time occur when a proportion of wind turbines cannot operate because of breakdown or lack of maintenance, then the generation revenue drops and the project

² Consistent therewith, Appendix F of the FEIS presented a ranking, for comparison purposes only, of alternative sites which estimated that revenues of a project at STI would have to be substantially higher (by approximately 17%) than at the proposed site. Notably, the Alliance's primary public criticism of the proposed project is that it would be too expensive; they therefore strain credibility by simultaneously now advocating for alternatives outside of Nantucket Sound which, even if technically and commercially viable, would incur higher costs and thus require substantially higher revenue streams.

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economics suffer. Current technology for maintenance access limits the suitable wave height to approximately 4.9 ft (1.5 m) or less.

Id. at 3-4. Thus, the STI alternative, even if the requisite equipment were technically viable, would in this application undermine economic viability by (i) substantially increasing capital costs, (ii) presenting additional exposures and uncertainties as to maintenance and replacement costs, and (iii) limiting the operations and maintenance activities needed to assure predictable and reliable operations, and thus creating additional uncertainties as to lost operating revenues. As discussed below, such additional costs and financial uncertainties would be particularly troublesome in today's commercial "project finance" marketplace, where renewable energy projects are typically financed solely in reliance upon the project's own assets and net revenues. We accordingly do not believe the STI alternative would be financeable under today's commercial conditions.

c. The nature of today's project finance market requires both proven technology and predictable revenues.

The consulting parties should also recognize that the commercial viability of any renewable energy project must be considered in the context of today's post-restructuring electricity markets, where (i) electric revenues are set by market forces (as opposed to "cost-of-service" pricing) and (ii) renewable energy projects are typically financed on a "project-financed" basis secured solely by the project's assets and revenues. See, National Renewable Energy Laboratory ("NREL") Technical Paper (Financing Projects That Use Clean-Energy Technologies: An Overview of Barriers and Opportunities, NREL/TP-600-38723. October 2005) ("Project financing is ... a crucial enabler on the critical path to large-scale deployment of [renewable energy] technologies.") Under such arrangements, project lenders look to the assets and forecasted net revenues generated by the project as both the source of repayment and as security for the project loan. Id. Thus, renewable energy project lenders require a high degree of confidence as to the predictability of project costs and revenues in order to determine the project's ability to cover its debt service obligations. See J. McKinsey, Insights on Renewable Energy Project Finance, NREL ECAI Web Forum (Jan. 2008);³ M. Malloy, International project Finance: Risk Analysis and Regulatory Concerns, 19 Transnat'l Law 89 (2004) (in a project finance transaction, particular emphasis is on asset-related risks, such as technology risks, construction and operational risks).⁴ With particular importance to the current situation, the

³ Available at http://www.nrel.gov/analysis/collab_analysis/pdfs/2008/0807_wf_mckinsey.pdf

⁴ Consistent with the foregoing, The Bank for International Settlements ("BIS"), a multinational bank for the central banks of ten large industrialized countries, has developed technical guidelines for rating project finance risks associated with large projects (Basel Committee on Banking Supervision, Working Paper on the Internal Ratings-Based Approach to Specialized Lending Exposures Oct. 2001), and such guidelines evaluate a project's capacity, under a range of operating environments and assumptions, to generate adequate debt service coverage in order to assess a bank's project financing risk exposure.

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NREL Technical Paper goes on to specify the difficulties presented by any proposal to utilize still-unproven technologies in the context of project finance transactions:

Project investors worry foremost about technology risk. This worry must be effectively addressed as a prerequisite to any dialogue with lenders and equity investors, or they won't provide financing. Project-financing lenders will not accept the risk that the technology will be unable to perform consistently in a commercial setting to commercial standards over the life of the project.

Supra. at 3.

E.R. Yescombe in his treatise Principles of Project Finance (Academic Press 2002) similarly recognized the need of project finance lenders to achieve "a high degree of confidence" as to both the demonstrated operating effectiveness of the project technology and the predictable net revenues arising from project operations:

[L]enders have to be confident that they will be repaid, especially taking into account the high level of debt inherent in a project finance transaction. This means that they need to have a high degree of confidence that the project (a) can be completed on time and on budget, (b) is technically capable of operating as designed, and (c) that there will be enough net cash flow from the project's operation to cover their debt service adequately. Project economics also need to be robust enough to cover any temporary problems that may arise.

Id. at 13, 160 (emphasis added).

In this instance, replacing CWA's proposed project with an STI alternative would materially undermine the uniquely "high level of confidence" required by project finance lenders by (i) introducing unproven technology that has never been commercially deployed or tested under comparable conditions, (ii) substantially increasing the amounts and uncertainties of capital, maintenance and replacement costs, and (iii) curtailing the offshore maintenance activities needed to assure operations (and operating revenues) at expected and predictable levels. It is also important to acknowledge that obtaining project financing for the first offshore wind farm in the United States would be challenging in any event, such that adding additional financial risk and uncertainty would significantly undermine the likelihood of commercial viability.

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iii. The record further indicates that the STI alternative, even if it were technically and commercially feasible, would not be preferable to the proposed action, when all factors are considered.

In any event, MMS and the Massachusetts review process have evaluated the potential impacts of the STI site (including impacts relevant to the Section 106 process) and such evaluations do not indicate that such alternative would, on balance, be preferable to the proposed project. With respect to visual impacts, the FEIS did conclude that the alternative would be preferable as to visibility from the designated Cape sites, but not from the Islands: “The South of Tuckernuck Island Alternative would be located close to Nantucket and the east end of Martha’s Vineyard and would have visual impact from those locations. However, it would be far away from Cape Cod and would be rarely visible from that area (see Figure 3.3.5-4).” *Id.* at 3-19.⁵

The FEIS goes on to conclude, however, that the lesser potential for visual impacts to historical resources on the Cape would also be offset by greater environmental impacts inherent to the STI alternative, including greater impacts to subtidal resources associated with the structures required by the site’s location, water depths and wave exposures, as follows:

Environmental impacts associated with the South of Tuckernuck Island Alternative would be greater than the proposed action with respect to avifauna, subtidal resources, non-ESA mammals, fish and fisheries, and essential fish habitat, and less than the proposed action with respect to impacts on visual resources.

With respect to avifauna, the South of Tuckernuck Alternative would have greater potential for impact to terrestrial coastal, and marine birds than the proposed action ...

With respect to subtidal resources, the additional pilings, cross-braces, and scour protection required at the South of Tuckernuck Island Alternative because of the greater depth at the site, substantially increase (by more than 10 times) the vertical habitat structure available for colonization by benthos for the life of the Project. However, anchoring impacts associated with construction at the South of Tuckernuck Island Alternative would be twice that of the proposed action and would result in greater overall impact to benthos including shellfish. The South of Tuckernuck Island Alternative also would have greater impacts on benthic resources as a result of the much longer interconnection line requirement compared to that of the site of the proposed action. The

⁵ The FEIS further noted that, while it would not be visible from the Cape sites of concern, “the South of Tuckernuck Island Alternative would be visible from historic properties and areas cultural and religious importance, and thus would affect cultural resources as a result of such visual impacts.” *Id.*

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greater impacts on benthos also result in greater impacts on fish and fisheries and essential fish habitat, which utilize the benthic resources and would be affected due to greater duration of construction and turbidity impacts. The greater size of the foundations at the South of Tuckernuck Island Alternative would also attract greater numbers of fish at the site due to the larger increase in hard bottom structure than the proposed action.

With respect to non-ESA mammals, the South of Tuckernuck Island Alternative is in closer proximity to seal haul-out and breeding sites than the proposed action, and therefore, development at this site has a greater potential to impact seals both during construction and operation. In addition, there is greater potential to impact whales at the South of Tuckernuck Island Alternative than the site of the proposed action since the site is proximate to historical sightings of these mammals.

Id. at 3-17 (emphasis added.)

The adverse environmental impacts of the STI alternative were also evaluated in great detail in the Draft and Final Environmental Impact Reports (“DEIR/FEIR”) prepared pursuant to the Massachusetts Environmental Protection Act (“MEPA”). With respect to adverse environmental impacts, the DEIR similarly concluded that such alternative would present greater environmental impacts, noting that “largely due to the quad cassion foundations and longer interconnecting cable length, the STI alternative (as compared to the proposal on [Horseshoe Shoal]) results in 68% greater impacts to benthic habits using scour mats and 70% greater impacts from rock armoring if used,” and that “selection of this alternative could result in more potential impacts to the north Atlantic right whale than the proposed Project.” Id. at 3-53. Such report further indicated that, while the proposed Horseshoe Shoal site is not with any low altitude IFR aviation routes, “the Proposed South of Tuckernuck Island Alternative site is located within the pathway of two low altitude IFR routes (US Government Flight Information Publication – IFR Enroute Low Altitude-US).” Id. at 3-90. Such report further indicates that, in response to the request of the Massachusetts Historical Commission (“MHC”) (per MHC letter dated July 21, 2005), a Visual Impact Assessment was conducted for the South of Tuckernuck Island Alternative, which indicated increased adverse effects of visibility from both the Nantucket Historic District and Cape Poge Light.

Thus, both the state and federal reviews of the STI alternative outside of Nantucket Sound similarly found that the benefits of reduced visibility of the designated Cape sites would be offset by increased visibility from the Islands, as well as significantly greater adverse impacts in various factors (e.g., benthic, avifuna, marine mammal, fish and fisheries resources, seals, North Atlantic right whales and aviation flight paths) that would argue strongly against a conclusion of overall preferability.

IV. The Section 106 Process should Recognize that Coastal Windmills have been an Integral Part of the Visual History and Heritage of Cape Cod.

Cape Wind also believes strongly that the consulting parties should evaluate the potential visual impacts of the proposed project upon historical resources within a context that recognizes that extensive, widespread and highly visible arrays of coastal windmills have been an integral part of the visual history and heritage of Cape Cod, particularly with respect to those historical periods that are of significance to many of the identified historical properties. The Advisory Council's regulations in this regard identify "adverse affects" as those that alter "the characteristics of a historic property that qualify the project for inclusion in the Nation Register," including changes to those physical features "within the property's setting that contribute to its historic significance." 36 CFR 800.5 (a)(i), a (2)(iv).⁶ Thus, the evaluation of adverse visual impacts to historical properties should give due consideration to the visual conditions that existed during the time period to which the site's historical importance relates, and which thus establishes the "setting" relevant to its historical significance.

In this case, the review should thus consider the historical fact that, from the time of the Revolution through the close of the nineteenth century, wind power was an integral and defining feature of the visual character of the region's coasts. Cape Codders revolutionized American salt production in the late 18th century by utilizing wind power to pump seawater landward for evaporation, such that "soon the wooden skeletons of rustic windmills were seen on the edge of most Cape Cod towns," and by 1837 "Cape Cod alone had 658 salt companies producing more than 26,000 tons per year." Kurlansky, Salt: A World History (Penguin 2002) at 223, 246. Cape historian William Quinn (The Saltworks of Historic Cape Cod: A Record of the Nineteenth Century Economic Boom in Barnstable County, Parnassus Imprints 1993) similarly described the "phenomenal growth" of wind-powered saltworks in highly visible locations along the coast of Cape Cod:

Many changes on the peninsula were brought about by the rapid development of the saltworks. The barren seaside on Cape Cod was considered wild land by the original settlers.

The Cape's upland beach areas had been left mostly in their natural state until the saltworks construction began. This widespread building completely changed the seaside landscape. The prolific use of these natural areas created a new rural scenery with covered vats as far as the eye could see.

⁶ The Department of Interior's Standards and Guidelines for Preservation Planning similarly provide that "the historic context is the cornerstone of the planning process," that "evaluation uses the historic context as the framework within which to apply the criteria for evaluation," and that the agency defining a historic context should "identify the concept, time period and geographical limits for this historical context." (Emphasis added.)

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The business began to multiply rapidly after several improvements had been implemented. Just before 1800, saltworks were being constructed all over Cape Cod.

Quinn, Id. 22-23.

Quinn's work further includes photographs demonstrating the prominent coastal visibility of such wind structures throughout the nineteenth century, including locations in proximity (both spatial and temporal) to many of the designated sites now of concern. Attached as Exhibit C in this regard are typical examples of historic shorefront windmills, with the author's statement that "these structures dotted the landscapes near the shores of every Cape Cod town." Id. With specific respect to Barnstable, Exhibit D shows the historic coastal windmills of the Crocker saltworks, as well as extensive evaporation structures which "covered a vast area of the land next to the present day Barnstable Harbor." Id. at 111. With respect to Yarmouth, Exhibit E shows extensive coastal wind and salt structures in both South Yarmouth and East Yarmouth. With respect to the areas of Osterville, Wianno, Lewis Bay and Hyannis Harbor, Exhibit F shows that extensive wind-powered saltworks were deployed in all such coastal areas, as indicated by the 1849 U.S. Coastal Survey Map. Id. 116-117. Exhibit G in turn shows the historic Nickerson wind and salt facilities at Chatham, which were listed by assessor's records as including 4,400 feet of saltworks. Id. at 154.

The Consulting Parties should also recognize that, to this day, windmills are revered as a symbol of the historical heritage of the Cape, as evidenced by the historical monument depicted on Exhibit H, commemorating the site where John Sears in 1776 revolutionized the American salt industry by utilizing the wind power of Cape Cod. Id. at 20. Thus, the potential impacts of proposed wind facilities should be evaluated within a historical context that recognizes the long standing, prominent and visible presence of wind facilities throughout the historical periods of relevance to many of the identified historical resources, and which thus defines the "setting" relevant to historical significance of such sites.

V. Conclusion.

As set forth above, CWA respectfully requests that the Consulting Parties now either: (i) enter into an MOA with mitigation terms that would apply to CWA's proposed project on Horseshoe Shoal in the event that such project is approved by the Secretary; or (ii) recognize that further consultation would otherwise not be productive and should thus be terminated. Notably, the Consulting Parties could enter into such an MOA without necessarily agreeing that CWA's proposed project constitutes the preferred alternative, or that it should ultimately be approved. We also view such a course of action to be consistent with the federal case law, which indicates that the requirement at 36 CFR 800.6 of the ACHP's regulations to consult on "alternatives or modifications to the undertaking" is more properly focused upon mitigating the

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existing proposal, as opposed to focusing upon different proposals located away from historic properties:

These references [in Section 800.6] to alternatives are thus more sensibly interpreted as applying only to changes in the **existing** proposal that could make it more compatible with its surrounding environment. If we were to adopt plaintiffs' argument that HUD must consider completely independent and different proposals for the use of federal funds, *i.e.*, construction outside of the historic district or rehabilitation of existing housing within it, then any proposal for consideration within a historic district would always have to be rejected since the alternatives would always create less of an impact on the district. This court does not believe the NHPA was intended to go so far.

Northwest Bypass Group v. U.S. Army Corps of Engineers, 552 F. Supp.2d 97, 132 (D.N.H. 2008) (emphasis original), quoting Wicker Park Historic Dist. Pres. Fund v. Pierce, 565 F. Supp. 1066-1076 (N.D. Ill. 1982).

We thus suggest an MOA including mitigation provisions for CWA's proposed action, which would be applicable in the event that CWA's proposal is approved by the Secretary. If, however, the Consulting Parties cannot reach a prompt consensus upon such an MOA, we would appear to be at an impasse, such that further consultation would not be productive and should be terminated.

Sincerely,



Dennis J. Duffy
Vice President – Regulatory Affairs

Alternatives Analysis Request For Proposal

Background

The Alliance to Protect Nantucket Sound is a non profit organization dedicated to the long term preservation of Nantucket Sound. The Alliance was first formed in response to a proposal by a private developer, Cape Wind Associates, to develop a 24 square-mile area on Horseshoe Shoal as a wind energy generation plant. While the Alliance supports renewable energy, it opposes the planned wind energy facility in Nantucket Sound due to inherent adverse economic and environmental impacts, as well as the lack of an appropriate review and permitting process and the absence of federal guidelines for offshore wind energy development.

The Alliance objects to the project because it would:

- Desecrate a national treasure;
- Introduce substantial visual, noise and light pollution;
- Violate the public trust through use of public land for private gain;
- Result in a high net cost to the public in terms of subsidies and tax credits, negative impacts on tourism, jobs and property values
- Threaten the environment in terms of endangered avian and marine species;
- Eliminate an important fishery in Nantucket Sound;
- Pose significant navigational hazards for commercial and recreational vessels, as well as a danger to small aircraft;
- Exacerbate transmission congestion problems in southeastern Massachusetts, increasing the potential for blackouts.

The Army Corps of Engineers is engaged in an environmental review as part of the permitting process for the wind energy plant. The identification and analysis of alternative locations are key issues to delay the environmental review process and ensure that less environmentally destructive options are considered.

Objective

The objective of the study is to identify viable alternative sites for a renewable energy facility. The preliminary purpose and need statement that is being used by the Army Corps of Engineers (ACQE) characterizes the project as a "commercial scale renewable energy facility tying into or providing power to the New England grid." This purpose and need statement too narrowly defines the purpose of the project and does not adequately consider the project purpose from the public's perspective or the relevant region from a technological perspective. This study should work both within the paradigm set up by the Corps - by using the Corps' purpose and need statement and its siting criteria - and outside the Corps' paradigm - by redrafting the purpose and need statement



Offshore Renewable Energy



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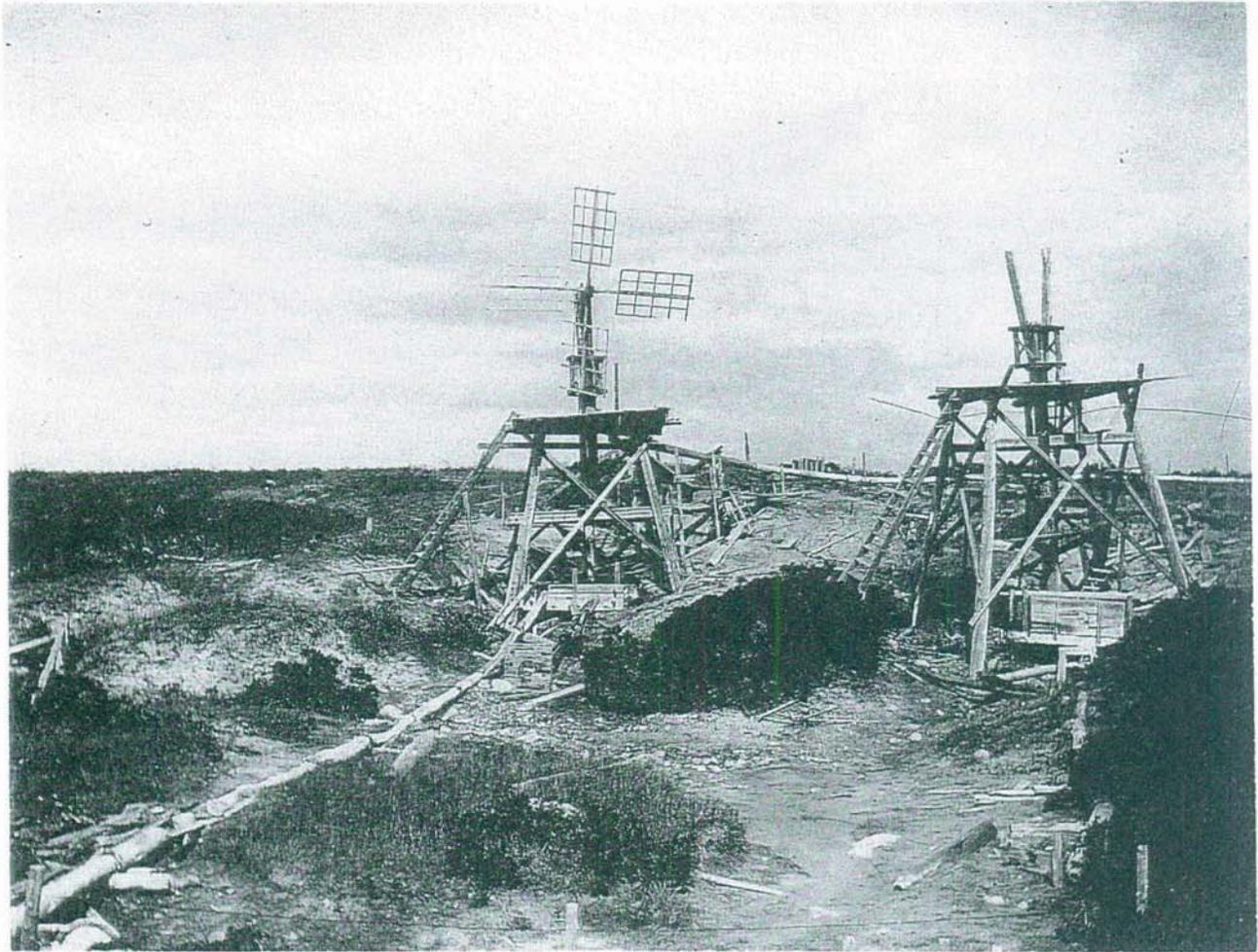


Cape & Islands Energy Technology Strategy Workshop
November 15, 2007
Woods Hole Research Center

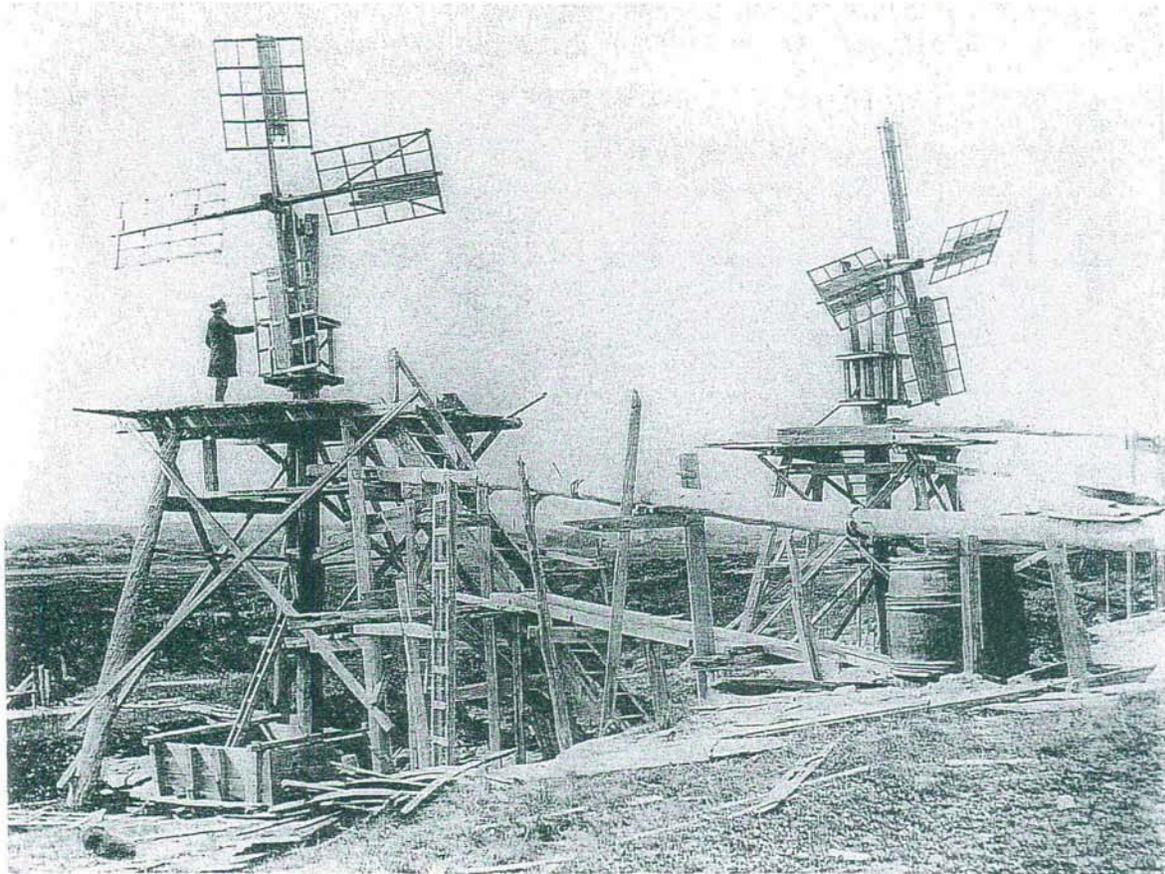
Technology Summary

- ❑ Shallow water offshore wind (<25m) is here today but will need experience in US waters to bring down costs and establish infrastructure.
- ❑ Transitional and deep water wind is experimental but will grow from shallow offshore experience and sustained R&D.
- ❑ A fully funded R&D effort for deep water wind would take 10-20 years to commercialize.
- ❑ Ocean Energy systems are in a nascent stage but may be accelerated by wind experience.

Exhibit C



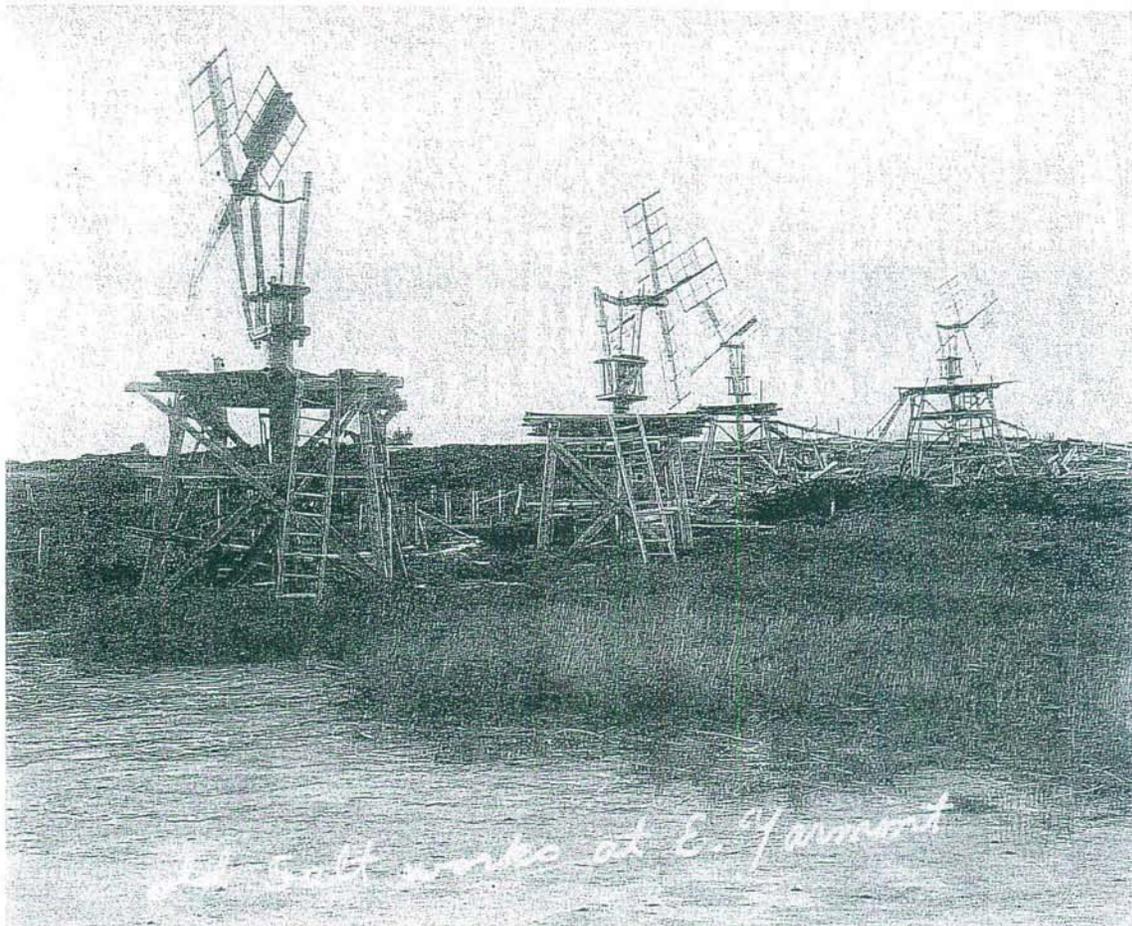
The saltworks began at the shore where windmills pumped sea water from reservoirs up to the evaporating vats to make salt. These structures dotted the landscapes near the shores of every Cape Cod town. *Photo from the H.K. Cummings Collection.*



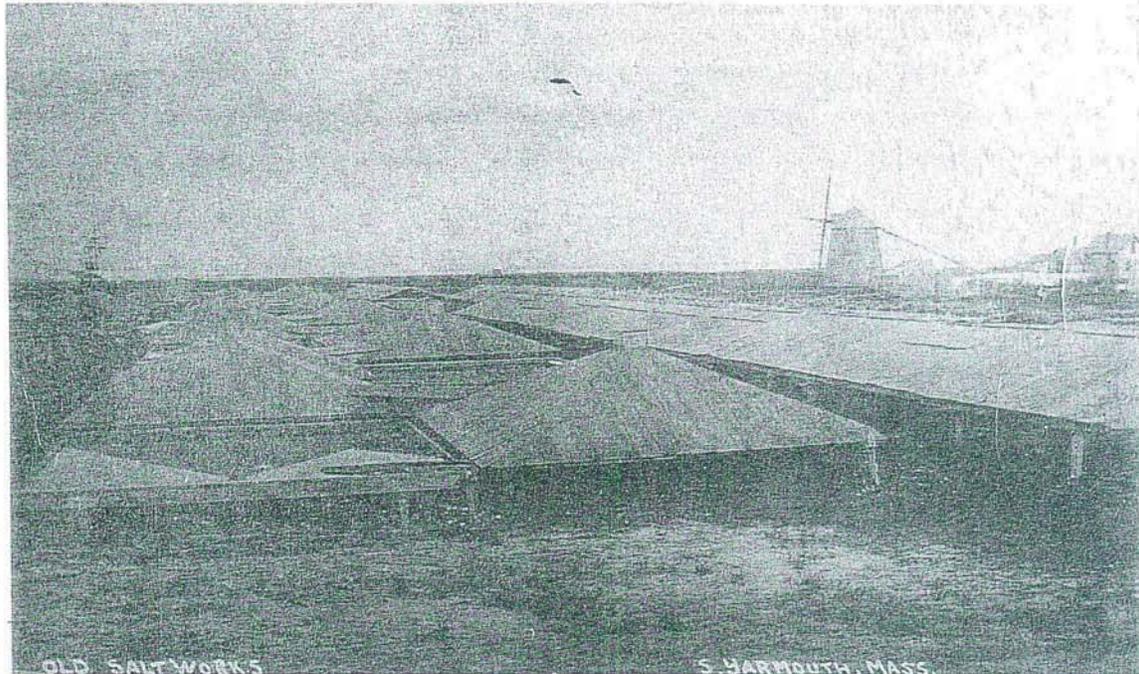
Above: The salt mills at the Crocker saltworks in Barnstable. The size of the pumps can be determined in relation to the man standing beside the wind vanes. A six-foot man would indicate that the diameter of the mill vanes is about eighteen feet with about twenty feet of vane area to catch the wind. The wooden pipes leading to the salt vats were hollowed out logs. They were either drilled or burned out. The pipes were then connected together and sealed with white lead. **Below:** The saltworks of Loring Crocker in Barnstable covered a vast area of the land next to the present day Barnstable Harbor. In this photo there are two horses and buggies. One of these may be a working rig for the man tending the saltworks. *Photos from the collection of Louis Cataldo, Barnstable, Mass.*



Exhibit E-1



Four salt mills in a row in this photo titled "Saltworks at East Yarmouth." The title locates them near the large area of works on Bass River. *Photo from the Author's collection.*

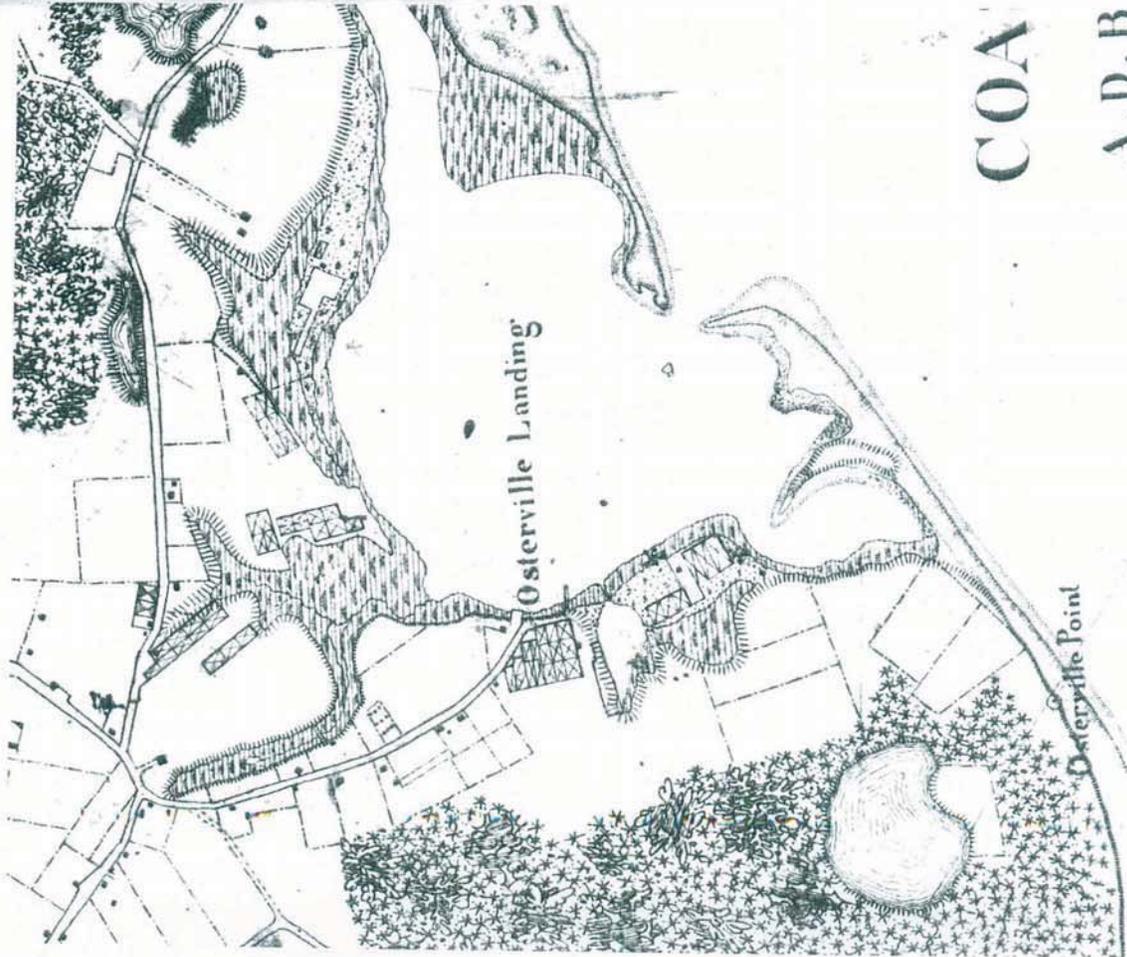


Above: The picture is titled “Old Saltworks, S. Yarmouth, Mass. The Judah Baker windmill is on the right side of the photo. It is still in nearly the same area today. **Below:** This photo is taken from an old post card and it is another area of the saltworks at Bass River with the salt mills near the water. Drying rooms and salt vats surround the land next to the dwelling houses in the background. *Photos courtesy of Alec & Audrey Todd, Yarmouth, Mass.*

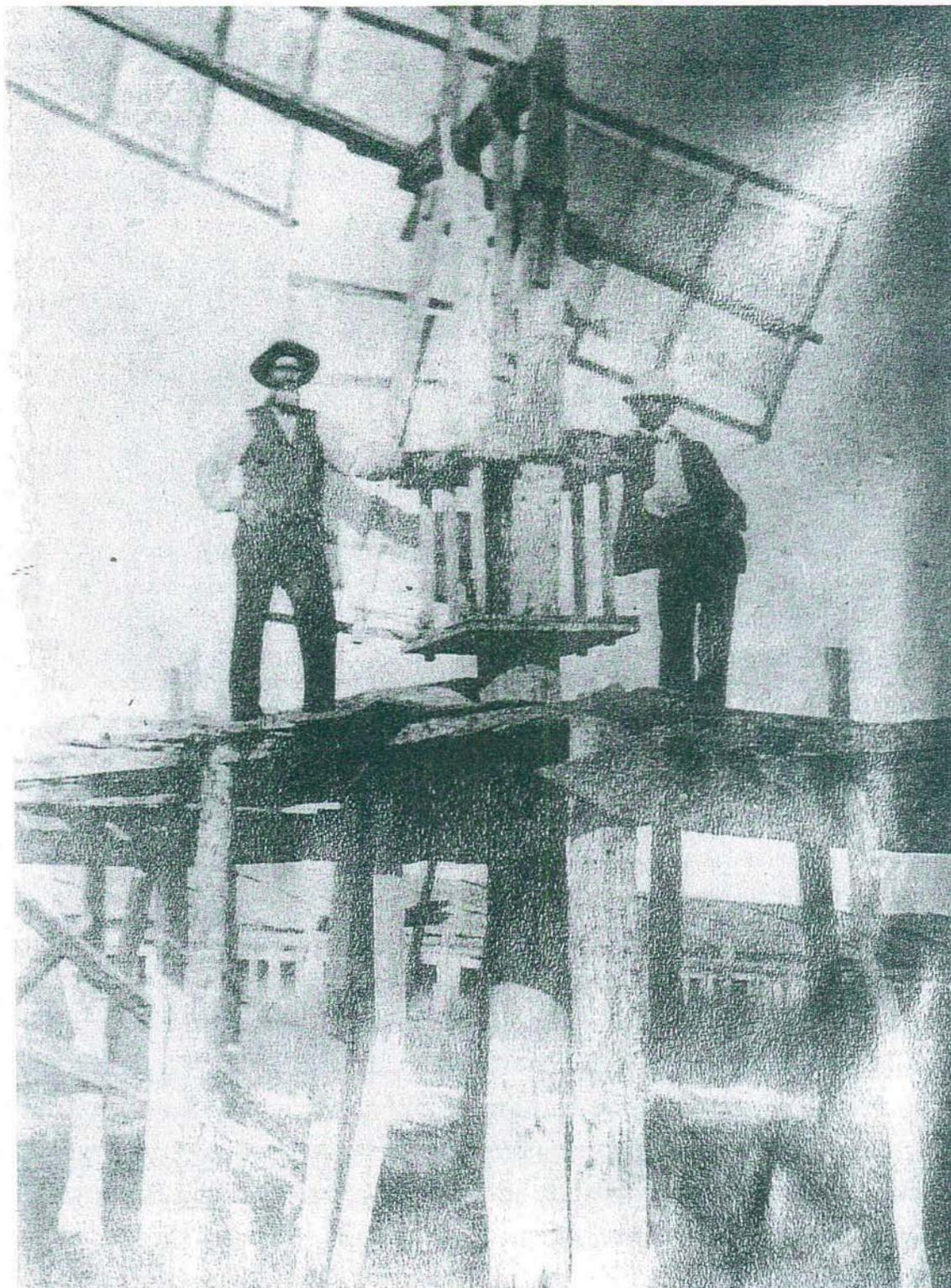




The Hyannis saltworks were located near Dunbar Point on Lewis Bay and Hyannis harbor. The small x near the center of the map on the beach is the site of a salt mill.



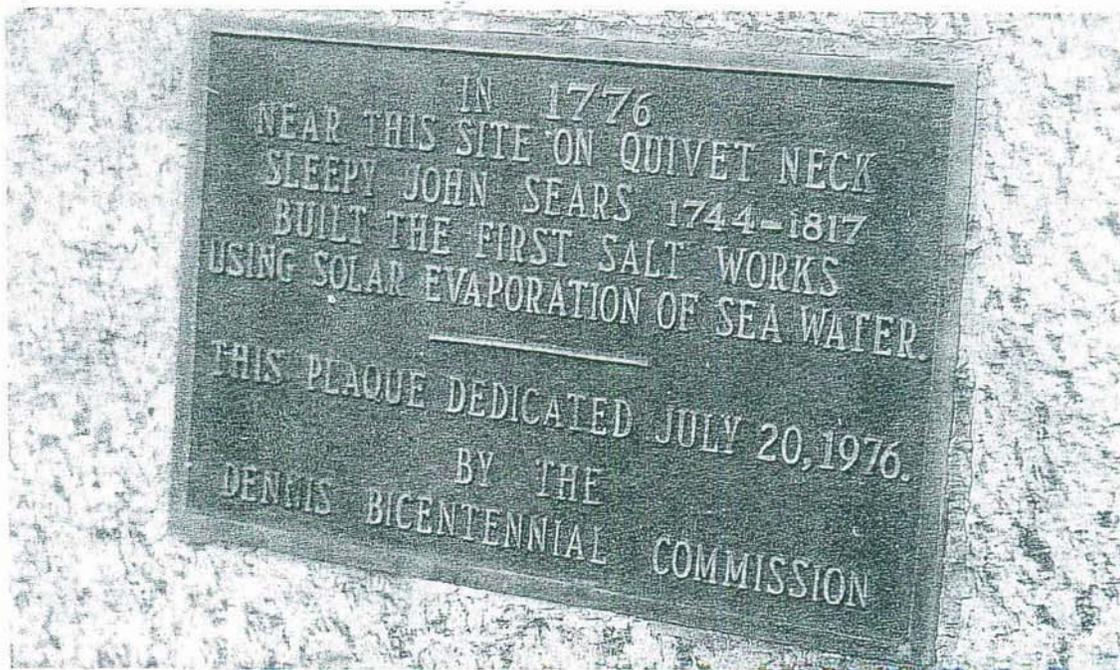
The saltworks in Osterville were located at what is the present East Bay near Wianno. There were several hundred feet of evaporators as depicted in the 1849 U.S. Coast Survey map.



The Assessors listing for the Town of Chatham for the year 1829, on page 160, lists Jesse Nickerson as owning 4,400 feet of saltworks. The men posing atop salt mill might well be his heirs. *Photo from the Library of Congress, Washington, D.C.*



Above: The Dennis Bicentennial Commission dedicated a monument to John Sears in 1976. The boulder lies in the center of a field where some of the Sears saltworks were situated. Below: The bronze plaque is about Mr. Sears who is considered the progenitor of this early industry. *Photo by William P. Quinn.*





April 9, 2009

Andrew D. Krueger, PhD
Alternative Energy Programs
U.S. Department of the Interior
Minerals Management Service
381 Elden Street, MS 4090
Herndon, VA 20170

**Re: *Cape Wind Energy Project
Consideration of Historic Preservation Issues in Alternatives Analyses
Nantucket Sound, Massachusetts***

Dear Dr. Krueger:

The letter dated April 1, 2009 from Reid J. Nelson of the Advisory Council on Historic Preservation (ACHP) requested clarification regarding how historic preservation issues were considered in the alternatives analyses conducted for the Cape Wind Energy Project (the Project). The alternatives analyses conducted over the last eight years under the National Environmental Policy Act (NEPA) review were designed to thoroughly consider potential impacts to all environmental resources, including cultural resources to comply with Section 106 of the National Historic Preservation Act (NHPA). The attached list summarizes the various alternatives considered and includes the cultural and visual issues identified for each, as well as other salient issues. The summary includes citations of the source documents, where the detailed assessments may be found. Three related figures and one table are also provided.

The summary demonstrates that historic preservation issues have been addressed, as requested by ACHP in its letter, for siting of the wind turbines, the design (layout) of the facility, the level of audible impacts for various alternatives, and in operations (particularly for visual impacts). The potential impacts of long-term maintenance (minimal boat traffic and repairs) were considered as part of the overall NEPA assessment.

If you have any questions, please contact me at (781)489-1110 or sfaldetta@essgroup.com.

Sincerely,

ESS GROUP, INC.

Sarah K. Faldetta
Senior Scientist

Attachments

C: Rodney Cluck, MMS
Melanie Stright, MMS
Rachel Pachter, Cape Wind Associates, LLC
Geri Edens, McKenna, Long & Aldridge
Deborah Cox, PAL, Inc.

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Cape Wind Project
Summary of Consideration of Alternatives
Pertaining to Historic Preservation Issues

The alternatives analyzed since 2001 as part of the NEPA process consistently included consideration of potential impacts to cultural resources, to assist in compliance with Section 106 of the NHPA. This summary has been compiled from the following sources:

1. Combined United States Army Corps of Engineers Draft Environmental Impact Statement and Massachusetts Executive Office of Environmental Affairs Draft Environmental Impact Report, issued November 2004 (USACE DEIS/DEIR)
2. Massachusetts Environmental Protection Act Final Environmental Impact Report issued February 15, 2007 (MEPA FEIR)
3. Minerals Management Service Final Environmental Impact Statement issued January 2009 (MMS FEIS), which included and superseded the alternatives analysis in the MMS Draft EIS issued January 2008.
4. Preliminary Marine Archaeological Sensitivity Assessment of 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 and Technical Memorandum, Cape Wind Terrestrial Alternative, Massachusetts Military Reservation: Archaeological Sensitivity Assessment. Both by PAL, Inc., issued January 2004 and March 9, 2004 respectively (contained in Appendix 3-I in Volume 2 and Section 3.4.3.2.11 of Volume 1 of USACE DEIS/DEIR).
5. Known Historic Properties on Cape Cod, Martha's Vineyard and Nantucket issued by PAL, Inc. on October 16, 2002 (list contained in Appendix 5.10B in Volume 3; locations shown on 4 sheets of Figure 5.10-1 of USACE DEIS/DEIR).
6. Marine Archaeological Sensitivity Assessment: Cape Wind Energy Project issued by PAL, Inc. on June 2003 (contained in Appendix 5.10-C-1 in USACE DEIS/DEIR).
7. Visual Impact Assessment for South of Tuckernuck Island Alternative: Final Environmental Impact Report issued by PAL, Inc. (contained in Appendix 3.2-D and Section 3.12 of the MEPA FEIR).
8. Marine Archaeological Reconnaissance Survey: Cape Wind Energy Project issued by PAL, Inc. March 2004 (contained in Appendix 5.10-C-2 in USACE DEIS/DEIR).
9. Visual Impact Assessment of Multiple Historic Properties: Cape Wind Energy Project, issued by PAL, Inc. June 2005 (contained in Appendix 5.10F of USACE DEIS/DEIR).
10. Supplemental Marine Archaeological Reconnaissance Survey of Revised Layout Offshore Project Area issued by PAL, Inc. (contained in Appendix 3.11-B and Section 3.11 of the MEPA FEIR).

A. SUMMARY OF PRELIMINARY ALTERNATIVES ANALYSES

Preliminary Site Screening Criteria (from 3.4.1 USACE DEIS)

- Area with wind power classification of 4 or greater (average winds of greater than 15.7 mph at 50 meters above ground/sea level): necessary for commercial wind energy project;

Sufficient surplus electric transmission capacity to transport 200 – 1,500 megawatt (MW) to centers throughout Independent Systems Operation-New England (ISO-NE) transmission system;

- Commercially-available land or permissible use of offshore area sufficient to accommodate a 200 – 1,500 MW wind energy project.

Preliminary Screening Analysis Process (from 3.4.2 USACE DEIS/DEIR)

- 17 alternative sites in New England Region were identified by the USACE through the public scoping process and meetings/consultations with cooperating agencies and were determined to be reasonable. These were then evaluated using the preliminary site screening criteria:
 - 8 upland alternatives: 1 viable option
 - 9 offshore alternatives: 3 viable options

Preliminary Screening Results (from 3.4.1 USACE DEIS/DEIR)

- Four alternatives (one upland and three offshore) were identified to warrant detailed analysis (these alternatives are shown in the attached Figure 3-20 of the USACE DEIS/DEIR):
 1. Upland Alternative: Massachusetts Military Reservation (MMR) was the only upland site evaluated that had only one limiting criteria (wind power classification of 3). Wind resources lower than the optimal 4 or greater would require taller, more visible turbine structures. Nonetheless, MMR was deemed the best upland alternative due to its large land area (though that land would likely not be available due to ongoing military operations at the location).
 2. Offshore Deep Water Alternative: South of Martha's Vineyard site would have the least impact from extreme storm waves (ESW) but would have potential hazards from unexploded military ordinance and was therefore omitted from further consideration. South of Tuckernuck Island, Nantucket is outside of military hazards but would have similar ocean conditions as the South of Martha's Vineyard site and would likely be more feasible.
 3. Offshore Shallow Water Combination Alternative: Offshore New Bedford has insufficient winds but is close enough to Nantucket Sound to combine that location with Horseshoe Shoal to form a shallow water combination alternative.
 4. Offshore Shallow Water Alternative: Nantucket Sound has the best options for wind resources and fewest limiting factors (i.e. marine mammals, seabed composition); three sub-site alternatives were identified and evaluated.

B. SUMMARY OF DETAILED ALTERNATIVES ANALYSES

Detailed Analysis of Alternatives Overview (from 3.4.3 USACE DEIS/DEIR)

Based upon the results of the preliminary screening analyses, four alternatives were found that warranted detailed analyses. These were assessed for potential impacts to cultural resources, in addition to environmental resources, as summarized below and by area.

- Results of a PAL archaeological sensitivity assessment of alternatives (Appendix 3-I of the USACE DEIS/DEIR) found that three of the four sites that underwent detailed analysis

have moderate to high potential for containing previously unrecorded, potentially significant archaeological resources. These were MMR, Nantucket Sound and the New Bedford/Horseshoe Shoal combination alternative. South of Tuckernuck Island was found to have low archaeological sensitivity for potential submerged Native American and Euro-American resources. The South of Tuckernuck Island and New Bedford Alternatives had relatively fewer historic properties in the Project viewshed; the New Bedford combination would include a Nantucket Sound sub-site and therefore would include more historic properties in the viewshed than the former two alternatives.

- Nantucket Sound Alternative (three sub-sites) had the greatest number of National Register-listed or eligible historic properties within the viewshed.

1. Massachusetts Military Reservation

- 23 known prehistoric archaeological sites within or immediately adjacent to the proposed MMR Site – none represent significant archaeological resources (from Appendix 3-I and Section 3.4.3.2.11 USACE DEIS/DEIR):
 - 13 previously identified sites located next to fresh water kettle ponds or swamps – low density deposits of lithic chipping debris (short-term activity areas) from stone tool manufacture/maintenance;
 - 10 sites in upland sections of MMR were isolated find spots with lithic flakes or tool fragments;
- No previously listed historic archaeological sites are located within MMR Site;
- MMR Site area has low potential to contain historic period resources;
- Low visual contrast because of existing structures on land;
- High levels of ambient light expected;
- The area contains low, moderate and high archaeological sensitivity;
- The area of potential effect (APE) for noise was considered the polygon encompassing the wind turbine generators and the associated work areas. Modeling indicates that temporary construction noise may be audible (from 3.4.3 USACE DEIS/DEIR).

2. South of Tuckernuck Island

- Deeper waters at this alternative would require multi-pile installations, which are commercially unproven as yet in deep water wind projects;
- Two aboveground historic properties within the viewshed of this Alternative: all of Nantucket Island (a National Historic Landmark) and Cape Poge Light, Martha's Vineyard (from Appendix 5.10B, Figure 5.10-1 and Section 3.4.3.2.11 USACE DEIS/DEIR);
- Site is not visible from Cape Cod;
- Site would have an Adverse Effect on the Nantucket Island National Historic Landmark and on the Cape Poge Lighthouse on Martha's Vineyard (Appendix 3.2-D and Section 3.12 of the MEPA FEIR);
- Flashing lights at night will affect least number of viewers in this Alternative;
- No known submerged historic properties or archaeological sites in area of Tuckernuck Island (Appendix 3-I and Section 3.4.3.2.11 of USACE DEIS/DEIR);
- No known wrecks in search area;

- Low Euro-American archaeological sensitivity, low Native American archaeological sensitivity;
- There would be impacts to ambient sound levels from construction, decommission and operation, the highest of which would be during construction (from 3.3.5.2 MMS FEIS);

3. New Bedford/Horseshoe Shoal

- 13 historic properties were identified with expected visibility of the WTGs (from Appendix 3-I and Section 3.4.3.2.11 USACE DEIS/DEIR);
- One known wreck and one obstruction were identified within the study area;
- Two shipwrecks were identified by MHC and MBUAR in study area;
- PAL assigned the New Bedford/Buzzard's Bay portion of alternative a high Euro-American archaeological sensitivity and a moderate Native American archaeological sensitivity;
- Reduced Horseshoe Shoal portion of site has high Euro-American archaeological sensitivity, high Native American archaeological sensitivity (from Appendix 5.10-F, USACE DEIS/DEIR);
- High levels of ambient light expected (from 3.4.3.2.11 USACE DEIS/DEIR);
- Lights on WTGs will be most visible from shore in this Alternative;
- The area of potential effect (APE) for noise was considered the polygon encompassing the wind turbine generators (WTGs) and the associated work areas (from 3.4.3 USACE DEIS/DEIR).

4. Nantucket Sound: Three Sub-Sites

Sub-sites are far enough from shore to minimize potential visual impacts but close enough to shore to facilitate submarine cable interconnections.

A. Monomoy/Handkerchief Shoal – determined to be technically, environmentally, and economically constrained:

- Numerous T&E listed species use area for migration, breeding or general habitat; well-known seal haul-out in winter; refuge for protected birds (from 3.4.3.2.1 and 3.4.3.2.4 USACE DEIS/DEIR);
- Inadequate water sheet area for installation of 130 WTGs (from 3.4.4.2 USACE DEIS/DEIR);
- Highest of sub-sites for commercial fishing activity use (from 3.4.3.2.5 USACE DEIS/DEIR);
- Limited options for feasible submarine cable interconnections (from 3.4.4.2 USACE DEIS/DEIR);
- Moderate Euro-American archaeological sensitivity, moderate Native American archaeological sensitivity (from Appendix 3-I and Section 3.4.2.11, USACE DEIS/DEIR);
- No known submerged historic properties or archaeological sites in search area recorded in National or State Registers, Massachusetts Board of Underwater Archaeological Resources (MBUAR) or Massachusetts Historical Commission (MHC);
- No known wrecks in search area, but five wrecks listed in Northern Shipwreck Database (the database) as within vicinity of Site (between 1853 – 1899);
- Least number of historic properties in viewshed (from 3.4.3.2.12 USACE DEIS/DEIR);

- The area of potential effect (APE) for noise was considered the polygon encompassing the wind turbine generators (WTGs) and the associated work areas (from 3.4.3 USACE DEIS/DEIR). There would be impacts to ambient sound levels from construction, decommissioning and operation, the highest of which would occur during construction (from 3.3.5.2 MMS FEIS);
- B. Tuckernuck Shoal** – determined to be technically, environmentally, and economically constrained:
 - In close proximity to significant bird and marine mammal habitat; Muskeget Island is one of two US breeding locations for grey seal; nearby islands well-known seal haul-out in winter (from 3.4.3.2.1 and 3.4.3.2.4 USACE DEIS/DEIR);
 - Area of defined navigation channels serving as entry point to Nantucket Sound and nearby commercial ports – makes it difficult to site WTGs and cables (from 3.4.3.2.10 USACE DEIS/DEIR);
 - High use commercial fishing activity (from 3.4.3.2.5 USACE DEIS/DEIR);
 - Limited options for feasible submarine cable interconnections (from 3.4.4.3 USACE DEIS/DEIR);
 - High visual impacts for Martha’s Vineyard, Nantucket Islands (from 3.4.3.2.12 USACE DEIS/DEIR);
 - Alternative has high Euro-American archaeological sensitivity, high Native American archaeological sensitivity (from Appendix 3-I and 3.4.2.11, USACE DEIS/DEIR);
 - No known submerged historic properties or archaeological sites recorded in the area in National or State Registers, MBUAR or MHC;
 - Two unidentified wrecks in search area; database reports 102 vessel casualties from 1799-1937 (17 reported to have been removed);
 - There would be impacts to ambient sound levels from construction, decommissioning and operation, the highest of which would occur during construction (from 3.3.5.2 MMS FEIS).
- C. Horseshoe Shoal** – determined to be technically, environmentally, and economically feasible:
 - Not a significant habitat or migratory pathway for marine mammals – no significant seal haul-outs in close proximity (from 3.4.3.2.4 USACE DEIS/DEIR);
 - Adequate water sheet area for installation of 130 WTGs (from 3.4.4.4 USACE DEIS/DEIR);
 - Ideal subsurface geological conditions for installation of wind park (from 3.4.3.2.2 USACE DEIS/DEIR);
 - Limited options for feasible submarine cable interconnections (from 3.4.4.4 USACE DEIS/DEIR);
 - Less commercial fishing activity than other sub-sites (from 3.4.3.2.5 USACE DEIS/DEIR);
 - Feasible distance for submarine cable interconnections (from 3.4.3.2.12 USACE DEIS/DEIR);
 - PAL found visual ‘adverse effect’ on 2 NHLs, 4 historic districts, 10 individual properties (from Appendix 5.10 F, USACE DEIS/DEIR);

- High Euro-American archaeological sensitivity, high Native American archaeological sensitivity (Appendix 5.10-C-1 of USACE DEIS/DEIR; Appendix 3.11-B and Section 3.11 of MEPA FEIR);
- No submerged historic properties or archaeological sites recorded in the area in National or State Registers, MBUAR or MHC (from Appendix 5.10-C-1 and Section 3.4.3.2.11 USACE DEIS/DEIR);
- No wrecks or obstructions in search area, 18 vessel casualties from 1819 – 1963 in vicinity (from 3.4.3.2.11 USACE DEIS/DEIR);
- Geophysical and geotechnical surveys indicate possibility of limited former land surfaces surviving post-glacial marine transgression in easternmost portion of Site. These limited areas were assigned high sensitivity for potential Native American archaeological resources, although none were found (from Appendix 5.10-C-2 and Section 3.4.3.2.11 USACE DEIS/DEIR);
- All areas of high archaeological sensitivity for potential Euro-American and Native American archaeological resources were avoided by Project re-design (Appendix 3.11-B and Section 3.11 of MEPA FEIR);
- Temporary construction noise from pile driving may or may not be audible at land areas near to the closest turbines when those are installed, depending upon wind speed and direction. Operational noise will be inaudible on Cape Cod, Martha's Vineyard and Nantucket (from 3.4.3 USACE DEIS/DEIR and 3.13.6 of the MEPA FEIR).

Additional Geographic Alternatives (from 3.3.1 of the MMS FEIS)

Building upon the analysis of alternatives that the USACE had previously conducted, the MMS identified and initially screened 9 wind farm sites (in addition to the proposed action on Horseshoe Shoal) along the coast from Maine to Rhode Island. These are shown on the attached Figure 3.3.3-1 from the MMS FEIS. 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. Several of the alternatives had been previously reviewed during the USACE analyses; however a number of sites were analyzed for the first time by MMS. The Phelps Bank site was chosen as a result of a comment/request by the Massachusetts Office of Coastal Zone Management that an alternative be evaluated for a site located more than 25 miles offshore with water depths less than 150 feet. The Offshore Nauset site was chosen as a result of agency interests in comparing a deep water alternative. The ten sites (including the proposed location) evaluated by MMS were:

1. Offshore Portland, Maine
2. Offshore Cape Ann, Massachusetts
3. Offshore Boston, Massachusetts
4. Offshore Nauset Massachusetts (east of Nauset Beach)
5. Nantucket Shoals (southeast of Nantucket Island Massachusetts)
6. Phelps Bank, (southeast of Nantucket Island Massachusetts)
7. East of Block Island, Rhode Island
8. Monomoy Shoals (East of Monomoy, Massachusetts)
9. South of Tuckernuck Island,

10. Horseshoe Shoal (proposed action).

As detailed in Section 3.3.3 of the MMS FEIS, preliminary siting criteria were applied to the alternatives resulting in 7 sites being eliminated from further consideration due to physical constraints. Monomoy Shoals, South of Tuckernuck Island, and Horseshoe Shoal were then subjected to more detailed analysis by MMS, along with several non-geographic alternatives which were subsets of the proposed action on Horseshoe Shoal. In addition to the information provided in the USACE DEIS/DEIR, the following three sites were described in Section 3.3.5 of the MMS FEIS.

- **Monomoy Shoals** - This alternative would require an area slightly larger than the proposed action, covering a total of 25.9 square miles. Locating the project here would have greater impacts on avifauna, sub-tidal resources, non-ESA mammals, fish and fisheries, essential fish habitat and threatened and endangered species because of its proximity to Monomoy Island National Wildlife Refuge, but would have less visual impact on historic structures (see attached Table 3.3.5-1 from the MMS FEIS). This alternative would also require a longer interconnection cable length adding to overall cost, and greater wave heights would prolong construction and decommissioning. With respect to cultural resources, no submerged historic properties or archaeological sites are recorded in the Monomoy Shoals alternative area. However, there could be visual impacts to visitors to the Cape Cod National Seashore and to Tribal areas of cultural and religious significance.
- **South of Tuckernuck Island** – This alternative site has water depths ranging from 15 to 100 feet below mean lower low water (MLLW), and would require an area covering approximately 36 square miles. The broad range in water depth would require the use of different types of foundations at this site, using three different diameter monopile structures and two different foundation structures. The wave heights at this location are also of concern with respect to construction and decommissioning. Deeper water, multi-membered foundation structures could provide additional resources for colonizing benthos and in turn for the fish feeding on them. A much longer interconnection line would also be needed for this alternative. Although this area is farther away from the shores of Cape Cod, the South of Tuckernuck Island alternative would be visible from historic properties and from Tribal areas of cultural and religious significance.
- **Horseshoe Shoal** – The proposed location is not expected to cause impacts jeopardizing to populations of threatened and endangered species. The total area of permanent benthic disturbance is calculated at 0.67 acres. The proposed action would result in visual impacts to areas along the south coast of Cape Cod, areas along the shorelines of Nantucket and Martha's Vineyard oriented toward the project site, some historic properties, and Tribal areas of cultural and religious importance

In addition to the above alternative locations, MMS FEIS also took into consideration non-geographic alternatives, as discussed below.

Non-Geographic Alternatives (from 3.3.6 MMS FEIS – see attached Figure 3.3.5-1)

- **Smaller Project** - The Smaller Project Alternative on Horseshoe Shoal is located in the same area as the proposed action but contains half the number of WTGs and thus, half the

generation capacity of the proposed action. The views of the Smaller Project Alternative would result in a reduced breadth of visual impacts when looking out at the horizon from Nantucket or Cape Cod. With respect to cultural resources, no submerged historic properties or archaeological sites are recorded in the area of this alternative. Construction related noise impacts to humans would be reduced as this alternative would be farther from Nantucket and Cape Cod. Also, with half the quantity of turbines, construction and decommissioning noise will be lessened.

- **Phased Development** - The Phased Development Alternative on Horseshoe Shoal would utilize the same site as the proposed action and would employ the same transmission cable system layout. This alternative would be constructed in two phases, with time in between to allow for monitoring of operations. The first phase would consist of 65 of the total 130 turbines, installed in the western half of the proposed project area. The remaining turbines would be installed in the eastern half after a monitoring period. Visual impacts would be the same as the proposed project once this alternative was operational. With respect to cultural resources, no submerged historic properties or archaeological sites have been recorded in the area of this alternative (the same as the proposed action).
- **Condensed Array** - 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 action. Construction noise impacts to humans would be slightly less because of increased distance to the turbine array from shore. The operational noise would be the same as the proposed project.
- **No Action Alternative** - The No Action Alternative would result in no construction or operation of the turbine array at all. This would eliminate any visual or cultural impacts of the proposed project on any historic or archaeological resource.

In summary, the detailed alternatives analyses undertaken for the Project have fully and consistently considered potential impacts to all environmental resources including historic properties, cultural resources and visual impacts (see attached Table 3.3.5-1 of the MMS FEIS Appendix A).

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February 18, 2009

Rodney E. Cluck, Ph.D.
Chief Environmental Science Branch
Alternative Energy Program
Minerals Management Service
381 Elden Street
Mail Stop 4080
Herndon, VA 20170

**Re: Responses to Massachusetts Historical Commission Comments on MMS's
Finding of Adverse Effect
Cape Wind Energy Project
Nantucket Sound, Massachusetts**

Dear Dr. Cluck:

We are writing to respond to the comments of the Massachusetts Historical Commission (MHC) in its letter dated February 6, 2009 regarding MMS's Finding of Adverse Effect (Finding) under Section 106 of the National Historic Preservation Act (NHPA). MHC's comments mischaracterize the extensive work that has been done to consider potential impacts on historic and cultural properties, misapply the requirements of the NHPA and the National Environmental Policy Act (NEPA), and are inconsistent with MHC's previous positions. There is also no factual or legal support for MHC's assertion that MMS's Finding is incomplete, that consideration of mitigation measures is premature, or that the EIS should be supplemented after the Section 106 process is complete. Further, it appears that MHC does not intend to engage in continued consultation to resolve adverse effects or to conclude the Section 106 process in a timely and constructive manner under a Memorandum of Agreement. CWA thus believes that continued consultation with MHC will not be productive and will only further delay the project and that MMS should consider terminating the consultation with MHC and proceeding to resolve adverse effects with the Advisory Council.

1. MHC has Failed to Participate in the Section 106 Process in a Timely and Constructive Manner.

As an initial matter, Cape Wind Associates (CWA) questions whether MHC has acted in good faith to fulfill its role under MMS's Section 106 process. Under the NHPA, MHC as the State Historic Preservation Officer (SHPO) must "consult with federal agencies on federal undertakings that may affect historic properties." 16 U.S.C. § 470a(b)(3)(I). The Advisory Council regulations further direct MHC to "advise *and assist* Federal agencies in carrying out their 106 responsibilities." 36 C.F.R § 800.1(c)(1)(i) (emphasis added).

The regulations thus clearly contemplate that MHC will work cooperatively with MMS to facilitate the Section 106 process and ensure that historic properties are "taken into consideration at all levels of planning and development." *Id.* Courts have observed that "consultation with the SHPO is an integral part of the Section 106 consultation process." *Pueblo of Sandia v. United States*, 50 F.3d 856, 862 (10th Cir. 1995). Yet it is our understanding that MHC has repeatedly been unwilling to meet or otherwise communicate with MMS (including repeated failure to return phone calls) outside of the consulting party meetings, and has offered only limited guidance in written comments. As a result, MMS has had to conduct the Section 106 process without the benefit of MHC's constructive engagement and without a clear understanding of MHC's concerns. Rather, MHC's principal input into the process has been to criticize MMS's work after-the-fact, a tactic which has only served to complicate and delay the process. MHC's comments on MMS's Finding should thus not be given the level of deference they may otherwise deserve had MHC participated constructively in the Section 106 process.

2. MHC's Opinion That the Documentation Supporting the Finding is Incomplete and Insufficient is Unfounded.

MHC contends that the MMS's documentation for its Finding is incomplete and insufficient under Advisory Council regulation Section 800.11, yet does not provide specific details to support its assertion, other than to say that the Finding should now be revised to address the demands of MHC and other consulting parties, including avowed opponents of the Project. MHC then asserts, without reference to the relevant standards, that the EIS includes inconsistent and insufficient information about cultural resources.

The Advisory Council has explained in this regard that the purpose of the documentation standard is "to provide *basic information* so that a third-party reviewer can understand the basis for an agency's finding or proposed decision." 65 Fed. Reg. 77698 (Dec. 12, 2000) (emphasis added). Section 800.11 therefore requires a finding to include a description of the undertaking, the steps taken to identify historic properties, the historic properties affected, the undertaking's effects on historic properties, as well as an explanation as to why the criteria of adverse effect were found applicable and copies or summaries of consulting parties' views. MMS's Finding addresses each of these requirements and clearly provides the "basic information" necessary to understand MMS's conclusions.

Moreover, MHC is aware that the Finding is supported by extensive identification and assessment efforts that began in November 2001. Over the past eight years, MHC has received, commented upon, and concurred with numerous studies and reports evaluating potential project impacts on historical and cultural resources. Nevertheless, PAL has now prepared yet another document that details the extensive property identification efforts that have been conducted, summarizes the visual simulation analyses that were performed, and addresses issues raised by the consulting parties at the third Section 106 consultation meeting conducted by MMS on January 29, 2009 (PAL Report). The PAL memorandum and attachments should negate any legitimate question concerning the adequacy of documentation.

3. MHC Mischaracterizes the Methodology Used to Identify Historic Properties.

MHC incorrectly criticizes the methodology used to identify historic properties as a “sampling methodology” and suggests that MMS could “estimate the total number of individual historic properties in the Area of Potential Effect, as only represented in the *sample* of historic properties that were used in the study.” MHC thereby distorts the methodology used to identify historic properties in an apparent attempt to artificially increase the number of historic properties affected by the project. As set forth below, the methodology of the study involved no form of “sampling.”

As the PAL memorandum details, in 2002 PAL developed a list and map of *all* historic properties in the 10 towns on Cape Cod, Martha’s Vineyard and Nantucket that had shorelines oriented toward the project that were (1) listed or formally determined eligible for inclusion on the National Register of Historic Places, (2) in Massachusetts Historical Commission’s (MHC) Inventory of Historic and Archaeological Assets of the Commonwealth for which MHC has concurred with an eligibility recommendation, or (3) on the State Register of Historic Places (State Register), including local historic districts, which MHC has found are eligible for the National Register. Those identified historic properties along the south side of Cape Cod, the north and east sides of Martha’s Vineyard, and the north side of Nantucket were then visited to determine whether the property could reasonably have an open view of the project. The Area of Potential Effect (APE) was thereafter defined as historic properties meeting the stated criteria with open views of visible components of the wind park. PAL found 16 individual properties and historic districts would be adversely affected by the visible components of the offshore wind turbines.

This methodology was supplemented by the consulting parties’ identification in 2008 of 30 additional properties potentially within the APE. Twelve of these 30 properties were found to meet the stated criteria and have a view of the proposed project, and therefore would be adversely affected by views of the offshore wind turbines. The total number of individually-listed above-ground historic properties and districts found by PAL to have an adverse effect is 28 (16 previously determined as adversely affected and 12 determined as adversely affected in 2008). In addition, where an individual property within a designated historic district was found to be adversely affected, *i.e.*, had a reasonable view of the project, all properties within the district were considered adversely affected. This approach captured numerous additional

properties, irrespective of whether there were views of the project. Thus, the results of these efforts can hardly be characterized as a mere representative “sampling” of historic properties, when all historic properties meeting the stated criteria that reasonably have a view of the project were considered.

To the extent that MHC is raising the concern expressed at the January 29, 2009 consulting party meeting that the identification efforts have not considered potential properties that, when viewed from third-party vantage points, are affected because a portion of the project may be in the field of vision, PAL explains in its memorandum that such an additional identification effort would not be reasonably required or useful in this instance, given the 5 to 15 mile distances of the project from the potentially affected resource and the relatively even topography. As PAL explained, under those conditions, the character-defining features of individual historic properties, or groups of historic properties, against the shoreline mass would not be distinguished in a manner that would reasonably enhance the analysis. The NHPA requires that MMS “make a reasonable and good faith effort to identify historic properties; determine whether identified properties are eligible for listing on the National Register . . .; assess the effects of the undertaking on any eligible historic properties found; determine whether the affect will be adverse; and avoid or mitigate any adverse effects.” *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 805 (9th Cir. 1999). The extensive efforts undertaken to identify historic properties and assess the potential effects of the project far exceed the NHPA’s standard of reasonableness and good faith.

4. The NHPA Does Not Require a Detailed Analysis of Alternatives Prior to Consideration of Mitigation Measures.

MHC next asserts that a “more explicit effort to consider feasible project alternatives” should be undertaken to understand what effects to historic properties can be feasibly avoided or minimized. MHC then criticizes the FEIS, asserting that the “analysis gives the sense that the proposed project schedule and project profitability are given more weight than the consideration of avoiding or minimizing adverse effects to historic properties.” MHC further states that “until a more complete alternatives analysis for cultural resources is undertaken, consideration of mitigation measures is premature.” In fact, alternatives have been fully considered and evaluated, as shown by the many studies conducted that include assessment of potential impacts on historic properties under various alternatives listed in Attachment A of PAL’s memorandum. While MHC's letter makes it sound like the effort to address historic impacts began recently and has a ways to run, that effort is now eight years old, as detailed in the chronology of effort to consider impacts on historic properties in Attachment B of PAL’s memorandum. For eight years, historic preservation has received sustained and careful attention. We stand at the end of a process, not at its middle or beginning, and MHC's attempt to reinitiate an exhausted process is without merit.

In fact, neither the NHPA nor the Advisory Council regulations require that MMS prepare a detailed analysis of alternatives before making its effects determination or proceeding to resolve adverse effects. See *Neighborhood Association of the Back Bay v. Federal Transit Administration*, 463 F.3d 50, 61 (1st Cir. 2006) (noting that “there is nothing in the statute or

regulations that requires the consideration of alternatives in making the no adverse effect determination”). Section 8.00.6 of the regulations further provide, when adverse effects have been identified, for the consulting parties to continue to consult to “develop and evaluate” alternatives or modifications as a means of considering how the identified adverse effects may be avoided, minimized, or mitigated. 36 C.F.R. §800.6. Thus, alternatives were properly considered throughout the planning process, but are now particularly discussed by the consulting parties under Section 800.6, *after* the federal agency has reached a finding of adverse effect. The Corps and MMS have adhered to these procedural requirements throughout the 8 year process.

In this case, consideration of the Project’s potential impacts on historic and cultural properties was initiated at the inception of the project. During the course of the EIS development process, numerous meetings were held with the USACE, MMS, MHC, and other interested agencies to address alternatives and the consideration of potential historic and cultural impacts. The chronology in Attachment B of PAL’s memorandum documents the extensive efforts that have been undertaken to address historic and cultural impacts and shows that PAL, CWA, and the Corps met with MHC as early as February 2004 to specifically discuss alternatives. Moreover, MHC was fully informed that the project was redesigned twice, each time in a manner that minimized impacts to the two National Historic Landmarks in the APE. Further, the two alternatives cited by MHC (deep water and floating turbines) were in fact considered in the FEIS and found not to be feasible alternatives. FEIS at E-5.6. Thus, to demand that MMS now reinitiate the alternative analysis is not reasonable or constructive.

5. MHC Improperly Suggests that a Supplemental EIS is Necessary.

MHC also attempts to blur the requirements of the NHPA and NEPA, stating that the data and conclusions about impacts to cultural resources in the final EIS are incomplete and not reliable, further suggesting that MMS supplement the EIS after the Section 106 process is complete and before the Record of Decision is issued.

As the Advisory Council has recognized, however, “the NHPA and NEPA are independent statutes with separate obligations for Federal agencies.” 65 Fed. Reg. at 77709. While the regulations suggest that the agency’s NHPA review be coordinated with reviews under other statutes, including NEPA, this is an agency directive intended to benefit the agency by preventing duplication of effort so that the agency can “use information developed for other reviews” to satisfy the NHPA. The Advisory Council has stated that the agency official “‘should coordinate,’ implying encouragement, but not a requirement.” *Id.* at 77703. In addition, while the Advisory Council regulations allow an agency to use the NEPA process to substitute for the Section 106 process, MMS has not chosen to do so. It is only when an agency opts to rely on NEPA to satisfy Section 106 that the Advisory Council regulations impose standards for developing the EIS. *Id.* at 77709 (noting that section 800.8 applies only when an agency “independently chooses NEPA documents/process to substitute for the regular section 106 process). MHC is incorrect to suggest that the Section 106 process and NEPA are interdependent and therefore require MMS to address MHC’s criticisms of the FEIS in the Section 106 process and then supplement the FEIS to include the issues raised in the Section 106 process.

Indeed, courts have found that the Advisory Council regulations “permit an agency to defer completion of the NHPA process until *after* the NEPA process has run its course (and the environmentally preferred alternatives chosen), but require that NHPA issues be resolved by the time that the license is issued.” *Mid State Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 554 (8th Cir. 2004) (en banc); *see also City of Alexandria, Virginia v. Slater*, 198 F.3d 862 (D.C. Cir. 1999). MMS’s Record of Decision for the project will be informed by the information developed in both the NEPA and Section 106 processes. There is no legal basis for MMS to consider supplementing the FEIS before issuing the ROD to include information developed during the Section 106 process. Under NEPA, a supplemental EIS is required only when new information presents “a seriously different picture of the likely environmental consequences of the proposed action” not adequately discussed in the original impact statement. *See State of Wisconsin v. Weinberger*, 745 F.2d 412 (7th Cir. 1984). Given the attention that has been given to the project’s potential impacts on historical and cultural resources over the past eight years, there is no credible suggestion of “new information” that would meet such a rigorous standard. In any event, consideration of such issue at this time would be premature, at best.

6. Conclusion.

It is apparent to CWA that MHC does not intend to engage in a good faith effort to discuss resolution of adverse effects. Indeed, MHC has made it clear that it has no intent to discuss mitigation measures unless MMS reverses course in response to entirely unreasonable demands, including the reinitiation of its consideration of alternatives in the FEIS. Further consultation efforts with MHC are therefore not likely to be productive. MMS should consider terminating the consultation and, in accordance with section 800.7, proceed to resolve adverse effects and execute a Memorandum of Agreement with the Advisory Council.

Thank you for your consideration of these comments.

Sincerely,



Dennis Duffy
Vice President

cc: B. Simon, Massachusetts Historical Commission
J. Eddins, Advisory Council for Historic Preservation



PRESERVATION PLANNING
ARCHAEOLOGY
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Archaeology
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November 24, 2008

Dr. Rodney E. Cluck
Chief, Environmental Sciences Branch
U.S. Department of the Interior
Minerals Management Service
381 Elden Street
Herndon, Virginia 20170

Re: Cape Wind Energy Project
Historic Properties Effect Evaluation

Dear Dr. Cluck:

In a letter dated September 30, 2008, the Town of Yarmouth requested that the Minerals Management Service consider the Cape Wind Energy Project's potential effects on properties in the Town that had not been part of PAL's previous analyses for the Army Corps of Engineers.

Eight properties, including five within the South Yarmouth/Bass River Historic District which is listed in the National Register of Historic Places, were identified by the Town as having a possible view of the wind park. The three individual properties are located at 92 Berry Avenue; 50 South Sea Avenue; and 185 South Sea Avenue. The five properties within the Historic District are at 21-4 Pleasant Street; 24 Frothingham Way; off-Pleasant Street; 170 Pleasant Street; and 149 River Street.

The property locations were visited on Monday, November 24, 2008. PAL is of the opinion that the wind farm will not be visible from any of the properties, including from any location within the Historic District. We are recommending that there will be no effect on these properties.

If you have any questions or need further information please do not hesitate to call me at your convenience.

Sincerely,

Deborah C. Cox, RPA
President

/bb

cc: M. Stright, MMS
C. Olmsted, Cape Wind Associates

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Appendix F

Clean Power Now

LAW OFFICES OF MATTHEW F. PAWA

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Matthew F. Pawa

Mark R. Rielly
Benjamin A. Krass

February 12, 2010

Via Electronic Mail and First Class Mail

Honorable Kenneth Salazar
c/o James F. Bennett
Chief, Branch of Environmental Assessment
Minerals Management Service
U.S Department of Interior
381 Elden Street, MS #4042
Herndon, VA 20170

Re: Cape Wind Energy Project, Section 106 Finding Document (Revised)

Dear Secretary Salazar:

I write on behalf of Clean Power Now, Inc., a nonprofit organization based on Cape Cod whose mission is to support the timely development of renewable energy projects. Clean Power Now is a consulting party in the Section 106 process under the National Historic Preservation Act (“NHPA”) and has been and continues to be a party in state administrative and judicial proceedings regarding the Cape Wind project. Clean Power Now represents over 13,000 members who believe that the Cape Wind project is the right project at the right time in the right place. Clean Power Now appreciates the Obama administration’s commitment to renewable energy and the opportunity to submit the following comments on the Section 106 process.

As a threshold matter, Clean Power Now emphatically supports your intention to render a final decision on the Cape Wind project no later than April, 2010. Respectfully, the time for a decision is long overdue. In nine years of intensive scrutiny by regulatory agencies, expert consultants and the public, not a single significant environmental impact has been found to be associated with the construction and operation of the proposed project.¹

Briefly by way of relevant background, the Section 106 process began back in April, 2004, when the United States Army Corps of Engineers (“USACE”) met with the Wampanoag Tribe of Gay Head (Aquinnah). The subsequent almost six years have been full of consultations,

¹ Viewing the turbines from a boat in proximity to the project was the *only* impact that, unsurprisingly, qualified as “major.”

including meetings, field research, correspondence, site visits, public comment periods, etc. This lengthy consultation period culminated in the Minerals Management Service's ("MMS") release of a Finding of Adverse Effect in December, 2008. This Finding document is the product of extensive consultation and details MMS's thorough evaluation of all onshore and offshore effects from the project, with special attention to tribal concerns. Six months later, the Advisory Council on Historic Preservation ("ACHP") told MMS that "the question of the National Register eligibility of Nantucket Sound as a traditional cultural place needs to be resolved." Ltr. from R. Nelson to A. Krueger, June 23, 2009, at 1. On January 4, 2010, the Keeper of the National Register of Historic Places (the "Keeper") decided that some boundless area including Nantucket Sound is eligible for listing on the National Register as a traditional cultural property.² In a revised Finding document, released in January, 2010, MMS thoroughly evaluated the impacts of the project on Nantucket Sound in light of the Keeper's decision.

MMS has comprehensively evaluated all onshore and offshore effects in its initial and revised Finding documents. Nonetheless, the opponents of the project demand that "MMS must begin its NEPA and NHPA compliance anew." *See* Letter from Save the Sound, Inc. to Secretary Salazar, Jan. 28, 2010, at 4. They take this position not because it is necessary as a legal or practical matter, but because they seek further delay as a means of stopping the project. However, as demonstrated below, restarting the Section 106 process is not required and is not an appropriate response to the Keeper's decision at this stage.

A. MMS Can Fulfill Its Section 106 Consultation Obligations By Considering the Consulting Parties' Comments Regarding Its Revised Finding Document.

As you are aware, Section 106 is an "essentially . . . procedural statute" that "imposes no substantive standards on agencies." *Nat'l Mining Ass'n v. Fowler*, 324 F.3d 752, 755 (D.C. Cir. 2003) (citation omitted). Accordingly, "Section 106 is characterized aptly as a requirement that agency decisionmakers 'stop, look, and listen,' but not that they reach particular outcomes." *Narragansett Indian Tribe v. Warwick Sewer Auth.*, 334 F.3d 161, 166 (1st Cir. 2003) (quoting *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999)). In other words, an agency may approve a proposed project even though it may have adverse effects on historic properties so long as those effects were, as here, the subject of a reasonable and good faith consultation.

² Clean Power Now believes that the Keeper's decision is irrational and should be vacated. The Keeper's decision lacks specificity, fails to reference any supporting documentation, and does not even define the boundaries of the supposed district. Indeed, according to the Keeper's reasoning the district would very well encompass the entire Cape Cod and Islands region and even stretch to Narragansett, Rhode Island. Rather than being an independent evaluation of fundamental issues such as whether the Sound can really be considered a "property" under NHPA, the Keeper appears merely to have regurgitated the decision of the State Historic Preservation Officer at the Massachusetts Historical Commission. If allowed to stand, the Keeper's decision will be severely detrimental to all manner of commerce, development, industry, and recreation on and around Nantucket Sound.

It cannot be genuinely disputed that MMS, and USACE before it, have made a reasonable and good faith effort to identify historic properties and to evaluate any adverse effects from and potential mitigation of the Cape Wind proposal. *See* 36 C.F.R. §§ 800.4 – 800.6. In light of the Keeper’s decision, MMS also has assessed in its revised Finding document whether the Cape Wind project would “alter, directly or indirectly, any of the characteristics of [Nantucket Sound] that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of [Nantucket Sound’s] location, design, setting, materials, workmanship, feeling, or association.” *Id.* § 800.5(a)(1). MMS has undertaken considerable consultation and has developed a solid factual record. At this point, therefore, MMS need only consider the additional comments that will be submitted during this extended comment period in order to fulfill its Section 106 consultation obligations to make “a reasonable and good faith effort to carry out the appropriate identification efforts.” *Id.* § 800.4(b)(1).

Under the circumstances, the views of the Wampanoag Tribes are relevant since Nantucket Sound was found eligible for its traditional cultural characteristics.³ The regulations governing tribal consultation entitles a tribe to:

a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.

Id. § 800.2(c)(2)(ii)(A). However, the regulations do not confer any greater rights on the tribes than those enjoyed by other consulting parties. Importantly, “there is no tribal veto” that empowers a consulting tribe to control the fate of a project. *Narragansett Indian Tribe*, 334 F.3d at 168; *see id.* (“consultation is not the same thing as control over a project.”); *accord Save Our Heritage, Inc. v. FAA*, 269 F.3d 49, 62 (1st Cir. 2001) (“[t]he choice whether to approve the undertaking ultimately remains with the agency”). Moreover, there is nothing in the operative regulations that mandates that the consultation process start anew upon the discovery of a previously unidentified eligible property. Such a system would be completely untenable insofar as it would encourage project opponents, like here, to game the system by keeping silent until the end of the process and then demanding that it start again by announcing a new property that was not previously considered.

The *Muckleshoot Indian Tribe* case, *supra*, is instructive regarding what constitutes reasonable and good faith consultation with tribes. The Ninth Circuit Court of Appeals held that

³ In evaluating the Tribes’ complaints that the location of turbines several miles out to sea will interfere with their viewsheds, MMS cannot overlook the fact that the Wampanoag Tribe of Gay Head (Aquinnah) has begun the permitting process to erect a 150-foot meteorological tower to measure wind data to determine the feasibility of constructing and operating a large wind turbine on their own tribal lands. *See* Nelson Siegelman, *Wampanoag Tribe Explores Wind Turbine*, available at http://www.wampanoagtribe.net/Pages/Wampanoag_News/Wampanoag%20tribe%20explores%20wind%20t.

the Forest Service's consultation with respect to a land swap with a logging company had been acceptable. After finding a particular land area eligible for listing on the National Register the Forest Service nonetheless gave those lands to the logging company in exchange for different land. Like here, the tribes claimed that numerous other places of historical and tribal importance existed and requested that the Forest Service do a full study. In response, the Forest Service "simply requested the immediate disclosure of any information the Tribe possessed about those sites." *Muckleshoot Indian Tribe*, 177 F.3d at 806. The Ninth Circuit held that while the Forest Service could have done more, and may even have deviated from National Register guidance documents, it did not violate Section 106 insofar as it had "continued to seek the requested information over a period of time" and "had previously conducted research of its own to identify relevant traditional cultural properties." *Id.* at 807. Furthermore, there was "no evidence that the Forest Service withheld information from the SHPO pertaining to historic sites, or failed to engage in good faith negotiations with SHPO." *Id.*⁴ Of particular importance to the Cape Wind matter, the Court held that the consultation process did not have to drag on where the parties had ample opportunity to consult:

Given more time and a more thorough exploration, the Forest Service might have discovered more eligible sites. However, the record also shows that the Tribe had many opportunities to reveal more information to the Forest Service. Although the Forest Service could have been more sensitive to the needs of the Tribe, we are unable to conclude that the Forest Service failed to make a reasonable and good faith effort to identify historic properties.

Id. See also *Davis v. Latschar*, 202 F.3d 359, 361 (D.C. Cir. 2000) (allowing undertaking to proceed because substance of objection was given full consideration).

Here, USACE's and MMS's consultation efforts far exceed those of the Forest Service in *Muckleshoot*. Those federal agencies have given the Tribes, the consulting parties and the public every opportunity over almost six years to identify historic properties and evaluate any adverse effects thereon. MMS now has given due consideration to impacts on Nantucket Sound itself in light of the Keeper's decision. The Tribes' demand that "the only avoidance of such impacts [on its traditional cultural properties] is relocation of the project," Finding (Revised) at 43, is tantamount to an unlawful "tribal veto." *Narragansett Indian Tribe*, 334 F.3d at 168. Furthermore, denying Cape Wind's application because of adverse cultural effects would fail to strike a reasonable balance between tribal concerns and our national need to build large-scale renewable energy facilities in order to avoid the effects of climate change and the national security threats associated with dependence on foreign oil, among other things.

⁴ The Court was contrasting the Forest Service's actions with its consultation in *Pueblo of Sandia v. United States*, 50 F.3d 856 (10th Cir. 1995), in which it simply requested information from tribes, failed to follow up on specific information about traditional cultural properties, and then withheld that information from the State Historic Preservation Officer, all of which the Tenth Circuit held was not reasonable or in good faith.

Upon consideration of the comments submitted in regard to its revised Finding document, MMS will have conducted an admirably thorough Section 106 process that will be legally defensible in the lawsuit that the opponents of the project will inevitably file.

B. The Keeper's Decision Does Not Require a Substantive Reassessment of the Adverse Effects of the Project, which MMS Already Has Evaluated Thoroughly.

MMS, based on archeological research and direct government-to-government consultation with the Wampanoag Tribes, has thoroughly identified and assessed all of the onshore and offshore cultural, historic and prehistoric resources that possibly could be impacted by the project. MMS also has comprehensively examined any impacts to those sites and resources, identified appropriate measures that will largely mitigate the adverse effects, and set forth its well-reasoned assessment in its December, 2008 Finding of Adverse Effect and its January, 2010 Finding (Revised).

The record firmly supports MMS's conclusion that "the effects of the proposed undertaking on above-ground historic properties and on onshore TCPs are expected to be minor, as they constitute indirect visual effects that will be reversed after the project's decommissioning." Finding (Revised) at 39. However, Clean Power Now disagrees with MMS's conclusion that the potential cultural effects to the seabed of Nantucket Sound "are expected to be major, as the physical intrusion will permanently alter the undefiled nature of the TCP." *Id.* There is no evidence in the record here that shows that archeologically sensitive areas will be disturbed. To the contrary, "[a]ll areas identified during the marine archeological remote-sensing and vibrocore investigations of the proposed project areas as having **any potential** for preserved prehistoric archaeological sites (i.e. aboriginal cultural sites and remains) **have been avoided** by redesign of the proposed project, including the relocation of eight WTGs and associated cable arrays." *Id.* at 42 (emphasis added). Clean Power Now submits that if an impact has been avoided it is not longer an impact, let alone a major one.

Notwithstanding that critique, it is clear from the record that MMS has fully assessed the project in reference to all historic and tribal concerns, including the impacts to the characteristics of Nantucket Sound that make it eligible for listing. MMS's initial and revised Finding documents are substantively sound and firmly anchored in the record and the Keeper's decision does not require that MMS start the Section 106 process or the environmental impact review anew.

Conclusion

This project is a signal event for our nation. Its fate will answer the questions about whether this nation is willing to take real, meaningful steps toward energy independence, a green economy, and public, indeed global, health. Years of scientific analysis demonstrate that the project will not cause any major environmental impacts. Moreover, given the minor or modest visual impacts the project will have, it appears that it will not interfere with the cultural practices of the Tribes. Thus, the Federal Government can satisfactorily balance the competing needs and

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interests at issue here. Clean Power Now urges MMS to approve this project.

Respectfully submitted,

CLEAN POWER NOW, INC.

By its attorneys.

/s/ Matthew F. Pawa

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February 12, 2010

Via Electronic Mail and First Class Mail

Honorable Kenneth Salazar
c/o James F. Bennett
Chief, Branch of Environmental Assessment
Minerals Management Service
U.S Department of Interior
381 Elden Street, MS #4042
Herndon, VA 20170

Re: Cape Wind Energy Project, Section 106 Finding Document (Revised)

Dear Secretary Salazar:

I write on behalf of Clean Power Now, Inc., a nonprofit organization based on Cape Cod whose mission is to support the timely development of renewable energy projects. Clean Power Now is a consulting party in the Section 106 process under the National Historic Preservation Act (“NHPA”) and has been and continues to be a party in state administrative and judicial proceedings regarding the Cape Wind project. Clean Power Now represents over 13,000 members who believe that the Cape Wind project is the right project at the right time in the right place. Clean Power Now appreciates the Obama administration’s commitment to renewable energy and the opportunity to submit the following comments on the Section 106 process.

As a threshold matter, Clean Power Now emphatically supports your intention to render a final decision on the Cape Wind project no later than April, 2010. Respectfully, the time for a decision is long overdue. In nine years of intensive scrutiny by regulatory agencies, expert consultants and the public, not a single significant environmental impact has been found to be associated with the construction and operation of the proposed project.¹

Briefly by way of relevant background, the Section 106 process began back in April, 2004, when the United States Army Corps of Engineers (“USACE”) met with the Wampanoag Tribe of Gay Head (Aquinnah). The subsequent almost six years have been full of consultations,

¹ Viewing the turbines from a boat in proximity to the project was the *only* impact that, unsurprisingly, qualified as “major.”

including meetings, field research, correspondence, site visits, public comment periods, etc. This lengthy consultation period culminated in the Minerals Management Service's ("MMS") release of a Finding of Adverse Effect in December, 2008. This Finding document is the product of extensive consultation and details MMS's thorough evaluation of all onshore and offshore effects from the project, with special attention to tribal concerns. Six months later, the Advisory Council on Historic Preservation ("ACHP") told MMS that "the question of the National Register eligibility of Nantucket Sound as a traditional cultural place needs to be resolved." Ltr. from R. Nelson to A. Krueger, June 23, 2009, at 1. On January 4, 2010, the Keeper of the National Register of Historic Places (the "Keeper") decided that some boundless area including Nantucket Sound is eligible for listing on the National Register as a traditional cultural property.² In a revised Finding document, released in January, 2010, MMS thoroughly evaluated the impacts of the project on Nantucket Sound in light of the Keeper's decision.

MMS has comprehensively evaluated all onshore and offshore effects in its initial and revised Finding documents. Nonetheless, the opponents of the project demand that "MMS must begin its NEPA and NHPA compliance anew." *See* Letter from Save the Sound, Inc. to Secretary Salazar, Jan. 28, 2010, at 4. They take this position not because it is necessary as a legal or practical matter, but because they seek further delay as a means of stopping the project. However, as demonstrated below, restarting the Section 106 process is not required and is not an appropriate response to the Keeper's decision at this stage.

A. MMS Can Fulfill Its Section 106 Consultation Obligations By Considering the Consulting Parties' Comments Regarding Its Revised Finding Document.

As you are aware, Section 106 is an "essentially . . . procedural statute" that "imposes no substantive standards on agencies." *Nat'l Mining Ass'n v. Fowler*, 324 F.3d 752, 755 (D.C. Cir. 2003) (citation omitted). Accordingly, "Section 106 is characterized aptly as a requirement that agency decisionmakers 'stop, look, and listen,' but not that they reach particular outcomes." *Narragansett Indian Tribe v. Warwick Sewer Auth.*, 334 F.3d 161, 166 (1st Cir. 2003) (quoting *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999)). In other words, an agency may approve a proposed project even though it may have adverse effects on historic properties so long as those effects were, as here, the subject of a reasonable and good faith consultation.

² Clean Power Now believes that the Keeper's decision is irrational and should be vacated. The Keeper's decision lacks specificity, fails to reference any supporting documentation, and does not even define the boundaries of the supposed district. Indeed, according to the Keeper's reasoning the district would very well encompass the entire Cape Cod and Islands region and even stretch to Narragansett, Rhode Island. Rather than being an independent evaluation of fundamental issues such as whether the Sound can really be considered a "property" under NHPA, the Keeper appears merely to have regurgitated the decision of the State Historic Preservation Officer at the Massachusetts Historical Commission. If allowed to stand, the Keeper's decision will be severely detrimental to all manner of commerce, development, industry, and recreation on and around Nantucket Sound.

It cannot be genuinely disputed that MMS, and USACE before it, have made a reasonable and good faith effort to identify historic properties and to evaluate any adverse effects from and potential mitigation of the Cape Wind proposal. *See* 36 C.F.R. §§ 800.4 – 800.6. In light of the Keeper’s decision, MMS also has assessed in its revised Finding document whether the Cape Wind project would “alter, directly or indirectly, any of the characteristics of [Nantucket Sound] that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of [Nantucket Sound’s] location, design, setting, materials, workmanship, feeling, or association.” *Id.* § 800.5(a)(1). MMS has undertaken considerable consultation and has developed a solid factual record. At this point, therefore, MMS need only consider the additional comments that will be submitted during this extended comment period in order to fulfill its Section 106 consultation obligations to make “a reasonable and good faith effort to carry out the appropriate identification efforts.” *Id.* § 800.4(b)(1).

Under the circumstances, the views of the Wampanoag Tribes are relevant since Nantucket Sound was found eligible for its traditional cultural characteristics.³ The regulations governing tribal consultation entitles a tribe to:

a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.

Id. § 800.2(c)(2)(ii)(A). However, the regulations do not confer any greater rights on the tribes than those enjoyed by other consulting parties. Importantly, “there is no tribal veto” that empowers a consulting tribe to control the fate of a project. *Narragansett Indian Tribe*, 334 F.3d at 168; *see id.* (“consultation is not the same thing as control over a project.”); *accord Save Our Heritage, Inc. v. FAA*, 269 F.3d 49, 62 (1st Cir. 2001) (“[t]he choice whether to approve the undertaking ultimately remains with the agency”). Moreover, there is nothing in the operative regulations that mandates that the consultation process start anew upon the discovery of a previously unidentified eligible property. Such a system would be completely untenable insofar as it would encourage project opponents, like here, to game the system by keeping silent until the end of the process and then demanding that it start again by announcing a new property that was not previously considered.

The *Muckleshoot Indian Tribe* case, *supra*, is instructive regarding what constitutes reasonable and good faith consultation with tribes. The Ninth Circuit Court of Appeals held that

³ In evaluating the Tribes’ complaints that the location of turbines several miles out to sea will interfere with their viewsheds, MMS cannot overlook the fact that the Wampanoag Tribe of Gay Head (Aquinnah) has begun the permitting process to erect a 150-foot meteorological tower to measure wind data to determine the feasibility of constructing and operating a large wind turbine on their own tribal lands. *See* Nelson Siegelman, *Wampanoag Tribe Explores Wind Turbine*, available at http://www.wampanoagtribe.net/Pages/Wampanoag_News/Wampanoag%20tribe%20explores%20wind%20t.

the Forest Service's consultation with respect to a land swap with a logging company had been acceptable. After finding a particular land area eligible for listing on the National Register the Forest Service nonetheless gave those lands to the logging company in exchange for different land. Like here, the tribes claimed that numerous other places of historical and tribal importance existed and requested that the Forest Service do a full study. In response, the Forest Service "simply requested the immediate disclosure of any information the Tribe possessed about those sites." *Muckleshoot Indian Tribe*, 177 F.3d at 806. The Ninth Circuit held that while the Forest Service could have done more, and may even have deviated from National Register guidance documents, it did not violate Section 106 insofar as it had "continued to seek the requested information over a period of time" and "had previously conducted research of its own to identify relevant traditional cultural properties." *Id.* at 807. Furthermore, there was "no evidence that the Forest Service withheld information from the SHPO pertaining to historic sites, or failed to engage in good faith negotiations with SHPO." *Id.*⁴ Of particular importance to the Cape Wind matter, the Court held that the consultation process did not have to drag on where the parties had ample opportunity to consult:

Given more time and a more thorough exploration, the Forest Service might have discovered more eligible sites. However, the record also shows that the Tribe had many opportunities to reveal more information to the Forest Service. Although the Forest Service could have been more sensitive to the needs of the Tribe, we are unable to conclude that the Forest Service failed to make a reasonable and good faith effort to identify historic properties.

Id. See also *Davis v. Latschar*, 202 F.3d 359, 361 (D.C. Cir. 2000) (allowing undertaking to proceed because substance of objection was given full consideration).

Here, USACE's and MMS's consultation efforts far exceed those of the Forest Service in *Muckleshoot*. Those federal agencies have given the Tribes, the consulting parties and the public every opportunity over almost six years to identify historic properties and evaluate any adverse effects thereon. MMS now has given due consideration to impacts on Nantucket Sound itself in light of the Keeper's decision. The Tribes' demand that "the only avoidance of such impacts [on its traditional cultural properties] is relocation of the project," Finding (Revised) at 43, is tantamount to an unlawful "tribal veto." *Narragansett Indian Tribe*, 334 F.3d at 168. Furthermore, denying Cape Wind's application because of adverse cultural effects would fail to strike a reasonable balance between tribal concerns and our national need to build large-scale renewable energy facilities in order to avoid the effects of climate change and the national security threats associated with dependence on foreign oil, among other things.

⁴ The Court was contrasting the Forest Service's actions with its consultation in *Pueblo of Sandia v. United States*, 50 F.3d 856 (10th Cir. 1995), in which it simply requested information from tribes, failed to follow up on specific information about traditional cultural properties, and then withheld that information from the State Historic Preservation Officer, all of which the Tenth Circuit held was not reasonable or in good faith.

Upon consideration of the comments submitted in regard to its revised Finding document, MMS will have conducted an admirably thorough Section 106 process that will be legally defensible in the lawsuit that the opponents of the project will inevitably file.

B. The Keeper's Decision Does Not Require a Substantive Reassessment of the Adverse Effects of the Project, which MMS Already Has Evaluated Thoroughly.

MMS, based on archeological research and direct government-to-government consultation with the Wampanoag Tribes, has thoroughly identified and assessed all of the onshore and offshore cultural, historic and prehistoric resources that possibly could be impacted by the project. MMS also has comprehensively examined any impacts to those sites and resources, identified appropriate measures that will largely mitigate the adverse effects, and set forth its well-reasoned assessment in its December, 2008 Finding of Adverse Effect and its January, 2010 Finding (Revised).

The record firmly supports MMS's conclusion that "the effects of the proposed undertaking on above-ground historic properties and on onshore TCPs are expected to be minor, as they constitute indirect visual effects that will be reversed after the project's decommissioning." Finding (Revised) at 39. However, Clean Power Now disagrees with MMS's conclusion that the potential cultural effects to the seabed of Nantucket Sound "are expected to be major, as the physical intrusion will permanently alter the undefiled nature of the TCP." *Id.* There is no evidence in the record here that shows that archeologically sensitive areas will be disturbed. To the contrary, "[a]ll areas identified during the marine archeological remote-sensing and vibrocore investigations of the proposed project areas as having **any potential** for preserved prehistoric archaeological sites (i.e. aboriginal cultural sites and remains) **have been avoided** by redesign of the proposed project, including the relocation of eight WTGs and associated cable arrays." *Id.* at 42 (emphasis added). Clean Power Now submits that if an impact has been avoided it is not longer an impact, let alone a major one.

Notwithstanding that critique, it is clear from the record that MMS has fully assessed the project in reference to all historic and tribal concerns, including the impacts to the characteristics of Nantucket Sound that make it eligible for listing. MMS's initial and revised Finding documents are substantively sound and firmly anchored in the record and the Keeper's decision does not require that MMS start the Section 106 process or the environmental impact review anew.

Conclusion

This project is a signal event for our nation. Its fate will answer the questions about whether this nation is willing to take real, meaningful steps toward energy independence, a green economy, and public, indeed global, health. Years of scientific analysis demonstrate that the project will not cause any major environmental impacts. Moreover, given the minor or modest visual impacts the project will have, it appears that it will not interfere with the cultural practices of the Tribes. Thus, the Federal Government can satisfactorily balance the competing needs and

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interests at issue here. Clean Power Now urges MMS to approve this project.

Respectfully submitted,

CLEAN POWER NOW, INC.

By its attorneys.

/s/ Matthew F. Pawa

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Matthew F. Pawa

Mark R. Rielly
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June 29, 2009

Via Electronic & First Class Mail

Andrew Krueger, PhD
Renewable Energy Program Specialist
Alternative Energy Programs
Minerals Management Service
U.S. Dept. of the Interior
381 Elden Street, MS 4090
Herndon, VA 20170

Re: *Section 106 Consultation Process for Cape Wind Project*

Dear Dr. Krueger:

This firm represents Clean Power Now, Inc. (“CPN”). CPN is a nonprofit organization based on Cape Cod that represents over 12,000 members who support the Cape Wind project because they believe it is an appropriate and necessary response to the potentially dramatic adverse impacts of global warming, sea level rise, dependence on foreign oil, and the health impacts of local and regional air pollution. CPN has intervened and taken an active role in state administrative and judicial proceedings regarding the Cape Wind project and has a direct stake in the outcome of the Cape Wind project. Accordingly, please consider this CPN’s formal request, pursuant to 36 C.F.R. Section 800.3(f)(3), to participate as a consulting party in the ongoing Section 106 process regarding Cape Wind.

It has come to our attention that the Minerals Management Service (“MMS”) may have accorded the Alliance to Protect Nantucket Sound (“APNS”) “consulting party” status in the Section 106 consultation process. 36 C.F.R. § 800.2(c)(5). In order to provide MMS with a true representation of the public’s position with respect to the project and its alleged impacts, CPN requests that MMS grant it the same status as APNS. CPN also hereby requests a list of all consulting parties.

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Thank you for your attention to this matter and we look forward to receiving MMS's response to CPN's request in the near future. In the meantime, kindly advise me of the schedule of any upcoming meetings, hearing or conferences in connection with the Section 106 process.

Sincerely,

CLEAN POWER NOW, INC.

By its attorney,

/s/ Matthew F. Pawa

Matthew F. Pawa
Mark R. Rielly

cc: Secretary Kenneth Salazar, U.S. Department of the Interior
Governor Deval Patrick
Liz Birnbaum, Director, Mineral Management Service
Walter Cruickshank, Mineral Management Service
Brona Simon, Massachusetts Historical Commission
David Rosenzweig, Esq., counsel for Cape Wind Associates, LLC
Barbara Hill, Executive Director, Clean Power Now, Inc.

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July 15, 2009

Via Electronic & First Class Mail

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Renewable Energy Program Specialist
Alternative Energy Programs
Minerals Management Service
U.S. Dept. of the Interior
381 Elden Street, MS 4090
Herndon, VA 20170

Re: *Section 106 Consultation Process for Cape Wind Project*

Dear Dr. Krueger:

Thank you for your letter of July 10, 2009, confirming that the Minerals Management Service (“MMS”) has granted the request of Clean Power Now, Inc. (“CPN”) to be a consulting party in the ongoing National Historic Preservation Act (“NHPA”) Section 106 process regarding the Cape Wind project. I write on behalf of CPN regarding two issues.

Termination of the Section 106 Process. CPN respectfully submits that the Section 106 process should be terminated at this time. MMS’ obligations under Section 106 are purely procedural.¹ MMS has prepared both an EIS under NEPA that addresses effects on historic

¹ See *Oglala Sioux Tribe v. United States Army Corps of Eng'rs*, 537 F. Supp. 2d 161, 173 (D.D.C. 2008) (“[t]he case law in this and other circuits holds that an agency’s duty to act under the NHPA...is procedural in nature.”) (quotation omitted); *CTIA - The Wireless Ass'n v. Fed. Commc'n Comm'n*, 466 F.3d 105, 107 (D.C. Cir. 2006) (“the Act does not require [a federal agency] to engage in any particular preservation activities; rather, Section 106 only requires that the [agency] consult the [State Historic Preservation Office] and the [Advisory Council on Historic Preservation] and consider the impacts of its undertaking.”) (quotation omitted). MMS “may fulfill its NHPA obligations by either following the old, non-integrated Section 106 process, see 36 C.F.R. §§ 800.3-800.6, or through the new integrated NEPA/NHPA process, see 36 C.F.R. § 800.8.” *Preservation Coalition v. Fed. Transit Admin.*, 356 F.3d 444, 453 (2d Cir.

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Minerals Management Service
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properties and is undertaking a separate and comprehensive Section 106 consultation process. MMS has expanded its efforts to identify historic properties beyond the original effort of the U.S. Army Corps of Engineers, which began back in 2001. *See* Public Archeology Laboratory, *Briefing Memorandum on Cape Wind Energy Project* (Feb. 17, 2009). With the release of MMS' Finding of Adverse Effect for the Cape Energy Project in December, 2008, the identification and assessment of adverse impact phases of the Section 106 process are now complete.

However, recent correspondence from the Alliance to Protect Nantucket Sound ("APNS") (May 5, 2009), the Wampanoag Tribe of Gay Head (Aquinnah) (June 23, 2009) and the Massachusetts Historical Commission/State Historic Preservation Officer ("MHC/SHPO") (Feb. 6, 2009) strongly indicate that these consulting parties refuse even to concur in the MMS Finding of Adverse Effect determination, and instead question MMS' good faith and seek further, unnecessary identification efforts. Furthermore, these consulting parties refuse to proceed to the next phase of resolving the adverse impacts in a memorandum of agreement. *See* 36 C.F.R. § 800.6. These consulting parties have left no doubt that the only acceptable outcome to this consultation process is one where the Cape Wind project is moved out of Nantucket Sound. MMS already has analyzed all alternative locations and determined that no alternatives exist that would be technologically feasible and/or cause less environmental impact. *See* MMS, Finding of Adverse Effect § 6.3.1 (Dec. 2008) at 35. The entrenched positions of these consulting parties shows that "further consultation will not be productive," 36 C.F.R. § 800.7(a), and counsels in favor of termination of the consulting process.

In fact, to the extent that MHC/SHPO is refusing MMS' requests to concur in its Finding of Adverse Effect and to cooperate in crafting a memorandum of agreement it is violating state law. On May 27, 2009, the Massachusetts Energy Facilities Siting Board granted a Certificate of Public Interest and Environmental Impact ("Certificate") to Cape Wind for the construction of a transmission line in the state waters of Nantucket Sound (and on land) for this project. By statute, this Certificate is "a composite of all individual permits, approvals or authorizations which would otherwise be necessary for the construction and operation of the facility." *See* Mass. Gen. Laws c. 164, § 69K. While MHC/SHPO has never had any authority to issue any state "permits, approvals or authorizations" for the project, MHC/SHPO is nonetheless a state agency, *see* Mass. Gen. Laws c. 9, § 26, that is bound by the following provision of the state

2004). The authorization of federal agencies to use the preparation of Environmental Impact Statements and Environmental Assessments under NEPA procedures to meet Section 106 requirements was "expected to be a major opportunity for agencies with well-developed NEPA processes to simplify concurrent reviews, reduce costs to applicants and avoid redundant paperwork." 64 Fed. Reg. 27044, 27060 (May 18, 1999) (Final Rule of Advisory Council on Historic Preservation).

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July 15, 2009

Certificate statute:

Notwithstanding the provisions of any other law to the contrary, a certificate may be so issued and when so issued, no state agency or local government shall require any approval, consent, permit, certificate or condition for the construction, operation or maintenance of the facility with respect to which the certificate is issued ***and no state agency or local government shall impose or enforce any law, ordinance, by-law, rule or regulation nor take any action nor fail to take any action which would delay or prevent the construction, operation or maintenance of such facility.***

Id. (emphases added). Under a decision of the Massachusetts Supreme Judicial Court, state authorization for the transmission line is contingent upon full federal permitting of the wind farm itself, which lies entirely in federal waters. *See Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd.*, 448 Mass. 45, 52 (2006). In other words, delaying approval of the wind farm delays the construction and operation of the transmission project. Thus, MHC/SHPO cannot take any action or discretionary position or fail to act in any manner that would further delay or prolong the consultation process since doing so would be in clear violation of its unambiguous state statutory obligation not to delay construction and operation of the transmission project. MHC/SHPO has no federal legal obligation that is inconsistent with this state law. While MMS is required to consult with MHC/SHPO under federal law, MHC/SHPO is not required under federal law to take any particular position in this process. MHC/SHPO's state law obligations prohibit it from taking any position in the consulting process that would delay the project.

CPN is prepared to take legal action under state law to prevent MHC/SHPO from further obstructing and delaying the resolution of the Section 106 process and, by extension, the construction and operation of the Cape Wind project. However, CPN believes that such legal action is unnecessary because MMS must take cognizance of state law. MMS should now simply terminate the Section 106 consultation process and proceed to request comment from the Advisory Council pursuant to 36 C.F.R. § 800.7.

Nantucket Sound Is Not Eligible for Listing on the NHP Register. CPN further submits that MMS should resist any attempt by consulting parties to further delay the project by suggesting that the entire Nantucket Sound is a Traditional Cultural Property eligible for listing on the National Register of Historic Places. The National Park Service's guidance documents are very clear that open waterways like Nantucket Sound are not eligible for listing on the NHP Register: "***Generally, though, the National Register excludes from the definition of 'site'***

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July 15, 2009

natural waterways or bodies of water . . .” National Register Bulletin 15, *How to Apply the National Register Criteria for Evaluation*, at 5. Nantucket Sound is not a natural feature like a rock outcropping or a grove of trees that may figure prominently in tribal rituals, but rather is an open body of water covering a massive geographic area. CPN is unaware of any such area ever being designated as a historic site.

The case of the Helkau Historic District in northern California illustrates that Traditional Cultural Properties cannot encompass vast landscapes or seascapes, but must be limited geographically:

[M]uch of the significance of the property in the eyes of its traditional users is related to the fact that it is quiet, and that i[t] presents extensive views of natural landscape without modern intrusions.

These factors are crucial to the medicine making done by traditional religious practitioners in the district. If the boundaries of the district were defined on the basis of these factors, however, the district would take in a substantial portion of California’s North Coast Range. Practically speaking, the boundaries of a property like the Helkau District *must be defined more narrowly*, even though this may involve some rather arbitrary decisions. In the case of the Helkau District, the boundary was finally drawn along topographic lines that included all the locations at which traditional practitioners carry out medicine-making and similar activities, the travel routes between such locations and the *immediate viewshed* surround[ing] this complex of locations and routes.”

National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*, at 20 (emphases added). Accordingly, there is no basis for considering the entire Nantucket Sound as eligible for listing on the National Register.

Finally, as to the alleged impacts, CPN understands that the Wampanoag Tribe of Gay Head (Aquinnah) opposes the project because it “considers the Nantucket Sound, in and of itself, traditional cultural property,” and contends that the “Nantucket Sound viewscape is essential to our spiritual well-being and the Cape Wind project will destroy this sacred site.” Ltr. from B. Washington to R. Cluck, June 23, 2009 at 1. Given that the Wampanoag Tribe is currently proposing to erect a 2.1 MW, approximately 400-foot tall turbine on the coast of Martha’s Vineyard directly on the best spot in Aquinnah to view the water, this claim of irreparable impact cannot be credible. In any event, the view from Aquinnah is in the wrong direction: the visual analysis “from Gay Head/Aquinnah to the proposed location indicates that no portions of the offshore turbines in the array would be visible to the viewers at Gay Head/Aquinnah.” MMS, *Documentation of Section 106 Finding of Adverse Effect* § 5.2.2 (Dec. 29, 2008), at 33.

Andrew Krueger, PhD
Minerals Management Service
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MMS must take into account the long history of frivolous opposition to the Cape Wind project, and should also question the credibility of the Alliance's purported concern with tribal issues.² MHC/SHPO and the Alliance are simply seeking delay by adding another set of frivolous legal claims to the long list of failed challenges to this project. Environmental and historic preservation laws are intended to elucidate real potential impacts, not cause death by a thousand cuts.

MMS can be perfectly comfortable that it has given the consulting parties every opportunity to identify historic properties and to suggest ways to mitigate the adverse effects, if any, on those properties. Further consultation will be fruitless and the process should be terminated. Thank you for your attention to this matter.

Sincerely,

CLEAN POWER NOW, INC.

By its attorneys,

/s/ Matthew F. Pawa

Matthew F. Pawa

Mark R. Rielly

² Barnstable and other opponents of the Cape Wind project have filed numerous federal and state cases and appeals, some of which are pending at this time. *E.g.*, *Alliance to Protect Nantucket Sound, Inc. v. U.S. Dept. of Army*, 288 F. Supp. 2d 64 (2003), *aff'd* 398 F.3d 105 (1st Cir. 2005); *Ten Taxpayers Citizen Group v. Cape Wind Assocs., LLC*, 278 F. Supp. 2d 98 (2003), *aff'd* 373 F.3d 183 (1st Cir. 2004); *Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd.*, 448 Mass. 45 (2006); *Ten Taxpayer Citizens Group v. Sec'y of the Exec. Office of Envtl. Affairs*, Civ. Action No. 2007-00296 (Super. Ct. Barnstable 2007); *Town of Barnstable v. Cape Wind Assocs., LLC*, Civ. Action No. 2007-00506 (Super. Ct. Barnstable 2007); *Town of Barnstable v. Massachusetts Energy Facilities Siting Bd.*, Civ. Action No. 2008-00281 (Super. Ct. Barnstable 2008); *Town of Barnstable v. Massachusetts Energy Facilities Siting Bd.*, Civ. Action No. 2008-00399 (Super. Ct. Barnstable 2008); *Ten Residents of Massachusetts, et al. v. Cape Wind Assoc., LLC*, Civ. Action No. 2009-00107 (Super. Ct. Barnstable 2009); *Town of Barnstable v. Cape Wind Assoc., LLC*, Civ. Action No. 2009-00109 (Super. Ct. Barnstable 2009); *Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd.*, Docket No. SJ-2009-0326 (Mass. 2009); *Town of Barnstable v. Massachusetts Energy Facilities Siting Bd.*, Docket No. SJ-2009-0334 (Mass. 2009); and *Cape Cod Commission v. Energy Facilities Siting Bd.*, Docket No. SJ-2009-0335 (Mass. 2009).

Andrew Krueger, PhD
Minerals Management Service
July 15, 2009

LAW OFFICE OF MATTHEW F. PAWA, P.C.
1280 Centre Street, Suite 230
Newton Centre, MA 02459
Tel 617-641-9550; Fax 617-641-9551

cc: Consulting party service list
Barbara Hill, Executive Director, Clean Power Now, Inc.

Appendix G

Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

December 1, 2009

Dr. Andrew D. Krueger
Alternative Energy Programs
U.S. Dept. of the Interior
Minerals Management Service
381 Elden Street, MS 4090
Herndon, VA 20170

Re: Cape Wind Energy Project

Dear Dr. Krueger:

As we have discussed, your signature below will confirm that the Mineral Management Service (MMS) will assume lead Federal agency status for the purpose of National Historic Preservation Act (NHPA) section 106 compliance for the Cape Wind Energy Project. Under the Advisory Council on Historic Preservation (ACHP) regulations at 36 CFR Part 800, the Cape Wind Energy Project is a Federal undertaking. More than one Federal agency is involved in this undertaking.

In accordance with 36 CFR § 800.2(a)(2), as the United States Environmental Protection Agency's (EPA) designee, MMS will identify the appropriate official to serve as the agency official to fulfill the collective responsibilities of EPA and the MMS under section 106. In addition, although EPA recognizes that as the lead Federal agency, MMS will take the lead on drafting relevant agreements as part of the NHPA section 106 process, EPA would appreciate the opportunity to review and, if appropriate, be a signatory to these documents.

We request that you sign this letter in the signature block provided below. By signing this letter, MMS acknowledges and accepts EPA's designation of MMS as the lead Federal agency for NHPA compliance in connection with the Cape Wind Energy Project. In addition, please return a signed copy of this letter to EPA.

Should you have any questions or concerns about this letter, please feel free to contact Ida McDonnell in my office at 617-918-1653, or LeAnn Jensen in the EPA Region 1 Office of Regional Counsel at 617-918-1072.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Perkins".

Stephen Perkins, Director
Office of Ecosystem Protection

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

cc: John Eddins, Advisory Council on Historic Preservation
Brona Simon, Massachusetts Historical Commission
Karen Adams, Army Corps of Engineers
Bruce Bozum, Mohegan Indian Tribe
John Brown, Narragansett Indian Tribe
Michael Thomas, Mashantucket Pequot Tribe
Bettina Washington, Wampanoag Tribe of Gay Head (Aquinnah)
George Green, Mashpee Wampanoag Tribe
Brendan McCahill, EPA Region 1
LeAnn Jensen, EPA Region 1

Acknowledgement by the Mineral Management Service

Name:
Title:

Date

Appendix H
Local Governments

October 8, 2008

Melanie Stright, Ph.D.
Federal Historic Preservation Officer
Minerals Management Service
381 Elden Street
Herndon, Virginia 20170

Rodney E. Cluck, Ph.D.
Cape Wind Project Manager
Minerals Management Service
U.S. Department of the Interior
1849 C St., N.W.
Washington, D. C. 20240

Dear Drs. Stright and Cluck:

As a town official in Chatham and a elected member of the Barnstable County Assembly I

have been designated one of the consulting parties under section 106 of the National Historic Preservation Act (NHPA) regarding the adverse impacts of the proposed Cape Wind Project in Nantucket Sound. I have reviewed the comments sent to you dated Oct. 6 by Susan Nickerson of the Alliance to Protect Nantucket Sound. I strongly agree with the recommendations made by Ms Nickerson, particularly the need for MMS to redo the visual impacts analysis using a qualified contractor with expertise in historic preservation which is not TRC.

The historic character of Nantucket Sound is very important to the people of Chatham, a traditional fishing and maritime community with a heavy reliance on tourism for our economic base. I urge you to scrap the flawed analysis by TRC and begin the process anew.

sincerely,

Ronald J. Bergstrom
Chatham Board of Selectman.



TOWN OF YARMOUTH

1146 ROUTE 28 SOUTH YARMOUTH MASSACHUSETTS 02664-4492

Telephone (508) 398-2231, Ext. 271, 270 — Fax (508) 398-2365

BOARD OF
SELECTMEN

TOWN
ADMINISTRATOR
Robert C. Lawton, Jr.

March 5, 2009

Dr. Rodney E. Cluck
Cape Wind Program Manager
Mail Stop 4080
4 Barnstable Road
Hyannis, MA 02601

Dr. Melanie Straight
Historic Preservation Officer
Mail Stop 4080
Office of Offshore Alternative Energy Programs
Department of Interior
Minerals Management Services
381 Elden Street
Herndon, VA 20170

Re: Section 106 Consultants; Nantucket Sound Historic and Tribal Archaeological Resources

Dear Dr. Cluck & Dr. Straight:

The Town of Yarmouth has reviewed a recent letter sent to you by the Save our Sound Alliance to Protect Nantucket Sound and would like to be recorded as agreeing with the points raised in their letter to you dated March 3rd, 2009.

Thank you for your consideration of the position of the Town of Yarmouth.

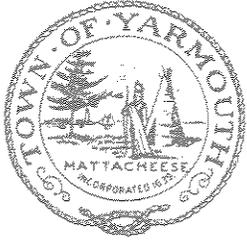
Respectfully,

Robert C. Lawton Jr.
Town Administrator

cc: Board of Selectmen
Attorney Jeffrey Bernstein

Mp3





TOWN OF YARMOUTH

1146 ROUTE 28 SOUTH YARMOUTH MASSACHUSETTS 02664-4492

Telephone (508) 398-2231, Ext. 271, 270 — Fax (508) 398-2365

BOARD OF
SELECTMEN

TOWN
ADMINISTRATOR
Robert C. Lawton, Jr.

September 30, 2008

Dr. Rodney Cluck
U.S. Department of the Interior
Minerals Management Service
Environmental Division
381 Elden Street
Herndon, VA 20170

Dear Dr. Cluck,

The Board of Selectmen of the Town of Yarmouth has recently become aware that the US Minerals Management Service (MMS) is engaged in a section 106 consultation process under the National Historic Preservation Act with regard to the proposed Cape Wind project. Since the Town of Yarmouth has considerable historic resources within its borders, we would like bring a number of matters to your attention. Foremost, we are concerned that MMS' consideration of the historic resources of Yarmouth falls short, since evidence in the record indicates that consideration of these impacts is incomplete at best.

Further, we are concerned that adequate notice has not been given in advance of the consultation process meetings. Towns with limited staff that are trying to deal effectively with important matters need to be able to arrange time and priorities to accommodate meeting schedules. We request that MMS provide us a detailed schedule of forthcoming meetings with at least one month in advance notice of final meeting dates that have been selected.

As part of your section 106 consultation process, we ask that MMS:

- Fully explore above-ground historic resources of the Town of Yarmouth to determine if all eligible resources have been considered as required under federal law;
- Ensure that properties in Yarmouth eligible for inclusion on the National Register, but not necessarily identified or already listed, are considered. The entire universe of historic properties mandated by Section 106 of the National Historic Preservation Act (NHPA) and the regulations of the Advisory Council on Historic Preservation (ACHP) must be included. For example, the South Yarmouth/Bass River Historic District (designated 1990) contains approximately 423 resources. This district will be affected by the Cape Wind project, but has not been considered.
- The findings of the Army Corps of Engineers (ACOE) in previous analyses of Cape towns, and current findings of MMS, show clearly that adverse effect determinations are biased toward those communities that have undertaken a comprehensive evaluation and designation of National Register properties. Where towns have not had the resources to undertake this kind of work, it is incumbent on MMS to carry out the proper analyses.



Attached is a summary of potentially affected historic properties in Yarmouth that was developed in 2004, based on previous work of the Yarmouth Historic Commission. Please note in particular the existence of the following two historic districts that are in close proximity to the Cape Wind project and that were not considered in your analysis or in the earlier one by ACOE:

• ***Park Ave. Historic District, Yarmouth (approximately 25 components)***

Collection of late 19th and early 20th century summer resort houses overlooking Nantucket Sound; unusually intact summer colony that has not been impacted by the extent of alterations and modern infill seen in other similar areas along Yarmouth's Nantucket Sound coast; includes #239-267-Park Avenue.

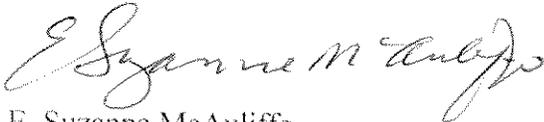
• ***Mass. Ave. Historic District, Yarmouth (approximately 25 components)***

Collection of late 19th and early 20th century summer resort houses overlooking Nantucket Sound; unusually intact summer colony that has not been impacted by the extent of alterations and modern infill seen in other similar areas along Yarmouth's Nantucket Sound coast; includes #286-292-Massachusetts Avenue between Broadway and Webster Street, Webster Street, and the east side of Columbus Avenue.

The Town of Yarmouth requests MMS to revise its visual effects analysis so as to apply the standards recommended by the ACHP and include all of the areas and properties that should be considered for the Town.

We also take this opportunity to remind MMS of its obligation to finalize your agency's overall regulations covering all offshore energy development matters in a Record of Decision in advance of concluding your review of the Cape Wind project, and to fully apply these regulations to the Cape Wind project and set up a supplemental comment period. Not only is this the logical sequence, but it is our understanding that Section 106 compliance must be completed, and the findings applied, to the Final Environmental Impact Statement on Cape Wind. We are depending on MMS to defend the public interest in this regard, and ensure the public that all impacts and alternatives have been properly considered.

Very truly yours,



E. Suzanne McAuliffe
Chairman Yarmouth Board of Selectmen
for the Board

YARMOUTH

Revised 11/18/2004; some inventory #s changed or added and some estimations of visibility changed following review of actual map locations

Summary

NR Eligible Properties

NR Eligible Individual Properties: 20

NR Eligible Areas/# Resources (approximate): 2/50

Survey Status non-professional survey; evaluated to identify NR-eligible properties 1989 by consultant Candace Jenkins for MHC and YHC

MHC NR Recommendations yes

NR Properties Considered by PAL

None

NR Properties with Possible Visibility Not Considered by PAL

☛ South Yarmouth/Bass River Historic District (1990) 423 resources

Individual Properties That May Meet NR Criteria

- #304 **15 Windmere Rd., full Cape (c1750-75) , West Yarmouth**
Recommended for individual nomination by 1989 consultant; Visibility likely
- #289 **193 Berry Ave., shingle resort hotel, c1900, West Yarmouth**
Recommended for individual nomination by 1989 consultant; Visibility likely
Preferred overland cable route??
- #292 **92 Berry Ave., sidehall GR, c1840, West Yarmouth**
Recommended for individual nomination by 1989 consultant; Visibility possible
Preferred overland cable route??
- #297 **28 Lewis Road, W. Yarmouth Community Bldg., 1854**
Route 28 vicinity; Only remaining 19th century public school
Recommended for individual nomination by 1989 consultant; Visibility unlikely

- #303 **281 Main St., gambrel Cape, shingles repl. by aluminum, c1750**
Route 28 vicinity; eligible for individual nomination despite siding; high priority due to rarity of form which is not effected by siding;
Recommended for individual nomination by 1989 consultant; Visibility unlikely
- #302 **300 Main St., W. Yarmouth Congo. Church, 1835**
Route 28 vicinity; eligible for individual nomination despite siding; strong historical associations override this unfortunate alteration;
Recommended for individual nomination by 1989 consultant; Visibility unlikely
- **25 Baxter Rd., full Cape, 2 outbuildings, c1800**
Route 28 vicinity; no inventory form listed in MACRIS
Recommended for individual nomination by 1989 consultant; Visibility unlikely
- #279 **50 South Sea Ave., 1/2 Cape, c1800, Route 28 vicinity**
Recommended for individual nomination by 1989 consultant; Visibility possible
- #278 **89 South Sea Ave., 1/2 Cape, Route 28 vicinity**
Recommended for individual nomination by 1989 consultant; Visibility unlikely
- #274 **185 South Sea Ave., 1/2 Cape, Crowell/Eberton House, Route 28 vicinity**
Recommended for individual nomination by 1989 consultant; Visibility possible
- #273 **268 South Sea Ave., 1/2 Cape, Route 28 vicinity**
Recommended for individual nomination by 1989 consultant; Visibility likely
- 28 South Sea Ave. should be thoroughly looked at to identify other early houses, Route
vicinity
Recommended for individual nomination by 1989 consultant; Visibility possible
- **Great Island, Corey House, Route 28 vicinity**
Recommended for individual nomination by 1989 consultant; Visibility likely
Not identified on MACRIS under Great Island Road; exact location unknown
- #365 **205 South St., 3/4 Cape (end of road), c1770**
South Yarmouth/Bass River area
Recommended for individual nomination by 1989 consultant; Visibility likely
- #363 **71 South St., GR with motor court, c1850/1920s**
South Yarmouth/Bass River area
Recommended for individual nomination by 1989 consultant; Visibility unlikely
- #416 **214 Pleasant St., poor pic., c1670, South Yarmouth/Bass River area**
Recommended for individual nomination by 1989 consultant; Visibility possible
- #415 **24 Frothingham Way, 2 story early Federal, c1780**

South Yarmouth/Bass River area
Recommended for individual nomination by 1989 consultant; Visibility possible

#414 **off-Pleasant St., 1/2 Cape, c1780, South Yarmouth/Bass River area**
Recommended for individual nomination by 1989 consultant; Visibility possible

#413 **170 Pleasant St., full Cape, c1790, South Yarmouth/Bass River area**
Recommended for individual nomination by 1989 consultant; Visibility possible

#341 **149 River St., full Cape, c1750, South Yarmouth/Bass River area**
Recommended for individual nomination by 1989 consultant; Visibility possible

#346 **9 Breezy Point Way/Willow St., 3/4 Cape, South Yarmouth/Bass River area**
Recommended for individual nomination by 1989 consultant; Visibility unlikely

Areas That May Meet NR Criteria

Park Avenue summer resort area

Status

Recommended for district nomination by 1989 consultant

Location

#239-267-Park Avenue summer resort area (adj. to Hyannis) turn-of-the-century, West Yarmouth

Significance

Collection of summer resort houses overlooking Nantucket South

Resources included in Area approximately 25

Visibility

Visibility likely

Massachusetts Avenue summer resort area

Status

Recommended for district nomination by 1989 consultant

Location

#286-292-Massachusetts Avenue summer resort area; turn-of-the-century, West Yarmouth; small district including Mass. Ave. between Broadway and Webster, Webster St., and east side of Columbus Ave.) Mass. Ave.

Significance

Collection of summer resort houses overlooking Nantucket Sound; area is especially important as an intact turn-of-the-century summer colony that has not been impacted by the alterations and modern infill seen in other similar areas

Resources included in Area approximately 25

Visibility

Visibility likely



TOWN OF YARMOUTH

1146 ROUTE 28 SOUTH YARMOUTH MASSACHUSETTS 02664-4492
Telephone (508) 398-2231, Ext. 271, 270 — Fax (508) 398-2365

BOARD OF
SELECTMEN

TOWN
ADMINISTRATOR
Robert C. Lawton, Jr.

November 8, 2004

Ms. Karen K. Adams
Regulatory Division
Department of the Army
New England District
Corps of Engineers
696 Virginia Road
Concord, Ma. 01742-2751

Dear Ms. Adams:

The Town of Yarmouth received your recent letter asking if the Town of Yarmouth wished to participate in a review of potential impacts to historic properties of a permit application from Cape Wind Associates LLC.

Our office forwarded this request to the Yarmouth Historic Commission to determine if they had an interest in participating directly. The Commission responded stating they believe that the State Historic Commission would be better suited to review the historic impact for the various towns on Cape Cod rather than the Town of Yarmouth Historic Commission specifically looking at only the Yarmouth Impact.

The Town appreciates being notified of the review and would ask that the town remain on your mailing list for any future reviews of this project.

Respectfully,

Robert C. Lawton, Jr.
Town Administrator

cc: Historic Commission
Board of Selectmen

jd

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NOV 12 2004

REGULATORY DIVISION





WIANNO CLUB

1 March 2005

Christine A. Godfrey
Karen Kirk Adams
Regulatory Division
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Re: Cape Wind Project

Dear Ms. Godfrey and Ms. Adams:

In early January 2005, the Wianno Club sent a letter to the Corps of Engineers asking that it include the Club as a consulting party in the review of the Cape Wind Project under Section 106 of the National Historic Preservation Act. To date the Corps has not responded to this request and the Section 106 review of this project has continued without the participation of our Club.

As mentioned in earlier correspondence, the Wianno Club building has, since 1979, been listed on the National Register of Historic Places as a significant historic building. The Club is also the centerpiece of the very substantial summer colony known as the Wianno Historic District. For these reasons, we feel it very important that Wianno Club be fully informed and included in discussions concerning the Cape Wind Project.

We respectfully request your reply in the affirmative that the Club will be included in all discussions that might ultimately have an adverse effect on this historic property.

Yours truly,

Thomas J. Swan, Jr.
Wianno Club President

RECEIVED
MAR - 3 2005
REGULATORY DIVISION



HISTORIC DISTRICT COMMISSION

established 1955

37 Washington Street
Nantucket, Massachusetts 02554

Telephone: 508.228.7231

Fax: 508.325.7572

COMMISSIONERS

Dirk Roggeveen
Chairman

Linda Williams

Dawn Hill
Secretary

John McLaughlin

Valerie Norton

ASSOCIATE COMMISSIONERS

Wendy McRae

Diane Coombs

Brian Conroy

STAFF

Mark W. Voigt
Administrator
mvoigt@town.nantucket.net

Aaron Marcavitch
Assistant Administrator
amarcavitch@town.nantucket.net

Katy Horgan
Office Administrator
khorgan@town.nantucket.net

Ann Medina
Office Assistant

October 25, 2004

Ms. Karen Adams
Regulatory Division, CENAE-R
Department of the Army
New England District Corps of Engineers
696 Virginia Road
Concord, Massachusetts, 01742-2751

RE: permit application from Cape Wind Associates

Dear Ms. Adams:

Thank you for your letter inviting our local government to participate in the review process concerning the above referenced application. I have discussed this issue with my Chairman and as Administrator for the Historic District Commission (HDC), I will serve as our local review board representative. Therefore the contact information contained in the letterhead above and to the side should suffice.

Thank you again for the invitation,

Respectfully,

Mark W. Voigt, AICP,
Administrator, Nantucket Historic District Commission

pc: Dirk Roggeveen, Chairman

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OCT 27 2004

REGULATORY DIVISION

Town and County of Nantucket
Board of Selectmen • County Commissioners

Timothy M. Soverino, Chairman
Douglas L. Bennett
Michael A. Glowacki
Finn Murphy
Bruce L. Watts



16 Broad Street
Nantucket, Massachusetts 02554

Telephone (508) 228-7255
Facsimile (508) 228-7272
www.nantucket-ma.gov

C. Elizabeth Gibson
Town & County Administrator

November 15, 2004

Karen K. Adams
Regulatory Division
Department of the Army
New England District
696 Virginia Road
Concord, MA 01742-2751

Dear Ms. Adams:

The Town of Nantucket thanks you for the invitation to participate in the review of potential impacts to historical properties from the Cape Wind Project. The Town would like to designate its Historical District Commission (HDC) as our consulting party. The contact for the HDC is:

Mark Voigt, Administrator
Town of Nantucket
37 Washington Street
Nantucket, MA 02554
508-228-7231

Again, thank you for the opportunity to participate.

Sincerely,

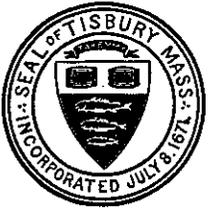
C. Elizabeth Gibson
Town Administrator

cc: Mark Voigt, HDC Administrator
Historic District Commission

RECEIVED

NOV 18 2004

REGULATORY DIVISION



TOWN OF TISBURY

OFFICE OF THE SELECTMEN

BOX 1239 - 51 SPRING STREET

VINEYARD HAVEN, MASSACHUSETTS 02568

TEL: (508) 696-4200

FAX: (508) 693-5876

November 29, 2004

Karen Kirk Adams
Regulatory Division - CENAE-R
Department of the Army
New England District - Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Re: Local Government Participation in Review Process of Cape Wind Assoc. Turbine Project

Dear Ms. Adams:

The Tisbury Selectmen discussed your letter of October 15, 2004, regarding the above at their meeting on November 16, 2004.

After some discussion, the Selectmen agreed that they wished to participate in the process as a consulting party and voted to designate Selectman Raymond P. LaPorte as their representative for the review process.

Mr. LaPorte can be reached at the following address:

Raymond P. LaPorte
PO Box 2281
Vineyard Haven, MA 02568
Phone: 508-693-3857 (Home); 508-693-6789 (Work)
FAX: 508-693-7289

Sincerely yours,

Aase M. Jones
Assistant to the Town Administrator

BOSLETTERS/82

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DEC - 2 2004
REGULATORY DIVISION



Wianno Club

FOUNDED 1916

107 Sea View Avenue
Post Office Box 249
Osterville, MA 02655-0249
Telephone 508-428-6981 Fax 508-428-9036

December 22, 2004

Christine A. Godfrey
Karen Kirk Adams
John Almeida
Regulatory Division
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Re: Cape Wind Project

Dear Ms. Godfrey and Ms. Adams:

I am writing on behalf of the Wianno Club located in Osterville, Massachusetts. We would like to request the Corps of Engineers to include our club as a consulting party in the review of the Cape Wind Energy Project under Section 106 of the National Historic Preservation Act.

As you know, the Wianno Club building has since 1979 been listed on the National Register of Historic Places as a significant historic building. We are informed that the Army Corps of Engineers has concluded, and the Massachusetts State Historic Preservation Officer ("SHPO") has agreed, that the Cape Wind project in Nantucket Sound will have an adverse effect on the Wianno Club building. This conclusion has caused great concern among our members.

We would like to see copies of the reports or studies that led to the adverse effect conclusion. We also request to know what other adverse effects, if any, might be expected from this project to our Club and its members. We would also like to be included and have our views heard in the discussions and meetings that we assume are or will be going on to identify, consider and decide upon measures to avoid, lessen or mitigate the adverse effect to our club building from this project.

RECEIVED

DEC 23 2004

REGULATORY DIVISION

We hope you will promptly consider and grant our request. Please contact me if you require anything further from us in support of our request, or if you have any questions about our club.

Very truly yours,



Thomas J. Swan, Jr.
President

cc: Ellen Roy Herzfelder, Executive Office Environmental Affairs
Phil Dascombe, Cape Cod Commission
Truman Henson, Massachusetts Coastal Zone Management Office
Brona Simon, Massachusetts Historic Commission
Beverly Wright, Wampanoag Tribe of Gay Head Indians
Cheryl Andrews-Maltais, THPO, Wampanoag Tribe of Gay Head
John Pagini, Nantucket Planning and Economic Development Commission
Betsy Merritt, National Trust for Historic Preservation
Don Klima, Advisory Council on Historic Preservation
Kate Atwood, USACORPS
Rebecca Watson, DOI/Land and Minerals
Massachusetts Commission on Indian Affairs
Terry Orr, Environmental Science Services, Inc.
Deborah C. Cox, PAL
Victor Mastone, EOE, Board of Underwater Archaeological Resources
Yarmouth Historical Commission
Mashpee Historical Commission
Barnstable Historical Commission
Nantucket Historical Commission
Edgartown Historical Commission
Oak Bluffs Historical Commission
Chatham Historical Commission



Town of Oak Bluffs

Board of Selectmen

Roger W. Wey, Chairman
Richard D. Combra
Gregory A. Coogan
Michael M. Dutton
Kerry F. Scott
M. Casey Sharpe, Town Administrator

308

17 November 2004

Ms. Karen K. Adams,
Regulatory Division
Department of the Army
New England District Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

RE: Cape Winds Associates, LLC Permit Application

Dear Ms. Adams;

The Town of Oak Bluffs very much appreciates the opportunity to act as a consulting party in the above-referenced application and we are anxious to participate in the process. We have selected our representative, Mr. David Grunden, Oak Bluffs Shellfish Constable, who can be reached by telephone at (508) 693-0072, by e-mail at obscallop@gis.net and at this address.

Respectfully,

Casey Sharpe
Casey Sharpe

pc: David Grunden

RECEIVED

NOV 22 2004

REGULATORY DIVISION

Appendix I

Mashpee Wampanoag Tribe and Wampanoag Tribe of Gay Head (Aquinnah)



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

December 15, 2009

Christopher Horrell
Acting Federal Preservation Officer
Minerals Management Service
1201 Elmwood Park Blvd
New Orleans, LA 70123-2394

RE: Cape Wind Energy Project. MHC #RC.29785.

Dear Mr. Horrell:

This is in response to your letter dated November 17, 2009, with which you enclosed the "Minerals Management Service National Register Determination of Eligibility for the Wampanoag Sites on Cape Cod and Martha's Vineyard, MA." I have reviewed the materials submitted and have the following comments.

Mashpee

I agree with your opinion that the two locations in Mashpee that are Traditional Cultural Properties (TCP's) to the Mashpee Wampanoag Tribe, meet the criteria of eligibility for listing in the National Register of Historic Places under the National Register criteria that you cite in your submittal. In addition, I agree with your determination that both of these TCP's are within the Area of Potential Effect (APE) of the proposed Cape Wind project, based on the photographs and descriptions that you submitted. I also concur with your determination that the proposed Cape Wind project will have an "adverse effect" on these two TCP's through the introduction of visual elements that alter the setting and are out of character with the historic, cultural and religious practices of the Mashpee Wampanoag Tribe (36 CFR 800.5(a)(2)(iv) and (v)).

Martha's Vineyard

In your submittal, you describe 12 places on Martha's Vineyard that are Traditional Cultural Properties (TCP's) to the Wampanoag Tribe of Gay Head (Aquinnah). These properties may meet the criteria of eligibility for listing in the National Register as TCP's, sites, and/or historic properties. A number of these properties are included in the Inventory of Historic and Archaeological Assets of the Commonwealth; thus this office has additional historical and archaeological information that you did not reference and yet would be germane to evaluating the historical significance of the sites.

You have determined that nine (or possibly ten) of these properties are not located with the Area of Potential Effect (APE) of the proposed Cape Wind project, and thus you did not render a determination as to their National Register eligibility. This office understands and respects the Tribe's concerns that the locations of these properties be kept confidential. Since the locations of the properties are confidential, we cannot comment on your determination regarding the APE and the TCP's on Martha's Vineyard. Under the Section 106 regulations (36 CFR 800.11(c)) and

Section 304 of the National Historic Preservation Act, MMS should seek the comments of the Secretary of Interior and the Advisory Council on Historic preservation regarding confidentiality.

Area of Project Effect

In your submittal to this office, you determined that the Cape Wind APE should not be expanded due to the Wampanoag Tribe of Gay Head (Aquinnah)'s concerns about oil spills from construction and maintenance vessels. This office does not have any expertise in analyzing or projecting the expanse of possible oil spills. We are in receipt of a copy of the Advisory Council's December 11, 2009 letter to the THPO and will defer to the Council's opinion that expansion of the APE is not supported by the simulation and modeling that was included in the project FEIS.

If you have any questions concerning these comments, please feel free to contact me.

Sincerely,



Brona Simon
State Historic Preservation Officer
Executive Director
Massachusetts Historical Commission

xc: Walter D. Cruickshank, Minerals Management Service
Andrew D. Krueger, Minerals Management Service
Craig Olmsted, Cape Wind Associates, LLC
John Eddins, Advisory Council on Historic Preservation
Carol Shull, Keeper of the National Register, National Park Service
Bettina Washington, Wampanoag Tribe of Gay Head (Aquinnah) THPO
George Green, Jr., Mashpee Wampanoag Tribe THPO
John Brown, Narragansett Tribe THPO
Cheryl Andrews-Maltais, Wampanoag Tribe of Gay Head (Aquinnah) Chairwoman
Cedric Cromwell, Mashpee Wampanoag Tribe Chairman
Bruce Bozsum, Mohegan Indian Tribe Chairman
Michael J. Thomas, Mashantucket Pequot Tribe Chairman
Bill Bolger, National Park Service
Karen Kirk Adams, USACOE-NED-Regulatory
David Saunders, US DOI Bureau of Indian Affairs Eastern Region
Betsy Merritt, National Trust for Historic Preservation
Roberta Lane, National Trust for Historic Preservation
Mark Voigt, Nantucket Historic District Commission
Sarah Korjeff, Cape Cod Commission
Audra Parker, Alliance to Protect Nantucket Sound
Matthew F. Pawa, Esq.
Clean Power Now
Aquinnah Historical Commission
Barnstable Historical Commission
Chatham Historical Commission
Edgartown Historical Commission
Falmouth Historical Commission
Mashpee Historical Commission
Oak Bluffs Historical Commission
Yarmouth Historical Commission



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

November 5, 2009

Christopher Horrell
Acting Federal Preservation Officer
Minerals Management Service
1201 Elmwood Park Blvd
New Orleans, LA 70123-2394

RE: National Register Eligibility Opinion for Nantucket Sound Traditional Cultural Property, MA.
Cape Wind Energy Project. MHC #RC.29785.

Dear Mr. Horrell:

This is in response to your letter dated October 9, 2009, with which you enclosed the "Minerals Management Service National Register Eligibility Determination for Nantucket Sound as a Traditional Cultural Property and Historic Property."

It is the role of the State Historic Preservation Officer (SHPO) to form an independent opinion regarding the National Register-eligibility of a property based on factual research sources in archaeology, history, and ethnography.

After review of the materials that you submitted, and review of pertinent archaeological, historical, and ethnographic sources, I disagree with your finding that Nantucket Sound is not eligible for listing in the National Register of Historic Places as a Traditional Cultural Property.

Please find enclosed the opinion of the Massachusetts SHPO that Nantucket Sound is a Wampanoag Traditional Cultural Property that meets the Criteria of Eligibility (36 CFR Part 60) for listing in the National Register of Historic Places under Criteria A, B, C, and D at the local level of significance.

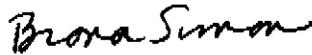
The enclosed opinion of the Massachusetts SHPO summarizes considerable archaeological, historical, and ethnographic information that substantiates that Nantucket Sound is historically significant. The historical significance of Nantucket Sound relates to the Native American exploration and settlement of Cape Cod and the Islands and with the central events of the Wampanoag origin story of Maushop and Squant/Squannit (Criterion A); for its association with Maushop and Squant/Squannit (Criterion B); as a significant and distinguishable entity integral to Wampanoag folklife traditions, practices, cosmology, and religion (Criterion C); and, for the important information it has yielded and/or may be likely to yield through archaeology, history, and ethnography (Criterion D).

While my office's independent research findings support the opinions of the Wampanoag Tribe of Gay Head (Aquinnah) Tribal Historic Preservation Officer and the Mashpee Wampanoag Tribe that Nantucket Sound is a significant Traditional Cultural Property to the Wampanoag, the Massachusetts SHPO has not been party to any of the consultation meetings that MMS has held directly with the Tribes.

Because we have a difference of opinion, the MMS should seek a formal Determination of Eligibility (36 CFR 63) from the Keeper of the National Register pursuant to 36 CFR 800.4(c)(2). Please enclose a copy of this letter and the enclosed Massachusetts SHPO's opinion with your submittal to the Keeper of the National Register, as well as any additional comments from the Wampanoag Tribe of Gay Head (Aquinnah) or Mashpee Wampanoag Tribe.

Please contact me if you have any questions or need additional information.

Sincerely,



Brona Simon
State Historic Preservation Officer
Executive Director
Massachusetts Historical Commission

Enclosure

xc w/ enclosure:

Walter D. Cruickshank, Minerals Management Service
Andrew D. Krueger, Minerals Management Service
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Massachusetts Historical Commission
Office of the Massachusetts State Historic Preservation Officer
OPINION: ELIGIBILITY FOR NATIONAL REGISTER OF HISTORIC PLACES
Nantucket Sound Wampanoag Traditional Cultural Property

November 5, 2009

There is extensive archaeological, historical, and ethnographic information that supports the opinions of the Tribal Historic Preservation Officer of the Wampanoag Tribe of Gay Head (Aquinnah) (Washington 2009) and the resolution of the Tribal Council of the Mashpee Wampanoag Tribe (2009) that Nantucket Sound is a Traditional Cultural Property that is eligible for listing in the National Register of Historic Places.

It is the opinion of the Massachusetts SHPO that Nantucket Sound as a Wampanoag Traditional Cultural Property meets the Criteria of Eligibility (36 CFR Part 60) for listing in the National Register of Historic Places under Criteria A, B, C, and D at the local level of significance. The historical significance of Nantucket Sound relates to the Native American exploration and settlement of Cape Cod and the Islands and with the central events of the Wampanoag origin story of Maushop and Squant/Squannit (Criterion A); for its association with Maushop and Squant/Squannit (Criterion B); as a significant and distinguishable entity integral to Wampanoag folklife traditions, practices, cosmology, and religion (Criterion C); and, for the important information it has yielded and/or may be likely to yield through archaeology, history, and ethnography (Criterion D).

The following summary of this information is intended to highlight pertinent historical "patterns or trends" (National Register of Historic Places [NRHP] 1997a: 7) as historic contexts in order to apply the Criteria of Eligibility (36 C.F.R. Part 60). Evaluation for National Register eligibility does not require an exhaustive and comprehensive compendium of all available information, but rather, an "illustrative" summary to demonstrate that an historic property is "representative of its theme, place, and time" (NRHP 1997b: 39, 49).

Archaeological Data

Prior to ca. 6,000 years ago, Nantucket Sound was exposed land (Uchupi et al. 1996). Native groups would have occupied the exposed lands, and focused their gathering and hunting and

social activities near fresh water and estuarine settings that are now submerged under the waters of Nantucket Sound. The Pleistocene-Holocene geology of Nantucket Sound shows the area ice-free by about 18,000 calendar years ago, containing favorable environmental settings in transformation that provided abundant resources and opportunities for Paleoindian exploration and occupation (Poppe et al. 2008; Ridge 2003). The islands of Nantucket Sound and its shallow submerged features such as Horseshoe Shoal were once hills on a broad coastal plain called the Nantucket Shelf Region (Provincetown Center for Coastal Studies 2005). The geographical boundaries of Nantucket Sound have been established by the US Department of Commerce, Coast and Geodetic Survey (ibid.: 7, 16-17) as follows:

Nantucket Sound is defined as the roughly triangular area of continental shelf that lies between the southern shore of Cape Cod (between Monomoy and Mashpee), and the islands of Martha's Vineyard and Nantucket.... Nantucket Sound constitutes a small, shallow marine basin whose edges are formed by the islands of Nantucket, Martha's Vineyard and Monomoy, the submerged shoals associated with these islands, and by the Cape....At its western end, Nantucket Sound merges with Vineyard Sound [Provincetown Center for Coastal Studies 2005: 7].

The oral tradition of the Aquinnah Wampanoag (Washington 2009) that their ancestors "walked" to Noepe (Martha's Vineyard) is supported by the paleogeographic reconstruction (Dunford and O'Brien: 32) and plausible archaeological interpretations of particular routes used by Paleoindian bands (ibid.: 36). Evidence of the very earliest known explorers in New England dating to the Paleoindian period—presently estimated to have commenced about 13,000 calendar years ago—have been found on Martha's Vineyard (Mahlstedt 1987: 23), Nantucket (Pretola & Little 1988: 49), and Cape Cod (Dunford and O'Brien 1997: 26-36). The dearth of Paleoindian and Early Archaic sites in the now-terrestrial parts of the Cape Cod and Islands region, is considered by archaeologists to be explained in part by the submergence of formerly exposed land where the majority of the earlier sites were located (e.g., Braun 1974: 583; Dincauze & Mulholland 1977; Herbster 2009: 8; Thorbahn et al. 1980: 30). Elsewhere in the New England region, extinct Pleistocene fauna and artifacts dating to the Archaic period have been found accidentally by scallopers dragging the seabed (for examples of previous underwater discoveries in the region, see Bell 2009: 19 & op. cit.). The entire region would have been as intensively used as terrestrial coastal places were used in later periods. Accurate geological

information and modern technologies are now available to locate intact, submerged ancient period sites that survived the dynamic effects of submergence (Merwin et al. 2003).

A major scientific discovery in Nantucket Sound was made during archaeological survey for the Cape Wind Energy project and during previous geological studies (Robinson et al. 2003: 36; Robinson et al. 2004: 59-62; Robinson 2008: 22). Core samples detected submerged, ancient terrestrial soils with preserved wood, charcoal, plants, and seeds in intact contexts that survived the submergence of Nantucket Sound. Radiocarbon dating of these deposits yielded dates of 5,490 B.P., 6,470 B.P., and 10,100 B.P. The core samples from the Cape Wind Energy project survey were interpreted as evidence of an intact upland deciduous forest floor, a fresh or brackish water wetlands, and a shallow freshwater pond or swamp. These are precisely the kinds of ancient landforms and environmental settings where ancient Native American features and artifacts are expected to be found in Nantucket Sound. The discovery of intact, submerged ancient landscape under the waters of Nantucket Sound is historically confirming to the Tribes (Andrews-Maltais 2008; Mashpee Wampanoag Tribe 2009; Washington 2009).

Survey results from Nantucket Sound demonstrate that Southern New England waters, and Nantucket Sound in particular, contain preserved landforms that have integrity, and a high likelihood of yielding important archaeological information. Submerged environments are likely to have preserved artifacts made of wood, plant material, leather, bone, and antler that are not typically preserved at terrestrial sites. Submerged sites have the potential to yield whole categories of ancient material culture that are usually absent from terrestrial sites. Nantucket Sound is likely to provide a more complete view of the range of technologies developed and refined by ancient Native Americans in New England, site selection, land use, and settlement patterns from the Paleoindian through the Archaic periods that New England archaeologists previously thought had probably been lost completely to the rising sea (Bell 2009: 19-21, 31 & op. cit.; Merwin et al. 2003; Stright 1986, 1990).

Ancient Native Americans in Southern New England relied considerably on marine resources and marine settings for subsistence, transportation, and for symbolic and ritual purposes (Bragdon 1996; Salwen 1978; Snow 1978; Strauss 1987; Willoughby 1935). The appearance by at least 7,500 years ago of specialized groundstone tools, particularly gouges, celts, axes, and adzes are considered to be evidence for *mushoon* (dugout canoe) manufacturing. Skin- and bark-on-frame boats were also used in this region (Bell 2009: 37 n4 & op. cit.; Salwen

1978: 163-164). Wampum produced from quahog shell was made for symbolic and ritual purposes, and was widely exchanged throughout the Northeast (Bragdon 1996: 97-98; Bragdon 2009: 104-105). Marine animals were rendered as effigies in stone objects (Willoughby 1935), whose forms, functions, and symbolism linked to cosmology and shamanistic practices, particularly those associated with water places (cf. Bragdon 1995). Graves were often placed in view of water. Ritual and religious activities are intensely focal in mortuary practices (Vitelli 2009).

Marine resources from Nantucket Sound were taken and used by both coastal and inland Native populations. Archaeological sites along the coasts, on the islands, and inland include habitation and resource processing areas. Many have prodigious amounts of preserved faunal remains of marine resources (fish, shellfish, marine mammals, waterfowl, crustaceans, turtles), and specialized gear and features, required for hunting, gathering, processing, cooking, and disposal. Distinctive and inventive Native technology traditions maintained for millennia include varieties of rock and wood fishing weirs; woven nets with notched or perforated rock sinkers, and animistic lures; traps; baskets; bone and antler fish hooks, harpoons, and projectile points; chipped and ground stone tools for capturing, cutting, gutting, scraping, pounding, and for boat making; wooden drying and cooking racks; pottery; and, pits and middens (see, e.g., Little & Schoeninger 1995; Ritchie 1969; Salwen 1978: 162; Snow 1978: 60, 65-67; Speck & Dexter 1948; Willoughby 1935; for particular excavated data, refer to Massachusetts Historical Commission 1978- index entries "Aquinnah," "Cape Cod and the Islands," Mashpee," etc., q.v.). Inland sites have understandably fewer quantities of preserved shell and bone from marine and coastal species, likely because fish and perishable shellfish meat were smoked or dried on the shore with the more archaeologically durable shells left behind, and also because faunal remains of any kind are usually not well preserved at inland sites. The presence of any marine resources at inland sites indicates connections and interrelationships of inland and coastal populations, and likely the cooperative and negotiated sharing of access to coastal and marine resource-gathering places (Mulholland 1988: 149-154).

In time, many species of land and marine plants and animals were displaced or became extinct, while other species moved into this region, all under the observation of the resident Native peoples. These changes could be protracted or at other times dramatically quick, noticeable within a person's lifetime and fixed in the social memory of the people. Ancient

Native American groups adapted to this ever-changing environment, as they transformed habitats and landscapes, moving ahead of sea level rise. As the habitable land area decreased with the rising ocean waters, and human population increased, social organization and certain social practices also changed creatively. Some retained their coastal orientation for recurrent settlement, subsistence, and for transportation. Native Americans adapted their tools and tool forms, and their gathering, hunting, and fishing techniques as plant and animal species became more or less available. Through intelligence, creativity, experimentation, and agency informed by their distinctive culture and “archive of knowledge” (Handsman 2008; Vitelli 2009) as “genealogies of practice” (Mills & Walker 2008), the Wampanoags affected and transformed the evolving geographic and ecological settings of Nantucket Sound as their homelands.

Bragdon (1999: 85) considered the innovative developments of politically complex social organizations distinctive to Southern New England. She postulated the presence of “chiefdoms” with “contingent” sedentism and despite popular conceptions, apparently without primary reliance upon maize agriculture in coastal places (Bragdon 1996; Chilton 2006; Mulholland 1988: 146; Stein 2007). She pointed to leading “factors” in these sociopolitical arrangements including “access to marine resources, particularly certain species of shellfish; [and] occupation of ‘edge’ environments, especially fresh and saltwater estuaries which provided the greatest variety and abundance of food sources” (Bragdon 1999: 85). Bradley (2005: 52-55 & op. cit.) provided a useful summary of the regional archaeological site data viewed as “an environmental and cultural network” oriented to marsh and estuarine settings (Bradley 2005: 52). The exceptionally diverse environmental setting of Nantucket Sound, with social networks allowing or limiting access to bordering coastal lands and wetlands and abundant marine and marine-dependent resources, were foremost factors that allowed the development of innovative, autonomous sociopolitical structures for the Wampanoag Nation.

Historical Data

The earlier written descriptions of the coastal inhabitants describe the use of coastal marine resources by resident Wampanoags (Mulholland 1988: 152; Ritchie 1969: 3-9; Salwen 1978). Wampanoags have regularly been involved in shellfishing, fishing and whaling for individual, family, and group subsistence and for commercial purposes in Nantucket Sound and throughout the Cape and Islands and Southeastern Massachusetts regions (Andrews 1985; McBride &

Cherau 1996; Speck & Dexter 1948). Transactions by Sachems recorded in 17th- and 18th-century Nantucket deeds include reserving rights to beached whales (Little & Andrews 1982). There were “Indian fishing houses” in Nantucket in the 18th century (Little 1981).

The Mashpee Wampanoag were, in the 17th century, sometimes referred to by the English colonists as the “South Sea Indians,” a geographic reference to Nantucket Sound (Barber 1841: 47; he spelled it “Marshpee”). Of Mashpee Barber (1841: 47-48) writes that the town

is bounded on the south by the ocean. It is well fitted for an Indian residence, being indented by two bays, and shoots into several necks or points of land. It is also watered by several streams and ponds. These, with the ocean, afford an abundant supply of fish of various kinds. ...Many of the Indians are employed in the whale fisheries, and they are said to make the first-rate whalers. In 1837, they built a small vessel...commanded by a capable, enterprising Indian. This vessel is employed in carrying their wood to Nantucket.

Wampanoags have long participated in the fishery and whaling industries, usually historically as skilled laborers, but also for personal and group sustenance. It has also been documented that there have been notable Wampanoags and other New England Indian men and women who historically achieved business successes in marine-dependent industries. The Mashpee Wampanoag advisor and educator, Ramona Peters (2006: 43 n1) writes that, “a majority of nineteenth-century Wampanoag men from Mashpee and Aquinnah participated in the whaling industry.” Mandell (2008), Nicholas (2002, 2005), Silverman (2001, 2005), and Vickers (1981, 1983, 1985) have intensively studied and documented social and economic organization of 17th, 18th, and 19th-century Native communities to seafaring and to the maritime setting of their homelands. Important whaling ports in the vicinity included Nantucket, New Bedford, Falmouth, and Wellfleet. Whale species were hunted in Nantucket Sound, and the waters of Nantucket Sound became familiarly associated with the historic whaling industry.

Laura Orleans (2000: 10, 23, 36-37) through the “Faces of Whaling” oral and documentary history project for the National Park Service recognized Wampanoag historical narratives still circulating about the whaling industry, focused on Amos Smalley (1877-1961). Smalley was an Aquinnah Wampanoag who harpooned a white whale in 1902 south of the Azores. Smalley (1957) recounted the event in a *Reader's Digest* article, was interviewed by several newspaper reporters, and appeared on a 1958 national television program. Smalley told the story to many Wampanoag directly. Smalley's feat has been remembered and retold by

descendants with parallels drawn to the Aquinnah Wampanoag character "Tashtego" from Herman Melville's epic novel, *Moby-Dick* (Anonymous 2007; Gaillard 1998: 120; Kinney 2009: 197; Orleans 2000: 23, 36, 50; Peters 1987: 14; Simmons 1986: 232). Smalley's dramatic story is an important part of Wampanoag history and of this area's whaling history generally.

Orleans' (2000: 23) history project interviewed Edith Andrews (an Aquinnah Wampanoag) and documented information about Smalley, and about her great-great-grandfather Amos Haskins (1816-1861), a Wampanoag whaling captain. Andrew's great-grandfather, Samuel Haskins (born ca. 1840), manned a rescue boat that responded to the tragic 1884 wreck of the *City of Columbus* on Devil's Bridge in Nantucket Sound. Orleans (2000: 9-10) indicates the potential for much more information about the role of Native Americans in the region's historic maritime industry from additional oral, genealogical, and documentary sources (see also Aquinnah Cultural Center Inc. n.d. [ca. 2008]; Boston Children's Museum n.d. [ca. 2004]; and, Wampanoag Tribe of Gay Head (Aquinnah) n.d. [ca. 2005] for additional examples of contemporary Wampanoag historical consciousness of these and related subjects documented from oral and written sources).

Mandell (2008: 165) notes that in the early 19th century "a few members of the [Aquinnah] tribe owned boats and fished near shore," but by the mid-19th century there were increased economic opportunities from commercial and recreational marine fishing in Nantucket Sound. Both Mashpee and Aquinnah Wampanoags led and sustained tourists to their homelands, and were at the forefront of the mid-19th-century Cape Cod recreational tourism movement (ibid.: 131). "Gay Head's location at the edge of the Elizabeth Islands and prime fishing grounds gave them an advantage" as increased urban markets for seafood also gave former whalers who bought fishing boats continued income (ibid.: 165). Wampanoags continue to derive income from guiding tourists to their fishing and scenic coastal places of Nantucket Sound, which are advantaged as opportunities for "teaching moments" to convey their folklife, history, and cosmology to their visitors. Marine fishing in Nantucket Sound and shellfishing at its shores were and continue to be vital parts of the sustenance and economic strategy for resident Wampanoags that "used the land and water in ways that combined old and new methods" (ibid.: 164).

Speck and Dexter's (1948) ethnographic fieldwork in Mashpee and Gay Head obtained detailed historical information about traditional and modern marine practices, material culture,

foodways, and folklore spanning from the mid-19th to the mid-20th century. A great variety of species were taken from Nantucket Sound and along its shores. Speck and Dexter (1948: 261-262, Figs. 1-3) described and illustrated Wampanoag artifacts made from horseshoe crabs: awls, needles, and a spear made from the tail; “lucky bones” made from the male’s chelicerae; and a basket fashioned from two horseshoe crab shells “tied together rim to rim”, likely the same kind of “handbaskets made of crabshells wrought together” observed in a Cape Cod *wetu* (wigwam) by the *Mayflower* explorers in 1620 (quoted in Handsman 2008: 169). By including archaeological, ethnographic, and historical and modern ecological data in their study, Speck and Dexter (1948) appreciated the continuities and changes in marine subsistence practices and methods.

Gertrude Haynes Aikens (Princess Evening Star) whose memory dated from the early 20th century said “South Mashpee [on Nantucket Sound] was the salt-water fishing and hunting place of the town.” She recollected Wampanoag women, men, and children quahogging, oystering, and eel fishing (Aiken[s] 1970: 19). Eel traps and eel pots were woven like baskets (Boston Children’s Museum, n.d. [ca. 2004]; Wolverton 2003: 350, 367 n37). The Peabody Museum of Archaeology and Ethnography at Harvard University curates a Mashpee Wampanoag eel trap collected in 1917 (catalogue #17-16-10/87069).

Earl Mills, Sr. (Chief Flying Eagle) relates how his father, Ferdinand Wilson Mills taught him fishing techniques in Mashpee (Mills & Mann 2006: 36, 45). Mills writes that his father wore “a red felt hat just like his father [i.e., Mills’ paternal grandfather] did, and decorate[d] it with lures, shells, and feathers. That was his way of expressing his attachment to and his respect for nature. Whenever he went fishing, he would pin onto that hat several fishhooks” (ibid.: 36). Through his recollections, Mills conveys the importance of generational connections for raising children in traditional ways that instill an appreciation of Indian perspectives on the relationship of people to the natural world and the resources it provides to feed and sustain them. Even in his clothing, Mills’ father meaningfully signals his “Indianness,” conveys direct connections to Mills’ paternal grandfather, and expresses “attachment” and “respect” for the natural world, including its marine resources (cf. Patton 2007).

For the Aquinnah Wampanoag, as well, “Male relatives taught [boys] where to find the best fishing spots—*Wampanoag fishing spots*—like the shoals of Devil’s Bridge [in Nantucket Sound] or the waters just off Noman’s Land island” (Silverman 2005: 242, emphasis added).

Silverman (2005: 242-243) appreciated the generational training of both boys and girls in the “customs that supported the Wampanoags’ sense of peoplehood. The significance of these acts rested in elders bequeathing to younger generations specialized knowledge about living off Wampanoag land.”

In another book (Mills & Breen 2001: 72), Earl Mills, Sr. relates the vital connections of food gathering from land and “sacred waters.” Russell M. Peters (1992: 14, 15) explains the *appanaug* (“seafood cooking” or clambake) as a ceremonial event. Peters’ story features his then-12-year-old grandson Steven who learns traditional ways, including gathering clams at Popponesset Bay on Nantucket Sound, where Steven can sense his “ancestor’s presence.” Steven is taught by his grandfather who had “learned how to prepare an *appanaug* from his father, who had learned from his father before him. In turn...Steven would pass the tradition on to his own children.... ‘We’re carrying on a tradition that our ancestors gave us’ ” (Peters 1992: 13, 18). Mills’ (Mills & Breen 2001; Mills & Mann 2006) and Peters’ (1987, 1992) accounts exemplify how Wampanoag

practices and beliefs endow the experiences of hunting, trapping, gathering, collecting, and farming with richly elaborated social meaning. These activities are ways to ‘keep in touch’ with supernatural helpers. To seek and take food is to experience directly with the supernatural the kind of ‘demand exchange’ often conducted with human beings [Bragdon 1996: 196].

Bragdon (1996: 131-136) discovered that even Wampanoag metaphorical language reveals an interwoven cultural conception of food, eating, and occupation of lands, with an ethic of reciprocity and expectations of sustainability by what was offered by the land and sea and through the labors of their fellows.

On August 17, 2002, the Wampanoag Indigenous Program at Plimoth Plantation organized a *mushoon* trip between Vineyard Sound and Nantucket Sound, from Falmouth to Tashmoo (at Tisbury on Martha’s Vineyard), using two *mushoonash* made at the museum’s Wampanoag Homesite (Coombs 2004a; Peters 2002). Months of practice and preparation preceded the event, renewing traditional skills with traditional nautical technology. “[S]o people wouldn’t have to ply the waters on an empty stomach,” food was provided to the participants during their practice sessions, and an *appanaug* was held on Lobsterville Beach after the paddlers arrived on Martha’s Vineyard (Coombs 2004a).

It was a trip of very historic import as it happened within the ancestral Wampanoag homeland, and with Wampanoag people from several tribes: Aquinnah, Mashpee, and Manomet (Herring Pond). Other staff and community members of other nations joined us as well, including Micmac, Narragansett, and Pequot.... The trip is something we feel was meant to happen when it did.... It was a trip meant to happen. A circle completed [Coombs 2004a].

The voyage was timed to coincide with the annual Legends of Maushop Pageant held by the Aquinnah Wampanoag. Coombs' (2004a) and Peters' (2002) accounts convey that the experience for the participants was evocatively "mystical," "very spiritual," and "historic." Coombs (ibid.) wrote that the goal of the project "was to acknowledge the navigational prowess of our ancestors; to celebrate our traditional way of life which we understand to be viable and sustainable; and to remind us of our connection to our ancestors, the earth and waters, and our responsibility to them." When Coombs, an Aquinnah Wampanoag educator and historian, concluded that "it was indeed a day of mending the hoop," she invoked a conventional phrase that expresses sanctity of contemporary Native American community-building and renewal of connections through collaboration, cooperation, and mentoring by traditional cultural practices occurring within traditional homelands.

The modern Aquinnah Wampanoag shellfish hatchery, and development of a Mashpee hatchery, are promising examples of how autonomous Wampanoags can seek to achieve economic benefit by cooperatively fostering indigenous marine resources while negotiating the modern global economy and creatively adapting to regional and global climate change (Vosk 2008).

Nantucket Sound and its marine resources, then, provide the setting, source, and content for Wampanoag traditions, cosmology, and practices through foodways, material culture, mentoring, and historical narratives, including the most important origin story of the Wampanoag homelands.

Ethnographic Data

The events of the central origin story of the Wampanoag homelands take place in Nantucket Sound. Simmons (1986: 172-234) presents several sequent versions of the story of Maushop, his wife Squant (also known as Old Squant, Granny Squant, and Squannit as pronounced in Mashpee [Peters 1987: 66; Simmons 1986: 173], and both names spelled variously), and their

children. The story involves the giant Maushop who attempts to rescue Wampanoag children kidnapped from land and taken offshore by a huge bird. Maushop discovers Noepe (Martha's Vineyard) and creates Nantucket and other islands. He transforms Squant/Squannit into other islands or rocks. He drags his big toe across Nantucket Sound to separate the Elizabeth Islands or Noman's Land from Martha's Vineyard, and drops rocks in Nantucket Sound to create Devil's Bridge. Maushop transforms his children into whales. He sends or flings dead or dying whales ashore or cooks whales to feed his people. Details of the story explain how Maushop "withdrew" after the Europeans arrived—Silverman (2005: 33; cf. Simmons 1986: 175-176) says "The Wampanoags proffered differing accounts of Moshup's disappearance, but in [short] time [by 1787] many of them would point to his disgust at the arrival of Englishmen"—"leaving only indirect evidence of his presence" (Simmons 1986: 172). Landscape features and characteristics such as the multicolored, Miocene fossil-bearing clays at Gay Head that indeed have the appearance of "an immense archaeological midden" (Simmons 1986: 174) are considered to be the remains of Maushop's ancient cooking fires. Ocean fog from Nantucket Sound is said to be the smoke from Maushop's pipe. Granny Squant/Squannit is usually a fearsome character to be placated with gifts, or better avoided altogether, in stories told to children to discipline and control their behavior. Speck and Dexter (1948: 260) said that "One bivalve, the common jingle shell (*Anomia simplex*), played a part in local (Gay Head) Wampanoag fables and myths, in which the shells are referred to as 'Granny Squanit's toe nails.' These were doubtless used as toys for children because of their bright golden and silver colors and the jingle sounds which they make."

The earliest written version of the Maushop story was published in 1643, an "impressive historical pedigree" (Simmons 1986: 233, 295 n1) that indicates that the origin story has great antiquity. This story and its variants continue to be related by and among Mashpee and Aquinnah Wampanoag in modern times (e.g., Andrews-Maltais 2009; Anonymous 2007; Aquinnah Cultural Center Inc., n.d. [ca. 2008]; Bingham 1970: 22; Coombs 2004a; Manning & Eccher 2001; Peters 1987: 66; Silverman 2005: 33 n68; Simmons 1986: 220-233; Simmons 1992: 323-325), demonstrating the continued *central* cultural significance of the story's maritime-related themes and symbolism linked to cultural identity and place, what Crosby (1993) characterizes as a "spiritual landscape." Simmons (1986: 234, *emphasis added*) recognizes that "the [Maushop-

Squant/Squannit] legends *still convey* a self-contained magical world where the ancestors, landscape, weather, sounds, and sea creatures are alive in distinctly Indian ways.”

Christie (2009) more generally explains that, “In conventional anthropological literature, ‘landscape’ is the term applied to the meaning local people bestow on their cultural and physical surroundings.” Christie wrote that “Landscape is a powerful factor in the operation of memory because of the associations narrators make between the local landscape and the events of the stories they tell. Ancestors and mythological events often become fixed in a specific landscape and act as timeless reference points” (Christie 2009). The theoretical, anthropological issues of historical *and contemporary* New England Indian identity created through “history,” “memory” and “landscapes” as ancestral homelands are considered in recent, current, and developing research by Bragdon (1992, 2009), Bruchac (2005), Coombs (2004b), Handsman (1991, 2008), Handsman and Lamb Richmond (1995), Lightfoot (2008), Mandell (2008), Mills and Walker (2008), Paynter (2002), Robinson (2000), Silliman (2009) and Vitelli (2009) among others. While these theoretical approaches to archaeological, historical, and ethnographic data to conceptualize historical and contemporary Native special places within homelands are chiefly of interest to anthropologists, these contemporary anthropological interpretive approaches are relevant to the consideration of spaces and places as “Traditional Cultural Properties” as conceived by Parker and King (1998) in *Guidelines for Evaluating and Documenting Traditional Cultural Properties*.

The very meaning of “Wampanoag” rendered in English as the phrase “People of the First Light or Dawn” refers to their relationship to Nantucket Sound as integral to their homelands, their history, their present, and their future. The evocative phrase “People of the First Light” is like a “tiny imagist poem” (Edward Sapir, quoted in Bragdon 1996: 135) packed with meaning. The word “Wampanoag” is both temporally literal—they have always been/are/will be the first people to see the sunrise over the water—and symbolically referential: they are *of* the place, it is how they identify themselves and how others know them. The Tribes have provided documentation about the religious qualities and characteristics of Nantucket Sound. The Tribes have referred to their cultural identity and to their religious practices as dependent on their reverential viewsheds of Nantucket Sound. These qualities and characteristics to the Wampanoag are also in their contemporaneity, history, folklife traditions, and cosmology. These define their identity as a people, embody their settled place in the region, and have historical, cosmological,

and religious meanings to them. For the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah), and to other Indian Nations as invited visitors to ceremonial events, Nantucket Sound is a central and important locale for their folkways. The Wampanoag people value Nantucket Sound as integral to their culturally rich, multidimensional folklife for its symbolic and religious qualities, and because marine resources play an important role in the training of generations in the continuation of their material culture, foodways, practices, cosmology, and narrative traditions.

Evaluation Considerations

The Massachusetts State Historic Preservation Officer (SHPO) recognizes that in addition to the “Criteria Consideration” for religious properties (36 C.F.R. Part 60), the National Register of Historic Places (NRHP 1997a: 5) also “[g]enerally...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. While they may have been ‘avenues of exploration,’ the features most appropriate to document this significance are the properties built in association with the waterways.” This guideline is actually a minor point in a longer discussion about the definition of “site” for the purposes of considering if a “property type” is National Register-eligible. The meaning of “natural” is intended to contrast artificial waterways and water bodies such as historic canals, aqueducts and constructed reservoirs.

Although there is no specific exclusionary language about waterways and water bodies for National Register consideration in the regulations (36 C.F.R. Part 60) or the law (16 U.S.C. 470 et seq.), practitioners of the evaluation process apply this guideline to the particular historic contexts documented for specific historic properties (NRHP 1997a; Parker & King 1998). A Traditional Cultural Property is a special historic “property type.” This general guideline to exclude natural waterways and water bodies, and the religious property consideration, *does not apply* to Traditional Cultural Properties “with sound documentation...of historical or cultural significance” (Parker & King 1998: 11; see also, *ibid.*: 14, 20; see also NRHP 1997a: 27).

Nevertheless, the significant historical qualities and characteristics of Nantucket Sound as an historic property per se—and not also as a Traditional Cultural Property with the sound documentation summarized here—are not limited to the specific exclusionary categories of the guideline. It is the opinion of the Massachusetts SHPO that none of the exclusionary criteria

considerations and evaluation issues outlined in the law, regulations, and guidance documents is pertinent to Nantucket Sound as a Traditional Cultural Property.

As to the Criteria Consideration for Nantucket Sound as a religious property—affirmed by the Tribes and documented through scholarship—the National Register guidance documents provide considerable explanation as to why this exclusion *does not apply* to historical Traditional Cultural Properties and to those religious properties and traditions “having secular scholarly recognition” (NRHP 1997a: 26-28; Parker & King 1998: 1, 2, 3, 5, 14-15):

Application of this criteria consideration to traditional cultural properties is fraught with the potential for ethnocentrism and discrimination. In many traditional societies, including most American Indian societies, the clear distinction made by Euroamerican society between religion and the rest of culture does not exist. As a result, properties that have traditional cultural significance are regularly discussed by those who value them in terms that have religious connotations [Parker & King 1998: 14].

In simplest terms, the fact that a property is used for religious purposes by a traditional group, such as seeking supernatural visions, collecting or preparing native medicines, or carrying out ceremonies, or is described by the group in terms that are classified by the outside observer as “religious” should not by itself be taken to make the property ineligible, since these activities may be expressions of traditional cultural beliefs and may be intrinsic to the continuation of traditional cultural practices [ibid.: 15].

The Section 106 regulations provide explicit direction to federal agencies to evaluate properties that have religious significance to Native American tribes: “The agency official *shall acknowledge* that Indian tribes...possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them” (36 C.F.R. 800.4(c)(1), emphasis added). The Tribes have provided documentation about the religious qualities and characteristics of Nantucket Sound. The religious beliefs and practices of the Wampanoag are the subjects of an enormous body of recognized secular scholarship well known to regional archaeologists, ethnohistorians, and ethnographers (e.g., Bragdon 1996, 2009; Silverman 2003, 2005; Simmons 1981; Vitelli 2009; & op. cit.).

Conclusion

The identity and culture of the indigenous Wampanoag are inextricably linked to Nantucket Sound. The long archaeological and historical record of dependence upon marine resources and

the ocean setting are well documented, with many illustrative historical and contemporary examples of the specific use of Nantucket Sound by the Wampanoag. Many more examples are documented in the references cited, and additional archaeological, historical, and ethnographic research could locate even more specific examples about these “Native maritime tribes” (Mandell 2008: 165). Their folklife of traditional practices, symbolism, material culture, foodways, mentoring, and narratives are sourced from and shaped by their relationship to Nantucket Sound. The traditional cultural significance of Nantucket Sound as an historical, symbolic, and sacred central place to the Wampanoag is supported by the opinions of the Tribal Historic Preservation Officer of the Wampanoag Tribe of Gay Head (Aquinnah) and the resolution of the Tribal Council of the Mashpee Wampanoag Tribe; by contemporary Wampanoag historical consciousness of important persons, places, and events in recorded oral and written narratives; and by scholars in ethnohistory. Nantucket Sound is a Traditional Cultural Property that is eligible for listing in the National Register of Historic Places at the local level of significance.

In the Massachusetts SHPO’s opinion, Nantucket Sound as a Traditional Cultural Property is a “site” that has integrity of “relationship” and “condition” (Parker & King 1998: 11-12) including location, setting, materials, feeling, and association. It meets Criterion A for its associations with the ancient and historical period Native American exploration and settlement of Cape Cod and the Islands, and with the central events of the Wampanoag origin story of Maushop and Squant/Squannit; Criterion B for its association with Maushop and Squant/Squannit; Criterion C as a significant and distinguishable entity integral to Wampanoag folklife traditions, practices, cosmology, religion, material culture, foodways, mentoring, and narratives; and, Criterion D for the important cultural, historical, and scientific information it has yielded and/or may be likely to yield through archaeology, history, and ethnography about the nature, timing, and changes of occupation, settlement, and land use prior to 6,000 years ago and after as a result of ocean submergence, about maritime resource use and technologies, about sociopolitical adaptations and innovations related to maritime resource acquisition and access sharing and/or resource exchange, about cultural practices and traditions of the Native Americans of Cape Cod and the Islands in relationship with other peoples in ancient and historical times, and about transformations brought about by European exploration, American settlement, and marine resource exploitation within Wampanoag homelands.

References Cited

- Aiken[s], Gertrude [Haynes] 1970 Life in South Mashpee...as I knew it as a child. In *Mashpee: Land of the Wampanoags*, by Amelia G. Bingham, pp. 18-20. Mashpee Historical Commission, Mashpee, MA.
- Andrews, J. Clinton 1985 Indian fish and fishing off coastal Massachusetts. *Bulletin of the Massachusetts Archaeological Society* 47(2): 42-46.
- Andrews-Maltais, Cheryl 2008 Letter of Chairwoman, Wampanoag Tribe of Gay Head (Aquinnah) to Rodney Cluck, Minerals Management Service, April 17.
- Andrews-Maltais, Cheryl 2009 Oral history audio recording of the Maushop story. Commonwealth Museum, Boston.
- Anonymous 2007 Native American culture celebrated at New England District. [Tobias Vanderhoop, keynote speaker, November 29, 2007, at the forum "Preserving cultural heritage and tribal resources."] *Yankee Engineer* (newspaper of the New England District, US Army Corps of Engineers) 42(3): 6. <http://www.nae.usace.army.mil/news/december2007.pdf>
- Aquinnah Cultural Center Inc. n.d. [ca. 2008] *Wampanoag Way, An Aquinnah Cultural Trail*. Wampanoag Tribe of Gay Head (Aquinnah), Aquinnah, MA.
- Barber, John Warner 1841 Marshpee. In *Historical Collections, Being a General Collection of Interesting Facts, Traditions, Biographical Sketches, Anecdotes, &c., Relating to the History and Antiquities of Every Town in Massachusetts, with Geographical Descriptions*, pp. 46-48. Dorr, Howland & Co., Worcester, MA.
- Bell, Edward L. 2009 Cultural resources on the New England coast and continental shelf: Research, regulatory, and ethical considerations from a Massachusetts perspective. *Coastal Management* 37(1): 17-53.
- Bingham, Amelia G. 1970 *Mashpee: Land of the Wampanoags*. Mashpee Historical Commission, Mashpee, MA.
- Boston Children's Museum n.d. [ca. 2004] *The Wampanoag: People of the First Light*. Boston Children's Museum, Boston, MA. <http://www.bostonchildrensmuseum.org/educators/wampanoag/index.htm>
- Bradley, James W. 2005 *Archeological Investigations at the Carnes Site, Coast Guard Beach, Cape Cod National Seashore, Massachusetts*. Northeast Region Archeology Program, National Park Service, Lowell, MA.
- Bragdon, Kathleen J. 1992 Language, folk history, and Indian identity on Martha's Vineyard. In *The Art and Mystery of Historical Archaeology: Essays in Honor of James Deetz*, ed. Anne Elizabeth Yentsch and Mary C. Beaudry, pp. 331-342. CRC Press, Boca Raton, FL.
- Bragdon, Kathleen J. 1995 The shamanistic "text" in Southern New England. In *The Written and the Wrought: Complimentary Sources in Historical Anthropology, Essays in Honor of James Deetz*, ed. M.E. D'Agostino, E. Prine, E. Casella, and M. Winer, pp. 165-176. Kroeber Anthropological Society Papers 79. Berkeley: Kroeber Anthropological Society, Department of Anthropology, University of California.
- Bragdon, Kathleen J. 1996 *Native People of Southern New England, 1500-1650*. University of Oklahoma Press, Norman.
- Bragdon, Kathleen J. 1999 Ethnohistory, historical archaeology, and the rise of social complexity in Native North America: Case studies from Southern New England. In *Old and New Worlds*, ed. Geoff Egan and R.L. Michael, pp. 84-95. Oxbow Books, Oxford.
- Bragdon, Kathleen J. 2009 *Native People of Southern New England, 1650-1775*. University of Oklahoma Press, Norman.

- Braun, David P. 1974 Explanatory models for the evolution of coastal adaptation in prehistoric Southern New England. *American Antiquity* 34(4): 582-596.
- Bruchac, Margaret M. 2005 Earthshapers and placemakers: Algonkian Indian stories and the landscape. In *Indigenous Archaeologies: Decolonizing Theory and Practice*, ed. Claire Smith and H. Martin Wobst, pp. 56-80. Routledge, London.
- Chilton, Elizabeth S. 2006 The origin and spread of maize (*Zea mays*) in New England. In *Histories of Maize: Multidisciplinary Approaches to the Prehistory, Biogeography, Domestication, and Evolution of Maize*, ed. John Staller, Robert Tykot, and Bruce Benz, pp. 539-547. Elsevier Academic Press, Burlington, MA.
- Christie, Jessica Joyce (ed.) 2009 *Landscapes of Origin in the Americas: Creation Narratives Linking Ancient Places and Present Communities*. University of Alabama Press, Tuscaloosa. Quotation from forthcoming book from <http://www.uapress.ua.edu>, possibly jacket copy or editor's introduction.
- Coombs, Linda 2004a Maushop brings his people home. Dugout canoe trip to Martha's Vinyard. *The Wampanoag People*. Plimoth Plantation, Plymouth, MA. <http://www.plimoth.org/discover/wampanoag-life/maushop.php>.
- Coombs, Linda 2004b Holistic history: Including the Wampanoag in an exhibit at Plimoth Plantation. *The Wampanoag People*. Plimoth Plantation, Plymouth, MA. Originally published 2002 in *Plimoth Life* 1(2):12-15. <http://www.plimoth.org/discover/wampanoag-life/holistic-history.php>.
- Crosby, Constance A. 1993 The Algonkian spiritual landscape. In *Algonkians of New England: Past and Present*, ed. Peter Benes, pp. 35-41. Dublin Seminar for New England Folklife, Boston University, Boston.
- Dincauze, Dena F., and Mitchell T. Mulholland 1977 Early and Middle Archaic site distributions and habitats in Southern New England. In *Amerinds and their Paleoenvironments in Northeastern North America*, ed. W.S. Newman and B. Salwen. *Annals of the New York Academy of Sciences* 288: 439-456.
- Dunford, Fred, and Greg O'Brien 1997 *Secrets in the Sand: The Archaeology of Cape Cod*. Parnassus Imprints, Hyannis, MA.
- Gaillard, Frye 1998 *As Long as the Waters Flow: Native Americans in the South and the East*. John F. Blair, Winston-Salem, NC.
- Handsman, Russell G. 1991 Illuminating history's silences in the "Pioneer Valley." *Artifacts* 19(2): 14-25.
- Handsman, Russell G. 2008 Landscapes of memory in Wampanoag Country—and the monuments upon them. In *Archaeologies of Placemaking: Monuments, Memories, and Engagement in Native North America*, ed. Patricia E. Rubertone, pp. 161-193. Left Coast Press, Walnut Creek, CA.
- Handsman, Russell G., and Trudie Lamb Richmond 1995 Confronting colonialism: The Mahican and Schaghticoke peoples and US. In *Making Alternative Histories, The Practice of Archaeology and History in Non-Western Settings*, ed. Peter R. Schmidt and Thomas C. Patterson, pp. 87-117. University of Washington Press, Seattle.
- Herbster, Holly 2009 Phase I Memorandum, Mashpee Town-Wide Archaeological Survey, Mashpee, Massachusetts. Public Archaeology Laboratory, Inc., Pawtucket, RI.
- Kinney, David 2009 *The Big One: An Island, an Obsession, and the Furious Pursuit of a Great Fish*. Atlantic Monthly Press, New York.
- Lightfoot, Kent G. 2008 Oral traditions and material things: Constructing histories of Native people in Colonial settings. In *Small Worlds: Method, Meaning, and Narrative in Microhistory*, ed. James F. Brooks, Christopher R.N. DeCorse, and John Walton, pp. 265-288. School for Advanced Research Press, Santa Fe.

- Little, Elizabeth A. 1981 *Historic Indian Houses of Nantucket*. Nantucket Algonquian Studies #4. Nantucket Historical Association, Nantucket.
- Little, Elizabeth A., and J. Clinton Andrews 1982 Drift whales at Nantucket: Kindness of Moshup. *Man in the Northeast* 23: 17-38.
- Little, Elizabeth A., and Margaret J. Schoeninger 1995 The Late Woodland diet on Nantucket Island and the problem of maize in coastal New England. *American Antiquity* 60(2): 351-368.
- Mahlstedt, Thomas 1987 Prehistoric overview. In *Historic and Archaeological Resources of Cape Cod and the Islands*, pp. 17-53. Massachusetts Historical Commission, Boston.
- Mandell, Daniel R. 2008 *Tribe, Race, History: Native Americans in Southern New England, 1780-1880*. Johns Hopkins University Press, Baltimore.
- Manning, Helen, with Jo-Ann Eccher 2001 *Moshup's Footsteps: The Wampanoag Nation, Gay Head/Aquinnah, The People of First Light*. Blue Cloud Across the Moon, Aquinnah, MA.
- Mashpee Wampanoag Tribe 2009 Tribal Council Resolution 2009-RES-022, Horseshoe Shoal, July 16.
- Massachusetts Historical Commission 1978- *Bibliography of Archaeological Survey and Mitigation Reports: Massachusetts*. Updated with periodic supplements to 2009. Massachusetts Historical Commission, Boston.
- McBride, Kevin A., and Suzanne G. Cherau 1996 Gay Head (Aquinnah) Wampanoag community structure and land use patterns. *Northeast Anthropology* 51: 13-39.
- Merwin, Daria E., Daniel P. Lynch, and David S. Robinson 2003 Submerged prehistoric sites in Southern New England: Past research and future directions. *Bulletin of the Archaeological Society of Connecticut* 65: 41-56.
- Mills, Barbara J., and William H. Walker 2008 Introduction: Memory, materiality, and depositional practice. In *Memory Work: Archaeologies of Material Practices*, ed. Barbara J. Mills and William H. Walker, pp. 3-23. School for Advanced Research Press, Santa Fe.
- Mills, Earl, Sr., and Betty Breen 2001 *Cape Cod Wampanoag Cookbook: Wampanoag Indian Recipes, Images and Lore*. Clear Light Books, Santa Fe.
- Mills, Earl, Sr., and Alicja Mann 2006 *Son of Mashpee: Reflections of Chief Flying Eagle, a Wampanoag*. Revised edition. Word Studio, Falmouth, MA.
- Mulholland, Mitchell T. 1988 Territoriality and horticulture: A perspective for prehistoric Southern New England. In *Holocene Human Ecology in Northeastern North America*, ed. George P. Nicholas, pp. 137-166. Plenum Press, New York.
- National Register of Historic Places 1997a *How to Apply the National Register Criteria for Evaluation*. National Register Bulletin. Revised edition. National Park Service, Washington, DC.
- National Register of Historic Places 1997b *Guidelines for Completing National Register of Historic Places Forms. Part A, How to Complete the National Register Registration Form*. National Register Bulletin. Revised edition. National Park Service, Washington, DC.
- Nicholas, Mark A. 2002 Mashpee Wampanoags of Cape Cod, the whalefishery, and seafaring's impact on community development. *American Indian Quarterly* 26(2): 165-197.
- Nicholas, Mark A. 2005 "New Maritime History" and Southern New England Indians. In *Eighteenth Century Native Communities of Southern New England in the Colonial Context*, ed. Jack Campisi, pp. 212-230. Mashantucket Pequot Museum & Research Center, Mashantucket, CT.

- Orleans, Laura 2000 *Faces of Whaling Oral History Project*. New Bedford Whaling National Historic Park, New Bedford, MA. <http://www.nps.gov/archive/nebe/research/faces.pdf>
- Parker, Patricia, and Thomas F. King 1998 *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. National Register Bulletin. Revised edition. National Park Service, Washington, DC.
- Patton, Jonathan Knight 2007 *Material Studies of Eastern Pequot Clothing in 18th- and 19th-Century Connecticut: Issues in Collaborative Indigenous Archaeology*. M.A. thesis. Historical Archaeology Program, University of Massachusetts, Boston.
- Paynter, Robert 2002 Time in the valley: Narratives about rural New England. *Current Anthropology* 43(4): 85-101.
- Peters, Paula 2002 Indian voyage echoes history. *Cape Cod Times* (August 18). Reprinted in *Canku Ota (Many Paths): An online newsletter celebrating Native America* 68 (August 24, 2002). http://www.turtletrack.org/Issues02/Co08242002/CO_08242002_Voyage.htm
- Peters, Ramona L. 2006 Consulting with the bone keepers: NAGPRA consultations and archaeological monitoring in the Wampanoag territory. In *Cross-Cultural Collaboration: Native Peoples and Archaeology in the Northeastern United States*, ed. Jordan E. Kerber, pp. 32-43. University of Nebraska Press, Lincoln.
- Peters, Russell M. 1987 *The Wampanoags of Mashpee: An Indian Perspective on American History*. Nimrod Press, Boston.
- Peters, Russell M. 1992 *Clambake: A Wampanoag Tradition*. Lerner Publications Co., Minneapolis.
- Poppe, Lawrence J., Katherine Y. McMullen, David S. Foster, Dann S. Blackwood, S. Jeffress Williams, Seth D. Ackerman, Steven R. Barnum, and Rick T. Brennan 2008 *Sea-Floor Character and Sedimentary Processes in the Vicinity of Woods Hole, Massachusetts*. U.S. Geological Survey Open-File Report 2008-1004. <http://woodshole.er.usgs.gov/pubs/of2008-1004/index.html>
- Pretola, John, and Elizabeth A. Little 1988 Nantucket: An archaeological record from the far island. *Bulletin of the Archaeological Society of Connecticut* 51: 47-68.
- Provincetown Center for Coastal Studies 2005 *Toward an Ocean Vision for the Nantucket Shelf Region*. Provincetown Center for Coastal Studies, Provincetown, MA. http://coastalstudies.org/pdf/ocean_vis_rep.pdf.
- Ridge, John C. 2003 The last deglaciation of the Northeastern United States: A combined varve, paleomagnetic, and calibrated ¹⁴C chronology. In *Geoarchaeology of Landscapes in the Glaciated Northeast*, ed. David L. Cremeens and John P. Hart, pp. 15-45. Bulletin 497. New York State Museum, Albany, NY.
- Ritchie, William A. 1969 *The Archaeology of Martha's Vineyard: A Framework for the Prehistory of Southern New England. A Study in Coastal Ecology and Adaptation*. The Natural History Press, Garden City, NY.
- Robinson, David S. 2008 *Remote Sensing Archaeological Survey, Great Harbor, Woods Hole, Massachusetts*. Public Archaeology Laboratory, Inc., Pawtucket, RI.
- Robinson, David S., Ben Ford, Holly Herbster, and Joseph N. Waller, Jr. 2003 *Marine Archaeological Sensitivity Assessment, Cape Wind Energy Project, Nantucket Sound, Massachusetts*. Public Archaeology Laboratory, Inc., Pawtucket, RI.
- Robinson, David S., Ben Ford, Holly Herbster, and Joseph N. Waller, Jr. 2004 *Marine Archaeological Reconnaissance Survey, Cape Wind Energy Project, Nantucket Sound, Massachusetts*. Public Archaeology Laboratory, Inc., Pawtucket, RI.

- Robinson, Paul A. 2000 One island, two places: Archaeology, memory, and meaning in a Rhode Island town. In *Interpretations of Native American Life: Material Contributions to Ethnohistory*, ed. Michael S. Nassaney and Eric S. Johnson, pp. 398-411. University Press of Florida, Gainesville.
- Salwen, Bert 1978 Indians of Southern New England and Long Island: Early period. In *Handbook of North American Indians, Vol. 15 Northeast*, ed. Bruce G. Trigger, pp. 160-176. Smithsonian Institution, Washington, DC.
- Silliman, Stephen W. 2009 Change and continuity, practice and memory: Native American persistence in Colonial New England. *American Antiquity* 74(2): 211-230.
- Silverman, David J. 2001 The impact of indentured servitude on the society and culture of Southern New England Indians, 1680-1810. *New England Quarterly* 74(4): 622-666.
- Silverman, David J. 2003 The church in New England Indian community life: A view from the Islands and Cape Cod. In *Reinterpreting New England Indians and the Colonial Experience*, ed. Colin G. Calloway and Neal Salisbury, pp. 264-298. The Colonial Society of Massachusetts, Boston.
- Silverman, David J. 2005 *Faith and Boundaries: Colonists, Christianity, and Community Among the Wampanoag Indians of Martha's Vineyard, 1600-1871*. Cambridge: Cambridge University Press.
- Simmons, William S. 1981 Cultural bias in the New England Puritans' perception of Indians. *William and Mary Quarterly* (3rd ser.) 38(1): 56-72.
- Simmons, William S. 1986 *Spirit of the New England Tribes: Indian History and Folklore*. University Press of New England, Hanover, NH.
- Simmons, William S. 1992 Of large things remembered: Southern New England Indian legends of colonial encounters. In *The Art and Mystery of Historical Archaeology: Essays in Honor of James Deetz*, ed. Anne Elizabeth Yentsch and Mary C. Beaudry, pp. 317-329. CRC Press, Boca Raton, FL.
- Smalley, Amos 1957 I killed Moby Dick. *Reader's Digest* 70(June): 172-180.
- Snow, Dean R. 1978 Late prehistory of the East Coast. In *Handbook of North American Indians, Vol. 15 Northeast*, ed. Bruce G. Trigger, pp. 58-69. Smithsonian Institution, Washington, DC.
- Speck, Frank G., and Ralph W. Dexter 1948 Utilization of marine life by the Wampanoag Indians of Massachusetts. *Journal of the Washington Academy of Sciences* 38(8): 257-265.
- Stein, Ninian R. 2007 *Native Peoples and Subsistence in Late Woodland and Early Contact Period Southern New England*. Ph.D. dissertation. Department of Anthropology, Brown University.
- Strauss, Alan E. 1987 Magic and ritual on the open ocean. *Archaeology of Eastern North America* 15: 125-136.
- Stright, Melanie J. 1986 Human occupation of the continental shelf during the Late Pleistocene/Early Holocene: Methods for site location. *Geoarchaeology* 1(4): 347-364.
- Stright, Melanie J. 1990 Archaeological sites on the North American continental shelf. In *Archaeological Geology of North America*, ed. Norman P. Lasca and Jack Donahue, pp. 439-465. Geological Society of America Centennial Special Volume 4. Geological Society of America, Boulder, CO.
- Thorbahn, Peter, Leonard W. Loparto, Deborah C. Cox, and Brona Simon 1980 *Prehistoric Settlement Processes in Southern New England: A Unified Approach to Cultural Resource Management and Archaeological Research*. Public Archaeology Laboratory, Department of Anthropology, Brown University, Providence.

- Uchupi, Elazar, G.S. Giese, D.G. Aubrey, and D.-J. Kim 1996 *The Late Quaternary Construction of Cape Cod, Massachusetts: A Reconsideration of the W.M. Davis Model*. Special Paper 309. Geological Society of America, Inc., Boulder, CO.
- Vickers, Daniel F. 1981 *Maritime Labor in Colonial Massachusetts: A Case Study of the Essex County Cod Fishery and the Whaling Industry of Nantucket, 1630-1775*. Ph.D. thesis. Department of History, Princeton University.
- Vickers, Daniel F. 1983 The first whaleman of Nantucket. *William & Mary Quarterly* 40(4)(3rd ser.): 560-583.
- Vickers, Daniel F. 1985 Nantucket whaleman in the deep-sea fishery: The changing anatomy of an early American labor force. *Journal of American History* 72(2): 277-296.
- Vitelli, Giovanna 2009 *Equilibrium, Well-Being, and Exchange: The Basis of Algonquian Mortuary Practice in Seventeenth Century Southern New England*. Ph.D. thesis. Department of Archaeology, School of Human & Environmental Sciences, University of Reading.
- Vosk, Stephanie 2008 Wampanoag propose oyster-farming operation. *Cape Cod Times* (October 18). <http://www.capecodonline.com/apps/pbcs.dll/article?AID=/20080908/NEWS/809080307>.
- Wampanoag Tribe of Gay Head (Aquinnah) n.d. [ca. 2005] Other stories and information. *Wampanoag Way: An Aquinnah Cultural Trail*. Wampanoag Tribe of Gay Head (Aquinnah), Aquinnah, MA. http://www.wampanoagtribe.net/Pages/Wampanoag_Way/other
- Washington, Bettina 2009 Letter of Tribal Historic Preservation Officer, Wampanoag Tribe of Gay Head (Aquinnah) to Janet Snyder Matthews, Keeper of the National Register, September 17.
- Willoughby, Charles C. 1935 *Antiquities of the New England Indians with Notes on the Ancient Cultures of the Adjacent Territories*. Peabody Museum of American Archaeology and Ethnology, Harvard University, Cambridge, MA.
- Wolverton, Nan 2003 "A Precarious Living": Basket making and related crafts among New England Indians. In *Reinterpreting New England Indians and the Colonial Experience*, ed. Colin G. Calloway and Neal Salisbury, pp. 341-368. The Colonial Society of Massachusetts, Boston.



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

October 8, 2008

Rodney E. Cluck
Project Manager
Melanie Stright
Federal Preservation Officer
Alternative Energy Program
Minerals Management Service
381 Elden Street
Mail Stop 4080
Herndon, VA 20170

RE: Cape Wind Energy Project, Nantucket Sound, MA. MHC #RC.29785.

Dear Mr. Cluck and Ms. Stright:

This correspondence is offered in response to your request for additional written comments from consulting parties following the meeting held on Cape Cod on September 9, 2008. Specifically, you have asked consulting parties to comment on the necessity for additional identification of historic properties and on the differing approaches to the assessment of adverse effects by the U.S. Army Corps of Engineers and the Minerals Management Service.

With regard to the assessment of adverse effects and the application of the criteria of effect to the preferred alternative, the MHC has the following comments. The MHC remains concerned that MMS has only identified three adverse effects in contrast to all of the "adverse effects" which were previously identified by the United States Army Corps of Engineers (COE) when the COE was the lead federal agency for this project. Specifically, the MHC concurred with the COE's prior determination that the preferred alternative for the Cape Wind project would have an **adverse effect** on the following historic properties: the Nobska Point Light Station (Falmouth); the Cotuit Historic District, the Col. Charles Codman Estate, the Wianno Historic District, the Wianno Club, the Hyannis Port Historic District, and the Kennedy Compound (all in Barnstable); the Monomoy Point Lighthouse (Chatham); the West Chop Light Station (Tisbury); the East Chop Light Station and the Dr. Harrison A. Tucker Cottage (both in Oak Bluffs); the Edgartown Village Historic District, the Edgartown Harbor Lighthouse, and the Cape Poge Light (Edgartown); and the Nantucket Great Point Light and the Nantucket National Historic Landmark District (Nantucket). The adverse effect includes the introduction of visual elements that are out of character with the historic properties and alteration of the setting of the historic properties (36 CFR 800.5(a)(2)(iv and v)).

The MHC is particularly concerned that the MMS has not included the Nantucket Historic District (Nantucket Island) in its adverse effect determinations. It should be noted that the entire island is a historic district that has been designated as a National Historic Landmark, not only for its historic villages, but for the integrity of its cultural landscape and scattered historic buildings. The Nantucket Historic District retains its character and maritime setting, and the introduction of

the project into its setting is an adverse effect. The MHC believes that the effect to this National Historic Landmark, as evidenced by earlier visual analysis, is a direct adverse effect on the historic resource (36 CFR 800.5(a)(2)(iv and v)).

MHC believes that the MMS's contractor, TRC, Inc., has incorrectly applied the criteria of effect by defining a set radius for their analysis and by using percentages of buildings as a basis for determining effects. The MHC requests that MMS reexamine the methodology used to apply the criteria and again seek the comments of the consulting parties. It is critically important to assess the effects of the project's entirety and to ensure that the scope of historic properties affected is accurate in order for the remainder of the steps in the Section 106 process to be meaningful and productive.

With regard to the identification of additional historic properties, the MHC offers the following comments. The MHC originally concurred with the COE's methodology for a representative sampling of historic properties from which to conduct visual studies. The Alliance to Protect Nantucket Sound (APNS) has provided additional information concerning locations of historic properties from which additional visual analysis should be performed. The MHC agrees that the APNS's research recently provided to your agency (a copy of which was received at this office) provides the basis for necessary additional identification efforts and subsequent visual analysis. Of particular interest is the Falmouth Heights Historic District area. MHC opinion of the district at Falmouth Heights is that it meets the criteria for listing in the National Register of Historic Places.

In light of new information produced during the consultation process thus far, the MHC strongly urges the MMS to reconsider both the identification efforts and the application of the criteria of effect for the project.

These comments are offered to assist in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800). Please contact Ann Lattinville or Edward L. Bell of my staff if you have any questions.

Sincerely,

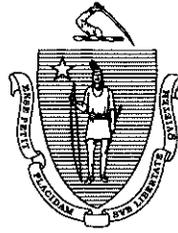


Brona Simon
State Historic Preservation Officer
Executive Director
Massachusetts Historical Commission

xc: see attached

xc:

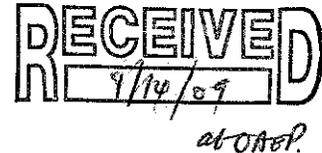
Cape Wind Associates, LLC
Don Klima, Advisory Council on Historic Preservation
John Eddins, Advisory Council on Historic Preservation
Betsy Merritt, National Trust for Historic Preservation
Wendy Nicholas, National Trust for Historic Preservation
Rebecca Williams, National Trust for Historic Preservation
George Price, Superintendent, Cape Cod National Seashore
Caroline Hall, National Park Service
Bill Bolger, National Park Service
Secretary Ian A. Bowles, EEA, MEPA Unit
Conrad C. Lautenbacher, Jr. NOAA
Karen Kirk Adams, USACOE-NED-Regulatory
Kate Atwood, USACOE-NED
John S. Wilson USFW
Bettina Washington, Wampanoag Tribe of Gay Head (Aquinnah)
George Green, Jr., Mashpee Wampanoag Tribe
Massachusetts Coastal Zone Management
Victor Mastone, Board of Underwater Archaeological Resources
Massachusetts Commission on Indian Affairs
Sarah Korjeff, Cape Cod Commission
Falmouth Historical Commission
Yarmouth Historical Commission
Mashpee Historical Commission
Barnstable Historical Commission
Nantucket Historical Commission
Edgartown Historical Commission
Oak Bluffs Historical Commission
Chatham Historical Commission
Alliance to Protect Nantucket Sound
Clean Power Now



The Commonwealth of Massachusetts

September 10, 2009 William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

Walter D. Cruickshank
Deputy Director
Minerals Management Service
U.S. Department of the Interior
381 Elden Street, MS 4090
Herndon, VA 20170



RE: Cape Wind Energy Project

Dear Mr. Cruickshank:

The Massachusetts Historical Commission (MHC), the office of the Massachusetts State Historic Preservation Officer (SHPO), is in receipt of your letter faxed on September 9, 2009, regarding your proposed next Section 106 consultation meeting for September 30, 2009 in Washington, DC.

As SHPO, I respectfully request that you arrange to have the next Section 106 consultation meeting in Hyannis, Massachusetts, so that I, as SHPO, as well as other local consulting parties will be able to attend.

Sincerely,

A handwritten signature in cursive script that reads "Brona Simon".

Brona Simon
State Historic Preservation Officer
Massachusetts Historical Commission

xc:

Craig Olmsted, Cape Wind Associates, LLC
John Eddins, Advisory Council on Historic Preservation
Betina Washington, Wampanoag Tribe of Gay Head (Aquinnah) THPO
George (Chuckie) Green, Jr., Mashpee Wampanoag Tribe THPO
John Brown, Narragansett Tribe THPO
Bruce Bozsum, Mohegan Indian Tribe Chairman
Michael J. Thomas, Mashantucket Pequot Tribe Chairman
Janet Matthews, National Park Service
Bill Bolger, National Park Service
Karen Kirk Adams, USACOE-NED-Regulatory
Betsy Merritt, National Trust for Historic Preservation
Roberta Lane, National Trust for Historic Preservation
David Saunders, US DOI Bureau of Indian Affairs Eastern Region
Sarah Korjeff, Cape Cod Commission
Glenn G. Wattle, Alliance to Protect Nantucket Sound
Mark Voigt, Nantucket Historical Commission
Matthew F. Pawa, Esq.



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

February 6, 2009

Rodney E. Cluck
Project Manager
Alternative Energy Program
Minerals Management Service
381 Elden Street
Mail Stop 4080
Herndon, VA 20170

RE: Cape Wind Energy Project, Nantucket Sound, MA. MHC #RC.29785.

Dear Mr. Cluck:

Staff of the Massachusetts Historical Commission (MHC), the office of the Massachusetts State Historic Preservation Officer (SHPO), have reviewed the Finding of Adverse Effect (Finding) which was received at this office on January 12, 2009. In addition, the MHC has reviewed the Final Environmental Impact Statement (EIS) prepared for the project referenced above, and participated in the consultation meeting held in Boston on January 29, 2009. The MHC has considered comments made by other consulting parties and the public, and initial responses provided by staff of the Mineral Management Service (MMS), the project proponents, and consultants. After review and consideration of this information, the MHC has the following comments.

The MHC agrees with the MMS that the project will have an "adverse effect" (36 CFR 800.5) on historic properties. In MHC's opinion, the documentation (36 CFR 800.11) provided in the Finding is incomplete and insufficient. The MMS should revise the Finding to address comments of the MHC and other consulting parties. The Final EIS was prepared without the benefit of this Finding, and the EIS includes inconsistent and insufficient information about cultural resources.

It is critically important to assess the adverse effects of the project in its entirety and to ensure that the consideration of historic properties adversely affected is accurate in order for the remainder of the steps in the Section 106 process to be meaningful and productive. The method and rationale for the identification effort should be summarized in the Finding. Other consulting parties continue to raise concerns about the sufficiency of the sampling methodology to characterize the magnitude of the project effects on chiefly "above-ground historic resources". In considering the project's effects in their entirety, the MMS could estimate the total number of individual historic properties in the Area of Project Effect, as only represented in the sample of historic properties that were used in the study.

The Final EIS (page 2-2) indicates, "the maximum WTG [Wind Turbine Generator] height has increased to 440 ft (134 m) (originally 417 ft [127 m])." The discussion of the survey methods for the above-ground historic resources and the visual simulations should indicate whether or not the 440 ft height was used as the survey standard. If not, the survey methods should include an evaluation of the overall reliability and validity of the survey sample to represent the effects to the historic properties in the Area of Potential Effect. It is apparent, however, based on a representative sample of above-ground historic properties that

the undertaking as a whole—whether the WTG height is 417 or 440 ft—will have an “adverse effect” on National Register-eligible and listed properties, including National Historic Landmarks.

Alternative locations and layouts, design, size, massing, scale, materials, color, etc. outlined in the Final EIS for other environmental considerations, should now be explicitly applied to the historic and culturally important properties in the area of potential effect, with particular attention to the special requirements for protecting National Historic Landmarks, “to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking” (36 CFR 800.10).

A more explicit effort to consider feasible project alternatives will assist to clearly understand what effects to historic properties can be feasibly avoided or minimized. The alternatives analysis presented in the Finding and the Final EIS does not convey a fully considered and convincing effort to examine ways to reduce or avoid effects to cultural resources. Some alternatives that do avoid and/or minimize effects to cultural resources are rejected. For instance, one alternative for floating turbines further offshore is a technologically and commercially feasible technology that according to the Final EIS will be available in a relatively short while if not presently. But it is not adopted because it does not fit with the project’s anticipated schedule. Another, deeper water alternative that would also minimize or avoid impacts is dismissed because of increased construction costs. The analysis gives the sense that the proposed project schedule and project profitability are given more weight than the consideration of avoiding or minimizing adverse effects to historic properties. Until a more complete alternatives analysis for cultural resources is undertaken, consideration of mitigation measures is premature (36 CFR 800.6(b)(2)).

THPOs have commented that the identification, evaluation, and consideration of effects to Traditional Cultural Properties (TCPs) is not yet completed or sufficiently documented in the Finding or the Final EIS. It is not clear if the “Mashpee Wampanoag Sacred Historic Site” identified by the MMS is the same property of concern to the Wampanoag Tribe of Gay Head (Aquinnah) (WTGHA), or if there are other historic TCPs in the area of project effect that are separate and distinct to the WTGHA or to the Mashpee Wampanoag Tribe. The Finding does not explicitly state that the one identified TCP is National Register-eligible, and does not explain its significant historic characteristics. The only significant quality of the one identified historic TCP considered in the Finding and the Final EIS is a visual quality, and the analysis of effects are all predicated on particular viewing locations. Comments provided at the consultation meeting by a representative to the THPO of the WTGHA corroborated that visual qualities are not the only significant historic characteristic to consider. The MHC encourages the MMS to continue government-to-government consultation with THPOs to ensure that an adequate identification and evaluation effort has been conducted for TCPs, and to continue to consult directly with the THPOs to consider alternatives to avoid, minimize, or mitigate adverse effects to TCPs, as well as properties of “religious and cultural significance” affected by the project. Documentation that is prepared by MMS should continue to be sensitive to not disclosing some kinds of information. MMS, however, should provide summary information in the Finding that ensures the other consulting parties and the public that these matters are addressed to the THPOs’ satisfaction.

MHC also learned at the consultation meeting that additional core samples will be taken for each WTG location, and that the results of the coring will be evaluated by a qualified archaeologist. MHC is interested in learning more about the proposed additional sampling, having the opportunity to review and comment on the qualifications and on the scope and methodology which should be consistent with the Secretary of Interior’s Standards for Archeology and Historic Preservation (48 Fed. Reg. 190 (1983)), and to reviewing and commenting on the results.

The Finding mentions that the proposed lease agreement will include a "chance find clause." The statement should be revised to indicate that the provisions of 36 CFR 800.13 for post-review discoveries will be followed, and MHC recommends that the "unanticipated discoveries plan" prepared by the project consultants be included as an appendix to the Finding.

MHC's review of the Final EIS noted several discrepancies in the document relating to cultural resources, and also noted that the consideration of impacts for NEPA are still pending the outcome of the Section 106 review. The Final EIS summary (page E-12) appears to deemphasize or not address impacts to cultural resources. The MHC recognizes that the Final EIS is not a decision-making document *per se*, but the Record of Decision (ROD) will in fact rely upon it. It is important, therefore, that the ROD is based on an accurate and complete EIS. The data and conclusions about impacts to cultural resources considered in the Final EIS are incomplete, and also in some places not reliable because of the same problems noted above for the Finding. The MMS indicated that it would consider supplementing the Final EIS, and MHC encourages the MMS to supplement the Final EIS after the Section 106 consultation process is concluded and prior to issuing the ROD.

These comments are offered to assist in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800). Please contact Edward L. Bell of my staff if you have any questions.

Sincerely,



Brona Simon
State Historic Preservation Officer
Executive Director
Massachusetts Historical Commission

xc: see attached

xc:

Cape Wind Associates, LLC
Reid J. Nelson, Advisory Council on Historic Preservation
John Eddins, Advisory Council on Historic Preservation
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Wendy Nicholas, National Trust for Historic Preservation
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Glenn G. Wattlely, Alliance to Protect Nantucket Sound
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Deborah C. Cox, PAL
T. Destry Jarvis, ORAPS, LLC



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

February 6, 2009

Rodney E. Cluck
Project Manager
Alternative Energy Program
Minerals Management Service
381 Elden Street
Mail Stop 4080
Herndon, VA 20170

RE: Cape Wind Energy Project, Nantucket Sound, MA. MHC #RC.29785.

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These comments are offered to assist in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800). Please contact Edward L. Bell of my staff if you have any questions.

Sincerely,



Brona Simon
State Historic Preservation Officer
Executive Director
Massachusetts Historical Commission

xc: see attached

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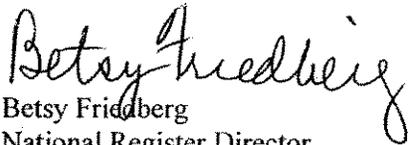
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Clean Power Now
Sarah K. Faldetta, ESS Group Inc.
Deborah C. Cox, PAL
T. Destry Jarvis, ORAPS, LLC

While it appears that the area is eligible for the National Register under criteria A and C at the local level for its associations with the spiritualist movement, it is also likely that the period of significance for this area would extend past the 1910 end date of the spiritualist presence and would include the use of the neighborhood as a summer cottage colony. Additional information would be necessary on inhabitants in the neighborhood after 1910, and on changes the area has sustained after 1928. Boundaries of the district should be strongly defined and it should be made clear that even with this later layer of significance, and with the changes that the area has undergone, the area retains integrity and the boundaries are well justified. The significance of the area at greater than local level would also need considerable substantiation in a National Register nomination."

If the Harwich Historical Commission is interested in pursuing a National Register nomination for this district, we would be happy to work with them. As you know, a critical component of the nomination process is a public information campaign. The goal is to make sure that all property owners are fully informed throughout the nomination process. A public informational meeting in Harwich early in the nomination's process is always useful; we urge the Harwich Historical Commission to take an active role in public information during the nomination's course, and we are available to help in such efforts. To that end, we recommend that at least one public meeting be held in the community to discuss the nomination at the beginning of the process, just after the evaluation step has been completed. MHC staff would be available at this meeting to discuss the National Register program and the implications of listing. A second meeting would be held later on, just before the nomination goes before the State Review Board for their review. We find that these meetings are the best way to combat constant misunderstandings about the implications of listing on the National Register (most repeatedly, that National Register is not the same as a local historic district ordinance, nor is it the first step toward establishment of such ordinance). It is a more friendly way to expand on the somewhat intimidating packet of information that the National Park Service requires us to send to property owners 30 to 65 days prior to the submission of the nomination to the State Review Board. And, for National Register districts on Cape Cod that are not also local historic districts, it is an opportunity to explain the role that the Cape Cod Commission might play, potentially, in reviewing projects in the district. Sarah Korjeff of the Cape Cod Commission staff has always been available to participate in these meetings along with MHC staff.

If you have questions about our eligibility opinion, please do not hesitate to contact me.

Sincerely,



Betsy Friedberg
National Register Director
Massachusetts Historical Commission

enclosures

cc: Chairperson, Harwich Historical Commission
Susan Brauner, Harwich
Sarah Korjeff, Cape Cod Commission



Mashpee Wampanoag Tribe
483 Great Neck Rd So, Mashpee MA 02649



The Wampanoag Tribe of Gay Head Aquinnah
20 Black Brook Road, Aquinnah MA 02535

January 29, 2010

The Honorable Ken Salazar
Secretary of the Interior
United States Department of the Interior
1849 C Street, N.W.
Room 6156
Washington, D.C. 20240

Dear Secretary Salazar:

The Aquinnah Wampanoag and Mashpee Wampanoag Tribes sincerely thank you for your significant investment of personal time to address the serious issues presented by the proposed location for the Cape Wind project. Our tribes have repeatedly raised serious objections over the proposed project throughout the federal review of this proposal, and for the first time we believe that our concerns are being addressed, at least at the policy level. This government-to-government discussion is long overdue, and we look forward to continuing the process of consultation until an acceptable outcome has been achieved. Your recent actions treating our Tribes with respect and personal attention is a strong signal that President Obama's November 7 commitment to the Native American people of this country is meaningful and will truly affect the actions of the federal government.

While our Tribes welcome your personal actions, we remain deeply concerned over the actions of the Minerals Management Service (MMS) and the course of action that has been presented for further action on the Cape Wind proposal. Unless immediate action is taken to change the MMS approach, your own good faith actions and the President's commitment to Native Americans will be frustrated and could devolve into empty gestures. We have three specific concerns in this regard.

First, our Tribes were shocked to receive, in the very meeting on January 13 where you were pledging to work and the consult with our governments, the MMS document entitled *Documentation of Section 106 Finding of Adverse Effect (Revised) (undated)*. This is a critically important document that purports to address the adverse effects of Cape Wind on properties eligible for, or included in, the National Register of Historic Places. Of major importance to this review is the effect of the project on Nantucket Sound itself, which was determined to be eligible by the Keeper of the National Register on January 4. The basis for that finding was the similar finding of the Massachusetts Historic Commission, and the determination of both state and federal officials that the Sound is a traditional cultural property of cultural and religious significance to both Tribes.

Needless to say, MMS's revised Finding of Adverse Effect is of primary relevance to both the section 106 review of the project and the concerns of the Tribes. Despite the signal importance of the Keeper's eligibility determination, and the many new issues it presents, MMS dismissed the determination in a few brief paragraphs in the revised finding. In addition, we are deeply offended that this report, and the new findings on the effect on Cape Wind on the Sound, were developed by MMS *with no consultation with our Tribes* on the newly eligible traditional cultural property (TCP). We must ask how, *in the very same meeting* where you were pledging consultation and cooperation, MMS could distribute a very important report that it developed in isolation from the Tribes. We will address the substantive deficiencies in the MMS report in a future letter. Our Tribes raise objection to this now, with you, because the actions of MMS have undermined your own good words and actions and, in our opinion, require a prompt withdrawal of the report and the initiation of true consultation with our Tribes.

Second, the Aquinnah Wampanoag and Mashpee Wampanoag Tribes must state our concern over the time frame for action that you announced. We do not believe that the review of such a controversial and harmful project should be subject to a deadline on March 1, for a decision in April, as you announced. While the project has been pending for many years, the reasons for the extended review are the problems presented by the proposed site, the developer's refusal to consider alternative locations, the developer's refusal to undertake the necessary research, and the failure of MMS to take Tribal objections and concerns seriously. The tribal consultation problem is just one example of these deficiencies. Indeed, MMS has admitted in section 106 meetings that it did not fully understand how the process should be conducted.

We recognize that the current Administration inherited many of these problems. Your personal involvement in seeking ways to solve them is a step in the right direction. An arbitrarily set deadline, however, is not the solution. We are aware that the developer is feeling pressure to obtain project approval to make it possible to obtain the federal cash payment for tax credit, which expires at the end of this year. This deadline should not be used to force premature decisions where the private company and the federal reviewing agency have been the cause for delay and have generated the controversy by failing to consider acceptable alternatives.

Our two tribes are prepared to continue to work in good faith to complete the decision-making process and, in particular, to achieve a negotiated outcome. We both will object, however, to deadlines that limit consultation and are not based in law or on government-to-government

respect, but instead are the result of the timing necessary to assist a private developer obtains massive federal subsidies. The record will speak for itself, and it will be clear to all involved when a decision is ready to be made.

Finally, we request that both Tribes be invited to be signatories to any Memorandum of Agreement (MOA) that would be developed for the section 106 review of this project. The most recent draft MOA for the Cape Wind project released in June 2009 lists the Aquinnah Wampanoag Tribe and the Mashpee Wampanoag Tribe as having been invited to execute the MOA as *concurring* parties only. This draft does not explain why Cape Wind Associates, LLC (the project proponent) and the U.S. Army Corps of Engineers are listed as full MOA *signatories*.

The Keeper's determination of eligibility of the Sound as a TCP acknowledged that both the Aquinnah Wampanoag Tribe and the Mashpee Wampanoag Tribe attach religious and cultural significance to Nantucket Sound, and to the larger historic district that encompasses the near-shore areas of the Sound, of which district Nantucket Sound is a part.

Therefore, the National Historic Preservation Act (NHPA) requires MMS to consult with the both Tribes in connection with its review of the Cape Wind undertaking under section 106 of the NHPA. As applied to the Cape Wind project, the rules of the Advisory Council on Historic Preservation (Advisory Council) provide that MMS must consult with the two tribes "to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects" to Nantucket Sound from the Cape Wind project. 36 C.F.R. § 800.6(a). President Obama's November 7 directive confirms his administration's intent to fully comply with this consultation duty.

The Advisory Council's rules also provide that MMS may invite any Indian tribe that attaches religious and cultural significance to a historic property to be a full signatory to an MOA concerning such property. 36 C.F.R. § 800.6(c)(2)(ii). Those rules further provide that MMS *should* invite any party that assumes a responsibility under an MOA to be a signatory to that MOA. 36 C.F.R. § 800.6(c)(2)(iii).

That instruction in the rules carries significance here because the June 2009 draft MOA provides that a representative of one or both of these tribes is to be "present on site" during the collection of approximately vibracore samples from the proposed location of each of the wind turbines. Moreover, Attachment A to the draft MOA describes several different responsibilities assigned to both the Aquinnah Wampanoag and Mashpee Wampanoag Tribes in connection with any unanticipated discovery of cultural resources or human remains. All of these provisions were included in the draft MOA at a time when MMS had formally expressed its ultimately incorrect opinion that Nantucket Sound was *not* eligible for the National Register as a historic property or a TCP. Now, with the eligibility finding, the grounds for including the Tribes as signatories to the MOA are ever more compelling.

The Tribes note that in its final rules for Alternative Energy and Alternative Uses of Existing Facilities on the Outer Continental Shelf (30 C.F.R. Parts 250, 285 and 290), MMS stated that it will provide for coordination and consultation with the executive of any Indian tribe that may be

affected by a lease, easement or ROW issued by the agency. 30 C.F.R. § 285.102). In addition, these rules provide that MMS may invite a representative of an affected Indian tribe to join in establishing a joint planning or coordination agreement in carrying out its responsibilities under its rules. *Id.*

The Tribes therefore respectfully assert that under the circumstances presented in this review of the Cape Wind project, considering the applicable requirements of federal law and the guidance provided in both the President's November 7 directive and MMS's own rules, **MMS should invite both the Aquinnah Wampanoag Tribe and the Mashpee Wampanoag Tribe to participate as signatories in the development and possible execution of the MOA for the Cape Wind project.**

Thank you again for committing to engage in and complete a robust and legally adequate consultation with both Tribes. Please contact us if you have any questions.

Respectfully,



Cedric Cromwell, Chairman
Mashpee Wampanoag Tribe

Respectfully,



Cheryl Andrews-Maltais, Chairwoman
The Wampanoag Tribe of Gay Head Aquinnah



The Wampanoag Tribe of Gay Head Aquinnah
20 Black Brook Road, Aquinnah MA 02535



Mashpee Wampanoag Tribe
483 Great Neck Rd So, Mashpee MA 02649

January 29, 2010

The Honorable Ken Salazar
Secretary of the Interior
United States Department of the Interior
1849 C Street, N.W.
Room 6156
Washington, D.C. 20240

Dear Secretary Salazar:

The Aquinnah Wampanoag and Mashpee Wampanoag Tribes sincerely thank you for your significant investment of personal time to address the serious issues presented by the proposed location for the Cape Wind project. Our tribes have repeatedly raised serious objections over the proposed project throughout the federal review of this proposal, and for the first time we believe that our concerns are being addressed, at least at the policy level. This government-to-government discussion is long overdue, and we look forward to continuing the process of consultation until an acceptable outcome has been achieved. Your recent actions treating our Tribes with respect and personal attention is a strong signal that President Obama's November 7 commitment to the Native American people of this country is meaningful and will truly affect the actions of the federal government.

While our Tribes welcome your personal actions, we remain deeply concerned over the actions of the Minerals Management Service (MMS) and the course of action that has been presented for further action on the Cape Wind proposal. Unless immediate action is taken to change the MMS approach, your own good faith actions and the President's commitment to Native Americans will be frustrated and could devolve into empty gestures. We have three specific concerns in this regard.

First, our Tribes were shocked to receive, in the very meeting on January 13 where you were pledging to work and the consult with our governments, the MMS document entitled *Documentation of Section 106 Finding of Adverse Effect (Revised) (undated)*. This is a critically important document that purports to address the adverse effects of Cape Wind on properties eligible for, or included in, the National Register of Historic Places. Of major importance to this review is the effect of the project on Nantucket Sound itself, which was determined to be eligible by the Keeper of the National Register on January 4. The basis for that finding was the similar finding of the Massachusetts Historic Commission, and the determination of both state and federal officials that the Sound is a traditional cultural property of cultural and religious significance to both Tribes.

Needless to say, MMS's revised Finding of Adverse Effect is of primary relevance to both the section 106 review of the project and the concerns of the Tribes. Despite the signal importance of the Keeper's eligibility determination, and the many new issues it presents, MMS dismissed the determination in a few brief paragraphs in the revised finding. In addition, we are deeply offended that this report, and the new findings on the effect on Cape Wind on the Sound, were developed by MMS *with no consultation with our Tribes* on the newly eligible traditional cultural property (TCP). We must ask how, *in the very same meeting* where you were pledging consultation and cooperation, MMS could distribute a very important report that it developed in isolation from the Tribes. We will address the substantive deficiencies in the MMS report in a future letter. Our Tribes raise objection to this now, with you, because the actions of MMS have undermined your own good words and actions and, in our opinion, require a prompt withdrawal of the report and the initiation of true consultation with our Tribes.

Second, the Aquinnah Wampanoag and Mashpee Wampanoag Tribes must state our concern over the time frame for action that you announced. We do not believe that the review of such a controversial and harmful project should be subject to a deadline on March 1, for a decision in April, as you announced. While the project has been pending for many years, the reasons for the extended review are the problems presented by the proposed site, the developer's refusal to consider alternative locations, the developer's refusal to undertake the necessary research, and the failure of MMS to take Tribal objections and concerns seriously. The tribal consultation problem is just one example of these deficiencies. Indeed, MMS has admitted in section 106 meetings that it did not fully understand how the process should be conducted.

We recognize that the current Administration inherited many of these problems. Your personal involvement in seeking ways to solve them is a step in the right direction. An arbitrarily set deadline, however, is not the solution. We are aware that the developer is feeling pressure to obtain project approval to make it possible to obtain the federal cash payment for tax credit, which expires at the end of this year. This deadline should not be used to force premature decisions where the private company and the federal reviewing agency have been the cause for delay and have generated the controversy by failing to consider acceptable alternatives.

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deadlines that limit consultation and are not based in law or on government-to-government respect, but instead are the result of the timing necessary to assist a private developer obtains massive federal subsidies. The record will speak for itself, and it will be clear to all involved when a decision is ready to be made.

Finally, we request that both Tribes be invited to be signatories to any Memorandum of Agreement (MOA) that would be developed for the section 106 review of this project. The most recent draft MOA for the Cape Wind project released in June 2009 lists the Aquinnah Wampanoag Tribe and the Mashpee Wampanoag Tribe as having been invited to execute the MOA as *concurring* parties only. This draft does not explain why Cape Wind Associates, LLC (the project proponent) and the U.S. Army Corps of Engineers are listed as full MOA *signatories*.

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Therefore, the National Historic Preservation Act (NHPA) requires MMS to consult with the both Tribes in connection with its review of the Cape Wind undertaking under section 106 of the NHPA. As applied to the Cape Wind project, the rules of the Advisory Council on Historic Preservation (Advisory Council) provide that MMS must consult with the two tribes "to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects" to Nantucket Sound from the Cape Wind project. 36 C.F.R. § 800.6(a). President Obama's November 7 directive confirms his administration's intent to fully comply with this consultation duty.

The Advisory Council's rules also provide that MMS may invite any Indian tribe that attaches religious and cultural significance to a historic property to be a full signatory to an MOA concerning such property. 36 C.F.R. § 800.6(c)(2)(ii). Those rules further provide that MMS *should* invite any party that assumes a responsibility under an MOA to be a signatory to that MOA. 36 C.F.R. § 800.6(c)(2)(iii).

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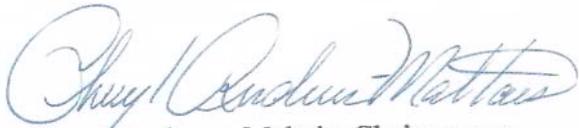
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will provide for coordination and consultation with the executive of any Indian tribe that may be affected by a lease, easement or ROW issued by the agency. 30 C.F.R. § 285.102). In addition, these rules provide that MMS may invite a representative of an affected Indian tribe to join in establishing a joint planning or coordination agreement in carrying out its responsibilities under its rules. *Id.*

The Tribes therefore respectfully assert that under the circumstances presented in this review of the Cape Wind project, considering the applicable requirements of federal law and the guidance provided in both the President's November 7 directive and MMS's own rules, **MMS should invite both the Aquinnah Wampanoag Tribe and the Mashpee Wampanoag Tribe to participate as signatories in the development and possible execution of the MOA for the Cape Wind project.**

Thank you again for committing to engage in and complete a robust and legally adequate consultation with both Tribes. Please contact us if you have any questions.

Respectfully,



Cheryl Andrews-Maltais, Chairwoman
The Wampanoag Tribe of Gay Head Aquinnah

Respectfully,



Cedric Cromwell, Chairman
Mashpee Wampanoag Tribe



Mashpee Wampanoag Tribe

November 20, 2009

Larry EchoHawk
Assistant Secretary of Indian Affairs
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary EchoHawk:

On behalf of the Mashpee Wampanoag Tribe – the People of the First Light - I want to request your support for the protection of our Tribe's religious and cultural heritage in Nantucket Sound, an ocean area regulated by the federal government. And we request your advocacy in a process currently underway before the Department's Minerals Management Service (MMS) to allow the construction of a massive wind-turbine electricity generating project in the Sound in the area of our religious cultural heritage.

The area where these massive turbines would be built includes waters, rivers, and historic lands used by our ancestors for eons for traditional gatherings, ceremonial events, and for fishing. This area has sustained us – both physically and spiritually – from time immemorial. And the Sound does so today as tribal members routinely hunt, fish, gather resources, and practice traditional spiritual ceremonies there.

Our ancient and current connection to this bountiful and sustaining area is beyond question. It has sustained us for millennia allowing us to remain a people in spite of pressure to assimilate and give up our heritage. We refused to give up our sovereignty and rights to natural resources in the past and continue to refuse now. This spirit has kept us whole and it is the bedrock on which we survive today.

The question is will the MMS hear us and fairly apply federal law protecting our religious cultural resources. Unfortunately, it is now apparent that MMS is not going to that.

The Mashpee Wampanoag Tribe after years of effort was finally recognized by the federal government in 2007. As a recognized Tribe, we are entitled to the protection of federal law and preservation of our way of life. This extends to the MMS process underway to allow the proposed electricity generation project. Indeed MMS has known for decades that the entire continental shelf might contain religious and cultural sites, and that as a general proposition any federal action on the shelf would trigger satisfying the requirements of federal antiquities law.

The Tribe raised its historic religious cultural concerns with the MMS more than five years ago and believed we would be an active partner in decision-making. However MMS delayed the required formal consultation with interested parties under Section 106 of the Act until June of 2008, and refused to undertake its responsibilities in a coordinated fashion with the development of the environmental impacts statement. To date, MMS has not made a reasonable and good faith effort to identify religious cultural heritage sites in the area and has failed to conduct research, oral history interviews, or field investigations necessary to do so. We have been on this land for thousands of years and are not swayed by those who argue a delay of a few months is somehow catastrophic to their project. It is essential to our rights and compliance with federal law that MMS undertake appropriate identification and evaluation of the religious and cultural resources of the Mashpee Wampanoag Tribe.

This delay by MMS and our reiteration of our rights have resulted in enormous pressures on MMS and the Tribe. It has created a poisonous public atmosphere for the Tribe which is being accused of an 11th hour effort to kill the project, and pressure on MMS to sweep aside its responsibilities to us and approve the project. The Tribe's cultural rights have been asserted for years in the process and MMS's refusal to do its job now should not be turned around to subject the Tribe to public accusations and even ridicule. MMS's statutory responsibilities should be carried out regardless of timing pressures asserted by others.

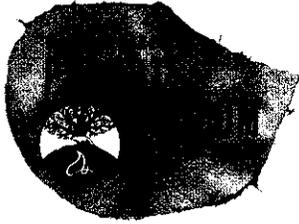
MMS's recent September 8, 2009 letter to the Tribe and others justifying its treatment of our concerns is unacceptable. It fails to explain why MMS would in effect sweep such concerns under the rug, delay formal consultation until very late in the process, and allow pressure to build to approve this massive project. As a result MMS is going to make its decision without a full or fair understanding of our religious cultural heritage – a decision which MMS interestingly acknowledges will adversely affect that heritage.

Your intervention is essential. We would like to meet with you at your earliest possible convenience to explain this unfortunate and unnecessary situation in more detail, and request that you ask Secretary Salazar for his commitment for MMS to fully comply with federal law, regulations and policies protecting religious cultural rights of recognized tribes.

I look forward to your reply.

Sincerely,


Cedric Cromwell, Chairman
Mashpee Wampanoag Tribe



11-20-09

Mr. Christopher Horrell,
Acting Federal Preservation Officer
Minerals Management Service
1201 Elmwood Park Blvd.
New Orleans, LA 70123-2394

Re: NATIONAL REGISTER ELIGIBILITY OPINION FOR NANTUCKET SOUND
TRADITIONAL CULTURAL PROPERTY, MA
CAPE WIND ENERGY PROJECT MHC # RC.29785.

Dear Mr. Horrell,

I am in receipt of a letter forwarded to me regarding the opinion of the Acting Federal Preservation Officer that Nantucket Sound is not eligible and does not meet the criteria for the National Register as a Traditional Cultural Property and Historic Property. I disagree with this determination, and I am in agreement with the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Tribe and the Massachusetts State Historic Preservation Officer (SHPO) that Nantucket Sound is a Wampanoag Traditional Cultural Property that meets the Criteria of Eligibility (36 CFR Part 60) for listing in the National Register of Historic Places under Criteria A, B, C, and D at the local level of significance.

Sincerely,

Kathleen Knowles,
Tribal Historic Preservation Officer
Mashantucket Pequot Tribe

MASHANTUCKET PEQUOT MUSEUM
& RESEARCH CENTER

110 Pequot Trail, PO Box 3180
Mashantucket, CT 06338
Phone: 860 396 6800
Fax: 860 396 6850
www.pequotmuseum.org



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,

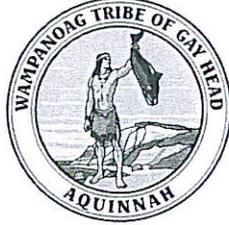
A handwritten signature in cursive script that reads "George 'Chuckie' Green".

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

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

Routing Slip for ODM-09-0417-- Appropriate Action --

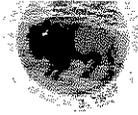
[Print](#) [Close](#)

Control Information

Control #: ODM-09-0417	Control Type: MISC	Control Date: 9/1/2009	
Rec/Int Date: 9/1/2009	Exec Sec #: 00007406	LM#:	
Resp Office: ADO MM	Surname:		
Corr. Date: 7/17/2009	Corr. Type: LETTER	Corr. Source:	
<hr/>			
TO: Title/Organization:	Last Name:	First Name:	
CITIZEN	HORRELL	CHRIS	
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THROUGH: Title/Organization:			
<hr/>			
FROM: Title/Organization:	Last Name:	First Name:	
TRIBAL HISTORIC	WASHINGTON	BETTINA M.	
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FOR SIGNATURE OF: Title:	Organization:	Date Due:	Date Signed:
N/A	ADOMM		
Subject: CAPE WIND			
Comments:			

Action Information

10/9/09 Rec'd at OREP



TASKING PROFILE

ACCN #:	ESO-00007406	Status:	Closed	Fiscal Year:	2009
Document Date:	Received Date:	Due Date:	Action Office:	Signature Level:	Doc Source:
07/17/2009	08/21/2009		LMS	AA	ITL

To (Recipient): Horrell, Chris

From (Author): Washington, Bettina M.

Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head
20 Black Brook Road
Aquinnah, MA 02535

Subject Text: Courtesy copy of letter expressing the Wampanoag Tribe of Gay Head's dissatisfaction with the MMS's handling of the government-to-government consultation regarding the Cape Wind project

Req. Surnames:

Mail Carrier:

Mail Track #:

Cross Ref:

Copies To: SIO-OES

Status Tracking: 08/31/2009 14:22:49 PM - Carrie Richardson : Per BIA, needs to go to MMS

Correspondence Specialist and Phone: SIO-OES Carrie Richardson/202-208-3181 *CMR*

Closed

Comments:

Signed:



TASKING PROFILE

<u>ACCN #:</u>	ESO-00007406	<u>Status:</u>	Closed	<u>Fiscal Year:</u>	2009
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Cross Ref:

Copies To: SIO-OES

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Correspondence Specialist and Phone: SIO-OES Carrie Richardson/202-208-3181 *CMR*

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Comments:

Signed:

*Redirection back
to Exec Sec for
MMS
ESO
7406
20 Aug*



Tribal Historic Preservation Office
20 Black Brook Road
Aquinnah, MA 02535

July 17, 2009

Mr. Christopher Horrell
Mineral Management Services
1201 Elmwood Park Blvd.
New Orleans, LA 70123

Dear Mr. Horrell,

I am in receipt of your latest email dated July 16, 2009 concerning the next consultation meeting between the Wampanoag Tribe of Gay Head (Aquinnah) (WTGH(A)) and Mineral Management Services (MMS). I would like to clarify the expectations of the Tribe on the continued Government-to-Government Section 106 Consultation meeting tentatively scheduled for the beginning of August.

The WTGH (A) THPO is deeply dissatisfied with and highly suspicious of MMS and its cancellation of our proposed July 18th - 19th consultation. The July consultation meeting was discussed at the June 3rd meeting, a lead-time of nearly 6 weeks. When we spoke at the June 16th (Tuesday) meeting all was well, handshakes to meet in July. The following Monday, June 22nd, I receive an email from you that states MMS had to cancel the consultation meeting as "many of us will be unavailable those days". Apparently not only were many of the MMS Cape Wind team unavailable, all of the MMS Cape Wind team must have been unavailable as your agency had to resort to calling in Mr. Barros, who has not been involved with the consultation process since July 2007, to be the lone representative of MMS.

The Tribe does not agree that Mr. Barros is familiar with the project, he has not been involved in any of the government-to-government and/or stakeholder consultation meetings since 2007 and therefore has not heard first hand our concerns past the original meeting. The Tribe does not appreciate having personnel changes in the middle of the consultation. The Tribe considers consultation as a *process of forming a relationship between the two governments*, and when there is a personnel change, a new relationship

and level of understanding and trust must be established before the consultation can proceed.

We do not extend an invitation to attend our cultural events without due consideration to our People. While the public comes to view the pageant, they are not privy to spending time with tribal members, learn first hand the cultural significance of the pageant and its importance to our continued tribal presence. Allowing others to see our oral history being passed on generation-to-generation is an occurrence we consider a privilege.

As stated above, your email was received on the 16th of July. The available dates for the next consultation with the WTGH (A) THPO are August 3rd and 4th, just over two weeks away. By sending this letter, and agreeing to meet with MMS, though it is on short notice, **the WTGH (A) and it's THPO office declares its commitment to government-to-government Section 106 consultation.** The WTGH (A) THPO expects that MMS will uphold its trust responsibility to the Tribe and if necessary, correct the misinformed individuals and/or organizations who are not familiar with the numerous executive orders, laws and regulations that have been enacted and enabled to ensure that the federal government's trust responsibility to consult with American Indian Tribes will be upheld. Regardless of outside entities and/or organizations calling for the termination of Section 106 consultation, the WTGH (A) THPO office will not be rushed through the consultation concerning the Cape Wind project.

The Tribe expects as stated in the letter dated June 23rd, 2009 to Dr. Rodney Cluck, all federal agencies that were present at the June 3rd meeting will be in attendance for the August consultation. The Tribe expects that MMS will be contacting the federal agency representatives and coordinating the necessary travel arrangements and/or providing the necessary information for any individual/federal government agency that is interested in attending the consultation.

In Balance, Peace and Harmony,



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

cc. Secretary Ken Salazar, Dept. of the Interior
Asst. Secretary Larry Echohawk, Dept. of the Interior
Mr. Richard Larrabee, Program Integrity Division
Mr. George Green, Mashpee Wampanoag Tribe
Senator Edward Kennedy
Senator John Kerry
Congressman William Delahunt
Mr. John Fowler, ACHP
Mr. John Eddins, ACHP
Ms. Charlene Vaughn, ACHP
Ms. Valarie Hauser, Native American Liaison, ACHP

Mr. David Saunders, BIA
Ms. Karen Adams, ACOE
Ms. Kathleen Atwood, ACOE
Ms. Brona Simon, SHPO, Commonwealth of Massachusetts
Mr. Tobias Vanderhoop, WTGH (A) Culture and Historic Commission – Chair
Dr. Rodney Cluck, Project Manager, MMS
Ms. Melaine Strait, Federal Preservation Officer, MMS

This correspondence has been sent electronically where possible with a hard copy to follow via USPS mail.



AA → BIA

AS-19-22 JUL 09 15:43

Tribal Historic Preservation Office
20 Black Brook Road
Aquinnah, MA 02535

July 21, 2009

Assistant Secretary Larry Echohawk
Department of the Interior
Bureau of Indian Affairs
1849 C Street, NW
Washington, DC 20240

Dear Assistant Secretary Echohawk,

Enclosed please find a letter written to Mr. Christopher Horrell of Mineral Management Services concerning the tentative consultation meeting next month on Martha's Vineyard.

Sincerely,

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



Tribal Historic Preservation Office
20 Black Brook Road
Aquinnah, MA 02535

June 23, 2009

Dr. Rodney Cluck
Mineral Management Services
381 Elden Street
Herdon, VA 22070

Dear Dr. Cluck,

I am writing to clarify the Wampanoag Tribe of Gay Head (Aquinnah) position on the last two meetings, June 3rd and June 16th held in Hyannis, MA; the incomplete Section 106 consultation process, including commentary on the next scheduled tribal consultation request.

These comments are offered and considered to be in conjunction with the expected ongoing and continued Government-to-Government consultation between the United States government, Mineral Management Service as the lead Federal Agency and the Wampanoag Tribe of Gay Head (Aquinnah) (herein denoted as the Tribe), a Sovereign Indian tribal Nation and the Tribal Historic Preservation Office (THPO) as required and intended under the National Historic Preservation Act (NHPA) Section 106, 35 CFR Part 800, and including but not limited to: The National Environmental Policy Act, American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, Archeological Resource Protection Act, Executive Order 13007-Indian Sacred Sites, Executive Order 13175 – Consultation and coordination with Indian Tribal Governments; Executive Order 12898 – Executive Order on Environmental Justice and the implementing regulations for these, as well as all other relevant Executive Orders, Federal Laws, statutes and regulations.

Since time immemorial, the Wampanoag and or Indigenous Northeastern Woodlands Indian People have; either traversed, fished, cultivated and occupied the entire area including the location currently under consideration for this undertaking. First and foremost, the Wampanoag Tribe of Gay Head (Aquinnah) considers the Nantucket Sound, in and of itself, traditional cultural property. The Nantucket Sound viewscape is essential to our spiritual well-being and the Cape Wind project will destroy this sacred site.

Executive Order 13007, Protection of Sacred Sites, states under *Section 1. (a)(2)...*avoid adversely affecting the physical integrity of such sacred sites and under subsection *iii*. “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.

Through the Section 106 consultation, it is the federal agency’s trust responsibility to protect the Tribe’s traditional cultural property and sacred properties from adverse effects, desecration and destruction.

At the June 3rd meeting, I had copies of the 36 CFR 800 regulations and asked how many of the MMS representatives had read them. Wyndy Rausenberger of the solicitor’s office was the only person who raised her hand in the room. I then stated that might be the reason why this consultation has been so flawed. Even so, it appeared that all others in the room except the Mashpee Wampanoag Tribe and Wampanoag Tribe of Gay Head (Aquinnah) were ready to skip over previous problems with our consultation and start speaking about alternatives, however I insisted we start at the beginning of the regulations and review the steps that should have been taken to date.

As per the regulations, 36 CFR 800.4(a) *Determine scope of identification efforts. In consultation with the SHPO/THPO, the agency official shall: (1) Determine and document the area of potential effects.* I asked if the APE has been defined. MMS had made the determination that the areas that may be visually affected by the wind farm defined the APE. To date, MMS has not come to Martha’s Vineyard Island to view the project from the vantage point of the viewscape that Cape Wind will destroy. MMS came to our reservation, located at the western end of the Island and made an incorrect assumption that because the wind farm could not be seen from our reservation, it would have no adverse effect on our People or their culture. Therefore, MMS has not complied with regulation 800.4(a)(4) *Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to 800.3(f) to assist in identifying properties, **including those located off tribal lands...***(bold added)

In addition, MMS has not complied with 800.4(c)(1) *Apply National Register criteria In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary’s Standards and Guidelines for Evaluation, the agency official shall apply the National Register criteria (36CFRpart 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility.... The Agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.*

The Tribe asserts that we consider Nantucket Sound a Traditional Cultural Property and is eligible for the listing in the National Register of Historic Places. Wyndy Rausenberger of MMS states that because she spoke with personnel in the Keeper’s Office and was told that an area of water and/or waterways usually does not qualify for eligibility for the

National Register of Historic Places, MMS has taken that conversation as a determination. That is not how an official determination is made; an official form must be submitted. At the stakeholders meeting on June 16th, I questioned as to whether she had completed and submitted the proper form, there was no answer. This crucial step has not been completed. Therefore it was determined that MMS will be completing the necessary paperwork to get a formal determination of eligibility from the Keepers Office. At that meeting the Massachusetts SHPO verbally agreed that she would consider the Nantucket Sound a Traditional Cultural Property to the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah).

The Tribe has maintained from the start there would be an adverse effect with the placement of the wind farm in the Nantucket Sound as found in regulation 800.5(a)(2) (i) *Physical destruction of or damage to all or part of the property;..(iv)Change of the character of the property's use or of physical features with the property's setting that contribute to its historic significance; (v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features. and, (vii)Transfer, lease or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.* MMS has agreed that there will be an adverse effect on the traditional cultural property and cultural practices of the Wampanoag People.

Since both parties agree that there will be an adverse effect, the agency is trying to proceed with section 800.6 – *Resolution of adverse effects*. However, the agency cannot fulfill the regulation 800.6(a)(1)*Notify the Council and determine Council participation. The agency official shall notify the council of the adverse effect finding by providing the documentation specified in 800.11(e)*. Since our consultation is not completed, the information is incomplete, and therefore any agreements and/or decisions would be premature.

At the June 16th stakeholders meeting, MMS was trying to get the stakeholders to look at alternative sites. First, the “Summary of Impacts for Main Alternatives Relative to Proposed Action” that we were reviewing was so confusing, even MMS had to go back into the FEIS to understand how to read the chart. It was discovered that incorrect symbols were used in the chart, resulting in opposite meanings from the original intent. Both George Green and I had to bring up the point that since the Section 106 consultation with the tribes was not complete, the cultural information on the chart could not be complete and MMS was asking the stakeholders to make a decision using incomplete and misleading information.

At the May comment meeting, I asked where the oil for the transformer would be berthed from, a representative from Cape Wind had said it would most likely berth from Woods Hole. When we met on June 3, 2009, I asked the same question and you told me it would come out of Quonset, RI. The original consultation did not include these cultural and historic areas and were not considered for adverse effect due to the lack of adverse visual effect. The Tribe is now aware that No. 2 oil will be transported from Quonset, RI through the Vineyard Sound into Nantucket Sound, the site of the proposed wind farm. This shipping route has not been considered in the Tribe's Section 106 consultation and includes, but not limited to, Narragansett Bay, the Taunton River Watershed, Buzzards Bay, Vineyard Sound, Menemsha and Squibnocket Ponds, and Lake Tashmoo. There has

been not been any consultation at all concerning this new information and we are making an official request to expand the area of potential effect to include all these waterways and shorelines.

The new information concerning the transportation of oil through the Vineyard Sound denotes that the Tribe was misled and therefore the consultation was not conducted properly and certainly shows a deficiency in the level of effort and good faith as stated per regulation 800.4(b)(1) *Level of effort. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take in to account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects.*

This expansion of the APE will require extensive review of the north shores of Martha's Vineyard and Elizabeth Islands per the requirement under 800.4(a)(4) *Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature and activities associated with such sites.*

Once we identify the eligible properties, the historic significance must be evaluated as stated in 800.4(c)(1) *"Apply National Register criteria. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, the agency official shall apply the National Register criteria (36CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibilityThe agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them."* and 800.4(c)(2) *Determine whether a property is eligible.* (see list of historic places for possible inclusion on National Register of Historic Places) It will then follow that criteria 800.10 will apply to those Historic Places, **800.10 Special requirements for protecting National Historic Landmarks.** (a) *Statutory requirement. Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in § 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.*

While our tribal Section 106 consultation process with MMS is far from over, it should also be noted that while the THPO has the authority to speak for the Tribe, our individual tribal members have the right to comment in their own voice concerning this new information and this forum has been denied to them. They are due their right to comment in the public consultation process as stated in 36 CFR Part 800.2 *Participants in the*

Section 106 process (F)(c)(5)(d)(1) Nature of involvement. The views of the public are essential to informed Federal decision making in the section 106 process.

As we discussed alternatives at the June 16th meeting, David Saunders from the Bureau of Indian Affairs (BIA) asked if the Tribe could support either the proposed project or an alternative located off the south coast of Nantucket. My response is that the south of Nantucket is still near our Island home and we will need to do more work in order to know whether it can be considered as an acceptable alternative site. The Nantucket Horseshoe Shoals is not an acceptable site. Therefore until we complete further study, my response is no action/denial of the permit. We are heartened that the BIA was present to show its support for the tribal concerns.

Since last September, throughout our comment meetings I had asked for a balloon test in the project area. At the June 3rd meeting the request was discussed and I was quite surprised that you voiced a deep concern for the environmental effects of such a test. Apparently, the effects would be devastating for a short test, but not for permanent structures over the next 20 years. There was also mention of the cost that such a test would be and that MMS would not be able to support this project. Please send a summary of the estimated costs as soon as possible to my attention so we may continue our discussion at our next tribal consultation meeting.

As the Tribe is still in ongoing consultation with MMS, at the June 3rd meeting we had requested a consultation meeting on Martha's Vineyard on July 17th and 18th or the 18th and 19th, 2009. At the June 16th meeting, I spoke with Chris Horrell and Wyndy Rausenberger and we were looking forward to meeting next month, the 18th and 19th. Yesterday I received an email from Chris that many of the MMS personnel will not be able to meet on June 18th. In addition, he wasn't sure who from MMS was invited. The Tribe was not contacted as to who should be at the June 3rd meeting, why is this an issue now? Anyone who was at the June 3rd may attend the consultation, with the exception of Brandie Carrier Jones as I do not believe we need a moderator. MMS can provide a recorder for the formal meeting portion of our consultation. If the intent of the visit is to get the most information, then it would follow, the more people from MMS, BIA and ACHP that attend, the better. The Tribe will have a cultural event that pertains directly to our oral history and its relationship to the Cape Wind Project hence the specific date. I would strongly urge those personnel that can make the consultation to be in attendance to achieve a greater understanding of our culture.

In January, MMS said the tribes were to blame for the lack of Section 106 consultation, we find this accusation vexing. A federal agency that hasn't read the 36 CFR 800 regulations is attempting to conduct consultation, failing miserably at it, and managing to make the consultation dates they set, but can't make the dates the Tribe requests even if it's given a large lead time. I will consider the cancellation of the July consultation on the Island a complete failure of compliance of MMS consultation responsibilities.

Earlier this month, a group of looters of American Indian items of cultural patrimony were arrested. Assistant Secretary of the Department of the Interior and head of the Bureau of Indian Affairs, Larry Echohawk stated, "Today's action should give American Indians and Alaska Natives assurance that the Obama Administration is serious about preserving and protecting their cultural property." Whether an item is stolen or a sacred

site is destroyed, they are gone from our People and our culture forever. We are expecting the same assurance and federal trust responsibility to preserve and protect our traditional cultural properties.

In Balance, Harmony and Peace,

Bettina M. Washington

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

cc. Secretary Ken Salazar, Dept. of the Interior
Asst. Secretary Larry Echohawk, Dept. of the Interior
Mr. Richard Larrabee, Program Integrity Division
Mr. George Green, Mashpee Wampanoag Tribe
Senator Edward Kennedy
Senator John Kerry
Congressman William Delahunt
Mr. John Fowler, ACHP
Mr. John Eddins, ACHP
Ms. Charlene Vaughn, ACHP
Ms. Valarie Hauser, Native American Liaison, ACHP
Mr. David Saunders, BIA
Ms. Karen Adams, ACOE
Ms. Kathleen Atwood, ACOE
Ms. Brona Simon, SHPO, Commonwealth of Massachusetts
Mr. Tobias Vanderhoop, CHC – Chair
Ms. Melaine Strait, Federal Preservation Officer, MMS
Mr. Christopher Horrell, MMS

This correspondence has been sent electronically where possible with a hard copy to follow via mail.

List of Historic Places due to expansion in Area of Potential Effect

Including, but not limited to:

Gay Head Cliffs – National Natural Landmark
Gay Head Lighthouse – National Register
Moshup's Bridge (Devil's Bridge)/Cuttyhunk
Menemsha Village
Menemsha Pond
Squibnocket Pond
Prospect Hill
Peaked Hill (SHPO recognizes eligibility)
Menemsha Clay works
Cedar Tree Neck
Lake Tashmoo
Penikese Island



Mashpee Wampanoag Tribe
483 Great Neck Rd. P.O. Box 1048 Mashpee ma 02649



Andrew Krueger
Minerals Management Service
U.S. Department of the Interior
31 Elden Street
Herndon, Va.02170

Dear Andrew,

I have reviewed the proposed agenda for the June 16th 106 consultation meeting. It has also been brought to my attention M.M.S. is under the impression that Secretary Kempthorne grandfathered this project in a way that no other geographic location could be considered as an alternative, if this is true we demand that M.M.S. provide support documentation to verify.

MMS has told the tribes that all alternatives listed in the alternative section 3.3.5 could be considered, if this is not true it is an indication that all consultation has been an empty exercise showing a lack of good faith.

The problem might come from a lack of understanding 36CFRPart 800, when asked who had read 36CFRPart800 only Wyndy Rausenberger of the solicitor's office raised her hand this was very troubling to me. MMS has a trust responsibility under section 106 of the National Historic Preservation Act (NHPA) 36CFRPart800 or Executive Order 13175 to conduct TRUE and MEANINGFUL Government to Government consultation, which if the above is true M.M.S. has not met.

MMS has already determined that this project location will have an adverse effect on 28 Historic Properties, one Historic District and Native American sacred sites and you know there is an alternative site that could avoid any adverse effects on historic properties.

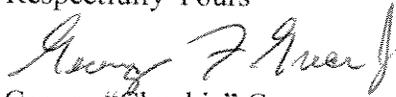
M.M.S. has also failed in its trust responsibility to preserve the physical integrity of our sacred sites; the southeastern view shed and our right to our religious and spiritual practices as defined in Executive Order 13007 and the American Indian Religious Freedom Act

In closing I would like to quote from 36CFRPart800 s800.1(c) Timing. The agency official must complete the section 106 process "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with the section 106, provided such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The agency official SHALL ensure that the section 106 process is initiated early in the undertaking's,

Andrew Krueger
Minerals Management Service
U.S. Department of the Interior
31 Elden Street
Herndon, Va.0217

Planning process so that a broad range of alternatives may be considered during the planning process for the undertaking.

Respectfully Yours



George "Chuckie" Green
Designee on Historic Preservation
Mashpee Wampanoag Tribe

Cc

The Honorable Kenneth Salazar
Honorable Mary Bomar, Director NPS
Senator Edward Kennedy
Senator John Kerry
Senator Byron Dorgan
Congressman William Delahunt
Congressman Barney Frank
Franklin Keel Regional Director BIA
John Nau III, Chairman ACHP
Larry Echohawk



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

March 19, 2009

Rodney E. Cluck
Minerals Management Service
U.S. Department of the Interior
31 Elden Street
Herndon, Va.02170

Dear Dr. Cluck,

The Mashpee Wampanoag Tribe (The Tribe) feels this document should not have been released before the completion of the 106 process, as your document confirms on pg. E12 Cultural Recourses, "Pending on outcome of Section 106 process". Minerals Management Service (MMS) has ignored the Tribe's Religious freedom, maybe because the 106 process, like the document, is incomplete.

On page 5-243 you reference my DEIS comments. You quote a legal remedy and then dismiss it by saying, "...however in practicality it is entirely possible that unanticipated archeological sites (e.g. tribal ancestral sites) could be inadvertently disturbed during lease activities and it would neither be recognized nor reported."

On page 7-2 you state, "In June 2008 MMS initiated formal consultation under Section 106" and the first meeting was July 23rd. At that meeting we discussed meeting format. Our next meeting was September 8th at which we discussed why the 300 foot Area of Potential Effect did not apply. We also proposed site visits, which were never scheduled.

In the next section you say you had formal meetings with the Mashpee Wampanoag Tribe on July 26, 2006, but the Tribe was not federally recognized until February 15, 2007.

All these things are just examples of disrespect of tribal rights, incomplete research and distortion of the facts.

Respectfully Yours,

A handwritten signature in black ink, appearing to read "George Green".

George "Chuckie" Green
Mashpee Wampanoag Tribe



UNITED SOUTH AND EASTERN TRIBES, INC.
711 Stewarts Ferry Pike • Suite 100 • Nashville, TN 37214
Telephone: (615) 872-7900 • Fax: (615) 872-7417

March 11, 2009

The Honorable Kenneth L. Salazar
Secretary of the Interior
1849 C Street, NW
Room 6156
Washington, DC 20240

RE: USET Resolution 2009-026: *Call to Department of Interior to Halt Minerals Management Services Action on Cape Wind Project, Nantucket Sound, Massachusetts*

Dear Honorable Kenneth Salazar:

On behalf of United South and Eastern Tribes, Inc. (USET), the attached resolution is presented for your information and advocacy in support of our member tribes.

This resolution is one of many resolutions on various areas of Indian affairs policy approved by the USET Board of Directors at the recent 2009 USET Impact Week Meeting and is a public expression and stance on a specific issue affecting Indian Country.

USET is an intertribal organization comprised of 25 federally recognized Tribes from twelve states and we look forward to working with you to carry out the intent of this resolution. As appropriate, would you please provide acknowledgement of receipt of this resolution including actions that have been taken or planned on our behalf?

Please call the USET office at (615) 872-7900 if you have questions.

Sincerely,

UNITED SOUTH AND EASTERN TRIBES, INC.

Michael J. Cook
Executive Director

(w/Attachment)

RECEIVED
MARCH 25 2009

2009 MAR 25 10:00Z

RECEIVED

449827

"Because there is strength in Unity"



United South and Eastern Tribes, Inc.
711 Stewarts Ferry Pike • Suite 100 • Nashville, TN 37214
(P): 615-872-7900 • (F): 615-872-7417

USET Resolution No. 2009:026

CALL TO DEPARTMENT OF INTERIOR TO HALT MINERALS MANAGEMENT SERVICES ACTION ON CAPE WIND PROJECT, NANTUCKET SOUND, MASSACHUSETTS

- WHEREAS,** United South and Eastern Tribes, Incorporated (USET) is an intertribal organization comprised of twenty-five (25) federally recognized Tribes; and
- WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member Tribe, as the Board of Directors comprises delegates from the member Tribes' leadership; and
- WHEREAS,** The Wampanoag Tribe of Gay Head (Aquinnah), People of the First Light, are opposed to the Cape Wind Project being considered for development in Nantucket Sound, part of their Ancient Homelands of the Wampanoag People; and
- WHEREAS,** The Wampanoag Tribe of Gay Head (Aquinnah) regards Nantucket Sound as a Traditional Cultural Property (TCP) and Sacred Site; and
- WHEREAS,** the Cape Winds Wind Farm Project will forever change the physical integrity of the Sacred Site; and will ruin the eastern vista viewshed, essential to maintaining the Tribal identity of the Wampanoag people and their spiritual wellbeing; and
- WHEREAS,** the Minerals Management Services (MMS) has failed to fully comply with the National Historic Preservation Act, Section 106 process and has not completed the required consultation with the Wampanoag Tribe of Gay Head (Aquinnah); and
- WHEREAS,** due to this failure to fully consult in compliance with the Act; we consider the Final Environmental Impact Study incomplete and invalid; therefore, be it
- RESOLVED** the USET Board of Directors calls upon the Department of the Interior to halt any further Mineral Management Services action on the Cape Winds Wind Farm Project due to the lack of or failure to complete good faith meaningful consultation, lack of compliance with existing regulations and failure to adequately consider reasonable and/or other viable alternatives.

CERTIFICATION

This resolution was duly passed at the USET Impact Week Meeting, at which a quorum was present, in Arlington, VA, on Thursday, February 12, 2009.

Brian Patterson, President
United South and Eastern Tribes, Inc.

Robert McGhee, Secretary
United South and Eastern Tribes, Inc.

"Because there is strength in Unity"