Appendix J

Massachusetts Historical Commission

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

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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

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.

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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

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
Craig Olmsted, Cape Wind Associates, LLC
John Eddins, Advisory Council on Historic Preservation
Janet Snyder Matthews, Keeper of the National Register, National Park Service
Bettina Washington, Wampanoag Tribe of Gay Head (Aquinnah) THPO
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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 whalemen. 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 whalemen 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 quahoging, 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 though 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.

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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

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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

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

RECEIVED 9/14/09 at OAOP

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,

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
Bettina 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. Wattley, Alliance to Protect Nantucket Sound
Mark Voigt, Nantucket Historical Commission
Matthew F. Pawa, Esq.

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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

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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

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
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Glenn G. Wattley, Alliance to Protect Nantucket Sound
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Sarah K. Faldetta, ESS Group Inc.
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.

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.

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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.

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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

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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James T. Kardatzke, US DOI Bureau of Indian Affairs Eastern Region
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Bettina Washington, Wampanoag Tribe of Gay Head (Aquinnah)
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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

Betsy Friedberg
National Register Director
Massachusetts Historical Commission

enclosures

cc: Chairperson, Harwich Historical Commission
Susan Brauner, Harwich
Sarah Korjeff, Cape Cod Commission

G59-B-12.3

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

August 11, 2004

Christine A. Godfrey
Chief, Regulatory Division
US Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

ATTN.: Karen Kirk Adams

RE: Cape Wind Energy Project, Barnstable and Yarmouth, MA.
MHC #RC.29785. COENED-R #199902477. EOEA #12643. PAL #1485.01.

Dear Ms. Godfrey:

The Massachusetts Historical Commission (MHC), office of the State Historic Preservation Officer, is in receipt of your correspondence of July 14, 2004, received at this office on July 19, 2004, concerning the above referenced project and containing your determination of effect for historic properties and a draft Programmatic Agreement. The MHC is also in receipt of the technical report, *Visual Assessment of Multiple Historic Properties, Cape Wind Energy Project,* prepared by the PAL. After a review of the materials submitted, MHC has the following comments.

The MHC concurs with your determination that the preferred alternative for the Cape Wind project will 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)).

An effect determination has not yet been prepared for archaeological properties. MHC's comments of May 19, 2004, on the results of the marine reconnaissance archaeological survey, provided recommendations, including the implementation of archaeological investigations to locate and identify National Register-eligible properties in the project Area of Potential Effect (APE). As the avoidance analysis and identification survey have not yet been advanced, and as modifications to the APE are contemplated (because of the likely adjustments in the locations of project facilities), it is not possible at this time for the MHC and consulting parties to provide substantive comments on what effects the proposed project may have on significant archaeological resources.

220 Morrissey Boulevard, Boston, Massachusetts 02125
(617) 727-8470 • Fax: (617) 727-5128
www.state.ma.us/sec/mhc

The MHC understands that the Corps will continue to consider public comments on this undertaking received during the Massachusetts Environmental Policy Act (MEPA) and National Environmental Policy Act (NEPA) review processes in fulfillment of the requirements set forth at 36 CFR 800.2. Under the provisions of 36 CFR 800.2, the MHC recommends that the Corps identify consulting parties identified during the public comment period for the EIR/EIS review. While the regulations at 36 CFR 800 allow for the drafting of Programmatic Agreements in order to govern the resolution of the adverse effects in situations where the undertaking involves a complex project (36 CFR 800.14(b), the MHC is concerned that the draft Programmatic Agreement does not include provisions for public comment or language that adequately describes a meaningful consideration of alternatives to the preferred alternative that would avoid, minimize or mitigate the effects of the proposed project. While the MHC is aware that the NEPA/MEPA process provides the vehicle for disseminating information concerning the proposed project and for receiving public comment in compliance with Section 106 of the National Historic Preservation Act, the mechanism by which the adverse effect is to be considered and resolved through consultation (36 CFR 800.6) must be more clearly and firmly established. Thus, it is premature to submit comments on the draft Programmatic Agreement.

According to 36 CFR 800.14(b)((3)), "consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects…shall follow Sec. 800.6." In light of this provision, MHC requests the opportunity to comment more fully on a Programmatic Agreement following its publication in the DEIR/EIS, when the supporting documentation regarding consideration of alternatives is made available and the MHC, the Tribal Historic Preservation Officer (THPO), and other consulting and interested parties have been afforded the opportunity to review it. This will also enable the Corps to take public comment into account concerning the project and to develop a meaningful mechanism for public involvement in the resolution of the adverse effects of the proposed project.

The MHC recommends that a more substantive method be established for project design that will minimize visual impacts during the day and night. The Corps and the proponent should consider alternative locations, configurations, designs, and light fixtures to minimize or avoid the adverse effects. The Corps and the proponent should consider and propose additional mitigation programs that would provide other permanent public benefits and which might directly benefit the preservation of historic properties and the public, should the alternatives study fail to identify a prudent or feasible alternative that would avoid the adverse effects.

Because the identification, evaluation, and consultation process for the project is incomplete for archaeological properties, the draft Programmatic Agreement is also premature until comments are received from consulting parties and the public. The MHC recommends that the Corps develop a more detailed plan for the identification and evaluation of archaeological properties.

The Massachusetts Board of Underwater Archaeological Resources (MBUAR) should be recognized as an agency with expertise on archaeological identification and evaluation surveys. The MBUAR, the THPO, and the Massachusetts Commission on Indian Affairs should be included among those with whom the Corps will consult on archaeological identification and evaluation surveys and the effect finding and proposed treatment, in addition to consultation with the MHC. Procedures for identification and evaluation surveys should be consistent not only with 36 CFR 800, but also with 950 CMR 70 (terrestrial survey areas) and 312 CMR 2 (marine survey areas). Any mitigation program should provide permanent public benefits and directly benefit the preservation of archaeological properties. An Unanticipated Discoveries Plan for Archaeological Resources should be fully consistent with the Massachusetts Unmarked Burial Law and NAGPRA, whichever may apply depending on the location of the discovery in non-Federal or Federal lands, respectively.

A consultation process on effects to cultural resources during operation and maintenance of the facilities should also be developed as well as emergency consultation (consistent with 36 CFR 800.12) in the event that an emergency occurs during operation. The Corps should develop procedures requiring review and consultation on effects to cultural resources if the project should be terminated during or after construction, or if dismantling of the facilities is proposed.

These comments are offered to assist in compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (36 CFR 800), MGL c. 9, ss. 26-27C (950 CMR 70-71), MEPA (301 CMR 11), and the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Fed. Reg. 190(1983)). Please contact Edward L. Bell or Ann Lattinville of my staff if you have any immediate questions.

Sincerely,

Brona Simon

Brona Simon
State Archaeologist
Deputy State Historic Preservation Officer
Massachusetts Historical Commission

xc:
Don Klima, Advisory Council on Historic Preservation
Kate Atwood, USACORPS
Rebecca Watson, DOI/Land and Minerals
Conrad C. Lautenbacher, Jr. NOAA
Cheryl Andrews-Maltais, THPO, Wampanoag Tribe of Gay Head (Aquinnah)
Massachusetts Commission on Indian Affairs
Cape Wind Associates, LLC
Terry Orr, Environmental Science Services, Inc.
Deborah C. Cox, PAL
Secretary Bob Durand, EOEA Attn. MEPA Unit
Massachusetts Coastal Zone Management
Victor Mastone, EOEA, Board of Underwater Archaeological Resources
Cape Cod 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

Appendix K

National Park Service

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

H32(2280)

MAY 2 4 2007

Memorandum

To: Chrysandra Walter, Acting Regional Director, Northeast Region

From: Janet Snyder Matthews, Keeper, National Register of Historic Places

Subject: Potential New Area of Significance, Dune Shacks of the Peaked Hill Bars Historic District, Barnstable County, Massachusetts

On January 26, 2007, you requested a determination of whether or not the District noted above meets the National Register criteria for recognition as a Traditional Cultural Property (TCP). Based on our review of this issue as summarized below, we have concluded that the District does not satisfy these requirements.

Background

The Dune Shacks of the Peaked Hill Bars Historic District was determined eligible for listing in the National Register of Historic Places on May 12, 1989, under National Register criteria A, B, and C. The District covered approximately 1,500 acres, included both the dune shacks and the dune landscape, and was described as a historic cultural landscape with a concentration of natural and cultural resources. The Determination of Eligibility was based on recognition that the District is significant under criteria A, B, and C for its role in the development of American art, literature, and theater; for its association with the life of American poet Harry Kemp; and for its architecture. In the DOE decision, the Dune Shacks of the Peaked Hill Historic District represents "a historic cultural landscape comprised of a distinctive, significant concentration of natural and cultural resources united by their shared historic use as a summer retreat for the Provincetown colony of artists, writers, poets, actors, and others....the District is significant for the shacks' collective use by the artistic community."

Recently, the National Park Service additionally evaluated the Dune Shacks of Peaked Hill Bars Historic District to establish whether the District may also be identified for its significance as a TCP with reference to Criterion A. To assist in this evaluation, the National Park Service hired, as consultants, ethnographers who prepared the following two studies:

- Robert J. Wolfe, "Dwelling in the Dunes: Traditional Use of the Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod" (August 2005) and

- Robert J. Wolfe and T. J. Ferguson, "Traditional Cultural Property Assessment, Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod National Seashore" (May 3, 2006).

Request from Northeast Regional Office

Your memorandum of January 26, 2007, indicated that the Northeast Regional Office staff, after review of the studies, the original National Register Determination of Eligibility (DOE), and other relevant information, provided the following opinion with respect to this issue:

- The District has historical significance as described in the DOE;
- Members of core families preserve knowledge of shack histories and local traditions of shack use and maintenance that is greatly valued by NPS;
- Agreement with the general assessment by consultants Wolfe and Ferguson that the Lower Cape towns of Provincetown, North Truro, and Wellfleet may well be considered as the "community" for purposes of this determination, but believe that the dune dwellers and their networks of friends are not, as a whole, a segment of the Lower Cape community because significant numbers of them are permanent residents in other, off-Cape communities and thus are not associated with the historic context of the Lower Cape community;
- The dune families and their individualized networks are not a community in the sense used in National Register Bulletin # 38: *Guidelines for Evaluating and Documenting Traditional Cultural Properties* due to their widely dispersed residential patterns, and because many individuals have few associations with each other except during short periods of seasonal dune occupation; they are more properly characterized as a collectivity practicing similar lifestyles while they are in the District; and
- The District should therefore not be considered eligible as a TCP under National Register Bulletin # 38.

Massachusetts SHPO Opinion

In a letter dated October 20, 2006, to George E. Price, Jr., Superintendent of Cape Cod National Seashore, Brona Simon, Deputy State Historic Preservation Officer for Massachusetts, disagreed with the opinion of the Northeast Regional Office staff, indicating that in her opinion, the detailed assessments written by Wolf and Ferguson:

- Rely heavily upon the guidance and definitions provided in National Register Bulletin # 38;
- Provide a reasoned discussion of the definitions of "community," "subgroup," "traditional culture," and "coterie;"
- Identify the long-term families, residents, and caretakers of the Dune Shacks as a subgroup of the Provincetown-Lower Cape Community, and of the Portuguese-Yankee maritime and writer/artists communities;
- Categorize dune shack residents and caretakers as carriers of the cultural traditions associated with living in the harsh conditions and natural setting of the dune shacks; and

- Identify dune shack supporters as a secondary group of tradition bearers who interact within the Provincetown community and help pass on the traditions of dune shack living.

Comments Received

Although not required by law or policy, to ensure an opportunity for adequate public input, our office provided a 45-day public comment period ending on March 17, 2007, regarding this issue. Our office reviewed the complete record associated with the District's 1989 Determination of Eligibility, as well as all materials received by our office regarding whether the District may also be identified for its significance as a TCP with reference to Criterion A. During the comment period, the National Register office received over 100 letters, many of which enclosed photographs, pages from publications, and other memorabilia. In addition, the Peaked Hill Trust submitted a sizeable notebook that included extensive transcribed interviews, letters, and email messages that testified to the importance of the dune shacks to Trust members.

The letters received fell into three distinct groups: 1) letters from long-term users of the dune shacks, whose families had occupied the shacks for extended periods of time on a seasonal basis; 2) letters from short-term users of the dune shacks, whose use was made possible through the lottery of the Peaked Hill Trust; and 3) letters from interested individuals who testified to the importance of preserving the shacks. The Peaked Hill Trust notebook provided substantial documentation that the short-term users of the dune shacks also were an important constituency in defining the dune shack society. (Since the 1989 Determination of Eligibility, the National Park Service has worked with organizations such as the Peaked Hill Trust, to make the dune shacks available to a broad constituency of short-term users.)

Traditional Cultural Properties

National Register Bulletins provide guidance and technical information regarding the evaluation of cultural resources. National Register Bulletin # 38 provides flexible guidance regarding the evaluation and documentation of TCPs. In general, as discussed more fully in the Bulletin, a TCP has the following characteristics:

- A living, traditional group or community;
- The group/community must have existed historically and the same group/community continues to the present;
- The group/community must share cultural practices, customs, or beliefs that are rooted in the group/community's history;
- These shared cultural practices, customs, or beliefs must continue to be held or practiced today;
- These shared cultural practices, customs, or beliefs must be important in maintaining the continuing cultural identity and values of the group/community;
- The group must transmit or pass down these shared cultural practices, customs, or beliefs through the generations, usually orally or through practice; and
- These shared cultural practices, customs, or beliefs must be associated with a tangible place, and the place must be directly associated with the identified cultural practices.

Why the Dune Shacks of the Peaked Hill Historic District Does Not Have Significance as a TCP

Our review of the submitted materials demonstrates that the District should not be identified for its significance as a TCP with reference to Criterion A. In this regard, it is particularly important that the District does not meet one of the most important characteristics of a TCP—that "**the group/community must have existed historically and the same group/community continues to the present.**" The groups that claim traditional associations with the Dune Shacks of the Peaked Hill Bars Historic District cover a range of peoples, including long-term occupants of the dune shacks, short-term occupants, transient visitors, residents of the Provincetown-Lower Cape Community, and likely other groups beyond the immediate locality. The groups that are culturally identified with the District were historically (and continue to be) fluid, evolving, and different from one year to the next.

In making this determination, we considered the Wolfe report, "Dwelling in the Dunes" and the Wolfe and Ferguson report, "Traditional Cultural Property Assessment." Our review found that these reports focus on a relatively small component of the multiple groups that claim traditional associations with the Dune Shacks of the Peaked Hill Bars Historic District—the long-term families and their friends who use, care for, and maintain due shacks. In the "Dwelling in the Dunes" report, Wolfe states that "the primary sources of information for this ethnographic report were long-term shack residents." The report lists 47 long-term residents who were interviewed for the report and who were associated with particular principal dune shacks. As a consequence, "Dwelling in the Dunes" provides intensive and detailed information on the long-term residents who value the District and the shacks. The Wolfe and Ferguson report, "Traditional Cultural Property Assessment" builds on the Wolfe report and focuses on the significance of the Dune Shacks of the Peaked Hill Bars Historic District to the long-term dune shack families.

This focus on a small component of the multiple groups that claim traditional associations with the District is in marked contrast with a substantial number of letters that were mailed to the National Register office during the 45-day comment period that expressed concern that the reports had defined the associated community too narrowly. Within this group of letters, some respondents did not believe that it was possible to identify a group of people who represented the cultural focus of the shack district because this group was always changing. The groups included long-term as well as casual, transient visitors. The extensive notebook provided by the Peaked Hill Trust, which included transcribed interviews with Trust members, as well as letters, confirmed the character of the associated community. Many members of the Peaked Hill Trust felt that transient users/tenants had not been included in the Wolfe report, but that they constituted an important component to shack culture.

Effects of the Decision

The fact that the Dune Shacks of the Peaked Hill Historic District should not be identified for its significance as a TCP with reference to Criterion A does not materially affect the1989 Determination of Eligibility of the Dune Shacks of Peaked Hill Bars Historic District for listing in the National Register of Historic Places under criteria A, B, and C for its role in the development of American art, literature, and theater; for its association with the life of American

poet Harry Kemp; and for its architecture. The property remains as eligible for inclusion in the National Register and will be treated in accordance with this designation. Nor does it affect the ongoing responsibility of park management to consult with the community and the various groups within the community on its planning and management activities. As the property has been determined eligible for the National Register, we recommend that the park prepare and submit a nomination of the District for listing in the National Register.

Thank you for your cooperation and assistance in providing information on this matter. Please note that a copy of this memorandum will be retained in the permanent National Register file for the Dune Shacks of the Peaked Hill Bars Historic District. If you have other questions regarding this matter, please contact Paul Loether, Chief of the National Register of Historic Places and National Historic Landmarks Programs at (202) 354-2003 or paul_loether@nps.gov.

cc: George E. Price, Jr., Superintendent, Cape Cod National Seashore
Ronald Kaufman, Chairman, Cape Cod National Seashore Advisory Commission
U.S. Senator Edward M. Kennedy
U.S. Representative William Delahunt
Brona Simon, Executive Director/State Historic Preservation Officer, Massachusetts
Provincetown Board of Selectmen
Truro Board of Selectmen
Provincetown Historical Commission
Truro Historical Commission
Kelly Fanizzo, Advisory Council on Historic Preservation
Robert J. Wolfe, Robert J. Wolfe and Associates
T. J. Ferguson
Keith A. Bergman, Town Manager, Provincetown Town Hall
John Thomas, Chair, Cape Cod National Seashore GMP Implementation Advisory Committee

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

DETERMINATION OF ELIGIBILITY NOTIFICATION

National Register of Historic Places
National Park Service

Name of Property: The Turners Falls Sacred Ceremonial Hill Site (Formerly, The Airport Improvement Project – Turners Falls Municipal Airport)

Location: Franklin County **State:** Massachusetts

Request submitted by: John C. Silva, Manager, Environmental Programs, FAA, New England Division

Date received: 05/25/2007 **Additional information received** 11/07/2008

Opinion of the State Historic Preservation Officer:

_Eligible X_Not Eligible _No Response _Need More Information

Comments:

The Secretary of the Interior has determined that this property is:

X_Eligible **Applicable criteria:** A, D _Not Eligible

Comment: See attached comments.

_Documentation Insufficient
(Please see accompanying sheet explaining additional materials required)

Janet Snyder Matthews
Keeper of the National Register

Date: 12/11/2008

WASO-28

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

RECEIVED
NAT REGISTER OF HISTORIC PLACES
NATIONAL PARK SERVICE

July 24, 2009

J. Paul Loether
Chief
National Register of Historic Places
National Historic Landmarks Program
1849 C Street N.W.
Mail Stop 2280
Washington D.C. 20240

Dear Chief Loether,

Enclosed is a resolution voted by the Mashpee Wampanoag Tribal Council Board of Directors on July 15, 2009. The Mashpee Wampanoag Tribe holds Nantucket sound as sacred and has a historic and religious connection to it and sees it as a Traditional Cultural Property

Respectfully Yours,

George "Chuckie" Green
Tribal Designee for Historic Preservation
Mashpee Wampanoag Tribe

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

2009-RES-022
Horseshoe Shoal Resolution

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

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

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

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

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

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

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

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

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

CERTIFICATION

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

DATED THIS 15th day of July, 2009

Cedric Cromwell

Cedric Cromwell, Chairman
Mashpee Wampanoag Tribal Council

ATTEST:

Marie Stone

Marie Stone, Secretary
Mashpee Wampanoag Tribal Council

H32(2280)

AUG 17 2009

Mr. George "Chuckie" Green
Tribal Designee for Historic Preservation
Mashpee Wampanoag Tribe
483 Great Neck Road
P.O. Box 1048
Mashpee, Massachusetts 02649

Dear Mr. Green

Thank you for your letter of July 24, 2009, to the National Register of Historic Places submitting a Mashpee Wampanoag Tribal Resolution (2009-RES-022 Horseshoe Shoal Resolution) requesting that the National Park Service determine Nantucket Sound a Traditional Cultural Property.

Historic places listed in or formally determined to be eligible for listing in the National Register can be recognized as Traditional Cultural Properties through one of two processes; either by nomination to the National Register of Historic Places by the appropriate State, Federal or Tribal Historic Preservation Officer (as stipulated in Federal Regulations 36 CFR Part 60), or in response to a determination of eligibility request by the appropriate Federal Preservation Officer as part of a Section 106 review of a Federal undertaking (as stipulated in Federal regulations 36 CFR Part 63). The National Park Service does not have the authority to recognize historic properties as having traditional cultural significance outside of this regulatory framework.

Sincerely,

J. Paul Loether

J. Paul Loether, Chief
National Register of Historic Places
and National Historic Landmarks Program

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

H32(2280)

OCT 16 2009

Memorandum

To: Director, Minerals Management Service

OCT 20 2009

Through: Deputy Assistant Secretary for Fish, Wildlife and Parks

From: for Director

Subject: Cape Wind Energy Project, Nantucket Sound, Massachusetts

Attached is a copy of the National Park Service's comment on the project noted above. The comment was prepared at the request of Minerals Management Service pursuant to a recommendation by the Advisory Council for Historic Preservation. If you or your staff have any questions regarding the attached document, please contact Dr. Antoinette Lee, Assistant Associate Director, Historical Documentation Programs, at 202-354-2272 or via electronic mail at toni_lee@nps.gov.

Attachment

National Park Service Comment on Effects of Proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts, on National Historic Landmarks

Background

At the request of the Minerals Management Service (MMS), the National Park Service (NPS) issues this comment on whether the proposed Cape Wind Energy Project (Project) would constitute a "direct and adverse effect" on the Nantucket Historic District and the Kennedy Compound, both National Historic Landmark (NHL) properties. This comment follows the September 4, 2009, meeting of MMS, NPS, and Department officials, and is as a result of the recommendation to the MMS by the Advisory Council on Historic Preservation (ACHP) to seek such comment from the NPS.

MMS's position as summarized in its April 29, 2009, email to NPS is that adverse effects posed by the Project are "indirect visual effects, not direct physical effects" and as a result, the undertaking is not subject to the provisions of Section 110(f) of the National Historic Preservation Act (NHPA). MMS's Finding of Adverse Effect concluded that the Project "constitutes an adverse effect for the 28 above-ground historic properties (see Table 4.1)…in that the undertaking will change the character of the properties' setting that contributes to their historic significance; and the undertaking introduces visual elements that are out of character with the properties." Both the Nantucket Historic District and the Kennedy Compound are included in Table 4.1. Subsequently, MMS stated its position that Section 110(f) of the NHPA is not applicable "in situations involving effects that are only indirect."[1]

It is the understanding of the NPS that the Project Section 106 consulting parties, which include the Massachusetts Historical Commission (SHPO), the Mashpee Wampanoag Tribe (THPO), and the Wampanoag Tribe of Gay Head, Aquinnah (THPO), have concurred that the visual intrusion resulting from the Project will have an adverse effect on both the Nantucket Historic District NHL and the Kennedy Compound NHL. The NPS further understands that MMS and the consulting parties do not necessarily agree as to the degree of adverse effect and whether the adverse effect on these two NHLs is or is not direct.

The NHPA (at 16 USC 470h-2), establishes Federal agency responsibilities for the preservation of historic properties. Where NHLs are concerned, Section 110(f) (16 USC 407h-2(f) provides that:

Prior to the approval of any Federal undertaking which may <u>directly and adversely</u> affect any National Historic Landmark, the head of the responsible agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such

---

[1] Brandi M. Carrier Jones, ed. *Minerals Management Service Documentation of Section 106 Finding of Adverse Effect, Prepared for Submission to Massachusetts Historical Commission Pursuant to 36 CFR 800.6(a)(3) for the Cape Wind Energy Project.* Lusby, MD: Minerals Management Service, December 29, 2008, 30, 34, and 35. Walter D. Cruickshank, *Proposed Cape Wind Energy Project, Nantucket Sound, Massachusetts.* Washington DC: Minerals Management Service, September 8, 2009, 2.

landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. [underlining added]

Moreover, pursuant to Section 101(g) (16 USC 470a(g)), the Secretary of the Interior has promulgated guidelines for these Federal agency responsibilities, *The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act* (*Secretary's Standards*), (*Federal Register*, April 24, 1998, pages 20496-20505). Standard 4 of these Guidelines, (j)–(l) pertain specifically to NHLs, including the process to be followed if an effect is direct and adverse.

The Nantucket Historic District, which includes the island of Nantucket, Massachusetts, in its entirety, was designated as an NHL by the Secretary of the Interior on November 13, 1966. The Kennedy Compound, which fronts the northern side of Nantucket Sound at Hyannis Port, Massachusetts, was designated as an NHL by the Secretary on November 28, 1972.

Summary of NPS Comment

Determinations like this are necessarily made on a case by case basis, on the facts of a particular undertaking, and the NHL at issue. Although this comment considers two NHLs, in reaching its conclusions the NPS considered the effects of the Project on each of the two NHLs. Following a detailed review of NPS file documentation for both NHLs, area nautical charts and topographical maps, the Project *Final Environmental Impact Statement* (*FEIS*), MMS's *Section 106 Finding of Effect*, pertinent National Register Bulletins, and other documentation, as well as professionally prepared viewshed assessments and computer-simulated photographs including those used in the following pages, the NPS finds that the Project will have an adverse effect on the historic Nantucket Sound settings of both NHLs. However, NPS further finds that this adverse effect is not "direct."

Project Overview

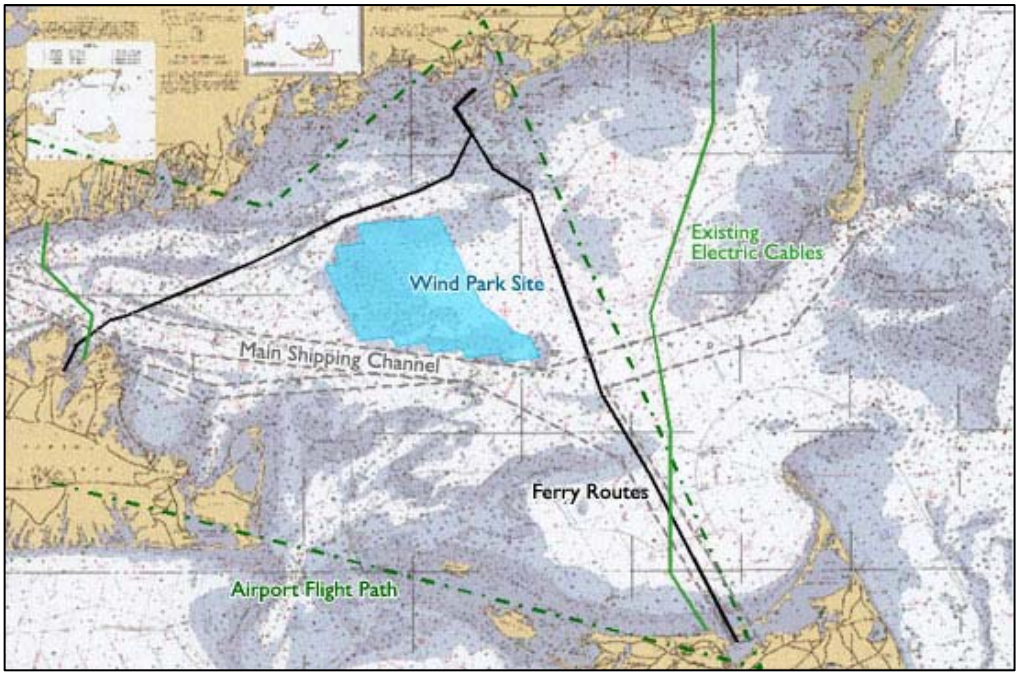
The proposed site of the Project encompasses most of Horseshoe Shoal, which is located in Nantucket Sound approximately 6 miles south/southwest of Hyannis Port and the Kennedy Compound NHL, 9 miles east/northeast of Martha's Vineyard, and 13 miles northwest of Nantucket and the Nantucket Historic District NHL (see following map). Neither Horseshoe Shoal nor Nantucket Sound are within the boundaries of either NHL.

"The proposed project entails the construction, operation, and decommissioning of 130 Wind Turbine Generators (WTGs) located in a grid pattern on and near Horseshoe Shoal in Nantucket Sound, Massachusetts, as well as an Electrical Service Platform (ESP), inner-array cables, and two transmission cables (USDOI MMS 2008; Figure 2.1)."[2] All WTGs will be mounted on tubular, conical steel towers set atop monopile foundations. The maximum tip height reached by any WTG rotor blade will be 440 feet; minimum water clearance for rotor-blade tips will be 75 feet. Individual WTG/tower units will be located between 0.3 and 0.5 miles from each other and placed within an approximately 24-square-mile footprint. All WTGs must

[2] Brandi M. Carrier Jones, Section 2.0.

include navigation and aviation warning lights conforming to standards established by the United States Coast Guard (USCG) and the Federal Aviation Administration (FAA).

Hyannis Port



Martha's Vineyard

Nantucket

Map of Nantucket Sound, Massachusetts, showing relationship of proposed Cape Wind Energy Project "Wind Park Site" in relation to Hyannis Port, Nantucket Island, and extant flight paths, shipping channels, ferry routes, and undersea electrical cables. (http://www.capewind.org/article7.htm).

Each of the 130 WTGs will generate electricity independently of each other. Solid dielectric submarine inner-array cables from each WTG will interconnect with the grid and terminate at the ESP; the ESP would serve as the common interconnection point for all WTGs. The proposed submarine transmission cable system is approximately 20.1 kilometers (km; 12.5 miles [mi]) in length extending from the ESP to the landfall location in Yarmouth, MA. Of the 20.1 km, 12.2 km [7.6 mi] are located within the Massachusetts territorial line (approximately 5.6 km [3.5 mi] from shore). The two submarine transmission cables would travel north to northeast through Nantucket Sound and into Lewis Bay, passing by the western side of Egg Island and making landfall at New Hampshire Avenue, in Yarmouth (USDOI MMS 2008).[3]

Area of Potential Effect

As stated in the MMS's *Finding of Adverse Effect*, the Project's Area of Potential Effect is defined as follows:

The Area of Potential Effect (APE) for the onshore component of the proposed project

[3] *Ibid.*

includes areas where physical ground disturbance would occur during construction, operation and maintenance, and decommissioning (e.g., the areas along the overland route to the Barnstable Switching Station where the transmission cable will tie-in), as well as those areas within view of the site of the proposed project (e.g., historic properties on Cape Cod, Martha's Vineyard, and Nantucket from which open views of the visible components of the proposed project, e.g. WTGs would be possible). The APE for offshore archaeological resources includes the footprints of the WTG structures on the sea floor; the work area around each WTG where marine sediments may be disturbed; the jet plowed trenches for installation of the inner-array cables connecting the WTGs to the ESP; the jet plowed trenches for the transmission cable system from the ESP to the landfall site; and associated marine work areas such as anchor drop areas (USDOI MMS 2008).[4]

Applicable Laws, Regulations, and Requirements

Pursuant to the provisions of the Historic Sites Act of 1935 and 36 CFR 65.2(b), upon designation by the Secretary of the Interior NHLs are automatically listed in the National Register of Historic Places (NR) and therefore subject to the provisions of Section 106 of NHPA. Section 106 regulations also contain provisions to protect NHLs*, Special Requirements for Protecting National Historic Landmarks*.[5] There are also guidance documents to assist in the compliance with these requirements, providing advice, instructions and examples. Due to Federal permitting requirements, the Project constitutes a Federally-assisted undertaking subject to the administrative oversight of MMS. As a Federal undertaking, the Project is subject to review under Section 106 of NHPA (16 USC 470f), which provides:

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

To aid the ACHP, the ACHP may but is not required to request the Secretary of the Interior to report on that undertaking, "detailing the significance of any historic property, describing the effects…and recommending measures to avoid, minimize or mitigate adverse effects." This report is produced by NPS and is referred to as a Section 213 Report because it is authorized by

[4] Brandi M. Carrier Jones, Section 2.1.

[5] 36 CFR 800.10, Special requirements for protecting NHLs, reiterates text of Section 110(f) of NHPA which: "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." See also *The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act*, Section 4(l).

NHPA Section 213 (16 USC 470u). The ACHP has specifically not requested a Section 213 Report on the Project, instead asking for this comment.

The Section 110(f) review process is similar to that required under Section 106, but requires Federal agencies to exercise a higher standard of care prior to the approval of any Federal undertaking that may directly and adversely affect NHLs. Agencies are mandated to engage in such planning and action as may be necessary to minimize harm to NHLs, and to obtain ACHP comments on the undertaking. As in the case of the Project, Section 110(f) reviews are generally accomplished under the regulations implementing Section 106, 36 CFR 800. Additional guidance regarding a Federal agency's responsibility for implementing Section 110(f) is provided under the *Secretary Standards,* Standard 4, Guidelines (j), (k), and (l).

The regulations for the implementation of Section 106, at 36 CFR 800, define an "effect" as meaning an "alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register," (36 CFR 800.16(i)), and an "adverse effect" in 36 CFR 800.5(a)(1) as:

[W]hen an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

These regulations were promulgated by the ACHP and when ACHP revised them in 2000, it was asked about the definition of "adverse effects," and what was meant by "when an undertaking 'may' alter 'indirectly any' of the characteristics making the property eligible in a way that would diminish the integrity of the property's 'feeling'or 'association.'" The ACHP responded that:

…adverse effect criteria are linked specifically to objective National Register criteria published by the National Park Service. The National Register criteria itself expands on the meaning of its terms and provides various examples. These criteria have been fleshed out through consideration and application countless times, over the years, since the program began, and explained through various guidance documents.[6]

The NPS has described "direct" effects and "indirect" effects within the context of Section 106 reviews in guidance documents, including the 1997 NPS *National Register Bulletin: Defining Boundaries for National Register Properties,* which provides:

To be in compliance with the act [Section 106 of NHPA], Federal agencies must identify and evaluate National Register eligibility of properties within the area of potential effect and evaluate the effect of the undertaking on eligible properties. The area of potential effect is

[6] *Federal Register*, December 12, 2000, 77707.

defined as the area in which eligible properties may be affected by the undertaking, including direct effects (such as destruction of the property) and indirect effects (such as visual, audible, and atmospheric changes which affect the character and setting of the property). The area of potential effect may include historic properties that are well beyond the limits of the undertaking. For example, a Federal undertaking outside of the defined boundaries of a rural traditional cultural property or an urban historic district can have visual, economic, traffic, and social effects on the setting, feeling, and association of the eligible resources.[7]

The ACHP, when it revised its regulations in 2000, was also asked the role of proximity of an undertaking to an historic site. The ACHP stated:

The standard set forth under section 106 is effect, not proximity. While it is possible that distance separating an undertaking from a particular historic property may remove any effects, such a determination should be made on a case by case basis, and is not suitable for a generalization. Different undertakings simply have different areas of potential effects according to several factors such as the nature of the undertaking itself, the nature of the historic property at issue, and topography.[8]

Relationship Between Historic Significance and Integrity

As the above definition of adverse effects indicates, determination of adverse effect requires an informed understanding of the integrity of a historic resource's character-defining features. The NPS's 1999 *National Register Bulletin: How to Prepare National Historic Landmark Nominations* (*Bulletin*), defines integrity as "the ability of an historic property to convey its historical associations or attributes." [9] The *Bulletin* notes that, while the evaluation of integrity is somewhat subjective, "it must be grounded in an understanding of a property's physical features and how they relate to its historical associations or attributes."[10]

The *Bulletin* identifies and describes seven aspects of integrity that are, in various combinations, used to evaluate NHLs: location, design, setting, materials, workmanship, feeling, and association. Unlike other properties listed in the NR, NHLs must possess several, and usually most of these aspects to a "high" degree. The retention of specific aspects of integrity is paramount in conveying a property's significance. Determining which of these aspects are most important to a particular property requires knowing why, where, and when the property is significant.

The *Bulletin* indentifies the three factors utilized by the NPS in assessing the integrity of NHLs:

- *Define the essential physical features that must be present to high degree for a property to represent its significance;*

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[7] *National Register Bulletin: Defining Boundaries for National Register Properties.* Washington DC: National Park Service, 1997, 1. See also NPS-28, *Cultural Resources*, chapter 5, "Assessing Effects," pages 59-61.
[8] Advisory Council on Historic Preservation, Protection of Historic Properties, 36 CFR 800, Final rule; revision of current regulations, *Federal Register*, Vol. 65, No. 239, Tuesday, December 12, 2000, 77707.
[9] *National Register Bulletin: How to Prepare National Historic Landmark Nominations.* Washington DC: National Park Service, 1999, 36.
[10] *Ibid.*

- *Determine whether the essential physical features are apparent enough to convey the property's significance; and*
- *Compare the property with similar properties in the nationally significant theme.*[11]

National Historic Landmarks Documentation

Documentation regarding the location, boundaries, significance, and integrity of the Nantucket Historic District and the Kennedy Compound as well as photographs and maps for each resource, are maintained by the NPS in the files of the NR and NHL Program in Washington, DC. NR and NHL files include original nomination documents as well as all supplementary documentation and communications collected on each resource since its date of listing/designation. NPS routinely utilizes such file documentation for a variety of preservation and educational purposes, including as a core reference source in the Section 106 and Section 110(f) decision-making processes. The following statements of significance for the Nantucket Historic District and the Kennedy Compound are summaries compiled by NPS from documentation currently maintained in the file for each resource.

National Significance of the Nantucket Historic District

The Nantucket Historic District is nationally significant both for its association with the American whaling industry (NHL Criterion 1) and for its remarkable concentration of well-preserved, whaling-industry related architecture (NHL Criterion 4). The island's principal historic village, Nantucket Town, remains one of the finest surviving architectural and environmental examples of an early 19th-century seaport town in New England. The Nantucket Historic District includes the entire island of Nantucket (30,000 acres and some 75 miles of coastline).

[11] *Ibid*., 37.

Typical View of Nantucket Harbor, Nantucket Historic District. Anonymous (http://www.new-england-weekender.com/nantucketisland.html).

Prior to European contact, Algonquian-speaking Native Americans, who subsisted by planting maize, beans, and squash, exploiting the rich aquatic resources in the ponds and along the shoreline, and hunting sea mammals such as seals and whales near the shore, inhabited the island. Archeological evidence indicates that these Algonquians were a part of a larger and culturally linked community that extended from Saco Bay in Maine, to the Housatonic River area in Connecticut, and from Long Island inland to southern New Hampshire and Vermont. Europeans first settled on Nantucket in the mid-17th century. Although Europeans originally lived alongside the Native American population, they eventually came to dominate the island.

Between the 1740s and 1840s, Nantucket became the world's leading whaling port and the island became synonymous with the great age of New England whaling. The island's dominance in this industry stemmed from both its geography and innovations developed by the islanders. Crews from Nantucket led the way not only in finding new hunting areas, but also in developing new techniques of whaling. Nantucket crews were also the first to understand the Gulf Stream, which an islander then mapped for the nation's Postmaster General.

During the height of the whaling industry in the early 19th century, Nantucket's population numbered almost 10,000. The island also boasted five wharves, 10 rope walks, 36 candle factories, sail lofts, cooper shops, and boatyards and shipyards. The island's harbor shoreline was lined with commercial and industrial buildings associated with the whaling industry and, in adjacent Nantucket Town, wealthy sea captains and merchants built magnificent homes. However, much of the island's early commercial building stock was destroyed in a 19th-century fire. Although many of the island's commercial buildings and structures specifically associated with the whaling industry are no longer extant, many significant residences and associated structures remain intact, and the harbor, which was of central importance to the whaling industry, remains an active seaport. These surviving buildings and structures and the continuous use of Nantucket Town's harbor for commercial purposes provide historical continuity and add to the quality of the landmark as a whole.

The well-preserved physical forms, plan, and materials associated with the island's historic villages are a physical manifestation of the island's wealth, which was derived from the island's successful whaling industry. Because the national significance of Nantucket rests on its heritage as a maritime community associated with whaling, the island's building stock, historic villages, and harbor are of central importance to the property's designation as an NHL. In this regard, these key elements of the Nantucket Historic District as a whole retain a degree of integrity sufficiently high enough to effectively convey the essential ambiance of an early 19th-century whaling community.

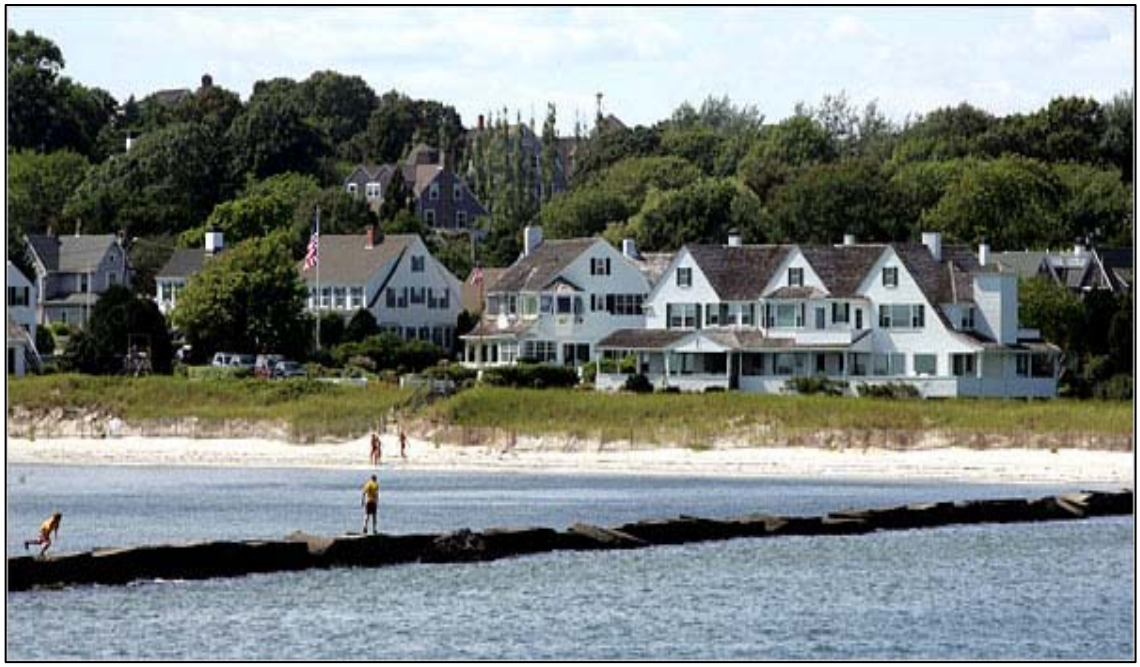
National Significance of the Kennedy Compound

The Kennedy Compound, a six-acre family enclave in Hyannis Port, Massachusetts, is nationally significant for its association with the Kennedy family (NHL Criterion 2). The compound includes homes formerly owned by Ambassador Joseph P. Kennedy, President John F. Kennedy,

and U.S. Attorney General and Senator Robert F. Kennedy. After 1982 and up to his death in 2009, U.S. Senator Edward M. Kennedy used the home of Ambassador Joseph P. Kennedy as his residence on Cape Cod.

In 1929, Joseph Kennedy acquired the Hyannis Port house after renting it for three summers. The family's ethnic and religious identity, which became an issue with John F. Kennedy's presidential campaign in 1960, was intrinsically linked to the choice of Hyannis Port as the setting for the family's summer home. At the time Joseph Kennedy purchased the property, Hyannis Port, unlike Cohasset, Massachusetts where Kennedy and his family had spent one summer, was more welcoming to Irish Catholics.

The compound's first and foremost residence, the Joseph P. Kennedy House, is prominently situated fronting Nantucket Sound slightly more that a mile west of Cape Cod's Lewis Bay. While not nationally significant for its architecture, the early 20th-century summer "cottage" was greatly expanded by Joseph Kennedy, and today remains one of the most impressive historic properties in Hyannis Port. As adults, John F. and Robert F. Kennedy, bought the houses adjacent to their father's, significantly expanding the property held by the Kennedy family, and thereby creating a large compound with multiple residences. While the compound served as a private retreat for the family, the political activities of the Kennedy family ensured that the property was in the forefront of the national consciousness during the early 1960s. In 1972, the significance of the compound was formally recognized when the property was designated by the Secretary of the Interior as an NHL.



Right-to-left: The Joseph P. Kennedy and John F. Kennedy House (part of the Kennedy Compound, Hyannis Port, Mass). Robert Spencer for the *New York Times* (http://travel.nytimes.com/2006/08/18/travel/escapes/18down.html).

The significance of the property is embodied in both the buildings and structures that make up the compound as well as the relationships between these buildings and structures, and the

association of the whole with the Kennedy family. It was in and around the Joseph P. Kennedy house that the Kennedy children spent their formative summers engaging in various competitive pursuits, such as football, tennis, swimming, and sailing, all of which were encouraged by their father. John F. Kennedy's 1960 presidential campaign was also planned in and around his father's and his own house. More broadly, the relationship of the various buildings and structures, specifically their close proximity to one another, illustrates and reflects the inter-relationships between the family members, both in terms of their familial as well as their political relationships.

The large lawns associated with the property are especially significant for their association with both the Kennedys' well-known and widely publicized practice of playing family football games as well as John F. Kennedy's campaign for the Presidency. In 1960, Kennedy spent two weeks at the compound before embarking on his fall election campaign. During this crucial two-week period, Kennedy frequently met with the press in his front yard; pictures of him on the Hyannis Port lawn were commonly featured in the national media, forming a backdrop to Kennedy's campaign and, ultimately, his presidency. After his election to office, Kennedy found it difficult for security reasons to stay at the compound, but he did fly in to the compound every weekend during the summer of 1961 and numerous U.S. and foreign officials met with him there. The Kennedy children all learned to sail, and members of the family were frequently photographed sailing or swimming around the property. As president, John F. Kennedy also often used his family's yacht to entertain foreign officials.

Overall, the property's national significance relies solely on its strong and continuing association with the various members of the Kennedy family. This significance rests in great measure upon the family's recreational use of the property, the proximity of the houses to one another, and the compound's proximity to the water. The compound's exceptional significance continues to be evident as a result of its continued high integrity.

Particularly key aspects of the high integrity associated with the Kennedy Compound are: location, materials, design, workmanship, feeling, and association. The integrity of the compound's oceanfront setting relies primarily on its ability to reflect the water activities in which the Kennedy family habitually engaged—the compound's immediate viewshed—and secondarily on its ability to afford unobstructed-to-the-horizon, ocean views.

Analysis

The national significance and high level of integrity of the Nantucket Historic District are intimately tied to the ability of the physical form, plan, and materials of its historic villages, buildings, structures, and immediate waterfront setting to convey both a way of life and historic patterns of construction and development. Historically, the district's island setting served to limit the impact of outside factors with respect to the creation and retention of historic fabric and life ways. As with most maritime communities, Nantucket's relationship with the water—particularly its main harbor, inlets, coastline, and the expanses of open water that surround the island—is far more significant historically with respect to transportation and commerce than from a scenic standpoint. However, unobstructed ocean views to the horizon in all directions enhance the district's historic sense of place and contribute to district's overall sense of high

integrity of historic setting. For the district as a whole, the most important aspects of integrity continue to be location, design, materials, workmanship, association, and feeling conveyed through, the forms, plans, and materials of its villages, buildings, structures, and Nantucket Town's harbor waterfront.

The national significance of the Kennedy Compound is principally embodied in the buildings, structures, plantings, and lots that combine to form the compound. Thus, location, materials, design, workmanship, and materials function as the core aspects of integrity. These aspects undergird the compound's ability to clearly convey its integrity of feeling and association with Kennedy family. As with Nantucket, while 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.

Because the Project is not located within the boundary of either NHL, essentially the only aspect of integrity that comes into play in evaluating the undertaking for adverse effect is integrity of setting, which is defined by the NPS as follows:

Setting *is the physical environment of a historic property. It refers to the historic character of the place in which the property played its historical role. It involves how, not just where, the property is situated and its historical relationship to surrounding features and open space. The physical features that constitute the historic setting of a historic property can be either natural or manmade and include such elements as topographic features, vegetation, simple manmade paths or fences, and the relationships between buildings and other features or open spaces.*[12]

In the case of the Nantucket Historic District, located approximately 13 miles from the Project footprint, a detailed Project shoreline visibility assessment completed by Environmental Design and Research (EDR) in July 2006, indicated that the WTGs will not be visible at all from more than 60% of the island's total coastline, and barely visible at most from the remainder of the island as a whole (see Figure 2 and Figure 1, Sheet 13 of 14).[13] According to EDR's assessment, the Project will partially interrupt 41 percent of the visible seascape horizon as viewed from Hyannis Port and the Kennedy Compound, located approximately 6 miles from the Project footprint (see Figure 1, Sheet 4 of 14).[14] Thus, while these long-distance interruptions visually "diminish" each NHL's overall integrity of setting, they will not impair the far more significant, essential character-defining aspects and high integrity associated with the immediate coastal waterfront settings of either NHL.

Conclusion

NPS's analysis of the adverse effect of the Project on the Nantucket Historic District and the Kennedy Compound is based on the unique circumstances of each NHL. They both owe part of

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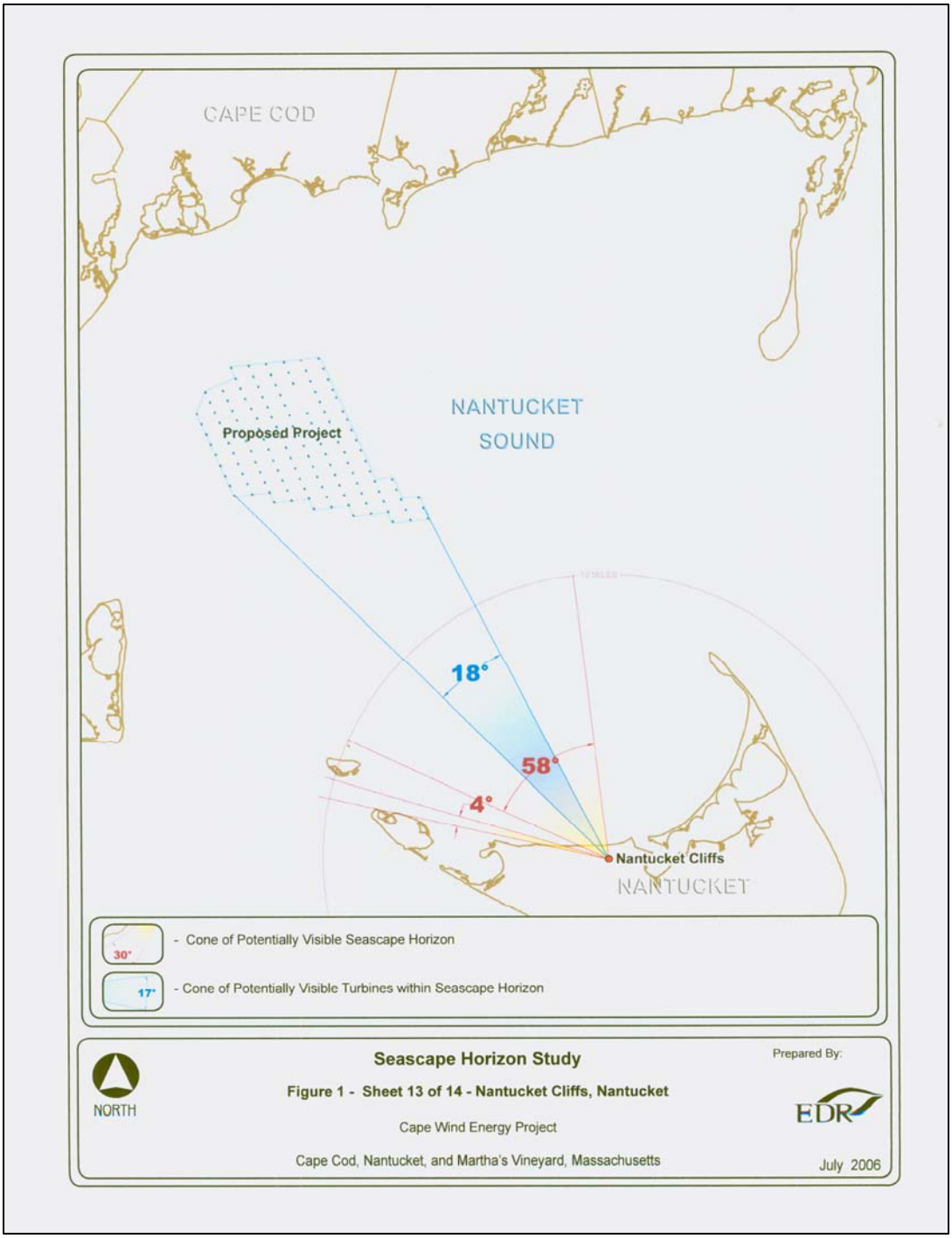
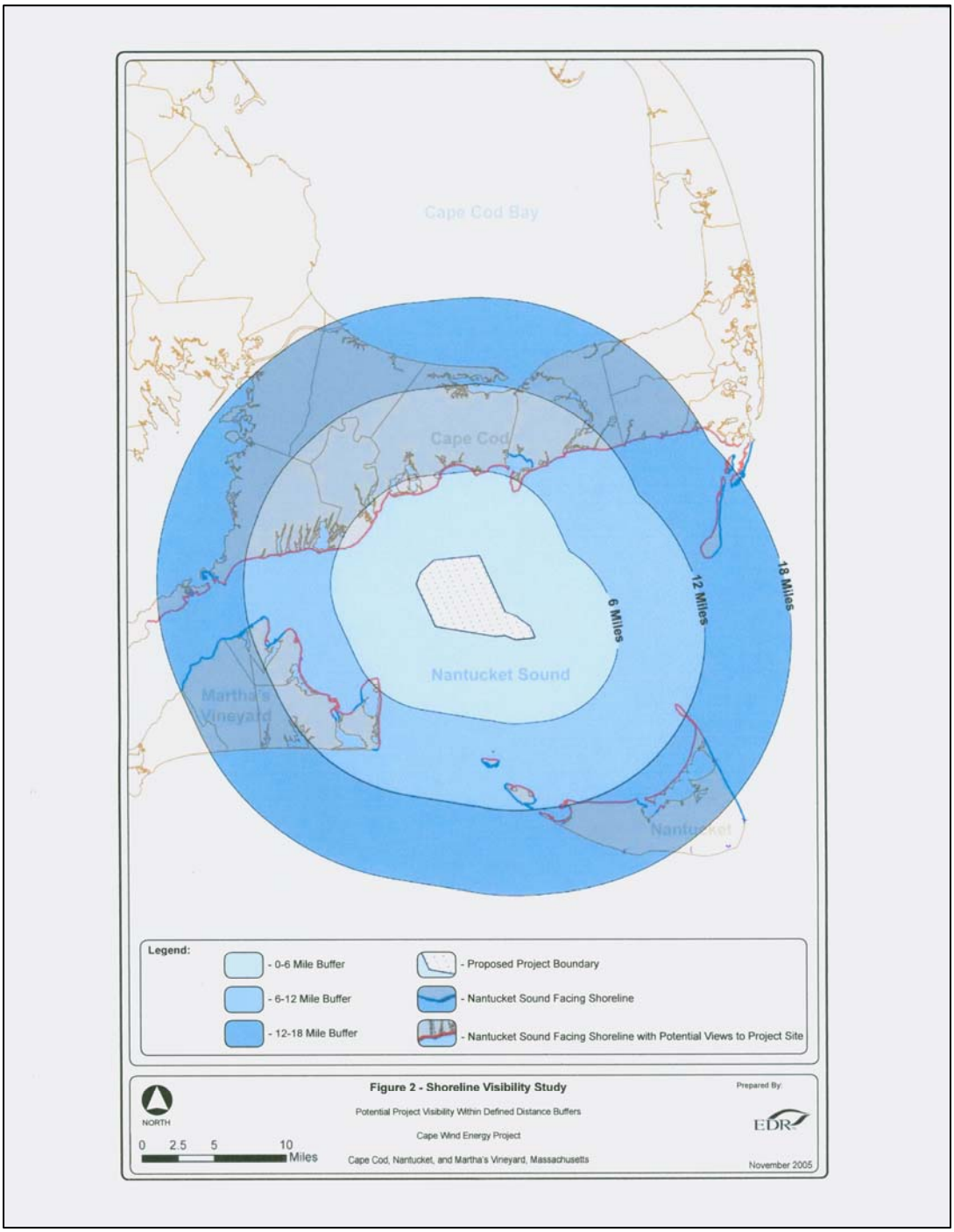
[12] *Bulletin*, 36-37.
[13] *Seascape and Shoreline Visibility Assessment Cape Wind Energy Project Cape Cod, Martha's Vineyard and Nantucket Massachusetts*. Syracuse, NY: Environmental Design and Research in July 2006, Figure 2.
[14] *Ibid.,* Figure 1, Sheet 1. See also *Ibid.,* Figure 1 Sheet 4 of 14.

their significance to their relationship to the water of Nantucket Sound. In this respect, the Project will have an adverse effect on both the Nantucket Historic District and the Kennedy Compound. However, the 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 viewsheds 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. As these determinations are necessarily made on a case by case basis, the conclusions the NPS reaches here that the visual intrusions are not a direct and adverse effect does not affect the NPS's ability in other circumstances to find that a visual intrusion can cause a direct and adverse effect on an NHL.

Environmental Design and Research, Seascape Horizon Study Figure 1 – Sheet 4 of 14 – Nantucket Cliffs, Nantucket. *Seascape and Shoreline Visibility Assessment Cape Wind Energy Project Cape Cod, Martha's Vineyard and Nantucket Massachusetts*, July 2006.



Environmental Design and Research, Seascape Horizon Study Figure 1 – Sheet 13 of 14 – Nantucket Cliffs, Nantucket. *Seascape and Shoreline Visibility Assessment Cape Wind Energy Project Cape Cod, Martha's Vineyard and Nantucket Massachusetts*, July 2006.



Environmental Design and Research, Figure 1 – Shoreline Visibility Study – Nantucket Cliffs, Nantucket. *Seascape and Shoreline Visibility Assessment Cape Wind Energy Project Cape Cod, Martha's Vineyard and Nantucket Massachusetts*, July 2006.

Computer simulation: Cape WTG park as viewed from Nantucket Cliffs (viewpoint distance from WTG=13.62 miles; camera elevation=44.51 feet; turbine paint color=off white). Environmental Design and Research (http://www.capewind.org/modules.php?op=modload&name=Sections&file=index&req=viewarticle&artid=9&page=1).

Computer simulation: Cape Wind WTG park as viewed from Hyannis Port, slightly west of Kennedy Compound (viewpoint distance from WTG=5.97 miles; camera elevation=22.44 feet; turbine paint color=off white). Environmental Design and Research (http://www.saveoursound.org/site/PageServer?pagename= CapeWind _Threats_View).

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Appendix L

National Trust for Historic Preservation

NATIONAL
TRUST
FOR
HISTORIC
PRESERVATION®

February 12, 2010

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

Dear Secretary Salazar:

The National Trust for Historic Preservation appreciates the opportunity to comment on Minerals Management Service's (MMS's) revised Finding of Adverse Effect on historic and cultural resources for the proposed Cape Wind project. As a Consulting Party in the Section 106 review of the Cape Wind project, pursuant to the National Historic Preservation Act (NHPA), the National Trust was grateful to be included in the meeting you convened on January 13, 2010. We were also very pleased to learn of your subsequent trip to view the proposed site and to meet with leaders of the Native American tribes affected. For your convenience, I am enclosing a copy of a letter to you from our President, Richard Moe, which was sent at the time of the January 13 meeting, summarizing the Trust's concerns about this project.

The National Trust continues to believe that the Cape Wind project poses serious threats to a range of historic and cultural resources of particular significance and sensitivity. In our view, the damage the project would cause to a rich concentration of nationally-significant historic and cultural resources at the proposed Horseshoe Shoal location is too great to justify issuing the development permit Cape Wind has requested.

We also join with the growing group of stakeholders who have encouraged the Department of the Interior to invite Cape Wind to apply for a permit at the South of Tuckernuck location. We feel strongly that South of Tuckernuck is a highly preferable and feasible alternative location that serves the purpose and need of this renewable energy project while causing substantially less harm to the area's most irreplaceable national treasures.

Our organization strongly supports the nation's efforts to combat climate change, including the development of alternative energy. With proper planning, and sensitive siting, this goal is not in conflict with the need to preserve America's most significant historic and cultural treasures.

Unfortunately, the revised Finding of Adverse Effect is the culmination of a planning process that did not properly weigh the proposed project's effects on

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historic and cultural resources in the manner—or at the early point in time—required by the National Environmental Policy Act (NEPA) and the NHPA. A thorough understanding of the scope and significance of the sites potentially affected should be the foundation for the NHPA and NEPA reviews. Here, by contrast, instead of building the Section 106 consideration and NEPA analyses on the prerequisite identification and evaluation of historic and cultural resources, MMS pushed through to discuss and largely dismiss the possibility of resolving the adverse effects the project could have on these resources.

The National Trust is gravely concerned about the prospect that Cape Wind could be permitted despite the recent evaluation of Nantucket Sound as a Traditional Cultural Property (TCP) eligible for listing on the National Register of Historic Places. The opinions rendered by the Mashpee Wampanoag Tribe, the Wampanoag Tribe of Gay Head (Aquinnah), the Massachusetts State Historic Preservation Office, and the National Park Service clearly indicate the manifest significance and complexity of the area that would be affected, and suggest its vulnerability to degradation from an industrial project such as Cape Wind.

Now, we have a clear sense of the qualities that would be damaged: the real potential for material remnants of the aboriginal settlements on the land that is now Horseshoe Shoals, the central cultural, religious, and historic importance of the Sound to the tribes, and the status of the Sound as a cohesive setting that defines the tribes' sense of place, as well as that of several other TCPs. This list of impacts is in addition to the adverse effects on resources already identified: a National Historic Landmark District and other National Register sites and districts that open out on the Sound.

If—at the beginning of the process, as required—MMS had studied and synthesized the significance and full scope of the historic and cultural assets at stake, the need to study alternative locations in much greater detail would have been obvious. This would have allowed MMS to weigh all options fairly and expeditiously.

It is extremely regrettable that we are only looking now at the full picture of the cultural resources that will be irreparably degraded by the project—so long after the beginning of the review processes meant to balance these values, and long after investment and momentum began to build for the proposed location. Now that the nature and magnitude of the adverse effect is more fully understood, we urge you not to issue the requested permit for this location. Instead, we believe the Department should require the applicant to study and develop plans for the South of Tuckernuck site, which would dramatically reduce harm to cultural resources.

Thank you for your attention to this important matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

Roberta Lane

Roberta Lane
Senior Program Officer & Regional Attorney,
Northeast Office

cc: John Brown, Narragansett THPO
George Green, Mashpee Wampanoag THPO
Bettina Washington, Wampanoag Tribe of Gay Head (Aquinnah)THPO
John Fowler, Advisory Council on Historic Preservation
Walter Cruickshank, Minerals Management Service
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Karen Kirk Adams, USACOE-NED-Regulatory
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Audra Parker, Alliance to Protect Nantucket Sound