

US EPA ARCHIVE DOCUMENT



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



DEC 15 2009

Mr. Stephen Perkins
Director, Office of Ecosystem Protection
U.S. Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100
Boston, Massachusetts 02114

RE: Section 106 Consultation for Cape Wind Energy Project

Dear Mr. Perkins:

Thank you for your letter dated December 1, 2009, requesting that the U.S. Environmental Protection Agency (EPA) be granted consulting party status in the National Historic Preservation Act (NHPA) Section 106 consultation process for the proposed Cape Wind Energy Project.

The Energy Policy Act (EPAct) amendments to the Outer Continental Shelf Lands Act granted the Secretary of the Department of the Interior—and, through delegation, the Minerals Management Service (MMS)—the discretionary authority to grant leases, easements, or rights of way on the Outer Continental Shelf (OCS) for renewable energy activities. Pursuant to this authority, the MMS has conducted an independent and comprehensive environmental review of the proposed Cape Wind Energy Project and has issued both a draft environmental impact statement (EIS) and a final EIS.

The MMS is the lead agency reviewing the Cape Wind Energy Project proposal. Pursuant to 36 C.F.R. Section 800.3 (f)(3), the lead agency official may invite others to participate as consulting parties in the Section 106 process. The MMS recognizes that the EPA may have responsibilities to fulfill under Section 106 of the NHPA relating to the issuance of permits for this project (similarly, the U.S. Army Corps of Engineers (USACE) has responsibilities to fulfill in its issuance of a Section 10 permit). The MMS grants the request for the EPA to have consulting party status, effective the date of this letter, and invites the EPA to participate in any future Section 106 consultation meetings. The MMS recognizes that the EPA may adopt the findings and conclusions of this process to help fulfill its regulatory obligations under Section 106. We have provided the following background and references to get your office up to speed with the Section 106 consultation process.

Background Information on the Project

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



August 2005, with the passage of the Energy Policy Act, the MMS became the lead Federal agency for the Cape Wind Energy Project. In February 2007, the State of Massachusetts and the Cape Cod Commission published a final EIR/DRI for the Cape Wind Project while the MMS draft EIS was still in preparation. The visual impact analysis in the final EIR/DRI concluded that the following historic properties would be subject to adverse visual effects from the proposed project:

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

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

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

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

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

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

Additional Documents for the Section 106 Consultation Process

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

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

The reports are available online at:

Report No. 1, 3, and 4: <http://www.nae.usace.army.mil/projects/ma/ccwf/app510c.pdf>
 Report No. 2: <http://www.nae.usace.army.mil/projects/ma/ccwf/app3i.pdf>

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

The Cultural Resource sections of the Cape Wind Energy Project final EIS are Section 4.3.5 (Description of the Affected Environment) and Section 5.3.3.5 (Environmental and Socioeconomic Consequences). Additional reports from the EIS that may be useful include: (available online at

<http://www.mms.gov/offshore/RenewableEnergy/PDFs/FEIS/Section10.0Bibliography.pdf>):

- **Report No. 4.3.4-1.** Public Archeological Laboratory (PAL). 2006. Cape Wind Energy Project Visual Impact Assessment of Revised Layout on Multiple Historic Properties: Final Environmental Impact Report. Nantucket Sound: Cape Cod, Martha's Vineyard, and Nantucket, Massachusetts. PAL Report No. 1485.05. Prepared for Cape Wind Associates, L.L.C., Boston, Mass. Pawtucket, R.I. September 2006.
- **Report No. 5.3.3-2.** Environmental Design & Research, P.C. 2003. Visual Simulation Methodology. Cape Wind Project. Cape Cod, Martha's Vineyard and Nantucket, Massachusetts. Prepared for Cape Wind Associates, L.L.C., Boston, Mass. Syracuse, N.Y. November, 2003.

Also, a list of Section 106 participants is enclosed with this letter.

Summary of Meetings

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

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

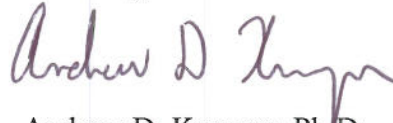
Meetings have been paused since June 2009 while the MMS is addressing important issues raised by the Advisory Council on Historic Preservation (ACHP) and the Massachusetts State Historic Preservation Officer (SHPO). Currently the MMS is in the final stages of addressing these issues, including the eligibility of Nantucket Sound for listing as a Traditional Cultural

Property (TCP) on the National Register of Historic Places (NRHP). We are working closely with the National Park Service (NPS), the ACHP, the SHPO, and all Section 106 consulting parties (including the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head/Aquinnah) to address these issues so that we can schedule the next meeting and bring the consultation to a conclusion. Once the Section 106 consultation process is concluded, the MMS will issue a record of decision on the project.

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

We look forward to working with all consulting parties to reach consensus on a MOA for the proposed Cape Wind Energy Project. Should you have any questions about the Section 106 consultation process for the Cape Wind Energy Project, please feel free to contact our Federal Preservation Officer, Dr. Christopher Horrell, at 504-736-2796 or Christopher.Horrell@mms.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andrew D. Krueger". The signature is fluid and cursive, with the first name "Andrew" being the most prominent.

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

Enclosure: Section 106 Consultation Participant List

cc: Brana Simon, Massachusetts State Historic Preservation Officer
Dr. John Eddins, Advisory Council for Historic Preservation

Cape Wind Energy Project
Section 106 Consulting Parties Contact List
(Updated as of November 21, 2008)

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