THE SECRETARY OF THE INTERIOR
WASHINGTON

MAR - 1 2010

Mr. John Fowler
Executive Director, Advisory Council
on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 809
Washington, D.C. 20004-2501

Dear Mr. Fowler:

In reference to the proposed Cape Wind Energy Project in the Nantucket Sound, offshore Massachusetts, I have determined that further consultation on this project would not be productive. We do not believe that we can reach a Memorandum of Agreement to resolve the adverse effects of this undertaking. Therefore, in accordance with 36 CFR 800.7(a)(1), I am terminating consultation and requesting the Advisory Council on Historic Preservation to comment on this project. You will find enclosed background documentation concerning our decision to terminate consultation and a description of the mitigation measures that Minerals Management Service proposes to resolve the adverse effects of the undertaking as required by 36 CFR 800.11 (g).

By this letter and the enclosed background documentation, I am also notifying the consulting parties of this termination and providing the reasons and notifying them of my request for ACHP comment pursuant to 36 CFR 800.7(a).

The MMS began consultation under Section 106 of the National Historic Preservation Act (NHPA) in July 2008 in an effort to reach agreement on historic and cultural sites potentially impacted by the proposed Cape Wind project and on potential measures to mitigate and minimize those impacts. In the interest of furthering the consultation and discussion of potential mitigation measures, I convened a Section 106 consultation meeting in Washington, D.C., on January 13, 2010. Additionally, on February 2, 2010, I visited potentially impacted tribal cultural sites with the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah), as well as viewed the proposed project site. Through intensive discussions among potential MOA signatories and government-to-government consultations with the Tribes, it has become clear that it is not possible to proceed with the proposed project in a manner that will be acceptable to all the consulting parties, including the Tribes. There have been no mitigation measures proposed by any of the various parties that can bridge the divide.

Review of the Cape Wind project began in 2001 when Cape Wind Associates, LLC applied for a permit from the U.S. Army Corps of Engineers to construct an offshore wind power facility on Horseshoe Shoal in Nantucket Sound, offshore of Massachusetts. Over the next 3 years, the Corps completed a Draft Environmental Impact Statement along with a separate review and issuance of a permit to construct a meteorological tower for data collection purposes. During that time the Corps also commenced its activities to comply with Section 106 of the NHPA.

After the enactment of the Energy Policy Act of 2005, the MMS was given authority for offshore wind projects, including the Cape Wind project, and since that time has completed an Environmental Impact Statement and conducted eight official NHPA Section 106 consultation meetings in Massachusetts and Washington, D.C. These meetings are in addition to many other discussions with the National Park Service, ACHP, Massachusetts Historical Commission (SHPO), Section 106 consulting parties (including the Tribes), and others. The MMS has also sought the views of the public through the official public commenting periods conducted during the environmental review for the Cape Wind project and as part of the Section 106 process and collected and analyzed approximately 75,000 public comments.

During the January 13, 2010, Section 106 consultation meeting with all consulting parties, I announced my intention to finalize a decision on the Cape Wind Energy Project application in April 2010. The steps necessary to move toward a decision included: provision of a public comment period on the revised Finding of Adverse Effect document (public comment closed February 12, 2010); consideration of public comments; and a determination by March 1, 2010, whether it is likely further consultation would be productive, or whether the consultation process would be terminated.

As part of this process, the MMS has been responsive to concerns such as those raised by the ACHP. In letters of April 1 and June 23, 2009, the ACHP raised several questions that it believed the MMS needed to resolve in order to move the consultation process forward. In a letter of January 20, 2010, the ACHP concluded that MMS had addressed these questions and that the schedule proposed at the January 13, 2010, meeting was "reasonable and workable."

The ACHP further commented in its letter of January 20, 2010, that the MMS should work to reach consensus on possible ways to resolve the adverse effects, including by clearly ascertaining the Tribes' assessment of the revised Finding of Adverse Effect and their opinion whether there are acceptable mitigation measures that could be included in a final MOA. The Tribal-only consultation meetings of January 13, 2010, the February 2, 2010, site visits with the Tribes—during which I met separately with the Tribes, visited areas with them identified through the Section 106 process as potentially impacted, participated in Tribal ceremonies, and viewed the proposed project site—along with additional government-to-government consultations held with the Wampanoag Tribe of Gay Head (Aquinnah) and Mashpee Wampanoag Tribe on February 9, 2010, and February 9 and 19, 2010, respectively, provided additional opportunities for the MMS to ascertain the Tribes' assessment of the revised Finding of Adverse Effect and their opinion whether there are any acceptable mitigation measures. The Tribes' message at these meetings was consistent with their opinion at previous meetings: there are no acceptable mitigation measures for the impacts to their Traditional Cultural Properties.

Moreover, in addition to the Tribes, there are other consulting parties who remain opposed to this project. These issues are more thoroughly discussed in the attached documentation. Therefore, as we do not believe agreement on an MOA is forthcoming, there is no basis for continuation of this consultation process.

In addition to the enclosed background documentation, the MMS has previously provided your staff with information on the project, including the Final Environmental Impact Statement, maps, and a chronology of consultation meetings and correspondence, as well as other documentation produced during this NHPA Section 106 consultation process. However, if you or your staff have questions or should need additional information on the project, please contact Mr. Poojan B. Tripathi, Minerals Management Service, Renewable Energy Program Specialist, at 703-787-1738, or Dr. Christopher E. Horrell, Minerals Management Service, Federal Preservation Officer, at 504-736-2796.

Thank you for your attention to this matter. The Department of the Interior appreciates the opportunity to fulfill the requirements of Section 106 of the NHPA regarding the effects of MMS-authorized undertakings on properties included in, or eligible for, the National Register of Historic Places.

Sincerely,

Ken Salazar

Ken Salazar

Enclosure