



*Preserving America's Heritage*

## **ENERGY DEVELOPMENT AND HISTORIC PRESERVATION: ACHP RECOMMENDATIONS**

The Advisory Council on Historic Preservation (ACHP) issued formal comments on April 2, 2010, to the Secretary of the Interior regarding the Cape Wind case on Nantucket Sound, Massachusetts, and the historic properties and viewsheds that would be affected by the planned windfarm in the Sound. The ACHP posed the following general recommendations regarding energy resources which will be useful to consider for future cases involving energy and historic preservation.

The development of alternative energy resources is an important national policy goal that historic preservation concerns need not impede. The nature of the potential effects to historic properties, though, warrants further consideration by the Department of the Interior (DOI) and other federal agencies involved in energy development to minimize circumstances for conflict.

The ACHP has highlighted the need for broader coordination among federal agencies, states, Indian tribes, industry, consulting parties, and the public to address energy challenges.

- I. **Tribal consultation:** DOI should review and update agency protocols for tribal consultation regarding energy projects and other undertakings.
  - a. The Secretary should ensure that all DOI agencies engage in effective tribal consultation early in the project planning and review process to enable full understanding and appreciation of tribal views on energy development and its potential to affect properties of religious and cultural significance to them. In light of the President's memorandum of November 5, 2009, DOI agencies should ensure that adequate provisions are incorporated in their Tribal Consultation Plans to achieve this goal. It is critical that the tribal consultation requirements of the Section 106 process be properly integrated into those plans and in a manner that ensures tribal views on historic resource impacts are addressed in a timely fashion in broader environmental reviews.
  - b. These Tribal Consultation Plans should establish procedures that ensure consultation meetings with Indian tribes are conducted in settings and conditions that provide for the consideration of confidential information about properties of religious and cultural significance and associated beliefs and practices.
  - c. In accordance with Section 36 CFR 800.4(c)(1) of the Section 106 regulations, agencies of DOI should take further steps to acknowledge the "special expertise" of Indian tribes in "assessing the eligibility of historic properties that may possess

religious and cultural significance to them.” Due deference should be given to the views of an Indian tribe regarding the impact on historic properties that are integral to the cultural and religious identity of the tribe before deciding to approve an undertaking that will have an adverse effect on such sites.

- II. **Site selection process and analysis of alternatives:** Minerals Management Service (MMS) should improve the planning process for the identification of preferred locations for energy development on the Outer Continental Shelf (OCS). Consideration of the presence of historic properties and the likelihood and nature of impacts from potential projects should be factored into decisions regarding the availability of federal lands for energy development.
- a. MMS should pursue strategies for the early identification of historic properties on the OCS to meet its responsibilities under Section 106 and to integrate Section 106 compliance effectively and in a timely manner with broader environmental reviews under the National Environmental Policy Act (NEPA).
  - b. MMS should work with and provide guidance to applicants to ensure that the Section 106 process is initiated early enough in the project planning and review process so it can realistically affect consideration of alternatives and selection of a preferred alternative project site.
  - c. In the review of alternative site locations, MMS should provide adequate weight to effects on historic properties in assessing the viability of an alternative. MMS should always maintain the option of withholding a permit or other authorization whenever the effects on historic properties of a specific alternative preferred by an applicant are found to be too great.
- III. **Improving the coordination between energy development and historic preservation:** The ACHP and DOI, working in coordination with other agencies and stakeholders, should recommend policies and provide guidance on the key issues regarding historic preservation and energy development.
- a. The ACHP should work with the Council on Environmental Quality to finalize guidance on the appropriate coordination of the Section 106 review process and the NEPA review process.
  - b. The ACHP and the National Park Service (NPS) should develop guidance to assist federal agencies in determining and addressing the effects of energy projects, especially wind and solar projects, on historic properties that comprise large areas with indefinite boundaries. Particular attention should be given to properties of religious and cultural importance to tribes and cultural landscapes. This effort should draw on the experience of other nations in addressing this subject.

- c. The ACHP and the NPS should assist agencies and applicants by sharing information on innovative and cost-effective strategies and techniques to identify all types of historic properties potentially affected by energy projects, not just standing structures and archaeological sites.
- d. The ACHP should clarify the distinction between direct and indirect effects to historic properties and when visual effects may constitute direct effects.
- e. The MMS should coordinate with the NPS, the ACHP, the National Conference of State Historic Preservation Officers, other agencies and stakeholders, and the professional marine archaeology community to develop guidelines specifying the methodologies and technologies that should be used in marine settings to assess the potential for the presence of archaeological sites and shipwreck sites. The guidelines should indicate the level of investigation that would represent a reasonable and good faith effort to identify historic properties for the projects on the OCS.

IV. **Creating a useful comprehensive database of historic properties:** DOI should revive the proposal of the 2006 Preserve America Summit that was endorsed by the ACHP to develop a comprehensive and accessible national inventory of historic properties to assist in the identification of historic properties during the federal project planning process. Priority should be given to those areas under federal jurisdiction or control that have high potential for both traditional and alternative energy development.

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