

DEPARTMENT OF THE ARMY PERMIT

Permittee_ Cape Wind Associates, LLC

Permit No.. 199902477

Issuing Office New England District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

To construct and maintain a single fixed tower, a Scientific Measurement Devices Station (SMDS), and an associated seabed mounted Acoustic Doppler Current Profiler (ADCP) in Nantucket Sound. The tower will consist of three piles supporting a 20 ft x 26.5 ft platform with a monopole extending from the platform to 169.85 ft (60 meters) above MLLW. The SMDS and the ADCP will be placed in accordance with drawings titled "Proposed Scientific Measurement Device Station Cape Wind Project" in 4 sheets with Figures 1 and 4 dated 11/21/01 and Figures 2 and 3 dated 3/21/02 by ESS (Environmental Science Services). Figures 2 and 3 were drawn by Han-Padron Associates and were also titled Revised Platform Elevation.

Project Location:

in the waters of Nantucket Sound between Cape Cod and Nantucket, Massachusetts, in an area referred to as Horseshoe Shoals.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on August 1, 2007 . If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. The permittee shall ensure that a copy of this permit is readily available whenever work is being performed and that all personnel performing work at the site of the work authorized by this permit are fully aware of the terms and conditions of the permit. This permit, including its drawings and any appendices and other attachments, shall be made a part of any and all contracts and sub-contracts for work which affects areas of Corps of Engineers jurisdiction at the site of the work authorized by this permit. This shall be done by including the entire permit in the specifications for work.

SPECIAL CONDITIONS CONTINUED ON PAGE 4

Further Information:

1. **Congressional Authorities:** You have been authorized to undertake the activity described above pursuant to:

() Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

() Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 108 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. **Limits of this authorization.**

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. **Limits of Federal Liability.** In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE) _____
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT ENGINEER) _____
(DATE)
Thomas L. Koning
Colonel, Corps of Engineers

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE) _____
(DATE)

SPECIAL CONDITIONS CONTINUED FROM PAGE 2

1. continued from page 2

If the permit is issued after the construction specifications but before receipt of bids or quotes, the entire permit shall be included as an addendum to the specifications. If the permit is issued after receipt of bids or quotes, the entire permit shall be included in the contract or sub-contract as a change order. The term "entire permit" includes permit amendments. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions of the entire permit, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

2. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structures or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

3. No later than 90 days after completion of the authorized work an as-built scaled drawing shall be submitted to the New England District of the Corps showing the geographic coordinates of the actual tower location. The drawing shall show a north arrow and a horizontal grid and shall note the scale, horizontal and vertical datums and the date the survey was done. The Corps will forward the submitted information to the National Oceanic and Atmospheric Administration (NOAA) to be located on future Coast Charts. The submittal shall be marked with the words "Permit No. 199902477" and shall be addressed to "Inspection Section, CENAE-R, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751". Documents which are not marked and addressed in this manner may not reach their intended destination and do not comply with the requirements of this permit.

4. An application for a Private Aid to Navigation shall be submitted to the Coast Guard. At least ten (10) working days in advance of the start date, the First Coast Guard District, Aids to Navigation Office, 617-223-8356, shall be notified of the location and estimated duration of the construction operations.

5. The structure shall have markings, lighting and sonic warning devices that the Federal Aviation Administration and U.S. Coast Guard require.

6. The permittee shall develop an operation and maintenance plan describing maintenance and repair and emergency response procedures. Prior to the start of construction, a copy of the plan shall be forwarded to the Army Corps of Engineers and no construction shall start until the Corps approves the plan in writing.

7. The permittee shall post a bond for \$300,000.00 for emergency repairs or removal of the tower as determined necessary by the Corps of Engineers. The bond shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in

Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register, or may be obtained from the U. S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW, 2nd Floor, West Wing, Washington, DC 20227. This bond must be in place at all times the structure is in the waterway and for a year after its removal in case subsequent information reveals debris or remnants from the tower and its construction and removal are discovered in the waterway.

8. Data obtained from the authorized work shall be provided upon request, and at reproduction cost, to any governmental entity or agency, and educational institutions, such as, but not limited to the Massachusetts Maritime Academy and the Renewable Energy Department at the University of Massachusetts at Amherst.

9. Since the tower is on Federal government controlled public ocean bottom lands, the permittee shall make this data tower available for governmental entities, research institutions, non-profit public interest groups or organizations, education institutions and similar entities (such as but not limited to University of Massachusetts, Cape Cod Community College, Woods Hole Oceanographic Institute, Massachusetts Audubon Society, Manomet Center for Conservation Sciences, etc.) for reasonable installation of scientific data gathering equipment. This will be done under a rent free basis if the Corps, in consultation with the permittee, determines that such equipment installation and maintenance can be done with no impact on operational effectiveness, liability, safety risks, maintenance ability or cost to the permittee. Separate agreements for each such use will be entered into between the Corps, the permittee, and the user.

10. A National Marine Fisheries Service approved observer shall be present during the pile driving activities to document the presence of listed species. If a listed species is sighted within the vicinity of the construction area, work shall be curtailed until the animal is confirmed outside the action area.

11. If a sea turtle or other listed species is injured, all construction activities shall cease immediately and the permittee shall contact Kara Dwyer, NMFS assistant stranding coordinator, at (508) 495-2274 (Pager no. (978)585-7149) or Kim Damon-Randall, NMFS Protected Resources Division, at (978)281-9112.

12. The sound level in the water, measured in decibels shall be monitored during the pile driving procedures, and the results of this monitoring shall be forwarded to Kim Damon-Randall, NMFS, One Blackburn Drive, Gloucester, MA 01930 or transmitted via electronic mail to Kimberly.Damon-Randall@noaa.gov to confirm that the anticipated sound levels in the water during pile driving does not exceed 180 dBA. Underwater sound pressure level measurements will be made at an Initial Safety Zone radius of 500 meters to determine compliance with the 180 dB NMFS threshold. Hydrophone measurements will use the Lmax RMS "fast" setting, and data will be analyzed on a real-time basis to ensure continuing compliance. If measured levels exceed the threshold, a site-specific Safety Zone radius corresponding to the 180 dB threshold will be established and the NMFS approved observer will be advised of the expanded action area for observation of marine animals. If a listed species is sighted in the vicinity of the action area, work will be curtailed until the animal is confirmed outside of the action area. Measurement

data will be reported real-time by phone and e-mail to Kim Damon-Randall at NMFS, Gloucester on whatever time interval NMFS requests (e.g. hourly, twice daily).

13. This permit does not supercede any authority of the Minerals Management Service, including the authority to convey rights to OCS sand, gravel, and other OCS resources in accordance with OCS Lands Act of 1953 and PL 103-426.

14. This permit shall not be transferred to any other party without the prior written approval of the Corps of Engineers. Based on current circumstances and issues that may arise, including the possibility of legislative change, the Corps may decide to require a new public interest review, including possibly a new public notice and imposition of further requirements, before approving such a transfer.

15. The data tower shall be completely disassembled and removed from the waterway within five years of the start of construction.

16. In order to more completely assess the potential for archaeological resources within the area to be impacted by the construction of the data tower, additional geophysical survey data as described below shall be collected and provided to the Corps, Massachusetts Historical Commission, and the MBUAR no later than 20 days prior to the start of work for their review and comment within 20 days of receipt. The submittal shall be marked and sent in accordance with the instructions in Special Condition 3. This additional survey shall include the use of side scan sonar, magnetometer, sub bottom profiler (using 50 foot lane spacing covering a 500 foot by 500 foot area centered on the SMDS site, which could potentially be affected by construction equipment) and visual inspection of detected anomalies if a review by a qualified marine archeologist indicates that these anomalies may represent historic or prehistoric archaeological resources in the construction area.

In the event that potentially significant historic or prehistoric archaeological resources are identified in the project area of effect, the Corps will consult with the MHC and MBUAR to avoid, minimize, or mitigate any adverse effects to National Register-eligible archaeological resources, prior to the commencement of construction.