



Union of Concerned Scientists
Citizens and Scientists for Environmental Solutions

October 5, 2004

Via Fax and U.S. Mail

Director, Office of Freedom of Information/
Security Review
U.S. Department of Defense
1155 Defense Pentagon, Room 2C757
Washington, D.C. 20301
Fax: 703-693-7341

FOIA/PA Officer
U.S. Army Corps of Engineers
Attn: CEHEC-OC
7701 Telegraph Road
Alexandria, VA 22315-3860
Fax: 703-428-7633

FOIA/PA Officer
U.S. Department of the Army – FOIA Division
7701 Telegraph Road, Suite 144
Alexandria, VA 22315-3860
Fax: 703-428-6522

FOIA/PA Officer
U.S. Army Corps of Engineers
New England District
Attn: Office of Counsel
696 Virginia Road
Concord, MA 01742-2751
Fax: 978-318-8251

Re: Freedom of Information Act Request

To Whom It May Concern:

This is a request under the Freedom of Information Act (5 U.S.C. § 552). On behalf of the Union of Concerned Scientists (UCS), a member-supported nonprofit environmental advocacy organization, I request that a copy of the following documents be provided to me:

1. The Draft Environmental Impact Statement (DEIS) for the proposal of Cape Wind Associates, LLC to construct a utility-scale wind energy generation project in Horseshoe Shoals, Nantucket Sound (File No. 200102913).
2. Any and all documents or records relating to the Army Corps of Engineers' decision in September of 2004 to send the DEIS to the Pentagon/Department of Defense before releasing the DEIS to the public, including, but not limited to:
 - a. E-mails, memoranda, letters, notes, or other materials, created on or after September 1, 2004 through October 4, 2004, relating to or mentioning a request by Raymond DuBois (Director, Administration and Management, Office of the Secretary of Defense and Deputy Under Secretary of Defense for Installations and Environment), John Paul Woodley, Jr. (Assistant Secretary of the Army, Civil Division), Chip Smith (Office of the Assistant Secretary of the Army, Civil Works), or other Pentagon/Department of Defense personnel, to receive a copy of the DEIS.

- b. E-mails, memoranda, letters, notes, or other materials, created on or after September 1, 2004 through October 4, 2004, relating to or mentioning the conveyance of the DEIS by the Army Corps of Engineers to Raymond DuBois, John Paul Woodley, Chip Smith, or other Pentagon/Department of Defense personnel.
 - c. E-mails, memoranda, letters, notes, or other materials, created on or after September 1, 2004 through October 4, 2004, relating to or mentioning a request or order by Raymond DuBois, John Paul Woodley, Jr., Chip Smith, or other Pentagon/Department of Defense personnel, not to release the DEIS to the public.
3. Any and all documents or records relating to the Army Corps of Engineers' plans to release the DEIS to the public, including, but not limited to:
- a. E-mails, memoranda, letters, notes, or other materials, created on or after June 1, 2004 through October 4, 2004, relating to or mentioning the completeness of the DEIS and/or its readiness to be released to the public.
 - b. E-mails, memoranda, letters, notes, or other materials, created on or after June 1, 2004 through October 4, 2004, relating to or mentioning the Army Corps of Engineers' planned schedule for releasing the DEIS to the public.
4. Any and all FOIA requests received regarding the DEIS on or after January 1, 2003 through October 4, 2004, and any and all written responses to such FOIA requests, including, but not limited to:
- a. FOIA request letters from the Alliance to Protect Nantucket Sound to the Army Corps of Engineers regarding the DEIS and any and all Army Corps responses to such letters.
 - b. FOIA request letters from the Boston Globe, Cape Cod Times, or other news media to the Army Corps of Engineers regarding the DEIS and any and all Army Corps responses to such letters.

Each of these records is described by 5 U.S.C. §552(a)(2) as information an agency is required to make available to the public, and there is no basis for claiming that the records requested herein are exempt from immediate disclosure under the FOIA. 5 U.S.C. §552(b); 32 CFR §286.12. If, however, it is your position that any portion of the requested records is exempt from disclosure, I request that you provide me with an index of those documents as required under Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied 415 U.S. 977 (1974). Should a portion of any requested document fall under an enumerated exception in §552, please disclose any reasonably segregable nonexempt portions of the requested documents. See 5 U.S.C. §552(b) ("any reasonably segregable portions of a record shall be provided to any person requested such a record after deletion of the portions which are exempt.....").

I seek a waiver of fees for this request because disclosure of the requested information to me is in the public interest. The information is likely to contribute significantly to public understanding of the Army Corps of Engineers' role and activities in reviewing Cape Wind's proposal to construct a utility-scale wind energy project in federal waters off of Cape Cod, Massachusetts. As a representative of UCS,

a member-supported nonprofit environmental advocacy organization, I am seeking the requested information in order to advance timely public review of the DEIS, which was expected to be released to the public by late August or early September. The DEIS will contain long-awaited assessments of the environmental benefits and impacts of the proposed wind energy project. Prompt release of the DEIS will finally enable public debate about the project to focus on scientific data and analysis, rather than speculation and conjecture.

Neither I nor UCS has a commercial interest in the requested information. Rather, we seek this information for the purpose of disseminating it to our members, other advocacy organizations seeking to review the Cape Wind proposal, and to the public at large.

Should you determine that this request does not qualify for a fee waiver, I nevertheless urge you to provide a copy of the DEIS – which is about to be reproduced and released to the public anyway – free of charge. UCS is willing to pay up to \$250 in search and duplication fees assessable after the first two hours of searching and the first 100 pages of copying, which are to be provided without charge pursuant to 32 C.F.R. §286.28(c)(1). Please notify me if you estimate that the fees will exceed that amount.

Please respond to this request in writing within twenty (20) days as required under 5 U.S.C. §552(a)(6)(A)(i) and 32 C.F.R. § 286(e)(1). If all of the requested documents are not available within that time period, please provide all requested documents or portions of documents that are available within that time period. If you have any questions about this request or foresee problems in fully releasing the requested records within the required period, please contact me by phone at (617) 547-5552, ext 221 or by e-mail at ddonovan@ucsusa.org.

Thank you for your prompt consideration of this request.

Very truly yours,

Deborah Donovan
New England Project Manager
Clean Energy Program

Cc: Lt. Col. Brian Green
Lt. General Carl A. Strock
Christine Godfrey
Karen Adams
James Gordon
Susan Nickerson