

Appeals court overturns key Cape Wind clearance

October 29 2011, By JAY LINDSAY , Associated Press

(AP) -- A federal appeals court on Friday overturned the Federal Aviation Administration's ruling that Cape Wind's turbines present no danger for local air traffic.

The decision could further delay construction of the wind farm first proposed a decade ago.

The U.S. [Court of Appeals](#) for the District of Columbia said the FAA misread its own rules when assessing [Cape Wind](#), which aims to be the nation's first [offshore wind farm](#).

The [court](#) said the FAA did not adequately determine whether Cape Wind's 130 turbines - each 440-foot tall - would pose a danger to pilots relying on sight rather than the plane's instruments.

The court vacated the government's "no hazard" finding and sent the case back to the FAA, agreeing with plaintiffs that "the FAA did misread its regulations."

The project has faced relentless [opposition](#) since it was first proposed in 2001 for Nantucket Sound, off Massachusetts. Critics say its power would be too costly and the wind farm will spoil beautiful vistas, while posing environmental and navigational threats.

The court ruling came in an appeal of the FAA finding by the town of Barnstable and the Alliance to Protect Nantucket Sound. The decision

could mean further delays for the \$2.6 billion project.

FAA spokesman Jim Peters said the agency was reviewing the [court decision](#). He said the FAA does not know yet whether it will have to start over its review of Cape Wind.

Audra Parker of the Alliance to Protect Nantucket Sound suggested the decision could sink the project. She said a significant delay could make it impossible for Cape Wind to attract needed investors, "a key step toward Cape Wind's ultimate [failure](#)."

A [lawyer](#) for Barnstable, Eric Pilsk, said the FAA took 2 1/2 years to return a new finding in a similar case in Nevada that his firm handled.

But Cape Wind spokesman Mark Rodgers said the ruling won't affect the project schedule, which calls for producing power by 2014. He said the project needed a renewed hazard determination from FAA within coming months anyway. The suit is just another delay tactic by project critics, he added.

"The FAA has reviewed Cape Wind for eight years and repeatedly determined that Cape Wind did not pose a hazard to air navigation," he said. "The essence of today's court ruling is that the FAA needs to better explain its Determination of No Hazard ruling."

Bill Short, a consultant working the renewable energy industry, said the ruling was a blow to Cape Wind, but the project can likely withstand any delay because it already has a buyer for half its power under very favorable terms.

"(It's like) driving down the road and you've hit one hellacious, enormous pothole and it has given you a flat tire. That's what this is like (for Cape Wind)," he said. "As opposed to you're driving down the road

and your car goes into a sinkhole and you don't come out."

Cape Wind backers say the costs for the project are worth the numerous benefits, including kicking off a new clean energy industry, while lowering carbon emissions and reducing dependence on foreign oil.

Last year, Cape Wind sold half its projected power output to the utility National Grid, after the project became the first U.S. offshore wind farm to win a lease from the U.S. Department of the Interior. But it has struggled to find a buyer for the other half of its electricity. Without one, it likely can't attract financing to fully build out the project. It could move ahead with a smaller project, but that would raise the price of its power and make it less economical to build.

In its ruling Friday, the court said the FAA made its initial finding of "no hazard" after inadequate analysis, basing it solely on the fact Cape Wind's turbines aren't 500 feet tall - the threshold for when turbines become a concern to pilots flying primarily by sight, not instruments, under "visual flight rules."

The court said the FAA's handbook indicates the [turbine](#) height is just one possible factor the FAA must consider, including how Cape Wind would affect pilots flying by visual flight rules.

It said there were hundreds of such flights in the area over a three-month span and cited testimony from some local pilots worried about colliding with the turbines in the frequently foggy and rough weather over Nantucket Sound.

"The FAA might ultimately find the risk of these dangers to be modest," the ruling read, "but we cannot meaningfully review any such prediction because the FAA cut the process short in reliance on a misreading of its handbook and, thus, as far as we can tell, never calculated the risks in the

first place."

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