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KENNEDY FLOOR STATEMENT ON THE CAPE WIND PROJECT

Provision included in Coast Guard Authorization bill gives Massachusetts a voice
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http://kennedy.senate.gov/newsroom/press_release.cfm?id=22D4625B-AB2A-4F64-AA49-CD5021DDE554

(Washington, DC) Today, Senator Edward M. Kennedy spoke on the floor of the United States Senate on the proposed Cape Wind project in Nantucket Sound. The project would be the first offshore wind farm in the United States.

Kennedy has consistently opposed the project and called for a federal policy to be in place before a project of this magnitude is given approval. Cape Wind seeks to put 130 wind turbines in Nantucket Sound that reach 417 feet tall. The effects on Massachusetts' fishing and tourism industries, the Coast Guard, navigation and national security are unknown.

Kennedy's floor speech is included below, as well as a fact sheet that highlights some of the most disturbing inaccuracies surrounding the Cape Wind project.

STATEMENT OF SENATOR EDWARD M. KENNEDY ON SECTION 414 OF THE COAST GUARD CONFERENCE REPORT. (As prepared for delivery)

Mr. President, rising energy costs are affecting every family in America. The high price of gasoline not only hits us at the pump, but it is forcing up prices at the grocery and department stores, on electric bills, on airline tickets, and in so many other parts of our lives.

Obviously, we need to end our dependence on foreign oil. We need to practice serious energy conservation. And we need to invest in new, clean and efficient technologies to meet our energy needs in the future.

One promising source of alternative energy is to use windmills to generate electricity. A number of wind farms have been erected on land in recent years, and we are now exploring offshore sites for them for the first time in the nation's history.

I strongly support the development of offshore wind energy projects. But just like any energy project, there's a right way and a wrong way to proceed with offshore wind development.

The right way is for scientists and the government to study the outer continental shelf and to decide which sites are appropriate for development.

The right way would keep wind energy projects away from sensitive ocean preserves, and away from areas surrounding vital sea lanes that must remain open to traffic to sustain national and local economies.

The right way is for companies to bid competitively for the right to develop public lands and waters -- and to do our best to see that the American people are getting the best deal possible.

That's why Congress decided in the Energy Policy Act of 2005 that offshore wind farms should be developed in the right way. The Act establishes a process that makes sense for the environment, for the affected communities, and for the public interest.

That process will include a comprehensive mapping of the outer continental shelf through which the Department of the Interior will identify the sites where development makes sense.

But the bill does have one flagrant loophole. One private project -- the Cape Wind project in Massachusetts -- won key exemptions from this sensible national policy. Thanks to that sweetheart deal, the Cape Wind project will not be evaluated in the same way as every other offshore wind energy project. And that's the wrong way for a project to be built.

Here's how the special exemption was created. Under Subsection 388(d)(1), some of the polices and procedures that will apply to every single offshore wind energy project in the future will not apply to a project where:

"an offshore test facility has been constructed"

And there is exactly one project in the entire country to which that language applies: the Cape Wind development. So this is special interest legislation, designed to benefit one developer at the cost of the public interest.

But the sweetheart deal gets much worse. Under Subsection 388(a)(3), a competitive bidding process will be established for every other offshore project except Cape Wind.

That exemption raises the possibility that the Cape Wind developer will pay below-market rates -- or nothing at all -- for the right to erect a massive development in federal waters.

In this way, a few words -- which never even identify Cape Wind by name -- allow a private developer to lay claim to 24 square miles of the waters off the coast of Massachusetts. The people didn't choose the site. The Department of Interior didn't choose it. The developer -- Energy Management Incorporated, or EMI -- chose this site.

EMI chose a site in the middle of a major local fishery, in the middle of navigation routes are essential to the economy of the entire Cape and Islands. But that didn't matter to EMI, and there was no government policy in place to protect the public interest.

EMI also chose to make this project the biggest in the world with 130 towers, each standing 417 feet tall, spread over 24 square miles.

A project of that size must be measured against the national policy that Interior is developing.

But instead of waiting for that policy, and then adhering to it, EMI is claiming that its special exemption requires the Department of the Interior to review and approve its application to develop Nantucket Sound before choosing which sites warrant development, and before establishing a national offshore wind energy development policy.

Every other developer must wait to see what sites are identified by the Department of Interior for development.

But not Cape Wind.

Every other developer must face a competitive bidding process.

But not Cape Wind.

Every other developer must wait for the policy to be finalized.

But not Cape Wind.

That's the wrong way to promote wind energy. We know sweetheart deals contracts harm our citizens. Halliburton got a no-bid deal to support our troops in Iraq, and our troops have paid the price. The Bush Administration awarded no-bid contracts to rebuild after Katrina, and the people of the Gulf Coast have paid the price. Now Cape Wind is turning the waters off of Cape Cod into an industrial park, and the people of Massachusetts are going to pay the price.

Every Senator who voted for the Energy Policy Act of 2005 has already voted in favor of a comprehensive and thoughtful policy to govern all offshore wind energy projects. That process will be thwarted if we allow one developer to play by a different set of rules.

That's why I support of Section 414 of the Coast Guard Reauthorization Bill. All that language does is give the Commandant of the Coast Guard and the Governor of Massachusetts the ability to ensure that the public interest is served and that serious environmental and safety issues with this project are addressed.

This provision is the opposite of an earmark. It corrects, rather than creates, special interest legislation. If EMI had not obtained a sweetheart deal in the Energy Policy Act last year, there would be no need for this provision. But it is needed now to correct a badly flawed process that treats the Cape Wind proposal differently than every other offshore wind energy development.

This provision is similar to other provisions we've passed to give authority to governors over projects off their shores. The Deepwater Port Act of 1974 grants final authority over the siting of offshore LNG terminals to the governor of the adjacent coastal state.

The Ocean Thermal Energy Conversion Act of 1980 gives authority to the governor of a coastal state to disapprove of offshore thermal energy conversion projects if they find that such facilities conflict with the state's laws or regulatory programs.

Similar authority makes sense here, because EMI is bypassing the federal process that will apply to all other offshore wind energy projects. The people of Massachusetts have protected Nantucket Sound for nearly 400 years, and they deserve more than a sweetheart deal to stick a massive project off their shores.

What are the arguments we've heard in support of Cape Wind's sweetheart deal?

First, we have heard that stopping this deal will send a bad message to others interested in developing alternative energy sources.

That's flatly untrue. Every other developer will have to comply with one uniform set of procedures. The Department of the Interior just announced Friday that it will hold public meetings for an environmental review needed to formulate the national offshore alternative energy policy authorized by the Energy Policy Act of 2005. On May 25th, they'll hold a hearing in Dedham, Massachusetts.

That environmental review will help the Interior Department create a clear, transparent and uniform set of standards for evaluation and siting offshore wind energy proposals on our outer continental shelf, and devise a competitive bidding process in which developers compete for the right to lease public offshore lands.

The environmental review will include an effort by the Department of Interior to map and zone the outer continental shelf area to determine which sites are appropriate for development, and which are not.

The issue before us today is whether EMI is entitled to evade this comprehensive process by staking its claim to one specific site and pushing for approval before Interior can assess which of our outer continental shelf lands are appropriate for development.

We send exactly the right message to other developers if we pass Section 414, because it tells them that Congress won't give sweetheart deals to particular developers.

Second, we are being told that EMI has already passed a careful review process.

That too is flatly untrue.

EMI originally applied to the Army Corps for a construction permit under the limited authority of the Rivers and Harbors Act of 1899. At the time of the application, the Army Corps had no authority to lease outer continental shelf lands for energy development and no siting policy in place for such proposals.

The Corps' review process ended in a draft environmental statement that the Environmental Protection Agency rated "inadequate" and the US Geological Survey described as "incomplete, and too often inaccurate, and/or misleading."

The US Commission on Ocean Policy, in its September 2004 report to Congress and the President, described the Corps' review process as "inadequate" as well, and said that it stands: "in stark contrast with the well established DOI regulatory program for onshore wind development, and in the marine setting, the robust regulatory program developed under OCSLA [the Outer Continental Shelf Lands Act]."

This inadequate process -- and EMI's incomplete, inaccurate and misleading draft environmental impact statement are plainly insufficient grounds on which to allow EMI to seek approval before Interior even creates the rules that should apply to everyone.

Third, EMI claims that they have invested nearly \$25 million in this project, and it would be unfair to force them to follow the rules.

This argument reveals just how far EMI will go in insisting that its financial interests come before the public interest.

The fact is that EMI will be eligible for more than \$28 million in federal wind energy tax credits in its first year. That's more than the entire amount they claim to have invested so far.

They'll be eligible for those same credits for each of the first ten years of the project's operation -- for a total of \$280 million in federal taxpayer subsidies.

The project will also be eligible for between \$37 million and \$82 million in renewable energy electricity price support subsidies each year from the ratepayers through Massachusetts renewable energy certificate trading program.

In addition, this massive project will be eligible for 5-year accelerated depreciation, which means the developer can write off the cost of this \$900+ million project on their federal taxes in just five years, even though the project may be in use for at least 20 years.

Between the federal tax credits, the Massachusetts benefits and accelerated depreciation, this project may cost taxpayers and ratepayers more than \$1 billion.

There's no problem with a profit motive. But a corporation that wants to develop federal lands for profit should expect to comply with the same rules as every other developer. And they should not have the gall to complain when their sweetheart deal receives the scrutiny it deserves. EMI is entitled to seek profits, but we are required to put the public interest first.

The real reason EMI can't afford to be governed by the same rules as every other offshore developer is that there are serious doubts as to whether this project would survive a careful and systematic review. In particular, this project has the potential to cause havoc with the fisheries, environment, marine navigation, and aviation in Nantucket Sound -- all of which are essential to the economic well-being of Cape Cod and the islands of Martha's Vineyard and Nantucket.

Consideration of Massachusetts' interests here must begin with the basic fact that EMI chose a site that rests on a doughnut hole of federal jurisdiction completely surrounded by waters under the control of the Commonwealth of Massachusetts.

Massachusetts is one of only two states in the country -- Alaska is the other -- with such a unique geography. In fact, Congress has already acknowledged that Massachusetts has an interest in these waters -- the Magnuson Stevens Act gave Massachusetts jurisdiction over fisheries in these waters.

Massachusetts has a long history of working to protect all of Nantucket Sound.

From the first colonists in the 1620's, Massachusetts has exercised stewardship over the waters of Nantucket Sound. In 1691, a charter was granted by the English monarchs William and Mary to the colonists of Massachusetts that included the waters of Nantucket Sound.

When the Revolutionary War was won, the First Congress established a customs enforcement system in 1789 that expressly included, in the definition of the district of Edgartown -- "all the waters and shores" within the county that held Martha's Vineyard, including Nantucket Sound.

In 1970, in recognition of mounting development pressures on critical offshore marine resources, the Commonwealth of Massachusetts passed the Massachusetts Ocean Sanctuary Act.

This legislation created the Cape and Islands Ocean Sanctuary granting heightened protections to the Sound and surrounding waters.

In particular, Massachusetts prohibited projects that -- like Cape Wind -- would result in "the construction or operation of offshore or floating energy generating stations."

Nantucket Sound lost its state ocean sanctuary protections only after a bitter and protracted legal battle settled by the US Supreme Court in 1986.

This created the hole in the middle of the state's protected waters that Cape Wind seeks to exploit today.

To ensure that Nantucket Sound would not be exploited by destructive development even if this doughnut hole were created, Massachusetts nominated Nantucket Sound for National Marine Sanctuary status and protections in 1980. Nantucket Sound was placed on the National Marine Sanctuary Site Evaluation List today. If National Marine Sanctuary status had been finalized, this project could not be built here, because the Energy Policy Act specifically prohibits construction of such projects in our 14 National Marine Sanctuaries.

I think we should protect Monterey Bay in California; the Florida Keys; the Olympic Coast off Washington; the Monitor off Newport News; and the Northwest Hawaiian Islands -- and I'm not ashamed to say that Nantucket Sound deserves to be in that company.

It is simply not appropriate to allow this proposal to go forward while Nantucket Sound remains on the Site Evaluation List.

I've been working my entire career to preserve and protect Massachusetts critical resources -- from proposing the Nantucket Sound Island Trust; blocking drilling on Georges Bank; protecting the Cape Cod National Seashore; and championing the Stellwagen National Marine Sanctuary off the coast of Boston.

And I don't fault Governor Jeb Bush, who was trying to do that same thing for Florida when he worked with the White House to block drilling 100 miles off Florida's coasts.

The difficulty confronting Massachusetts with this project is that it's going to be nearly impossible to protect the integrity of the Cape and Islands Ocean Sanctuary, if Cape Wind keeps its sweetheart deal.

In a recent meeting with editorial writers at the Cape Cod Times, Governor Romney commented on this very situation:

"It's absolutely outrageous that the federal government would allow" a wind farm in an area completely surrounded by Ocean Sanctuary waters the state has fought to preserve and protect.

Governor Romney asked: "How could you do this to us?"

One reason Massachusetts needs a voice here is because the project threatens the livelihoods of Massachusetts' fishermen. Nantucket Sound has accounted for annual catches of over a million pounds of squid and fish. Nearly 50 to 60 percent of that catch

is from the portion of the Nantucket Sound where EMI wants to place massive wind turbines.

That is why the Massachusetts Fishermen's Partnership strongly opposes the Cape Wind project, and why the Massachusetts Division of Marine Fisheries has stated that it "remains greatly concerned that this project may have substantial . . . impacts to fisheries resources, habitat and harvest activities in Nantucket Sound."

This project also has serious implications for the safety of navigation in and around Nantucket Sound.

In its criticism of the Army Corps' draft environmental impact statement of the Cape Wind project, the Coast Guard noted that the report failed to consider a series of studies in Great Britain, which -- unlike the United States -- has extensive experience with offshore wind energy projects.

These British studies raised serious issues concerning the impact of wind turbines on radar and navigation. The Great Britain site has only 30 towers standing 220 feet tall in an area of just 3.8 square miles. The Cape Wind project has four times as many towers, that are twice as tall, and cover over six times the area.

The British reports found that "Small vessels, buoys, etc. might not be detectable within or close to the wind farm," that "the wind turbine generators blind and shadow areas," and that there was an "inability to effect surface rescues within the wind farm in restricted visibility."

Based on these studies, Britain now recommends a 1.5-nautical mile buffer between shipping channels and wind turbines, unless significant navigation control systems exist in the area. The Cape Wind project would be just a fifth of a mile from established shipping channels and only three-quarters of a mile from established ferry routes.

These concerns have been emphasized by the Passenger Vessel Association, the nation's largest trade association for US-flagged vessel operators, which passed a unanimous resolution on April 25th, stating:

"The Passenger Vessel Association opposes the construction of a proposed offshore wind energy facility in Nantucket Sound, Massachusetts, because of its hazardous impact on navigation and safety of passengers. . . The location of 130 wind towers in close proximity to existing ferry routes to the islands of Nantucket and Martha's Vineyard poses unacceptable safety risks, including possible collision and interferences with navigational radar."

If there were an accident involving a ferry, the wind energy project could turn it into a tragedy.

Retired US Coast Guard Lt. Cmdr. William H. Rypka, a former Coast Guard search and rescue helicopter pilot who's performed numerous searches in this very area has written that the proposed wind farm is an "extreme hazard to navigation" that the "potential for a collision with the windmills is huge."

He wrote that he's performed helicopter searches at 100 feet above sea level, which will not be possible in the 24 square-mile area once the 417-foot tall towers go up.

There are similar concerns with the effect of the wind energy project on the safety of air travel. Studies by the British Ministry of Defence have prompted the FAA to begin looking into the radar effects of large-scale wind turbines in close proximity to airports. In March, the FAA designated a wind energy project in Wisconsin a hazard to aviation, and informed Congressman William Delahunt that recent briefings with British Ministry of Defence representatives "seem to confirm our concern of potential interference from wind turbines to our own traffic control radar systems."

In a series of three studies published in 2005, the Royal Air Force found ample reason to believe that wind turbines affected radar performance as much as 24,000 feet above the wind farms. As a result of these British studies, Congress has asked the Department of Defense to lead an investigation into the possible effects of wind turbines on the nation's 59 different defensive radar systems. That investigation is underway.

This kind of aviation radar interference is an enormous public safety concern for the Cape and Islands, which rely heavily on air and sea travel. Three major airports surround the project site, and more 400,000 flights a year criss-cross the airspace over the proposed project site. This airspace is overseen by the Cape Cod Terminal Radar Approach Control located at Otis Air National Guard Base.

Mike Suriano, the National Air Traffic Controllers Association Facility Representative at Cape Approach Control wrote the Army Corps in 2004 opposing the siting of this project. In his letter, Suriano wrote "if you were to ask me, where is the worst place to construct a hazard to aviation and jeopardize safety in the Cape and Islands airspace, I couldn't have picked a better spot . . . "

"Placing 170 of these wind driven turbines in this area, in our opinion, is a disaster waiting to happen."

A disaster waiting to happen. And it doesn't have to happen if we do the right thing. In closing, I emphasize that this issue is not about wind energy. I strongly support wind energy, and Congress has passed a law that will establish a thoughtful and comprehensive process that will allow offshore wind farms to go forward whenever and wherever they are in the public interest. The sole question raised by Section 414 of the Coast Guard bill is whether a private developer will be allowed to win approval to build the world's largest offshore wind energy project before that thoughtful and careful process has been finalized. I believe we need to take a stand against the sweetheart deal obtained by EMI, and to place the final decision on the wisdom of this project into the hands of the Coast

Guard and the State of Massachusetts, which will have to live with this project for decades to come.

FACT SHEET:

Concerns with Cape Wind Proposal Senator Kennedy has many concerns regarding the proposed Cape Wind project, which if permitted, would be the world's largest offshore wind energy facility. The Senator is concerned that Cape Wind's project will undermine the more than 30-year effort to protect the ecology of the Sound and will jeopardize the public interest, the environment and the safety of users of the Sound. The inadequate review the proposal has received -- first, through the U.S. Army Corps' insufficient environmental review, and second, through special interest exemptions Cape Wind enjoys under the Energy Policy Act of 2005 -- exacerbate the Senator's concerns, leading him to oppose the project.

A. The Inadequacy of the Review Section 388 of the Energy Policy Act authorizes the Secretary of the Interior (through the Minerals Management Service) to implement the offshore alternative energy program. Although the MMS is diligently establishing a framework for reviewing offshore energy projects, Cape Wind's (and LIPA's) proposed project will not undergo the same review required of all other projects because of the bill's special interest provisions. 1. Special Review Process for Cape Wind Section 388 exempts Cape Wind from submitting any documents previously submitted to any federal agency before the enactment of the Energy Policy Act of 2005. MMS has interpreted this provision to allow Cape Wind and LIPA to initiate the MMS review process before any other developer and before MMS has developed regulations to implement its offshore program and review processes. Thus, Cape Wind's project will be reviewed before a programmatic environmental review is conducted, before MMS can determine which areas are closed to development, before review standards are established, and before the cumulative impacts of multiple developments are assessed. In addition, Cape Wind has asserted that MMS should rely on the environmental impact statement prepared for the Corps for MMS's review. The Corps conducted its review under the century-old 1899 Rivers and Harbors Act, which is not designed to permit massive offshore energy projects, but instead commonplace obstructions to navigation such as docks and bridges. As noted by the U.S. Commission on Ocean Policy, the Corps' process stood: . . . in stark contrast the well established DOI regulatory program for onshore wind energy development, and in the marine setting, the robust regulatory program developed under the OCSLA [Outer Continental Shelf Leasing Act]. Using the Section 10 process as the primary regulatory vehicle for offshore wind energy development is inadequate. . . . [I]t lacks the management comprehensiveness that is needed to take into account a broad range of issues, including other ocean uses in the proposed area and the consideration of a coherent policy and process to guide offshore management. It is therefore not surprising that the environmental review prepared by the Corps was declared by the EPA to be "Category 3?Inadequate." Nonetheless, Cape Wind continues to argue that it is sufficient for MMS's review, and MMS is using that review as the basis for its own analysis. 2. Competitive Bidding Provision Cape Wind, under Section 388, is also exempt from

undergoing the competitive bidding process that will apply to all other offshore alternative energy developers. Thus, if approved, Cape Wind it will have acquired development rights to an immensely valuable and ecologically fragile area of the OCS, without having to compete with any other company for those rights. Given that Cape Wind also stands to enjoy approximately \$28 million per year in federal subsidies and another \$37 to \$82 million in state renewable price supports, obtaining rights to Nantucket Sound without undergoing competitive bidding is a huge windfall for Cape Wind. The approximate 10 cents per household per month benefit that New Englanders are expected to enjoy as a result of Cape Wind's project does not compensate for the heavily subsidized profits Cape Wind will reap.

B. The Ecological Values of the Sound 1. Sanctuary Status Nantucket Sound is a unique resource that the Commonwealth has sought to protect for more than 30 years. In 1970, Massachusetts passed the Massachusetts Ocean Sanctuaries Act and designated all of the Sound as part of the Cape and Islands Ocean Sanctuary. The Act protects the ecology of the Sound by barring energy development in sanctuary waters. Although the Commonwealth intended to include the entirety of the Sound as an ocean sanctuary, the center of the Sound was declared federal waters after a long, hard-fought legal battle against the United States. While this legal battle was waging, the Commonwealth sought additional federal protection for the Sound by applying to have it declared a National Marine Sanctuary in 1980. It remains on the National Marine Sanctuary Site Evaluation List to today. As Cape Wind has long known, its project would be barred in state waters under a 30 year-old law. The only reason that the project is even remotely possible is because the federal government claimed the center of the Sound as its own. Cape Wind's project is no less harmful simply because it plans to pitch the site just two miles outside of the Commonwealth's reach. 2. Fishing Interests For area fishermen, the effects of this project may be particularly devastating. According the Massachusetts Division of Marine Fisheries, 1,162,529 pounds of squid and fish were harvested in 2000 by more than 123 commercial vessels working in Nantucket Sound. Nearly 50 to 60 percent of their catch is from the shallow Horseshoe Shoal area -- the site of the proposed wind farm. If Cape Wind develops the property, these fishermen will likely no longer be able to fish in these waters because they may not be able to deploy their fishing gear in the midst of the 130 tower wind facility that may take up one-third of the existing footprint area of the Horseshoe Shoal fishing grounds. In addition, there is serious concern that the construction of these towers will have permanent effects on critical shallow fish habitats. The project will require laying more than 100 miles of cable by plowing into the seabed, driving the bases of its 130 turbines deep into the seabed, and performing dredging in areas too shallow to currently accommodate the work boats needed for construction of the turbines. Destruction of fish habitat is unavoidable. C. Danger to the Public Safety 1. Maritime Concerns and Navigational Risks The project is proposed directly adjacent to a major shipping lane and a major passenger ferry route in the midst of one of the most heavily trafficked maritime environments in the country. Each year, nearly 3 million people travel through the area by ferry or private vessel. The proposed site is too close to shipping channels to be safe: with only a 1,200-ft separation from established shipping channels and a 4,500-foot separation from established ferry routes, not enough time is available to respond to a structure or possibly to avoid another vessel. Vessels traveling at

just 6 nautical miles per hour will encounter a new 417-foot spinning turbine every 3 minutes; vessels traveling 20 nautical miles per hour will encounter a turbine approximately every 50 seconds. Factoring in that Nantucket Sound often experiences dense fog causing zero visibility conditions, John T. Griffin, Vice Chairman of the Barnstable Airport Commission, and Edward Barrett, of the Massachusetts Fishermen's Partnership, recently wrote that the Cape Wind proposal was "utter recklessness." In Great Britain, research into wind farms and their effect on radar and collision avoidance systems has led the government to recommend a minimum separation distance between wind turbines and shipping lanes of 1.5 nautical miles, unless significant vessel navigation control systems exist in the area. The British Chamber of Shipping "advocates the adoption of a precautionary separation zone of at least two nautical miles from recognized shipping lanes." Cape Wind has proposed far less. The danger to the public is real and substantial.

2. Aviation/Defense Implications The project previously received preliminary approval from the Federal Aviation Administration, but in recent months FAA has decided to take a more comprehensive look at the potential impacts on large-scale wind turbines. FAA Administrator Marion Blakey has stated that after being briefed on several British Ministry of Defence studies, the British experience "seems to confirm our concern of potential interference from wind turbines to our own air traffic control systems." This is an enormous concern for the Cape and Islands communities which rely heavily on air travel. Three airports operate within miles of the proposed Cape Wind project, and approximately 400,000 planes traverse the airspace over the proposed site each year. In addition, Otis Air Force Base and the Coast Guard's Air Station Cape Cod are located in close proximity to the site. Planes from Otis were the first in the air in response to the attacks of 9/11. Also located on Cape Cod is the Pentagon's PAVE PAWS radar system, which tracks intercontinental ballistic missiles and is one of only two such systems in the country.

Press Contact