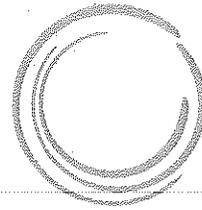


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BARNSTABLE, MASSACHUSETTS 02630



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**CAPE COD
COMMISSION**

Date: December 15, 2011

To: Samuel A. Lorusso
Cape Cod Aggregates Corp.
PO Box 96
Hyannis, MA 02601

Hemenway & Barnes LLP
Diane Tillotson, Esq.
60 State Street
Boston, MA 02109

From: Cape Cod Commission

Re: Procedural Denial Decision

Project Applicant: New Generation Wind LLC
P.O. Box 96
Hyannis, MA 02601

Project: Edgehill Park Subdivision

Project #: TR11010

Map/Parcel: (See attached)

Book/Page:

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission), hereby procedurally denies without prejudice the application of New Generation Wind LLC (the Applicant) for the Edgehill Park Subdivision as a Development of Regional Impact (DRI) in accordance with Sections 12 and 13 of the Cape Cod Commission Act (Act) and Section 15 of the *DRI Enabling Regulations*. This decision is rendered pursuant to a unanimous vote of the Commission on December 15, 2011.

PROJECT DESCRIPTION

The project is described in the May 13, 2011 DRI referral form and attachments as a preliminary subdivision of land, which exceeds 30 acres of residentially zoned and 10 acres of commercially zoned land between Route 6 and Route 25 in Bourne, MA.

PROCEDURAL HISTORY

The project was referred to the Commission as a DRI under Section 3(c) of the Commission's *Enabling Regulations*. The Commission received the referral from the Town of Bourne Planning Board through Mr. Christopher Farrell, the Board Chair, on May 13, 2011. In accordance with the Cape Cod Commission Act, the Commission is required to schedule a public hearing within sixty (60) days of the receipt of a DRI referral. A public hearing was opened by Hearing Officer on July 11, 2011 and closed by Hearing Officer on October 7, 2011. As the Commission did not receive an application from the Applicant, a substantive public hearing could not be scheduled within the statutorily mandated timeframe. Commission staff advised the Applicant that the project may either be withdrawn from local consideration and Commission review, or that the Commission may have to take steps to procedurally deny the project without prejudice. In a letter dated November 21, 2011, Attorney Diane Tillotson, on behalf of the Applicant, requested that the project be procedurally denied without prejudice. The Applicant was notified in writing on November 20, 2011 of the pending procedural denial and was provided with an opportunity to address the Cape Cod Commission Regulatory Committee on November 28, 2011 regarding the status of the project. The Regulatory Committee of the Commission deliberated on the procedural denial request at its November 28, 2011 meeting, where it voted unanimously to recommend that the full Commission procedurally deny the project without prejudice.

JURISDICTION

The proposed project qualifies as a DRI pursuant to Section 3(c) of the Commission's *Enabling Regulations Governing Review of DRIs (Enabling Regulations)* as a development that proposes to divide parcel(s) of land totaling 30 acres or more in common ownership or control on or after September 30, 1994.

FINDINGS

The Commission makes the following findings pursuant to Sections 12 and 13 of the Act and Section 15 of the Commission's *Enabling Regulations*:

1. The proposed project, as referred to the Commission on May 13, 2011, consists of a preliminary subdivision of approximately 40 acres of land between Route 6 and Route 25 in Bourne.
2. Section 15 of the *Enabling Regulations* states in pertinent part that "*Developments of Regional Impact (DRI), DRI Exemptions and DRI Hardship Exemption requests may be procedurally denied, without prejudice, when one or more of the following occur:*"
 - (i) *the Applicant fails to submit a complete DRI application;*
 - (v) *other instances where the project fails to progress continuously and expeditiously through required regulatory processes and the Commission determines that a procedural denial*

without prejudice may be properly granted; or

(vi) the Applicant fails to pay the entire filing fee specified in Section 16, Schedule of Fees.”

3. The Commission finds the Applicant has not submitted a complete DRI application for the project.
4. The Commission finds that the project has failed to progress continuously and expeditiously through the required regulatory process and a procedural denial without prejudice may be properly granted.
5. The Commission finds the Applicant has not paid the filing fee for DRI Review as specified in Section 16 of the *Schedule of Fees, Commission’s Enabling Regulations*.
6. On November 20, 2011, the Applicant was notified in writing of the pending procedural denial and was provided with an opportunity to address the Cape Cod Commission Regulatory Committee on November 28, 2011 regarding the status of the project.
7. On November 21, 2011, Attorney Diane Tillotson, on behalf of the Applicant, submitted a request in writing that the proposed project be procedurally denied without prejudice.
8. On November 28, 2011, the Commission’s Regulatory Committee voted unanimously to recommend that the full Commission procedurally deny the project without prejudice.
9. On December 15, 2011, the Cape Cod Commission voted to procedurally deny, without prejudice, the proposed development pursuant to the DRI Referral of New Generation Wind LLC for the Edgehill Park Subdivision, Project # TR11010.

CONCLUSION

The Cape Cod Commission hereby procedurally denies without prejudice the proposal of New Generation Wind LLC for the Edgehill Park Subdivision in Bourne as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act) c. 716 of the Acts of 1989, as amended.

(Signature on last page)



Peter Graham
Cape Cod Commission Chair

12/15
11

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

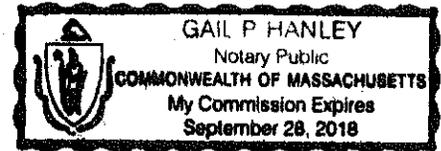
Dec 15, 2011

Before me, the undersigned notary public, personally appeared

Peter Graham, in his/her capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.

Gail P. Hanley
Notary Public

My Commission Expires: 9-28-18



<u>OWNER</u>	<u>ASSESSOR PARCEL/REFERENCES</u>	<u>BOOK/PAGE</u>
Tudor G. Ingersoll, Trustee of Bourndale Real Estate Trust	Map 9: Lots 22 & 78	Book 21236, Page 162 (5A) Book 10423, Page 246 (60.45A)
Tudor G. Ingersoll, Trustee of Bourndale Real Estate Trust	Map 9: Lots 78.01 & 78.02	Book 10423, Page 246
Tudor G. Ingersoll, Trustee of Panhandle Trust	Map 10: Lot 9	Book 7808, Page 236 (Approx. 194A)
Cape Cod Aggregates Corp.	Map 10: Lots 10 & 10.01 Map 16: Lots 7,8,9 & 10	Book 9518, Page 210 (126A) Book 13392, Page 246 (57A) Book 22533, Page 248 (5.96A)
Samuel A. Lorusso	Map 15: Lots 46-60 Map 16: Lots 2,6,18, 20-27, 42, 44-60, 55.01, 68-75, 78-105	Book 14227, Page 190 Book 22110, Page 238
Olivia Grace LLC	Map 16: Lots 28, 29, 33, 62	Book 22784, Page 237 (Lot 11) Book 22229, Page 289 (Lot 29) Book 22700, Page 266 (Lot 9) Book 21155, Page 308 (Lot 10)
Tudor G. Ingersoll, Trustee of Heather Hill Road Realty Tr. 36	Map 16: Lot 40	Book 16428, Page 172