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CAPE COD
COMMISSION

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Date: March 13, 2013

To: Lester Smith
Epsilon Associates, Inc.
3 Clock Tower Place
Suite 250
Maynard, MA 01754

Re: Limited DRI Review Scoping Decision
Cape Cod Commission Act, Section 13(a)
Cape Cod Commission *Enabling Regulations*, Sections 3, 5, & 7

Applicants: Comcast, North Central Division and NSTAR Electric Company

Project: Martha's Vineyard Hybrid Cable

Project #: EIR/DRI 12027

Project Location: Landfall starts in Barnstable County at the intersection of Surf Drive and Mill Road, and Falmouth. Crosses Vineyard Sound to Martha's Vineyard to a landfall on Squantum Avenue, Tisbury, Dukes County

Property Owner for Falmouth Landfall: Town of Falmouth (Municipal parking lot)

Assessor's Parcel ID Falmouth Landfall: 47-02-017-2A and 47-07-00F-0001B

Barnstable Registry District of the Land Court:
Lot A2, Land Court Plan 12326-D, Certificate of Title Number 10820
Lot B2, Land Court Plan 12326-D, Certificate of Title Number 10820

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission), through an authorized Subcommittee, hereby limits the scope of Development of Regional Impact (DRI) review and determines that Limited DRI review is required for the proposed new submarine hybrid fiber optic/electric cable to provide reliable, redundant communications and electric services to Martha's Vineyard pursuant to Section 13(a) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, and Sections 3, 5, and 7 of the Commission's *Enabling Regulations* (revised March 2011/New Fee Schedule effective July 1, 2012).

Comcast, North Central Division and NSTAR Electric Company, (Co-Applicants) may proceed with Limited Development of Regional Impact review in the Regional Policy Plan (RPP) issue areas of Coastal Resources and Marine Resources.

This project shall not be scoped for DRI review in the RPP issue area of Water Resources, so long as it is conditioned to comply with Minimum Performance Standard WR7.9 (*Best Management Practices During Construction*), which states that “*construction best management practices for erosion and sedimentation controls shall be specified on project plans to prevent erosion, control sediment movement and stabilize exposed soils.*”

This decision is rendered pursuant to a vote of a duly authorized Subcommittee of the Commission on March 13, 2013.

PROJECT DESCRIPTION

The Co-Applicants propose to install a new submarine hybrid fiber optic/electric cable to continue to provide reliable, redundant communications and electric services to Martha’s Vineyard by way of redundant service. Existing services are provided via spliced submarine cables laid on the surface of the seafloor. According to the application, these existing cables have experienced a number of failures necessitating the proposed project in the event that the existing services fail.

The total length of the proposed submarine cable route is 4.5 miles (23,850 feet). According to the application, the proposed route will avoid Special, Sensitive, and Unique (SSU) resources, as identified in the Massachusetts Ocean Management Plan (MOMP), and was selected based on the results of a detailed marine survey and sampling plan completed in September 2011. The main run of the submarine cable through Vineyard Sound is proposed to be installed from a turntable mechanism aboard a cable ship or cable barge and laid along the proposed route in one continuous length using a cable-trenching remotely-operated vehicle (ROV) or hydroplow.

According to the application, the proposed Falmouth landing site is located near the intersection of Mill Road and Beach Road/Surf Drive in and under an unpaved parking lot owned by the Town of Falmouth that contains existing Comcast and NSTAR infrastructure. The proposed Falmouth landing site also has sufficient space and is of suitable substrate to accommodate horizontal directional drilling (HDD) operations. The proposed cable will be placed within a 16 inch-diameter high-density polyethylene (HDPE) conduit installed using HDD from the landing sites. The HDPE will extend approximately 2,600 feet seaward and HDD will be used for this section of cable installation to avoid potential impacts to coastal and nearshore resource areas, including eelgrass (*Zostera marina*) beds.

PROCEDURAL HISTORY

The Commission received an application to limit the scope of DRI review on October 15, 2012. Commission staff sent a letter to the Co-Applicant’s representative, Lester B. Smith of Epsilon Associates, Inc., dated November 5, 2012 stating that the application was not complete. Epsilon Associates submitted additional application materials to the Commission on November 13, 2012, November 19, 2012, November 30, 2012 (3 documents), and December 7, 2012 (2 documents). The application was deemed substantially complete to proceed to a public hearing on February 2, 2013. A substantive Limited DRI scoping hearing was held on February 21, 2013 at the Gus Canty Community Center, Falmouth. At this hearing, the Subcommittee voted to continue the public hearing to March 13, 2013 at 4:00 PM at the Cape Cod Commission office, 3225 Main Street, Barnstable, MA. At the February 21, 2013 Limited DRI scoping hearing, the

Subcommittee also voted unanimously that the proposed submarine hybrid cable project shall be scoped for Limited DRI review in the Regional Policy Plan issue of Coastal Resources, Marine Resources, and Wildlife and Plant Habitat. The Subcommittee also voted that this project shall not be scoped for DRI review in the RPP issue area of Water Resources, so long as it is conditioned to comply with Minimum Performance Standard WR7.9 (*Best Management Practices During Construction*), which states that “*construction best management practices for erosion and sedimentation controls shall be specified on project plans to prevent erosion, control sediment movement and stabilize exposed soils*. Finally, the Subcommittee voted unanimously on February 21, 2013 to direct Commission staff to draft a written Limited DRI scoping decision, consistent with the above findings.

At the continued public hearing on March 13, 2013, the Subcommittee reviewed a draft written Limited DRI scoping decision. The Subcommittee voted unanimously to close the hearing and the record on the Limited DRI review scoping process. The Subcommittee voted unanimously to approve the March 13, 2013 alternate draft written Limited DRI review scoping decision, as amended.

TABLE 1: Materials Submitted for the Record	
<i>Materials from Cape Cod Commission</i>	<i>Date Sent</i>
Email: Commission staff comment letter on SEIR	6/7/12
Email: Commission staff comment letter on NPC	8/14/12
Email from Jessica Rempel to Les Smith re: DRI application fee	10/17/12
Email from JR to LS re: Waste Management	10/17/12
Letter from Gail Hanley to LS: Cost to notice hearing	10/23/12
Letter from Gail Hanley (GH) to LS: Notify as DRI	10/31/12
Letter, Andrea Adams (AA) to LS: Application completeness (hard copy)	11/5/12
Email of letter, AA to LS, HM: Application completeness	11/5/12
Hearing Notice (Procedural Only)	11/9/12
Minutes (Hearing Officer)	11/9/12
Email of letter: AA to Paul Foley, Jessica Wielgus, Jon Idman: Application completeness	11/13/12
Email, Heather McElroy (HM) to LS: Question on Notice of Intent (NOI)	11/19/12
Email, HM to LS: More discussion of NOI	11/20/12
Email, AA to LS, JI: Next steps in review	12/12/12
Email, AA to LS, JI: Discussion of Application and withdrawal	12/12/12
Email, AA to LS, JI: More discussion of possible withdrawal	12/12/12
Email, AA to LS, JI with letter: Salutation wrong; need to formally withdraw from local and Commission review	12/12/12
Email, JI to AA: Discussion of DRI withdrawal	12/12/12
Email, AA to Leslie Richardson: Scoping comments on project	12/13/12
Memo, AA to Commission members: Withdrawal of DRI	12/13/12
Email, AA to LS, Jennifer McKay: Acknowledge project withdrawn	12/14/13
Email, Sarah Korjeff to AA: Community Character comments	12/17/12
Email, AA to JI, Gail Hanley: Dates for Scoping hearing	1/11/13
Letter, AA to LS, Brian Currie: Application complete (w/Notice attached)	2/4/13

Letter from Gail Hanley to LS: Noticing of Scoping hearing	2/4/13
Email, AA to LS: Copy of letter deeming application complete and copy of notice	2/4/13
Staff Report on Limited DRI Scope	2/13/13
Memo, AA to Subcommittee: Materials for Scoping Hearing and site visit	2/14/13
Email, AA to LS: Copy of staff report as PDF	2/19/13
Email, AA to LS: Will correct mistakes in staff report re: riser poles	2/19/13
Email, AA to JI, Falmouth staff: Copy of staff report as PDF	2/21/13
Hearing Notice – Limited DRI Scoping Hearing	2/21/13
Staff PowerPoint of Staff Report at Scoping Hearing	2/21/13
Chair’s Sheet for Scoping Hearing	2/21/13
Minutes from Scoping Hearing	2/21/13
Email, AA to JI, Falmouth staff: Second try to send Email on recording information	3/4/13
Email, AA to Falmouth staff: Thank you for confirmation of recording information and next steps in review post-scoping	3/4/13
Email, JI to AA: Recording/assessor’s information for beach lot	3/4/13
Draft Limited DRI Scoping Decision	3/7/13
Email, AA to Subcommittee: PDF copy of 3/7/13 draft decision	3/8/13
Email, AA to Subcommittee: PDF copy of 2/21/13 draft Minutes	3/8/13
Email, AA to Falmouth staff: PDF copy of 3/7/13 draft decision	3/8/13
Email, JI to AA: Add finding to draft decision about “no take”	3/12/13
Continued Hearing Notice (Continued from 2/21/13)	3/13/13
Meeting Notice	3/13/13
Minutes from Continued Scoping Hearing	3/13/13
Materials from Applicant	Date Received
Email from LS to JR re: application	10/12/12
Limited DRI application (3 hard copies and CD)	10/15/12
Email from LS to JR re: fee	10/17/12
Email from LS to JR with application materials attached	10/22/12
Email from LS to JR: Base fee for Limited Review and Abutters List	10/22/12
Email from LS to AA, HM: Emails between LS and Fish/Wildlife	11/2/12
Email from LS to AA: Letter attached responding to 11/5/12 staff letter	11/13/12
Email from LS to AA, HC: NSTAR Oil Spill Policy	11/30/12
Email from LS to AA, HM, HC: Updated project narrative	11/30/12
Email from LS to AA, HC: Comcast Waste management/Spill plan	12/7/12
Email from LS to AA, HM, HC: Notice of Intent (NOI) filing with Conservation Commission	12/7/12
Email from LS to AA, JI: Possible procedural withdrawal of DRI	12/11/12
Email from LS to AA, JI: Withdrawal of DRI but proceed with Limited Review	12/12/12
Email from LS to AA, JI: Withdrawal of DRI but proceed with Limited Review – Filed with Conservation Commission	12/12/12
Email from LS to AA, JI: Withdrawal of Conservation Commission filing	12/12/12
Email from LS to AA: Withdrawal of DRI filing	12/12/12
Email from LS to AA: Withdrawal of NOI with Conservation Commission	12/12/12
Email from LS to AA: Revised withdrawal letter	12/12/12

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Letter from Les Smith: Withdrawal in hard copy	12/12/12
Letter from Les Smith: Submission of updated DRI application	2/12/13
Email from LS: Correction to staff report: No riser poles	2/19/13
Email from LS to AA, HM, JI: W/attachment: No take determination letter from NHESP (dated January 2, 2013 from Thomas French, Assistant Director)	3/11/13
Email/PDF: Copy of Epsilon Power Point presentation used at 2/21/13 scoping hearing	3/12/13
Materials from Public Agencies/Towns/State/Federal	Date Received
Paul Foley, DRI Coordinator/Planner, Martha's Vineyard Commission	11/13/12
Email, Planning@Falmouthmass.us	2/21/13
Email, Planning@Falmouthmass.us, Brian Currie: Correct lot citation	3/4/13
Materials from Members of the Public	Date Received
None received	

TESTIMONY

February 21, 2013 Public Hearing

Mr. Smith gave a PowerPoint presentation on the project. He described the project using several slides, showing the proposed route through Vineyard Sound. He noted the project is to provide redundant service because the other four cables to Martha's Vineyard have either failed and are no longer in service or have failed in the past. He noted the proposed route avoids marine resources protected by the Ocean Management Plan. Mr. Smith used slides to describe the proposed work at the Falmouth upland cable landing site, including a graphic showing how the cable would be drilled under eel grass beds. He noted the various overlay mapping in the area of the Falmouth landing including floodplain and Natural Heritage and Endangered Species Program (NHESP) mapping in Vineyard Sound. Mr. Smith described the types of subsurface investigation that the Applicants had conducted to select the proposed cable route, including bathymetry, side scan sonar, and video transects. Mr. Smith described the MEPA process to date, noting that MEPA had required additional surveying of the proposed cable route. He said the additional surveying was done using techniques including multi-beam bathymetry, magnometer, and sub-bottom profiling along a 600-foot wide survey corridor. He used several slides to describe the machinery used to collect the additional sampling, and provided graphics of the results of the various sampling techniques. Mr. Smith noted that MEPA issued a Certificate in June 2012 stating the project adequately and properly complied with MEPA. He note there were no time of year restrictions imposed because of the use of Horizontal Directional Drilling (HDD) technique to avoid eel grass. He noted there are piping plovers on the Martha's Vineyard side of the landfall, but that NHESP determined no impacts again due to HDD. Mr. Smith described the proposed cable, and noted it had changed since the original filing with MEPA. He noted MEPA had determined the change was insignificant in a Certificate issued in August 2012. Mr. Smith showed several cross section slides to illustrate the proposed HDD technique and how the cable, once it emerged in deeper water would be laid using a hydro plow or other similar method. He showed several slides of how the proposed cable would be laid and simultaneously buried in the deeper water portion of the cable route. He showed a slide of the Falmouth landfall and the proposed work area. Mr. Smith described what HDD drill mud consisted of and how it would be disposed of. He said the work at the Falmouth landfall would be done in such a way as to minimize noise and light impacts to abutters. He said this could include work scheduling (in Fall or Winter when fewer neighboring homes occupied), noise requirements for contractors, monitoring noise levels, use of mufflers on equipment, and noise abatement curtains. He said the methods to reduce light impacts included aiming fixtures into the work area, and shielding.

Ms. Carlson took over the PowerPoint presentation from Mr. Smith, and discussed the project relative to the Regional Policy Plan Minimum Performance Standards (MPS). Ms. Carlson said the Regional Policy Plan (RPP) Land Use section, Economic Development issue area, and Water Resources issue area should be excluded from the Limited DRI review scope. In the RPP issue area of Coastal Resources, Ms. Carlson suggested the issue area was relevant to the Limited DRI review scope, although techniques would be

used that show consistency with the Coastal Resources MPS. For the RPP issue area of Marine Resources, Ms. Carlson suggested this issue area was relevant to the Limited DRI review scope, although the application indicates the project will be consistent with its MPS. Ms. Carlson suggested the Wetlands RPP issue area should be excluded from the Limited DRI review scope. Ms. Carlson said the RPP issue area of Wildlife and Plant Habitat was relevant to the Limited DRI review scope, although she also suggested the application showed consistency with the issue area's MPS. Ms. Carlson said the RPP issue areas of Open Space/Recreation, Transportation, Hazardous Materials/Waste Management, Solid Waste, Energy, and Affordable Housing should be excluded from the Limited DRI review scope. Ms. Carlson suggested the RPP issue area of Heritage Preservation/Community Character had MPS that were not applicable to the project and other MPS that the project was consistent with because it would have no impact. In conclusion, Ms. Carlson suggested the RPP issue areas that should be included in the Limited DRI review scope were Coastal Resources, Marine Resources and Plant and Wildlife Habitat.

Ms. Adams gave a PowerPoint presentation of the February 13, 2013 Staff Report. She described the Commission's jurisdiction over the project. She described the standards for the Limited DRI Review Scoping process, noting a Subcommittee determines scope of DRI review through a public hearing using the Scoping Checklist for New Development.

Ms. Adams then when over the RPP areas and sub-issue areas as Commission staff suggested that they either applied or did not apply to the proposed project, which included Land Use. Ms. Adams did note, however, that construction of a single, hybrid cable could meet a Best Development Practice (BDP LU2.3) for co-location of public infrastructure.

In the RPP issue area of Water Resources, Ms. Adams said Commission staff suggests Water Resources not be included in Limited DRI scope so long as the project is conditioned to comply with MPS WR7.9 (Best Management Practices During Construction).

In the RPP issue area of Coastal Resources, Ms. Adams said the project involves new or expanded non-water dependent use within 250 feet of mean high water, and includes site disturbance within 100 feet of Land Subject to Coastal Storm Flowage, a Coastal Bank, or Coastal Dune. She also noted the project involves alternation of a Coastal wetland or its 100-foot buffer. For these reasons, Ms. Adams said Commission staff suggests Coastal Resources should be included in Limited DRI scope.

In the RPP issue area of Marine Resources, Ms. Adams noted the project occurs within the jurisdictional area of the Massachusetts Ocean Management Plan (MOMP), and within the planning area of the Cape Cod Ocean Management Plan. She said the submarine cable would be located in areas identified as Special, Sensitive, and Unique and within high human use activity areas per the MOMP. Based on this, she said staff suggests the proposed project may have significant impacts on purposes and values identified in Section One of the Commission Act, and that the RPP issue area of Marine Resources should be included in Limited DRI scope.

In the RPP issue areas of Wetlands and Wildlife & Plant Habitat, Ms. Adams said Commission staff suggests Wetlands should not be included in the Limited DRI scope, but that the RPP issue area of Wildlife & Plant Habitat should be included in Limited DRI scope.

In the RPP issue areas of Open Space/Recreation, Transportation, Hazardous Materials and Wastes, Solid Waste/Recycling, Energy and Affordable Housing, Ms. Adams suggested the Minimum Performance Standards in some of these RPP sections do not apply to the proposed project, or that the proposed project will neither involve a substantial deviation from the relevant Minimum Performance Standards nor have a significant impact on the purposes and values protected by Section One of the Commission Act, and that these RPP issue areas should not be included in Limited DRI scope.

In the RPP issue area of Historic/Archeological Resources and Community Character, Ms. Adams noted the project does not involve buildings, and the upland cable will be installed using the HDD method in a parking lot. She said this indicates the project should not have adverse visual impacts. With respect to

Historic/Archeological Resources, she directed the Subcommittee to Section 4.13.1 of Limited DRI Application, which indicates no previously identified historic or archeological assets are located within the submarine portion of the project area. Ms. Adams said the Application also indicates that the upland cable route is located within areas on Inventory of Historic and Archeological Assets but the Applicants will be using existing wires to provide cable service, or will lash new cable to those wires. Ms. Adams said the Applicants conducted a survey of underwater route which was submitted to Massachusetts Board of Underwater Archeological Resources. She said this survey determined that no sensitive archeological resources are present along the proposed cable route. Ms. Adams said the exterior lighting impacts from construction would be temporary. Based on this, Ms. Adams said Commission staff suggests that Heritage Preservation/Community Character RPP issue area should not be included in Limited DRI scope.

Mr. Graham asked the Applicant if the proposed project was new or existing fiber? Is there another cable already in place?

Mr. Smith said there is currently another submarine fiber optic cable on the sea floor which transits between the Cape and Martha's Vineyard. He said it was cable #99. He said the proposed project would be constructed of new cable, but was to provide redundant service in the event that the existing service failed.

Mr. Knight noted that Provincetown was still in the process of retrieving generators it had sold to Martha's Vineyard after the last strong storm.

Ms. Brookshire noted the Massachusetts Natural Heritage and Endangered Species Program (NHESP) had commented on the proposed project. She questioned including the Regional Policy Plan issue area of Wildlife and Plant Habitat if NHESP had already commented on the project.

Ms. McElroy acknowledged the Applicants had been working with NHESP, and that this should still be included in the scope of the review, so that any conditions that NHESP may place on the project are also incorporated into the Commission's decision.

Mr. Virgilio asked if the safety representative on site was a company representative or an independent? He asked if daily records were kept? He asked if these records could be reviewed? Mr. Virgilio asked for further details about the method of laying the submarine portion of the cable.

Mr. Oheim said NSTAR typically places a requirement on the construction contractor to have a safety program and a safety monitor. He said NSTAR has its own safety monitors. He said this person was not an independent third party per se. Mr. Oheim said yes, daily records were kept, and could be reviewed.

Mr. Smith said the cable laying machine either cuts or fluidizes the soils so that the cable can be laid.

Mr. Virgilio asked at what point in the water is the transition made, and is it still within the Commission's jurisdiction?

Mr. Smith said the transition from the land cable to the submarine portion of cable laying would be approximately 2,600 feet out.

Ms. Adams said yes, in that the Commission's jurisdiction in this case extended into Vineyard Sound to the border with Martha's Vineyard/Duke's County.

Mr. Virgilio asked Ms. McElroy if Commission staff was confident that the Natural Resources issues could be addressed.

Ms. McElroy said Commission staff suggested that the Marine Resources section of the Regional Policy Plan be included in the Limited DRI review scope. She acknowledged that the Applicants had done work

to survey the cable route with the idea of avoiding the natural resources on the ocean bottom as much as possible. She noted the land-based cable would be laid in such a way as to transit under the eel grass. She said areas through which the submarine cable would be laid is sandier, and generally avoids natural resources. She said this would be dealt with in more detail in the forthcoming DRI review.

Mr. Virgilio asked about the time of year that work would take place. He noted the area was a fishing area for either squid or scallopers.

Mr. Smith said the Applicant was aware of this. He said the time period for construction would be fall through winter, into perhaps the early part of May. He said the HDD work would be done first, and submarine cable laying would be done next.

Mr. Graham noted the staff's suggestion to deliberate on probable project benefits relative to one of the Land Use Best Development Policies.

Ms. Adams said the target of the Subcommittee's deliberations tonight was to determine what Regional Policy Plan issue or sub-issue areas should or should not be included in the scope of the Limited DRI review. She said staff suggests the Subcommittee may wish to think about whether the project meets a Land Use Best Development Policy is that Commission staff suggests this Regional Policy Plan issue area be excluded from the DRI review. But the Subcommittee should be aware that the project may show one potential project benefit in the Land Use issue area.

Mr. Knight questioned whether the Applicants had a plan to not interfere with shellfish harvesting boats that might be in the same area as where the submarine cable was going to be laid down?

Mr. Smith said the Applicants would coordinate with the local Harbor Masters, Coast Guard, and Steamship Authority.

Mr. Knight suggested the Applicants reach out to local fisherman's' groups to coordinate the work.

Mr. Smith asked if the Subcommittee members had particular groups in mind to contact?

Mr. Virgilio and Mr. Knight suggested the Applicants publicize the upcoming work as much as possible.

Ms. Adams suggested the Applicants contact the Cape Cod Hook Fisherman's Association or the Center for Coastal Studies. She noted the Center for Coastal Studies dealt with whales and disentangling them from fishing gear, so they might have an entry into the fishing community.

Mr. Virgilio said there are a number of fishing clubs from Hyannis to Falmouth that could be contacted.

Ms. Carlson noted the navigational buffer around the work will be relatively constrained. She noted the dynamic positioning system used on the cable barge would negate the need for anchoring.

Mr. Knight noted there are times when the fog is quite heavy, so marine safety is a concern.

Mr. Virgilio expressed concern about winter weather conditions.

Mr. Smith said the Applicants would attempt to pick a period of time when the weather was expected to be calm, so as to lay the cable from off shore Falmouth to the Martha's Vineyard end. He said the cable laying work takes approximately 2-3 weeks.

Ms. Brookshire asked how the hydro plowing would work? How would the trench backfill?

Mr. Smith said the trench collapses on itself, because the bottom is a sandy material. He said the trench might be 3-7 feet deep.

Mr. Virgilio asked for testimony from Federal, State and local officials. Hearing none, Mr. Virgilio asked for any further testimony from the audience using the sign in sheet.

Ms. Gerald Swift said she lived next to the parking lot. She said there was a great scallop bed near this area. She said she lives in the carriage house for a mansion that used to exist on Mill Road, and suggested therefore that there might be some historical significance to the area. She said there were historical walls there. She said Surf Drive had been built up. She said the Town had just gotten a grant to fix the drainage on Surf Drive. Ms. Swift says she occasionally sees something going on at Elm Road. She said she appears to see flares and boats working in that area. She questioned what it meant to put all the stuff onto a pole. Ms. Swift questioned the failure at Elm Road, and now it was failing here, on Surf Drive. She questioned the need for the cable. Ms. Gerald expressed concern that the birds would strike the additional wires and poles. She questioned what the next phase of development would be? Ms. Gerald asked what the hours of maintenance would be for the facilities? She questioned the benefit of the project to Falmouth. She compared it to the noise from Elm Road. She expressed concern about impacts of the project to fisherman.

Mr. Virgilio encouraged Ms. Gerald to turn in her notes, or write comments.

Ms. Gerald said her oral testimony was adequate. She asked whether the Commission really knew what the project was. She said the summer residents of the area may not know what's going on.

Mr. Short asked Ms. Gerald to explain the accidents and lights she saw from her home?

Ms. Gerald said it wasn't truly accidents, but it looked like that. She suggested it was from the maintenance of the Elm Road sites where failures took place.

Mr. Knight said it was his understanding that part of the rationale for the proposed project was the failure of other submarine cables from Cape Cod to Martha's Vineyard.

Mr. Smith said two cables lead out to sea from the Elm Road site. He said one of the cables has failed in the past.

Ms. Gerald suggested the cables from Elm Road be repaired, rather than constructing a new cable at the Surf Drive landfill.

Mr. Smith said the cables have been repaired, and are in use today.

Mr. Virgilio said the new cable being used for the current project was a continuous cable, where the other two cables had splices, which are more prone to failure.

Ms. Brookshire suggested the cable would go under Surf Drive to Martha's Vineyard.

Ms. Gerald said the large installation at Elm Road was intrusive.

Mr. Virgilio said no such installation was proposed as part of the current cable project.

Mr. Oheim said the Elm Road site was a switch. It had nothing to do with the current project. He said that switch was for one of the existing sea cables.

Ms. Gerald said she sees the maintenance at Elm Road, and that is what disturbs her at night. She said she sees boats in the water.

Ms. Adams asked the Applicants if the type of maintenance Ms. Gerald is describing at the Elm Road site anticipated for the proposed project at Surf Drive?

Mr. Oheim said the proposed project would have potentially no maintenance or a switch. He said the electrical components would be underground. He said the electrical portion would be below grade. He said the electrical portion would start at the Falmouth sub-station via conduit. He said the pole strung part of the project is Comcast's. He said the fiber optic cable would go via existing poles. He said the new cable was approximately a half inch in diameter. He said the new facility would be lashed to the existing wire.

Mr. Virgilio asked Mr. Roberto for comments.

Mr. Roberto asked about visual impacts. How big is the new cable?

Mr. Oheim said it would be about a half inch in diameter.

Mr. Roberto asked the Applicants to comment on the recharge area. Are the fluids used in the drilling rig contained?

Ms. Adams said the potential impact on the recharge area, so long as stormwater management controls are implemented during construction, should be negligible. She said the cable after it is laid had no fluids in it.

Mr. Oheim said the drilling fluids are contained.

Mr. Roberto asked about the start time for the project. What would be the noise impacts, and when?

Mr. Oheim said the drilling operation takes not more than a month, including setup and breakdown. He said the key issue would be the scheduling of the cable vessel, which are hard to schedule. He suggested the entire project would be done well before May, 2013.

Mr. Roberto asked if there would be drilling at night, and lighting. He asked about the decibel level of the drill or other machinery.

Mr. Oheim said generally no. He said pilot hole work may be done in one day. He suggested there could be some night work. He said lights would be directed in, towards the drilling operations. He said heavy equipment would be equipped with low-noise mufflers. He said if noise becomes an issue, noise curtains could be installed, to minimize impacts.

Ms. Adams commented on the potential lighting impacts, noting that because of the Applicants' plan to direct light towards the work area, and the temporary nature of the lighting impacts, that she had recommended that exterior lighting not be included in the Limited DRI review scope. She noted that as the person on the Commission staff who dealt with lighting issues, she would have recommended the same measures as were being proposed by the Applicants. On the issue of noise, she noted this was covered in the Massachusetts state regulations, and that if there was an issue with noise, those affected could contact the satellite office of the Department of Environmental Protection in Barnstable. She suggested the Applicants and contractors would probably have a plan in place to deal with noise issues and complaints.

Mr. Virgilio said he had done many construction projects, and had been stopped several times due to noise. Based on this, he expressed some level of confidence that the Applicants would address noise issues if they arose.

Attorney Idman said the Subcommittee could adopt all the motions as written if the Subcommittee so chose.

Mr. Graham moved that the proposed cable project shall be scoped for DRI review in the Regional Policy Plan issue areas of Coastal Resources, Marine Resources, and Wildlife & Plant Habitat, that the project shall be conditioned to comply with MPS WR7.9, and to direct Commission staff to draft a written decision for the Subcommittee's consideration.

Mr. Knight seconded Mr. Graham's motion, which passed unanimously, with Ms. Brookshire abstaining.

Mr. Graham suggested the Subcommittee deliberate on possible project benefits in the DRI review.

Attorney Idman suggested the finding at this stage about BDP LU2.3 was not finding that it constituted a benefit, but rather that it is eligible to constitute a benefit at the DRI stage. He noted Land Use was recommended to be excluded. He suggested the Subcommittee consider it be eligible at this stage to be considered a benefit.

Mr. Graham moved that the Subcommittee find that the project's meeting BDP LU2.3 is eligible to be considered a project benefit.

Mr. Knight seconded Mr. Graham's motion, which passed unanimously, with Ms. Brookshire abstaining.

Mr. Knight moved to continue the hearing and the record to Wednesday, March 13, 2013 at 4:00 PM at the Cape Cod Commission office. Mr. Graham seconded the motion, and it passed unanimously with Ms. Brookshire abstaining.

March 13, 2013 Continued Public Hearing

Ms. Adams gave a presentation of the March 13, 2013 alternate draft written decision in reference to the March 7, 2013 draft that had been Emailed to the Subcommittee. She described the cover page, noting a change to the recording information. She noted the proposed change to the Regional Policy Plan (RPP) issue areas to be included in the review, and that Commission staff suggested striking the inclusion of Wildlife and Plant Habitat. She noted the Email that had been received from Mr. Smith of Epsilon, which included with it a January 2, 2013 formal and unconditional "no take" determination from the Natural Heritage and Endangered Species Program (NHESP). She said Commission Natural Resources Planner Heather McElroy had reviewed Mr. Smith's Email and the letter from NHESP and was comfortable suggesting to the Subcommittee that the issue area of Wildlife and Plant Habitat could be removed from consideration.

Ms. Adams then when over other changes to the proposed written decision. She noted the size of the conduit described in the Project Description section had increased from 12 inches to 16 inches. She noted the draft decision also included a Materials Submitted for the Record table. Ms. Adams noted the draft decision would also include a summary of the Minutes from the February 21, 2013 as well as today's continued hearing.

Ms. Adams noted that the Findings in the draft written decision in the General Findings section as well as the RPP issue areas of Land Use, Water Resources, Coastal Resources and Marine Resources had not changed from the March 7, 2013 draft that had been Emailed to the Subcommittee in advance of today's hearing.

In the RPP issue areas of Wetlands and Wildlife & Plant Habitat, Ms. Adams noted the proposed amended language shown in color on page 6 of the March 13, 2013 alternate draft written decision. She noted it memorialized the fact that the NHESP had issued an unconditional "no take" determination. Ms. Adams said that for these reasons, Ms. Adams said the Commission staff now suggested that the RPP issue area of Wildlife and Plant Habitat should not be included in the Limited DRI scope.

Ms. Adams reviewed the remainder of the draft March 13, 2013 written decision page by page with the Subcommittee, noting that the findings in the RPP issue areas of Open Space/Recreation, Transportation, Hazardous Materials and Wastes, Solid Waste/Recycling, Energy, Affordable Housing, and

Historic/Archeological Resources and Community Character were the same as in the March 7, 2013 draft Emailed to the Subcommittee in advance of today's hearing. She said Based on this; Ms. Adams said Commission staff suggests that these RPP issue areas should not be included in Limited DRI scope. Ms. Adams noted the change to the Conclusion section of the draft March 13, 2013 decision, which amended the RPP issue areas to be included in the Limited DRI review scope.

Mr. Virgilio asked why the conduit size had been increased from 12 to 16 inches?

Mr. Smith said it was to allow for additional space inside the conduit so as to reduce the amount of friction the cable was subjected to as it was pulled through the conduit. He said the new conduit size had been based on consultations with the cable manufacturer.

Mr. Smith said the need for the proposed project had become more urgent, in that one of the cables exiting the Elm Street sub-station had just recently failed. He said the companies were in the process of investigating the reasons for the failure. He said this put the number of cables servicing Martha's Vineyard down currently to just two.

Mr. Virgilio asked for any questions from the Subcommittee.

Mr. Short asked if the cable conduit was wet or dry inside?

Mr. Smith responded that he believed the conduit would be wet inside, because of how the conduit was laid, with an open end where the upland and sea-going pieces would be joined.

Mr. Virgilio asked about how long would it take for the Applicants to receive necessary local approvals once the Commission had completed its review?

Mr. Smith suggested local review might take about six (6) weeks.

Mr. Knight expressed concern about the failure of the cable from the Elm Street sub-station, and asked if the Commission had a process in place to expedite the review, such as an emergency work procedure, given that the warmer weather was coming, and this would likely put a strain on the remaining cables as the electrical demand on Martha's Vineyard increased.

Attorney Idman said the Commission does have an Emergency Work determination procedure, but suggested it was not necessary in this case, given that the next step in the Commission's review of the project would be relatively rapid, particularly if the majority of the current Subcommittee transferred to the upcoming DRI review.

Ms. Adams echoed Attorney Idman's comments, noting that once the Commission had received a DRI referral of the project from the Town of Falmouth, it would take approximately 21 days to properly notice a hearing. She suggested the review could be relatively rapid, given the limited number of RPP issue areas included in the DRI review.

Mr. Virgilio asked for testimony from Federal, State and local officials. Hearing none, Mr. Virgilio asked for any further testimony from the audience using the sign in sheet. See no persons in attendance other than the Subcommittee, Commission staff and the Applicant's representatives, Mr. Virgilio asked for final comments or responses.

Mr. Smith said the Applicants had none. Ms. Adams directed the Subcommittee to the proposed motions.

Mr. Virgilio asked for a motion to close the hearing and the record on the Limited DRI review scoping process.

Mr. Knight moved to close the hearing and the record on the Limited DRI review scoping process. Mr. Putnam seconded the motion, and it was unanimously approved.

Mr. Virgilio asked for a motion to approve the March 13, 2013 alternate draft written Limited DRI review scoping decision, as amended.

Mr. Knight moved to approve the March 13, 2013 alternate draft written Limited DRI review scoping decision, as amended. Ms. Brookshire seconded the motion, and it was unanimously approved.

Mr. Virgilio asked for a motion to adjourn. Ms. Brookshire moved to adjourn. Mr. Putnam seconded the motion, and it was approved unanimously. Adjourned at 4:35 PM.

JURISDICTION

The proposed submarine hybrid cable project qualifies as a DRI pursuant to Section 2(d)(ii) of the Commission's Enabling Regulations (Revised March 2011) as "*Any proposed development for which an Environmental Impact Report (EIR) is required to be prepared under the provisions of MEPA shall be deemed a DRI.*"

The Co-Applicants have applied for a Limited DRI Review. In accordance with Section 5(a) of the *Enabling Regulations*, "[f]or any project that is a DRI...the proponent may apply to the Commission to limit the scope of the DRI review."

FINDINGS

The Commission, through a Subcommittee, has considered the Limited DRI Scoping application of the Co-Applicants for the proposed new submarine cable from Falmouth, MA to Tisbury, MA and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings, pursuant to Section 13(a) of the Act and Sections 3, 5 and 7 of the *Enabling Regulations*:

General Findings

GF1. As the date of the first substantive public hearing on the proposed project was February 21 2013, this project was reviewed subject to the 2009 RPP, as amended August, 2012.

GF2. The proposed project is the development of a new hybrid communications/electrical service submarine cable between Barnstable County (Falmouth, MA) and Dukes County (Tisbury, MA). As such, the Commission considered the Limited DRI Review Scoping Checklist for New Development in its deliberations on the Limited DRI review scope.

GF3. The proposed project that is the subject of this Limited Scoping decision is a new submarine hybrid fiber optic/electric cable to provide communications and electric services to Martha's Vineyard. The total length of the proposed submarine cable route to Martha's Vineyard is 4.5 miles (23,850 feet). According to the application, the proposed route will avoid Special, Sensitive, and Unique resources, as identified in the Massachusetts Ocean Management Plan and was selected based on the results of a detailed marine survey and sampling plan completed in September 2011. The main run of the submarine cable through Vineyard Sound is proposed to be installed from a turntable mechanism aboard a cable ship or cable barge and laid along the proposed route in one continuous length using a cable-trenching remotely-operated vehicle (ROV) or hydroplow.

GF4. The project proposes utility co-location (telecommunications and electric hybrid cable), which the Commission finds could be deemed consistent with RPP Land Use Best Development Practice for co-location of public infrastructure (BDP LU 2.3).

Water Resources Findings

WRF1. The project is not within a Wellhead Protection Area, a Potential Public Water supply Area, a Freshwater Recharge Area or a Water Quality Improvement Area. Construction-related activities will take place adjacent to, but not within a Marine Water Recharge Area. The project does not propose groundwater withdrawals, wastewater disposal, stormwater recharge or any effect on surface water levels. The project will have impacts on stormwater during construction, but no long term impacts related to recharge or increased impervious cover. For these reasons, the Commission finds that this project shall not be scoped for DRI review in the RPP issue area of Water Resources, so long as it is conditioned to comply with Minimum Performance Standard (MPS) WR7.9 (*Best Management Practices During Construction*), which states that “*construction best management practices for erosion and sedimentation controls shall be specified on project plans to prevent erosion, control sediment movement and stabilize exposed soils.*”

Coastal Resources Findings

CRF1. The Commission finds the project involves new or expanded non-water dependent use within 250 feet of the mean high water line; site disturbance in or within 100 feet of Land Subject to Coastal Storm Flowage, Coastal Dune, or Coastal Bank; and alteration of a coastal wetland or its 100 foot buffer zone. For these reasons, the Commission finds the issue area of Coastal Resources applies to the project and finds that this issue area shall be included in the scope of DRI review.

Marine Resources Findings

MRF1. The project occurs within the jurisdictional area of the Massachusetts Ocean Management Plan (MOMP), and also within the planning area of the Cape Cod Ocean Management Plan. The Commission finds that there is the potential for marine safety impacts related to the underwater portion of the construction due to the need for vessels to navigate/work in a particular area of Vineyard Sound along the proposed cable route while cable installation is being done. Due to the project’s proposed location either within areas identified as Special, Sensitive, and Unique, and/or within high human use activity areas as identified through the MOMP, the Commission finds the proposed project may have significant impact upon the purposes and values identified by Section One of the Act. For these reasons, the Commission finds that the issue area of Marine Resources applies to the project and finds that this issue area shall be included in the scope of DRI review.

Wildlife and Plant Habitat Findings

WPHF1. The project occurs within rare species habitat as mapped by the Natural Heritage and Endangered Species Program (NHESP). However, NHESP issued an unconditional “no take” determination on the project in a letter dated January 2, 2013. For this reason, the Commission finds that although the sub-issue area of Wildlife and Plant Habitat applies to the project, that this project shall not be scoped for DRI review in the RPP issue area of Wildlife and Plant Habitat as the project will neither involve substantial deviation from the applicable Minimum Performance Standards of the RPP nor have significant impact upon the purposes and values identified in Section One of the Act and that this sub-issue area shall not be included in the scope of DRI review.

Transportation Findings

TF1. The Limited DRI Review Scoping Checklist for New Development poses the following three questions to determine whether the RPP issue area of Transportation applies to the project: *Will the project generate more than 250 new daily trips?; Will the project generate more than 25 new peak hour trips at a high crash location?; Does the project have direct access on, or does the project directly abut, a regional roadway?*

TF2. The Commission finds that the project is not anticipated to generate new daily vehicle trips. Vehicle trips to the site will be limited to construction and infrequent maintenance activities. The Commission also finds that the project is not anticipated to generate new peak hour vehicle trips. Vehicle trips to the site will be limited to construction and infrequent maintenance activities.

TF3. The Commission finds that the Falmouth landing site is located on the corner of Surf Drive and Mill Road, both regional roadways; however, the Commission finds that impacts to these roadways will be temporary and minimal. As stated in the Draft Environmental Construction Management Plan (Application Attachment E) the landing site has “*sufficient space to accommodate construction staging.*” Additionally, project construction is being scheduled to avoid the busiest recreational periods.

TF4. In terms of safety impacts, all project access/egress locations must afford acceptable sight distances per MPS TR1.8 (*Sight-Distance Requirements*). Based on site visit to the Falmouth landing site by Commission staff, the Commission finds that acceptable sight distances exist.

Land Use Findings

LUF1. Though the proposed project is an infrastructure project, the Commission finds that it does not involve new infrastructure. The Town of Falmouth has not adopted a Land Use Vision Map; compact development standards are not applicable due to the nature of the project; the project is not a wireless telecommunication facility; and the project neither involves land capable of sustained agricultural production nor is adjacent to rural landscapes or lands under active agricultural production. For these reasons, the Commission finds the proposed project shall not be scoped for DRI review in the Regional Policy Plan issue area of Land Use.

Wetlands Findings

WETF1. The project occurs within several coastal wetland resource areas. The project does not occur within freshwater wetlands, though portions of the Falmouth landing site are located within the 100 foot buffer to wetlands. However, because development activity will occur entirely within a previously disturbed parking lot area, or will be under water, and no direct, long-term stormwater discharge to the resource areas are proposed, the Commission finds that this project shall not be scoped for DRI review in the RPP sub-issue area of Wetlands.

Open Space/Recreation Findings

OSRF1. The project occurs within Significant Natural Resources Area due to the presence of rare species habitat. However, the Commission finds the project will have little to no impacts on upland resources that would require mitigation through the provision of restricted open space. Significant portions of the project occur almost entirely underground or underwater. For these reasons, the Commission finds that the project shall not be scoped for DRI review in the RPP issue area of Open Space Protection and Recreation as the project will neither involve substantial deviation from the applicable Minimum Performance Standards of the RPP nor have significant impact upon the purposes and values identified in Section One of the Act.

Hazardous Materials & Waste Findings

HMWF1. Based on the application materials submitted, Hazardous Wastes may be generated during cable landing activities, including from equipment servicing and fueling. MPS WM1.5 requires that “[a]ny development or redevelopment that uses, handles, generates, treats, or stores Hazardous Waste...” shall be in compliance with the state’s Hazardous Waste regulations and specifies three items be provided to show compliance with this requirement for purposes of Commission review: 1) notification or registration with the Massachusetts Department of Environmental Protection, 2) a written plan to manage the Hazardous Waste, 3) a signed disposal contract with a registered, licensed company.

HMWF2. The application (pg. 2-26) states that nearly all vehicle fueling and all major equipment maintenance will be performed off-site. The HDD rig may be fueled on site, but any landward fueling will be conducted outside of the 100 foot buffer to wetlands, and a 200 foot buffer to private or community wells. The DRI application also outlines the basics of a spill containment protocol in Section 2 and in Appendix E.

HMWF3. The HDD process involves use of slurry consisting of excess drill fluid (bentonite clay, silica and gypsum) and cuttings. The slurry is reused after it is filtered to remove the drill cuttings which are soils generated from whatever the HDD head is traveling through. The Commission finds the HDD slurry waste is unlikely to be considered a Hazardous Waste within the Regional Policy Plan’s definition of Hazardous Waste.

HMWF4. According to supplemental information provided by Email on 11/30/12 by Epsilon Associates, one of the Co-Applicants, NSTAR, has developed a detailed spill response policy. NSTAR also has a Generator ID Number (MP6175417740) which allows the company to manage Hazardous Wastes, and retains the services of Clean Harbors for waste disposal. Similarly, a second 11/30/12 Email from Epsilon Associates indicates the other Co-Applicant, Comcast, has its own detailed spill response policy. It also uses Clean Harbors for waste disposal.

HMWF5. Given the specialized nature of the project, and the application materials submitted to date, the Commission finds the two Co-Applicants (Comcast and NSTAR) have submitted sufficient information to show that the project will comply with the three parts of MPS WM1.5, thereby indicating the project will not substantially deviate from the applicable Minimum Performance Standards of the RPP nor have significant impact upon the purposes and values identified in Section One of the Act. Based on this, the Commission finds that the DRI sub-issue area of Hazardous Materials and Hazardous Waste shall not be included in the scope of DRI review.

Solid Waste/Recycling Management Findings

SWRF1. The materials submitted to date indicate the project may generate little if any solid waste or C&D debris from construction or maintenance, based on stringing the upland cable on existing poles, and by use of the HDD technique for the land to sea transition. The overhead Comcast line will travel on existing poles to the Comcast hub in Mashpee. Based on this, the Commission finds that the proposed cable interconnection to the existing upland system will result in a relatively limited amount of solid waste, if any, including possibly waste cable, used cable reels or spools, and packing materials.

SWMF2. MPS WM2.1 requires that “[d]evelopment and redevelopment projects shall address the disposal of construction waste...” and that “a plan shall be provided to demonstrate how the

applicant proposes to handle solid wastes, construction and demolition waste and recyclable materials currently categorized by the [DEP] as a waste ban material.” MPS WM2.2 describes the requirements of a construction and demolition (C&D) waste management plan. MPS WM2.3 requires a post-construction waste and recyclables management plan, and MPS WM2.4 deals with the management of “*significant amounts*” of food wastes.

SWMF3. An 11/13/12 letter from Epsilon Associates state that “[a]ny excess cable (hybrid, electric, or fiber optic) generated...will either be retained by NSTAR and Comcast for spare use or will be recycled based on the lengths of the excess cable. Packing materials will be disposed of as recyclable waste whenever possible. In most cases, cable reels are returnable and will be returned to the cable manufacturer for reuse; in some cases the reels may be designated by the cable manufacturer as disposable, and in such cases disposable reels will be sent to a metal recycling center.”

SWMF4. The Application (Section 4.10.2) indicates that “drill cuttings” are soils generated from whatever the HDD device encounters during the drilling procedure. The application describes how drill cuttings are separated from reusable drill fluid, which is a mixture of bentonite clay, silica and gypsum, is put back into service, while the remaining waste is disposed of as “clean fill.” The Application also states the drill cuttings and excess drill fluid typically have an elevated water content, which could require transport in sealed trucks. It also states typical disposal sites for this type of material include gravel pits or upland farm fields or pasture. An 11/13/12 letter from Epsilon Associates indicates that approximately 145 cubic yards of solids and possibly 80,000 gallons of liquids could be generated by HDD operations.

SWMF5. Given the specialized nature of the project, the Commission finds that MPS WM2.3 (*Recycling Post-construction*) and MPS WM2.4 (*Food Waste Management*) are not applicable.

SWMF6. Based on the above Findings, the Commission finds that this project shall not be scoped for DRI review in the RPP sub-issue area of Solid Waste.

Energy Findings

EF1. The Commission finds that the Minimum Performance Standards of the Regional Policy Plan’s Energy section seek to promote energy conservation, efficiency and self-sufficiency through use of locally distributed energy generation and better building design. The MPS in this section include requirements for energy audits of existing buildings to undergo redevelopment, use of ENERGY STAR design and renewable onsite energy generation. Other MPS in the Energy section include requirements for proposed Wind Energy Conversion Facilities. The Commission finds that the proposed new hybrid cable is not a type of development to which the Energy MPS apply, and finds that the proposed project shall not be scoped for DRI review in the RPP issue area of Energy.

Affordable Housing Findings

AHF1. The proposed project is a utility infrastructure project that involves the construction of a submarine hybrid cable across Vineyard Sound from Tisbury to Falmouth; therefore, the project falls under the *Other* category for the purpose of the affordable housing mitigation for commercial DRIs required under AH 3.1.

AHF2. Technical Bulletin #10-001 provides guidelines for the calculation of affordable housing mitigation for DRIs in the *Other* category, and it states that “... *buildings and/or facilities in which a calculation of building square footage is not feasible or appropriate.....will not be*

required to provide mitigation in the 'Other' category under AH 3.1." Based on this, the Commission finds that the requirements of MPS AH3.1, and the Regional Policy Plan's other Affordable Housing Minimum Performance Standards are not applicable to this project, and finds that this project shall not be scoped for DRI review in the RPP issue area of Affordable Housing.

Heritage Preservation/Community Character Findings

HPCCF1. The Minimum Performance Standards in the Community Character section of the Regional Policy Plan regulate the siting and design of development/redevelopment to prevent strip development, protect existing roadway character, breakup the massing of buildings, and stipulate landscape requirements. The proposed project is the installation of a sea-based cable using a Horizontal Directional Drilling technique at the Falmouth landing site. The Falmouth landing site, near the intersection of Mill Road and Beach Road/Surf Drive, is in an unpaved parking lot owned by the Town of Falmouth. At the proposed Falmouth landing site, the cable will be installed through proposed manholes to proposed riser poles and connected to existing Comcast and NSTAR subsurface and overhead infrastructure. Based on this information, the Commission finds the proposed project does not include construction of any new buildings or structures on land that could pose adverse visual impacts.

HPCCF2. MPS HPCC1.3 states in part "[w]here development is proposed on or adjacent to known archaeological sites or sites with high archaeological sensitivity as identified by the Massachusetts Historical Commission (MHC) or the Local Historical Commission during the review process, it shall be configured to maintain and/or enhance such resources where possible. A predevelopment investigation of such sites shall be required early in the site planning process to serve as a guide for layout of the development. Archaeological sites determined eligible for listing on the National Register of Historic Places shall be preserved and protected from disturbance."

HPCCF3. Section 4.13.1 of the Application states:

"No previously-identified historic or archaeological assets are located within the submarine portion of the Project area. Portions of the redundant upland route are located within areas included in the Inventory of Historic and Archaeological Assets of the Commonwealth or are listed in the State and/or National Registers of Historic Places. Since the portion of the Project in Falmouth consists of utilizing existing wires on utility poles or upgrading these wires as necessary, there will be little change to existing conditions and no significant impacts to historic resources.

To confirm that the proposed submarine cable route will not impact archaeological resources, a permit to undertake a marine archaeological survey was submitted to the Massachusetts Board of Underwater Archaeological Resources (MBUAR). The approved survey was performed in September 2011 in conjunction with the detailed marine surveys, and included magnetometer, sub-bottom, and side scan sonar. Results from the surveys were analyzed by Marine Archaeological Services at Fathom Research, LLC. During the survey, 29 relatively low magnitude magnetic anomalies were digitized, tabulated, and mapped for comparison with side scan sonar and sub-bottom sonar data layers. At least 19 of these anomalies appeared to be associated with existing submarine cables in the vicinity of Middle Ground Shoals. Based on a thorough analysis of survey results, Fathom Research has concluded that no sensitive marine archaeological resources are present along the proposed cable route."

HPCCF4. Appendix D of the Application includes an October 5, 2012 letter from MHC/MBUAR which states in part “[r]esults of the [underwater] reconnaissance survey identified no significant marine archeological resources within the project impact area. As no historic properties were identified in the project area of potential effect, the MHC recommends that the [Army Corps of Engineers] could make a finding of ‘no historic properties affected’...for the project as proposed.”

HPCCF5. MPS HPCC2.11 requires that site lighting and exterior building lights in all developments shall employ “shoe-box” type or decorative fixtures which are fully shielded, create a total cutoff of all light at less than ninety (90) degrees from vertical, provide a total cutoff of all light at the property lines of the parcel to be developed, and that all lights used shall meet a maximum initial horizontal foot-candle level of not more than 8.0 foot-candles, as measured directly below the luminaire(s) at grade.

HPCCF6. The application (pg. 4-25) states “cable installation will likely extend around the clock...” such that the HDD drill pit in Falmouth will need to be illuminated. It also states the lighting will conform to OSHA standards, “but will also take care to minimize the amount of construction lighting that extends outside the immediate work zone.” The application also states that lights at the Falmouth landing site will be shielded and directed away from homes on Mill Road (pg. 4-25). Based on this information, the Commission finds the majority of the project’s exterior lighting impacts would likely come from temporary construction work lights that will not substantially deviate from the applicable Minimum Performance Standards of the RPP nor have significant impact upon the purposes and values identified in Section One of the Act.

HPCCF7. Based on the above Findings, the Commission finds that this project shall not be scoped for DRI review in the RPP area of Heritage Preservation/Community Character.

CONCLUSION

Based on the above findings, the Commission, through an authorized Subcommittee, hereby determines that the proposed new submarine hybrid fiber optic/electric cable to provide communications and electric services to Martha’s Vineyard as outlined in this decision shall be reviewed as a Limited Development of Regional Impact scoped to the Regional Policy Plan issue areas and sub-issue areas of Coastal Resources and Marine Resources.

GENERAL CONDITIONS

GC1. Compliance with this Decision shall be made a condition of the Limited Development of Regional Impact decision, including any conditions of this Decision.

GC2. Unless otherwise more specifically addressed or conditioned herein, this Decision shall be appurtenant to and run with the property which is the subject project site.

GC3. The term “Applicant” or “Applicants” as used herein shall include its heirs, successors, and assigns in interest, and its employees, representatives, and agents, as the context implies. This Decision shall be enforceable against the Applicant or Applicants, its heirs, successors, and assigns.

GC4. The Applicant shall obtain all necessary federal, state, and local permits for the proposed project.

GC5. Failure to comply, and remain in compliance, with all conditions stated herein, and with all related statutes, ordinances, laws and other regulations, shall be deemed cause to revoke or modify this Decision.

WATER RESOURCES CONDITION

WRC1. Construction Best Management Practices for erosion and sedimentation controls shall be specified on project plans to prevent erosion, control sediment movement and stabilize exposed soils.

SEE SIGNATURES ON NEXT PAGE

SIGNATURES

Executed this 13 day of MARCH 2013.

Ernest S. Virgilio
Signature

ERNEST S. VIRGILIO
Print Name and Title

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

March 13, 2013

Before me, the undersigned notary public, personally appeared Ernest S. Virgilio

in his/her capacity as Chairman of the Cape Cod Commission Subcommittee, 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:

