3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

CAPE COD COMMISSION

Date: May 23, 2013

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

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

Co-Applicants: Comcast of Connecticut/Georgia/ Massachusetts/New Hampshire/New York/North Carolina/ Virginia/Vermont, LLC (Comcast), and NSTAR Electric (NSTAR)

Project: Martha's Vineyard Hybrid Cable

Project #: EIR/DRI 12027

Project Location: Landfall starts in Barnstable County at the intersection of 0 (zero) 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), hereby approves, with conditions, the Development of Regional Impact (DRI) application of Comcast of Connecticut/Georgia/ Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC (Comcast), and NSTAR Electric (NSTAR) (Co-Applicants) for a proposed new submarine hybrid fiber optic/electric cable to provide reliable, redundant communications and electric services to Martha's Vineyard pursuant to the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, and the Commission's *Enabling Regulations* (revised March 2011/New Fee Schedule effective July 1,

2012). This project is also subject to a Limited DRI scope as determined by an authorized Commission Subcommittee in a decision dated March 13, 2013. The Limited scope of DRI review was granted subject to of the Commission's *Enabling Regulations* (revised March 2011/New Fee Schedule effective July 1, 2012) which limited the scope of DRI review under the 2009 Regional Policy Plan (RPP) (as amended August, 2012) to the issue areas of Coastal Resources and Marine Resources. This DRI decision is rendered pursuant to a unanimous vote of the Commission on May 23, 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. 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.

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. (A landing site is the location where a submarine or other underwater cable makes landfall.) At the proposed Falmouth landing site, the cable will be installed through proposed manholes to an existing riser pole (in the case of the fiber optic cable) and to existing NSTAR subsurface infrastructure (in the case of the electric cable). 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) plastic or steel conduit installed using HDD from the landing site. The conduit 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.

The application materials include an Environmental Construction Management Plan (ECMP) that outlines an environmental orientation, training, and inspection program, including a provision for an on-site Environmental Field Supervisor to monitor project construction, designed to ensure that the project is constructed in accordance with project permits. The ECMP identifies sensitive resources in the project area and describes construction sequencing, including construction management techniques, a general list of construction equipment, and construction mitigation measures.

The Co-Applicants propose to conduct a post-construction submarine survey of the cable route approximately four to six weeks after installation to determine if any visible evidence of the cable installation is still present. If any visible evidence is found, a subsequent survey would be conducted one year later.

PROCEDURAL HISTORY

An authorized Commission Subcommittee issued a decision dated March 13, 2013 which limited the scope of DRI review to the Regional Policy Plan issue areas of Coastal and Marine

Resources. On April 8, 2013, the Commission received confirmation that the Falmouth Conservation Commission had voted to refer the project to the Cape Cod Commission for review. In a letter dated April 10, 2013, the application was deemed substantially complete to proceed to a substantive public hearing. A substantive Limited DRI hearing was held on April 25, 2013 at the Falmouth Public Library, Main Branch, Main Street, Falmouth. At this hearing, the Subcommittee heard presentations by Commission staff and the Co-Applicants' representatives on the project. The Subcommittee voted unanimously to direct Commission staff to draft written decision, with conditions, in the Regional Policy Plan issue areas of Coastal Resources and Marine Resources. The Subcommittee voted to continue the hearing and record to May 14, 2013 at 4:30 PM at Commission's office, Barnstable, MA.

At the continued public hearing on May 14, 2013, the Subcommittee voted to approve the draft Minutes of the March 13, 2013 (with Mr. Harris and Mr. McCormack abstaining) and April 25, 2013 public hearings as presented. The Subcommittee reviewed the draft written decision page by page. The Subcommittee made some corrections to spelling and sentence structure errors in the draft decision document. The Subcommittee asked the Co-Applicants representatives clarifying questions about the project. The Subcommittee heard no testimony from members of the public or public officials. The Subcommittee voted unanimously to accept the written Limited DRI decision, with conditions, as drafted. The Subcommittee voted to continue the public hearing and the record to the May 23, 2013 full Commission meeting, scheduled to start at 6:00 PM at the First District Courthouse, Assembly of Delegates Chamber, Barnstable, MA.

A List of Materials Submitted for the Record

Materials from Cape Cod Commission	***Date Sent or Created***
Draft Fee Calculation Sheet and copy of 11/5/12 letter to Applicant about fee	Undated
Draft Minutes, Public Hearing	3/13/12
Email, Andrea Adams (AA) to Lester Smith (LS), Epsilon, Holly Carlson (HC), Epsilon, Gail Hanley (GH), and Jon Idman (JI): Scheduling hearing	3/21/23
Email, JI to AA: Forward Email to Brian Currie, Falmouth Town Planner, to clarify meeting of proposed condition in Limited Scoping decision	3/21/13
Email, AA to Brian Currie: Clarifying meaning of proposed condition in Limited DRI Scoping decision	3/26/13
Email, AA to Commission Members Mary Pat Flynn and John D. Harris, seeking new members for Subcommittee	3/26/13
Email, AA to HC, GH, JI: Scheduling hearing, abutters list	3/26/13
Email, AA to HC, GH, JI: Scheduling hearing	3/28/13
Email, AA to Brian Currie: Seeking input on criteria of DRI approval	3/28/13
Email, AA to John D. Harris: Schedule for hearing and site visit; preference for copy of Applicants' materials	4/3/13
Email, John D. Harris to AA: Confirm hearing and site visit	4/3/13
Email, AA to Joyce White, Falmouth Planning Department: Re-send of Email to Brian Currie of 3/28/13	4/3/13
Email, AA to Jennifer McKay, Falmouth Conservation Administrator, Brian Currie, LS, JI: Please send confirmation of Conservation Commission vote	4/4/13
Subcommittee Establishment Form, signed by John D. Harris, Commission Chair (Notarized 5/6/13)	4/4/13
Email, AA to Jennifer McKay, Brian Currie, JI, LS: Receipt of Email from Jennifer confirming Conservation Commission's vote	4/8/13
Letter, Gail Hanley, to LS: Seeking payment for noticing of public hearing	4/8/13
Letter, AA to LS, Brian Currie, Project File: Application substantially complete to proceed to substantive hearing	4/10/13

Staff Report	4/10/13
Cover Memo, AA to Subcommittee: Transmittal of information; confirm date, time and place of hearing and of site visit for John Harris and John McCormack	4/10/13
Email, AA to LS, Brian Currie, Jennifer McKay: Letter deeming application complete and noting hearing date of 4/25/13	4/11/13
Email, JI to Commission Subcommittee and staff with attachment: Copy of staff report	4/17/13
Email, JI to Brian Currie, Jennifer McKay, LS, HC, with attachment: Copy of staff report	4/17/13
Staff Report with corrections from Epsilon	4/24/13
Hearing Notice	4/25/13
Hearing Sign In Sheet	4/25/13
Chair's Sheet for public hearing	4/25/13
Copy of Commission staff's Power Point presentation given at hearing	4/25/13
Approved Minutes, Public Hearing	4/25/13
Email, AA to GH: Continued hearing and record to 5/14/13	4/30/13
Email, AA to GH: Correction to official names of Co-Applicants as provided by Epsilon	4/30/13
Email, Gail Hanley to Michael Palmer, Falmouth Town Clerk, with attachment: Notice for continued hearing on 5/14/13	4/30/13
Email, AA to LS, HC, Heather McElroy (HMc), Maria McCauley: Follow up to conference call and transmittal of second notice/invoice for noticing public hearing	5/6/13
Email, HMc to AA, Jessica Wielgus (JW), JI: Comments on draft decision	5/6/13
Email, AA to LS, HC, JI, Maria McCauley, Gail Coyne: Payment for noticing of hearing has been received	5/6/13
Copy of Draft Decision (dated 5/8/13) for May 14, 2013 Continued Hearing	5/8/13
Email, AA to Subcommittee Members, JI: Transmitting draft Minutes and draft decision as attachments	5/8/13
Email, AA to Subcommittee Members, JI: Transmitting additional information from public agencies and Co-Applicants as attachments	5/8/13
Email, AA to Subcommittee Members, JI: Transmitting additional information from the Co-Applicants as attachment	5/8/13
Email, AA to Brian Currie, Jennifer McKay, JI: Copy of draft decision as attachment	5/8/13
Email, AA to LS, HC, JI: Copy of draft decision as attachment	5/8/13
Email, AA to HMc: Copy of draft decision as attachment	5/9/13
Chair's Sheet for Continued Public Hearing	5/14/13
Sign-In Sheet for Continued Public Hearing	5/14/13
Hearing Notice, Continued Public Hearing	5/14/13
Approved Minutes, Public Hearing	5/14/13
Email, AA to LS, HC, HMc, JI: Seeking copy of 1/2/13 letter from NHESP	5/15/13
Email, AA to LS, HC, HMc, JI: Seeking copy of updated project plan (C-1)	5/15/13
Email, GH to Michael Palmer, with attach: Hearing Notice for 4/23/13	5/15/13
Email, AA to LS, HC, JI: Discussion of Amended ECMP	5/21/13
Email, JI to AA, HMc, LS, HC: Discussion of Amended ECMP	5/21/13
Email, AA to JW, JI: Review of Amended ECMP	5/21/13
Email, JW to AA, JI: Review of Amended ECMP	5/21/13
Email, AA to HMc, JI: Please review Amended ECMP for noise protocol	5/21/13
Email, AA to LS, HC, JI: Review of Amended ECMP by Commission staff	5/21/13

Email, AA to Tom Cambareri, Scott Michaud, James Sherrard: Please review Amended ECMP for spill response protocols	5/21/13
Email, James Sherrard to AA: Seeking copy of original ECMP	5/22/13
Email, AA to James Sherrard, JI: ECMP shows original language and changes in Track Changes mode	5/22/13
Email, AA to LS, HC: Copy of Cape Cod Commission Agenda and Chair's Outline for May 23, 2013	5/22/13
Email, James Sherrard to AA: Review of ECMP for upland spills	5/22/13
Email, AA to JI, JW, HMc: Copy of James Sherrard's comments on ECMP	5/22/13
Copy of Commission Staff Power Point presentation on draft decision	5/23/13
Copy of Commission Staff PowerPoint on draft decision as handout	5/23/13
Hearing Notice for Continued Hearing before Full Commission	5/23/13
Chair's Sheet	5/23/13
Materials from Applicant	***Date Received***
Copy of Single Environmental Impact Report	4/30/12
Email, Lester Smith (LS), Epsilon, to AA: Attached fee estimate	11/30/13
Email, LS, to AA, Holly Carlson (HC), Epsilon: Coordinate meeting/hearing with other Town meetings	3/21/13
Email, HC, to AA, LS: Abutters List	3/21/13
Letter, LS to AA: Fee Payment for DRI fee	4/9/13
Copy of 4/10/13 staff report with corrections from Lester Smith, Epsilon	4/10/13
Copy of PowerPoint presentation given by Lester Smith and Holly Carlson, Epsilon, at April 25, 2013 Hearing	4/25/13
Email, LS to AA, HMc, HC: Seeking copy of staff report	4/30/13
Email, LS to AA, HMc, JI, HC: Seeking copy of staff PowerPoint	4/30/13
Email, HC to LS, AA, JI, HMc, Maria McCauley: Copy of Amended Environmental Construction Management Plan (one showing changes; one with changes incorporated into the document)	5/6/13
Copy of fee payment check for noticing of public hearings	5/7/13
Email, LS to AA, HMc, HC: Copy of prior Emails showing correspondence with MA Department of Marine Fisheries and no Time of Year restrictions	5/8/13
Email, LS to AA: Correction to draft decision	5/8/13
Check for cost of noticing (By Hand) (Copy made for file)	5/14/13
Email, HC to AA: Copy of January 2, 2013 NHESP Letter to Co-Applicants	5/15/13
Email, LS to AA, HC: Suggested corrections to draft decision regarding ECMP	5/20/13
Email, HC to AA, JI, LS, with attachment: Amended ECMP (Track Changes)	5/21/13
Materials from Public Agencies/Towns/State/Federal	***Date Received***
Certificate of the Secretary of Energy and Environmental Affairs on the Public Benefit Determination	dated 9/28/12
Letter, Thomas W. French, Assistant Director, Division of Fisheries and Wildlife, to Falmouth and Tisbury Conservation Commissions: Determination of "no take"	Dated 1/2/13; Received 5/15/13
Email, Jennifer L. McKay, Conservation Administrator, to AA, Brian Currie, Falmouth Town Planner, and Lester Smith: DRI referral from Falmouth Conservation Commission	3/20/13
Email, Joyce White, Office Administrator, Falmouth Planning Department, to AA: Confirmation she received re-send of Email to Brian Currie, Falmouth Town Planner	4/3/12
Email, Brian Currie, Falmouth Town Planner, to AA, JI: Town comments on project's consistency with DCPC, Bylaws, LCP	4/3/13

Email, Jennifer L. McKay, Conservation Administrator, to AA, Brian Currie, Falmouth Town Planner, and Les Smith: Vote of Conservation Commission to refer project as DRI	4/8/13
Email, Joyce White, Office Administrator, Falmouth Planning Department, to JI: Comments from Brian Currie, Falmouth Town Planner	5/7/13
Materials from Members of the Public	***Date Received***
None received	

TESTIMONY

April 25, 2013 Public Hearing

Mr. Virgilio, Subcommittee Chair, opened the Hearing on April 25, 2013 at 6:30 PM. Mr. Putnam read the Hearing Notice. Mr. Virgilio noted the hearing location, date and time, and that the hearing was being recorded and that there was a sign-in sheet for people who wished to provide testimony. Mr. Virgilio also noted the public hearing was being videotaped for television broadcast on Falmouth Public Access TV. He explained that the order of the hearing would be a presentation by the Applicant, followed by a presentation by Commission staff, then by questions from the Subcommittee and then public testimony.

Applicants' Presentation

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) in the Regional Policy Plan (RPP) issue areas of Coastal and Marine Resources. She addressed the MPS in the Coastal Resources section first. Ms. Carlson then went on to discuss the proposed project's consistency with the Regional Policy Plan's Marine Resources section.

Commission Staff Presentation

Ms. Adams gave a PowerPoint presentation of the April 10, 2013 Staff Report. She described the Commission's jurisdiction over the project, noting the hybrid cable qualifies as a DRI under Section 2(d)(ii) of *Enabling Regulations*. She noted the Applicants had applied to limit the scope of DRI Review and that a duly empowered Commission Subcommittee had limited the DRI scope in a decision dated March 13, 2013 to the Regional Policy Plan issue areas of Coastal and Marine Resources. Ms. Adams addressed the standards of review for Developments of Regional Impact. She then described the Commission staff's analysis of the proposed project's consistency with the Coastal Resources and Marine Resources Minimum Performance Standards.

Ms. Adams' PowerPoint presentation showed a slide summarizing the Commission standards for DRI review and approval. She said one criterion is that the probable benefit of a proposed project must be found to be greater than the probable detriment. She noted that the Subcommittee, at its discretion, may consider Best Development Practices (BDPs) that exceed the MPS in its analysis of benefits and detriments. Ms. Adams noted that the Commission staff's analysis of the proposed project indicated that it had met two BDPs: BDP Land Use 2.3 relative to co-location of public infrastructure, and BDP Marine Resources 1.29, relative to multi-hazard plans. Ms. Adams also noted that Subcommittee that had scoped the Limited DRI review had voted that the consideration of consistency with BDP Land Use 2.3 was appropriate as a probable benefit even though the Regional Policy Plan's Land Use section was not part of the DRI scope. Ms. Adams noted that the Subcommittee may also consider other factors that it determines constitute probable benefits.

Ms. Adams said another criterion of DRI review and approval is consistency with Commission-Certified Local Comprehensive Plan (LCP) and municipal development bylaws. She noted that Falmouth had a Commission-certified LCP as of 1998, and that Commission staff was seeking input from Brian Currie, Falmouth Planner and DRI Liaison, on the project's consistency with the LCP and municipal bylaws.

Ms. Adams said another criterion of DRI review and approval is a project's consistency with any applicable Districts of Critical Planning Concern (DCPCs). She noted an April 3, 2013 Email from Brian Currie indicates the Falmouth landfall not located in a DCPC.

Ms. Adams concluded her PowerPoint presentation with a slide showing several issues on which the Subcommittee should seek clarification from the Co-Applicants. She also noted the Commission staff was still seeking clarification from Town Planner on consistency with Falmouth's Commission-certified LCP and municipal bylaws. Based on this, Ms. Adams suggested the Subcommittee vote to continue the hearing and the record to a date/place/time certain so as to receive additional testimony.

Subcommittee Questions

Mr. Virgilio noted that the Co-Applicants' maps showing the proposed cable route as presented in Mr. Smith's PowerPoint indicated the proposed new cable would not follow a completely linear path, in that it would have bends or jogs in it. Based on this, he asked if the cable might be more subject to potential failure because of the bends in the cable?

Mr. Oheim said no, in that what had likely cause the failures in the existing cables between the Cape and Martha's Vineyard was the fact that the cables had been manufactured and installed in sections. He said the proposed new cable would be one continuous cable, with no splices. He also said the proposed cable may have some slight bends in it to facilitate maintenance, but nothing like a right-angle bend. Mr. Oheim said another difference between the proposed new cable and existing ones between Martha's Vineyard and Cape Cod is that this cable would be trenched and buried, where the others are laid on the sea floor.

Mr. Smith said the cables between Nantucket and the Cape are similar in design to the proposed new cable, and have not experienced any failures to date.

Mr. Short asked how the Co-Applicants would repair the cable if there was a problem? He also asked if it was a three-phase cable?

Mr. Oheim said the cable would be located and excavated, then brought to the surface for repairs. Once fixed, it would be re-trenched.

Mr. Smith showed a cross section of the proposed cable strand to respond to Mr. Short's second question.

Mr. Harris asked what entity or entities would have the responsibility for cable maintenance and repair?

Mr. Oheim said the cable owners are responsible; both Comcast and NSTAR.

Public Testimony
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. There was none.

Continue Hearing and Adjournment
Ms. Adams suggested the Subcommittee discuss dates and times for a continued public hearing, so that additional testimony on the project's consistency with Falmouth's Commission-certified Local Comprehensive Plan and local bylaws could be provided.

Ms. Adams also suggested the Subcommittee could vote to direct Commission staff to draft a written decision, with conditions, approving the proposed project.

Mr. Short moved to continue the hearing and the record to Tuesday, May 14, 2013 at 4:30 PM at the Cape Cod Commission office. Mr. Putnam seconded the motion, and it passed unanimously.

Mr. Short moved to direct Commission staff to draft a written decision, with conditions, in the Regional Policy Plan issue areas of Coastal and Marine Resources approving the proposed project. Mr. Putnam seconded the motion, and it passed unanimously.

Mr. Virgilio asked for a motion to adjourn.

Mr. Harris moved to adjourn. Mr. Putnam seconded the motion, and it was approved unanimously.

May 14, 2013 Continued Public Hearing

Mr. Virgilio, Subcommittee Chair, opened the continued hearing on May 14, 2013 at 4:50 PM.

Approval of Draft Minutes
Mr. Short moved to approve the draft Minutes of the March 13, 2013 hearing as presented. Mr. Putnam seconded the motion, and Mr. Virgilio, Mr. Putnam and Mr. Short voted in favor of approving the Minutes as presented. Mr. McCormack and Mr. Harris abstained.

Mr. Short moved to approve the draft Minutes of the April 25, 2013 hearing as presented. Mr. Putnam seconded the motion, and it passed unanimously.

Commission Staff Presentation of the Draft Written Decision
The Subcommittee reviewed the proposed draft written decision, and reviewed the draft written decision page by page. The Subcommittee made some corrections to spelling and sentence structure errors in the draft decision document.

Mr. Smith noted that the word *"proposed"* should be changed to *"existing"* with respect to the riser pole mentioned in Coastal Resources Finding CRF6. He noted the proposed project would utilize existing utility poles.

The Subcommittee adopted Mr. Smith's proposed change.

Subcommittee Questions
Mr. Virgilio asked what the hours of construction would be for both the on-shore and off-shore work?

Mr. Smith responded that the hours of construction at the Falmouth landfall would be governed by the local requirements. He said he was not aware of any restrictions on construction hours for the off-shore work.

Mr. Virgilio noted that squid fishing boats sometimes operate in the vicinity of the proposed project, and urged the Co-Applicants to take account of this, as these draggers operated during the evening hours.

Mr. Smith said the Co-Applicants will coordinate with the US Coast Guard and the Steamship Authority in order to avoid conflict with other marine users.

Mr. Virgilio asked Mr. Smith if the Co-Applicants had any comments?

Mr. Smith said no, but asked that a copy of the April 25, 2013 PowerPoint presentation be made part of the materials provided to the other Commission members as part of their review of the draft written decision.

Public Testimony
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.

Hearing none, Mr. Virgilio asked for final comments from the Co-Applicants and Commission staff, if any.

Mr. Smith and Ms. Adams said they had no comments.

Vote on Draft Decision and to Continue the Hearing and Record
Mr. Virgilio asked a Subcommittee member to make a motion on the draft written decision.

Mr. Putnam moved to approve the draft Limited DRI written decision as presented. Mr. McCormack seconded the motion, and it passed unanimously.

Mr. McCormack moved to continue the hearing and the record to the full Cape Cod Commission meeting scheduled for May 23, 2013, scheduled to commence at 6:00 PM at the First District Courthouse, Assembly of Delegates chamber. Mr. Short seconded the motion, and it passed unanimously.

Mr. Virgilio asked for a motion to adjourn. Mr. Harris moved to adjourn. Mr. Putnam seconded the motion, and it was approved unanimously.

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."*

FINDINGS

The Commission, has considered the DRI 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 the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, and the Commission's *Enabling Regulations* (revised March 2011/New Fee Schedule effective July 1, 2012):

GENERAL FINDINGS

GF1. As the date of the first substantive public hearing on the proposed project using the Limited DRI scope was April 25 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).

GF3. The proposed project is the installation and operation of a new submarine hybrid fiber optic/electric cable to continue to provide reliable, redundant communications and electric services to Martha's Vineyard. 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 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. Section 13 of the Cape Cod Commission Act (Act) and Section 7(c)(viii) of the Commission's *Enabling Regulations* (revised March 2011; Revised Fee Schedule Effective July 1, 2012) states that the Commission shall review proposed DRIs for their consistency with the Act, the RPP, Districts of Critical Planning Concern (DCPCs), municipal development bylaws, and Local Comprehensive Plans. The Commission shall approve, or approve with conditions, a DRI if the Commission finds after a public hearing that:

> [1] The probable benefit from the proposed development is greater than the probable detriment;
>
> [2] The proposed development is consistent with the RPP and with the Local Comprehensive Plan of the Municipality in which the proposed development is located if the municipality has adopted a Local Comprehensive Plan which has been certified by the Cape Cod Commission as consistent with the Regional Policy Plan;
>
> [3] The proposed development is consistent with municipal development bylaws, or, if it inconsistent, the inconsistency is necessary to enable a substantial segment of the population to secure adequate funding opportunities of housing, conservation, environmental protection, education, recreation or balanced growth;
>
> [4] If the proposed development is located in whole or in part within a designated DCPC, it is consistent with the regulations approved or adopted by the Commission pursuant to Section 11 of the Act.

GF5. Based on the April 3, 2013 written testimony from Brian Currie, Falmouth's Town Planner, the project is not located in a District of Critical Planning Concern. As such, the Commission finds that the approval criterion of consistency with DCPCs is not applicable to the proposed project.

GF6. Based on the written testimony of Brian Currie, the Falmouth Town Planner in an Email received by the Cape Cod Commission on May 7, 2013, the Commission finds the proposed development is consistent with Falmouth's 1998 Commission-Certified LCP.

GF7. Based on the written testimony of Brian Currie, the Falmouth Town Planner in an Email received by the Cape Cod Commission on May 7, 2013, the Commission finds that the proposed development is consistent with Falmouth's municipal development by-laws so long as the Co-Applicants obtain all necessary municipal permits, licenses and approvals for the project including but not limited to an Order of Conditions from the Falmouth Conservation Commission.

GF8. The project proposes utility co-location (telecommunications and electric hybrid cable), which the Commission finds is consistent with Regional Policy Plan Land Use Best Development Practice (BDP) for co-location of public infrastructure (BDP LU 2.3). The Commission also finds the proposed project meets BDP MR1.29 which recommends coordination and consideration of multi-hazard mitigation plans, where available. The Co- applicants performed a shoreline change analysis which indicates that the proposed manhole installation site will not be vulnerable to shoreline erosion.

COASTAL RESOURCES FINDINGS

CRF1. The proposed project involves development in or within 100 feet of Land Subject to Coastal Storm Flowage (LSCSF), Coastal Dune, Coastal Beach, and FEMA-designated flood velocity zone ("V zone"), which are all coastal wetland resource areas specifically regulated under the Regional Policy Plan (RPP).

CRF2. The hybrid cable conduit will be installed by horizontal directional drilling (HDD) beneath Coastal Dune and Coastal Beach, as well as beneath eelgrass beds. The Commission finds that HDD installation of the conduit below grade and the seabed in the near-shore zone will avoid any direct impacts to these sensitive coastal resources. The Commission finds the HDD technique will also enable the project to avoid time-of-year restrictions (TOY) to protect sensitive fisheries resources as determined by the Massachusetts Division of Marine Fisheries (DMF) in email correspondence dated November 2, 2012. The Commission also finds that HDD installation will result in no impacts to Land Under the Ocean except for minimal impacts at the seaward locations of the project where the HDD conduit will reach the seafloor.

CRF3. According to the application, HDD drilling fluid is described in the application as *"a water-based slurry consisting predominately of bentonite, a naturally-occurring, non-toxic clay."* The project narrative indicates that drilling fluids generated by HDD will be contained within an approximately ten foot by ten foot approach/reservoir pit and disposed of in accordance with state and local regulations. The Environmental Construction Management Plan (ECMP) included in the application describes proposed best management practices (BMPs) to contain the drilling muds during HDD operations to prevent any accidental release of drilling fluids into Salt Pond. Proposed BMPs include installing silt fence and/or hay bales around the reservoir pit and along the edge of the filtration swale and monitoring these installations on a regular basis to ensure they are functioning as intended.

CRF4. Management of drilling fluid generated by HDD operations and any refueling and/or lubricating of construction equipment on-site are of particular concern, given the proximity of Salt Pond and its bordering wetlands, both of which are sensitive environments. According to information submitted by the Co-Applicants, the approach pit will be located approximately 85-

90 feet from wetlands (shrub swamp) bordering Salt Pond. This approach pit will also serve as a reservoir for drilling fluids.

CRF5. According to the application, most refueling and maintenance of construction equipment will occur off-site at commercial service stations and fueling on-site will not be done within 100 feet of marked wetlands. In addition, spill containment gear and absorption materials will be maintained on-site and a Site Safety Representative will implement the project's Spill Prevention Program.

CRF6. The Commission finds the proposed project complies with Minimum Performance Standard (MPS) CR1.1 as the project is proposed to begin after October 15, 2013 to avoid the busiest recreational periods; the sub-grade cable will not interfere with public access to coastal resources, or public trust rights; the cable will not be visible until it reaches the existing riser pole and will not change existing views of the ocean or shoreline; and construction equipment will be visible only for a brief (3-4 month) period of time in the off-season.

CRF7. The Commission finds that MPS CR1.2 to MPS CR1.4 do not apply to the project because the project does not involve public beach nourishment, impacts to maritime industry, or development of buildings or structures relative to the existing maritime architecture.

CRF8. The Commission finds the proposed Environmental Construction Management Plan adequately addresses coastal hazard concerns related to cable installation activities set out in the MPS under Goal CR2.

CRF9. The Commission finds that MPS CR2.2, MPS CR2.7 and MPS CR2.9 do not apply to the project. The Commission also finds that MPS CR2.5 and MPS CR2.6 do not apply because the project is not proposed to be located on a Coastal Dune or Coastal Bank.

CRF10. Pursuant to MPS CR 2.10, and notwithstanding MPS CR2.1, MPS CR2.3, MPS CR2.4 and MPS CR2.8, underground utility crossings that do not disturb protected resources may be permitted, provided that the applicant demonstrates that best available measures are utilized to minimize adverse impacts on all critical characteristics of Land Subject to Coastal Storm Flowage (LSCSF), and provided that all other Regional Policy Plan MPS for underlying resource areas are met. The Commission finds that the underground cable installation will not disturb protected resources, and the Co-Applicants have proposed BMPs in the Environmental Construction Management Plan (ECMP) to minimize or avoid adverse impacts on the applicable Coastal Resource areas, as outlined above.

CRF11. The Commission finds that MPS CR 3.2, MPS CR3.4 to MPS CR3.9 and MPS CR3.12 do not apply to the project because the project does not involve a septic system, stormwater system, dredging or aquaculture

CRF12. MPS CR3.1 protects buffer zones to coastal wetlands. As referenced in MPS CR3.1, MPS WET1.2 and MPS WET1.3 allow disturbance of this buffer zone for installation of utility lines where there is no feasible alternative to the proposed route, and where disturbance is to be minimized and restored. The Commission finds that there is no feasible alternative route based on the Co-Applicants Single Environmental Impact Report (Single EIR) which was submitted to and reviewed by the Massachusetts Environmental Policy Act (MEPA) Unit between May and June, 2012, and also submitted to the record on April 30, 2012 and again on May 6, 2013. Information concerning impacts to buffer zones to coastal wetlands is described in Sections 3.0 (*Alternatives Analysis*) and 4.0 (*Environmental Impacts and Consistency with Massachusetts*

Ocean Management Plan) of the Single EIR incorporated into and made a part hereof, and that the ECMP adequately addresses minimization and restoration of buffer zone disturbance.

CRF13. The Site Plan included with the application indicates that a filtration swale that discharges to Salt Pond is located between the parking lot and the bordering wetlands. The Commission finds that this design addresses MPS CR3.3, which prohibits the direct discharge of untreated stormwater into any coastal waters or wetlands.

CRF14. MPS CR3.10 prohibits direct or indirect project impacts to eelgrass. The Co-Applicants conducted a video survey in September 2011 that found that eelgrass beds extend approximately 2,400 to 2,500 feet offshore from Falmouth. Based on the results of this 2011 survey data, which is described in Sections 3.0 (*Alternatives Analysis*) and 4.0 (*Environmental Impacts and Consistency with Massachusetts Ocean Management Plan*) of the Single EIR the Co-Applicants proposed to use HDD to install the cable for a distance of approximately 2,600 feet from the landing site to avoid surveyed eelgrass beds. As such, the Commission finds the proposed project meets this standard.

CRF15. MPS CR3.11 requires that projects minimize direct and indirect adverse impacts to marine life and their habitat. Installation of the cable in offshore areas by hydroplow will result in temporary impacts to benthic organisms and habitats. However, the Commission finds that the benthic communities are expected to quickly recover given the naturally dynamic nature of the substrate. According to the application, and based on consultations between the Co-Applicants and the Division of Marine Fisheries (DMF) regarding the use of HDD and avoidance of impacts, as evidenced in a November 2, 2012 Email from Lester Smith, DMF determined that no Time of Year (TOY) restrictions are necessary to protect sensitive resources.

MARINE RESOURCES FINDINGS

MRF1. The Commission finds that the project meets MPS MR1.2 as the project is not located in mapped Cable/Pipeline Prohibited Areas.

MRF2. MPS MR1.3 requires that cable installations provide adequate buffers to navigation. The proposed location of the cable will not interfere with navigation, but installation with the ROV barge could interfere with recreational activities and/or Steamship Authority routes. In order to address these concerns, the Co-Applicants indicate that installation will occur between October 15, 2013 and April, 2014 when recreational users are least active, and that the proponent will coordinate with the US Coast Guard and the Steamship Authority in order to avoid conflict with other marine users. The Commission finds that this satisfies MPS MR1.3.

MRF3. MPS MR1.4 requires that applicants provide an Operations and Maintenance Plan. Appendix E of the DRI application details procedures for installation and maintenance of the cable. MPS MR1.4 requires that responsible parties are identified, and that adequate capital or insurance exists to respond to contingencies. The Commission finds that the Co-Applicants shall be, and are identified in Section 1 of the Environmental Construction Management Plan (ECMP) as, responsible parties to ensure that adequate capital or insurance exists to respond to contingencies, emergencies or other non-emergency repairs, and to ensure that cable installation and maintenance occurs in a manner consistent with this decision

MRF4. MPS MR1.5 requires that applicants provide an Emergency Response Plan. The Co-Applicants indicate in Section 2.6.3.1 of the application that they will contract with an Environmental Remediation Service Contractor for emergency response to hazardous materials spills. On May 6, 2013, the Co-Applicants submitted an updated Environmental Construction

Management Plan which serves as a draft Emergency Response Plan. The Commission finds it is appropriate to condition the project to require the Co-Applicants have a contractor to respond to any spills, whether on-ship spills or on-land. The Environmental Construction Management Plan (ECMP) contained in Appendix E includes protocols for ensuring that landside and HDD-related spills do not occur. The Commission finds that the Environmental Construction Management Plan establishes Environmental Field Monitors (EFM) who shall be responsible for ensuring that these protocols are followed and will have "stop work" authority on the construction site, whether on land or on board ship.

MRF5. MPS MR1.6 requires that cable installation operations immediately cease if North Atlantic Right Whales (NARWs) are observed within 2 miles of the installation. The Co-Applicants indicate in the materials submitted for the record that they are prepared to abide by these requirements. The Environmental Field Monitor(s) may perform this function. The Commission finds that it is appropriate to condition the project to require the Co-Applicants to provide certification that Environmental Field Monitor(s) are trained in the observation of NARWs, and shall have the authority to stop work should marine mammals be observed within the work area.

MRF6. The Commission finds that MPS MR1.7 does not apply as the project is not located in mapped Exclusionary Areas for North Atlantic Right Whales.

MRF7. MPS MR1.8 requires that all individuals responsible for operating and managing the project are apprised of the NOAA Fisheries Northeast Regional Viewing Guidelines. The application materials indicate the Co-Applicants are prepared to comply with these requirements.

MRF8. MPS MR1.9 requires that Applicants provide a plan for protecting sea turtles during installation. The Co-Applicants have consulted with DMF, and the agency determined that no Time of Year restrictions were needed to protect sea turtles. The Commission finds that based on the winter time frame for construction, and that DMF determined that no Time of Year restrictions were needed to protect sea turtles, that the proposed project is consistent with MPS MR1.9.

MRF9. MPS MR1.10 requires that cable installations protect important fish resources and habitat, including licensed commercial fishing or aquaculture operations. Based on the information submitted as part of the project review, the Commission finds that installation of the cable in offshore areas by hydroplow will result in temporary impacts to benthic organisms and habitats. The Commission also finds based on the information submitted that the benthic communities are expected to quickly recover given the naturally dynamic nature of the substrate. The Commission also finds that according to the application and based on consultations between the Co-Applicants and the DMF regarding the use of HDD and avoidance of impacts, DMF determined that no Time of Year (TOY) restrictions are necessary to protect sensitive fish resources. Based on this information, the Commission finds the proposed project is consistent with MPS MR1.10.

MRF10. MPS MR1.11 and MR1.12 require that cable installations not directly or indirectly impact current or historic eelgrass beds or hard/complex seafloor. The Co-Applicants conducted marine surveys of the proposed route in September 2011, determining that eelgrass resources extended further offshore than represented on current maps. The Commission finds that the proposed installation method will avoid these resources by tunneling beneath them, out to a distance approximately 100 feet seaward from the furthest extent of eelgrass beds. Similarly, the

Commission finds that the Co-Applicants' video surveys identified areas of hard/complex bottom, resulting in redesign of the cable route to avoid impacts to these resources. According to the DRI application, the seafloor along the proposed route is characterized by gravelly sand, with bands of sandy gravel, sporadic cobbles, and occasional boulders. At the same time, the Commission finds it is appropriate to condition the project to require turbidity monitoring as hydroplowing may occur within 100 feet of eelgrass beds on the Falmouth side of the project area, and sedimentation on these eelgrass beds could occur under certain sediment and current conditions.

MRF11. MPS MR1.13 requires that applicants consult with Massachusetts Division of Marine Fisheries (DMF) regarding necessary Time of Year restrictions to protect benthic habitats. According to the application and based on consultations between the Co-Applicants and the DMF regarding the use of HDD and avoidance of impacts, DMF determined that no Time of Year (TOY) restrictions are necessary to protect sensitive resources. Based on this, the Commission finds the proposed project is consistent with MPS MR1.13.

MRF12. MPS MR1.14 requires that applicants provide a site monitoring plan during construction. The Commission finds that it is appropriate to condition the project to require that the Co-Applicants provide a monitoring plan that will provide information about potential turbidity impacts during hydroplowing as hydroplowing may occur within 100 feet of eelgrass beds on the Falmouth side of the project area, and sedimentation on these eelgrass beds could occur under certain sediment and current conditions.

MRF13. MPS MR1.15 requires that development shall not have adverse impacts on endangered species habitat. The project is located within mapped rare species habitat for terns and plovers. The Co-Applicants submitted project plans to the Natural Heritage and Endangered Species Program (NHESP) and received a letter dated January 2, 2013 from the NHESP stating that the project will not adversely affect the actual Resource Area habitat of state-protected rare wildlife species, and that it will not result in a prohibited "take" of state-listed species. Based on this information, the Commission finds the project is consistent with MPS MR1.15.

MRF14. MPS MR1.16 requires that applicants provide a Construction Noise Mitigation Plan. The Co-Applicants suggest that a noise mitigation plan is not necessary due to the very low likelihood that marine mammals or sea turtles will be present in the project area during the winter months when the project will be installed. The Commission finds that it is appropriate to condition the project to require that the Environmental Construction Management Plan require the Environmental Field Monitor(s) to be trained accordingly, and to be responsible for observation of marine mammals and sea turtles. The Environmental Field Monitor(s) will have the authority to stop work should marine mammals or sea turtles be observed within the work area.

MRF15. MPS MR1.17 requires that applicants identify certain types of existing or permitted off-shore development to aid in the Commission's determination whether the public benefits of the project outweigh the cumulative adverse impacts of off-shore development. The Applicant has stated in the DRI application that the public benefits of the proposed project included expanded capacity of electrical service, redundancy of communications services, and that the project impacts will be temporary and spatially constrained. Based on the map, Figure 2-1 in the DRI application, illustrating the existing and proposed cables crossing Vineyard Sound in this location, the Commission determines the public benefits of the proposed project outweigh cumulative adverse impacts to resources protected under the Act, because there are not impacts created by other off-shore development within the proposed cable route and based on the

findings of the September 28, 2012 Public Benefit Determination made by the Secretary (Secretary) of Energy and Environmental Affairs. In this Determination, the Secretary found that the project will avoid future impacts that may occur with siting and installation of two separate cables. The Secretary also found that the Co-Applicants proposed a method of less-invasive cable burial (hydro plow or ROV trenching) together with a dynamically positioned surface vessel.

MRF16. MPS MR1.18 requires that applicants coordinate conduit crossings to the maximum extent feasible. The Commission finds the proposed route utilizes an area of seafloor with existing cables and that the project bundles two different utility cables into one conduit to be installed simultaneously. Based on this, the Commission finds the proposed project is consistent with MPS MR1.18.

MRF17. MPS MR1.19 requires that development is configured to avoid adverse impacts to archaeological resources. The Co-Applicants performed surveys of the proposed cable route and had them evaluated for the presence of archaeological resources. The technical report was submitted to the Marine Board of Underwater Archaeological Resources and the Massachusetts Historical Commission, which determined that no historic properties would be affected by the cable installation. Based on this information, the Commission finds the proposed project is consistent with MPS MR1.19.

MRF18. MPS MR1.27 requires that development not result in adverse impacts to benthic communities. The Co-Applicants conducted marine surveys of the proposed route in September 2011, determining that eelgrass resources extended further offshore than represented on current maps. The Commission finds the proposed installation method will avoid these resources by tunneling beneath them, out to a distance approximately 100 feet seaward from the furthest extent of eelgrass beds. Similarly, the video surveys identified areas of hard/complex bottom, resulting in redesign of the cable route to avoid impacts to these resources. According to the DRI application, the seafloor along the proposed route is characterized by gravelly sand, with bands of sandy gravel, sporadic cobbles, and occasional boulders. The Commission finds that it is appropriate to condition the project to provide sedimentation and turbidity monitoring reports to the Commission consistent with MPS MR1.27 and MPS MR1.14. based on the Co-Applicants Single Environmental Impact Report (Single EIR) which was submitted to and reviewed by the Massachusetts Environmental Policy Act (MEPA) Unit between May and June, 2012. Information concerning impacts to buffer zones to coastal wetlands is described in Sections 3.0 (*Alternatives Analysis*) and 4.0 (*Environmental Impacts and Consistency with Massachusetts Ocean Management Plan*) of the Single EIR.

MRF19. The Commission finds that MPS MR1.28 does not apply to the proposed project as the project does not occur within the identified core bird habitats.

CONCLUSION

Based on the above Findings, the Commission hereby concludes that:

1. Upon satisfaction of the conditions identified in this decision, the proposed project is consistent with the 2009 (as amended) Regional Policy Plan and the Commission Act.

2. The Town of Falmouth has a 1998 Commission-certified Local Comprehensive Plan. The proposed project is consistent with this certified Local Comprehensive Plan.

3. If the development successfully obtains the required municipal permits, the proposed development is consistent with Falmouth's municipal development by-laws/ordinances.

4. The project is not located in a District of Critical Planning Concern in Falmouth, as noted by finding G5, and therefore this criterion does not apply.

5. That the probable benefits of the proposed project are greater than the probable detriments. This conclusion is supported by finding G8.

CONDITIONS

The Commission hereby approves, with conditions, the DRI application of Comcast of Connecticut/Georgia/ Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC (Comcast), and NSTAR Electric (NSTAR) (Co-Applicants) for a proposed new submarine hybrid fiber optic/electric cable to provide reliable, redundant communications and electric services to Martha's Vineyard with the Falmouth landfall located at the intersection of 0 (zero) Surf Drive and Mill Road, and Falmouth, provided the following conditions are met:

GENERAL CONDITIONS

GC1. This decision is valid for a period of 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of this written 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 "Co-Applicant" or "Co-Applicants" as used herein shall include its or their heirs, successors, and assigns in interest, and its or their employees, representatives, and agents, as the context implies. This Decision shall be enforceable against the Co-Applicants jointly and severally, and its or their heirs, successors, and assigns.

GC4. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, and remain in compliance herewith, shall be deemed cause to revoke or modify this decision.

GC5. No development work, as the term *"development"* is defined in the Cape Cod Commission Act and approved herein, shall be undertaken until the DRI decision appeal period has elapsed or, if such an appeal has been filed, until all judicial proceedings on the appeal have been completed, and until a Preliminary Certificate of Compliance has been issued by the Commission

GC6. Prior to issuance of any Preliminary Certificate of Compliance by the Cape Cod Commission for development as the term *"development"* is both defined in the Cape Cod Commission Act and is approved herein, the Co-Applicants shall submit final project plans as approved by state, federal, and local authorities for review by Commission staff who shall determine their consistency with this decision. If Commission staff determines that the final plans are not consistent with those project plans approved, referenced and incorporated herein, the Commissions shall require that the Applicant seek a modification to this decision for further review and approval of the project plans in accordance with the *"Modification"* section of the Commission's *Enabling Regulations* in effect at the time the modification is sought. In addition, any deviation during construction to the approved plans and other documents, including shall

require approval by the Commission through the Modification process pursuant to the Commission's *Enabling Regulations*. The Co-Applicants shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans or project as described in this decision.

GC7. Unless otherwise more specifically addressed or conditioned herein, prior to issuance of a Building Permit or undertaking any development as the term *"development"* is both defined in the Cape Cod Commission Act and is approved herein, the Co-Applicant shall obtain a Preliminary Certificate of Compliance from the Commission that states that all conditions in this decision required to have been satisfied prior to the issuance of a Preliminary Certificate of Compliance have been satisfied. Such Certificate of Compliance shall not be issued unless and until all applicable, required conditions have been satisfied.

GC8. Unless otherwise more specifically addressed or conditioned herein, prior to the commencement of cable use and operation, the Co-Applicants shall obtain a Final Certificate of Compliance from the Commission that states that all conditions in this decision required to have been satisfied prior to the issuance of a Final Certificate of Compliance have been satisfied. Such Certificate of Compliance shall not be issued unless and until all applicable, required conditions have been satisfied.

GC9. Prior to the issuance of a Preliminary Certificate of Compliance, the Co-Applicants shall provide written proof to the Commission that a copy of this decision has been provided to the general contractor(s), including but not limited to the Environmental Field Monitor, at least thirty (30) calendar days prior to commencement of any development, as the term *"development"* is both defined in the Cape Cod Commission Act and is approved herein.

GC10. All development and redevelopment shall be constructed in a manner consistent with the following approved plans and other information attached hereto as Exhibit A. These plans and documents are on file with the Cape Cod Commission.

> *Martha's Vineyard Cable Project, Sheets 1 through 5 of a set of 8, dated January 10, 2013: Sheet 1-General Vicinity Map and Key Sheet; Sheet 2 – Falmouth Landing Plan & Section; Sheet 3 – Submarine Route Plan & Section; Sheet 4-Submarine Route Plan & Section; Sheet 5-Submarine Route Plan & Section, Submitted to the Commission as part of the February 2013 DRI application*
>
> *Martha's Vineyard Cable Project: Surf Drive at Mill Road, Site Plan, Sheet C-1, drawn by Power Engineers, LLC, issued for review 1/20/13; Updated Manhole Locations 4/5/13*
>
> *Martha's Vineyard Cable Project: Surf Drive at Mill Road, Staging Plan, Sheet C-3, Power Engineers, LLC, issued for review 1/20/13*

GC11. The Co-Applicants shall notify Commission staff in writing at least thirty (30) calendar days prior to its intent to seek either a Preliminary or Final Certificate of Compliance. Such notification shall include a list of key contact(s), along with their titles, addresses, Email addresses, and telephone numbers, for questions that may arise during the Commission's compliance review. Commission staff may complete an inspection under this condition, if warranted, and shall notify the Co-Applicants of any deficiencies and corrections needed. The Co-Applicants understand that the Commission has no obligation to issue any Certificate of Compliance unless all conditions are complied with or secured consistent with this decision.

The Co-Applicants hereby authorize Commission staff to enter onto the property which is the subject of this decision for the purpose of determining whether the conditions contained in this decision have been met.

GC12.The Co-Applicants shall obtain all necessary federal, state, and local permits for the proposed project. Specifically, prior to the issuance of a Preliminary Certificate of Compliance, the Applicant shall obtain all necessary municipal permits, licenses and approvals for the project including but not limited to an Order of Conditions from the Falmouth Conservation Commission. Obtaining all necessary municipal licenses, permits, and approvals shall confirm that the project is consistent with municipal development by-laws.

GC13. Prior to the issuance of a Preliminary Certificate of Compliance, but not until the appeal period for this decision has elapsed, or if such an appeal has been filed, until the appeal has been finally dismissed, adjudicated or otherwise disposed of, the Co-Applicants shall record a copy of this decision with the Barnstable Registry of Deeds, or as the case may be, register the same with the Barnstable Registry District of the Land Court, and provide written proof to Commission staff of such recording or registration. This decision shall not be effective until a copy of the same has been so recorded or, as the case may be, so registered.

GC14. This project is also subject to the DRI scoping decision dated March 13, 2013 which limited the scope of DRI review.

COASTAL AND MARINE RESOURCES CONDITIONS

CMRC1. Prior to issuance by the Commission of a Preliminary Certificate of Compliance, the Co-Applicants shall submit a Final Environmental Construction Management Plan (ECMP) for review and approval by Commission staff, which shall include the following additional elements:

A. Augment Section 4.2.2 of the ECMP to include spill prevention and emergency response protocols related to potential upland and marine spills, seepage or release of hazardous materials, including lubricants, fuels and drilling fluid.
B. Augment Section 2.3 of the ECMP to require that cable installation operations immediately cease if North Atlantic Right Whales (NARWs) are observed within 2 miles of the installation;
C. Augment the ECMP to include a noise mitigation protocol in the event that marine mammals or sea turtles are observed within the work area.

CMRC2. Prior to issuance by the Commission of a Preliminary Certificate of Compliance, the Co-Applicants shall provide to Commission staff monitoring reports to document sedimentation and turbidity impacts during hydro plowing as hydro plowing may occur within 100 feet of eelgrass beds on the Falmouth side of the project area.

CMRC3. Prior to issuance by the Commission of a Preliminary Certificate of Compliance, the Co-Applicants shall provide to Commission staff certification that Environmental Field Monitor(s) are trained in the observation of NARWs, and protocols to stop work in the event NARWs are observed within 2 miles of the installation.

CMRC4. Prior to issuance by the Commission of a Preliminary Certificate of Compliance, the Co-Applicants shall provide to Commission staff the names and contact information for the designated EFM(s).

CMRC5. Prior to issuance by the Commission of a Preliminary Certificate of Compliance, the Co-Applicants shall provide evidence to the Cape Cod Commission that the Co-Applicants have adequate capital or insurance to respond to contingencies, emergencies or other non-emergency repairs and to ensure that cable installation and maintenance occurs consistent with the decision.

SEE SIGNATURES ON NEXT PAGE

SIGNATURES

Executed this 23RD day of May 2013.

Signature

JOHN D. HARRIS, CHAIR

Print Name and Title

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss May 23, 2013

Before me, the undersigned notary public, personally appeared John D. Harris,

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

GAIL P. HANLEY
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
September 28, 2018

EXHIBIT A
EIR/DRI 12027

MAP SOURCE:

NOAA RASTER NAVIGATIONAL CHART 13237_1, 03-01-2007

SHEET INDEX:

1. VICINITY MAP & KEY SHEET
2. FALMOUTH LANDING - PLAN & SECTION
3. SUBMARINE ROUTE - PLAN & SECTION
4. SUBMARINE ROUTE - PLAN & SECTION
5. SUBMARINE ROUTE - PLAN & SECTION
6. SUBMARINE ROUTE - PLAN & SECTION
7. TISBURY LANDING - PLAN & SECTION
8. TISBURY CONNECTION - PLAN

SITE INFORMATION:

VINEYARD SOUND FROM FALMOUTH TO TISBURY
AT: FALMOUTH/TISBURY
IN: VINEYARD SOUND
BARNSTABLE/DUKES COUNTY
COMMONWEALTH OF MASSACHUSETTS

0 3,000 6,000

SCALE IN FEET

PROPERTY INFORMATION:

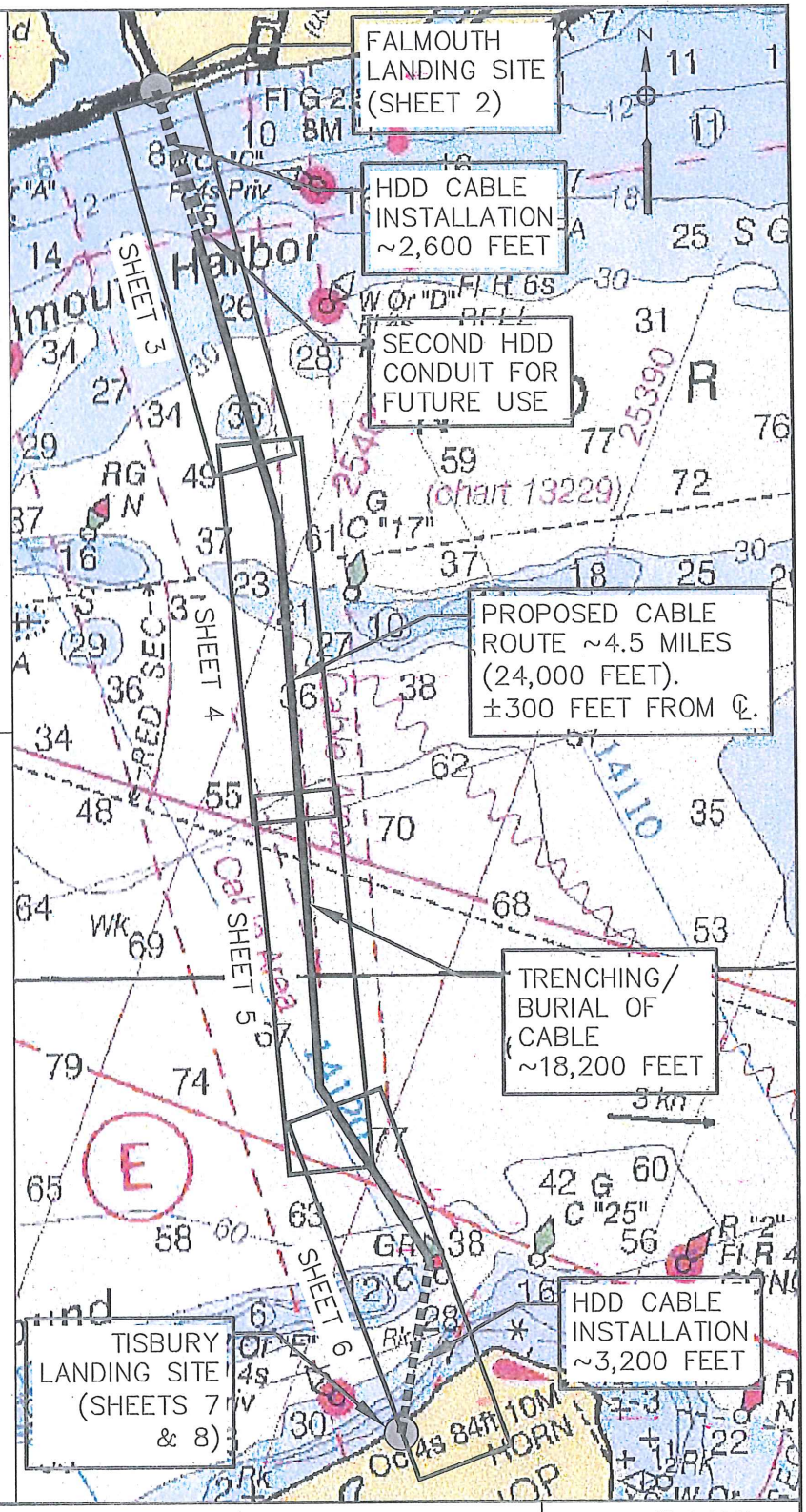
FALMOUTH:

- LOT 1B & LOT 2A: TOWN OF FALMOUTH; VACANT LAND, SURF DRIVE.

TISBURY:

- LOT 3: SHERIFF'S MEADOW FOUNDATION, INC.; VACANT LAND, MAIN ST.
- LOT 4: STUART E. LUCAS, TR.; 14 CATUMET AVE.
- LOT 5: STUART E. LUCAS ET AL.; 22 CATUMET AVE.
- LOT 6: WEST CHOP TRUST.; VACANT LAND, MAIN ST.

NOTE: EASEMENTS TO BE ADDED AFTER LEGAL DOCUMENTS WITH PROPERTY OWNERS ARE EXECUTED.



MARTHA'S VINEYARD HYBRID CABLE PROJECT

GENERAL VICINITY MAP & KEY SHEET

SCALE: 1"=3,000'

DATE: JAN. 10, 2013

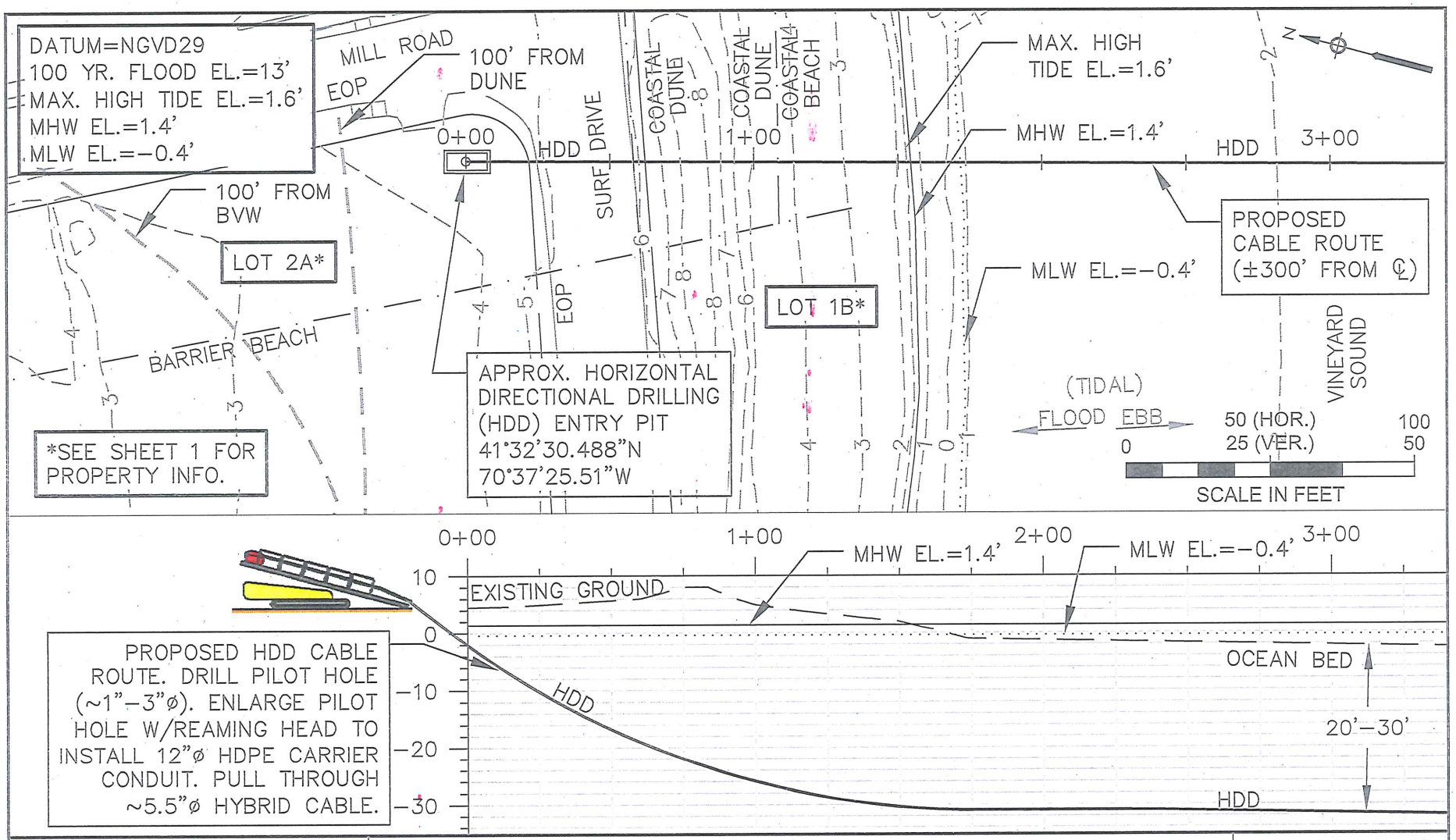
SHEET: 1 OF: 8

APPLICATION BY:

COMCAST, NORTH CENTRAL DIVISION
330 BILLERICA ROAD, CHELMSFORD, MA 01824

NSTAR ELECTRIC
1 NSTAR WAY, WESTWOOD, MA 02090

EXHIBIT A
EIR/DRI 12027



SITE INFORMATION:

VINEYARD SOUND FROM FALMOUTH TO TISBURY
AT: FALMOUTH/TISBURY
IN: VINEYARD SOUND
BARNSTABLE/DUKES COUNTY
COMMONWEALTH OF MASS.

MARTHA'S VINEYARD HYBRID CABLE PROJECT

FALMOUTH LANDING - PLAN & SECTION

APPLICATION BY:

COMCAST, NORTH CENTRAL DIVISION
330 BILLERICA ROAD, CHELMSFORD, MA 01824

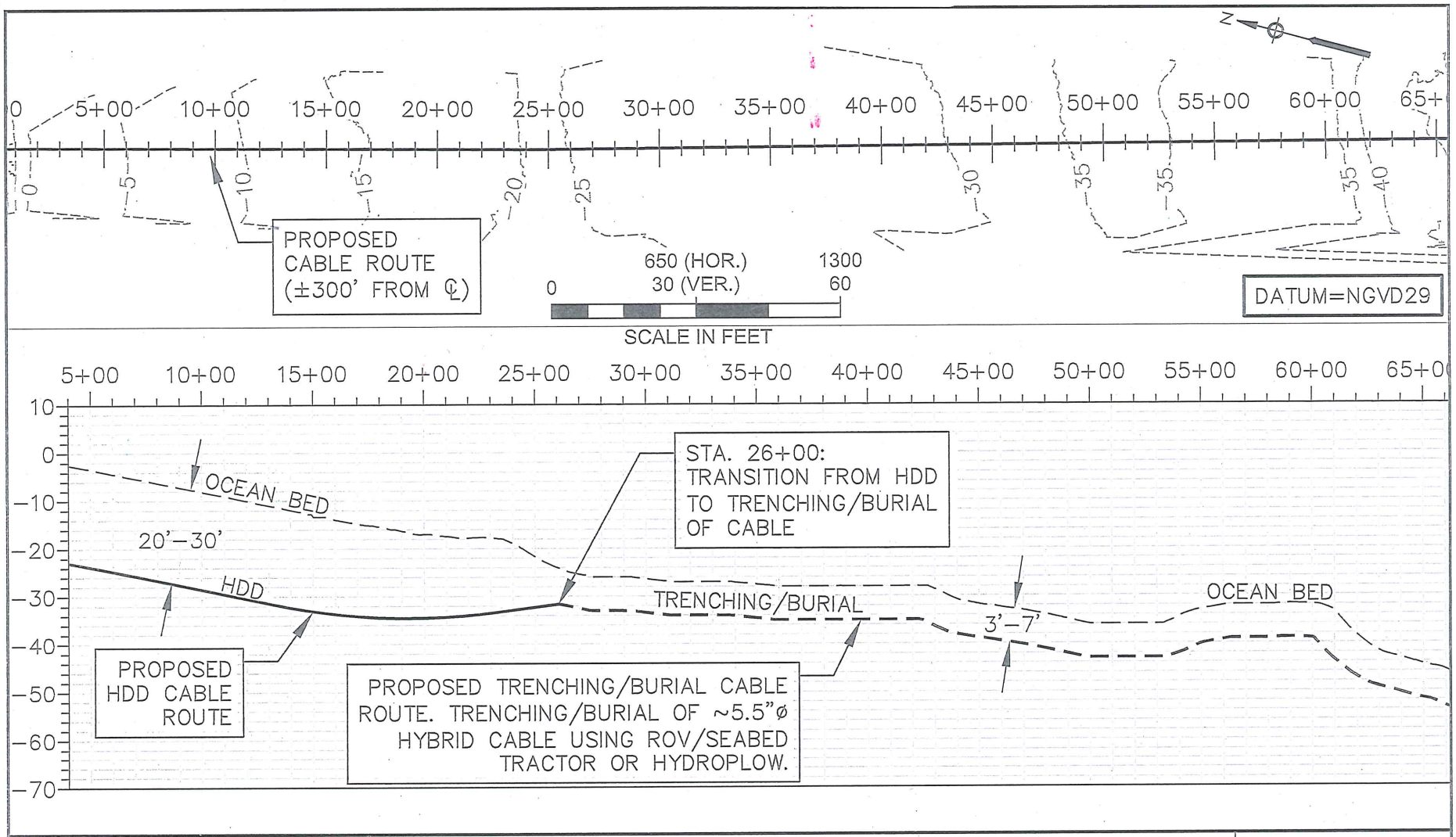
NSTAR ELECTRIC
1 NSTAR WAY, WESTWOOD, MA 02090

SCALE: HOR: 1"=50'
VER: 1"=25'

DATE: JAN. 10, 2013

SHEET: 2 OF: 8

EXHIBIT A
EIR/DRI 12027



SITE INFORMATION:
VINEYARD SOUND FROM FALMOUTH TO TISBURY
AT: FALMOUTH/TISBURY
IN: VINEYARD SOUND
BARNSTABLE/DUKES COUNTY
COMMONWEALTH OF MASS.

MARTHA'S VINEYARD HYBRID CABLE PROJECT

SUBMARINE ROUTE - PLAN & SECTION

HOR: 1"=650'
SCALE: VER: 1"=30'

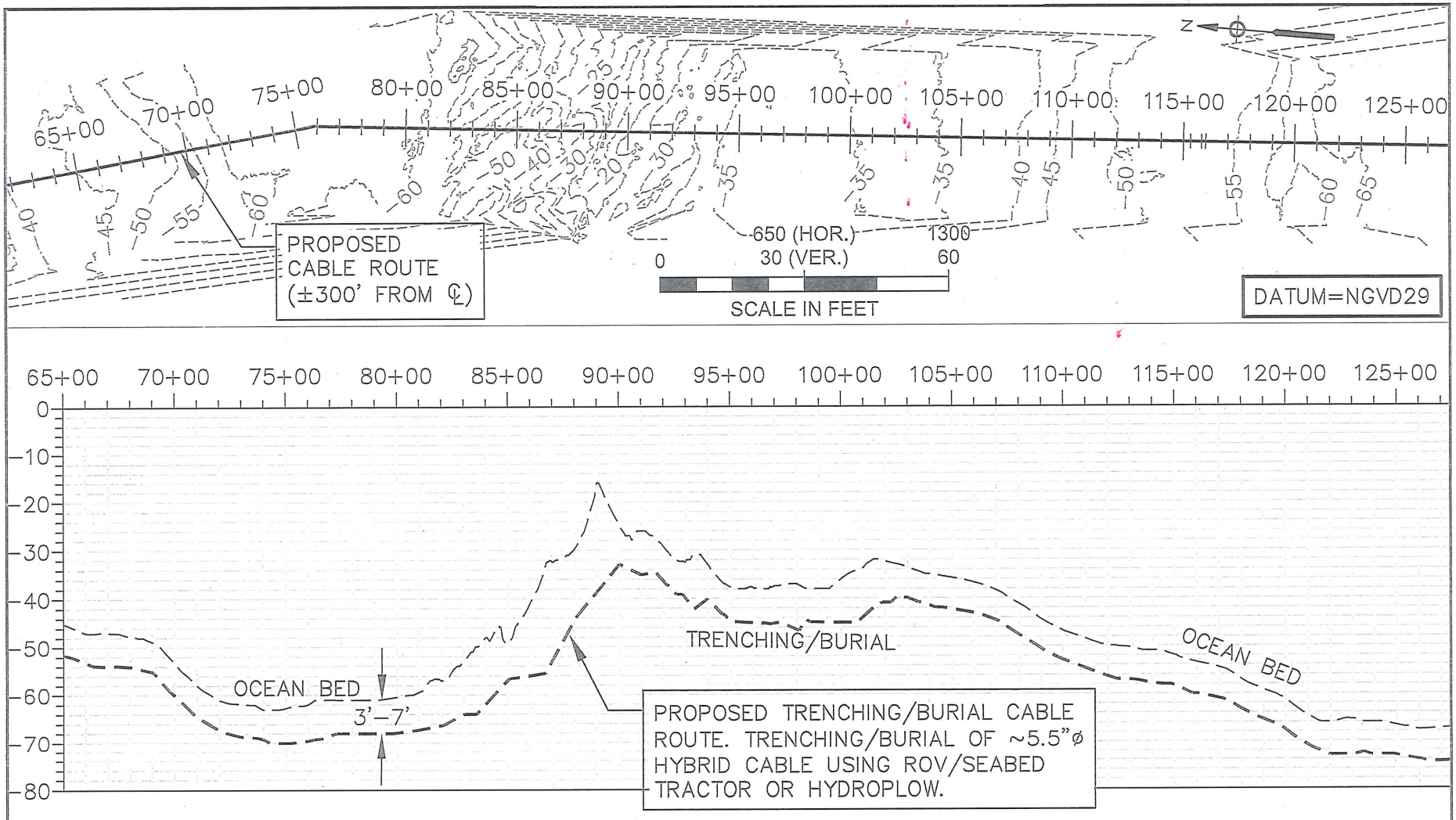
DATE: JAN. 10, 2013

SHEET: 3 OF: 8

APPLICATION BY:
COMCAST, NORTH CENTRAL DIVISION
330 BILLERICA ROAD, CHELMSFORD, MA 01824

NSTAR ELECTRIC
1 NSTAR WAY, WESTWOOD, MA 02090

EXHIBIT A
EIR/DRI 12027



SITE INFORMATION:
VINEYARD SOUND FROM FALMOUTH TO TISBURY
AT: FALMOUTH/TISBURY
IN: VINEYARD SOUND
BARNSTABLE/DUKES COUNTY
COMMONWEALTH OF MASS.

MARTHA'S VINEYARD HYBRID CABLE PROJECT

SUBMARINE ROUTE - PLAN & SECTION

HOR: 1"=650'
SCALE: VER: 1"=30'

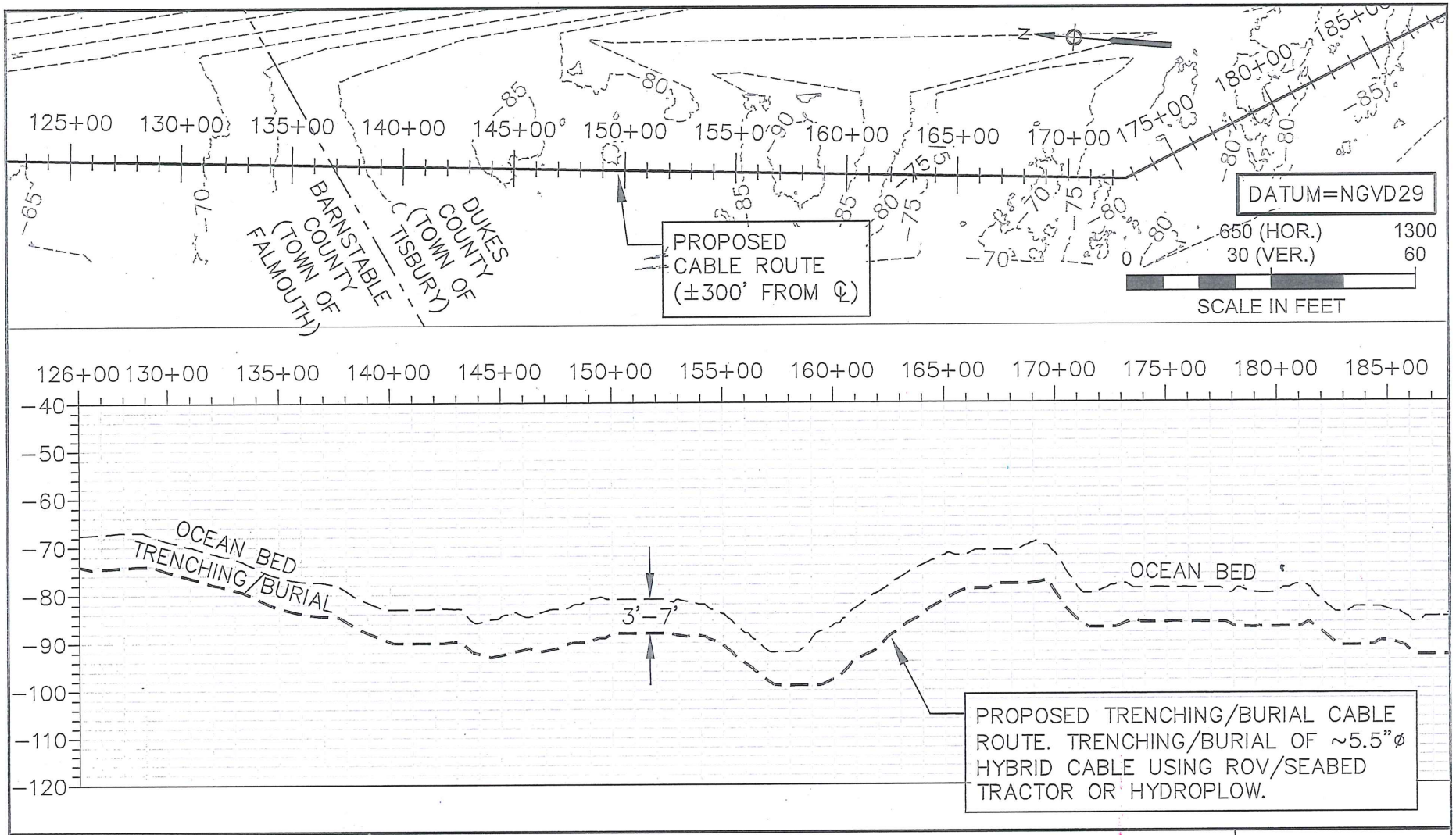
DATE: JAN. 10, 2013

SHEET: 4 OF: 8

APPLICATION BY:
COMCAST, NORTH CENTRAL DIVISION
330 BILLERICA ROAD, CHELMSFORD, MA 01824

NSTAR ELECTRIC
1 NSTAR WAY, WESTWOOD, MA 02090

EXHIBIT A
EIR/DRI 12027



SITE INFORMATION:
VINEYARD SOUND FROM FALMOUTH TO TISBURY
AT: FALMOUTH/TISBURY
IN: VINEYARD SOUND
BARNSTABLE/DUKES COUNTY
COMMONWEALTH OF MASS.

MARTHA'S VINEYARD HYBRID CABLE PROJECT

SUBMARINE ROUTE - PLAN & SECTION

HOR: 1"=650'
SCALE: VER: 1"=30'

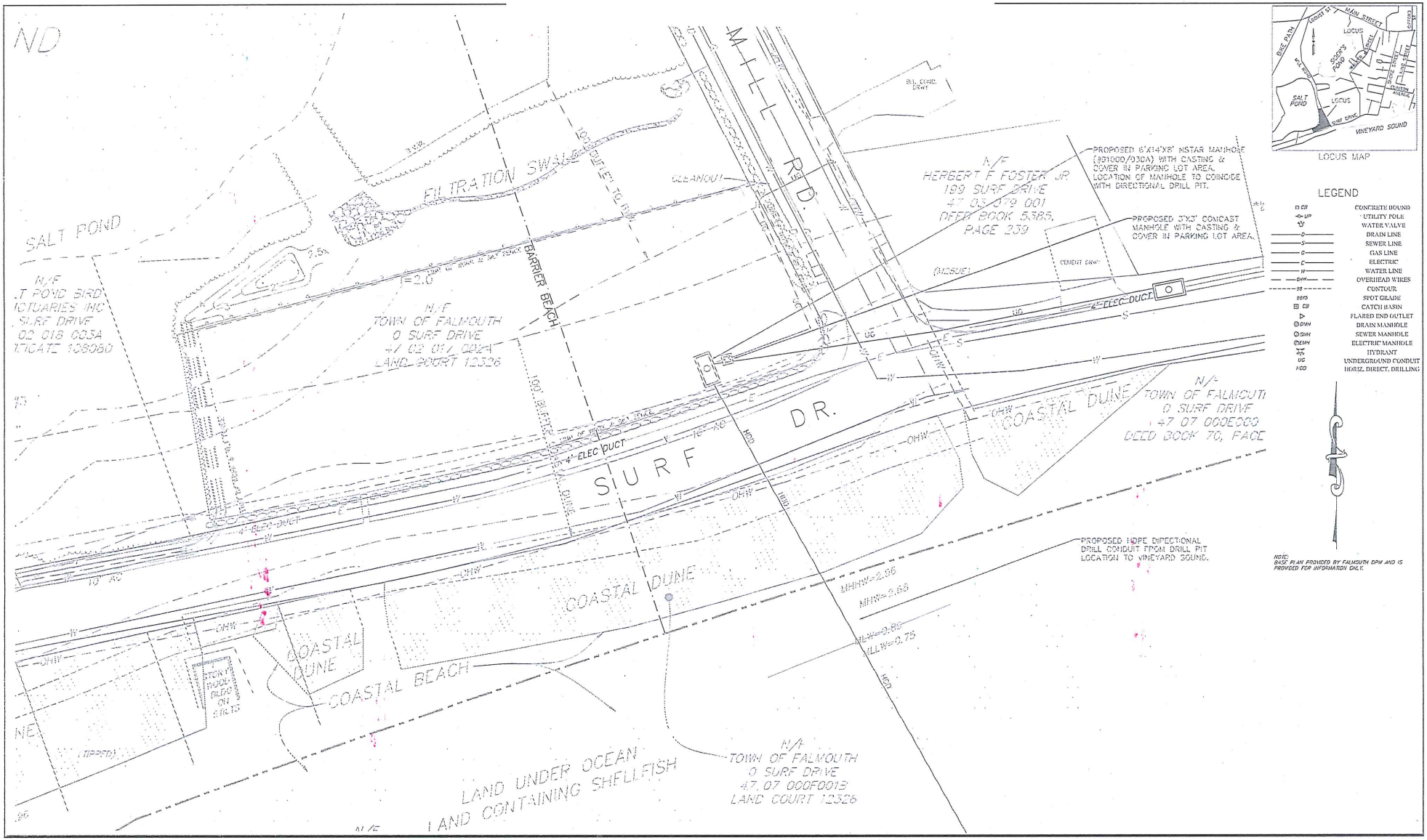
DATE: JAN. 10, 2013

SHEET: 5 OF: 8

APPLICATION BY:
COMCAST, NORTH CENTRAL DIVISION
330 BILLERICA ROAD, CHELMSFORD, MA 01824

NSTAR ELECTRIC
1 NSTAR WAY, WESTWOOD, MA 02090

EXHIBIT A
EIR/DRI 12027



No.	DATE	REVISIONS
	4/5/2013	UPDATED MANHOLE LOCATIONS
0	1/2013	ISSUED FOR REVIEW

PROJ. MANAGER:
CHIEF DESIGNER:
REVIEWED BY: DATE

SEAL

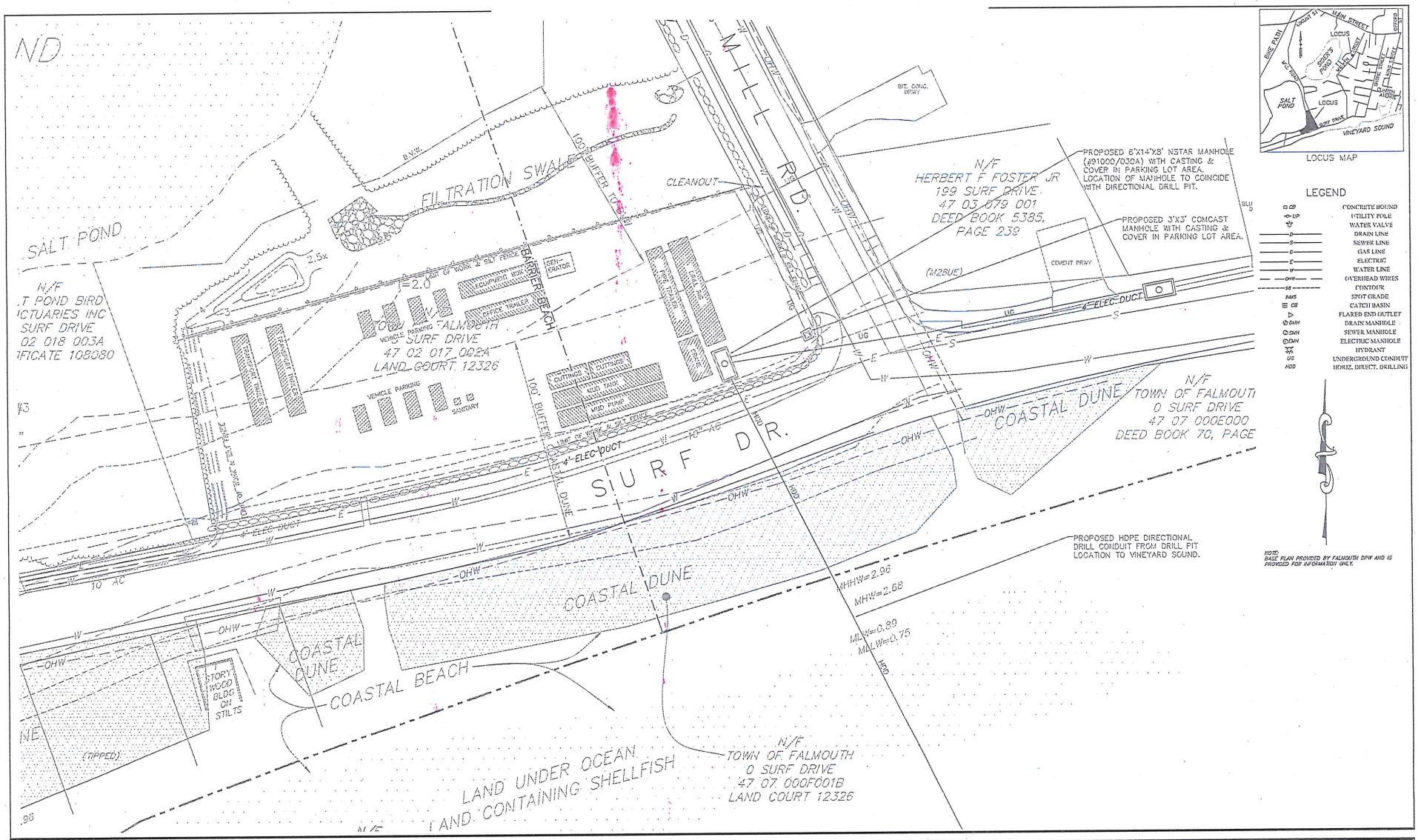
SCALE:
HORZ.: 1"=20'-0"
VERT.:
DATUM:
HORZ.:
VERT.:
20' 10' 0 20'
GRAPHIC SCALE

POWER ENGINEERS, LLC
37 Fox Den Road
Kingston, MA 02364-2150
(508) 612-0382
www.PowerEngineersLLC.com
Electrical Engineering, Power, Lighting, Technical Studies and Utility Consulting

MARTHA'S VINEYARD CABLE PROJECT
SURF DRIVE AT MILL ROAD
SITE PLAN

PROJ. No.: 076H
DATE: JAN 2013
C-1
SIZE: D | REV: 0

EXHIBIT A
EIR/DRI 12027



No.	DATE	DESCRIPTION
0	1/2013	ISSUED FOR REVIEW

REVISIONS

No.	DATE	DESCRIPTION

REVISIONS

PROJ. MANAGER:
CHIEF DESIGNER:
REVIEWED BY: DATE

SEAL

SCALE:
HORZ.: 1"=20'-0"
VERT.:
DATUM:
HORZ.:
VERT.:
20' 10' 0 20'
GRAPHIC SCALE

POWER ENGINEERS, LLC
37 Fox Den Road
Kingston, MA 02364-2150
(508) 612-0382
www.PowerEngineersLLC.com
Electrical Engineering, Power, Lighting, Technical Studies and Utility Consulting

MARTHA'S VINEYARD CABLE PROJECT

SURF DRIVE & MILL ROAD STAGING AREA

PROJ. No.: 076H
DATE: JAN 2013

C-3

SIZE: D | REV: 0