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CAPE COD COMMISSION

CAPE COD COMMISSION
DEVELOPMENT OF REGIONAL IMPACT (DRI) DECISION

Date:	May __, 2023
Project:	Martha's Vineyard Reliability Project (CCC File No. 22009)
Project Applicant:	NSTAR Electric Company d/b/a Eversource Energy 247 Station Drive Westwood, MA 02090
Project Location:	Town of Falmouth

SUMMARY

The Cape Cod Commission ("Commission") hereby grants Development of Regional Impact ("DRI") approval, with Conditions, for the "Martha's Vineyard Reliability Project," to construct a fifth distribution from Falmouth to Martha's Vineyard for the purpose of increasing reliability of grid-based infrastructure, pursuant to a vote of the Commission at its meeting on May __, 2023.

FINDINGS

The Cape Cod Commission hereby finds and determines as follows:

F1. Components of the project located within Barnstable County include:

- submarine cables from Surf Drive Beach across Vineyard Sound, 2.46 miles +/- of which is located in Barnstable County;
- a 2.7-mile +/- long 25-kiloVolt (kV) distribution cable from an existing Eversource Substation #933 off Stephens Lane in Falmouth to the Surf Drive Beach landing site of the submarine cable;
- an underground duct and manhole system to house the 2.7-mile +/- distribution cable between Substation #933 and Surf Drive Beach, proposed to proceed west on Jones Road to the Shining Sea Bikeway, follow the bikeway to Cemetery Lane, turn south onto Mill Road, then east onto Surf Road, and terminate at the parking lot eastern end of Surf Road (collectively, the "Project").

F2. A combination of Horizontal Directional Drill ("HDD") and hydroplow will be used to install the offshore cable, with the hydroplow construction technique used for the majority of the offshore route length.

F3. Horizontal Directional Drill ("HDD") will be used at the landing sites to avoid impact to intertidal resources. The offshore cables will connect to the onshore cables at the landfall site.

F4. The onshore cable portion of the Project will be contained within buried concrete duct bank.

F5. Currently, grid-based electricity is delivered to Martha's Vineyard by four submarine cables. The four existing submarine cables cannot reliably supply the peak demand. In the summer months, five permanent diesel generators are used to meet demand. If a cable failure occurs during summer peak conditions, the Applicant also needs to rent portable 2MW diesel units to augment the existing generation until the failed cable is repaired. The most recent failure occurred in July 2021, when the 91 Cable failed.

F6. As an electric company regulated by the Department of Public Utilities, Eversource Energy ("Applicant") has a responsibility to provide and maintain reliable electrical service throughout its service area. The Applicant proposes the Project to uphold its responsibility to meet the current and future electrical demand to maintain the reliability of the grid-based electrical service and to support the transition to a more electric-centric energy supply.

DRI Jurisdiction

F7. The Project requires mandatory DRI review pursuant to Section 2(d)(i) of the Commission's Chapter A: Enabling Regulations Governing Review of Developments of Regional Impact ("Enabling Regulations"), revised November 2021, because the Project required the preparation of an Environmental Impact Report ("EIR") pursuant to the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61-62I ("MEPA").

Procedural History

F8. The Project triggered review under MEPA because it would result in alteration of ½ or more acres of any other wetlands (Land Under Ocean ["LUO"]) and proposes dredging of 10,000 or more cubic yards of material. The Project required preparation of an EIR pursuant to 301 CMR 11.06(7)(b) because it is located within a Designated Geographic Area around an EJ population.

F9. The Project received its certificate on its Single Environmental Impact Report ("SEIR") stating that the project properly and fully complies with MEPA on February 17, 2023.

F10. A staff hearing officer opened the DRI hearing period procedurally on April 3, 2023. The Applicant submitted a DRI application for the Project to the Commission on August 29, 2022.

F11. A substantive public hearing on the Project was opened by the Committee on Planning and Regulation on April 27, 2023.

F12. The full Cape Cod Commission held a hearing on the Project at its meeting on May 11, 2023. It considered the recommendation of the Committee on Planning and Regulation, including the draft written DRI decision. At the hearing on May __, 2023 the Commission voted to adopt the draft written DRI decision, and approve the Project, with the Conditions set out in said decision.

DRI Review Standards

F13. Section 7(c)(viii) of the Commission's Enabling Regulations contains the standards to be met for DRI approval, which include, as applicable, consistency with the Cape Cod Regional Policy Plan ("RPP"), municipal development bylaws, District of Critical Planning Concern ("DCPC") implementing regulations and Commission-certified Local Comprehensive Plans ("LCP"). The Commission must also find that the probable benefit from the Project is greater than its probable detriment.

F14. DRI review of the Project is subject to the 2018 Regional Policy Plan ("RPP"), as amended in March 2021, which is the version of the RPP in effect at the time of the Commission's first substantive public hearing on the Project. The Commission determines the Project's consistency with the Act and RPP by determining whether the Project is consistent with the Goals and Objectives in Section 6 of the 2018 RPP, as particular goals and objectives are deemed applicable and material to the Project.

Cape Cod Regional Policy Plan

Applicable and Material RPP Goals

F15. The following RPP Goals are applicable, material, and regionally significant and are thus subject to RPP consistency review: Transportation, Water Resources, Ocean Resources, Coastal Resiliency, Capital Facilities and Infrastructure, and Energy.

Transportation

F16. The Transportation Goal of the RPP is *to provide and promote a safe, reliable, and multi-modal transportation system*. The following Transportation Objectives are applicable and material to the Project:
- **TR1**—improve safety and eliminate hazards for all users of Cape Cod's transportation system; and
- **TR2**—provide and promote a balanced and efficient transportation system that includes healthy transportation options and appropriate connections for all users.

F17. The Transportation Goal applies to development projects that will have a regionally significant and permanent effect on regional transportation infrastructure or the traffic network. This Project, once developed, will have no permanent effect on the traffic network. To the extent that this Project will make improvements to transportation infrastructure, it furthers Objective TR2, as discussed below.

F18. Though the Project impacts on traffic safety will be largely limited to construction activities, the Project will mitigate off-site safety impacts, consistent with Objective TR1. Temporary construction impacts for roads and the bike path associated with the onshore cable installation will be mitigated with Traffic Management Plans ("TMPs"). TMPs will be finalized in coordination with the Town of Falmouth and MassDOT to avoid and minimize temporary traffic-related impacts, and to avoid any regional impacts during construction.

F19. Work will be limited to daytime hours (7AM to 6PM) and will adhere to the typical summer shutdown on construction activities on Cape Cod (Memorial Day to Labor Day) when traffic volumes are lower.

F20. The Applicant proposes make improvements to bicycle and pedestrian infrastructure as part of the Project, consistent with Objective TR2.

F21. The Applicant will widen and repave portions of the Shining Sea Bikeway as part of the Project. The Shining Sea Bikeway is a heavily used rail trail, which is a component of a region-wide trail network allowing for users to travel across Cape Cod in a healthy, sustainable manner. By improving the condition of the bike path, the Applicant is supporting the region's bicycle network.

F22. The Applicant will relocate fifteen (15) utility poles on Palmer Avenue in Falmouth to improve sidewalk clearances to meet current standards and improve safety for pedestrians.

F23. As part of the MOU with the Town, Eversource has agreed to provide the Town with $800,000 to mitigate project construction impacts to support the Town's restoration of Surf Drive, changes in connection with the disruption of the Shining Sea Bikeway, the restoration of the Depot Avenue parking lot, and additional unspecified construction impacts such as traffic congestion and economic impacts.

Water Resources

F24. The Water Resources Goal of the RPP is to *maintain a sustainable supply of high-quality untreated drinking water and protect, preserve, or restore the ecological integrity of Cape Cod's fresh and marine surface water resources*. The following Objective is applicable and material to the Project:

- **WR4**—manage and treat stormwater to protect and preserve water quality.

F25. The Project proposes adequate stormwater treatment and control during and after construction, accounting for a small amount of impervious surface attributable to Shining Sea Bikeway widening, consistent with Objective WR4.

F26. The Applicant proposes to widen the Shining Sea Bikeway throughout certain areas of the route, resulting in an approximately 14,730-sf +/- increase in impervious surface. With an increase in impervious surface, the proponent proposes stormwater management using a 2-foot-wide, 1-foot-deep gravel infiltration trench along each side of the altered bike path. This management design is sufficient in storage and infiltration capacity for consistency with the Water Resources Goal.

F27. Water resource considerations will largely be limited to the construction phase. Proper management during and after construction will be sufficient to mitigate these potential impacts. The Stormwater Pollution Prevention Plan will serve to minimize impacts to nearby surface water bodies during construction. There are no ongoing impacts or risks to ground water from the cables after installation.

Ocean Resources

F28. The Ocean Resources Goal is to *protect, preserve, or restore the quality and natural values and functions of ocean resources*. The following Objectives are applicable and material to the Project:
- **OR1** – locate development away from sensitive resource areas and habitats;
- **OR2** – preserve and protect ocean habitat and the species it supports; and
- **OR3** – protect significant human use area and vistas.

F29. All development projects in the Ocean must meet Ocean Resources Objectives OR1, OR2, and OR3. These Objectives and associated methods prioritize the protection of the ocean-based resources and uses that are present in the Project area. The cable installation is proposed in the following ocean resource areas: Priority Habitats for State-Protected Rare Species (PH 2158); Estimated Habitats for Rare Wildlife (EH 1366); hard/complex seafloor; and eelgrass.

F30. Although the Project is proposed in ocean resource areas, the Applicant has made adjustments that serve to avoid or mitigate impacts to ocean resources.

F31. The offshore cables are not located within designated prohibited areas for ocean species or exclusionary areas as identified in the Ocean Management Plan.

F32. The offshore portion of the Project does extend through area mapped as core habitat for Least Tern, Common Tern, and Roseate Tern, which is also a federally listed species.

F33. Because this Project is located in rare species habitat, the Applicant submitted the Project to NHESP for review and comment. Comments from NHESP indicate the state listed species present in the area are shore birds. Work over open water will not disturb nesting, and the limited size of the work area as compared to the expanse of feeding habitat is de minimus. Work at the landfall site in Falmouth, proximate to beach and dune, will observe TOY restrictions to avoid nesting time of year and therefore no adverse effects to state-listed species are anticipated. Scheduling the

work proximate to the beaches around TOY restrictions will be developed in conjunction with local Falmouth and state agencies during the permitting process. The Applicant has initiated consultation with NHESP via submission of a Joint Wetlands Protection Act ("WPA") and Massachusetts Endangered Species Act ("MESA") Notice of Intent.

F34. To the extent the Wildlife and Plant Habitat Objective, WPH3 (to protect and preserve rare species habitat, vernal pools, 350-foot buffers to vernal pools) of the Wildlife and Plant Habitat Goal is applicable, material, and regionally significant, the NHESP comments and measures to avoid impacts to rare species also satisfy the method to meet Objective WPH3.

F35. Although benthic habitat in the direct path of the hydroplow will be disturbed during cable installation, recolonization and recovery of these habitats is expected based on results from similar projects in the region and given the similarity of nearby habitat and species. In addition, micro-siting implemented during the pre-pass phase of construction will be used to attempt to avoid impassable complex substrates, such as those containing large boulders or dense gravel pavement.

F36. HDD at the landfall site will avoid work on the beach or dune and is also proposed to avoid eelgrass off the Falmouth coastline.

F37. The Applicant will mitigate construction noise by: ensuring that appropriate mufflers are installed and maintained on construction equipment; minimizing idling times; and using shielding or buffering distance to the extent practical. With these mitigation measures in place, noise from vessel traffic associated with the Project is likely to be similar to background vessel traffic noise.

F38. The Project furthers substantial public purposes, consistent with Objective OR2. The Project will increase the reliability of electrical service on Martha's Vineyard, and will allow the Applicant to decommission the five on-Island diesel generators, reducing fuel use and emissions from said generators. The Project will also result in improvements to transportation infrastructure, such as the widening and repaving of the Shining Sea Bikeway, that will benefit the public.

F39. The Project route, construction techniques, and the temporary nature of installation will minimize potential impacts to ocean habitat and species while still furthering a substantial public purpose.

F40. The Project route was chosen to align with existing cable corridors and avoid interference with existing developed uses.

F41. The Project construction window will be coordinated to take place between Labor Day and Memorial Day to minimize impacts to high-use activity areas. While construction and installation activities may temporarily affect navigation and/or fishing activities in the vicinity of cable installation vessels, these impacts are

expected to be limited and will be determined in coordination with the U.S. Coast Guard.

F42. Based on the Cumulative Impact Assessment for the Project, the incremental addition of this Project will not unduly degrade ocean resources or conflict with human uses.

F43. A marine archeological resources assessment was conducted for the Martha's Vineyard Reliability Project within Vineyard Sound and was submitted to the Massachusetts Historical Commission and Massachusetts Board of Underwater Archaeological Resources. No effects to known marine archaeological resources are anticipated.

F44. The Applicant's route, design, and construction choices will serve to minimize impacts to ocean resources. Through offshore cable route selection, cable installation methods, TOY restrictions, and the use of HDD for the offshore-onshore transition, the Project locates development away from sensitive ocean resource areas and habitats and preserves and protects ocean habitat and the species it supports, consistent with OR1 and OR2. The temporary nature of offshore export cable installation impacts and the limited permanent footprint due to any cable protection serves to protect offshore human use areas, consistent with OR3.

Wetlands Resources

F45. The Wetlands Resources Goal of the RPP is to *protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers*. The following Objective is applicable and material to the Project:

- **WET1** – protect wetlands and their buffers from vegetation and grade changes.

F46. The RPP allows for utility installation in wetlands and their buffers where the Applicant can show that there is a public benefit, there is no feasible alternative to alteration, and the impacts from the alteration are minimized and mitigated.

F47. Work in the buffer zones to coastal beach and coastal dune is located within public Right-of-Way (ROW) and will not affect vegetation or grades. The buried cable will not change grades in the ROWs.

F48. The Project is the water-dependent installation of utility lines, there will be no permanent impacts to wetland resource areas within the land-based portion of the Project, and temporary impacts within the limited wetland resource areas described above will be minimized with construction Best Management Practices and restored to existing conditions after construction.

F49. The Project will facilitate several public benefits including improved electricity reliability and reduced emissions as the cable will replace the need for diesel generators. As a water-dependent project providing a connection between Falmouth and Martha's Vineyard, there is no feasible alternative to the cable location within

Land Under the Ocean and the affected areas of Coastal Dune and Land Subject to Coastal Storm Flowage.

Coastal Resiliency

F50. The Coastal Resiliency Goal of the RPP is to *prevent or minimize human suffering and loss of life and property or environmental damage resulting from storms, flooding, erosion, and relative sea level rise.* The following Objective is applicable and material to the Project:

- **CR2**—plan for sea level rise, erosion, and floods

F51. Work proximate to coastal banks is limited to existing paved areas and the underground duct and manhole system.

F52. The Project was designed to accommodate and be resilient to sea level rise, erosion, and floods. The duct and manhole system and cable are designed to be watertight to be resilient to coastal flooding; however, they will not cause loss of flood storage as they are proposed to be buried below existing grades. Corrosion control measures are also included in the manholes to mitigate corrosion of any exposed metal structures or equipment.

Capital Facilities & Infrastructure

F53. The Capital Facilities & Infrastructure Goal of the RPP is to guide the development of capital facilities and infrastructure necessary to meet the region's needs while protecting regional resources. The following Objectives are applicable and material to the Project:

- **CAP1**—ensure capital facilities and infrastructure promote long-term sustainability and resiliency; and
- **CAP2**—coordinate the siting of capital facilities and infrastructure to enhance the efficient provision of services and facilities that respond to the needs of the region.

F54. The Project ensures long term sustainability as it locates infrastructure underground where it will not be subject to wind, ice, tree falls or other above ground hazards.

F55. While portions of the project must inherently be located in flood prone areas, cables and splices are designed to be sealed from water intrusion. When properly installed according to industry standards, underground cable systems are not affected by flooding and weather events. Directional drilling will avoid any impacts to the natural beneficial functions of coastal resources.

F56. Consistent with Objective CAP2, the Project siting and construction is coordinated with other cable installations and with improvements to local and regional transportation infrastructure. The use of existing utility easements and rights of way reduces the cost of providing infrastructure and protects the region's historic and community character.

Energy

F57. The Energy Goal of the of the RPP is to *provide an adequate, reliable, and diverse supply of energy to serve the communities and economies of Cape Cod.* The following Objective is applicable and material to the Project:

- **EN2**—increase resiliency of energy generation and delivery

F58. The Project will further the reliability of the electric supply and reduce the dependence on fossil fuel generators.

F59. The Project will protect infrastructure by locating the transmission cables underground and manage for peak demand.

F60. By supporting redundant electricity distribution and transmission infrastructure the Project is proposed to improve the reliability of grid-based electricity, meet existing and projected load growth, and allow for better integration of distributed renewable power.

Other DRI Standards of Review

Consistency with applicable Municipal Development Bylaws

F61. Under the Memorandum of Understanding (MOU) with the Town of Falmouth, the Applicant will seek all requisite approvals for the Project from the Town. The Town has agreed to coordinate with Eversource to facilitate a timely review of the required Eversource grant of location petitions, street opening permits, and all other Town approvals that may be required for the Project.

F62. The approvals required for the Project are: Falmouth Conservation Commission Massachusetts Wetlands Protection Act Order of Conditions/Falmouth Wetlands Protection Bylaw; and Grant of Location and Street Opening Permit.

DCPC Implementing Regulations

F63. The offshore cable is located in an area that was designated as Cape Ocean Management Planning District of Critical Planning Concern ("DCPC"). There are no implementing regulations associated with the DCPC that apply to the Project.

Consistency with CCC-certified Falmouth LCP

F64. The Project broadly supports sustaining economic viability and infrastructure while maintaining the resilience of the natural resources and including opportunities to advance recreational assets, consistent with Falmouth's Commission-certified Local Comprehensive Plan.

F65. Supportive of the Town's goals for Economic Sustainability Policy to provide the necessary infrastructure to meet the needs of the local and regional economy, the Project supports economic sustainability by increasing reliability of energy delivery infrastructure. The Proponent has established an MOU with the Town of Falmouth to provide these benefits. Further, consistent with the Town's, the new underground and submarine electric distribution cable will improve reliability with increased grid-

based electric service to meet current and future electricity demands and improve the ability to integrate dispersed renewable energy in support of the Town's Energy Policy to support the use of renewable energy sources.

F66. The Project is broadly supportive of the Town's Transportation Policies to: increase the local and regional transportation system's efficiency, flexibility, and resilience; maintain transportation infrastructure; and encourage environmentally sensitive modes of travel. The Project will result in the widening and repaving of portions of the Shining Sea Bike Path as well as the relocation of 15 utility poles in Palmer Avenue in Falmouth to improve sidewalk clearances. The Applicant has also committed to installing electric vehicle charging stations at the Palmer Avenue parking lot and other locations in Falmouth.

F67. Relative to the Town's Policies for Land Use and Historic Character, the Project proposes to utilize existing infrastructure including the bike path and roadways to install the underground cable. This reuse of existing developed land eliminates the need to impact natural areas and any impacts to visual resources. The cable route in Falmouth does not pass through any mapped historical areas and was chosen over alternative routes that passed through several mapped historical areas.

Probable Project Benefits versus Probable Project Detriments

F68. The probable benefits of the Project outweigh the probable detriments of the Project, from a regional perspective.

F69. The probable benefits of the Project are that it will:

- meet current and future electricity load expectations to improve the reliability of grid-based power;
- alleviate the need for a battery storage facility and allow for the retirement of the diesel generators on Martha's Vineyard;
- allow for the future elimination of fossil fuel use on the island as the Eversource grid incorporates a greater amount of renewable electricity;
- make contributions toward recreation and exercise opportunities in Falmouth, such as the widening and repaving of the Shining Sea Bikeway;
- coordinate with the Town to minimize disruption on the Shining Sea Bikeway during construction; and
- relocate fifteen (15) utility poles on Palmer Avenue to increase sidewalk clearance and improve pedestrian passage.

F70. The probable detriments of the Project are that it will result in:

- temporary traffic delays in the area of onshore cable installation; and
- temporary elevation of turbidity associated with offshore cable installation.

CONCLUSION

Based on the Findings above and subject to the Conditions set out below, the Commission further determines, finds, and concludes that the Project is consistent with the 2018 Cape Cod Regional Policy Plan, applicable provisions from the Falmouth LCP, and applicable

municipal development bylaws; the probable benefit of the Project is greater than the probable detriment; and the Commission hereby grants DRI approval for the Martha's Vineyard Reliability Project (File No. 22009).

CONDITIONS

C1. This Decision shall be final when the appeal period set out in Section 17 of the Cape Cod Commission Act has elapsed without appeal (or if such an appeal has been filed, when the appeal has been finally settled, dismissed, adjudicated, or otherwise disposed of in favor of the Applicant). Thereafter, this Decision shall be valid and in effect, and local development permits may be issued pursuant hereto for a period of seven years from the date of this Decision, or for such extended period as may be permitted by the Commission pursuant to the Enabling Regulations.

C2. The Applicant shall obtain all required federal, state, and local permits, licenses, and approvals. The Project's consistency with required Municipal Development Bylaws shall be ratified and confirmed by the Applicant obtaining the required municipal development permits.

C3. The Applicant shall provide or otherwise ensure that the Commission is copied on all state and local permits, licenses, and approvals, including without limitation MassDOT access permit submissions and approvals.

C4. The Applicant shall provide or otherwise ensure that the Commission is copied on Traffic Management Plans. Said plans shall be subject to review by Commission staff.

C5. Wherever existing infrastructure, such as roads, sidewalks, and street trees are impacted, they shall be repaired or replaced to same or better condition, in coordination with the Town of Falmouth and state agencies; provided, however, that where the Applicant removes invasive species, replacement is not necessary to satisfy this condition if coordinated with appropriate local or state officials.

C6. The Applicant shall make all reasonable efforts to publicize construction activities, detours, and road, bike path, or sidewalk closures utilizing various media outlets, such as media outreach and changeable message signs located at key points within the impacted area.

C7. Applicant shall re-grade the grass shoulder adjacent to the new pavement surface of the Shining Sea Bikeway to avoid an unsafe condition for bicyclists/pedestrians who use the shoulder as a safety area to recover from avoidances.

C8. The Applicant shall continue to work with applicable state and federal agencies to finalize and implement TOY restrictions and BMPs to avoid, minimize, and/or mitigate impacts to ocean resources, species, and habitats, and ocean-dependent human uses.

SIGNATURE PAGE

Executed this _____ day of May 2023.

For the Cape Cod Commission by:

_____
Harold Mitchell, Chair
Cape Cod Commission

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss May ___, 2023

Before me, the undersigned notary public, personally appeared Harold Mitchell, in his capacity as Chair of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose on behalf of the Cape Cod Commission. 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 [x] personal knowledge of the undersigned.

_____

Notary Public:

My Commission expires:

SEAL