

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Petition of Vineyard Wind LLC Pursuant to G.L. c. 40A, § 3 for Exemptions from the Operation of the Zoning Ordinance of the Town of Barnstable for the Construction and Operation of New Transmission Facilities for the Delivery of Energy from an Offshore Wind Energy Facility Located in Federal Waters to an NSTAR Electric (d/b/a. Eversource Energy) Substation Located in the Town of Barnstable, Massachusetts.

D.P.U. 20-56

**PETITION OF VINEYARD WIND LLC PURSUANT TO G.L. c. 40A, § 3 FOR
INDIVIDUAL AND COMPREHENSIVE EXEMPTIONS FROM THE
OPERATION OF THE ZONING ORDINANCE OF THE TOWN OF
BARNSTABLE**

I. INTRODUCTION

Vineyard Wind LLC (“Vineyard Wind”) hereby requests, pursuant to G.L. c. 40A, § 3 through this petition (the “Zoning Petition”), that the Department of Public Utilities (the “Department”) grant specific and comprehensive zoning exemptions from the operation of the *Zoning Ordinance of the Town of Barnstable, Massachusetts* as amended through February 28, 2019 (the “Barnstable Ordinance”) in connection with Vineyard Wind’s proposal to construct, operate, and maintain (1) a new, approximately 27-mile, 220- or 275-kilovolt (“kV”) combined offshore/onshore underground electric transmission line from the boundary with federal waters south of Muskeget Channel to a new substation to be located off Shootflying Hill Road in the Town of Barnstable, (2) a new substation located on a 6.7-acre property on Shootflying Hill Road, less than a mile east of NSTAR Electric Company’s existing West Barnstable Substation, housing transformers, switchgear, and other necessary equipment (“the Onshore Substation”), and

(3) a new, approximately 0.7-mile, 345-kV, underground transmission line, between the Onshore Substation and the West Barnstable Substation.¹

The transmission lines described above are referred to collectively as the “Export Cable.” The offshore portion of the transmission lines until the landfall site is referred to as the “Offshore Export Cable.” The onshore portion of the transmission lines that connects the landfall site to the West Barnstable Substation, including the transition vaults/joint bays to be installed within the paved parking lot at the landfall site, is referred to as the “Onshore Export Cable.”² Collectively, the Export Cable and the Onshore Substation constitute the “Vineyard Wind Connector 2” or the “Project.”³ They are the Massachusetts-jurisdictional elements of “Park City Wind”—an approximately 800-megawatt (“MW”) wind energy generation facility under development by Vineyard Wind, which includes wind turbine generators (“WTG”) located in federal waters within the central portion of Bureau of Ocean Energy Management (“BOEM”) Lease Area

¹ At this time, NSTAR Electric Company (“Eversource”) is not a co-petitioner with Vineyard Wind in this proceeding. To interconnect at Eversource’s West Barnstable Substation, construction will be necessary at that substation. Vineyard Wind expects that construction would be undertaken by Eversource and will support Eversource in those efforts. Vineyard Wind does not expect to construct, own, operate, or maintain any transmission facilities at West Barnstable Substation. Vineyard Wind includes information relating to work at West Barnstable Substation in this petition for completeness and because it is possible that zoning relief may be necessary at West Barnstable Substation. Vineyard Wind is working with Eversource to clarify the construction that will occur at West Barnstable Substation and whether zoning relief will be necessary for that work. If Vineyard Wind and Eversource are able to sufficiently advance plans for construction at the West Barnstable Substation, then one or both of them may request associated zoning relief in this proceeding or separately.

² As described in paragraphs 21, 22, and 25, the Offshore Export Cable will consist of two separate 220 kV or 275 kV cables, and the Onshore Export Cable will consist of six separate cables located in an underground duct bank. More specifically, the portion of the Onshore Export Cable between the Landfall Site and the Onshore Substation will consist of six separate underground 220 or 275 kV cables, and the portion of the Onshore Export Cable between the Onshore Substation and the West Barnstable Substation will consist of six separate underground 345 kV cables.

³ Part of the offshore portions of the Export Cable is located in federal waters. That part is not included in the 27-mile length provided above, nor is it part of the Project that is the subject of this petition.

OCS-A 0501 (the “Lease Area”).⁴ The Vineyard Wind Connector 2 is necessary to interconnect the Park City Wind WTGs to the electric grid in New England. In support of this Petition, Vineyard Wind states as follows:

1. Vineyard Wind is a Delaware limited liability company registered in the Commonwealth of Massachusetts. Its principal place of business is 700 Pleasant Street, Suite 510, New Bedford, MA 02740.

2. As described below, the construction and operation of the Vineyard Wind Connector 2 may be inconsistent with certain provisions of the Barnstable Ordinance. At the same time, construction of the Vineyard Wind Connector 2 is necessary to connect the WTG to the New England bulk power grid and bring approximately 800 MW of power generated from offshore wind to the New England electric grid, thus making a substantial contribution to meeting individual New England states’ renewable energy requirements, including the Commonwealth’s clean energy policies. Thus, Vineyard Wind is seeking individual and comprehensive zoning exemptions from the Department in order to allow for the timely construction of the Vineyard Wind Connector 2 and avoid the substantial public harm that would result from delay in the construction and operation of the Project.

3. Vineyard Wind has also filed a petition with the Energy Facilities Siting Board (the “Siting Board”) requesting approval to construct, operate, and maintain the Vineyard Wind Connector 2 pursuant to G.L. c. 164, § 69J (the “Section 69J Petition”) (EFSB 20-01). The Section 69J Petition included, as Attachment A, a document titled

⁴ Consistent with the Department’s Checklist for Filing of Zoning Exemption Petitions, which is attached hereto as Exhibit B, an attested copy of the Barnstable Ordinance is attached hereto as Exhibit A.

“Vineyard Wind Connector 2: Analysis to Support Petition Before the Energy Facilities Siting Board” (the “Analysis”), which describes the Vineyard Wind Connector 2 in detail and provides factual bases for Vineyard Wind’s conclusions that the Vineyard Wind Connector 2 meets the standards applied by the Siting Board under G.L. c. 164, §§ 69J and 72, and G.L. c. 40A, § 3.

4. Vineyard Wind is also filing: (a) a petition to the Department pursuant to G.L. c. 164, § 72 requesting approval to construct and operate the transmission line components of the Vineyard Wind Connector 2 (the “Section 72 Petition”); and (b) motions with the Department and the Siting Board requesting that the Department refer this Zoning Petition and the Section 72 Petition to the Siting Board and that the Siting Board consolidate the Section 69J Petition, the Section 72 Petition, and the Zoning Petition for its review. *See* G.L. c. 25, § 4; G.L. c. 164, § 69H(2).

5. Vineyard Wind incorporates its Section 69J Petition, including the Analysis and all exhibits and attachments, and its Section 72 Petition, including all exhibits and attachments, herein by reference as a part of this Zoning Petition.⁵ The Section 69J Petition, and the attached Analysis, provide the factual basis for Vineyard Wind’s conclusion that the Vineyard Wind Connector 2 meets the standards applied by the Siting Board under G.L. c. 164, §§ 69J and 72 and G.L. c. 40A, § 3, is necessary, provides public benefits, appropriately balances and minimizes environmental and other

⁵ In light of the motions filed herewith requesting that the Department refer this Zoning Petition and the Section 72 Petition to the Siting Board for consolidation with the 69J Petition, Vineyard Wind has not filed a copy of its Section 69J Petition herewith. Vineyard Wind requests that the Department, to the extent necessary, consider the Section 69J Petition, including the Analysis, pursuant to 220 C.M.R. § 1.10(3). Vineyard Wind will file additional copies of the Section 69J Petition upon request.

impacts, is superior to alternatives, and is consistent with relevant Commonwealth policies.

6. The Analysis provides an extensive description of the Vineyard Wind Connector 2, including plans for the construction of the Export Cable and Onshore Substation. It also includes an explanation of the purpose of, and need for, the Vineyard Wind Connector 2 and a discussion of the public interest that would be served by the construction and operation of the Project.

7. Inasmuch as the standards applicable to approval under G.L. c. 164, § 69J and G.L. c. 164, § 72 are essentially the same as the standards that apply to requests for zoning relief pursuant to G.L. c. 40A, § 3, the Section 69J Petition provides a comprehensive factual foundation for the zoning relief sought in this proceeding. *See, e.g., NSTAR Elec. Co.*, EFSB 14-2/D.P.U. 14-73/14-74, at 93 (2017); *NSTAR Elec. Co.*, EFSB 15-03/D.P.U. 15-64/15-65, at 80 (2017); *NRG Canal 3 Dev. LLC*, EFSB 15-06/D.P.U. 15-180, at 144, 156 (2017); *New England Power Co.*, EFSB 10-1/D.P.U. 10-107/10-108, at 82, 97 (2012).

II. PROJECT DESCRIPTION

8. The purpose of the Vineyard Wind Connector 2 is to connect the Park City Wind WTGs to the New England bulk power grid so that approximately 800 MW of offshore wind energy generation from the federally designated Wind Energy Area (“WEA”) on the Outer Continental Shelf (“OCS”) outside of Massachusetts can be used to meet demand in New England with cost-effective renewable energy.

9. The Vineyard Wind Connector 2 will be a major step in meeting the region’s growing demand for cost-effective clean energy. More specifically, the Project will serve the public interest by delivering approximately 800 MW of power generated

from offshore wind to the New England electric grid, thus making substantial contributions to meeting individual New England state renewable energy requirements, including those advanced by the Commonwealth's 2008 Global Warming Solutions Act, St. 2008, c. 298, as amended ("GWSA") and Connecticut's Act Concerning Global Warming Solutions, Public Act 08-98, both of which call for significant reductions in greenhouse gas emissions.

10. Vineyard Wind holds rights to the Lease Area, which comprises approximately 261 square miles. The Lease Area is one of the seven lease areas awarded by BOEM for wind energy offshore from Massachusetts and Rhode Island. The Lease Area is a product of a decade-long process that was used to delineate, approve and auction offshore areas for offshore wind generation led by the federal government with strong state participation.

11. The Lease Area is approximately 10 miles wide and 30 miles long along a northeast to southwest axis, and at its nearest point is approximately 14.4 miles from the southeast corner of Martha's Vineyard and a similar distance from Nantucket. It is approximately 34 miles offshore from the Cape Cod mainland. The northern portion of the Lease Area is being developed as the Vineyard Wind 1 Project.⁶

12. The WTGs for Park City Wind will be centrally located in the Lease Area, immediately south/southwest of the area being developed for the Vineyard Wind 1 Project. This location is the northern part of an area referred to as the Southern Wind

⁶ The "Vineyard Wind 1 Project" refers to the "Vineyard Wind Energy Facility," as described in the Siting Board's Final Decision in EFSB 17-05/D.P.U. 18-18/18-19 (May 10, 2019). To avoid confusion, the "Project" from that previous proceeding is referred to in this Petition as the "Vineyard Wind Connector 1" rather than the "Vineyard Wind Connector."

Development Area (“SWDA”), which encompasses all of the Lease Area not being used for the Vineyard Wind 1 Project. At its nearest point, the SWDA is just over 19 miles from the southwest corner of Martha’s Vineyard, approximately 23 miles from Nantucket, and approximately 41 miles south of the Cape Cod mainland. The SWDA is located entirely in federal waters.

13. Vineyard Wind advanced development of Park City Wind to respond to solicitations for commercial-scale offshore wind projects from, among other entities, the Connecticut Department of Energy and Environmental Protection (“DEEP”). DEEP has authority to solicit offshore wind generation under *An Act Concerning the Procurement of Energy Derived from Offshore Wind*, Public Act 19-71. Similar to Section 83C of the Green Communities Act (St. 2008, c. 169, § 83C, as amended) in Massachusetts, Public Act 19-71 is intended to ensure a diversified electrical energy portfolio for Connecticut while reducing greenhouse gas emissions and strengthening the region’s clean energy economy – in particular, by supporting the development of an offshore wind industry in the region.

14. Public Act 19-71 authorized DEEP, in consultation with the procurement manager of the Connecticut Public Utilities Regulatory Authority (“PURA”), the Connecticut Office of the Attorney General, and the Connecticut Office of Consumer Counsel, to solicit proposals for offshore wind resources. Public Act 19-71 requires DEEP to consider factors including: (1) whether the proposal is in the best interest of ratepayers; (2) whether the proposal promotes electric distribution system reliability, including winter peak demand; (3) any positive impacts on the state’s economic development; (4) whether the project is consistent with requirements to reduce

greenhouse gas emissions; (5) whether the proposal is consistent with policy goals outlined in the state's Comprehensive Energy Strategy; (6) whether the proposal is consistent with certain state statutes; and (7) whether the proposal uses practices to avoid, minimize, and mitigate impacts to wildlife, natural resources, ecosystems and traditional or existing water-dependent uses. Public Act 19-71 authorized DEEP to direct electric distribution companies to enter into power purchase agreements with successful bidders for energy, capacity, transmission, or any combination thereof on behalf of their customers. Under Public Act 19-71, such power purchase agreements are subject to approval by PURA, which will review whether they: (A) provide for the delivery of adequate and reliable products and services, for which there is a clear public need, at a just and reasonable price, (B) are prudent and cost effective, and (C) are between an electric distribution company and a respondent to the solicitation that has the technical, financial and managerial capabilities to perform pursuant to such agreement.

15. DEEP issued an RFP under Public Act 19-71 on August 16, 2019. It received more than 30 bid variants from three different developers by the October 30, 2019 deadline for submissions. On December 5, 2019, DEEP announced that Vineyard Wind had been selected to develop Park City Wind. Vineyard Wind has entered into power purchase agreements with Eversource and the United Illuminating Company, Connecticut's electric distribution companies, which were filed with PURA on May 21, 2020.

16. Although output from Park City Wind will be contracted to the Connecticut electric distribution companies, the electric grid in New England is interconnected, and its operations are coordinated across all six New England states.

Injection of renewable energy from Park City Wind into the New England electric grid will displace other power, providing economic and environmental benefits across the region, including in Massachusetts. Further, the development of Park City Wind will advance a regional offshore wind industry, reduce regional greenhouse gas emissions, and deliver diversity and reliability benefits to the regional grid, all objectives of Massachusetts policies such as Section 83C of the Green Communities Act and the GWSA.

17. Park City Wind will be Vineyard Wind's second offshore wind energy generation facility, following the 800-MW Vineyard Wind 1 Project, the Massachusetts-jurisdictional portions of which (the "Vineyard Wind Connector 1") were approved by the Siting Board in *Vineyard Wind*, EFSB 17-05/D.P.U. 18-18/18-19 (May 10, 2019).

18. Because Park City Wind includes components in federal waters, it is being developed and permitted at the federal level in addition to the state, regional, and local levels. Vineyard Wind will file its Construction and Operations Plan ("COP"), the principal federal approval necessary to build Park City Wind, with BOEM. Vineyard Wind has been engaged with BOEM regarding the COP and has had multiple discussions with the federal agencies with whom BOEM will coordinate and consult during the National Environmental Policy Act ("NEPA") process.

19. As described in more detail in Sections 3.0, 4.0, and 5.0 of the Analysis, Vineyard Wind conducted an assessment of project alternatives and an extensive routing analysis for the transmission resources needed to bring energy from the SWDA to the New England electric grid.

20. Vineyard Wind proposes to construct, operate, and maintain the Vineyard Wind Connector 2, including (a) the Offshore Export Cable, which would be installed in state waters (including state waters within the Towns of Barnstable, Edgartown, Nantucket, and Mashpee) and the Onshore Export Cable in the Barnstable, and (b) the Onshore Substation in Barnstable.

21. Beginning at the SWDA, two offshore export cables will bring the output from the Park City Wind WTGs to the landfall site in Barnstable. The two offshore export cables will be new 220- or 275-kV three-core alternating current (“AC”) cables located within an identified Offshore Export Cable Corridor (“OECC”). The OECC is largely the same as the corridor approved for the Vineyard Wind Connector 1 in EFSB 17-05/D.P.U. 18-18/18-19, but has been widened in some locations. It is approximately 63 miles in total length, approximately 7 miles of which occur within the SWDA, and approximately 23 miles of which are located in state waters (the remainder are located in federal waters outside of the SWDA). The offshore export cables will travel north from the SWDA, cross into state waters between Martha’s Vineyard and Nantucket, pass through a pocket of federal waters in Nantucket Sound, reenter state waters, and make landfall on the Cape Cod mainland. Vineyard Wind’s preferred landfall site is at Craigville Beach in Barnstable. Vineyard Wind also presents a route variation that makes landfall at Covell’s Beach in Barnstable. The offshore export cables are described in detail in the Analysis, including at Sections 1.3.2, 1.5.3, and 4.6.

22. At the landfall site, horizontal directional drilling (“HDD”) will be used to complete the offshore-to-onshore transition. The physical connection between the offshore and onshore export cables will be made in underground concrete transition

vaults that will be installed within a paved parking lot at either landfall site. At the transition vaults, each three-core offshore export cable system will transition to three separate single-core, 220- or 275-kV cables that will travel from the landfall site to the Onshore Substation in Barnstable within a buried concrete duct bank.

23. The Preferred Route from the landfall site to the Onshore Substation is approximately 4.0 miles long, all within the Town of Barnstable. It is located almost entirely within public roadway layouts, with the possible exception of the approach to the crossing of Centerville River and the crossing itself, and except for the final approximately 0.2 miles approaching the Onshore Substation, which is within Eversource Right of Way (“ROW”) #343. The Noticed Alternative Route from the landfall site to the Onshore Substation is approximately 6.1 miles long, located almost entirely within public roadway layouts with the possible exception of the approach to the crossing of Centerville River and the crossing itself. Vineyard Wind proposes three variants to the Preferred Route and two variants to the Noticed Alternative Route, some of which vary the route length.

24. The Onshore Substation is necessary to step up the 220- or 275-kV power that comes ashore via the export cables to 345 kV in preparation for interconnection at the West Barnstable Substation. The Onshore Substation is located at an approximately 6.7-acre, privately owned parcel off Shootflying Hill Road in Barnstable southwest of the intersection of Route 6 and Route 132. It is less than one mile from the existing West Barnstable Substation. The northern part of the Onshore Substation site currently contains a motel building. The southern part consists of wooded land. To the west, the site is bordered by residential parcels, to the north it is bordered by Shootflying Hill Road

(and further north the Route 6 layout), to the east it is bordered by land owned by the Chamber of Commerce and the Massachusetts Department of Transportation (“MassDOT”), and to the south it is bordered by ROW #343. The Onshore Substation will house two 220/345-kV or 275/345-kV “step-up” transformers, switchgear, and other necessary equipment.⁷ Vineyard Wind proposes a gas-insulated substation (“GIS”) design for the Onshore Substation and will incorporate a containment system consistent with commitments to the Town of Barnstable, as set forth in Section 1.3.4.1 of the Analysis.

25. From the Onshore Substation, six single-core 345-kV onshore export cables will travel to West Barnstable Substation within a buried duct bank. The Preferred Route from the Onshore Substation to West Barnstable Substation is approximately 0.7 miles long and is located entirely within existing utility ROWs. Vineyard Wind proposes three variants to the Preferred Route from the Onshore Substation to West Barnstable Substation, which vary in length and use different portions of existing utility ROWs and roadway layouts. The Noticed Alternative Route from the Onshore Substation to West Barnstable Substation is approximately 1.8 miles long and is located entirely within public roadway layouts.

26. As described in the Analysis at Section 1.3.5, some modifications to the interconnection point at West Barnstable Substation will be necessary to interconnect the Vineyard Wind Connector 2. Vineyard Wind expects that any work within the West Barnstable Substation would be designed and performed by Eversource, but for the

⁷ It is possible that some elements of the Onshore Substation will be relocated to a parcel adjacent to Eversource’s West Barnstable Substation, north of Route 6, as described in Section 1.3.4 of the Analysis (“Parcel 214-001”). Vineyard Wind anticipates acquiring Parcel 214-001.

reasons set forth in footnote 1, Vineyard Wind includes information relating to that anticipated work in this petition. Vineyard Wind is consulting with Eversource and working with ISO-NE on the System Impact Study for the interconnection, which will help determine the nature of the modifications.

27. The Vineyard Wind Connector 2 is described in more detail in Section 1.0 of the Analysis.

A. Overview of Preferred Route from Landfall to the Onshore Substation

28. The approximately 0.4-mile onshore portion of the Preferred Route begins at the paved parking lot at Craigville Public Beach, and proceeds north on Craigville Beach Road for approximately 0.5 miles (and for purposes of the approach to the crossing of Centerville River and the crossing itself, may traverse under a parcel at the intersection of Craigville Beach Road and Short Beach Road), then continues north on Main Street for approximately 0.5 miles, then continues north on Old Stage Road for approximately 0.7 miles, crossing Route 28, then follows Shootflying Hill Road for approximately 2.1 miles before turning southeast onto a utility ROW for the final approximately 0.2 miles to the Onshore Substation.

29. Variant 1 would use an alternative landfall option at the paved Covell's Beach parking lot approximately 0.4 miles east of Craigville Public Beach and proceed along an approximately 0.4 mile stretch of Craigville Beach Road before joining the path of the Preferred Route.

30. Variant 2 diverges from the Preferred Route at the intersection of Craigville Beach Road with South Main Street, following South Main Street eastward

(approximately 0.7 miles) to Main Street (approximately 0.4 miles)⁸, Mothers Park Road (approximately 0.1 miles), Phinneys Lane (approximately 0.4 miles), and then Great Marsh Road until it rejoins the Preferred Route north of Route 28 at Shootflying Hill Road. This variation adds approximately 1.2 miles of length to the Preferred Route, all within existing roadway layouts, for a total length of approximately 5.2 miles.

31. Variant 3 changes the approach to the Onshore Substation by staying on Shootflying Hill Road for an additional approximately 0.3 miles rather than using the utility ROW to reach the Onshore Substation. It would avoid use of utility ROW, staying in existing roadway layouts, and would add approximately 0.1 miles in length to the Preferred Route.

B. Overview of the Noticed Alternative Route from Landfall to the Onshore Substation

32. The Noticed Alternative Route begins at the Craigville Public Beach Landfall Site and proceeds northerly on Craigville Beach Road for 0.5 miles (and for purposes of the approach to the crossing of Centerville River and the crossing itself, may traverse a parcel at the intersection of Craigville Beach Road and Short Beach Road). At the intersection between Craigville Beach Road and South Main Street, it essentially follows Variant 2 to the Preferred Route, continuing northeasterly on South Main Street for 0.7 miles, turning sharply west on Main Street for 0.4 miles⁹ to Mothers Park Road where it turns briefly to the north for 0.1 miles to join Phinneys Lane, and then

⁸ It may be necessary to cross Aaron S. Crosby Park and thereby deviate from the roadway layout to eliminate what would otherwise be a very sharp bend in the route between South Main Street and Main Street.

⁹ It may be necessary to cross Aaron S. Crosby Park and thereby deviate from the roadway layout to eliminate what would otherwise be a very sharp bend in the route between South Main Street and Main Street.

continuing northeast on Phinneys Lane for 0.4 miles, crossing Route 28 and turning west on Great Marsh Road. It then follows Great Marsh Road for 0.9 miles, crossing Shootflying Hill Road, ultimately turning northward onto Old Stage Road for 1.4 miles to Oak Street, where it turns northeast and continues 0.9 miles to Service Road. It then follows Service Road for 0.8 miles to Shootflying Hill Road, which it follows the remaining 0.1 miles to the proposed substation. The total length of the Noticed Alternative Route, which is entirely within public roadway layouts, is 6.1 miles.

33. Variant 1 to the Noticed Alternative Route would use an alternative landfall option at the paved Covell's Beach parking lot approximately 0.4 miles east of Craigville Public Beach and proceed west along an approximately 0.4 mile stretch of Craigville Beach Road before joining the path of the Noticed Alternative Route.

34. Variant 2 to the Noticed Alternative Route would shorten the Noticed Alternative Route by approximately 0.7 miles (to 5.4 miles in total length) by utilizing approximately 1.6 miles of existing utility ROW between Old Stage Road and the Onshore Substation. Rather than continuing on Old Stage Road to Oak Street, it would turn right off Old Stage Road where it crosses the utility ROW and proceed approximately 1.6 miles in the utility ROW to the Onshore Substation.

C. Onshore Substation (Barnstable)

35. As described above, the Onshore Substation will be located on a 6.7-acre commercial property less than a mile east of the West Barnstable Substation with approximately 400 feet of frontage on Shootflying Hill Road, and on-site access to utility ROW #343. The parcel is shown on Figure 1-9 of the Analysis.

36. The Onshore Substation will be enclosed with wire mesh fence or concrete masonry unit ("CMU") wall and will house two 220/345-kV or 275/345-kV "step-up"

transformers, gas-insulated switchgear and a control room inside two buildings or metal enclosures, and other necessary equipment, likely including shunt reactors, STATCOMs, and harmonic filters, along with associated bus work and support structures, overhead and underground wiring and conduits, protective systems, electrical service equipment, grounding protection, lightning protection masts, and a stormwater management system. A conceptual schematic for the new substation, showing a maximum build-out of the site and site access, is provided as Figure 1-9 of the Analysis. The transformers and other equipment containing dielectric fluid will be underlain by full-volume 110% containment systems. While this additional protection is not a standard practice given the low probability of any leakage, Vineyard Wind has opted to commit to such containment based on consultations with local officials and comments at public meetings. Also included in the design as additional mitigation is a common drain system that routes each individual containment area, after passing through an oil-absorbing inhibition device, to an oil water separator before draining to the infiltration basin. A stormwater management system at the substation site will include the low-impact development (LID) strategies, which are designed to capture, treat, and recharge stormwater runoff. Outdoor lighting is planned at the proposed substation. Light fixtures are typically holophane type fixtures equipped with light shields to prevent light from encroaching into adjacent areas. Light shields may be rotated within fixtures to the most effective position to keep light overflow from leaving the substation. The design will work to comply with night sky lighting standards to the maximum extent practicable. There are typically a few lights illuminated for security reasons on dusk-to-dawn sensors as well as a few on motion-sensing switches, depending on the application needed for the site. The majority of lights

will be switched on for emergency situations only and would not be used on a regular basis. Most of the major equipment and bus work is not expected to exceed 30 feet in height, although the shunt reactors will be on the order of 35-40 feet tall; these may be replaced with smaller tap changed reactors. The station will also be equipped with slender lightning protection masts that will be approximately 80 feet in height.

37. As shown on Figure 1-10 of the Analysis, Vineyard Wind plans to include an approximately 30-foot-wide vegetated buffer on the western and northern, boundaries of the site. Buffer on the eastern boundary may be utilized for part of the perimeter access drive, and the abutting land is undeveloped wooded land. Since the southern property line extends into ROW #343, no vegetated buffer will be possible in that location. As described in Section 1.3.4 of the Analysis, some of the equipment for the proposed substation may be relocated from the motel site to a parcel located immediately southeast of the West Barnstable Substation (shown as Parcel 214-001 on Figure 1-11 of the Analysis). Should that occur, it would provide flexibility with regard to the substation equipment itself and would also provide greater flexibility for providing visual and noise buffers for residences near the motel site. The substation yard area will be finished in crushed stone, and perimeter security fencing will be installed. Access to the new substation site will be via a paved driveway off Shootflying Hill Road. The substation design also includes an all-weather internal access road.

38. As detailed in Section 5.4.5 of the Analysis, construction of the substation will include the following steps:

- Install perimeter construction fencing and security gate, install initial erosion controls;
- Clear and grub the portion of the site necessary for construction;

- Grade the site to provide a level yard area, providing additional erosion controls where needed;
- Excavate areas required for major component foundations and full volume containment sumps;
- Form and pour major foundations/containment sumps;
- Excavate areas required for spread footings, form and pour footings;
- Deliver and place major equipment (e.g., transformers, reactors) using appropriate heavy load vehicles and equipment (transformers are filled with dielectric fluid later in the construction sequence);
- Trench areas for underground cabling, install, backfill;
- Install ground grid and place crushed stone in yard area;
- Deliver and set prefabricated control enclosure;
- Deliver and place other equipment (e.g., breakers), and begin to erect buswork;
- Complete buswork, begin cabling;
- Complete cabling, control wiring, protection systems, etc.;
- Test and commission;
- Install permanent perimeter security fencing;
- Restore and landscape at periphery of site; and
- Remove construction stage erosion controls.

D. Overview of Preferred Route from the Onshore Substation to West Barnstable Substation

39. The Preferred Route begins by entering an existing utility ROW on the south side of the Onshore Substation and proceeding west for less than 0.1 miles before turning southwesterly onto another utility ROW. The route follows that ROW for approximately 0.5 miles before turning northwesterly for less than 0.2 miles on another existing utility ROW that crosses Route 6 and proceeds to the West Barnstable

Substation. The total length of this Preferred Route is approximately 0.7 miles, all within existing utility ROW.

40. Variant 1 to the Preferred Route shortens the length of existing utility ROW used by exiting the northern side of the proposed substation site onto Shootflying Hill Road, traveling west for less than 0.1 miles before continuing west on Service Road for approximately 0.6 miles. It then enters a utility ROW and turns north for less than 0.1 miles (crossing Route 6) before entering the West Barnstable Substation. It is the same length as the Preferred Route, approximately 0.7 miles, 0.6 miles of which are within existing roadway layouts and 0.1 miles of which are within utility ROW.

41. Variant 2 to the Preferred Route follows the same less than 0.1-mile segment of utility ROW as it exits the south side of the Onshore Substation going west as does the Preferred Route. It then diverges from the Preferred Route by turning northwest onto a different utility ROW for less than 0.1 miles, then turning west onto another utility ROW for approximately 0.4 miles (crossing Route 6) before entering the northeast portion of West Barnstable Substation. With a total length of 0.6 miles, this variation is 0.1 miles shorter than the Preferred Route, and is located entirely within existing utility ROWs.

42. Variant 3 to the Preferred Route exits the northern side of the Onshore Substation onto Shootflying Hill Road, traveling west for less than 0.1 miles before continuing west on Service Road for approximately 0.1 miles. It then enters a utility ROW for approximately 0.4 miles (crossing Route 6) before entering the northeast portion of the West Barnstable Substation. With a total length of 0.6 miles (0.4 miles in

utility ROW and 0.2 miles in existing roadway layouts), it is 0.1 miles shorter than the Preferred Route.

E. Overview of the Noticed Alternative Route from the Onshore Substation to West Barnstable Substation

43. The Noticed Alternative Route begins on the north side of the Onshore Substation, exiting easterly on Shootflying Hill Road for approximately 0.2 miles before turning northwesterly onto Route 132/Iyannough Road for approximately 0.9 miles to the intersection with Oak Street. The route then follows Oak Street southwesterly for approximately 0.7 miles before turning into the northwest corner of West Barnstable Substation. The total length of the route is 1.8 miles, entirely within public roadway layouts.

III. COMMUNITY OUTREACH

44. Vineyard Wind has conducted community outreach regarding the Vineyard Wind Connector 2. Vineyard Wind's community outreach efforts through April 2020 are summarized in Section 1.10 of the Analysis.

45. Specifically, Vineyard Wind has been consulting with federal and state agencies, and affected municipalities and tribes regarding Project status, planned studies, issues of concern, the permitting process, and related matters associated with the Vineyard Wind 1 Project and this Project since 2015. A list of meetings conducted with agencies, municipalities, and tribes through April 2020 is provided in Table 1-4 of the Analysis.

46. Vineyard Wind has met with officials from the Town of Barnstable in regards to the proposed cable route(s) and proposed substation, engaged in good-faith

consultations with officials from the Town regarding the Vineyard Wind Connector 2, and has obtained feedback that has been incorporated into Vineyard Wind's proposal.

47. Vineyard Wind has had and will continue to have good faith discussions with Town of Barnstable officials regarding the need for the requested zoning exemptions based on a conservative approach to potential ambiguity in the Barnstable Ordinance.

48. In addition, in connection with review under the Massachusetts Environmental Policy Act ("MEPA"), Vineyard Wind conducted project meetings with MEPA Office staff in February and April 2020.

49. For the Project, public notices and meetings are expected to be held associated with this and other state filings, and Vineyard Wind will send out additional mailers to abutters (and others) providing relevant Project details, contact information, and other means for residents to connect with Vineyard Wind representatives to obtain information and provide feedback.

50. In addition, Vineyard Wind has been consulting with a broad and diverse range of stakeholders regarding the Vineyard Wind Connector 2. Section 1.10.2 of the Analysis lists nearly 80 stakeholders with whom Vineyard Wind has been consulting. Vineyard Wind has also held several meetings with agencies, municipalities, and tribes, as shown in Section 1.10.1 of the Analysis. This is a representative list of outreach, and does not include every person and/or group with whom Vineyard Wind has consulted.

51. Vineyard Wind plans to maintain an active level of consultation and outreach as the Project proceeds through the licensing, permitting, and construction phases. Vineyard Wind will continue to address any concerns that may arise with the

affected municipalities or other interested parties following the submittal of this Zoning Petition.

IV. STANDARD OF REVIEW

52. G.L. c. 40A, § 3 provides, in relevant part, that:

Lands or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or bylaw if, upon petition of the corporation, the [Department] shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public

53. Thus, a petitioner seeking exemption from a local zoning bylaw under G.L. c. 40A, § 3 must meet three criteria. First, the petitioner must qualify as a public service corporation. Second, the petitioner must demonstrate that its present or proposed use of the land or structure is reasonably necessary for the public convenience or welfare. Third, the petitioner must establish that it requires exemption from the zoning ordinance or bylaw. *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 132 (2019); *NSTAR Elec. Co.*, EFSB 14-2/D.P.U. 14-73/14-74, at 90 (2017) (citing *Save the Bay, Inc. v. Dep't of Pub. Utils.*, 366 Mass. 667 (1975); *NRG Canal 3 Dev. LLC*, EFSB 15-06/D.P.U. 15-180, at 140-41 (2017); *NSTAR Elec. Co.*, EFSB 15-03/D.P.U. 15-64/15-65, at 77 (2017)).

V. VINEYARD WIND IS A PUBLIC SERVICE CORPORATION

54. In determining whether a petitioner qualifies as a “public service corporation” for the purposes of G.L. c. 40A, § 3, the Massachusetts Supreme Judicial Court has stated:

[A]mong the pertinent considerations are whether the corporation is organized pursuant to an appropriate franchise from the State to provide for a necessity or convenience to the general public which could not be furnished through the ordinary channels of private business; whether the corporation is subject to the

requisite degree of governmental control and regulation; and the nature of the public benefit to be derived from the service provided.

Save the Bay, 366 Mass. at 680; *see also Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 133 (2019).

55. “The Department interprets this list not as a test, but rather, as guidance to ensure that the intent of G.L. c. 40A, § 3, will be realized: i.e., that a present or proposed use of land or structure that is determined by the Department to be ‘reasonably necessary for the convenience or welfare of the public’ not be foreclosed due to local opposition.” *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 133 n.134 (2019) (citing *Berkshire Power Development, Inc.*, D.P.U. 96-104, at 30); *Save the Bay*, 366 Mass. at 685-86; *Town of Truro v. Dep’t of Pub. Utils.*, 365 Mass. 407, at 410 (1974); *Exelon West Medway, LLC*, EFSB 15-01/D.P.U. 15-25, at 135 n.117.

56. Accordingly, “[t]he Department has interpreted the ‘pertinent considerations’ as a ‘flexible set of criteria which allow the Department to respond to changes in the environment in which the industries it regulates operate and still provide for the public welfare.’” *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 133 n.134 (2019) (citing *Berkshire Power Development, Inc.*, D.P.U. 96-104, at 30); *New England Power Co.*, D.P.U. 15-44/15-45, at 6; *Dispatch Communications of New England*, D.P.U./D.T.E. 95-59B/95-80/95-112/96-113, at 6 (1998)).

57. Significantly, “[t]he Department has determined that it is not necessary for a petitioner to demonstrate the existence of ‘an appropriate franchise’ in order to establish [public service corporation] status.” *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 133 n.134 (2019) (citing *Berkshire Power Development, Inc.*, D.P.U. 96-104, at 31;

New England Power Co., D.P.U. 15-44/15-45, at 5-6; *NSTAR Elec. Co.*, D.P.U 15-02, at 4-5).

58. A petitioner qualifies as a public service corporation when it proposes a facility that will be used to meet the Commonwealth's or the region's energy needs. "Pursuant to Department and Siting Board precedent, 'any corporation that owns generating assets in Massachusetts, and makes those assets available to serve the New England market, is a public service corporation.'" *Exelon West Medway, LLC*, EFSB 15-01/D.P.U. 15-25, at 136 (quoting *USGen New England, Inc.*, D.T.E. 03-83, at 15 n.9 (2004)); *accord Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 135-36 (2019) (determining that Vineyard Wind qualified as a public service corporation for the purposes of G.L. c. 40A, § 3 with respect to the Vineyard Wind Connector 1); *Brockton Power Co., LLC*, EFSB 07-7/D.P.U. 07-58/07-59, at 99-100 (determining that independent power producers qualify as public service corporations under G.L. c. 40A, § 3); *NRG Canal 3 Dev. LLC*, EFSB 15-06/D.P.U. 15-180, at 142-43 (finding the petitioner to be a public service corporation where it and its parent company were "in the business of acquiring, owning, and operating electric generation facilities, including facilities in Massachusetts, that serve the needs of the Commonwealth and of the New England region" and a proposed facility would be used to meet capacity needs); *Russell Biomass LLC*, D.T.E./D.P.U. 06-60, at 15 (finding the petitioner to be a public service corporation where it "planned to make the output of [a generating] facility available to the New England energy market"); *Berkshire Power Development, Inc.*, D.P.U. 96-104, at 26-36 (explaining the importance of extending public service corporation status to non-franchise monopoly participants in the electric power industry).

59. In *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19 (2019), the Department found that Vineyard Wind “meets the most salient aspects of the current Siting Board and Department standard for PSC status in Massachusetts,” specifically that the Vineyard Wind Connector 1 would “deliver the power generated by the Wind Energy Facility to the New England electric market, including Massachusetts, and will have a legal and physical presence in Massachusetts,” and therefore “Vineyard Wind qualifies as a Massachusetts public service corporation for the purposes of G.L. c. 40A, §3.” *Id.* at 135. In particular, the Department found that Vineyard Wind “demonstrated an appropriate nexus with Massachusetts to be considered a PSC in Massachusetts,” given that “it is registered and doing business in Massachusetts, and thus is subject to a degree of business regulation under Massachusetts law[,]” and that “major components of the Facility will have a physical presence within Massachusetts, including approximately 20 miles of the Offshore Cables; the landfall site for the transition between the Offshore and Onshore Cables; all 5.3 miles of the Onshore Cables from the landfall to the new Substation; and the new Substation.” *Id.* at 136.

60. As with the Vineyard Wind Connector 1, Vineyard Wind is developing the WTGs associated with Park City Wind and the Vineyard Wind Connector 2 in order to bring the generation output from a large-scale offshore wind energy project to the New England bulk power grid, where it can serve the needs of energy consumers in Massachusetts and in the region. Vineyard Wind acquired and holds rights to the approximately 261-square-mile Lease Area, which was awarded through an auction conducted by BOEM, for the purpose of developing a WTG and bringing the offshore wind energy generation from that WTG to the New England region.

61. As with the Vineyard Wind Connector 1, and as summarized in Section 1.2 of the Analysis and discussed in further detail in Section 6 of the Analysis, construction of Park City Wind and the Vineyard Wind Connector 2 will serve the public interest by increasing the reliability and diversity of the regional and statewide energy supply. As outlined in Section 1.6 of the Analysis, Park City Wind and the Vineyard Wind Connector 2 are expected to create a range of environmental and economic benefits for southeastern Massachusetts, Massachusetts as a whole, and the entire New England region. As identified in Section 1.6.1 of the Analysis, Park City Wind and the Vineyard Wind Connector 2 will provide reliability benefits to Cape Cod and the Commonwealth as a whole. Park City Wind and the Vineyard Wind Connector 2 will also provide significant environmental benefits as a zero-carbon generation resource, as described in Section 1.6.3 of the Analysis.

62. Where the factual and legal bases upon which Vineyard Wind qualified as a public service corporation in *Vineyard Wind I* are materially and legally identical here, Vineyard Wind continues to qualify as a public service corporation under G.L. c. 40A, § 3 for the purposes of the Vineyard Wind Connector 2.

VI. THE VINEYARD WIND CONNECTOR 2 IS REASONABLY NECESSARY FOR THE PUBLIC CONVENIENCE OR WELFARE.

63. “In determining whether the present or proposed use is reasonably necessary for the public convenience or welfare, the Department must balance the interests of the general public against the local interest.” *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 136 (citing *Save the Bay*, 366 Mass. at 680; *Town of Truro*, 365 Mass. at 410). “Specifically, the Department is empowered and required to undertake ‘a broad and balanced consideration of all aspects of the general public interest

and welfare and not merely [make an] examination of the local and individual interests which might be affected.” *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 136 (quoting *New York Cent. R.R. v. Dep’t of Pub. Utils.*, 347 Mass. 586, 592 (1964)).

“When reviewing a petition for a zoning exemption under G.L. c. 40A, § 3, the Department is empowered and required to consider the public effects of the requested exemption in Massachusetts as a whole and upon the territory served by the applicant.”

Vineyard Wind I, EFSB 17-05/D.P.U. 18-18/18-19, at 136 (citing *Save the Bay*, 366 Mass. at 685; *New York Cent. R.R.*, 347 Mass. at 592).

64. Department precedent is clear that

With respect to the particular site chosen by a petitioner, G.L. c. 40A, § 3 does not require the petitioner to demonstrate that its primary site is the best possible alternative, nor does the statute require the Department to consider and reject every possible alternative site presented. Rather, the availability of alternative sites, the efforts necessary to secure them, and the relative advantages and disadvantages of those sites are matters of fact bearing solely upon the main issue of whether the primary site is reasonably necessary for the convenience or welfare of the public.

Vineyard Wind I, EFSB 17-05/D.P.U. 18-18/18-19, at 137 n.136 (citing *Martarano v. Dep’t of Pub. Utils.*, 401 Mass. 257, 265 (1987); *New York Cent. R.R.*, 347 Mass. at 591).

65. Thus,

when making a determination as to whether a petitioner’s present or proposed use is reasonably necessary for the public convenience or welfare, the Department examines: (1) the need for, or public benefits of, the present or proposed use; (2) the present or proposed use and any alternatives or alternative sites identified; and (3) the environmental impacts or any other impacts of the present or proposed use. The Department then balances the interests of the general public against the local interest and determines whether the present or proposed use of the land or structures is reasonably necessary for the convenience or welfare of the public.

Vineyard Wind I, EFSB 17-05/D.P.U. 18-18/18-19, at 136-37; accord *NSTAR Elec. Co.*, EFSB 14-2/D.P.U. 14-73/14-74, at 92-93 (citing *NRG Canal 3 Dev. LLC*, EFSB 15-06/D.P.U. 15-180, at 143-44; *NSTAR Elec. Co.*, EFSB 15-03/D.P.U. 15-64/15-65, at 79; *Tennessee Gas Co.*, D.T.E. 98-33, at 4-5 (1998)).

A. There is a Public Benefit and Need for the Vineyard Wind Connector 2.

66. The primary purpose of the Vineyard Wind Connector 2 is to bring offshore wind generation from the federally designated WEA to the New England electric grid.

67. As described more fully in Section 2.0 of the Analysis, the existing transmission system is inadequate to connect Park City Wind to the electric grid in New England. The Vineyard Wind Connector 2 would address that need by providing a reliable means to bring electricity from Park City Wind to the New England electric grid.

68. As described in Sections 1.0 and 2.0 of the Analysis, the generation component of Park City Wind is planned and not subject to the Siting Board's jurisdiction. *See Vineyard Wind I* at 12. As further described in Section 2.0 of the Analysis, multiple indicators of project progress establish and will establish that the generation component of Park City Wind is likely to be available to contribute to the regional energy supply. For instance, Park City Wind is consistent with and supported by state and federal policies, and it is being developed in response to and in conjunction with those policies – including BOEM's lease of the Lease Area and Connecticut Public Act 19-71. In particular, Public Act 19-71 embodies a legislative determination that facilities such as Park City Wind are needed, provide significant benefits, and must be constructed. DEEP's selection of Park City Wind pursuant to a solicitation under Public Act 19-71 indicates that the State of Connecticut supports the construction of Park City Wind,

specifically, pursuant to that Act. Vineyard Wind entered into PPAs with the Connecticut electric distribution companies consistent with Public Act 19-71, which have been filed with PURA. By legislative design and purpose, projects selected and contracted for under this process are likely to be developed and to contribute to the regional energy supply. Once Vineyard Wind has obtained approved PPAs that commit the Connecticut electric distribution companies to known prices for the output of Park City Wind, that price certainty provides a further economic basis for concluding that Park City Wind is likely to be built and put into operation.

69. As further described in Section 2.0 of the Analysis, other indicators of project progress that further establish and will establish that the generation component of Park City Wind is likely to be available to contribute to the regional energy supply include the valuable nature of the wind resource in the Lease Area, permitting milestones that have been or will be achieved in the near future, progress towards an amendment to the existing host community agreement with the Town of Barnstable, effective and extensive project outreach, and the broad support by Massachusetts, Connecticut and other northeastern states for the development of large quantities of offshore wind generation.

70. For these reasons, the generating component of Park City Wind is likely to be available to contribute to the regional energy supply.

71. The Department has previously found that where transmission facilities are necessary to connect proposed generating facilities, that necessity supports a finding of need under G.L. c. 40A, § 3. See *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 138-39 (2019); *Russell Biomass, LLC*, EFSB 07-4/D.P.U. 07-35/07-36, at 68-69

(2009); *see also Cape Wind Assocs., LLC*, EFSB 02-2A/D.T.E. 02-53, at 21-24 (2008) (reaching the same conclusion under G.L. c. 164, § 72).

72. In addition, as explained in the Analysis, particularly Sections 1.2, 1.6, and 6.0, the Vineyard Wind Connector 2 would provide significant public benefits. As described in Sections 1.2 and 6.0 of the Analysis, construction of Park City Wind and the Vineyard Wind Connector 2 will serve the public interest by increasing the reliability and diversity of the regional and statewide energy supply. As articulated in Section 1.6 of the Analysis, the WTG and the Vineyard Wind Connector 2 will provide a range of environmental and economic benefits for southeastern Massachusetts, Massachusetts as a whole, and the entire New England region. Section 1.6.1 of the Analysis details how Park City Wind and the Vineyard Wind Connector 2 will provide reliability benefits to Cape Cod and the Commonwealth. Section 1.6.3 of the Analysis quantifies the large environmental benefits that the WTG and the Vineyard Wind Connector 2 will provide by reducing carbon dioxide, nitrogen oxide, and sulfur dioxide emissions – avoiding 47,600,000 tons of carbon dioxide emissions, 25,450 tons of nitrogen oxide emissions, and 13,500 tons of sulfur dioxide emissions over the life of the Project.

73. Given the similarity in statutory standards between G.L. c. 164, § 69J and G.L. c. 40A § 3, the information provided by Vineyard Wind demonstrating that the Vineyard Wind Connector 2 will contribute to a reliable supply of energy for the Commonwealth with a minimum impact on the environment at the lowest possible cost, all in accordance with G.L. c. 164, § 69J, also serves to demonstrate that the Vineyard Wind Connector 2 is necessary pursuant to the requirements of G.L. c. 40A, § 3. *See, e.g., NSTAR Elec. Co.*, EFSB 10-2/D.P.U. 10-131/10-132, at 97 (2012); *NSTAR Elec.*

Co., EFSB 15-03/D.P.U. 15-64/15-65, at 80; *NSTAR Elec. Co.*, EFSB 14-2/D.P.U. 14-73/14-74, at 93; *Exelon West Medway, LLC*, EFSB 15-01/D.P.U. 15-25, at 137-138; *NRG Canal 3 Dev. LLC*, EFSB 15-06/D.P.U. 15-180, at 144.

74. In addition, Department precedent provides that the public interest analysis required by G. L. c. 164, § 72 is analogous to the Department’s analysis for the “reasonably necessary for the convenience or the welfare of the public” standard under G.L. c. 40A, § 3. *Boston Edison Co.*, EFSB 04-1/D.T.E. 04-5/D.T.E. 04-7, at 163 (2005); *Russell Biomass, LLC*, EFSB 07-4/D.P.U. 07-35/07-36, at 55-56. Accordingly, to the extent that Vineyard Wind has demonstrated that the Vineyard Wind Connector 2 has satisfied the statutory requirements of G.L. c. 164, § 69J and, consequently, G.L. c. 164, § 72, so too has it demonstrated that the Vineyard Wind Connector 2 has satisfied the “convenience or welfare of the public” standard under G.L. c. 40A, § 3.

B. Vineyard Wind Considered Alternatives.

75. Vineyard Wind considered alternatives to the Vineyard Wind Connector 2, and multiple possible routing and design options. As set forth in Sections 3.0, 4.0 and 5.0 of the Analysis, in evaluating alternatives, Vineyard Wind considered multiple factors, including reliability, environmental impact, cost, community acceptance, and the time required to implement them. Alternative approaches and routing options considered by Vineyard Wind are described, in detail, in Sections 3.0, 4.0, and 5.0 of the Analysis. As shown therein, the Vineyard Wind Connector 2 is the superior alternative for meeting the identified need.

C. The Impacts of the Vineyard Wind Connector 2 Have Been Minimized.

76. Vineyard Wind conducted a comprehensive analysis of the environmental impacts of the Vineyard Wind Connector 2, has identified the relevant impacts, and has

appropriately minimized environmental impacts. The Vineyard Wind Connector 2 will also achieve an appropriate balance among conflicting environmental concerns as well as among environmental impacts, reliability, and cost. Section 5.0 of the Analysis provides information regarding the minimization of impacts for the Vineyard Wind Connector 2.

VII. THE VINEYARD WIND CONNECTOR 2 REQUIRES INDIVIDUAL ZONING EXEMPTIONS.

77. “In determining whether an exemption from a particular provision of a zoning by-law is ‘required’ for purposes of G.L. c. 40A, § 3, the Department determines whether the exemption is necessary to allow construction or operation of the petitioner’s project.” *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 139 (citing *NRG Canal 3 Dev. LLC*, EFSB 15-06/D.P.U. 15-180, at 143-144; *Tennessee Gas Co.*, D.P.U. 92-261, at 20-21 (1993)). The Petitioner must identify the individual zoning provisions applicable to the Project and establish that an exemption from each of those provisions is required. *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 139.

78. The Siting Board and the Department encourage zoning exemption applicants to consult with local officials prior to seeking zoning exemptions under G.L. c. 40A, § 3. *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 152; *see also Russell Biomass LLC*, EFSB 07-4/D.P.U. 07-35/07-36, at 60-63 (setting forth guidelines regarding consultations with municipalities).

79. The Siting Board applies the guidelines from *Russell Biomass* on a case-by-case basis, recognizing that there are additional circumstances when it may not be necessary or appropriate for a petitioner to apply for local zoning approvals or related relief prior to filing a zoning exemption petition, and it is well established that

applying for local zoning permits in advance of filing a zoning exemption petition is not required where to do so would likely be futile, or where the

Company has met the spirit and intent of Russell by engaging in outreach with the affected municipalities regarding the Company's plan to seek zoning relief from the Department. Other factors supporting a finding that the spirit and intent of Russell have been met are that the affected municipalities do not object to the Company seeking such relief; and that the Company has made a good faith effort to abide by the reasonable recommendations of the municipalities with respect to the Project.

New England Power Co., EFSB 10-1/D.P.U. 10-107/10-108, at 85-86 (2012) (citing *New England Power Co.*, EFSB 09-1/D.P.U. 09-52/09-53, at 76-77 (2011); *Massachusetts Elec. Co.*, EFSB 08-2/D.P.U. 08-105/08-106, at 132-133),

80. The Department has recognized that zoning variances are difficult to obtain, constitute a disfavored form of relief, and are susceptible to being overturned on appeal. Accordingly, pursuing a variance is not necessary when the process is likely to be burdensome, result in an adverse outcome, or result in unnecessary delay. *NSTAR Elec. Co.*, D.P.U. 13-64, at 31 (2014); *NSTAR Elec. Co.*, D.P.U. 11-80, at 40-42 (2012); *NRG Canal 3 Dev. LLC*, EFSB 15-06/D.P.U. 15-180, at 149; *NSTAR Elec. Co.*, EFSB 14-2/D.P.U. 14-73/14-74, at 97; *NRG Canal 3 Dev. LLC*, EFSB 15-06/D.P.U. 15-180, at 149-50. The Department has similarly recognized that, for many of the same reasons, pursuing a special permit is not necessary when the process is likely to be burdensome, result in an adverse outcome, or result in unnecessary delay. *NRG Canal 3 Dev. LLC*, EFSB 15-06/D.P.U. 15-180, at 149; *NSTAR Elec. Co.*, EFSB 14-2/D.P.U. 14-73/14-74, at 97.

81. Vineyard Wind has met these requirements. Vineyard Wind has had and will continue to have good faith discussions with Barnstable officials regarding the Vineyard Wind Connector 2, including conversations about the need for the requested zoning exemptions based on a conservative approach to potential ambiguity in the

Barnstable Ordinance. Vineyard Wind has made and will continue to make a good faith effort to abide by reasonable recommendations from Barnstable.

82. As described in more detail below, the applicability of the Barnstable Ordinance to the Project is potentially ambiguous in several respects, and the construction and operation of the Vineyard Wind Connector 2 are or may be construed to be inconsistent with certain provisions in the Barnstable Ordinance, creating uncertainty that could cause delay, burden, or undue expense. However, the Vineyard Wind Connector 2 is needed in the immediate time frame in order to enable Park City Wind to interconnect to the New England electric grid and provide substantial public benefits. Moreover, the Vineyard Wind Connector 2 is subject to review by the Cape Cod Commission, a regional land use planning and regulatory agency (*see* Chapter 716 of the Acts of 1989) that reviews developments referred to as “Developments of Regional Impact” or “DRIs.”¹⁰ The Cape Cod Commission holds adjudicatory hearings for projects over which the Siting Board has jurisdiction. *See* Cape Cod Commission Regulations, Chapter A, § 7(d). Local permits, including variances and special permits for zoning relief are suspended during review as a DRI, adding significant time to the overall permitting process and delaying resolution of local zoning issues, potentially exacerbating the delay and burden of seeking local zoning relief. Thus, Vineyard Wind is seeking zoning relief from the Department in order to allow for the timely, efficient, and consistent construction of the Vineyard Wind Connector 2, and in several respects its

¹⁰ Any development that is subject to MEPA and requires an EIR, such as the Vineyard Wind Connector 2, is considered a DRI by the Cape Cod Commission. *See* Cape Cod Commission Regulations, Chapter A, § 2(d).

request reflects potential ambiguity as to the application of the Barnstable Ordinance to the Project.

83. To grant a variance, the Barnstable Zoning Board of Appeals would need to find the following in accordance with G.L. c. 40A, § 10: (a) circumstances exist relating to soil conditions, shape or topography of the particular parcel or structure that do not affect generally the zoning district in which the parcel or structure is located; (b) a literal enforcement of the provisions of the bylaw would involve substantial hardship to the applicant, and there is a nexus between the special circumstance and the hardship; and (c) the relief requested may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the bylaw. It is difficult to demonstrate the existence of unique conditions relating to soil conditions, shape or topography of a particular parcel of land or structure. Moreover, variances are a legally disfavored form of relief and, even if granted, can be susceptible to appeal.¹¹ In similar circumstances, the Siting Board has agreed that

variances are difficult to obtain, constitute a disfavored form of relief, and are susceptible to being overturned on appeal. Consequently, the need to obtain variances is likely to result in an adverse outcome, a burdensome requirement, or an unnecessary delay.

and that

¹¹ It is well established that variances are “disfavored.” The Massachusetts Supreme Judicial Court has ruled that they are to be issued sparingly and only if all of the statutory prerequisites have been met. *Norcross v. Bd. of Appeal of the Bldg. Dep’t of the City of Boston*, 255 Mass. 177, 185 (1926) (“[i]t is only in rare instances and under exceptional circumstances that relaxation of the general restrictions established by the statute ought to be permitted. The power granted is only for the relief of specific instances, peculiar in their nature”). This holding has been consistently reiterated in decisions of the courts regarding the issuance of variances. *See, e.g., Guiragossian v. Bd. of Appeals of Watertown*, 21 Mass. App. Ct. 111 (1985).

the potentially discretionary and substantive nature of conditions associated with granting of special permits may result in restrictive or burdensome conditions.

NSTAR Elec. Co., EFSB 14-2/D.P.U. 14-73/14-74, at 97. Indeed, the Siting Board has recently elaborated on its recognition that variances are disfavored and that pursuit of variances is both unlikely to be successful and likely to delay or even prevent project construction:

[V]ariances are a “disfavored” form of relief. *Cornell v. Board of Appeals of Dracut*, 453 Mass. 888, 895 (2009). For this reason, variances are to be “sparingly granted.” *Lussier v. Zoning Board of Appeals of Peabody*, 447 Mass. 531, 534 (2006). Additionally, the Siting Board notes that the grant of a variance may be appealed. See G.L. c. 40A, § 17, see also, 28 Mass. Prac. Series, Real Estate Law, § 23.24 (4th ed.) (“it is not surprising that few variances stand up when challenged in court”). Consequently, the Company’s pursuit of variances could, at a minimum, result in significant Project delay; at worst it would prevent the Project’s construction.

NRG Canal 3 Dev. LLC, EFSB 15-06/D.P.U. 15-180, at 149-50.

84. After reviewing the Barnstable Ordinance, the following sets forth the zoning relief required and the exemptions sought for the Vineyard Wind Connector 2.

85. According to the Zoning Map of the Town of Barnstable, Massachusetts dated September 1, 1998 and last amended February 28, 2019,”¹² the Onshore Substation parcel is located in RF and RF-1 (Residential) districts, a Groundwater Protection Overlay District, an Aquifer Protection Overlay District, and a Resource Protection Overlay District. Parcel 214-001 is located in an RF (Residential) district, an Aquifer Protection Overlay District, and a Resource Protection Overlay District. Because the

¹² The version of the Zoning Map on the Barnstable Town web site states that it is current though April 27, 2017. The two revisions to the Barnstable Ordinance (of which the Zoning Map is a component, per Section 240-6 of the Ordinance) since that date did not affect any district in which the Project will be located.

Onshore Substation and Parcel 214-001 are located in RF and RF-1 (Residential) districts, Groundwater Protection Overlay Districts, Aquifer Protection Overlay Districts, and Resource Protection Overlay Districts, and public utility uses are not expressly allowed in any of those five districts, use variances are or may be required to Sections 240-13, 240-14, 240-7.A, 240-35.E(2), 240-35.F(2), (3), and (4), and 240-36 of the Barnstable Ordinance. Further, Groundwater Protection Overlay Districts prohibit uses that generate, treat, store or dispose of hazardous waste that is subject to G.L. c. 21C and 310 C.M.R. § 30.000 and hazardous substances totaling more than 50 gallons or 25 pounds at any one time. Activities at the Onshore Substation and Parcel 214-001 may generate hazardous wastes on an intermittent basis and will, at least for the Onshore Substation, require the use of transformer dielectric fluids that may under certain circumstances be considered hazardous substances. As the use of such substances is necessary to perform the function of the substation, a use variance may be needed to permit the use of such substances.¹³ Because of the legal uncertainty in obtaining variances, and the potential for adverse interpretations, delay, burden, and undue expense associated with the permitting process and appeals therefrom, Vineyard Wind therefore requests relief from Sections 240-13, 240-14, 240-7.A, 240-35.E(2), 240-35.F(2), (3), and (4), and 240-36 of the Barnstable Ordinance for activities at the Onshore Substation and Parcel 214-001.¹⁴ The

¹³ As noted in the Analysis at Section 1.3.4, there are currently similar uses in the immediate vicinity of the proposed Onshore Substation, including the existing West Barnstable Substation and existing transmission corridors with 115 kV overhead lines.

¹⁴ If Vineyard Wind and Eversource are able to sufficiently advance plans for construction at the West Barnstable Substation, then one or both of them may request associated zoning relief in this proceeding. The West Barnstable Substation is immediately adjacent to Parcel 214-001, and could be expected to require similar zoning relief as is requested for Parcel 214-001 and/or the Onshore Substation, and on the same legal bases as articulated throughout this Section VII for Parcel 214-001.

Department granted an exemption from the same or similar sections of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 142.

86. According to the “Zoning Map of the Town of Barnstable, Massachusetts dated September 1, 1998 and last amended February 28, 2019,” the Onshore Export Cable connecting the Onshore Substation and the West Barnstable Substation would traverse the following Barnstable zoning districts: RF and RF-1 (Residential) districts, an Aquifer Protection Overlay District, a Resource Protection Overlay District, and a Groundwater Protection Overlay District. Notably, while the Noticed Alternative Route for the Onshore Export Cable connecting the Onshore Substation and the West Barnstable Substation is entirely within public road layouts, all or portions of the Preferred Route (and its three variants) for the Onshore Export Cable connecting the Onshore Substation and the West Barnstable Substation are not, and are instead within utility ROW. The applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is ambiguous; the Barnstable Ordinance is presumed to apply to the portions within utility ROW, and may be interpreted to apply to in-road portions, and uncertainty as to its applicability could subject the Vineyard Wind Connector 2 to delay, undue expense, and potential legal challenges. Therefore, use variances are or may be required from Sections 240-13, 240-14, 240-35.E(2), 240-35.F(2), and 240-36 of the Barnstable Ordinance as well as from Section 240-7.A, which requires compliance with

However, in contrast to Parcel 214-001 and the Onshore Substation, the West Barnstable Substation may constitute a non-conforming pre-existing use pursuant to the Barnstable Ordinance. If so, Section 240-94(B) permits the expansion and/or intensification of a pre-existing non-conforming use by special permit from the Zoning Board of Appeals, in lieu of a requesting a use variance from the provisions of Section 240-14. Similar to a variance, however, a special permit can only be issued after a public hearing, is discretionary, and if granted, is subject to appeal.

district regulations. As described above, variances are a legally disfavored form of relief and, even if granted, can be susceptible to appeal. Because of the legal uncertainty in obtaining variances, and the potential for adverse interpretations, delay, burden, and undue expense associated with the permitting process and appeals therefrom, Vineyard Wind seeks an exemption from Sections 240-13, 240-14, 240-35.E(2), 240-35.F(2), 240-36, and 240-7.A of the Barnstable Ordinance for the portion of the Onshore Export Cable connecting the Onshore Substation and the West Barnstable Substation.

87. According to the “Zoning Map of the Town of Barnstable, Massachusetts dated September 1, 1998 and last amended February 28, 2019,” for the routing of the Onshore Export Cable between the landfall sites and the Onshore Substation, all variants of both the Preferred Route and the Noticed Alternative Route are anticipated to pass through a lot known as 2 Short Beach Road. The lot currently contains an unoccupied single-family structure that Vineyard Wind intends to remove. Because the lot is located in the CBD and LBSBNOD districts, and public utility uses are not expressly allowed in those districts, a use variance would be required pursuant to Section 240-131 of the Barnstable Ordinance. In addition, use of the lot for cable access purposes would potentially require dimensional variances from the requirements of the Barnstable Ordinance for minimum yard setbacks, minimum lot frontage, and minimum lot area (Section 240-131.5), as well as variances from the general and special performance standards applicable to development in the CBD and LBSBNOD districts (Sections 240-131.7.D and 240-131.7.E). Use of the lot may also require site plan approval under Sections 240-98 through 240-105 of the Barnstable Ordinance because the proposed use would or may be interpreted to involve “construction, demolition, grading, clearing or

other land development activity” and/or “Establishment of any new use or new construction of any building or structure, including any grading or land development activity” As described above, variances are a legally disfavored form of relief and, even if granted, can be susceptible to appeal. Because of the legal uncertainty in obtaining variances, and the potential for adverse interpretations, delay, burden, and undue expense associated with the permitting process and appeals therefrom, Vineyard Wind seeks an exemption from Sections 240-98 through 240-105, 240-131, 240-131.5, 240-131.7.D and 240-131.7.E of the Barnstable Ordinance for the Onshore Export Cable as it may be located at 2 Short Beach Road.

88. As to those segments of the Onshore Export Cable route that will be installed in a public way, Vineyard Wind recognizes that authorization for such installations are commonly provided through a grant of location pursuant to G.L. c. 166, or in a state highway through an access permit from the Massachusetts Department of Transportation pursuant to G.L. c. 81, § 21. Vineyard Wind does not believe such in-road segments are subject to local zoning, and recognizes that the Department concurs in this belief. *See Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 149-51 (“exemptions from local zoning are not necessary for construction and operation of the Onshore Cables within the meaning of G.L. c. 40A, § 3.”) Nonetheless, in the absence of any a legally binding determination from the Town of Barnstable that the Barnstable Ordinance does *not* apply to in-street construction, and given the recognition by the Department and Siting Board that zoning impediments “may result in Project construction delays could result in substantial public harm,” *id.* at 156, Vineyard Wind requests zoning relief for the in-road segments of the Onshore Export Cable route out of an abundance of caution.

Vineyard Wind acknowledges that should the Department grant the request in this Petition for a comprehensive zoning exemption, individual zoning exemptions for in-road installation of the Onshore Export Cable would be unnecessary.

89. Further to the preceding paragraph, according to the “Zoning Map of the Town of Barnstable, Massachusetts dated September 1, 1998 and last amended February 28, 2019,” the Preferred Route of the Onshore Export Cable between the landfall sites and the Onshore Substation, and the variants thereto, would traverse the following Barnstable zoning districts: RC, RD, RD-1, RF, RF-1 (Residential) districts, a Highway Business (HB) district, a Highway Office (HO) district, the Craigville Beach (CBD) district, the Craigville Beach Neighborhood Overlay (CBNOD) district, the Long Beach/Short Beach Neighborhood Overlay (LBSBNOD) district, the Craigville Village Neighborhood Overlay (CVNOD) district, the Centerville Village (CVD) district, an Aquifer Protection Overlay District, a Resource Protection Overlay District, and a Groundwater Protection Overlay District, except that Variant 2 would not traverse an HB district, but would pass through an RC-2 (Residential) district and an HO district. The applicability of the Barnstable Ordinance to the underground Onshore Export Cable is ambiguous; it may be interpreted to apply, and uncertainty as to its applicability could subject the Vineyard Wind Connector 2 to delay, undue expense, and potential legal challenges. Therefore, use variances are or may be required from Sections 240-11, 240-13, 240-14, 240-15, 240-25, 240-26, 240-35.E(2), 240-35.F(2), 240-36, 240-130, and 240-131 of the Barnstable Ordinance as well as from Section 240-7.A, which requires compliance with district regulations. Note that Variant 2 of the Preferred Route does not pass through a HB district and would not require an exemption from Section 240-25;

conversely, only Variant 2 of the Preferred Route passes through a RC-2 and HO district, and thus only Variant 2 of the Preferred Route would require exemptions from 240-15 and 240-26, respectively. As described above, variances are a legally disfavored form of relief and, even if granted, can be susceptible to appeal. Because of the legal uncertainty in obtaining variances, and the potential for adverse interpretations, delay, burden, and undue expense associated with the permitting process and appeals therefrom, Vineyard Wind seeks an exemption from Sections 240-11, 240-13, 240-14, 240-15, 240-25, 240-26, 240-35.E(2), 240-35.F(2), 240-36, 240-130, 240-131, and 240-7.A of the Barnstable Ordinance for portion of the Onshore Export Cable between the landfall sites and the Onshore Substation.

90. According to the Zoning Map of the Town of Barnstable, Massachusetts dated September 1, 1998 and last amended February 28, 2019, the Noticed Alternative Route, including its variants, would traverse the Craigville Beach (CBD) district, the Craigville Beach Neighborhood Overlay (CBNOD), the Long Beach/Short Beach Neighborhood Overlay (LBSBNOD) district, the Craigville Village Neighborhood Overlay (CVNOD) district, the Centerville Village (CVD) district, a RC, RC-2, RD-1, RF, RF-1, and a Highway Office (HO) district, as well as a Groundwater Protection Overlay District, an Aquifer Protection Overlay District, and a Resource Protection Overlay District (RPOD). The applicability of the Barnstable Ordinance to the underground Onshore Export Cable is ambiguous; it may be interpreted to apply, and uncertainty as to its applicability could subject the Vineyard Wind Connector 2 to delay, undue expense, and potential legal challenges. Therefore, if the Siting Board approved the Noticed Alternative Route, use variances would or may be required from Sections

240-11, 240-13, 240-14, 240-15, 240-26, 240-35.E(2), 240-35.F(2), 240-36, 240-130, and 240-131 of the Barnstable Ordinance as well as from Section 240-7.A, which requires compliance with district regulations. As described above, variances are a legally disfavored form of relief and, even if granted, can be susceptible to appeal. Because of the legal uncertainty in obtaining variances, and the potential for adverse interpretations, delay, burden, and undue expense associated with the permitting process and appeals therefrom, Vineyard Wind seeks an exemption from Sections 240-11, 240-13, 240-14, 240-15, 240-26, 240-35.E(2), 240-35.F(2), 240-36, 240-130, 240-131, and 240-7.A of the Barnstable Ordinance for the Onshore Export Cable in the event that the Siting Board approves the Noticed Alternative Route.¹⁵

91. Section 240-10.A of the Barnstable Ordinance prohibits from all zoning districts “[a]ny use which is injurious, noxious or offensive by reason of the emission of odor, fumes, dust, smoke, vibration, noise, lighting or other cause.” The activities at the Onshore Substation and Parcel 214-001 may emit sound, light or vibration that, subjectively, may be deemed injurious, noxious or offensive. Enforcement of this subjective and discretionary standard is uncertain. Thus, to the extent that the Project could not meet this subjective standard, a variance would be required. As described above, variances are a legally disfavored form of relief and, even if granted, can be susceptible to appeal. Because of the legal uncertainty in obtaining variances, and the potential for adverse interpretations, delay, burden, and undue expense associated with the permitting process and appeals therefrom, Vineyard Wind seeks an exemption from

¹⁵ Vineyard Wind’s position articulated in the previous paragraph with respect to the in-road portions of the Preferred Route applies equally to the Noticed Alternative Route.

Section 240-10.A of the Barnstable Ordinance for activities at the Onshore Substation and Parcel 214-001. The Department granted an exemption from this Section of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 143-44 (granting an exemption after concluding that Section 240-10.A “contains no objective standards, nor does it limit the discretion of the Building Commissioner, leaving open the possibility – however remote – of the Company being unable to construct and operate the Substation in Barnstable absent a zoning variance.”).

92. Sections 240-13 and 240-14 of the Barnstable Ordinance impose a 30-foot (or two story) height restriction on buildings located in the RF and RF-1 (Residential) district. The Barnstable Ordinance is unclear as to whether this height restriction would apply to equipment at the Onshore Substation and Parcel 214-001, such as a lightning mast and transformers, which are necessary for would exceed 30-feet in height. *Vineyard Wind* does not believe that the transformers or lightning mast must comply with the maximum building height requirement. However, the building inspector’s interpretation of the Barnstable Ordinance could differ from *Vineyard Wind*’s. If the height restriction is applicable, a variance would be required. As described above, variances are a legally disfavored form of relief and, even if granted, can be susceptible to appeal. Because of the legal uncertainty in obtaining variances, and the potential for adverse interpretations, delay, burden, and undue expense associated with the permitting process and appeals therefrom, *Vineyard Wind* seeks an exemption from the height restrictions of Sections 240-13 and 240-14 of the Barnstable Ordinance for the Onshore Substation and Parcel 214-001. The Department granted an exemption from the height limitations of the

Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 144. Section 240-13 and 240-14 of the Barnstable Ordinance impose upon structures in the RF (Residential) district minimum yard setbacks of 30 feet from the front lot line and 15 feet from the side and rear lot lines, and minimum frontage of 150 feet on a public way. It is unclear whether the required substation construction at the Onshore Substation or Parcel 214-001 will be able to comply with the minimum yard setbacks. Nor does Parcel 214-001 have the minimum required frontage, as it has no frontage on a public way. As described above, variances are a legally disfavored form of relief and, even if granted, can be susceptible to appeal. Because of the legal uncertainty in obtaining variances, and the potential for adverse interpretations, delay, burden, and undue expense associated with the permitting process and appeals therefrom, Vineyard Wind seeks an exemption from the minimum yard setback requirements (for the Onshore Substation and Parcel 214-001) and the minimum frontage requirements (for Parcel 214-001) of Sections 240-13 and 240-14 of the Barnstable Ordinance.¹⁶

93. The Barnstable Ordinance, by Sections 240-61.D, 240-65, and 240-66, prohibits danger and warning signs in all districts, limits the total number of signs, and limits the size of signs individually and in total. Signage will be posted at certain intervals along the perimeter of the Onshore Substation and Parcel 214-001 with warnings advising of the presence of high voltage and providing emergency contact

¹⁶ At this time, final engineering designs for the Onshore Substation and the use of Parcel 214-001 are not yet available. It is possible that relief from additional dimensional requirements set forth in Sections 240-13 and 240-14 of the Barnstable Ordinance, such as those relating to height or setbacks, may be required. If necessary, Vineyard Wind will update the Siting Board as the substation design is finalized.

information. Additional signs with safety information will be posted at each access point. A variance would therefore be required for the necessary safety and warning signs. As described above, variances are a legally disfavored form of relief and, even if granted, can be susceptible to appeal. Because of the legal uncertainty in obtaining variances, and the potential for adverse interpretations, delay, burden, and undue expense associated with the permitting process and appeals therefrom, Vineyard Wind seeks an exemption from Sections 240-61.D, 240-65, and 240-66 of the Barnstable Ordinance for signage at the Onshore Substation and Parcel 214-001. The Department granted an exemption from this Section of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 144-45.

94. The Onshore Substation, the work at Parcel 214-001, and the Onshore Export Cable do or may require site plan approval under Sections 240-98 through 240-105 of the Barnstable Ordinance because they would or may be interpreted to involve “construction, demolition, grading, clearing or other land development activity” and/or “Establishment of any new use or new construction of any building or structure, including any grading or land development activity” Barnstable Ordinance Sections 240-100.A, 240-100.B. Section 240-101 prohibits issuance of building permits or occupancy permits or carrying out any activity for which site plan approval is required until site plan approval has been obtained. Site plan approval requires compliance “with zoning and other applicable regulations and standards.” Barnstable Ordinance Section 240-105.E. As described herein, the Onshore Substation, Parcel 214-001, and the Onshore Export Cable cannot meet all such requirements or are subject to uncertainty with respect to their ability to meet such requirements. Further, Vineyard Wind must

have the discretion to design the Onshore Substation, Parcel 214-001, the Onshore Export Cable in a manner consistent with established industry standards. Site plan approval is discretionary and, even if granted, subject to appeal. Compliance with the site plan approval requirements would be costly and burdensome, and would subject the Project to discretionary approvals and unclear requirements. The process is potentially iterative and time consuming, threatening significant delays for the Project. Moreover, notwithstanding that Vineyard Wind's construction of the Onshore Substation, Parcel 214-001, and the Onshore Export Cable could be interpreted to require site plan approval under Barnstable Ordinance Sections 240-100.A, 240-100.B, it would appear that the purpose of site plan review, as described in the Barnstable Ordinance, would not apply to the Onshore Substation, Parcel 214-001, or the Onshore Export Cable. According to Barnstable Ordinance Sections 240-98:

Developments designed to be used for business and professional offices, commercial establishments, industrial facilities, medical-service facilities, public recreational facilities and multiple-family dwellings, together with their associated outdoor areas for vehicular movement and parking, invite and accommodate varying degrees of open and continuous use by the general public. Owing to their physical characteristic and the nature of their operations, such developments may affect neighboring properties and adjacent sidewalks and streets. It is in the interest of the community to promote functional and aesthetic design, construction and maintenance of such developments and to minimize any harmful effects on surrounding areas.

The Department has specifically found that the scope of this particular provision was meant to address projects that “differ significantly in nature and scope” from the construction of a substation. *Commonwealth Elec. Co.*, D.T.E. 03-7, at 14-15 (2003). Even if the discretionary site plan approval were obtained, it would be subject to appeal. In order to avoid the delay, cost, potential inconsistency with industry standards, and

uncertainty associated with obtaining site plan approval, and the prospect of appeal, Vineyard Wind requests an exemption from Sections 240-98 through 240-105 of the Barnstable Ordinance for the Onshore Substation, Parcel 214-001, and the Onshore Export Cable. The Department granted an exemption from this Section of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 146.

95. Section 240-124.A of the Barnstable Ordinance requires a performance bond of

not less than \$4 per foot of frontage against possible costs due to erosion or damage within passable street rights-of-way shall be required by the Building Commissioner prior to authorization of any new building, and a bond or cash security may be required by the Building Commissioner for other construction

The applicability of this Section to the Onshore Substation, Parcel 214-001, and the Onshore Export Cable is ambiguous; it may be interpreted to apply to the Project. A performance bond is not necessary because Vineyard Wind has committed to restoring all affected public roads to as-new condition after completing construction, as described in Section 5.4.3.3 of the Analysis. However, the performance bond requirements are not defined in the Barnstable Ordinance and are set on a project-by-project basis by the Building Commissioner. The amount of these bonds is to be determined by the Building Commissioner in his or her sole discretion. Because the amount of the bonds is unfixed and there is no process for how these determinations are to be made, the potential for delay is great. Further, this section requires certification of compliance with yard requirements by a registered land surveyor. Therefore, a variance is or may be required. As described above, variances are a legally disfavored form of relief and, even if granted,

can be susceptible to appeal. Because of the legal uncertainty in obtaining variances, and the potential for adverse interpretations, delay, burden, and undue expense associated with the permitting process and appeals therefrom, Vineyard Wind seeks an exemption from Section 240-124.A of the Barnstable Ordinance for the Onshore Substation, Parcel 214-001, and the Onshore Export Cable. The Department granted an exemption from this Section of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 145.

96. Section 240-124.B of the Barnstable Ordinance states:

No premises and no building or structure erected, altered or in any way changed as to construction or use, under a permit or otherwise, shall be occupied or used without an occupancy permit signed by the Building Commissioner. Such permit shall not be issued until the premises, building or structure and its uses and accessory uses comply in all respects with this chapter.

The applicability of this Section to the Onshore Substation, Parcel 214-001, and the Onshore Export Cable is ambiguous; it may be interpreted to apply to the Project.

Variances or exemptions from the Department to other aspects of the Barnstable Ordinance will be necessary for the Onshore Substation, Parcel 214-001, and the Onshore Export Cable. The Project may not, therefore, be in compliance with all provisions of the Barnstable Ordinance for the purposes of Section 240-124.B. Thus, a variance from Section 240-124.B of the Barnstable Ordinance is or may be necessary. As described above, variances are a legally disfavored form of relief and, even if granted, can be susceptible to appeal. Because of the legal uncertainty in obtaining variances, and the potential for adverse interpretations, delay, burden, and undue expense associated with the permitting process and appeals therefrom, Vineyard Wind seeks an exemption from Section 240-124.B of the Barnstable Ordinance for the Onshore Substation, Parcel 214-

001, and the Onshore Export Cable. The Department granted an exemption from this Section of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 146.

97. Sections 240-48 through 240-58 of the Barnstable Ordinance establish off-street parking requirements for “new, expanded or intensified uses within the Town,” and no use may be intensified “without providing adequate off-street parking.” Barnstable Ordinance Sections 240-48, 240-49. The Barnstable Ordinance regulates several aspects of parking, including, among other things, the minimum number of parking spaces required. The number of parking spaces required for the Onshore Substation and Parcel 214-001 would appear to fall into the catch-all category of “[a]ll other uses” where the number of spaces required is discretionary: “[a]s determined by the Building Commissioner.” Barnstable Ordinance Section 240-56. Parking at the Onshore Substation and Parcel 214-001 will be infrequent because the substation will generally not be manned. Although the Zoning Board of Appeals can reduce the number of parking spaces required by the Building Commissioner by special permit (Barnstable Ordinance Section 240-57), seeking such a special permit would be burdensome and unnecessary in light of the other exemptions required and would be subject to appeal. Moreover, *Vineyard Wind* will incorporate adequate loading space on the site to conform to proper construction techniques for electric transmission facilities. The uncertainty caused by a discretionary requirement with respect to parking spaces creates the potential for adverse interpretations, delay, burden, and undue expense. Accordingly, *Vineyard Wind* seeks an exemption from Section 240-56 of the Barnstable Ordinance for the Onshore Substation and Parcel 214-001. The Department granted an exemption from this

Section of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 147 (concluding that where “the Substation generally will not have personnel working on-site,” it is “is appropriate to allow the Company to design the Substation layout in accordance with [industry] standards” and declining to “require as a condition to this Decision that a certain number of parking spaces be included on the Substation site.”).

98. The following table summarizes the individual zoning exemptions requested from the Barnstable Ordinance:

Zoning Provision from which Exemption is Requested	Local Zoning Relief Required	Why Exemption is Required
I. NEW ONSHORE SUBSTATION (Shootflying Hill Road)		
Use Regulations Section 240-13	Use Variance	A use variance is or may be required because Section 240-13 does not expressly allow public utility uses in the RF-1 (Residential) district, the district in which the Onshore Substation is located. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.
Use Regulations Section 240-14	Use Variance	A use variance is or may be required because Section 240-14 does not expressly allow public utility uses in the RF and RF-1 (Residential) districts, the districts in which the Onshore Substation is located. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.

<p>Use Regulations Section 240-7.A</p>	<p>Use Variance</p>	<p>A use variance is or may be required because Section 240-7 prohibits the use of any building or premises “for any purpose except in conformity with all of the regulations herein specified for the district in which it is located,” and public utility uses are not expressly allowed in the RF or RF-1 district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Groundwater Protection Overlay District Section 240-35.F(2), (3) and (4)</p>	<p>Use Variance</p>	<p>The Onshore Substation is located in the Groundwater Protection Overlay District. Public utility uses are not expressly allowed in the underlying RF or RF-1 districts, thus a use variance would be required to allow such a use in the Groundwater Protection Overlay District. In addition, in the Groundwater Protection Overlay District, uses that generate, treat, store or dispose of hazardous waste that is subject to G.L. c. 21C and 310 C.M.R. § 30.000 are prohibited. Furthermore, the Groundwater Protection Overlay District limits the total area of a lot that can be rendered impervious by the installation of buildings, structures and paved surfaces (i.e., not more than 50% of the upland area if all runoff is recharged on site, or the greater of 15% of the lot areas or 2,500 square feet if less than all runoff is recharged on site), and requires that a minimum of 30% of the total upland area be retained in its natural state. To the extent the Onshore Substation could be found not to comply with these requirements relating to hazardous waste and substances, a use variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>

<p>Prohibited Uses Section 240-10.A</p>	<p>Use Variance</p>	<p>Any use that is injurious, noxious or offensive by reason of odor, fumes, dust, smoke, vibration, noise, lighting, or other cause is prohibited. The Project may emit sound, light, or vibration that subjectively may be deemed injurious, noxious or offensive. Thus, a variance would or may be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Structure Height Sections 240-13 and 240-14</p>	<p>Dimensional Variance</p>	<p>It is unclear whether the 30-foot height restriction applies to the Project's lightning masts and transformers, which would exceed 30 feet in height. If the height restriction is applicable, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>
<p>Minimum Yard Setbacks Sections 240-13 and 240-14</p>	<p>Dimensional Variance</p>	<p>It is unclear whether the Project will comply with the minimum yard setbacks under the Barnstable Ordinance which are 30 feet from the front lot line and 15 feet from the side and rear lot lines. If the Project does not comply with the minimum yard setbacks, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>
<p>Signs Article VII, Sections 240-61.D, 240-63</p>	<p>Variance</p>	<p>Danger and warning signs are prohibited in any district, thus a variance would be required for the necessary danger and safety signs normally posted on property used for similar purposes. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>

<p>Site Plan Review Article IX Sections 240-98 through 240-105</p>	<p>Site Plan Approval</p>	<p>Site Plan approval requires Project compliance with all applicable requirements of the Barnstable Ordinance, and the Project cannot meet all such requirements or is subject to significant uncertainty with respect to their ability to meet such requirements. Vineyard Wind must have the discretion to design the Project and site layout in a manner consistent with established industry standards. Site Plan approval is discretionary and, even if granted, subject to appeal.</p>
<p>Performance Bonds Section 240-124.A</p>	<p>Variance</p>	<p>The performance bond requirements are not defined in the Barnstable Ordinance and are set on a project-by-project basis by the Building Commissioner. Because the amount of the bonds is unfixed and there is no process for how these determinations are to be made, the potential for delay is great. A variance would be required, but the legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Occupancy Permits Section 240-124.B</p>	<p>Variance</p>	<p>An occupancy permit cannot be granted unless a structure or use complies in all respects with the Barnstable Ordinance. If any exemptions or variances are granted, the Project would not be in compliance with those provisions of the Barnstable Ordinance. In that case, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>

<p>Off-Street Parking Article VI Sections 240-48 through 240-58</p>	<p>Special Permit/ Variance</p>	<p>Under the Barnstable Ordinance, the minimum number of parking spaces is determined by the Building Commissioner. Because the Building Commissioner has discretion to impose parking requirements inconsistent with the proposed Onshore Substation, a special permit (with respect to number of parking spaces) or variance (with respect to other requirements) may be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal. A special permit can only be issued after a public hearing, is discretionary, and if granted, is subject to appeal.</p>
<p>III. PARCEL 214-001¹⁷</p>		
<p>Use Regulations Section 240-14</p>	<p>Use Variance</p>	<p>A use variance is or may be required because Section 240-14 does not expressly allow public utility uses in RF (Residential) district, the district in which the New Substation is located. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Use Regulations Section 240-7.A</p>	<p>Use Variance</p>	<p>A use variance is or may be required because Section 240-7 prohibits the use of any building or premises “for any purpose except in conformity with all of the regulations herein specified for the district in which it is located,” and public utility uses are not expressly allowed in the RF district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>

¹⁷ As noted above in note 14, the West Barnstable Substation is immediately adjacent to Parcel 214-001, and could require similar zoning relief as is summarized here in order to accommodate the Vineyard Wind Connector 2.

<p>Aquifer Protection Overlay District Section 240-35.E(2)</p>	<p>Use Variance</p>	<p>Parcel 214-001 is located in the Aquifer Protection Overlay District. Public utility uses are not expressly allowed in the underlying RF district, thus a use variance would be required to allow such a use in the Aquifer Protection Overlay District. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Resource Protection Overlay District Section 240-36</p>	<p>Use Variance</p>	<p>Parcel 214-001 is located in a Resource Protection Overlay District. Public utility uses are not expressly allowed in the underlying RF district, thus a use variance would be required to allow such a use in the Aquifer Protection Overlay District. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Prohibited Uses Section 240-10.A</p>	<p>Use Variance</p>	<p>Any use that is injurious, noxious or offensive by reason of odor, fumes, dust, smoke, vibration, noise, lighting, or other cause is prohibited. The Project may emit sound, light, or vibration that subjectively may be deemed injurious, noxious or offensive. Thus, a variance would or may be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Structure Height Section 240-14</p>	<p>Dimensional Variance</p>	<p>It is unclear whether the 30-foot height restriction applies to the Project's lightning masts and transformers, which would exceed 30 feet in height. If the height restriction is applicable, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>

<p>Minimum Yard Setbacks Section 240-14</p>	<p>Dimensional Variance</p>	<p>It is unclear whether the Project will comply with the minimum yard setbacks under the Barnstable Ordinance which are 30 feet from the front lot line and 15 feet from the side and rear lot lines. If the Project does not comply with the minimum yard setbacks, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>
<p>Minimum Lot Frontage Section 240-14</p>	<p>Dimensional Variance</p>	<p>The Project site does not have frontage on a public way and so does not comply with the minimum lot frontage under the Barnstable Ordinance which is 150 feet. A variance is required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>
<p>Signs Article VII, Sections 240-61.D, 240-63</p>	<p>Variance</p>	<p>Danger and warning signs are prohibited in any district, thus a variance would be required for the necessary danger and safety signs normally posted on property used for similar purposes. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Site Plan Review Article IX Sections 240-98 through 240-105</p>	<p>Site Plan Approval</p>	<p>Site Plan approval requires Project compliance with all applicable requirements of the Barnstable Ordinance, and the Project cannot meet all such requirements or is subject to significant uncertainty with respect to their ability to meet such requirements. Vineyard Wind must have the discretion to design the Project and site layout in a manner consistent with established industry standards. Site Plan approval is discretionary and, even if granted, subject to appeal.</p>

<p>Performance Bonds Section 240-124.A</p>	<p>Variance</p>	<p>The performance bond requirements are not defined in the Barnstable Ordinance and are set on a project-by-project basis by the Building Commissioner. Because the amount of the bonds is unfixed and there is no process for how these determinations are to be made, the potential for delay is great. A variance would be required, but the legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Occupancy Permits Section 240-124.B</p>	<p>Variance</p>	<p>An occupancy permit cannot be granted unless a structure or use complies in all respects with the Barnstable Ordinance. If any exemptions or variances are granted, the Project would not be in compliance with those provisions of the Barnstable Ordinance. In that case, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Off-Street Parking Article VI Sections 240-48 through 240-58</p>	<p>Special Permit/ Variance</p>	<p>Under the Barnstable Ordinance, the minimum number of parking spaces is determined by the Building Commissioner. Because the Building Commissioner has discretion to impose parking requirements inconsistent with the proposed New Substation, a special permit (with respect to number of parking spaces) or variance (with respect to other requirements) may be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal. A special permit can only be issued after a public hearing, is discretionary, and if granted, is subject to appeal.</p>
<p>IV. OFFSHORE EXPORT CABLE FROM LANDFALL TO THE ONSHORE SUBSTATION</p>		

A. Preferred Route and Variants^{18, 19}		
Use Regulations Section 240-131	Use Variance	This portion of the Onshore Export Cable will pass through the Craigville Beach (CBD) district, Craigville Beach Neighborhood Overlay (CBNOD) district, Long Beach/Short Beach Neighborhood Overlay (LBSBNOD) district, and Craigville Village Neighborhood Overlay (CVNOD) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-131 does not expressly allow public utility uses in the CBD, CBNOD, LBSBNOD or CVNOD districts. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal. Moreover, because Section 240-131.4(A)(1) affirmatively prohibits “any use not expressly allowed herein”, because Section 240-131.8(A) does not incorporate Section 240-125 (the provision of the Ordinance authorizing use variances), and because Section 240.131.8(B) states that in the event of a conflict with other provisions of the Ordinance, Section 240-131 shall control, a use variance may not be available.

¹⁸ Variant 2 of the Preferred Route does not pass through a HB (Highway Business) district and would, therefore, not require an exemption from the corresponding section.

¹⁹ Only Variant 2 of the Preferred Route passes through a RC-2 (Residential) district and a HO (Highway Office) district.

<p>Minimum Yard Setbacks Section 240-131.5</p>	<p>Dimensional Variance</p>	<p>It is unclear whether the portion of the Onshore Export Cable that passes through 2 Short Beach Road will comply with the minimum yard setbacks under the Barnstable Ordinance which are 20 feet from the front lot line and 15 feet from the side and rear lot lines. If the Project does not comply with the minimum yard setbacks, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>
<p>Minimum Lot Frontage Section 240-131.5</p>	<p>Dimensional Variance</p>	<p>The Project site has 100 feet of frontage on 2 Short Beach Road and does not comply with the minimum lot frontage under the Barnstable Ordinance which is 125 feet. A variance is required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>
<p>Minimum Lot Area Section 240-131.5</p>	<p>Dimensional Variance</p>	<p>The Project site located at 2 Short Beach Road has a lot area of approximately 0.28 acres and does not comply with the minimum lot area under the Barnstable Ordinance which is 87,120 square feet. A variance is required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>
<p>Performance Standards Sections 240-131.7.D and 240-131.7.E</p>	<p>Variance</p>	<p>The portion of the Project located at 2 Short Beach Road may not comply with the general and special performance standards applicable to development in the CBD and LBSBNOD districts including the following; (1) new non-water-dependent development must be set back at least 50 feet from the top of the coastal bank resource area, and (2) no development is permitted in the V (Velocity) Zone. If the Project does not comply with the performance standards, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>

<p>Use Regulations Section 240-130</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through CVD (Centerville Village) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a regulatory agreement with the Town may be required because Section 240-130 does not expressly allow public utility uses in the CVD district. A regulatory agreement is discretionary and subject to appeal. In the event that Vineyard Wind and the Town are unable to agree upon a regulatory agreement to permit a public utility use in the CVD district, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal. Moreover, because Section 240-130.5(A) does not incorporate Section 240-125 (the provision of the Ordinance authorizing use variances), and because Section 240.130.5(B) states that in the event of a conflict with other provisions of the Ordinance, Section 240-130 shall control, a use variance may not be available.</p>
<p>Use Regulations Section 240-11</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through RD-1 (Residential) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-11 does not expressly allow public utility uses in the RD-1 district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>

<p>Use Regulations Section 240-13</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through RC (Residential) and RF-1 (Residential) districts. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-13 does not expressly allow public utility uses in the RC or RF-1 districts. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Use Regulations Section 240-14</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through RF (Residential) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-14 does not expressly allow public utility uses in the RF district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Use Regulations Section 240-25</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through HB (Highway Business) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-25 does not expressly allow public utility uses in the HB district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>

<p>Use Regulations Section 240-26 ²⁰</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through HO (Highway Office) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-25 does not expressly allow public utility uses in the HO district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Use Regulations Section 240-15 ²¹</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through RC-2 (Residential) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-14 does not expressly allow public utility uses in the RC-2 district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Use Regulations Section 240-7.A</p>	<p>Use Variance</p>	<p>Although applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, a use variance may be required because Section 240-7 prohibits the use of any premises “for any purpose except in conformity with all of the regulations herein specified for the district in which it is located,” and public utility uses are not expressly allowed in the CBD, CBNOD, CVNOD, LBSBNOD, CVD, RC, RC-2, RD-1, RF, RF-1, HB or HO districts. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>

²⁰ See *supra* note 19.

²¹ *Id.*

<p>Aquifer Protection and Groundwater Protection Overlay Districts Sections 240-35.E(2), 240- 35.F(2)</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through Aquifer Protection and Groundwater Protection Overlay Districts. Public utility uses are not expressly allowed in the underlying CBD, CBNOD, CVNOD, LBSBNOD, CVD, RC, RC-2, RD-1, RF, RF-1, HB or HO districts, thus, although applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, a use variance may be required to allow such a use in the Aquifer Protection and Groundwater Protection Overlay Districts. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Resource Protection Overlay District Section 240-36</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through a Resource Protection Overlay District. Public utility uses are not expressly allowed in the underlying RC, RC-2, RD-1, RF or RF-1 districts, thus, although applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, a use variance may be required to allow such a use in the Resource Protection Overlay District. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>B. Noticed Alternative Route</p>		

<p>Use Regulations Section 240-131</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through the Craigville Beach (CBD) district, Craigville Beach Neighborhood Overlay (CBNOD) district, Long Beach/Short Beach Neighborhood Overlay (LBSBNOD) district, and Craigville Village Neighborhood Overlay (CVNOD) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-131 does not expressly allow public utility uses in the CBD, CBNOD, LBSBNOD or CVNOD districts. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal. Moreover, because Section 240-131.4(A)(1) affirmatively prohibits “any use not expressly allowed herein”, because Section 240-131.8(A) does not incorporate Section 240-125 (the provision of the Ordinance authorizing use variances), and because Section 240.131.8(B) states that in the event of a conflict with other provisions of the Ordinance, Section 240-131 shall control, a use variance may not be available.</p>
<p>Minimum Yard Setbacks Section 240-131.5</p>	<p>Dimensional Variance</p>	<p>It is unclear whether the portion of the Onshore Export Cable that passes through 2 Short Beach Road will comply with the minimum yard setbacks under the Barnstable Ordinance which are 20 feet from the front lot line and 15 feet from the side and rear lot lines. If the Project does not comply with the minimum yard setbacks, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>

<p>Minimum Lot Frontage Section 240-131.5</p>	<p>Dimensional Variance</p>	<p>The Project site has 100 feet of frontage on 2 Short Beach Road and does not comply with the minimum lot frontage under the Barnstable Ordinance which is 125 feet. A variance is required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>
<p>Minimum Lot Area Section 240-131.5</p>	<p>Dimensional Variance</p>	<p>The Project site located at 2 Short Beach Road has a lot area of approximately 0.28 acres and does not comply with the minimum lot area under the Barnstable Ordinance which is 87,120 square feet. A variance is required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>
<p>Performance Standards Sections 240-131.7.D and 240-131.7.E</p>	<p>Variance</p>	<p>The portion of the Project located at 2 Short Beach Road may not comply with the general and special performance standards applicable to development in the CBD and LBSBNOD districts including the following; (1) new non-water-dependent development must be set back at least 50 feet from the top of the coastal bank resource area, and (2) no development is permitted in the V (Velocity) Zone. If the Project does not comply with the performance standards, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted subject to appeal.</p>

<p>Use Regulations Section 240-130</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through CVD (Centerville Village) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a regulatory agreement with the Town may be required because Section 240-130 does not expressly allow public utility uses in the CVD district. A regulatory agreement is discretionary and subject to appeal. In the event that Vineyard Wind and the Town are unable to agree upon a regulatory agreement to permit a public utility use in the CVD district, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal. Moreover, because Section 240-130.5(A) does not incorporate Section 240-125 (the provision of the Ordinance authorizing use variances), and because Section 240.130.5(B) states that in the event of a conflict with other provisions of the Ordinance, Section 240-130 shall control, a use variance may not be available.</p>
<p>Use Regulations Section 240-11</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through RD-1 (Residential) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-11 does not expressly allow public utility uses in the RD-1 district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>

<p>Use Regulations Section 240-13</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through RC (Residential) and RF-1 (Residential) districts. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-13 does not expressly allow public utility uses in the RC or RF-1 districts. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Use Regulations Section 240-14</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through RF (Residential) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-14 does not expressly allow public utility uses in the RF district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Use Regulations Section 240-26</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through HO (Highway Office) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-25 does not expressly allow public utility uses in the HO district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Use Regulations Section 240-15</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through RC-2 (Residential) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-14 does not expressly allow public utility uses in the RC-2 district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>

<p>Use Regulations Section 240-7.A</p>	<p>Use Variance</p>	<p>Although applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, a use variance may be required because Section 240-7 prohibits the use of any premises “for any purpose except in conformity with all of the regulations herein specified for the district in which it is located,” and public utility uses are not expressly allowed in the CBD, CBNOD, CVNOD, LBSBNOD, CVD, RC, RC-2, RD-1, RF, RF-1 or HO districts. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Aquifer Protection and Groundwater Protection Overlay Districts Sections 240-35.E(2), 240- 35.F(2)</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through Aquifer Protection and Groundwater Protection Overlay Districts. Public utility uses are not expressly allowed in the underlying CBD, CBNOD, CVNOD, LBSBNOD, CVD, RC, RC-2, RD-1, RF, RF-1 or HO districts, thus, although applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, a use variance may be required to allow such a use in the Aquifer Protection and Groundwater Protection Overlay Districts. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Resource Protection Overlay District Section 240-36</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through a Resource Protection Overlay District. Public utility uses are not expressly allowed in the underlying RC, RC-2, RD-1, RF or RF-1 districts, thus, although applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, a use variance may be required to allow such a use in the Resource Protection Overlay District. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>

C. All Routes		
Site Plan Review Article IX Sections 240-98 through 240-105	Site Plan Approval	Site Plan approval requires Project compliance with all applicable requirements of the Barnstable Ordinance, and the Project cannot meet all such requirements or is subject to significant uncertainty with respect to its ability to meet such requirements. Vineyard Wind must have the discretion to design the Project and site layout in a manner consistent with established industry standards. Site Plan approval is discretionary and, even if granted, subject to appeal.
Performance Bonds Section 240-124.A	Variance	The performance bond requirements are not defined in the Barnstable Ordinance and are set on a project-by-project basis by the Building Commissioner. Because the amount of the bonds is unfixed and there is no process for how these determinations are to be made, the potential for delay is great. A variance would be required, but the legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.
Occupancy Permits Section 240-124.B	Variance	An occupancy permit cannot be granted unless a structure or use complies in all respects with the Barnstable Ordinance. If any exemptions or variances are granted, the Project would not be in compliance with those provisions of the Barnstable Ordinance. In that case, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.
V. ONSHORE EXPORT CABLE FROM ONSHORE SUBSTATION TO WEST BARNSTABLE SUBSTATION		
Preferred Route and Variants and Noticed Alternative Route		

<p>Use Regulations Section 240-13</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through the RF-1 (Residential) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-13 does not expressly allow public utility uses in the RF-1 district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Use Regulations Section 240-14</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through RF (Residential) district. Applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, and a use variance may be required because Section 240-14 does not expressly allow public utility uses in the RF district. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Use Regulations Section 240-7.A</p>	<p>Use Variance</p>	<p>Although applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, a use variance may be required because Section 240-7 prohibits the use of any premises “for any purpose except in conformity with all of the regulations herein specified for the district in which it is located,” and public utility uses are not expressly allowed in the RF or RF-1 districts. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>

<p>Aquifer Protection and Groundwater Protection Overlay Districts Sections 240-35.E(2), 240- 35.F(2)</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through Aquifer Protection and Groundwater Protection Overlay Districts. Public utility uses are not expressly allowed in the underlying RF or RF-1 districts, thus, although applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, a use variance may be required to allow such a use in the Aquifer Protection and Groundwater Protection Overlay Districts. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Resource Protection Overlay District Section 240-36</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through a Resource Protection Overlay District. Public utility uses are not expressly allowed in the underlying RF or RF-1 districts, thus, although applicability of the Barnstable Ordinance to this portion of the Onshore Export Cable is uncertain, a use variance may be required to allow such a use in the Resource Protection Overlay District. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.</p>
<p>Site Plan Review Article IX Sections 240-98 through 240-105</p>	<p>Site Plan Approval</p>	<p>Site Plan approval requires Project compliance with all applicable requirements of the Barnstable Ordinance, and the Project cannot meet all such requirements or is subject to significant uncertainty with respect to its ability to meet such requirements. Vineyard Wind must have the discretion to design the Project and site layout in a manner consistent with established industry standards. Site Plan approval is discretionary and, even if granted, subject to appeal.</p>

Performance Bonds Section 240-124.A	Variance	The performance bond requirements are not defined in the Barnstable Ordinance and are set on a project-by-project basis by the Building Commissioner. Because the amount of the bonds is unfixed and there is no process for how these determinations are to be made, the potential for delay is great. A variance would be required, but the legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.
Occupancy Permits Section 240-124.B	Variance	An occupancy permit cannot be granted unless a structure or use complies in all respects with the Barnstable Ordinance. If any exemptions or variances are granted, the Project would not be in compliance with those provisions of the Barnstable Ordinance. In that case, a variance would be required. The legal standard for obtaining a variance is difficult to meet. Variances are a disfavored form of relief and, even if granted, subject to appeal.

VIII. THE VINEYARD WIND CONNECTOR 2 REQUIRES A COMPREHENSIVE ZONING EXEMPTION

99. Vineyard Wind respectfully requests a comprehensive exemption from the operation of the Barnstable Ordinance for the Vineyard Wind Connector 2.

100. The Department granted Vineyard Wind a comprehensive zoning exemption from the operation of the Barnstable Ordinance in *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 156, recognizing “the potential for zoning impediments that may result in Project construction delays [and] could result in substantial public harm.” *Id.* While the grant of comprehensive zoning exemptions is based on the specifics of each case, *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 153, the substantially identical factual and legal circumstances between *Vineyard Wind I* and this petition— involving the same petitioner, the same ordinance, and the same scope of requests

(pertaining to the installation of onshore export cables and the construction of a substation)—provide compelling justification for the grant of a comprehensive zoning exemption.

101. The Department will consider a request for comprehensive zoning relief when issuance of a comprehensive exemption when multiple zoning ordinances are at issue and conflicting interpretations could arise, when municipalities do not object, and when a comprehensive exemption will avoid substantial public harm or avoid delaying public benefits. *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 153; *Western Massachusetts Elec. Co.*, D.P.U. 13-187/188, at 58 (2015); *NSTAR Elec. Co.*, D.P.U. 13-177/178, at 38-40 (2015); *NSTAR Elec. Co.*, D.P.U. 13-64, at 35-37 (2014).

102. The Department has cited the following factors as relevant in making a determination to grant a comprehensive exemption:

(1) the project is time sensitive; (2) the project involves multiple municipalities that could have conflicting zoning provisions that might hinder the uniform development of a large project spanning these communities; (3) the proponent of the project has actively engaged the communities and responsible officials to discuss the applicability of local zoning provisions to the project and any local concerns; and (4) the affected communities do not oppose the issuance of the comprehensive zoning exemption.

New England Power Company d/b/a National Grid, EFSB 13-2/D.P.U. 13-151/13-152, at 99 (2014); *accord New England Power Co.*, EFSB 10-1/D.P.U. 10-107/10-108, at 89-90; *Western Massachusetts Elec. Co.*, EFSB 08-2/D.P.U. 08-105/08-106, at 136-37 (2010). *Accord Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 153.

103. The grant of a comprehensive zoning exemption is necessary even where individual zoning exemptions are granted because the two types of zoning exemptions serve distinct needs. An individual zoning exemption relates to specific provisions in

zoning bylaws currently in effect that have the potential to conflict or be inconsistent with, prevent, delay, or obstruct the construction or operation of the Project. A comprehensive zoning exemption goes beyond the provisions in the current zoning bylaws to exempt the Project from any future zoning enactment that comes into effect that has the potential to jeopardize the Project. The two types of zoning exemptions work in tandem to ensure that meritorious energy facilities, like the Vineyard Wind Connector 2, are constructed as approved by the Siting Board and the Department without undue delay. The very purpose of a comprehensive zoning exemption is to provide a mechanism for relief from local zoning that would not be available if only individual zoning exemptions were able to be secured.

104. A comprehensive zoning exemption is also necessary with regard to provisions currently in effect because zoning bylaws and ordinances are rarely written with unique energy infrastructure facilities in mind and, thus, lead to substantial uncertainty with regard to the application of zoning regulations to energy infrastructure facilities, such as the Vineyard Wind Connector 2. For instance, local zoning ordinances and bylaws often: (i) directly conflict with overarching state and industry safety and engineering standards; (ii) are vague ambiguous and difficult to apply to unique energy infrastructure; or (iii) are discretionary in nature and can result in burdensome or restrictive conditions. This is in contrast to the comprehensive state and industry standards that apply to energy infrastructure facilities under state and industry standards meant to ensure the safe and reliable operation of such facilities. The lack of clearly defined and specific regulation of electric infrastructure in the Barnstable Ordinance, and the vague and subjective terms and provisions of the Barnstable Ordinance as they apply

to the Vineyard Wind Connector 2 result in an imprecise, at best, application of the zoning provisions to the Project. Vineyard Wind has interpreted the provisions of Barnstable Ordinance conservatively for the purposes of this petition, in the hope that it is requesting individual zoning exemptions for all of the provisions that could conceivably be said to apply to the Vineyard Wind Connector 2. Nevertheless, there is nothing to prevent local boards, building inspectors, or parties with interests adverse to the Vineyard Wind Connector 2 from interpreting the provisions of applicable zoning bylaws and ordinances differently (indeed building inspectors and other officials charged with implementing zoning requirements will change over time and the interpretations of new individuals in such roles may not be consistent). The grant of a comprehensive exemption would remove any reasonable doubt as to the ability of the Project to move forward without violating any terms of the Barnstable Ordinance and would avoid the delays that would result if a particular provision, originally interpreted as not applicable, is latter interpreted to be applicable or if new zoning provisions are adopted prior to construction.²²

105. Seeking the various zoning permits, approvals, and variances required for the Vineyard Wind Connector 2 could result in delays, excessive costs, redundancy of process and/or burdensome requirements that may also be inconsistent with the comprehensive regulatory and industry standards pertaining to energy infrastructure facilities. *See Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 156 (granting

²² Absent a comprehensive zoning exemption, if the notice of proposed change to a zoning bylaw is published before a building permit for a proposed project is issued, then the new zoning provision would apply to the proposed project. G.L. c. 40A, § 6. Thus, any gap in time between attainment of necessary approvals for the Project or the granting of zoning relief and the commencement of construction exposes a project to the risk of new zoning enactments that could jeopardize construction of needed energy infrastructure.

comprehensive zoning exemption given “the potential for zoning impediments that may result in Project construction delays [and] could result in substantial public harm”).

Because of the number and extent of zoning requirements implicated for this Project, uncertainty associated with the application of zoning provisions, and the linear nature of the Project, comprehensive zoning exemptions would ensure that project components along the length of the route are not treated inconsistently at different points.

106. A comprehensive zoning exemption would also ensure the timely construction of the Project in the event that a Project design change is required. A comprehensive zoning exemption would enable Vineyard Wind to promptly address and implement design changes to reduce impacts associated with the Project, for instance, design changes that may occur during this proceeding and the related dockets for the Section 69J Petition and Section 72 Petition or changes that may result from field conditions encountered during construction or from concerns raised by town officials or residents that need to be addressed during construction. Vineyard Wind will work closely with town officials on the final design and construction details, and changes could result in previously unanticipated conflict with zoning provisions. Seeking further exemptions from the Department close to, or during, construction could cause significant delay and impose substantial costs.

107. As described herein, the Vineyard Wind Connector 2 satisfies the Department’s standards for the grant of a comprehensive zoning exemption. As described in more detail in the Analysis, the Vineyard Wind Connector 2 is necessary to connect the WTG to the New England electric grid, bring public benefits, and serve the public interest (*see, e.g.*, Sections 1.2, 1.6, 2.0, and 6.0 of the Analysis), each of which

were factors found sufficient to warrant the grant of a comprehensive zoning exemption in *Vineyard Wind I*. *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 156.

108. In sum, a comprehensive zoning exemption from the operation of the Barnstable Ordinance would ensure the timely construction of this important project and would be consistent with the precedent established in *Vineyard Wind I*, EFSB 17-05/D.P.U. 18-18/18-19, at 156, granting comprehensive zoning exemption in substantially identical factual and legal circumstances and with respect to the same Barnstable Ordinance given “the potential for zoning impediments that may result in Project construction delays [and] could result in substantial public harm.” *Id.*

IX. PERMITS REQUIRED

109. Consistent with the Department’s Checklist for Filing of Zoning Exemption Petitions, which is attached hereto as Exhibit B, Table 6-1 of the Analysis lists the permits that are required to construct and operate the Vineyard Wind Connector 2.

110. Vineyard Wind will soon submit an Environmental Notification Form for the Vineyard Wind Connector 2 (the “ENF”) to the MEPA office of the Executive Office of Energy and Environmental Affairs. Vineyard Wind will update the record with the ENF when it is filed and with a copy of the Certificate of the Secretary of Energy and Environmental Affairs on the ENF when such Certificate is received. No Environmental Impact Report has yet been filed for the Vineyard Wind Connector 2 under MEPA and,

accordingly, no related Certificates or draft MEPA Section 61 findings are yet available.²³

WHEREFORE, Vineyard Wind respectfully requests that, pursuant to G.L. c. 40A, § 3, and after due notice and public hearing, the Department (or, as appropriate, the Siting Board) determine that the Vineyard Wind Connector 2 is reasonably necessary for the convenience and welfare of the public, and grant (1) exemptions from the particular provisions of the Barnstable Ordinance described herein; and (2) a comprehensive exemption from the provisions of the Barnstable Ordinance; and (3) take such other action as may be necessary and appropriate in connection with Vineyard Wind's proposal to construct and operate the Vineyard Wind Connector 2.

²³ Consistent with the Department's Checklist for Filing of Zoning Exemption Petitions, Vineyard Wind filed a draft hearing notice addressing the Section 69J Petition, the Section 72 Petition, and this Zoning Petition, with the Section 69J Petition.

Respectfully Submitted,

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Dated: May 28, 2020

EXHIBIT LIST – ZONING PETITION

EXHIBIT A Attested Copy of the Barnstable Zoning Ordinance

EXHIBIT B Zoning Exemption Checklist