

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

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Petition of Commonwealth 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 ) D.P.U. 22-106  
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. )  
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**PETITION OF COMMONWEALTH 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**

Commonwealth Wind, LLC (“Commonwealth 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 October 21, 2021 (the “Barnstable Ordinance”)<sup>1</sup> in connection with Commonwealth Wind’s proposal to construct, operate, and maintain (1) a new, approximately 29.7-mile, 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 in the Town of Barnstable (“Barnstable”); (2) a new substation located at a site consisting of two parcels totaling approximately 15.2

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<sup>1</sup> 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.

acres off Oak Street, less than a mile west of NSTAR Electric Company d/b/a Eversource Energy's ("Eversource") existing West Barnstable Substation, housing transformers, switchgear, and other necessary equipment ("the Substation"); and (3) a new, approximately 0.4- or 0.5-mile, 345-kV underground transmission line, between the Substation and the West Barnstable Substation.<sup>2</sup>

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 is referred to as the "Onshore Export Cable."<sup>3</sup> Collectively, the portions of the Offshore Export Cable in state waters, the Onshore Export Cable, and the Substation constitute the "New England Wind 2 Connector" or the "Project."<sup>4</sup> The New England Wind 2 Connector is the Massachusetts-jurisdictional elements of the "Commonwealth Wind Project"—an over 1,200-megawatt

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<sup>2</sup> At this time, NSTAR Electric Company ("Eversource") is not a co-petitioner with Commonwealth Wind in this proceeding. To interconnect at Eversource's West Barnstable Substation, construction will be necessary at that substation. Commonwealth Wind expects that construction would be undertaken by Eversource and will support Eversource in those efforts. Commonwealth Wind does not expect to construct, own, operate, or maintain any transmission facilities at West Barnstable Substation. Commonwealth 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 the West Barnstable Substation. Commonwealth Wind is working with Eversource to clarify the construction that will occur at the West Barnstable Substation and whether zoning relief will be necessary for that work. If Commonwealth 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.

<sup>3</sup> As described in paragraphs 17, 19-21, the Offshore Export Cable will consist of three separate 275 kV cables, and the Onshore Export Cable will consist of nine separate cables located in an underground duct bank. The portion of the Onshore Export Cable between the Landfall Site and the Onshore Substation will consist of nine separate underground 275 kV cables, and the portion of the Onshore Export Cable between the Onshore Substation and the West Barnstable Substation will consist of nine separate underground 345 kV cables.

<sup>4</sup> Part of the offshore portions of the Export Cable is located in federal waters. That part is not included in the 29.7-mile length provided above, nor is it part of the Project that is the subject of this petition.

(“MW”) wind energy generation facility under development by Commonwealth Wind, which includes wind turbine generators (“WTGs”) located in federal waters within the southern portion of Bureau of Ocean Energy Management (“BOEM”) Lease Area OCS-A 0534 (the “Lease Area”). The New England Wind 2 Connector is necessary to interconnect the Commonwealth Wind Project WTGs to the electric grid in New England. In support of this Petition, Commonwealth Wind states as follows:

1. Commonwealth Wind is a Delaware limited liability company registered in the Commonwealth of Massachusetts. Its principal place of business is 2701 Northwest Vaughn Street, Suite 300, Portland, Oregon 97210.

2. As described below, the construction and operation of the New England Wind 2 Connector may be inconsistent with certain provisions of the Barnstable Ordinance. Nonetheless, its construction and operation is necessary to connect the WTGs to the New England bulk power grid and bring over 1,200 MW of power generated from offshore wind to the New England electric grid, thus making a substantial contribution to meeting Massachusetts’ renewable energy requirements and clean energy policies. Thus, Commonwealth Wind is seeking individual and comprehensive zoning exemptions from the Department to allow for the timely construction of the New England Wind 2 Connector and avoid the substantial public harm that would result from delay in the construction and operation of the Project because of potential zoning issues.

3. Commonwealth Wind has also filed a petition with the Energy Facilities Siting Board (the “Siting Board”) requesting approval to construct, operate, and maintain the New England Wind 2 Connector pursuant to G.L. c. 164, § 69J (the “Section 69J Petition”) (EFSB 22-06). The Section 69J Petition included, as Attachment A, a

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

4. Commonwealth 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 New England Wind 2 Connector (the “Section 72 Petition”) (D.P.U. 22-105); 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. Commonwealth 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.<sup>5</sup> The Section 69J Petition, and the attached Analysis, provide the factual basis for Commonwealth Wind’s conclusion that the New England Wind 2 Connector 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

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<sup>5</sup> Commonwealth Wind has provided digital copies of all three petitions (the Section 69J Petition, the Section 72 Petition, and the Zoning Petition) and their attachments to the Department, along with a motion to the Department to refer the Section 72 Petition and Zoning Petition to the Siting Board for consolidation with the Section 69J Petition for review in a single proceeding. Commonwealth 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).

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

6. The Analysis provides an extensive description of the New England Wind 2 Connector, including plans for the construction of the Export Cable and Substation. It also includes an explanation of the purpose of, and need for, the New England Wind 2 Connector 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) (“*Walpole-Holbrook*”); *NSTAR Elec. Co.*, EFSB 15-03/D.P.U. 15-64/15-65, at 80 (2017) (“*Mystic-Woburn*”); *NRG Canal 3 Dev. LLC*, EFSB 15-06/D.P.U. 15-180, at 144, 156 (2017) (“*NRG Canal 3*”); *New England Power Co.*, EFSB 10-1/D.P.U. 10-107/10-108, at 82, 97 (2012) (“*Hampden County*”).

## **II. PROJECT DESCRIPTION**

8. The purpose of the New England Wind 2 Connector is to connect the Commonwealth Wind Project WTGs to the New England bulk power grid so that over 1,200 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 the Commonwealth with cost-effective renewable energy.

9. The New England Wind 2 Connector will be a major step in meeting the Commonwealth’s growing demand for cost-effective clean energy. More specifically,

the Project will serve the public interest by delivering over 1,200 MW of power generated from offshore wind to the New England electric grid, thus making substantial contributions to meeting Massachusetts' renewable energy requirements, including those advanced by the Commonwealth's 2008 Global Warming Solutions Act, St. 2008, c. 298 ("GWSA") and the 2021 Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy, St. 2021, c. 8 (the "Climate Roadmap Act"), which call for significant reductions in greenhouse gas ("GHG") emissions and for the Massachusetts Secretary of Energy and Environmental Affairs to adopt a statewide 2050 GHG emissions limit that achieves at least net zero emissions.

10. Commonwealth Wind holds rights to the southern portion of the Lease Area where it intends to develop the Commonwealth Wind Project. The Lease Area is one of several that were awarded by BOEM for wind energy development offshore from Massachusetts and Rhode Island. The federal government delineated the Lease Area as part of a decade-long process of developing offshore areas for wind generation projects led by the federal government with strong state participation.

11. The Lease Area is located entirely within federal waters and was previously a portion of a lease area designated by BOEM as Lease Area OCS-A 0501. In January 2021, BOEM separated Lease Area OCS-A 0501 into two lease areas: Lease Area OCS-A-0501, where the Vineyard Wind Project is being developed, and Lease Area OCS-A-0534, where both the Park City Wind Project and the Commonwealth Wind

Project (together, “New England Wind”) are being developed. The Commonwealth Wind Project will occupy the southern portion of the Lease Area.<sup>6</sup>

12. The WTGs for the Commonwealth Wind Project will be located immediately south/southwest of the area being developed for the Park City Wind Project.<sup>7</sup> This location is the southern part of an area referred to as the Southern Wind Development Area (“SWDA”), which encompasses all of the Lease Area and the southwest portion of Lease Area OCS-A-0501. 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. Commonwealth Wind is developing the Commonwealth Wind Project in response to solicitations for commercial-scale offshore wind projects from, among other entities, the Massachusetts Electric Distribution Companies (“EDCs”). The EDCs are required to solicit offshore wind energy projects in the Commonwealth under Section 83C of the Green Communities Act, as it has been amended.<sup>8</sup> On December 17, 2021, in

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<sup>6</sup> The “Vineyard Wind Project” refers to the offshore wind energy facility described in the Siting Board’s Final Decision in EFSB 17-05/D.P.U. 18-18/18-19 (May 10, 2019). The Park City Wind Project refers to the offshore wind energy facility described in Park City Wind LLC’s petition for approval of the Massachusetts jurisdictional transmission facilities that will interconnect the Park City Wind Project to the New England electric grid. *See* EFSB 20-01/D.P.U. 20-56/20-57.

<sup>7</sup> The portions of the Park City Wind project located in state waters, *i.e.*, the New England 1 Connector, are currently under review by the Siting Board in EFSB 20-01/DPU D.P.U. 20-56/20-57.

<sup>8</sup> *See* Section 83C of An Act Relative to Green Communities, St. 2008 c. 169J, as amended by St. 2016, c. 188, § 12, St. 2021, c. 24, §§ 69, 72, St. 2021 c. 8, §§ 91-95, and St. 2022, c. 179, §§ 61, 62; *see also* St. 2018, c. 227, § 21. These statutes set a mandatory target of 5,600 MW of offshore wind energy that the Massachusetts EDCs must solicit.

their third round of competitive solicitations, the EDCs selected Commonwealth Wind's offshore wind project as a winning bidder.<sup>9</sup>

14. Because the Commonwealth Wind Project includes components in federal waters, it is being developed and permitted at the federal level in addition to the state, regional, and local levels. The federal permitting process began in July 2020 with the filing of the phased Construction and Operations Plan ("COP") for New England Wind (both the Park City Wind and Commonwealth Wind Projects) with BOEM as the lead federal agency and the agency responsible for completing the National Environmental Policy Act ("NEPA") process. On June 30, 2021, BOEM published a Notice of Intent ("NOI") to Prepare an Environmental Impact Statement ("EIS"). Two COP updates were filed with BOEM in Fall 2021 and Spring 2022. Commonwealth 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 NEPA process.

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

16. Commonwealth Wind proposes to construct, operate, and maintain the New England Wind 2 Connector, including (a) the portions of the Offshore Export Cable to be installed in state waters (including state waters within the Towns of Barnstable,

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<sup>9</sup> The EDCs selected the Vineyard Wind Project (800 MW) and the Mayflower Wind Project (800 MW) in the previous two solicitations. The Park City Wind Project (800 MW), by contrast, was selected by Connecticut's Department of Energy and Environmental Protection ("DEEP") under Public Act 19-71, Connecticut's statute for the procurement of offshore wind energy.



Edgartown, Nantucket, and Mashpee) and the Onshore Export Cable in Barnstable, and (b) the Substation in Barnstable.

17. Three new 275-kV three-core alternating current (“AC”) cables will bring the output from the Commonwealth Wind Project WTGs from the SWDA to the landfall site in Barnstable within an identified Offshore Export Cable Corridor (“OECC”). The OECC is a widened version of the corridor the Siting Board approved for the Vineyard Wind Connector in EFSB 17-05/D.P.U. 18-18/18-19, and is largely the same corridor that was proposed for the New England Wind 1 Connector in EFSB 20-01/D.P.U. 20-56/20-57, with two principal differences: (1) the corridor diverges to the west in Barnstable waters to provide access to the Dowses Beach Landfall Site; and (2) in addition to the preferred route through Muskeget Channel, Commonwealth Wind has also identified a Western Muskeget Channel routing option that could be used for installing one or two of the offshore export cables if doing so is determined to be warranted upon further engineering analysis.

18. The maximum length of the OECC in state and federal waters combined is up to 47.2 miles.<sup>10</sup> Of this, the maximum total length of the OECC within state waters is approximately 21.9 miles. The Offshore Export Cable 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 at the Dowses Beach Landfall Site in Barnstable.

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<sup>10</sup> An additional length of offshore export cable within the portion of Lease Area OCS-A 0534 that will be utilized for the Commonwealth Wind Project (up to approximately 26 miles [approximately 42 km] per cable, though likely less) will be needed to reach the electrical service platform(s).

19. 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 the landfall site. There, each three-core offshore export cable system will transition to three separate single-core, 275 kV cables that will run from the landfall site to the Substation within a buried concrete duct bank.

20. The Preferred Transmission Route from the landfall site to the Substation is approximately 6.7 miles long, all within Barnstable. The route is located entirely within public roadway layouts or the parking lot area at Dowses Beach. The Noticed Alternative Transmission Route from the landfall site to the Substation is approximately 6.6 miles long, and is also located entirely within public roadway layouts or the parking lot area at Dowses Beach, all within Barnstable. The Company has also identified a Main Street Variation that provides a link between the Preferred Route and Noticed Alternative.

21. From the Substation, nine single-core 345-kV onshore export cables will run to West Barnstable Substation within a buried duct bank. The Company has identified three possible Grid Interconnection Routes in the Analysis and is completing final engineering reviews to identify which is preferred. Each of the three routing options are between 0.4 and 0.5 miles in length.

22. 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 New England Wind 2 Connector. Commonwealth Wind expects that any work within the

West Barnstable Substation would be designed and performed by Eversource, but for the reasons set forth in footnote 1, above, Commonwealth Wind includes information relating to that anticipated work in this Petition.

23. The route of the New England Wind 2 Connector is described in more detail in Sections 1.0, 4.0, and 5.0 of the Analysis.

**A. Overview of Preferred Transmission Route from Landfall to the Substation**

24. From the parking lot of the Dowses Beach Landfall Site, the Preferred Transmission Route proceeds generally west on Dowses Beach Road to East Bay Road, and then approximately 0.2 miles in a southerly direction along East Bay Road. At the end of East Bay Road, the Preferred Transmission Route turns northwest on Wianno Avenue, which it follows for approximately 0.9 miles to Main Street. It then continues north on Main Street for approximately 1.1 miles to Osterville-West Barnstable Road, which it follows for approximately 1.9 miles to Old Falmouth Road. There, the Preferred Transmission Route turns and continues northeast along Old Falmouth Road for approximately 0.9 miles then heads east on Old Stage Road for approximately 0.2 miles to the Oak Street intersection. Turning north on Oak Street, the Preferred Transmission Route follows Oak Street for approximately 1.0 mile before proceeding west on Service Road and continuing another 0.2 miles to a staging area for the proposed trenchless crossing of Route 6 into the Substation site.

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

25. The Noticed Alternative Transmission Route also begins in the parking lot of the Dowses Beach Landfall Site and proceeds generally northwest on Dowses Beach Road to East Bay Road. From there, the Noticed Alternative Transmission Route travels

approximately 0.7 miles northwest along East Bay Road. At the north end of East Bay Road, the Noticed Alternative Transmission Route crosses Main Street and proceeds northeast approximately 1.7 miles on Old Mill Road, Bumps River Road, and Five Corners Road. The Noticed Alternative Transmission Route then turns to the northwest on Lumbert Mill Road and continues for approximately 1.5 miles to Osterville-West Barnstable Road. Turning toward the northeast, the Noticed Alternative Transmission Route then follows Osterville-West Barnstable Road a short distance before merging into Old Falmouth Road and continuing approximately 0.9 miles to Old Stage Road. The Noticed Alternative Transmission Route then follows Old Stage Road for approximately 0.2 miles to Oak Street, and proceeds on Oak Street for approximately 1.0 mile before turning west on Service Road and continuing another 0.2 miles to a staging area for the trenchless crossing of Route 6 to the proposed Substation site. The Noticed Alternative Transmission Route's final approximately 2.3-mile segment—from Old Falmouth Road to the Route 6 crossing and into the Substation Site—is identical to the final segment of the Preferred Transmission Route.

### **C. Main Street Variation**

26. In addition to the routing options described above, the Company is also proposing the Main Street Variation. The Main Street Variation is a variation to the Preferred Transmission Route and the Noticed Alternative Transmission Route, providing a link between the two routing options via approximately 0.3 miles along Main Street between the intersection of East Bay Road, Main Street, and Old Mill Road, and the intersection of Wianno Avenue and Main Street. The Main Street Variation would allow the Company to replace the preliminary routing from the landfall site in the Preferred Transmission Route with the preliminary routing from the landfall site in Noticed

Alternative Transmission Route, and vice versa. The Main Street Variation provides the flexibility to respond to changing circumstances during the Siting Board's review should East Bay Road or Wianno Avenue become the preferred route segment in this area based on more detailed engineering design and additional community and stakeholder outreach. In addition, the Main Street Variation allows for flexibility as discussions advance with the Town of Barnstable regarding the potential to coordinate with future proposed sewer projects.

27. For the Preferred Transmission Route, the Main Street Variation follows the first segment of the Noticed Alternative Transmission Route from the landfall site. It begins at the parking lot of the Dowses Beach Landfall Site and proceeds generally west on Dowses Beach Road to East Bay Road for approximately 0.7 miles to Main Street. The route then turns west on Main Street and rejoins the remainder of the Preferred Transmission Route, described above.

28. For the Noticed Alternative Transmission Route, the Main Street Variation follows the first segment of the Preferred Transmission Route from the landfall site. It begins at the parking lot of the Dowses Beach Landfall Site and proceeds generally northwest on Dowses Beach Road to East Bay Road, and then approximately 0.2 miles in a southerly direction along East Bay Road. At the end of East Bay Road, the route turns northwest on Wianno Avenue, which it follows for approximately 0.9 miles to Main Street. The route then turns east on Main Street and rejoins the remainder of the Noticed Alternative Transmission Route.

**D. Substation (Barnstable)**

29. The Substation is necessary to step up the 275-kV power from the Export Cable to 345 kV for interconnecting at the West Barnstable Substation. The Substation is

located at an approximately 15.2-acre site consisting of three privately owned, undeveloped wooded parcels north of Route 6 and west of Oak Street in Barnstable. The site is approximately 0.5 miles west of the existing West Barnstable Substation. The site is bordered by undeveloped land to the west. To the north, the site includes a 40-ft wide “panhandle” that extends from the north of the property into the existing Eversource ROW 342, and is bordered by two protected parcels that are part of the Spruce Pond Conservation Area owned by the Town of Barnstable and managed by the Conservation Commission. To the east, the site is bordered by a residential parcel developed with one single family home. The site’s southern border is the Route 6 layout managed by Massachusetts Department of Transportation (“MassDOT”). The Substation site is shown on Figure 1-7 of the Analysis.

30. Commonwealth Wind proposes a gas-insulated substation (“GIS”) design for the Substation. The Substation will house three 275/345-kV “step-up” transformers, gas-insulated switchgear, a control room within a building, 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, and lightning protection masts. Substation equipment and enclosures are expected to be 40 feet or less in height. The lightning protection masts will be approximately 80 feet in height, though the height and number of masts is subject to further design refinement. The Substation will incorporate a containment system consistent with anticipated commitments to Barnstable, as set forth in Section 1.3.4.1 and 5.5.4.1 of the Analysis.

31. The transformers and certain other Substation equipment containing dielectric fluid will be underlain by full-volume 110% containment systems (*i.e.*, the main transformers, iron core reactors, and equipment associated with STATCOMS containing dielectric fluid). While this additional protection goes beyond standard practice given the low probability of any leakage, Commonwealth Wind has committed to such containment based on the sensitive nature of the Cape Cod watershed. The Company is also committing to increase the 110% containment for the equipment identified above to account for an extreme rain event, that is, the simultaneous Probable Maximum Precipitation (“PMP”) event in a 24-hour period, which will be determined for the Substation site in consultation with Barnstable. The Substation design also includes as additional mitigation a common drain system that routes to 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 low-impact development (“LID”) strategies, which are designed to capture, treat, and recharge stormwater runoff.

32. 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 site. The design will be sensitive to night sky lighting considerations. 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 and maintenance activities but would not be

used on a regular basis. The Company will work with the Town of Barnstable to ensure the lighting scheme complies with applicable Town requirements.

33. The Substation yard area will be finished in crushed stone, and perimeter security fencing and/or a retaining wall will be installed. Access to the Substation site will be via a paved driveway off Oak Street. The Substation design also includes an internal gravel access road.

**E. Overview of Preferred Grid Interconnection Route from the Substation to West Barnstable Substation**

34. The Company has identified three possible routes in the Analysis and is currently completing its engineering review to identify the preferred and noticed alternative Grid Interconnection Routes from the Substation to the West Barnstable Substation.

35. Grid Interconnection Option G1 is approximately 0.4 miles in length and includes installing the grid interconnection cables within the existing Fire Tower access road off Oak Street, then northeasterly along Oak Street and into the northern portion of the West Barnstable Substation.

36. Grid Interconnection Option G2 is also approximately 0.4 miles in length and includes installing the grid interconnection cables heading north to the existing electric transmission corridor (Eversource ROW #342). The route then turns east and runs within the existing Eversource ROW #342 corridor into the northern portion of the West Barnstable Substation.

37. Grid Interconnection Option G3 is approximately 0.5 miles in length and includes installing the grid interconnection cables that would be constructed within the northern portion of the existing Route 6 State Highway Layout from the Substation site



extending east to Oak Street. This route would be within this proposed access road up to the intersection with Oak Street and would then turn north onto Oak Street and would be located within Oak Street and into the northern portion of the West Barnstable Substation parcel.

### **III. COMMUNITY OUTREACH**

38. Commonwealth Wind has conducted extensive community outreach regarding the New England Wind 2 Connector. Commonwealth Wind's community outreach efforts to date are summarized in Section 1.10 of the Analysis.

39. Specifically, Commonwealth Wind and its affiliates and predecessors have been consulting with federal and state agencies and affected municipalities and tribes regarding Project status, planned studies, issues of concern, and the permitting process from 2019 to the present. A list of meetings conducted with agencies, municipalities, and tribes to date is provided in Table 1-4 of the Analysis.

40. Commonwealth Wind has presented to the Barnstable Town Council in regards to the proposed cable routes and proposed Substation and has held multiple meetings with the Osterville Village Association.

41. In addition, in connection with review under the Massachusetts Environmental Policy Act ("MEPA"), Commonwealth Wind conducted project meetings with MEPA Office staff in June 2022. The Environmental Notification Form ("ENF") has been circulated widely, including to Barnstable and the Barnstable Library System.

42. For the Project, public notices and meetings are expected to be held associated with this and other state filings, and Commonwealth Wind will send out additional mailers to abutters (and others) providing relevant Project details, contact

information, and other means for residents to connect with Commonwealth Wind representatives to obtain information and provide feedback.

43. In addition, Commonwealth Wind has been consulting with a broad and diverse range of stakeholders regarding the New England Wind 2 Connector. Section 1.10.2 of the Analysis lists nearly 80 stakeholders with whom Commonwealth Wind and its affiliates and predecessors have been consulting. This is a representative list of outreach, and does not include every person and/or group with whom Commonwealth Wind and its affiliates and predecessors have consulted.

44. Commonwealth Wind plans to maintain an active level of consultation and outreach as the Project proceeds through the licensing, permitting, and construction phases. Commonwealth Wind will continue to address any concerns that may arise with the affected municipalities or other interested parties following the submission of this Zoning Petition.

#### **IV. STANDARD OF REVIEW**

45. 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 . . . .

46. 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 LLC*, EFSB 17-05/D.P.U. 18-18/18-19, at 132 (2019) (“*Vineyard Wind*”); *Walpole-Holbrook* at 90 (citing *Save the Bay, Inc. v. Dep’t of Pub. Utils.*, 366 Mass. 667 (1975); *NRG Canal 3* at 140-41; *Mystic-Woburn* at 77).

## V. COMMONWEALTH WIND IS A PUBLIC SERVICE CORPORATION

47. In determining whether a petitioner qualifies as a “public service corporation” (“PSC”) 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* at 133.

48. “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* at 133 n.134 (citing *Berkshire Power Development, Inc.*, D.P.U. 96-104, at 30 (1997) (“*Berkshire Power*”)); *Save the Bay*, 366 Mass. at 685-86; *Town of Truro v. Dep’t of Pub. Utils.*, 365 Mass. 407, 410 (1974); *Exelon West Medway, LLC*, EFSB 15-01/D.P.U. 15-25, at 135 n.117 (2016) (“*Exelon West Medway*”).

49. 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* at 133 n.134 (citing *Berkshire Power* at 30);

*New England Power Co.*, D.P.U. 15-44/15-45, at 6 (2016) (“*MVRP*”); *Dispatch Communications of New England*, D.P.U./D.T.E. 95-59B/95-80/95-112/96-113, at 6 (1998)).

50. 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* at 133 n.134 (citing *Berkshire Power* at 31; *MVRP* at 5-6; *NSTAR Elec. Co.*, D.P.U 15-02, at 4-5).

51. 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* at 136 (quoting *USGen New England, Inc.*, D.T.E. 03-83, at 15 n.9 (2004)); accord *Vineyard Wind* at 135-36 (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*); *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* 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* at 26-36 (explaining the importance of extending public service corporation status to non-franchise monopoly participants in the electric power industry).

52. Commonwealth Wind is a PSC for the same reasons the Siting Board determined that Vineyard Wind was a PSC in *Vineyard Wind*. That proceeding addressed a similar project consisting of state-jurisdictional transmission facilities intended to connect a utility-scale offshore wind generation facility in federal waters to the New England electric grid. *Vineyard Wind* at 134-36. Here too Commonwealth Wind “meets the most salient aspects of the current Siting Board and Department standard for PSC status in Massachusetts”: that the New England Wind 2 Connector would “deliver the power generated by the [Commonwealth Wind Project] to the New England electric market, including Massachusetts, and will have a legal and physical presence in Massachusetts.” *Id.* at 135 (finding that for these reasons, Vineyard Wind qualified as a PSC).

53. Commonwealth Wind has also “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 [Project] will have a physical presence within Massachusetts, including approximately 23 miles for each of the Offshore Cables; the landfall site for the transition between the Offshore and Onshore Cables; all [6.7] miles of the Onshore Cables from the landfall to the new Substation; and the new Substation.” *Id.* at 135-36; *see also NRG Canal 3* at 1, 142-43 (finding that NRG Canal 3 Development LLC, organized under Delaware law and registered to do business

in Massachusetts a foreign limited liability company, was a public service corporation for purposes of seeking zoning exemptions under G. L. c. 40A, § 3 for a proposed 350 MW electric generating facility).

54. As with the Vineyard Wind Connector, and as summarized in Section 1.2 of the Analysis and discussed in further detail in Section 6.0 of the Analysis, construction of the Commonwealth Wind Project and the New England Wind 2 Connector 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, the Commonwealth Wind Project and the New England Wind 2 Connector are expected to create a range of environmental and economic benefits for southeastern Massachusetts as well as Massachusetts as a whole. As identified in Section 1.6.1 of the Analysis, the Commonwealth Wind Project and the New England Wind 2 Connector will provide reliability benefits to Cape Cod and the Commonwealth as a whole. The Commonwealth Wind Project and the New England Wind 2 Connector will also provide significant environmental benefits as a zero-carbon generation resource, as described in Section 1.6.3 of the Analysis.

55. Because the factual and legal bases upon which Vineyard Wind was determined to qualify as a PSC in *Vineyard Wind* are materially and legally identical here, Commonwealth Wind should also be determined to be a PSC for the purposes of the New England Wind 2 Connector.

**VI. THE NEW ENGLAND WIND 2 CONNECTOR IS REASONABLY NECESSARY FOR THE PUBLIC CONVENIENCE OR WELFARE.**

56. “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.” *New England Power Co. d/b/a National Grid*, EFSB19-04/D.P.U. 19-77/19-78, at 118 (2021) (“*Salem-Beverly*”) (citing *Save the Bay*, 366 Mass. at 686; *Town of Truro*, 365 Mass. at 411); *NSTAR Elec. Co.*, EFSB 17-02/D.P.U. 17-82/17-83, at 195 (2019) (“*Sudbury-Hudson*”); *Vineyard Wind* at 136. “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.’” *Salem-Beverly* at 118-19 (quoting *New York Cent. R.R. v. Dep’t of Pub. Utils.*, 347 Mass. 586, 592 (1964)); *Sudbury-Hudson* at 195; *Vineyard Wind* at 136. “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.” *Salem-Beverly* at 119 (citing *Save the Bay*, 366 Mass. at 685; *New York Cent. R.R.*, 347 Mass. at 592); *Sudbury-Hudson* at 195; *Vineyard Wind* at 136.

57. Department precedent provides 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.

*Salem-Beverly* at 119, n.105 (citing *Martarano v. Dep’t of Pub. Utils.*, 401 Mass. 257, 265 (1987); *New York Cent. R.R.*, 347 Mass. at 591); *Sudbury-Hudson* at 195, n.173; *Vineyard Wind* at 137 n.136.

58. 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.

*Salem-Beverly* at 119; *Sudbury-Hudson* at 195; *Vineyard Wind* at 136-37.

**A. There is a Public Benefit and Need for the New England Wind 2 Connector**

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

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

61. As described in Sections 1.0 and 2.0 of the Analysis, the generation component of the Commonwealth Wind Project is planned and not subject to the Siting Board's jurisdiction. As further described in Section 2.0 of the Analysis, multiple indicators of project progress establish and will establish that the generation component of the Commonwealth Wind Project is likely to be available to contribute to the regional energy supply. For instance, the Commonwealth Wind Project 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



Massachusetts law, including Section 83C. In particular, Section 83C embodies a legislative determination that facilities such as the Commonwealth Wind Project are needed, provide significant benefits, and must be constructed. *See also*, An Act Driving Clean Energy and Offshore Wind, St. 2022, c. 179 (including numerous provisions to support offshore wind development because of its benefits to the Commonwealth). In April 2022, Commonwealth Wind also entered in long-term power purchase agreements with the Massachusetts EDCs for 1,200 MW of the output of the Commonwealth Wind Project, which is another indicator of project progress.

62. Section 2.0 of the Analysis sets out additional indicators of project progress that further establish that the generation component of the Commonwealth Wind Project is likely to be available to contribute to the regional energy supply. Those indicators include the high value of the wind resource in the Lease Area, permitting milestones that have been or will be achieved in the near future, effective and extensive project outreach, and the broad support by Massachusetts for the development of large quantities of offshore wind generation.

63. Because existing transmission facilities are inadequate to interconnect the Commonwealth Wind Project, and the Commonwealth Wind Project has attained significant indicators of project progress showing that its generation facilities are likely to be available to contribute to the regional energy supply, the Project is needed.

64. 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* at 138-39; *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).

65. In addition, as explained in the Analysis, particularly in Sections 1.2, 1.6, and 6.0, and in paragraph 54, above, the New England Wind 2 Connector will provide significant public benefits, including increasing the reliability and diversity of the regional and statewide energy supply and providing significant environmental and economic benefits for southeastern Massachusetts and Massachusetts as a whole. In addition, the Commonwealth Wind Project, which will connect to the electric grid via the New England Wind 2 Connector, will reduce carbon dioxide, nitrogen oxide, and sulfur dioxide emissions significantly, avoiding 2.35 million tons per year (“tpy”) of emissions of carbon dioxide equivalent, 1,255 tpy of nitrogen oxide emissions, and 666 tpy of sulfur dioxide emissions, over the Project’s lifetime.

66. Given the similarity in statutory standards between G.L. c. 164, § 69J and G.L. c. 40A § 3, the information provided by Commonwealth Wind demonstrating that the New England Wind 2 Connector 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 demonstrates that the New England Wind 2 Connector is necessary under G.L. c. 40A, § 3. *See, e.g., NSTAR Elec. Co.*, EFSB 10-2/D.P.U. 10-131/10-132, at 97 (2012); *Mystic-Woburn* at 80; *Walpole-Holbrook* at 93; *Exelon West Medway*, at 137-138; *NRG Canal 3* at 144.

67. 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 Commonwealth Wind has demonstrated that the New England Wind 2 Connector has satisfied the statutory requirements of G.L. c. 164, § 69J and G.L. c. 164, § 72, so too has it demonstrated that the New England Wind 2 Connector has satisfied the “convenience or welfare of the public” standard under G.L. c. 40A, § 3.

**B. Commonwealth Wind Considered Alternatives**

68. Commonwealth Wind considered alternatives to the New England Wind 2 Connector, 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, Commonwealth Wind considered several factors, including reliability, environmental impact, cost, community acceptance, and the time required to implement them. Alternative approaches and routing options considered by Commonwealth Wind are described in Sections 3.0, 4.0, and 5.0 of the Analysis. As shown therein, the New England Wind 2 Connector is the superior alternative for meeting the identified need.

**C. The Impacts of the New England Wind 2 Connector Have Been Minimized**

69. Commonwealth Wind has comprehensively analyzed the environmental impacts for building and operating the New England Wind 2 Connector, identified all relevant impacts, and appropriately avoided or minimized those impacts. The New England Wind 2 Connector, as proposed, achieves an appropriate balance among conflicting environmental concerns and among environmental impacts, reliability, and costs. Section 5.0 of the Analysis describes how Commonwealth Wind has avoided or minimized impacts for the New England Wind 2 Connector.

**VII. THE NEW ENGLAND WIND 2 CONNECTOR REQUIRES INDIVIDUAL ZONING EXEMPTIONS.**

**A. Standard of Review**

70. “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.” *Salem-Beverly* at 120; *Sudbury-Hudson* at 196; *Vineyard Wind* at 139. The petitioner must identify the individual zoning provisions applicable to the Project and establish that an exemption from each of those provisions is required. *Salem-Beverly* at 121; *Sudbury-Hudson* at 197; *Vineyard Wind* at 139.

71. 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. *Salem-Beverly* at 117; *Sudbury-Hudson* at 193; *Vineyard Wind* at 132; *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).

72. 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.

*Hampden County* at 85-86 (2012) (citing *New England Power Co.*, EFSB 09-1/D.P.U. 09-52/09-53, at 76-77 (2011)); *Western Massachusetts Elec. Co.*, EFSB 08-2/D.P.U. 08-105/08-106, at 132-33 (2010) (“*GSRP*”).

73. 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* at 149-50; *Walpole-Holbrook* at 97. 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* at 149; *Walpole-Holbrook* at 97.

74. Commonwealth Wind has met these requirements. Commonwealth Wind has presented the Project to the Town Council, has and will continue to have good faith discussions with Barnstable officials regarding the New England Wind 2 Connector and will continue to make a good faith effort to abide by reasonable recommendations from Barnstable.

75. 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 New England Wind 2 Connector 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 New England Wind 2 Connector is needed immediately to enable the Commonwealth Wind

Project to interconnect to the New England electric grid and provide substantial public benefits. The New England Wind 2 Connector is also 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.”<sup>11</sup> 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, Commonwealth Wind is seeking zoning relief from the Department in order to allow for the timely, efficient, and consistent construction of the New England Wind 2 Connector.

76. 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. In many circumstances, it is difficult to demonstrate the existence of unique

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<sup>11</sup> Any development that is subject to MEPA and requires an EIR, such as the New England Wind 2 Connector, is considered a DRI by the Cape Cod Commission. *See* Cape Cod Commission Regulations, Chapter A, § 2(d).

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.<sup>12</sup> 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

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

*Walpole-Holbrook* at 97. Indeed, the Siting Board has 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]ariations 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* at 149-50.

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<sup>12</sup> 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).

**B. The Department Should Grant the New England Wind 2 Connector Individual Zoning Exemptions From the Operation of the Barnstable Ordinance**

77. According to the Zoning Map of the Town of Barnstable, Massachusetts dated September 1, 1998 and last amended February 4, 2021,<sup>13</sup> the Substation parcel is located in the RF (Residential) district and an Aquifer Protection Overlay District. Because the Substation is located in the RF (Residential) district and an Aquifer Protection Overlay, and public utility uses are not expressly allowed in any of those districts, use variances are or may be required to Sections 240-14, 240-7.A, and 240-35.E(2) of the Barnstable Ordinance. 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, Commonwealth Wind therefore requests relief from Sections 240-14, 240-7.A, and 240-35.E(2) of the Barnstable Ordinance for activities at the Substation.<sup>14</sup> The Siting Board granted an exemption from the same or similar sections of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind*, EFSB 17-05/D.P.U. 18-18/18-19, at 142.

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<sup>13</sup> The version of the Zoning Map attached as Exhibit A was last amended on February 4, 2021 and is available on the Barnstable Town website. The Company will provide the Siting Board with an official, physical copy of the map upon request.

<sup>14</sup> If Commonwealth 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. However, in contrast to 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.



78. According to the Zoning Map of the Town of Barnstable, Massachusetts dated September 1, 1998 and last amended February 4, 2021, the Grid Interconnection (that is, the Onshore Export Cable connecting the Substation and the West Barnstable Substation) would traverse the following Barnstable zoning districts: RF (Residential) district, an Aquifer Protection Overlay District, and a Resource Protection Overlay District. Therefore, use variances are or may be required from Sections 240-14, 240-35.E(2), and 240-36 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, Commonwealth Wind seeks an exemption from Sections 240-14, 240-35.E(2), 240-36, and 240-7.A of the Barnstable Ordinance for the Grid Interconnection.

79. As to the Onshore Export Cable route between the landfall site and the Substation, both the Preferred Transmission Route and Noticed Alternative Route are proposed to be installed in a public way. Certain portions of the proposed Grid Interconnection Routes will also be installed along Oak Street, a public way. For those segments of the Onshore Export Cable route that will be installed in a public way, Commonwealth 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. Commonwealth 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*, 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 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, Commonwealth Wind requests zoning relief for the in-road segments of the Onshore Export Cable route out of an abundance of caution.

Commonwealth 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.

80. Further to the preceding paragraph, according to the Zoning Map of the Town of Barnstable, Massachusetts dated September 1, 1998 and last amended February 4, 2021, for the routing of the Onshore Export Cable between the landfall site and the Substation, the Preferred Transmission Route, and the Main Street Variation, would traverse the following Barnstable zoning districts: RC, RF, RF-1 (Residential) districts, a BA (Business A) district, an Aquifer Protection Overlay District, a Resource Protection Overlay District, a Groundwater Protection Overlay District, a Wellhead Protection Overlay District, and a Ground Mounted Solar Photovoltaic Overlay 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 New England Wind 2 Connector to delay, undue expense, and potential legal challenges. Therefore, use variances are or may be required from Sections 240-13, 240-

14, 240-21, 240-35.E(2), 240-35.F(2), 240-35.G(2), 240-36, and 240-44.2 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, Commonwealth Wind seeks an exemption from Sections 240-13, 240-14, 240-21, 240-35.E(2), 240-35.F(2), 240-35.G(2), 240-36, 240-44.2, and 240-7.A of the Barnstable Ordinance for the Preferred Transmission Route.

81. According to the Zoning Map of the Town of Barnstable, Massachusetts dated September 1, 1998 and last amended February 4, 2021, the Noticed Alternative Transmission Route, would traverse RC, RD-1, RF, RF-1 (Residential) districts, a BA (Business A) district, a Groundwater Protection Overlay District, an Aquifer Protection Overlay District, a Wellhead Protection District, and a Resource Protection Overlay 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 New England Wind 2 Connector to delay, undue expense, and potential legal challenges. Therefore, if the Siting Board approved the Noticed Alternative Transmission Route, use variances would or may be required from Sections 240-11, 240-13, 240-14, 240-21, 240-35.E(2), 240-35.F(2), 240-35.G(2), and 240-36 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, Commonwealth Wind seeks an exemption from Sections 240-11, 240-13, 240-14, 240-21, 240-35.E(2), 240-35.F(2), 240-35.G(2), 240-36, and 240-7.A of the Barnstable Ordinance for the Onshore Export Cable in the event that the Siting Board approves the Noticed Alternative Transmission Route.<sup>15</sup>

82. 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 Substation 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, Commonwealth Wind seeks an exemption from Section 240-10.A of the Barnstable Ordinance for activities at the Substation. The Siting Board granted an exemption from this Section of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind*, 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

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<sup>15</sup> Commonwealth Wind’s position articulated in paragraph 79 with respect to the in-road portions of the Preferred Route applies equally to the Noticed Alternative Transmission Route.

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.”).

83. Sections 240-13 and 240-14 of the Barnstable Ordinance impose a 30-foot height restriction on buildings located in the RF (Residential) district. The Barnstable Ordinance is unclear as to whether this height restriction would apply to buildings or enclosures at the Substation, or equipment at the Substation, such as lightning masts, transformers, and other Substation equipment, which are necessary, and would or could exceed 30 feet in height. Commonwealth Wind does not believe that the transformers or lightning masts must comply with the maximum building height requirement. However, the building inspector’s interpretation of the Barnstable Ordinance could differ from Commonwealth 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, Commonwealth Wind seeks an exemption from the height restrictions of Sections 240-13 and 240-14 of the Barnstable Ordinance for the Substation. The Siting Board granted an exemption from the height limitations of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind*, EFSB 17-05/D.P.U. 18-18/18-19, at 144.

84. 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. It is unclear whether the

required Substation construction at the Substation will be able to comply with the minimum yard setbacks. 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, Commonwealth Wind seeks an exemption for the Substation from the minimum yard setback requirements of Sections 240-13 and 240-14 of the Barnstable Ordinance.<sup>16</sup>

85. The Barnstable Ordinance, by Sections 240-61.D and 240-63, 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 Substation with warnings advising of the presence of high voltage and providing emergency contact 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, Commonwealth Wind seeks an exemption from Sections 240-61.D and 240-63 of the Barnstable Ordinance for signage at the Substation. The Siting Board granted an

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<sup>16</sup> At this time, final engineering designs for the Onshore Substation 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, Commonwealth Wind will update the Siting Board as the Substation design is finalized.

exemption from this Section of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind*, EFSB 17-05/D.P.U. 18-18/18-19, at 144-45.

86. The Substation 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 Substation 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, Commonwealth Wind must have the discretion to design the Substation and 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 Commonwealth Wind’s construction of the Substation 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 Substation 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 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, Commonwealth Wind requests an exemption from Sections 240-98 through 240-105 of the Barnstable Ordinance for the Substation and the Onshore Export Cable. The Siting Board granted an exemption from this Section of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind*, EFSB 17-05/D.P.U. 18-18/18-19, at 146.

87. 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 Substation and the Onshore Export Cable is ambiguous; it may be interpreted to apply to the Project. 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, Commonwealth Wind seeks an exemption from Section 240-124.A of the Barnstable Ordinance for the Substation and the Onshore Export Cable. The Siting Board granted an exemption from this Section of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind*, EFSB 17-05/D.P.U. 18-18/18-19, at 145-46. The Siting Board explained that, “due to the road-restoration to which the Company has committed in the [Host Community Agreement], exemption of the Company from Section 240-124.A is appropriate.” *Id.* Here, Commonwealth Wind has committed to restoring impacted roads following Project construction. *See* Analysis Sections 1.6, 4.0.

88. 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 Substation 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 Substation 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, Commonwealth Wind seeks an exemption from Section 240-124.B of the Barnstable Ordinance for the Substation and the Onshore Export Cable. The Siting Board granted an exemption from this Section of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind*, EFSB 17-05/D.P.U. 18-18/18-19, at 146.

89. 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 Substation 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 Substation will be infrequent because the Substation will generally not be staffed. 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. The uncertainty caused by a discretionary requirement with respect to parking spaces creates the potential for adverse interpretations, delay, burden, and undue expense. Accordingly, Commonwealth Wind seeks an exemption from Section 240-56 of the Barnstable Ordinance for the Substation. The Siting Board granted an exemption from this Section of the Barnstable Ordinance in substantially identical factual and legal circumstances in *Vineyard Wind*, 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.”).

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

<b>Zoning Provision from which Exemption is Requested</b>	<b>Local Zoning Relief Required</b>	<b>Why Exemption is Required</b>
<b>I. NEW SUBSTATION (West of Oak Street)</b>		

<p><b>Use Regulations</b> 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 the RF (Residential) district, the district in which the 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><b>Use Regulations</b> 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>
<p><b>Aquifer Protection Overlay District</b> Section 240-35.E(2)</p>	<p>Use Variance</p>	<p>The Substation 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><b>Prohibited Uses</b> 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><b>Structure Height</b> 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 Substation’s buildings, enclosures, and equipment, such as 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><b>Minimum Yard Setbacks</b> 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><b>Signs</b> 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><b>Site Plan Review</b> 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. Commonwealth 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><b>Performance Bonds</b> 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><b>Occupancy Permits</b> 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><b>Off-Street Parking</b> <b>Article VI</b> 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 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><b>II. ONSHORE EXPORT CABLE FROM LANDFALL TO THE SUBSTATION (TRANSMISSION ROUTE)</b></p>		
<p><b>A. Preferred Route and Main Street Variation</b></p>		

<p><b>Use Regulations</b> 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><b>Use Regulations</b> 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><b>Use Regulations</b> Section 240-21</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through BA (Business A) 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 240-21 does not expressly allow public utility uses in the BA 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>Use Regulations</b> 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 RC, RF, RF-1 or BA 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><b>Aquifer Protection, Wellhead Protection, and Groundwater Protection Overlay Districts</b> Sections 240-35.E(2), 240- 35.F(2), and 240-35.G(2)</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through the Aquifer Protection, Wellhead Protection, and Groundwater Protection Overlay Districts. Public utility uses are not expressly allowed in the RC, RF, RF-1 or BA 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, Wellhead 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><b>Resource Protection Overlay District</b> 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, 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>Ground Mounted Solar Photovoltaic Overlay District</b> Section 240-44.2</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through a Ground Mounted Solar Photovoltaic Overlay District. Public utility uses are not expressly allowed in the underlying RF district, 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 Ground Mounted Solar Photovoltaic 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>B. Noticed Alternative Route and Main Street Variation<sup>17</sup></b></p>		
<p><b>Use Regulations</b> 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><b>Use Regulations</b> 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>

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<sup>17</sup> A portion of the Main Street Variation for the Noticed Alternative Transmission Route passes through the BA (Business A) district.

<p><b>Use Regulations</b> 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><b>Use Regulations</b> Section 240-21</p>	<p>Use Variance</p>	<p>A portion of the Noticed Alternative Transmission Route Main Street Variation of the Onshore Export Cable will pass through BA (Business A) 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 240-21 does not expressly allow public utility uses in the BA 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>Use Regulations</b> 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 RD-1, RC, RF, RF-1 or BA 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><b>Aquifer Protection, Wellhead Protection and Groundwater Protection Overlay Districts</b> Sections 240-35.E(2), 240- 35.F(2), and 240-35.G(2)</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through the Aquifer Protection, Wellhead Protection, and Groundwater Protection Overlay Districts. Public utility uses are not expressly allowed in the underlying RD-1, RC, RF, RF-1 or BA 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, Wellhead 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><b>Resource Protection Overlay District</b> 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 RD-1, RC, 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>C. All Routes</b></p>		
<p><b>Site Plan Review</b> 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. Commonwealth 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><b>Performance Bonds</b> 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><b>Occupancy Permits</b> 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><b>III. ONSHORE EXPORT CABLE FROM SUBSTATION TO WEST BARNSTABLE SUBSTATION (GRID INTERCONNECTION)</b></p>		
<p><b>Route Options 1, 2 and 3</b></p>		
<p><b>Use Regulations</b> 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><b>Use Regulations</b> 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 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>Aquifer Protection Overlay District</b> Section 240-35.E(2)</p>	<p>Use Variance</p>	<p>This portion of the Onshore Export Cable will pass through the Aquifer Protection Overlay District. Public utility uses are not expressly allowed in the underlying RF district, 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 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>Resource Protection Overlay District</b> 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 district, 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>Site Plan Review</b> 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. Commonwealth 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><b>Performance Bonds</b> 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><b>Occupancy Permits</b> <b>Section 240-124.B</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>

**VIII. THE NEW ENGLAND WIND 2 CONNECTOR REQUIRES A COMPREHENSIVE ZONING EXEMPTION**

91. Commonwealth Wind respectfully requests a comprehensive exemption from the operation of the Barnstable Ordinance for the New England Wind 2 Connector.

92. The Department will consider a request for comprehensive zoning relief 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. *Salem-Beverly* at 126-27; *Sudbury-Hudson* at 215; *Vineyard Wind* 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).

93. 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.

*Salem-Beverly* at 126-27; *Sudbury-Hudson* at 215; *Vineyard Wind* at 153.

94. The grant of a comprehensive zoning exemption is necessary even when 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 New England Wind 2 Connector, 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.

95. 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 New England Wind 2 Connector. 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 New England Wind 2 Connector result in, at best, an imprecise application of the zoning provisions to the Project. Commonwealth 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 New England Wind 2 Connector. Nevertheless, local boards, building inspectors, or parties with interests adverse to the New England Wind 2 Connector could interpret 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 later interpreted to be applicable or if new zoning provisions are adopted prior to construction.<sup>18</sup>

96. Seeking the various zoning permits, approvals, and variances required for the New England Wind 2 Connector 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* at 156 (granting 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.

97. A comprehensive zoning exemption would also ensure the timely construction of the Project in the event that a Project design change is required. A

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<sup>18</sup> 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 would enable Commonwealth 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. Commonwealth 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.

98. As described herein, the New England Wind 2 Connector satisfies the Department's standards for the grant of a comprehensive zoning exemption. As described in more detail in the Analysis, the New England Wind 2 Connector is necessary to connect the WTG to the New England electric grid, bring public benefits, and serve the public interest (*see, e.g.*, Sections 1.6, 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. Vineyard Wind* at 156.

99. In a proceeding for a similar transmission project to interconnect an offshore wind generation facility, the Siting Board granted Vineyard Wind comprehensive zoning exemption from the operation of the Barnstable Ordinance for the Vineyard Wind Connector, 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, *id.* at 153, the substantially identical factual and legal circumstances between *Vineyard Wind* and this proceeding—involving a similarly situated 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 to grant a comprehensive zoning exemption here as well.

100. 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* at 156, granting a comprehensive zoning exemption in substantially identical factual and legal circumstances, given “the potential for zoning impediments that may result in Project construction delays [and] could result in substantial public harm.” *Id.*

## **IX. PERMITS REQUIRED**

101. 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 New England Wind 2 Connector.

102. Commonwealth Wind submitted the ENF to the MEPA office of the Executive Office of Energy and Environmental Affairs on September 30, 2022, and has attached the ENF to this Zoning Petition as Exhibit C. Commonwealth Wind will update the record 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 New England Wind 2 Connector under MEPA and, accordingly, no related Certificates or draft MEPA Section 61 findings are yet available.<sup>19</sup>

**WHEREFORE**, Commonwealth 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 New England Wind 2 Connector is reasonably necessary for the convenience and welfare of the public, and grant (1) individual 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 Commonwealth Wind's proposal to construct and operate the New England Wind 2 Connector.

Respectfully Submitted,

**COMMONWEALTH WIND, LLC**

By its Attorneys:

  
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<sup>19</sup> Consistent with the Department's Checklist for Filing of Zoning Exemption Petitions, Commonwealth Wind filed a draft hearing notice addressing the Section 69J Petition, the Section 72 Petition, and this Zoning Petition, with the Section 69J Petition.

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Dated: November 1, 2022

**EXHIBIT LIST – ZONING PETITION**

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|------------------|---|
| <b>EXHIBIT A</b> | Attested Copy of the Barnstable Zoning Ordinance<br>Barnstable Zoning Map |
| <b>EXHIBIT B</b> | Zoning Exemption Checklist  |
| <b>EXHIBIT C</b> | Environmental Notification Form   |