

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

September 18, 2019

**In the Matter of
Vineyard Wind LLC**

**OADR Docket No. WET-2019-029
Superseding Order of Conditions**

STIPULATED ADDITIONAL CONDITIONS

The Parties submit the following stipulation in conjunction with their joint motion for approval of these conditions.

1. The applicant, Vineyard Wind LLC (“Applicant”), submitted a Notice of Intent under the provisions of G. L. c. 131, § 40 (the “Act”), and the applicable regulations, 310 CMR 10.00 et seq. (the “Wetlands Regulations”) (the “NOI”), to the Petitioner, the Edgartown Conservation Commission (the “Commission”). The NOI was assigned MassDEP File # SE20-1529. The project proposed in the NOI consisted of the installation of two 220-kiloVolt (kV) transmission cables within sections of the Nantucket Sound and Muskeget Channel within the Town of Edgartown (“the Project”) for the purpose of bringing power from an 800 megawatt Off-shore Wind Development Area to the mainland.

2. In an Order of Conditions filed with the office of the Edgartown Town Clerk on July 18, 2019, the Commission timely denied the Project.

3. The Applicant timely appealed to the Massachusetts Department of Environmental Protection (the “Department”) (collectively, with the Applicant and the

Commission, the "Parties") under the applicable provisions of the Wetlands Regulations. After an in-depth review, the Department issued the SOC, a copy of which is appended hereto as Exhibit 1.

4. On August 19, 2019, the Commission timely appealed the SOC to the Office of Appeals and Dispute Resolution (the "OADR"), which issued a scheduling order for a pre-hearing conference to be held on September 17, 2019, and adjudicatory hearing to be held on December 18, 2019. On the Commission's assented-to motion, the OADR re-scheduled the pre-hearing conference to September 24, 2019, based on the Applicant's and the Commission's representation that they were engaged in discussions to resolve the matter by adding additional conditions and obviating the need for the expense and time of an administrative hearing.

5. Based on the history described in the preceding paragraphs, and in order to ensure the Commission's continued role and oversight of the Project in order to advance and to protect various interests under the Act, the Parties agree to the following additional conditions, set forth in paragraphs 6-14, which shall be incorporated into a Final Order of Conditions ("FOC"). The 15 Special Conditions currently in the SOC shall also be incorporated into the FOC.

6. Special Condition 16: When the Applicant is required to make submissions under the Final Order of Conditions ("FOC") to the Department for review and approval, specifically pursuant to Special Conditions 5 (requests for amendment of time frames), 8 (fisheries survey plan), 9 (shellfish survey plan), 10 (Cape Pogue survey plan), and 12 (monitoring plan for turbidity and total suspended solids during dredging operations), such submissions shall be provided simultaneously to the Commission for its review and comment to the Department on matters within the scope of the Act and applicable to activities within the Town of Edgartown (the "Town"). Any comment submitted by the Commission shall also be simultaneously provided to the Applicant. The Commission shall supply any comments within 30 calendar days of receipt of the Applicant's submission, except with respect to Special Condition 5, where comments are due in 7 calendar days. Date of receipt shall be considered the actual date for an emailed document (or link to an on-line file sharing system) or one business day after the document is sent to the Commission by a recognized overnight delivery carrier.

7. Special Condition 17: In addition, when the Applicant is required to make submissions under the FOC to the Department that do not require the Department's approval, specifically, submissions under Special Conditions 3 (pre-grapnel run report), 6 (reports

generated from the pre-construction benthic monitoring plan), 7 (reports from the post-construction benthic habitat monitoring plan), 12 (reports from the turbidity and TSS monitoring plan), and 15 ("As built" plan) such submissions shall be provided simultaneously to the Commission.

8. Special Condition 18: If the Department initiates consultation with other state and federal agencies pursuant to Special Condition 11 of the FOC, the Department shall also consult with the Commission.

9. Special Condition 19: If, pursuant to Special Condition 11 of the FOC, the Department determines that any resource areas disturbed by construction impacts have not substantially returned to their former productivity, the Department's consultation with the other state and federal agencies and the Commission to specify what additional measure is to be implemented by the permittee shall include consideration of restoration measures and other non-compensatory mitigation measures, as well consideration of compensatory mitigation.

10. Special Condition 20: The Applicant shall inform the Commission of the choice of cable protection used, if any, within the Town as referenced in Special Condition 13 of the FOC.

11. Special Condition 21: The Applicant shall report to the Commission of the choice of technique of boulder relocation within the Town as referenced in Special Condition 14 of the FOC.

12. Special Condition 22: The post-construction benthic monitoring plan and Fisheries, Shellfish and Cape Pogue Eelgrass surveys required by FOC Special Conditions 7 through 10 shall include a survey generated and submitted no later than one year and three years after cable laying operations are completed.

13. Special Condition 23: When the Applicant prepares a decommissioning plan(s) for Project components installed within the Town subject to this FOC, it will provide a copy of such plan(s) to the Commission for a 30-day review and comment period, and, as applicable, will seek approval under the Act.

14. Special Condition 24: The Applicant shall promptly report any emergency repairs, or instances in which the cable becomes exposed, in each instance within the Town, and any actions taken or planned to be taken by the Applicant in response to such conditions to the Commission. Notwithstanding the foregoing, (1) cable and other structures authorized by this FOC may be maintained as authorized by the applicable Wetlands Regulations and other applicable law, and (2) if the cable requires emergency repair, the Applicant may make such emergency repairs except to the extent prohibited by applicable law. If the Applicant plans activities relating to cable or other structures authorized by this FOC within the Town that require submission of a further Notice of Intent under the Act, then the Applicant will submit a Notice of Intent compliant with then-applicable law. Regardless of whether a Notice of Intent is required, the Applicant will provide information reasonably requested by the Commission as to the cause of the incident, actions taken or plans to correct the incident.

RESPECTFULLY SUBMITTED:

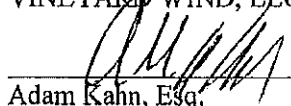
THE PETITIONER,
TOWN OF EDGARTOWN
CONSERVATION COMMISSION

By its attorneys,

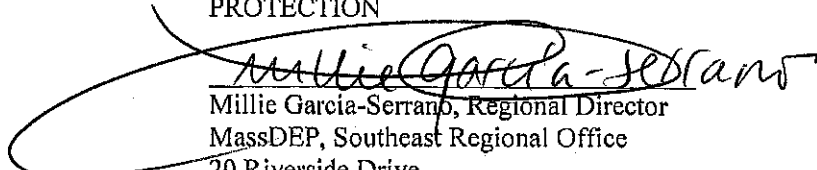


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DATED: September 18, 2019