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CAPE COD  
COMMISSION

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## LIMITED DEVELOPMENT OF REGIONAL IMPACT SCOPING DECISION

DATE: DECEMBER \_\_\_\_, 2015

TO: ATTY. MICHAEL D. FORD  
PO BOX 485, WEST HARWICH, MA 02671

PROJECT APPLICANT/  
PROPERTY OWNER: NRG RENEW CANAL 1 LLC  
9 FREEZER ROAD, SANDWICH, MA 02563

PROJECT NUMBER: LR15020

PROJECT: CANAL COMMUNITY SOLAR, SANDWICH, MA

PROJECT SITE/LOCATION: TUPPER ROAD, SANDWICH, MA

TITLE INFORMATION: BOOK 11961 PAGE 226  
PLAN BOOK 546 PAGE 42

ASSESSOR'S ID: MAP 86 PARCELS 13 & 15

### SUMMARY

The Cape Cod Commission (Commission), through the Executive Director, hereby determines that mandatory Development of Regional Impact (DRI) review of the proposed ground-mounted photovoltaic project located at Tupper Road in Sandwich, MA (Project) shall be limited to the Regional Policy Plan (RPP) issue or sub-issue areas of Water Resources (Goals WR1 and WR7), Wildlife and Plant Habitat, and Open Space, and that NRG Renew Canal 1 LLC (Applicant) may proceed with its application for said Limited DRI approval.

### PROJECT DESCRIPTION

The Applicant is proposing to develop a 20.6-acre site with a 1.5-MW solar field accessed via an existing gravel drive extending from Tupper Road. According to the application materials, the Project will require the disturbance of 10.6 acres of the site. The area of the Project and its

associated disturbance primarily contains forested upland. The Project will connect to existing overhead power distribution infrastructure owned by Eversource along Route 6A. The Project is intended to be part of the Applicant's comprehensive approach to its operations at the existing plant along the Cape Cod Canal.

## **PROCEDURAL HISTORY**

The Applicant filed an Expanded Environmental Notification Form (EENF) for both the Project and a 330MW dual-fueled electric generating facility; the Applicant requested a Phase 1 Waiver for the Project. The Commission submitted a comment letter to the MEPA office on the EENF; the comments included support for the Phase 1 Waiver. The Secretary of EEA issued a certificate on the EENF and granted a Phase I Waiver for the Project on October 9, 2015. The Phase 1 Waiver allows the Project to proceed to DRI review without further review under MEPA, and prior to DRI review for other work described in the EENF (that other work will require both EIR and DRI review).

The DRI Scoping application was received by the Commission on November 6, 2015. The DRI Scoping application was deemed complete on December 7, 2015.

At its public meeting on December 17, 2015, the Committee on Planning and Regulation (CPR) reviewed a draft Scoping decision. The CPR voted to accept and adopt the decision as final, which approved limiting the scope of DRI review to the issue or sub-issue areas of Water Resources (Goals WR1 and WR7), Wildlife and Plant Habitat, and Open Space.

## **JURISDICTION**

The Project qualifies as a Development of Regional Impact (DRI) pursuant to Section 3(e) of the Commission's *Enabling Regulations* (revised November 2014) as "*new construction or development that has a Total Project Area greater than 40,000 square feet.*"

In accordance with Section 5(a) of the *Enabling Regulations*, "[f]or any Project that is a DRI...the proponent may apply to the Commission to limit the scope of the DRI review."

Pursuant to Section 5(e)(v) of the *Enabling Regulations*, upon submission and after review of such application, "[t]he Executive Director shall issue a written decision following his/her determination of the scope of DRI review."

## **FINDINGS**

### **GENERAL FINDINGS**

The Executive Director hereby finds as follows:

GF1. The Applicant submitted an application to scope DRI review on November 6, 2015; the Scoping application was deemed complete on December 7, 2015.

GF2. As the date the application was declared complete was December 7, 2015, the Project was reviewed subject to the 2009 Regional Policy Plan (RPP), as amended in August 2012.

GF3. The Executive Director considered the Limited DRI Scoping Checklist for new development in its review and deliberations on the scoping application.

GF4. The Applicant is proposing to develop a 20.6-acre site with a 1.5-MW solar field accessed via an existing gravel drive extending from Tupper Road. According to the application materials, the Project will require the disturbance of 10.6 acres of the site. The area of the Project and its associated disturbance primarily contains forested upland. The Project will connect to existing overhead power distribution infrastructure owned by Eversource along Route 6A.

GF5. The proposed project is to be implemented and constructed in accordance with the following plan set titled "Preliminary Site Plans for Canal Community Solar Project" dated October 9, 2015 by Atlantic Design Engineers, Inc., and other information and documents referenced herein:

- Sheet 1 of 8: *Title Sheet*
- Sheet 2 of 8: *Overall Existing Conditions Plan*
- Sheet 3 of 8: *Existing Conditions Plan*
- Sheet 4 of 8: *Existing Conditions Plan*
- Sheet 5 of 8: *Existing Conditions Plan*
- Sheet 6 of 8: *Overall Site Development Plan*
- Sheet 7 of 8: *Site Vicinity Plan*
- Sheet 8 of 8: *Site Vicinity Plan*

## LAND USE

LUF1. There is an approved Land Use Vision Map (LUVV) for the Town of Sandwich. The project site is mapped as an Economic Center, meeting Minimum Performance Standard (MPS) LU1.1 (Development Location). MPS LU1.2 (Compact Development) does not apply due to the nature of the Project, i.e. the proposal does not involve building development.

LUF2. The Project connects to existing infrastructure and is located within the Solar Overlay District which was approved by the Town of Sandwich at its Special Town Meeting on November 16, 2015. Therefore the Project complies with MPS LU2.1 (Connections to Existing Infrastructure). As the Project is not proposing a telecommunications facility, MPS LU2.2 (Co-location of Telecommunication Facilities) does not apply.

LUF3. As the Project is not on or adjacent to agricultural lands, the standards under goal LU3 (Rural Lands) do not apply.

LUF4. The Executive Director finds that the Project neither involves substantial deviation from nor would have significant impacts upon the Land Use Goals of the RPP and standards thereunder, and thus does not require substantive DRI review for the RPP issue area of Land Use, which is hereby scoped out of DRI review.

## ECONOMIC DEVELOPMENT

EDF1. The Project is located in an area of Sandwich mapped as an Economic Center on the Town's Land Use Vision Map (LUVV), thus meeting MPS' ED1.1 (Location in Economic Centers).

EDF2. The Project is not located on agricultural, waterfront or recreational lands. Therefore MPS ED1.4 (Resource-based Economic Areas) does not apply.

EDF3. The Project does not involve gaming. Therefore MPS ED2.1 (Gaming) does not apply.

EDF4. The Project will help meet Cape Cod's continuing demand for electricity by introducing more power into the market, meeting MPS ED4.1 (Demonstrated Need and Public Benefit).

EDF5. The Executive Director finds that the Project neither involves substantial deviation from nor would have significant impacts upon the Economic Development Goals of the RPP and standards thereunder, and thus does not require substantive DRI review for the RPP issue area of Economic Development, which is hereby scoped out of DRI review.

## WATER RESOURCES

WRF1. Water Resources Goals WR1 (General Aquifer Protection) and WR7 (Stormwater Quality) apply to all new development and therefore apply to the Project. Because the Project generates some new nitrogen load and requires stormwater management for the development, the Project may have significant impacts upon Water Resources Goals WR1 and WR7 of the RPP, and standards thereunder.

WRF2. The Project is not located within any Commission-mapped areas for Water Resources. Therefore standards under goals WR2 (Drinking Water Quality and Quantity), WR3 (Marine Water Embayments and Estuaries), WR4 (Freshwater Ponds and Lakes), and WR5 (Water Quality Improvement Areas) do not apply to the Project.

WRF3. The Project does not create any wastewater, thus the standards under goal WR6 (Public and Private Wastewater Treatment Facilities) do not apply to the Project.

WRF4. The Executive Director finds that the Project requires substantive DRI review for standards under RPP Water Resources Goals WR1 and WR7. The Executive Director also finds that the Project neither involves substantial deviation from nor would have significant impacts on RPP Water Resources goals WR2, WR3, WR4, WR5, and WR6 and standards thereunder, and thus does not require substantive DRI review for RPP Water Resources goals WR2, WR3, WR4, WR5, and WR6, which are hereby scoped out of DRI review.

## COASTAL RESOURCES

CRF1. The Project is not located along the coast, thus the Coastal Resources issue area does not apply to the Project. The Executive Director finds that the Project does not require substantive

DRI review under the RPP issue area of Coastal Resources, and this issue area is hereby scoped out of DRI review.

## MARINE RESOURCES

MRF1. The Project is not located offshore, thus the Marine Resources issue area of the RPP does not apply to the Project. The Executive Director finds that the Project does not require substantive DRI review under the RPP issue area of Marine Resources, and this issue area is hereby scoped out of DRI review.

## WETLANDS

WETF1. The Project does not involve alteration to wetlands or their buffers, thus the Wetlands sub-issue area of the RPP does not apply to the Project. The Executive Director finds that the Project does not require substantive DRI review under the RPP sub-issue area of Wetlands, and this sub-issue area is hereby scoped out of DRI review.

## WILDLIFE AND PLANT HABITAT

WPHF1. The Project Site is not mapped as priority habitat for rare species, and the Applicant has received correspondence dated August 28, 2015 from the Massachusetts Natural Heritage and Endangered Species Program (NHESP) indicating further review under MESA is not necessary.

WPHF2. The Project involves significant clearing of vegetation, which may have significant impacts upon the Wildlife and Plant Habitat Goals of the RPP and standards thereunder. The Executive Director finds that the Project requires substantive DRI review under the RPP sub-issue area of Wildlife and Plant Habitat.

## OPEN SPACE

OSF1. The Project proposes new development within previously undisturbed areas. Because the Project may have significant impacts upon the Open Space and Recreation Goals of the RPP and standards thereunder, the Executive Director finds that the Project requires substantive DRI review under the RPP issue area of Open Space and Recreation.

## TRANSPORTATION

TRF1. Considering site traffic will be limited to temporary construction activities and infrequent maintenance activities, the Project does not involve substantial deviation from the Transportation MPS of the RPP and would not have significant impacts upon the Transportation Goals of the RPP. The Executive Director finds that the Project does not require substantive DRI review under the RPP issue area of Transportation, which is hereby scoped out of DRI review.

## WASTE MANAGEMENT

WMF1. The Project is neither located in any resource area prohibiting the storage or generation of hazardous wastes nor will generate or store a significant quantity of hazardous waste. Further, the Project will not create significant amounts of solid waste during the construction phase aside from wastes produced by land clearing activities, and thus does not require the preparation of a construction and demolition waste plan.

WMF2. The Executive Director finds that the Project would not involve substantial deviation from the MPS of the RPP and would not have significant impacts upon the RPP Waste Management Goals and standards thereunder. The Project does not require substantive DRI review under the issue area of Waste Management, and this issue area is hereby scoped out of DRI review.

## ENERGY

EF1. RPP Energy standards E1.1-1.6 are only applicable to building development; the remaining RPP Energy standards E1.7-1.11 are only applicable to wind energy conversion facilities. Therefore the Executive Director finds that the RPP issue area of Energy does not apply to the Project, the Project does not require substantive DRI review under the RPP issue area of Energy, and this issue area is hereby scoped out of DRI review.

## AFFORDABLE HOUSING

AHF1. The Project falls under the ‘Other’ category for the purpose of the affordable housing mitigation required under MPS AH 3.1. Operation of the solar array will require fewer than the equivalent of one full-time on-site or contracted employee. In addition, the Project involves facilities in which a calculation of building square footage is not feasible or appropriate. Therefore, in accordance with Technical Bulletin #10-001 (Guidelines for Calculation of Mitigation for DRIs in ‘Other’ Category for MPS AH 3.1), the Executive Director finds that the Project would not involve substantial deviation from the MPS of the RPP and would not have significant impacts upon the RPP issue area of Affordable Housing. Thus the proposed project does not require substantive DRI review under the RPP issue area of Affordable Housing, and this issue area is hereby scoped out of DRI review.

## HISTORIC PRESERVATION/ COMMUNITY CHARACTER

HPCCF1. The proposed project site does not include any historic structures and is not located within or adjacent to any historic districts. A letter from the Massachusetts Historical Commission (MHC), dated October 2, 2015, states that a review of MHC’s Inventory of Historic and Archaeological Assets of the Commonwealth identified no inventoried or State Register-listed historic properties in the area of potential impact. As such, the Project is consistent with RPP MPS HPCC1.1 (Historic Structures), HPCC1.2 (Cultural Landscapes), and HPCC1.3 (Archaeological Sites). Additionally, the Project will be reviewed by the Town of Sandwich Historic District Committee due to its location within the Old King’s Highway Historic District.

HPCCF2. Given the fact that the proposed solar panels extend only 8 feet above grade level and the Project has a significant, naturally vegetated buffer and setback from developed areas and the regional roadway, the Executive Director finds the Project is unlikely to pose any detrimental visual impacts. The Project is consistent with HPCC2.3 (Avoid Adverse Visual Impacts) due to the low height of the structures and the project siting. The Executive Director finds that there is no need for preparation of a Visual Impact Assessment (VIA). RPP standards relating to building design (HPCC2.4 through HPCC2.7) are not applicable to the Project because no buildings are proposed. Similarly, RPP parking and landscaping standards (HPCC2.8 through HPCC2.10) and some project siting standards, namely HPCC2.1 (Strip Development) and HPCC2.2 (Protection of Existing Roadway Character), are not applicable due to the nature of the Project.

HPCCF3. The Executive Director finds that the Project would not involve substantial deviation from the Heritage Preservation/ Community Character MPS of the RPP and would not have significant impacts upon the Heritage Preservation/ Community Character Goals of the RPP Goals. The Project does not require substantive DRI review under the issue area of Historic Preservation and Community Character, and this issue area is hereby scoped out of DRI review.

## **CONCLUSION**

Based on the foregoing findings, the Executive Director hereby further finds and determines that the proposed ground-mounted solar photovoltaic project located at Tupper Road in Sandwich, Massachusetts as outlined in this decision requires further DRI review, which shall be limited to the RPP issue areas of Water Resources (Goals WR1 and WR7), Wildlife and Plant Habitat, and Open Space. The remaining RPP issue or sub-issue areas of Land Use, Economic Development, Wetlands, Marine Resources, Coastal Resources, Water Resources (Goals WR2 through WR6), Transportation, Waste Management, Affordable Housing, Energy, and Heritage Preservation/ Community Character are hereby scoped out of DRI review. This decision is subject to the conditions below.

## **CONDITIONS**

GC1. This decision shall allow the Applicant to file a Limited DRI application and undertake Limited DRI review with the Commission, consistent with this terms and conditions of this decision, within one year from the date of this decision, which time may be extended upon mutual agreement of Commission staff and the Applicant.

GC2. The Project shall be implemented and constructed in accordance with the plans outlined herein under Finding GF5 and other information and documents referenced herein.

GC3. The terms and conditions of this decision shall be incorporated into any substantive Limited DRI decision for the project.

***SEE NEXT PAGE FOR SIGNATURES***

**SIGNATURES**

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss \_\_\_\_\_, 2015

Before me, the undersigned notary public, personally appeared \_\_\_\_\_,

in his/her capacity as \_\_\_\_\_ of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was [ ] photographic identification with signature issued by a federal or state governmental agency, [ ] oath or affirmation of a credible witness, or [ ] personal knowledge of the undersigned.

\_\_\_\_\_  
Notary Public

SEAL

My Commission Expires: