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FILED

December 1, 2023

**SUPERIOR COURT OF NJ
MERCER VICINAGE
CHANCERY**

Attorneys for Plaintiffs

Long Beach Township, Beach Haven, Ship Bottom, Barnegat Light,

Surf City, Harvey Cedars, Brigantine, and Ventnor City

<p>Long Beach Township, Beach Haven, Ship Bottom, Barnegat Light, Surf City, Harvey Cedars, Brigantine, and Ventnor City,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>New Jersey Department of Environmental Protection</p> <p style="text-align: center;">Defendant,</p>	<p>SUPERIOR COURT OF NEW JERSEY</p> <p>LAW DIVISION: MERCER COUNTY</p> <p>DOCKET NO.: ____-C-____ C-88-23</p> <p style="text-align: center;"><u>Civil Action</u></p> <p style="text-align: center;">COMPLAINT</p>
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Plaintiffs Long Beach Township, Beach Haven, Ship Bottom, Barnegat Light, Surf City, Harvey Cedars (LBI Municipalities) and Brigantine and Ventnor City (collectively with the LBI Municipalities, Plaintiffs), by and through their attorneys Pashman Stein Walder Hayden P.C. by way of Complaint against Defendant, the New Jersey Department of Environmental Protection (DEP), say:

Introduction

This matter involves Plaintiffs' good faith efforts to obtain a fair and impartial administrative hearing to ensure that the scientifically-documented harms of one of the largest and closest to land offshore wind projects in the world are duly considered consistent with due process. Those harms include severe negative impacts to tourism, wildlife, and both the State and shore economies. To be clear, Plaintiffs do not oppose development of offshore wind energy. They simply want to ensure that alternatives, such as moving presently proposed projects further offshore, are properly considered. Substantial evidence exists that the DEP has prejudged and has engaged in efforts to advance the Governor's ambitious wind-energy policy directives rather than serve as an impartial arbiter of the facts and law. As such, the DEP is not appropriately discharging its independent role as stewards of the environment in violation of a number of administrative regulations. Due process requires that the DEP refer the matter to the Office of Administrative Law for an adjudicatory hearing to ensure a legitimate opportunity for a fair presentation by all stakeholders of countervailing facts presently being ignored or whitewashed by the DEP. The public good and preservation of public trust demand that a project of this magnitude, that will forever alter the ocean horizon—above and below the surface—not be rushed forward by political mandate.

Parties

1. Plaintiff Long Beach Township is a municipality in Ocean County, New Jersey, and comprises the largest parts of Long Beach Island (LBI) with various portions located throughout the 18-mile stretch of LBI beaches. Its principal address is 6805 Long Beach Boulevard Brant Beach, NJ 08008.

2. Plaintiff Beach Haven is a borough situated on the Jersey Shore in southern Ocean County and is situated on LBI. Its principal address is 300 Engleside Avenue Beach Haven, NJ 08008.

3. Plaintiff Ship Bottom is a borough situated on the Jersey Shore in southern Ocean County and is situated on LBI. Its principal address is 1621 Long Beach Boulevard Ship Bottom, New Jersey 08008.

4. Plaintiff Barnegat Light is a borough situated on the northern tip of LBI. Its principal address is 2-12 East 7th Street, Barnegat Light, New Jersey 08006.

5. Plaintiff Surf City is a borough in LBI, with its principal address at 813 Long Beach Boulevard, NJ 08008.

6. Plaintiff Harvey Cedars is a borough in the Northern end of LBI, with its principal address at 7606 Long Beach Boulevard, PO Box 3185, Harvey Cedars, NJ 08008.

7. Plaintiff Brigantine is a city in Atlantic County, New Jersey, with its principal address at 1417 West Brigantine Avenue, Brigantine, New Jersey 08203.

8. Plaintiff Ventnor City is a city in Atlantic County, New Jersey, with its principal address at 6201 Atlantic Avenue, Ventnor City, New Jersey 08406.

9. Defendant, the DEP, headquartered in Trenton, New Jersey is a State agency designated with the responsibility to protect environmental quality and public health. The DEP Commissioner, Shawn M. LaTourette, was appointed by Governor Philip D. Murphy and is responsible for formulating statewide environmental policy and directing programs that protect public health and ensure the quality of New Jersey's air, land, water, and natural and historic resources.

Factual Background

A. New Jersey’s ambitious goal of being the Epicenter in Offshore Wind Energy

10. New Jersey has been outspoken about the impacts of climate change as an imminent threat to the health, safety, and welfare of New Jersey citizens.

11. On August 19, 2010, the Offshore Wind Economic Development Act (OWEDA) was signed into law. Among other things, OWEDA directed the Board of Public Utilities (BPU) to establish an Offshore Wind Renewable Energy Certificate (OREC) program requiring a percentage of the State’s electric load to be supplied by OffShore Wind (OSW) from qualified OSW projects. A qualified OSW project is defined as, “...a wind turbine electric generation facility in the Atlantic Ocean and connected to the electric transmission system in this State, and includes the associated transmission-related interconnection facilities and equipment, and approved by the Board pursuant to [N.J.S.A. 48:3- 87.1].”

12. OWEDA defines an OREC as representing the environmental attributes of one megawatt hour (“MWh”) of electric generation from an OSW project. For each MWh delivered to the transmission grid, an OSW project will be credited with one OREC.

13. OWEDA also established the application requirements for OSW projects to be considered eligible to receive ORECs and provides factors that the BPU should consider. Following the passage of OWEDA, the BPU adopted rules governing the application process and evaluation framework for OSW facilities.

14. Following the passage of OWEDA, Governor Murphy pledged to decrease the impacts of climate change through a commitment to reaching 100 percent clean energy by 2050.

15. Within his first few weeks in office, on January 31, 2018, Governor Murphy signed Executive Order (EO) 8 making New Jersey's leadership in Offshore Wind a centerpiece of the Governor's environmental and energy agenda.

16. EO 8 implements the OWEDA and sets a vision for a clean energy economy by setting "an aggressive offshore wind energy production goal."

17. EO 8 directs the Board of Public Utilities ("BPU"), the Department of Environmental Protection ("DEP"), all other State agencies with responsibilities under OWEDA to "take all necessary actions to implement OWEDA in order to promote and realize the development of wind energy off the coast of New Jersey to meet a goal of 3,500 megawatts of offshore wind energy generation by the year 2030."

18. EO 8 further directs the BPU to implement OWEDA's Offshore Renewable Energy Certificate ("OREC") program through the approval of OREC Pricing Plans as outlined in OWEDA and then issue a solicitation for proposed offshore wind projects for the generation of 1,100 megawatts of electric power – "the nation's largest such solicitation to date."

19. On November 19, 2019, Governor Murphy signed EO 92, which increased the State's OSW energy goal from 3,500 MW by 2030 to an even more aggressive goal of 7,500 MW by 2035. Governor Murphy found that expanding the OSW goal will ensure that New Jersey can "meet the State's goals of 50 percent renewable energy by 2030 and 100 percent clean energy by 2050."

20. On May 23, 2018, Governor Murphy signed the Clean Energy Act ("CEA") into law, (P.L.2018, c.17). Among other things, the CEA increased OWEDA's initial 1,100 MW requirement to "at least" 3,500 MW of generation from OSW projects. The Clean Energy Act

sought to expand New Jersey's renewable energy programs by establishing one of the most ambitious renewable portfolio standards in the country.

21. On January 27, 2020, Governor Murphy unveiled the state's Energy Master Plan, which outlines key strategies to reach his goal of 100 percent clean energy by 2050.

22. Among other executive orders designed to implement the Governor's aggressive target of clean energy, on September 21, 2022, Governor Murphy signed EO 307, which, again increased New Jersey's offshore wind goal. EO 307 rescinded Paragraph 2 of Executive Order No. 92 (2019), which established a goal of 7,500 megawatts of offshore wind energy generation by the year 2035, and set a new goal nearly 50% higher of 11,000 megawatts of offshore wind energy generation by the year 2040.

23. In addition, EO 307 directed the BPU to undertake to study the feasibility and benefits of further increasing the new goal.

24. Since taking office in 2018, the Murphy Administration has led a targeted effort focused on achieving clean energy, including developing a "wind port" in Salem County along the Delaware Bay that would become a hub for construction of wind turbines (currently, the United States has no capacity for construction of the turbines needed for wind farms), establishing a Wind Institute to coordinate workforce development and research and development in offshore wind, and authorizing a \$250 million investment in the Port of Paulsboro for turbine component manufacturing.

25. Governor Murphy has taken numerous additional measures over the past few years to ensure that New Jersey is at the forefront of the wind energy movement. Governor Murphy is one of the nation's strongest advocates for offshore wind as "a core strategy" to reduce reliance on fossil fuels. He repeatedly has made clear that he wants to make New Jersey the

“hub” of East Coast’s offshore wind energy and “epicenter” of the wind energy industry. Governor Murphy stated, “[o]ur renewed and strengthened commitment to offshore wind development testifies to my Administration’s understanding that, regardless of our impressive successes to date, there is always more that we can do to make New Jersey more sustainable while further advancing the state’s economic vitality.”

26. To that end, Governor Murphy explicitly has charged all State agencies, including the DEP, to “take all necessary actions” to implement his aggressive goal of offshore wind energy generation in New Jersey. The Governor stated at a Climate Change Conference, “[t]his is a whole of government approach. So anyone who thinks this is just a Department of Environmental Protection initiative, *which it obviously is*, is missing the broader picture.”

27. Those agencies, including the DEP, have demonstrated absolute adherence to the Governor’s directives. DEP Commissioner Shawn M. LaTourette stated, “[f]rom the country’s first purpose-built offshore wind port to a nation-leading strategy for improving water infrastructure, New Jersey is demonstrating that strong environmental policy supports and promotes economic growth.” Mr. LaTourette echoed the Murphy Administration’s “commitment to improving our environment ...through our pursuit of a just clean energy transition and clean water for all” and applauded the Governor’s “course for accelerating New Jersey’s green economic growth.”

B. Atlantic Shores Offshore Wind Projects

28. In response to OWEDA and the Governor’s executive Orders, the BPU issued two solicitations for qualified OSW projects. On September 18, 2018, the BPU began the 2018/2019 Solicitation by opening an application window and inviting all interested parties to

submit OSW Applications. The BPU ultimately selected Ørsted's Ocean Wind 1 to receive ORECs.¹

29. On September 9, 2020, the BPU held a second solicitation window seeking to secure ORECs targeting 1,200 MW to 2,400 MW of OSW capacity. Interested developers were encouraged to submit an application to build an OSW facility in areas leased from the Federal Bureau of Ocean Energy Management ("BOEM") in federal waters off the coast of New Jersey.

30. In June 2021, the BPU awarded a total of 2,658 megawatts of offshore wind capacity to two projects, Atlantic Shores Offshore Wind, to be developed by Atlantic Shores Offshore Wind 1, LLC, a joint venture between EDF-RE Offshore Development, LLC and Shell New Energies US LLC, and Ocean Wind II, to be developed by Ørsted's Ocean Wind II, LLC. Those projects represented the largest combined offshore wind award in the nation at the time.

31. The Atlantic Shores projects that are the subject of this lawsuit will be owned and operated by Atlantic Shores Offshore Wind Project 1, LLC and Atlantic Shores Offshore Wind Project 2, LLC, (together, the Projects). The Atlantic Shores projects will span a 100-plus acre of undeveloped ocean.

32. Atlantic Shores' proposal calls for the construction and operation of two distinct offshore wind energy projects that, combined, would include up to 200 massive wind turbine structures - each as high as the Eiffel Tower (over 1,000 feet) and as almost as wide as they are tall. The Projects would also include up to 10 offshore substations, one meteorological tower, up

¹ Later, in 2021, the BPU issued another order awarding Ørsted's Ocean Wind 2 a 20-year OREC for its proposed offshore wind farm with a capacity of 1,148 MW. Ørsted's Ocean Wind projects were projected to become operational as early as 2025-26. However, just recently, Ørsted has announced that will "cease development" of both projects – a devastating blow to Governor Murphy's clean energy goals.

to four temporary meteorological and oceanographic buoys inter-array cables, up to two onshore substations, one operations and maintenance facility, and up to eight transmission cables making landfall in Atlantic City and/or Sea Girt, New Jersey.

33. At its closest point, the wind turbine generators (as well as offshore substations and various cables) would be approximately 8.7 miles from the New Jersey shoreline.

34. The proposed Projects would be the first of their kind in the United States and will be the largest, tallest, and closest-to-shore wind farm ever built.

35. On April 8, 2021, the Bureau of Ocean Energy Management (BOEM) approved Atlantic Shores' Site Assessment Plan. On March 25, 2021, Atlantic Shores submitted its Construction and Operation Plans (COP), which was updated on May 3, 2023, and is currently under review with BOEM.

36. On May 15, 2023, the BOEM announced the availability of the draft Environmental Impact Statement (EIS) for the proposed Atlantic Shores South Wind Project, which was published in the Federal Register on May 19, 2023 and opened a 45-day public comment period, which ended on July 3, 2023.

37. To proceed with the Projects, Atlantic Shores requires that the DEP issue a Federal Consistency Certification. That Certification seeks to ensure consistent standards for certain coastal development as federal and state jurisdiction over coastal waters are often intertwined.

38. The Coastal Zone Management Act (CZMA) (16 U.S.C. 1451 et seq.) requires that federal actions within the coastal zone or within the geographic location descriptions (i.e., areas outside the coastal zone in which an activity would have reasonably foreseeable coastal effects) affecting any land or water use or natural resource of the coastal zone be consistent with

the enforceable policies of a state's federally approved coastal management program. Because portions of the Atlantic Shores Projects are located within New Jersey's designated coastal zone, the Projects require a federal consistency review under the CZMA (16 USC 1456), Section 307 (c)(3)(A) and 15 CFR Part 930.

39. The DEP is charged with conducting federal consistency reviews to ensure that the Projects are "consistent" with New Jersey Coastal Zone Management (CZM) rules, N.J.A.C. 7:7, et. Seq. Coastal states such as New Jersey have a special responsibility to protect America's ecologically and economically significant coastal and marine resources under the CZMA.

40. As part of its application, Atlantic Shores has submitted a "Coastal Zone Management Consistency Statement," which concludes that "the Projects are consistent to the maximum extent practicable with the enforceable policies of the New Jersey Coastal Management Program." (Atlantic Shores Offshore Wind Construction and Operations Plan for Commercial Lease OCS (OCS-A 0499), Appendix I-C Coastal Zone Management Consistency).

41. The state's consistency concurrence is required before BOEM may approve or disapprove the Atlantic Shores COP.

42. On May 31, 2023, the DEP and Atlantic Shores mutually agreed to stay the DEP six-month consistency review period consistent with 15 CFR§ 930.60(b) in an effort to "provide sufficient time for discussions, meetings, and exchange of materials between Atlantic Shores and the NJDEP." Pursuant to the attached stay agreement, the DEP consistency decision in this matter is due no later than January 12, 2024. See Exhibit A.

43. The DEP has held several rounds of public comment periods on Atlantic Shores' application.

44. On June 29, 2023, the Plaintiffs submitted comments raising serious concerns about the impacts of Projects of such size, scope, and proximity on the shore economy as well as environmental resources, noting that approval of the Projects would destroy the coastal resources upon which the Plaintiffs LBI Municipalities rely and the very resources New Jersey's Coastal Zone Management regulations were designed to protect. See Exhibit B. Plaintiffs filed supplemental comments on October 19, 2023. See Exhibit C. Some of those concerns are outlined below.

C. Atlantic Shores Projects' Inconsistency with the CZM Rules.

i. There will be major visual impacts from large-scale offshore wind turbines - contrary to DEP's rules - which will have a negative economic impact on Plaintiffs

45. LBI ranges from a national wildlife refuge at one end to a historic state park at the other, with pristine and popular beaches in between. As numerous studies show, the proposed Project would have an immense adverse impact on those scenic resources of LBI. Several hundred massive wind turbine structures that are proposed – each 1,064 feet tall with blade spans over 900 feet in diameter – in close proximity to the shoreline, would—as Atlantic Shores' and BOEM's own reports concede as detailed below—cause a substantial visual impact on communities that thrive from offering scenic and immaculate beach views.

46. Significantly, at the time offshore wind was initially studied for the New Jersey coastline and lease areas designated, wind turbines were substantially shorter. BOEM's environmental studies were prepared in 2006-2008, a time when rotor diameter was well under 100 meters. The visual impacts of wind turbines from the lease areas were thus not adequately assessed at the time the lease area was designated and awarded to Atlantic Shores.

47. Indeed, Atlantic Shores cannot dispute the scale or severity of the visual impact of the turbines. The results of the visual impact assessment (VIA) performed on behalf of Atlantic Shores as part of its COP are alarming. As part of the VIA, a panel of credentialed landscape and architectural planners compared the aesthetic character of views based on photo simulations from 22 selected key observation points (seven of those in LBI) and rated its visual impact accordingly.

48. Views from Centre Street in Beach Haven on LBI received **the highest** visual impact rating of any other KOP at -5.3 and a visual threshold level of 6, with the visual impact labeled as **“significant.”** This photographic simulation, based on a somewhat hazy day, is shown below:

Centre Street, Beach Haven (13.4 miles from nearest turbine)



49. The massive turbine structures, organized in a dense, stacked array as proposed, will be an unavoidable, unsightly, and uncharacteristic component of the existing serene ocean

views valued by the many residents and tourists who frequent the Beach Haven beachfront, which Atlantic Shores acknowledges is a “very popular stretch of beach” and that “the ocean is an integral part of their beach experience” for various forms of recreation. The presence of the structures will directly interfere with utilization and enjoyment of the pristine, undeveloped ocean environment for those engaging in beach activities.

50. The visual impacts of the Project at five other selected KOPs on LBI are no less concerning, likewise being classified as “significant” from views at Forsythe NWR in Holgate, Holyoke Avenue in Beach Haven, Beach Haven Historic District, Ship Bottom Beach, and the Beach at the LBI Arts Foundation in Long Beach Township, with each of those locations having received visual impact ratings ranging from -4.2 to -5.0 and each received a visual threshold level score of 5 (the object/phenomenon “contrasts with the surrounding landscape elements so strongly that it is a major focus of visual attention, drawing viewer attention immediately and tending to hold that attention”).

51. The VIA indicates that the scenic quality of the views from each of these locations under the proposed conditions will be “modified” and the existing views only “partially retained,” while simultaneously acknowledging that residents and vacationers to LBI will assuredly experience a severe adverse impact, as the beach is a significant contributor to the visual character of those places.

52. Field studies on the visual impact threshold of offshore windfarms in the United Kingdom (co-funded by BOEM and which is relied upon by Atlantic Shores), with turbines ranging from 377 to 449 feet from blade to tip, determined that “under favorable but not exceptional viewing conditions, moderately sized offshore wind facilities may frequently be visible at distances exceeding 35 km (22 mi); in this study, the turbines were visible at a

maximum distance of 44 km (27 mi). The Atlantic Shores Projects propose constructing turbines at least *double* in height, rotor diameter and number in a comparable proximity to shore as those in the study.

53. The federal government’s independent assessment of the Projects’ impact on scenic and visual resources, which included its review of Atlantic Shores’ COP and accompanying VIA of the wind turbine area, confirms the degree of impact in the character of the scenic resources along New Jersey’s coast, including the studied observation points in LBI. Indeed, the BOEM indicated that the Project provides “no beneficial impacts on scenic and visual resources” and determined there to be only adverse impacts to varying degrees.

54. The BOEM concluded that highly valued open ocean vistas, like those for which LBI has gained statewide recognition, **“would reach the maximum level of change to its features and characters from a formerly undeveloped ocean to dominant wind farm character by approximately 2030 and result in major impacts.”**

55. But even the BOEM’s alarming concession is modest. An expert analysis obtained by Plaintiffs reflects that Atlantic Shores and BOEM’s analysis understates the visibility of the turbines and the impact they would have. The LBI Municipalities retained Interface Multi-Media to produce expert visual renderings of the impact the turbines Atlantic Shores will have on the view from the beach in Holgate and Long Beach Township. Those photographs are depicted below:



An animation of the view from Holgate is available at <https://vimeo.com/865989588/ed41118942>.²

² Those renderings were created using the most accurate geolocation data of the wind turbines available, as provided by the Bureau of Ocean Energy Management (BOEM). This data was incorporated into a 3D computer model and overlaid on photographs taken in Long Beach Township with a 50mm camera lens, and accurately represent what the human eye will see.

56. As reflected in those photographs, the turbines will dominate the view on peak beach days. As separate studies show, turbines of this scale, this close to shore, will have severe impacts on tourists' willingness to continue to visit these beach communities, and have a resulting drastic negative economic impact on the LBI Municipalities.

57. The undeniable visual impacts have readily-foreseeable, negative impact to local economies in the affected areas of coastal New Jersey. As off-shore wind-energy projects around the world have increased, studies have shown a negative economic impact on these typically seaside, tourist regions. Studies show that up to 43% of beachgoers would switch beaches to avoid the visual and experiential blight of a close-to-shore turbine array.

58. Seasonal economies, like the Plaintiffs, would suffer staggering losses of its tourist revenues of \$1.8 billion, including \$100 million in state tax revenue and \$140 million in local tax revenue.

59. Studies also show correlation between proximity to wind turbines and decrease in property values, demonstrating the negative economic impacts of visible wind turbines, which markedly decrease as turbines are located further offshore.

60. Indeed, in connection with the DEP's recent response to comments in connection with the issuance of permits and a federal consistency certification for the separate Ocean Wind 1 offshore wind project, DEP specifically recognized the net negative impact to local tourism for a turbine array that is within 15 miles of the shore, much farther than the proposed Atlantic Shores' Projects. Significantly, in connection with the Ocean Winds project for which the DEP recently issued a Federal Consistency Certification (what Atlantic Shores currently seeks), **the**

Everything from the colors of the paint on the blades and foundations to the shadows from the sun were accurately modeled to the time and day the photographs were taken.

DEP noted that public concerns over the impact to local tourism could be ameliorated by placing the turbines at least 15 miles off shore, citing a University of Delaware Study that examined consumer decision-making in relation to wind farm location. That study concluded that consumers are more likely to switch shore destinations where those destinations are proximate to an offshore windfarm, noting that windfarms that were 15 miles or closer to shore (and half the size of Atlantic Shores' proposed Projects) caused 25-29% of survey respondents to choose a different beach to visit. The Atlantic Shores Projects would, at its closest point, be 8.7 miles from shore and double in height of those analyzed in the study, thereby rendering the impact on the LBI municipalities significantly greater.

61. The BOEM also has readily conceded that an offshore wind project will have a negative impact on tourism.

62. The impacts of the proposed Atlantic Shores Projects violate New Jersey's CZM regulations designed to preserve scenic resources and related recreational uses along New Jersey's coast.

63. For example, N.J.A.C. 7:7-16.10(c) limits "[n]ew coastal development that is not visually compatible with existing scenic resource in terms of large-scale elements of building and site design." A project "which is of a scale and location that has significant effect on the scenic resources of a region is considered to have a regional impact and to be of State concern." N.J.A.C. 7:7-16.10(g). Such development is "discouraged" – meaning it is "likely to be rejected or denied" by DEP. N.J.A.C. 7:7-1.5. That is particularly the case concerning "developments which by their singular or collective size, location and design could have a significant adverse effect on the scenic resources of the coastal zone." N.J.A.C. 7:7-16.10(g).

64. The proposed turbines are comparably sized to skyscrapers and in that regard, similarly urbanize/industrialize an otherwise serene, natural undeveloped view of the ocean environment. They are extremely close in proximity to LBI's shoreline and the observation points on the island received some of the most negative visibility scores of those studied. The visual impact – in Atlantic Shore's own words – will be significant.

65. Moreover, the DEP has set standards relevant to recreation priority, pursuant to which “[r]esort/recreation uses and commercial fisheries uses shall have priority over all other uses in Monmouth, Ocean, Atlantic, and Cape May counties with highest priority reserved for those uses that serve a greater rather than a lesser number of people, and those uses that provide facilities for people of all ages and for people with physical handicaps.” N.J.A.C. 7:7-15.3(b)(2). According to the rule, deeming areas of recreation a priority setting reflects its station as an integral part of the coastal environment and economy, and as “essential for the quality of life.” N.J.A.C. 7:7- 15.3(f). The rule notes the “the importance of maintaining the visual quality of the oceanfront.”

66. Recreational uses typical along LBI's oceanfront such as sunbathing, swimming, boating, fishing, walking, and running, for example, take highest priority under this regulation. LBI's ocean-centric recreation serves a greater number of people on the island as its beaches are largely undeveloped or residential, lacking for example a boardwalk. Enjoyment of the beaches and oceanfront is available to people of all ages and physical abilities.

67. The Projects' dominating visual impact on the ocean landscape along LBI detracts from full enjoyment of, and engagement in, recreational activities along the beach. Indeed, the BOEM specifically noted that “[b]ased on the relationship between visual impacts and impacts

on recreational experience, the impact of visible WTGs on recreation would be long term, continuous, and adverse.”

ii. The Atlantic Shores Project will negatively impact commercial fishing and fisheries in violation of DEP Regulations.

68. The DEP’s regulations recognize the importance of commercial fishing and protecting shellfish (N.J.A.C. 7:7-9.2), surf clam (N.J.A.C. 7:7-9.3), prime fishing areas (N.J.A.C. 7:7-9:4), finfish migratory pathways (N.J.A.C. 7:7-9.5), and marine fish and fisheries (N.J.A.C. 7:7-15.4).

69. Any proposed development that would adversely impact marine fish or fisheries (or access thereto) is discouraged. N.J.A.C. 7:7-15.2(d).

70. The BOEM’s draft Environmental Impact Statement (EIS) makes clear that the Projects would adversely impact marine fish and fisheries. The BOEM acknowledges that the turbines “could have several impacts on commercial and for-hire recreational fisheries, including through gear loss or damage, navigational hazards, habitat conversion and fish aggregation, migration disturbances, and space-use conflicts.” The BOEM further recognized that [f]ishing vessel operators who are displaced from fishing grounds within offshore wind areas and are unable to find alternative fishing locations would experience long-term revenue losses.

71. The BOEM noted that the amount of revenue at risk increases as proposed offshore wind energy projects are constructed.

72. Local communities that support commercial fishing will suffer, as the BOEM recognized that “fishing communities [that] derive a high percentage of revenue from the Lease

Area and have a high reliance on the commercial fishing industry are expected to experience the greatest impacts from reduced demand for shoreside support services.”

73. DEP previously acknowledged the resulting negative impact of wind turbines on commercial and recreational fishing and ports along the New Jersey coast, including Barnegat Light in connection with its review of the Empire Wind application, finding “[s]horeside impacts are certain if landings are impacted.” Those impacts will be the same or greater for the Atlantic Shores project.

74. The DEP’s own comments on the Atlantic Shores’ Projects acknowledged that this project as proposed will negatively impact benthic habitat, included the slough and sand ridge complex which “provide habitat for a variety of fish species and benthic infauna.” The impacts of the turbines on this habitat, according to the DEP, “would not be temporary,” would alter sand waves that “may be many thousands of years old,” that there is not yet scientific literature evaluating the impact of removing this habitat, and “[t]here is no clear evidence that the habitat created by turbine foundations provides similar ecosystem services.”

75. According to a Rutgers University study published in June, 2022, Atlantic City’s surf clam fisheries could lose up to 25% of their revenue due to wind farms.

76. LBI’s commercial fisheries rely upon these offshore habitats for fishing, trawling for flounder and other aquatic species, and for passing through to areas further offshore. Any disturbance – to the extent fishing boats are even able to access the areas at all – will negatively impact commercial fishers who rely on the area and the revenue that fishing generates.

77. The recent cancellation by Ørsted of the Ocean Wind projects further highlights the risk that wind projects may not be decommissioned as planned, if the project were to become economically infeasible at some point after construction begins and the developer were to

declare bankruptcy or otherwise walk away from its obligations. If the structures are not ultimately decommissioned and removed, that would only increase the impact on fishing.

iii. The Atlantic Shores Project will have an adverse impact on the North American Right Whale in violation of DEP's threatened and endangered species rule.

78. As Atlantic Shores recognizes in its COP, marine mammals are important species to any marine ecosystem; specifically, whales enhance primary productivity in their feeding areas by concentrating nitrogen at the surface and have even been identified as important for both the storage and transfer of carbon.

79. Of the various species of marine mammals present in the Outer Continental Shelf where the Projects would be located, five whale species are listed as endangered. The North Atlantic Right Whale (NARW), which regularly appears in the Project area, is on the brink of extinction. The Projects will have a negative impact on the entire whale population but given the presence of the NARW on site and its critically endangered status, it poses specific risk to the NARW.

80. The NARW is considered one of the world's most endangered large whale species and is labeled "critically endangered" by BOEM. There are estimated fewer than 350 NARW remaining, of which less than 70 are breeding females.

81. Since 2017, there has been a multi-year decline in the NARW population such that BOEM declared an "Unusual Mortality Event" for the NARW.

82. The NARW typically occupy coastal and shelf waters and is a migratory species. New Jersey coastal waters are important migratory routes for NARW and the Project area is a

biologically important area for NARW migration. Anything that imperils the NARWs' migration must be avoided to ensure the continued survival of the species.

83. The NARW's 12-mile-wide migration corridor off New Jersey intersects with and is adjacent to the proposed project area.

84. The Atlantic Shores Projects would cause a number of negative impacts on the NARW. One significant such impact is noise exposure from the project. Marine mammals rely heavily on sound for essential biological functions, including communication, mating, foraging, predator avoidance, and navigation. The NARW have acute very-low frequency and infrasonic hearing and depend upon sound in the low-frequency register for critical life functions. Underwater anthropogenic noise can have deleterious effects on those species by blocking migration, bringing marine mammals to shore; bringing about whale surfacing to avoid noise levels and posing a higher risk for vessel strikes; masking communications; impeding navigational capabilities, feeding, or mating, and impeding the ability to detect predators or vessels.

85. There is no dispute that there will be underwater anthropogenic noise involved in the construction, installation, operation, and decommissioning of the Atlantic Shores Projects. The noise poses a serious problem for NARWs because it increases stress hormone levels and contributes to suppressed immunity, reduced reproductive rates, and fecundity, and, most significantly, causes acoustic masking that interferes with NARW's detection of prey, predators, and communication signals, all of which are critical for the NARW's survival. Atlantic Shores intends to use up to 51 vessels during the construction and installation of the project, with as many as 16 vessels expected to operate at one time, causing a significant increase in vessel activity compared to normal conditions.

86. Over the past several decades, an increasing number of whales have been washing up on shore, and the only changed circumstance from prior years is the large number of wind energy vessel surveys being conducted off the coast. Those vessels use high intensity noise devices to map the seabed for future wind turbines. Notably, (and contributing to the reason Plaintiffs believe the DEP lacks the ability to fairly and impartially assess Atlantic Shores' application, as set forth more fully below), recent statements by the DEP, including testimony by Commissioner LaTourette, purport to reject the potential impact of offshore wind projects on whales, including the endangered right whale, against the weight of the evidence.

87. Scientific data confirms the deleterious effects of wind turbines on marine life in various phases from installation to operation.

88. Recently, Save LBI, a nonprofit organization studying the destructive impact of the proposed Projects, commissioned an acoustic company to calculate the operational turbine noise levels at various distances from the full wind complex proposed off LBI. That study confirmed an estimated conservative noise source level of 181 dB for a single turbine, resulting in the 12-mile-wide right whale migration corridor permeated with continuous noise levels from 140 to 145 dB, at least 20 dB above the 120 dB criteria set forth by National Marine Fisheries Service at which the whale's behavior will be disturbed.

89. The increase in vessel activity also poses a threat to the NARW. Atlantic Shores' Draft EIS readily admits that NARW are particularly vulnerable to vessel strikes, and vessel strikes are a primary cause of death for this species. The NARW has been experiencing unusual mortality events since 2017, with the main causes attributed to vessel strikes and entanglement in fisheries gear. The impact of vessel traffic on NARW is major and long term and vessel strikes

have had and continue to have population-level effects that compromise the viability of the species.

90. Although Atlantic Shores has proposed a number of mitigation measures to combat the effects of the Projects on the NARW and other marine mammals, those measures are far from sufficient. Indeed, noting that the migratory corridor is considered a Biologically Important Area for the NARW, despite Atlantic Shores' proposed measures, the BOEM has concluded that the cumulative impact of the Projects "result in ... moderate to major impacts on NARW."

91. The CZM Rules set forth protections for endangered or threatened wildlife and require an applicant of a proposed project sought to be developed on a site with documented endangered or threatened wildlife to demonstrate that the endangered or threatened wildlife would not be adversely affected. *See* N.J.A.C. § 7:7-9.36(b) and (c); N.J.A.C. 7:7-11.2(b) and (c); 7:7-11.4(c). Given the potential negative impacts of the Project and the BOEM's acknowledgment that the project poses moderate to major impacts on NARW, the Project does not comply with the CZM's requirement of showing no adverse effect.

D. The LBI's Municipalities' suggestion and the DEP's refusal to refer the matter to an adjudicatory hearing on Atlantic Shores' Application to ensure an unbiased review by a neutral third-party.

92. On June 29, 2023, the LBI Municipalities, sent their comments on the pending request by Atlantic Shores for a Federal Consistency Certification in connection with the Projects to the DEP. Plaintiffs outlined in detail the concerns raised above, providing additional detail and citations to the relevant studies and substantiating data and explained why Atlantic Shores' application violates New Jersey's enforceable coastal policies as set forth in its CZM

Rules, N.J.A.C. 7:7-1.1, *et seq.*, and why the DEP should decline to issue the consistency certification.

93. The LBI Municipalities explained that they are not opposed to developing wind power and recognize the need to transition towards clean energy sources. Instead, they sought to convey the real, undeniable, and irreparable negative impacts of the size and magnitude of the Projects sought to be built by Atlantic Shores only 8 miles from shore in a location that relies heavily on summer tourism and maritime commerce. The LBI Municipalities offered an alternative lease location, known as Hudson South, which is further from shore, but available for development of an offshore wind project and would not pose the same negative effects as the current proposed project.

94. Moreover, the LBI Municipalities expressed that they have significant concern about DEP's ability to impartially review Atlantic Shores' request and objections thereto in light of Governor Murphy's executive orders directing DEP and other state agencies to facilitate the development of offshore wind projects (discussed above). Because of those concerns, Plaintiffs requested that Atlantic Shores' application be referred for an adjudicatory hearing in the Office of Administrative Law to ensure it is reviewed by a neutral party.

95. The DEP issued no response to Plaintiffs' June 29, 2023 request.

96. On August 14, 2023, Plaintiffs, once again reached out to the DEP requesting a meeting and an adjudicatory hearing on Atlantic Shores' application for a federal consistency certification. See Exhibit D.

97. Plaintiffs stated that the circumstances here warrant a pre-decision, adjudicatory hearing. Plaintiffs explained that Governor Murphy's executive orders and public statements, as well as statements by DEP and its Commissioner – who serves at the pleasure of the Governor -

raise doubt as to the DEP's neutrality in reviewing the application, and require that the recommended disposition be made by an independent administrative law judge, rather than by the DEP Commissioner, who is a member of the Governor's cabinet and was directed by the Governor's Executive Orders to assist in achieving the Governor's wind power goals.

98. The Plaintiffs explained that due process requires that DEP refer the application to the Office of Administrative Law for an adjudicatory hearing to ensure that there is an adversarial presentation before the ALJ.

99. On October 12, 2023, The DEP responded to Plaintiffs' August 14, 2023 letter. The DEP rejected Plaintiffs' suggestion to refer Atlantic Shores' application to the Office of Administrative Law for an Administrative Law Judge to determine whether the application is consistent with the CZM rules on the grounds that that the DEP does not believe the application constitutes a contested case under the Administrative Procedure Act. See Exhibit E.

100. The DEP further rebuffed Plaintiffs' request to have a meeting with the DEP to discuss the concerns of the LBI Municipalities with the application of Atlantic Shores'. The DEP noted that if and when Atlantic Shores applies for permits, Plaintiffs may participate in the public process associated with the Department's evaluation of the permit applications.

101. Plaintiffs, and the general public as widely reported in the media, remain extremely concerned that the Atlantic Shores Projects not only would have a serious adverse impact on the viewshed from LBI, along with a devastating impact on LBI's tourism economy and its municipalities' tax revenues, but that the DEP Commissioner cannot possibly consider an analyze those concerns impartially in light of that agency to carry out the Governor's directive of using wind power to achieve 100% clean energy in the next two decades. As such, Plaintiffs are faced with no choice but to seek Court intervention to ensure that administrative due process is

achieved through a fair hearing before a neutral and unbiased decisionmaker on Atlantic Shores' application.

COUNT I

INJUNCTIVE RELIEF

102. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if set forth at length herein.

103. As described above, the Atlantic Shores Projects have significant environmental and economic implications, including the extraordinary intrusive views from plaintiff municipalities, effects on marine life, tourism, and local economies. The importance of those issues cannot be overstated. Given the potential adverse consequences that could result from the construction and operation of the proposed wind turbines, the decision-making process must be completely impartial to ensure the protection of the public interests.

104. New Jersey also has a strong and well-established Public Trust Doctrine that obligates the state to protect and preserve natural resources, including beaches, for the use and enjoyment of the public. The proposed wind farm's potential to affect these public trust resources requires that the decision-making process is thorough, unbiased, and adheres to the principles of the Public Trust Doctrine. The potential impacts on public trust resources, as presented in this case, demand the highest level of scrutiny, can be achieved only through a referral to a neutral third party.

105. Moreover, and significantly, the DEP is an agency that operates under the Governor's directives. As explained above, Governor Murphy's executive orders, actions taken

while in office, and public statements have made it crystal clear that his administration is determined to construct these offshore wind projects.

106. Comments in the recent past by DEP executives similarly suggest that the DEP is fully on board with the Governor's agenda and intends to see that the Governor's mission is faithfully carried out. Although the goal of alternative energy is commendable, it can be achieved through less harmful approaches. The DEP's failure to look seriously at alternative locations for the turbines, coupled with its rush forward on Atlantic Shores as proposed, raises serious concern about the DEP's independence and impartiality and willingness to give adequate weight to evidence of adverse consequences of individual projects.

107. Indeed, when faced with questions concerning the recent increase in whale deaths, which are said to coincide with an increase in windfarms, the DEP Commissioner categorically rejected the notion that offshore wind projects have any impact on the endangered whales. Such comments show that the Commissioner and the DEP apparently have prejudged the environmental consequences of Offshore Wind Projects, particularly on endangered species like the Right Whale. That preconceived bias can compromise the objectivity and fairness of the review process.

108. The DEP, whose Commissioner serves at the pleasure of the Governor, has been explicitly directed to approve offshore wind projects in order to reach the Governor's aggressive goal of 100% clean energy by 2050. The Commissioner, as well as other members of the Department, thus, hold a "pecuniary interest"—a legal term of art—in the approval of offshore wind farm applications.

109. The DEP has been working side-by-side with Atlantic Shores, going so far as permitting Atlantic Shores to preview DEP's response to an OPRA request and designate

materials to be withheld or redacted. That OPRA request, filed by Plaintiffs in May 2023, seeking communications between DEP and Atlantic Shores, remains unanswered despite the fact that two public comment periods have opened and closed in the meantime, suggesting that DEP is attempting to conceal the level of coordination between it and Atlantic Shores until after its decision has been issued.

110. When finally produced, the documents revealed that DEP and Atlantic Shores have engaged in bi-weekly meetings concerning Atlantic Shores' application, and Atlantic Shores – not DEP – has prepared the minutes of those meetings. The minutes were withheld under purported privileges.

111. The DEP just recently issued a Federal Consistency Certification for Empire Wind on September 15, 2023. Notably, in the DEP's analysis accompanying that certification, it acknowledged the project's potential impacts to shellfish habitat, surf clam areas, and prime fishing areas. DEP also acknowledged the resulting negative impact the project would have on commercial and recreational fishing and ports along the New Jersey coast, including Barnegat Light, finding "[s]horeside impacts are certain if landings are impacted." Despite those impacts, which would be the same or greater in this instance, the DEP issued the consistency certification.

112. Issuing the same certificate to Atlantic Shores would bring the DEP closer to achieving the Governor's mission; the Department has every incentive to push forward Atlantic Shores' Projects.

113. Notably, in the wake of recent news concerning Ørsted ceasing development of its Offshore Wind farms, which would have provided more than 2200 megawatts of electricity toward the state's goal of 100% clean energy by 2050, the DEP is under even more pressure to approve and push forward the Atlantic Shores Projects.

114. Media outlets have reported that Ørsted’s announcement that it would not move forward with Ocean Wind 1 and 2 Projects “trigger[ed] an angry response from New Jersey Governor Phil Murphy.” Governor Murphy stated that “[the] decision by Ørsted to abandon its commitments to New Jersey is outrageous and calls into question the company’s credibility and competence.” The Governor directed his administration to “review all legal rights and remedies and to take all necessary steps to ensure that Ørsted fully and immediately honors its obligations” and stated he would “make sure” that Ørsted pays the State the \$300 million in penalties that it agreed to pay for failing to complete the projects.

115. Despite Ørsted’s news, Governor Murphy further reiterated, “I remain committed to ensuring that New Jersey becomes a global leader in offshore wind — which is critical to our economic, environmental, and clean energy future.”

116. In light of those recent events, there now is more pressure than ever on the DEP to take all steps necessary to achieve the Governor’s clean energy agenda. The DEP’s role in moving forward with that agenda raises serious concerns about the DEP’s ability to fairly and impartially assess the Atlantic Shores Projects.

117. The actions and statements by the DEP, along with the close collaboration between the DEP and the Atlantic Shores project, create a perception that the outcome of the review process is predetermined, even before the application has been fully examined. That perception can undermine public trust and confidence in the regulatory process, making it essential to seek an alternative and impartial forum for the review.

118. Under established legal principles, administrative due process requires a fair hearing before a neutral and unbiased decision-maker. Such a decision-maker must be impartial and capable of judging each case fairly based on its own unique and specific circumstances. The

current situation falls short of those requirements, as the DEP's ability to be impartial and neutral are, at a minimum, high questionable and, evidently, compromised.

119. Given the potential adverse effects stemming from Atlantic Shores' Projects, including substantial economic impacts, the LBI Municipalities have a particularized property interest that justifies their standing to request an adjudicatory hearing to assess the impact of the Projects in a neutral and impartial setting.

120. In light of the perceived bias and perception of pre-determination within the DEP, and the general importance of a fair and impartial review in a situation as high-stakes and complex as this, it is imperative that the matter be referred to and reviewed by an Administrative Law Judge, after permitting an adversarial presentation of evidence.

121. That step would ensure that all aspects of the application are considered without any preconceived notions and would guarantee a fair and transparent evaluation of the Projects' compliance with New Jersey law. A hearing before an impartial adjudicator would protect the interests and rights of the Plaintiffs as well as any other concerned parties while upholding the principles of administrative due process and justice and preserve public trust and confidence in the process.

WHEREFORE, Plaintiffs demand:

- a. An Order referring the determination concerning Atlantic Shores' Federal Consistency Certification to the Office of Administrative Law;
- b. an Order temporarily, preliminarily, and permanently restraining the DEP from issuing a Federal Consistency Certification until a hearing in the Office of Administrative Law has been completed and an Initial Decision issued; and
- c. such other and further relief as this Court deems equitable and just.

PASHMAN STEIN WALDER HAYDEN

A Professional Corporation

Attorneys for Plaintiffs, Long Beach Township,
Beach Haven, Ship Bottom, Barnegat Light, Surf
City, Harvey Cedars, Brigantine, and Ventnor City

BY: /s/ Michael S. Stein

Michael S. Stein

Dated: December 1, 2023

DESIGNATION OF TRIAL COUNSEL

Michael S. Stein, Esq. has been designated as trial counsel in this matter.

PASHMAN STEIN WALDER HAYDEN

A Professional Corporation

Attorneys for Plaintiffs, Long Beach Township,
Beach Haven, Ship Bottom, Barnegat Light, Surf
City, Harvey Cedars, Brigantine, and Ventnor City

BY: /s/ Michael S. Stein

Michael S. Stein

Dated: December 1, 2023

CERTIFICATION

Pursuant to R. 4:5-1, it is hereby certified that this matter in controversy is not the
subject of any other action pending in any court or of a pending arbitration proceeding and that

no other action or arbitration proceeding is contemplated. It is further certified that Plaintiff and its counsel are unaware at this time of any other party that should be joined in this action. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in the original certification.

Pursuant to New Jersey Court Rule, R. 1:38-7(b), I hereby certify that any confidential personal identifiers have been redacted from documents now submitted to the Court in this pleading, and will be redacted from all documents submitted or served in the future.

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

PASHMAN STEIN WALDER HAYDEN

A Professional Corporation

Attorneys for Plaintiffs, Long Beach
Township, Beach Haven, Ship Bottom,
Barnegat Light, Surf City,
Harvey Cedars, Brigantine, and Ventnor
City

BY: /s/ Michael S. Stein

Michael S. Stein

Dated: December 1, 2023

VERIFICATION

Joseph H. Mancini, of full age, deposes and says:

1. I am the Mayor of Long Beach Township, New Jersey, a Plaintiff in the foregoing Verified Complaint, and am authorized to make this verification on Plaintiffs' behalf.

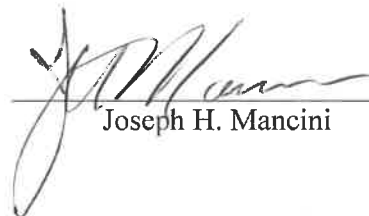
2. I have read the Verified Complaint, and know the allegations contained therein to be true.

3. The said Paragraphs of the Verified Complaint are based on personal knowledge. The Verified Complaint is made in truth and good faith and without collusion, for the causes set forth herein.

4. All documents attached to the Verified Complaint are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents unless so stated.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 30, 2023



Joseph H. Mancini