

## MEMO

FROM: Joe Shanahan, Senior Project Developer, Con Edison Clean Energy Businesses

TO: Michael King, Chairman, Planning Board, Town of Wareham

SUBJECT: Proposed Solar Facility, 91 & 101 Fearing Hill Road

DATE: June 29, 2022

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At the Planning Board meeting on June 13, 2022, Wareham resident Eric Lintala made unfounded allegations that the subject solar project would have a harmful impact on threatened and/or endangered species which he alleged were located at the project property.

In response, I submit that there is absolutely NO evidence of any threatened and/or endangered species located at the project property. To the contrary, all of the credible evidence makes it clear that there are NO threatened and/or endangered species at the project property.

I ask that the Board consider the attached letter from Atlantic which addresses the matter and should put it to rest once and for all.

If the Planning Board has any questions with regard to this matter, please do not hesitate to contact me.



June 29, 2022

Kenneth Buckland  
Director of Planning and Community Development  
Town of Wareham Planning Board  
54 Marion Road  
Wareham, MA 02571

**Re:    *Endangered Species & Critical Habitat Review Memo  
        Fearing Hill Road Solar Project, Wareham, MA***

Dear Mr. Buckland:

As part of project planning, Atlantic Design Engineers, Inc. (Atlantic) on behalf of Wareham MA 3, LLC, (the 'Applicant') has completed a multi-tiered review of available databases to screen for the potential existence of state/federally listed endangered species or critical habitats for the above-mentioned project location.

***Federally Listed Species & Critical Habitats***

Screening of potential federal endangered species was completed via the US Fish & Wildlife Services Information for Planning and Consultation (IPAC) database. IPAC is a project planning tool which streamlines the environmental review process by providing information on the location of listed species and other USFWS trust resources which could potentially be affected by a project.

According to the attached USFWS issued Official Species List, it was determined that there are no critical habitats located at the Site. It was noted that potentially affected species might include the threatened Northern Long-Eared Bat and endangered Plymouth Redbelly Turtle.

Please note that the Monarch Butterfly is also listed on the Official Species List as a Candidate Species which has not yet been listed or proposed for listing as endangered. As such, further consultation with U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act is not applicable for the Monarch Butterfly species.

***Threatened Northern Long-Eared Bat***

The threatened Northern Long-Eared Bat (NLEB) is mapped within the IPaC Mapper throughout a significant portion of Massachusetts due to potential migratory routes leading to areas of maternity trees during the pup season (June 1 through July 31).

P.O. Box 1051  
Sandwich, MA 02563  
(508) 888-9282 · FAX 888-5859  
email: [ade@atlanticcompanies.com](mailto:ade@atlanticcompanies.com)  
[www.atlanticcompanies.com](http://www.atlanticcompanies.com)

On a federal level, the United States Fish and Wildlife Service (USFWS) dictates that unless construction activities qualify under exempted activities that would result in *No Affect*, the project can complete tree clearing without notification for NLEB consultation if time of year restrictions (November 1- April 14<sup>th</sup>) are implemented relative to tree clearing activities.

Out of an abundance of caution, the applicant elected to proceed with the completion of NLEB Determination Key through the USFWS IPAC online system in June 2022. Determination Keys through IPAC are a structured set of questions designed to assist a user in determining whether a proposed project qualifies for predetermined consultation outcomes based on USFWS standing analyses.

Following the completion of s NLEB Determination Key, the proposed project was issued a Northern Long Eared Bat Consistency Letter on June 9, 2022. This Consistency Letter verifies that the proposed solar project ('Action') is not likely to result in unauthorized take of the Northern Long-Eared Bat. As per the Consistency Letter, if the Action proceeds as described and no additional information about the Action's effects on species protected under the Endangered Species Act becomes available, no further coordination with the USFWS is required with respect to the NLEB. A copy of the June 9, 2022, Consistency Letter can be found attached below.

#### *Endangered Plymouth Redbelly Turtle*

The endangered Plymouth Redbelly Turtle is mapped within the IPaC Mapper over a specific area of southeastern of Massachusetts, described predominantly as the Plymouth Pinelands. Plymouth Redbelly Turtles are typically found within bodies of deep, quickly moving freshwater with muddy bottoms and large amounts of vegetation. Per the Wetland Border Report completed by Goddard Consulting, LLC dated March 29, 2021 (Revised June 4, 2021), there are neither standing or moving bodies of water located on-site.

There are currently no IPAC Determination Keys available for the endangered Redbelly Turtle. As per the most recent USFWS 5-Year Review for the Plymouth Redbelly Turtle dated March 2022, this species may make short (<40 m (131.2 ft)) overland movements between aquatic habitats. As per the Goddard Wetland Border Report, the Fearing Hill Road project area currently consists of vacant woodlands located approximately 100 to 125 feet to the south of a Bordering Vegetated Wetland system and approximately 125 feet to the east of an Isolated Wetland system.

Out of an abundance of caution, the applicant has elected to carry out a voluntary Mass Wildlife's Natural Heritage & Endangered Species Program (NHESP) Turtle Protection Plan (TPP) that will be overseen and conducted by an NHESP-approved turtle biologist. This TPP will be designed to

ensure protection of the Plymouth Redbelly Turtle prior to and during construction of the solar facility. The TPP will likely involve installation of a turtle barrier along the limit of work and, if necessary, visual sweeps during the active season for this species (April 15 to October 15). Prior to the start of construction, the biologist will inform all key construction personnel in writing regarding the potential presence, life history and identification of the Plymouth Redbelly Turtle. In the event that any turtles are encountered during construction, the personnel will be informed about the steps to take in order to prevent any harm to the animals.

Please note that no work on the project will start until a TPP has been approved in writing by NHESP. Following construction of the solar facility, a 6-inch gap in the security fencing surrounding the solar facility will be featured to allow for the passage of wildlife.

### ***State Listed Species & Critical Habitats***

As shown on **Figure 1** attached herein below, the proposed project is not mapped within Mass Wildlife's Natural Heritage & Endangered Species Program's (NHESP) Priority Habitat for Rare Species, Estimated Habitat of Rare Wildlife or Natural Community. Additionally, the Site is not mapped within an Area of Critical Environmental Concern or Massachusetts BioMap2 Critical Natural Landscape/Core Habitat.

If you have any questions or require further information, please don't hesitate to contact me at (508) 888-9282.

Sincerely,

**ATLANTIC DESIGN ENGINEERS, INC.**

A handwritten signature in black ink, appearing to read 'Rich Tabaczynski', written over a light blue horizontal line.

Richard J. Tabaczynski, P.E.  
Vice President

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*FIGURE 1 – MASSGIS ENDANGERED SPECIES & CRITICAL HABITAT*

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# Figure 1: Endangered Species & Critical Habitat



NHESP Estimated Habitats of Rare Wildlife



NHESP Priority Habitats of Rare Species



Areas of Critical Environmental Concern  
ACECs



BioMap2 Critical Natural Landscape



BioMap2 Core Habitat



NHESP Natural Communities



Property Tax Parcels

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*USFWS OFFICIAL SPECIES LIST & NLEB CONSISTENCY LETTER*

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*USFWS Official Species List*

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## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
New England Ecological Services Field Office  
70 Commercial Street, Suite 300  
Concord, NH 03301-5094  
Phone: (603) 223-2541 Fax: (603) 223-0104



In Reply Refer To:  
Project Code: 2022-0052228  
Project Name: Fearing Hill Road Solar Project

June 09, 2022

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

*Please review this letter each time you request an Official Species List, we will continue to update it with additional information and links to websites may change.*

### **About Official Species Lists**

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Federal and non-Federal project proponents have responsibilities under the Act to consider effects on listed species.

The enclosed species list identifies threatened, endangered, proposed, and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested by returning to an existing project's page in IPaC.

### **Endangered Species Act Project Review**

Please visit the **"New England Field Office Endangered Species Project Review and Consultation"** website for step-by-step instructions on how to consider effects on listed

species and prepare and submit a project review package if necessary:

<https://www.fws.gov/office/new-england-ecological-services/endangered-species-project-review>

**\*NOTE\*** Please do not use the **Consultation Package Builder** tool in IPaC except in specific situations following coordination with our office. Please follow the project review guidance on our website instead and reference your **Project Code** in all correspondence.

**Northern Long-eared Bat Update** - Additionally, please note that on March 23, 2022, the Service published a proposal to reclassify the northern long-eared bat (NLEB) as endangered under the Endangered Species Act. The U.S. District Court for the District of Columbia has ordered the Service to complete a new final listing determination for the NLEB by November 2022 (Case 1:15-cv-00477, March 1, 2021). The bat, currently listed as threatened, faces extinction due to the range-wide impacts of white-nose syndrome (WNS), a deadly fungal disease affecting cave-dwelling bats across the continent. The proposed reclassification, if finalized, would remove the current 4(d) rule for the NLEB, as these rules may be applied only to threatened species. Depending on the type of effects a project has on NLEB, the change in the species' status may trigger the need to re-initiate consultation for any actions that are not completed and for which the Federal action agency retains discretion once the new listing determination becomes effective (anticipated to occur by December 30, 2022). If your project may result in incidental take of NLEB after the new listing goes into effect this will first need to be addressed in an updated consultation that includes an Incidental Take Statement. If your project may require re-initiation of consultation, please contact our office for additional guidance.

#### *Additional Info About Section 7 of the Act*

Under section 7(a)(2) of the Act and its implementing regulations (50 CFR 402 et seq.), Federal agencies are required to determine whether projects may affect threatened and endangered species and/or designated critical habitat. If a Federal agency, or its non-Federal representative, determines that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Federal agency also may need to consider proposed species and proposed critical habitat in the consultation. 50 CFR 402.14(c)(1) specifies the information required for consultation under the Act regardless of the format of the evaluation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<https://www.fws.gov/service/section-7-consultations>

In addition to consultation requirements under Section 7(a)(2) of the ESA, please note that under sections 7(a)(1) of the Act and its implementing regulations (50 CFR 402 et seq.), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species. Please contact NEFO if you would like more information.

**Candidate species** that appear on the enclosed species list have no current protections under the ESA. The species' occurrence on an official species list does not convey a requirement to

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consider impacts to this species as you would a proposed, threatened, or endangered species. The ESA does not provide for interagency consultations on candidate species under section 7, however, the Service recommends that all project proponents incorporate measures into projects to benefit candidate species and their habitats wherever possible.

### **Migratory Birds**

In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see:

<https://www.fws.gov/program/migratory-bird-permit>

<https://www.fws.gov/library/collections/bald-and-golden-eagle-management>

Please feel free to contact us at **newengland@fws.gov** with your **Project Code** in the subject line if you need more information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat.

Attachment(s): Official Species List

Attachment(s):

- Official Species List

## Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

**New England Ecological Services Field Office**

70 Commercial Street, Suite 300

Concord, NH 03301-5094

(603) 223-2541

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## Project Summary

Project Code: 2022-0052228

Event Code: None

Project Name: Fearing Hill Road Solar Project

Project Type: Power Gen - Solar

Project Description: A proposed  $\pm 19$ -acre ground-mounted solar project located over land that currently consists of vacant woodlands.

Project Location:

Approximate location of the project can be viewed in Google Maps: [https://](https://www.google.com/maps/@41.76909515,-70.76548516524272,14z)

[www.google.com/maps/@41.76909515,-70.76548516524272,14z](https://www.google.com/maps/@41.76909515,-70.76548516524272,14z)



Counties: Plymouth County, Massachusetts

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## Endangered Species Act Species

There is a total of 3 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

### Mammals

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/9045">https://ecos.fws.gov/ecp/species/9045</a>	Threatened

### Reptiles

NAME	STATUS
Plymouth Redbelly Turtle <i>Pseudemys rubriventris bangsi</i> There is <b>final</b> critical habitat for this species. The location of the critical habitat is not available. Species profile: <a href="https://ecos.fws.gov/ecp/species/451">https://ecos.fws.gov/ecp/species/451</a>	Endangered

### Insects

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/9743">https://ecos.fws.gov/ecp/species/9743</a>	Candidate

### Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

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## **IPaC User Contact Information**

Agency: Atlantic Design Engineers  
Name: Asa Smith  
Address: 39 Pleasant Street  
City: Bourne  
State: MA  
Zip: 02532  
Email: [asmith@atlanticcompanies.com](mailto:asmith@atlanticcompanies.com)  
Phone: 5088889282

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*NLEB Consistency Letter*

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## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
New England Ecological Services Field Office  
70 Commercial Street, Suite 300  
Concord, NH 03301-5094  
Phone: (603) 223-2541 Fax: (603) 223-0104



In Reply Refer To:  
Project code: 2022-0052228  
Project Name: Fearing Hill Road Solar Project

June 09, 2022

Subject: Consistency letter for the 'Fearing Hill Road Solar Project' project indicating that any take of the northern long-eared bat that may occur as a result of the Action is not prohibited under the ESA Section 4(d) rule adopted for this species at 50 CFR §17.40(o).

Dear Asa Smith:

The U.S. Fish and Wildlife Service (Service) received on June 09, 2022 your effects determination for the 'Fearing Hill Road Solar Project' (the Action) using the northern long-eared bat (*Myotis septentrionalis*) key within the Information for Planning and Consultation (IPaC) system. You indicated that no Federal agencies are involved in funding or authorizing this Action. This IPaC key assists users in determining whether a non-Federal action may cause “take”<sup>[1]</sup> of the northern long-eared bat that is prohibited under the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based upon your IPaC submission, any take of the northern long-eared bat that may occur as a result of the Action is not prohibited under the ESA Section 4(d) rule adopted for this species at 50 CFR §17.40(o). Unless the Service advises you within 30 days of the date of this letter that your IPaC-assisted determination was incorrect, this letter verifies that the Action is not likely to result in unauthorized take of the northern long-eared bat.

Please report to our office any changes to the information about the Action that you entered into IPaC, the results of any bat surveys conducted in the Action area, and any dead, injured, or sick northern long-eared bats that are found during Action implementation.

If your Action proceeds as described and no additional information about the Action’s effects on species protected under the ESA becomes available, no further coordination with the Service is required with respect to the northern long-eared bat.

The IPaC-assisted determination for the northern long-eared bat **does not** apply to the following ESA-protected species that also may occur in your Action area:

- Monarch Butterfly *Danaus plexippus* Candidate

- Plymouth Redbelly Turtle *Pseudemys rubriventris bangsi* Endangered

You may coordinate with our Office to determine whether the Action may cause prohibited take of the animal species listed above.

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[1]Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct [ESA Section 3(19)].

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## Action Description

You provided to IPaC the following name and description for the subject Action.

### 1. Name

Fearing Hill Road Solar Project

### 2. Description

The following description was provided for the project 'Fearing Hill Road Solar Project':

A proposed  $\pm 19.4$ -acre ground-mounted solar project located over land that currently consists of vacant woodlands.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@41.76909515,-70.76548516524272,14z>



## Determination Key Result

This non-Federal Action may affect the northern long-eared bat; however, any take of this species that may occur incidental to this Action is not prohibited under the final 4(d) rule at 50 CFR §17.40(o).

### Determination Key Description: Northern Long-eared Bat 4(d) Rule

This key was last updated in IPaC on **May 15, 2017**. Keys are subject to periodic revision.

This key is intended for actions that may affect the threatened northern long-eared bat.

The purpose of the key for non-Federal actions is to assist determinations as to whether proposed actions are excepted from take prohibitions under the northern long-eared bat 4(d) rule.

If a non-Federal action may cause prohibited take of northern long-eared bats or other ESA-listed animal species, we recommend that you coordinate with the Service.

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## Determination Key Result

Based upon your IPaC submission, any take of the northern long-eared bat that may occur as a result of the Action is not prohibited under the ESA Section 4(d) rule adopted for this species at 50 CFR §17.40(o).

## Qualification Interview

1. Is the action authorized, funded, or being carried out by a Federal agency?

*No*

2. Will your activity purposefully **Take** northern long-eared bats?

*No*

3. [Semantic] Is the project action area located wholly outside the White-nose Syndrome Zone?

**Automatically answered**

*No*

4. Have you contacted the appropriate agency to determine if your project is near a known hibernaculum or maternity roost tree?

Location information for northern long-eared bat hibernacula is generally kept in state Natural Heritage Inventory databases – the availability of this data varies state-by-state. Many states provide online access to their data, either directly by providing maps or by providing the opportunity to make a data request. In some cases, to protect those resources, access to the information may be limited. A web page with links to state Natural Heritage Inventory databases and other sources of information on the locations of northern long-eared bat roost trees and hibernacula is available at [www.fws.gov/media/nleb-roost-tree-and-hibernacula-state-specific-data-links-0](http://www.fws.gov/media/nleb-roost-tree-and-hibernacula-state-specific-data-links-0).

*Yes*

5. Will the action affect a cave or mine where northern long-eared bats are known to hibernate (i.e., hibernaculum) or could it alter the entrance or the environment (physical or other alteration) of a hibernaculum?

*No*

6. Will the action involve Tree Removal?

*Yes*

7. Will the action only remove hazardous trees for the protection of human life or property?

*No*

8. Will the action remove trees within 0.25 miles of a known northern long-eared bat hibernaculum at any time of year?

*No*

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9. Will the action remove a known occupied northern long-eared bat maternity roost tree or any trees within 150 feet of a known occupied maternity roost tree from June 1 through July 31?

*No*

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## Project Questionnaire

**If the project includes forest conversion, report the appropriate acreages below. Otherwise, type '0' in questions 1-3.**

1. Estimated total acres of forest conversion:

19.4

2. If known, estimated acres of forest conversion from April 1 to October 31

0

3. If known, estimated acres of forest conversion from June 1 to July 31

0

**If the project includes timber harvest, report the appropriate acreages below. Otherwise, type '0' in questions 4-6.**

4. Estimated total acres of timber harvest

0

5. If known, estimated acres of timber harvest from April 1 to October 31

0

6. If known, estimated acres of timber harvest from June 1 to July 31

0

**If the project includes prescribed fire, report the appropriate acreages below. Otherwise, type '0' in questions 7-9.**

7. Estimated total acres of prescribed fire

0

8. If known, estimated acres of prescribed fire from April 1 to October 31

0

9. If known, estimated acres of prescribed fire from June 1 to July 31

0

**If the project includes new wind turbines, report the megawatts of wind capacity below. Otherwise, type '0' in question 10.**

10. What is the estimated wind capacity (in megawatts) of the new turbine(s)?

0

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## **IPaC User Contact Information**

Agency: Atlantic Design Engineers  
Name: Asa Smith  
Address: 39 Pleasant Street  
City: Bourne  
State: MA  
Zip: 02532  
Email: [asmith@atlanticcompanies.com](mailto:asmith@atlanticcompanies.com)  
Phone: 5088889282

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