

Save the Pine Barrens, Inc.
158 Center Hill Preserve
Plymouth MA 02360
www.savethepinebarrens.org
environmentwatchesoutheasternma@gmail.com

November 7, 2021

Mr. Richard Swenson
Chair, Planning Board
Town of Wareham
54 Marion Road
Via Kenneth Buckland, Director of Planning and Community Development
kbuckland@wareham.ma.us

Sandra Slavin
Chair, Conservation Commission
Town of Wareham
54 Marion Road
Via
Dave Pichette, Conservation Administrator, dpichette@wareham.ma.us

Angela Dunham
Chair, Historical Commission
Town of Wareham
54 Marion Road
Wareham, Massachusetts 02571
Via US Mail

**Re: 91 and 101 Fearing Hill Road, Wareham (Large Industrial Ground Mounted
Solar and Battery Storage Project)**
Parcel ID 91-1000 and 74-1007

Planning Board Case No. 3055.2
Conservation Commission Case No. SE76-2684

Dear Planning Board, Conservation Commission and Historical Commission,

Thank you for the opportunity to submit comments on the Site Plan Review application
for the large ground-mounted industrial solar project proposed by Wareham MA 3, LLC and Con
Edison (collectively “the Applicant”) at 91 and 101 Fearing Hill Road in Wareham (“the Site”).

The Applicant plans to clear-cut and grade about 22 acres of a 44-acre site according to plans dated May 17, 2021 (“the Project”).

These comments are submitted by Save the Pine Barrens, Inc. (“STPB”), a non-profit volunteer-led alliance groups and individuals whose mission is to preserve, protect, and steward the land and water resources of Southeastern Massachusetts. STPB has members who live, work, and recreate in Wareham and have legal interests that will be harmed by the Project, including members of Wampanoag tribes.

The Application is incomplete because it fails to address Article 12, Performance Standards, of the Wareham Zoning By-Laws (“the By-Laws”).

The Board must require an amended Site Plan Review application demonstrating compliance with Article 12.

I. The Project

The Project locus is an approximately 44-acre site in an area zoned residential. The site itself “is presently composed of vacant woodlands and wetlands.” Applicant’s Site Plan Application, May 17, 2021 (the “Application”), page 1.

According to the Applicant, at least 22 acres will be clear-cut of all trees, stumps, roots, vegetation and topsoil to install 7,333 PV solar “panels mounted on a racking system attached to a foundation system anticipated to be driven posts.” In addition, “the project will require tree clearing within the solar array area, removal and stockpiling of existing topsoil for spreading, and minimal site grading”.... “Most of the proposed grading is associated with installations of proposed detention basins and 20-foot-wide access roads.” Application, pages 1-3.

II. Article 12, Performance Standards

The Applicant seeks site plan review and special permit approval under Article 5, Section 590, *Solar Energy Generation Facilities*. (The Application mentions the term “Special Permit” in several areas.) It must also meet the *Performance Standards* of Article 12.

The purposes of Article 12 are to:

1212.1 Protect the health, safety and property of the residents of the Town by regulating clearing and grading activities associated with land development preserving existing trees and vegetation, preventing erosion and sedimentation of inland and coastal wetlands, ponds and other water bodies, controlling stormwater runoff, minimizing fragmentation of wildlife habitat and loss of vegetation;

1212.2 Limit land clearing and alteration of natural topography prior to development review;

1212.3 Protect specimen trees and significant forest communities from damage or removal during site development;

1212.4 Protect water quality of adjacent wetlands and surface water bodies;

1212.5 Encourage the use of Best Management Practices that prevent and reduce nonpoint source of pollutants;

1212.6 Promote land development and site planning practices that are responsive to the Town's scenic character without preventing the reasonable development of land;

1212.7 Protect archaeological and/or historic resources.

Some but not all of these standards are addressed in the solar bylaw, Section 590 and site plan review, Article 15. Large ground mounted solar projects are not exempt from Article 12. The solar bylaw, Section 590 states that all ground-mounted solar projects “will be subject to Site Plan Review in accordance with Article 15 of the Zoning By-Law and the additional standards of this section [590].” Section 594. It also requires solar projects to be “consistent with all applicable local . . . Requirements.” Solar bylaw, Section 592.1, *Compliance with Laws, Ordinances and Regulations*. This includes Article 12, *Performance Standards*.

The solar bylaw, Section 594, *Design Standards*, states that “unless expressly provided by this section of the bylaw requirements of the underlying zoning district shall apply, except and in addition, the following standards which shall apply.” Article 12 applies in the Residential District where the Project is located.

The Planning Board must do its job and require compliance with *Performance Standards* in Article 12 during site plan review. These *Performance Standards* are at the heart of what site plan review is supposed to achieve.

III. Article 12 requirements for the Project

A. Site Alteration Special Permit

The Applicant must apply for and obtain a *Site Alteration Special Permit* under Article 12, *Performance Standards*.

Article 12, Section 1214 states,

No person shall undertake clearing or grading activities of an area greater than 50,000 square feet at any one time...without first obtaining a **Site Alteration Special Permit** from the Planning Board unless specifically exempted under Section 1206 [sic: 1216] of the By-Law.

The Project will clear and grade about 870,000 square feet (about 22 acres). The Project is not exempt under Section 1216. Section 1214 is mandatory: it explicitly says that “**no person shall undertake clearing or grading**” on an area over 50,000 square feet at any one time without a Site Alteration Permit. The Planning Board does not have the authority to waive or ignore Section 1214 and to allow the Applicant to clear and grade 870,000 square feet without a Site Alteration Special Permit under Article 12.

The Planning Board has no authority to exempt the Project from the requirement for a Site Alteration Special Permit.

B. An archeological and historic survey under Section 1218.5

There is credible, reasonable evidence before the Board to warrant a historic and archeological survey under Article 12, *Performance Standards*. Article 12, *Purposes*, include to “[p]rotect archeological and/or historical resources. Section 1212.7. Section 1218.5, *Review Standards*, requires a project developer to demonstrate that it will use measures to will “avoid impacts to archeological resources” when clearing and grading a site. This also requires a “response from the Massachusetts Historical Commission (MHC) regarding the potential for archeological or historical resources on the site.” **Three issues must be addressed in an archeological and historic survey: Ancient Ways, Ceremonial Stone Landscapes, and consultation under the National Historic Preservation Act.**

The Site has the potential for significant ancient and colonial archeological and historic resources. Native American presence in Southeastern Massachusetts is ubiquitous. Southeastern Massachusetts is the ancestral home of the Wampanoag people and there is evidence of over 12,000 years of human use and occupation. See, for example, information about the Herring Pond Wampanoag Tribe, Inc. <https://www.herringpondtribe.org/> Wareham’s own Town Seal centers the Town’s cultural and historic identity on the Indigenous people who used and occupied the Wareham area. The Wareham Seal, adopted in 1739, bears the image of a Native person in a canoe, under the phrase “Nepinnae Keket” meaning “Summer Home” in the Wampanoag language. This is consistent with the Site’s proximity to the sea and the Weweantic River, a historically significant migratory fishery that would draw human use and occupation. See <https://buzzardsbay.org/living-resources/herring-runs/weweantic-herring-historical/>.

Ancient Ways

Potential Ancient Ways are identified in the Application:

Existing walking trails are located throughout the Site primarily in a north-south direction. The topography of the site consists of a high point (known as Fearing Hill) that runs along the central portion of the property and generally rolls to wetlands located offsite to the west and northeast.

Two U.S. Geological Survey maps identify potential Ancient Ways: an “unimproved road” and a “trail”. Exhibits 1 and 2, attached. This potential Ancient Way, a cart path, runs from Fearing Hill Road mostly parallel to the Weweantic River. Oral tradition confirms that the Fearing Hill trail, colloquially referred to as an “Indian path” by local people, probably has been used continuously for time immemorial. This Ancient Way represents a tangible and enduring link between the past and present.

In Massachusetts, an Ancient Way is generally understood to be an ancient road that has been in use “since time immemorial”. Spauge v. White, 34 Mass. 309 (Mass. 1835). Often, such Ancient Ways are cart and footpaths that have been in use since at least the colonial era, with many in Massachusetts significantly predating colonization, having served as paths and routes for the Indigenous peoples of the area. The features identified on the Site as an unimproved road, trail and Indian path, and roadway are historic resources required to be protected under Section 1210 of the By-Laws.

Ceremonial Stone Landscapes

A historical and archeological survey is required to address Ceremonial Stone Landscapes (“CSL”). These are stone structures and other stone features of historic, cultural and sacred value to Native American people. The Site has stone features throughout.

According to the United Southern and Eastern Tribes (USET), CSL are “sacred ceremonial stone landscapes and their stone structures which are of particular cultural value . . . Whether these stone structures are massive or small structures stacked, stone rows, or effigies,

these *prayers in stone* are often mistaken by archeologists and State Historic preservation Officers (SHPOs) . . .” [Emphasis Provided] *Sacred Ceremonial Stone Landscapes at the*

Ancestral Territories of USET Member Tribes [https://www.usetinc.org/wp-](https://www.usetinc.org/wp-content/uploads/mbreedlove/USET-Resolutions%20/2007%20%20resolutons/02%2007%20resolutions%20pdf/2007%20037.pdf)

[content/uploads/mbreedlove/USET-](https://www.usetinc.org/wp-content/uploads/mbreedlove/USET-Resolutions%20/2007%20%20resolutons/02%2007%20resolutions%20pdf/2007%20037.pdf)

[Resolutions%20/2007%20%20resolutons/02%2007%20resolutions%20pdf/2007%20037.pdf](https://www.usetinc.org/wp-content/uploads/mbreedlove/USET-Resolutions%20/2007%20%20resolutons/02%2007%20resolutions%20pdf/2007%20037.pdf).

Ceremonial stone landscapes are identified using Optically Stimulated Luminescence (OSL), an archeological survey technique used to date stone and other inorganic structures. OSL is similar to carbon dating, used to date organic matter. OSL measures certain luminescence signals that accumulate over time when quartz-based substances (read stones) are buried for significant lengths of time. <http://www.usu.edu/geo/luminlab/whatis.html>. This allows for a determination of how long the stone structure has been in place, allowing for definitive dating of the structure.

OSL is used to show that stone structures that may have been thought to be European constructs actually pre-date colonization. This was demonstrated in a 2020 study by Feathers and Muller, *Optically stimulated luminescence dating of a probable Native American cairn and wall site in Eastern Pennsylvania*. Feathers, J. & Muller, N. (2020). (Optically stimulated luminescence dating of a probable Native American cairn and wall site in Eastern Pennsylvania. *North American Archaeologist*, 41, 33-50. Retrieved from

<https://journals.sagepub.com/doi/pdf/10.1177/0197693120920492>.) This OSL survey dated stone structures BC 570 and connected them to the Adena peoples. This study established that CSLs predate European colonization in the region by at least 2000 years (using the establishment of the Massachusetts Bay colony as the starting point for European colonization). This technique should be used at the Site.

Federal National Historic Preservation Act, Section 106 Consultation

The Board and the Conservation Commission must ensure they have adequate information about the Applicant's consultation with Indigenous people. *Performance Standard*, 1217, requiring protection of archeological and historic features should draw on, and cannot ignore, the federal National Historic Preservation Act (NHPA). The federal Clean Water Act requires the Applicant to certify compliance with Section 106 of the NHPA in order to get a federal Stormwater Pollution Prevention Plan (SWPPP) from the U.S. EPA. The Applicant must answer, under oath: "Is your project located on a property of religious or cultural significance to an Indian tribe." *US Environmental Protection Agency, FORM 3510-9, Notice of Intent (NOI) for the 2017 NPDES Construction Permit*. This information is material and significant to the Conservation Commission Order of Conditions and compliance with 1212.7 of the *Performance Standards* requiring protection of archeological and historic resources. Town agencies should not ignore this information.

Conclusion

STPB respectfully requests the following:

1. That the Planning Board require the Applicant to comply with Article 12, *Performance Standards*, including obtaining a Site Alteration Special Permit;
2. That the Planning Board use its authority under Mass. Gen. Laws Chapter 44, §53G and the By-Laws, Section 1565.1 to require an independent historic and archeological study by a qualified professional to study and report on ancient ways and Ceremonial Stone Landscapes evaluated by OSL under Article 12, *Performance Standards*;

3. That the Applicant be required to report to the Planning Board and the Conservation Commission the results of its consultation under Section 106 of the National Historic Preservation Act in order to ensure compliance with Article 12, *Performance Standards*; and
4. The Applicant be required to circulate the Site Plan application to the Wareham Historical Commission pursuant to the By-laws, Section 1565.2.2(k) (Site Plans to be circulated to 10 named town departments and commissions, and “Others as determined to be appropriate.” Here, because the site has potential historic and archeological significance, it is appropriate to circulate the Site Plans to the Historical Commission.).

Please feel free to contact us if you have any questions or require further information.

Sincerely,

Margaret E. Sheehan

Margaret E. Sheehan
Attorney/Volunteer
Save the Pine Barrens, Inc.
158 Center Hill Road
Plymouth MA 02360
environmentwatchsoutheasternma@gmail.com
tel. 508-259-9154

James Mooney (He/Him)
Legal Intern
Save The Pine Barrens, inc.
158 Center Hill Road
Plymouth MA 02360
jmooney@su.suffolk.edu

Exhibit List

1. 1938 USGS Map showing Potential Ancient Way
2. 1949 USGS Map showing Potential Ancient Way
3. 1977 USGS Map showing Potential Ancient Way
4. 2021 USGS Map showing Potential Ancient Way
5. Applicant's Map of property

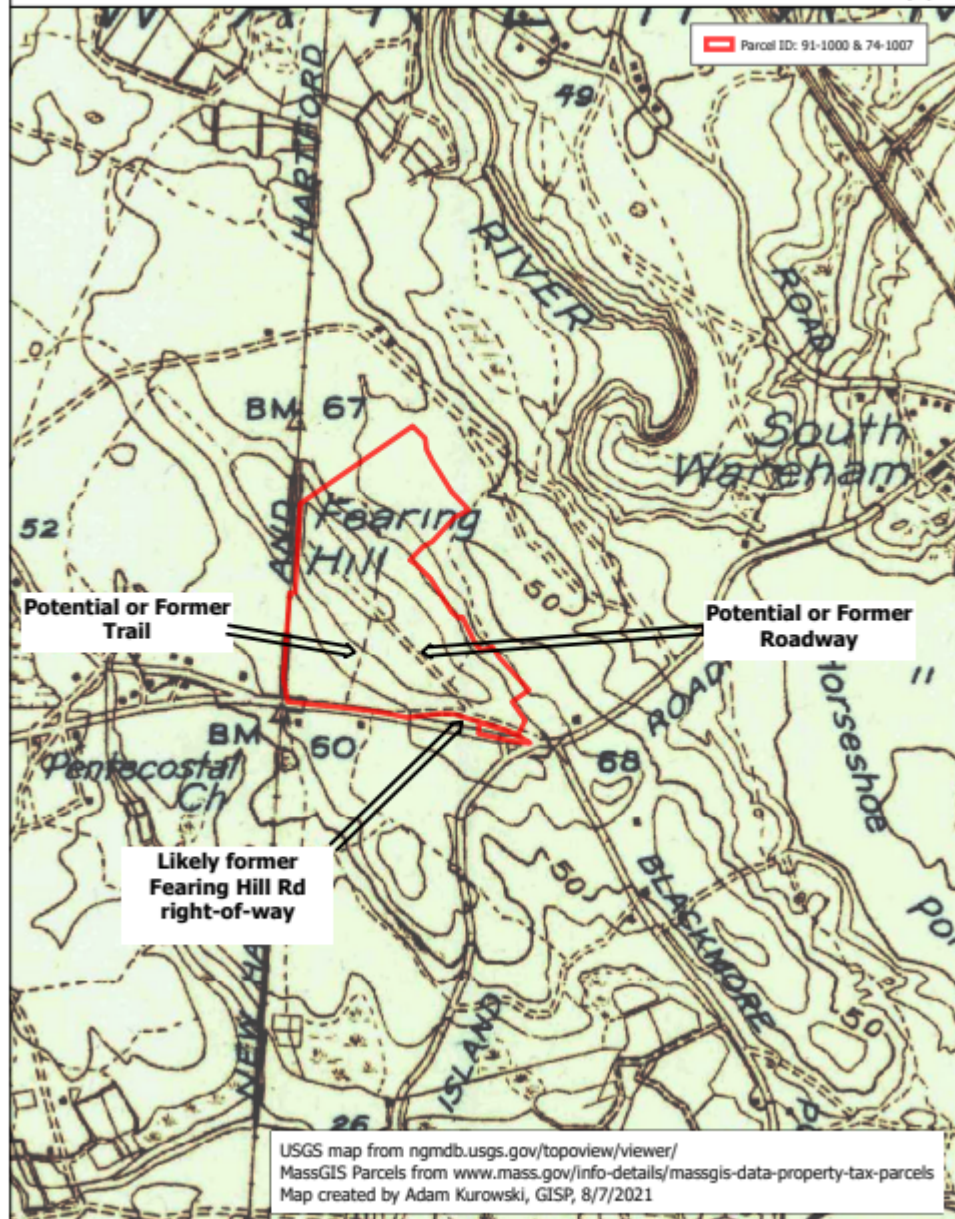
Exhibit One

USGS Map: 1938 with MassGIS Parcels

0 0.1 0.2 0.3 Miles



Parcel ID: 91-1000 & 74-1007



USGS map from ngmdb.usgs.gov/topoview/viewer/
MassGIS Parcels from www.mass.gov/info-details/massgis-data-property-tax-parcels
Map created by Adam Kurowski, GISP, 8/7/2021

Exhibit Two

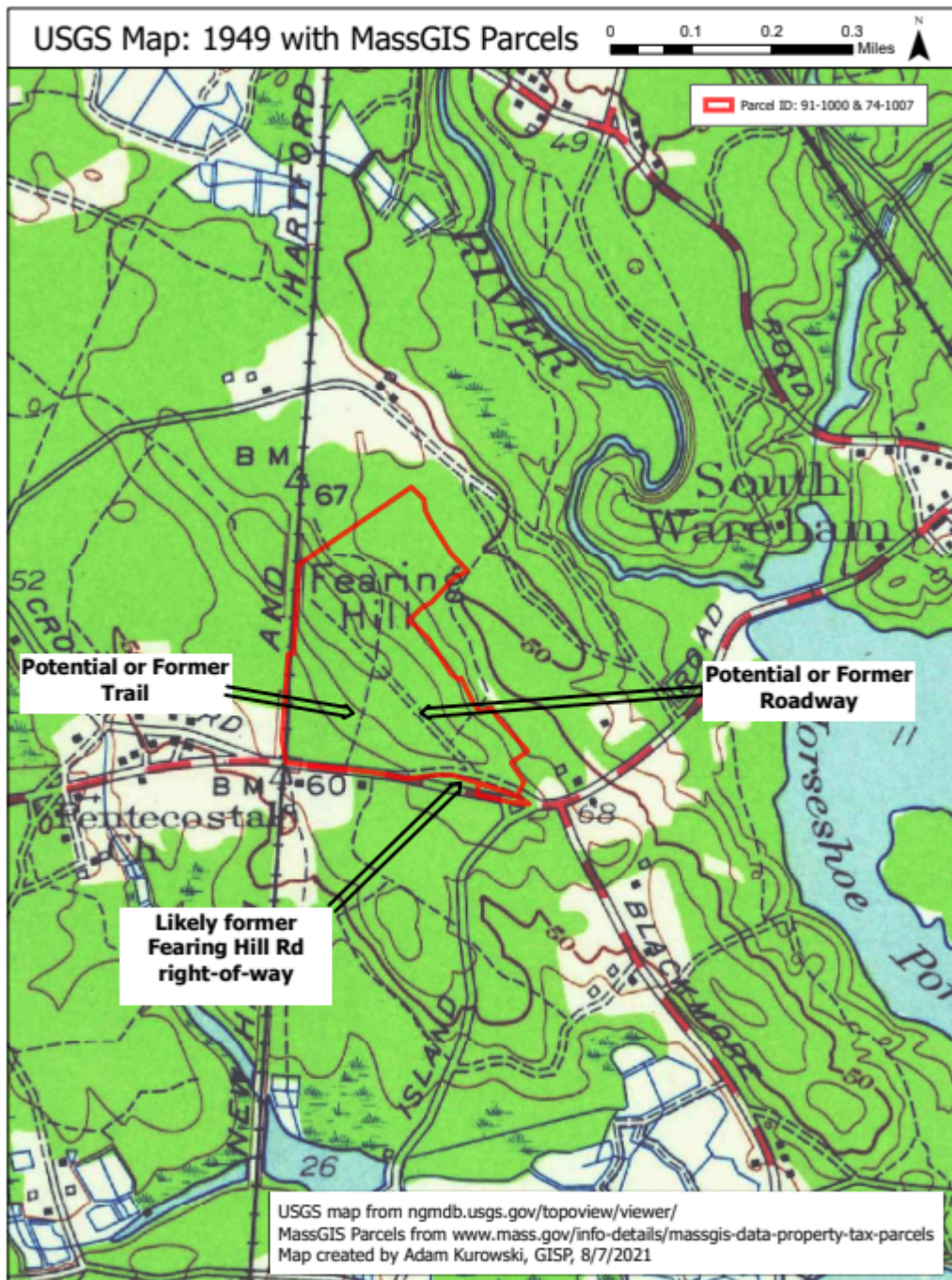


Exhibit Three

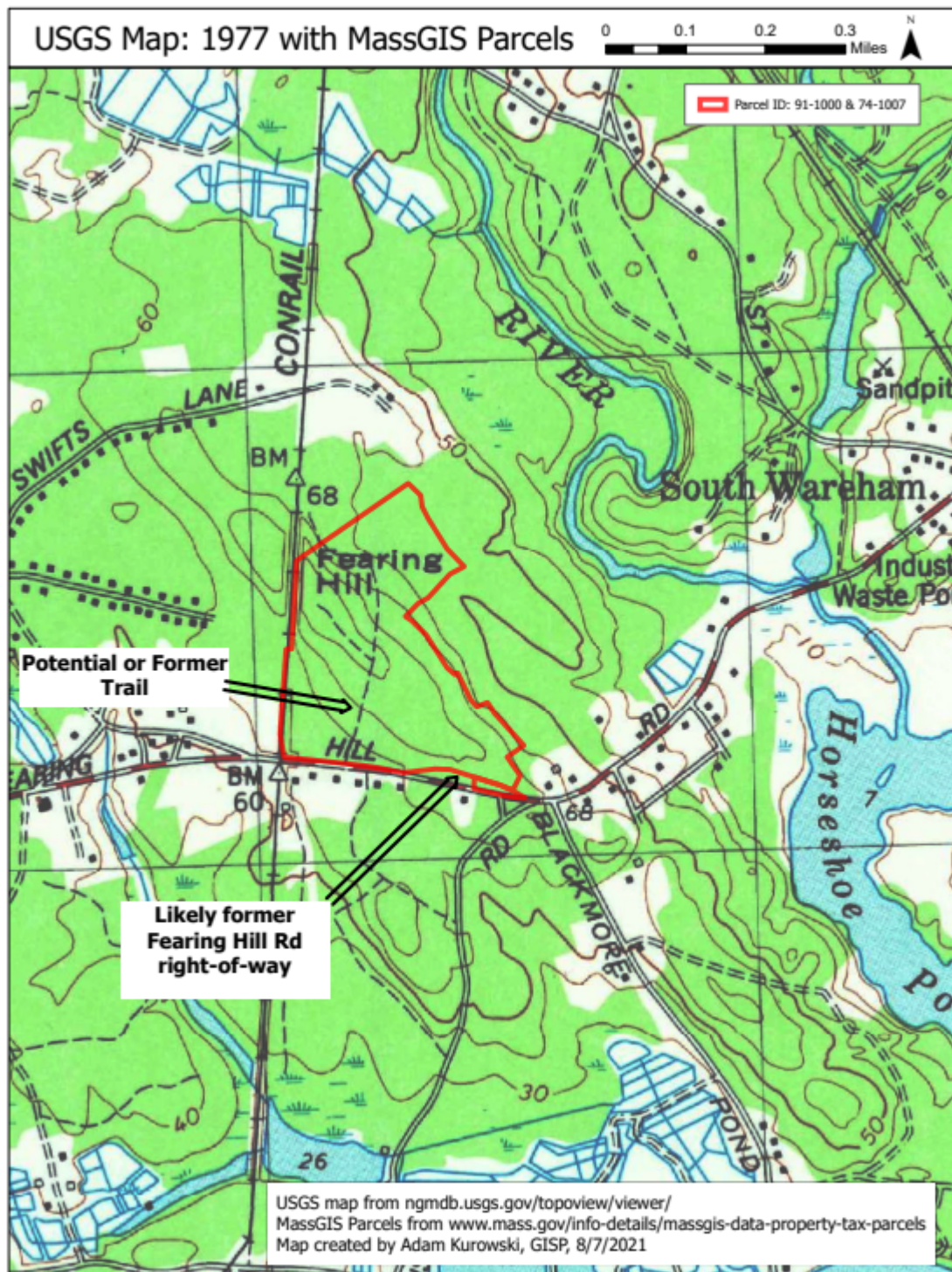


Exhibit Four

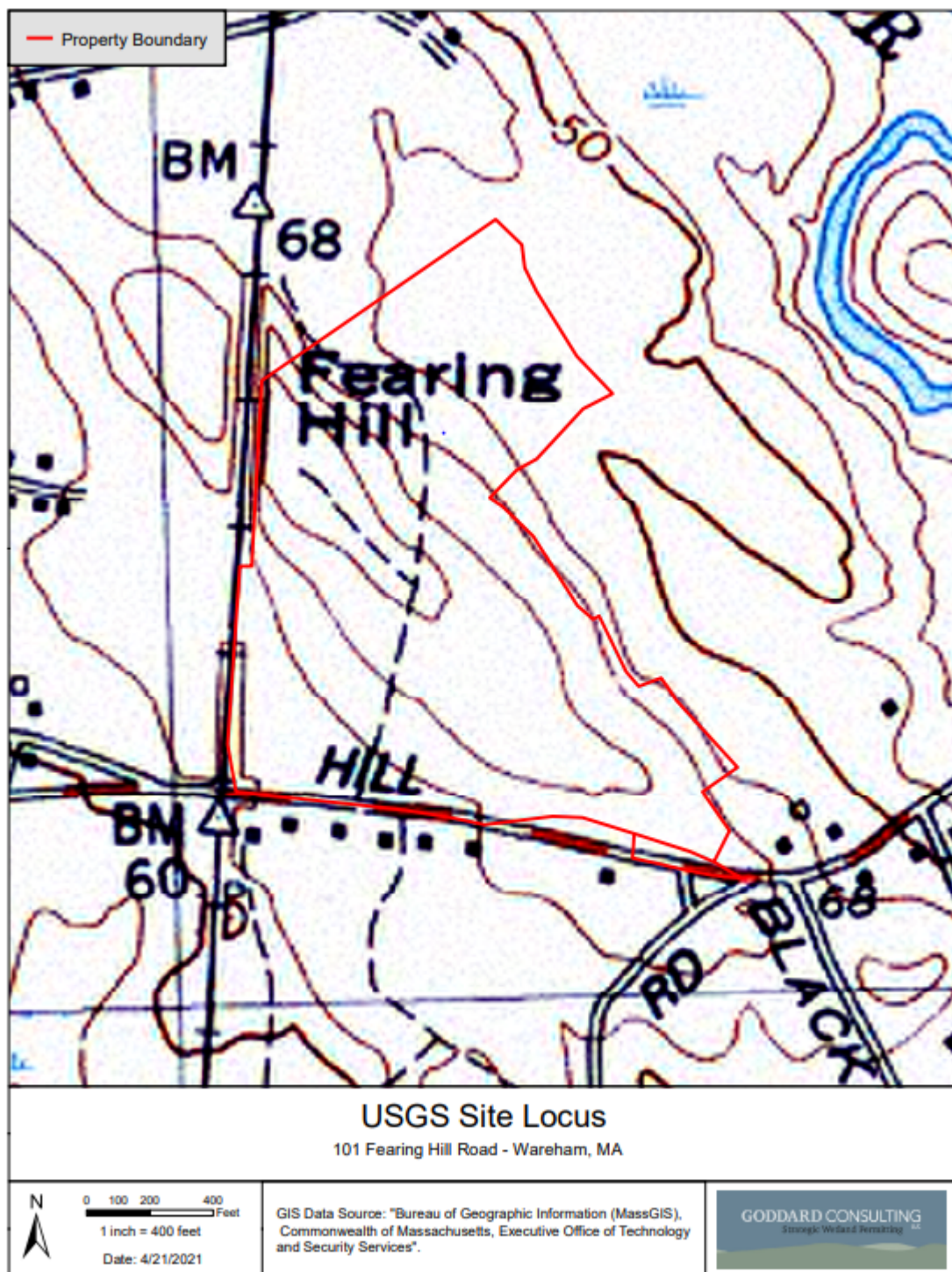
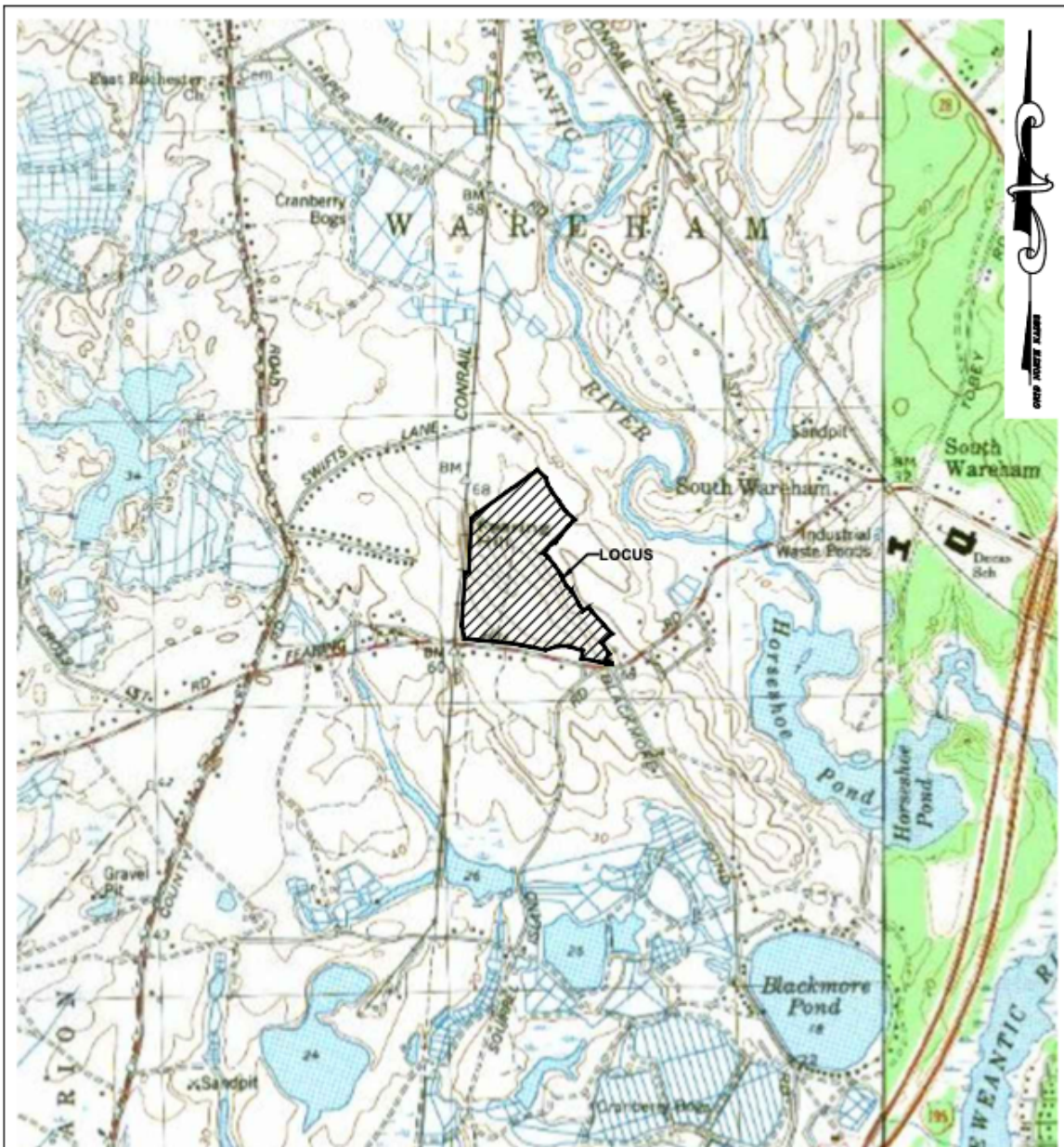


Exhibit Five



SCALE 1" = 1500'



DESIGN ENGINEERS, INC

P.O. Box 1051, Sandwich, MA 02563

(508) 888 - 9282

FILE: 3055.02

APPLICANT:
CON EDISON CLEAN ENERGY BUSINESSES
 100 SUMMIT LAKE DRIVE
 VALHALLA, NY 10595

FIGURE - USGS TOPO MAP
 FOR
91 & 101 FEARING HILL ROAD
 WAREHAM, MASSACHUSETTS 02576
 APRIL 28, 2021

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JOB NUMBER	
3055.02	