

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 3
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**Department of
Environmental
Conservation**

January 7, 2020

Bea Ogunti
Town of Wappinger Planning Board
20 Middlebush Road
Wappingers Falls, New York 12590

RE: NY1136 Castle Point Cell Tower – 110 Chelsea Road
Tax Map Number 6056-03-339420 (Town of Wappinger), Dutchess County
Tax Map Number 6056-03-297312 (Town of Fishkill), Dutchess County
CH# 8558
SEQR Lead Agency Designation

Dear Ms. Ogunti:

The New York State Department of Environmental Conservation (DEC or Department) has reviewed the State Environmental Quality Review (SEQR) Notice of Intent to Serve as Lead Agency submitted by the Town of Wappinger Planning Board for the above-referenced project.

The following documents were submitted by Christopher Bond of CBRE, Inc. for review:

- Threatened and Endangered Species Review (ETS Report), dated November 18, 2019;
- Plans titled "Site Name: Castle Point," pages 1 through 6, prepared by Tectonic Engineering, dated September 17, 2019;
- Letter prepared by Heidi Krahling – DEC, dated November 18, 2019; and
- Letter prepared by Lisa Masi – DEC, dated November 25, 2019.

The following documents were submitted by The Town of Wappinger Planning Board:

- Application for Site Plan Approval, dated October 8, 2019;
- Town of Wappinger Planning Board Special Use Permit Application, dated October 8, 2019; and
- Full Environmental Assessment Form (EAF), dated September 17, 2019.

According to the submitted information, the proposed project involves the construction of an unmanned wireless telecommunications facility comprised of a 154-foot (ft.) tall monopole. Ancillary equipment will be installed at ground level within an approximate 100 ft. x 100 ft. lease area. All equipment will be located within a proposed 50 ft. x 50 ft. fenced compound within the lease area. A 12 ft.-wide gravel road extending north to Chelsea



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Road is proposed to provide access to the project site. Based upon our review of your inquiry and submitted materials, we offer the following comments:

PROTECTION OF WATERS

The following stream is located within or near the site you indicated:

Name	Class	DEC Water Index Number	Status
Tributary of the Hudson River	C	H-99	Non-Protected

A permit is not required to disturb the bed or banks of "non-protected" streams.

If a permit is not required, please note, however, you are still responsible for ensuring that work shall not pollute any stream or waterbody. Care shall be taken to stabilize any disturbed areas promptly after construction, and all necessary precautions shall be taken to prevent contamination of the stream or waterbody by silt, sediment, fuels, solvents, lubricants, or any other pollutant associated with the project.

FRESHWATER WETLANDS

The project site is not within a New York State protected Freshwater Wetland.

WATER QUALITY CERTIFICATION

According to the EAF, the applicant proposes to install a new culvert at the above-referenced stream to facilitate the construction and future use of the proposed access road. The project site appears to contain federally-regulated wetland areas. If the United States Army Corps of Engineers (ACOE) requires a permit for work completed in or impacting a federal wetland, you will require a Water Quality Certification from the Department. Please contact the ACOE at (917) 790-8411 for a determination.

STATE-LISTED SPECIES

The DEC has reviewed the State's Natural Heritage records. We have determined that the site is located within or near records of the following state-listed species:

<u>Name</u>	<u>Status</u>
Indiana bat (<i>Myotis sodalis</i>)	Endangered

The proposed project's boundaries fall within 100 meters from the nearest documented Indiana bat roost tree. Due to the presence of Indiana bats within close proximity to the proposed activity, this project falls within what is considered occupied habitat and could result in a take under 6 NYCRR Part 182. To avoid adverse impacts to Indiana bats and the need for an Incidental Take permit, all tree removal must take place from October 1st through March 31st. If over 10 acres of tree removal is required, additional review of the proposal will be required, and the following items submitted:

- A review of the remaining percentage of forest cover within 2.5 miles of the documented roost tree; and
- Potential indirect impacts to this species.

As long as the aforementioned time-of-year restriction is adhered to, less than 10 acres of tree removal is proposed, and the location of the proposed cell tower is consistent with the plans provided for the Department's review (titled "Site Name: Castle Point," pages 1 through 6, prepared by Tectonic Engineering and dated September 17, 2019), the Department has determined that the proposed activity is not likely to result in the incidental taking of this species and an Article 11, Incidental Take permit is not required for this project.

If significant modifications are proposed to the above-referenced scope of work, please contact the Department for additional review.

Please note that a project sponsor may not commence site preparation, including tree clearing, until the provisions of SEQR are complied with and all necessary permits are issued for the proposed project.

For technical questions regarding this species and its associated avoidance and mitigation measures, please contact the NYSDEC Bureau of Wildlife at (845) 256-3098.

The absence of data does not necessarily mean that other rare or state-listed species, natural communities, or other significant habitats do not exist on or adjacent to the proposed site. Rather, our files currently do not contain information which indicates their presence. For most sites, comprehensive field surveys have not been conducted. We cannot provide a definitive statement on the presence or absence of all rare or state-listed species or significant natural communities. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

CULTURAL RESOURCES

We have reviewed the statewide inventory of archaeological resources maintained by the New York State Museum and the New York State Office of Parks, Recreation, and Historic Preservation. These records indicate that the project is located within an area considered to be sensitive with regard to archaeological resources. The project sponsor should submit project materials to the New York State Historic Preservation Office's online Cultural Resource Information System (CRIS) to initiate the review process. Information on submitting to the system and access to it are available at <http://www.nysparks.com/shpo/>.

COASTAL MANAGEMENT ZONE

The project site is located within the Coastal Management Zone. If the Department has individual permit approvals for this project, the Department would review it in accordance with Coastal Management Program requirements. For additional information about the Coastal Management Zone, please contact the NYS Department of State (DOS), (518) 474-6000.

OTHER


Other permits from this Department or other agencies may be required for projects conducted on this property now or in the future. Also, regulations applicable to the location

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subject to this determination occasionally are revised and you should, therefore, verify the need for permits if your project is delayed or postponed. This determination regarding the need for permits will remain effective for a maximum of one year unless you are otherwise notified. More information about DEC permits may be found on our website, www.dec.ny.gov, under "Regulatory" then "Permits and Licenses." Application forms may be downloaded at <http://www.dec.ny.gov/permits/6081.html>.

Please contact this office if you have questions regarding the above information.

Sincerely,



Christina Pacella
Division of Environmental Permits
Region 3, Telephone No. (845) 256-2250

Enc: Indiana Bat Project Review Fact Sheet

cc: Lisa Masi, NYSDEC Bureau of Wildlife
Brian Drumm, NYSDEC Bureau of Ecosystem Health
NYSDOS Office of Planning & Development
Rosita Miranda, USACOE
Town of Fishkill Town Clerk
Brett Buggeln, Tarpon Towers II, LLC, Applicant
Neil J. Alexander, Esq., Project Contact
Christopher Bond, CBRE, Inc.

Indiana Bat Project Review Fact Sheet

New York Field Office

The following fact sheet is intended to provide information to assist project sponsors, as well as any involved Federal and State agencies, with the review of activities that occur within the likely range of the Indiana bat (*Myotis sodalis*) within the State of New York. This fact sheet can be used to assist with compliance with the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). **PLEASE NOTE - this fact sheet does not apply to wind development projects as they involve many unique considerations.** Contact the U.S. Fish and Wildlife Service (Service) directly for technical assistance for wind projects. In addition, information on evaluating impacts from wind projects on Indiana bats can be found at <http://www.fws.gov/midwest/endangered/mammals/inba/WindEnergyGuidance.html>.

Background

The Indiana bat is federally- and New York State-listed as an endangered species with a range that extends from the Midwest to northeastern and southeastern parts of the United States. Additional information on Indiana bat occurrences can be found at <http://ecos.fws.gov> and <https://www.fws.gov/northeast/nyfo/es/NYSpecies.htm>.

The Indiana bat typically hibernates in caves/mines in the winter and roosts under bark or in tree crevices in the spring, summer, and fall. Suitable potential summer roosting habitat is characterized by trees (dead, dying, or alive) or snags with exfoliating bark, or containing cracks or crevices that could potentially be used by Indiana bats as a roost. The minimum size roost tree observed to date is 2.5 inches diameter breast height (d.b.h.) for males and 4.3 inches d.b.h. for females. However, maternity colonies generally use trees greater than or equal to 9 inches d.b.h. Overall, roost tree structure appears to be more important to Indiana bats than a particular tree species or habitat type. Females appear to be more habitat specific than males presumably because of the warmer temperature requirements associated with gestation and rearing of young. As a result, they are generally found at lower elevations than males may be found. Roosts are warmed by direct exposure to solar radiation, thus trees exposed to extended periods of direct sunlight are preferred over those in shaded areas. However, shaded roosts may be preferred in very hot conditions. As larger trees afford a greater thermal mass for heat retention, they appear to be preferred over smaller trees. Additional information on potentially suitable summer habitat can be found in the Draft Indiana Bat Recovery Plan (Service 2007) at <http://www.fws.gov/northeast/nyfo/es/IndianaBatapr07.pdf> and at <http://www.fws.gov/midwest/endangered/mammals/inba/inbasummersurveyguidance.html>

Streams associated with floodplain forests, and impounded water bodies (ponds, wetlands, reservoirs, etc.) where abundant supplies of flying insects are likely found, provide preferred foraging habitat for Indiana bats, some of which may fly up to 2-5 miles from upland roosts on a regular basis. Indiana bats also forage within the canopy of upland forests, over clearings with early successional vegetation (*e.g.*, old fields), along the borders of croplands, along wooded fencerows, and over farm ponds in pastures (Service 2007). While Indiana bats appear to forage in a wide variety of habitats, they seem to tend to stay fairly close to tree cover.

Threats include disease (white-nose syndrome), habitat loss or degradation, human disturbance, contaminants, and collision with wind turbines.

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Evaluation of Presence or Probable Absence

To determine whether the proposed project site may be occupied by the Indiana bat, the Service recommends the following analytical approach¹:

Step 1. Is the proposed project within an area² identified by the Service as known or likely to contain Indiana bats?

- No: No further coordination regarding the Indiana bat is necessary at this time.
- Yes: Proceed to Step 2.

Step 2. Is there existing information regarding probable presence/absence of Indiana bats (e.g., proximity to hibernacula, prior summer netting/acoustics)³?

- No: Proceed to Step 3.
- Yes: Document existing information and coordinate with the Service.

Step 3. Is there any suitable Indiana bat habitat⁴ present within the proposed action project area?

- No: No further coordination regarding the Indiana bat is necessary at this time.
- Yes: Determine whether the proposed project involves any effects to Indiana bats.

Determination of Effects

Determine for each project whether effects to Indiana bats or their habitat are expected. If there are impacts to habitat while bats are not present, assess the scale and scope of those impacts to determine whether bats returning in the spring may be affected.

For example, consider whether a project may result in temporary or permanent increases in noise, vibration, dust, chemical use, lighting, vehicle use, and general levels of human activity. Also, consider whether a project may result in temporary or permanent loss, degradation, and/or fragmentation of roosting, foraging, swarming, commuting, or wintering habitat.

Certain transportation projects have already been evaluated and processes developed in accordance with a Rangewide Consultation and Conservation Strategy:

<https://www.fws.gov/Midwest/endangered/section7/fhwa/>

Surveys for Indiana Bats

Should suitable Indiana bat habitat be present and should the proposed project have the potential for impacting Indiana bats, coordinate with the Service to determine whether 1) assuming presence or 2) conducting surveys⁵ is the best approach. Due to the limited time frame when bat surveys can be completed and in order to avoid project delays, it is strongly recommended that the project sponsor (or involved Federal agency) contact the Service as early as possible during

¹ This reflects our current understanding but future studies may require a revision to this guidance.

² <https://ecos.fws.gov/ipac/>

³ <http://www.fws.gov/northeast/nyfo/es/NYSpecies.htm> and <http://www.dec.ny.gov/animals/38801.html>

⁴ <http://www.fws.gov/midwest/endangered/mammals/inba/inbasummersurveyguidance.html>

⁵ <http://www.fws.gov/midwest/endangered/mammals/inba/inbasummersurveyguidance.html>

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project planning to determine if surveys or additional avoidance and/or minimization measures are appropriate. Should Indiana bat presence be detected, the Service should be contacted immediately for further assistance in determining whether your action may impact Indiana bats. If no bats are detected after protocol surveys, submit the results as soon as possible for our review in accordance with the timeframes agreed upon during the review of the survey scope of work.

Conservation Measures

Conservation measures are designed to minimize the likelihood of adverse impacts or result in beneficial effects to Indiana bats from projects. The following guidance represents general recommendations that may be incorporated into the proposed project design as appropriate.

Project Siting

- Avoid removing or damaging documented roosts or trees surrounding roosts.
- Avoid impacts to forest patches with documented roosts/foraging use (*e.g.*, forest within 0.25 mile of known roosts).
- Minimize impacts to all forest patches.
- Maintain forest patches and forested connections (*e.g.*, hedgerows, riparian corridors) between patches.
- Maintain natural vegetation between forest patches/connections and developed areas.
- Maintain at least 35%⁶ of forest habitat within maternity colony home range⁷.
- Restore and/or protect on- and off-site habitat.
- Avoid impacting potential roost trees to the greatest extent practicable
 - Retain standing live trees that have exfoliating (separated from cambium) bark.
 - Retain black locust, shellbark, shagbark, and bitternut hickories as possible, regardless of size or condition (live, dead, or dying).
 - Retain standing snags as much as possible regardless of species.

Project Construction

- When >10 miles from a P3 or P4 hibernaculum or >20 miles from a P1 or P2 hibernaculum⁸, but within the summer range of the Indiana bat, the clearing of potential roost trees, generally ≥4 inches should occur from October 1 through March 31⁹.
- When <10 miles from a P3 or P4 hibernaculum or <20 miles from a P1 or P2 hibernaculum, clearing should be conducted from October 31 to March 31.
- Use bright flagging/fencing to demarcate trees to be cleared.

⁶ Minimum % forest cover within Indiana bat maternity colony home range (NYSDEC unpublished data)

⁷ For explanation of how to delineate Indiana bat maternity colony home range, please see the Indiana Bat Section 7 and Section 10 Guidance for Wind Energy Projects document located at <http://www.fws.gov/midwest/Endangered/mammals/inba/index.html>

⁸ See Service 2007 for definitions of Priority 1-4 hibernacula. Contact the NYFO for information regarding the closest hibernaculum to your project

⁹ Site specific information may allow for deviations from the listed dates. Also, there may be cases (*e.g.*, very small number of trees) when we believe the likelihood of impacts is low regardless of when tree removal occurs.

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Project Operations/Maintenance

- Minimize lighting impacts (*e.g.*, limit number of lights, direct lights downward, fully shield lights, use motion sensors or timers).
- Conduct activities in a manner that will minimize impacts to potential drinking water sources for bats.

As we better understand a given proposed project, including any proposed conservation measures for Indiana bats, we may have additional recommendations. Project sponsors should seek assistance from the Service to develop these measures.

Information to Provide to the Service

The project's environmental documents should identify project activities that might result in impacts to the Indiana bat or their habitat. Information on any potential impacts and the results of any recommended habitat analyses or surveys for the Indiana bat should be provided to the New York Field Office and will be used to evaluate potential impacts to the Indiana bat and/or their habitat, and to determine the need for further coordination or consultation pursuant to the ESA. We encourage the project sponsor to submit these materials as early in the planning process as possible to all appropriate parties (*e.g.*, involved Federal/State agencies, the New York State Department of Environmental Conservation, Service).

Specifically, the following information should be provided:

- whether a Federal agency is involved or not;
- a detailed project description;
- a map of the proposed project area with coarse vegetation cover types (*e.g.*, emergent wetland, open field) in acres;
- a summary table of current vs. proposed future acreage of each cover type;
- provide number or acreage of trees proposed for removal and timing of removal;
- an overlay of the project on the vegetation map;
- a description of the forested area onsite, including the type of forest (*e.g.*, oak-hickory), approximate stand age, and presence of dead or live trees with split branches or trunks or exfoliating bark;
- photographs representative of all cover types on the site and encompassing views of the entire site;
- a topographic map with the project area identified; and
- a summary of proposed conservation measures.

References:

U.S. Fish and Wildlife Service. 2007. Indiana Bat (*Myotis sodalis*) Draft Recovery Plan: First Revision. U.S. Fish and Wildlife Service, Fort Snelling, MN. 258 pp.