



DIVISION OF FISHERIES & WILDLIFE

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April 7, 2022

Hull Conservation Commission
Town Hall, 253 Atlantic Ave
Hull MA 02045

Christopher Gardner, Director
Hull Department of Public Works
9 Nantasket Ave
Hull MA 02045

RE: Applicant: Christopher Gardner, Hull Department of Public Works
 Project Location: Beach Ave
 Project Description: Maintain Roadway Width (18-20ft wide) for Emergency Vehicle Access
 DEP Wetlands File No.: 035-1661
 NHESP Tracking No.: 17-37071

Dear Commissioners & Applicant:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") received a Notice of Intent, project narrative (dated 4/7/22) with site figures (undated) in compliance with the rare wildlife species section of the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.37). The Division also received the MESA Review Checklist and supporting documentation for review pursuant to the MA Endangered Species Act Regulations (321 CMR 10.18).

Based on the Massachusetts Natural Heritage Atlas, 15th Edition, portions of Beach Ave are delineated as *Priority Habitat* and *Estimated Habitat* for state-listed species. The proposed project will occur within mapped habitat the Piping Plover (*Charadrius melodus*) a species state-listed as Threatened. This species and its habitats are protected in accordance with the rare species provisions of the WPA and the MESA. The Piping Plover is federally protected as "Threatened" pursuant to the U.S. Endangered Species Act (ESA, 50 CFR 17.11). Fact sheets for state-listed species can be found at www.mass.gov/nhesp. Piping Plovers are ground-nesting shorebirds that will establish nests on sparsely vegetated, sandy areas of coastal beaches and dunes. Their nests are comprised of shallow depressions in the sand that may be lined with shell fragments or pebbles. Piping Plovers and their nests are particularly vulnerable to predators, unleashed pets, and human disturbance. After hatching, Piping Plover chicks are not capable of flight for up to 35 days.

The purpose of the Division's review of the proposed project under the WPA regulations is to determine whether the project will have any adverse effects on the Resource Areas Habitats of state-listed species. The purpose of the Division's review under the MESA regulations is to determine whether a Take of state-listed species will result from the proposed project.

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WETLANDS PROTECTION ACT (WPA) & MASSACHUSETTS ENDANGERED SPECIES ACT (MESA)

Based on the information provided and the information contained in our database, it is the opinion of the Division that this project, as currently proposed, **must be conditioned in order to avoid adverse effects to the Resource Area Habitats of state-listed wildlife species (310 CMR 10.37, 10.58(4)(b), 10.59) and must be conditioned in order to avoid a prohibited Take of state-listed species (321 CMR 10.18(2)(a)).** To avoid adverse effects to the Resource Area Habitats of state-listed species and to avoid a prohibited Take the following conditions must be implemented:

1. **Time of Year Restriction:** Work associated with maintaining Beach Ave shall not occur during the shorebird breeding period **April 1 – August 31.**
2. **Removed Sand:** All sand removed to maintain Beach Ave to the 18-20ft width may be retained and reused on Nantasket Beach provided it is conducted in accordance with a valid MESA determination.
3. **State-listed Species Protection.** The property owner(s) have the responsibility of protecting breeding Piping Plovers and state-listed species of terns that may be on this section of beach. Therefore, the property owner must allow regular monitoring for the presence of Piping Plovers and terns by a qualified shorebird monitor, as determined by the Division, during the period April 1 – August 31 and shall allow any nests, scrapes, or unfledged chicks to be protected with symbolic fencing (warning signs and twine fencing).
3. **Authorization Duration.** This authorization is valid for 5 years from the date of issuance. Work may be completed at any time during this 5-year period in compliance with the conditions herein. Thereafter, the applicant shall re-file under the MESA.
4. **Notice.** Upon filing for renewal, extension, or amendment of the Orders of Conditions, the applicant shall contact the Division for written response regarding impacts to Resource Area habitat of state-listed wildlife.

Provided these conditions are included in any approving Orders of Conditions issued by the Conservation Commission, and the applicant complies with all the above noted conditions, the project **will not result in an adverse impact to the resource area habitats of state-listed wildlife species pursuant to the WPA and will not result in a prohibited Take pursuant to the MESA.** A copy of the final Order of Conditions shall be sent to the NHESP simultaneously with the applicant as stated in the Procedures section of the WPA (310 CMR 10.05(6)(e)).

This determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. Any changes to the proposed project or any additional work beyond that shown on the site plans may require an additional filing with the Division pursuant to the MESA. This project may be subject to further review if no physical work is commenced within five years from the date of issuance of this determination, or if there is a change to the project.

Please note that this determination addresses only the matter of state-listed species and their habitats. If you have any questions regarding this determination please contact Amy Hoenig, Endangered Species Review Biologist, at Amy.Hoenig@mass.gov or (508) 389-6364.

Sincerely,

A handwritten signature in black ink, reading "Everose Schlüter". The signature is written in a cursive style with a large, stylized 'E' and a long, sweeping underline.

Everose Schlüter, Ph.D.
Assistant Director

cc: Philip Leminis, Hull Town Manager
MA DEP Southeast Region