



MASSWILDLIFE

DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581

p: (508) 389-6300 | f: (508) 389-7890

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July 14, 2023

Ryan Guthrie
Plum Island Blue, LLC
206 Andover Street, Suite 1
Andover, Massachusetts 01810

Newbury Conservation Commission
25 High Road
Newbury, MA 01950

RE: Applicant: Ryan Guthrie
 Project Location: 18 Fordham Way
 Project Description: Replacement of beach stairs and walkway
 DEP Wetlands File No.: -
 NHESP File No.: **23-8356**

Dear Commissioners and Applicant:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") received a Notice of Intent 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).

The Division has determined that this Project, as currently proposed, will occur **within** the actual habitat of the following species:

<u>Scientific Name</u>	<u>Common Name</u>	<u>Taxonomic Group</u>	<u>State Status</u>
<i>Charadrius melodus</i>	Piping Plover	Bird	Threatened

State-listed species and their habitats are protected in accordance with the MESA and state-listed rare wetland wildlife habitat is protected pursuant to the rare species provisions of the WPA. The Piping Plover is also protected as a Threatened species pursuant to the U.S. Endangered Species Act (ESA, 50 CFR 17.11).

Piping Plovers nest 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. Nests for this species are

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particularly vulnerable to predators, unleashed pets, and human disturbance. Piping Plover chicks are not capable of flight for 25-30 days after hatching, and during this period they must feed themselves with parents in attendance, often ranging widely to forage during this period of rapid growth.

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.

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 and to avoid a prohibited Take of state-listed species, the conditions attached to this letter must be met.**

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 letter please contact Melany Cheeseman, Endangered Species Review Assistant, at Melany.Cheeseman@mass.gov, (508) 389-6357.

Sincerely,



Everose Schlüter, Ph.D.
Assistant Director

cc:

Attachment: List of Conditions

List of Conditions

Applicant: Ryan Guthrie
Project Location: 18 Fordham Way
Project Description: Replacement of beach stairs and walkway
NHESP File No.: 23-8356
Heritage Hub Form ID: RC-64658
Approved Plan: Limited Existing Conditions Plan, 18-20 Fordham Way
Plan date: June 28, 2023, prepared by Winter GEC, LLC Revised Date: N/A

To avoid adverse effects to the Resource Area Habitats and to avoid a prohibited Take of state-listed species, the following condition(s) must be met:

- Time of Year Restriction:** Work, maintenance activities, stair repair, beach nourishment, and other alterations at this site located within Priority Habitat shall not occur during the period of **April 1 – August 31**. Any work proposed during April 1 – August 31, requires written authorization from the Division prior to the start of work and a Division-approved monitoring and protection plan for state-listed shorebirds. Said monitoring and protection plan must be implemented by a qualified shorebird monitor, as determined by the Division.
- State-listed Species Protection:** The property owner has the responsibility of protecting breeding Piping Plovers and/or state-listed species of terns that may nest 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). Symbolic fencing protects state-listed species nesting habitat, breeding adults, nests, and chicks reducing disturbance and human-caused mortality. These fenced areas shall be managed in accordance with the Massachusetts Division of Fisheries and Wildlife document of April 1993 titled *Guidelines For Managing Recreational Use Of Beaches To Protect Piping Plovers, Terns, And Their Habitats In Massachusetts* (“Guidelines”).
- 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 must re-file pursuant to the MESA.
- 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.