



MASSWILDLIFE

## DIVISION OF FISHERIES & WILDLIFE

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October 06, 2023

Julie Russell  
Martha's Vineyard Land Bank Commission  
167 Main Street  
Edgartown, Massachusetts 02539

West Tisbury Conservation Commission  
P.O. Box 278  
West Tisbury, MA 02575

RE:    Applicant:                Julie Russell and Harrison Kisiel - Martha's Vineyard Land Bank Commission  
      Project Location:        283, 285, 287, 289 Lamberts Cove Road  
      Project Description:    James Pond Preserve Management Activities  
      DEP Wetlands File No.: 079-0458

**NHESP File No.:        23-8636**

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
<i>Polygonum glaucum</i>	Sea-beach Knotweed	Plant	Special Concern

State-listed species and their habitats are protected in accordance with the MESA and state-listed rare wetland wildlife habitat is protected in accordance with the rare species provisions of the WPA.

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

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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 Emily Holt, Endangered Species Review Assistant, at Emily.Holt@mass.gov, (508) 389-6385.

Sincerely,



Everose Schlüter, Ph.D.  
Assistant Director

cc: DEP Southeast Region

Attachment: List of Conditions

## List of Conditions

Applicant: Julie Russell and Harrison Kisiel - Martha's Vineyard Land Bank Commission  
Project Location: 283, 285, 287, 289 Lamberts Cove Road  
Project Description: James Pond Preserve Management Activities  
**NHESP File No.:** 23-8636  
**Heritage Hub Form ID:** RC-65349  
**Approved Plan:** PROPOSED LAND MANAGEMENT ACTIVITIES - JAMES POND PRESERVE - WEST TISBURY, MA  
**Plan date:** SEPTEMBER 2023 **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 associated with installation or maintenance of the beach access stair system shall not be conducted during the period April 1 – August 31, unless under the direct oversight of a qualified shorebird monitor implementing a Division-approved monitoring and protection plan.
- State-listed Species Protection:** The property owner has the responsibility of protecting breeding Piping Plovers and 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.
- 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.