

DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581
p: (508) 389-6300 | f: (508) 389-7890
MASS.GOV/MASSWILDLIFE

Request for Certificate of Inclusion for Piping Plover Habitat Conservation Plan MESA Review Checklist & Application Cover Page

Project Location:

Address/Location	Cape Poge Wildlife Refuge, Leland Beach, & Wasque Reservation
City(ies)/Town(s)	Edgartown

Applicant:

Individual	Shea Fee
Organization	The Trustees of Reservations
Mailing address	860 State Road, Vineyard Haven, MA 02568
Phone & Email	508-680-6450 sfee@thetrustees.org

Property Owner(s) Information (if different from Applicant): **Provide separate sheet if multiple landowners*

Individual(s)	n/a
Organization(s)	The Trustees Of Reservations
Mailing address	200 High St, Boston, MA 02100
Phone & Email	

Representative (if any):

Individual	Cynthia Ditbrenner
Organization	The Trustees of Reservations
Mailing address	200 High St, Boston, MA 02100
Phone & Email	cditbrenner@thetrustees.org

Has this project previously been issued a NHESP Tracking Number (either by previous NOI Submittal or MESA Information Request Form)? No If yes, Tracking no. _____

Is coverage for Least Terns also being requested? (Y/N)	Yes			
List additional MESA-listed species in project area (if known):	Roseate tern	Common tern	Northern harrier	Seabeach knotweed

REQUESTED ACTIVITIES FOR PIPING PLOVER

Covered activity:	Use of roads and parking lots in the vicinity of unfledged chicks	Recreation and beach operations	Oversand vehicle use in vicinity of unfledged chicks	Total*
Mitigation ratio (mitigation credits: exposures)	3:1	2.5: 1	2.5: 1	
Mitigation fee (per pair, nest, brood, or territory)	\$6150	\$5800	\$5800	
No. requested take exposures*	0	3	3	3
Max. % of total pairs at site to be exposed				30

<i>Specific activities requested: (mark with "X")</i>				
· Reduced proactive symbolic fencing	☐	☒	☐	
· Reduced fencing around the nest	☐	☒	☐	
· Beach raking	☐	☐	☐	
· Chick herding	☐	☐	☐	
· Nest moving	☐	☐	☐	
· Other	☐	☒	☐	
Acreage affected				2
Max. % of total nesting acreage affected at site				10

* As beach operators may not be able to predict precisely which combination of Covered Activities may be carried out in a given year, a range of values for *No. requested take exposures* may be presented for individual Covered Activities; however, the *Total* should be a single not-to-exceed value.

PROPOSED MITIGATION

Type	Y/N	Total amount	Pairs to benefit/Credits
Pay fee for offsite mitigation (\$5800 - \$6150 per take exposure; see above)	No	\$	
Applicant-implemented activities:			
· Selective predator management	Yes	Submit details in IAMP (see below)	50
· Increased education & outreach	No		*
· Increased law enforcement	No		*
· Habitat management	No		*
· Other	No		*

* MassWildlife will determine value (credits) for non-selective predator management options

OTHER REQUIRED ELEMENTS OF REQUEST FOR COI

(Please attach. Additional guidance is available to applicants; contact Coastal.Waterbirds@mass.gov.)

- ☒ Site map – showing boundaries and provide proof of ownership
- ☒ Written assent of landowner(s) to request coverage, if applicant is not landowner
- ☒ Site-specific Impact Avoidance and Minimization Plan (IAMP)
- ☒ Mitigation plan, including budget
- ☒ MA Endangered Species Act filing fee
(\$300 payable to “Comm of MA – NHESP”; <https://www.mass.gov/how-to/how-to-file-for-a-mesa-project-review>)
- ☒ Conservation and Management Permit fee
(\$600 payable to “Comm of MA – NHESP”; <https://www.mass.gov/how-to/apply-for-a-conservation-management-permit>)
- ☐ Draft Escrow/Mitigation Fund Agreement, with applicant-specific edits in Track Changes/redline (if mitigation fee will be paid)
Contact: Coastal.Waterbirds@mass.gov for template agreement.

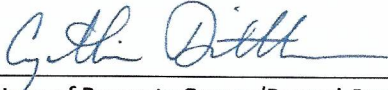
SUBMITTAL

- ☐ Mail a hard copy of entire application (including signed cover sheet) with checks, to:
Environmental Review-HCP, MassWildlife-NHESP, 1 Rabbit Hill Rd., Westborough, MA 01581.
- ☐ Also email entire application to: Coastal.Waterbirds@mass.gov.

REQUIRED SIGNATURES

Provide separate sheet if multiple landowners

I hereby certify under the penalties of perjury that the foregoing HCP/MESA filing and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge.



Signature of Property Owner/Record Owner of Property

• 12/8/23

Date



Signature of Applicant (if different from Owner)

12/5/23

Date



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Project Location:

Address/Location	Attachement for Leland Beach
City(ies)/Town(s)	Edgartown

Applicant:

Individual	
Organization	
Mailing address	
Phone & Email	

Property Owner(s) Information (if different from Applicant): **Provide separate sheet if multiple landowners*

Individual(s)	n/a
Organization(s)	Massachusetts Division of Marine Fisheries
Mailing address	251 Causway St Suite, 400, Boston, MA 02114
Phone & Email	617-626-1520

Representative (if any):

Individual	Ross Kessler
Organization	Massachusetts Division of Marine Fisheries
Mailing address	251 Causway St Suite, 400, Boston, MA 02114
Phone & Email	ross.kessler@mass.gov

Has this project previously been issued a NHESP Tracking Number (either by previous NOI Submittal or MESA Information Request Form)? Y/N If yes, Tracking no. _____

Is coverage for Least Terns also being requested? (Y/N)	Y/N			
List additional MESA-listed species in project area (if known):				

REQUESTED ACTIVITIES FOR PIPING PLOVER

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No. requested take exposures*				
Max. % of total pairs at site to be exposed				

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Environmental Review-HCP, MassWildlife-NHESP, 1 Rabbit Hill Rd., Westborough, MA 01581.
- ☐ Also email entire application to: **Coastal.Waterbirds@mass.gov.**

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Provide separate sheet if multiple landowners

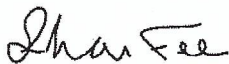
I hereby certify under the penalties of perjury that the foregoing HCP/MESA filing and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge.



Signature of Property Owner/Record Owner of Property

12/14/23

Date



Signature of Applicant (if different from Owner)

12/5/23

Date

The Trustees of Reservations: Request for Certificate of Inclusion

on

Cape Poge Wildlife Refuge, Leland Beach, and Wasque Reservation

Edgartown, Martha's Vineyard

2024



The Trustees of Reservations

200 High Street

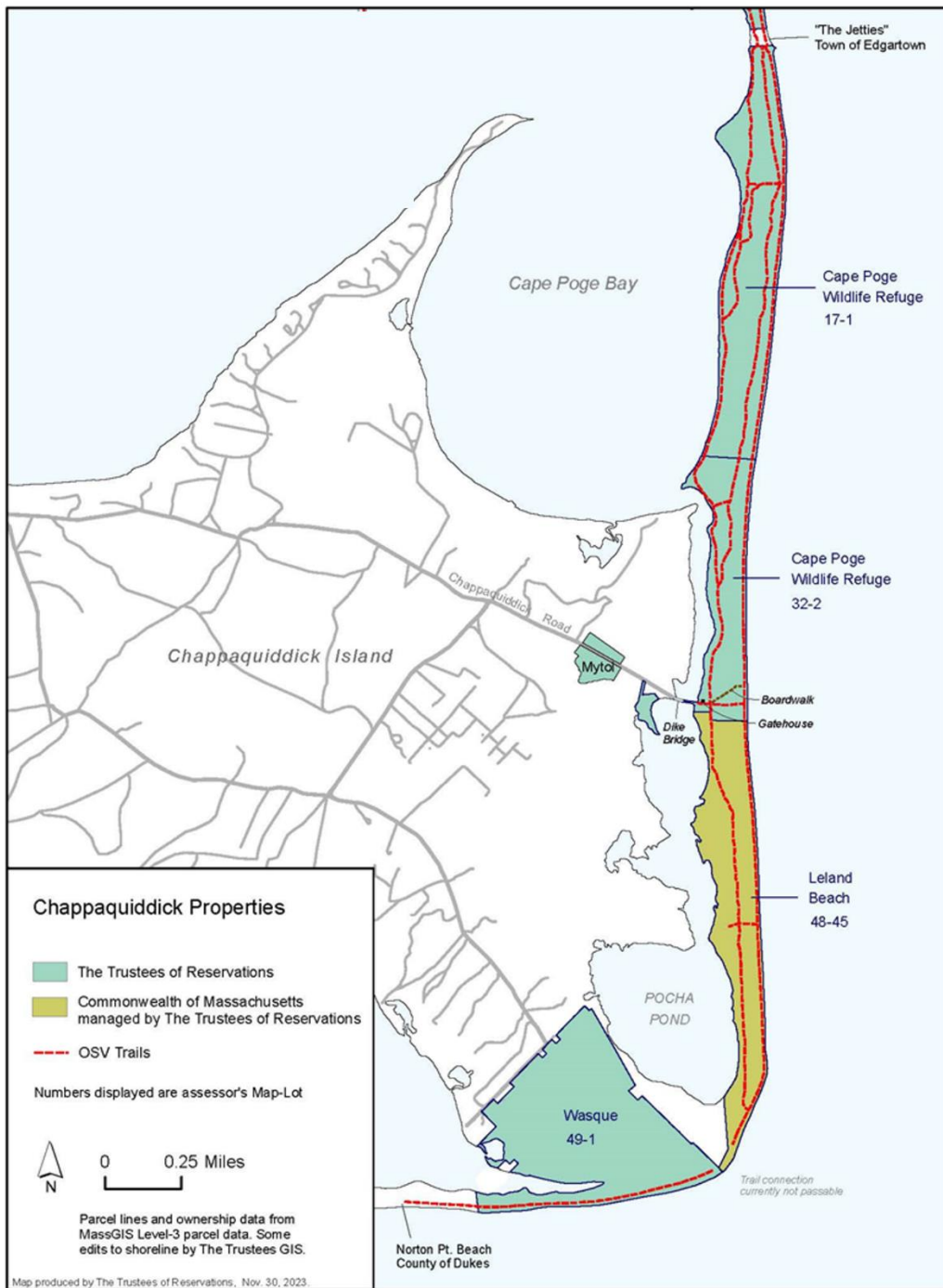
Boston, MA 02110

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Site Map



Ownership and management of requested sites: Cape Poge Wildlife Refuge (south of the Jetties parcel), Leland Beach, and Wasque Reservation. Cape Poge Wildlife Refuge and Wasque Reservation, shown in green are owned and managed by the Trustees. Leland Beach, shown in gold is owned by the Massachusetts Division of Marine Fisheries (MDMF). OSV trails are shown in red.

The Trustees of Reservations: Impact Avoidance & Mitigation Plan

2024

I. Site Description

a. Site Map

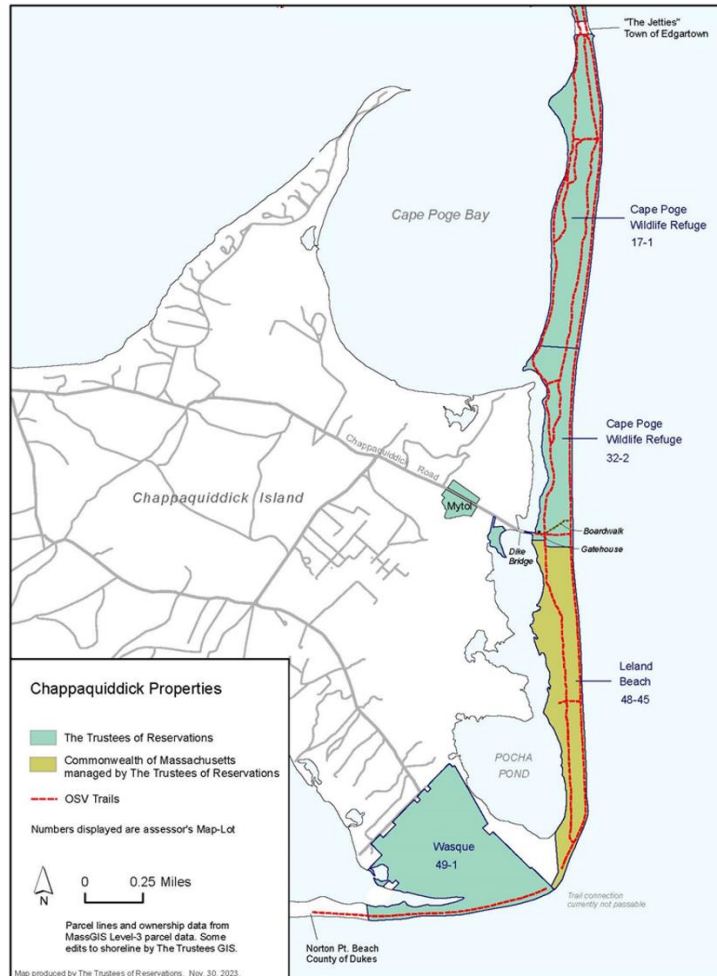


Figure 1: Sites covered in the COI request include the southern portion of Cape Poge Wildlife Refuge (south of the Jetties), Leland Beach, and Wasque Reservation. All other upland Trustees parcels shown on the map are for reference only and are not included in the COI request.

b. Property Descriptions and Amenities

The Trustees of Reservations, founded by Charles Eliot in 1891, is one of the oldest land conservation organizations in the country. Our mission is to preserve areas, for public use and enjoyment of exceptional scenic, historic, and ecological value throughout Massachusetts. We frequently collaborate with other conservation groups and government agencies that share aspects of our mission.

Together, Leland Beach, Wasque Reservation, and the southern portion of Cape Poge Wildlife Refuge comprise an impressive 4.5-mile barrier beach system stretching across the southern and eastern ends of Chappaquiddick Island. The southern position of Cape Poge Wildlife Refuge, south of the Town of Edgartown owned “Jetties” parcel totals approximately 155 acres with 2 linear miles of barrier beach, wrapped along the eastern shore of Chappaquiddick. At this location, oceanside shorelines are characterized by low-lying vegetated dunes and highly dynamic shorelines that have a narrow coastal beach. On the opposite side of the barrier lies Cape Poge Bay. The bayside beach is decidedly narrow and, in many places, intertidal. Dotted along the bayside shore are pocket and fringe saltmarsh, providing habitat for birds like the threatened Saltmarsh sparrow. The two shorelines are separated by vegetated dunes and a Maritime Juniper Woodland, a critically imperiled natural community type in Massachusetts. Cape Poge Wildlife Refuge is owned and managed by the Trustees of Reservations and is accessible by foot, boat, and over sand vehicle (OSV). The sole OSV access point is located at the Dike Bridge.

Connected to Cape Poge to the south is Leland Beach, a 1.4-mile-long (80 acres) stretch of barrier beach consisting of an oceanside beach to the east, dunes, and saltmarsh and tidal pond to the west. Leland is owned by the Commonwealth of Massachusetts (Division of Marine Fisheries) but managed by The Trustees of Reservations under a 1993 Memorandum of Understanding (MOU). This MOU specifies that “...public access for sportfishing shall be a priority use of Leland Beach” and that the “Trustees agree to permit the general public to have access to Leland Beach through the Wasque Reservation and the Cape Poge Wildlife Refuge.” Our management of Leland Beach complies with these priorities while upholding the 1993 Guidelines for the Recreational Use of Beaches to Protect Piping Plovers, Terns, and their habitats. The primary mode of access on Leland Beach is by OSV via the Dike Bridge entrance.

Continuing south of Leland Beach is the shoreline of Wasque Reservation, owned and managed by the Trustees. This approximately 1 mile stretch of beach (15 acres) is part of the land bridge that connects Chappaquiddick to Katama in most years. Currently, Wasque beach only offers pedestrian access from 2 parking areas on the upland portion of the reservation. The beach is subject to dramatic cycles of erosion and deposition, and frequently experiences overwash during storms or astronomical high tides. Wasque’s comparatively wide and sparsely vegetated beaches are bordered by the Atlantic Ocean on one side and coastal bluff on the other. Wasque is famed both for its scenic value and for the sportfishing associated with a strong tidal rip just offshore.

In addition to their recreational value, these beaches are a haven for wildlife and provide critical habitat for a myriad of important and imperiled species. In addition to Piping plovers and terns, beach nesting birds such as American oystercatcher, Willet, and Black skimmer utilize the habitat to hatch and raise young. State-listed Northern harriers can be seen hunting and sometimes nesting in the dunes of these properties as well. Use by transient non-breeding birds also deserves mention. Ocean beaches are used during spring and especially, fall migration by species including Black-bellied and Semipalmated plovers, Sanderling, and Ruddy turnstone. Bay and

pond side beaches are frequented by Least, White-rumped, and Semipalmated sandpipers, Greater yellowlegs, Whimbrel, and Red knot just to name a few.

Collectively, the 3 parcels described in this COI request combine to form a 4.5-mile stretch of habitat would be under one Certificate of Inclusion. Effectively managing OSV access and shorebird protection is a central preoccupation for the Trustees. Access is integral to the organization's mission and OSV access in particular, is currently a significant part of the Trustees' operations on Martha's Vineyard. Inclusion in the HCP program will allow for management flexibility to maintain some OSV access during the shorebird breeding season that may otherwise be impossible given state and federal shorebird regulations.

II. Ownership and Management Entities

The Trustees own and manage Cape Poge Wildlife Refuge and Wasque Reservation. The Massachusetts Division of Marine Fisheries (MDMF) is the property owner of Leland Beach. The Trustees manage and monitor this site's shorebirds through a Memorandum of Understanding (see Supplementary Materials). The Trustees has notified and received written permission from the Massachusetts Division of Marine Fisheries to participate in the HCP on Leland Beach (see Supplementary Materials).

Although not included in this COI request, it is important to note that there are additional Town and privately owned inholdings along the Cape Poge beach complex, north of the Jetties. The Trustees possess the right to pass through many of these parcels through an 1891 Partition (see Supplementary Materials). Property owners access their homes via OSVs through the Cape Poge Wildlife Refuge. On rare occasions, the Trustees coordinate with the Edgartown Police department to respond to emergencies or assist with enforcement issues. Cape Poge private property owner vehicles as well as law enforcement vehicles are considered essential vehicles. Procedures detailing essential vehicle access is detailed in section VI subsection i.

III. Responsible Staff

Russ Hopping, Lead Coastal Ecologist:

Oversees statewide coastal ecology program including shorebird management. Oversees a team of two Coastal Ecologists and 5-6 seasonal Shorebird Technicians. Works with state and federal officials and partners in the implementation of the program. Began ecology career by managing Piping plovers and Least terns at Crane Beach, Ipswich, starting in 1991. Completed undergraduate research on migratory shorebirds at Crane Beach in 1991. B.S. in Human Ecology and M.S. in Environmental Studies. (Off site-year round, full-time position). Participated as a stakeholder in the development of the first HCP.

Darci Schofield, Islands Portfolio Director:

Oversees The Trustees operations on Martha's Vineyard and Nantucket including 2,000 acres of land, 14 miles of beach, eight Trustees places open to the public including Coskata-Coatue Wildlife Refuge, and 60 staff during the summer season. Over last two decades, she has created over 1,300 acres of protected land, published 15 plans on climate-smart parks, climate vulnerability and natural resilience and assisted 20 cities in New England on the planning and development climate-smart parks for nature-based resilience, and provided research and technical assistance to park and recreation agencies across

the U.S. on parks for health, equity, and resilience. Darci has a BA in Environmental Science from Boston University, an MS in Forest Ecosystem Science from the University of Maine, Orono, and is certified in Leadership and Negotiation from Harvard Law School. (Martha's Vineyard based year-round, full-time position)

Stewardship Manager:

Oversees all stewardship and beach management on Chappaquiddick including Cape Poge Wildlife Refuge, Leland Beach, and Wasque Reservation. Direct supervisor of 20-30 seasonal stewardship ranger staff to ensure protection of natural resources as well as visitor safety and satisfaction. This position is in the final stages of hiring. (Martha's Vineyard based- year round, full-time position. On call during the summer months.)

Shea Fee, Coastal Ecologist:

Manages the shorebird protection program for Nantucket and Martha's Vineyard and oversees 3 seasonal shorebird technicians- one on Nantucket and two on Martha's Vineyard. She has worked in the field of wildlife conservation since 2013 but began monitoring and protecting shorebirds in 2016. She worked as a Shorebird Technician on the Coskata- Coatue Wildlife Refuge as well as Nantucket National Wildlife Refuge from 2017 to 2020. She assumed her current role as Coastal Ecologist in 2021. Shea earned her bachelor's degree in Ecology from Connecticut College. (Martha's Vineyard based- year round, full-time position)

Shorebird Technicians:

Two seasonal Shorebird Technicians are hired from the beginning of May till the end of August and are expected to dedicate 40 hours per week to shorebird monitoring. Technicians provide 7 day a week monitoring coverage of all sites during daylight hours. They are responsible for maintaining symbolic fencing, monitoring nesting shorebirds and their chicks, conducting predator management, providing escorts to staff needing to get past shorebird closures for essential maintenance or safety reasons, and recording and reporting shorebird data. The Shorebird Technicians are trained and supervised by the Coastal Ecologist. (Martha's Vineyard based- seasonal, 40 hr/week positions)

Stewardship Rangers:

Twenty to 30 seasonal rangers are hired to enforce rules and regulations, ensure the safety of visitors, and support the shorebird protection program. Ranger operations extend from May to October and provide daily coverage during the shorebird season. Daytime ranger shifts are from 9am to 5pm. Nighttime ranger shifts are from 3pm or 5 PM to 10pm. Daytime rangers work eight hour shifts five days a week and nighttime rangers work 20 to 40 hour shifts five days a week. The Trustees hires sufficient staffing to ensure that the beaches are open and monitored seven days a week from May through October. Rangers receive basic shorebird training in the beginning of the season and a more in-depth training prior to HCP implementation. Rangers are supervised by the Stewardship Manager. (Martha's Vineyard based- seasonal, 40 hr/ week positions)

IV. Piping Plover Habitat, Population, and Productivity

This large, complex, and dynamic beach system offers approximately 57 acres of nesting habitat and a variety of other resources for Piping plovers. Historically, pairs have nested on the ocean-side beach, on the inside salt pond shore, and in blow-outs or washover areas in the dunes. However, plovers occasionally nest in settings that do not conform to the accepted definition of ideal plover nesting habitat (Figures 1-4). The breeding population size has trended upward in recent years perhaps pushing pairs into more marginal habitat. However, despite this boom in population size, productivity remains low and exhibits considerable annual variation (Tables 1 & 2). Management of these birds is challenging not just due to the vagaries of the birds themselves and the dynamics of a barrier beach, but because this entire location is heavily used by a range of overlapping human constituencies: homeowners accessing their properties, fisherman, boaters, kiteboarders, swimmers, sightseers, and birders, some of them accessing the beach on foot with many others accessing it by means of over-sand vehicles.

A frequent complication in beach management arises when a pair of adult plovers nest near critical beach access points or bring their broods from one side of the barrier beach to the other, generally in order to access productive foraging habitat. In particular, interdune OSV trails and sparsely vegetated patches of dune may furnish opportunities for this kind of expedition. Such mobility makes shoreline to shoreline closures more likely, since the birds could appear unexpectedly on any stretch of trail. Our participation in the Piping Plover Habitat Conservation Plan is largely aimed at providing more flexibility in responding when this type of situation arises. For example, in 2022, the Trustees implemented the covered activity of OSV use in the presence of unfledged chicks for two pairs nesting adjacent to Norton Point's sole OSV access trail. One nest was located on the bayside beach, at the end of a decommissioned vehicle trail that leads directly to Norton Point's only OSV access point. The second nest was located on the oceanside beach directly adjacent to the over-sand vehicle access road to the outer beach. Both nest locations as well as documented occurrences of adult Piping plovers utilizing the vehicle access road travel to bayside foraging habitat, posed an imminent challenge to maintaining vehicle access upon hatching. With the implementation of the HCP, the Trustees were able to maximize public OSV access to the beach during this time while also enabling successful chick fledging from both pairs.

On Cape Poge, Piping plover nesting often occurs along the east beach as well as sparsely to intermediately vegetated interdune areas. Sometimes pairs nest in extremely marginal habitat in the inter dunes adjacent to OSV trails.

Leland beach offers some of the best quality nesting habitat for Piping plovers across all Trustees-managed Vineyard properties. Wide beaches peppered with small stones and shells provide ample space and camouflage for prospecting plovers and their nests. Oceanside beaches have low vegetated dunes with an expansive interdune system. Within the interdune are large, vegetation free patches of habitat utilized by plovers and several other species of beach nesting bird. Piping plover nesting has occurred in such patches near the Dike bridge (the sole access point to Cape Poge and Leland Beaches) and southern Leland, especially where foraging access to the sandy pond shore is easily available.

Wasque is currently experiencing a breach in the barrier beach which broke through in December 2022. As a result of the breach, the beach system remains highly dynamic with areas of dramatic erosion and accretion. Longshore currents along this barrier system erode the eastern edge of the breach and deposit sediment on the western end, moving the breach eastward until connection at Wasque Point. This coastal process will inevitably form new unvegetated beach, desirable for Piping Plover and tern nesting. Historically, Wasque supports very few nesting pairs of Piping plover however, recent changes in beach morphology may attract more pairs to the site. Despite limited nesting activity, post-breeding migratory birds such as Roseate and Common terns use this site to stage and shorebirds like Black-bellied plover, Sanderling, Spotted sandpiper, and Dunlin forage along the ocean and bayside shorelines.

2023 Piping Plover Nest Locations

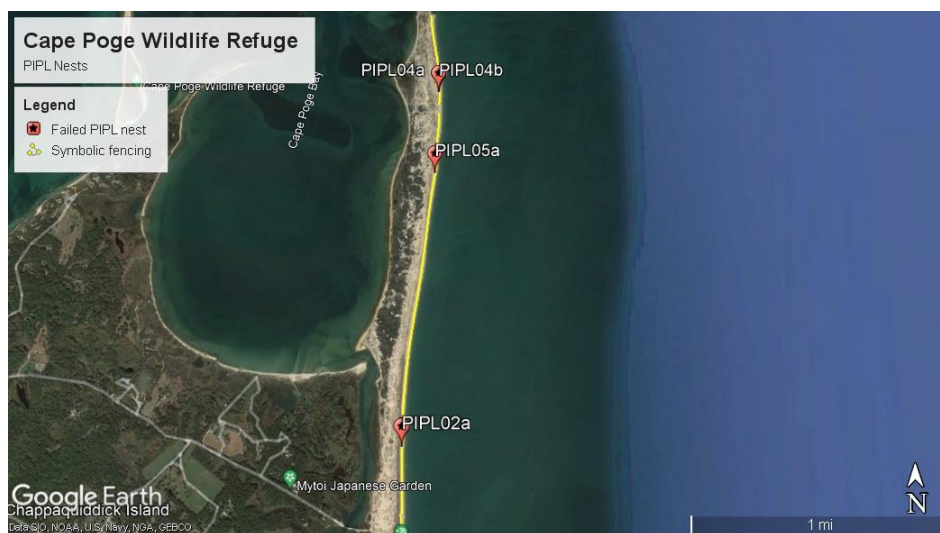


Figure 2: Piping Plover nest locations and symbolic fencing on Cape Poge Wildlife Refuge

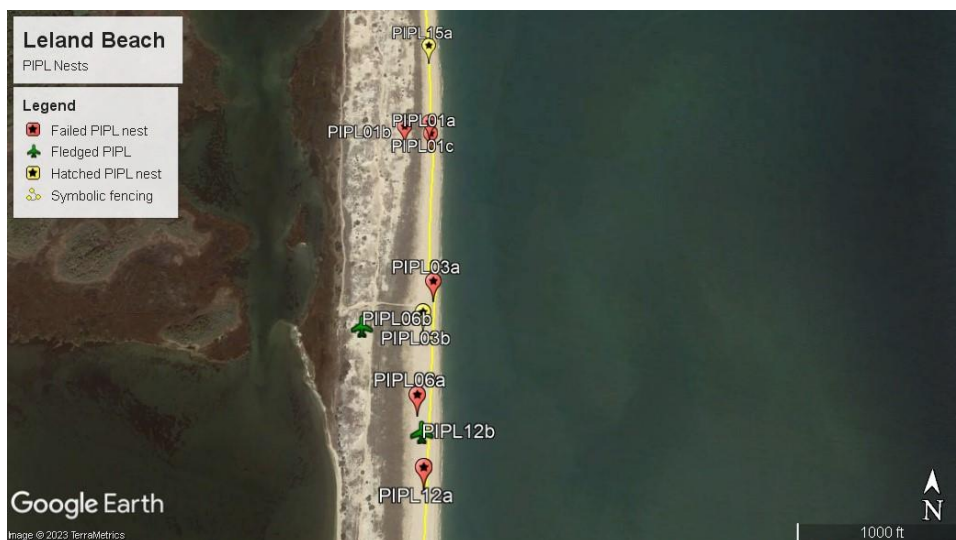


Figure 3. Piping plover nest locations and symbolic fencing on Leland Beach

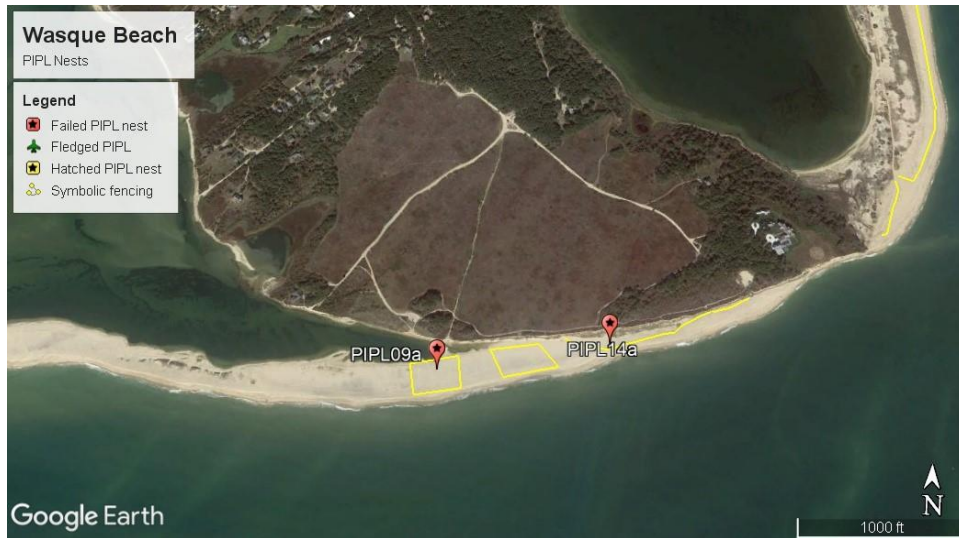


Figure 4. Piping Plover nest locations and symbolic fencing on Wasque Reservation

Table 1. 5 Years of Piping Plover Pair Numbers and Productivity*

	2019	2020	2021	2022	2023
# Pairs	5	7	9	10	10
# Fledglings	8	4	6	8	2
Productivity	1.60	.57	.67	.80	.20

Table 2. Historical Averages for Piping Plovers

	# PAIRS	# FLEDGLINGS	PRODUCTIVITY
5-YR AVG	8.2	5.6	.77
2019-2023			

*Pair numbers include only those that nested in the proposed implementation area

During the 2023 breeding season, 10 pairs of Piping plover nested across all beaches included in the IAMP. In total, these pairs produced 17 nests, 52 eggs, 11 chicks, and 2 fledglings. The overall productivity was 0.20 chicks fledged per breeding pair and nest success (nests that hatched at least one egg) was 0.24. Nest failure was attributed primarily to depredation or unknown causes. Despite experiencing a 67% increase in nesting pairs over the past 5 years, Piping plover productivity has not experienced that same upward trend. In general, nest predation seems to be the most significant contributor to chronically low productivity. In 2023, 58% of all failed Piping plover nests were attributed

to depredation. Skunks and crows are the most common shorebird nest predators and are seen in abundance on all Martha's Vineyard beaches. In addition, these beaches experience heavy recreational use during the summer. Human disturbance is well documented to have negative effects of beach nesting birds. The Trustees minimize human disturbance by following state and federal shorebird guidelines which, include creating appropriate buffers for nesting birds and broods, implementing public access restrictions, and requiring all pets are leashed and under the owners' control.

V. Tern Habitat and Other State Listed Species

Terns-

Three species of tern have been recorded nesting on the Trustees' barrier beach complex: Least tern, Common tern, and Roseate tern. However, in recent years, only the Least terns have formed colonies in the IAMP area. Historically, colonies formed on overwash areas on Wasque and the upper beach or sparsely vegetated interdune patches along Leland Beach (Figure 6). However, locations selected for colonies varies and numbers of nesting birds and productivity fluctuate from year to year (Tables 3 & 4)).

While the beach system often offers structurally suitable habitat and an abundance of appropriate prey items in nearby waters, nesting terns experience the same challenges here as Piping plovers: a wealth of predators sometimes encouraged by unintentional human subsidies, and heavy recreational use by humans. Accordingly, breeding success varies greatly. Ordinarily, terns require little additional management because the areas in which they nest are also managed for Piping plovers; beach closures or access restrictions for plovers protect terns as well, often extending beyond what the guidelines specify for terns alone.

Table 3. 5 Years of Least Tern Breeding Pair Numbers*

Year	LETE Pair #	Productivity
2019	64	Poor
2020	0	n/a
2021	68	Poor
2022	1	Poor
2023	15	Poor

Table 4. Historical Pair Averages for Least Terns

	# LETE PAIRS
5-YR AVG	29.6
2019-2023	

*Pair numbers include only those that nested in the proposed implementation areas

Least Tern Nesting Areas 2019-2023

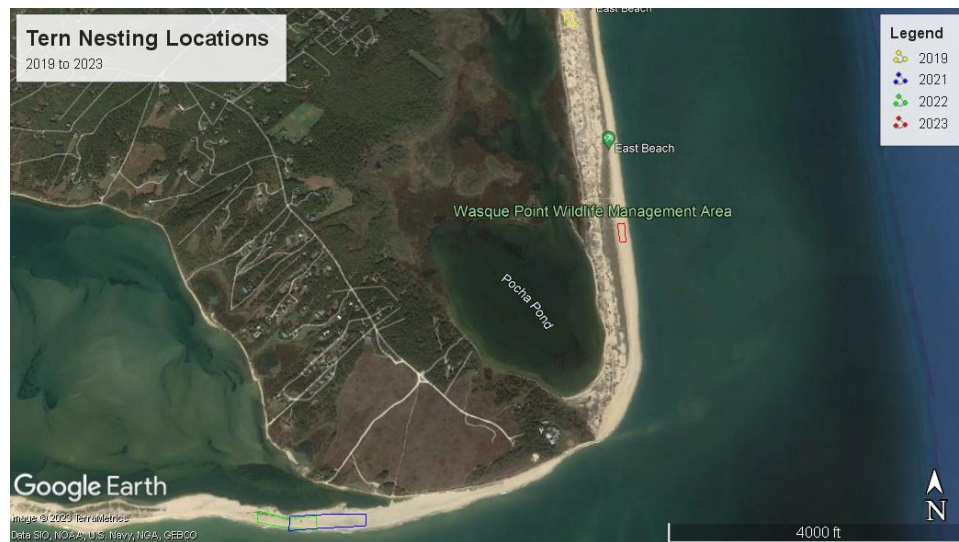


Figure 5. Tern colony locations 2019 to 2023

During the 2023 breeding season, one colony consisting of 15 pairs of Least terns nested across all beaches included in the IAMP. Unfortunately, this singular colony was unable to produce chicks. The cause for colony reduction and subsequent abandonment is uncertain. However, skunks and crows frequented the colony area, gulls were a constant presence, and Northern harriers regularly hunted the adjacent dunes. But evidence of predation was lacking; no eggs or eggshells were found in the colony after it failed.

Other Listed Species-

The Trustees also take several measures to protect rare plants on our beaches. Shorebird technicians are trained to look for and identify listed plant species such as seabeach knotweed (*Polygonum glaucum*). If found, populations of listed plants are delineated with symbolic fencing to prevent trampling or other disturbance. Often, rare plants are found in areas already fenced for shorebird nesting thus are often already protected from public impact. Additionally, thoughtful establishment and diligent maintenance of OSV corridors help protect rare flora from OSV related destruction. Additionally, at least one pair of Northern Harrier was recorded nesting on Cape Poge Wildlife Refuge in 2023. Nesting sites are usually in heavily vegetated areas that are not accessible to the public so additional visitor management for this species is not currently needed. Northern harriers may also benefit from predator control efforts as they are also ground nesting birds susceptible to mammalian predators.

VI. Beach Operations and Management

The Trustees manage beaches and over-sand vehicle (OSV) recreation using a management plan which adheres to the Massachusetts Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program and Guidelines for Managing Recreational Use of Beaches to Protect Piping Plovers and Terns and Their Habitat (1993).

a. Beach Hours

8:30 am-10pm unless actively surfcasting. Active surfcasters are permitted to be on the property at any time.

b. Recreational Activities

- OSV use: Over-sand vehicle travel is accommodated through a network of interdune and outer beach trails linked by occasional crossover trails. In order to protect beach nesting birds pursuant to state guidelines all historic and potential shorebird nesting habitat is protected by symbolic fencing and signage by April 1st and is maintained at least through the breeding period. Whenever possible, a 50 yard buffer is maintained between nests and passing OSVs. One to 2 days before an expected hatch date, the beach is closed to OSVs up to and beyond 100 yards (300 feet) on either side of the nest site. As the chicks move, the closure is adjusted to maintain a 100-yard buffer around unfledged chicks. Brood movements are monitored daily by qualified personnel to ensure vehicles are a safe distance away from all chicks. The Trustees, given their multifaceted mission and obligations under various management agreements, seeks to maximize public access to the extent consistent with sound ecological management of wildlife and the physical beach environment itself.
- Non-OSV beach recreation:
 - Surfcasting: Individuals engaging in this activity are not allowed within symbolically fenced areas or other marked restricted zones.
 - Kiteboarding and kite flying. The *1993 Guidelines for Managing the Recreational Use of Beaches to Protect Piping Plovers, Terns, and their Habitats* and NHESP regulates kiteboards as kites in protecting listed shorebirds. Kiteboarders are required to remain 200 yards away from all tern and piping plover suitable habitat. Habitat includes areas for establishing territory, breeding, nesting, chick rearing, and migration staging. The Trustees will provide, as available, an acceptable area 200 yards away from protected shorebird habitat for kiteboarders to launch from April 1 to September 30. This will be the only launching/exiting location during the shorebird season and is subject to change if protected shorebird activity enters the designated area.
 - Swimming: See surfcasting.
 - Hiking: See surfcasting
 - Birdwatching and photography: See fishing
 - Organized or Non-organized sports: See fishing
 - Shellfishing: Shellfishing often occurs off Trustees managed beaches, below mean low water. While the Trustees maintains no public boat launch, the Trustees allows licensed shellfishermen to access shellfish areas from the beach if they have an OSV permit and a license in accordance with the Town of Edgartown Regulations for the Taking and Culture of Shellfish and Town of Edgartown shellfish restrictions for bay scallop harvest at Cape Poge Bay. Access is limited to areas outside of symbolically fenced and/ or restricted areas.

- Drones: Drones are prohibited except with prior written approval from The Trustees or in emergency situations. Drone use is almost always restricted during the protected shorebird season from April 1 to September 30, unless for emergency or research purposes. Both require prior written approval from The Trustees and Natural Heritage and Endangered Species Program, as necessary.

c. Parking and Roads

Parking is permitted along the beach where it is wide enough or in designated pull-outs outside of symbolically fenced habitat. Parked vehicles will not interfere with established OSV travel corridors. Vehicles are not permitted behind symbolic fencing or where beaches are closed to vehicle traffic due to the presence of unfledged chicks.

d. Beach Cleaning and Refuse Management

Beaches are not mechanically raked. Trash is picked up by Rangers during routine patrol and removed from the beach. Recreational beachgoers are expected to “carry in-carry out”. To discourage predator attraction to coastal areas, there are no trash receptacles on Trustees beaches.

e. Seasonal Installations

Every June stands equipped with life rings and a rescue paddle board are installed along the beach outside of symbolic fencing. They remain until the end of the summer season.

f. Rules, Regulations, and Permit Policies

The following is a comprehensive list of these rules as they are currently provided to visitors and enforced by The Trustees at these beaches.

- All OSV permit holders must watch The Trustees OSV Training Video prior to purchasing and picking up permit. The video is found on The Trustees webpage for purchasing OSV permits at <https://thetrustees.org/program/mv-osv-permits/>. Gatehouse staff inquire and test knowledge of the video at the time of pick up and provide tablets (e.g., iPads) to visitors who haven’t watched the video before they can continue purchase of their permit.
- The Trustees require all OSV operators to have safety equipment including a jack, a base board for jack, a shovel, tow rope, full size spare, and tire pressure gauge in their vehicle. Staff inspect vehicles at the time of permit pick up. Visitors are not allowed to pick up their permit without indicating proper equipment.
- Dogs are prohibited on the beaches from April 1 to September 30 at Cape Poge Wildlife Refuge and Wasque. Dogs are permitted on leash from April to September 30 only at Leland Beach. Dogs must be leashed and under owners’ control. Visitors with dogs are asked to clean up after their dogs to protect beach habitat and water quality.
- Permit holders are required to keep *The Trustees OSV Driving Guide* in their vehicle while on the beach.
- All OSV operators must agree to and adhere to the Rules and Regulations delineated in the *Trustees OSV Driving Guide*.

- Egregious, abusive, or hostile behaviors are subject to immediate permit revocation and loss of privilege to access the beach.
- All vehicles are required to use designated OSV vehicle corridors or trails.
- Vehicles are directed to the Mytoi ranger station for deflation and inflation.
- Dike Bridge gatehouse staff visually and/or physically check tire pressure upon entrance to the beach. If vehicle tires are not deflated sufficiently drivers are redirected to deflate at the Mytoi ranger station to avoid congestion at the beach entrance and Dike Bridge area.
- The Trustees will impose towing fees up to \$300 for vehicles in need of assistance by winch truck.
- OSV speed must never exceed 15 MPH. Exceptions should only occur in cases of medical or safety emergencies.
- Wildlife viewing from a safe distance is required to reduce disturbance.
- Vegetation, whether living or dead, helps stabilize shorelines, dunes, tidal flats and bluffs and its protection ensures a healthy and pristine beach for all. Walking and driving on vegetation is prohibited.
- The Trustees reminds visitors to respect our neighbors and their private property by enjoying only The Trustees beach properties and staying within the boundaries of our properties.
- Gas or charcoal contained grills are allowed at open beaches during beach daytime hours only. Please bury charcoal deeply to protect walkers. All other fires are prohibited.
- Our properties are carry-in and carry-out. Trash receptacles are not provided on site.
- Hunting requires prior written permission from Trustees' management. All hunting requires proper licenses and compliance with Massachusetts hunting laws and regulations.
- Commercial Activities (those providing service, product, or activity for a fee) require a permit from the Trustees' management.
- Disturbing, removing, defacing, cutting or otherwise causing damage to a natural feature, sign, poster, barrier, building, or other property is prohibited.
- Behavior that disturbs the peace of Trustees' properties or its enjoyment by visitors is not allowed. This includes unruly, harassing and/or aggressive behavior toward staff and visitors.
- Trustees staff reserves the right to prohibit the use of alcoholic beverages on their properties.
- Parties greater than 20 people require a permit by The Trustees' management.
- Vehicles exceeding a gross weight of 6800 pounds are prohibited from Trustees OSV trails and will not be eligible for permits. Dune buggies, motorcycles, mopeds, trailers, snowmobiles, all-terrain vehicles are also prohibited.
- OSV Permits are required year-round and are valid from April 1 to March 31. Permit stickers must be applied to front and rear bumpers of the driver side of the vehicle. Vehicles not displaying both stickers will be denied entrance. Replacements for lost or misplaced stickers will not be provided. Stickers will be reissued for sold or damaged vehicles if original stickers are surrendered at time of reissue.
- Permit fees are subject to change, are used to support property management and operations.
- By purchasing a permit the purchaser and their guests acknowledge and agree to abide by Trustees' rules and regulations are for the health and safety of themselves, others, and the protection of natural resources.

- The Trustees of Reservations reserve the right to impose limitations on the number of vehicles permitted on the OSV corridor.
- Vehicle occupants in violation of policies and rules may be asked to leave the premises, have their permit revoked (X marked or removed), be subject to court citation or law enforcement action if warranted by the severity of the violation. Trustees beach rangers or gatehouse staff are authorized to enforce violations of policies and rules witnessed or reported to them.

g. Law Enforcement

Rangers are responsible for enforcing all property rules and regulations. Rangers may periodically request assistance from the Edgartown Police Department and the Massachusetts Environmental Police as needed. Circumstances that might warrant law enforcement request include medical emergencies, criminal and/or violent behavior, trespassing, egregious violations of the shorebird protection program and/or rules and regulations.

From May through October, rangers patrol assigned areas approximately once per hour from 8:30 AM until 10 PM. During March and April, the Stewardship Manager and/or Winter Ranger will patrol the beach once or twice a day or as needed.

h. Other Operations

Trustees' tours on Cape Poge Wildlife Refuge are given throughout the spring, summer and fall using a 4WD truck. Tour vehicles are not considered essential vehicles thus are not permitted to drive through areas closed to protect shorebirds. The Trustees also provide educational programming at Chappaquiddick Beaches through the Claire Saltonstall Education Program (CSEP). The CSEP was founded in 1991 to provide place-based education to Martha's Vineyard students. Each year, up to 1,600 students partake in programming on these specific beaches. Students (grades K-12) study coastal and marine topics through hands-on activities, including, but not limited to, beach profiling, landform and waterbody mapping, species identification, vegetation monitoring, and erosion and weathering activities. In addition, trained volunteers may engage in monitoring of dunes, collecting beach profile data and monitor wildlife at various points within this beach system. Students and volunteers access Wasque Beach by foot and Leland and Cape Poge Wildlife Refuge beaches are accessed by foot and over-sand vehicle.

Researchers interested in conducting research on Trustees properties must complete and submit a Trustees researcher application for approval. Additionally, all education leaders and participants and researchers are limited to designated areas outside of symbolically fenced and restricted protected shorebird areas unless otherwise permitted by DFW.

Other special events occur infrequently within the resource area. Some examples include the MV Fishing Derby, movie/commercial filming, community athletic events, fundraisers, staff gatherings, and beach clean-ups. Generally, these events pose no more impact than typical

recreational uses. All special events require prior approval and/ or permit from The Trustees and must abide by the rules and regulations set forth in The Trustees Beach Management Plan.

i. Essential Vehicle Use

Essential vehicle use is permitted in areas of beach where unfledged chicks are present but travel should only occur during daylight hours and when absolutely necessary. If possible, alternate travel routes that avoid shorebird broods will be utilized. Essential vehicles include vehicles operated by law enforcement, public safety officials, private property owners and their guests, and Trustees staff trained in shorebird detection. Private property owners are required to use routes to their homes designated by the Trustees that avoid critical brood areas. Additionally, all essential vehicles traveling through chick habitat should not exceed speeds of 5mph and are required to sign in and out in a logbook before and after travel. All Trustees beach staff in addition to private property owners are regularly informed of the location of broods along a travel corridor.

j. Outreach and Education

The Trustees provides multiple avenues to communicate beach conditions, OSV restrictions, and OSV trail access. Communication protocols are listed on the front of the OSV Vehicle Driving Guide and visitors are informed at the time of permit pick up. Road conditions and closures will be communicated:

- At the Mytoi and Dike Bridge gatehouses with maps updated as necessary and information provided by gatehouse staff.
- Via social media posts @TheTrusteesMV on Instagram and Facebook as needed.
- Via our beach hotline, updated as needed: 508-627-8390.
- Via text alerts. Permit holders can opt into our text alert system. The Trustees uses this system for urgent alerts or major updates to beach conditions.
- Through signage. During peak summer season, The Trustees places “Beach Closed” sandwich signs in downtown Edgartown at the ferry waiting line, at the Edgartown side of the Chappy Ferry and at the intersection of Dike Road and Chappaquiddick Road. During the off-season, The Trustees places signs at the entrance of the Dike Bridge. On the beach, closed or restricted areas are marked with appropriate signage.
- Communication protocols are subject to change based on visitor preference, technological advances, or other criteria. The Trustees will always regularly communicate to its visitors and the public on OSV trail conditions and OSV restrictions frequently and regularly.

In addition, residents operating essential vehicles are alerted via email and text of travel restrictions and operational procedure when there are shorebird closures. These updates are developed by the Coastal Ecologist and do not reveal exact shorebird locations or numbers. The Trustees also has a shorebird FAQ webpage where inquiring visitors can be directed ([FAQs on Beach Closures during Shorebird Season](#)).

Before and during HCP implementation, The Trustees will perform significant public outreach and engagement to manage the expectations of the public and brief them on implementation procedures. These communication protocols may include but are not limited to press alerts to the Martha's Vineyard Gazette and Martha's Vineyard Times, videos and posts on social media @TheTrusteesMV, text alerts, signs, "Visitor Guide to the HCP" brochures handed to visitors at the entrances, email and other communications to beach stakeholders, visitors, and OSV permit holders, and individual ranger education to visitors on a regular basis through the implementation period. Communications will include upcoming plover hatchings that would affect beach hours in addition to providing initial instructions on access changes relate to the HCP including vehicle escorts, timed entry and exits, and reduced beach hours. Reminders on implementation procedures and explanations of the HCP itself will be shared twice weekly on Trustees social media platforms, text alerts, email communications and other forms of communication. Early and consistent outreach will help ensure maximum protection of the chicks while providing OSV access. Staff will continue individual outreach, explaining the program and the importance of protecting unfledged chicks. The Trustees have also created an HCP FAQ page on The Trustees website. This link will be shared often during implementation.

In addition to digital outreach, the Trustees will also meet with representatives from various local stakeholder groups to provide greater education on the HCP and the Trustees' shorebird protection program. The intention will be to build better relations and understanding on OSV access while adhering to the state shorebird guidelines. The Trustees currently meet regularly with the Martha's Vineyard Beachgoers Access Group, Cape Poge homeowners, and the Martha's Vineyard Surfcasters Association.

VII. Bird Management and Monitoring

The Trustees has been managing and monitoring shorebirds at these sites since 1986. Symbolic fencing and appropriate shorebird signage are placed around suitable and historic nesting habitat by April 1st in accordance with state guidelines. Symbolic fencing is adjusted throughout the season to accommodate the needs of the shorebirds. Metal t-posts strung with rope are used to symbolically protect important nesting habitat. Signs alerting visitors of closed areas and the shorebirds we protect are hung along fence lines. One Lead Shorebird Technician is hired for a 15-week period starting in May and works five days a week, 8 hours a day. One additional full-time Shorebird technician is hired for 13 weeks also beginning in May. Between the two technicians and Coastal Ecologist, sites are covered seven days a week May- August. The Coastal Ecologist takes on all early season monitoring in April and fills in throughout the season if a technician is unavailable. They are also responsible for training and supervising the Shorebird Technicians and overseeing the entire shorebird protection program. Shorebird Technicians are responsible for locating and recording the courtship, territorial, and nesting behavior of several focal species including Piping plover, Black skimmer, American oystercatchers, Least terns, Roseate terns, and Common terns. They will also record reproductive data including nest locations, dates and timing of egg laying, hatching, and fledging, number of eggs laid, number of chicks hatched, and number of chicks fledged (Appendix C). They will complete daily observation forms, census forms, and nest attempt forms (Appendices B & C). In addition, technicians will record and address any

shorebird related violations that may arise (Appendix D). Technicians will also keep track of brood movements to ensure they are at least 100 yards away from OSVs.

While the Coastal Ecologist determines the timing and locations of OSV and pedestrian closures related to shorebirds, they work closely with the Stewardship Manager, Rangers, and Shorebird Technicians to implement these closures. Additionally, Technicians conduct species censuses during official state census windows. All monitoring will be conducted daily during daylight hours. Shorebird technicians will be provided with binoculars, spotting scope, field notebooks, and a GPS unit to perform their duties. At the end of the season, all data collected will be compiled in an annual internal report in addition to being submitted to DFW through the PIPLODES database.

Nest Enclosures and Predator Management-

Nest enclosures may be used in consultation with MNHESP. The Trustees are aware that while enclosures remain a useful tool in the plover management arsenal, their use is a potentially disruptive intervention that can cause nest abandonment by adult plovers and may expose them to elevated risk of predation. Additionally, the Trustees conduct targeted predator management internally and through contracts with USDA APHIS-WS. Box traps and a CO2 euthanasia chamber will be utilized. All predator management will be properly permitted.

Monitoring-

At least one Shorebird Technician is on site every day, weather permitting, to monitor each pair. A daily site visit log is kept, recording all monitoring activities and record shorebird information (Appendix B). Additionally, when a nest is discovered or is found to have failed, nest attempt/nest success forms are filled out and updated as needed. The shorebird program staff also keep a detailed digital master list of all nesting attempts (Appendix C) and are responsible for completing a detailed internal end of season shorebird report.

Tern management-

Because of beach morphology, overlapping habitat preferences, the extent of proactive symbolic fencing, and the extent of OSV restrictions necessitated by nesting piping plovers, tern colonies are typically adequately protected by measures taken on behalf of piping plovers. When unfledged chicks are present in a tern colony, vehicles (if not already prohibited due to the presence of plover chicks) are excluded at least 100 yards on either side of lines drawn from the margins of the colony, perpendicular to the long access of the beach. This management complies with state and federal guidelines which ensure that there is no adverse impact to or “take” of protected shorebird species. The Trustees report census information to DFW through TERNODES and maintains communication with this agency throughout the nesting season.

VIII. Covered Activities

a. Covered Activities and Take Distribution

Covered activities will impact a maximum of three Piping plover pairs/ broods/nests/ territories (30% of breeding pairs at this site based on the 2023 breeding census). This take exposure may be apportioned among two covered activities: *OSV use in the vicinity of unfledged chicks* and *recreation*

and beach operations. For Least terns, a maximum of 15% of the colony area may be affected and a maximum of 20 unfledged chicks may be exposed to take through the same two covered activities listed above. A minimum of 2 to 4 breeding pairs of Least terns and 2.5 pairs of Piping plovers must benefit from mitigation for every pair, nest, or unfledged chick exposed. When Stewardship staff in consultation with Ecology staff agree to initiate a covered activity, 24-hour advance notice will be provided by the Coastal Ecologist to DFW.

The Trustees acknowledge that other listed species not covered by the HCP or associated CMPs including but not limited to Seabeach knotweed, Common tern, and Roseate tern occupy our beaches. Covered activities will not interfere with the survival or success of listed species not covered under this program. For example, if reduced symbolic fencing exposes a population of Seabeach knotweed to trampling or OSV related disturbance, then the covered activity will not be implemented or will be modified to protect this species (i.e. include the plant within the symbolically fenced area). Similarly, if a Roseate tern nests within a Least tern colony and proper buffers cannot be maintained as outlined in the state Guidelines around its nest or brood, then implementation will not take place.

b. Implementation Protocols

OSV Use in the Vicinity of Unfledged Chicks-

The concern centers mainly around chicks using crossover roads or other areas of low-lying unvegetated dune to move between oceanside and bayside beaches as well as pairs nesting close to key OSV access points. With an appropriate mix of close observation and careful management of OSV traffic, we believe procedures outlined in this IAMP allows for continued vehicle access with acceptably low risk to unfledged chicks. The Trustees will adjust the nature and extent of access to the affected area according to the availability of management resources and the overall access picture on the beach (closures “downstream” of a plover pair, for example, may make it pointless to offer access to the public). This activity may expose up to 3 broods of Piping plover and 20 pairs of Least tern to Take.

Piping Plover Protocol: The travel corridor will be an existing OSV trail, no greater than five yards wide, selected to minimize the likelihood of vehicles coming into proximity of chicks given observed patterns of behavior and movement. Escorting will begin at minimum, 200 feet from the closest chick and will end at least 200 feet from the last chick in the brood. There will be no parking or stopping along the corridor unless authorized or mandated by implementation staff. Parking areas will be permitted at least 200 meters (600 feet) away from the travel corridor and will be designated with signs placed by implementation staff and readjusted as necessary to accommodate brood movements. Travel will only occur between 1000 and 1600 hours and will be restricted to up to 3 travel periods per day. OSVs will be escorted by a trained Trustees Escort one by one or in groups not exceeding 50 vehicles. Escorts may be conducted on foot or using an ATV or UTV operated at no more than 5 miles per hour.

Brood monitors will be responsible for monitoring and recording chick movement prior to and during the travel period. Prior to implementation, the Compliance Monitor will assign one brood monitor to each effected brood. At least one half-hour before each travel period, Brood Monitors

will confirm with a Shorebird Technician or the Coastal Ecologist how many chicks remain in their assigned brood and must locate all chicks within that brood. Once the Brood Monitor has established the locations of the chicks, they will notify the Compliance Monitor of the brood's location. At the time the travel corridor is due to open, the Compliance Monitor will confer with Brood Monitors that all chicks are at least 50 feet from the corridor. If all chicks are a safe distance away from the travel corridor (at least 50 feet), then the Compliance Monitor will make the determination to open it and begin the escort process.

During the entire escorted travel period, Brood Monitors shall continuously track affected broods using binoculars from no less than 100 feet away. Disturbance of the chicks shall be minimized. Simultaneously, the Compliance Monitor will be located along the escort corridor so that they can ensure compliance with protocols and stop traffic if necessary. The Brood Monitors, Escort, and Compliance Monitor will communicate primarily through handheld radios with cell phones as a backup. If at any time during the escorting process the Brood Monitor loses visual contact with one or more chicks or observes a chick venturing within 50 feet of the travel corridor, they will notify the Escort and Compliance Monitor via radio. The Compliance Monitor will then instruct the Escort to halt travel. Travel through the corridor can only be resumed if all chicks are accounted for or have moved at least 50 feet away from the corridor. The Compliance Monitor will confirm with the Brood Monitor that these conditions have been met before instructing the Escort to resume travel. Once vehicles are escorted through the travel corridor exit, they are free to make their way to designated parking areas or off the beach depending on the direction of the escort.

In addition, the Compliance Monitor, Coastal Ecologist, or Stewardship Manager will have the independent authority to stop travel if they feel the safety of a brood is in jeopardy, implementing staff are unable to properly perform their duties, or there is an incident or emergency.

After each travel period, tire ruts in the escort corridor will be smoothed. This will be done on foot with rakes or with an ATV/ UTV and appropriate attachment. If the work is to be done using a vehicle, then a pedestrian escort must be used to ensure no chicks enter the travel corridor while smoothing is taking place. Rut smoothing may stop after all effected chicks reach 14 days of age.

During travel periods, implementing staff must not deviate from their assigned roles for the duration of implementation. They are not permitted to address issues or take on other responsibilities not related to implementation. For example, a Brood Monitor may not stop observing their assigned brood to help an OSV operator who has got stuck in the sand near the designated parking area. There must be additional Stewardship staff present on the beach that are not involved in implementation to address visitor needs and enforce regulations outside of the HCP. Implementation staff may take on other beach-related responsibilities or lunch breaks outside of travel periods given they are ready to undertake their assigned duties before each travel period.

Additionally, staff involved in the HCP must complete daily logs for each day this covered activity is implemented as well as weekly reports for the duration of implementation. Data sheets and report outlines are detailed in Appendix F. Daily data collection responsibilities for each position are listed below in section c.

Any question or concerns that arise before, during, or after implementation that cannot be addressed by the Compliance Monitor, will be addressed by the Coastal Ecologist and/or the Stewardship Manager.

The Compliance Monitor, Escorts, and Brood Monitors may be additional staff brought on specifically for HCP implementation, or they may be existing stewardship staff (see section V for budget). In either case, all staff participating in the program will have undergone training on shorebird detection and monitoring best practices by the Coastal Ecologist, have prior experience with or willingness to learn about shorebird protection, be able to safely operate UTV/ATVs, and have clear communication skills. Additionally, before implementation of a covered activity, staff will be trained by the Stewardship Manager and Coastal Ecologist in IAMP procedures. The goal will be to have all participating staff identified and approved by DFW, trained, and clear on their roles and responsibilities well in advance of initiating a covered activity.

Least Tern Protocol: In the event of a Least tern colony impinging on use of an important trail or access point, the Trustees would seek to implement the Compliance Monitoring Protocol (CMP) associated with the HCP COI. For the covered activity of OSV use in the vicinity of unfledged chicks, plan implementation would follow the same escort corridor restraints, traffic control, travel protocols, and reporting requirements described above for Piping plovers however, deviations in monitoring protocols are detailed below. A maximum of 20 unfledged Least tern chicks are allowed to be exposed to Take throughout the course of the season. At least one-half hour before each travel period, a Brood Monitor must verify the number of chicks in the affected colony and determine the locations of said chicks as best they can. The Brood monitor must then keep track of chick movements during the travel period to ensure no chicks are approaching or have entered the travel corridor. Colonies with less than 10 unfledged chicks will only require one Brood monitor. Colonies exceeding 10 unfledged chicks will require at least 2 Brood monitors, one stationed at each end of the colony. If it is determined by the Coastal Ecologist or Compliance Monitor that two monitors are insufficient for proper implementation, more monitors may be stationed along the extent of the colony to better ensure chick safety. All Brood Monitors will be responsible for assessing chick numbers and movements throughout the travel period. 24-hour notification to DFW of a proposed implementation of the plan will include an assessment of the number and developmental stage of chicks present at the colony, the configuration of the colony with respect to shorelines and the affected trail, and our proposal for the location of the travel corridor and the size of the associated monitoring staff that will suffice to safely keep track of the location of the birds.

Contingency Plans-

Personnel: In the event that the Brood Monitor or Compliance Monitor is unavailable (e.g., calls in sick), the Coastal Ecologist, a Shorebird Technician, or other qualified designee shall assume this duty given that it does not detract from regular shorebird monitoring or beach management obligations. Any such substitute will be fully trained to the standards of regular monitors; if no such staff is available, the OSV corridor will be shut down until the site can be fully staffed.

Inclement weather: Compliance Monitor will monitor weather forecasts on a daily basis. In the event a weather warning is predicted or issued that could jeopardize public safety, the escort corridor shall be closed for the duration of the hazard, or the start and/or end time for passage on the corridor may be changed. The escort corridor may not reopen until the Compliance Monitor has determined it is safe to do so.

Emergencies: OSV permit holders shall be advised verbally and in writing that egress from the beach outside of the escort windows shall be strictly prohibited. In the event of a life-threatening emergency, Trustees beach management staff and emergency responders will be notified immediately. Any emergency response vehicles will be allowed to pass through the travel corridor at any time. If a public participant is experiencing an emergency and needs to depart the beach outside of approved travel times, Trustees staff will escort their vehicle through the travel corridor, off the beach.

Violations: Any violations of the aforementioned protocols will not be tolerated. A zero tolerance policy will be fully enforced. Monitors and Beach Rangers will be in constant contact to ensure enforcement. Rangers will be authorized to revoke OSV permits and eject violators from the beach. Violators of the escort protocols shall be subject to OSV permit revocation and shall have their rights to operate an OSV on Trustees managed beaches suspended for a period of up to one year from the date of the violation. Violations will be recorded and summarized in the annual HCP report.

Recreation and Beach Operations-

- Reduced symbolic fencing around nests:

At several points along the OSV trail system, bottlenecks or chokepoints exist at which an access restriction could prevent vehicle access to most or all of the beach. The Dike Bridge entrance is one such location. The intersection of the inter-dune and outer beach trails near the south end of Leland Beach, near the boundary with Wasque Beach, is another. Depending on specific seasonal circumstances, there may be other such bottlenecks. In the event of birds nesting close enough to a key access point so that the normal 50-yard fencing radius around the nest would prohibit access entirely, we propose to reduce the fenced radius around the nest to the largest dimension that would allow use of the access trail while the pair is present. During the critical egg laying period, the buffer around the nest site will be maximized to reduce disturbance as much as possible during this sensitive time. After the egg laying period, fencing may be further reduced to its target radius. Buffer reductions must be done in increments of 10 yards per day until desired size is achieved. Buffer radii will not be less than 10 yards from a nest unless special permission is given by DFW. Affected nests will be monitored daily by Shorebird Technicians during daylight hours to observe the effects of the reduced buffer on incubating adults and track nest success. Lingering near the reduced fencing area will be discouraged through verbal instruction from gatehouse and beach staff, in order to reduce stress and disturbance of the nesting birds. If eggs hatch, the protocol for the covered activity *OSV use in the vicinity of unfledged chicks* will immediately be enacted. The same procedure will be used in the case of

Least tern nesting. We are requesting Take for up to 3 Piping plover nests/ territories and up to 20 Least tern nests.

- Reduced proactive symbolic fencing and nesting deterrents:

Stewardship staff will consult the Coastal Ecologist to identify potential implementation sites early in the season before shorebird arrival. Stewardship staff will delineate the site proposed for this activity and determine its area. For Piping plovers, an estimate of available nesting habitat on the property will be prepared by the Coastal Ecologist, using the most recent available aerial photos combined with ground-truthing, to ensure that the area managed under this covered activity remains below 10% of habitat or 2 acres, whichever is less. In keeping with area limitations for this covered activity, the Trustees propose reducing symbolic fencing in areas of nesting habitat that may cause significant access impairments if a pair were to nest. Additionally, we propose the use of physical nest deterrents such as flagging, pallets, and wood planks to discourage nesting in a pre-determined area. Deterrents will be installed prior to the onset of territorial or nesting behavior. The site will be monitored at least 3 times a week in April by the Coastal Ecologist and daily by a Shorebird Technician May till mid-August. Additionally, the site will also benefit from frequent (albeit incidental) monitoring by Rangers (some of whom will be shorebird-trained) using the access corridor. In the event nesting activity is detected, symbolic fencing will be erected around the nest or scrape consistent with the procedures describe for the covered activity of *reduced symbolic fencing around nests*, detailed above. Nesting deterrents will be maintained throughout the implementation period and will be removed at a date agreed upon by the Stewardship Manager and the Coastal Ecologist. However, deterrents shall not remain on the beach past August 31st of each year.

In the case of Least terns, a similar protocol to the one described above will be implemented. For well-established colonies that nest in a similar area each year, no more than 15% of the historic colony area (based on at least 2 years of historic nesting data) may be affected. Alternatively, if Least terns are observed prospecting in a new area, then the extent of symbolic fencing reduction or nest deterrents will be based on the distribution of the birds early in their breeding cycle (before egg laying). Consultation with DFW will be necessary to make this determination.

c. Monitoring Plan for Covered Activities

i. Compliance Monitoring

The Stewardship Manager, Coastal Ecologist, and in the covered activity of *OSV use in the vicinity of unfledged chicks* the Compliance Monitor will ensure that plan implementation is carried out properly. They will also work together to submit weekly reports to DFW during the duration of program implementation and compose an annual report. The Coastal Ecologist will be responsible for issuing start and stop notifications to DFW before implementation begins and after it ends. Implementation staff will meet weekly to assess program effectiveness and discuss any issues. If an incident should occur, a special meeting will be held to debrief and discuss future incident prevention.

- OSV use in the vicinity of unfledged chicks: As required by the HCP, a daily implementation log will be kept to document brood activity and procedures (Appendix F). Any violations, incidents, or accidents associated with the vehicle escort program, including take of a chick(s) shall be recorded and immediately reported to DFW (Appendices D and F.c). Additionally, on a predetermined weekly deadline, the Compliance monitor will compile information collected in daily implementation logs (listed below and detailed in Appendix F a., b., and c) into a weekly report. The Compliance Monitor will share the completed report with the Coastal Ecologist who will then submit it to DFW. The report will include the species affected, age of chicks, a daily vehicle trip count, observations on chick numbers, movement and behavior, a map of the observed brood ranges, weekly tally and description of any rule violations and enforcement actions taken, weekly tally and description of all observations of broods crossing or approaching <100 feet from the vehicle corridor (both during the OSV travel windows and any other such observations during routine monitoring), and any other notes, observations, or recommendations relevant to operating the escorting program (Appendices F.a & F.b). Daily data collection responsibilities are listed below:

Data Collection and Reporting Responsibilities

- Compliance Monitor: Responsible for collecting the following information each day of implementation and composing weekly reports.
 - Date
 - Times of travel periods
 - # of vehicles escorted through travel corridor
 - Species affected (Piping Plover or Least tern)
 - Incidents or violations
 - Reasons for delays or suspensions of vehicle travel
 - Time and duration of vehicle travel suspension
- Brood Monitors: Responsible for collecting the following information each day of implementation.
 - Date
 - Brood ID
 - Age of chicks
 - Times of travel periods
 - Species monitored (Piping plover or Least tern)
 - Number of chicks in brood
 - Chick and adult behavioral observations
 - Brood range
 - Observations of broods crossing or approaching <100 feet from the vehicle corridor
- Coastal Ecologist: Responsible for submitting start and stop notifications and completed weekly reports to DFW in addition to co-writing and submitting the annual HCP report to DFW.

- Stewardship Manager: Responsible for co-writing the annual HCP report.

- Recreation and beach operations: Data collected includes dates of implementation, activity (reduced proactive fencing, nesting deterrents, and reduced fencing around nests), location of activity, acreage of affected area, daily observations of affected pair/broods/chicks and observation times, details on nesting deterrents used as well as their installation and maintenance (Appendix F.d.). Incidents or violations associated with the covered activity will also be recorded and reported to DFW (Appendices D and F.c). Additionally, by October 15th of each year, The Trustees will submit an annual HCP report to DFW describing the details of the nesting season and implementation.

Data Collection and Reporting Responsibilities

- Shorebird Technicians: Responsible for daily habitat and/or nest monitoring as well as recording incidents related to the covered activity.
 - Stewardship Rangers: Responsible for recording incidents related to the covered activity.
 - Coastal Ecologist: Responsible for submitting start and stop notifications, completing and submitting weekly reports and co-writing and submitting the annual HCP report to DFW.
 - Stewardship Manager: Responsible for co-writing the annual HCP report and when instituting reduced proactive symbolic fencing, delineating and determining the area of the affected site.
1. See appendices A and F for schedules and datasheets dedicated to compliance monitoring.
- ii. Effectiveness of monitoring
1. Shorebird staff is responsible for monitoring the success of every nesting attempt and chick. The same biological data will be collected for exposed and unexposed pairs, nests, and broods (appendices A- E). Birds exposed to take through the HCP will be monitored daily by shorebird staff to assess territory, nest, or brood status. Once implementation is underway, responsible staff will begin recording the necessary data as detailed in appendices D-F. The purpose of monitoring and reporting is to assess the effects of implemented covered activities on nesting Piping plovers and Least terns and provide the Trustees with a way to gauge the efficacy of our IAMP procedures.
 2. Tern and plover productivity will be assessed for each nesting pair or colony. Recording the number of fledglings per breeding pair or in the case of Least terns, a productivity estimate for the entire colony gives us a way to reliably track beach nesting bird success and compare birds exposed to Take verses those unexposed to Take. Additionally, violations and incidents will be recorded throughout the season

and compiled at the end of the summer. This allows the Trustees to quantify the effectiveness of rule enforcement and to help us identify where improvements need to be made.

d. Staffing (Implementation vs Non-implementation)

Staffing levels required for implementation are very similar to the levels required for everyday beach operations. Typically, up to 20 seasonal stewardship rangers are hired each year to fill various roles such as ranger or gatehouse attendant for the combined area of Wasque, Leland Beach and Cape Poge Wildlife Refuge. This level of staffing ensures approximately seven to nine rangers and gatehouse staff are covering the beaches from 8:30 AM to 10 PM seven days a week from May to October. Seasonal hires are part and full time employees paid anywhere from \$15 an hour to \$20 an hour depending on their tenure and responsibilities. Seasonals begin work in May or June and are employed until August or October. At least five seasonal stewardship employees are trained in HCP implementation in addition to the full time, year-round Stewardship Manager. Together, they are responsible for carrying out implementation on the beach. If the stewardship team is fully staffed for the season, the Trustees should be able to implement the HCP daily for as long as needed and provide full beach gatehouse coverage. If seasonal hiring is an issue, then implementation may be scaled accordingly to meet HCP standards depending on the staff available. Since Shorebird Technicians are not primarily responsible for implementation, there will be no changes in shorebird staffing when implementing the HCP. Their primary task will be to monitor nesting shorebirds regardless of implementation and will only assist with the HCP if there is a temporary staffing issue and it does not interfere with their regular monitoring.

Staffing Descriptions and Responsibilities for Each Covered Activity

- OSV Use in the Vicinity of Unfledged Chicks:
 - Compliance Monitor- Ensures protocols outlined in the IAMP are being followed and provides on the ground supervision of implementation and data collection. Has the authority to delay or halt OSV escorts or close the travel corridor completely if necessary. Responsible for daily data collection and weekly reporting.
 - Brood Monitors: Locate assigned chicks one half-hour before each travel period and keep track of chick movements and behavior throughout travel periods. Responsible for notifying the Compliance Monitor of the location of chicks prior to the travel corridor being opened or when chicks venture close to or into the travel corridor thus halting travel. Responsible for data collection on brood activity during implementation.
 - Escorts- Lead single or groups of OSVs through the travel corridor at designated times. Must adhere to the 5mph speed limit, be diligent about watching for chicks in the travel corridor, comply with instructions from the Compliance Monitor, and help stop OSV traffic when travel is suspended.
 - Stewardship Manager- Provides indirect oversight of the program and plays an advisory role to help address any issues or question that may arise. May act as the Compliance Monitor or will be the direct supervisor of the Compliance Monitor. Will assist in writing the annual HCP report.

- Coastal Ecologist- Provides indirect oversight of the program and plays an advisory role to help address any issues or question that may arise. Also responsible for start and stop notifications and the submission of weekly and annual reports to DFW.
- Non-HCP Stewardship Staff- Address visitor issues and enforce beach regulation unrelated to the HCP during covered activity implementation.
- Recreation and Beach Operations:
 - Reduced Proactive Symbolic Fencing and Nesting Deterrents-
 - Shorebird Technicians- Site monitoring for nesting activity and data collection.
 - Coastal Ecologist- Create estimates of total nesting habitat. Advise Stewardship Manager in identifying potential implementation sites. Assist with site monitoring and data collection. Help install nesting deterrents. Co-write weekly and annual reports with Stewardship Manager. Report submittal to DFW.
 - Stewardship Rangers- Rule enforcement. Help install, maintain, and remove nesting deterrents.
 - Stewardship Manager- Work with the Coastal Ecologist to identify potential implementation sites. Delineate chosen site and determine its area. Install and maintain nesting deterrents and remove them at the end of the season. Rule enforcement. Co-write weekly and annual reports with Coastal Ecologist.
 - Reduced Symbolic Fencing Around Nests-
 - Shorebird Technicians- Assist the Coastal Ecologist in setting initial buffer during the egg laying period. Daily nest monitoring and data recording. Assist with rule enforcement. Initiate buffer fencing adjustments under the direction of the Coastal Ecologist.
 - Coastal Ecologist- Set initial buffer during egg laying period. Assist with nest monitoring and data recording. Work with Stewardship Manager to determine largest buffer size that would allow for access trail use. Direct buffer fencing adjustments. Co-write weekly and annual reports with Stewardship Manager. Report submittal to DFW.
 - Stewardship Rangers- Rule enforcement and incidental monitoring of effected nests. Assist Shorebird Technicians with buffer fencing adjustments.
 - Stewardship Manager- Work with Coastal Ecologist to determine largest buffer size that would allow for access trail use. Co-write weekly and annual reports with Coastal Ecologist.

IX. Budget

The Trustees works to train and deploy existing seasonal and year-round staff to implement the measures required as opposed to requiring new staff for HCP implementation. Application fees and contingency are not needed in the absence of implementation. Staffing costs remain the same as they

represent a portion of stewardship staff therefore, the operating costs difference is the application fees and contingency. Fringe benefits and supplies/fuel costs remain the same.

a. Cost to Implement HCP Year One

Item	Cost
MESA CMP application fees (one-time fee/3-year COI)	\$900
Compliance and Brood Monitors (3 Seasonal Ranger hires at blended rate \$18/hour, 40 hours/week for 13 weeks), Stewardship Manager at 0.25 full time equivalent (FTE), Director at 0.1 FTE	\$28,380
Fringe benefits (22.5%)	\$6,385.50
Vehicles and Fuel (\$3,500), O/H @ 10% (\$3,089), Signs (\$1,000), Uniforms (\$500)	\$7,838
Subtotal	\$43,504
Contingency (5%)	\$2,175.18
TOTAL	\$45,678.68

b. Cost Absent of HCP Implementation

Item	Cost
Three Seasonal Ranger hires at blended rate \$18/hour, 40 hours/week for 13 weeks), Stewardship Manager at 0.25 full time equivalent (FTE), Director at 0.1 FTE	\$28,380
Fringe benefits (22.5%)	\$6,385.50
Vehicles and Fuel (\$3,500), O/H @ 10% (\$3,089), Signs (\$1,000), Uniforms (\$500)	\$7,838
TOTAL	\$42,603.50

Appendix

A. Timing and Summary of Shorebird Program Activities

Activity	Timing and frequency of task
Symbolic fencing installation	By April 1. All possible nesting habitat fenced using posts, rope, and appropriate shorebird related signage. Fencing is adjusted throughout the season to accommodate shorebird movements and tides.
Shorebird monitoring	April 1 – May beaches are monitored by the Coastal Ecologist at least 3 days a week. Early May- mid August shorebird techs monitor all sites daily.
Beach patrols	Stewardship rangers patrol the beach daily beginning on Memorial Day Weekend from 8:30 AM- 10 PM and ending in October. Off-season, Stewardship manager staff patrol the beaches daily and additionally, as needed.
Rule enforcement	Rules are enforced daily by both rangers and shorebird techs. Violations are recorded and violators are educated about beach rules and are either given a warning, escorted off the beach, and/or have their OSV permit revoked depending on the severity or frequency of the offence.
Restrictions to non-essential vehicles	Vehicle restrictions are activated at least 1 day prior to predicted hatch dates for all species of shorebird. If a plover or tern nest is found with a full clutch and a hatch date cannot be determined or an unknown brood is discovered, an OSV restriction will be enacted immediately. Restrictions remain in place until all chicks have fledged or perished.

B. Example of Shorebird Technician Daily Log

Date	Staff	Time	Weather	Fencing Adjustments	Incidents	Predator Activity	#PIPL Adults	#PIPL Chicks	#PIPL Fledges	Pair Notes	Terns	General Notes

C. List of Data Fields Collected for Each Nesting Attempt

a. Terns

- Colony ID
- Colony location
- Colony size & date of count (A count)
- Colony size & date of count (B count)
- Maximum nest count and date
- Date of first nests
- Date of last nests
- Expected first and last hatch dates
- Vegetation cover at colony site
- Habitat type at colony site
- Colony fate
- Causes of nest loss or colony failure
- Date chicks first observed
- Date fledglings first observed
- Final productivity

b. Piping plover

- Nest attempt number
- Nest ID
- Found by
- Location description
- Nest latitude and longitude
- Date clutch found
- Number of eggs when clutch was found
- Date clutch completed (if known)
- Number of eggs laid
- Estimated hatch date
- Nest fate (hatched or failed)
- Date nest hatched or failed
- Number of eggs hatched
- Cause of egg loss (indicate if known or suspected)
- Expected fledge date
- Date of chick 1 loss and suspected cause
- Date of chick 2 loss and suspected cause
- Date of chick 3 loss and suspected cause
- Date of chick 4 loss and suspected cause
- Number of chicks fledged
- Expected fledge date
- Actual fledge date
- Exclosed (yes or no)
- Exclosure type
- Date exclosure installed
- Vegetation cover at nest site
- Habitat type at nest site

D. Example of Incident Report Datasheet

Date	Vehicle Violation	Kite	Drone/Aircraft	Bike	Boat	Dog	Pedestrian in closed area	Negative interaction	Vandalism/Theft	Daily Total	Notes

E. Shorebird related OSV restrictions

Site	Closure date	Open date	Closure location if not already closed for other pairs	Closure length (miles)

F. Logs for covered activities

a. Implementation Vehicle Travel Log (OSV use in the vicinity of unfledged chicks)

Date	Vehicle zone ID (if more than one)	No. vehicle trips	Species affected (e.g., PIPL, LETE)

b. Weekly Implementation Datasheet (OSV use in the vicinity of unfledged chicks)

1. Daily Vehicle Trip Count

Day of Week	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Date							
Count							

2. Daily Observations: Violations, chick numbers, behavior, and brood range

Date	Day of Week	Notes

3. Weekly tally and description of rule violations:

4. Weekly tally and description of brood travel 100 feet from vehicle corridor:

5. Other Notes, observations, and recommendations:

6. Map of brood range:

c. Implementation Issue Log

Date	Issue	Pair, brood, nest, or chicks affected	Description

d. Observation Logs (Reduced symbolic fencing and nesting deterrents) *

Covered Activity Log

Activity (reduced proactive fencing, reduced fencing around nests, nesting deterrents)	Dates Implemented	Location	Acreage of affected area (if acreage fluctuates throughout the season include adjustments and associated dates)	Details on activity (i.e., what type of deterrent was used)	Affected pair or nest ID (if any)	Description of changes to affected area or fencing

Pair/Brood Behavior Observation Datasheet*

Date	Observation Times	Description of Covered Activity	Behavioral Observations	General Comments	Staff Initials

* To be used primarily by non-shorebird technician staff. The shorebird technician will keep detailed notes on the status and behavior of the affected pair/nest/brood/chicks in their daily observation log.

Mitigation Plan

I. Mitigation Funding

The Trustees choose to opt out of providing funding to the Division to support “off-site” mitigation.

II. Internal Mitigation

i. Proposed Mitigation Plan

In order to mitigate for Piping plover and Least tern pairs that may be impacted under the HCP, The Trustees will implement a comprehensive predator management plan at Crane Beach, Ipswich, Massachusetts, through contracting with US Department of Agriculture-Wildlife Services (USDA-WS). USDA-WS has identified four primary species of predators impacting the reproductive success of nesting shorebirds at Crane Beach: American crow, common raven, great-horned owl, and eastern coyote. Each species has been responsible for shorebird predation at various times of the year and require different management practices.

The primary predator of shorebird nests at Crane Beach has been crows, especially early in the season prior to implementing control. Predator management will prioritize corvid control. In 2024, we will use mock Piping plover exclosures baited with hard-boiled chicken eggs to detect avian nest predators. Infrared cameras will confirm species up taking bait eggs. If American crows or common ravens are observed, USDA-WS will replace plain chicken eggs with DRC-1339-laced chicken eggs to reduce or remove individuals that “key in” on shorebirds. Trustees staff on Crane Beach will set up mock exclosures and place plain bait eggs beginning in early April. Three (3) mock exclosures will be placed in similar locations as in 2023. When Trustees staff observes 100% pre-bait uptake, they will contact USDA staff to conduct a DRC-1339 application. This method has been quite successful in the past. In 2023, of 18 toxicant eggs were deployed, 14 were taken by American crows (below average of 18 treated eggs consumed), 4 were unconsumed and removed by USDA-WS.

Coyotes and owls have also been significant predators at Crane. During the 2023 season coyotes (or coyote sign) were consistently present through the breeding season and attributed to eight nest predations in 2023. Great horned owls were a substantial predator between 2014 and 2017, when we experienced learned predatory behavior by owls targeting adults at predator exclosures and later nests and chicks. This behavior continued for subsequent years until USDA removed the owl(s) with this learned behavior, highlighting the importance of the removal. We keep in mind the possibility that coyotes and owls may be predating or deterring the presence of other potential predators, such as skunks, raccoons, or feral cats. This could mean that the presence of owls or coyotes on the beach produces a net benefit for nesting shorebirds, potentially even if coyotes and owls predate some nests, chicks, or adults. Decisions on how or whether to manage coyotes at Crane will be based on our best assessment of their overall ecological effects and predation impact.

If called for by observed circumstances in response to predation pressure, owls and coyotes will be controlled by USDA-WS in 2024. We will also implement control for other predators identified in USDA’s form WS-12A on an as needed basis if they are documented as a limiting factor to

shorebird productivity. Multiple methods of removal will be incorporated including lethal removal using firearms and live box trapping/euthanasia.

- ii. Predation remains a primary influencer to shorebird productivity at Crane Beach. During the 2023 season, 47 nest failures occurred, 35 of which were the result of depredation. Crows accounted 7 of the known nest predations and coyotes accounted for 8 nest losses. There were 20 incidents of predation by unknown predators; the majority of which can likely be linked to crows. Skunk tracks were also observed on the beach, and we have a strong suspicion that skunks preyed multiple tern nests within electric fencing and likely killed an adult plover at and enclosure. This is the first time in more than a decade that skunk(s) have been documented as a predator at Crane. By reducing local shorebird predator populations the Trustees hope to increase hatching and fledging rates and decrease overall depredation levels over time. An estimated 50 Piping plover pairs (~5% of the states breeding population) and 213 Least tern pairs will benefit from proposed mitigation based on 5 year averages for this site.
- iii. The Trustees will monitor predator control efforts and provide an annual report to MADFW. This report will contain the number of plover broods exposed to covered activities, number of breeding pairs of Piping plovers and Least terns benefitting from the comprehensive predator management, program reach and effectiveness (e.g. number of warnings, citations, any violations, changes in public attitude), documentation that the selective predator management was implemented (i.e. paid invoices and contractor final report), Piping plover and Least tern productivity for the site, causes of nest and/or chick loss, and any mitigation credits or deficits that will be carried over into the following season.
- iv. Based on a scope of work developed by USDA - WS in consultation with Trustees staff, the cost for this comprehensive predator management on Crane Beach is anticipated to be approximately \$6,000. It will include six months of control which consists of up to five control visits. In addition, it is expected Trustees shorebird staff will spend a minimum 60 hours on predator management, costing about \$800 (total cost \$6,800). This plan is expected to benefit an estimated 50 pairs of Piping plovers and 213 pairs of Least terns based on the five-year (2019-2023) average for this site, resulting in an estimated cost of \$136 per Piping plover breeding pair to benefit from predator control (\$6800/50 pairs). The proposed covered activities require mitigation for 2.5 pairs per exposed Piping plover pair/brood, resulting in an estimated mitigation cost of \$1,020 (\$136 x 2.5 x 3 broods). For the exposure of Least terns, mitigation requires 40 to 80 pairs or chicks to benefit from predator control efforts. Estimated mitigation costs for per pair for Least terns is \$31.92 (\$6800/213 pairs). The maximum annual mitigation costs for this species is estimated at \$2,553.60 (31.92x4x20).

If the Crane Beach plover population declines below the average 50 pairs, The Trustees will fund additional predator management as necessary to meet the truing up requirements of the HCP and will continue to fund predator control during the term of the three year COI as necessary to offset exposure of up to 9 broods (3 per year of the COI) to the covered activity at an estimated cost of up to \$1,020 per year (at least 2.5 Piping plover breeding pairs to benefit annually per

exposure) and 60 to 120 pairs of Least terns (20 to 40 per COI year) at an estimated cost of \$2,553.60 per year.

Itemization of Costs for Predator Management (Estimated):

Item	Cost
Contract Services (USDA-WS)/ per year	\$5,500
Staff Time (60hrs)	\$800
TOTAL	\$6,300

Supplementary Materials

Letter of Budget Assurance

MDMF Letter Assent

MOU Between The Trustees and MDMF for Leland Beach

Right to Pass Property List (Cape Poge)

Parcel Map (Cape Poge)

1891 Partition and Associated Map

Order of Preliminary Injunction



December 14, 2023

The Trustees of Reservations
Vineyard Haven Office
860 State Road
Vineyard Haven, MA 02568

Massachusetts Division of Fisheries and Wildlife
1 Rabbit Hill Road
Westborough, MA 01581

Re: Budget Assurance Annual Notification Letter for Participation in MA Piping Plover HCP on Martha's Vineyard

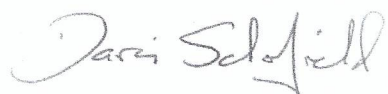
To whom it may concern,

The Trustees are submitting this letter to assure MassWildlife that adequate funding has been secured to implement the budget presented in the 2024 application for a Certificate of Inclusion (COI), to implement the COI on Cape Poge Wildlife Refuge, Leland Beach, and Wasque Reservation in Edgartown, MA. The funding has been built into The Trustees annual operating budget for fiscal year 2025, which will cover the items listed in the budget table below. The Trustees have already secured the necessary mitigation credits needed to implement the COI over the next period.

Item	Cost
MESA CMP application fees (one-time fee/3-year COI)	\$900
Compliance and Brood Monitors (3 Seasonal Ranger hires at blended rate \$18/hour, 40 hours/week for 13 weeks), Stewardship Manager at 0.25 full time equivalent (FTE), Director at 0.1 FTE	\$28,380
Fringe benefits (22.5%)	\$6,385.50
Vehicles and Fuel (\$3,500), O/H @ 10% (\$3,089), Signs (\$1,000), Uniforms (\$500)	\$7,838
Subtotal	\$43,504
Contingency (5%)	\$2,175.18
TOTAL	\$45,678.68

The nesting season will fall within a single fiscal year, and The Trustees will submit subsequent assurance letters for the next COI implementation year. The total amount of funding secured through the Martha's Vineyard operating budget for implementing the COI in fiscal year 2025 for the 2024 plover season is \$45,678. The total operating budget for Martha's Vineyard in FY24 is \$975,638.

Sincerely,

A handwritten signature in cursive script, reading "Darci Schofield".

Darci Schofield
The Trustees of Reservation
Islands Portfolio Director (Nantucket and Martha's Vineyard)



The Commonwealth of Massachusetts

Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114

p: (617) 626-1520 | f: (617) 626-1509

www.mass.gov/marinefisheries



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

BETHANY A. CARD
Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

November 27, 2023

Shea Fee

Trustees Martha's Vineyard and Nantucket

860 State Road, Vineyard Haven, MA 02568

Dear TTOR:

As the property owner of Leland Beach, the Division of Marine Fisheries gives the Trustees permission to implement the Habitat Conservation Plan on this property. The agency fully supports the renewal of the Certificate of Inclusion for the HCP that includes Leland Beach.

Please do not hesitate to contact me if you need additional information.

Sincerely,

Ross Kessler
Public Access Coordinator

COOPERATIVE MANAGEMENT AGREEMENT
between the
Commonwealth of Massachusetts Division
of Marine Fisheries
and
The Trustees of Reservations
regarding management of Leland Beach,
Chappaquiddick Island,
Martha's Vineyard, Massachusetts

WHEREAS, the Commonwealth of Massachusetts, acting through its Division of Marine Fisheries (DMF) of its Department of Fisheries, Wildlife and Environmental Law Enforcement (DFWELE), owns in fee title and manages the 108-acre portion of barrier beach on Chappaquiddick Island, Martha's Vineyard, Massachusetts, commonly known as "Leland Beach"; and

WHEREAS, The Trustees of Reservations (Trustees), a non-profit Massachusetts charitable corporation, owns all or a substantial portion of the 490-acre Cape Poge Wildlife Refuge adjacent to Leland Beach on the north and the 200-acre Wasque Reservation adjacent to Leland Beach on the south; and

WHEREAS, Leland Beach, as part of this coastal barrier beach ecosystem comprised of Wasque Reservation, Leland Beach, and the Cape Poge Wildlife Refuge, has great natural resource value, including nesting habitat for the piping plover, a federally-listed threatened species; and

WHEREAS, Leland Beach also has great public recreation value, including being a very popular area for marine sportfishing and other public uses generally associated with barrier beaches; and

WHEREAS, the Commonwealth and Trustees recognize the importance of unified, coherent management of the complex barrier beach ecosystem represented by the lands at Wasque, Leland Beach, and Cape Poge; and

WHEREAS, the protection of the natural resources of Leland Beach while permitting such public use thereof requires the same general policies and techniques of barrier beach management as those now in use by Trustees at Cape Poge Wildlife Refuge and Wasque Reservation; and

WHEREAS, Trustees have extensive management experience at Cape Poge and Wasque with demonstrated success in preserving the fragile barrier beach ecosystem on Chappaquiddick Island while allowing broad public use of this area, have developed a barrier beach ecology program to carefully manage such barrier beach ecosystems,

and have staff on hand at Cape Poge and Wasque to monitor and enforce a comprehensive management program for these areas; and

WHEREAS, the Commonwealth recognizes the substantial management and capital expenses associated with responsible beach management that endeavors to provide continued access for sportfishing and other public uses and effective management and protection of endangered species and the fragile beach resource, and further recognizes that increases in such expenses by Trustees are anticipated as a result of this Agreement which may require corresponding increases in the revenues available to Trustees for the management of Leland Beach; and

WHEREAS, Trustees are willing and desire to assist DMF in managing Leland Beach in a manner that will protect the resources thereon while allowing appropriate public use thereof.

NOW, THEREFORE, it is Agreed by and between DMF and Trustees as follows:

1. Trustees shall assist DMF in managing Leland Beach in accordance with the "Leland Beach Management Proposal", dated September 11, 1992; the Trustees' "Cape Poge and Wasque Shorebird Management Plan", dated March 8, 1993; and the "Guidelines for Managing Recreational Use of Beaches to Protect Piping Plovers, Terns, and Their Habitats in Massachusetts", dated April 5, 1993, attached as Exhibits A, B, and C, respectively, and incorporated herein by this reference. Consistent with these documents, public access for sportfishing shall be a priority use of the Leland Beach. To the extent DMF either permits or prohibits swimming at Leland Beach, it is agreed that nothing herein imposes on Trustees any lifeguarding or other responsibilities related to swimming and bathing.

2. Trustees agree to continue to permit the general public to have access to Leland Beach through the Wasque Reservation and the Cape Pogue Wildlife Refuge, in accordance with the above-described Management Plans and regulations posted by Trustees, for sportfishing and other permitted uses of the Beach. Trustees also agree to bear all costs pertaining to Trustees' activities under this Cooperative Management Agreement. In return, Trustees may apply its current vehicle access fee program to all persons entering through Wasque Reservation and/or the Cape Pogue Wildlife Refuge to get to Leland Beach; a copy of this fee schedule is attached as Exhibit D.

- 2.1 In addition, Trustees personnel and persons with a Trustees' sticker or other appropriate authorization by Trustees may cross Leland Beach by foot or vehicle to access the Cape Pogue Wildlife Refuge and Wasque Reservation so long as these individuals fully comply with the aforescribed Management Plans.

2.2 Trustees agree that any increase in such fees from those charged by Trustees as of the date of this Agreement as applied to the general public desiring access to Leland Beach only a) shall not be assessed without at least 30 days prior public notice, and b) must be approved by DMF and the United States Fish & Wildlife Service (USF&WS), such approval not to be unreasonably withheld. Trustees agree that such fees as applied to such persons will not unreasonably discriminate between residents of Martha's Vineyard and persons who reside elsewhere. If DMF and the USF&WS neither approve nor disapprove the proposed fees within 30 days, the proposed fees will be deemed approved and Trustees may assess such fees as if approval had been granted.

3. Representatives from Trustees, DMF, and DFWELE shall meet in October of each year to a) evaluate the implementation of the Management Plans for the Leland Beach-Wasque-Cape Poge area during the just-concluded summer tourist season, b) review the Trustees' performance hereunder, c) discuss any changes desired by either party to the above-described Management Plans and/or to this Agreement, and d) assess enforcement needs for Leland Beach to assure that visitors to the Beach comply with the aforescribed Management Plans and with applicable environmental laws and regulations, particularly those pertaining to endangered species protection and to barrier beaches. All agreements and decisions reached shall be set forth in writing. All changes to the Management Plans and/or this Agreement must be approved in writing by USF&WS. DMF and DFWELE shall provide the enforcement personnel agreed to in these discussions and as they otherwise determine to be necessary to ensure compliance with the Management Plans and state environmental laws and regulations. Costs associated with enforcement personnel shall be the responsibility of the Commonwealth.

4. Should any disagreements arise over management of Leland Beach and/or the rights and duties of either party to this Agreement, DMF and Trustees shall make good faith efforts to resolve said disagreements. However, if a mutually agreeable resolution cannot be reached within a reasonable time period not to exceed 30 days, DMF, in consultation with USF&WS, shall have final authority over all matters pertaining to the management of Leland Beach under this Agreement. Trustees shall have the right to appeal any such decision by DMF to the Commissioner of the Department of Fisheries, Wildlife and Environmental Law Enforcement. The Commissioner shall review the position of all parties and issue a final decision thereon, subject to review and approval thereof by the USF&WS. This decision shall be in writing, shall state the facts and rationale relied on in making the decision, and shall be binding on all parties.

5. This Agreement shall become effective when signed by both parties hereto and shall continue in force for a five-year period. This Agreement shall be automatically renewed for additional 5-year periods unless terminated as provided in paragraph 6 below.

6. Either party may terminate this Agreement without cause by 45 days written notice thereof together with a statement of the general reasons for the decision to terminate. Both parties agree to make every effort to send such notice of termination no later than December 31 of any year in order to help the other party preclude the incurring of expenses associated with the planning and budgeting of management activities hereunder for the ensuing tourist season as well as to provide each party with adequate time to make alternate arrangements for management of their respective properties. If termination is by either party for cause because (a) in the opinion of one party, the other party has failed to fulfill its obligations and duties under this Agreement, and/or (b) continuation of this Agreement threatens DMF compliance with USF&WS federal aid program requirements, the party desiring to terminate for cause shall send written notice thereof to the other party containing a detailed and specific description of the reasons for termination. Within 21 days of receipt, the party being terminated may request a meeting to discuss the proposed termination. If DMF is the terminating party and following said meeting decides to proceed with termination, Trustees shall have the right to appeal said decision to the Commissioner of the Department of Fisheries, Wildlife & Environmental Law Enforcement. Said appeal must be made in writing to the Commissioner within 14 days of the above-described meeting and shall state in detail the grounds for appeal. The Commissioner, in consultation with the USF&WS, shall arbitrate the dispute over termination. The Commissioner shall issue his/her decision in a written opinion containing a thorough elaboration of the reasons therefore, and said decision shall be final and binding on all parties.

7. DMF recognizes the importance to Trustees of continued access across Leland Beach by employees of Trustees in order to efficiently manage the Trustees-owned Cape Poge Wildlife Refuge and Wasque Reservation portions of the Wasque to Cape Poge barrier beach system. If this Agreement is terminated, DMF and the Commissioner of DFWELE agree to meet with Trustees to discuss ways in which assured access by employees of Trustees across Leland Beach for such purposes may be continued, subject to all DMF regulations and policies applicable to users of the Beach. However, Trustees agree that, except to the extent Trustees have rights of access under prevailing law, DMF and the Commissioner of DFWELE are not obligated in any manner to provide or permit the desired access and may in their sole discretion decline to do so.

8. In all matters pertaining to notice regarding this Agreement, notice shall be sent to Mr. Frederick Winthrop, Jr., Director, The Trustees of Reservations, 572 Essex Street, Beverly, MA, 01915 and to Mr. Philip Coates, Director, Division of Marine Fisheries, 100 Cambridge Street, Room 1901, Boston, MA, 02202 or such other person or address as may be designated to the other parties from time to time.

WITNESS our hands and seals on the date opposite our signatures below.



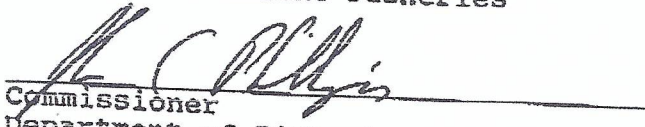
Director
The Trustees of Reservations

2/10/94
Date



Director
Division of Marine Fisheries

2/4/94
Date



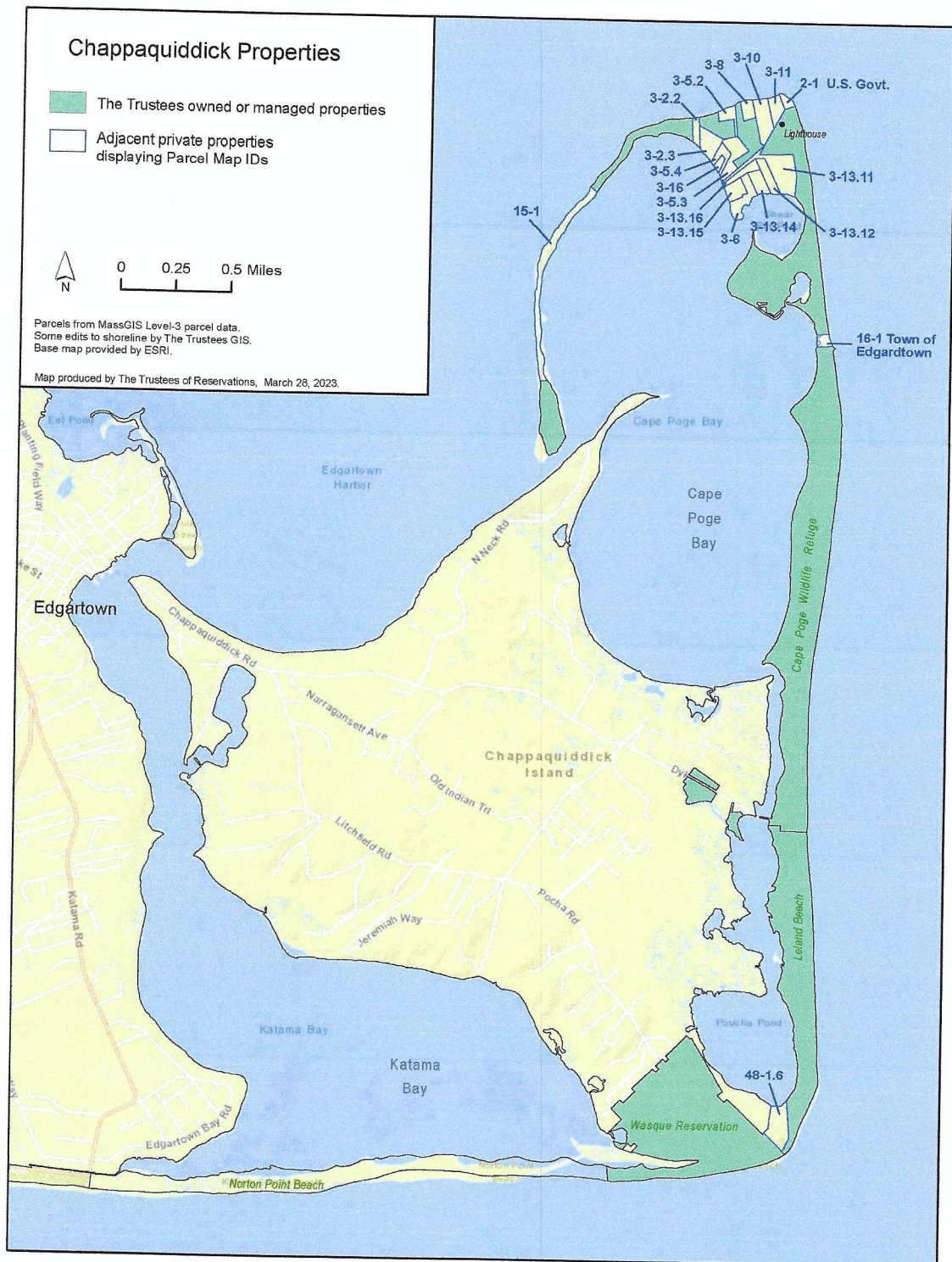
Commissioner
Department of Fisheries, Wildlife &
Environmental Law Enforcement

2/4/94
Date

Parcel Number	Property Address	Owner Name	Co Owner Name	Owner Address	Owner Address 2	Owner State	Owner City	Owner Zip	Book	Page	Legal Instrument to Access
17-1	20 LIGHTHOUSE RD	TRUSTEES OF RESERVATIONS		572 ESSEX ST		MA	BEVERLY	01916	00237	0070	Trustees Owned
32-2	10 LIGHTHOUSE RD	TRUSTEES OF RESERVATIONS	BRINE W H JR	572 ESSEX ST		MA	BEVERLY	01916	00283	0673	Trustees Owned
48-46	LIGHTHOUSE RD	Commonwealth of Massachusetts		100 Cambridge Street		MA	BOSTON	02202	615	629	Management Contract, Letter of Assent

Intersection OSV Trails on non-Trustees parcels with right to pass

Private Parcels	Property Address	Owner Name	Co Owner Name	Owner Address	Owner Address 2	Owner State	Owner City	Owner Zip	Book	Page	OSV Access
16-1	36 Lighthouse Road	Town of Edgartown		Box 5158		Massachusetts	Edgartown	02539	172	75	1881 Partition, Judgement Preliminary Injunction



Trustees owned or managed parcels (green) as well as adjacent private properties labeled with map and parcel numbers.

I, the Honorable the Judge of the Probate Court,
in and for the County of Dukes County,

Pursuant to your warrant to us directed dated January 19th
A.D. 1891, we the Commissioners therein named having been
first sworn and having given notice to all persons inter-
ested as therein directed have appraised all the real estate
therein named and of which are required to make par-
tition as follows:

We have appraised all the estate described in said pe-
tition in one parcel, in the sum of Two Thousand Dollars
- \$2000.00. And according to our best judgment after a
full hearing of all the parties we have made partition of
said real estate among the parties entitled thereto as
follows:

Division No. 1

To Jonathan D. Conduct of Madison in the County of Morris and
State of New Jersey we have set off the portion of said estate bound-
ed as follows:

Beginning at the stone bound marking the southwest-
erly corner of the United States Government Lighthouse lot
on Cape Poge; thence southwesterly in a straight line
until it meets the high-water line at a point on
the shore of Cape Poge Pond five hundred and ninety
eight (598) feet southerly from the stone found marking
the southwesterly corner of the United States Government boat
house lot; thence on the same course to low-water mark
thence southerly and easterly and the various courses
following the low-water line on the shores of said Cape Poge
Pond and Sheep Shear Pond until it comes to the division line
between divisions No. 1 and 6, the high-water point of which di-
vision line on the shore of said Sheep Shear Pond is
two hundred and forty-five (245) feet true east
from the southern extremity of a line drawn three thousand
one hundred and sixty (3160) feet true south from said
stone found at the southwest corner of said Lighthouse
lot; thence south eight degrees and twenty minutes east
(S.8°20'E.) following said division line across the land
that connects with "Little Neck," so called, to the low-

water line on the waters of a cove between said Little Neck and the East Beach; thence southerly following the low-water line on said cove and said Cape Poge Pond to the extremely southerly point on East Beach of the premises described in the warrant; thence across said East Beach in a true east course until it comes to a point on the Atlantic Ocean or Muskeget Channel shore at low-water line eleven-thousand (11000) feet southerly from the most northerly point of the shore at low-water line of said Cape Poge; thence northerly following the low-water line on the shore of said Ocean or Channel to the said Lighthouse lot; thence westerly by said lot to the point of beginning, containing with Division No. 17 set off to said Condict one hundred sixty six and 7/100 (166.07) acres.

Division No. 2

To James E. Smith, Marietta Chapel, Lizzie D. Smith and Herbert P. Smith all of Nantucket in the County of Nantucket heirs at law of James E. Smith, late of said Nantucket deceased who requested that they might be permitted to hold their shares of said estate together and undivided we have set off the portion of said estate bounded as follows:

Beginning at a bound on the first described line of Division No. 1, nine hundred and sixty-five (965) feet southwesterly from the stone bound marking the southwesterly corner of the Lighthouse lot; thence northwesterly at right angles with said first described line to the low-water line on the shore of Edgartown harbor; thence westerly by said harbor to the east line of Division No. 9 the high-water mark on said east line being one hundred seventy two feet from the high-water mark on the first described line of this division; thence in a true south course to the low-water line on the shore of Cape Poge Pond; thence southerly following the low-water line of said Pond to the division line on the shore of Cape Poge Pond; thence southerly following the low-water line of said Pond to the division line first described in said Division No. 1, thence northeasterly by said division line to the point of beginning, containing with Division No. 14 set off to

said heirs of James G. Smith fifty nine and 91/100 (59.91) acres, excepting from this division the land owned by the United States Government and used as a boat house lot.

Division No. 3

To Luther T. Townsend of Watertown in the County of Middlesex we have set off the portion of said estate bounded as follows:

Beginning at a bound on the first described line of Division No. 2, one hundred and five (105) feet northwesterly from the bound marking the beginning of said described line; thence northerly to the high-water line on the shore of Edgartown harbor at a point six hundred and thirty-three feet (633) westerly from the Lighthouse lot; thence on the same course to low-water mark; thence westerly by said harbor to Division No. 2; thence southeasterly at right angles with the first described line of Division No. 1 to the point of beginning, containing with Division No. 15 set off to said Townsend twenty four 65/100 acre.

Division No. 4

To Lester W. Clark, of the City, County and State of New York we have set off the portion of said estate bounded as follows:

Beginning at a bound on the first described line of Division No. 1 nine hundred and sixty-five (965) feet southwesterly, from the stone bound marking the southwesterly course of the Lighthouse lot; thence northwesterly at right angles with said first described line of Division No. 1 and by Division No. 2 one hundred and five (105) feet to Division No. 3; thence northwesterly to the high-water line on the shore of Edgartown harbor at a point six hundred and thirty three (633) feet westerly from the Lighthouse lot; thence on the same course to low-water line; thence easterly (three hundred and fifty (350) feet in a straight line) by said harbor to Division No. 5; thence southeasterly by said Division No. 5 to a bound on the first described line

of Division No. 1 five hundred and ten (510) feet southwesterly from the stone bound marking the southwesterly corner of the Lighthouse lot; thence southwesterly by said first division line four hundred and fifty-five (455) feet to the point of beginning, containing with Divisions No. 10 and 16 set off to said Clark fourteen and 62/100 (14.62) acres.

Division No. 5

To Horace Bacon of the City, County and State of New York we have set off the portion of said estate bounded as follows:

ATTESTED COPY
OF WILL
Bk. 357 Pg. 223

Beginning at the stone bound marking the southwesterly corner of the Lighthouse lot; thence northwesterly by said Lighthouse lot to the low-water line on the shore of Edgartown harbor; thence westerly (two hundred eighty three (283) feet in a straight line) by said harbor to Division No. 4; thence southeasterly by said Division No. 4 to a bound on the first described line of Division No. 1 five hundred and ten (510) feet southwesterly from the stone bound marking the southwesterly corner of the said Lighthouse lot; thence northeasterly by Division No. 1 to the point of beginning, containing with Division No. 9 set off to the said Bacon eight (8) acres.

Division No. 6

To Maria R. Huxford of Edgartown in said Dukes County we have set off the portion of said estate bounded as follows:

Beginning at the northwest end of the division line between Division No. 1 and this division which is on the low-water line of the shore of Sheep Shear Pond; thence by said shore of said Pond westerly to Division No. 7; thence south thirty-eight degrees and fifty minutes west (S.38°50'W.) to high-water mark; thence on the same course seven hundred and fifty five (755) feet to Division No. 8 at a bound; thence south fifty-one degrees and ten minutes east (S.51°10'E.)

to the edge of a salt marsh; thence northerly, easterly and southerly and the various courses by said marsh to its northeasternmost extremity, then south fifty-one degrees and ten minutes east (S.51°10'E.) to

low-water mark on the shore of the cove; thence northerly by the cove to the southeasterly end of said division line between Division No. 1 and this division; thence north eight degrees and twenty minutes west (N.8°20'W.) by said Division line to the point of beginning, containing with Division No. 12 set off to said Huxford twenty and 37/100 (20.37) acres.

Division No. 7

To Horace Warren Gridley of the City, County and State of New York, we have set off the portion of said estate bounded as follows:

Beginning at a point at high-water mark five hundred and seventy-six (576) feet southwesterly from a point on the division line between Division No. 1 and 6 near the northwesterly end thereof and at high-water mark; thence south thirty-eight degrees and fifty minutes west (S.38°50'W.) seven hundred and fifty five (755) feet to a bound on the division line between Division No. 8 and this division; thence north fifty one degrees and ten minutes west (N.51°10'W.) by Division No. 8 to low-water line on the shore of Cape Poge Pond; thence northeasterly by Sheep Shear Pond to the first described line of this division extended; thence south thirty eight degrees fifty minutes west (S.38°50'W.) to the point of beginning, containing with Division No. 11 set off to said Gridley thirteen and 50/100 (13.50) acres.

Division No. 8

To Josephine L. Huxford of Edgartown in said Dukes County we have set off the portion of said estate bounded as follows:

Beginning at the northwesterly end of the Division line between Division No. 7 and the division on the shore of Cape Poge Pond; thence southwesterly and southeasterly and by various courses by said Pond and by the cove to the division line between Division No. 6 and this division; thence north fifty-one

Degrees and ten minutes west (N.51°10'W.) by said Division No. 6 to the northeasternmost extremity of the marsh boundary line of Division No. 6; thence southwesterly and various courses by Division No. 6 to Division No. 7; thence by Division No. 7 to the point of beginning, containing with Division No. 13 set off to said Huxford twenty two and 22/100 (22.22) acres.

Division No. 9

To Horace Bacon of the City, County and State of New York, we have set off the portion of said estate bounded as follows:

Beginning at a point on the high-water line of Edgartown harbor one hundred and seventy-two (172) feet westerly from the north-westerly end of the division line between Division No. 2 and No. 3; thence in a true south course by Division No. 2 to the low-water line of Cape Poge Pond; thence northwesterly by said Pond to the south end of the division line between Division No. 10 and this division; thence in a course true north parallel with and one hundred and seventy (170) feet west from the first described line of this division to the low-water line of said harbor; thence easterly by said harbor to the first described line of this division extended; thence by said line south to the point of beginning.

Division No. 10

To Lester W. Clark of the City, County and State of New York, we have set off the portion of said estate bounded as follows:

Beginning at the north end of the division line between Division No. 9 and this division on the low-water line of Edgartown harbor; thence in a course true south by said division line to the low-water line of Cape Poge Pond; thence northwesterly by said Pond to the south end of the division line between Division No. 11 and this division; thence in a course true north parallel with and two hundred and fifty (250) feet west from the first de-

scribed line of this division to the low-water line of said harbor; thence easterly by said harbor to the point of beginning.

Division No. 11

To Horace Warren Gridley of the City, County and State of New York, we have also set off the portion of said estate bounded as follows:

Beginning at the north end of the division line between Division No. 10 and this division on the low-water line of Edgartown harbor; thence in a course true south by said division line to the low-water line of Cape Poge Pond; thence westerly by said Pond to the southerly end of this division line between Division No. 12 and this division; thence north seven degrees and thirty minutes west (N.7°30'W.) by said division line to the low-water line of said harbor; thence easterly by said harbor to the point of beginning a distance of nine hundred and thirty (930) feet measured on high-water line by one hundred (100) feet straight lengths.

Division No. 12

To Maria R. Huxford of Edgartown in said Dukes County we have set off the portion of said estate bounded as follows:

Beginning at the northwesterly end of this division line between Division No. 11 and this division on the low-water line of Edgartown harbor; thence south seven degrees and thirty minutes east (S.7°30'E.) by said division line to the low-water line of Cape Poge Pond; thence southwesterly by said Pond to the southeasterly end of the division line between Division No. 13 and this division; thence north forty six degrees and thirty minutes west (W.46°30'W.) by said division line to the low-water line of said harbor thence northerly by said harbor to the point of beginning a distance of nine hundred and eighty (980) feet straight lengths.

Division No. 13

To Josephine L. Huxford of Edgartown in the County of Dukes County we have set off the portion of said estate described as follows:

Beginning at the northwesterly end of the division line between Division No. 12 and this division on the low-water line of Edgartown harbor; thence south forty six degrees and thirty minutes east (S.46°30'E.) by said division line to the low-water line of Cape Poge Pond; thence southwesterly by said Pond to the southeasterly end of the division line between Division No. 14 and this division; thence north fifty degrees west (N.50°W.) by said division line to the low-water line of said harbor; thence northerly by said harbor to the point of beginning a distance of nine hundred and sixty (960) feet measured on high-water line by one hundred (100) feet straight lengths.

Division No. 14

To the said James E. Smith, Marietta Chapel, Lizzie D. Smith and Herbert P. Smith, heirs at law of the said James G. Smith, we have also set off the portion of said estate bounded as follows:

Beginning at the northwesterly end of the division line between Division No. 13 and this division on the low-water line of Edgartown harbor; thence south fifty degrees east (S.50°E.) by said division line to the low-water line of Cape Poge Pond; thence southerly by said Pond to the northeasterly end of the division line between Division No. 15 and this division; thence south eighty six degrees and fifteen minutes west (S. 86°15'W.) by said division line (the center of which division line is eight hundred and fifteen (815) feet northerly from the center of the division line between divisions No. 15 and No. 16) to the low-water line of said harbor; thence northerly by said harbor to the point of beginning.

Division No. 15

To the said Luther T. Townsend we have also set off the portion of said estate bounded as follows:

Beginning at the southwesterly end of the division line between Division No. 14 and this division on the low-water line of Edgartown harbor; thence north eighty six degrees and fifteen minutes east ($N.86^{\circ}15'E.$) by said division line to the low-water line of Cape Poge Pond; thence southerly by said Pond to the northeasterly end of the division line between Division No. 16 and this division; thence south seventy-eight degrees and thirty minutes west ($S.78^{\circ}30'W.$) by said division line (the center of which division line is four hundred and seventy (470) feet northwesterly from the center of the division line between Divisions No. 16 and No. 17) to the low-water line of said harbor; thence northwesterly by said harbor to the point of beginning.

Division No. 16

To the said Lester W. Clark we have also set off the portion of said estate bounded as follows:

Beginning at the southwesterly end of the division line between Division No. 15 and this division on the low-water line of Edgartown harbor; thence north seventy eight degrees and thirty minutes east ($N.78^{\circ}30'E.$) by said division line to the low-water line of Cape Poge Pond; thence southerly by said Pond to the east end of the division line between Division No. 17 and this division; thence in a course true west by said division line the center of which division line is two hundred and seventy (270) feet north from the center of the present high-water line at the end of the West Beach Point so called) to the low-water line of said harbor; thence northerly by said harbor to the point of beginning.

Division No. 17

To the said Jonathan D. Conduct we have also set off the portion of said estate bounded as follows:

Beginning at the west end of the division line between Division No. 16 and this division on the low-water line of Edgartown harbor (the center of said division line is two hundred and seventy (270) feet northerly from the present high-water line at the center of West Beach Point); thence in a course true east by said division line to the low-water line of Cape Poge Pond thence southerly westerly and northerly by said Pond and said harbor to the point of beginning.

Variation of transit needle $11^{\circ}13'W$. Said partition is made according to and as indicated by a "Plan of Division of Cape Poge, Edgartown Mass." drawn by J.H. Orwell surveyor and filed herewith except that said plan bounds the several divisions thereon indicated wherever they border upon tide water by high-water mark visited of low-water mark which latter is the boundary line intended in this partition.

And as a part of this partition and as appurtenant to the several divisions by us made and for the benefit and use of all the proprietors thereof we have established the following right of way as indicated by red line of said plan.

Right of Way

1. Beginning at the top of bank on the south side of the Lighthouse lot; thence southerly about sixteen hundred (1600) feet in length, thirty (30) feet wide measuring from the edge of the bank; thence continuing of the same width southerly through the center of the beach between the Atlantic Ocean or Muskeget Channel and Sheep Shear Pond and following the present roadway through the East Beach to the south end of Division No. 1.
2. Beginning at the division line between Divisions No. 7 and No. 8 thence following fifteen (15) feet each side of the division line between Divisions No. 6 and No. 7 about six hundred (600) feet; thence

thirty (30) feet wide northeasterly across Division No. 6 and into Division No. 1 until it meets the first described way.

3. Beginning at the top of bank at the south side of the Lighthouse lot; thence westerly and northerly thirty (30) feet in width by said lot to the top of bank on the west side of said Lighthouse lot; thence westerly thirty feet wide (measuring from the edge of the bank) nine hundred (900) feet; thence turning northwesterly and running westerly (30) feet out from the general edge of the sand hills until it comes to a point about six hundred (600) feet westerly from the division line between Divisions No. 10 and No. 11; thence crossing the west beach south to the way one rod wide around the shore of Cape Poge Pond; thence northerly one rod wide above high-water line of said Pond to a point about eight hundred (800) feet northwesterly from the U.S. Govt. boat house lot; thence turning easterly and becoming thirty (30) feet wide measuring from the edge of the bank and running northeasterly (passing eastward of and adjoining said boat house lot) along the banks of said Cape Poge Pond and by the banks of Sheep Shear Pond until it meets the way running from the said Lighthouse lot southerly over the East Beach.

4. Beginning at the way before named at the southwest corner of the Lighthouse lot; thence thirty (30) feet west in a curve to the right through Division No. 1 following the valley or low elevation until it meets the division line at the corner of and between Division No. 1 and No. 4; thence in a straight line through Division No. 2 to the U.S. Govt. boat house lot. A short [?branch?] from this way thirty (30) feet wide runs northwesterly through Division No. 4 and by Division No. [ILLEGIBLE] until it meets Division No. 3.

5. Beginning at the thirty (30) foot way that crosses from north to south through Division No. 11; thence south-

westerly and various other courses of a width of one rod measuring from high-water line by Cape Poge Pond and Edgartown harbor to the division line between Divisions No. 16 and No. 17 of said harbor.

William H. Orwell	}	Commissioners
William W. Butler		
George H. Furber		

The undersigned being all the persons interested in the foregoing report hereby assent thereto and request that the same be confirmed without further notice and we to whom money is awarded acknowledge the receipt or security thereof.

Lester W. Clark	Maria R. Huxford
Horace Warren Gridley	Horace Bacon
Grafton H. Smith	Jonathan D. Condict
Josephine L. Huxford	

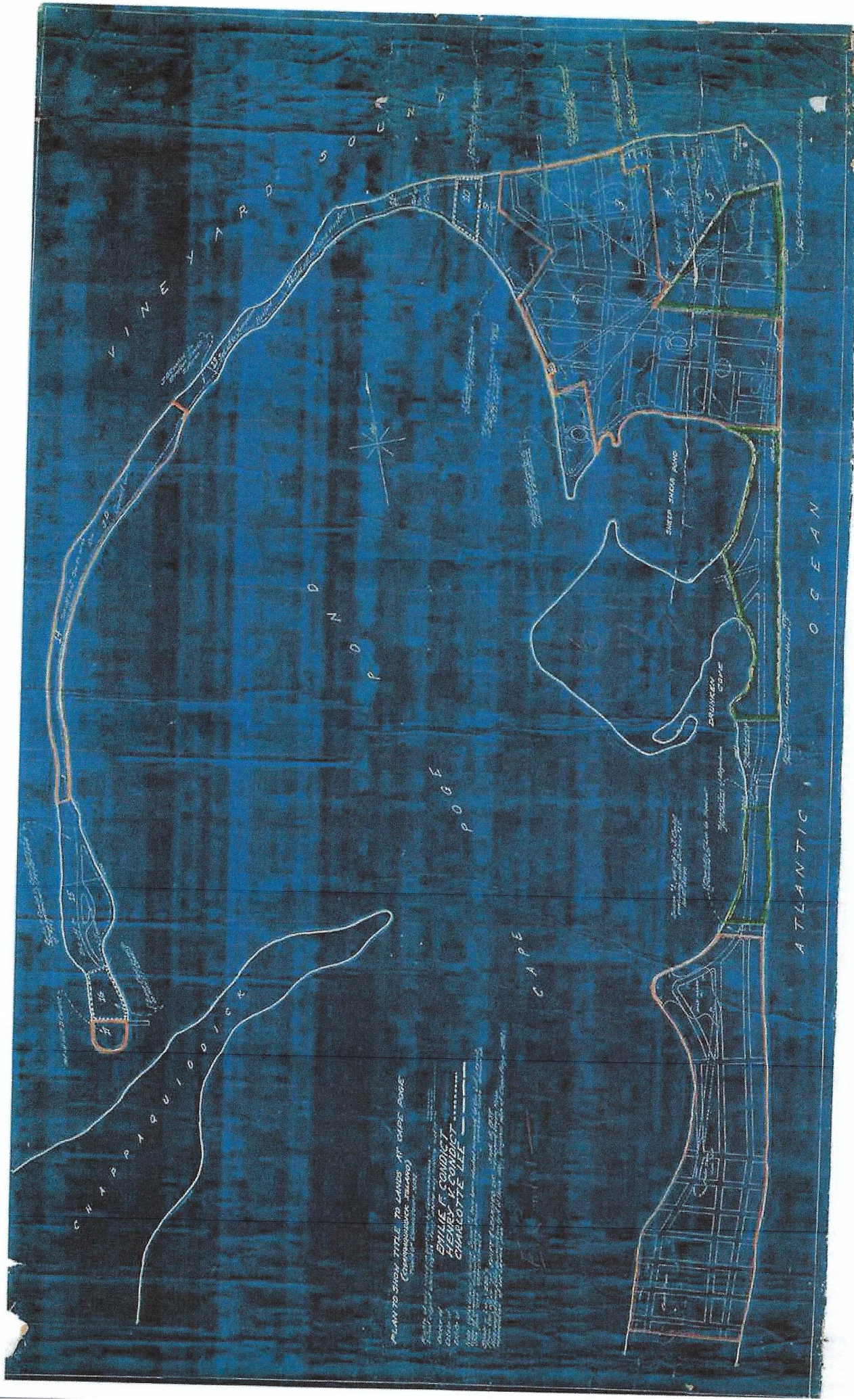
Duke County, SS.

At a Probate Court holden at Edgartown in said County of Dukes County on the 7th day of December A.D. 1891 the foregoing report having been examined and considered and all parties interested having been notified and had an opportunity to be heard thereon before this court and having assented thereto in writing and it appearing that said Commissioners were sworn according to law and gave notice as ordered by Court; that said partition has been properly made.

It is decreed that said report be accepted and the partition confirmed and established and that the premises be assigned as described and set off to the several parties therein named.

Joseph T. Pease, Judge of Probate Court.

No. 519.
 Jonathan D. Condict.
 Warrant and re-
 turn for partition
 of real estate
 among tenants
 in Common.
 Filed Aug 18 1891.
 Rec. Gen. Bk.
 Vol. 24 Page
 303.
 Beriah T. Hillman
 Register.



**COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

DUKES, ss.

MISCELLANEOUS CASE
No. 22 MISC 000182 (HPS)

VICTOR COLANTONIO and DAWN
ROBERTO BRUNO COLANTONIO, as
TRUSTEES of the DAWN ROBERTO
BRUNO COLANTONIO 2010
REVOCABLE TRUST,

Plaintiffs,

v.

THE TRUSTEES OF RESERVATIONS,

Defendant.

ORDER ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

The plaintiffs in this action seek a declaratory judgment that the use of a right of way by the defendant The Trustees of Reservations ("the "Trustees") constitutes an overburdening of a right of way over which the parties share dominant rights, as well as a nuisance. The plaintiffs claim overburdening as well with respect to a separate easement reserved by the Trustees over one of the plaintiffs' two parcels. The plaintiffs also seek a judgment that the Trustees are committing a trespass on the plaintiffs' land.

The plaintiffs filed a non-verified complaint supported by the Affidavit of Victor Colantonio. In their motion for preliminary injunction, the plaintiffs requested that the Trustees be ordered to "immediately cease and desist in selling OSV [Over Sand Vehicle] permits for access to the shared Right of way on Cape Pogue for the 2022 season." At the hearing, and in their post-hearing "clarification" the plaintiffs stated that they do not seek to prohibit sales of

OSV permits, but instead seek an injunction prohibiting access to OSV permit holders to any of the right of way except the two-and-one-half miles south of Aruda Point. This would enjoin access to approximately five additional miles of the right of way, including the location of the Cape Pogue Lighthouse and the location where the right of way and easement cross the plaintiffs' two parcels.

On the day of the hearing on the present motion, April 26, 2022, the plaintiffs filed two additional affidavits, by William Gazaille and Rachel Self, two non-party residents of Cape Pogue. The Trustees filed an additional opposition on May 4, 2022, and the plaintiffs filed a "clarification to argument" on May 3, 2022, after which I took the matter under advisement. For the reasons stated below, the plaintiffs' motion for preliminary injunction is DENIED.

FACTS

The plaintiffs own Lot 5, a 4.4-acre shorefront parcel, improved by a single-family dwelling, and Lot 9, an unimproved parcel, about 4 acres in size, both on Cape Pogue on Chappaquiddick, Martha's Vineyard. The Trustees own considerable acreage on Cape Pogue. Nearly 330 acres of land, including the present lands of both the plaintiffs and the Trustees, are accessed by a right of way established in 1891 when Cape Pogue was partitioned, with the reservation of the right of way to provide access to all of the partition parcels.

The language used to grant the unpaved right of way to the parties' predecessors in 1891 is as follows:

"And as a part of this partition and as appurtenant to the several divisions by us made and for the benefit and use of all the proprietors thereof we have established the following right of way as indicated by red line of said plan..."¹

¹ Exhibit B to Complaint

There follows a metes and bounds description of the right of way as it wends through Cape Pogue. The right of way, which at many points abuts the shore, is described as thirty feet in width. Notwithstanding its reserved width of thirty feet, in many places today the right of way on the ground is actually only wide enough for a single vehicle.

In addition, plaintiffs' property known as Lot 5 is subject to a separate easement reserved by the Trustees in the Trustees' 1987 deed to a predecessor-in-title to the plaintiffs as grantee of Lot 5. This easement is described as follows:

"RESERVING to the said THE TRUSTEES OF RESERVATIONS, as appurtenant to and for the benefit of its other land on the Island of Chappaquiddick, in said Edgartown, and their licensees, subject to such rules and regulations as may from time to time be imposed by THE TRUSTEES OF RESERVATIONS upon their lands on the Island of Chappaquiddick, known as the 'Cape Pogue Wildlife Refuge', the perpetual right and easement to pass and repass, by foot or motor vehicle within that area upon said Lot 5 which lies between the inland edge of any coastal bank or due upon said Lot 5 and the waters of Edgartown Harbor and the Atlantic Ocean, in common with the Grantor and others lawfully entitled thereto."²

The Trustees' property on Cape Pogue has the benefit of the 1891 right of way. The Trustees acquired 132 acres in 1959, and acquired additional land subsequently, and has operated its land on Cape Pogue since 1959 as the Cape Pogue Wildlife Refuge. The Cape Pogue Wildlife Refuge is operated by the Trustees in conjunction with the Trustees' statutory purpose of "acquiring, holding, arranging, maintaining and opening to the public, under suitable regulations, beautiful and historical places and tracts of land within this Commonwealth." St. 1891, c. 352. The plaintiffs have asserted, and the Trustees acknowledge, that the Trustees sell "thousands" of permits, called Over Sand Vehicle, or OSV permits, entitling members of the public to access the Cape Pogue Wildlife Refuge by use of the right of way and the easement over the plaintiffs' Lot

² Exhibit F to complaint.

5. However, neither party has at this early stage of the proceedings been able to provide a count of how many vehicles actually access the right of way or the easement over Lot 5 on any given day. At the hearing on this matter the Trustees suggested that on peak days in the summer, such as the days around July 4th, the number could be as high as in the hundreds, but would be lower at most other times of the year.

DISCUSSION

STANDARD FOR ISSUANCE OF PRELIMINARY INJUNCTION

The familiar standard for consideration of a request for preliminary injunctive relief is as follows: "[W]hen asked to grant a preliminary injunction, the judge initially evaluates in combination the moving party's claim of injury and chance of success on the merits. If the judge is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the judge must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue." *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

LIKELIHOOD OF SUCCESS ON THE MERITS

The rights of the parties are spelled out in the grant of right of way in the 1891 partition of Cape Pogue, and in the reservation of easement in the conveyance of Lot 5 to the plaintiffs' predecessor in interest. In both cases, with the exception of the Lot 5 easement, which provides

that the easement may be used by pedestrians and motor vehicles, the grants are expressed in general terms, with no specified limitations.

The law in Massachusetts is well-settled that an easement granted in general terms, and without express limitation or restrictions, is available for the reasonable uses to which the dominant estate may thereafter be devoted. *Marden v. Mallard Decoy Club*, 361 Mass. 105, 107 (1972). “In the absence of express limitations, such a general right of way obtained by grant may be used for such purposes as are reasonably necessary to the full enjoyment of the premises to which the right of way is appurtenant.” *Tehan v. Security Nat’l. Bank of Springfield*, 340 Mass. 176, 182 (1959), citing *Parsons v. New York, New Haven & Hartford Railroad Co.*, 216 Mass. 269, 273 (1913).

An easement granted or reserved in general terms is available for all reasonable, consistent uses, and those uses may change over time. *Lawless v. Trumbull*, 343 Mass. 561, 563 (1962); *Hayes v. Inniss*, 83 Mass. App. Ct. 1138 (2013) (Rule 1:28 Unpublished Decision) (once an easement is created, every right necessary for its enjoyment is included by implication). In *Hodgkinds v. Bianchini*, the Supreme Judicial Court found that an easement for a “cart road to pass to and from the main street” was not restricted to “use to horse drawn vehicles or limit[ed]... to the width of vehicles then in common use.” 323 Mass. 169, 172 (1948). Similarly, a right of way grant originally used only to access a cottage and barn by foot and carriage, later encompassed uses by motor vehicles to access a four-car garage. *Mahon v. Tully*, 245 Mass. 571, 573 (1923).

Overburdening comes into play where the use of the easement exceeds what is allowed by right. *Swensen v. Marino*, 306 Mass. 582, 583 (1940). Here, the right of way and the easement over Lot 5 are granted and reserved in general terms and contain no limiting language, as, for

instance, limiting travel to pedestrian travel, or explicitly prohibiting the use of the right of way by motor vehicles, or limiting use to any particular number of vehicles. Such general language granting a right of way with no specific specified limitations is for “an easement for all purposes of ingress and egress common to a way.” *Reynolds v. Hyman*, 86 Mass. App. Ct. 1123, at p. 2, fn. 13 (2014), quoting *Deacy v. Berberian*, 324 Mass. 321, 327 (1962).

Accordingly, use of the right of way by motor vehicles is completely consistent with the general right of way granted in 1891. Such use of the right of way does not overburden the right of way. Nor does the use of the right of way by any particular number of vehicles, just by the fact of use by a large number of people, overburden the right of way. *Lane v. Zoning Bd. of Appeals of Falmouth*, 65 Mass. App. Ct. 434, 440 (2006)

The plaintiffs have made no showing at this stage of the proceedings sufficient for the court to conclude that any use of the right of way exceeds that authorized by the original grant. The plaintiffs have not shown, or even alleged, that the right of way, or the easement over Lot 5, are being used for any purpose inconsistent with the 1891 grant or the 1987 reservation over Lot 5. The affidavit of Victor Colantonio is conspicuously missing any assertion of direct impact on Lot 5 or Lot 9 as a result of any use of the right of way inconsistent with either the 1891 grant or the 1987 reservation of easement.

The only allegations in the affidavit that specifically implicate the plaintiffs’ property are those that allege that Mr. Colantonio removed stakes and rope apparently installed to delineate the right of way on his parcels, and an allegation that a portable toilet has been placed within five feet from the Lot 5 property line. Neither of these allegations implicate a likelihood of success in a claim of overburdening. Mr. Colantonio also alleges that a Habitat Conservation Plan would

obstruct his access to his property, but he fails to allege that he or his invitees have actually been prevented from reaching his property.

Rachel Self, a non-party and neighbor of the plaintiffs on Cape Pogue, alleges in her affidavit interference with the use of and access to and from her property, but not the plaintiffs' property, by OSV permit holders. William Gazaille, also a non-party, who resides with Ms. Self, describes in his affidavit a single incident in which an ill-prepared driver, presumably but not necessarily an OSV permit holder, got stuck in the sand surface of the right of way and blocked the right of way, with insufficient assistance from the Trustees in removing the obstructing vehicle. Neither Ms. Self nor Mr. Gazaille indicate any interference with the plaintiffs' use of the right of way.

None of the affidavits submitted to the court establish that the plaintiffs are likely to succeed on the merits of the plaintiffs' claims sufficiently to support the issuance of preliminary injunctive relief. The real thrust of Mr. Colantonio's affidavit, and that of his non-party neighbors, appears to be their concern that the Trustees are mismanaging the Wildlife Refuge in general and have "destroyed the natural beauty, tranquility, wildlife habitat, vegetation, and dunes of Cape Pogue."³ This is a legitimate concern if true, but it is not one that is addressed to the alleged overburdening of the right of way.

IRREPARABLE HARM

It is appropriate for the court, in assessing the relative irreparable harm to the parties if preliminary injunctive relief is granted or denied, to also take into account the public interest. See *Commonwealth v. Mass. CRINC*, 392 Mass. 79 (1984).

³ Affidavit of Victor Colantonio, ¶ 27.

As is noted above, the plaintiffs have not made a sufficient showing of any irreparable harm to them or their property as a result of the continued use of the right of way by members of the public pursuant to the OSV permits issued by the Trustees. Further, “[a] preliminary injunction ordinarily is issued to preserve the status quo pending the outcome of litigation.” *Doe v. Superintendent of Schools of Weston*, 461 Mass. 159, 164 (2011). “It is proper, indeed desirable, to issue an injunction if its issuance is the only way to preserve the status quo and it promotes the public interest to do so, even though it grants the ultimate relief sought.” *Petricca Const. Co. v. Com.*, 37 Mass. App. Ct. 392, 400 (1994). The preliminary relief sought by the plaintiffs, the complete prohibition of those with OSV permits from much of Cape Pogue, including the lighthouse, not only fails to maintain the status quo, but it goes well beyond any relief that is likely to be granted should the plaintiffs be successful on the merits.

The Trustees, and the public, on the other hand, would be irreparably harmed by a prohibition of access to much of Cape Pogue during the pendency of this action as requested by the plaintiffs. Such a prohibition would prevent the Trustees from fulfilling their statutory mission, and would deprive the public of access to the Cape Cod Wildlife Refuge likely for the entire summer and fall seasons of 2022.

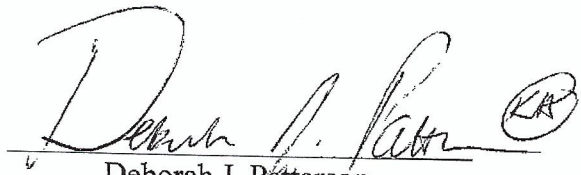
The plaintiffs’ concerns about the management of the Cape Cod Wildlife Refuge and the right of way used for access to it should be addressed by discussions between the parties, but neither the public’s interest nor that of the parties would be adequately and legitimately served by the prohibition of public access to much of the Cape Pogue Wildlife Refuge while such talks proceed.

CONCLUSION

For the reasons stated above, the plaintiffs' motion for preliminary injunction is
DENIED.

So Ordered.

HPR By the Court. (Speicher, J.)
Attest:


Deborah J. Patterson
Recorder

Dated: May 6, 2022.