MASSWILDLIFE

DIVISION OF
**FISHERIES & WILDLIFE**

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# MA ENDANGERED SPECIES ACT (G.L. c.131A) CONSERVATION AND MANAGEMENT PERMIT

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| **Date** | | June 4, 2020 |
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| **Conservation Permit No.:** | | 020-355.DFW |
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| **NHESP File No.** | | 16-35449 |
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| **Permit Holder** | | The Trustees of Reservations |
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| **Activity** | | (1) Oversand Vehicle Use in the Vicinity of Unfledged Piping Plover and Least Tern Chicks, (2) Reduced Symbolic Fencing around Nests, and (3) Reduced Proactive Symbolic Fencing, Cape Pogue Wildlife Refuge, Leland Beach, Wasque Point, and Norton Point Beach, Edgartown, MA |

Pursuant to the authority granted in the Massachusetts Endangered Species Act ("MESA") (G.L. c. 131A) and its implementing regulations (321 CMR 10.23), the Director of the Massachusetts Division of Fisheries & Wildlife (the "Division") hereby issues a Conservation and Management Permit to The Trustees of Reservations (the "Permit Holder"). This permit and associated The Trustees of Reservations Certificate of Inclusion (the "COI") in the Final Massachusetts Division of Fisheries & Wildlife Habitat Conservation Plan (HCP) for Piping Plover, dated June 2016, issued in accordance with the Incidental Take Permit (ITP) No. TE01281C-0 for Piping Plover, dated July 8, 2016, authorize the taking of the State and Federally listed Piping Plover, which is listed as "Threatened" pursuant to the MESA and "Threatened" pursuant to ESA arising out of the use of oversand vehicles in the vicinity of unfledged Piping Plover chicks and other recreational beach operations more particularly described in documents attached hereto (the "Activities") at Cape Pogue Wildlife Refuge, Leland Beach, Wasque Point, and Norton Point Beach, Edgartown, Massachusetts (the "Property"). This permit also authorizes the taking of the State-listed Least Tern, listed as Special Concern pursuant to MESA, associated with the use of oversand vehicles in the vicinity of unfledged chicks.

During a given beach season, a maximum of two (2) pairs, nests, or broods of Piping Plovers may be exposed to oversand vehicle (OSV) use, reduced fencing around the nest, or reduced proactive symbolic fencing. Additionally, up to twenty (20) Least Tern Chicks may be exposed to OSV use. However, a variety of procedures required by way of this Permit and the HCP will significantly decrease risk.

Under the authority granted by and in accordance with MGL c131A§3 and 321 CMR 10.23, the Director may permit the taking of a State-listed Species for conservation and management purposes provided that there is

a long-term Net Benefit to the conservation of the impacted species. If the Director determines that the applicant for a permit has avoided, minimized and mitigated impacts to the State-listed Species consistent with the following Performance Standards, then the Director may issue a conservation and management permit, provided:

(a) the applicant has adequately assessed alternatives to both temporary and permanent impacts to State-listed Species;
(b) an insignificant portion of the local population would be impacted by the Activities, and;
(c) the applicant agrees to carry out a conservation and management plan that provides a long-term Net Benefit to the conservation of the State-listed Species that has been approved by the Director, as provided in 321 CMR 10.23(5), and shall be carried out by the applicant.

The Director has determined that the applicant for this permit has met the above-noted Performance Standards and that the conservation and management plan described herein provides a long-term Net Benefit to the affected state-listed species.

Pursuant to this permit, multiple impact avoidance and minimization measures—including but not limited to traffic management with the ability to stop vehicles, staff training, and intensive monitoring—will be implemented in order to minimize the risk of direct mortality. Mitigation will consist of selective predator management, which will be implemented off-site at Crane Beach (Ipswich, Massachusetts) in order to reduce nest and chick loss and increase production of Piping Plover and Least Tern chicks and fledglings.

Therefore, the Activity can be permitted pursuant to the MESA. This Conservation and Management Permit (the "Permit") is issued to condition the Activities and to provide a long-term Net Benefit to the affected species.

In accordance with the document submitted to the Division entitled:

- "Impact Avoidance and Minimization Plan: Cape Pogue Wildlife Refuge, Leland Beach, Wasque Point, and Norton Point Beach," dated January 2020 (the "Plan"; Attachment A).

Incorporated by reference into this permit, and any other plans and documents referenced herein, this Conservation and Management Permit is issued with the following conditions:

## Conditions:

1. This Permit authorizes the exposure of up to two Piping Plover pairs, nests, or broods to the Activities: (1) Oversand Vehicle Use in the Vicinity of Unfledged Chicks, (2) Reduced Symbolic Fencing around Nests, and (3) Reduced Proactive Symbolic Fencing. In addition, this Permit authorizes the exposure of up to twenty Least Tern chicks to Oversand Vehicle Use in the Vicinity of Unfledged Chicks. All Activities are subject to limitations described in Attachment A, and set forth in this Permit and the COI.

2. All Activities must be confined to the Trustees of Reservations-owned Property shown in Figures 1, 2, and 3 of Attachment A and any other privately-owned properties shown in the Figures, provided that the Permit Holder has provided in advance to the Division written permission from the owner for the Trustees to use the property to carry out activities authorized by and in accordance with this permit.

3. Other than the exceptions authorized by this Permit, the Permit Holder shall carry out beach use and management in compliance with the relevant State Guidelines and Federal Guidelines for management of recreational beaches with breeding plovers and terns effective during the term

of the Permit.

4. This Permit authorizes only otherwise lawful activities. All activities carried out pursuant to this Permit must be carried out in accordance with applicable local, state, and federal statutes and regulations.

5. As set forth in the COI, all activities authorized by this Permit must be carried out in accordance with the HCP and ITP. The COI, HCP and ITP are incorporated by reference into this Permit. By acceptance of this Permit, the Permit Holder acknowledges receipt of copies of the COI, HCP and ITP, official copies of which are located at the Division's field headquarters, 1 Rabbit Hill Rd., Westborough, MA.

6. Division representatives shall have the right to enter and inspect the Property subject to this Permit at reasonable hours to evaluate permit compliance and require the submittal of any reasonable information not otherwise required by this Permit but deemed necessary by the Division to complete its evaluation.

7. Any change to the proposed Plan shall require the Permit Holder to inquire of the Division, in writing, whether the change is significant enough to require the filing of a new Conservation and Management Permit Application, and or require additional long-term Net Benefit for affected State-listed species. The Division retains the right to require the submittal of additional, reasonable information to evaluate the plan change.

8. Prior to implementing the Plan, the Permit Holder shall notify the Division in writing of the name, address, business and home telephone numbers of the manager responsible for compliance with this Conservation and Management Permit. The Permit Holder shall provide updated information in writing to the Division should a new or additional manager be hired after the Activity has commenced.

9. The Permit Holder shall notify the Division at least 24 hours prior to initiating any covered Activity affecting a new pair, nest, or brood of Piping Plover not previously exposed.

10. Prior to the implementation of the Plan or any covered activity in any given year, the Permit Holder shall provide the Division with proof that it has secured adequate funding to implement the annual requirements of the Plan consistent with the budget provided in the Plan.

11. Impact avoidance and minimization procedures to protect Piping Plovers and Least Terns shall be carried out for all 3 years and implemented in accordance with the Plan.

12. Interim and annual reporting shall be conducted in accordance with the Plan, including submittal of an annual report by October 15 of each year. Annual reports shall provide an update on state-listed plants including existing and novel populations.

13. The Division shall be notified by October 15 each year, in the form of an NHESP Rare Animal or Plant Observation Form, of any state-listed plant species or species other than Piping Plovers and terns that are observed on the property. Preferably, notification will be through the Division's data submittal tool, the Vernal Pool & Rare Species (VPRS) Information System. VPRS and our paper observations forms can be found at: http://www.mass.gov/dfw/nhesp/vprs.

14. Prior to the implementation of the covered activities in 2020, the Permit Holder shall carry out selective predator management in accordance with the plan set forth in Attachment A. Prior to carrying out covered activities in 2021 and 2022, the Permit holder shall provide annual selective

predator management scopes of work, developed by qualified experts, for review and approval by the Division. The Division-approved annual scope of work shall be carried out by the Permit Holder in advance of implementing the Activity in that year. The Permit Holder shall be responsible for meeting the mitigation ratios and commitments set forth in Part 6 of Attachment A and may be required by the Division to perform supplemental work in the following beach season to address year-to-year changes in the plover and tern breeding populations, as described in the HCP.

15. In accordance with the HCP, the Permit Holder must obtain written reauthorization from the Division to carry out covered activities prior to the 2021 and 2022 beach seasons. No covered activities may be carried out in 2021 or 2022 prior to receipt of written reauthorization. As set forth in the HCP, the Division may, in its sole discretion, reduce the allowable take exposure for those years or decline to reauthorize any exposure.

16. A violation of any condition of this Permit, COI, HCP or the ITP will result in an unauthorized Take pursuant to M.G.L. c. 131A or under the HCP or ITP and may be subject to civil and or criminal penalties pursuant to M.G.L. c. 131A. In the event of such non-compliance, the Division may suspend, or revoke this Permit and the COI. The Permit Holder shall have the right to request an appeal within 30 days of any suspension or revocation of this Permit or COI in accordance with the requirements of Condition No. 17 below.

17. Notice of Appeal Rights: This Determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.23.. Any person aggrieved by this decision shall have the right to an adjudicatory hearing at the Division pursuant to M.G.L. c. 30A, s.11 in accordance with the procedures for informal hearings set forth in 801 CMR 1.02 and 1.03.

Any notice of claim for an adjudicatory hearing shall be made in writing and be accompanied by a filing fee in the amount of $500.00. The notice of claim shall be sent to the Division by certified mail, hand delivered or postmarked within 21 days of the date of the Division's Determination to:

Mark S. Tisa
Director
Division of Fisheries and Wildlife
Field Headquarters
One Rabbit Hill Road
Westborough, MA 01581

Any notice of claim for an adjudicatory hearing shall include the following information:

1. The file number for the Activity;
2. The complete name, address and telephone number of the person filing the request, and the name, address and telephone number of any authorized representative;
3. The specific facts that demonstrate that a party filing a notice of claim satisfies the requirements of an "aggrieved person," including but not limited to (a) how they have a definite interest in the matters in contention within the scope of interests or area of concern of M.G.L. c. 131A or the regulations at 321 CMR 10.00 and (b) have suffered an actual injury which is special and different from that of the public and which has resulted from violation of a duty owed to them by the Division;
4. A clear statement that an adjudicatory hearing is being requested;
5. A clear and concise statement of facts which are grounds for the proceeding, the specific objections to the actions of the Division and the basis for those objections; and the relief

sought through the adjudicatory hearing; and a statement that a copy of the request has been sent by certified mail or hand delivered to the applicant and the Record Owner, if different from the applicant.

Jonathan Regosin, Deputy Director
Massachusetts Division of Fisheries & Wildlife

On this 4th day of June 2020, before me, the undersigned notary public, personally appeared Jonathan Regosin, Deputy Director, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Emily Melissa Holt, Notary Public
My Commission expires: July 12, 2024

**Conservation Permit 020-355.DFW**
**Issued this 4th day of June, 2020**
**Permit Expires: 1 December 2022**

EMILY MELISSA HOLT
MY COMM. EXPIRES
JULY 12, 2024
NOTARY PUBLIC
COMMONWEALTH OF
MASSACHUSETTS

ACKNOWLEDGEMENT AND ACCEPTANCE OF ALL TERMS OF THIS CONSERVATION PERMIT

The undersigned below agrees that commencement of any work authorized by and described in this Conservation and Management Permit constitutes acknowledgement and acceptance of all terms of this permit.

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| Russell Hopping, Lead Ecologist, Coastal Ecology<br>Trustees of Reservations |

COMMONWEALTH OF MASSACHUSETTS

On this _____day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public

_____

My commission expires: _____

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## Distribution List

Russell Hopping, Trustees of Reservations
Matthew Pelikan, Trustees of Reservations
Edgartown Board of Selectman
Edgartown Conservation Commission
DEP Southeast Regional Office, Wetlands Program
David Simmons, USFWS
Susi von Oettingen, USFWS