



DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581

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MASS.GOV/MASSWILDLIFE

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

DATE	February 24, 2022
CONSERVATION PERMIT NO.:	022-391.DFW
NHESP FILE NO.	16-35397
PERMIT HOLDER	Town of Orleans 19 School Road Orleans MA 02653
PROJECT	Inclusion in the Massachusetts Habitat Conservation Plan for Piping Plover on Nauset Beach, Orleans

A. Permit Authority

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 (the "Permit") to the Town of Orleans (the "Permit Holder"). This Permit and the associated Town of Orleans Certificate of Inclusion (the "COI") in the Final Massachusetts Division of Fisheries & Wildlife Habitat Conservation Plan (HCP) for Piping Plover, dated February 24, 2022, issued in accordance with the Incidental Take Permit (ITP) No. TE01281C-0 for Piping Plover, dated July 8, 2016, authorize the Take of the Piping Plover (*Charadrius melodus*), which is State-listed as "Threatened" pursuant to the MESA and federally listed as "Threatened" pursuant to the U.S. Endangered Species Act (ESA), Least Tern (*Sternula antillarum*), which is State-listed as "Special Concern" pursuant to the MESA, and Diamond-backed Terrapin (*Malaclemys terrapin*), which is State-listed as "Threatened" pursuant to the MESA, arising out of the Covered Activity(ies) ("Activities") detailed below and more particularly described in the documents referenced herein at Nauset Beach, Orleans, Massachusetts (the "Property").

B. Description of Take

The HCP and ITP authorize specific Covered Activities, which are actions that have the potential to result in Take of Piping Plovers and state-listed species of terns as well as their habitats. The Activities may reduce availability of or access to nesting, foraging, loafing and refuge habitats and expose Plovers and Terns to increased disturbance and mortality risk (collectively, Take exposures). In this case, the Activities will result in up to 2 Take exposures for Piping Plover, 20 Take exposures for Least Tern, and a heightened risk of mortality for Diamond-backed Terrapin from oversand vehicle use.

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PERMITTED ACTIVITIES FOR PIPING PLOVER

	Covered Activity			
	<i>Use of roads and parking lots in the vicinity of unfledged chicks</i>	<i>Recreation and beach operations</i>	<i>Oversand vehicle use in vicinity of unfledged chicks</i>	<i>Total*</i>
<i>Max. no. permitted take exposures*</i>			2 broods	2 broods
<u><i>Specific activities permitted: (marked with "X")</i></u>				
· <i>Reduced proactive symbolic fencing</i>				
· <i>Reduced fencing around the nest</i>				
· <i>Beach raking</i>				
· <i>Chick herding</i>				
· <i>Nest moving</i>				
· <i>Other</i>				
<i>Max. permitted acreage to be affected</i>				1.44 ac, inclusive of Least Tern, Diamond-backed Terrapin

* 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 stated for individual Covered Activities; however, the *Total* is a not-to-exceed value.

PERMITTED ACTIVITIES FOR LEAST TERN

	Covered Activity			
	<i>Use of roads and parking lots in the vicinity of unfledged chicks</i>	<i>Recreation and beach operations</i>	<i>Oversand vehicle use in vicinity of unfledged chicks</i>	<i>Total*</i>
<i>Max. no. permitted take exposures*</i>			20 chicks	20 chicks
<u><i>Specific activities permitted: (marked with "X")</i></u>				
· <i>Reduced proactive symbolic fencing</i>				
· <i>Reduced fencing around the nest</i>				
· <i>Beach raking</i>				
· <i>Chick herding</i>				
· <i>Nest moving</i>				
· <i>Other</i>				

<i>Max. permitted acreage to be affected</i>				1.44 ac, inclusive of Piping Plover, Diamond-backed Terrapin
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* 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 stated for individual Covered Activities; however, the *Total* is a not-to-exceed value.

C. Permit Performance Standards

Under the authority granted by and in accordance with MGL c131A§3 and 321 CMR 10.23, the Director may permit the Take 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 Project or Activity, 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 conservation of the Piping Plover, Least Tern, and Diamond-backed Terrapin.

D. Conservation and Management Plan

The Permit Holder has proposed, by way of the Permit Application, multiple measures to avoid and minimize the number of Take exposures associated with the Activities. The Permit Holder has proposed, by way of the Permit Application, the following measures to provide a long-term Net Benefit to the conservation of Piping Plover and Least Tern for Take exposures that cannot be avoided:

REQUIRED MITIGATION

Type	Y/N	Total amount	Pairs to benefit/Credits
<i>Pay fee for offsite mitigation (\$5800 - \$6150 per take exposure; see above)</i>	Y	\$11,600	5 Piping Plover, 35 Least Tern
<i>Applicant-implemented activities:</i>			
· <i>Predator control</i>		As detailed in IAMP submitted with application	
· <i>Increased education & outreach</i>			
· <i>Increased law enforcement</i>			

· Habitat management		
· Other		

Additionally, Permit Holder will install signage, monitor the OSV corridor for Diamond-backed Terrapin nests and relocate and protect such nests and any hatchlings away from the corridor to enhance hatching success and hatchling survival.

Therefore, the Activities can be permitted pursuant to the MESA. This Permit is issued to condition the Project and to provide a long-term Net Benefit to the Piping Plover, Least Tern, and Diamond-backed Terrapin.

E. Documents and Plans of Records

In accordance with the documents and plans of record submitted to the Division entitled:

Town of Orleans Request for Certificate of Inclusion (COI) on Nauset Beach, dated January 2022

and any other plans and documents referenced herein (collectively, the “Plans of Record” or “Plan”), this Permit is issued with the following General and Special Conditions:

F. General Conditions

GC 1.		The Permit Holder shall comply with all General and Special Conditions of this Permit and carry out the Activities consistent with all Division-approved plans and supporting documents referenced herein, except as otherwise approved by the Division in writing.
GC 2.		A violation of any General or Special 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. Should the Permit Holder violate any General or Special Condition of this Permit, the Division reserves the right to require an immediate cessation of Activities (as defined in Special Condition #1), in whole or in part and at its sole discretion, and may suspend or revoke this Permit and the COI.
GC 3.		The Permit Holder shall submit in writing any documents, plans, reports, or other items required for submission in accordance with this Permit, for review and written approval by the Division, except as otherwise approved by the Division in writing. Unless otherwise required herein, any submission or notification to the Division in accordance with the terms and conditions of this Permit shall be via email at Coastal.Waterbirds@mass.gov.
GC 4.		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 additional, reasonable information not otherwise required by this Permit but deemed necessary by the Division to complete its evaluation.
GC 5.		Any land protected to achieve a long-term Net Benefit associated with this Permit shall remain undeveloped and protected as habitat for State-listed Species in perpetuity.
GC 6.		This Permit shall not preclude the review of future projects on the Property that are subject to the Wetlands Protection Act Regulations (310 CMR 10.37, 10.58(4)(b), 10.59), as applicable, by the Division.

GC 7.	This Permit does not relieve the Permit Holder of the necessity of complying with all applicable federal, state or local statutes, ordinances, bylaws or regulations, including but not limited to those administered by the Town of Orleans Conservation Commission and the Massachusetts Department of Environmental Protection.
GC 8.	All Activities shall be in conformance with the Plans of Record. Any changes, updates, or revisions to the Project, or any additional work beyond that shown on the Plans of Record, shall require additional review and approval by the Division prior to implementation, pursuant to General Condition #9. This Permit prohibits any work not specifically authorized by this Permit, unless otherwise approved by the Division in writing prior to performing the additional work.
GC 9.	Any proposed change to any plan identified in this Permit, or to the State-listed species conservation and management plan required by way of this Permit, 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 proposed plan change.
GC 10.	<p>In the event the subject property is sold or leased, the new owner or lessee shall not automatically be covered under this Permit. The Permit Holder must inform the buyer or lessee of this Permit in writing with a copy to the Division prior to the transfer, sale, or leasing.</p> <p>If the new owner or lessee desires to continue performing the Activities, it must submit to the Division a written request for coverage under the ESA and MESA for the Take of Piping Plover, Least Tern, and Diamond-backed Terrapin. The written request shall include the following:</p> <ul style="list-style-type: none"> • Confirmation that they understand and assent to the terms of the HCP, this Permit, and the Division's ITP (collectively, the "Authorizations"); • Demonstrate its financial ability to ensure compliance with the Plan and all conditions required by way of the Authorizations, including mitigation plan requirements; and • Demonstrate its eligibility (including appropriate qualifications and experience) under the provisions of the HCP. <p>The Division will review the information submitted and determine, in writing, whether the Permit can be transferred to the new owner or lessee. The Division retains the right to require the submittal of additional, reasonable information to evaluate the request. If necessary to ensure adherence to the terms and conditions of the Authorizations, the Division may impose additional conditions on the new owner or lessee as part of its approval. The Division, at its sole discretion, reserves the right to terminate the COI and require that the new owner or lessee reapply for new Permit.</p>
GC 11.	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 that it has received of copies of and will ensure compliance with the terms and conditions of the COI, HCP and ITP, official copies of which are located at the Division's field headquarters, 1 Rabbit Hill Rd., Westborough, MA.
GC 12.	Other than as expressly authorized by this Permit, the Permit Holder shall carry out beach use and management in compliance with the relevant State (<i>Guidelines for Managing Recreational Use of Beaches to Protect Piping Plovers, Terns and Their Habitats in Massachusetts</i>) and Federal (<i>Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act</i>) guidelines effective during the term of the Permit.

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G. Special Conditions:

SC 1.		<u>Activities Authorized by the Permit:</u> This Permit and the associated COI in the Final Massachusetts Division of Fisheries & Wildlife HCP for Piping Plover authorize the exposure of up to 2 Piping Plover broods, 20 Least Tern chicks, and Diamond-backed Terrapins arising out of the Activities described under Section B of this Permit and in the Plan, subject to limitations described in the Plan, and set forth in this Permit and the COI. The Activities also include any other activity required by the Division as a condition of this Permit.
SC 2.		<u>Permit Duration:</u> This Permit is valid in 2022, 2023, and 2024, provided that all conditions and reauthorizations are met.
SC 3.		<u>Permit Site:</u> All Activities must be confined to the property(ies) shown in the Plan, provided that the Permit Holder has provided in advance to the Division written permission from each property owner for the Permit Holder to use the property for the Activities described in and authorized by this Permit.
SC 4.		<u>Avoidance and Minimization Procedures:</u> Procedures to protect Piping Plovers, Least Terns, and Diamond-backed Terrapins shall be carried out in 2022, 2023, and 2024 and implemented in accordance with the Plan, unless otherwise approved in writing by the Division.
SC 5.		<u>Offsite Mitigation for State- and Federally listed Species – Annual Funding:</u> In order to provide a Net Benefit to the conservation of the State-listed species impacted by this Project, the Permit Holder has proposed to provide, annually, restricted funding in the amount of \$5,800 per Take exposure (total, \$11,600) (the “Funds”) for activities (including but not limited to: selective predator management; education, outreach, and increased law enforcement; and nesting habitat improvement) to benefit the Piping Plovers, Least Terns, and Diamond-backed Terrapins in Massachusetts. The Permit Holder has chosen to fulfill this obligation by providing restricted funding to an escrow account, subject to an agreement that has been approved by the Division. Any changes to said agreement, other than typographical or grammatical changes, must be approved in writing by the Division before the account is established. Therefore, prior to the initiation of Activities and prior to April 1, 2022 , the Permit Holder shall send written confirmation to the Division of depositing \$11,600 into the account subject to the agreement, including written confirmation of deposit receipt and an electronic copy of the executed agreement, unless a sufficient unexpired balance remains from a previous permit term. Prior to conducting Activities in 2023 and 2024, and by February 15 of each year, the Permit Holder shall provide additional funding to achieve the aforementioned required balance sufficient to offset the maximum number of take exposures. The Division, and not the Permit Holder, shall have sole responsibility for ensuring that said funds are used for activities to benefit the State-listed species impacted by this Project.
SC 6.		<u>Annual Notification of Permit Compliance Manager:</u> Prior to the initiation of Activities in 2022, and by March 15 in 2023 and 2024, the Permit Holder shall notify the Division in writing of the name, address, email, and telephone numbers of the manager responsible for compliance with this Permit. The Permit Holder shall provide updated information in writing to the Division should a new or additional manager be designated after the Activities have commenced.
SC 7.		<u>Annual Proof of Funding:</u> Prior to the implementation of the Plan or any Activities in a given year, the Permit Holder shall provide the Division, by March 15 , with written proof that it has secured adequate funding to implement the annual requirements of the Plan consistent with the budget provided in the

		Plan. The responsible fiscal officer of the Permit Holder's organization shall confirm that adequate funding is available and provide supporting documentation of funds set aside for all aspects of Plan implementation.
SC 8.		<u>Annual Notification of Implementation</u> : The Permit Holder shall notify the Division at least 24 hours prior to initiating any Activities affecting a new territory, pair, nest, or brood of Piping Plover or Least Tern colony not previously exposed. The Permit Holder must notify the Division again when Activities conclude.
SC 9.		<u>Reporting Requirements</u> : Interim and annual reporting to the Division shall be conducted in accordance with the Plan, including weekly updates during implementation of the Activities and submittal of an annual report by October 15 of each year. Additional guidance on reporting is available from the Division.
SC 10.		<u>Annual Request for Reauthorization</u> : In accordance with the HCP, and by March 15 each year, the Permit Holder must request written reauthorization from the Division to carry out Activities prior to the 2023 and 2024 beach seasons. In order to reauthorize, the Division must receive confirmation of adequate funding, scopes of work for mitigation activities and/or proof of escrow/mitigation fund deposits, and contact information for manager(s) responsible for compliance with this Permit. Submit to Coastal.Waterbirds@mass.gov . No Activities may be carried out in 2023 or 2024 prior to receipt of written reauthorization from the Division. 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 Take exposure.
SC 11.		<u>Observations of State-listed Species</u> : The Division shall be notified, in the form of an NHESP Rare Animal or Plant Observation Form, by October 15 of any State-listed species observed on the Property. Preferred notification is through the Division's Heritage Hub. (https://www.mass.gov/info-details/overview-of-the-heritage-hub)

H. Notice of Appeal of Rights:

This Permit 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.

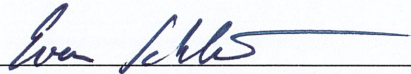
Any notice of claim for an adjudicatory hearing shall be made in writing and be accompanied by a filing fee in the amount of \$500.00. The notice of claim shall be sent to the Division by certified mail, hand delivered or postmarked within twenty-one (21) days of the date of issuance of this Permit to:

Mark S. Tisa, Director
Massachusetts 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 project;
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.



Everose Schlüter, Assistant Director
Massachusetts Division of Fisheries & Wildlife

On this 24th day of February, 2022, before me, the undersigned notary public, personally appeared Everose Schlüter, Assistant 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

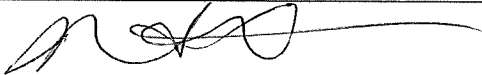
Conservation and Management Permit 022-391.DFW

Issued: February 24, 2022

Expires: December 31, 2024

Acknowledgement and Acceptance of all Terms of this Permit

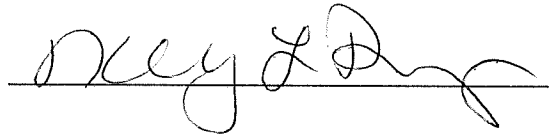
The undersigned below agrees that commencement of any work authorized by and described in this Permit constitutes acknowledgement and acceptance of all terms of this Permit.

	
Signatory 1 Organization	Town of Orleans

COMMONWEALTH OF MASSACHUSETTS

On this 25th day of Feb, 2022, before me, the undersigned notary public, personally appeared Nate Sears, proved to me through satisfactory evidence of identification which was personally known 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:



SEAL

My Commission Expires: Feb 5, 2027



Kelly L. Darling
NOTARY PUBLIC
Commonwealth of
Massachusetts
My Commission Expires
2/5/2027

Distribution List

Orleans Board of Selectmen
Orleans Conservation Commission
DEP Southeast Regional Office