



MASSWILDLIFE

## DIVISION OF FISHERIES & WILDLIFE

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May 14, 2021

Newburyport Conservation Commission  
Newburyport City Hall  
60 Pleasant Street  
Newburyport MA 01950

Mayor Donna Holaday  
City of Newburyport  
60 Pleasant Street  
Newburyport MA 01950

RE:      Applicant:                    Mayor Donna Holaday, City of Newburyport  
         Project Location:            North of Reservation Terrace (69<sup>th</sup> Street to north of 77<sup>th</sup> Street)  
         Project Description:        Reservation Terrace Shoreline Protection Project – sand-filled coir system  
         DEP Wetlands File No.:    051-1050  
         **NHESP File No.:**            **16-35980**

Dear Commissioners & Applicant:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the “Division”) received a Notice of Intent with site plans (dated April 2021) in compliance with the rare wildlife species section of the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.37). The Division also received the MESA Review Checklist and supporting documentation for review pursuant to the MA Endangered Species Act Regulations (321 CMR 10.18).

The Division has determined that this Project, as currently proposed, will occur **within** the actual habitat for Piping Plover (*Charadrius melodus*) and Seabeach Needlgrass (*Aristida tuberculosa*), both species are state listed as Threatened pursuant to the MESA. These species and their habitats are protected pursuant to the MESA and in accordance with the rare species provisions of the WPA, as appropriate. Fact sheets for state-listed species can be found at [www.mass.gov/nhesp](http://www.mass.gov/nhesp). The Piping Plover is federally protected as Threatened pursuant to the U.S. Endangered Species Act (ESA, 50 CFR 17.11).

The purpose of the Division’s review of the proposed project under the WPA regulations is to determine whether the project will have any adverse effects on the Resource Areas Habitats of state-listed species. The purpose of the Division’s review under the MESA regulations is to determine whether a Take of state-listed species will result from the proposed project.

Based upon a review of the information provided, the proposed project is designed to provide a short-term solution to erosion and flooding issues along Reservation Terrace. As described, the proposed project includes installation of a sand-filled coir envelope system along ±830-foot section of shoreline. The coir system is proposed with a maximum of three tiers: up to two envelopes buried below grade, two partially buried envelopes and one envelope along the top. As part of the coir system, the existing concrete blocks where encountered along the alignment will be repositioned to become a component of

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the below-grade tier with a sand-filled envelope placed seaward of the concrete block. In areas where concrete blocks are not present, up to two sand-filled tiers could be utilized. Each sand-filled envelope is approximately 4 ft wide, 4 ft high, and 40 ft long; stockpiled sand and a compatible offsite sand source will be utilized to fill the envelopes. The system will be tapered at the ends to tie into the existing grade and reduce end scour. Construction access will occur from 73<sup>rd</sup> Street and 75<sup>th</sup> Street and construction staging is to be located within an existing paved parking lot.

**WETLANDS PROTECTION ACT (WPA) & MASSACHUSETTS ENDANGERED SPECIES ACT (MESA)**

Based on the information provided and the information contained in our database, it is the opinion of the Division that a portion of this project, as currently proposed, **must be conditioned in order to avoid adverse effects** to the Resource Area Habitats of state-listed wildlife species (310 CMR 10.37) and **must be conditioned in order to avoid a prohibited Take** of state-listed species (321 CMR 10.18(2)(a)). The following conditions must be met:

- 1) **System Installation & Limit of Work.** All work, including access, staging, and installation shall conform to the plan titled “PROPOSED CONDITIONS PLAN COIR ENVELOPE EROSION PROTECTION” dated April 2021 prepared by GZAGeoEnvironmental, Inc. (hereinafter the “PLAN”). Any changes or modifications to the project or any additional work beyond that shown on the PLAN shall require additional review and written approval from the Division.
- 2) **Time of Year Restriction.** Work associated with installation and maintenance of the Reservation Terrace Short-Term Shoreline Protection project shall not occur during the period **April 1 – August 31**, unless otherwise approved in writing by the Division.
- 3) **Sand Cover/Nourishment.** Sand excavated from the installation of the bottom tier(s) of the system shall remain onsite and used as cover over the top tier of coir system. Ultraviolet light will hasten degradation of the coir system; to the extent possible sand cover should be maintained with an offsite compatible source or other compatible stockpiled sand.
- 4) **State-listed Species Protection.** The Property Owners have the responsibility of protecting breeding Piping Plovers and state-listed species of terns that may nest on this section of beach. Therefore, they must allow regular monitoring for the presence of Piping Plovers. Each year, beginning April 1, a qualified shorebird monitor shall determine whether territorial, courting, or nesting Piping Plovers or state-listed species of terns are present at the site and if so, shall erect and maintain warning signs and symbolic fencing (string or rope fencing and warning signs) to protect nesting habitat, breeding adults, nests, and chicks from disturbance or human-caused mortality. These fenced areas shall be managed in accordance with the Massachusetts Division of Fisheries and Wildlife document of April 1993 titled *Guidelines For Managing Recreational Use Of Beaches To Protect Piping Plovers, Terns, And Their Habitats In Massachusetts (“Guidelines”)*.
- 5) **Compliance Report and As-Built Plan:** Within ninety (90) days of completion of work, the Applicant shall submit as-built site plans and a brief written report including, photographs showing final constructed conditions with particular emphasis on demonstrating compliance with the Conditions herein and include documentation as necessary.
- 6) **Authorization Duration.** This authorization is valid for 5 years from the date of issuance and limited to the project described herein. Thereafter, the applicant shall re-file under the MESA.

7) **Notices.**

- a. Upon filing for renewal, extension, or amendment of the Orders of Conditions, the applicant shall contact the Division for written response regarding impacts to Resource Area habitat of state-listed wildlife.
- b. Formal authorization or approval must be obtained the Department of Conservation and Recreation (DCR) in advance of any construction access or work upon their property.

Provided these conditions are included in any approving Orders of Conditions issued by the Conservation Commission, and the applicant complies with all the above noted conditions, the project will not result in an adverse impact to the resource area habitats of state-listed wildlife species pursuant to the WPA and will not result in a prohibited Take pursuant to the MESA. A copy of the final Order of Conditions shall be sent to the NHESP simultaneously with the applicant as stated in the Procedures section of the WPA (310 CMR 10.05(6)(e)).

We note that all work is subject to the anti-segmentation provisions (321 CMR 10.16) of the MESA. This determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. Any changes to the proposed project or any additional work beyond that shown on the site plans may require an additional filing with the Division pursuant to the MESA. This determination is valid for five years. This project may be subject to further review if no physical work is commenced within five years from the date of issuance, or if there is a change to the project.

Please note that this determination addresses only the matter of state-listed species and their habitats. If you have any questions regarding this letter please contact Amy Hoenig, Endangered Species Review Biologist, at (508) 389-6364.

Sincerely,



Everose Schlüter, Ph.D.  
Assistant Director

cc: MA DEP Northeast Region  
Anders Bjarngard, GZA GeoEnvironmental, Inc.  
Priscilla Geigis, Deputy Commissioner, MA DCR