



MASSWILDLIFE

## DIVISION OF FISHERIES & WILDLIFE

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August 31, 2021

Chris Our et al  
56 Obed Brooks Road  
Harwich, MA 02645

RE: Applicant: Chris Our et al  
Project Location: Off Little Pond Road, Harwich  
Project Description: 7 Lot Residential Subdivision  
NHESP File No.: **21-40405**

Dear Applicant:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") received the MESA Project Review Checklist, Project Plans (dated July 14, 2021) and other required materials for review pursuant to the Massachusetts Endangered Species Act (MESA) (MGL c.131A) and its implementing regulations (321 CMR 10.00).

The project includes the development of a 7 lot residential subdivision, totaling  $\pm 4.3$  acres of disturbance on a  $\pm 9.0$  acre parcel. In addition,  $\pm 5.5$  acres of the  $\pm 9.0$  acre parcel is proposed to be permanently protected and visibly monumented as a "Vegetation and Wildlife Conservancy Area".

The MESA is administered by the Division, and prohibits the Take of state-listed species. The Take of state-listed species is defined as "in reference to animals...harm...kill...disrupt the nesting, breeding, feeding or migratory activity...and in reference to plants...collect, pick, kill, transplant, cut or process...Disruption of nesting, breeding, feeding, or migratory activity may result from, but is not limited to, the modification, degradation, or destruction of Habitat" of state-listed species (321 CMR 10.02).

The Division has determined that this Project, as currently proposed, will occur **within** the actual habitat of the Eastern Box Turtle (*Terrapene carolina*), a species state-listed as Special Concern. This species and its habitats are protected in accordance with the MESA. A fact sheet for this species can be found on our website: [www.mass.gov/nhESP](http://www.mass.gov/nhESP).

Based on the information provided and the information contained in our database, the Division finds that this project, as currently proposed, **must be conditioned** in order to avoid a prohibited Take of state-listed species (321 CMR 10.18(2)(a)). To avoid a prohibited Take of state-listed species, the following condition must be met:

- The Applicant shall submit an Eastern Box Turtle Protection Plan. Said Protection Plan must be approved in writing by the Division prior to the start of Work. The Division is available for consultation on the development of the plan.

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- It is the Division's understanding that  $\pm 5.5$  acres are proposed to be permanently protected and monumented as "Vegetation and Wildlife Conservancy Area". The Division requests proof of land protection and monumentation of the Conservancy Area.

Provided the above-noted conditions are fully implemented and there are no changes to the project plans, this project will not result in a Take of state-listed species. 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 project may be subject to further review if no physical work is commenced within five years from the date of issuance of this determination, or if there is a change to the project.

The Division notes that any future projects or activities proposed on the property which are (a) located outside of the approved limit of work shown on the site plan, (b) not exempt from review pursuant to 321 CMR 10.14, and (c) located within mapped Priority Habitat as indicated in the Massachusetts Natural Heritage Atlas, will require review by the Division pursuant to MESA. Furthermore, 321 CMR 10.16 provides that projects shall not be segmented or phased to evade or defer the review requirements under MESA. If the Division determines, based on the considerations provided for in 321 CMR 10.16, that a future project or activity proposed on the property is part of a larger common project or scheme, it may evaluate the cumulative impacts of the existing and proposed segments of the common project when reviewing the future proposed project or activity pursuant to MESA.

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 David Paulson, Senior Endangered Species Review Biologist, at (508) 389-6366.

Sincerely,



Everose Schlüter, Ph.D.  
Assistant Director

cc: Daniel A. Ojala, Down Cape Engineering, Inc.