

November 6, 2018

Email (eantonietti@nantucket-ma.gov)

Town of Nantucket
Zoning Board of Appeals
c/o Eleanor Antonietti, Zoning Administrator
2 Fairgrounds Road
Nantucket, MA 02554

**Re: Surfside Crossing—NHESP Review Summary
3, 5, 7, & 9 South Shore Road
Map 67, Parcels 336, 336.7, 336.8, & 336.9
Nantucket, Massachusetts**

[LEC File #: CCI\17-274.01]

Dear Members of the Board:

On behalf of the Applicant, Surfside Crossing, LLC, LEC Environmental Consultants, Inc., (LEC) is providing this letter to summarize Massachusetts Natural Heritage and Endangered Species Program’s (NHESP) review of the Surfside Crossing project, including NHESP’s feedback specific to state-listed Lepidoptera, the Northern Long-Eared Bat (*Myotis septentrionalis*), and rare plants, most notably the New England Blazing Star (*Liatris novae-angliae*). Some of the attached documents have been previously submitted to the Board, but we felt it would be helpful to provide a complete NHESP review summary with all the relevant documents attached together.

Lepidoptera

As stated during LEC’s presentation at the October 30, 2018 meeting, NHESP has now issued a determination letter, dated October 19, 2018 (Attachment 1), following the completion of the NHESP-approved Lepidoptera (moth) study (Attachment 2) and submission of the formal MESA Project Review Application (Attachment 3). NHESP has determined that the project, as originally proposed, will result in a “take” of only one state-listed rare species, the Coastal Heathland Cutworm (*Abagrotis nefascia*), a species of “Special Concern” protected under the *Massachusetts Endangered Species Act* (M.G.L. c. 131A) and its implementing *Regulations* (321 CMR 10.00; collectively “MESA”). The “take” determination under 321 CMR 10.18 (2)(b)), results from the potential *harming or killing of individuals, interference with feeding, breeding, over-wintering and migratory activities, and the permanent loss of suitable habitat for this species.*

The project consequently requires a MESA Conservation and Management Permit (CMP). LEC has consulted with NHESP at length to review the performance standards to qualify for a CMP. Following issuance of the determination letter on October 19, 2018, NHESP confirmed, via email on October 29,



2018 (Attachment 4), the habitat impacts (13.56± acres) and corresponding mitigation requirements associated with the project that will be incorporated into the CMP. More specifically, off-site mitigation is proposed to be provided through: Land protection of up to 20.34± acres via an Executive Office of Energy & Environmental Affairs - Division of Conservation Services approved Conservation Restriction or conveyance in fee to a qualified government entity approved by NHESP; and/or funding directly to a qualified conservation entity to support a specific, NHESP-approved land protection, conservation research, habitat management, and/or conservation planning project(s) to benefit the Coastal Heathland Cutworm. The specific details of the mitigation requirements (i.e., long-term Net Benefit) will be finalized through NHESP's review of the CMP Application. The potential for off-site land protection will be reviewed first.

The Applicant looks forward to working cooperatively with any on-island conservation group on appropriate land protection and/or funding for land protection, conservation research, habitat management, and/or conservation planning project(s) approved by NHESP.

Northern Long-Eared Bat

In response to the Select Board's September 27, 2018 letter to NHESP, an email response was provided by NHESP on October 2, 2018 (Attachment 5). To provide background, the Northern Long-Eared Bat is an "Endangered" species protected under MESA. As the Northern Long-Eared Bat is mapped statewide by the U.S. Fish & Wildlife Service (USFWS), projects in Massachusetts that result in tree removal activities shall comply with the 4(d) rule under the federal Endangered Species Act (ESA, 50 CFR 17.11), effective 2/16/2016, which states:

"Incidental take resulting from tree removal is prohibited if: 1) Occurs within 0.25 mile radius of known northern long-eared bat hibernacula or 2) cuts or destroys known occupied maternity roost trees, or any other trees within a 150-foot radius from the known maternity tree during the pup season (June 1 through July 31)."

In NHESP's October 2, 2018 email, Jesse Leddick, Chief of Environmental Review, states that *the Division (NHESP) reviews proposed projects or activities within 0.25 miles of known winter hibernacula (caves or mines) and within 150 feet of known roost trees – an approach that is consistent with USFWS's 4(d) rule under the ESA. We also note that the 4(d) rule specifically does not apply to roosts or hibernacula that occur in structures, where Northern Long-eared Bats overwinter on Nantucket.*

As reviewed by LEC during the October 30, 2018 ZBA meeting, the Applicant is committed to no tree clearing during June and July of any year in line with the 4(d) rule. NHESP has confirmed in the October 2, 2018 email that *this time of year restriction would render surveys on or in the immediate vicinity of the property unnecessary. As further affirmed by NHESP, if documented observations of Northern Long-eared Bat roosting within 150 feet of the property were to be submitted to and approved by the Division, we could review the proposed project relative to this species. Although the Division will not render a final determination until it receives a formal filing, in this instance and consistent with the 4(d) rule, the*



Division would then likely require that the proponent implement appropriate protective measures (e.g., no tree removal between June 1st and July 31st of any year). Subsequent to the October 2, 2018 email, NHESP issued the formal determination on October 19, 2018, confirming the “take” of only the Coastal Heathland Cutworm. However, the Applicant will implement the no tree removal time of year restrictions in June and July.

State-listed Rare Plants

NHESP’s October 2, 2018 email also addressed state-listed vascular plants. In the email, NHESP notes that the *New England Blazing Star* was recently observed immediately north of the Surfside Crossing property within existing sandplain grassland/heathland habitat. I would note that these plants were observed during surveys performed at the request of the Division, and that they were only found within suitable sandplain grassland/heathland habitat. As indicated by TNC’s Habitat Mapping for Nantucket as well as current aerial photographs, the Surfside Crossing property – which is dominated by dense shrubland and pitch pine mixed shrub woodland habitat - does not appear to provide suitable habitat for these plant species. As detailed above, the Division delineates Priority Habitat for state-listed species based on current, verified observations of listed species and where there is suitable habitat present for the listed species. Therefore, the property does not meet the criteria for mapping as Priority Habitat for these listed plants and the Division will not review the proposed project relative to these species.

Summary

Based on the existing and proposed conditions along with all information submitted by the Applicant and public to date, NHESP has determined that the Surfside Crossing project will only result in a “take” of the Coastal Heathland Cutworm and will not require field surveys for the Northern Long-Eared Bat or state-listed rare plants (e.g., New England Blazing Star). The Applicant will continue to work with NHESP on the specific details of the off-site mitigation, as required through a CMP.

LEC appreciates the opportunity to review Lepidoptera, Northern Long-Eared Bat, and rare plant questions discussed to date and include relevant correspondence from NHESP. If you should have any questions in advance of the November 27, 2018 meeting, please do not hesitate to inquire.

Sincerely,

LEC Environmental Consultants, Inc.

Brian T. Madden
Wildlife Scientist

Attachments

cc: Surfside Crossing, LLC; Reade/Hanley; Freeman; Select Board (c/o Erika Mooney); Libby Gibson

Attachment 1

NHESP Determination Letter, Dated October 19, 2018



MASSWILDLIFE

DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581

p: (508) 389-6300 | f: (508) 389-7890

MASS.GOV/MASSWILDLIFE

October 19, 2018

Surfside Crossing LLC
c/o Jamie Feeley
37 Old South Road, Unit #6
Nantucket, MA 02554

RE: Applicant: Surfside Crossing LLC
 Project Location: 3, 5, 7 and 9 South Shore Road, NANTUCKET
 Project Description: Construction of Residential Subdivision
 NHESP File No.: **12-31035**

Dear Applicant:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") received the MESA Project Review Checklist, site plans entitled "*Surfside Crossing*" A Proposed 40B Development in Nantucket, Massachusetts (dated February 15, 2018; prepared by Bracken Engineering, Inc.) and additional materials in compliance with the Massachusetts Endangered Species Act (MGL. c. 131A) and its implementing regulations (321 CMR 10.00) (MESA).

The MESA prohibits the Take of state-listed species, which includes actions that "in reference to animals, means to harass, harm, pursue, hunt, shoot, hound, kill, trap, capture, collect, process, disrupt the nesting, breeding, feeding or migratory activity or attempt to engage in any such conduct, or to assist such conduct... 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 wildlife species" (321 CMR 10.02).

The Division has determined that this project, as currently proposed, will occur within the mapped *Priority Habitat* of several state-listed Lepidoptera species according to the Massachusetts Natural Heritage Atlas (14th Edition). These species and their habitats are protected in accordance with the MESA. Fact sheets for state-listed species can be found at www.mass.gov/nhesp. Surveys for state-listed Lepidoptera were conducted on the property by a Division-approved biologist in 2016, in which Coastal Heathland Cutworm (*Abagrotis nefascia*), state-listed as Special Concern, was documented to occur within suitable on-site habitats. During pre-filing consultations the Applicant elected to have a Division-approved biologist conduct additional surveys for state-listed Lepidoptera on the property in 2018. Northern Brocade Moth (*Neoligia semicana*), state-listed as Special Concern, was documented during 2018 surveys; this species is likely associated with wetland marsh habitats located to the west of the property.

The project, as currently proposed, includes the construction of sixty (60) single-family homes, ninety-six (96) condominium units, roadways and associated site work on a ±13.56-acre property, as shown on the site plans. Based on a review of the information that was provided and the information that is currently contained in our database, the Division has determined that the project, as proposed, **will result in a**

MASSWILDLIFE

Take (321 CMR 10.18 (2)(b)) of the Coastal Heathland Cutworm resulting from the harming or killing of individuals, interference with feeding, breeding, over-wintering and migratory activities, and the permanent loss of suitable habitat for this species.

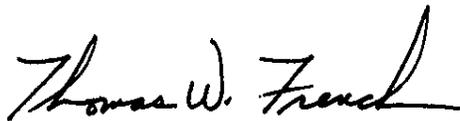
Projects resulting in a Take of state-listed species may only be permitted if they meet the performance standards for a Conservation and Management Permit (CMP; 321 CMR 10.23). In order for a project to qualify for a CMP, the applicant must demonstrate that the project has avoided, minimized and mitigated impacts to state-listed species consistent with the following performance standards: (a) adequately assess alternatives to both temporary and permanent impacts to the state-listed species, (b) demonstrate that an insignificant portion of the local population will be impacted, and (c) develop and agree to carry out a conservation and management plan that provides a long-term net benefit to the conservation of the state-listed species.

This Determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. 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, accompanied by a filing fee in the amount of \$500.00 and the information specified in 321 CMR 10.25 (3). The notice of claim shall be sent to the Division's Director, Mark S. Tisa, by certified mail, hand delivered or postmarked within twenty-one (21) days of the date of the Division's Determination.

Please note that projects resulting in a Take of two (2) or more acres within *Priority Habitat* must file an Environmental Notification Form (ENF) with the Massachusetts Environmental Policy Act ("MEPA") Office and complete all MEPA actions prior to completing the MESA permitting process, per 301 CMR 11.03 (2)(b).

Please note that no soil or vegetation disturbance, work, clearing, grading or other activities related to the subject filing shall be conducted anywhere on the project site until the MESA permitting process is complete. If you have any questions regarding this letter, please contact Jesse Leddick, Chief of Regulatory Review, at jesse.leddick@state.ma.us or (508) 389-6386.

Sincerely,



Thomas W. French, Ph.D.
Assistant Director
Massachusetts Division of Fisheries & Wildlife

cc: Brian Madden, LEC Environmental Consultants, Inc.

Attachment 2

NHESP-Approved Lepidoptera (Moth) Study



LLOYD CENTER FOR THE ENVIRONMENT

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430 Potomska Road | Dartmouth | Massachusetts | 02748 | tel 508-990-0505 | fax 508-993-7868 | www.lloydcenter.org

SURVEY OF LEPIDOPTERA
LISTED IN THE MASSACHUSETTS ENDANGERED SPECIES ACT
AT 3, 5, 7 & 9 SOUTH SHORE ROAD, NANTUCKET, MA

Mark J. Mello
Lloyd Center for Environmental Studies
430 Potomska Rd.
Dartmouth, MA 02748

Report to

Jamie Feeley
Surfside Crossing, LLC
[37 Old South Road, #6](#)
[Nantucket, MA 02554](#)

August 30, 2018

INTRODUCTION

During 2016, the Lloyd Center conducted a habitat assessment and survey of moths at seven stations focusing on species listed in the Massachusetts Endangered Species Act (MESA) on the 3, 5, 7 & 9 South Shore Road property (Figure 1; Mello, 2016).



Figure 1 Light trap locations (red) and vegetation observations (yellow) established in 2016.

Two hundred seventy-six species of macro-moths were identified (Appendix I), only one of which, [REDACTED] listed in MESA was encountered. Two were found at Station 4 on July 28, 2016, and one on August 7 at Station 7.

The Massachusetts Natural Heritage & Endangered Species Program (NHESP) requested additional light trap surveys during 2018 as expressed in your e-mail as follows:

Cicinnus melsheimeri (T), Jun 10-30, target scrub oak (*Quercus ilicifolia*)
Heterocampa varia (T), Jul 18-Aug 8, target scrub oak (*Quercus ilicifolia*) at least 3 trap efforts (under suitable conditions) for the June 10-30 period, and at least 2 trap efforts for the July 18 – August 8 period.”

In order to determine if any of these species are currently present, the Lloyd Center embarked upon a survey program that covered the flight periods of the adults.

METHODS

Five field trips encompassing seven trap-nights were conducted in 2018. During the initial field trip, three trap stations (1B, 2A and 3C) were established that would: 1) cover the expanse of the property, and 2) cover habitat with at least some open canopy scrub oak thicket that would be the most likely sites to find the aforementioned scrub oak-feeding MESA species, if present, on the property. The GPS coordinates and sample dates are presented in Table 1 and the locations mapped in Figure 2.

Table 1. GPS coordinates and sampling dates for stations surveyed in 2018.

		GPS	1B	2A	3C
		North	41.25815	41.25890	41.25909
		West	-70.09892	-70.10013	-70.09842
June	12		X	X	X
	20		X	X	X
	21		X	X	X
	27		X	X	X
July	22		X	X	X
	23		X	X	X
August	1		X	X	X



Figure 2. Location of light trap stations surveyed during 2018.

There appears to be a significant shrub footprint at the northeast corner of the property, however, on ground inspection proved it to be almost exclusively comprised of bayberry. The sites chosen for sampling (Stations 1B, 2A and 3C) had at least a third of the understory comprised of scrub oak, and the canopy (primarily pitch pine and oak) cover was less than 50% within a 50 meter radius.

Three portable ultraviolet light traps were operated on seven nights commencing on June 12 and ending on August 1 (Table 1). Light traps charged with ethyl acetate were set prior to dusk and retrieved after dawn the following morning. All macro-moths were identified and counted.

RESULTS

A total of 2,421 macro-moths were trapped, counted and identified in 2018 (Appendix II, Table 2). Thirty-nine species were found in 2018 that did not occur in the 2016 survey. Two species (*Syngnatha abstrusa/alias* and *Datana angusii*) appear to be new records for Nantucket. In 2016, six new species (*Glenoides texanaria*, *Dyspyralis puncticosta*, *Catocala minuta*, “*Elaphria*” *cyanympa*, *Caradrina clavipalpus*, and *Neoligia atlantica*) were recorded for the island, thus eight species not previously documented on Nantucket were recorded on this property during the 2016 and/or 2018 surveys. The total number of macro-moths recorded for the two-year period is 317 (Table 2). Inventories conducted for other projects on Nantucket by this author since 2000 has documented 630 species of macro-moths. The current two inventories at the South Shore Road property has documented roughly half that number. A randomized cumulative species curve (Figure 3) is beginning to flatten, however it was still producing an average of one additional species per trap sample for the last half-dozen data points, suggesting that more species would appear with additional sampling effort.

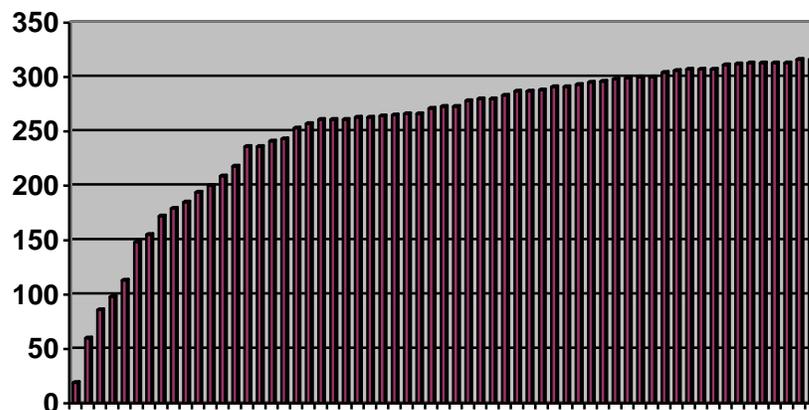


Figure 3. Randomized cumulative species curve for 2016 & 18 data.

Neither of the two MESA species (*Cicinnus melsheimeri* and *Heterocampa varia*) targeted by this survey were found, and during the two surveys (2016 and 2018) no scrub oak-feeding MESA species were recorded. However, one MESA-listed species was recorded in 2018. A single individual [REDACTED] on June 20, 2018. Because larval hostplants for [REDACTED] and most of the other species in this genus are unrecorded, it is difficult to describe its habitat requirements other than it most likely is a grass or sedge feeder as a larva. Robinson, et al. (2002) list two larval references for [REDACTED] as *Zea mays* (corn!) (Tietz, 1972 and Zhang, 1994) however it is unclear if these records are for the same species that is currently known as [REDACTED]. The NHESP fact sheet (2015) for this species states that the larval hostplant is undocumented and suggests that it is a wetland affiliate, a habitat that is absent on the property and 500 meters west of the nearest wetland bordering the upper reaches of Miacomet Pond. The specimen in the trap was in very good condition, a rarity in trap samples for the delicate species in this genus. It is possible that upland grasses or sedges might also be used, but with the exception of Pennsylvania sedge, monocots are scant on the property.

During 2016, three [REDACTED] individuals were encountered, however none were seen in the 2018 samples. Beach Plum (*Prunus maritima*) has recently been documented as the larval hostplant (Goldstein & Nelson, 2017). This plant was not found on the property, but it is possible that the species feeds on other *Prunus* (Black or Choke Cherry) or *Amelanchier* (Shadbush), which are present on or adjacent to this property.

Nantucket has been intensively surveyed both by Charles Kimball (Kimball & Jones, 1943) in the early 1900's and by the Lloyd Center from 2000 to the present (Mello, 2009, 2004; Mello et al., 2002, 2001; unpubl. data, 2010, 2008, 2007, 2006, 2005, 2004). Nevertheless, six species not previously recorded on Nantucket were found in 2016 and an additional two in 2018. *Glenoides texanaria* (Geometridae) and "*Elaphria*" *cyanympa* (Noctuidae) are southern species that are apparently moving north. Both were found in 2016 and 2018. The former is now well established in southern New England, but the latter, whose northernmost reported range was South Carolina, is a new record for Massachusetts. The 16 individuals found in 2016 and the 4 in 2018 suggest that a breeding population is present on the island. *Dyspyralis puncticosta* (Erebidae), *Catocala minuta* (Erebidae) and *Caradrina multifera* (Noctuidae) are found elsewhere in Massachusetts. *Neoligia atlantica* (Noctuidae) is a northern coastal species that is very similar in appearance to the MESA-listed *Neoligia semicana*. Eric Quinter, an expert on the Noctuidae, has seen *atlantica* specimens along the coast as far south as Long Island (in American Museum of Natural History collection). It is at least as uncommon as *semicana* but not

listed in MESA. During 2018, *Datana angusii* (Notodontidae) and *Syngrapha abstrusa* or *alias* (genitalic dissection will be necessary to distinguish between the two species) were recorded. *Angusii* larvae feed on a variety of trees and shrubs (Robinson, 2002), however hickories are preferred (Wagner, 2005). This species occurs elsewhere in Massachusetts. *Abstrusa* and *alias* are northern/montane species that occur elsewhere in Massachusetts. The former is the most likely the individual found at the property as it is a dry coniferous forest species (Lafontaine & Poole, 1991; Wagner et al, 2011).

CONCLUSIONS

Perhaps the most surprising outcome of the two-year survey of this property was the absence of any of the MESA-listed, scrub oak-feeding species despite the prevalence of scrub oak on the property. Similarly, the blueberry-feeding *Psectraglaea carnosus* was not found during the 2016 fall sampling period. Thus, this coastal shrubland does not appear to be functioning as a barrens habitat. The two MESA species that were documented, [REDACTED] (3 individuals) and [REDACTED] (1 individual) have been found elsewhere on Nantucket, but this property does not appear to support a breeding population based upon apparent lack of suitable habitat.

Records of these two species have been, or are in the process of being reported to NHESP as required by the survey permit.

REFERENCES

Goldstein, P.Z. and M.W. Nelson, 2017. Two psammophilic noctuids newly associated with beach plum, *Prunus maritima* (Rosaceae): The Dune Noctuid (*Sympistis riparia*) and Coastal Heathland Cutworm (*Abagrotis benjamini*) in Northeastern North America (Lepidoptera, Noctuidae). ZooKeys 661: 61-89 (2017). <http://zookeys.pensoft.net>

Kimball, C.P., and F.M. Jones, 1943. **The Lepidoptera of Nantucket and Martha's Vineyard Islands, Massachusetts**. Publ. Nantucket Maria Mitchell Assoc. Vol. IV. Nantucket, May, 1943. 217 p.

Lafontaine, J.D. & R.W. Poole, 1991. Noctuoidea, Noctuidae (part), Plusiinae. In Dominick, R.B., et al., **The Moths of North America** Fascicle 25.1

Massachusetts List of Endangered, Threatened and Special Concern Species. 321 CMR 10.03. MA Natural Heritage and Endangered Species Program. [REDACTED] fact Sheet as of 2015.

<http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/species-information-and-conservation/mesa-list/list-of-rare-species-in->

[massachusetts.html](#)

Mello, M.J., 2016. Inventory of threatened and endangered species/species of special concern Lepidoptera at 3, 5, 7 & 9 South Shore Rd., Nantucket, MA. Lloyd Center report to Site Design Engineering, LLC.

Mello, M.J., 2009. Survey for insects at Norwood Farm Trust to determine presence and distribution of species listed in the Massachusetts Endangered Species Act. Lloyd Center Report #2009-4.

Mello, M.J., 2004 Inventory of Lepidoptera on Nantucket with particular attention to critical habitat for state-listed species. Lloyd Center Report #2004-1

Mello, M.J., J.B. Bogart and A. Weed, 2002. Inventory of state-listed Lepidoptera and other insects at Nantucket Airport, Nantucket, Massachusetts. Lloyd Center Report #2002-2

Mello, M.J., J.B. Bogart & G. Davis, 2001. Status of state-listed Lepidoptera on Property proposed for South Shore links Golf Course, Nantucket, MA. Lloyd center Report #2001-1

Robinson, G.S., P.R. Ackery, I.J. Kitching, G.W. Beccaloni & L.M. Hernandez, 2002. *Memoirs of the American Entomological Institute*, Vol. 69. Gainesville, FL

Tietz, H.M., 1972. *An Index to the described life histories, early stages and hosts of the Macrolepidoptera of the continental United States and Canada*. 2 vols. 1-536; 537-1041 p. A.C. Allyn, Sarasota, FL.

Wagner, D.L., 2005. **Caterpillars of Eastern North America**. Princeton University Press, Princeton & Oxford. 512 p.

Wagner, D.L., D.F. Schweitzer, J.B. Sullivan & R.C. Reardon, 2011. **Owlet Caterpillars of Eastern North America**. Princeton University Press, Princeton & Oxford. 576 p.

Zhang, B.C., 1994. *Index of economically important Lepidoptera*. 599. CAB International, Wallingford.

Attachment 3

MESA Project Review Application



September 19, 2018

Email [jesse.leddick@state.ma.us]

Mr. Jesse Leddick
Natural Heritage & Endangered Species Program
MA Division of Fisheries & Wildlife
1 Rabbit Hill Road
Westborough, MA 01581

Re: MESA Project Review
NHESP #12-31035 - Surfside Crossing
3, 5, 7, & 9 South Shore Road
Map 67, Parcels 336, 336.9, 336.8, & 336.7
Nantucket, Massachusetts

[LEC File #: CCI\17-274.01]

Dear Mr. Leddick:

On behalf of the Applicant, Surfside Crossing LLC, LEC Environmental Consultants, Inc., (LEC) is submitting for formal MESA Project Review the proposed residential development, referred to as “Surfside Crossing,” located off South Shore Road on Nantucket. As currently proposed, the project involves the construction of sixty (60) single-family homes and ninety-six (96) condominium units contained with six (6) separate buildings, along with related appurtenances on the 13.56± acre project site. The proposed project is depicted on the plan set entitled “*Surfside Crossing*” a Proposed 40B Development, prepared by Bracken Engineering, Inc., dated February 15, 2018.

According to the 14th edition of the *Massachusetts Natural Heritage Atlas* (effective August 1, 2017) published by the Massachusetts Natural Heritage and Endangered Species Program (NHESP), the project site, composed of four (4) subject parcels, is located within a Priority Habitat (PH) of Rare Species. Consequently, the proposed residential development requires NHESP review under the *Massachusetts Endangered Species Act* (M.G.L. c. 131A) and its implementing *Regulations* (321 CMR 10.00; collectively “MESA”).

In response to an updated MESA Information Request, NHESP provided a letter dated September 8, 2017, relaying that their database indicates that the following state-listed rare species have been found in the vicinity of the site: Melsheimer’s Sack Bearer (*Cicinnus melsheimeri*), Coastal Swamp Metarranthis (*Metarranthis pilosaria*), Waxed Sallow Moth (*Chaetagnalea cerata*), Pink Sallow (*Psectraglaea carnosus*), Sandplain Heterocampa (*Heterocampa varia*), and Chain Dot Geometer (*Cingilia catenaria*); six (6) state-listed rare moth species (Lepidoptera) protected as either “Special Concern” or “Threatened” under MESA.

LEC Environmental Consultants, Inc.

www.lecenvironmental.com

12 Resnik Road
Suite 1
Plymouth, MA 02360
508-746-9491
508-746-9492 (Fax)

PLYMOUTH, MA

380 Lowell Street
Suite 101
Wakefield, MA 01880
781-245-2500
781-245-6677 (Fax)

WAKEFIELD, MA

100 Grove Street
Suite 302
Worcester, MA 01605
508-753-3077
508-753-3177 (Fax)

WORCESTER, MA

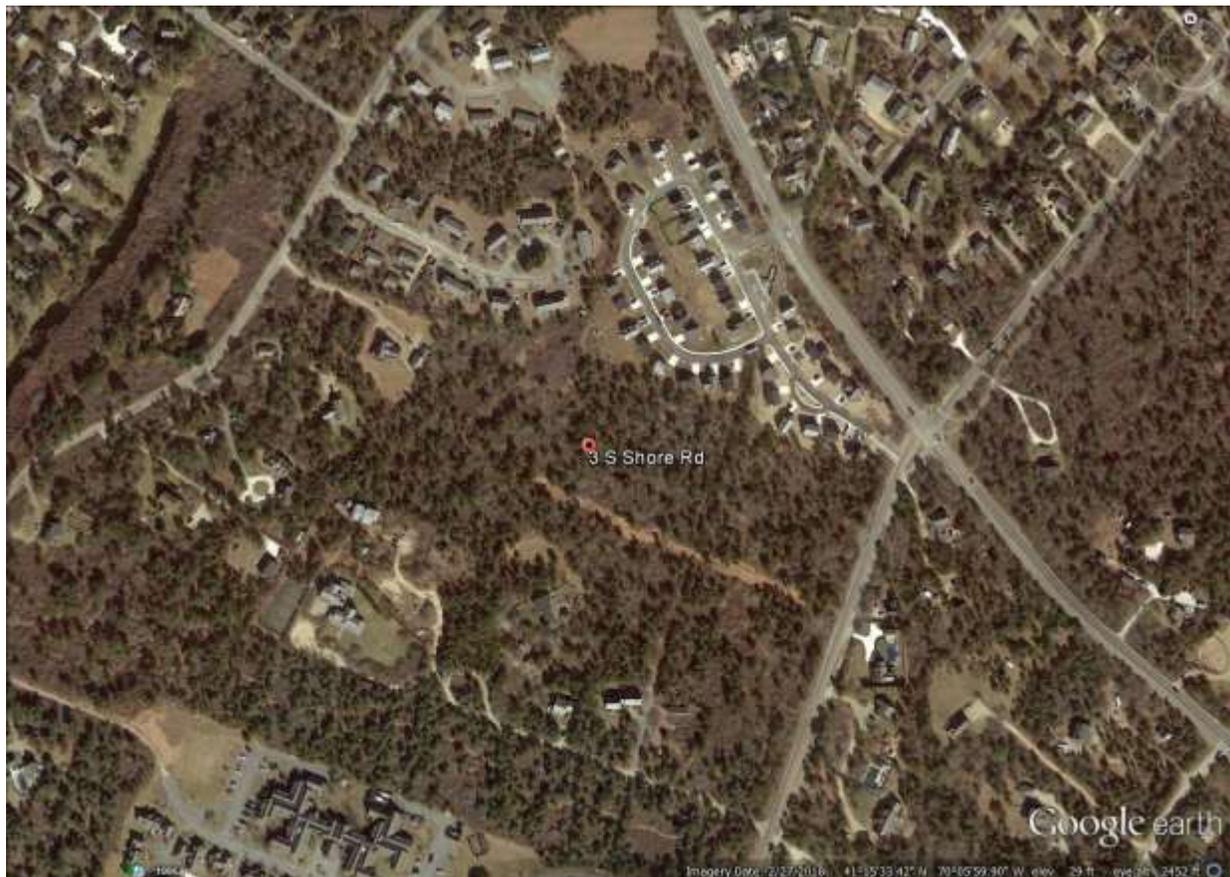
P. O. Box 590
Rindge, NH 03461
603-899-6726
603-899-6726 (Fax)

RINDGE, NH

LEC engaged NHESP early in pre-filing consultation to review MESA permitting requirements. In order to determine presence or absence of the state-listed moth species on the project site, a NHESP-approved Lepidoptera field survey was completed between June and August 2018. With the conclusion of the survey, the Applicant is now filing for formal MESA Project Review. The following reviews existing and proposed conditions.

Existing Conditions

The 13.56± acre project site, composed of four (4) subject parcels, is located southwest of the Surfside Road, Fairgrounds Road, and South Shore Road intersection on Nantucket. Moderately dense residential development abuts directly to the north, including Sachem's Path, a 46-unit project previously reviewed by NHESP and developed under the provisions of M.G.L. c. 40B, s. 20-23. Single-family homes occur directly to the west and south, while the site maintains frontage along South Shore Road to the east.



The site itself is occupied by pitch pine (*Pinus rigida*) barren habitat conditions maintaining a partially to moderately open canopy with denser groups of pines. The understory is dominated by patches of bayberry (*Morella pensylvanica*) and clusters and individuals of scrub oak (*Quercus ilicifolia*), distributed somewhat unevenly across the site. Black huckleberry (*Gaylussacia baccata*) and arrowwood (*Viburnum dentatum*) are present at lower concentrations, along with sporadic black cherry (*Prunus serotina*),

saplings, and young trees. Lowbush blueberry (*Vaccinium angustifolium*), dewberry (*Rubus flagellaris*), poison ivy (*Toxicodendron radicans*), and Pennsylvania sedge (*Carex pennsylvanica*) dominate portions of the groundcover. A few isolated openings of herbaceous vegetation occur sporadically, dominated by Pennsylvania sedge and little bluestem (*Schizachyrium scoparium*). Representative photographs are attached.

In February 2018, a path was brush cut into the site to allow access for exempt soil testing activities (see above 2/27/18 Google Earth image). The aforementioned species, predominantly bayberry, black huckleberry, and Pennsylvania sedge, have since begun to regenerate within the brush cut path (see Photographs 9 & 10).

A 30-foot wide sewer easement extends through the eastern portion of the site, running parallel to South Shore Road. Two 20" sewer force mains are centrally-located within the easement. The sewer easement is largely overgrown by the species listed above. However, the southerly portion of the on-site sewer easement (1,400± s.f.) was used as a driveway/storage area and is currently composed of dirt/gravel, miscellaneous herbaceous vegetation, and vegetative clippings (see Photographs 13 & 14).

Additionally, a fenced-in animal paddock (5,700± s.f.) previously encroached onto the south-central portion of the site. More recently, the split rail fencing around the perimeter of the paddock has been relocated off-site. The former paddock area is currently occupied by short grasses, most notably Pennsylvania sedge (see Photograph 12). Vegetative clippings about the former paddock area.

The former driveway/storage area and animal paddock are evident on the above 2/27/18 Google Earth image and attached 2014 Aerial Orthophoto.

Proposed Conditions

As depicted on the 2/15/18 plan set, the proposed residential development involves the construction of 156 residential dwelling units in two components: 1) sixty (60) stand-alone single-family cottages on fee simple lots and 2) ninety-six (96) condominium dwelling units contained within six (6) multi-family buildings. Stormwater will be directed to a series of subsurface infiltration systems scattered throughout the development; designed in compliance with Massachusetts Stormwater Management Standards. The development will connect to municipal sewer and water. Due to the flat topography across the site, very minimal regrading is necessary. Proposed green spaces, gardens, and/or playgrounds are distributed within the development footprint. A 10-30 foot wide variable vegetated buffer will surround the proposed development. Site disturbance totals 12.72± acres.

Summary

LEC is submitting this MESA Project Review on behalf of the Applicant, Surfside Crossing LLC, for the proposed "Surfside Crossing" residential development consisting of 60 single-family cottages, 96



condominium units, and related appurtenances on the 13.56± acre project site located within Priority Habitat. The project is proposed under the provisions of M.G.L. c. 40B, s. 20-23 and is depicted on the plan set entitled “*Surfside Crossing*” a Proposed 40B Development, prepared by Bracken Engineering, Inc., dated February 15, 2018.

Thank you in advance for accepting this MESA Project Review Application. As required, LEC has included the MESA Project Review Filing Checklist; associated \$1,800.00 filing fee for 5-20 acres of site disturbance; site plans; the USGS Topographic Map; Assessors/GIS map; a Deed confirming that Applicant is the Record Owner; and site photographs. A 2014 Aerial Orthophoto depicting the vegetative cover types is also attached, accompanying the above description and 2/27/18 Google Earth image.

If you should have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

LEC Environmental Consultants, Inc.

A handwritten signature in black ink, appearing to read "Brian T. Madden".

Brian T. Madden
Wildlife Scientist

Attachments

Attachments

MESA Project Review Checklist Form

USGS Topographic Map

Assessors/GIS Map

Surfside Crossing LLC Deed

Photographs

Aerial Orthophoto Map



MASSWILDLIFE

DIVISION OF FISHERIES & WILDLIFE

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

Jack Buckley, Director

MESA Project Review Checklist

Massachusetts Endangered Species Act M.G.L. c.131A and Regulations (321 CMR 10.00)

Contact Information

1) Project Location:

3, 5, 7, 9 South Shore Rd	Nantucket	02554
Street Address/Location	City/Town	Zip Code
Map 67	Parcels 336, 336.9, 336.8, & 336.7	
Assessors Map/Plat Number	Parcel /Lot Number	

2) Applicant:

Surfside Crossing LLC	(c/o Jamie Feeley)	
First Name	Last Name	Company
37 Old South Road, Unit #6		
Mailing Address		
Nantucket	MA	02554
City/Town	State	Zip Code
508-825-8825		jamie@cottageandcastleinc.com
Phone Number	Fax Number	Email address

3) Property owner (if different from applicant):

First Name	Last Name	Company
Mailing Address		
City/Town	State	Zip Code
Phone Number	Fax Number	Email address

4) Representative (if any):

LEC Environmental Consultants, Inc.		
Company		
Brian	Madden	
Contact Person First Name	Contact Person Last Name	
12 Resnik Road, Suite 1		
Mailing Address		
Plymouth	MA	02360
City/Town	State	Zip Code
508-746-9491	508-746-9492	bmadden@lecenvironmental.com
Phone Number	Fax Number	Email address

MASSWILDLIFE

Additional Information

- 1. Will this project require a filing with the Conservation Commission and/or DEP? No Yes
- 2. Has this project previously been issued a NHESP Tracking Number (either by previous NOI Submittal or MESA Information Request Form)? No Yes, if Yes -Tracking No. 12-31035

Project Description (attach separate sheet, as needed)

Please note, certain projects or activities are exempt from review, see 321 CMR 10.14. The MESA does not allow project segmentation. Your filing must reflect all anticipated work associated with the proposed project (CMR 321 10.16).

See attached

Include the Following Information:

ALL Applicants must submit:

- USGS map (1:24,000 or 1:25,000) with property boundary clearly outlined
- Project plans for entire site (including wetland Resource Areas, showing existing and proposed conditions, existing and proposed tree/vegetation clearing line, and clearly demarcated limits of work)
- Assessor's map or right-of-way plan of site
- Statement/proof that applicant is the Record Owner or that applicant is a person authorized in writing by the record owner to submit this filing
- Photographs representative of the site

Projects altering 10 or more acres, must also submit:

- A vegetation cover type map of the site
- Project plans showing Priority Habitat boundaries

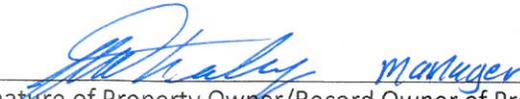
The NHESP may request additional information, such as, but not limited to, species and habitat surveys, wetland reports, soil map and reports, and stormwater management reports (321 CMR 10.16). The NHESP will notify the applicant within 30 days if the materials submitted do not satisfy requirements for a filing and request submission of any missing materials (321 CMR 10.18(1)).

Filing Fee, Payable to Comm. of MA - NHESP (see website for fee information)

a. Total MESA Fee Paid \$1,800 b. Acreage of Disturbance 12.72 c. Total Site Acreage 13.56

Required Signatures

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

 manager 7/27/2018
Signature of Property Owner/Record Owner of Property Date

Signature of Applicant (if different from Owner) Date

HOLD TO LIGHT TO VIEW TRUE WATERMARK IN PAPER HEAT SENSITIVE RED LOCK DISAPPEARS WHEN HEATED

1093

EZShieldSM Check Fraud
Protection for Business

SURFSIDE CROSSING LLC

37 OLD SOUTH RD #6
NANTUCKET, MA 02554

NANTUCKET BANK
A DIVISION OF BLUE HILLS BANK
53-7013/2113

7/27/2018

PAY TO THE
ORDER OF

COMM Of MA - NHESP

\$ **1,800.00

One Thousand Eight Hundred Only*****

DOLLARS

Mass Division of Fisheries & Wildlife
1 Rabbitt Hill Road
Westborough, MA 01581



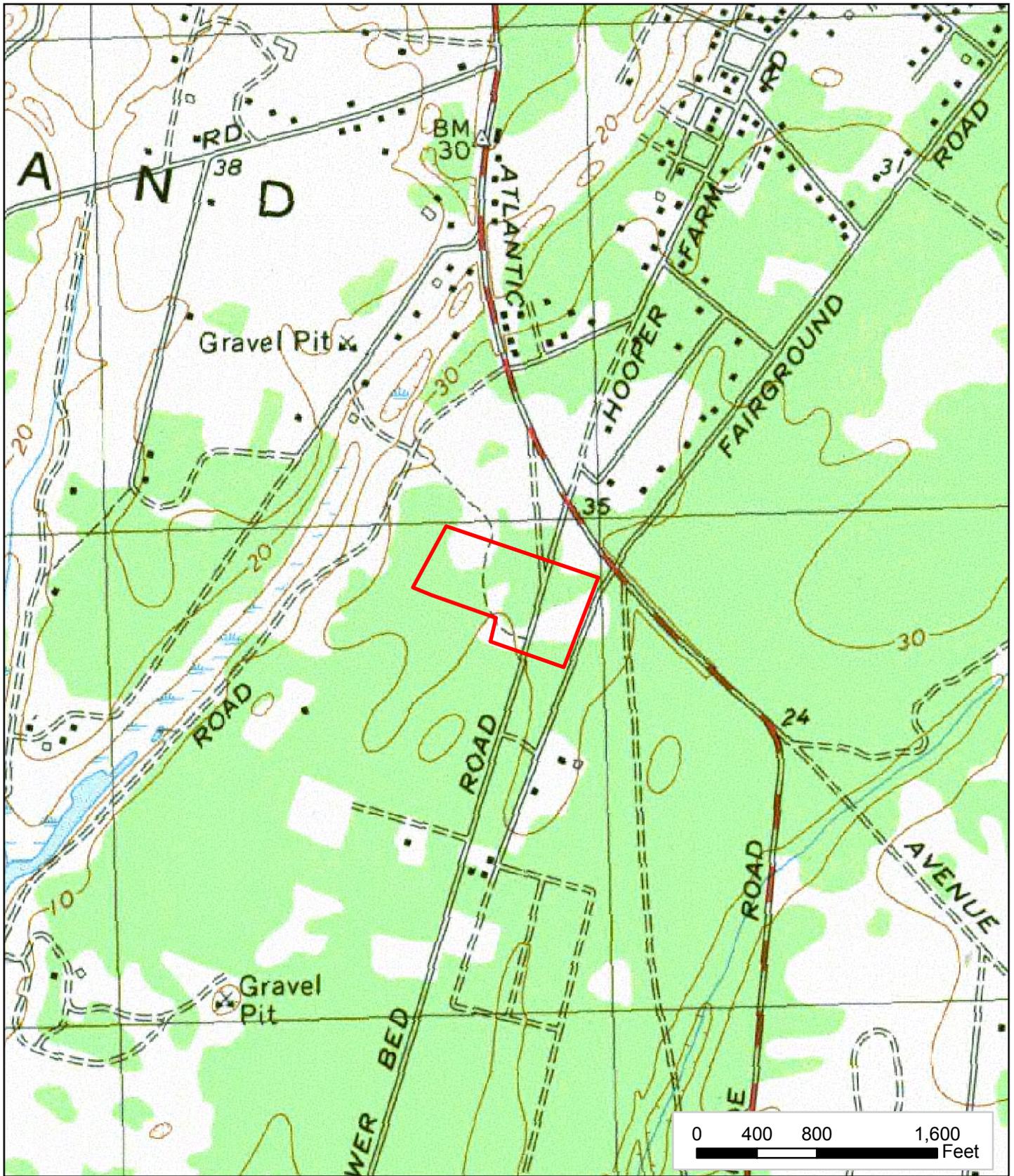
[Handwritten Signature]
AUTHORIZED SIGNATURE

MEMO

Surfside Crossings filing fee

⑈001093⑈ ⑆211370134⑆ 17 003646⑈

Security features. Details on back



LEC Environmental Consultants, Inc.

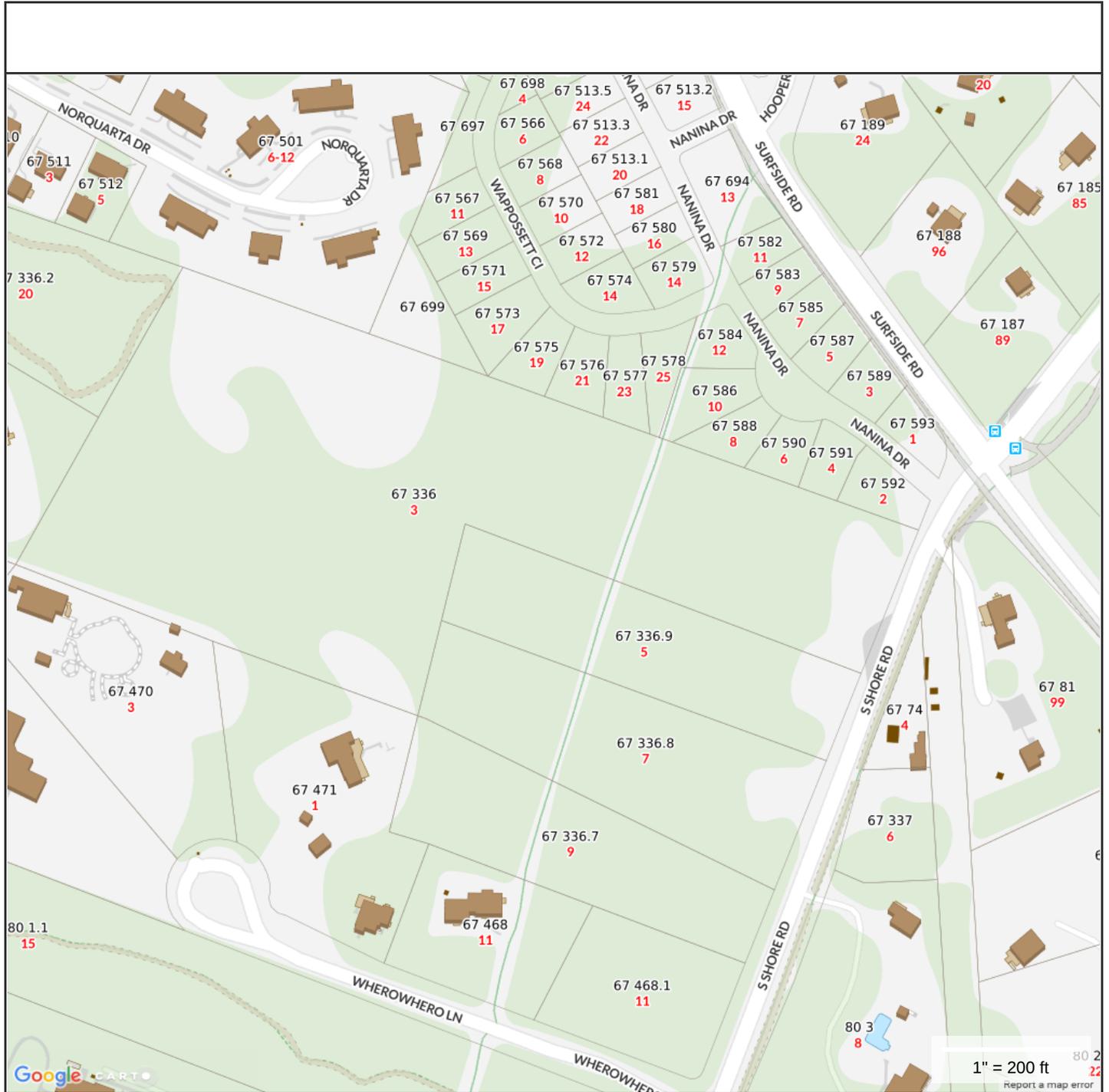
Plymouth, MA
508.746.9491
www.lecenvironmental.com

USGS Topography Map

3, 5, 7, & 9 South Shore Road
Nantucket, Massachusetts



August 10, 2017



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

Town and County of Nantucket, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated 09/14/2018
Properties updated 09/19/2018



2017 00002988

Bk: 1612 Pg: 62 Page: 1 of 5
Doc: DD 10/03/2017 11:53 AMDEED

PHILIP M. McLAUGHLIN and ELLEN R. MALCOLM, as Trustees of the BARBARA R. MALCOLM REALTY TRUST under Declaration of Trust dated July 21, 1983, recorded with Nantucket Deeds in Book 433, Page 200 and

ELLEN R. MALCOLM and PHILIP M. McLAUGHLIN, as Trustees of WINDOM REALTY TRUST under Declaration of Trust dated November 13, 2002, recorded with Nantucket Deeds in Book 789, Page 292

for consideration paid in the amount of \$4,050,000.00,

grant to SURFSIDE CROSSING LLC, a Massachusetts limited liability company, with a mailing address of c/o Vaughan, Dale, Hunter and Beaudette, P.C., 2 Whaler's Lane, Nantucket, Massachusetts 02554, with QUITCLAIM COVENANTS,

PARCEL ONE (3 South Shore Road)

That certain parcel of vacant land situated in Nantucket, Nantucket County, Massachusetts, now known and numbered as 3 South Shore Road, bounded and described as follows:

EASTERLY	by South Shore Road, one hundred ninety-five and 57/100 (195.57) feet;
SOUTHERLY	by Lot 3 on plan hereinafter mentioned, five hundred eighty-two and 76/100 (582.76) feet;
EASTERLY	by Lots 3 and 2 on said plan, two hundred fifty-six and 91/100 (256.91) feet;

SOUTHERLY by land now or formerly of Water J. Cairnes, five hundred seventy and 05/100 (570.05) feet;

NORTHWESTERLY by lands now or formerly of Andrew C. Malcolm and now or formerly of Barbara H. and Ellen R. Malcolm, four hundred sixty-four and 84/100 (464.84) feet; and

NORTHERLY by land now or formerly of Nantucket Housing Authority, one thousand sixty-three 77/100 and (1,063.77) feet.

Said land is shown as Lot 4 on plan prepared by Hart-Blackwell & Associates dated August 13, 1990, recorded with Nantucket Deeds in Book 25, Page 50. Said land contains 350,522 square feet, more or less, according to said plan.

PARCEL TWO (5 South Shore Road)

That certain parcel of vacant land situated in Nantucket, Nantucket County, Massachusetts, now known and numbered as 5 South Shore Road, bounded and described as follows:

EASTERLY by South Shore Road, one hundred thirty and 00/100 (130.00) feet;

SOUTHERLY by Lot 2 on plan hereinafter mentioned, five hundred sixty-six and 64/100 (566.64) feet;

WESTERLY one hundred forty-nine and 08/100 (149.08) feet, and

NORTHERLY five hundred eighty-two and 76/100 (582.76) feet, by Lot 4 on said plan.

Said land is shown as Lot 3 on plan prepared by Hart-Blackwell & Associates dated August 13, 1990, recorded with Nantucket Deeds in Book 25, Page 50. Said land contains 80,018 square feet, more or less, according to said plan.

PARCEL THREE (7 South Shore Road)

That certain parcel of vacant land situated in Nantucket, Nantucket County, Massachusetts, now known and numbered as 7 South Road Road, bounded and described as follows:

EASTERLY by South Shore Road, one hundred thirty-eight and 75/100 (138.75) feet;

SOUTHERLY by Lot 1 on plan hereinafter mentioned, five hundred fifty-five and 99/100 (555.99) feet;

WESTERLY by Lot 4 on said plan, one hundred seven and 83/100 (107.83) feet; and

NORTHERLY by Lot 3 on said plan, five hundred sixty-six and 64/100 (566.64) feet.

Said land is shown as Lot 2 on plan prepared by Hart-Blackwell & Associates dated August 13, 1990, recorded with Nantucket Deeds in Book 25, Page 50. Said land contains 80,062 square feet, more or less, according to said plan.

PARCEL FOUR (9 South Shore Road)

That certain parcel of vacant land situated in Nantucket, Nantucket County, Massachusetts, now known and numbered as 9 South Shore Road, bounded and described as follows:

EASTERLY by South Shore Road, one hundred twenty and 94/100 (120.94) feet;

SOUTHERLY five hundred thirty-four and 54/100 (534.54) feet, and

WESTERLY one hundred seventy-five and 00/100 (175.00) feet, by land now or formerly of Walter J. Cairnes; and

NORTHEASTERLY by Lot 2 on plan hereinafter mentioned, five hundred fifty-five and 99/100 (555.99) feet.

Said land is shown as Lot 1 on plan prepared by Hart-Blackwell & Associates dated August 13, 1990, recorded with Nantucket Deeds in Book 25, Page 50. Said land contains 80,042 square feet, more or less, according to said plan.

Said land is conveyed subject to real estate taxes assessed by the Town of Nantucket for the fiscal year 2018, commencing on July 1, 2017.

For title to Parcels One and Four, see Deed recorded with Nantucket Deeds in Book 433, Page 207 and for title to Parcels Two and Three, see Deed recorded with Nantucket Deeds in Book 789, Page 297.

The Grantors hereby certify that no beneficiary, nor a spouse, civil union partner, ex-spouse or ex-civil union partner of a beneficiary of Malcolm Nominee Trust or Windom Realty Trust, occupies or intends to occupy the land as a principal residence or is entitled to claim the benefit of an existing estate of homestead in the property by court order or otherwise.

We hereby certify that we are the present Trustees of Barbara H. Malcolm Realty Trust and of the Windom Realty Trust, which are in full force and effect, have not been amended nor revoked, and have not terminated; and that we have been duly authorized to execute and deliver this instrument according to its terms and content by the holders of all of the beneficial interest in said Trusts, none of the holders being under any disability to act, and none of the holders being a corporation which is disposing of all or substantially all of its property situated in Massachusetts.

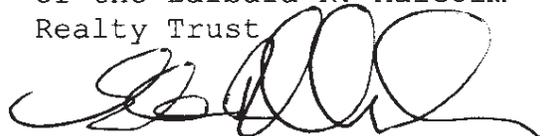
Executed and sealed on September 21, 2017.

MASSACHUSETTS EXCISE TAX
Nantucket County ROD #16-001
Date: 10/03/2017 11:53 AM
Ctrl# 463068 29869 Doc# 00002988
Fee: \$18,468.00 Cons: \$4,050,000.00

NANTUCKET LAND BANK	
CERTIFICATE	
<input checked="" type="checkbox"/> Paid \$ 81,000.00	
<input type="checkbox"/> Exempt	
<input type="checkbox"/> Non-applicable	
No. 38972	Date 10/3/17
Authorization	SM


Philip M. McLaughlin as
Trustee of the Barbara R.
Malcolm Realty Trust


Ellen R. Malcolm, as Trustee
of the Barbara R. Malcolm
Realty Trust

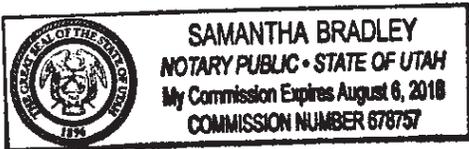

Ellen R. Malcolm, as Trustee
of the Windom Realty Trust


Philip M. McLaughlin as
Trustee of the Windom Realty
Trust

STATE OF Utah

Summit, ss.

On this 21 day of September, 2017, before me, the undersigned notary public, personally appeared Philip M. McLaughlin, Trustee as aforesaid, proved to me through satisfactory evidence of identification, which was Florida State Drivers License, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that he signed voluntarily, as his free act and deed, for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.



[Signature]
Notary Public

My commission expires:

STATE OF ~~UTAH~~ Washington DC

Washington DC, ss.

On this 20 day of September, 2017, before me, the undersigned notary public, personally appeared ~~Philip M. McLaughlin and~~ Ellen R. Malcolm, Trustees as aforesaid, proved to me through satisfactory evidence of identification, which was Washington DC Drivers License, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that she signed voluntarily, as her free act and deed, for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.

[Signature]
Notary Public

My commission expires: March 31, 2020



NANTUCKET COUNTY Received & Entered
Attest: Jennifer H. Ferrarino, Registrar of Deeds



Photograph 1: Northerly view of site's frontage along South Shore Road.



Photograph 2: Southerly view of site's frontage along South Shore Road.



Photograph 3: Typical Pitch Pines Barrens Habitat conditions on-site.



Photograph 4: Typical Lowbush Blueberry and Pennsylvania sedge groundcover conditions under Pitch Pine canopy.



Photograph 5: Bayberry/Scrub Oak/Black Huckleberry shrub-dominated patch within central/eastern portion of #7 South Shore Road, surrounded by Pitch Pine trees.



Photograph 6: Typical small patch of Black Huckleberry within western portion of #3 South Shore Road.



Photograph 7: Small open herbaceous pocket, dominated by Pennsylvania Sedge and Little Bluestem, located within northwestern portion of #3 South Shore Road.



Photograph 8: Brush cut path extending westerly off South Shore Road (proposed roadway entrance).



Photograph 9: Typical conditions within brush cut path extending westerly off South Shore Road.



Photograph 10: Typical conditions within brush cut path extending westerly off South Shore Road.



Photograph 11: Typical conditions within sewer easement extending parallel to South Shore Road.



Photograph 12: Former animal paddock encroaching onto south-central portion of site.



Photograph 13: Southerly portion of on-site sewer easement, utilized as a former driveway/storage area; southerly view.



Photograph 14: Northerly view of the southerly portion of on-site sewer easement, utilized as a former driveway/storage area.



Plymouth, MA
508.746.9491
www.lecenvironmental.com

Aerial Orthophoto

3, 5, 7, & 9 South Shore Road
Nantucket, Massachusetts



August 10, 2017

Attachment 4

NHESP Email, Dated October 29, 2018

Brian Madden

From: Leddick, Jesse (FWE) <jesse.leddick@state.ma.us>
Sent: Monday, October 29, 2018 9:43 AM
To: Brian Madden
Cc: Holt, Emily (FWE)
Subject: RE: Surfside Crossing--3, 5, 7, and 9 South Shore Road, Nantucket (NHESP #12-31035)

Hi Brian,

Based on our ongoing review of the proposed project, the summary of habitat impacts and corresponding mitigation requirements (pursuant to 321 CMR 10.23) appears accurate. Thank you for confirming. We recommend that any Application for a Conservation and Management Permit include a thorough evaluation of off-site opportunities for permanent protection and or management of suitable habitat to provide a long-term Net Benefit to this species. Best regards,

Jesse Leddick

Chief of Regulatory Review
Massachusetts Division of Fisheries & Wildlife
[1 Rabbit Hill Road, Westborough, MA 01581](https://www.mass.gov/location/#/details/1-Rabbit-Hill-Road-Westborough-MA-01581)
p: [\(508\) 389-6386](tel:5083896386) | e: Jesse.Leddick@state.ma.us
mass.gov/masswildlife | [facebook.com/masswildlife](https://www.facebook.com/masswildlife)

From: Brian Madden [mailto:BMadden@lecenvironmental.com]
Sent: Tuesday, October 23, 2018 10:06 AM
To: Leddick, Jesse (FWE)
Cc: Holt, Emily (FWE)
Subject: Surfside Crossing--3, 5, 7, and 9 South Shore Road, Nantucket (NHESP #12-31035)

Hi Jesse,

Thank you for the October 19, 2018 determination letter confirming that the proposed project will only result in a “take” of one Lepidoptera species, the Coastal Heathland Cutworm (*Abagrotis nefascia*), a state-listed species of “Special Concern” protected under MESA. The Applicant looks forward to cooperatively working with NHESP to finalize the specific details for the Conservation and Management Permit (CMP) Application.

Based on our on-going consultations and information submitted to NHESP, the Applicant respectfully requests NHESP’s confirmation on the following Coastal Heathland Cutworm habitat impacts and corresponding mitigation requirements under 321 CMR 10.23.

Coastal Heathland Cutworm Habitat Impact

As stated within the MESA Project Review Application, the Project Site is 13.56± acres. While undisturbed buffers are intended to be provided around the perimeter of the actual development footprint, the “take” of potential Coastal Heathland Cutworm habitat will total 13.56± acres, as currently proposed.

Mitigation Requirements

As required under 321 CMR 10.23, habitat impacts to species of “Special Concern” resulting in a “take” shall carry a 1.5:1 mitigation ratio (*i.e., protection of one and one half times the amount of areal habitat of the affected Species of Special Concern that is impacted by the Project or Activity*) under a Conservation and Management Plan (long-term Net Benefit). Consequently,

13.56± acres x 1.5 = 20.34± acres (Required Mitigation)

Off-site mitigation is proposed to be provided through: land protection of up to 20.34± acres via an Executive Office of Energy & Environmental Affairs-Division of Conservation Services approved Conservation Restriction or conveyance in fee to a qualified government entity approved by NHESP; and/or funding directly to a qualified conservation entity to support a specific, NHESP-approved land protection, conservation research, habitat management, and/or conservation planning project(s) to benefit the Coastal Heathland Cutworm. LEC notes that while the specific details of the mitigation requirements (*i.e., long-term Net Benefit*) will be finalized through NHESP’s review of the CMP Application, the potential for off-site land protection under the Conservation Management Plan will be reviewed first.

Thank you in advance for your confirmation on the above-referenced state-listed rare species habitat impacts and corresponding mitigation requirements for inclusion within the CMP Application based on the Applicant’s review and consultation with NHESP to date.

Best,
Brian

Please visit our web site at www.lecenvironmental.com for a full description of our services.

Brian T. Madden
Wildlife Scientist
LEC Environmental Consultants, Inc.
Office: 508.746.9491
Cell: 508.364.1662
bmadden@lecenvironmental.com

Attachment 5

NHESP Email, Dated October 2, 2018

Holt, Emily (FWE)

From: Leddick, Jesse (FWE)
Sent: Tuesday, October 02, 2018 2:50 PM
To: Libby Gibson
Cc: French, Tom (FWE); 'susi_vonoettingen@fws.gov'; Holt, Emily (FWE)
Subject: RE: Surfside Crossing 40B Application -- Nantucket

Libby and Members of the Select Board,

Thank you for contacting us and for sharing the information provided by Avalon Consulting regarding Northern Long-eared Bats and state-listed plant species. We greatly appreciate the Town's concern for the conservation of these species; in an effort to clarify the Division's review of the property relative to these listed species, we have provided additional information below.

Northern Long-eared Bat:

It is important to keep in mind that the emergence and spread of White-nose syndrome is *the* reason that Northern Long-eared Bat was listed under the U.S. Endangered Species Act (ESA) and the Massachusetts Endangered Species Act (MESA).

With that said, the Division delineates Priority Habitat for state-listed species based on verified observations of listed species, and we review proposed projects or activities located within Priority Habitat for compliance with MESA. In the case of Northern Long-eared Bats, the Division reviews proposed projects or activities within 0.25 miles of known winter hibernacula (caves or mines) and within 150 feet of known roost trees – an approach that is consistent with USFWS's 4(d) rule under the ESA. We also note that the 4(d) rule specifically does not apply to roosts or hibernacula that occur in structures, where Northern Long-eared Bats overwinter on Nantucket.

We are very familiar with the work being done on Nantucket for Northern Long-eared Bats, especially by Zara Dowling and the Nantucket Biodiversity Initiative. However, we have not received any verified observations of Northern Long-eared Bats roosting within 150 feet of the Surfside Crossing property. Additionally, there are no known winter hibernacula (caves or mines) within 0.25 miles of the property or elsewhere on Nantucket. Therefore, based on the information that is currently available to the Division, the property does not meet the criteria for mapping as Priority Habitat for this species, and the Division cannot review the proposed project relative to or require the proponent to conduct a study for this species. If there are recent, documented observations of this species roosting within 150 feet of the property that have not yet been reported to the Division, we would recommend that these be submitted as soon as possible through our Vernal Pool & Rare Species Information System for review and verification.

If documented observations of Northern Long-eared Bat roosting within 150 feet of the property were to be submitted to and approved by the Division, we could review the proposed project relative to this species. Although the Division will not render a final determination until it receives a formal filing, in this instance and consistent with the 4(d) rule, the Division would then likely require that the proponent implement appropriate protective measures (e.g., no tree removal between June 1st and July 31st of any year). Outside of this period when young are raised, trees could still be removed. Based on recent verbal consultations with the proponent's representatives, it is our understanding that the proponent is willing to proactively include this time of year restriction as part of any future, permitted projects or actions that may occur on the property. This time of year restriction would render surveys on or in the immediate vicinity of the property unnecessary.

State-listed Plants:

Regarding New England Blazing Star (*Liatrix novae-angliae*) and Sandplain Blue-eyed Grass (*Sisyrinchium fuscatum*), both of which are state-listed as Special Concern, we are similarly familiar with these species and their habitat needs on

Nantucket. These species are found in open, dry, low-nutrient soils of early-successional sandplain grasslands/heathlands that are devoid of dense woody plant cover. For your reference, I have attached below links to the Division's Fact Sheets for these species:

<https://www.mass.gov/files/documents/2016/09/ow/liatris-novae-angliae-2015.pdf>
<https://www.mass.gov/files/documents/2016/08/qd/sisyrinchium-fuscatum.pdf>

As shown in the figure depicting The Nature Conservancy's Habitat Mapping for Nantucket (provided by Avalon), New England Blazing Star was recently observed immediately north of the Surfside Crossing property within existing sandplain grassland/heathland habitat. I would note that these plants were observed during surveys performed at the request of the Division, and that they were *only* found within suitable sandplain grassland/heathland habitat. As indicated by TNC's Habitat Mapping for Nantucket as well as current aerial photographs, the Surfside Crossing property – which is dominated by dense shrubland and pitch pine mixed shrub woodland habitat - does not appear to provide suitable habitat for these plant species. As detailed above, the Division delineates Priority Habitat for state-listed species based on current, verified observations of listed species and where there is suitable habitat present for the listed species. Therefore, the property does not meet the criteria for mapping as Priority Habitat for these listed plants and the Division will not review the proposed project relative to these species.

Thank you again for sharing your concerns, we appreciate being able to provide additional information. Importantly, I would like to highlight that the property is mapped as Priority Habitat for several state-listed Lepidoptera (moth) species and that the Division is currently reviewing the proposed project relative to these listed moths. If you have further questions, you are welcome to contact me.

Jesse Leddick

Chief of Regulatory Review

Massachusetts Division of Fisheries & Wildlife

[1 Rabbit Hill Road, Westborough, MA 01581](https://www.mass.gov/info-details/1-rabbit-hill-road-westborough-ma-01581)

p: [\(508\) 389-6386](tel:5083896386) | e: Jesse.Leddick@state.ma.us

[mass.gov/masswildlife](https://www.mass.gov/masswildlife) | [facebook.com/masswildlife](https://www.facebook.com/masswildlife)

From: Libby Gibson [<mailto:LGibson@nantucket-ma.gov>]

Sent: Thursday, September 27, 2018 11:09 AM

To: Leddick, Jesse (FWE)

Cc: French, Tom (FWE); 'susi_vonoettingen@fws.gov'

Subject: Surfside Crossing 40B Application -- Nantucket

Good morning. Please see the enclosed letter and associated attachments. The Nantucket Select Board authorized its Chair to sign this letter on behalf of the Board at its September 26, 2018 meeting. Any questions, please contact me. Thank you.

C. Elizabeth Gibson
Town Manager
Town of Nantucket
(508) 228-7255