



MASSWILDLIFE

DIVISION OF FISHERIES & WILDLIFE

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July 12, 2024

Town of Andover
36 Bartlet Street
Andover, Massachusetts 01810

Andover Conservation Commission
Town Offices
36 Bartlett St
Andover, MA 01810

RE: Applicant: Town of Andover
 Project Location: Between High Plain Road and Haggetts Pond Road, Andover, MA
 Project Description: Haggetts Pond Trail
 DEP Wetlands File No.: 090-1428
 NHESP File No.: 23-8679

Dear Commissioners and Applicant:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") received a Notice of Intent in compliance with the rare wetland wildlife species section of the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.58(4)(b), 10.59). 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).

Project Description

The project involves modifications and improvements to +/- 1.0 mile stretch of an existing walking trail along a historic rail bed between High Plain Road and Haggetts Pond Road. Proposed modifications and improvements include the: resurfacing from dirt to asphalt; expansion and paving of two parking areas located at the north and south ends of the trail off High Plain Road and Haggetts Pond Road respectively; construction of a new approx. 140 foot long scenic overlook spur trail; installation of trail side benches; and the creation of stormwater catchment systems for the parking areas/portions of the trail. Plans submitted include:

- 1) Haggetts Pond Rail Trail, prepared by BSC Group, dated 11/7/2023, revised through 4/16/2024, 51 sheets (the "Revised Site Plans")
- 2) Letter from BSC Group to Andover Conservation Commission, dated 4/16/2024, re: MASSDEP File #090-1428, Haggetts Pond Rail Trail Project 0,051R & 52 Haggetts Pond Road, Andover, MA, 37 pages. (the "Revised Plans")

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2A) Addenda to Peer Review Response, Haggetts Pond Rail Trail, Andover, Massachusetts, prepared by BSC Group, 123 pages. (the "Revised Plans Addenda")

3) Project’s Operation & Maintenance Plan, dated April 2024 (the "O&M")

Through consultation with the Division, the Applicant addressed direct impacts through a reduction in the trail’s initially proposed width from 13 feet (8 foot wide paved path with an adjacent 3 foot wide stone dust path, bordered by one foot wide gravel shoulders on each side) to 10 feet (8 foot wide paved path, bordered by onefootwide loamed and seeded shoulders). Additionally, direct impacts associated with the project’s construction phase will be addressed through the implementation of a Divisionapproved Rare Species Protection Plan. The Project also incorporated the following to address state-listed species concerns:

- 1) Increased foot traffic: The Revised Site Plan reduces the total number of proposed parking spaces and includes the installation of eight (8) “No Parking” signs along Haggetts Pond Road.
- 2) Increased velocity of trail users along the paved trail corridor: The Revised Plans propose to restrict trail use as passive recreation only (page 21) and will prohibit the use of motorized vehicles, including electric bicycles (page 12).
- 3) Post construction vegetation management: The Applicant excludes routine vegetation O&M operations between April 15 and October 15 along the trail corridor and two adjacent open fields owned and managed by the Town (Andover Assessor’s Parcels 172 9 and 173 3). Per the Revised Plans Addenda, the Town will incorporate the guidelines listed in the publication “Mowing Advisory Guidelines in Rare Turtle Habitat: Pastures, Successional Fields, and Hayfields” into future management plans for the Site.

Abutting the rail bed corridor are numerous properties under the control of the Town of Andover, many of which are interconnected by an existing trails network. MESA Regulation 321 CMR 10.16(1) states, “

[p]rojects shall not be segmented or phased to evade or defer the review requirements of 321 CMR 10.13 and 10.18 through 10.23 or the eligibility requirements for an exemption under 321 CMR 10.14. For the purposes of 321 CMR 10.13, 10.14 and 10.18 through 10.23, the entirety of a proposed Project subject to review, including likely future expansions, shall be considered, and not separate phases or segments thereof.”

The Town of Andover stated that any further trail development designed to facilitate access to the trail described herein shall be submitted for review and approval by the Division, unless otherwise exempt under 321 CMR 10.14. The Division retains the right to consider impacts from the currently proposed trail cumulatively with any further trail development in keeping with the provision of 321 CMR 10.16.

State-Listed Species

The Division has determined that this Project, as currently proposed, will occur **within** the actual habitat of the following species:

<u>Scientific Name</u>	<u>Common Name</u>	<u>Taxonomic Group</u>	<u>State Status</u>
<i>Emydoidea blandingii</i>	Blanding's Turtle	Reptile	Threatened

This species and their habitats are protected in accordance with the MESA and the rare wetland wildlife species habitat provisions of the WPA.

Wetlands Protection Act (WPA)

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 this project, as currently proposed, **will not adversely affect** the actual Resource Area Habitat of state-protected rare wildlife species. Therefore, it is our opinion that this project meets the state-listed species performance standard for the issuance of an Order of Conditions.

Please note that this determination addresses only the matter of rare wildlife habitat and does not pertain to other wildlife habitat issues that may be pertinent to the proposed project.

Massachusetts Endangered Species Act (MESA)

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).

Based on the information provided and the information contained in our database, the Division finds that this project, as currently proposed, **must be conditioned 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 conditions attached to this letter must be met.**

Provided the attached 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.

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 Nikolis Gualco, Endangered Species Review Biologist, at nikolis.a.gualco@mass.gov, (508) 389-6375.

Sincerely,



Jesse Leddick
Assistant Director

cc:

Attachment: List of Conditions

List of Conditions

Applicant: Town of Andover
Project Location: Between High Plain Road and Haggetts Pond Road, Andover, MA
Project Description: Haggetts Pond Trail
NHESP File No.: 23-8679
Heritage Hub Form ID: RC-74351
Approved Plan: Haggetts Pond Rail Trail
Plan date: 11/7/2023 **Revised Date:** 4/16/2024

To avoid a prohibited Take of state-listed species, the following condition(s) must be met:

- 1. Turtle Protection Plan:** Prior to the start of work (including vegetation clearing or soil disturbance), the Applicant shall submit a Blanding's Turtle Protection Plan to the Division for review and written approval. Said Plan shall detail procedures for protecting state-listed turtles during construction, and be prepared and implemented by a qualified, Division-approved wildlife biologist. The Division is available for consultation on Plan development and can provide contact information for qualified biologists. The Division-approved Plan shall be implemented as written; any proposed changes to the Plan must be submitted to the Division for review and written approval prior to implementation of said changes. Please note that protective measures for state-listed turtles are required for any construction activities occurring between April 15 and October 15 of any year unless otherwise approved by the Division.

The Division has received a Blanding's Turtle Protection Plan, dated 06/14/2024, prepared by Matt Burne, BSC Group, which has been approved. All Work shall occur pursuant to the protective measures outlined within said Plan, which shall be implemented as written unless otherwise approved by the Division in writing. Any proposed changes to said Plan shall be submitted to the Division for review and written approval prior to implementation of any changes. Said Plan must be implemented by a qualified, Division-approved wildlife biologist in possession of a valid Scientific Collection Permit obtained from the Division. By December 31st of any year in which work occurs, the qualified wildlife biologist shall submit: a) a summary report to the Division detailing project status and compliance with the Plan; and b) any observations of state-listed turtles at <https://www.mass.gov/how-to/report-rare-species-vernal-pool-observations>.

- 2. Authorization Duration:** This authorization is valid for 5 years from the date of issuance. Work may be completed at any time during this 5-year period in compliance with the conditions herein. Thereafter, the Applicant must re-file pursuant to the MESA.