



MASSWILDLIFE

DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581

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

[MASS.GOV/MASSWILDLIFE](https://www.mass.gov/masswildlife)

July 28, 2022

Mount Washington Conservation Commission
East Street, Rfd 3
Mount Washington, MA 01258

Karen Lombard
The Nature Conservancy
136 West Street, Suite 202
Northampton, MA 01060

RE: Applicant: Karen Lombard, The Nature Conservancy
Project Location: Becker Pond
Project Description: Dam Removal
NHESP File No.: 18-37448
DEP Wetlands No.: 232-0046

Dear Commissioners & Ms. Lombard:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") received an Ecological Restoration Notice of Intent (NOI) with plans and other required materials (dated June 2022, prepared by BSC Group) in compliance with the rare 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 Massachusetts Endangered Species Act (MESA; MGL c.131A) and its implementing regulations (321 CMR 10.00). This review additionally incorporates information and plans submitted as part of the Single Environmental Impact Report (dated 5/17/21; prepared by BSC Group).

The Nature Conservancy (TNC) proposes to remove the existing Becker Pond dam which will include dredging of 525 cubic yards of impounded sediment to restore natural stream morphology, hydrology, and ecological connectivity. The Project will create a new section of access road and will side-trim parts of the existing access road. When dam removal activities are complete, the access road will be converted to a hiking trail after loaming and seeding the margins of the road to narrow the passable width. Temporarily disturbed areas, including access road margins and the area around the dam removal will be stabilized and planted with native vegetation. Tree cutting and the placement of gravel for the access road surface will be minimized to the extent practicable. The project sequence is described in the MESA filing.

The following plans, SEIR filing, NOI, and MESA filing are included by reference herein:

- BECKER POND DAM REMOVAL 75% DESIGN PLANS SEPTEMBER 4, 2020. Prepared by Inter-Fluv. 11 Sheets (SEIR),
- BECKER POND REMOVAL PROJECT Environmental Resources map Proposed Conditions. Prepared by BSC Group. 2 sheets, Attachment B (MESA filing), and
- SNAKE PROTECTION PLAN, Attachment D (MESA filing).

MASSWILDLIFE

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.

Note: When filing for any new or amended Notice of Intent, Request for Determination of Applicability or associated renewal, extension, or amendment of the WPA Orders of Conditions the Applicant shall contact the Division for written response regarding impacts to Resource Area habitat of state-listed wildlife. A renewal, extension or amendment of any Order of Conditions or other permit under the MA Wetland Protection Act does not renew, extend or amend this MESA authorization.

MASSACHUSETTS ENDANGERED SPECIES ACT (MESA)

Based on the information provided and the information contained in our database, the Division finds that a portion of 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 conditions must be met:

- 1) **Limit of Work.** All Work on the Property shall be within the limits of work as shown on the Plans noted above. Any changes to the proposed Work or any additional work beyond that shown on the Plans shall require additional review and written approval from the Division. Notwithstanding this condition, the Applicant will make every effort to create and enhance habitat for the state-listed species, which may occur outside the construction footprint.
- 2) **Rare Vertebrate Protection Plan.** Should any work be conducted during the active season, the Applicant is required to conduct such work under the supervision of a qualified biologist and the Division-approved "Snake Protection Plan" (SPP).
 - a. The SPP is approved with the following additions/changes:
 1. Stockpiled materials shall be stored on mats such double stacked pallets or similar materials, whenever possible. This allows the materials to be moved using the upper pallet while leaving the ground-contact pallet undisturbed.
 2. Contracts for the project shall stipulate that the qualified biologist may direct or temporarily halt onsite work to maximize protection of state-listed species and allow for additional sweeps/searches.
 - b. A MESA Commercial Scientific Collection Permit must be obtained from the Division to handle state-listed species. The permit application should provide a description of the qualifications of the biologist(s) proposed to implement the plan relative to state-listed vertebrates.
 1. As part of the application, the biologist can update/modify/revise the SPP.
 2. The qualified biologist shall have the responsibility and obligation to increase or modify (but not decrease) the search area, hours of effort, days of effort and or approaches to maximize detection of state-listed species based on actual field conditions observed. In such a circumstance, the qualified biologist shall notify the Division as soon as possible of the deviation, and the reason for deviating from, the approved protocol.
- 3) **Work Timing.**
 - a. Inactive season: Work conducted between November 1 and April 14 may proceed without restrictions.

- b. **Active season:** Work conducted between April 15 and October 31, even if initiated earlier, must be conducted under the direct supervision of a Division-approved biologist in accordance with the SPP.
- 4) **Mesh Construction Materials.** Mesh materials are addressed in the SPP. The following adds to the bullet points in the SPP. Mesh materials must be excluded from Project implementation unless otherwise approved in writing by the Division.
 - a. No presence, stockpiling, or use of permanent or temporary mesh materials with a nominal opening between 1/4" and 2" shall be permitted, unless otherwise approved in writing by the Division or fully encased in a non-penetrable wrap or surface (e.g., poured concrete over rebar mesh).
 - b. Netless rolled erosion control products may be utilized whenever mesh materials are necessary. Authorized materials include (1) standard, black silt fencing (i.e., 36-in wide, tightly woven), (2) orange safety fencing (aka barrier or snow fencing) with nominal 2" or greater openings installed tightly between supports *and* with a 6" minimum gap along the ground, and (3) chain-link fencing with 2" or greater openings and installed with a 6" minimum gap along the ground.
- 5) **Use only Native Plants and Seeds.** All plants and seed mixes shall be composed of species native to the County in accordance with The Vascular Plants of Massachusetts: A County Checklist First Revision (Dow Cullina, M, B Connolly, B Sorrie, and P Somers. 2011. MA NHESP DFW). Available from Massachusetts state archive: <http://archives.lib.state.ma.us>.
- 6) **State-listed Plants and Seeds Shall Not Be Used.** The Division also does not approve of the planting of state-listed species, even if the seeds are sourced outside of Massachusetts. Please carefully review seeds and plantings at the time of sourcing to ensure they are not state-listed species. <https://www.mass.gov/info-details/list-of-endangered-threatened-and-special-concern-species>
- 7) **Develop and Implement an Invasive Species Control Plan.** The Applicant shall develop and implement an invasive plant species control plan in areas of restoration.
- 8) **Compliance Reports:**
 - a. *Post Construction:* No later than sixty (60) days after completion of construction the Applicant shall submit a brief written report including photographs showing previous and final conditions with particular emphasis on demonstrating compliance with the Conditions herein.
 - b. *Vegetation Restoration Status:* Additional reports shall be submitted 1 and 3 years post construction to report on the conditions and growth of the vegetative plantings associated with the narrowed access road and areas of enhanced habitat for the state-listed species. The report should include corrective plans for failed vegetation or intrusion of non-native plants.
- 9) **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 shall re-file under the MESA.

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.

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 Misty-Anne Marold, Senior Endangered Species Review Biologist, at 508-389-6356.

Sincerely,

A handwritten signature in black ink, reading "Everose Schlüter". The signature is written in a cursive style with a large initial 'E' and a long, sweeping underline.

Everose Schlüter, Ph.D.
Assistant Director

cc: Sarah Barnum, BSC Group, Inc.
Andrew Madden, MA DFW Western Regional Office