



MASSWILDLIFE

**DIVISION OF
FISHERIES & WILDLIFE**

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MASS.GOV/MASSWILDLIFE

October 20, 2022

David Ennis, Affirmative Investments, Inc.
33 Union Street, 2nd Floor
Boston, MA 02108

RE: Applicant: David Ennis, Affirmative Investments, Inc. (in collaboration with the
 Island Housing Trust)
 Location: 85 Edgartown Vineyard Haven Road, Oak Bluffs
 ASSESSOR’S MAP 50, PARCEL 31; BOOK 350/PAGE 190, BOOK 320/PAGE 52,
 DUKES COUNTRY REGISTRY OF DEEDS
 Project Description: Construction of Planned Residential Development
 NHESP File No.: 21-40189

Dear Applicant:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the “Division”) received the MESA Review Checklist with the site plan entitled PLANNED RESIDENTIAL DEVELOPMENT SOUTHERN TIER PROPERTY OAK BLUFFS, MASSACHUSETTS (“Site Plan with Area Summary,” 1 sheet; dated July 15, 2022, revised through October 12, 2022; prepared by Horsley Witten Group, Inc.; the “Plan”) and supporting documentation for review pursuant to the MA Endangered Species Act Regulations (321 CMR 10.18).

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 Imperial Moth (*Eacles imperialis*), state-listed as “Threatened.” This species and its habitats are protected in accordance with the rare species provisions of the MESA. A Fact Sheet for these species can be found on our website, www.mass.gov/nhesp.

The project, as proposed, includes the construction of a planned affordable residential housing development (“Southern Tier Property”), utilities, landscaping and associated site work resulting in ±4.95 acres of habitat disturbance (hereinafter, the “Work”; labeled “Area A” on the Plan) on a ±7.78-acre parcel owned by the Oak Bluffs Resident Homesite Committee. As an integral part of the project, the Applicant has proposed to permanently protect ±1.87 acres of the property (labeled “Protected Open Space” on the Plan) as open space and state-listed species habitat through fee transfer or donation of a conservation restriction to a qualified conservation entity.

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Area A (Southern Tier Property):

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 conditions must be met:

1. **Recordation:** Prior to the Start of Work, the Applicant shall record this determination letter and the Plan in the Dukes County Registry of Deeds so as to become a record part of the chain of title for the property. Prior to the start of Work, the Applicant shall provide the Division with written proof of said recordation.
2. **Symbolic Fencing:** Prior to the start of Work, symbolic fencing shall be erected along the "Limit of Work (Phase I & II)" shown on the Plan and maintained throughout the construction period. No work or activity shall occur on the property outside the "Limit of Work (Phase I & II)" shown on the Plan.
3. **Monumentation:** Prior to the start of Work, the Applicant shall submit a plan to permanently monument the "Protected Open Space" shown on the Plan. Prior to the start of Work or as otherwise approved by the Division, monumentation shall be installed pursuant to the Division-approved plan. Said monumentation shall be maintained in good condition and repaired or replaced, as necessary.
4. **Compliance Report:** Within thirty (30) days of the completion of work or as otherwise approved by the Division, the Applicant shall submit written confirmation to the Division documenting compliance with the conditions outlined herein.
5. **Habitat Protection:** Within one (1) year of the start of Work and prior to recording any instrument to transfer or protect the "Protected Open Space" shown on the Plan, the Applicant shall provide the Division with a plan for permanently protecting the "Protected Open Space" as open space and state-listed species habitat pursuant to Article 97 provisions.

Provided the above-noted conditions are fully implemented and there are no changes to the Plan, this project will not result in a Take of state-listed species. 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 the "Limit of Work (Phase I & II)" shown on the Plan 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.

Area B and Future Residential Housing Project (Southern Woodland Reservation):


The Applicant and the Island Housing Trust have disclosed that, at some future time, an access road on the property (labeled "Area B" on the Plan) as well as additional affordable residential housing on land immediately north of the property presently owned by the Martha's Vineyard Land Bank ("Southern Woodland Reservation") may be proposed.

The Division notes that any future projects or activities proposed on and adjacent to the property which are (a) located outside of the approved "Limit of Work (Phase I & II)" shown on the 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 proposed project or activity 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 Jesse Leddick, Chief of Regulatory Review, at (508) 389-6386 or jesse.leddick@mass.gov.


Sincerely,



Everose Schlüter, Ph.D., Assistant Director
Massachusetts Division of Fisheries & Wildlife

On this 20th day of October, 2022, before me, the undersigned notary public, personally appeared Everose Schlüter, Assistant Director, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.





Emily Melissa Holt, Notary Public
My Commission Expires: July 12, 2024

cc: Derrill Bazy and Phillippe Jordi, Island Housing Trust
Deborah Potter, Oak Bluffs Town Administrator
Amy Ball, Horsley Witten Group, Inc.

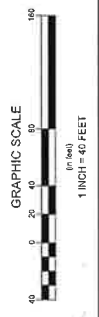
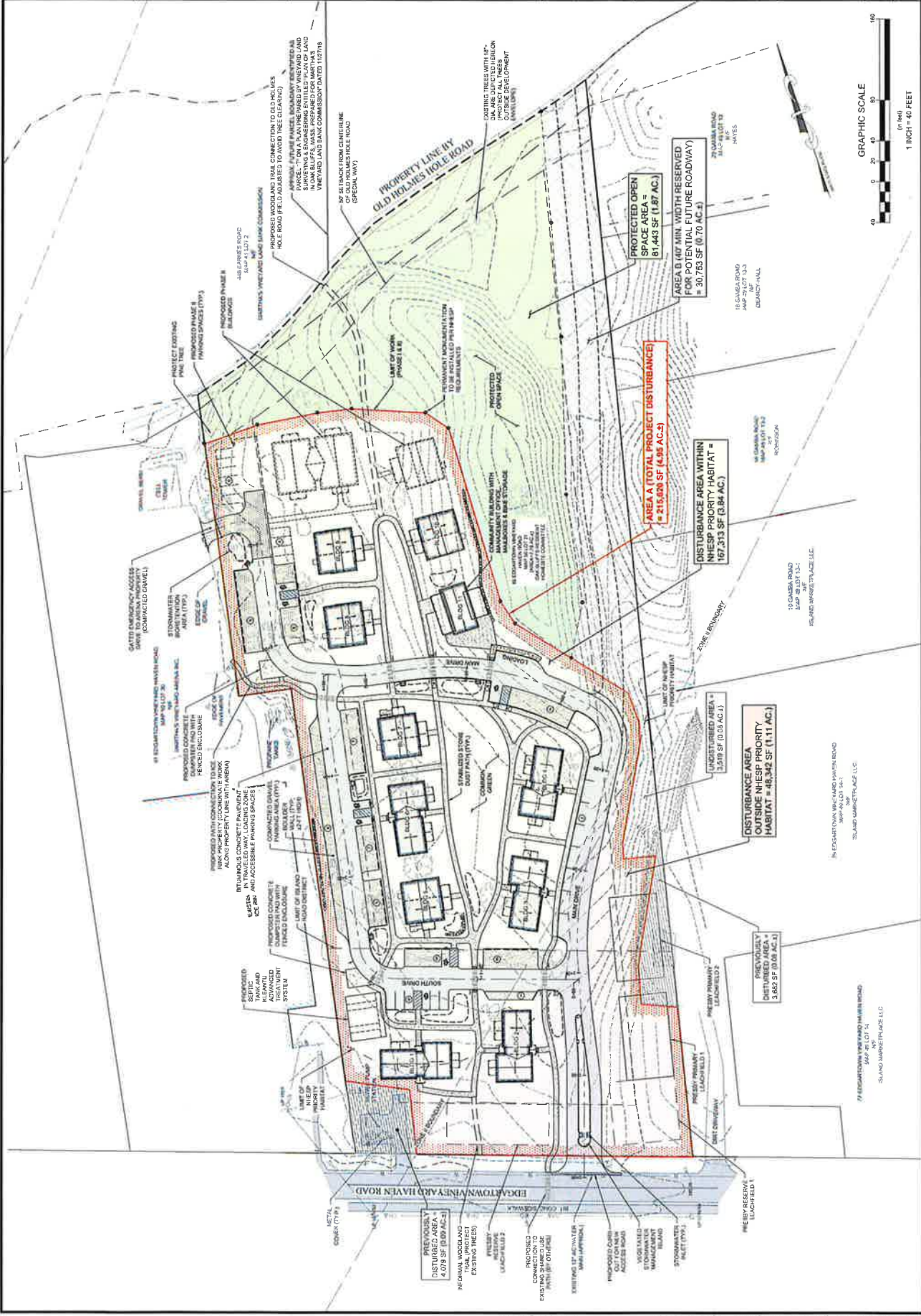
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HORTLEY WITEN GROUP, INC.
 1000 WASHINGTON STREET, SUITE 200
 BOSTON, MASSACHUSETTS 02108
 TEL: (617) 552-1000
 WWW.HORTLEYWITEN.COM

SITE PLAN WITH AREA SUMMARY
PLANNED RESIDENTIAL DEVELOPMENT
SOUTHERN TIER PROPERTIES
OAK BLUFFS, MASSACHUSETTS

Affirmative Investments,
 23 Union Sq, 2nd Floor
 Boston, MA 02108
 Tel: (617) 552-1000
 Fax: (617) 552-1000
 Date: February 16, 2022

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