



TOWN OF EDGARTOWN  
BUILDING INSPECTOR  
P. O. BOX 158  
EDGARTOWN, MASSACHUSETTS 02539

11 February 1992

Christopher P. Kennedy  
The Trustees of Reservations  
Wakeman Conservation Center  
Box 319-X, RFD  
Vineyard Haven, MA 02563

Dear Mr. Kennedy:

This is in response to your letter of 5 February 1992. You have asked me to determine if your proposed gate would require a Special Permit under the Cape Pogue District of Critical Planning.

In Section 14.4.4 of the Edgartown Zoning By-Laws it states that a "Special Permit shall be required for any 'development' as that word is defined in Chapter 831, Section 6 of the Acts and Resolves of 1977." It goes on to list examples of projects that would require a Special Permit. Fences and walls are two of the examples that are given.

It is my opinion that a gate shares similar characteristics with fences and walls and would require a Special Permit from the Edgartown Planning Board.

Very Truly Yours,

Leonard Jason, Jr.  
Building/Zoning Inspector

LJJ:up  
cc: Planning Board



Commonwealth  
of Massachusetts

DEP File No

(To be provided by DEP)

City/Town Edgartown

Applicant: \_\_\_\_\_

**Request for a Determination of Applicability  
Massachusetts Wetlands Protection Act, G.L. c. 131, §40**

and under the Edgartown Wetlands Protection Bylaw

1. I, the undersigned, hereby request that the Edgartown Conservation Commission Conservation Commission make a determination as to whether the area, described below, or work to be performed on said area, also described below, is subject to the jurisdiction of the Wetlands Protection Act, G.L. c. 131, §40.
2. The area is described as follows. (Use maps or plans, if necessary, to provide a description and the location of the area subject to this request)

Location: Street Address East Beach, Chappaquiddick, Edgartown, MA

Lot Number: Map 32, Lot 2, Edgartown Assessor's Map

The Trustees of Reservations (TTOR) is a conservation land trust incorporated in 1891 to provide public access and protection to properties of unusual beauty and ecological importance. The Cape Poge Wildlife Refuge (Refuge) is one of 73 properties owned and managed by TTOR in Massachusetts.

3. The work in said area is described below. (Use additional paper, if necessary, to describe the proposed work.) (Continued)

**Vehicle Control Gate, Dyke Causeway,  
Cape Poge Wildlife Refuge**

The Commonwealth of Massachusetts, Department of Public Works and the Town of Edgartown have announced their plans to rebuild the Dyke Bridge leading to the Refuge for the purposes of providing off road vehicle access to the barrier beach. TTOR has issued a position statement and intention to regulate vehicle access into the refuge during periods of shorebird nesting and migration (April 1- Sept. 30). This seasonal restriction will provide for the protection of the federally endangered Piping plover (*Charadrius melodus*) and Massachusetts listed species of special concern, Least tern (*Sterna albifrons*) which we are obligated to protect under the terms of our charter. We feel the proposal we have outlined regarding the limitation of ORV access into the Refuge via the Bridge during the shorebird nesting and migration season will also assure continued public access to the beaches and fishing points within the Refuge.

(Continued)

Continued #3

This proposal is dependent upon the placement of a vehicle control gate located on the TTOR/Town of Edgartown property line located on the East side of the Dyke causeway. The gate will be closed to ORV's from April 1-September 30, and open at all other times. Pedestrians will NOT be restricted from entering the Refuge via the Bridge.

The vehicle control gate will be placed on the causeway in such a manner that pedestrians will be able to walk around the gate and vehicles will have adequate clearance to pass between the latch post and hinge post at times when the gate is open for ORV access.

Land owners at East Beach and Cape Poge will be provided keys to the gate for their personal vehicular access to their homes. Keys will also be provided to State and local police, fire and emergency organizations.

ORV access will be allowed to enter the Refuge on a yearround basis via Wasque Reservation. TTOR has taken the position that at those times when shorebirds are most vulnerable, they will be protected from increased levels of ORV disturbance. TTOR also has a responsibility to provide public access in balance with wildlife protection and thus existing ORV access to the Refuge will be allowed via Wasque Reservation.

4. The owner(s) of the area, if not the person making this request, has been given written notification of this request on N/A (date)  
The name(s) and address(es) of the owner(s):

5. I have filed a complete copy of this request with the appropriate regional office of the Massachusetts Department of Environmental Protection February 4, 1992 (date)


DEP Northeast Regional Office  
5 Commonwealth Avenue  
Woburn, MA 01801

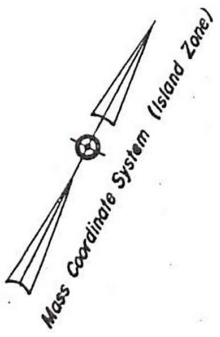
DEP Southeast Regional Office  
Lakeville Hospital  
Route 105  
Lakeville, MA 02347

DEP Central Regional Office  
75 Grove Street  
Worcester, MA 01605

DEP Western Regional Office  
State House West, 4th Floor  
436 Dwight Street  
Springfield, MA 01103

6. I understand that notification of this request will be placed in a local newspaper at my expense in accordance with Section 10.05(3) (b) 1 of the regulations by the Conservation Commission and that I will be billed accordingly.

Signature  Name Christopher P. Kennedy  
Islands Regional Supervisor  
Address The Trustees of Reservations Tel: 508-693-7662  
RFD Box 319-X  
Vineyard Haven, MA 02568



*Glenn F. Provoct*  
12-31-91

The Lagoon

72.5 ± Ac

edge of marsh  
approx. location of underground telephone line  
M.H.W.

⊙ DENOTES IRON PIPE FOUND 11-15-91

RECORDED  
12:45 P.M.  
COUNTY CLERK  
PHILIP J. NORTON

Dike Bridge  
M.H.W.

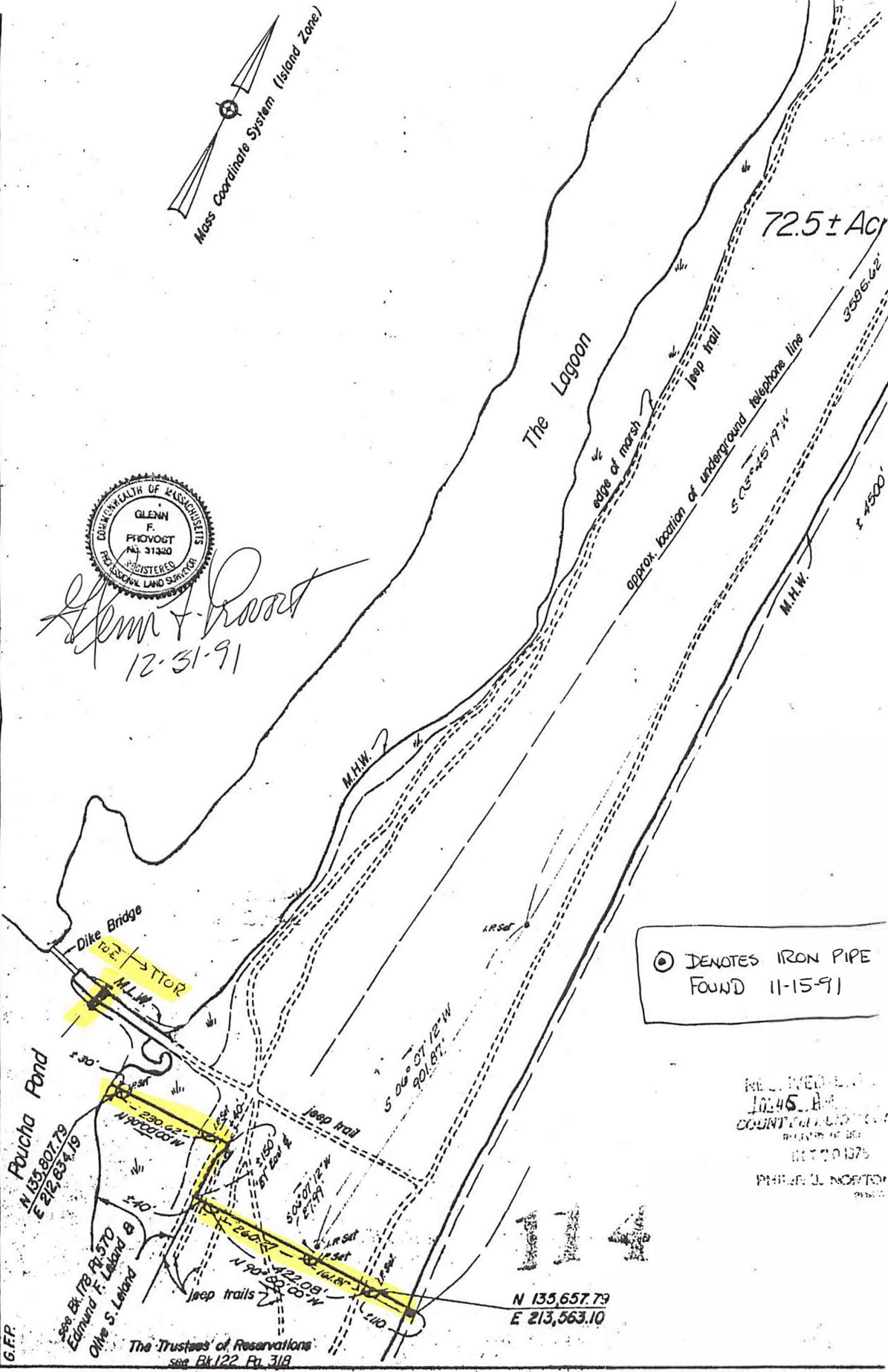
Roucha Pond  
N 135,807.79  
E 212,834.10

see Bk 178 Pt. 570  
Edmund F. Leland &  
Olive S. Leland

The Trustees of Reservations  
see Bk 122 Pt. 318

N 135,657.79  
E 213,563.10

548  
G.F.P.





January 17, 1992

Mr. Fred B. Morgan, Jr., Chairman  
Board of Selectmen  
Edgartown, MA 02539

Dear Mr. Morgan:

In anticipation of the reconstruction of the Dyke Bridge, The Trustees of Reservations (TTOR) has carefully re-examined the research on which the Cape Poge Wildlife Refuge/Wasque Reservation Management Plan is based. Particular attention has been focused on vehicular access to Cape Poge Wildlife Refuge (CPWR) in an effort to answer the specific question raised at our meeting on January 8th: how many off-road vehicles (ORVs) can be permitted to enter CPWR without adversely affecting the fragile natural resources of the barrier beach?

Research conducted along the Atlantic coast over the past 25 years concludes that the answer is zero. Dr. Paul Godfrey, studying the effects of human impact at Cape Cod National Seashore, Crane Beach in Ipswich, and CPWR, concluded that one pass by an ORV will kill American beachgrass and increase erosion rates. Furthermore, vehicles traveling along sandy paths cause depressions in dune systems and increase erosion rates. Researchers studying the effects of human impact on beach nesting birds, such as federally endangered piping plovers or state-listed least terns, concluded that ORVs adversely impact nests as well as chicks. For this reason the U.S. Fish and Wildlife Service now prohibits ORV access to ten beaches along the Atlantic coast where piping plovers nest on federal refuges.

TTOR has taken a less restrictive approach. In developing the Cape Poge/Wasque Management Plan we have tried to balance recreation and preservation. Many years of on-site research supported this plan. Boardwalks have been built for pedestrian access, vehicle ramps have been built for ORV access, and damaged dunes are being restored. Bird nests are protected from predators and people by fences.

## Conserving Massachusetts Landscape

### STANDING COMMITTEE

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Hall J. Peterson  
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Joseph P. Spang

Rush Taggart

William W. Windle

### DIRECTOR

Frederic Winthrop, Jr.

The Trustees of Reservations is dedicated to preserving properties of exceptional scenic, historic and ecological value throughout the Commonwealth. Founded in 1891, it is a non-profit organization and the oldest private trust in the world.



The fact that there has been only one point of vehicular access - via Wasque Reservation - has greatly enhanced the success of these management techniques. With no Dyke Bridge in place, relatively few visitors are willing to make the drive from Wasque to CPWR. Of those that do, most are sportsmen and others who are respectful of the environment. There has been generally minimal damage to the dunes or nesting shorebirds.

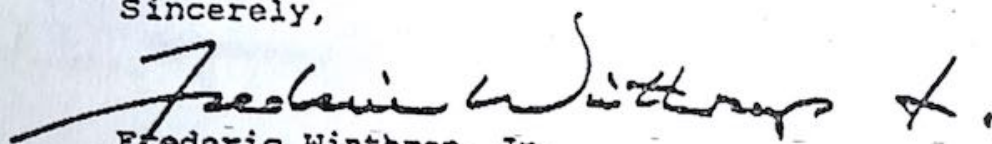
In 1989, Dr. Jerry Vaske and Dr. Maureen Donnelly conducted a visitor use study at CPWR. A questionnaire was used to better understand visitors' behaviors, attitudes and beliefs. We found that 70% of our visitors are fishermen and that most agree that CPWR is a fragile ecosystem that need special protection. When asked which was more important, preserving wildlife or allowing recreation, 72% said preserving wildlife. TTOR is encouraged that there is such a high level of understanding among CPWR visitors.

Obviously, the reconstruction of the Dyke Bridge would make it much easier to ORVs to enter CPWR, and we anticipate significantly more pressure on the refuge from ORV operators at large. In an effort to balance preservation and recreation, we believe certain restrictions are necessary, especially during the shorebird nesting season. Therefore, TTOR intends to limit ORV access in the following manner:

1. No vehicles will be permitted to enter Cape Poge Wildlife Refuge from the Dyke Bridge between April 1 and September 30, the key months for nesting and migratory shorebirds. For the six months between October 1 and March 31, the gates will generally remain open, except during severe storm threats or other emergencies.
2. In order to enforce these restriction, a barrier gate will be erected on TTOR property at the east end of the Dyke Bridge causeway. For public safety and effective enforcement, TTOR asks the Town of Edgartown and the Commonwealth for permission to erect a similar gate on the west side of the bridge. When bridge access is to be closed, both gates will be closed.
3. Vehicles will be able to continue to drive to CPWR through Wasque Reservation as they have since the Dyke Bridge was closed by the state more than ten years ago.
4. Pedestrian access both at Wasque and over the Dyke Bridge will be unrestricted except when public safety dictates otherwise.
5. As TTOR continues to monitor environmental impacts, we will evaluate and adjust vehicle limitations accordingly.

In conclusion, TTOR supports the rebuilding of the Dyke Bridge on the condition that the vehicular access can be controlled and the natural resources of the refuge protected.

Sincerely,

  
Frederic Winthrop, Jr.  
Director

Frederic Winthrop, Jr.  
Director





Conserving the  
Massachusetts  
Landscape

POSITION STATEMENT

CONTACT  
FREDERIC WINTHROP, JR.  
Director  
or  
RICHARD T. HOWE  
Deputy Director  
for Property Management  
(508) 921-1944

The Trustees of Reservations releases preliminary plan for managing Cape Poge Wildlife Refuge after reconstruction of the Dyke Bridge

Beverly, Mass. -- A decade after closing the Dyke Bridge on Chappaquiddick Island, Martha's Vineyard, the Commonwealth of Massachusetts has tentatively agreed to provide the Town of Edgartown with funding for reconstruction of the bridge. The proposed Dyke Bridge will span Poucha Pond at the end of Dyke Road and exit onto the Cape Poge Wildlife Refuge, a conservation property of The Trustees of Reservations, a private, non-profit land trust.

The Trustees of Reservations (TTOR) and the Town of Edgartown have spent a considerable amount of time

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The Trustees of Reservations is dedicated to preserving properties of exceptional scenic, historic and ecological value throughout the Commonwealth. Founded in 1896 it is a non-profit organization and the oldest private land trust in the world.



-- 2 --

trying to reconcile TTOR's management responsibility for the fragile Wildlife Refuge with Edgartown's insistence on full and unlimited vehicular access to the property. Following a meeting early in January between TTOR and the town, mediated by the state Department of Transportation and Construction, TTOR was instructed to submit to the state mediator its plan for managing vehicular and pedestrian access once the bridge is rebuilt.

In anticipation of the reconstruction of the bridge, TTOR has carefully re-examined the research on which the 1990 Cape Poge Wildlife Refuge/Wasque Reservation Management Plan is based. Particular attention has been focused on vehicular access to Cape Poge Wildlife Refuge in an effort to answer a specific question raised at the January meeting: how many off-road vehicles (ORVs) can be permitted to enter Cape Poge Wildlife Refuge without adversely affecting the fragile natural resources of the barrier beach?

Research conducted along the Atlantic coast over the past 25 years concludes that each ORV will have some adverse impact:

- One pass by an ORV will kill American beachgrass and increase erosion rates. Even vehicles traveling on established ORV paths cause depressions in dune systems and increase erosion rates.
- ORVs adversely impact beach-nesting birds and their chicks. For this reason, the U.S. Fish

-- MORE --

-- 3 --

and Wildlife Service now prohibits ORV access to ten beaches along the Atlantic coast where piping plovers nest on federal refuges.

Traditionally, TTOR has taken a less restrictive approach to managing its barrier beaches and continues to do so now. In developing the Cape Poge/Wasque Management Plan, it has tried to balance recreation and preservation. Boardwalks have been built for pedestrian access, vehicle ramps have been constructed for ORV access, and damaged dunes are continually being restored. Bird nests are protected from predators and people by fences.

The fact that there has been only one point of vehicular access to Cape Poge -- via TTOR's Wasque Reservation -- has greatly enhanced the success of these management techniques. With no Dyke Bridge in place, relatively few visitors are willing to make the drive from Wasque to Cape Poge. Of those who do, most are sportsmen who are respectful of the environment. There has generally been minimal damage to the dunes or nesting shorebirds.

Reconstruction of the Dyke Bridge would make it much easier for ORVs to enter Cape Poge Wildlife Refuge, and TTOR anticipates significantly more pressure on the refuge from ORV operators at large. In an effort to balance preservation and recreation, TTOR believes certain restrictions are necessary, especially during the shorebird nesting and migration

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season. Therefore, TTOR intends to limit ORV access in the following manner:

1. TTOR intends to erect a gatehouse and gate on TTOR property at the east end of the Dyke Bridge causeway, the point where the Dyke Bridge exits onto Cape Poge Wildlife Refuge. TTOR expects the full support of the Edgartown Board of Selectmen during the permitting process.
2. For public safety and effective enforcement, TTOR is asking the Town of Edgartown and the Commonwealth to erect a similar gate on the west side of the Dyke Bridge causeway. When access to Cape Poge is prohibited, both gates will be closed.
3. No vehicles will be permitted to enter Cape Poge Wildlife Refuge from the Dyke Bridge between April 1 and September 30, the key months for nesting and migratory shorebirds. For the six months between October 1 and March 31, the gate will generally remain open, except during severe storm threats or other emergencies.
4. Vehicles will continue to have access to Cape Poge through Wasque Reservation year-round, as they have since the Dyke Bridge was closed by the state more than ten years ago. Access will be limited only by severe storm threats or other emergencies.
5. Pedestrian access both at Wasque and over the Dyke Bridge will be unrestricted, except when public safety dictates otherwise.
6. As TTOR continues to monitor environmental impacts, it will evaluate and adjust vehicle limitations accordingly.

In conclusion, TTOR supports the rebuilding of the Dyke Bridge on the condition that the vehicular access can be controlled and the natural resources of Cape Poge Wildlife Refuge protected.

# # # # #

1/24/92



TOWN OF EDGARTOWN  
BUILDING INSPECTOR  
P. O. BOX 158  
EDGARTOWN, MASSACHUSETTS 02539

11 February 1992

Christopher P. Kennedy  
The Trustees of Reservations  
Wakeman Conservation Center  
Box 319-X, RFD  
Vineyard Haven, MA 02568

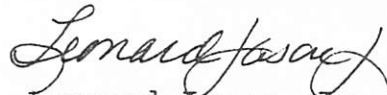
Dear Mr. Kennedy:

This is in response to your letter of 5 February 1992. You have asked me to determine if your proposed gate would require a Special Permit under the Cape Pogue District of Critical Planning.

In Section 14.4.4 of the Edgartown Zoning By-Laws it states that a "Special Permit shall be required for any 'development' as that word is defined in Chapter 831, Section 6 of the Acts and Resolves of 1977." It goes on to list examples of projects that would require a Special Permit. Fences and walls are two of the examples that are given.

It is my opinion that a gate shares similar characteristics with fences and walls and would require a Special Permit from the Edgartown Planning Board.

Very Truly Yours,



Leonard Jason, Jr.  
Building/Zoning Inspector

LJJ:up  
cc: Planning Board



**The Trustees of Reservations**  
*Conserving the  
Massachusetts Landscape*

**Martha's Vineyard and  
Nantucket Management Region**

Christopher P. Kennedy  
*Assistant Regional Supervisor*

Wakeman Conservation Center  
Box 319-X, RFD  
Vineyard Haven, Massachusetts  
02568

Telephone  
508-693-7662

February 5, 1992

Leonard Jason, Jr.  
Zoning Inspector  
Town of Edgartown  
Town Hall  
Edgartown, MA 02539

Dear Mr. Jason:

This past November I requested a verbal ruling on the applicability of the Cape Poge District of Critical Planning Concern zoning by-law to a proposal by The Trustees of Reservations (TTOR) relative to the placement of a vehicle control gate on TTOR owned property at the Dyke causeway.

At that time you stated that a gate on the causeway did not require a building permit but would require review by the Edgartown Conservation Commission for Determination of Applicability to MGLA C. 131, S. 40. As I recall you did not state whether our proposal for the placement of the gate would necessitate a Special Permit under the terms of the DCPC.


As of this date, TTOR has filed a Request for Determination of Applicability for placement of a vehicle control gate on the TTOR causeway. This gate will be used to effect our position statement issued to the Commonwealth of Massachusetts and the Town of Edgartown in light of the pending construction of a replacement Dyke Bridge.

The Trustees of Reservations is dedicated to preserving properties of exceptional scenic, historic and ecological value throughout the Commonwealth. Founded in 1891, it is a non-profit organization and relies for support entirely upon membership dues, admission fees and voluntary contributions.

We are requesting your review to determine if this gate (see enclosed survey plan and position statement) will require a Special Permit under the terms of the Cape Poge DCPC.

Your prompt determination would be greatly appreciated.

Sincerely,

  
Christopher P. Kennedy,  
Islands Regional Supervisor

CC: F. Winthrop, TTOR  
D. Taylor, Esq., Hill and Barlow  
T. Curry Jones, Edgartown Planning Board  
Peter Vincent, Esq., Edgartown Conservation Commission



# The Trustees of Reservations

*Conserving the  
Massachusetts Landscape  
Since 1891*

Islands  
Regional Office

Christopher Kennedy  
Regional Supervisor

May 20, 1993

Michael Donaroma,  
Chairman  
Edgartown Planning Board  
Town Hall  
Edgartown, MA 02539

Dear Mr. Donaroma:

On February 11, 1992, Edgartown Zoning Inspector, Leonard Jason Jr., ruled that the placement of vehicle control gates within the Cape Poge District of Critical Planning Concern would require a Special Permit from the Planning Board.

Therefore, please accept this letter of application for a Special Permit under the terms of the Cape Poge District of Critical Planning Concern for the placement of two vehicle control gates located at the western end of the Dyke Bridge and eastern end of the Dyke Bridge Causeway. The reason for the placement of these gates is more fully described in the Notice of Intent (attached) and in particular the Memorandum of Agreement between the Town of Edgartown (TOE) and The Trustees of Reservations. These gates will, in part, satisfy the objections of the United State Fish and Wildlife Service who have gone on record in opposition to the reconstruction of the Bridge except in the case where vehicle safeguards for access onto the barrier beach are incorporated into the management of the property.

TOE Board of Selectmen have voted to accept TTOR's Shorebird Management Plan, and all of the provisions of the Memorandum of Agreement as the basis for reconstructing the Dyke Bridge. Federal officials have voiced their strong support for the adoption of the Dyke Bridge Agreement along with the adoption of the TTOR Shorebird Management Plan. The Agreement provides, however, that the Bridge shall not be reopened for vehicle use until and unless the gates for controlling vehicle access are in place.

The Agreement also stipulates that TTOR and the Board of Selectmen will work cooperatively to attain all necessary permits pertaining to the Bridge construction and use.



A positive vote in favor of this application will ensure that rare shorebirds and their habitats are protected and will allow for the use of the new bridge by off road vehicles.

Sincerely,



Christopher P. Kennedy,  
Islands Regional Supervisor

cc: F. Winthrop, Director.  
E. Surkin, Chair, Chappaquiddick Committee  
L. Jason Jr., Zoning Inspector  
E. Vincent, Chair, Edgartown Conservation  
Commission

*original*

4/16/92

**MEMORANDUM OF UNDERSTANDING  
CONCERNING RECONSTRUCTION OF DYKE BRIDGE,  
CHAPPAQUIDDICK ISLAND  
EDGARTOWN, MASSACHUSETTS**

**INTRODUCTION**

- A. The parties are the Town of Edgartown, Massachusetts (the Town) and The Trustees of Reservations (the Trustees).
- B. The dispute relates to the construction and use of a replacement bridge planned to be built on the site of the bridge known as Dyke Bridge, Chappaquiddick, MA (the Project). The bridge would provide access to a barrier beach, which includes a 72.5 acre parcel of land in which the Trustees hold with others an undivided interest, and land known as Cape Poge Wildlife Refuge and Wasque Reservation which are owned entirely by the Trustees, as well as other parcels owned by the Town and certain private owners. It would replace a bridge that had existed for a number of years but which fell into disrepair in the 1970's. The bridge has been closed to vehicles since 1981 and to pedestrians since 1988.
- C. The barrier beach is connected to the island of Chappaquiddick and to the main island of Martha's Vineyard at the beach's southern point, called Wasque Point. The Trustees own land at that point, called Wasque Reservation, and control vehicular access to Wasque Reservation, Cape Poge Wildlife Refuge and the rest of the barrier beach by selling annual stickers that authorize vehicular access and use. A number of users are people who go to this beach to fish, including several organizations devoted to surfcasting. There are also a number of private residences at the Cape Poge end of the barrier beach. Occupants of such residences currently reach their homes and people drive to fishing locations by entering the barrier beach at Wasque Reservation and driving along the barrier beach. Any vehicles using the barrier beach are specially equipped for such driving, including four-wheel drive. The Trustees require air to be

partially let out of car tires for beach driving and provide facilities for re-inflation after leaving the beach.

D. Some areas of the parcels referred to in Paragraph B above are a habitat of the piping plover, a shorebird that was added to the Federally-protected list of endangered species in 1986. The Fish and Wildlife Service of the U.S. Department of the Interior has stated that primary threats to the piping plover are "habitat disturbance and destruction, and disturbance of nesting adults and chicks," and identified the beach north and south of the Dyke Bridge as "an area which could contribute significantly to the survival and recovery of the piping plover." Federal biologists who visited this area in 1989 and 1990 concluded that, "with adequate management, beaches between Norton Point and Cape Pogue could provide nesting habitat for significantly increased numbers of piping plovers."

E. The purpose of this Memorandum of Understanding is to resolve issues concerning the use of the rebuilt bridge in a manner that protects the environmental fragility of the barrier beach, including its wildlife, while providing reasonable but limited vehicular access.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. The parties agree that the construction of the bridge should proceed so that it can be completed as soon as possible, that it should be used by pedestrians without limit, and by motor vehicles, including vehicles of landowners on Cape Poge, emergency vehicles, and vehicles of the general public, subject to certain limitations to be specified herein.

2. Gates shall be constructed on both sides of the bridge, to be staffed in a limited way by the Trustees. In order to minimize traffic management responsibilities, the Trustees would not be required to provide continuing staff presence at the bridge or to monitor the use of the bridge or otherwise police access, but would provide staff solely to open and close the gates. The Town and the Trustees agree to cooperate in obtaining all permits necessary for the construction of the gates, including those from the relevant town boards (including Conservation Commission and/or Planning Board as appropriate). It

is expected that permits for the new gates shall be issued prior to the start of construction. The parties agree that the bridge will not be opened to vehicles until both gates are in place.

3. Pedestrians shall be able to use the bridge at all times, whether gates are open or closed.
4. During the actual bird nesting season as determined by a joint inspection (approximately April 15 through August 31), gates shall be open to the general public only in early morning and late afternoon, (with a right in the Trustees but no obligation to monitor the actual purposes of those using the bridge, and no expectation of constant presence by the Trustees at the gates). Such hours shall be from sunrise or 5:00 a.m. whichever is later to 9:00 a.m., and from 4:00 p.m. to 7:00 p.m. Gates shall be locked all other periods -- to prevent general automobile traffic during prime daytime beach hours and during nighttime beachparty hours. Signs and other means shall be used to route all vehicular traffic on the barrier beach away from the nesting and feeding areas during bird nesting season.
5. The Trustees, in return for the right to erect its gates on town property, will endeavor to provide a parking area at its Mytoi Reservation, with signs developed cooperatively between the Town and Trustees to encourage pedestrian use of the bridge and discourage use by private vehicles. (The use of property at Mytoi is subject to the approval of the donor's family.)
6. The Trustees and the Town shall use their best efforts to reach agreement with the Martha's Vineyard Striped Bass & Bluefish Derby, the Martha's Vineyard Surfcasters' Association, and the Martha's Vineyard Rod & Gun Club to assist the Trustees' rangers in protecting the nesting areas of the birds and making sure vehicles stay in established routes on the barrier beach.
7. Only emergency vehicles and vehicles of the Town and the Trustees on official business would have their own keys to the gates so they could have unlimited use of the bridge. All keys would be of the variety that cannot be duplicated and must be used to lock the gate in order to remove the key.

8. The restrictions in Paragraph 4 shall not be in place outside the bird nesting season referred to in Paragraph 4 and shall be subject to variation for the protection of natural resources and as public safety may require in the event of storms or other emergencies.

9. The Town and the Trustees will cooperate in developing an educational program (including signage and other elements) to encourage responsible driving habits on the barrier beach.

10. The above principles and conditions shall be evaluated on an ongoing basis, at least annually, with an understanding that the management plan could be changed at a later time based upon experience. The Trustees will periodically report to the Town on the effectiveness of its management plan, including the vehicular use of the area. The Trustees will inform the Town and the general public of any changes to its management plan for Cape Poge and Wasque and, except in cases of emergency, will provide an opportunity for the Town to comment on the plan reasonably in advance of its implementation. Consistent with applicable law, the Trustees shall retain exclusive authority to establish regulations for its properties, including regulations which provide charges for access and regulations limiting use of the properties.

11. The Town and the Trustees agree to cooperate in obtaining all permits required for the construction of the bridge, including the permit from the U.S. Army Corps of Engineers.

Executed this 16<sup>th</sup> day of April, 1992 by:

TOWN OF EDGARTOWN, MASSACHUSETTS, BY: [Signature]  
TITLE: SELECTMAN

THE TRUSTEES OF RESERVATIONS, BY: [Signature]  
TITLE: DIRECTOR



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
400 RALPH PILL MARKETPLACE  
22 BRIDGE STREET  
CONCORD, NEW HAMPSHIRE 03301-4901

May 14, 1992

Mr. William Lawless, Chief  
Regulatory Division  
U.S. Army Corps of Engineers  
424 Trapelo Road  
Waltham, Massachusetts 02254-9149

ATTN: Tom Bruha

Dear Mr. Lawless:

We have reviewed the Memorandum of Understanding (MOU) between The Trustees of Reservations (TTOR) and the Town of Edgartown, Massachusetts regarding the reconstruction of the Dyke Bridge in Edgartown. We realize that no COE permit has been sought by the town to date. However, we offer the following comments about their MOU for your consideration when an application is submitted.

In our February 4, 1992 letter to Richard Taylor (enclosed), we responded to a Notice of Intent filed under the Massachusetts Wetlands Protection Act by the Town of Edgartown for reconstruction of the Dyke Bridge. In our letter, we stated that the reopening of the Dyke Bridge to vehicular traffic will result in harm to the Federally listed threatened piping plover (*Charadrius melodus*) through habitat disturbance and destruction, and disturbance of nesting adults and chicks. Off-road vehicles (ORVs) are a major factor limiting both numbers and productivity of piping plovers on the beaches that would receive vehicular use via the bridge.

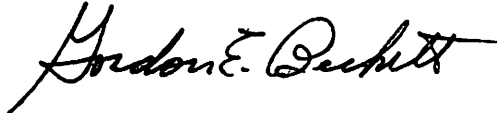
Condition 4 of the MOU attempts to address public use of the beach during the plover breeding season. A number of statements need further refinement in order to prevent adverse impacts to nesting plovers. For example, in Massachusetts, the plover breeding season generally begins about April 1, not April 15 as stated in this condition.

Furthermore, Condition 4 also tries to resolve the conflicts of ORV use on nesting plover beaches by limiting vehicular access to the beach to the early morning and late afternoon hours. The MOU further states that "signs and other means shall be used to route all vehicular traffic on the barrier beach away from nesting and feeding areas during bird nesting season." Unfortunately, the MOU does not elaborate the "other means" used to route traffic from plover nesting and feeding areas. This condition lacks the specific description of actions that would protect nesting adult plovers and their chicks from vehicular and pedestrian traffic. Therefore, Condition 4 provides insufficient protection to piping plovers and their chicks. Regardless of the time of day of vehicular use of these beaches, ORVs may impact piping plover territory establishment, nest site selection and chick survival. In particular, vehicles may impede access of flightless chicks to

intertidal feeding habitat, or worse, crush them. Vehicles may also destroy the wrackline, a preferred feeding habitat in some locations. If unrestricted pedestrian use is allowed, the MOU should clearly state that symbolic fencing of nesting territories and informational signs be mandatory.

Please notify Susi von Oettingen of this office at 603/225-1411, once you have received a permit application for the Edgartown Dyke Bridge, so that we may further discuss our recommendations and the Edgartown/TTOR MOU. We appreciate your close coordination with our staff throughout this process. Thank you for the consideration of our comments and please contact Ms. von Oettingen, if you have any questions.

Sincerely yours,



Gordon E. Beckett  
Supervisor  
New England Field Offices

Enclosure

CC: RO/FWE Reading File  
Rob Deblinger, Trustees of Reservations  
Scott Melvin, MA F&W  
Anne Hecht, RO/SE  
Town of Edgartown, MA  
Richard Taylor, MA Sec. of Trans. & Const.  
FWE: SvonOettingen:5-14-92:603/225-1411





# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
400 RALPH PILL MARKETPLACE  
22 BRIDGE STREET  
CONCORD, NEW HAMPSHIRE 03301-4901

June 15, 1992

Mr. William Lawless, Chief  
Regulatory Division  
New England Division, Army Corps of Engineers  
424 Trapelo Road  
Waltham, Massachusetts 02254-9149

ATTN: Tom Bruha

Dear Mr. Lawless:

This is a follow-up to our letter of May 14, 1992 and telephone conversations with Mr. Bruha, regarding a Nationwide permit for the reconstruction of the Dyke Bridge in Edgartown, Massachusetts. Section 7(a)(2) of the Endangered Species Act of 1973, as amended, requires that Federal agencies, in consultation with and with the assistance of the Secretary [of the Interior], insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat of such species which has been designated as critical ("critical habitat"). The Nationwide permit that would allow the reconstruction and reopening of the Dyke Bridge to vehicular traffic would result in harm to the Federally listed threatened piping plover (*Charadrius melodus*) through habitat disturbance and destruction, and disturbance of nesting adults and chicks.

The Atlantic Coast population of the piping plover was added to the list of threatened species protected under the Endangered Species Act in January 1986. Primary threats to the piping plover cited in the Final Rule were habitat disturbance and destruction, and disturbance of nesting adults and chicks (U.S. Fish and Wildlife Service 1985). In our letter of February 4 to Mr. Richard Taylor, Secretary of Transportation and Construction, we questioned the wisdom of reopening the bridge because of potential harm to the piping plover from associated traffic, in particular, disruption of breeding activity and chick mortality due to vehicular traffic.

The Dyke Bridge, which has been closed to vehicles since 1981 and to pedestrians since 1988, will exit onto the Cape Pogue Wildlife Refuge, a property of The Trustees of Reservations. The Service has identified the beach north and south of the proposed bridge as an area which could contribute significantly to the survival and recovery of the piping plover. Historic reports (Griscom and Emerson 1959) imply that these beaches formerly supported far larger numbers of piping plovers than the two to six pairs recorded during each of the last four years; however, with adequate management, beaches between Norton Point and Cape Pogue could provide nesting habitat for significantly increased numbers of piping plovers.

Off-road vehicles are a major factor currently limiting both numbers and productivity of piping plovers on these beaches. Off-road vehicles disrupt establishment of plover nesting territories, affect nest site selection, impede access of chicks to intertidal feeding habitat, and crush nests and chicks. Vehicles also destroy the wrackline, a preferred piping plover feeding habitat. More information about each of these impacts follows:

- o Disruption of nesting - Piping plovers are particularly vulnerable to disturbance when they are establishing territories and conducting courtship. Strauss (1990) linked vehicle activity with four out of five incidents of territory abandonment recorded during his study at Sandy Neck, Massachusetts.
- o Interference with nest site selection - MacIvor *et al.* (1987) observed piping plovers on North Beach in Chatham, Massachusetts. This area, which had a history of extensive off-road vehicle use, became inaccessible to vehicles following separation from the mainland during a winter 1987 storm. During the subsequent breeding season, 50 percent of plover pairs shifted their nest sites to areas on North Beach that were not available for nesting in 1985 or 1986 due to off-road vehicle traffic. Further, all three colonies of least terns (which frequently nest in the same areas as piping plovers) were also in locations that were formerly unavailable due to off-road vehicle use.
- o Impeding chick mobility - Ruts created by vehicles impede movements of flightless chicks, increasing time and energy that chicks must invest in travel. Jacobs (1988) recorded observations of plovers at Delaware Seashore State Park: "The adult plovers ... tried repeatedly to lead their chicks down to the water to feed, but at each attempt the birds were driven back by vehicles zooming by. In one case, a vehicle came within inches of running over a chick. As the chick ran to avoid the vehicle, it stumbled, rolled, and apparently injured itself, because it did not get up for several minutes. It did survive overnight, but the next day it was limping awkwardly and unable to feed itself."
- o Destruction of wrackline - Off-road vehicles crush wrack (organic matter deposited on the beach above the high tide line). Data from three studies (Goldin *et al.* 1989, Hoopes *et al.* 1990, and Gibbs 1986) found wrackline to be a preferred feeding habitat for plover chicks. Goldin (1991) noted that at Breezy Point, New York, "In 1988, vehicle traffic on the beach compacted the wrack into the sand and little was available to the plovers. In contrast, in 1989 when vehicles were excluded from the beach, wrack was abundant throughout the season." Flightless piping plover chicks are extremely vulnerable to impacts that impede feeding. Cairns (1977) found that piping plover chicks typically tripled their weight during the first two weeks after hatching. Chicks that failed to achieve at least 60% of this weight gain by day 12 were unlikely to survive.
- o Crushing eggs and chicks - Numerous cases of direct egg and chick mortality due to crushing by vehicles have been documented. Of particular relevance for the proposed project, is the case of three chicks found dead in vehicle ruts in 1991 on East Beach, just south of the Dyke Bridge. Increased vehicle traffic in this area will exacerbate this problem.

Because of the severe threat that vehicles pose to piping plovers, it would be irresponsible to increase vehicles access to this area during the piping plover nesting season. However, we do not object to bridge reconstruction, if access is controlled to prevent adverse effects on plovers and other beach resources. Please note that we do not oppose pedestrian access to the area or vehicle activity outside of the plover breeding season.

The Memorandum of Understanding (MOU) between The Trustees of Reservations (TTOR) and the Town of Edgartown, Massachusetts regarding the reconstruction of the Dyke Bridge does provide for management of off-road vehicles during the plover breeding season (Condition 4 in particular). However, the MOU lacks a precise description of actions that would protect nesting adult plovers and their eggs or chicks from vehicular and pedestrian traffic and a detailed commitment on the part of the Town and TTOR regarding continued monitoring. For example, the MOU does not elaborate the "other means" used to route traffic from plover nesting and feeding areas, nor does it identify a commitment to continue intensive beach management.

To ensure that there be no adverse effects to breeding piping plovers as a result of increased vehicular traffic from the reconstruction of the Dyke Bridge, we propose that the Nationwide permit be amended with the following conditions:

1. The bridge will be closed to all vehicular traffic during the piping plover breeding season, April 1 to August 31, unless the alternative protection strategies described in items 2 through 5, below are implemented.
2. The permittee is to provide for mandatory symbolic fencing of nesting and feeding territories, informational signs and intensive monitoring, by a qualified individual(s) throughout the breeding seasons.
  - a. Monitoring to be initiated during the early periods of territory and nest establishment. Frequency of monitoring shall not be less than every second day during periods when public use is high enough to disrupt plovers that might be attempting to establish nesting territories, and not less than twice weekly during periods of low public use.
  - b. When plover behavior indicates territory establishment is observed, an area large enough to prevent disruption will be fenced and posted closed to all public use. Once a nest is established, the closure should extend a minimum of 300 feet in each direction (far enough to assure that incubating birds are not flushed from the nest by passing vehicles or pedestrians). This buffer should be closely monitored and adjusted if the brood moves. From the date of hatch until all chicks are fledged, closures to be expanded to include all feeding habitat being used by the brood. This will necessitate closure from the bay side to the ocean unless brood foraging is consistently limited to one side or the other.

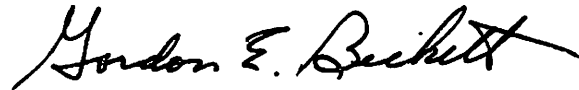
3. The permittee must maintain documentation of plover monitoring in the off-road vehicle corridor. Documentation to indicate date and time of surveys, status of plovers observed, and protection measures in place. Birds must be carefully observed to assure that their behavior patterns are not disrupted by recreational activities in the vicinity. Clearly recorded field notes will be adequate for this purpose.
4. The permittee will inform all drivers about locations of piping plover territories, nests, and feeding areas; and ensure that vehicles are routed as far away from those areas as possible.

It should be understood that these conditions hold true until the piping plover is no longer Federally threatened. In many of these conditions, the applicant may delegate the responsibility to TTOR as agreed in the MOU. The continued implementation of these conditions is contingent on a significant commitment on the part of the Town of Edgartown and TTOR to monitor the piping plovers and to establish and enforce closures.

The incorporation of these conditions into the Nationwide permit will preclude a "may affect" decision and further consultation under Section 7. In the event that these conditions are incorporated into the Nationwide permit and not met by the permittee, the Service understands that the Corps will be responsible for pursuing violations of the permit.

We appreciate your consideration of our concerns regarding this issue. If you have any questions about this matter or if we can furnish any further information to you, please feel free to contact Susi von Oettingen of this office at 603/225-1411.

Sincerely yours,



Gordon E. Beckett  
Supervisor  
New England Field Offices

CC: RO/FWE Reading File  
Fred B. Morgan, Jr.  
Chairman, Board of Selectmen  
Edgartown, MA 02539  
Chairperson  
Edgartown Conservation Commission  
P.O. Box 1065  
Edgartown, MA 02539  
Diane Boretos  
Department of Environmental Protection  
SE Regional Office  
Lakeville Hospital  
Middleboro, MA 02346  
Tom French, MA F&W  
Scott Melvin, MA F&W  
Rob Deblinger, The Trustees Of Reservations  
Jay Copeland, MANHP  
RO/SE  
FWE: SvonOettingen:6-15-92:834-4411

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- Strauss, E. 1990. Reproductive Success, Life History Patterns, and Behavioral Variation in a Population of Piping Plovers Subjected to Human Disturbance (1982-1989). Ph.D. dissertation. Tufts Univ., Medford, Massachusetts.
- U.S. Fish and Wildlife Service. 1985. Federal Register 50: 50726-50734.



TOWN OF EDGARTOWN  
OFFICE OF SELECTMEN  
70 MAIN STREET, P. O. BOX 5158  
EDGARTOWN, MASSACHUSETTS 02539

TELEPHONE  
(508) 627-6180

October 8, 1992

Mr. William Lawless, Chief  
Regulatory Division  
New England Division, Army Corps of Engineers  
424 Trapelo Road  
Waltham, MA 02254-9149

Attn: Tom Bruha

Dear Mr. Lawless,

On or about June 15, 1992, this Board received a copy of a letter sent to you by Gordon E. Beckett of the United States Department of the Interior regarding Dyke Bridge in Edgartown, Massachusetts, more particularly, as the reconstruction of said bridge relates to the piping plover.

The Fish and Wildlife Service has requested that the nationwide permit for the bridge reconstruction be amended to include several conditions relating to vehicular traffic. For the most part, we do not have a problem with these conditions, but we think further discussion is necessary regarding area closures that extend a minimum of 300 feet in each direction, and we also feel that the area of management, as it relates to the Town, needs to be clarified.

This Board respectfully requests a meeting with all parties concerned to discuss these issues. Hopefully, such a meeting could be held on the Vineyard.

We look forward to your response.

Very sincerely,

Dana K. Anderson, Chairman

Thomas A. Durawa

Fred B. Morgan, Jr.  
BOARD OF SELECTMEN

cc: Gordon E. Beckett, Supervisor, New England Field Office  
Diane Boretos, Department of Environmental Protection  
Frederic Winthrop, Jr., Director, Trustees of Reservations  
Edgartown Conservation Commission  
Laurence Mercier, Street Superintendent

BOS/hgw



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
NEW ENGLAND DIVISION, CORPS OF ENGINEERS  
424 TRAPELO ROAD  
WALTHAM, MASSACHUSETTS 02254-9149

December 7, 1992

Regulatory Division  
CENED-OD-R-03-199200373

Town of Edgartown  
Att. Dana K. Anderson, Chairman  
Office of Selectman  
70 Main Street  
Edgartown, Massachusetts 02539

Dear Ms. Anderson:

This concerns the Town's application for a Corps of Engineers permit submitted by Mr. Laurence Mercer, Highway Superintendent, to reconstruct the timber bridge (Dyke Bridge) and the repair of the timber abutments and bulkhead located in Pocha Pond. Also, this is in response to your letter to Mr. Lawless, dated October 8, 1992, requesting a meeting with all interested parties to discuss the June 15, 1992 letter from Mr. Gordon Beckett, United States Fish and Wildlife Service (USF&WS) concerning the impacts on the Piping Plovers as a result of the reconstruction of the bridge.

The Corps project manager, Mr. Thomas C. Bruha, has discussed the regulatory procedure with the other Federal agencies and with Mr. Mercer after a site visit last summer whom he believed to be the point of contact. He has also met with Ms. Susi von Oettingen of the USF&WS to discuss the requirements under Section 7(a)(2) of the Endangered Species Act, as amended.

The proposed activity will require authorization from this office for the bridge abutments and the bulkhead with special conditions, based upon USF&WS regulations, to ensure the continued protection of the Piping Plovers located on Leland Beach.

The reconstruction of the bridge will require a permit from the United States Coast Guard. Mr. Gary Kassof, Bridge Management Specialist First Coast Guard has agreed to be the lead Federal agency and will coordinate all activities between the applicant and the Federal regulatory agencies. Mr. Kassof was furnished a copy of your October 8, 1992 letter.

It is our intention to continue processing your permit application and to include, as a condition in our permit, the final recommendations of the USF&WS on managing the Piping Plover.



If you have questions, please do not hesitate to contact Thomas C. Bruha at (617) 647-8058, or use our toll free number 800-343-4789 or 800-363-4367 if calling from within Massachusetts.

Sincerely,

  
Karen Kirk Adams  
Chief, Permits Branch  
Regulatory Division

cc.  
Mr. Gary Kassof  
USCG

U. S. Fish and Wildlife Service  
Att. Susi von Oettingen  
Ralph Pill MKPL.  
22 Bridge Street  
Concord, New Hampshire 03301

SB&H Civil Engineers  
Att. Mr. Martin R. Donoghue, P. E.  
97 State Road  
P. O. Box 339  
Vineyard Haven, Massachusetts 02568-2781

**received**  
12/14/92

P.