



15 July 2020

Newburyport Conservation Commission
Newburyport City Hall
60 Pleasant Street
Newburyport, MA 01950

Re: Request for Determination of Applicability (RDA)
MBTA Right-of-Way Operated by Keolis Commuter Services (Purple Lines)

Dear Commission Members:

On behalf of the Massachusetts Bay Transportation Authority ("MBTA") and Keolis Commuter Services, LLC. ("Keolis") owner and operator of the Commuter Rail passenger service in Massachusetts, FDCEngineers is submitting the enclosed RDA for the review of the wetland map(s) along the railroad right-of-way (ROW) within your community as part of the renewal of the five-year Vegetation Management Plan (VMP).

Keolis is obligated under Federal regulation to implement controls for vegetation along the railroad Right-of-Way ("ROW"). Under the jurisdiction of the Rights of Way Management Program [333 CMR 11.00], Keolis implements a Vegetation Management Plan ("VMP") approved every five years by the Massachusetts Department of Agricultural Resources (MDAR) in consultation with a multi-agency Advisory Council including the Massachusetts Department of Environmental Protection (MassDEP). The objective of the VMP is to eliminate, control and manage vegetation along the ROW that represents "*any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment*" as required by the Federal Transit Administration ("FTA") and Federal Railroad Administration ("FRA") to ensure safe operations and in doing so, ensure the protection of the general interests of the Commonwealth of Massachusetts. [49 CFR 673.5; 49 CFR 237].

By way of background information, the final Rights of Way Management regulation effective since 1987 [333 CMR 11.00] was the result of an extensive review initiated by the Department of Food and Agriculture (DFA) in consultation with a technical advisory task force of environmentalists, state agencies and rights of way managers who assisted in the General Environmental Impact Report (GEIR) preparation. Based on results of the study, they recommended to the Secretary of Environmental Affairs a framework for a *coherent state-wide rights of way regulatory program*. During the GEIR process, MassDEP and DFA (now MDAR) worked closely to include provisions which give maximum protection for water supplies and provide protection for wetlands as prescribed within M.G.L. c. 131, § 40 and 310 CMR 10.00. Specifically, the Rights of Way Management regulations presume that work performed in accordance with a VMP [Vegetation Management Plan] and YOP [Yearly Operational Plan], as required under the 333 CMR 11.00 regulations, **will not alter an area subject to protection under M.G.L. c. 131, § 40.**

In 2016, your commission approved the attached wetlands map for the section of land adjacent to the railroad Right-of-Way (ROW). The determination that was issued has allowed Keolis to conduct vegetation management activities over the last five years in accordance with the 333 CMR 11.00 and Keolis' Vegetation Management Plan (VMP). Each year since the determination was issued, you have been supplied with Keolis' Yearly Operational Plan (YOP) and ROW map(s) including the wetlands locations and sensitive receptors.

Keolis is currently in the process of renewing the five-year VMP that will expire on December 31, 2020. In accordance with the Wetlands Protection Act, RDA's issued for work conforming to 333 CMR 11.00 are in effect for the five-year life of the VMP and must be renewed with the VMP. Accordingly, enclosed please find the RDA to renew the wetland map(s) along the ROW in your municipality. The enclosed map(s) represent the location of the permanent marking setbacks prescribed by 333 CMR 11.00 to protect the resources in your community. There are no proposed changes to the existing maps and permanent markings in the field from the previous filing. The map(s) included in the filing are provided in USGS 1:25,000, as required by 333 CMR 11.02. The maps have been revised to reflect the latest revisions to all surface/drinking water supply zones as identified on maps supplied by MassGIS.

The safety of employees, passengers and neighboring communities is of high priority. Nonetheless, while the VMP railroad maintenance activities objective is to eliminate, control and manage vegetation along the rail ROW, these maintenance activities are executed with consideration of neighboring communities and the environment. To review the Vegetation Management Plan for the period of 2021-2025 please visit www.fdcerrailroadvegetation.com.

In the interests of the Commonwealth of Massachusetts and in accordance with M.G.L. c. 131, § 40, upon review of the enclosed RDA, please consider the following negative determination on WPA Form 2:

- Number (2) determination: "The work described in the Request is within an area subject to protection under the Act, but will **not remove, fill, dredge, or alter that area**. Therefore, said work does not require the filing of a Notice of Intent"; or
- Number (5) determination citing as exemption 310 CMR 10.02(2)(a)(2) "activities conducted to ***maintain***, repair or replace, but not substantially change or enlarge ***an existing and lawfully located structure or facility used in the service of the public..***".

If you have any questions, please do not hesitate to call Clary Coutu at (617) 874-6946 (clary.coutu@Keoliscs.com) and or you may reach me at (207) 747-4651 (tim@FDCEngineers.com).

Very truly yours,
FDCEngineers



Tim Dermody, EI
President

Enclosure

cc: Clary Coutu, Keolis
Janis O. Kearney, MBTA
Regional Office, DEP



WPA Form 1- Request for Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

A. General Information

Important:

When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. Applicant:

Clary Coutu, Keolis Commuter Services, Director of ENV

Clary.coutu@keolis.com

Name

E-Mail Address

N/A

Mailing Address

470 Atlantic Avenue, Suite 500

MA

02210

City/Town

State

Zip Code

Boston

Phone Number

Fax Number (if applicable)

2. Representative (if any):

Fair Dermody Consulting Engineers

Firm

Tim Dermody

tim@fdcengineers.com

Contact Name

E-Mail Address

19 Ocean Avenue, Unit 5

Mailing Address

Portland

ME

04103

City/Town

State

Zip Code

207-747-4651

Phone Number

Fax Number (if applicable)

B. Determinations

1. I request the Newburyport make the following determination(s). Check any that apply:
Conservation Commission

- a. whether the **area** depicted on plan(s) and/or map(s) referenced below is an area subject to jurisdiction of the Wetlands Protection Act.
- b. whether the **boundaries** of resource area(s) depicted on plan(s) and/or map(s) referenced below are accurately delineated.
- c. whether the **work** depicted on plan(s) referenced below is subject to the Wetlands Protection Act.
- d. whether the area and/or work depicted on plan(s) referenced below is subject to the jurisdiction of any **municipal wetlands ordinance or bylaw** of:

Name of Municipality

- e. whether the following **scope of alternatives** is adequate for work in the Riverfront Area as depicted on referenced plan(s).



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C. Project Description

1. a. Project Location (use maps and plans to identify the location of the area subject to this request):

N/A	Newburyport
Street Address	City/Town
N/A	N/A
Assessors Map/Plat Number	Parcel/Lot Number

b. Area Description (use additional paper, if necessary):

The attached map is a USGS map of the Commuter Rail Line in your municipality. The map was created using MassGIS and the private well registry provided by the Department of Agricultural Resources. The rail line is depicted by the dark black line with cross hatches, the numbers represent mileposts.

c. Plan and/or Map Reference(s):

USGS Right of Way Maps by Rail Line and Community	July 15, 2020
Title	Date
_____	_____
Title	Date
_____	_____
Title	Date
_____	_____

2. a. Work Description (use additional paper and/or provide plan(s) of work, if necessary):

The "work" is related to vegetation management, control and maintenance activities for the years 2021-2025 for the railroad right-of-way [FRA, 49 CFR 237]. The Vegetation management plan for the railroad incorporates the Integrated Pest Management (IPM) approach towards promoting a safer railroad for employees, passengers, and neighboring communities by means of implementing various approaches towards removal of nuisance vegetation along the ROW. This work includes both chemical and mechanical controls as represented within the VMP available for viewing at fdcerailroadvegetation.com. The attached previously approved wetland maps are provided for your review and final maps will be incorporated into the VMP as part of the Rights of Way Management Program 333 CMR 11.00 which incorporates 310 CMR 10.03 (6) to ensure protection of resource areas within your community.



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C. Project Description (cont.)

b. Identify provisions of the Wetlands Protection Act or regulations which may exempt the applicant from having to file a Notice of Intent for all or part of the described work (use additional paper, if necessary).

310 CMR 10.02 (2)(a)(2) - "activities conducted to maintain, repair or replace, but not substantially change or enlarge an existing and lawfully located structure or facility used in the service of the public..." in accordance with Presumption for the application of Herbicides 310 CMR 10.03 (6) (b) - Any application of herbicides within the Buffer Zone, other than as provided in 310 CMR 10.03(6)(a), shall be presumed not to alter and Area Subject to Protection under M.G.L. c. § 40,...

3. a. If this application is a Request for Determination of Scope of Alternatives for work in the Riverfront Area, indicate the one classification below that best describes the project.

- Single family house on a lot recorded on or before 8/1/96
- Single family house on a lot recorded after 8/1/96
- Expansion of an existing structure on a lot recorded after 8/1/96
- Project, other than a single family house or public project, where the applicant owned the lot before 8/7/96
- New agriculture or aquaculture project
- Public project where funds were appropriated prior to 8/7/96
- Project on a lot shown on an approved, definitive subdivision plan where there is a recorded deed restriction limiting total alteration of the Riverfront Area for the entire subdivision
- Residential subdivision; institutional, industrial, or commercial project
- Municipal project
- District, county, state, or federal government project
- Project required to evaluate off-site alternatives in more than one municipality in an Environmental Impact Report under MEPA or in an alternatives analysis pursuant to an application for a 404 permit from the U.S. Army Corps of Engineers or 401 Water Quality Certification from the Department of Environmental Protection.

b. Provide evidence (e.g., record of date subdivision lot was recorded) supporting the classification above (use additional paper and/or attach appropriate documents, if necessary.)



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Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

D. Signatures and Submittal Requirements

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

I further certify that the property owner, if different from the applicant, and the appropriate DEP Regional Office were sent a complete copy of this Request (including all appropriate documentation) simultaneously with the submittal of this Request to the Conservation Commission.

Failure by the applicant to send copies in a timely manner may result in dismissal of the Request for Determination of Applicability.

Name and address of the property owner:

Massachusetts Bay Transportation Authority (MBTA: ATTN. Janis O Kearney)

Name

10 Park Plaza Suite 1607

Mailing Address

Boston

City/Town

Massachusetts

State

02210

Zip Code

Signatures:

I also 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 Wetlands Protection Act regulations.

Signature of Applicant

Signature of Representative (if any)

Date

July 15, 2020

Date



EASTERN ROUTE MAIN LINE

NEWBURYPORT

NEWBURY

END OF LINE



State of Massachusetts, Esri, HERE, DeLorme, INCREMENT P, Intermap, USGS, METI/NASA, EPA, USDA

TOWN:	NEWBURYPORT
DATE:	7/15/2020
SCALE:	1:25,000
SHEET:	1 OF 1

	LIMITED SPRAY ZONE (1 YEAR INTERVAL)		DEP APPROVED ZONE I		ZONE A		NATIONAL WETLANDS
	LIMITED SPRAY ZONE (2 YEAR INTERVAL)		DEP APPROVED ZONE II		ZONE B		CERTIFIED VERNAL POOL
	NO SPRAY ZONE		IWPA		NHESP PRIORITY HABITATS		