



FAIR DERMODY
CONSULTING ENGINEERS

15 July 2020

Scituate Conservation Commission
Scituate Town Hall
600 Chief Justice Cushing Way
Scituate, MA 02066

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.

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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.

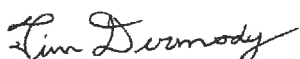
The safety of employees, passengers and neighboring communities is of high priority. Nonetheless, while the VMP railroad maintenance activities objective is to eliminate, control and manage vegetation along the rail ROW, these maintenance activities are executed with consideration of neighboring communities 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