

Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

WPA Form 2 – Determination of Applicability

DA2020-042

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.



From:

Andover  
Conservation Commission

To: Applicant

Keolis Commuter Services  
Name  
470 Atlantic Avenue, Suite 500  
Mailing Address

Boston MA 02210  
City/Town State Zip Code

Property Owner (if different from applicant):

Name  
Mailing Address

City/Town State Zip Code

1. Title and Date (or Revised Date if applicable) of Final Plans and Other Documents:

USGS Right of Way Maps by Rail Line and Community 7/15/2020  
Title Date

Title Date

Title Date

2. Date Request Filed:

August 4, 2020

B. Determination

Pursuant to the authority of M.G.L. c. 131, § 40, the Conservation Commission considered your Request for Determination of Applicability, with its supporting documentation, and made the following Determination.

Project Description (if applicable):

vegetation management, control and maintenance activities for 2021-2025 for the railroad Right of Way.

Project Location:

Railroad Right of Way  
Street Address

Andover  
City/Town

Assessors Map/Plat Number

Parcel/Lot Number



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**B. Determination (cont.)**

The following Determination(s) is/are applicable to the proposed site and/or project relative to the Wetlands Protection Act and regulations:

**Positive Determination**

Note: No work within the jurisdiction of the Wetlands Protection Act may proceed until a final Order of Conditions (issued following submittal of a Notice of Intent or Abbreviated Notice of Intent) or Order of Resource Area Delineation (issued following submittal of Simplified Review ANRAD) has been received from the issuing authority (i.e., Conservation Commission or the Department of Environmental Protection).

1. The area described on the referenced plan(s) is an area subject to protection under the Act. Removing, filling, dredging, or altering of the area requires the filing of a Notice of Intent.

2a. The boundary delineations of the following resource areas described on the referenced plan(s) are confirmed as accurate. Therefore, the resource area boundaries confirmed in this Determination are binding as to all decisions rendered pursuant to the Wetlands Protection Act and its regulations regarding such boundaries for as long as this Determination is valid.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2b. The boundaries of resource areas listed below are not confirmed by this Determination, regardless of whether such boundaries are contained on the plans attached to this Determination or to the Request for Determination.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The work described on referenced plan(s) and document(s) is within an area subject to protection under the Act and will remove, fill, dredge, or alter that area. Therefore, said work requires the filing of a Notice of Intent.

4. The work described on referenced plan(s) and document(s) is within the Buffer Zone and will alter an Area subject to protection under the Act. Therefore, said work requires the filing of a Notice of Intent or ANRAD Simplified Review (if work is limited to the Buffer Zone).

5. The area and/or work described on referenced plan(s) and document(s) is subject to review and approval by:

\_\_\_\_\_  
Name of Municipality

Pursuant to the following municipal wetland ordinance or bylaw:

\_\_\_\_\_

Name

\_\_\_\_\_

Ordinance or Bylaw Citation



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**B. Determination (cont.)**

6. The following area and/or work, if any, is subject to a municipal ordinance or bylaw but not subject to the Massachusetts Wetlands Protection Act:
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- 

7. If a Notice of Intent is filed for the work in the Riverfront Area described on referenced plan(s) and document(s), which includes all or part of the work described in the Request, the applicant must consider the following alternatives. (Refer to the wetland regulations at 10.58(4)c. for more information about the scope of alternatives requirements):

- Alternatives limited to the lot on which the project is located.
- Alternatives limited to the lot on which the project is located, the subdivided lots, and any adjacent lots formerly or presently owned by the same owner.
- Alternatives limited to the original parcel on which the project is located, the subdivided parcels, any adjacent parcels, and any other land which can reasonably be obtained within the municipality.
- Alternatives extend to any sites which can reasonably be obtained within the appropriate region of the state.

**Negative Determination**

Note: No further action under the Wetlands Protection Act is required by the applicant. However, if the Department is requested to issue a Superseding Determination of Applicability, work may not proceed on this project unless the Department fails to act on such request within 35 days of the date the request is post-marked for certified mail or hand delivered to the Department. Work may then proceed at the owner's risk only upon notice to the Department and to the Conservation Commission. Requirements for requests for Superseding Determinations are listed at the end of this document.

- 1. The area described in the Request is not an area subject to protection under the Act or the Buffer Zone.
  - 2. 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.
  - 3. The work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act. Therefore, said work does not require the filing of a Notice of Intent, subject to the following conditions (if any).
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- 4. The work described in the Request is not within an Area subject to protection under the Act (including the Buffer Zone). Therefore, said work does not require the filing of a Notice of Intent, unless and until said work alters an Area subject to protection under the Act.

# Keolis MBTA Right of Way

## DA2020-042

ANDOVER, MASSACHUSETTS

The attached Determination of Applicability is issued by the Andover Conservation Commission subject to the following conditions:

1 FINDING - NOTICE OF JURISDICTION UNDER THE MASSACHUSETTS WETLANDS PROTECTION ACT, M.G.L.c. 131, § 40. The Andover Conservation Commission hereby finds that all or part of the property on which the work authorized by this Determination of Applicability is proposed is subject to jurisdiction under the Massachusetts Wetlands Protection Act, M.G.L.c. 131, § 40. The owner is hereby notified of his or her responsibility to comply with the provisions of that statute. **This condition shall remain in effect in perpetuity.**

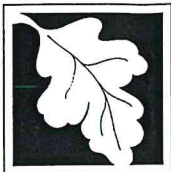
2 FINDING – NOTICE OF JURISDICTION UNDER ARTICLE XIV, ANDOVER WETLANDS PROTECTION BY-LAW. The Andover Conservation Commission hereby finds that all or part of the property on which the work authorized by this Determination of Applicability is proposed is **NOT** subject to jurisdiction under Article XIV, ANDOVER WETLANDS PROTECTION BY-LAW. **(Rail project)**

3 COMPLIANCE. Failure to comply with all conditions stated in this Determination of Applicability shall be deemed cause for revocation. Failure to comply with all the terms and conditions of this Determination of Applicability may be deemed to be a violation of the Massachusetts Wetlands Protection Act, M.G.L.c. 131, § 40, and/or Article XIV, ANDOVER WETLANDS PROTECTION BY-LAW.

4 FINDING – WAIVER OF SUBMISSION REQUIREMENTS. The Andover Conservation Commission hereby waives a portion of their submission requirements at the applicant's request **(Plan Requirements of the CONSERVATION COMMISSION APPLICATION POLICIES Revised through MAY 6, 2008)**.

5 PLAN CHANGES. Any changes made or intended to be made to the above-referenced plan shall require the applicant or his successors in interest to inquire in writing of the Conservation Commission whether the proposed change is significant to the interests of the Wetlands Protection Act. Failure to secure prior approval for changes will, at minimum, require the owner or responsible party to file a Notice of Intent, and to obtain an Order of Conditions.

6 RIGHT TO INSPECT. Members and agents of the Andover Conservation Commission shall have the right to enter and inspect the premises to evaluate compliance with these conditions and to require the submittal of any data deemed necessary by the Commission for that evaluation.



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**B. Determination (cont.)**

- 5. The area described in the Request is subject to protection under the Act. Since the work described therein meets the requirements for the following exemption, as specified in the Act and the regulations, no Notice of Intent is required:

310CMR10.02(2)(a)(2) "activities conducted to maintain existing lawfully located structure used in the service to the public"

Exempt Activity (site applicable statutory/regulatory provisions)

- 6. The area and/or work described in the Request is not subject to review and approval by:

Name of Municipality

Pursuant to a municipal wetlands ordinance or bylaw.

Name

Ordinance or Bylaw Citation

**C. Authorization**

This Determination is issued to the applicant and delivered as follows:

- by hand delivery on

Date

- by certified mail, return receipt requested on

Date

September 8, 2020

This Determination is valid for **three years** from the date of issuance (except Determinations for Vegetation Management Plans which are valid for the duration of the Plan). This Determination does not relieve the applicant from complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.

This Determination must be signed by a majority of the Conservation Commission. A copy must be sent to the appropriate DEP Regional Office (see

<http://www.mass.gov/eea/agencies/massdep/about/contacts/find-the-massdep-regional-office-for-your-city-or-town.html>) and the property owner (if different from the applicant).

Signatures:

*Don R. Cooper*  
*[Signature]*  
*[Signature]*  
*[Signature]*

*Alexandra Pincall*  
*Kevin J. Hart*  
*[Signature]*

September 1, 2020

Date



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**D. Appeals**

The applicant, owner, any person aggrieved by this Determination, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate Department of Environmental Protection Regional Office (see <http://www.mass.gov/eea/agencies/massdep/about/contacts/find-the-massdep-regional-office-for-your-city-or-town.html>) to issue a Superseding Determination of Applicability. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and Fee Transmittal Form (see Request for Departmental Action Fee Transmittal Form) as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Determination. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant if he/she is not the appellant. The request shall state clearly and concisely the objections to the Determination which is being appealed. To the extent that the Determination is based on a municipal ordinance or bylaw and not on the Massachusetts Wetlands Protection Act or regulations, the Department of Environmental Protection has no appellate jurisdiction.