

Keith L. Morris
622 Spring Street
Leeds, Massachusetts 01053
Cell: 413 695-2767
Email: keithlmorris@comcast.net

March 12, 2021

Lancaster Conservation Commission
Prescott Building
701 Main Street, Suite 4
Lower Level
Lancaster, MA 01523

RE: Pan Am Railways
Request for a Determination of Applicability

Dear Commission Members:

On behalf of Pan Am Railways, we are pleased to submit a Request for a Determination of Applicability and accompanying track plans for Pan Am's rights-of-way- in your community.

The applicant is requesting verification of sensitive areas as they pertain to the Massachusetts Wetlands Protection Act (MWPA) MGL, Chapter 131, Section 40, and the Massachusetts Department of Agricultural Resources (MDAR) Pesticide Board Regulations 333 CMR 11.00.

Each year, Pan Am's rights-of-ways will be treated with herbicides, as allowed, for weed control. The actual application of herbicide is regulated by the Massachusetts Department of Agricultural Resources. The enclosed Request for a Determination of Applicability is for verification of sensitive areas only, and not application of herbicides. This verification was last done in the year 2016. We are asking for approval of the same boundaries previously approved by your Commission. There may be minor revisions based on field observations over the last five years.

At this time the railroad treats the entire right of way as a restricted spray zone, therefore, only the "no spray" (yellow) zones are remarked each year. In addition, the Environmental Consultant is required to ride with the licensed applicator during herbicide application to insure that "no spray" zones are located in the field and are not sprayed.

Please notify the undersigned of the date and time of the public meeting and, if necessary, site inspection for this application. If you have any questions concerning this matter, please do not hesitate to contact our office.

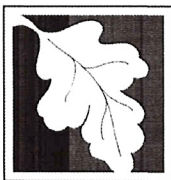
Thank you for your help.

Sincerely,



Keith L. Morris
Environmental Consultant

CC. Pan Am Railways
Regional Office - DEP



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

Lancaster
City/Town

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:

Pan Am Railways, Inc. , Bill Wallace, Chief Engineer of
Track & Structures

bwallace@panamrailways.com
E-Mail Address

1700 Iron Horse Park

Mailing Address

North Billerica

MA
State

01862
Zip Code

City/Town

978-663-9311

Phone Number

Fax Number (if applicable)

2. Representative (if any):

Keith Morris, Environmental Consultant

Firm

Keith Morris

keithlmorris@comcast.net
E-Mail Address

Contact Name

622 Spring Street

Mailing Address

Leeds

MA
State

01053
Zip Code

City/Town

413-695-2767

Phone Number

Fax Number (if applicable)

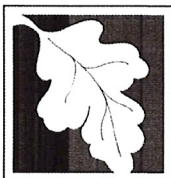
B. Determinations

1. I request the Lancaster 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).



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

Lancaster
City/Town

WPA Form 1- Request for Determination of Applicability

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

C. Project Description

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

Pan Am Rights of Way

Lancaster

Street Address

City/Town

See attached plan

See attached plan

Assessors Map/Plat Number

Parcel/Lot Number

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

The area consists of Pan Am's Rights of Way in the Community. See attached plan.

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

Sensitive Area Marking Key, Pan Am Railways, dated January 2021

January, 2021

Title

Date

Title

Date

Title

Date

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

The applicant is requesting verification of the wetland boundaries as defined in the Massachusetts Wetlands Protection Act (MWPA) MGL Chapter 131 Section 40 and the Massachusetts Department of Agricultural Resources (MDAR) Pesticide Board Regulations 333 CMR 11.00. The sensitive areas have been delineated in the field by a color coded system approved by the MDAR. The system involves painting/spray painting the railroad ties as described in the attached additional information and Figure 2. This application is for the verification of wetland boundaries only and not for the actual application of herbicides. Prior to the application of herbicides a Yearly Operational Plan (YOP) is submitted to each community and there is a 45 day review and comment period.

Approval of the color coded tags is for the purpose of herbicide application only as per MWPA 310 CMR 10.03 (6) (b).



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

Lancaster

City/Town

WPA Form 1- Request for Determination of Applicability

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

C. Project Description (cont.)

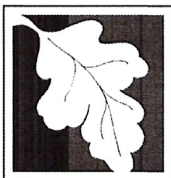
b. Identify provisions of the Wetlands Protection Act or regulations which may exempt the applicant from having to file a Notice of Intent for all or part of the described work (use additional paper, if necessary).

MWPA 310 CMR 10.03(6)

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.)



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

Lancaster
City/Town

WPA Form 1- Request for Determination of Applicability

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:

Pan Am Railways Inc., Bill Wallace, Chief Engineer of Track and Structure

Name

1700 Iron Horse Park

Mailing Address

North Billerica

City/Town

MA


State

01862

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

3-12-21

Date


Signature of Representative (if any)

3-12-21

Date

ADDITIONAL INFORMATION

PAN AM RAILWAYS

Purpose

The purpose of this Request for a Determination of Applicability (RFDA) is for verification of sensitive areas along Pan Am Railways, Inc. rights-of-way (ROW) as per Massachusetts Department of Agricultural Resources (DAR-) Pesticide Board Regulations 333 CMR 11.00. The purpose of these regulations is for the use of herbicides, as allowed, in the maintenance of the ROW within the state of Massachusetts.

Sensitive areas, as they pertain to the Massachusetts Wetlands Protection Act (MWPA) MGL Chapter 131, Section 40, include:

- | | | | |
|-----|------------------------|--------------|-------------|
| (a) | Any bank, | | the ocean |
| | any freshwater wetland | | any estuary |
| | any coastal wetland | | any creek |
| | any beach | bordering on | any river |
| | any dune | | any stream |
| | any flat | | any pond |
| | any marsh | | or any lake |
| | any swamp | | |
| | any riverfront area | | |
| | certified vernal pool | | |
| | any riverfront area | | |
- (b) Land under any of the water bodies listed above
- (c) Land subject to tidal action

*Marking System Used To Identify Sensitive Areas in Field

A color-coded marking system was implemented in the field to allow herbicide applicators to identify the locations of sensitive areas adjacent to the roadbed. Specific railroad ties and rails were painted according to the following color scheme:

Yellow - **Limits of no spray zone.** Represents a point on the railroad tracks that is a minimum 10 feet away from an area subject to protection under the MWPA 310 CMR 10.02 (1) (a) - (e) (bordering vegetated wetlands, streams, ponds, etc.). **No spraying is allowed between the yellow ties.**

Blue- **Limits of buffer zone and restricted spray zone.** Represents a 100-foot buffer zone from a resource area or no spray (yellow) marker, or the limits of the 200-foot riverfront area. In the restricted spray zones, herbicides can only be applied selectively by low pressure (< 60 psi) foliar application or stem application.

** At this time, the railroad treats the entire right of way as a restricted spray zone, therefore; only the no spray markers (yellow) zones are updated each year.*

Additionally, an environmental consultant is required to ride with the licensed applicator to insure the “no spray” zones are located and no herbicides are applied to them.

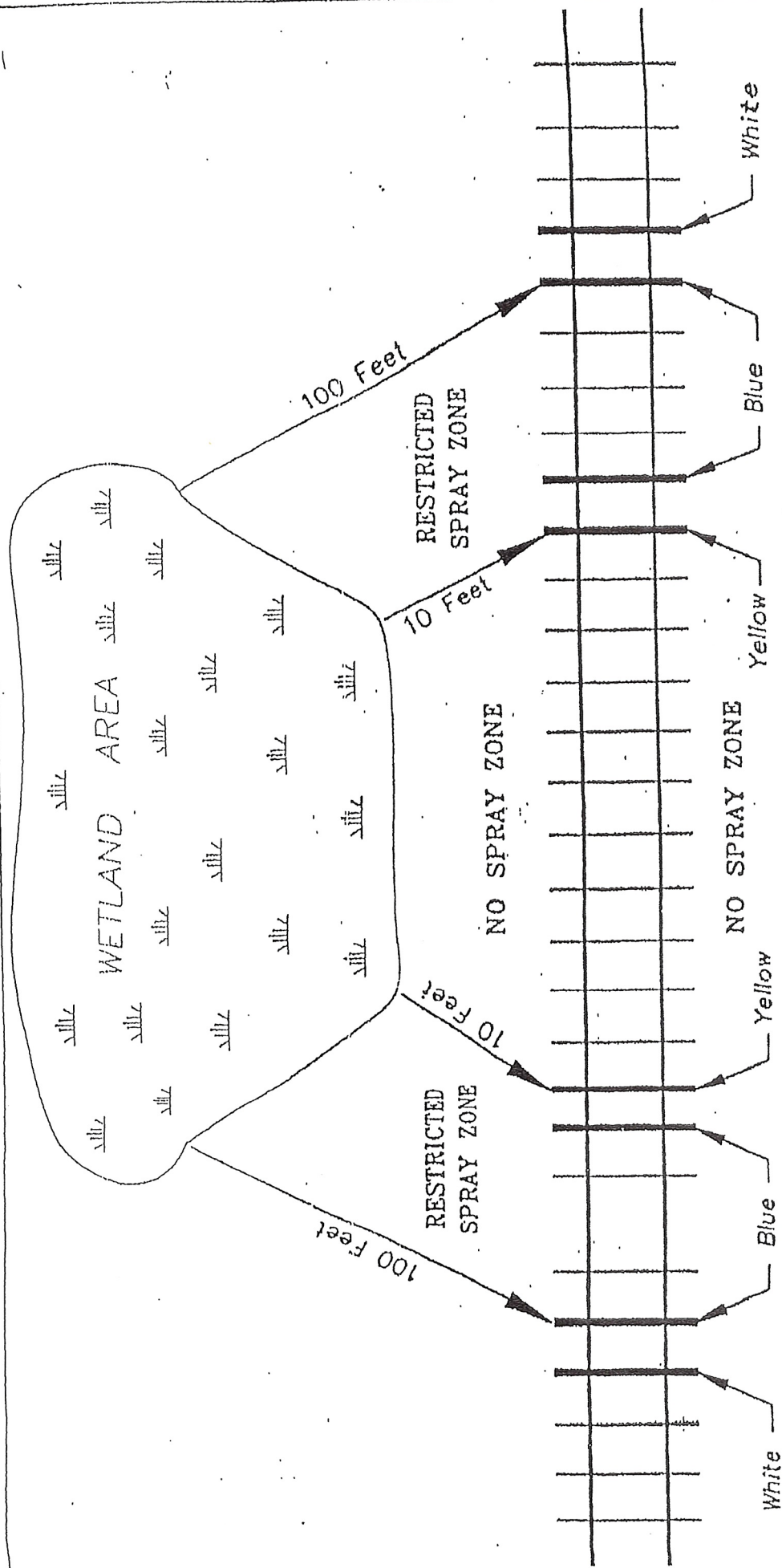
White - **Sensitive area warning marker.** Indicates that the applicator is either entering or leaving a restricted spray zone. White markers are always adjacent to a blue tie. See Figure 2 for further information.

DRAINAGE DITCHES

Drainage ditches are an important component of the railroad right-of-way. If properly maintained, these ditches carry stormwater away from the tracks insuring that the bearing capacity of the soils under the rail bed is not reduced. Proper maintenance of the roadbed includes keeping the ballast free of vegetation and sediments, and insuring that flow in the drainage ditches is not impeded.

There are areas where ditches were not maintained in the past. In these areas water tends to pond and hydrophytic (water loving) vegetation predominates. This condition reduces the bearing capacity of the soils under the rail bed, which decreases the stability the tracks.

In the wetland delineation process, drainage ditches which contained wetland vegetation and a direct hydraulic connection to a viable wetland were considered regulated and the tracks marked accordingly. Drainage ditches that were not connected hydraulically shall be maintained with herbicides or by mechanical means. No herbicides shall be applied to any ditches if water is present.



Tie Marker Key

Yellow = Limits of No Spray Zone
Blue = Limits of Buffer / Restricted Spray Zone
White = Sensitive Area Warning Marker
XIII = Wetland Area

Figure 2
SPRAY ZONES
N. T. S.

51
F
Z

PREFACE TO WETLANDS REGULATIONS RELATIVE
TO RIGHTS OF WAY MANAGEMENT

1987 REGULATORY REVISION

In 1983, the Massachusetts Pesticide Control Act, M.G.L. c. 132B, was amended to require notification of conservation commissions prior to application of herbicides on rights of way. Many commissions became aware for the first time that application of herbicides on rights of way may result in alteration of wetlands and, with the exception of exempt utilities, may require action under the M.G.L. c. 131, § 40. On July 18, 1986, the Department issued a final decision after adjudicatory hearing in DEP Hearing Docket Nos. 83-28 and 83-35 (Clinton and Leverett) finding that the application of specific herbicides by the railroads to track and ballast within 100 feet of wetland areas would alter those wetlands and was therefore subject to jurisdiction under M.G.L. c. 131, § 40, requiring the filing of Notices of Intent with the local conservation commissions.

The Department of Food and Agriculture (DFA) initiated a Generic Environmental Impact Report (GEIR) evaluating alternatives for rights of way management. A technical advisory task force of environmentalists, agencies and rights of way managers assisted in the GEIR preparation and, based on results of the study, recommended to the Secretary of Environmental Affairs a framework for a coherent state-wide rights of way regulatory program. DFA published draft regulations to implement this program in 1986 and received extensive public commentary. Final regulations, 333 CMR 11.00, became effective on July 10, 1987.

The DFA regulations require persons proposing to apply herbicides to rights of way to first receive approval of a five year Vegetation Management Plan (VMP) and Yearly Operating Plan (YOP). These regulations identify certain "sensitive areas", including wetlands and public and private surface and groundwater supplies, where the application of herbicides is, in most instances, prohibited, and areas adjacent to the sensitive areas where use of herbicides is curtailed.

DEP worked closely with DFA to include provisions which give maximum protection for water supplies and provide protection for wetlands at least equal to that provided under the M.G.L. c. 131, § 40 and 310 CMR 10.00. To eliminate duplicate review under M.G.L. c. 131, § 40, DEP has adopted changes to the wetlands regulations which allow herbicide applications on rights of way in accordance with the DFA regulations without filing a Notice of Intent under the M.G.L. c. 131, § 40. However, non-exempt applicants will still be required to file a Request for Determination of Applicability to the appropriate conservation commission to establish boundaries of wetlands on or near the right of way. Specifically, these regulations presume that work performed in accordance with a VMP and YOP, as may be required under DFA regulations, will not alter an area subject to protection under M.G.L. c. 131, § 40.

During the public comment period on its proposed regulations, the Department identified several issues of major concern. After consideration of all comments, the Department has determined that, except for minor points of clarification and the addition of an automatic expiration date, no further changes in the regulations are warranted at this time. A discussion of these issues follows.

A. Presumption vs. Limited Project. Several commentators suggested that conservation commissions should retain the authority to review each herbicide application on rights of way through the usual Notice of Intent process. These regulations create a presumption that herbicide application carried out in accordance with an approved VMP and YOP under the DFA regulations will not alter wetlands and that the filing of a Notice of Intent is therefore not required. This procedure was established pursuant to the recommendation of the GEIR task force which states:

10.00: continued

wetland areas. In light of the strict controls placed on application of herbicides within the 100-foot buffer zone under the DFA regulations, the Department finds that adoptions of the proposed regulatory scheme is fully consistent with its previous adjudicatory hearing decision in the Clinton and Leverett cases.

C. Impacts of Herbicides Application on Wildlife Habitat. The Department is currently developing regulations under M.G.L. c. 131, § 40 to protect wildlife habitat. The effective date of these regulations is November 1, 1987. One commentator expressed concern regarding the impact of herbicide application on wildlife habitat in wetlands, and particularly on the habitat of rare, "state-listed" wildlife species. As discussed above, the Department has determined that the DFA regulations provide for protection of wetlands from alterations due to herbicide application. However, the DFA regulations do not include floodplains in their definition of wetlands, although those regulations do prohibit herbicide application within 10 feet of any standing or flowing surface water. Beyond that, there is no specific protection of wildlife habitat, including rare species, in floodplain areas.

The Department is concerned that the DFA regulations do not specifically address protection of wildlife habitat in floodplains, in particular those rare, "state-listed" wildlife species. Therefore, as a member of the VMP advisory panel, the Department will review VMPs for potential effect on wildlife habitat and specifically will recommend disapproval of any VMP that will have an adverse effect in areas mapped by the Natural Heritage and Endangered Species Program as habitat of any rare, "state-listed" wildlife species. Furthermore, the Department expects applicators to incorporate into the previously discussed two-year monitoring study a section detailing the effects of herbicide application on wildlife habitat in floodplains and on the habitat of rare, "state-listed" wildlife species. The Department will use the results of this study as the basis for recommending any amendments to the DFA regulations and a decision on reauthorization of these amendments to the Department's wetlands regulations.

