

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

March 4, 2021

In the Matter of
Massachusetts Bay Transportation
Authority

OADR Docket Nos. WET-2021-001
through WET-2021-022
Superseding Determinations of
Applicability

ORDER CONSOLIDATING APPEALS & CASE MANAGEMENT ORDER

Between February 16th and February 18th, 2021, Keolis Commuter Services, LLC (“Keolis”) and the Massachusetts Bay Transportation Authority (“MBTA”)(collectively, “the Petitioners”) filed a total of twenty-two (22) separate appeals with the Massachusetts Department of Environmental Protection’s Office of Appeals and Dispute Resolution (“OADR”) challenging superseding determinations of applicability (“SDA”) issued by the Southeast, Central, and Northeast Regional Offices of the Massachusetts Department of Environmental Protection (“MassDEP”) to the Petitioners.¹ The SDAs concern the Petitioners’ proposed Vegetation

¹ The 22 SDAs and the appeals are as follows:

MassDEP Southeast Region (“SERO”): WET-2021-001 (Avon); WET-2021-002 (Bridgewater); WET-2021-003 (Brockton); WET-2021-004 (East Bridgewater); WET-2021-005 (Fall River); WET-2021-006 (Hanson); WET-2021-007 (New Bedford); WET-2021-008 (Norwood); WET-2021-009 (West Bridgewater).

MassDEP Central Region (CERO): WET-2021-010 (Fitchburg); WET-2021-011 (Grafton); WET-2021-012 (Westborough).

Management Plan (“VMP”) for the removal of vegetation in the vicinity of MBTA commuter rail line tracks running through 22 municipalities. Each SDA determined that some parts of the VMP were subject to permitting under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40, while other parts were not, for similar or different reasons. In order to conduct just, efficient and speedy adjudications of the appeals we are issuing this order consolidating the appeals and a preliminary case management order, as follows:


1. Pursuant to the authority of 310 CMR 1.01(1)(b), 310 CMR 1.01(5)(a) and 310 CMR 1.01(6)(g), we are consolidating the appeals because we have determined that there are common issues of fact and law to be adjudicated and consolidation will help secure the just, efficient and speedy determination of the cases.
2. We are directing the parties to propose an efficient means to resolve the appeals by:
 - a. Engaging in settlement discussions with the goals of negotiating and resolving issues of fact and law to the extent reasonably possible;
 - b. For those issues that cannot be negotiated and resolved identifying common issues of law among the appeals that could potentially be resolved on dispositive motions; and
 - c. For the remaining issues and appeals identifying common issues of law and fact among the appeals that would facilitate resolving the appeals most efficiently in one or more adjudicatory hearings.
3. By no later than sixty days from the date of this Order the parties shall file a joint status report with OADR responsive to the above directives and detailing their proposals for adjudicating these appeals.

MassDEP Northeast Region (NERO): WET-2021-013 (Lynn); WET-2021-014 (Framingham); WET-2021-015 (Brookline); WET-2021-016 (Haverhill); WET-2021-017 (Concord); WET-2021-018 (Milton); WET-2021-019 (Wellesley); WET-2021-020 (North Andover); WET-2021-021 (Melrose); WET-2021-022 (Manchester-by-the-Sea)

All submittals shall be made by electronic mail only to caseadmin.oadr@mass.gov.



Timothy M. Jones
Presiding Officer



Jane Rothchild
Presiding Officer

SERVICE LIST

In the Matter of MBTA

Docket Nos. WET-2021-001 through WET-2021-022

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