



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

Montague  
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:

New England Central Railroad, Debra-Ann Bocash  
Name

deb.bocash@gwrr.com  
E-Mail Address

2 Federal Street  
Mailing Address

St. Albans  
City/Town

VT  
State

05478  
Zip Code

508 755-4000 x252  
Phone Number

Fax Number (if applicable)

2. Representative (if any):

Keith Morris, Environmental Consultant  
Firm

keithlmorris@comcast.net  
E-Mail Address

Keith Morris  
Contact Name

622 Spring Street  
Mailing Address

Leeds  
City/Town

MA  
State

01053  
Zip Code

413-695-2767  
Phone Number

Fax Number (if applicable)

**B. Determinations**

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

- ☐ 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):

New England Central Railroad, Rights of Way

Montague

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, New England Central Railroad, dated January 2021

January, 2021

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).





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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).

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.)



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**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:

New England Central Railroad, Debra-Ann Bocash

Name

2 Federal Street, Suite 201

Mailing Address

St. Albans

City/Town

VT

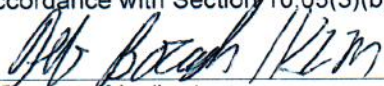
State

05478

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

3-29-21

Date

  
Signature of Representative (if any)

3-29-21

Date

## **ADDITIONAL INFORMATION NEW ENGLAND CENTRAL RAILROAD COMPANY**

### **Purpose**

The purpose of this Request for a Determination of Applicability (RFDA) is for verification of sensitive areas along New England Central Railroad Company 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,  
any freshwater wetland  
any coastal wetland  
any beach  
any dune  
any flat  
any marsh  
any swamp  
any riverfront area  
certified vernal pool  
any riverfront area  
bordering on  
the ocean  
any estuary  
any creek  
any river  
any stream  
any pond  
or any lake
- (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.

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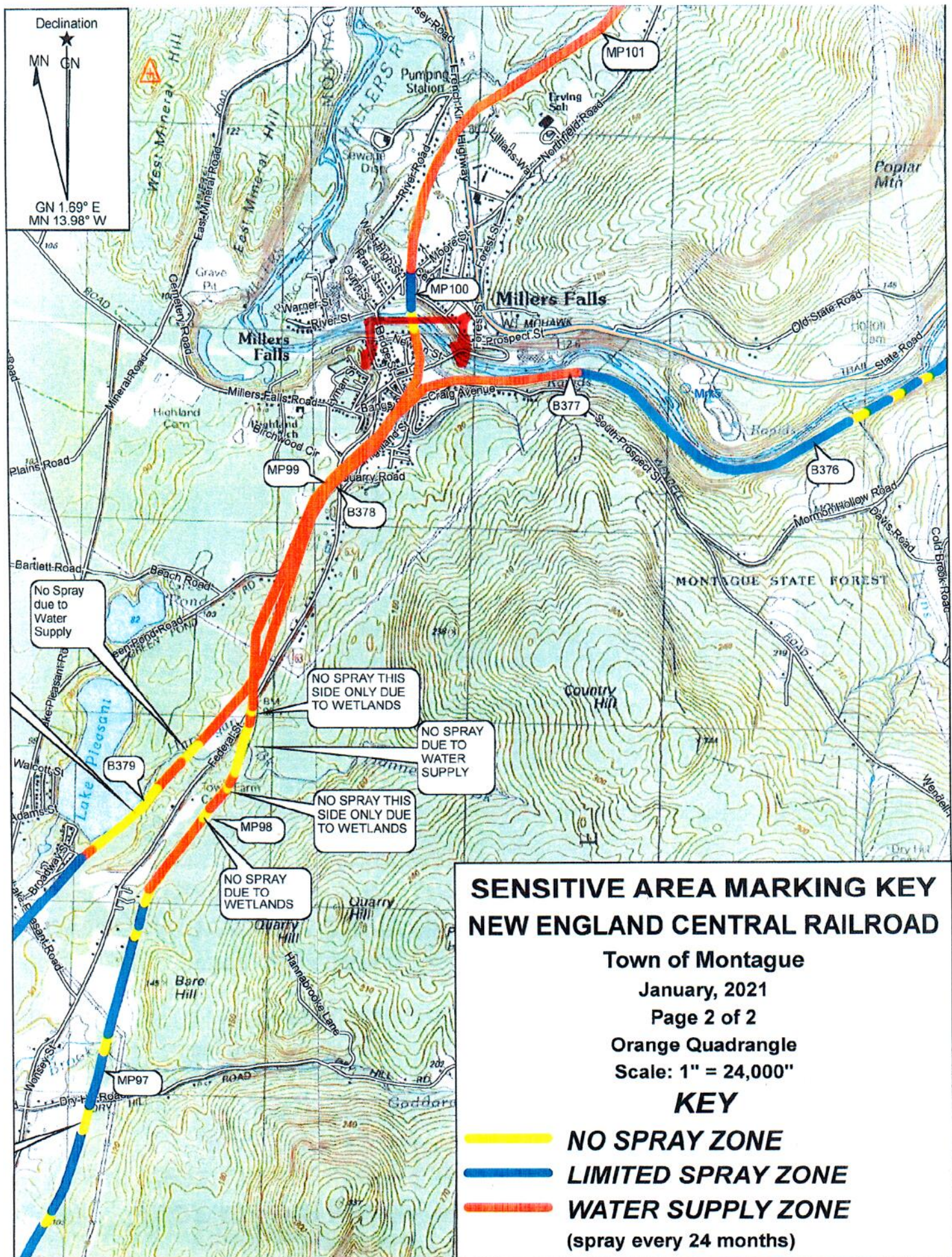
### **DRAINAGE DITCHES**

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.

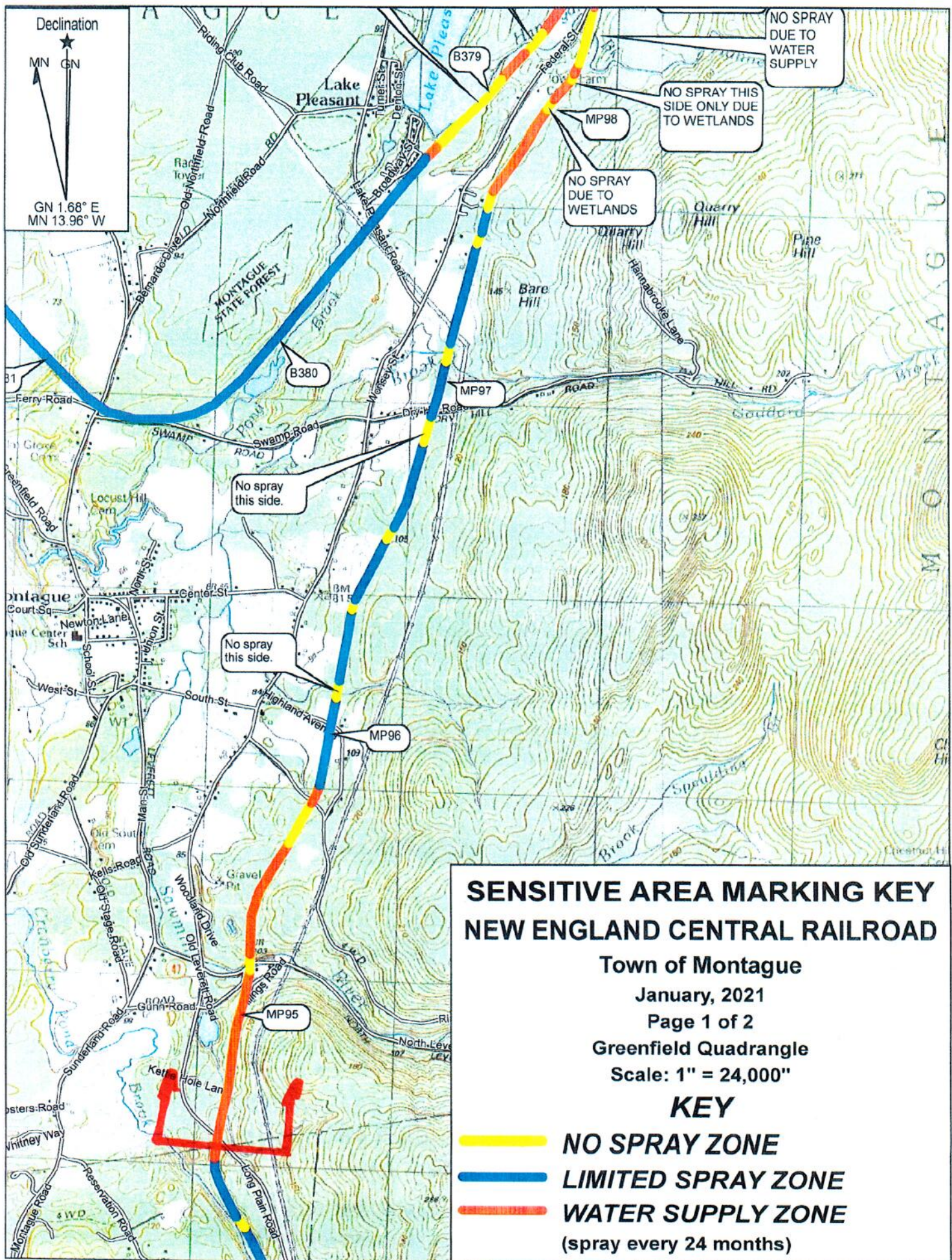
There are areas where ditches were not maintained in the past. In these areas water tends to pond and hydrophytic (water loving) vegetation predominates. This condition reduces the bearing capacity of the soils under the rail bed, which decreases the stability the tracks.

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.












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.

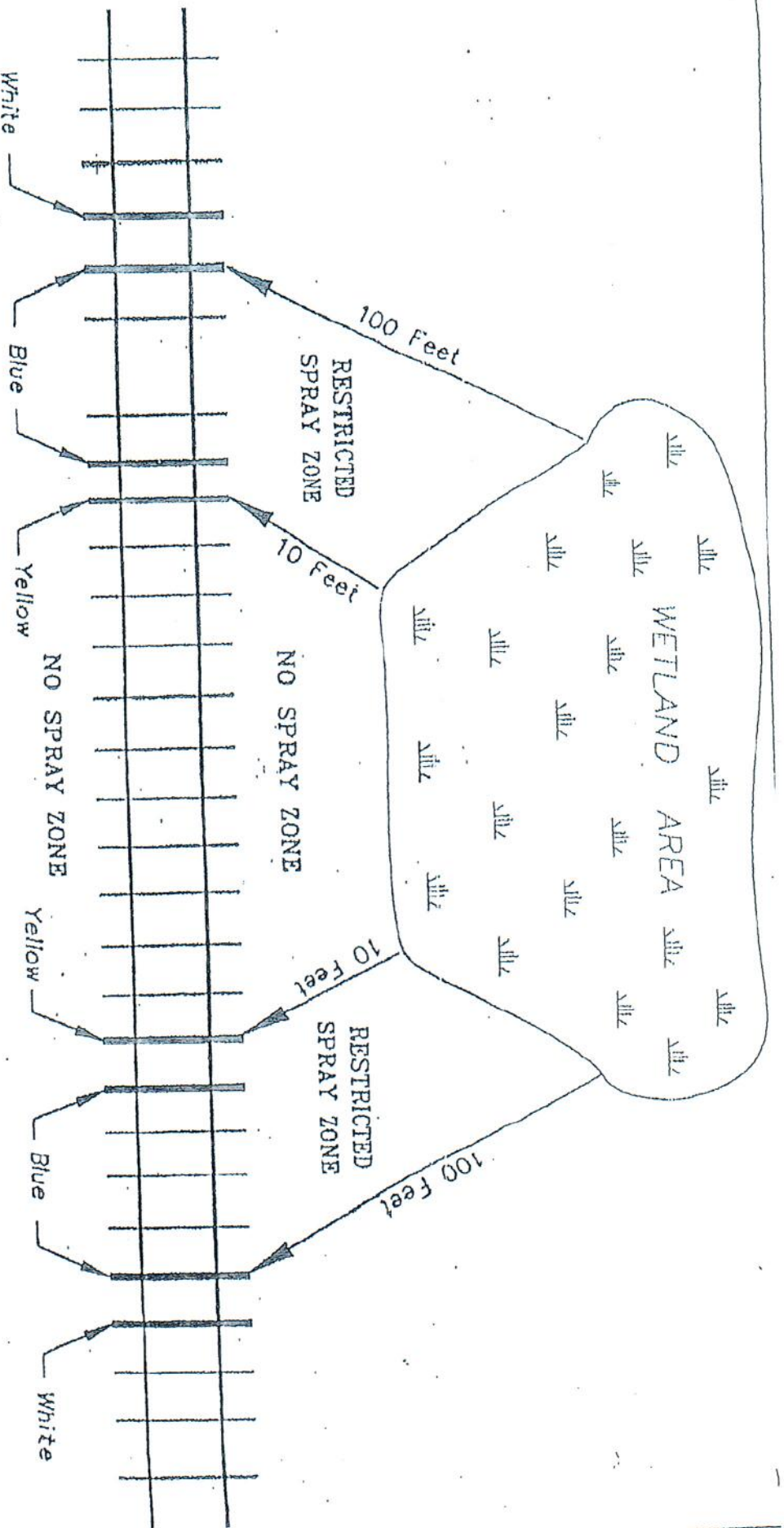
The DFA regulations require persons proposing to apply herbicides to rights of way to first receive approval of a five year Vegetation Management Plan (VMP) and Yearly Operating Plan (YOP). These regulations identify certain "sensitive areas", including wetlands and public and private surface and groundwater 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:





## Tie Marker Key

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

Figure 2  
SPRAY ZONES  
N. T. S.