

Protect Sudbury Inc.

79 Robert Best Road, Sudbury, MA 01776

978-443-8598

president@protectsudbury.org



Protect Sudbury

May 1, 2020

Hudson Conservation Commission
78 Main Street
Hudson, MA 01740

**Re: Joint NOI No. 190-06xx filed by
Eversource for Sudbury-Hudson Transmission Reliability Project
and MassDCR for Mass Central Rail Trail**

Dear Hudson Conservation Commissioners:

Protect Sudbury, a non-profit citizens' group ("PS")¹, has followed the Eversource/DCR combined proposal to install a 115-kilovolt transmission line and bike trail on the abandoned Boston & Maine RR right-of-way ("ROW") through several years of regulatory reviews: MEPA (commenting from ENF to FEIR)², as a party to the Energy Facilities Siting Board ("EFSB") hearings³, and the "Wetlands Protection Act" ("WPA") determinations (ORAD – Sudbury, ANRAD – Hudson). PS and its members would, as

¹ PS members are abutters, members of conservation organizations such as the Friends of the Assabet River National Wildlife Refuge and the Sudbury Valley Trustees. Many reside in Hudson, Stow and Sudbury, some also abut or live near the project, enjoy the adjacent conservation lands and volunteer in preserving and managing them. Others live on or near Lake Boon, White Pond and the Assabet River and its tributaries such as Fort Meadow Brook. All the residents of Stow have private water supply wells as do many in Hudson on or near the ROW. Their shared objective is mitigation of environmental degradation, damage and prevention of exacerbation of existing conditions of pollution. Their mutual hope is that your careful conditioning of the project will achieve this objective.

²The EOEAA Secretary's Certificate on the Final Env. Impact Report has been appealed and remains pending. The MEPA process is intended by the statute, G.L. c. 30, ss. 61-62I, to provide a clearinghouse for vetting permitting requirements from federal to municipal. MEPA also prohibits project segmentation.

³ The decision of the EFSB has been appealed by the Town of Sudbury and PS and is presently pending at the Mass. Supreme Judicial Court ("MSJC"). Also pending at the MSJC is the Town of Sudbury Land Ct. case (Town of Sudbury v. MBTA, SJC-12738) raising the doctrine of "prior public use" which could preclude use of the railbed as a utility corridor.

interested parties, like to offer our perspectives on the unique issues raised by this unusual Joint Notice of Intent (“JNOI”) for a regional project affecting four towns. It is our hope that our comments will assist your review and we are happy to provide any further information you might need. We hope you will find our comments helpful and we appreciate the task before you.

As an initial matter, PS questions whether it is appropriate, or even permissible, for two separate entities to file a single NOI for two such divergent projects on the same site⁴. It seems plain that installation of a high voltage transmission line is not the equivalent of a bike trail and that reviews of the two should not be commingled. As Eversource project managers have testified in the EFSB proceedings, their project will require removal of 24 acres of established forest (50 yrs. growth) and the installation of multiple “construction platforms” to a width of 40 to 50 feet for 50 linear feet (“lf”) to accommodate splice vaults, manholes, a permanent access road (EFSB Exh. EV-2 at 5-13, Tr. 7 at 1343) as well as construction staging areas for heavy equipment and excavated railbed soils and groundwater. The emphasis on the 18 – 22-foot platform left for the bike trail, sidesteps the requirements of the utility installation which are no less permanent (up to 50 ft or more in width denuded of vegetation). Eversource repeatedly states that it will “allow revegetation”; an invitation to invasives by permanent elimination of canopy and habitat offering only loaming and seeding. Further, the 18 – 22 foot “platform” goes beyond the typical rail trail footprint as revealed by DCR’s prior MEPA filing (2013) where DCR sought only a ten-foot path on a 12 to 15-foot bed and shoulder.

By contrast, a review of the Eversource transmission line proposal presents a staggering series of wetland impacts: the reconstruction of three bridges⁵ over perennial streams having significant flows and floodplains, disposal of an estimated 50,660 tons of “excess soils” (Bev Shultz, EFSB Tr. Vol. 7, 1402-1404). As Ms. Schultz explains, Eversource will have to “characterize” the tons of railbed soils excavated for off-site disposal. Application of the DEP’s rail trail soils protocol to the Eversource transmission line project thus seems completely out of scale and highly inappropriate for this transmission line.

Eversource cannot meet the 10% Riverfront Area (“RFA”) threshold (311,680 sf of fill). The project will also fill 34,314 sf of Bordering Land Subject to Flooding (“BLSF”), dredge 640 sf of BLSf and 754 sf of Isolated Land Subject to Flooding (“ILSF”) and alter

⁴ Ref. MassDEP’s “Multiple Filings Policy” (DWW 88-3) which requires single filings for a single site (copy attached).

⁵ Fort Meadow, Hop Brook and Landham Brook. The bridges are listed as historic plate girder construction with MHC dating from the Civil War Era. The work Eversource proposes has been found to be in contravention of the requirements of s. 106 of the “National Historic Preservation Act”. Letter of the SHPO attached.

497,027 sf of Buffer Zone⁶. There is no equivalence to rail trail impacts. The DCR installation of the bike trail does not require the 22 foot or up to 60 foot, clearing of trees nor the splice vault and manhole excavations and maintenance, only paving a ten-foot trail and seeding and installation of a rail fence where needed. PS believes that these significant differences warrant separate conditions in separate NOIs. The EFSB Final Decision notes that the rail trail had not been fully engineered and that only "alignment sheets" were provided from DCR's 2013 MEPA filing and that the full extent of clearing and grading had not been identified. EFSB at 158.

It is reasonable to expect significant changes to the proposed DCR rail trail prior to a final design, and as such, permitting is premature. DCR has publicly stated that their policy is to work closely with host communities. On July 28, 2018, in his presentation at the Golden Spike Conference (copy attached), Kurt Gaertner of the Executive Office of Energy and Environmental Affairs and member of the Governor's Trails Team stated that the present administration "is not going to be advancing trails that don't have local support." He further stated that, "We're not going to be forcing a trail or a report unless it's something that municipalities voluntarily decide that they want to do." At this conference DCR presented multiple options for final trail designs including: Greenways, improved unpaved trails and unimproved natural trails. Based on its conference presentation It is reasonable to expect that DCR would solicit the input of the four municipalities involved in this section of the MCRT in order to ensure that the design is consistent with the wishes of the host communities. So far as PS can ascertain DCR has not to date sought any such input from any of the four host communities.

Beyond the lack of equivalent wetland impacts, retention of a joint NOI could also pose procedural and compliance difficulties. The distinctions between the two projects that warrant separate review and conditions for the work are but one aspect of the problem; another is DCR's lack of funding for "Phase II".

Paul Jahnige, DCR's Director of its Greenways and Trails Program was, when asked at the January hearing, unable to give a timeline for his portion of the work ("Phase II") or any ability to fund the work; creating the very real prospect that issuance of a Certificate of Compliance ("CoC") for the entire JNOI would be open indefinitely. This inability also offers the prospect that Eversource would presumably continue to perform post-construction activities in DCR's stead; requiring particular conditions to cover that possibility and delaying issuance of the CoC. Without rail trail funding it's entirely possible that the project

⁶ From Table 2-1 of the FEIR.

would simply remain a high voltage transmission line. It should therefore be reviewed as such; without the rail trail “gloss”.

Eversource may request issuance of a partial CoC to cover its “Phase I” work but if DCR is not funded, presumably a partial cannot issue since the entire JNOI project is not complete. This leaves post-construction tasks and maintenance to Eversource without conditions for it to do so. A final copy of the MOU governing the division of post-construction tasks seems a good place to start.

Eversource is also subject to the mandates contained in the decision of the Energy Facilities Siting Board (“EFSB”)⁷ whereas DCR is not. One of the EFSB conditions, requested by counsel for the Town of Hudson at the hearing on the Tentative Decision, was incorporated into the Final Decision: that Eversource not use herbicides in light of the public well contamination at Cranberry Well (EFSB Final Decision at 121-122). The EFSB Final Decision also notes that Eversource and DCR are negotiating an MOU for vegetation management. The Decision requires the MOU to contain the Eversource obligation to use only mechanical controls and asks that DCR agree to this same provision. In the event that DCR refuses to agree, the Decision requires that Eversource report back to the EFSB describing DCR’s objections for the Board’s consideration. EFSB Final Decision, p. 121-122.

It is not clear to PS whether the MOU has been finalized although, at the April 13th public hearing on the Sudbury NOI, Mr. Jahnige stated that it was not yet final and failed to provide a completion date. Thus, PS urges the Commission to repeat the request of the EFSB that DCR clarify its intent. Eversource by its presentation to you has indicated that it will use mechanical methods, but Mr. Jahnige has “reserved the right” to use herbicides for persistent invasives such as bittersweet, Japanese knotweed and poison ivy. It is also unclear if DCR recognizes the MESA conditions along the 4,000 linear feet of Protected and Estimated Habitat along the ROW. The “Corridor Management Plan” (offered in Draft form⁸) should be consistent with all permitting.

⁷ The Town of Hudson was a party to the EFSB proceedings and thus received a copy of its Final Decision, EFSB 17-02/DPU 17-82/83, dated December 18, 2019. PS directs the Commission’s attention to pages 104 (mid-page) to 113 for relevant discussion of wetland impacts and vegetation management. In this decision the EFSB notes that the All-Street alternative would be preferable in order to avoid the magnitude of environmental impacts of the railbed route, pp. 102-103 and found that the All-Street Route is the preferred route for avoidance of wetland impacts. P. 120.

⁸ In the FEIR the “Corridor Management Plan” in apparently final form was offered as Appendix 6-1.

PS also finds it contrary to DCR's avowed interest in public benefits and natural resources⁹ for it to refuse to relinquish herbicides on a trail that passes through three Zone IIs (in Sudbury and four in Hudson), Priority Habitat under MESA, through extensive Riverfront, altering and filling associated floodplain as well as a few feet from 16 Vernal Pools¹⁰; all to accommodate the transmission line. Mr. Jahnige's "reservation" of herbicide use ignores the EFSB Decision failing to comply with its directive if no report has been submitted for the EFSB's consideration and response. In light of DCR's position, PS believes that the unfinished MOU could conflict with any conditions under an Order of Conditions unless it contains a requirement to follow the Order as well as any MESA requirements. For example, the "Corridor Management Plan"¹¹ refers to DCR "BMPs" without explaining how they conform to specific permitting conditions. It also makes sense for the Joint Applicants to immediately provide the MOU to the EFSB and the Conservation Commissions of all three Towns so as to avoid any such confusion or conflict.

In light of the foregoing concerns for reconciling different approaches between the Joint Applicants and the significantly more extensive construction impacts to wetlands of the installation of the 115-kilovolt transmission line as opposed to the rail trail alone, are extensive, never mind the permanent impacts. Replace the foregoing with : PS views reconciliation of the Joint Applicants' different approaches and the significantly more extensive impacts of the transmission line versus the rail trail as a critical task best accomplished by separate NOIs.

As a first step toward the needed reconciliation, PS urges the three reviewing Conservation Commissions to consult with each other and is pleased that information sharing has begun with Hudson's peer review. Not only does a regional project such as this lend itself to collaboration, the Wetland Regulations for "Limited Projects" at 310 CMR 10.53(6) require that Notices of Intent for projects in multiple municipalities shall each "...describe the total impacts to resource areas proposed for the entire project." It thus makes sense that the three JNOIs filed in Hudson, Stow and Sudbury be reviewed by each as a whole rather than as a separate segmented project in each town. Consistency in conditions where there are shared statutory interests such as pollution prevention and protection of public and private water supplies and groundwater should enhance performance, monitoring and compliance.

⁹ DCR's "Trails Guidelines and Best Practices Manual" contains "Principles of Ecologically Sustainable Trails" including avoidance of "Sensitive Ecological Areas", pp. 17-18.

¹⁰ Eversource's persistent statement that "no work will occur in Vernal Pools" is disingenuous if work on steep slopes or in associated wetlands is within a few feet.

¹¹ Appendix 6-1 of the FEIR...

We are also given to understand that the Department of Environmental Protection (“DEP”) typically does not permit the filing of NOIs for separate projects on the same locus for different purposes¹². PS believes that the Eversource transmission line installation, having greater wetland impacts, should be reviewed first before the DCR rail trail conditions are developed. In light of DCR’s admitted inability to set a schedule for its work, this makes a great deal of sense and may avoid incomplete work and any attendant procedural confusion or ambiguity. DCR can always file its NOI when it has the funding in hand, a design completed and can then establish a schedule.

Another example of distinct requirements is Mass Wildlife’s “Conditional Take” approval for work in habitat of species protected under “Massachusetts Endangered Species Act” (“MESA”)¹³. Eversource is subject to a “Corridor Management Plan for the Sudbury-Hudson Transmission Reliability Project” (dated May 31, 2018) required by the “Conditional Take” (May 17, 2019). DCR also has a set of separate requirements for its “Phase II” portion of the project which differ from those of Eversource. It is not clear how these two sets of protective requirements are incorporated into the NOI. It seems advisable to integrate both into their Orders.

Further, as the Commissioners noted in their questions to the applicants at the January 16, 2020, hearing there are significant findings that were not presented in the NOI application, most notably the wildlife survey (for Eastern Box Turtles a MESA protected species) conducted by Eversource under MESA. PS does not agree that placing slash from clearing the ROW will adequately replace lost habitat and it may even encourage growth of invasives. Replanting with native woody plants and restoration of the duff, humus and existing soils are far more important to the protected species (turtle, moth, whip-poor-will and native lupine). Such materials can easily be stockpiled at intervals along the railbed for post-construction re-installation. The photographs from the wildlife study done for the NOI show the nature of the wooded railbed and the close proximity of wetlands to the toe of the slope. Reductions in fill and clearing and replanting with more than herbaceous species seems warranted since most of the existing canopy will be permanently removed there will be no shelter from heat and desiccation. Deforesting steep slopes then protesting that they cannot be replanted should not be countenanced so too filling and dredging perennial streams and floodplains warrant careful conditioning.

¹² While DEP’s “Multiple Filings” Policy addresses multiple NOIs for a single project, it does not address multiple projects under a single NOI. The concept underlying the policy seems applicable to this case.

¹³ M.G.L. c. 131A, and 321 CMR 10.00.

In light of these issues, PS believes that the two projects should be decoupled and that each should apply separately, with clearly distinguished construction periods and consistent long-term maintenance conditions in separate NOIs. It appears that Eversource will have its own ROW maintenance requirements and DCR its own rail trail maintenance requirements; these should either be reconciled or each should be separately and consistently conditioned to protect the key wetland resource areas (Vernal Pools¹⁴ etc.) and wetland interests especially pollution prevention and protection of water supply. Each of the applicants will have to conduct maintenance of their respective interests; it does not end with construction.

Combining the applications can only engender confusion. The extensive wetlands along the route that will be subject to the transmission line installation's greater impacts, especially the number of Vernal Pools at the base of, or within feet of, the toe of slope, warrant a more precise and distinguishable set of construction conditions as well as permanent maintenance conditions. Also, there are three separate sets of NOI's for two separate projects in three separate communities with assertions of differing wetland standards¹⁵ being filed in the three affected Towns of Stow, Hudson and Sudbury warranting consolidated review or, at a minimum, consultation as to conditions. This would seem to avoid further confusion and provide consistent protection.

PS is also troubled by Eversource attempts to skirt full compliance with stormwater standards, contamination management and wetland mitigation by cloaking itself as a bike trail and "Limited Project" under 310 CMR 10.53(6) and (3)(d). While it is a utility transmission line, it should still be held to protective standards for stormwater management, Vernal Pools, Zone 2 wellhead protections, management of contamination and restoration of established vegetation protective of wildlife values. The MassDEP comment letter on the DEIR (attached) says as much, noting that it qualifies for limited project status but going on to require full compliance with the stormwater standards.

¹⁴ As the FEIR notes there are sixteen (16) Vernal Pools along the route; three in Hudson and 13 in Sudbury. FEIR at 88. The FEIR charts the distances of these pools from the work; they range from 2 feet to 34 feet. FEIR Table 5-3. Of the 16 nine are ten feet or less from the work; one heavy rain in winter and the pools will suffer. Moreover, use of plastic netting on straw or other erosion control materials has been shown to be lethal to snakes and amphibians crawling around or through. They should not be used nor block migration periods.

¹⁵ In its Stow filing Eversource has asserted that it should be subject only to the redevelopment standards of 10.58 since the railbed is "previously developed" despite the fact that work is proposed in pristine RFA and on a reforested railbed.

In light of the significant perennial streams in the Project Area, PS believes that the extensive movement of fill, excavation and fill in BLSF, Bank, Land Under Water and especially Riverfront Area ("RFA") warrant coordination with the 401 Water Quality Certification as well as disqualifying the application as a "Limited Project" under 310 CMR 10.53. A c. 91 Waterways License or Minor Modification is also required for the bridges (MEPA Certificate, p. 4). PS is not aware that either of these key permits has been either discussed with, or issued by, DEP but each will contain conditions for wetland work relevant here. Eversource should have produced these parallel permits or at the very least explained their current status just as for the MOU with DCR.

A particular concern for the Town of Hudson, as well as PS and its members, is the proximity of the railbed to the Boyd Coatings 21E site, a DEP listed area of historic and recent groundwater contamination. A schematic of the project and this site is attached showing that soil sampling by VHB stopped short of the site and, most importantly, that no groundwater sampling seems to have been done. Not only does the railbed itself pose considerations of contaminated excavate, but the depth of the excavations¹⁶ is likely to encounter contaminated groundwater; neither of these construction effects is typical of a rail trail project¹⁷. There are no provisions for managing either the excavated soils or groundwater as hazardous waste. Instead the Joint Applicants propose stockpiling soils along the ROW, backfilling with same and dewatering discharges "in uplands". NOI, Section 3.1.1.2, p. 15.

It has been very difficult to ascertain what the nature of the soils and groundwater exactly is. A single set of soil and groundwater samples was submitted to the Commission but does not appear on the website list of hearing documents nor is it referenced in, or appended to, the NOI. It is a VHB memo dated December 11, 2018, from Paige Cornell of VHB to Denise Bartone and Beverly Shultz of Eversource entitled "Laboratory Analytical Data Interpretation – Hudson, Massachusetts" containing two tables of soil and groundwater sampling. The soil sampling shown in Table 1 is presented in such a miniscule scale as to be illegible and shows no detectable results for any of the contaminants. Some of the contaminants tested for appear not to be capable of being detected due to the test detection levels used and not all of the contaminants typical of rail beds has been tested for. No testing for the known water supply contaminant perfluoroalkyls ("PFAs") was done. In addition, quite curiously no sampling locations were provided so it is unknown if the tests were made near the Phase I identified "properties of concern" (see attached VHB color

¹⁶ According to Eversource's EFSB testimony the splice vaults/manholes will, regardless of size (typically 8'w x 8'd x 24'l), go to a depth of 12 to 15 feet. Tr. Vol. 7, p.1321.

¹⁷ Consequently, PS takes the position that Eversource's insistence that it can apply the DEP Rail Trail Guidance is completely inappropriate.

chart and Ft. Devens Annex Testing) or in any of the areas proposed for excavation and dewatering (manholes/splice vaults). Contaminated groundwater should not be treated with siltation devices and discharged along the route but should instead be pumped to frac tanks and removed for management as hazardous waste. Similarly, excavated soils should be treated as typical railbed soils; contaminated. Just as indicated in DEP's "Private Well Guidelines" (Updated July 2018) Appendix B – Land Use/Associated Contaminants Matrix" (extract attached) in the category "Railroad Tracks and Yards" there are over 30 such contaminants of concern; not all of which were tested for. Out of the three groundwater sample sites tested, one site off Chestnut St. south of the Hudson wellfield (Chestnut #1-#3 and Kane) showed two contaminants above the testing limits, dibromomethane and 1-4 dioxane, a gasoline additive and fumigant. This is an area of Hudson where there are nearby residents on private water supply wells and residents of Stow where all drinking water is through private wells. Suffice to say, in a setting so proximate to private water supply wells and where public water supply wells are being treated for PFAs, more testing and testing directed to withdrawal and discharge points should now be provided.

During the MEPA review, the attached color chart was developed for Eversource by VHB and incorporated into the Secretary's Final Certificate. It shows the "Properties of Concern" identified by VHB, for Eversource and the recommended sampling from MassDEP's "BMPs for ... Rail Trails" (attached). Based on the information presently available to PS we do not believe that sampling has been done in the area of the Fort Devens Annex or Boyd Coatings. Further, without the sampling locations in the recently submitted testing (so small in scale as to be illegible), it cannot be determined if any testing has been done in the areas to be excavated for splice vaults and manholes. This missing information seems important to obtain and clarify.

Eversource's soil and groundwater sampling was recently provided but the results in Tables 1 and 2 are provided in such a scale as to be illegible and no locations were provided. It is apparent that sampling for the recently discovered PFAs in groundwater in this same area was not done. This is in direct contravention of the EFSB Final Decision which required that the field investigation "would focus on higher risk areas identified by the environmental due diligence report (VHB Chart attached), include environmental and geotechnical soil borings and soil characterization..." and "be incorporated in the Company's soil **and groundwater** management plan..." (emphasis added) EFSB Decision at 150. We ask that Eversource produce a map showing all locations of what it described to the EFSB as "sites of concern", including active and closed MCP sites and other sites it considered to have elevated environmental risk along the proposed routes and also include the locations of each soil boring and groundwater sampling it has done in order for the Commission to assess whether this requirement was met and reported on. Further, we are

unable to find any soil and groundwater management plan as contemplated by the EFSB and MEPA in the NOI filings; another incomplete requirement. The work proposed has implications for pollution of wetland and groundwater as well as public and private wells; all statutory interests under the Act.

As the Town of Hudson is well aware, MassDEP is preparing new drinking water regulations that will lower the drinking water standards for PFAs to parts per trillion. PS suggests that Eversource be required, in furtherance of the statutory interests of groundwater and drinking water protection to do such sampling rounds in groundwater along the route. It is concerning that the Eversource soil samples do not even run the length of the project and do not include the Boyd area. This too should be corrected. We are not only concerned for exacerbation of the contamination issues for Hudson's adjacent public drinking water wells from the depth of transmission excavations and any attendant discharges, we and our members are also concerned for private water supply wells and surface water bodies such as Fort Meadow Brook, Lake Boon and White Pond. Consequently, we suggest that broader sampling protocols be deployed to include PFAs, expand the limited soil sampling and add groundwater sampling¹⁸ with a view to developing conditions for no contaminated railbed or groundwater discharges. It is also not clear that Eversource has a discharge permit for any groundwater discharges.

The fact that there are 21E sites along the ROW as well as such sensitive receptors as Hudson's Cranberry public water supply well its Zone 2 (zone of contribution) as well as the Zone 2s and Zone 1s for Chestnut St. 1, 2 and 3 and the Kane Wells (NOI Figure 5) further supports separating the two NOIs so that the soil and groundwater disturbances required to significant depths (15 feet) for manholes and splice vaults are adequately managed, contained and monitored to prevent pollution and protect public and private water supplies. The excavations for the splice vaults and manholes to depths of 12 to 15 feet will reach groundwater, especially where the rail bed passes through BLSF, and thus warrant sampling prior to construction in order to provide for proper disposal. Discharges to these deep trenches, to wetlands or even to adjacent uplands of untested, potentially contaminated waters should be prohibited. Preconstruction sampling seems advisable and was anticipated by the EFSB and MEPA. The transmission line installation will require substantial disturbance of rail bed soils and it appears that the NOI plans (Sheet 15) contemplate using borrow or "excavated material" for backfilling. Since the sampling bears no relation to excavation sites it seems clear that it was done for construction purposes

¹⁸ DEP's draft regulations on PFAs require use of EPA Method 537 or 537.1; drinking water triggers are measured in parts per trillion.

rather than with a view to protecting statutory interests in avoiding contamination or to comply with the Rail Trail BMPs, the EFSB Decision or the MEPA Certificate.

Coordination with the 401-permit process for dredging and filling in wetlands seems particularly important and it and MEPA compliance will be required by DEP. DEP also requires that the MEPA process be completed prior to issuance of wetland permits. 310 CMR 10.07. As noted earlier, the MEPA Certificate is under appeal and thus incomplete. PS notes that DEP's comments on the Draft EIR included a requirement for a 401 Water Quality Certification and a c. 91 Waterways license. PS asks the Commission if it is aware if these filings have been made by Eversource and DCR and if not, why not, and if so, what their status is? Coordination of conditions for this project straddling 3 sets of municipal wetland permits and 2 DEP Regions seems advisable. Other outstanding permits are those Eversource must obtain from EPA and the Army Corps of Engineers ("ACOE") and the development of a Stormwater Pollution Prevention Plan ("SWPP") which would be helpful to review in developing and coordinating conditions.

In terms of other permitting coordination on the federal level, PS understands from the April 3, letter from Mass Historic to the ACOE (attached) that its review of the Eversource plans for the three railroad bridges show that they are not compliant with s. 106 of the "National Historic Preservation Act of 1966". It is not clear to PS that the ACOE has responded to these state concerns which will affect how the three historic bridges, 130 at Fort Meadow, 128 at Hop Brook and 127 at Landham Brook, will be treated. Mass Historic states that demolition of these plate girder style bridges from the Civil War Era is non-compliant.

Another of our chief concerns with this joint NOI application is the assertion made by Eversource that the Project qualifies as a "Limited Project" under the WPA Regulations at 310 CMR 10.53(3)(d), and 10.53(6). PS does not agree for the reasons we've elaborated here such as the fact that the application presents two very different projects requiring different scrutiny. Further, we believe that the transmission line portion of the project's wetland impacts are so extensive that it cannot qualify as a "Limited Project" while the rail trail may. Under 10.53(3) the factors that allow an issuing authority to exercise its discretion to allow a "Limited Project" are: the magnitude of the alteration and the significance of the project site to the statutory interests, availability of reasonable alternatives to the proposed activity, the extent to which adverse impacts are minimized, and the extent to which mitigation measures, including replication and restoration, are provided to contribute to protection of the statutory interests.

Despite the NOI's assertion that it meets the wetland performance standards "to the maximum extent practicable" (a standard for work in RFA), we do not find that the JNOI has met all the 10.53(3) criteria as required. The magnitude of the alterations is clear in Table 1 of the JNOI despite the attempted reductions by characterizing "disturbance" as temporary or resulting in "net gains". An example is permanent clearing of 760 sf of ILSF in order to obtain "a net gain of 99.07 cy of flood storage. This does not demonstrate any of the "Limited Project" criteria to minimize adverse impacts, find alternatives or mitigate. For BVW, Table 1 describes clearing of 1,342 sf as "temporary" and along an edge. Clearing is not "temporary" unless mitigated. As the Commission is well aware the two Resource Areas most affected are Riverfront (RFA) and floodplain (BLSF). Eversource acknowledges its inability to meet the 10% ceiling for RFA alteration while asserting it will meet performance standards "to the maximum extent feasible". Yet the JNOI does not demonstrate the latter. Table 1 demonstrates the massive impacts: 124,528 sf of permanent RFA alteration (this is only Hudson's portion) and 15,735 sf of BLSF.

What is most troubling to commenters is that Eversource will obtain substantial relief from wetland performance standards through its request for "Limited Project" status. This is particularly evident as Eversource admits that it cannot meet the 10% RFA limit of permanent alteration required by 10.58(4)(d)1. No alternatives are explored in the JNOI nor is any explanation given of how the work constitutes an "improvement" of "Previously Developed" RFA (the railbed) other than the removal of ties and rails; installation and permanent maintenance of a high voltage line in the bed with a paved path over it and minimal restoration (loaming and seeding, revegetation). This seems wholly inadequate to meet the standards for allowing a "Limited Project". An exercise of the Commission's discretion to allow this as a "Limited Project" does not seem appropriate in light of the extensive proposed impacts to major drainages presumed significant. Instead, these impacts should, as the regulation requires, be mitigated and alternatives considered

The January 16th hearing slides provide section by section alterations to resource areas: Wilkins St. paving of RFA lawn (1,595 sf), east of Wilkins 52,129 sf RFA less 18,190 prev. dev'd (33,939 sf), Fort Meadow Bridge 11,066 sf less 970 prev. dev'd (10,096 sf). A summary slide announces 219,500 sf total RFA in Hudson and that stormwater will be "managed per Mass DEP Stormwater Management Standards" however this management consists of a simplified system of vegetated swales to rip rap outfalls in pristine resource areas at base of slope. It seems fairly clear that this is in fact a massively impactful project with minimal proposals for mitigation and the only stormwater standard applied, TSS, is barely met. Since the transmission line will require vehicle access the potential for contamination of the adjacent sensitive receptors whether Priority Habitat, Vernal Pools

feet away from toe of slope or private and public drinking water seems to be proposed without any plan to mitigate. Eversource, having found that its transmission line requirements exceed the 10% limit for RFA, seeks "Limited Project" status rather than offer alternatives or mitigation. This is not a setting that the WPA and regulations contemplate.

As the Commission is aware, the proposed work has the potential for contaminated soils and groundwater to cause pollution and permanently alter substantial wetland resource areas as well as pose additional risks to public and private water supplies. The statutory interests of pollution prevention, protection of public and private water supply, and protection of significant wildlife habitat are clearly implicated in the extensive and invasive work being proposed. It is undeniable that the railbed, for better or worse, runs through extensive floodplains associated with major streams (BLSF) requiring bridge repair in Bank, Land Under Water and Riverfront, close by BVW and only a few feet from 16 vernal pools, through Zone 2s of public water supply where pre-existing contamination and significant wildlife habitat exist. PS submits that these circumstances should mitigate against treating these projects as a "Limited Project".

Our comments reflect a litany of information gaps and reduced standards reflective of a lack of a coherent plan for this complex regional project. The JNOI proposes to extensively excavate a known source of contamination located in a large area of conserved open space containing multiple sensitive resources and proposes to do so with lowered protective standards and minimal investigation. Our experience and yours in the development of this project has been one of shared concerns falling on apparently deaf ears. PS believes that the NOI reviews in all three Towns are an important local and fact-based opportunity for the gaps to be closed in order that the appropriate protections can be applied. If we can be of assistance please do not hesitate to contact us. We appreciate your consideration of our comments.

Sincerely,



Raymond Phillips
President

Protect Sudbury

www.protectsudbury.org

cc: Stow Conservation Commn.

Sudbury Conservation Commn.

Judith Schmitz, DEP/CERO/DWW

Jill Provencal , DEP/NERO /DWW
Mark Baldi, DEP/CERO/BWSC
Steve Johnson, DEP/NERO/BWSC

Attachments