SUDBURY SELECT BOARD
TUESDAY AUGUST 30, 2022
6:30 PM, ZOOM

Item #	Time	Action	Item
	6:30 PM		CALL TO ORDER
			Opening remarks by Chair
			Reports from Town Manager
			Reports from Select Board
			Public comments on items not on agenda
			TIMED ITEMS
1.	6:45 PM	*VOTE*	Interview two candidates for appointment to the Commission on Disability. Following interviews, vote whether to appoint Patricia Brown, 34 Whispering Pine Road, for a term expiring 5/31/25, and Rebecca Chisholm, 80 Prides Crossing, for a term expiring 5/31/25. Also, regarding candidates interviewed on August 9, vote whether to appoint Cameron LaHaise, 195 Horse Pond Road, for a term expiring 5/31/25, and Jean Nam, 81 Newbridge Road, for a term expiring 5/31/23.
2.	7:15 PM	*VOTE / SIGN*	As the Licensing Authority for the Town of Sudbury, vote to approve a new Common Victualler License for Wayside Pizza, 730 Boston Post Road, #6, as requested in an application dated August 9, 2022, subject to conditions put forth by the Fire Department and Building Department. Manager Ibrahim A. Mohamed to attend.
			MISCELLANEOUS
3.			Discussion with Community Paradigm Associates - Town Manager search
4.		*VOTE*	Discussion on how to regulate Grants of Locations for small wireless facilities. David Maxson of Isotrope, LLC to provide background on small wireless facilities. Discuss application procedures and limits placed by the FCC, as well as the kinds of controls that could be in new regulations. Also discuss and possibly vote next steps.
5.			Updates related to Eversource Transmission Line project. Eversource representatives in attendance will be Michael Hager, Project Manager; Miles Lang-Kennedy and Megan Aconfora, Project Services; Karen Newell, Community Relations.

These agenda items are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. Some items may be taken out of order or not be taken up at all. The Chair will strive to honor timed items as best as possible, however, the estimated timing may occasionally be inaccurate.

Item #	Time	Action	Item
6.		*VOTE*	Discussion and vote whether to modify the current Code of Conduct for Town of Sudbury Committees to be a Code of Conduct/Code of Ethics for Town of Sudbury Committees. This refers to members who are appointed by the Sudbury Select Board or the Sudbury Town Manager. This request made by Member Roberts.
7.		*VOTE*	Vote to review and possibly approve the open session minutes of 6/21/22.
8.			Public Comments (cont)
9.			Upcoming agenda items
			CONSENT CALENDAR
10.		*VOTE*	Vote to accept grant awarded by Mass Department of Environmental Protection (DEP) up to $10,000 for a Sustainable Materials Recovery Program, in the form of a reimbursement, toward the purchase of a mattress and box spring collection container for recycling.
11.		*VOTE*	Vote to accept a Social Work Grant from the MetroWest Foundation in the amount of $30,000.
12.		*VOTE*	Vote to approve the execution of a contract by the Interim Town Manager to Pare Corporation for environmental monitoring services related to the Eversource underground transmission line project upon approval by Town Counsel.
13.		*VOTE*	Pursuant to the Street Acceptance vote under Article 21 of the May 3, 2022 Annual Town Meeting, VOTE to execute the Order of Taking of a permanent easement for all purposes, including attendant customary uses for which public ways are utilized in the Town of Sudbury, in, on and under the parcel of land and any associated drainage utility, or other easements shown as "Huckleberry Lane" (the "Easement Premises") on a plan entitled "Acceptance Plan of Huckleberry Lane in Sudbury, MA" prepared for Eligius Homes Company by Thomas Land Surveyors and Engineering Consultants, Inc., dated September 17, 2014 and twice revised on December 12, 2016 and March 16, 2017, filed with the Town Clerk, and subject to Town Counsel's review.
14.		*VOTE*	Vote to accept a $100.00 donation from Katie Sutherland for deposit to the Pool Donations Account 191748/483100, as requested by Dennis Mannone, Park & Recreation/Aquatics Director.
15.		*VOTE*	Vote to accept the resignation of Yana Bloomstein, 84 Carriage Way, from the Diversity, Equity and Inclusion (DEI) Commission, effective immediately, and send a thank you letter for her service to the Town.
16.		*VOTE*	Vote to reappoint Janie Dretler, 286 Goodmans Hill Road, to the Sudbury Housing Trust for a term ending 5/31/24.
17.		*VOTE*	Vote to grant a special permit to Sudbury Historical Society to hold the "Sudbury Historical Society Road Race" on Friday, November 11, 2022, from 9:00 A.M. through approximately 12:00 P.M., subject to Police Department safety requirements, proof of

These agenda items are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. Some items may be taken out of order or not be taken up at all. The Chair will strive to honor timed items as best as possible, however, the estimated timing may occasionally be inaccurate.

Item #	Time	Action	Item
			insurance coverage and the assurance that any litter will be removed at the race's conclusion.
18.		*VOTE*	Vote to grant a special permit to Lisa Hanson, St. Anselm Conference of the Society of St. Vincent de Paul, to hold a "Walk for the Poor" on Saturday, September 24, 2024, from 11:30 a.m. through approximately 2:00 p.m., subject to Police Department safety requirements, proof of insurance coverage and the assurance that any litter will be removed at the race's conclusion.
19.		*VOTE*	Vote to assign Chair Charlie Russo and Director of Planning and Community Development Adam Duchesneau as designated representatives from Sudbury to the Bruce Freeman Rail Trail's Community Summit on Sept. 15, 2022 at 2:15 PM.

These agenda items are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. Some items may be taken out of order or not be taken up at all. The Chair will strive to honor timed items as best as possible, however, the estimated timing may occasionally be inaccurate.

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

TIMED ITEM

1: Interview candidates for Commission on Disability

REQUESTOR SECTION
Date of request:

Requestor: Interim Town Manager

Formal Title: Interview two candidates for appointment to the Commission on Disability. Following interviews, vote whether to appoint Patricia Brown, 34 Whispering Pine Road, for a term expiring 5/31/25, and Rebecca Chisholm, 80 Prides Crossing, for a term expiring 5/31/25. Also, regarding candidates interviewed on August 9, vote whether to appoint Cameron LaHaise, 195 Horse Pond Road, for a term expiring 5/31/25, and Jean Nam, 81 Newbridge Road, for a term expiring 5/31/23.

Recommendations/Suggested Motion/Vote: Interview two candidates for appointment to the Commission on Disability. Following interviews, vote whether to appoint Patricia Brown, 34 Whispering Pine Road, for a term expiring 5/31/25, and Rebecca Chisholm, 80 Prides Crossing, for a term expiring 5/31/25. Also, regarding candidates interviewed on August 9, vote whether to appoint Cameron LaHaise, 195 Horse Pond Road, for a term expiring 5/31/25, and Jean Nam, 81 Newbridge Road, for a term expiring 5/31/23.

Background Information:
Attached resumes and applications. 6:45 PM

Financial impact expected:

Approximate agenda time requested: 30 minutes

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

TOWN OF SUDBURY
APPLICATION FOR APPOINTMENT TO

COMMISSION ON DISABILITY

BOARD OF SELECTMEN
278 OLD SUDBURY ROAD
SUDBURY, MA 01776

FAX: (978) 443-0756
E-MAIL: selectmen@sudbury.ma.us

Name:
Patricia Brown

Brief resume of background and experience:
Currently retired, with a background in research science and communications software support, specifically systems and protoc

Address: 34 Whispering Pine Road, Sudbury
Home phone:
Work phone:

Years lived in Sudbury: 28
E-Mail Address:

Municipal experience (If applicable):
2014-2020 Select Board, 2012-2014 Planning Board, 2014-2020 CPC, 2004-2015 Rail Trail Conversion Advisory Committee

Educational background:
PhD Brandeis University 1980

Employment and/or other pertinent experience:
Four years postdoctoral research, 25 years software communication (systems and protocols)

I consider myself disabled: ☐ Yes ■ No

I am (circle where appropriate) the spouse, sibling, parent, other relative, of a person with disabilities.

Reason for your interest in serving/areas of interest for people with disabilities:
I would like to provide an insight into town government to prioritize the remedies proposed in the ADA Self Evaluation and Transition Plan to achieve the greatest impact swiftly and efficient

Times when you would be available (days, evenings, weekends):
I am generally available except not Monday or Thursday evenings or Sunday mornings

Do you or any member of your family have any business dealings with the Town? If yes, please explain:
No.

PAB (Initial here that you have read, understand and agree to the following statement)

I agree that if appointed, I will work toward furtherance of the committee's mission statement as adopted by the Board of Selectmen and further, I agree that I will conduct my committee activities in a manner which is compliant with all relevant State and Local laws and regulations, including but not limited to the Open Meeting Law, Public Records Law, Conflict of Interest Law, Email Policy and the Code of Conduct for Town Committees.

I hereby submit my application for consideration for appointment to the Commission on Disability.

Signature Patricia A Brown Date May 9, 2022

Rev. 5/12

Attachment1.a: Brown_COD_Application_2022.redact (5411 : Interview candidates for Commission on Disability)

TOWN OF SUDBURY
APPLICATION FOR APPOINTMENT

SELECT BOARD
278 OLD SUDBURY ROAD
SUDBURY, MA 01776

FAX: (978) 443-0756
E-MAIL: selectboard@sudbury.ma.us

Board or Committee Name: Commission on Disability

Name: Rebecca Chisholm
Address: 80 Prides Crossing Email Address: [redacted]
Home phone: _____ Work or Cell phone: [redacted]

Years lived in Sudbury: less than 1 year

Brief resume of background and pertinent experience:
Over the past several years, I have worked to improve accessibility in the town of Wayland by driving change to update school playgrounds to be more inclusive and to help bring school buildings into compliance with the ADA and Section 504 of the Rehab Act. Through these initiatives, I feel that I have the knowledge, passion and fortitude to create change for the disability community. My work experience also revolves around working with people with disabilities as an occupational therapist.

Municipal experience (if applicable):
None

Educational background:
MS Occupational Therapy from Boston University, MS Physiology & Biochemistry from Georgetown University, BS Anthropology, University of Pennsylvania

Reason for your interest in serving:
[redacted], I have learned through experience how access and inclusion benefits individuals with disabilities, their families, and the community. Sudbury has shown exemplary efforts in these areas, including its fully accessible playgrounds. I hope to join the Commission on Disability to further the work of the town to break down barriers for people with disabilities and make everyone feel included.

Times when you would be available (days, evenings, weekends):
Mon-Fri: 7-10pm
weekends flexible

Do you or any member of your family have any business dealings with the Town? If yes, please explain:
No

RC____ (Initial here that you have read, understand and agree to the following statement)

I agree that if appointed, I will work toward furtherance of the committee's mission statement; and further, I agree that I will conduct my committee activities in a manner which is compliant with all relevant State and Local laws and regulations, including but not limited to the Open Meeting Law, Public Records Law, Conflict of Interest Law, Email Policy and the Code of Conduct for Town Committees.

I hereby submit my application for consideration for appointment to the Board or Committee listed above.

Signature RChisholm Date 5/8/22

Attachment1.b: Rebecca_Chisholm_COD_2022.redact2 (5411 : Interview candidates for Commission on Disability)

Part I ADMINISTRATION OF THE GOVERNMENT

Title VII CITIES, TOWNS AND DISTRICTS

Chapter 40 POWERS AND DUTIES OF CITIES AND TOWNS

Section 8J DISABILITY COMMISSION; POWERS AND DUTIES; MEMBERS; TERMS

Section 8J. A city which accepts the provisions of this section by vote of its city council, subject to the provisions of its charter, or a town which accepts the provisions of this section at an annual or special town meeting, may establish a commission on disability, hereinafter called the commission, to cause the full integration and participation of people with disabilities in such city or town. Such commission shall (1) research local problems of people with disabilities; (2) advise and assist municipal officials and employees in ensuring compliance with state and federal laws and regulations that affect people with disabilities; (3) coordinate or carry out programs designed to meet the problems of people with disabilities in coordination with programs of the Massachusetts office on disability; (4) review and make recommendations about policies, procedures, services, activities and facilities of departments, boards and agencies of said city or town as they affect people with disabilities; (5) provide information, referrals, guidance and technical assistance to individuals, public agencies, businesses and organizations in all matters pertaining to disability; (6) coordinate activities of other local groups organized for similar purposes.

Said commission shall keep records of its meetings and actions and shall file an annual report which shall be printed in the city or town annual report and shall have at least ten meetings annually.

Attachment1.c: General Law - Part I, Title VII, Chapter 40, Section 8J (5411 : Interview candidates for Commission on Disability)

Said commission shall consist of not less than 5 and not more than 13 members. In cities, the members shall be appointed by the mayor, subject to the provisions of the city charter except that in cities having a Plan D or Plan E form of government said appointments shall be by the city manager, subject to the provisions of the charter, and in towns they shall be appointed by the selectmen, except towns having a town manager form of government, in which towns appointments shall be made by the town manager, subject to the approval of the selectmen and except towns having a town council form of government, the town manager. A majority of said commission members shall consist of people with disabilities, one member shall be a member of the immediate family of a person with a disability and one member of said commission shall be either an elected or appointed official of that city or town. The terms of the first members of said commission shall be for one, two or three years, and so arranged that the term of one-third of the members expires each year, and their successor shall be appointed for terms of three years each. Any member of said commission may, after a public hearing, if so requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment. The chairperson and other officers shall be chosen by a majority vote of said commission members.

Said commission may receive gifts of property, both real and personal, in the name of the city or town, subject to the approval of the city council in a city or the board of selectmen in a town, such gifts to be managed and controlled by said commission for the purposes of this section.

Attachment1.c: General Law - Part I, Title VII, Chapter 40, Section 8J (5411 : Interview candidates for Commission on Disability)

TOWN OF SUDBURY
APPLICATION FOR APPOINTMENT TO

COMMISSION ON DISABILITY

BOARD OF SELECTMEN
278 OLD SUDBURY ROAD
SUDBURY, MA 01776

FAX: (978) 443-0756
E-MAIL: selectmen@sudbury.ma.us

Name: Cameron LaHaise

Brief resume of background and experience: Six years as Executive Director of the Down Syndrome Association of Central Texas. Responsibilities included: advocacy (inclusion, civil rights, legislative), fundraising, community engagement, partnerships, marketing/awareness. Currently, Executive Director at Harvard Business School Healthcare Alumni Associatio

Address: 195 Horse Pond Rd. Sudbury MA 01776 Home phone: [redacted] Work phone:

Years lived in Sudbury: 3.5 yrs E-Mail Address: [redacted]

Municipal experience (If applicable): At DSACT (Down Syndrome Association of Central Texas) worked with activists and state legislators to advance legislation for the Down Syndrome commun

Long-time lifeguard/swim instructor for DCR during my youth.

Educational background:
University of Massachusetts: BA in English and Certificate in Public Health Policy and Administrat

Employment and/or other pertinent experience: 2016 AFP Chamberlain Scholar.
2018 Selection Committee for DIV.Inc., Champions of Change. Div Inc [Diversity and Inclusion in Entrepreneurship]

I consider myself disabled: ☐ Yes ■ No
I am (circle where appropriate) [redacted]

Reason for your interest in serving/areas of interest for people with disabilities:
Much of my career has been dedicated to equity and inclusion for people with disabilities. My current position focuses more on healthcare and I am eager to continue serving and advocating for this community.

Times when you would be available (days, evenings, weekends):

Flexible all days/nights.

Do you or any member of your family have any business dealings with the Town? If yes, please explain:

NO

CL (Initial here that you have read, understand and agree to the following statement)

I agree that if appointed, I will work toward furtherance of the committee's mission statement as adopted by the Board of Selectmen **and further**, I agree that I will conduct my committee activities in a manner which is compliant with all relevant State and Local laws **and regulations**, including but not limited to the Open Meeting Law, Public Records Law, Conflict of Interest Law, Email Policy and **the Code of** Conduct for Town Committees.

I hereby submit my application for consideration for appointment to the Commission on Disability.

Signature Cameron E LaHaise **Date** 5/28/2022

Rev. 5/12

Attachment1.d: LaHaise_Cameron_2022_redact2 (5411 : Interview candidates for Commission on Disability)

Dear Town Manager Hayes and Members of the Commission on Disability:

I'm excited to submit this application for appointment to the Commision on Disability. I have spent much of my career advocating for people with disabilities, most notably, as the Executive Director for the Down Syndrome Association of Central Texas. In my professional life, I have broad experience in areas relevant to the COD, including: advocacy, awareness building, community partnerships, developing programs, event management, board and financial management, and more.

[redacted] Advocating [redacted] gave me a new perspective on disabilities even though I had spent years immersed in and serving this community.

As my career has evolved [redacted], it has become even more important to me to continue to advocate for people with disabilities. I am eager to volunteer my time, passion, and experience to this cause in Sudbury. I am also ready to learn more about, and work on, both the challenges and opportunities Sudbury faces in this area.

I was inspired by the mission statement of the COD; to promote equal access to all aspects of community life for individuals in Sudbury living with disabilities by helping the Town identify barriers, by collaborating to have them removed, and by promoting self-advocacy. I know I can contribute in ways that will advance the mission.

On page 2, are some links to my relevant experience. I look forward to speaking with you soon, and am excited to attend the June 2nd meeting of the COD to learn more about the Americans with Disabilities Act from the Massachusetts Office on Disability, as well as the many other important items on the agenda.

Thank you for your consideration,
Cameron LaHaise
[redacted]

Attachment1.d: LaHaise_Cameron_2022_redact2 (5411 : Interview candidates for Commission on Disability)

Relevant Professional Experience

Cameron LaHaise LinkedIn
Down Syndrome Association of Central Texas (DSACT)
Awareness/Advocacy: CBS Austin Interview
Legislative Advocacy: HB3374: Down Syndrome Information Act
Stakeholder Comments: TX State Plan:Implementation of Every Student Succeeds Act
Inclusion/Events: Stars at the Trail

Harvard Business School Healthcare Alumni Association (HBSHAA)
Relevant Programs and Events:

HEALTH EQUITY MINDSET IN ACTION, Mar 8

Patricia Mae Doykos, PhD, Lead, Health Equity Initiative and Director, BMS Foundation at Bristol Myers Squibb
Dr. Olajide Williams, Professor of Neurology (with Tenure), Chief of Staff of Neurology, Co-Chair Columbia University Irving Medical Center Anti-Racism Task Force, Co-Director Columbia University Wellness Center. Founder Hip Hop Public Health
Melinda B. Gould, Founder, 40 West Advisors, MBA 1991
Moderator, **Patricia Martone Carrolo**, General Manager, IBM Global Healthcare and Life Sciences, HBSHAA Board, MBA 1991

Addressing Health Disparities: Moving from Insights to Action, September 15th Session

Sreekanth Chaguturu, M.D., Senior Vice President and, Chief Medical Officer, CVS Caremark

Attachment1.d: LaHaise_Cameron_2022_redact2 (5411 : Interview candidates for Commission on Disability)

Jean Nam

81 Newbridge Rd, Subury, MA 01776, [redacted]

Professional Summary

Motivated Project Manager with solid experience directing multidisciplinary teams. Strong written and relationship development skills.

Technology Skills

- Spreadsheets (MS Excel, Google Sheets)
- Documents (MS Word, Powerpoint, Google Docs, Slides, Jamboard, Pages, Canva, Preview)
- Website Design (Wordpress, Weebly, Square, Wix, Squarespace)
- Communications (Email, Mailchimp, Google Forms)

Experience

2017 to Present **Chairperson and Co-Founder** - PlaySudbury - Sudbury, MA

- Manages a $1 million+ project to rebuild all four elementary school playgrounds in Sudbury.
- Coordinates the multidisciplinary team of municipal staff and volunteers.
- Point of contact with external vendors.
- Creates budgets, solicits quotes, advocates for town funding, and maintains fiscal oversight.
- Successfully secured $250,000 in grant funding from multiple sources.

2006 to 2011 **Software Manager** - Ikanos Communications - Fremont, CA

- Developed automated debugging tools to enable engineers to remotely solve customer issues.
- Created a knowledge management strategy for interdepartmental communications.
- Communicated and collaborated with competitors in order to improve interoperability and develop international standards for the telecommunications industry.

1995-2006 **Manager and Business Team Interface** - Analog Devices - Wilmington, MA

- Defined project scopes and priorities with the business team.
- Formalized software releases, resourced projects, and integrated new team members.
- Initiated and implemented the software release process and testing framework.

Education

M.Eng and B.S in Electrical Engineering and Computer Science
Massachusetts Institute of Technology - Cambridge, MA

Additional Information

- Peter Noyes Elementary School PTO Webmaster
- Sudbury Family Network Webmaster
- Member Sudbury Finance Committee
- Member Community Preservation Committee
- Member Strategic Financial Planning Committee for Capital Funding
- Member Budget Strategies Task Force
- Friends of The Goodnow Library Board Member
- Volunteer for The Goodnow Library Foundation
- Sudbury Public Schools - Superintendent Screening Committee
- Sudbury Public Schools - Director of Student Services Screening Committee

Attachment1.e: Jean Nam_COD_2022_redact (5411 : Interview candidates for Commission on Disability)

Sudbury, MA Boards & Commissions

Submit Date: May 09, 2022

Application Form

Profile

Jean
First Name

Middle Initial

O Nam
Last Name

mail Address

81 NEWBRIDGE RD
Home Address

Suite or Apt

SUDBURY

MA
State

01776
Postal Code

Mobile:

Alternate Phone

Question applies to multiple boards

MAY 2022 TERM EXPIRATION STATUS: Do you wish to be REAPPOINTED

○ Yes ◉ No

Which Boards would you like to apply for?

Commission on Disability: Submitted

Sudbury Residency

 # Years Lived in Sudbury

10

Interests & Experiences

Please tell us about yourself and why you want to serve.

Why are you interested in serving on this board or commission?

About 5 years ago the Sudbury Schools started a project to renovate our school playgrounds and make them ADA compliant and inclusive. I co-founded a non-profit, PlaySudbury which collaborated with SPS to bring this idea to fruition. At the beginning of the project, we realized that Sudbury's ADA assessment was out of date and began advocating to get it updated. Now that the town has completed the assessment, and is beginning work on making more ADA improvements, I am excited for the opportunity to take an active role in this process.

Attachment1.e: Jean Nam_COD_2022_redact (5411 : Interview candidates for Commission on Disability)

Please describe your experience pertinent to this board/committee.

Finance Committee (4 years) - I am familiar with the municipal budgeting process and the latest financial policies. This experience will help with prioritizing projects and developing proposals for funding suggestions. Community Preservation Committee (2-3 years) - I have been a member of CPC as well as a project proponent, so I have experience with the process of obtaining CPC funds. Some of the ADA proposed projects are CPC eligible. For example, improvements to the Flynn building may qualify for CPC funds because the Flynn building is a historic site. My experience on the FinCom and CPC will help to COD when trying to optimized and streamline the funding process. I have also written grants applications that resulted in $250,000 for the playground ADA project.

Do you have previous municipal experience? If so, in what capacity have you served?

As described above, I have served on town committees - Finance Committee and CPC. I have also collaborated closely with SPS, DPW, and Facilities departments while we worked to complete the renovation of the 4 elementary school playgrounds. As a result, I have developed strong and proven working relationships with these town departments. Completing projects to improve our ADA compliance will be an interdisciplinary exercise, and having these trusted working relationships will help us to hit the road running.

What is your educational background?

Masters in Engineering from the Massachusetts Institute of Technology

N/A
Employer

Job Title

Resume_-_JN.pdf
Upload a Resume

Availability

When are you available to attend board/committee meetings? (Please select all that apply) *

- [x] Weekday Mornings
- [x] Weekday Evenings
- [x] Weekends

Town Interest

Do you or any member of your family have any business dealings with the Town? If yes, please explain.

No.

Signature Confirmation

Attachment1.e: Jean Nam_COD_2022_redact (5411 : Interview candidates for Commission on Disability)

Check below to indicate that you have read, understand and agree to the following statement:

I agree that if appointed, I will work toward furtherance of the committee's mission statement; and further, I agree that I will conduct my committee activities in a manner which is compliant with all relevant State and Local laws and regulations, including but not limited to the Open Meeting Law, Public Records Law, Conflict of Interest Law, Email Policy and the Code of Conduct for Town Committees.

☑ I Agree

Fill in your name below to confirm: I hereby submit my application for consideration for appointment to the Board(s) or Commission(s) indicated above.

Jean O Nam

Attachment1.e: Jean Nam_COD_2022_redact (5411 : Interview candidates for Commission on Disability)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

TIMED ITEM

2: Wayside Pizza Common Victualler License Application

REQUESTOR SECTION
Date of request:

Requestor: Wayside Pizza Inc

Formal Title: As the Licensing Authority for the Town of Sudbury, vote to approve a new Common Victualler License for Wayside Pizza, 730 Boston Post Road, #6, as requested in an application dated August 9, 2022, subject to conditions put forth by the Fire Department and Building Department. Manager Ibrahim A. Mohamed to attend.

Recommendations/Suggested Motion/Vote: As the Licensing Authority for the Town of Sudbury, vote to approve a new Common Victualler License for Wayside Pizza, 730 Boston Post Road, #6, as requested in an application dated August 9, 2022, subject to conditions put forth by the Fire Department and Building Department. Manager Ibrahim A. Mohamed to attend.

Background Information:
Application and department feedback attached.

Financial impact expected:$50 Common Victualler License Fee

Approximate agenda time requested: 10 minutes

Representative(s) expected to attend meeting: Ibrahim Mohamed, Owner/Manager

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

Town of Sudbury

Office of Select Board
www.sudbury.ma.us

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776-1843
978-639-3381
Fax: 978-443-0756
Email: sbadmin@sudbury.ma.us

APPLICATION FOR COMMON VICTUALLER & ENTERTAINMENT LICENSE

Please complete this application form and return to the Select Board's Office, along with all required materials listed below. Please review your plans with the Building Inspector, Health Director and Fire Chief prior to submitting your application. After submitting the completed form and materials, the applicant will be reviewed by Town staff and added to the Select Board's agenda. The applicant will be asked to attend a Select Board meeting to discuss the application – advanced notice of the date will be provided. The processing time for the license is approximately 30 days.

TO THE LICENSING AUTHORITY
SUDBURY, MASSACHUSETTS

Applicant or Corporate Name: Wayside Pizza INC

Applicant or Corporate Address: 730 Boston Post Rd #6

City: Sudbury State: MA Zip Code: 01776

Applicant Contact E[redacted]

Applicant Contact P[redacted]

Business/Restaurant Name (DBA): Wayside Pizza

Business/Restaurant Address: 730 Boston Post Rd #6 Sudbury, MA

Business/Restaurant Phone: 9782307277

Restaurant Manager Name: Ibrahim Mohamed

RECEIVED
SUDBURY, MA
2022 AUG -9 A 11:3

APPLICATION REQUIREMENTS

☐ Completed Tax Attestation (form attached)

☐ Evidence of compliance with the Worker's Compensation Act requirement to provide workers' compensation insurance for employees. (A copy of the policy or a certificate of insurance is satisfactory.)

Attachment2.a: Wayside Pizza CV_SB (5417 : Wayside Pizza Common Victualler License Application)

Town of Sudbury

Office of Select Board
www.sudbury.ma.us

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776-1843
978-639-3381
Fax: 978-443-0756
Email: sbadmin@sudbury.ma.us

Attachment2.a: Wayside Pizza CV_SB (5417 : Wayside Pizza Common Victualler License Application)

- ☐ Background information relative to the corporation. If applicable, articles of incorporation, including, names of principals of corporation, number of restaurants owned, etc.
- ☐ Floor plan: detailing plan of rooms, their use, restroom locations, exits, seating arrangements, as well as showing cooking and service area (seating capacity must be obtained from the Building Inspector).
- ☐ Whether any changes in the premises, structural or expansion, are planned.
- ☐ A dated letter from the present business owner stating the effective date of new ownership.
- ☐ A copy of the lease agreement between the property owner and the business owner.
- ☐ Application Fee:
  - **Common Victualler License: $50**
  - **Entertainment License** (if applicable): **$50**
  - ***Provide <u>one check</u> payable to Town of Sudbury with application materials.***

In accordance with M.G.L. c.140, I hereby request a Common Victualler license, to be presented within the premises herein described.

08-09-22 _____
Date Applicant Signature

Please submit completed application and materials to:
Office of Select Board, 278 Old Sudbury Rd, Sudbury, MA 01776

Town of Sudbury

Office of Select Board
www.sudbury.ma.us

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776-1843
978-639-3381
Fax: 978-443-0756
Email: sbadmin@sudbury.ma.us

APPLICATION FOR ENTERTAINMENT LICENSE

Entertainment licenses are required for live entertainment (*not* tv or radio) that occurs Monday – Saturday.

Please note: a separate license is required for entertainment on Sunday.

FORM OF ENTERTAINMENT: _____

_____

DAYS & HOURS OF ENTERTAINMENT: _____

_____

EXPECTED # OF ATTENDEES: _____

ADDITIONAL REQUIREMENT

☐ Floor plan showing accessibility: the entrance and at least one table must be handicap-accessible.

-OR-

CHECK HERE ☑ IF ENTERTAINMENT LICENSE IS NOT REQUESTED.

Attachment2.a: Wayside Pizza CV_SB (5417 : Wayside Pizza Common Victualler License Application)

CERTIFICATE OF TAXES/TAX ATTESTATION

Pursuant to M.G.L. Chapter 62C, Section 49A, I certify under penalties of perjury that Wayside Pizza INC has/have complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

[redacted]
Social Security Number, or
Federal Identification Number

Wayside Pizza INC
Signature of Individual, or
Corporation Name

08-09-22
Date

By: Ibrahim Mohamed - Owner
Corporate Officer & Title (if applicable)

AFFIX CORPORATE SEAL

Attachment2.a: Wayside Pizza CV_SB (5417 : Wayside Pizza Common Victualler License Application)

MA SOC Filing Number: 202236096310 Date: 7/28/2022 12:00:00 PM

The Commonwealth of Massachusetts
William Francis Galvin

Minimum Fee: $250.00

Secretary of the Commonwealth, Corporations Division
One Ashburton Place, 17th floor
Boston, MA 02108-1512
Telephone: (617) 727-9640

Articles of Organization
(General Laws, Chapter 156D, Section 2.02; 950 CMR 113.16)

Identification Number: 001597235

ARTICLE I

The exact name of the corporation is:

WAYSIDE PIZZA INC

ARTICLE II

Unless the articles of organization otherwise provide, all corporations formed pursuant to G.L. C156D have the purpose of engaging in any lawful business. Please specify if you want a more limited purpose:

ARTICLE III

State the total number of shares and par value, if any, of each class of stock that the corporation is authorized to issue. All corporations must authorize stock. If only one class or series is authorized, it is not necessary to specify any particular designation.

Class of Stock	Par Value Per Share Enter **0** if no Par	Total Authorized by Articles of Organization or Amendments		Total Issued and Outstanding
		Num of Shares	*Total Par Value*	*Num of Shares*
CNP	$0.00000	10,000	$0.00	1,000

G.L. C156D eliminates the concept of par value, however a corporation may specify par value in Article III. See G.L. C156D Section 6.21 and the comments thereto.

ARTICLE IV

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares of a class, if shares of another class are outstanding, the Business Entity must provide a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding and of each series then established within any class.

ARTICLE V

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are:

ANY SHAREHOLDER, INCLUDING THE EXECUTORS, ADMINISTRATORS, HEIRS, AND DEVISEES OF A DECEASED STOCKHOLDER, DESIRING TO SELL OR TRANSFER STOCK SHALL FIRST OFFER IT TO THE BOARD OF DIRECTORS IN WRITING, ALONG WITH THE PRICE AT W E/SHE IS WILLING TO SELL OR TRANSFER AND THE NAME OF ONE ARBITRATOR. THE DIREC

Attachment2.a: Wayside Pizza CV_SB (5417 : Wayside Pizza Common Victualler License Application)

OLDER AND SUBMIT THE NAME OF A SECOND ARBITRATOR. THE TWO ARBITRATORS SHAL L NAME A THIRD; AND IT SHALL THEN BE THE DUTY OF THE ARBITRATORS TO SET A VALU E FOR THE STOCK. THE DIRECTORS SHALL HAVE 30 DAYS TO PURCHASE THE STOCK AFTE R THE VALUE IS SET BY THE ARBITRATORS AND THE DIRECTORS ARE SO NOTIFIED IN WRIT ING. IN THE EVENT THAT THE DIRECTORS SHALL FAIL TO PURCHASE THE STOCK WITHIN S UCH TIME, THEN THE OWNER OF THE STOCK SHALL THEN BE AT LIBERTY TO DISPOSE OF THE STOCK IN ANY MANNER HE/SHE DEEMS FIT. NO SHARES OF STOCK SHALL BE TRANSF ERRED OR SOLD UNTIL THIS PROVISION HAS BEEN COMPLIED WITH, BUT THE DIRECTORS, IN ANY PARTICULAR INSTANCE, MAY WAIVE THIS REQUIREMENT. THE ARBITRATION SHA LL BE CONDUCTED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE AMERI CAN ARBITRATION ASSOCIATION.

ARTICLE VI

Other lawful provisions, and if there are no provisions, this article may be left blank.

Note: The preceding six (6) articles are considered to be permanent and may be changed only by filing appropriate articles of amendment.

ARTICLE VII

The effective date of organization and time the articles were received for filing if the articles are not rejected within the time prescribed by law. If a *later* effective date is desired, specify such date, which may not be later than the *90th day* after the articles are received for filing.

Later Effective Date: Time:

ARTICLE VIII

The information contained in Article VIII is not a permanent part of the Articles of Organization.

a,b. The street address of the initial registered office of the corporation in the commonwealth and the name of the initial registered agent at the registered office:

Name: IBRAHIM MOHAMED
No. and Street: 730 BOSTON POST RD
City or Town: SUDBURY State: MA Zip: 01776 Country: USA

c. The names and street addresses of the individuals who will serve as the initial directors, president, treasurer and secretary of the corporation (an address need not be specified if the business address of the officer or director is the same as the principal office location):

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
PRESIDENT	IBRAHIM MOHAMED	6 VILLAGE GREEN #6 MILLBURY, MA 01527 USA
TREASURER	IBRAHIM MOHAMED	6 VILLAGE GREEN #6 MILLBURY, MA 01527 USA
SECRETARY	IBRAHIM MOHAMED	6 VILLAGE GREEN #6 MILLBURY, MA 01527 USA
DIRECTOR	IBRAHIM MOHAMED	6 VILLAGE GREEN #6 MILLBURY, MA 01527 USA

Attachment2.a: Wayside Pizza CV_SB (5417 : Wayside Pizza Common Victualler License Application)

d. The fiscal year end (i.e., tax year) of the corporation:
December

e. A brief description of the type of business in which the corporation intends to engage:

RESTAURANT

f. The street address *(post office boxes are not acceptable)* of the principal office of the corporation:

No. and Street: 730 BOSTON POST RD
City or Town: SUDBURY State: MA Zip: 01776 Country: USA

g. Street address where the records of the corporation required to be kept in the Commonwealth are located *(post office boxes are not acceptable)*:

No. and Street: 730 BOSTON POST RD
City or Town: SUDBURY State: MA Zip: 01776 Country: USA
which is

___ its principal office
___ an office of its secretary/assistant secretary
___ an office of its transfer agent
X its registered office

Signed this 28 Day of July, 2022 at 12:02:38 PM by the incorporator(s). *(If an existing corporation is acting as incorporator, type in the exact name of the business entity, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said business entity and the title he/she holds or other authority by which such action is taken.)*
IBRAHIM MOHAMED

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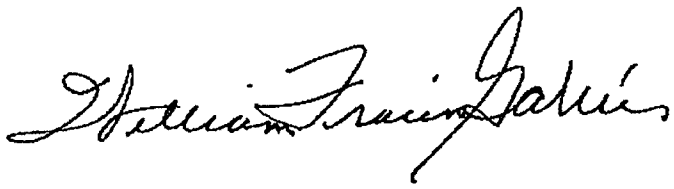
Attachment2.a: Wayside Pizza CV_SB (5417 : Wayside Pizza Common Victualler License Application)

MA SOC Filing Number: 202236096310 Date: 7/28/2022 12:00:00 PM

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

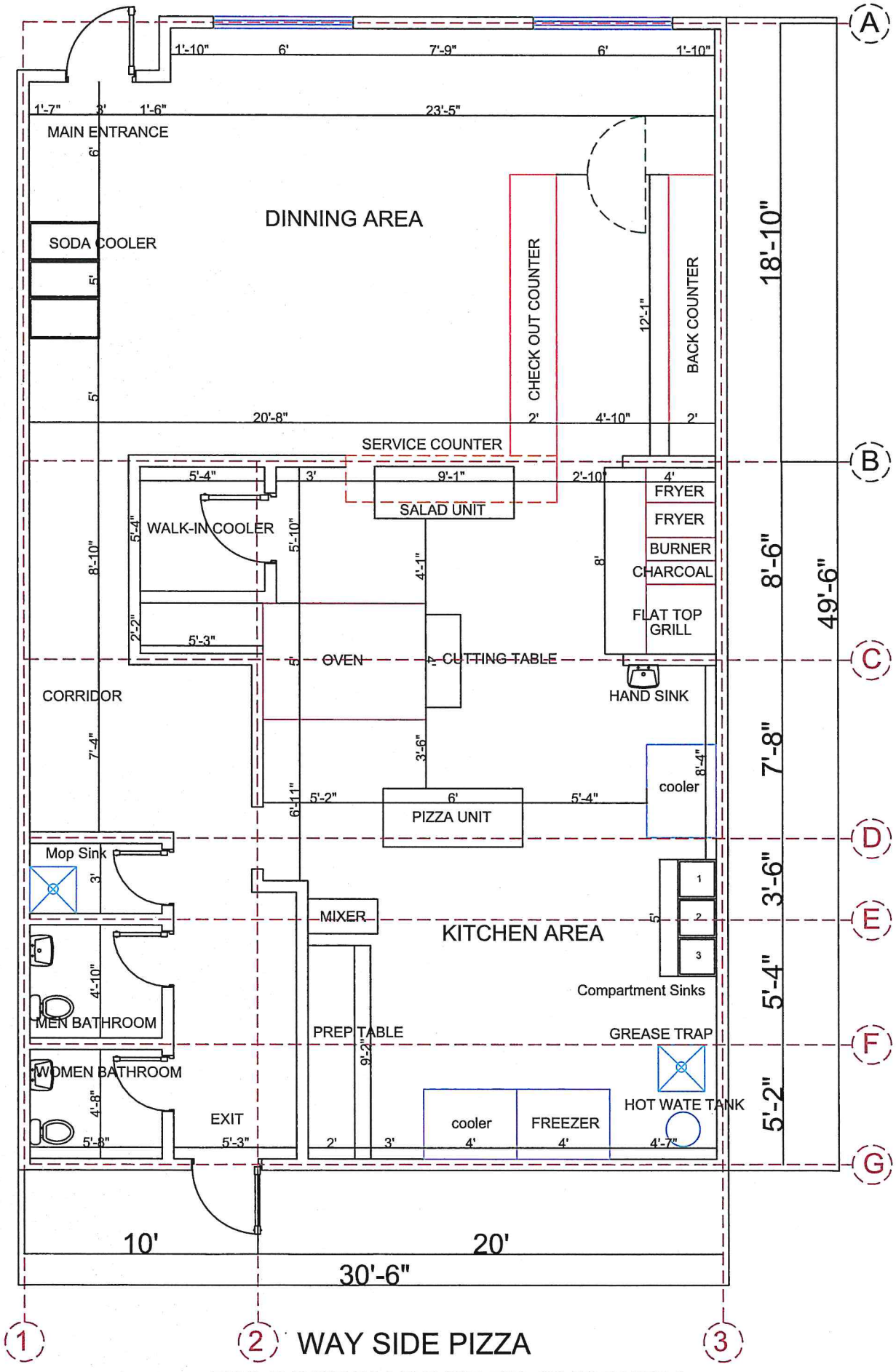
July 28, 2022 12:00 PM



WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth

Attachment2.a: Wayside Pizza CV_SB (5417 : Wayside Pizza Common Victualler License Application)



WAY SIDE PIZZA

730 BOSTON POST RD SUDBURY

PORPOSED PLAN

Attachment2.a: Wayside Pizza CV_SB (5417 : Wayside Pizza Common Victualler License Application)

Change of ownership

As of August 1st, 2022 I, Jason Carter of J.Carter Ventures LLC. DBA: Fire Dough Kitchen, located at 730 Boston Post Rd #6 Sudbury, MA 01776 have sold and transferred ownership of its space and assets to Ibrahim A. Mohamed.

Seller:

Date: 8/1/22

Jason Carter

J.Carter Ventures LLC

Buyer:

Date: 08-01-22

Ibrahim A. Mohamed

Attachment2.a: Wayside Pizza CV_SB (5417 : Wayside Pizza Common Victualler License Application)

Wayside Pizza
Common Victualler License Application

Department Feedback

Department	Staff	Date	Comments
Building Department	Andrew Lewis	8/23/22	I have no issue with this, but I will go with Tim and inspect. I heard they were removing the wood fired oven and installing gas fired.
Fire Department	Asst. Chief Choate	8/16/22	I went down there yesterday afternoon to check on the fire suppression and life safety and they were closed. The FD is ok with transfer but I will need to check these items before they open to ensure fire code compliance.
Health Department	Bill Murphy	8/16/22	The new applicant has not applied for a Board of Health Food Service Establishment permit to date. He has been advised to promptly submit required documentation for review and contact the building department regarding any modifications to building (proposing replace wood ovens with traditional gas ovens).
Police Department	Chief Nix	8/16/22	Police Department is fine with the transfer.

Attachment2.b: Wayside Pizza CV Feedback (5417 : Wayside Pizza Common Victualler License Application)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

MISCELLANEOUS (UNTIMED)

3: Community paradigm discussion - Town Manager search

REQUESTOR SECTION
Date of request:

Requestor: Chair Russo

Formal Title: Discussion with Community Paradigm Associates - Town Manager search

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

SUDBURY, MA – Town Manager

Position Statement

Sudbury, MA (18,934 pop.), is a beautiful community in which to live and work. Residents are passionate about the Town and strive to maintain its character along with the quality of life it offers. Sudbury has an excellent public school system, attractive neighborhoods, high property values, abundant open space, a well-managed local government, and is only 20 miles west of Boston.

Sudbury's deep connections to the past are seen in its historic Town Center and in the hundreds of historic homes scattered throughout the community. Scenic roadways are lined with old stone walls, mature trees, and fields, reminders of the community's rural past. Sudbury has numerous noteworthy sites, including the Longfellow Wayside Inn and the Revolutionary War Cemetery.

The Town of Sudbury is well managed and well situated for continued success. The Town's challenges include prioritizing and managing its many projects, maintaining its superior financial stability, maintaining its community character while finding ways to increase revenue, and moving to the forefront on social and global issues that have local impact, including diversity, equity, and inclusion, and environmental sustainability efforts.

Sudbury is seeking an experienced, knowledgeable, and talented leader with excellent communication and community engagement skills, proficient financial acumen, and superior project management and personnel management skills to serve as its next Town Manager. Preferred candidates should have an advanced degree in public or business administration, law, or a related field and experience as a town manager or assistant town manager or an equivalent level of experience. Candidates should be proactive and strategic thinkers, who are able to prioritize and to build collaborative relationships with appointed/elected officials, business owners, residents, and employees. The next Town Manager should be a visionary who is enthusiastic about the opportunities Sudbury offers.

Annual Salary: **$XXXK+/-**. The successful candidate will receive an attractive compensation package including health and retirement plans, commensurate with qualifications and experience. Sudbury is an Affirmative Action/Equal Opportunity Employer. The Town Manager position does not have a residency requirement.

DRAFT

Attachment3.a: Sudbury TM Position Statement 2022 (5419 : Community paradigm discussion - Town Manager search)

Government

In 1994, the Town of Sudbury adopted a Special Act Charter, which provides for the Select Board-Town Manager form of government and includes open Town Meeting. The Select Board is made up of five members who are elected for three-year overlapping terms. The Board acts as the primary policy-making body of the Town. It provides oversight for matters in litigation, acts as the licensing authority for a wide variety of licenses, and enacts rules and regulations for such matters as traffic control. Further, the Board serves, along with the Town Treasurer, as Trustees of Town Trusts. In addition to the responsibilities stated above, the Select Board formulates guidelines for all Town agencies and appoints the Town Manager, Town Counsel, and Town Accountant. The Board's 2022 Goals can be reviewed on the Town website.

An elected five-member School Committee oversees the long-range policies of the Sudbury Public Schools, which educates students from grades PreK-8. Lincoln-Sudbury Regional High School has an elected six-member School Committee, four of whom currently reside in Sudbury. Other elected positions in Town include Board of Assessors, Board of Library Trustees, Housing Authority, Board of Health, Planning Board, Park and Recreation Commission, and Town Moderator. In addition, the Town utilizes many other appointed boards and commissions to conduct municipal operations. The Sudbury 2020 Annual Town Report is available online.

The Select Board appoints the Town Manager to provide, along with the Board, executive leadership for the Town. The Town Manager is responsible for executing the policy directives of the Select Board and for managing the operations and activities of the Town. Details regarding the qualifications and powers and duties of the Town Manager can be found in Part IV of the Charter. The Town Manager is specifically responsible for providing support to the Select Board; managing all Town departments; financial management and budgeting; handling personnel and benefits administration, hiring and firing of personnel, employee performance reviews, and collective bargaining; purchase of supplies, materials, and equipment; inventory of all Town property, maintenance and use of all Town facilities; and coordinating the activities of all town agencies serving under the office of the Town Manager and the office of the Select Board.

Important Links:

- Town of Sudbury
- Home Rule Charter Act
- General Bylaws
- 2020 Annual Town Report
- FY23 Proposed Budget
- Financial Policies
- Sudbury Master Plan
- Housing Production Plan
- Open Space & Recreation Plan
- Hazard Mitigation Plan
- ADA Evaluation and Transition Plan

Finances

The Town of Sudbury is in a very stable financial condition. The Town's FY23 operating and capital budgets total approximately $111 million and Sudbury has a AAA rating from Standard and Poor's. The Town allocates $650,000 annually toward its OPEB liability. The FY22 tax rate is $18.05 for residential properties and $24.57 for commercial, industrial, and personal properties. Slightly over 85% of the Town's revenue comes from the tax levy, nearly 6% from state aid, and slightly over 4% from local receipts. New growth in FY22 was $31.6 million. The total assessed value of Sudbury properties in FY22 is nearly $5.2 billion. Free cash for FY22 is certified at nearly $6.6 million. The average single family tax bill in FY22 is $14,395.

The next Town Manager should have solid financial acumen and the ability to help maintain Sudbury's healthy finances. The next Town Manager needs to be decisive and forward-thinking regarding finances and all aspects of municipal management. Experience with collective bargaining and procurement would be beneficial.

DRAFT

Attachment3.a: Sudbury TM Position Statement 2022 (5419 : Community paradigm discussion - Town Manager search)

Education

Sudbury residents place a high value on education, and the Town's schools have a well-known tradition of excellence. Sudbury Public Schools operates four elementary schools, serving students in grades PreK-5 and Curtis Middle School for students in grades 6-8. There are approximately 2,521 students in the PreK-8 program. The school budget for FY23 is approximately $41.8 million and there are about 500 employees.

Most Sudbury students in grades 9-12 attend Lincoln-Sudbury Regional High School, which has approximately 1,520 students in the current academic year with nearly 90% coming from Sudbury. The school has a per-pupil expenditure of approximately $23,000 and Sudbury contributes approximately $27.8 million to its FY23 budget. The Lincoln-Sudbury Regional High School building was opened in 2004 and is well maintained. A small number of Sudbury's high-school students choose to attend a regional technical high school, typically selecting Assabet Valley Regional Technical High School in Marlborough or Minuteman Regional Vocational Technical High School in Lexington.

Economic and Community Development

Sudbury has experienced a bit of a building boom over the past few years. Cold Brook Crossing, a 274-unit residential development off Route 117 with condominiums, apartments, and 55+ townhomes, began its permitting process in 2020. The apartments are now leasing for fall move-ins. The Meadow Walk Sudbury complex, which first broke ground about four years ago on 50 acres off Route 20 that was once home to defense contractor Raytheon, consists of a 75,000-square-foot village retail center of approximately 15 stores and restaurants anchored by a Whole Foods Market grocery store, a 250-unit luxury apartment community, a 60-unit active-adult condominium community, and a 48-unit assisted living community. The Coolidge at Sudbury, a 55+ community with 110 units, was completed in 2020. Sudbury currently exceeds the Massachusetts' mandate that at least 10% of its housing stock be affordable to middle- and lower-income households and should retain that status until 2030 or beyond.

The Town remains interested in pursuing thoughtful economic development that will align with the community's values and respects the historic character of Sudbury. The Town of Sudbury benefits from its location near Boston, which is the economic engine of Massachusetts. Sudbury residents also have access to I-90 (Mass. Pike) and Routes 95/128 and 495, although it is not direct access which causes traffic congestion in some areas of Town. Logan International Airport is located a short distance away in Boston. The Sudbury Water District is an independent municipal entity and distinct from the Town of Sudbury.

Sudbury recently updated its Master Plan, which details various initiatives to be undertaken in the future to enhance the community. The Town's most recent Hazard Mitigation Plan was approved in 2020. Sudbury has approved a Complete Streets Policy in which, whenever possible and with consideration of roadway character, roadways are planned, designed, and constructed to meet the needs of all travel modes and people of all abilities.

DRAFT

Attachment3.a: Sudbury TM Position Statement 2022 (5419 : Community paradigm discussion - Town Manager search)

Open Space, Recreation, and Climate Resiliency

Conservation of open space and natural resources is a priority for residents, for passive and active recreation use and for environmental preservation purposes. For example, the Town purchased the 46-acre Camp Sewataro land for $11.2 million and is now working to determine its best use; and, in 2018, acquired Broadacres Farm, a 34-acre horse farm adjacent to existing Town-owned properties, for $5.5 million.

Sudbury is home to portions of Great Meadows National Wildlife Refuge and Assabet River National Wildlife Refuge. The thousands of acres of open space provide opportunities for hiking, fishing, kayaking, wildlife viewing, photography, cross-country skiing, and bird watching. Funding for both a new Open Space Plan and an Athletic Fields Needs Assessment was approved by Town Meeting in May 2022. The 2009-2013 Open Space and Recreation Plan can be viewed on the Town's website.

Sudbury also has a wealth of park spaces and playing fields for such activities as soccer, baseball, and lacrosse. The Sudbury Park and Recreation Department offers a wide variety of programs for youths and adults. The Town also has a community pool located at the Fairbank Community Center which is temporarily closed for yearly maintenance and new building construction.

Sudbury recognizes that climate change impacts community health, local natural resources, and infrastructure and is diligently working to mitigate the impacts and to enhance its climate resiliency. In May 2022, Town Meeting passed a Climate Emergency Declaration which, among other items, calls for community-wide greenhouse gas emissions reductions as soon as possible and for the hiring of a Sustainability Director. Sudbury held a Climate Change and Sustainability Town Forum in July 2022.

Recent and Ongoing Projects

- The Fairbank Community Center broke ground in August and will help usher in a new era and new generation of services and support for Parks & Recreation, the Senior Center, and school administration.
- Sudbury's portion of the Bruce Freeman Rail Trail is slated to break ground soon, which will add a regional amenity and increase the quality of life in town. More than $12 million in state and federal funds are committed to the project.
- Additional funding for the renovation/construction of Fire Station 2 on Route 20 was approved at Town Meeting in May 2022, bringing the total cost to approximately $5.25 million.
- A new Master Plan was created in 2021, mapping out various initiatives to be undertaken to enhance the community in coming years.
- A Comprehensive Wastewater Management Plan is now being developed. There is a focus on Route 20 which could allow for more economic development opportunities there.
- In May 2022, Town Meeting approved funding for a new town-wide Open Space Plan and a town-wide Athletic Fields Needs Assessment.
- The Mass Central Rail Trail project is moving forward, and work must be closely monitored by the Town.
- Work to determine a long-term strategy for the use and operation of the Sewataro property is ongoing.
- Conducting a space needs assessment may be considered within the next few years.
- Town Hall needs renovations and is a project to be considered in future years.
- A town-wide ADA Accessibility Evaluation was recently completed.
- Short-term and long-term capital plans and a capital maintenance plan need further development.
- A planning consultant is currently assisting in the creation of a town-wide Historic Preservation Plan.

DRAFT

Attachment3.a: Sudbury TM Position Statement 2022 (5419 : Community paradigm discussion - Town Manager search)

The Ideal Candidate

- Advanced degree, preferably in a field related to public or business administration, law, or a related field.
- Three to five years of experience as a Town Manager or Assistant Town Manager or equivalent experience and solid background in municipal operations and law with a preference for Mass. knowledge.
- Skilled in project management, economic and community development, communications, and personnel management.
- Proficient in municipal financial management, budgeting, short- and long-term capital planning, and procurement.
- Superior and demonstrable leadership skills.
- Ability to prioritize and to effectively communicate those priorities.
- Skilled at working with boards and committees.
- Visionary; strategic; collaborative; diplomatic.
- Creates a welcoming and inclusive environment.
- Concerned about environmental sustainability and climate change.
- Data-driven decision making; analytical.
- Understands the necessary balance between open space and economic development.
- Recognizes historic nature of the community.
- Ability to build trust and respect; politically neutral.
- Ability to build relationships with the business community.
- Able to build and maintain morale.

How To Apply

Send cover letter and résumé via email, in a single PDF, by XXXXXX XX, 2022, 3:00 p.m. EST to:

Apply@communityparadigm.com

Subject: Sudbury Town Manager

Questions regarding the position should be directed to:

Bernard Lynch, Principal
Community Paradigm Associates
Blynch@communityparadigm.com
978-621-6733

The Town of Sudbury, Mass., is an Affirmative Action/Equal Opportunity Employer.

Attachment3.a: Sudbury TM Position Statement 2022 (5419 : Community paradigm discussion - Town Manager search)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

MISCELLANEOUS (UNTIMED)

4: Regulation of GOLs for small wireless facilities

REQUESTOR SECTION
Date of request:

Requestor: Chair Russo

Formal Title: Discussion on how to regulate Grants of Locations for small wireless facilities. David Maxson of Isotrope, LLC to provide background on small wireless facilities. Discuss application procedures and limits placed by the FCC, as well as the kinds of controls that could be in new regulations. Also discuss and possibly vote next steps.

Recommendations/Suggested Motion/Vote: Discussion on how to regulate Grants of Locations for small wireless facilities. David Maxson of Isotrope, LLC to provide background on small wireless facilities. Discuss application procedures and limits placed by the FCC, as well as the kinds of controls that could be in new regulations. Also discuss and possibly vote next steps.

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting: David Maxson of Isotrope LLC

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

David P. Maxson, WCP
Curriculum Vitae

Isotrope, LLC, Medfield, Massachusetts, 1982*-present — Founder, CEO

a) Radio communications facility and network design and construction
b) Safety planning and evaluation of communications facilities, safety protocol development
c) Research and development on digital media initiatives
d) Evaluation of radio frequency facilities for compliance with technical and regulatory standards
e) Radio frequency interference remediation
f) Expert consultation in radio and digital communications litigation
g) Municipal guidance in wireless planning and regulation

*Note – Isotrope, LLC continues a prior business operated by David Maxson since 1982. Isotrope was formed in 2009.

Charles River Broadcasting Company, Waltham, Massachusetts, 1978-1998.
Vice President, Director of Engineering and Technical Operations

Affiliations

- Certified IEEE Wireless Communications Professional®, demonstrating "a thorough understanding of different key technologies in the wireless arena."
- Member of National Radio Systems Committee, 1998-present.
  - Digital Radio Broadcasting Subcommittee, IBOC Standards Development Working Group
    - Chairman: Location Based Services Working Group, 2012-2015
  - RBDS Subcommittee, AM/FM Analog Broadcasting Subcommittee
- Member of International Committee on Electromagnetic Safety ("ICES") 2016 – present
  - Certificate of appreciation for service on the Editorial Working Group for C95.1-2019 *IEEE Standard for Safety Levels with Respect to Human Exposure to Electric, Magnetic, and Electromagnetic Fields, 0 Hz to 300 GHz.*
- Member of the Committee on Man and Radiation ("COMAR") 2019 – present
  - Electromagnetic safety policy and information
- Charter Member of Wireless Infrastructure Association's DAS Forum (the small-cell group) 2008
- Corresponding Member: IEEE-USA Committee on Communications Policy, 2012 to present
- Senior Member, IEEE; Certified Broadcast Radio Engineer, Society of Broadcast Engineers; FCC General Class Radiotelephone License with Radar Endorsement, Massachusetts Licensed Construction Supervisor #CS073481.

Project Highlights

- Subject Matter Expert and trackside network design lead for Caltrain trackside broadband project, 2019 to present
- Subject Matter Expert and Design and Construction Manager for Trackside Facilities – Amtrak wireless data trackside network, 2014-2018
- Expert testimony, Strayton v. Martha's Vineyard Commission, New Cingular Wireless, MVWiFi, *et al*, Massachusetts Superior Court, C.S. No. 1874 CV0008, 2020.
- Subject Matter Expert and Project Manager - Utah Broadband Project's Wireless Broadband Surveys: developed test plan and conducted 7000-mile drive tests of wireless broadband service availability across Utah in 2011 and 2013.
- Project Reviewer - NTIA Broadband Technology Opportunities Program and USDA Rural Utilities Service Broadband Initiatives Program – American Recovery and Reinvestment Act, 2009.
- Project Director and Engineer, PAVE PAWS Radar Environmental Emissions Modeling and Survey, for PAVE PAWS Public Health Steering Group, 2004-2005 (results peer reviewed by Nat'l Academies of Science)
- Massachusetts Department of Public Health, follow-up survey of specific locations not evaluated in PAVE PAWS study; 2007-2008
- US House of Representatives Telecom Subcommittee, Testimony on RF interference study, February 2000.

Attachment4.a: curriculumvitae-Maxson 2020 (5421 : Regulation of GOLs for small wireless facilities)

David P. Maxson, WCP
Curriculum Vitae

- Wireless facility evaluation and planning consultant to the Cape Cod Commission as well as to over a hundred municipalities in New England and beyond, 1999 to present. Performed more than 500 wireless facility reviews
- Appointed member of Massachusetts Department of Public Health ad hoc committee on revisions to electromagnetic energy safety regulations 105 CMR §122, 1997.

Selected Publications

- Peer-reviewed paper: *FM 8th Harmonic Interference to Wireless Facility Not Radiated by the FM Station: A Case Study,* Proceedings of the National Association of Broadcasters Broadcast Engineering Conference ("NAB-BEC"), 2020.
- Peer-reviewed paper, co-author: *IEEE Committee on Man and Radiation—COMAR Technical Information Statement: Health and Safety Issues Concerning Exposure of the General Public to Electromagnetic Energy from 5G Wireless Communications Networks*, Health Physics: August 2020 - Volume 119 - Issue 2 - p 236-246
- Author, *Your Mileage May Be Different – Reflections on Megabits per Second and Miles per Day [on a statewide drive test of broadband data connectivity in Utah],* Above Ground Level Magazine, December 2011.
- Principal Author, *A Tractable Approach to Defining and Measuring IBOC Signals against the RF Masks,* Annex 1, NRSC Guideline -G201: NRSC-5 RF Mask Compliance: Measurement Methods and Practice, 2010, reaffirmed 2016
- Peer-reviewed paper: *New Kinds of Interference in the FM Band: 2 Case Studies of Stuff You Didn't Know,* NAB-BEC, 2016
- Author, *The IBOC Handbook— Understanding HD Radio Technology*, 2007, Focal Press, ISBN 13:978-0-2408084-4-4.
- Article, *Evaluating Emissions of Your New IBOC Transmitter*, Radio World Engineering Extra, June 2005.
- Article, *Posting Hazard Communications Signs at Your Radio Transmission Plant,* Radio Guide, April 2005.
- Peer-reviewed paper: *Interference Potential of Hybrid Digital Transmission: An IBOC Occupied Bandwidth Case Study*, NAB-BEC, 2004.
- Peer-reviewed paper: *Integrating ANSI-Compliant RF Signs into Corporate RF Safety Programs*, NAB-BEC 2004.
- Peer-reviewed paper, co-author: *Applying the Principles of Data Communications to the Development of an Open and Universal IBOC Data Protocol,* NAB-BEC 2003.

Attachment4.a: curriculumvitae-Maxson 2020 (5421 : Regulation of GOLs for small wireless facilities)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

MISCELLANEOUS (UNTIMED)

5: Updates related to Eversource transmission line project

REQUESTOR SECTION
Date of request:

Requested by: Patty Golden

Formal Title: Updates related to Eversource Transmission Line project. Eversource representatives in attendance will be Michael Hager, Project Manager; Miles Lang-Kennedy and Megan Aconfora, Project Services; Karen Newell, Community Relations.

Recommendations/Suggested Motion/Vote: Updates related to Eversource Transmission Line project. Eversource representatives in attendance will be Michael Hager, Project Manager; Miles Lang-Kennedy and Megan Aconfora, Project Services; Karen Newell, Community Relations.

Background Information:

EVERSOURCE DOCUMENTS
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5.k: SJC Siting Board Appeal Dismissal. June 25, 2021

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting: Eversource representatives

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

TOWN OF SUDBURY
Office of the Interim Town Manager

Maryanne Bilodeau
Interim Town Manager

278 Old Sudbury Road
Sudbury, Massachusetts 01776
Tel: (978) 639-3385
Email: bilodeaum@sudbury.ma.us

To: Select Board
From: Maryanne Bilodeau
Re: Town Department/Sudbury Water District Updates Related to Eversource Transmission Line Project
Date: August 24, 2022

In preparation for the Eversource Transmission Line Project Update that is scheduled for the August 30th Select Board agenda, please see the comments listed on the following pages in regards to how departments are prepared as well as outstanding concerns they may have.

The Town Department Heads, Vin Roy from the Sudbury Water District, and Eversource representatives will be available at your meeting to answer questions.

Police Chief Scott Nix:

We are aware of the emotions involved surrounding the Eversource Project. As always, we remain neutral in ensuring the safety for all while being cognizant of our need to adjust if behaviors are not appropriate. Any concerns are yet to be determined and we will continue to monitor and/or communicate with those we need to.

At points we expect the requisite work will require police details to facilitate safe work within the Town's right of way. Eversource has been advised how to request said details.

Fire Chief John Whalen:

I had a meeting with Bond Construction and Eversource on 8/11 and they provided a better defined scope of the work that will occur in Sudbury. At this point the only items we are waiting for are;

1. The Bond Emergency Contact List.
2. A list of Bond personnel that have the proper safety training to work the project.

The Fire Dept is ready for this project to start, we have reached out to our mutual aid partners and informed them of the projected start date.

Attachment5.a: Town Department and SWD Updates related to Eversource Transmission Line Project 8-25-22 (5418 : Updates related to

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DPW Director Dan Nason:

How the DPW is prepared for the project:

a. The DPW is expecting and will expedite the road opening / closing application.

Outstanding concerns:

b. Road opening /closure permits are required from the Public Works Department for the roadway crossings.
c. Adequate notification (Message Boards) placed at road crossings at least a week before the work is scheduled to alert motorists and residents of the pending delays and detours. Any planned or proposed detour routes shall be reviewed and approved by the Public Works Director, Police Chief and Fire Chief to ensure they do not interfere with other Town construction projects or emergency response/access.
d. Provide and distribute an Emergency Contact List with persons, name, title and a phone number where they can be reached 24/7.
e. Ensure construction routes are disseminated to all truck drivers to ensure the pre-determined routes are followed and to eliminate truck traffic in neighborhoods.
f. Any and all construction debris deposited along the roadways or damages caused by the construction vehicles and transportation of debris is the responsibility of Eversource and its contractor. The Public Works Department recommends a pre-construction video or survey is performed of all truck routes to document conditions prior to the commencement of activities.

Planning and Community Development Director, Adam Duchesneau

Planning Board – Stormwater Management Permit

The permit has been approved. The Applicant has submitted some items of compliance listed in the decision and our office is working to obtain others (or verify they have been submitted).

Earth Removal Board – Earth Removal Permit

The permit has been approved as well as an extension until May of 2024. The Applicant has submitted some items of compliance listed in the decision and our office is working to obtain others (or verify they have been submitted).

Historic Districts Commission – Certificate of Appropriateness

The Historic Districts Commission issued a Certificate of Appropriateness for the project which was filed with Town Clerk on August 18, 2022. The Applicant has submitted some items of compliance listed in the decision and our office is working to obtain others (or verify they have been submitted).

Historical Commission – Memorandum of Agreement (MOA)

A final MOA between the US Army Corps of Engineers (USACE), the Massachusetts Historical Commission (MHC), Eversource, and the Massachusetts Department of Conservation and Recreation (DCR) was sent to the Historical Commission on July 29, 2022. The Historical Commission made no decision at their meeting on August 16, 2022 whether to sign or not sign the MOA. A majority of the Historical Commission approved sending a letter to the USACE stating that and explaining that further changes to the MOA are needed, including the recent decision by Eversource and DCR to realign the project around the Section Tool House. This letter explaining their position was sent to the USACE on August 18, 2022. It should be noted here the only entities required to sign the MOA are the USACE and MHC.

Attachment5.a: Town Department and SWD Updates related to Eversource Transmission Line Project 8-25-22 (5418 : Updates related to

Outstanding Concerns/Comments
As an FYI, there will be areas of the railroad corridor that will be completely off limits due to the work that is being conducted during construction. There was no discussion about this during the Stormwater Management Permitting process and the breakage of linkages between trail connections or public properties was not contemplated. Other alternative trail routes will need to be found during the construction process.

Some trail/land connections across the corridor will be completely closed off during construction. Eversource may need to implement significant physical barriers to restrict public access.

Board of Health Director, Bill Murphy

The sample results, Environmental Compliance Manuals, and the Soil and Groundwater Management Plan have been reviewed.

These documents address compliance with the MA Department of Environmental Protection's guidance document "Best Management Practices for Controlling Exposure to Soil During Construction of Rail Trails" Link:
https://www.mass.gov/doc/best-management-practices-for-controlling-exposure-to-soil-during-the-development-of-rail-0/download

The Eversource documents address construction practices to minimize or eliminate exposure to contaminants to workers, residents, and the environment through all phases of construction. The Conservation Commission will be utilizing a Licensed Site Professional for third party oversite to review construction and protections in jurisdictional areas if additional contamination is found. The Select Board may want to consider expanding these services for the project if there is concern regarding compliance with DEP guidelines.

Public Communications Update from Leila Frank:

Eversource to provide project information and updates.

- -Web page established by Eversource – currently live – current info and will be updated weekly: http://www.eversource.com/sudbury-hudson-project
- -Emails via Constant Contact will be sent to those who sign at https://bit.ly/SHform21 on a weekly basis. Additional emails may be sent as needed in case of changes such as night work arising during the week.
- -Phone calls and text messages via Eversource call center staff will be sent to those who sign up
- -Door hangers to be placed at abutters homes when any major changes in work being performed nearby are expected (approx. 200 households)
- -Abutter notification and update signup will be mailed to approx. 500 households
- -All materials distributed to households via hardcopy will be shared with Select Board's office
- -Sandwich boards will be placed on roadways near construction. Electronic message boards in advance of work starting also being considered per DPW request.
- -Eversource *not* currently planning to provide updates via social media as requested. May engage Corporate Communications team for feedback.
- -Town Staff asked to direct project concerns from residents to Eversource via 800-793-2202 or projectinfo@eversource.com
- -Town will provide links to Eversource project page, update sign up link and Eversource contact phone and email on the Town website Eversource page: https://sudbury.ma.us/selectboardsoffice/?p=869

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Conservation Coordinator, Lori Capone:

The Conservation Commission issued an Order of Condition on February 4, 2021 for the construction of the Eversource Underground Transmission Line followed by the installation of the Mass Central Rail Trail. The Applicant has been working since issuance of this Order to accomplish the pre-construction conditions contained within this Order. I provide the following status on these pre-construction requirements, what measures are being implemented to ensure the applicant meets the permit requirements, and outstanding matters and concerns.

Pre-Construction Condition Compliance Status:

The following are the pre-construction conditions placed on the project and the status of how these have been addressed.

1. Provide the executed Memorandum of Understanding between Eversource and the Department of Conservation and Recreation and the agreements between the Massachusetts Bay Transportation Authority and the Applicants, to ensure the obligations of the project are fulfilled.

   Status: This MOU has been provided to the Town.

2. The baseflow and baseline water quality of all Cold-Water Fisheries shall be established pre-construction. Baseline monitoring shall be accomplished to ensure there is no degradation of water quality over time from this project. The Applicants shall submit a detailed plan, subject to the Commission's approval, to specify water quality monitoring parameters, including times, methodology, analyses and reporting. Post construction, monitoring may be required and may continue in the Certificate of Compliance based on monitoring result up to that time.

   Status: The applicant has developed a plan and has been providing monthly testing and quarterly reports to obtain baseline conditions at the two Hop Brook Crossings and six tributary streams. Samples are taken at each location and are evaluated for temperature, dissolved oxygen, pH specific conductivity, oxygen reduction potential, chlorine, hardness, alkalinity, turbidity, and velocity. This data will be compared throughout construction to confirm that construction is not negatively impacting our Cold-Water Fisheries.

   These reports are posted to the Commission's project page at: https://sudbury.ma.us/conservationcommission/eversource-mass-central-rail-trail-notice-of-intent/

3. Prior to commencement of each Phase, the Conservation Commission or its Agent shall map the corridor for the presence of invasive species within and adjacent to the limit of work. The information generated from this mapping shall be used to identify any new invasive species populations or significant expansions of invasive species that are a direct result from the Project. Mapping shall be used by the Applicants to implement a program to control invasive species populations to ensure the functions of wetland resource areas in the limits of work that have been restored with native vegetation are not subject to degradation by expansion of invasive species. If the Commission or its agent determines that the Project resulted in new or significantly expanded invasive populations, the Applicants shall implement a program to control these populations to ensure the project does not result in additional degradation of wetland resource areas.

Status: The applicant has hired SWCA to map the corridor for locations and densities of invasive species. I have walked to corridor with SWCA to confirm the accuracy of the mapping and determine areas that would be appropriate for 3.3 acres of invasive species management to mitigate for project impacts and will be used to ensure the project does not result in new introductions and expansions of invasive populations. This analysis resulted in the agreement to manage invasives species within the ROW but outside the limit of work of 3.64 acres.

The invasive species management plan has been posted on the Commission's project page at: https://sudbury.ma.us/conservationcommission/wp-content/uploads/sites/273/2022/01/Invasive-Species-Management-Plan.pdf?version=1f6120cd16ca675848093164edb20cf1.

The project has been conditioned to require vegetation removed from the site will be chipped directly into a truck and removed from the project site to prevent the spread of invasive seeds and plant material.

4. The site shall be accessed predominantly from public ways. If alternative access points are needed, the Applicants will first direct the contractor to use previously disturbed areas outside wetlands jurisdiction. If alternative access is found to be needed within wetlands jurisdiction, access may be permitted within previously disturbed areas that will not require additional vegetation removal or additional impacts to wetland resource areas, with approval from the Commission's representative. No equipment turnaround locations outside the limit of work are permitted.

   Status: I am scheduled to walk the corridor with the contractor on August 31st to review any alternative access points.

5. Laydown areas shall be located predominantly outside resource areas subject to the Commission's jurisdiction. If any construction laydown area is proposed outside of the currently proposed work limits and in an area subject to the Commission's jurisdiction, an erosion control plan shall be submitted in advance to the Commission's representative for review and approval.

   Status: I am scheduled to walk the corridor with the contractor on August 31st to review laydown areas.

6. Prior to the start of work, the Applicants must submit to the Division and the Commission, for review and approval, a signage plan for the shoulder and duct bank mowing areas, which must describe sensitive dates for the Eastern Box Turtle.

   Status: This will be submitted prior to Phase II when the corridor will start to be managed via mowing. If there is lag time between phases I and II, the applicant has agreed that these areas will not be mown.

7. Measures shall be implemented to protect Eastern Box Turtles during construction. Prior to the start of work, a final Eastern Box Turtle Protection Plan must be submitted to the Division and Commission for review and approval, and must be implemented as approved. Said Plan must include detailed turtle protection measures to be implemented by the Applicants. If changes to said Plan are proposed, a revised Plan must be submitted to the Division for review and prior written approval. The Commission shall be provided a copy of the final Eastern Box Turtle Protection Plan along with any modifications thereto.

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Status: A Turtle Protection Plan was approved by the Division of Fisheries and Wildlife and is posted on the Commission's project webpage here: https://s3-us-west-2.amazonaws.com/cdn.sudbury.ma.us/wp-content/uploads/sites/273/2021/09/Approved-Turtle-Protection-Plan-August-2-2021.pdf?version=a72b389e16740db9ccb72c4773420743.

8. Prior to the start of work, the Applicants must submit to the Division and Commission, for review and approval, a native seed mix proposed for any planting or loam and seed activities.

Status: Native seed mixes were included as part of the Notice of Intent.

9. An independent Environmental Monitor, hired by the Conservation Commission and paid for by the Applicant, shall be provided to oversee the certain agreed upon activities.

Status: A draft contract has been submitted for consideration to engage Pare Corporation to provide the following environmental monitoring services for the Town.

1. Review the erosion control barrier following installation but prior to any land disturbance and each year prior to vernal pool species migration. Conduct spot inspections of vernal pools during construction and/or review reports provided by the Applicant's Environmental Monitor to ensure no negative impact to vernal pools during construction.
2. Be on site during initial tree removal and invasive species clearing activities, within the limit of work.
3. Review and ensure appropriate reporting of all activities associated with construction scheduling, erosion control monitoring, compliance with the project's SWPPP, and environmental monitoring activities including ensuring adherence to time of year restrictions.
4. Be on site during bridge platform installation and spot inspections during bridge construction.
5. Be notified of all dewatering activities and be on site during dewatering in sensitive locations, i.e. whenever excavation is proposed within 50 feet of a wetland, or when extensive dewatering will be needed. Specific oversight locations will be determined with the contractor, prior to commencement of work.
6. Review restoration/mitigation areas including being on site during the construction of the wetland replication area.
7. Be on site to oversee excavation/construction activities over culverts and drainage structures.
8. Be available to respond to emergency situations, should they arise.

These inspections will help supplement additional regular oversight provided by the Conservation Office

In addition, the Applicant is required to ensure there is a qualified Environmental Monitor(s) on site at all times overseeing work that is subject to this Order. The Environmental Monitor(s) shall send weekly erosion control inspection reports and reports following any storm event of ½ inch of rain or greater, to the Conservation Commission. These reports will be closely monitored by the Town and its Environmental Monitor.

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10. At least four weeks prior to any land disturbance, an Invasive Species Management Plan shall be developed and submitted to the Conservation Commission for review and approval. Said Management Plan shall involve removal of invasive species and revegetation with native species for a period of five (5) years from a minimum of 3.3 acres of land within the MBTA Right-of-Way, but outside the proposed limit of work, and shall focus efforts on improving wildlife habitat in areas identified through the Wildlife Habitat Evaluation and peer review thereof as being most impacted from proposed work. Following implementation, the Invasive Species Management Area shall be managed in accordance with Perpetual Condition b. contained within this Order.

    Status: See Item 3 above.

11. At least two weeks prior to any land disturbance, a Soil and Groundwater Management Plan (SGMP) prepared in conjunction with the selected contractor shall be submitted to the Conservation Commission for review and comment. The Applicant shall give due consideration to address comments received from the Commission that are needed to protect wetland resource areas functions and values. The SGMP will develop means and methods to manage soils and groundwater encountered during project construction activities including soil excavation, groundwater dewatering, and railroad tie and track removal. If conditions are encountered that suggest soil may require additional evaluation or special handling based on visual, olfactory, or field screening results, excavation activities in that area will immediately be stopped and Eversource, their Licensed Site Professional, and the Conservation Commission will be contacted immediately to evaluate the observations and recommend requirements for proper handling. The Commission shall be copied on all related correspondence.

    Status: A Soil and Groundwater Management has been developed by Weston and Samson and approved by the Conservation Commission. This report is posted on the Commission's project webpage here: https://sudbury.ma.us/conservationcommission/wp-content/uploads/sites/273/2022/02/S-H-SGMP-Update_FINAL-1.31.22.pdf?version=181090dcf006e6823e4175dee15cc0a1.

12. At least two weeks prior to any land disturbance, a structural engineer and wildlife biologist shall inspect the culverts and drainage structures within the Project Site to determine whether they are structurally sound to (a) function hydrologically, (b) withstand the planned construction activities, and (c) evaluate their wildlife migration functions, and shall provide a report of the finding to the Commission. If any culverts do not meet these requirements or is damaged during construction, it shall be repaired or replaced with a culvert that meets current MA Stream Crossing Standards to the maximum extent practicable, as determined by the Commission or its Agent. Any recommended improvements to these structures, not included in this Notice, shall be required to submit a separate Notice of Intent and/or an Amendment to this Order to the Commission for further evaluation. Following completion of Phase I and Phase II a similar structural evaluation shall be conducted to confirm work did not affect culverts and drainage structures.

    Status: The applicant has submitted a report regarding the structural integrity of on-site culverts. The primary culvert that I have concerns with is the culvert that conveys Dudley Brook. The Town's Environmental Monitor will be on site when excavation and construction is occurring over culverts throughout construction. The structural integrity was raised during the Notice of Intent hearing process. Should there be any impacts to culverts from the construction, work shall immediately cease in these areas until proper review and any additional permitting is obtained to repair and/or replace culvert and/or drainage structures.

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The analysis of these culverts is posted on the Commission's webpage here: https://sudbury.ma.us/conservationcommission/wp-content/uploads/sites/273/2022/08/Culvert-Inspection-August-2021.pdf?version=93e6761858b70afb117ac2f44c0eb77d.

13. At least three weeks prior to any land disturbance, a Project Compliance Manual that includes the requirements from compliance from the various permits for the Project, including this Order and Conditions herein, shall be submitted to the Conservation Commission for review to confirm that the requirements of this Order are accurately stated.

    Status: The applicant has provided an Environmental Compliance Manual which has been reviewed and approved by the Commission. This Manual is posted on the Commission's webpage here: https://sudbury.ma.us/conservationcommission/wp-content/uploads/sites/273/2022/08/Environmental-Compliance-Manual.pdf?version=4cbd8b0e8f0fd714f1351431d89b5397.

14. At least two weeks prior to the start of Phase I, the Applicant shall provide a construction schedule detailing construction activities and sequencing. This shall be amended as necessary throughout construction. Weekly reports shall be submitted to the Commission that details work completed each week and anticipated work for the coming week, including identifying when work is located in areas of potential elevated levels of soil and groundwater contamination. These reports shall include anticipated dewatering activities so that oversight can be provided by the Commission or its Agent, if found necessary, and include the location of active stockpiles with confirmation that appropriate erosion control measures are being implemented.

    Status: The applicant has provided drafts of the construction schedule detailing construction sequencing. As the construction start date keeps changing, I have not posted these to the Commission's project webpage, but they will be once construction commences. This schedule will be closely monitored by the Town and its Environmental Monitor to ensure work is being conducted in compliance with any restrictions and will be used to determine on-site inspections that will be required.

15. At least two weeks prior to the start of Phase I, the Applicant shall provide the final Stormwater Pollution Prevention Plan (SWPPP) to the Commission for review and approval. Any use of permanent infiltration BMPs for temporary construction-related stormwater management shall be specifically addressed in the SWPPP and protocol for removal of fine silt and sediment from these BMPs shall be conducted at the completion of Phase I.

    Status: The SWPPP was provided and reviewed by the Commission and has been posted to the Commission's project webpage as part of the Environmental Compliance Manual https://sudbury.ma.us/conservationcommission/wp-content/uploads/sites/273/2022/08/Environmental-Compliance-Manual.pdf?version=4cbd8b0e8f0fd714f1351431d89b5397.

16. Prior to land disturbance, the Applicant shall provide a signed illicit discharge statement.

    Status: We have not yet received this.

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17. The Limit of Work/erosion control location shall be survey located in the field and certified by a Mass Registered Professional Land Surveyor, installed under the oversight of the Applicant's Environmental Monitor, and reviewed by the Commission and/or its Agent prior to commencement of any site work.

    Status: I am scheduled to walk the corridor with the contractor on August 31st to review the survey located limit of work prior to installation of erosion controls.

18. Prior to any site disturbance, with the exception of the installation of the erosion control barrier, the Applicant shall schedule a pre-construction site visit with the Conservation Coordinator as least one week prior to commencement of work. At a minimum, those in attendance at this site visit should include the Applicant, construction supervisor, and Environmental Monitors involved in the project.

    Status: This will be scheduled prior to commencement of work.

19. The Applicant's wildlife biologist or other qualified individual shall document the location of all important habitat features that will be removed (such as brush piles, snags, overhanging trees, logs within or near the water, large woody debris, etc.) to quantify the number of features removed and provide confirmation that work did not result in the loss of important wildlife habitat features. Brush, large woody debris, and logs shall be replaced within or near the water, generally in the location of where they were removed. Reports shall be provided to the Conservation Commission at least every six (6) months, for the life of the Order, documenting wildlife habitat removal and restoration efforts implemented, including monitoring of vernal pools.

    Status: The applicant has evaluated and mapped the corridor for important habitat features. This evaluation has been posted on the Commission's webpage here: https://sudbury.ma.us/conservationcommission/wp-content/uploads/sites/273/2022/03/Sudbury_Wildlife-Features-Survey-Methods_MAR2022_FINAL_Compiled.pdf?version=0156c05dc68e25fb0917ebcf836e4008

20. Tree/limb clearing shall be minimized to only that which is required to access the project site with equipment and to conduct the approved work. Equipment shall be chosen which minimizes required clearing to the maximum extent practicable. The Applicant shall retain as many limbs overhanging the limit of work as possible. Prior to tree felling, the Applicant shall walk the corridor with the Commission or its Agent to determine the extent of canopy that can be retained.

    Status: I am scheduled to walk the corridor with the contractor on August 31st to review tree and limb removal. We will also be identifying any snags that can be retained. Woody material for reuse on site for the creation of wildlife habitat features shall be identified and retained.

21. The contractor shall provide detailed plans of the crane mat location and installation a minimum of one week prior to installation. All work and impacts associated with installation, removal, and stabilization of the crane areas shall be conducted in strict compliance with the Project Plans and Details and shall be reviewed and approved by the Commission and/or its Agent prior to installation and shall be installed under the supervision of the independent Environmental Monitor.

    Status: This will be provided prior to commencement of this activity.

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22. Dewatering activities shall be located as far as possible from wetland resource areas and shall be prohibited from discharging to Bordering Vegetated Wetlands, Isolated Vegetated Wetlands, Land Under Water Bodies and Waterways, or within the inner Riverfront Area. Dewatering may only occur in other upland resource areas provided adequate control measures are implemented and locations are identified by the contractor and review and approved by the Commission and/or its agent prior to implementation.

    Status: I am scheduled to walk the corridor with the contractor on August 31st to review proposed dewatering locations and evaluate when this activity will require direct oversight by the Town and/or its Environmental Monitor.

Soil and Groundwater Management

The Commission has placed the following conditions on the project to manage soil and groundwater during construction. Reports will be developed and provided by the Applicant's LSP, which will be reviewed by Conservation staff and/or Environmental Monitor to ensure work is being conducted appropriately.

According to the Project's NPDES Construction General Permit the project will use water only for dust control and specifically avoid using other techniques such as solutions containing calcium chloride for dust control. Water for this purpose will be brought into the site and not drawn from onsite resource areas. Active soil stockpiles can only remain in place for a maximum of one week and have to be covered with tarp and surrounded by erosion controls to prevent migration of particles.

1. Other than the grading of minor amounts of soil within the immediate vicinity of the Hudson/Sudbury town boundary, no soil excavated from Hudson may be used in Sudbury. The Sudbury Conservation Commission shall be copied if the Hudson Conservation Commission is notified of any remedial activities or changes to the work plans required due to the potential presence of PFAS in jurisdictional areas in Hudson.

2. The Applicant shall ensure that any reuse of on-site soils shall not result in the degradation of soil or groundwater in the area.

3. Stockpiling of materials within the ROW shall be limited in size and duration (one-week maximum) and shall be located as far from sensitive areas as possible. Soil stockpiles shall be covered with tarp or plastic sheet and surrounded by erosion controls. Excess soil not reused within the Project site shall be stockpiled outside the ROW and wetland jurisdiction. Weekly reports prepared by the Environmental Monitors throughout construction will identify the locations of active stockpiles and will confirm that the appropriate erosion control measures are being implemented.

4. Loam borrow brought to the site to stabilize the work area after completing Phase 1 shall be sourced appropriately. Use of impacted soils (from contamination or invasive seed) shall be prohibited.

5. Every effort shall be made to restore disturbed area with a similar soil composition to that which is was removed.

6. There shall be no drafting of water from wetland resource areas for dust control, for watering plantings, or any other activity.

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7. In any part of the Project work limits within 200 feet of a road crossing where the MBTA ROW crosses a Zone II for the Sudbury Water District supply wells, if a clay layer is encountered in the excavation for the transmission line and the excavation will extend below the bottom of the clay layer, the clay shall be stockpiled and reused to backfill and line the excavation before the transmission line duct bank is placed in that location.

Environmental Protections and Mitigation Conditions:
The following conditions are intended to minimize disturbance within sensitive areas and dictate mitigation to offset unavoidable impacts. Mitigation efforts include: 0.9 acres of restoration and mitigation plantings within the limits of work; invasive species management within the limit of work; implementation of a 3.64-acre invasive species management program within the MBTA ROW but outside the limits of work, to be maintained in perpetuity; debris removal outside the limit of work to help clean up the corridor; creation of strategic brush piles for wildlife habitat; and, the installation of an osprey platform at the existing substation off Boston Post Road.

1. Mitigation, and restoration efforts within the limit of work, shall be implemented during the first growing season following commencement of work. Written reports shall be submitted by December 1 of each year the Order is active that details mitigation efforts that have been implemented, success of implementation, and anticipated activities the following growing season. Mitigation and Restoration

2. areas shall be deemed substantially in compliance when there is a minimum of 90% cover with native species and free of invasive species.

3. Areas adjacent to vernal pools shall be revegetated immediately following the completion of all necessary grading in these areas, and the revegetation in these areas shall be monitored so erosion controls can be removed as soon as field conditions allow. Mitigation plantings around the vernal pool margins shall be monitored for successful establishment for a minimum of two growing seasons and annual reports documenting establishment shall be submitted to the Commission.

4. Prior to planting, the Applicant's Environmental Monitor shall inspect, approve, and provide photo documentation of all plant stock. Any species substitutions must be provided to the Commission, in writing, including a justification for substitution, for review and approval prior to implementation.

5. The wetland replication area shall be constructed during vegetation removal in the vicinity of the replication area and prior to the construction of structures in that vicinity.

6. All plantings must survive for at least two growing seasons or be replaced at the expense of the Applicant.

7. No spoils of construction, construction material, or equipment shall be stored, placed or operated in the wetland resource areas or the wetland buffer zone except as may be permitted by this Order for work in the riverfront and upland resource area. These activities may not occur within the bordering vegetated wetland or within bordering land subject to flooding.

8. There shall be no disturbance beyond the limits of activities permitted as part of this Order.

9. No deicing products shall be used within the project site. Snow may be stockpiled within the limit of work only or shall be removed from the site to an appropriate facility outside wetlands resource areas.

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10. Should Phase II not commence within three years of completion of Phase I, the Applicant shall file an Amendment to bring the stormwater management into full compliance with the Town of Sudbury Stormwater Regulations.

11. All wildlife habitat replication and restoration shall be completed during the first growing season of Phase I to avoid a significant adverse project/site-specific impact or an adverse cumulative impact on wildlife for more than two growing seasons. Should Phase II not commence within two years of completion of Phase I, erosion controls or other methods of demarcation shall be implemented to prevent further alteration of restored areas. No important wildlife habitat features restored during Phase I shall be removed during Phase II.

Long-term Management

The following conditions were included to ensure the environmental integrity of the site is maintained post construction.

1. To ensure the environmental integrity of the site is maintained to offset the permitted activity, after the initial management period of five (5) years, the 3.3-acre invasive species management areas shall be monitored annually for the presence of invasive species and annual reports shall be submitted to the Conservation Office. Any areas found to contain concentrations of invasive species and/or should the plant community within the management area exceed 10% invasive species, the

2. management area shall be managed by DCR in accordance with a program developed in consultation with the Commission's representative.

3. Fertilizers shall not be used within jurisdictional areas.

4. No pesticides or herbicides are allowed within a wetland resource area, including the 200-foot riverfront area, or within 100-foot of a wetland resource area (the adjacent upland resource area under the local bylaw), except for spot treatment of Japanese knotweed, without additional review by the Conservation Commission.

5. Underground storage of petroleum products is prohibited within a wetland resource area and within the 100' buffer zone of a wetland resource area.

6. No coal tar-based sealants may be applied to any area draining into the upland or wetland resource areas of the property.

7. All components of the stormwater management system shall be maintained in accordance with the MassCentral Rail Trail (MCRT) – Wayside Section Stormwater Management System Operation and Maintenance Pan (O&M) and the Long-Term Pollution Prevention Plan, and as necessary to function as designed. Inspection checklists shall be maintained and be made available for review by the Conservation Commission or staff on request.

8. There shall be no snow removal activities or de-icing products used on site, except as required for emergency situations.

Attachment5.a: Town Department and SWD Updates related to Eversource Transmission Line Project 8-25-22 (5418 : Updates related to

Attachment5.a: Town Department and SWD Updates related to Eversource Transmission Line Project 8-25-22 (5418 : Updates related to

9. The five-foot maintained area over the transmission line, outside the two-foot shoulders that will be regularly maintained, may be mown once per year, before April 1 or after November 1 Mowing outside this timeframe may be allowed in accordance with the Final Corridor Management Plan, with the objective of allowing vegetation to go to seed and propagate.

10. When maintaining the rail trail, no debris, including natural debris such as leaves, shall be blown or swept into areas within 25 feet of vernal pools. Signage or other means of demarcating this management requirement shall be provided to and approved by the Conservation Commission prior to issuance of a Certificate of Compliance.

11. The culverts and drainage structures shall be inspected at least annually and cleared of debris as needed. If culverts become damaged or no longer function as required, they shall be repaired or replaced according to most current MA Stream Crossing Standards. This work will require review and approval by the Conservation Commission under a Notice of Intent.

12. If herbicide use by DCR is permitted under a future Vegetation Management Plan, as approved by the Department of Agricultural Resources, herbicide use shall be prohibited within any certified or certifiable vernal pool, vegetated wetlands or waterways. Invasive species removal by DCR will be by mechanical means when possible and spot treatment of herbicide by a licensed herbicide applicator when other approaches are ineffective. DCR shall notify the Commission in advance, if herbicides are to be used within wetland jurisdictional areas, indicating the target control species, the type(s) of herbicide to be used, and the on-going maintenance plan for the targeted area.

13. All trail amenities, such as benches and kiosks, shall be located outside wetland jurisdictional areas, except as shown on the approved plans.

Outstanding Actions:

1. Administrative Approval to shift the proposed rail trail south of Boston Post Road to allow the retention of rail in front of the RR building in this location. The applicant will tentatively present this to the Conservation Commission at their September 12th meeting.

2. Execution of contract for the Town's Environmental Monitor, to be paid for by the applicant.

The Commission is confident that the project has been appropriately conditioned to protect Sudbury's wetland resource areas associated with this project. The Town's ability to provide adequate oversight of the project during and after construction is essential to ensuring the project is carried out in accordance with required permits and associated conditions. The ability to have an Environmental Monitor assist the Town with project oversight is fortunate, however, the time commitment that will be required of the Conservation Department will be exceptionally demanding.

Sudbury Water District Executive Director, Vincent Roy

Removing the potential for contamination of the District's public water supply during any construction project is essential to maintaining aquifer water quality and minimizing the need for treatment. Protecting a watershed is the first step to providing safe drinking water to customers. When there is known or highly probable contamination that might migrate to a water supply source, it is of utmost importance to take all precautionary steps to identify (1) the contaminants and degree of contamination, (2) the potential pathways between the contamination and contribution areas to our wells, (3) how to monitor any potential migration, and (4) specific steps to stop that migration.

Keeping construction from contaminating our water supply requires a well-thought-out plan, specific to Sudbury and the Sudbury Water District. Contaminated soils represent a hazard to our wells. When those soils are excavated, we need to be sure that the process of excavation does not create a release of contamination that otherwise might lie relatively dormant. It is also important that measures are taken to contain the soils that have been excavated, preferably direct-loaded onto a truck or into a container and removed from the area to the final disposal location.

I have reviewed the directed requirements in the Stormwater and Earth Removal permits and it appears that much of the District's concerns to protect the Town's aquifer have been addressed. However, the District is requesting that Eversource provide a detailed, project-specific plan for the District to review. That plan must show the following:

1) Preconstruction characterization of soils and groundwater, including the concentrations of contaminants in soil and groundwater and the horizontal and vertical extents of contaminated soils,
2) The leachability of the known contaminants from the soil (Toxicity Characteristic Leaching Procedure – TCLP)
3) Groundwater monitoring to identify potential migration
4) Mitigation measures if there is demonstrated migration of contamination (which may include curtailing construction activity altogether),
5) The processes for handling, testing, and disposing of soil and groundwater encountered during construction
6) Post-construction groundwater monitoring
7) A plan for the replacement of water main at road crossings.

Please keep us informed as Eversource and the Town of Sudbury progress with discussions on this project.

Attachment5.a: Town Department and SWD Updates related to Eversource Transmission Line Project 8-25-22 (5418 : Updates related to

EVERSOURCE

How dust control will be handled.

RESPONSE: Dust control measures were addressed during the local permitting process with the Earth Removal Board (approval in May 2022) and Conservation Commission in Sudbury. Eversource and its contractors will follow best management practices (BMPs) set forth by Mass DEP in their Rail Trail Guidance Document and other local conditions. Eversource has BMPs which were described in the Conservation Commission proceedings.

A map of the dump truck routes, due to all the soil removal.

RESPONSE: A truck routing plan was shared with the Sudbury Earth Removal Board. The construction contractor will choose routes that are most expeditious for the trucks to access the ROW and then to leave the ROW to export of materials. Given the nature of the roadways and potential access routes, it seems likely that most trucks will be routed to and from the ROW via US Route 20/Boston Post Road, which is likely to be the most expeditious route between the ROW and remote locations. The distances between Route 20 and the ROW entrances at local roads in Sudbury are as follows.

· Dutton Road: 1.5 miles south to US Route 20 WB via Wayside Inn Road, or via Old Garrison Rd 400 ft south to Peakham Road then 0.5 mi to Route 20 EB

· Peakham Road: 1.0 miles south to US Route 20;

· Horse Pond Road: 0.6 miles south on Route 20;

· Union Ave: 1,000 ft south to Route 20;

· Substation Driveway (enters directly on to Route 20.

A Color-coded map so the public knows month to month where you expect to be working. Including trenching and tree work.

RESPONSE: Eversource will utilize an interactive online project map (through Google My Map) that will be accessible to members of the public. The map will display work crew locations and other details specific to the construction process. Eversource will partner with the Town to develop additional collateral materials to display active and upcoming work zones.

Pictures of the types of equipment that will be used. Maybe a PP for our website that folks could see. (We wouldn't expect you to show the PP at the meeting but sending it would be helpful to post.)

RESPONSE: The following equipment will be used on the Project but is subject to change and/or variation based on availability and usage: CAT 322 Excavator, CAT 325 Excavator, CAT 395 Excavator, Tri-Axle Dump Truck, Truck Crane, Tractor Trailer w/ 53' trailer, Chipper, Small Loader, Rail Scrap Dumpster, CAT D5 Dozer, Roller and Rack Truck.

August 24, 2022

Attachment5.b: Sudbury (5418 : Updates related to Eversource transmission line project)

EVERSOURCE

Has Eversource been in touch with Vin Roy from the Sudbury Water District? The Water District is a separate entity.

RESPONSE: Eversource has been in touch with the Water District as part of the local permitting process with the Sudbury Conservation Commission. Please see the Order of Conditions provided by the Sudbury Conservation Commission issued in February 2021.

What is the voltage of the underground transmission line on Goodman's Hill Road, Sudbury?

RESPONSE: There is a 115kV underground line at Goodman's Hill Rd in Sudbury. It is the 416-526, 115kV line which has terminals at neighboring substations, the new line in Sudbury will also be 115kV.

Attachment5.b: Sudbury (5418 : Updates related to Eversource transmission line project)

Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
MassDEP File #:301-1287
eDEP Transaction #:1188427
City/Town:SUDBURY

A. General Information

1. Conservation Commission: SUDBURY
2. Issuance: a. ☑ OOC b. ☐ Amended OOC

3. Applicant Details

a. First Name	b. Last Name
c. Organization	NSTAR ELECTRIC COMPANY D/B/A EVERSOURCE ENERGY / DEPARTMENT OF CONSERVATION AND RECREATION
d. Mailing Address	247 STATION DRIVE, SE270 / 251 CAUSEWAY STREET, SUITE 600
e. City/Town	WESTWOOD/ BOSTON f. State MA g. Zip Code 02090/02114

4. Property Owner

a. First Name	b. Last Name
c. Organization	MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
d. Mailing Address	10 PARK PLAZA
e. City/Town	BOSTON f. State MA g. Zip Code 02116

5. Project Location

a.Street Address	MBTA ROW FROM TOWN OF HUDSON TO 183 BOSTON POST ROAD (SUDBURY SUBSTATION)		
b.City/Town	SUDBURY	c. Zip Code	01776
d. Assessors Map/Plat#	H03, J05, J06, K07, K08, K09 K11; K08; K10; K11	e. Parcel/Lot#	5000; 5100; 0014; 0402
f. Latitude	42.36001N	g. Longitude	71.39733W

6. Property recorded at the Registry of Deed for:

a. County	b. Certificate	c. Book	d. Page
SOUTHERN MIDDLESEX		11317 / 7734	113 / 426

7.Dates

a. Date NOI Filed : 3/9/2020 b. Date Public Hearing Closed: 2/3/2021 c. Date Of Issuance: 2/4/2021

8.Final Approved Plans and Other Documents

a. Plan Title:	b. Plan Prepared by:	c. Plan Signed/Stamped by:	d. Revised Final Date:	e. Scale:
EVERSOURCE SUDBURY-HUDSON TRANSMISSION RELIABILITY PROJECT SUDBURY NOTICE OF INTENT PLANS (205 PAGES)	VANASSE HANGEN BRUSTLIN, INC.	KENNETH STAFFIER, P.E.	JAN 2021	1 INCH = 20 FEET

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

MASS CENTRAL RAIL TRAIL IN THE TOWNS OF HUDSON, STOW, MARLBOROUGH & SUDBURY (41 PAGES)	VANASSE HANGEN BRUSTLIN, INC.	JOSHUA C. CONE-RODDY P.E.	JANUARY 7, 2021	1 INCH = 20 FEET
DRAFT SUDBURY-HUDSON TRANMISSION TRLIABILITY PROJECT STORMWATER POLLUTION PREVENTION PLAN	VANASSE HANGEN BRUSTLIN, INC.		MAY 2020	N/A
DRAFT MASSCENTRALRAIL TRAIL - WAYSIDE STORMWATER POLLUTION PREVENTION PLAN	VANASSE HANGEN BRUSTLIN, INC.		MAY 2020	N/A
TIME OF YEAR (TOY)RESTRICTIONS AND GUIDELINES FIGURES (SHEETS 1-10)	VANASSE HANGEN BRUSTLIN, INC.		OCTOBER 14, 2020	1 INCH = 200 FEET
EASTERN BOX TURTLE PROTECTION PLAN	VANASSE HANGEN BRUSTLIN, INC.		Undated	N/A
DRAFT CORRIDOR MANAGEMENT PLAN FOR MASS CENTRAL RAIL TRAIL - WAYSIDE SECTION AND THE SUDBURY-HUDSON TRANSMISSION RELIABILITY PROJECT	DEPARTMENT OF CONSERVATION AND RECREATION		AUGUST 7, 2020	N/A

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

MASSCENTRAL RAIL TRAIL (MCRT) - WAYSIDE SECTION STORMWATER MANAGEMENT SYSTEM OPERATION AND MAINTENANCE PLAN	DEPARTMENT OF CONSERVATION AND RECREATION	JUNE 2020	N/A
LONG TERM POLLUTION PREVENTION PLAN	DEPARTMENT OF CONSERVATION AND RECREATION	JUNE 2020	N/A

B. Findings

1.Findings pursuant to the Massachusetts Wetlands Protection Act

Following the review of the the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act.

Check all that apply:

a. ☑ Public Water Supply	b. ☑ Land Containing Shellfish	c. ☑ Prevention of Pollution
d. ☑ Private Water Supply	e. ☑ Fisheries	f. ☑ Protection of Wildlife Habitat
g. ☑ Ground Water Supply	h. ☑ Storm Damage Prevention	i. ☑ Flood Control

2. Commission hereby finds the project, as proposed, is:

Approved subject to:

a. ☑ The following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

Denied because:

b. ☐ The proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**

c. ☐ The information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the interests of the Act , and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

3. ☐ Buffer Zone Impacts:Shortest distance between limit of project disturbance and the wetland resource area specified in 310CMR10.02(1)(a). _____ a. linear feet

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

Massachusetts Department of Environmental Protection
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Provided by MassDEP:
MassDEP File #:301-1287
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Inland Resource Area Impacts:(For Approvals Only):

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. ☑ Bank	246 a. linear feet	246 b. linear feet	246 c. linear feet	246 d. linear feet
5. ☑ Bordering Vegetated Wetland	613 a. square feet	613 b. square feet	784 c. square feet	784 d. square feet
6. ☑ Land under Waterbodies and Waterways	1146 a. square feet	1146 b. square feet	1146 c. square feet	1146 d. square feet
	0 e. c/y dredged	0 f. c/y dredged		
7. ☑ Bordering Land Subject to Flooding	10435 a. square feet	10435 b. square feet	7749 c. square feet	7749 d. square feet
Cubic Feet Flood Storage	54.43 e. cubic feet	54.43 f. cubic feet	136.88 g. cubic feet	136.88 h. cubic feet
8. ☐ Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. ☑ Riverfront Area	235668 a. total sq. feet	235668 b. total sq. feet		
Sq ft within 100 ft	181600 c. square feet	181600 d. square feet	110020 e. square feet	110020 f. square feet
Sq ft between 100-200 ft	54054 g. square feet	54054 h. square feet	32385 i. square feet	32385 j. square feet

Coastal Resource Area Impacts:

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. ☐ Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. ☐ Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. ☐ Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. ☐ Coastal Beaches	a. square feet	b. square feet	c. c/y nourishment	d. c/y nourishment
14. ☐ Coastal Dunes	a. square feet	b. square feet	c. c/y nourishment	d. c/y nourishment

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15. ☐ Coastal Banks	a. linear feet	b. linear feet		
16. ☐ Rocky Intertidal Shores	a. square feet	b. square feet		
17. ☐ Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. ☐ Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. ☐ Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. ☐ Fish Runs	Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	c. c/y dredged	d. c/y dredged		
21. ☐ Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		

22.

☐ Restoration/Enhancement (For Approvals Only)

If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c & d or B.17.c & d above, please entered the additional amount here.

a. square feet of BVW

b. square feet of Salt Marsh

23.

☐ Streams Crossing(s)

If the project involves Stream Crossings, please enter the number of new stream crossings/number of replacement stream crossings.

a. number of new stream crossings

b. number of replacement stream crossings

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

a. the work is a maintenance dredging project as provided for in the Act; or
b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.

5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not exceed the issuance date of the original Final Order of Conditions.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work..
10. A sign shall be displayed at the site not less then two square feet or more than three square feet in size bearing the words,

" Massachusetts Department of Environmental Protection"
[or 'MassDEP"]
File Number :"301-1287"

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before Mass DEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

19. The work associated with this Order(the "Project") is (1) ☑ is not (2)☐ subject to the Massachusetts Stormwater Standards. If the work is subject to Stormwater Standards, then the project is subject to the following conditions;

a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollutant Discharge Elimination System Construction General Permit as required by Stormwater Standard 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.

b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that: *i.* all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures; *ii.*. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized; *iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10; *iv.* all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition; *v.* any vegetation associated with post-construction BMPs is suitably established to withstand erosion.

c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 19(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following: i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.

d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollutant Discharge Elimination System Multi-Sector General Permit.

e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.

g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.

h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.

i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.

j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.

k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.

l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions:
SEE ATTACHED

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

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Provided by MassDEP:
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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1.Is a municipal wetlands bylaw or ordinance applicable? ☑ Yes ☐ No

2.The Conservation Commission hereby(check one that applies):

a. ☐ DENIES the proposed work which cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw specifically:

1. Municipal Ordinance or Bylaw _____ 2. Citation _____

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order or Conditions is issued. Which are necessary to comply with a municipal ordinance or bylaw:

b. ☑ APPROVES the proposed work, subject to the following additional conditions.

1. Municipal Ordinance or Bylaw: SUDBURY ADMINISTRATIVE WETLAND BYLAW
2. Citation: XXII

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows:
SEE ATTACHED

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
MassDEP File #:301-1287
eDEP Transaction #:1188427
City/Town:SUDBURY

E. Signatures

This Order is valid for three years from the date of issuance, unless otherwise specified pursuant to General Condition #4. If this is an Amended Order of Conditions, the Amended Order expires on the same date as the original Order of Conditions.

2/4/2021
1. Date of Original Order

Please indicate the number of members who will sign this form. This Order must be signed by a majority of the Conservation Commission.

4
2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signatures:

B. Porter

Thomas R. Friedlander

D. Henkels

R. Morse

☐ by hand delivery on

Date

☐ by certified mail, return receipt requested, on

Date

F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, 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 MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed 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 Order. 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.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act

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(M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.

G. Recording Information

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

SUDBURY
Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

SUDBURY
Conservation Commission

Please be advised that the Order of Conditions for the Project at:

MBTA ROW FROM TOWN OF HUDSON TO 183 BOSTON POST ROAD (SUDBURY SUBSTATION)	301-1287
Project Location	MassDEP File Number

Has been recorded at the Registry of Deeds of:

County	Book	Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book	Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

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Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
MassDEP File #:301-1287
eDEP Transaction #:1188427
City/Town:SUDBURY

Document Number

Signature of Applicant

Rev. 4/1/2010

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ORDER OF CONDITIONS
State Wetlands Protection Act &
Sudbury Wetlands Administration Bylaw

DEP FILE #301-1287
Address: MBTA ROW and 183 Boston Post Road
Applicants: Eversource and Department of Conservation and Recreation
Issued: February 4, 2021

The Sudbury Conservation Commission hereby finds that the following conditions are necessary, in accordance with the Performance Standards set forth in the Wetlands Protection Act, its corresponding regulations, and the Sudbury Wetlands Administration Bylaw to protect those interests checked above. To aid in implementation, compliance, and enforcement the specific conditions are divided into several broad categories for reference.

The Sudbury Conservation Commission orders that all work shall be performed in accordance with said conditions and with the Notice of Intent referenced. To the extent that the following conditions modify or differ from the plans, specifications or other proposals submitted with the Notice of Intent, the conditions shall control.

This Decision of the Sudbury Conservation Commission under the Wetlands Protection Act may be appealed to the MA Department of Environmental Protection, Northeast Region.

This Decision of the Sudbury Conservation Commission under the Sudbury Wetlands Administrative Bylaw may be appealed to the Superior Court in accordance with G.L. Ch. 249 §4.

Findings:

The Notice of Intent was filed for the installation of a new 115kV underground electrical transmission line and the construction of a portion of the Mass Central Rail Trail, from the existing Sudbury Substation to the Hudson town line, along the inactive Massachusetts Bay Transportation Authority Right-of-Way, in Sudbury, MA, under the State Wetlands Protection Act and the Sudbury Wetlands Administrative Bylaw.

The Commission finds that portions of the project, as designed and mitigated for, qualifies as a limited project under 310CMR 10.53(3)(d) for Phase I and under 310CMR 10.53(6) for Phase II.

The Commission finds that the stormwater management has been designed in accordance with 310CMR 10.05 (m), as the end use is a non-motorized multi-use trail and Eversource inspection vehicles only need to access the transmission line facility once every three years.

The Commission finds that alternative routes with fewer adverse environmental impacts may exist. However, given the Energy Facilities Siting Board (EFSB) Decision (EFSB 17-02/D.P.U. 17/82/17/83) the Commission was not permitted to evaluate alternative routes under the Wetlands Protection Act. Since this EFSB Decision is currently under Appeal by the Town of Sudbury, if there is a change in the route for the Eversource transmission line as a result of the appeal process, the Applicants shall return to the Commission for further review of any changes to either phase of the project and a determination of the need for potential modifications of this Order.

All wetland resource areas within the Project Locus were reviewed and approved as part of the Abbreviated Notice of Resource Area Delineation (ANRAD) process with the Sudbury Conservation Commission in 2018 through the Order of Resource Area Delineation (ORAD) issued on August 27, 2018. The ORAD included Bordering Vegetated Wetland (BVW), Bank, Land Under Water Bodies and Waterways (LUWW), Bordering Land Subject to Flooding (BLSF), Riverfront Area (RA), and vernal pools, in

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accordance with Wetlands Protection Act and Sudbury Wetland Bylaw definitions. During the ANRAD review process, the BLSF boundary was established in the field by ground survey by using the 100-year floodplain (i.e., BLSF) base flood elevation. Under the Act, Hop Brook and Dudley Brook are considered perennial and have an associated 200-foot Riverfront Areas. Under the Sudbury Bylaw, all remaining streams on the Project Locus are defined to be perennial and their associated 200-foot Riverfront Area are jurisdictional under the Bylaw Regulations only. In addition, the Sudbury Bylaw regulates activities within the Adjacent Upland Resource Area (AURA), which generally consists of land within 100 feet of wetland resource areas and land within 200 feet from the top of bank of perennial streams and rivers. The AURA for vernal pools, or Vernal Pool Habitat, extends 100 feet from the mean annual high-water line defining the depression. There are also isolated wetlands on the Project Locus that are subject to local and federal jurisdiction. Portions of the project site are also located within Estimated and Priority Habitat for Rare Species, within Coldwater Fishery Resources, and within a Zone II Wellhead Protection Zone. There are 13 wetland areas that would qualify as vernal pools under the state regulations (one is currently certified and 12 contain biological criteria for certification). There are an additional seven wetland areas that are presumed to be vernal pools under the local bylaw only.

The project and conditions and requirements set forth in this Order of Conditions are specific for each phase of construction: Phase I being under the responsibility of Eversource for the installation of the underground transmission line, all major earthwork, installation of the stormwater management system, construction of a 14-foot gravel road, construction/renovation of Bridges 128 and 127, site restoration, and implementation of all mitigation; and Phase II being under the responsibility of the Department of Conservation and Recreation for the paving of the Mass Central Rail Trail, installation of safety plantings and other trail amenities, and long-term maintenance of the corridor, including culverts and drainage structures.

The project proposes disturbance to four acres of land within estimated and priority habitat for four species: Eastern Box Turtle, Eastern Whip-poor-will, Gerhard's Underwing Moth, and Coastal Swamp Metarranthus Moth. As such, the Natural Heritage and Endangered Species Program has reviewed the project and imposed conditions to prevent the "take" of state-listed species in determination letters to the Applicants dated October 19, 2018, and May 17, 2019. These conditions are incorporated herewith.

The Commission finds that this project is designed to meet the performance standards of the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw. Mitigation under the Bylaw for the proposed project actions within the locally regulated Adjacent Upland Resource Area, will be achieved by installation of restoration and mitigation plantings within the limits of work (total of 0.9 acres), debris removal outside the limit of work, creation of strategic brush piles for wildlife habitat, installation of an osprey platform at the existing substation off Boston Post Road, and implementation of a 3.3-acre invasive species management program within the MBTA ROW but outside the limits of work proposed for the Project. The Commission finds the Project, as conditioned in this Order is sufficient to meet the requirements of the state and local wetland regulations.

Final Record Documents:

1. Sudbury-Hudson Transmission Reliability and Mass Central Rail Trail Project Notice of Intent dated March 2020.
2. Sudbury-Hudson Transmission Reliability and Mass Central Rail Trail Project Wildlife Habitat Evaluation, dated March 2020, with supplemental Wildlife Habitat Evaluation Summary dated October 15, 2020.
3. Eversource Sudbury Notice of Intent Plans March 5, 2020, as revised through January 2021
4. Mass Central Rail Trail Notice of Intent Plan March 5, 2020, as revised through January 7, 2021
5. Draft Eversource Stormwater Pollution Prevention Plan dated May 2020
6. Draft DCR Stormwater Pollution Prevention Plan dated May 2020
7. Sudbury – Soil and Groundwater Analytical Memo dated June 12, 2020

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8. Time of Year Restrictions Figures June 24, 2020
9. Draft Turtle Protection Plan (undated)
10. Draft Corridor Management Plan dated August 7, 2020
11. MCRT Operation and Maintenance June 2020
12. Long Term Pollution Prevention Plan June 2020

All work must conform to the plans referenced, the Notice of Intent, and this Order. In case of conflict, the requirements in this Order shall prevail. By accepting this Order, the Applicants confirms submission all relevant documentation, reports, and information available to Applicants, in the application submitted and that this information is true and valid to the best of the Applicants' knowledge.

SPECIAL CONDITIONS:
PART I: GENERAL PROJECT CONDITIONS:
For Phase I and Phase II

These conditions apply to all projects permitted by the Sudbury Conservation Commission. They shall remain in force until issuance of a Certificate of Compliance by the Commission. A violation of any of these conditions shall constitute reason for enforcement action by the issuing authority:

a. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.

b. This Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.

c. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, by-laws, or regulations.

d. The work authorized hereunder, except for that work which has specific timeframes indicated, shall be completed within three years from the date of issuance of this Order unless either of the following apply:
   1) the work is a maintenance dredging project as provided for in the Act; or
   2) the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this Order.

e. This Order may be extended by the issuing authority for one or more periods of up to one year upon application to the issuing authority at least thirty days prior to the expiration date of this Order. In determining whether or not to grant an Extension Permit, the Sudbury Conservation Commission shall review and apply the criteria for extensions of time as set forth in the Regulations.

f. No work shall be undertaken until all administrative appeal periods from the date of issuance of this Order have elapsed or, if such an appeal has been filed, until all proceedings have been completed.

g. **No work shall be undertaken until the Final Order has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property**. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor index under the name of the owner of the land upon which the proposed

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work is to be done. In the case of registered land, the final Order shall also be noted on the Land Court Certificate of title of the owner of the land upon which the proposed work is to be done.

h. The recording information shall be submitted to the Commission on the form at the end of the Order, or other form acceptable to the Commission, within thirty days of the issuance of this Order or prior to the start of construction, whichever is sooner.

i. Where the Department of Environmental Protection is requested to make a determination and to issue a Superseding Order, the Sudbury Conservation Commission shall be party to all agency proceedings and hearings before the Department.

j. The work shall conform to the plans and special conditions incorporated in this document.

k. The project engineer, contractors, and all subcontractors must be informed of the conditions in this Order.

l. The Applicants are held responsible for compliance with this Order of Conditions. The Sudbury Conservation Commission shall be notified, in writing, within forty-eight hours of any transfers of title on this property.

m. This Order of Conditions shall apply to any successor in control, or successor in interest, of the property described in the Notice of Intent and accompanying plans.

n. Members and agents of the Sudbury Conservation Commission shall have the right to enter and inspect the property to evaluate compliance with the conditions stated in this Order. When possible prior to project site access, reasonable advance notice will be made. Compliance with health and safety protocols for the project site will be followed.

o. Prior to commencement of work, the Applicants shall provide the executed Memorandum of Understanding between Eversource and the Department of Conservation and Recreation and the agreements between the Massachusetts Bay Transportation Authority and the Applicants, to ensure the obligations of the project are fulfilled.

p. All Time-of-Year restrictions and sweeps required by the Natural Heritage and Endangered Species Program shall be followed. Time-of-Year restrictions for work within 450 feet of all vernal pools shall be March 1 through June 1. Between March 1 and June 1, the Applicants' Environmental Monitor shall conduct sweeps prior to vehicles traveling down the project site within vernal pool buffers (including certified, certifiable, and presumed vernal pools). Between April 1 and October 31, the Applicants' environmental monitor shall conduct turtle sweeps prior to initiation of work each day, or prior to vehicles travelling through the Box Turtle Protection Area.

q. The baseflow and baseline water quality of all Cold Water Fisheries shall be established pre-construction. Baseline monitoring shall be accomplished to ensure there is no degradation of water quality over time from this project. The Applicants shall submit a detailed plan, subject to the Commission's approval, to specify water quality monitoring parameters, including times, methodology, analyses and reporting. Post construction, monitoring may be required and may continue in the Certificate of Compliance based on monitoring result up to that time.

r. Prior to commencement of each Phase, the Conservation Commission or its Agent shall map the corridor for the presence of invasive species within and adjacent to the limit of work. The

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information generated from this mapping shall be used to identify any new invasive species populations or significant expansions of invasive species that are a direct result from the Project. Mapping shall be used by the Applicants to implement a program to control invasive species populations to ensure the functions of wetland resource areas in the limits of work that have been restored with native vegetation are not subject to degradation by expansion of invasive species. If the Commission or its agent determines that the Project resulted in new or significantly expanded invasive populations, the Applicants shall implement a program to control these populations to ensure the project does not result in additional degradation of wetland resource areas.

s. The site shall be accessed predominantly from public ways. If alternative access points are needed, the Applicants will first direct the contractor to use previously disturbed areas outside wetlands jurisdiction. If alternative access is found to be needed within wetlands jurisdiction, access may be permitted within previously disturbed areas that will not require additional vegetation removal or additional impacts to wetland resource areas, with approval from the Commission's representative. No equipment turnaround locations outside the limit of work are permitted.

t. Laydown areas shall be located predominantly outside resource areas subject to the Commission's jurisdiction. If any construction laydown area is proposed outside of the currently proposed work limits and in an area subject to the Commission's jurisdiction, an erosion control plan shall be submitted in advance to the Commission's representative for review and approval.

u. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.

v. No equipment cleaning or refueling may occur within a wetland or upland resource area, with the exception of the crane. For cranes positioned within wetland jurisdiction for more than one day, the Applicant shall provide secondary containment to contain any leaks that may emanate from equipment.

w. All equipment, including timber mats, shall be cleaned and certified invasive species free, prior to entering the site. Such certification shall be provided to the Commission prior to commencement of mobilization into the site and when remobilized within the project site.

x. Heavy mechanical equipment (exerting a ground pressure of 3 psi or greater) will not be allowed in areas where final grading, aeration, and vegetation restoration/mitigation have been completed, including restored and replicated wetland resource areas. Following completion of restoration areas, erosion controls or other method of demarcation shall be implemented to prevent further alteration of restoration areas.

y. All areas of disturbance shall be monitored for invasive species, which shall be manually removed if encountered, for the duration of the project and until such time as a minimum of 90% native vegetative cover is established.

z. The wetland replication area and land adjacent thereto shall be monitored for invasive species, and manually removed when found, for the life of the Order. The wetland replication area shall be considered substantially restored when it contains a minimum of 90% cover with native species. Replications that do not properly restore the functions and values of altered resource areas will not be deemed acceptable no matter how closely they adhere to approved engineered plans.

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aa. There shall be no drafting of water from wetland resource areas for dust control, for watering plantings, or any other activity.

bb. Every effort shall be made to reduce soil compaction. Compacted soils shall be aerated prior to being revegetated.

cc. Upon completion of the work associated within each phase, the Applicants shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed and clearly documenting any deviations or deficiencies from the approved plans.

CONDITIONS RELATED TO ENDANGERED SPECIES MANAGEMENT
For Phase I and Phase II

a. Prior to implementation, the Final Corridor Management Plan for Massachusetts Central Rail Trail and Sudbury-Hudson Transmission Reliability Project that will be provided to the Division of the Fisheries and Wildlife ("the Division") shall be provided to the Commission for review and approval and must be implemented as approved. If changes to said Plan are proposed, the revised Plan to be submitted to the Division shall be submitted to the Commission for review and approval. Vegetated areas over the duct bank and water quality swales (within wetland jurisdictional areas) shall not be mown between April 1 and November 1, unless needed for safety purposes, without prior approval of the Conservation Commission.

b. Prior to the start of work, the Applicants must submit to the Division and the Commission, for review and approval, a signage plan for the shoulder and duct bank mowing areas, which must describe sensitive dates for the Eastern Box Turtle.

c. Measures shall be implemented to protect Eastern Box Turtles during construction. Prior to the start of work, a final Eastern Box Turtle Protection Plan must be submitted to the Division and Commission for review and approval, and must be implemented as approved. Said Plan must include detailed turtle protection measures to be implemented by the Applicants. If changes to said Plan are proposed, a revised Plan must be submitted to the Division for review and prior written approval. The Commission shall be provided a copy of the final Eastern Box Turtle Protection Plan along with any modifications thereto.

d. Prior to the start of work, the Applicants must submit to the Division and Commission, for review and approval, a native seed mix proposed for any planting or loam and seed activities.

e. Unless otherwise approved by the Division and Commission, proposed wood railings must leave, at a minimum, a 10-inch space beneath the lowest rail for wildlife passage.

f. Unless otherwise approved by the Division, construction activities within Priority Habitat must not occur during the Eastern Whip-poor-will breeding season (May 1 – August 1), as proposed. The Applicants shall endeavor to refrain from construction activities within Priority Habitat from April 15 to August 1.

g. Within thirty (30) days of the completion of work, or as otherwise approved by the Division, the Applicants shall submit a compliance report to the Division and Commission documenting the completion of the project and compliance with all conditions herein, including a summary of construction timelines and photographs.

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h. Work within 450 feet of vernal pools is prohibited between March 1 and June 1. The Applicants shall have a qualified Environmental Monitor on site to monitor vehicular traffic during this Time of Year restriction, should a suitable alternative route not be available.

PART II: CONDITIONS SPECIFIC TO
Phase I: Eversource Underground Transmission Line

a. An independent Environmental Monitor, hired by the Conservation Commission and paid for by the Applicant, shall be provided to oversee the following activities:
   1. Review the erosion control barrier following installation but prior to any land disturbance and each year prior to vernal pool species migration. Conduct spot inspections of vernal pools during construction and/or review reports provided by the Applicant's environmental monitor to ensure no negative impact to vernal pools during construction.
   2. Be on site during initial tree removal and invasive species clearing activities, within the limit of work.
   3. Review and ensure appropriate reporting of all activities associated with construction scheduling, erosion control monitoring, compliance with the project's SWPPP, and environmental monitoring activities including ensuring adherence to time of year restrictions.
   4. Be on site during bridge platform installation and spot inspections during bridge construction.
   5. Be notified of all dewatering activities and be on site during dewatering in sensitive locations, i.e. whenever excavation is proposed within 50 feet of a wetland, or when extensive dewatering will be needed. Specific oversight locations will be determined with the contractor, prior to commencement of work.
   6. Review restoration/mitigation areas including being on site during the construction of the wetland replication area.
   7. Be on site to oversee excavation/construction activities over culverts and drainage structures.
   8. Be available to respond to emergency situations, should they arise.

b. At least four weeks prior to any land disturbance, an Invasive Species Management Plan shall be developed and submitted to the Conservation Commission for review and approval. Said Management Plan shall involve removal of invasive species and revegetation with native species for a period of five (5) years from a minimum of 3.3 acres of land within the MBTA Right-of-Way, but outside the proposed limit of work, and shall focus efforts on improving wildlife habitat in areas identified through the Wildlife Habitat Evaluation and peer review thereof as being most impacted from proposed work. Following implementation, the Invasive Species Management Area shall be managed in accordance with Perpetual Condition b. contained within this Order.

c. At least two weeks prior to any land disturbance, a Soil and Groundwater Management Plan (SGMP) prepared in conjunction with the selected contractor shall be submitted to the Conservation Commission for review and comment. The Applicant shall give due consideration to address comments received from the Commission that are needed to protect wetland resource areas functions and values. The SGMP will develop means and methods to manage soils and groundwater encountered during project construction activities including soil excavation, groundwater dewatering, and railroad tie and track removal. If conditions are encountered that suggest soil may require additional evaluation or special handling based on visual, olfactory, or field screening results, excavation activities in that area will immediately be stopped and Eversource, their Licensed Site Professional, and the Conservation Commission will be contacted immediately to evaluate the observations and recommend requirements for proper handling. The Commission shall be copied on all related correspondence.

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d. At least two weeks prior to any land disturbance, a structural engineer and wildlife biologist shall inspect the culverts and drainage structures within the Project Site to determine whether they are structurally sound to (a) function hydrologically, (b) withstand the planned construction activities, and (c) evaluate their wildlife migration functions, and shall provide a report of the finding to the Commission. If any culverts do not meet these requirements or is damaged during construction, it shall be repaired or replaced with a culvert that meets current MA Stream Crossing Standards to the maximum extent practicable, as determined by the Commission or its Agent. Any recommended improvements to these structures, not included in this Notice, shall be required to submit a separate Notice of Intent and/or an Amendment to this Order to the Commission for further evaluation. Following completion of Phase I and Phase II a similar structural evaluation shall be conducted to confirm work did not affect culverts and drainage structures.

e. At least three weeks prior to any land disturbance, a Project Compliance Manual that includes the requirements from compliance from the various permits for the Project, including this Order and Conditions herein, shall be submitted to the Conservation Commission for review to confirm that the requirements of this Order are accurately stated.

f. At least two weeks prior to the start of Phase I, the Applicant shall provide a construction schedule detailing construction activities and sequencing. This shall be amended as necessary throughout construction. Weekly reports shall be submitted to the Commission that details work completed each week and anticipated work for the coming week, including identifying when work is located in areas of potential elevated levels of soil and groundwater contamination. These reports shall include anticipated dewatering activities so that oversight can be provided by the Commission or its Agent, if found necessary, and include the location of active stockpiles with confirmation that appropriate erosion control measures are being implemented.

g. At least two weeks prior to the start of Phase I, the Applicant shall provide the final Stormwater Pollution Prevention Plan (SWPPP) to the Commission for review and approval. Any use of permanent infiltration BMPs for temporary construction-related stormwater management shall be specifically addressed in the SWPPP and protocol for removal of fine silt and sediment from these BMPs shall be conducted at the completion of Phase I. If a response is not received by the Conservation Commission within 10 days of receipt, the SWPPP shall be deemed approved. Any changes made to the SWPPP during the course of the project shall be submitted and approved by the Commission prior to implementation.

h. Prior to land disturbance, the Applicant shall provide a signed illicit discharge statement.

i. The Applicant shall ensure there is a qualified Environmental Monitor(s) on site at all times overseeing work that is subject to this Order. The Environmental Monitor(s) shall send weekly erosion control inspection reports and reports following any storm event of ½ inch of rain or greater, to the Conservation Commission.

j. The Limit of Work/erosion control location shall be survey located in the field and certified by a Mass Registered Professional Land Surveyor, installed under the oversight of the Applicant's Environmental Monitor, and reviewed by the Commission and/or its Agent prior to commencement of any site work.

k. Prior to any site disturbance, with the exception of the installation of the erosion control barrier, the Applicant shall schedule a pre-construction site visit with the Conservation Coordinator as least one week prior to commencement of work. At a minimum, those in attendance at this site visit should include the Applicant, construction supervisor, and environmental monitors involved in the project.

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l. The Applicant's wildlife biologist or other qualified individual shall document the location of all important habitat features that will be removed (such as brush piles, snags, overhanging trees, logs within or near the water, large woody debris, etc.) to quantify the number of features removed and provide confirmation that work did not result in the loss of important wildlife habitat features. Brush, large woody debris, and logs shall be replaced within or near the water, generally in the location of where they were removed. Reports shall be provided to the Conservation Commission at least every six (6) months, for the life of the Order, documenting wildlife habitat removal and restoration efforts implemented, including monitoring of vernal pools.

m. During initial vegetation removal, trunks shall be retained but cut as close to the ground as possible. Following installation and approval of erosion controls, stumps and roots may be grubbed, if necessary. Stumping and grubbing activities shall not adversely affect woody vegetation or soils outside the erosion control barrier. Logs, stumps, and other large woody debris in and/or overhanging the resource areas shall be left undisturbed to maximize food source and habitat.

n. Tree/limb clearing shall be minimized to only that which is required to access the project site with equipment and to conduct the approved work. Equipment shall be chosen which minimizes required clearing to the maximum extent practicable. The Applicant shall retain as many limbs overhanging the limit of work as possible. Prior to tree felling, the Applicant shall walk the corridor with the Commission or its Agent to determine the extent of canopy that can be retained.

o. Vegetation removed from the site shall be chipped directly into a truck and removed from the project site. Woody material for reuse on site for the creation of wildlife habitat features shall be identified and retained.

p. The contractor shall provide detailed plans of the crane mat location and installation a minimum of one week prior to installation. All work and impacts associated with installation, removal, and stabilization of the crane areas shall be conducted in strict compliance with the Project Plans and Details and shall be reviewed and approved by the Commission and/or its Agent prior to installation and shall be installed under the supervision of the independent Environmental Monitor.

q. Dewatering activities shall be located as far as possible from wetland resource areas and shall be prohibited from discharging to Bordering Vegetated Wetlands, Isolated Vegetated Wetlands, Land Under Water Bodies and Waterways, or within the inner Riverfront Area. Dewatering may only occur in other upland resource areas provided adequate control measures are implemented and locations are identified by the contractor and review and approved by the Commission and/or its agent prior to implementation.

r. The Conservation Commission and their representative shall be notified at least three (3) business days in advance of the removal of the crane mats at Bridge 127.

s. Other than the grading of minor amounts of soil within the immediate vicinity of the Hudson/Sudbury town boundary, no soil excavated from Hudson may be used in Sudbury. The Sudbury Conservation Commission shall be copied if the Hudson Conservation Commission is notified of any remedial activities or changes to the work plans required due to the potential presence of PFAS in jurisdictional areas in Hudson.

t. The Applicant shall ensure that any reuse of on-site soils shall not result in the degradation of soil or groundwater in the area.

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

u. Stockpiling of materials within the ROW shall be limited in size and duration (one-week maximum) and shall be located as far from sensitive areas as possible. Soil stockpiles shall be covered with tarp or plastic sheet and surrounded by erosion controls. Excess soil not reused within the Project site shall be stockpiled outside the ROW and wetland jurisdiction. Weekly reports prepared by the Environmental Monitors throughout construction will identify the locations of active stockpiles and will confirm that the appropriate erosion control measures are being implemented

v. Additional test pits/borings at the location of each proposed "area of increase infiltration" shall be conducted during construction to verify soil conditions, infiltration rates, and groundwater levels, and provided to the Conservation Commission for review. At a minimum, soil tests shall be conducted in the vicinity of Stations 502+00, 511+00, 570+00, and 579+00. A report of the findings, comparison with expectations, and a statement on the appropriateness of the design shall be provided to the Conservation Commission for review. If findings are not consistent with the assumptions made for the stormwater management design, revisions to the design and approval of modifications to the Plan may be required.

w. Infiltration basins shall not be used as sediment basins during construction. Additional erosion controls shall be installed to protect infiltration basins from sedimentation until contributing areas are stable.

x. The Conservation Commission and/or their agent shall inspect all permanent stormwater infiltration BMPs for acceptance prior to construction demobilization to a new location within the ROW.

y. Mitigation, and restoration efforts within the limit of work, shall be implemented during the first growing season following commencement of work. Written reports shall be submitted by December 1 of each year the Order is active that details mitigation efforts that have been implemented, success of implementation, and anticipated activities the following growing season. Mitigation and Restoration areas shall be deemed substantially in compliance when there is a minimum of 90% cover with native species and free of invasive species.

z. Areas adjacent to vernal pools shall be revegetated immediately following the completion of all necessary grading in these area, and the revegetation in these areas shall be monitored so erosion controls can be removed as soon as field conditions allow. Mitigation plantings around the vernal pool margins shall be monitored for successful establishment for a minimum of two growing seasons and annual reports documenting establishment shall be submitted to the Commission.

aa. Prior to planting, the Applicant's Environmental Monitor shall inspect, approve, and provide photo documentation of all plant stock. Any species substitutions must be provided to the Commission, in writing, including a justification for substation, for review and approval prior to implementation.

bb. The wetland replication area shall be constructed during vegetation removal in the vicinity of the replication area and prior to the construction of structures in that vicinity.

cc. All plantings must survive for at least two growing seasons or be replaced at the expense of the Applicant.

dd. Loam borrow brought to the site to stabilize the work area after completing Phase 1 shall be sourced appropriately. Use of impacted soils (from contamination or invasive seed) shall be prohibited.

ee. No spoils of construction, construction material, or equipment shall be stored, placed or operated in the wetland resource areas or the wetland buffer zone except as may be permitted by this Order for

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

work in the riverfront and upland resource area. These activities may not occur within the bordering vegetated wetland or within bordering land subject to flooding.

ff. In any part of the Project work limits within 200 feet of a road crossing where the MBTA ROW crosses a Zone II for the Sudbury Water District supply wells, if a clay layer is encountered in the excavation for the transmission line and the excavation will extend below the bottom of the clay layer, the clay shall be stockpiled and reused to backfill and line the excavation before the transmission line duct bank is placed in that location.

gg. There shall be no disturbance beyond the limits of activities permitted as part of this Order.

hh. Every effort shall be made to restore disturbed area with a similar soil composition to that which is was removed.

ii. No deicing products shall be used within the project site. Snow may be stockpiled within the limit of work only or shall be removed from the site to an appropriate facility outside wetlands resource areas.

jj. Should Phase II not commence within three years of completion of Phase I, the Applicant shall file an Amendment to bring the stormwater management into full compliance with the Town of Sudbury Stormwater Regulations.

kk. All wildlife habitat replication and restoration shall be completed during the first growing season of Phase I to avoid a significant adverse project/site-specific impact or an adverse cumulative impact on wildlife for more than two growing seasons. Should Phase II not commence within two years of completion of Phase I, erosion controls or other methods of demarcation shall be implemented to prevent further alteration of restored areas. No important wildlife habitat features restored during Phase I shall be removed during Phase II.

PART II CONDITIONS SPECIFIC TO
Phase II: DCR Mass Central Rail Trail

a. Prior to commencement of Phase II, erosion controls shall be inspected. Erosion controls shall be removed from all areas that have stabilized from Phase I and will not be re-disturbed as part of Phase II. All degraded erosion controls shall be replaced. Areas requiring re-installation of erosion controls for Phase II shall be installed at the limit of work for Phase II.

b. At least two weeks prior to the start of Phase II, the Applicant shall provide a construction schedule detailing construction activities and sequencing. This shall be amended as necessary throughout construction. Weekly reports shall be submitted to the Commission that details work completed each week and anticipated work for the coming week.

c. At least two weeks prior to the start of Phase II, the Applicant shall provide the final Stormwater Pollution Prevention Plan (SWPPP) to the Commission for review and approval. Any changes made to the SWPPP during the course of the project shall be submitted and approved by the Commission prior to implementation. If a response is not received by the Conservation Commission within 10 days of receipt, the SWPPP shall be deemed approved.

d. The Applicant shall ensure there is a qualified Environmental Monitor(s) on site at all times overseeing work that is subject to this Order. The Environmental Monitor(s) shall send weekly erosion control reports and reports following any storm event of ½ inch of rain or greater, to the Conservation Commission.

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e. The Phase II limit of work/erosion control location shall be located in the field with survey grade equipment that produces sub-foot accuracy installed under the oversight of the Applicant's Environmental Monitor, and reviewed by the Commission and/or its Agent prior to commencement of any site work.

f. Prior to any site disturbance, with the exception of the installation of the erosion control barrier, the Applicant shall schedule a pre-construction site visit with the Conservation Coordinator as least one week prior to commencement of work. At a minimum, those in attendance at this site visit should include the Applicant, construction supervisor, and environmental monitors involved in the project.

g. There shall be no disturbance beyond the limits of activities permitted as part of this Order.

h. Other than road crossings and pullouts, the paved multi-use trail shall not exceed ten (10) feet in width. Any pavement that exceed 10 feet in width shall be required to be removed.

i. Stockpiling of materials shall be within the Phase II limit of work and shall be located as far from sensitive areas as possible.

j. No spoils of construction, construction material, or equipment shall be stored, placed or operated in the wetland resource areas or the wetland buffer zone except as may be permitted by this Order for work in the riverfront and upland resource area. These activities may not occur within the bordering vegetated wetland or within bordering land subject to flooding.

k. The corridor shall be maintained in compliance with the MassCentral Rail Trail (MCRT) – Wayside Section Stormwater Management System Operation and Maintenance Pan (O&M) and the Long Term Pollution Prevention Plan.

l. Japanese knotweed shall be managed within the limit of work. Chemical treatment, via spot treatment, may be permitted as a last measure to manage knotweed. Herbicide use shall be prohibited within any certified, certifiable, or presumed vernal pool, vegetated wetlands or waterways.

m. DCR shall notify the Commission in advance if herbicides are to be used for vegetation control within jurisdictional areas, indicating the target control species, the type(s) of herbicide to be used, the proposed application rate, and the on-going maintenance plan for the targeted area for review and approval. This Condition is ongoing and does not expire with the expiration of the Order of Conditions or the issuance of a Certificate of Compliance.

PART III: EROSION, SEDIMENTATION, STABILIZATION CONDITIONS
For Phase I and Phase II

a. Erosion control shall be installed per the approved plan and maintained as necessary to prevent erosion and sedimentation from entering the resource areas. It is the Applicants' responsibility to take appropriate measures to control sedimentation into the wetland resource areas.

b. Perimeter erosion controls shall be installed along the down gradient side of disturbed areas where topography is directed towards other portions of the existing/proposed trail work area.

c. Stabilization of slopes shall be accomplished as soon as possible. Biodegradable jute netting shall be properly anchored in place, secured with non-chemically treated biodegradable materials. Should non-biodegradable fasteners be needed, with prior approval by the Commission and/or its agent, the

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

Applicants may use non-biodegradable fasteners with the condition that the Applicants shall provide confirmation that all fasteners have been removed once the area is deemed fully stabilized by the Commission and/or its representative.

d. Appropriate netting shall be installed under the bridge 128 during bridge work to prevent debris from entering the stream. The Applicants shall contact the Conservation Office once installed for review prior to commencement of bridge work.

e. Following Land Under Water Restoration, erosion controls shall be removed once fully stabilized and the Conservation Commission or its representative has confirmed stabilization, to protect the long-term water quality of the adjacent wetland waterways.

f. During Phase I, Eversource shall be responsible for installing and maintaining erosion controls within the project site. Following completion of Phase I, Eversource shall continue to maintain erosion controls until DCR commences Phase II, provided that Eversource shall remove erosion controls from areas stabilized at the completion of Phase I, as confirmed by the Commission or its agent. Every effort shall be made during Phase I to stabilize areas within vernal pool habitat immediately following final grade.

g. During Phase II, DCR shall be responsible for installing and maintaining erosion controls on the project site. Following completion of Phase II and inspection by the Commission or its Agent, DCR shall be responsible to remove all erosion control barriers.

h. Should the time between Phase I and Phase II exceed one year, the site shall be assessed every six months, in the presence of the Commission or its Agent, to determine if erosion controls containing areas that are stable which will not be destabilized during Phase II, can be removed.

PART IV: PLAN MODIFICATIONS:

a. Any changes during construction due to soil types found or other conditions discovered during construction shall require immediate notification of the Conservation Commission for a determination if the changes require revisions to this Order or the filing of a new Notice of Intent. Any modifications or revisions to the plans referenced, or any new plans, must be submitted to the Commission for review and a determination as to whether a new Notice of Intent is required. If this procedure is not followed, this Order may not be amended. No additional work not specifically allowed by this Order shall be accomplished on the site without the approval of the Sudbury Conservation Commission and the appropriate new filings or amendment requests are approved. Amendment procedures as described in the Wetlands Protection Act, the regulations, and the Department of Environmental Protection's Wetlands Program Policies shall be followed.

b. No additional new construction or disturbance of a wetland resource area, as defined in the Wetlands Protection Act and its regulations, or within the 100' wetland resource area buffer zone, not covered by this Order of Conditions, shall be permitted on this site until a determination has been made by the Commission as to whether a new Notice of Intent is required, and the new work or disturbance is incorporated into a new or amended Order of Conditions. An adequate stockpile of unused erosion controls shall be available at or near the site.

c. Should the Sudbury Conservation Commission become aware of work on site being accomplished that was not approved as part of the Order of Conditions or subsequent amendments, the Commission reserves the right to require a new Notice of Intent. The plan filed with the new Notice of Intent must be based on an interim as-built plan prepared by a registered engineer. The new Notice must provide

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

a detailed description of the discrepancies between the approved plan and the site conditions to date. The Commission reserves the right to require as part of the interim as-built plan, but not be limited to requiring, new topography survey, new drainage calculations, and details or all disturbance within the wetland resource and the 100' wetland buffer zone.

PART V: CERTIFICATE OF COMPLIANCE REQUIREMENTS:

a. Following completion of Phase I, Eversource shall request a Partial Certificate of Compliance. This Request shall be accompanied by as-built plans, stamped by a professional land surveyor or other qualified professional, detailing all elements of Phase I including all restoration plantings, wetlands replication, all stormwater management elements, post construction structural report, provide a cut/fill analysis for the project by stream reach and elevations to confirm adequate compensatory storage is provided and affidavit from all site professionals that all aspects of this Order were adhered to, along with reports associated with mitigation activities. Any deviations from the approved plans shall be specifically called out on the as-built plan. A report on the restoration/mitigation plantings and invasive species management program shall be provided that includes an assessment of the plant community composition in the context of the wildlife habitat restoration. Vegetation outside the limit of work shall also be evaluated to confirm no negative impacts occurred outside the limit of work.

b. Following completion of Phase II and full stabilization of the site, a full Certificate of Compliance shall be requested, accompanied by an as-built plan of Phase II elements overlain the Phase I as-built plan, final report on restoration/mitigation efforts, and post construction structural report. Any deviations from the approved plans shall be specifically called out on the as-built plan.

PART VI: CONDITIONS IN PERPETUITY:

The following conditions shall be recorded at the Registry of Deeds as part of this Order of Conditions and shall continue in perpetuity and be included on the Certificate of Compliance. Owners of this property shall be made aware of restrictions in perpetuity on the activities allowed on this property. If the property owner has good cause to request an amendment to the conditions in perpetuity, he/she shall have the right to make a request for an amendment to the issuing authority. If, in the judgment of the issuing authority, the proposed activities will not detrimentally impact the wetland resource area functions, this Order, or the Certificate of Compliance shall be amended.

a. Wetlands are located on this property that are subject of the Massachusetts Protection Act (Chapter 131, section 40) and the Sudbury Wetlands Administration Bylaw. Any work within a wetland resource area (including the 200’ riverfront area) or within 100' of a wetland resource area requires review and approval by the Sudbury Conservation Commission prior to the commencement of such work.

b. To ensure the environmental integrity of the site is maintained to offset the permitted activity, after the initial management period of five (5) years, the 3.3-acre invasive species management areas shall be monitored annually for the presence of invasive species and annual reports shall be submitted to the Conservation Office. Any areas found to contain concentrations of invasive species and/or should the plant community within the management area exceed 10% invasive species, the management area shall be managed by DCR in accordance with a program developed in consultation with the Commission’s representative.

c. Fertilizers shall not be used within jurisdictional areas.

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

d. No pesticides or herbicides are allowed within a wetland resource area, including the 200-foot riverfront area, or within 100-foot of a wetland resource area (the adjacent upland resource area under the local bylaw), except for spot treatment of Japanese knotweed, without additional review by the Conservation Commission.

e. Underground storage of petroleum products is prohibited within a wetland resource area and within the 100' buffer zone of a wetland resource area.

f. No coal tar-based sealants may be applied to any area draining into the upland or wetland resource areas of the property.

g. All components of the stormwater management system shall be maintained in accordance with the MassCentral Rail Trail (MCRT) – Wayside Section Stormwater Management System Operation and Maintenance Pan (O&M) and the Long Term Pollution Prevention Plan, and as necessary to function as designed. Inspection checklists shall be maintained and be made available for review by the Conservation Commission or staff on request.

h. There shall be no snow removal activities or de-icing products used on site, except as required for emergency situations.

i. The five-foot maintained area over the transmission line, outside the two-foot shoulders that will be regularly maintained, may be mown once per year, before April 1 or after November 1 Mowing outside this timeframe may be allowed in accordance with the Final Corridor Management Plan, with the objective of allowing vegetation to go to seed and propagate.

j. When maintaining the rail trail, no debris, including natural debris such as leaves, shall be blown or swept into areas within 25 feet of vernal pools. Signage or other means of demarcating this management requirement shall be provided to and approved by the Conservation Commission prior to issuance of a Certificate of Compliance.

k. The culverts and drainage structures shall be inspected at least annually and cleared of debris as needed. If culverts become damaged or no longer function as required, they shall be repaired or replaced according to most current MA Stream Crossing Standards. This work will require review and approval by the Conservation Commission under a Notice of Intent.

l. If herbicide use by DCR is permitted under a future Vegetation Management Plan, as approved by the Department of Agricultural Resources, herbicide use shall be prohibited within any certified or certifiable vernal pool, vegetated wetlands or waterways. Invasive species removal by DCR will be by mechanical means when possible and spot treatment of herbicide by a licensed herbicide applicator when other approaches are ineffective. DCR shall notify the Commission in advance, if herbicides are to be used within wetland jurisdictional areas, indicating the target control species, the type(s) of herbicide to be used, and the on-going maintenance plan for the targeted area.

m. All trail amenities, such as benches and kiosks, shall be located outside wetland jurisdictional areas, except as shown on the approved plans.

Attachment5.c: ConCom Order of Conditions Complete Eversource Feb 2021 (5418 : Updates related to Eversource transmission line project)

Town of Sudbury
Historic Districts Commission

Flynn Building
278 Old Sudbury Road
Sudbury, MA 01776
978-639-3387
Fax: 978-639-3314
HistoricDistricts@sudbury.ma.us
www.sudbury.ma.us/historicdistricts

_X_ Certificate of Appropriateness
___ Permit for Demolition or Removal

Case File Number: 22-15 Issuance: August 4, 2022

This Certificate/Permit is issued pursuant to Chapter 40 of the Acts of 1963 to:

2022 AUG 16 AM 10:08
TOWN CLERK
SUDBURY, MASS

Applicant(s): Eversource Energy c/o Denise Bartone

Applicant(s) Address: 247 Station Road, SE270, Westwood, MA 02090

Owner(s): Massachusetts Bay Transportation Authority (MBTA)

Property Address: Boston Post Road near Station Road

With respect to the following property: Town Assessor's Map **K09-5000**

Boston Post Road near Station Road – Certificate of Appropriateness to remove railroad ties and rails, and install an underground electric transmission line and gravel access road.

The Commission voted unanimously, 4–0, with Mr. Taylor, Mr. Hagger, Mr. Shah, and Ms. Trexler in favor and Ms. Finn absent, to approve the application with the following conditions:

- The Historic Districts Commission shall receive a letter from the Department of Conservation and Recreation which indicates the rail trail will be placed on top of the realigned gravel and the intent of the Department of Conservation and Recreation is to not remove the rail in front of the Section Tool House which is part of Phase I of the project which will retain or reset those rails, and that those rails will be protected as part of Phase 2.

- An updated plan which reflects the realigned rail trail with more specific details of the realignment and the protective fencing to be used around the Section Tool House shall be submitted to the Historic Districts Commission.

- Eversource, as the Applicant, shall obtain any necessary permitting approvals for the modifications of permits with other relevant Town boards, committees, and commissions.

- If, after 12 months of completion of the gravel base, the rail trail has not been installed, Eversource will loam and seed the entire gravel base within the George Pitts Tavern Historic District.

- If Eversource needs to remove the railroad ties and rails in front of the Section Tool House, the details of the removal and replacement shall be reviewed with the Historic Districts Commission.

Attachment5.d: 22-15 Boston Post Road near Station Road (Eversource) (5418 : Updates related to Eversource transmission line project)

SUDBURY HISTORIC DISTRICTS COMMISSION

By _____
Fred Taylor, Chair

Date Application Received: June 22, 2022

Date(s) of Meeting(s): July 7, 2022 and August 4, 2022

The Decision above deals only with the Sudbury Historic Districts Commission Act (Chapter 40 of the Acts of 1963) and not with the State Building Code, or other Town Bylaws or regulations. Any person aggrieved by this Decision may appeal pursuant to Section 10 of Chapter 40 of the Acts of 1963, within twenty (20) days after this Decision is filed with the Sudbury Town Clerk.

This is to certify that no notice of an appeal against Historic Districts Commission Decision Case # 22-15 was filed in the Town Clerk's office within 20 days after such decision was filed on August 18, 2022.

A True Copy Attest:

_____ _____
Rose M. Miranda Date
Assistant Town Clerk

Attachment5.d: 22-15 Boston Post Road near Station Road (Eversource) (5418 : Updates related to Eversource transmission line project)

Berkshire North Registry of Deeds

Electronically Recorded Document

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Receipt Number	: 2824432
Recording Fee	: $105.00

Berkshire North District County Registry of Deeds
Maria T. Ziemba, Register
65 Park Street
Adams, MA 01220
413-743-0035
www.Masslandrecords.com

Attachment5.e: Eversource ERP - Decision 21-1 183 Boston Post Road Recorded (5418 : Updates related to Eversource transmission line

Case #: 21-1
May 17, 2021

TOWN OF SUDBURY
EARTH REMOVAL BOARD
NOTICE OF DECISION

TOWN CLERK
SUDBURY, MASS
2021 MAY 21 PM 2:55

Location of Property:
183 Boston Post Road and the Massachusetts Bay Transportation Authority Corridor
Sudbury, MA 01776

Name and Address of Applicant:
NSTAR Electric Company d/b/a Eversource Energy
247 Station Drive
Westwood, MA 02090

Name and Address of Owner:
Massachusetts Bay Transportation Authority (MBTA)
10 Park Plaza
Boston, MA 02116

DECISION of the Earth Removal Board (the "Board") on the application of NSTAR Electric Company d/b/a Eversource Energy (the "Applicant") under Article V(A) of the Town Bylaws, to allow removal of 24,123 cubic yards ("CY") of soil for construction of a construct a new 115- kilovolt ("kV") underground electric transmission line, access driveway, and appurtenances at Massachusetts Bay Transportation Authority Corridor from the Marlborough Hudson Town Line up to and including 183 Boston Post Road, Sudbury, Massachusetts and identified as Assessors Map p K10-0014, K11-5000, K09-5000, K08-5000, K07-5000, J06-5000, J05-5000 and H03-5000 (the "Property"). DEED REF: BOOK 7734-4 & BOOK 11317-113

This Decision is in response to an Application filed with the Board on March 9, 2021. After causing notice of the time and place of the public hearing and of the subject matter thereof to be published in the Sudbury Town Crier on April 1 and April 8, 2021, posted and mailed to the Applicant, abutters and other parties of interest as required by law, the public hearing was conducted on April 26, 2021 and continued to May 17, 2021 when it concluded. The record of the proceedings and submissions upon which this Decision is based may be referred to in the office of the Planning and Community Development office.

Michael Hager, Eversource, Project Manager; Denise Bartone, Eversource, Manager Licensing & Permitting; Mike Shamon, VHB; Paul McKinley, Weston and Sampson, LSP; Dean Bebis, Eversource, Licensing & Permitting Specialist; and Barry Fogel, Keegan Werlin, Applicant's Counsel appeared at the hearing to represent the Applicant. The Applicant sought approval to remove soil and gravel materials to construct a new 115- kV underground electric transmission line, access driveway, and appurtenances.

Members present and voting at the hearing were Jonathan W. Patch, Chair; David Booth, William Ray, Jeffrey Rose, and Benjamin Stevenson.

Attachment5.e: Eversource ERP - Decision 21-1 183 Boston Post Road Recorded (5418 : Updates related to Eversource transmission line

The Board, after considering the materials submitted with the application, together with the information developed at the hearing, finds that:

1. The Applicant seeks a Removal Permit under Article V(A) of the Town Bylaws to remove of up to 24,123 CY of soil for construction of a new 115-kV underground electric transmission line at the Massachusetts Bays Transportation Authority Corridor from the Marlborough Hudson Town Line to 183 Boston Post Road.
2. As identified in the Sudbury Soil Removal Table submitted by the Applicant on April 23, 2021, the total quantity of soil permanently removed off-site from the right-of-way (ROW) to the temporary stockpile location and then to a soil receiving facility shall be limited to 10,453 CY, which is the difference between the total proposed quantity of 24,123 CY of in-situ soil to be excavated along the ROW as a "cut" and the 13,670 CY of soil which will be reused along the ROW as a "fill".
3. The proposed activity which is the subject of this application is described in the Application, including revised material submitted to the Board on April 22, 2021, April 23, 2021 and May 10, 2021.
4. Subject to the conditions set forth below, the request is in harmony with the general purpose and intent of the bylaw.
5. Subject to the conditions set forth below, the request will be completed in a way that is not detrimental to the neighborhood.
6. Subject to the conditions set forth below, adequate and appropriate transportation of materials will be provided for the proper operation of the proposed request.
7. The Board has imposed restrictions which are necessary for the general welfare of the Town, noted below.

Therefore, the Board, after reviewing the available materials and based upon the above findings, voted unanimously to **GRANT** the **REMOVAL PERMIT** subject, to the following conditions:

1. The proposed activity shall be conducted substantially in accordance with the Application submitted and materials contained in the file.
2. This permit is non-transferable, and pursuant to the Earth Removal Bylaw Section 7, will expire in one year on May 17, 2022. The Board will consider permit renewal upon receipt of proper application on or before that date.
3. Construction activities will be performed between the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday. No work shall take place on Saturday or Sunday.
4. Vehicular and heavy equipment access shall be minimized on roadways to the maximum extent possible. In particular, the use of tractor/trailer trucks accessing the right-of-way (ROW) on Dutton Road, Peakham Road, and Horse Pond Road shall be minimized. Eversource shall work with the Sudbury Department of Public Works Director, who will coordinate with the Police and Fire Departments to ensure safe passage of vehicles, bicycles, and pedestrians at all points during construction in the Public Ways. Particular care will be given to the safe passage of children to and from schools near the construction in the Public Way. A police detail shall be present as needed and upon request by Town representatives.
5. Appropriate measures shall be taken to prevent tracking of material onto any public way. Soil on outgoing trucks shall be stabilized via the use of covers.
6. Street sweeping of the adjacent streets will be conducted as needed or as directed by Town representatives, but no less frequent than weekly.

Attachment5.e: Eversource ERP - Decision 21-1 183 Boston Post Road Recorded (5418 : Updates related to Eversource transmission line

7. General precautionary measures shall be taken to prevent erosion on the site into adjacent wetlands.
8. A copy of the SWPPP will be prepared and submitted to the Town with documentation of receipt by the EPA.
9. Proposed off-site stockpile locations in the Town of Sudbury shall be submitted to the Board for review and approval.
10. Any stockpiled soil must be surrounded by siltation fencing to minimize sedimentation during construction. The contractor shall take appropriate measures to minimize dust impacts to abutters and vehicular traffic, including wetting of stockpiles, temporarily covering them, or seeding them, as required.
11. At least two weeks prior to any blasting, if proposed, a blasting plan shall be submitted to the Board for record. Blasting Permits are issued by the Sudbury Fire Department.
12. At least two weeks prior to any land disturbance, a Soil and Groundwater Management Plan (SGMP) prepared in conjunction with the selected contractor shall be submitted to the Board for review and approval. The Applicant shall give due consideration to address comments received from the Board to minimize potential impacts to project abutters and the Town as a whole. The SGMP will develop means and methods to manage soils and groundwater encountered during project construction activities including soil excavation, groundwater dewatering, soil stockpiling, soil hauling, dust management, and railroad tie and track removal to avoid and minimize the risk of exposure to potential contaminants. If conditions are encountered that suggest soil may require additional evaluation or special handling based on visual, olfactory, or field screening results, excavation activities in that area will be immediately stopped and Eversource, their Licensed Site Professional (LSP), and the Board will be contacted immediately to evaluate the observations and review and comment on their proposed procedures for proper handling. Furthermore, as part of the SGMP, Eversource shall implement a tracking system to document the approximate origin of soil along the ROW that is hauled to the off-site temporary stockpile location. The Board shall be copied on all related correspondence.
13. The Applicant shall, at a minimum, perform additional chemical testing of soil and groundwater samples from the ROW and surrounding properties a minimum of four weeks prior to significant disturbance of the soil. This shall include, at a minimum, the following scope of sampling and testing:
    a. Performing chemical testing of in-situ shallow soil samples along the former track bed for the presence of total arsenic in Segment 3 of the project (defined herein as the residential, rural, undeveloped corridor located approximately between the Sudbury-Hudson border to near the northwest corner of the Meadow Walk Sudbury) at every approximately 500 linear feet prior to commencing excavation of soil, after the railroad ties are removed and the erosion controls are in place. This is anticipated to require approximate 30 total samples.
    b. Furthermore, at a minimum, testing of soil and/or groundwater shall be performed at seven (7) of the properties of potential environmental concern located in Sudbury where soil and/or groundwater testing was previously not performed on behalf of Eversource which are listed in the table entitled "Summary of Properties of Concern, MBTA ROW, Transmission Line Project, Sudbury to Hudson, Massachusetts" contained in a memorandum entitled "Summary of Hazardous Materials Assessment, Proposed Transmission Line Project, Sudbury to Hudson, Massachusetts prepared by VHB dated September 29, 2017.

Attachment5.e: Eversource ERP - Decision 21-1 183 Boston Post Road Recorded (5418 : Updates related to Eversource transmission line

i. The testing of soil and/or groundwater samples at each of these specific sites shall be performed for the constituents of concern within the proposed depth of excavation for the project.

c. The results of all testing shall be submitted to the Board, along with all documentation prepared by their LSP, for its record.

14. Conditions number 9, 12 and 13 above may require the Board to hold a public meeting with the Applicant to review and discuss the proposed plan and stockpile location(s) and results of chemical testing. The public meeting will not require abutter notification or a public hearing but will be an open public meeting. The Town will endeavor to convene a quorum of members for a meeting to be scheduled within 10 days of the soil test results, proposed plan and stockpile location being submitted to the Board.
15. At least two weeks prior to the loading and hauling of stockpiled soil to a licensed soil receiving facility, Eversource shall submit to the Board for its records the results of the chemical testing performed on the stockpiled soils along with all documentation prepared by their LSP and the soil receiving facility.
16. The applicant shall submit to the Board monthly the total quantity of soil that has been loaded and hauled from the temporary stockpile location to licensed soil receiving facilities.
17. The total quantity of soil permanently removed off-site from the ROW to the temporary stockpile location and then to a soil receiving facility shall be limited to 10,453 CY, which is the difference between the total proposed quantity of 24,123 CY of in-situ soil to be excavated along the ROW as a "cut" and the 13,670 CY of soil which will be reused along the ROW as a "fill". The Board shall be notified of any changes to the earth removal plan and quantities to be removed.
18. Prior to commencing the work, the Town shall be given the name of a contact person who will be available should problems arise associated with construction.
19. The requirement for a performance guarantee is waived given that the project has received a Stormwater Management Permit approval from the Sudbury Planning Board and subject to the Stormwater Management Permit Decision, prior to occupancy any conditions unfulfilled will be subject to a performance guarantee.
20. Clearing shall only be allowed upon review by and to the extent approved by the Sudbury Conservation Commission and Planning Board.
21. This Removal Permit shall not take effect until a copy of the Decision has been recorded in Middlesex County South District Registry of Deeds.
22. The Decision rendered herein is concerned only with the Town Bylaw noted above, and not with the Building Code or any other Town Bylaw. The Applicant is responsible for determining and complying with Town, State, and Federal regulations in using the authorization granted.

TOWN OF SUDBURY EARTH REMOVAL BOARD

By: _____, Chair

I certify that copies of this Decision have been filed with the Sudbury Town Clerk and Planning Board on

Beth Penny.
May 24, 2021

TOWN CLERK
SUDBURY, MASS
2021 MAY 26 PM 2:55

Attachment5.e: Eversource ERP - Decision 21-1 183 Boston Post Road Recorded (5418 : Updates related to Eversource transmission line

183 Boston Post Road and the Massachusetts Bay Transportation Authority Corridor
Sudbury, MA 01776
Earth Removal Permit Decision

This is to certify that no notice of an appeal against this Decision was filed in the Town Clerk's Office during the appeal period after such Decision was filed on May 24, 2021.

A True Copy Attest:

Rose M. Miranda
Assistant Town Clerk

Date June 13, 2022

cc: Applicant
Town Clerk
Building Inspector
Conservation Commission
DPW Director

Attachment5.e: Eversource ERP - Decision 21-1 183 Boston Post Road Recorded (5418 : Updates related to Eversource transmission line

Town of Sudbury

Earth Removal Board

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776
978-639-3389
Fax: 978-443-0756

erb@sudbury.ma.us

http://www.sudbury.ma.us/services/planning

June 13, 2022

Beth Klein
Town Clerk
322 Concord Road
Sudbury, MA 01776

Re: Earth Removal Permit Case#: 21-1-Eversource Project, 183 Boston Post Road and the Massachusetts Bay Transportation Authority Corridor

At its meeting of May 12, 2022, the Earth Removal Board voted to grant an extension to allow removal of up to 24,123 cubic yards of existing soil for construction of a 115- kilovolt ("kV") underground electric transmission line, access driveway, and appurtenances at Massachusetts Bay Transportation Authority Corridor from the Marlborough Hudson Town Line up to and including 183 Boston Post Road, Sudbury, Massachusetts and identified as Assessors Map p K 10-0014, K 11-5000, K09-5000, K08-5000, K07-5000, J06-5000, J05-5000 and H03-5000, until May 17, 2024.

If there are any questions, please contact this office.

On behalf of the Earth Removal Board,

Beth Suedmeyer
Planning & Community Development

2022 JUN 13 PM 4:11
TOWN CLERK
SUDBURY, MASS.

Attachment5.e: Eversource ERP - Decision 21-1 183 Boston Post Road Recorded (5418 : Updates related to Eversource transmission line

Middlesex South Registry of Deeds

Electronically Recorded Document

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Recording Information

Document Number	: 186367
Document Type	: DECIS
Recorded Date	: August 19, 2021
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Number of Pages(including cover sheet)	: 21
Receipt Number	: 2706086
Recording Fee	: $105.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
www.middlesexsouthregistry.com

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

BOOK 7734, PAGE 426

Town of Sudbury

Planning Board

Flynn Building
278 Old Sudbury Road
Sudbury, MA 01776
978-639-3387
Fax: 978-639-3314

PlanningBoard@sudbury.ma.us

www.sudbury.ma.us/planning

A TRUE COPY, ATTEST:
TOWN CLERK

January 27, 2021

TOWN CLERK
SUDBURY, MA
2021 JAN -8 PM 2:56

DECISION
STORMWATER MANAGEMENT PERMIT
Eversource Sudbury-Hudson Transmission Reliability and Mass Central Rail Trail Project
183 Boston Post Road, Sudbury, MA
SWMP #20-07

DECISION of the Planning Board of the Town of Sudbury, Massachusetts (the "Board") on the petition of NSTAR Electric Company d/b/a Eversource of 247 Station Drive, SE270 Westwood, MA 02090 and Department of Conservation and Recreation (DCR) of 251 Causeway Street, Suite 600, Boston, MA 02114 ("Applicants") and Massachusetts Bay Transportation Authority (MBTA) of 10 Park Plaza, Boston, MA 02116 ("Owner") for approval of a Stormwater Management Permit to construct a new 115-kV underground transmission line and a multi-use path within an existing inactive railroad right-of-way, which will require removal of the existing rails and ties; vegetation clearing; grading; installation of the underground transmission line, duct bank, and manholes; installing a 14-foot-wide gravel base; paving of the 10-foot-wide rail trail, multi-use path; installation of stormwater management features; and site restoration, (the "Project") on the property (the "Property") located at 183 Boston Post Road and within the 4.3 mile long MBTA Right-of-Way subject to a lease agreement with the DCR in Sudbury, MA. The Project proposes alteration of approximately 643,985 sq. ft. (14.8 acres) of land, including approximately 221,410 sq. ft. of land area on slopes greater than 10% and a total increase in impervious area of 226,556 sq. ft., on a 54.4 acre parcel located at 183 Boston Post Road and the MBTA Right-of-Way, Sudbury, MA, Town Assessor Maps K10-0014, K11-5000, K09-5000, K08-5000, K07-5000, J06-5000, J05-5000, and H03-5000, zoned Residential A, Residential C, Business, and Limited Industrial, Water Resource Protection Overlay District Zone II and III, and Flood Plain Overlay District.

This Decision is issued in response to an application submitted to the Board on July 15, 2020 by the Applicants for a Stormwater Management Permit (the "Permit") under Article V (F), Section 5.C of the Town of Sudbury Bylaws (the "Bylaw") and the Town of Sudbury Stormwater Management Bylaw Regulations (the "Regulations").

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted, and mailed to the Applicants, Owners, abutters, and other parties in interest, as required by law, the public hearing was opened on August 12, 2020 and continued on September 9, 2020, September 23, 2020, October 28, 2020, November 18, 2020, December 9, 2020, January 13, 2021, and January 27, 2021, when it was closed. The project was deliberated on August 12, 2020, October 28, 2020, November 18, 2020, December 9, 2020, January 13, 2021, and January 27, 2021. The following members of the Board were present throughout the proceedings: Stephen Garvin, Charles Karustis, John Hincks, Justin Finnicum, and John Sugrue. The record of the proceedings and submissions upon which this Decision is based may be referred to in the office of the Town Clerk or the Planning and Community Development Department.

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

Documents submitted for the Board's consideration and collectively referenced as the "Plan", include:

1) Sudbury Stormwater Bylaw Permit Application for the Sudbury-Hudson Transmission Reliability and Mass Central Rail Trail Project, issued to Sudbury Planning Board, prepared by VHB, dated July 15, 2020 (1,356 pages).
2) Sudbury Stormwater Management Plan Narrative for the Sudbury Hudson Transmission Reliability Project and Mass Central Rail Trail Project, Sudbury Massachusetts (Stormwater Management Report), dated March 7, 2018, last revised October 21, 2020, received January 13, 2021 (1,349 pages).
3) Site Plans Eversource, Sudbury-Hudson Transmission Reliability Project, Sudbury Stormwater Permit Plans, prepared by VHB, dated July 2020, (181 pages), last revised January 13, 2020, received January 13, 2021 (206 pages). This Plan set represents Project Phase I.
4) Site Plans Commonwealth of Massachusetts, Department of Conservation and Recreation, Division of Planning and Engineering, prepared by VHB, dated July 2020, (52 pages), last revised January 13, 2020, received January 13, 2021 (52 pages). This Plan set represents Project Phase II.
5) Stormwater Pollution Prevention Plan (SWPPP) Manual Sudbury-Hudson Transmission Reliability Project, Sudbury, Marlborough, Stow, Hudson, prepared by VHB and dated May 2020
6) Stormwater Pollution Prevention Plan (SWPPP) Manual Mass Central Rail Trail – Wayside, Sudbury, Marlborough, Stow, Hudson, prepared by VHB and dated May 2020.
7) Letter to the Sudbury Conservation Commission, regarding the Sudbury-Hudson Transmission Reliability and Mass Central Rail Trail Project, prepared by BETA Group, Inc., dated May 11, 2020 (27 pages).
8) Letter to the Sudbury Conservation Commission, in response to BETA's stormwater peer review, prepared by VHB, dated July 30, 2020 (11 pages).
9) Letter to the Sudbury Conservation Commission, regarding the Sudbury-Hudson Transmission Reliability and Mass Central Rail Trail Project, prepared by BETA Group, Inc., dated August 31, 2020 (20 pages).
10) Peer Review Memo from Horsley Witten, dated September 18, 2020.
11) Memorandum regarding the Underground Transmission Line Stormwater Management Standards Compliance for Hypothetical Development Scenario, prepared by VHB, dated November 10, 2020 (5 pages).
12) Memorandum regarding the response to comments from Horsley Witten Peer Review of the Stormwater Management, prepared by VHB, dated November 10, 2020 (10 pages).
13) Letter to the Sudbury Planning Board, in response to HW's Comment Letter, prepared by VHB, dated October 21, 2020 (14 pages).
14) MassCentral Rail Trail (MCRT) – Wayside Section Stormwater Management System Operation and Maintenance (O&M) Plan and Long-Term Pollution Prevention Plan (LTPPP), dated June 2020.
15) Stormwater Pollution Prevention Plan (SWPPP) Construction Site Inspection Report – form template (5 pages).
16) Email from Lori Capone, Sudbury Conservation Coordinator regarding Conservation Commission review of the Stormwater Standards, dated November 3, 2020.
17) Peer Review Memo (#2) from Horsley Witten, dated November 23, 2020.
18) Letter to the Sudbury Planning Board, Supplemental Submission, in response to HW's Comment Letter, prepared by VHB, dated December 2, 2020 (67 pages).
19) Peer Review Memo (#3) from Horsley Witten, dated December 4, 2020.
20) Corridor Management Plan for Massachusetts Central Rail Trail and Sudbury-Hudson Transmission Reliability Project, dated August 7, 2020, received January 26, 2021.

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

I. BASIS FOR DECISION

The Board bases its Decision on the following:

A. The Applicants filed for approval of a Stormwater Management Permit to construct a new 115-kV underground transmission line and a multi-use path within an existing inactive railroad right-of-way, which will require removal of the existing rails and ties; vegetation clearing; grading; installation of the underground transmission line, duct bank, and manholes; installing a 14-foot-wide gravel base; paving of the 10-foot-wide rail trail; installation of stormwater management features; and site restoration, (the "Project") which will disturb on the property (the "Property") located at 183 Boston Post Road and within the 4.3 mile long MBTA Right-of-Way, in Sudbury, MA on a 54.4 acre parcel located at Boston Post Road and the MBTA Right-of-Way, Sudbury, MA, Town Assessor Maps K10-0014, K11-5000, K09-5000, K08-5000, K07-5000, J06-5000, J05-5000, and H03-5000.

B. Granting the Permit is in harmony with the general purpose and intent of the Bylaw in that the proposed drainage system design and controls will protect and maintain the public health, safety, environment and general welfare by controlling the adverse effects of increased post-development stormwater runoff and nonpoint source pollution associated with the proposed development; and shall protect the health, safety, environment and general welfare by controlling runoff and preventing soil erosion and sediment resulting from construction/alteration and development.

C. The Project complies with the applicable regulations and performance standards of the most recent version of the Massachusetts Department of Environmental Protection (DEP) Stormwater Management Policy and Standards.

D. The development and related activities shall maintain the after-development runoff characteristics as equal to or less than the pre-development runoff characteristics from the site in order to avoid flooding, stream bank erosion, siltation, nonpoint source pollution, property damage and to maintain the integrity of stream channels and aquatic habitats.

E. The Project is designed to minimize or avoid damages due to increases in volume, velocity, frequency, duration and peak flow rate of stormwater runoff. The project conforms to the general criteria of the Bylaw and Regulations to the maximum extent feasible.

F. The Plan establishes provisions for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety.

G. In addition to structural components, the Project design uses nonstructural stormwater management, stormwater better site design practices, and/or "low impact development practices", such as the use of bio-retention basins, to the maximum extent practicable.

H. The Project represents a two-phased project with Phase I the Eversource Transmission Reliability Project and Phase II the DCR Mass Central Rail Trail. Additional development upon the Project Site and Property that does not relate to the Project or the Plan may require separate approval and is not subject to this Permit.

I. The Stormwater Management Standards shall apply to the maximum extent practicable to footpaths, bike paths and other paths for pedestrian and/or nonmotorized vehicle access. The

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

Planning Board finds the completed Project as presented will meet the Stormwater Management Standards to the maximum extent practicable. After construction is complete, the 14-foot wide gravel path will be utilized by Eversource once every three years and the primary purpose of the path will be for a multi-use rail trail.

J. The proposed design will include best management practices and pre-treatment of runoff for water quality improvement. Erosion and sedimentation control are proposed on the Plan. Long term maintenance, operation and reporting will be required.

K. The Applicants have submitted a Stormwater Management and Erosion Control Plan and project description and Operation and Maintenance Plan, which are satisfactory.

THEREFORE, the Board hereby GRANTS the requested Stormwater Management Permit, as requested in the application and shown on the Plan, located in Sudbury, Middlesex County, Massachusetts, with the benefit of the following Plan modifications, conditions and limitations. The approval herein granted is based on the Plan as described above.

II. CONDITIONS AND REQUIREMENTS

The following conditions of this approval shall be strictly adhered to. Failure to adhere to these conditions or to comply with all applicable laws and Permit conditions shall give the Town the rights and remedies set forth in Section 12 of the Regulations.

A. Conformity: All construction at the Project Site shall be in substantial conformity with the Plan, which is on file with the Board, and representations made by the Applicant during the public hearing.

B. Access During Construction: The Applicant shall ensure safe and convenient vehicular access to the Project Site during the entire duration of the construction period. The Board and its representatives shall be permitted access to the Project Site to observe and inspect the site and construction progress until such time as the Project has been completed. When possible prior to Project Site access, reasonable advance notice will be made. Compliance with health and safety protocols for the Project Site will be followed.

C. Conditions prior to any vegetation removal, site disturbance, or construction activities:

1) The Applicant shall submit $10,000.00 for the purpose of the Town hiring a construction monitor to perform the inspections set forth in Section II. R. below for compliance with the stormwater management permit, design, and plans. If prior to completion of the Project, the Board finds that this initial deposit is not sufficient to cover actual costs incurred by the Town for these purposes, the Applicant shall be required to submit forthwith such additional amount as is deemed required by the Board to cover such costs. If the actual cost incurred by the Town for such purposes is less than the amount on deposit as specified above, the Board shall authorize that such excess amount be refunded to the Applicant concurrently upon issuance of a Certificate of Completion.

2) The Project will disturb more than one acre of land and is therefore required to obtain coverage under the Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Construction General Permit. Draft Stormwater Pollution Prevention Plans (SWPPP) have been included in the application. The draft SWPPP includes recommended construction period pollution prevention and erosion and sedimentation

TOWN CLERK
SUDBURY, MASS.
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Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

controls. For each Project Phase, the final SWPPPs with all applicable attachments shall be submitted to the Board for review and approval prior to commencement of any work in connection with the Project. If a response is not received within 10 days of receipt, the Plan shall be deemed approved. All work on the Project Site shall be conducted in accordance with the requirements of those permits and plans. Any changes made to the SWPPP during the course of the project shall be submitted and approved by the Planning Board or its representative prior to implementation.

3) Erosion control methods shall be installed as shown on the Plan and any updates shall be provided to the Planning Board's representative as work progresses on the Project Site.

4) A performance bond shall be submitted and held by the Planning Board until the paved rail trail, multi-use path is constructed, the Premises are fully stabilized with vegetation, and the stormwater structures have been cleaned and deemed functional by the Director of Public Works. The initial bond amount shall be established by the Town Engineer and may be adjusted at the discretion of the Town Engineer based on a detailed estimate provided by the Applicant. The bond amount may be reduced as progress is made during construction subject to review by the Town Engineer and approval of the Planning Board

5) The Applicant shall provide for review and approval by the Planning Board or a representative a construction schedule detailing construction activities and sequencing, that limits the area of the Site disturbed at any one time to the extent possible to mitigate environmental impacts and risk of erosion. If a response is not received within 10 days of receipt, the Schedule shall be deemed approved. The schedule shall be updated as necessary throughout construction and provided to the Planning Board.

6) At least two weeks prior to any land disturbance, a structural engineer shall inspect the culverts and drainage structures within the Project Site to determine whether they are structurally sound to (a) function hydrologically and (b) withstand the planned construction activities and shall provide a report of the findings to the Planning Board. If any culvert does not meet these requirements or is damaged during construction, it shall be replaced with a culvert that meets current MA Stream Crossing Standards to the maximum extent practicable, as determined by the Sudbury Conservation Commission or its Agent. Any recommended improvements to these structures, not included in this Permit, shall be required to submit a separate permit application and/or permit amendments for further evaluation.

7) This Decision and the Operations and Maintenance Plan shall be recorded in the Middlesex South District Registry of Deeds, within the chain of title of the affected property. The recording information shall be submitted to the Planning Board.

8) An Illicit Discharge Compliance Statement, signed by the Applicant, shall be submitted to the Planning Board.

9) The Soil and Groundwater Management Plan (SGMP) prepared in conjunction with the selected contractor and meeting the requirements of the Sudbury Conservation Commission as conditioned in the Order of Conditions shall be submitted to the Planning Board.

10) A Project Compliance Manual shall be submitted to the Planning Board for review and approval. The document shall include the requirements for compliance with the various permits for the Project, including this Decision and Conditions herein. If a response is not received from the Planning Board or its representative within 10 days of receipt, the Project

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

Compliance Manual shall be deemed approved.

11) The Applicant shall provide to the Planning Board copies of both the executed Memorandum of Understanding between Eversource and Department of Conservation and Recreation and the lease agreement between Eversource and the MBTA to ensure the obligations of the project are fulfilled.

12) The project engineer, contractors, and all subcontractors must be informed of the conditions in this Decision.

D. A Stormwater Construction Site Inspection Report (Stormwater Pollution and Prevention Plan Inspection Report) shall be generated by the Applicant or its representative for this Project, at a minimum, every two weeks during construction, and after every major storm event.

E. Access to the drainage structures for inspection and maintenance shall be kept clear of obstruction.

F. Additional soil testing shall be conducted during construction in the vicinity of "areas of increased infiltration" to verify soil conditions, infiltration rates, and groundwater levels. At a minimum, soil tests shall be conducted in the vicinity of Station 502+00, Station 511+00, Station 570+00, and Station 579+00. A report of the findings, comparison with expectations, and a statement on the appropriateness of the design shall be provided to the Planning Board by the design engineer for review. If findings are not consistent with the assumptions made for the stormwater management design, revisions to the design and approval of modifications to the Plan may be required.

G. Construction reports with a summary of past week activities and look ahead at anticipated activities with advanced notification of anticipated phasing transitions shall be provided to Planning and Community Development on a weekly basis. On-site meetings shall be provided throughout construction, as needed and indicated by the Planning and Community Development Environmental Planner. Site stabilization measures should be reviewed for adequacy and adjustments to the sediment and erosion control plan may be considered to optimize site stabilization. Reports shall include the location of active stockpiles with confirmation that appropriate erosion control measures are being implemented.

H. Soil stockpiles shall be covered with tarp or plastic sheet and surrounded by erosion controls.

I. Responsibility of sediment and erosion control will depend on project phasing.

1) During Phase I, Eversource shall be responsible for installing and maintaining erosion controls within the project site. Eversource may remove erosion controls from areas restored and revegetated as part of Phase I work if the Planning Board representative has inspected those areas and confirmed they are stabilized sufficiently. In the period between Phase I and Phase II, any erosion controls removed in areas that have been properly stabilized shall be reinstalled prior to commencement of Phase II.
2) During Phase II, DCR shall be responsible for installing and maintaining erosion controls on the Project Site during the performance of all Phase II construction activities, which may include utilizing erosion controls that were installed and maintained by Eversource if those erosion controls remain in proper condition and demarcate the limit of Phase II work. Otherwise, DCR shall install new erosion controls as required for Phase II, including in any restored and revegetated areas where Eversource was authorized to remove erosion controls.
3) Following completion of Phase II and inspection by a Planning Board representative, DCR shall be responsible for removal of all erosion control barriers.

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

J. Proposed infiltration basins shall not be used as sediment basins during construction. Additional erosion controls shall be installed to protect infiltration basins from sedimentation until contributing areas are stable.

K. Evaluation of appropriate screening for adjacent properties has not been completed. Alterations to the Landscape Plan shall be submitted to Planning and Community Development for review and approval. If a response is not received within 10 days of receipt, the Plan shall be deemed approved.

L. Native plants should be used for plantings throughout the site.

M. All equipment, including timber mats, shall be cleaned and certified invasive species free, prior to entering the site. Such certification shall occur prior to commencement of mobilization into the site and when remobilized within the project site. All areas of disturbance shall be monitored for invasive species, which shall be manually removed if encountered.

N. The Applicant, DCR, and its successors and assigns shall be responsible for maintaining the stormwater management system for the development in accordance with the Operation and Maintenance (O&M) Plan submitted and applicable DEP regulations. An annual Operation and Maintenance inspection shall be conducted by a certified inspector who will prepare an annual status report for delivery to the Board demonstrating compliance with the O&M Plan. Revisions to the O&M Plan may be proposed to and accepted by the Planning Board or its representative.

O. The following source control and pollution prevention measures shall be employed on the site to prevent contamination of stormwater runoff:

1) Debris shall be removed from the paved path regularly, ideally swept with a vacuum or regenerative air sweeper.
2) Measures shall be taken to control litter on the site.
3) No chemicals or hazardous wastes shall be stored on the property.
4) Slow release nitrogen and low phosphorus fertilizers shall be applied sparingly to prevent wash off.
5) No fertilization, herbicide, or pesticide application shall occur within any vernal pool, vegetated wetland or waterway. Eversource, as part of their operations, shall not conduct fertilization, herbicide, or pesticide application. DCR shall not use herbicides within any vernal pool, vegetated wetland or waterway. Invasive species removal by DCR will be by mechanical means when possible and spot treatments of herbicide by a licensed applicator when other approaches are not effective. This Condition is ongoing and does not expire with the expiration of the Order of Conditions or the issuance of a Certificate of Compliance.
6) Hazardous wastes shall be used and disposed of properly.
7) No vehicle washing shall be allowed on the property.
8) Vehicles shall be maintained and clean up fluid spills/drips shall occur with absorbent materials immediately.
9) Personnel shall be educated on implementation of spill abatement and containment procedures.
10) No de-icing products shall be used on the site.
11) No coal tar-based pavement sealants are to be used on site.

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

P. If developed by DCR, and as approved by the Department of Agricultural Resources, any Vegetation Management Plan/Integrated Pest Management Plan shall be submitted to the Planning Board annually, and if chemicals will be used, the Board shall be notified in advance.

Q. The Applicant, DCR, has indicated no snow and ice management will occur on the multi-use path and such operations are not included in this permit. Any change to snow and ice operations shall require a modification to the permit. As needed during construction, the Applicant shall designate areas for snow storage in upland locations where meltwater can drain onto pervious surfaces away from water resources, infiltration BMPs, bio-retention areas, and wells.

R. Inspections: In accordance with Section 9.B of the Regulations, the Board, or its designee, may inspect the Project Site at the following stages, at a minimum. The Applicant shall inform the Board of these stages in construction at least two days prior to commencement or completion, whichever is applicable, for scheduling of an inspection:

1) Pre-Construction Site Inspection – prior to commencement of construction for each Project phase, during which the construction schedule and acceptance of erosion control barriers can be finalized.
2) Erosion and Sediment Control Inspection – to ensure erosion control practices during and after construction are in accordance with the approved Plan.
3) Construction Inspection – multiple inspections will be made of the stormwater management system facilities, including but not limited to infiltration systems, BMPs, and connections to existing pipes, prior to backfilling of underground drainage or stormwater conveyance structures. It is recommended the Planning Boards designee inspect all permanent stormwater infiltration BMPs for acceptance prior to construction demobilization to a new location within the ROW. The Applicant and Planning Board designee will develop and agree to an inspection plan at the Pre-Construction Site Inspection.
4) Phase I Completion Inspection - after Phase I has been constructed, once the as built plan is prepared, and before partial Certification of Completion is issued.
5) Final Inspection – after the Phase II has been constructed, once the final as built plan is prepared, and before the final Certificate of Completion has been issued.

S. As-built Plan: The Applicant shall submit an as-built plan, containing all elements listed in Section 11.A.2 of the Regulations, to the Board upon completion of this Project and prior to the issuance of the Certificate of Occupancy. The plan shall be signed by a land surveyor or other qualified professional. A registered engineer shall certify that the work has been completed in accordance with the approved Plan and the Stormwater Management Permit.

1) Since the project is phased, the submission of current status, as-built plans shall be presented at the phasing transition
2) Following completion of Phase I, Eversource shall request a Partial Certificate of Completion. This Request shall be accompanied by as-built plans, stamped by a professional land surveyor or other qualified professional, detailing all elements of Phase I including all stormwater management elements, post construction structural report, and affidavit from all site professionals that all aspects of this Decision were adhered to. Any deviations from the approved plans shall be specifically called out on the as-built plan. Vegetation outside the limit of work shall also be evaluated to confirm no negative impacts occurred outside the limit of work.

T. No use or occupancy (except in connection with the construction activity authorized by this Permit) shall be conducted on the Project Site until a Certificate of Completion is issued by the Board in accordance with Section 11.0 of the Regulations. A Partial Certificate of Completion will be issued

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

upon the satisfactory completion of Phase I. To the extent that the requirements of this Permit have been met with respect to such completed phase of the Project on the Project Site, the Board may permit the use and occupancy of the completed phase in accordance with Section 11.0 of the Regulations.

U. It is DCR's intention to initiate Phase II as soon as possible following completion of Phase I. Should Phase II not commence within three years of completion of Phase I, the Applicant shall file an Amendment to bring the stormwater management into full compliance with the Town of Sudbury Stormwater Regulations.

V. The Planning Board shall be notified, in writing, within forty-eight hours of any transfers of title on this property. In the event the Property ownership or trail, multi-use path management transfers to a non-public entity, a covenant requiring maintenance of the stormwater management system in accordance with Best Management Practices and the Operation and Maintenance Plan shall be recorded on the Project Site. This covenant shall allow for the placement of municipal liens on the Project Site if the Applicant fails to maintain the system and the Town needs to do so. The Town shall be granted an easement to access the site in case emergency maintenance is needed. The Applicant shall submit the covenant for review and approval of the Select Board prior to recording at the Middlesex South District Registry of Deeds. A template will be provided by the Town.

W. The culverts and drainage structures shall be inspected at least annually and cleared of debris as needed. If culverts become damaged or no longer function as required, they shall be replaced according to most current MA Stream Crossing Standards to the maximum extent practicable, as determined by the Sudbury Conservation Commission or its Agent. Any recommended improvements to these structures, not included in the application for this Permit, shall be subject to a separate permit application and/or permit amendments for further evaluation.

X. The corridor and all components of the stormwater management system shall be maintained in compliance with the Mass Central Rail Trail (MCRT) – Wayside Section Stormwater Management System Operation and Maintenance Pan (O&M) and the Long Term Pollution Prevention Plan.

Y. The Project is subject to an Energy Facility Site Board (EFSB) Decision (EFSB 17-02/D.P.U. 17/82/17/83). Since this EFSB Decision is currently under Appeal by the Town of Sudbury, any changes to the project as a result of the appeal process may cause the need for project modifications to undergo further review by the Planning Board, in which case the applicant shall return to the Board to seek the necessary modifications.

Z. Violation of Conditions: Violation of any of the conditions of this Stormwater Management Permit may be grounds for revocation of this Permit, or of any building or occupancy permit granted hereunder, or both. In the case of violation of the continuing obligations of this Permit, the Town shall notify the Owner and Applicant of such violation and give the Owner and Applicant reasonable time, not to exceed thirty days, to cure the violation. If at the end of said thirty-day period, the Applicant has not cured the violation, or, in the case of violations requiring more than thirty days to cure, has not commenced the cure and prosecuted the cure expeditiously, the Board may, after notice to the Applicant or owner of the Project Site, conduct a hearing in order to determine whether the failure to abide by the conditions contained herein should result in revocation of the Permit. As an alternative, the Town may enforce compliance with the conditions of this Permit by an action for injunctive relief before any court of competent jurisdiction. The Applicant agrees to reimburse the Town for its reasonable costs in connection with the enforcement of the conditions of this Permit.

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

AA. The Applicant by accepting this Permit warrants that the Applicant has included all relevant documentation, reports, and information available to Applicant, in the application submitted and that this information is true and valid to the best of the Applicant's knowledge.

BB. If the project requires an Earth Removal Permit, an application should be submitted to and permit issued by the Earth Removal Board prior to any site disturbance. The project also requires an Order of Conditions from the Sudbury Conservation Commission. Inconsistencies between plans approved by and conditions issued by other permitting authorities may require the Applicant to return to the Planning Board to review and approve the modifications.

III. LIMITATIONS

The authority granted to the Applicant by this Permit is limited as follows:

A. Applicability of Permit: This Permit applies only to the proposed construction of a new 115-kV underground transmission line and a multi-use path within an existing inactive railroad right-of-way, which will require removal of the existing rails and ties; vegetation clearing; grading; installation of the underground transmission line, duct bank, and manholes; installing a 14-foot-wide gravel base; paving of the 10-foot-wide rail trail, multi-use path; installation of stormwater management features; and site restoration, on the Project Site, as shown on the Plan. This Permit does not apply to other portions of the Property. Construction of the Project shall be conducted in accordance with the terms of this Permit and shall be limited to improvements shown on the Plan referenced above as amended by the conditions of this Decision. Any change of use for the Project or change to the Plans shall require notice to the Board and may require a new or amended Stormwater Management Permit from the Board.

B. Limitations of Further Development: There shall be no further development, material increase in intensity of use, change in use as per the Sudbury Zoning Bylaw, modification of the approved development plan of the Project without either a new Permit or the written consent of this Board. This does not absolve the Applicant from securing any permits required by other governmental boards, agencies or bodies having jurisdiction related to water quality or quantity.

C. Other Permits or Approvals: This decision applies only to the requested Stormwater Management Permit. Other permits or approvals required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.

D. Bylaw Compliance: The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all inclusive or to negate the remainder of the Bylaw.

E. Lapse of Permit: Should the land-disturbing activity approved under this Permit not begin within 12 months following Permit issuance, the Board may evaluate the existing stormwater management plan to determine whether the plan still satisfies local program requirements and to verify that all design factors are still valid. If the Board finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the commencement of land-disturbing activities. If the Project associated with an approved Stormwater Management Permit granted under the Bylaw has not been substantially completed within three years of Permit issuance, a new Permit or a Permit extension will be required by the Board.

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

F. Appeals: Any person aggrieved by this decision may appeal pursuant to the General Laws, Chapter 249, Section 4.

The provisions of this Permit shall be binding upon every owner or owners of the lots and the executors, administrators, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with the land, as shown as the Property on the Subdivision Plan, in full force and effect for the benefit of and enforceable by the Town of Sudbury.

This Permit shall not take effect until a copy of this Decision has been recorded with the Middlesex South District Registry of Deeds and until a certified copy of the recorded document is submitted to the Board.

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

Witness our hands this 27th day of January, 2021.

SUDBURY PLANNING BOARD

Stephen Garvin, Chair

Charles Karustis, Vice Chair

John Hincks, Clerk

Justin Finnicum

John Sugrue

A TRUE COPY, ATTEST:
Bett R.
TOWN CLERK

2021 FEB -3 PM 2:59

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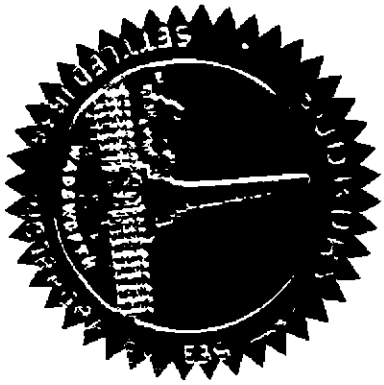
This is to certify that no notice of an appeal against the Planning Board's Stormwater Management Permit Decision for 183 Boston Post Road, SWMP #20-07, was filed in the Town Clerk's office within 60 days after such decision was filed on February 3, 2021.

A True Copy Attest:

Rose M. Miranda
Assistant Town Clerk

June 29 2021
Date



Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

MassCentral Rail Trail (MCRT) – Wayside Section
Stormwater Management System
Operation and Maintenance Plan (O&M)
and
Long Term Pollution Prevention Plan (LTPPP)

June 2020
(Revised April 2021)

This Stormwater Management System Operation and Maintenance Plan provides for the inspection and maintenance of structural Best Management Practices (BMPs) and for measures to prevent pollution associated with the Stormwater Management System on the MassCentral Rail Trail Wayside Section (in Hudson, Stow and Sudbury).

This document has been prepared in accordance with the requirements of the Stormwater Regulations included in the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.05(6)(k)).

Figure of stormwater management features is attached.

Responsible Party

Department of Conservation and Recreation (DCR) office will be responsible for the maintenance of the shared-use facility and associated stormwater management features, in accordance with DCR standards. The facility will be maintained by DCR maintenance staff from:

DCR's Maintenance Facility
Hopkinton Complex
164 Cedar St,
Hopkinton MA 01748
Jeff Cate
Field Operation Team Leader
(508) 435-4303

Maintenance Measures

The stormwater management system covered by this Operation and Maintenance Plan consists of the following components:

- Swales – Dry with check dams
- Areas of increased infiltration
- Drainage structures
  Hudson
  - Sta. 119+25 LT – Catch basin (Str 3)
  - Sta. 119+25 RT – Headwall (Str 4)
  - Sta. 119+25 – 18" RCP - New crossing drainage pipe

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- Sta. 119+45 - 6' by 6' Conc. Box - Cattle Crossing
- Sta. 126+70 RT – Catch basin (Str 5)
- Sta. 126+70 LT – Headwall (Str 6)
- Sta. 126+70 – 24" DIP – New crossing drainage pipe
- Sta. 182+55 RT – Catch basin (Str 8)

Sudbury

- Sta. 368+84 - 2' by 2.5' Stone Box (Drainage Structure 129A)
- Sta. 410+25 - 2' by 2' Stone Box (Drainage Structure 127J)
- Sta. 517+96 - 1' by 2' Stone Box (Drainage Structure 127I)
- Sta. 521+64 - 1.5' by 3' Stone Box (Drainage Structure 127H)
- Sta. 527+30 - 2' by 2' Stone Box (Drainage Structure 127G)
- Sta. 530+80 RT – Catch basin (Str 9)
- Sta. 533+46 RT – Flared End Section (Str 10)
- Sta. 713+63 LT – Headwall (Str 12)
- Sta. 713+63 RT – Headwall (Str 13)
- Sta. 577+31 - 1' by 2' Stone Box (Drainage Structure 127D)
- Sta. 704+56 - 24" Cast Iron (Drainage Pipe 127B)
- Sta. 713+63 - 24" Cast Iron (Drainage Pipe 127A)
- Sta. 738+77 - 18" Cast Iron (Drainage Pipe 126D)
- Sta. 752+17 - 12" Corrugated Metal (Drainage Pipe 126A)

DCR Operations to maintain swales and the drainage pipes.

DCR Engineering to maintain listed catch basins, flared end section, headwalls, drainage pipes. Engineering can assist with blocked culverts if major blockage or structural concern.

Maintenance of these components will be conducted biannually at a minimum in accordance with DCR standard maintenance practices, as noted in the attached Operation and Maintenance table summarizing the pertinent inspection and maintenance activities.

DCR Operations will also inspect and clear culverts conveying streams as needed. Inspection will identify any deterioration of headwalls, culverts, bridge structures, abutments and erosion. Any identified issues will be immediately brought to the attention of DCR Engineering.

- Stream culverts/bridges
  Hudson
  - Sta. 107+92 – 2' by 3' stone box (Culvert 132A)
  - Sta. 148+81 – Fort Meadow Brook Bridge (Bridge 132)
  - Sta. 206+10 – 24" Clay Culvert (Culvert 129C)

  Sudbury
  - Sta. 400+31 – Hop Brook Bridge (Bridge 132)
  - Sta. 539+40 – Twin 36" Corrugated Metal – Dudley Brook (Culverts 127F)
  - Sta. 560+82 - 3'x2' Concrete Box (Culvert 127E)
  - Sta. 593+18 - 2'x2' Stone Box (Culvert 127C)
  - Sta. 747+39 - 2.5'x2' Stone Box (Culvert 126B)

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

- Sta. 764+60 - 12" Reinforced Concrete (Culvert 125B)
- Sta. 725+31 – Hop Brook Bridge (Bridge 130)

If inspection indicates the need for major repairs of structural components, the inspector should contact the DCR maintenance supervisor to initiate procedures to effect repairs in accordance with DCR standard construction practices.

Practices for Long Term Pollution Prevention

In general, long term pollution prevention and related maintenance activities will be conducted consistent with DCR's NPDES Stormwater MS4 Permit(s), and the measures outlined in the Stormwater Management Plans (SWMP). Information about the DCR permit and the SWMP are available at the following website:

http://www.mass.gov/eea/agencies/dcr/conservation/stormwater-mgmnt/

For the facilities covered by this Operation and Maintenance Plan, long term pollution prevention includes the following measures:

Litter Pick-up
DCR will conduct litter pick-up from the stormwater management facilities in conjunction with routine maintenance activities.

Routine Inspection and Maintenance of Stormwater BMPs
DCR will conduct inspection and maintenance of the stormwater management practices in accordance with the guidelines discussed above.

Spill Prevention and Response
DCR will implement its standard response procedures in the unlikely event of releases of significant materials such as fuels, oils, or chemical materials onto the ground or other areas that could reasonably be expected to discharge to surface or groundwater.

- Reportable quantities will immediately be reported to the applicable Federal, State, and local agencies as required by law. The applicable DCR office should also be notified.
- Applicable containment and cleanup procedures will be performed immediately. Impacted material collected during the response must be removed promptly and disposed of in accordance with Federal, State, and local requirements. A licensed emergency response contractor may be required to assist in cleanup of releases depending on the amount of the release and the ability of the responsible party to perform the required response.
- Reportable quantities of chemical, fuels, or oils are established under the Massachusetts Contingency Plan (MCP) and enforced through MassDEP.

Maintenance of Landscaped Areas
DCR will mow and/or weed whack the shoulders adjacent to the rail trail bi-weekly or as needed between Memorial Day and Columbus Day. Outside of the 2-foot shoulders, DCR will mow the 5-foot herbaceous area over the duct bank no more than once annually. Outside of the 19-foot

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

maintained area (paved rail trail, 2-foot shoulders on either side and 5-foot area over the duct bank) woody vegetation will be allowed to naturally revegetate and DCR will not implement vegetation management unless it poses a risk to MCRT users The vegetated shoulders/slopes outside the maintained area will help to disperse and infiltrate disconnected drainage although no stormwater management benefit is identified. The swales and areas of increased infiltration outside of the 19-foot area will be inspected and mowed as needed or biannually at a minimum to maintain proper water quality treatment function. If maintenance activities anywhere disturb the ground and removes the vegetated surface, the disturbed area will be restored with loam and seed to reestablish a vegetated surface.

Per the Sudbury Order of Conditions, Condition VI j, in Sudbury grass cuttings, leaves or twigs and sticks will not be blown off the paved path within 25 feet of a vernal pool. Pavement markers have been installed to indicate the 25-foot offset from a vernal pool.

Eversource inspection vehicles will use the paved MCRT to access the transmission line facility approximately once every three years, or as needed for maintenance of the transmission line.

Within the Priority Habitat areas, the vegetation will not be trimmed lower than 10 inches along the shoulders or over the duct bank.

Fertilizers will not be used.

If DCR finds it necessary to use chemical treatment for invasive species vegetation control, this work will be done in compliance with MDAR regulations at 333 CMR 11.00, which will limit impacts to sensitive areas such as groundwater and drinking water wells. If needed in the future, the DCR will develop a Yearly Operational Plan regarding vegetation maintenance along their bike path and recreational corridors, which will include the MCRT.

Erosion Control

Portions of the MCRT are on elevated former railroad embankment with steep side slopes. Review the MCRT alignment for any evidence of erosion on slopes, within swales, at check dams or at inlets and outlets of drainage pipes or stream culverts during the biannual inspection of the corridor and the stormwater BMPs. If erosion is observed, note on the inspection form. Include the location and extent of erosion (width and length), which side of the path or pipe/culvert, if the erosion is toward or away from the path, and if any resource areas are at risk of impact. Include photographs is possible. Note location on the attached figure as accurately as possible. Notify the Field Operations Team Leader.

Any observed erosion will be repaired, and reseeded or otherwise stabilized as needed to prevent continued erosion. Notify the local conservation commission if erosion impacts a resource area or requires reconstruction within a resource area or within 100 feet of a resource area. A regulatory filing may be required.

Snow and Ice Management

There are no plans for snow and ice removal, nor de-icing (i.e., sanding, salting) of the bike path surface during winter months.

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Prohibition of Illicit Discharges

The DEP Stormwater Management Standards prohibit illicit discharges to the storm water management system. Illicit discharges are discharges that do not entirely consist of stormwater, except for certain specified non-stormwater discharges.

Discharges from the following activities are not considered illicit discharges:

- firefighting
- water line flushing
- landscape irrigation
- uncontaminated groundwater
- potable water sources
- water used to clean residential buildings without detergents
- foundation drains
- footing drains
- individual resident car washing
- flows from riparian habitats and wetlands
- dechlorinated water from swimming pools
- water used for street washing
- air conditioning condensation

There are no known or proposed illicit connections associated with this project. If a potential illicit discharge to the facilities covered by this plan is detected (e.g., dry weather flows at any pipe outlet, evidence of contamination of surface water discharge by non-stormwater sources), the DCR shall be notified for assistance in determining the nature and source of the discharge, and for resolution through DCR's IDDE program.

Public Access

The MCRT Wayside Section is a public access facility. The facility is typically open dawn to dusk every day. Members of the Sudbury Planning Board or Conservation Commission are free to access the rail trail at any time the facility is open. Periodically the facility may be closed for maintenance construction (repairs, resurfacing, etc.) and for the safety of the public, access to the rail trail will be restricted.

Lease/Easements

The DCR holds a lease for construction and operation of the MCRT over the Massachusetts Department of Transportation – MBTA rail corridor. Within the rail corridor there are the following existing easements or license agreements by others:

- NSTAR Electric Company d/b/a Eversource Energy ("Eversource") to construct and operate the transmission powerline.
- Sudbury Lumber for access and storage of materials (off Union Avenue).
- Tennessee Gas Transmission Company to install and operate an underground natural gas transmission pipeline (east of Marlborough/Hudson town line).
- Town of Sudbury (east of Route 20 – building license).
- Douglas P. Webb lease for South Sudbury Station (off Union Avenue).

Record Keeping

The DCR shall maintain an operation and maintenance log for the inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location). The maintenance Inspection checklists shall be maintained and be made available for review by the MassDEP or Conservation Commissions or staff on request

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource
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Appendix: MCRT Maintenance and Best Management Practices: Operation & Maintenance Measures Schedule

Maintenance Practice or Best Management Practice[1]	Sweep	Mow	Inspect	Clean	Repair
Shoulder Maintenance (2-foot area either side of pavement)	As needed	Biweekly or as needed during growing season	Biweekly	As needed	As needed
Over duct bank[1] (5-foot area outside shoulders)	N/A	Once yearly in fall	Yearly	As needed	As needed
Pavement Surface	As needed[2]	N/A	Biweekly	As needed[2,3]	As needed
Swales[1]	N/A	Mow swales as needed or biannually (minimum)	Biannually at a minimum	As needed	As needed
Check Dams[1]	N/A	String trim as needed (Not to be mowed) or biannually (minimum)	After every significant rainfall event	As needed	As needed
Areas of increased infiltration[1]	N/A	Mow or string trim as needed or biannually (minimum)	Biannually at a minimum	As needed	As needed
Drainage structures	N/A	NA	Biannually at a minimum	As needed	As needed

[1]If mowing occurs between April 1 and November 1, then areas within mapped priority habitat for state-listed turtles will require "turtle sweeps" by trained individuals ahead of the mower and mower deck heights shall be set lower than 10 inches above the ground or string trimmers can be used.
[2]No blowing of grass clippings, leaves or twigs and sticks within 25 feet of a vernal pool. Pavement markers indicate 25 feet from a vernal pool.
[3]Snow removal will not be conducted.

MCRT Best Management Practices – Inspection and Maintenance/ Evaluation Checklist

Best Management Practice	Inspection Frequency	Date Inspected	Inspector	Minimum Maintenance and Key Items to Check	Cleaning/Repair Needed	Date of Cleaning/Repair	Performed by
Swales	Biannually at a minimum			• Accumulated sand and sediment • Accumulated debris • Erosion of swale • Mow biannually (minimum)	☐yes ☐no ☐yes ☐no ☐yes ☐no ☐yes ☐no		
Check Dams	After significant rain fall events			• Accumulated sand and sediment • Accumulated debris • Erosion of surface • Cut grass biannually (minimum) (string trimmer)	☐yes ☐no ☐yes ☐no ☐yes ☐no ☐yes ☐no		
Areas of increased infiltration	Biannually at a minimum			• Accumulated sand and sediment • Mow as needed or biannually (minimum)	☐yes ☐no ☐yes ☐no		
Drainage structures, drainage pipes and stream culverts	Biannually at a minimum			• Accumulated sand and sediment • Floatable/Trash • Inlets free of debris • Damage to headwalls or wingwalls	☐yes ☐no ☐yes ☐no ☐yes ☐no ☐yes ☐no		
Erosion (Provide location and detailed description in notes below. Include photographs)	Biannually at a minimum			• Slope erosion observed • Erosion within a swale or at check dam • Erosion/Siltation onto the path surface • Erosion/Siltation away from the path surface • Erosion at a drainage pipe or stream culvert	☐yes ☐no ☐yes ☐no ☐yes ☐no ☐yes ☐no ☐yes ☐no		

Notes on Stormwater / Drainage / Erosion Issues:

_____

_____

_____

Stormwater Control Manager _____

Figure of Stormwater BMPs Attached

Attachment5.f: Eversource MCRT SWMP 210127 Recorded (5418 : Updates related to Eversource transmission line project)

07/28./
5.g

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2084CV00151

Notice sent
07.28.21 (NJ)
- KPL/C.Y.P., D.C.B.
- OAG/P.O.C.,
- KW/B.P.F., D.S.R.

TOWN OF SUDBURY

vs.

KATHLEEN THEOHARIDES, in her capacity as SECRETARY OF THE EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS & another[1]

MEMORANDUM OF DECISION AND ORDER
ON CROSS MOTIONS FOR JUDGMENT ON THE PLEADINGS

The town of Sudbury ("Town") brings this action seeking a declaratory judgment, pursuant to G. L. c. 231A, that a certificate of compliance issued by the Secretary of the Executive Office of Energy and Environmental Affairs ("Secretary") to NSTAR Electric Company doing business as Eversource Energy ("Eversource") is invalid. The Secretary's certificate was issued in response to a final environmental impact report filed by Eversource to construct an underground electrical transmission line between electrical substations in Sudbury and Hudson. The Town challenges the adequacy of the environmental reviews conducted by Eversource pursuant to the Massachusetts Environmental Policy Act, G. L. c. 30, §§ 61-62H and its implementing regulations at 301 Code Mass. Regs. § 11.14 et seq. This matter is now before the Court on the parties' cross-motions for judgment on the pleadings pursuant to Mass. R. Civ. P. 12(c). For the reasons that follow, the Town's motion shall be **DENIED** and the Secretary's and Eversource's motions shall be **ALLOWED**.

[1] NSTAR Electric Company d/b/a Eversource Energy

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BACKGROUND

I. Massachusetts Environmental Policy Act

To put the factual background and the Town's claims in context, the Court begins with an overview of the Massachusetts Environmental Policy Act ("MEPA"), G. L. c. 30, §§ 61-62H, and its implementing regulations. Together, MEPA and the regulations promulgated thereunder "establish a process to ensure that State permitting agencies have adequate information on which to base their permitting decisions, and that environmental impacts of the project are avoided or minimized." *Brockton* v. *Energy Facilities Siting Board (No. 1)*, 469 Mass. 196, 201 n.12 (2014), citing G. L. c. 30, §§ 61, 62C, fourth par.; 301 Code Mass. Regs. § 11.00 (2013). "Although MEPA, by its terms, only applies to the actions of State agencies or other public bodies, private development '[p]roject[s]'. . . fall within the scope of MEPA's jurisdiction where any party 'seeks the provision of financial assistance by an agency, or requires the issuance of a permit by an agency.'" *Ten Persons of the Commonwealth* v. *Fellsway Dev. LLC*, 460 Mass. 366, 368-369 (2011), quoting G. L. c. 30, § 62.

"Pursuant to MEPA, a project proponent requiring a permit from a State agency files an environmental review notification form (ENF) with the Secretary . . . ." *Brockton*, 469 Mass. at 201 n.12, citing G. L. c. 30, § 62A; 301 Code Mass. Regs. § 11.06. "[T]he Secretary then analyzes the project to determine if it meets or exceeds any of several 'review thresholds' enumerated at 301 Code Mass. Regs. § 11.03." *Ten Persons of the Commonwealth*, 460 Mass. at 369. "There are two categories of review threshold: those that require the filing of an ENF and a mandatory [environmental impact report ("EIR")] (e.g., alteration of ten or more acres of wetlands; generation of 3,000 or more vehicle trips on an existing roadway to a single location), and those that require the filing of an ENF, and 'other MEPA review [only] if the Secretary so

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requires' (e.g., disturbance to endangered species habitat; generation of 2,000 or more vehicle trips on an existing roadway to a single location)." *Id.*, quoting 301 Code Mass. Regs. § 11.03.

If the Secretary determines an EIR is required, she must "'limit the scope of the report to those issues which by the nature and location of the project are likely to cause damage to the environment.'" *Allen* v. *Boston Redev. Auth.*, 450 Mass. 242, 246 (2007), quoting G. L. c. 30, § 62A. "Further, '[t]he secretary shall determine the form, content, level of detail and alternatives required for the report.'" *Id.*, quoting G. L. c. 30, § 62A. "In accordance with G. L. c. 30, § 62B, an EIR shall contain statements describing 'the nature and extent of the proposed project and its environmental impact; all measures being utilized to minimize environmental damage; any adverse short-term and long-term environmental consequences which cannot be avoided should the project be undertaken; and reasonable alternatives to the proposed project and their environmental consequences.'" *Id.*

"Once an EIR (draft or final) is submitted to the Secretary, public notice of the availability of the EIR is issued and a thirty-day review period begins." *Id.* at 246-247, citing G. L. c. 30, § 62C. "During this time, any person or reviewing agency can submit written comments on the EIR to the Secretary, which then become part of the public record." *Id.* at 247.

After reviewing a draft EIR ("DEIR"), the Secretary has three options: (1) she may "determine that the [DEIR] is adequate, even if certain aspects of the Project or issues require additional description or analysis in a final EIR, provided that the Secretary finds that the [DEIR] is generally responsive to the requirements of 301 CMR 11.07 and the Scope;" (2) she may "determine that no substantive issues remain to be addressed" and "publish notice in the next Environmental Monitor that the [DEIR] shall be reviewed as a final EIR"; or (3) she may "determine that the [DEIR] is inadequate and require the Proponent to file a supplemental

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[DEIR] in accordance with 301 CMR 11.07." 301 Code Mass. Regs. § 11.08(8)(b) (2018). The regulations give the Secretary two options following her review of a final EIR ("FEIR"). The Secretary may "determine that a[n] [FEIR] is adequate, even if certain aspects of the Project or issues require additional analysis of technical details . . . ." or "determine that the [FEIR] is inadequate and require the Proponent to file a supplemental [FEIR] in accordance with 301 CMR 11.07." *Id.* § 11.08(c).

"The MEPA review process culminates with the Secretary's certification of a[n] [FEIR]." *Allen*, 450 Mass. at 247. "Certification under MEPA, however, 'does not constitute final approval or disapproval of a particular project, which ultimately is left to various permitting agencies.'" *Brockton*, 469 Mass. at 201 n.12, quoting *Allen*, 450 Mass. at 247. "Rather, the certificate signals that the Secretary, 'a disinterested public official with expertise in environmental matters,' has determined that the information-gathering process has been completed in accordance with MEPA." *Allen*, 450 Mass. at 247, quoting *Cummings* v. *Secretary of Envtl. Affairs*, 402 Mass. 611, 617 (1988). "Once the Secretary issues a certificate on a[n] [FEIR], those agencies, departments, boards, commissions, and authorities that are undertaking, funding, or permitting a proposed project use the information set forth in the EIR to assess the project's impact on the environment and to prevent or minimize and consequential damage." *Id.*, citing G. L. c. 30, § 61.

II. Factual Background

On May 15, 2017, Eversource submitted an ENF to the Secretary concerning a proposed project to construct an approximately nine-mile underground electrical transmission line between its substations in Sudbury and Hudson aimed at increasing the reliability and capacity of the regional electric transmission system (the "Project"). The ENF indicated that the Project would

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be constructed along an inactive railroad right-of-way ("ROW") on land owned by the Massachusetts Bay Transportation Authority ("MBTA"), which abuts land owned by the Town.

In the ENF, Eversource indicated that the Project would meet or exceed a mandatory EIR threshold to the extent it would involve the temporary alteration of one or more acres of bordering vegetated wetland. See 301 Code Mass. Regs. § 11.03(3)(a)(1). In response to a prompt on the standardized ENF form that asked Eversource to "[d]escribe the on-site project alternatives (and alternative off-site locations, if applicable) . . . and the reasons that they were not selected as the preferred alternative," Eversource wrote:

> The Company reviewed a variety of existing linear corridors including transmission line, highway, railroad, and pipeline ROWs; however, other existing ROWs were found to be impractical alternatives because they were either overly circuitous in connecting the Sudbury Substation and Hudson Substation or of insufficient width to construct a new transmission line. No feasible alternative was identified that would be allowed under current zoning.
>
> Eversource also considered several routing options along different roadways between the two substations, as well as construction of an overhead transmission line within the MBTA ROW. The overhead transmission line would require tree clearing along the full width of the ROW and result in significantly greater environmental impacts. Other roadway options, including routes located entirely n roadways, would result in greater impacts to the natural and/or developed environments than the proposed route. Through a detailed evaluation of the potential environmental impacts and cost of each route, the company determined that the proposed underground route will minimize environmental impacts while keeping the cost of the project as low as possible.

(Rec. Appx. Vol. I: 0008).

On June 12, 2017, Eversource submitted a corrected ENF after it determined that the "anticipated wetland alterations from the Project as presented in the ENF either [;] (1) incorrectly included buffer zones, causing an overrepresentation of the actual proposed wetland alterations, and/or (2) were presented in a manner that warrants clarification as to the extent of anticipated alterations." (Rec. Appx. Vol. I: 0123). Eversource determined that as a result, the Project did

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not meet or exceed a mandatory EIR threshold as it had initially indicated. Even so, in an effort "to be open and transparent" concerning the "potential environmental impacts of the Project," Eversource opted to seek MEPA review of the Project through the EIR process on a voluntary basis. (Id.).

On July 14, 2017, the Secretary issued a certificate on Eversource's ENF ("ENF Certificate"). In the ENF Certificate, the Secretary acknowledged that the Project was not required to file a mandatory EIR, but that Eversource was proceeding through the MEPA review process on a voluntary basis. The ENF Certificate also included a scope for a DEIR, which noted, *inter alia*, that Eversource had included a detailed alternatives analysis in a pending petition to the Energy Facilities Siting Board ("EFSB") but did not include one in its ENF. The Secretary thus stated that the alternatives analysis in Eversource's DEIR "should, at a minimum, analyze and include a supporting narrative" for certain alternatives to the Project. (Rec. Appx. Vol. I.:0231). The alternatives the Secretary identified included the No-Build Alternative, pursuant to which Eversource would not pursue any new facilities or resources but continue to rely on the existing system; the Non-Transmission Alternative, which would use alternative technologies, such as gas turbines and solar power, to provide additional energy at needed locations; the Alternative Transmission Solution, also known as the New England Power or "NEP" Alternative, which would consist of multiple projects constructed by National Grid doing business as New England Power Company; and alternative routes, including the "Noticed Alternative Route," *viz.*, a 10.3 mile transmission line within public roadways, and the "Noticed Variation," which would involve constructing an overhead, as opposed to underground, transmission line along the MBTA ROW.

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With respect to each alternative, the Secretary stated that the "DEIR should identify the criteria used to select the Preferred Alternative, should document why various alternatives were dismissed, and should identify how the Preferred Alternative will avoid, minimize and mitigate Damage to the Environment in accordance with MEPA regulations." (Id.). The Secretary further instructed Eversource to include in its DEIR, "a comparison of the environmental impacts associated" with the alternatives "and a summary table of anticipated wetlands, rare species, land alteration, public water supply protection areas, cold water fisheries, traffic, and construction period impacts." (Id. at 0232).

Eversource submitted its DEIR on October 27, 2017. On December 15, 2017, the Secretary issued a certificate approving the DEIR ("DEIR Certificate"), finding that it "adequately and properly complie[d] with MEPA and its implementing regulations." (Rec. Appx. Vol. IV: 2058). With respect to alternatives, the Secretary averred that the DEIR included an analysis of the alternatives cited in the ENF Certificate, finding that the No-Build, Non-Transmission, and Alternative Transmission Solution alternatives were dismissed because they would not provide sufficient reliability and/or have increased environmental impacts compared to the proposed Project. Turning to the DEIR's analysis of alternative routes, the Secretary noted that a table in the DEIR "demonstrate[d] that the Noticed Alternative would reduce tree clearing, wetland, rare species, and coldwater fishery resource impacts compared to the [Project]. . . . [but] would have greater construction period impacts, including traffic, to resident and commercial/industrial land uses, and would cost an addition $19.4 million compared to the [Project]." (Id. at 2063). The Secretary additionally observed that "[t]he DEIR indicated that the Noticed Variation would cost $46.8 million less to construct compared to the [Project] but would require increased wetland impacts and tree clearing compared to the [Project][]" and that the

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Project "was selected to achieve the best balance between cost and environmental impact while meeting the project's need." (Id. at 2064).

Last, the DEIR Certificate included a scope identifying additional information and analysis that should be provided in Eversource's FEIR. Therein, the Secretary stated that the FEIR "should include a comprehensive analysis of the project that demonstrates that the [Project] includes all feasible means to avoid Damage to the Environment, or the extent that Damage to the Environment cannot be avoided, that it includes measures to minimize and mitigate Damage to the Environment to the maximum extent practicable." (Id. at 2073). The Secretary also noted that it was "unclear why measures to avoid, minimize and mitigate wetland impacts were not specified commensurate with the level of project design achieved at this point." (Id. at 2075). To that end, the Secretary instructed Eversource to include "additional evaluation of impacts to rare species and wetland resource areas and . . . a comprehensive mitigation program." (Id. at 2059).

On July 26, 2018, Eversource submitted its FEIR. The FEIR included discussion of alternative construction methodologies and site design measures to further avoid and minimize Damage to the Environment, including reduction of the Project footprint in ways that would minimize environmental impacts (including impacts to wetland resource areas and vernal pools), reducing the limit of clearing, using a smaller construction platform, and using alternative construction equipment. The FEIR also stated that Eversource had consulted with experts who had determined the Project was not anticipated to result in impacts to coldwater fishery resources, and included an analysis of the potential for adverse effects to particular species and mitigation plans.

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On September 14, 2018, the Secretary issued a certificate approving the FEIR ("FEIR Certificate"), finding that it adequately complied with MEPA and its implementing regulations and "may proceed to permitting." (Rec. Appx. Vol. V: 2859). Even so, the Secretary noted that

> Comments from State Agencies identify aspects and issues of the project that require additional analysis during permitting. Comments from State Agencies do not request additional MEPA review. State Agencies and local Conservation Commissions have sufficient regulatory authority to address outstanding issues that are identified in this Certificate and these processes will provide additional opportunities for public review and comment.

(Id. at 2859-2860).

The Secretary also stated that comment letters had been submitted

> from legislators, municipal representatives, environmental advocacy groups, and residents which identify concerns regarding wetland resource and rare species impacts, soil and drinking water supply contamination, and impacts to historic/cultural resources. Many of these comment letters request additional consideration of the Noticed Alternative to avoid these impacts. I acknowledge and appreciate these concerns; however, the Scope for the FEIR did not require additional analysis of project alternatives and the purpose of MEPA review is to evaluate the environmental impacts of a proposed project in light of the Proponent's objectives. Identification of a project's purpose and need provides context for MEPA review and the alternatives analysis. MEPA requires that the Proponent identify environmental impacts, consider and analyze alternatives that could reduce environmental impacts and evaluate and adopt measures to avoid, minimize and mitigate Damage to the Environment. It does not prescribe to a Proponent what, where, or how a project should be designed or built.

(Id. at 2865).

The Secretary also briefly reviewed the alternatives analysis that had been set forth in the DEIR, reiterating that although the Noticed Alternative Route "would reduce tree clearing, wetland, rare species, and coldwater fishery resource impacts" compared to the Project, it would also "have greater construction period impacts, including traffic, to residents and commercial/industrial land uses, and would cost an additional $19.4 million." (Id. at 2864).

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DISCUSSION

I. Standard of Review

"The Secretary has broad discretion under MEPA to facilitate environmental planning for proposed projects that will require action by Commonwealth agencies." *Allen*, 450 Mass. at 254. "The 'informal and informational public consultation' permitted under EIR review and the Secretary's certification are not adjudicatory proceedings.'" *Id.*, quoting *Sierra Club* v. *Commissioner of the Dep't of Envtl. Mgmt.*, 439 Mass. 738, 747 (2003). "Nonetheless, '[t]he process by which the information is gathered, identified, and applied to the statutory standards under MEPA must be logical, and not arbitrary or capricious.'" *Id.*, quoting *Sierra Club*, 439 Mass. at 749. Therefore, the Court must consider whether the Secretary's certification of the FEIR "had a rational basis." *Id.* The Court is "mindful that appropriate deference must be given to the Secretary's expertise in environmental matters." *Id.*

II. Analysis

The Town argues that the Secretary's determination that the FEIR adequately complied with MEPA and its implementing regulations was arbitrary and capricious for three primary reasons. First, the Town argues that the FEIR failed to analyze the environmental consequences of any alternatives to the Project. Second, the Town contends that the Secretary improperly evaluated the cost of a feasible alternative as compared to its ability to avoid or minimize impact to the environment. Third, the Town argues that the FEIR Certificate lacks findings required by G. L. c. 30, § 61. The Court will address each of the Town's arguments in turn.

A. Environmental Consequences of Alternatives

The Town first argues that Secretary improperly found that the FEIR was adequate because the FEIR did not analyze alternatives that would avoid/mitigate environmental damage,

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including damage to protected wetlands resource areas, coldwater fishery resources, and adjacent vernal pool alternatives requirements. The Secretary and Eversource (together, "Defendants") concede that the alternatives discussed in the FEIR, viewed in isolation, may appear to be inadequate, but argue that the FEIR must be read together with the DEIR, which provides a robust analysis of alternatives. The Court agrees with the Defendants.

MEPA regulations state that "[t]he Secretary may limit the Scope of the [FEIR] to aspects of the Project or issues that require further description or analysis and a response to comments, instead of requiring a stand-alone document that meets of the form and content requirements for an EIR . . . provided that the draft *and* final EIRs shall present a complete and definitive description and analysis of the Project and its alternatives, and assessment of its potential environmental impacts and mitigation measures . . . ." 301 Code Mass. Regs. § 11.07(4) (2018) (emphasis added). Accordingly, the Secretary has the authority to limit the information included in the FEIR and must consider the information in the DEIR *and* the FEIR to decide whether MEPA requirements have been met. See *Allen*, 450 Mass. at 259 ("It is left to the discretion of the Secretary to decide specifically what project alternatives are appropriate for inclusion in a particular EIR . . . ."); *Enos* v. *Secretary of Envtl. Affairs*, 432 Mass. 132, 137 (2000) ("The record created during MEPA review (any draft and final EIRs, all public and agency comments, and the Secretary's certification or, presumably, failure to certify) provides the information for the agency's evaluation and subsequent § 61 findings."); *Boston Preservation Alliance, Inc.* v. *Secretary of Envtl. Affairs*, 396 Mass. 489, 494 (1986) ("General Laws c. 30, § 62A, specifically grants to the Secretary the authority to determine the form, content, and level of detail required in an EIR.").

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A fair reading of the DEIR at issue in this case reveals a robust analysis of each of the alternatives the Secretary identified in the ENF Certificate, including the mechanics of each alternative, associated cost, environmental impact, and why each alternative was ruled out, whether due to cost, reliability issues, logistical difficulties, and/or increased environmental harm. With respect to routing and design alternatives in particular, the DEIR stated that Eversource had initially identified twenty-one different route options that were subsequently narrowed down to twelve, and explained why it decided to remove nine of the initial twenty-one routes from consideration. The DEIR then demonstrated how Eversource evaluated and scored the twelve remaining routes based on environmental criteria, construction issues, reliability, and cost. Based on this analysis, the Preferred Alternative (the Project), Noticed Variation, and Noticed Alternative were identified as the best routes. The DEIR then compared the environmental impacts, abutting land uses, and costs associated with these three routes. The environmental impacts that were considered including tree clearing, wetland impacts, public water supplies, conservation lands, coldwater fishery resources crossings, rare species habitat, and the potential presence of contamination.

The Secretary found that the DEIR "adequately and properly" complied with MEPA, but issued a scope directing Eversource to produce an FEIR with a more comprehensive analysis of the Project establishing that Eversource would employ all feasible means to avoid and/or mitigate environmental harm, as well as additional evaluation of the Project's impact on rare species and wetland resource areas, and a comprehensive mitigation program. Significantly, and as the Secretary expressly noted in the FEIR Certificate, the scope set forth in the DEIR Certificate did *not* require Eversource to revisit its analysis of Project alternatives.[2] See 301 Code

[2] During oral argument on June 16, 2021, the Town argued that the DEIR Certificate required Eversource, "[a]t a minimum," to conduct a more through alternatives analysis to "avoid and minimize Damage to the Environment."

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Mass. Regs. § 11.07(6) (Secretary may issue scope indicating that particular information "shall not be included in the EIR"). The FEIR addressed the issues cited in the scope and additionally explained how Eversource determined that the Project was not anticipated to result in impacts to coldwater fishery resources. Based on the foregoing, the Town has failed to demonstrate that the Secretary's determination that the FEIR set forth a sufficient alternatives analysis was arbitrary and capricious. See *Allen*, 450 Mass. at 258, citing *Sierra Club*, 439 Mass. at 750 (MEPA does not require exhaustive search for alternatives); see also *Cambridge* v. *Civil Service Comm'n*, 43 Mass. App. Ct. 300, 303 (1997) ("A decision is arbitrary and capricious when it lacks any rational explanation that reasonable persons might support."). Compare *Allen*, 450 Mass. at 259 (Secretary's decision certifying FEIR was arbitrary and capricious where FEIR failed to consider alternatives that the Secretary had previously instructed project proponent to analyze).

B. Cost of Feasible Alternatives

The Town next argues that the Secretary inappropriately considered the costs of a project alternative to the extent the FEIR Certificate states that the Noticed Alternative Route would cost $19.4 million more than the Project. The Town argues that this finding renders the Secretary's determination arbitrary and capricious because it demonstrates the Secretary considered the costs of the Noticed Alternative to be more important than the mitigation of damage to the environment. This argument fails to persuade.

By way of this argument, the Town sought to imply that the DEIR Certificate required Eversource to conduct a more thorough analysis of alternatives to the Project. However, the language in the DEIR Certificate instructing Eversource to conduct a more thorough alternatives analysis does not refer to alternatives to the Project, but instead "alternative construction methodologies and site design measures," concerning the Project itself, including "additional reductions in roadway width and clearing, locating the majority of the duct bank within the footprint of the access road, jack-and-bore and/or horizontal drilling (HDD) at stream/culvert crossing, and use of smaller construction equipment to access clearing." (Rec. Appx. Vol. IV: 2074). The FEIR addresses these alternatives in detail.

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As set forth above, "[c]ertification under MEPA . . . 'does not constitute final approval or disapproval of a particular project, which ultimately is left to various permitting agencies.'" *Brockton*, 469 Mass. at 201 n.12, quoting *Allen*, 450 Mass. at 247. "Rather, the certificate signals that the Secretary, 'a disinterested public official with expertise in environmental matters,' has determined that the information-gathering process has been completed in accordance with MEPA." *Allen*, 450 Mass. at 247, quoting *Cummings*, 402 Mass. at 617. Accordingly, the Secretary could not have improperly weighed the cost of the Noticed Alternative Route because "weighing" the pros and cons of any project alternative fell outside the scope of her review. Rather, the Secretary's analysis of the Noticed Alternative Route was limited to whether Eversource had given it the consideration due under MEPA. See 301 Code Mass. Regs. § 11.07(6)(f) (prescribing requirements for description and analysis of alternative projects in EIR). The Secretary merely referenced the cost of the Noticed Alternative Route in a section of the FEIR Certificate summarizing the alternatives analysis that appeared in the DEIR and the reasons *Eversource* had cited for choosing the Project over the Noticed Alternative Route, alongside additional considerations, such as the impacts on the environment and the surrounding community.

Further, although MEPA regulations require EIRs to analyze the primary differences between project alternatives with particular regard to "potential environmental impacts," the regulations do not state that such analysis must focus *exclusively* on potential environmental impacts, and broadly require project proponents to discuss why particular alternatives are no longer under consideration. See 301 Code Mass. Regs § 11.07(6)(f). The Town does not cite any authority that indicates project proponents are prohibited from citing cost as reason an alternative is no longer under consideration, let alone authority that suggests the Secretary's

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reference to a project proponent's cost considerations in an FEIR certificate renders her decision arbitrary and capricious.

C. Required Findings

The Town last argues that the Secretary was required to make findings pursuant to G. L. c. 30, § 61, which "requires departments of the Commonwealth [to] 'review, evaluate, and determine the impact on the natural environment of all works, projects or activities conducted by them' and requires them to 'use all practicable means and measures to minimize damage to the environment.'" *Sierra Club*, 439 Mass. at 752, quoting G. L. c. 30, § 61. The Town contends that the repercussions of the Secretary's failure to make Section 61 findings are exacerbated by her finding that there are "outstanding issues" with the Project that will require additional analysis during the permitting process. The Town's reliance on G. L. c. 30, § 61 is misplaced.

MEPA regulations explain that "[i]n accordance with M.G.L. c. 30, § 61, any Agency that takes Agency Action on a Project for which the Secretary required an EIR shall determine whether the Project is likely, directly or indirectly, to cause any Damage to the Environment and make a finding describing the Damage to the Environment and confirming that all feasible measures have been taken to avoid or minimize the Damage to the Environment." 301 Code Mass. Regs. § 11.12(5) (2018). The regulations define "agency" as "[a]ny agency, department, board, commission, or authority of the Commonwealth." *Id.* § 11.02(2). "Agency action" is "any formal and final action taken by an Agency in accordance with applicable statutes and regulations that grants a Permit, provides Financial Assistance, or closes a Land Transfer." *Id.* Since certification under MEPA "'does not constitute final approval or disapproval of a particular project,'" *Brockton*, 469 Mass. at 201 n.12, and therefore, does not result in the grant

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of a permit, financial assistance, or a land transfer, the Secretary's issuance of an FEIR Certificate does not constitute an "agency action" for which Section 61 findings are required.[3]

Moreover, insofar as the Town takes issue with the Secretary's determination that the FEIR was adequate despite several outstanding issues, MEPA regulations expressly permit such a result. More particularly, upon review of an FEIR, the Secretary may "determine that a[n] FEIR is adequate, even if certain aspects of the Project or issues require additional analysis of technical details, provided that the secretary finds that the aspects and issues have been clearly described and their nature and general elements analyzed in the EIR or during MEPA review, that the aspects and issues can be fully analyzed prior to any Agency issuing its Section 61 Findings, and that there will be meaningful opportunities for public review of the additional analysis prior to any Agency taking agency action on the Project." 301 Code Mass. Regs. § 11.08(c)(1) (2018). In accordance with this regulation, the Secretary found that the outstanding issues concerning the Project had been sufficiently described to allow additional agency analysis and meaningful public review. See *Allen*, 450 Mass. at 254 (court must give appropriate deference to Secretary's expertise in environmental matters). Accordingly, the Secretary's failure to make Section 61 findings in the FEIR Certificate and determination that the FEIR was adequate despite outstanding issues, did not render her decision arbitrary and capricious.

In view of the foregoing, the Town has not met its burden of demonstrating that the Secretary acted arbitrarily and capriciously in certifying that the FEIR adequately and properly complies with MEPA.

[3] The Secretary demonstrated an understanding and awareness of the requirements of G. L. c. 30, § 61 in the ENF Certificate, which directed Eversource to include draft Section 61 findings for each anticipated State Agency action in its DEIR. The Secretary later found that "the draft Section 61 Findings will serve as the primary template for State Agency Permit conditions and should be revised, as necessary, in response to [the FEIR] Certificate and/or comment letters and provided to State Agencies to assist in the permitting process and issuance of final Section 61 Findings." (Rec. Appx. Vol. V: 2871).

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ORDER

For the foregoing reasons, the Town's Motion for Judgment on the Pleadings is **DENIED**; the Secretary's Motion for Judgment on the Pleadings is **ALLOWED**; and Eversource's Motion for Judgment on the Pleadings is **ALLOWED**.

Elaine M. Buckley
Justice of the Superior Court

Dated: July 7th, 2021

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VIA OVERNIGHT COURIER

December 23, 2019

Sudbury Board of Selectmen
278 Old Sudbury Road
Sudbury, MA 01776

Re: NSTAR Electric Company, d/b/a Eversource Energy EFSB 17-02/D.P.U. 17-82/17-83

Dear Board Members:

Please find enclosed a copy of the Final Decision of the Energy Facilities Siting Board (the "Siting Board") issued on December 18, 2019 in the above-referenced proceeding. This is being provided to you pursuant to the instructions of the Final Decision of the Siting Board (see page 238).

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,

Kristin M. Reynolds

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Enclosure

RECEIVED
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SUDBURY, MA
2019 DEC 26 A 10:13

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COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

Petition of NSTAR Electric Company d/b/a Eversource Energy for Approval to Construct a New 115 kV Transmission Line in the Towns of Sudbury, Hudson, and Stow, and the City of Marlborough and to Make Modifications to Existing Substations in Sudbury and Hudson, Massachusetts, Pursuant to G.L. c. 164, § 69J	EFSB 17-02
Petition of NSTAR Electric Company d/b/a Eversource Energy for Exemptions from the Operation of the Sudbury, Hudson and Stow Massachusetts Zoning Bylaws, Pursuant to G.L. c. 40A, § 3	D.P.U. 17-82
Petition of NSTAR Electric Company d/b/a Eversource Energy for Approval to Construct and Use a New 115 kV Transmission Line in the Towns of Sudbury, Hudson, and Stow, and the City of Marlborough, Massachusetts Pursuant to G.L. c. 164, § 72	D.P.U. 17-83

FINAL DECISION

On the Decision:

Stephen August
Charlene de Boer
Ashley Ferrer
Andrew Greene
Dean Hazle
Lavinia LaBonte
Barbara Shapiro
John Young

Joan Foster Evans
Presiding Officer
December 18, 2019

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ABBREVIATIONS

Alliance	Alliance to Protect Nantucket Sound v. Department of Public Utilities, 461 Mass. 190 (2011)
ANRAD	Abbreviated Notice of Resource Area Delineation
ASTM	American Society for Testing and Materials
Berkshire Power	Berkshire Power Development, Inc., D.P.U. 96-104 (1997)
BLSF	bordering land subject to flooding
Box Pond	Box Pond Association v. Energy Facilities Board, 435 Mass. 408 (2001)
BMP	best management practices
Braintree	Planning Board of Braintree v. Department of Public Utilities, 420 Mass. 22 (1995)
BVW	bordering vegetated wetland
CCGT	combined-cycle gas turbine
CELT	Capacity, Energy, Loads, and Transmission (report)
CHG	Commonwealth Heritage Group, Inc.
CMR	Code of Massachusetts Regulations
CPP	critical peak pricing
CPR	critical peak rebate
Company	NSTAR Electric Company d/b/a Eversource Energy
dBA	A-weighted decibels
DCR	Massachusetts Department of Conservation and Recreation

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DCR Lease	a 99-year lease between the Massachusetts Bay Transportation Authority and the Massachusetts Department of Conservation and Recreation for the construction of a multi-use trail along a Massachusetts Bay Transportation Authority right-of-way
Department	Massachusetts Department of Public Utilities
DEIR	Draft Environmental Impact Report
DG	distributed generation
DOMSB	Decisions and Orders of Massachusetts Energy Facilities Siting Board
DR	demand response
East Eagle	NSTAR Electric Company d/b/a Eversource Energy, EFSB 14-04/D.P.U. 14-153/14-154 (2017)
EE	energy efficiency
EFSB	Energy Facilities Siting Board
EIR	Environmental Impact Report
EJ	environmental justice
EMF	electric and magnetic fields
ERIS	environmental risk information services database
FCA	Forward Capacity Auction
FEIR	Final Environmental Impact Report
FEMA	Federal Emergency Management Agency
GCA	Green Communities Act
GHG	greenhouse gas

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Greater Boston Area	a portion of the electric system including the Northeast Massachusetts load zone, and portions of the New Hampshire, Southeastern Massachusetts, and Western Central Massachusetts load zones
G.L. c.	Massachusetts General Laws chapter
GWSA	Global Warming Solutions Act
HLPD	Hudson Light & Power Department
Hudson Substation	electrical substation owned by the Hudson Light & Power Department located at Forest Avenue in the town of Hudson, Massachusetts
ISO-NE	ISO-New England
kV	kilovolts
LCOE	levelized cost of entry
LEI	London Economics International, LLC
LSP	Licensed Site Professional
LTE	long-time emergency rating
MAPA	Massachusetts Administrative Procedure Act
Marlborough Subarea	a portion of the electric grid serving customers in Marlborough, Hudson, Stow, Berlin, Northborough, Westborough, Southborough, Framingham, Grafton, and Shrewsbury
MassDEP	Massachusetts Department of Environmental Protection
MassDEP Rail Trail BMP	MassDEP Best Management Practices for Controlling Exposure to Soil During the Development of Rail Trails guidance document
MassDFW	Massachusetts Division of Fisheries and Wildlife
MassDOER	Massachusetts Department of Energy Resources
MBTA	Massachusetts Bay Transportation Authority

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MCP	Massachusetts Contingency Plan
MCRT	The Mass Central Rail Trail – a proposed 104-mile-long multi-use path between Boston and Northampton on the former Massachusetts Central Railroad corridor
MEPA	Massachusetts Environmental Policy Act
mG	milligauss
MHC	Massachusetts Historical Commission
MLS	Multiple Listing Service
MODF	mineral oil dielectric fluid
MOU	Memorandum of Understanding
MVA	megavolt-amperes
MVRP	New England Power Company d/b/a National Grid, D.P.U. 15-44/15-45 (2016)
MW	megawatts
Mystic-Woburn	NSTAR Electric Company d/b/a Eversource Energy, EFSB 15-03/D.P.U. 15-64/15-65 (2017)
Needham-West Roxbury	NSTAR Electric Company d/b/a Eversource Energy, EFSB 16-02/D.P.U. 16-77 (2018)
NERC	North American Electric Reliability Corporation
New Line	the proposed 115 kV transmission line between the Sudbury and Hudson Substations
NHESP	Natural Heritage & Endangered Species Program
NPCC	Northeast Power Coordinating Council
NY Central Railroad	New York Central Railroad v. Department of Public Utilities, 347 Mass. 586 (1964)
NRG	NRG Canal 3 Development LLC, EFSB 15-06/D.P.U. 15-180 (2017)

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NTA	non-transmission alternative
Option Agreement	an agreement between the Massachusetts Bay Transportation Authority and NSTAR Electric Company d/b/a Eversource Energy granting Eversource Energy the right and option to acquire an easement along an existing Massachusetts Bay Transportation Authority right-of-way
PAs	program administrators
PAHs	polycyclic aromatic hydrocarbons
Petitions	Siting Petition, Section 72 Petition, and Zoning Petition
PPA	Proposed Plan Application
PP-4	ISO-NE Planning Procedure No. 4
Project	proposed 115 kV transmission line between the Sudbury and Hudson Substations and associated substation facilities
PSC	Public Service Corporation
Public Comment Hearing Notice	Notice of Public Comment Hearing/Notice of Adjudication
ROW	right-of-way
Russell	Russell Biomass, LLC, 17 DOMSB 1; EFSB 07-4/D.P.U. 07-35/07-36 (2009)
Salem Cables	New England Power Company d/b/a National Grid, 20 DOMSB 129; EFSB 13-2/D.P.U. 13-151/13-152 (2014)
Save the Bay	Save the Bay v. Department of Public Utilities, 366 Mass. 667 (1975)
Section 72 Petition	Eversource petition pursuant to G.L. c. 164, § 72
SF_6	sulfur hexafluoride
Siting Board	Massachusetts Energy Facilities Siting Board
Siting Board Petition	Eversource petition pursuant to G.L. c. 164 § 69J
SJC	Supreme Judicial Court

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solar PV	solar photovoltaic
STE	short-time emergency rating
Sudbury Motion	June 13, 2019, motion by the Town of Sudbury requesting reopening of the record and hearing in this proceeding
SWPPP	stormwater pollution prevention plan
TMPs	Traffic Management Plans
TPP	Turtle Protection Plan
Town of Truro	Town of Truro v. Department of Public Utilities, 365 Mass. 407 (1974)
ULSD	ultra-low sulfur diesel
URAM	Utility-Related Abatement Measure (310 CMR 40.0460)
USACE	U.S. Army Corps of Engineers
USEPA	U. S. Environmental Protection Agency
Vineyard Wind	Vineyard Wind LLC, EFSB 17-05/D.P.U. 18-18/18-19 (2019)
VMP	vegetation management plan
Walpole-Holbrook	NSTAR Electric Company d/b/a Eversource Energy, EFSB 14-2/D.P.U. 14-73/14-74 (2017)
WHO	World Health Organization
Woburn-Wakefield	NSTAR Electric Company d/b/a Eversource Energy and New England Power Company d/b/a National Grid, EFSB 15-04/D.P.U. 15-140/15-141 (2018)
Worcester	New England Power Company d/b/a National Grid, 18 DOMSB 173; EFSB 09-1/D.P.U. 09-52/09-53 (2011)
WPA	Wetlands Protection Act
Zoning Petition	Eversource petition pursuant to G.L. c. 40A § 3

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ZBA	Zoning Board of Appeals
2015 Needs Assessment	Greater Boston Updated Transmission Needs Assessment (2015)

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Pursuant to G.L. c. 164, § 69J, the Massachusetts Energy Facilities Siting Board ("Siting Board") hereby approves, subject to the conditions set forth below, the Petition of NSTAR Electric Company d/b/a Eversource Energy ("Eversource" or "Company") to construct a new approximately nine-mile-long 115 kilovolt ("kV") underground transmission line in Sudbury, Hudson, Stow, and Marlborough, Massachusetts. Pursuant to G.L. c. 164, § 72, the Siting Board hereby approves, subject to the conditions set forth below, the Petition of Eversource for a determination that the proposed transmission line is necessary, serves the public interest, and is consistent with the public interest. Pursuant to G.L. c. 40A, § 3, the Siting Board hereby approves, subject to the conditions set forth below, the Petition of Eversource for individual and comprehensive zoning exemptions from the Sudbury, Hudson, and Stow Zoning Bylaws in connection with the proposed transmission facilities, including improvements to the Sudbury Substation, as described herein.

I. INTRODUCTION

A. Description of the Proposed Project

Eversource proposes to construct a new approximately nine-mile-long 115 kV underground transmission line between the Company's Sudbury Substation in Sudbury, Massachusetts, and the Hudson Light & Power Department's ("HLPD") Hudson Substation in Hudson, Massachusetts ("New Line") (Exh. EV-2, at 1-1). In order to accommodate the New Line, both Eversource and HLPD would need to make modifications to their respective substations, including the installation of new breakers and other equipment (together, the "Project")[1] (Exh. EV-2, at 1-1, 3-2 to 3-3, 5-5, 5-8). According to the Company, the Project is

[1] In its Petition, the Company described the scope of "the Project" as including only the New Line and Sudbury Substation facilities (Exh. EV-2, at 1-1). HLPD supports this position and argues that work at the Hudson Substation is outside of the scope of the Siting Board's review (HLPD Brief at 5). The Siting Board views the facilities at both the Sudbury and Hudson Substations as ancillary facilities to the New Line that are essential components of the Project, and as such includes work at both substations within the scope of its review. This is consistent with the Siting Board's responsibilities under G.L. c. 164, § 69J to review the proposed construction of a "facility," which includes relevant ancillary structures which are integral parts of the operation of any transmission line which is a facility, such as the substations at either end of a jurisdictional transmission facility. See G.L. c. 164, § 69G, definition of "facility." While HLPD is

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needed to maintain a reliable supply of electricity to customers in the municipalities of Marlborough, Hudson, Stow, Berlin, Northborough, Westborough, Southborough, Framingham, Grafton, and Shrewsbury, Massachusetts (the "Marlborough Subarea") (Exh. EV-2, at 2-1). The Company's estimate for the cost of the Project is approximately $95.8 million (RR-EFSB-50(1)).

Eversource proposes three alternative routes for the New Line: (1) its Preferred Route (aka the Primary Route), an approximately nine-mile-long route including a 7.6 mile underground segment within an inactive Massachusetts Bay Transportation Authority ("MBTA") right-of-way ("ROW") in Sudbury, Stow, Marlborough, and Hudson, and a 1.4-mile underground in-street segment in Hudson ("MBTA Underground Route"); (2) a Noticed Variation along the same route as the Preferred Route, instead using overhead transmission line construction along the MBTA ROW and the same underground, in-street segment in Hudson ("MBTA Overhead Route"); and (3) an approximately 10.3-mile-long Noticed Alternative Route, which would avoid use of the MBTA ROW entirely and be located underground within roadways in Sudbury and Hudson ("All-Street Route") (Exh. EV-2, at 5-3 to 5-4). A map of the MBTA Underground Route, the MBTA Overhead Route, and the All-Street Route is presented in Figure 1 below.

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not a co-petitioner here and is not requesting approval of the work to be performed at the Hudson Substation, the Siting Board reviews the impacts of the Project as a whole, including impacts from Project-related work at the Hudson Substation.

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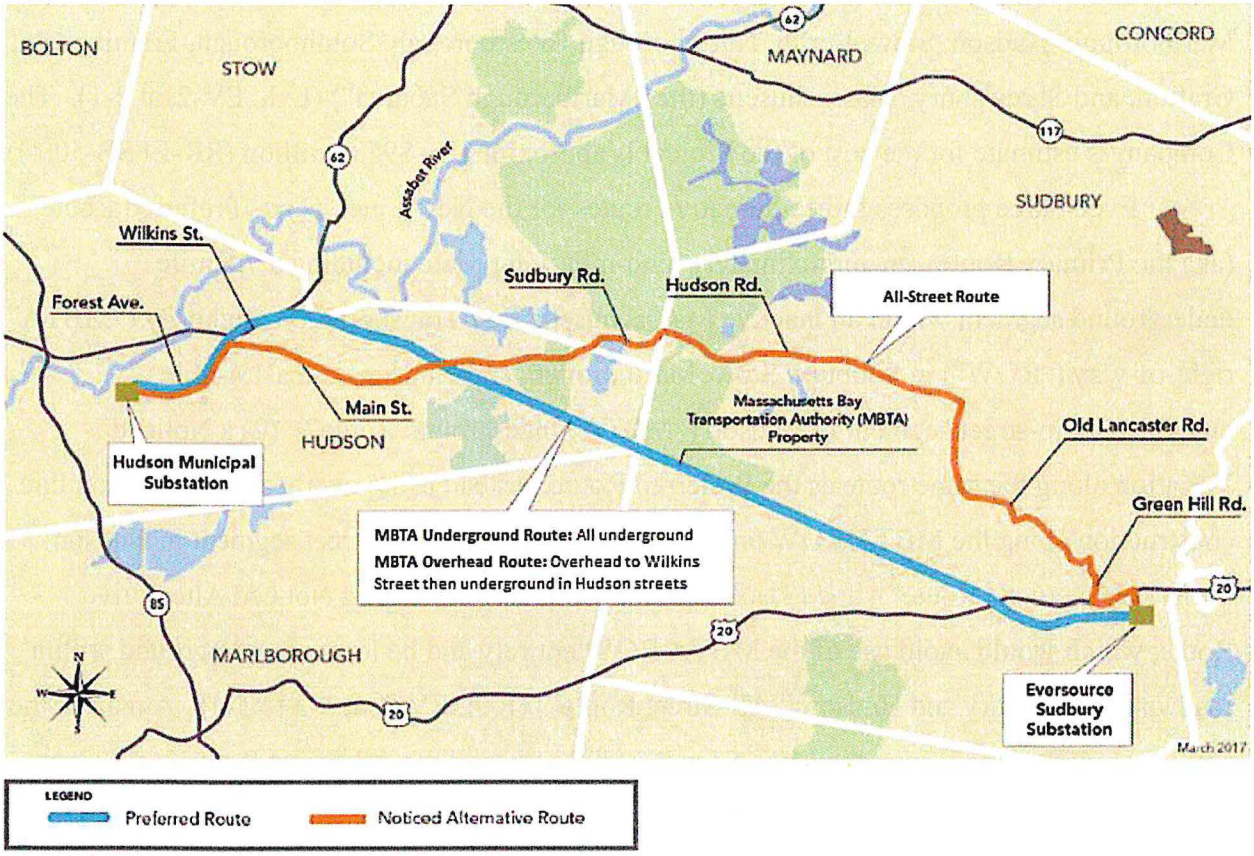
Figure 1. MBTA Underground and Overhead Routes, and All-Street Route



Source: Exh. Protect-2-52(1) at 6, with the route names changed to match those memorialized in this Decision.

As part of the proposed MBTA Underground Route for the Project, the Company has partnered with the Massachusetts Department of Conservation and Recreation ("DCR") in the co-development of a segment of the Mass Central Rail Trail ("MCRT"), a DCR-proposed multi-use rail trail (Exh. EV-2, at ES-2).[2] The Company proposes coupling the Project and the

2 The MCRT is a proposed 104-mile-long multi-use path between Boston and Northampton on the former Massachusetts Central Railroad corridor, including a 23-mile segment of inactive railroad ROW between Waltham and Berlin owned by the MBTA, and leased to the DCR for development of this segment of the MCRT (Exhs. EFSB-LU-36(2) at 1; EFSB-3; SUD-G-19(1)). DCR's lease of the ROW provides 19 feet for development of the rail trail itself, but allows DCR to use the remainder of the ROW for ancillary uses, and to access, construct, and maintain/landscape the ROW, subject to MBTA approval (Exh. SUD-G-19(1) at 3). The MBTA lease to DCR also retains all existing easements and the MBTA's right to lease any and all areas of the

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MCRT by constructing the Project's 14-foot-wide access road, required for construction and future maintenance work, as the gravel base for the MCRT, and refurbishing and repairing existing rail bridges needed for both the Project and the MCRT (Exh. EV-1, at ES-2). Under a Memorandum of Understanding ("MOU") between Eversource and DCR, after completion of the Project, DCR would construct the final elements of the MCRT, paving a ten-foot width of the access road and installing a two-foot-wide seeded and loamed shoulder on each side (Exh. EV-18, at 107, fig. 2-4). In its initial petitions, the Company also presented design options for co-locating the MCRT with the MBTA Overhead Route, if that route were selected (Exh. EV-1, at 5-46 to 5-47; 5-83). However, DCR indicated that its support for co-development of the MCRT with the Project relates specifically to the MBTA Underground Route, and it noted that the MBTA lease to Eversource is for underground construction of the Project (Exh. EFSB-5).

B. Procedural History

On April 20, 2017, Eversource filed three petitions with the Siting Board and the Massachusetts Department of Public Utilities ("Department") relating to the Project. In these petitions, the Company seeks: (1) approval to construct the Project, pursuant to G.L. c. 164, § 69J ("Siting Petition"); (2) approval to construct and use the Project, pursuant to G.L. c. 164, § 72 ("Section 72 Petition"); and (3) individual and comprehensive exemptions from the zoning bylaws of Sudbury, Hudson, and Stow for the Project, pursuant to G.L. c. 40A, § 3 ("Zoning Petition") (together, "Petitions").

The Siting Petition was docketed as EFSB 17-02, the Zoning Petition as D.P.U. 17-82, and the Section 72 Petition as D.P.U. 17-83. Pursuant to the Company's motion, on April 27, 2017, the Chairman of the Department issued a Consolidation Order, referring the Section 72 and Zoning Petitions for review by the Siting Board pursuant to G.L. c. 164, § 69H (2). The consolidated proceeding was docketed as EFSB 17-02/D.P.U. 17-82/17-83. The Siting

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ROW to third parties (including any utility or other entity) for revenue (Exh. EFSB-C-12(R)(2)). Thus, the respective MBTA leases to DCR and Eversource allow for overlapping areas and joint uses of the ROW (Exh. EFSB-5, at 1; Exhs. SUD-G-19(1)); EFSB-C-12(R)(2) at 3).

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Board conducted a single adjudicatory proceeding and developed a single evidentiary record for the consolidated Petitions.

Pursuant to the Presiding Officer's instructions, the Company published the Notice of Public Comment Hearing/Notice of Adjudication ("Public Comment Hearing Notice") for the Project once per week for two consecutive weeks in the Boston Globe and the MetroWest Daily News. The Presiding Officer directed the Company to place copies of the Public Comment Hearing Notice and a copy of the Petition in the Sudbury, Hudson, Stow, and Marlborough clerk's offices, and to serve the Public Comment Hearing Notice on the planning boards of the Towns of Sudbury, Hudson, and Stow, and the City of Marlborough (as well as the planning board of each city or town abutting any of these four municipalities). The Presiding Officer also directed the Company to place a copy of the Public Comment Hearing Notice and a copy of the Petition in public libraries of Sudbury, Hudson, Stow, and Marlborough. In addition, the Presiding Officer directed the Company to send a copy of the Public Comment Hearing Notice to the property owners abutting the MBTA Underground and Overhead Routes and the All-Street Route, and to abutters-to-abutters within 300 feet.[3]

The Siting Board conducted public comment hearings in Sudbury on May 25, 2017, and in Hudson on June 1, 2017. Commenters raised a variety of concerns about alleged impacts relating to use of the MBTA ROW for both the proposed Underground Route and the Overhead Route alternative, including: adverse impacts on drinking water supplies in Sudbury and Hudson; the need to cut down a large number of trees in the corridor; disruption and harm to the surrounding conservation land; adverse impacts to water resources; adverse impacts from application of herbicides to maintain the transmission corridor, and adverse impacts to property values for homes abutting the ROW.

The Presiding Officer's rulings of June 26, 2017 and June 27, 2017 granted intervenor status to the Town of Sudbury, the Town of Hudson, the Town of Stow, Protect Sudbury, Inc., and HLPD, and granted limited participant status to the individuals listed in Appendix A.

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3 The Project does not trigger either the enhanced public participation or enhanced analysis of impacts and mitigation provisions of the Commonwealth's Environmental Justice ("EJ") Policy. See also Section VII.B, below.

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The Company presented the testimony of the following thirteen witnesses in support of the Petitions: Robert D. Andrew, Eversource Director of System Solutions; William H. Bailey, Principal Scientist, Exponent; Denise M. Bartone, Eversource Senior Environmental Engineer; Marc Bergeron, Senior Wetland Scientist, Vanasse, Hangen, Brustlin, Inc.; James A. Chalmers, Chalmers & Associates, LLC; Julia Frayer, Managing Director, London Economics International, LLC ("LEI"); Elizabeth Leonard, Eversource Senior Engineer; Paul McKinlay, Director Remediation and Assessment, Vanasse, Hangen, Brustlin, Inc.; Brian J. Rice, Eversource Senior Analyst; Demetrios Sakellaris, Eversource Transmission Line Engineer; Jawahar Shah, Senior Consultant, LEI; Christopher P. Soderman, Eversource Lead Engineer; and John M. Zicko, Eversource Director of Massachusetts Substation Engineering.

The Town of Sudbury presented the testimony of seven witnesses: Paul L. Chernick, President, Resource Insight, Inc.; Deborah M. Dineen, Conservation Coordinator, Town of Sudbury; Mark Herweck, Building Inspector and Zoning Enforcement Agent, Town of Sudbury; Ruth M. Geoffroy, Director of Environmental Permitting and Planning, Nover-Armstrong Associates, Inc.; Daniel F. Nason, Town of Sudbury Public Works Director; Marta J. Nover, Principal, Senior Wetland Scientist and Permitting Expert, Nover-Armstrong Associates, Inc.; and William R. O'Rourke, Town of Sudbury Deputy Public Works Director.

The Town of Hudson presented the testimony of two witnesses: Pam Helinek, Conservation Agent, Town of Hudson; and Eric Ryder, Director, Hudson Department of Public Works. Protect Sudbury presented the testimony of four witnesses from Comprehensive Environmental Inc.: Richard Cote, Principal-in-Charge and Manager of Remedial Engineering; Robert Hartzel, Principal and Project Manager; Matthew Lundsted, Principal and Project Manager; and Michael Ohl, Principal and Project Manager. HLDP presented the testimony of two witnesses: Brian Choquette, General Manager, HLPD; and Michael Barrett, Principal, PLM.

The Siting Board issued three sets of Information Requests to the Company and one set of information requests each to the Town of Sudbury, the Town of Hudson, Protect Sudbury and HLPD. The Town of Sudbury issued three sets of Information Requests to the Company, while Protect Sudbury issued two sets and the Town of Hudson issued one set. The Company issued one round of Information Requests to the Town of Sudbury. The Siting Board conducted 16 days of evidentiary hearings. The evidentiary record consists of approximately 1840 exhibits.

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Eversource, the Town of Sudbury, Protect Sudbury, and Hudson Power and Light Department filed initial briefs on March 2, 2018. Town of Sudbury, Protect Sudbury, and Town of Stow[4] filed reply briefs on March 16, 2018, and the Company filed a reply brief on March 30, 2018.[5]

Subsequent to briefing, Eversource filed its Final Environmental Impact Report ("FEIR") on the Project with the Massachusetts Environmental Policy Act ("MEPA") Office on July 2, 2018. The Secretary issued a Certificate on Eversource's FEIR on September 14, 2018.[6]

On June 13, 2019, the Town of Sudbury filed a motion requesting that the Siting Board reopen the record and hearing in this proceeding to admit into evidence: (1) current load and energy efficiency forecast data from ISO-NE; (2) current Massachusetts Department of Energy Resources ("MassDOER") solar photovoltaic ("solar PV") data; and (3) new information relating to non-transmission alternatives ("Sudbury Motion") (Sudbury Motion at 1). Sudbury requested that the Siting Board allow for limited additional discovery, cross-examination, or rebuttal with respect to such evidence (Sudbury Motion at 1). Contemporaneously, Sudbury filed a memorandum in support of its motion ("Sudbury Memorandum"), as well as an affidavit of Paul L. Chernick ("Chernick June 13 Affidavit"). In the Sudbury Motion and supporting documentation, Sudbury argues that this additional evidence is necessary for the Siting Board's

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4 The Town of Stow filed an amended brief on March 28, 2018. References to the Town of Stow brief are to its amended brief.

5 Ms. Hewitt, Ms. Nelson, and Mr. O'Neill – individual limited participants in this proceeding – each submitted briefs questioning the need for the Project and the environmental impacts thereof. Issues raised, generally, included alleged impacts to drinking water, wildlife habitat, and wetlands; historical contamination from use as a railroad, community opposition, flawed cost estimates and preference for the All-Street Route. While none of these briefs contained references to record evidence in the proceeding, these topics are addressed generally by the Siting Board in this Decision. The Board notes that the need for the Project is assessed in Section III, below, and that the environmental impacts of the Project and mitigation measures proposed by the Company are discussed in Section VI.D, below.

6 The Town of Sudbury and Protect Sudbury have each filed a notice of intent to commence an action alleging the improper determination that the FEIR complies with MEPA. The appeal of the Secretary's Certificate would commence no later than 30 days following the issuance of the first agency permit, which in this case would be Siting Board's decision in this proceeding. 301 CMR 11.14.

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review of the Project. On July 12, 2019, Protect Sudbury, HLPD, and the Company filed written responses to the Sudbury Motion. The Company's response ("Eversource Opposition") included two affidavits in support of its opposition to the Sudbury Motion: (1) a joint affidavit of Robert D. Andrew and Elizabeth Leonard ("Andrew/Leonard Affidavit"); and (2) an affidavit of Julia Frayer ("Frayer Affidavit"). On July 26, 2019, Sudbury filed a reply to the Eversource Opposition, which included a second affidavit of Mr. Chernick ("Chernick July 26 Affidavit").

Siting Board staff prepared a Tentative Decision and distributed it to the Siting Board members and all parties for review and comment on December 2, 2019. The parties were given until December 10, 2019 to file written comments. The Siting Board received timely written comments from parties Town of Sudbury, Town of Hudson, Protect Sudbury, and Eversource, and from limited participants Brian O'Neill and Christine Nelson. The Board conducted a public meeting to consider the Tentative Decision on December 17, 2019, at which the parties and limited participants presented oral arguments. After deliberation, the Board directed staff to prepare a Final Decision approving the Petitions, subject to certain conditions set forth below.

C. Due Process

The Town of Sudbury and Protect Sudbury contend that the Siting Board did not provide due process to parties in this proceeding as required by the Massachusetts Administrative Procedures Act ("MAPA"), G.L. c. 30A, §§ 10, 11.

1. Positions of the Parties

a. Town of Sudbury and Protect Sudbury

The Town of Sudbury asserts that the MAPA "obligates the Siting Board to afford all parties to Proceedings the right to a full and fair hearing" (Sudbury Brief at 6-7, citing G.L. c. 30A, §§ 10, 11). Sudbury argues that the Siting Board must provide every party the right to call and examine witnesses, introduce exhibits, cross examine witnesses who testify, and submit rebuttal testimony (Sudbury Brief at 7). Sudbury contends that the Siting Board did not provide the parties with sufficient notice of the issues to afford the parties a reasonable opportunity to prepare and present evidence and argument (Sudbury Brief at 7). According to

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Sudbury, the Siting Board deprived the town of due process during the proceedings (Sudbury Brief at 6-11).

Sudbury maintains that the Presiding Officer's July 10, 2017, Procedural Schedule unreasonably limited discovery to two rounds, did not provide intervenors the right to written surrebuttal, and restricted the entire adjudication to a period of less than six months (Sudbury Brief at 7-8). Sudbury notes that there is significant precedent for longer procedural schedules in Siting Board cases (Sudbury Brief at 8, n.1). The town also asserts that the Company repeatedly failed to adequately respond to discovery and that the Company's supplemental filings failed to adequately respond to the town's discovery requests and/or adhere to the Presiding Officer's instructions (Sudbury Brief at 8). Sudbury notes that it had to divert considerable town resources in order to enforce its due process rights in the Siting Board proceeding (Sudbury Brief at 7, 9).[7] Sudbury also alleges that the Company waited until after completion of the evidentiary hearings to file responses to several key outstanding record requests from the Siting Board (Sudbury Brief at 11).[8]

b. Company Response

The Company maintains that the Intervenors[9] have been fully accorded due process rights during the proceeding and argues that the sheer number of filings in this proceeding (e.g., 922 information requests, 117 record requests, 18 submissions of direct, supplemental and rebuttal testimonies, and 16 days of evidentiary hearings) belies the Intervenors' claims of due process violations (Company Reply Brief at 5). The Company argues that the Intervenors must

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7 Additionally, Sudbury identifies various rulings issued by the Presiding Officer that the town disagrees with and essentially argues that such rulings denied the town due process (Sudbury Brief at 8-11).

8 Protect Sudbury also notes its concerns with the procedure and process in this case, and states that many of the issues raised by the Town of Sudbury "implicate" Protect Sudbury as well (PS Reply Brief at 1, n.1). Protect Sudbury states that it shares and supports the town's position regarding the unfairness of the process (PS Reply Brief at 1, n.1).

9 The Company identifies Town of Sudbury and Protect Sudbury as the "Intervenors" for purposes of arguments regarding due process.

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be given "an opportunity to be heard at a meaningful time and in a meaningful manner," and maintains that the Intervenors were afforded a full and fair hearing and that parties were provided with more than sufficient opportunity to participate actively throughout the proceeding (Company Reply Brief at 5-6, citing Alliance to Protect Nantucket Sound Inc. v. Energy Facilities Siting Bd., 448 Mass. 45, 52 (2006)).

In response to Sudbury's argument that the procedural schedule was constrained to a five-month period, the Company argues that neither the proposed procedural schedule, nor any schedule proposed thereafter, contemplated anything less than a twelve-month adjudication process (Company Reply Brief at 7). The Company states that it filed its petitions on April 20, 2017, and the initial procedural schedules were developed to enable the Siting Board to issue a decision within one year, in accordance with the Legislative charge to the Siting Board to endeavor to complete its statutory reviews of petitions within twelve months (Company Reply Brief at 7, citing G.L. c. 164, §69J). The Company maintains that "[t]here is nothing unfair or unfounded about a schedule that complies with a legislative directive," nor is there anything "unusual or unduly compressed about the course of the Siting Board's proceeding" (Company Reply Brief at 7). The Company notes that the schedule was extended on several occasions, providing months of discovery and numerous additional evidentiary hearings, and that approximately eleven months passed between the Company's filing of its petitions and the Intervenors' filing of reply briefs (Company Reply Brief at 7). Indicating that the Intervenors were actually afforded three rounds of discovery, the Company argues that the Intervenors have failed to provide a legal basis to support a claim that they are entitled to a specified number of rounds of discovery (Company Reply Brief at 8).

The Company notes that the Intervenors filed ten procedural motions in this proceeding requesting extensions, stays and compulsion of discovery, and that the Presiding Officer ruled judiciously on these motions, demonstrating flexibility in exercising discretion to adjust the schedule, providing reasonable extensions where appropriate, and in many cases requiring further responses to discovery (Company Reply Brief at 6). According to the Company, its response to certain record requests after hearings concluded is typical in a Siting Board proceeding, and the Intervenors could have moved for additional hearings had they so chosen (Company Reply Brief at 9).

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2. Analysis and Findings on Due Process

During this proceeding, the Siting Board has endeavored to conduct its review of the proposed Project in a manner consistent both with applicable principles of due process, such as those reflected in the MAPA, and with the timeframe for Siting Board proceedings set out in the Siting Board statute.[10] The procedural schedule established in the case reflected a balancing of these two interests by the Presiding Officer. Specifically, it represents the Presiding Officer's assessment of the appropriate balance, in this specific case, of: (1) ensuring the opportunity for full, fair, and meaningful review of the Project by the parties; and (2) the goal from G.L. c. 164, § 69J, of conducting Siting Board proceedings as efficiently as possible.[11]

With respect to the specific requirements of the MAPA, G.L. c. 30A, § 11(3) states that "every party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence." The Intervenors were given the opportunity in this case to do so, propounding three rounds of discovery consisting of nearly 600 information requests to the Company (many with multiple subparts). The Intervenors submitted the prefiled testimony of thirteen witnesses; were given the opportunity to provide oral surrebuttal testimony and conduct extensive cross-examination of the Company's witnesses during the 16 days of evidentiary hearings; and had the opportunity to submit both initial and

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10 See G.L. c. 164, § 69J provides that: "If the board determines the standards set forth above have not been met, it shall within twelve months of the date of the filing reject in whole or in part the petition, setting forth in writing its reasons for such rejections, or approve the petitions subject to stated conditions." G.L. c. 164, § 69J. The SJC has stated that the twelve month language is directory, not mandatory. Box Pond Association v. Energy Facilities Siting Board, 435 Mass. 408, 415 n.7 (2001) ("Box Pond").

11 The Siting Board acknowledges that this proceeding has, in fact, taken much longer than twelve months, despite the Board's initial efforts and expectations to remain within the period prescribed in the statute. Among other things, the complexity of the case, the numerous and novel issues involved, staffing constraints, and developments in separate but related cases (e.g., MEPA, MBTA, and Natural Heritage and Endangered Species ("NHESP") appeals) were all contributing factors in the Board's extended review. See Section VI.D.

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reply briefs.[12] In addition, all of the parties in this proceeding were given advance notice of the anticipated schedule; the procedural schedule was revised several times at the request of parties, and issued to the parties expeditiously.[13] The Siting Board's review of the Project in this proceeding has been extensive, as evidenced by the number of exhibits, witnesses, hearing days, and rulings issued. In short, we see no merit to Sudbury's argument regarding lack of due process.

Sudbury is correct that there has been a history of Siting Board procedural schedules that extended beyond the one-year timetable in G.L. c. 164, § 69J. However, a review of past procedural schedules shows that the schedule for a Siting Board proceeding is highly case-specific and, moreover, that each schedule changes to some extent, as the case in question unfolds. The Intervenor's attempt to rely on schedules in other cases to support an objection to the schedule in this proceeding has no basis in statutes or regulations of the Siting Board, and is not a compelling argument.

The Presiding Officer's rulings on a variety of motions that sought extensions or stays of the proceeding were also guided by the combined goals of fairness and efficiency. Under the Siting Board's regulations, a Presiding Officer "shall have the authority to take all actions necessary to ensure a fair, orderly and efficient proceeding." 980 CMR 1.04(2). Such actions include, among other things, "regulating the course of the proceeding," "disposing of procedural questions," and "hearing and ruling upon motions." Accordingly, the Presiding Officer is

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12 Regarding record requests, the Siting Board notes that its regulations contemplate the ability to issue record requests during the course of evidentiary hearings. 980 CMR 1.1.06(6)(g). Typically, in Siting Board proceedings, some responses to record requests issued during evidentiary hearings are filed after the conclusion of evidentiary proceedings. On occasion, parties have sought additional process with respect to post-hearing record request responses. See e.g., NSTAR Electric Company d/b/a Eversource Energy, EFSB 16-02/D.P.U. 16-77, Presiding Officer Ruling on Motion to Re-open Evidentiary Hearings (April 13, 2018). In this case, in response to a record request filing by the Company after hearings, the Presiding Officer allowed additional Intervenor written testimony, and an additional two days of hearings.

13 The procedural schedules issued to the parties indicated that oral surrebuttal testimony would be allowed. There is no requirement that the Siting Board allow only written surrebuttal testimony.

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afforded wide discretion in establishing the course of the proceeding.[14] In this case, motions that were submitted were ruled on by the Presiding Officer, and such rulings reflect the necessary balance that must take place between allowing for additional process and considerations of efficiency, as reflected in G.L. c. 164, § 69J. Although the Siting Board recognizes that Sudbury disagrees with the outcome of several motions seeking additional time or stays of the proceeding, or additional information from the Company, the Board views each such ruling to reflect a proper regard for both fairness and efficiency.

Neither the Town of Sudbury nor Protect Sudbury provided any legal citation or citation to precedent for their assertion that the Siting Board was obligated to provide more process than what was provided in this case. "The hallmarks of due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner." Daniels v. Board of Registration in Medicine, 418 Mass. 380, 383 (1994) (citations omitted). The Siting Board concludes that all of the Intervenors in this case were afforded a full and fair hearing, within the meaning of the MAPA and applicable legal precedent. Each of the Intervenors in this case was provided with appropriate notice and an extensive opportunity to be heard; the procedural schedule for the case appropriately balanced fundamental considerations of due process and efficiency; and the proceeding was conducted in all respects in a fair and efficient manner. Accordingly, the Siting Board dismisses claims of lack of due process in this proceeding by Sudbury and Protect Sudbury.

II. JURISDICTION AND STANDARD OF REVIEW UNDER G.L. C. 164, § 69J

G.L. c. 164, § 69J provides that the Siting Board should approve a petition to construct if the Siting Board determines that the petition meets certain requirements, including that the plans for the construction of the applicant's facilities are consistent with the policies stated in G.L. c. 164, § 69H to provide a reliable energy supply for the Commonwealth with a minimum

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[14] The SJC has confirmed the broad discretion of the Presiding Officer with respect to the schedule and other procedural aspects of Siting Board proceedings. See Box Pond (decision whether to grant a motion to continue lies within the sound discretion of the hearing officer or the board (citations omitted); refusal to grant a continuance will not constitute error absent an abuse of that discretion).

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impact on the environment at the lowest possible cost, and are consistent with current health, environmental protection, and resource use and development policies of the Commonwealth. Pursuant to G.L. c. 164, § 69J, a project applicant must obtain Siting Board approval for the construction of proposed energy facilities before a construction permit may be issued by another state agency.

G.L. c. 164, § 69G defines a "facility" to include "a new electric transmission line having a design rating of 115 [kV] or more which is ten miles or more in length on an existing transmission corridor, except [for] reconductoring or rebuilding of transmission lines at the same voltage" or "a new electric transmission line having a design rating of 69 [kV] or more and which is one mile or more in length on a new transmission corridor." The Company's proposed 115 kV underground transmission line would be approximately nine miles long and run along a new transmission corridor. Therefore, the proposed 115 kV transmission line is a "facility" with respect to Section 69J and, therefore, the Project is subject to Siting Board review under Section 69J.

The Siting Board requires that an applicant demonstrate that its proposal meets the following requirements: (1) that additional energy resources are needed (see Section III, below); (2) that, on balance, the proposed project is superior to alternative approaches in terms of reliability, cost, and environmental impact, and in its ability to address the identified need (see Section IV, below); (3) that the applicant has considered a reasonable range of practical facility siting alternatives and that the proposed facilities are sited in locations that minimize costs and environmental impacts while ensuring a reliable energy supply (see Section V, below); (4) that environmental impacts of the project are minimized and the project achieves an appropriate balance among conflicting environmental concerns as well as among environmental impacts, cost, and reliability (see Section VI, below); and (5) that plans for construction of the proposed facilities are consistent with the current health, environmental protection, and resource use and development policies of the Commonwealth (see Section VII, below).

III. NEED FOR THE PROPOSED PROJECT

A. Standard of Review

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The Siting Board reviews the need for proposed transmission facilities to meet reliability, economic efficiency, or environmental objectives. G.L. c. 164, §§ 69H, 69J. When demonstrating the need for a proposed transmission facility based on reliability considerations, a petitioner applies its established planning criteria for construction, operation, and maintenance of its transmission and distribution system. Compliance with the applicable planning criteria can demonstrate a "reliable" system. NSTAR Electric Company d/b/a Eversource Energy, EFSB 16-02/D.P.U. 16-77, at 8-9 (2018) ("Needham-West Roxbury"); NSTAR Electric Company d/b/a Eversource Energy and New England Power Company d/b/a National Grid, EFSB 15-04/D.P.U. 15-140/15-141, at 9-10 (2018) ("Woburn-Wakefield"); NSTAR Electric Company, EFSB 14-04/D.P.U. 14-153/14-154, at 8, 9 (2017) ("East Eagle").

Accordingly, to determine whether system improvements are needed, the Siting Board: (1) examines the reasonableness of the petitioner's system reliability planning criteria; (2) determines whether the petitioner uses reviewable and appropriate methods for assessing system reliability over time based on system modeling analyses or other valid reliability indicators; and (3) determines whether the relevant transmission and distribution system meets these reliability criteria over time under normal conditions and under certain contingencies, given existing and projected loads. Needham-West Roxbury at 8-9; Woburn-Wakefield at 9; East Eagle at 9.

When a petitioner's assessment of system reliability and facility requirements is, in whole or in part, driven by load projections, the Siting Board reviews the underlying load forecast. The Siting Board requires that forecasts be based on substantially accurate historical information and reasonable statistical projection methods that include an adequate consideration of conservation and load management. See G.L. c. 164, § 69J. To ensure that this standard has been met, the Siting Board requires that forecasts be reviewable, appropriate, and reliable. A forecast is reviewable if it contains enough information to allow a full understanding of the forecast method. A forecast is appropriate if the method used to produce the forecast is technically suitable to the size and nature of the company to which it applies. A forecast is considered reliable if its data, assumptions, and judgments provide a measure of confidence in what is most likely to occur. Needham-West Roxbury at 8-9; Woburn-Wakefield at 10; East Eagle at 9.

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B. Description of the Company's Demonstration of Need

As part of its role as the independent system operator of New England, ISO-New England ("ISO-NE") carries out a regional system planning process, wherein it conducts periodic needs assessments on a system-wide or specific-area basis, and develops an annual regional transmission plan using a ten-year planning horizon (Exh. EV-2, at 2-5 to 2-6). In 2015, ISO-NE issued one such assessment, the "Greater Boston Area Updated Transmission Needs Assessment" ("2015 Needs Assessment") (Exh. EV-2, at 2-6 to 2-7, app. 2-1). The Company's assertion of need for the Project is based largely on this ISO-NE needs assessment, including the planning standards and criteria, and demand forecast contained therein. Eversource also undertook an "Updated Analysis" to confirm the need for the Project in light of more recent supply and demand projections (Exh. EV-2, at 2-15). ISO-NE's 2015 Needs Assessment and the Company's Updated Analysis are described below.[15]

1. ISO-NE's 2015 Needs Assessment

The Marlborough Subarea is located within the broader transmission area referred to as the "Greater Boston Area," which includes Boston and surrounding suburbs, and for which ISO-NE issued its 2015 Needs Assessment (Exh. EV-2, at 2-3, 2-7, and app. 2-1, at 12).[16,17] According to the Company, this assessment evaluated the reliability performance of the transmission system serving the Greater Boston Area under 2018 and 2023 projected system

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15 The Siting Board addresses a motion by the Town of Sudbury relating to the question of need in Section XII, below.

16 Specifically, the 2015 Needs Assessment defined the Greater Boston Area as including all of the Northeast Massachusetts load zone, and portions of the New Hampshire, Southeastern Massachusetts, and Western/Central Massachusetts load zones (Exh. EV-2, app. 2-1, at 12).

17 The development of the 2015 Needs Assessment and attributes of the assessed base cases are described in NSTAR Electric Company d/b/a Eversource Energy, EFSB 15-03/ D.P.U. 15-64/15-65, at 7-12 (2017) ("Mystic-Woburn"), and New England Power Company, D.P.U. 15-44/15-45, at 8-10 (2016).

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conditions, and assessed the system for compliance with planning standards and criteria established by the North American Energy Reliability Corporation ("NERC"), the Northeast Power Coordinating Council ("NPCC"), and ISO-NE (Exh. EV-2, at 2-4). These reliability criteria require that transmission system thermal and voltage levels remain within applicable limits following certain representative contingencies (Exh. EV-2, at 2-1).[18]

a. Load Forecast Methodology

Eversource stated that the 2015 Needs Assessment relied on the summer peak 90/10 load forecast from ISO-NE's 2013 Capacity, Energy, Loads, and Transmission ("CELT") Report to develop the 2018 and 2023 forecasted load levels for the Greater Boston Area (Exh. EV-2, at 2-8, app. 2-1, at 19).[19] Demand response ("DR") resources that had cleared Forward Capacity Auction ("FCA") 7, and energy efficiency ("EE") resources, as forecast in the 2013 CELT Report, were modeled as reductions to load to establish the net demand for the area (Exh. EV-2, at 2-8 to 2-9, app. 2-1, at 31-32). The CELT Report contains a ten-year econometric forecast and is the source of many of the assumptions used in ISO-NE's regional planning studies (Exh. EFSB-N-1). Eversource indicated that the CELT Report demand forecast is updated annually and takes into consideration factors such as regional economic indicators (e.g., predictions of gross state product as provided by Moody's Analytics, Inc.), and customer behavior (e.g., behind-the-meter generation and passive DR participation) (Exhs. EFSB-N-1a(2); EFSB-N-1b(1)). Eversource further indicated that the CELT forecast is reviewed through an extensive stakeholder process, including review by the ISO-NE Planning Advisory Committee and ISO-NE's energy efficiency working group (Tr. 1, at 20-24).

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18 For the transmission system to meet the established reliability criteria, there cannot be any instances of equipment exceeding its Long-Time Emergency ("LTE") or Short-Time Emergency ("STE") rating, or unacceptably high or low voltages following an N-1 contingency (loss of a single transmission element) or N-1-1 contingency (loss of a subsequent non-related transmission element following an initial N-1 event) (Exhs. EV-2, at 2-7 to 2-8, app. 2-1, at 44).

19 The 90/10 peak load represents a load level that has a ten percent chance of being exceeded because of weather conditions in any one year (Exh. Protect-85(2) at 14, 63).

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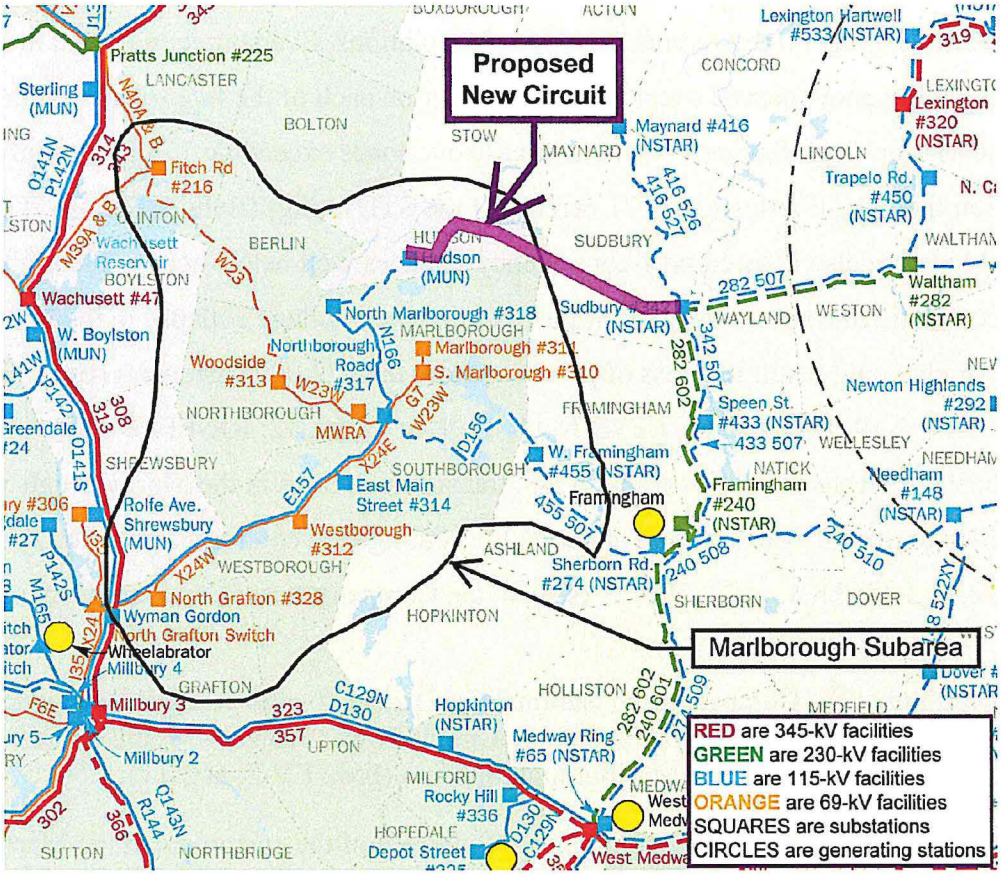
b. Greater Boston Area Reliability Needs

ISO-NE's 2015 Needs Assessment identified numerous reliability concerns throughout the Greater Boston Area, including criteria violations in Subarea D, which ISO-NE further divided into the Marlborough and Sudbury Subareas (Exh. EV-2, at 2-2, 2-10 to 2-14, app. 2-1, at 6-8, 68-69, app. 3-3 at 63). Figure 2, below, shows the general geographic location of Subarea D, and outlines in black the smaller Marlborough Subarea contained within.

Figure 2. Greater Boston Subarea D and the Marlborough Subarea



Source: Exh. EV-2, at 2-3.

According to the Company, the Marlborough Subarea is currently supplied by two 115 kV transmission lines (the E-157W and 455-507 Lines) and three 69 kV transmission lines (the X-24, N-40, and W-23 Lines) (Exhs. EV-2, at 2-2; SUD-G-10(S-1)). Originally built as a 69 kV system, 115 kV lines were added as demand in the area grew (Tr. 1, at 85-86).

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Eversource described the Marlborough Subarea as a "load pocket," where demand for electricity greatly exceeds any local generation and, as such, power flows into the area on the five high-voltage transmission lines from elsewhere on the transmission grid (Tr. 1, at 18).

The 2015 Needs Assessment identified numerous post-contingency thermal overloads and low-voltage violations in the Marlborough Subarea following certain N-1 and N-1-1 contingencies (Exh. EV-2, at 2-11). Eversource stated that while the N-1 violations identified in the area would be addressed by other planned transmission system investments,[20] N-1-1 post-contingency thermal overloads and low voltage violations would remain unresolved (Exh. EV-2, at 2-11).

Focusing solely on these remaining criteria violations, Eversource indicated that, by 2018, post-contingency thermal overloads could occur on each of the five transmission lines serving the Marlborough Subarea, with worst-case overloads exceeding 178 percent of the transmission line's LTE rating (and 171 percent of the STE rating) (Exhs. EFSB-N-7(1); EV-2, at 2-12). Modeling also showed post-contingency voltages well below acceptable limits; Eversource identified a substantial risk of post-contingency voltage collapse in the Marlborough Subarea, which would result in a loss of power to more than 72,000 customers (Exhs. EV-2, at 2-13 to 2-14, 2-19; EFSB-N-10; EFSB-N-11; Tr. 1, at 52-53, 72; RR-EFSB-109).[21]

The 2015 Needs Assessment found that transmission lines in the Marlborough Subarea already failed to meet thermal criteria under N-1-1 contingency conditions prior to 2013 (Exh. EV-2, at 2-15; Tr. 1, at 27, 29).[22] As such, the Company stated that there is an immediate

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20 According to the Company, two National Grid projects – the W-23W Reconductoring Project and the X-24W/E-157W Double Circuit Tower Project – would address the N-1 violations identified in the Marlborough Subarea (Exh. EV-2, at 2-11).

21 Eversource reported that approximately 60 percent of the customers in the Marlborough Subarea are served by National Grid, 27.4 percent by local municipal light plants, and 12.6 percent by the Company (RR-EFSB-109).

22 While a similar year-of-need analysis was not undertaken for voltage violations in the 2015 Needs Assessment, Eversource stated that, based on the severity of the low voltage violations identified, it would be reasonable to conclude that the year of need for these criteria violations was also prior to 2013 (Exhs. EFSB-N-9; EV-EL-1 at 3; Tr. 1, at 82-84).

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need for transmission system upgrades in the area, and that this need is not dependent on any future load growth (Exhs. EV-2, at 2-15; EV-EL-1, at 3; Tr. 1, at 27-29).

2. Eversource Updated Analysis

Given the passage of time since the completion of the 2015 Needs Assessment, Eversource conducted an Updated Analysis of the need for the Project in the year 2023 using the 2016 CELT demand forecast (the most recent CELT forecast available at the time), and the updated EE and solar PV forecasts contained therein (Exh. EV-2, at 2-15; Tr. 1, at 40). Generation and DR resources that cleared FCA 10, as well as transmission reinforcements (aside from the Project) that had been recommended by ISO-NE in response to the 2015 Needs Assessment were also included in the Company's assessment (Exh. EV-2, at 2-16 to 2-17; RR-EFSB-6). Eversource indicated that its Updated Analysis confirmed the need for the Project, with modeling continuing to show post-contingency thermal overloads and low voltage violations in the Marlborough Subarea (Exh. EV-2, at 1-4, 2-17 to 2-18; RR-EFSB-15; RR-EFSB-16).[23] Accordingly, the Company stated that there remains an immediate need for additional capacity to reliably serve electric customers in the area (Exh. EV-2, at 1-4).

C. Positions of the Parties

1. Town of Sudbury

The Town of Sudbury argues that the demand forecasts underlying the Company's assertion of need are neither reviewable nor reliable (Sudbury Brief at 21-27). Sudbury describes the Company's Updated Analysis as a "black box," and argues that insufficient information has been provided to allow a full understanding of the Company's forecast methodology (Sudbury Brief at 22, citing Exh. SUD-PLC-1, at 17).[24] Sudbury further asserts

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23 Based on the 2016 CELT demand forecast and National Grid plans to transfer 17 MW of load to the North Grafton Substation within the Marlborough Subarea, voltage collapse in the subarea would result in the loss of power to approximately 412 MW of load under 2023 peak load conditions (Exh. Protect-2-62(S-1)(1); Tr. 1, at 49-53).

24 For example, the Town of Sudbury expresses concerns with a lack of specific detail on the method and justification for how substation-level forecasts prepared by the electric

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that, while some examination of the Company's Updated Analysis was possible through the discovery process, it has had no meaningful opportunity to replicate or confirm Eversource's methodology (Sudbury Brief at 21, citing Exh. SUD-PLC-1, at 18).

Regarding the reliability of the ISO-NE forecast, Sudbury argues that ISO-NE consistently overestimates future growth in electrical demand (Sudbury Brief at 23). According to Sudbury, a review of ISO-NE's normal weather and extreme weather CELT forecasts for the Boston Subarea since 2003 shows forecasts have always (for 90/10 forecasts) or mostly (for 50/50 forecasts) exceeded both weather-normalized and actual peak electrical demand (Sudbury Brief at 23, citing Exh. SUD-PLC-1, at 7). Sudbury suggests that failing to consider all EE reductions achieved by the utilities, and instead reflecting only those EE savings that have cleared ISO-NE's FCA, may be one reason for ISO-NE's tendency to overestimate load growth (Sudbury Brief at 23-24, citing Exh. SUD-PLC-1, at 14).

Sudbury also argues that the forecast Eversource relies on is overstated because: (1) the 2016 CELT forecast grossly underestimates the rate at which solar PV has been added in the Marlborough Subarea; and (2) the Company did not update its analysis to reflect 2017 CELT Report forecast data, which predicted peak demand for Massachusetts in 2023 would be 191 MW lower than previously forecast (Sudbury Brief at 25; Sudbury Reply Brief at 3). Sudbury argues that the 2017 CELT Report does not support the need for the Project (Sudbury Brief at 24-25; Sudbury Reply Brief at 3).[25] Finally, Sudbury argues that the Company erroneously based its need analysis on load levels in the Boston regional system plan subarea, when a majority of the Marlborough Subarea is outside the Boston planning zone (Sudbury Reply Brief at 2-4, citing Exhs. SUD-N-1; SUD-N-37(1)).

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utilities were adjusted by ISO-NE to produce ISO-NE's subarea forecasts (Sudbury Brief at 21-23).

25 Sudbury references updated load, EE and PV forecast reports in its brief (Sudbury Brief at 24-25). The Siting Board notes that these reports are not part of the record in this proceeding, and as such are not considered by the Siting Board in its determination of need for the Project. 980 CMR 1.06. The Siting Board notes that subsequent to filing its briefs, Sudbury filed a motion to reopen the record to admit updated forecast reports. The Siting Board addresses this motion to reopen in Section XII, below.

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Sudbury submits that, in response to the above forecast concerns, Eversource and ISO-NE incorrectly argue that the need for the Project is not dependent on the load forecast (Sudbury Brief at 26, citing Exh. EV-EL-1, at 3; RR-EFSB-1). Sudbury rejects this argument for two reasons, arguing first that because the 2015 Needs Assessment and the Company's Updated Analysis used load forecasts to assess transmission system reliability and facility requirements, the Siting Board's standard of review requires the Board to review the forecasts to ensure that they are based on substantially accurate historical information and reasonable statistical methods that include consideration of conservation and load management (Sudbury Brief at 26). Second, Sudbury argues that, even if Eversource was correct that transmission lines in the Marlborough Subarea were vulnerable to post-contingency overloads under certain pre-2013 conditions, this does not necessarily indicate that the transmission lines would be subject to overloads in the future (Sudbury Brief at 26). According to Sudbury, recent system improvements by National Grid, and a lack of clarity around the exact magnitude of the 2013 load level the Company refers to, mean any pre-2013 scenario may not be applicable in the future (Sudbury Brief at 26-27).

2. Protect Sudbury

Protect Sudbury argues that Eversource has ignored record evidence and credible testimony that the Project is not needed (PS Reply Brief at 1). Protect Sudbury argues further that Eversource has not substantiated its claim that the proposed Project (using underground as opposed to overhead construction along the MBTA ROW) is the result of a transmission system study process undertaken by ISO-NE and its working group to "identify and address" transmission reliability requirements and develop solutions (PS Brief at 5, citing Exh. EV-2, at 1-3).[26]

3. ISO-NE

Although ISO-NE is not a party to the proceeding, it did respond to a request from staff to address the Town of Sudbury's concerns with the CELT forecast. ISO-NE indicated that the

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26 Protect Sudbury's arguments relating to ISO-NE's consideration of an underground Project are evaluated in Section IV, below.

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CELT forecast is prepared annually through an open stakeholder process, which is designed to ensure that prudent and up-to-date assumptions regarding the region's economic, policy, and load trends are used when evaluating transmission system adequacy (RR-EFSB-1).

ISO-NE stressed that the reliability issues addressed by the Project could occur at existing load levels, and that the need for the Project is not dependent on forecast growth in electrical demand (RR-EFSB-1). ISO-NE asserted that while it continues to refine its forecasting methods and assumptions, Sudbury's concerns with the CELT forecast are overstated (RR-EFSB-1). With respect to the accuracy of the CELT forecast, ISO-NE stated that Sudbury inappropriately compared forecast gross load levels with actual and normal weather demand, which are net loads (RR-EFSB-1). According to ISO-NE, when net 50/50 forecast loads are compared to actual and weather normal values, the difference between the ISO-NE forecast and actual loads is greatly reduced (RR-EFSB-1).[27]

ISO-NE agreed with the Town of Sudbury that EE performance in recent years has outpaced the original FCA results, suggesting that conservative bidding behavior by Program Administrators ("PAs") and the early delivery of EE measures are the likely cause of underestimated performance (RR-EFSB-1). ISO-NE stated that it works closely with PAs and other key stakeholders to develop the EE forecast, indicating that trends such as these recent underestimates are reviewed and considered within the EE forecast process (RR-EFSB-1).

4. Company Response

The Company argues that the forecasts relied upon to support the need for the Project are based on substantially accurate historical information and reasonable statistical projection methods that include an appropriate consideration of conservation and load management (Company Reply Brief at 10). With respect to whether the forecasts are reviewable, the

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[27] Sudbury acknowledged this error, and revised the prefiled testimony of Mr. Chernick on January 23, 2018. According to Sudbury's updated prefiled testimony, the average difference between actual peak load and the ISO-NE median weather forecast in the 2010 to 2017 CELT Reports was two percent (Exhs. SUD-PLC-1, at 8; SUD-PLC-5, at 1). Sudbury further stated that forecasts of load more than two years into the future overestimated actual loads by an average of three percent (Exhs. SUD-PLC-1, at 8; SUD-PLC-5, at 1).

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Company argues that it has provided ample documentation relative to the forecasts and forecast methods, demonstrating that use of CELT forecasts ensures system assessments use consistent load forecasts that have been reviewed through a rigorous stakeholder process (Company Reply Brief at 10-12, citing inter alia, Exhs. EV-2, at 1-3, app. 2-1; EFSB-N-1). The Company argues further that the need for a number of recent transmission projects subject to Siting Board review, namely the Woburn-Wakefield, East Eagle, NSTAR Electric Company d/b/a Eversource Energy, EFSB 14-2/D.P.U. 14-73/14-74 (2017) ("Walpole-Holbrook"), and Mystic-Woburn projects, was established based on similar forecasts and methodology (Company Reply Brief at 11).

With respect to ISO-NE estimates of demand, the Company defends ISO-NE's use of 90/10 forecasts as a conservative measure for planning purposes and argues that actual loads would generally be expected to be less than that forecast for 90/10 conditions (Company Reply Brief at 13-14). The Company states that forecast contingency overloads are as severe as 150 to 170 percent of the STE ratings of equipment, indicating that current loads are sufficient to justify the need for the Project and that only a major decline in peak load on the order of 115 MW would obviate Project need (Company Reply Brief at 16, n.11, 12, citing Tr. 1, at 27; RR-EFSB-19). The Company maintains that EE reductions achieved by the utilities are already reflected in load data, and suggests that these EE reductions may erode with time (Company Reply Brief at 12, 14-15).

The Company maintains that it did update its assessment of the need for the Project to reflect 2017 CELT Report forecast data, and that Eversource's Updated Analysis confirmed the need for the Project (Company Reply Brief at 12, citing Exhs. SUD-N-3; Protect-2-85; Tr. 1, at 60-61). With respect to the load forecasts for the Marlborough Subarea, the Company maintains that its forecast is based on individual substation loads in the Marlborough Subarea, which tie into the CELT forecast being used for the analysis; therefore, the Company argues it does not matter that parts of the Marlborough Subarea may be outside of the Boston regional system plan subarea (Company Reply Brief at 13, n.7, citing Exhs. EV-2 at 2-16; EFSB-N-41; Protect-1(S1); Protect-2-69).

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D. Analysis and Findings on Need

In the 2015 Needs Assessment, ISO-NE identified numerous reliability needs within the Greater Boston Area, including deficiencies in the Marlborough Subarea. The Siting Board recognizes the responsibilities and expertise of ISO-NE and accords considerable weight to the 2015 Needs Assessment and its findings. See e.g., Needham-West Roxbury at 13; Woburn-Wakefield at 17-18; Walpole-Holbrook at 16-17; East Eagle at 26-29; Mystic-Woburn at 17-18.

The 2015 Needs Assessment's evaluation of the Marlborough Subarea demonstrated that the existing transmission system would be insufficient to reliably supply customers under both pre-existing and forecast summer peak load conditions following certain N-1 and N-1-1 contingencies. The record shows that the identified N-1 violations in the Marlborough Subarea will be resolved by other planned system reinforcements, while the N-1-1 violations in the area remain to be addressed. Eversource's Updated Analysis, which is consistent with ISO-NE's study approach used in the 2015 Needs Assessment, demonstrated that this remains the case in light of more recent supply and demand information. Furthermore, the Company presented evidence showing that even assuming proposed transmission system reinforcements elsewhere in the Greater Boston Area were constructed, with the exception of the Project, the regional transmission system would remain inadequate.

Eversource must eliminate the potential for post-contingency thermal overloads and low voltages in the Marlborough Subarea in order to comply with applicable national and regional reliability standards, and to provide a reliable supply of electricity to customers in the Greater Boston Area. The Siting Board finds that the Company's use of an N-1-1 planning criterion is reasonable, that the methods used to assess system reliability are reviewable and appropriate, and that Eversource's existing transmission system does not currently meet the established reliability criteria. See e.g., Needham-West Roxbury at 13; Woburn-Wakefield at 17-18; Walpole-Holbrook at 16-17.

The Company's assessment of need relied in part on the 2015 Needs Assessment and the demand forecast contained therein. This forecast was developed using the summer peak 90/10 load forecast from the 2013 CELT Report, adjusted to reflect the contributions of forecast DR

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and EE resources.[28] The Company also reviewed the need for the Project using net load projections from the 2016 CELT Report. The Town of Sudbury argues against use of the CELT forecast on the bases that Sudbury was unable to exactly reproduce the results, and that, historically, CELT forecasts have over-predicted net load growth. The Siting Board does not find these arguments to be persuasive because: (1) conservative load forecast predictions are warranted for system planning purposes; (2) the over-predictions by ISO-NE of approximately two to three percent are relatively minor; and, most importantly; (3) the post-contingency thermal and voltage violations are already severe, were shown in the 2015 Needs Assessment to occur at pre-2013 load levels, and would remain so even with flat to declining loads. Based on these facts, the Siting Board finds that the need for the Project is not dependent on growth in electrical demand in the Marlborough Subarea, and that the level of precision in the Company's forecasting methodology is sufficient to make a proper determination on Project need.

The record demonstrates that the CELT forecast – which underlies the Company's forecasting methodology – undergoes a rigorous stakeholder review process, and the Siting Board considers it to be well suited for assessing the reliability needs of electric utilities on a consistent basis across New England.[29] In view of the above, the Siting Board finds that the Company has provided sufficient information to permit an understanding of its forecasting method, and that its forecast is reviewable, appropriate, and reliable for use in this proceeding to evaluate the Company's assertion of need.

For these reasons, the Siting Board finds that additional energy resources are needed to maintain a reliable supply of electricity in the Marlborough Subarea.

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28 The area assessed in the 2015 Needs Assessment encompassed the Boston Regional System Plan subarea plus some load to the west and south (Exh. EV-2, app. 2-1, at 12).

29 The Siting Board has found that the CELT forecast is reviewable, appropriate, and reliable in a number of recent decisions. See Needham-West Roxbury at 13; Woburn-Wakefield at 17-18; Walpole-Holbrook at 16-17; East Eagle at 26-29; Mystic-Woburn at 17-18.

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IV. ALTERNATIVE APPROACHES TO MEETING THE IDENTIFIED NEED

A. Standard of Review

G.L. c. 164, § 69J requires a project proponent to present alternatives to the proposed facility, which may include: (1) other methods of transmitting or storing energy; (2) other sources of electrical power; or (3) a reduction of requirements through load management.[30] In implementing its statutory mandate, the Siting Board requires a petitioner to show that, on balance, its proposed project is superior to such alternative approaches in terms of cost, environmental impact, and ability to meet the identified need. In addition, the Siting Board requires a petitioner to consider reliability of supply as part of its showing that the proposed project is superior to alternative project approaches. Needham-West Roxbury at 13-14; Woburn-Wakefield at 18-19; East Eagle at 29; Walpole-Holbrook at 17.

B. Identification of Alternative Approaches for Analysis

On August 12, 2015, ISO-NE issued the Final Solutions Study for the Greater Boston Area, outlining the recommended transmission investments for addressing the reliability needs identified in the 2015 Needs Assessment (Exh. EV-2, app. 3-3). A new overhead 115 kV transmission line between the Sudbury and Hudson Substations was one of the recommended projects (Exh. EV-2, at 2-1, 3-1 to 3-2, app. 3-3, at 12-13).[31] Eversource asserted that its further evaluation of project alternatives confirmed that the Project, using underground construction, is the best alternative for meeting the identified need, with minimal impact to the environment, with a greater degree of reliability, and at the lowest possible cost (Exh. EV-2, at 3-2).

In assessing alternative solutions to meet the identified need, Eversource explored non-transmission alternatives ("NTAs") including generation, EE, DR, and energy storage, as

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30 G.L. c. 164, § 69J also requires an applicant to present "other site locations." This requirement is discussed in Section V, below.

31 Eversource indicated that ISO-NE has not conducted a formal evaluation of an underground version of the 115 kV transmission line between the Sudbury and Hudson Substations (Tr. 8, at 1228-1230).

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well as alternative transmission facilities.[32] Each of these alternative approaches is discussed further below.

1. Non-Transmission Alternatives

Eversource engaged LEI to assess the cost and feasibility of using NTAs to address the identified need (Exh. EV-2, at 3-8). Eversource indicated that, as the first step in the process, it provided LEI with information on the necessary amounts and locations of NTA resources that would be required to address the identified need (Exhs. EV-2, at 3-8 to 3-9).[33] Initially, Eversource stated that by 2023 a minimum of 264 MW of effective capacity (237 MW connected to the Northborough Road Substation, and 27 MW connected to Woodside Substation) would be required (Exhs. EV-2, at 3-9; EFSB-PA-10). However, over the course of the proceeding, Eversource revised this figure to a total of 115 MW, with the full amount to be injected at either the Northborough Road or Hudson Substations (which LEI referred to as the "large scale" NTA case), or for the capacity additions to be spread across the West Framingham, Northborough Road, and North Marlborough Substations (which LEI referred to as the "medium scale" NTA case) (Tr. 15, at 2554-2555, 2557; RR-EFSB-19; RR-EFSB-24(R1)(1) at 4-5). Eversource stated that the decrease in the size of the injection requirement was the result of a number of factors, including the application of an improved modeling methodology and use of the 2016 CELT load forecast (rather than the 2013 CELT forecast used in the 2015 Needs Assessment) (Exh. EFSB-PA-10; Tr. 15, at 2647-2654; RR-EFSB-19).

Next, LEI identified a range of NTA technologies that could potentially meet this firm injection requirement, including thermal generation, renewable generation, storage, and EE (RR-EFSB-24(R1)(1) at 5). LEI first considered the minimum and maximum size of each NTA technology to determine whether a particular NTA option could provide the size of injection needed at a specific location (Exh. EV-2, at 3-10; RR-EFSB-24(R1)(1) at 3). Next, LEI

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32 Eversource also explored a no-build approach. However, this approach did not address the identified reliability need (Exh. EV-2, at 3-2).

33 LEI's assessment assumed completion of all elements of the ISO-NE recommended solution for the Greater Boston Area, excepting the Project (Tr. 3, at 358).

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considered whether a specific NTA technology has the operating characteristics necessary to respond to contingency conditions (Exh. EV-2, at 3-10; RR-EFSB-24(R1)(1) at 3, 6).[34] LEI then considered practical challenges (e.g., land and infrastructure requirements) that might prevent the NTAs identified from being developed (Exh. EV-2, at 3-10; RR-EFSB-24(R1)(1) at 3, 6, 16-17).

After identifying the technically feasible NTA technologies for each location, LEI developed a least-cost set of NTA solutions based on the gross and net levelized cost of entry ("LCOE") for each technology (Exhs. EV-2, at 3-11 and app. 3-5, at 10; RR-EFSB-24(R1)(1) at 3).[35] Given its view that future market revenues are uncertain, LEI calculated the net LCOE under four scenarios with varying assumptions for revenues from the capacity and renewable energy certificate markets (Exh. EV-2, at 3-12; RR-EFSB-24(R1)(1) at 3, 18). Based on this assessment, LEI concluded that the least-cost technically feasible NTA would be a medium-scale generation solution consisting of two 57 MW frame peakers and two 18 MW reciprocating engines (to yield 115 MW of derated capacity) (Exh. EV-2, app. 3-5, at 15). LEI estimated the direct cost to ratepayers of this NTA solution would range from $16.3 million to $23.9 million annually, depending on forward capacity market revenues (Exh. EV-2, app. 3-5, at 15).[36] In

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34 The Company stated that in order to respond to an N-1-1 contingency, an NTA resource must be able to provide energy within 30 minutes of the first contingency (Exh. EV-2, at 3-10). According to the Company, the NTA resource must then be able to continue to operate for a minimum of twelve hours, which would provide sufficient time for the failed transmission system element to be repaired, or for load levels to drop sufficiently (Exh. EV-2, at 3-10; Tr. 15, at 2559-2560).

35 LEI stated that the gross LCOE is a dollars-per-kilowatt-year ($/kW-year) value that includes all investment and operating costs, and that net LCOE is derived by deducting any potential revenue streams (e.g., energy sales, capacity market revenues, etc.) from the gross LCOE (Exh. EV-2, app. 3-5, at 13).

36 LEI also presented a large scale combined-cycle gas turbine ("CCGT") solution, which it estimated would have a net direct cost to ratepayers of approximately $12.8 million annually (RR-EFSB-24(R1)(1) at 15). However, LEI stated that based on the size of the injection requirement and available CCGT technology, this solution would not capable of starting up quickly enough to address the N-1-1 reliability needs of the area, and therefore this option was eliminated from further consideration (RR-EFSB-24(R1)(1) at 15; Tr. 15, at 2614-2617).

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comparison, Eversource estimated the annual revenue requirement of the Project to be approximately $11.2 million (RR-EFSB-11(S1); RR-EFSB-24(R1)(1) at 16).

In addition to a higher cost, Eversource identified significant implementation barriers for NTA solutions (Tr. 15, at 2626-2631; RR-EFSB-19; RR-EFSB-24(R1)(1) at 16-17). These barriers included the high cost and limited availability of land in the vicinity of the identified injection points, a lack of sufficient enabling infrastructure (e.g., gas pipeline and transmission system interconnections), zoning restrictions, end-of-life replacement costs, the need for sophisticated operator interventions, and lead-time concerns in light of the pre-2013 date of the reliability needs in the Marlborough Subarea (Tr. 15, at 2626-2631; RR-EFSB-19; RR-EFSB-24(R1)(1) at 16-17).

Eversource stated that, based on both the cost and practical challenges associated with the development of an NTA in the Marlborough Subarea, any technically feasible NTA solution is inferior to the Project (Exh. EV-2, at 3-12 to 3-13; Tr. 15, at 2546).[37] Eversource maintained that, overall, the Project better meets the goal of providing a robust, secure, and reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost (Exh. EV-2, at 3-13).

2. Transmission Alternatives

The Company considered two transmission alternatives with distinct approaches to meeting the reliability needs of the Marlborough Subarea: (1) the Project, which would bring a new source of supply to the area; and (2) Transmission Alternative 2, which would upgrade existing transmission lines in the area (Exh. EV-2, at 3-2 to 3-4; Tr. 1, at 97-98).

As discussed above, the Project consists of a new approximately nine-mile-long 115 kV transmission line (the New Line), and improvements at the Sudbury and Hudson Substations

37 In addition, Eversource stated that, unlike the Project, an NTA solution would not ameliorate potential contingencies that could cause loss of service to customers served by the Hudson Substation (Exh. EV-2, at 3-13). Reliability benefits associated with the Project are discussed in Section IV.B.2, below.

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(Exhs. EV-2, at 3-2 to 3-3; EFSB-PA-1; Tr. 1, at 103-105).[38] According to the Company, necessary work within the Sudbury Substation would include the installation of two new 115 kV breakers and a 115 kV shunt reactor (Exh. EV-2, at 3-2, 5-5).[39] Three new 115 kV breakers, one new underground and two new overhead transmission line terminals, and reconfiguration of the existing substation into a ring bus design, would be required at the Hudson Substation (Exhs. EV-2, at 3-2 to 3-3; EFSB-HLP-6). Upon completion, the Project would provide a capacity increase of approximately 320 megavolt-amperes ("MVA")[40] into the Marlborough Subarea (Exh. EFSB-PA-29). Eversource estimated the total cost of the Project to be approximately $95.8 million (RR-EFSB-50(1)).

Transmission Alternative 2 would be undertaken primarily by National Grid, and would involve: (1) converting the recently refurbished X-24 Line from 69 kV to 115 kV between the Millbury No. 5 and the Northborough Road Substations (14.5 miles); (2) reconductoring the E-157 Line between the Millbury No. 2 and Centech Substations (5.8 miles); and (3) reconductoring the 455-507 Line between the West Framingham and Sherborn Substations (5.8 miles) (Exh. EV-2, at 3-3; Tr. 1, at 103-105). Conversion of the X-24 Line to 115 kV operation would require installation of larger diameter conductor along the length of the line, and replacement of all of the existing support structures (Exh. EV-2, app. 3-4, at 9, 18).[41] Relocation

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38 Eversource explained that the New Line could be built using either underground or overhead construction, but that in the Company's opinion an underground transmission line is preferable (Exh. EV-2, at 3-1, n.16). For the purpose of the Company's comparison of project alternatives, underground construction is assumed for the Project. See Section VI, below, for a detailed comparison of the environmental impacts, costs, and reliability of the New Line using underground versus overhead construction.

39 Eversource indicated that a shunt reactor and associated facilities would not be required at the Sudbury Substation if the New Line were constructed using an overhead design (Exh. EV-2, at 5-4 to 5-5).

40 MVA is total power, which includes real power (MW) and reactive power (megavolt-amperes-reactive).

41 According to National Grid, 233 new steel pole structures, with roughly 136 new reinforced concrete caissons, would be installed to support the upgraded X-24 Line (Exh. EV-2, app. 3-4, at 9).

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of other transmission lines within the X-24 Line ROW, and upgrades at a number of National Grid substations would also be required (Exh. EV-2, at 3-3 to 3-4, and app. 3-4, at 9, 18).[42] Reconductoring the E-157 and 455-507 Lines would require National Grid and Eversource, respectively, to install larger diameter conductor and new support structures (Exhs. EV-2, at 3-3, app. 3-4, at 11-12; EFSB-PA-4).[43] Eversource would also need to complete upgrades at its West Framingham and Sherborn Substations (Exhs. EV-2, at 3-3; EFSB-PA-4).[44] All in, the various elements of Transmission Alternative 2 would require work in Millbury, Grafton, Shrewsbury, Westborough, Southborough, Framingham, Ashland, and Sherborn (Exh. EV-2, at 3-3 to 3-4, fig. 3-2). According to the Company, Transmission Alternative 2 would provide a 300 MVA transmission capacity increase into the Marlborough Subarea, and would cost approximately $116.1 million (Exhs. EV-2, at 3-4, 3-7; EFSB-PA-29).

Eversource indicated that, while both alternatives would meet the need, the Project would provide a greater increase in capacity at a lower cost, and would provide greater flexibility over the longer term (Exhs. EV-2, at 3-4 to 3-5, 3-7; EFSB-PA-29). Additionally, Eversource stated that the Hudson Substation is currently supplied radially from the Eversource system by a single

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42 National Grid stated that reconfiguration of the existing X-24 Line ROW to accommodate Transmission Alternative 2 would require the installation of 35 new structures and 29 new reinforced concrete foundations supporting transmission lines other than the X-24 Line within the ROW (Exh. EV-2, app. 3-4, at 9). An existing, retired, 69 kV line would also need to be removed (Exh. EV-2, app. 3-4, at 9). National Grid further stated that upgrades at the Millbury No. 2, Millbury No. 5, North Grafton, Westborough, and Northborough Road Substations would be required, and would involve, among other things, the installation of 115 kV autotransformers, 115 kV circuit breakers, and changes to existing relay equipment (Exh. EV-2, at 3-3 to 3-4, and app. 3-4, at 11-17).

43 National Grid stated that reconductoring the E-157 Line would require installation of twelve reinforced concrete foundations and in-kind replacement of 26 transmission support structures (Exh. EV-2, app. 3-4, at 11). Eversource stated that reconductoring the 455-507 Line would require replacement of 50 of the existing 97 transmission support structures (Exh. EFSB-PA-4).

44 Eversource stated that work at the West Framingham and Sherborn Substations would include replacing existing disconnect switches, small sections of cable buses, and resetting current transformers, relays, and meters (Exh. EFSB-PA-4).

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double-circuit 115 kV transmission line; the construction of a new transmission line between the Sudbury and Hudson Substations would provide an additional source of supply and allow the Hudson Substation to remain in service following an N-1 contingency to this existing supply line (Exh. EV-2, at 3-5). The reliability of the Hudson Substation would also be enhanced through the reconfiguration of the substation to a ring bus design (Exh. EV-2, at 3-5; Tr. 14, at 2461-2465). Finally, Eversource stated that the Project would provide a new, geographically separate source of supply to the broader Marlborough Subarea, diversifying the transmission supply to the region and protecting against extreme contingencies, such as the loss of all of the transmission lines in a single ROW (Exh. EV-2, at 3-5; RR-EFSB-17). According to the Company, Transmission Alternative 2 (which would reinforce existing transmission lines) would not improve the reliability of the Hudson Substation, nor provide a new source of supply to the Marlborough Subarea (Exh. EV-2, at 3-4 to 3-5; RR-EFSB-17).

Eversource also identified implementation issues for Transmission Alternative 2, including a long development lead time, difficulties in scheduling necessary equipment outages, greater customer outage exposure during Project construction, and complex construction requirements, including the potential need for live line work (Tr. 1, at 142-147; RR-EFSB-17). Regarding cost, Eversource stated that the Project would be roughly $20 million less than Transmission Alternative 2 and would therefore be preferable (Exh. EV-2, at 3-4).

Finally, with respect to environmental impacts, Eversource stated that a direct comparison and determination of superiority is difficult due to the distinct types of environmental impacts associated with the Project and Transmission Alternative 2 (Exh. EFSB-PA-36(R-3)). Table 1, below, provides a summary of the environmental considerations assessed by the Company for the two transmission alternatives. The Company concluded that, overall, the two transmission alternatives are comparable with regard to the potential for environmental impact (Exh. EFSB-PA-36(R-3)). However, Eversource noted that impacts from the Project would be similar to those associated with construction of the MCRT as a standalone project by DCR (Exh. EFSB-PA-36(R-3)).[45] Eversource asserted that if development of the MCRT by DCR is assumed as a baseline, the incremental environmental

[45] See Section VI.D.9 for further discussion of the proposed MCRT.

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impact attributable to the New Line component of the Project would be significantly reduced (Exh. EFSB-PA-36(R-3)).

Table 1. Comparison of Potential Environmental Impacts Associated with Transmission Alternatives 1 and 2 as Presented by the Company[46]

	Project	Transmission Alternative 2
Total Circuit Miles	9.0 miles	26.05 miles
Total Unique ROW Miles	9.0 miles	23.3 miles
Highway/Road Crossings	10	66
Water Body Crossings	11	41
Total Tree Clearing	23.9 acres	0.14 acres
Tree Clearing within Forested Wetland Areas	0 acres	0 acres
Permanent Fill within Vegetated Wetland Areas	<0.01 acres	0.14 acres
Temporary Fill within Vegetated Wetland Areas	0.05 acres	25.30 acres
NHESP Priority/Estimated Habitat	4.0 acres	1.45 acres
Disturbance within an Area of Critical Environmental Concern	0 acres	1.18 acres
Disturbance within Vegetated Wetlands Areas Classified as Outstanding Resource Waters	<0.01 acres	4.33 acres
Length within Mapped Public Water Supply Areas	6.49 miles	2.4 miles
Adjacent Residential Parcels	156	290
Adjacent Sensitive Receptors	3	4
Adjacent Environmental Justice Areas	0 miles	4.9 miles
Adjacent Conservation Land	3.7 miles	2.9 miles
MHC Cultural Resource Points	23	44
MHC Cultural Resource Areas	1.7 miles	2.5 miles

Sources: Exhs. EV-2, at 3-7; EFSB-PA-36(R-3); EV-18, at 20, 22-23. Tr. 1, at 159-162; RR-EFSB-12.

46 The Company noted that the impact figures tabulated for the Project do not net out impacts that would otherwise be incurred for the proposed MCRT as a standalone project by DCR (Tr. 1, at 162-164).

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C. Positions of the Parties

1. Town of Sudbury

The Town of Sudbury argues that the Company's NTA analysis is riddled with errors, pointing to a number of corrections made by the Company during the course of the proceeding, each showing a reduction in the needed scope of an NTA solution, and divergent estimates of load apportionment in the Marlborough Subarea among National Grid, Eversource, and municipal electric companies (Sudbury Brief at 28-30, 33-35). Additionally, Sudbury points out that the analysis by LEI did not readily produce a cost-optimized NTA solution (Sudbury Brief at 33-34). Based on the multiple changes to NTA size requirements, Sudbury calls into question whether Eversource has presented reliable and adequate information to the Board (Sudbury Brief at 29, citing Exh. SUD-5).

Further, Sudbury argues that the Company should not have dismissed an NTA of EE measures (e.g., a reduction on the order of 15 percent of load) on the basis that it would be more expensive than other measures, considering that Sudbury's witness testified that EE measures are "generally the least expensive resources and usually pay for themselves in energy and capacity savings, and reductions in market prices" (Sudbury Brief at 34, citing Exh. SUD-PLC-4, at 4).

Sudbury's witness, Paul Chernick, testified as to several NTA options (rate design, distributed solar and storage, and targeted load reductions) that could be implemented individually or in combination to reduce peak load. Mr. Chernick identified rate design options for time-varying rates for peak demand and time-of-use pricing (Sudbury Brief at 36, citing Exh. SUD-PLC-1, at 21, 28-33, 36-47). In particular, Mr. Chernick identified critical peak pricing ("CPP") and critical peak rebate ("CPR") programs, citing to the successful operation of CPR programs in Maryland (Sudbury Brief at 36, citing Exh. SUD-PLC-1, at 28-30). Mr. Chernick contends implementation of time-of-use pricing is a viable rate design option for the load pocket, with minimal costs for utilities, given the assumed installation of advanced metering equipment, which he asserts was encouraged by the Department in it its Grid Modernization docket (D.P.U. 12-76-B) and is supported by National Grid (Exh. SUD-PLC-1, at 21, 28-31).[47] Mr. Chernick also presented time-of-use pricing as an option to improve the

[47] The Siting Board notes that in D.P.U. 15-120/121/122, issued May 2018, the Department declined to preauthorize any customer-facing advanced metering investments. In the

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reliability of the transmission supply to the load pocket (Exh. SUD-PLC-1, at 32-33). Sudbury acknowledges that Eversource serves a low proportion of the load in the Marlborough Subarea, but argues that this does not relieve the Company of achieving the load reductions necessary for an NTA (Sudbury Reply Brief at 9).[48]

Sudbury argues that Eversource could use a number of means, including advanced metering functionality, critical peak pricing and peak time rebates, to pursue EE and rate design NTAs in the Marlborough Subarea – either on its own or in concert with National Grid and/or the municipal light plants (Sudbury Reply Brief at 9-10).[49] Sudbury argues that Eversource has also chosen not to comply with the Department's directive to implement advanced metering functionality that provides for two-way communications (Sudbury Brief at 40-41, citing Tr. 4, at 591-597). Finally, Sudbury argues that Eversource has made no effort to assess rate design, DR, targeted EE, solar, or storage resources to address the identified reliability need (Sudbury Brief at 40).

Sudbury argues that Eversource did not substantiate its assumption that a local resource solution would need to be capable of operating for a minimum of twelve hours, as if load would remain at the 90/10 peak for all twelve hours (Sudbury Reply Brief at 8, citing

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Order, the Department weighed the significant costs associated with full achievement of advanced metering functionality using advanced metering infrastructure against the considerable uncertainty regarding benefits from reduced demand, capacity savings, and customer participation in time varying rates or other forms of dynamic pricing. While the Department confirmed that advanced metering infrastructure is an important tool in meeting grid modernization objectives, it determined that, currently, the benefits of a full deployment of advanced metering functionality do not justify the costs. Grid Modernization Order, D.P.U. 15-120/121/122, at 1-2 (2018).

48 Sudbury argues that Eversource has failed to satisfy a Siting Board standard, noting that the Siting Board requires the Company to "strongly encourage" its customers to take full advantage of EE programs and explore "creative ways to use NTAs (individually or in combination) to avoid or delay the need for new transmission infrastructure" (Sudbury Brief at 33, referencing Mystic-Woburn at 25, n.28).

49 Sudbury further argues that Eversource misrepresented the proportion of load served by the Company in the Marlborough Subarea (Sudbury Brief at 29-30). The Siting Board does not view the difference between 10 and 12.1 percent as having a bearing on the feasibility of EE as a project alternative.

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RR-EFSB-24(R1)(1) at 4). Sudbury notes that when questioned about this assumption during the evidentiary hearing, Eversource told the Siting Board that the twelve-hour peak load assumption is a requirement of ISO-NE Planning Procedure 7 (Sudbury Reply Brief at 8, citing Tr. 15, at 2561). Sudbury argues that there is no specific ISO-NE planning guideline that addresses the technical requirements or operating specifications of an NTA solution and that, contrary to the Company's assertions, the twelve hours is related to the LTE rating for a transmission element, not an NTA solution (Sudbury Reply Brief at 8, citing Tr. 15, at 2561, 2599). Sudbury notes that the Company nevertheless continues to argue that "to compare transmission and non-transmission alternatives on a consistent basis," NTAs would need to satisfy a twelve-hour firm capacity requirement (Sudbury Reply Brief at 8, referencing Company Brief at 57, n.42). Sudbury submits that the Siting Board should treat this argument as baseless and reject it (Sudbury Reply Brief at 8).

Sudbury proposed a distributed solar-and-storage NTA consisting of approximately 250 MW of distributed solar PV, and 160 MW of energy storage capacity (capable of providing 638 megawatt-hours, or approximately four hours of peak output) within the Marlborough Subarea (Exh. SUD-PLC-1, at 36). This solution was designed to supplement firm transmission capacity in the Marlborough Subarea following the contingency of concern in the year 2023, and the combination of solar PV and storage would be dispatched to follow load (Exh. SUD-PLC-1, at 36-38; Tr. 16, at 2786). According to Sudbury, there is adequate space on rooftops within the Marlborough Subarea to achieve this level of installed solar PV capacity (i.e., rooftop space available for a total of approximately 565 MW of solar PV), and there is potential for additional generation from ground-mounted arrays (Exh. SUD-PLC-1, at 39-40). Sudbury maintains that peak load days have weather that is conducive to solar PV generation, because sunny weather leads to higher air conditioning load due to both higher ambient temperatures and increased direct radiant heating (Tr. 16, at 2747-2748).[50]

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[50] Meteorological data presented by the Company for evaluating solar PV production was from Bedford, Massachusetts; Sudbury argues that this location is not close to the Marlborough Subarea, and that the Company did not provide a rationale for its selection (Sudbury Brief at 38).

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Sudbury argues that its proposed solar PV and storage solution would not require any significant enabling infrastructure, such as improvements to distribution hardware or controls (Sudbury Brief at 37). According to Sudbury, the solar PV component of the NTA would largely be paid for through the sale of renewable power to the grid (Exhs. SUD-PLC-1, at 44-45; EFSB-SUD-17). Similarly, Sudbury proposed that the accompanying storage facility could be deployed for electricity price arbitrage (i.e., not for local reliability) for most of the year, reducing the cost of the distributed solar and storage NTA (Exh. SUD-PLC-1, at 39). Sudbury asserted that behind-the-meter solar is currently cost effective and extrapolated that 250 MW of solar PV with 160 MW of storage would break even or yield modest profits (Exh. SUD-PLC-1, at 44). Sudbury concludes that, using a combination of NTAs, the feasibility of a creative, hybrid NTA solution is unassailable (Sudbury Brief at 37-38).

With respect to the Eversource's NTA evaluation, Sudbury maintains that it has clearly called into question the scale of the Company's NTA solution, and the reasonableness of the Company's analyses (Sudbury Brief at 41). Sudbury argues that while Eversource has avoided or obstructed any effort to consider NTAs, Sudbury has presented viable NTAs that withstand scrutiny, and therefore, the Siting Board must reject the Company's Petition (Sudbury Brief at 41).

With regard to the transmission alternative presented by the Company, Sudbury notes that National Grid would have been responsible for construction of Transmission Alternative 2, but that it was absent from the proceeding, and the record is therefore inadequate with respect to the costs and environmental impacts of that alternative (Sudbury Brief at 27, citing Exh. EV-2, at 3-3 to 3-4).[51] Sudbury argues that the record contains no support for National Grid's estimate of the cost of Transmission Alternative 2,[52] and asserts that Eversource was unable to provide an

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51 Sudbury also notes that Eversource apparently did not to review National Grid's own published EE plans, despite knowing that National Grid serves a large portion of the load pocket (Sudbury Brief at 34-35, citing Tr. 14, at 2659).

52 Sudbury cites to record evidence that the cost estimate for Transmission Alternative 2 was developed from a desktop review of line characteristics and historical costs from other projects; that no property surveys, evaluations of soil conditions, or environmental

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opinion on what the actual cost of the alternative would be (Sudbury Reply Brief at 5, citing Tr. 1, at 124).[53] Given this stated deficiency, and some overlap between cost range estimates for the Project and Transmission Alternative 2, Sudbury argues that the Siting Board must find there is no reasonable explanation for Eversource's dismissal of Transmission Alternative 2 on the basis of cost (Sudbury Reply Brief at 5-6).

Sudbury also argues that impacts on an existing utility ROW are different in kind from impacts on the MBTA ROW, due in part to ongoing vegetation management practices along the route of Transmission Alternative 2 (Sudbury Brief at 32; Sudbury Reply Brief at 6). In contrast, the MBTA ROW, which has not had railroad service in over 40 years, is characterized by Sudbury as "a pristine, largely untouched wilderness that will face significant permanent damage from construction of the Project" (Sudbury Reply Brief at 6; citing generally Exh. SUD-DMD-1; EFSB-SUD-38(1)).[54] In addition, Sudbury argues that many of the Company's metrics (e.g., a count of road crossings) are not natural environmental impact considerations (Sudbury Brief at 32). Sudbury notes that its own experts easily concluded that the environmental impacts of the Project far exceed those of Transmission Alternative 2 (Sudbury Reply Brief at 6, citing Exh. SUD-MJN/RMG-1(R) at 11). Sudbury argues that, with no reasonable cost information and a specious environmental impact comparison, Eversource has failed to establish that the

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studies were conducted; and that details such as crew sizes and specific construction equipment were not presented (Sudbury Brief at 30, citing Exh. SUD-C-6(S-1)).

53 Oral testimony, cited by Sudbury, was that Eversource believes the expected cost of Transmission Alternative 2 of $116.1 million was calculated by National Grid using a -25%/+50% methodology; however, Eversource could not confirm the exact basis of National Grid's cost estimate (Tr. 1, at 124).

54 Sudbury argues that maintaining a cleared corridor on the MBTA ROW would have relatively high impacts on 3.7 miles of adjacent conservation land (Sudbury Brief at 32, citing Exh. SUD-DMD-1). In contrast, Sudbury argues that reconductoring an overhead utility line within an existing ROW would not impact adjacent conservation land because the ROW is already cleared and vegetation management is ongoing, suggesting that the Company should have included ongoing vegetation management as a factor when comparing environmental impacts (Company Brief at 32, citing Exh. SUD-DEIR-53).

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Project is superior to Transmission Alternative 2, and therefore, that the Siting Board must deny Eversource's Petition (Sudbury Brief at 33).

2. Protect Sudbury

Protect Sudbury maintains it is "axiomatic that construction on an otherwise undeveloped parcel [the MBTA ROW] will have more impacts than construction under-street or on a developed utility right of way" (PS Brief at 7). Protect Sudbury argues that Transmission Alternative 2 poses no risk to groundwater or public water supplies, wildlife habitat, rare species, conservation land uses, nor to abutting historic or archeological resources (PS Brief at 9-10). Protect Sudbury argues that the Project would have dramatic short- and long-term environmental impacts, and that these impacts are much more significant than the environmental impacts of Transmission Alternative 2 (PS Brief at 7).

With respect to comparative costs, Protect Sudbury argues that conceptual estimates used by the Company are based on limited design or engineering information, and omit key assumptions regarding material and labor costs, production rates, and construction conditions (PS Brief at 29, citing Exh. Protect-RC/RH/ML/MO-1, at 5). Protect Sudbury argues that, with the wide range and variation of the competing projects (i.e., underground, overhead, and in-street), conceptual estimates are not helpful in evaluating cost estimates for project alternatives, particularly where the project estimates are relatively close together in range of costs (PS Brief at 30, citing Exh. Protect-RC/RH/ML/MO-1, at 6). Protect Sudbury suggests that underground construction especially poses risks of cost increases (PS Brief at 30-32). Protect Sudbury notes that the ranges associated with the Company's cost estimates for the Project and Transmission Alternative 2 overlap, arguing that further refinement is necessary in order to reasonably rank the alternatives by cost (PS Brief at 33, citing Exh. Protect-RC/RH/ML/MO-1, at 16). Protect Sudbury contends that the Company has not met its burden to demonstrate that the Project is the least costly, given the Company's use of inaccurate conceptual estimates (PS Brief at 27).

Protect Sudbury argues that ISO-NE did not, in fact, compare the Project with Transmission Alternative 2, but rather compared an overhead transmission line along the MBTA ROW (the MBTA Overhead Route) with the National Grid-led alternative (PS Brief at 10-12; PS Reply Brief at 2-4). Protect Sudbury argues that, by failing to update ISO-NE when it

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became clear that an overhead transmission alternative was no longer the Company's preferred option, Eversource circumvented well-established ISO-NE procedures for stakeholder review of competing projects and comparative costs (PS Brief at 12). Protect Sudbury argues that a key function of ISO-NE's planning process is to keep stakeholders apprised of the initiation and on-going status of reliability planning studies, and that this is achieved, in part, through presentations to ISO-NE's Planning Advisory Committee ("PAC") (PS Brief at 13). Protect Sudbury argues that material changes to the cost and design of the New Line, resulting from the Company's decision to pursue the MBTA Underground Route, should have been subject to the PAC's confirmation that the Project was the cost-effective solution compared to alternative options (PS Brief at 13).[55] Protect Sudbury concludes that in the absence of a required ISO-NE review the Siting Board should reject the Company's Petition outright (PS Brief at 26). Protect Sudbury concludes that the Siting Board should reject the Company's proposed Project (PS Brief at 3).

3. HLPD

HLPD argues that, in addition to other system reliability benefits, the Project would provide significant reliability and cost benefits to HLPD customers, and that these benefits would not be achieved if any of the alternative approaches explored in this proceeding were pursued in place of the Project (HLPD Brief at 3). According to HLPD, the existing supply arrangement at the Hudson Substation leaves HLPD customers exposed to potential supply interruptions

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55 Protect Sudbury also argues that the Siting Board "has correctly assumed that any transmission project proposal would be reviewed and evaluated by ISO-NE before it is submitted for its review" (PS Brief at 11, 20, citing East Eagle at 8-20). Protect Sudbury argues further that Eversource failed its obligation to keep ISO-NE informed about changes to the Project and that "Eversource failed to submit its Preferred Route for review by ISO-NE as required" (PS Brief at 20). In fact, the Siting Board has no statutory or regulatory requirement that transmission facilities must be approved by ISO-NE prior to filing with the Siting Board, nor is the Siting Board responsible for ISO-NE's interpretation of its procedures. Furthermore, the Siting Board performs its own evaluation between the Project and Transmission Alternative 2 and concludes that the Project is superior. See Section IV.D. Therefore, Protect Sudbury's argument is not addressed further.

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following certain N-1 contingencies (HLPD Brief at 4). Following construction of the Project, an additional, geographically distinct, transmission supply would be brought to the Hudson Substation, eliminating the reliability risk associated with the substation's radial supply (HLPD Brief at 4, citing Tr. 14, at 2461-2462). In addition, a single contingency at the Hudson Substation would no longer result in the loss of more than one of the substation's three transformers (HLPD Brief at 4). According to HLPD, neither an NTA nor the type of existing transmission system reinforcement proposed as Transmission Alternative 2 would provide either of these reliability benefits (HLPD Brief at 4, citing Tr. 14, at 2465-2466). As such, HLPD urges the Siting Board to approve Eversource's Petitions, and to do so as soon as practicable (HLPD Brief at 4).

4. Company Response

Eversource argues that Sudbury's proposed NTAs are unrealistic and conceptual, and that all technically feasible NTAs are more costly than the Project (Company Reply Brief at 28, 33-36). The Company argues that Sudbury's NTA witness did not substantiate how its proposed alternatives could be implemented cost effectively, practically, or on an expeditious basis, to address the immediate reliability need in the Marlborough Subarea (Company Reply Brief at 28, citing Tr. 15, at 2544; RR-EFSB-24(R1)(1)). Further, the Company argues that it is not in a position of ensuring that NTAs such as those proposed by Sudbury would occur in a timely manner, if at all, whether by private project developers or end-use customers (Company Reply Brief at 28, citing Exh. EV-EL-1, at 4, 7).

The Company argues that it cannot force customers to participate more actively in EE, to buy advanced metering, to subscribe to different forms of time-of-use rates, to shift their consumption to off-peak periods, or add solar systems or related storage systems to their homes or businesses (Company Reply Brief at 29, citing Exh. EV-EL-1, at 7-8, RR-EFSB-101, at 3).[56]

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[56] The Town of Sudbury objects to the Company's response to RR-EFSB-101, arguing that it was filed late, constitutes improper rebuttal testimony, and should be stricken from the record (Sudbury Brief at 40; Sudbury Reply Brief at 10-11). The Company contends that the response is not rebuttal testimony, but rather information relevant to the topic of the record request and as such there is no basis to strike it (Company Reply Brief at 35 n.22). As an initial matter, we note that the Board's regulations require that any objections to

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The Company argues that it has a long history of successfully and aggressively implementing EE programs, and has implemented EE programs to the best of its ability and to the extent of customers' willingness to participate, receiving national recognition for these programs (Company Reply Brief at 30, citing Exh. SUD-N-26, Tr. 1, at 151, Tr. 4, at 587).

The Company reiterates that, even in the unlikely event that EE could achieve as much as a 15 percent peak load reduction around specific substation locations (above and beyond the EE reductions already included in the load forecast), it would not be sufficient to resolve the identified criteria violations (Company Reply Brief at 30-31, citing RR-EFSB-24(R1)(1) at 6). The Company maintains that achieving incremental EE gains, beyond what it is already implementing, and beyond what is already planned and included in the ISO-NE load forecast, would be far more expensive than the Project (Company Reply Brief at 31, citing Exh. EV-EL-1, at 7).

The Company argues that Sudbury failed to appreciate the cost and practical implementation impediments to its proposed rate design measures (Company Reply Brief at 32). Eversource states that the ability to respond to time-varying rate pricing signals is modest for most customers, and that the Company has historically found it difficult to sustain customer participation and response under time-varying rate programs (Company Reply Brief at 33, citing Exh. EV-BJR-1, at 4-5). Eversource submits that, based on its experience, the Company would not expect to achieve significant load reductions from a time-varying rate or CPP program (Company Reply Brief at 33, citing Exh. EV-BJR-1, at 4).[57]

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record requests responses be filed within seven days of the response. 980 CMR 1.06(6)(g). Notwithstanding the lateness of Sudbury's objection, a review of the Company's response indicates that pages 1-3 provide the information requested by the Siting Board, but that pages 3-11 include information beyond that required to respond to staff's request. While the information may be relevant to the general topic of the record request, it goes beyond the scope of the question. As such, the Siting Board does not rely on the out-of-scope information in the Company's response to RR-EFSB-101 (on page 3 starting with "We are concerned with Mr. Chernick…" and concluding on page 11).

[57] Eversource estimated a total peak demand reduction of less than one percent under expected program participation rates (Company Brief at 33, citing Exh. EV-BJR-1, at 4).

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Regarding DR, Eversource argues that there has been a more than a 50 percent reduction in active DR between the 2013 CELT Report and the 2016 CELT Report because of recent changes in environmental regulations (Company Reply Brief at 32, citing RR-EFSB-5). The Company further argues that active DR is dispatched by ISO-NE only when required by system-wide conditions and cannot be counted upon when a load pocket may be lost under N-1-1 contingency conditions (Company Reply Brief at 32, citing RR-EFSB-6). The Company concludes that the need is far too big and immediate to be met by targeted load reductions (Company Reply Brief at 31-32).

With respect to the number of hours an NTA must be available, the Company asserts that, while Planning Procedure 7 does not specifically address the technical requirements of an NTA (because it is a transmission planning document), the procedure is grounded on the principle that a contingency could occur over an extended time frame when loads are high enough to require at least twelve hours of backup resources, and that this requirement is equally applicable to transmission and non-transmission alternatives (Company Reply Brief at 36-37, citing Tr. 3, at 448-450, 454, 461-463, 477; Tr. 15, at 2561-2562; RR-EFSB-24(R1)(1) at 4, 19).

The Company acknowledges that engineering for Transmission Alternative 2 was not advanced to the same degree as for the Project, but argues that the Siting Board is nevertheless able to compare alternatives, even when, as is typical, the confidence level of estimates for project alternatives is less than that for the proposed project (Company Reply Brief at 26). The Company argues that it used standard industry practices to develop its costs estimates, and that its estimates drew from the knowledge and expertise of design engineers and managers of prior construction projects (Company Reply Brief at 69-71).[58] Overall, Eversource argues that it has provided ample information showing that, on balance, the Project is superior to alternative approaches, including Transmission Alternative 2 (Company Reply Brief at 26).

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58 Further, the Company submits that, although National Grid was not a party to this proceeding, National Grid's absence did not hamper the flow of information regarding the costs of Transmission Alternative 2, and that, as necessary, the Company contacted National Grid, which provided information in full (Company Reply Brief at 25, citing Exh. EFSB-PA-22).

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D. Analysis and Findings on Alternative Approaches

The Company's assessment of alternative approaches to the proposed Project included a review of potential non-transmission and transmission alternatives. The Company argues that both of these options are inferior to the Project because they would provide a lower level of reliability at a higher cost. The Company described a centralized generation NTA solution to resolve the identified reliability needs; the Company's NTA solution would be less reliable and more costly than the Project.[59,60]

The Town of Sudbury proposes a different NTA solution, wherein the local utilities would somehow induce area customers to both provide for more of their own power consumption (e.g., with solar PV and storage), and to reduce their consumption at the time of a transmission system contingency. Eversource disputes that there is potential to sufficiently reduce customers' electricity consumption, or that such an approach would be reliable or cost-effective.

The record does not support Sudbury's contention that there are untapped, inexpensive measures readily available that would sufficiently reduce load in the Marlborough Subarea by more than 15 percent – beyond EE savings already included in the load forecast – either alone or in combination.[61] Without compelling evidence that a substantial cut in peak power demand in the Marlborough Subarea is feasible, and likely to occur, relying on such an expectation is not an

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59 The Siting Board notes that the Company's assessment of the amount of NTA resources required to address the identified reliability need shifted markedly over the course of the proceeding, necessitating an updated NTA assessment. Comments by parties helped identify the need for these refinements. The Siting Board recognizes that there are technical difficulties in establishing optimized NTA injection requirements; nonetheless, applicants should ensure that such technical details are resolved prior to filing with the Board.

60 None of the parties supported the Company's centralized generation NTA solution.

61 The Siting Board notes that the Department has no rate-setting authority for municipal light department customers, generally, or for a substantial portion of the Marlborough Subarea, and therefore has no mechanism to effect Sudbury's proposal to reduce peak load through rate-design.

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appropriate response to the identified, and immediate, need.[62] Furthermore, the record does not support a conclusion that implementation of the combined decentralized solar PV and energy storage concept proposed by Sudbury is a feasible or cost effective alternative to the Project, especially in light of the time-sensitive nature of the reliability needs in the Marlborough Subarea.[63,64] The record shows that such an approach would require a significant mobilization of new infrastructure – including a means of incentivizing customer participation (e.g., new specific programmatic support), and a centralized system for monitoring and dispatching the DG resources – the costs, practicality and timing of which are unknown. The record does not include an assessment of when specific quantities of capacity would in fact be installed under Sudbury's approach, nor when control system infrastructure would be available. The solar plus storage solution offered by Sudbury appears to suffer from two additional critical deficiencies. First, this concept assumes that solar PV generation would be available during the contingency, or other times when the energy storage systems need to be charged to be prepared to withstand such a contingency. Given that solar PV is an intermittent technology, and not dispatchable, there can

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62 The CELT forecast reflects ISO-NE's estimate of peak load reductions, including reductions from EE programs that Eversource described as having received national recognition. Eversource noted that most customers have a limited ability to respond to electricity pricing signals and predicted a less-than-one-percent reduction in total peak demand from its time-varying rate programs. Eversource also noted that it cannot force customers to reduce or shift their electricity consumption. As such, the Siting Board concludes that incremental peak load reduction measures are not a practical element to a Project alternative in this instance.

63 Additionally, the record shows that reliability improvements to customers supplied by the Hudson Substation would not be achieved if an NTA solution, such as the one proposed by the Town of Sudbury, were implemented in place of the Project.

64 The Siting Board notes that the demand forecast underlying the Company's Updated Analysis includes ISO-NE's expectation of future solar PV uptake across New England, including the Marlborough Subarea. The Siting Board expects that significant amounts of uptake beyond this level would require additional programmatic and financial support, and notes that municipal light plant customers, which make up a significant portion of the Marlborough Subarea, are not eligible to participate in the Commonwealth's current solar PV incentive program (i.e., the Solar Massachusetts Renewable Target (SMART) Program). See Tr. 3, at 521.

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be no such assurance, even though there may be a statistical likelihood that solar PV could serve this function. A key role of reliability planning is to address contingencies that may be statistically unlikely, but such significant threats to reliable energy supply that they necessitate a certain remedy. Solar PV does not provide the certainty necessary to obviate contingencies that can occur at any time.

Second, Sudbury presumes that energy storage systems are made more economical and competitive to the Project by means of their ability to perform "energy arbitrage" while also providing the capacity when needed during a system contingency. This too, is an unrealistic assumption. Absent perfect knowledge of when, and for how long, a system contingency will occur, there can be no assurance that energy storage systems that are part of a solution strategy will have sufficient energy reserves available at that time needed to respond to a contingency that threatens system reliability. Energy arbitrage activity could deplete a battery energy storage system to a low state-of-charge just prior to a system contingency and would therefore render that storage system an unreliable solution for that contingency. There may be remedies for this shortcoming, but Sudbury has not demonstrated what they are, or how they would affect the cost and feasibility of an energy storage solution. Given the reliability needs currently present in the Marlborough Subarea, the Siting Board concludes that the NTAs proposed by the Town of Sudbury are inferior alternatives to the Project.

The Company and the Town of Sudbury also disagree on the minimum duration of an NTA alternative. ISO-NE Planning Procedure 7 requires that transmission elements have a twelve-hour rating in the summer, or LTE rating, to provide the needed supply under various contingencies. The Siting Board has evaluated and accepted use of LTE ratings (which are a twelve-hour maximum rating) in gauging whether the system has the resilience to withstand one or more contingencies. The Company has proposed to continue use of this practice in this case, which the Siting Board continues to find an appropriate criterion when considering transmission solutions, like the Project.

However, with the advent of new and increasingly practical utility-scale NTA technologies, such as energy storage systems, the use of the twelve-hour, LTE-based, minimum duration requirement for the evaluation of NTA solutions warrants review. In this regard, the Siting Board is not wholly persuaded by the Company's argument that the necessary duration for

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an effective energy storage system solution must be based on the twelve-hour definition of the LTE rating of a transmission line. In fact, to avoid loss of load, an NTA would only have to provide supplemental power for the actual number of hours that post-contingency transmission components would be insufficient. The Siting Board recognizes that such close alignment would require perfect information and foresight, along with considerable operator action to match changes in load for the duration of the outage with transmission capability and NTA output, the management of which is likely to have cost and reliability implications.

For planning purposes, it is the Board's view that a conservative approach on NTA adequacy is appropriate for ensuring reliability and is consistent with our past practice. Nevertheless, the record in this proceeding leaves open the question whether twelve hours of backup power is necessarily required for NTAs to reliably supplant typical transmission investments, as a general planning criterion. The Siting Board directs the Company to review its approach and develop a methodology for determining reasonable and appropriate duration requirements for use in future NTA assessments. Such a determination will need to address the unique circumstances of the applicable contingencies and system characteristics in study areas and could result in minimum required NTA durations that are either less than, or greater than, the current twelve-hour planning approach.[65]

Overall, the record shows that the NTA alternatives identified in the record are inferior to the Project with respect to reliability and cost. While at least some of the NTA alternatives may be preferable to the Project with respect to environmental impacts, on balance, considering environmental impacts, reliability and cost, the Siting Board finds that the Project is preferable to NTA alternatives.[66]

Regarding transmission alternatives, the Company showed that the Project, which would bring a new source of supply to the Marlborough Subarea and provide redundancy to HLPD's

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65 The Siting Board recommends that the Company confer with ISO-NE and other transmission utilities in developing its methodology.

66 The Siting Board continues to expect that Eversource will strongly encourage its customers, both existing and new, to take full advantage of EE programs. Eversource should also continue to explore creative ways to use NTAs (individually or in combination) to avoid or delay the need for new transmission infrastructure.

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supply, overall, would provide more reliable electric service to the subarea than Transmission Alternative 2. While the cost estimate ranges for the two alternatives do overlap, the Company's best estimate of the cost of Transmission Alternative 2 is substantially higher than its best estimate of the cost of the Project, and it is unlikely that the ranking of the respective transmission alternative costs would reverse.[67] Thus, the Project would provide a more reliable and cost effective solution than Transmission Alternative 2.[68]

Eversource's position is that the environmental impacts of the Project and Transmission Alternative 2 are comparable. Because the type of work proposed for each alternative is different, it is difficult to directly assess the relative impacts of the two options, but the Project would require a considerably greater level of tree clearing and NHESP habitat disturbance. Furthermore, impacts along the existing active utility corridors used in Transmission Alternative 2 may be somewhat diminished due to differences in potential habitat disturbance. However, there are valuable environmental resources along these corridors that could be negatively impacted by new construction along these routes, and the scope of work required for Transmission Alternative 2 is significant. On this basis, the Siting Board finds that both transmission alternatives have the potential for environmental disruption, but that the Project has a somewhat greater potential for adverse environmental impacts than Transmission Alternative 2. Based on the enhanced reliability and likely lower cost of the Project compared to Transmission Alternative 2, the Siting Board finds that the overall benefits of the Project outweigh the environmental advantages of the alternative.[69]

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67 See also, Section VI.E, below.

68 The Siting Board accepts the evidence presented by Eversource on behalf of National Grid regarding the cost and environmental impacts of Transmission Alternative 2 as a reasonable basis for comparing the alternative transmission approaches. Siting Board staff and intervenors were able to seek information from National Grid through Eversource during the proceeding (see, for example, RR-SUD-6). While it would have been welcome, direct participation of National Grid is not necessary for the Board's review of the Project.

69 The Siting Board notes that if construction of the MCRT is assumed, many of the environmental impacts associated with the Project would occur regardless of Project construction. See Section VI.D.9., for discussion of the MCRT.

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Based on its review of non-transmission and transmission alternatives, the Siting Board finds that the Project is superior to the other alternatives identified with respect to providing a reliable energy supply for the Commonwealth with minimum impact on the environment at the lowest possible cost.

V. ROUTE SELECTION

A. Standard of Review

G.L. c. 164, § 69J requires a petition to construct to include a description of alternatives to the facility, including "other site locations." Thus, the Siting Board requires an applicant to demonstrate that it has considered a reasonable range of practical siting alternatives and that its proposed facilities are sited in locations that minimize cost and environmental impacts while ensuring a reliable energy supply. To do so, an applicant must meet a two-pronged test. First, the applicant must establish that it developed and applied a reasonable set of criteria for identifying and evaluating alternative routes in a manner that ensures that it has not overlooked or eliminated any routes that, on balance, are clearly superior to the proposed route. Second, the applicant generally must establish that it identified at least two noticed sites or routes with some measure of geographic diversity. Vineyard Wind LLC EFSB 17-05/D.P.U. 18-18/18-19 at 19 (2019) ("Vineyard Wind"); Needham-West Roxbury at 21; Woburn-Wakefield at 34-35. But see Colonial Gas Company d/b/a National Grid, EFSB 16-01, at 28 (2016), Colonial Gas Company d/b/a National Grid, EFSB 18-01/D.P.U. 18-30, at 40-41 (2019), where the Siting Board found the company's decision not to notice an alternative route to be reasonable.

B. Company's Approach to Route Selection

Eversource stated that its route selection methodology is an iterative approach that included the following steps: identifying a geographic study area (the "Study Area"); identifying viable routes and design options (the "Universe of Routes"); evaluating and scoring environmental and constructability constraints for the Universe of Routes; comparing estimated costs; and selecting as the candidate routes for further analysis: (1) the MBTA Underground Route as the Primary Route; (2) the MBTA Overhead Route as the Noticed Variation; and (3) the All-Street Route as the Noticed Alternative Route (Exh. EV-2, at 4-3).

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The Company identified a Study Area by reviewing potential routes between the Sudbury and Hudson Substations, which included areas within the municipalities of Sudbury, Wayland, Framingham, Marlborough, Hudson, and Stow, roughly bounded to the north by Route 27 and to the south by U.S. Route 20 (Exh. EV-2, at 4-6). The Company stated that a majority of the land uses within its Study Area are conservation, recreation, agriculture, and water supply protection areas; however, there are residential and commercial areas at the eastern end of the Study Area in Sudbury, the western end of the Study Area in Hudson, and along the public roadways (Exh. EV-2, at 4-6).

The Company used United States Geological Survey maps, Massachusetts Geographic Information System data, aerial photography, and field reconnaissance to identify its Universe of Routes (Exh. EV-2, at 4-7). Eversource looked to site the Project in an existing linear corridor, such as an existing utility ROW (e.g., rail, gas, electric) or public roadway (Exh. EV-2, at 4-6). The Company met with federal, state, and municipal officials; Protect Sudbury; residents; business owners; and other stakeholders to discuss route options and to obtain input on the Universe of Routes (Exh. EV-2, at 4-4). Further, Eversource reported that it incorporated suggested routes from stakeholders into its Universe of Routes, specifically routes identified by the Town of Sudbury, Protect Sudbury, and Northeast Logistics, LLC (Exhs. EV-2, at 4-4, 4-6; EFSB-RS-3; EFSB-RS-4).

The Company stated that its initial Universe of Routes included 21 geographically distinct routes (Exh. EV-2, at 4-7). Eversource completed an initial screening that considered abutting land uses; proximity of wetlands, waterways, and rare species habitat; existing traffic patterns and volumes; constructability considerations such as bends or the presence of existing underground utilities; easements and property ownership; and feedback from stakeholders (Exh. EV-2, at 4-7). Based on its initial assessment, Eversource eliminated nine routes that it considered unsuitable for the Project (Exhs. EV-2, at 4-7 to 4-9; EFSB-RS-3).

The Company identified design variations and/or hybrid designs for five of the remaining twelve routes, yielding a total of 20 options along twelve unique route corridors (Exh. EV-2, at 4-7, 4-13 to 4-14). Of the twelve routes, six (and one design variation) would be located entirely within public roadways, providing geographically distinct routing alternatives; further, two were identified by the Town of Sudbury and two were identified by Protect Sudbury

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(Exhs. EV-2, at 4-29; EFSB-RS-3).[70] The Company's scoring process consisted of the following: (1) identifying evaluation criteria to identify impacts of each route; (2) calculating a ratio score for each criterion for each route; (3) assigning individual weights to each criterion to reflect its potential for impact; and (4) determining a total raw ratio score and total weighted ratio score for each route (Exh. EV-2, at 4-15 to 4-16).

Eversource scored the 20 options based on 17 environmental and constructability criteria that fell into three categories: (1) developed environment criteria (seven criteria); (2) natural environment criteria (six criteria); and (3) constructability criteria (four criteria) (Exh. EV-2, at 4-15). Within the developed environment category, the criteria included a comparison of the existing conditions and impacts to residential land uses, sensitive receptors, traffic conditions, commercial and industrial land uses, scenic roadways, cultural resources, and the potential to encounter subsurface contamination (Exh. EV-2, at 4-16 to 4-20).[71] Criteria within the natural environment category included tree clearing, wetland resource areas, state-listed rare species habitat, public water supplies, conservation land uses, and public shade trees (Exh. EV-2, at 4-20 to 4-23). Criteria within the constructability criteria included trenchless crossings, existing utility density, length of route, and hard angles (greater than 30 degrees) (Exh. EV-2, at 4-23 to 4-25). The Company stated that the environmental and constructability criteria in this proceeding are similar to the criteria it has presented to the Siting Board in other transmission line proceedings; however, Eversource also developed three unique criteria for route scoring of the Project (i.e., scenic roadways, public water supplies, and conservation lands) (Exhs. EFSB-RS-1; EFSB-RS-7; EFSB-RS-10).

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70 The six routes that would be located entirely within public roadways are: Routes 4, 5, 5A, 6, 7, 8, and 11 (Exh. EV-2, at 4-10 to 4-14; 4-31). Protect Sudbury proposed Routes 5A, and 11, and the Town of Sudbury proposed Routes 7 and 8 (Exh. EFSB-RS-3).

71 The Company quantified the potential to encounter subsurface contamination based on the number of sites, on or adjacent to each route option, where a documented release of oil and/or hazardous materials occurred, or where past land uses have been documented as "Disposal Sites" under the Massachusetts Contingency Plan ("MCP") (Exhs. EV-2, at 4-20; EFSB-RS-11). Eversource indicated that, unless there was a documented release or disposal site in the MCP database, it did not include potential subsurface contamination in its route scoring approach (Exh. EFSB-RS-11; Tr. 5, at 791-792).

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Next, the Company calculated ratio scores to reflect potential impacts (Exh. EV-2, at 4-16). Eversource assigned a value of "1" to the criterion on the route with the highest potential for the corresponding impact; other routes received a ratio score between "0" and "1" indicating their relative potential impact for the particular criterion (Exh. EV-2, at 4-16).[72] The Company added scores for each criterion together to get a total raw ratio score for each candidate route (Exh. EV-2, at 4-16).

The Company then selected weights (1 to 5) for each scoring criterion (with higher weights having greater impact), intended to reflect the Company's assessment of: (1) the potential temporary and permanent impacts that could result from construction; (2) the availability of best management practices or construction techniques to minimize these temporary or permanent impacts; and (3) public input (Exhs. EV-2, at 4-15, 4-16, 4-25; EFSB-RS-1; EV-MB-2, at 5-6). Table 2 presents the weights that the Company assigned to the 17 criteria.

72 For example, if a hypothetical Route X with ten proximate residential structures has the highest potential residential unit impact, then the residential unit impact score of Route X is 10 structures/10 structures or "1" (Exh. EV-2, at 4-16). A hypothetical Route Y with five proximate residential structures has a residential structure impact score of 5 structures/10 structures or "0.5" (Exh. EV-2, at 4-16).

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Table 2. Routing Analysis Criteria Weights Summary

	Criterion	Assigned Weight
Natural Environment	Public Shade Trees	1
	Tree Clearing Area	5
	Wetland Resource Area	5
	Public Water Supplies	3
	State-Listed Rare Species Habitat	5
	Conservation Land Use	3
Developed Environment	Residential Land Use	5
	Commercial/Industrial Land Use	4
	Sensitive Receptors	5
	Cultural Resources	2
	Scenic Roadways	4
	Potential for Traffic Congestion	5
	Potential to Encounter Subsurface Contamination	1
Constructability	Route Length	1
	Trenchless Crossings	3
	Utility Density	3
	Hard Angles	1

Source: Exh. EV-2, at 4-25.

Eversource stated that it assigned weights that are generally consistent with previous Siting Board cases for criteria such as residential land use, potential for traffic congestion, and commercial/industrial land uses (Exh. EFSB-RS-1). However, the Company increased the weights for the criteria of protected habitats, wetland resource areas, and trenchless crossings (Exh. EFSB-RS-1). Further, the Company chose to use a "1 to 5" scale, rather than a "1 to 3" scale as in previous proceedings, to provide more granularity in comparing the benefits and impacts of each option (Exh. EFSB-RS-1; Tr. 5, at 757-761). Eversource indicated that it designed its criteria and weights to reflect unique components of the Project and Study Area, and public feedback (Exhs. EFSB-RS-1; EFSB-RS-7).

Considering each option in turn, the Company multiplied the raw ratio score for each criterion by the assigned weight to develop a weighted score, then added the weighted scores of all the criteria to calculate a total weighted ratio score for each candidate route (Exh. EV-2,

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at 4-16, 4-27 to 4-29). The lowest total weighted ratio scores indicate routes with the lowest potential impacts (Exh. EV-2, at 4-16).

For each of the remaining twelve geographic routes and related design options, the Company completed a reliability analysis and a conceptual (-25 percent/+50 percent) cost analysis (Exh. EV-2, at 4-33 to 4-35). Eversource determined that there were no substantial differences in the reliability risks of any of the options; and therefore, reliability was not a determining factor when comparing the Universe of Routes (Exh. EV-2, at 4-35). Table 3, below, provides weighted ratio scores and cost estimates along with the corresponding rankings for the twelve routes and their design variations. Following Table 3 is Figure 3 depicting the geographic location of each route.

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Table 3. Eversource Route Scoring Matrix

Route Options	Weighted Environmental Ratio Score	Weighted Env'l Ratio Ranking	Cost Estimate (Millions)*	Cost Ranking
1A: MBTA ROW Overhead to Chestnut	29.52	19	$50.5	3
1B: MBTA ROW Underground to Chestnut	20.76	4	$95.4	9
1C: MBTA ROW Hybrid to Chestnut	20.22	3	$88.1	6
2A: MBTA ROW Overhead to Wilkins ***(MBTA Overhead Route)***	29.03	16	$44.2	2
2B: MBTA ROW Underground to Wilkins ***(MBTA Underground Route)***	19.37	1	$91.0	7
2C: MBTA ROW Hybrid to Wilkins	20.83	5	$83.5	4
3A: MBTA ROW Overhead to Woodrow	29.27	17	$43.3	1
3B: MBTA ROW Underground to Woodrow	19.44	2	$94.5	8
3C: MBTA ROW Hybrid to Woodrow	20.91	6	$85.4	5
4: Route 20 to Concord to Hudson	25.49	8	$113.7	14
5: Route 20 to Union to Hudson	27.94	13	$119.7	17
5A: Route 20 to Station to Union to Hudson	26.45	11	$118.1	16
6: Route 20 to Horse Pond to Hudson	27.91	12	$120.2	18
7: Route 20 to Sudbury to Main	29.68	20	$127.0	19
8: Route 20 to Hosmer to Causeway	26.07	10	$132.9	20
9A: MBTA ROW Overhead to Station to Union to Hudson	29.43	18	$106.1	11
9B: MBTA ROW Underground to Station to Union to Hudson	28.09	15	$114.5	15
10A: MBTA ROW Overhead to Horse Pond to Hudson	27.99	14	$95.9	10
10B: MBTA ROW Underground to Horse Pond to Hudson	25.94	9	$109.4	12
11: Route 20 to Green Hill to Hudson ***(All-Street Route)***	25.41	7	$110.4	13

*costs do not include work at the Hudson Substation (approximately $5 million) (Exh. EV-2, at 5-84)

Source: Exh. EV-2, at 4-29, 4-34.

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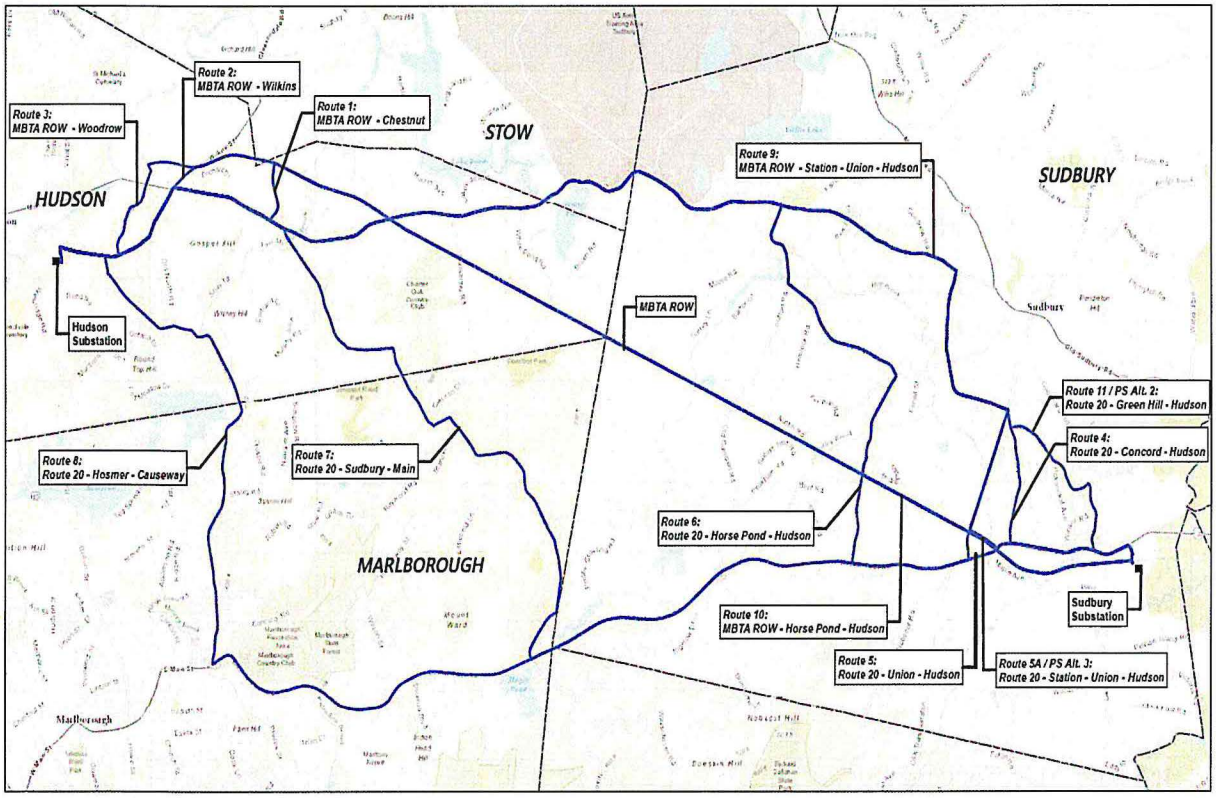
Figure 3. Universe of Routes



Source: Exh. EV-2, fig. 4-2.

Based on the consideration of environmental impacts, cost, and reliability, the Company selected Route 2B (the MBTA Underground Route) as its Primary Route for the Project (Exh. EV-2, at 4-36). Eversource stated that the MBTA Underground Route has the overall lowest weighted environmental score (Exh. EV-2, at 4-29). Eversource noted that Route 2A (MBTA Overhead Route) has a lower cost than the MBTA Underground Route, but greater potential for environmental impacts, so it selected the MBTA Overhead Route as a Noticed Variation to the Project (Exh. EV-2, at 4-36). The Company stated that, of the public roadway routes, Route 11 (the All-Street Route, using Route 20 to Green Hill to Hudson) has the lowest environmental score and the lowest conceptual cost (Exh. EV-2, at 4-29). This route – initially proposed by Protect Sudbury – was therefore selected as the Noticed Alternative Route (Exh. EV-2, at 4-37; EFSB-RS-3).

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The Company indicated that in the early stages of the Project's development, the MBTA Overhead Route was presented to the towns and the public as the Company's preferred route for the Project (Tr. 5, at 823-829). Although it determined that the MBTA Underground Route had a lower environmental score compared to the MBTA Overhead Route, the Company initially selected the MBTA Overhead Route as its preferred route primarily on the basis of cost (Tr. 5, at 828-829). After meetings with towns and stakeholders, and further consideration of the greater environmental impacts of an overhead route, the Company decided to present the MBTA Underground Route as the Primary Route for the Project in its Petitions (Tr. 5, at 828-829).

C. Geographic Diversity

The Company stated that it developed and assessed a wide variety of routes within the Study Area (Exh. EV-2, at 4-37). Figure 3 shows the diversity of routes. The Company maintains that its selection of a route that follows the MBTA ROW and a route located entirely in public roadways represents geographically diverse alternatives (Exh. EV-2, at 4-2, 4-29).

D. Positions of the Parties

1. Town of Sudbury

The Town of Sudbury argues that the Company failed to demonstrate that it developed and applied a reasonable set of criteria for identifying and evaluating potential routes (Sudbury Brief at 41; Sudbury Reply Brief at 18). Sudbury states that the Company's route selection procedure is deficient in several ways (Sudbury Brief at 41).

First, Sudbury argues that during its initial screening, Eversource eliminated routes from its Universe of Routes prior to undertaking a quantitative assessment (Sudbury Brief at 41-42 citing Exh. EV-2, at 4-7, 4-9; Tr. 5, at 843-844). Sudbury asserts that the Company eliminated five routes based on "certain generalizations" of factors such as abutting land uses, historic resources, traffic conditions, and constructability constraints, and did not rely on a quantitative assessment or fixed procedures (Sudbury Brief at 43-44 citing Exh. EV-2, at 4-7; Tr. 5, at 771-772; RR-SUD-7). Further, Sudbury argues that the same factors that eliminated routes during the initial screening were quantitatively assessed during the second stage of the route selection process (Sudbury Brief at 43-44, citing Exh. EV-2, at 4-3; Tr. 5, at 843-844). The town

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concludes that this approach subsequently affected the results of the route selection process by excluding routes with higher potential impacts, which it claims enabled the Company to control the strength of the criteria (Sudbury Brief at 42-43).

Second, Sudbury faults the Company's choice of criteria, and argues that constructability criteria should not be included as part of the route selection process (Sudbury Brief at 44). Citing the pre-filed testimony of Protect Sudbury, the town agrees that constructability criteria are temporary, site-specific factors that affect construction costs rather than environmental impacts (Sudbury Brief at 44, citing Exh. Protect-RC/RH/ML/MO-2). Sudbury contends that constructability factors should be included in the cost analysis of the routes, and not as a category in the environmental scoring process because they detract from a proper review of whether Eversource selected a route with minimal environmental impacts (Sudbury Brief at 44-45, citing Exh. Protect-RC/RH/ML/MO-2).

Additionally, Sudbury states that the design and weighting methods for the criteria are unreasonable (Sudbury Brief at 45). Sudbury claims that the Company's scoring unjustifiably treats impacts on the built environment as more important than impacts on the natural environment (Sudbury Brief at 45 citing Exh. EV-2, at 4-27). Specifically, Sudbury asserts that a weight of "3" for conservation land use does not reflect the permanent nature of impacts to the open space corridor (Sudbury Brief at 46, citing Exhs. EV-2, at 4-27; SUD-MJN/RMG-1, at 36). The town also states that calculating conservation land use by linear foot of frontage does not adequately quantify the impact to those resources (Sudbury Brief at 46, citing Exhs. EV-2, at 4-27; SUD-MJN/RMG-1, at 36). Sudbury argues that temporary impacts to the developed environment, such as traffic, are overstated by being assigned the highest weight of "5" (Sudbury Brief at 46, citing Exh. SUD-MJN-RMG-1(R) at 58). Further, Sudbury states that the four criteria that Eversource added to the routing analysis based on public input (scenic roadways, public water supplies, conservation lands, and tree clearing) did not result in a meaningful consideration of the stakeholder interests, as those criteria ranked poorly for the MBTA Overhead Route (Sudbury Reply Brief at 19, citing Exh. EV-2, at 4-27).

Sudbury outlines its concerns with the use of a ratio score (Sudbury Brief at 47). Sudbury presented exhibits during evidentiary hearings that it claimed illustrate how a ratio score allows the route with the highest environmental impact to skew the magnitude of the ratio scores

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for the other routes within a category (Exhs. SUD-2; SUD-3; SUD-4; Tr. 5, at 856-875; Sudbury Brief at 47-50; Sudbury Reply Brief at 18). According to the town, this approach could result in routes with objectively equivalent environmental impacts scoring differently, or clearly superior routes being overlooked (Sudbury Brief at 47-50).[73]

Overall, on environmental grounds, Sudbury asserts that Eversource's scoring system: (1) fails to capture the intensity and importance of the permanent adverse impacts to the town; and (2) overstates the importance of impacts to the developed environment while understating the importance of permanent adverse impacts to the natural environment (Sudbury Brief at 46, citing Exh. Protect-RC/RH/ML/MO-2, at 12; Sudbury Reply Brief at 18, citing Exh. EV-2, Section 4). To illustrate its point, Sudbury asserts that the MBTA Underground Route would result in significant impacts to the natural environment, such as rare species and wildlife habitat, water resources, vernal pools, and conservation land, and argues that the scoring fails to reflect the route's impact to those types of natural resources (Sudbury Brief at 45-46, citing Exh. SUD-DMD-1).

Sudbury concludes that the Company's route selection methodology is unsound, unreliable, and fatally flawed, and that the Siting Board should deny the Project because the Company has not demonstrated that it minimized environmental impacts or ensured that clearly superior routes were not overlooked during the route selection process (Sudbury Brief at 50-51; Sudbury Reply Brief at 18).

2. Protect Sudbury

Protect Sudbury asserts that the Company's routing analysis is biased and that Eversource manipulated the weights and criteria, such that the All-Street Route, which Protect Sudbury

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[73] Sudbury suggests two alternatives to the Company's scoring approach (Sudbury Brief at 50). Rather than using the maximum data observed in each category as the denominator, Sudbury proposed either the use of the median or the lowest non-zero observation as the denominator, both resulting in the MBTA Underground Route scoring substantially lower/less impactful (Sudbury Brief at 50). Sudbury attached to its brief a chart purporting to show the resulting rankings using its alternative methods. To the extent that Sudbury is including evidence or analysis not included in the record of this matter, the Siting Board will not rely on such extra-record evidence. 980 CMR 1.06.

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claims has virtually no environmental impacts, receives a worse score than the MBTA Underground Route (PS Brief at 38, 47). Protect Sudbury contends that the Company's route analysis unreasonably included constructability factors, failed to distinguish between short-term and long-term impacts, and failed to consider stakeholder input, and therefore, should be rejected by the Siting Board (PS Brief at 38-39, citing Exh. Protect-RC/RH/ML/MO-2, at 7-8; PS Reply Brief at 4-6, 11-12).

Protect Sudbury contends that constructability criteria are temporary, site-specific construction considerations that: (1) primarily impact cost; and (2) are already included in the conceptual cost estimates used in the route selection evaluation (PS Brief at 39, citing Exh. Protect-RC/RH/ML/MO-2, at 7-8). By including the constructability criteria within the environmental scoring component of the route selection analysis, Protect Sudbury contends that Eversource, in effect, double counts these costs in its evaluation (PS Brief at 39).[74] Protect Sudbury also argues that Eversource's analysis overstates construction considerations and places less weight on true environmental impacts of the routes by diluting the importance of the other environmental criteria it regards as valid (PS Brief at 39-40, citing Exh. Protect-RC/RH/ML/MO-2, at 8-9). Protect Sudbury concludes that there is no basis for including constructability as a subset of the environmental scoring analysis (PS Brief at 39, citing Exh. Protect-RC/RH/ML/MO-2, at 8-9).

Protect Sudbury also argues that Eversource's scoring does not adequately distinguish between temporary, short-term impacts and long-term, post-construction impacts (PS Brief at 41; PS Reply Brief at 11). Protect Sudbury asserts that the Company overstated temporary impacts and undervalued permanent impacts by: (1) assigning the same numerical weight ("5") to temporary, construction-phase disturbances (e.g., traffic, residential land use, sensitive receptors) as to permanent, natural environment disturbances (e.g., tree clearing); and (2) assigning

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74 As an example, Protect Sudbury points to the trenchless crossing criteria (included in the constructability category), which includes trenchless crossings in wetland resource areas; however, in the natural environment category, there is also a separate criterion for wetland resources (PS Brief at 39). Therefore, Protect Sudbury states that trenchless crossings should be included only in the wetland resource category rather than also being included as a construction category (PS Brief at 39, citing Exh. Protect-RC/RH/ML/MO-2, at 7-8).

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unjustifiably low weighting values for impacts associated with long-term impacts (e.g., "1" for subsurface contamination, "3" for conservation land use) (PS Brief at 41, citing Exhs. Protect-RC/RH/ML/MO-2, at 11-15; Hudson-PH-1, at 3-7).[75]

Protect Sudbury conducted its own route scoring calculations to demonstrate the influence of the constructability criteria and to develop a method it views as more accurately reflecting potential long-term impacts. Table 4, below, summarizes the three different approaches that Protect Sudbury used in its route scoring calculations and the results.[76]

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75 Protect Sudbury characterizes the potential impacts to conservation land and potential impacts from subsurface contamination as permanent due to what it believes to be the permanent loss of open space, and a permanent risk of contamination and associated impacts, respectively (PS Brief at 41).

76 In Protect Sudbury Analysis III, two underground routes that follow a portion of the MBTA ROW ranked lower (less impactful) than the MBTA Underground Route (Routes 9B and 10B, and their overhead variations, 9A and 10A, respectively) (Exh. Protect-RC/RH/ML/MO-2). Route 9 (A or B) would leave the MBTA ROW at the intersection of Route 20 and Station Road in Sudbury, follow Union Avenue and Old Lancaster Road to Hudson Road, where it would then follow the same route as the All-Street Route (Exh. EV-2, at 4-11). Route 10 (A or B) would leave the MBTA ROW at Horse Pond Road in Sudbury, and follow Horse Pond Road, Pratts Mill Road, and Dutton Road to Hudson Road, where it would then follow the same route as the All-Street Route (Exh. EV-2, at 4-11).

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Table 4. Protect Sudbury's Routing Analyses

	Description of Analysis	Results Compared to Eversource's Analysis
Protect Sudbury Analysis I	• Removed constructability criteria	• Reduced all total ratio scores and weighted scores • Environmental Rankings: 1: All-Street Route 2: MBTA Underground Route 19: MBTA Overhead Route See Exh. Protect-RC/RH/ML/MO-2, at 10, Table CEI-3
Protect Sudbury Analysis II	• Removed constructability criteria • Adjusted the weight of the residential, commercial/industrial land use, sensitive receptors, traffic impacts, and scenic roadway categories to be "0" for only the MBTA Underground and All-Street Routes to reflect the assumption that those categories would have minimal or no post-construction impacts to develop a "representative long-term impact" score. For the MBTA Overhead Route, only traffic impacts were assigned a "0" • Characterized Eversource's weighted ratio score as a "representative short-term impact" score • Developed a duration impact weighting for short-term impacts (5%) and long-term impacts (95%) based on Protect Sudbury's classification of the duration of construction activities and service life of the Project[77] • Multiplied the representative long-term and short-term scores by the percentage above to obtain weighted scores, and then added the short-term and long-term weighted scores to arrive at a total weighted score	• Protect Sudbury only conducted this analysis on the MBTA Underground Route, MBTA Overhead Route, and the All-Street Route, and therefore did not provide a revised ranking of all the routes • Stated that the total environmental score would be lower for the All-Street Route compared to the MBTA Underground Route • Protect Sudbury stated that by creating two separate scores, one for short-term impacts and one for long-term impacts, the analysis could represent a "trade-off" and balance between short-term and long-term impact • Protect Sudbury argued that the weights (5% and 95% in its example) could be adjusted to reflect stakeholder interests See Exh. Protect-RC/RH/ML/MO-2, at 13-14, 16, 17, Tables CEI-4, CEI-5

77 Protect Sudbury refers to these as "duration impact weighting factors." Mathematically, Protect Sudbury calculated weights for long-term impacts (at 40 years) relative to short-term impacts (at two years) yielding a relative long-term impact weighting of 95 percent versus a short-term impact weighting of 5 percent (or a 19-to-1 ratio of long-term to short-term impact weightings) (PS Brief at 43).

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	Description of Analysis	Results Compared to Eversource's Analysis
Protect Sudbury Analysis III	• Removed constructability criteria • Developed a duration impact weighting factor (1 to 5 scale) based on a 40-year project life-cycle • Multiplied each criteria by the weighting factor based on Protect Sudbury's assumption of the duration of impacts, while keeping all other weights from Eversource's analysis the same	• Increased all total weighted scores; changed the relative ranking of the routes • Environmental Ranking: 1: All-Street Route 14: MBTA Underground Route 19: MBTA Overhead Route See Exh. Protect-RC/RH/ML/MO-2, at 6, 19-20, Table CEI-7

Source: Exhs. Protect-RC/EH/ML/MO-2; EV-PS-8.

Protect Sudbury concludes that the modifications it performed to the Company's route scoring approach present a more accurate reflection of short-term and long-term impacts (PS Brief at 43-44, citing Exh. Protect-RC/EH/ML/MO-2). Protect Sudbury asserts that its analysis demonstrates that the All-Street Route would better mitigate short-term and long-term environmental impacts compared to either the MBTA Underground Route or the MBTA Overhead Route (PS Brief at 43-45, citing Exh. Protect-RC/EH/ML/MO-2). Protect Sudbury argues that selection of the All-Street Route would be consistent with previous Siting Board findings that underground projects in existing roadways avoid long-term environmental impacts and are a preferred approach (PS Brief at 44-45, citing East Eagle at 146).

Protect Sudbury states that the Company did not present a specific comparison of the environmental impacts of Transmission Alternative 2 to the routes included in the Universe of Routes (PS Brief at 46, citing Tr. 5, at 929). Further, Protect Sudbury argues that impacts of Transmission Alternative 2 should be considered incrementally, since Transmission Alternative 2 would be constructed in an existing utility ROW, which would reduce the severity of environmental impacts (PS Brief at 46, citing Exh. Protect-RC/EH/ML/MO-2, at 21). Protect Sudbury states that the Company's assertion that the Project compares favorably to Transmission Alternative 2 is without merit because the Company did not accurately consider the difference in short-term and long-term impacts between the two routes (PS Brief at 47, citing Exhs. EFSB-PA-36(R-2); Protect-RC/EH/ML/MO-2, at 21-23).

Finally, Protect Sudbury argues that the Company's assertion of "extensive community outreach" and its determination of "clear advantages of constructing the Project underground along the MBTA corridor" ignores the fact that, in Protect Sudbury's opinion, there is no

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community support for the Project (PS Brief at 48-49; PS Reply Brief at 4-5). Protect Sudbury asserts that this shows that the Company has totally disregarded the community and minimized stakeholder participation in its decision-making process (PS Reply Brief at 4-5).

3. Company Response

The Company contends its route selection process was rigorous, thorough, and objective, and supports its selection of the MBTA Underground Route (Company Brief at 79). The Company states it developed and assessed a wide array of potential routes and design variations, developed and applied a reasonable set of criteria to analyze impacts, and identified a Primary Route, Noticed Variation, and Noticed Alternative Route that balance environmental impacts, cost, and reliability (Company Brief at 84-86, citing Exh. EV-2, at 4-37; Company Reply Brief at 39). The Company's responses to specific arguments on aspects of the route selection process are outlined below.

a. Initial Screening Process

In response to the Town of Sudbury's arguments that the initial screening process was flawed, the Company states that it evaluated a variety of factors before it eliminated routes for further consideration during the initial screening process (Company Reply Brief at 40). Eversource states that the routes eliminated during the initial screening process had a variety of negative attributes and were therefore unsuitable for the Project, and "did not possess any positive attributes over any of the alternatives that were not eliminated" (Company Reply Brief at 40-41, citing Exhs. EV-2, at 4-6 to 4-8; EV-MB-2, at 3; Tr. 5, at 836). The Company argues that its initial screening process is consistent with Siting Board precedent, and that it did not overlook or eliminate any clearly superior routes (Company Reply Brief at 41, citing Woburn-Wakefield at 34-65; East Eagle at 63-76; Mystic-Woburn at 26-31; Walpole-Holbrook at 32-37).

b. Constructability Factors

Both Protect Sudbury and the Town of Sudbury expressed concerns regarding the use of constructability criteria in the Company's scoring analysis. The Company states that

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constructability criteria provide a measurable factor to differentiate between the duration and magnitude of impacts along a given route that are not otherwise captured (or duplicated) in the environmental or cost categories (Company Brief at 76 n.53; Company Reply Brief at 42, citing Exhs. EV-MB-2, at 11; EV-DAS/DB-1, at 2).[78]

Specifically, the Company asserts that constructability factors identify components of a route that may lead to a longer construction period (i.e., a longer period of impact to abutting land uses) and a greater amount of disturbance (e.g., wider width of trench for underground lines, or increased number of splice vaults) (Company Reply Brief at 43, citing Exh. EV-MB-2, at 12). Eversource argues that the constructability criteria it selected represent factors that would result in increased impacts to the environment and abutting land uses along a route (Company Reply Brief at 43-44, citing Exh. EV-MB-2, at 12). Contrary to the Town of Sudbury and Protect Sudbury assertions, Eversource maintains that not all impacts flowing from constructability issues can be accounted for as impacts to the natural and developed environment, and that constructability should not be eliminated as an individual criterion (Company Reply Brief at 43). Finally, the Company argues that it routinely includes constructability criteria in its route selection process, and the Siting Board has previously found these criteria to be appropriate (Company Reply Brief at 44, citing Woburn-Wakefield at 39, 65; East-Eagle at 65, 74; Mystic-Woburn at 29, 32).

c. Evaluation Criteria

The Company argues that it selected criteria that allow for an appropriate analysis of the different variables, corridors, environmental features, and designs of its candidate routes

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78 The Company notes several examples of how its constructability factors can influence the duration and magnitude of environmental impacts: (1) trenchless crossings can result in a prolonged period of impact to abutting uses, and greater disturbance to abutters at exit and entry pits; (2) existing utilities, and their density, can affect construction duration and resulting impacts to abutters; (3) length of a route is closely related to construction duration and corresponding impacts to abutters; and (4) hard angles produce bends in the cable that can increase construction difficulty, require additional splice vaults, increase land areas of land disturbance, and increase construction duration (Company Reply Brief at 43).

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(Company Reply Brief at 46, citing Exh. EV-MB-2, at 4-5). Eversource states that its criteria are designed to reflect natural and developed environmental characteristics in the Study Area, while also identifying temporary and permanent impacts, and differentiate between construction methods (Company Reply Brief at 46-47, citing Exh. EV-MB-2, at 4-5). The Company dismisses the Town of Sudbury and Protect Sudbury criticisms, and contends that their approach "overlooked the need for certain criteria and the need to evaluate both temporary and permanent impacts from construction along each of 20 route options" (Company Reply Brief at 47, citing Exh. EV-MB-2, at 4-5).

The Company adds that it included several additional criteria specifically recommended by stakeholders including: Scenic Roadways; Public Water Supplies; Conservation Lands; and Tree Clearing (Company Reply Brief at 47, citing Exh. EV-MB-2, at 4-5). However, the Company takes issue with Protect Sudbury's use of an additional "impact duration criterion" claiming the Company already properly accounted for the duration of temporary and permanent impacts in its choice of criteria and weights (Company Brief at 76 n.54; Company Reply Brief at 44).

In sum, Eversource states that the criteria it selected appropriately characterize and quantify relevant potential temporary and permanent impacts of each route (Company Reply Brief at 45-46). Eversource contends that the criteria it used allowed for an appropriate analysis of all the different variables encountered in a diverse array of route options, with different types of project designs, and that many of the criteria it used are consistent with the criteria reviewed and approved by the Siting Board in past projects, including other recent Greater Boston Area projects (Company Reply Brief at 46-47, citing Exhs. EFSB-RS-1; EV-MB-2, at 4-5).

d. Weighting and Scoring of Routes

The Company asserts that the criteria weights it selected and its use of ratio scoring are also consistent with past Siting Board cases (Company Brief at 78 n.55, citing East Eagle at 66-68, 74; Mystic-Woburn at 29-32; New England Power Company d/b/a National Grid, EFSB 12-1/D.P.U. 12-46/12-47 (2014) at 45; NSTAR Electric Company, EFSB 10-2/D.P.U. 10-131/10-132 (2012) at 55-57; Western Massachusetts Electric Company, EFSB 08-2/D.P.U. 08-105/08-106 (2010) at 44-47; Needham-West Roxbury;

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Woburn-Wakefield; Company Reply Brief at 39). Eversource states that the selected weights for each criterion serve to represent the importance of each criterion (Company Reply Brief at 47, citing Exh. EV-MB-2, at 14).

For example, the Company notes that categories of tree clearing, public shade trees, wetland resource areas, and state-listed rate species habitat identify anticipated areas of disturbance that are permanent, and therefore given the highest level of importance with an assigned weight of 5 (Company Brief at 76 n.54, citing Exh. EV-MB-2, at 7-8). Further, the Company maintains, the following two criteria reflect temporary impacts: traffic congestion and potential for subsurface contamination, and while traffic is accorded a high level of importance with a weighting factor of 5, the Company used a weighting factor of 1 for sub-surface contamination (Company Reply Brief at 45, citing Exh. EV-MB-2, at 15-17). The Company also contends that it applied certain criteria, such as adjacent conservation lands, in a context-specific manner, with no impacts assumed for in-road construction, in contrast with inclusion of these areas (and a weighting factor of 3) for the MBTA ROW routes (Company Brief at 76 n.54, citing Exh. EV-MB-2, at 7-8).

In response to Protect Sudbury's argument that assigning a weight of "5" to construction-related impacts such as traffic, residential land use, and sensitive receptors is unreasonably high, the Company contends that Protect Sudbury completely ignores the relevance of impacts from construction and dismisses them as insignificant, overlooking the reality that construction impacts are not inconsequential to an abutting business, residence or sensitive receptor (Company Reply Brief at 48, citing Exh. EV-MB-2, at 13).

In response to Protect Sudbury's argument that a weight of "1" undervalues that long-term impacts of the potential to encounter subsurface contamination, Eversource argues that: (1) each candidate route has the potential to encounter undocumented or unknown sources of hazardous materials; and (2) the Company's extensive experience managing and monitoring potential hazardous materials, in coordination with regulatory frameworks, would minimize the potential risk of hazardous materials (Company Reply Brief at 50-51, citing Exh. EV-MB-2, at 18-19).

In response to Sudbury's argument that assigning a weight of "3" to adjacent conservation land is insufficient, Eversource argues that there would be no direct impact to or

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loss of conservation land, as the MBTA ROW is not protected open space (Company Reply Brief at 48-50, citing Exhs. EV-2, at 5-43; EV-MB-2, at 15-16). In fact, Eversource contends that, rather than causing any long-term adverse impacts to adjacent conservation land, the co-development of the DCR's MCRT with the Project would greatly enhance the ROW's open space character with associated recreational attributes, and improved regional connectivity to adjacent conservation lands for greater public use, enjoyment, and appreciation (Company Reply Brief at 50, citing RR-SUD-10).[79] The Company acknowledges that there could be some potential indirect impacts to adjacent conservation lands during construction and tree-clearing in the MBTA ROW, but notes that an undisturbed buffer would remain intact between the edge of Project construction and the boundary between the MBTA ROW and adjacent conservation lands (Company Reply Brief at 50, citing RR-SUD-10). In view of these considerations, the Company argues that a weighting of 3 for this criterion is reasonable and appropriate (Company Reply Brief at 50).

With respect to the Town of Sudbury's and Protect Sudbury's arguments regarding the Company's scoring method, the Company contends that the arguments illustrate their "self-interest in the route selection process" and that different stakeholder's views on appropriate criteria and weighting would inevitably differ (Company Reply Brief at 51-52). With regard to Protect Sudbury's route scoring analyses, the Company maintains that the results differ from the Company's given that Protect Sudbury is "injecting its own subjectivity into these [criteria] assignments" (Company Reply Brief at 50, n.27). Eversource argues that Protect Sudbury's routing analysis, scoring, and matrices are unbalanced and do not reflect input from the full group of stakeholders within the Project area (Company Reply Brief at 52). In particular, the Company criticizes Protect Sudbury's elimination of constructability criteria, and use of a duration weighting factor, which the Company argues does not consider the balanced input of all stakeholders within the Project area and does not constitute an "objective, data-driven route selection process" (Company Reply Brief at 52). The Company asserts that Protect Sudbury's

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79 The Company also notes that it did not include abutting conservation land uses in its evaluation of in-street routes, which means that only conservation land abutting the MBTA ROW is considered (Company Reply Brief at 48-50).

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revised scoring matrices should be give no weight; instead, Eversource argues that its scoring approach should be accepted by the Siting Board, as it properly identifies the relative importance of each individual criterion, is appropriate, reasonable, and consistent with its past practices approved by the Siting Board (Company Reply Brief at 50-53, citing Woburn-Wakefield at 67).

e. Stakeholder Engagement

The Company asserts that it developed and supplemented its routing analysis with significant feedback from identified stakeholders (Company Reply Brief at 54-55, citing Exhs. EV-2, at 1-10 to 1-12, 4-4 to 4-5; EFSB-RS-1; Tr. 5, at 839; Protect-21; Protect-2-80; Protect-2-118). Eversource states that beginning in January 2014, it conducted more than 48 meetings with federal, state, and municipal officials; residents and business owners; and other stakeholders such as Protect Sudbury (Company Reply Brief at 54, citing Exhs. EV-2, at 1-10 to 1-12, 4-4 to 4-5; EFSB-RS-1; Tr. 5, at 839; Protect-21; Protect-2-80; Protect-2-118).[80] The Company asserts that it used input from those meetings to add routes to the Universe of Routes, increase the weight of existing criteria, add new criteria, expand the visual impact assessment, conduct an analysis of potential impacts to public water supplies, and add local historic sites to its site evaluation (Company Reply Brief at 54-55). Eversource notes that several routes within the Universe of Routes were proposed by either the Town of Sudbury or Protect Sudbury and that feedback from municipal officials significantly modified its route selection process (Company Reply Brief at 54-55). In conclusion, the Company argues that its route selection process comprehensively addresses the Siting Board's standards and that the record demonstrates that Eversource has "developed and applied a reasonable set of criteria for identifying and evaluating alternative routes" (Company Reply Brief at 55).

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80 The Siting Board notes that the Company has made references to both "more than 48 meetings'" and "almost 60 outreach meetings" when describing its outreach efforts in its brief. See Company Reply Brief at 54, 81.

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E. Analysis and Findings on Route Selection

The Siting Board requires that applicants consider a reasonable range of practical siting alternatives and that proposed facilities are sited in locations that minimize cost and environmental impacts. In past decisions, the Siting Board has found various criteria to be appropriate for identifying and evaluating route options for transmission lines and related facilities. These criteria include natural resource impacts, land use impacts, community impacts, cost and reliability. Needham-West Roxbury at 21; Woburn-Wakefield at 64; Boston Edison Company d/b/a NSTAR Electric, EFSB 04-1/ D.P.U. 04-5/04-6 (2005) at 43-44. The Siting Board has also found the specific design of scoring and weighting methods for chosen criteria to be an important part of an appropriate route selection process. Needham-West Roxbury at 21; Woburn-Wakefield at 65; Boston Edison Company, EFSC 89-12A, at 34-38 (1989).

The Company developed a broad area to evaluate its routing options for a 115 kV transmission line between the Sudbury and Hudson Substations, and looked for existing linear corridors, such as rail, gas, and electric ROWs, and public roadways, which appeared feasible for construction of a new line and would provide a reasonably direct route between the two substations. The resulting Universe of Routes, which included several routes proposed by stakeholders, such as the Town of Sudbury and Protect Sudbury, consisted of 21 geographically distinct routes. The Company used an initial qualitative screening process to eliminate nine of these route alignments as inferior for a variety of reasons, leaving twelve route options, plus variations, for more detailed evaluation. The route options comprise a diverse mix including overhead and underground use of the MBTA ROW, use of a variety of public roadways, and combinations thereof.

Eversource's initial qualitative screening process considered potential impacts such as abutting land uses; proximity of wetlands, waterways, and rare species habitat; existing traffic patterns and volumes; constructability considerations; easements or other property requirements; and feedback from stakeholders. The Town of Sudbury argues that this initial screening, completed without quantitative scoring and costing analysis across routes, could skew the comparison between routes later in the route selection process. The Company asserts that the routes eliminated in its initial screening were not suitable and did not exhibit any positive attributes compared to routes that were advanced.

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The Siting Board does not concur with the assertions of the Town of Sudbury that the Company's qualitative initial screening process was designed to skew route scoring more favorably towards the Company's Preferred Route. Rather, the record shows that the Company used appropriate siting considerations and established Siting Board precedent, in winnowing down the Universe of Routes to a more manageable number for rigorous quantitative analysis in its route selection process. Moreover, none of the routes eliminated in this initial screening phase demonstrated any particular advantages not otherwise captured by one or more of the remaining routes under consideration. Accordingly, the Siting Board considers the Company's process for developing its Universe of Routes, and its initial qualitative screening, to be appropriate, and notes that these initial steps for route selection are consistent with the criteria, outreach process, and analytical approaches the Siting Board has previously found acceptable.[81] See Needham-West Roxbury at 21; Woburn-Wakefield at 65.

The Company then developed and applied a quantitative scoring system for ranking the routing options. Based on its evaluation of environmental impacts, cost, and reliability, the Company selected: (1) the MBTA Underground Route as the Primary Route; (2) the MBTA Overhead Route as the Noticed Variation; and (3) the All-Street Route as the Noticed Alternative Route. The Town of Sudbury and Protect Sudbury raised various concerns about the Company's route scoring approach, including its inclusion of constructability and other criteria, weightings, and the use of ratio scores.[82]

With respect to the use of constructability criteria, the Town of Sudbury and Protect Sudbury argue that they should not be included as part of the route selection process. Both the town and Protect Sudbury view constructability criteria as temporary, site-specific factors that primarily affect construction costs rather than environmental impacts, and, in any event, would already be captured in other specific environmental criteria. Both parties contend that

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81 The Siting Board notes that the Company evaluated routes proposed by the Town of Sudbury and Protect Sudbury during its initial evaluation, with four of those intervenor-suggested routes moving on to be scored as a part of the route options.

82 The Siting Board notes that the Company added several criteria to respond to concerns raised during its stakeholder outreach process.

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constructability factors detract from a proper environmental review, given that they result in less weight given to "true environmental impacts." They further argue that the use of constructability criteria essentially double counts cost in the evaluation of routes.

The Company argues that constructability issues are not adequately captured within the environmental criteria, and that constructability criteria are more granular and address the duration and magnitude of key impacts to abutting land uses. The Siting Board notes the importance of consideration of constructability in the choice of routing a needed facility. The Siting Board concurs with the Company's view that constructability criteria help inform the review of the magnitude and duration of impacts – a unique characteristic that is neither strictly cost-related nor environmental impact-related – and capture a unique attribute of construction impacts to abutters and area residents. Moreover, the Siting Board has accepted the use of constructability criteria in numerous past cases, and the logic and value of this method is well established. See Lowell-Tewksbury at 36, 40; Needham-West Roxbury at 22, 25; Woburn-Wakefield at 36, 65.

With respect to the selection of the scoring criteria and weights, there is general agreement with the principle that the proper use of weighting methods for chosen criteria is an important part of an appropriate site selection process in order to reflect the relative importance of the various criteria. However, the Town of Sudbury and Protect Sudbury argue that the weights selected by the Company unjustifiably treat impacts to the built environment as more important than impacts on the natural environment, and that impacts to the built environment are temporary while those to the natural environment are persistent.

The weighting method used by the Company, contrary to the criticisms of the Town of Sudbury and Protect Sudbury, provides a balanced consideration of both impacts to the natural and built environments, and places greater emphasis on the more impactful criteria, whether these are related to short-term or long-term effects. While the Town of Sudbury and Protect Sudbury assert that greater weight should be accorded to natural rather than built environment impacts, construction impacts, such as traffic, noise, and other disturbances, can be highly disruptive, and a source of great concern to abutters and area residents – even if limited in duration. Moreover, we do not view the Company's weighting system as neglecting or short-changing concern for the natural environment. In fact, Eversource's weighting system for

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the natural and built environment criteria categories included three top-weighted criteria (that is, a weighting of 5) in each category.[83]

Furthermore, the Siting Board notes that there is not a strict distinction between natural and built environment criteria, and that a number of the criteria identified as "built environment impacts" in fact relate to the natural environment. For example, the Company's scenic roads criteria is categorized as a built environment criteria; however, the Company stated that this criteria reflects potential impacts from tree clearing and stone wall removal, which the Siting Board views as relevant to the natural environment.

The Siting Board does see some merit in the Town of Sudbury's and Protect Sudbury's arguments that certain weighting factors (such as conservation land along the routes) could have been more heavily weighted. However, we note that the Company did not evaluate conservation land along the in-street routes, which, to a great degree, offsets any under-weighting of this criterion for the routes using the MBTA ROW.[84]

With respect to ratio scoring, the Town of Sudbury states that this method could result in routes with equivalent environmental impacts scoring differently, or clearly superior routes being overlooked. The Siting Board does not agree with this assessment. First, ratio scoring serves an essential quantitative purpose, by transforming disparate measurement scales used across the various criteria into a comparable metric – a ratio of raw data for a particular criterion for a specific route (the numerator) compared to the raw data for the worst route for that criterion (the

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83 The relative importance of the natural and built environment categories in route scoring is a function of both the criteria used and their weights. In this case, the natural environment category included six criteria, with a weighting factor total of 22, while the built environment category included seven criteria, with a weighting factor total of 26. Neither the Town of Sudbury nor Protect Sudbury suggested adding or deleting any criteria used by the Company in either category.

84 A drawback of this approach is that if one in-street route is adjacent to more conservation land than another in-street route, the Company's route selection analysis would have not distinguished between them. The Siting Board notes that the record identifies a number of conservation properties abutting various in-street routes (Exhs. EV-1, figure 5-7; EFSB-LU-14). Accordingly, we conclude that the Company's route selection process would have benefitted from the inclusion of conservation land abutting in-street routes in the route selection evaluation criteria.

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denominator). By achieving a normalized metric, across all routes and all criteria, ratio scoring enables the appropriate comparison and weighting of factors. Second, the use of a similar ratio scoring method, where the denominator is the maximum data observed in each category, was recently considered in Woburn-Wakefield, and, as in that decision, the Siting Board continues to find that the use of ratio scoring is appropriate. See Woburn-Wakefield at 67-68.

Protect Sudbury provided three different methods of route scoring that illustrate its criticisms of the Company's approach. In all three methods, Protect Sudbury eliminated the Company's constructability criteria. Protect Sudbury also developed two methods of impact duration weighting, which it applied following the elimination of the constructability criteria. The results of each of these methods ranked the All-Street Route with a lower environmental score than the MBTA Underground Route, and in the two methods for which Protect Sudbury provided rankings, the All-Street Route ranked as the route with the lowest (i.e., least impactful) environmental score. Protect Sudbury concluded that its analysis more accurately reflects long-term impacts and demonstrates the biasing influence of constructability criteria.

With respect to Protect Sudbury's proposed elimination of the constructability criteria, the Siting Board notes that, as discussed above, constructability criteria assist in the evaluation of the magnitude and duration of impacts and provide valuable insights. For this reason, among others, the Protect Sudbury route scoring analyses are deficient. The impact duration factors developed by Protect Sudbury in support of its Analysis III resulted in a change to the relative ranking of all the route options.[85] The Siting Board does not find the use of an impact duration factor to be warranted or an improvement to the Company's route scoring approach. Impact duration is, indeed, a relevant concern with regard to natural and built environment impacts. However, the use of weighting factors alone is a more practical and inclusive way of assessing the overall importance of a criterion's impact, including its duration, magnitude, and other

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85 For Protect Sudbury Analysis III, the All-Street Route received the lowest environmental score and the MBTA Underground Route ranked 14th. Two routes along the MBTA ROW (Routes 9 and 10, as either underground or overhead options) score lower than the MBTA Underground Route. However, Routes 9 and 10 follow the same roadways as the All-Street Route in Stow and Hudson, and at least a portion of the All-Street Route in Sudbury and would not provide the necessary geographic diversity to the All-Street Route.

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qualitative and quantitative considerations. The Siting Board further notes that, while there are certainly differences in the duration of impacts, contrary to the Town of Sudbury's and Protect Sudbury's views, a short-term impact does not necessarily equate to a less-severe impact.

The Town of Sudbury and Protect Sudbury contest various aspects of the Company's route scoring methodology and are correct that it inherently reflects certain subjective assessments – upon which the Company and the Town of Sudbury and Protect Sudbury differ sharply. However, the significance of any such differences and scoring outcomes is largely mooted by fact that in Section VI below, the Siting Board undertakes a detailed comparison of the routing choices favored by the Company and the Town of Sudbury and Protect Sudbury, respectively: the All-Street Route (favored by the Town of Sudbury and Protect Sudbury); the MBTA Underground Route (favored by the Company); and the MBTA Overhead Route, (originally preferred by the Company, but not currently favored by any party). There is no record evidence that another route would be clearly superior to all three routes analyzed in detail below, on the basis of environmental, cost, and reliability, nor that the Company precluded any party's preferred route from receiving a comprehensive review.[86] Based on the considerations above, the Siting Board concludes that the route selection process used by the Company did not overlook or eliminate any clearly superior routes.

The Siting Board encourages project applicants to engage with stakeholders early in its route selection process, in order to identify additional routes and criteria that are important to stakeholders, and to incorporate feedback into its analysis. As noted in its findings in Woburn-Wakefield, the Siting Board also encourages the applicants to pursue a good faith effort to consult jointly with affected communities and stakeholders in its route selection process. See Woburn-Wakefield at 71.

The Siting Board notes that the Company has undertaken extensive outreach, including holding 48 separate meetings with various stakeholders, and sought a collaborative approach with stakeholders in this proceeding. In fact, several of the routes in the Company's Universe of

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86 Protect Sudbury argued that its revisions to the route selection analysis would reorder the ranking of the routes, not that the Company overlooked any specific routes that would have been superior.

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Routes were suggested by stakeholders, including the Town of Sudbury and Protect Sudbury. The Siting Board notes that the Company's Noticed Alternative Route, the All-Street Route, was originally presented to the Company by Protect Sudbury. Further, the Company added evaluation criteria, such as public water supplies and conservation land, to reflect the concerns of stakeholders. The Company stated that it selected the MBTA Underground Route as its Primary Route, despite its higher cost, based on the importance of the environmental factors; a decision it claims was partially influenced by public feedback. While parties in this proceeding argued that consultation with the community and stakeholders was insufficient, the Siting Board concludes that the Company engaged with stakeholders early in its route selection process and incorporated significant public input into its analyses.

With respect to Protect Sudbury's argument that the Company did not compare Transmission Alternative 2 to the Universe of Routes, the Siting Board notes that the Transmission Alternative 2 was presented by the Company as a transmission alternative as part of the alternative project approach analysis. See Section IV.B.2. In Section IV.D, the Siting Board found that a transmission line between the Sudbury and Hudson Substations is the best project approach for meeting the identified need. In its route selection analysis, the Company is tasked with evaluating siting alternatives for the preferred project approach. Accordingly, the selected project approach is carried forward to the route selection analysis, and this did not and should not include Transmission Alternative 2 based on the findings above.

With regard to geographic diversity, the Company identified a Noticed Alternative Route (aka the All-Street Route) which utilizes a significantly different linear corridor, located completely within public roadways, between the Sudbury and Hudson Substations. The Siting Board concludes that the All-Street Route is geographically diverse from the MBTA Underground and Overhead Routes.

Based on the route selection process described above, the Siting Board finds that the Company has: (1) developed and applied a reasonable set of criteria for identifying and evaluating alternative routes in a manner that ensures that it has not overlooked or eliminated any routes that are on balance clearly superior to the proposed Project; and (2) identified a range of transmission line routes with some measure of geographic diversity. Therefore, the Siting Board finds that the Company has demonstrated that it examined a reasonable range of practical siting

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alternatives and that its proposed facilities are sited in locations that minimize cost and environmental impacts while ensuring a reliable energy supply.

VI. ANALYSIS OF THE MBTA UNDERGROUND AND OVERHEAD ROUTES AND THE ALL-STREET ROUTE

In this section, the Siting Board analyzes the MBTA Underground Route, the MBTA Overhead Route and the All-Street Route based on environmental impacts, cost, and reliability. Based on the evidence and findings presented below, the Siting Board concludes that the MBTA Underground Route is superior to the MBTA Overhead Route and the All-Street Route with respect to providing a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.

A. Standard of Review

In implementing its statutory mandate under G.L. c. 164, §§ 69H, 69J, the Siting Board requires a petitioner to show that its proposed facility is sited at a location that minimizes costs and environmental impacts while ensuring a reliable energy supply. To determine whether such a showing is made, the Siting Board requires a petitioner to demonstrate that the proposed route for the facility is superior to the alternative route on the basis of balancing environmental impact, cost, and reliability of supply. Vineyard Wind at 35; Needham-West Roxbury at 32; Woburn-Wakefield at 71.

The Siting Board first determines whether the petitioner has provided sufficient information regarding environmental impacts and potential mitigation measures to enable the Siting Board to make such a determination. The Siting Board then examines the environmental impacts of the proposed facilities and determines: (1) whether environmental impacts would be minimized; and (2) whether an appropriate balance would be achieved among conflicting environmental impacts as well as among environmental impacts, cost, and reliability. Finally, the Siting Board compares the routes to determine which is superior with respect to providing a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. Vineyard Wind at 35; Needham-West Roxbury at 32; Woburn-Wakefield at 71.

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B. Description of the MBTA Underground and Overhead Routes, and the All-Street Route

1. MBTA Underground Route

The Company's MBTA Underground Route starts at the Sudbury Substation, located off of Route 20 in Sudbury, and travels northwest within an existing MBTA ROW for approximately 7.6 miles through the municipalities of Sudbury, Stow, Marlborough, and Hudson (Exh. EV-2, at 5-3). At the intersection of the MBTA ROW and Wilkins Street (Route 62) in Hudson, the MBTA Underground Route leaves the MBTA ROW and proceeds southwest beneath Wilkins Street and Forest Avenue for approximately 1.4 miles before terminating at the Hudson Substation on Forest Avenue (Exh. EV-2, at 5-3).

2. MBTA Overhead Route

The MBTA Overhead Route follows the same approximately nine-mile route as the MBTA Underground Route, but would use an overhead transmission design rather than underground construction along the MBTA ROW (Exh. EV-2, at 5-3).[87] As with the MBTA Underground Route, the MBTA Overhead Route would use an underground, in-street transmission design for approximately 1.4 miles in Hudson, between the intersection of the MBTA ROW and Wilkins Street, and the Hudson Substation (Exh. EV-2, at 5-3).

3. All-Street Route

The Company's All-Street Route consists of an approximately 10.3-mile-long in-street underground transmission line (Exh. EV-2, at 5-4). Beginning at the Sudbury Substation, the All-Street Route travels west under Route 20 for 1,400 feet, turns north onto Green Hill Road for 2,300 feet, and then west onto Old Lancaster Road (and a short section of Concord Road), for approximately two miles (Exh. EV-2, at 5-4; RR-EFSB-51). At the intersection of Old Lancaster Road and Hudson Street, the All-Street Route turns west onto Hudson Road, which becomes

87 The Company would use underground transmission line construction from terminals in the Sudbury Substation to the nearby MBTA ROW, where the New Line would transition to an overhead design (Exh. EV-2, at 5-3).

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Sudbury Road in Stow, and then continues west onto State Road, which becomes Main Street in Hudson, for a total of approximately 6.2 miles (Exh. EV-2, at 5-4, figure 5-3 sheet 10 of 17; RR-EFSB-51). At the intersection of Main Street and Forest Avenue in Hudson, the All-Street Route turns southwest for approximately 1.2 miles and terminates at the Hudson Substation (Exh. EV-2, at 5-4; RR-EFSB-51).

4. Substation Upgrades

A common feature of the Project, regardless of route, is that it would require upgrades at Eversource's Sudbury Substation and HLPD's Hudson Substation (Exh. EV-2, at 5-4, 5-8 to 5-9). The Company described a number of modifications to the Sudbury Substation that would be required to accommodate the Project, including the installation of 115 kV breakers, an air-core shunt reactor, surge arrestors, and a 100-foot-tall shielding mast (Exh. EV-2 at 5-5).[88] According to the Company, modifications at the Sudbury Substation would not require expansion of the existing substation fenceline regardless of whether the MBTA Underground or Overhead Routes, or the All-Street Route was selected (Exh. EV-2, at 1-6, 5-5).

Regarding the Hudson Substation, Eversource stated that modifications would include the installation of three new 115 kV circuit breakers, changes to existing bus work, and retermination of the existing H-160 and N-166 transmission lines (Exhs. EV-2, at 5-8 to 5-9; EFSB-HLP-6). The fenced enclosure at the Hudson Substation would be expanded by approximately 10,000 square feet to accommodate this work (Exh. EFSB-HLP-6). The modifications proposed at the Hudson Substation would be identical regardless of the route selected (Exh. EV-2, at 5-8; Tr. 14, at 2469-2470).

C. General Description of Project Construction

Eversource described the construction methods that would be used for the MBTA Underground Route and the MBTA Overhead Route (together the "MBTA Routes"), the

88 Eversource stated that the shunt reactor would be required to compensate for the reactive power produced by the New Line and would not be necessary if overhead construction were used (as proposed under the MBTA Overhead Route) (Exh. EV-2, at 5-7; Tr. 1, at 99).

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All-Street Route, and the two substations. While different approaches would be required for underground and overhead transmission line construction along the MBTA ROW, all three routes would use the same construction methods for the in-street portions of the New Line.

1. Underground Construction Along the MBTA ROW

Eversource indicated that underground transmission line construction along the MBTA ROW would proceed in six phases: (1) vegetation removal; (2) implementation of erosion and sedimentation controls; (3) steel rail and wooden tie removal, and access road subgrade construction; (4) construction of the duct bank and splice vault system; (5) cable pulling and splicing, testing, and commissioning; and (6) access road final grading, and site restoration (Exh. EV-2, at 5-11 to 5-13).

The MBTA ROW is generally 82.5 feet wide (Exh. EFSB-C-12(R1)(2) at 4). To prepare the MBTA ROW for its use, Eversource would remove trees from an approximately 22-foot-wide corridor along the MBTA Underground Route (Exhs. EV-2, at 5-11; EV-18, at 6). A 22-foot-wide construction platform would be established within this cleared area, consisting of a 14-foot-wide access road for construction vehicles, space for the four-foot-wide transmission duct bank (offset from the access road by two feet), and an additional four feet of space to facilitate installation of the New Line (Exh. EV-2, at 5-13; Tr. 8, at 1343).[89] Grading and leveling would be completed as necessary along the MBTA ROW to achieve final grades appropriate for the Company's access road (Exh. EV-2, at 5-12). Eversource stated that any excess soil would be removed from the construction area and transported to a temporary construction laydown area, or, following soil characterization, would be disposed of off-site (Exhs. EV-2, at 5-12; EV-16, at 375; Tr. 8, at 1400-1403).

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89 A wider construction platform would be necessary at each splice vault location, where the Company stated it would increase the width of cleared area to approximately 40 to 50 feet, for a linear distance of 50 feet (Exh. EV-2, at 5-13). Additionally, Eversource stated that in certain narrow portions of the MBTA ROW the transmission duct bank would be installed underneath the Company's access road, and an 18-foot-wide construction platform would be used (Exh. EFSB-LU-29; Tr. 8, at 1355; Tr. 9, at 1485).

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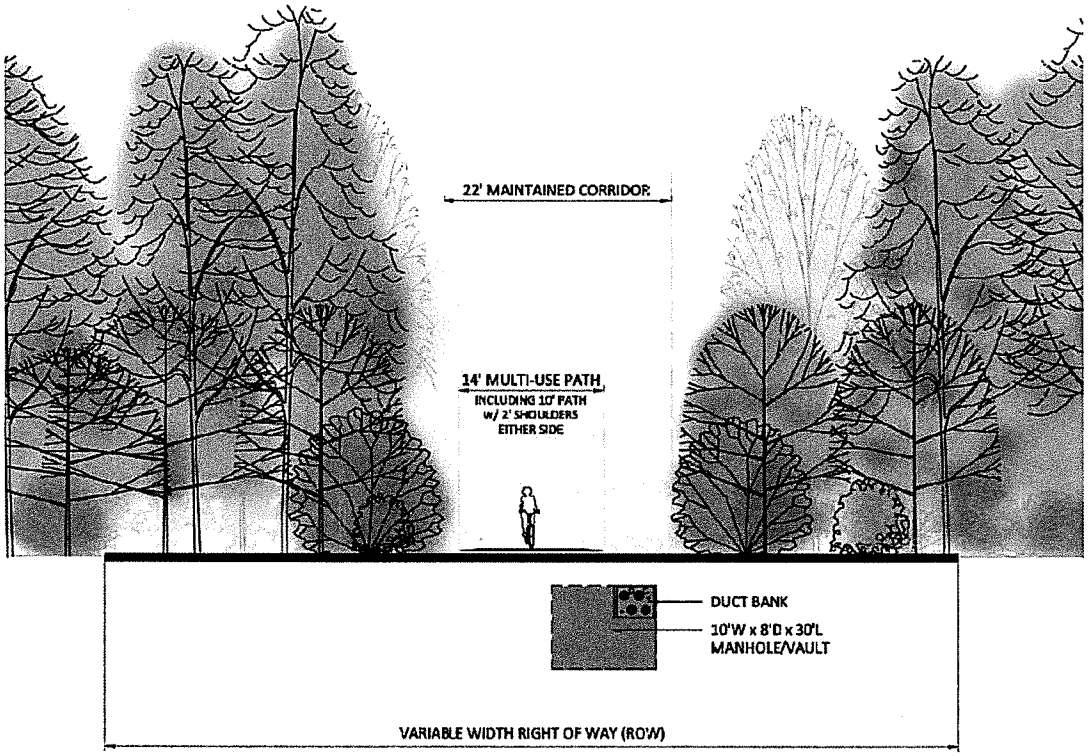
Figure 4. Cross-Section of the MBTA Underground Route along the MBTA ROW (showing potential MCRT)



Source: Exh. EFSB-G-16(2).

Eversource stated that three existing bridges along the MBTA ROW would require upgrades to accommodate installation of the New Line (Exhs. EFSB-CM-2; EV-16, at 377). Of the two bridges over Hop Brook in Sudbury, one would be rehabilitated (Bridge 128), and one would be replaced with a new single-span bridge, with the new abutments landward of the existing abutments (Bridge 127) (Exh. EV-18, at 8). In addition, a new single-span bridge would be constructed in the same location as the existing Fort Meadow Brook Bridge in Hudson (Exh. EV-18, at 8; Tr. 8, at 1349-1351).[90,91] The Company provided drawings showing

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90 Eversource stated that bridge rehabilitation work would include the installation of new decking and guardrails, and some other minor repair work (Tr. 8, at 1350).

91 According to the Company, some bridge refurbishment activities (including the installation of new decking and rails) may be performed by DCR as part of the MCRT project (Exh. EV-16, at 97).

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installation of the conduits underneath the bridges, but indicated that final designs had yet to be determined (Exh. EV-16, at 96-99; Tr. 8, at 1396-1397).

Actual installation of the New Line would begin with construction of the splice vaults (aka manhole vaults) (Exh. EV-2, at 5-13). According to the Company, manhole vaults are approximately 24 feet long by eight feet tall by eight feet wide and would be installed approximately every 1,500 to 1,800 feet along the MBTA ROW, for a total of 25 manhole vaults along the ROW portion of the MBTA Underground Route (Exhs. EV-2, at 5-13 to 5-14; EFSB-CM-9; Tr. 8, at 1312). Eversource stated that each manhole vault would take approximately five to seven days to install (Exh. EV-2, at 5-14).

Underground duct banks for the Project would be installed using open-cut trenching; the Company would use a backhoe to excavate a trench, and then install 300- to 400-foot segments of conduit and backfill with thermal concrete (Exhs. EV-2, at 5-14; EFSB-CM-12; EFSB-CM-16). At a typical residence or business along the route, there would be roughly three or four weeks of trench-related construction activities, including trench excavation, duct bank installation, and final grading and restoration of the access road (RR-EFSB-99).

Following conduit installation, the Company would pull cables through the conduits between consecutive manhole vaults (Exh. EV-2, at 5-15). Adjacent cable sections would then be spliced together inside the manhole vaults (Exh. EV-2, at 5-15). Eversource stated that cable pulling would typically take three eight-hour days for each pair of manholes, while cable splicing would typically take four to five extended workdays (up to twelve hours each) to complete (Exh. EV-2, at 5-15).[92] Finally, Eversource would stabilize any soils disturbed during construction of the Project with an appropriate seed mixture and/or mulch in coordination with DCR (Exh. EV-2, at 5-16).

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92 Eversource indicated that splicing solid-dielectric cables does not require continuous 24-hour activity; rather, typical work hours for Project cable splicing would be 7:00 a.m. to 7:00 p.m. (Exhs. EFSB-NO-2(S1); EFSB-NO-10; Tr. 13, at 2354-2360).

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2. Overhead Construction Along the MBTA ROW

Should overhead construction along the MBTA ROW be selected, the Company indicated that such construction would proceed in seven phases: (1) vegetation removal; (2) implementation of erosion and sedimentation controls; (3) steel rail and wooden rail tie removal, and access road subgrade construction; (4) work pad preparation; (5) tower foundation and structure installation; (6) conductor and shield wire installation; and (7) access road final grading, and site restoration (Exh. EV-2, at 5-17).

The Company's construction methods for vegetation removal, the installation of erosion and sedimentation controls, and construction of the access road would be similar to those proposed for the MBTA Underground Route, except that a larger area of trees would be cleared (Exh. EV-2, at 5-16 to 5-18; Tr. 8, at 1300-1302, 1343). According to the Company, trees would be removed from the full width of the MBTA ROW (approximately 80 feet) for the length of the Project in order to maintain safe clearances for the overhead transmission line (Exh. EV-2, at 5-17).

Work pads measuring approximately 75-feet-long by 75-feet-wide would be established at each of the 90 transmission tower locations (Exh. EV-2, at 5-17 to 5-18). Following preparation of the access road and work pads, Eversource would install concrete foundations for the steel monopole transmission structures (Exh. EV-2, at 5-17 to 5-18). Eversource stated that the foundations would typically be drilled piers, which range from six feet to eight feet in diameter, and 15 to 30 feet deep, depending on the height and load specifications of a specific structure (Exh. EV-2, at 5-18). Steel monopoles would be delivered in sections and assembled on site using a crane (Exh. EV-2, at 5-19). Eversource estimated that it would take roughly four days to complete the installation of each transmission line structure (RR-EFSB-99).

Eversource stated that following the erection of the steel monopoles, the Company would install conductors and shield wire in sections ranging between one mile and three miles in length (Exhs. EV-2, at 5-19; EFSB-CM-15). A section of lightweight line known as a "pilot" or "lead" line would be installed first using either bucket trucks or helicopter installation (Exh. EFSB-CM-15). A pulling winch would be used to pull this pilot line, and then a higher strength "pulling line," through the tower section (Exh. EFSB-CM-15). The conductor would then be attached to the pulling line and a winch would be used to pull the conductor through the

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section (Exh. EFSB-CM-15). Eversource stated that conductor would be installed under tension, and would not be permitted to come into contact with the ground (Exh. EFSB-CM-15). The Company would use guard structures at locations such as road crossings and distribution line crossings to protect against any potential cable falls (Exh. EFSB-CM-15). Finally, Eversource would complete the same access road grading, and site restoration activities as would be necessary for the underground alternative (Exh. EV-2, at 5-19).

3. Underground Construction Within Public Roadways

All three routes would involve some in-street construction of underground transmission line (Exh. EV-2, at 5-21). According to the Company, construction in public roadways would proceed in five phases: (1) implementation of erosion controls; (2) splice vault installation; (3) trench excavation, duct bank installation, and temporary pavement restoration; (4) cable pulling, splicing, and testing; and (5) final pavement restoration (Exh. EV-2, at 5-21 to 5-22).

The Company would install splice vaults in a similar manner to that proposed for the MBTA ROW portion of the MBTA Underground Route, with four manhole vaults for the in-street portion of the MBTA Underground Route, and 31 in-street manhole vaults along the entire All-Street Route (Exhs. EV-2, at 5-22; EFSB-CM-9). Eversource estimated that each in-street splice vault would take approximately seven to ten days to install – longer than for manhole vaults along the MBTA ROW because of construction restrictions associated with traffic and work hour limitations along streets (Exh. EV-2, at 5-22). Manhole vault installation could take longer at locations with high utility density (Exh. EV-2, at 5-22 to 5-23).

The underground duct banks for the New Line would be constructed using open-cut trenching, where the Company would cut the pavement with a saw, excavate the trench to the required depth by backhoe, then install conduit in approximately 200- to 300-foot segments, and backfill with thermal concrete and soil; the road surface would then be restored for travel (Exhs. EV-2, at 5-23; EFSB-CM-12). At a typical residence or business location along this route, there would be roughly two to three weeks of trench-related construction activities, including pavement sawing, trench excavation, duct bank installation, and temporary pavement patching (Exh. EV-2, at 5-24; RR-EFSB-99). Eversource indicated that the pace of construction may be slower in areas of higher existing utility density, where the Company encounters

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unanticipated obstructions, where the depth of the trench increases, or in areas with higher traffic volumes (Exh. EV-2, at 5-24).

After conduit installation, sections of the solid-dielectric transmission cable would be installed within the conduits between consecutive manhole vaults and spliced using the same methods described for the MBTA Underground Route (Exh. EV-2, at 5-25). Eversource stated it would restore all roadway surfaces affected by the Project to pre-construction condition or better (Exh. EV-2, at 5-25).

4. Substation Upgrades

According to the Company, work at the Sudbury and Hudson Substations would take place over a roughly one-year period (Tr. 8, at 1364-1365). At the Sudbury Substation, Eversource would begin by installing equipment foundations, and then proceed with the installation of new electrical equipment (Tr. 8, at 1364). Cable pulling and splicing work to complete installation of the New Line would also be required (Tr. 8, at 1364). Work at the Hudson Substation would consist of expanding the area of the Substation, followed by installation of foundations and new electrical equipment (Tr. 8, at 1364-1365; Tr. 14, at 2474-2475).

D. Environmental Impacts

1. Land Use and Historic Resources

a. Company Description

As discussed above, much of the MBTA Routes is proposed within an existing MBTA ROW running through the towns of Sudbury, Stow, and Hudson and the City of Marlborough (Exh. EV-2, at 5-3). Eversource stated that the MBTA ROW measures approximately 82.5 feet across and contains an intact, but unused, railroad track, approximately eight to nine feet wide, consisting of steel rails, treated ties, and rock ballast (Exhs. EV-16, at 7-3; EFSB-C-12(R1)(2) at 4). According to the Company, vegetation has re-established itself in many areas of the MBTA ROW since rail service ended in the early 1970s, with 50- or 60-year-old trees in some locations (Exh. EV-16, at 7-3; Tr. 9, at 1477). Eversource indicated that an informal, user-created path adjacent to the railroad track is used by the public for hiking, running, walking,

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mountain biking, and horseback riding (Exh. EV-16, at 7-3). The Company would remove the rails and ties in order to construct the Project, and work in coordination with DCR to ultimately transform the Project's gravel access road into a segment of the MCRT, a regional rail trail (Exhs. EV-2 at 1-1, 5-11; EV-16, at 2-30; Tr. 8, at 1379-1380).

Two land use agreements relate to the MBTA ROW: (1) a 2017 Option Agreement Between the MBTA and NSTAR Electric Company d/b/a Eversource Energy for a Transmission Line Easement on Central Mass Branch Right of Way Located in Hudson, Stow, Marlborough and Sudbury, Massachusetts ("Option Agreement"); and (2) a 2010 Alternative Transportation Corridor Lease Agreement by and between the MBTA and the Commonwealth of Massachusetts by and through its Department of Conservation and Recreation ("DCR Lease") (Exh. EFSB-C-12(R1)(2)).

In the Option Agreement, the MBTA agrees to grant Eversource the right and option to acquire a permanent, non-exclusive, subsurface easement, approximately 8.63 miles long by 82.5 feet wide, along the MBTA ROW for the purposes of constructing, operating, and maintaining the proposed Project (Exh. EFSB-C-12(R1)(2) at 62). In the Option Agreement, the MBTA reserved the right, among other things, to "relocate all or any portion of [the Project] to another location within the [easement] any time after the expiration of twenty (20) years from the date hereof, if in MBTA's opinion, the [Project facilities] unreasonably interfere with then present or future use of MBTA's ROW for the operation of its transportation system (and for no other purpose)." (Exh. EFSB-C-12(R1)(2) at 64). Further, the Option Agreement specifically acknowledges the pre-existing DCR Lease, which grants DCR, for 99 years, access to a portion of the MBTA ROW to construct a multiuse path for bicycle, pedestrian, and other non-motorized public transportation and recreation uses (Exh. EFSB-C-12(R1)(2) at 3, 90-91). The Option Agreement states that Eversource must not materially interfere with or disturb the DCR's use of its leased premises; shall cooperate with DCR in connection with the future operation, use, and maintenance of the multiuse path; and shall negotiate a memorandum of understanding ("MOU") (or similar instrument) with DCR regarding Eversource's and DCR's obligations, liabilities, and commitments to each other regarding the DCR Lease, the Option Agreement, and the easement itself (Exh. EFSB-C-12(R1)(2) at 3).

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Eversource indicated that the MBTA Underground Route would necessitate a 22-foot-wide clearing for the Project corridor within the MBTA ROW and a 40- to 50-foot-wide clearing at each proposed splice vault location (Exhs. EV-18, at 16, 93, 116-117; EV-2, at 5-40).[93] The Company stated that the MBTA Underground Route would require approximately 23.9 acres of tree clearing in total (Exh. EV-18, at 23). The Company stated that the MBTA Overhead Route would necessitate clearing the full width of the 82.5 foot ROW, constituting approximately 70 acres of tree clearing in total (Exh. EV-2, at 5-40, 5-44, 5-46). Eversource stated that no tree clearing would be required for the All-Street Route, except for possible selective trimming of branches in some locations (Exh. EV-2, at 4-21, 5-63). The Company affirmed that all vegetation removal would be conducted in accordance with its approved Vegetation Management Plan ("VMP"), DCR's Trail Guidelines and Best Practices Manual ("DCR Trail Manual"), and all applicable state and local laws, bylaws, and regulations (Exh. EV-2, at 4-21, 5-12).

Eversource stated that it would cut tree trunks as close to the ground as possible and would leave the stumps and roots in place to regrow, except in areas where grading would require their removal (Exh. EV-2, at 5-11 to 5-12; Tr. 9, at 1477). Large tree trunks, limbs, and brush would be chipped and removed from the MBTA ROW (Exh. EV-2, at 5-12). To avoid disturbing saturated soils and/or to provide habitat for wildlife after construction of the New Line, the Company may leave some felled trees to decompose in place (Exh. EV-2, at 5-12). Eversource stated that cutting of trees and vegetation along stream banks would be selective to minimize disturbance of bank soils and limit the potential for erosion (Exh. EV-2, at 5-12).

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93 In the FEIR, submitted July 2, 2018, the Company indicated that it has reduced the typical width of tree clearing for the MBTA Underground Route from 30 feet to 22 feet; 22 feet is the width of the construction platform (Exh. EV-18, at 16). The Siting Board notes that some of the receptor information in this section is based on the original 30-foot-wide clearing.

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The Company stated that, following construction of the MBTA Underground Route, the MBTA corridor would be maintained to a width of 22 feet, including a 14-foot access road[94] and an approximately four-foot-wide strip of maintained herbaceous and low-growing shrubby vegetation on each side of the access road (Exh. EV-16, at 7-5).[95] For the MBTA Overhead Route, the corridor would be maintained to a width of 30 feet centered on the overhead transmission line and would be managed to allow low herbaceous or low growing woody vegetation not exceeding 15 feet in height; the remainder of the MBTA ROW would be allowed to revegetate to varying heights (Exh. EV-2, at 5-63; RR-EFSB-93; RR-EFSB-94).

The Company stated that it expects to finalize an MOU with DCR, currently in draft form, regarding vegetation management on the MBTA ROW, with DCR ultimately carrying out maintenance activities such as mowing and trimming within the maintained area of the MBTA ROW (Exh. EV-2, at 5-16). The Company anticipates that DCR would undertake vegetation management responsibilities once construction of the rail trail begins; the Company would assume responsibility for vegetation management prior to that (Tr. 9, at 1498, 1500).[96] Eversource has developed a Corridor Management Plan ("CMP") that lays out the responsibilities of DCR once the MCRT is constructed (Exh. EV-18, app. 6-1). Eversource stated that vegetation management carried out by DCR would conform with the DCR Trail Manual and electric utility best management practices (Exh. EV-2, at 5-16).

Land uses along the entire length of the three alternative routes include residential, commercial, and industrial, with recreation and open space areas and sensitive receptors such as schools, daycare facilities, hospitals, and elder care facilities (Exh. EV-2, at 5-51 to 5-53). Residential land uses consist of single- and multi-family housing units, such as apartments and

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94 Of the 14-foot wide gravel access road, ten feet would be paved by DCR for the rail trail with a two-foot-wide seeded and loamed shoulder on each side (Exh. EV-18, at 59, 206 fig. 2-4).

95 According to the draft MOU between Eversource and DCR, no trees or woody shrubs or plantings can be planted within the estimated 22-foot wide corridor (Exh. EV-18, app. 2-4, at 287 of 382).

96 The Company indicated that construction of the MCRT is anticipated to begin within one year of the completion of the Project (Exh. EV-18, at 20).

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condominiums, with a total of 315 residential units with properties abutting the MBTA Routes and 549 residential units adjacent to the All-Street Route (Exh. EV-2, at 5-51).[97] The Company identified three sensitive receptors adjacent to the MBTA Routes and nine sensitive receptors adjacent to the All-Street Route – each within 50 feet of the limits of Project work areas (Exh. EV-2, at 5-53; RR-EFSB-90). The Company identified 90 commercial or industrial entities abutting the MBTA Routes and 61 commercial or industrial entities abutting the All-Street Route (Exh. EV-2, at 5-52). Eversource noted that, while there are more commercial/industrial entities adjacent to the MBTA Routes than the All-Street Route, the All-Street Route would result in a higher potential for construction-related disruption of vehicle access and parking for commercial and industrial properties because the All-Street Route would be installed entirely within roadways (Exh. EV-2, at 5-52).

Eversource indicated that there are three man-made recreational land uses (e.g., playgrounds, ball fields, and golf courses) along each of the proposed routes (Exh. EV-2, at 5-54). Additionally, there is undeveloped land conserved for the protection of natural resources such as wetlands, waterways, wildlife habitat, and open space (Exh. EV-2, at 5-55). The Company identified 14 conservation properties bordering the MBTA Routes, totaling 3.7 miles of abutting length (Exh. EV-2, at 5-55). For the All-Street Route, the Company identified nine bordering conservation properties, totaling approximately three miles of abutting length (Exh. EV-2, at 5-55). Eversource reported that neither the MBTA Routes nor the All-Street Route would involve the use of protected conservation land and would not require Article 97 approval (Exhs. EV-16, at 2-10; EFSB-LU-40).[98,99] Temporary trail closures would

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97 According to the Company, 16 residential units are located within 50 feet of the proposed work area along the MBTA Underground Route, compared to 108 and 61 for the MBTA Overhead Route and All-Street Route, respectively (Exh. EV-2, at 5-71 to 5-75).

98 Article 97 lands are protected conservation lands that require legislative action for use under Article 97 of the Constitution of the Commonwealth of Massachusetts.

99 Eversource noted that the MBTA ROW does abut several Article 97 properties: four Town of Sudbury parcels; three Sudbury Valley Trustees parcels; three City of Marlborough parcels; three Town of Hudson parcels; and one Commonwealth of Massachusetts parcel (which is listed as owned by "Commonwealth of Massachusetts Environmental Management" on the assessor maps) (Exh. EV-16, at 2-10; Tr. 9, at 1540;

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be necessary along the MBTA Routes where existing recreational paths cross the Project ROW (Tr. 13, at 2337-2339). Eversource indicated that it would work with the towns to develop appropriate detours for these closures (Tr. 13, at 2339).

The Company used NHESP Priority and Estimated Habitat maps to identify areas of protected habitat for state-listed rare species along each alternative route (Exh. EV-2, at 5-47 to 5-50). The Company identified three areas mapped as protected habitat for state-listed rare species along the All-Street Route (Exh. EV-2, at 5-49). Eversource stated that it assumed no impacts to those protected habitat areas, as the transmission line would be installed entirely within the paved limits of the public roadways, and the proposed installation would be exempt from NHESP review (Exh. EV-2, at 5-49 to 5-50). Eversource stated that the MBTA Routes pass through one Priority/Estimated Habitat area for the eastern box turtle, the eastern whip-poor-will, Gerhard's underwing moth, and the coastal swamp metarranthis moth (Exh. EV-16, at 7-2).

The Company initiated field studies to identify box turtles within the Priority/Estimated Habitat area along the MBTA Routes (Exh. EV-16, at 7-2). The Company reported that construction of the New Line could result in potential adverse effects to turtle habitat from the removal of vegetation and leaf litter, and turtle mortality due to movement within the construction areas (Exh. EV-18, at 117). Due to its current informal trail uses, the Company stated that the MBTA corridor is not a potential nesting habitat for whip-poor-will, nor suitable foraging habitat (Exh. EV-16, at 7-4; Tr. 9, at 1437). The Company reported that potential adverse effects for the whip-poor-will involve removal of vegetative cover (Exh. EV-16, at 117). The Company indicated that NHESP's primary concerns are vegetative management practices, future use of the corridor, and protection of habitat (Exh. EV-16, at 7-4; Tr. 9, at 1436-1437).

With regard to the MBTA Underground Route, the Company stated that impacts to protected habitat would include tree clearing and permanent loss associated with construction of the access road (Exhs. EV-2, at 5-49; EV-16, at 7-5). Specifically, the Company estimated approximately two acres of permanent habitat loss due to the 14-foot access road, and

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RR-EFSB-65(1) at 1). A parallel assessment of Article 97 properties adjacent to the All-Street Route was not provided.

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approximately four acres of habitat conversion from forested to shrub/herbaceous vegetation in other areas (Exh. EV-18, at 22).

For the MBTA Overhead Route, mapped habitat impacts would include 1.1 acres of temporary disturbance caused by the placement of work pads for access of construction equipment, 13.2 acres of habitat conversion due to tree clearing, and 2.5 acres of permanent habitat loss associated with construction of the access road and the transmission structures (Exh. EV-2, at 5-49). For both MBTA Routes, Eversource noted that the 14-foot-wide access road would not be regarded as suitable habitat for the state-listed rare species following construction of the Project (Exh. EV-16, at 7-5).[100]

The Company indicated that in areas where the Project would traverse rare species habitat, it would set up strategic exclusion fencing at the onset of construction to avoid turtle nesting areas and have a field biologist on site to do a search and relocation of the relevant turtle species prior to the start of construction each day (Tr. 9, at 1449-1450). Specifically, the Company has developed a Turtle Protection Plan ("TPP") in conjunction with NHESP and DCR that included protection methods for turtles and their nests both during and after construction (Exh. EV-18, at 118, app. 6-2). The TPP includes the following time-of-year restrictions and directives: (1) vegetation clearing and earth moving between November 1 and March 31 only; (2) no-work zones within 100-feet of known hibernation locations between November 1 and March 31; (3) construction monitoring between April 1 and October 31; and (4) post-construction vegetation management between April 1 and November 1 only (Exh. EV-18, at 118-119; Tr. 9, at 1451). In addition, to protect the whip-poor-will, no construction would occur during the breeding season from May 1 through August 1 (Exh. EV-18, at 119; Tr. 9, at 1451).

Eversource testified that, as part of the MESA checklist, it would map host plant communities to determine the potential for the two moth species to be located within the limits of the Project (Tr. 9, at 1433). The Company stated that it has been working with NHESP to develop avoidance, minimization and mitigation measures described above, and that following

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100 The Company stated that in its assessments the area surrounding the MBTA ROW, but not the MBTA ROW itself, was identified as potential suitable foraging, migration, mating, and nesting habitats (Exh. EV-16, at 7-4).

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the submission of the Project Review Checklist, additional or revised measures may be required (Exh. EV-18, at 118).

On October 19, 2018, NHESP issued a determination concluding that, subject to conditions – including implementation of the Company's TPP and CMP – the Project along the MBTA Underground Route would not result in a "take" of state-listed species (Exh. EFSB-LU-7(S2)(1)). On November 8, 2018, Protect Sudbury challenged this determination (Exh. EFSB-LU-7(S3)). On April 12, 2019, the Director of the Massachusetts Division of Fisheries and Wildlife issued a Final Decision confirming the conditional no-take determination (Exh. EFSB-LU-7(S4)).

Eversource stated that it would use several practices to limit the spread of invasive species along the Project route (Exh. EFSB-LU-32). For example, seed-free erosion controls would be used; soil stabilization and restoration would be done with weed-free seed mix; and vehicles and equipment used for Project construction would be cleaned each day prior to entering the MBTA ROW in order to reduce the transport of off-site seed (Exh. EFSB-LU-32).

Eversource coordinated with the Commonwealth Heritage Group, Inc. ("CHG") to identify cultural, historic, and archaeological resources within a quarter-mile radius of each route (Exhs. EV-2, at 5-59; EV-16, at 12-1). Along the MBTA Routes, the Company identified 20 archaeological sites, 22 historically significant buildings, and eight additional areas of interest (Exh. EV-2, at 5-60). Along the All-Street Route, the Company identified 22 archaeological sites, 16 historically significant buildings, and three additional areas of interest (Exh. EV-2, at 5-60). The Company noted that the MBTA Routes would be subject to review under Section 106 of the National Historic Preservation Act and would require a permit from the US Army Corps of Engineers ("USACE"), and would also be subject to a review by the Massachusetts Historical Commission ("MHC") (Exh. EV-2, at 5-60).

Eversource does not anticipate impacts to known archaeological sites within the MBTA ROW due to the previously disturbed nature of the corridor (Exh. EV-16, at 12-2). Eversource stated that it would coordinate with the USACE, the MHC, and local historic commissions through the MEPA process to avoid or minimize adverse impacts to any applicable historic

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resource or archaeological resource (Exhs. EV-2, at 5-60; EV-16, at 12-3).[101] Further, Eversource affirmed that where practical, in coordination with CHG, it would take measures to avoid historic or archaeological resources as the Project design advances and that any unanticipated discoveries during construction would be addressed as part of its construction management plan (Exhs. EV-2, at 5-61; EFSB-EIR-22).[102] Eversource stated that construction along the All-Street Route would not result in any impacts to abutting historic or archaeological resources (Exhs. EV-2, at 5-61; EV-16, at 12-2; Tr. 9, at 1471).

Eversource noted that a combination of laydown areas, temporary storage areas, and staging areas would be needed to support Project construction along any of the three routes (Exh. EV-2, at 5-10). The Company testified that its designated contractor would be responsible for selecting the laydown areas and therefore the locations have not yet been selected (Exh. EV-2, at 5-10; Tr. 13, at 2377). However, the Company indicated that a project of this size is anticipated to require four to five laydown areas of one to two acres each, ideally located as close as possible to the Project but they could be as far as five to six miles away (Exhs. EV-16, at 5-6; EV-18, at 83). Eversource emphasized that license or lease agreements for such sites would contain terms and conditions designed to minimize the impact of the use of the sites on surrounding properties (Exh. EV-2, at 5-10).

b. Positions of the Parties

i. Town of Sudbury

Sudbury argues that construction and operation of the Project would substantially affect the unique natural environment along the MBTA ROW in Sudbury (Sudbury Brief at 51).

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101 The Company explained that as part of its investigation, the USACE would consult with Native American Tribes that express an interest in the cultural resources that may be affected by the portions of the routes subject to USACE and MHC jurisdiction (Exhs. EV-2, at 5-60; EV-16, at 12-3; EFSB-LU-35).

102 Eversource noted if certain resources could not be avoided, specific minimization and mitigation measures such as research, photography, archaeological testing, and preparation of an interpretive panel would be established through consultation with USACE, MHC, and other parties (Exh. EFSB-EIR-22).

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Sudbury argues that the Project would cross or abut an expanse of protected land and restricted land areas such as streams, marshes, swamps, forest, recreational open space, vernal pools, wellhead protection areas, NHESP priority and estimated habitat, Article 97 lands, local water districts, historic properties, and local historic districts (Sudbury Brief at 51-52, citing Exhs. EV-2 at Table 3-1, Table 4-3 and 4-20; EFSB-SUD-42(1)).[103] The town further notes that that MBTA ROW is currently used by the public for walking, hiking, and other passive recreational uses (Sudbury Brief at 51, citing Exhs. SUD-DMD-1, at 3; EV-2, at 1-5). Sudbury argues that it is committed to the preservation of open land for conservation purposes, and that over 3,000 acres of permanently protected lands are contained within properties directly abutting the MBTA ROW (Sudbury Brief at 52-53).

Sudbury challenges Eversource's claim that the MBTA ROW is an already-disturbed area, emphasizing that, despite its prior rail use, the corridor has been used solely for passive recreation for over 40 years (Sudbury Brief at 51, 70, citing Exhs. SUD-DMD-1, at 3, 5; EV-2 at 1-5; Tr. 12, at 2186). Thus, the town argues that existing wildlife habitats would be disrupted and destroyed if the Project were constructed along the ROW (Sudbury Brief at 70, citing Exh. SUD-DMD-1, at 5; Tr. 12, at 2186). Sudbury notes that there are small species, such as snakes and turtles, and larger ones, such as coyote, fox, and bobcat that use the corridor; it contends that the impact on each species would vary (Sudbury Brief at 71, citing Tr. 12, at 2196). Sudbury states that some species use the MBTA ROW in a linear fashion and others cross the corridor to access habitat on either side (Sudbury Brief at 71, citing Tr. 12, at 2196). Sudbury concludes that Eversource has not accounted for the fact that the Project would have a harmful effect on wildlife habitat currently located along the MBTA corridor (Sudbury Brief at 71).

Sudbury argues that the Company's project plans do not allow for a full evaluation of the Project and its effects on existing environmental conditions along the MBTA ROW, and that the plan set issued on December 22, 2017 was submitted after the close of the evidentiary hearings on environmental topics (Sudbury Brief at 56-57). The town lists numerous deficiencies with the

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103 Sudbury's concerns related to vernal pools, wellhead protection areas, and local water districts are discussed further in Section VI.D.2, below.

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latest Project plans and contends that it was not afforded due process with respect to review of these Project plans or the revised environmental impact summary based on the plans (Sudbury Brief at 57). Sudbury contends that proper mitigation measures or quantitative information regarding proposed mitigation have not been identified by Eversource (Sudbury Brief at 61).

Sudbury notes that although Eversource has stated it has a system-wide VMP, the Company would not apply that plan to the MBTA ROW because DCR is expected to undertake vegetation management (Sudbury Brief at 64, citing Exhs. EV-2, Appendix 5-4; SUD-VM-5). Sudbury questions Eversource's contention that all vegetation management would be the responsibility of DCR, including a responsibility to work with NHESP regarding vegetation management practices related to priority habitat in the area (Sudbury Brief at 64). Sudbury asserts that since currently there is no final executed MOU between Eversource and DCR on the record – and DCR does not yet have the funds to proceed with work on the MBTA ROW – there is an open question as to which party is responsible for specific mitigation measures related to vegetation management and protection of priority species (Sudbury Brief at 64-65, citing Exh. SUD-G-20(S3); Tr. 9, at 1441-1444).

Further, Sudbury asserts that proper mitigation would require that surface contours and vegetation be substantially restored wherever construction activities related to splice vault and duct bank installation take place (Sudbury Brief at 65, citing Exh. SUD-MJN/RMG-1(R) at 40). Sudbury reports that Eversource plans to seed unstable soils outside the 14-foot gravel access road with a seed mixture and/or mulch (Sudbury Brief at 65, citing Exh. SUD-DEIR-4). The town insists that this is not proper mitigation, as the surface vegetation and contours of the temporary construction area would not be substantially restored in accordance with the Massachusetts WPA regulations, and that simple seeding or mulching would not restore the vegetation that provides food, shelter, and breeding areas for existing native wildlife, or shade for the coldwater fisheries (Sudbury Brief at 65; Exh. SUD-MJN/RMG-1(R) at 40-41).

Sudbury further argues that the Siting Board cannot determine that the Project would have no adverse effect on rare species habitat because Eversource has not presented a mitigation plan, nor has it completed the required wildlife habitat evaluations under the Massachusetts WPA, or the site-specific assessments of habitat quality as required by NHESP (Sudbury Brief at 65, citing Exh. SUD-MJN/RMG-1(R) at 27). Sudbury asserts that without a completed

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evaluation, the Company has not overcome the presumption inherent under 310 CMR 10.61(1) that the Project would have an adverse effect on wildlife habitat (Exh. SUD-MJN/RMG-1, at 27; Sudbury Brief at 65).

Sudbury argues that the construction of the All-Street Route within existing roadways would have no impact on wetland resource areas, groundwater, public water supplies, coldwater fisheries, wildlife habitat, rare species, conservation land use, and abutting historic or archaeological resources (Sudbury Brief at 71). Further, Sudbury claims that the mitigation required for a route along the MBTA ROW would be significantly greater than mitigation required for the All-Street Route (Sudbury Brief at 71-72). The town asserts that the Company has failed to demonstrate that the MBTA Underground Route is superior to the All-Street Route on the basis of balancing environmental impacts and should be denied by the Siting Board (Sudbury Brief at 72).

Sudbury challenges the MBTA's authority to grant Eversource rights to construct, operate, and maintain a transmission line along the MBTA ROW (Sudbury Brief at 84-85). The Town filed a lawsuit with the Land Court alleging that, without statutory authorization, the MBTA does not have the right to modify the use of the MBTA ROW to one that is not consistent with the prior public railroad use by the MBTA (Sudbury Brief at 85, citing Complaint, Exhibit A to Motion for Stay). The Town emphasizes that if the MBTA is restricted from leasing the ROW to Eversource, the Company would not be able to continue to seek approval for the Project on the basis of its Petition with the Siting Board (Sudbury Brief at 85).

ii. Protect Sudbury

Protect Sudbury contends that the Project, using the MBTA ROW, would be sited "as close to a wilderness area as [one] can find in Boston Metrowest" on "one of the largest and most pristine natural resource areas…with over 3,000 acres of permanently preserved land" (PS Brief at 8). Protect Sudbury argues that the Project would have short- and long-term environmental impacts that would be more significant than those of the All-Street Route (or the NEP Alternative; see Section IV.D) (PS Brief at 7).

Protect Sudbury contends that the Project would permanently disturb rare species, protected conservation land or open space, scenic roads, coldwater fisheries, and vernal pools

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(PS Brief at 8). Protect Sudbury voices alarm that the Project would result in the permanent loss of mature forest land and vegetation, increase the risk associated with flooding and pollution, and would be in close proximity to abutting homes and businesses (PS Brief at 8). Protect Sudbury asserts that the All-Street Route has none of the environmental impacts associated with the Project, such as impacts to rare species, cultural or historic resources, conservation lands, trees and vegetation, wildlife habitat, wetlands, groundwater or public water supplies, nor does it pose the risk of contamination from hazardous materials (PS Brief at 9, citing Exh. SUD-MJN/RMG-1, at 10-11, 52-53). In contrast, Protect Sudbury notes that most of the impacts of the All-Street Route would be caused primarily by traffic disruption and temporary inconveniences (PS Brief at 9, citing Exh. SUD-MJN/RMG-1, at 10-11, 52-53). Protect Sudbury argues that Eversource failed to acknowledge that the traffic disruptions from construction of the All-Street Route are temporary while the impact of the Project on the natural environment would be "significant" or "permanent" (PS Brief at 9, citing Exh. SUD-MJN/RMG-1, at 10-11, 52-53).

Protect Sudbury argues that the probable impacts to property values from the Project should have been included as an additional consideration in the Environmental Analysis (PS Brief at 48, citing Tr. 12, at 2018-2083). Protect Sudbury claims the record confirms that transmission lines generally negatively impact property values, the Project would likely have such impacts, and some definitive determination should be made with respect to the possible impacts on property values from the Project as compared to the Noticed Alternative and NEP Alternative Routes (PS Brief at 48, citing Exhs. Protect-C, D, E; Tr. 12, at 2109-2114).[104]

iii. Town of Hudson

Hudson argues that the MBTA Underground Route has significantly greater environmental impacts than outlined in the Company's Petition (Exh. Hudson-PH-1, at 3).

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104 On September 15, 2017, the Presiding Officer issued a Scoping Order regarding Property Values, which stated that "evidence concerning potential property value impacts associated with the Company's proposed transmission facility in this case may be presented by the parties for the limited purpose of the Siting Board's review of the general public interest relating to the Company's Section 72 and G.L. c. 40A, § 3 petitions" (September 15, 2017 Ruling at 4). Accordingly, the property value issue raised by Protect Sudbury, although related to land-use, is addressed in Section X below.

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Hudson states that construction of the MBTA Underground Route would result in permanent damage to the natural environment, including loss of habitat, trees, and conservation land (Exh. Hudson-PH-1, at 4, 6). Specifically, the town notes that the MBTA Underground Route bisects one of the largest and most pristine natural resource areas remaining in Hudson and surrounding communities, which includes the Assabet River National Wildlife Refuge, the Desert Conservation Area, Marlborough-Sudbury State Forest, and conservation lands in Sudbury (Exh. Hudson-PH-1, at 6-7). Further, Hudson states that the MBTA Underground Route passes close to at least 15 vernal pools and upland areas around vernal pools, which are critical to the survival of numerous species, and provide habitat for several rare and endangered species (Exh. Hudson-PH-1, at 7, 10, 11). Hudson argues that the Project would result in the clearing of over one million square feet of mature forestland in Hudson, which would have an impact on wildlife, soils, and microclimate, and would increase the potential for invasive plant species to take root (Exh. Hudson-PH-1, at 8).

iv. Company Response

The Company argues that it has provided substantial evidence that it has minimized environmental impacts of the Project consistent with the Siting Board's statutory mandate (Company Reply Brief at 57). Eversource argues that following construction of the Project, the MBTA ROW would continue to offer suitable habitat for species, as tree clearing and vegetation maintenance along the MBTA ROW would be considered habitat conversion rather than habitat loss (Company Brief at 110, citing Exhs. EV-2, at 5-50; EFSB-LU-21). Moreover, the Company contends that once the old railroad track is removed, there would no longer be a physical barrier to movement for reptiles like eastern box turtles (Company Brief at 110, citing Exh. EV-16, at 7-5). Eversource confirmed that based on discussions with NHESP, it has initiated field studies to identify eastern box turtles within the priority/estimated habitat area (Company Brief at 109, citing Exhs. EFSB-EIR-15; EV-16, at 7-2).

The Company argues that it plans to provide the best suitable habitat for wildlife along the MBTA corridor after construction by minimizing the width of the maintained corridor, promoting the growth of native plant species, removing the railroad track, and consulting with

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managers of protected land, and local, state, and federal agencies (Company Brief at 110, citing Exhs. EV-16, at 7-6; EFSB-LU-21).

Lastly, the Company states that the Project would be designed and constructed to incorporate best management practices, to comply with federal, state, and local laws and regulations, and that Eversource would provide mitigation for any impacts that may not be avoided (Company Brief at 91, citing Exh. EV-2, at 5-83). For these reasons, Eversource argues that it has properly minimized impacts to rare species (Company Brief at 111).

The Company challenges the arguments presented by the intervenors regarding the status of Project plans and the description of the environmental impacts and mitigation (Company Reply Brief at 58). Eversource argues that the level of detail and design it has presented for the Project, the extent of the evidentiary record, and the information on mitigation provide a "substantially accurate and complete" description of environmental impacts (Company Reply Brief at 58-59). Further, the Company argues that the considerable amount of information presented in this case is typical for a Siting Board proceeding, and that there is no requirement for the Company to present a fully designed Project (Company Reply Brief at 58-59). Lastly, Eversource contends that throughout the proceeding it has refined and improved its mitigation plans (Company Reply Brief at 60). The Company asserts that it will finalize reasonable mitigation measures with local Conservation Commissions as Project design is finalized (Company Reply Brief at 62). Eversource concludes by arguing that construction impacts associated with the Project would be minimized and mitigated (Company Reply Brief at 63).

In response to Sudbury's claim that the MBTA could reestablish the corridor for transportation purposes, the Company argues that it could relocate its facilities elsewhere within the ROW, without causing a reliability impact, and that the town's argument is therefore baseless (Company Reply Brief at 22 and 57, citing Exh. EFSB-C-12(R1)(2) at 5; Protect-2-14; Tr. 7, at 1002). Likewise, the Company argues that the lawsuit by the town challenging the MBTA's authority to convey an easement on the MBTA ROW is speculative and that, if any presumption is to be made, it should be that the MBTA has a clear understanding of its rights and obligations with respect to the prior public use doctrine and its own enabling legislation (Company Reply Brief at 56). Further, the Company argues that site control is not a prerequisite in project permitting before the Siting Board, and that a project proponent is not required to secure any

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necessary interests in land prior to filing its petitions with the Siting Board or the Department (Company Reply Brief at 56).

c. Analysis and Findings on Land Use and Historic Resources

The parties to this proceeding have described the MBTA ROW in a variety of ways – a former transportation corridor that has been historically disturbed, a valuable transportation corridor that can be used for a future rail trail, and an area that has been restored to its natural condition, connecting important conservation lands. The Siting Board views the corridor as a combination of the above and recognizes its multiple attributes and values as a regional transportation and recreational resource, a regional energy transmission corridor, and a linear location with ecological and natural resource value.

Within the category of Land Use and Historic Resources, the Siting Board considers a diverse range of impacts to the built and natural environments, leaving other specific impacts, such as water and wetlands, noise, traffic, and visual, for separate review. With respect to the built environment, the record in this case shows that in comparison with the All-Street Route, abutters to the MBTA Routes include 234 fewer residential units and six fewer sensitive receptors, although there are 29 more commercial/industrial entities. Each of the three route options is located adjacent to three man-made recreational uses. The record further shows that for those most affected by Project construction – residences and sensitive receptors within 50 feet of Project work areas – the MBTA Underground Route has the fewest abutters (16 residences and three sensitive receptors), the All-Street Route has three to four times as many (61 residences and nine sensitive receptors), and the MBTA Overhead Route has the most (108 residences and three sensitive receptors). Finally, the record shows that a total of 50 historically significant sites are located along the MBTA Routes, whereas 41 such sites would be located along the All-Street Route. No direct impacts to historic resources or archeological sites are anticipated from Project construction along any of the three routes considered.

In view of the number and proximity of abutters to the various route locations, the Siting Board concludes that the MBTA Underground Route has the lowest potential impact to the built environment from a land use perspective, followed by the All-Street Route, and last, by the MBTA Overhead Route.

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With regard to natural environment land use impacts, the Siting Board notes that, although the MBTA ROW is situated adjacent to significant expanses of ecologically sensitive, protected natural resource areas, the MBTA ROW itself is not classified as protected open space. It has, however, been over 40 years since there was active rail service on the MBTA ROW, and the corridor has significantly filled in with trees and other vegetation that provide important habitat and ecological value. Over the course of this proceeding the Company has reduced the width of the corridor along the MBTA Underground Route that would be cleared of trees and vegetation during construction. These changes help to preserve the natural resources in the MBTA ROW that have flourished since rail service ended. The Siting Board expects that recreational use of the ROW is likely to continue following Project construction, regardless of whether the rail trail is ultimately constructed.[105]

The MBTA Overhead Route would require the most vegetation removal for construction, and therefore it has the highest potential impact to wildlife and rare species habitat and adjacent conservation lands. The reduced amount of tree clearing and the lack of above-ground structures associated with the MBTA Underground Route make this option much less impactful to the natural environment than the MBTA Overhead Route. Further, NHESP has determined that, subject to conditions (described below), construction of the Project along the MBTA Underground Route would not result in a "take" of protected species. The All-Street Route has the lowest potential land use impacts to the natural environment given the fact that it is an existing roadway and would not require any habitat loss or conversion.

In view of the above, the Siting Board finds that, on balance, the MBTA Underground Route and the All-Street Route have impacts that are different in nature, but are comparable with respect to land use and historic resource impacts. As noted above, the All-Street Route is preferred with regard to natural environment impacts, while the MBTA Underground Route is

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105 This recreational use may, in fact, be improved with construction of the Project. For example, in the expanded Environmental Notification Form Certificate issued by the Secretary for the MCRT, the Secretary noted that the existing informal trail lacks user access consistent with the requirements of the Americans with Disability Act and does not discourage encroachment on the MBTA ROW. See Exh. EFSB-LU-36(2) at 4. Removal of the existing rail and ties and construction of the Company's gravel access road would result in a more accessible and clearly defined trail.

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advantageous with regard to impacts to the built environment. Both the MBTA Underground Route and the All-Street Route are preferable to the MBTA Overhead Route from a land use perspective.

With respect to mitigating environmental impacts, Eversource emphasized that it would design the Project to minimize the overall disturbance from construction and to minimize habitat loss along the length of the MBTA Underground Route. To further mitigate Project impacts to rare species, the Company committed to implementing mitigation measures including time-of-year restrictions, temporary barriers, avoiding nesting areas, and conducting surveys in advance of construction. The Company has received a final "no-take" determination from NHESP for the Project, conditional on compliance with these commitments. Eversource would limit the spread of invasive species along the MBTA ROW by, among other things, using weed-free seed mixes and cleaning vehicles and equipment used for Project construction each day prior to entering the ROW.

The Company committed to coordinate with USACE and the MHC to avoid and/or minimize adverse effects to any eligible historic and archaeological resources. To avoid impacts to historic districts or specific historic uses, Eversource would consult with MHC and the local historic commissions to ensure that it identifies any necessary avoidance and/or timing of mitigation-related measures that would need to be implemented during the construction phase.

The Siting Board does not agree with the Town of Sudbury that Eversource's latest Project plans are deficient with respect to existing environmental conditions and mitigation, nor with the town's complaint that these plans were filed after the close of evidentiary hearings on environmental topics. The Siting Board notes that the permitting process for a transmission line is iterative and that as a project design advances more information becomes available. The Siting Board encourages proponents to actively engage with all permitting and regulatory agencies early in its design process so that adequate and up-to-date information is available for the Siting Board's review. However, the Siting Board does not require a proponent to have produced final design plans before a decision can be issued, nor is it the Siting Board's view that the record is incomplete without the final design plans. See e.g., Needham-West Roxbury, Ruling on Motion to Reopen Evidentiary Hearings (April 13, 2018) (town not entitled to any specific degree of design-plan completeness … either during or after hearings). Further, as

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discussed in Section I.C, above, Intervenors in this case were afforded a full and fair hearing, consistent with the MAPA. The Siting Board notes that the Company actively consulted with agencies, such as NHESP, local conservation commissions, and MEPA, and that each requires mitigation as part of its regulatory process.[106] In sum, the Company has produced adequate information for the parties in this proceeding, and the Siting Board, to evaluate the Project's potential environmental impacts and the Company's proposed mitigation and minimization plans for purposes of the approvals sought in this docket.

With respect to the Company's MOU with DCR regarding vegetation management, the Company stated throughout the proceeding that an MOU would be developed and that it would file a copy of the MOU with the Siting Board. Therefore, the Siting Board directs the Company to file, prior to construction, the executed MOU between DCR that outlines vegetation management along the MBTA ROW.

The Siting Board recognizes and appreciates the concerns of the towns and Protect Sudbury relating to the proximity of the Project to conservation and open land (e.g., Assabet River National Wildlife Refuge, Marlborough-Sudbury State Forest, Desert Conservation Area).[107] Impacts to wildlife habitat and conservation lands, including habitat disturbance and temporary closures to recreational trails, are anticipated as a result of Project construction. The Company's efforts to reduce the size of Project work areas along the MBTA ROW, as well as its commitments to (i) leave stumps and roots in place where possible along the ROW to encourage vegetation recovery; (ii) to perform only selective vegetation removal along stream banks; and (iii) to potentially provide new habitat for wildlife by leaving felled trees to decompose in place, will limit the extent of these impacts. The Company has also committed to providing signage to

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106 For example, during the local wetlands permitting process (specifically, the Abbreviated Notice of Resource Area Delineation ("ANRAD") application), the Company will provide current design plans and Sudbury will have further opportunity to review the environmental mapping for the Project with a focus on mitigating potential wetland impacts.

107 The Town of Sudbury's concerns with respect to construction activities in wetland areas (e.g., the Project's compliance with Massachusetts Wetlands Protection Act ("WPA") regulations) is addressed in Section VI.D.2, below.

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notify the public of trail closures and to work with the towns to arrange detours to minimize construction-related impacts to recreational users.

In furtherance of this goal, the Siting Board directs the Company, in consultation with the owners/managers of bordering conservation land – Sudbury, Hudson, Marlborough, Sudbury Valley Trustees, DCR, and the U.S. Department of the Interior – to develop an access plan that details: (1) the time of year that access would be limited along the MBTA ROW; (2) alternative access points to specific conservation areas if applicable; (3) guidelines for communicating with all owners/managers of such conservation lands; and (4) a complaint and resolution process regarding any issues arising from construction that impact the bordering conservation land.

The Town of Sudbury questions the validity of the Option Agreement between the MBTA and the Company, arguing in the Massachusetts Land Court that the MBTA cannot allow its ROW to be used by Eversource for the Project absent statutory authorization. The Siting Board notes that since the submission of briefs in this proceeding the legal processes relating to the town's lawsuit have advanced. On December 22, 2017, the MBTA filed a Motion to Dismiss with the Land Court; on February 26, 2018 Eversource joined the Motion to Dismiss. On September 28, 2018, the Land Court ruled allowing the defendants' motion to dismiss. Subsequently, the Town of Sudbury appealed this decision, and on May 16, 2019, the Supreme Judicial Court ("SJC") took jurisdiction of the appeal sua sponte. Briefing is complete and oral arguments in the SJC proceeding were heard on October 1, 2019.

As the Company noted, site control is not a prerequisite in project permitting, particularly before the Siting Board. Nothing in either G.L. c. 164, § 69J or § 72 requires that a project proponent secure any necessary interests in land prior to filing its petitions with the Siting Board or the Department. G.L. c. 164, §§ 69J, 72. Rather, the SJC has explicitly found that a project proponent has standing to pursue its petitions before the Siting Board even if the proponent lacks necessary property rights. Town of Andover v. Energy Facilities Siting Bd., 435 Mass. 377, 395 (2001). See Company Reply Brief, at 56. Nevertheless, the Company's legal rights to install the Project within the MBTA ROW will ultimately be determined by the SJC. Should the SJC rule in favor of the town, specific legislation would be required to permit construction of the Project along the MBTA ROW. To limit the potential for impacts while the status of the Company's Option Agreement is in dispute, the Siting Board directs that the Company cannot commence

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construction of the Project along the MBTA Underground Route until the question of whether the MBTA can enter into the Option Agreement is resolved and the Company's rights to install the New Line along the MBTA ROW are thereby confirmed. Given the implementation measures proposed by the Company and the above conditions, the Siting Board finds that land use impacts from the Project along the MBTA Underground Route would be minimized.

2. Water and Wetlands

a. MBTA Underground Route and MBTA Overhead Route

i. Wetlands and Waterbodies

The Company reported that construction along the MBTA ROW would result in permanent and temporary impacts to wetland resources areas including bordering vegetated wetlands ("BVW"), bordering land subject to flooding ("BLSF"),[108] riverfront areas, vernal pools, and buffer zones (Exh. EV-2, at 5-29 to 5-30). Eversource estimated that no impacts to wetland resource areas would occur along the in-street portion of the MBTA Routes, and therefore only presented impacts along the MBTA ROW (Exh. EFSB-W-10). Eversource identified the following construction activities that would result in wetland resource impacts: development of the construction platform and access road; tree clearing; grading; construction and installation of the underground transmission line and splice vaults; installation of new bridge abutments at Hop Brook; and excavation for overhead structure foundations (Exhs. EV-2, at 5-32; EV-18, at 95; SUD-W-28; RR-SUD-10). Table 5, below, provides the Company's total estimated impacts to wetland resource areas.[109,110] In addition, the Project would result in

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108 The Company stated that the Massachusetts WPA develops BLSF limits based on the Federal Emergency Management Agency ("FEMA") Zone A floodplain; and therefore, the terms BLSF and floodplain can be used interchangeably (Tr. 10, at 1743).

109 As noted above, the Company reported the impacts to several types of wetland resources. The Company indicated that the Massachusetts WPA regulations include performance standards for permanent fill of BVW and BLSF, which are the impacts that are presented in Table 5 (Exh. EV-2, at 5-33).

110 Eversource reported that its estimates of wetland resource impacts have been reduced as engineering has advanced because it has been able to include mitigation such as retaining

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1,500 square feet of permanent wetland fill at the Hudson Substation regardless of which of the routes is chosen (Exhs. EFSB-PA-36(R-3)(1); EFSB-HLD-1). HLPD indicated that this wetland is a drainage swale that was created during construction at the Hudson Substation (Tr. 14, at 2478). HLPD further indicated that it would hire and consult with a wetlands expert to analyze the resource, and if necessary, determine with the Hudson Conservation Commission any necessary mitigation (Tr. 14, at 2460, 2476-2480). The work at the Hudson Substation is the same for all three routes and is not reflected in Table 5 (Exhs. EFSB-PA-36(R-3)(1); EFSB-HLD-1).

Table 5. Estimated Impacts to Wetland Resource Areas (in square feet)

Route	Permanent Fill within BVW	Temporary Fill within BVW	Tree Clearing within BVW	BLSF Impacts[111]
MBTA Underground Route	284	2,234	0	Total: 34,314
MBTA Overhead Route	1,059	17,519	195,755	Permanent: 29,333 Temporary: 24,002 Tree clearing: 278,784
All-Street Route	0	0	0	0

Sources: Exhs. EV-18, at 30-31; EFSB-PA-36(R-3)(1); RR-SUD-10.

The Company stated that these wetlands impacts would be jurisdictional to regulations and bylaws enforced by USACE, MassDEP, and the conservation commissions of Hudson, Sudbury, and Stow (Exhs. EV-2, at 5-33; EFSB-W-1; Tr. 10, at 1711-1714). For permanent, unavoidable impacts to BVW, depending on the location and jurisdiction of the wetland

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walls and rip-rap in its design and to locate its work areas outside wetlands (Exhs. EFSB-EIR-29; EFSB-EIR-30).

111 The BLSF impacts for the MBTA Underground and Overhead Route are not directly comparable since for the MBTA Overhead Route tree clearing activities that would occur outside the limits of grading were not calculated (Exhs. EFSB-W-7; EV-16, at 2-7; EV-18, at 30-31).

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resource, compensation would be required at a minimum of 1:1 ratio or up to 20:1 (Exh. EV-2, at 5-33; Tr. 10, at 1742, 1776).[112] The Company stated that any fill within BLSF would require compensatory flood storage at the same incremental elevation as the proposed fill (Exh. EV-2, at 5-33; Tr. 10, at 1741-1742). Eversource filed its ANRAD applications with the Hudson and Sudbury Conservation Commissions in November 2017, beginning the local wetland permitting process (Exhs. EFSB-EIR-28(S1); EFSB-EIR-28). Further, Eversource stated that it would file a Notice of Intent for geotechnical borings and construction activities after the Project's final design is completed (Exh. EV-16, at 2-10). Eversource stated it would minimize impacts to wetlands to the extent practicable in consultation with the appropriate jurisdiction (Exh. EFSB-W-9).

Eversource stated that it continues to work with all regulatory entities to establish mitigation, but it has not reported the location, or types of wetland replication or compensatory flood storage it would implement (Exh. EFSB-EIR-8; Tr. 10, at 1741-1742, 1746). The Company proposed to provide replication for unavoidable permanent impacts to BVW and isolated vegetative wetlands at a 2:1 ratio (Exh. EV-18, at 51, 96). The Company reported it would develop mitigation plans that would include wetland replication and compensatory flood storage due to permanent fill of BVW and BLSF resources when the final design is complete (Exhs. EV-2, at 5-33 to 5-34; EFSB-W-9). The Company noted that it confirmed one location requiring compensatory flood storage along the MBTA Underground Route, which it has designed to provide the appropriate storage, and reported an additional location that may require compensatory flood storage, which would depend on further engineering and topographic information (Exhs. SUD-DEIR-30; SUD-DEIR-31; Tr. 10, at 1745, 1747).

The Company stated that it would minimize impacts to wetland resource areas by designing the access road and construction platform to be located outside of wetland resource areas wherever possible, and by reducing the size of the construction platform to 18 feet across

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112 Among the host communities, only Sudbury has a local wetlands protection bylaw, which could require wetland replication up to a 3:1 ratio (Exh. EV-2, at 5-33; Tr. 10, at 1776; Tr. 12, at 2143-2144). The USACE recommends a compensation ratio of at least 2:1 and up to 20:1, depending on the type of resource area impacted and the proposed mitigation (Exh. EV-2, at 5-33).

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(compared to 22 feet for the rest of the ROW) in locations near vernal pools (Exh. EV-2, at 5-33; Tr. 8, at 1354).[113] Eversource stated it would further minimize impacts to wetland resource areas through the use of erosion and sedimentation controls, and by excluding vehicle refueling from wetland protection and buffer zones (Exh. EV-2, at 5-35 to 5-37; Tr. 10, at 1685).

Eversource indicated that the New Line would cross several perennial and intermittent streams, including Hop Brook, Dudley Brook, Fort Meadow Brook, and several existing unnamed culverts (Exh. EFSB-W-2). With respect to the MBTA Underground Route, the Company stated that the duct bank would be attached to bridge structures and installed over existing culverts (Exhs. EV-2, at 5-14; EFSB-W-2). The Company stated that it does not anticipate impacts to wetland resources or waterbodies due to bridge rehabilitation (Exh. SUD-W-6).

ii. Public Water Supplies

The Company reported that the Project would be located in the vicinity of wellhead protection areas regulated by MassDEP and water supply protection overlay districts regulated by local zoning authorities (together, "public water supplies") (Exhs. EV-2, at 5-35; EFSB-W-11).[114] Eversource stated that the MBTA Overhead and Underground Routes would cross 6.5 linear miles of public water supplies, including three Zone II wellhead protection areas (two in Hudson and one in Sudbury) and three local water supply protection overlay districts (Exh. EV-2, at 5-35 to 5-36). The Company provided the distance between the Project along all three routes and each municipal well in Sudbury and Hudson (Exhs. EFSB-W-13; EFSB-W-15). See Table 6, below.

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113 With respect to vernal pools, Eversource committed to avoiding construction within 450 feet of vernal pools during the migratory breeding period from March 1 to May 14 (Exh. EV-18, at 137). Further, the Company conducted an analysis of existing and proposed flows to vernal pools, confirming that the Project would not affect the annual recharge of these resources (Exh. EV-18, at 137).

114 The Company stated that there are no known private drinking wells within 100 feet of the MBTA ROW (Exh. EV-16, at 8-2).

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Table 6. Distance Between Closest Municipal Well and Project Features for All Route Alternatives

Well Name	Distance to MBTA Underground Route Duct Bank	Distance to MBTA Overhead Route Structure	Distance to All-Street Route Duct Bank
GP Well 2A (Sudbury)	1,820 feet	1,840 feet	5,312 feet
Cranberry Bog Well (Hudson)	713 feet	700 feet	3,209 feet
GP Well 4 (Sudbury)	3,458 feet	3,443 feet	5,131 feet
Kane Well (Hudson)	1,031 feet	1,017 feet	646 feet

Sources: Exhs. EFSB-W-13; EFSB-W-15.

The Company stated that it engaged a professional hydrogeologist to complete a groundwater hydrology assessment for public water supplies in Sudbury and Hudson (Exhs. EV-2, at 5-35 to 5-36, app. 5-6, app. 5-7; EV-16, app. 8-1, app. 8-2; Tr. 10, at 1655). The assessments evaluated the potential for the Project features (e.g. duct bank, concrete foundations) to affect the flow and quality of water within the public water supplies and identified locations along the MBTA ROW where the duct bank, manholes, or overhead structure foundations would extend into the groundwater table, which is presented in Table 7, below (Exhs. EV-2, at 5-35 to 5-36; EV-16, app. 8-1, app. 8-2; RR-EFSB-73).[115]

115 The Company asserted that it considered relocating manholes that would extend into the groundwater table, however, it subsequently determined that relocation would be infeasible based on: (1) the distance required between manholes, which is limited by the length of cable segments (between 1,500 and 1,900 feet), and (2) natural features within the ROW, such as wetland resource areas (Tr. 10, at 1661-1671; RR-EFSB-71).

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Table 7. Project Features Within Groundwater Table

Town	Project Features	Total Locations	Maximum Depth of Project Below Groundwater Level (feet)
Sudbury	Duct Bank	7	15
	Manhole	3	14
	Structure Foundation	18	30
Hudson	Duct Bank	4	10
	Manhole	2	6
	Structure Foundation	19	25

Sources: Exhs. EV-16, app. 8-1, at 7, and app. 8-2, at 6; RR-EFSB-72; RR-EFSB-73.
Note: The Company assumed that the duct bank would be buried approximately five feet below grade, manholes would be buried at a maximum of 14 feet below grade, and structure foundations would require excavation to a depth of 30 feet (RR-EFSB-72; RR-EFSB-73).

Eversource noted that: (1) the underlying aquifers are composed of highly permeable sand and gravel; and (2) the Project features would extend into a shallow portion of the 100-foot-deep aquifer, allowing groundwater to flow under and around each feature (Exh. EV-16, app. 8-1, app. 8-2; Tr. 10, at 1658-1661, 1683). Eversource concluded that the placement of duct banks, manholes, or structure foundations within the aquifer would not impact flow rate, flow direction, or quantity of groundwater flow (Exh. EV-16, app. 8-1, at 7-8, app. 8-2, at 6-7; Tr. 10, at 1659-1660, 1683). The Company stated that any potential Project impacts to public water supplies would be limited to contamination from spilled fuels, lubricants, or other potentially hazardous materials (Exh. EFSB-W-19). Eversource noted that, with respect to the potential for Project construction to encounter subsurface contamination, it may encounter currently unidentified contamination from the MBTA ROW's previous use as an active railroad corridor (Exh. EV-2, at 5-58). See Section VI.D.6. The Company stated that in a meeting with MassDEP about the MCRT, MassDEP did not express any specific concerns regarding groundwater and contamination from construction along the railroad corridor, given that the railroad has inactive for roughly 50 years and any leaching would have already occurred (Tr. 10, at 1693).

The Company asserted that it would minimize impacts to public water supplies by developing a Stormwater Pollution Prevention Plan ("SWPPP") and implementing spill

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protection controls and countermeasures, including prohibiting equipment refueling within 100 feet of wetland or waterbodies, locating contractor staging and storage areas within existing developed and impervious areas, and requiring contractors to have spill containment and prevention equipment available (Exh. EV-2, at 5-35 to 5-37; Tr. 10, at 1685).[116]

As noted above in Section VI.D.1, DCR would be responsible for ROW maintenance and vegetation management once construction of the MCRT starts, and the Company stated that it expects that DCR's practices would comply with applicable best management practices and regulatory standards to ensure no impacts to public water supplies (Exh. EV-2, at 5-37; Tr. 10, at 1689). For the MBTA Overhead Route, DCR would be responsible for vegetation maintenance within its easement, and the Company would be responsible for maintenance outside of the DCR easement required for safe operation of the overhead transmission line (Tr. 9, at 1511; Tr. 10, at 1689). For any vegetation maintenance areas under Eversource's responsibility, the Company stated that it would adhere to its established VMP and Yearly Operating Plan to avoid adversely affecting groundwater (Exhs. EV-2, app. 5-4, app. 5-5; EFSB-W-12; EFSB-W-20; SUD-W-22; Tr. 10, at 1685-1686). Eversource stated that it does not use herbicides during construction and maintains a no-spray zone within 400 feet of public drinking water wells and 50 feet from private drinking wells after construction (Exh. EFSB-W-12).

iii. Coldwater Fisheries

The MBTA ROW crosses Hop Brook, a MassDEP and Massachusetts Division of Fisheries and Wildlife ("MassDFW") designated coldwater fishery, at two locations (Exh. EV-2, at 5-39).[117] Eversource indicated that tree removal and bridge rehabilitation could impact Hop

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116 The Company stated its SWPPP would be drafted during its detailed engineering phase, completed when the Company selects its construction contractor, and filed with the U. S. Environmental Protection Agency ("USEPA") prior to construction (Exh. EFSB-W-4).

117 The Massachusetts WPA defines waters as coldwater fisheries if: (1) the mean of the maximum daily temperature over a seven-day period generally does not exceed 68°F; and (2) ecological factors are capable of supporting a year round population of coldwater aquatic life (Exh. EV-2, at 5-39). MassDFW designates waters as coldwater fishery resources when there is evidence that a coldwater fish population and suitable habitat (e.g., streamside vegetation) exists (Exh. EV-2, at 5-39). Hop Brook is one of several

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Brook by causing erosion and sedimentation and removing vegetative cover (e.g., shade trees, tall grasses, shrubs, aquatic plants) from banks (Exhs. EV-2, at 5-40 to 5-41; EFSB-W-21).

The Company reported that it would minimize impacts to coldwater fisheries by retaining tree canopy along and on top of the banks, minimizing shrub removal and soil disturbance, and avoiding removal of logs, stumps, and woody debris (Exhs. EFSB-W-21; EFSB-EIR-4; Tr. 10, at 1727-1728). The Company determined that the main source of shading along Hop Brook, which could be impacted by construction, is dense shrubby vegetation beneath trees and along the banks (Exh. EFSB-W-21; Tr. 10, at 1728-1729). However, Eversource noted that this vegetation provides limited shading, as the branches do not hang directly over the brook, and that any shading realized occurs in the morning and afternoon hours rather than at the hottest time of the day (Exh. EFSB-W-21). The Company stated that new bridge decking would provide shading (Tr. 10, at 1728-1729).

Eversource reported that the Project would require a total of 287 linear feet of tree removal along banks, including along Hop Brook (Exh. EV-18, at 10, 85). Eversource stated it would restore vegetation along banks where tree removal would be required to the extent practicable (Exhs. EFSB-W-21; EFSB-EIR-4). The Company also noted that measures in its SWPPP would minimize the risk of erosion and would contain standard best management practices ("BMPs") to protect water quality and coldwater fisheries (Exhs. EV-2, at 5-41; EV-16, at 6-4). Eversource stated that the duct bank for the MBTA Underground Line would be attached to the bridges; however, temporary impacts to wetland resources would result from the installation of sheeting to support the new bridge abutments, and timber mats to support the cranes for the bridge work (Exhs. EV-18, at 85; EFSB-EIR-4). The Company stated that no active in-stream work would be performed in both Hop Brook locations from October 1 through June 30 to avoid potential impacts to the coldwater fishery resource (Exh. EV-18, at 137).

Eversource stated that it consulted with MassDFW staff regarding impacts to coldwater fisheries and measures to avoid, minimize and mitigate such impacts (Exh. EV-18, at 90). MassDFW indicated that the proposed work is not anticipated to result in impacts to coldwater

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nearby brooks, including Cranberry Brook and Trout Brook that are classified as coldwater fisheries (Exh. EFSB-W-21).

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fisheries resources, given that a large portion of Hop Brook is already flowing through wet open meadows and the Company would be replanting appropriate and compatible vegetation (Exh. EV-18, at 90).[118] The Company reported that Sudbury's Wetlands Administration Bylaw and Regulations establishes performance standards for vegetated riverfront areas, which would include the banks of Hop Brook (Exhs. EV-16, at 2-27; EFSB-EIR-4; Tr. 10, at 1729). Under this bylaw, if the Company removes trees within 80 feet of coldwater fisheries, Eversource would be required to complete a wildlife habitat evaluation to identify key habitat features and develop an avoidance and restoration plan (Exh. EV-16, at 2-27; Tr. 10, at 1728-1730). The Company stated that it would work with all applicable regulatory agencies and landowners to adhere to coldwater fishery regulatory standards to the maximum extent practicable, and that it would minimize impacts to coldwater fisheries (Exh. EFSB-W-21).

iv. Stormwater

The Company stated that it would design and construct the stormwater management system for the MCRT (Tr. 10, at 1720). Eversource stated that it is designing the access road to comply with MassDEP stormwater standards applicable to its future use as a multi-use path and impervious surface (Exh. SUD-DEIR-3; Tr. 10, at 1722-1723).[119] The Company stated it would develop a SWPPP that details how stormwater discharges are controlled and would include adequate soil erosion, sediment, and turbidity control plans to prevent the migration of soil and sediment to adjacent wetlands and waterbodies (Exh. EV-18, at 31).

b. All-Street Route

The Company stated that the All-Street Route would not have permanent or temporary impacts to wetland resource areas, public water supplies, or coldwater fishes since the All-Street

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118 As discussed above, the Company received a final conditional "no-take" determination from NHESP of the MassDFW on October 19, 2019.

119 Eversource noted that it would design its stormwater system to be in full compliance with the stormwater standards for rail trails, which it indicated are more stringent that what the Project would be subject to as an electric transmission line (Tr. 10, at 1720-1723; Tr. 11, at 1888-1890).

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Route would be located entirely within public roadways (Exh. EV-2, at 5-33, 5-36, 5-41).[120] Accordingly, the All-Street Route would not require any jurisdictional filings with USACE, MassDEP, or local municipalities, or mitigation due to wetland fill (Exh. EFSB-W-8).

c. Positions of the Parties

i. Town of Sudbury

The Town of Sudbury argues that Project construction will cause significant adverse impacts to wetlands resources and that the impacts to wetland resources and coldwater fisheries would be more serious and extensive than demonstrated by Eversource (Sudbury Brief at 56, 59, 66). Sudbury states that it has identified numerous errors, omissions, and inconsistencies in the Company's design plan sets throughout the proceeding, including in the Company's most recent filing on December 22, 2017 (Sudbury Brief at 57-58). According to Sudbury, these errors, omissions, and inconsistencies relate to wetland delineations, limits of work and construction disturbance, and topography (Sudbury Brief at 57-58).

Sudbury asserts that the Company's inadequate design plans make it impossible to quantify the temporary and permanent impacts to wetland resources, vegetation, and coldwater fisheries located along the MBTA ROW, specifically related to bridge repair and culvert replacement (Sudbury Brief at 56-57, 59-61, 63-64). Among other deficiencies, the town notes that BLSF impacts are only identified at 50-foot intervals on the cross-section sheets with no impacts identified between those intervals; wetland impacts for BVW and bank at culverts are not identified; and that there are three locations of BVW alteration shown on the plans which do not align with the impacts shown in a record request response (Sudbury Brief at 58, citing RR-SUD-10(3)). Moreover, Sudbury questions Eversource's delineation of bank in certain sensitive areas categorized as coldwater fisheries resources (Sudbury Brief at 58, citing Tr. 12, at 2172-2173). According to Sudbury, the total impact to bank in the final approved ANRAD

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120 Although Eversource asserted the All-Street Route would not impact wetland and water resources due to its location in a previously developed roadway, it reported that the All-Street Route would: (1) pass through BVW buffer zones, BLSF buffer zones, and riverfront areas; (2) traverse 6.63 miles of public water supplies; and (3) cross two coldwater fisheries (Exh. EV-2, at 5-33, 5-35 to 5-36, 5-41).

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Plans may be significantly more than reported in RR-SUD-10; and thus, the wetlands boundaries on the December 22, 2017 plans and the reduced quantities of impact to wetlands resource areas reported in RR-SUD-10 are only approximations (Sudbury Brief at 58-59, citing Tr. 12, at 2152). Therefore, Sudbury concludes that there is no way to utilize the December 22, 2017 plans to confirm or replicate Eversource's most current summary of wetlands impacts (Sudbury Brief at 58).

Sudbury also asserts that the Company's mitigation measures are inadequate and that the Company has not provided any quantitative information on its proposed mitigation measures (Sudbury Brief at 61-62, 64). Sudbury specifies that Eversource has not identified a mitigation plan for sensitive environmental areas in the vicinity of the bridges, such as wetlands, and that a VMP would be essential for protecting the functions of wetlands and priority species (Sudbury Brief at 64). Sudbury states that proper mitigation is important to the protection of the values and function of wetlands and species (Sudbury Brief at 64). Sudbury contends that the Draft Environmental Impact Report ("DEIR") contains no mitigation measures or specific locations for mitigation measures (Sudbury Brief at 62, citing Exh. EV-16). Sudbury states that it does not allow the use herbicides or pesticides on any property that has been subject to a wetlands order of conditions (Tr. 11, at 2147).

Sudbury argues that the environmental impacts of the Project will be more significant than claimed by Eversource (Sudbury Brief at 66). Specifically, the town expresses concern regarding water resources such as wetlands and floodplains (Sudbury Brief at 66-69). With respect to wetlands, Sudbury states that tree clearing along banks of coldwater fisheries, construction activities within wetland resource areas, and bridge and culvert improvements would lead to significant adverse impacts (Sudbury Brief at 66). Sudbury argues that without adequate project design, construction specifications, and a wildlife habitat evaluation, the Company cannot accurately estimate the impact of the Project (Sudbury Brief at 66, 68).[121] Sudbury notes that its environmental experts, based on their experience on similar projects

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121 Specific project design features and construction specifications that the town claims are inadequate include slope stabilization measures, geotechnical investigations, and hydraulic analysis of floodplain fill (Sudbury Brief at 66-69).

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within the town, expressed concerns about additional impacts which would be realized during construction (Sudbury Brief at 66, citing Exh. SUD-MJN/RMG-1(R) at 56).

Further, Sudbury argues that the Company has inadequately described the extent and the benefit of shading along banks to coldwater fisheries and failed to report woody and aquatic plant species that provide shading along adjacent banks (Sudbury Brief at 66-67). Sudbury asserts that removal of trees and shrubs along Hop Brook would eliminate shading to the underlying coldwater fisheries (Sudbury Brief at 66-67). With respect to vernal pools, the town argues that despite the Company's assertion that there would be no direct impact to vernal pools, there would be secondary effects of construction activities (Sudbury Brief at 67).

Sudbury argues that impacts to floodplains, including discharge of floodwater and obstruction of flow, would be realized through permanent fill and encroachment of construction activities and bridge features on BLSF (Sudbury Brief at 68-69, citing Exh. SUD-MJN/RMG-1(R) at 25-26; Tr. 11, at 2041-2046; Tr. 12 at, 2158-2061; RR-SUD-10). Sudbury argues that the Company failed to provide details of the stormwater best management practices that it would implement to comply with applicable stormwater standards (Sudbury Brief at 62). The town argues that the Company incorrectly stated it would be responsible for stormwater standards developed for foot paths, bike paths, and other pedestrian paths; rather, it claims that the Company would be responsible for stormwater standards for a vehicular access road (Sudbury Brief at 63).

ii. Protect Sudbury

Protect Sudbury asserts that the Project as proposed would impact environmentally sensitive and protected areas including bordering vegetative wetlands, bordering land subject to flooding, riverfront areas, and 100-foot buffer zones (PS Brief at 8, citing Exh. EFSB-W-7(1), SUD-MJN/RMG-1, at 10-11). Further, Protect Sudbury asserts that, in addition to the impacts to wetland resource areas listed above, the Project would permanently affect rare species, coldwater fisheries, vernal pools and public water supplies (PS Brief at 8, citing Exhs. SUD-DFN/WFO-1 at 7; Hudson-ER-1 at 3-7; SUD-MJN/RMG-1 at 18-48). Protect Sudbury concludes that Eversource cannot hide the long-lasting extensive damage to fragile wetlands, public water supplies, and coldwater fisheries resulting from the Project (PS Reply Brief at 11).

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iii. Town of Hudson

Hudson stated its belief that use of the MBTA corridor for the proposed Project has significantly greater environmental impacts than identified by the Company in its Petition (Exh. Hudson-PH at 3). Specifically, Hudson asserted that the Company did not consider the cost of lost environmental services or the potential increased flooding and pollution due to the loss of stormwater absorption from tree clearing and wetland fill; Hudson also argued that the Company did not evaluate climate change implications of the Project (Exhs. Hudson-PH at 4, 6; EFSB-HUD-4). Hudson notes that the MBTA Routes traverse two Zone II protection areas and are in close proximity to, or within, one or more Zone I protection areas associated with Hudson's five town wells, which serve over 20,000 residents (Exhs. Hudson-PH at 4-5, 7, 10; Sudbury-ER at 3). Hudson asserts that construction along the MBTA corridor would negatively impact the town's water supply due to disturbance of soil likely contaminated by historic train operations (Exhs. Hudson-ER, at 4; Hudson-PH at 10).[122]

Hudson also points to the use of herbicides following construction as likely to contaminate surface water and groundwater, thereby affecting public drinking water wells (Exh. Hudson-ER-5). Hudson prefers the use of mechanical means of vegetation management versus herbicides in sensitive areas such as Zone I, Zone II, and other wetland resource areas (Tr. 11, at 2000-2002). Hudson states that in the Watershed Protection District, herbicide use is allowed by special permit only, and that as a general practice, special permits in this district prohibit such use (RR-EFSB-76). Hudson notes that based on the Company's groundwater hydrology assessments completed for the Project, soil in the area of the MBTA ROW is highly permeable, heightening the vulnerability of its public water supplies (RR-EFSB-76).

Hudson also notes that the clearing of vegetation could have serious adverse impacts on fish (and other wildlife) that depend on a limited range of water temperatures for living and

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122 The Siting Board received two comment letters from the Town of Hudson reiterating its concerns relating to its public water supplies. In these letters, the town describes contamination of drinking water from a near-by industrial source. See March 28, 2019 letter from Thomas Moses, Executive Assistant of the Town of Hudson and March 29, 2019 letter from Pam Helinek, Town of Hudson Conservation Agent.

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breeding, such as the native brook trout in the Hop Brook in Sudbury (Exh. Hudson-PH, at 8). With regard to wetlands, Hudson asserts that wetland replication is extremely difficult and fails more than it succeeds (Exh. Hudson-PH at 9). Finally, Hudson notes that routes using the MBTA corridor are near at least 15 certified vernal pools (Exh. Hudson-PH at 11).

iv. Company Response

The Company states that it has improved and updated its information regarding wetlands, coldwater fisheries, and stormwater runoff throughout this proceeding (Company Brief at 100 n.70; Company Reply Brief at 61-62). The Company acknowledges that information such as final bridge and culvert design would be addressed during the local permitting process (Company Reply Brief at 61-62). Eversource notes it will continue to work collaboratively with the conservation commissions in each town to identify reasonable mitigation measures while presenting advanced and refined Project designs at the local permitting level (Company Brief at 101; Company Reply Brief at 61-62).

The Company asserts that it has made significant commitments to mitigate wetland resource impacts through consultations with USACE, MassDEP, NHESP, and local conservation commissions (Company Brief at 100-101; Company Reply Brief at 65-66). The Company commits to continue to design the Project to avoid permanent floodplain fill (Company Brief at 100). Eversource asserts it would develop reasonable compensatory mitigation plans for wetland and floodplain impacts when final design is complete (Company Brief at 101; Company Reply Brief at 66).

The Company states that, in accordance with FEMA requirements, it would complete a hydrologic and hydraulic analysis, and that by providing necessary compensatory flood storage, the Project would not result in increased flood levels (Company Reply Brief at 80, citing Exh. SUD-DEIR-34; Tr. 8, at 1394-1397). The Company states that the installation of the Project would not have any appreciable impact on groundwater flow or public water supplies (Company Brief at 102-103). Eversource states that underground Project components would only impinge on a small fraction of the aquifer, which it claims is highly permeable, and that water would be able to flow under and around any underground Project components (i.e., duct banks, splice vaults, structure foundations) (Company Brief at 102-103). Further, the Company

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contends that its spill protection controls and counter measures, as well its vegetation management practices, would ensure no impacts to water quality from Project construction (Company Brief at 103-104).

Eversource asserts it has adequately described the anticipated environmental impacts to Hop Brook from bridge construction and identified minimization measures applicable to that construction activity (e.g. minimizing tree clearing, completing wildlife habitat evaluations) (Company Reply Brief at 65). The Company contends that such action would minimize impacts to Hop Brook (Company Reply Brief at 65).

d. Analysis and Findings on Water and Wetlands

The Siting Board agrees with the Town of Sudbury that wetlands in the vicinity of the MBTA ROW are valuable and sensitive environmental resources that necessitate careful Project planning and mitigation measures. The Siting Board notes that as the Company's engineering and design plans for the Project have advanced, the Company has significantly reduced the Project's anticipated wetland resource impacts. The record shows that the Company continuously modified its design plans to minimize and avoid wetland resource impacts, including vernal pools; however, as final project design has not yet been completed, the Company has not presented its final plans for wetland replication and compensatory flood storage. Contrary to the Town of Sudbury's assertions, the Company's compliance with FEMA's National Flood Insurance Program, including required hydrologic and hydraulic analyses, will protect against any potential for increased flooding during a 100-year storm event following construction of the Project.

Comparing the routes, with respect to construction along the MBTA ROW, the MBTA Underground Route would have fewer impacts than the MBTA Overhead Route, primarily due to decreased tree clearing in wetland areas. Construction of the in-street portions of the MBTA Routes would minimize water and wetland resource impacts along both routes. The All-Street Route, given its exclusive use of public roadways, would not have any water and wetland resource impacts. Accordingly, with regard to wetland resources, the Siting Board finds that the All-Street Route is preferable to both the MBTA Underground and Overhead Routes, and that the MBTA Underground Route is preferable to the MBTA Overhead Route.

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Eversource asserted it would meet all mitigation requirements, to the extent possible, identified by USACE, MassDEP, and local conservation commissions. Further, the record shows that the Company would complete wildlife habitat assessments and develop an avoidance and restoration plan for coldwater fishery resources. In addition, the Company has committed to avoid all in-stream work in both Hop Brook locations from October 1 to June 30 to further limit potential impacts to coldwater fisheries. The Siting Board directs the Company to file the following documents applicable to a particular community prior to the start of construction in that community: final mitigation plans for wetland replication and compensatory flood storage; completed wildlife habitat assessments; final avoidance and mitigation plans; and each Order of Conditions from the local conservation commissions. The Company shall not be precluded from commencing construction in a particular community if it is fully permitted to proceed in that community.

The record shows that the Project would cross public water supplies in Sudbury and Hudson, and that construction of the Project would not negatively affect these resources or groundwater flow. To minimize the potential for spills and other sources of groundwater contamination such as migration of contaminates from excavated soils into adjacent wetlands, Eversource would develop a SWPPP, and would not allow equipment fueling within 100 feet of wetlands and waterbodies. See Section VI.D.6.

The record shows that the MBTA ROW crosses a designated coldwater fishery at two locations. Construction activities could lead to erosion, sedimentation, and the removal of vegetative cover, but that the Company would minimize potential impacts to these resources through identified best management practices, adherence to its VMP, and consultation with MassDFW. The Siting Board directs the Company to report on any future consultations with MassDFW and provide any additional mitigation or best practices that will be implemented prior to construction of the Project.

The Siting Board notes that the towns have expressed concerns regarding vegetation management along the MBTA ROW and potential impacts to water supplies, and further that the Project would be located in a Hudson Watershed Protection District and a Sudbury Water Resource Overlay District (see Section VIII). The Siting Board directs Eversource to utilize mechanical vegetation management along the MBTA ROW. Further, if Eversource finalizes an

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MOU with DCR for vegetation management along the MCRT, Eversource shall incorporate the same provision in the MOU. If DCR does not agree to the inclusion of this provision in the MOU, Eversource shall submit a report to the Siting Board describing DCR's objections for the Board's consideration.

Given the Company's ongoing consultations with the local conservation commissions, USACE, and MassDFW, and the wetland replication and compensatory flood storage that would be required for the MBTA Underground Route, and with the implementation of the above conditions, the Siting Board finds that wetlands and water resource impacts of the Project along the MBTA Underground Route would be minimized.

3. Noise

a. Company Description

The Company stated that noise from construction of the Project would result in localized, short-term increases in noise levels near work sites during construction (Exh. EV-2, at 5-69). Construction-related noise would occur as a result of the operation of heavy equipment, construction vehicles, backhoe excavations, dump truck loading, concrete truck operations, drilling rigs, and cranes, among other equipment (Exhs. EV-2, at 5-69; EV-18, at 115). According to the Company, typical Project construction equipment would produce sound levels along the MBTA Routes of 60 dBA to 98 dBA at a distance of 50 feet (Exhs. EV-2, at 5-72, 5-74; EV-16, at 13-5).[123] Project sound would be louder closer to construction, so along the MBTA ROW, where Eversource reported that the closest residence to the MBTA Underground Route is 34 feet from the proposed construction, sound levels would be from 63 dBA to 101 dBA (Exhs. EV-2, at 5-71 to 5-74; EV-16, at 13-5). For the MBTA Overhead Route, the closest residence is eleven feet from the proposed construction, where construction sound levels were estimated to be between 65 dBA to 111 dBA (Exhs. EV-2, at 5-71 to 5-74; EV-16, at 13-5). The Company estimated that construction sound levels at the closest residence along the roadway

123 According to the Company, Project sound levels inside a building would typically be reduced by about 27 dBA in the winter months with windows closed, and by 17 dBA in the summer with windows open, relative to Project sound levels outside the building (Exh. EFSB-EIR-26).

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portion of the MBTA Routes in Hudson, 28 feet from the limit of work, would be from 63 dBA to 93 dBA (Exhs. EV-2, at 5-72; Tr. 10, at 1711).

For the All-Street Route, sound levels from typical construction equipment would produce sound levels of 60 dBA to 90 dBA at a distance of 50 feet (Exhs. EV-2, at 5-75). Eversource reported that the closest residence to the All-Street Route is twelve feet from the proposed construction, where construction sound levels were estimated to be between 73 dBA to 103 dBA (Exh. EV-2, at 5-75).

The Company indicated that the noisiest activity of construction would be vegetation removal along the MBTA ROW (98 dBA at 50 feet), which would take two to three months for the MBTA Underground Route and three to four months for the MBTA Overhead Route, and would require bulldozers, grapple trucks, mowers, and chain saws, among other equipment (Exh. EV-2, at 5-72; 5-74; Tr. 13, at 2362-2363). Splice vault installation and trench excavation would be the noisiest activities associated with in-street construction (Exh. EV-2, at 5-74 to 5-75). Eversource stated that pavement saws, pneumatic hammers, and other heavy equipment would be used to complete this work (Exh. EV-2, at 5-74 to 5-75).

Table 8 below summarizes the range of construction noise levels at 50 feet and at the closest point to residences associated with all three routes, and the total number of residential units located along all three routes.

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Table 8. Construction Noise Impacts

	Number of Residential Units at 50 Feet[124]	Sound Levels at 50 Feet	Sound Levels at Nearest Residence	Total Number of Residential Units Along Route
MBTA Underground Route	16	60 to 98 dBA	63 to 101 dBA (at 34 feet)	315
MBTA Overhead Route	108	60 to 98 dBA	65 to 111 dBA (at 11 feet)	315
All-Street Route	61	60 to 90 dBA	73 to 103 dBA (at 12 feet)	549

Source: Exh. EV-2, at 5-51, 5-72, 5-74, 5-75, 5-76.

The Company's proposed construction hours are Monday through Friday, 7:00 a.m. to 7:00 p.m., and Saturdays from 9:00 a.m. to 5:00 p.m. (Exh. EFSB-NO-2). Sudbury's Zoning Bylaw allows construction from Monday to Friday from 7:00 a.m. to 6:00 p.m. (Exhs. EFSB-NO-4(2); EFSB-Z-7). The Company is seeking an exemption from Section 3423 of the Sudbury Zoning Bylaw for allowed hours and days of construction (Exh. EV-3, at 15, 16) (See Section VIII).[125]

Eversource stated that extended work hours may be proposed beyond the normal construction hours due to schedule delays, inclement weather, business impact mitigation, or activities that must be performed continuously such as cable splicing (Exh. EFSB-NO-2). The Company explained that other activities that could occur outside of typical work hours may

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124 Number of residences and sound levels are measured at 50 feet from the construction activity (Exh. EV-1, at 5-73).

125 The Company is seeking an exemption from Section 3.8.13 of the Stow Zoning Bylaw from sound in excess of three decibels in sound increase beyond the property line (Exh. EFSB-NO-4(3)). There are no designated hours and days of construction (Exh. EFSB-NO-4(3)). Stow does not object to the exemption based on its application to construction activities only (Stow Brief at 4). Section 33 of the Hudson Town Bylaw limits loud noise between the hours of 11:00 p.m. and 7:00 a.m. (Exh. EFSB-NO-4(1) at 10).

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include night work for installations of the cable within the roadway, which may be a preference of Hudson in order to minimize traffic impacts during the day (Exh. EFSB-NO-13).[126] Eversource proposed to perform work that requires continuous operation until completion on a limited time on evenings, Sundays, and holidays (Exh. EV-2, at 5-26, 5-76). Eversource stated that if it would need to extend construction hours, it would notify the municipality of the need for extended work hours one week prior to the needed date, and it would notify nearby property owners three to five days in advance (Exh. EV-18, at 114). For extended hours for unexpected work, it would notify the municipality at the time the need is identified and would notify abutters with door-to-door notifications (Exh. EV-18, at 114).

The Company stated that it would be willing to adjust its work hours to alleviate daytime impacts to businesses located along the ROW (Tr. 13, at 2382). Eversource explained that if any businesses along the ROW would benefit substantially from different construction hours, the Company would communicate with the businesses and the applicable town to identify construction work hours amenable to all parties (Tr. 13, at 2382).

Noise sources from underground cable splicing and pulling would include a generator, air conditioner, and splicing van (Exh. EV-2, at 5-72). The Company anticipates that cable splicing would require twelve hours of continuous work once started and may need to be performed outside typical work hours if the allowable workday has fewer than twelve hours (Exh. EFSB-NO-10; Tr. 13, at 2356). Eversource emphasized that during cable splicing the location of the generator would be strategically placed to minimize noise impacts to abutters (Tr. 13, at 2368). The Company affirmed that it would use low noise generators during cable pulling, splicing, and testing (RR-EFSB-91). Eversource maintained that low noise generators

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126 Eversource explained that Hudson would prefer nighttime construction at the intersection of Wilkins and Main Street due to heavy daytime traffic in that area (Tr. 13, at 2375). The Company stated that overnight construction hours could occur from 7:00 p.m. to 5:00 a.m., and Hudson confirmed that the Company can request approval for construction work beyond 11:00 p.m. (Tr. 11, at 1978; Tr. 13, at 2377).

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are rated to produce sound levels of 60 dBA at a distance of 50 feet (Exh. EV-18, at 116; RR-EFSB-91).[127]

The Company explained that it would commence activities that require continuous work as early in the day as possible to minimize the number of hours needed beyond normal work hours (Exh. EFSB-NO-9; Tr. 13, at 2357, 2360). Outside of emergency situations, Eversource asserted that no construction has been identified that would require planned, around-the-clock work (Exh. EFSB-NO-5). Specifically, for the MBTA Overhead Route, the Company stated that foundation drilling associated with the overhead structures would have potential for requiring extended work hours in the event of a mechanical issue or if bedrock is encountered (Tr. 13, at 2360-2361).

Eversource proposed the following mitigation for noise impacts associated with construction of the Project: (1) the Company would minimize engine noise by ensuring that only necessary equipment would be running during construction; (2) the Company would require its contractors to use equipment that is in good working order and meets all regulatory requirements; (3) portable generator units would be placed as far away from sensitive receptors as possible and the exhaust would be pointed away from the receptors; (4) portable generators would be placed on solid, padded bases and on top of a vibration dampening pad; (5) a sound dampening enclosure or barrier would be placed around the generator units; (6) the Company would limit vehicle idling to no more than five minutes, per state law and MassDEP regulations, and job site supervisors would be responsible for full enforcement of this rule; (7) the Company would comply with all applicable local noise ordinances; and (8) the Company would request additional access points to the MBTA ROW from industrial or commercial abutting property owners in order to minimize its use of public road crossings, minimizing vehicle access noise to nearby residents (Exhs. EV-18, at 115, 116; EV-2, at 5-75 to 5-76; EV-16, at 13-5; EFSB-NO-4; EFSB-NO-6; EFSB-NO-11; EFSB-NO-16; Tr. 13, at 2368; RR-EFSB-91). In addition,

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127 Eversource estimated that maximum noise impacts from cable splicing without the use of a low noise generator would be approximately 63 to 87 dBA at the closest residence to the Project (Exh. EV-2, at 5-72).

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Eversource affirmed that it would consult with municipalities on a case-by-case basis during the permit application process for a suggested work schedule (Exh. EFSB-NO-16).

Eversource stated that it would have specific community outreach staff available during construction of the Project that would communicate with abutters and municipal officials by going door-to-door, distributing flyers, using email and phone, addressing noise-related concerns and providing advance notice of any modifications to construction (Exh. EV-2, at 5-76; Tr. 13, at 2385-2386). The Company reported that it would maintain a toll-free phone line for the public to contact project staff (Exh. EV-2, at 1-8). Eversource maintained that it would work directly with its construction contractors to address and mitigate specific concerns brought up by the public (Tr. 13, at 2386-2387). Further, the Project will maintain a field office in the area of the Project and Company staff would attend weekly meetings with the towns (Tr. 13, at 2384-2386).

With regard to operational noise, Eversource conducted a sound study to assess potential noise impact from the proposed installation of the shunt reactor and associated switching and protection equipment at the Sudbury Substation (Exh. EV-2, App. 5-1, at 1). The study indicated that the proposed shunt reactor and related equipment would not cause sound levels in excess of MassDEP or Town of Sudbury regulations (Exh. EV-2, at 5-6; App. 5-1, at 8). Specifically, the future sound levels would increase by 0.3 to 0.4 dBA at the three closest residential receptors from the Sudbury Substation, and no pure tone condition would be produced (Exhs. EV-2, at 5-6; EV-3, at App. 5-1, at 5, 8, 10; EFSB-NO-15). Eversource stated that as the MBTA Overhead Route would not require the installation of a third shunt reactor at the Sudbury Substation, there would be no additional operational sound (Exh. EFSB-NO-1). HLPD confirmed that no noise producing equipment would be installed at the Hudson Substation (Exh. EFSB-HLP-9).

Eversource stated that typical construction sound levels would be similar for all three proposed routes (Tr. 13, at 2389). The Company explained that the All-Street Route would have the highest potential for construction noise to disturb residents because more residential units are located along the All-Street Route (Tr. 13, at 2389-2390). However, Eversource noted that the MBTA Overhead Route would be the noisiest route for construction because it would involve extensive tree clearing (Tr. 13, at 2391).

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b. Analysis and Findings on Noise

There would not be an increase in existing noise levels associated with operation of the proposed Project. Construction of the Project, however, would have considerable, though temporary, noise impacts along all three routes. The record shows that Project construction noise could be as high as 98 dBA along both of the MBTA Routes and 90 dBA along the All-Street Route at a distance of 50 feet from the construction activity, and higher at the closest residences. The impact of construction-related noise along all the routes depends on the construction equipment used for each phase of construction, the specific construction activity, and the proximity of residents, businesses, and sensitive receptors along each route.

The record shows that the MBTA Overhead Route has the greatest potential for construction-related noise impacts of the three routes proposed. The MBTA Overhead Route has the greatest number of residences within 50 feet of construction (108), involves the most vegetative clearing (the loudest construction activity proposed), and would result in the highest maximum noise level at an abutting residence (111 dBA). While the All-Street Route does not require vegetation clearing, the record shows that it has the greatest total number of nearby residential units of the three routes (549 versus 315 for the MBTA Routes) and that it has the second highest number of residences within 50 feet of construction (61 versus 91 for the MBTA Overhead Route and 16 for the MBTA Underground Route). Additionally, the All-Street Route has the second highest maximum noise level at the closest residential abutter (103 dBA for the All-Street Route versus 111 dBA for the MBTA Overhead Route and 101 dBA for the MBTA Underground Route). Overall, the Siting Board finds that with respect to noise impacts the MBTA Underground Route is preferable to the All-Street Route and that both are preferable to the MBTA Overhead Route.

Locations that would have the longest duration of construction noise impacts would likely be adjacent to manhole locations, where cable splicing activities would involve about twelve hours of continuous work. In order to minimize sound impacts from cable splicing operations, the Siting Board directs the Company to use the quietest low-noise generators reasonably available. In addition, Eversource proposed to place portable generator units as far from sensitive receptors as possible and to use solid, padded bases. The Siting Board directs

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Eversource to place any additional stationary equipment that emits loud noise as far as practicable from residences and other sensitive receptors during construction.

Hudson indicated that it would prefer nighttime work to minimize traffic concerns. The Siting Board requests that the Company work collaboratively with Hudson to alleviate the town's concerns and to minimize noise impacts of nighttime construction through appropriate mitigation measures. The Company is directed to provide a filing with the Siting Board describing nighttime construction noise mitigation measures that will be implemented during Project construction.

The Siting Board notes that the Sudbury Zoning Bylaw allows construction from Monday to Friday from 7:00 a.m. to 6:00 p.m., with no construction on Saturday and Sundays. The Company has requested construction hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. The Siting Board recognizes that construction in close proximity to residential areas would have noise impacts and requires certain limitations. To alleviate noise disturbances to residents, the Siting Board will allow Saturday work at the Sudbury and Hudson Substations, but it shall be limited to large equipment deliveries and to quiet assembly and testing activities. Because Project construction is in close proximity to many residential areas along the proposed route, including some where homes are within 50 feet of the ROW, the Siting Board directs the Company to limit construction of the New Line in residential areas to Monday through Friday from 7:00 a.m. to 6:00 p.m., with the exception of in-street work as requested by the Town of Hudson. Work requiring longer continuous duration than normal construction hours allow, such as cable splicing, is exempted from this condition.

Should the Company need to extend construction work beyond the above-noted hours and days, with the exception of emergency circumstances on a given day necessitating extended hours, the Siting Board directs the Company to seek written permission from the relevant municipal authority before the commencement of such work, and to provide the Siting Board with a copy of such permission. If the Company and municipal officials are not able to agree on whether such extended construction hours should occur, the Company may request prior authorization from the Siting Board and shall provide the relevant municipality with a copy of any such request.

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The Company shall inform the Siting Board and the relevant municipality within 72 hours of any work that continues beyond the hours allowed by the Siting Board. The Company shall also send a copy to the Siting Board, within 72 hours of receipt, of any municipal authorization for an extension of work hours. Furthermore, the Company shall keep records of the dates, times, locations, and duration of all instances in which work continues beyond the hours allowed by the Siting Board; if a municipality grants the Company extended work hours in writing, the Company shall keep records of work that continues past allowed hours, and must submit such records to the Siting Board within 90 days of Project completion.

With regard to community outreach, the Siting Board also directs the Company to provide a Project-specific phone number, staffed during all daytime construction hours, for the public to raise concerns with respect to Project construction impacts. Further, the Siting Board directs the Company to develop a Project-specific website, which should at a minimum contain contact information for Company public affairs personnel, the Project-specific phone number, all communications regarding local construction impacts, a Project map, traffic management plans ("TMPs"), and a construction timeline. The Company shall provide the Siting Board with the phone number and website address when created.

The Siting Board directs the Company, in consultation with the towns, to develop a separate, comprehensive outreach plan for the Project for each municipality. Each outreach plan should describe the procedures to be used to notify the public about: (1) the scheduled start, duration, and hours of construction in particular areas; (2) the methods of construction that will be used in particular areas (including any use of nighttime construction); and (3) anticipated street closures and detours. Each outreach plan should also include information on complaint and response procedures; Project contact information; the availability of web-based project information; and protocols for notifying the schools of upcoming construction.

With the implementation of the above noise conditions, the Siting Board finds that noise impacts of the Project along the MBTA Underground Route would be minimized.

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4. Traffic

a. MBTA Underground Route and Overhead Route

The Company stated that 84 percent of the MBTA Underground and Overhead Routes would be along the MBTA ROW and, therefore, traffic impacts would be limited to the six locations where the MBTA ROW crosses public roadways and along the 1.3 miles of in-street construction in Hudson (Exhs. EV-2, at 5-65 to 5-68; EFSB-T-8). Eversource indicated that all traffic impacts would be temporary and construction-related (Exh. EV-2, at 5-68).

With respect to the MBTA Underground Route, the Company stated that trenching of roadways crossings along the MBTA ROW would require either: (1) temporary road closures and traffic detours for narrow road widths, or (2) alternating two-way traffic for wider road widths (Exh. EV-2, at 5-65). Roadway crossings required for the MBTA Overhead Route would require a temporary traffic stop during the conductor stringing process (Exh. EV-2, at 5-66). The Company stated that roadway crossings during construction along the MBTA ROW would not impact abutters, such as residences, businesses, public safety facilities, health care facilities, and schools as there are not any existing access points to these land uses along the MBTA corridor (Exh. EFSB-T-8). With respect to school bus stops within the proposed construction zone identified by Sudbury, Eversource committed to avoiding in-street construction during school bus hours identified by Sudbury (7:00 a.m. to 9:00 a.m. and 2:30 p.m. to 5:00 p.m.) (Exhs. SUD-DFN/WFO-1, at 8; EFSB-SUD-27; Tr. 14, at 2511-2513; RR-EFSB-80).[128]

The Company anticipated that road closures in the form of one-way alternating traffic would be required for construction along the in-street portion of the MBTA Underground and Overhead Routes (Exhs. EFSB-T-5; EV-16, at 11-1). At locations with high daytime traffic volumes and congestion, adjacent commercial or industrial land uses or, as requested by authorities, the Company would construct at night (Exh. EFSB-T-11). For instance, MassDOT may require night work along Route 20 and Hudson may also prefer night work at the

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[128] Sudbury presented pre-filed testimony and witnesses which identified concerns related to traffic impacts. See e.g. Exh. SUD-DFN/WFO-1. The town's witnesses stated that Sudbury would work with Eversource to address issues such as the construction schedule and road closures (Tr. 11, at 2028-2038).

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intersection of Wilkins Street and Forest Street (Exh. EFSB-T-11; Tr. 13, at 2376-2377).[129] Eversource stated that it would consult with the towns and MassDOT to identify specific locations for night work (Tr. 13, at 2375-2377).

Eversource would seek to locate laydown areas and construction-worker parking areas within five miles of the MBTA ROW (Tr. 13, at 2377-2378). Eversource would work with its construction contractor to select these areas, and coordinate with the towns to identify locations outside of environmentally sensitive and residential areas (Exh. EV-2, at 5-10; Tr. 13, at 2377-2378). The Company stated that workers would park personal vehicles within designated parking areas and travel to the work site in Company work trucks (Tr. 13, at 2379-2380).

The Company outlined its public outreach process for notifying abutters of traffic-related issues such as nighttime and weekend construction (Tr. 13, at 2384-2386). In general, Eversource would notify abutters prior to the entire Project construction and follow up with notifications three to five days in advance of construction in the proximity of a specific location (Tr. 13, at 2384-2386). For more details on community outreach, see Section VI.D.3, above.

The Company stated that it would develop a construction TMP with each municipality prior to construction (Exh. EV-2, at 5-67). Eversource described the following components as items that may be included (but are not limited to) in its TMPs: (1) coordination with police and fire departments; (2) provisions for emergency vehicle access; (3) timing and delivery of equipment and materials; and (4) and work schedules and duration of lane closures (Exh. EV-2, at 5-68). Eversource stated that its TMPs would be developed as part of its final design process, and once complete, would be posted publicly (Exhs. EFSB-T-1; EFSB-T-6). In general, the Company asserted that a majority of its traffic management efforts are contingent upon final design, which include coordinating with MassDOT, municipalities, police and safety personnel; identifying plans and schedules for material delivery, locations of staging, storage, and laydown

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129 Hudson presented pre-filed testimony and witnesses to support its concerns related to traffic impacts. See e.g. Exh. Hudson-ER-1. During cross-examination, the Hudson Director of Public Works stated that the DPW would collaborate with the Company to address concerns such as locations of staging areas and scheduling of nighttime construction (Tr. 11, at 1972-1981).

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areas; and developing traffic control measures for road crossings, and therefore more specific information is not yet available (Exhs. EFSB-T-3; EFSB-T-5; EFSB-T-8; EFSB-T-9; Tr. 14, at 2514-2518). Finally, the Company indicated it would be providing curb-to-curb repaving along all of the roadways for all three routes (RR-EFSB-47; Tr. 7, at 1092).

b. All-Street Route

The Company stated that the entire ten-mile length of the All-Street Route would be constructed within public roads of varying degrees of traffic volumes, with significantly more residential abutters than the MBTA Routes (Exhs. EV-2, at 5-51, 5-66 to 5-67; EFSB-T-8). For the All-Street Route, 1.3 miles of the ten miles follows the same route in Hudson as both of the MBTA Routes (Exh. Ev-2, at 4-14). As noted above, the Company anticipated that most in-street construction would require one-way alternating traffic (Exh. EV-16, at 11-1).[130] Eversource noted that it would only draft a TMP for the All-Street Route if it reached a final design plan (i.e., if the All-Street Route was approved by the Siting Board as the preferred route) (Exh. EFSB-T-6). The Company claimed it has not identified specific locations of nighttime work along the All-Street Route, with the exception of work at the Wilkins Street and Forest Street intersection in Hudson, but anticipated nighttime work would be required (Exhs. EFSB-T-11; Tr. 13, at 2376-2377). Eversource concluded that the All-Street Route would have a higher potential for traffic impacts, compared to the MBTA Underground or Overhead Routes (Exh. EV-1, at 5-69).

c. Analysis and Findings on Traffic

Construction of either of the MBTA Routes along the MBTA ROW would result in temporary traffic impacts at locations where the ROW crosses public roads and along the 1.3 miles of in-street construction. At road crossings and for the in-street portions, coordination with municipal and state authorities to identify the need for road closures, or one-way alternating

130 During evidentiary hearings, Sudbury responded to the Company's characterization of the existing traffic volumes along the All-Street Route, and identified several stretches of roadway for which Sudbury would recommend road closures and detours based on the town's perception of existing traffic volumes (Tr. 11, at 2033-2037).

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traffic, would mitigate the traffic impacts of construction. Eversource would consult with Hudson and MassDOT to identify locations where night construction would best mitigate traffic impacts. Additionally, the Company would work with each municipality to develop TMPs designed to minimize traffic impacts.

The All-Street Route would be constructed directly in roadways for approximately ten miles, resulting in direct, albeit temporary, impacts to abutting residential and commercial development. The Siting Board finds that the MBTA Underground Route and MBTA Overhead Route are comparable, and both routes are preferable to the All-Street Route with respect to construction-related traffic impacts, given the additional traffic impacts associated with in-street construction for the All-Street Route.

In addition to the TMPs, Eversource would develop an outreach plan to notify abutters of traffic-related impacts such as nighttime construction and road closures. In order to ensure adequate notice is received by the community, the Siting Board directs the Company to alert abutters a minimum of two weeks in advance of anticipated local construction activities, when possible. With the implementation of the conditions imposed above and in Section VI.D.3 (related to community outreach), the Siting Board finds that traffic impacts of the Project along the MBTA Underground Route would be minimized.

5. Visual

a. Company Description

i. MBTA Underground Route

Eversource stated that the primary visual impact associated with the Project would result from tree clearing along the MBTA ROW (Exhs. EV-2, at 5-61, app. 5-7; EV-16, at 2-12). The Company reported that for the MBTA Underground Route, a 22-foot-wide corridor cleared of trees and other vegetation would be required to facilitate the installation of the transmission line (Exhs. EV-2, at 5-11, 5-40, 5-43; EV-18, at 6). To accommodate the installation of splice vaults, including the use of cranes and other specialized equipment, Eversource would temporarily expand the clearing to a width of 40 to 50 feet for a length of approximately 50 feet at each proposed splice vault location (Exh. EV-2, at 5-11, 5-13, 5-40, 5-43). The Company estimated that post construction, the entire corridor would be maintained at a 22-foot width consisting of

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the access road, duct bank, and a shoulder consisting of low-growing vegetation (Exhs. EV-2, at 5-16; EV-18, at 6).[131] Eversource stated that areas of the MBTA corridor outside of the defined work area would not be impacted by construction of the Project (Exh. EV-2, at 5-44). As noted above in Section VI.D.1, the Company estimated that approximately 23.9 acres of forested land within the MBTA corridor would be cleared for the Project (Exh. EV-18, at 13).

The Company stated that along the MBTA ROW, the average amount of existing tree buffer between the property line of the average residential abutter and the centerline of the existing railbed is 40 feet (Exh. EFSB-V-8; Tr. 13, at 2417). Following tree clearing, the average remaining tree buffer would be a minimum of 23.5 feet each side for the MBTA Underground Route (Exh. EFSB-V-8; Tr. 13, at 2417). Eversource noted that there are some residential areas along the MBTA ROW where the post-construction tree buffer within the ROW would be much less than 23.5 feet (RR-EFSB-93). The Company estimated, however, that in those areas, there is existing vegetation on the abutting residential property that would still provide some tree buffer (RR-EFSB-93). For all areas, depending on the season and the amount of vegetative buffer on the property after construction, the views from residential properties would consist of trees on the far side of the MBTA ROW or the access road itself (Tr. 13, at 2420-2421).[132] The cleared portion of the MBTA ROW would be visible at all road crossings (Exh. EV-2, at 5-62).

Eversource indicated its intention to allow the MBTA ROW to revegetate naturally post-construction, with the exception of the 14-foot-wide access road, which would remain permanently without vegetation and an approximately four-foot-wide strip on each side of the access road, which would consist of maintained herbaceous and low-growing shrubbery

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131 The Company stated that in absence of the Project, the proposed MCRT would require a 19-foot-width of clearing on the MBTA ROW, consisting of a 10-foot-wide paved trail, two feet of grassed shoulders on either side of the trail, and native plantings within the remaining five feet of the platform (RR-EFSB-98).

132 The Company stated that at many of the abutting commercial and industrial locations, there is already less than 23.5 feet of existing vegetative buffer between the property boundary and the existing rail, therefore post-construction conditions would not be much different (RR-EFSB-93).

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(Exh. EV-16, at 7-5; RR-EFSB-93). The Company presented a visual impact assessment to examine the visual, aesthetic, and recreational resources within an area extending out to 0.5 miles from the Project centerline and the potential visual impact on these resources (Exh. EV-2, app. 5-8, at 3). The visual impact assessment included a viewshed analysis, photo simulations, and artist renderings to illustrate post-construction views from abutting landowners and sensitive receptor locations such as historic places, state forests and parks, and other designated scenic areas (Exh. EV-2, fig. 5-29; app. 5-6; 5-8). Based on the viewshed analysis, the Company concluded that the MBTA Underground Route would have minimal visual impact (Exh. EV-3, app. 5-8, at 20).

Eversource estimated that approximately twelve public shade trees would be removed for construction of the MBTA Underground Route (Exh. EV-2, at 5-28). The Company stated that all twelve trees are at locations where the MBTA ROW intersects public roadways (Exh. EV-2, at 5-28). The Company indicated that no public shade trees would be removed along the public roadway portion of the Project, as the transmission line would be entirely within the limits of the paved roads (Exh. EV-2, at 5-28). The Company stated it would work with tree wardens in each municipality and/or MassDOT to identify proper protection for remaining public shade trees, which may include temporary fences around individual trees (Exh. EV-2, at 5-29).

For visual mitigation measures, the Company proposed to work with any abutting landowners, on an individualized basis, that may experience a material change in their view due to tree clearing related to the Project to determine a reasonable and practical screening option that could be provided on their properties, as long as such mitigation would not interfere with the safe and reliable operation of the Project (Exhs. EV-2, at 5-63; EFSB-V-2; Tr. 13, at 2444-2445). Eversource stated that screening options would be in the form of vegetation and/or fencing (Exhs. EV-2, at 5-63; EFSB-V-2; EFSB-V-9; EFSB-LU-3). Further, Eversource asserted that it plans to work cooperatively with the municipalities, DCR, and the MBTA to advance the details of a landscaping plan on the MBTA ROW that would be compatible with the MCRT and the proposed transmission line (Exhs. EV-2, at 5-63 to 5-64; EFSB-V-2).

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ii. MBTA Overhead Route

The Company indicated that the MBTA Overhead Route would have the greatest visual impact as it would require the greatest width of vegetation clearing on the MBTA ROW, in addition to the new aboveground transmission infrastructure (Exh. EV-2, at 5-82). Eversource indicated that for the MBTA Overhead Route, it would clear trees entirely from the 80-foot width of the ROW to maintain overhead transmission line safety clearances, but it would allow low-growing woody vegetation to remain outside of the active work area (Exh. EV-2, at 5-17, 5-40, 5-44; RR-EFSB-95). Eversource estimates that approximately 70 acres of forested land would be cleared from the MBTA ROW for construction of the MBTA Overhead Route, or 47 more acres of clearing than for the MBTA Underground Route (Exhs. EV-2, at 5-44; 5-46; EV-18, at 13).

The MBTA Overhead Route would require 90 steel monopole transmission structures ranging from 75 feet to 105 feet in height, with an average height of 87.5 feet (Exhs. EV-2, at 5-17; EFSB-V-6(1)). The viewshed analysis mapped by the Company shows the greatest amount of visibility would occur in residential areas, adjacent open fields, parking lots, and commercial areas (Exhs. EV-2, at 5-62, figs. 5-30 to 5-33; EV-3, app. 5-8). The Company indicated that the MBTA Overhead Route would result in permanent visual impacts to abutting land uses that would have a direct line of sight to the proposed vertical transmission line elements due to the anticipated tree clearing (Exh. EV-2, app. 5-8, at 20). Eversource stated that the overhead transmission line infrastructure and wires would also be directly visible to users of the MCRT (Exh. EV-2, app. 5-8, at 20).

Eversource indicated that it would maintain vegetation at varying heights for the MBTA Overhead Route (Exh. EV-2, at 5-19). In particular, an area approximately 30 feet wide centered on the overhead transmission line (directly under the wires and extending to 15 feet on each side), known as the wire zone, would be maintained to allow herbaceous and low woody vegetation to grow to a mature height of up to, but not exceeding, 15 feet (Exh. EV-2, at 5-19 to 5-20, 5-40, 5-44; RR-EFSB-94).[133] All other portions of the MBTA ROW, or the peripheral

[133] Within the wire zone, the access road and shoulders would be maintained the same as described above for the MBTA Underground Route (RR-EFSB-94).

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zone, would be managed by the Company to allow for growth of native woody vegetation, tall shrubs, and low-growing trees that have a mature height of up to, but not exceeding, 25 feet (Exh. EV-2, at 5-20, 5-40, 5-44; RR-EFSB-94).

Eversource stated that for the MBTA Overhead Route, it would remove 47 public shade trees at points along the route where the MBTA ROW crosses public roadways (Exh. EV-2, at 5-28; Tr. 13, at 2443). The Company would not remove public shade trees along the in-street portion of the MBTA Overhead Route (Exh. EV-2, at 5-28). As noted above for the MBTA Underground Route, the Company stated that it would work with tree wardens or MassDOT to identify proper mitigation for remaining public shade trees (Exh. EV-2, at 5-29).

Eversource affirmed that mitigation measures for the MBTA Overhead Route would be similar to the MBTA Underground Route as discussed in Section VI.D.5.a.i, above (Exh. EV-2, at 5-63). Eversource does not anticipate that the installation of a transmission line in public roadways in Hudson would result in any permanent visual impacts (Exh. EV-2, app. 5-8, at 21).

The Company concluded that of all three proposed routes, the MBTA Overhead Route would result the greatest potential for visual impacts due to the proposed aboveground transmission structures and extensive vegetative clearing (Exh. EV-3, app. 5-8, at 21).

iii. All-Street Route

The Company indicated that there would be minimal visual impacts for the All-Street Route, as it would install the transmission line entirely underground within the existing limits of public roadways (Exh. EV-2, at 5-46, 5-63). The Company does not anticipate the need to cut any public shade trees along the All-Street Route; however, it may selectively trim tree branches to facilitate construction at specific locations such as splice vaults (Exh. EV-2, at 4-21, 5-63; Tr. 13, at 2443-2444). The Company would implement the same practice to protect public shade trees regardless of the route selected (Exh. EV-2, at 5-28). Upon completion of construction, the Company would restore roads to pre-existing conditions (Exh. EV-2, at 5-63). Eversource does not anticipate visual mitigation measures to be necessary with the All-Street Route because visual impacts would be minimal (Exh. EV-2, at 5-64; Tr. 13, at 2415). The Company concluded that even with visual mitigation along the MBTA Underground and Overhead Routes, the All-Street Route would result in lower visual impacts (Exh. EV-2, app. 5-8, at 21).

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iv. Substations

Eversource stated that visual impacts at the Sudbury and Hudson Substations would result regardless of which alternative is constructed (Exh. EV-2, at 5-61). The Company noted that visual impacts at the Sudbury Substation would be minimal, as the new structures would be similar in height to existing structures at the Substation, shielded by the existing vegetative buffer, and integrated with similar existing structures within the Substation (Exhs. EFSB-V-4; EFSB-V-4(1)-(5)). The Company would also install a 100-foot shielding mast at the Sudbury Substation as part of the Project (Exh. EFSB-V-4). The Company noted that except for areas where the ROW emerges, the Sudbury Substation is surrounded by trees approximately 60 feet high, creating a visual buffer for the proposed and existing equipment (Exh. EFSB-V-4). Eversource noted that the Sudbury Substation is largely surrounded by vacant land and that the nearest building is an indoor sports dome with no windows approximately 325 feet to the northeast of the Substation (Exh. EV-2 app. 5-8, at 5).

Eversource reported that the existing lighting illuminates the equipment at ground level and the overhead switches, but is only kept on continuously during periods of night work at the Substation or at the request of law enforcement agencies (Exh. EFSB-V-3). For the MBTA Overhead Route, the MBTA Underground Route, and the All-Street Route, some additional lighting would be required for the breaker, line and terminal disconnect switches; the MBTA ROW routes would also require lighting for equipment associated with the proposed shunt reactor and relocated capacitor bank (Exh. EFSB-V-3).

The Company stated that it would be necessary to expand the limits of the existing fence line at the Hudson Substation in order to install the equipment necessary to support the new transmission line, but that there would be no additional removal of vegetation (Exh. EV-2, at 5-8). HLPD stated that any new equipment would not be taller than existing equipment (Exh. EFSB-HLP-6, at 2; HLPD Brief at 6-7). HLPD explained that the expansion would not result in any adverse visual impacts to the residents of condominiums to the south of the substation parcel, closest to the expansion area, largely because the portion of the condominium complex that is closest to the substation was designed and developed with the objective of avoiding views of the existing substation (Tr. 14, at 2484; HLPD Brief at 6-7).

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b. Analysis and Findings on Visual

The MBTA Overhead Route would result in the highest potential for visual impacts as a result of the newly built overhead transmission line and associated structures. In addition, the MBTA Overhead Route would require the greatest amount of tree clearing, as the entire 80-foot wide limit of the MBTA ROW would be cleared.

For the MBTA Underground Route, the immediate visual impact would be the increased visibility of the MBTA ROW from abutting landowners and land uses due to the 22-foot wide vegetation clearance on the MBTA ROW. Following construction, a 14-foot width of the 22-foot clearance would remain cleared as the access road, and would be loam and seeded on the remaining eight feet. Thus, following revegetation, the long-term visual impacts would be the increased visibility of the permanently cleared 22-foot corridor.

The All-Street Route would have little to no visual impacts, as there would be no above-ground transmission structures built and no permanent vegetation removal is expected. The Company proposes selective cutting or trimming of branches and would allow such vegetation to regrow following construction. For all three routes, the visual impacts at the two Substations would be minimal, as both Substations would not require additional tree clearing. The only additional visual impacts of Sudbury Substation may be limited views of the 100-foot lightning mast; and the Hudson Substation expansion area would be screened by design measures already in place for the residential area closest to the expansion area. Thus, the Siting Board finds that with respect to visual impacts, the All-Street Route is preferable to both the MBTA Underground Route and the MBTA Overhead Route, and the MBTA Underground Route is preferable to the MBTA Overhead Route.

In several recent transmission line cases, the petitioners have been directed to implement off-site screening programs consisting of vegetative plantings and/or other screening. See e.g., Needham-West Roxbury at 62; Woburn-Wakefield at 120. The Company stated that it would work with abutting landowners that may experience a material change in their view of the MBTA ROW to determine a reasonable and practical screening option that could be provided on their properties on a case-by-case basis. Eversource acknowledged that for the MBTA Underground Route or the MBTA Overhead Route, abutters' view of the ROW could change

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due to tree clearing and/or the new transmission line structures. Therefore, as Eversource has agreed, the Siting Board directs Eversource, upon request of any person or entity owning property located directly abutting the MBTA ROW whose view has materially changed due to construction of the Project, to provide appropriate and reasonable off-site screening. Such screening may include shrubs, trees, window awnings, and fences, provided that operating and maintenance requirements for the transmission line are met. Upon completion of construction, the Company shall notify all owners of property located on or abutting the MBTA ROW in writing of the option to request that the Company provide off-site mitigation. The Company shall honor all reasonable and feasible requests for mitigation that it receives from property owners within six months of receipt of the Company's written notification.

Based on the Company's proposed visual mitigation measures and with the conditions summarized above, the Siting Board finds that potential visual impacts of the Project along the MBTA Underground Route would be minimized.

6. Hazardous Waste

a. Description

Eversource stated that hazardous substances including hydraulic oil, greases, and construction equipment fuels, both gasoline and diesel, would be used during Project construction (Exh. EFSB-HW-1). The Company indicated that equipment refueling would occur outside of wetlands and buffer zones to the extent feasible (Exh. EFSB-HW-1). The Company and its contractors are required to have spill response materials available at all times (Exh. EFSB-HW-1). In the event of a spill along any of the routes, the Company stated it would activate its Oil and Hazardous Material Spill Release/Notification Contingency Plan Policy and Procedure ("Spill Response Protocol") (Exhs. EFSB-HW-1; EFSB-HW-3(1)). The Company stated that the risk of a hazardous material spill would also be reduced by compliance with the Company's USEPA National Pollutant Discharge Elimination System Construction General Permit and the SWPPP (Exh. EV-2, at 5-35 to 5-36). The Company stated that a contracted environmental inspector would conduct weekly inspections of the Project to enforce compliance with the Company's best management practices manual ("BMP Manual") and permit conditions (Exhs. EFSB-CM-5; EFSB-CM-6).

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The Company stated that after the construction is complete, operation of the New Line would not produce any hazardous waste, noting that the New Line would not require circulating coolant or other hazardous materials that could leak or spill (Exhs. EFSB-HW-2; EV-2, at 5-35). The Sudbury Substation as it exists today contains mineral oil dielectric fluid ("MODF") in transformers and sulfuric acid in batteries (Exh. EFSB-HW-2).[134] A release of MODF would be contained by a secondary containment structure around each transformer (Exh. EFSB-HW-2). The batteries are located inside a building at the Sudbury Substation; any release of acid would be contained by an existing acid-resistant berm equipped with specialty pillows designed to neutralize acid (Exh. EFSB-HW-2). The Company stated its Spill Response Protocol would remain in effect after construction and would be activated in the event of a hazardous materials release at the Sudbury Substation (Exh. EFSB-HW-2).

The Company reported that, due to the commercial and industrial uses of nearby properties and the developed nature of the MBTA Underground Route, MBTA Overhead Route, and All-Street Route, there is a potential along all three routes to encounter subsurface contamination that would require special handling and management during construction (RR-EFSB-66(1) at 12). The Company reported that the MassDEP Best Management Practices for Controlling Exposure to Soil During the Development of Rail Trails guidance document ("MassDEP Rail Trail BMP") details the most commonly reported contaminants along rail lines to include metals, pesticides, petroleum compounds, coal ash, creosote, and polycyclic aromatic hydrocarbons ("PAHs") (Exh. EV-16, at 9-4). The Company explained that it does not anticipate these contaminants to be prevalent beyond the topmost layer of soil given that metals and PAHs are relatively immobile contaminants and more mobile contaminants would have leached out of soil during the intervening decades since active rail use on the corridor (Tr. 10, at 1623-1624). The potential for contamination along the ROW may vary by location, as further described further below. The Company also stated that non-point sources of contaminants along roadways such as the historic use of leaded gasoline and fill material used for road construction

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134 Gas insulated switching equipment containing sulfur hexafluoride gas ("SF_6") is also located at the Sudbury Substation. See Section VI.D.7.b.

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could increase the likelihood of encountering previously undocumented hazardous material on the All-Street Route (Tr. 10, at 1630-1633).

The Company asserted that in its meeting with the MassDEP, the agency indicated that following MassDEP Rail Trail BMP would be appropriate because the proposed project would facilitate the conversation of the ROW to a rail trail (Tr. 10, at 1622). Furthermore, commenting on the DEIR, MassDEP stated that the Company should consult the MassDEP Rail Trail BMP "for measures to limit to exposure to workers and adjacent residents/trespassers" (Exh. EV-16, app. 15-2, at 841). Following the MassDEP Rail Trail BMP, the Company identified areas of the ROW that may, based on available information, have a higher potential for contamination due to railroad operations and/or adjacent land uses (RR-EFSB-66(1) at 33-34). The Company identified the locations of former railroad stations, known historic rail car collision locations, and industrial areas which may have contamination extending to the ROW unrelated to the former railroad use (RR-EFSB-66(1) at 33-34). The Company proposes to complete geotechnical soil borings and soil characterization at identified locations with a higher potential for contamination and throughout the industrial areas (Tr. 9, at 1593-1595; Tr. 10, at 1649-1650). The Company stated that its field investigation would be consistent with a Massachusetts Contingency Plan ("MCP") Phase I investigation and that results of the investigation would be incorporated into the soil and groundwater management plan (Tr. 9, at 1604-1606; Tr. 10, at 1648).

The Company stated that if contaminated soils or other regulated materials are discovered in excess of regulatory thresholds along any of the routes, they would be managed pursuant to the Utility-Related Abatement Measure ("URAM") provisions of the MCP (Exhs. EV-2, at 5-23; EV-16, at 5-12; EFSB-LU-5; RR-EFSB-66). Eversource explained that the URAM provisions are specific to subsurface utility installation work; the Company stated that it has been advised by MassDEP that URAM provisions would be applicable to the Project notwithstanding the addition of the rail trail component, whereas if the rail trail was constructed without the Project, a URAM might not be applicable (Tr. 9, at 1599). The Company has contracted with a Licensed Site Professional ("LSP") to be responsible for managing and overseeing activity pursuant to the MCP, including use of the URAM provisions (Exh. EV-2, at 5-23). The Company stated that the LSP has also been engaged to support construction planning and to ensure compliance with the

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BMP Manual and other Company policies (Exhs. EFSB-HW-11; EV-2, at 5-58 to 5-59; SUD-CMM-10).

The Company expects that construction along either of the MBTA Routes would result in excess soil (Exh. EV-16, at 5-5). The Company stated it would develop a comprehensive soil and groundwater management plan describing how soils would be managed for reuse or disposal once the Project design is finalized, based on due diligence results and the MassDEP Rail Trail BMP (Exhs. EFSB-HW-8; EFSB-HW-10; Tr. 10, at 1647-1648). The Company stated that the maximum depth of excavation would be 15 feet below surface grade for the MBTA Underground Route and 22 to 28 feet for the MBTA Overhead Route (RR-EFSB-66(1) at 11). Eversource stated that, compared to the MBTA Overhead Route, the MBTA Underground Route would require a wider excavation corridor and a greater volume of excavated soil and, therefore, would have an increased potential for encountering undocumented subsurface contamination (Exh. EFSB-HW-5).

The Company stated that excess soil would remain on the ROW until soil testing and coordination of offsite transportation are completed (Exh. EV-16, at 5-5). Eversource stated it would manage soil stockpiles in accordance with its BMP Manual, which stipulates that stockpiles be located outside sensitive areas to the extent practical and managed to prevent erosion and sedimentation of adjacent areas (Exh. EV-16, at 5-5). The Company stated that its cut and fill analysis for the proposed access road on the MBTA ROW accounted for the amount of soil expected to require off-site disposal, the amount of soil expected to be reused in grading, and the amount of new soil to be required for capping (Exh. EV-DAS/DMB-1, at 10-11). Eversource stated that soil contaminated at levels above MCP thresholds would not be reused as fill along the ROW, and that new soil brought onsite for capping would be clean fill (Exhs. EV-16, at app. 2-3; EV-DAS/DMB-1, at 10; Tr. 10, at 1640, 1643). The Company explained that the 14-foot wide access road would be constructed of eight inches of clean gravel on top of a woven geotextile fabric (Tr. 10, at 1639-1640). The Company stated that, together, the geotextile and gravel would serve as a cap, thereby minimizing future exposures to contaminants in soil (Tr. 9, at 1601)

Eversource assessed the potential to encounter subsurface contamination from on-site or abutting sources along the MBTA Underground Route, the MBTA Overhead Route, and the

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All-Street Route (RR-EFSB-66). The Company stated that its assessment would inform the development of its soil and groundwater management plan and in identifying appropriate BMPs to protect public health and the environment during and after construction (RR-EFSB-66(1) at 1). According to the Company, the assessment was a desktop review that followed the MassDEP Rail Trail BMP and the database review methods contained within the American Society for Testing and Materials ("ASTM") standard for due diligence (Tr. 9, at 1608; RR-EFSB-66(1) at 3, 23).

Specifically, the Company relied on methods from ASTM 1527-13: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, which stipulates the use of an Environmental Risk Information Services ("ERIS") database search report, as well as the review of MassDEP records and other available historical information (RR-EFSB-66; RR-EFSB-66(1) at 23; Tr. 9, at 1608). In the assessment, the Company tallied state-listed disposal sites (i.e., MCP sites) within the limits of the three routes, identifying five MCP sites along the MBTA Routes and eight along the All-Street Route (RR-EFSB-66(1) at 11). For each route, the Company also enumerated the "sites of concern," which included active and closed MCP sites and other sites identified by the ERIS database report deemed to have elevated environmental risk inferring from historical uses and other information available to the Company (RR-EFSB-66(1) at 20-21).[135] Eversource stated that the two MBTA routes have 35 total sites of concern, and the All-Street Route has 25 sites of concern (RR-EFSB-66).[136]

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135 The ERIS database report includes "sites of concern" based on factors including, but not limited to, the presence of underground storage tanks, use for an environmentally sensitive industry (gas stations, drycleaners, automotive repair), and status as hazardous waste generator (RR-EFSB-66(1) at 20-21).

136 The Company's briefs did not specifically compare the routes with respect to impacts related to hazardous waste (see Company Brief at 93-99; Company Reply Brief at 57-66).

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b. Position of the Parties[137]

i. Town of Sudbury

Citing the MassDEP Rail Trail BMP, Sudbury submits that the Company should expect to encounter residual levels of lead, arsenic, and petroleum when working in the MBTA ROW (Exh. SUD-MJN/RMG-1(R) at 50). Sudbury points out that the Company has identified that residual oil and or hazardous material associated with past use of the railroad ROW includes metals, pesticides, and PAHs (Exhs. SUD-MJN/RMG-1(R) at 50; EV-16, at 665). Sudbury cautions that, if improperly managed, potentially contaminated soil excavated during construction of the access road, duct bank, and splice vaults could lead to human and environmental exposures (Sudbury Brief at 69, citing Exh. SUD-MJN-RMG-1(R) at 51-52). Sudbury also suggests that dust from construction, stormwater runoff during the construction period, and effluent from excavation dewatering could cause the migration of contaminants to adjacent coldwater fishery resources, vernal pools, and wetland resources areas containing important wildlife habitat (Sudbury Brief at 70).

Sudbury argues that the Company's disposal costs or level of management of disposal activities cannot be confirmed as the Company has not characterized the soil that would be disposed of during construction (Sudbury Brief at 70). Specifically, Sudbury asserts that there would be a significant volume of soil displaced when the duct banks and splice vaults are installed (more than 50,000 tons), which Sudbury expects to be contaminated (Exh. SUD-MJN/RMG-1(R) at 49; Tr. 8, at 1404). Sudbury argues that the MassDEP Rail Trial BMP guidance applies to the limited disturbance from excavating at or near the surface for construction of rail trails alone, rather than excavation for electric transmission lines that are coupled with rail trails (Sudbury Reply Brief at 17; Exh. SUD-MJN/RMG-1(R) at 52). Sudbury argues that the MassDEP Rail Trail BMP recommends minimizing soil disturbance and that the soil disturbance associated with the Project far exceeds the volume typically estimated for rail trail construction (Sudbury Reply Brief at 17, citing Exh. EV-2, at app. 5-3).

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137 The Siting Board notes that the Town of Hudson's concerns relating to potential contamination of drinking water supplies are described in Section VI.D.2, above.

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ii. Protect Sudbury

Protect Sudbury notes that the Company acknowledges the inherent contamination risks associated with historic railroad ROWs, such as metals, pesticides, petroleum constituents, lead, coal ash, and creosote (PS Brief at 32, citing Exh. EFSB-HW-6(S-1)(1) at 2). Protect Sudbury further notes that the Company has identified five state-listed contamination sites directly within the limits of the MBTA Routes and an additional nine state-listed sites in the vicinity of the MBTA Routes (PS Brief at 32, n. 23, citing Exh. EFSB-HW-6(S-1)(1) at 12).

Protect Sudbury argues that the Company should not have relied on the MassDEP Rail Trail BMP in evaluating the potential presence of hazardous soils along the MBTA Underground Route (Exh. Protect-RC/RH/ML/MO-1, at 10). Specifically, Protect Sudbury asserts that the Project involves an underground utility installation with far greater potential to expose contaminated soils and create new environmental impacts, compared to a typical rail trail project that is the subject of the guidance document (Exh. Protect-RC/RH/ML/MO-1, at 10). Thus, Protect Sudbury argues that relying on the MassDEP Rail Trail BMP for this Project may result in the Company significantly underestimating the potential impact of contaminated soils on Project cost (Exh. Protect-RC/RH/ML/MO-1, at 11-12). Protect Sudbury argues that Eversource should be required to conduct an MCP Phase 1 level of investigation (310 CMR 40.0483) to further evaluate subsurface contamination along the railroad ROW (Exh. Protect-RC/RH/ML/MO-1, at 11). Protect Sudbury asserts that, given the availability and advantages of the All-Street Route, the uncertainties, risks, and costs associated with contaminated soils along the MBTA Routes are needless (PS Brief at 32, citing Exh. Protect-RC/RH/ML/MO-1, at 12-13).

iii. Company Response

Eversource argues that environmental impacts, including hazardous waste impacts, would be similar for construction of the Project compared to the construction of only the MCRT (Company Reply Brief, at 61 citing RR-EFSB-98). Furthermore, the Company states that the Project would facilitate clean-up of any existing hazardous material that is encountered during construction, thereby improving the MBTA ROW in this regard (Company Reply Brief at 63 n. 32, citing RR-EFSB-66; RR-EFSB-66(1)). The Company asserts that its cost estimate

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for the Project reflects the quantities of soil expected to be: (1) removed from the ROW; (2) reused on the ROW; and (3) brought onto the ROW for capping (Company Reply Brief at 71-72, citing Exh. EV-DAS/DMB-1, at 10).[138] The Company further asserts that this level of design detail affords a substantial reduction in soil management cost uncertainty (Company Reply Brief at 72, citing Exh. EV-DAS/DMB-1, at 10).

The Company states that it did not consider undocumented sources of hazardous materials in its comparison of the three routes because all of the routes have inherent potential to encounter previously undocumented hazardous materials and, therefore, the potential to encounter undocumented subsurface contamination would not provide any differentiator for each route in the analysis (Company Reply Brief at 51, citing Exh. EV-MB-2, at 18-19). While the Company acknowledges that based on the number of sites of concern, "one could infer that there is a greater potential for contamination" along the MBTA Routes than the All-Street Route, it notes that there is a risk of encountering additional contamination along any route until existing conditions are confirmed through soil and groundwater testing (RR-EFSB-66).

Eversource reiterates that, regardless of which route is selected, the Company expects to encounter contaminated soils and would perform pre-characterization to determine its regulatory obligations and avoid or eliminate the risk presented by those materials (Company Reply Brief at 51, citing Exh. EV-MB-2, at 18-19; Tr. 5, at 794). The Company points out that, in an attempt to refine its soil management plan, it sought approval from the Sudbury Conservation Commission to conduct subsurface work including soil characterization (Company Reply Brief at 62-63).[139]

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138 For the MBTA Underground Route, the Company estimates that approximately 66,000 tons of excess material would need to be removed during construction, including work at the Sudbury Substation, the MBTA ROW, and the portion of the project in Wilkins Street in Sudbury (Tr. 10, at 1635-1636).

139 The Siting Board notes that Eversource received permission to conduct subsurface work including soil characterization from the Sudbury Conservation Commission on August 20, 2018. See Sudbury Conservation Commission Meeting Minutes.

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c. Analysis and Findings on Hazardous Waste

The record shows that, for all potential routes, construction will require the use of hazardous substances including hydraulic oil, greases, and construction equipment fuels. Risk related to the use of the use of hazardous substances during construction would be adequately mitigated by the following measures: (1) fueling equipment outside of wetlands and buffer zones to the extent feasible; (2) compliance with the Company's Spill Response Protocol; (3) the availability of on-site spill response materials; and (4) weekly inspections conducted by a contracted environmental inspector.

The record shows that operating the New Line after construction is complete would not generate any hazardous wastes. At the Sudbury Substation, the risk of a release of MODF stored in transformers and acid stored in batteries is mitigated by secondary containment structures and the Company's Spill Response Protocol.

The record shows that the MBTA Underground Route, MBTA Overhead Route, and the All-Street Route traverse commercial, industrial, and rural environments and, as such, the Project may encounter hazardous materials including contaminated soil and contaminated groundwater. While Sudbury and Protect Sudbury point out that the MBTA Routes are more likely to contain certain contaminants associated with the former use as a railroad ROW, the All-Street Route is not inherently lower risk since roadways also have a potential to contain hazardous materials specific to that type of land use. For example, while the MBTA Routes are more likely to contain contaminants such as metals, pesticides, petroleum compounds, coal ash, creosote, and PAHs, roadways may be contaminated from the historic use of leaded gasoline and urban fill materials.

MCP sites are documented sources of contamination, and the likelihood of encountering such subsurface contamination is likely related to the total number of MCP sites along a route. The Company identified a greater number of MCP sites along the All-Street Route than the MBTA Routes (eight versus five). Eversource enumerated what it described as "sites of concern," including active and closed MCP sites and other sites it considered to have elevated environmental risk along the proposed routes; both MBTA Routes have the same 35 total sites of concern, while the All-Street Route has 25 total sites of concern. It bears noting that the MCP sites document releases of hazardous materials in specific locations, whereas sites of concern

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include properties that have elevated potential to contain hazardous materials, which have not been confirmed through observation or testing.

Although Sudbury argued that it was not appropriate for Eversource to utilize the MassDEP Rail Trail BMP and Protect Sudbury argued that the Company should be required to conduct a MCP Phase 1 level of investigation, the record shows that MassDEP concurs with the use of the MassDEP Rail Trail BMP and that the Company would conduct a field investigation consistent with the requirements of a MCP Phase 1 investigation. The field investigation would focus on higher risk areas identified by the environmental due diligence report, include environmental and geotechnical soil borings and soil characterization, and be completed prior to the start of construction. Results of the field investigation would be incorporated into the Company's soil and groundwater management plan, thereby reducing the overall risk and uncertainty associated with soil management in the MBTA ROW. Construction of the access road with a woven geotextile fabric and eight inches of gravel would serve as a barrier for potentially contaminated soil not removed from the ROW as part of project construction.[140]

The MBTA Underground Route has an increased potential for encountering subsurface contamination due to the wider excavation and greater volume of excavated soil compared to the MBTA Overhead Route. The MBTA Routes have fewer MCP sites within the limits of the route than the All-Street Route; however, the All-Street Route traverses fewer "sites of concern." The Siting Board ascribes greater significance to the count of MCP sites, given that each is a documented instance of contamination. Therefore, the Siting Board finds that the MBTA Underground Route and the All-Street Route are comparable with respect to hazardous waste impacts. The Siting Board also finds that due to the greater volume of excavation required for the MBTA Underground Route, the MBTA Overhead Route is preferable to both the MBTA Underground Route and the All-Street Route with respect to hazardous waste impacts.

The record shows that impacts from hazardous materials along the MBTA Underground Route would be minimized. Eversource will develop a comprehensive soil and groundwater management plan to address handling of contaminated media encountered during construction.

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140 Should DCR complete the access road as a paved rail trail, a pavement covering, such as asphalt, would enhance the path's function as a cap.

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Compliance with permit conditions and the Company's BMP Manual would be monitored by weekly inspections from a contracted environmental inspector. Eversource has provided assurance that its construction will comply with: (1) the Company's BMP Manual; (2) the forthcoming soil and groundwater management plan; (3) expected environmental permit conditions; and (4) all applicable environmental regulations. Specifically, any contaminated soil or other regulated materials encountered during Project construction would be managed in accordance with the URAM provisions of the MCP.

The combination of complying with the URAM provisions of the MCP in conjunction with the MassDEP Rail Trail BMP would address the potential for environmental impacts from encountering existing hazardous materials along the MBTA ROW portion of the Project. Compliance with the URAM provisions is enforced through the MCP. The Siting Board directs the Company to provide an interim report at the mid-point of construction and a final report at the completion of the Project describing how the Company followed the MassDEP Rail Trail BMP. The record shows that the Company has established procedures to guard against both spreading of existing contamination and new releases of hazardous materials. On this basis, the Siting Board finds that, with implementation of the above condition, hazardous waste and soil management impacts from the Project along the MBTA Underground Route would be minimized.

7. Safety and Air

a. Safety

Eversource maintained that, regardless of the route selected, construction safety would be addressed through adherence with all federal, state, and local regulations, as well as industry standards and guidelines established for protection of the public (Exhs. EV-2, at 6-1 to 6-2; EFSB-S-1). Eversource stated that it would establish traffic control plans for the Project, and that it would restrict public access to work areas (Exhs. EV-2, at 6-1 to 6-2; EFSB-S-1; EFSB-RR-87; Tr. 13, at 2336).

For work proposed along the MBTA ROW, Eversource would post signs at road crossings, nearby trail entrances, and regularly used ROW entrances detailing the ROW closure and ongoing construction (RR-EFSB-87). Temporary fencing would be used to secure the

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construction site and deter unauthorized access (RR-EFSB-87). During working hours, open trenches would be monitored by construction personnel (Exh. EFSB-S-1). During non-working hours, trenches would either be fenced, covered with plates, or backfilled (Exh. EFSB-S-1; Tr. 13, at 2336; RR-EFSB-87). With regard to the proposed substation work, Eversource stated that construction activities at both the Sudbury and Hudson Substations would be performed within a fenced area that would be monitored by onsite construction staff while work is performed and locked during non-working hours (Exh. EFSB-S-1; Tr. 13, at 2340; Tr. 14, at 2474-2476).

b. Air

Regardless of route chosen, the Company indicated it would control dust at construction sites by placing water trucks with misters in or near work areas during construction activities (Exh. EV-2, at 5-9). The Company indicated that it would also comply with state laws concerning limited vehicle idling (Exh. EV-2, at 5-10; Exh. EFSB-A-1). To minimize air emissions from equipment operation, the Company would direct its contractors to retrofit any diesel-powered, non-road construction equipment rated 50 horsepower or above, whose engine is not certified to USEPA Tier 4 standards, and that will be used for 30 days or more over the course of the Project, with USEPA-verified (or equivalent) emission control devices (Exh. EV-2, at 5-10). The Company stated that its own diesel-powered construction equipment would use ultra-low-sulfur diesel ("ULSD") fuel and that it would require its contractors to use ULSD fuel in their diesel-powered construction equipment used for the Project (Exh. EV-2, at 5-10).

The Company indicated that at the Sudbury Substation it would add two SF_6 circuit breakers, each containing approximately 80 pounds of SF_6 (Exh. EFSB-HW-2). According to the Company, the new switchgear would be designed for an annual emission rate of 0.1 percent, which the Company stated would be in compliance with MassDEP's standard of not more than 1.0 percent per year, as set forth in 310 CMR 7.72 (Exhs. EFSB-A-3; EV-16, at 10-3). The Company has installed cameras at the Sudbury Substation to help detect any small leaks of SF_6 gas (Exh. EV-18, at 112). If a SF_6 leak is detected, the Company indicated it would switch the equipment out of service as soon as system and weather conditions allow (Exh. EV-G-16, at 10-3).

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c. Analysis and Findings on Safety and Air

The Company committed to following all relevant safety laws and regulations during construction, regardless of the route selected. Accordingly, the Siting Board finds the three routes to be comparable on the basis of safety. Based on the Company's proposed safety mitigation measures, the Siting Board finds that potential safety impacts from Project construction along the MBTA Underground Route would be minimized.

Based on the above, the Siting Board finds that the air impacts are comparable regardless of the route selected. The Company commits to implementing dust control measures during Project construction, such as spraying water at worksites. The Company would comply with the standard Siting Board diesel retrofit provisions referencing the MassDEP Diesel Retrofit Program and follow the Massachusetts anti-idling law and regulations that limit vehicle idling to five minutes.

The Company would purchase new switchgear for the Sudbury Substation that contain SF_6, and the Company commits to complying with MassDEP regulations for SF_6. With the proposed measures to minimize dust and air emissions from construction equipment and the Company's selection of low-leakage SF_6 containing equipment, the Siting Board finds that potential air impacts from construction and operation of the Project along the MBTA Underground Route would be minimized.

8. Magnetic Fields

a. Background

A magnetic field is present whenever electrical current flows in a conductor (Exh. EV-2, at 5-77). Strengths of magnetic fields depend on the amount of current, the distance to conductors and, where there are multiple phases, the distance between conductors; field strength decreases rapidly as distance from the source increases (Exh. EV-2, at 5-77).

Over the years, some epidemiology studies have reported statistical associations between power-frequency magnetic fields and diseases such as childhood leukemia (Exh. EV-2, at 5-78, app. 5-9, at viii to ix). In 2007, the World Health Organization ("WHO") concluded that the evidence of a causal relationship is limited and that magnetic field exposure limits based upon epidemiological evidence are not recommended, but some precautionary measures are warranted

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(Exh. EV-2, at 5-78; app. 5-9, at 1-2). When reviewing magnetic fields in past proceedings, the Siting Board, in recognition of public concern about magnetic fields and in keeping with WHO guidance, has encouraged use of low-cost measures that would minimize magnetic fields along transmission ROWs. Woburn-Wakefield at 121; New England Power Company d/b/a National Grid, 20 DOMSB 129; EFSB 13-2/D.P.U. 13-151/13-152 (2014) ("Salem Cables") at 88.

b. Company Description

The Company's consultant, Exponent, modeled above-ground 60-hertz magnetic field strengths from annual average and annual peak projected line loadings for the year 2023 (Exh. EV-2, at 5-78 to 5-79, app. 5-10, at 10-11). The Company modeled the expected magnetic fields above the centerline of an underground transmission line, above a manhole, and beneath an overhead conductor; the Company also modeled fields at various lateral distances from these centerlines (Exh. EV-2, app. 5-10, at 10-11). Further, the Company reported potential exposures to magnetic fields by future users of the MCRT (Exh. EFSB-MF-2; RR-EFSB-31). Table 9, below, provides the Company's modeled magnetic field values in milligauss ("mG"), based on average annual loadings projected for each route.[141]

[141] Exponent noted that average annual loads for all-underground options (MBTA Underground Route and All-Street Route) are higher than the predominately overhead MBTA Overhead Route (Exh. EV-2, app. 5-10, at 11-12). The average annual loads correspond to the lower impedance of underground cables, and translate to higher maximum electric currents and higher maximum magnetic field levels directly over the underground duct bank centerline (Exh. EV-2, app. 5-10, at 11-12).

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Table 9. Average Annual Modeled Magnetic Field Values (in mG)

		Maximum on Street/ROW	Maximum at 25 feet from Centerline	Closest Edge of Rail Trail	Center of Rail Trail
MBTA Underground Route	Along cable route (MBTA ROW and in-street)	24	3.4	19 (5 feet from duct bank centerline)	11 (10 feet from duct bank centerline)
	At manholes	28	4.4		
MBTA Overhead Route	Along overhead portion	6.8	4.4	6.1 (18 feet from conductor)	5.5 (23 feet from conductor)
	In-street portion	13	1.8		
	At manholes along in-street portion	15	2.4		
All-Street Route	Along cable route	26	3.6	N/A	
	At manholes	29	4.7		

Source: Exhs. EV-2, app. 5-10, at 15; EFSB-MF-1; RR-EFSB-31; RR-EFSB-97.

The Company stated that the proposed delta configuration of underground conductors, with limited spacing, minimizes potential magnetic field impacts (Tr. 4, at 684-688). The Company stated that it does not expect any health impacts from magnetic fields created by any part of the Project along any of the three potential routes (Tr. 4, at 682-683, 686).[142] The Company noted that the predicted magnetic field levels are well within guidelines of the WHO and further characterized the potential magnetic field levels for the MBTA Underground Route, MBTA Overhead Route, and the All-Street Route as similar to each other (Exh. EV-2, at 5-81 to 5-82).

142 With respect to the potential for a future rail trail along the MBTA ROW, Eversource indicated that trail use, like appliance use or walking under a transmission line, would not constitute a long-term exposure and that the modeled values "are not outside the range that one could encounter in many places in our environment" (Tr. 4, at 682-683).

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c. Analysis and Findings on Magnetic Fields

The record shows that, in the context of health-based guidelines, magnetic field strengths along the MBTA Underground Route, MBTA Overhead Route, and All-Street Route are not substantially different. Therefore, the Siting Board finds that the MBTA Underground Route, MBTA Overhead Route, and All-Street Route are comparable with respect to magnetic field impacts.

Consistent with WHO recommendations, the Siting Board continues to look for low-cost measures that would minimize exposures to magnetic fields from transmission lines. In prior Siting Board decisions, the Siting Board has recognized public concern about magnetic fields and has encouraged the use of practical and low-cost design to minimize magnetic fields along transmission ROWs. See, e.g., Salem Cables at 88. The Siting Board requires magnetic field mitigation which, in its judgment, is consistent with minimizing cost. The Company's average annual modeled magnetic field values, as indicated in above, show that the underground transmission line design and close positioning of the phases provides mitigation of magnetic fields.

The Siting Board finds that magnetic field impacts of the Project along the MBTA Underground Route would be minimized.

9. Massachusetts Central Rail Trail

a. Description

The Company stated that use of the MBTA ROW for construction of the MBTA Underground or MBTA Overhead Route would allow the Company to partner with the MBTA and DCR to develop a 7.63-mile portion of DCR's proposed MCRT, resulting in significant cost savings to DCR (Exh. EV-2, at 5-83; Company Reply Brief at 4).[143] The MCRT is a 104-mile-long proposed multi-use path between Boston and Northampton on the former Central

143 DCR provided the Siting Board with a comment letter on April 18, 2017 in support of the MBTA Underground Route to facilitate DCR's planned development of the MCRT from downtown Sudbury to the Assabet River Rail Trail in Hudson, and the planned Bruce Freeman Rail Trail (Lowell to Sudbury). See Exh. EFSB-5.

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Massachusetts Railroad corridor, including a 23-mile segment on inactive railroad ROW between Waltham and Berlin now owned by the MBTA, and leased to DCR (Exh. EFSB-LU-36(1) at 1; RR-EFSB-60). DCR serves as the project proponent for development of the MCRT on the 23-mile MBTA segment, including sections in the municipalities of Waltham, Weston, Wayland, Sudbury, Stow, Hudson, Bolton, and Berlin (Exh. EFSB-LU-36(1) at 2; RR-EFSB-60).[144] As noted in Section IV.D.1, the Company would maintain the access road, with respect to vegetation management and safety, to ensure it remains in appropriate condition until DCR's construction of the MCRT, whereupon DCR would manage the rail trail, including post-construction vegetation management (RREFSB-61).[145]

The Company argues that the majority of the construction impacts of the Project would be incurred if the MCRT were constructed absent the Project (RR-EFSB-98; Company Reply Brief at 60-61). As noted above in Section IV.B.2, the Company also argues that the impacts from the Project would be similar to those associated with the development of the MCRT, and further, if development of the rail trail is assumed, the incremental impact of construction of the Project is significantly reduced (Exh. EFSB-PA-36(R-3); Company Reply Brief at 60). In Section IV.D, the Siting Board noted that if construction of the rail trail is assumed, many of the environmental impacts associated with the Project would occur regardless of Project construction.

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144 Eversource, in consultation with DCR, reported on the status of the proposed MCRT (RR-EFSB-60). According to the Company, DCR has identified the Waltham to Berlin section of the MCRT as a priority project for the DCR (RR-EFSB-60). DCR's plans entail construction of the MCRT in partnership with communities and private and public entities (RR-EFSB-60). Some segments of the MCRT have already been constructed and some are presently under construction (RR-EFSB-60). DCR has developed funding and construction plans for the MCRT between Waltham and Hudson (17 miles); although the six-mile long section west of Wilkins Street in Hudson through Berlin is part of the MCRT scope, as reflected in the ENF filing with MEPA, DCR has not yet identified a source of funding or developed construction plans for that segment (Exh. EFSB-LU-36(1); RR-EFSB-60).

145 According to Eversource, following completion of the Project, DCR would add fine gravel, compact the existing access road, and finish with top surface or pavement (RR-EFSB-61).

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The Company quantified the incremental environmental impacts between construction of the MCRT as a standalone project, and the Project coupled with the MCRT, as proposed by Eversource, and supported by DCR and the MBTA (Tr. 9, at 1512; RR-EFSB-98). The Company noted that since the MCRT has not been fully engineered, the only information available for this comparison are alignment sheets provided in DCR's 2013 ENF filing with MEPA (Exh. EFSB-LU-36(1); RR-EFSB-98; Tr. 9, at 1517). Eversource stated this conceptual information provides typical construction details, such as the width of the construction platform, but does not identify exact limits of clearing and grading (RR-EFSB-98).[146] Table 10, below, presents the Company's comparison of the environmental impacts based on the noted limitations of the data.

146 Specifically, the Company stated that DCR's conceptual design for the MCRT described a 19-foot-wide flat platform, consisting of a 10-foot-wide paved trail, two feet of grassed shoulders on either side of the trail, and native plantings within the remaining five feet of the platform (RR-EFSB-98). Eversource posited that the impacts would decrease as DCR advanced final design of the MCRT (RR-EFSB-98).

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Table 10. Eversource Comparison of Environmental Impacts of the Project & the MCRT

	MBTA Underground Route and Rail Trail	MBTA Overhead Route and Rail Trail	Rail Trail
Tree Clearing (acres)	27.96	70.05	17.39
Permanent Wetlands (sq. ft.)	1,179	1,059	2,058
Visual	Permanent corridor: 22 ft.	Permanent corridor 80 ft.	Permanent corridor: 19 ft.
Hazardous Waste	Potential for impacts are similar – excavation of duct bank and overhead foundations would not result in additional disturbance of potential containments. Construction within MBTA ROW would require MassDEP guidance for rail trails construction.		
Rare Species, Wildlife, and Habitat	Potential for impacts are similar – removal of existing railroad infrastructure would eliminate a barrier to movement of existing species and tree clearing would remove existing habitat. The potential tree clearing is the greatest for the MBTA Overhead Route, which also would have the least amount of revegetation following construction.		
Historic Resources	Potential for impacts are similar – construction of the access road would have similar visual impacts from abutting historic properties. Tree clearing required for the transmission lines could lead to visual impacts on abutting properties; however at least 31 feet of visual buffer would remain. The increased depth of excavation required for the underground duct bank and overhead structure foundations could lead to the discovery of archeological resources. Any potential impacts would be handled with MHC.		
Traffic	MBTA Underground Route would require one-way traffic, detours, or road closures due to trenching of pavement for installation of underground transmission line at grade crossings.	MBTA Overhead Route would require brief road closures during conductor stringing.	Rail trail may require one-way traffic to install roadway edge and pavement markers at crossings, requiring the shortest amount of traffic disruption.
Noise	In addition to standard construction equipment required for the access road, duct bank, and rail trail, the MBTA Underground Route would require specialized equipment such as generators, air conditioners, and a splicing van.	In addition to standard construction equipment required for the access road, structure foundations, and rail trail, the MBTA Overhead Route would require specialized equipment for conductor stringing.	Rail trail construction would require standard construction equipment for vegetation removal, erosion and sedimentation control installation, and construction of access road.

Sources: Exhs. EFSB-PA-36(R-3); EFSB-LU-36(1); RR-EFSB-98.

Note: For consistency, impacts associated with the MBTA Overhead Route and Project have not been updated to reflect more recent refinements made by the Company – i.e., a reduction in anticipated tree-clearing and wetland impacts associated with the Project as identified in the Company's FEIR filing with MEPA.

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Eversource maintains that the Project would involve similar construction activities and equipment, and would result in similar impacts to wetland resource areas, traffic, noise, hazardous waste, historic resources, rare species, and wildlife and habitat, as the MCRT construction (Company Reply Brief at 61). The Company states that the amount of tree clearing would differ between the Project and the rail trail alone, but concluded that the visual impacts would be similar (Company Reply Brief at 61, citing Exh. RR-EFSB-98).

Eversource estimated the cost savings to DCR to be in the range of $6 to $10 million due to Eversource's completion of the access road, which would serve as the base of the rail trail (Exh. EV-1, at 5-33; RR-EFSB-18; Company Reply Brief at 66). Eversource attributed those savings to the cost of removal and disposal of rail ties; clearing and grubbing; grading for the access road, rail trail, and shoulders; erosion and sedimentation controls; excavation and removal of contaminated soils; and laying of the gravel access road (RR-EFSB-18).[147] Further, the Company stated that it agreed to complete bridge rehabilitation work, regardless of which route along the MBTA ROW is selected (underground or overhead), to facilitate the Company's inspections of tower structures and the development of the access road to be used as the base for the rail trail (Tr. 8, at 1301-1303).

The towns of Sudbury and Hudson have contemplated construction of the MCRT, and in response to Siting Board record requests, provided information regarding various town votes concerning the MCRT, dating back to 1997 (Tr. 12, at 2210-2216; RR-EFSB-83; RR-EFSB-84). In April 1997, Sudbury Town Meeting approved Article 50, a non-binding resolution expressing support for development of a bicycle and pedestrian trail along the Massachusetts Central Railroad ROW, and requesting that the Massachusetts Department of Environmental Management (now DCR) and the Massachusetts Highway Department design and construct the trail (RR-EFSB-83(1) at 1-2). In September 2014, Sudbury Special Town Meeting "indicated strong support" for the MCRT, including Phase I (from Union Avenue to Dutton Road in Sudbury) and the "full trail" length in Sudbury (RR-EFSB-83(1) at 5). At Town Meeting in

147 Conversely, the Company reported that it would benefit from annual cost savings of approximately $5,000 per year from DCR's vegetation management of the MBTA ROW following completion of the MCRT (RR-EFSB-63).

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December 2014, Sudbury voters considered two MCRT-related articles: Article 3, which sought town approval to raise and appropriate funding for engineering design and construction bid documents for the 1.8-mile-long Phase I segment of the MCRT (indefinitely postponed as the Finance Committee had already voted to transfer Reserve Funds to prepare design specifications for the MCRT); and Article 4, a non-binding resolution advising the "Board of Selectmen to support a paved travel surface on the MCRT," which passed overwhelmingly (RR-EFSB-83(1) at 10-14). On May 11, 2015, Sudbury Town Meeting voters rejected Article 55, which called for $1,000,000 to be raised by taxation for the engineering and construction of "greenway style" multi-use recreation trail that would have a "rolled stone dust finish layer" (RR-EFSB-83(1) at 27).[148] With regard to the Town of Hudson, in May 1997, the Hudson Board of Selectmen unanimously approved a resolution in support of the MCRT (RR-EFSB-84).[149]

b. Positions of the Parties

The Company asserts that in addition to DCR's avoided costs described above, the rail trail would provide public benefits by extending public open space areas, promoting regional connectivity between towns, developing opportunities for outdoor recreation and pollution-free transportation, and providing environmental and historical educational opportunities (Exh. EV-2, at 1-7; Tr. 2, at 333-334). Eversource concluded that the Project would help implement DCR's vision for the MCRT and would effectively reduce the overall cumulative impact of the Project (Exh. EV-2, at 5-85; Company Brief at 93).

The Town of Sudbury and Protect Sudbury oppose the Company's assertion that construction of the Project (including the MCRT) would have comparable environmental

148 Concerns expressed at Sudbury Town meeting in opposition to Article 55 included the durability and accessibility of a stone dust trail surface, and competing demands at the time for capital projects by the town (RR-EFSB-83(1) at 29-31).

149 Hudson's witness, Ms. Helinek (Conservation Commission Agent/Planner), expressed her view that that the 1997 Select Board approval does not necessarily indicate "whether there is currently public support from Hudson residents for the Massachusetts Central Rail Trail" (RR-EFSB-84; RR-EFSB-84(1)).

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impacts to the MCRT alone.[150] Sudbury argues that there would be no public benefit or consistency with the public interest by developing the Project and the MCRT in tandem (Sudbury Brief at 3; Sudbury Reply Brief at 14). Sudbury argues that construction of the MCRT absent the Project would have far less permanent environment impacts (Sudbury Reply Brief at 14). The town notes that the wider construction platform and tree clearing required for the Project would go beyond the "minor alterations" that would be required for just the rail trail (Sudbury Brief at 99, citing Exh. SUD-MJN/RMG-1(R) at 38). Specifically, Sudbury states that for the rail trail, DCR would not need to alter embankments along Hop Brook, and therefore would not impact BVW, vernal pools, waterbodies, or coldwater fisheries along banks (Sudbury Brief at 99, citing Exh. EFSB-LU-10(2)). The town further argues that the MCRT would have less impact to wildlife due to decreased tree clearing and would require less excavation and soil disturbance (Sudbury Brief at 99, citing Exh. EFSB-LU-10(2); Sudbury Reply Brief at 17).

Protect Sudbury argues that the Company has not demonstrated that the rail trail would provide any benefit to the Project, such as reliability or system need (PS Brief at 49-50). Protect Sudbury contends that the host communities should be allowed to decide independently about the development of the MCRT, without any consideration of the Project (PS Brief at 49-50). Further, Protect Sudbury claims that the advantages of a rail trail are fewer than the negative impacts of the Project (PS Brief at 50, citing Exh. SUD-MJN/RMG-1 at 41-43; PS Reply Brief at 7). Protect Sudbury claims that the MCRT, combined with the Project, would impact more of the natural environment than the rail trail alone (PS Reply Brief at 7-8). Protect Sudbury concludes that the Siting Board should not consider the MCRT as part of its evaluation of the Project (PS Brief at 50).

c. Analysis and Conclusions

Construction of the MCRT would further the Commonwealth's stated intention to provide greater access to natural resource areas and create corridors that are pedestrian and

150 In a comment letter to MEPA on the Company's ENF and in a letter to the Siting Board, the Stow Conservation Commission indicated its support for the MBTA Underground Route and noted the opportunity to advance construction of the MCRT (Exh. EFSB-G-1(3) at 340; Tr. 9, at 1508-1509).

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cyclist friendly. See Exh. EFSB-3. As DCR has stated, development of a multi-use rail trail along the MBTA ROW would provide the missing link in the regional MCRT, from downtown Sudbury to the Assabet River Rail Trail in Hudson, and the Bruce Freeman Rail Trail between Lowell and Sudbury. The rail tail is a unique opportunity to provide public open space, promote regional connectivity and local commerce, and to encourage outdoor recreation and the health benefits derived therefrom. Construction of the Project along the MBTA ROW would also provide significant cost savings to DCR and assist in DCR's goal of completing the MCRT.

If it is assumed that the MCRT would be constructed on the MBTA ROW, many of the environmental impacts associated with the MBTA ROW section of the Project would occur regardless of whether the Project itself is constructed. The record shows that the greatest difference in environmental impacts between the MCRT as a standalone project and the Project with the MCRT would be land use, coldwater fisheries, and visual impacts related to the increase in the width of the corridor required for the Project with either an underground or overhead transmission line. Otherwise, environmental impacts would be similar for construction of the Project along the MBTA Underground Route and the MCRT, as a standalone project.

Notwithstanding the stated opposition of Sudbury, Protect Sudbury, and Hudson to the Project in this proceeding, the record shows that on multiple occasions since 1997, elected officials and voters in both communities have shown support for the MCRT. As recently as December 2014, Sudbury Town Meeting voters approved Article 4, a non-binding resolution advising the Board of Selectmen to support a paved travel surface on the MCRT. These past expressions of support for the MCRT are consistent with the Company's view (shared by DCR) that the MCRT would provide important public benefits.

Nevertheless, in making a judgment on the merits of the Project, the Siting Board elects not to net out the prospective impacts from construction of the MCRT in its evaluation of the impacts for the Project. In this manner, the analysis used by the Siting Board places the full weight of environmental and cost impacts on the Project in comparison with alternatives. We do this despite the fact that the parts of the MCRT are already moving forward in the neighboring communities of Weston and Wayland, and that the Secretary issued a Certificate in 2014 on DCR's Expanded ENF for the MCRT on the MBTA ROW (including the section used by the

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Project). This conservative approach severs consideration of the development of the MCRT as a "baseline condition" from the Siting Board's findings on Project impacts.

10. Summary of Environmental Impacts

The Siting Board finds that the information the Company provided regarding the Project's environmental impacts is substantially accurate and complete. A summary of the Siting Board's findings regarding the relative environmental impacts of the three routes is provided in Table 11, below.[151]

Table 11. Ranking of the Three Routes with Respect to Environmental Impacts (1 lowest impact, 3 highest impact)

Environmental Impacts	MBTA Underground Route	All-Street Route	MBTA Overhead Route
Land Use and Historic Resources	1	1	3
Water and Wetlands	2	1	3
Noise	1	2	3
Traffic	1	3	1
Visual	2	1	3
Hazardous Waste	2	2	1
Safety	1	1	1
Air	1	1	1
Magnetic Fields	1	1	1
Total Impact Ranking	**12**	**13**	**17**

On balance, the Siting Board finds that environmental impacts for the MBTA Underground Route are comparable with those of the All-Street Route; and that the MBTA Overhead Route has the highest environmental impact of the three routes proposed.

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151 The numbers in Table 11 reflect the comparisons presented in the individual environmental analyses above. For example, in the Land Use category, the Siting Board found that the MBTA Underground Route and the All-Street Route were both preferable to the MBTA Overhead Route, and as such the MBTA Underground Route and the All-Street Route are both ranked first and the MBTA Overhead Route is ranked third.

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E. Cost

1. Company Description

In its initial petitions, Eversource provided conceptual-level cost estimates (i.e., -25%/+50%) for the MBTA Underground Route, the MBTA Overhead Route, and the All-Street Route (Exh. EV-2, at 5-84). The Company reported that these conceptual grade estimates were calculated using recent costs of similar materials and construction activities and include overhead items such as costs related to design and permitting, and allowance for funds used during construction (Exh. EV-2, at 5-84). Subsequently, Eversource provided a more refined planning grade cost estimate (-25%/+25%) for the MBTA Underground Route and made related updates to its conceptual grade estimates for the MBTA Overhead Route and the All-Street Route (Exh. EV-2, at 5-84; Tr. 7, at 1118-1119; RR-EFSB-50). Eversource stated that it uses the same cost estimate methodology across all projects and that this methodology is consistent with Attachment D of the ISO-NE's Planning Procedure No. 4 (pool-supported transmission facility cost review) ("PP-4") (Exh. SUD-C-1).[152]

The Company's planning grade cost estimate for the MBTA Underground Route is $95.8 million (RR-EFSB-50). By comparison, the Company's conceptual level cost estimates

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152 Eversource indicated that its cost estimate for the Project was developed using a bottom-up approach, aggregating the estimated costs of each component of the Project in accordance with widely accepted industry standards, such as the American Society of Professional Estimators Standard Estimating Practice (Exh. SUD-C-1; Company Reply Brief at 70; RR-EFSB-50). Eversource stated that, where applicable, standard base-level inputs are used, such as the depth of the duct bank and the number of test pits per mile, to ensure consistency and uniformity across estimates (Exh. SUD-C-1). The Company's cost estimate for the Project does not include annual lease payments associated with the MBTA ROW of approximately $425,000 per year for 20 years, which the Company considered operational costs rather than capital costs, for a total of $9,358,077 (Tr. 8, at 1285-1286; Exh. EFSB-C-12(R-1)).

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for the Project are $67.5 million using the MBTA Overhead Route and $114.2 million for the All-Street Route, as detailed in Table 12, below (RR-EFSB-50).[153,154]

Table 12. Total Estimated Cost of the MBTA Underground Route, MBTA Overhead Route, and All-Street Route

Route	Sudbury Substation	Hudson Substation	Transmission Line	Total Estimated Cost
MBTA Underground Route	$3.8 million	$5 million	$87 million	$95.8 million (+/- 25%)
MBTA Overhead Route	$3.1 million	$5 million	$59.4 million	$67.5 million (-25%/+50%)
All-Street Route	$3.9 million	$5 million	$105.3 million	$114.3 million (-25%/+50%)

Source: RR-EFSB-50.

Based on the above, the Company estimated that the MBTA Overhead Route is the lowest cost route, followed by the MBTA Underground Route, with the All-Street Route being the most expensive (RR-EFSB-50).

2. Positions of the Parties

a. Town of Sudbury

Sudbury maintains that Eversource has not substantiated its contention that the MBTA Underground Route is superior to the All-Street Route in terms of cost (Sudbury Brief at 73).

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153 The Company's initial conceptual level cost estimate for the MBTA Underground Route was $96 million (including $6.7 million for work at Sudbury Substation, and $5 million for work at the Hudson Substation) (Exh. EV-2, at 5-84). By comparison, the Company's initial conceptual level cost estimate for the MBTA Overhead Route was $49.2 million (including $4.2 million for work at the Sudbury Substation, and $5 million for work at the Hudson Substation), and $115.4 million for the cost of the All-Street Route (including $6.8 million for work at the Sudbury Substation and $5 million for work at the Hudson Substation) (Exh. EV-2, at 5-84).

154 With respect to cost allocation, Eversource indicates that, should the Siting Board approve the Project along the MBTA Underground Route, the Company would submit an application to ISO-NE seeking to regionalize the costs of the Project, including the incremental cost of underground construction, across New England (Company Reply Brief at 24-25, citing Tr. 4, at 718; Tr. 7, at 1000, 1257).

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According to Sudbury, the Company failed to provide a coherent cost analysis necessary for the Siting Board's review, and the record is "completely devoid of substantial evidence to support the cost estimates" for the MBTA Underground Route and the noticed alternatives (Sudbury Brief at 73). Sudbury maintains that the Company's cost figures cannot be relied upon because evidence suggests that "the estimates are manipulated" by the Company (Sudbury Brief at 73). Even if not manipulated, Sudbury maintains that the costs of the MBTA Underground Route and the All-Street Route "are not meaningfully different at the level of precision used," and that the Company's cost estimates do not adequately consider "the high level of environmental mitigation" that would be required along the MBTA ROW (Sudbury Brief at 73-74).

Sudbury contends that the Company has not filed a reliable cost analysis "and has withheld the calculations and assumptions used for its estimates, in violation of the Town's due process rights" (Sudbury Brief at 73-74). Sudbury argues that, notwithstanding the Company's production of a basic table showing a breakdown of materials, labor, ROW costs, engineering/permitting, financing/AFUDC, and escalation for the proposed line along the MBTA Underground Route and at the Sudbury Substation, the Company refused to produce the workpapers, spreadsheets, and related cost documentation underlying this information (Sudbury Brief at 74, citing Exhs. EFSB-C-6; EFSB-C-13; SUD-C-17(S-1) at 1). Sudbury contends that it was "forced to proceed with an inadequate record, in clear violation of its due process right to review reasonable information supporting the Company's cost estimation process" (Sudbury Brief at 75). Sudbury notes that after the end of evidentiary hearings, the Company filed entirely new itemization tables professing to include a planning grade estimate for the MBTA Underground Route, but still including a conceptual grade estimate for the MBTA Overhead Route and All-Street Route (Sudbury Brief at 76, citing RR-EFSB-50(1)). Noting numerous cost changes made to all three routes in the updated estimates, the town argues that many of the changes were made without accompanying explanation and that parties have not had an opportunity to cross-examine the Company on the changes, in violation of their due process rights (Sudbury Brief at 76).

Sudbury argues that the Company's cost estimates are biased and unreliable (Sudbury Brief at 77). Sudbury asserts that the Company's original cost information contained data entry errors, included costs that were not properly applicable to the All-Street Route, and omitted the

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$425,000 annual fee that must be paid to the MBTA for use of the ROW (Sudbury Brief at 77, citing Tr. 7, at 1017). The town argues that this annual fee is an incremental cost of the MBTA Underground Route and should have been included in a fair cost comparison between the alternatives (Sudbury Brief at 77). Sudbury maintains that, in the aggregate, the cited examples of errors give cause to seriously question the trustworthiness of the information provided by the Company (Sudbury Brief at 77-78).

Sudbury notes that estimates of Project costs associated with bridge repairs, tunnel installations, clearing and grubbing, and soil management all increased after the filing of the DEIR and cross-examination, arguing that these increases show that the Company's cost estimates are unreliable (Sudbury Brief at 78, citing Exh. SUD-C-17(S2)(1); RR-EFSB-50(1)). Sudbury notes that these changes initially narrowed the gap between the MBTA Underground Route costs and the All-Street Route cost estimate, but maintains that the Company "made up for these changes by systematically decreasing or removing" MBTA Underground Route costs while increasing All-Street Route costs in other categories, in most cases without explanation (Sudbury Brief at 78, citing RR-EFSB-50(1)(confidential)).

Sudbury maintains that the difference in costs between the All-Street Route and the MBTA Underground Route is "further distorted" by the Company's use of escalation and contingency multipliers, which Sudbury contends are not appropriate for use if a project is not yet fully designed and the cost estimates already involve "a high level of guesswork" (Sudbury Brief at 79).

Sudbury contends that even if the Company's cost estimates are taken at face value, the estimated cost differences between the All-Street Route and the MBTA Underground Route "are meaningless when considering the imprecision of the estimates" (Sudbury Brief at 82). According to Sudbury, the $20 million difference between the two routes is not a reliable statistic because the bandwidth of error associated with conceptual grade estimates is $87 million for the All-Street Route and $72 million for the MBTA Underground Route (Sudbury Brief at 82).[155]

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155 According to Sudbury, narrowing the range for the MBTA Underground Route to -25%/+25% still results in a potential range of error equal to $50 million, which is greater than the difference between the Company's cost estimate for the MBTA Underground Route and the All-Street Route (Sudbury Brief at 82).

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According to Sudbury, given the level of overlap between the cost estimates, "there is a likelihood that costs associated with the [MBTA Underground Route] would be equal to or more costly than" the All-Street Route, and that the Siting Board cannot reasonably demonstrate through sufficient evidence that the All-Street Route would be the more expensive route (Sudbury Brief at 82).

Sudbury also contends that the Company's cost estimates fail to recognize the sensitive nature of the MBTA ROW and assign appropriate mitigation costs to the Company's MBTA Underground Route (Sudbury Brief at 83, citing Exh. EV-16). Sudbury maintains that there are significant environmental sensitivities along the Company's proposed route (e.g., Project construction near jurisdictional wetland resource areas, excavation of contaminated soils, etc.) and that at the time of evidentiary hearings, the Company had undertaken only about half of the environmental survey work necessary for the MBTA Underground Route (Sudbury Brief at 83, citing Tr. 7, at 1165-1166). Sudbury describes what it believes to be the "absurd" result that the Company is currently estimating that the All-Street Route, which is located entirely in public roadways, would involve 44 percent higher environmental and mitigation costs compared to the MBTA Underground Route (Sudbury Brief at 83, citing RR-EFSB-50(1))(confidential).[156]

b. Protect Sudbury

Protect Sudbury argues that the Company's conceptual grade cost estimates are inherently inaccurate (PS Brief at 28-31). According to Protect Sudbury, conceptual estimates are a highly-variable, rough order of magnitude estimates, used principally to establish the feasibility of a project or to screen alternative project designs early in the planning process (PS Brief at 29, citing Exh. Protect-RC/RH/ML/MO-1, at 5). Protect Sudbury maintains that,

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156 The Siting Board notes that the mitigation costs presented by the Company for the All-Street Route consist solely of the additional cost of curb-to-curb repaving (RR-EFSB-47). The mitigation costs presented for both MBTA Routes consist of wetland replication, land preservation, and meeting environmental performance standards for tree restoration, wildlife habit, and coldwater fisheries, as well as curb-to-curb repaving for the in-street portion of these routes also (RR-EFSB-47). Soil management was included as a separate line item in the Company's cost estimates in addition to mitigation (RR-EFSB-50).

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generally, these estimates are prepared using only basic criteria such as generic unit cost factors (PS Brief at 29, citing Exh. Protect-RC/RH/ML/MO-1, at 5, 14).

Protect Sudbury asserts that conceptual grade estimates do not include significant information such as material costs, labor costs, production rates, construction conditions, and overall competitiveness of the construction industry, nor soil characteristics, potential hazardous materials, and "specialty construction" areas, such as directional drilling, river and highway crossings (PS Brief at 29-30, citing Exh. Protect-RC/RH/ML/MO-1 at 5, 7-8). Protect Sudbury contends that if conceptual estimates are used, it would be more accurate to compare the cost ranges of the candidate routes, rather than the specific cost estimates, in any evaluation (PS Brief at 30, citing Exh. Protect-RC/RH/ML/MO-1, at 7).

Protect Sudbury specifically criticizes the Company's use of conceptual cost estimates on the grounds that such estimates would understate demonstrated risks relating to site conditions and contamination along the MBTA ROW (PS Brief at 31-32, citing Exh. EFSB-HW-6(S-1)(1) at 2).[157] Protect Sudbury asserts that despite the Company's acknowledgement of contamination risks associated with railroad ROWs (and the MBTA Underground Route, specifically), costs associated with these risks have not been included in the conceptual estimates (PS Brief at 32, citing Exh. EFSB-HW-6(S-1)(1)). Protect Sudbury maintains that the level of significant contamination along the MBTA Underground Route will likely increase costs beyond the upper range of the Company's conceptual cost estimate (PS Brief at 32, citing Exh. Protect-RC/RH/ML/MO-1, at 11-12). Protect Sudbury notes that elements of uncertainty may vary between projects and may increase the cost estimate of the MBTA Underground Route or decrease the cost estimate of another candidate route and argues that the absence of detailed information at this stage of the proceeding makes it difficult to determine whether there is enough relevant information to accurately rank the cost estimates (PS Brief at 31). Protect Sudbury argues that the Siting Board should "give more weight to the inherent inaccuracy of the estimates used in this case" because the proposed Project along the MBTA Underground Route was not vetted by ISO-NE as part of a Solutions Study or Proposed Plan Application ("PPA")

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157 The Siting Board notes that the final cost estimate submitted by the Company for the Project is a planning grade estimate, rather than a conceptual grade estimate.

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process; rather, the lower-cost MBTA Overhead Route was evaluated by ISO-NE (PS Brief at 11-12, 27-28).

Beyond its concerns about the use of conceptual cost estimates, Protect Sudbury argues that the MBTA Underground Route is the more costly choice, as compared to the All-Street Route (PS Brief at 34). Protect Sudbury maintains that, in reaching a contrary conclusion, the Company erroneously compares the alternative routes based on the single conceptual cost estimate, rather than on the complete cost-range for any given candidate route (PS Brief at 34).

Finally, Protect Sudbury argues that, even if the Project along the MBTA Underground Route were the least cost alternative, the Siting Board should reject the Project and determine that another alternative is preferable (PS Brief at 36). Protect Sudbury submits that the Siting Board has previously determined that a more expensive route was, on balance, preferable to the alternatives because it had fewer environmental impacts and strong community support (PS Brief at 36, citing New England Power Company, EFSB 97-3, at 71-72 (1998)).

c. Company Response

The Company acknowledges that the MBTA Overhead Route is the least cost route (Company Reply Brief 67). Eversource contests criticisms of its cost estimates by the Town of Sudbury and Protect Sudbury (Company Reply Brief at 67-77). According to the Company, cost issues have been the subject of thorough cross-examination and exhaustive discovery, and the Company has established that the estimated cost of the MBTA Underground Route is lower than the cost of the All-Street Route (Company Reply Brief at 67). The Company argues that: (1) it has provided accurate and detailed cost estimates; (2) the Company's cost estimation process is consistent with industry practice and ISO-NE procedures; (3) the Company's updated cost estimates for the MBTA Underground Route and alternatives were appropriately developed (including inclusion of mitigation costs); (4) it was appropriate for the Company to include contingency allowances and escalation factors in its cost estimates; (5) current cost estimates appropriately reflect changes over time; and (6) the Company's cost estimates provide a sufficient basis for an informed review by the Siting Board (Company Reply Brief at 67-77). Finally, the Company emphasizes that the costs in the record for the MBTA Underground Route, the MBTA Overhead Route and the All-Street Route are the most current estimates available,

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and that the MBTA Underground Route cost estimate has an accuracy of -25%/+ 25% (Company Reply Brief at 67, citing RR-EFSB-50).

The Company maintains that all the underlying estimates, assumptions, and subcomponents for its cost estimates have been provided and that its costs have not only been broken out by component (overhead transmission, underground transmission, and substation), but also by category (materials, invoices and labor) (Company Reply Brief at 68, 69 citing RR-EFSB-44; RR-EFSB-45; RR-EFSB-46; RR-EFSB-47, RR-EFSB-48; RR-EFSB-49; RR-EFSB-50). While costs of the route alternatives were not established at the same level of precision as costs of the MBTA Underground Route, the Company argues that: (1) its cost estimating methods were consistent across the three transmission route alternatives; and (2) the scope of cost-related information in this case "far exceeds" what is typical in Siting Board proceedings (Company Reply Brief at 68). In addition, the Company argues that its detailed set of cost submissions negates Sudbury's argument that the Company withheld workpapers and underlying calculations (Company Reply Brief at 69). Eversource argues further that the Company's approach accords with cost estimating methods used in recent Siting Board cases (Company Reply Brief at 68, citing Woburn-Wakefield at 46; East Eagle at 34).

Eversource contests Protect Sudbury's argument that conceptual level estimates are inherently inaccurate and should be rejected by arguing that the development of its Project cost estimates follows standard industry practice, both in terms of timing and level of accuracy (Company Reply Brief at 69, citing Exhs. EV-DAS/DMB-1, at 5; Protect-14). The Company cautions that the intervenors are seeking a level of precision in the Company's cost estimates that is not available at this stage of project design and engineering (Company Reply Brief at 72). The Company argues that it would be impractical to take every alternative to its complete engineering conclusion for the purpose of providing more certain comparative cost estimates because of the time and expenditures that would be required (Company Reply Brief at 69, citing Exh. EV-DAS/DMB-1, at 18). The Company suggests that Sudbury fails to recognize that the cost figures in the record reflect the current stage of Project design, that additional discovery would not bring forth final cost figures, and that the Company's cost estimates provide a range of precision typically accepted by the Siting Board (Company Reply Brief at 72).

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Eversource disagrees with Sudbury's assertion that the Company has "withheld from the record critical information that will significantly increase the Project's environmental impacts and add to its cost" – for example, on costs relating to items such as bridge repair, culvert improvements, and soil disposal costs (Company Reply Brief at 71). The Company maintains that it has included costs for mitigation, taking into consideration unique elements and associated specific cost estimates for each alternative route (Company Reply Brief at 71). According to the Company, the record reflects consideration of the following elements: (1) specialized crossings, including bridge crossings; (2) the assumed extent of utility congestion and need for utility relocations; (3) the potential extent of contamination that may be present, the volume of soils that need to be transported off-site, and the amount of soil needed to be brought on-site for capping; and (4) the extent of necessary erosion control (Company Reply Brief at 71-72, citing Exh. EV-DAS/DMB-1, at 10). The Company argues that it has performed sufficient analysis of potential environmental mitigation to enable the Company to reduce uncertainties associated with its environmental mitigation costs (Company Reply Brief at 72).

The Company contests Sudbury's argument that contingency and escalation factors should not be used in the development of the Company's cost estimates, and maintains that it was appropriate to include both contingency and escalation in its cost estimates, and in accordance with Attachment D of ISO-NE's PP-4 (Company Reply Brief at 72-73, citing Exh. EFSB-1). The Company argues that it is appropriate to include higher contingency factors for the alternative routes because there has been less engineering work completed for these route options and therefore greater uncertainty (Company Brief at 73-74). The Company agrees with Sudbury that it had originally used different escalation factors for the MBTA Underground Route and All-Street Route and that it had corrected the discrepancy (Company Reply Brief at 74, citing RR-EFSB-50(1)(confidential).

The Company dismisses Sudbury's assertion that line-item cost changes made by the Company during the course of the proceeding are indicative of Company bias or manipulation or indicate the cost estimates are unreliable (Company Reply Brief at 74-75, citing East Eagle at 61; Exhs. EV-DAS/DMB-1, at 5; EFSB-1). Instead, the Company maintains that updates to its cost estimates reflect the Company's process of refining estimates as the Project design progresses, which, by definition, is an iterative process involving extensive internal review and refinement

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prior to finalization (Company Reply Brief at 75). Eversource indicates that this is standard practice for transmission companies in the ISO-NE control area and is in accordance with PP-4 (Company Reply Brief at 70, citing Exhs. PROTECT-83; EFSB-1). The Company contends that Sudbury's argument concerning bias and manipulation are unsupported by the record (Company Reply Brief at 75).

The Company defends its use of a single-point cost estimate (versus using a comparison of the potential lowest and highest end of the range of a cost estimate) as both appropriate and in accordance with Siting Board precedent (Company Reply Brief at 69, citing Woburn-Wakefield at 18, East Eagle at 28, Walpole-Holbrook at 16, Mystic-Woburn at 18). The Company disputes arguments of Sudbury and Protect Sudbury that, given the overlap between cost estimates ranges, there is a likelihood that costs associated with the MBTA Underground Route would be equal to or more costly than the All-Street Route (Company Reply Brief at 75). The Company maintains that there is no rationale or factual basis to assume that similar cost items that exist across project alternatives will deviate in opposite directions for the MBTA Underground Route and its alternatives; while actual costs may change from estimates over time, the Company argues that the direction of cost changes will be consistent over time for all alternatives for the clear majority of cost items (e.g., labor, materials, overheads, etc.) (Company Reply Brief at 76, citing Exh. EV-DA/DMB-1, at 7). Further, although all three project alternative estimates are bounded at the bottom by -25 percent, the Company argues that the MBTA Underground Route's planning grade estimate is the only one of the three alternative cost estimates that now has a more limited +25 percent upper confidence limit, compared to the +50 percent confidence limits for the MBTA Overhead Route and the All-Street Route and that, therefore, the cost advantage of the MBTA Underground Route, relative to the All-Street Route, is even stronger when comparing the upper bounds of the cost estimate ranges (Company Reply Brief at 75-76). The Company further argues that its single point cost estimate approach is consistent with the procedures required in ISO-NE's PP-4 (Company Reply Brief at 69-70).

3. Analysis and Findings on Cost

The Siting Board requires the petitioner to demonstrate that the proposed route for the transmission facility is superior to the alternative route(s) on the basis of balancing

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environmental impact, cost, and reliability of supply. G.L. c. 164, § 69J. Further, because G.L c. 164, § 69J provides that "no state agency shall issue a construction permit for any such facility unless the petition to construct such facility has been approved by the [Siting Board]," the Siting Board's balancing of environmental impact, cost, and reliability of supply takes place at a relatively early stage in the engineering design of a particular project. As a result, project cost estimates are typically developed only to an intermediate level of precision. Furthermore, applicants typically do not develop engineering design of alternatives to the same level of detail, so cost estimates for alternatives are necessarily less precise. See East Eagle at 60-61.

Sudbury's overarching complaint is that the Company failed to meet its burden to provide a coherent cost analysis of the MBTA Underground Route and its alternatives, and that the record is "devoid of substantial evidence to support the cost estimates for the Project." Following a motion by Sudbury to compel responses to discovery seeking, inter alia, workpapers used to develop the Company's line-item cost estimates, at the Siting Board's direction, the Company filed additional information (Exh. SUD-C-17(S-2)). This supplemental response provided some additional back-up information to support the Company's cost information for each of the three alternative transmission routes, but Sudbury argues that the Company did not produce its "actual workpapers."

At the December 5, 2017, evidentiary hearing, Siting Board staff as well as counsel for Sudbury and Protect Sudbury asked extensive questions of the Company's cost witnesses, and Siting Board staff issued a number of detailed record requests to obtain additional back-up documentation and explanations of the Company's cost estimates (see RR-EFSB-34 through RR-EFSB-49). Responses to these record requests provide substantial information on the underlying basis and rationale for the Company's cost estimates. Accordingly, the Siting Board does not accept Sudbury's contention that the record is devoid of substantial evidence supporting the Company's cost estimates.[158] To the contrary, the Siting Board concludes that the record

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158 The Siting Board also rejects the Town of Sudbury's contention that the Company's updated planning grade estimate was devoid of explanation. In many cases, the information contained in the updated cost schedule (RR-EFSB-50(1)(confidential) was derived and explained in separate response to record requests, such as RR-EFSB-44 (the cost of trenchless crossings), RR-EFSB-45 (costs of underground transmission pavement restoration costs), RR-EFSB-46 (costs of underground transmission materials),

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contains extensive cost information, that taken together, constitute substantial evidence on the issue of Project cost. The Siting Board is entitled to rely upon this substantial body of evidence to conclude that the cost of the All-Street Route is likely to be greater than either of the MBTA Routes.

The Siting Board notes that the Company's responses to record requests concerning the cost of the MBTA Underground Route and its two alternatives contain a number of corrections from earlier Company cost estimate elements, including consistent per-foot pavement restoration costs and duct bank material costs, and vegetation clearing and grubbing costs for access roads.[159] Contrary to Sudbury's assertions, the substantial detail and explanations provided by the Company provide a sufficient basis to conclude that the Company's cost estimates, including soil management and environmental mitigation, are reliable.

In PP-4, ISO-NE anticipates different grades of estimates to be developed as planning for a project proceeds (e.g., conceptual estimates, planning estimates, etc.) and that the level of detail in the estimate will increase as the project develops. ISO-NE's PP-4 also requires project proponents to include escalation and contingency in their cost estimates for transmission projects, regardless of the grade of the estimate (Exh. EFSB-1, Attachment D, at 8-13). The Siting Board considers this approach to be reasonable and reflective of the uncertainty associated with cost estimation practices. Accordingly, the Siting Board sees no reason to diverge from the cost estimating process adopted by

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RR-EFSB-47 (mitigation costs for the three alternatives), RR-EFSB-48 (the costs of clearing and grubbing/access road), and RR-EFSB-49 (further support and explanation for costs associated with traffic control, flagger & police, the costs of unspecified trenchless crossings, the cost of plating, and the development and backup for the cost associated with soils management). Although not every change that the Company made to its cost estimate that was submitted with its updated planning grade estimate was explained, sufficient basis and explanation was provided to support the new planning grade estimate for the MBTA Underground Route and for revisions to estimates for the MBTA Overhead Route and All-Street Route.

159 The Siting Board rejects Sudbury assertion that its due process rights were violated by the Siting Board's long-standing practice of allowing parties to submit information not available at hearings in the form of record request responses. See 980 CMR 1.06(6)(g). See also Section I.C.

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ISO-NE and is not persuaded by Sudbury's argument that escalation and contingency factors are inappropriate for conceptual and planning grade estimates.

With respect to the argument by Sudbury that it was unreasonable to assign different contingency factors for different routes, the Siting Board accepts the Company's explanation that because it had conducted more extensive engineering of the MBTA Underground Route, and therefore had a more detailed understanding of the Project compared to the All-Street Route and the MBTA Overhead Route, it was reasonable for the Company to use a lower contingency for the Project compared to the alternative routes. This is consistent with past Siting Board precedent (see e.g., East Eagle at 60-61), as well as PP-4, Attachment D, at 10, which suggests that contingency levels are expected to be reduced as a given cost estimate advances from an early preliminary cost estimate to a more detailed cost estimate.[160]

The record shows that the Company did not include annual lease payments to the MBTA in its estimates for the MBTA Routes on the grounds that these are operational costs, not capital costs. The Siting Board agrees that this is consistent with past Company practice and that including a selective operational cost associated with the MBTA Routes (as proposed by Sudbury) would create an inconsistent comparison. See e.g., New England Power Company d/b/a National Grid EFSB 09-1/D.P.U. 09-52/D.P.U. 09-53, at 64 (2011).

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160 The Town of Sudbury correctly notes that the amount of contingency has increased for the All-Street Route in both actual and percentage terms under the updated cost estimate in RR-EFSB-50. The contingency for the All-Street Route increased by 77 percent and the contingency for the MBTA Underground Route increased by five percent (RR-EFSB-50(1)(confidential)). Although the Siting Board does not find it unreasonable for the contingency factor applied to the estimated costs of the All-Street Route to be higher than the contingency factor applicable to the MBTA Underground Route (given the greater level of uncertainty associated with the All-Street Route, as discussed above), it is unclear why the contingency for the All-Street Route has increased by approximately 77 percent, compared to the contingency for the same cost element as originally identified by the Company. Nevertheless, this difference does not materially alter the conclusion that the MBTA Underground Route is substantially less expensive than the All-Street Route.

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The record shows that the cost estimate ranges for the MBTA Underground Route and the two alternative routes overlap. That is, the low end of the estimated cost range for the MBTA Underground Route is lower than the high end of the range for the MBTA Overhead Route, and the high end of the cost range for the MBTA Underground Route is higher than the low end of the All-Street Route. The Siting Board notes that there is a greater confidence level associated with the Company's estimate of the cost of the MBTA Underground Route than that of the MBTA Overhead and All-Street Routes. The Siting Board accepts the Company's position that the direction of any cost changes from the estimates would tend to be consistent for the majority of cost items over time, including increases or decreases in the cost of labor, materials, and overhead. As such, it is unlikely that, in the event of construction, actual costs of the MBTA Overhead Route would exceed those of the MBTA Underground Route under the same external conditions – or that the All-Street Route would become less expensive than the MBTA Underground Route. This view is reflected in ISO-NE's practices, which compare the cost of projects on a point-estimate basis.

The record identifies the MBTA Overhead Route as the least cost alternative, with an estimated cost of approximately $67.5 million compared to the MBTA Underground Route estimated cost of approximately $95.8 million. The All-Street Route, with an estimated cost of approximately $114.3 million, is the highest cost of the three noticed route alternatives. Based on the Company's cost estimates, the Siting Board finds that the MBTA Overhead Route is preferable to the MBTA Underground Route with respect to cost and that both the MBTA Overhead Route and MBTA Underground Route are preferable to the All-Street Route with respect to cost.[161]

F. Reliability

The Company evaluates several factors when assessing the reliability of transmission projects, including the location of the transmission facilities, total exposure to faults (length), the

[161] The Siting Board notes that this relative ranking of costs remains unchanged even if costs associated with annual lease payments to the MBTA for the MBTA Routes are included.

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type of transmission structures, and maintenance and repair accessibility (Tr. 2, at 283-284). According to the Company, while both overhead and underground transmission lines are reliable, historical performance on the Eversource system indicates that underground transmission lines experience fewer outages than overhead lines since they are protected from exposure to weather (Exh. EFSB-R-1). However, Eversource states that the duration of outages on overhead transmission lines is generally less than 24 hours, while the duration of outages on underground transmission lines is significantly longer, typically 30-60 days (Exh. EFSB-R-1). Considering both the frequency and duration of outages, the Company believes there is no meaningful difference between the reliability of the underground and overhead routing alternatives considered (Exh. EFSB-R-1). Furthermore, the Company does not consider the shorter length of the MBTA Underground Route (approximately nine miles) to provide a material advantage in reliability over the All-Street Route (approximately ten miles) (Exh. EV-2, at 1-1, 1-6; Tr. 2, at 284-285).

Sudbury argues that complications associated with the Company's decision to pursue underground construction of the Project, after initially proposing overhead construction in the ISO-NE planning process, creates a reliability concern that should be considered by the Siting Board (Sudbury Brief at 85-86). According to Sudbury, additional ISO-NE process would be required if the Board were to approve the Company's proposed MBTA Underground Route – specifically, a revised PPA to ensure that no material adverse impacts would result from construction of the Project (Sudbury Brief at 86). Sudbury also notes that the Option Agreement between Eversource and the MBTA contemplates underground construction only and does not allow overhead construction as proposed under the MBTA Overhead Route (Sudbury Brief at 86, citing Tr. 2 at 343). Finally, Sudbury argues that termination rights established in the Option Agreement allow the MBTA to terminate the Company's lease for railroad use or other transportation purposes, at which point Eversource would need to relocate its facilities along the MBTA ROW, creating additional reliability concerns (Sudbury Brief at 87, citing Exhs. SUD-G-19(1); Protect-2-14).

In response to Sudbury's arguments that a revised PPA is necessary, Eversource maintains that it has performed an analysis to verify that the proposed underground configuration of the Project will not adversely affect the existing transmission system (Company Reply Brief

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at 20, citing Exh. EFSB-C-4). The Company will seek formal PPA approval from ISO-NE following a decision by the Siting Board (Company Reply Brief at 20-21, citing Exh. EFSB-C-4). Eversource dismisses Sudbury's concerns relating to its Option Agreement with the MBTA, stating that the Company is not precluded from constructing the transmission line overhead along the ROW,[162] and that in the unlikely event that the MBTA were to terminate its lease with Eversource, the Company's facilities would be relocated within the easement, and that such a relocation would be coordinated to ensure no reliability impact (Company Reply Brief at 22, 57, citing Exhs. EFSB-C-12(R1)(2) at 5; Protect-2-14; Tr. 7, at 1002).

The Siting Board is persuaded by the Company's testimony that the proposed underground construction of the Project would not adversely affect the existing transmission system and notes that the Project will be subject to formal ISO-NE review to confirm this fact following issuance of the Board's decision. Furthermore, Eversource has affirmed that, in the unlikely event that the MBTA restores rail service along the MBTA ROW or elects to use the ROW for other transportation purposes, the Company would be able to relocate its transmission facilities within the ROW without any detrimental impacts to system reliability.[163] Thus, the Siting Board concludes that the terms of the Option Agreement are not likely to have a significant impact on the reliability of the New Line. Accordingly, the Siting Board finds that the MBTA Underground and Overhead Routes, and the All-Street Route are comparable with respect to reliability.

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162 The Company stated that if overhead construction along the MBTA ROW were to go forward, an amendment to the Option Agreement would be pursued with the MBTA (Company Reply Brief at 22).

163 The Siting Board notes that if relocation of the New Line within the MBTA ROW were to become necessary, under the Option Agreement the MBTA is required to give Eversource no less than five years notice in order to allow Eversource sufficient time to complete construction of the relocated facilities prior to removal of the existing facilities and without disruption to the Project's operation (Exh. EFSB-C-12(R1) at 64).

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G. Conclusion on Analysis of the MBTA Underground and Overhead Routes and All-Street Route

The Siting Board is charged with ensuring jurisdictional facilities approved for construction in the Commonwealth achieve an appropriate balance between environmental impacts, reliability, and cost. As discussed above, the Siting Board finds that the MBTA Underground Route, the MBTA Overhead Route, and the All-Street Route are comparable with respect to reliability. The Siting Board further finds that the MBTA Underground Route is comparable to the All-Street Route with respect to environmental impacts and preferable with respect to cost, and that the MBTA Overhead Route is preferable to the MBTA Underground Route and the All-Street Route with respect to cost.

While the MBTA Overhead Route is the lowest cost route alternative, the record shows that this route has the greatest potential for environmental impact. Construction of the MBTA Overhead Route would, among other things, require substantial tree clearing, the loss of valuable wetland resources, the highest level of construction-related noise impacts, and permanent visual impacts that would result in meaningful change to the natural environment and residential areas along the MBTA ROW. The record shows that these impacts can be avoided, or significantly, reduced through the use of underground construction techniques, as proposed in the MBTA Underground Route. On balance, therefore, the Siting Board concludes that the additional expenditure of $28.3 million associated with construction of the MBTA Underground Route rather than the MBTA Overhead Route is warranted in this instance.[164] While the specific environmental impacts associated with the MBTA Underground Route and the All-Street Route differ, on balance, the Siting Board has found them comparable. As such, the Siting Board concludes that the additional expenditure of $18.5 million to construct the All-Street Route rather than the MBTA Underground Route (or a total increase of $46.8 million over the least-cost route alternative) is not warranted in this instance.

The Siting Board therefore finds that the MBTA Underground Route is superior to the MBTA Overhead Route and the All-Street Route with respect to providing a reliable energy

164 The Siting Board notes that DCR "fully supports" the MBTA Underground Route, as this route would "best facilitate DCR's plans to develop a multi-use rail trail along that portion of the MBTA property" (Exh. EFSB-5 at 1).

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supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.

Based on review of the record, the Siting Board finds that the Company provided sufficient information to allow the Siting Board to determine whether the Project has achieved a proper balance among cost, reliability, and environmental impacts. The Siting Board finds that with the implementation of the specified conditions and mitigation presented above, and compliance with all applicable local, state, and federal requirements, the environmental impacts of the Project along the MBTA Underground Route would be minimized. The Siting Board finds that the Project along the MBTA Underground Route would achieve an appropriate balance among conflicting environmental concerns as well as among environmental impacts, reliability, and cost.

VII. CONSISTENCY WITH POLICIES OF THE COMMONWEALTH

A. Standard of Review

G.L. c. 164, § 69J requires the Siting Board to determine whether plans for construction of the applicant's new facilities are consistent with current health, environmental protection, and resource use and development policies as adopted by the Commonwealth. Vineyard Wind at 127; Needham-West Roxbury at 74; Woburn-Wakefield at 136.

B. Positions of the Parties

1. Town of Sudbury

Sudbury asserts that the Siting Board cannot conclude that Eversource's plan for construction of the Project is consistent with the Commonwealth's health, environmental protection and resource use and development policies, and therefore the Siting Board should deny the Petition (Sudbury Brief at 96-97).

Sudbury argues that the Project would have adverse impacts to jurisdictional wetland resource areas, adversely affecting interests that are protected by the Massachusetts WPA, such as the private or public water supply, ground water, flood control, wildlife habitat, and fisheries (Sudbury Brief at 88-89, citing G.L. c. 131, § 40). The town also maintains that the Company's Project is inconsistent with the Commonwealth's policy to avoid adverse impacts on coldwater

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fisheries (Sudbury Brief at 88-89). Sudbury notes that the Company has not yet been able to demonstrate that the Project does not impact rare species habitat, as the Company has not yet completed its NHEPSP rare species evaluation (Sudbury Brief at 89-90).[165]

Sudbury alleges that the Company's Project is an affront to the State's longstanding commitment to preserve and enhance open spaces under the jurisdiction of Article 97, noting that there are 14 parcels of Article 97 land abutting the Project route (Sudbury Brief at 90, citing Exh. SUD-MJN/RMG-1(R) at 34; RR-EFSB-65(1)). Further, Sudbury argues that, in accordance with state law, the town has adopted a master plan that includes a "[n]atural and cultural resources element which provides an inventory of the significant natural, cultural and historic resource areas of the municipality, and policies and strategies for the protection and management of such areas" (Sudbury Brief at 90, citing G.L. c. 41, §81D). The town asserts that Eversource's preferred route along the MBTA ROW is in conflict with Sudbury's master plan, which preserves the Hop Brook landscape in Sudbury (Sudbury Brief at 90-91, citing G.L. c. 41, §81D).

Sudbury refers to Governor Baker's Executive Order 569, which recognizes that the generation and consumption of energy continues to be a significant contributor to greenhouse gas ("GHG") emissions in the Commonwealth, and the need to assess vulnerabilities and adopt strategies to increase the resiliency of the state's infrastructure (Sudbury Brief at 91). According to Sudbury, the Company's current design to compensate for flood storage, which will lower the elevation of the railroad platform surface at the Bridge #130 (Fort Meadow Brook) to below the 100-year flood plain elevation, would promote additional flooding and decrease resiliency (Sudbury Brief at 91-92; citing RR-SUD-10; RR-SUD-10(1)). Further, Sudbury argues that adding an additional transmission line to the Marlborough Subarea does not further the state's goal under the Global Warming Solutions Act ("GWSA") and Executive Order 569 to diversify the Commonwealth's energy portfolio (Sudbury Brief at 92).

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165 The Siting Board notes that, as discussed in Section VI.D.1, above, since the filing of briefs the Company has received a conditional "no-take" determination from NHESP, including a Final Decision signed by the Director of the Division of Fisheries and Wildlife denying an appeal petition filed by Protect Sudbury (see Exh. EFSB-LU-7(S2)(1); EFSB-LU-7(S4)(1)).

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Sudbury argues that the Project is in contravention to the Commonwealth's Smart Growth/Smart Energy policy's Sustainable Development Principles #4, #5, and #9: Protect Land and Ecosystems; Use Natural Resources Wisely; and Promote Clean Energy, respectively (Sudbury Brief at 92-93). According to Sudbury, the Company's plan to construct the Project along the "ecologically sensitive" MBTA ROW, "and its failure to reasonably consider NTAs such as energy efficiency and renewable energy," are inconsistent with the Commonwealth's sustainable development goals (Sudbury Brief at 93).

Finally, the Sudbury takes issue with the Company's decision to address the identified need with a transmission project, which the town maintains is inconsistent with the Company's statutory mandate under the Green Communities Act ("GCA") and subsequent Department decisions, thereby avoiding any meaningful effort to consider NTAs that would satisfy the claimed need for the Project (Sudbury Brief at 93-96).

2. Protect Sudbury

Protect Sudbury argues that the Project is inconsistent with and violates the Commonwealth's Smart Growth/Smart Energy policy's Sustainable Development Principles and Siting Board past directives to evaluate whether a proposed project, among other things, has the support of local officials who have assisted in the development of the route as well as in a construction mitigation plan (PS Brief at 50-51, citing New England Power EFSB 09-1/D.P.U. 09-52/09-53 ("Worcester") at 63 (2011)).[166] According to Protect Sudbury, the Project: (1) has not been designed and conditioned to avoid or minimize impacts to natural and cultural resources by being placed underground in city streets and within existing underground rights of way; (2) would significantly affect undisturbed property; (3) does not have the support of local

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166 The Siting Board notes that the citation referenced by Protect Sudbury does not provide the cited information. In Worcester at 67, the Siting Board did not state that local officials supported the project, but noted "local officials and community groups played a significant role in developing the route for the [p]roject as well as construction mitigation plans."

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officials; and (4) is located in a "mapped habitat" and is "likely to impact water or historic resources" (PS Brief at 51, citing East Eagle at 146; Worcester at 63).[167]

3. Company

Eversource argues that, in addition to satisfying the requirements of the Siting Board's statue under G.L. c. 164, § 69J, the Project is consistent with other state energy policies as articulated in the Electric Utility Restructuring Act of 1997, the GCA (Chapter 169 of the Acts of 2008), the Energy Diversity Act (Chapter 188 of the Acts of 2016), and the GWSA (Chapter 298 of the Acts of 2008) (Company Brief at 126, citing Exh. EV-2, at 6-1).

According to the Company, the Project will be consistent with applicable health policies because it will improve the reliability of the regional transmission system, ensuring a reliable supply of electricity to customers in the Marlborough Subarea – a matter, which Eversource submits, greatly affects public health and safety (Company Brief at 126, citing Exh. EV-2, at 6-1).[168] Further, the Company maintains that the more robust transmission system will enable the connection of various future energy resources that may be developed in response to the Energy Diversity Act, and a more efficient and flexible operation of the electric grid, consistent with the GCA (Company Brief at 131, citing Exh. EV-2, at 6-4 to 6-5).

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167 Protect Sudbury filed a Notice of Claim with the Division of Fisheries and Wildlife ("Division") contending that Eversource improperly segmented the construction of the Project, which resulted in a "gross underestimation" of the impacts on state-listed species and the total acreage of disturbance within Priority Habitats" (Exh. EFSB-LU-7(S3)(1) at i-2). Both the Division and Eversource filed separate Motions to Dismiss the Petitioner's appeal for lack of standing (Exh. EFSB-LU-7(S4)(3) at 1-2). Subsequent to the filing of these motions to dismiss, a Ten Citizen Group filed a Motion to Intervene in the Petitioner's appeal pursuant to M.G.L. c. 30A, § l0A (Exh. EFSB-LU-7(S4)(3) at 1-2). In a Final Decision, the Director of the Division granted the respective Motions to Dismiss by the Division and Eversource based on a determination that the Petitioner Protect Sudbury, Inc. does not have standing to appeal the Division's Conditional No-Take Determination, and that the Ten Citizen Group's Motion to Intervene is therefore moot (Exh. EFSB-LU-7(S4)(1)).

168 The Company further states that it will design, build, and maintain the Project so that the health and safety of the public are protected (Company Brief at 126, citing Exh. EV-2, at 6-1).

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Eversource submits that it has compared a range of alternative projects and proposed specific plans to carefully mitigate environmental impacts associated with the construction, operation and maintenance of the Project, consistent with cost minimization, and that, as such, the Project is consistent with the environmental policies of the Commonwealth (Company Brief at 128-129, 1 citing Exh. EV-2, at 6-2 to 6-3). Further, Eversource states that the Project will be constructed and operated in accordance with all relevant federal, state and municipal regulations and environmental policies, and that it will have no adverse climate change impacts or negative effects on sea levels (Company Brief at 129, 132, citing Exhs. EV-2, at 6-3, 6-5, 6-7, Table 6-1; EV-16, at Table 2-3, Table 2-4 and Table 2-5). Thus, the Project is consistent with the GWSA and will contribute to a reliable, low cost, diverse energy supply for the Commonwealth while avoiding, minimizing, and mitigating environmental impacts to the maximum extent practicable (Company Brief at 129, citing Exh. EV-2, at 6-3).

Finally, Eversource argues that the Project is consistent with, and furthers, the Commonwealth's policies regarding resource use and development because no previously undisturbed property will be affected by construction of the Project (Company Brief at 132-133, citing Exh. EV-2, at 6-5 to 6-6).

In response to Sudbury's assertions that the Project is not consistent with policies of the Commonwealth because it will impact certain resource areas, Eversource argues that Sudbury has failed to acknowledge that the Company is required to obtain all environmental approvals and permits required by federal, state, and local agencies, and that the Project would be constructed and operated to fully comply with those permits and approvals, as well as all relevant federal, state, and municipal regulations and environmental polices (Company Reply Brief at 77, citing Exhs. EV-2, at 6-3, 6-7, Table 6-1; EV-16, at Table 2-3, Table 2-4 and Table 2-5.). According to the Company, the essence of a project that meets the Commonwealth's policies is reflected by meeting such approvals and permits, including the Certificate from the Secretary of Energy and Environmental Affairs under MEPA relating to the Company's FEIR (Company Reply Brief at 77-78, citing Exhs. EV-2, at 6-3, EV-16, at 2-8 to 2-30, RR-EFSB-104).

With respect to Article 97 land protection, the Company responds that the Project does not trigger the need for Article 97 approval, and that the Project would be constructed on an existing railroad transportation corridor and that previously undisturbed Article 97 land would be

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largely unaffected by the siting, construction or operation of the Project (Company Reply Brief at 78, citing Exhs. EV-2, at 6, EFSB-LU-40, Tr. 9, at 1540-1541).

The Company rejects Sudbury's argument that the design of the Project at Bridge #130 is inconsistent with strategic approaches to climate change, or that the resiliency of the Company's infrastructure would be at risk because of increased flooding (Company Reply Brief at 80). According to the Company, potential increased flooding resulting from climate change would not impact the resiliency of the Company's Project because the New Line is designed such that, even if fully submerged, water would be unable to penetrate the conduits, protecting the cables from damage (Company Reply Brief at 80, citing Exh. SUB-DEIR-34; Tr. 8, at 1394-1397).[169] Further, the Company maintains that the Project would not cause additional significant environmental impact to the surrounding area, as maintained by the town, because the Project would comply with the FEMA National Flood Insurance Program regulations and the Massachusetts WPA regulations (Company Reply Brief at 80, citing Exh. SUB-DEIR-34; Tr. 8, at 1394-1397).[170]

The Company disagrees with Sudbury's contention that the Project reflects a bias by the Company not to undertake any meaningful effort to consider NTAs that would satisfy the asserted need for the Project (Company Reply Brief at 80-81). To the contrary, the Company argues that it thoroughly evaluated the feasibility and cost of implementing NTAs in lieu of the Project, but determined that the practical challenges to development of conventional fossil-fuel or renewable generation in the Project area make technically feasible NTAs inferior to the Project (Company Reply Brief at 81, citing Exh. EV-2, at 3-8 to 3-12, Appendix 3-5; RR-EFSB-24(R1); RR-EFSB-24(R1)(1)).

In response to the argument made by Protect Sudbury that the Project is inconsistent with and violates the Commonwealth's Sustainable Development Principles, and does not meet Siting

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169 Eversource stated that sections of conduit would be fuse-welded together, which prevents water entry (Tr. 8, at 1396).

170 According to the Company, where the Project encroaches upon a regulatory floodway, the Company would demonstrate through a hydrologic and hydraulic analysis that the Project would not result in any increase in flood levels within the community during a 100-year flood (Company Reply Brief at 80, citing Exh. SUD-DEIR-34).

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Board precedent, the Company argues that the Project has been designed and conditioned to avoid or minimize impacts to natural and cultural resources by being placed underground on an existing transportation corridor where it would promote the development of an extension of the Commonwealth's rails to trails program (Company Reply Brief at 79). The Company notes that the Project would be located entirely within the existing infrastructure of the MBTA ROW or roadways, and therefore, the siting, construction, and installation of the Project would not affect undisturbed property (Company Reply Brief at 79). Further, the Company maintains that because the Project supports the development of the MCRT, it also supports Sustainability Principle #4, by increasing "accessibility of open spaces and recreational opportunities" (Company Reply Brief at 79-80).

C. Analysis and Findings

1. Health Policies

In Section 1 of the Electric Utility Restructuring Act of 1997, the Legislature declared that "electricity service is essential to the health and well-being of all residents of the Commonwealth" and that "reliable electric service is of utmost importance to the safety, health, and welfare of the Commonwealth's citizens." See St. 1997, c. 164. In Section VI.G, above, the Siting Board found that the Project would improve the reliability of electric service in Massachusetts. Reliable electricity service is essential to the health and well-being of residents of the Commonwealth; therefore, an improvement in electric service reliability will also help contribute to the health and well-being of Commonwealth's residents.

The Project has received an FEIR Certificate from the Secretary affirming the Project's consistency with MEPA requirements that all Project-related impacts to the environment have been properly and adequately identified, minimized, and mitigated. In Section VI.D, the Siting Board finds that the Project's land use, wetland and water resource impacts, noise, traffic, visual impacts, hazardous waste, safety, air, and magnetic fields impacts have been minimized. In addition to the Siting Board's conditions, the Company is required to obtain all environmental approvals and permits required by federal, state, and local agencies and must be constructed and operated according to those permits and approvals. Accordingly, subject to the Company's specified mitigation and the Siting Board's conditions set forth in Section VII, below, the Siting

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Board finds that the Company's plans for construction of the Project are consistent with current health policies of the Commonwealth.

2. Environmental Protection Policies

The Global Warming Solutions Act, enacted in August 2008, is a comprehensive statutory framework to address climate change in Massachusetts. St. 2008, c. 298. The GWSA mandates that the Commonwealth reduce its GHG emissions by 10 to 25 percent below 1990 levels by 2020, and by at least 80 percent below 1990 levels by 2050. G. L. c. 21N, §3(b). The GWSA obligates administrative agencies, such as the Siting Board, to consider reasonably foreseeable climate change impacts and related effects when reviewing permit requests. G.L. c. 30, § 61. Pursuant to the GWSA, the Secretary issued the Massachusetts Clean Energy and Climate Plan for 2020 on December 29, 2010 (the "2020 CECP") and an update dated December 31, 2015 (the "2020 CECP Update"). In a determination accompanying the 2020 CECP, the Secretary set the 2020 state-wide GHG emissions limit at 25 percent below 1990 levels. In 2016, Governor Charles D. Baker issued Executive Order 569, titled "Establishing an Integrated Climate Change Strategy for the Commonwealth," and in 2017, MassDEP issued final regulations in accordance with the GWSA. In 2016, Massachusetts Governor Charles D. Baker signed into law "An Act to Promote Energy Diversity". St. 2016, c. 188. The Energy Diversity Act requires utilities to procure additional renewable energy resources including offshore wind, hydroelectric generation, and new Class I RPS eligible resources. St. 2016, c. 188, § 12.

The Siting Board notes that the transmission line portion of the Project would have minimal GHG emissions as it is an underground transmission line and would not create direct emissions from a stationary source or indirect emissions from energy consumption. The new 115 kV circuit breakers at the Sudbury Substation will require the use of SF_6 gas, a potent GHG (Exh. EFSB-G-3(S1)(2) at 11). The Secretary's Certificate on the FEIR notes that the annual emissions rate for these circuit breakers of 0.1 percent is the lowest commercially available, and that the potential for SF_6 emissions at the substation is minimal (Exh. EFSB-G-3(S1)(2) at 11).

With regard to increasing use of renewable energy resources, by improving the reliability of the regional transmission system, the Project will help facilitate the integration of these renewable energy resources. The Sudbury Substation currently has the capability to interconnect

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distributed renewable energy resources and there are no changes that could be implemented in conjunction with the Project to enhance this capability (Exh. EFSB-G-3(S1)(2) at 11-12). The record also shows that an NTA solution consisting of combined battery storage facilities and solar PV was fully considered by the Company, as described in Section IV, above, and the Siting Board found that the Project is preferable to such an alternative.

The Company has shown that construction of the Project would have no adverse climate change impacts or suffer negative effects relating to sea level rise. As discussed in Section VI.D.2., above, the Siting Board does not agree with Sudbury's assessment that the Company's current design to compensate for flood storage would promote flooding in the area or change the hydrology either upstream or downstream of Fort Meadow Brook. In addition, any potential increased flooding that occurs due to climate change has not been shown to jeopardize any components of the Project. The underground construction of the Project does not need to be installed above surface water elevations, as sections of the conduit are fuse-welded together, which prevents water from penetrating and damaging it. Accordingly, the Siting Board finds that the Project is consistent with the Commonwealth's climate change and resiliency policies.

In Section VI.D, above, the Siting Board reviewed how the Project would meet other state environmental protection requirements. The Siting Board also: (1) considered the Project's environmental impacts, including those related to land use, historic resources, wetlands and water resources, coldwater fisheries, rare species habitat, wildlife habitat, noise, traffic, visual, hazardous waste, safety, air, and magnetic fields impacts; and (2) concluded that, subject to the specified mitigation and conditions set forth below, the Project's environmental impacts have been minimized. Accordingly, we reject Sudbury's argument that the Project is inconsistent with the Commonwealth's efforts to protect coldwater fisheries and rare species habitat. We also reject Sudbury's argument that construction of the Project is at odds with the Commonwealth's policy to protect, preserve, and enhance all open space areas covered by Article 97, as the Project would not be constructed on any Article 97 lands, and no undisturbed property would be directly impacted by the siting, construction, and operation of the Project. Moreover, the Project would be constructed on a pre-existing and already disturbed railroad corridor. As discussed in Sections VI.D.1 and VI.D.2, impacts to the Hop Brook landscape or other open space that has

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been designated by the 2001 Sudbury Master Plan to preserve critical natural resources and wildlife habitat would be minimized.

The Project does not trigger enhanced public participation or enhanced analysis of impacts and mitigation under either the Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs issued on January 31, 2017 ("2017 EJ Policy"), or the prior EJ Policy issued in 2002 and in effect at the time the Company filed the Petitions (see Company Brief at 130). Further, consistent with established Siting Board practice and language access considerations, the Siting Board staff examined the linguistic composition of the affected Project area, and determined that additional outreach, in languages other than English, was neither required, nor specifically requested by members of the public.

Subject to the specified mitigation and conditions set forth in this Decision, the Siting Board finds that the Company's plans for construction of the Project are consistent with the current environmental protection policies of the Commonwealth.

3. Resource Use and Development Policies

In 2007, pursuant to the Commonwealth's Smart Growth/Smart Energy policy, the Executive Office of Energy and Environmental Affairs established Sustainable Development Principles. Among the principles are: (1) supporting the revitalization of city centers and neighborhoods by promoting development that is compact, conserves land, protects historic resources and integrates uses; (2) encouraging reuse of existing sites, structures and infrastructure; (3) protecting environmentally sensitive lands, natural resources, critical habitats, wetlands and water resources and cultural and historic landscapes; and (4) increasing the quantity, quality, and accessibility of open spaces and recreational opportunities. In Section V, the Siting Board reviewed the process by which the Company selected the MBTA Underground Route for the Project. The Project has been designed and conditioned to avoid or minimize impacts to natural and cultural resources by being constructed underground, primarily in an existing ROW linking the existing Sudbury and Hudson Substations.

As discussed in Section IV.D, above, given the reliability needs currently present in the Marlborough Subarea, NTAs are inferior to the Project. Accordingly, the Siting Board does not agree with Sudbury's argument that siting the Project along the MBTA ROW contradicts the

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Commonwealth's Sustainable Development Principles, including the principle to promote clean energy. Indeed, the Project would further a more robust transmission system that is better positioned to support the objectives of the Energy Diversity Act.

The Siting Board also does not agree with Sudbury and Protect Sudbury that the Project is inconsistent with or violates the Commonwealth's Smart Growth/Smart Energy policy or past Siting Board practice on the subject. As discussed in Section VI.D, above, the Project's environmental impacts have been minimized, with applicable imposed conditions; its construction would be in compliance with all applicable federal, state and local laws and regulations, and would not significantly impact natural or cultural resources. The Project would be located within the existing infrastructure of the MBTA ROW and existing streets, and therefore, the siting, construction, and installation of the Project would not affect undisturbed property. Further, the Project supports the development of the MCRT, and therefore supports Principle #4, which seeks to increase the quantity, quality, and accessibility of open spaces and recreational opportunities. Contrary to Protect Sudbury's arguments, there are no legal or policy requirements that there be no mapped habitat in the vicinity of a project or that a project has the support of local officials.

Subject to the specific mitigation and the conditions set forth in this Decision, the Siting Board finds that the Company's plans for construction of the Project are consistent with the current resource use and development policies of the Commonwealth.

VIII. ANALYSIS UNDER G.L. C. 40A, § 3 - ZONING EXEMPTIONS

Pursuant to G.L. c. 40A, § 3, the Company filed a petition ("Zoning Petition") seeking individual and comprehensive zoning exemptions from the zoning bylaws of the Towns of Sudbury, Hudson, and Stow for the Company's Project.

A. Standard of Review

G.L. c. 40A, § 3 provides, in relevant part, that:

> Land or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the [Department] shall, after notice given pursuant to section eleven and public hearing in the town or city, determine

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> the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public . . .

Thus, a petitioner seeking exemption from a local zoning bylaw under G.L. c. 40A, § 3 must meet three criteria.[171] First, the petitioner must qualify as a public service corporation. Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667, 677 (1975) ("Save the Bay"). Second, the petitioner must demonstrate that its present or proposed use of the land or structure is reasonably necessary for the public convenience or welfare. Vineyard Wind at 132; Woburn Wakefield at 140; NRG Canal 3 Development LLC, EFSB 15-06/D.P.U. 15-180, at 140-141 (2017) ("NRG"). Finally, the petitioner must establish that it requires exemption from the zoning ordinance or bylaw. Vineyard Wind at 132; NRG at 141; Tennessee Gas Pipeline Company, D.T.E. 01-57, at 3-4 (2002).

Additionally, the Siting Board favors the resolution of local issues on a local level whenever possible, to reduce concern regarding any intrusion on home rule. The Siting Board believes that the most effective approach for doing so is for a petitioner to consult with local officials regarding its project before seeking zoning exemptions pursuant to G.L. c. 40A, § 3. Vineyard Wind at 132; Woburn Wakefield at 140; Russell Biomass LLC, EFSB 07-4/D.P.U. 07-35/07-36, at 61-62 (2009) ("Russell"). Thus, the Siting Board encourages petitioners to consult with local officials, and in some circumstances, to apply for local zoning permits, before seeking zoning exemptions from the Department under G.L. c. 40A, § 3. Vineyard Wind at 132; NRG at 141; Russell at 68.

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171 G.L. c. 40A, § 3 applies to the Department. The Department refers zoning exemption cases to the Siting Board for hearing and decision pursuant to G.L. c. 25, § 4. In accordance with G.L. c. 164, § 69H, when deciding cases under a Department statute, the Siting Board applies Department and Board standards "in a consistent manner." Thus, the Siting Board the Department implement G.L. c. 40A, § 3 using consistent standards of review, and this Decision cites to both Siting Board decisions and Department orders interpreting G.L. c. 40A, § 3.

On April 27, 2017, the Chair of the Department referred the Company's Zoning Petition to the Siting Board for review and decision pursuant to G.L. c. 25, § 4.

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B. Public Service Corporation

1. Standard of Review

In determining whether a petitioner qualifies as a "public service corporation" ("PSC") for the purposes of G.L. c. 40A, § 3, the Massachusetts SJC has stated:

> among the pertinent considerations are whether the corporation is organized pursuant to an appropriate franchise from the State to provide for a necessity or convenience to the general public which could not be furnished through the ordinary channels of private business; whether the corporation is subject to the requisite degree of governmental control and regulation; and the nature of the public benefit to be derived from the service provided.

Save the Bay, 366 Mass. at 680; Woburn-Wakefield at 141; Berkshire Power Development, Inc., D.P.U. 96-104, at 26-36 (1997) ("Berkshire Power").[172]

2. Analysis and Conclusion

The Company is an electric company as defined by G.L. c. 164, § 1 and, as such, qualifies as a public service corporation. Woburn Wakefield at 141. Accordingly, the Siting Board finds that the Company is a public service corporation for the purposes of G.L. c. 40A, § 3.

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172 The Department interprets this list not as a test, but rather, as guidance to ensure that the intent of G.L. c. 40A, § 3, will be realized: i.e., that a present or proposed use of land or structure that is determined by the Department to be "reasonably necessary for the convenience or welfare of the public" not be foreclosed due to local opposition. Berkshire Power at 30; Save the Bay, 366 Mass. at 685-686; Town of Truro v. Department of Public Utilities, 365 Mass. 407, 410 (1974) ("Town of Truro"); Exelon West Medway at 135 n.117; New England Power Company d/b/a National Grid, D.P.U. 15-44/15-45 at 5-6 (2016) ("MVRP"). The Department has interpreted the "pertinent considerations" as a "flexible set of criteria which allow the Department to respond to changes in the environment in which the industries it regulates operate and still provide for the public welfare." Berkshire Power at 30; MVRP at 6; see also Dispatch Communications of New England d/b/a Nextel Communications, Inc., D.P.U./D.T.E. 95-59B/95-80/95-112/96-113, at 6 (1998). The Department has determined that it is not necessary for a petitioner to demonstrate the existence of "an appropriate franchise" in order to establish PSC status. Berkshire Power at 31; MVRP at 6; NSTAR Electric Company, D.P.U. 15-02 (2015) at 4-5.

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C. Public Convenience or Welfare

1. Standard of Review

In determining whether the present or proposed use is reasonably necessary for the public convenience or welfare, the Department must balance the interests of the general public against the local interest. Save the Bay, 366 Mass. at 685; Town of Truro, 365 Mass. at 407. Specifically, the Department is empowered and required to undertake "a broad and balanced consideration of all aspects of the general public interest and welfare and not merely [make an] examination of the local and individual interests which might be affected." New York Central Railroad v. Department of Public Utilities, 347 Mass. 586, 592 (1964) ("NY Central Railroad"). When reviewing a petition for a zoning exemption under G.L. c. 40A, § 3, the Department is empowered and required to consider the public effects of the requested exemption in the State as a whole and upon the territory served by the applicant. Save the Bay, 366 Mass. at 685; NY Central Railroad, 347 Mass. at 592.

Therefore, when making a determination as to whether a petitioner's present or proposed use is reasonably necessary for the public convenience or welfare, the Department examines: (1) the need for, or public benefits of, the present or proposed use; (2) the present or proposed use and any alternatives or alternative sites identified;[173] and (3) the environmental impacts or any other impacts of the present or proposed use. The Department then balances the interests of the general public against the local interest and determines whether the present or proposed use of the land or structures is reasonably necessary for the convenience or welfare of the public. Vineyard Wind at 136-137; Woburn-Wakefield at 142; Tennessee Gas Company, D.T.E. 98-33, at 4-5 (1998).

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173 With respect to the particular site chosen by a petitioner, G.L. c. 40A, § 3 does not require the petitioner to demonstrate that its primary site is the best possible alternative, nor does the statute require the Department to consider and reject every possible alternative site presented. Rather, the availability of alternative sites, the efforts necessary to secure them, and the relative advantages and disadvantages of those sites are matters of fact bearing solely upon the main issue of whether the primary site is reasonably necessary for the convenience or welfare of the public. Martarano v. Department of Public Utilities, 401 Mass. 257, 265 (1987); NY Central Railroad, 347 Mass. at 591.

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2. Analysis and Findings

With respect to the need for, or public benefits of, the Project, the Siting Board found in Section III that additional energy resources are needed for reliability in the Project area. In Section IV the Siting Board analyzed different project approaches including transmission and non-transmission alternatives, that the Company might use to meet the reliability need and concluded that the proposed approach is superior to other approaches. The Siting Board also reviewed the Company's route selection process in Section V, and has found that the Company demonstrated that it: (1) examined a reasonable range of practical siting alternatives and (2) identified locations which would minimize cost and environmental impacts while ensuring a reliable energy supply. The Siting Board also compared the impacts of the MBTA Underground Route, the MBTA Overhead Route and the All-Street Route. Based on that review, the Siting Board has concluded that the MBTA Underground Route is superior to the MBTA Overhead and All-Street Routes in providing a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.

Finally, regarding Project impacts, in Section VI.D, the Siting Board evaluated the environmental impacts of the Project and found that, although the Project may result in some local adverse impacts, the environmental impacts of the proposed Project would be minimized with the implementation of mitigation measures directed by the Siting Board and described in this Decision. Based on the foregoing, the Siting Board finds that the need for the Project on balance outweighs identifiable adverse local impacts associated with the construction and operation of the Project. Accordingly, the Siting Board finds that the proposed Project is reasonably necessary for the convenience or welfare of the public.

D. Individual Exemptions Required

1. Standard of Review

In determining whether an exemption from a particular provision of a zoning bylaw is "required" for purposes of G.L. c. 40A, § 3, the Department determines whether the exemption is necessary to allow construction or operation of the petitioner's project. Vineyard Wind at 139; Woburn Wakefield at 143-144; Tennessee Gas Company, D.P.U. 92-261, at 20-21 (1993). The

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Petitioner bears the burden to identify the individual zoning provisions applicable to the project and establish on the record that exemption from each of those provisions is required:

> The Company is both in a better position to identify its needs, and has the responsibility to fully plead its own case . . . The Department fully expects that, henceforth, all public service corporations seeking exemptions under [G.L.] c. 40A, § 3 will identify fully and in a timely manner all exemptions that are necessary for the corporation to proceed with its proposed activities, so that the Department is provided ample opportunity to investigate the need for the required exemptions.

Vineyard Wind at 139; Woburn Wakefield at 143-144; New York Cellular Geographic Service Area, Inc., D.P.U. 94-44, at 18 (1995).

2. Description

a. Exemptions

Tables 13, 14, and 15, below, summarize: (1) each of the specific provisions of the Sudbury, Hudson, and Stow Zoning Bylaws from which the Company seeks exemptions; (2) the relief available (if any) under the bylaws; and (3) the Company's argument as to why it cannot comply with the identified zoning provision and/or why the available zoning relief is inadequate.

Table 13. Requested Individual Exemptions from the Sudbury Zoning Bylaw – Summary of Company's Position

Section of the Sudbury Zoning Bylaw	**Available Relief**	**Why Exemption is Required: Company's Position**
Principal Use Regulations Section 2230	Special Permit	The provision requires a special permit for Essential Services (e.g., services provided by a public service corporation) in all zoning districts. The Company maintains that grant of a special permit is discretionary and, even if granted, would be susceptible to appeal.
Dimensional Requirements Section 2600	Variance	The provision limits height of structures to 35 feet, which would require a variance for the proposed 100-foot shielding mast at the Sudbury Substation. Eversource maintains that variances are a legally disfavored form of relief and, even if granted, are susceptible to appeal.
Performance Standards	Variance	The provision limits construction activity to weekdays from 7:00 a.m. to 6:00 p.m. A variance would be

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Section of the Sudbury Zoning Bylaw	Available Relief	Why Exemption is Required: Company's Position
Noise Section 3423		required to allow the Company's proposed construction hours. Additionally, the Company asserts that the provision's prohibition of excessive noise may require a variance to the extent that construction activities would not meet the noise standard included in the provision. Eversource maintains that variances are a legally disfavored form of relief and, even if granted, are susceptible to appeal.
Performance Standards **Vibration, odor, glare, etc.** Section 3425	Variance	The Company argues that it cannot ensure that its construction activities would meet the requirements of this provision, which prohibit detectable vibration without instruments at any lot line, and that dust shall be confined to the premises. Eversource maintains that variances are a legally disfavored form of relief and, even if granted, are susceptible to appeal.

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Section of the Sudbury Zoning Bylaw	Available Relief	Why Exemption is Required: Company's Position
Performance Standards **Site Development Criteria** Section 3427 subpart (a) (Natural Features Conservation); subpart (c) (Siting of Structures); subpart (f) (Outdoor Lighting); subpart (g) (Other Site Features)	Variance	*Section 3427(a)* provides that changes to the natural topography be kept "to an absolute practical minimum" and that where tree coverage has been removed, new plantings may be required. The Company maintains that compliance with the topography standard is "subjective" and that some trees will need to be permanently removed in connection with the Project. *Section 3427(c)* provides that the siting of all structures minimize disruption of the topography, facilitate natural surface drainage, and be properly designed for particular site conditions. The Company argues that construction of the access road and transmission line placement may change topography, and that the topography standard is "subjective." *Section 3427(f)* provides standards for outdoor lighting and requires that all glare and light spilling onto neighborhood properties be avoided. The Company states that it will need to employ temporary outdoor lighting in connection with its construction activities during extended work hours. Lighting will also be required for nighttime repairs during operation of the Sudbury Substation. The Company contends that a variance would be required to the extent that these provisions apply to the Project, and the lighting necessary for the Project is not in compliance. *Section 3427(g)* requires that all utility structures and facilities be located or visually screened so as not to create hazards or visual or other nuisances. The Company argues that the application of this provision to the Sudbury Substation, as modified, is "subjective." For each provision where the available relief is a variance, Eversource maintains that variances are a legally disfavored form of relief and, even if granted, are susceptible to

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Section of the Sudbury Zoning Bylaw	Available Relief	Why Exemption is Required: Company's Position
Erosion Control Section 3430 Section 3431 (Final slopes >15 percent) Section 3432 (Topsoil and vegetative cover requirements) Section 3433 (Vegetation Clear-stripping or Filling) Section 3436 (Vegetative Cover Requirements)	Variances	Section 3430 requires various conditions be met for site design, materials, and construction processes to avoid erosion damage, sedimentation, or uncontrolled surface water runoff. According to the Company, the Project has not advanced sufficiently to ensure that it will meet Sections 3431 and 3432 with respect to the grading of slopes, nor to determine whether the vegetative cover requirements of Section 3436 will be met. The Company further argues that the term "hillside" in Section 3436 is undefined and therefore it is unclear whether the provision applies to the Project. The Company maintains that the Project will not be able to comply with section 3433, as work along the ROW will involve removal of vegetation to construct the access road and duct bank. For each bylaw provision where available relief is a variance, Eversource maintains that variances are a legally disfavored form of relief and, even if granted, are susceptible to appeal.
Excavation Abutting Roads Section 3440	Zoning Board of Appeals ("ZBA") Approval	Excavation within 50 feet of a road may not be below the grade of the road without ZBA approval. The Company maintains that the design of the Project is not sufficiently advanced to ensure its ability to meet the excavation requirements.
Flood Plain Overlay District Section 4100 et seq.	Special Permit or None Available	Section 4140 generally prohibits filling, excavation and construction in the Flood Plain Overlay District. The Company maintains that construction of the Project would require a use variance, which is not an available form of relief for the Project under the bylaw. Section 4166 provides the Board of Appeals the authority to grant a special permit under certain circumstances. The Company maintains that grant of a special permit is discretionary and, even if granted, would be susceptible to appeal.

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Water Resource Protection Overlay District Section 4200	Use Variance or None Available	The provision allows uses in the Water Resource Protection Overlay District only if such uses are allowed in the underlying zoning district. According to the Company, to the extent that this provision applies to uses allowed by special permit (and not just to those allowed as-of-right), a use variance would be required for construction of the New Line along the MBTA ROW in the Water Resource Protection Overlay District. The Company maintains that use variances are allowed in limited circumstances, but that none of the limited circumstances apply in this case. Eversource argues that because there is no local relief available an exemption from the requirements of Article 4200 are per se required.
Section 4243(c) Section 4253(b) Section 4260 Section 4261(a) Section 4261(b) Section 4261(c) Section 4261(f)	Special Permits	Eversource indicates that the application of a starter fertilizer along with seed is common practice for the stabilization of disturbed soils following the construction of large linear projects. Sections 4243(c) and 4253(b) require a special permit for the application of fertilizers for non-domestic or non-agricultural uses in Zone II and III wellhead protection areas. Eversource maintains that the conditions required for the grant of a special permit are subjective and that a special permit, if granted, is susceptible to appeal. Section 4260 specifies the procedures and conditions for the grant of a special permit for excavation in the Water Resource Protection Overlay District. The Company maintains that because excavated material may be re-used at different locations along the duct bank, or removed from site as excess material, the Project may not comply with Section 4260. Further, the Company argues that the Project will not be able to meet the special conditions found in Section 4261 that are required for the grant of a special permit because (1) they are inconsistent with the Company's access road or transmission line design requirements, or (2) because this requirement does not conform with MassDEP's "Best Management Practices for Controlling Exposure to Soil During the Development of Rail Trails," which the Company maintains allows for the reuse of materials along the corridor. Additionally, Eversource maintains that Section

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Section of the Sudbury Zoning Bylaw	Available Relief	Why Exemption is Required: Company's Position
		4261(f) of the bylaw states that "[f]ill material shall contain no solid waste, toxic or hazardous materials or hazardous waste" and the town relies on the plain English definition of these words to interpret this provision. Eversource seeks an exemption from Section 4261(f) in part because the provision does not reference or rely on the definitions and/or characteristics of the terms "soil waste" "toxic or hazardous materials" or "hazardous waste" as specified in applicable regulations. Further, Eversource argues that the conditions required for the grant of a special permit are subjective and that a special permit, if granted, is susceptible to appeal.

Sources: Exhs. EV-3, at 18-19; EFSB-Z-4; EFSB-Z-7; EFSB-Z-15; EFSB-Z-16; EFSB-Z-17; EFSB-Z-19; Tr. 10, at 1688; RR-EFSB-69.

Table 14. Requested Individual Exemptions from the Hudson Zoning Bylaw – Summary of Company's Position

Section of the Hudson Zoning Bylaw	Available Relief	Why Exemption is Required: Company's Position
Residential District Allowed Uses Section 5.2	None Available	The Company maintains that Section 5.2 does not authorize electric transmission lines in Residential Districts and that the Hudson Zoning Bylaw does not authorize the granting of a Use Variance.
Watershed Protection District Section 3.3.10[174]	None Available	The Company contends that because the proposed transmission line is not a permitted use within the Single Residence District, the use is also not permitted within the Watershed Protection District. According to the Company, the Hudson Zoning Bylaw does not authorize the granting of a Use Variance.

Sources: Exhs. EV-3, at 21; EFSB-Z-6.

[174] Hudson bylaw Section 3.3.10(V)(4) states that the application of pesticides for non-agricultural uses in combination with inter alia erosion and sedimentation control plans may be allowed by special permit (Exh. EV-3, exh. B at 18; RR-EFSB-76). The Town of Hudson notes that although herbicide use is permitted by special permit, the

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Table 15. Requested Individual Exemptions from the Stow Zoning Bylaw – Summary of Company's Position

Section of the Stow Zoning Bylaw	Available Relief	Why Exemption is Required: Company's Position
Table of Principal Uses Section 3.10	None Available	Pursuant to Section 3.10, Public Service Corporation use is allowed in the Residential District "in accordance with the provisions of M.G.L. Ch. 40A, Section 3." To the extent that the intent of the provision is to allow public utility use only after the Department's grant of an exemption, a use variance would be required, unless an exemption by the Department is granted. According to the Company, the Stow Zoning Bylaw does not authorize the granting of use variances.
Noise Section 3.8.1.3	Variance	Section 3.8.1.3 prohibits sound levels greater than three decibels above the natural ambient sound level, with exceptions not relevant to the Project. To the extent that construction activities would not meet this standard, a variance would be required. Eversource maintains that variances are a legally disfavored form of relief and, even if granted, are susceptible to appeal.

Sources: Exhs. EV-3, at 21-22; EFSB-Z-5.

b. Consultation with the Municipalities

Prior to filing its Zoning Petition, the Company conducted outreach to both local residents, special interest groups, regulatory agencies, and local officials in the affected municipalities (Exhs. EV-2, at 1-9 to 1-12, Table 1-1; EFSB-G-6). Eversource stated that it participated in numerous meetings with officials from Sudbury, Hudson, and Stow, and participated in Board of Selectmen meetings in Sudbury on October 26, 2016, Stow on November 9, 2016, and Hudson on November 14, 2016 (Exhs. EV-2, at 1-10 to 1-12;

ZBA generally conditions special permits to prohibit that use (RR-EFSB-76). Hudson also notes that utilities are granted an exemption under Section 3.3.10(IV)(12) of the Hudson Zoning Bylaws with respect to earth disturbance in the Watershed Protection District (RR-EFSB-76).

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EFSB-G-6). Overall, the Company reports that it conducted more than 48 meetings with various stakeholders prior to filing its Petitions with the Siting Board (Company Reply Brief at 54, 81, citing Exhs. EV-2, at 1-9 to 1-12, 4-4 to 4-5; EFSB-G-6; EFSB-RS-1; Tr. 5, at 839; Protect-21; Protect-2-80; Protect-2-118).

In addition, the Company met with Hudson and Stow zoning officials to discuss the Company's approach to zoning on September 14 and September 15, 2017, respectively (roughly five months after filing its Zoning Petition) (Exh. EFSB-Z-2(S-2)). Eversource stated that it reviewed the zoning exemptions that were requested and the rationale for making the requested exemptions (Exh. EFSB-Z-2(S-2)). According to the Company, neither Hudson nor Stow zoning officials expressed concerns specific to the zoning requests at these meetings (Exh. EFSB-Z-2(S-2)). With respect to Sudbury, the Company reported that it did not meet with Sudbury zoning officials prior to filing its Zoning Petition, but did meet on February 14, 2018 to discuss pending permit applications and ongoing project-related issues (RR-EFSB-69; Company Brief at 146; Company Reply Brief at 81-82).

3. Position of the Parties

a. Town of Sudbury

Sudbury states that it "is not prepared to support" the individual and comprehensive zoning exemptions Eversource is seeking in this case (Sudbury Brief at 101). Sudbury objects to the lack of "detailed information" on Eversource's final design of the Project (e.g., location of equipment staging areas, parking areas, detailed erosion and sedimentation controls specific to sensitive areas along the Project route, best management practices for stormwater management, etc.) (Sudbury Brief at 101, citing RR-EFSB-81; Exh. SUD-MH-1, at 4). Sudbury opines that were the Project required to proceed through the ZBA, the town would have the opportunity to learn more about the details of the Project, engage in a public dialogue with the Company, and impose reasonable conditions on any zoning relief to address concerns such as buffering, landscaping, and water runoff (Exh. SUD-MH-1, at 3).

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Sudbury expresses concerns relating to the Company's request for exemptions from Sections 3423 and 4200 of the Sudbury Zoning Bylaw (Exh. SUD-MH-1, at 5-7).[175] With respect to Section 3423, Sudbury argues that this provision "prohibits any use from causing a nuisance or hazard to persons by reason of excessive noise generated therefrom," and that construction of the Project along the MBTA Underground Route could result in a significant disturbance for the town's residents, especially where the route travels through a residential area (Exh. SUD-MH-1, at 5). With respect to Section 4200, the Water Resource Protection Overlay District, Sudbury argues that Eversource's Zoning petition does not address important issues that could impact this sensitive area, such as storage of fuel and hazardous materials, use of herbicides, and extent of increased water runoff (Exh. SUD-MH-1, at 7; RR-EFSB-81).[176]

Sudbury also argues that the Company's failure to consult with town zoning officials before filing its Petition is inconsistent with the Siting Board's directive in Russell that applicants not seek a zoning exemption "without first consulting with the municipality" (Sudbury Brief at 100). Sudbury states that the Zoning Petition was filed in April 2017, and the Company did not seek to consult with Sudbury zoning officials until September 2017 (Sudbury Brief at 101). Moreover, Sudbury maintains that the Company's requested zoning relief from the Town of Sudbury should be denied because the Project "does not serve the public convenience and is not consistent with the public interest" (Sudbury Brief at 101).

In its reply brief, Sudbury argues further that Eversource is now seeking certain relief from the Sudbury Zoning Bylaw that was not included in the Company's original Zoning Petition or in the Siting Board's Notice of Adjudication and Notice of Public Comment Hearing (Sudbury Reply Brief at 22-23). According to Sudbury, while the Company's original Zoning

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175 Sudbury initially expressed concerns with Eversource's request for an exemption from Section 2600 of the Sudbury Zoning Bylaw, which limits the height of structures to 35 feet in the Single Residence "A" zoning district (Exh. SUD-MH-1, at 6). However, during evidentiary hearings the town's building inspector and zoning enforcement agent, Mr. Herweck, indicated that the Company's proposed location for its 100-foot-tall shielding mast limited this concern (Tr. 11, at 2060-2062).

176 Sudbury's concerns with potential water-related impacts from construction and operation of the Project are described in Section VI.D.2, above.

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Petition clearly requested an exemption from that portion of the Sudbury performance standards contained in Section 3423 (noise), the Zoning Petition made no reference to the Sudbury performance standards in Sections 3425 (detection of vibration, odor, glare, etc.); 3427 (site development criteria); 3430-3433 (erosion control); 3436 (vegetative cover of hillside areas); or 3440 (excavation of abutting roads), which Sudbury maintains the Company references in its initial brief (Sudbury Reply Brief at 22-23). According to Sudbury, although the Company cites to its response to Exhibit EFSB-Z-19 to support its request for these additional zoning exemptions, the town contends that the Company's response to an information request response during discovery "cannot remedy its failure to include reference to these exemptions" in the Company's initial Zoning Petition (Sudbury Reply Brief at 22-23). In addition, Sudbury notes that the Company's reference to Section 4100 (flood plain overlay district) and 4166 (conditions for filling and excavating in a flood plain overlay district) were identified by the Company for the first time in its initial brief, and cannot be found in either the Company's Initial Petition or in a Company response to discovery (Sudbury Reply Brief at 22-23).

Sudbury argues that the zoning exemption statute, G.L. c. 40A, § 3, expressly requires public notice, as does Section 11(1) of the MAPA (parties must have sufficient notice of the issues "to afford them reasonable opportunity to prepare and present evidence and argument,") and that such notice was not provided in the Siting Board's May 4, 2017 Public Hearing Notice (Sudbury Reply Brief at 23). According to Sudbury, the Siting Board cannot consider additional zoning relief "after the fact" because to do so violates the intervenors' due process rights (Sudbury Reply Brief at 23). Sudbury argues that the Siting Board should, therefore, "strike or otherwise give no consideration" to the Company's additional requests for relief from the Sudbury Zoning Bylaw (Sudbury Reply Brief at 23).

b. Town of Stow

The Town of Stow maintains that the Project "may properly be exempted" from application of the Stow Zoning Bylaw Sections 3.10 and 3.8.1.3, as requested by the Company (Stow Brief at 1). Stow does not object to the Siting Board granting an exemption from Section 3.8.1.3 based on Eversource's argument that "*construction activities* may exceed the Bylaw limit of 3 dBA above ambient" (emphasis added) (Stow Brief at 4). Stow "does not disagree" that the

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Company has met the established legal framework for obtaining the identified individual zoning exemptions (Stow Brief at 3-4).

c. Town of Hudson

The Town of Hudson raised concerns regarding the granting of any exemptions related to water resources, including Section 3.3.10, Watershed Protection District, relating to the Company's potential use of pesticides and soil disturbances within an area with wells providing the supply of water to Hudson (Exh. Hudson-ER-1, at 6; Tr. 11 at 1954-1957; RR-EFSB-76). Hudson noted that although the Hudson ZBA could grant a Special Permit for the use of pesticides in the Watershed Protection District pursuant to Section 3.3.10(V)(4), the ZBA conditions special permits to prohibit such use as a general practice (RR-EFSB-76). Hudson also noted that the Company does not require an exemption for earth disturbance under the zoning bylaws since utilities are granted a specific exemption in the provisions of Section 3.3.10(IV)(12) (RR-EFSB-76). Hudson did not file a brief addressing these issues.[177]

d. Company Position

The Company answered Sudbury's objections concerning its requested individual zoning exemptions stating that the exemptions are needed to avoid delay in construction of a facility which is necessary to meet the regional need for additional energy resources (Company Reply Brief at 81-85). First, with respect to Sudbury's claim that Eversource did not timely consult with Sudbury zoning officials regarding the requested zoning exemptions, the Company maintains that it conducted more than 48 outreach meetings with municipal officials, special interest groups, regulatory agencies and other stakeholders in Sudbury, Marlborough, Stow and Hudson before it filed its Petition (Company Reply Brief at 54, 81, citing Exhs. EV-2, at 1-9 to 1-12, 4-4 to 4-5; EFSB-G-6; EFSB-RS-1; Protect-21; Protect-2-80; Protect-2-118; Tr. 5, at 839).

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177 Christine Nelson, a Hudson resident, opposed the Company's request for zoning exemptions and expressed support for the Town of Sudbury's opposition to the Company's request for zoning relief (Nelson Brief at 2-3). Brian O'Neill, another Hudson resident, also opposed the Company's request for exemptions related to the proximity of the Preferred Route to the Hudson town wells (O'Neill Brief at 2).

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The Company further stated that it deferred zoning discussions with municipal officials in an attempt to address municipal concerns (Company Reply Brief at 82). According to the Company, once the petitions were filed, "it became eminently clear" that Sudbury was opposed to the Project, and the town would not support the Company's request for zoning exemptions (Company Reply Brief at 82). Nevertheless, the Company states that it did request a meeting with Sudbury zoning officials in September 2017 (Company Reply Brief at 82). The Company argues that the town's clearly stated opposition to the Project moots "any hypothetical omission by the Company to meet with Sudbury zoning officials" (Company Reply Brief at 82).

The Company objects to Sudbury's argument that certain Company-requested individual zoning exemptions are not properly before the Siting Board in this case, arguing that none of the Company's requested zoning exemptions were explicitly enumerated in the Public Hearing Notice, nor is it commonplace to do so (Company Reply Brief at 83). The Company maintains that the information it provided in Exhibit EFSB-Z-19, in which the Company identified and requested additional individual zoning exemptions, "constitutes a legally sufficient request for additional exemptions" (Company Reply Brief at 83). The Company argues that the Public Hearing Notice put the public "on notice" that the Company was seeking both individual and comprehensive zoning exemptions pursuant to the provisions of G.L. c. 40A, § 3 (Company Reply Brief at 83). Since a comprehensive zoning exemption would have the effect of exempting the Project from the operation of all applicable provisions of the Sudbury Zoning Bylaw, including the additional requested zoning exemptions identified in Exhibit EFSB-Z-19, the Company contends that the public was on notice of the breath of the Company's request and fully afforded "a reasonable opportunity to prepare and present evidence and argument" (Company Reply Brief at 83).

4. Analysis and Findings

a. Notice of the Company's Requested Exemptions

As a preliminary matter, we address the assertion by the Town of Sudbury that the Company has failed to provide adequate notice of certain of the zoning exemptions it is seeking from the Sudbury Zoning Bylaw.

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The Company seeks exemption from a total of nine individual provisions of the Sudbury Zoning Bylaw, as well as a comprehensive exemption from the bylaw in its entirety. Eversource requested these exemptions at different points in the proceeding. In its Zoning Petition, filed on April 20, 2017, the Company requested four individual exemptions (Sections 2230, 2600, 3423, and 4200). Subsequently, on July 27, 2017 in answer to an Information Request issued by Siting Board staff prior to hearings, Eversource identified an additional four exemptions (Sections 3425, 3427, 3430, and 3440) necessary for the Project. Finally, in its initial brief, filed on March 2, 2018, the Company requested one additional zoning exemption (Section 4100).

The Town of Sudbury objects to the timing of the Company's various requests for zoning relief. Sudbury asserts that the Board should consider only the four exemptions identified in the Company's original Zoning Petition and disregard or strike the remaining requests (Sudbury Reply Brief at 22). Sudbury asserts that, because the original Zoning Petition did not include the five later zoning exemption requests, inadequate notice of these requests was provided to the parties, in violation of the notice requirements in G.L. c. 40A, § 3, and G.L. c. 30A, § 11(1) (Sudbury Reply Brief at 22-23).

The MAPA addresses the notice requirements applicable to state-agency adjudicatory proceedings in the Commonwealth. G.L. c. 30A. Section 11 of the MAPA addresses the question of adequate notice to parties regarding the issues to be determined in an adjudicatory proceeding. Importantly, Section 11 does not require that all issues be identified at the outset of the proceeding. In fact, Section 11 recognizes that this does not, or cannot, always occur, and it sets out the notice provisions that apply when issues are identified later in the proceeding, rather than at the outset. Section 11 provides that:

> parties shall have sufficient notice of the issues involved to afford them reasonable opportunity to prepare and present evidence and argument. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all parties reasonable opportunity to prepare and present evidence and argument regarding the issues.
>
> G.L. c. 30A, § 11(1).

There is no question the parties, including the towns of Sudbury, Hudson, and Stow, had sufficient notice of the Company's initial four zoning exemption requests, as they were set forth

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in the Company's April 20, 2017 Zoning Petition, the filing of which commenced this proceeding. Parties received notice of the next four exemption requests on or about July 27, 2017, when the Company filed its response to Information Request EFSB-Z-19 of the Board's second set of Information Requests. Evidentiary hearings in the proceeding did not begin until October 31, 2017, and they ended on January 24, 2018; briefing was completed March 2018. The parties thus had approximately eight months to address the four additional requests, both during hearings and in briefing. The Siting Board finds that this eight-month period provided sufficient notice to afford the parties a reasonable opportunity to prepare and present evidence and argument regarding these exemptions, as required by G.L. c. 30A, § 11. See also Hopkinton LNG Corporation, D.P.U. 17-144, at 66-69 (2018).

The fifth additional zoning exemption, requested for the first time in the Company's initial brief, is in a different category than the four additional exemptions requested during pre-hearing discovery. The timing of the Company's request for this exemption precluded examination of the request, both by the Board and by the parties, either during discovery or during hearings. Intervenors had an opportunity to comment on the request only in reply briefs two weeks after the Company made the request. Therefore, the Siting Board must determine whether the Company's late exemption request provided "sufficient notice of the issues involved to afford [the parties] reasonable opportunity to prepare and present evidence and argument" consistent with the requirements of G.L. c. 30A, § 11.

The zoning relief requested in the Company's initial brief was for an exemption from a single section of the Sudbury Zoning Bylaw: Section 4100, pertaining to permissible uses and activities in the town's Flood Plain Overlay District. The record shows that a portion of the Project would be located in the Flood Plain District. Section 4100 provides that construction of the Project in the Flood Plain District would require: (1) a use variance, which is not an available form of relief under the Sudbury Zoning Bylaw; or (2) a Special Permit, for which the Project may or may not qualify. Thus, the argument to be made by the parties upon receiving notice of this exemption request was whether, under the Siting Board's standard of review, an exemption from Section 4100 is "required" to construct the Project. It is clear that an exemption from Section 4100 is necessary to construct the Project. As a result, the Company's request for an exemption from Section 4100 constitutes a relatively minor amendment to the Company's

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original Zoning Petition. As such, we find that two weeks was not an unreasonable amount of time for the parties to review Section 4100 and to respond, if they wished to do so, to the Company's request for this final additional zoning exemption.[178]

Accordingly, the Siting Board finds that the notice provided for each of the Company's zoning exemption requests satisfied the requirements of G.L. c. 30A, § 11(1) and G.L. c. 40A, § 3, by providing actual notice with sufficient time for parties to respond.[179] The Board finds further that in this instance there is no prejudice to any party's rights by allowing the Company, in effect, to amend its initial Zoning Petition to include the five exemption requests not originally included in its Zoning Petition. Accordingly, the Siting Board finds that, consistent with G.L. c. 30A, § 11(1), the notice provided by the Company of its all nine of its individual zoning exemption requests was sufficient to afford the parties a reasonable and sufficient opportunity to address each of them.[180] The Siting Board considers the merits of the Company's individual zoning exemption requests below.[181]

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178 We note that the Town of Sudbury did in fact respond to the Company's request for an exemption from Section 4100. See Sudbury Reply Brief at 22-23.

179 The notice provided to the parties regarding the nine requested zoning exemptions also meets the notice requirement in G.L. c. 40A, § 3, as G.L. c. 40A, § 3 simply provides that the notice to be provided is the notice set forth in G.L. c. 40A, § 11.

180 The Board notes that the finding of adequate notice with respect to the Company's request for exemption from Section 4100 of the Sudbury Zoning Bylaw rests largely on the specific facts of this case, in particular the nature of the requested exemption and the unlikely success of an argument that the exemption is not required to allow construction of the Project within the meaning of G.L. c. 40A, § 3. Such a finding, however, may not necessarily result where a late-filed amendment to an initial petition is more substantial or more complex in nature than the Company's single zoning exemption request here. See New York Cellular Geographic Service Area, Inc., D.P.U. 94-44, at 18 (1995) (obligation to identify individual zoning exemptions applicable to a project).

181 One additional note. The Department is not required to identify each and every zoning provision that applies to a particular facility in its grant of a zoning exemption. The SJC has stated that "[t]here is no reason to require the [D]epartment to determine which specific by-laws apply… the [D]epartment can exempt specified uses of specified property from the by-laws and ordinances to the extent applicable. That the land, structure, or use are specified is sufficient." Planning Board of Braintree v. Department of Public Utilities, 420 Mass. 22, 29 (1995).

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b. Individual Exemptions Required

The Company has identified in Tables 13 through 15, above, the individual provisions of the Sudbury, Hudson, and Stow Zoning Bylaws from which it seeks exemptions to minimize delay in the construction and ultimate operation of the Project. The record shows that, without these exemptions, the Company would need to seek numerous variances and special permits. The Siting Board concurs with the Company that the grounds for issuing a variance may be subjective and that variances are difficult to obtain, constitute a disfavored form of relief, and may be overturned on appeal. Consequently, the need to obtain variances may result in an adverse outcome, burdensome requirements, or the potential for significant delay. Similarly, the Siting Board agrees that the discretionary nature of special permits and ZBA approval, the potential for an adverse result or burdensome conditions, and the delay that would result from a potential appeal warrant exemption from the provisions of the towns' bylaws requiring special permits. Furthermore, the Company has demonstrated that exemptions from: (1) Sections 5.2 and 3.3.10 of the Hudson Zoning Bylaw, which would otherwise prohibit the construction and operation of the Project in the town's Residential District and Water Protection District; and (2) Section 3.10 of the Town of Stow Zoning Bylaw, which effectively allows a public service corporation use in the Residential District only upon the grant of an exemption by the Department, are necessary for construction of the Project. As such, the Siting Board concludes that grant of the individual exemptions requested by the Company is warranted subject to the following conditions and exceptions.

First, as noted in the environmental analysis section above, Project construction in close proximity to residential areas would have noise impacts and requires certain limitations. Accordingly, while the Siting Board grants the Company's request for exemption from Section 3423 of the Sudbury Zoning Bylaw (and the construction hours prescribed therein), weekday construction in residential areas within the town shall be limited to Monday through Friday between the hours of 7:00 a.m. to 6:00 p.m., and Saturday construction in the town shall be limited to large equipment deliveries and quiet assembly and testing activities at the Sudbury Substation. This limitation is subject to the parameters described in Conditions J and K, below.

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Second, the Board has declined to grant exemptions from zoning restrictions related to the operation, as opposed to the construction, of a proposed facility. The Siting Board is concerned that granting such exemptions would preclude the municipality from exercising its authority to limit well-defined nuisances such as operational fumes, odors and smoke, which the Board views as an unwarranted incursion into municipal home rule authority. See; Woburn-Wakefield at 147-148; Walpole-Holbrook at 99; Woburn Substation at 36. The Siting Board grants the Company's request for an exemption from Section 3425 of the Sudbury Zoning Bylaw and Section 3.8.1.3 of the Stow Zoning Bylaw only as the request relates to the construction of the Project. Therefore, to the extent that Section 3425 of the Sudbury Zoning Bylaw (pertaining to vibration, odor, glare and other potential environmental impacts) and/or Section 3.8.1.3 of the Stow Zoning Bylaw (pertaining to noise) applies to operation, rather than construction, of the Project, the Siting Board denies the Company's request for exemption from that Section.

Third, Section 3.3.10 of the Hudson Zoning Bylaw requires a special permit for non-agricultural pesticide (including herbicide) use in the Watershed Protection District. As noted in Section VI.D.2, above, in this instance the Siting Board directed Eversource to utilize mechanical vegetation management along the MBTA ROW. Consistent with that determination, and the nature of the Company's access road, Siting Board declines to grant an exemption to the Company for the use of pesticides in the Hudson Watershed Protection District.

c. Municipal Consultation

The Siting Board encourages zoning exemption applicants to consult with local officials, and in some circumstances, to apply for local zoning permits, prior to seeking zoning exemptions from the Siting Board under G.L. c. 40A, § 3. In this case, the Company met with numerous stakeholders, including municipal officials of all three towns, regarding route selection and design options in multiple meetings. The Company notes that during the period of these outreach meetings the Company deferred zoning discussions with municipal officials of all three towns in favor of attempting to satisfy concerns about route selection and design options with other town officials and therefore delayed meetings otherwise planned with town zoning officials.

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The record reflects the Company's efforts to meet with Sudbury's zoning officials, although such efforts were ultimately unsuccessful. It is not unreasonable for the Company to have concluded from the entirety of its earlier outreach meetings, as well as its inability to secure a specific zoning-related meeting, that Sudbury was clearly opposed to the Project and would not support the Company's request for zoning exemptions. See NSTAR Electric Company, EFSB 10-2/D.P.U. 10-131/10-132, at 107-108 (2012) (applying for local zoning permits in advance of filing a zoning exemption petition is not required where to do so would likely be futile, or where the Company has met the spirit and intent of Russell by engaging in outreach with the affected municipalities). Given these circumstances, the Siting Board is not persuaded by Sudbury's argument that the Company's requested zoning exemptions should be denied because the Company did not consult with Sudbury zoning officials regarding its request for zoning exemptions prior to the Company's filing of its Zoning Petition. See East Eagle at 160 (the Russell standard is met where an applicant demonstrates that it made a good faith effort to consult with municipal authorities regarding a proposed project). Based on the record in this proceeding, the Siting Board finds that the Company has engaged in good-faith consultations with Sudbury, Hudson, and Stow regarding the Project, consistent with Russell.

5. Conclusion on Request for Individual Zoning Exemptions

The Siting Board has found above that: (1) the Company is a public service corporation; (2) the proposed use is reasonably necessary for the public convenience or welfare; and (3) the specifically named zoning exemptions set forth in Tables 13 through 15 are required for construction of the Project, within the meaning of G.L. c. 40A, § 3, with the exception of Section 3425 of the Sudbury Zoning Bylaw and Section 3.8.1.3 of the Stow Zoning Bylaw (construction only), and the provisions of Section 3.3.10 of the Hudson Zoning Bylaw relating to pesticide use. Additionally, we find that the Company engaged in good faith consultation with Sudbury, Hudson, and Stow. Accordingly, the Siting Board grants the Company's request for the individual zoning exemptions listed above in Tables 13 through 15, subject to the exclusions and conditions set forth in this Decision.

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IX. COMPREHENSIVE ZONING EXEMPTIONS

A. Standard of Review

The Company requests comprehensive zoning exemptions from the operation of the Sudbury, Hudson, and Stow Zoning Bylaws (Exh. EV-3, at 23; Company Brief at 151). The Siting Board grants such requests on a case-by-case basis where the applicant demonstrates that issuance of a comprehensive exemption could avoid substantial public harm by serving to prevent a delay in the construction and operation of the proposed use. Vineyard Wind at 153; Woburn-Wakefield at 150; East Eagle at 161-162.

In order to make a determination regarding substantial public harm, the Department and the Siting Board have articulated relevant factors, including, but not limited to, whether: (1) the proposed project contributes to a reliable energy supply for the Commonwealth; (2) the project is time sensitive; (3) the project involves multiple municipalities that could have conflicting zoning provisions that might hinder the uniform development of a large project spanning these communities; (4) the proponent of the project has actively engaged the communities and responsible officials to discuss the applicability of local zoning provisions to the project and any local concerns; and (5) the affected communities do not oppose the issuance of the comprehensive exemption. Vineyard Wind at 153; Woburn Wakefield at 150; East Eagle at 161-162.

B. Positions of the Parties

The Company argues that a comprehensive zoning exemption is necessary in this case because the Project is necessary for system reliability and because the Project is needed imminently (i.e., the reliability concerns identified arose prior to 2013) (Company Brief at 153, citing Exh. EV-3, at 25). According to the Company, a comprehensive zoning exemption is necessary for the Project because zoning bylaws and ordinances "are rarely written with unique energy infrastructure facilities in mind," leading to the absence of clearly defined and specific regulation of electric infrastructure (Company Brief at 153 n.97). Moreover, vague and subjective terms and provisions within zoning bylaws result in an imprecise application of the zoning provisions to electric utility infrastructure projects (Company Brief at 153 n.97). In

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addition, the Company argues that a comprehensive zoning exemption would exempt the Project from future zoning enactments that might jeopardize the Project (Company Brief at 152). Therefore, although the Company asserts that it interprets the provisions of zoning bylaws conservatively, in the hope that it is requesting individual zoning exemptions "for all of the provisions that could conceivably be said to apply to a project," the Company maintains that the grant of a comprehensive zoning exemption would remove any reasonable doubt as to the ability of the Project to move forward without violating any terms of the relevant zoning bylaws (Company Brief at 153 n.97, citing Exh. EV-3, at 25).

Sudbury states that it "is not prepared to support" the Company's request for a comprehensive zoning exemption (Sudbury Brief at 101). Sudbury indicates that it lacks detailed information on the Company's final design and construction of the Project (Sudbury Brief at 101, citing RR-EFSB-81). In addition, Sudbury asserts that the Company has failed to demonstrate that the Project is consistent with the public interest (Sudbury Brief at 101).

Stow states that it does not believe that a comprehensive zoning exemption from the Stow Zoning Bylaw would be necessary for the Project (Stow Brief at 1-2). Stow rejects the Company's argument that such comprehensive exemption is needed to protect the Project from any *future* zoning enactment that "has the potential to jeopardize the Project" (Stow Brief at 2, 4), citing Company's Brief at 152). Stow asserts that if the Project along the MBTA Underground Route is approved by the Siting Board (which is the route Stow supports as the better option for the Project), it is highly unlikely that any future zoning enactment would have such potential, and accordingly that such comprehensive exemption is unnecessary (Stow Brief at 4).

C. Analysis and Findings on Comprehensive Zoning Exemption

General Laws c. 40A, § 3 provides the Department with the authority to ensure that local interests do not prevent construction of needed facilities that serve the public interest. "The zoning exemption available under G.L. c. 40A, § 3, is intended to assure utilities' ability to carry out their obligation to serve the public when this duty conflicts with local interests." Planning Bd. of Braintree v. Department of Public Utilities, 420 Mass. 22, 27 (1995) ("Braintree").

Compared to the grant of individual zoning exemptions, which is tailored to meet the

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construction requirements of a particular project, the grant of a comprehensive exemption serves to nullify a municipality's zoning code in its entirety with respect to the project under review. Thus, compared to the grant of individual zoning exemptions, a comprehensive zoning exemption constitutes a broader incursion upon municipal home rule authority. In the absence of a showing that substantial public harm may be avoided by granting a comprehensive exemption, the granting of such extraordinary relief is not justified. NSTAR Electric Company, D.P.U. 13-126/13-127, at 38-39 (2014) ; NSTAR Electric Company, D.P.U. 11-80, at 45 (2012); NSTAR Electric Company Waltham, D.P.U. 08-1, at 36-37 (2009).

Department and Siting Board cases that have considered and granted comprehensive exemptions have typically involved projects that contribute to a reliable supply of energy, were time-sensitive, and often, but not necessarily, dealt with the zoning ordinances of multiple municipalities where conflicting provisions or interpretations could arise. See e.g., Woburn-Wakefield at 150-151; Walpole-Holbrook at 98-100.

As discussed in Section III above, the record in this proceeding shows that the Project is needed to maintain the reliability of the regional transmission grid and to address pre-existing violations of planning standards and criteria. Thus, construction of the Project both contributes to a reliable energy supply and is time-sensitive. The record also shows that the Project spans multiple municipalities, including the towns of Sudbury, Hudson, and Stow, and the City of Marlborough. In addition, the Siting Board found, in Section VIII, above, that the Company engaged in good faith consultations with numerous municipal officials concerning the Project, notwithstanding the fact that the towns of Sudbury and Stow have objected to the grant of a comprehensive zoning exemption. In Sections VI and XIII, the Siting Board has incorporated specific conditions with regard to the construction and operation of the Project, which seek to protect local interests with regard to environmental impacts. Under these circumstances, the Siting Board finds that delay in the completion of the Project would likely cause substantial public harm and that the grant of comprehensive exemptions from the zoning bylaws of the towns of Sudbury, Hudson, and Stow is warranted.

In granting this relief, however, the Siting Board notes that the Company must inform the Siting Board of any changes other than minor variations so that the Board may decide whether to inquire further into a particular issue. See Section XIII, below. This condition ensures that all

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intervenors and interested persons receive notice of any potential modification proposed by the Company related to the construction and operation of the Project and have the opportunity to comment on the potential impact of such modifications on local interests. The imposition of this standard protects local interests and should assist in resolving any potential conflicts between local needs and the interest of the general public in the timely completion of construction and operation of an energy facility needed for reliability purposes.

Further, even when a comprehensive zoning exemption is granted, one class of zoning ordinances or bylaws is often excluded: zoning restrictions relating to well-defined environmental aspects of the ongoing operation of the proposed project (as compared to the construction phase of a project). Woburn-Wakefield at 147-148; Walpole-Holbrook at 99; Woburn Substation at 36. As discussed in Section VIII, above, the Siting Board recognizes that granting such exemptions could prevent a city or town from exercising reasonable control over the on-going operation of a project. See Woburn Substation at 36.

In this case, in addition to the individual performance standards exemptions identified above, Sudbury Zoning Bylaw Section 3421 (water quality), Section 3422 (air quality), Section 3424 (solid waste storage), and Section 3426 (inflammables and explosives) set forth the town's authority to limit activities associated with environmental irritants and hazards. Section 5.4.2 of the Hudson Zoning Bylaw (Uses Specifically Prohibited) sets forth Hudson's authority to specifically prohibit any use that may produce a nuisance or hazard from fire, toxic or noxious fumes, odors, etc. The Town of Hudson also specifically prohibits uses that contaminate ground water, pollution of any stream or otherwise pollute the atmosphere in Hudson. Similarly, Sections 3.8.1.2 and 3.8.1.3 of the Stow Zoning Bylaws regulate odor, dust, and smoke, and limit noise in Stow. Consequently, including the above-referenced zoning provisions in the grant of a comprehensive exemption would preclude the towns from exercising reasonable local control over the on-going operations of the Project with respect to these environmental impacts. Accordingly, a comprehensive exemption is granted from these provisions only as they relate to the construction, as distinguished from operation, of the Project.

Accordingly, we grant a comprehensive zoning exemption from the Sudbury, Hudson, and Stow Zoning Bylaws, with the exception of: (1) Sections 3421, 3422, 3424, 3425, and 3426 of the Sudbury Zoning Bylaw; (2) Section 5.4.2 of the Hudson Zoning Bylaw; and (3) Sections

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3.3.1.2 and 3.3.1.3 of the Stow Zoning Bylaw (these zoning exemptions are limited to the construction, not ongoing operation, of the Project), and Section 3.3.10 of the Hudson Zoning Bylaw (relating to both construction and operation of the Project). The comprehensive zoning exemption shall apply to the Project specifically as it has been described, approved, and conditioned herein.

X. ANALYSIS UNDER G.L. C. 164, § 72

A. Standard of Review

General Laws, c. 164, § 72 requires, in relevant part, that an electric company seeking approval to construct a transmission line must file with the Department a petition for:

> authority to construct and use … a line for the transmission of electricity for distribution in some definite area or for supplying electricity to itself or to another electric Company or to a municipal lighting plant for distribution and sale … and shall represent that such line will or does serve the public convenience and is consistent with the public interest .... The [D]epartment, after notice and a public hearing in one or more of the towns affected, may determine that said line is necessary for the purpose alleged, and will serve the public convenience and is consistent with the public interest.[182]

The Department, in making a determination under G.L. c. 164, § 72, considers all aspects of the public interest. Boston Edison Company v. Town of Sudbury, 356 Mass. 406, 419 (1969). Among other things, Section 72 permits the Department to prescribe reasonable conditions for the protection of the public safety. Id. at 419-420.

In evaluating petitions filed under G.L. c. 164, § 72, the Department examines: (1) the need for, or public benefits of, the present or proposed use; (2) the environmental impacts or any other impacts of the present or proposed use; and (3) the present or proposed use and any alternatives identified. Needham-West Roxbury at 77-78: Woburn-Wakefield at 152; East Eagle at 164. The Department then balances the interests of the general public against the local

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182 Pursuant to G.L. c. 164, § 72, the electric company must file with its petition a general description of the transmission line, a map or plan showing its general location, an estimate showing in reasonable detail the cost of the line, and such additional maps and information as the Department requires.

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interests and determines whether the line is necessary for the purpose alleged and will serve the public convenience and is consistent with the public interest. Needham-West Roxbury at 77-78; Woburn-Wakefield at 152; East Eagle at 164.

B. Positions of the Parties

Protect Sudbury asserts that, under certain circumstances, "transmission lines generally do impact property values" and that "the Project would likely have such impacts" (PS Brief at 48, citing Exh. Protect-C, D, and E; Tr. 12, at 2109-2114). Protect Sudbury submitted three Massachusetts real estate listings (Multiple Listing Service, or "MLS" listings) for properties in the Town of Sudbury that referenced the potential for the Eversource Project (Exh. Protect-C, D, and E; Tr. 12, at 2109-2114). Protect Sudbury implied that these MLS listings demonstrated that properties in the vicinity of the Project had been removed from the market or had sold for less than the asking price (Exh. Protect-C, D, and E; Tr. 12, at 2109-2114).

Contrary to Protect Sudbury, Eversource argues that construction of the Project as proposed would not result in any detrimental effects to residential property values (Company Brief at 155, citing Exh. EV-JAC-1, at 4-5; Tr. 12, at 2127-2130). According to the Company, studies performed concerning other high-voltage transmission facilities have found no statistically significant effects on the market value of residential properties unless: (1) there was an easement on the property; (2) the residence was in very close proximity to the ROW (an average of 35 feet); and (3) there were unobstructed views of transmission structures (Exh. EV-JAC-1, at 3; Tr. 12, at 2085-2087). Eversource questioned the evidentiary value of the MLS listings provided by Protect Sudbury, indicating that listing prices vary with respect to sale prices for many reasons and that there is no basis for attributing differences for these three properties to the Project (Tr. 12, at 2130).

C. Analysis and Findings

In Sections III through VI, above, the Siting Board examined: (1) the need for, or public benefits of, the proposed Project; (2) the environmental impacts of the proposed Project; and (3) any identified alternatives. The Siting Board concluded that the Project along the MBTA

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Underground Route would achieve an appropriate balance among conflicting environmental concerns as well as among environmental impacts, reliability, and cost.

As noted in Section VI.D.1, above, while impacts to property values are outside of the scope of the Siting Board's review under G.L. c. 164, § 69J, consideration of such impacts is appropriate in the Board's review of the general public interest under G.L. c. 164, § 72 and G.L. c. 40A, § 3. See Presiding Officer Scoping Order Concerning Issue of Property Values, September 15, 2017. Based on the record in this proceeding, the Siting Board concludes that construction of the Project along the MBTA Underground Route is unlikely to have a significant detrimental effect on residential property values. The Siting Board does not view the three MLS listings provided by Protect Sudbury as a sufficient basis for identifying a real or persistent trend in real estate values in the Town of Sudbury, nor for establishing a causal relationship between residential property values and the Project. Rather, the Siting Board accepts the testimony of Mr. Chalmers – supported by peer-reviewed research – that because the Project along the MBTA Underground Route does not involve residential properties with (1) easements on the property; (2) residences in very close proximity to the ROW; and (3) unobstructed views of transmission structures, negative impacts to property values are unlikely.

Accordingly, with implementation of the specified mitigation measures proposed by the Company and the conditions set forth by the Siting Board in Section XIII, below, the Siting Board finds pursuant to G.L. c. 164, § 72, that the Project is necessary for the purpose alleged, will serve the public convenience, and is consistent with the public interest. Thus, the Siting Board approves the Section 72 Petition.

XI. SECTION 61 FINDINGS

MEPA provides that "[a]ny determination made by an agency of the Commonwealth shall include a finding describing the environmental impact, if any, of the Project and a finding that all feasible measures have been taken to avoid or minimize said impact" ("Section 61 Findings"). G.L. c. 30, § 61. Pursuant to 301 CMR 11.01(3), Section 61 Findings are necessary when an EIR is submitted to the Secretary of Energy and Environmental Affairs and Section 61 Findings should be based on such EIR. Where an EIR is not required, Section 61 Findings are not necessary. 301 CMR 11.01(4).

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The record shows that Eversource filed an ENF for the Project with MEPA on May 15, 2017, and a correcting and clarifying ENF, dated June 12, 2017 (Exh. EFSB-G-1). The Secretary issued a Certificate on the ENF on July 14, 2017, requiring the Company to file a DEIR and an FEIR (Exh. EFSB-G-1(3)).[183] Therefore a finding under G.L. c. 30, § 61 is necessary for the Company's Zoning and Section 72 Petitions.[184] The Company submitted its DEIR on October 27, 2017 (Exh. EV-16) and the Secretary issued a Certificate on the DEIR on December 15, 2017 (Exh. EFSB-G-2(S3)(2)). The Company submitted its FEIR on July 2, 2018 (Exh. EV-18).[185] The Secretary issued a Certificate on the FEIR on September 14, 2018, determining that the FEIR adequately and properly complied with MEPA and its implementing regulations (Exh. EFSB-G-3(S1)(2))).

The Siting Board recognizes the Commonwealth's policies relating to GHG emissions, including G.L. c. 30, § 61 and the MEPA Greenhouse Gas Emission Policy and Protocol. The Siting Board notes that the transmission line portion of the Project would have minimal GHG emissions as it is an underground transmission line and would not have direct emissions from a

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183 The July 14, 2017 Certificate states that the Secretary determined that the Project "is not subject to the requirement to file a Mandatory Environmental Impact Report (EIR)." However, the Certificate further states: "[t]he Proponent intends to proceed through the MEPA review process on a voluntary basis and has requested that I issue a Scope for a Draft EIR (DEIR)" (Exh. EFSB-G-1-1(S-2)). Thus, the Project did, in fact, undergo MEPA review and required both a DEIR and an FEIR (Exh. EFSB-G-1-1(S-2)). See also DEIR Certificate, which states: "MEPA jurisdiction for this project extends to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment as defined in the MEPA regulations" (Exh. EFSB-G-2(S3)(2) at 5 of 77).

184 The Siting Board generally is not required to make a G.L. c. 30, § 61 finding in a G.L. c. 164, § 69J proceeding, as the Siting Board is exempt by statute from MEPA. G.L. c. 164, § 69I. However, the Board must comply with MEPA with respect to review of the Company's Section 40A, § 3, and § 72 Petitions, which are both Department statutes, and not exempt from MEPA. Accordingly, in approving the Company's Section 40A and 72 Petitions in this case, the Siting Board has conducted the review and made the findings required by MEPA.

185 The Company notified the Siting Board that in order to comply with the circulation requirements identified at 301 CMR 11.16(3)(b), on July 19, 2018, the Company withdrew its FEIR and subsequently resubmitted it for inclusion in the August 8, 2018 Environmental Monitor. See July 19, 2018 letter.

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stationary source or indirect emissions from energy consumption. The new 115 kV circuit breakers at the Sudbury Substation will require the use of SF_6 gas, a potent GHG (Exh. EFSB-G-3(S1)(2) at 11). The Secretary's Certificate on the FEIR notes that the annual emissions rate for these circuit breakers of 0.1 percent is the lowest commercially available, and that the potential for SF_6 emissions at the substation is minimal (Exh. EFSB-G-3(S1)(2) at 11). Further, the Sudbury Substation currently has the capability to interconnect distributed renewable energy resources and there are no changes that could be implemented in conjunction with the Project to enhance this capability (Exh. EFSB-G-3(S1)(2) at 11-12).

In Section VI, above, the Siting Board conducted a comprehensive analysis of the environmental impacts of the proposed Project. Further, the record contains, and the Siting Board has reviewed, the MEPA documents submitted by the Company, including the ENF, DEIR, and FEIR for the Project, as well as public comments on the DEIR and FEIR (Exhs. EFSB-G-1; EFSB-G-1-1(S-2); EFSB-G-1(S-1); EFSB-G-2(S3); EFSB-G-3(S1); EV-16, and EV-18). In accordance with the requirements of MEPA, the Siting Board has: reviewed the FEIR for the Project; evaluated, and determined the impact of the Project on the natural environment; and specified in detail in this Decision measures to be taken by Eversource to avoid damage to the environment or, to the extent damage to the environment cannot be avoided, to minimize and mitigate damage to the environment to the maximum extent practicable. G.L. c. 30, § 61. The Siting Board notes that the Secretary has determined that the FEIR for the Project adequately and properly complies with MEPA (Exh. EFSB-G-3(S1)(2)). Accordingly, the Siting Board finds that all feasible measures have been taken to avoid or minimize the environmental impacts of the proposed Project. See G.L. c. 30, § 61; 301 CMR 11.2(5).

XII. RULING ON MOTION TO REPOEN RECORD AND HEARING

A. Procedural Background

On June 13, 2019, the Town of Sudbury filed a motion requesting that the Siting Board reopen the record and hearing in this proceeding to admit into evidence: (1) current load and EE forecast data from ISO-NE; (2) current MassDOER solar PV development data; and (3) new information relating to NTAs (Sudbury Motion at 1). Sudbury also filed a memorandum in support of its motion and an affidavit of Paul L. Chernick, and requested that the Siting Board

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allow for limited additional discovery, cross-examination, or rebuttal with respect to such evidence (Sudbury Motion at 1).

On July 12, 2019 Protect Sudbury, HLPD, and the Company filed responses to Sudbury's Motion. The Company's response included two affidavits in support of its opposition to the Sudbury Motion: (1) a joint affidavit of Robert D. Andrew and Elizabeth Leonard; and (2) an affidavit of Julia Frayer. On July 26, 2019, Sudbury filed a reply to the Eversource Opposition, which included a second affidavit of Mr. Chernick.

B. Standard of Review

The Board's procedural regulations permit the re-opening of a completed adjudicatory hearing or record only for good cause, and only with respect to evidence that was unavailable at the time of hearing. Specifically, a party seeking to reopen a proceeding must: (1) explain the nature and relevance of the evidence it seeks to present; (2) explain why the evidence was unavailable while the hearing was still open; and (3) demonstrate clearly that good cause exists for re-opening. 980 CMR 1.09 (1). To demonstrate good cause clearly, a party must show that the new evidence, if allowed into the record, would be likely to have a significant impact on the Siting Board's decision in the proceeding. Cape Wind Associates, LLC and Commonwealth Electric Company d/b/a NSTAR Electric Company, EFSB 02-2/D.T.E. 02-53, Hearing Officer Ruling on Motion to Reopen (March 21, 2005) ("Cape Wind Ruling on Re-Opening"); in accord, Alliance to Protect Nantucket Sound v. Department of Public Utilities, 461 Mass. 190, 194-195 (2011) ("Alliance"); Box Pond. See also NSTAR Electric Company d/b/a Eversource Energy, EFSB 16-02/D.P.U. 16-77, Presiding Officer Ruling on Motion to Re-Open Evidentiary Hearings (April 13, 2018); NSTAR Electric Company d/b/a Eversource Energy, EFSB 14-04/D.P.U. 14-153/14-154, Presiding Officer Ruling on Four Post-Hearing Evidentiary Motions (November 8, 2017).

Whether to re-open a completed adjudicatory hearing is, in the first instance, a matter of administrative agency discretion. Alliance, 461 Mass. at 190, 193-194; Box Pond, 435 Mass. at 408, 420. For a number of reasons, including considerations of due process, efficiency, and finality, an agency's discretion to re-open a completed hearing is to be exercised sparingly, and for compelling reasons only. See Alliance, 461 Mass. at 190, 193-195. This is why, in addition

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to demonstrating unavailability and relevance, a party seeking to re-open the record in a Siting Board proceeding for the purpose of admitting new evidence must also demonstrate good cause, by showing that the evidence, if admitted, would be likely to have a significant impact on the Siting Board's decision in the proceeding. See 980 CMR 1.09(1); Cape Wind Ruling on Re-Opening at 12-14; Alliance, 461 Mass. at 190, 194-195.

C. Sudbury Motion

In the Sudbury Motion and supporting documentation, Sudbury argues that this additional evidence is necessary for the Siting Board's review of the Project because:

- the load and EE forecast used in the proceeding is stale; more recent forecasts are available showing a significant decrease in electricity demand and should be considered by the Siting Board;
- a revised needs assessment is required given the downward trend in ISO-NE's load forecasts;
- MassDOER's Solar Carve-Out II Program ("SREC II") and Solar Massachusetts Renewable Target ("SMART") Program solar PV information is necessary for the Siting Board's review of the solar PV/storage alternative proposed by the town;
- Eversource should revise its NTA analysis to consider whether the minimum injection requirement has fallen further and whether solar PV development paired with energy storage is a feasible NTA; and
- additional information on other feasible NTA solutions, which was not available during evidentiary hearings, should be considered by the Siting Board.

(Sudbury Motion at 1-2; Sudbury Memorandum at 3-13).

Sudbury argues that good cause exists to reopen hearings based on the reasons above (Sudbury Motion at 1; Sudbury Memorandum at 1). Sudbury cites to the passage of time and the availability of current information, and notes that the information it seeks to admit was not available until after the close of hearings (Sudbury Memorandum at 3-4). According to Sudbury, the information is central to the Siting Board's findings on Project need and alternative approaches to satisfy that need (Sudbury Memorandum at 3). Sudbury contends that the information will show material changes to forecasts relied upon by the Company and therefore will have a significant impact on the Siting Board's determinations in this proceeding (Sudbury Memorandum at 8-9).

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D. Position of the Parties

1. Protect Sudbury

Protect Sudbury supports the Sudbury Motion, arguing that the town had clearly demonstrated that critical assumptions relied upon by the Company have significantly and materially changed since the close of hearings (PS Support at 1-3). Specifically, Protect Sudbury identifies fundamental and important changes in forecast data, solar capacity, and NTAs (PS Support at 1-3). Protect Sudbury seconds the town's position that the Siting Board has the authority to reopen the case and asserts that "it is beyond question that Chernick's [June 13] Affidavit constitutes the material evidence required to demonstrate good cause" (PS Support at 3 n.1). Protect Sudbury argues that the Siting Board should: (1) consider the information presented in the Chernick June 13 Affidavit; (2) review Eversource's forecasts and assumptions; and (3) assess growth in distributed generation capacity, particularly solar PV and battery storage, and active demand technologies (PS Support at 2-3).

2. HLPD

HLPD opposes the Sudbury Motion, requesting that the Siting Board deny the motion and issue a Final Decision as soon as possible (HLPD Opposition at 1). HLPD notes that Eversource's Petition was filed on April 20, 2017, and that briefing in this proceeding was completed on March 30, 2018 (HLPD Opposition at 1). HLPD submits that there has been more than sufficient time for the Siting Board and parties to ask questions, submit evidence, and make arguments with respect to every issue in this case (HLPD Opposition at 1-2). HLPD argues that the Siting Board process is not a moving target where every new piece of information requires that the record and/or hearings be re-opened, and states that it is not uncommon for ISO-NE to issue new forecasts while the Siting Board is considering evidence and preparing a Tentative Decision (HLPD Opposition at 2).

3. The Company

Eversource objects to the Sudbury Motion, arguing that the town has failed to demonstrate that the new information provided by way of the motion, if allowed into the record,

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is likely to significantly affect the Siting Board's Final Decision (Eversource Opposition at 2). Accordingly, the Company requests that the Sudbury Motion be denied (Eversource Opposition at 2, 10).

In response to the town's assertion that use of the 2018 and 2019 CELT forecasts may obviate the need for the Project, the Company reports that it updated its needs analysis for the year 2023 using the 2019 CELT forecast and that this analysis shows a clear and continuing need for the Project (Eversource Opposition at 4-5).[186] While the Company agrees with the town that load levels predicted for the year 2023 in the 2019 CELT forecast are lower than those predicted in the 2016 CELT, Eversource argues that the thermal overloads, low voltage violations, and voltage collapse issues identified in the Company's Petition and referenced during the evidentiary hearings remain (Eversource Opposition at 5; Andrew/Leonard Affidavit at 1-5). Specifically, the Company states that it identified post-contingency thermal overloads as severe as 164 percent of LTE (or 158 percent of STE), post-contingency voltages as low as 0.75 per unit, and the potential for a voltage collapse that would interrupt the supply of power to all electric customers in the Marlborough Subarea (Eversource Opposition at 5; Andrew/Leonard Affidavit at 3-5). As such, the Company argues that the information Sudbury seeks to admit as evidence does not affect the Company's demonstration of need based on existing record evidence, nor would it significantly affect the Siting Board's conclusions on need (Eversource Opposition at 6).

Eversource reports that, prompted by the Sudbury Motion, it also prepared an update to its original analysis of an NTA solution to the identified need, including updated injection amounts and locations (Eversource Opposition at 6). Using the 2019 CELT forecast, the Company projected that approximately 80 MW of effective capacity (50 MW connected at the

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186 Eversource maintains that Sudbury bears the burden of proof to show it has met the Siting Board's good cause standard (Eversource Opposition at 2). Furthermore, Eversource states that the information provided in the Eversource Opposition and accompanying affidavits is not intended for admission into the evidentiary record, but rather is provided in response to the factual statements made in the Sudbury Motion and its attached documents, and is intended solely to demonstrate that the town has not met its burden to show good cause why the record and hearing should be reopened (Eversource Opposition at 2 n.1).

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West Framingham Substation and 30 MW at the Hudson or Northborough Road Substations) would be required to address the revised need for local resources; this is a reduction of approximately 35 MW from the injection requirement identified in the evidentiary record (Eversource Opposition at 6-7; Andrew/Leonard Affidavit at 6).[187] Eversource argues that any NTA of this magnitude would still be infeasible and/or higher cost than the Project (Eversource Opposition at 7-10). For example, Eversource submits that to address the need for the Project with EE resources, net peak load in the Marlborough Subarea would need to be reduced by 22 percent (Eversource Opposition at 7). Eversource argues that this level of EE savings is significantly different in scope and scale from any existing Eversource program and continues to be far in excess of any peak load reductions achieved by the Company or other transmission operators (Eversource Opposition at 7; Andrew/Leonard Affidavit at 6-7).

Eversource reports that a combined solar PV and battery storage solution also remains infeasible and not cost-effective under its updated analysis (Eversource Opposition at 8-9). According to the Company, even under the revised injection requirement and using updated cost and market information, such a solution would face significant implementation obstacles and have a yearly cost of approximately four times the levelized cost of the Project (Eversource Opposition at 8-9). Eversource states that the MassDOER information on solar PV developments raised in the Sudbury Motion does not alter this conclusion (Eversource Opposition at 8-9). Overall, Eversource argues that its updated analysis confirms the abundant record evidence that the Project is the least-cost alternative to resolve the identified need (Eversource Opposition at 10).

4. Sudbury Reply

Sudbury takes exception to the factual representations made in the Eversource Opposition, arguing that the information raises disputes as to material issues of fact, and that, absent inclusion of the information in the record, there is no mechanism in the Siting Board's

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187 Eversource states that a total injection of 80 MW at the Hudson Substation would also resolve the identified need (Andrew/Leonard Affidavit at 6). The injection requirement would increase to 85 MW if all of the resources were to connect to the Northborough Road Substation (Andrew/Leonard Affidavit at 6).

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procedures and prior decisions, nor in cognate law, for the Board to rely on the Company's factual assertions when determining whether there is good cause to reopen the record and hearing (Sudbury Reply at 2). Furthermore, Sudbury argues that the new analysis undertaken by the Company is untested, inconsistent with the underlying record, and not publicly available (Sudbury Reply at 2-3). Sudbury submits that Siting Board cannot rely on the factual assertions made by the Company without further process regarding such information (e.g., limited additional discovery, cross-examination and/or rebuttal) (Sudbury Reply at 3).

Without accepting the validity of the Eversource's updated analysis, Sudbury argues that the information presented shows a decrease of six violations in six years and that if this trend were to continue all violations could be resolved by 2025 (Sudbury Reply at 3). The town further argues that the lower NTA injection requirement cited by the Company provides clear support for Sudbury's request to update the record with current load and EE forecast data, and asserts that, because only 80 MW of effective capacity is now necessary, load rejection would be an acceptable alternative to the Project (Sudbury Reply at 4; Chernick July 26 Affidavit at 4).

Finally, using the Company's revised injection requirement, Sudbury describes a combination solar PV and storage project (250 MW solar PV and 308 MWh storage, intended to be used over a seven-hour period) as an alternative to the Project (Sudbury Reply at 5; Chernick July 26 Affidavit at 5). Sudbury argues that reopening the record would allow the Siting Board to properly evaluate a storage project as an NTA, in order to determine whether the falling cost of storage, the non-transmission benefits of storage, and the Commonwealth's goals for developing storage makes this NTA superior to the Project (Sudbury Reply at 5).

E. Analysis and Findings on Sudbury Motion

Administrative agencies have broad discretion over procedural matters before them. See Zachs v. Department of Public Utilities, 406 Mass. 217, 227 (1989). This is especially the case when the ruling concerns whether to reopen a proceeding or an administrative record. See Brockton Power Co., LLC v. Energy Facilities Siting Board, 469 Mass. 215, 219 (2014); Alliance II, 461 Mass. at 190; Box Pond, 435 Mass. at 420. In order for Sudbury to prevail on a motion to reopen the record, it must demonstrate clearly that good cause exists to reopen. 980 CMR 1.09(1). The burden is on Sudbury, and the Siting Board's regulations and standard of

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review reflect this heavy burden. As discussed in Section III, above, the Siting Board found that there is a current need to address reliability criteria and planning standard violations in the Marlborough Subarea. These violations were found under both pre-existing and forecast summer peak load conditions and are so severe as to result in post-contingency thermal overloads well in excess of the LTE and STE ratings of existing transmission facilities, and the potential for an area-wide outage.

Parties agree that ISO-NE's most recent CELT forecast shows a lower level of electrical demand in year 2023 than previously predicted.[188,189] The significance of this decline to the need for the Project, however, is under dispute. The Town of Sudbury and Protect Sudbury argue that the decline in demand obviates the need for the Project, as evidenced by a reduction in the number of transmission elements experiencing post-contingency overloads. The Company maintains that demand in the area continues to exceed the existing transmission system's capability and that thermal overloads (both LTE and STE) and low-voltage violations remain to be addressed. In light of the severity of the planning standards and criteria violations identified in the Marlborough Subarea, above, and confirmed by the Company's updated analysis based on the ISO-NE 2019 CELT forecast showing criteria violations remain, the Siting Board concludes that inclusion of ISO-NE's recent demand forecast information in the record of this proceeding as requested by the town – and a revised needs assessment using this forecast – is not likely to

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188 The information that Sudbury requests to be added to the record was not available during hearings. However, the Siting Board notes that CELT forecasts were part of the adjudicated underlying proceeding. Sudbury seeks to update evidence on the record.

189 The Siting Board reviews the information provided in affidavits from Sudbury and the Company to determine whether good cause exists to reopen the record. The standard to establish good cause is different than the general standard to admit evidence in an adjudicatory proceeding. The proffered evidence must not be merely relevant, but also of a significant nature such that it is likely that the evidence would impact in a significant way the conclusions reached by the Siting Board.

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have a significant impact the Siting Board's determination that the Project is needed for reliability purposes.[190,191]

As discussed in Section IV, above, the Siting Board found that an NTA solution is inferior to the Project, particularly in light of the urgency and severity of the reliability concerns in the Marlborough Subarea. While the scale of the NTA required to address the identified need has been reduced by approximately 35 MW to a firm injection requirement of 80 MW, for the reasons stated in Section IV, above, confirmed by the Company's updated NTA analysis, an NTA solution of this magnitude remains infeasible and significantly higher cost than the Project. The information provided by the Town of Sudbury with its motion regarding NTAs does not resolve the deficiencies associated with such an alternative identified in Section IV.D, above, including the viability of achieving unprecedented levels of EE reductions in the Marlborough Subarea in a cost-efficient and timely manner, and the costs, practicality, and timing of the programmatic support needed to incentivize and coordinate a distributed solar PV/energy storage solution. See n.61, above.

Finally, in Sudbury's Reply to the Eversource Opposition, the town raises the potential for a load interruption alternative not previously raised in this proceeding. Sudbury argues that because the firm injection requirement for the Marlborough Subarea has been reduced to 80 MW it now falls below ISO-NE's threshold for allowable load interruption following an N-1-1 contingency. The Siting Board notes that the 2010 ISO-NE Load Interruption Guidelines, presented by the town, includes guidance stressing the importance of providing reliable service to all customers as well as specific provisions stating that: (1) overloads above the STE rating of equipment must be corrected by means other than interrupting load; and (2) non-consequential

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190 The Siting Board concurs with HLPD that it is not uncommon for ISO-NE to issue updated load forecast information during the pendency of a Board decision.

191 The Siting Board is not persuaded by the Town of Sudbury's argument that a reduction in the number of violations observed in the Marlborough Subarea demonstrates the need for the Project has been reduced in a meaningful way. While the number of transmission elements subject to post-contingency overloads is of interest when characterizing the breadth of a reliability concern, it is not determinative because each and every component of the transmission system must comply with applicable reliability standards and criteria to ensure a reliable supply of electricity for the Commonwealth.

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load interruption is not recommended as a mitigation for voltage violations.[192] See Load Interruption Guidelines at 8. Accordingly, the Siting Board is not persuaded that a load interruption alternative would be an appropriate means of addressing the thermal overloads and low voltage violations identified in the Marlborough Subarea.

Given the reliability needs currently present in the Marlborough Subarea, the Siting Board concludes that inclusion of the NTA information presented by the Town of Sudbury with its Motion to Reopen is not likely to have a significant impact on the Siting Board's determination that the Project is necessary and superior to other alternatives identified with respect to providing a reliable energy supply for the Commonwealth with minimum impact on the environment at the lowest possible cost.

F. Conclusion

The Siting Board finds that the Town of Sudbury has failed to demonstrate clearly good cause for reopening the record in this matter. Therefore, the Town of Sudbury Motion to Reopen Record and Hearing, dated June 13, 2019, is denied. The documents referenced above that Sudbury and the Company have filed pertaining to the Sudbury Motion will not be considered by the Siting Board in its deliberations and in the issuance of a tentative and final decision on this matter.

XIII. DECISION

The Siting Board's enabling statute directs the Siting Board to implement the energy policies contained in G.L. c. 164, §§ 69H to 69Q, to provide a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. G.L. c. 164, § 69H. Thus, an applicant must obtain Siting Board approval under G.L. c. 164, § 69J, prior to construction of a proposed energy facility.

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192 For example, the 2010 ISO-NE Load Interruption Guidelines includes a "guiding concept" stating that "[p]lanning of the regional transmission system should not consider load interruption as the primary means to mitigate transmission system reliability violations and thus recognizes the importance of providing reliable service to all customers." See Load Interruption Guidelines ("Load Interruption Guidelines") at 3.

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In Section III, above, the Siting Board finds that additional energy resources are needed to maintain a reliable supply of electricity within the Marlborough Subarea.

In Section IV, above, the Siting Board finds that the Project is superior to the other alternatives identified with respect to providing a reliable energy supply for the Commonwealth with minimum impact on the environment at the lowest possible cost.

In Section V, above, the Siting Board finds that the Company has developed and applied a reasonable set of criteria for identifying and evaluating alternatives to the Project in a manner that ensures that the Company has not overlooked or eliminated any routes that are on balance clearly superior to the Project. The Siting Board also finds that the Company has identified a range of practical transmission line routes with some measure of geographic diversity. Consequently, the Siting Board finds that the Company has demonstrated that it examined a reasonable range of practical siting alternatives, and the proposed facilities are sited in locations that minimize cost and environmental impacts while ensuring a reliable energy supply.

In Section VI, above, the Siting Board finds that the proposed facilities along the MBTA Underground Route would be superior to the proposed facilities along both the All-Street Route and the MBTA Overhead Route with respect to providing a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.

In Section VI, above, the Siting Board reviewed environmental impacts of the Project and finds that with the implementation of the specified mitigation and conditions, and compliance with all applicable local, state and federal requirements, the environmental impacts of the Project along the MBTA Underground Route would be minimized.

In Section VII, above, the Siting Board finds that with the implementation of specified mitigation and conditions, the Project is consistent with the health, environmental protection, and resource use and development policies of the Commonwealth.

In addition, the Siting Board finds, pursuant to G.L. c. 164, § 72, that the Project is necessary for the purpose alleged, and will serve the public convenience, and is consistent with the public interest, subject to the following Conditions A through S.

In addition, the Siting Board finds, pursuant to G.L. c. 40A, § 3, that construction and operation of the Company's proposed facilities are reasonably necessary for the public convenience or welfare. Accordingly, the Siting Board approves the Company's Petition for an

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exemption from certain provisions of the zoning bylaws of the Towns of Sudbury, Hudson, and Stow, with limitations, as enumerated in Section VIII.D, above. In addition, the Siting Board finds that delay in the completion of the Project would likely cause substantial public harm and that the grant of comprehensive exemptions from the zoning bylaws of the towns of Sudbury, Hudson, and Stow is warranted. Accordingly, the Siting Board approves the Company's Petition for comprehensive exemptions from the provisions of the zoning bylaws of the Towns of Sudbury, Hudson, and Stow, with limitations, as enumerated in Section IX.C, above.

Accordingly, the Siting Board APPROVES pursuant to G.L. c. 164, § 69J, the Company's Petition to construct the Project using the MBTA Underground Route, as described herein, subject to the following Conditions A through S.

A. The Company shall file, prior to construction, the executed MOU between DCR that outlines vegetation management along the MBTA ROW.

B. The Company shall, in consultation with the owners/managers of bordering conservation land – Sudbury, Hudson, Marlborough, Sudbury Valley Trustees, DCR, and the U.S. Department of the Interior – develop an access plan that details: (1) the time of year that access would be limited along the MBTA ROW; (2) alternative access points to specific conservation areas if applicable; (3) guidelines for communicating with all owners/managers of such conservation lands; and (4) a complaint and resolution process regarding any issues arising from construction that impact the bordering conservation land.

C. The Company shall not commence construction of the Project along the MBTA Underground Route until the question of whether the MBTA can enter into the Option Agreement is resolved and the Company's rights to install the New Line along the MBTA ROW are thereby confirmed.

D. The Company shall file the following documents applicable to a particular community prior to the start of construction in that community: final mitigation plans for wetland replication and compensatory flood storage; completed wildlife habitat assessments; final avoidance and mitigation plans; and each Order of Conditions from the local conservation commissions. The Company shall not be precluded from commencing construction in a particular community if it is fully permitted to proceed in that community.

E. The Siting Board directs the Company to report on any future consultations with MassDFW and provide any additional mitigation or best practices that will be implemented prior to construction of the Project.

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F. The Siting Board directs Eversource to utilize mechanical vegetation management along the MBTA ROW. Further, if Eversource finalizes an MOU with DCR for vegetation management along the MCRT, Eversource shall incorporate the same provision in the MOU. If DCR does not agree to the inclusion of this provision in the MOU, Eversource shall submit a report to the Siting Board describing DCR's objections for the Board's consideration.

G. The Company shall use the quietest low-noise generators reasonably available during cable splicing.

H. Eversource shall place any stationary equipment that emits loud noise in addition to portable generator units as far as practicable from residences and other sensitive receptors during construction.

I. Eversource shall provide a filing with the Siting Board describing nighttime construction noise mitigation measures that will be implemented during Project construction.

J. The Company shall limit construction of the New Line in residential areas to Monday through Friday from 7:00 a.m. to 6:00 p.m., with the exception of in-street work as requested by the Town of Hudson. Work requiring longer continuous duration than normal construction hours allow, such as cable splicing, is exempted from this condition. The Siting Board will allow Saturday work at the Sudbury and Hudson Substations, but it shall be limited to large equipment deliveries and to quiet assembly and testing activities.

Should the Company need to extend construction work beyond the above-noted hours and days, with the exception of emergency circumstances on a given day necessitating extended hours, the Company shall seek written permission from the relevant municipal authority before the commencement of such work, and to provide the Siting Board with a copy of such permission. If the Company and municipal officials are not able to agree on whether such extended construction hours should occur, the Company may request prior authorization from the Siting Board and shall provide the relevant municipality with a copy of any such request.

K. The Company shall inform the Siting Board and the relevant municipality within 72 hours of any work that continues beyond the hours allowed by the Siting Board. The Company shall also send a copy to the Siting Board, within 72 hours of receipt, of any municipal authorization for an extension of work hours. Furthermore, the Company shall keep records of the dates, times, locations, and duration of all instances in which work continues beyond the hours allowed by the Siting Board; if a municipality grants the Company extended work hours in writing, the Company shall keep records of work that continues past allowed hours, and must submit such records to the Siting Board within 90 days of Project completion.

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L. The Company shall provide a Project-specific phone number, staffed during all daytime construction hours, for the public to raise concerns with respect to Project construction impacts. Further, the Company shall develop a Project-specific website, which should at a minimum contain contact information for Company public affairs personnel, the Project-specific phone number, all communications regarding local construction impacts, a Project map, traffic management plans, and a construction timeline. The Company shall provide the Siting Board with the phone number and website address when created.

M. The Company shall, in consultation with the towns, develop a separate, comprehensive outreach plan for the Project for each municipality. Each outreach plan should describe the procedures to be used to notify the public about: (1) the scheduled start, duration, and hours of construction in particular areas; (2) the methods of construction that will be used in particular areas (including any use of nighttime construction); and (3) anticipated street closures and detours. Each outreach plan should also include information on complaint and response procedures; Project contact information; the availability of web-based project information; and protocols for notifying the schools of upcoming construction.

N. The Company shall alert abutters a minimum of two weeks in advance of anticipated local construction activities, when possible.

O. The Company shall, upon request of any person or entity owning property located directly abutting the MBTA ROW whose view has materially changed due to construction of the Project, to provide appropriate and reasonable off site screening. Such screening may include shrubs, trees, window awnings, and fences, provided that operating and maintenance requirements for the transmission line are met. Upon completion of construction, the Company shall notify all owners of property located on or abutting the MBTA ROW in writing of the option to request that the Company provide off site mitigation. The Company shall honor all reasonable and feasible requests for mitigation that it receives from property owners within six months of receipt of the Company's written notification.

P. The Company shall provide an interim report at the mid-point of construction and a final report at the completion of the Project describing how the Company followed the MassDEP Rail Trail BMP.

Q. The Siting Board directs the Company to comply with all applicable federal, state, and local laws, regulations, and ordinances from which the Company has not received an exemption. The Company shall be responsible for ensuring such compliance by its contractors, subcontractors, or other agents.

R. The Siting Board directs the Company to submit to the Board an updated and certified cost estimate for the Project prior to the commencement of construction.

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Additionally, the Siting Board directs the Company to file semi-annual compliance reports with the Siting Board starting within 180 days of the commencement of construction, that include projected and actual construction costs and explanations for any discrepancies between projected and actual costs and completion dates, and an explanation of the Company's internal capital authorization approval process.

S. The Siting Board directs the Company, within 90 days of Project completion, to submit a report to the Siting Board documenting compliance with all conditions contained in this Decision, noting any outstanding conditions yet to be satisfied and the expected date and status of compliance.

Because issues addressed in this Decision relative to this facility are subject to change over time, construction of the proposed Project must be commenced within three years of the date of the Decision.

In addition, the Siting Board notes that the findings in this Decision are based upon the record in this case. A project proponent has an absolute obligation to construct and operate its facility in conformance with all aspects of its proposal as presented to the Siting Board. Therefore, the Siting Board requires the Company, and its successors in interest, to notify the Siting Board of any changes other than minor variations to the proposal so that the Siting Board may decide whether to inquire further into a particular issue. The Company or its successors in interest are obligated to provide the Siting Board with sufficient information on changes to the proposed Project to enable the Siting Board to make these determinations.

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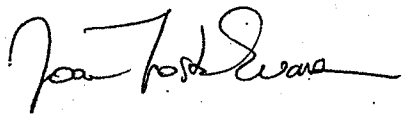
The Secretary of the Department shall transmit a copy of this Decision and the Section 61 findings herein to the Executive Office of Energy and Environmental Affairs and the Company shall serve a copy of this Decision on the Town of Sudbury Board of Selectmen, the Town of Hudson Board of Selectmen, the Town of Stow Board of Selectman, and the City Council of the City of Marlborough and the planning boards and zoning boards of appeals in these municipalities. The Company shall certify to the Secretary of the Department within ten business days of issuance that such service has been made.



Joan Foster Evans, Esq.
Presiding Officer

Dated this 18th day of December 2019

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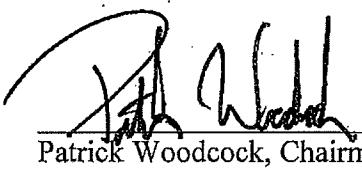
APPROVED by a vote of the Energy Facilities Siting Board at its meeting on December 17, 2019, by the members present and voting. Voting for the Tentative Decision as amended: Patrick Woodcock, Undersecretary of the Executive Office of Energy and Environmental Affairs and Siting Board Chairman; Matthew Nelson, Chair of the Department of Public Utilities; Cecile M. Fraser, Commissioner of the Department of Public Utilities;; Gary Moran, Deputy Commissioner and designee for the Commissioner of Massachusetts Department of Environmental Protection; Joseph Bonfiglio, Public Member; and Brian Casey, Public Member.



Patrick Woodcock, Chairman
Energy Facilities Siting Board

Dated this 18 day of December 2019

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APPENDIX A – LIMITED PARTICIPANTS

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For: Protect Hudson

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Sudbury, MA 01776

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Appeal as to matters of law from any final decision, order or ruling of the Siting Board may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the order of the Siting Board be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Siting Board within twenty days after the date of service of the decision, order or ruling of the Siting Board, or within such further time as the Siting Board may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the clerk of said court. Massachusetts General Laws, Chapter 25, Sec. 5; Chapter 164, Sec. 69P.

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ORDER FOR LOCATION FOR LINES, WIRES AND CABLES

Town of Sudbury, Massachusetts May 5, 2021

WHEREAS, NSTAR ELECTRIC COMPANY d/b//a Eversource ENERGY has petitioned for permission to construct a line for the transmission of electricity for lighting, heating, or power over and under the public way or ways of the Town as hereinafter specified, and notice has been given and a hearing held on said petition as provided by law.

It is ORDERED that NSTAR ELECTRIC COMPANY d/b/a/ Eversource ENERGY be and hereby is granted permission to construct, and a location for, such a line with the necessary wires and cables, therein over and under the following public way or ways of said Town (collectively, the "Public Ways"):

- Dutton Road (at its intersection with the MBTA railroad corridor)
- Peakham Road (at its intersection with the MBTA railroad corridor)
- Horse Pond Road (at its intersection with the MBT A railroad corridor)
- Union Avenue Pond Road (at its intersection with the MBTA railroad corridor)

TOWN CLERK
SUDBURY, MASS
2021 MAY 10 AM 11:57

All construction work under this Order shall be in accordance with the following conditions:

1. Lines, wires, and cables shall be located as shown on a plan(s) made by Eversource dated March 1, 2019, on file with said petition.
2. Said Company shall comply with the requirements of existing by-laws and such as may hereafter be adopted governing the construction and maintenance of lines, wires and cables.
3. All work shall be done to the reasonable satisfaction of the Select Board or such officer or officers as it may appoint to supervise the work. Work not deemed satisfactory shall be promptly communicated to Eversource in writing by such officer together with the reasons therefor.
4. Work is subject to the following conditions:
   - Require a 1-1/2-inch Cold Plane and repaving with bituminous surface course material for a total of 50 feet, 25 feet in either direction of the trench, curb to curb.
   - Exposed joints shall be sealed with a RS-1 emulsion and coated with stone dust.
   - Seek and acquire the appropriate Road Opening/Access permit from the Public Works Department for work being proposed in the public right-of-way.
5. The line with the necessary wires and cables will be located entirely under the above-named public way or ways of said Town as stated in the Energy Facilities Siting Board decision dated December 18, 2019.
   - https://www.mass.gov/files/documents/2019/12/18/SudburyHudson%20FINAL%20Decision%202019-12-18.pdf
6. This Approval shall become effective in four months, on September 8, 2021, or four weeks after the Town receives a copy of the Memorandum of Understanding between Eversource and the DCR, whichever is later.
7. The work on the Public Ways will adhere to all conditions previously set forth by the Sudbury Planning Board on January 27, 2021 and the Sudbury Conservation Commission on February 4, 2021.

Attachment5.i: Grant of Location_Eversource_5.7.21 (5418 : Updates related to Eversource transmission line project)

8. Surety bond – As part of the NSTAR Electric Company d/b/a Eversource Energy 115KV transmission main project along the MBTA rail corridor, the Town of Sudbury requires the following of Eversource and its authorized subcontractors for crossing four (4) public rights-of-way including Dutton Road, Peakham Road, Horse Pond Road and Union Avenue. For each crossing, Eversource or its Contractor shall provide a performance bond at the time it seeks a Street Opening permit in the amount of $10,000 for milling and overlay repairs for 25 feet either side of the transmission main crossing for the entire width for each of the four roadway crossings ($40,000 total).
9. Unless otherwise agreed to in writing, there shall be no stockpiling of material or equipment within the public right-of-way or on any other Town-owned property.
10. Eversource shall be responsible for daily site clean-up, including removal of all refuse, rubbish, scrap and surplus material, and debris for work in the Public Ways. Eversource shall sweep the work zone daily and adjacent areas as needed, if directed by the Town. The site and adjacent areas shall present a neat and orderly appearance.
11. Eversource and its contractor shall be responsible for dust control within the work zones at all times, and shall maintain water within the Town to use for such purposes.
12. Eversource shall work with the Sudbury Department of Public Works Director, who will coordinate with the Police and Fire Departments to ensure safe passage of vehicles, bicycles, and pedestrians at all points during construction in the Public Ways. Particular care will be given to the safe passage of children to and from schools near the construction in the Public Way.
13. Eversource shall provide and erect acceptable barricades, traffic signs, temporary lighting such as flashers, and all other traffic devices to safely isolate the work from traffic, pedestrians, and animals, as shown in the Traffic Management Plans and/or as directed by the Sudbury Police Department. Construction signage and barriers shall be in accordance with the Manual on Uniform Traffic Control Devices ("MUTCD"), as amended, published by the U.S. Department of Transportation.
14. Eversource and its contractor shall comply with MGL c.82A ("Jackie's law") related to excavation and trench safety, particularly as it relates to extended trenching limits.
15. If, in the reasonable opinion of the Department of Public Works Director, an excavation becomes a safety and/or utility hazard, or if it excessively restricts traffic at any point, then the Department of Public Works Director shall provide written notice of such hazard with explanation and may require special construction procedures, such as limiting the length of the trenching and/or prohibiting stocking excavated material in the street.
16. Eversource shall provide notification of any gas leaks identified during Project construction for response by National Grid.
17. Eversource shall be responsible for securing all necessary temporary construction easements from public and private property owners needed for the work in the Public Ways.
18. Eversource shall be responsible for the preservation of all public and private property while constructing in the Public Ways and shall use every precaution necessary to prevent damage thereto. All existing buildings, utilities, pipes, poles, wires, fences, curbings, signs, stone bounds, and other structures not otherwise called for relocation, removal, or replacement shall be carefully supported and protected from damage by the contractor. If any direct or indirect damage is done to public or private property by or on account of any act, omission,

Attachment5.i: Grant of Location_Eversource_5.7.21 (5418 : Updates related to Eversource transmission line project)

neglect, or misconduct in the execution of the work in the Public Ways on the part of Eversource or its contractor, such property shall be promptly restored to a condition similar or equal to that existing before the damage was done, to the reasonable satisfaction of the Department of Public Works Director or, if private property, the property owner. Restoration of existing property shall be carried out as promptly as practicable and shall not be left until the end of the construction period, unless otherwise requested by the Department of Public Works Director or the affected property owner.

19. Eversource shall be responsible for identifying all stone bounds that will be impacted on the Public Ways prior to the start of construction. Where bounds are impacted, Eversource shall hire a Massachusetts registered professional land surveyor to reset the bound and shall provide documentation to the Town Engineer at the completion of the work. Bounds shall be set in accordance with applicable provisions of Massachusetts General Laws.
20. Pavement restoration of disturbed trenches within existing driveway aprons shall include full replacement of the driveway apron to maintain control of surface runoff in the driveway.
21. All existing drainage facilities including but not limited to brooks, streams, channels, ditches, culverts, catch basins, and drainage piping shall be adequately safeguarded so as not to impede drainage or to cause siltation of downstream areas in any manner whatsoever. If Eversource damages or impairs any of the aforesaid drainage facilities, it shall repair them with appropriate urgency, as soon as practicable.
22. Eversource shall consult with the Department of Public Works Director and Police Chief to develop a Traffic Management Plan ("TMP"), including TMPs for the manhole locations in the Public Ways, if any, and submit said plan to the Town no later than 60 days prior to beginning open excavation.
23. Any changes or amendments to the TMPs must be made in consultation with the Public Works Director and Police Chief.
24. When driveway access to abutting properties is blocked, Eversource or its contractor shall be prepared to temporarily halt construction and restore access at any point during the workday within a reasonable timeframe. Driveway access shall be restored to safe, passable conditions at the end of each workday. Special attention shall be given to this requirement at specified locations as further defined by the Department of Public Works Director during the construction process.
25. Backfilling or use of steel plates of adequate strength to carry traffic shall be used to completely close all street excavations at the end of each workday. Excavation within the Public Way between November 1 and April 1 will be permitted only by special permit issued by the Public Works Director as long as weather permits. If permitted, the use of steel plates will not be allowed when a winter weather event is expected. All trenches will need to be backfilled and paved with hot mix asphalt to existing grade prior to any projected winter event requiring treatment or plowing.
26. After backfilling and compacting the trench, Eversource shall be responsible for maintaining any temporary patch installed. Final street repaving shall take place after one full season to allow adequate time for the settlement of trenches.
27. Eversource shall notify the Town of Sudbury within two days of determining that it is necessary to install a manhole using cast-in-place construction techniques within the Public Way rather than precast structures so that the Town can assess any impacts to the TMPs.

Attachment5.i: Grant of Location_Eversource_5.7.21 (5418 : Updates related to Eversource transmission line project)

28. Eversource shall maintain and protect existing municipal utilities and service connections during construction. Further, Eversource's contractor shall submit support of excavation ("SOE") plans, depicting the means and methods of trench shoring, and existing utility temporary support systems. Copies of the proposed SOE plans shall be submitted to the Town of Sudbury Department of Public Works Director for review and comment prior to approval by Eversource.
29. Eversource shall maintain a minimum vertical clearance of 12 inches between the Project facilities and all Town utility crossings, unless a lesser clearance is approved in writing by the DPW Director, such approval shall not be unreasonably withheld and issued as soon as practicable, and no more than five business days from Eversource's request. Eversource shall maintain a minimum of 18 inches horizontal clearance, as provided for in the Certificate Decision, between Project facilities and all adjacent Town utilities.
    Up to six inches of excavation width (the portion closest to the adjacent municipal utilities, and only that portion below the pavement) would necessitate vacuum or hand excavation, while the other portions of the trench could use mechanical excavation methods. The Company will employ vacuum or hand excavation methods for any excavation between 18 and 24 inches from adjacent municipal utility lines. The Company may select whether vacuum or hand excavation methods is best suited in such circumstances.
30. All water services within the work zone shall be identified and located prior to the start of construction in each area of open excavation along the Public Ways. Eversource and its contractor shall work with the Department of Public Works Director to determine if relocation or replacement of services is necessary.
31. Eversource shall ensure continuous operation of all existing water and drainage utilities along the Public Ways, including privately-owned water services during construction along the Public Ways. There shall be no scheduled shutdowns or service interruptions unless approved by the Department of Public Works Director (for the drain system and Water District for the water system), which approval shall not be unreasonably withheld and issued as soon as practicable, and no more than five business days from Eversource's request.
32. If it is determined during the course of construction that modification to a Town-owned utility is required, Eversource or its contractor shall immediately stop work and notify the Department of Public Works Director and Town Engineer of the requested change. Review of such requests shall be performed in a timely manner, and approval of any changes shall be provided in writing by the Department of Public Works Director, which approval shall not be unreasonably withheld and issued as soon as practicable, and no more than five business days from Eversource's request.
33. If at any point during the construction along the Public Ways there is damage to a Town-owned water or drain utility, or to a privately-owned water service, all construction within the affected work zone shall immediately stop and the Department of Public Works Director shall be notified of the issue. The Department of Public Works Director, Eversource, and its contractor shall immediately determine a plan of action to remedy the situation. Work on the remainder of work along the Public Ways shall not recommence until permission has been granted by the Department of Public Works Director.
34. Work to repair any damage to public or private utilities shall begin immediately and be completed within 12 hours of such damage, to the extent practicable. The Department of

Attachment5.i: Grant of Location_Eversource_5.7.21 (5418 : Updates related to Eversource transmission line project)

Public Works Director shall approve any temporary services or by-pass pumping, if required such approval shall not be unreasonably withheld and issued as soon as practicable, and no more than five business days from Eversource's request.

35. Handling of any asbestos-containing material encountered during the work shall be in accordance with applicable OSHA and other federal and state standards. The Town shall not be responsible for the handling, removal, or disposal of any asbestos containing material encountered.
36. Eversource or its contractor shall, to the extent warranted, provide sufficient information to way-finding applications such as Waze and Google Maps to allow those services to reroute traffic where necessary.
37. No overhead power lines or related infrastructure is permitted by this Grant of Location.
38. Eversource shall be responsible for the proper performance of all work authorized hereunder and to restore the Public Ways and to make future repairs, if any, are needed as a result of the work undertaken under this GOL, as required by applicable state and Town regulations and standards.
39. In the event the electric transmission line is decommissioned, the Select Board reserves the right to order the removal of the facilities permitted by this Grant of Location, dependent upon attendant circumstances.
40. Eversource shall not increase the capacity of the transmission line above 115Kv without obtaining all required state and local permits and approvals.
41. Eversource shall perform magnetic field measurements at the four crossings of the Public Ways, once preconstruction and twice post-construction, within 10 months of the in-service date of the Project, and annually, at times mutually agreed to by Eversource and the Town, consistent with EMF monitoring Eversource has undertaken after construction of new transmission facilities in certain other municipalities. Eversource shall provide the results of those measurements to the Town. All post-construction measurements shall occur at a time during the calendar year where there is a potential for the greatest electricity usage (e.g., July or August). Eversource shall record all electric and magnetic field measurements at a height of one meter (3.28 feet) above ground in accordance with industry standard protocol for taking measurements near power lines (IEE Std. 644-1994 [R2008] "IEEE Standard Procedures for Measurement of Power Frequency Electric and Magnetic Fields from tC Power Lines." The resultant magnetic field will be measured with a 3-axis, recording digital meter EMDEX II). Electric fields will be measured with an E-Probe attachment accessory to the EMDEX II meter. Eversource shall measure the electric and magnetic fields along a transect (i.e., profile) passing perpendicularly over the new line at the specified locations. The measurement path shall extend to 10 feet from either side of the new transmission line. The Town will work cooperatively with the Company to facilitate traffic management during the measurement activity.
42. EMF levels shall not exceed the guidelines of 85mG below which the EFSB precedent has deemed acceptable.
43. Company shall provide measurements for contaminants including PFAS and other toxins specified by Town of Sudbury at each of the crossings prior to start of construction.
44. Company shall provide Groundwater flow and direction measurements and analysis for each of the crossings to the Town of Sudbury and the Sudbury Water District.
45. All signage and detail officers will be the responsibility of Eversource. The Company, through its Contractor, will provide reasonable signage as provided in the Temporary Traffic

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Control Plans provided in Exhibit D to the GOL Application and will pay the expense of reasonable police details.

46. For installation of the transmission line along the Public Way, Eversource or its contractor shall correspond regularly with property owners abutting the workzone, and shall notify abutters of any anticipated impacts to their properties at least 48 hours prior to the start of construction, including impacts to driveway access, water, sewer, or other utility services. For manhole installation, along the Public Way, if any, Eversource shall notify properties within 300 feet of the manhole locations one week prior to the start of construction detailing the construction scope, schedule and impacts.
47. Eversource shall provide a direct line to respond to calls by the Department of Public Works Director 24 hours a day, 7 days a week, including holidays.
48. Any work, repair, or restoration of public or private property along the Public Ways shall be conducted in accordance with the "Sudbury Public Works: Specifications for Regulating Construction Within Public Ways" dated 4/28/2020. Any deviations from the specifications included therein must be provided in writing to the Department of Public Works Director.
49. Eversource or its contractor shall be required to apply to the Department of Public Works Director for Street Opening Permits in order to complete work along the Public Ways.
50. The Town does not allow the use of public hydrants for water on construction projects. Eversource and its contractor may coordinate with Department of Public Works Director to obtain water from the DPW yard. Eversource shall not operate valves on Sudbury Water District-owned water mains; Eversource or its contractor shall contact Sudbury Water District if water gates need to be adjusted.
51. After substantial completion of the work pursuant to, and as required by, a grant of location, the grantee shall submit as-built plans of the facilities, stamped by a professional land surveyor or other qualified professional, detailing all elements of work.
52. This Grant of Location does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, by-laws, or regulations.

Select Board of the
Town of Sudbury

Attachment5.i: Grant of Location_Eversource_5.7.21 (5418 : Updates related to Eversource transmission line project)

CERTIFICATE

We hereby certify that the foregoing Order was adopted after due notice and public hearing as prescribed by Section 22 of Chapter 166 of the General Laws (Ter. Ed.) and any additions thereto or amendments thereof, to wit:--after written notice of the time and place of the hearing mailed at least seven days prior to the date of the hearing by the Select Board to all owners of real estate abutting upon that part of the way or ways upon, along or across which the line is to be constructed under said Order, as determined by the last preceding assessment for taxation, and a public hearing held on the 4th day of May, 2021 at 7 PM in said Town.

Janie W. Dretler

Jennifer S. Roberts

William J. Schineller

Charles G. Russo

Daniel E. Carty

Select Board of the
Town of Sudbury

CERTIFICATE

I hereby certify that the foregoing are true copies of the Order of the Select Board of the Town of Sudbury, Massachusetts, duly adopted on the 5th day of May, 2021, and recorded with the records of location Orders of said Town, Book 12, Page 76, and the certificate of notice of hearing thereon required by Section 22 of Chapter 166 of the General Laws (Ter. Ed.), and any additions thereto or amendments thereof, as the same appear of record.

Attest:
Clerk of the Town of Sudbury, Massachusetts

Attachment5.i: Grant of Location_Eversource_5.7.21 (5418 : Updates related to Eversource transmission line project)

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCReporter@sjc.state.ma.us

SJC-12738

TOWN OF SUDBURY vs. MASSACHUSETTS BAY TRANSPORTATION AUTHORITY & another.[1]

Suffolk. October 1, 2019. - September 22, 2020.

Present: Gants, C.J., Lenk, Gaziano, Lowy, Budd, Cypher, & Kafker, JJ.[2]

Massachusetts Bay Transportation Authority. Easement. Real Property, Easement. Public Utilities, Electrical transmission line.

Civil action commenced in the Land Court Department on September 27, 2017.

Motions to dismiss were heard by Gordon H. Piper, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

George X. Pucci (Audrey A. Eidelman also present) for the plaintiff.

Thaddeus A. Heuer for Massachusetts Bay Transportation Authority.

Joshua A. Lewin for NSTAR Electric Company.

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[1] NSTAR Electric Company, doing business as Eversource Energy.

[2] Chief Justice Gants participated in the deliberation on this case prior to his death.

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Mark R. Rielly & Rachel C. Thomas, for New England Power Company & another, amici curiae, submitted a brief.

Jessica Gray Kelly & Daniel C. Johnston, for NAIOP Massachusetts & others, amici curiae, submitted a brief.

GAZIANO, J. In this appeal, we consider the scope of the common-law doctrine of "prior public use." Under this long-standing doctrine, public lands acquired for one public use may not be diverted to another inconsistent public use unless the subsequent use is authorized by plain and explicit legislation. Robbins v. Department of Pub. Works, 355 Mass. 328, 330 (1969). Here, we are asked to extend this doctrine and to determine that the prior public use doctrine bars the diversion of public land devoted to one public use to an inconsistent private use. Because such a sweeping change would not advance the purposes of the doctrine, and would create widespread uncertainty concerning numerous existing holdings of private land that were transferred by public entities, we decline to adopt the municipality's proposed reworking of the doctrine. Accordingly, we affirm the Land Court judge's decision dismissing the complaint, albeit, in part, on somewhat different grounds.[3]

[3] We acknowledge the amicus briefs submitted by NAIOP Massachusetts, the Real Estate Bar Association for Massachusetts, Inc., and The Abstract Club; and New England Power Company and Massachusetts Electric Company, both doing business as National Grid.

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1. Prior proceedings. In November 2017, the town of Sudbury (town) filed an amended complaint in the Land Court seeking to prevent defendant Massachusetts Bay Transportation Authority (MBTA) from entering into an option agreement with defendant NSTAR Electric Company, doing business as Eversource Energy (Eversource), for an easement to install an electric transmission line underneath about nine miles of a disused right of way (ROW), approximately 4.3 miles of which extend through the town. The town argued that the prior public use doctrine precludes the MBTA from transferring public land to another public entity for an inconsistent use, here, changing the use of the ROW from the purpose set forth in the eminent domain transfer -- the extension and operation of mass transportation services -- to the installation and maintenance of underground electric transmission lines, absent legislative authorization.

The first count of the complaint sought a judgment declaring that the "inconsistent public use is illegal under the Massachusetts prior public use doctrine unless and until it is specifically authorized by legislation." The second count sought to enjoin MBTA's diversion of the inactive ROW to an inconsistent public use. The defendants moved to dismiss the complaint based on the town's lack of standing and the failure to state a claim for a violation of the prior public use

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doctrine. See Mass. R. Civ. P. 12 (b) (1), (6), 365 Mass. 754 (1974).

A Land Court judge denied the defendants' motions to dismiss for lack of jurisdiction, see Mass. R. Civ. P. 12 (b) (1), after concluding that the town had standing to bring the claim, albeit that "the [t]own's standing appears at the precipice of adequacy." The judge then allowed the defendants' motions to dismiss on the ground that the complaint failed to state a claim upon which relief can be granted. See Mass. R. Civ. P. 12 (b) (6). In so doing, the judge ruled that Eversource is a private corporation and not, as the town claimed, a public entity. The judge declined the town's urging that he extend the long-established doctrine of prior public use to situations involving the diversion of an authorized public use of land to an inconsistent private use. The town appealed to the Appeals Court, and we transferred the case to this court on our own motion.

2. Background.[4] The MBTA acquired the ROW in part through an indenture from the trustees of the property of the Boston and Maine Corporation (B&M), subject to an easement for B&M's

[4] The facts are drawn from the complaint, the exhibits attached to the complaint, and undisputed documents provided by the parties in connection with the proceedings. See Lipsitt v. Plaud, 466 Mass. 240, 241 (2013); United States ex rel. Winkelman v. CVS Caremark Corp., 827 F.3d 201, 208 (1st Cir. 2016).

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continued use of the ROW as a freight railroad, and subsequently through a taking by eminent domain for purposes of providing and extending mass transportation services. The MBTA has not constructed an extension of its transportation system through the ROW, and the ROW has been inactive as a rail line for over forty years. Although the rails and rail beds are still extant, the area has become heavily wooded. Multiple sections of the ROW abut environmentally sensitive areas, such as Federal, State, and private conservation areas, a farm, a fishery, streams, ponds, and wetlands. Numerous other sections abut "dense" areas of private properties, some of which are subject to conservation restrictions under G. L. c. 184, §§ 31-33. Parts of the ROW currently are used by the public as a walking or hiking trail, and other stretches generally serve as wooded areas of wildlife habitat. The railroad tracks and railroad beds formerly used by B&M have not been removed, and continue to extend through the ROW.

The 1976 indenture from B&M provided that, for consideration of $36,549,000, B&M granted the MBTA "all of [B&M's] right, title and interest . . . sufficient to permit the [MBTA] to operate a passenger and freight rail service over the rail line rights of way . . . and to [B&M's] rights of way and other lands thereon and including all track, signals, bridges, buildings, shops, towers, and other improvements affixed

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thereto." B&M "reserve[d] unto themselves, their successors and assigns, the right and easement as are appropriate and necessary to the continuance of [B&M's] freight transportation business."

In 1977, the MBTA acquired title to the ROW in fee simple, pursuant to G. L. c. 161A, § 3 (o), "for[, among other things,] the purpose of providing and extending mass transportation facilities for public use." The order of taking was made subject to the same freight easement that was reserved to B&M in the indenture, as well as "all easements for wires, pipes, conduits, poles, and other appurtenances for the conveyance of water, sewerage, gas, oil, and electricity."

On June 9, 2017, the MBTA entered into an option agreement with Eversource. The agreement entitles Eversource to lease an easement in the ROW and to install an underground 115-kilovolt electrical transmission line, subject to obtaining "any necessary permits or approvals." The option agreement further provides that the MBTA reserves the right to relocate the transmission lines to anywhere within the ROW if the MBTA determines that the lines are interfering with its use of the ROW for transportation purposes. If exercised, the agreement is expected to generate $9.3 million for the MBTA over the subsequent twenty years.

The preferred route for the underground transmission line, through the entire length of the ROW, is approximately nine

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miles.[5] The route begins at Eversource's Sudbury substation and travels through the ROW northwest through Sudbury, Marlborough, Hudson, Stow, and then Hudson again. In Hudson, the transmission line would proceed underneath public roadways to Eversource's Hudson substation.

The MBTA also has entered into a lease agreement with the Department of Conservation and Recreation (DCR) to allow for the construction of a segment of the Massachusetts Central Rail Trail (MCRT) over the buried transmission lines to be placed in the ROW. Under the terms of the option agreement, the easement granted to Eversource is subject to the provisions of the DCR lease, and Eversource is precluded from "materially interfer[ing] with or disturb[ing] the DCR's use of its leased premises." According to the complaint, "Eversource and DCR are entering into a memorandum of understanding in an effort to memorialize agreements related to design, permitting, construction, operation, and maintenance of both the underground electric transmission line and the above-ground publicly accessible rail trail within the MBTA ROW. Eversource has

[5] An alternative route, which Eversource believes would be much more expensive than using the ROW, would be placed under existing streets in Sudbury. Another alternative to provide the increase in electric transmission in this area that Eversource believes will be necessary to prevent power outages would involve modifying or replacing above-ground power lines. This option is not preferred for a number of reasons.

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stated that it expects that DCR will be responsible for maintenance of the ROW following completion of the transmission project."

The proposed transmission project is subject to regulatory approval from the Energy Facilities Siting Board (EFSB) and the Department of Public Utilities (DPU), as well as review under the Massachusetts Environmental Protection Act (G. L. c. 30, §§ 61 et seq.) and the Wetlands Protection Act (G. L. c. 131, § 40), and by the Executive Office of Energy and Environmental Affairs and the Sudbury conservation commission. Eversource has undertaken the approval process with respect to the EFSB and the DPU, who have consolidated their proceedings in the matter.

In support of the town's argument that the transmission project is a diversion of one public use to another, the complaint states that Eversource's applications to regulatory entities describe the proposed service and Eversource as public. In its petition to the EFSB, Eversource maintains that the proposed transmission lines would serve a "compelling public use and purpose." The new transmission lines are necessary, Eversource asserts, in order to meet its customers' growing energy needs and to avoid service outages, which are estimated to occur given the current facilities and increasing demand. Eversource also maintains that coupling the underground

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transmission line with the MCRT would confer a "public benefit," thus justifying approval of the project.

3. Discussion. a. Standard of review. "We review the denial of a motion to dismiss de novo, accepting the facts alleged in the complaint as true and drawing all reasonable inferences in the plaintiff's favor." Edwards v. Commonwealth, 477 Mass. 254, 260 (2017), citing Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 676 (2011). In assuming the facts as alleged, however, "[w]e do not regard as 'true' legal conclusions cast in the form of factual allegations." Leavitt v. Brockton Hosp., Inc., 454 Mass. 37, 39 n.6 (2009). To survive a motion to dismiss, the "[f]actual allegations must be enough to raise a right to relief above the speculative level . . . [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The facts alleged must "'plausibly suggest[] (not merely [be] consistent with)' an entitlement to relief." Iannacchino, supra, quoting Bell Atl. Corp., supra at 557. See Revere v. Massachusetts Gaming Comm'n, 476 Mass. 591, 609 (2017) (complaint survives motion to dismiss "if it includes enough factual heft" to raise basis for relief beyond speculation). "[A] well-pleaded complaint may proceed even if

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it appears 'that a recovery is very remote and unlikely.'" Bell Atl. Corp., supra at 556, quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

b. Standing. The MBTA urges us to affirm the Land Court judge's decision, but on the alternative ground that the town lacked standing to bring a claim under the prior public use doctrine. "The issue of standing may be raised at any time." See Matter of the Receivership of Harvard Pilgrim Health Care, Inc., 434 Mass. 51, 56 (2001), quoting Ginther v. Commissioner of Ins., 427 Mass. 319, 322 (1998). According to the MBTA, the judge erred in finding "an automatic rule of injury-free municipal standing."

"To have standing in any capacity, a [plaintiff] must show that the challenged action has caused the [plaintiff] injury." Slama v. Attorney Gen., 384 Mass. 620, 624 (1981). See Enos v. Secretary of Envt'l Affairs, 432 Mass. 132, 135 (2000), quoting Bonan v. Boston, 398 Mass. 315, 320 (1986) ("standing requires 'a definite interest in the matters in contention in the sense that [a plaintiff's] rights will be significantly affected by a resolution of the contested point'"). Although "it is settled that G. L. c. 231A does not provide an independent statutory basis for standing," Enos, supra, citing Pratt v. Boston, 396 Mass. 37, 42-43 (1985), a party has standing under the statute where the

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defendant has "violated some duty owed to the plaintiff[]," Enos, supra, quoting Penal Insts. Comm'r for Suffolk County v. Commissioner of Correction, 382 Mass. 527, 532 (1981), and where the plaintiff "can allege an injury within the area of concern of the statute or regulatory scheme." Service Employees Int'l Union, Loc. 509 v. Department of Mental Health, 469 Mass. 323, 328 (2014), quoting Enos, supra. See Northbridge v. Natick, 394 Mass. 70, 75 (1985) ("An injury alone is not enough; a plaintiff must allege a breach of duty owed to it by the public defendant").

In prior cases, this court generally has held that cities and towns lack standing to challenge zoning board decisions. See Hingham v. Department of Hous. & Community Dev., 451 Mass. 501, 506 n.9 (2008) ("The town is not a 'person aggrieved' within the meaning of this statutory provisions"); Burlington v. Bedford, 417 Mass. 161, 165 (1994) (no standing where there was no duty owed to town, and town's injury was too "remote, speculative, and undefined"). See also Planning Bd. of Hingham v. Hingham Campus, LLC, 438 Mass. 364, 368 (2003) (town's planning board was not "person aggrieved" as required to have standing under statute). At the same time, in cases involving zoning and permitting, abutting landowners are afforded a rebuttable presumption of standing. See Standerwick v. Zoning Bd. of Appeals of Andover, 447 Mass. 20, 33-34 (2006).

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As the town points out, we have considered a case involving a change in a prior public use where the plaintiff was a municipality, see Selectmen of Braintree v. County Comm'rs of Norfolk, 399 Mass. 507 (1987) (Braintree). The town contends that this court's decision in Braintree "establishes that the [t]own has stated a valid claim upon which relief can be granted under the prior public use doctrine." In finding that the town had standing to bring its claims under the prior public use doctrine, the judge relied on the argument the town advances concerning our decision in Braintree, id. at 510-513. He reasoned that we "implicitly" must have conferred standing on the municipality in that case because we decided the case without any discussion of the municipality's standing to bring its claim.

Our holding in Braintree, 399 Mass. at 510-513, however, did not establish, as the town argues and the Land Court judge appears to have adopted, "an automatic rule of injury-free municipal standing." Nothing in Braintree should be read to confer automatic standing where a town brings a claim under the doctrine of prior public use. To survive a motion to dismiss under the prior public use doctrine, any entity, including a town, must establish standing, i.e., a claim of individualized harm. The question then becomes whether the complaint in this case sufficiently asserted an individualized harm to the town,

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see Hingham, 451 Mass. at 506 n.9; Slama, 384 Mass. at 624, so as to withstand the motion to dismiss.

At the outset, we note that the town has no ownership interest in the ROW itself. The town asserts an individualized injury to town lands that abut the ROW, cf. Standerwick, 447 Mass. at 33-34, as well as apparently implicitly asserting representative standing on behalf of numerous others: Federal authorities who oversee Federal wildlife refuges, State and private trustees of conservation land and farms, and many private owners of residential properties, all of which also abut the ROW at some point. See Slama, 384 Mass. at 624.

The noted harms listed in the complaint, but not further discussed after having been identified, include the loss of 27.96 acres of trees, the loss of wildlife habitat, danger to certain species already designated as at risk, loss of recreational space, loss of aesthetic value, and reduction in property values. For most of these claims, the town either does not have standing to assert them, or the asserted harm is not legally cognizable.

Of the 4.3 miles (or 22,704 feet) of the ROW that run through the town, the town asserts that it owns various parcels, totaling 6,145 linear feet of land, that abut the ROW, that is, approximately twenty-seven percent of the total length of the land abutting the ROW within the town. The complaint delineates

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two Federal wildlife refuges, a farm that is run as a joint State and private project, several areas of conservation land held under private trusts as well as town-owned conservation parcels, wetlands, ten vernal pools, and eight perennial streams as at risk of harm from the transmission project.[6] The complaint also asserts the diminution in property values for the many "dense[ly]" located residential parcels that abut the ROW, and loss of aesthetic view.[7]

The town has no standing to bring a claim under the prior public use doctrine concerning the majority of the land abutting the ROW in which the town has no property interest. See Slama, 384 Mass. at 624 ("[o]rdinarily, one may not claim standing in this Court to vindicate the constitutional rights of some third party"; "[r]epresentative standing is generally limited to cases in which it is difficult or impossible for the actual rightholders to assert their claims" [citation omitted]). The individual property owners and the government entities who own

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[6] The water, wetland, and conservation areas enumerated abut or are proximate to the ROW; none is actually within the ROW.

[7] The complaint also presents as alleged harm that, if the project were to include certain types of fill around bridge abutments that affect floodplains, additional permits and agency review would be necessary. Any asserted harm that might result if particular mandated remediation procedures were not followed is entirely speculative. Moreover, the planned work as described in the complaint involves the electric wires remaining within the existing bridge footprint for the three bridges at issue, obviating any need for fill around newly dug abutments.

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or manage these properties are not in that position. They could, and in some cases already have, pursued their own claims regarding the transmission project before the EFSB and the DPU.

Similarly, "[d]iminution in the value of real estate is a sufficient basis for standing only where it is 'derivative of or related to cognizable interests protected by the applicable zoning scheme.'" Kenner v. Zoning Bd. of Appeals of Chatham, 459 Mass. 115, 123 (2011), citing Standerwick, 447 Mass. at 31–32. "Zoning legislation 'is not designed for the preservation of the economic value of property, except in so far as that end is served by making the community a safe and healthy place in which to live.'" Kenner, supra at 123-124, citing Tranfaglia v. Building Comm'r of Winchester, 306 Mass. 495, 503–504 (1940). Thus, the "alleged diminution in value of [town] property is not a basis for standing." Kenner, supra at 124.

While the complaint says little other than listing the assertedly affected land and stating that loss of habitat and harm to wildlife will result, with respect to at least a few of the asserted losses,[8] the complaint sets forth specific, legally cognizable injuries, so long as we accept that the injury

[8] These include the claim that the cold water fishery at Hop Brook will be negatively affected by loss of tree cover and the resulting rise in water temperature, the potential contamination of drinking water resource areas during removal of the railroad tracks, and the potential danger to certain protected species whose habitat encompasses town conservation land.

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resulting from the change to the ROW depends on some type of legally cognizable interest that the ROW remain in its current, disused, and overgrown condition.

As to that injury, the town seeks injunctive and declaratory relief for harm that purportedly would arise if the trees on the ROW were cleared to create an access road and rail trail, and the transmission wires and containers were installed. Only if one starts with the premise that the ROW will continue to be a rarely used strip of woodland with occasional recreational uses is it possible to infer any type of harm from the proposed clearing of a strip of land within the ROW, the placement of the underground conduits and the electrical wires, and the permanent paving of a narrower strip within the ROW. Indeed, if the MBTA chose to resume or extend rail or bus service along the ROW, it necessarily would have to remove, permanently, more than double the area of trees that Eversource contemplates removing for this project. The complaint does not state any ground on which the town would be entitled to insist that the ROW remain unused, or would be able to preclude the MBTA from using the ROW for the explicitly authorized purposes of operating freight and passenger rail service, as well as other mass transportation activities, for which the MBTA paid B&M $36,549,000.

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Undoubtedly it is for all of these reasons that the motion judge found that "the [t]own's standing appears at the precipice of adequacy" before he dismissed the case on other grounds. In these circumstances, we assume without deciding that the town would be able to establish some individualized harm, and therefore has standing. See Bell Atl. Corp., 550 U.S. at 556.

c. Doctrine of prior public use. The doctrine of prior public use is a "firmly established" creation of the common law, dating back to the Nineteenth Century. See Smith v. Westfield, 478 Mass. 49, 60-61 (2017), citing Old Colony R.R. v. Framingham Water Co., 153 Mass. 561, 563 (1891), and Boston Water Power Co. v. Boston & W.R. Corp., 23 Pick. 360, 398 (1839). Under this doctrine, "public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion." Robbins, 355 Mass. at 330. See, e.g., Brookline v. Metropolitan Dist. Comm'n, 357 Mass. 435, 440 (1970) ("The principle that land appropriated to one public use cannot be diverted to another inconsistent use without plain and explicit legislation to that end has been well established in our decisions"); Sacco v. Department of Pub. Works, 352 Mass. 670, 672 (1967) (specific statutory language is required to divert land devoted to one public purpose to another inconsistent public purpose); Higginson v. Treasurer & Sch. House Comm'rs of Boston,

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212 Mass. 583, 591 (1912) (public purpose for which city has acquired land by eminent domain may be changed to another inconsistent public use by "plain and explicit legislation to that end"); Old Colony R.R., supra ("There can be no doubt that the Legislature may take, or authorize a corporation to take, land for a public use, which has previously been appropriated by legislative authority to a different public use . . . [b]ut it will not be deemed to have done so unless its intention so to take such land is plainly manifested in the statute").

To survive the defendants' motions to dismiss, the town was required to plead sufficiently that the option agreement met all four elements of the doctrine of prior public use: (1) a subsequent public use; (2) previous devotion of the property to only "one public use"; (3) an inconsistent subsequent use; and (4) a lack of legislative authorization. See Smith, 478 Mass. at 60, quoting Robbins, 355 Mass. at 330. See, e.g., Higginson, 212 Mass. at 591, citing Eldredge v. County Comm'rs of Norfolk, 185 Mass. 186 (1904).

On appeal, as they did before the Land Court judge, the MBTA and Eversource raise a number of grounds in support of their motions to dismiss for failure to state a claim upon which relief can be granted, e.g., failure to show that the option agreement violated the doctrine of prior public use. The defendants argue that dismissal was required because the public

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uses for which the ROW initially was acquired by the MBTA were not a single use; Eversource's right under the option agreement to use the ROW to construct and operate an underground transmission line is not inconsistent with the MBTA's rights to use the ROW for mass transportation services; the subsequent inconsistent use must be public, not private, and here, Eversource is a private entity; and the MBTA's enabling legislation, G. L. c. 161A, contains specific provisions authorizing the MBTA to grant easements that do not interfere with rail service, and further obligates the MBTA to maximize its nontransportation revenue.[9]

[9] Even if a subsequent use is inconsistent, the prior public use doctrine is satisfied where the Legislature has adopted the subsequent public use by plain and explicit legislation. See Robbins v. Department of Pub. Works, 355 Mass. 328, 330 (1969). The MBTA argues that its enabling statute, G. L. c. 161A, satisfies that requirement here, either by explicitly allowing the MBTA to grant the easement to Eversource, or by abrogating the common-law doctrine by necessary implication. See Ferriter v. Daniel O'Connell's Sons, Inc., 381 Mass. 507, 521 (1980) (discussing repeal of common law by direct enactment or necessary implication). Under its enabling statute, the MBTA has the authority to grant easements over "any real property held by the authority" that do not "unduly" interfere with mass transportation facilities, G. L. c. 161A, § 3 (m); and to "develop, finance and operate the mass transportation facilities and equipment in the public interest," including the disposition of real property without any further legislative approval, G. L. c. 161A, § 5 (a)-(b). In addition, the MBTA is obligated to "[e]stablish and implement policies that provide for the maximization of nontransportation revenues from all sources." G. L. c. 161A, § 11. Because of the result we reach, we need not address these arguments by the MBTA further.

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As stated, in allowing the motions to dismiss, the judge relied on his determination that Eversource is a private entity, the use at issue is a private use, and the doctrine of prior public use does not apply to a subsequent inconsistent private use. Based on this, the judge did not reach the defendants' arguments concerning the other three elements of the prior public use doctrine: prior devotion of the property to only "one public use"; an inconsistent subsequent use;[10] and the absence of legislative authorization. See, e.g., Smith, 478 Mass. at 60, quoting Robbins, 355 Mass. at 330.

On appeal, the town contends that the judge's decision was erroneous for two reasons. First, while Eversource is a private corporation, its use of the ROW for an underground electrical transmission line to service its customers is in reality a public use. Second, the judge's narrow construction of the prior public use doctrine "would defeat the purpose of the [doctrine], which is to protect public land acquired for a

[10] While the complaint states that railroad use would be impossible if the underground transmission wires were to be constructed, the MBTA asserts that it currently operates commuter rail service on some lines over such underground conduits. The judge did not reach the issue whether Eversource's proposed use is inconsistent with the prior use, and, for purposes of the motions to dismiss, we must accept the town's assertion that the use would be inconsistent. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007), quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

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particular public use . . . without the required legislative awareness and specific authorization."

i. Public use of the ROW. For the prior public use doctrine to be applicable under our existing law, we must accept the town's contention that the option agreement in reality is a diversion to a public use. The town maintains that the prior public use doctrine focuses on the "use" of the land, not on the corporate status of the user. The town points out that Eversource represented in its petition before the EFSB and the DPU that the project serves "a compelling public use and purpose,"[11] and that the construction of the MCRT walking and biking trail through the ROW confers a further "public benefit." Moreover, the town argues, Eversource is able to pass along the costs of the project to its public ratepayers.

Relying on this asserted public use, the town contends, as it did in the Land Court, that this court's decision in Braintree, 399 Mass. at 509, "establishes that the [t]own has stated a valid claim upon which relief can be granted under the prior public use doctrine." The comparison is inapt. First,

[11] In its brief, Eversource contests some of the town's assertions about the content of Eversource's statements to the EFSB, and points to a published set of documents it says do not contain the asserted language. For purposes of a motion to dismiss, however, we assume "that all the allegations in the complaint are true (even if doubtful in fact)." Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp., 550 U.S. at 555.

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the judge properly rejected the contention that Eversource is a public entity, or that the transmission project is a public use. Second, our holding in Braintree, supra, did not suggest that the doctrine of prior public use applies to a subsequent private use.

The judge rejected the town's efforts "to paint the [p]roject as one of public use." He recognized that, in regulatory proceedings, Eversource argues that laying the transmission lines underneath the ROW will afford a public benefit with respect to power grid enhancements and, later, the construction of the MCRT in concert with the DCR. Nonetheless, he concluded, "[t]hat a utility, owned by its shareholders, is subject to considerable public oversight does not make it a public entity for purposes of the legal doctrine. . . . Nor does the fact that a utility such as Eversource only can proceed to build and operate power lines with the approval of public regulatory agencies, and has its rates reviewed in a public manner."

We agree. Eversource's proposed use of the MBTA ROW to construct and operate underground transmission lines is not a public use. Eversource, a domestic corporation, privately owns and operates its electric transmission and distribution systems. See ENGIE Gas & LNG LLC v. Department of Pub. Utils., 475 Mass. 191, 206 (2016) ("The business of electric distribution

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companies is to plan for, build, and operate distribution infrastructure . . . ; deliver electricity; and be compensated for doing so"). Eversource will pay taxes on the transmission line as an asset, see G. L. c. 59, § 18, Fifth, and is entitled to earn a profit on its investment through rates approved by the DPU. See G. L. c. 164, § 94. See Higginson, 212 Mass. at 589 (court focuses on "character of the use"); Abbott v. Inhabitants of Cottage City, 143 Mass. 521, 525 (1887) ("[public] use is in the public at large").

Like many other privately owned corporations doing business in the Commonwealth, such as banks and common carriers, Eversource is publicly regulated. In order to site a new electric transmission line, Eversource is required to demonstrate to the EFSB and the DPU that the project "will or does serve the public convenience and is consistent with the public interest" and is "reasonably necessary for the convenience or welfare of the public." See G. L. c. 164, § 72; G. L. c. 40A, § 3. A statutory requirement that regulators consider the public's interest in siting transmission lines, however, does not convert the construction and operation of a four-mile segment of a privately owned electric transmission grid into a public use.

ii. Extension of doctrine to diversion to private use. The town's second argument rests on the mistaken premise that

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the sole purpose of the prior public use doctrine is to prevent the diversion of public land acquired for a particular public use to any inconsistent use without specific legislative awareness and approval.

Although the prior public use doctrine undoubtedly protects public land, it developed in our common law as a means to resolve conflicts over the use of public lands between State-chartered corporations, municipalities, or other governmental agencies that might claim authority to use another government entity's land, or to take the land by eminent domain, in a potentially never-ending cycle of takings.[12] See, e.g., Brookline, 357 Mass. at 436-437 (dispute between town and State agency over taking of property previously acquired as parkland for road construction); Needham v. County Comm'rs of Norfolk, 324 Mass. 293, 295-297 (1949) (dispute between town and county commissioners over relocation of public way on strips of

[12] The prior public use doctrine has been applied particularly stringently to protect public lands acquired as "parkland." Smith v. Westfield, 478 Mass. 49, 61 (2017). "The policy of the Commonwealth has been to add to the common law inviolability of parks express prohibition against encroachment." Higginson v. Treasurer & Sch. House Comm'rs of Boston, 212 Mass. 583, 591-592 (1912). See Robbins, 355 Mass. at 330; Gould v. Greylock Reservation Comm'n, 350 Mass. 410, 419 (1966). We noted in Mahajan v. Department of Envtl. Protection, 464 Mass. 604, 616 (2013), that the "spirit" of art. 97 of the Amendments to the Massachusetts Constitution derived from the public use doctrine, and that the protections of inconsistent subsequent use in that doctrine in large part were intended to ensure that public parkland remain parkland.

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land previously appropriated for school and library); Bauer v. Mitchell, 247 Mass. 522, 525 (1924) (dispute between trustees of agricultural school and county commissioners over attempt to take portion of school land for hospital sewage system); Boston & Albany R.R. v. City Council of Cambridge, 166 Mass. 224, 224 (1896) (dispute between city and railroad over city's taking of land to build park); Old Colony R.R., 153 Mass. at 563-564 (dispute between railroad and water company over operation of pumping station on land previously acquired for rail use).

The doctrine of prior public use prevents the absurd result of public entities, each with the authority to exercise eminent domain, taking and retaking the same property from each other "ad infinitum."[13] Commonwealth v. Massachusetts Turnpike Auth., 346 Mass. 250, 254-255 (1963). See Appleton v. Massachusetts Parking Auth., 340 Mass. 303, 310 (1960) (specific legislative authority required in order to prevent governmental agency from engaging in "roving eminent domain"). See generally Comment, Judicial Balancing of Uses for Public Property: The Paramount

[13] The doctrine of prior public use also promotes "fiscal and social stability" by protecting the long-term interests of a municipality or other government agency which "may have expended resources for the improvement of property in reliance on a continued right to use that property." Somerset v. Dighton Water Dist., 347 Mass. 738, 742 (1964). See Norfolk So. Ry. v. Intermodal Props., LLC, 215 N.J. 142, 162-163 (2013) (common-law rule developed to create certainty among public entitles, each with authority to exercise power of eminent domain over same property).

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Public Use Doctrine, 17 B.C. Envtl. Aff. L. Rev. 893, 896 n.35 (1990) (prior public use doctrine was developed to avoid "impropriety of the [S]tate's nullifying its own prior dedication of property to public use, without specific consideration of the superseding public use"); Wilson, The Public Trust Doctrine in Massachusetts Land Law, 11 B.C. Envtl. Aff. L. Rev. 839, 866-867 (1984) (prior public use doctrine establishes priorities between multiple governmental entities each possessing power of eminent domain). See also Georgia Dep't of Transp. v. Jasper County, 355 S.C. 631, 635 (2003) (prior public use doctrine is "a rule of law limited to controversies between two [entities] each possessing a delegated, general power of eminent domain" [citation omitted]); In re Vt. Gas Sys., Inc., 2017 VT 83, ¶ 19 (purpose of common-law doctrine is to "protect public uses and to prevent land from being condemned back and forth between competing condemners, which would result in a lack of consistent public use of the land").

In this case, involving a transaction between public and private entities for a subsequent private use of land, we are not called upon to resolve a conflict over eminent domain authority. The common-law prior public use doctrine has never been applied to bar a subsequent private use carried out by a private entity. While the town urges that we extend the

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doctrine of prior public use to encompass a diversion to an inconsistent private use, the town has not demonstrated that the benefits of expanding the prior public use doctrine to encompass subsequent inconsistent private uses outweigh the value of adhering to our long-standing common-law formulation. To adopt a vastly expanded view of the doctrine in order to add a similar requirement for diversion to an inconsistent private use would not serve the purposes of the doctrine we have discussed, and would lead to numerous deleterious consequences. Among other things, countless prior transfers of interests in land, including many easements for utility wires and pipes, and water and sewage pipes, would be called into question. Yet, as the town itself recognizes, these types of transactions between government and private entities are frequent and critical to maintaining a municipality's infrastructure. See Somerset v. Dighton Water Dist., 347 Mass. 738, 742 (1964). Moreover, it would render future developments between public and private entities, which, according to the amici, have been blossoming in the Commonwealth,[14] prohibitively expensive and time consuming to undertake.

[14] The amici point to several very recent housing projects involving public and private entities to create hundreds of units of much-needed affordable housing that also generates revenue for the government entities involved, affordable child-care facilities to address severe shortages, and the leasing of

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As the Land Court judge explained, "at both the local and [S]tate level, transfers of government-owned property to private ownership happen with frequency, and at times in cases where the land's title was acquired by the public owner for an express public purpose which may be at odds with the private grantee's ensuing use." Thus, an expansion of the doctrine of prior public use to include subsequent private uses would "give rise to a significant number of lawsuits challenging the public disposition of . . . real estate." The concerns raised by the amici that "[i]mposing upon the Legislature a new common law requirement to provide site-specific approval before any such project could commence construction would add great uncertainty as to schedule (and, therefore, project costs), making development involving public land or rights therein far less attractive to the private sector than it is today" also are persuasive.

4. Conclusion. Because we decline to extend our long-standing doctrine of prior public use to include a diversion from public use to an inconsistent private use, the town cannot prevail on either of its claims, and we accordingly affirm the Land Court judge's decision allowing the defendants' motions to dismiss.

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land along State highways to support electrical panels that save the Department of Transportation millions of dollars annually.

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So ordered.

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SJC-12997

TOWN OF SUDBURY vs. ENERGY FACILITIES SITING BOARD & another[1] (and a consolidated case[2]).

Suffolk. March 1, 2021. - June 25, 2021.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Energy Facilities Siting Board. Public Utilities, Energy company, Electric company, Electrical transmission line. Electric Company. Environment. Administrative Law, Record, Decision, Judicial review, Substantial evidence.

Civil actions commenced in the Supreme Judicial Court for the county of Suffolk on January 17, 2020.

After consolidation, the case was reported by Cypher, J.

Jeffrey M. Bernstein for town of Sudbury.
Richard A. Kanoff for Protect Sudbury, Inc.
Pierce O. Cray, Assistant Attorney General, for Energy Facilities Siting Board.
David S. Rosenzweig for NSTAR Electric Company.
The following submitted briefs for amici curiae:
Kin K. Gee, pro se.

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[1] NSTAR Electric Company, doing busines as Eversource Energy, intervener.

[2] Protect Sudbury, Inc. vs. Energy Facilities Siting Board & another.

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Andrew M. Fischer for Massachusetts Bicycle Coalition & others.

Mark R. Rielly & Rachel C. Thomas for New England Power Company.

KAFKER, J. The town of Sudbury (town) and Protect Sudbury, Inc. (Protect Sudbury), challenge a decision of the Energy Facilities Siting Board (board) that approved a proposal by NSTAR Electric Company, doing business as Eversource Energy (Eversource), under G. L. c. 164, § 69J, to construct a new electrical transmission line between substations in Sudbury and Hudson (project). Eversource sought to construct the new transmission line after assessments revealed that this area needed additional energy supply to withstand certain contingencies, posing a risk to 72,000 customers. The board's mandate under G. L. c. 164, § 69H, when considering such projects, is to "provide a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost." The town and Protect Sudbury (collectively, petitioners) raise a number of challenges to the manner in which the board applied these three statutory considerations in this case.

We conclude that there was no error in the board's assessment and approval of the project. We first explain that the board's obligation is to balance the reliability, cost, and environmental impact of each proposal before it. No one factor

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is determinative, and the board has wide discretion to balance the factors from case to case to achieve its statutory mandate. Many of the petitioners' arguments are little more than disagreement with how the board interpreted its statutory mandate or balanced these considerations. Our role is not to substitute our judgment or the petitioners' judgment for that of the board, however, and we see no legal basis for disturbing the board's careful and reasoned decision in this case. Accordingly, for the reasons described infra, we affirm the board's approval of the project.[3]

1. Background. a. Energy Facilities Siting Board. The board is an independent board within the Department of Public Utilities charged by the Legislature with administering the provisions contained in G. L. c. 164, §§ 69H-69Q. See G. L. c. 164, § 69H. "The approval of the board is required prior to the commencement of construction of any 'facility' . . . in the Commonwealth, and no State agency may issue a construction permit for any such facility unless the petition to construct the facility has already received approval from the board." Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities

[3] We acknowledge the amicus briefs submitted by Kin K. Gee; the Massachusetts Bicycle Coalition, Massachusetts Central Rail Trail Coalition, East Quabbin Land Trust, East Coast Greenway Alliance, and Rails to Trails Conservancy; and New England Power Company, doing business as National Grid.

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Siting Bd., 448 Mass. 45, 46-47 (2006) (Alliance I), quoting G. L. c. 164, §§ 69J, 69J 1/4. Its "governing mandate . . . is to 'provide a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost.'" Alliance I, supra at 47, quoting G. L. c. 164, § 69H. To accomplish this, the board reviews "the need for, cost of, and environmental impacts of transmission lines," and "[s]uch reviews shall be conducted consistent with . . . [§] 69J." G. L. c. 164, § 69H. Also, "[i]n order to site a new electric transmission line, [the utility provider] is required to demonstrate to the [board] . . . that the project 'will or does serve the public convenience and is consistent with the public interest' and is 'reasonably necessary for the convenience or welfare of the public.'" Sudbury v. Massachusetts Bay Transp. Auth., 485 Mass. 774, 786 (2020), citing G. L. c. 164, § 72, and G. L. c. 40A, § 3.

More specifically, in this case, the board evaluated Eversource's application based on the following five requirements:

> "(1) that additional energy resources are needed . . . ;
>
> "(2) that, on balance, the proposed project is superior to alternative approaches in terms of reliability, cost, and environmental impact, and in its ability to address the identified need . . . ;
>
> "(3) that the applicant has considered a reasonable range of practical facility siting alternatives and that the

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> proposed facilities are sited in locations that minimize costs and environmental impacts while ensuring a reliable energy supply . . . ;
>
> "(4) that environmental impacts of the project are minimized and the project achieves an appropriate balance among conflicting environmental concerns as well as among environmental impacts, cost, and reliability . . . ; and
>
> "(5) that plans for construction of the proposed facilities are consistent with the current health, environmental protection, and resource use and development policies of the Commonwealth."

b. Eversource's site-selection process. Eversource sought to site a new 115 kilovolt underground transmission line between one of its substations in Sudbury and the Hudson light and power department's substation in Hudson.[4] Eversource conducted a thorough site-finding process before determining its preferred plan for the project, detailed infra.

i. Identification of need. Eversource proposed the transmission line to address reliability concerns that were identified by ISO New England Inc. (ISO-NE). ISO-NE is "a private, nonprofit entity that runs the region's power grid and its restructured wholesale energy market." Strategic Energy, LLC v. Western Mass. Elec. Co., 529 F. Supp. 2d 226, 229 (D. Mass. 2008). It is entrusted under Federal law with operating a safe and reliable transmission system in New England,

[4] Before the board, Eversource also filed a petition pursuant to G. L. c. 40A, § 3, seeking individual and comprehensive exemptions from zoning enactments in Sudbury, Hudson, and Stow, the grant of which has not been challenged.

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administering "a regional network that coordinates the movement of wholesale electricity in all or parts of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont." Beyond Nuclear v. U.S. Nuclear Regulatory Comm'n, 704 F.3d 12, 16 (1st Cir. 2013). Its "system . . . transmits energy through high-voltage lines to local distribution lines that serve consumers." Alliance to Protect Nantucket Sound, Inc. v. Department of Pub. Utils., 461 Mass. 166, 180 n.26 (2011) (Alliance III). ISO-NE also "oversees the markets for wholesale electricity in the New England region." PNE Energy Supply LLC v. Eversource Energy, 974 F.3d 77, 80 (1st Cir. 2020). As most relevant here, the board explained that ISO-NE "carries out a regional system planning process, wherein it conducts periodic needs assessments on a system-wide or specific-area basis, and develops an annual regional transmission plan using a ten-year planning horizon" as part of its role as the independent system operator of New England.

As such, when conducting needs assessments, ISO-NE analyzes how a particular grid or subarea will perform in the event of several contingencies. A "contingency" in this context is an event causing the loss of transmission system elements. A single contingency is referred to as an "N-1" contingency, and an "N-1-1" contingency occurs when there is a subsequent loss of a transmission element following an N-1 event. As the board

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explained, an "N-1-1 contingency" is "a particularly adverse event where two separate and unrelated parts of a transmission system fail." ISO-NE uses these criteria to ensure that a transmission system can reliably deliver power even during stressed conditions and the loss of one or more transmission elements.

In 2015, ISO-NE issued the "Greater Boston Area Updated Transmission Needs Assessment" (2015 needs assessment). The 2015 needs assessment used "summer peak 90/10 load" forecasts[5] of customer demand and other assumptions from ISO-NE's then most current 2013 capacity, energy, loads, and transmission (CELT) report to assess the reliability of the existing transmission lines.

Eversource relied on the 2015 needs assessment and 2013 CELT forecasts from ISO-NE for its determination of need. The 2015 needs assessment found that the existing transmission system in the Marlborough subarea[6] is inadequate to reliably serve current and future customer load. Specifically, the 2015 assessment identified numerous postcontingency "thermal

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[5] The peak 90/10 load represents an energy load level that has a ten percent chance of being exceeded because of weather conditions in any one year.

[6] The Marlborough subarea includes the cities of Marlborough and Framingham and the towns of Hudson, Stow, Berlin, Northborough, Westborough, Southborough, Grafton, and Shrewsbury.

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overloads" and "low-voltage violations" in the Marlborough subarea following certain N-1 and N-1-1 contingencies. Eversource stated that although the N-1 violations identified in the area would be addressed by other planned transmission system investments, N-1-1 postcontingency thermal overloads and low voltage violations would remain unresolved, leaving a risk that more than 72,000 customers in the subarea could lose power.

Eversource also presented the board with its internal updated analysis undertaken in 2016 and 2016 ISO-NE CELT forecast data that Eversource considered as part of the updated analysis. Eversource claimed that its updated analysis confirmed the need for the project as identified in the 2015 needs assessment, demonstrating a risk of "post-contingency thermal overloads" and "low voltage violations" in the Marlborough subarea. Based on all of this information, Eversource concluded that there was a need for additional energy supply in the Marlborough subarea.

ii. Facility and route selection. To select a proposed location for the project, Eversource identified a study area, reviewed potential routes between the Sudbury and Hudson substations, and narrowed the list of potential routes. As part of this process, Eversource met with Federal, State, and municipal officials; petitioner Protect Sudbury; residents;

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business owners; and other stakeholders to discuss route options and to obtain input.

Eversource considered multiple alternatives in addition to a new transmission line to address the need. It analyzed various nontransmission alternatives that could potentially address the identified need.[7] Eversource also assessed an alternative transmission project consisting of multiple transmission line reinforcements and upgrades to several substations (transmission alternative two), most of which would need to be constructed and operated by another transmission company, New England Power Company, doing business as National Grid (NEP).[8] Eversource expressed concerns about the cost and reliability of these alternatives and, as described in more detail infra, concluded that a new transmission line would be superior to both alternatives.

Eversource next examined a range of routes for the line. Eversource analyzed twenty-one potential route options,

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[7] Those alternatives included generation, energy efficiency, demand response, and battery storage. The town also proposed its own nontransmission alternative: a combination of solar-panel photovoltaic technology, storage resources, and demand response. Based on its detailed analysis, Eversource determined that the least-expensive, feasible nontransmission alternative would be a new generation facility, consisting of peak generating units and reciprocating engines.

[8] Transmission alternative two is also referred to as the "NEP Alternative."

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including both overhead and underground routes along a Massachusetts Bay Transportation Authority right of way (MBTA ROW), a mix of public roadways, and routes suggested by the petitioners.[9] This analysis identified three routes for further evaluation and presentation to the board. Eversource identified as its preferred route for the new line an approximately nine-mile route, of which 7.6 miles would run underground along the MBTA ROW in Sudbury, Stow, Marlborough, and Hudson.[10,11] As part of this preferred route, Eversource partnered with the

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[9] After considering abutting land uses, natural resources, traffic patterns, and constructability issues, Eversource eliminated nine routes because of their clear inferiority and identified twelve routes for further study based on reliability, environmental, and cost considerations. Eversource then identified design variations or hybrid designs for five of the remaining twelve routes, yielding a total of twenty options along twelve unique route corridors. It then analyzed each of these routes, which entailed (1) establishing evaluation criteria to assess the impacts of each route; (2) calculating a ratio score for each criterion for each route; (3) assigning individual weights to each criterion to reflect its potential for impacts; and (4) determining a total raw ratio score and total weighted ratio score for each route. Eversource scored the twenty options based on seventeen environmental and constructability criteria that fell into three categories: (1) developed environment criteria (seven criteria); (2) natural environment criteria (six criteria); and (3) constructability criteria (four criteria). Eversource designed the criteria and the weights given to reflect the unique components of the project, study area, and public feedback.

[10] The board referred to this route as the "MBTA Underground Route." We refer to it as the "preferred route."

[11] The remainder of the line would run underneath streets in Hudson.

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Department of Conservation and Recreation in the codevelopment of a segment of the Massachusetts Central Rail Trail, a proposed multiuse rail trail. Eversource presented a variation of this same route that would instead run overhead along the MBTA ROW (overhead route). Additionally, as required by § 69J, Eversource also proposed as an alternative an approximately ten-mile route for the project that would run entirely under existing roadways in Sudbury and Hudson (all-street route).

Based on its consideration of environmental impacts, cost, and reliability, Eversource selected the underground route along the MBTA ROW as its preferred route for the project.[12]

c. Procedural background. On April 20, 2017, Eversource filed three petitions with the board and the Department of Public Utilities, pursuant to G. L. c. 164, § 69J, for approval of the project. The board consolidated the three petitions into a single adjudicatory proceeding, accepted written public comments, and held two public comment hearings. It then conducted a thirty-two month adjudicatory proceeding, including

[12] Eversource originally presented the overhead route as its preferred route, but after meetings with towns and stakeholders, and further consideration of the greater environmental impacts of an overhead route, Eversource decided to present the underground route as the preferred route for the project. Ultimately, the overhead route had a lower cost than the preferred route but greater potential for adverse environmental impacts.

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sixteen days of evidentiary hearings, amassing a substantial evidentiary record consisting of over 1,840 exhibits and 2,800 transcript pages, extensive discovery responses, and written and oral testimony from twenty-eight witnesses.[13]

On June 13, 2019, the town filed a motion to reopen the record and hearing to admit in evidence (1) current load and energy efficiency forecast data from ISO-NE; (2) current Department of Energy Resources solar photovoltaic data; and (3) new information relating to nontransmission alternatives. It argued that the new evidence was necessary for review of the project and submitted an affidavit in support of its motion. Eversource opposed the motion and submitted two supporting affidavits, arguing that the new data would not change any of the board's findings or conclusions, and that the data therefore did not satisfy the standard in 980 Code Mass. Regs. § 1.09(1) (2010) for reopening the record and hearing. The town filed a reply to Eversource's opposition and submitted a second affidavit responding to Eversource's opposition.

On December 2, 2019, the board issued a tentative decision denying the motion to reopen the record and approving Eversource's petition to construct the project using the

[13] There were five active interveners before the board -- the towns of Sudbury, Hudson and Stow; Hudson Light and Power Department; and Protect Sudbury -- and approximately sixty individual participants.

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preferred route. On December 18, 2019, the board issued its 246-page final decision.

The petitioners filed separate appeals from the final decision with a single justice of this court pursuant to G. L. c. 25, § 5. See Alliance I, 448 Mass. at 46. Eversource subsequently was permitted to appear as an intervener in the appeals. The parties filed a joint motion to consolidate the appeals, proceed on a single record, and impound confidential documents. After granting the motion, the single justice reserved and reported the case to the full court.

2. Discussion. a. Motion to reopen the record. Before reaching the merits, we first address the procedural issue raised by the town regarding its motion to reopen the record before the board to add more recent ISO-NE forecast data. Under the applicable regulations, a movant must "clearly show good cause for re-opening the hearing" to reopen the record. 980 Code Mass. Regs. § 1.09(1). The parties agree that, under board precedent, "good cause" only exists where the evidence, if admitted, would be likely to have a significant impact on the board's decision in the proceeding. The board denied the town's motion because it was not likely that the new data would have a significant impact on the board's decision. The town argues that the board erroneously relied on extrarecord information -- the affidavits and analysis submitted by Eversource in

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opposition to the town's motion -- in denying the motion to reopen. Essentially, the town argues that without an evidentiary hearing it was error for the board to rely on Eversource's analysis of, and conclusions drawn from, new data that Eversource submitted in opposition to the motion.

We afford the board a great degree of deference when it rules on whether to reopen an administrative record. See Brockton Power Co. v. Energy Facilities Siting Bd., 469 Mass. 215, 219 (2014); Box Pond Ass'n v. Energy Facilities Siting Bd., 435 Mass. 408, 420 (2001) ("An agency may reopen a hearing, but we accord agencies broad discretion in deciding whether to do so . . ." [citation omitted]). The town characterizes the opposition materials as "extra-record" and argues that the board cannot rely on such extrarecord arguments when ruling on the motion to reopen. The very purpose of a motion to reopen the administrative record, however, is for the board to consider putting material that is not in the record (i.e., extrarecord material) into the record. The board must look at the extrarecord material to determine whether there is "good cause" to admit it. The board did just that here: it considered the materials and the affidavits submitted by both parties and ultimately determined that the new data would not have an impact on its decision because the new data did not change the fact

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that there was already a need for additional energy supply.[14] We see no error in the board's decision to deny the motion to reopen.

b. Standard under G. L. c. 164, § 69H. The petitioners raise a number of challenges to various determinations made by the board, each of which we address infra. We begin, however, by addressing the framework of G. L. c. 164, § 69H. Section 69H provides that the board "shall implement the provisions contained in [§§] 69H to 69Q, inclusive, so as to provide a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost" (emphases added). The statute identifies three objectives –- reliability, environmental impact, and cost -- and provides that the board must balance each of these three objectives by maximizing reliability and minimizing environmental impact and cost. See New Bedford v. Energy Facilities Siting Council, 413 Mass. 482, 485 (1992), S.C., 419 Mass. 1003 (1995) ("The statute mandates that the council balance environmental harm that would be caused by a new power plant against the other statutory objectives -- providing a necessary energy supply at the lowest possible

[14] If we adopted the town's position, the board would have to rule on motions to reopen the administrative record without ever looking at the evidence that the movant wants added to the record or any arguments related to that evidence.

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cost").[15] To be selected, a proposal need not be the best in each of the three categories. Nor is any single factor prioritized over the others. The factors are considered in combination with each other. An alternative can be evaluated higher in terms of reliability and lower in terms of cost or environmental impact or vice versa, and still be selected. It is the over-all balancing and evaluation of all three factors that determines whether the proposal satisfies the statutory criteria.

The petitioners' arguments reflect a misunderstanding or distortion of this framework. For example, Protect Sudbury at one point argues that the board erroneously approved the project because it did not have the least environmental impact or the lowest possible cost among available alternatives. But this is not what the statute requires. As explained supra, the board does not have to choose the alternative that has the least environmental impact; it instead must balance the three objectives based on the circumstances presented in each case.

The record before the board in this case demonstrates how the board will often have to balance the statutory objectives. One part of the board's analysis of the petition was weighing

[15] At the time of our decision in New Bedford, § 69H used "necessary energy supply" instead of "reliable energy supply." See New Bedford, 413 Mass. at 485. The relevant statutory language is otherwise the same.

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the project against the proposed nontransmission alternatives and transmission alternative two. The board determined that the project provided greater reliability at a lower cost but with more environmental impacts than transmission alternative two. And, while the nontransmission alternatives provided the least environmental impacts, the board determined that they were not as reliable as the project and would cost more. Later, when choosing the best route for the new transmission line, none of the proposals before the board provided the most reliability at the lowest cost with the least environmental impacts. The board determined that the overhead route provided the lowest cost with the greatest environmental impact; the all-street route provided the highest cost with the lowest environmental impact; and the preferred route fell somewhere in the middle on cost and was comparable to the all-street route on environmental impact. At no point did any one of these options provide the board with the greatest reliability at the lowest cost and with the fewest impacts to the environment. To carry out its mandate, therefore, the board had to compare the relevant costs and benefits of each proposal and determine whether the project as proposed "provide[d] a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost." G. L. c. 164, § 69H.

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We also recognize that there is a substantive as well as a comparative aspect to this three-factor analysis. For example, for any option to be selected, it must have "a minimum impact on the environment." To carry out this statutory mandate, the board expressly required "that environmental impacts of the project [be] minimized and the project achieve[] an appropriate balance among conflicting environmental concerns as well as among environmental impacts, cost, and reliability." Therefore, the board's assessment of the environmental impact of a proposal is not simply a relative exercise. That a proposal has the least environmental impact of the alternatives presented does not automatically mean that it satisfies the statutory requirement of having a "minimum impact on the environment." Rather, the board must scrutinize each option and ensure, consistent with § 69H, that the preferred option has the required "minimum impact on the environment." This is the appropriate statutory framework under which we must review the board's actions in this case. We next turn to the numerous specific challenges raised by the petitioners.

c. Board's decision. i. Standard of review. "In evaluating a claim that the board's determination is arbitrary, capricious, or unsupported by substantial evidence, we 'give[] great deference to the board's expertise and experience.'" Brockton Power Co., 469 Mass. at 223, quoting Alliance I, 448

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Mass. at 51. "The board's interpretation of its 'statutory mandate will be disturbed only if the interpretation is patently wrong, unreasonable, arbitrary, whimsical, or capricious.'" Brockton Power Co., supra at 219, quoting Box Pond Ass'n, 435 Mass. at 416. As for the application of facts, "[o]ur 'review does not turn on whether, faced with the same set of facts, we would have drawn the same conclusion as [the siting board], but only "whether a contrary conclusion is not merely a possible but a necessary inference."'" Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd., 457 Mass. 663, 690 (2010) (Alliance II), quoting Goldberg v. Board of Health of Granby, 444 Mass. 627, 638 (2005). Given this deference, the "burden of proving that the decision is invalid . . . is a heavy one." Alliance I, supra.

ii. Need. We begin with the challenge to the board's determination that there was a need for additional energy resources. The town argues that the ISO-NE forecasts are too conservative because they base the existence of a need on the occurrence of rare contingencies. The board defended the use of these rare contingencies, explaining in its final decision that "[a] key role of reliability planning is to address contingencies that may be statistically unlikely, but such significant threats to reliable energy supply that they necessitate a certain remedy."

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We discern no error in the board's use of the conservative N-1-1 criterion in assessing the existence of a need. Conservative forecast predictions are warranted, particularly given the importance placed on a reliable electric system. State law makes it clear that the residents of the Commonwealth simply cannot be exposed to foreseeable and avoidable power outages. See St. 1997, c. 164, § 1 (h) (Electric Utility Restructuring Act) ("reliable electric service is of utmost importance to the safety, health, and welfare of the commonwealth's citizens and economy"). See also St. 1997, c. 164, § 1 (a) ("electricity service is essential to the health and well-being of all residents of the commonwealth, to public safety, and to orderly and sustainable economic development"). If government and industry fail to properly plan and act to timely address our energy needs, enormous suffering can result.

The town also maintains that the forecasts should not have been relied on because they consistently overestimate future load growth. The board considered and rejected this argument. Again, we discern no error in the board's decision to use ISO-NE load forecasts in assessing whether there was a need for additional energy resources. We first note that these forecasts are commonly relied on by the board and other New England States. See NextEra Energy Resources, LLC v. Department of Pub. Utils., 485 Mass. 595, 615-616 (2020) (emphasizing reasonable

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reliance on tracking system used by industry in New England region). Moreover, the board's determination of need here was based both on current need as well as projected future loads, particularly as forecast in the 2015 needs assessment. That assessment determined that existing transmission lines were insufficient to provide the subarea with the necessary energy supply in the event of certain contingencies based on pre-2013 usage. As explained supra, contingency planning is necessary and appropriate. Consequently, the board's conclusion of a then-existing need is not dependent on whether the future load forecasts provided by Eversource were somewhat overestimated. Accordingly, the board's determination was supported by substantial evidence.[16]

iii. Cost. Both petitioners challenge the board's assessments of cost as it relates to the project and several of the alternatives. For the nontransmission alternatives, the board compared the cost to the ratepayers for each. For transmission alternative two, the board used conceptual cost estimates to compare the cost of the proposal.[17] For much of the

[16] During the evidentiary hearing, ISO-NE itself made this clear, as it told the board in response to an information request that the need for the project was not dependent on forecast growth in demand.

[17] A planning grade estimate has a range of plus or minus twenty-five percent. The less precise conceptual cost estimate

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proceeding, Eversource relied on a conceptual cost estimate for the project as well. It eventually provided a planning grade estimate for the project, but only for the project.

Protect Sudbury argues that Eversource failed to "meet it[s] burden to submit cost estimates that provided any reasonable basis for a determination of lowest possible cost." It maintains that conceptual cost estimates are inherently inaccurate and that the board cannot engage in any meaningful comparison with alternatives using these estimates. It argues that the board therefore should require applicants to submit planning grade estimates for all options under consideration.

We discern no legal error in the board's decision to rely primarily on conceptual cost estimates when comparing the project with proposed alternatives. As the board explained,

> "the [board's] balancing of environmental impact, cost, and reliability of supply takes place at a relatively early stage in the engineering design of a particular project. As a result, project cost estimates are typically developed only to an intermediate level of precision. Furthermore, applicants typically do not develop engineering design of alternatives to the same level of detail, so cost estimates for alternatives are necessarily less precise."

As a result, the board explained, it would be impractical and inefficient to require planning grade estimates for all of the options presented in a petition. Moreover, the board and the

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has a range from minus twenty-five percent to plus fifty percent.

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petitioners were able to question Eversource's cost witnesses extensively. Eversource also provided detailed responses and documentation to the board in response to record requests. Any concerns with the accuracy or limitations of these cost estimates could have been addressed through the evidentiary hearing procedures. There was ample evidence upon which the board could reasonably assess the comparative cost of the proposals being considered. Therefore, we conclude that the board's reliance on conceptual cost estimates was reasonable.

Protect Sudbury's insistence that the board require planning grade estimates for each alternative is also arguably inconsistent with the time frames set out in G. L. c. 164, § 69J. This section encourages the board to issue a decision on a petition in a timely manner by providing that proceedings before the board should be completed in twelve months from the filing date. G. L. c. 164, § 69J (board "shall within twelve months from the date of filing approve [or reject] a petition to construct a facility"). Cf. Box Pond Ass'n, 435 Mass. at 415 & n.7 (construing similar one-year time frame for consideration of petition to construct generating facility, contained in G. L. c. 164, § 69J 1/4, as "directory and not mandatory"). Protect Sudbury acknowledges that obtaining a planning grade estimate for just the all-street route would take ten to twelve months. If Eversource had to provide such estimates for every proposal

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it considered, or all the proposals of interest to objectors, that could result in substantial delay to a proceeding that already lasted over thirty-two months. Such a delay could frustrate the board's ability to complete the approval process in a timely manner, and thus leave the Commonwealth's energy needs unaddressed and its residents unprotected.[18]

iv. Alternative approaches. After determining that there was a need for additional energy resources, the board considered whether there were alternative approaches that could satisfy the need. The board focused on several proposed nontransmission alternatives and transmission alternative two. It ultimately concluded that the nontransmission alternatives and transmission

[18] Protect Sudbury appears to argue that because the ranges in the conceptual cost estimates overlap, the board could have treated any of the alternatives presented as having the lowest possible cost. The board properly rejected this argument. It explained that the direction of deviation from the baseline estimate would likely be the same across projects; if the cost of the preferred route exceeded its baseline estimate, the cost of the other routes would also be expected to exceed their baseline. This is because the cost items that comprise each estimate, such as the cost of labor or materials, are the same or similar for each route. This is one reason the board uses the baseline estimates rather than the ranges to compare project costs, a practice also used by ISO-NE. See NextEra Energy Resources, LLC, 485 Mass. at 615-616 (recognizing significance of industry standard).

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alternative two provided lower reliability at higher costs than the project.[19]

Again, we discern no reason to disturb the board's findings or conclusions with regard to the alternatives. The board concluded that the project was superior to the nontransmission alternatives for several reasons, each of which is supported by the evidence that was before it. It concluded that the nontransmission alternatives were not as reliable as the project, as there was uncertainty whether a combination of nontransmission alternatives could feasibly meet the need:[20]

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[19] The board did find that at least some of the nontransmission alternatives were "preferable" to the project on environmental impacts.

[20] The town argues that the board failed to appreciate the significance of Eversource's repeated reduction in the amount of additional electricity that a nontransmission alternative would need to be capable of adding (injection amount). Eversource initially estimated that 264 megawatts of energy capacity were required for nontransmission alternatives to meet the need. Over the course of the proceeding before the board, Eversource lowered the required capacity to 115 megawatts. Eversource used this revised estimate when assessing the proposed nontransmission alternatives. The town argues that this reduction -- totaling fifty-five percent by the end of the hearing -- undermines the reliability of Eversource's analysis regarding nontransmission alternatives. The board noted the reduction but ultimately gave it little weight in its analysis. The town overstates the importance of the injection amount in the board's analysis. It is clear from the board's consideration and rejection of nontransmission alternatives that the necessary injection amount was not a major consideration for the board. Rather, the board focused on concerns regarding the reliability and feasibility of these solutions being used to meet an immediate need.

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"Without compelling evidence that a substantial cut in peak power demand in the Marlborough [s]ubarea is feasible, and likely to occur, relying on such an expectation is not an appropriate response to the identified, and immediate, need." The board also concluded that these alternatives were inferior on cost, as they would result in a higher annual cost to ratepayers than the project. Again, each of these findings is supported by substantial evidence in the record before the board. Neither petitioner provides us with any reason why we should overrule the board's reasoned balancing with regard to the reliability and cost of the nontransmission alternatives. See Brockton Power Co., 469 Mass. at 223, citing Alliance I, 448 Mass. at 51.

Similarly, although the project carried a "greater potential for adverse environmental impacts" than transmission alternative two, the board nonetheless concluded that "the overall benefits of the project outweigh the environmental advantages" of transmission alternative two. These benefits included the increased reliability provided by the [p]roject at a lower cost. On reliability, the board valued the flexibility that the project would bring as a new, distinct energy supply source in the region, thereby providing greater geographical diversity.

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Protect Sudbury argues that the board's determination on reliability was error, as the board credited the project with "enhanced reliability," a term that has no statutory basis. All that the board did, however, was determine that a new transmission facility brought greater reliability, including geographical diversity, to the subarea when compared with simply increasing the capability of existing facilities. For this reason, it concluded that the project provided greater reliability than transmission alternative two. Such a decision falls squarely within the discretion and expertise of the board. See Alliance I, 448 Mass. at 51.

On cost, the record before the board showed that transmission alternative two would be approximately $20 million more expensive than the project. In addition to its challenge to the use of a conceptual cost estimate for transmission alternative two, discussed supra, Protect Sudbury argues that the cost estimate was not a reliable basis on which the board could make a decision. It argues that Eversource simply provided the cost estimate provided by NEP without explaining how NEP developed the estimate or demonstrating its reliability. The board considered Protect Sudbury's arguments and rejected them, concluding that NEP's direct participation was not required and that it was reasonable to rely on evidence given to Eversource. It also explained that both the board and the

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petitioners were able to seek information from NEP through Eversource over the course of the proceeding. We agree with the board's position that it was reasonable to rely on the cost estimate provided by NEP for the purposes of comparing the cost of transmission alternative two to the cost of the project.[21]

Given these findings, we conclude that the board's balancing of the trade-offs and its approval of the project over transmission alternative two were supported by substantial evidence. See Brockton Power Co., 469 Mass. at 223, quoting Alliance I, 448 Mass. at 51.

v. Route. Once it determined that a new transmission facility was the best approach for meeting the identified need, the board then considered whether the route proposed by Eversource was superior to alternative routes. See G. L. c. 164, § 69J (petition must identify "other site locations"). The board focused its analysis on Eversource's preferred route -- the underground route -- and the two primary alternative routes –- the overhead route and the all-street route.[22] For cost, the board determined that the overhead route

[21] We note that in an amicus brief submitted to this court, NEP defended the reliability of its cost estimate as "thorough, accurate and complete."

[22] The board focused on these three routes because even though other routes were included in the petition, it concluded that there was no evidence in the record that any other route would be clearly superior to these three routes. The board also

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had the lowest cost and that the all-street Route had the highest cost, with the preferred route falling in the middle. For environmental impact, the board concluded that the preferred route and the all-street route were comparable and that both were superior to the overhead route. For reliability, the board concluded that all three routes were comparable.

Given these findings, the board determined that the preferred route was superior to the overhead route because it had fewer adverse environmental impacts. This reduction in environmental impact meant that the preferred route's higher cost -- approximately $28.3 million more than the overhead route -- was justified. The board also concluded that the preferred route and the all-street route were comparable on both reliability and environmental impact; therefore, the higher cost of the all-street route -- approximately $18.5 million more than the preferred route and $46.8 million more than the overhead route -- was not justified. Accordingly, the board found that the preferred route was superior on balance to both the overhead and all-street routes.

Protect Sudbury argues that the board was wrong because the all-street route was comparable to the preferred route on cost.

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concluded that Eversource did not exclude any of the petitioners' preferred routes from being comprehensively reviewed as part of the route selection process.

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We readily reject this argument as the evidence before the board demonstrated that the preferred route was approximately $18.5 million less expensive than the all-street route. The petitioners advance a number of arguments as to why the board's cost calculations were incomplete and suggest that the cost between these two routes was not as significant as the board determined. None of these arguments has any merit, however, as the board's determination that the preferred route was superior to the all-street route on cost was supported by substantial evidence.[23]

We also reject the petitioners' arguments challenging the board's determination that the preferred route and the all-street route were comparable on environmental impact. The petitioners raise two points about the manner in which the board weighed and assessed the environmental impacts that merit discussion. The petitioners contend that the board should have given more weight to the permanent impacts caused by construction on the preferred route as opposed to the temporary impacts on the all-street route. The petitioners also argue

[23] We also reject the town's argument that the board essentially always must approve of a project that costs more but has fewer adverse environmental impacts. The fact that the board determined that the project was superior to the overhead route does not mean that the board must always select a route with higher costs but lower environmental impacts.

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that the board failed to weigh impacts on the natural environment more heavily than impacts on the built environment.

We agree with the board that nothing in the statutory framework dictates how the board must balance these different environmental considerations in every case. The statute does not categorize or prioritize impacts as argued by the petitioners. To analyze the environmental impacts, Eversource used seventeen different criteria, including criteria that measured the impact to both the natural environment and the built environment.[24] It also assigned weights to each criterion, taking into consideration the potential temporary and permanent impacts that could result from each. Thus, Eversource's thorough, multifaceted analysis of the environmental impacts on the different routes reasonably accounted for the various types of impacts that could result. Indeed, the board correctly highlighted that Eversource's analysis of the environmental impacts "provides a balanced consideration of both impacts to the natural and built environments, and places greater emphasis on the more impactful criteria, whether these are related to short-term or long-term effects." As we have also previously explained, some impacts, although temporary, can still be

[24] Tellingly, neither the town nor Protect Sudbury argues that any of these criteria should not have been used. Similarly, neither argues that Eversource should have considered other criteria.

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significant.[25] See, e.g., Brockton v. Energy Facilities Siting Bd., 469 Mass. 196, 214, S.C., 469 Mass. 215 (2014) ("traffic from construction and regular deliveries presents potentially significant environmental impacts").

To be sure, even the board acknowledges that "if all else is equal, then a permanent impact should be accorded more weight than a temporary one." But under § 69H, the board has flexibility and can address these issues on a case-by-case basis, focusing on the specific facts presented. In sum, the distinctions between environmental impacts that the town seeks to draw are not set out in the statute, nor is the over-all environmental analysis of the board in any way arbitrary or capricious or unsupported by substantial evidence. Rather, the board undertook a comprehensive comparative analysis of environmental impacts and carefully explained its reasoning.

[25] For example, the board determined that the impact from construction along the all-street route, although temporary, would be substantial. It explained: "At a typical residence or business location along this route, there would be roughly two to three weeks of trench-related construction activities, including pavement sawing, trench excavation, duct bank installation, and temporary pavement patching." Moreover, this disruption would affect a greater number of residents, as the all-street route had 234 more residential units abutting the route than the preferred route.

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Thus, deference is due. See Brockton Power Co., 469 Mass. at 223, quoting Alliance I, 448 Mass. at 51.[26]

Ultimately, there was no error in the board's decision to approve the preferred route over the all-street route. The board explained its rationale in its detailed analysis and conclusions, all of which are supported by substantial evidence. It is simply not our role to displace them with the town's preferred balancing of the statutory criteria. See, e.g., Sy v. Massachusetts Comm'n Against Discrimination, 79 Mass. App. Ct. 760, 765 (2011) ("substantial evidence standard does not permit the reviewing court to substitute its judgment for that of the agency even if there is evidence to support the court's point of view"). Therefore, we reject the challenges to the board's approval of the preferred route over the all-street route.

vi. Public policy of the Commonwealth. The town also challenges the board's conclusion that the project is consistent with the current health, environmental protection, and resource

[26] The board also determined that the preferred route satisfied the additional requirement that it had a minimum impact on the environment. The board found "that with the implementation of the specified conditions and mitigation presented above, and compliance with all applicable local, [S]tate, and [F]ederal requirements, the environmental impacts of the [p]roject along the MBTA Underground Route would be minimized." It further found "that the [p]roject along the MBTA Underground Route would achieve an appropriate balance among conflicting environmental concerns as well as among environmental impacts, reliability, and cost."

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use and development policies of the Commonwealth. See G. L. c. 164, § 69J, fourth par. The board properly relied on the declaration of the Legislature that reliable electricity service "is essential to the health and well-being of all residents of the [C]ommonwealth," in the Electric Utility Restructuring Act. St. 1997, c. 164, § 1 (a). The board then correctly emphasized that the project received a final environmental impact report certificate from the Secretary of Energy and Environmental Affairs "affirming the [p]roject's consistency with [the Massachusetts Environmental Policy Act, G. L. c. 30, §§ 61-62H,] requirements that all [p]roject-related impacts to the environment have been properly and adequately identified, minimized, and mitigated," and that Eversource "is required to obtain all environmental approvals and permits required by [F]ederal, [S]tate, and local agencies and must be constructed and operated according to those permits and approvals." The board further determined that the project is consistent with environmental protection policies of the Commonwealth, including the Global Warming Solutions Act of 2008, St. 2008, c. 298, because it would generate minimal greenhouse gas emissions, have no adverse climate change impacts, and facilitate the integration of renewable energy resources by improving the reliability of the regional transmission system. Finally, it concluded that, subject to specific mitigation and conditions

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required by the board, the project was consistent with the resource use and development policies of the Commonwealth because it was designed to minimize impacts to natural and cultural resources and would promote a more robust transmission system that is better positioned to support the objectives of the Energy Diversity Act.[27]

On appeal, the town argues that a nontransmission alternative solution would be "far more consistent" with the more recent policies of the Commonwealth. It also argues that the Electric Utility Restructuring Act is outdated, and that there have been a "plethora of climate and environmental policies recently adopted by the Commonwealth" that emphasize the importance of environmental and other public health concerns over the reliability of the transmission of electricity.

Once again, the town provides no proper legal basis to reverse the board's assessment of the project. The town ignores the statutorily required balancing of reliability and cost along with environmental impacts and dismisses the board's thorough application of that balancing test. The town also ignores the board's careful consideration of the need to minimize

[27] The board explained that the Energy Diversity Act, St. 2016, c. 188, requires utilities like Eversource to procure additional renewable energy resources.

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environmental impacts, including those emphasized by recent environmental statutes.

We also emphasize that it is the responsibility of the Legislature, not this court, to determine that an act has become outdated. See, e.g., Liberty Sq. Dev. Trust v. Worcester, 441 Mass. 605, 619 (2004) (urging Legislature to address "outdated" statute); Bongaards v. Millen, 440 Mass. 10, 34 (2003) (emphasizing that it is role of Legislature to address past statutes even where "there appears to be no dispute that [a] statute is outdated and inadequate"). We have no power to decide that a statute's usefulness has faded out over time. Although we must harmonize older statutes with newer ones, and more general with more specific ones, we discern no difficulty doing so in the instant case. See Ryan v. Mary Ann Morse Healthcare Corp., 483 Mass. 612, 620 (2019), quoting School Comm. of Newton v. Newton Sch. Custodians Ass'n, Local 454, SEIU, 438 Mass. 739, 751 (2003) ("In the absence of explicit legislative commands to the contrary, we construe statutes to harmonize and not to undercut each other"). We emphasize that the Electric Utility Restructuring Act is a relatively recent act that is specifically directed at the energy issues we consider here. Importantly, none of the cited acts has curtailed, in any way, the significance of a reliable electricity supply to the health of the Commonwealth. And, as

Attachment5.k: SJC-12997_Opinion_Ruling Dismissal of Siting Board Decision Appeal (5418 : Updates related to Eversource transmission line

the board explained, the project helps advance many of the recent environmental and resource use policies of the Commonwealth by enabling future development of renewable resources.

Finally, we recognize, as did the board, that this approval is a single step, albeit a significant one, in a multistep process to secure approval for the construction of the project. Before Eversource may proceed with construction, it must have secured all necessary approvals from numerous other State and local authorities, including those responsible for protecting the environment and other resources. See Alliance II, 457 Mass. at 668 (§ 69J approval necessary before issuance of any construction permits). We therefore reject the town's argument that the board erred in concluding that the project is consistent with the policies of the Commonwealth, as they are required to be considered by the board.

3. Conclusion. For the foregoing reasons, we affirm the order of the board.

So ordered.

Attachment5.k: SJC-12997_Opinion_Ruling Dismissal of Siting Board Decision Appeal (5418 : Updates related to Eversource transmission line

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

MISCELLANEOUS (UNTIMED)

6: Modify code of conduct/code of ethics

REQUESTOR SECTION
Date of request:

Requestor: Member Roberts

Formal Title: Discussion and vote whether to modify the current Code of Conduct for Town of Sudbury Committees to be a Code of Conduct/Code of Ethics for Town of Sudbury Committees. This refers to members who are appointed by the Sudbury Select Board or the Sudbury Town Manager. This request made by Member Roberts.

Recommendations/Suggested Motion/Vote: Discussion and vote whether to modify the current Code of Conduct for Town of Sudbury Committees to be a Code of Conduct/Code of Ethics for Town of Sudbury Committees. This refers to members who are appointed by the Sudbury Select Board or the Sudbury Town Manager. This request made by Member Roberts.

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

Town of Sudbury

Code of Conduct for Town of Sudbury Committees

Whose Members are appointed by the Sudbury Select Board
or the Sudbury Town Manager

1. A member of any Committee who has accepted appointment by the Select Board or the Town Manager to a Committee position is expected to comply with the following code of conduct. Failure to adhere to this code will be considered by the Board and Town Manager when making re-appointment decisions.
    a. A member of a Board or Committee in relation to their community should:
    b. Realize that their function is to follow the mission statement of the Committee.
    c. Accept the role of a Committee member is a means of unselfish service, not to benefit personally or politically from their Committee activities.
    d. Abide by the ethics guidelines established by the State.
    e. Conflicts of interest: Refrain from participating as either a member of the Committee or as a member of the public in Committee matters in which they have a personal interest.
    f. Abide by all policies established by the Select Board.
    g. Realize that they are one of a team and should abide by all decisions of the Committee once they are made.
    h. Be well informed concerning the duties and responsibilities of the Committee.
    i. Remember that they represent the entire community at all times.

2. A member of a Board or Committee in their relations with staff of the Town should:
    a. Request assistance from Town staff only through the staff person assigned to the Committee.
    b. Refrain from publicly criticizing an employee of the Town. Concerns about staff performance should only be made to the Town Manager through private conversation.
    c. Recognize and support the administrative chain of command and refer all complaints.
    d. Ensure that any materials or information provided to a Committee member from Town staff should be made available to all Committee members.

3. A member of a Board or Committee in their relations with fellow Board/Committee members should:
    a. Not make statements or promises of how they will vote on matters that will come before the Committee until they have had an opportunity to hear the pros and cons of the issue during a public meeting of the Committee.
    b. Make decisions only after all facts on a question have been presented and discussed.
    c. Refrain from communicating the position of the Committee to reporters or state officials unless the full Committee has previously agreed on both the position and the language of the statement conveying the statement.
    d. Uphold the intent of Executive Session and respect the privileged communication that exists in Executive Session.

Attachment6.a: CodeofConductforCommittees8-09 (5412 : Modify code of conduct/code of ethics)

e. Treat with respect and courtesy all members of the Committee, attendees and staff despite differences of opinion.
f. Treat with respect and courtesy any member of the public, including anyone they have brought to represent them, who comes before the Committee for any reason, but particularly in matters related to regulatory issues.

4. If circumstances change so that meeting attendance on a regular basis becomes difficult, the Committee member will offer his or her resignation to the Board, so that someone who can regularly attend meetings can be selected by the Board.

[Adopted by the Select Board July 11, 2006; revised September 8, 2009; revised March 9, 2021. Please note: This code of conduct was originally developed based on similar codes used by other elected Boards and Committees in other communities.]

Attachment6.a: CodeofConductforCommittees8-09 (5412 : Modify code of conduct/code of ethics)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

MISCELLANEOUS (UNTIMED)

7: Minutes Review

REQUESTOR SECTION
Date of request:

Requestor: Chair Russo

Formal Title: Vote to review and possibly approve the open session minutes of 6/21/22.

Recommendations/Suggested Motion/Vote: Vote to review and possibly approve the open session minutes of 6/21/22.

Background Information:
attached draft

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

SUDBURY SELECT BOARD

TUESDAY, JUNE 21, 2022

(Meeting can be viewed at www.sudburytv.org)

Present: Chair Charles Russo, Vice-Chair Janie Dretler, Select Board Member Daniel Carty, Select Board Member Lisa Kouchakdjian, Select Board Member Jennifer Roberts, Town Manager Henry L. Hayes, Jr.

The statutory requirements as to notice having been compiled with, the meeting was convened at 8:46 PM, via Zoom telecommunication mode.

Chair Russo announced the recording of the meeting and other procedural aspects included in the meeting.

Call to Order/Roll Call

Select Board Roll Call: Roberts-present, Carty-present, Kouchakdjian-present, Russo-present

Chair Russo stated that Board Member Dretler would be joining the meeting soon.

Ratify vote taken in Executive Session regarding Sudbury Interim Town Manager Contract

Chair Russo read in the words of the motion. Board Member Carty moved in the words of the Chair. Board Member Kouchakdjian seconded the motion.

It was on motion 4-0; Roberts-aye, Kouchakdjian-aye, Carty-aye, Russo-aye

VOTED: To ratify the Select Board vote taken in Executive Session regarding Sudbury Interim Town Manager contract

Consent Calendar

Vote to approve a Sunday Entertainment License for Bullfinch's, Inc., d/b/a Bullfinch's Restaurant, 730 Boston Post Road, for a live music duo (flute and accordion) from 5:00 p.m. to 8:00 p.m. on Sunday, June 26.

Present: Adella Richardson, Manager at Bullfinch's.

The Board confirmed the Police Department, the Fire Department, and the Building Department had no issues with the requested music event.

Chair Russo read in the words of the motion. Board Member Roberts moved in the words of the Chair. Board Member Kouchakdjian seconded the motion.

It was on motion 4-0; Roberts-aye, Kouchakdjian-aye, Carty-aye, Russo-aye

VOTED: To approve a Sunday Entertainment License for Bullfinch's, Inc., d/b/a Bullfinch's Restaurant, 730 Boston Post Road, for a live music duo (flute and accordion) from 5:00 p.m. to 8:00 p.m. on Sunday, June 26.

DRAFT

Attachment7.a: SB_draft1_6.21.22_min_for_review (5405 : Minutes Review)

Citizens Comments

None

Opening Remarks by Chair

- Fun at Interdependence Event with church and community groups, joining to stop discrimination .
- Wonderful last day of school
- MMA (MA Municipal Association) Bulletin mentioned extension of remote government meetings being considered

Town Manager Opening Remarks

- Tax Taking legal notice; for additional information refer to Town website
- Summer 2022 Camp Sewataro Property information – see Town website
- Town Forum: Climate Change & Sustainability on July 14, 7:00 PM – 9:30 PM
- Fairbank Community Center construction scheduled to commence in July
- Hudson Road water main construction in process
- Town offices will be following a summer schedule from July 11 to August 26

Reports from Select Board

Board Member Roberts:

- Interdependence Day was fun
- Great last day of school
- MA Senate recommended extension of remote municipal meetings; MA House must vote

Board Member Carty:

- Mentioned Juneteenth event at Wayside Inn on Saturday, June 25th to include Town Manager Hayes and the Select Board

Board Member Kouchakdjian:

No comments

Board Member Dretler joined the meeting at approximately 8:55 PM; Dretler-present

Board Member Dretler:

No comments

Discussion and possible vote on Town Manager Search Firm RFP/RFQ

Present: Attorney David Doneski, KP Law

Board Member Roberts commented about the RFP (Request for Proposals) and the RFQ (Request for Quotes) Town Manager selection methods. She indicated that the RFP could be a more-lengthy process, but likely a more thorough process.

DRAFT

Attachment7.a: SB_draft1_6.21.22_min_for_review (5405 : Minutes Review)

Attorney Doneski reiterated that the focus is price alone when considering the RFQ method.

Town Counsel Lee Smith provided a summary of RFP and RFQ options in a communication to the Select Board titled "Town Manager Search Firm Procurement Methods," dated June 16, 2022. The communication detailed that the RFP method was utilized for the previous Town Manager search process. Attorney Smith provided a revised redlined draft of the "Request For Proposals – Search Firm To Assist With Town Manager Recruitment."

Board Members reviewed topics outlined in the "Request For Proposals – Search Firm To Assist With Town Manager Recruitment:"

Overview

The position of Town Manager was adopted by the Town in 1994.

Schedule and Time Line

Chair Russo suggested the RFP would be available in the Sudbury Select Board's Office by noon on Thursday, July 21, 2022; with the interview process to begin in August. The RFP would be available via email by contacting Patty Golden, Senior Administrative Assistant to the Town Manager.

Scope of Work

The executive search consultants will work with the Sudbury Select Board, Senior Staff of the Town, and an appointed Screening Committee in the selection process.

Proposal Submission Requirements

Two Proposal components include a "Technical Proposal" with information about the proposer, references, and the services to be provided, and a "Price Proposal." The "Price Proposal" shall include a fixed price fee for services to be provided within the terms of the contract.

Proposal Submittal

Technical and Price Proposals must be submitted in separately sealed envelopes and submitted to Patty Golden.

Examination of Documents

Proposers shall be familiar with all submittal and RFP requirements before submitting proposals.

Evaluation of Proposals

Technical Proposals will be opened and evaluated by the Select Board and/or its designees who will individually rate the proposals. The following scale will be used to evaluate each criterion:

- Highly Advantageous – HA (3 Points)
- Advantageous - A (2 points)
- Not Advantageous – NA (1 point)
- Unacceptable – U (0 points)

Contract Award

DRAFT

Attachment7.a: SB_draft1_6.21.22_min_for_review (5405 : Minutes Review)

"The contract will be awarded to that Proposer deemed by the Select Board and/or its designees to have submitted the most advantageous proposal taking into consideration all of the Technical Proposal criteria and Proposers' interviews in addition to Price Proposals."

Term of the Contract

If the selected candidate commences employment in Sudbury, and for any reason leaves the position within the first 12 months of employment, the consultant will perform another search under the terms of this contract for an amount "equal to out-of-pocket expenses only."

ATTACHMENT A – CERTIFICATE OF NON-COLLUSION

ATTACHMENT B – CERTIFICATE OF TAX COMPLIANCE

ATTACHMENT C – Price Proposal (To be submitted in a separately sealed envelope from the Technical Proposal)

Chair Russo read in the words of the motion. Vice-Chair Dretler moved in the words of the Chair. Board Member Kouchakdjian seconded the motion.

> It was on motion 5-0; Dretler-aye, Carty-aye, Roberts-aye, Kouchakdjian-aye, Russo-aye
>
> VOTED: To approve the "Request For Proposals – Search Firm To Assist With Town Manager Recruitment," subject to further edits by Town Staff, and review by Town Counsel.

Citizen's Comments (Cont.)

None

Upcoming agenda items

June 28:

- BFRT
- Vocational Education Update - Board Member Kouchakdjian
- Discussion regarding equipment for hybrid meetings
- ARPA Consolidations

July 12:

- Fall Town Meeting Hearing

Future Agenda Items

- LSRHS Student Proposals – Civic Activity
- Select Board Protocol and Norms (TBD) – Board Member Kouchakdjian
- Retreat Consideration – (TBD) – Vice-Chair Dretler

DRAFT

Attachment7.a: SB_draft1_6.21.22_min_for_review (5405 : Minutes Review)

Adjourn

Chair Russo read in the words of the motion. Vice-Chair Dretler moved in thew words of the Chair. Board Member Kouchakdjian seconded the motion.

It was on motion 5-0; Dretler-aye, Carty-aye, Roberts-aye, Kouchakdjian-aye, Russo-aye

VOTED: To adjourn the meeting

There being no further business, the Select Board meeting was adjourned at 10:28 PM.

DRAFT

Attachment7.a: SB_draft1_6.21.22_min_for_review (5405 : Minutes Review)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

MISCELLANEOUS (UNTIMED)

8: Public Comments (cont)

REQUESTOR SECTION
Date of request:

Requested by: Patty Golden

Formal Title: Public Comments (cont)

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

MISCELLANEOUS (UNTIMED)

9: Upcoming agenda items

REQUESTOR SECTION
Date of request:

Requested by: Patty Golden

Formal Title: Upcoming agenda items

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

POTENTIAL UPCOMING AGENDA ITEMS/MEETINGS

MEETING/EVENT	DESCRIPTION
Sept. 6, Tues.	State Primary Election
Sept. 7, Wed.	*Tentative* additional meeting
Sept. 13	Master Plan Update (per C**hair** Russo)
Date to be determined	Discussion on whether to extend DEI commission (by 9/30/22)
	Housing trust bylaw
	Capital Process
	Citizen Leadership Forum (Govt and how it works)
	Civics projects (students) discussion
	Climate Emergency declaration & sustainability director
	Discussion on Civics projects for SPS/LS/Scouts
	Discussion on Select Board meeting flow, process, efficiency, and decorum
	Discussion on potential ADA policy
	Discussion on Town Manager Task Requests
	SB Goal setting – Fall
	SB self-evaluation process individually and collectively (Lisa K)
	Sudbury TV annual update – October/November
	Vocational Education update (Lisa K)
	Executive Session minutes to review/release
	Eversource
	Fairbank Community Center update (ongoing)
	Health/COVID-19 update
	Investment Advisory Committee
	Invite Commission on Disability Chair to discuss Minuteman High School
	Local receipts – fee schedule review (Member Russo)
	Quarterly review of approved Executive Session Minutes for possible release (February, May, August and November). Consider separate meeting solely for this purpose.
	Quarterly update from Diversity, Equity and Inclusion Commission (DEI) (December, March, June, September)
	Quarterly update on Bruce Freeman Rail Trail (BFRT) (March, June, September, December)
	Quarterly update on Key Performance Indicators (KPIs) projects to track (December, March, June, September)
	Peakham Road Speed Limits
	Route 20 empty corner lot – former gas station
	Select Board Retreat (Member Dretler) and SB statements
	Sidewalks discussion
	Solar Panels
	Subcommittee discussion (Executive)
	Town meeting recap – year in review
	Town-wide traffic assessment and improve traffic flow
	Update on crosswalks (Chief Nix/Dan Nason)
	Update on traffic policy (Chief Nix)
	Work Session with Town Counsel: Select Board/Town Manager Code of Conduct and other procedural training

Attachment9.a: Upcoming items 08.30.22 (5404 : Upcoming agenda items)

Standing Items for All Meetings	Select Board requests for future agenda items at end of meeting
	Public Comments, continued (if necessary)

Attachment9.a: Upcoming items 08.30.22 (5404 : Upcoming agenda items)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

CONSENT CALENDAR ITEM

10: Accept $10K grant from Mass DEP

REQUESTOR SECTION
Date of request:

Requestor: Dan Nason DPW Director

Formal Title: Vote to accept grant awarded by Mass Department of Environmental Protection (DEP) up to $10,000 for a Sustainable Materials Recovery Program, in the form of a reimbursement, toward the purchase of a mattress and box spring collection container for recycling.

Recommendations/Suggested Motion/Vote: Vote to accept grant awarded by Mass Department of Environmental Protection (DEP) up to $10,000 for a Sustainable Materials Recovery Program, in the form of a reimbursement, toward the purchase of a mattress and box spring collection container for recycling.

Background Information:
The Massachusetts Department of Environmental Protection (MassDEP) has awarded the Town of Sudbury a Sustainable Materials Recovery Program Grant up to $10,000 (in the form of reimbursement) towards the purchase of a mattress and box spring collection container for recycling.

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

GRANT AGREEMENT
BETWEEN THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL PROTECTION ("MassDEP")

AND THE TOWN OF SUDBURY ("Grantee")

Pursuant to the Green Communities Act, relevant provisions of which are codified at M.G.L. c. 25A, Section 11F(d) and the regulations promulgated thereunder at 310 CMR 19.300 and in support of the Massachusetts Solid Waste Master Plan developed pursuant to M.G.L. c. 16, Section 21, MassDEP has awarded the Town of Sudbury a Sustainable Materials Recovery Program Grant for a Mattress Recycling Container ("Grant") valued at up to $10,000. Grantee shall comply with the specific terms and conditions described below in the performance of the Grant.

Duration of the Grant: This grant expires on January 1, 2023. Invoicing and Reporting deadlines are described below.

RESPONSIBILITIES OF THE GRANTEE

1. Authority: The Signatory of this Grant Agreement is authorized by the governing body of the Grantee to enter into this Grant Agreement on behalf of the Grantee and accept and utilize this Grant.

2. Commonwealth Terms and Conditions: The Grantee shall comply with the Commonwealth Terms and Conditions and other requirements set forth in the Grantee's executed Master Agreement.

3. Failure to Comply: If, in the judgment of MassDEP, the Grantee fails to comply with any of its responsibilities as identified in the Grant Agreement, then, at the election of MassDEP, (a) the Grantee may be deemed ineligible to participate for what time remains of the grant period; and/or (b) title to all grant materials purchased with these grant funds immediately and without any further steps shall be transferred to MassDEP; and/or (c) MassDEP may find the Grantee not eligible to seek another Sustainable Materials Recovery Program Grant for up to three years; and/or (d) the Grantee shall repay the grant funds to MassDEP within 90 days. MassDEP may provide written notice to the Grantee of any such failure to comply. Such notice may provide a time period and manner for the Grantee to cease or remedy the failure. Such notice from MassDEP of any such failure by the Grantee is not a precondition to MassDEP's right to select options (a), (b), and/or (c) above. The Grantee shall follow the instructions of MassDEP regarding possession of the grant materials (e.g., collection container). The Parties hereby agree to execute any and all documents necessary to accomplish said transfer. Furthermore, the Grantee shall transfer or arrange to transfer actual possession of said materials to an authorized representative of the Commonwealth of Massachusetts or its designee.

4. Recycling in Practice: The Grantee has established paper, bottle, and can recycling in all municipal buildings offices and meeting spaces, including schools. The Grantee shall continue such paper, bottle and can recycling during the term of the Grant.

5. Notification of Buy Recycled Policy: The Grantee has established a written policy which promotes a preference for the purchase of recycled products in lieu of non-recycled products and distributes an annual notification of the Buy Recycled Policy, ordinance or by-law to all staff, department heads and employees with purchasing authority. This notice is sent from the Mayor, Board of Selectmen, Town Manager, Town Administrator, or Chief Purchasing Officer and highlights specific opportunities to buy recycled products, the benefits of buying recycled and encourages the purchase of these products. The Grantee shall continue to send annual notification during the term of the grant.

6. Use of Grant Funds: Grantee will be reimbursed up to $10,000 for the purchase of a container to collect mattresses and box springs ("mattresses") for recycling
   - **a.** Appropriate containers include: a roll-off container, closed-top stationary container (also known as a sea container or intermodal container), or transfer trailer. Any other type of container must be approved in writing by MassDEP and amenable to the Vendor.
   - **b.** Container shall be utilized only for the collection and recycling of mattresses for a minimum of 5 years unless otherwise approved in writing by MassDEP. Mattresses may not be sent for processing at a construction and demolition debris processing facility; they must be recycled.
   - **c.** Container must be permanently labeled with MassDEP's logo and "Funded by a grant from MassDEP."

Attachment10.a: Sudbury MRI Grant Agreement - Blank (5414 : Accept $10K grant from Mass DEP)

7. Invoicing: Grant funds for Container purchase are disbursed on a reimbursement basis only. After expending funds for an eligible expense, the Grantee shall submit a request for reimbursement ("invoice") to MassDEP. Invoices must be submitted no later than June 30, 2023. Requests for reimbursement must be accompanied by the following documentation:

- **a.** Proof of purchase in the form of an invoice which lists the vendor's name and address, item purchased, item price, extended price and shipping costs if any; and
- **b.** Photograph of the Container in use at the recycling center or transfer station including signage.

8. Property Rights: Upon delivery from the vendor, the Grantee shall retain exclusive possession of the equipment, subject to the provisions of this Grant Agreement. The Grantee shall be solely responsible to ensure the equipment against damage, theft, or loss during the time in which said equipment is in the possession, custody, or control of the Grantee. For the duration of this grant, 1) the Grantee shall not sell, lease, loan, or otherwise transfer rights or possession to the Grant Materials unless it has received prior written authorization from the Department, and 2) if the Grantee determines any or all of the Grant Materials are not needed for the granted use, the Grantee shall assist the Department in the transfer of the Grant Materials to (an) other municipality(ies), or be given authorization to surplus the materials if the Department determines that the Grant Materials have no value to the Commonwealth.

9. Reporting: The Grantee shall file an annual Recycling and Solid Waste survey by February 15th, via ReTrac, for two full calendar years following the start of the program documenting the annual mattress tonnage collected. Failure to comply with these reporting requirements may jeopardize future grant awards.

10. Publicity and Outreach:

- **a.** All outreach materials and publicity tools (i.e., press releases, media advisories, education materials, etc.) issued by the Grantee in conjunction with or as a result of this grant shall include the following language: "This project is funded in part by a grant from the MassDEP".
- **b.** The Grantee should be prepared to provide a public presentation on the results or findings of the Grant at the request of MassDEP.

11. Environmental Compliance: The Grantee understands receipt of a Grant from MassDEP does not in any way imply that the Grantee is in compliance with applicable environmental regulations. This Grant Agreement shall not be construed as, nor operate as, relieving the Grantee or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals. The Grantee's facility(ies) are subject to inspection at any time by MassDEP and noncompliance with applicable environmental regulations may result in formal enforcement actions, including penalties.

12. Addendums: Should MassDEP award additional grant funds, an addendum to the Grant Agreement shall be provided to the Grantee. The same terms and conditions apply to the addendum.

IN WITNESS WHEREOF, MassDEP and the Grantee hereby execute this Grant Agreement.

COMMONWEALTH OF MASSACHUSETTS

By: _____ _____
John Fischer, Deputy Division Director, Solid Waste (Date)
Department of Environmental Protection

TOWN OF SUDBURY

By: _____ _____
(Signature) (Date)

_____ _____
(Print Name) (Title)

Municipal Official(s) Authorized to sign: Town Manager

Attachment10.a: Sudbury MRI Grant Agreement - Blank (5414 : Accept $10K grant from Mass DEP)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

CONSENT CALENDAR ITEM

11: Accept Social Work Grant $30K

REQUESTOR SECTION
Date of request:

Requestor: Bethany Hadvab, Town Social Worker

Formal Title: Vote to accept a Social Work Grant from the MetroWest Foundation in the amount of $30,000.

Recommendations/Suggested Motion/Vote: Vote to accept a Social Work Grant from the MetroWest Foundation in the amount of $30,000.

Background Information:
See attached memo from Bethany Hadvab, Town Social Worker

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

Town of Sudbury

Board of Health

DPW Office Building
275 Old Lancaster Road
Sudbury, MA 01776
978 440-5479

Tuesday, August 23, 2022

Re: Acceptance of Grant

Dear Select Board Members,

The Board of Health Social Work Office si requesting the Select Board accept the following grant:

MetroWest Health Foundation-Social Work Intern Stipend Grant
$30,000

As was the case in 2021, the Health Department Social Work Office was again awarded a $30,000 grant from the MetroWest Health Foundation. This writer applied for and was awarded $7,500 stipends for each of four (4) Masters Level Social Work interns that will serve the department from September 2022-April 2023. These stipends will help interns reduce financial stressors as they balance academics, internship, and home life. The goal is to reduce intern financial stress, hence improving services to residents and quality of life for social work interns.

This writer has developed a robust internship program, brining students to Sudbury seeking a Master's degree in social work. These students have experience in the social work or human services field, and make an immediate impact on the growing demand for resources sought by residents. As anticipated, the COVID pandemic continues to result in high demands for social work services.

Thank you for your consideration.

Sincerely,

Bethany Hadvab, LICSW
Town Social Worker

Attachment11.a: MWHF Intern Stipend Grant-Letter to SB 8.23.22-signed (5424 : Accept Social Work Grant $30K)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

CONSENT CALENDAR ITEM

12: Approve Pare Contract for environmental services re: eversource

REQUESTOR SECTION
Date of request:

Requestor: Lori Capone Conservation Coordinator

Formal Title: Vote to approve the execution of a contract by the Interim Town Manager to Pare Corporation for environmental monitoring services related to the Eversource underground transmission line project upon approval by Town Counsel.

Recommendations/Suggested Motion/Vote: Vote to approve the execution of a contract by the Interim Town Manager to Pare Corporation for environmental monitoring services related to the Eversource underground transmission line project upon approval by Town Counsel.

Background Information:
This contract is to be administered by the Town, but paid for by Eversource, to provide environmental monitoring services agreed to through the Order of Conditions issued for this project. Pare Corp. will specifically be providing the following services to assist the Town in overseeing the construction of the Underground Transmission Line, construction and oversight anticipated to be about 18 months. If the project takes longer than 18 months, the contract will be modified to extend Pare Corp. services. This oversight is for Phase I only.

1. Review the initial installation of erosion controls, prior to any land disturbance, to ensure proper location and installation. Review reports provided by the applicant to confirm adherence to Stormwater Pollution Prevention Program and Erosion Control Monitoring Reports.

2. Review erosion control barriers each year prior to vernal pool species migration.

3. Conduct spot inspections of the vernal pools during construction, report any negative impacts and review reports provided by the applicant.

4. Observe initial tree removal and invasives species clearing activities within the limit of work.

5. Observe bridge platform installation and periodic inspections during bridge construction.

6. Observe dewatering activities in sensitive locations.

7. Review mitigation and restoration areas and oversee construction of the wetland replication area.

8. Observe excavation and construction activities over culverts and drainage structure to ensure these structures are not impacted from the construction activities.

9. Review weekly construction schedules to ensure project is adhering to Time-of Year Restrictions for work within rare species habitat and confirming the work within the corridor is being conducted in accordance with the construction schedule provided by the contractor.

10. Provide Emergency Situation Response and LSP Services as needed.

Conservation staff will be overseeing the day-to-day operations and regular oversight of the construction activities and will be coordinating with Pare Corp. to ensure all proper oversight is provided during construction.

Financial impact expected:None. Funds will be collected from Eversource and deposited into a 53G account to pay for all services provided by Pare Corp under this contract.

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

Attachment12.a: Pare Corporation Environmental Monitor Contract (5422 : Approve Pare Contract for environmental services re: eversource)

AGREEMENT FOR TECHNICAL SERVICES

The Town of Sudbury, acting by and through its Town Manager (the "Town") hereby agrees to pay for and Pare Corporation with a usual place of business at 10 Lincoln Road, Suite 210 Foxboro, MA 02035 (the "Contractor", the term Contractor is hereby used for convenience purposes only) hereby agrees to provide Environmental Monitoring services related to the Eversource Underground Transmission Line Project as identified in and reasonably inferable from Contractor's July 26, 2022 Proposal titled Environmental Compliance Monitoring, Proposal No GP149.22, (the "Services") which was in Response to Request for Proposals from the Town, which services Contractor shall perform in accordance with the following terms and conditions.

1. COST OF SERVICES

a) For performance of the Services, the Town shall pay a sum not to exceed $133,600.00. Any additional services shall be paid on a time and materials basis in accordance with the hourly rates included in Exhibit A, attached hereto, provided that Contractor shall obtain advance written approval of the Town before commencing such additional servicing.

2. PAYMENT

The Contractor shall submit invoices to the Town on a monthly basis according to the work completed, and the Town shall make payment within thirty (30) days after receipt of an invoice.

3. TIME

The Contractor shall complete performance of its services hereunder on or before eighteen (18) months following commencement of the Eversource Underground Transmission Line Project, anticipated to commence on September 1, 2022, unless extended by the Town.

4. CONTRACTOR RESPONSIBI LITIES

The Contractor represents that it can and shall perform the services hereunder in a competent and professional manner, as proposed in the Proposal, and in accordance with that degree of care and skill ordinarily exercised under similar circumstances by members of the Contractor's profession, as implied by law in Massachusetts.

5. ASSIGNMENT

The rights and obligations of the Contractor hereunder may not be assigned without the written consent of the Town.

6. ENTRY ONTO PROPERTY

If performance of the services described in The Proposal requires the Contractor to make entry onto land or other property, the Town hereby grants (for property it owns) or agrees that it has obtained or will exercise reasonable efforts to obtain (for property it does not own) permission to enter such property for the purpose of performing such services. The Contractor hereby agrees that it shall conduct its activities on such property in such a manner as to minimize any damage, disruption or alteration to the site, and shall, so far as is reasonable and consistent with the nature of the activities conducted thereon, restore the site to its condition prior to entry by the Contractor.

7. PROVISION OF INFORMATION AND EXTENT OF LIABILITY

The Town Shall, upon written request of Contractor, make available to the Contractor all information in its possession which relates to the subject of the services to be performed hereunder. The Town does not warrant the accuracy or completeness of such information; however, unless stated by the Town in writing, the Contractor shall be entitled to reasonably rely upon such information, subject to the following conditions. The Contractor shall be responsible for reviewing the information for any inaccuracies which are apparent upon a view of the site or discrepancies between such information and any materials, measurements, analysis or data prepared independently by the Contractor which concern the same subject matter; and the Contractor shall not be entitled to rely on information which such review shows, or reasonably should have shown, consistent with professional diligence and generally accepted standards of performance in the Contractor's field of practice, to be incorrect. The Contractor shall not be liable to the Town in connection with errors, acts or omissions directly resulting from the Contractor's reasonable and justified reliance, in accordance with the requirements of this paragraph, on information furnished to it by the Town. All information provided to the Contractor by the Town shall remain the property of the Town.

8. HAZARDOUS WASTE OR MATERIALS

If the services to be performed hereunder involve the detection, exploration or analysis of hazardous waste or materials or contamination of a site, the following provisions shall apply.

a) Provided it acts within the scope of services set forth in the Proposal and in accordance with the other requirements hereunder, including the following provisions of this section, the Contractor shall not be deemed to be, nor have the responsibilities of a generator,

Attachment12.a: Pare Corporation Environmental Monitor Contract (5422 : Approve Pare Contract for environmental services re: eversource)

handler, treater, storer, transporter or disposer of hazardous waste or materials;

b) The Contractor shall comply with all applicable federal, state and local laws and regulations relating to hazardous waste and materials, including, without limitation, the Resource Conservation and Recovery Act of 1976-42 U.S.C. s.6901 et. seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980-42 U.S.C. s. 9601 et. seq., and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act – M.G.L. Ch.21E;

9. DISCOVERY OF TOXIC OR HAZARDOUS WASTE OR MATERIALS

If, during the course of performing services hereunder, the Contractor discovers or observes at the site any previously unreported, unknown or unidentified toxic or hazardous waste or materials or substances the Contractor suspects or has reason to believe are toxic or, hazardous, the Contractor shall immediately notify the Massachusetts Department of Environmental Protection, the Sudbury Board of Health, and the Sudbury Conservation Commission.

10. UNFORSEEN OCCURRENCES

If, during the performance of services hereunder, the Contractor encounters any unforeseen conditions or occurrences, including the discovery of toxic or hazardous waste or materials, which affect the Contractor's performance of services hereunder, the Contractor shall promptly notify the Town. After such notification the:

a) The Town and Contractor may agree to proceed with completion of the services, with or without an adjustment in the cost therefore; or

b) The Town and Contractor may agree to modify the scope of services and cost therefore to reflect a reduction of or addition to such services on account of the unforeseen occurrence; or

c) The Town may terminate this agreement, in which case the Town shall pay the Contractor for all services rendered to the Town prior to such termination.

Election of action pursuant to option a) or b) shall be in writing signed by both parties.

11. FORCE MAJEURE

The Contractor shall not be responsible for failure to perform or for delay in performance on account of circumstances beyond its control, including strikes, riots, wars, acts of nature or acts of government preventing performance. In the event of delay in performance on account of such circumstances, the time for performance shall be extended by a period necessary to

Attachment12.a: Pare Corporation Environmental Monitor Contract (5422 : Approve Pare Contract for environmental services re: eversource)

allow completion; however, the Town may elect to terminate this agreement upon seven (7) day notice in writing if any such delay exceeds twenty-one (21) days or continuation of the delay would result in the Town being unable to meet a requirement of state or local law for action on any matter pending before it within a certain time.

12. TERMINATION

a) If the Town fails to make payment hereunder when due or fails to comply with any of its responsibilities hereunder, the Contractor may terminate this agreement upon fourteen (14) days written notice.

b) The Town may terminate this agreement upon seven (7) days written notice if the Contractor fails to comply with any of its responsibilities hereunder, fails to prosecute its work hereunder in a timely fashion or fails to comply with any requirement of law or regulation applicable to this agreement or the services hereunder.

c) The Town may terminate this agreement at any time upon seven (7) days written notice. If such termination is without the fault of the Contractor, the Town shall pay the Contractor all compensation and reimbursement. due to the Contractor up to the date of termination.

13. NOTICE

Notices shall be sent to the Town at:

Lori Capone, Conservation Coordinator
275 Old Lancaster Road
Sudbury, MA 01776

and to the Contractor at:

David R. Caouette, P.E., Senior Project Engineer
Pare Corporation
10 Lincoln Road, Suite 210
Foxboro, MA 02035

14. OWNERSHIP OF DOCUMENTS

All documents and materials of whatever kind prepared by the Contractor and delivered to the Town pursuant to this agreement shall become the property of the Town; provided, that the Contractor may use its copies of such materials for educational or promotional purposes or for required submissions to governmental bodies.

Attachment12.a: Pare Corporation Environmental Monitor Contract (5422 : Approve Pare Contract for environmental services re: eversource)

15. INDEMNIFICATION

The Contractor shall indemnify and save harmless the Town and all of the Town's officers and employees against all costs, damages, suits and claims of liability of every name and nature (including reasonable attorneys' fees) to the extent caused by the negligence acts, errors, or omissions of the Contractor in the performance of this Contract and shall indemnify the Town for any third-party claim arising out of injuries to the Contractor's employees or others performing services for the Contractor. The foregoing is in addition to and not in limitation of any other rights and remedies available to the Town.

16. LIMITATION OF LIABILITY

The total liability in the aggregate, of the Contractor and Contractor's officers, directors, agents and employees to the Town or anyone claiming by, through or under the Town, for any and all claims of professional negligence arising out of or in any way related to Contractor's services or this Contract shall NOT exceed the total amount available under the limits of the Contractor's insurance policies as set forth herein.

Neither party shall be responsible or liable to the other forspecial,indirect or consequential damages.

Notwithstanding the foregoing, the limitation of liability set forth in this or any other provision of this Agreement shall not apply to claims by the Town for indemnification of claims of third parties asserted against the Town for which Contractor is liable.

17. CONTRACTOR INSURANCE

The Contractor shall provide a certificate of professional liability coverage in the amount of one million dollars ($1,000,000.00), and a certificate evidencing Contractor's commercial general liability, automobile liability, and workers' compensation insurance. The $l,000,000 amount of Contractor's professional liability policy shall be the limits of ENGINEER' s liability for professional negligence. All liability policies shall be written on an occurrence basis, and shall be primary and non-contributory. Professional Liability Coverage may be written on a claims-made basis. The coverage shall be in force from the time of the agreement to the date when all services for the Project are completed and accepted by the Town. If, however, the policy is a claims-made policy, a policy shall remain in force for a period of six (6) years after completion.

18. AMENDMENT OF AGREEMENT

Any amendments to this agreement shall be inwriting and signed by both parties.

Attachment12.a: Pare Corporation Environmental Monitor Contract (5422 : Approve Pare Contract for environmental services re: eversource)

19. APPLICABLE LAW

This agreement shall be deemed to be executed and delivered within the Commonwealth of Massachusetts and shall be governed and construed in accordance with the laws of said Commonwealth. Any litigation arising hereunder shall be brought solely in the state courts of the county in which the Town maintains its principal office.

In WITNESS WHEREOF the parties hereto have executed copies of this Agreement the day and year first above written

PARE CORPORATION

_____ _____

Date

TOWN OF SUDBURY

_____ _____

Maryanne Bilodeau, Interim Town Manager Date

Attachment12.a: Pare Corporation Environmental Monitor Contract (5422 : Approve Pare Contract for environmental services re: eversource)

Engineers | Scientists | Planners
PARECORP.COM

PARE CORPORATION

April 20, 2022
Revised July 26, 2022

Ms. Lori Capone
Conservation Agent
Town of Sudbury Conservation Commission
278 Old Sudbury Road
Sudbury, MA 01776

RE: **Environmental Compliance Monitoring**
Eversource Transmission Line – DCR Mass Central Rail Trail
Sudbury, Massachusetts
(PARE Proposal No.: GP149.22)

Dear Ms. Capone:

In response to your request, Pare Corporation (Pare) is pleased to provide the Town of Sudbury (Town) with this proposal for environmental compliance monitoring relative to the Eversource Transmission Line – DCR Mass Central Rail Trail project located in Sudbury, Massachusetts. This proposal is subject to the attached Terms and Conditions.

BACKGROUND

Eversource Energy will be installing a 4.3 mile long, subterranean 115-kV electric transmission line between Sudbury and Hudson along an abandoned railway embankment. The project is a collaboration between the MADCR, Eversource, and the MBTA. The duration of construction activity is reported to be 18 months.

The project borders and is within the buffer zones of numerous wetlands, vernal pools, streams, brooks, and other environmentally sensitive areas. Eversource will be required to install numerous erosion controls, schedule work around various time of year restrictions, excavate and stockpile earthen materials, dewater work areas, excavate around numerous culvert crossings, and abide by the Order of Conditions (DEP File No, 301-1287) and Storm Water Pollution Prevention Plan. Part II of the Order of Conditions special conditions specifies that the Conservation Commission will hire an Independent Environmental Monitor to oversee specific construction activities and provide environmental compliance monitoring for Phase I of the project (Eversource Underground Transmission Line).

SCOPE OF WORK (Basic Services)

The following scope is proposed to allow Pare to function as an Independent Environmental Monitor for the Town of Sudbury for Phase I of the project (installation of the Eversource Underground Transmission Line). If additional monitoring is required for Phase II of the project (DCR Mass Central Rail Trail), Pare can complete these services under a supplemental agreement.

TASK 100: Construction Plan & Document Review

Pare will review the following construction documents to be familiar with the project and inform Pare

10 LINCOLN ROAD, SUITE 210
FOXBORO, MA 02035
508.543.1755

8 BLACKSTONE VALLEY PLACE L
INCOLN, RI 02865
401.334.4100

14 BOBALA ROAD, SUITE 2 B
HOLYOKE, MA 01040
413.507.3448

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personnel on the approved project documents: Order of Conditions, Construction Plans, Construction Schedule, Wildlife Habitat Evaluation, Stormwater Management Plan, Erosion and Sediment Control Submittals, Control of Water Submittals, Culvert Inspection Reports. For the purposes of this proposal, Pare has assumed that 10 construction related submittals will need to be considered to be familiar with the proposed work. Submittals provided to Pare should be final submittals accepted by the engineer of record for use in construction. The intent of this review is to familiarize Pare with the areas to be monitored and the overall scope of the work. Review and/or approval of the submittals for compliance with applicable plans and specifications is not included within Pare's scope of work.

Additional documents other than those stated herein can be reviewed under a supplemental agreement.

TASK 200: Independent Environmental Monitoring

As the Independent Environmental Monitor, Pare will complete the following actions:

1. Review the erosion control barriers following installation but prior to any land disturbance.
    - Pare will require 1 week notice for potential new work areas and 48 hours' notice to confirm the date of inspection.
2. Review the erosion control barriers each year prior to vernal pool species migration.
    - It is expected that the vernal pool species migration inspections will include two environmental staff members per inspection.
3. Conduct spot inspections of vernal pools during construction and/or review reports provided by the Eversource's environmental monitor. Report negative impacts to vernal pools during construction to the Sudbury Conservation Commission.
    - The Conservation Commission shall indicate when spot inspections are required/approved.
4. Observe initial tree removal and invasive species clearing activities within the limit of work.
    - Pare will require 1 week notice for potential new work areas and 48 hours' notice to confirm the date of inspection.
    - The Conservation Commission shall indicate when spot inspections are required/approved.
5. Observe bridge platform installation and provide periodic spot inspections during bridge construction.
    - If the Contractor is working within the approved limit of disturbance, inspections will be limited to environmental monitoring and reviewing.
    - Structural review for compliance of installation of the working platforms and/or bridge installation is excluded from this scope of services.
    - The Conservation Commission shall indicate when spot inspections are required/approved.
6. Observe dewatering in sensitive locations such as whenever excavation is proposed within 50 feet of a wetland, or when extensive dewatering will be needed.
    - Specific observation locations will be determined between the contractor and Conservation Commission, prior to commencement of work and communicated to Pare.
    - Pare will require 1 week notice for potential observation activities and 48 hours' notice to confirm the date of inspection.
    - Pare will review dewatering activities and report on turbid or direct discharge into wetland areas.
7. Review restoration/mitigation areas; provide observation during excavation for and installation of the wetland replication area.
    - Pare will require 1 week notice for potential observation activities and 48 hours' notice to confirm the date of inspection.
8. Observe excavation/construction activities over culverts and drainage structures.
    - If the Contractor is working within the approved limit of disturbance, inspections will be limited to environmental monitoring and reviewing

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- Pare will report variances from the previously reported conditions within the August 2021 Culvert Inspection Report.
- Structural review of the culverts for suitability for reuse is excluded from this scope of services.

Pare will prepare weekly reports to summarize the observations made during each inspection. The reports will indicate the date of observation, general weather conditions on the days of observation, time Pare personnel were on-site, personnel that Pare interacted with while on-site, and describe the site conditions as it relates to the general actions (1 through 8) as stated above. Variances from the approved documentation will be reported to the Conservation Commission on the day of observation.

Pare assumes that site visits will have an average duration of 3 hours of on-site activity.

TASK 300: Erosion Control Monitoring, SWPPP, Scheduling, and Time of Year Restriction Compliance Review

Pare will review Construction Schedules, Erosion Control Monitoring Reports, SWPPP Reports, and reported work areas submitted by the Contractor on a weekly basis for compliance with the SWPPP and Order of Conditions. Pare will notify the Sudbury Conservation Commission of deviances from the approved plan. It is understood that Eversource will be allowed to travel atop the prepared and stabilized railroad embankment through areas affected by the time of year restrictions; however, activities beyond travel are prohibited.

On a weekly basis Pare will review the rainfall totals in the area to determine if the Contractor is in compliance with the SWPPP reporting requirements for after rain events. In the absence of site-specific data provided by either the Contractor or the Sudbury Conservation Commission, Pare will review the information provided by CoCoRaHS Mapping System (Community Collaborative Rain, Hail & Snow Network) for the Sudbury area to determine if rainfall amounts greater than the threshold limit have occurred. In the event rainfall in excess of 0.25 inches had fallen and no report was generated by the Contractor, Pare will notify the Conservation Commission of the variance from the SWPPP.

TASK 400: Emergency Situation Response and LSP Services Contingency

Should Pare Engineers, Environmental Scientists, LSP Services, or other service be required that is not specifically stated within this scope of work, Pare can provide response efforts within Pare's area of practice as an additional service through a contract addendum. To allow for continued service and response to emergency events while a contract addendum clarifying services is prepared, Pare recommends that the Town carry a contingency fund of $10,000.00.

GENERAL PURPOSE OF SITE VISITS

Pare will not provide interpretations or clarifications of the contract documents, prepare associated correspondence, or provide technical opinions concerning acceptability of the work with respect to the contract documents. Pare will not supervise, direct, or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences, or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents. Pare will not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. Pare does not guarantee the performance of the Contractor and will not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules, or regulations.

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Neither the professional activities of Pare, nor the presence of Pare or its employees and subconsultants at a construction/project site, shall relieve the Contractor(s) of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Pare and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Contractor shall be solely responsible for jobsite safety. Through the project specifications and general conditions of the construction contract, Pare and Pare's subconsultants shall be indemnified by the Contractor and shall be made additional insureds under the Contractor's policies of general liability insurance.

TASKS TO BE PERFORMED BY THE TOWN

During the progression of the work, some information and tasks will need to be provided or performed by the Town. This includes the following:

- Providing all necessary construction documentation.
- Provide 48 hours of notice prior to working in areas that will require Pare's presence. This may be coordinated to allow for direct contact by the Contractor.
- Parking for Pare to access the work area.
- Review of report submissions.
- The Town shall be responsible for coordination of report findings with the Contractor.
- Enforcement of variances from the contract documents.

ACTIVITIES NOT INCLUDED IN THIS PROPOSAL

The following activities are not included as part of this proposal and cannot be provided by Pare as part of this work.

- Pare's role will not include the enforcement of the contract documents.

The following activities are not included as part of this proposal, but may be included as additional services if required.

- Attendance at public, regulatory, and construction progress meetings.

BASIS OF CHARGES AND CONDITIONS OF ENGAGEMENT

The Town of Sudbury shall pay Pare for Basic Services rendered as indicated below:

Task 100: Per Attached Rates
Task 200: Per Attached Rates
Task 300: Per attached Rates (not to exceed $700 per week)
Task 400: Per attached Rates

Note: All rates presented are to be held through January 2024. Rates are subject to revision after this period.

Invoices for services rendered and expenses incurred will be processed through the last Friday of each month and are due and payable upon receipt. Invoices not paid within thirty (30) days of the invoice date shall be

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subject to a one and one-half percent (1.5%) per month interest charge. In addition, for contracts more than thirty days in arrears for payment, Pare may, with seven days written notice, suspend services.

Pare reserves the right to renegotiate or adjust the fee accordingly if its Proposal for Service is not accepted within a ninety (90) day period.

ESTIMATE OF CHARGES

Based upon the scope of work presented above, Pare will perform the work for the Fees presented below**.**

Task		Fee	Unit	Proposed Budget[1]
100	Document Review	See Rates	Per Hour	$ 5,250.00
200	Environmental Monitoring	See Rates	Per Hour	$ 60,000.00
300	Erosion Control Monitoring, Construction Schedule, SWPPP, Time of Year Compliance Review	See Rates	Per Hour	$ 54,600.00
400	Emergency Services & LSP Contingency	See Rates	Per Hour	$ 10,000.00
			Estimated Total	$ 133,600.00

[1]The Proposed Budget values for Tasks 200, 300, and 400 are conceptual in nature based on estimates on the overall duration of the project and an estimated number of visits. The actual number of site visits and ultimate budget will be determined by the number of site visits requested by the Conservation Commission.

This represents our best judgment at this time as to the effort required to achieve the stated objectives. It must be recognized that unforeseen conditions, which become evident during the work, may alter, or increase the effort required. You will be notified of any changes requiring an increase in budget, and we will not exceed the recommended budget without your prior approval.

ACCEPTANCE

This Proposal may be accepted by signing in the appropriate spaces below and returning one copy to us. Issuance of a purchase order implicitly acknowledges acceptance of the Statement of Terms and Conditions.

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Thank you for the opportunity to submit this Proposal. We look forward to providing you with environmental monitoring services to meet your needs. If you have any questions, please do not hesitate to call us at 508.543.1755.

Sincerely,
PARE CORPORATION

David R. Caouette, P.E.
Senior Project Engineer

Allen R. Orsi, P.E.
Vice President

Lauren Gluck
Senior Environmental Scientist

Attachments:
- Schedule of Fees
- Statement of Terms and Conditions
- Resumes

This Proposal for Services and Statement of Terms and Conditions are hereby accepted and executed by a duly authorized signatory, who, by execution hereof, warrants that he/she has full authority to act for, in the name of, and on behalf of Town of Sudbury.

TOWN OF SUDBURY

By:_____Title: __

_____ _____
Typed Name Date

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SCHEDULE OF FEES

For Proposal for Services, dated April 20, 2022 *Revised June 29, 2022*
(Pare Proposal No. GP149.22)

LABOR:

Engineer I	$ 160.00/Hour
Engineer II	$ 190.00/Hour
Project Engineer	$ 200.00/Hour
Senior Project Engineer	$ 230.00/Hour
Managing Engineer	$ 270.00/Hour
Principal/Officer	$ 315.00/Hour
Environmental Scientist	$ 160.00/Hour
Senior Environmental Scientist	$ 190.00/Hour
Principal Environmental Scientist	$ 260.00/Hour
Senior Project Coordinator	$ 170.00/Hour
CADD Operator/Designer*	$ 105.00/Hour
Senior CADD Operator/Designer*	$ 130.00/Hour
Principal CADD Operator/Designer*	$ 175.00/Hour
GIS Specialist	$ 125.00/Hour
Engineering Technician*	$ 105.00/Hour
Senior Engineering Technician*	$ 115.00/Hour
Clerical/Office Personnel*	$ 85.00/Hour

REIMBURSABLE EXPENSES:

Mileage (at Federal Standard Rate)	$ 0.585/Mile
Printing/Copying Wide Format (in-house)	$ 0.15/Square Foot
Photocopying (in-house)	$ 0.10/Copy
Outside Services and Out-of-Pocket Expenses	Cost plus 10%

The above rates for technical and support personnel will be charged for actual time worked on the project.

For expert and material witness services, including preparation, associated with any actual or potential litigation, mediation, arbitration, or similar proceeding, a fifty percent (50%) premium will be added to the above rates. Overtime worked by non-exempt, non-professional employees (indicated with an asterisk next to their position) will be charged at a rate of one and one-half times the rates shown above for all time worked in excess of 8 hours per day.

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EXHIBIT B

STATEMENT OF TERMS AND CONDITIONS

Attached to and made a part of the Agreement for Professional Services dated April 20, 2022, by and between the Town of Sudbury (Client) and Pare Corporation, (Pare) in respect of the Environmental Compliance Monitoring - Eversource Transmission Line – DCR Mass Central Rail Trail – Sudbury, MA (Project) described therein.

SECTION 1. SERVICES TO BE PROVIDED

1.1 Pare hereby agrees to provide Client with the services set forth in the Proposal for Services and under the terms and conditions set forth herein.

1.2 This Agreement, once executed, will become effective upon Pare's receipt of written authorization to proceed. The attendant Proposal for Service is subject to renegotiation if acceptance by this Agreement is not received within sixty (60) days.

1.3 Client acknowledges that work shall proceed under the defined scope of services only upon receipt by Pare of a signed Agreement (this Agreement) and, if required, a retainer payment. The retainer amount shall be held by Pare and shall be applied against the final invoice. In the event the amount of the retainer exceeds the final invoice, Pare shall refund the balance with the final invoice. If the final invoice exceeds the retainer, the Client shall promptly remit the amount due.

1.4 If CLIENT authorizes changes in the scope, extent, or character of the PROJECT, then the time for completion of Pare’s services, and the rates and amounts of Pare’s compensation shall be adjusted equitably.

1.5 If Pare's services include the performance of any services during the construction phase of the Project,

a. it is understood that the purpose of any such services (including any visits to the site) will be to enable Pare to better perform the duties and responsibilities assigned to and undertaken by it as an experienced and qualified design professional, and to provide Client with a greater degree of confidence that the completed work of the Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). Neither the professional activities of Pare, nor the presence of Pare or his or her employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Pare personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. Client agrees that the General Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in Client's agreement with the General Contractor. Client also agrees that Client, Pare and Pare's consultants shall be indemnified and shall be made additional insured under the General Contractor's general liability insurance policy.

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b. *(Shop Drawing Review)* it is understood that Pare shall review and approve or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. Pare's review shall be conducted with reasonable promptness while allowing sufficient time in Pare's judgment to permit adequate review. Review of a specific item shall not indicate that Pare has reviewed the entire assembly of which the item is a component. Pare shall not be responsible for any deviations from the Construction Documents not brought to the attention of Pare in writing by the Contractor. Pare shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

c. it is understood that providing a Resident Project Representative (RPR) is a separately defined service in addition to those described above and that the use of a RPR is to assist in providing a more extensive observation of the Contractor's work. If RPR services are to be provided, compensation shall be as set forth in Exhibit C, Compensation for RPR, and the Duties, Responsibilities, and Authority of the RPR shall be as set forth in Exhibit D. The furnishing of such RPR services will not limit, extend, or modify Pare's responsibilities or authority except as expressly set forth in Exhibit C and Exhibit D.

SECTION 2. BILLING AND PAYMENT

2.1 Client agrees to pay Pare in accordance with the rates and charges set forth in the attached Proposal for Services. Invoices for services rendered and expenses incurred will be submitted monthly by Pare to Client. All such invoices shall be due and payable upon receipt. Additionally, in the case of a lump sum method of compensation, invoices will be based upon Pare's estimate of the proportion of the total services actually completed at the time of billing.

2.2 All invoices shall be paid in full prior to the filing by Pare of any documents with a governmental agency having jurisdiction over this Project.

2.3 In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be promptly paid.

2.4 If Client fails to make any payment due Pare for services and expenses within thirty (30) days after the invoice date of Pare's statement therefor, the amounts due Pare shall include an interest charge at the rate of one and one-half percent (1.5%) per month from said thirtieth day, and in addition, Pare may, after giving seven (7) days written notice to Client, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses. Unless Pare receives payment in full within seven (7) days of the date of the notice, the suspension shall take effect without further notice. Payments on account will be credited first to interest and then to principal. In the event of a suspension of services, Pare shall have no liability to Client for delay or damage caused Client because of such suspension of services.

2.5 In the event of termination by Client under Section 17, Client shall remain liable for and shall promptly pay Pare the full amount for all services rendered by Pare to the date of termination and all termination costs together with interest on all overdue accounts in accordance with the foregoing rate and

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attendant attorneys' fees and costs of collection. No failure by Pare to exercise any right hereunder shall operate as a waiver nor preclude Pare from exercising any other right.

2.6 If Client fails to make payment to Pare in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination by Pare.

2.7 In the event legal action is necessary to enforce the payment provisions of this Agreement, Pare shall be entitled to collect from Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by Pare in connection therewith and, in addition, the reasonable value of Pare's time and expenses spent in connection with such collection action, computed at Pare's prevailing fee schedule and expense policies.

2.8 Payment of invoices is in no case subject to unilateral discounting or set-offs by Client, and payment is due regardless of suspension or termination of this Agreement by either party.

2.9 Payment of invoices to Pare is the sole responsibility of the signatory of this Agreement and is not subject to third party agreements.

SECTION 3. ADDITIONAL SERVICES

3.1 Services required by Client, which are not part of those described in the Proposal for Services, shall be considered Additional Services. Additional Services shall be furnished by Pare, or obtained from others by Pare, if requested in writing by Client. Client shall pay Pare for Additional Services in accordance with rates and charges agreed to in writing prior to authorization by Client.

3.2 Requests for additional services and any associated fee adjustment must be authorized in writing before additional services can begin. Oral directives by Client authorizing Additional Services will be confirmed in writing by Pare. Client shall pay Pare for orally directed Additional Services furnished by Pare in accordance with Pare's current Schedule of Fees unless other rates and charges for compensation are agreed to prior to the completion of the authorized Additional Services. Pare reviews its Schedule of Fees annually and reserves the right to adjust its schedule accordingly.

SECTION 4. REIMBURSABLE EXPENSES

4.1 Normal reimbursable expenses are in addition to the fee for services. Internal expenses incurred and allocated to the project will be billed to Client in accordance with our fee proposal and/or our attendant Schedule of Fees. Outside expenses incurred and allocated to the project shall be billed at rate of _____times the amount expended. Reimbursable expenses include, but are not limited to, expenses associated with the Project such as: travel including transportation, meals and lodging; printing, copying and handling of documents; computer charges including computer-aided design; film and processing; telephone calls and other communications charges; postage and delivery; equipment for tests; and securing approval of authorities having jurisdiction over the Project and not specified as part of the fee.

SECTION 5. CLIENT'S RESPONSIBILITIES

5.1 Pare shall indicate to Client the information needed for rendering of services hereunder. Client shall provide to Pare all criteria and full information as to Client's requirements for the Project and such other information as is available to Client and Client's consultants and contractors, and Pare shall be entitled to rely upon the accuracy and completeness thereof. Client recognizes that it is impossible for Pare to assure

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the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions that may have occurred in assembling the information Client is providing.

5.2 Client shall designate in writing a person to act as Client's representative with respect to the services to be rendered; shall examine and respond promptly to Pare's submissions; and shall give prompt written notice to Pare whenever he observes or otherwise becomes aware of any defect in the work.

5.3 Client shall arrange for access to and make all provisions for Pare to enter upon public and private property as required for Pare to perform his services.

5.4 Client acknowledges that invoices must be kept current for services to continue. If Client fails to pay any invoice due to Pare within 30 days of the date of the invoice, Pare may, without waiving any other claim or right against Client, suspend services under this Agreement until Pare has been paid in full all amounts due Pare and/or any of its Consultants and Subcontractors (See Paragraph 2.4). Sealed plans, final documents, reports and attendance at meetings/hearings will not be provided unless payment for services is current. Client acknowledges Pare's right to suspend services and withhold plans and documents, as provided above if payments are not current. If services are suspended for 30 days or longer, upon resuming services Pare shall be entitled to payment for expenses incurred in the interruption and resumption of services. If services are suspended for 90 days or longer, Pare shall be entitled to payment for expenses incurred in the interruption and resumption of its services, and fees for remaining services shall be equitably adjusted.

SECTION 6. INSURANCE

6.1 Pare is covered by Workers' Compensation Insurance, Commercial General Liability Insurance, Automobile Liability Insurance and Professional Liability Insurance. We will furnish information and certificates upon request.

SECTION 7. STANDARD OF CARE

7.1 Services provided by Pare under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the same locality.

SECTION 8. USE OF DOCUMENTS

8.1 All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media prepared or furnished by Pare under this Agreement are instruments of service in respect to this Project, and Pare shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of Pare) whether or not the Project is completed. Client shall not rely in any way on any Document unless it is in printed form, signed or sealed by Pare or one of its Consultants.

8.2 A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any

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conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

8.3 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

8.4 When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator. If any information is provided in electronic format, Client recognizes that such plans, documents or other information recorded on or transmitted as electronic media, including CADD documents ("Electronic Documents") are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the electronic documents are provided to Client for informational purposes only and not as record documents.

8.5 Client may make and retain copies of Documents for information and reference in connection with use on the Project by Client. Pare grants Client a license to use the Documents on the Project, extensions of the Project, and other projects of Client, subject to the following limitations: (1) Client acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Pare, or for use or reuse by Client or others on extensions of the Project or on any other project without written verification or adaptation by Pare; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Pare, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Pare or to Pare's Consultants; (3) Client shall indemnify and hold harmless Pare and Pare's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Pare; (4) such limited license to Client shall not create any rights in third parties.

8.6 If Pare at Client's request verifies or adapts the Documents for extensions of the Project or for any other project, then Client shall compensate Pare at rates or in an amount to be agreed upon by Client and Pare.

SECTION 9. OPINIONS OF PROBABLE COST

9.1 Since Pare has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable project cost and construction cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Pare cannot and does not guarantee nor make warranty, expressed or implied, that proposals, bids, or actual project or construction cost will not vary from opinions of probable cost prepared by him. Similarly, since Pare has no control over building operation and/or maintenance costs, Pare cannot and does not guarantee that the actual building or system operating or maintenance costs will not vary from any estimates given by Pare.

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EXHIBIT B

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SECTION 10. CERTIFICATIONS

10.1 Client shall not request certifications and/or affidavits that would require knowledge or services beyond the scope of this Agreement and/or beyond the professional qualifications and engineering expertise of Pare. Pare shall not be required to sign any documents, no matter by whom requested, that would result in Pare having to certify, guaranty or warrant the existence of conditions whose existence Pare cannot ascertain. Any certification provided by Pare shall be so provided based on Pare's knowledge, information and belief subject to the preceding sentence, and shall be given in Pare's professional opinion consistence with the Standard of Care. Pare shall be compensated for any work necessary to verify project compliance with regulatory standards for purposes of such certification.

10.2 The proposed language of any such certificates, affidavits or certifications requested of Pare or Pare's consultants shall be submitted to Pare for review and approval at least fourteen (14) days prior to expected execution.

SECTION 11. LIMITATION OF LIABILITY

11.1 To the maximum extent permitted by law, Client agrees to limit Pare's liability to Client for or on account of all claims and/or damages of any nature whatsoever caused by or arising out of Pare's performance of its services, such that the total aggregate liability of Pare for any and all claims and/or damages of any nature whatsoever, arising out of the performance of Pare's services on the Project, shall not exceed $50,000 or Pare's total fee for services rendered on the Project, whichever is greater.

11.2 Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any special, indirect, incidental, or consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by Client or Pare, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

SECTION 12. SERVICES MADE NECESSARY BY LACK OF CONTRACTOR PERFORMANCE

12.1 It is Client's responsibility to hire the Contractor, and it is the Contractor's responsibility to install and complete fully operable systems. Client agrees to pay Pare 3.20 times Direct Labor Costs for all its trouble-shooting work due to Contractor's inability to achieve satisfactory operation. Client shall hold harmless, defend and indemnify Pare, its officers, agents, employees and consultants, from any and all liabilities, claims, damages and suits arising out of the negligence of Client or its agents, or liability due to the negligence of any contractor(s) performing any portion of the work and supplying any materials, or any other parties, except for any liability of Pare, or its consultants, due to the sole negligence of Pare, or its consultants.

SECTION 13. HAZARDOUS WASTE/ASBESTOS/CONTAMINANTS

13.1 In consideration of the substantial risks to Pare involving or relating to the actual or threatened release, escape or discharge of hazardous waste, asbestos and/or other contaminants, it is agreed that Client to the fullest extent permitted by law, shall release and indemnify and hold harmless Pare and its consultants, agents and employees, from and against all claims, damages, losses and expenses, direct and

indirect, including but not limited to attorneys' fees and defense costs, arising out of or resulting from the performance of any services by Pare, or claims against Pare related to, involving or arising out of hazardous waste, asbestos or other contaminants.

SECTION 14. INDEMNIFICATION

14.1 Pare agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Pare's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom Pare is legally liable.

14.2 The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Pare, its officers, directors, employees and subconsultants (collectively, Pare) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

14.3 Neither the Client nor Pare shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

SECTION 15. SUSPENSION OF SERVICES

15.1 If the Project is suspended by Client, or the services are suspended by Pare in accordance with Paragraph 2.4 and/or Paragraph 5.4 of this Agreement for more than thirty (30) calendar days in the aggregate, Pare shall be compensated for services performed and charges incurred prior to receipt from Client or issuance by Pare of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. Depending on the duration of the stoppage, an additional adjustment may be necessary to cover wage increases and general escalation. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the Project is suspended for more than ninety (90) calendar days in the aggregate, Pare may, at his or her option, terminate this Agreement upon giving notice in writing to Client.

SECTION 16. DISPUTE RESOLUTION

16.1 Any disputes arising out of or relating to this Agreement, including disputes under termination, shall first be submitted to nonbinding mediation unless the parties mutually agree otherwise.

16.2 The parties further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

16.3 On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representative and shall meet within ten (10) days after the service of notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of the meeting. Should the parties themselves be unable to agree on a resolution of the

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dispute, then the parties shall proceed with mediation in accordance with the mediation rules of the American Arbitration Association. The cost of mediation shall be borne equally by both parties.

16.4 Any dispute not settled by agreement of the parties shall be decided by litigation in a court of competent jurisdiction.

SECTION 17. TERMINATION

17.1 Either Client or Pare may terminate this Agreement at any time with or without cause upon giving the other party ten (10) calendar days prior written notice. Client shall within thirty (30) calendar days of termination pay Pare for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this Agreement.

SECTION 18. TITLES

18.1 The titles in this Agreement are for general reference only and are not part of the Agreement.

SECTION 19. GOVERNING LAW

19.1 The laws of the Commonwealth of Massachusetts will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in the courts of the Commonwealth of Massachusetts.

SECTION 20. INTEGRATION

20.1 This Agreement comprises the final and complete agreement between Client and Pare. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Amendments to this Agreement, except as otherwise provided herein, shall not be binding unless made in writing and signed by both Client and Pare.

SECTION 21. SEVERABILITY AND SURVIVAL

21.1 Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and Pare shall survive the completion of the services hereunder and the termination of this Agreement.

SECTION 22. SUCCESSORS AND ASSIGNS

22.1 Client and Pare each binds himself and his partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

22.2 Neither Client nor Pare shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 23.1 and except to the extent that the effect of

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this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Pare from employing such independent consultants, associates, and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

22.3 Nothing herein shall be constructed to give any rights or benefits hereunder to anyone other than Client and Pare.

SECTION 23. ENTIRE AGREEMENT

23.1 This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no verbal understandings, statements, or stipulations bearing upon the meaning or effect of this Agreement. This Agreement may only be modified or amended by a written instrument executed by both parties, except as may be otherwise provided herein.

(END)

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David R. Caouette, P.E.

Senior Project Engineer (Project Manager)

PARE CORPORATION

REGISTRATIONS AND CERTIFICATIONS

Professional Engineer – Massachusetts, Rhode Island

PROFESSIONAL AFFILIATIONS

Association of State Dam Safety Officials

American Society of Civil Engineers

EDUCATION

University of Rhode Island:
B.S., Civil Engineering, 2011
B.A., German Language, 2011

TRAINING

Troxler Nuclear Density Gauge License

OSHA 10 Hour Construction Safety Training

RELEVANT EXPERIENCE

Mr. Caouette is a Geotechnical Engineer with 12 years of experience specializing in the fields of dam and foundation engineering. Mr. Caouette has completed numerous dam inspections, embankment designs, deep and shallow foundation designs, alternatives analyses, and a variety of other dam and geotechnical related projects throughout the New England region. While currently serving as a Project Manager, his experience to date includes analytical analysis, field observations, permit development, grant writing data gathering/reduction/analysis, and contract administration through all project stages, resulting in a diverse project portfolio and a well-rounded approach to project completion. Relevant project experience includes:

- **Sunset Lake Dam Improvements:** Completed subsurface investigations and geophysical survey, analysis to assess this significant hazard potential dam with a history of seepage and spillway clogging. Mr. Caouette developed a variety of dam alternatives from reconstruction to an upstream cutoff wall for evaluation by the dam owner. The project is currently entering design phase to install an upstream cutoff wall and complete additional repairs to the earthen embankment. Foxboro, MA

- **Silver Spring Dam Rehabilitation:** Completed investigations, analyses and design to replace the low level outlet, improve the downstream channel characteristics, remove unwanted vegetation, address upstream slope instability, restore access across the spillway, while preparing to accommodate future spillway improvements at this high hazard potential dam. Mr. Caouette prepared construction drawings, specifications and permit applications to facilitate award by competitive quals based bid. The project is currently in construction. North Kingstown, RI.

- **Stearns Millpond Dam:** Completed designs to demolish and replace the low-level outlet, demolish and replace the primary spillway discharge apron, and install a toe drain to address leakage and scour issues at the existing dam. Provided bid phase, construction administration, permitting assistance, and field observation services. Sudbury, MA

- **Connecticut Water Company – Capitol Improvements Plan:** Completed and reviewed initial site assessments at 27 dams owned by the CWC and developed recommendations for additional studies, repairs, and remedial actions over a 15-year period to aid in the long term capitol improvements plan of this quasi private drinking water supplier within Connecticut.

- **Haskell Pond Dam:** Completed site investigations, alternatives design, final design, and contract administration for this multi-phase project to improve the condition of a large size, high hazard water supply reservoir to address static/dynamic deficiencies utilizing an internal secant pile wall to support the embankment. Designed spillway and embankment improvements to pass design flows. Developed numerous grant applications to the State of MA and FEMA to aid with project funding. Completed Phases I and II and currently pursuing/awaiting funding for Phase III. Gloucester, MA.

- **Chartley Pond Dam:** Designed repairs to address advanced cracking and scouring of the concrete for an existing high hazard potential dam. Prepared construction and bid documents to secure bids, and provided construction administration throughout construction and project closeout. Norton, MA.

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- **RIDEM Dam Inspections (2017-2022):** Project engineer for the completion of visual inspections of dams in Rhode Island for the RIDEM Dam Safety Program. Statewide, RI.

- **Stafford Pond Dams:** Created and completed a data collection and subsurface investigation program to assess the historic development of sinkholes along the crest and spillway walls of two dams. Developed a repair program using permeation grouting techniques to address the observed conditions. Union, CT.

- **Rhode Island Attorney General's Office:** Evaluate a failing well point system to address foundation/basement leakage. Design a permanent well point dewatering system and prepare construction documents. Providence, RI.

- **Wyoming Pond Dam Rehabilitation:** Completed designs to replace the low level outlet, restore operability to the sluiceway, replace the concrete cap at the overflow spillway and improve the condition of the masonry components of the dam. Based upon the detection of sever internal erosion the design expanded to include the replacement of the right embankment with a new earthen and concrete dam with a bedrock foundation. Mr. Caouette prepared construction drawings, specifications and permit applications to facilitate award by competitive quals based bid. The project is nearing final completion. Hope Valley, RI.

- **Various Control of Water Designs:** Design temporary water diversion cofferdams, siphons, dewatering systems, dewatering and sediment control basins to facilitate construction. Prepared emergency response plans for storms in excess of the specified design event. Prepared emergency modifications to address elevated pond level.
  - Bound Brook Dam – Cohasset, MA
  - Central Street Bridge – Framingham, MA
  - Georgiaville Pond Dam (siphon Design) – Smithfield, RI
  - Penobscot River Restoration: Dam By-Pass Channel – Howland, ME
  - Washington Street Bridge – Taunton, MA
  - Wachusett Street Bridge – Holden, MA
  - Horseshoe Dam – Shannock, RI
  - Shannock Upper Dam – Charlestown, RI
  - Lowell Canal – Lowell, MA
  - Swanton Street – Winchester, MA

- **Warwick Levee Repairs:** Designed a levee extension to raise the height of the existing levee, and to increase the lateral limits of protection, to accommodate the 500-year storm event. The design included transitions between the historic and new structure as well as the repair of a damaged section of the existing levee. Prepared construction plans and specifications. Provided on-site construction administration during all three phases. Warwick, RI.

- **Reading High School Retaining Wall:** Completed a subsurface investigation and existing conditions analysis to supplement the design, repair, and reconstruction of a failing MSE wall. Prepared construction drawings and specifications and provided on-site observation and construction administration services. Reading, MA

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Lauren H. Gluck, PWS
Senior Environmental Scientist

PARE CORPORATION

REGISTRATIONS AND CERTIFICATIONS

Professional Wetland Scientist #2496

OSHA Construction Safety 10-Hour Training

OSHA HAZWOPER 40-hour Training

PROFESSIONAL AFFILIATIONS

Society of Wetland Scientists

Association of Massachusetts Wetland Scientists

National Society of Collegiate Scholars

EDUCATION

University of Rhode Island: B.S. in Wildlife and Conservation Biology, 2006

Wetlands-related courses include the following: Intro to Soil Science, Field Botany/Taxonomy, Wetland Wildlife, Wetland Ecology, Wetlands and Land Use, Wetlands Field Investigation, Marine Ecology

Introduction to ArcGIS I March 2007

RELEVANT EXPERIENCE

Ms. Gluck is responsible for performing wetland delineations in accordance with the guidelines and criteria of the Massachusetts Department of Environmental Protection (MADEP), Rhode Island Department of Environmental Management (RIDEM), Rhode Island Coastal Resources Management Council (RICRMC), and the US Army Corps of Engineers (USACE). Additional responsibilities include environmental studies, wildlife habitat investigations, impact mitigation design, reports and permit applications for a variety of coastal and inland projects, including utility, highway, bridge, dam, and private development projects. Ms. Gluck is adept at aerial photo interpretation, and the use of GPS, GIS, and AutoCAD in the collection and display of field data to assist in the development of permit submissions and other documentation. Representative projects include:

- **Waltham Wayside Trail:** Responsible for wetland delineation and preparation of a Notice of Intent for the proposed 2.8-mile Waltham section of the Wayside Trail, a 23-mile shared use path on an abandoned railroad embankment extending from Bolton to Waltham. The Wayside Trail is a component of the Mass Central Rail Trail, a 104-mile shared use path that will connect from Northampton to Boston. Waltham, MA.

- **Pine Street Site Due Diligence:** Completed vernal pool investigations and preliminary wetland evaluations on a 206-acre wooded site. Completed monthly water level monitoring and biological investigations at ten isolated flooded depressions identified as Potential Vernal Pools. Also performed a site-wide walkover wetland field review to provide a preliminary evaluation of wetland constraints. Norton, MA.

- **MassLite Quarry Site Vernal Pool Monitoring:** Completed investigations of eight isolated flooded depressions identified as Potential Vernal Pools within wooded and developed areas on a quarry site. Completed bi-weekly water level monitoring and biological investigations throughout the growing season. Also completed stream monitoring at the upper reach of Ten Mile River on the site. Plainville, MA.

- **Attleboro Sand and Gravel Vernal Pool Monitoring:** Completed investigations of six isolated flooded depressions identified as Potential Vernal Pools within wooded and developed areas on a sand and gravel site. Completed bi-weekly water level monitoring and biological investigations throughout the growing season for two consecutive years. Attleboro, MA.

- **Concrete Products Site:** Responsible for wetland delineations, wetland data collection, vernal pool investigation, and preparation of an Abbreviated Notice of Resource Area Delineation (ANRAD) for the site. Plainville, MA.

- **Willowdale Subdivision Wetlands Consulting:** Provided wetland delineation and permitting support for a residential subdivision project on a former golf course site heavily constrained by wetlands. Responsibilities included delineation of wetlands, preparation of a wetland delineation report for inclusion in permitting documentation; seasonal monitoring of a potential vernal pool and submission of a potential vernal pool monitoring study for review by the Conservation Commission; and providing support at public hearings throughout the permitting process. Mansfield, MA.

- **Panas Road Wetland Delineation:** Delineated approximately 2 miles of wetland within a 55-acre site that included open areas, natural woodlands,

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and abandoned gravel pits. Prepared a Wetland Delineation Report and appeared at a Public Hearing for an Abbreviated Notice of Resource Area Delineation. Currently monitoring two possible vernal pools on the site. Foxborough, MA.

- **242-244 Main Street Flagging:** Delineated extensive wetlands within an 80 acre site that included maintained horse pasture, shrub wetlands, natural woodlands, and stream channels, to assist with land use planning. Monitored flow conditions within two stream channels in order to determine whether either qualifies as an intermittent stream under 310 CMR 10.58 (2). Evaluated a potential vernal pool on the site. Foxborough, MA.

- **Haskell Pond Dam Rehabilitation:** Responsible for wetland delineations and environmental permitting for a water supply dam in Gloucester. Responsibilities included wetland delineations, assessment of potential mitigation sites, preparation of a Notice of Intent, MEPA Environmental Notification Form, Water Quality Certification. Submitted documentation to the US Army Corps of Engineers for coverage under the General Permit for Massachusetts. Gloucester, MA.

- **Paradise Pond Dam:** For the design of repairs to an existing dam and dike on the campus of Smith College. Responsible for wetland delineations and a detailed Wildlife Habitat Evaluation. Prepared a Notice of Intent, Environmental Notification Form, Chapter 91 Waterways License application, and Water Quality Certification. Submitted documentation to the US Army Corps of Engineers for coverage under the General Permit for Massachusetts. Northampton, MA.

- **Center Pond Dam:** Performed and documented wetland delineations and prepared a detailed Wildlife Habitat Evaluation for repairs to Center Pond Dam. Prepared a Notice of Intent, Environmental Notification Form, Chapter 91 Waterways License application, and Water Quality Certification. Submitted documentation to the US Army Corps of Engineers for coverage under the General Permit for Massachusetts. Contributed to the design of a Wetland Replication plan and is currently responsible for assisting with on-site environmental compliance monitoring. Becket, MA.

- **Abington Co-Located Pre-K/Middle/High School:** Performed wetland delineations and provided environmental permitting services for a combined pre-Kindergarten/Middle School/High School on the site of the former high school building. Prepared a Notice of Intent for the proposed school and associated facilities and assisted with the design of a compensatory mitigation area to offset impacted wetlands. Abington, MA.

- **The Kraft Group Soccer Training Facilities:** Performed wetland delineations, wildlife habitat assessment, and permitting support for a proposed New England Revolution training facility on a previously degraded site adjacent to Gillette Stadium in Foxborough. Field work included extensive wetland delineations on a highly disturbed 50 +/- acre parcel of land, and monitoring ten isolated wetland depressions for the presence of vernal pool habitat throughout the amphibian breeding season. Permitting support included submission of a Request for Jurisdictional Determination (JD) to the U.S. Army Corps of Engineers and an Abbreviated Notice of Resource Area Delineation (ANRAD) to the Foxborough Conservation Commission and DEP, and attendance at public hearings. Foxborough, MA.

Attachment12.b: GP149.22 SudburyEnviMonitConstObs - Revised 7-26_rev (5422 : Approve Pare Contract for environmental services re:

Adam M. Dutra
Environmental Scientist

PARE CORPORATION

CERTIFICATIONS

USEPA Watershed Management Training Certificate

OSHA 10-Hour Training

EDUCATION

University of Idaho: M.S. in Environmental Science, 2021

Rhode Island College: B.S. in Environmental Studies, 2018

RELEVANT EXPERIENCE

Mr. Dutra is an environmental scientist responsible for performing wetland delineations in accordance with the guidelines and criteria of the Massachusetts Department of Environmental Protection (MADEP), Rhode Island Department of Environmental Management (RIDEM), Rhode Island Coastal Resources Management Council (RICRMC), and the US Army Corps of Engineers (USACE). Additionally, his duties include impact assessments, environmental monitoring, reporting and permit compliance services; GPS/GIS mapping; and reports and permit applications for highway, utility, bridge, dam, commercial and residential projects. His previous experience as a forestry consultant and as a conservation intern with the Audubon Society have given him valuable experience. Representative projects include:

- **MADCR – Taunton River Trail at Sweet Knolls State Park:** Assisted in wetland delineation and GPS survey along approximately two miles of a former rail-way easement, in support of the forthcoming Taunton River Trail bike path. Assisted with preparation of wetland delineation documentation including U.S, Army Corps of Engineers (USACE) data forms. Dighton, MA.

- **City of Amesbury – Friend Street Drainage Improvements:** Prepared Notice of Intent (NOI) application for proposed culvert replacements and dam repairs for the City of Amesbury. Amesbury, MA.

- **Edgewood Development Company, Inc. – Redbird Farm Potential Vernal Pool Evaluations:** Conducted assessments of fifteen isolated wetland depressions identified as potential vernal pools (PVPs) on an 111-acre wooded site as part of due diligence for potential development. on a property. Wrentham, MA.

- **Bay State Vet - Wetland Delineations and Site Assessments:** Performed wetland delineations and GPS survey for a proposed veterinary office development site. Swansea, MA.

- **Providence Water Supply Board – Johnston Tank Site:** Conducted wetland delineation and prepared wetland documentation for future permitting of a water tank on an undeveloped property. Assisted in a wildlife habitat assessment in support of a future Application to Alter. Johnston, RI.

- **City of Pawtucket – Public Recreation Facility Feasibility Study:** Assisted in wetland and coastal feature delineation in accordance with CRMC criteria. Prepared wetland delineation documentation in support of future CRMC permitting. Pawtucket, RI.

- **KCWA – New Operations Facility Site:** Prepared RIDEM Preliminary Determination Application for the design of a new office/maintenance facility for the Kent County Water Authority. West Greenwich, RI.

- **Town of Johnston – Early Childhood Center RIDE Stage III:** Conducted wetland field investigations, delineations, and reporting in support of permitting for the design of a new 56,000-sf Early Childhood Center. Assisted in the preparation of applications to RIDEM. Johnston, RI.

- **Town of Somerset – Dam Improvement Project:** Performed wetland delineations, GPS survey, and wetland delineation documentation for the site of the Somerset Reservoir Dam. Somerset. MA

Attachment12.b: GP149.22 SudburyEnviMonitConstObs - Revised 7-26_rev (5422 : Approve Pare Contract for environmental services re:

- **Preservation of Affordable Housing – Hebronville Pond Dam & Culvert Repair:** Prepared a Notice of Intent to conduct required work on a dam and vertical retaining walls located on the Ten Mile River. Attleboro, MA.

- **RIDOT Dynamic Message Sign Replacement:** Responsible for preparing CE Checklist for Rhode Island Department of Transportation. Collected data and collaborated with DEM officials to ensure that all precautions are taken when working with stormwater, vegetation removal, and within National Heritage Areas and in habitats of threatened or endangered species. Warwick, RI.

- **Great Island Revetment Replacement:** Responsible for preparation of CRMC Maintenance Application for revetment on private property. Narragansett, RI.

- **Brisa Builders – Carriage Grove Redevelopment:** Conducted wetland delineations and GPS survey in support of a housing development on a former state hospital site. Belchertown, MA.

Attachment12.b: GP149.22 SudburyEnviMonitConstObs - Revised 7-26_rev (5422 : Approve Pare Contract for environmental services re:

Seaver Anderson
Environmental Scientist

PARE CORPORATION

REGISTRATIONS AND CERTIFICATIONS

Post – Baccalaureate Certificate in GIS and Remote Sensing

OSHA 10-Hour Construction Safety & Health

AFFILIATIONS AND MEMBERSHIPS

Soil Scientists of Southern New England (Associate Member)

Association of Massachusetts Wetland Scientists

Society of Wetland Scientists

Northeast Arc Users Group

EDUCATION

University of Rhode Island: M.S. Environmental Science and Management, 2019

University of Vermont: B.A., Geography, Fine Arts, 2014

RELEVANT EXPERIENCE

Mr. Anderson has four years of experience in a variety of fields including land conservation and management, on-site wastewater treatment systems, anadromous fish passage, watershed hydrology, and GIS mapping. Since joining Pare in June of 2019, he has been involved in environmental permitting and site assessments, GIS mapping, wetland delineation, and soil characterization. Representative project experience includes:

- **The Kraft Group – Rand Whitney Industrial Development:** Performed wetland delineation, prepared supporting delineation documentation, and prepared Notice of Intent application to MA DEP and Boylston Conservation Commission for the development of a light industrial complex. Prepared and received approval for a Beaver Management Plan to address issues with beaver activity. Boylston, MA

- **WuXi Biologics – Manufacturing Facility:** Prepared Notice of Intent application to MassDEP and City of Worcester for the construction of a new pharmaceutical manufacturing facility. Worcester, MA.

- **Organogenesis – 275 Dan Road Improvements:** Performed wetland delineation, prepared supporting delineation documentation, and prepared Notice of Intent application to MA DEP and Canton Conservation Commission for site improvements to an existing development. Canton, MA

- **Bay State Vet – Site Selection:** Performed wetland assessments and wetland delineations for multiple sites throughout Massachusetts and one in Rhode Island. GIS mapping for each site for property evaluation. Swansea and Seekonk, MA and Coventry, RI

- **Bay Colony Group – Wetland Delineations:** Responsible for executing numerous wetland consulting assignments under a Master Services Agreement. Assignments have included wetland delineations, wetland evaluations, and report preparation. Various Locations - MA.

- **Edgewood Development Company – Wetland Delineations and Site Assessments:** Responsible for multiple wetland delineation and site assessments for potential development sites throughout Massachusetts. Assignments have included wetland delineations, ANRAD application, wetland evaluation, and report preparation. Various Locations - MA.

- **Town of Ashburnham – Whitney Pond Dam Removal:** Responsible for wetland delineations and documentation in support of the Whitney Pond Dam Removal. Prepared SEIR and received approval from MEPA for the dam removal. Currently preparing MA DEP, USACE, and Town of Ashburnham applications for the dam removal. Ashburnham, MA

- **Whitin Reservoir Watershed District – Whitin Reservoir Operations & Maintenance Manual:** Performed Wetland Delineation, prepared delineation documentation, and prepared Notice of Intent for the ongoing operations and maintenance of the Whitin Reservoir. Douglas, MA

- **RIDEM – Wyoming Dam Repairs:** Performed wetlands delineation and prepared documentation in support of maintenance repairs to the Wyoming Dam on the Wood River. Hope Valley, RI

Attachment12.b: GP149.22 SudburyEnviMonitConstObs - Revised 7-26_rev (5422 : Approve Pare Contract for environmental services re:

- **City of Woonsocket – Dam Repairs:** Performed wetland delineations and prepared wetland reports for areas around Woonsocket Reservoir #1 and Harris Pond in support of maintenance repairs. Woonsocket, RI

- **RIDOT – Stormwater Control Plan GIS Database Management:** Updated GIS features and attribute tables for proposed stormwater treatment units and catchment areas in RIDOT's online GIS Stormwater Control Plan portal. Providence, RI

- **RIDOT and City of Warwick – Sand Pond Bank:** Performed wetland delineation and prepared documentation in support of a bank stabilization and stormwater treatment project on Sand Pond. Prepared RIDEM wetlands permit application and supporting documentation in support of the project. Warwick, RI

- **RIDOT – Stormwater Basins:** Performed wetland delineations and site assessments to support the restoration of eight stormwater basins throughout Rhode Island. Prepared RIDEM Preliminary Determination Applications for the retrofit of seven of the stormwater basins. Statewide – RI.

- **MassDOT – Mongo Pond Dam Emergency Repairs:** Performed wetlands delineation around the Mongo Pond Dam in support of emergency repairs required due to failure of a low-level outlet. Assisted in the preparation of MA DEP permit application documents. Palmer, MA

- **RIDOT – J.T. Connell Road/Coddington Highway:** Assisted in RIDEM wetlands permitting for the roadway reconstruction of the J.T. Connell/ Coddington Highway restoration as part of the Pell Bridge Approaches project. Newport/ Middletown, RI

- **RIDOT – Aquidneck Avenue Roadway Improvements:** Assisted in the delineation of wetlands along Aquidneck Avenue and the RIDEM wetlands permitting for roadway reconstruction and improvements. Middletown, RI.

- **Johnson and Wales University – Equestrian Campus:** Prepared Mass DEP and Town of Rehoboth wetlands permitting applications for the construction of a bridge on the Johnson and Wales Equestrian Campus. Rehoboth, MA.

- **SUEZ – Winchester Drive Water Main Replacement:** Performed review of coastal wetlands in vicinity of Winchester Drive and prepared permitting documentation for a CRMC Maintenance Assent. South Kingstown, RI

- **Narragansett Bay Commission – CSO Phase III:** Performed both coastal and freshwater wetland delineations and documentation for multiple sites in relation to the Combined Sewer Overflow (CSO) program for Pawtucket and Central Falls. Salt marsh mapping in Assisted in RI CRMC permitting master plan for work associated with the CSO program and generated maps in GIS for various presentations and reports. Pawtucket, RI.

- **Kent County Water Authority – Groundwater Treatment Facility:** Performed wetland delineation and prepared wetland delineation documentation for a groundwater treatment site. East Greenwich, RI

Attachment12.b: GP149.22 SudburyEnviMonitConstObs - Revised 7-26_rev (5422 : Approve Pare Contract for environmental services re:

Alan D. Hanscom, LSP
LSP Services / Soil Reviews

PARE CORPORATION

REGISTRATIONS AND CERTIFICATIONS

MA Department of Environmental Protection Licensed Site Professional

AFFILIATIONS AND MEMBERSHIPS

Licensed Site Professional Association

Water Environment Federation

EDUCATION

University of Maine, Orono - B.S., Civil Engineering, 1976

RELEVANT EXPERIENCE

Mr. Hanscom has over 40 years in the engineering and environmental consulting industry. He has a broad range of experience focused primarily on site/civil design projects, including dozens of projects involving underground water, sewer and drainage utilities, and all phases of environmental permitting, design, and site remediation. He has a comprehensive understanding of the many federal, state, and local environmental laws and regulations dealing with environmental issues for a variety of clients, including public agencies, municipalities, developers, utility companies, manufacturers, and other private sector clients. Relevant engineering experience includes:

- **Shoreline Marine Terminal:** Project Manager for the redevelopment of the former Revere Copper Products Plant. Project includes significant environmental cleanup actions involving free product and groundwater contaminated with heavy metals, renovation of 60,000 sf of space for seafood processing facilities, new electrical service, stormwater permitting and design, a new rail spur, underground utilities, demolition of several industrial buildings and extensive structural, geotechnical, and site/civil support services. New Bedford, MA.

- **Brisa Construction** – Redevelopment of the former Baskin Property. Mr. Hanscom has been responsible for LSP services associated with cleanup of the Site and subsequent coordination and oversight of site/civil design and permitting activities. The project includes renovation of an exiting mill building for a brew pub, a102-unit residential housing building, and a 50,000 sf pre-engineered athletic building. Chicopee, MA.

- **City of Chicopee – Uniroyal and Facemate Brownfields Projects:** Responsible for LSP services, demolition, brownfields redevelopment and regulatory permitting for cleanup of one of the largest Brownfields sites in Massachusetts. This project included overall guidance and technical support for multiple environmental assessments under the MCP and TSCA; technical support for over a dozen grant and loan applications for USEPA, HUD and MassDevelopment funding programs; beneficial use determinations (BUD) & re-use of coated asphalt, brick, and concrete; hazardous waste characterization and management (toxic chromium wastes in dye vats); design of MCP site remediation and building demolition contracts, with emphasis on bid items for equitable compensation; preparation of Activity & Use Limitations (AULs) and Permanent Solutions with Conditions (PSWC); development of a Fill Management Plan (FMP) for backfilling the Site with RCS-1 and RCS-2 soils to prepare the Site for redevelopment, including the generation of >$1 Million in net revenue from soil tipping fees; and technical support for negotiating cleanup and Risk Based Disposal Plan (RBDP) for portions of the Site by the PRP. Chicopee, MA. Chicopee, MA.

- **Town of Weymouth - Smelt Brook Daylighting:** Coordinated and oversaw the engineering design and construction of a precast concrete culvert to daylight approximately 150 linear feet of Smelt Brook. The project was constructed in three phases: Phase 1 included repairs to an existing structure on the town line between Weymouth and Braintree, including asbestos abatement, re-facing the building exterior with new brick masonry and siding, and repairs to the existing roofing and parapet; Phase 2 consisted of the daylighting of 150 linear feet of underground stone masonry culvert with a 8' by 10' deep precast concrete culvert, including installation

Attachment12.b: GP149.22 SudburyEnviMonitConstObs - Revised 7-26_rev (5422 : Approve Pare Contract for environmental services re:

of substrate to support smelt migration and reproduction in the Weymouth Landing area; and Phase III included replacement of an additional eighty (80) linear feet of stone masonry culvert under Route 53. Challenges included relocation of water and sewer utilities, traffic control during the winter months, and cleanup of PCBs from abandoned gas mains. Weymouth, MA.

- **Consolidated Equipment Site Remediation:** Provided LSP services related to environmental assessment and remediation of petroleum- and VOC-impacted soil and groundwater at a former tannery/chemical tank farm. The project included a subsurface investigation; design of a groundwater pumping, treatment (granular activated carbon) and recirculation system; monitoring and MCP reporting of remediation system operation; and preparation and filing of an Activity & Use Limitation (AUL) and Permanent Solution Statement with Conditions (PSSC). Peabody, MA.

- **Revere Copper Products Site Remediation:** Provided LSP and related professional services for the remediation of multiple MCP releases. Primary activities included on-site treatment of metals-impacted groundwater to eliminate a substantial release migration of impacted groundwater to the Acushnet River (copper concentrations in groundwater were reduced by over 95%); in-situ characterization and dual phase recovery of petroleum-impacted groundwater under the former heat-treating industrial buildings; and oversight of disposal of various building materials and waste streams throughout the facility, including wooden wear blocks (flooring), asbestos building materials, pickling wastes, heavy metals/debris, miscellaneous containers of oil and hazardous materials, etc. Services also included preparation of estimates of probable costs for dealing with ongoing site remediation, building decontamination, stormwater system cleaning, groundwater sampling and analyses, MCP reporting, etc.; monitoring of storm water discharges under a NPDES discharge permit; and preparation and filing of a Remedy Operation Status submittal under MCP regulations. New Bedford, MA.

- **City of Boston – East Boston Greenway:** Provided LSP support for the design of an urban rail trail project. Tasks included in-situ characterization, risk assessment, and on-site washing and re-use of over 2,000 cubic yards of lead and arsenic-impacted ballast in the subsurface drainage system. Boston, MA.

- **New Middle School Project:** Managed the assessment and strategic cleanup-on-site management of PCB-impacted materials under a TSCA Risk Based Cleanup Plan at the site of a new middle school. New Bedford, MA.

- **Chemical Applications Site Remediation:** Project Manager for the development of remedial action measures for heavy metal contamination exceeding state limits. Response also included vapor intrusion mitigation via a subsurface depressurization system (SSDS). Peabody, MA.

Attachment12.b: GP149.22 SudburyEnviMonitConstObs - Revised 7-26_rev (5422 : Approve Pare Contract for environmental services re:

Aaron C. Ting, P.E.
LSP Services / Soil Reviews

PARE CORPORATION

REGISTRATIONS AND CERTIFICATIONS

Professional Engineer: Massachusetts

OSHA 40 Hour HAZWOPER

OSHA 8-Hour Site Supervisor

PROFESSIONAL AFFILIATIONS

Asian Real Estate Association of America, Commercial Committee Vice Chair

EDUCATION

University of Connecticut - M.S., Environmental Engineering, 2010

Worcester Polytechnic Institute, B.S., Civil & Environmental Engineering, 2008

RELEVANT EXPERIENCE

Mr. Ting brings 14 years of experience in leading engineering evaluation, design, and construction management projects for complex Fortune 500 industrial and private commercial real estate (CRE) projects throughout New England and the US, administered under the Massachusetts Contingency Plan, other state regulations, and federal Resource Conservation and Recovery Act (RCRA) and Toxic Substance Control Act (TSCA) regulatory programs. He has been responsible for providing consulting and engineering services for industrial, institutional and public/private-sector clients including manufacturing, pharmaceutical, educational, petroleum, real estate, attorneys, and local associations/municipalities. Mr. Ting has broad experience related to managing risk and obtaining regulatory closure associated with a diverse range of sites including former manufactured gas plants, closed landfills, Brownfield developments, former dry-cleaning facilities, rail roads, natural gas pipelines, and electrical substations.

- **Brisa – Baskin Parcel Redevelopment:** Project Engineer responsible for environmental engineering services including soil management technical specifications, compliance reporting, contractor coordination, and various forms of environmental sampling to support redevelopment of a former textile manufacturing mill. Chicopee, MA.

- **Shoreline Marine Terminal:** Project Engineer responsible for site civil and environmental engineering to redevelop a 13-acre parcel for future shipyard, seafood processing facility and wind energy support services. Site civil services involved preparing site redevelopment plan and project specifications including relocating a city-owned stormwater overflow system. Designed new stormwater system for shipyard and for future seafood processing facility. Environmental services included soil and waste management, health and safety planning for hazardous materials management, multiple forms of environmental sampling and compliance reporting. New Bedford, MA.

- **DPS Group – 220 Mill Road Renovation:** Project Engineer for the analysis and design of structural renovations consisting of: a new steel-framed roof platform to support mechanical equipment; several new steel-framed equipment mezzanines and access platforms; evaluation of existing building framing to support pipe racks and pick point/hoists; and an exterior tank farm, nitrogen support pad, and generator support pad. Responsibilities included development of construction documents, project technical specifications, and construction administration services. Chelmsford, MA.

- **Torchlight – AppleTree Mall Redevelopment/Repositioning:** Project Engineer for investigation associated with a release from a dry cleaner. The project involved the sampling of soil, groundwater and soil gas conditions in and around the dry cleaner to identify the extent of contamination. Identified reportable concentrations of cVOCs in groundwater that were transmitted to NH DES. Ultimately, installed a SSDS within the dry cleaner to address indoor air quality issues to adjacent tenant spaces and provided the state with an Interim Remedial Monitoring Reports and Groundwater Monitoring Plan. Londonderry, NH.

- **Town of Holliston – 9 Green St Redevelopment:** Project Engineer providing demolition support by preparing technical specifications, contract plans, bid forms and measurements/payment, bidding review and on-site observation services. Prepared Beneficial Use Determination (BUD)

Attachment12.b: GP149.22 SudburyEnviMonitConstObs - Revised 7-26_rev (5422 : Approve Pare Contract for environmental services re:

package, which was approved by MassDEP Solid Waste for the beneficial reuse of painted concrete for structural fill. Holliston, MA.

- **Oudens Ello Architecture – Boston Library, Faneuil Branch Renovations:** Project Engineer responsible for environmental engineering services including soil management technical specifications, compliance reporting, contractor coordination, waste profile preparation and various forms of environmental sampling to support renovation of the library. Brighton, MA.

- **EZ Doze It – LSP Services:** Project Engineer responsible for professional services related to required MCP compliance submittals for a former release of petroleum and metals. Involved with preparing supplemental soil and groundwater investigation plans and a Phase II Comprehensive Site Assessment (Phase II CSA). Wellfleet, MA.

- **1023 East Street, LLC – LSP Services:** Project Engineer responsible for providing strategic soil management plans related to subsurface work beneath the cap of a closed site. Coordinating soil management with civil engineering design team under a future Release Abatement Measures (RAM) Plan. Site under development for a new commercial building. Tewksbury, MA.

- **Omni New York, LLC – LSP Services**: Project Manager of UST removal and reporting activities associated with the removal of ten 15,000-gallon underground storage tanks (USTs). The project involved contractor selection support, UST removal oversight and soil and groundwater sampling to delineate the extent of petroleum-impacts. One of the ten tank was found to have had a release, which involved notification to the MADEP and performance of IRA. Ultimately, 300 tons of petroleum-impacted soil was removed and disposed of to an in-state facility, and the release condition closed under an IRAC / PSNC. Roslindale, MA.

- **40 Rugg Road, LLC – LSP Services:** Project Engineer providing bid documentation and design preparation and contractor selection support. The project, which had received Brownfields Redevelopment Authority (BRA) approval, involved the removal of chlorinated VOC contaminated soils from a former dry-cleaning facility located on the property. The remediation programs, detailed within a Phase III RAP and Phase IV RIP, included: removal of VOC impacted soils to a depth of 0-6 feet in localized areas, treatment of groundwater using ISCO injection and installation of a passive vapor barrier beneath the future mixed-use building. Allston, MA.

- **Worcester Regional Transit Authority – LSP Services:** Project/Resident Engineer performing both engineering and construction management services during the re-development of an 11-acre former MGP facility property. Over 10,000 tons of soil was managed during the project, about half containing both friable and non-friable asbestos. Prior to site remediation, oversaw a 4-week pre-characterization program involving the collection of over 200+ samples and preparation of earthwork and vapor barrier bid specifications. Construction management involved overseeing multiple earthwork crews, installation of the vapor barrier, management of field-sampling crews, contractor schedule management with building operations, contractor submittal reviews, sampling and laboratory coordination, and interim report writing. Worcester, MA.

Attachment12.b: GP149.22 SudburyEnviMonitConstObs - Revised 7-26_rev (5422 : Approve Pare Contract for environmental services re:

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

CONSENT CALENDAR ITEM

13: Complete street acceptance Huckleberry Lane voted Art 21 ATM

REQUESTOR SECTION
Date of request:

Requestor: Town Counsel's office

Formal Title: Pursuant to the Street Acceptance vote under Article 21 of the May 3, 2022 Annual Town Meeting, VOTE to execute the Order of Taking of a permanent easement for all purposes, including attendant customary uses for which public ways are utilized in the Town of Sudbury, in, on and under the parcel of land and any associated drainage utility, or other easements shown as "Huckleberry Lane" (the "Easement Premises") on a plan entitled "Acceptance Plan of Huckleberry Lane in Sudbury, MA" prepared for Eligius Homes Company by Thomas Land Surveyors and Engineering Consultants, Inc., dated September 17, 2014 and twice revised on December 12, 2016 and March 16, 2017, filed with the Town Clerk, and subject to Town Counsel's review.

Recommendations/Suggested Motion/Vote: Pursuant to the Street Acceptance vote under Article 21 of the May 3, 2022 Annual Town Meeting, VOTE to execute the Order of Taking of a permanent easement for all purposes, including attendant customary uses for which public ways are utilized in the Town of Sudbury, in, on and under the parcel of land and any associated drainage utility, or other easements shown as "Huckleberry Lane" (the "Easement Premises") on a plan entitled *"Acceptance Plan of Huckleberry Lane in Sudbury, MA"* prepared for Eligius Homes Company by Thomas Land Surveyors and Engineering Consultants, Inc., dated September 17, 2014 and twice revised on December 12, 2016 and March 16, 2017, filed with the Town Clerk, and subject to Town Counsel's review.

Background Information:
In accordance with statute, on January 24, 2022, the Select Board voted its intention to lay out Huckleberry Lane and referred the matter to the Planning Bd. for consideration. Upon receipt of the Planning Board's recommendation, the Board voted on April 5, 2022 to lay out the way. The subsequent Annual Town Meeting vote under Article 21 approved the street acceptance. The execution of the Order of Taking submitted for vote at the August 30, 2022 Select Board, and the recording thereof completes the process.

Financial impact expected:Town to maintain Huckleberry land under a permanent easement.

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:		
Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

At a legal meeting of the qualified voters of the Town of Sudbury,

held May 3, 2022 the following business was transacted under

ARTICLE 21. STREET ACCEPTANCE – HUCKLEBERRY LANE

MODERATOR DECLARED VOTED BY MORE THAN A MAJORITY:

To accept the layout of the following as a public way:

Huckleberry Lane from Old Lancaster Road to dead end, a distance of 453 feet +/-

as laid out by the Select Board in accordance with the descriptions and plan entitled "Acceptance Plan of Huckleberry Lane in Sudbury, MA" prepared for Eligius Homes Company by Thomas Land Surveyors and Engineering Consultants, Inc., dated September 17, 2014 and twice revised on December 12, 2016 and March 16, 2017, on file in the Town Clerk's Office; and to authorize the Select Board to acquire by purchase, by gift, or by eminent domain, an easement or fee simple, over the way shown on said plan and any associated drainage, utility, or other easements for all purposes for which public ways are used in the Town of Sudbury.

A true copy, Attest:

Beth R. Klein

Beth R. Klein
Town Clerk

Attachment13.a: Article 21 Street Acceptance Huckleberry Ln (5413 : Complete street acceptance Huckleberry Lane voted Art 21 ATM)

FOR REGISTRY USE

I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES & REGULATIONS OF THE REGISTRIES OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

9/17/14
DATE

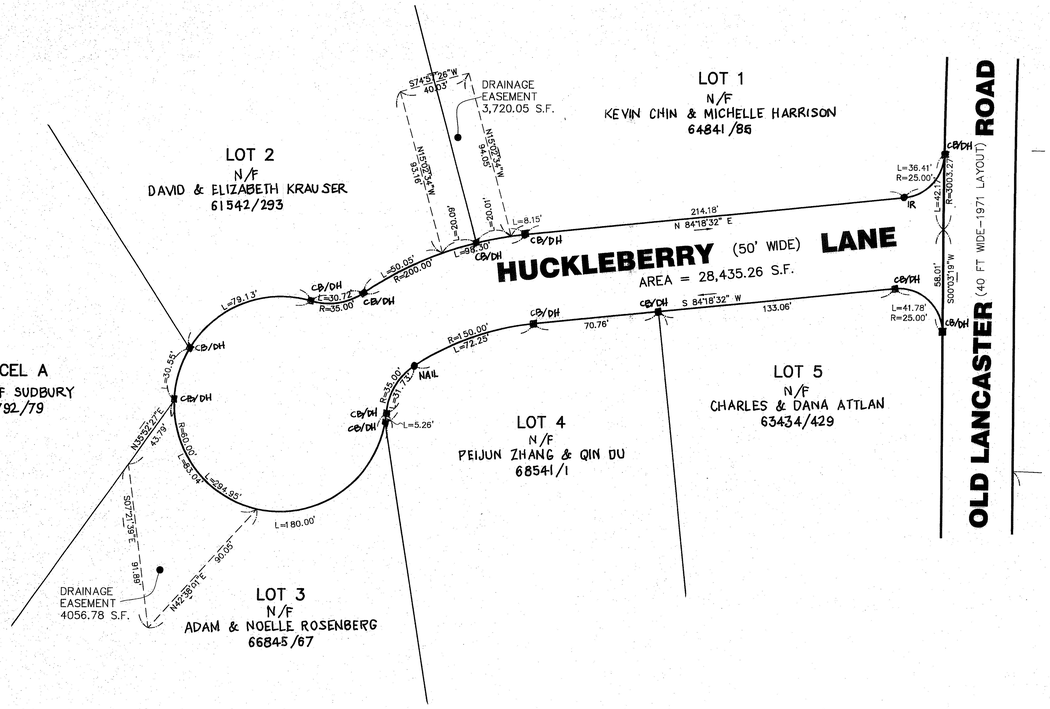
REG. PROF. LAND SURVEYOR

I CERTIFY THAT THIS PLAN SHOWS THE PROPERTY LINES THAT ARE THE LINES DIVIDING EXISTING OWNERSHIP, AND THE LINES OF STREETS AND WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

9/17/14
DATE

REG. PROF. LAND SURVEYOR

PLAN No. 737 OF 2011



I HEREBY CERTIFY THAT THE CONCRETE BOUNDS AND STEEL PINS HAVE BEEN INSTALLED AS SHOWN ON THIS PLAN.

Thomas DiPersio, Jr.
THOMAS DIPERSIO, P.E.

12-12-16 + 3-16-17
DATE

PLAN REFERENCE: PLAN No. 737 OF 2011

GRAPHIC SCALE

40 0 20 40 80 160

(IN FEET)
1 inch = 40 ft.

THOMAS P. DIPERSIO No. 29864 REGISTERED PROFESSIONAL LAND SURVEYOR COMMONWEALTH OF MASSACHUSETTS

THOMAS DIPERSIO, P.L.S.
LICENSE #29864

THOMAS P. DIPERSIO, JR. No. 40077 REGISTERED PROFESSIONAL ENGINEER COMMONWEALTH OF MASSACHUSETTS

THOMAS DIPERSIO JR., P.E.
LICENSE #40077

No.	Date	Description
2	3/16/17	ADDIT.'L BOUND
1	12/12/16	ABUTTERS AND BOUNDS

Revisions

Prepared for:
ELICIUS HOMES COMPANY
329A BOSTON POST ROAD
SUDBURY, MA 01776

Owned by:
ELICIUS HOMES COMPANY
329A BOSTON POST ROAD
SUDBURY, MA 01776

Prepared By:
THOMAS LAND SURVEYORS
& Engineering Consultants, Inc.
Land Surveyors, Civil & Environmental Engineers, Planning Consultants
265 WASHINGTON STREET HUDSON, MA 01749
PHONE: (978) 562-3661 FAX: (978) 568-8504

Title:
ACCEPTANCE PLAN
OF
"HUCKLEBERRY LANE"
IN
SUDBURY, MA

SCALE	1"=40'
DRAWN	ML, TD
CHECKED	T. DIPERSIO
FILE NAME	...\1863\DWG\DEFIN PLAN REVISED.DWG
PLOTTED	
ISSUE DATE	SEPTEMBER 17, 2014
JOB NO.	1863

SHEET 1 of 1

COPY COPY COPY 9259

Attachment13.c: KP-#827961-v1-SUDB-_Huckleberry_Lane_Order_of_Taking (5413 : Complete street acceptance Huckleberry Lane voted Art 21

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS. TOWN OF SUDBURY

ORDER OF TAKING

At a regularly convened meeting of the Select Board of the Town of Sudbury (the "Town") held on this 30th day of August, 2022, it was voted and ordered as follows:

The Select Board of the Town of Sudbury, duly elected, qualified, and acting as such, on behalf of the Town and by virtue of and in accordance with the authority of the vote taken under Article 21 of the May 3, 2022 Annual Town Meeting, a certified copy of which is attached hereto and incorporated herein, the provisions of Chapter 79 and Chapter 82, Sections 21-24 of the General Laws, and any and every other power and authority hereunto enabling it in any way, hereby takes, on behalf of the Town, a permanent easement for any and all purposes for which public ways are used in the Town of Sudbury, together with attendant customary uses, including, without limitation, drainage and utility easements, for the purposes of constructing, inspecting, operating, maintaining, repairing, removing, replacing, relocating, and abandoning in place rights of way and any and all structures and facilities necessary or convenient to support the same, or related thereto, including, without limitation, rights of way, sidewalks, guardrails, support or retaining walls, signs, drains, utilities, and any related appurtenances, in, on and under the parcels of land shown as "Huckleberry Lane" (28,435.26 S.F.), and "Drainage Easement" (3,720.05 S.F.), and "Drainage Easement" (4,056.78 S.F.), collectively, the "Easement Premises", on a plan entitled "Acceptance Plan of Huckleberry lane in Sudbury, MA" prepared for Eligius Homes Company by Thomas Land Surveyors and Engineering Consultants, Inc., dated September 17, 2014 and twice revised on December 12, 2016 and March 16, 2017, which plan is on file in the Sudbury Town Clerk's office (the "Plan")

The Town shall have the right to enter upon and pass over the Easement Premises from time to time, by foot, vehicle, or heavy equipment, for any and all purposes stated herein and uses necessary or incidental thereto, including, without limitation, using and temporarily storing, as needed, construction equipment, materials or other incidental items within the Easement Premises for the purposes set forth herein. No temporary or permanent buildings, structures or other objects shall be constructed, installed or placed upon the Easement Premises by any party other than the Town. The Town may assign such easements to or authorize use of such easement areas by any utility company.

The taking includes the right of the Town to remove any buildings, structures, objects, utilities and/or vegetation (including trees and shrubs) now or hereafter located within the Easement Premises whenever their removal shall be necessary or convenient to exercise the rights taken hereunder and/or for the purposes set forth herein. Utilities and related facilities located within the Easement Premises that are owned by private utility companies and easements held by private utility companies are not taken.

The parcels of land subject to said easements are owned or supposed to be owned and/or formerly owned by the parties listed in Exhibit A, which parties are hereinafter collectively referred to as Owners. If in any instance the name of any Owner is not correctly stated, the names of the supposed Owners being given as of this Order of Taking, it is understood that in such instance the land referred to is owned by an Owner or Owners unknown to us, and said easements are hereby taken.

The Select Board has determined that no persons will sustain damages in their property by reason of the herein taking, all in accordance with the provisions of G.L. c.79, §6, as amended, and accordingly award no damages for this taking. The purpose of this taking is to complete the layout and acceptance of Huckleberry Lane as a public way.

Betterments are not to be assessed under this taking.

[Signature Page Follows]

Attachment13.c: KP-#827961-v1-SUDB-_Huckleberry_Lane_Order_of_Taking (5413 : Complete street acceptance Huckleberry Lane voted Art 21

IN WITNESS WHEREOF, we, the duly elected and authorized members of the Sudbury Select Board have hereunto set our hands and seals on this day of August, 2022.

TOWN OF SUDBURY,
By its Select Board

_____
Charles G. Russo, Chair

_____
Janie W. Dretler, Vice Chair

_____
Jennifer S. Roberts, Member

_____
Daniel E. Carty, Member

_____
Lisa V. Kouchakdjian, Member

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this day of August, 2022, before me, the undersigned notary public, personally appeared _____, member(s) of the Sudbury Select Board, as aforesaid, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of the Town of Sudbury Select Board.

_____
Notary Public
My Commission Expires:

827961/SUDB/0001

Attachment13.c: KP-#827961-v1-SUDB-_Huckleberry_Lane_Order_of_Taking (5413 : Complete street acceptance Huckleberry Lane voted Art 21

Attachment13.c: KP-#827961-v1-SUDB-_Huckleberry_Lane_Order_of_Taking (5413 : Complete street acceptance Huckleberry Lane voted Art 21

EXHIBIT A

LIST OF OWNERS

H08-0048	Charles Henri Attlan Dana Michelle Attlan 3 Huckleberry Ln. Sudbury, Ma 01776	BK. 63434 PG. 429
H07-0054	Patrick M. Burek Taylor C. Meyer 12 Huckleberry Ln. Sudbury, MA 01776	BK. 77100 PG. 315
H07-0056	Adam J. and Noelle Y. Rosenberg Trustees, 15 Huckleberry Lane Realty Trust 15 Huckleberry Ln. Sudbury, MA 01776	BK. 74375 PG .592
H07-0057	Peijun Zhang & Qin Du 11 Huckleberry Ln. Sudbury, Ma 01776	BK. 68541 PG. 1
H07-0055	Town of Sudbury Conservation Commission 275 Old Lancaster Rd. Sudbury, MA 01776	BK. 57792 PG. 79
H08-0037	Kevin Chin & Michelle Harrison Trustees of the Kevin and Michelle Living Trust 4 Huckleberry Ln. Sudbury, MA 01776	BK. 68475 PG. 293
	Eligius Homes Company, Inc. Pine Grove Homeowners Trust 209 West Central St. Natick, MA 01760	BK. 50635 PG. 423 BK. 57792 PG. 64

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

CONSENT CALENDAR ITEM

14: Park & Rec donation

REQUESTOR SECTION
Date of request:

Requestor: Dennis Mannone, P&R Director

Formal Title: Vote to accept a $100.00 donation from Katie Sutherland for deposit to the Pool Donations Account 191748/483100, as requested by Dennis Mannone, Park & Recreation/Aquatics Director.

Recommendations/Suggested Motion/Vote: Vote to accept a $100.00 donation from Katie Sutherland for deposit to the Pool Donations Account 191748/483100, as requested by Dennis Mannone, Park & Recreation/Aquatics Director.

Background Information:
attached letter

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

8 / 12 / 2022

Dear Town of Sudbury Select Board,

I am looking to make a $100.00 donation to Atkinson Pool. I have many fond memories at Atkinson including Sudbury Swim Team, dive team and even my 5th birthday party. I also lifegaurded and taught swim lessons as my high school job. Atkinson Pool is a very special place and so are the staff. While small, I hope this donation can be a part of another individuals experien of all that Atkinson can bring to someo Childhood and upbringing. Thank you for all that you do for the Town of Sudbury.

Kindly,

Katie Sutherland

Proud former Sudbury Resident

RECEIVED
TOWN CLERK'S OFFICE
2022 AUG 15 P 2:53

Attachment14.a: Atiknson Pool Donation 08.15.2022 (5423 : Park & Rec donation)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

CONSENT CALENDAR ITEM

15: Accept DEI resignation

REQUESTOR SECTION
Date of request:

Requestor: Yana Bloomstein, DEI member

Formal Title: Vote to accept the resignation of Yana Bloomstein, 84 Carriage Way, from the Diversity, Equity and Inclusion (DEI) Commission, effective immediately, and send a thank you letter for her service to the Town.

Recommendations/Suggested Motion/Vote: Vote to accept the resignation of Yana Bloomstein, 84 Carriage Way, from the Diversity, Equity and Inclusion (DEI) Commission, effective immediately, and send a thank you letter for her service to the Town.

Background Information:
attached resignation email

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

From: yana c bloomstein
To: Diversity, Equity, and Inclusion Commission; Town Manager; Town Clerk; Select Board
Subject: Yana Bloomstein Resignation
Date: Wednesday, August 24, 2022 2:15:43 PM

To All SDEI Members, Advisors, And Town Support Services,

This is my official resignation letter from SDEIC.
I have been nothing but honored to serve on this incredible commission and am so proud of the work that's been done to date.
I remain available as a volunteer and will be watching videos of the meetings to stay abreast of the work.

To everyone staying on and continuing, all my deepest gratitude and pride in your perseverance and dedication.

See everyone soon!

Humbly and Warmly,
Yana Bloomstein

Sent from Yahoo for iPhone

Attachment15.a: Yana Bloomstein Resignation (5426 : Accept DEI resignation)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

CONSENT CALENDAR ITEM

16: Reappointment to Housing Trust

REQUESTOR SECTION
Date of request:

Requestor: Adam Duchesneau, Director of Planning & Community Development

Formal Title: Vote to reappoint Janie Dretler, 286 Goodmans Hill Road, to the Sudbury Housing Trust for a term ending 5/31/24.

Recommendations/Suggested Motion/Vote: Vote to reappoint Janie Dretler, 286 Goodmans Hill Road, to the Sudbury Housing Trust for a term ending 5/31/24.

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

CONSENT CALENDAR ITEM

17: Sudbury Historical Society Road Race 2022

REQUESTOR SECTION
Date of request:

Requestor: Rachael Robinson, Sudbury Historical Society Director

Formal Title: Vote to grant a special permit to Sudbury Historical Society to hold the "Sudbury Historical Society Road Race" on Friday, November 11, 2022, from 9:00 A.M. through approximately 12:00 P.M., subject to Police Department safety requirements, proof of insurance coverage and the assurance that any litter will be removed at the race's conclusion.

Recommendations/Suggested Motion/Vote: Vote to grant a special permit to Sudbury Historical Society to hold the "Sudbury Historical Society Road Race" on Friday, November 11, 2022, from 9:00 A.M. through approximately 12:00 P.M., subject to Police Department safety requirements, proof of insurance coverage and the assurance that any litter will be removed at the race's conclusion.

Background Information:
Application and department feedback attached

Financial impact expected:N/A

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

TOWN OF SUDBURY
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278 Old Sudbury Rd
Sudbury, MA 01776-1843
978-639-3381
Fax: 978-443-0756
Email: SBadmin@sudbury.ma.us

Attachment17.a: SHS RR CharitableWalkApplication 2022_SB (5416 : Sudbury Historical Society Road Race 2022)

APPLICATION FOR A CHARITABLE WALK/RELAY PERMIT ON A PUBLIC WAY

Written permission to conduct a fundraising walk or relay race in any public street, public sidewalk or public way within the Town must be obtained from the Select Board prior to the event. The Chief of Police will determine the appropriate public safety requirements for this event and the cost of such special duty officers, if any required, will be borne by the applicant. The Town of Sudbury requires a Certificate of Insurance of no less than $1,000,000, naming the Town as an additional insured. All cleanup from the event will be completed by the applicant within 8 hours after the stated ending time or applicant will be billed for the Towns cost to clean up. Application processing can take up to four weeks as approval from the Police, Building and Park & Recreation departments may be required prior to Select Board approval. Processing begins after all required materials are received, so please plan accordingly.

Organization Name Sudbury Historical Society, INC

Event Name Sudbury Historical Society Road Race

Organization Address 288 Old Sudbury Road, Sudbury MA 01776

Name of contact person in charge Rachael Robinson

Telephone Number(s) of contact _____ (cell) _____

Email address _____

Date of event Nov. 11, 2022 Rain Date _____

Starting time 9am Ending time 12pm

Route of the race/relay and portion of the road requested to be used (please indicate on map and attach to this application) Wayside Inn Road, Prides Crossing Road, Jack Pine Drive

Anticipated number of participants 100+

Assembly area (enclose written permission of owner if private property to be used for assembly) _____
Wayside Inn field

Organization that proceeds will go to Sudbury Historical Society

Any other important information _____

The undersigned applicant agrees that the applicant and event participants will conform to applicable laws, by-laws and regulations as well as any special requirement that may be made as a condition of the granting of permission pursuant to this application. I/we agree to hold the Town of Sudbury harmless from any and all liability and will defend the Town of Sudbury in connection therewith.

Signature of Applicant [signature] Executive Director Date 7/27/2022

TOWN OF SUDBURY
Office of Select Board
www.sudbury.ma.us

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776-1843
978-639-3381
Fax: 978-443-0756
Email: SBadmin@sudbury.ma.us

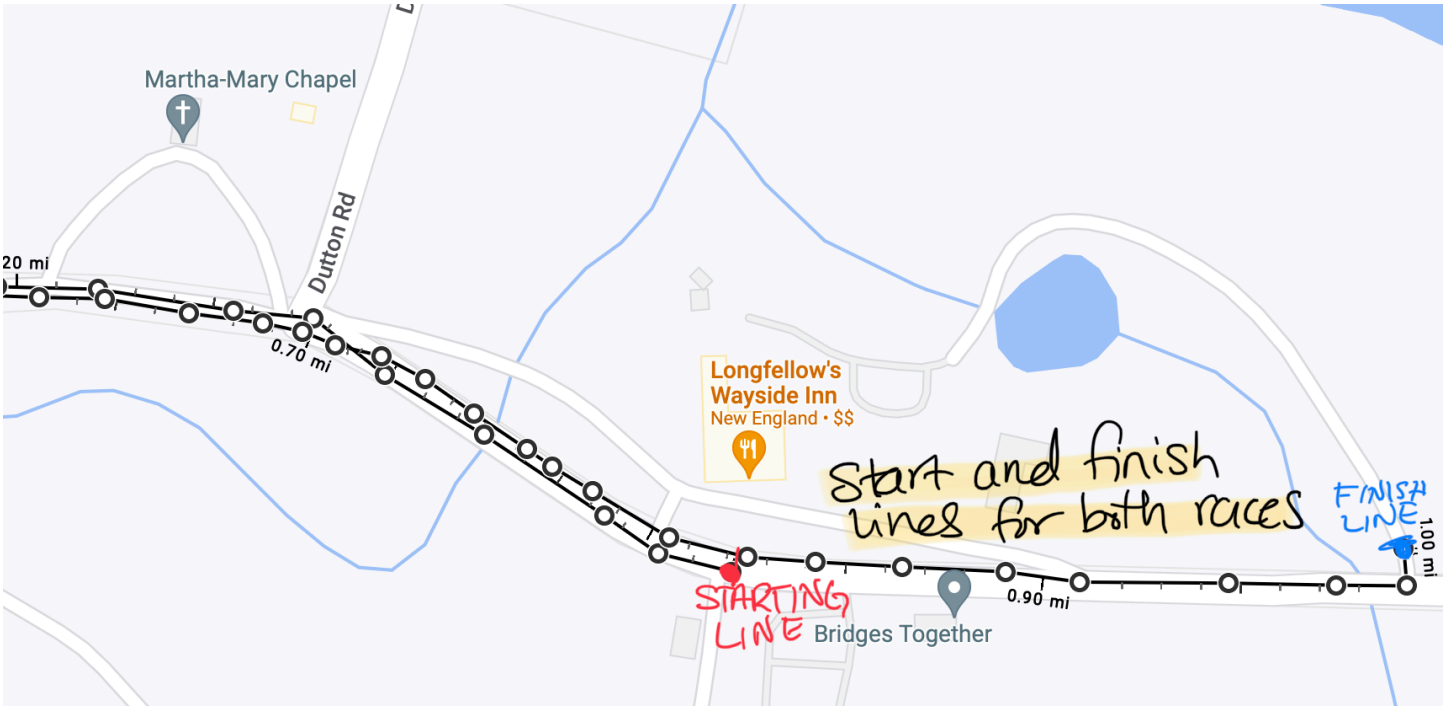
CONTINUED: APPLICATION FOR A CHARITABLE WALK/RELAY PERMIT…

Application Checklist:

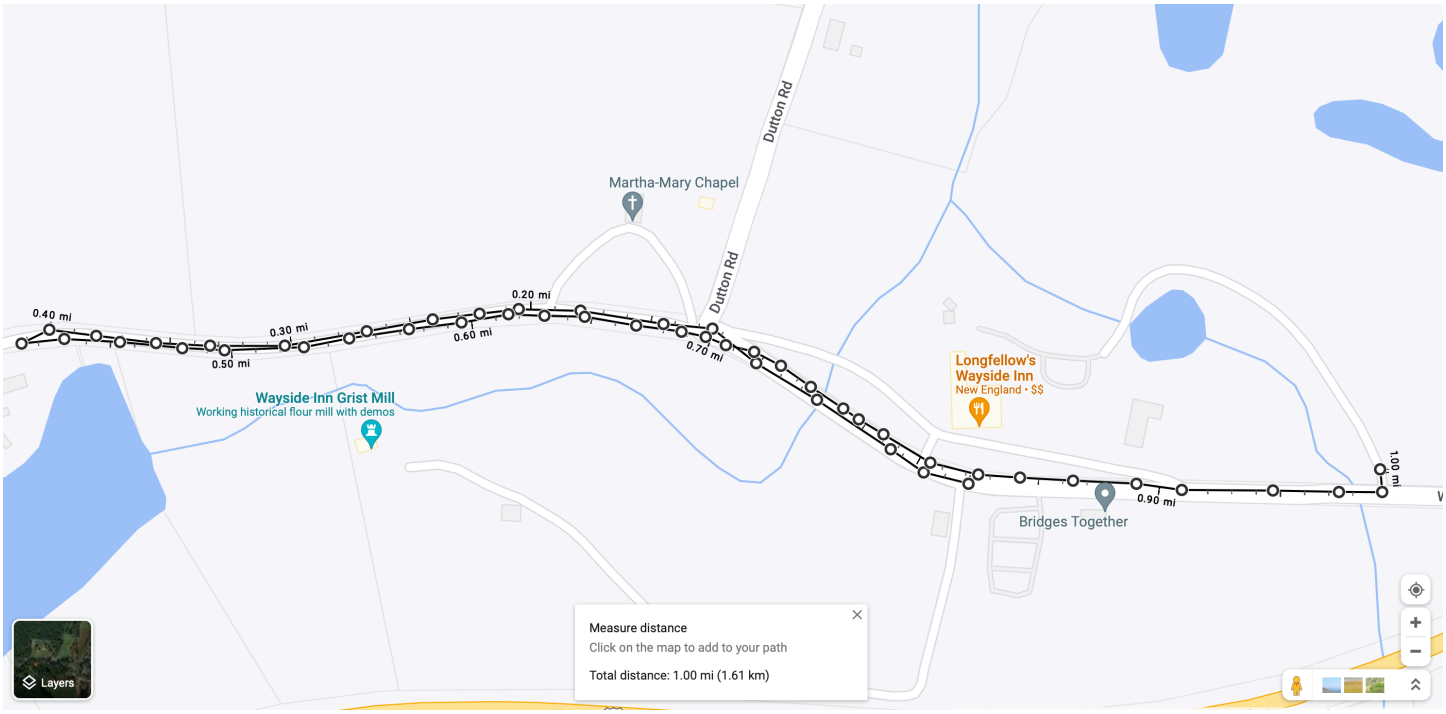
- ☐ Application Form
- ☐ Map of Route
- ☐ Evidence of Certificate of Insurance (please see details above)

Please submit completed application and materials to:
Office of Select Board
278 Old Sudbury Rd.
Sudbury, MA 01776
Fax: 978-443-0756
Email: SBadmin@sudbury.ma.us

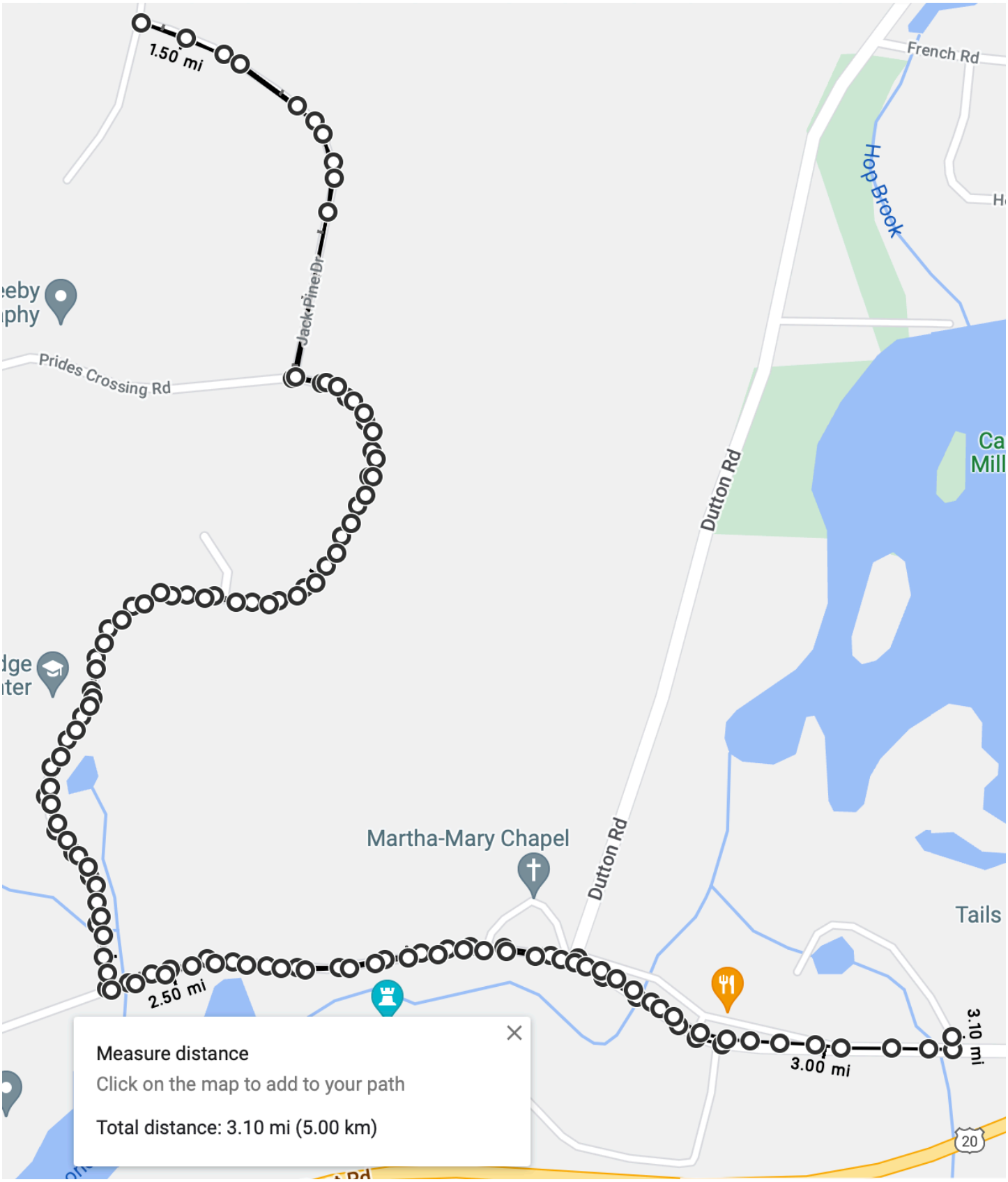
Attachment17.a: SHS RR CharitableWalkApplication 2022_SB (5416 : Sudbury Historical Society Road Race 2022)



Attachment17.a: SHS RR CharitableWalkApplication 2022_SB (5416 : Sudbury Historical Society Road Race 2022)



Attachment17.a: SHS RR CharitableWalkApplication 2022_SB (5416 : Sudbury Historical Society Road Race 2022)



Attachment17.a: SHS RR CharitableWalkApplication 2022_SB (5416 : Sudbury Historical Society Road Race 2022)

LONGFELLOW'S Wayside Inn SINCE 1716

August 4, 2022

To whom it may concern,

The Sudbury Historical Society has my permission to host a fundraising "Road Race" event on our property. They will be gathering and parking on our East Field.

The event is scheduled for the morning of Friday, November 11 and will planned to be finished by 11:00 am.

Sincerely,

Steve Pickford

Innkeeper

72 Wayside Inn Road Sudbury, MA 01776 tel 978.443.1776 www.wayside.org

Longfellow's Wayside Inn is part of The Wayside Inn Foundation, a Massachusetts 501(c)(3) nonprofit organization.

Attachment17.a: SHS RR CharitableWalkApplication 2022_SB (5416 : Sudbury Historical Society Road Race 2022)

Sudbury Historical Society Road Race

Friday, November 11, 2022

Department Feedback

Department	Staff	Date	Comments
Fire Department	Asst. Chief Choate	8/16/22	FD is good
Highway Department	Dan Nason	8/23/22	The Public Works Department has no issues with this event assuming there are no resources (personnel, equipment, barricades, cones, etc.) needed it.
Park & Recreation	Dennis Mannone	8/16/22	No concerns from P & R
Police Department	Chief Nix	8/24/22	We need to continue to finalize the necessary detail officers for the event. Otherwise, the PD is good with the event.

Attachment17.b: SHS RR Feedback 2022 (5416 : Sudbury Historical Society Road Race 2022)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

CONSENT CALENDAR ITEM

18: St. Anselm/St. Vincent de Paul Walk 2022

REQUESTOR SECTION
Date of request:

Requestor: Lisa Hanson, St. Anselm Conference of the Society of St. Vincent de Paul

Formal Title: Vote to grant a special permit to Lisa Hanson, St. Anselm Conference of the Society of St. Vincent de Paul, to hold a "Walk for the Poor" on Saturday, September 24, 2024, from 11:30 a.m. through approximately 2:00 p.m., subject to Police Department safety requirements, proof of insurance coverage and the assurance that any litter will be removed at the race's conclusion.

Recommendations/Suggested Motion/Vote: Vote to grant a special permit to Lisa Hanson, St. Anselm Conference of the Society of St. Vincent de Paul, to hold a "Walk for the Poor" on Saturday, September 24, 2024, from 11:30 a.m. through approximately 2:00 p.m., subject to Police Department safety requirements, proof of insurance coverage and the assurance that any litter will be removed at the race's conclusion.

Background Information:
Please see attached.

Financial impact expected:N/A

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

From: Lisa Hanson

Sent: Monday, August 15, 2022 2:49 PM

To: Frank, Leila

Subject: St. Anselm Walk

Good Afternoon Lelia,

We would like to host or annual Walk for the Poor on Sunday October 2nd at 12:00 noon. The route will be the same as the past and I have requested the insurance for the Archdiocese of Boston. Let me know if you need anything else.

Thank You,

Lisa

Attachment18.a: St Anselm Walk App 2022_SB (5425 : St. Anselm/St. Vincent de Paul Walk 2022)

TOWN OF SUDBURY
Office of Select Board
www.sudbury.ma.us

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278 Old Sudbury Rd
Sudbury, MA 01776-1843
978-639-3381
Fax: 978-443-0756
Email: SBadmin@sudbury.ma.us

RECEIVED
SUDBURY SELECT BOARD
SUDBURY, MA
2022 AUG 18 P 1:48

APPLICATION FOR A CHARITABLE WALK/RELAY PERMIT ON A PUBLIC WAY

Written permission to conduct a fundraising walk or relay race in any public street, public sidewalk or public way within the Town must be obtained from the Select Board prior to the event. The Chief of Police will determine the appropriate public safety requirements for this event and the cost of such special duty officers, if any required, will be borne by the applicant. The Town of Sudbury requires a Certificate of Insurance of no less than $1,000,000, naming the Town as an additional insured. All cleanup from the event will be completed by the applicant within 8 hours after the stated ending time or applicant will be billed for the Towns cost to clean up. Application processing can take up to four weeks as approval from the Police, Building and Park & Recreation departments may be required prior to Select Board approval. Processing begins after all required materials are received, so please plan accordingly.

Organization Name St. Vincent de Paul - St. Anselm Church

Event Name Walk for the Poor

Organization Address 100 Landham Rd

Name of contact person in charge Lisa Hansen

Telephone Num [redacted] l)

Email address [redacted]

Date of event 9/24/22 Rain Date 10/25/22

Starting time 11:30 Ending time 2:00

Route of the race/relay and portion of the road requested to be used (please indicate on map and attach to this application) Landham Brookdale Stock Farm

Anticipated number of participants 100

Assembly area (enclose written permission of owner if private property to be used for assembly) St Anselm Church

Organization that proceeds will go to ST Vincent de Paul

Any other important information

The undersigned applicant agrees that the applicant and event participants will conform to applicable laws, by-laws and regulations as well as any special requirement that may be made as a condition of the granting of permission pursuant to this application. I/we agree to hold the Town of Sudbury harmless from any and all liability and will defend the Town of Sudbury in connection therewith.

Signature of Applicant [signature] Date 8/16/22

Attachment18.a: St Anselm Walk App 2022_SB (5425 : St. Anselm/St. Vincent de Paul Walk 2022)

TOWN OF SUDBURY
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978-639-3381
Fax: 978-443-0756
Email: SBadmin@sudbury.ma.us

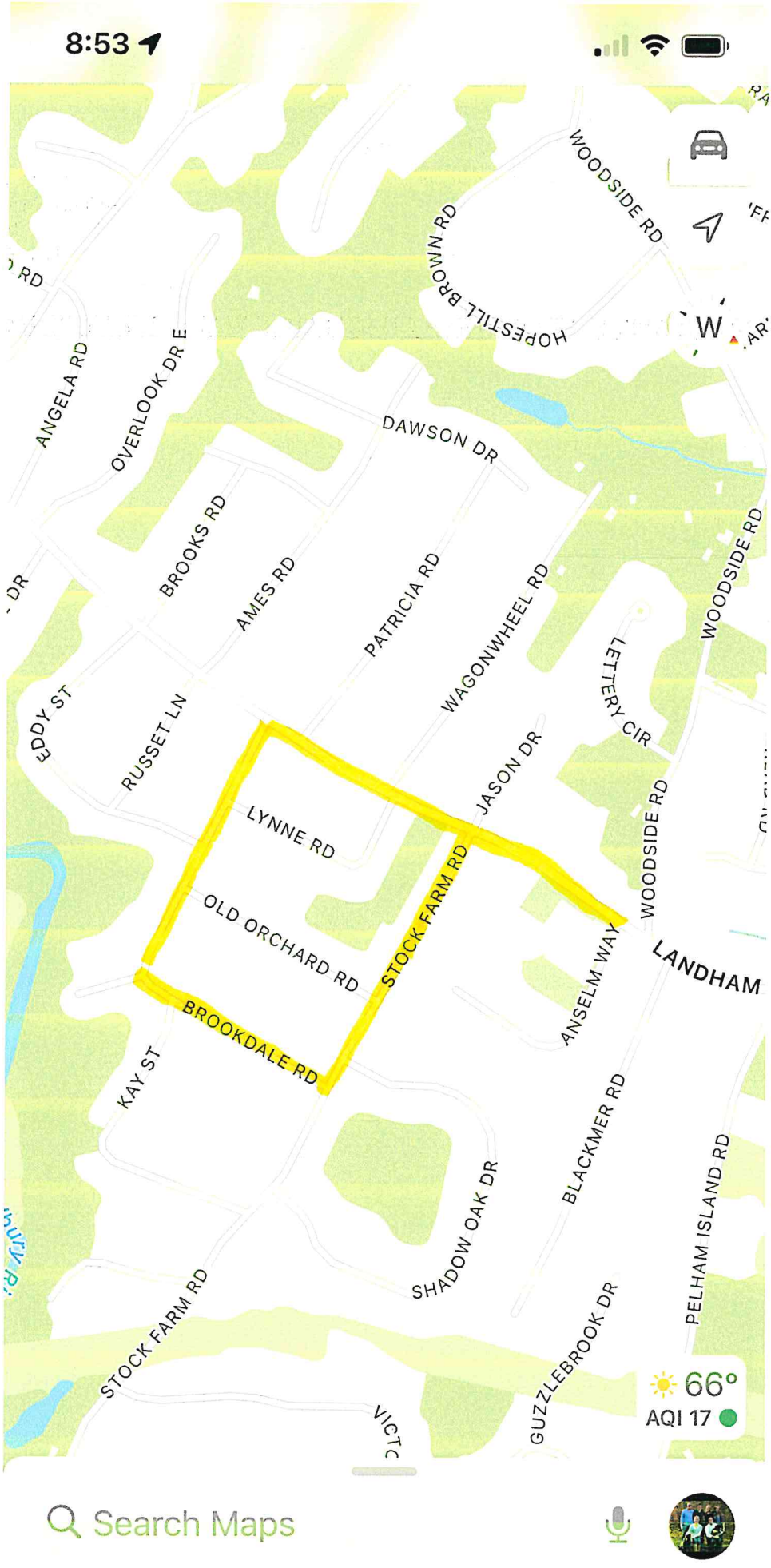
CONTINUED: APPLICATION FOR A CHARITABLE WALK/RELAY PERMIT…

Application Checklist:

- [x] Application Form
- [x] Map of Route
- [ ] Evidence of Certificate of Insurance (please see details above)

Please submit completed application and materials to:
Office of Select Board
278 Old Sudbury Rd.
Sudbury, MA 01776
Fax: 978-443-0756
Email: SBadmin@sudbury.ma.us

Attachment18.a: St Anselm Walk App 2022_SB (5425 : St. Anselm/St. Vincent de Paul Walk 2022)



Attachment18.a: St Anselm Walk App 2022_SB (5425 : St. Anselm/St. Vincent de Paul Walk 2022)

SUDBURY SELECT BOARD
Tuesday, August 30, 2022

CONSENT CALENDAR ITEM

19: BFRT letter Community Summit

REQUESTOR SECTION
Date of request:

Requestor: Chair Russo

Formal Title: Vote to assign Chair Charlie Russo and Director of Planning and Community Development Adam Duchesneau as designated representatives from Sudbury to the Bruce Freeman Rail Trail's Community Summit on Sept. 15, 2022 at 2:15 PM.

Recommendations/Suggested Motion/Vote: Vote to assign Chair Charlie Russo and Director of Planning and Community Development Adam Duchesneau as designated representatives from Sudbury to the Bruce Freeman Rail Trail's Community Summit on Sept. 15, 2022 at 2:15 PM.

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending	
Town Manager's Office	Pending	
Town Counsel	Pending	
Select Board	Pending	
Select Board	Pending	08/30/2022 6:30 PM

Friends of the
Bruce Freeman Rail Trail

P.O. Box 1192
Concord, MA 01742
www.brucefreemanrailtrail.org

Board Members

Acton
Paul Malchodi
Joyce Reischutz

Carlisle
Glenn Reed

Chelmsford
Patrick Lewis

Concord
Carlene Hempel
Stuart Johnstone
Judy Perrin
Barbara Pike:
Membership

Framingham
Ed Kross

Lowell
Sharon Galpin

Sudbury
John McQueen
Chris Menge
Dick Williamson

Chris Barrett
Emily Teller:
Secretary

At-Large
Christine Corr:
Treasurer
Tom Michelman:
President

August 20, 2022, via email

Dear Town Officials,

Thank you for your support for the past 15 years of the design, construction, and maintenance of the Bruce Freeman Rail Trail (BFRT). This linear park is and will continue to be a significant and valuable recreational and transportation resource for our region.

We are writing to make you aware of what we consider a current and growing safety concern as the BFRT expands into more communities. MassDOT has just issued the request for proposal for Phase 2D construction in Concord and Sudbury. Only Framingham's portion remains before the BFRT will be complete and stretch 26 miles through eight cities and towns.

Our safety concern is due to various versions of "rules" signs currently posted along the BFRT, which results in confusion among trail users as they cross town lines. Some of the variations include who has the right of way, when the trail is open and closed and the use of e-bikes

In 2008, as Phase 1 in Chelmsford and Westford was under construction, a multi-town meeting was convened to work on consistent and uniform BFRT rules. The Friends of the BFRT funded those signs.

Acton's phase was built a few years later and today has signs that are different and more complex than the ones in Chelmsford and Westford. In addition, Concord now has two sets of rules signs: (1) the original uniform signage and (2) custom Concord signage.

The Friends of the BFRT is proposing another multi-town "Community Summit" to create and implement uniform and consistent rules signage. If agreed upon, the Friends of the BFRT would fund the creation and installment of consistent signs in every community along the BFRT including Lowell and Framingham.

In the future, this group (a multi-community BFRT Coordinating Committee) could address other BFRT issues such as event registration forms, maintenance scheduling to enable consistency of conditions between phases, etc.

We hope you will either send a Select Board member or designate a town staff or committee member who can act as a delegate as part of this working group. Other delegates could include someone from your Parks and Recreation Department or Town Planning Department.

Attachment19.a: Uniform BFRT signage (5428 : BFRT letter Community Summit)

This initial Community Summit is scheduled for Thursday, Sept. 15, 2022, at 2:15 p.m. at the Fowler Library, 1322 Main St., in West Concord. More details as well as meeting materials will be provided by the Friends of BFRT to the person or persons you delegate to attend.

Thank you for your past commitment to the BFRT, and for your help now in addressing this concern. Please RSVP the name, title and email address(es)of your delegate or delegates to Concord Board Member Barbara Pike at bbpike@aol.com.

Sincerely,

Tom Michelman President	Emily Teller Secretary and Westford Board Member	Carlene Hempel Community Summit Moderator and Concord Board Member (Questions? 617-335-0580 or carlenehempel@hotmail.com)

Friends of the Bruce Freeman Rail Trail
www.brucefreemanrailtrail.org

Attachment19.a: Uniform BFRT signage (5428 : BFRT letter Community Summit)