

**Protect Sudbury Inc.**

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August 3, 2020

Jim Montgomery, Commissioner  
Department of Conservation and Recreation  
Executive Office of Energy and Environmental Affairs  
251 Causeway Street, 9<sup>th</sup> Floor  
Boston, MA 02114

Dear Commissioner Montgomery,

This letter is in reference to your letter of July 7, 2020 to Senator Eldridge and Representatives Hogan and Gentile concerning the proposed Eversource Transmission Line and the DCR's involvement with this project. Protect Sudbury wishes to address the errors, omissions and other misrepresentations contained in your letter regarding the facts surrounding this proposed project.

Background

From the outset of the Department of Conservation and Recreation's (DCR) involvement in the Mass Central Rail Trail (MCRT) - Wayside project, the DCR has sought to minimize the environmental regulations to which this project should be held accountable. In their Expanded Environmental Notification Form (EENF) submitted to MEPA on November 8, 2013, the DCR argued that although the project was required by law to provide an Environmental Impact Report (EIR), your agency requested and ultimately received from MEPA, a waiver from this environmental standard based on their claim of 'undue hardship' due to anticipated "construction delay and financial considerations". As you know, these regulations exist to protect the communities that are impacted by such projects. As a result of these relaxed environmental standards, MEPA received extensive comments from both

the Wayland and Sudbury Conservation Commissions that outlined their concerns regarding wetlands, stormwater and water quality. From the outset, the DCR sought to trade environmental protection for financial considerations and this pattern clearly continues into the present day as the rest of this letter will demonstrate.

#### HUDSON TO SUDBURY PUBLIC - PRIVATE PARTNERSHIP

In your response to our elected representatives, you inaccurately compared a project between the DCR and Eversource in Weston and Wayland to the proposed Sudbury and Hudson project in an attempt to establish some form of equivalency. The Weston Wayland project simply involved paving an existing Eversource access road beneath overhead high voltage transmission towers that have been in place since the 1950s.

The Sudbury Hudson project seeks to couple the construction of a new \$100,000,000 underground high voltage transmission line with a new DCR rail trail. The construction of this underground high voltage transmission line involves construction activities that include the excavation of tens of thousands of tons of contaminated soils and the pumping of contaminated groundwater into sensitive wetland areas. Such construction activities have little if anything in common with the Wayland project and any other rail trail project for that matter.

The construction of a high voltage transmission line and a rail trail are fundamentally very different projects. In fact, the only thing that the Sudbury/Hudson Eversource transmission line project and a DCR rail trail have in common is the physical location of each.

Lured by the possibility of moderately reducing the cost of their project, the DCR made the decision in 2014 that a partnership with Eversource was more important than partnering with the communities that would be impacted by this project. This, despite the Town of Sudbury's interest and intent of self-funding the development of a Greenway project on this right of way. Eversource, a corporation that has been the most heavily fined utility in the Commonwealth over the past twenty years, paying out over \$55 million in consumer and environmental fines, is indeed a very strange bedfellow for a State agency concerned about the conservation of natural resources.

Further, in Eversource's sworn testimony before the Energy Facilities Siting Board (EFSB), they admitted that they have never combined the construction of two such disparate projects at any time in their recent history. With any 'first time' construction project comes increased risks and greater possibility of unintended consequences. It is clear to Protect

Sudbury that the threat to the Sudbury, Hudson and Stow water supplies is real and should be avoided particularly when alternative solutions are available to both Eversource and the DCR. The loss of additional wetland areas and minimal stormwater remediation mean a greater risk of flooding in areas that have been in the past been devastated by major storms. The public health risk of the continuous exposure to levels of electromagnetic radiation that exceed both EFSB and State guidelines when the line is under full load has also not been accounted for by DCR.

Commissioner, your claim that this 'partnership' is saving the citizens of the Commonwealth money is without merit. The Eversource project, which Protect Sudbury has determined as unnecessary based on extensive research by experts in the energy industry and continued reporting that peak energy demand continue to fall, is classified by ISO New England as a 'reliability project'. Therefore, all of the dollars spent by Eversource, plus 10%, will be assessed directly upon the electric ratepayers of Massachusetts. This is not an 'investment' by Eversource. This includes the dollars that Eversource has proposed to spend on construction activities that are related only to the DCR's rail trail and not their transmission line. Eversource is not investing their own corporate dollars into this project, they are spending the electric ratepayers' dollars. This 'partnership' is simply a hidden tax being placed on the citizens of the Commonwealth without their awareness and facilitated through the assistance of the DCR.

Your letter touts that the Eversource project completed an extensive MEPA review and was approved by the EFSB after extensive public process and testimony, yet the DCR did not actually participate in this MEPA review and further ignores the scores of letters submitted to MEPA outlining many serious environmental concerns. The DCR also did not play any part in the EFSB process. DCR did not appear at a single EFSB hearing. The rail trail project was, in fact, positioned by Eversource to the EFSB and the impacted communities as an afterthought and something that they had no direct involvement in. Eversource is on record as repeatedly saying in various public forums that "we are not building a rail trail" whenever questioned about any non-transmission aspect of the project. Further, the DCR never participated in any of the community outreach sessions conducted by Eversource in Sudbury and Hudson. The DCR was absent from any of Eversource's "Open House" community outreach events.

Commissioner, your claim that general information sessions such as the MassTrails conference and 'Public Presentation' in Waltham in 2012 constitute 'community outreach' is disingenuous. These 'outreach' events are not specific to any community and were held

during the work week when few citizens could participate. In fact, there has been no public process that specifically address the Sudbury and Hudson portions of the MCRT. Further, your claim that DCR's attendance at the ongoing Conservation Commission meetings in Hudson and Sudbury hardly constitutes 'community outreach' when the DCR is participating in order to obtain a wetlands permit based on a set of rail trail design plans and has resisted community requests for mitigative actions.

Your letter also minimizes opposition to the proposed Eversource project by referring to concerned citizens as "abutters and others" when in fact there is widespread regional opposition to the high voltage transmission line and the DCR's complicity in its construction. The majority of citizens of Sudbury Hudson understand the extensive environmental damage to protected community conservation lands, the threat to public and private drinking water supplies and the existence of viable alternatives that have none of these risks.

For the record, Protect Sudbury Inc., is a non-profit 503(c)4 corporation, and is comprised of over 3000 active participants. Those participants live throughout Sudbury, Hudson, Marlborough and Stow. The membership also includes communities across the State and even the entire nation.

[www.protectsudbury.org](http://www.protectsudbury.org)

Protect Sudbury is not alone in its opposition. The environmental organizations that are on record as opposing this project include:

- ✚ Bolton Conservation Commission
- ✚ Environmental League of Massachusetts
- ✚ Clean Water Action
- ✚ Sudbury Valley Trustees
- ✚ Massachusetts Sierra Club
- ✚ Mass Audubon Advocacy Department
- ✚ OARS for the Assabet, Sudbury, and Concord Rivers
- ✚ Friends of the Assabet River National Wildlife Refuge

The political leaders and agencies and communities that also oppose this project include:

- ✚ US Senator Ed Markey
- ✚ US Senator Elizabeth Warren
- ✚ State Senator Jamie Eldridge
- ✚ State Representative Carmine Gentile

- ✦ State Representative Kate Hogan
- ✦ US Department of the Interior, Fish and Wildlife Service
- ✦ Town of Sudbury – Board of Selectman
- ✦ Town of Hudson – Board of Selectman
- ✦ Sudbury Water District
- ✦ Governor’s Councilor Marilyn Petitto Devaney
- ✦ Sudbury Historical Society
- ✦ Sudbury Historic Districts Commission

While your agency has consistently characterized these organizations and their supporters as “advocacy groups” as if that somehow diminishes the importance of their message, these are environmental stewards and political leaders that have taken fully informed positions. The highlights of their messages can all be found here:

<http://www.protectsudbury.org/official-support/>

Just as both Eversource and the DCR prefer exchanging environmental standards at will between rail trail construction and underground transmission line construction when it suits them, your letter shares the same inconsistencies and attempts to obfuscate the real issues. On the one hand you say that the concerns are ‘conflated’ and are “unrelated to the DCR” and then go on to say that the projects “overlap significantly” in terms of “construction approaches, limits of work, potential impacts, potential timing and final condition”. Which is it Commissioner?

You cite the “heavy regulation” by DEP, but omit the presence of over thirty 21E sites on or adjacent to the MBTA right of way (ROW) and well as the fact that Eversource testing did not follow the lightly applied Rail Trail BMPs by omitting promised soil and groundwater testing. What testing Eversource has done has avoided these sites and still reveals the presence of contaminants in the few groundwater and soils samples that have been taken. Sampling, which erroneously did not follow DEP’s specific instructions regarding where to sample. One of those DEP locations was the Boyd Coatings 21E site. That site is directly responsible for the recent contamination of the Hudson drinking water supply with PFAS. It was only after questioning at a recent Hudson Conservation Commission meeting that Eversource admitted that they had in fact not tested in that DEP location asserting that it was not their responsibility. This position is boldly inaccurate. DEP has described the Eversource plan to extract and discharge groundwater in this area of known PFAS contamination without testing as imprudent suggesting that it is unwise to do so and may run afoul of c. 21E regulations for remedial wastewater and URAM and RAM Plans.

You mention the protection that the DEP rail trail BMPs afford, but you fail to include that they are not appropriate for use on major underground transmission line projects. Rail trail projects do not require extensive excavation of the railbed, but instead cap the contamination with a gravel or an asphalt surface. You make the incredulous comment that “a transmission line is not itself a contaminant and its existence below grade has no bearing on the DEP BMPs and their implementation” but you fail to acknowledge that Eversource is using those BMPs as guidance for trenching contaminated soils into groundwater in order to construct the line. Eversource should simply use the same BMP’s that are used on every other major underground transmission line project they have constructed and be held accountable to same.

Your statement that the DEP approved these BMP’s in a pre-project consultation meeting with Eversource in 2017 is again misleading. Protect Sudbury has obtained a copy of the draft minutes written by Eversource of that meeting in 2017. There is no record of DEP acceptance. From those draft minutes, it is clear that DEP was not made aware of the extent of the excavations required by splice vault/manhole construction to fifteen feet into the railbed which in many locations in this area of high-water table will be in ground or surface water. The cavalier approach of both your representative and Eversource to the risks that this underground power line poses by deep excavation in a contaminated railbed (well beyond what is typical of a rail trail), through multiple 21E sites including the presence of PFAS through a highly productive aquifer containing multiple Zone II’s for two well fields in Hudson and Sudbury’s main well does not demonstrate collaboration with the affected communities nor support your agency’s avowed interest in resource conservation

At the July 8, 2020 Sudbury Conservation Commission meeting, Mr. Robert Bird, a licensed site professional (LSP) employed by EnviroTrac Inc., testified that the rail trail BMPs are not the appropriate standard for the underground transmission portion of this project. EnviroTrac is presently preparing an extensive report that will highlight the risks associated with the failure to follow reasonable and prudent environmental practices in an area replete with both sensitive environmental receptors such as protected species, over twenty Vernal Pools only a few feet from the bed and highly valued and productive water supply areas already stressed by significant contamination.

Commissioner, we find your reference to the letter from DCR Commissioner Leo Roy, a former Principal at VHB, of April 18, 2017 to the EFSB indicating his support for the Eversource project being designed by VHB, to be of particular interest. Eversource filed their petition for the project with the EFSB on April 20, 2017. Up until that time, the

members of the general public had no knowledge of the contents of the petition and the siting of the line, yet the former Commissioner was intimately familiar with its design and docket number EFSB17-02 days before the docket was opened. Consultation between agencies within the Massachusetts Department of Energy and the Environment, most notably the DCR and the EFSB, and a private corporation prior to the submission of its EFSB petition is at best unethical and at worst illegal. Most importantly, the letter does not “demonstrate that these joint projects are, in fact, compatible with DCR’s mission”. The proposed project is actually in direct contradiction to DCR’s stated mission of “natural resource conservation” and “expanding public involvement”. Facilitating the construction of unnecessary transmission lines is nowhere to be found in that charter.

Your statement that these two projects are a “model for co-locating infrastructure to protect the environment” is in direct contradiction to the EFSB’s final determination that the use of the MBTA ROW would have the greatest environmental impact when compared to other alternatives. Instead, it is a model for private corporations that wish to build projects regardless of the environmental consequences. It also remains undecided whether such use of dedicated transportation corridors for utility transmission lines is in fact legally permissible.

We do agree that the project comes at “limited cost to the Commonwealth” if that cost is solely measured in dollars and cents. However, this project comes with a severe and everlasting cost to both the built environment, the natural environment and the health and safety of the citizens of the Commonwealth.

Your reference to the project recommendations by state permitting agencies is once again incomplete. You fail to mention the multiple appeals filed by Protect Sudbury including a challenge to the Dept of Fish and Wildlife’s decision to permit the project and allow a take of endangered species. Of particular concern to Protect Sudbury was the elimination of an entire protected habitat section by MassWildlife from the 2017 Priority Habitat Map conveniently just before Eversource expanded its Sudbury Substation into the Hop Brook wetlands. Rather than avoid a take, the record shows that the species were physically removed to allow the work to occur in what should have been a protected habitat clearly done as a result of political pressure and the undue influence of VHB and Eversource. As a direct result of this pressure, a known and documented habitat for the Blue Spotted Salamander in Sudbury on and adjacent to the ROW was removed at their urging in order to facilitate environmental permitting. Protect Sudbury was denied the opportunity to offer

its testimony due to the intervention by Eversource that prevented Protect Sudbury from having access to a fair hearing.

Your mention of the EFSB's directive to Eversource in light of Hudson's water supply contamination issues not to use herbicides on the ROW also demands further review. Despite the EFSB's order and its directive to Eversource not to use any herbicides and to negotiate a similar restriction with the DCR, the DCR has remained adamant in insisting that it will continue its use of herbicides whenever it deems it necessary. The MOU promised to the EFSB has remained unavailable during permit review although it is said to be nearly complete. Withholding such key information from permit reviewers undermines their ability to condition the project in accord with statutory protections, an act not worthy of your agency. Despite the EFSB's order and despite the public asking that this practice be abandoned by the DCR, the DCR has proceeded to withhold the MOU thus ignoring community concerns and welfare and defying the dictates of a sister EOEEA agency. DCR is the same agency, and Eversource the same company whose arrangement on Martha's Vineyard for DCR to perform vegetation management on a shared corridor fell through in 2017 when DCR abandoned their plan of "mechanical vegetation management" and instead Eversource applied the cancer-causing herbicide glyphosate aka 'Round Up'.

Having been directly involved with the proposed project for over four and a half years, Protect Sudbury found your statement that the "DCR engaged in extensive community outreach, public involvement and community input... over many years" to be, by far, the most disingenuous. The only direct involvement that the DCR ever had, on the record, with Sudbury officials about their easement on the ROW was in 2014 when Sudbury was about to authorize funding for a 'Greenway Project' that would have converted the ROW to a canopied multi-use trail that was consistent with its present use and desired future use by the community. Unfortunately, that project was derailed shortly after that meeting when a rumor 'surfaced' that Eversource was going to build the community a 'free rail trail'. From that point, until the EFSB decision was made in 2019, the DCR has done nothing to understand the specific concerns, interests and present uses of the ROW by Hudson and Sudbury. Instead, they went into hiding. The DCR's 'vision' for this ROW is fatally flawed. The communities' present and desired use of the ROW is squarely at odds with the DCR's vision.



Protect Sudbury requests that you immediately terminate your business relationship with Eversource and begin discussions with the taxpayers within the communities of Sudbury and Hudson to determine what they feel would be best for their communities when and if a recreation trail is ever built. To do any less would effectively abandon your stated mission.

Regards,



Raymond Phillips

President

Protect Sudbury

[www.protectsudbury.org](http://www.protectsudbury.org)

cc: Kathleen Theoharides, Secretary of Energy and Environmental Affairs  
State Representative Smitty Pignatelli, Chair, Joint Committee on Environment, Natural Resources and Agriculture  
State Senator Anne Gobi, Joint Committee on Environment, Natural Resources and Agriculture  
Governor's Councilor Marilyn Petitto Devaney  
U.S. Senator Ed Markey  
U.S. Senator Elizabeth Warren  
U.S. Congresswoman Katherine Clark  
U.S. Congresswoman Lori Trahan  
Senator James Eldridge  
Representative Carmine Gentile  
Representative Kate Hogan  
Sudbury Conservation Commission  
Stow Conservation Commission  
Hudson Conservation Commission  
The Sudbury Valley Trustees  
State Representative Bradley Jones, DCR Special Commission

DCR Stewardship Council  
Protect Hudson  
MetroWest Daily News  
Boston Globe  
Robert Bird, LSP; EnviroTrac  
Sudbury Historic Commission  
Sudbury Planning Board  
Richard Kanoff, Prince Lobel