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January 20, 2021

Sudbury Conservation Commission
275 Old Lancaster Road
Sudbury, MA 01776

Re: Joint NOI No. 301-1287 by
Eversource for Sudbury-Hudson Transmission Reliability Project
and MassDCR for Mass Central Rail Trail

Dear Sudbury Conservation Commissioners:

Protect Sudbury (Protect), residents, legislators and other conservation organizations (SVT, FARNWR, OARS, USFWS) have provided comments on this project over the weeks and months of permit review. These commenters appreciate the opportunity to provide helpful input to the work before you. As your reviews have progressed some issues have been resolved but others, matters of substance such as adequate mitigation and avoidance of impacts, remain. While it is wise to draft conditions as they become susceptible of resolution, commenters are concerned that your position(s) on matters they have raised remain unclear or unresolved. Protect urges you to bring these remaining issues forward in what are likely the last hearing(s) so that they do not remain obscure and may be publicly resolved.

It has always been Protect's goal to provide information and commentary that assists your deliberations. The report of an independent Licensed Site Professional for example, the discussions with the Sudbury Water District and coordination with our state legislators. It is with this goal in mind that we now write, in what may be a last commentary, to underscore those remaining issues that warrant serious consideration of denial. We do not do this lightly but mindful of the advice of BETA not to "over condition" this project. As you are doubtless well aware there has been a theme of finding conditions that VHB's client(s) "can agree to". Conversely, we share in the advice of your Conservation Administrator and Peer Reviewer, that you have clear "discretion" as the issuing authority to determine if the Applicants' responses to BETA's questions/issues meet the standards of the state and town regulations. We discuss here why those responses do not.

Foremost among the open and apparently unresolvable issues is the question under the Sudbury Wetlands Bylaw (SWB) of 2:1 mitigation. The facial difficulty for the Applicants is the extent of alteration this 4.5-mile linear utility installation requires: 94,645 sf of AURA, 33,139 sf of Vernal Pool Habitat, 32,246 sf of Bylaw Riverfront, 61,003 sf of State Riverfront. While the plantings have increased from an initial offer of loaming and seeding to planting of shrubs and trees, the Applicants have persisted in characterizing the duct bank and trail shoulders as temporarily altered when in fact they will be converted from established woodland to grass and shrubs. This altered area will be mowed as well ensuring its alterations will be permanent. Mitigation for the “temporary” impacts is appropriate and should be aimed at reduction of the extensive alterations; there should be a nexus between the harm and the proffered mitigation.

The Applicants offer mitigation in the form of invasives removal amounting to about half of what they are altering. This presents two considerations: how does this removal “substantially restore” existing vegetation and what mitigation has been offered to meet the SWB standard? The Commission must determine in the exercise of its sound discretion if the additional plantings offered (1,336 plantings at 23 locations) as detailed in VHB’s August 7, 2020 letter constitute mitigation for the project’s permanent impacts. Bear in mind that the Applicants declined to consider contour alterations since they deemed them necessary to their installation and persist in characterizing the duct bank and shoulders as temporary alterations. There is another pattern here; the Applicants fail to address the issue presented by misrepresenting the impacts and offering mitigation that has no relationship to them.

Another example of this is their responses on impacts to Wildlife Habitat where they continue to point to features outside the work area, on land of others as supporting their removal of habitat. This is also not mitigation, it is in fact deflection, repeated deflection.

They also assert that Riverfront Area will be “78% stabilized” but this will only be done by loaming and seeding. Provision should be made to stockpile the native soils and leaf mold so it (and the seed bank it contains) can be returned to the shoulders where the established canopy and understory are “grubbed” and removed.

Stockpiling of contaminated railbed soils was originally only to be done overnight and the soils were to be tested so that they could be assigned to an appropriate receiving facility. Now it appears that the soils may remain for an indeterminate period and that the only “monitoring” will be done by viewing and sniffing; this is useless and will not detect lead (Sudbury Rod & Gun) or PFAS without sampling.

Eversource claims that some years ago it cleared its reliance on DEP’s “BMPs for Rail Trails” with DEP but it omits to relate that when doing so, it did not describe its plan to excavate to depths of 10 to 15 feet or discharge groundwater including to wetlands. Eversource also did not sample for any PFAs here or in Hudson (where it stopped short of the known plume) and now refuses to do more than 3 water samples along the 4.5-mile bed. The high groundwater and sandy lakebed soils at the Sudbury/Hudson/Marlboro town lines that provide the cold

reliable groundwater that sustains CWF¹, is susceptible (being so permeable) to the known releases of PFAS from the Firefighting Academy to White Pond (where PFAS are known to be present) as the gradient may well be along Hop Brook². The Applicants' desktop Phase I identified Fort Devens Annex and the Sudbury Rod and Gun Club as warranting investigation; which again Eversource declined to do. As noted in the Partners LSP Report provided by Protect, groundwater testing at Raytheon did pull up an exceedance for 1,4 Dioxane but used the wrong testing protocol. These omissions will not protect the statutory interests of pollution prevention, protection of groundwater and public/private drinking water. Only three groundwater samples were taken and soils were not tested below 8 feet and were composites so that the more contaminated surface levels were blended. This is not a thorough assessment and poses a risk of contamination. Consequently, discharges of untested groundwater should not be allowed and certainly not to wetlands including BLSF. Lack of knowledge is not protective and does not meet the requirements of the bylaw or WPA. The Applicants have said they "can agree" to a Soil & Groundwater Management Plan" for the Commission's review and comment but will not subject it to your approval. In light of the lack of information regarding the risk of contamination, this "agreement" is neither a protective or mitigative response.

It is not apparent to commenters that the Commission (or the Planning Board) is considering their request that the trail not be paved, most particularly that section west of Horsepond Road. The thermal impacts to the 15 Vernal Pools over half of which are within 10-20 feet of the railbed are certain as it does not take much of a temperature difference to affect breeding and gestation. As to accessibility and maintenance issues we attach Appendix B showing how DCR has maintained gravel or stone dust trails along other portions of the Mass Central Railroad (including a portion in Wayland) and at DCR Forest and Park facilities such as Bradley Palmer State Park. Users of adaptive bikes in such wooded areas are not impeded as the grades are flat and thus not subject to erosion³. Blowing of debris off the trail should not be done near wetland areas especially the Vernal Pools; dust and other contaminants will alter the pool chemistry and the ability of the species to respire. Protect repeats its request and that of SVT that the portion of the project that abuts SVT and the Town's Hop Brook Marsh Conservation Area remain unpaved. We note also that the existing gravel railbed does not readily erode even on the banks at Bridge 128; having been compacted over time by users.

Further on the subject of Vernal Pools and mitigation/plantings it is not at all clear why plantings in or near the pools constitute mitigation if, as VHB repeatedly points out, work is not

¹ Belying the blithe comments of Dr. Slater regarding the lack of impacts from loss of shading ("cutting a few trees"). The CWF during low periods is protected by shading as groundwater levels drop significantly.

² The Town would also be well-advised to ensure that the Applicants agree to investigate the bedrock in the ledge areas prior to construction. Geological advice is that bedrock is likely to be present at or above the proposed 10-15-foot excavations proposed by Eversource. See, M.G.L. c. 148, s. 19. Blasting so proximate to residences would be unsafe and ill-advised. See Appendix C for ledge/bedrock example. Protect also provided comments regarding EMF emissions along the railbed affecting wildlife and the public.

³ We refer the Commission to the book recently donated to it by local author Marjorie Turner (Hollman). Ms. Turner uses an adaptive bike regularly on stone dust bike trails and provides advice to other such users in talks and in her books.

being done in the pools. Plantings in undisturbed areas of pool or habitat are clearly not mitigation, they are alteration.

As BETA's comments point out, the lack of any certainty on when, and if, Phase 2 will be built by DCR invites invasives but more importantly, since the Applicants persist in not providing the MOU between them (upon which the herbicide use provision of the Energy Facilities Siting Board relied)⁴, this provides no good footing for an Order of Conditions. There is no agreement between the Town and the Applicants regarding maintenance post-construction. At the Planning Board hearing last week DCR/Jahnige said, on advice of unidentified DCR counsel, it could not agree to a bond or the grant of the usual easement and covenant for stormwater structures; again, very poor footing for a permit.

Protect offers these comments to assist the Commission in its deliberations and hopes that they are found useful. We are, as always, available to discuss issues and options and look forward to hearing from the Commission on their approach to the matters addressed in this letter. Finally, thank you for your diligence and attention to wetland protection in Sudbury, it is appreciated.

Sincerely,



Raymond Phillips

President
Protect Sudbury
www.protectsudbury.org

Enc.

Cc: Sudbury Select Board & Town Manager
George Pucci, Town Counsel, Kopelman & Paige, PC
Sudbury Planning Bd.
Sudbury Historical Commission
George Pucci, Kopelman & Paige, PC
Richard Kanoff, PS Counsel, Prince, Lobel, Tye, LLP
Sudbury Valley Trustees
MA Senator Jamie Eldridge
MA Representative Carmine Gentile
MA Representative Kate Hogan
MA US Representative Lori Trahan
U.S. Senator Ed Markey

⁴ See, Appendix A (attached) for EFSB ruling from its Final Decision.

Appendix A – Text of the EFSB MOU requirement concerning no herbicides

C. 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.

EFSB Final Decision, pp. 117-118

Appendix B – Rail Trail Surface Examples and Descriptions

Trail Description for Walk at Bradley Palmer State Park – A DCR Property

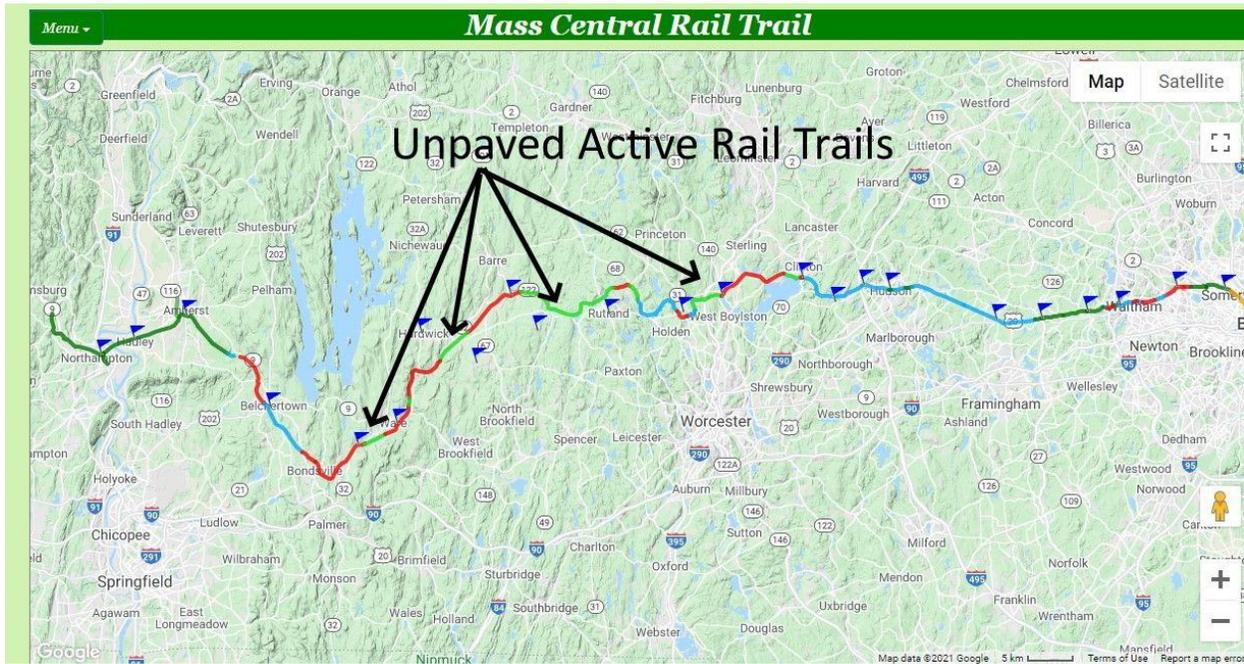
Introductory Walk Accessible Ipswich Riverside Stroll Trailhead:

Park at the area near the Main Entrance off Ashbury Street. Lat/Long: 42.652797, -70.911048 Distance: 1.8-mile return, Accessible section is ½ mile Difficulty:

Easy Brief Description:

The Accessible Trail has a level stone dust surface that is a flat grade. It is great for persons with mobility issues. Motorized vehicles and equestrians are prohibited.

The trail starts just past the old Lamson farmhouse on what was once the original route of Asbury Street before Bradley Palmer moved it away from his house in 1925. As you start the trail note how wide it is between the stone walls on either side. The area on your right was farmland used by the Lamson Family over multiple generations. Just before you reach a boardwalk there is a turnout on your left where you will see the stone abutments from the Lamson Bridge, first built in 1730. Old Asbury Street used to turn here to cross the Ipswich River to its intersection with Ipswich Road. Cross the boardwalk which overlooks the river and a stream that has been dammed by beavers, forming a pond. On the other side of the boardwalk, you enter a forest dominated by eastern hemlocks planted by Bradley Palmer. There is a branch to your left that takes you to the riverbank, but look for exposed tree roots which can be trip hazards and are hard to navigate with wheelchairs or strollers. Continue on the trail until you reach the footbridge crossing the Ipswich River. This is as far as the Accessible Trail goes, a half mile from the start. Return by retracing your route back to the parking lot. You may continue another half mile along the river, but the trail is not accessible at this point.

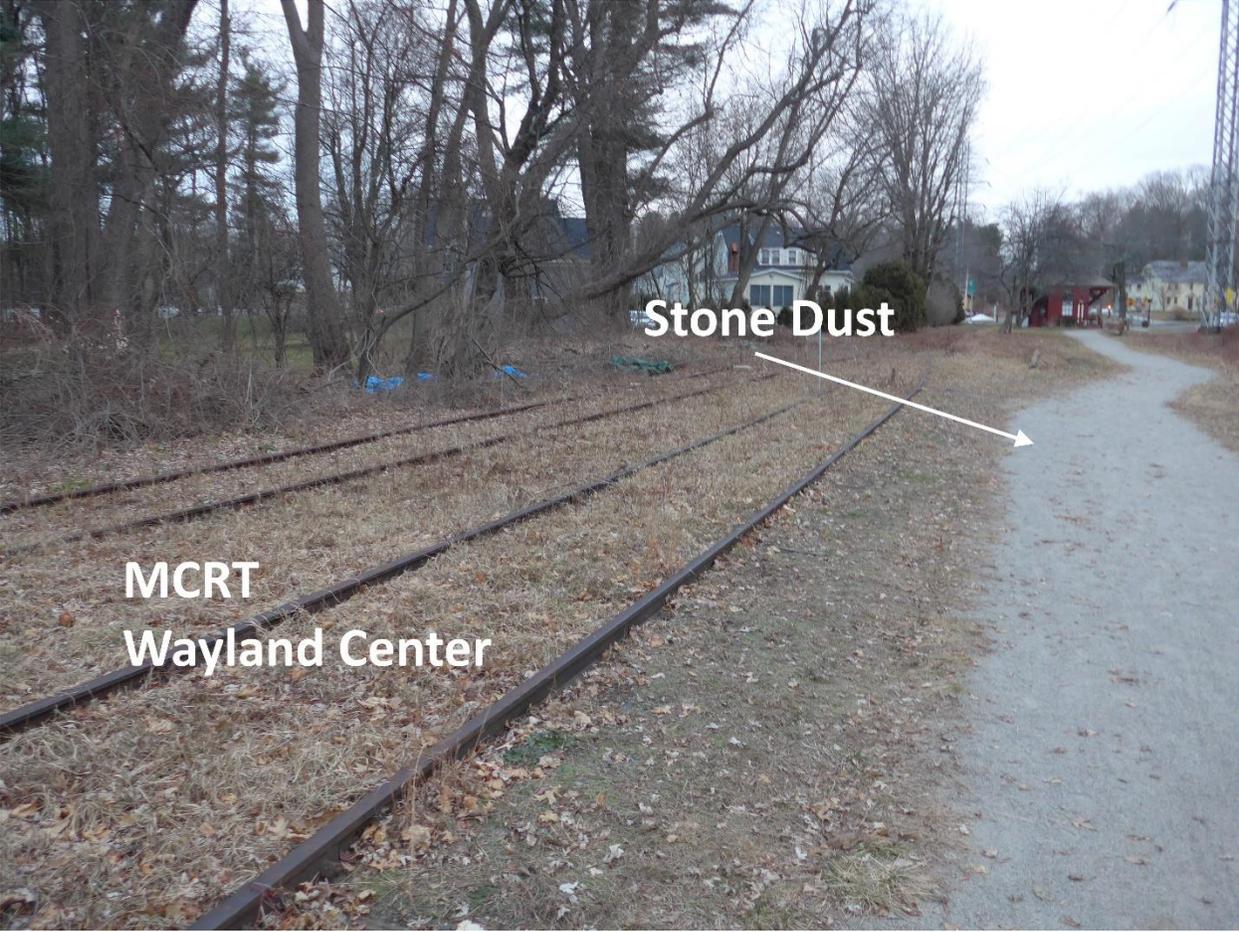




Mass Central Rail Trail
Oakdale, MA



Mass Central Rail Trail
Oakdale, MA



MCRT
Wayland Center

Stone Dust

Appendix C – Bedrock and Ledge Example



Central Mass Right Of Way
Between Peakham Rd and Dutton Rd