



Town of Sudbury

Historical Commission

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MINUTES

APRIL 5, 2022 AT 6:30 PM

VIRTUAL MEETING

Present: Chair Chris Hagger, Vice-Chair Diana Warren, Diana Cebra, Jan Costa, Marjorie Katz, Taryn Trexler, Chris Durall, Kathryn McGrath

Absent: Commissioner Steve Greene

Participant introductions took place, to include: Beth Goslin, Council of Public Affairs – USACE; Tammy Turley, Regulatory Division Chief – New England District/USACE; Katelyn Rainville, USACE; Paul Maniccia – MA Branch/USACE; Marc Paiva, Archaeologist/Tribal Liaison – USACE; Julie Byars, Office of Counsel – USACE; Denise Bartone – Eversource; Brooke Kenline-Nyman, Cultural Resource/Program Administrator – Eversource; Paul Jahnige, DCR; Jeffrey Harris, Office of Cultural Resources/DCR; Vivian Kimball, Project Manager/Consultant – VHB, Inc for Eversource.

Others Present: Planning & Zoning Coordinator Beth Perry

Mr. Hagger opened the consultation meeting, at 10:00 AM. Roll Call was taken: Hagger-Present, Costa-Present, Warren-Present, Durall-Present, McGrath-Present, Cebra-Present, Katz-Present, Trexler-present

Agenda Topic: National Historic Preservation Act (NHPA) Section 106 Review and Consultation with the United States Army Corps of Engineers (USACE), New England Division, Concerning the Sudbury-Hudson Transmission Reliability and Mass Central Rail Trail Projects:

- **USACE Response and Feedback to March 15, 2022 Historical Commission Letter**
- **Discussions of Solutions to Avoid, Minimize, or Mitigate Adverse Effects**
- **Status of USACE Consultation with the Narragansett Tribal Historic Preservation Office (THPO)**
- **Review of Revised Memorandum of Agreement (MOA) of February 1, 2022**

Status of USACE Consultation with the Narragansett Tribal Historic Preservation Office (THPO)

Ms. Turley detailed that an initial letter was sent by USACE to the Narragansett Tribe, on April 20, 2021; was awaiting any site-specific documentation from the Narragansett Tribe. Ms. Turley emphasized that results of consultation conversations, would not be shared, as they were specific to the Tribe and USACE; unless the Tribe chose to share such information with others. Ms. Turley stated that consultation/discussions with the Tribe continues.

Ms. Warren noted the USACE sent a letter to the Narragansett Tribe in April, 2021; and consultation did not take place at that time, despite the efforts of the Tribe. She further detailed that the Tribal investigator

conducted two full-days of site walks, one as referenced on March 23rd, and a previous full-day site walk, with focus on the right-of-way.

Ms. Warren indicated that the site investigation had not been completed, due to the incomplete investigation of the right-of-way. Ms. Warren asked how possible historic property/resources within an MOA (Memorandum of Agreement) would be considered and presented. She added the Commission had asked this question in a recent letter to the USACE. Ms. Turley responded that the Corp. would determine such eligibility, which could be addressed in the Historic Properties Avoidance and Protection Plan, the MOA, or as special conditioning. Ms. Warren asked when the final portion of the site visit might be completed. Ms. Turley responded that she did not know.

Resident Jim Gish, 35 Rolling Lane, asked about the MOA and special permit conditions, as mentioned. Ms. Turley responded that the MOA was typically a special condition of any issued Clean Water Act general permit. She mentioned a special condition could include compliance with the Water Quality Aspects, and could include language stating the applicant must abide by the MOA, and related stipulations; or include a condition detailing that the particular site that has been identified. She stressed there could be preservation and avoidance conditions within a permit of special conditions; and the MOA itself would be a special condition. Mr. Gish affirmed he wanted to avoid a situation where the MOA is finalized, and additional findings by the tribe are submitted, requiring amendment of the MOA. He suggested that all parties agree to such amendments at this meeting; otherwise Tribal sites could be at risk. Ms. Turley reiterated she did not know when the Narragansett Tribe would be available, and such consultation/s toward finalizing the MOA would continue. She hoped the Tribe would provide such information very shortly, if they have information to provide. She stressed the comprehensive "Avoidance and Protection Plan," would allow for any possible findings during construction, and construction would stop, and consultation would resume (only as a protective measure). Ms. Turley reiterated that USACE had been asking the Tribe for related information for some time.

Ms. Warren expressed great concern regarding the Corps' intention to proceed with a self-imposed deadline. She stated that given the history of Narragansett Tribe's exclusion, providing several more weeks of input, would be the manner in which to proceed. She strongly recommended that the Corps wait to release the finalized MOA until after the tribe can provide its findings to the Corps. She expressed concern about any process which might follow an MOA. Ms. Turley noted that in MA, the Corp. traditionally consults with two Tribes, and the Narragansett Tribe asked to be included; the Corp. has been requesting related information since April of 2021 (one year).

Resident Rebecca Cutting, 381 Maynard Road, noted that the Narragansett Tribe representative (a volunteer), has been struggling with medical issues; and asked the Corp. to take that fact under consideration. She added that Ms. Pierce did not complete her thorough review, stressing that the purpose of a consultant is to obtain information that will contribute to the Corps' decision-making outcome. She commented that present stipulations in the MOA, did not include all key features of the Railroad right-of-way. She expressed concerns that the archeological pre-contact site, was located in the proposed wetland mitigation area. Ms. Cutting agreed with Ms. Warren, and asked that the Corp. not act hastily, so that all information could be presented, in order to make a considered decision.

USACE Response and Feedback to March 15, 2022 Historical Commission Letter

Mr. Maniccia stated that many of the questions posed in the March 15, 2022 letter from the Sudbury Historical Commission (SHC), had been answered/addressed. He stated that the applicants can provide answers to questions in the SHC letter. He spoke of renderings for Bridges 127 and 128, adding that USACE reviewed the plans; and final “as built” drawings are not requested and are not considered in finalized permitting, nor part of the process. The Corps used the data to determine impacts to waters of the us and other resources and the boundaries included within those resources. He stated that Appendix C and the 800 regs were being followed.

Mr. Maniccia referred to page 3 of the letter, regarding the diamond crossing being removed during Phase I construction. He stated that the USACE determined that the MOA and HPPAP is sufficient to protect the diamond junction as it is removed and reset. s Mr. Hagger asked who would be responsible for the removal, storing, and re-installation of such features. Mr. Jahnige stated the diamond feature would be removed by Eversource, as part of Phase I, and stored at a location in the right-of-way in close proximity to where it currently stands; but outside the limit of work. Mr. Jahnige stated that in Phase II, DCR would re-install/reset that tract within the footprint, as included in the plans for finalization.

Ms. Warren brought up the issue regarding project impacts as detailed on the Spreadsheet, where the name of the responsible party/parties was not indicated. She confirmed the SHC requested that an additional column be added to the Spreadsheet, to clearly specify who is responsible for particular actions/work. She maintained that the “Historical Protection and Avoidance Plan” has “no teeth to it,” and the post-discovery plan “has no teeth to it, either.” Ms. Warren requested again, that the “Project Impact Spreadsheet,” specifically name the party to be removing and resetting the feature/s, as well as inclusion, about what to remove and reset. She commented that without the Spreadsheet stating who is responsible, there can be no accountability. She added that the Eversource Sheet Plans did not indicate the location of railroad resources.

Ms. Warren stated that SHC had not received a definitive answer from DCR confirming they would remove any railroad infrastructure, under the terms of the lease agreement that they have with the MBTA. She requested clarity of such, from Eversource, as well. Mr. Jahnige responded that all such information had been provided, and the only feature DCR was resetting would be the diamond junction; and other features will be removed and reset in Phase I, by Eversource. He stressed that DCR had been clear that they would not be removing any other features, which have not been previously mentioned/detailed. Ms. Warren asked that DCR put this language in writing. Mr. Jahnige maintained such statements were in writing.

Ms. Turley suggested that DCR and Eversource provide reference as to where the statements are located. Ms. Warren stated that SHC sent a letter, requesting such documentation, and that request was not answered.

Mr. Maniccia referred to Section 13 of the 2010 Lease Agreement between DCR and the MBTA, and noted that the applicants (DCR and the MBTA) were responsible for securing site access; and USACE did not get involved in that aspect. Mr. Maniccia noted if DCR and the MBTA wanted to provided additional related information on this topic, they could.

Mr. Maniccia then reviewed the “Post-Review Discoveries Plan” topic, stating that certified archaeologists would be on-call during the entire project; which was a requirement for the applicants.

In response to the USACE “Notification to Advisory Council on Historic Preservation (ACHP),” Mr. Maniccia stated that the Corp. had notified the ACHP, and provided all related information.

Mr. Paiva addressed the Tribal Section 106 Consultation topic, within the letter; noting that he had been involved in the project since September, 2021. He noted that the Corp. provided Ms. Pierce, of the THPO, with all necessary information needed to complete the Tribal Report. Ms. Pierce had previously indicated there was an area in Hudson she wanted to further examine, and the Corp. would review that area in consideration of finalizing the MOA. He noted that if the Tribe identifies any properties with religious or cultural significance, the USACE would consider such findings, via a condition or inclusion in the MOA. Mr. Paiva referenced the summaries of the 2018 and 2019 Archaeological Reconnaissance Surveys, and the Narragansett Tribe had only been included in such documentation in the last year; adding that there had been constant and continuous consultations with the Mashpee and Wampanoag/Aquinnah Tribes, as well.

Ms. McGrath asked if the entire area had actually been surveyed, including the splice vaults; she recommended that geomorphologists also examine this aspect, in relation to possible the Paleo features, and glacial aspects within Sudbury. Mr. Paiva deferred to Eversource to answer. Ms. Kenline-Nyman answered that Commonwealth Heritage Group did a thorough investigation. Ms. Bartone asked about the particular splice vault being considered. Ms. McGrath inquired about the 15-foot vault. Ms. Bartone confirmed the depth of the splice vault was usually 12 to 15 feet, and the archeologist would research soils produced before human occupancy, and referred Ms. McGrath to the Phase I investigation regarding, noting that any post-discovery aspects would be considered. Ms. McGrath thought there should be further investigative steps.

Ms. Warren commented that it was the SHC who had informed the Narragansett THPO about the project six months before the Corps contacted the tribe and that the consultation with the mentioned Tribes, had not been constant or consistent, and the USACE letter to the THPO had not been received until at least six months after the Tribe was informed of the action. Mr. Paiva noted that the Corp. had records which display the frequent communications with the Tribes.

Mr. Paiva indicated that the Hop Brook was outside of the work areas, and would not be impacted. Ms. McGrath mentioned possible considerations within the limit of work be examined.

Resident Nick Pernice, 255 Peakham Road, questioned the MOA considerations, and studies for Bridge 127, in order to save the bridge. He mentioned the stock piling of soils, which might be in the vicinity of historical resources. Ms. Turley commented about the 800 Regulations regarding the Section 106 process; she focused on Appendix C in her response. Ms. Bartone explained that soils would be managed within the limit of work area. She detailed the man-hole areas within the limit of work.

Resident Daniel Depompei, 35 Haynes Road, noted that the right-of-way had been incorrectly labeled as “abandoned,” by the MBTA and Eversource. He stated that the Surface Transportation Board did not recognize the site as “abandoned.” He recommended that any additional transportation considerations, should be placed on hold until a formal determination had been made by the Surface Transportation

Board (STB). Ms. Turley responded that the permitting provided, does not provide right to access the mentioned property, even if the property was involved in some type of litigation/dispute. Mr. Jahnige mentioned that the issue had been addressed by the STB, and all rights, were secured. Ms. Warren maintained that the STB did not deny the petition; rather, they dismissed it, and did not rule on merit.

Mr. Gish stated that the STB did not provide a ruling/finding, but affirmed that Protect Sudbury did not have standing, and this remains an unresolved issue. He added, that like Mr. Pernice, he did not see protection illustrations in the plans. He quired, if artifacts are set aside, what would be the process to ensure protection during the removal and replacement process. He commented that Appendix C was controversial, which creates confusion, and asked if USACE is meeting all obligations of a Section 106 review. Ms. Turley responded that USACE was meeting its full obligation, and complying with all aspects of the Historic Preservation Act, following the 800 Regulations and utilizing Appendix C, in order to better define the undertaking.

Ms. Kenlin-Nyman stated the treatment of features could be found in the “Historic Properties Avoidance and Protection Plan,” on pages 7 and 8.

Mr. Hagger stated that there is only 35 minutes left in the 2 hour consultation meeting and the SHC needs to focus on the MOA agenda topic. Ms. Warren suggested there are additional issues associated with the SHC Letter to the USACE, specific to the MOA.

In reference to the MOA section of the letter, Mr. Paiva stated there were areas that the Corps. did not agree with, such as alteration of setting around the Section Tool House, and removal of the track in that area. Related extensive discussion took place. Mr. Paiva stated he would defer to the applicant to explain the reasons why the track has to be removed near the Section Tool House. Ms. Kenline-Nyman stated that the rails are being replaced by a rail trail so there is ample interpretation to understand the relationship between the railroad and the Section House. Ms. Kenline-Nyman detailed aspects of the protective fencing as part of the “Avoidance Protection Plan,” which would protect the platform, and the Section Tool House; from any construction activities.

Mr. Hagger mentioned the significance of the track around the Section Tool House, in regard to the setting context. Mr. Paiva expressed his appreciation, noting he would defer to the applicants regarding this aspect. Ms. Kenline-Nyman stated in this instance, the rails were being replaced with a rail trail, where context could still be recognized.

Mr. Jahnige indicated that proposed signage of 30, within Hudson and Sudbury, was excessive for the corridor; and suggested a total of 20 of such identifying/feature signs. Mr. Jahnige expressed his willingness to work with the Commission on the presentation of such signage. He mentioned the distinctions involved with the interpretive signs.

Mr. Hagger commented about diamond area considerations. Mr. Jahnige stated the 6-foot x 6-foot diamond could be set within a proposed 24-foot area, across the diameter, and specifics could be discussed.

Mr. Jahnige confirmed there would not be sufficient space to include a viewing platform around Bridge 128, without added wetland impacts. Mr. Hagger inquired about a possible viewing of girders, through the bridge (somewhat like a window). Mr. Jahnige agreed to further consider Mr. Hagger's proposal.

Mr. Hagger mentioned the two Bridge 127 girders, be removed, saved, and be placed by Eversource, at a determined location. Ms. Bartone responded that Eversource would work with the SHC on this proposal, but Eversource would not be willing to store such materials, but would locate them to the area the Commission would like. Mr. Hagger asked why Eversource would not be willing to install the girder display. Ms. Bartone responded that such installation could affect the construction timeline, and would not expand the project process. She suggested that the SHC discuss this aspect with DCR. She noted that such rail materials were provided by Eversource, but installations were installed by the Historic Commissions of Weston and Wayland. Mr. Jahnige voiced two related concerns; one being that such installation would not be on the rail trail itself, and could create a safety hazard; and two, attaching them to already-compromised rail rests, would be risky.

Ms. Costa commented that presented exhibits/attachments should be included in the MOA, as an integral part of that document. She stated the "Historic Properties Avoidance and Protection Plan," and the "Project Impact Grid," should be included to reflect current status. She agreed with Ms. Warren's recommendation, that a comprehensive document be viewed as a legal entity.

Ms. Warren noted SHC was concerned about DCR standing regarding a general permit, and the "Response to Comments," did not provide a legal explanation/basis. She commented about "post-discovery plan," mentioning that the phrase "significant archeological site," was not defined, and would be interpreted by an assigned archeologist. Ms. Warren strongly recommended inclusion of such definition at this time.

Ms. Warren asked if USACE had received copy of the March 24, 2021 Memorandum of Understanding, executed by Eversource and DCR, which appeared to undermine the current MOA.

Ms. Warren mentioned that the Section 106 recently filed by the Corp., with the Advisory Council, suggests there has been "an in-depth investigation," of various alternatives regarding demolition of Bridge 127, and such wording comes from a September 30, 2020 VHB letter. She stressed that the SHC had never seen these mentioned evaluations, which would provide the justification for demolition of the bridge. Mr. Paiva noted the "significance," phrase reflected criterion by which artifacts or features, are determined significant; and the Corps. follow that criteria process. In regards, to the VHB piece, he confirmed such query would be directed to VHB.

Mr. Hagger commented that the alternative description regarding replacement of Bridge 127, was very brief, and quired about factors/analysis leading to that decision. Ms. Kimball responded that a number of meetings took place with the civil engineering team. Mr. Hagger confirmed, as an engineer himself, this demolition decision, was not substantiated, from a structural perspective.

Ms. Warren asked how the limit of work differed from area of potential effect. Ms. Byars mentioned that the agreed upon consultation timeline for today's meeting, had expired thus ending the meeting.

Mr. Hagger asked if there was opportunity for additional dialogue. Ms. Turley responded that the USACE had no additional clarifying questions, and would be working on the finalization of the MOA. She noted that significant changes had been made when comparing to the MOA drafted a year ago, which reflected a thorough review of the Commission and the other consulting parties.

Mr. Gish asked if the “chat” comments would be part of the record, to be provided to the USACE. Mr. Hagger responded in the affirmative.

Ms. Warren commented that part of the record would include the letter from Select Board Member Bill Schineller, as well as emails from Rachel Goodrich, dated April 2, 2022, and March 14, 2022; and an email dated April 4, 2022; from Nicholas Pernice. Mr. Hagger commented that Ms. Goodrich is not a member of the SHC.

Adjourn

Mr. Hagger motioned to adjourn the meeting. Ms. Costa seconded the motion.

The vote was unanimous; Cebra-aye, Hagger-aye, Trexler-aye, Katz-aye, Warren-aye, McGrath -aye

The meeting was adjourned at 12:15 PM.