

Ms. Tammy R. Turley, Chief
Regulatory Division
U.S. Army Corps Engineers, New England District
696 Virginia Road
Concord, MA 01742-2751

By Email and US Post

October 13, 2021

In re: Citizen Comment and Questions Regarding the US Army Corps of Engineers and the Section 106 Sudbury-Hudson Transmission Line/DCR Undertakings

Dear Ms. Turley:

We, a group of citizens who are concerned with preserving and protecting the historical and archeological resources in the town of Sudbury, Massachusetts pose the following questions to the US Army Corps of Engineers, as listed below, and request that they be read and entered into the record of the Section 106 review and answered during the Corps' consultation meeting on October 14, 2021 with the Sudbury Historical Commission, as they regard the Eversource-MA Department of Conservation and Recreation (DCR) projects and proposed revised draft Memorandum of Agreement between the Army Corp of Engineers and Eversource and DCR et al.

We believe the questions we pose here, are questions that must be answered in order for the undertaking to be reviewed properly under the National Historic Preservation Act and Section 106, 36 CFR 800 regulations as promulgated by the Advisory Council on Historic Preservation, and prior to any Section 106 Memorandum of Agreement being finalized and signed and any Section 404 Clean Water Act general permit is issued by the Army Corps for this undertaking. The Advisory Council on Historic Preservation has commented to the Army Corps that its Section 106 review process to date has been flawed and is incomplete, and they have advised the Corps to comply with 36 CFR 800 rather than rely on its Appendix C. (See the April 30, 2021 letter from the Advisory Council to the Army Corps in the Summary of Documents provided in this letter under Attachment A.)

We believe that the protection of Sudbury's historical and archeological resources depends on a complete and compliant Section 106 review by the US Army Corps of Engineers and all involved.

Sudbury is one the most important historical towns in the state of Massachusetts – if not the country. The Town Green and Loring Parsonage from which Sudbury Militia marched on April 19, 1775 to the battlefields in Concord, the Wadsworth Monument, the Training Field Monument, Wayside Inn, Grist Mill, First Parish Church, Goodnow Library and numerous early American properties, graveyards and garrison sites, *including* the important Native American archeological and cultural resources located here, are all reminders that we are blessed to have Sudbury's historical resources and believe that they are integral to the town's unique connection with history. We cherish the historical resources we see in Sudbury every day; they are a constant reminder of just how important Sudbury and its past residents have been to the shaping of our nation. But these gifts from the past come at a price: historical resources don't just exist for the people who are charged with caring for them, they exist for everyone. That is why we must continue to fight to preserve and protect them. History tells us about who we were, who we are and where we are going. It is our connection to history that helps us become better people in a better society. Therefore, it is incumbent on us to preserve and pass these resources on to those who come after us.

The area where the proposed Eversource High Voltage Transmission Line (HVTL) construction project is to be sited lies within the Central Massachusetts Railroad Corridor, a line associated with the country's commerce and rail growth period of the mid to late-1800's. The line had its beginning in 1868 and is unique in that it is almost untouched, containing many valuable identified and as yet identified historic resources, (of the former group of resources we can count two rare train bridges and a Section Tool House (restored by the Town). The entire corridor runs through Sudbury, Marlborough, Stow and Hudson. The 4.6-mile portion running through Sudbury is eligible for listing in the National Register of Historic Places – in its entirety as a NR historic district. We believe that the proposed Sudbury-Hudson High Voltage Line Project will adversely affect not just all of the historic railroad resources within the corridor in Sudbury, but in all three of the other towns the corridor passes through as well.

The region, including Sudbury, was originally inhabited by the Nipmuc, Narragansett and Wampanoag peoples who lived, worshipped, hunted and fished here for thousands of years. A vast number of Native American artifacts have been found in the vicinity of where the Eversource HVTL project is planned to be sited: near the Sudbury River, Hop Brook and Hop Brook Marsh, and Dudley Brook. Some of these archeologically sensitive artifacts date back to as early as 5000 B.C. Native American villages once existed all along the Sudbury River, as well as on the three major hills surrounding the project: Green Hill, Goodman Hill and Nobscot Hill. Route 20, which is the road this project would follow for nearly a mile and which would be crossed by it at the George Pitts Tavern Historic District, was once a major Native American path connecting the Sudbury River to settlements south and west. One can easily assume that there are many unidentified Native American historic and sacred resources and sites remaining in or near the Central Mass Railroad Right-of-Way. In fact, the Assabet River (translated as "place where materials for fishnets grow") located at the westernmost end of the proposed HVTL project is one such area where pre-contact archeologically important Native American settlements most likely exist.

The following are questions that we, citizens, and residents of the town, believe must be answered fully and completely by the US Army Corps under Section 106 of the NHPA 36 CFR 800.

- A. Regarding the Complete Identification of Historic Resources and Assessment of Effects Adverse Effects on Historic Resources per the Requirements under Advisory Council on Historic Preservation (ACHP) Section 106 Regulations (36 CFR 800).**
1. Has the Army Corps completed the identification of all historic resources in the entire APE, Area of Potential Effects in the towns of Sudbury, Stow, Marlborough and Hudson? If not, why not?
 2. Has the Army Corps completed its identification of effects (direct and indirect) on historic resources in the APE, including the entire National Register eligible Central Mass Railroad right-of-way area corridor as required under ACHP Sec 106 regulations? If so, provide a list of the identified historic resources and effects. If not, why not?
 3. Has the Army Corps completed the identification of ADVERSE AFFECTS on the National Register eligible historic resources? If not, why not?
 4. Has the Army Corps notified the ACHP and the Massachusetts Historical Commission that the Central Mass Railroad Corridor (CMRCC) in Sudbury, in its entirety as a historic district, is eligible for listing in the National Register of Historic Places? If not, why not and when will the Corps do so?

5. Has the Army Corps identified the less visible but nevertheless fragile and important Native American sites that exist within and adjacent to the MBTA ROW and APE specifically in but not limited to the upland areas near and adjacent to Bridge 127 and 128? If not, why not?

B. Massachusetts Department of Conservation and Recreation (DCR) Standing Under Section 404 of the Clean Water Act

1. Is the MA Department of Conservation and Recreation (DCR) project subject to Section 404 of the Clean Water Act? Please explain.
2. Is DCR required to obtain a separate Army Corps' Section 404 Clean Water Act General Permit? Please explain.
3. Please explain how the Mass. Dept of Conservation and Recreation rail trail part of the project is subject to Sec. 404 of the Clean Water Act?
4. What activities during DCR's Project Phase II will result in discharge/fill into the Waters of the U.S. in Sudbury and what specifically are the Phase II activities? Which are temporary impacts, and which are permanent? Please explain?
5. If the DCR Phase II construction activities do not result in discharge/fill into the Waterways of US in Sudbury, please explain why the DCR is listed as a signatory to the MOA and the rationale as to why a Department of the Army permit would be issued to DCR?

C. The Demolition/Replacement of Bridge 127 in the Mass Central Railroad Corridor in Sudbury

1. Eversource/VHB have stated in their November 14, 2019 letter to the Corps that they cannot rehabilitate Sudbury's historic railroad Bridge 127 due to design requirements associated with DCR's Rail Trail Phase II of the undertaking. Has the Corps ever seen or received any alternative design plans that would assist the Corps in assessing the impacts of the alternatives to demolition of Bridge 127? If so, please identify.
2. Has the Army Corps received any evidence either written or oral that would substantiate VHB's claim that no feasible alternatives to the destruction and replacement of Bridge 127 are possible?

D. Identification and Acknowledgement of Consulting Party/THPO under ACHP Section 106

1. Has the Army Corps provided a formal acknowledgement in writing to the Sudbury Historical Commission concerning the Commission's August 17, 2020 request that the Commission be acknowledged as a consulting party under this Section 106 review? If not, why not? When will the Army Corps acknowledge in writing the consulting party status of the Commission?
2. Has the Army Corps acknowledged and acted upon the Narraganset THPO's request to jointly conduct with the Corps a field site walk in the APE for the purpose of identifying historic resources and Traditional Cultural Properties (TCP) and areas for the potential identification of archaeological resources? If not, why not? When will the Army Corps act upon the Narragansetts THPO's request?

3. Has the Army Corps contacted the Nipmuc Tribe in its efforts to gain specific knowledge and avail itself of the established expertise under Section 106 as it relates to identifying historic resources in the APE and/or invited them to conduct a site walk in the APE? If not, why not?

We, the concerned citizens have followed the permitting proceedings regarding the Eversource Sudbury-Hudson High HVTL Project over the last several years, including the National Historic Preservation Act Section 106 review currently underway. It is our belief that the use of and reliance by the Army Corps on USACE's Section 106 regulations, 33 CFR Part 325, referred to as Appendix C, is inappropriate; that the proposed Eversource and DCR HTVL Project threatens Sudbury's historically and archeologically sensitive areas, as well as the Native American historic properties and religious and cultural resources contained within and outside the impact areas of the Central Mass Railroad Right-of-Way. We believe this project represents a clear and present danger to the town's historical and archeological resources and its unique connection to history.

Therefore, we look forward to the Army Corps' reply and answers to our questions at the October 14, 2021 meeting with the Sudbury Historical Commission and the agency's forthcoming actions to fully comply with Section 106 36 CFR 800 regulations.

Sincerely,

Citizens Concerned about the Preservation of Sudbury's Historical Resources

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Cc:

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Attorney General Maura Healey (MA)
Senator Jamie Eldridge (MA)
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Brona Simon, SHPO Mass Historical Commission
Jonathan Patton, Mass Historical Commission
John Eddins, Advisory Council on Historic Preservation, ACHP
Jaime Loichinger, ACHP
Paul Maniccia, USACE
John Brown, THPO Narragansett Tribe
Bettina Washington, THPO Wampanoag Tribe of Gay Head (Aquinnah)
David Weeden, THPO Mashpee Wampanoag Tribe
Sudbury Historical Commission
Hudson Historical Commission
Sudbury Select Board
Sudbury Town Manager
Sudbury Planning Director
Sudbury Town Counsel

ATTACHMENT A

Summary of Documents Related to Appendix C and APE Issues

On November 8, 2018, VHB, Eversource's consultant, notified the U.S. Army Corps of Engineers that the HVTL Project required a permit under Sections 404 of the Clean Water Act and that because historic resources may be impacted, it was subject to review under Section 106 of the National Historic Preservation Act and the USACE's Section 106 regulations, 33 CFR Part 325, referred to as Appendix C (which have never been approved by the ACHP). VHB listed the numerous major waterbodies, residential areas, and "major" conservation areas that the HVTL Project would cross. VHB's letter requested a Permit Area Determination by the Army Corps for approval of a Permit Area based on Appendix C (thereby limiting the Section 106 review of the Project to a very small area rather than the larger area under the ACHP 36 CFR 800 regulations which require inclusion of the entire area impacted by the Project, referred to as APE or Area of Potential Effects.)

On April 21, 2021 the Sudbury Historical Commission received a letter from the USACE, with a draft Memorandum of Agreement (MOA), stating that the updated Project plans from the applicants had reduced the size of the waterways and wetland impact areas and that therefore, the Army Corps authority over the Waters of the U.S. was reduced. They furthermore stated that pursuant to Appendix C, only Bridge 127 was within the Permit Area. (However, under ACHP 36 CFR 800 regulations the Army Corps is not limited to US Waterways.) The Army Corps requested that the Historical Commission review and comment only on the "areas identified within the Corps authority" and the Commission's review and participation in the draft MOA.

On April 30, 2021 the USACE received a letter from the Advisory Council on Historic Preservation, ACHP, stating they had received communications from the consulting parties and stakeholders with expressions of concern regarding the Section 106 review being carried out by the Corps, regarding the Corp's definition of the undertaking subject to review, its delineation of the Area of Potential Effect, and the sufficiency of its effort to identify and consider effects to the historic properties that may be affected by the undertaking, and identification and acknowledgement of important stakeholders to the 106 process as consulting parties. The concerns expressed included: the fact that no detailed information was provided for the rail trail Phase II sponsored by DCR; the Corp's refusal to consider effects to the historic properties in other portions of the ROW beyond the permit area associated with modification or replacement of bridges to enable cable attachments of the transmission line for crossing the waterbodies; the fact that the project corridor has the potential for unrecorded structures and features associated with the 17th - 19th century of Sudbury and Hudson and the archeological sites associated with the railroad and Native American pre-contact sites.

In addition, the ACHP stated: "As you aware, the ACHP has never approved Appendix C as an alternative to the Section 106 implementing regulations . . ." Furthermore, regarding APE, the Section 106 process provides federal agencies with the authority to determine appropriate levels of effort for the identification and consideration of effects to historic properties that can qualify as meeting the reasonable and good faith standard set out in the regulations. The corps must consider the components of the larger undertaking the federal action focuses on, the location of those components and the relationship of those components to the larger undertaking. Among other things, the ACHP stated that it believes that in this case, the activity requiring the Corps' authorization represents a sufficient level of federal involvement that the Corps is obligated to actively take into account effects to historic properties throughout the entire ROW for the project. The Bridge replacement has no independent utility separate from the larger undertaking.

On May 20, 2021, The Sudbury Historical Commission wrote the Army Corps and offered comments on the undertaking seeking full engagement in the consultation process to resolve the project's adverse effects on Sudbury's historic resources that are eligible for the NR. They commented that they expected the USACE to "fulfill its obligation and responsibilities under Section 106 (38 CFR 800) to consider the effects of the undertaking on historic properties throughout the entire right-of-way, APE for the project and not just Bridge 127. They also indicated that they could not sign off on the proposed MOA as written listing the following issues: the timeline of Sec. 106 and the application of Appendix C.; the narrow scope of Appendix C-generated Permit Area and that out of the 66 railroad features discovered so far that are within the 4.62-mile NR eligible historic railroad corridor the USACE has only so far recognized one railroad feature, Bridge 127; the omission of historic properties eligible for listing in the National Register and the adverse effects the demolition of bridge 127, alteration of 128 and alterations to the visual and historical context and setting of the Section Tool House would have on the historic integrity of the resources and corridor as a whole; the incomplete consultation process surrounding the unresolved adverse effects on Bridge 127 and lack of any information or analyses on alternatives to the replacement of Bridge 127, Bridge 128, Section Tool House and components, Rail corridor and rail bed; and the fact that the Narragansett THPO had informed the ACHP that they had determined that precontact sites may be present within the APE and would be impacted during construction. The town's Historical Commission also requested any information on this pre-contact identification that has been provided to the Army Corps.