

Conservation Commission and Public Comments on the Eversource/DCR Notice of Intent Application

The Conservation Commission has compiled this list of questions and concerns regarding the Eversource Transmission Line-DCR Mass Central Rail Trail construction project generated at the April 13, 2020 Public Hearing, and submitted following this meeting, to facilitate the Commission's review of project impacts within their jurisdiction. We request Eversource/DCR provide input/information requested to each question and/or be prepared to address these questions/comments at the next Public Hearing on May 18, 2020.

The major environmental issues that were raised during the EIR and EFSB processes included the following nine items. The applicants should provide information on how the recent Notice of Intent submittal has addressed these concerns.

1. Loss of tree canopy and associated impacts to wildlife corridor and Cold Water Fisheries: The applicant has provided a Wildlife Habitat Evaluation that will be reviewed by the peer reviewer and the Commission.
2. Proper quantification of wetland impacts:
The peer reviewer is ensuring that the wetland delineation approved by the approved Order of Resource Delineation is used on the most recent plan and that wetland impacts are properly quantified.
3. Compliance with DEP Stormwater Management:
The peer reviewer is ensuring that the project is in full compliance with DEP Stormwater Management.
4. Quantification of floodplain fill:
There was question whether the floodplain fill was accurately quantified. The peer reviewer will ensure all floodplain fill is properly identified and that adequate compensatory storage is being provided.
5. Proper management of contaminated soils from rail bed during excavation:
There was question on what pollutants are present in the soils and what may be released from the excavation of the rail bed material. There was question on the potential impact any release may have on adjacent surface and groundwater quality.
6. Use of herbicide to manage corridor following completion of work:
There was concern that alteration of the corridor will result in the establishment and spread of invasive species due to the edge habitat that will be created.
7. Applicability of Limited Project designation:
There was question whether the project qualifies as a limited project under 310CMR 10.53(3)(d) and 310CMR 10.53(6).
8. Impacts from dewatering activities:
There was question whether dewatering activities are adequately managed to ensure this activity will not result in negative impacts on adjacent resource areas.

9. Impacts to rare species:

Sections of project site falls within estimated and priority habitat of rare and endangered species. The Natural Heritage and Endangered Species Program have designated this area for four species: the eastern box turtle, eastern whip-poor-will and two species of moths (Gerhard's underwing and Coastal Swamp Metarantia). The project has filed an application under the Massachusetts Endangered Species Act which has resulted in Time of Year Restrictions when certain activities cannot be conducted in certain areas to ensure the project does not result in negative impacts to these species. There is also a requirement that the applicant adhere to a Turtle Protection Plan during construction to protect the eastern box turtle.

Additional questions raised on the recent NOI submittal:

10. Invasive Species Management:

Information is needed on what efforts will be implemented to prevent invasive species from establishing and what management technique will be employed to manage them long term.

11. Limited Project Status:

The NOI states that DEP-CERO confirmed eligibility of limited project status in their MEPA Letter. The applicant should provide this letter for evaluation. As Sudbury is in the DEP-NERO Region, any applicable determination from NERO should also be provided.

12. Construction Equipment:

The applicant should provide a list of equipment that will be used during Phase I and Phase II and the clearance requirements for each machine to evaluate whether impacts are being minimized.

13. Dewatering Activities:

The NOI states that dewatering activities will occur outside resource areas. It is unclear whether the term resource areas including the buffer zone and riverfront area. A specific dewatering plan should be provided as part of this Notice of Intent for areas highly likely to encounter groundwater such as at Bridge 127.

14. Bridge 127 Design:

Bridge 127 is designed to support construction vehicles to expedite construction between Hop Brook and the Sudbury Substation. The applicant should explain if this construction and associated wetland impacts are in excess of what is needed for the MCRT alone, and if so, what additional resource area impacts, if any, are associated with this design.

15. Table 5 in NOI:

Table 5 in the NOI lists changes in the design that minimize or avoid wetland impacts. It is unclear what plans these two sets of calculations refers to. The applicant should clarify.

16. Compliance with Sudbury Wetlands Administrative Bylaw:

The NOI states that the plans are in full compliance with the Sudbury Wetlands Administrative Bylaw but does not appear to provide mitigation for alteration of Adjacent

Upland Resource Area (AURA) in accordance with the Bylaw and its accompanying Regulations.

17. Requested changes to Best Management Practices:

- a. Haybales are called out for erosion controls. These should be changed to straw bales.
- b. Erosion control blankets are called out for erosion controls. The location of where these will be installed should be shown on the plan. The applicant should also provide information on what type of ecb blanket is being used.
- c. The application states that vehicle storage and refueling will be outside and as far as practical from sensitive areas, such as wetlands, unless specifically agreed by the Project Team. The plan should detail where these activities can take place and should be conditioned that it must be outside jurisdictional areas. The applicant should also identify stockpile and storage locations on the plan set. Any modifications to these designated locations should be at the approval of the Commission, not Project Manager.
- d. The application says that seeded area will be mulched with hay. This should be changed to straw.
- e. Concrete trucks should not be to not permitted to washout on site or into catch basins.

18. Groundwater/soil data from soil borings:

Provide the groundwater/soil data and reports generated from soil borings that were conducted along the entire ROW, both in legible tabular form, as well as, showing the boring locations on a map, and their locations in relation to known contamination sites and where, within the ROW the boring was located. Please clearly indicate the purpose for each boring.

19. Resource Area Impacts Per Activity:

Quantify impacts/disturbance associated with the installation of the transmission line versus impacts necessary for the rail trail alone.

20. Riverfront Area Impacts:

The NOI states that the project results in a reduction in the portion of the Riverfront Area that is degraded. Additional clarification is needed to substantiate this claim.

21. Zone II Wellhead Protection Zone:

Portions of the work area are located within a Zone II Wellhead Protection Zone: The applicant should provide information of how proposed impacts to Bank, Bordering Vegetated Wetlands, Land Under Waterways, and Riverfront Area will not impact the recharge function of these resource areas. The Applicant should also obtain a letter from the Water District regarding potential impacts to the Zone II Wellhead Protection Zone.

22. Project Phasing and Timeline:

Following construction of Phase I, all disturbed areas will be seeded with a native seed mix. Plantings associated with alteration associated with the construction pads will also

be installed. Additional plantings will be installed following Phase II. It makes sense to install plantings after Phase II if these projects will quickly follow each other to prevent plantings from being disturbed during Phase II. However, there are areas, like where the manholes are proposed, which will alter a much more substantial area that would not otherwise be altered during Phase II. Plantings should be installed in addition to the seed mix to stabilize such areas following Phase I. Seven out of 13 manholes are located within jurisdictional areas: all are located within the riverfront area; six are within Buffer Zone and AURA.

23. What other permits need to be obtained for the proposed project?
24. The Commission requested the Memorandum of Understanding between MBTA, Eversource, and DCR, when available.
25. Would the project design be different whether it was filed as a limited project, or not?
26. How does the project meet the Sudbury Wetlands Administrative Bylaw in regards to the extent of revegetation being proposed?
27. Provide a summary of the cumulative impact of wildlife impacts for the entirety of the project site.
28. How do you remove the large amount of soil and rails from the site? Where are these materials being removed to?
29. How does the project design meet Americans with Disabilities Act requirements?
30. How are proposed impacts to the isolated vegetated wetland addressed under the Bylaw?
31. How do you distribute heat emanating from the underground transmission line? If there is heat generation, how much? Describe how the heat will not pose a threat to the public or wildlife.

Additional Commissioner Comments Following April 13th Hearing:

32. West of bridge 128 in the ROW one finds several undisturbed nutrient- and water-starved domes of sand called barrens deposited by the glacier that covered New England over 10,000 years ago. The Marlborough Desert Natural Area was created to protect these barrens that are extremely rare in New England. The barrens are so unfertile that they have remained totally free of plant life for over 10,000 years. These barrens can easily be destroyed, never to be seen again, if contaminated with nutrient-rich soil or exposed to non-native seed. It has become its own unique habitat in sharp contrast to the surrounding forest. There are animals that thrive in this habitat simply because their predators stay away. The Pine Barrens in New Jersey is the home to two species: the pine barrens snake and pine barrens frog.

In the course of constructing the MCRT, care should be given to these barrens to minimize disturbance so they remain intact for future generations to enjoy.



33. How are cables protected from moisture, gases, liquids (acids, alkalis)?
34. Is a substation required along the line?
35. How is water treeing prevented, if it is deemed an exposure? Acidification impact on cable/conduit.
36. Does an underground system require the load to convert from AC to DC transmission?
37. Are the installation of pipe sleeves a part of the work being completed? Do they provide for easier access for maintenance?
38. Are any structures or devices needed to prevent subdraining or groundwater movement?
39. Will dewatering basins be built? Are they used in addition to other storage methods?
40. When do you anticipate conducting construction within streams/wetlands, particularly as it relates to MESA Time of Year restrictions.
41. Will stock pile areas be completely replanted within jurisdictional areas?
42. Is there separation of excavated soil and subsoil to allow for the potential of easier and accurate pipe installation?

43. Aside from trenching/horizontal drill, are other methods available when crossing a body of water?
44. What is the minimum depth of horizontal drilling under a body of water?
45. What are the maintenance and restoration designs?
46. Could drilling be bypassed while adhering pipe to preexisting structures i.e. bridges?
47. Have Cold Water habitats and potential impacts to banks been addressed/mitigated?
48. Construction equipment can transport invasive seeds to wetland habitat. What mitigation methods have been considered to minimize this exposure?
49. Are any temporary crossings being considered?
50. Would construction mats be introduced, as needed, during the growing season?
51. Should shrubs/trees be permitted to grow 12/15 feet within the ROW?
52. Will there be the use of back fill? If so, what materials are anticipated?
53. What are the dimensions of the Ductbanks that run between each manhole? Will concrete be poured at the construction site as the ductbank is “assembled inside the trench? How are the transmission lines protected to ensure the public is protected from exposure? What is the risk for electrical transmission outside the ductbank or to the surface of trail?
54. Will there or should there be any fencing along the trail?
55. Currently, this ROW is used by horses. Will this still be a permissible use in the ROW?
56. Please provide the Eastern Box Turtle Protection Plan approved by the Natural Heritage and Endangered Species Program.
57. Please provide the Corridor Management Plan for Mass Central Rail Trail and Sudbury Hudson Transmission Reliability Project approved by the Natural Heritage and Endangered Species Program.

Public Comments Raised and/or provided in writing at April 13th Hearing:

58. What is the opinion of the Conservation Commission on appropriateness of Joint project application for two very different projects spaced an unspecified time apart?
59. How does this transmission project approach 'avoid' impacts, when there are project alternatives which actually do avoid cutting any trees?
60. Explain to the Commission how the size and shape of the Mapped Priority Habitat near the Sudbury Substation was modified in 2017 after the Project was submitted to the Energy Facilities Siting Board, and how this changes the quantified impacts.

61. How many feet within the Sudbury part of the project would require fill to create a level platform for your utility project?
62. How much fill will be required and how will this amount of fill affect the natural surroundings of the environment?
63. How has the NOI provided for any re-initiation of rail service during the life of the proposed transmission line?
64. If you end up detecting contamination in water along the mass rail line, especially at places that historically have reported spills like Landham Road, Station Road, Union Ave and the old raytheon site, how do you plan on mitigating this pollution, and wouldn't this result in making this an unconstructable site for your utility project?
65. Do you plan to blast/remove/alter the 10-15-foot tall granite ledge that is present on both side of the rail between Dutton Road and Peakham Road?

The Friends of the Assabet River National Wildlife Refuge expressed concern with:

66. Impacts from the use of the rail trail by dogs, both from harassment of wildlife and negative impacts from dog waste.
67. That the land clearing will lead to the proliferation of invasive species.
68. That the lack of sufficient restoration will lead to the permanent loss of species.
69. They request DCR consider not paving the section of the trail to runs through the Assabet River National Wildlife Refuge.

Protect Sudbury Submitted:

70. Question for Eversource - Why is there no rehabilitation work proposed for the six 100+ year old culverts that are noted in Section 5.1.2?
 - a. If the existing culverts are damaged during construction, and the damage is only uncovered sometime after the conclusion of construction, who is responsible for the repair of the culverts and any damage due to flooding?
71. Question for Eversource - Please refer to **Table 12 Permanent and Temporary Disturbance to MWPA RFA** in the NOI. Please describe the nature of the construction activity at Dudley Brook that will result in 17,621 sq. feet of disturbance? What is the proposed mitigation?
 - b. On page-53, the NOI points to 'plan sheet 54 in Attachment B', however, Attachment B is 'under separate cover'. Please supply a copy of Attachment B and any other attachment that was listed 'under separate cover' to the Sudbury Conservation Commission.
72. Question for DCR - How many nine plus mile rail trails has the DCR constructed that first involved the placement of an underground transmission line in a greenfield right of way prior to the construction of a rail trail?
 - c. If there are any such projects, were these joint permitted and were they

determined to be 'limited projects. If so, please provide appropriate reference materials to the Conservation Commission.

73. Question for Eversource. How much of the transmission line has been designed to be located under the center line of the rail trail? (Approximate percentage) Please see diagram below.



74. Question for Eversource - At the Stow Conservation Commission meeting on March 4th, 2020, Attorney Fogel stated that Eversource has the right, at their own risk, to begin construction of the underground transmission line once all required permits have been obtained.

- d. Is Eversource, in fact, planning to start construction once all permits have been obtained. If so when is the estimated start date and where would construction begin?
 - e. Could you elaborate on what is meant by “at their own risk”?
 - i. For example, if the EFSB decision was ultimately overturned by the SJC, would Eversource still be entitled to ratepayer funded reimbursement through ISO New England/DPU for all such construction activities or would those construction cost to build and then remove and restore the right of way be borne by Eversource Energy Inc?
75. Question for Eversource - In a meeting with Sudbury Selectmen in February 2016 discussing this project, Beverly Schultz, Eversource Project Manager stated that Eversource was “not building a rail trail”. She went on to say that any of the required access for maintenance activities could be accommodated via intersecting streets and that there was no need to modify or demolish the two existing historic bridges structures that are located in Sudbury as well as the ones located in Hudson. In testimony before the EFSB Eversource stated that the bridge reconstruction was being done primarily for the benefit of the DCR rail trail, but that horizontal directional drilling was an alternative for crossing the two waterways in Sudbury.
- f. Is the DCR providing the funding for all bridge reconstruction? If not, will this cost be passed on to ratepayers as a ‘reliability improvement’?

76. Question for Eversource – Please provide a detailed comparison of the potential wetland impact between the bridge construction work as currently proposed and the alternative of placing the transmission line under the both waterways using (HDD) hydraulic directional drilling techniques.
77. Question for Eversource - How are you addressing the potential for pre, in progress, and post construction impacts on the public water supply; i.e. the migration of existing and newly introduced contaminants? For example, are you installing monitoring wells at regular intervals within that portion of the right of way that runs through the Sudbury Zone 2 aquifer? Do you intend to test the water pre-construction to establish a baseline condition? Will you test again during construction? Will you test at the completion of construction and then for five-year intervals until such time that your lease with the MBTA is no longer in effect?
78. Question for Eversource - In the event that the MBTA exercised their right to reclaim the right of way for transportation purposes, approximately how long would it take under a Federal or Massachusetts state of emergency to remove the power line and restore it to usable condition for emergency transportation purposes? What would be the approximate time under non-emergency conditions?
- g. Would federal, state and local permitting typically be required for such removal?
79. Question for Eversource/DCR - For the purposes of determining whether joint permitting is appropriate for this application, could the petitioner(s) indicate the month and year when discussions about a combined transmission line and a rail trail began and whom was the initiating party?

Additional Public Comments Received Following April 13, 2020 Meeting

80. How are the two “phases” of this “project”—Eversource (phase 1) and DCR (phase 2) logically connected? The two uses are distinct and separate. These seem to be two independent projects constructed on the same piece of land. It appears to just continue into “phase 2” rather than completing the phase 1 construction fully, and without committing to a timeframe to complete “phase 2”. This implies that the site will be left unfinished for an arbitrary and unknowable period of time, depending on when phase 2 construction can be taken over by DCR, continued and ultimately completed. Given the disjoint nature of the “project(s)”, what will protect the environment during this interim period—and who is responsible for detecting, repairing, and remediating any damage during that period? How and by whom will this be enforced?
81. The proposed twenty-two foot wide construction platform will require either excavation of the existing rail corridor (disturbing and moving soil with the customary rail-related contaminants) or importing fill to fill in the area adjacent to the current track and ties to create the desired width. The duct bank will require further excavation, and the manholes yet more. The diagram (Figure 6-2) seems to indicate that the volume above the duct bank will be filled with “backfill”. Where will the soil to create the construction

platform come from, and how will the release of contaminants into the surrounding lowlands be prevented? Where (and when) will excess any be taken. What standards will any proposed fill have to meet? Again, how and by whom is this to be monitored and enforced? If there is a delay between phase 1 and phase 2, how will the “temporarily disturbed” soil be stabilized?

82. The project runs within a WPA Zone II for approximately 1.5 miles (roughly the Rolling Lane/Jarman intersection to the Maple Avenue/Route 20 intersection.) This will have all the issues described in the question above, with the added complexity that this is an aquifer recharge zone leading directly to the main town water wells. How will this particularly sensitive stretch be monitored for compromised water quality, and who will pay for any necessary remediation?

83. What are the plans for construction in the narrow area behind Amanda and Bulkley Roads where the rail line runs through steep rock walls and is by no means twenty-two feet wide in this area? The equipment described will not fit within the available corridor, and the ground is rock—not amenable to duct bank. While there is no wetland resource here, this is a concern not addressed in the proposal.

84. There is a question if the proposed design and NOI addressed the Owner's title encumbrances and the Owner's unilateral rights within the tenants leases. The MCRT RoW is an inactive Rail Corridor owned by the State (MBTA). This status is validated in the MBTA lease to Eversource and in the MBTA lease to DCR. As an inactive Rail Corridor (under Federal Statutes) the corridor must remain available for re-activation of rail service. This is why other State owned rail trail RoWs are leased to the Municipality hosting said rail trail, with a 30 day, unilateral, reversionary clause favoring the State. The proposed Eversource/DCR joint project basically sacrifices the existing rail bed for a high voltage transmission line and a paved multi use path. (In the writer’s opinion, removal of the rails and ties, installation of the proposed transmission line and construction of the proposed multiuse path on the railbed invalidate re-activation of rail service.) The MBTA Lease for the Eversource easement refers to said easement as “in perpetuity”; however, in the Easement Agreement (Attachment C: pages 2,3 & 5), the proposed Easement is secondary to MBTA right to install and operate a transportation system. In fact, after 20 years, at the MBTA’s sole discretion, the MBTA can direct installation and operation of a transportation system and Eversource must move their improvements at their own expense. DCR lease, Paragraph 4: The term of this lease shall be for a period of 99 years beginning on the date hereof except that the MBTA may terminate this lease upon 2 years written notice to DCR for the greater public good. DCR acknowledges that the premises or a major portion thereof may be necessary for active railroad or other transportation uses in the future.
 - a. Question is for the MBTA:

Can rail service be reactivated on this RoW without removal of the proposed transmission line and multi-use path as aligned and designed in their proposal?

 - b. Questions are for the applicants:

What provisions have you provided in your design(s) and alignment(s) to minimize the risk of relocation?

What provisions have you provided to minimize environmental damage in removal/relocation of your improvements?

c. Questions for the ConCom:

It is the responsibility of the applicant(s) to justify the project(s) as proposed. Given the owners right to unilaterally relocate all improvements have the applicants justified the alignment and design of their improvements?

Is a 20 year life for the joint project (or either project on its' own) sufficient to consider said project for approval?

85. There is question as to the appropriateness of filing one NOI for two distinctly different projects that are owned and managed by two separate entities whereas the projects differ greatly in their purpose, the extent of their wetland and environmental impacts, and timelines.
86. There is question of the appropriateness of applying DEP's rail trail standards to the Eversource transmission line project.
87. How will the Eversource/DCR MOU relate to the Order of Conditions. Will the MOU be drafted to include those Orders? What will be the content of the MOU? The MOU has tremendous bearing on the implementation of this project and requires review by the Conservation Commission and abutters.
88. If the project qualifies as a Limited Project, does this reduce the level of protection to our wetlands and wildlife resources?
89. What will happen to the one and only population of wild lupine that is located directly on the abandoned rail line at the junction of Hudson, Marlborough and Sudbury? While this is not a listed species, it is well-documented as declining in our region.