



Town of Sudbury

Historical Commission

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May 12, 2021

Brona Simon
State Historic Preservation Officer
Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, MA 02125

RE: Sudbury-Hudson Transmission Reliability Project, Sudbury, Marlborough, Stow and Hudson, Massachusetts: MHC #RC.62384, EEA #15703, USACE NAE-2017-01406, ACHP #016522

Dear Ms. Simon,

The Sudbury Historical Commission appreciates the Massachusetts Historical Commission's assistance in supporting our efforts to protect Sudbury's historic properties that will be subject to adverse effects as a result of this undertaking.

The Sudbury Historical Commission is in receipt of a letter dated April 21, 2021 from the United States Army Corps of Engineers (hereinafter, USACE), seeking comments on a draft Memorandum of Agreement (MOA) with a May 21, 2021 deadline. The Sudbury Historical Commission (hereinafter, SHC) cannot sign off on this MOA at this time due to several procedural factors that require resolution. First, the required Identification and Determination of Effects portions of Section 106 of the National Historic Preservation Act (36 CFR 800) have not yet been completed by the applicant. Second, the action that is being offered as mitigation, i.e., construction of the Mass Central Rail Trail (hereinafter, MCRT) is also the action that is causing an adverse effect on Bridge 127 (i.e., demolition). As an indication of our good faith in the process, the SHC will, however, provide consultation comments by May 21, 2021 in order to move the process forward.

The Sudbury Historical Commission presents its specific concerns, as follows.

Incomplete Identification of Historic Properties

In determining the Area of Potential Effect (APE), USACE has chosen to use Appendix C as an alternative to Section 106. Appendix C is not recognized by the Advisory Council on Historic Preservation (hereinafter, ACHP). USACE ignores the (Section 106-compliant) APE identified

by its cultural resource consultant, Commonwealth Heritage Group (CHG).¹ CHG's APE, with which we concur, includes 4.62 miles of historic railroad corridor features in Sudbury. USACE limits the APE to two stream crossings and to archaeological sites. Table 1, attached, presents the sixty-six (66) historic railroad features within the Central Mass Railroad historic corridor that were identified by CHG and by the SHC's cultural resource consultant and evaluated as eligible for the National Register of Historic Places.² Please also see attached permit area plans (Figure 1) that only indicate bridges and archaeological sites.³ In correspondence (attached), the ACHP has indicated that the USACE was "obligated to actively take into account effects to historic properties throughout the entire ROW for the project" and provided directions in greater detail to USACE.⁴

The SHC welcomes USACE's entry into consultation with the Narragansett THPO, as the THPO can provide information about archaeological sites and settlement patterns about which we do not have sufficient knowledge.

Incomplete Assessment of Effects

Even among the historic railroad corridor features the USACE has identified, many project design and impact details have not yet been finalized by NSTAR Electric Company d/b/a Eversource Energy (hereinafter, Eversource), or perhaps, have not yet been communicated to the SHC. Eversource Notice of Intent plans (Dec. 2020) provided to SHC are missing many railroad features, including, but not limited to several signal relay boxes, a milepost, an approach signal, whistle posts, and a diamond rail junction. Furthermore, SHC has learned of some design changes, e.g., the diamond junction at South Sudbury Station, only in a meeting.⁵ SHC cannot comment upon the proposed effects of the undertaking if said effects are not provided. Without these details, SHC finds it impossible to comment. (See Table 1.)

Questions Regarding Participants' Standing with Regard to Section 106

The SHC seeks clarity whether the Massachusetts Department of Conservation and Recreation (hereinafter, DCR) has standing in the Section 106 process, given that some of the project's adverse effects are incurred as a result of DCR's involvement. The Eversource transmission line project and the MCRT project are two separate projects for two separate purposes. The co-applicants claim that the transmission line installation and the construction of the MCRT are one project to be constructed in two phases. However, the only connection between the Eversource

¹ Commonwealth Heritage Group, Prepared for Vanasse Hangen Brustlin, Inc., "Reconnaissance-Level Historic Properties Survey: Sudbury-Hudson Transmission Reliability Project, Towns of Sudbury, Hudson, and Stow and City of Marlborough, Middlesex County, Massachusetts," October 2017, and "Commonwealth Heritage Group, Prepared for NSTAR Electric Co. d/b/a/ Eversource Energy and submitted to Massachusetts Historical Commission, "Archaeological Intensive (Locational) Survey for the Sudbury-Hudson Transmission Reliability Project, Towns of Sudbury, Hudson, Marlborough, and Stow, Middlesex County, Massachusetts." May 2019.

² Commonwealth Heritage Group, 2017, page 7, and Commonwealth Heritage Group, 2019, page 108.

³ Vanasse Hangen Brustlin, Inc. prepared for Eversource Energy and USACE, Permit Area Plans, "Sudbury-Hudson Transmission Reliability Project," Sheets 18-32.

⁴ Correspondence, Jaime Loichinger, Asst. Director, Advisory Council on Historic Preservation, to Tammy Turley, Corps of Engineers, New England District, April 30, 2021.

⁵ Sudbury Historical Commission Special Meeting, Dec. 15, 2020, with Eversource, Vanasse Hangen Brustlin, Inc., Massachusetts Department of Conservation and Recreation, and Epsilon Associates.

project and the DCR MCRT project is that that these projects would be co-located within the same railroad ROW.

SHC asks that you consider several factors, using Bridge 127 as a reference point.

- Demolition of Bridge 127 will be undertaken by Eversource at the behest of DCR, even though demolition of Bridge 127 is non-essential to the construction of the transmission line.
- Demolition of Bridge 127 to accommodate the MCRT is an adverse effect. If USACE were to undertake this project without the MCRT design, Bridge 127 would not need to be demolished and the adverse effect would be removed.⁶ Alteration of Bridge 128 and the loss of the Section Tool House's historic setting as a result of a new MCRT road crossing at Boston Post Road are additional examples of adverse effects associated with DCR's involvement.
- The MCRT project does not appear to be subject to Section 404 of the Clean Water Act and could be severed from the federal permit process. (See Clean Water Act Pre-Construction notification (PCN), attached.)
 - Eversource will install an underground transmission line and DCR will construct a portion of the MCRT within the inactive Massachusetts Bay Transportation Authority (MBTA) railroad ROW. "The Project will be constructed in a two-phased approach. Phase I will be constructed under the control and responsibility of Eversource and will include all major earthwork, bridge reconstruction, construction of wetland replication area, and the installation of the underground transmission line and storm water management features. Phase II will be under the control and responsibility of DCR and will include installation of facilities at road crossings, paving the MCRT and final restoration."⁷ However, the PCN provided "no detailed information for the Rail Trail Phase II cited in the project name, though it is [ACHP's] understanding that it will be sponsored by the MA Department of Conservation and Recreation, which is listed as co-applicant under the PCN for the project."⁸ Reference to the DCR MCRT Phase II in the PCN is made only in regard to applying DCR design criteria to the Eversource project.
 - Eversource will perform all construction activities that will result in discharge/fill into Hop Brook, including alteration/removal of Bridges 127 and 128.⁹ DCR will not perform any construction or engage in any such activities and therefore is not

⁶ Paul Jahnige, DCR, stated that removal of Bridge 127 is needed to accommodate the rail trail design. Sudbury Historical Commission Special Meeting, Dec. 15, 2020, with Eversource, Vanesse Hangen Brustlin, Inc., Massachusetts Department of Conservation and Recreation, and Epsilon Associates.

⁷ Vanasse Hangen Brustlin, Inc. to USACE on behalf of Eversource and DCR, Section 404 Pre-Construction Notification (PCN), Section 404 Nationwide General Permit under the Clean Water Act (CWA). July, 2020.

⁸ Correspondence, Jaime Loichinger, Asst. Director, Advisory Council on Historic Preservation, to Tammy Turley, Corps of Engineers, New England District, April 30, 2021.

⁹ Denise Bartone, Eversource, statement at Sudbury Historical Commission Special Meeting, Dec. 15, 2020, with Eversource, Vanesse Hangen Brustlin, Inc., Massachusetts Department of Conservation and Recreation, and Epsilon Associates.

involved in the construction activity that will result in discharge/fill into Hop Brook. Activity that results in discharge/fill into Hop Brook is an undertaking under the Clean Water Act. The MCRT project will not result in discharge/fill. As a result, the MCRT does not appear to be subject to the Clean Water Act and does not require a federal permit. The MCRT project can thereby be severed from the Eversource project and the resulting Section 106 review.

- Other permitting jurisdictions have recognized the Eversource project and the DCR project as two separate undertakings. The Massachusetts Energy Facilities Siting Board's approval of the Eversource project did not consider the MCRT project to be part of the Eversource project or to be part of a combined two-phased project.
- The 2017 Option Agreement between the MBTA and Eversource¹⁰ stipulates that the MBTA grant DCR the right and option to acquire an easement for the right to construct, operate, maintain, repair, and replace facilities and related equipment and appurtenances **directly** related to Eversource's transmission and distribution of electricity. Obviously, DCR is not in the business of the transmission or distribution of electricity and therefore it appears that Eversource's activity in Phase I can only be for the purpose of transmission line construction.

The SHC also seeks clarification regarding DCR's role in the proposed removal of rail infrastructure. Under DCR's existing lease agreement with the MBTA,¹¹ if the MBTA does not exercise its right to remove the rail infrastructure, DCR may do so and "retain any revenue... from [its] removal and disposal of such." Will Eversource or will DCR be responsible for the removal of the rail infrastructure and the resultant adverse effect on the historic railroad corridor?

Inadequate Stipulations

Stipulation II of the draft MOA states that if "previously unidentified historic properties are discovered during the Project construction that may be affected by the undertaking, Eversource and DCR shall notify the signatories of the discovery and cease all work at that location." This statement is confusing as the USACE has stated that the "only" historic properties are Bridges 127 and 128. This narrow offering ignores the historic nature of the railroad corridor in its totality and the unique individual features already identified by cultural resources consultants throughout the right-of-way.

¹⁰ Option Agreement Between Massachusetts Bay Transportation Authority and NSTAR Electrical Company d/b/a Eversource Energy for a Transmission Line Easement on Central Mass Branch Right of Way Located in Hudson, Stow, Marlborough, and Sudbury, Massachusetts. 2017.

¹¹ Alternative Transportation Corridor Lease Agreement by and between the Massachusetts Bay Transportation Authority and the Commonwealth of Massachusetts by and through its Department of Conservation and Recreation, Dec. 30, 2010, p. 11.

Conclusion

The Sudbury Historical Commission expects the USACE to consider the effects of the entire undertaking on historic properties, not just the effects on Bridge 127, to fully relay those effects via drawings and other documentation to the SHC and to make a good faith effort to consult with the SHC to either avoid or mitigate those effects to the greatest extent possible.

The Sudbury Historical Commission does not approve of the provisions of the MOA and declines to sign the agreement as written. The SHC respectfully requests that the Massachusetts Historical Commission also not execute the MOA as written due to concerns outlined above. USACE's "reliance of Appendix C as a basis for making findings and determinations in the Section 106 review will leave the Corps' compliance with Section 106 subject to challenge due to fundamental inconsistencies between Appendix C and the Section 106 implementing regulations."¹² SHC notes that MHC's letters to the USACE¹³ state that MHC's "review of the undertaking [was] offered to assist with compliance with Section 106 of the NHPA of 1966, as amended (36 CFR 800)."

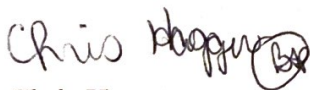
The Sudbury Historical Commission also hopes MHC will review the DCR MCRT project as a separate undertaking for purposes of the NHPA Section 106 and Massachusetts General Laws, Chapter 9, section 26-27C (950 CMR 70-71).

The Sudbury Historical Commission appreciates the Massachusetts Historical Commission's assistance in supporting the Commission's efforts to protect Sudbury's historic resources.

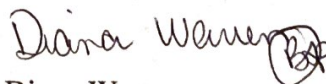
As stated in 36 CFR 800, MHC reflects the interests of the State and its citizens in the preservation of their cultural heritage. The SHC views the Central Massachusetts Railroad corridor as a linear historic district corridor eligible for listing on the National Register of Historic Places. Sudbury has a unique opportunity to preserve, protect, and interpret this historic resource. The inherent value and integrity of the corridor is due, in large part, to the high number of intact historic artifacts in their original setting along the 4.26-mile right-of-way. We look to the MHC to advocate for the protection and preservation of these resources in totality.

The Sudbury Historical Commission appreciates your attention and consideration of our comments and welcomes any questions you have of us.

Sincerely,



Chris Hagger
Chair
Sudbury Historical Commission



Diana Warren
Vice Chair
Sudbury Historical Commission

¹² Correspondence, Jaime Loichinger, Asst. Director, Advisory Council on Historic Preservation, to Tammy Turley, Corps of Engineers, New England District, April 30, 2021.

¹³ Correspondence, Brona Simon, State Historic Preservation Officer, Massachusetts Historical Commission, to USACE, June 17, 2017; March 19, 2018; August 31, 2018; April 3, 2019 and December 18, 2020.

Encl.

CC w/o Encl.

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