

**MEMORANDUM OF AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS
AND THE MASSACHUSETTS HISTORICAL COMMISSION
REGARDING THE SUDBURY-HUDSON TRANSMISSION RELIABILITY AND MASS
CENTRAL RAIL TRAIL PROJECT, HUDSON, STOW, MARLBOROUGH, AND
SUDBURY, MASSACHUSETTS**

WHEREAS the U.S. Army Corps of Engineers (Corps) plans to issue a Department of the Army Permit to NSTAR d/b/a Eversource Energy (Eversource) and the Massachusetts Department of Conservation and Recreation (DCR) for the Sudbury-Hudson Transmission Reliability and Mass. Central Rail Trail Project (File No. NAE-2017-01406) in Hudson, Stow, Marlborough, and Sudbury, Massachusetts, (“the undertaking”) pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344); and

WHEREAS, the undertaking consists of the discharge of fill material in order to install a new electric transmission line and construct a rail trail within an existing inactive railroad right-of-way, including rehabilitation of one bridge and replacement of two bridges that meet the criteria of eligibility for listing in the National Register of Historic Places as contributing historic properties to a potential Central Massachusetts Railroad Historic District; and

WHEREAS, the Corps has defined the scope of the undertaking to include the permit area as shown in the figures submitted to the Corps on November 8, 2018, under a Request for Permit Area Determination; and

WHEREAS, the Corps issuance of a Section 404 permit is subject to review under Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. 306108), , which requires federal agencies to take into account the effects of their undertakings on historic properties listed in or eligible for inclusion in the National Register of Historic Places and afford the Advisory Council on Historic Preservation (“ACHP”) a reasonable opportunity to comment; and

WHEREAS, the Corps has determined that the undertaking shall have an adverse effect on Massachusetts Central Railroad Bridges #127, property eligible for listing in the National Register of Historic Places, and has consulted with the Massachusetts Historical Commission (MHC) pursuant to 36 CFR Part 800, and 33 CFR Part 325, Appendix C, the regulations implementing Section 106 of the NHPA, and

WHEREAS, the Corps has consulted with NSTAR d/b/a Eversource Energy and the Massachusetts Department of Conservation and Recreation regarding the effects of the undertaking on the Sudbury – Hudson electric utility line/rail trail and has invited them to sign this MOA as a invited signatories pursuant to 36 CFR §800.6(c)(2); and

WHEREAS, the Corps has consulted with the Wampanoag Tribe of Gay Head/Aquinnah, the Mashpee Wampanoag Tribe and the Narragansett Indian Tribe, for which the bridge crossing may have religious and cultural significance and has invited them the to sign this Memorandum of Agreement (MOA) as concurring parties pursuant to 36 CFR §800.6(c)(3); and

WHEREAS, the Corps has consulted with the Sudbury Historic Commission and the Hudson Historic Commission regarding the effects of the undertaking on the Sudbury – Hudson electric utility line and rail trail and has invited them to sign this Memorandum of Agreement (MOA) as concurring parties pursuant to 36 CFR §800.6(c)(3); and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the Corps has notified the ACHP by letter dated [DATE], of its adverse effect determination with specified documentation, and the ACHP has chosen *not* to participate in the consultation pursuant to 36 CFR §800.6(a)(1)(iii);

NOW, THEREFORE, the Corps, MHC, Eversource, and DCR agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties. The Corps will incorporate the following stipulations as conditions to any Section 404 permit issued to Eversource and DCR for this project.

STIPULATIONS

The Corps shall ensure that the following measures are carried out in consultation with the MHC, Eversource, and DCR shall provide proof of compliance with such measures to the Corps and MHC:

I. Massachusetts Central Railroad Bridges #127

1. The production of updated MHC Inventory forms for Massachusetts Central Railroad Bridges #127 (MHC #SUD.901) in Sudbury.
2. Photodocumentation to HABS/HAER standards of the Massachusetts Central Railroad Bridges #127 (MHC #SUD.901) in Sudbury.
3. Development and installation of interpretive signage at Massachusetts Central Railroad Bridges #127 (MHC #SUD.901) in Sudbury that describe the history of the bridges and Massachusetts Central Railroad.

II. UNANTICIPATED DISCOVERIES

If previously unidentified historic properties are discovered during 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 until the requirements of 36 CFR 800.13 and 33 CFR 325, Appendix C have been satisfied.

III. DURATION

This MOA shall be null and void if its terms are not carried out within three (3) years from the date of its execution. Prior to such time, USACE may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V, below.

IV. MONITORING AND REPORTING

Each year following the execution of this MOA until, the work is complete, the permit expires or is terminated, Eversource and DCR shall provide all parties to this MOA a summary letter report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received by USACE in its efforts to carry out the terms of this MOA.

V. DISPUTE RESOLUTION

At any time during the implementation of the measures stipulated in this MOA, should an objection to any such measure or its manner of implementation be raised by a signatory, the Corps will notify all signatories to the agreement, take the objection into account, and work as needed to resolve the objection. The disputing signatory Parties will first strive to resolve matters informally. If the signatories cannot agree regarding the dispute, the Corps shall then initiate appropriate actions in accordance with the applicable provisions of 36 CFR 800.

VI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment shall be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VII. TERMINATION

If any signatory to this MOA determines that its terms shall not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation V, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, the Corps must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The Corps shall notify the signatories as to the course of action it shall pursue.

Execution of this MOA by the Corps, MHC, Eversource, and DCR, and implementation of its terms evidence that the Corps has taken into account the effects of this undertaking on historic properties and satisfied its obligations under Section 106 of the NHPA.

SIGNATORIES:

[REGULATORY DIVISION CHIEF NAME]

Date

Chief, Regulatory Division
U.S. Army Corps of Engineers

Brona Simon, title
Massachusetts Historical Commission

Date

INVITED SIGNATORIES:

NSTAR d/b/a Eversource Energy

name, title

Date

Department of Conservation and Recreation

name, title

Date

CONCURRING:

Hudson Historical Commission

name, title

Date

Sudbury Historical Commission

name, title

Date

Aquinnah Wampanoag Tribe

name, title

Date

Mashpee Wampanoag Tribe

name, title

Date

Narragansett Tribe

name, title

Date