

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
NO. SJC-12997

Town of Sudbury, Protect Sudbury, Inc.,
Petitioners-Appellants

v.

Energy Facilities Siting Board,
Respondent-Appellee

ON APPEAL FROM A FINAL DECISION OF THE ENERGY
FACILITIES SITING BOARD IN EFSB 17-02/D.P.U. 17-82/83

**AMICUS BRIEF OF THE MASSACHUSETTS BICYCLE COALITION
[MASSBIKE], THE MASS. CENTRAL RAIL TRAIL COALITION,
THE EAST QUABBIN LAND TRUST, THE EAST COAST GREENWAY
ALLIANCE, AND THE RAILS TO TRAILS CONSERVANCY**

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CORPORATE DISCLOSURE STATEMENT
PURSUANT TO SJC RULE 1:21

The Massachusetts Bicycle Coalition [MASSBike], the Mass. Central Rail Trail Coalition [MCRT], the East Coast Greenway Alliance, the East Quabbin Land Trust and the Rails to Trails Conservancy each declare that they are non-profit corporations or associations. They each further declare that none of them have any parent corporation and no publicly held corporation owns 10% or more of the stock in any of the Amici entities.

MASS. R. APP. P. 17(C) (5) DECLARATION

Neither party, nor their counsel, authored this brief in part or in whole. Neither party, nor their counsel, contributed money that was intended to fund the preparation or submission of this brief. None of the amici has represented one of the parties to the present appeal in any other proceeding involving similar issues, nor in any proceeding that is at issue in the present appeal.

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Other Authorities

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Commonwealth Connections, A Greenway Vision for Massachusetts, <https://www.mass.gov/doc/commonwealth-connections-report/download>.. . . . 17, 26, 30

Fox, Pamela, "Weston Derails the Rail Trail", *ibid.* Weston Historical Society Bulletin, Vol. XLIX, No. 1, Spring 2018
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Salem News, May 14, 2017, "Rail trail reality: 'It's perception'"
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STATEMENTS OF INTEREST OF AMICI CURIAE

The Massachusetts Bicycle Coalition (MassBike) is a statewide non-profit membership-based organization promoting bicycling and advocating for bicyclists. MassBike promotes a bicycle-friendly environment and encourages bicycling for fitness and transportation.

Massbike works statewide to help improve conditions for all bicyclists including the development, expansion and maintenance of bicycle paths, bicycle lanes and other bicycle facilities, such as the Mass. Central Rail Trail, the Minuteman Commuter Bikeway (which is the most heavily traveled multi-use path in the United States), the Norwottuck Rail Trail in Northampton, Hadley and Amherst, and the Assabet River Rail Trail in Hudson.

Massbike focuses its work on the six E's of bicycle advocacy: engineering, encouragement, enforcement, evaluation, equity, and education. Massbike works through a number of programs and initiatives to support every community, age group, interest level, and type of bicyclist.

The Mass. Central Rail Trail Coalition is an informal coalition of residents, property owners, businessmen, volunteers, municipal officials and other individuals in the 25 communities extending from Boston to Northampton, including Sudbury, through which there is an existing railroad right of way. The coalition is working to open up this rail right of way as a linear park. Along what was once an abandoned railway, there will be bicyclists, hikers, joggers, cross-country skiers, and babies in baby carriages. The trail's users will be tourists and locals, supporting economic development in the form of trailside bed & breakfast inns, restaurants, bike shops, and similar businesses.

The East Coast Greenway Alliance [ECGA] is a non-profit organization that develops and promotes the vision for a 3,000-mile multi-use trail for biking, walking, and other active means from Calais, Maine (which also connects to a long-distance trail network in Canada) to Key West, Florida. The vision is for a route separated from motor vehicle traffic that connects major cities, small towns, and the nature around them. By

providing safe, and accessible infrastructure for everything from a local commute to a long adventure, the Greenway will foster healthy, sustainable, and prosperous communities throughout the Eastern Seaboard.

The ECGA partners with local, state, and national government agencies to promote the establishment, stewardship, and public enjoyment of a safe and accessible multi-user greenway linking cities and towns from Maine to Florida. The 7.6 mile portion of the planned route that runs through Sudbury and Hudson is a critical segment of this 3000 mile network.

The East Quabbin Land Trust [EQLT], works to stop the loss of farmland and wildlife habitat to unplanned sprawl, to foster the sustainable use of natural and historic resources for the benefit of all generations through the conservation and stewardship of the farms, woods and waters in our region of Massachusetts. Focused on the communities of Barre, Hardwick, New Braintree, North Brookfield, Oakham, Petersham, Ware and West Brookfield, the EQLT works cooperatively with property owners, government agencies, conservation groups and

other land trusts. The EQLT has permanently protected over 5,000 acres. The EQLT has purchased and opened 3 miles of former railroad corridor as part of the Mass Central Rail Trail in Hardwick and New Braintree and an additional half-mile in Ware. Currently, the organization is advancing redevelopment of another 2.3-miles of Mass Central Rail Trail in Ware and Hardwick on the former railroad corridor owned by National Grid.

The Rails to Trails Conservancy ("RTC") is a national non-profit corporation that facilitates the preservation of inactive rail corridors for trail use and other compatible uses including future public transportation uses and utility, including for possible future rail reactivation ("railbanking") and for other compatible interim public uses, including use as trails. RTC has more than 99,000 members nationwide, including 5,910 members in the Commonwealth of Massachusetts including members who both support and would use the trail at issue in this case. To carry out its mission, RTC identifies rail corridors that are not currently needed for rail transportation and facilitates their

preservation and continued public use through conversion to public trails, non-motorized transportation corridors, and other public uses, and provides technical assistance to communities across the country on rails-to-trails conversions. The Mass Central trail is the backbone of Massachusetts' state-wide network, and is also the connector that links southern New England to northern New England, making the New England Vision possible.

The Amici have worked for many years for the completion of the Mass. Central Rail Trail [MCRT]. The Mass. Central Rail Trail is a planned 104 mile rail trail to be built on the Mass. Central Railroad right of way that extends from Boston to Northampton. A 7.6 mile portion of that railroad right of way that runs through Sudbury and Hudson is the subject of this case.

In selecting the right of way along the now unused Mass. Central Railway corridor as the preferred route, the Energy Facility Siting Board [EFSB] has provided the Commonwealth with the heretofore unavailable resources to perform significant work on the rail trail.

The EFSB Findings states that the preferred route "would allow the Company [Eversource] to partner with the MBTA and DCR to develop a 7.63-mile portion of DCR's proposed MCRT, resulting in significant cost savings to DCR". [EFSB Findings, p. 156]

As will be set forth herein, after twenty years of delays caused by similar neighborhood opposition in Weston, the segment of the Mass. Central Rail Trail through Weston and Wayland was officially opened in October, 2019. <https://www.wickedlocal.com/news/20191029/rail-trail-in-weston-and-wayland-officially-open>

The Weston and Wayland portion of the proposed trail stops at Wayland Junction, waiting to be continued through Sudbury without another twenty years of neighborhood opposition. The intervenors speak on behalf of the many citizens of and visitors to the Commonwealth who are waiting for the completion of this portion of the MCRT, and on behalf of all who will be affected by the environmental benefits of not just the Sudbury portion but of the entire Mass. Central Rail Trail, of which the Sudbury portion is an essential link.

INTRODUCTION

The siting of the Eversource power lines underground along the MBTA right of way, is a sound and prudent choice, based upon the factors considered and presented in the EFSB Findings and set forth in the Appellees' brief. However the benefits to this route extend beyond those normally considered within the scope of an EFSB Findings, due to the unique and forward looking partnering of private industry and a state agency. The benefits include completing a large portion of the work needed to complete a 7.6 mile segment of the Mass. Central Rail Trail from Wayland through Sudbury to Hudson.

Siting the Eversource project along the railroad right of way provides the Massachusetts Department of Conservation and Recreation [DCR], with a partner who has an interest in doing much of the initial work to construct the trail. In order to install its underground power lines, Eversource needs to remediate much of the environmental hazards left behind on the right of way by decades of railroad travel.

Old and rotting railroad ties soaked in creosote, lead and other hazardous materials must be removed before either power lines or a bike path can be put in place upon the roadbed that has pierced through the open greenspace that all the parties are interested in protecting. The clean up of the roadbed is a burden that Eversource willingly assumes, as it is work Eversource must do anyway in the course of digging and covering the trenches where it will be laying its new power lines.

This will allow the Commonwealth to have toxic pollutants be removed from the green space at issue at no cost to the Commonwealth. In the course of digging and laying the power lines, Eversource will also be doing a major portion of the preparatory work in order to develop the bike trail. Thus for no additional cost to Eversource, the Amici and the Commonwealth will receive a significant benefit that will be lost if the petitioners/Appellants succeed in their opposition to the Preferred Route.

In fact, opposition to the rail trail is the real motive for the petitioners/Appellants' opposition to

what is the preferred route for multiple good reasons. The preferred route creates a visionary partnership that no other route can do. This recent opposition comes after years of support and cooperation from the town, documented in the EFSB Findings.¹ It catches the various parties involved by surprise, after years of support and cooperation from the town working with Eversource, with the state agencies involved both in energy and the trail, and the municipalities and advocates of the MCRT.

Not only would both the Amici and the Commonwealth suffer significant economic harm, but a large number of citizens would lose the benefit of not just the 7.6 miles of the rail trail through Sudbury, but of 104 miles of uninterrupted off road trail. Additionally, a reversal of the EFSB Findings would strike a severe blow to the environment, both in and around Sudbury and much more broadly.

¹The EFSB Findings note, at 163, "Notwithstanding the stated opposition of Sudbury, Protect Sudbury, and Hudson to the Project in this proceeding, the record shows that on multiple occasions since 1997, elected officials and voters in both communities have shown support for the MCRT."

Accordingly, this Court should affirm the judgment of the Siting Board.

ARGUMENT

I. The construction of the Mass. Central Rail Trail has been deferred for decades and should not suffer from further delays when the Preferred Route will allow a significant portion of the construction to be performed at no cost to the Commonwealth.

A. This Court has long recognized the benefits to local communities in preserving abandoned rail corridors as rail trails.

In 1973 this Court wrote, in Henry Thomas Ballantine, Jr. & another v. Town of Falmouth et al., 363 Mass. 760 (1970) that it is in the public interest for the government "to purchase or take by eminent domain for conservation, recreation, public parking and public utilities purposes that portion of the railroad right of way . . . that has been abandoned for railroad purposes." In this decision, this Court acknowledged the public interest that is served by the rail to trail movement. The EFSB is consistent with the precedent that this Court established in that landmark case.

B. The opposition to the Mass. Central Rail Trail, like past opposition to the rail trail, could cause decades more of undue and costly delay.

Twenty three years ago, the vision for the Mass. Central Rail Trail was set forth by Acting Governor Jane Swift in **Commonwealth Connections, A Greenway Vision for Massachusetts**, <https://www.mass.gov/doc/commonwealth-connections-report/download>, a report promoting the development of greenway rail trails throughout the state. The report specifically referred to an east-west rail trail, stating "Over the past several years, there have been a wide range of local and regional efforts to create a cross-state multi-use trail along the Central Massachusetts rail line reaching from Boston to the Connecticut River Valley and perhaps, beyond." [id. p.8]

The report proposed to "[c]reate a Cross-State Trail Partnership to coordinate activities of key groups, to explore opportunities for trail connections from Boston to the Berkshires and to develop a strategy for completing and maintaining the trail." [Id, at p. 9](#)

In the late 1990s there were ten rail trails in the in Massachusetts. These included the Minuteman Bikeway from Arlington to Bedford, the Cape Cod Rail Trail, and the Norwottuck Rail Trail from Amherst to Northampton."

Pamela Fox, "Weston Derails the Rail Trail", Weston Historical Society Bulletin, Vol. XLIX, No. 1, Spring 2018, 17, at p. 28. The Norwottuck Rail Trail would become the western end of the MCRT.²

The first seeds of the eastern side of the MCRT, to be called the Wayside Trail can be found in the 1997 Central Massachusetts Rail Trail Feasibility Study, <https://archive.org/details/centralmassachus00lewi/mod/e/2up> The proposed trail was to be called the Wayside Trail. It ran from Belmont through Waltham, Weston, Wayland, through the same portion of Sudbury in dispute in this case, to Hudson and Berlin, along the eastern end of the Mass. Central right of way.

By the spring of 1997, five of the seven towns, including Sudbury, had approved of the trail by overwhelming majorities. Fox, "Weston Derails the Rail Trail", id. p. 18. However, the town also agreed to establish a task force to address any concerns by adjacent landowners about the proposed trail. Weston

²Each of these were opposed, ultimately unsuccessfully, but the opposition always caused delays and added costs.

residents David Conna and Mary Horne described the task force to study the proposed trail in a letter to fellow trail supporters that foreshadows the present situation in Sudbury:

Originally it was envisioned that the task force would identify and address legitimate concerns related to the construction of the trail. To be sure, some important issues are being discussed and addressed. However, very early on in the process, it became clear that the task force was made up primarily of rail trail opponents who are more interested in using those issues, whether legitimate or not, to further their agenda of opposition to a trail. Unfortunately, objective evaluation of the data often does not occur. Fox, "Weston Derails the Rail Trail", at p. 19

The Weston opposition argued that the trail would bring increased traffic and congestion, negatively impacting abutting conservation land and green space, *id.*, p. 22, as the Sudbury opposition now argues in its filings.

Weston Town Meeting on December 8, 1997 reversed course and voted against the trail [Annual Report of the Town of Weston, p. 214], after a debate that was "one of the most open and contentious in the town's history". [Weston Town Crier and TAB, Dec. 11, 1997] Progress on the rail trail was derailed for over twenty years.

Now, twenty three years later, there is renewed interest and opportunity to complete the still incomplete Mass. Central Rail Trail [MCRT]. The Massachusetts Department of Transportation [MASSDot] in 2019 completed a feasibility study for the link between the eastern end of the Norwottuck Rail Trail to Hudson.

<https://www.mass.gov/mass-central-rail-trail-feasibility-study>

The segments east of Weston, in Waltham and Belmont have started or are in the design stage. The only segment remaining is the Sudbury/Hudson segment. It will be at risk should the Appellants prevail in reversing the Siting Board decision in this case.³

After the twenty year delay caused by the Weston abutters, the trail faces a new set of opponents with an old story. Appellants, also led by not-in-my-backyard

³ There do remain other gaps in the trail, primarily in the 58 mile stretch from Belchertown to Berlin, of which 30 miles are paved but the remaining pieces include several bridges that need to be repaired or replaced, the 1000 foot Clinton tunnel, and a number of missing pieces where the rights of way have been lost to abutters, but each of these "gaps" are being addressed one at a time.

abutters⁴, have arisen as a new opposition in a town that had for years supported the trail. Indeed “the record shows that on multiple occasions since 1997, elected officials and voters in both [Sudbury and Hudson] have shown support for the MCRT.” [EFCB Decision, p. 163]

Notwithstanding Sudbury’s record of support for the MCRT, in 2019, the same year that the 4.4 mile Weston Wayland portion opened, the first lawsuit was brought by the petitioners in this case, [Town of Sudbury v. Mass. Bay Transp. Auth., 2018 Mass. LCR LEXIS 214, 2018 WL 4700410 \(2018\)](#). The Land Court dismissal of that case was upheld by this Court. [Town of Sudbury v. Massachusetts Bay Transportation Authority, 485 Mass. 774 \(2020\)](#)

Just as the years of opposition and, ultimately, unsuccessful litigation by Weston delayed the completion

⁴ Four of the seven directors of Protect Sudbury, Inc. live within 1000 feet of the trail corridor and three of the seven live within 250 feet, according to the addresses they provided on the corporate filings with the Secretary of State. See Exhibit A, attached hereto.] The seventh marker is the home of an anti-trail member of the Board of Selectmen who lives next door to Director Hamilton.

of the first leg of MCRT, the next piece of the trail, from Wayland through Sudbury, the last segment needing local cooperation to complete the full 104 mile trail, appears to be the next and hopefully last road block. This is because of the reversal of the town's prior support for the MCRT. As the EFSB Findings notes, at p. 163,

As recently as December 2014, Sudbury Town Meeting voters approved Article 4, a non-binding resolution advising the Board of Selectmen to support a paved travel surface on the MCRT. These past expressions of support for the MCRT are consistent with the Company's view (shared by DCR) that the MCRT would provide important public benefits.

II. The joint venture between a utility company and a state agency can create not only the opportunity for cost savings through shared work but additional benefits, as well.

A. A successful working relationship already exists between Eversource and the DCR, the state entity that maintains the trail, as evidenced by the 2016 contribution by Eversource of much of the construction cost of building a portion of the service road/multi-use trail in Weston.

Eversource has long been using a portion of the same Mass. Central Railroad right of way in Weston, for above ground electric power lines. In 2016, seeking easier access to the power lines along the old rail bed

for its repair vehicles, Eversource filed for the required conservation permits to build a 14-foot-wide gravel access road in Weston and Wayland.

The relevant portion of the trail in Weston was then a dirt trail impassable by repair vehicles. Eversource widened and firmed the path to gain access to its lines and towers.

A year later, in January 2017, DCR announced plans to pave the 4.4 mile Weston and Wayland section of the trail. This involved paving the portion of the trail that encompassed the Eversource access road, the cost of which Eversource assumed. This beginning of a mutually beneficial public/private collaboration should be continued. It has reduced the combined cost to Weston and Wayland taxpayers by about \$2,000,000. Weston Historical Society Bulletin, Vol. XLIX, No. 1, Spring 2018, 17, 27-28.

<http://westonhistory.org/data/uploads/bulletins/2018-Spring-Bulletin.pdf>

The Appellants would have Eversource and the Commonwealth veer from the very straight path along the

Mass. Central rail right of way, to the detriment of not just the Eversource/Commonwealth public/private partnership but to the 104 mile Mass. Central Rail Trail and all of its existing and prospective users, as well.

B. The joint venture significantly shortens the timeline for completing the entire rail trail by jumpstarting the 7.6 mile portion from Wayland into Hudson through Sudbury, one of the final links to the 104 mile Mass. Central Rail Trail, as well as reduces significantly the cost of completing the Sudbury segment of the MCRT.

The EFSB has correctly found, on multiple grounds, that the preferred route is superior to either of the two alternatives. Its decision was based on the best alternative even before considering the additional benefits to the MCRT from the synergy of Eversource's work doubling as foundation for the construction of much of the Sudbury to Hudson portion of the rail trail.

Virtually all the underlying preparation work would be done by Eversource in the course of its work laying the underground power lines. This would result in estimated "cost savings to the DCR in the range of \$6 to \$10 million". [EFSB Findings, p. 160]

III. The completion of this link to the 104 mile Mass. Central Rail Trail will provide substantial benefits to

the entire Commonwealth, far outweighing the claimed objections of the Appellants.

A. The MCRT, which cannot be completed without the Sudbury/Hudson link, will be the main artery that connects a growing system of statewide and regional greenways.

The EFSB, at p. 163 of its decision, notes that "development of a multi-use rail trail along the MBTA ROW [right of way] would provide the missing link in the regional MCRT, from downtown Sudbury to the Assabet River Rail Trail in Hudson, and the Bruce Freeman Rail Trail between Lowell and Sudbury." [EFSB Findings, 163] This is only part of a growing network of bicycle trails that will be connected through the MCRT, providing a multitude of benefits, not just in transportation and recreation, but to the environment, to local and state economies, public safety and otherwise.

The Assabet River Rail Trail and the Bruce Freeman Rail Trail are but two of fourteen (14) Massachusetts greenways, including rail trails, the state presently planned to connect to the MCRT, [see Affidavit of David Loutzenheiser, Ex. B, hereto] as it becomes the central

trunk for the rail trail network envisioned by the DEM.⁵

[Commonwealth Connections, A Greenway Vision for Massachusetts, <https://www.mass.gov/doc/commonwealth-connections-report/download>]

B. The Mass. Central Rail Trail also provides a critical link for the East Coast Greenway, an interstate greenway, which will run from Maine to Florida, in part along the Mass. Central Rail Trail in Sudbury and Hudson.

The East Coast Greenway [ECG], is a planned and partially completed off road bicycle and pedestrian route stretching 3,000 miles from Maine to Florida.

<https://www.greenway.org/about/the-east-coast-greenway>, website of the East Coast Greenway Alliance, [ECGA] It is a bicyclist's equivalent to what the Appalachian trail is to a hiker or US Route 1 is to a motorist. [Exhibit C, hereto, Affidavit of Kristin Keeney, New England Coordinator of the ECGA] In the thirty years since the vision for the greenway was born, large parts of the Greenway have been pieced together from existing or newly built greenway trails.

⁵ The Department of Environmental Management, DEM, is now the DCR, the Department of Conservation and Recreation.

The ECG route has changed over time as new bicycle trails are built, often converted former rail lines, such as the MCRT, which provides a significant segment of the ECG through Massachusetts. This part of the ECG, running from Boston past Hudson, includes the 7.6 mile section through Sudbury. The ECGA plans [Exhibit D] show the route continuing straight through Sudbury, along the MCRT. [Keeney Aff., Ex. C] The ECG awaits the approval and buildout of the extension of the MCRT through Sudbury not just so it can update the on-line mapping tool [Keeney Aff.], but to add another piece to the Greenway.

As with the Mass. Central Rail Trail, the biggest problem in getting the greenways completed is the initial neighborhood opposition based on perceived misconceptions about trail impacts, opposition that invariably disappears once the greenway has opened. [See Rail trail reality: 'It's perception', Salem News, May 14, 2017.

https://www.salemnews.com/news/local_news/rail-trail-reality-its-perception/article 03bda08d-4b23-5ed4-8238-f8f016bf774a.html

IV. There are many benefits of greenways trails beyond green transportation and recreation, ranging from combatting climate change by decreasing carbon emissions to increased tourism and economic development in the communities through which the greenways pass.

The interrelationship between the dual crises of adequate energy supplies and addressing global climate change call for the creative implementation of bold new ideas. Today is an important time for both utility transmission projects and rail trails, as both are increasingly needed to achieve similar benefits.

Many of these benefits come from dramatically reducing carbon emissions, something that can only be accomplished by the shared venture that the appellants' efforts would undermine block. Among the benefits are (1) providing zero-emission/carbon offsetting transportation alternatives; (2) increased public welfare and improved public health and safety that come from reduced motor vehicle traffic; (3) greater infrastructure reliability; (4) a healthier and more sustainable transportation infrastructure, (5) reduced use of fossil fuels and increasing reliance on renewable energy; and (5) more prosperous state and local

economies with flourishing business activity that grow from the redevelopment of former railways into greenway trails. (see, e.g. The Economic Impact of the Erie Canalway Trail, https://ptny.org/application/files/2714/4604/5359/Economic_Impact_of_the_Erie_Canalway_Trail_Full_Document.pdf

V. Where the town of Sudbury was one of the many parties collaborating on the Mass. Central Rail Trail for many years, the many other members of the coalition committed to the trail have reasonably relied on the words and deeds of the Town of Sudbury and as a matter of equity are entitled to rely on the past conduct of the town.

In the spring of 1997, Sudbury voted its support by an “overwhelming majority” for the Wayside Trail, which was then to be the eastern anchor of the MCRT. Fox, “Weston Derails the Rail Trail”, *id.* p. 18. From then until 2017, when the Appellees brought their first, losing litigation, in *Town of Sudbury v. MBTA*, *id.*, the Town of Sudbury supported the MCRT.

More than just supporting the MRCT, the Town of Sudbury has worked hand in hand with the many members of the coalition that have come together around the vision

of a rail trail from Boston to Northampton that would be the spine of a network of rail trails across the Commonwealth. This has included, in addition to the amici, twenty three other municipalities through which the MBTA corridor runs, community groups supporting the rail trail in these municipalities, and various state agencies from the time Acting Governor Swift spoke of "green corridors" and "bikeways that link one town to the next" in in Commonwealth Connections, A Greenway Vision for Massachusetts, *ibid.* at 2.

The Town of Sudbury continued its support for the MCRT for seventeen years, with another town meeting vote in favor of the MCRT in December 2014. EFSB,163. Evidence of Sudbury's support is further found in emails between the Town of Sudbury and NStar/Eversource coordinating the very partnership the Appellants now seek to derail, posted on the website of Appellant Protect Sudbury. As Sudbury's Director of Planning and Community Development, Jody Kablack, wrote in an April 9, 2015 email, they

understand the synergy between NStar's project and several Town and State priorities. NStar could be

the catalyst to link energy independence, the State's Bicycle Planning priorities, alternative transportation modes, Green Communities (NStar mentioned this, so I will too), the Assabet River Rail Trail and the Mass Central Rail Trail. If the NStar project is not chosen, we may be doing this on our own. <http://www.protectsudbury.org/wp-content/uploads/2018/03/Town-of-Sudbury-FOIA-emails.pdf>

Sudbury should not be permitted to change its mind and "withdraw", requiring the 104 mile rail trail to abruptly stop at its borders and force bicyclists, pedestrians and other travelers to find where to resume their trip on the other side of the town. That is grossly unreasonable but it is what will result if the EFSB Findings are reversed.

CONCLUSION

The public/private collaboration between Eversource and the Commonwealth in locating the utility's transmission line on an existing linear transportation corridor will lead not only to significant cost savings for the Commonwealth, through shared work, but many additional benefits, as well. For this and the other reasons set forth above, and in

shared work, but many additional benefits, as well. For this and the other reasons set forth above, and in elsewhere in the record, this Court should affirm the decision of the EFSB.

Respectfully submitted,
Massbike
Mass. Central Rail Trail Coalition
The East Coast Greenway Alliance
The East Quabbin Land Trust
Rail to Trails Conservancy

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CERTIFICATE OF SERVICE

I, Andrew M. Fischer, certify under the penalties of perjury that on February , 2021 a copy of the foregoing document was filed electronically through the efileMA system for electronic service to the following registered users:

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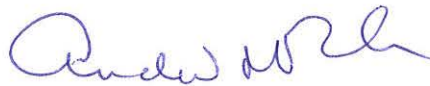
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February 3, 2021

CERTIFICATE OF COMPLIANCE

I, Andrew M. Fischer, hereby certify pursuant to Mass. R. App. P. 17 that this brief complies with the rules of court that pertain to the filing of amicus briefs. In compliance with Rules 20(a)(3)(E) and 20(a)(4), the brief uses a 12-point monospaced font (Courier New), 1-inch top and bottom margins, and 1.5-inch left and right margins. The brief contains fewer than 35 pages of countable material.

A handwritten signature in blue ink, appearing to read "Andrew M. Fischer", written over a horizontal line.

Andrew M. Fischer

EXHIBIT A



William Francis Galvin
Secretary of the Commonwealth of Massachusetts

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Corporations Division

Business Entity Summary

ID Number: 001212767

[Request certificate](#)[New search](#)

Summary for: PROTECT SUDBURY, INC.

| | | | |
|---|-------------------------|---|---------------------|
| The exact name of the Nonprofit Corporation: PROTECT SUDBURY, INC. | | | |
| Entity type: Nonprofit Corporation | | | |
| Identification Number: 001212767 | | | |
| Date of Organization in Massachusetts: 03-04-2016 | | | |
| Last date certain: | | | |
| Current Fiscal Month/Day: 12/31 | | | |
| The location of the Principal Office in Massachusetts: | | | |
| Address: 79 ROBERT BEST ROAD | | | |
| City or town, State, Zip code, Country: SUDBURY, MA 01776 USA | | | |
| The name and address of the Resident Agent: | | | |
| Name: CHRISTOPHER P. HAMILTON, ESQ. | | | |
| Address: HAMILTON & HAMILTON, P.C. 393 TOTTEN POND ROAD, 4TH FLOOR | | | |
| City or town, State, Zip code, Country: WALTHAM, MA 02451 USA | | | |
| The Officers and Directors of the Corporation: | | | |
| Title | Individual Name | Address | Term expires |
| PRESIDENT | RAYMOND PHILLIPS | 40 WHISPERING PINE ROAD SUDBURY, MA 01776 USA | upon vote |
| TREASURER | M. TRACY BILLIG | 79 ROBERT BEST ROAD SUDBURY, MA 01776 USA | upon vote |
| CLERK | MELISSA GOUGH | 16 WILDWOOD LANE SUDBURY, MA 01776 USA | upon vote |
| DIRECTOR | H. REBECCA CUTTING | 381 MAYNARD ROAD SUDBURY, MA 01776 USA | upon vote |
| DIRECTOR | RENATA AYLWARD | 265 DUTTON ROAD SUDBURY, MA 01776 USA | upon vote |
| DIRECTOR | RAYMOND PHILLIPS | 40 WHISPERING PINE ROAD SUDBURY, MA 01776 USA | upon vote |
| DIRECTOR | JAMES W. GISH | 35 ROLLING LANE SUDBURY, MA 01776 USA | upon vote |
| DIRECTOR | CHRISTOPHER P. HAMILTON | 36 JARMAN ROAD SUDBURY, MA 01776 USA | upon vote |
| Consent Confidential Data Merger Allowed Manufacturing | | | |
| View filings for this business entity: | | | |
| <div>ALL FILINGS Annual Report Application For Revival Articles of Amendment Articles of Consolidation - Foreign and Domestic</div> | | | |
| View filings | | | |
| Comments or notes associated with this business entity: | | | |
| <div></div> | | | |

[New search](#)

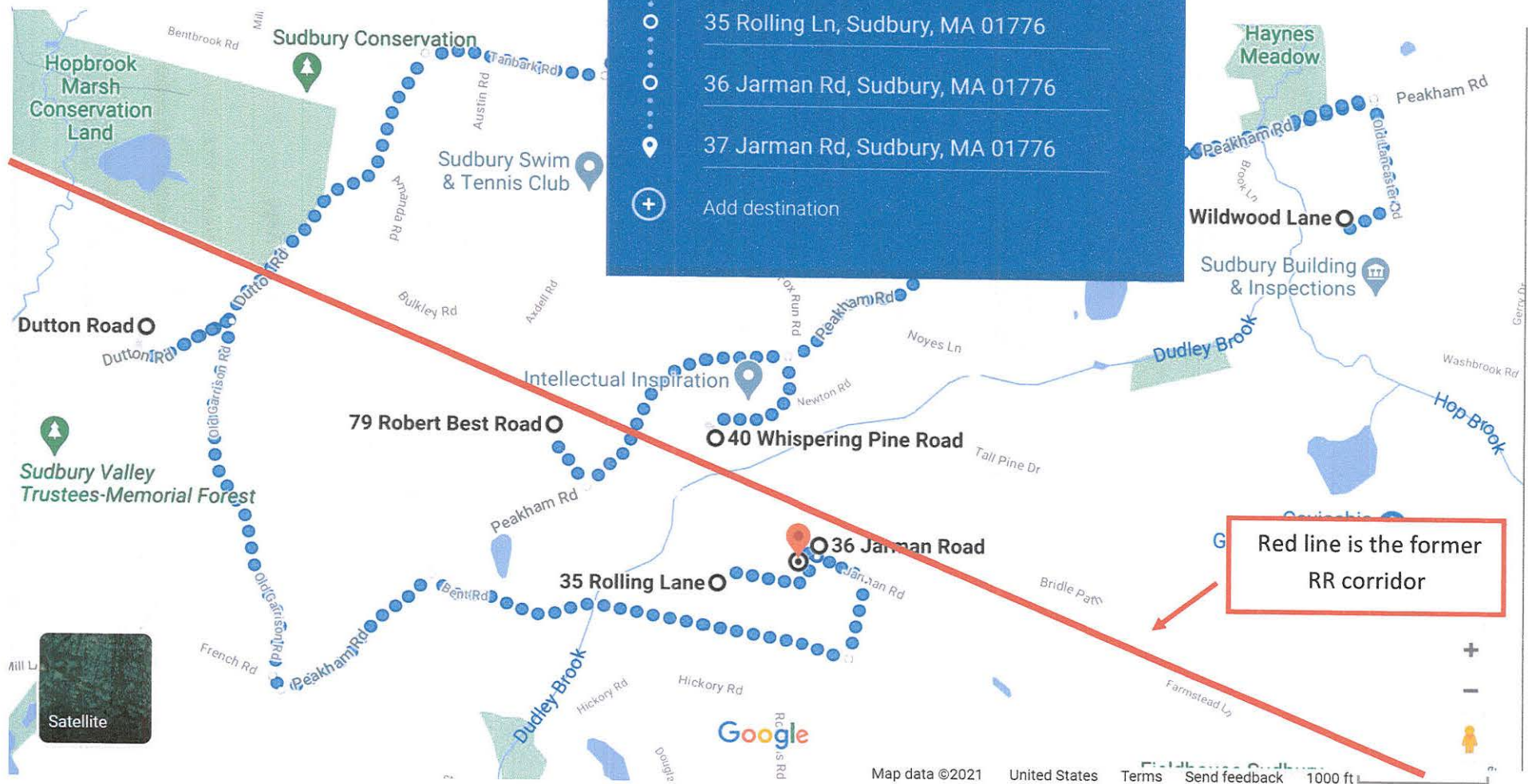
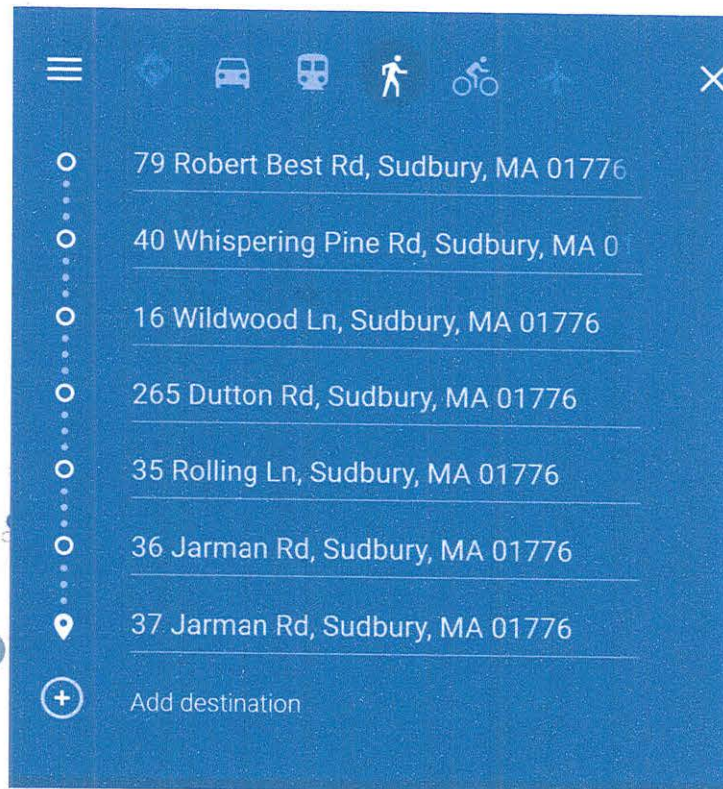


EXHIBIT B

Affidavit of David Loutzenheiser

I, David Loutzenheiser, do hereby affirm and attest as follows:

1. My name is David Loutzenheiser and I graduated from the University of California at Berkeley, School of Engineering.
2. I have been employed as a transportation planner for some 25 years. However, I am writing this affidavit in my individual capacity and not on behalf of or representing my employer.
3. Currently I am a project manager, primarily in the area of transportation. One of my duties is to track and map shared use paths as they are planned and constructed, in the course of building a greenway transportation network throughout the Commonwealth. In that capacity, I have personal knowledge of each of the facts set forth herein.
4. Planners within various state agencies, including what is now the DCR and MassDOT, have for many years been creating a coordinated system of shared use paths that would form a statewide greenway transportation network. This is documented at least as far back as the Jane Swift administration in the 1990's **Commonwealth Connections, A Greenway Vision for Massachusetts,**

<https://www.mass.gov/doc/commonwelth-connections->

report/download, a report promoting the development of greenway rail trails in the Commonwealth.

5. The Mass. Central Rail Trail, which will extend 104 miles from Boston to Northampton, will be the main trunk to which numerous other trails and greenways, many of which are converted rail trails, will connect, forming a comprehensive transportation and recreation network.
6. I have, in the course of my work, my personal interests, and otherwise, been to many of these trails. I am aware of others through bicycle maps I have assembled or worked with, plans I have participated in preparing or otherwise encountered in my work.
7. There are at least fifteen (15) existing trails that I can identify as connecting to the Mass. Central Rail Trail.

These include:

1. The Boston Harborwalk, a pedestrian path
2. The Mystic to Charles Connection in Somerville, a shared use path [SUP]
3. The Minuteman Trail at the Cambridge end [SUP]
4. The Western Greenways Trail in Waltham, pedestrian path
5. The Charles River paths [SUP]
6. Bay Circuit Trail Weston
7. The Weston Aqueduct Trail, Wayland, pedestrian path (does not directly intersect)
8. The Assabet River National Wildlife Refuge Trail Network [SUP]
9. The Bruce Freeman Rail Trail, [SUP]
10. The Assabet River Rail Trail [SUP]
11. The Midstate Trail Rutland walking
12. The Wachusett Aqueduct Trail, Berlin
13. The Chickadee Trail Belchertown Multi-use

14. The New England National Scenic Trail NET,
Belchertown, pedestrian path
15. The New Haven & Northampton Canal Greenway,
Northampton Multi-use

8. Both the Bruce Freeman Trail, whose northern end is in Lowell, and the Assabet River Rail Trail join will connect to the Mass. Central Trail along the portion of the trail that would pass through Sudbury and Hudson.

**SIGNED AND SWORN UNDER PAIN AND PENALTY OF PERJURY THIS 27 DAY
OF JANUARY, 2021.**



David Loutzenheiser

EXHIBIT C

Affidavit of Kristine Keeney

I, Kristine Keeney, do hereby affirm and attest as follows:

1. My name is Kristine Keeney and I reside in Greenwood, Maine, where I am the New England Coordinator for the East Coast Greenway Alliance. In this capacity, I have personal knowledge of each of the facts attested to herein.
2. The vision of the East Coast Greenway was formed in 1991 by a small group of bicycle advocates who imagined and envisioned a bicycle route that would run from Maine to Florida, like the Appalachian Trail for hikers or U.S. Route 1 for motorists.
3. The non-profit East Coast Greenway Alliance was established to lead and promote the development of the East Coast Greenway. It operates a website with information regarding the Greenway, its proposed route, its existing segments, and other information. The website is at www.greenway.org.
4. The website includes a map of the current travel route, at <https://map.greenway.org>. This map is interactive, showing the completed portions of the map in green and the interim on-road portions in blue.
5. The map shows a straight green line for the completed portion of the Mass. Central Rail Trail that passes through Weston and Wayland.

6. When the route reaches the Sudbury town line, the straight green line veers off into a twisting blue line, reflecting the current "official" interim on-road Greenway travel route as continuing off the Mass Central Rail Trail and onto Old Sudbury Rd., State Highway 27.
7. The Greenway is intended to be wholly on off-road multi-use trails, and thus the preferred route is to continue the Greenway further along the Mass. Central Rail Trail through Sudbury and Hudson once those segments are completed.
8. This is reflected in the internal planning map that tracks the development stages of multi-use trail projects for the purposes of completing the East Coast Greenway entirely off-road, found at
<https://niles.carto.com/builder/8594915e-2a01-46b0-ab47-1446ae44381b/embed?state=%7B%22map%22%3A%7B%22ne%22%3A%5B42.32174723665052%2C-431.75651550292974%5D%2C%22sw%22%3A%5B42.47437600081555%2C-431.341781616211%5D%2C%22center%22%3A%5B42.39810802339276%2C-431.54914855957037%5D%2C%22zoom%22%3A12%7D%7D>
9. This map is not a public-facing product, and the future off-road route of the East Coast Greenway is not reflected in

the interactive online travel route map until trail
segments are completed and open to the public.

SIGNED AND SWORN UNDER PAIN AND PENALTY OF PERJURY THIS 25th DAY
OF JANUARY, 2021.

/s/ Kristine Kenney
Kristine Kenney

EXHIBIT D

Envisioned Route

- COMPLETE
- GAP
- PLANNING
- IN PUBLIC CONTROL
- ENGINEERING/DESIGN
- CONSTRUCTION
- OFF ROAD DEFINED NOT IN PUBLIC CO...
- OTHERS

