

AMENDMENT TO SQUANNACOOK GREENWAYS / SQUANNACOOK RAIL TRAIL ENF
July 24, 2018

A site walk was held for the ENF filing for the Squannacook Rail Trail. After the walk was complete, Ms. Erin Flaherty of the MEPA office contacted Squannacook Greenways (SGI) and requested supplemental information on various topics. The topics are identified in bold text below, and Ms. Flaherty's text is included in italics. SGI's responses are provided in standard text. One additional matter not included in Ms. Flaherty's request is also discussed at the bottom of this document.

ALTERNATIVES ANALYSIS

This should include an analysis of a different trail terminus, and alternative parking options. The alternative parking options should include impacts associated within any new parking lots proposed including clearing and/or paving. Please include engineering/wildlife impacts that may have shaped the Preferred Alternative.

The amended alternatives analysis is presented in three parts.

First, additional history regarding the alternatives analysis performed with DFW prior to selection of the preferred plan is presented.

Second, DFW's comments regarding trail terminus alternatives appear to be based on a misunderstanding of SGI's requirements for using and managing the MBTA corridor under the lease, and an erroneous presumed right of public access and DFW access to and across the land leased by SGI from MBTA. A discussion of these topics is presented. These considerations will make it apparent that the trail must extend to Bertozzi. (Extension of the trail beyond Bertozzi was considered and rejected in the original filing).

Finally, alternatives for parking at the western end of the trail are presented. As will be clear from the first topic of discussion (additional history), the parking plan as presented in the original filing was not SGI's preferred alternative, but was the plan requested by DFW and was proposed to accommodate DFW's wishes. SGI will continue to be flexible in this regard in selection of the final parking alternative.

History: Mark Cram, Bruce Easton, and Cedwyn Morgan of SGI met with Pat Huckery and Jen Jones of Division of Fisheries and Wildlife (DFW) on August 7, 2016 to discuss the trail, and specifically parking arrangements at the western end of the trail. The current Bertozzi parking is an unimproved dirt lot on the north side of the rail trail corridor. There is a gate between the parking lot and the rail corridor. Users of the parking lot must cross the rail trail to gain access to most of the Bertozzi land and the Squannacook River. During the meeting, SGI presented our preferred alternative to DFW, which was to remove the gate and expand the parking area in the rail trail corridor adjacent to the gate. This alternative would minimize disturbance and expand parking to provide adequate parking for both rail trail users and Bertozzi users. DFW rejected this option. We also discussed placing parking on the rail trail corridor where it reaches Crosswinds Drive. DFW also rejected this option, because they felt that the location was too difficult to access and that rail trail users would still park at Bertozzi. DFW stated that parking spots at Bertozzi should be reserved for hunters and fishermen, and should not be usurped by rail trail users. (SGI notes that the majority of users of the parking lot under current use appear to be recreational users; principally people accessing the Squannacook River swimming hole, walkers, and partying kids.)

DFW then suggested two alternative parking areas near Shepherd's, just east of Townsend Harbor, as alternative parking locations. One of the suggested areas was not reasonably feasible due to access issues. SGI accepted the other proposed location and included it as our recommended action. So, to be clear, the option recommended in the original ENF was the option requested by DFW. Based on DFW's requests, we did not propose any parking at the east end of the trail near Bertozzi.

At no time during that site walk did DFW state that a consequence of SGI's accepting DFW's requested parking option would be that trail could not extend to Bertozzi because SGI was not constructing additional parking at Bertozzi. Had DFW correlated their requested option with a determination that the trail could not be constructed as proposed, SGI would not have proposed DFW's requested option in the original ENF. As discussed in section 3, there are numerous feasible options for parking near Bertozzi and SGI is willing to pursue any of those options.

Lease Requirements: As discussed further below, the only use permitted by SGI's lease with MBTA is construction of a public-access recreational trail. There is no other permitted use of the lease, and no public right of access, or right of access for DFW, under the lease if a recreational rail trail is not constructed. If a rail trail is constructed, there is no public or DFW right of access to leased areas that do not include a rail trail. Although DFW assumes that it and the public have a right of access across the rail corridor from the existing Bertozzi parking lot to the Bertozzi lands, that right does not exist in the absence of a public-access trail. The only access allowed under the lease without a rail trail is for emergency vehicles.

Furthermore, SGI's relies on the protection from liability provided by the Recreational Use Statute. In the absence of a recreational rail trail, there is no public access to the leased land, per the lease, and the Recreational Use Statute will not apply. Thus, the consequence of terminating the trail west of Bertozzi is that SGI will be obliged to eliminate public and DFW access from the Bertozzi parking lot to the Bertozzi lands and Squannacook River south of the trail, both to comply with the lease and to protect SGI from liability. This is not a desirable outcome.

The following paragraphs discuss these issues in greater detail, and have been reviewed by an attorney acting on behalf of SGI:

In order to discuss alternative parking arrangements, it is necessary to have a full understanding of the legal and liability implications of where the Squannacook River Rail Trail begins and ends. The MBTA rail bed was not open to the public prior to Squannacook Greenways signing the MBTA lease in March of 2015. Clear physical evidence of this policy can be seen in the sign the MBTA left behind in August of 2008, after it replaced a culvert behind Harbor Village in Townsend, which reads: "No Parking/No Trespassing/No Dumping/Per MBTA Police." An image of this sign can be found on our website at <http://sqgw.org/status.html#a20080820>.

With the signing of the MBTA lease, however, Squannacook Greenways was authorized to build a publicly-accessible rail trail. However, nowhere in the lease does the MBTA indicate that sections of the former rail bed where there is no rail trail will be publicly accessible. In fact, paragraph 2 of the lease provides "LESSEE shall...designate a contiguous corridor (the "Corridor" or "ATC") within which the uses permitted hereby shall be located." Furthermore, paragraph 3(b) states "The remainder of the Premises shall be further be used solely by the LESSEE exclusively to access, construct and maintain the Corridor..." The lease clearly states that there are no rights given to Squannacook Greenways that are not specifically described in the lease. The full text of the lease can be found at <http://sqgw.org/pdf/MBTALease2015.pdf>.

In addition, the MBTA lease requires Squannacook Greenways to maintain a set level of liability insurance. Squannacook Greenways is paying approximately \$1500/year to maintain this requirement. This price is sustainable only because the Recreational Use Statute protects Squannacook Greenways when we are providing "lawful public access". The only places we can provide lawful public access is where a rail trail exists, and so for both legal and liability reasons, Squannacook Greenways' policy is that sections of the rail bed beyond where rail trail can be built will not be open to the public.

Parking Alternatives Near Bertozzi: The following options have been identified:

1. No action. No construction will be performed by SGI near Bertozzi and the public will either park elsewhere (e.g. proposed parking area at Shepherds), or use Crosswinds Drive and the Bertozzi lot. A parking area already exists at this location but will be improved. This option would have

minimal disruption or wildlife impacts due to the existence of the existing parking and proximity to Route 119.

2. Remove gate separating Bertozzi lot and rail corridor, and expand parking in corridor adjacent to gate. The gate would be relocated to the south side of the rail corridor. This option is the simplest and lowest-impact way to expand parking. No additional access road would be needed, and this area is already degraded by the existing parking lot. Because of the presence of the existing lot, incremental wildlife impacts should be limited. This remains the preferred alternative.
3. Construct parking along the rail corridor with access from Crosswinds Drive. This would involve greater disruption of vegetation and create a new area of disturbance, potentially resulting in more impacts on wildlife.
4. The Town of Groton has obtained an easement that extends from Townsend Road to the rail corridor just east of the existing Bertozzi parking area. An access road could be constructed on this easement, with parking constructed on the rail corridor where the easement joins the corridor. This would also result in increased disruption due to the construction of a new access road. The parking would be close to the Bertozzi lot, but there would be additional disruption along the corridor and potentially greater impacts on wildlife.
5. Delayed action. The decision on where and whether to construct parking near Bertozzi could be set aside until after the trail is constructed and the demand for parking associated with rail trail use can be empirically evaluated.

SGL is willing to explore any of these options with DFW.

WETLANDS IMPACTS

The supplemental information should include an overview of potential wetlands impacts associated with the repair/replacements of culverts along the rail trail. Please take a look at our threshold at 301 CMR 11.03(3)(a) and (b) to see if there is potential for such impacts to exceed the thresholds. Please identify if any permits from MassDEP or the Army Corp of Engineers may be needed. Please include information on the timeline of the replacements

There is one stone box culvert along the trail that requires maintenance/repair. This culvert is located just west of Meetinghouse Road in Townsend and is original to the rail bed construction. The culvert extends a short distance out from the banks of the rail bed on either side of the trail. The lintel or "roof" stone on the culvert extension on the south side of the trail has fallen in, and sediment has accumulated around the stone. The stone and sediment partially block the culvert. The stone needs to be lifted and re-set or removed (the stone is not necessary for the structural integrity of the culvert), and a small amount of sediment cleaned out from the south side of the culvert. The stone work would be done by reaching down from the rail bed with an excavator. Sediment removal would probably be done by hand but may be assisted by the excavator. The affected area is approximately 10 square feet or less. The MEPA thresholds are not exceeded

LAND OWNERSHIP/EASEMENTS

Please clarify whether any easements/land transfers are required from MassDOT (or any other agencies) for the portion of the trail that will run along the roadway.

The trail construction will reach the roadway just east of the South Road / Rte. 110 intersection in Townsend. Users of the trail will travel the existing roadside right of way until reaching the Harbor Church parking lot on the west side of the intersection. SGL has obtained an easement from the Townsend Historical Society for trail users to return to beginning of the constructed trail on the south side of the Harbor Church parking lot. SGL does not propose any construction along the roadway between Shepherds and the Harbor Church parking lot. No easements or land transfers from any agency other than the easement already obtained from the Historical Society are needed.

ARTICLE 97

Please clarify if any of the project area is protected by Article 97 and if there is a proposed change in use how the project will comply with the EEA's Article 97 Land Disposition Policy.

None of the land is protected by Article 97.

WILDLIFE LANDS POLICY

Please include how the project will be consistent with MassWildlife's Wildlife Lands Policy (distributed at the site walk)

MassWildlife's Wildlife Lands Policy addresses land owned by DFW. The trail will be constructed entirely on land leased by SGI from MBTA. Therefore, the project is not inconsistent with the Wildlife Lands Policy. We defer to DFW to interpret the policy as it pertains to parking arrangements, if any, at or near Bertozzi, as discussed above.

ADDITIONAL MATTER: GROTON TURTLE CONSERVATION

The ENF reported on correspondence between SGI and Groton Turtle Conservation (GTC) regarding the potential for GTC to assist in developing educational signage related to turtles. SGI has since spoken to Ms. Darcy Donald of GTC. She asked SGI to clarify that GTC does not support the project because it would potentially disrupt turtle habitat. It is our understanding that if the project is approved, GTC would be willing to serve as a resource to SGI for turtle conservation and education measures.

Submitted by Squannacook Greenways Inc.
July 24, 2018