

DRAFT 8(m) PERMIT APPLICATION (12/1/15 JMS)

Current Status of the Sudbury Aqueduct in Newton

The City of Newton has approximately 1.7 miles of the Sudbury Aqueduct running through Metropolitan Water Resources Authority (MWRA)-owned land from the Charles River to just beyond Beacon Street. The majority of the remainder of the Sudbury Aqueduct alignment (in the east side of Newton) is under private property.

Within the 1.7 miles of the contiguous, MWRA-owned alignment, are many segments, defined by street crossings. Most segments are well-used by abutters and other nearby residents for recreational walking and commuting to school and work. Other segments of MWRA-owned land are impacted by major roadways (e.g., Chestnut St. and Boylston St./Route 9) and private development and, therefore, are only used by immediate abutters, if at all. The portions of the Sudbury Aqueduct that cross private property are not used by the public at all.

Currently, all MWRA-owned segments of the Sudbury Aqueduct alignment are officially off-limits to the public. People who are aware of the MWRA alignment at its physically accessible portions, however, use them as they see fit for walking. MWRA has historically “turned a blind eye” to this use. MWRA undertakes minimal routine maintenance, such as biennial mowing and tree clearing as necessary to maintain access for MWRA vehicles. Under the current management framework, existing modes and levels of public use are tolerated by MWRA and do not require the City to expend personnel time or effort.

Newton’s Interests in an 8(m) Permit

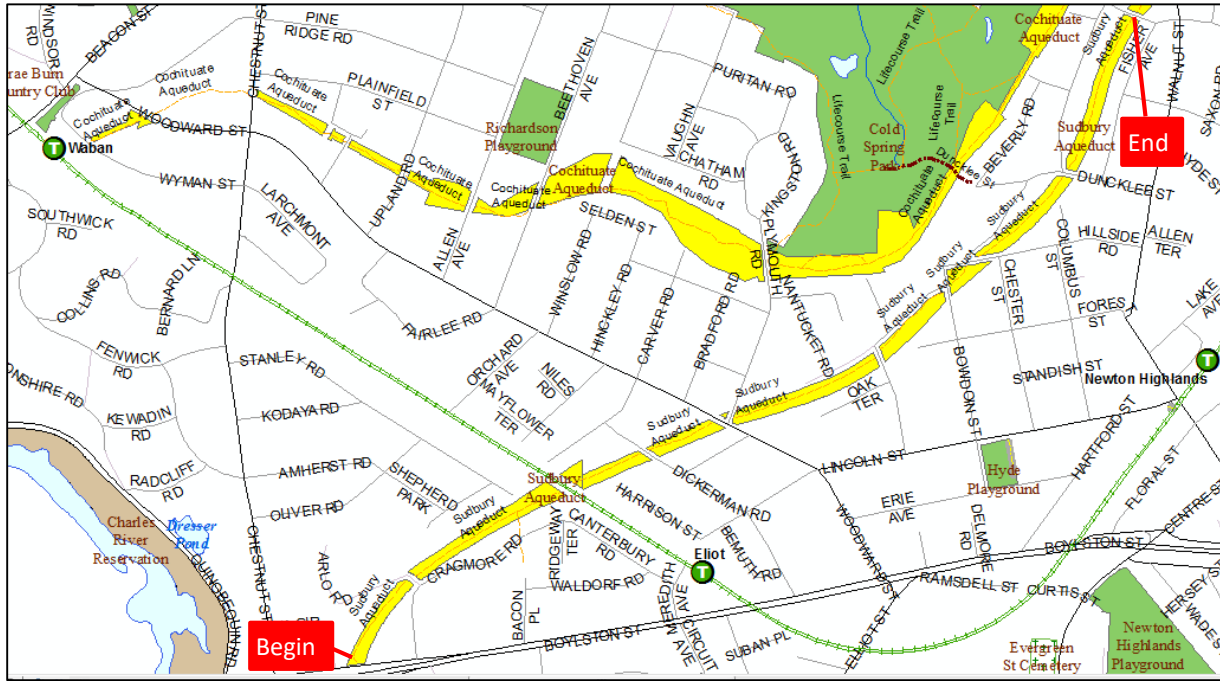
Maintaining the current management framework (and continuing to turn a blind eye to the on-going recreational and commuter pedestrian traffic) is possible.

There are two major reasons to secure an 8(m) permit. The first is to facilitate legalizing the existing patterns of use. The second is to allow for improved management of this public resource. As a Green City, Newton would like to be able to legally promote pedestrian commuting and the inter-connectivity of green corridors in the City. Newton would like to address concerns about trail safety, improve street crossings, and install signage to focus foot traffic on the appropriate portions of the MWRA alignment.

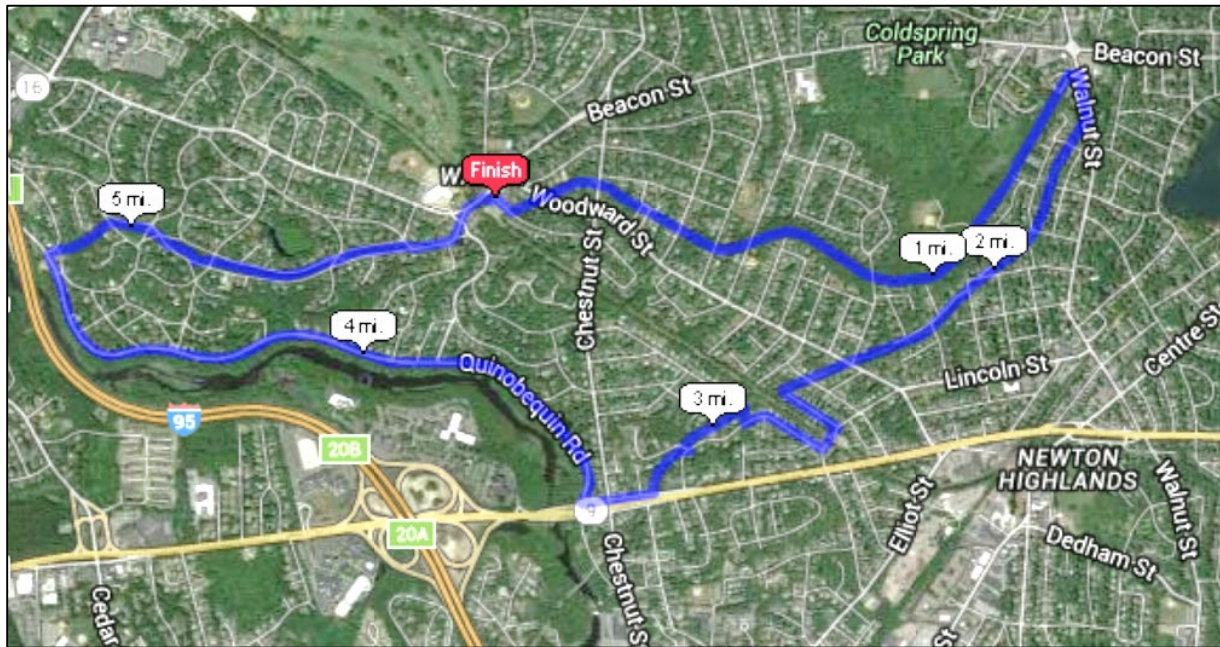
The interest in better managing a public resource is supported in the Open Space and Recreation Plan, as well as by the Bicycle and Pedestrian Committee, the Mayor, and the Newton Conservators, among others. The Open Space and Recreation Plan establishes as a goal, “To integrate compatible recreation and conservation uses.” More specifically, the Open Space and Recreation Plan’s Passive Use Action Program identifies the Aqueduct loop trail system as its second priority under Passive Use Facility Improvement and Development. This is a 6-mile mostly-off-road loop trail involving the Sudbury and Cochituate Aqueducts and the wooded trail along Quinobequin Rd. (The City purchased in 1952 the alignment of the Cochituate Aqueduct in Newton for sewer lines and is now a trail system.)

See the maps on the following page illustrating the connections the Sudbury Aqueduct provides between neighborhoods, other open space resources, and transportation corridors.

Map of the 1.2-mile stretch to be included in the 8(m) permit



Map of the 6-mile Aqueduct Loop route (courtesy of Henry Finch, 2006)



Newton's 8(m) Permit Focus

Newton would like to begin with a pilot program, officially opening only the most-used segments of the Sudbury Aqueduct under an 8(m) permit. Approximately 1.15 miles are readily accessible, are frequently used by walkers and commuters (to access the Eliot MBTA station), and have relatively safe road crossings.

The 0.21 miles of the MWRA-owned alignment from the Charles River to Boylston St./Route 9 are impacted by busy street crossings and private development. The 0.28 miles of the MWRA-owned stretch from Kingman Rd. to Hancock Ave. are impacted by a retaining wall, private usage, and busy street crossings.

For these reasons, the City of Newton is proposing that the MWRA provide an 8(m) permit officially allowing pedestrian and bicycle access to the 1.2-mile stretch of the Sudbury Aqueduct that runs from the Boylston St./Route 9 access ramp for Chestnut St. (to the south and west) to Kingman Rd. (to the north and east). This will legalize existing use and facilitate access to the Eliot MBTA station.

Newton's Use Plan

The 1.2-mile Sudbury Aqueduct trail from the Boylston St./Route 9 access ramp for Chestnut St. to Kingman Rd. exists already and is intended to be used under the 8(m) permit as follows:

- Only from dawn to dusk;
- Only for low-impact activities such as walking, jogging, bicycling, cross-country skiing, and snowshoeing; and
- Only leashed dogs; all pet waste must be carried and properly disposed of off-site.

All high-impact uses, such as the use of motorized vehicles, off-leash dog walking, picnicking, littering, or damaging MWRA property in any way, shall be construed as illegal trespass and shall be subject to enforcement actions and/or fines under _____

The 1.2-mile Sudbury Aqueduct trail shall be posted with signs (summarizing allowed and prohibited uses) and wayfinding medallions, as appropriate.

It is anticipated that there will be limited if any increase in use as a result of securing an 8(m) permit.

Newton's Maintenance and Management Plan

1.2-mile Sudbury Aqueduct trail will be kept in its current condition.

- The well-established footpath is already appropriately centered in the MWRA-owned parcels.
- Police and Fire will respond to 911 calls (as they would under current management).
- MWRA will continue to mow as it does, roughly twice per year.
- The Newton Conservation Office shall conduct biennial inspections and communicate all concerns to relevant parties, including but not limited to: MWRA, Newton Police, abutters, etc.

Minor improvements to this 1.2-mile trail will be undertaken shortly after the 8(m) permit is secured.

- The MWRA will install handicapped accessible gates if/as necessary to facilitate pedestrian access and preclude illegal vehicular access.
- The Bicycle Advisory Committee (BAC) of the Newton Transportation Advisory Group will

undertake improvements to the aqueduct crossing between the end of Stanley Rd and Canterbury Rd.

- The Metropolitan Area Planning Council (MAPC) and the Newton Conservation Office will provide wayfinding medallions to be hung along the established foot path.
- The Newton Conservation Commission will install signs summarizing allowed and prohibited uses.

Any other proposed improvements to MWRA-owned portions of the Sudbury Aqueduct alignment shall be reviewed by the Newton Planning Department, and presented to the MWRA for review and approval.

If litter, dog waste, or other nuisances become a problem, the City may choose to:

- Engage volunteers in clean-up efforts;
- Employ city staff for clean-up efforts;
- Install trash receptacles for city collection; or
- Close the Sudbury Aqueduct to public access.

Newton's Access Plan

The street-crossing access points for this well-used 1.2-mile stretch the Sudbury Aqueduct trail in Newton are already and shall continue to be well-established.

Access points from the south and west (0.3 miles to the MBTA Green Line)

- Boylston St./Route 9 ramp to Chestnut St.
- Arlo Rd.
- Dead-end of Stanley Rd. and trail off Canterbury Rd.

Access points from the MBTA Green Line to the north and east (0.85 miles to Kingman Rd.)

- Dickerman Rd.
- Woodward St.
- Mountford Rd.
- Bowdoin St. / Wood End Rd.
- Hillside Rd.
- Duncklee St.
- Kingman Rd.

Any other access points are prohibited and shall be discouraged.

Newton's Safety and Emergency Response Plan

Only 1.2 miles of the Sudbury Aqueduct trail in Newton are proposed to be legalized for pedestrian and bicycle traffic under this 8(m) permit. Every street crossing (listed above) currently allows access for emergency personnel, if needed. Newton Police and Fire will include the identified segments of the 1.2-mile trail in their current Safety and Emergency Response Plan. Appropriate personnel from both departments will be familiarized with the trail alignment, access points, and permitted uses.

Community meetings may be held to address safety concerns associated with the trail.

DRAFT MASSACHUSETTS WATER RESOURCES AUTHORITY 8(m) PERMIT

Pursuant to Section 8(m) of Chapter 372 of the Acts of 1984, the City of Newton (hereinafter referred to as "Permittee") is hereby granted permission to use certain portions of land in the City of Newton that are presently under the care, custody, and control of the Massachusetts Water Resources Authority ("MWRA" or the "Authority") for the purpose set forth below.

The land is described as follows:

Those portions of the Sudbury Aqueduct located within the City of Newton, Massachusetts shown in yellow on plans (____) entitled "____ – 8(m) Permit No. ____", attached hereto and incorporated herein (hereinafter referred to as the "Permitted Property" or "Premises").

Permittee may use the land for the purpose of:

- Establishing, operating and maintaining a passive-use trail.

TERMS AND CONDITIONS

Rights of MWRA

- 1) Permittee's use of the Permitted Property shall at no time interfere with the Authority's activities or operations on the Permitted Property or on the adjacent property under the Authority's care, custody, and control.
- 2) Any proposed work beyond the scope of this Permit must have the prior written approval of the Authority. The Permittee must submit plans and specifications in advance of any planned improvements to the Permitted Property to the Authority for review and approval.
- 3) To the extent permitted by law, the Permittee and its consultants, employees, contractors, agents, invitees, successors and assigns shall indemnify, hold harmless and defend the Authority and its directors, employees, agents, successors and assigns from all damages and/or claims arising from the acts or omissions of the Permittee on the Permitted Property or of anyone acting by or through the Permittee. The Permittee's obligations under this paragraph shall include payment to the Authority of all costs to repair all such damage caused to the Authority's property.
- 4) The granting of this permit shall in no way interfere with the rights of the Authority to exercise its existing rights in or over the Permitted Property. Permittee acknowledges that the Authority may enter upon the location at any time in order to carry out the inspection, maintenance, repair, and replacement of its property.
- 5) The Authority may revoke this permit at any time. This permit may not be assigned or transferred.
- 6) No blasting, drilling or other activity that could in any way affect the integrity or operability of the Authority's property or use of the Permitted Property shall be permitted without express prior written approval of the Authority.
- 7) The Authority does not warrant that title to the Permitted Property is held by the Authority or the Commonwealth of Massachusetts and does not warrant or represent that this permit will be recognized by third parties as effective to grant the rights intended by the Authority.
- 8) By the grant of this permit the Authority does not warrant that Permittee will have exclusive and uninterrupted use of the Permitted Property to the Permittee. Permittee acknowledges that the Authority may not be granting all rights of access or use of the Permitted Property necessary for the implementation of the Permittee's intended use, that other persons or entities may hold or claim interests in portions of the property covered by this permit, and that the Authority may not have the ability, or authority, to grant such rights throughout the entirety of the property. The Authority shall

notify the Permittee in writing of any such interest, or claim of such interest, by other persons or entities of which the Authority is aware, or becomes aware, during the term of this permit and the Permittee shall notify the Authority in writing of any such interest, or claim of such interest, by other persons or entities of which the Permittee is aware, or becomes aware, during the term of this permit.

- 9) The Authority shall not be responsible for curing or removing any encroachments upon the Permitted Property which may interfere with Permittee's use. The Authority shall also not be responsible for litigating or otherwise resolving any adverse claims regarding rights to the Permitted Property whether or not such adverse rights interfere with the Permittee's proposed use.
- 10) If, at any time that this permit is in effect, the Authority decides to surplus its care, custody, and control of the Permitted Property and the property rights associated with it, this permit will immediately terminate and notice of such termination will be given to Permittee. Permittee agrees that such determination to surplus the property is in the sole discretion of the Authority.
- 11) The Authority and Permittee shall be independently responsible for undertaking response actions for the remediation of oil and/or hazardous materials, in accordance with G.L. c. 21E, which are the direct and sole result of their own activities, respectively, on the Permitted Property. As between the Authority and Permittee, neither shall be responsible for indemnifying the other or for undertaking such response actions which result from incidents or releases for which the other is deemed to be responsible or which: (i) result from the presence of oil and/or hazardous materials that existed on the Permitted Property prior to the Authority's and Permittee's, respectively, having acquired any rights to occupy any part of the Permitted Property, (ii) result from the activities of third parties, or (iii) result from the migration of oil or hazardous material onto the Permitted Property from any abutting property.
- 12) The Authority may close the Permitted Property to the public at any time for emergency maintenance or repairs or in response to a water infrastructure security threat.
- 13) The Authority may also temporarily close the Permitted Property, or portions thereof, to safely perform necessary maintenance activities. If such temporary closures are necessary, the Authority will provide advance notice to the Permittee.
- 14) This permit supersedes any other previous documents between the Authority and the Permittee that pertain to the use of the Permitted Property.
- 15) The Authority will not be responsible for any mitigation of impacts of the trail system to abutting property.

Responsibilities of MWRA

- 16) Should it be determined that legislation is required for the implementation and/or continuation of the Permittee's proposed use of the Permitted Property, the Authority shall cooperate with any effort to obtain such legislation but neither the Authority nor the Commonwealth of Massachusetts can guarantee that such legislation can be obtained.
- 17) The Authority and Permittee shall be independently responsible for undertaking response actions for the remediation of oil and/or hazardous materials, in accordance with G.L. c. 21E, which are the direct and sole result of their own activities, respectively, on the Permitted Property. As between the Authority and Permittee, neither shall be responsible for indemnifying the other or for undertaking such response actions which result from incidents or releases for which the other is deemed to be responsible or which: (i) result from the presence of oil and/or hazardous materials that existed on the Permitted Property prior to the Authority's and Permittee's, respectively, having acquired any rights to occupy any part of the Permitted Property, (ii) result from the activities of third parties, or (iii) result from the migration of oil or hazardous material onto the Permitted Property from any abutting property.

- 18) The Authority plans to maintain the Permitted Property in a similar manner as it does upon the date of the granting of this 8(m) Permit. To the extent that the Permittee desires any additional maintenance the Permittee may conduct said additional maintenance subject to the approval of the Authority and shall be solely responsible for that additional maintenance of the Premises at no cost to the Authority.
- 19) **New.** The Authority shall install ADA compliant pedestrian access gates at all road crossings as necessary to facilitate low-impact access and preclude vehicular access.

Rights of Newton

- 20) Permittee may take any actions reasonable and necessary for the development and operation of the passive recreational trail system permitted hereunder and the mitigation of the impacts of such trail system on abutting property. The Authority will not be responsible for any mitigation of impacts of the trail system to abutting property.
- 21) No recreational motor vehicles, bicycles or mountain bikes shall be allowed on the Permitted Property. The Permittee, in conjunction with local police, shall be responsible for the enforcement of this restriction.
- 22) Permittee shall maintain signs along the trail at regularly spaced intervals which indicate that the trail users must remain on the trail and the uses allowed on the Permitted Property. Permittee shall submit drafts of the signs to the Authority for approval prior to posting.
- 23) **New-ish.** Permittee shall install:
 - a) Historic signs (if/as provided by MWRA)
 - b) way-finding medallions (provided by MAPC) and
 - c) use regulation signs (provided by the Newton Conservation Commission) which indicate that the trail users must remain on the trail and the uses allowed on the Permitted Property. Permittee shall submit drafts of the signs to the Authority for approval prior to posting.
- 24) Permittee may form a citizen's advisory group to monitor, support and provide information to the general public on the rules, regulations and location of the trail, subject to the terms of this permit.

Responsibilities of Newton

- 25) The Permittee shall remove, at its own expense, within three (3) months of the date of written notice from the Authority, any or all signs, structures and appurtenances installed by the Permittee on the Permitted Property under this permit if, in the Authority's sole discretion, such removal is necessary for the operation, maintenance or replacement of the Authority's infrastructure.
- 26) The Permittee recognizes and acknowledges the applicability of M.G.L. Chapter 21 Section 17C to Permittee's use of the Permitted Property allowed hereunder. The Permittee shall not charge any fee or accept any compensation or consideration for the use of the Permitted Property by any member of the public, shall not engage in any conduct, nor maintain any condition upon the Permitted Property which could be deemed to constitute willful, wanton or reckless conduct under Section 17C of M.G.L. Chapter 21 and shall otherwise conduct itself and its agents, employees, contractors, and invitees in a manner that will preserve the Authority's, and the Commonwealth of Massachusetts' immunity from liability to those coming onto the Permitted Property.
- 27) In consideration of the issuance of this permit, Permittee releases the Authority and its directors, employees, agents, and the Commonwealth of Massachusetts from any and all claims, suits, and causes of actions of any kind or description arising out of or related to any work or activity under this permit, including without limitation those for loss, damage or destruction of property, for personal injury or death of any consultant, contractor, employee, agent or invitee of either Permittee or any entity acting by or through it hereunder, and from any and all damages arising out

of any such claims including any direct, indirect or consequential damages, economic loss or loss of profits, together with all attorneys' fees and any related costs and expenses.

- 28) The Authority and Permittee shall be independently responsible for undertaking response actions for the remediation of oil and/or hazardous materials, in accordance with G.L. c. 21E, which are the direct and sole result of their own activities, respectively, on the Permitted Property. As between the Authority and Permittee, neither shall be responsible for indemnifying the other or for undertaking such response actions which result from incidents or releases for which the other is deemed to be responsible or which: (i) result from the presence of oil and/or hazardous materials that existed on the Permitted Property prior to the Authority's and Permittee's, respectively, having acquired any rights to occupy any part of the Permitted Property, (ii) result from the activities of third parties, or (iii) result from the migration of oil or hazardous material onto the Permitted Property from any abutting property.
- 29) Permittee shall develop a Safety and Emergency Response Plan in conjunction with the Southborough Police, Fire and Emergency Services Departments.
- 30) Permittee shall be responsible for monitoring and managing the control of litter, including dog waste on the Permitted Property. Permittee shall institute a "Carry In/Carry Out" policy and monitor compliance with such regulation. Should the "Carry-In/Carry Out" not be successful, the Permittee, with the approval of the Authority, shall install trash receptacles and establish a dog waste program, including the installation of mutt mitt dispensers and trash receptacles at approved locations. Should trash receptacles be installed, Permittee shall empty the receptacles on a regular basis.
- 31) No motor vehicles shall be allowed on the Permitted Property. The Permittee, in conjunction with local police, shall be responsible for the enforcement of this restriction.
- 32) Permittee shall give the Authority thirty (30) days of notice prior to commencing operations pursuant to this permit.
- 33) All work allowed by this permit shall be limited to surface work intended to operate a passive recreational trail while protecting the subsurface infrastructure operated by the Authority. Permittee will monitor the use of the Permitted Property and take measures to prevent any negative impacts including, but not limited to, the erosion of soils.
- 34) Permittee shall be responsible for any street crossing enhancements deemed necessary by local, state, and federal authorities, including but not limited to the striping of crosswalks and signage in order to insure the safety of the users of the trail and the general public.