

Kris Pastoriza, comment March 22, 2017
Questions sent to DES regarding their permit for NPT:

Kris: "NPT/DES permit states "No excavation shall be done in flowing water." How would NPT then trench through the many smaller streams and groundwater (which flows) on the proposed burial route?"

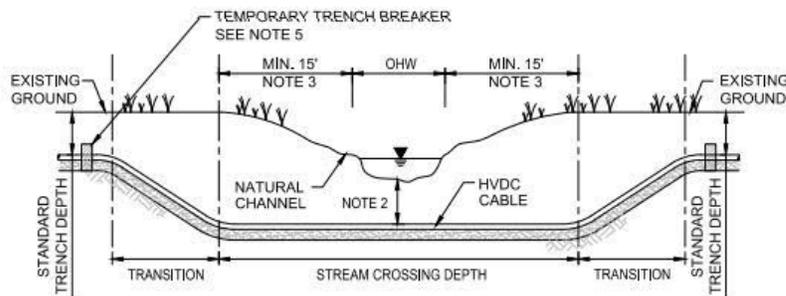
Rene: "This activity would be done either with cofferdams and flume bypass methods, or by directional boring underground so that no impacts occur within the bed or banks."

Kris: "NPT has no plans to do HDD under 58 of Easton's culverts, only the larger rivers and culverts incidental to them; Unnamed at the Easton/Franconia border, Brooks Brook, Kendall Brook, Ham Branch, two unnamed, Ham Branch, Slide Brook, Unnamed, Reel Brook, Ham Branch and Swamp Brook, Black Brook, Clay Brook and Underhill Brook."

NPT provided no diagrams for flume bypasses or cofferdams. Where would I find them?

Does DES have any restrictions on bentonite or drilling additives, for protection of water supplies, like that at Wildwood?"

Kris: "Like this?"



NOTES:

1. OPEN TRENCH EXCAVATION OF PERENNIAL STREAMS SHALL BE PERFORMED AFTER ESTABLISHING APPROPRIATE ENVIRONMENTAL CONTROLS AS SPECIFIED AND/OR DIRECTED.
2. AT PERENNIAL STREAMS, CABLE SHALL BE INSTALLED NOT LESS THAN 5 FEET BELOW THE EXISTING NATURAL STREAM CHANNEL BOTTOM UNLESS OTHERWISE SPECIFIED OR DIRECTED.
3. AT PERENNIAL STREAMS, THE DEPTH OF INSTALLATION SHALL CONTINUE FOR A DISTANCE OF 15 FEET BEYOND THE EDGE OF THE ORDINARY HIGH WATER (OHW) EMBANKMENT.
4. STREAM BANKS AND BOTTOM SHALL BE RESTORED TO MATCH PRE-CONSTRUCTION CONDITION UNLESS OTHERWISE DIRECTED.
5. SEGREGATE AND STOCKPILE STREAM BED AND BANK MATERIALS SEPARATELY FROM SUBSURFACE MATERIAL SOILS. RESTORE SOIL HORIZONS TO THE EXTENT PRACTICABLE WHEN BACKFILLING DISTURBED SECTIONS OF BED AND BANK.
6. TEMPORARY TRENCH BREAKER SHALL BE INSTALLED UPGRADIENT FROM THE TRANSITION ZONE ON EACH SIDE OF THE CHANNEL AND REMOVED AS WORK PROGRESSES.

Rene: "Yes, that's a good representation of directional boring... "

Kris: "That is an open trench stream crossing, not HDD.

My question was, is that an adequate representation of how one trenches through a stream while adhering to DES conditions of not working in stream beds.

I am concerned that DES did not read the NPT DOT Permit Packages at all, or consider what was in them in your permitting decision or your permit conditions.

Did DES assess the Permit Packages and if so, in what way do the conditions DES set reflect the information presented by NPT in these Permit Packages?

Does DES have any restrictions on bentonite or other drilling slurry additives? Does DES place any conditions on work over aquifers or in groundwater protection districts, beyond basic "BMPs"?

Kris: "DOT standards for HDD referenced in their Utility Accommodation Manual state: "a predetermined disposal site for the drilling mud must be identified in the planning process or addressed through submittals."

Did DES read this manual before making their permitting decision and conditions? How could DES make a decision without knowing the recommendations for HDD?

Please provide NPT submission to DES of disposal site(s) for drilling mud."

Rene: "The DES review of the NPT application did not include reviewing any DOT manuals or standards, as our various program rules do not require the applicant to address DOT standards. We recommend you contact DOT directly regarding their review of the project and concerning any questions you have about boring or HDD techniques and standards.

In response to your question on stream crossings, DES **recommended** (my emphasis) imposing conditions that require the applicant to provide final stream diversion/cofferdam plans for review and approval prior to construction for any in-stream activity to ensure work is not done in flowing water. As far as bentonite use for drilling, there are no restrictions that I am aware of."

Kris: "Did DES look at the DOT Permit Packages as part of their assessment?

Did DES meet with DOT to coordinate assessments in any way?"

Kris: "Mr. Pelletier,

please provide answers to the above question. In addition; did DES accept NPT figures for no permanent impacts to the 188 streams, 144 wetlands and 17 vernal pools it proposes to cross with its Bethlehem to Bridgewater proposal for burial, or did DES undertake its own independent assessment? That Robert Varney (NPT/ Normandeau) worked for DES, and Mr. Bisbee, (NPT) worked

for DES doesn't mean Normandeau's/NPT figures are good data. To the contrary, it argues for their expertise in knowing how to game your system (=manipulate your system for the desired outcome.)

Did DES consider the effects of thermal concrete and its composition (coal fly ash with heavy metals, PH effect on waters, fluidizer ingredients, effect on watershed and water flow of extensive in-valley underground barriers, effects of hundred of gallons of drilling slurry "lost" underground and/or through frak-out to more visible locations, like streams, unknown effects (think MBTE, PFOA, airborne mercury in NH fish from midwest power plants, nitrates from DOT blasting, DDT, endocrine disruptors, Agent Orange, Woburn, etc, etc.)

Does DES have any specific standards for HDD? If so, are any of these standards applied to use/process rather than results (which are usually difficult and expensive to monitor and measure, when they don't go completely unnoticed for years.)

To rephrase, was a cautious, precautionary approach to assessment of "no effect" and permitting taken?

Did DES consider the effect of NPT proposed HDD, drilling fluids and additives on water, groundwater, aquifers and soils?

Did DES consider the effect of NPT proposed blasting on groundwater/aquifers in its assessment of effects?

Do the statutes directing/limiting DES allow it to consider unknowns in their permitting decisions? If not, how does its mission for protecting resources address this rather serious issue?

Did DES ignore areas for which NPT did not submit data?

A breakdown of factors considered for burial would be helpful to those of us on the burial route "confused" by your finding of no impact here.

An answer to each question above would avoid repetition of questions.

I think most of us would be glad to have DES rehabilitated as a regulatory agency rather than a permitting agency. What are DES figures for accepted vs. denied permits? Are any permits denied? Does DES have the ability to deny permits? If not, a clear statement of this would allow those of us concerned to pursue legislation enabling DES to have a more effective role in protecting and preserving New Hampshire.”



Kris: ""Slurry Modification and Disposal

Responsible disposal of drilling fluids, water phase effluent and produced solids require that these materials not be allowed to gain entry into any stream, waterway or body of water and should always be done in accordance with all applicable federal, state and local regulations. Baroid IDP provides additives that help convert drilling fluids and slurries into solid waste to facilitate disposal."

<http://www.baroidip.com/idp/products-applications/products/drilling-fluid-additives/slurry-modification-and-disposal/slurry-disposal.page?node-id=hlz0i3ud>

Industry speaking, here.

How has DES addressed this issue? Slurry certainly gained entry to waterways during the geotechnical boring; underground, as evidenced in the drilling logs, into streams, as evidenced by photographs, and on the ground, helped by the contractors hosing it into the undergrowth as shown above.

"Water phase effluent" appears to indicate dumping "filtered" slurry water is not acceptable practice. It is not enough to state that practices will not case violation of RSA whatever, because no one will know. There has to be a rule in place restricting actions, such as slurry dumping or water phase effluent dumping. This is why DES has to read the HDD guidelines manual. DES cannot state this is a DOT issue, outside their purview. Practices with potential to contaminate water and soils are your responsibility.

"Lost Circulation Materials

Loss of circulation equates to loss of borehole value. Lost sample information, lost formation production, frac outs, excessive replacement fluid costs, failed grout jobs, total hole failure, are lost value. Borehole value is maximized when the fluid stays in the hole. Our products give operators cost-effective ways to respond to complete or partial lost circulation."

"Many utility bores and all river crossings occur in alluvial environments or simply areas that contain large gravel and cobbles. These formations present the greatest challenge to HDD contractors concerning hole stability and suspension. "

What is DES response to inevitable loss of boring slurry into the ground? Even industry now admits that slurry cannot be disposed of in a way that will let it into the water, yet that's what will happen when the slurry leaks out the hundreds of feet of two 18" minimum boreholes into the surrounding gravel and cobbles. These show up on the drilling logs. If hundreds of gallons of slurry are lost into 4" geotechnical holes of 15' depth, how much will be lost into 18" boreholes?

How did DES address these issues in its permit?

An underground supplement to your permit needs to be written, and not by NPT."

Boring Number	Depth (feet)	USCS Symbol	Gravel Content (%)	Sand Content (%)	Fines Content (%)
B-2A	15-17	SM	33.1	47.7	19.2
B-4A	10-12	SP-SM	2.1	87.5	10.4
B-5	10-12	SP	4.6	91.9	3.6
B-5A	10-12	SM	0.0	62.3	37.7
B-6	10-12	SM	14.2	45.4	40.4
B-7	10-12	SP-SM	42.4	48.1	9.6
B-7A	10-12	SP-SM	35.9	50.8	13.3
B-8	10-12	GM	40.8	35.5	23.7
B-8A	10-12	SP-SM	0.6	93.3	6.1
B-10A	10-12	GP-GM	52.1	39.1	8.8
B-11	11-13	SP-SM	8.1	82.0	9.9
B-14	15-17	GP-GM	47.7	40.5	11.8
B-38A	10-12	GP	86.4	11.8	1.8
B-38B	15-15.8	SM	26.0	54.3	19.7
B-38C	10-12	SP-SM	33.6	57.4	9.0

Kris:

"Many utility bores and all river crossings occur in alluvial environments or simply areas that contain large gravel and cobbles. These formations present the greatest challenge to HDD contractors concerning hole stability and suspension. "

52% gravel in borehole 10-A.

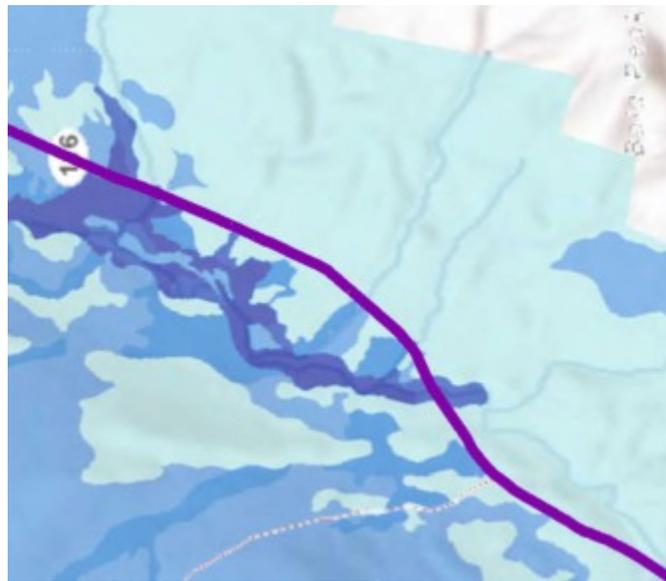
Did DES look at NPT's Risk Report? It is in the Discovery data.

Report of Expected Geotechnical Conditions

Northern Pass Project
Pittsburg to Deerfield, New Hampshire
July 10, 2015
Terracon Project No. J1155137

For example, below are water risks for Route 116 in Franconia near the Ham Branch.

Dark blue = high risk.”



Kris Pastoriza
March 23, 2017

Regulatory Capture of DES has just left 31 NH communities and their watersheds and soils vulnerable to corporate exploitation.



NPT has no RFP, no TSA, their PPA is no good, their proposed lease is illegal, the existing easements do not permit the fiber optic necessary for DC lines, they have no permission for burial on municipal roads, they have not spoken with PNGTS about siting, large sections of the burial route have undefined ROW widths, making them “legally problematic” (NPT statement), and other extensive sections are too narrow for safe

burial... They are dependent on regulatory capture:

From: Dana Bisbee <dbisbee@devinemillimet.com>
Sent: Thursday, January 28, 2016 9:33 AM
To: Pelletier, Rene <Rene.Pelletier@des.nh.gov>; 'Adams, Collis' <Collis.Adams@des.nh.gov>; Mauck, Ridge <Ridgely.Mauck@des.nh.gov>; Comstock, Gregg <Gregg.Comstock@des.nh.gov>; Sommer, Lori <Lori.Sommer@des.nh.gov>; Forst, Darlene <Darlene.Forst@des.nh.gov>; Thomas, William <William.Thomas@des.nh.gov>; Drew, Tim <Timothy.Drew@des.nh.gov>
Cc: Lee Carbonneau <lcarbonneau@normandeau.com>; Jake Tinus <jtinus@burnsmcd.com>
Subject: Northern Pass
Attach: Press Release - Northern Pass - Clean Energy RFP.PDF; Clean Energy RFP - Northern Pass Overview.pdf

Hi everyone,

I'm passing some info along to you that is being released to the media today. Eversource is submitting a bid today in response to the "Clean Energy Request for Proposals" issued by the states and utilities of Connecticut, Massachusetts, and Rhode Island. Northern Pass's participation in this RFP helps to ensure New Hampshire enjoys the many unique benefits of the project while also addressing the regional concerns of reducing price volatility, easing winter supply issues, and advancing clean energy goals. Many projects are expected to be submitted today, yet Northern Pass stands out in its ability to offer a significant amount of renewable, low-carbon hydropower at a fixed construction price.

Dana
George Dana Bisbee
Devine, Millimet & Branch P.A.
Manchester, Concord, Portsmouth NH and Boston MA
603.695.8626
dbisbee@devinemillimet.com

Above: Dana Bisbee, former DES commissioner now working for Northern Pass, strengthening New Hampshire’s robust system of regulatory capture through “outreach” to his former agency.

Apparently NPT didn’t stand out enough, and where is their “fixed construction price” now?

When Mr. Bisbee wasn’t at DES he was relentlessly pushing the New Hampshire Division of Historical Resources to assess Northern Pass historical documentation for the SEC process, an area outside their purview, which they steadfastly resisted. He also relentlessly pursued NPT’s early intervention in the Section 106 Programmatic Agreement between DHR and the DOE, so NPT could do their best to make sure the historical review would happen just ahead (or behind) the bulldozers.

Mark Hodgdon did “open and correct” outreach to DOJ then moved on to Victoria Sheehan, which was followed by DOT losing their 2012 uncertainty over road ownership:

From: Mark Hodgdon <mark@hodgdonlegal.com>
Sent: Friday, September 12, 2014 2:59 PM
To: Karen Schlitzer <karen.schlitzer@doj.nh.gov>
Subject: Utility Use of Highways
Attach: Utility Use of Highways.pdf

Karen,

Thank you for attending the meeting yesterday. I am sure you have lots of information to digest.

As promised, I am providing some citations and analysis on whether power transmission lines may properly be located within easement highways. Please understand that the attached is not intended to be exhaustive. There are many more cases supporting the analysis and general principles discussed. I believe you will find the 1957 Opinion of Justices most directly of interest. In the event, however, the State disagrees, I would appreciate you letting me know. The object, of course, is to be open and correct.

Mark P. Hodgdon

Law Office of Mark P. Hodgdon, PLLC

18 N. Main St., Suite 307

Concord, NH 03301

603 715-5951

b. Considerations::

- i. Uses of Easement ROWs are restricted to Construction, Maintenance and Operation of the roadway. The Department is unsure at this time of the ramifications of utilizing Easement corridors for Utility transmission lines and the relationship to the underlying property owners.

NPT DIS 030899 (2012)

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October 16, 2015

Commissioner Victoria Sheehan
N. H. Department of Transportation
John O. Morton Building
7 Hazen Drive
Concord, NH 03302-0483

Re: Petition for Aerial Road Crossings, Railroad Crossings and Underground Installations in State Maintained Highways.

Dear Commissioner,

Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire (“PSNH”) request permission to install an electric transmission line, including related conduit, cable, wires, poles, structures and devices across, over, under and along certain state highways and railroads pursuant to RSA 231:160 as detailed in this document. For the reasons set forth more fully below, granting this Petition meets the public good standard set forth in RSA 231:161 and will not impact the safe, free and convenient use of the highways under RSA 231:68. Accordingly, NPT and PSNH request issuance of a comprehensive Use and Occupancy Agreement, appropriate licenses, permits, and permissions authorizing the proposed use.

NPT and PSNH file this petition, pursuant to RSA 162-H:7, VII, with their application to the Site Evaluation Committee (“SEC”) for a Certificate of Site and Facility to construct and operate a 1090 MW capacity, 192-mile high voltage electric transmission line comprising a +/- 320 kV direct current line from the Canadian border at Pittsburg, N.H. to a converter terminal in Franklin, N.H., and a 345 kV alternating current line from Franklin, N.H. to an PSNH substation in Deerfield, N.H. NPT and PSNH understand that the Petition will be forwarded to the DOT for review pursuant to RSA 162-H:7, IV.

The N.H. Department of Transportation (“NHDOT”) has jurisdiction and authority to grant this Petition and such permits, agreements, licenses and approvals necessary for state-maintained highways pursuant to RSA 231:161, I (c). The NHDOT adopted a *Utility Accommodation Manual* (hereinafter UAM), dated February 24, 2010, to guide its process for accommodating and licensing utilities within highway and railroad corridors.

In accordance with commonly accepted design and construction practices, plans submitted with this application are at the 30% design stage. We understand from NHDOT practice that this level of detail is sufficient to initiate the permitting process. Prior to approval

NPT_DIS 030530

and construction, final design plans will be developed and provided. Furthermore, temporary access permits and appropriate traffic control and management plans, fully compliant with the *Manual on Uniform Traffic Control Devices* (“MUTCD”), will be provided for review and approval prior to construction. Similarly, any and all necessary highway access (driveway) permits will be submitted for review and approval as necessary in advance of construction.

USE OF HIGHWAY CORRIDORS IS LEGALLY APPROPRIATE

Utilities of all varieties, including power lines, have long been recognized as appropriate users of public highways, so long as the facilities do not conflict with the general public’s superior use. E.g. *McCaffrey v. Concord Electric Co.*, 80 N.H. 45, 46-47 (1921) (Power lines transporting or transferring electricity must be assumed to be rightfully occupying easement highway so long as they do not interfere with ordinary public travel). Furthermore, New Hampshire law has long recognized that the public easement extends both above and below the surface of the road. E.g. *State v. Kean*, 69 N.H. 256 (1897).

In *Opinion of the Justices*, 101 N.H. 527 (1957), the Court reasoned that public highway easements encompass all reasonable modes of travel, transmission and transportation which are not incompatible with the proper use of the easement by others. *Opinion* at 530. The use of the easement is not limited to the mere transportation of persons or property in movable vehicles. *Opinion* at 530. Rather, the public easement encompasses every new method of conveyance within the general viatic purpose for which highways are designed. *Opinion* at 530. As science develops, highway law permits any improved or new methods for the transmission of persons, property, communication, data or other means to promote sanitation, public health and the general welfare which does not conflict with the superior rights of the traveling public. *Opinion* at 530. Electric power transmission falls well within the scope of these proper highway uses.

Accordingly, utility lines are properly licensed and located within the highway easement, including above and below the surface as proper highway uses subject to reasonable regulation preventing undue interference with the general public’s rights. *Opinion* at 528. More recently, in *King v. Town of Lyme*, 126 N.H. 279 (1985), the Court reaffirmed that power lines are appropriate highway uses and holding that New Hampshire has never considered highway purposes to be limited to the transportation of movable vehicles, persons or property. *King* at 284.

This appropriate and permissible use of the easement for power lines was codified into RSA 231:160, which authorizes use of public highways by electric utilities under license from the appropriate governing authority. For state maintained highways, the Commissioner of the NHDOT is the licensing entity. See RSA 231:161. To further that process, the Commissioner has adopted standards set forth in the UAM.

The Supreme Court has made it clear that the authority to license is regulatory in character and must be exercised in a non-exclusionary and reasonable manner. In *Rye v. Public Service Company of New Hampshire*, 130 N.H. 365 (1988), the Court held that Rye could not revoke a license granted to Public Service Company of New Hampshire to erect siren poles for the Seabrook nuclear plant for reasons other than legitimate concerns over highway safety impacts. In construing the terms of RSA 231:161 authorizing the licensing of various utility uses of highways, the Court stated:

The selectmen of Rye lack the authority to revoke licenses...or to deny applications for licenses to erect three siren poles on town maintained highways for any reason other than a reason relating to the "safe, free and convenient use for travel of the highway..." which is the criterion for the exercise of the selectmen's authority under the statute; and no safety based justification for the revocation was articulated by the town.

Rye at 369. Consistent with long established case law, this holding recognizes a utility as a proper use of the public right of way subject to the safety and interests of other users.

Based on the enclosed information, NPT's and PSNH's proposal will not unduly or unreasonably impact the safety or integrity of the highway infrastructure. Therefore, NPT and PSNH seek appropriate licensing, approvals and permits necessary for installation of its proposed transmission line within, along, over and across public highways as proposed herein.

And so on. DOT caved to the implied threat of litigation, despite Mr. Hodgdon's shaky legal brief and clear description of the problems with their route, for example, on Route 112 "the road's scenic quality would invariably be altered by the additional widening, tree removal and terrain changes necessary to place the NPT underground facility in the undisturbed areas."

On Bear Rock Road: "Construction of the proposed facility outside the travelled way would dramatically disrupt environmental, archaeological and historic resources, as well as alter the rural characteristics of the area in an environmentally and socially unacceptable manner. In addition, installation of the underground transmission line along the right of way edges would require extensive disruption and relocation of existing utilities, loss of swaths of mature tree growth and vegetation, impacts to wetland resources and forever alter the roadside aesthetics."

It makes one wonder how NPT would describe the overland route, if they had an alternative.

Lee Carbonneau (Normandeau/NPT) took Mr. Hodgdon's "proof" of NPT's right to bury under state roads and DOT's capitulation, to DES, (Ridge Mauck, Darlene Forst and Collis Adams), to enlist their acceptance, deny SPNH's claims and avoid extra permitting requirements:

DES required only written justification from NPT of their right to use the roads. Does DES ever say no?

From: Lee Carbonneau <lcarbonneau@normandeau.com>
Sent: Thursday, November 12, 2015 3:57 PM
To: Collis Adams (collis.adams@des.nh.gov) <collis.adams@des.nh.gov>
Cc: Marvin P. Bellis/NUS@NU
Subject: Northern Pass Wetland Application
Attach: The Law Office of Mark P.PDF

Hi Collis –

I am sorry I was unable to reach you by phone today, but I wanted to respond to some assertions made in a letter sent to you and dated November 9, 2015 from BCM Environmental and Land Law, PLLC, at the behest of the Society for the Protection of New Hampshire Forests. The letter asserts the Northern Pass permit applications are incomplete because Northern Pass does not have adequate property rights to apply for the requested permits; specifically along the ROWs of Route 3 in Clarksville; North Hill Road and Bear Rock Road in Stewartstown; Routes 302, 18, and 116 in Bethlehem; Route 18 in Sugar Hill; Route 116 in Easton; and Route 112 in Woodstock.

The project team discussed obtaining and submitting NHDOT ROW deeds for underground locations with Darlene Forst, as the shoreland application is the only state permit application that requires the submittal of deeds or other property rights documentation. Darlene indicated that as an alternative to NHDOT deeds, written justification of construction rights along road ROWs would address this requirement. The following statement is included in each of the shoreland applications:

“Per recommendation of the NH Department of Environmental Services Shoreland Bureau, legal documents associated with easements and other property rights, including deeds, are being submitted separately via CD to NHDES. NPT will install underground transmission facilities pursuant to authority provided under RSA 231:160, et seq. for use of public highways for various utility purposes.”

The RSA states:

RSA 231:160 Authority to Erect. – Telegraph, television, telephone, electric light and electric power poles and structures and underground conduits and cables, with their respective attachments and appurtenances may be erected, installed and maintained in any public highways and the necessary and proper wires and cables may be supported on such poles and structures or carried across or placed under any such highway by any person, copartnership or corporation as provided in this subdivision and not otherwise.

NPT_DIS 030513

New Hampshire Division of Historic Resources declared the application incomplete, way back on November 12, 2015. This earned them a visit from Bill Quinlan, Mike Iacopino, Jeanine Girgenti (NH [AG \(jeanine.girgenti@doj.nh.gov\)](mailto:jeanine.girgenti@doj.nh.gov)), Pam Monroe, and others on the NPT team. By December 2, 2015 NHDHR had signed an MOU with NPT, allowing the application to go forward.

https://www.nhsec.nh.gov/projects/2015-06/letter-memos-correspondance/2015-06_2015-12-02_nhdhr_ltr_app_review_revised.pdf

Below is a short version of those meeting minutes.

Bill (Quinlan): “Here to discuss where DHR sees issues with the SEC application and to try to work with DHR to understand the issues and resolve them.”

Bill: “Applications don't have to have Phase 1 complete for the application, do they?”

Bill: “The project could go forward with the promise to complete all required Phases.”

Bill: “What would DHR want to make the application complete?”

Bill: “With respect to the DHR review, what will it take for completion? Will a PA work?”

Bill: “Is there something short of a PA that DHR could be satisfied with?”

Bill: “What body of information will get them...?”

Elizabeth Muzzey: explains the use of an MOU.

Bill: “Perhaps this is a path forward. We still want to work on the trust issue.

We will do this quickly, draft something by tomorrow afternoon.”

Elizabeth Muzzey: “What timing will work for the SEC?”

Mike Iacopino: “As long as it is signed before the hearing on Monday.”

Bill: “This conversation has been helpful. Should we commit to meeting more regularly?”



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Why did the SEC declare the application complete?

Comment NPT Kris Pastoriza March 22, 2017