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July 31, 2017

Commissioner Victoria Sheehan  
New Hampshire Department of Transportation  
John O. Morton Building  
PO Box 483 | 7 Hazen Drive  
Concord, New Hampshire 03302

**Re: Easton Selectboard Letter, dated July 17, 2017 regarding RSA 228:35**

Dear Commissioner Sheehan,

Please accept this letter as a firm endorsement and concurrence of the recent correspondence, dated July 17, 2017, sent by the Selectboard of Easton, New Hampshire to your attention.

In furtherance of the above referenced letter, the Franconia Board of Selectmen requests that you enforce RSA 228:35 (following) for the roads conditionally permitted by the New Hampshire Department of Transportation for use as burial corridors by the Northern Pass Project.

***"Reestablishment of Highway Boundaries.*** – *Whenever in the opinion of the commissioner the boundary lines, limits, or location of any class I or class II highway, or any part thereof, shall have become lost, uncertain, or doubtful, he may reestablish the same as, in his opinion, they were originally established. He shall give in hand to, or send by registered mail to the last known address of, all persons claiming ownership of or interest in the land adjoining such reestablished highway and to the owners of property within the limits thereof, and file with the town clerk of the town in which the highway is located, and with the secretary of state, maps showing the boundary lines, limits, or location of such reestablished highway and such lines, boundaries, limits and location as reestablished shall be the lines, boundaries, limits and location of such highway. Any person aggrieved by the reestablishment of such lines, boundaries, limits and location may petition for the assessment of damages to the superior court in the county where the reestablished highway is located within 60 days from the date of filing of such maps with the secretary of state, and not thereafter, and the court shall assess the damages, if any, by jury, provided such reestablished lines, boundaries, limits or location are not the same as originally established. The commissioner shall pay from the funds of his department all expenses incurred hereunder and the amount of final judgment and costs."*

The Franconia Board of Selectmen bases its request on the following excerpts from the Northern Pass application and statements of record:

On October 16, 2015, Northern Pass LLC submitted a permit application to the New Hampshire Department of Transportation requesting permission to bury two HVDC transmission cables with appurtenances under state easement roads.

## *"UNDERGROUND INSTALLATIONS IN PUBLIC HIGHWAYS*

*NPT proposes three distinct sections of underground installation within public highways. The two most northerly underground installations cover approximately 8 miles from just north of the Connecticut River crossing at the Pittsburg-Clarksville town line to Bear Rock Road in Stewartstown.*

*These two northerly underground proposals utilize both state and municipal maintained highways. The designs employ a mix of trench and trenchless construction. Trenchless construction techniques will be used where appropriate to address significant highway, environmental, historic and terrain features, as noted on the attached plans.*

*The first northerly underground section passes underneath Old Canaan Road just north of the Connecticut River. From that location, the transmission line will be drilled in bedrock below U.S. Rt. 3 to land on the southerly side of the River, where it returns above ground after leaving the highway right of way and proceeds southeasterly.*

*The transmission line returns underground to follow state maintained Rt. 145 before traversing along municipally maintained Old County Road/North Hill Road to the Bear Rock Road intersection. Remaining underground, the facility will follow the state maintained portion of Bear Rock Road east to a point near Guy Placy Road where Bear Rock Road becomes municipally maintained*

*The third proposed underground section traverses the White Mountain National Forest region for approximately 52 miles from Bethlehem, through Sugar Hill, Franconia, Easton, Woodstock and down to Bridgewater utilizing state maintained highways. For convenience this is referred to as the WMNF section. As mentioned, the proposed underground route begins in Bethlehem where an existing power line intersects with the Rt. 302 right of way, proceeds westerly along Rt. 302 to Rt. 18 and turns south on Rt. 18 to Franconia. It then follows Rt. 116 through Easton to the intersection with Rt. 112 in Woodstock. The alignment then turns east along Rt. 112 to the intersection with Rt. 3 in Woodstock before turning south along Rt. 3 to Bridgewater"*

In this application, Northern Pass sought a blanket exception from the requirements of the DOT Utility Accommodation Manual that all lines be buried at the edge of the ROW easement rather than under the pavement. One of their reasons for this exception was the unknown width of the road in several locations:

*"DOT Excavation Permit #4: Route 145 (aka Old County Road), Clarksville, District. 1.*

***The Clarksville portion of Rt. 145 has no recorded layout and dates back to around 1828. It is therefore considered a prescriptive highway. Without a specific right of way width, locating the NPT proposal outside of the travelled way and beyond the disturbed ditch lines is legally problematic. This is especially so since existing utilities, notably distribution lines, occupy much of the roadside and greatly complicate the installation of the underground transmission line.***

*Furthermore, the Rt. 145 roadside contains several residences, stonewalls, fences and heavy tree cover just beyond the shoulder and ditch lines. A few steep roadside grades and wet areas are present as well. Construction of the underground transmission line in this area outside of the disturbed area would result in significant and likely unacceptable impacts due to these characteristics." (Emphasis and bold added.)*

***"The relevant portion of Rt. 302 in Bethlehem has no defined right of way width. The pertinent portion of Rt. 18 from the Rt. 302 intersection in Bethlehem to the intersection of Rt. 116 in Franconia was originally laid out in the 1800s, as a 4 rod layout. In practicality, however, it is a narrow, rural two lane highway. Dense mature woods and old stone walls line the roadway through most of Sugar Hill." (Emphasis and bold added.)***

(Above, the Applicant failed to mention the 1871 layout that reduced portions of Route 18 to two and three rods.)

*"The overwhelming length of Rt. 116 from Franconia to the Rt. 112 intersection dates to an 1833 four rod (66') layout. However, the layout has significant gaps in description and is not well defined. Ancient layout issues aside, the road is a narrow two lane highway with modest traffic. Numerous wetlands, historic resources, water courses and ponds sporadically adorn the roadside. Mature trees crowd much of its length. Stonewalls and existing utilities occupy the land just past the ditch lines and shoulders." (Emphasis and bold added.)*

(The applicant failed to mention the 1839 layout of Route 116 in Franconia at 3 rods.)

*"Extending south from the center of Woodstock, Rt. 3 has a long established presence in the communities it serves. This importance is reflected in a relatively densely built roadside with numerous residences, institutions and businesses crowding the right of way along its length.*

*Innumerable signs, landscaping, trees, curbs, parking spaces, walls and fences lie just beyond the travelled surface. A variety of water courses and rivers weave across and along the highway. Attempting to construct a utility of this nature outside the disturbed area of the roadway is highly problematic."*

Above, while noting on-the-ground evidence for a ROW width, the Applicant fails to state what the ROW widths are for Route 3.

On November 3, 2016 the Easton Conservation Commission sent a letter to DOT and others making known the issue of undefined width on Route 116 and the Applicant's trespass while doing archaeological surveys.

On April 3, 2017 DOT issued a provisional permit to the Applicant for burial of their transmission lines under the aforementioned roads. Condition #4, p. 3 was:

*"4. The Applicant shall provide a certified survey report delineating means and methods of determining the right of way shown on the plans. The report shall include notations on all records and plans used and the monumentation held to control the right-of-way lines. The report will be certified by the Licensed Land Surveyor in charge that the right-of-way lines shown on the submitted plans are accurate locations defined by ground survey and all pertinent research."*

On April 12, 2017 Meridian Surveyors submitted to B.L. Companies a survey of the ROW of the Applicant's proposed route from Bridgewater to North Woodstock, which covered 25 miles of the proposed 52 miles of burial. This survey stated:

*"BL Co Project Approach documentation noted that "...there will be many sections which simply cannot be certified as accurate" and Meridian's Notable Approach Points / Conditions included the comment; "ROW sideline determination accuracy is to be variable per previous correspondence". The BL Co Project Approach also noted that "The resulting understood accuracy of the sidelines will be labeled/noted on the Base Survey Plan in order that specific areas of concern can be further determined if there is a need during the design phase."*

*"Right of Way Determination:*

*As per the contract documents, Meridian depicted three line types to indicate the accuracy confidence level of for the Right of Way sidelines, which are on their own separate drawing layers.*

*1) Bold Solid for Determined:*

*This line type remains un-used at this time.*

*We expected that there would be specific sections of ROW where a full determination would be requested, which would require additional research, fieldwork and LLS evaluation.*

*We have not received any requests for this level of effort."*

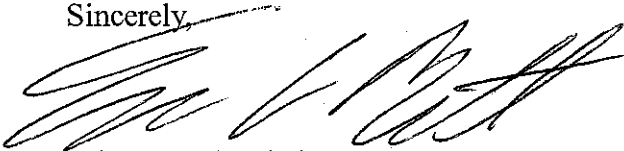
This survey was submitted by the Applicants to DOT along with another survey by B.L. Companies of the route from North Woodstock to Bethlehem which showed private property lines and hypothetical connections between the same.

On April 20, 2017, Kris Pastoriza sent 52 pages of road width documentation for the Bethlehem to Woodstock section of the proposed burial route to Applicant and DOT. This included maps, original road layouts from the Oscar Jewell compilations at the New Hampshire Archives, layouts from local town records, property deeds referencing roads and locations mentioned in the road layout deeds, photographs and on-the-ground documentation.

At issue here is a private project proposing to use public roads for a highly invasive project. Its size and length are unprecedented in New Hampshire and the majority of road abutters do not know what the road width is, and therefore are unable to defend their property rights, when they even know that there is an issue of unknown width. Likely, many people assume that when the State took over these roads they set a standard ROW width, which is not true. Abutters and travelers have a right to a clear determination of road widths, yet what is being proposed is a permit of a project which has not provided adequate proof of ROW widths. Even with all the relevant information in hand, some roads on the proposed route were laid out without the width of the road being specified. As such, there is an inescapable uncertainty about the road boundaries.

In conclusion, the participation of Franconia and other intervening towns and parties has been profoundly compromised in the SEC process by your Department's failure to enforce RSA 228:35. Therefore, the Franconia Board of Selectmen respectfully requests a determination, pursuant to RSA 228:35, by the Department of Transportation in light of the ongoing New Hampshire SEC adjudicatory hearings.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric L. Meth", written over a horizontal line.

Eric L. Meth, Chairman  
Board of Selectmen