

TOWN OF BETHLEHEM



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August 21, 2017

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

Re: Letters from the Easton and Franconia Selectboards
regarding RSA 228:35 and Northern Pass

Dear Commissioner Sheehan:

The Bethlehem Board of Selectmen requests that you enact RSA 228:35 "Reestablishment of Highway Boundaries" for the roads conditionally permitted by the New Hampshire Department of Transportation for use as burial corridors by the Northern Pass Project. We support the requests of the towns of Easton and Franconia in this regard in their letters to you of July 17 and July 31, 2017 respectively (Enclosures 1 and 2).

As they mention in their letters, the Right-of-Ways (ROW) along the proposed route are not standard and are often not clearly established and it seems that significant portions of the proposed underground route are of undetermined width.

The Bethlehem Selectboard believes that Bethlehem property owners along the underground route in Bethlehem do not understand the ramifications this could have on their property.

We are concerned that a survey submitted by Northern Pass claiming the ROW width it needs to install its underground transmission line could involve removing stone walls, trees, lawns, fences and gardens that private property owners believe are outside of the ROW.

We certainly agree with the Easton Selectboard's assessment of the issue: "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, so there is inescapable uncertainty about the road boundaries."

We are also aware of minutes of a July 18, 2017 conference (Enclosure 3) attended by members of the Department of Transportation and Northern Pass, which highlight several troubling issues related to the accuracy of diagrams provided by Northern Pass, namely:

- a) "The right-of-way layout in Exception Request #42 does not match that shown on the previous DOT project plans."
- b) "It was identified that several Exception Request locations, had existing facilities that were incorrectly shown/described or not shown on the plans."
- c) "Ms. Esterberg noted that these errors make Department personnel wonder about the accuracy of existing facilities and the right-of-way throughout the entire route."
- d) "Mr. Rodrigue stressed that Highway Maintenance and Design Services personnel have been told to make NPT review a priority but errors and inaccuracies are making the review take longer and diverting resources from personnel's normal job responsibilities hinders highway maintenance and project development activities."
- e) "Several rejections were related to incorrect right-of-way shown on the plans with the NHDOT understanding that additional right-of-way exists which provides additional area to construct the conduct system outside the pavement."
- f) "At several locations, the plans showed conflicts with existing facilities without resolution to the conflict."

We also want to call your attention to a letter to you dated October 16, 2015 (Enclosure 4) from the law office of Mark P. Hodgdon, PLLC regarding "Petition for Aerial Road Crossings, Railroad Crossings and Underground Installations in State Maintained Highways." On page 10, which is marked at the bottom NPT_DIS 030076, it calls out Rt. 302 in Bethlehem: "The relevant portion of Rt. 302 in Bethlehem has no defined right of way width....."

We would like to direct you as well to the August 11, 2017 following motion to the SEC from the Grafton County Commissioners (Enclosure 5): "Motion to suspend the Adjudicatory Hearing until (1) the plans submitted by Northern Pass are Determined to be accurate and (2) the procedure set forth in NH RSA 228:35 to reestablish lost, uncertain or doubtful boundary limits (rights of way) for the roads associated with the underground burial of lines is followed....."

Finally, we call your attention to DOT communications of August 1 (an Inter-Department Communication) and August 11, 2017 (a letter from DOT's Melodie Esterberg to Northern Pass's Jerry Fortier) (Enclosure 6): These say that the majority of the ROW locations shown on the plans are "approximate locations only," whereas the conditions of approval require them to


be "accurate locations defined by ground survey and all pertinent research." The August 11 letter states: "It is critical that right-of-way information on the plans is accurate as this is the basis for the Department to evaluate the proposed alignment of the facility as it relates to the Department's infrastructure."

Again, because the Bethlehem Selectboard believes that Bethlehem property owners along the underground route in Bethlehem do not understand the ramifications this could have on their property, we join the other boards to urge DOT to follow the process outlined under RSA 228:35 (below) to give property owners an opportunity to petition for redress of grievances if the determined easement width is disputed:

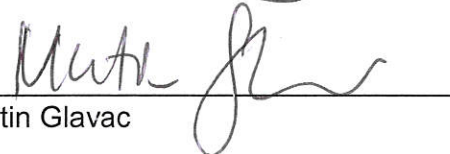
RSA 228:35 Reestablishment of Highway Boundaries. – Whenever in the opinion of the commissioner the boundary lines, limits, or location of any class I or class II highway, or any part thereof, shall have become lost, uncertain, or doubtful, he may reestablish the same as, in his opinion, they were originally 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.

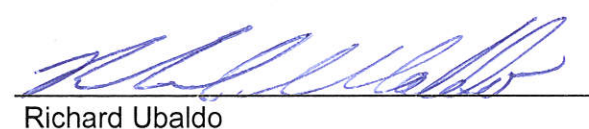
Sincerely,

The Bethlehem Board of Selectmen


Mary Moritz

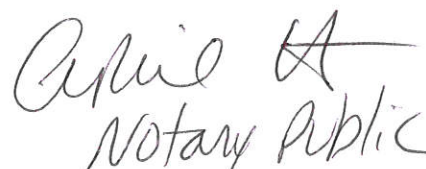

Linda Moore


Martin Glavac


Richard Ubaldo


Gabe Boisseau

8/21/17


Notary Public
exp 9/19/2017

Enclosure 1: Letter of July 17, 2017 Easton Selectboard

Enclosure 2: Letter of July 31, 2017 Franconia Selectboard

Enclosure 3: Minutes of a July 18, 2017 conference meeting between the Department of Transportation and Northern Pass

Enclosure 4: Letter of October 16, 2015 from the law office of Mark P. Hodgdon, PLLC

Enclosure 5: Grafton County Commissioners August 11, 2017 "Motion to suspend the Adjudicatory Hearing until....."

Enclosure 6: DOT communications of August 1 and August 11, 2017