

STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

Docket No. \_\_\_\_\_

**PETITION FOR DECLARATORY RULING**

The Town of Bethlehem, Town of Bridgewater, Town of Bristol, Town of Clarksville, City of Concord, Town of Deerfield, Town of Easton, Town of Franconia, Town of Littleton, Town of New Hampton, Town of Northumberland, Town of Pembroke, Town of Pittsburg, Town of Plymouth, Town of Stewartstown, Town of Sugar Hill and Town of Whitefield, Town of Woodstock, the Ashland Water and Sewer Department, the Society for the Protection of New Hampshire Forests, and the Appalachian Mountain Club (the “Petitioners”), pursuant to New Hampshire Administrative Rule Site 203.01, respectfully petition the New Hampshire Site Evaluation Committee (the “SEC” or “Committee”) to issue a declaratory ruling stating that, pursuant to RSA 231:160 *et seq*, only municipalities have the authority to authorize or not authorize the erection, installation, or maintenance of electric power poles or structures or underground conduits or cable, or their respective attachments or appurtenances, on, across, or under locally maintained highways, regardless of whether the New Hampshire Department of Transportation (the “NHDOT”), the SEC, or other agencies have authority to permit or license other portions of any proposed facility. In support of this Petition, the Petitioners offer the following:

**JURISDICTION AND STANDARDS**

1. Pursuant to RSA 541-A:16, I(d), New Hampshire Administrative Rule Site 203.01 authorizes “[a]ny person [to] submit a petition for declaratory ruling from the committee

on matters within its jurisdiction.” A declaratory ruling is a ruling as to the “specific applicability of any statutory provision or any rule or order of the agency.” RSA 541-A:1, V. The SEC has 90 days from the time of submission to rule on the petition. N.H. Admin. Rule Site 203.02(b).

2. The Petitioners, especially the Petitioning Towns, have an interest in the management and regulation of activities along, and under, municipally maintained highways and rights of way, and in seeing that municipal authority is recognized. Further, the Forest Society holds conservation easements on land abutting and under municipally maintained highways, and has an interest in assuring that existing encumbrances are managed lawfully and not exceeded.

3. The following standards govern declaratory petitions. The SEC may not dismiss a petition that: (1) sets forth factual allegations that are definite and concrete; (2) does not involve a hypothetical situation or otherwise seek advice as to how the committee would decide a future case; (3) implicates the legal rights or responsibilities of the petitioner; and (4) is within the committee’s jurisdiction. *Id.* 203.03(c). The jurisdiction of the SEC is to evaluate and issue or deny a certificate of site and facility approval for certain energy generation and transmission projects. RSA 162-H.

## **BACKGROUND**

4. The Petitioners request this ruling because resolution of this issue would impact their interests generally, and more particularly in Docket No. 2015-06 involving the Northern Pass project. While the Northern Pass project provides the impetus for this petition, the interpretation of the statute, issues raised, and relief sought are broader than a single project.

5. On October 19, 2015, Northern Pass Transmission LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively “Applicants”) submitted an Application to the SEC for a Certificate of Site and Facility (“Application”) to construct a 192-

mile transmission line (“Project”). As proposed, the Project would run through New Hampshire from the Canadian border in Pittsburg to Deerfield.

6. As part of the Project, Applicants propose to install conduit, cable, wires, poles, structures, and devices across, over, alongside, and under highways maintained by the following municipalities:<sup>1</sup> *Town of Pittsburg; Town of Clarksville; Town of Stewartstown; Town of Dummer; Town of Stark; Town of Northumberland; Town of Lancaster; Town of Dalton; Town of Bristol; City of Franklin; Town of Northfield; Town of Canterbury; City of Concord; Town of Pembroke; Town of Allenstown; and the Town of Deerfield*, including at least 71 aerial crossing and four underground roadway installation sections. Joint Appl. of N. Pass Transmission, LLC and Pub. Serv. Co. of N. H. d/b/a Eversource Energy for a Certificate of Site for the Construction of a 1,090 MW Electric Transmission Line 82 [hereinafter “Appl.”]; Appl. App. 10, at 3-5.

#### **APPLICANTS’ POSITION**

7. Applicants maintain that the “SEC has exclusive authority to grant permission to an energy facility to utilize locally-maintained highways.” Appl. 82.

8. Accordingly, Applicants seek “approval from the SEC to install its Project within, along, over, under and across locally-maintained highways.” *Id.* 83. Applicants claim this “request mirrors the approach followed, and the standards applied, in the request made to NHDOT for state-maintained highways.” Applicants propose that the SEC has authority to permit this portion of the installation and should do so by applying “the NHDOT *Standard Specifications for Road and Bridge Construction* and the provisions, instructions, and regulations set forth in the NHDOT’s standard Excavation Permit.” *Id.*

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<sup>1</sup> Towns in italicized font are Petitioners here.

9. Applicants have not sought, obtained, or applied for a permit or license, in accordance with RSA 231:161, I(a), and (b), from any of the municipalities that maintain highways whose highways the Applicants would be use.

10. In subsection (d) of the Application, “OTHER REQUIRED APPLICATIONS AND PERMITS,” Applicants do not reference any permits or licenses obtained from municipalities for the installation across, over, under and alongside locally maintained highways. *Id.* 17-21. Applicants have, however, submitted a blank NHDOT excavation permits within of the section of the Appendix 10 of the Application concerning underground plans of locally maintained highways. Appl. App. #10, Part B.

11. Applicants’ apparent position is that municipalities do not have any permitting or licensing role regarding the utilization of municipally maintained highways, and that submitting 13 blank applications for NHDOT excavation permits to the SEC in an appendix satisfies a statutory requirement to seek licenses or permits from municipalities.

12. Applicants also state a “separate request for permits for the municipally maintained highways has been filed with the Site Evaluation Committee.” Appl. App. #9, at 5. Upon careful review of the Application, it is unclear what this “separate request” is. The Application does not appear to include any document that constitutes a “separate request.”

13. In their Application, Applicants cite *Public Service Company of New Hampshire v. Hampton*, 120 N.H. 68 (1980) as the primary authority for this position. Appl. 82. As discussed in the subsequent analysis section, this case does not apply because that *per curiam* decision was narrow when it was made and its holding has been eroded over time, and the facts of the case were completely different, namely that Hampton and other municipalities changed

their laws five years *after* a certificate of site and facility had been granted, and the applicant agreed with municipal requests to redesign the project.

14. Of note, in its November 13, 2015, letter notifying the SEC that its review of the Application was complete, the NHDOT stated that it “anticipates executing a Use and Occupancy Agreement for the entire project *within state-maintained* rights-of-way (ROW).” Letter from Victoria F. Sheehan, Commissioner, NHDOT, to Pamela G. Monroe, Administrator, NH SEC (Nov. 13, 2015) (emphasis added). Commissioner Sheehan did not opine on or issue any permits in regards to municipally maintained highways, and her letter indicated NHDOT’s anticipated permit would not include the portions of the project impacting municipally maintained rights of way. *Id.* Thus, NHDOT has impliedly acknowledged that it does not have the authority to issue any permits or licenses in regards to municipally maintained highways.

15. Similarly, the Applicants’ own conduct begs the question whether the Applicants are required to obtain municipal permits or licenses to use municipally maintained highways. In connection with performing borings to further the design of underground portions of the proposed Project, the Applicants obtained boring permits from the state to bore in state-maintained highways. However, Applicants did not obtain such permits from municipalities to bore in municipally maintained highways. Instead, Applicants paid thousands of dollars to abutting property owners for permission to bore into land near municipally maintained highways. *See* Affidavits of James Nuttall and Robert Brooks, attached as Exhibits 1 and 2.

## ANALYSIS

16. Petitioners seek a declaratory ruling stating that the SEC does not have authority to grant the permits and licenses specified in RSA 231:161 for the installation of portions of utility infrastructure projects located across, over, under, and alongside locally maintained

highways. Therefore, the ruling should further state that applicants must obtain from municipal officers the permits and licenses required by RSA 231:160 *et seq.*

**A. RSA 231:160 *et seq* Provides a Clear Statutory Scheme that Empowers Only Towns and Cities to Permit or License the Utilization of Town- or City-Maintained Highways**

17. Applicants' position that the SEC has exclusive authority is based on a reading of RSA 231:160 *et seq* that is at best inaccurate and that would result in the violation of clear statutory procedures. In its application, Applicants omit the portions of the statute that are directly on point, and then propose an ostensibly novel approach for the SEC to follow for approving the Applicants' utilization of locally maintained highways—as if the Legislature had not already specified a clear procedure in that same statutory section cited.

18. RSA 231:160 states:

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.*

(emphasis added).

19. This statute demonstrates that the Legislature intended that the specific procedures for installing and maintaining electric transmission lines and their supporting structures on any public highway contained in RSA 231:160 *et seq* shall govern because the term “not otherwise” means that this authority shall not be subordinate to any other state statute or rule governing the same subject matter. *Id.*

20. RSA 231:160 *et seq* provides *different*—not *mirrored* as the Applicants claim—procedures that any person, co-partnership, or corporation desiring to erect or install any poles, structures, conduits, cables or wires across, over, under, and alongside any such highways that

are state-maintained, as opposed to highways that are town- or city-maintained, must follow.

RSA 231:161, I.

21. For state-maintained highways:

Petitions for such permits or licenses concerning all class I and class III highways and state maintained portions of class II highways shall be addressed to the commissioner of transportation who shall have exclusive jurisdiction of the disposition of such petitions to the same effect as is provided for selectmen in other cases, and also shall have like jurisdiction for changing the terms of any such license or for assessing damages as provided herein.

RSA 231:161, I(c).

22. For town-maintained highways:

Petitions for such permits or licenses concerning town maintained highways shall be addressed to the selectmen of the town in which such highway is located; and they are hereby authorized to delegate all or any part of the powers conferred upon them by the provisions of this section to such agents as they may duly appoint.

RSA 231:161, I(a).

23. For city-maintained highways:

Petitions for such permits or licenses concerning city maintained highways shall be addressed to the board of mayor and aldermen or board of mayor and council of the city in which such highway is located and they shall exercise the powers and duties prescribed in this subdivision for selectmen; and they are hereby authorized to delegate all or any part of the powers conferred upon them by the provisions of this section to such agents as they may duly appoint.

RSA 231:161, I(b).

24. The remaining subsections of RSA 231:161 govern the specifics of the permits and licenses, including their effect, effective life, required specifications, and the conditions for granting them. RSA 231:161, II-VII.

25. Most pertinently, all those entities having jurisdiction over the issuance of permits or licenses in this statutory section shall grant a permit or license if the “public good requires.” *Id.*<sup>2</sup>

26. Therefore, the SEC’s authority to issue or not issue a Certificate of Site and Facility for this Project does not extend so far as to supplant the authority of a municipality to issue or not issue a permit or license for the utilization of municipally maintained highways in accordance with RSA 231:160 *et seq.*<sup>3</sup>

27. This is unlike the roles that state agencies play regarding this Project, because RSA 162-H:7-a explicitly limits and defines those roles. RSA 162-H places no such limit on the authority RSA 231:160 *et seq* give to municipalities. Indeed, RSA 162-H is silent on this issue.

28. In practice, when an entity proposes to install utility infrastructure in accordance with RSA 231:160 *et seq*, a municipality generally issues two types of permits pursuant to RSA 231:161, most commonly in the form of letters of approval presented on official town or city letterhead. First, a municipality may issue such a permit for any installation that involves excavation of the locally maintained right-of-way. Second, municipalities may issue such a permit for installation that involves placing poles or supporting structures on, across, or alongside the right-of-way, i.e. no excavation. Furthermore, per the general authority granted in

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<sup>2</sup> The evaluation of the “public good” has been adjudicated to be limited to determining whether the proposed utility use would impair other public uses. *Parker-Young Co. v. State of New Hampshire*, 83 N.H. 551, 555-57 (1929).

<sup>3</sup> Municipal authority and the scope of highway easements are limited. With respect to municipal authority, RSA 231:168 provides, in part:

The location of poles and structures and of underground conduits and cables by the selectmen shall be made *so far as reasonably possible* so that the same and attachments and appurtenances thereto will not interfere with the safe, free and convenient use for public travel of the highway or of any private way leading therefrom to adjoining premises or with the use of such premises or any other similar property of another licensee.

(emphasis added). With respect to the scope of highways easements, RSA 231:167, which provides for the payment of damages when installation of a facility would harm a landowner, clearly implies that highway easements have limits.

the statute, some municipalities have more detailed and stringent permitting and licensing requirements for such projects. No matter the exact municipal protocol, all of these are designed to assure that the use of municipally maintained highways preserves public safety.

29. As a matter of law, however, the distinction between permits or licenses for installation involving excavation and installation not involving excavation is not relevant. The narrow issue presented in this petition concerns the authority of municipalities to issue or not issue permits or licenses per RSA 231:161 *et seq.*, which clearly encompasses both excavation and non-excavation installations. *See* RSA 231:160.

30. This reading of the law is consistent with the NHDOT's statement that it anticipates issuing a Use and Occupancy Agreement for the entire project *only* within state-maintained rights-of-way. Letter from Victoria F. Sheehan, Commissioner, NHDOT, to Pamela G. Monroe, Administrator, NH SEC (Nov. 13, 2015) (emphasis added).

**B. New Hampshire Public Policy Favors Municipal Authority for Municipal Concerns**

31. Although Applicants may view this statutory scheme as burdensome because it empowers many individual municipalities to exercise control over a state-wide project, this is precisely what the Legislature intended.

32. The law empowering municipalities to evaluate the public safety concerns in these circumstances is appropriate considering the severe and significant impacts that the Project would cause in connection to municipally maintained highways.

33. The installation of utility infrastructure across, over, under, or alongside municipally maintained highways could cause highway closures, traffic delays, engineering conflicts with respect to municipal infrastructure, damage to roadbeds, and many other issues.

34. Additionally, Applicants have admitted that construction of this project would require extended highway closures on at least Bear Rock Road, North Hill Road, and Old County Road in Clarksville and Stewartstown.

35. Moreover, this scheme is consistent with New Hampshire's strong public policy that municipalities have the authority to protect the health, safety, and financial sustainability of their own citizens. *See* RSA 31:39; RSA 41:9, 11; RSA 47:17, VII-VIII & XVIII. To deprive municipalities of their express statutory authority to evaluate the impacts of this Project would fly in the face of New Hampshire's well-regarded tradition of local governance.

36. After all, municipalities are in the best position to evaluate the impacts of the Project on the "safe, free and convenient use for public travel of the highway or of any private way leading therefrom . . . ." RSA 231:168; *Rye v. Pub. Serv. Co.*, 130 N.H. 365, 369 (1988) (quoting RSA 231:168).

**C. *Public Service Company of New Hampshire v. Town of Hampton Does Not Support Applicant's Position that SEC has Exclusive Authority to Permit Applicants to Utilize Locally Maintained Highways***

37. Aside from omitting the unfavorable portions of a legislatively mandated procedure in an attempt to create their own procedure that is more amenable to their goals, Applicants also cite to the New Hampshire Supreme Court's decision in *Public Service Company of N.H. v. Hampton*, 120 N.H. 68 (1980) to support their position. In doing so, Applicants argue that *Hampton* supports their position that the SEC has exclusive authority to grant permission to an energy facility to utilize locally maintained highways for an electric transmission project.

38. It does not. The outdated, narrow, and *per curiam* holding of *Hampton* does not apply here because *Hampton* concerned the authority of municipalities pursuant to local regulations enacted years after the state actions at issue, and where the applicant had previously

agreed to modify its design as a result of consulting the municipalities. This issue, by contrast, involves municipalities empowered by a state statute that predates the proposed Project by decades, where the petitioning towns have reached no such agreement with the Applicants, where the certificate of site and facility has not yet been issued or denied, and in a legal context where *Hampton* cannot be read so broadly as to apply under these circumstances.

39. In *Hampton*, the plaintiff energy company sought an order declaring void, as applied to it, the votes of towns taken *five years after* the SEC approved the energy project at issue to adopt certain ordinances requiring all electric transmission lines over 69,000 volts to be buried underground. *Id.* at 69-70.

40. The trial court submitted two questions on interlocutory appeal:

1. Do the votes purportedly adopted by the defendant towns endowing them with any legal authority to interfere with the construction of overhead transmission lines associated with the Seabrook Project, in light of RSA 162-F F [the forerunner to RSA 162-H], the Certificate and the other permits held by the plaintiff?

2. Do the votes purportedly adopted by the defendant towns endowing them with any legal authority to interfere with the construction of overhead transmission lines by the plaintiff in connection with the Seabrook Project, in light of the requirements of the Zoning Enabling Act (RSA 31:60 et seq.) or other provisions of law relating to actions taken by Town Meetings?

*Id.*

41. The Court concluded the purpose of RSA 162-F *et seq.* was to “provide a resolution, in an ‘integrated fashion,’ of all issues involving the selection of sites and routing of associated transmission lines.” *Id.* at 70. It held that “[b]y enacting RSA ch. 162-F, the legislature has preempted any power that the defendant towns might have had with respect to transmission lines embraced by the statute, and the actions by the defendant towns with regard to transmission lines are of no effect.” *Id.* at 71.

42. This narrow holding is inapposite to the issue before the SEC on this petition. The issue in *Hampton* was whether municipal ordinances enacted *five* years after a state had approved a project were preempted by the state statute that provided for the project's prior approval. Here, the relevant law empowering municipalities is well-established state law, not a retroactive municipal ordinance. Neither the narrow holding nor the dicta of *Hampton* alters or amends the provisions of RSA 231:160 *et seq.*

43. Moreover, the if the *Hampton* case was as dispositive as the Applicants suggest, the SEC would not have had to entertain as much adjudication as it did in Docket No. 2012-01 (Antrim Wind Energy, LLC) focused on the question of whether the SEC preempted municipal subdivision authority. While the SEC did not reach that issue in its decision-making, the volume of pleadings and the SEC's deliberations suggest that the extent of SEC preemption of municipal authority is anything but well-settled.

**D. RSA 162-H Does Not Override RSA 231:160 *et seq.***

44. RSA 162-H does not override RSA 231:160 *et seq.* or preempt the authority of a Board of Selectmen pursuant to it.

45. "Where reasonably possible, statutes should be construed as consistent with each other. When interpreting two statutes which deal with a similar subject matter, we will construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute. To the extent two statutes conflict, the more specific statute controls over the general statute." *State v. Cheney*, 165 N.H. 677, 682-83 (2013) (quotation marks and internal citations omitted).

46. The statutory schemes do not conflict. RSA Chapter 162-H does not contain an explicit statement to override the authority given to municipalities in RSA 231:160 *et seq.* Unlike

the roles of states agencies, which are explicitly limited by RSA 162-H:7-a, RSA Chapter 162-H does not restrict the permitting and licensing role of municipalities as it pertains to the utilization of locally maintained highways for electric transmission projects.

47. Applicants appear to take this same position because they follow the procedures of RSA 231:160 *et seq* when it comes to seeking licenses and permits from the DOT. Appl. at 82-84.

**E. SEC Rules Anticipate the Interplay Between RSA 162-H and RSA 231:160 *et seq*.**

48. The SEC rules anticipate the interplay between RSA 162-H and RSA 231:160 *et seq*.

49. New Hampshire Administrative. Rule Site 301.03(c)(6) requires an application for site certification to contain:

Evidence that the applicant has a *current* right, an option, or other legal basis to acquire the right, to construct, operate, and maintain the facility on, over, or under the site, in the form of:

- a. Ownership, ground lease, easement, or other contractual right or interest;
- b. A license, permit, easement, or other permission from a federal, state, or *local government* agency, or an application for such a license, permit, easement, or other permission from a state governmental agency that is included with the application; or ...

(emphasis added). This rule explicitly mentions licenses or permits issues by local government agencies.

50. Applicants have not submitted to the SEC any permits or licenses issued by any of the municipalities that operate locally maintained highways that the Project would utilize, as is required by RSA 231:161.

## CONCLUSION

This Petition sets forth factual allegations that are definite and concrete, does not involve a hypothetical situation or otherwise seek advice as to how the Committee would decide a future case, implicates the legal rights and responsibilities of the Petitioners, and is within the Committee's jurisdiction.

Reading RSA 162-H, RSA 231:160 *et seq.*, and SEC Rule 301.03 together, there is a clear legislative intent that entities wishing to construct an electric transmission line (and its supporting structures) across, over, under, or alongside locally maintained highways must obtain the required licenses and permits from the Selectboard of the municipalities. The SEC does not have authority to grant said licenses and permits.

**WHEREFORE**, the Town of Bethlehem, Town of Bridgewater, Town of Bristol, Town of Clarksville, City of Concord, Town of Deerfield, Town of Easton, Town of Franconia, Town of Littleton, Town of New Hampton, Town of Northumberland, Town of Pembroke, Town of Pittsburg, Town of Plymouth, Town of Stewartstown, Town of Sugar Hill and Town of Whitefield, Town of Woodstock, the Ashland Water and Sewer Department, the Society for the Protection of New Hampshire Forests, and the Appalachian Mountain Club, respectfully request that the Committee issue a ruling declaring that pursuant to RSA 231:160 *et seq.*, only municipalities have the authority to authorize or not authorize the erection, installation, or maintenance of electric power poles or structures or underground conduits or cable, or their respective attachments or appurtenances, on, across, or under locally maintained highways, regardless of whether the New Hampshire Department of Transportation (the "NHDOT"), the SEC, or other agencies have authority to permit or license other portions of any proposed facility.

Respectfully Submitted,

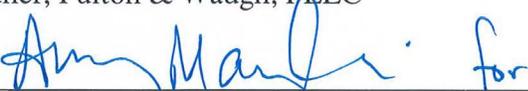
**TOWN OF BETHLEHEM, TOWN OF  
BRISTOL, TOWN OF EASTON, TOWN OF  
FRANCONIA, TOWN OF  
NORTHUMBERLAND, TOWN OF  
PLYMOUTH, TOWN OF SUGAR HILL AND  
TOWN OF WHITEFIELD**

By their Attorneys,

Gardner, Fulton & Waugh, PLLC

Date: December 19, 2016

By:

 for

Christine Fillmore, Esq. (13851)  
Gardner, Fulton & Waugh, PLLC  
78 Bank Street Lebanon NH 03766- 1727  
Tel. (603) 448-2221  
Fax (603) 448-5949  
cfillmore@ townandcitylaw.com

**TOWN OF BRIDGEWATER, TOWN OF NEW  
HAMPTON, TOWN OF WOODSTOCK,  
TOWN OF LITTLETON, TOWN OF  
PEMBROKE, TOWN OF DEERFIELD, AND  
ASHLAND WATER AND SEWER  
DEPARTMENT**

By their Attorneys  
Mitchell Municipal Group, P.A.

Date: December 19, 2016

By:  for  
Steven M. Whitley, Esq. (17833)  
25 Beacon Street East  
Laconia, New Hampshire 03246  
Telephone: (603) 524-3885  
steven@mitchellmunigroup.com

**CITY OF CONCORD**

By its Attorney

Date: December 19, 2016

By: 

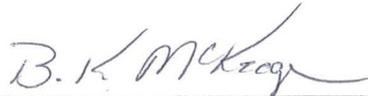
Danielle L. Pacik, Esq., (14924)  
Deputy City Solicitor  
41 Green Street  
Concord, New Hampshire 03301  
Telephone: (603) 225-8505  
Facsimile: (603) 225-8558  
dpacik@concordnh.gov

**TOWN OF PITTSBURG**

By its Selectboard

Handwritten signature of Stephen Ellis in blue ink.

Stephen Ellis, Selectboard

Handwritten signature of Brendon McKeage in black ink.

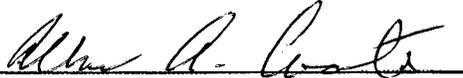
Brendon McKeage, Selectboard

Handwritten signature of Richard Lapoint in black ink.

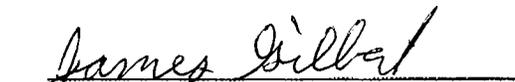
Richard Lapoint, Selectboard

**TOWN OF STEWARTSTOWN**

By its Selectboard

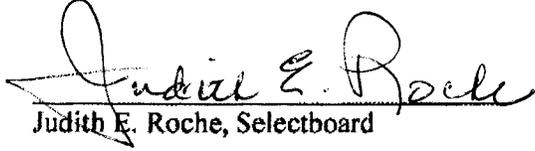
  
Allen Coats, Selectboard

  
Hasen Burns, Selectboard

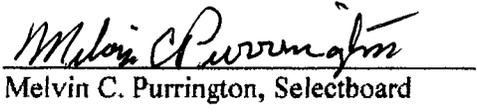
  
James Gilbert, Selectboard

**TOWN OF CLARKSVILLE**

By its Selectboard

  
Judith E. Roche, Selectboard

  
Ramon F. DeMaio, Selectboard

  
Melvin C. Purrington, Selectboard

**SOCIETY FOR THE PROTECTION OF  
NEW HAMPSHIRE FORESTS**

By its Attorneys,

BCM Environmental & Land Law, PLLC

Date: December 19, 2016

By:



Amy Manzelli, Esq. (17128)  
Jason Reimers, Esq. (17309)  
Elizabeth A. Boepple, Esq. (20218)  
3 Maple Street  
Concord, NH 03301  
(603) 225-2585  
manzelli@nhlandlaw.com

**APPALACHIAN MOUNTAIN CLUB**

By its Attorneys,

Drummond Woodsum & MacMahon

Date: December 19, 2016

By:



William L. Plouffe, Esq. (ME 2480)  
84 Marginal Way, Suite 600  
Portland, ME 04101-2480  
Tel. (207) 772-1941  
Fax: (207) 772-3627  
wplouffe@dwmlaw.com

# **EXHIBIT 1**

**AFFIDAVIT OF JAMES NUTTALL**

I, James Nuttall, being over the age of eighteen years and competent to testify to the matters contained herein, do state under oath that I do believe the following to be true and accurate to the best of my personal knowledge:

1. I reside at North Hill Road in Stewartstown, New Hampshire. My mailing address is Post Office Box 235, Colebrook, NH, 03576.
2. I have personal knowledge that in 2013 a representative of Northern Pass asked me if I would consent to allowing Northern Pass to conduct a geotechnical excavation on my land fronting North Hill Road. As I understand, my land goes to the centerline of North Hill Road. It is not clear to me whether the boring that was actually done on my land was within or outside of the Town's right of way over my land.
3. Mr. James Wagner, the representative of Northern Pass, offered me \$3,000 for permission to conduct one boring on my land. I was paid \$500 before the work, and paid a second installment of \$2,500 once the work was completed.

Dated: December 13, 2016

Print Name: James W. Nuttall

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STATE OF NEW HAMPSHIRE

December 13, 2016

COOS, ss.

Personally appeared the above named James W Nuttall and gave oath that the foregoing affidavit is true and accurate to the best of his/her knowledge, information, and belief.

Before me,



Notary Public, State of New Hampshire

My Commission Expires:



# **EXHIBIT 2**

**AFFIDAVIT OF ROBERT BROOKS**

I, Robert Brooks, being over the age of eighteen years and competent to testify to the matters contained herein, do state under oath that I do believe the following to be true and accurate to the best of my personal knowledge:

1. I reside at 66 North Hill Road, Stewartstown, New Hampshire, 03576.
2. I have personal knowledge that in 2013 a representative of Northern Pass approached me about using my land on North Hill Road for the purpose of doing a geotechnical boring near North Hill Road on my land outside of the municipal road right of way.
3. Mr. Scott Mason, representing Northern Pass, offered me \$3,000 in exchange for doing one test boring excavation on my land. I told Mr. Mason that I would agree to allow Northern Pass to do the boring if Northern Pass would donate the \$3,000 to the North Hill Church, which is adjacent to my land. Mr. Mason initially said that Northern Pass could not make such an accommodation. I then indicated to Mr. Mason that I would not consent to Northern Pass doing the work on my land.
4. Mr. Mason later called back, and indicated that Northern Pass would consent to making a \$3,000 donation to the Church. NP made the contribution, and then did the excavation project on my land.

Dated: December 13, 2016

  
Print Name: Robert Brooks

STATE OF NEW HAMPSHIRE  
COOS, ss.

December 13, 2016

Personally appeared the above named Robert Brooks and gave oath that the foregoing affidavit is true and accurate to the best of his/her knowledge, information, and belief.

Before me,



Notary Public, State of New Hampshire

My Commission Expires:

