



New Hampshire Association of Conservation Commissions

SERVING NEW HAMPSHIRE'S COMMUNITIES SINCE 1970

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Conservation Commissions and the Northern Pass

Background

The Northern Pass is a project by Eversource and Hydro-Quebec that was introduced in 2010 and it proposes to construct a 192-mile, 1,090 megawatt high-voltage transmission line from Canada through 31 New Hampshire municipalities. It proposes a new direct current (DC) transmission line from the Canadian border to Franklin where a converter terminal will be built to convert the electricity from DC to alternating current (AC). From there, a new AC transmission line would carry the energy to an existing substation in Deerfield and into New England's electric grid. The project needs federal and state approvals.

Federal Permitting

On the federal permitting side, the U.S. Department of Energy recently completed its draft Environmental Impact Statement, and is now revising the draft to reflect the new route unveiled in August. The DOE is expected to hold hearings in December on the environmental impact statement, as a prelude to the presidential permit needed for the power lines to cross the international border.

State Permitting: Site Evaluation Committee Process

Administrative Completeness: On the state side, the project is currently in the permit application process. On October 19, 2015, Northern Pass submitted its project application to the state's [Site Evaluation Committee \(SEC\)](#). The SEC permit is the most critical permit needed for the project to advance.

The SEC acts similarly to a planning board but on statewide level for energy projects and it consists of the three members of the Public Utilities Commission, the commissioners of NH Department of Environmental Services, Department of Transportation, Division of Historic Resources and two members of the public.

The NH Department of Environmental Services (NH DES) and other state agencies must submit their opinions to the SEC by November 13, 2015 on whether they believe the application is administratively complete.

Administrative completeness is not about the quality of the submission, or in other words, the question to ask is: Are there any deficiencies with the application? Conservation commissions wishing to comment on administrative completeness of the application should submit comments to [Collis Adams at NH DES](#) and to [Pamela Monroe at the SEC](#) before November 13. Conservation commissions should be looking at the rules of each resource program (i.e. wetlands, Shoreland, etc.) to determine whether the applicant fulfilled the requirements of the rules for each program. More information is below about how conservation commissions can comment on the permit applications specific to their municipalities.

The SEC will consider comments from conservation commissions, NH DES and other state agencies and must determine within 60 days of receiving the application, which is December 18, whether it is administratively complete. The deliberation is public, so the SEC would call a public meeting the week before December 18. A subcommittee of the SEC will then issue an order (decision). If the application is determined to not be administratively complete, the applicant will have 10 days to remedy any shortfalls.

Concurrent to the process in determining administrative completeness is the process of conservation commissions commenting on [Fill and Dredge in Wetlands](#) applications for impacts in their municipalities. Staff from NH DES and the SEC have informed NHACC that conservation commissions should follow the normal procedures for fill and dredge applications, Shoreland impacts, etc. This document focuses on fill and dredge procedures and more information is below on questions to consider. The normal process allows a conservation commission to request time to investigate an application for a fill and dredge permit filed with the NH DES Wetlands Bureau. If a commission makes this request within 14 days of the date the application is signed by the town or city clerk, the Wetlands Bureau must delay action on that application until a report is received from the conservation commission or until 40 days from the date of the clerk's signature, whichever comes first. The conservation commission is the ONLY municipal body with authority to "intervene" (request this delay).¹ NHACC recommends that conservation commissions that received fill and dredge permit applications should follow the normal 14-day/40-day process.

As noted above, the process of determining administrative completeness and evaluating fill and dredge, Shoreland and other permit applications is concurrent. If the main application is determined administratively complete, NH DES will then focus its attention on the wetlands, Shoreland, and other permit applications. Other state agencies will also be evaluating impacts within their jurisdictions. As such, conservation commissions are encouraged to submit comments to NH DES and SEC throughout the entire application review process because comments will be critical to the approval/denial process.

If the application is determined administratively complete, within 45 days of December 18, which would be around January 31, 2016, the SEC subcommittee must hold a public information session in each county that is impacted by the project. Those counties include: Merrimack, Grafton, Coos, Rockingham and Belknap. The meetings will consist of a presentation from the agencies with jurisdiction, a question and answer period (questions need to be submitted on notecards ahead of time) and then an open comment period. The NHDES and the other state agencies will then review the comments and continue to review the application.

Within 90 days of December 18, which would be around March 16, 2016, the SEC subcommittee must hold another public hearing in each impacted county.

The agencies continue to review the application, and within 150 days of December 18, the agencies need to report to the SEC subcommittee their progress on the application review including an outline of permit conditions, whether more information is needed to make a final decision, etc.

Within 240 days of December 18, the agencies must file final comments and final permit conditions.

Within 365 days of December 18, an adjudicative proceeding with the full SEC must begin and the SEC determines whether to issue/deny a certificate to Northern Pass.

The SEC's decision can be appealed to the NH Supreme Court.

¹ Note that the authority to intervene in this instance is different than filing for intervenor status with the SEC. More information on filing for intervenor status is below.

Permitting: Fill and Dredge in Wetlands

NHACC has compiled a list of questions for fill and dredge wetland applications to generate ideas of what to consider. Some questions include:

- Who delineated the wetlands?
- Are they certified? Is their license current or has it lapsed or been suspended? (Call the NH Joint Board - could look at the web site but it may not be up to date)
- How long ago were the wetlands delineated? (If more than a couple years may want to ask to have site redelineated. Or may want surveyor to refresh the flags as many will likely be missing.)
- What standards did they use? (I can provide a list of state and federal standards if they are interested.) Did they follow local zoning regulations/definitions also?
- Is there a certification note on the plan? Does it reference the standards used?
- Is the plan stamped by the scientist?

A more complete list can be [downloaded from the NHACC website](#). Reviewing NH DES's [fill and dredge page](#) is also advised. NHACC encourages conservation commissions to take site walks as soon as possible and to have public meetings with the applicant so they are there to answer questions. Additional questions to consider asking include:

- What are the impacts and what kinds of impacts to our wetlands that you are expecting?
- What are you planning for mitigation?
- What are you planning for erosion controls?
- Will there be stream crossings? Are they going to be bank to bank?
- How are you going to maintain the corridors over time?
- What are your plans for burial, and what impacts do you see with burial?

Reviewing NH DES's [guidance for Shoreland impacts](#) is also advised.

Other Evaluation Tools

[RSA 36-A](#) authorizes municipalities to establish conservation commissions and lists their specific responsibilities, plus additional activities which commissions may, but need not, undertake. Conservation commissions can use the information they have gathered in their Natural Resources Inventory (NRI), for example, to identify other natural resource impact risks and advise municipal leaders on ways to avoid or mitigate those impacts.

Consider the following:

- Review your town's **master plan** - if it is outdated, consider updating it with important natural resources identified (including viewsheds).
- Review your **zoning** ordinances/regulations - update with Wetland/Shoreland/Floodplain Zoning.
- Conduct an assessment of prime or significant **wetlands**.
 - Prepare potential impacts list and identify suitable mitigation sites
 - Check municipal equalized values against ARM Fund listing to calculate wetland values
- Develop a list of **priorities** for conservation AND restoration (based on NRI).
- Inventory conservation lands and **document** valuable resources.
 - And/or provide updates to **Conservation Lands Database** (with restrictions and easement holders, etc.). Assisting with the updating of the GRANIT layer helps provide accurate data to other conservation organizations across the state.

- Develop a **rating sheet** for potential conservation projects.
- Review the **Wildlife Action Plan**:
 - <http://www.wildlife.state.nh.us/wildlife/wap.html>
- Check rare plants, wildlife and natural communities lists by town on NH Natural Heritage Bureau and submit any additional information you have to them.
 - <http://www.nhdf.org/about-forests-and-lands/bureaus/natural-heritage-bureau/>
- Identify, assess and document vernal pools based on aerial interpretation.
 - http://www.cornishnh.net/wp-content/uploads/2014/08/Vernal_pool_manual.pdf
- Document and map any archaeological and historical resources.
 - <https://www.nh.gov/nhdhr/review/archaeology.htm>
- Make sure property deeds and conservation easements and restrictions have been recorded at the Registry of Deeds.
 - <http://www.nhdeeds.com/>
- Ensure that Baseline Documentation Reports (BDR's) are complete.
 - <https://www.nh.gov/oep/planning/programs/clsp/documents/eastment-report.pdf>
- Do homework necessary to establish value of conservation land in case of a negotiated easement or an eminent domain taking.
- Review conservation restrictions on conservation land to see if proposed survey methods would violate restrictions.

Intervenor Status

Can a municipality be an intervenor? Yes. Municipalities, individuals, businesses, and other organizations and entities may file a petition to intervene in the Northern Pass docket. In short, the petition for intervention must demonstrate a substantial interest that will be affected by the Northern Pass (such as abutting or nearby property owners) or have specialized knowledge that will be helpful to the SEC subcommittee (such as non-profit organizations working in an affected area). The subcommittee has the authority to limit and structure intervenors, particularly if the number of intervenors is large. For example, the SEC can group like-minded intervenors together to avoid duplication and delay in the adjudicative process.

Municipalities that are impacted by a project have very specific standing in the statute, whether they intervene or not. One statutory finding that the SEC must make in reaching a decision is that the proposed project "will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies." A simple letter from a municipality to the SEC will have an impact. A decision by a municipality to formally intervene will have an even greater impact.²

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The NH Association of Conservation Commissions is a nonprofit conservation organization that provides education and assistance to New Hampshire's local conservation commissions. Our mission is to foster conservation and appropriate use of New Hampshire's natural resources by providing assistance to conservation commissions, facilitating communication and cooperation among commissions, and helping to create a climate in which commissions can be successful.

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² Information for this section taken from a Society for the Protection of New Hampshire Forests [Frequently Asked Questions document](#).