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Robert Dillberger
Mason Conservation Commission
16 Darling Hill Road
Mason NH 03048

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STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

MARGARET WOOD HASSAN
Governor

October 22, 2015

Mr. Robert Dillberger
Mason Conservation Commission
16 Darling Hill Road
Mason, NH 03048

Dear Mr. Dillberger:

Thank you for your letter on behalf of several dozen New Hampshire Conservation Commissions regarding the proposed Kinder Morgan Northeast Energy Direct (NED) Project. I understand and appreciate the concerns outlined in the letter, and I have raised many of these concerns with both Kinder Morgan and the Federal Energy Regulatory Commission (FERC).

In my latest letter to FERC, I asked the commission to carefully review the proposed route and the potential negative environmental impacts. Specifically, my letter asked FERC and Kinder Morgan to address a number of concerns related to water quality and water resources, air quality and emissions, and noise from compressor stations, among others that were raised in your letter and other letters – and the Chairman of the Commission has assured me that these issues will be fully analyzed by commission staff in the environmental impact statement (EIS).

As conservation commissions, I understand your important duty to protect both the conservation properties under your jurisdiction and more broadly our critical natural resources, and I support the work you do to protect these resources for future generations of Granite Staters. To address concerns related to conservation properties and easements, the New Hampshire Department of Justice Charitable Trusts Unit recently sent a letter to the FERC outlining the legal restrictions on these lands and requesting that Kinder Morgan identify the location and type of restrictions for all conservation land potentially impacted by the NED Project. That letter is enclosed herein for your reference.

The siting of any energy transmission project must strike a balance between potential benefits, such as reduced costs to rate payers, and potential negative impacts, such as the environmental and land conservation concerns you raised. I will not support energy projects that do not appropriately strike this balance; the potential negative impacts of any proposed energy project should not disproportionately outweigh the benefits, particularly for the residents and communities that would bear the burden of hosting the project.

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Kinder Morgan must do more to show that the NED Project will have clear energy benefits for New Hampshire, particularly for the residents and communities where the proposed project would be hosted. The company must continue to work with impacted communities to understand and address local concerns related to the environment, air quality, water quality, historic and cultural resources, conservation lands, public safety, and more. The company must also ensure that any final proposal addresses local concerns and impacts and provides clear benefits to our people.

Thank you again for writing and voicing your concerns. I will continue to work with you and other town conservation commissions to ensure your concerns are expressed to the FERC and Kinder Morgan. By working together, I know that we can find energy solutions that lead to a stronger, more diverse and more affordable energy future.

With every good wish,

A handwritten signature in dark ink, appearing to read "Maggie Hassan", followed by a long horizontal line.

Margaret Wood Hassan
Governor

Enclosures

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

October 9, 2015

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Re: Northeast Energy Direct Project, Kinder Morgan Pipeline
Docket No. PF 14-22-000

Dear Ms. Bose:

Thank you for the opportunity to provide comment with respect to the Northeast Energy Direct (NED) Project (Docket No. PF 14-22-000). Please be advised that the New Hampshire Director of Charitable Trusts exercises all of the common law and statutory rights, duties and powers of the New Hampshire Attorney General in connection with the supervision, administration and enforcement of charitable trusts. New Hampshire RSA 7:20.

The donation in whole or in part of an interest in real estate to a charitable organization or a governmental entity may create a charitable trust. We understand that the NED project proposal would cross land parcels with donated property interests. Accordingly, I write to make FERC aware of the existence of these donated property interests along the proposed route of the NED project that are subject to charitable trust principles. I also write to clarify the role of the Charitable Trusts Unit with respect to these real estate interests. Finally, I write to request that Kinder Morgan supply FERC with sufficient documentation to identify the location and type of charitable trust restrictions on land affected by the proposed NED project.

This letter will discuss with some specificity the two types of donated property interests encountered along the route of the proposed NED project: the conveyance of a fee (ownership) interest and the conveyance of an easement interest.

Donated Fee (Ownership) Interest

An owner of real estate may decide to donate (or to sell at a discounted price) a parcel to a charitable organization or governmental entity. Under New Hampshire law, if the deed or gift instrument contains language that the real estate is to be used for some charitable purpose, such as for preservation of wild land with unique natural features or for conservation of forest land or

for park use, that conveyance creates a charitable trust. The entity that accepts the gift of property then must act in a fiduciary capacity to assure that the donor's intent is carried out.

The Charitable Trusts Unit does not maintain a database of every real estate parcel located along the proposed NED project route subject to a charitable purpose or restriction. It is aware that some properties held by the State of New Hampshire, including certain of the Rhododendron State Park parcels and the Russell-Abbott State Forest, were donated to the State and with specific deed restrictions.

In those cases where restrictions appear in a deed or in a gift instrument, the State of New Hampshire, a municipality or a land trust has a fiduciary duty to see that the land is used in accordance with the stated restriction. The Charitable Trusts Unit may investigate and take action against landowners that do not abide by the restriction. This authority even extends to departments of the State of New Hampshire that own land. Should the holder of such property seek to modify or extinguish all or part of any restriction, it must petition the probate court for cy pres relief. See, New Hampshire RSA 547:3-d. The standard for granting relief is high: the charitable purpose must have become impossible or impracticable or illegal or obsolete or ineffective or prejudicial to the public interest to carry out. The Director of Charitable Trusts is a necessary party to any such cy pres action.

The cy pres requirement is in addition to any other process that the charitable trust landowner may be required to follow in conveying an interest in the property. Therefore, the statutory process for the State of New Hampshire to dispose of any of its property, or for a landowner to dispose of property acquired in part with Land Conservation Improvement Program funds, is not a substitute for the cy pres process.

Donated Easement Interest

Similarly, an owner of real estate may decide to donate in whole or in part an easement for conservation, recreation, agricultural, historic or park purposes to a governmental entity or to a charitable organization. See, New Hampshire RSA 477:45 -- 47. These conveyances are typically referred to as conservation easements and they create a charitable trust. The donor may have also received a charitable deduction for the donation, which means that the transaction met very specific requirements under the Internal Revenue Code relating to its permanence and the absence of private benefit. The entity that accepts the gift of an easement then must act in a fiduciary capacity to assure that the donor's intent is carried out as reflected in the easement deed.

The Charitable Trusts Unit does not maintain a database of every real estate parcel along the proposed NED project route that may be subject to a conservation easement. It is aware of several, however, including the Fifield Tree Farm in Mason, upon which the Town of Mason Conservation Commission holds a conservation easement.

Kimberly D. Bose, Secretary
October 9, 2015
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Again, where a conservation easement is donated to the State of New Hampshire, a municipality or a land trust, that entity has a fiduciary duty to make sure that the use of the land does not violate any of the terms of the easement. The Charitable Trusts Unit may investigate and take action against easement holders that do not enforce easements they hold. Should the easement holder of such property seek to amend the easement terms, it must first consult with the Charitable Trusts Unit. Depending on the risk level of the proposed amendment, the easement holder may also be required to petition the probate court for cy pres relief, as described above. The Director of Charitable Trusts is a necessary party in any such proceeding. The Charitable Trusts Unit has published Guidelines for New Hampshire Easement Holders that deal with the amendment process. A copy of the Guidelines is enclosed.

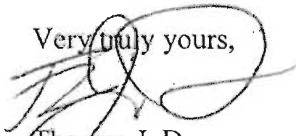
The consultation with the Charitable Trusts Unit and the potential cy pres requirement is in addition to any other process that the conservation easement holder may be required to follow to convey an interest in the property.

Conclusion

Some of the parcels along the proposed NED project route are subject to restrictions that create charitable trusts and therefore require the involvement of the Charitable Trusts Unit before a change of use. The restrictions donors place on land parcels vary greatly, although generally the donor wanted the land to be managed so as to preserve its natural or conservation values. The Charitable Trusts Unit cannot determine, in advance, how it will approach a specific request to amend a conservation easement or to modify or extinguish a restriction. The Charitable Trusts Unit expects that the owners of restricted parcels or the holders of conservation easements will in the first instance act in accordance with their fiduciary duties of loyalty, care and obedience in considering any such request.

To make sure that no land subject to a restriction for a charitable purpose is overlooked, the Charitable Trusts Unit requests that Kinder Morgan conduct sufficient research and submit maps showing all parcels along the proposed route that are subject to any restriction for charitable purposes, and including all supporting documentation, whether it be contained in a deed, gift instrument or probate document. The Charitable Trusts Unit also requests that the map and supporting documentation be included in the draft environmental impact statement.

Very truly yours,



Thomas J. Donovan
Director of Charitable Trusts
(603) 271-3591
tom.donovan@doj.nh.gov

TJD:ab
enclosure