

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

January 4, 2019

247006

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20423

ENTERED
Office of Proceedings
January 28, 2019
Part of
Public Record



Re: Docket No. AB-1237 Sub-No. 1X, *New Hampshire Department of Transportation – Abandonment Exemption – Between Littleton, NH and Bethlehem, NH*

Dear Ms. Brown:

Please find enclosed a check in the amount of \$4,200.00 in satisfaction of the filing fee for the notice of exemption to abandon 6.86 miles of rail line located between Station 995+66 (at Industrial Drive in Littleton, N.H.) and Station 1359+77 (3.35 miles east of the Littleton, N.H./Bethlehem, N.H. town line) (the Line) in the above-referenced matter.

Thank you for your attention in this matter. Please be in touch with any other concerns related to the State's application.

FEE RECEIVED
January 28, 2019
SURFACE
TRANSPORTATION BOARD

Sincerely,

Allison B. Greenstein
Assistant Attorney General
Transportation & Construction Bureau
(603) 271-3675
allison.greenstein@doj.nh.gov

FILED
January 28, 2019
SURFACE

ABG/mce TRANSPORTATION BOARD

Enclosure

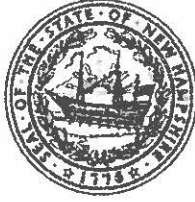
cc: Shelley Winters, Bureau of Rail and Transit Administrator, Department of Transportation

2263380

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

October 4, 2018

Ms. Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Docket No. AB-1237 Sub. 1
New Hampshire Department of Transportation - Abandonment Exemption-
Between Littleton, NH and Bethlehem, NH

Dear Ms. Brown:

Enclosed for filing are the original and ten copies of a Notice of Exemption under 49 C.F.R. 1152.50. New Hampshire Department of Transportation's request for a waiver of the filing fee in accordance with 49 C. F. R. § 1002.2 is included with the Notice of Exemption in Section 7 therein.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Allison B. Greenstein".

Allison B. Greenstein
Attorney
Transportation & Construction Bureau
(603) 271-3675

ABG/mce

Enclosures

cc: Bureau of Rail and Transit, NH Department of Transportation

2162407

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 1237 Sub. 1

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION
-ABANDONMENT EXEMPTION-
IN GRAFTON COUNTY, NH

VERIFIED NOTICE OF EXEMPTION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 1237 Sub. 1

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION
-ABANDONMENT EXEMPTION-
IN GRAFTON COUNTY, NH

VERIFIED NOTICE OF EXEMPTION

New Hampshire Department of Transportation ("NHDOT") files this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1152.50 to abandon 6.86 miles of rail line located between Milepost C113, Station 995+66 to Milepost C119.86, Station 1359+77, between Industrial Drive in Littleton, NH, and a point 3.35 miles east of the Littleton, NH/Bethlehem, NH town line (hereinafter referred to as "the Line"). A map showing the Line is attached hereto as Exhibit A. Because no freight has moved over the Line since November 1998, this abandonment is exempt from regulation under 49 CFR § 1152.50. In accordance with the aforesaid regulation, Petitioners make the following assertions:

Certification: 49 C.F.R. § 1152.50(b)

NHDOT certifies that the Line satisfies the criteria for abandonment under the exemption provisions at 49 C.F.R. part 1152, subpart F. Verification and Certification of Victoria Sheehan, Commissioner, New Hampshire Department of Transportation attached as Exhibit B. Certification of Compliance with Notice Requirements attached as Exhibit C. Copy of Newspaper Notice attached as Exhibit D.

Proposed Consummation Date: 49 C.F.R. § 1152.50(d)(2).

NHDOT proposes that the consummation date for abandonment of the Line will be no sooner than 50 days after the Board's acceptance of this Notice of Exemption filing.

Additional Required Information: 49 C.F.R. § 1152.22(a)(1) through (4), (7), and (8), and (e)(4).

(a) General.

(1) Exact name of applicant.

New Hampshire Department of Transportation (NHDOT).

(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

NHDOT is not a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105. Although NHDOT did acquire the Line as part of a larger acquisition from the former New Hampshire and Vermont Railroad (FD 33728, New Hampshire Department of Transportation – Acquisition Exemption, New Hampshire and Vermont Railroad, Inc., STB served April 16, 1999), NHDOT contracted with that carrier, and later with New Hampshire Central Railroad, to operate the line. It acquired the Line with the full intent to contract with a rail carrier that would provide rail service thereon. At no time did NHDOT itself provide rail service on the Line.

(3) Relief sought.

NHDOT seeks to use the class exemption at 49 C.F.R. § 1152.50 to abandon 6.86 miles of rail line located between Milepost C113, Station 995+66 to Milepost 119.86, Station 1359+77, between Industrial Drive in Littleton, NH,

and a point 3.35 miles east of the Littleton, NH/Bethlehem, NH town line. There has been no local traffic on the Line since November 1998 and no overhead traffic was ever handled over this Line.

(4) Map.

A detailed map depicting the Line covered by the proposed abandonment is attached as Exhibit A.

(7) Representative of Applicant

Correspondence regarding these proceedings should be sent to the following representative of NHDOT:

Jack E. Dodd, Rail Business Consultant
73 Bishop Street
Saint Albans, VT 05478
802-233-5656

(8) United States Postal Service ZIP Codes traversed.

The Line traverses U.S. ZIP Code Codes 03561 and 03574.

(e) Rural and community impact.

(4) Statement of other public purposes.

The Line runs through rural land and part of Littleton village in Littleton, NH. There are adequate road and highway networks existing in the vicinity of the Line. Therefore, there is little or no likelihood that the rail corridor is needed for transit or highway corridor. The right-of-way is suitable for recreational trails.

Labor Protection.

NHDOT does not anticipate any adverse impacts on employment levels as a result of the proposed abandonment as there has been no traffic over the Line since 1998. Nevertheless,

NHDOT agrees that the appropriate level of employee protection to be imposed on this abandonment is that established in *Oregon Short Line R. Co. -Abandonment- Goshen*, 360 I.C.C. 91 (1979).

Public Purposes and/or Trail Use.

The Line is suitable for other public purposes or trail use. There are no known restrictions on the Title of property, including any reversionary interest which would affect transfer of title or use of the property other than for rail purposes.

Environmental and Historic Reports.

The Environmental and Historic Reports containing information required by 49 C.F.R. § 1105.7 and § 1105.8 were filed with the Board on September 29, 2017. Moreover, NHDOT worked closely with the New Hampshire Department of Natural & Cultural Resources (formerly known as the New Hampshire Department of Historical Resources (NHDHR)) with respect to any assets that might have historical significance. A letter from NHDHR certifying that there will be no adverse effects on the line subject to the stipulations contained in the letter is attached as Exhibit E.

Based on information in our possession, the Line does not contain federally granted rights-of-way. Any documentation in the NHDOT's possession will be made available promptly to those requesting it.

Request for Waiver of Filing Fee

NHDOT respectfully requests that the Board waive the \$4,100.00 filing fee in connection with

this Notice of Exemption in accordance with 49 CFR § 1002.2 (e) (1). NHDOT is a state government entity and is not a quasi-governmental corporation or government subsidized transportation company. The filing fee funds could instead be used to facilitate an efficient and timely transition from the railroad corridor to a public trail use by allocating these funds to ensure the right-of-way is safe for public trail use.

Respectfully submitted,

NEW HAMPSHIRE DEPARTMENT OF
TRANSPORTATION

By its attorney,

GORDON J. MACDONALD
ATTORNEY GENERAL

October
~~September~~ 4, 2018


Allison B. Greenstein, Bar No. 265364
Attorney
Transportation & Construction Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
Telephone: (603) 271-3675

CERTIFICATE OF SERVICE

I hereby certify that on the ^{October} 4th day of ~~September~~, 2018, a copy of the foregoing Verified Notice of Exemption for the State of New Hampshire Department of Transportation was served by first class mail, postage prepaid, upon the agencies specified in C.F. R. § 1152.50(d)(1) as follows:

N.H. Public Utilities Commission
Martin P. Honigberg, Chairman
Debra A. Howland, Executive Director
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Railroads for National Defense Program
Military Surface Deployment & Distribution Command
Transportation Engineering Agency
1 Soldier Way Bldg. 1900W
Scott AFB, IL 62225-5006

Regional Director
National Park Service
U.S. Custom House
200 Chestnut Street, Fifth Floor
Philadelphia, PA 19106

Chief of Forest Service
US Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250-1111

Governor Christopher Sununu
State House
107 North Main Street
Concord, NH 03301

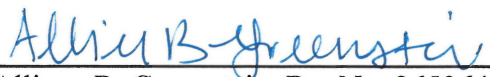
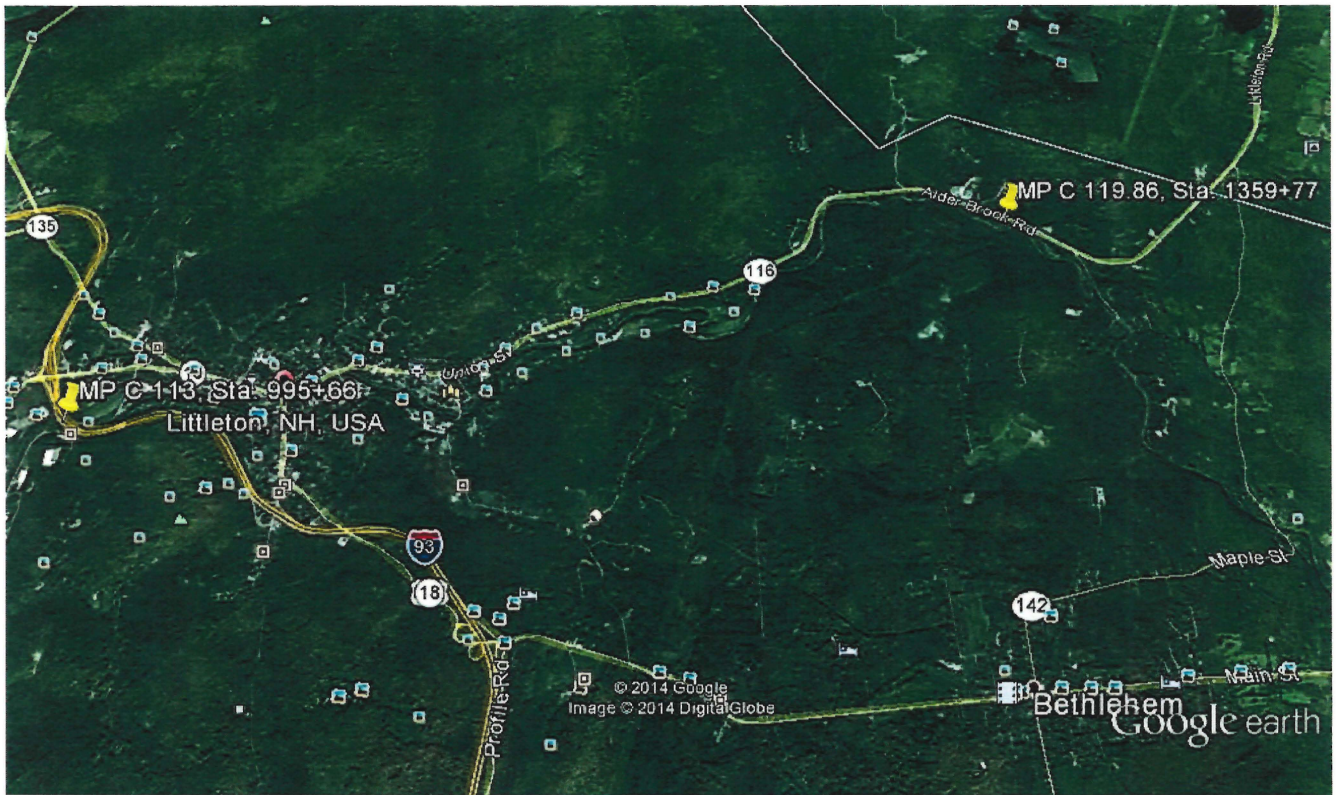

Allison B. Greenstein, Bar No. 265364
Attorney
Transportation & Construction Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
Telephone: (603) 271-3675

EXHIBIT A



State-owned Berlin Branch Railroad Corridor – Proposed abandonment MP C 113, Station 995+66 to MP C 119.86, Station 1359+77

Towns of Littleton and Bethlehem, NH

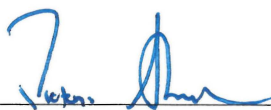
EXHIBIT B

CERTIFICATION THAT RAIL LINE MEETS
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

AFFIDAVIT OF VICTORIA SHEEHAN

I, Victoria Sheehan, Commissioner at the New Hampshire Department of Transportation, for the State of New Hampshire ("the State"), applicant herein, hereby verify on behalf of the State, under penalty of perjury, that I am authorized to make this verification by the State to verify and file with the Surface Transportation Board the foregoing application in STB Docket No. AB 1237 Sub. 1. I certify that I am qualified and authorized to file this pleading and that I have carefully examined all of the statements in this application as well as the exhibit attached thereto and made a part thereof. I further declare that I am competent to testify and give this affidavit based upon my personal knowledge of the facts and matters relied upon in the application, and that the facts pertaining to the State as set forth in the foregoing Notice of Exemption are true and correct to the best of my knowledge, information, and belief. In addition, I hereby certify that no rail traffic has moved over the subject line since November 1998, and that no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period prior to the filing of this Notice of Exemption.



Victoria Sheehan
Commissioner, New Hampshire Department of Transportation

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this 4th day of October, 2018, personally appeared Victoria Sheehan, before me the undersigned officer, and made solemn oath that the foregoing statements are true to the best of his knowledge and belief.

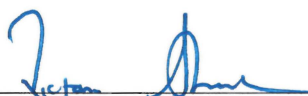


~~Justice of the Peace~~ Notary Public
Dawn M. Dosselt
Notary Public-New Hampshire
My Commission Expires Oct. 28, 2021

VERIFICATION

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

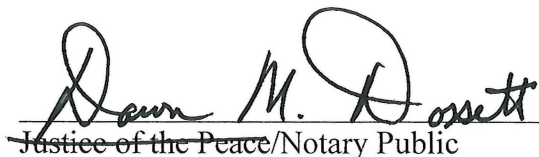
Victoria Sheehan makes oath and says that she is the Commissioner of the New Hampshire Department of Transportation applicant herein; that she has been authorized by the applicant to verify and file with the Surface Transportation Board the foregoing application in STB AB 1237 Sub 1; that she has carefully examined all of the statements in the application as well as the exhibit attached thereto and made a part thereof; that she has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of her knowledge, information, and belief.



Victoria Sheehan
Commissioner, New Hampshire Department of Transportation

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this 10th day of October, 2018, personally appeared Victoria Sheehan, before me the undersigned officer, and made solemn oath that the foregoing statements are true to the best of his knowledge and belief.



Justice of the Peace/Notary Public

Dawn M. Dossett
Notary Public-New Hampshire
My Commission Expires Oct. 26, 2021

EXHIBIT C

**CERTIFICATION OF COMPLIANCE WITH NOTICE REQUIREMENTS
OF 49 C.F.R. §1152.50(d)(1)**

I hereby certify that on the 26th day of February, 2018, a Notice of the Verified Exemption for the State of New Hampshire Department of Transportation was served by first class mail, postage prepaid, upon the agencies specified in 49 C.F. R. § 1152.50(d)(1) as follows:

N.H. Public Utilities Commission
Martin P. Honigberg, Chairman
Debra A. Howland, Executive Director
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Chief of Forest Service
US Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1111

Regional Director
National Park Service
U.S. Custom House
200 Chestnut Street, Fifth Floor
Philadelphia, PA 19106

I hereby further certify that on the 14th day of March, 2018, a Notice of the Verified Exemption for the State of New Hampshire Department of Transportation was served by electronic mail upon the agencies specified in 49 C.F. R. § 1152.50(d)(1) as follows:

Railroads for National Defense Program
Military Surface Deployment & Distribution Command
Transportation Engineering Agency
Scott AFB
usarmy.scott.sddc.mbx.public-affairs@mail.mil



Jack E. Dodd
Rail Business Consultant
Forest Products Advisor
73 Bishop Street
Saint Albans, VT 05478

EXHIBIT D

Certificate of Newspaper Publication

I certify that the "Notice of Intent to Abandon Line of Railroad" shown on the next page was published in the form prescribed by the Board for abandonment and discontinuance notices of exemption (49 C.F.R. § 1105.12). The notice was published one time on November 10, 2017 in the Caledonian Record, a newspaper of general circulation in the cities of Littleton, NH and Bethlehem, NH.



Jack E. Dodd
Rail Business Consultant
Forest Products Advisor
73 Bishop Street
Saint Albans, VT 054

NOTICE

New Hampshire Department of Transportation (NHDOT) hereby gives notice that on or after November 24, 2017, it will file a Notice of Exemption under 49 CFR 1152 Subpart F - Exempt Discontinuances - permitting the abandonment of a line of railroad between Industrial Drive in Littleton, NH and the Littleton-Bethlehem town line, or approximately between Stations 995+66 and 1359+77. The line traverses United States Postal Service Zip Codes 03561 and 03574. The proceeding has been assigned Docket Number AB-1237 by the Surface Transportation Board (STB).

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA) which will be normally available twenty-five (25) days after filing of the Notice of Exemption. Comments on environmental and energy matters should be filed no later than fifteen (15) days after the EA becomes available to the public and is addressed in the Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to OEA, Surface Transportation Board, Washington, DC 20423, or by calling the OEA at 202-245-0296.

Appropriate offers of financial assistance to continue rail service may be filed with the Board. Requests for environmental conditions, public use conditions or rail banking/trail use can be filed with the Board. An original and ten (10) copies of any pleading that raises matters other than environmental issues must be filed with the Board's Section of Administration, Office of Proceedings, 396 E Street S.W., Washington, DC 20423 and one (1) copy must be served on Petitioner's representative. Questions regarding offers of financial assistance, public use or trail use may be directed to the Board's Office of Public Assistance, Governmental Affairs and Compliance, at 202-245-0278. Copies of comments or requests for conditions should be served on Petitioner's representative: Jack E. Dodd, Rail Business Consultant, 73 Bishop Street, Saint Albans, VT 05478.

EXHIBIT E



NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

State of New Hampshire, Department of Natural and Cultural Resources 603-271-3483
19 Pillsbury Street, Concord, NH 03301-3570 603-271-3558
TDD Access Relay NH 1-800-735-2964 FAX 603-271-3433
www.nh.gov/nhdhr preservation@dcr.nh.gov

August 16, 2017

Jack E. Dodd
Rail Business Consultant
Forest Products Advisor
73 Bishop Street
Saint Albans, VT 05478

Re: Abandonment of a 6.86-mile section of the White Mountain Railroad/WM Division of the
Boston, Concord & Montreal Railroad *RPR 7722*
Dkt. No. AB-1237X

Dear Mr. Dodd:

Thank you for participating in consultation pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended. As noted in 49 CFR § 1105.8, the Historic Report to be provided to the Surface Transportation Board relates to the consultation process required by the National Historic Preservation Act, particularly Section 106.

Previously reviewed in 1995 and 2002, the entire line of the White Mountain Railroad was confirmed eligible for listing in the National Register of Historic Places on February 22, 2017 under Criteria A and C, for history and engineering. On May 24, 2017 approximately 50 extant historic elements located along the 6.86-mile section of the line proposed for abandonment/trail conversion were confirmed as contributing elements to the linear historic district. These include a variety of posts, signs, switches, and other small features, as well as larger features such as bridges.

Per an e-mail dated August 8, 2017 (Gamache, NH Bureau of Trails), the project will involve removal of 6.86 miles of rail and ties, minimal grading of the corridor, and repairs and installation of decking on bridges for conversion to trail use to add mileage to an existing trail open to hiking, bicycle, OHRV, snowmobile, equine, sled dog, and cross-country skiers. The e-mail notes that contractors will perform the initial trail conversion work, with trail maintenance performed by the NH Bureau of Trails and local volunteer clubs. However, the Request for Project Review (RPR) initiating Section 106 consultation with our office (received June 10, 2016) also noted that the intent is to avoid impacts to "All railroad operation appurtenances (granite mile posts, whistle posts, tell-tales and signals . . .), *unless a hazard to current (snowmobiles) and future corridor users, will remain*" (italics added).

The DHR expressed two areas of concern for further consultation in its June 9, 2017 e-mail to the NH Bureau of Trails and NHDOT. One is the potential removal of contributing railroad elements such as posts, signs, switches, and open battery wells that could potentially be construed as hazards and removed per the RPR project description. The second is the presumed installation of railings on open railroad bridges in order to ensure trail users' safety. These concerns have not been addressed by the project applicant. As was mentioned in that e-mail, good examples of treatment of these types of elements/resources have been developed in recent projects.

The DHR concurs that the undertaking would have "*No Adverse Effect*," pursuant to 36 CFR Part 800.5, *if the abandonment/trail conversion is done as described in the following stipulations:*

Stipulations: (1) A list of identified hazards and a hazard removal plan is prepared and shared with the DHR with reasonable time for review and consultation to revise plans, if necessary; (2) the NH Bureau of Trails will commit to avoiding/protecting railroad-related features during construction, and maintenance of these during trail management by, at minimum, informing its staff and volunteers as to what historic items to be aware of and on the lookout for to avoid disturbing them, by marking out artifacts encountered before beginning work to reduce any occurrences of accidental damage, and by including a clause in construction bid documents that mandates any historic items be left intact and undisturbed during the construction process unless specifically addressed in the hazard removal plan; and (3) design plans for converting railroad bridges to trail use, such as installation of railings, must follow the Secretary's Standards for the Treatment of Historic Properties; design plans must be shared with the DHR with reasonable time for review and consultation to revise plans, if necessary.

Therefore, based on the information available, it has been determined that the undertaking, *under condition that actions as stipulated above are accepted and completed*, will have "No Adverse Effect," pursuant to 36 CFR Part 800.5, on the White Mountain Railroad; nor will it have an adverse effect on any other properties or districts that are listed in or may be eligible for the National Register, or properties of known or potential architectural, historical, archaeological or cultural significance.

Sincerely,



Richard A. Boisvert
Deputy State Historic Preservation Officer
New Hampshire Division of Historical Resources

