

**Right to a sustainable energy future and community self-  
government ordinance**

**Sugar Hill, New Hampshire**

Explanatory information and draft ordinance

Produced by the Sugar Hill Northern Pass Action Committee

## **About the Sugar Hill Northern Pass Action Committee**

In September of 2011 the Sugar Hill Selectboard voted unanimously to create the Sugar Hill Northern Pass Action Committee (SNOPAC). The board believed that since the town had unanimously voted at Town Meeting to oppose the project, a committee should be appointed to study further ways the town could oppose Northern Pass. The committee is open to anyone who wishes to participate and all meetings are posted and open to the public.

During the fall, SNOPAC extensively researched various means of opposition to NP that could be taken on a town level. This research led to the recommendation that the Selectboard consider a Rights Based Ordinance (RBO) that would assert the town's right to make its own decisions about any energy projects to be sited here. SNOPAC worked with the Community Environmental Defense Fund (CELDF) to draft a proposed ordinance -- CELDF has wide experience working with municipalities to draft this type of ordinance. Several SNOPAC members attended training provided by CELDF. The Selectboard met with a representative of CELDF to learn more about RBOs, reviewed a proposed draft of the ordinance, and decided unanimously to support it and place it on the warrant themselves.

The original members of SNOPAC included individuals who were full-time residents, part-time residents or landowners who live elsewhere. All are affected by Northern Pass. Anyone is welcome to join this committee.

SNOPAC members:

Dorothy McPhaul, co-chair

Janet Anderson, co-chair

Judy Weisenberger

Nancy Martland

Peter Anderson

Jamie White

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## **Contents**

This information packet provides a set of materials that explain the Rights Based Ordinance which will appear on the Town Warrant at Town Meeting on March 13. This packet was prepared by SNOPAC, and is accurate to the best of our knowledge. It includes an explanation of why we need the ordinance, what it does, plain English summary of the "legalese," the text itself, and answers to frequently asked questions. We suggest that reading the explanatory materials first will make it easier to understand the actual text of the ordinance.

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# **Sugar Hill's Challenge to Northern Pass: A Rights Based Ordinance**

Fifty years ago, the founders of Sugar Hill fought to establish the town that we love by demanding the right of self-governance. They took risks and they suffered setbacks, but in the end they carried the day. Today it is our turn to step up and fight for those same founding principles to protect our town. Our town cannot currently use local regulation to stop the Northern Pass. The Federal and State regulatory process preempts local regulations. A fight through the regulatory process is costly and ultimately doomed in all but a few cases. A Community Rights Ordinance presents a different means to stop this project.

## **What is a Rights Based Ordinance (RBO)?**

- A *local law* based in the NH and US Constitutions, to be voted on at Town Meeting on March 13.

## **Why do we need a Rights Based Ordinance?**

- Sugar Hill voted unanimously at Town Meeting 2011 to oppose Northern Pass – this was a resolution, not a law. *A Rights Based Ordinance puts the power of law behind our opposition.*
- If we do nothing, or depend on state regulatory law, it is likely that NP will be permitted.
- If we pass a Rights Based Ordinance, we create law designed to allow our local regulations to control corporate activity in our town, which would challenge any permit granted to NP.

## **What does our Rights Based Ordinance enable us to do?**

- Claim the right to decide what happens in our town – you need to claim a right to defend it.
- Determine our own energy policy, to move toward a sustainable energy future.
- Protect our forests, ecosystems, local economy, scenic landscapes and the rights of both our residents and nature in Sugar Hill.

## **Does a Rights Based Ordinance work?**

- These ordinances are designed to challenge federal and state regulations because they are based on a higher level of law, they assert the rights of citizens vs. the rights of corporations.
- Community Environmental Legal Defense Fund (CELDF) worked with Sugar Hill citizens to draft this ordinance. CELDF has worked with over 100 towns across the US. In all but one case, the corporate project stopped without legal action after a community rights ordinance was adopted.
- We are one of at least 8 towns with a community rights ordinance on their warrant in 2012.

## **What are the costs involved?**

- CELDF lawyers only charge expenses. Costs are hard to predict, but a Constitutional fight is much cheaper than a regulatory one.
- So far, all the work has been done by volunteers or covered through private contributions.

## **What does our Sugar Hill ordinance say?**

- The ordinance is explained on the back of this flyer.

## What the Sugar Hill Rights Based Ordinance (RBO) Does

The ordinance makes a fundamental change in the way our town handles state and federal regulatory procedures. It involves the claim that we have the right to a final say over what corporate energy infrastructure projects are located here. It is a very logical argument.

### The way it is now

- Regulatory procedure does not recognize the town's existing codes, policies, zoning rules and other local ordinances. This is called the doctrine of "preemption."
- Preemption allows permits given by state or federal authorities to override local control.
- Example: Sugar Hill has a height ordinance. All of us who live here have to respect it when we build, or try for a variance from our local Zoning Board if we want to build higher. A corporation such as Northern Pass *does not* have to respect our local height ordinances once they receive a state permit.

### The RBO does three major things to change the way it is now

- It claims the right of the citizens of our town to community self-government, based on the New Hampshire Constitution's guarantee of consent of the governed. In this way it challenges the doctrine of preemption because we assert our legal standing in regulatory matters. If we do not claim this right, we cannot challenge preemption.
- It declares that corporations shall not have the rights of persons under either the US or the NH Constitution, and removes corporations' power to use state or federal preemptive law, including eminent domain, in our town without our consent.
- It claims the right of the citizens of our town to determine our own energy policy to move toward sustainable energy use and to enforce that policy.

### How the ordinance works

- Declares a bill of rights including self-governance, the right to a sustainable energy future, the right to preserve the aesthetic values and environment of our town.
- It is based on the argument that *energy sustainability is the grounds on which we can reject Northern Pass*, and any other future energy project that we expect will come along, which is why energy sustainability is a focus of the ordinance.
- The way that Sugar Hill works toward a more sustainable energy future is left for us to determine, through our own energy policy *to be approved by popular vote*. The ordinance offers a sweeping definition of what can be considered "unsustainable." It leaves it to us to determine what we will permit or not as we move toward a more sustainable future. For example, our policy could exclude aerial transmission towers that damage our natural beauty, which is included in the definition of unsustainable energy systems in the ordinance.
- The key point here: THIS IS UP TO US, not an outside permitting authority.

# Sugar Hill's Rights Based Ordinance

## The Ordinance at-a-glance

The main points of the RBO are explained below in plain English. The ordinance text begins with an opening section and then has several numbered sections. The full text ordinance follows this explanation -- you might want to refer back here as you read it.

### Opening Section: Bill of Rights

- Summary: prohibits the siting of new energy projects that violate the ordinance.
- Based on the founding documents of the U.S. and on the NH Constitution, asserts our right to govern ourselves in the sense that WE get to decide what goes on in our town.
- Claims the right to direct our energy future, preserve the aesthetic values of clean air, pure water, healthy soil, forests and unspoiled vistas.
- Prohibits land acquisition for, or siting and construction of, any structure to be used in the operation of an unsustainable (defined below) energy system. Northern Pass is such a system.

### Section 1: Findings and Intent

- Asserts the town's finding that it will not allow its interests to be overridden by corporations.
- Asserts its right to a sustainable energy future, including the prohibition of unsustainable energy projects sited within it. This overrides state and federal permits – it challenges preemption.

### Section 2: Definitions

- "Unsustainable energy systems" means those systems that are controlled by state and federal energy policies rather than community controlled energy policies.
- There is a sweeping definition of what is unsustainable, enumerating types of energy that would come under the phrase. Think of this as a legal rather than an everyday use of the word "unsustainable."
- The phrase also includes any energy system that violates the rights of human and natural communities.
- This definition allows the town to decide what to permit and what not to permit as it moves toward a more sustainable energy policy.

### Section 3: Statements of Law –Rights of Residents and Natural Environment

- Establishes the town's rights to a sustainable energy future, scenic preservation, clean water, flourishing natural communities, and self-government.

#### **Section 4: Statements of Law – Prohibitions Necessary to Secure Bill of Rights Protections**

- Prohibits the acquisition of land for, and construction or siting of, any structure to be used in the operation of an unsustainable energy system, as determined by the Town of Sugar Hill (explained further in Section 6).
- Prohibits the legal treatment of corporations as persons.
- Corporations may not use the doctrine of preemption to override this ordinance. This includes eminent domain.
- Specifically invalidates State or Federal permits which would override the prohibitions in this ordinance or the claimed rights of residents and natural communities

#### **Section 5: Enforcement**

- Makes violation a summary offense, punishable to the full extent of the law. Usually summary offenses are punishable by a fine.
- Allows any town resident to have the legal standing to bring action to enforce the ordinance, as well as the town itself.

#### **Section 6:**

- A key element of the RBO is to have the town adopt a sustainable energy policy. The town determines its policy by a popular vote. Once the policy is in place, the other parts of the ordinance enable the town to enforce it. For example, the policy could exclude aerial transmission of High Voltage electricity. There is plenty of room in the earlier definition of what is unsustainable for this to fit.

These are the operative sections of the ordinance. Other sections cover effective date, people's right to self government, severability ( if any one section of the laws is found to by a court to be invalid, the others still remain in effect) and repeal of earlier town ordinances that conflict with the new one.

**Right to A Sustainable Energy Future, Right To Scenic Preservation and Community Self-Government Ordinance**

**A RIGHTS--BASED ORDINANCE TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF RESIDENTS AND ECOSYSTEMS OF SUGAR HILL, NEW HAMPSHIRE BY ESTABLISHING A BILL OF RIGHTS; BY RECOGNIZING THE RIGHT TO A SUSTAINABLE ENERGY FUTURE, AND THE RIGHT TO SCENIC PRESERVATION, AND BY PROHIBITING THE SITING OF NEW ENERGY PROJECTS THAT VIOLATE THE PEOPLE’S RIGHT TO A SUSTAINABLE ENERGY FUTURE.**

**Whereas**, this ordinance establishes a Bill of Rights which recognizes and secures the civil and political rights of Sugar Hill residents; and

**Whereas**, this ordinance recognizes and secures a right to a Sustainable Energy Future for Sugar Hill residents; and

**Whereas**, this ordinance then prohibits the land acquisition necessary for the construction of an unsustainable energy system, or land acquisition necessary to engage in construction or siting of any structure to be used in the operation of an unsustainable energy system, because such actions would violate the right of the Sugar Hill residents to a sustainable energy future; and

**Whereas**, this ordinance recognizes and secures a right to preserve the aesthetic values of the town, including clean air, pure water, forests, healthy soil and unspoiled vistas that are essential for the tourism that provides economic sustainability for local businesses, and

**Whereas**, this ordinance removes legal powers and authority from corporations within the Town that are in violation of this ordinance or are seeking to engage in activities that are prohibited by this ordinance, in recognition that those legal powers are illegitimate and unjust, in that they place the rights of a corporate minority over the rights and political authority of a majority of Sugar Hill residents, thereby nullifying those rights and authority; and

**Whereas**, this Ordinance shall be known and may be cited as “The Town of Sugar Hill’s Right to a Sustainable Energy Future, Right to Scenic Preservation, and Community Self-Government Ordinance;” and

**Whereas**, this Ordinance is enacted pursuant to the inherent right of the residents of Sugar Hill to govern their own community, including, without limitation, the Declaration of Independence’s declaration that governments are instituted to secure the rights of people, and the New Hampshire



Constitution's recognition that "all government of right originates from the people, is founded in consent and instituted for the general good."

### **Section 1 – Findings and Intent**

The residents of the Town of Sugar Hill recognize that the current energy policies of the state of New Hampshire and the United States have long been directed by a small handful of energy corporations and the directors of those corporations, and that centralized control over energy policies forces reliance upon unsustainable industrial-scale energy production, and denies the rights of residents to a sustainable energy future.

The residents of the Town of Sugar Hill recognize that environmental and economic sustainability cannot be achieved if the rights of community majorities are routinely overridden by corporate minorities claiming certain legal powers that bar meaningful regulatory limitations and prohibitions concerning the generation, distribution, and transmission of unsustainable energy. The residents of the Town also recognize that sustainability cannot be achieved within a system of preemption which enables those corporations to use state governments to override local self-government, and which restricts municipalities to that lawmaking specifically authorized by state government.

The residents of the Town of Sugar Hill find that the protection of their health, safety, and welfare is mandated by the doctrine of the consent of the governed and their inherent right to local self-government. Thus, the Town of Sugar Hill hereby adopts this rights-based Ordinance, which establishes a Bill of Rights for the residents and communities of the Town. This Bill of Rights includes the Right to a Sustainable Energy Future, prohibits corporations from acquiring land necessary for the construction of unsustainable energy systems, or engaging in the construction or siting of any structure to be used in the operation of unsustainable energy systems, removes certain legal powers from energy corporations operating within the Town of Sugar Hill that would violate the Right to a Sustainable Energy Future, and nullifies state laws, permits and other authorizations which interfere with the rights secured by this Ordinance.

### **Section 2 – Definitions**

- (a) "Corporations," for purposes of this ordinance, shall include any corporation, limited partnership, limited liability partnership, business trust, public benefit corporation, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability attributes for its owners, directors, officers, and/or managers. This term shall not include the Town of Sugar Hill municipal corporation, but shall include other municipal corporations, local and state authorities, and state and federal agencies.
- (b) "Ecosystem" shall include but not be limited to, wetlands, streams, rivers, aquifers, and other water systems, as well as all naturally occurring habitats that sustain wildlife, people, flora and fauna, soil-dwelling or aquatic organisms.

(c) “Natural Communities” means communities of wildlife, flora, fauna, soil-dwelling, aerial, and aquatic organisms, as well as humans and human communities that have established sustainable interdependencies within a proliferating and diverse matrix of organisms, within a natural ecosystem.

(d) “Energy systems” means those systems producing, generating, distributing, transmitting, or transporting energy and power.

(e) “Unsustainable energy systems” means those systems that are controlled by state and federal energy policies, rather than community controlled energy policies; hydroelectric power and industrial scale wind power when it is not locally or municipally owned and operated, energy systems using fossil fuels, including but not limited to coal, natural gas, petroleum products, nuclear and radioactive materials, and other fuel sources that are non-renewable, or which produce toxins and substances that cause injury to humans or natural communities and ecosystems, or that are in violation of residents’ right to a sustainable energy future. The phrase shall also include any energy system which violates the rights of human and natural communities under this ordinance or under other laws. The term shall not include combustion of wood and wood products or the use of propane, kerosene, heating oil, coal, or natural gas when combustion of those fossil fuels is used solely to generate on-site heat or power and the energy produced is not sold, transmitted, or distributed.

### **Section 3- Statements of Law – Rights of Residents and the Natural Environment**

(a) Right to a Sustainable Energy Future. The residents of Sugar Hill have a right to a sustainable energy future in which energy decisions are made by the community, and in which fuel sources used to generate energy are renewable and sustainable.

(b) Right to Scenic Preservation. All residents of the town of Sugar Hill possess a fundamental and inalienable right to protect and preserve the scenic, historic and aesthetic values of the town, including clean air, pure water, healthy soil, and unspoiled vistas that provide the foundation for tourism and economic sustainability for local businesses. Residents and local representatives have the authority to enact and enforce legislation that guarantees an exercise of local self-government that is protective of these rights.

(c) Right to Water. All residents, natural communities and ecosystems in Sugar Hill possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the Town.

(d) Rights of Natural Communities. Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the Town of Sugar Hill. Residents of the Town shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

(e) Right to Self-Government. All residents of Sugar Hill possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities and their directors and managers shall not enjoy special privileges or powers under the law which make community majorities subordinate to them.

(f) People as Sovereign. The Town of Sugar Hill shall be the governing authority responsible to, and governed by, the residents of the Town. Use of the "Town of Sugar Hill" municipal corporation by the sovereign people of the Town to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation that is subordinate to them in all respects at all times. The people at all times enjoy and retain an inalienable and inalienable and indefeasible right to self-governance in the community where they reside.

(g) Rights as Self-Executing. All rights delineated and secured by this ordinance shall be self-executing and these rights shall be enforceable against corporations and governmental entities.

#### **Section 4 -- Statements of Law – Prohibitions Necessary to Secure Bill of Rights' Protections**

(a) It shall be unlawful within the Town of Sugar Hill for a corporation or any person using a corporation, to engage in land acquisition necessary for the construction of an unsustainable energy system, or to engage in construction or siting of any structure to be used in the operation of an unsustainable energy system.

(b) Corporations in violation of the prohibitions of this ordinance or seeking to engage in those prohibited activities, shall not have the rights of "persons" afforded by the United States and New Hampshire Constitutions, nor shall those corporations be afforded the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the New Hampshire Constitution. Those corporations shall also not be afforded the protections of the 1<sup>st</sup> or 5<sup>th</sup> Amendments to the United States Constitution, or the corresponding sections of the New Hampshire Constitution.

(c) Corporations engaged or seeking to engage in actions prohibited by this ordinance shall not possess the authority or power to enforce State or federal preemptive law, including eminent domain powers, against the people of the Town of Sugar Hill, or to challenge or overturn municipal ordinances adopted by the Board of Selectmen or the residents of the Town of Sugar Hill, or interfere with the rights asserted by this ordinance, or interfere with the authority of the Town to protect the health, safety, and welfare of its residents.

(d) No permit, license, privilege, eminent domain authority, or charter issued by any State or federal agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Ordinance or deprive any Town resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the New Hampshire Constitution, the United States Constitution, or other laws, shall be deemed valid within the Town of Sugar Hill.

## **Section 5—Enforcement**

(a) Any person, corporation, or other entity that violates any prohibition of this Ordinance shall be guilty of a summary offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance found to be violated.

(b) The Town of Sugar Hill may enforce this Ordinance through an action in equity brought in the Grafton County District Court or other court of competent jurisdiction. In such an action, the Town of Sugar Hill shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

(c) Any Town resident shall have the authority to enforce this Ordinance through an action in equity brought in the Grafton County District Court or other court of competent jurisdiction. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

(d) Any person who brings an action to secure or protect the rights of natural communities or ecosystems within the Town of Sugar Hill, or to secure the right to scenic preservation, shall bring that action in the name of the natural community or ecosystem in a court of competent jurisdiction. Damages shall be measured by the cost of restoring the natural community or ecosystem to its pre-damaged state, and shall be paid to the Town of Sugar Hill or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community or ecosystem.

## **Section 6 – Sustainable Energy Policy**

The Town shall implement a Sustainable Energy Policy following the adoption of this ordinance that provides a plan for the community's reduction in use of power from unsustainable energy systems, within a time frame agreed to by the residents, to be decided by popular vote.

## **Section 7—Effective Date and Existing Permit holders**

This Ordinance shall be effective five (5) days after the date of its enactment, at which point the Ordinance shall apply to any and all commercial production, distribution, transportation or transmission of energy that would violate this ordinance regardless of the date of any applicable local, state, or federal permits.

## **Section 8—People's Right to Self-Government**

The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and pursuit of happiness. Any attempts to use other units and levels of government to preempt, amend, alter, or overturn this Ordinance, or parts of this Ordinance, shall require the Town of Sugar Hill to hold public meetings that

explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to self-government. Such consideration may include actions to separate the municipality from the other levels of government used to preempt, amend, alter, or overturn the provisions of this Ordinance or other levels of government used to intimidate the people of the Town of Sugar Hill or their elected officials.

**Section 9—Severability**

The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance. The Town of Sugar Hill hereby declares that in the event of such a decision, and the determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

**Section 10 - Repealer**

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All inconsistent provisions of prior Ordinances adopted by the Town of Sugar Hill are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this \_\_\_\_ day of \_\_\_\_\_, 2012, by the Town of Sugar Hill, in Grafton County, New Hampshire.

By:

## FAQs for the Rights Based Ordinance

### Right to A Sustainable Energy Future and Local Self-Government Ordinance

**Ordinance:** a local law, adopted by the governing body - town residents and their elected officials - to protect their health, safety, and welfare.

#### **1. Why is there a Bill of Rights written into the ordinance?**

The rights of the residents are claimed outright and stated plainly in the ordinance. Should the targeted corporate entity violate these claimed rights, they will be in violation of the law.

#### **2. Who is subject to the prohibition section of the local ordinance?**

(a) It shall be unlawful within the Town of Lancaster for a corporation or any person using a corporation to engage in land acquisition necessary for the construction of an unsustainable energy system, or to engage in construction or siting of any structure to be used in the operation of an unsustainable energy system.

After the law is adopted, **by definition**, acquiring land for the purpose of pursuing the project known as the Northern Pass in Town is a violation of the rights of the residents.

The target is unsustainable systems that will produce and transmit energy and power to benefit the corporation, not the people who live in Town. Acquiring land needed to build, or building hydroelectric and industrial wind systems not under local or municipal ownership, authority, and direction is illegal.

#### **3. Why do we give nature “rights” in the ordinance?**

To protect against the claims of the project supporters to use eminent domain powers against property owners. If the ecosystems in Town can be protected by the ordinance, then the Town has the authority to protect all of the property within the Town from trespass and destruction that will occur if permits are issued.

Under present legal arguments, only those people who own property or abut property that is being sought for a right of way have “legal standing” in court. This “legal standing” entitles them to prove direct financial interest and be compensated for damages. It does not guarantee that property owners will be able to keep their property, if the state and federal authorities deem the project “necessary for the common good”, even if that “commons” is a group of energy consumers who live in Massachusetts and Connecticut.

Under the new law, the Town could protect every forest and ecosystem by asserting rights to ban the project from going forward because the project would destroy the scenic preservation (nature), local economy (dependent on nature through tourism), rights of residents (to enjoy nature) and rights of nature (as a legal entity) to exist.

Residents would call upon the Town for enforcement first and are authorized to enforce it if the Town selectmen neglected to enforce the local law.

#### **4. Can any resident enforce the “nature’s rights” part of the ordinance against any other resident?**

Well, anyone can sue anyone for anything right now. The ordinance does nothing to change that.

The ordinance can be enforced against “a corporation or any person using a corporation to engage in land acquisition necessary for the construction of an unsustainable energy system, or to engage in construction or siting of any structure to be used in the operation of an unsustainable energy system.” (Section 4 (a).

(b) “Energy systems” means those systems producing, generating, distributing, transmitting, or transporting **energy and power**. (Section 3. Definitions)

No one can use the ordinance to sue their neighbors for dredging a pond, widening a forest lane, cutting timber, hunting wildlife, or any of the countless other activities that take place on private property.

This ordinance is enforceable against violators - namely, those who seek installation of the project known as the “Northern Pass” - or any other unsustainable energy project that will direct **energy and power** through the Town. Under this ordinance, no state or federal or corporate entity can force the Town to accept - against their will and consent - any future unsustainable energy systems that fall within the limits of the definition by causing harm to tourism, the environment, economic interests of local business owners, or the health of residents.

#### **5. Does the ordinance affect future businesses that would want to come into Town?**

The ordinance does nothing to discourage future development or business. The ordinance strips legal powers only from those corporation that seek to force unwanted unsustainable energy systems on the residents.

Only those corporations in violation of the local law are affected by it.

#### **6. Will there be “unintended consequences” if we pass the ordinance?**

**Or, with a turn of the question, will there be unintended consequences if we do not pass the ordinance?**

The Town is opposed to the siting of the unsustainable energy system known as the Northern Pass.

State and federal law claim the authority to allow the project to site in Town, even though voters unanimously opposed allowing the project at the last Town Meeting.

If residents follow the regulatory laws that are in place, the Town gets the project.

Your Town selectmen take an oath to “protect the health, safety, and welfare” of the residents.

The health risks associated with Electromagnetic Field (EMF) are well documented.

The ruin of scenic vistas may ruin tourism for the area, thus destroying the livelihoods/economic survival of some residents who are in business in the Town that rely upon tourism. Property values will be at risk.

There is no vehicle in regulatory law to deny the project.

There is no vehicle in regulatory law to protect the health of residents, the safety of residents, especially school children who will be exposed to the EMF that surrounds the towers along the proposed route.

There is no vehicle in regulatory law to protect all property owners from eminent domain.

These are the reasons for creating the rights based ordinance. It is the only way that we have found to be successful at banning unwanted projects and providing protections that the state is unwilling to provide.

If residents do not pass defining law at the local level, you will get the project.

All residents of the Town will be subjected to the trespasses, noted above, should the ordinance not pass.

**7. There is a gas station in town. If that gas station goes out of business and another one wants to start up in its place, would that qualify as a “new source” and thus, be prohibited? What about an oil company, since it is fossil fuels that we’re talking about?**

No, the ordinance specifies energy systems as; (b) “Energy systems” means those systems producing, generating, distributing, transmitting, or transporting **energy and power**. Gas stations, by definition, are not prohibited, since they do not produce, generate, transmit, or transport energy and power.

**8. Will legal fees increase if the Town enforces this ordinance?**

Spending taxpayers’ money is a valid concern and the selectmen are correct to be mindful of any financial risk.

First, because the ordinance is based on constitutional law, its defense in court is less expensive than defending local, regulatory zoning laws. Litigating regulatory law requires the expensive process of depositions which constitutional litigation does not. Residents of the towns of Nottingham, NH and Bethlehem, NH are well aware of the costs of fighting a regulatory battle. Funneling their argument through the regulatory system of law in New Hampshire courts cost the towns \$400,000 and \$500,000



respectively, in legal fees, (taxpayer dollars). In 2008, Nottingham passed a rights based ordinance. Bethlehem is still fighting through the regulatory system.

Without doing anything, the possibility of the project getting *permitted* to take land, ruin vistas, expose people to EMF, and ultimately, decide what happens in your town - against the will and without the consent of the residents - is pretty high. What will your town's future with the Northern Pass be like?

What will happen to property values if the project goes forward?

What will happen to tourism dollars? Will people want to come to New Hampshire to "get away" from it all, if we start looking just like what they're trying to "get away" from?

Who should have the right to determine the future of the Town – residents and their elected representatives, or a few members on a corporate board of directors from outside New Hampshire, who work within the system to claim the authority to come into your town and dictate the future to you and then get you to pay for it?

**9. I am a business owner in Town. Does this ordinance remove my corporate shield?**

No. The corporate shield protections are granted through the state chartering process. This state protection remains intact.

**10. How many other towns in New Hampshire have passed rights based ordinances? And of those, how many have been challenged?**

Four towns – Barnstead (2006), Atkinson (2007), Nottingham (2008), Barrington (2009),

and three towns in Maine - Shapleigh, Newfield (2009) and Monroe (2010), have adopted rights based ordinances. There are currently 8 towns in New Hampshire considering the Right to a Sustainable Energy Future Ordinance for adoption at Town Meetings in 2012.

None have been challenged. There are over 120 communities living under rights based ordinances in the country right now.

**11. Can the representatives for the Northern Pass simply ignore the ordinance?**

People and persons using corporations try to ignore the law all the time. No one can predict how Hydro-Quebec or the state will react to the law. Where rights based ordinances have been adopted in other places, the corporation that was banned from engaging in a particular activity – like mining coal, spreading sludge, dumping wastewater used in gas drilling, mining water, and mining uranium - stopped the activity.

Since the Town will be the enforcer, the answer lies with your selectmen and community members.

If Hydro-Quebec violates the local law, will you enforce it, or ignore them?

## **12. Why isn't the state protecting us from the project, can't the governor refuse the project for us?**

As supportive as several state representatives and governor Lynch seem to be of the opposition, legally, they are not in a position to deny the permit. Our government is organized hierarchically – meaning top down governing.

The federal government controls commerce. Energy is commerce. The federal energy policy controls which projects get denied and which get approved. And they are not about to deny investment capital from claiming territory to operate and generate revenue, especially projects that can be defined as “renewable” energy.

There are lobbyists in our state government halls right now, working to change the statutes to allow large scale hydroelectric power to come in under the term “renewable”. No one is lobbying for the rights of residents.

If people want to say “no” to the project, they must write defining law – an ordinance – that expresses this view through an assertion of local self-government. We must lobby for our own rights at the local level.

We have the authority under our state constitution to do so.

Article 1, Article 8, and Article 10 state the rights of the people very clearly.

## **13. Is the ordinance “illegal”?**

Your town counsel has a responsibility to protect the Town against libel. Since government is hierarchical – top to bottom governing – only the federal government can regulate commerce. The State dictates to the Town what it can and cannot do. Within regulatory statutes, projects like the Northern Pass are permitted. Whatever the State allows, the municipality cannot deny. So, when you hear people saying, “nothing can stop the Northern Pass, it's a done deal”, this is what they are talking about.

If we have the inalienable right to self-government and government is founded upon our consent, then when we do not give our consent, government should protect us.

To claim these rights and assert them at the local level is one of our inalienable rights, guaranteed by our state constitution.

This rights based ordinance is a tool used by communities to assert their rights.

When government acts legitimately, it secures and protects rights.

Illegitimate government would not protect residents of the state, but would instead come in on the side of corporations to force projects on communities without their consent.

The message of a rights based ordinance is that rights trump regulations, not the other way around.

The question is, do we govern – and if not - what are we willing to do about it?

We have three choices:

**Do nothing** and get the project.

**Oppose the project** through the regulatory structure and get the project anyway.

**Assert local governing rights**, do not compromise by voluntarily surrendering our local authority and force the powers at be to strip these rights from us.

Frame the conversation around rights, not regulations, like how tall the towers will be, or where the route will go. Force the state to say that corporations have more rights in your community than you do.

Please think of other questions and send them on to me, we'll add them to the list.

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New England Community Organizer

Community Environmental Legal Defense Fund

Sugar Town Meeting

Tuesday, March 13, 2011 at 7 pm

Sugar Hill Meeting House