

STATE OF NEW HAMPSHIRE

WETLANDS COUNCIL

DOCKET NO. _____ WtC

IN RE APPEAL OF DALTON CONSERVATION COMMISSION

**Compliant Notice of Appeal from Final Approval by Department of
Environmental Services of Shoreland Impact Permit 2024-00766**

The Appellant, Dalton Conservation Commission, hereby submits this Compliant Notice of Appeal as provided by the Department's August 12, 2024 PNA Letter, in response to the Appellant's Preliminary Notice of Appeal of the Department's approval of the above-captioned permit on or about July 18, 2024.

The Dalton Conservation Commission incorporates its previous filings in this docket, including, expressly and without limitation, its Preliminary Notice of Appeal of Department of Env. Svcs, received by the Department on August 5, 2024. *See* August 12, 2024 PNA Letter acknowledging date of receipt; N.H. Admin. R. Ec-Wet 201.01(d) (filings deemed to have been filed on the date received by the department). In support hereof, the Appellant further states, pursuant to Ec-Wet 203.01(b) and 203.03(c)(2):

- I. **Filing requirements of Ec-Wet 201.01.** This filing shall be submitted electronically to the Wetlands Council Appeals Clerk, appeals@des.nh.gov, followed by first class mail delivery to the Appeals Clerk and all parties on the service list for this matter. Counsel for the Appellant, representing the Appellant in this matter, and his contact information are as signed below.
- II. **NOA requirements of RSA 21-O:14, I-a.** This is an appeal from the final action of the Department of Environmental Services ("DES") on an application for a Shoreland Impact Permit to construct improvements in a shoreland area for the Granite State Landfill Project proposed for Bethlehem and Dalton, N.H. This appeal was originally filed in timely fashion through the Dalton Conservation Commission's Preliminary Notice of Appeal, submitted on August 5, 2024, within thirty days of the DES' July 18, 2024 decision on the Applicant's Shoreland Impact Permit Application.
- III. **Copy of Decision Appealed.** *See* attached.
- IV. **Clear and Concise Statement of Fact and Law:** Why Department Permitting Decision was Unlawful and Unreasonable. Please *see* attached supplemental Section IV.
- V. **Certificate of Notice of Service.** I hereby certify that a copy of the foregoing has been forwarded this day to parties on the Service List provided by the Department of Environmental Services, via email and/or with a physical copy within five business days in accordance with Ec-Wet 203.04 and 203.05.

VI. Appearance. An appearance by the undersigned for the Dalton Conservation Commission has been submitted contemporaneously herewith.

Respectfully submitted,

Dalton Conservation Commission

By its Attorneys,

Date: September 18, 2024

By /s/ Jeremy D. Eggleton
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The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

July 31, 2024

GRANITE STATE LANDFILL LLC
1855 VERMONT RTE 100
HYDE PARK VT 05655

Re: Approved Shoreland Standard Permit Application (RSA 483-B)
NHDES File Number: 2024-00766
Subject Property: NH Route 116, Bethlehem, Tax Map #ROW, Lot #ROW

Dear Applicant:

On July 18, 2024, the New Hampshire Department of Environmental Services (NHDES) Shoreland Program approved the above-referenced Shoreland Standard Permit Application. Enclosed please find Shoreland Permit # 2024-00766 to impact 24,983 square feet of protected shoreland in order to construct safety improvements entirely within New Hampshire Department of Transportation right-of-way.

This approval is based on the following findings:

1. The proposed impacts consist exclusively of safety improvements to a public road entirely within the New Hampshire Department of Transportation right-of-way and, pursuant to RSA 483-B:9, Minimum Shoreland Protection Standards, IV-b, shall be permitted as consistent with the intent and purpose of RSA 483-B, rather than the strict requirements of RSA 483-B:9, V(g) and RSA 483-B:9, V(b).
2. Pursuant to RSA 483-B:2, Minimum Standards Required, I, the development standards provided in this chapter shall be the minimum standards necessary to protect the public waters of the state of New Hampshire and these standards shall serve to further the maintenance of safe and healthful conditions.
3. Pursuant to RSA 483-B:2, Minimum Standards Required, XVI, the development standards provided in this chapter shall be the minimum standards necessary to protect the public waters of the state of New Hampshire and these standards shall serve to provide for economic development in proximity to waters.
4. Proposed tree clearing within the woodland buffer is necessary to expand the road surface to improve safety for vehicles accessing adjacent commercial properties and to protect overhead electrical utility lines and is thus in keeping with purposes of RSA 483-B as described in RSA 483-B:2.
5. Strict application of the stormwater treatment requirements of RSA 483-B:9, V(g) to public highway projects within the limited areas of public rights of way would preclude the majority of public highway improvements, and therefore, because this project is found to be in keeping with RSA 483-B:2, I and XVI it has been reviewed and approved pursuant to RSA 483-B:9, IV-b.
6. The Department received a letter dated April 18, 2024, from the Ammonoosuc River Local Advisory Committee (ARLAC) outlining concerns related to use of land, proximity to a drinking water source, drainage flow, aesthetic consequence, increased truck traffic affecting erosion, public safety, noise, fumes, spill of leachate, wildlife road crossing risks, and increased litter, related to the proposed project.
7. The proposed project authorized by this approval is limited to safety improvements to a public road. The concerns put forward by ARLAC pertain to a private land development project to be located on an adjacent property located outside of protected shorelands, and therefore, the issues of concern identified by ARLAC are outside the jurisdiction and scope of the Shoreland Water Quality Protection Act, RSA 483-B.

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095

NHDES Main Line: (603) 271-3503 • Subsurface Fax: (603) 271-6683 • Wetlands Fax: (603) 271-6588

TDD Access: Relay NH 1 (800) 735-2964

8. Additional ARLAC concerns related to the Applicant's failure to complete sections of the application have been addressed through the Applicant's completed response to the Department's April 24, 2024, Request for More Information Letter.

In accordance with RSA 483-B:14, RSA 21-O:14, and Rules Ec-Wet 100-200, **any person aggrieved by this decision may file a Notice of Appeal directly with the NH Wetlands Council (Council) within 30 days of the decision date, July 18, 2024.** Every ground claiming the decision is unlawful or unreasonable must be fully set forth in the Notice of Appeal. Only the grounds set forth in the Notice of Appeal are considered by the Council. Information about the Council, including Council Rules, is available at <https://www.nhec.nh.gov/wetlands-council/about>. For appeal related issues, contact the Council Appeals Clerk at (603) 271-3650.

If you have any questions, please contact me at Calvin.Diessner@des.nh.gov or (603) 271-4067.

Sincerely,



Calvin G. Diessner
Shoreland Section Supervisor, Wetlands Bureau
Land Resources Management, Water Division

Enclosure

Copied: Municipal Clerk/Conservation Commission
Assistant Wetlands Bureau Administrator



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

SHORELAND IMPACT PERMIT 2024-00766

NOTE CONDITIONS

PERMITTEE: GRANITE STATE LANDFILL LLC
1855 VERMONT RTE 100
HYDE PARK VT 05655

PROJECT LOCATION: NH ROUTE 116, BETHLEHEM
Tax Map/Block/Lot(s): ROW/no block/ROW

WATERBODY: AMMONOOSUC RIVER

APPROVAL DATE: JULY 18, 2024

EXPIRATION DATE: JULY 18, 2029

Shoreland Permit Application 2024-00766 has been found to meet or exceed the requirements of RSA 483-B as required per RSA 483-B:6, II. The New Hampshire Department of Environmental Services (NHDES) hereby issues this Shoreland Impact Permit with conditions pursuant to RSA 483-B:6, II.

PERMIT DESCRIPTION:

Impact 24,983 square feet of protected shoreland in order to construct safety improvements entirely within New Hampshire Department of Transportation right-of-way.

THE FOLLOWING PROJECT-SPECIFIC CONDITIONS HAVE BEEN APPLIED TO THE PERMIT PURSUANT TO ENV-WQ 1406.15(c):

1. All work shall be in accordance with plans by CMA Engineers dated June 2024 and received by the New Hampshire Department of Environmental Services (NHDES) on June 21, 2024 pursuant to Env-Wq 1406.15(f).
2. All proposed impacts are limited and must occur exclusively within the New Hampshire Department of Transportation right-of-way.
3. Within three days of final grading or temporary suspension of work in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1 as required pursuant to RSA 483-B:9, V(d) Erosion and Siltation, (1).
4. This permit shall not be interpreted as acceptance or approval of any impact that will occur within wetlands jurisdiction regulated under RSA 482-A including all wetlands, surface waters and their banks. The owner is responsible for maintaining compliance with RSA 482-A and Administrative Rules Env-Wt 100 - 900 and obtaining any Wetland Impact Permit that may be required prior to construction, excavation or fill that will occur within Wetlands jurisdiction as required pursuant to RSA 483-B:6, I(b).
5. This permit shall not preclude NHDES from taking any enforcement or revocation action as authorized pursuant to 483-B:5, I, if NHDES later determines that any of the structures depicted as "existing" on the plans submitted by the applicant were not previously permitted or grandfathered.

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095

NHDES Main Line: (603) 271-3503 • Subsurface Fax: (603) 271-6683 • Wetlands Fax: (603) 271-6588

TDD Access: Relay NH 1 (800) 735-2964

THE FOLLOWING STANDARD PROJECT CONDITIONS SHALL BE MET PURSUANT TO ENV-WQ 1406.20:

1. Erosion and siltation control measures shall be installed prior to the start of work, be maintained throughout the project, and remain in place until all disturbed surfaces are stabilized.
2. Erosion and siltation controls shall be appropriate to the size and nature of the project and to the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to wetlands or surface waters.
3. No person undertaking any activity in the protected shoreland shall cause or contribute to, or allow the activity to cause or contribute to, any violations of the surface water quality standards established in Env-Wq 1700, and the requirements in Env-Wq 1404.01(a) and(b).
4. Any fill used shall be clean sand, gravel, rock, or other suitable material.
5. For any project where mechanized equipment will be used, orange construction fence shall be installed prior to the start of work at the limits of the temporary impact area as shown on the approved plans; be maintained throughout the project; and remain in place until all mechanized equipment has been removed from the site.

ANY INDIVIDUAL CONDUCTING WORK UNDER THIS PERMIT IS ADVISED OF THE FOLLOWING:

1. During construction, a copy of this permit should be posted on site in a prominent location visible to inspecting personnel.
2. This permit does not convey a property right, nor authorize any injury to property of others, nor invasion of rights of others.
3. Pursuant to Env-Wq 1406.21, transfer of this permit to a new owner requires notification to, and approval of, NHDES.
4. This project has been screened for potential impact to **known** occurrences of protected species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or only cursory surveys have been performed, unidentified sensitive species or communities may be present. This permit does not absolve the permittee from due diligence in regard to state, local or federal laws regarding such communities or species. This permit does not authorize in any way the take of threatened or endangered species, as defined by RSA 212-A:2, or of any protected species or exemplary natural communities, as defined in RSA 217-A:3.

APPROVED:



Calvin G. Diessner
Shoreland Section Supervisor, Shoreland Program
Wetlands Bureau, Land Resources Management
Water Division

THIS PERMIT IS NOT VALID UNTIL SIGNED BY THE PARTIES BELOW (Env-Wq 1406.21(c))

PERMITTEE SIGNATURE (required)

PRINCIPAL CONTRACTOR SIGNATURE (required, if any)

Section IV: Clear and Concise Statement of Fact and Law Appeal
of Dalton Conservation Commission, Permit 2024-00766

Introduction

1.e The Applicant has submitted a Shoreland Impact Permit (“Shoreland Permit”)e Application, approved July 18, 2024 by the New Hampshire Department of Environmental Services (“NHDES”), pertaining to work the Applicant needed to do in a shoreland area where the entrance to its proposed multi-community landfill will be located. Shoreland Impact Permit 2024-00766 (July 18, 2024). NHDES approved the application, despite grave procedural and substantive deficiencies in the permit application. More particularly, the Applicant’s Shoreland Permit Application related to a subsidiary component of the much larger and more impactful project that is a project of regional significance located in two communities. However, the Applicant failed to provide notice, as required by law, to both of the affected communities, so as to permit both affected communities to provide input and comment. NHDES has erroneously approved the Applicant’s Shoreland Permit, despite these procedural notice defects. In addition, and without excluding any other ground for appeal listed, supra, NHDES has permitted the segregation/disaggregation of the major regional project into smaller parts. Furthermore, NHDES has granted approval to the Applicant despite the Applicant’s failure to meet reasonable avoidance and minimization criteria.

Facts

2. The Appellant references and incorporates its August 2, 2024 Preliminary Notice of Appeal herein in its entirety.

3. The Applicant is in the process of planning and permitting for a proposed landfill in Dalton and Bethlehem, N.H. *See* Application for Water Quality Certification, NHDES Docket

No. 2021-404I-002, NHDES Incompleteness Letter (June 7, 2024) (“The Project involves the proposed construction and operation of a secure solid waste disposal facility, i.e., a landfill, within the Alder Brook/Hatch Brook and Ammonoosuc River watersheds, in Dalton, Coos County and Bethlehem, Grafton County, N.H.”).

4. Pursuant to the Granite State Landfill Project, the Applicant, Granite State Landfill, Inc., filed a Shoreland Permit Application that the NHDES received and deemed complete on March 25, 2024.

5. The proposed Project work for which the Shoreland Permit was required is the “construction of an acceleration lane on NH Route 116 at the intersection with Douglas Drive in the town of Bethlehem... The acceleration lane will serve trucks exiting Douglas Drive and turning left onto NH Route 116 towards Whitefield.” Permit Application at 2.

6. The Applicant has identified the work as “Granite State Landfill Entrance Improvements.” Permit Application at 37. The Applicant further clarified in its notice letter to interested parties that the Permit Application concerns “the proposed site access for the future Granite State Landfill.”

7. The Shoreland Permit Application acknowledged two additional pending permits associated with “this project,” including an Alteration of Terrain Permit and a Wetlands Permit, both pending. *See* Permit Application at 3.

8. Although the site-access location for the Granite State Landfill is located in Bethlehem alone, the Granite State Landfill is a major project proposed to be located on land in two communities, Dalton and Bethlehem, N.H.

9. The Applicant is required by law to provide notice of the Permit Application to the “governing body of the municipality *or municipalities* in which the project is located.” *See* RSA 483-B:5-b, IV-a (emphasis added).

10. Of these two communities, only the governing body of the Town of Bethlehem was given notice of the Permit Application. Neither the Dalton governing body, its selectboard, nor the Dalton Conservation Commission, Dalton’s duly authorized body for “the proper utilization and protection of the natural resources and for the protection of watershed resources,” *see* RSA 36-A:2, was provided notice of the Shoreland Permit Application, nor of any follow up filings and/or correspondence, including, without limitation:

- a. Comment by the Ammonoosuc Reiver Local Advisory Committee (April 18, 2024);
- b. DES Request for More Information (April 24, 2024);
- c. The Applicant’s reply to the Request for More Information (June 21, 2024);
- d. The NHDES Shoreland Permit Approval (July 18, 2024).

11. The Town of Dalton is a “Host Community” for the Granite State Landfill Project.

12. The Town of Dalton was entitled to notice of the Shoreland Permit Application under RSA 483-B:5-b, IV-a.

13. The Dalton Conservation Commission is the municipal conservation commission for the Town of Dalton, and has as its primary duties, the duty to ensure “the proper utilization and protection of the natural resources and for the protection of watershed resources” in the Town of Dalton. RSA 36-A:2.

14. The Granite State Landfill Project in the aggregate will impact the “proper utilization and protection of the natural resources and ... the protection of watershed resources” in the Town of Dalton. *Id.*

15. The NHDES is required to consider the Granite State Landfill Project in the aggregate, not disaggregated or segregated into its constituent permitting parts. RSA 482-A:11, V (“Notwithstanding any rules adopted by the commissioner defining minor projects, a series of minor projects undertaken by a single developer or several developers over a period of 5 years or less may, when considered in the aggregate, amount to a major project in the opinion of the department; all such related projects shall be subject to a public hearing as provided in RSA 482-A:8. *A series of minor projects shall be considered in the aggregate if they abut or if they are a part of an overall scheme of development or are otherwise consistent parts of an eventual whole.*”) (emphasis added); *see*, also, Request for More Information, Standard Dredge and Fill Wetlands Permit Application (June 24, 2024) (noting in Dredge and Fill Permit evaluation that RSA 482-A:11, V’s aggregate project definitions apply to the Granite State Landfill Project of which this Shoreland Permit Application is a part).

16. NHDES has established that the Granite State Landfill Project is an aggregated project, permit applications relating to which must be considered in a “comprehensive and coordinated review [in order to evaluate] impacts of the project on water resources” and to “align the proposed areas of impact between the Solid Waste application and the Wetlands application.” *See id.*; NHDES Letter to Granite State Landfill, Inc. (August 26, 2021) (concerning Wetlands Permit amendments);

17. As a consequence of the failure of the Applicant, or NHDES, to provide the Town of Dalton with due and proper notice of the Shoreland Permit Application, the Dalton Selectboard and the Dalton Conservation Commission were unable to fulfill their obligations to the Town and people of Dalton concerning the Granite State Landfill Project.

18. The governing bodies of both Bethlehem and Dalton have received notice of the other permit applications submitted by the Applicant for the Granite State Landfill Project, except for one prior omission, when the Applicant failed to provide notice to the Bethlehem governing body concerning the Solid Waste Permit Application (submitted October 16, 2023).

19. The proposed scope of work in the Shoreland Permit Application directly impacts the Town of Dalton, because the “acceleration lane” is required to make the access road to the Granite State Landfill Project functional for its intended purpose. Furthermore, without the proposed improvements, the Granite State Landfill Project would have no egress onto public roads as the sole access route between the public highway and the Granite State Landfill Project site in Dalton is the proposed location of the improvements relating to this Shoreland Permit Application. *See* ARLAC Letter (April 18, 2024) (“The sole reason for the proposed project is to provide access to the proposed Granite State Landfill.”).

20. The Applicant itself acknowledged that the Shoreland Permit Application implicates the Town of Dalton when it included its N.H. Dept. of Transportation Driveway Permit Application, noting the address for the Granite State Landfill as being at 104 Douglas Drive, Dalton, N.H. The Applicant also cited RSA 236:13 (Driveways and Other Accesses to the Public Way), III (“...for access to a proposed commercial or industrial enterprise, or to a

subdivision, *all of which for the purposes of this section shall be considered a single parcel of land.*") (emphasis added).

21. The Applicant also identified the improvements associated with the Granite State Landfill as being part of one larger project when it identified the Wetlands Permit and the Alteration of Terrain Permit as “permits [that] have been submitted or will need to be submitted to the department *for the same project.*” Shoreland Permit Application at 3 (emphasis added). The Applicant duly noticed the Town of Dalton and the Town of Bethlehem regarding these two permits (on December 14, 2023 and November 8, 2023, respectively), but in this case, the Applicant did not provide notice to the Town of Dalton for the Shoreland Permit Application nor any of the communications in that file.

22. The Dalton Conservation Commission became aware of the NHDES approval of the Shoreland Permit Application on or about July 26, 2024, when a member of the DCC conducted an occasional check of the NHDES docket to see what the status of the Granite State Landfill Project was.

23. Upon perusing the file, members of the DCC identified that the Applicant failed to provide, and NHDES failed to demand, an accurate description of the aggregate Granite State Landfill Project, as required by Env.-Wq 1406.7(i) and Env-Wq 1406.17(b)(3) in the original Shoreland Permit Application.

24. Upon perusing the file, members of the DCC identified that the Applicant failed to provide, and the NHDES failed to demand, substantive responses to the NHDES Request for More Information Letter, or to the comments submitted by ARLAC.

25. Among other things, the NHDES asked the Applicant to provide postal receipts verifying that the governing body of the municipality in which the project will be located, and all abutters to Douglas Ingerson, have been notified as required by Env-Wq 1406.13 and RSA 483-B:5-b, IV-a (“At the time of the permit application, the applicant shall provide postal receipts or copies, verifying that the governing body of the municipality or municipalities in which the property is located and the local river management advisory committee, if the project is within a designated river corridor defined in RSA 483:4, XVIII and contains river and river segments designated in RSA 483:15, and all abutters have been notified of the application by certified mail. Applicants for the construction of public roads, public utility lines and associated structures and facilities, and public water access facilities shall only be required to provide postal receipts or copies, verifying that the governing body of the municipality or municipalities in which the property is located, and the local river management advisory committee if the project is within a designated river corridor defined in RSA 483:4, XVIII and contains river and river segments designated in RSA 483:15, have been notified of the application by certified mail.”)

26. The Dalton Conservation Commission, Appellant in this matter, objects to the Shoreland Permit issued by DES in this matter because the applicant, and NHDES, failed to provide notice to the Appellant or to the Town of Dalton, New Hampshire, as required by the Shoreland Permit Application and, inter alia, RSA 483-B:5-b, IV-a. In addition, on the merits, the Appellant objects to the issuance of the permit because the Applicant has failed to demonstrate that the least impactful alternative has been selected, and thus has failed to meet the Department’s avoidance and minimization requirements under, inter alia, Env.-Wt 311.06, 313.03 and 524.02. Furthermore, the DES erroneously permitted the Applicant to disaggregate, or

segregate, one part of a major project affecting multiple communities and watershed areas in contravention of, *inter alia*, RSA 482-A:11, V. Allowing the Applicant to proceed piecemeal with its permitting and/or construction improperly segregates the various permits and disaggregates the Granite State Landfill Project from its status as a unified whole project with substantial regional impact.

27. The DCC requests that the Council reverse the NHDES approval of the Applicant's Shoreland Permit Application and:

- a. Require the Applicant and NHDES to include the Town of Dalton and the Dalton Conservation Commission for additional comment and hearings, as appropriate.
- b. Require any NHDES approval of a re-submitted Shoreland Permit Application by the Applicant to be conditioned upon all other related permits associated with the Granite State Landfill Project being approved.
- c. Require that the construction of shoreland improvements ultimately approved may not proceed until all other permits for the Granite State Landfill Project, federal and state, e.g., Army Corps Environmental Impact Statement, etc., are duly obtained and appeal deadlines exhausted.
- d. Require the Applicant and NHDES to treat the Granite State Landfill Project as one project in its totality, and not as piecemeal, segregated and disaggregated projects falling under different permitting regimens. *See* RSA 482-A:11, V; RSA 482-A:8; RSA 483-B:5-b, IV-a (requiring notice to all municipalities in which the property is located).

- e. Require the Applicant and NHDES to meet the avoidance and minimization concerns outlined by the DCC and ARLAC in this and all associated permitting processes.

Respectfully submitted,

Dalton Conservation Commission,

By its attorneys,

Orr & Reno, P.A.

Date: September 18, 2024

By /s/ Jeremy D. Eggleton
Jeremy D. Eggleton, Esq.
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STATE OF NEW HAMPSHIRE

WETLANDS COUNCIL

DOCKET NO. _____ WtC

IN RE APPEAL OF DALTON CONSERVATION COMMISSION

Filing and Service List

File:

Wetlands Council
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c/o NH Dept. of Justice
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Concord NH 03301
appeals@des.nh.gov

Serve (electronically and by mail within five days):

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Hyde Park, VT 05655
John.gay@casella.com

Town of Bethlehem/Conservation Commission
2155 Main St.
PO Box 189
Bethlehem NH 03574
conservationcommission@bethlehemnh.org

Ammonoosuc River Local Advisory Committee
66 Grove St.
Littleton, NH 03561
2024 Chair, Courtney Bowler
Cf.bowler@gmail.com

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NH Department of Transportation, c/o William Cass
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Serve (by mail):

JW Chipping, Inc.
104 Douglas Dr.
Bethlehem NH 03574

Dalton Valley Drags LLC
104 Douglas Dr.
Bethlehem NH 03574

Cosmo Valente
24 High St.
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Crowe Family Investments LLC
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24 Maple Ave.
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(two mailings for Map 405 Lot 54 and Map 406 Lot 55)