



July 3, 2024

Frank J. DelGiudice
Chief, Permits and Enforcement Branch
Regulatory Division
U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

Via email: CENAE-R-PN-NH@usace.army.mil; frank.j.delgiudice@usace.army.mil;
lindsey.e.lefebvre@usace.army.mil

RE: Granite State Landfill Permit Application, File No. NAE-2021-02240

Dear Mr. DelGiudice,

Conservation Law Foundation (“CLF”) writes in response to the U.S. Army Corps of Engineers’ April 8, 2024, Public Notice of Granite State Landfill, LLC’s (“GSL”) wetlands permit application, File No. NAE-2021-02240, to construct a landfill in Dalton, New Hampshire. CLF is a non-profit environmental advocacy organization working to protect public health and natural resources in New Hampshire and throughout New England. CLF has a long history of advocating for the protection of aquatic resources, including wetlands and surface waters, and advocating to protect our communities and the environment from the harmful impacts of unsustainable waste practices.

In proposing to permanently destroy wetlands and other aquatic resources to build a landfill, GSL must first overcome a strong presumption that safer, less environmentally damaging alternatives are available. GSL has failed to overcome that presumption, and the Army Corps must deny GSL’s permit application. Moreover, GSL’s project is contrary to the public interest and will cause severe and unacceptable impacts to the environment, including vitally important aquatic resources. GSL failed to include critical information in the permit application and cannot demonstrate that it took appropriate steps to avoid and mitigate environmental harms.

In the alternative, if the Army Corps does not deny the permit, the Corps must prepare an Environmental Impact Statement to fully evaluate the impacts of this project, a major federal action that will significantly affect the quality of the environment.

CLF submits the following comments and urges the Corps to deny the permit sought by GSL.

I. Background and permitting process.

GSL proposes to construct a brand-new commercial landfill in Dalton, New Hampshire, in waters of the United States.¹ GSL submitted a permit application pursuant to Section 404 of the Clean Water Act seeking to construct a 70-acre landfill with ancillary landfill infrastructure, including buildings, scales, roads, a landfill gas management area, a wastewater management area, and stormwater management features. *Id.* In this current application, GSL proposes to cause permanent impacts to roughly 11 acres of wetlands, over 3,000 linear feet of permanent and temporary stream impacts, and to directly impact tributaries to Alder Brook and the Ammonoosuc River. *Id.* The project entails the destruction of at least five vernal pools, the clearcutting of 90 acres of forest, and total disturbances of 148 acres.² The landfill is intended to be the successor to the nearby North Country Environmental Services landfill (“NCES”) in Bethlehem, New Hampshire. GSL Permit Application at 38. GSL and NCES are both subsidiaries of Casella Waste Systems, Inc. *Id.* at 151.

GSL first submitted applications to construct a landfill in Dalton in 2020. At the time, GSL described the company’s plan to develop the landfill in three phases, totaling 137 acres. The proposed project would result in permanent impacts to 17.04 acres of wetlands and roughly a quarter mile of stream impacts, the complete destruction of five vernal pools and their 750-ft. buffer areas, and the clearcutting of over 160-acres of forested land immediately adjacent to the Alder Brook wetlands complex. GSL Phase I Landfill Permit Application (February 2021) Section VI, at 5 (excerpts attached as Exhibit 1).

While GSL’s first set of permit applications were pending, after a public hearing in July, 2020, and in light of enormous public opposition to the landfill, the New Hampshire Department of Environmental Services asked GSL to submit an amended application, focusing only on the first phase of GSL’s planned three-phase development. NHDES Correspondence to GSL (August 26, 2021) (attached as Exhibit 2).

¹ U.S. Army Corps of Engineers Public Notice, File No. NAE-2021-02240 (April 9, 2024), available at <https://www.nae.usace.army.mil/Missions/Regulatory/PublicNotices/Article/3743063/nae-2021-02240-application/>.

² Granite State Landfill U.S. Army Corps of Engineers Clean Water Act Section 404 Individual Permit Application (March 7, 2024) (hereinafter, “GSL Permit Application”), available at: <https://www.nae.usace.army.mil/Missions/Regulatory/PublicNotices/Article/3743063/nae-2021-02240-application/>, at 2, 335. The GSL Permit Application consists of 1,241 pages. References to the GSL Permit Application refer to the page number in the 1,241-page PDF application document. *See also* Granite State Landfill Water Quality Certification Application (April 19, 2024), at 10 (describing forest clearing), available at <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/gsl-wqc-application.pdf>.

In response to DES's request, GSL withdrew its applications and resubmitted them over several months in 2023 and 2024.³ Crucially, GSL's applications fail to include critical information regarding site conditions and expected impacts, making it impossible to fully assess the project's complete impacts on aquatic resources and wetland functions and values. GSL's current application describes a smaller landfill on the same site where the larger landfill was planned. It is clear from the site plans that there is plenty of room for future expansion of the landfill, with additional impacts to aquatic resources. *See infra* at 5. GSL reports that surface water and groundwater generally flow to the southwest, towards Alder Brook and the Alder Brook wetlands complex. *See, e.g.*, GSL Permit Application at 337. Consulting hydrogeologists criticize GSL's application for failing to account for all hydrogeological pathways from the site, including to nearby Forest Lake and water supply wells.⁴

- II. The Army Corps must consider the project in light of GSL's larger plans to expand the landfill and must take into account cumulative and reasonably foreseeable impacts.
 - A. The Army Corp's regulations, the National Environmental Policy Act, and the Clean Water Act require the Army Corps to consider the entire project as a whole, including cumulative and reasonably foreseeable impacts.

GSL's application for a wetlands permit under the Clean Water Act triggers the Army Corps' review under the Army Corps' regulations, 33 C.F.R. § 320 *et seq.*, the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*, and Section 404 of the Clean Water Act, 33 U.S.C. § 1344 *et seq.* Under each of these provisions, the Army Corps is required to consider the project as a whole, including the cumulative and reasonably foreseeable impacts of the project.

Central to the Army Corps' permit review under the Corps' general regulatory policies is the requirement that the Corps must consider the entirety of the project, including the cumulative effects of the project. *See generally* 33 C.F.R. § 320.4. As part of the Corps' public interest review, the Corps must consider the cumulative effects of the project on all the public interest factors. 33 C.F.R. § 320.4(a)(1); *Buttrey v. U.S.*, 690 F.2d 1170, 1180 (5th Cir. 1982). Similarly, in considering the effects on wetlands, the Corps' review cannot be piecemeal, and must consider the impacts on the larger wetlands complex. 33 C.F.R. § 320.4(b)(3). The regulations explain:

³ *See generally* NHDES's website for various GSL permit applications: <https://www.des.nh.gov/land/landfills/granite-state-landfill-llc-state-permitting>; GSL Permit Application.

⁴ *See, e.g.*, Calex Environmental Consulting Hydrogeological Comments (May 3, 2024) (attached as Exhibit 3).

Although a particular alteration of a wetland may constitute a minor change, the cumulative effect of numerous piecemeal changes can result in a major impairment of wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it may be part of a complete and interrelated wetland area.

Id.; see also 33 C.F.R. § 320.4(1)(2) (cumulative impacts of floodplain alterations must be considered, including potential harms to upstream and downstream activities); *Wyoming Outdoor Council Powder River Basin Res. Council v. U.S. Army Corps of Eng'rs*, 351 F.Supp.2d 1232, 1255 (D. Wyo. 2005) (Army Corps failed to consider cumulative impacts; permit remanded to Army Corps to make findings regarding cumulative impacts).

Under NEPA, the reviewing agency is required to consider the project's direct, indirect, and cumulative effects on the environment. 40 C.F.R. § 1508.1(g). Rather than reviewing a permit application in a vacuum, an agency conducting a NEPA review "must take account of connected, cumulative, and similar actions whose impacts should be discussed in the same impact statement as the project under review." *Trenton Threatened Skies v. Fed. Aviation Admin.*, 90 F.4th 122, 135 (3d Cir. 2024) (internal citations omitted).

Consideration of cumulative effects includes the consideration of individually minor actions that, when taken together, are collectively significant. 40 C.F.R. § 1508.1(g)(3).

Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency . . . or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

Id. In the context of NEPA review, this is known as NEPA's prohibition against segmentation. Neither the applicant nor the federal agency may divide the full project into smaller segments for purposes of conducting its impact review. To do so would constitute illegal segmentation, the dividing of an overall plan or project into smaller parts to create the appearance that the proposed action will have less significant environmental effects. 40 C.F.R. § 1508.1(g)(3). See also *City of West Chicago, Ill. v. U.S. Nuclear Regulatory Com'n*, 701 F.2d 632, 650 (7th Cir. 1983).

Moreover, NEPA regulations require the Army Corps to review all *reasonably foreseeable* direct, indirect, and cumulative effects. 40 C.F.R. § 1508.1(g). The First Circuit explains that an agency "need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action." *Dubois v. U.S. Dep't of Agric.*, 102 F.3d 1273, 1286 (1st Cir. 1996) (citations omitted). "[R]easonable forecasting is implicit in NEPA" *Id.* An environmental effect would only be considered too speculative to

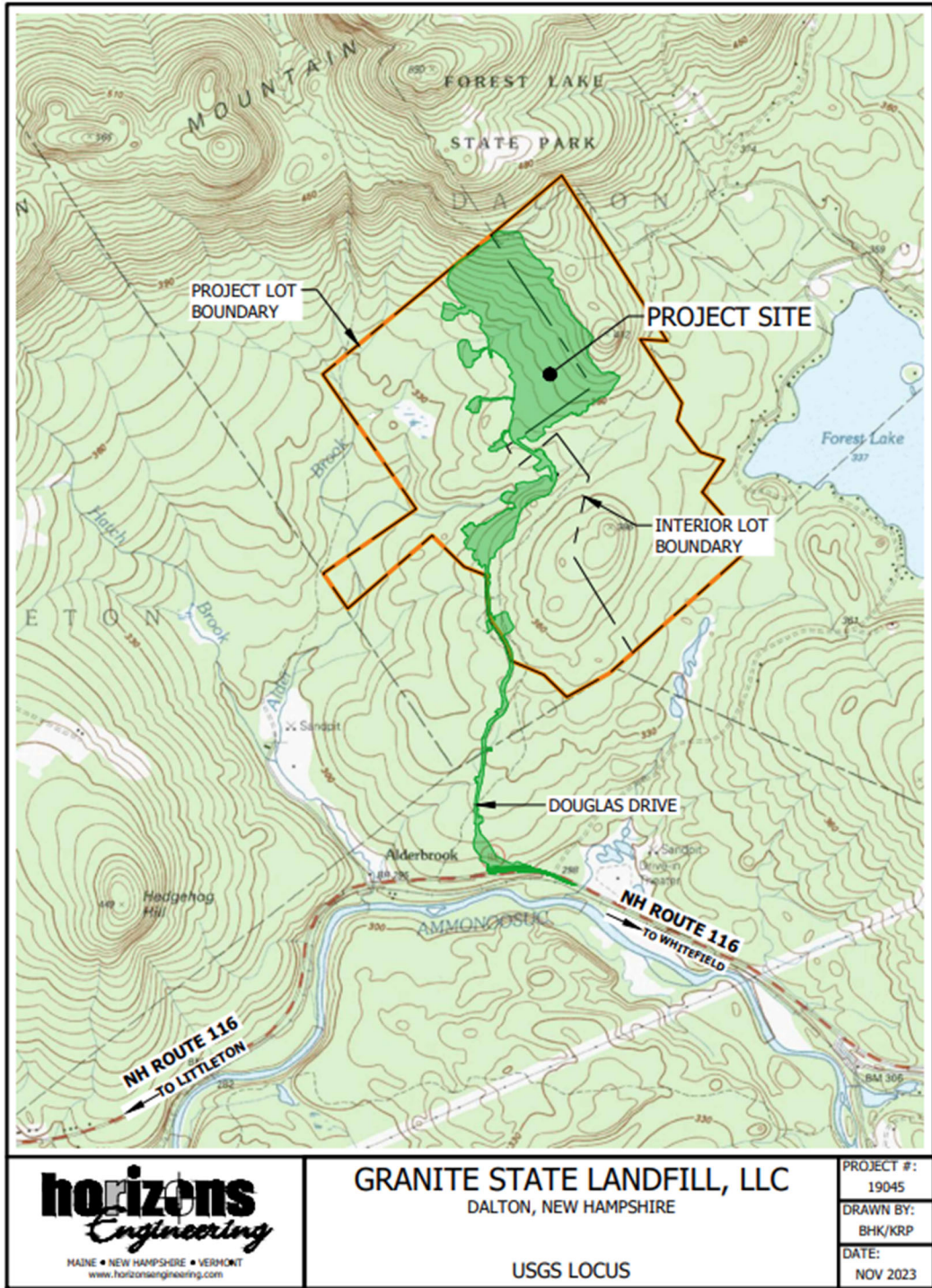
take into consideration: “if it cannot be described . . . with sufficient specificity to make its consideration useful to a reasonable decision-maker.” *Id.*

Finally, consideration of the project as a whole, including cumulative adverse effects on water quality and the environment, is required under the Clean Water Act and the accompanying CWA Section 404 Guidelines. 33 U.S.C. § 1344(e), 40 C.F.R. § 230.7(a)(3); 40 C.F.R. § 230.11(g). As specified in the Section 404 Guidelines, cumulative effects should be predicted “to the extent reasonable and practical” and include “the collective effect of a number of individual discharges of dredged and fill material.” 40 C.F.R. § 230.11(g)(1)-(2). Consistent with both the Corp’s general guidelines and NEPA, *supra*, the CWA Section 404 Guidelines prohibit segmentation: “Although the impact of a particular discharge may constitute a minor change in itself, the cumulative effect of numerous such piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems.” 40 C.F.R. § 230.11(g)(1).

B. GSL’s current permit application is just one part of GSL’s larger plans to expand the landfill.

GSL has stated its plans to construct a larger landfill at the site, through multiple expansion phases. The Army Corps need not speculate to consider the reasonably foreseeable effects of the landfill – those effects are well documented as part of a clear plan of development.

In 2021, GSL explained its intention to expand the landfill over time: “The full buildout of the Granite State Landfill is planned to be constructed in three phases totaling 137 acres of lined landfill footprint over 38 years of operation.” GSL Phase I Landfill Permit Application, (February 2021) Section VI, at 5 (excerpts attached as Exhibit 1). A review of the current project plans reveals the large amount of space on the property surrounding the initial planned footprint.



GSL Permit Application at 266. Considering GSL’s prior plans for a much larger landfill at this exact site, and the open space surrounding the landfill on the existing site plans, the areas for

future expansion are readily apparent. *See Florida Wildlife Fed'n v. U.S. Army Corps of Engin'rs*, 401 F.Supp.2d 1298, 1315 (S.D. Fla. 2005) ("One need only review the map of the proposed site in context" to see future expansion plans); *see also* Dalton Conservation Commission Wetlands Permit Application Comments (February 20, 2024) at 3 (attached as Exhibit 4).

Additionally, GSL's current application must be considered in light of its parent company, Casella's, routine practice of repeatedly expanding landfills as those landfills near capacity. For example, Casella's nearby NCES landfill in Bethlehem is currently operating in Stage VI, having gone through several rounds of expansion permits. In recognition of this practice, in 2020 NHDES asked GSL about their plans for future expansion:

As is the case with most landfill projects in the state, when they are close to reaching capacity, requests are made to expand the landfill footprint in the immediate vicinity. While 3 phases are currently proposed, please address how potential future expansions will impact surrounding wetlands and surface waters on the property, as this long-term planning is critical to determine if avoidance and minimization of wetland resources has been fully demonstrated

NHDES Request for More Information (November 18, 2020) (attached as Exhibit 5). More recently, on June 24, 2024, NHDES again asked GSL to provide additional information for their future expansion of the site:

. . . please provide an overview of the future project plans that includes all lots for the overall development scheme to inform the assessment of avoidance and minimization. After-the-fact (ATF) impacts to be retained for the pre-case concrete company roadway are outside the landfill project footprint *and are indicative of a larger overall development scheme*. As commented in BCC and DCC reports, there is both a concern regarding piecemeal of the application and expansion of the landfill. The Department is unable to assess compliance . . . without an overall scheme of development for the lots in question.

NHDES Request for More Information (June 24, 2024), at 2 (emphasis added) (attached as Exhibit 6). GSL is expected to seek to expand the landfill as a matter of routine practice, and GSL's expansion plans must be considered as part of the larger landfill proposal. *See Trenton Threatened Skies*, 90 F.4th at 136 (noting that the agency appropriately considered foreseeable future projects, including extending airport runways and construction of additional facilities).

The Army Corps' review should consider not only the full planned landfill buildout GSL described in 2020, but also GSL's reasonably foreseeable future landfill expansion proposals and their impacts on water resources.

III. The Army Corps must deny the permit because GSL has failed to demonstrate that the project is the least environmentally damaging practicable alternative.

A. GSL must overcome a strong presumption of practicable alternatives.

When reviewing a permit application, the Corps must consider the avoidability of the project's impacts. 40 C.F.R. § 230.10(a); *Bersani v. U.S. E.P.A.*, 674 F. Supp. 405, 415 (N.D.N.Y. 1987), *aff'd* 850 F.2d 36 (2d Cir. 1988). If a project is not water dependent, such as GSL's landfill, the applicant must overcome a strong presumption that less impactful alternatives exist. 40 C.F.R. § 230.10(a)(3); *Florida Wildlife Fed'n*, 401 F.Supp.2d. at 1308.

The Section 404(b) Guidelines explain that no permit to fill wetlands shall be issued "if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem." 40 C.F.R. § 230.10(a). "That requirement is often called the least environmentally damaging practicable alternative ('LEDPA')." *Healthy Gulf v. U.S. Army Corps of Eng'rs*, 81 F.4th 510, 517 (5th Cir. 2023).

Where, as here, the project is not water dependent, an even more stringent standard applies: "*practicable alternatives* that do not involve special aquatic sites are *presumed to be available unless clearly demonstrated otherwise.*" *Id.* at § 230.10(a)(3) (emphases added). If the applicant does not successfully rebut the presumption, a permit cannot be issued. "Once a project is determined to be non-water dependent, the burden shifts to the permit applicant to rebut the first presumption by clearly demonstrating that a practicable alternative is not available, and to rebut the second presumption with detailed, clear, and convincing information *proving* that an alternative with less adverse impact is impracticable. *City Club of New York v. U.S. Army Corps of Eng'rs*, 246 F.Supp.3d 860, 866 (S.D.N.Y. 2017) (emphasis in original) (citing *Sierra Club v. Van Antwerp*, 362 Fed.Appx. 100, 106 (11th Cir. 2010) and *Greater Yellowstone Coal. v. Flowers*, 359 F.3d 1257, 1269 (10th Cir. 2004)). *See also Bersani*, 850 F.2d at 39 ("40 C.F.R. § 230.10(a) covers 'non-water dependent activities' . . . and provides essentially that the Corps must determine whether an alternative site is available that would cause less harm to the wetlands.); *Buttrey*, 690 F.2d at 1180 ("This presumption is very strong.").

The strong presumption against destroying wetlands for non-water dependent projects arises from the regulations' recognition that wetlands are special aquatic sites, the destruction of which "is considered to be among the most severe environmental impacts." 40 C.F.R. § 230.1(d). Referring to the preamble to the Section 404 Guidelines, the Second Circuit explains that the purpose of an alternatives analysis is to protect wetlands – "to recognize the special value of

wetlands and to avoid their unnecessary destruction, particularly where practicable alternatives were available in non-aquatic areas . . .”. *Bersani*, 850 F.2d at 43-44 (quoting 404 (b)(1) Guidelines preamble, 45 Fed.Reg. 85,338 (1980)). “The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources.” 40 C.F.R. § 230.1(d). In light of that guiding principle, “the Clean Water Act and the applicable guidelines do not contemplate that wetlands will be destroyed simply because it is more convenient than not to do so.” *Buttrey*, 690 F.2d at 1180.

GSL’s proposed project – the construction and operation of a landfill – is not water dependent. Accordingly, GSL must overcome the strong presumption that alternative least damaging sites are available. It has failed to do so.

B. GSL has failed to demonstrate that the project is the least environmentally damaging practicable alternative.

The issuance of a 404 permit for this project would be unlawful because GSL has failed to satisfy its heavy burden of proving that the proposed project is the least environmentally damaging practicable alternative (LEDPA).

As an initial matter, GSL’s application does not consider the alternative of not constructing a new landfill. *See, e.g.*, GSL Permit Application at 397. Under the Section 404 Guidelines, the first practicable alternative to consider is an activity that does not discharge dredged or fill material into waters of the United States. 40 C.F.R. § 230.10(a)(1)(i). New Hampshire has sufficient landfill capacity for the next several decades at least and does not need another landfill.⁵ In evaluating GSL’s substantially similar state wetlands permit application, NHDES recently determined that GSL has not demonstrated that the project is the least impacting alternative and identified utilizing existing landfills as a potential alternative to the project. NHDES, Exhibit 6, at 2; *see also* Dalton Conservation Commission, Exhibit 4, at 5, 9.

NHDES further identified alternative sites in New Hampshire and Massachusetts. Recognizing that both the Dalton Conservation Commission and Ammonoosuc Local River Advisory Committee suggested possible alternatives and criticized GSL’s alternatives analysis, NHDES determined that “several options appear to be potentially viable as offsite alternatives providing the same capacity.” NHDES, Exhibit 6, at 2. Specifically, NHDES identifies four sites that may be viable alternatives and asks if GSL considered others. *Id.* at 1-2. *See also* Ammonoosuc River Local Advisory Committee (“ARLAC”) Comments (June 7, 2024), at 3 (attached as Exhibit 8) (noting that the alternatives analysis was conducted based on GSL’s

⁵ *See* New Hampshire Department of Environmental Services 2021-2022 Biennial Solid Waste Report (December 2023) at 4-8, available at <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/r-wmd-23-05.pdf>, (attached as Exhibit 7).

original plans for a larger landfill, and was not conducted in consideration of GSL’s purported plans for a smaller landfill); Connecticut Valley Environmental Services, Inc. (“CVES”) Comments (May 8, 2024), at 4 (attached as Exhibit 9). The Dalton Conservation Commission similarly identified a no-build alternative of continuing to use existing landfills and identified two additional alternative sites. Dalton Conservation Commission, Exhibit 4, at 5, 9, 11.

Moreover, GSL has failed to demonstrate that the project’s existing location is the least environmentally damaging alternative at the project site. The Bethlehem Conservation Commission, relying on Dalton’s wetlands consultant, concludes that the access road location has not minimized impacts to wetlands, and less impacting road alignments are available at the site. Bethlehem Conservation Commission Comments (March 1, 2024), at 2, 3 (attached as Exhibit 10). GSL’s application is missing critical information that is crucial to determining if GSL has avoided and minimized wetlands impacts to the furthest extent practicable at the site. NHDES, Exhibit 6, at 2. GSL failed to provide field delineations for all wetlands within the site. *Id.* GSL did not classify the wetlands. *Id.* GSL did not provide an assessment of the functions and values of the wetlands at the site. *Id.* GSL’s hydrogeologic report is incomplete and fails to account for all hydraulic pathways at and from the site. Calnex, Exhibit 3, at 5, 7. GSL failed to provide this essential information, and the Army Corps cannot rely on GSL’s assurances that the least environmentally damaging alternative has been selected. *See also* CVES, Exhibit 9, at 4 (documenting missing information and criticizing GSL’s onsite alternative analysis as “dubious”); Fraggles Rock Environmental (“FRE”) Comments (May 2, 2024) at 3-6, 10 (attached as Exhibit 11).

IV. The Army Corps must deny the permit because impacts from the project are contrary to the public interest.

The Army Corp’s decision whether to issue a permit is based on: “an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.” 33 C.F.R. § 320.4(a)(1). This inquiry is case specific and requires the Corps to engage in: “a careful weighing of all those factors which become relevant in each particular case.” *Id.* The Corps’ analysis must balance a proposal’s benefits and burdens: “The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments.” *Id.* The Corps must consider a broad range of factors, including, among other things, conservation, aesthetics, general environmental concerns, wetlands, fish and wildlife values, floodplain values, recreation, water supply and conservation, water quality, safety, and the needs and welfare of the people. *Id.* “In a public interest review, the Corp’s decision must reflect the ‘national concern’ for the protection and use of resources but must also consider the ‘needs and welfare of the people.’” *Bersani*, 850 F.2d at 40.

Weighing the extensive burdens of GSL's proposal against the negligible, if any, public benefit of the landfill, the permit should be denied. *See Buttrey*, 690 F.2d at 1185 (upholding denial of 404(b) permit were the Corps found that, after considering all of the facts, the costs of the project outweighed its potential benefits and the public interest would be best served by denying the permit).

The project will not result in public benefit. GSL's proposal would result in the first new landfill being built in New Hampshire since 1989, at a time when New Hampshire has excess landfill capacity. *See* GSL Application at 396. It is uncontested that New Hampshire does not need another landfill for several decades. *See, e.g.*, Exhibit 7 at 4-8. New Hampshire has sufficient landfill capacity to accommodate the state's waste, and even imports roughly half of the waste disposed of in New Hampshire landfills from out-of-state. *Id.* The public does not benefit from excess landfill capacity or the importation of out-of-state waste. Rather, the benefit runs to a for-profit landfill company. The public would benefit from alternatives to landfills, such as composting and recycling facilities. *See id.* at 2. The New Hampshire legislature has articulated this preference, ranking landfilling as the least-preferred method in the state's waste management hierarchy. *Id.*; New Hampshire R.S.A. 149-M:3.

In contrast, the negative impacts of the project are extensive, widespread, and will affect most of the public benefit factors. *See* 33 C.F.R. § 320.4(a)(1). There is great public opposition to the proposed landfill. The Bethlehem Conservation Commission warns that: "the potential impacts of this project are so severe and unacceptable to the local and natural communities that it has absolutely no public benefit." Bethlehem Conservation Commission, Exhibit 10, at 7. Even without considering GSL's larger landfill plans for the site, which the Army Corps must consider, the project as described in the current permit application will cause, and can reasonably be foreseen to cause, many harms, including, but not limited to, the impacts described below.

The project will cause widespread environmental damage, beginning with the unnecessary destruction and alteration of wetlands, which, pursuant to the Army Corp's regulations, is in itself "contrary to the public interest." 33 C.F.R. § 320.4(b)(1). Environmental harms from the project include, but are not limited to:

- The disruption of 148 acres of land. GSL Permit Application at 385.
- The permanent destruction of 11.5 acres of wetlands, at least 1,628 linear feet of streams, five vernal pools, and 90 acres of forest. *Id.* at 39, 779-80, *see also* n. 2.
- additionally temporary impacts during construction. GSL Permit Application at 39.
- The addition of 25.5 acres of impervious surfaces. CVES, Exhibit 9, at 1.
- Disturbance of a well-functioning wetlands complex. ARLAC, Exhibit 8, at 2.
- The disturbance to perennial streams and Alder Brook, its associated wetlands, and the Alder Brook brook trout fishery; ARLAC, Exhibit 8, at 2.

- Wildlife habitat loss, including the destruction of habitat of the northern long-eared bat, and the possible destruction of Canada lynx and monarch butterfly habitat. Bethlehem Conservation Commission, Exhibit 10, at 3, 7.
- Increased greenhouse gas emissions from landfill gas emissions, consisting of roughly 50 percent methane, a potent greenhouse gas.⁶
- Contamination from leaks that will eventually occur at the landfill. Bethlehem Conservation Commission, Exhibit 10, at 6.
- Ground and surface water pollution, including PFAS pollution, from spills, leaks, and stormwater runoff. *See, e.g.*, NHDES GSL Meeting Notes (January 24, 2024) at 2 (documenting NHDES’ concern regarding leachate releases and the proposed stormwater infrastructure’s inability to mitigate the release of leachate) (attached as Exhibit 12); *see also* North Country Representatives Correspondence to NHDES (April 19, 2024), at 2 (attached as Exhibit 13); ARLAC, Exhibit 8, at 2; CVES, Exhibit 9, at 2.
- Threats to two rare natural plant communities, the northern white cedar balsam fir swamp and northern white cedar seepage, and to two state endangered plant species, the greater yellow lady’s slipper and march horsetail. Bethlehem Conservation Commission, Exhibit 10, at 6-7.

The project will cause downstream harms, including, but not limited to:

- Negative impacts and threats of additional harms to groundwater, wetlands, and surface water bodies located downgradient from the site. ARLAC, Exhibit 8, at 2; Calex, Exhibit 3 at 6; Bethlehem Conservation Commission, Exhibit 10, at 4-5, 7; *see also* NHDES, Exhibit 6, at 3-4. These threats are made worse by the presence of what one expert describes as “highly transmissible surficial bedrock” that provides potential hydrogeological pathways offsite and may include pathways to Forest Lake and water supply wells. Calex, Exhibit 3 at 5.
- Impacts to Alder Brook, which is ranked as Highest Ranked Wildlife Habitat in New Hampshire, and its associated wetlands. ARLAC, Exhibit 8, at 2. Runoff, groundwater, and contamination from the project will enter the Alder Brook watershed. Calex, Exhibit 3, at 5.
- Impacts to the Ammonoosuc River, which is a source of drinking water to several downstream communities and provides rainbow trout and brown trout fishing habitat. ARLAC, Exhibit 8, at 2; Bethlehem Conservation Commission, Exhibit 10 at 6; *see also* Calex, Exhibit 3 at 5-6.

⁶ U.S. EPA, Basic Information about Landfill Gas, available at <https://www.epa.gov/lmop/basic-information-about-landfill-gas>.

- Threats to threatened or endangered species in the Ammonoosuc River watershed. Bethlehem Conservation Commission, Exhibit 10 at 6.
- Threats to drinking water supply and downstream waters, including the threat of PFAS-contaminated runoff, contaminating the surrounding environment. North Country Reps, Exhibit 13, at 1.
- Road construction will result in re-grading and increased runoff draining directly to the Ammonoosuc and downstream wetlands. Bethlehem Conservation Commission, Exhibit 10, at 2-3.
- The cumulative impact and inequity of burdening the Ammonoosuc River with the impacts of two landfills, NCES and GSL's proposed landfill. ARLAC, Exhibit 8, at 2.

The project will generate a significant volume of leachate each day, and GSL has failed to disclose the fate of that leachate. Leachate contains pollutants “at several orders of magnitude higher than typical domestic wastewater.”⁷ A certain amount will be stored on-site, and leachate is expected to be trucked away from the project site regularly. Leachate, laden with pollutants including PFAS,⁸ will cause harmful impacts both at the site, and where it is ultimately trucked to. Negative impacts that will result from the project's leachate generation, management, and trucking offsite include, but are not limited to:

- Dangerous storage and handling of leachate, which will threaten to contaminate the environment. NHDES recently issued a Letter of Deficiency to NCES, finding that NCES committed violations by, in 450 instances, improperly and dangerously storing leachate in the landfill liner system. NHDES Letter of Deficiency (June 14, 2024) at 1-5 (attached as Exhibit 14). NHDES found that, due to NCES's improper use of the liner system to store leachate and exceedances of secondary flow rates, NCES “has not controlled to the greatest extent practical the generation of leachate as required by Env-Sw 1005.01(d)(7). *Id.* at 8. Additionally, NCES failed to record required leachate data collection information,

⁷ U.S. E.P.A. Office of Research & Development, State of the Practice of Onsite Leachate Treatment at Municipal Solid Waste Landfills at 1 (EPA/600/R-21/182) (Oct. 2021).

⁸ PFAS, also known as “forever chemicals,” refers to a family of synthetic organic chemicals that persist in the environment for up to thousands of years. Per- and Polyfluoroalkyl Substances (PFASs), UN ENV'T PROGRAMME, available at <https://www.unep.org/topics/chemicalsand-pollution-action/pollution-and-health/persistent-organic-pollutants-pops/and>. PFAS have been linked to cancer and other serious health harms. 3 See 87 Fed. Reg. 36848, 36849 (June 21, 2022); 89 Fed. Reg. 8606, 8613–8615 (Feb. 8, 2024); U.S. E.P.A., Our Current Understanding of the Human Health and Environmental Risks of PFAS, available at <https://www.epa.gov/pfas/our-currentunderstanding-human-health-and-environmental-risks-pfas>.

failed to report required information, and failed to notify NHDES of leachate management incidents in 450 and 550 separate instances. *Id.*; *see also* GSL Incident Report (June 24, 2024) (attached as Exhibit 15).

- NHDES identified inadequate infrastructure in the project’s leachate loadout area, which threatens to release leachate spills to the environment. NHDES GSL Meeting Notes, Exhibit 12, at 2.
- The generation and improper handling of excess leachate, which will result in improper storage and handling of leachate, *see supra*, and may result in GSL operating the leachate management system outside of permitted hours. *See* NCES Modification 2024 Operating Plan (June 21, 2024), at 19 (attached as Exhibit 16) (documenting NCES’s request to operate the NCES leachate management system 24 hours a day, 7 days a week).
- Increased truck traffic to move leachate. *See id.*
- The trucking of leachate to waste water treatment facilities that are not equipped to treat leachate for PFAS, and the subsequent release of PFAS into the environment through discharges to surface waters or the incineration of sludge, releasing PFAS pollution into the air.⁹

⁹ NCES sends landfill leachate to the Manchester, New Hampshire WWTF under temporary discharge permits. City of Manchester Dep’t of Public Works Class III Wastewater Discharge Permit No. T-3001-2-24 (2024); City of Manchester Dep’t of Public Works Class III Wastewater Discharge Permit No. T-3001-4-24 (2024). NCES sent landfill leachate to the Manchester WWTF from April to May 2024 (up to 30,000 gallons per day) (City of Manchester Dep’t of Public Works Class III Wastewater Discharge Permit No. T-3001-4-24 (2024)), in March 2024 (47,703 gallons total) (NCES letter to NHDES (April 30, 2024) (attached as Exhibit 17), and in February 2024 (454,886 gallons total) (*id.*). The WWTF sampled NCES’s leachate influent for PFAS in February 2024, measuring 1,870 ppt PFOA, 281 ppt PFOS, 4,240 ppt PFHxS, and 125 ppt PFNA. Email from Christopher Crowley, Manchester EPD, to Frederick McNeill, Manchester EPD (April 18, 2024) (attached as Exhibit 18). The WWTF’s findings noted that each of these samples exceeded the New Hampshire drinking water standards, which are 12 ppt PFOA, 15 ppt PFOS, 18 ppt PFHxS, and 11 ppt PFNA. *Id.* The NCES landfill leachate contained 11,186.7 ppt total PFAS when 17 compounds were measured on February 13, 2024 (during NCES’s temporary permit period to discharge into the Manchester WWTF) and 12,263 ppt PFAS when 12 compounds were measured for a different WWTF in 2023. NCES Summary of Monitoring Data (2024) (attached as Exhibit 19); NCES letter to City of Concord (March 20, 2023) (attached as Exhibit 20). In addition to discharging PFAS at high concentrations, evidence suggests NCES violated the temporary discharge permits that authorized it to send leachate to the City’s WWTF. The landfill sent more leachate to the WWTF than the permit’s daily limit, discharged leachate to the plant on days that were not covered by

- The threat of disastrous leachate spills, similar to Casella’s recent leachate releases at landfills in Bethlehem, New Hampshire and Coventry, Vermont. ARLAC, Exhibit 8, at 2; CVES, Exhibit 9 at 5; NHDES GSL Meeting Notes, Exhibit 12.

The project will cause negative impacts from the addition of heavy truck traffic. Traffic impacts include, but are not limited to:

- Increased heavy truck traffic with associated negative traffic impacts, including traffic, noise and damage to roads. GSL Permit Application at 399, 402; ARLAC, Exhibit 8, at 2; North Country Reps, Exhibit 13, at 12.¹⁰
- Dust, debris, and odors from trucks. *See* GSL Permit Application at 162 (proposing to spray landfill trucks with “odor neutralizing agents” and water to purportedly lessen these impacts); *see also* ARLAC, Exhibit 8, at 2.
- Increased climate and air pollution.¹¹
- safety and nuisance concerns from increased truck traffic. GSL Permit Application at 402.

The project will result in additional negative impacts that will affect the broad range of public interest factors the Army Corps must consider. Additional negative impacts on the public interest include, but are not limited to:

- Aesthetic harms, including the landfill being visible to the public and damaging the local tourism industry. ARLAC, Exhibit 8, at 2; *see also* GSL Permit Application at 399, 416 (recognizing the need to screen the public from noise and visual impacts)
- Aesthetic harms to nearby Forest Lake. GSL Permit Application at 348, 349, 416.

the temporary permit, and failed to disclose certain pollutant parameters. Email from Save Forest Lake (May 21, 2024) (attached as Exhibit 21). Despite these violations, despite the WWTF’s inability to treat PFAS, and despite the known health risks associated with these pollutants, the City has communicated with Casella regarding the potential to accept PFAS from another active Casella landfill, the Coventry landfill in Vermont. Email from Chris Crowley (April 18, 2024) (attached as Exhibit 22).

¹⁰ *See, e.g., Buttrey*, 690 F.2d at 1184-85 (upholding denial of 404(b) permit were the Corps found, in part, that the proposed activity would have negative impacts through increased noise and increased traffic).

¹¹ *See generally* U.S. E.P.A., Overview of Air Pollution from Transportation, available at <https://www.epa.gov/transportation-air-pollution-and-climate-change/overview-air-pollution-transportation>.

- Aesthetic harms in the destruction of the natural features themselves.¹²
- Impacts to quality of life, including odors and noise from landfill operations. *See, e.g.*, GSL Permit Application at 399, 416 (recognizing the need to screen the public from noise and visual impacts).
- Stigma and harm to North Country tourism and outdoor recreation, with negative economic impacts, in particular for local businesses that depend on the tourism industry. North Country Reps, Exhibit 13, at 1, 2.
- High costs for communities to remediate landfill-related pollution, including PFAS pollution. *Id.*
- Negative impacts to the quality of life of the surrounding community may be exacerbated if GSL operates outside of its operating hours. *See supra*, Exhibit 16.

Finally, the Army Corps must consider Casella’s poor environmental track record and numerous violations operating landfills in other locations. *See supra, see also* North Country Alliance for Balanced Change Comments (July 3, 2024).

As evidenced by the many comments submitted to the Army Corps and the comments offered at the highly-attended Army Corps public meeting held in Dalton on June 26, 2024, there is great public opposition to the project. The project places an undue burden on residents of the North Country to host yet another landfill, with no public benefit.¹³

V. The Army Corps must deny the permit because the project will degrade aquatic resources and will cause severe and unacceptable adverse effects to waters of the United States.

The Clean Water Act Section 404 Guidelines explain that “the degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be *among the most severe environmental impacts . . .*”. 40 C.F.R. § 230.1(d) (emphasis added). Because of this, the environmental impacts of GSL’s proposed project must be strictly scrutinized.

The Corps cannot issue a permit to GSL unless GSL can demonstrate that project will not have an “unacceptable adverse effect” on the aquatic ecosystem. *See Sierra Club v. U.S. Army Corps of Eng’rs*, 772 F.2d 1043, 1050 (2nd Cir. 1985) (citing 40 C.F.R. § 230.1(c)). “Fundamental to the [Section 404(b)] Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a

¹² *See, e.g., Buttrey*, 690 F.2d at 1184 (upholding denial of 404(b) permit were the Corps found, in part, that the proposed activity would have aesthetic impacts of destroying the natural features of an existing swamp).

¹³ GSL’s proposal to address disparities through its proposed host community agreement and free roadside waste collection does not mitigate this burden or satisfy the principles of environmental justice. *See* GSL Permit Application at 209.

discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.” 40 C.F.R. § 230.1(c).

As part of this scrutiny, the Corps must consider not only the direct impacts of the project on wetlands and other related resources, but it also must consider the proposed project’s cumulative and secondary impacts. 40 C.F.R. § 230.11(g), (h). Cumulative impacts are “the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material. . . [and] . . . should be predicted to the extent reasonable and practical.” 40 C.F.R. § 230.11(g)(1), (2). Secondary effects are “effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material. . . . Some examples of secondary effects are . . . leachate and runoff from a sanitary landfill located in waters of the U.S.” 40 C.F.R. § 230.11(h)(1), (2).

Federal regulations recognize that the environmental impacts caused by the destruction of wetlands are particularly severe:

From a national perspective, the degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by these [404(b)] Guidelines. The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources.

40 C.F.R. § 230.1(d). GSL’s current proposal calls for the permanent destruction of 11.5 acres of wetlands, the most severe form of environmental impact. *See id.*

As documented above, *supra* at 11-16, GSL’s proposed landfill would result in significant direct, secondary, and cumulative impacts. Most significant is the destruction of an important, well-functioning wetland complex. ARLAC, Exhibit 8, at 2, 3. Moreover, Dalton’s wetland consultant warns that: “aquatic resource impacts enumerated in the wetland permit application are drastically underestimated.” CVES, Exhibit 9 at 2.

The Army Corps cannot rely on GSL’s assurances that unacceptable adverse effects on the environment will be avoided, as GSL’s analysis is flawed and is missing critical information. Necessary information regarding wetlands is absent. Indeed, NHDES recently determined that GSL’s state wetlands permit application is incomplete and missing critical information. NHDES, Exhibit 6, at 2. GSL failed to provide field delineations for all wetlands within the site. *Id.* GSL did not classify the wetlands. *Id.* GSL did not provide an assessment of the functions and values of the wetlands at the site. *Id.* GSL’s hydrogeologic report is incomplete and fails to account for all hydraulic pathways at and from the site. Calex, Exhibit 3, at 5, 7. *See also* CVES, Exhibit 9,

at 4; Bethlehem Conservation Commission, Exhibit 10, at 1 (GSL’s habitat assessment is qualitatively inadequate). *See also* NHDES letter (June 24, 2024) (finding GSL’s state solid waste permit to be incomplete for a second time, and documenting missing information, including missing at least ten pages of hydrogeological data, geotechnical data, and information about leachate storage on site) (attached as Exhibit 23).

The ARLAC has repeatedly documented its concerns about the project’s environmental impacts, expressing “serious concerns about environmental and community impacts to the site . . . as well as to hydrologically connected neighboring sites and downstream communities.” ARLAC, Exhibit 8, at 1. ARLAC finds that the project threats include threatening interconnected groundwater and surface water systems flowing to Hatch Brook-Alder Brook tributaries, a perennial stream complex, and the Ammonoosuc River. *Id.* at 1-2. The project will disturb the Alder Brook, which is ranked as Highest Ranked Wildlife Habitat in New Hampshire’s 2020 Wildlife Action Plan. *Id.* at 2. It will impact the Alder Brook fishery and wild brook trout and rainbow trout and brown trout in the Ammonoosuc. *Id.* Dalton’s wetlands consultant provided a similar explanation of the project’s expected impacts, explaining that “the Ammonoosuc River designated river corridor, highest ranked habitats of New Hampshire, acres of wetlands, vernal pools, perennial and intermittent streams, and cold-water fisheries are downgradient and will be adversely affected by the project.” CVES, Exhibit 9 at 4.

The project will cause additional harms downstream, as described above. In addition, Dalton’s wetlands consultant criticizes GSL’s application’s for underestimating the full scope of indirect impacts. CVES, Exhibit 9 at 2. According to Mr. McClammer, GSL’s wetlands impact calculations: “ignore probable indirect impacts on aquatic resources from inadequate stormwater control measures . . . , other existing and proposed projects within the same watershed, and the likely future expansion of the landfill.” *Id.* The project’s plans for the construction of numerous artificial ponds will increase surface water temperatures which will cause additional adverse impacts effects on downstream wetlands and cold-water fisheries. *Id.*

Downstream, the project will threaten the Ammonoosuc River, which is a drinking water source for nearby Woodsville. ARLAC, Exhibit 8 at 2. ARLAC notes the “very high fluvial erosion zone” reaching the Ammonoosuc and site features, including the slope of the land, that will direct drainage from the project site to the Ammonoosuc. *Id.* The Bethlehem Conservation Commission notes the site’s porous soils, uphill location, and presence of branches of the Alder Brook could allow landfill leaks to reach and contaminate the Ammonoosuc River. Bethlehem Conservation Commission, Exhibit 10, at 7. Planned impacts along the access road in Bethlehem will result in stream channels running downstream through perennial creeks and discharging into Alder Brook and the Ammonoosuc River. *Id.* at 3.

The project’s destruction of wetlands will have negative impacts on wetlands directly downstream, in Bethlehem. *Id.* at 2-3. Citing a report commissioned by the Bethlehem

Conservation Commission in 2015, Bethlehem explains that proposed wetlands impacts at the project site will cause impacts in Bethlehem. *Id.* at 3 (“Incremental contributions of individual streams and wetlands are cumulative across entire watersheds, and their effects on downstream waters should be evaluated within the context of other streams and wetlands in that watershed.”). The Bethlehem Conservation Commission further documented its concerns about additional environmental harms the project will cause, including the loss of biodiversity in wetlands and adjacent upland plant and animal communities, erosion and stream bank destabilization, sedimentation downstream, and aquifer degradation. *Id.* at 3.

Finally, the project will cause violations of state water quality standards and will threaten aquatic life. According to GSL: “The most vulnerable existing use/aquatic resource has been identified as the coldwater fish community in the Alder Brook and Hatch Brook watersheds.” N. 2 (GSL WQC Application) at 25. The project could cause or contribute to a violation of Env-Wq 1702.17(d), designated use for aquatic life integrity. As acknowledged by GSL:

The aquatic life integrity existing use/designated use has the potential to be affected by the proposed activities due to flow alteration, changes to landcover in the watershed, and discharge of stormwater. Eastern Brook Trout were identified by the participating agencies as the species most likely to be affected by the Proposed Project, due to it being a coldwater species sensitive to environmental changes in its supporting habitat.

Id. at 16. *See also* GSL Permit Application, Site Visit Summary NH Fish and Game Department (September 29, 2023), at 890 (discussing Fish and Game concerns for effects to aquatic species, including Eastern Brook Trout, Northern Redbelly Dace, Blacknose Dace, and Creek Chub).

Because the project will degrade and destroy aquatic resources, including significant direct, secondary, and cumulative impacts, the Army Corp cannot grant GSL’s permit application. *See* 40 C.F.R. § 230.1(c).

VI. The Army Corps must deny the permit application because GSL has not taken appropriate and practical steps to minimize impacts on aquatic ecosystems.

The CWA regulations provide that “no discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem.” 40 C.F.R. § 230.10(d). The project’s extensive destruction of wetlands, vernal pools and streams, as detailed above, will have adverse impacts on the aquatic ecosystem, and GSL’s application falls far short of demonstrating that it has taken sufficient steps to minimize these impacts.

NHDES’s recently determined that that GSL has not demonstrated sufficient avoidance and minimization of wetlands impacts. First, without providing complete information regarding

GSL's intended buildout of the landfill, GSL cannot, and has not, demonstrated that GSL has taken appropriate and practicable steps to minimize adverse impacts. *See* NHDES, Exhibit 6, at 2-3 ("The Department is unable to assess compliance with avoidance and minimization requirements without an overall scheme of development for the lots in question.").

Additionally, NHDES determined that GSL hasn't demonstrated avoidance and minimization of wetlands impacts for the project currently under review. *Id.* at 2-3. Notably, GSL has not provided field delineation of all wetlands within the project scheme, has not provided wetlands classifications, and has not classified, evaluated, or provided functional assessments for each of the wetlands to be impacted. *Id.* Without this critical information, the impacts to the wetlands functions and values cannot be assessed. *Id.* GSL must identify the functions and values for all wetlands and vernal pools, and then demonstrate how those functional assessments were used to select the project location with the least impact to wetlands functions. *Id.* at 3. GSL has not demonstrated that the selected design layout avoids and minimizes impacts. *Id.* GSL failed to show that the project will avoid and minimize impacts to downstream wetlands, downstream intermittent and perennial streams, and wetland-dependent species and habitats. *Id.* at 4.

Concerned about the project's proposed entrance from Douglas Drive in Bethlehem, the Bethlehem Conservation Commission finds that GSL's selection of the access road did not minimize impacts and will unnecessarily impact .09 acres of wetlands and a perennial stream, although less damaging routes are available. Bethlehem Conservation Commission, Exhibit 10, at 2, 3.

Finally, because GSLS has failed to demonstrate adequate avoidance and mitigation, GSL cannot, and has not, demonstrated it will provide appropriate compensatory mitigation. *See Healthy Gulf*, 81 F.4th at 517 (appropriate compensatory mitigation is determined after adequate avoidance and mitigation).

VII. In the alternative, if the Army Corps does not deny GSL's permit application at this time, it must prepare an Environmental Impact Statement to fully evaluate the environmental impacts of the project and inform the public of those impacts.

If the Army Corps does not decide to deny GSL's permit application at this time, the Corps must prepare an Environmental Impact Statement.

Under NEPA, the Corps must complete an Environmental Assessment and then prepare either an Environmental Impact Statement or make a Finding of No Significant Impact. *See* 33 C.F.R. §230.7(a). An in-depth EIS is required "for every major Federal action significantly affecting the quality of the human environment." *Winter v. Nat. Res. Def. Council*, 55 U.S. 7, 15-16 (2008) (citing 42 U.S.C. § 4332(2)(C)). This duty extends to any federal actions that "will or may" have a significant effect on the environment. 40 CFR § 1508.1(b) (emphasis added). "NEPA requires the agency to take a hard look at the environmental consequences of a major

federal action.” *Massachusetts v. U.S. Nuclear Regul. Comm’n*, 708 F.3d 63, 67 (1st Cir. 2013) (citations omitted).

An EIS is necessary to both fully evaluate the environmental impacts of a proposal and to inform the public of those impacts. *Id.* “Part of the harm NEPA attempts to prevent in requiring an EIS is that, without one, there may be little if any information about prospective environmental harms and potential mitigating measures.” *Winter*, 55 U.S. at 23.

This proposal will significantly affect the environment and requires an EIS. *See* 42 U.S.C. § 4332(2)(C). Even without considering GSL’s larger expansion plans, as documented above, GSL proposes to cause permanent impacts to roughly 11 acres of wetlands, over 3,000 linear feet of permanent and temporary stream impacts, and to directly impact tributaries to Alder Brook and the Ammonoosuc River. The project entails the destruction of at least five vernal pools, the clearcutting of 90 acres of forest, and total disturbances of 148 acres. The surface water and groundwater generally flows from the site to the southwest towards Alder Brook, which is ranked as Highest Ranked Wildlife Habitat in New Hampshire, and its associated wetlands, and then to the Ammonoosuc River. The project’s destruction of wetlands is considered to be *among the most severe environmental impacts . . .*”. 40 C.F.R. § 230.1(d) (emphasis added).

The environmental impacts, and cumulative and foreseeable environmental impacts of the project, are significant. *See supra* at 11-16. The communities being asked to host the project have documented substantial concerns with the widespread significant environmental impacts the project will cause. The wetlands consultant for Dalton describes the project as perhaps “the most complex permitting project in New Hampshire’s history” with disruptions to approximately 148 acres of land, destruction of 11.5 acres of wetlands and 3,256 linear feet of streams, and the addition of 25.5 acres of impervious surface. CVES, Exhibit 9, at 1. The Bethlehem Conservation Commission concludes that the project’s impacts will be severe, widespread, and unacceptable to the local and natural communities. Bethlehem Conservation Commission, Exhibit 10, at 7.

The Ammonoosuc River Local Advisory Committee (ARLAC) alone has provided at least eight comment letters to state agencies and the Army Corps expressing its concerns about the environmental impacts of the proposed landfill “being uphill of the Ammonoosuc River and that the headwater on the hillside are highly interconnected with groundwater, feeding into the Hatch-Brook Brook-Alder Brook tributary, a perennial stream complex that flows into the Ammonoosuc River. . . .” ARLAC, Exhibit 8, at 1. The ARLAC identifies “serious concerns about environmental and community impacts” in the project area, “as well as to hydrogeologically connected neighboring sites and downstream communities.” *Id.*; *see also supra* at 11-16.

The Bethlehem Conservation Commission describes the project as “ill-advised and ill-conceived” and concludes “[i]t is clear that this project will result in a breathtaking amount of damage to the environment, including posing a threat to the Ammonoosuc River, a protected river. It would be unconscionable to approve the proposed Granite State Landfill when the capacity of a new landfill is clearly not needed.” Bethlehem Conservation Commission, Exhibit 10, at 1.

The Army Corps cannot rely on GSL’s assurances in light of the substantive and valid criticisms of GSL’s proposal submitted by municipal bodies, the ARLAC, environmental consultants, and the public at large. *See supra*, at 11-16.

GSL’s permit application is a major federal action that will significantly affect the quality of the human environment. If the Army Corps does not deny the permit application, it must prepare an EIS to fully evaluate the application.

VIII. Request for a Public Hearing

Pursuant to 33 CFR § 327.4(b), CLF requests that a public hearing be held in the Dalton area to enable meaningful public participation, ensure that the Army Corps considers all applicable information in evaluating the proposal, and as part of the Army Corps’ broad public interest review. A public hearing is necessary as part of the Army Corp’s review of the permit application in light of environmental justice considerations. As described above, the significant size and scope of the proposed landfill, its extraordinary environmental harms, including substantial impacts to wetlands and streams, and the great public interest in this project warrant a public hearing. In 2021, when GSL first proposed to construct a landfill in Dalton, nearly one hundred people attended a public hearing about the landfill. The Army Corp’s June 26, 2024, public information meeting in Dalton was well attended, and many members of the community, including CLF, asked the Army Corps to hold a public hearing regarding this permit application. A public hearing is necessary for the public to be able to fully participate in this process, and for the Army Corps to fully understand and properly evaluate the impacts of this proposal.

IX. Conclusion

As discussed above, the Army Corps must deny GSL’s permit application on several grounds, including: (1) GSL’s failure to overcome the strong presumption that the project is not the least environmentally damaging practicable alternative, (2) the project conflicts with the public interest, (3) the project will degrade aquatic resources and cause severe and unacceptable impacts to aquatic resources, and (4) NCEC has failed to mitigate impacts to aquatic resources.



In the alternative, the Army Corps must prepare an EIS to fully evaluate the project and inform the public.

Respectfully submitted,

A handwritten signature in blue ink, which appears to read "Heidi H. Trimarco". The signature is fluid and cursive.

Heidi H. Trimarco
Staff Attorney
Conservation Law Foundation
27 North Main Street
Concord, NH 03301

htrimarco@clf.org