STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS COUNCIL

Docket No. 24-21 WtC

In re: Dalton Conservation Commission Appeal

REPLY TO OBJECTION TO MOTION TO DISMISS

Granite State Landfill, LLC (the "Applicant" or "GSL")[1] submits this reply in response to the Dalton Conservation Commission's (the "DCC") objection to the motion to dismiss. The DCC fails to present any cogent argument as to both its standing to maintain this appeal and its authority to act on behalf of the Town of Dalton.

I. The DCC fundamentally misinterprets the statutory permitting scheme

The DCC's objection is inherently flawed. There is no basis or requirement in the statutes for the Applicant to provide the DCC with notice of a shoreland permit. Ignoring all standards of statutory interpretation, the DCC's claim at its core is that the dredge and fill statute, RSA 482-A, and its notice requirements subsume the notice requirements of the shoreland protection statute, RSA 483-B. This interpretation, however, renders the notice requirements in RSA 483-B meaningless, in contravention of generally accepted principles of statutory interpretation. *Garand v. Town of Exeter*, 159 N.H. 136, 141 (2009) ("The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect.").

The statutory language requiring notice is clear and unambiguous; the DCC was not entitled to notice. The DCC now attempts to obfuscate this clear and unambiguous language

[1] The DCC's notes that "Casella" is the applicant for the shoreland permit. Granite State Landfill, LLC, however, is listed on the permit application as the applicant.

through a meritless argument that RSA 483-B:3, II, requires application of the notice requirements under the dredge and fill statute, because that is the "more stringent standard." Yet the DCC cites *no authority* in support of its attempt to 'mix and match' different statutes to create its desired outcome. Such an argument makes a mockery of statutory construction and provides no standards by which an applicant could ever know which notice requirements apply.[2]

Similarly, the DCC claims that the avoidance and minimization criteria in RSA 482-A somehow apply to the work authorized by the shoreland permit. The DCC bases this argument on RSA 483-B:5-b, IV which provides "impacts in the protected shoreland that receive a permit in accordance with RSA 482-A… shall not require a permit under this section." This section only applies, however, if the "impacts in the protected shoreland" would be subject to the jurisdiction and requirements of RSA 482-A. For instance, if there were wetlands within the protected shoreland that the Applicant was planning to dredge or fill, then the Applicant would only be required to obtain a permit under RSA 482-A. Here, however, there are *no wetlands impacts within the protected shoreline*. It would be impossible to obtain a permit for something that is not going to occur.

This further illustrates the DCC's tortured understanding of NHDES's permit programs. The landfill project admittedly requires a dredge and fill permit. But that permit is only required because there will be work in wetlands. Similarly, a shoreland permit is only required because there is some work on a roadway that will occur within a certain distance of a protected shoreland (to be clear, no dredge and fill work will occur within the protected shoreland). These permits are only required because work will be done in the areas each program regulates. If the

[2] Even if the DCC's statutory interpretation were accepted, it would be unconstitutional. Such an interpretation is impermissibly vague as it would prevent an applicant from knowing which standards and requirements applied to which permit programs.

legislature desired to combine all permit programs in a single, unified process, it could have done so. Instead, the legislature designated specific requirements for different programs, each regulating different aspects or characteristics of the environment. Where each program's enabling legislation specifically applies to certain categories of actions affecting certain environments, the requirements of each permitting program cannot be mixed and matched in a hodge-podge environmental regulation scheme as the DCC suggests.

II. The dormancy denial of the solid waste permit application does not render this proceeding moot

Without any supporting authority, the DCC filed a supplement to its objection claiming that the denial of the solid waste permit application requires denying all other permits GSL is seeking, including the shoreland permit. There is no legal basis for this claim. GSL was already granted the shoreland permit and GSL has filed a declaratory judgment action challenging the validity of the denial in court and will shortly be filing an appeal with the waste management council. Moreover, the denial does not preclude GSL from refiling the solid waste permit application. The landfill is anything but "dead in the water" and staying the consideration of the DCC's appeal violates GSL's right to resolution of the issues raised in the DCC's appeal.[3]

III. The DCC is not authorized to maintain this appeal

The DCC is not authorized to maintain this appeal. The only rights that the DCC raises are those held by the Town of Dalton, not the DCC. Without specific authorization of the Town of Dalton's governing body, *i.e.*, the Selectboard, the DCC cannot maintain this appeal. *See Benson v. New Hampshire Ins. Guar. Ass'n*, 151 N.H. 590, 593 (2004); *see also Ricci v. Okin*,

[3] The DCC also continues the flawed argument that the permitting process must be one single process, not separate permits. None of the applicable rules or statutes allow for a single permitting process for a project that affects several different regulated areas. NHDES has not indicated that it intends to, or even could, combine the permit applications into one application process as the DCC appears to suggest. Thus, this argument has no bearing on the effect of the denial of GSL's solid waste permit application.

770 F.Supp.2d 438, 443 (D. Mass. 2011) (third-party standing requires litigant to show injury in fact that gives rise to concrete interest in adjudication of the third party's rights, litigant has a close relationship to that third party, and there some hindrance that prevents the third-party from protecting its own interests). The letter submitted with the motion to dismiss simply underscored the DCC's lack of any authorization to proceed with this appeal.

III. Conclusion

In accordance with the foregoing, GSL respectfully requests that the council dismiss the DCC's appeal.

Respectfully submitted,

GRANITE STATE LANDFILL, LLC,
By Its Attorneys,
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Dated: 4/11/2025

/s/ Jacob M. Rhodes

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CERTIFICATION

I, Jacob M. Rhodes, hereby certify that on April 11, 2025, I filed the foregoing document with the Council by way of electronic mail and regular mail, with copies served upon all persons listed on the service contact list through electronic mail.

/s/ Jacob M. Rhodes