STATE OF NEW HAMPSHIRE
WETLANDS COUNCIL

Appeal of Dalton Conservation Commission
Docket No. 24-21 WtC

STATE'S CONCURRENCE WITH GRANITE STATE LANDFILL'S MOTION TO DISMISS

NOW COMES the New Hampshire Department of Environmental Services ("Department"), by and through its counsel, the Office of the Attorney General (collectively, the "State"), and concurs with the motion to dismiss submitted by Granite State Landfill, LLC ("GSL") on March 10, 2025.

Appellant raises several issues related to the Department's issuance of the Shoreland Impact Permit #2024-00766 ("Permit"). The Permit authorizes GSL 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." Notice of Appeal, Permit Attachment.

Appellant's first alleged basis of standing appears to be that the Department failed to ensure that Appellant received notice of the GSL shoreland impact application and Appellant was harmed thereby. Notice of Appeal, ¶¶9-10; ¶26. However, the Appellant was not entitled to notice per RSA 483-B:5-b, IV-a. That provision requires that notice be provided only to "the governing body of the municipality or municipalities in which the property is located." RSA 483-B:5-b, IV-a. As Appellant acknowledges, the "site-access location for the Granite State Landfill," which is where the proposed safety improvements will occur "is located in Bethlehem alone..." Notice of Appeal, ¶8. Additionally, the Permit identifies the "project location" as "NH Route 116, Bethlehem" and requires that all "proposed impacts must occur exclusively within the New Hampshire Department of Transportation right-of-way." Notice of Appeal, Permit Attachment (page 1). Accordingly, the "property" for purpose of RSA 483-B:5-b, IV-a, exists

solely within the Town of Bethlehem, and thus the Town of Bethlehem was the only governing body entitled to notice under this provision. *See* RSA 483-B:5-b, IV-a. Therefore, the Appellant was not required to receive notice of the application.

The Appellant next argues that the impacts of the activities related to the proposed construction or operation of the proposed landfill itself confer standing. However, as stated above, the work authorized by the Permit is located solely on a portion of NH Route 116 in Bethlehem and is related only to access. Notice of Appeal, ¶14. As a general rule, permit issuance, and subsequent appeals, address the impacts of the permit and not all impacts of the project. *See Greenland Conservation Comm'n v. N.H. Wetlands Council*, 154 N.H. 529, 541 (2006) (limiting the department's authority to the permit at issue because, among other things, "[t]he statute does not authorize DES to consider impacts created by the subsequent use of structures").

To support its argument that all impacts should be considered together, Appellant alleges that the Department unlawfully "disaggregated" the permitting processes. *Id.* at ¶¶13-15. However, Appellant's citations to RSA 482-A:11, V in support of aggregation have meaning within the wetlands permitting process, as Appellant acknowledges, but only there.

Specifically, pursuant to RSA ch.482-A, projects impacting wetlands are classified by the degree of impact, measured by the "size and nature" of the project. N.H. Admin. R. Env-Wt 103.42. RSA 482-A:8 requires the Department to hold a public hearing on all "major" impact projects. To prevent developers from breaking a "major" impact project into a series of "minor" projects and thereby avoiding the public hearing requirement, RSA 482-A:11, V, requires that "a series of minor projects undertaken by a single developer or several developers over a period of 5 years or less … [if] when considered in the aggregate, amount to a major project in the opinion

of the department" may also "be subject to a public hearing as provided in RSA 482-A:8." In contrast, RSA 483-B has no such requirement.

Finally, Appellant claims that the Department erred in issuing the Permit because GSL's application allegedly failed to demonstrate the least impactful alterative and thus failed to satisfy "avoidance and minimization" requirements. Notice of Appeal, ¶26. However, the avoidance and minimization requirements are based in RSA 482-A and exist within the wetlands permitting process. They are inapplicable to RSA 483-B and the Permit at issue here. Indeed, the Permit authorizes no work in wetlands jurisdictional areas and expressly requires that any wetlands impact requires RSA 482-A approvals. Notice of Appeal, Permit Attachment (page 1).

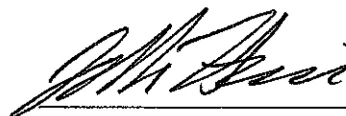
The State, therefore, concurs that the Appellant's arguments described above do not confer standing and fail to state a claim as a matter of law.

Respectfully submitted

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

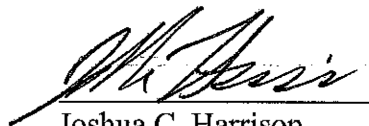


Dated: March 18, 2025

Joshua C. Harrison, N.H. Bar #269564
Assistant Attorney General
Keely Lovato, N.H. Bar #278724
Attorney
Environmental Protection Bureau
1 Granite Place South
Concord, New Hampshire 03301
Joshua.C.Harrison@doj.nh.gov
Keely.Lovato@doj.nh.gov
(603) 271-3679

Certificate of Service

I, Joshua Harrison, hereby certify that a copy of the foregoing has been emailed to all listed on the service list related to the above-captioned appeal and that a copy is being provided via hand-delivery to the Wetlands Council Appeals Clerk.



Joshua C. Harrison