

August 5, 2024

Via Email

New Hampshire Department of Environmental Services

Michael Wimsatt
Director, Waste Management Division
michael.wimsatt@des.nh.gov

Jaime Colby
Supervisor, Engineering and Permitting Section
Jaime.M.Colby@des.nh.gov

**Re: NHDES File Number: 2023-66600 Solid Waste Standard Permit
Application; Subject Properties: Dalton Tax Map 406, Lots 2.1, 2.3, 2.4,
2.5, 3, and 3A and Bethlehem Tax Map 406, Lots 1 and 2
("Application")**

Dear Director Wimsatt and Ms. Colby,

I write in continued representation of North Country Alliance for Balanced Change ("NCABC"). On October 31, 2023, Granite State Landfill, LLC, a subsidiary of Casella Waste Systems, Inc., ("GSL" or "Applicant") submitted a new application for a Standard Permit for Solid Waste Landfill to the Solid Waste Management Bureau ("Bureau") of the New Hampshire Department of Environmental Services ("Department") for its proposed landfill on the private road of Douglas Drive in Dalton and Bethlehem, New Hampshire ("Landfill" or "Proposal").

The location of the Landfill on Douglas Drive presents several issues that justify denial of the Application, each of which is explained in detail below. Please make this letter part of your record in this matter.

Executive Summary

Numerous issues surround GSL's use of Douglas Drive as part of this proposal. To summarize:

- (1) GSL has not received, and has refused to seek, local approval from Bethlehem even though part of the Landfill (i.e., a stretch of Douglas Drive and other improvements requiring permits) is located within Bethlehem. In fact, GSL

cannot obtain local approval from Bethlehem because both Bethlehem’s zoning ordinance and settlement agreements with Casella preclude the Landfill.

- (2) GSL has not received, and has refused to seek, local approval from Dalton pursuant to RSA 674:41 even though Douglas Drive is a private road.
- (3) GSL has not demonstrated full ownership of Douglas Drive even though Douglas Drive is part of the proposed Landfill facility.
- (4) Bethlehem has not been treated as a host municipality for purposes of the state permitting process even though part of the Proposal is within Bethlehem and Bethlehem and its residents will be exposed to the negative consequences, namely heavy truck traffic.

Zoning & Planning Approvals – Bethlehem

According to Applicant, “[l]ocal permitting is not anticipated” because “[t]he Town of Dalton does not have a zoning ordinance.” Application, Section 3, Permit Status. Indeed, in Section III of its Standard Permit for Solid Waste Landfill, Applicant did not check the box indicating that local zoning approval would be required. However, local approval *is* required in this case because a portion of the Landfill facility—specifically, a segment of Douglas Drive and numerous supporting structures—is located within the Town of Bethlehem. Bethlehem *does* have a zoning ordinance, so Applicant must receive zoning approval from Bethlehem.

Under Env-Sw 314.07, an applicant for a solid waste permit must identify and provide the status of all required local permits and approvals. If an applicant has not yet filed an application, it must indicate the anticipated filing date. Env-Sw 314.07(b)(1). Applicant has failed to do so in this case as it relates to Bethlehem. Relatedly, an applicant must notify a host municipality about a proposed solid waste facility. Env-Sw 314.08. Bethlehem, along with Dalton, should be treated as a “host municipality” for purposes of notifications and other processes involving municipalities under the state permitting process, and Applicant has not done so up to this point.

Douglas Drive is part of the overall Landfill facility, as indicated by Applicant’s own plans, which include several sheets dedicated exclusively to Douglas Drive (sheets 22 through 36). Notably, sheet 22 (DD-1), sheet 23 (DD-2), sheet 24 (DD-3), and sheet 32 (DD-11) highlight the portions of Douglas Drive that traverse Bethlehem. Visual inspection of these plans alone is enough to see that Douglas Drive—including the Bethlehem portion—is part of the Landfill facility. This is especially true considering all the work Applicant proposes for the Bethlehem section of Douglas Drive, as indicated on the plans.

The fact that the Bethlehem segment of Douglas Drive is part of the Landfill is also reflected in the law, which provides an expansive definition of what constitutes a “facility.” Under RSA 149-M:4, IX, a “facility” is “a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment, or disposal of solid waste.” The corresponding solid waste rule, Env-Sw 103.01, adopts the statutory definition. Douglas Drive is part of the “facility” in this case because it is a “physical structure,” or at the very least is part of the “system,” for the “transfer” of the solid waste. In other words, Douglas Drive will facilitate the transfer of the solid waste to the dumping area, making it part of the overall “facility” per the statutory and regulatory definition.

In sum, Douglas Drive is part of the Proposal, and a portion of Douglas Drive crosses through Bethlehem. As such, Applicant must obtain local zoning approval from Bethlehem, and the Application should include this requirement. Likewise, Bethlehem should be treated as a host municipality for purposes of the Application and permitting process.

However, even if Applicant updates its Application and approaches Bethlehem for zoning approval, ***Applicant cannot obtain zoning approval from Bethlehem.*** For one, Bethlehem’s zoning ordinance does not permit any new private landfills in the town. According to Article III, Section A of the ordinance, “no solid waste disposal facility, site or expansion of any existing solid waste facility or landfills shall be located in any district except District V or except a facility operated by the Town for the purpose of providing a solid waste disposal facility for solid waste generated in the Town.” District V corresponds to the current NCES landfill; the area of Bethlehem that would be part of the Proposal (underlying Douglas Drive) is not part of District V. As landfills are permitted only in District V and the Proposal is not in District V, the Landfill would not be permitted under Bethlehem’s current zoning.

Even if Applicant sought zoning relief (i.e., a variance) to construct a landfill outside of District V, such relief would not be possible because it would violate settlement agreements between Bethlehem and GSL’s parent company, Casella. In a “Settlement Agreement and Mutual Release of All Claims” dated November 22, 2011 (the “2011 Settlement Agreement”), between NCES (another Casella subsidiary) and Bethlehem related to the NCES landfill, attached as **Exhibit A**, the parties agreed to several “Restrictions on Development” in Section 5. The opening paragraph of Section 5 makes it clear that these restrictions apply to GSL, with NCES agreeing “on behalf of itself and its *affiliates, successors, and assigns* to the following restrictions upon the expansion of the Landfill and the development of future landfill capacity.” (Emphasis added.)

Two subsections clearly apply here. Section 5(b) states that “NCES shall not acquire any real property within the Town's boundaries for the purpose of developing or operating a landfill on such property.” Further, Section 5(c) explains that “NCES shall not

seek or acquire any federal, state, or local permits to develop or operate a landfill within the Town's boundaries and outside of District V.” Another subsection, Section 5(a), may also be applicable, as it provides that “NCES shall not expand the landfill or develop or operate any other landfill capacity within the Town's boundaries and outside of District V.” These guarantees were reaffirmed in a “Settlement Agreement and Mutual Release of All Claims” dated November 9, 2018 (the “2018 Settlement Agreement”), attached as **Exhibit B**. In Section 2.2 of the 2018 Settlement Agreement, “NCES acknowledges and affirms (a) the restrictions on development set forth in Paragraph 5 of the 2011 Settlement Agreement.”

GSL cannot seek zoning approval from Bethlehem without violating Section 5(c) of the 2011 Settlement Agreement (and, by extension, Section 2.2 of the 2018 Settlement Agreement), which explicitly bars GSL from seeking any type of local approval for a landfill within Bethlehem.¹ Therefore, GSL will never be able to show the necessary compliance with local approvals. *See* Env-Sw 305.04(b) (applicant’s obligation to obtain all necessary local permits, licenses, or approvals).

Ultimately, while Applicant has claimed that it does not need any local approvals for the Proposal, this is simply not the case. The Landfill facility includes Douglas Drive, part of which is in Bethlehem. Because part of the facility is in Bethlehem, Applicant must acquire local zoning approval from Bethlehem. According to the Application, such approval has not been sought, and Applicant has not indicated that it will seek such approval. Indeed, it is impossible for Applicant to secure local approval from Bethlehem because (1) Bethlehem’s zoning ordinance prohibits landfill facilities in the proposed area and (2) Casella’s settlement agreements with Bethlehem preclude GSL (or any other Casella affiliate/subsidiary) from pursuing a landfill within Bethlehem. For these reasons, the Department should exercise its discretion to deny the Application.

Local RSA 674:41, I Approvals – Dalton & Bethlehem

RSA 674:41, I provides that, when a municipality’s planning board has the power to approve or disapprove plats, “no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed” meets one of several conditions.

If the access street is a private road, the local governing body, after review and comment from the planning board, must vote to authorize the issuance of building permits for the erection of buildings on the private road. RSA 674:41, I(d)(1).

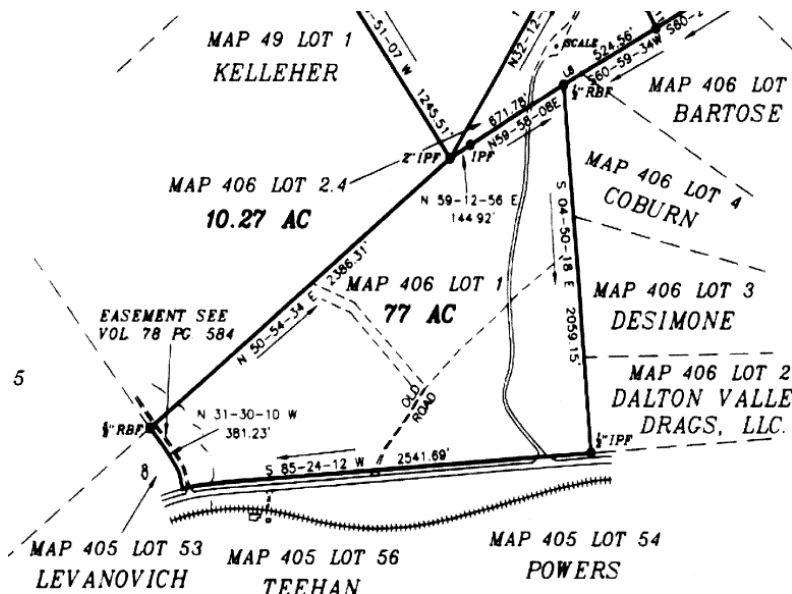
¹ In fact, GSL has already violated Section 5(c) by seeking state and federal permits.

Alternatively, a building may be erected on a private road without further local approval if the road “[c]orresponds in its location and lines” with a street (1) on the municipality’s official map, (2) on a subdivision plat approved by the planning board, (3) on a street plat made and adopted by the planning board, or (4) located and accepted by the local legislative body. *Id.* § (b).

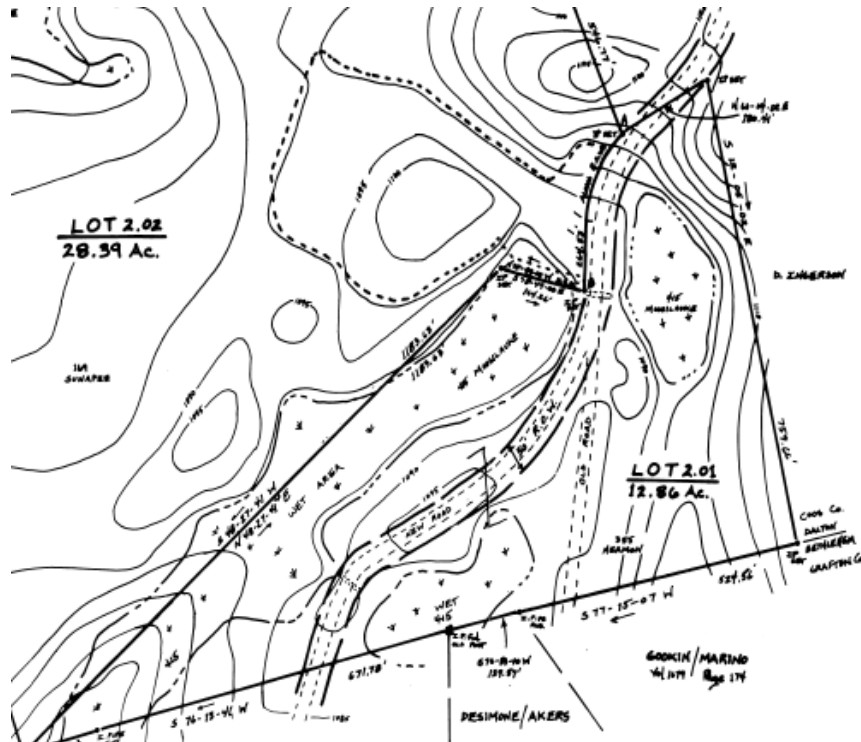
Even though Dalton does not have zoning, its Planning Board *is* empowered to approve/disapprove plats, so RSA 674:41 is applicable. Douglas Drive, which would be the sole access to the Landfill, is a private road, as Applicant concedes in its Application. As such, Applicant must satisfy the requirements of either subsection (b) or (d) of RSA 674:41.

The Dalton Selectboard sent GSL a letter dated January 9, 2023, attached as **Exhibit C**, informing GSL that it would need to comply with the requirements of RSA 674:41 by seeking the appropriate approvals from the Town. GSL, by counsel, responded via a letter dated February 1, 2023, attached as **Exhibit D**, explaining that it would *not* seek approval from the Town because Douglas Drive appears on two subdivision plats previously approved by the Dalton Planning Board, which satisfies RSA 674:41, I(b)(2). However, there are several holes in this argument.

As a threshold matter, neither of the roads purported to be Douglas Drive on the plats referenced by GSL—Plat #3970 (attached as **Exhibit E**) and Plat #895 (attached as **Exhibit F**)—is actually labelled as Douglas Drive. Plat #895 merely refers to a “New Road” and an “Old Road” and Plat #3970 similarly only contains an “Old Road” label. For example, here is a portion of Plat #3970, the entirety of which can be seen at **Exhibit E**:



Here is a portion of Plat #895, again the entirety of which can be seen at **Exhibit F**:



The complete absence of any road being labeled as Douglas Drive is especially a problem because the two plats appear to have inconsistent depictions of what GSL apparently purports to be “Douglas Drive.” Assuming that GSL meant the “New Road” on Plat #3970 (**Exhibit E**) and/or the road *not* labelled “Old Road” on Plat #895 (**Exhibit F**) to represent Douglas Drive, the course for the roads is completely different, as shown in the comparison attached as **Exhibit G**.

What is more, neither plat shows (what is presumed to be) Douglas Drive traversing its entire span. Plat #895 only shows a small section of any road. Plat #3970 contains a larger stretch of a road, but it still does not show the full extent of a road, specifically as it pertains to Lot 405-33. This is evident in the comparison of Plat #3970 to a Google Maps image of Douglas Drive, attached as **Exhibit H**.

These details are significant because the law, meaning the specific language of RSA 674:41, I(b)(2), is that the street on the subdivision plat approved by the planning board must “[c]orrespond[] in its location and lines with” the “street giving access to the lot upon which such building is proposed to be placed.”

First, it is unclear whether the roads depicted on the plats cited by GSL actually correspond in their locations and lines with any road that is actually Douglas Drive, and

GSL has not provided any evidence that such is the case. Neither plat has metes and bounds descriptions for the roads they illustrate, and no road is labelled as Douglas Drive. Whether the roads shown on the plats accurately reflect the location and lines of Douglas Drive is a substantial question that needs to be answered for GSL to substantiate its claim that RSA 674:41, I(b)(2) applies in this situation.

Second, neither plat utilized by GSL shows the entirety of Douglas Drive. The Dalton Planning Board cannot be deemed to have approved portions of the road that were never before it on a plat; just because the Board may have approved the sections of Douglas Drive depicted on the plats used by GSL (assuming for the sake of argument that the plats actually depict Douglas Drive) does not mean the Board's approvals extend to the entire road, especially segments not shown.

Unless GSL is able to provide evidence that (1) the road depicted on a plat is actually Douglas Drive; (2) the depiction in the plat actually corresponds to the location and lines of Douglas Drive and (3) the plat shows a complete rendering of Douglas Drive, RSA 674:41, I(b)(2) does not apply and GSL *must* obtain approval from the Town pursuant to RSA 674:41, I(d)(1).

However, as demonstrated by its February 1, 2023 response letter (**Exhibit D**), GSL has already expressed that it has no intention of complying with RSA 674:41. With respect to these same requirements for the portion of Douglas Drive located in Bethlehem, GSL has been silent.

By refusing to comply with RSA 674:41, GSL has, by extension, shirked its obligation to seek *all* necessary local approval. *See* Env-Sw 305.04(b) (emphasis added). In a situation such as this where Applicant has shown a lack of commitment to complying with local laws, the Department should exercise its discretion to deny the Application.

Incomplete Ownership of Douglas Drive

Additionally, Applicant has not demonstrated that it will have complete ownership of Douglas Drive, and thereby complete ownership of the Landfill facility. Under Env-Sw 1003.03(a), a permittee must either (1) own the property on which a facility is to be located or (2) have a lease, easement, or other legal right to use the property, including access. *However*, Env-Sw 804.06 sets a more stringent standard for landfill facilities, mandating that “[a] new landfill shall be sited only on property which is *owned* by the permittee.” (Emphasis added.)

Therefore, while a lease, easement, or other legal right may be sufficient for certain solid waste facilities, a landfill facility requires outright ownership. As the Department highlighted in its letter dated June 24, 2024, notifying GSL of the

Department's second determination that GSL's solid waste application is incomplete, GSL has provided insufficient information to show it has legal control of the relevant properties for the proposed landfill facility.

As explained above, it is indisputable that Douglas Drive is part of Applicant's proposed Landfill facility. This is apparent from Applicant's own plans, many of which are specific to Douglas Drive and show that Applicant will perform significant work on the road as part of the Proposal. State law and the Department's rules are also clear on this point, providing that a "facility" includes all "physical structures" or "systems" that facilitate the "transfer" of solid waste. RSA 149-M:4, IX; Env-Sw 103.01.

Because Douglas Drive is part of the "facility," and the Proposal in this case is specifically a "landfill" facility, Applicant must *own* Douglas Drive pursuant to Env-Sw 804.06. However, Applicant's plans reveal that it will not own significant stretches of Douglas Drive.

The "Abutter Plan – July 12, 2023," shown on the following page, shows the parcels that GSL will own (blue) and the parcels that J.W. Chipping (i.e., Douglas Ingerson) will continue to own (yellow). Douglas Drive traverses several of the yellow parcels that will not be owned by GSL, including Map 406, Lot 1; Map 406, Lot 2.4; Map 406, Lot 2.5; and Map 405, Lot 33. Under Env-Sw 804.06, because Douglas Drive is part of the Landfill facility, GSL must own the *entirety* of Douglas Drive, including the portions that span the yellow parcels; it is not enough for GSL to own the portions within its blue parcels.

GSL has not shown complete ownership of the Landfill facility consistent with Env-Sw 804.06, so the Department should exercise its discretion to deny GSL's Application.

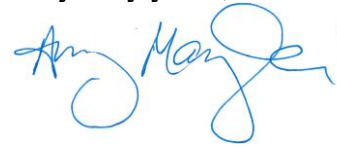
This is especially true because the traffic queuing in Bethlehem will not be ordinary commuter traffic; it will be heavy truck traffic hauling solid waste and leachate. As it stands, Bethlehem and its residents will be exposed to the odors, noise, exhaust, and adverse health effects associated with heavy truck traffic ***without having the access and participation to which a host municipality is entitled under the Department's permitting process.*** Heavy trucks, including those lingering on the Bethlehem portion of Douglas Drive, will have a considerable impact on Bethlehem and its residents, so Bethlehem should not be excluded from the permitting process as discussed in this letter.

Conclusion

Numerous issues surround GSL's use of Douglas Drive as part of this Proposal. GSL has not sought—and has indicated it will not seek—required local approvals from Bethlehem and Dalton. Indeed, GSL *cannot* obtain local approvals from Bethlehem because of the Town's zoning ordinance and settlement agreements with Casella. What is more, GSL has failed to demonstrate complete ownership of Douglas Drive as the law requires for landfill facilities. Finally, Bethlehem has not been treated as a host municipality during this process even though a component of the Landfill facility (i.e., Douglas Drive) is within the Town's borders and its residents would suffer the heavy truck traffic and other detriments that will flow from the Proposal.

The North Country Alliance for Balanced Change, therefore, respectfully requests that if the Applicant achieves a completed Application, the Department exercise its discretion to deny the Application pursuant to RSA 149-M:9. Thank you for your attention to this matter.

Very truly yours,



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Enclosures

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SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Settlement Agreement and Mutual Release of All Claims ("Agreement"), dated as of November 22, 2011, is made between the Town of Bethlehem (the "Town") and North Country Environmental Services, Inc. ("NCES") (together with the Town, the "Parties").

Recitals

- A. NCES owns and operates a municipal solid waste ("MSW") landfill on Trudeau Road within the Town's boundaries (the "Landfill").
- B. NCES and the Town are parties to the consolidated cases entitled *North Country Environmental Services, Inc. v. Town of Bethlehem, Bethlehem Planning Board, and Bethlehem Zoning Board of Adjustment*, Docket No. 215-2001-EQ-00177, and *Town of Bethlehem v. North Country Environmental Services, Inc.*, Docket No. 215-20090EQ-00025, in the Grafton Superior Court (the "Litigation").
- C. On October 17, 2011, the Parties mediated their dispute pursuant to N.H. Superior Court Rule 170 (as amended effective July 1, 2011) and reached an agreement on the essential terms of a settlement.
- D. On October 21, 2011, the Parties' counsel executed a Memorandum of Understanding ("MOU") memorializing the essential terms upon which the Parties had agreed at the mediation; a copy of the MOU is attached as Attachment 1.
- E. The MOU expressly contemplated the drafting and execution of an agreement setting out the detailed provisions of the settlement.
- F. This Agreement constitutes the agreement contemplated by the MOU.

Terms and Conditions

NOW, THEREFORE, in consideration of the mutual covenants set forth below and of other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Residential MSW Pickup and Disposal.** Commencing with approval of this Agreement and the Zoning Amendments (as that term is defined in paragraph 4 below) by the voters of the Town at a special town meeting (the "Ratification and Approval Vote") and continuing until all the Landfill's current and future disposal capacity as approved by the New Hampshire Department of Environmental Services ("NHDES") has been exhausted (this period, the "Post-Settlement Life of the Facility"), NCES shall provide to all residences within the Town curbside pickup and disposal of MSW and curbside pickup of commingled recyclables at no charge to the Town or its residents. The frequency with which NCES will provide pickup services will be agreed upon from time to time with the Town, but NCES shall provide such services weekly unless the Town agrees to less

frequent pickups after consultation with NCES. For purposes of this paragraph, NCES' capacity shall be exhausted when it can no longer receive MSW for disposal at the Landfill under its NHDES permits. To the extent that the Bethlehem Village District has independent authority over management of solid waste generated within its borders, it may elect whether to accept the pickup and disposal services provided by NCES under this paragraph. Nothing in this Agreement shall affect the obligation of commercial or industrial enterprises within the town to provide, at their own cost, for the pickup and disposal of the wastes they generate. During the Post-Settlement Life of the Facility, the Landfill will be available for disposal of wastes generated by commercial and industrial enterprises within the Town pursuant to the terms of such agreements as may be negotiated from time to time between any such enterprise and NCES.

2. **Trudeau Road Transfer Station.** During the Post-Settlement Life of the Facility, NCES will, at no charge to the Town or its residents, accept at its transfer station on Trudeau Road for processing or disposal all wastes that are generated by residents of the Town and that NCES is then permitted by NHDES to accept at the transfer station; provided, however, that NCES shall not accept MSW, construction and demolition debris, or any waste generated by any commercial or industrial enterprise at the transfer station. NCES shall operate its transfer station with its own employees for twenty-five hours each week, including 8:00 a.m. to 12:00 noon on Saturdays.
3. **Host Community Payment.** During the Post-Settlement Life of the Facility, NCES will pay the Town a host community payment at the rate of \$0.25 (twenty-five cents) for each ton of waste NCES accepts for disposal in the Landfill through December 31, 2017, and at the rate of \$0.75 (seventy-five cents) for each ton of waste NCES accepts for disposal in the Landfill commencing on January 1, 2018. The host community payment shall not be paid in connection with the placement of daily cover or material approved as alternative daily cover by NHDES. NCES shall make host community payments for each calendar quarter within thirty days of the end of such quarter. For each calendar year, NCES shall, within thirty days of the end of such year, provide the Town with an annual report of all waste disposed of in the Landfill for that year. Such report shall be generated by the "PC Scales" software or any equivalent replacement software used by NCES to track the number of tons of waste accepted for disposal in the Landfill. Within thirty days of its receipt of each report the Town shall be entitled to notify NCES in writing of its appointment of a qualified representative to audit the tonnages of waste accepted by NCES for that year. NCES shall provide such representative access to all records of its waste acceptance as may be reasonably necessary to enable the representative to verify the tonnages included in the report. Under no circumstances shall NCES be required to provide the Town access to records containing financial or any other proprietary business information, including, without limitation, fees charged for waste disposal.
4. **Enlargement of and Exemption Within District V.** Consistent with Paragraph 6 of this Agreement, the Town will place before a special town meeting, in accordance with all applicable statutory provisions but as promptly as reasonably possible, amendments to the Town's zoning ordinance in the form of Attachment 2 to this Agreement to enlarge

the area of Zoning District V from 51 acres to 61 acres as depicted on the plan in Attachment 3 to this Agreement ("District V") and to exempt from the Town's "Aquifer Ordinance" the development and operation of a solid waste landfill within District V (together, the "Zoning Amendments"). The Town agrees that the intent and effect of the Ratification and Approval Vote will be to create a vested right in NCES to landfill throughout District V except to the extent expressly stated in Paragraph 5e of this Agreement. The Town agrees that any amendment to its zoning ordinance taking effect after the Ratification and Approval Vote shall not be applicable within District V if application of any such amendment would have the effect of prohibiting or restricting in any way NCES's use of District V for landfilling as provided for in this Agreement.

5. **Restrictions on Development.** Upon, and only upon, the Ratification and Approval Vote, NCES agrees on behalf of itself and its affiliates, successors, and assigns to the following restrictions upon the expansion of the Landfill and the development of future landfill capacity:
- a. NCES shall not expand the landfill or develop or operate any other landfill capacity within the Town's boundaries and outside of District V.
 - b. NCES shall not acquire any real property within the Town's boundaries for the purpose of developing or operating a landfill on such property.
 - c. NCES shall not seek or acquire any federal, state, or local permits to develop or operate a landfill within the Town's boundaries and outside of District V.
 - d. The final closed and capped elevation of the Landfill shall not exceed 1,483 (one thousand, four hundred and eighty-three) feet above the North American Vertical Datum of 1988 (NAVD88) at any location on NCES's property. NCES shall be entitled to deposit waste within those areas of the Landfill site where subsidence has taken place during ongoing landfilling activities. NCES shall not substantially discontinue ongoing landfilling operations for the purpose of allowing subsidence of the waste mass at the Landfill or remove the final cap placed over any landfill cell for the purpose of disposing of waste within airspace created by subsidence of the waste mass. Nothing in this Agreement shall prevent NCES from removing the cap in place at the time of the execution of this Agreement for the purpose of placement of an overliner and construction of airspace for Stage IV Capacity as approved by NHDES by permit modification of August 27, 2010, a copy of which is attached as Attachment 4 to this Agreement.
 - e. NCES shall not expand the Landfill into the two cross-hatched portions of its property as depicted on Attachment 5 to this Agreement, such areas being comprised of (1) the 7.16-acre area of land abutting Trudeau Road and formerly owned by Castello and Vaughn and (2) the approximately 4.33-acre area of land in the northeast corner of the 48.28-acre parcel as shown on a subdivision plan approved by the Town planning board in 1985 and recorded in the Grafton County Registry of Deeds as Plan #2598 (together, the "Infrastructure-Only

Areas”). Within the Infrastructure-Only Areas, NCES shall be permitted to maintain, construct, or replace any infrastructure that is accessory to the land use of landfilling. A metes and bounds description of Infrastructure-Only Areas is set out in Attachment 6 to this Agreement.

- f. NCES shall grant a conservation easement by deed in the form of Attachment 7 on the approximately thirty-seven acres of NCES’s property lying generally to the north of District V and described more particularly by metes and bounds within Attachment 7. Within thirty days after the Ratification and Approval Vote the Town shall notify NCES in writing whether the conservation easement is to be granted to the Town or to an entity that is unaffiliated with the Town, is organized, in whole or in part, for the purpose of administering and enforcing conservation easements, and has reasonable experience in the administration and enforcement of such easements. NCES shall, within fourteen days of receiving such written notice from the Town, execute and deliver to the Town a deed in the form of Attachment 7 naming as the grantee either the Town or the entity identified in such notice.
 - g. Once the 2,050,000 cubic yards of disposal capacity approved by NHDES Standard Permit No. DES-SW-SP-03-002 (“Stage IV Capacity”) is exhausted, NCES shall not use mechanically stabilized earthen (“MSE”) berms or any equivalent structure along the perimeter of any Landfill cell so as to enable it to dispose of additional waste on established sideslopes. NCES shall not use MSE berms in connection with the construction of any Landfill cell to accommodate Stage IV Capacity. Without modifying the foregoing provisions of this paragraph 5g, and for the avoidance of doubt, nothing in this Agreement shall prevent NCES from using conventional berming methods, including, without limitation, compacted earthen materials, riprap, and erosion matting, in the construction of any Landfill cell if such methods constitute reasonable and appropriate elements of the design of any such cell based on such factors as the terrain, sound construction techniques, cost, and landfill stability.
6. **Special Town Meeting.** The Town will convene a special town meeting as promptly as reasonably possible to seek the Ratification and Approval Vote.
 7. **Board of Selectmen Support.** The Town’s board of selectmen agrees to support publicly the approval of this Agreement and the Zoning Amendments by the Town’s voters.
 8. **Property Taxes.** During the Post-Settlement Life of the Facility the Town will continue to use the methodology prescribed by the New Hampshire Board of Tax and Land Appeals (“BTLA”) in Docket Nos. 19709-02PT / 20384-03PT / 21064-04PT to determine the value of the parcels of real property owned by NCES and on which the Landfill and any landfill infrastructure are sited for purposes of assessing ad valorem real property taxes. NCES agrees that it will not seek the introduction of legislation amending New Hampshire law, including N.H. RSA 72:12-a, so that the Landfill will be

exempt from ad valorem real property taxes. For the tax year commencing April 1, 2011, NCES will pay the Town property taxes on such parcels in an amount of the greater of \$200,000 or the tax payable under the BTLA methodology described in this paragraph.

9. **Dismissal.** Within seven days after the Ratification and Approval Vote, counsel for the Town and for NCES shall execute and file with the Grafton Superior Court the form of docket markings in Attachment 8 to this Agreement. The Parties agree that the dismissal of the Litigation pursuant to such filing shall not vacate any court orders entered in the Litigation and that neither of them shall appeal any such order to the New Hampshire Supreme Court.
10. **No Exactions Claim.** The Parties agree that nothing in this Agreement constitutes an unlawful exaction, and NCES agrees that it shall not seek a judicial declaration or any other form of relief premised upon a claim that any provision of this Agreement is an unlawful exaction.
11. **Mutual Releases.** Upon, and only upon, the Ratification and Approval Vote, each of the Parties (on behalf of themselves and their respective agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a "Releasing Party") releases and forever discharges the other Party (and their respective agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a "Released Party") of all claims that the Releasing Party made or could have made in the Litigation, including, without limitation, all manner of action or actions, cause or causes of action, suits, debts, damages, claims, demands, judgments, or executions whatsoever, whether known or unknown, whether under statute or in contract, tort, or otherwise, and whether in law or in equity, that the Releasing Party ever had, has now, or may ever have against any Released Party arising from the subject matter of the Litigation.
12. **Miscellaneous.**
 - 12.1 **No Admission.** This Agreement is not to be construed as an admission of liability on the part of any Party, and each Party expressly denies such liability.
 - 12.2 **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect unless such invalidity or unenforceability frustrates the purpose of the Agreement. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and full effect to the extent not held invalid or unenforceable, unless such invalidity or unenforceability frustrates the purpose of the Agreement.
 - 12.3 **Multiple Counterparts.** This Agreement may be executed in identical counterparts, which shall constitute one agreement when signed by all of the Parties.

- 12.4 **Additional Documents and Acts.** Each Party agrees to execute and deliver, from time to time, such additional documents and instruments and to perform such additional acts as may be reasonably necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.
- 12.5 **Governing Law/Forum Selection.** This Agreement shall be governed, construed, and interpreted by, and in accordance with, New Hampshire law without regard to its conflicts of law rules or rulings. The Parties agree that any litigation concerning the subject matter of this Agreement shall take place exclusively in the Grafton Superior Court. Each of the Parties agrees to submit to such jurisdiction for all purposes hereunder.
- 12.6 **Representations.** Each Party to this Agreement represents that the Party is duly authorized to execute this Agreement and to enter into the settlement described herein. The Parties agree that one of the purposes of this Agreement is to “buy peace” and that this paragraph 12.6 is a substantial inducement for each of the Parties’ entering into this Agreement.
- 12.7 **Fully Integrated Agreement.** The Parties agree that this Agreement sets forth their entire agreement, superseding all prior negotiations and agreements, whether written or oral, including the MOU. There are no collateral or outside agreements of any kind between the Parties other than those expressly reflected herein.
13. **Understanding of Agreement.** THE PARTIES WARRANT THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT WITH MUTUAL RELEASES, HAVE HAD AN OPPORTUNITY TO DISCUSS IT WITH COUNSEL, UNDERSTAND ITS TERMS, AND ARE EXECUTING IT VOLUNTARILY AND OF THEIR OWN FREE WILL.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

Date: North Country Environmental Services, Inc.,

By: _____
Its Authorized Representative

Date: TOWN OF BETHLEHEM,

By: _____
David Lovejoy, Chairman,
Bethlehem Selectboard

Date:

By: Gerard Blanchard 11-21-11
GERALD Gerard Blanchard
EN3 Bethlehem Selectboard

Date:

By: _____
Michael Culver
Bethlehem Selectboard

Date:

By: Cassandra Lalame 11-21-11
Cassandra Lalame
Bethlehem Selectboard

Date:

By: Alecia Loveless 11-21-11
Alecia Loveless
Bethlehem Selectboard

**SETTLEMENT AGREEMENT AND
MUTUAL RELEASE OF ALL CLAIMS**

This Settlement Agreement and Mutual Release of All Claims (“Agreement”), dated as of November 9th, 2018, is made between the Town of Bethlehem, by and through its duly elected Board of Selectmen (the “Town”), and North Country Environmental Services, Inc. (“NCES”) (together with the Town, the “Parties”).

Recitals

- A. NCES owns and operates a municipal solid waste landfill on Trudeau Road within the Town’s boundaries (the “Landfill”).
- B. NCES filed an application for the abatement of its property taxes with the Town on February 27, 2018 (the “Abatement Application”).
- C. The Town denied the Abatement Application on June 25, 2018.
- D. On June 26, 2018, the Town initiated a lawsuit (the “2018 Action”) seeking declaratory relief with respect to some of the terms of the Parties’ November 22, 2011, settlement agreement (the “2011 Settlement Agreement”). By the Parties’ agreement, the Town filed a motion for voluntary nonsuit of the 2018 Action, which the court granted on July 27, 2018.
- E. NCES then filed an appeal of the Town’s denial of the Abatement Application with the New Hampshire Board of Tax and Land Appeals (“BTLA”) on August 31, 2018 (Docket No. 29055-17PT), (the “BTLA Appeal”).
- F. The Parties have negotiated the proposed terms of a settlement of the BTLA Appeal, the issues raised in the 2018 Action, and other disputes between the Parties.
- G. This Agreement contains the terms negotiated by the Parties.

Terms and Conditions

NOW, THEREFORE, in consideration of the mutual covenants set forth below and of other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. **NCES Abatement Application.** The Town shall immediately grant the abatement sought by the Abatement Application. NCES waives its right to collect any interest that would have otherwise been due to it under RSA 76:17-a.

2. **Landfill Expansion Within District V.**

- 2.1 The Town shall state publicly and in writing that it does not oppose the expansion of the Landfill in District V (as defined by the Town's 2018 zoning ordinance) known as "Stage VI," which is reflected on the plan attached to this Agreement as Attachment B. The limit of waste of Stage VI shall be confined within the boundary of District V as depicted in Attachment B, just as the limit of waste in Stage V is presently confined within the northern boundary of District V. The Town acknowledges and agrees that the placement of waste up to the boundary of District V as depicted in Attachment B will necessitate the alteration of the terrain immediately outside the District V boundary to provide physical and utility access and adequate support and stability to the perimeter of Stage VI. NCES's alteration of this terrain shall be in accordance with permits granted by the New Hampshire Department of Environmental Services ("NHDES").
- 2.2 NCES acknowledges and affirms (a) the restrictions on development set forth in Paragraph 5 of the 2011 Settlement Agreement and (2) that any expansion of the Landfill beyond Stage VI, as described in this Section 2, would require an amendment to the 2011 Settlement Agreement and to the Town zoning ordinance, both of which would require Town Meeting approval.

3. **Future Property Tax Determination.** In accordance with paragraph 8 of the 2011 Settlement Agreement, the Parties shall continue to employ the methodology (the "BTLA Formula") prescribed by the New Hampshire Board of Tax and Land Appeals in Docket Nos. 19709-02PT / 20384-03PT / 21064-04PT (the "BTLA Order") to determine the value of the parcels of real property owned by NCES and on which the Landfill and any Landfill infrastructure are sited (collectively, the "Property") for purposes of assessing ad valorem real property taxes. The Parties agree to the following terms for the application of the BTLA methodology for each tax year after the 2017 tax year (each of which, a "Tax Year").

3.1 Average Tipping Fees. The Town shall use as the "Tip Fee" in the BTLA Formula (as illustrated in the calculations on pages 13, 14, 19, and 20 of the BTLA Order) for each Tax Year the average tipping fee NCES received for each ton of waste deposited in the Landfill over the preceding calendar year (the "Tax Year Average Tip Fee").

3.1.1 In calculating the Tax Year Average Tip Fee, all tipping fees and tonnages of waste received from Casella Waste Systems, Inc. ("Casella") or any entity having Casella as its ultimate parent company or with the same ownership or management as Casella (each of which, an "Affiliate") shall be excluded.

3.1.2 For the period commencing on the date this Agreement is executed by NCES and all of the Town's selectmen and continuing until December 31, 2018 (the "2018 Floor Period"), NCES shall calculate the average tipping fee it receives for each ton of waste deposited in the Landfill, excluding tipping fees

and tonnages of waste received from any Affiliate. If the calculated average tipping fee for the 2018 Floor Period is less than \$67 per ton, then in the calculation of the 2019 Tax Year Average Tip Fee the tonnage NCES received during the 2018 Floor Period will be deemed to have yielded an average tipping fee of \$67 per ton (the “\$67 Floor”).

3.1.3 Except as provided in Section 3.1.5, in any Tax Year after 2019, the Tax Year Average Tip Fee shall not be less than the \$67 Floor.

3.1.4 Subject to Sections 3.1.4.1 and 3.1.4.2, if at any time NCES receives a final standard permit or a permit modification from NHDES approving the design and construction of Stage VI and any and all appeal periods have expired without an appeal of such approvals (a “Stage VI Approval”), the Tax Year Average Tip Fee for the Tax Year in which such appeal periods expire, and for each Tax Year thereafter, shall not be less than \$85 per ton (the “\$85 Floor”).

3.1.4.1 If NCES, in its sole, unreviewable discretion, determines that conditions or restrictions set forth in a Stage VI Approval make development of Stage VI infeasible or uneconomic, then it may elect not to proceed with the development of Stage VI and the \$67 Floor shall remain in effect.

3.1.4.2 In the alternative, NCES, in its sole, unreviewable discretion, may elect to pursue modification of such conditions or restrictions through NHDES or through an appeal or other legal challenge, and if NCES receives an order or approval granting modifications that, in its sole, unreviewable discretion, make development of Stage VI feasible and economic, and all appeal periods have expired without an appeal of such order or approval, then the Tax Year Average Tip Fee for the Tax Year in which such appeal periods expire, and for each Tax Year thereafter, shall not be less than the \$85 Floor.

3.1.5 If NHDES denies NCES’s application for a Stage VI Approval or there is a successful appeal or other legal challenge to a Stage VI Approval, the \$67 Floor shall not be applied in the calculation of the Tax Year Average Tip Fee from the time of such denial or of the order in such appeal or legal challenge.

3.2 Affiliate Tonnage Depletion Rate. The tonnage of solid waste received by NCES from any Affiliate shall be included in the “Depletion Rate (Tons)” as that term is used in the BTLA Formula.

3.3 3.5% Escalator. The Town shall apply the assumed 3.5% increase in tipping fees adopted on page 10 of the BTLA Order to the Tax Year Average Tip Fee for each Tax Year to determine the present value of the Property (as illustrated in the calculations on pages 13, 14, 19, and 20 of the BTLA Order) for that Tax Year.


4. **Host Community Payment.** The Parties acknowledge and affirm that the host community payment paid by NCES to the Town is \$.75 (seventy-five cents) per ton, as described in Paragraph 3 of the 2011 Settlement Agreement.
5. **Dismissal.** Within seven days after the Parties sign this Agreement, counsel for the Town and for NCES shall execute and file with the BTLA such documents as are necessary to dismiss the BTLA Appeal with prejudice.
6. **Mutual Releases.** Each of the Parties (on behalf of themselves and their respective agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a “Releasing Party”) releases and forever discharges the other Party (and their respective agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a “Released Party”) of all claims that the Releasing Party made or could have made in the BTLA Appeal or the 2018 Action, including, without limitation, all manner of action or actions, cause or causes of action, suits, debts, damages, claims, demands, judgments, or executions whatsoever, whether known or unknown, whether under statute or in contract, tort, or otherwise, and whether in law or in equity, that the Releasing Party ever had or has now against any Released Party arising from the subject matter of the BTLA Appeal or the 2018 Action.
7. **Miscellaneous.**
 - 7.1 **No Admission.** This Agreement is not to be construed as an admission of liability on the part of any Party, and each Party expressly denies such liability.
 - 7.2 **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect unless such invalidity or unenforceability frustrates the purpose of the Agreement. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and full effect to the extent not held invalid or unenforceable, unless such invalidity or unenforceability frustrates the purpose of the Agreement.

- 7.3 **Multiple Counterparts.** This Agreement may be executed in identical counterparts, which shall constitute one agreement when signed by all of the Parties' representatives.
- 7.4 **Additional Documents and Acts.** Each Party agrees to execute and deliver, from time to time, such additional documents and instruments and to perform such additional acts as may be reasonably necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.
- 7.5 **Governing Law.** This Agreement shall be governed, construed, and interpreted by, and in accordance with, New Hampshire law without regard to its conflicts of law rules or rulings.
- 7.6 **Representations.** Each Party to this Agreement represents that the Party is duly authorized to execute this Agreement and to enter into the settlement described herein. The Parties agree that one of the purposes of this Agreement is to "buy peace" and that this paragraph 7.6 is a substantial inducement for each of the Parties' entering into this Agreement.
- 7.7 **Fully Integrated Agreement.** The Parties agree that this Agreement sets forth their entire agreement, superseding all prior negotiations and agreements regarding the subject matter of this Agreement, whether written or oral with the exception of the 2011 Settlement Agreement. There are no collateral or outside agreements of any kind between the Parties other than those expressly reflected herein.
8. **Understanding of Agreement.** THE PARTIES WARRANT THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT WITH MUTUAL RELEASES, HAVE DISCUSSED IT WITH THEIR RESPECTIVE COUNSEL, UNDERSTAND ITS TERMS, AND ARE EXECUTING IT VOLUNTARILY AND OF THEIR OWN FREE WILL.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

North Country Environmental Services, Inc.,

Date: 11/7/18

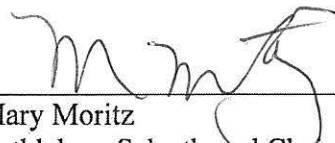
By: 

Its Authorized Representative
Brian Oliver

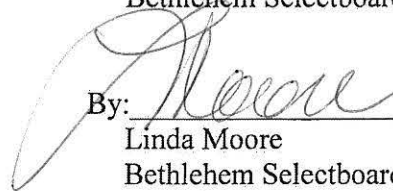
Signatures Continue on Next Page

Town of Bethlehem,

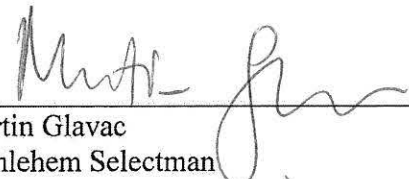
Date: 11/9/2018

By: 
Mary Moritz
Bethlehem Selectboard Chair

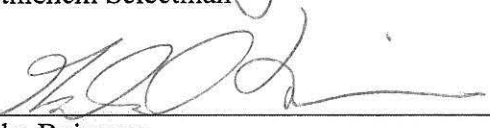
Date: 11/9/2018

By: 
Linda Moore
Bethlehem Selectboard Vice-Chair


Date: 11/9/2018

By: 
Martin Glavac
Bethlehem Selectman

Date: 11/9/2018

By: 
Gabe Boisseau
Bethlehem Selectman

Date: 11/9/2018

By: 
Richard Ubaldo
Bethlehem Selectman

*Town of Dalton, NH
Board of Selectmen
756 Dalton Road
Dalton, NH 03598
selectmen@townofdalton.com*

January 9, 2023

Brian Oliver, Regional Vice President
Casella Waste Systems
110 Main Street, Suite 1308
Saco, ME 04005
Brian.Oliver@casella.com
(sent only via email)

Re: Granite State Landfill LLC
Proposed Lined Landfill-Dalton, NH
RSA 674:41 "Erection of Buildings on Streets"
NHDOT Driveway Permit Application #14656 (GSL Landfill Project)

Dear Mr. Oliver:

We write to inform you that according to RSA 674:41, "Erection of Buildings on Streets", the erection of any building on property which has as its sole access a Class VI or private road, is prohibited. Douglas Drive, which is the sole access to the proposed GSL Landfill development project, is a private road.

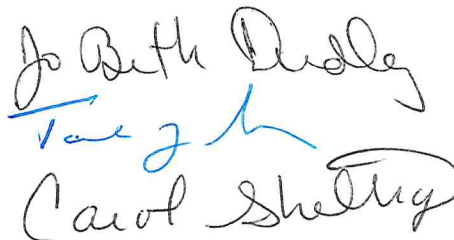
No approvals have been issued by the Town of Dalton as set forth in RSA 674:41.

Therefore, as the duly elected representatives of the Town of Dalton, the municipality in which the proposed Granite State Landfill development is to be sited in, we write to respectfully inform you that Casella/GSL will require approval from the Dalton Select Board before it is permitted to construct any buildings at this proposed site at Douglas Drive in Bethlehem and Dalton.

Sincerely,

Select Board, Town of Dalton

*Jo Beth Dudley, Chair
Carol Sheltry
Tamela Swan*



Handwritten signatures of Jo Beth Dudley, Carol Sheltry, and Tamela Swan.

Cc:

William J. Cass, Commissioner, NHDOT william.j.cass@dot.state.nh.us

Mr. James McMahon, Engineer, NHDOT Region 1 james.f.mcmahoniii@dot.nh.gov

Robert Scott, Commissioner, NHDES robert.scott@des.nh.gov

Director Michael Wimsatt, NHDES Waste Management Division michael.wimsatt@des.nh.gov

Town of Bethlehem Select Board admin@bethlehemnh.org

Town of Whitefield Select Board administrativeassistant@whitefieldnh.org

Town of Littleton Select Board selectmen@townoflittleton.org



CLEVELAND, WATERS AND BASS, P.A.
ATTORNEYS AT LAW

BRYAN K. GOULD, ESQUIRE
(603) 224-7761 EXT. 1037
(603) 224-6457 FACSIMILE
GOULDB@CWBPA.COM

TWO CAPITAL PLAZA, P.O. BOX 1137
CONCORD, NEW HAMPSHIRE 03302-1137

February 1, 2023

Via E-Mail Transmission

Walter Mitchell, Esq. (walter@mitchellmunigroup.com)
Mitchell Municipal Group
25 Beacon Street E., #2
Laconia, NH 03246

Re: Granite State Landfill

Dear Walter:

As you may know, the Board of Selectmen in the Town of Dalton has sent a letter to our client, Casella Waste Systems, Inc., asserting that Casella and its subsidiary, Granite State Landfill, LLC, must obtain approval from the selectboard before GSL will be permitted to construct any buildings at the proposed landfill site in Dalton. A copy of the January 9, 2023, correspondence is enclosed for your convenience.

The board argues that such approval is necessary pursuant to RSA 674:41 because Douglas Drive is a private road. The board's reliance on RSA 674:41 is misplaced, however. The construction of buildings accessed by private roads is not prohibited when the street giving access to the lot "[c]orresponds in its location and lines with . . . [a] street on a subdivision plat approved by the planning board." RSA 674:41, I(b)(2). In this instance, Douglas Drive appears on at least two plats previously approved by the planning board. The planning board approved Plat #895 on April 8, 1996, which depicts the "new road" and a 50-foot right of way that is now known as Douglas Drive. That plan was recorded at the Coos County Registry of Deeds on April 12, 1998 (Doc. Ref. No. 895). The road also appears on Plat #3970, which was approved by the planning board on June 3, 2015, and recorded at the Coos County Registry of Deeds on June 12, 2015 (Doc. Ref. No. 3970).

Walter Mitchell, Esq.
February 1, 2023
Page 2

Because Douglas Drive appears on the subdivision plats previously approved by the planning board, the provision of RSA 674:41 contemplating approvals for private roads does not apply. Accordingly, our clients will not be seeking the approval that the town has claimed they must.

Very truly yours,

/s/ Bryan K. Gould

Bryan K. Gould, Esq.

BKG:bmb

Enclosure

*Town of Dalton, NH
Board of Selectmen
756 Dalton Road
Dalton, NH 03598
selectmen@townofdalton.com*

January 9, 2023

Brian Oliver, Regional Vice President
Casella Waste Systems
110 Main Street, Suite 1308
Saco, ME 04005
Brian.Oliver@casella.com
(sent only via email)

Re: Granite State Landfill LLC
Proposed Lined Landfill-Dalton, NH
RSA 674:41 "Erection of Buildings on Streets"
NHDOT Driveway Permit Application #14656 (GSL Landfill Project)

Dear Mr. Oliver:

We write to inform you that according to RSA 674:41, "Erection of Buildings on Streets", the erection of any building on property which has as its sole access a Class VI or private road, is prohibited. Douglas Drive, which is the sole access to the proposed GSL Landfill development project, is a private road.

No approvals have been issued by the Town of Dalton as set forth in RSA 674:41.

Therefore, as the duly elected representatives of the Town of Dalton, the municipality in which the proposed Granite State Landfill development is to be sited in, we write to respectfully inform you that Casella/GSL will require approval from the Dalton Select Board before it is permitted to construct any buildings at this proposed site at Douglas Drive in Bethlehem and Dalton.

Sincerely,

Select Board, Town of Dalton

*Jo Beth Dudley, Chair
Carol Sheltry
Tamela Swan*

*Jo Beth Dudley
Carol Sheltry*

Cc:

William J. Cass, Commissioner, NHDOT william.j.cass@dot.state.nh.us

Mr. James McMahon, Engineer, NHDOT Region 1 james.f.mcmahoniii@dot.nh.gov

Robert Scott, Commissioner, NHDES robert.scott@des.nh.gov

Director Michael Wimsatt, NHDES Waste Management Division michael.wimsatt@des.nh.gov

Town of Bethlehem Select Board admin@bethlehemnh.org

Town of Whitefield Select Board administrativeassistant@whitefieldnh.org

Town of Littleton Select Board selectmen@townoflittleton.org

Exhibit E – Plat #3970

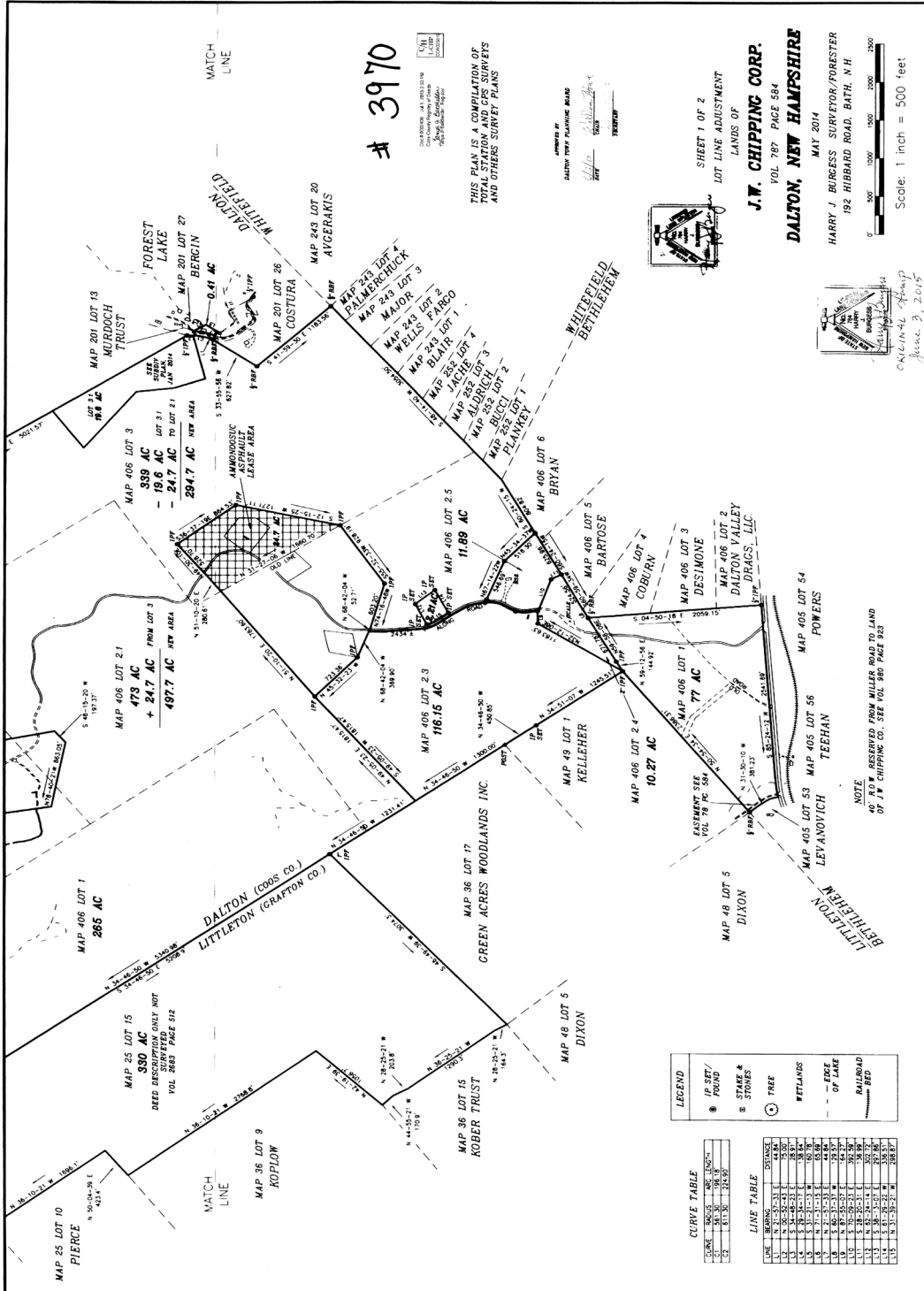


Exhibit F – Plat #895

DRAWING NUMBER
#895

DRAWING NUMBER

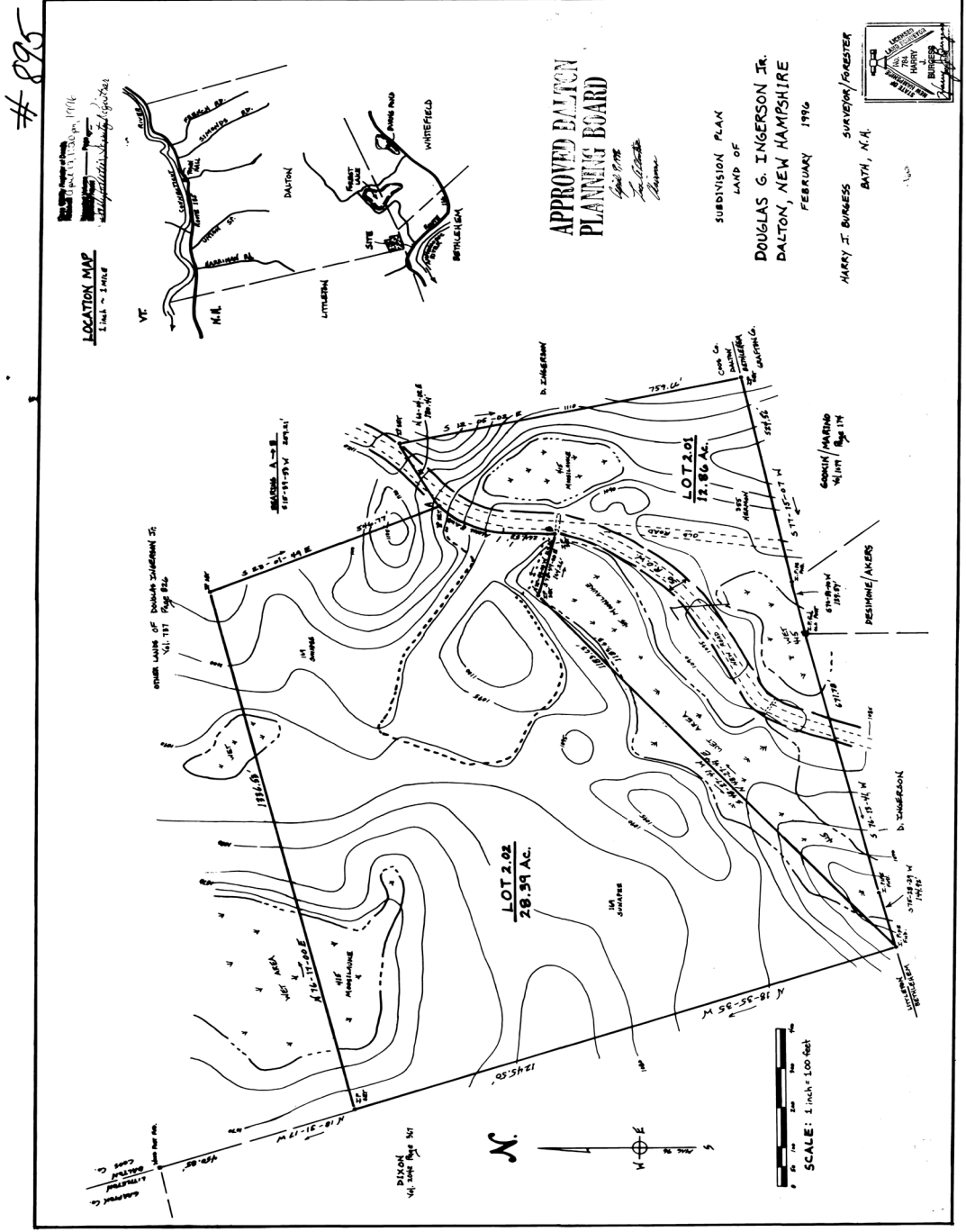


Exhibit H – Full Road Comparison

Green is used to approximate the portion of the road that is consistent between Plat #3970 and the actual extent of Douglas Drive as shown on Google Maps. Yellow is used approximate the portion of Douglas Drive that is not shown on Plat #3970. This portion extends into Lot 405-33.

