

Commissioner's Office

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MEMORANDUM**TO:** Peter Shumlin, Governor**THROUGH:** Deb Markowitz, Secretary, Agency of Natural Resources**FROM:** Alyssa Shuren, Commissioner, Department of Environmental Conservation**DATE:** November 28, 2016**SUBJECT:** Easement Acquisition Approval – 39- 41 Barre Street, Montpelier

Your approval is requested pursuant to Title 10, § 6615 and 10 V.S.A. Chapter 155, for the acceptance of the easements acquisition referenced below. Natural Resources Land Acquisition Committee approval is not required for this acquisition. Joint Fiscal approval is not required for this acquisition.

Description and Background

The site is located on approximately 0.48 acres of land at 39 - 41 Barre Street in Montpelier. Historic use of the properties, including coal/wood burning and the proximity of a railroad in an urban setting contributed to the distribution of PAHs, arsenic and lead in soils at concentrations in excess of soil screening values. Historical property uses included residential, commercial and a portion of the property was used as a railway. The current owner of the property is Downstreet Housing and Community Development.

The property was placed on the State's Hazardous Sites List on April 28, 2014. Corrective action has been completed at this property which includes an Easement to ensure that engineered controls associated with the remedy are maintained. Information presented in the Corrective Action Plan Completion Report indicates the site is eligible for a Site Management Activity Completed (SMAC) designation.

Ownership and Management

The property is owned by Downstreet Housing and Community Development. The primary responsibility of ensuring compliance with these easements rests with the current property owner. The State of Vermont has oversight authority and enforcement authority over these restrictions and the current owner.

Budget and Funding

Funding for the continuing obligation of the monitoring and maintenance for this project is funded by the current owner.

APPROVAL FOR LAND ACQUISITION

We, the undersigned, hereby approve the acquisition by the State of Vermont, Agency of Natural Resources, Department of Environmental Conservation, of the Grant of Use Restrictions and Access Rights Easement on the property consisting of 0.48 acres, more or less, located on 39 - 41 Barre Street, in Montpelier, Vermont to be owned and maintained by Downstreet Housing and Community Development.

This approval is pursuant to Title 10 §§ 6615 and 10 V.S.A. Chapter 155.

12/19/16
Date



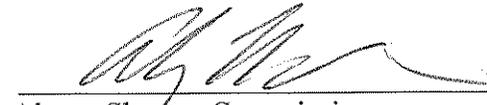
Peter Shumlin, Governor
State of Vermont

12-13-16
Date



Deb Markowitz, Secretary
Agency of Natural Resources

11/28/16
Date



Alyssa Shuren, Commissioner
Dept. of Environmental Conservation

**GRANT OF ENVIRONMENTAL RESTRICTIONS,
RIGHT OF ACCESS, AND EASEMENT**

THIS GRANT OF ENVIRONMENTAL RESTRICTIONS, RIGHT OF ACCESS, AND EASEMENT (“Grant”) is made this _____ day of _____, 2016, by Barre Street Apartments Limited Partnership, a Vermont corporation with its principal place of business located in _____, Vermont, its successors and assigns (“Grantor”), for the benefit of the State of Vermont, Agency of Natural Resources, and any successor agencies, Grantee (“Agency of Natural Resources”).

WITNESSETH:

WHEREAS, the property is situated on lands and premises owned by Grantor consisting of approximately 0.48 acres, more or less, located at 39 – 41 Barre Street in the City of Montpelier, in Washington County, Vermont (the “Parcel”), as more particularly described in **Exhibit A**; and ENV. 1; and

WHEREAS, the Grantor proposes to re-develop portions of the Parcel for residential apartments and the Montpelier Children’s House daycare facility; and

WHEREAS, the Grantor and its predecessor in title have cooperated with the Agency of Natural Resources in studying and evaluating conditions on the Parcel (including shallow soil subsurface contamination as a result of combustion of carbon based fuels within an urban setting, and possible use of urban fill on the property, as identified in a Corrective Action Plan for SMS # 2014-4497, prepared by KAS and dated January 13, 2015 and revised on January 16, 2015); and

WHEREAS, certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at the Parcel for construction, operation, and maintenance of response actions at the site and to ensure that future activities at the Parcel, including the areas owned by Grantor, do not interfere with response activities, or in any way increase the ecological, human, or environmental risks at the Parcel; and

WHEREAS, it is the purpose of this instrument to convey real property rights from the Grantor to the Grantee, the State of Vermont, Agency of Natural Resources, including, but not limited to, easements, rights of access, other rights, obligations, covenants and use restrictions, all in perpetuity, to the Agency of Natural Resources, which will run with the Parcel, in perpetuity; and

WHEREAS, these environmental restrictions, right of access and easement are required under the terms of the Site Management Activity Completed (SMAC) designation dated October 5, 2016, a true and correct copy of which is attached hereto as **Exhibit B**, and

WHEREAS, the Grantor agrees that these environmental restrictions, right of access and easement will run with the Parcel in perpetuity.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and in the Certificate of Completion, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the Grantor and Grantee, the Grantor, on behalf of itself, by these presents does hereby GIVE, GRANT, BARGAIN, SELL, CONVEY AND CONFIRM unto the Grantee, and its authorized representatives, successors and assigns, and with WARRANTY, COVENANTS forever, these environmental restrictions, right of access and easement, and shall apply to the Parcel as set forth below:

1. Easement Rights of Access. Grantor grants to Grantee the perpetual right and easement and right of access in, on, upon, to, through, over and under the Parcel for the following purposes:
 - a. verifying any data or information submitted to the Agency of Natural Resources;
 - b. assessing the need for, planning, or implementing additional response actions at or near the Parcel;
 - c. determining whether the Parcel is being used in a manner that is prohibited or restricted;
 - d. enforcing the rights of Grantees to the Parcel and the covenants of the Grantor set forth herein;
 - e. surveying;
 - f. all other activities necessary to maintain the response actions.
2. Restricted Uses and Activities. Grantor makes the following covenants and agrees to permanent use restrictions and obligations on behalf of Grantor, its successors and assigns, for the benefit of Grantee, its authorized representatives, successors and assigns, which covenants, restrictions and obligations shall run with and bind the Parcel in perpetuity:
 - a. Grantor shall comply with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants on or from the Parcel;
 - b. Grantor shall not use the Parcel or conduct any activities on the Parcel, or allow uses or activities to be conducted on the Parcel that would:
 - i. unreasonably interfere with any investigations of the environmental conditions at the Parcel;
 - ii. cause or exacerbate contamination of the Parcel or contamination of off-site properties; or
 - iii. pose or present any risk to the maintenance of the remedy.

- c. Grantor shall not take or authorize any of the following activities or actions on the Parcel/Restricted Areas without the prior express written consent from the Grantee:
 - i. Construction, substantial improvement, or stabilization of buildings or any work on the foundations of buildings;
 - ii. Plowing, tilling, ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials;
 - iii. Any other use that may impact or adversely affect the maintenance of the remedy.

3. Enforcement.

- a. The Grantee shall be entitled to enforce the terms of these Environmental Restrictions by resort to specific performance or other legal process, including enforcement in the courts of the State of Vermont.
- b. The Grantor agrees that a violation of the Environmental Restrictions will constitute irreparable harm and entitle Grantee to injunctive relief.
- c. All reasonable costs and expenses of Grantee, including, but not limited to, attorneys' fees, incurred in any enforcement action shall be borne by the Grantor or its successors in interest or assigns if Grantee prevails in any such action.
- d. All remedies available hereunder shall be in addition to any and all remedies at law or in equity, including but not limited to federal and state hazardous waste management statutes. Nothing in these Environmental Restrictions shall be construed to limit or otherwise affect the Agency of Natural Resources' rights of entry and access provided by law or regulation.
- e. Enforcement of the terms of these Environmental Restrictions shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise their rights under these Environmental Restrictions shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under these Environmental Restrictions.
- f. Grantee shall be entitled to recover monetary damages for violations of the terms of these Environmental Restrictions, or for any injury to the response actions.
- g. Grantee shall be entitled to recover damages for injury to the public health and welfare or to the environment protected by these Environmental Restrictions.

4. Severability. The provisions of these Environmental Restrictions are severable. If any provision of these Environmental Restrictions is invalid, or if any application of these Environmental Restrictions to any circumstance is invalid, the invalidity shall

not affect other provisions or applications that can be given effect without the invalid provision or application.

5. Provisions to Run With the Land in Perpetuity. The environmental restrictions, rights of access, easements, obligations and covenants, granted in this instrument shall run with the land, and any portion thereof, in perpetuity, and shall be binding on the Grantor, the Grantor's agents, successors and assigns, and shall inure to the benefit of the Grantee and its authorized representatives, successors and assigns.
6. Incorporation into Leases. Grantor hereby agrees to incorporate these Environmental Restrictions, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Parcel, or any portion thereof, is conveyed.
7. Termination.
 - a. This Grant of environmental restrictions, right of access and easement may be modified, or terminated in whole or in part only upon written agreement between of the Grantor, its successors or assigns, and the Grantee, signed by the Grantee and recorded in the land records in the City of Montpelier.
 - b. The Grantee may terminate, in whole or in part, the environmental restrictions, right of access and easement at such time or times, if ever, when the Grantee, in its sole reasonable discretion, determines that termination is necessary or that the purposes for which these environmental restrictions, right of access and easement were created have been achieved.
8. Miscellaneous Rights and Obligations.
 - a. Nothing contained herein shall give or grant to the public a right to enter upon or to use the Parcel or any portion thereof where no such right existed in the public immediately prior to the execution of these Environmental Restrictions.
 - b. If Grantor or its successors and assigns become delinquent in payment of said taxes or assessments such that a lien against the Parcel is created, the Grantee shall have the right to take actions as may be necessary to protect the Grantee's interest in the Parcel and to assure the continued enforceability of the rights granted herein.
 - c. Grantor does further covenant and represent that the Grantor is seized of the Parcel in fee simple and warrants that it has good right and title to grant and convey the interests granted herein, and that the Parcel is free and clear of any and all encumbrances, that Grantor shall warrant, defend, and indemnify against all lawful claims whatever, and that Grantee and its successors and assigns shall have the use of and enjoyment all of the benefits derived from and arising out of these Environmental Restrictions.

- d. Grantee shall be entitled to record these Environmental Restrictions, or to record a notice making reference to the existence of these Environmental Restrictions, in the Land Records for the City of Montpelier as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A. Chapter 5, Subchapter 7, including 27 V.S.A. §§ 603 and 605.
- e. The parties hereto recognize and agree that the benefits of the environmental restrictions, easement, and right of access granted and imposed herein are in gross and are assignable by Grantee, subject to notice to Grantor and recording of the assignment in the Land Records for the City of Montpelier.

TO HAVE AND TO HOLD this Grant of Environmental Restrictions, Rights of Access and Easements unto the said Grantee Agency of Natural Resources of Vermont, its authorized representatives, successors and assigns forever.

IN WITNESS WHEREOF, the Grantor, Barre Street Apartments Limited Partnership, has caused these presents to be executed and sealed by its duly authorized agent below the day and year first above written.

_____ by: _____

Witness Printed name: _____

STATE OF VERMONT

COUNTY OF _____, ss.

At _____ this ___ day of _____, 2016, _____

_____ of _____, personally appeared and acknowledged this instrument by him sealed and subscribed to be his own free act and deed.

Before me: _____

Notary Public

Commission expires _____

Exhibit A

Being certain land with improvements thereon located at 39, 40 and 41 Barre Street and being all and the same land and premises conveyed by Central Vermont Community Land Trust, Inc. to Barre Street Apartments Limited Partnership by Warranty Deed dated February 26, 2015 and recorded in Book 665 at Page 242 of the Montpelier land records and being more particularly described as " Parcel #1" in a Warranty Deed from Ashtek Properties, Inc. to Central Vermont Community Land Trust, Inc. dated February 14, 1990 and recorded in Book 230 at Page 275 of Montpelier land records. Also included herewith is an easement for access along and across a portion of a driveway located adjacent to the northwesterly boundary of the parcel of land located at 39 Barre Street as reserved in a deed from William A. Stowell and Ruth H. Stowell to Timothy E. Callahan dated March 30, 1910 and recorded in Book 27 at Page 291 of Montpelier land records.

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Environmental Science & Engineering
 255 Avenue D, Suite 15
 Whitehall, VT 05495
 802.263.0495
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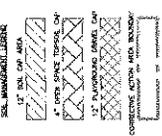


CENTRAL VERMONT COMMUNITY
 LAND TRUST
 39-40 BARRÉ STREET
 MONTPELIER, VERMONT

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ENV.1

SOIL MANAGEMENT PLAN
 SMS SITE# 2014-4497



LEGEND

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State of Vermont
Department of Environmental Conservation
Waste Management & Prevention Division
1 National Life Drive – Davis 1
Montpelier, VT 05620-3704
(802) 828-1138

AGENCY OF NATURAL RESOURCES

November 2, 2016

Ms. Alison Friedkin, Associate Director
Downstreet Housing and Community Development
105 North Main Street
Barre, VT 05641

RE: Sites Management Activities Completed, 39 - 41 Barre Street Properties, Montpelier (SMS Site #20144497)

Dear Ms. Friedkin:

The Sites Management Section (SMS) has recently conducted a review of the above referenced site file. Information contained within our site file includes the following:

- A Phase I Environmental Site Assessment (Phase I ESA) dated January 7, 2014 performed by KAS Environmental (KAS), which identified three recognized environmental conditions (RECs) at the site: (1) possible shallow soil contamination due to historic property railway uses; (2) possible subsurface petroleum contamination due to the potential presence of an underground storage tank at an adjacent property; and (3) possible subsurface petroleum contamination due to an adjacent property. A sensitive receptor assessment was conducted as part of the Phase I ESA. The properties are served by municipal water and sewer. Potentially affected sensitive receptors at the site were identified as site users who may come in contact with contaminated surface soils.
- A Phase II Environmental Site Assessment (Phase II ESA) dated April 28, 2014, revised November 6, 2014, performed by KAS. The Phase II ESA, determined the degree and extent of polynuclear aromatic compounds (PAHs), arsenic, and lead in soil which were in excess of Vermont soil screening values (SSVs).
- Work conducted in the Phase II ESA included the installation of eleven soil borings to depths ranging from 10" - 15". Soil was screened with a photoionization detector (PID) and the maximum PID reading in all borings was 3.4 parts per million volume (ppmv). Seven soil samples were submitted for laboratory analysis for PAHs and RCRA 8 metals. PAHs were detected at levels slightly in excess of SSVs. Arsenic was detected at levels in excess of residential SSVs, but within concentrations which are typically found in Vermont. Lead was also detected at concentrations typically found in Vermont, with the exception of one sample collected between the building and driveway at 38 Barre Street, which was attributed to the possible presence of lead based paint, since the sample was collected in the vicinity of the drip line of the building.
- The Corrective Action Plan was approved on February 5, 2015, following a two-week public comment period, which ran from January 21, 2015 - February 4, 2015. The approved remediation activities included source area excavation, capping, and land use controls. The CAP was implemented between April and November 2015. Nine areas of the site were excavated and/or capped. A total of 916.28 tons of contaminated soil was disposed of as alternative daily cover at the New England Waste Services Vermont facility. Annual inspection of the caps will be required.

Based on the information summarized above and further described in the site file, the Sites Management Section (SMS) of ANR has determined that the identified release(s), summarized above and further described



in the site file, do not constitute an unacceptable exposure to human health and the environment based on current use and conditions. Therefore, the SMS is assigning the site a Site Management Activity Completed (SMAC) designation, which will become effective upon the recording of a Grant of Environmental Restrictions, Rights of Access, and Easement (Grant) for the site in the land records of the City of Montpelier. The SMAC designation does not release the owner (Downstreet Housing and Community Development) and or operators (past, current, or future) from any past or future liability for residual contamination associated with the PAH, arsenic, and lead contamination at this site. The SMAC designation is also not a determination that the site is free of contamination or absent of other environmental issues. The designation does mean the SMS is not requesting any additional work in response to the contamination identified during the Phase II Environmental Site Assessment dated November 6, 2014.

The SMAC designation will not be in effect until a copy of the grant of environmental restrictions right of access and easement for this property has been recorded in the City of Montpelier Land Records and a copy with the book and page number have been submitted to the SMS. An annual inspection of the Site must be reported on to the SMS by October 1st of each year. The annual report must include the results of a physical inspection of the property to ensure no excavation or other site activities that are inconsistent with the use restrictions of the Easement have been conducted, and that the caps remain intact.

Should you have any questions, please do not hesitate to call me; I may be reached at (802) 249-5324.

Sincerely,



Patricia Coppolino, Environmental Program Manager
Sites Management Section

- c: Erik Sandblom, KAS Inc (via e-mail)
- DEC Regional Office - Barre, Carl Fuller (via email)
- Montpelier Selectboard/Council (via email)
- Montpelier Health Officer (via email)



State of Vermont
Department of Environmental Conservation
Waste Management & Prevention Division
1 National Life Drive – Davis 1
Montpelier, VT 05620-3704

AGENCY OF NATURAL RESOURCES

MEMORANDUM

To: Chuck Schwer, Director, Waste Management and Prevention Division *CS*
From: Patricia Coppelino, Brownfields Program Manager, Waste Management and Prevention Division *PC*
Date: November 2, 2016
Subject: Easement for Barre Street Apartments, Montpelier, VT

Attached is an easement for signature by the Governor. The site will receive a Sites Management Activity Complete letter. Part of the site closure required an easement on the property due to engineered caps that were constructed over portions of impacted soils that remain at the site.

