

TOWN OF WILLISTON

MEMORANDUM

January 4, 2019

TO: Rick McGuire
CC: Matt Boulanger, Erik Wells
FROM: Melinda Scott
RE: Catamount Community Forest

This memorandum is intended to provide the Selectboard with an update on the acquisition of the Catamount Community Forest. As we all know, this project represents by far the largest acquisition of open space the town has undertaken. As such, the nature of the transaction is complex, involving multiple stakeholders and components. To date, the major milestones achieved include 1) secured \$1.8 million in funding 2) development and adoption of a management plan through a public process, 3) negotiation of a License Agreement with the COFC, 4) negotiation of a conservation easement with Vermont Land Trust/VHCB, and 5) completion of necessary documentation and due diligence for the purchase including survey, appraisal, title and environmental assessments. Staff has prepared the following update pertaining to funding and due diligence.

Environmental Assessment

In November 2017 a Phase I Environmental Assessment was conducted by LE Environmental. The ESA documented one Recognized Environmental Condition (REC), a 500 gallon underground storage tank (UST) that had released gasoline. The tank was removed by LE Environmental on November 20, 2017, paid for by the McCulloughs and the state's Petroleum Cleanup Fund. The site was listed with the VT DEC (Site #2017-4746) and investigation was done to determine the magnitude of contamination. Soil borings were taken and groundwater monitoring wells were installed on March 28, 2018. Analysis of soil and groundwater monitoring samples taken on April 9, 2018 indicated some limited subsurface contamination. LE Environmental concluded that subsurface contamination is limited and is not widespread; soil and groundwater contamination appears to be confined to an approximately 1,000 square foot area in the vicinity of, and downgradient from, the former gasoline UST. The soil and groundwater contamination begins approximately 3 feet below grade in the vicinity of the former UST location and is deeper in the downgradient direction, between 4 and 8 feet below grade. LE Environmental concluded it would be unlikely for recreational users or the general public to come in contact with contaminated soil or groundwater while on the site. According to staff at Vermont Department of Environmental Conservation, the site is very low risk in terms of affecting environmental and human health and the contamination has little chance of spreading. The closest water supply well is located across Governor Chittenden Road, approximately 350 feet away on the parcel to be retained by the McCulloughs, in a presumed up gradient direction with respect to groundwater flow. Additional monitoring was done on October 15, 2018 that showed the contaminant concentrations decreased from the spring 2018 sample but were

still above the Vermont Groundwater Enforcement Standards. The cleanup and monitoring are being done using Vermont Petroleum Cleanup Funds, and the Town will have no costs associated with the future monitoring or cleanup of the contamination. Waste Management staff at VT DEC are recommending continued monitoring of the site until contamination levels have naturally subsided to acceptable standards, at which time a Site Management Activity Complete (SMAC) letter will be issued.

Staff at VT DEC are recommending the Town enroll in the Brownfields Reuse and Environmental Liability Limitation Program (BRELLA), which will limit the Town's future environmental liability associated with this limited soil contamination. Staff have submitted an application to the BRELLA program, with the intention of getting the town enrolled prior to the acquisition. The \$500 application fee was covered by the Chittenden County Regional Planning Commission. With enrollment in BRELLA, the State will issue a Certificate of Completion rather than a SMAC letter. DEC Site Manager Shawn Donovan will attend the January 8 Selectboard meeting to answer questions or provide clarification if needed.

VLT and VHCB have agreed to temporarily exclude from the conservation easement a 0.08 acre area in the vicinity of the former UST until the State determines closure of the issue, at which time the area can be included under the easement. TPL has confirmed that this environmental issue does not affect the USFS's Community Forest Program grant, nor does it affect the appraised fair market value of the property.

Appraisal

After the first appraisal and three revisions failed to pass federal review, TPL hired a different firm to conduct a new appraisal in October 2018. The new appraisal successfully passed federal review as of December 2018, and exceeds the agreed-upon purchase price of \$1.6 million.

Funding

The Trust for Public Land has secured \$1,855,131 to date from public and private sources, including 174 private individuals to date. TPL is continuing to fundraise to make up for the current \$63,000 budget shortfall, but is prepared to move forward with closing and cover capital costs with internal funds with the hope to be reimbursed by LWCF funds post-closing.

The town has requested \$280,000 from the Land and Water Conservation Fund (LWCF). If the full grant is received, it would allow reimbursement of \$200,000 to the town and \$60,000 to TPL, with \$20,000 proposed for a stewardship endowment for the property. Grant awards will be made March 1st, with disbursements of funds in mid-summer after review and approval of all associated documents. The Town and TPL are making sure that all closing documents conform with LWCF rules.

When the town first began working with TPL and the McCulloughs towards this acquisition, staff proposed the use of Environmental Reserve Funds (ERF) for the purchase. Staff would like at this time to make a formal request to use ERF funds up to \$600,000 to purchase the McCullough property, with the understanding that up to \$200,000 may be reimbursed by the

Land and Water Conservation Fund. Per Town Policy, to authorize an expenditure using ERF funds the Selectboard must take formal action.

Potential Amendments to License Agreement with Catamount Outdoor Family Center

If the town were to receive funding from LWCF, the program requires particular language in any lease documents or concession agreements for the operation of LWCF-assisted sites by private organizations or individuals. Those requirements would necessitate some minor edits to section 7 and 10 as shown in the redlined license agreement included with the Board's agenda. The requirements are summarized as follows:

Per LWCF manual, all lease documents and concession agreements for the operation of LWCF-assisted sites by private organizations or individuals must address the following:

1. In order to protect the public interest, the project sponsor must have a clear ability to periodically review the performance of the lessee/concessioner and terminate the lease/agreement if its terms and the provisions of the grant agreement, including standards of maintenance, public use, and accessibility, are not met. **Already contained in section 23.**
2. The lease/agreement document should clearly indicate that the leased/concessioned area is to be operated by the lessee/concessioner for public outdoor recreation purposes in compliance with provisions of the Land and Water Conservation Fund Act and implementing guidelines (36 CFR 59). As such, the document should require the area be identified as publicly owned and operated as a public outdoor recreation facility in all signs, literature and advertising, and is operated by a lessee/concessioner as identified in the public information to eliminate the perception the area is private. **See edits in section 7.**
3. The lease/agreement document should require all fees charged by the lessee/concessioner to the public must be competitive with similar private facilities. **See addition to section 10.**
4. The lease/agreement document should make clear compliance with all Civil Rights and accessibility legislation (e.g., Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, and Americans with Disabilities Act) is required, and compliance will be indicated by signs posted in visible public areas, statements in public information brochures, etc. **See edits in Section 7.**

Items Requiring Consideration and Possible Action

- An amendment to the purchase and sale agreement between the Town and TPL would be required to stipulate the conditions that would enable reimbursement of grant funds if awarded. The amendment also acknowledges TPL's recommendation for the Town to enroll in BRELLEA, and enrollment would need to be done prior to closing if the Town plans to do so.
- Amendments to the license agreement with the Catamount Outdoor Family Center. These changes are required if the LWCF funds are awarded. The Board could make the changes now, or wait to make the changes if the funds are awarded.
- Formal action to expend \$600,000 from the environmental reserve fund to use for the purchase of the property.