

Council Minutes

August 1, 2022

A duly warned meeting of the Newport City Council was held on Monday, August 1, 2022, in the council room in the Newport Municipal building. Present were Mayor Paul Monette, Council President John Wilson, Council Members Melissa Pettersson, Kevin Charboneau and Chris Vachon, City Manager Laura Dolgin, City Clerk/Treasurer James D. Johnson, Public works Director Tom Bernier, Mike Welch, Francis Cheney III, and John Schmeltzer, and members of the Press and Public

Mayor Monette opened the meeting at 6:30PM.

Approval of Minutes

Mr. Wilson moved to approve the minutes of July 11, 2022. Seconded by Mr. Charboneau, motion carried unanimously.

Comments by the Public

Anne Chiarillo asked if city buildings are metered and if the city pays for the water. Ms. Dolgin responded yes; that city buildings are metered and that some buildings are billed.

Acknowledgement of Environmental Restrictions & Right of Access Between Central Maine & Quebec Railway US Inc., and the State of Vermont Agency of Natural Resources (attached)

Mr. Vachon moved to acknowledge the city has considered the Environmental Restrictions and Right of Access placed on Newport Rail Yard at 758 South yard Rd. between Central Maine & Quebec Railway US Inc., and the Vermont Agency of Natural Resources. Seconded by Mr. Charboneau, motion carried unanimously.

Confirmation of Perpetual Maintenance of the Storm Drainage System for the Newport Marina Project. (attached)

Mr. Vachon moved to agree to the perpetual maintenance of the storm drainage system for the Newport Marina. Seconded by Mr. Wilson, motion carried unanimously.

Authorization for Grant Request from VTACCD (attached)

Mr. Wilson moved to authorize the grant request from ACCD not to exceed \$40,000. Seconded by Mr. Vachon, motion carried unanimously.

Zoning Administrator Appointment.

Mr. Wilson moved to appoint Francis Cheney III, Zoning Administrator. Seconded by Mr. Charboneau, motion carried unanimously.

New Business

Mr. Johnson presented a Special Events Permit for council approval. Mr. Charboneau moved to approve a Special Events Permit for Eden Ice Cider. Seconded by Mr. Vachon, motion carried unanimously.

Mr. Johnson presented a vendors permit for council approval. Mr. Charboneau moved to approve a vendors permit for Smokin Barrels BBQ. Seconded by Mr. Vachon, motion carried unanimously.

Mr. Wilson noted the Purple Heart Ceremony at Gardner Park on Sunday, August 7, 2022.

Ms. Dolgin announced routine maintenance is taking place on the Westside Water Tower. Users may experience intermittent changes in water pressure. The project is expected to last 6 weeks. If the issues do not correct themselves let us know.

Old Business

Mayor Monette requested a timeline for the installation of water meters and the number of meters left to install by the August 15th meeting.

Mayor Monette requested a detailed income and expense report for the new Parklet. He noted the paper reported that cost over runs would be charged to the Public Works Department. He understood there would be no cost to the taxpayer and has been telling people that when asked.

Ms. Dolgin reminded that the first hearing on the Municipal plan is scheduled for the Planning commission tomorrow night August 2nd second hearing will be in front of the city council September 12th and the third will be October 3rd.

Next Meeting Date

August 15, 2022, at 6:30 PM.

Adjournment

Mr. Vachon moved to adjourn at 7:28 PM. Seconded by Mr. Charboneau, motion carried unanimously.

Attested *James Johnson* This 16th Day of August, 2022

[Signature] Mayor



Laura Dolgin <laura.dolgin@newportvermont.org>

RE: Newport Rail Yard-Proposed Grant of Environmental Restrictions and Right of Access

1 message

David W. Rugh <drugh@firm SPF.com>
To: Laura Dolgin <laura.dolgin@newportvermont.org>

Wed, Jul 6, 2022 at 12:24 PM

Good afternoon Laura,

We've taken a look at this Grant of Environmental Restrictions and Right of Access for the Newport Rail Yard, and there's not much for the City to comment on. The Restrictions document is essentially a real estate covenant that prohibits certain activities on the property (mostly soil excavation or management) because of the presence of contaminated soils on-site, even after a significant volume of soils were already removed from the site and/or were remediated, including sediments in two treatment lagoons. These remediation activities are completed, and the current owner plans to continue using the site for its current railroad maintenance and repair activities.

The parcel of land that is subject to the Restrictions is not owned by the City (it's owned by Canadian Pacific RR). The Restrictions generally limit excavation or other activities that would have an impact or effect on the property's soils, other than minor grading associated with railroad maintenance or plowing. The Restrictions also require the posting of "No Trespassing" signs along the property's easterly boundary and near the two intersections of South Yard Road and Glenn Road.

To the extent there are changes needed to the Restrictions document itself, we've attached a marked-up version showing our suggested edits. Our revisions were made primarily to note that the property is located in the City of Newport, not the Town, and that the City has separate land records, etc. from the Town.

If you, the Mayor or Councilors have any comments or questions on this, please let me know.

Thanks,

Dave

David W. Rugh, Esq.

Stuzel, Page & Fletcher, P.C.

171 Battery Street

P.O. Box 1507

Burlington, VT 05402-1507

Phone: 802-660-2555



State of Vermont
Department of Environmental Conservation
Waste Management and Prevention Division
1 National Life Dr-Davis 1
Montpelier, VT 05620-3704
802.249-5324
john.schmeltzer@vermont.gov

July 27, 2022

**STATE OF VERMONT ACQUIRING A GRANT OF ENVIRONMENTAL
RESTRICTION
AND RIGHT-OF-ACCESS
758 SOUTH YARD ROAD NEWPORT RAILYARD**

REQUEST: The Vermont Agency of Natural Resources is requesting the City’s consideration and written concurrence that the Grant of Environmental Restrictions and Right-of-Access (Grant) placed on a parcel with this Newport Railyard property are acceptable to the City of Newport.

Attached is a copy of the draft Grant and the map showing the “Parcel” within the Newport Railyard property that will have the environmental restrictions and right of access.

WHY IS THE STATE ACQUIRING THIS GRANT AND RIGHT OF ACCESS? The Vermont Agency of Natural Resources proposes to become a Grantee of the Grant for 32.5 acres, more or less, within the Newport Rail Yard property in the City of Newport, Vermont. This Grant is a necessary component in completing the corrective action taking place at the site. It includes restrictions that ensures future railroad-related activities or future change of use on this Parcel do not increase the ecological, human, or environmental risks within or outside the Parcel.

OPERATIONAL HISTORY: This yard has been used for track, equipment, and locomotive maintenance, fueling, cargo transfer, and freight train assembly and classification. Currently, three employees work out of the Newport Rail Yard. Their primary duties are to maintain the track infrastructure between the Newport Rail Yard and the Canadian Border. Central Maine & Quebec Railway US Inc. has informed the Agency of Natural Resources that they plan to maintain the current use of property (and Parcel) as rail yard for the foreseeable future.

OVER



ENVIRONMENT INVESTIGATIONS: Environmental investigations have taken place on this Site since 1997. These investigations included collecting analytical samples from soils and groundwater on the property and from water and sediments from former onsite lagoons and the South Bay of Lake Memphremagog. Soil and groundwater samples were tested for volatile organic compounds, semi-volatile organic compounds, asbestos, total petroleum hydrocarbons, and metals. Petroleum-related compounds were the most predominant compounds detected. Sediment in the lagoons and South Bay were tested for total petroleum hydrocarbons, and limited sediment samples were tested for metals and semi-volatile organic compounds.

CORRECTIVE ACTION: Based on the results of these investigations, corrective actions took place in three major areas:

- **Sediments in South Bay near the Outfall of Dike Skimmer** - In 2002, a hydraulic dredge removed a minimum of one foot of sediment (or to peat, whichever was encountered first) within an area of approximately 6,700 square feet. Approximately 430 tons of sediment were removed and disposed at the Solid Waste Landfill in Coventry, Vermont.
- **Lagoon Sediments** - Two lagoons were created in 1972 by creating two embankments across the inlet in the South Bay. The lagoons were created to mitigate a petroleum release from an underground pipeline. In 2005, both lagoons were dredged. Approximately 890 tons of sediment containing elevated levels of petroleum hydrocarbons and nickel were removed and disposed at the Solid Waste Landfill in Coventry, Vermont.
- **Central Yard Groundwater and Soils** - This area is approximately 1.5 acres. Multiple petroleum handling and storage practices took place in this area. Remediation of the petroleum contamination found in the subsurface and groundwater was completed in multiple phases. The major phase consisted of soil removal. Soil excavation and onsite soil treatment took place at the site from 2003 through 2010. Approximately 15,000 cubic yards of soil were excavated. Much of this excavated soil was treated in three actively-aerated biopiles. Treated soils were used as fill for the next phase of excavation. The Central Yard remediation was completed in 2015 by placing the treated soil primarily within the Central Yard.

ENVIRONMENTAL EXPOSURE ASSESSMENT: An updated exposure assessment was completed in 2020 for the Central Yard. This assessment indicated no elevated exposure risks for workers and trespassers from concentrations of chemicals of concern in the surface soils.

SITE STATUS: No additional corrective action is expected for the site. The Agency is in the process of issuing a Site Management Activities Completed (SMAC) designation for the site, which means that the Agency is not requiring additional environmental investigation or corrective action at the site at this time.

QUESTIONS: Please contact John Schmeltzer, the State Project Manager for this site if you have any questions about this request. He can be reached at (802) 249-5620 or john.schmeltzer@vermont.gov.

GRANT OF ENVIRONMENTAL RESTRICTIONS AND
RIGHT OF ACCESS

THIS GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS ("Grant") is made this _____ day of _____, 2022, by Central Maine & Quebec Railway US Inc., a Delaware corporation doing business as Canadian Pacific, with its principal place of business located in Minneapolis, Minnesota, 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 Parcel, is situated on lands and premises owned by Grantor and consists of 32.5 +/- acres, more or less, located on S. Yard Rd. in the City of Newport, in Orleans County, Vermont (the "Parcel"), as more particularly described in Exhibit A; and

WHEREAS, the Parcel is currently used for railroad purposes; and

WHEREAS, the Grantor intends to maintain the current use of the property as a rail yard for the foreseeable future; and

WHEREAS, the Grantor and its predecessor in title have cooperated with the Agency of Natural Resources in studying, evaluating and remediating conditions on the Parcel associated with prior railroad uses to the satisfaction of the Agency of Natural Resources; and

WHEREAS, certain rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary on the Parcel as depicted in Exhibit A hereto, 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 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 and right of access are a component of the Sites Management Activity Complete (SMAC) determination letter issued for the Parcel by the Grantee, a true and correct copy of which is attached hereto as Exhibit B, and

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

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and in the SMAC determination letter, 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, CONVEY AND CONFIRM unto the Grantee, and its authorized representatives, successors and assigns, and with WARRANTY, COVENANTS forever, these environmental restrictions and right of access and shall apply to the Parcel as set forth below:

1. Rights of Access. Grantor grants to Grantee the perpetual right 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 Grantee to the Parcel and the covenants of the Grantor set forth herein;
 - e. all other activities necessary to monitor or 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 install and maintain No Trespassing signs at the entrances to the Parcel from Glen Road and S. Yard Road, at the two eastern corners of the Parcel and between the two eastern corners of the Parcel, not more than 400 feet apart. The signs shall not be less than 8 ½ inches by 11 inches.
 - c. 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 intentionally or recklessly cause a release or exacerbate contamination of the Parcel or contamination of off-site properties.
 - d. Grantor is permitted to conduct routine and emergency railroad maintenance including, but not limited to, minor grading, placement of ballast, installation of

spill pans, repair of surface water drainage and culverts, replacement of ties, tracks and switches.

e. Grantor shall not take or authorize any of the following activities or actions on the Parcel without the prior express written consent from the Grantee and without a Soil Management Plan that is mutually agreeable to the Grantee and Grantor:

- i. Construction or demolition activities associated with subsurface building foundations; (above-ground building demolition or maintenance is permissible);
- ii. Except for necessary railroad maintenance activities as described in Section 2d, plowing, tilling, ditching, draining, diking, filling, excavating, dredging, mining or drilling;
- iii. Removal of soil, sand, gravel, rock, minerals or other materials from the Parcel;
- iv. Extracting groundwater for potable or non-potable use;
- v. Construction activities which will materially change hydrogeologic conditions or will likely cause migration of contaminated groundwater;
- vi. Any other soil disturbance not associated with railroad maintenance as described in Section 2d within the Parcel depicted in Exhibit A.

3. Enforcement.

- a. Nothing in this Grant in this Grant affects the liability of Grantee under 10 V.S.A. §6615.
- b. 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.
- c. The Grantor agrees that a violation of the Environmental Restrictions will constitute irreparable harm and entitle Grantee to injunctive relief.
- d. 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.
- e. 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.

- f. 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.
 - g. 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,
 - h. 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, 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 and right of access 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 Newport.
 - b. The Grantee may terminate, in whole or in part, the environmental restrictions and right of access 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 and right of access 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 Newport 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 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 Newport.

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

IN WITNESS WHEREOF, the Grantor _____ has caused these presents to be executed and sealed below the day and year first above written.

_____ by: _____

Witness Printed name: _____.

STATE OF VERMONT

COUNTY OF _____, ss.

At _____ this ___ day of _____, 200_, _____

_____ 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 _____



N/F
JOYCE L.M. HILSON
(LIFE ESTATE)
BOOK 208, PAGES 65-66

SEASONAL
WATER LINE
CROSSING
(SEE NOTE #10)

DAV
·TK
BQQ.

h

Perpetual Operation and Maintenance Agreement

For Newport Marine Services Drainage Storm water Treatment Design
Installed under the following agreement: 2019-ERP-IMP-01

This Operations and Maintenance Agreement, ("Agreement") is made and entered into this 1st day of April, 2022, between the City of Newport (hereinafter referred to as the "Responsible Party"), the Spates Family, LLC, and the Department of Environmental Conservation, (hereinafter referred to as the "DEC").

1. The Responsible Party agrees to enter a contract (minimum of 10 years from construction) with the Landowner and to keep the signed agreement on file for the length of the contract period.
2. The Responsible Party agrees to inspect and maintain the above-mentioned project(s) or practice(s) at regular intervals, according to the attached Operation and Maintenance Plan.
3. The Responsible Party agrees to correct any maintenance issues or conduct needed repairs that are observed during inspections, such as the as-needed maintenance and repairs listed in the attached plan.
4. The Responsible Party agrees to maintain the practice outlined according to the attached plan for 10 years from the date the project installation and/or construction.
5. DEC staff may periodically visit the project site to inspect the condition of the installed practice(s). If the project is on private land, the grantee and responsible party will be notified by DEC staff at least 48 hours prior to any site visit. The responsible party agrees to facilitate site access for DEC staff or contractors during State of Vermont Business hours (8:00-4:30).
6. If a project or practice is found to be in need of maintenance or in a state of disrepair, DEC will conduct the following steps:
 - a. Notify the Responsible Party of the items that need to be corrected.
 - b. Provide the Responsible Party a reasonable schedule to correct the items in need of maintenance.
 - c. If the items cannot be corrected within the allotted time, require the Responsible Party to establish a schedule to complete the correction
 - d. If no adequate response or correction action has been taken within the allotted time, provide the Responsible Party a written warning that failure to meet all grant conditions could result in the Responsible Party being ineligible for future clean water grants.
7. The Responsible Party shall not be able to transfer or modify its responsibilities with respect to this agreement without the DEC's written prior consent.
8. Any delays in or failures of performance by a party under this Agreement shall not be considered a breach of this Agreement if caused by occurrences beyond the reasonable control of the party affected, including but not limited to: severe storms, floods or other natural events and sabotage. Any time for performance hereunder shall be extended by the time of delay

Signature of Responsible Party: _____



Date: 8/11/2022 -

City Manager..... (802) 334-5136
City Clerk/Treasurer 334-2112
Public Works/Parks 334-2124
Zoning Adm./Assessor ... 334-6992
Recreation 334-6345
Fax..... 334-5632



City of Newport
222 Main Street
Newport, Vermont 05855
www.newportvermont.org

August 1, 2022

Secretary Lindsay Kurrle
Agency of Commerce and Community Development
One National Life Drive
Deane C. Davis Building, 6th Floor
Montpelier, VT 05620-0501

Re: Governor Scott Support for EB-5 Recovery Efforts

Dear Secretary Kurrle,

In response to Governor Scott's interest in assisting the City of Newport in our recovery efforts from the failed EB 5 projects, the City of Newport has been informed that there are set-aside funds remaining from the Discover Newport Grant program that we would like to use to assist the City in the strategic planning efforts for the Main St. Development Site which was left vacant by the failed EB-5 projects.

The process for releasing these funds for this purpose requires a letter of request and authorization from the City Council. This letter serves as confirmation that the relevant motion was made and approved at the August 1, 2022, City Council meeting for the purpose of drawing down these funds as follows:

Motion: "The City of Newport requests that the remaining Discover Newport Funds be provided directly to the City of Newport for the purpose of strategic planning around the Main Street Development Site which was left vacant by the failed EB-5 projects. A portion will be used to fund an analysis on the existing state office building, and the remainder will be used to fund the services of the consulting firm of White and Burke. All receipts will be provided to the VTACCD for reimbursement. The total amount will not exceed \$40,000.00."

Respectfully submitted,



Paul L. Monette
Mayor

cc Joan Goldstein, Commissioner, Vt ACC Department of Economic Development
David Snedeker, Executive Director, NVDA
Laura Dolgin, Newport City Manager