



TOWN OF NORTON

BOARD OF SELECTMEN

70 EAST MAIN STREET

MUNICIPAL CENTER, NORTON, MASS. 02766

TELEPHONE (508) 285-0210

January 13, 2011

Honorable Representative F. Jay Barrows
State House, Room 542
Boston, MA 02133

Honorable Representative Steven S. Howitt
State House, Room 237
Boston, MA 02133

Honorable Representative Elizabeth A. Poirier
State House, Room 124
Boston, MA 02133

Dear Representatives Barrows, Howitt, and Poirier:

Please accept this letter as a request, pursuant to Article II, Section 8, Paragraph 1, Clause (1) of the Amendments to the Constitution, as amended by Article LXXXIX, that you file legislation with the General Court on behalf of the Town of Norton. The purpose of the legislation is to allow the Town to comply with the requirements of a federal Consent Decree issued by the Environmental Protection Agency ("EPA") concerning the cleanup of environmental contaminants at the so-called Shpack Site, a site designated under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the federal Superfund law. The Town will need permission under Article 97 of the Massachusetts Constitution to transfer an easement to the United States Army Corps of Engineers and the performing defendants under the Consent Decree, organized as the Shpack Site Group, to allow them access the site to conduct the remediation required by the EPA, as discussed further below. The Norton Town Meeting approved this request for special legislation under Article 4 of the June 7, 2010, Special Town Meeting, and a certified copy of the Town Meeting vote is enclosed herewith.

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The Shpack Landfill, covering 9.4 acres, more or less, is located in large part in the Town of Norton, and is bordered by a wooded swamp. The landfill was operated for approximately 30 years from the mid 1940's to the mid 1970's. It is believed that the landfill received domestic and industrial waste, including inorganic and organic chemicals, as well as radioactive waste. It is estimated that approximately 40,000 people live within a three-mile radius of the site, and that the majority of such residents use private drinking water wells, some of which are located quite close to the landfill property. Investigation concerning the extent of contamination has been ongoing for over 20 years. Several studies have been undertaken, most recently by the Army Corps of Engineers and the Shpack Site Group. The Record of Decision issued by the EPA on September 30, 2004, requires the excavation and disposal of about 35,000 cubic yards of waste, and includes two response actions, one managed by the Army Corps of Engineers and one managed by the EPA. The Army Corps cleanup of radiological material began in September 2005 and is ongoing. A Remedial Design/Remedial Action (RD/RA) Consent Decree was lodged in the U.S. District Court in Boston on December 8, 2008, and entered on January 27, 2009. Under the terms of the consent decree, the performing defendants will perform the remainder of the site-wide cleanup of chemical wastes and other contaminants. More information concerning this project may be reviewed at the EPA's website at: http://yosemite.epa.gov/r1/npl_pad.nsf/f52fa5c31fa8f5c885256adc0050b631/58e94c43d64b4ff88525691f0063f6f5!OpenDocument .

As is evident from the above recitation of facts, this site is now subject to the cleanup standards dictated by the Record of Decision and Consent Decree. In order to allow the Army Corps of Engineers and the Shpack Site Group sufficient access to the property to facilitate the required clean-up efforts, a grant of easements is necessary. Where the property at issue was acquired for conservation purposes, however, no such grant can be made without approval from the General Court. Importantly, however, the restrictions to be placed upon the property by the original Record of Decision and the subsequent Consent Decree will limit all future use of the property in such a way as to be consistent both with the requirements of the Consent Decree and the protective purposes of Article 97. Once remediated, the property may not be used for residential, agricultural or other uses that might present an unacceptable risk to human health. Additionally, excavation and construction of structures will be prohibited. Thus, despite the grant of an easement to facilitate remediation of the site as required by the EPA, the limitations on future use of the property, including the areas comprising the easements, will not derogate from the protections accorded under Article 97. Moreover, notwithstanding the lack of dedication of a parcel of similar size to Article 97 purposes (the so-called "no net loss policy"), the disposition of this land under the Record of Decision and Consent Decree will result in permanent protection of the public health and environment in manner entirely consistent with the purposes and affect of the restrictions imposed under Article 97.

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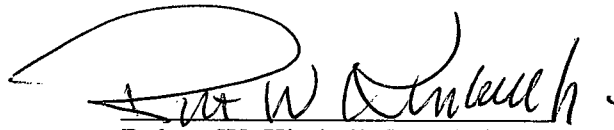
January 13, 2011

In summary, the Town believes that the attached legislation facilitates the intent of Article 97 with regard to the Shpack Site. Approval of the legislation will result in protection of the public health and the environment both now and in the future, in accord with the directive of the EPA, by facilitating the removal from the site of noxious contaminants and limiting future use of the site in a manner consistent with Article 97.

Wherefore, the Town of Norton, through its Board of Selectmen, respectfully requests that you file the enclosed special legislation on behalf of the Town.

Thank you for your timely consideration of this important matter. If you need further information, please contact me or the Town Manager.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert W. Kimball, Jr.", written over a horizontal line.

Robert W. Kimball, Jr., Chairman
Norton Board of Selectmen

Enclosures

xc: Senator James E. Timilty
Town Counsel
U. S. Army Corps of Engineers
United States Environmental Protection Agency

416854/NORT/0001



OFFICE OF THE TOWN CLERK

Danielle M. Sicard
Town Clerk

Anne Rodrigues
Assistant Town Clerk

ARTICLE 4 (Requires 2/3 vote)

Motion was made by Wayne Graf, Chairman of the Finance Committee, that the Town transfer the care, custody, maintenance, and control of the land described herein, owned by the Town and currently under the care, custody, maintenance, and control of the Conservation Commission for conservation purposes, to the Conservation Commission for conservation purposes and the purpose of conveyance, and further MOVE that the Town authorize the Conservation Commission to convey such restrictions or easements upon such property as are necessary to effectuate the environmental remediation in accordance with the Record of Decision and Consent Decree as lodged in the matter of United States v. City of Attleboro, Massachusetts, et al., relating to the so-called Shpack Superfund Site, said parcel of land being further described as printed in the warrant.

The remainder of the warrant for Article 4 as printed in the warrant is as follows:

The land with the buildings and improvements thereon, being Lot 1 and Lot 3 on a Plan of Land entitled: "Plan of Land on Union Road in Norton, Massachusetts, Prepared for: Lea Shpack Date: March 16, 1981, Freeman Engineering Company" which plan is recorded at the Bristol Northern District Registry of Deeds together with, and being more particularly described in, a deed recorded with Bristol Northern District Registry of Deeds in Book 2106, Page 246, and as shown on Assessor's Map 26 as Parcel 2 and Parcel 2-02;

and, further:

to see if the Town will vote to authorize the Board of Selectmen to petition the Massachusetts General Court, pursuant to Article 97 of the Amendments of the Massachusetts Constitution for approval of such change in use and conveyance of restrictions and easements upon all or a portion of said property; or take any other action relative thereto.

A Counted Vote was taken:

1020 YES 3 NO

DECLARED VOTED BY 2/3 BY THE MODERATOR

I hereby certify that the above article was voted and declared voted by the Moderator at the Special Town Meeting, June 7, 2010.

Attest:

Danielle M. Sicard
Town Clerk

AN ACT AUTHORIZING THE TOWN OF NORTON TO GRANT EASEMENTS AND RESTRICTIONS OVER CERTAIN TOWN-OWNED LAND

Be it enacted by the Senate and the House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding the provisions of any general or special law to the contrary and pursuant to the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and in recognition of the fact that the removal of the below-described land from the protections of Article 97 will be tempered by the imposition of strict regulation of future use of the land to protect public health and the environment, the Town of Norton is hereby authorized to transfer the care, custody, management and control of a portion of the property commonly known as the Shpack Site from the conservation commission for conservation purposes to the conservation commission for conservation purposes and for the purpose of conveyance to the Army Corps of Engineers and the performing defendants under the below-referenced consent decree of such restrictions on the future use of the property and such easements thereon as are necessary to effectuate environmental remediation and future use of such land as provided by and in accordance with the Record of Decision and Consent Decree lodged in the matter of U.S. v. City of Attleboro, Massachusetts et al. (Civil Action No. 1:08-cv-120378), and to authorize the conservation commission to convey said easements and restrictions; said parcel of land being further described as follows:

The land with the buildings and improvements thereon, being Lot 1 and Lot 3 on a Plan of Land entitled: "Plan of Land on Union Road in Norton, Massachusetts, Prepared for: Lea Shpack Date: March 16, 1981, Freeman Engineering Company" which plan is recorded at the Bristol Northern District Registry of Deeds together with, and being more particularly described in, a deed recorded with Bristol Northern District Registry of Deeds in Book 2106, Page 246, and as shown on Assessor's Map 26 as Parcel 2 and Parcel 2-02;

SECTION 2. No document conveying interests in the property described in section 1 shall be valid unless such document provides that said interests shall be solely for the purposes of remediating the property and imposes restrictions on the future use of such property, so as to meet the requirements of the Record of Decision and Consent Decree lodged in the above-referenced matter.

SECTION 3. This act shall take effect upon passage.

AN ACT AUTHORIZING THE TOWN OF NORTON TO GRANT EASEMENTS AND RESTRICTIONS OVER CERTAIN TOWN-OWNED LAND

Be it enacted by the Senate and the House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding the provisions of any general or special law to the contrary and pursuant to the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and in recognition of the fact that the removal of the below-described land from the protections of Article 97 will be tempered by the imposition of strict regulation of future use of the land to protect public health and the environment, the Town of Norton is hereby authorized to transfer the care, custody, management and control of a portion of the property commonly known as the Shpack Site from the conservation commission for conservation purposes to the conservation commission for conservation purposes and for the purpose of conveyance to the Army Corps of Engineers and the performing defendants under the below-referenced consent decree of such restrictions on the future use of the property and such easements thereon as are necessary to effectuate environmental remediation and future use of such land as provided by and in accordance with the Record of Decision and Consent Decree lodged in the matter of U.S. v. City of Attleboro, Massachusetts et al. (Civil Action No. 1:08-cv-120378), and to authorize the conservation commission to convey said easements and restrictions; said parcel of land being further described as follows:

The land with the buildings and improvements thereon, being Lot 1 and Lot 3 on a Plan of Land entitled: "Plan of Land on Union Road in Norton, Massachusetts, Prepared for: Lea Shpack Date: March 16, 1981, Freeman Engineering Company" which plan is recorded at the Bristol Northern District Registry of Deeds together with, and being more particularly described in, a deed recorded with Bristol Northern District Registry of Deeds in Book 2106, Page 246, and as shown on Assessor's Map 26 as Parcel 2 and Parcel 2-02;

SECTION 2. No document conveying interests in the property described in section 1 shall be valid unless such document provides that said interests shall be solely for the purposes of remediating the property and imposes restrictions on the future use of such property, so as to meet the requirements of the Record of Decision and Consent Decree lodged in the above-referenced matter.

SECTION 3. This act shall take effect upon passage.