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Application to Enter into a Brownfields Covenant Not to Sue Agreement

Pursuant to M.G.L. c. 21E, s. 3A(j)(3) and 940 CMR 23.00

The execution of Brownfields Covenant Not to Sue Agreements is governed by Section 3A(j)(3) of M.G.L. c. 21E ("Chapter 21E"), and the Attorney General's Brownfields Covenant Regulations, 940 CMR 23.00. Applicants are encouraged to familiarize themselves with the terms of that statutory section and those regulations before completing this application. Any term used in this application that is defined in 940 CMR 23.00 shall have the same meaning as set forth there, and is capitalized in this application.

Applicants must submit this application in hard copy, together with an electronic version in either Microsoft Word or Rich Text File (RTF) format. The filing of an electronic version may be waived for good cause shown. An electronic version of this application may be obtained from the Brownfields Section of the Attorney General's website, www.mass.gov/ago.

The hard copy of the application should be sent to:

Brownfields Unit
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

The electronic version should be sent as an email attachment to Benjamin.Ericson@state.ma.us

In addition to completing this application, an Applicant may be requested to provide further information that the Attorney General deems necessary to complete review of the proposed project.

Applicant: Town of Acton

Date: October 12, 2010

I. BACKGROUND INFORMATION

Applicant: Town of Acton

Street address: 472 Main Street

City: Acton State: MA Zip: 01720

Legal/organizational status of Applicant (e.g., individual, corporation, limited partnership, etc): _____

Municipality _____

Contact person for the Applicant: Stephen D. Anderson, Town Counsel, Anderson & Kreiger LLP

Contact street address: 1 Canal Park, Suite 200

City: Cambridge State: MA Zip: 02141

Phone: (617) 621-6510 Fax: (617) 621-6610

Email: sanderson@andersonkreiger.com

Name of person completing this application: Stephen D. Anderson

Name of project (if any): Simeone-Caouette Property - Community Preservation Land Purchase

Location of project: Stow and Martin Streets, Acton, Massachusetts

Street address: 2 Stow Street and 90 Martin Street

City: Acton State: MA Zip: 01720

II. DEVELOPMENT PLAN

A. The Property:

1.) Describe the property that is the subject of the proposed Agreement in a clear and concise manner sufficient to identify it to the general public (e.g., “a five-acre parcel located at the intersection of Commonwealth Avenue and Main Street in Anytown, Massachusetts, which was formerly the location of Acme Industries”).

The property to be acquired by the Town consists of approximately 10.18 acres of land and a portion of the abutting Mill Pond (the “Property”), comprising a portion of the premises consisting of Parcel 95 on Acton Assessors’ Map H-2 and Parcel 62 on Assessors’ Maps H-2A and H-3B, located at 2 Stow Street and 90 Martin Street, Acton, Massachusetts (the “Premises”). The Town is acquiring the Property for agricultural, open space and conservation purposes. The balance of the Premises will be retained by the Sellers as a single-family residence on a lot subject to a conservation restriction. The Sellers’ family will continue to operate a family farm on the Property under a 10-year lease agreement with the Town. The Property abuts the proposed Assabet River Rail Trail corridor and includes ownership to the centerline of the Mill Pond and a portion of Fort Pond Brook.

The southeastern portion of the Property was formerly occupied by factories from at least 1892 to 1917. The factory buildings were demolished in or about 1930 and the southeastern portion of the Property has since become overgrown and wooded. The remainder of the Property and the Premises has been used as a family farm and residence.

2.) Reference the most recent deed or certificate of title, including reference to the book and page number at the relevant Registry of Deeds or the Land Court Registration number.

Title to the Premises is held by Mary Ann Caouette, Frances Simeone and John E. Simeone, individually and as trustees of The Simeone Irrevocable Trust u/d/t dated November 17, 1998, and recorded with the Middlesex South Registry of Deeds at Book 31063, Page 219 (collectively the “Sellers”), under the following deeds:

- a. A deed dated November 17, 1998, and recorded with the Middlesex South Registry of Deeds at Book 31063, Page 229; and
- b. A deed dated November 17, 1998, and recorded with the Middlesex South Registry of Deeds at Book 31063, Page 231.

A majority of the Premises is agricultural land subject to General Laws Chapter 61A. After a developer proposed to purchase the Premises, demolish the farm, and redevelop the Premises for multiple residences, the Town of Acton (the “Town”) exercised its statutory right of first refusal under Chapter 61A to buy the Property. At the 2010 Acton Annual Town Meeting, the Town unanimously voted to authorize the Selectmen to acquire the Property, and \$1,000,000 in Community Preservation Act Funds were appropriated for the purpose. The Town has entered into a Purchase and Sale Agreement, as amended, with the Sellers (“P&S”). A copy of the P&S, with the First through Fifth Amendments, is attached as **Exhibits 1-6**.

3.) Describe the Releases at the Site, and list any Release Tracking Number(s) for the Site.

Following competitive procurement procedures under the Uniform Procurement Act, the Town has conducted several rounds of environmental due diligence concerning the Property.

In early 2010, O'Reilly, Talbot & Okun Associates ("OTO") conducted an ASTM Phase I Environmental Site Assessment for the Property. OTO determined that the historical industrial uses of the southeastern portion of the Property constituted a Recognized Environmental Condition ("REC") and that soil, pond sediment and groundwater in that area may have been adversely affected. A copy of the Phase I Site Assessment dated March 24, 2010, is attached as **Exhibit 7**.

In April and May 2010, Groundwater & Environmental Services, Inc. ("GES") conducted an ASTM Phase II Environmental Site Assessment of the Property to determine the presence or absence of environmental impairment in the area identified as a REC by OTO. A copy of the ASTM Phase II Site Assessment dated June 7, 2010, is attached as **Exhibit 8**. As part of the Phase II Assessment, GES collected soil, groundwater and sediment samples from the Property. No oils or hazardous materials were detected above applicable reportable concentrations in the groundwater samples. Concentrations of certain hazardous substances (chromium, fluorene and lead) were detected in pond sediments at levels which exceed DEP's "Freshwater Sediment Screening Criteria." Soil samples exhibited concentrations of arsenic, polycyclic aromatic hydrocarbons ("PAHs"), and lead in excess of the Reportable Concentrations for Soil Category 1 (RCS-1). GES determined that these constituents created a 120-day MassDEP reporting condition for the owner of the Property pursuant to the Massachusetts Contingency Plan, 310 CMR 40.0000 (the "MCP").

Based on the findings of the Phase II Site Assessment, the Town retained OTO to conduct further soil and sediment analyses of the Property. A copy of OTO's report regarding its Soil and Sediment Sampling Program dated September 29, 2010, is attached as **Exhibit 9**. Soil samples collected by OTO exhibited reportable PAH concentrations above RCS-1 in shallow soils (approximately 0 to 2 feet below grade) within and near the footprint of the former Morocco Factory Building. OTO also discovered arsenic concentrations in shallow soils above the MCP's 2-hour imminent hazard threshold within 500 feet of a residence. After the owner was alerted to this 2-hour reporting condition, the owner provided oral notice to DEP of the 2-hour reporting condition for arsenic and a 120-day reporting condition for other constituents identified in OTO's September 29, 2010 report. DEP has assigned Release Tracking Number RTN 2-18007 to that reported release.¹ The Town has placed temporary fencing around the imminent hazard areas to mitigate potential exposure thereto.

OTO's environmental assessment activities of the Property are continuing in preparation for a Special Town Meeting to be held on October 25, 2010 to determine whether or not the Town Meeting will appropriate funds to proceed with the purchase and remediation of the Property. If the Town Meeting fails to appropriate the remediation funds, the Town has the right to cancel the Purchase & Sale Agreement for the Property.

4.) Does the property that is the subject of the proposed Agreement constitute the entire Site? *Yes or No*

Yes. (DEP Release Tracking Number RTN 2-18007 for the Site applies to the former industrial portion of the Property to be acquired by the Town. The remainder of the Property is agricultural land.)

¹ The Town has also learned that, in the ASTM Phase 2 investigation, GES apparently installed one sampling point on property later identified by OTO as being on the adjacent Assabet Valley Rail Trail Corridor Property (the "Rail Trail Property") owned by the Town and formerly owned by the MBTA. The sampling point on the Rail Trail Property exhibited reportable concentrations of PAH, arsenic, and lead. The Town has reported this condition to DEP and DEP has been assigned RTN-2-17998 to that reported release. The Town intends to address the contamination on the Rail Trail Property under the MCP and DEP's Best Management Practices for Controlling Exposure to Soil during the Development of Rail Trails.

If your answer is “no,” provide a short description of the relationship between the property and the Site as a whole.

5.) Have you attached a map of the property that is the subject of the proposed Agreement (and, if different, for the Site as a whole)? *Yes or No*

Yes. A USGS Map of the area is attached as Figure 1 to Exhibit 9. A draft Approval Not Required Plan of the Property prepared by Stamski & McNary, Inc., progress print dated June 15, 2010, is attached as **Exhibit 10**. A plan showing the relative relationship of the historical location of the former industrial Site to the Property is attached as Figure 2 to Exhibit.7

B. The Project:

1.) Provide a short, concise description of the project that is the subject of the proposed Brownfields Covenant Not to Sue Agreement, including in your description an enumeration of all major uses that will be made of the property (and, if different, of the Site as a whole) after the Proposed Remediation Status has been achieved.

The project that is the subject of the proposed Brownfields Covenant Not to Sue Agreement involves the acquisition, creation, preservation, restoration and development of the Property for multiple open space and recreational uses consistent with the Community Preservation Act (“CPA”), G.L. c. 44B.² The Town proposes to acquire the Property, remediate the shallow soil contamination identified at the Site in accordance with the MCP, and use and allow the Property to be used for multiple purposes including the conservation of open space, the preservation of historic agricultural resources, the creation of recreation areas for Town residents, and the improvement of access and use of the abutting Town-owned Assabet River Rail Trail Corridor. Consistent with these goals, the Town intends to take the following steps:

- The Board of Selectmen and Town Manager have been authorized by Town Meeting to “impose a perpetual Conservation Restriction, on such terms and conditions as the Selectmen may determine, on all or any portion of the [Property] ... so as to protect and preserve said land in perpetuity.” If the Town purchases the Property, the Board of Selectmen intends to place such a restriction on the Property after conducting a public process to evaluate uses that will be allowed or prohibited under the Conservation Restriction. The terms of the Conservation Restriction are subject to approval by the Executive Office of Energy and Environmental Affairs (“EOEEA”).
- The Board of Selectmen and Town Manager have been authorized by Town Meeting to “lease, on such terms and conditions as the Selectmen may determine, all or any portion of the [Property] Land for agricultural use.” The Town intends to lease back the historically agricultural portion of the Property to the Simeone-Caouette family, the current residents of the Premises, for use as a family farm and agricultural land. The Farm Lease will be subject to the terms of the Conservation Restriction and would initially be for a term of 10 years. The Town and the Caouette-Simeone family would have the option of considering a new or renewed Farm Lease at the expiration of the 10-year term. A draft Farm Lease is attached to the P&S found at Exhibit 1.
- The Property abuts the Assabet River Rail Trail Property previously acquired by the Town from

² The CPA in c. 44B, § 2, defines “Open space” to “include, but not be limited to, land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use.” It defines “Recreational use” to include “active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field.”

the MBTA for development of a multi-use rail-trail which is currently in the advanced design phase. As part of the process of developing the terms of the Conservation Restriction, the Town will also consider developing a portion of the Property as a trail head or parking area in conjunction with the development of the abutting Assabet Valley Rail Trail (to the extent possible while preserving the Property's dominant agricultural use).

- The Town intends to provide public access to portions of the Property, not inconsistent with the lease of the agricultural areas, for recreational and educational purposes.

2.) Describe how the project complies or will comply with applicable zoning and land use permitting requirements.

The Property is currently used as a farm and will retain that dominant use after the completion of the Project. The agricultural use of the Property is protected by the Dover Amendment, G.L. c. 40A, § 3, and is allowed in all zoning districts under § 3.2.1 of the Acton Zoning Bylaw. Conservation use and municipal use are also allowed in all zoning districts under § 3.2.2 and § 3.4.1, respectively, of the Acton Zoning Bylaw. In the event work is undertaken within wetland areas or the buffer zone of wetland areas (e.g. proximate to the Mill Pond or Fort Pond Brook), the Town will conform to wetland permitting requirements under the Wetlands Protection Act, DEP's wetlands regulations, and the Acton wetlands protection bylaw.

3.) Describe the current status of the project and a schedule setting forth specific milestones for bringing the project to fruition.

This Application is being made shortly before the contemplated closing date on the Town's purchase of the Property. This results from the fact that the Town has only recently become aware of the full nature, extent and estimated clean-up costs of the contamination at the Property. The OTO Report documenting the estimated extent of the release and possible remediation strategies and costs was submitted to the Town on September 29, 2010. Further soil sampling, TCLP testing, evaluation, analysis and report preparation by OTO has been ongoing since that time.

In the near term, the Project is subject to imminent deadlines as follows:

- The Project is subject to appropriation by a Special Town Meeting to be held on **October 25, 2010**, of up to \$426,500 in general revenues (in addition to \$830,000 previously appropriated from CPA funds) toward the purchase price, environmental assessment, containment, removal and/or remedial actions required for the Property, and associated transaction costs.
- In the event that the Special Town Meeting approves the requisite appropriation, the closing date under the P&S Agreement as amended is currently scheduled for **October 26, 2010** but may be extended for a brief period. If Town Meeting does not appropriate, *inter alia*, up to \$200,000 toward future environmental assessment and remediation of the Property, the transaction is subject to termination.

If the closing occurs, the Board of Selectmen intends to proceed on parallel paths for the remediation of the shallow soil contamination on the one hand and the development of the specific terms and conditions of the Conservation Restriction on the other.

- The Town anticipates that the remediation of the soil contamination will involve a six to twelve month time line including:
 - The development of a specific remedial plan and related documentation in

- accordance with the MCP;
 - The preparation of a bid specification for the required public procurement process to engage a remedial contractor;
 - The performance of the remedial work; and
 - The preparation of a Response Action Outcome Statement indicating a Condition of No Significant Risk under the MCP for the Site.
- The Town anticipates that the public process to develop the specific terms and conditions of the Conservation Restriction for the Property will be completed in the same six to twelve month time line, subject to approval by EOEEA.
- In the event a portion of the Property is to be used as a trail head or parking area for the Assabet River Rail Trail, that work would be performed within the same time frame as the development of the Rail Trail itself.

4.) Describe the current status of the funding for the project and how full funding of the project will be achieved.

The Town’s Community Preservation Commission (the “CPC”) recommended to the 2010 Annual Town Meeting that the Town appropriate \$1,000,000 of its Community Preservation Act (“CPA”) open space funds to purchase the Property. That purchase price was based on the price offered by a prospective developer to the Sellers prior to the Town’s involvement, which triggered the Town’s matching offer under its right of first refusal pursuant to G.L. c. 61A. The 2010 Annual Town Meeting unanimously voted to acquire the Property and voted to appropriate that amount for the purchase of the Property under Articles 24 and 25 of the Annual Town Meeting, subject to appropriate due diligence activities.

After Town Meeting approval, the Town discovered through its due diligence that (a) there are environmental issues related to the Property, and (b) the Property contains less acreage than originally anticipated because of issues related to the delineation of lot lines in the Mill Pond (i.e. the property line did not encompass the entire Mill Pond but rather extended only to the middle of Mill Pond). As a result, the Town commissioned a supplemental appraisal of the Property which found the value to be less than one million dollars, the Sellers’ sale price under the Chapter 61A process pursuant to which the Town had the right of first refusal to purchase the Property.

Under Article 24 of the Acton 2010 Annual Town Meeting, the Town had appropriated up to one million dollars of Community Preservation Act (“CPA”) funds to purchase the Property. However, under the CPA , G.L. c. 44B, § 5(f), “no ... real property, or interest therein, shall be acquired by any ... town [using CPA funds] for a price exceeding the value of the property as determined by such ... town through procedures customarily accepted by the appraising profession as valid.” Accordingly, given the limits the use of the CPA funds, the Town had the Property re-appraised and determined that the maximum amount of CPA funds that can be used for the purchase of this Property, based on the updated appraisal for the Town, is \$830,000.

Accordingly, the balance of the purchase price, the environmental assessment and remediation costs, and other transaction costs are subject to appropriation at the upcoming October 2010 Special Town Meeting are as follows:

Cost	From Previous Appropriation of CPA Funds	Amounts Subject to Appropriation at October 2010 Special Town Meeting	Total
Purchase Price	\$830,000	\$170,000	\$1,000,000
Environmental Remediation	\$0	\$200,000	\$200,000

Environmental Testing	\$0	\$34,000	\$34,000
P&S Extensions	\$0	\$22,500	\$22,500
Total	\$830,000	\$426,500	\$1,256,500

5.) Describe the public benefits that the proposed use of the property that is the subject of the proposed Agreement (and, if different, for the Site as a whole) will provide, focusing on how the project will create new, permanent jobs, result in affordable housing benefits, provide historic preservation, create or revitalize open space, or provide some other public benefit to the community in which the Site that includes the project is located. Where possible, provide numbers (e.g., number of jobs created, number of acres of open space secured, etc.) and documentation.

The proposed project will directly result in the following significant public benefits with respect to the Property to be acquired by the Town and with respect to the Site comprising a portion of the Property:

- Preserve the Chapter 61A portion of the Property in agricultural use;
- Remediate historic soil contamination at the Site (some of which is characterized as an “imminent hazard” under the MCP) to a Condition of No Significant Risk;
- Conserve the land in perpetuity as an important open space, conservation and recreational resource available to current and future generations of the Town;
- Improve the recreational and open space value of the Town-owned Assabet River Rail Trail corridor which abuts the land;
- Protect the historic farm land and associated open space from being forever lost to private development;
- Protect and improve the quality of life for current and future residents of Acton.

6.) Describe the public outreach that has been done to date, the current level of community support or opposition (with specific references to all local officials, community groups, and abutters who have been contacted), and plans for any future outreach.

The Town has held extensive public outreach concerning the Project:

- Even before the Town was presented with the need to exercise its Chapter 61A right-of-first refusal, the Town had, through a lengthy public process, identified the Caouette-Simeone farm as high on the list of the Town’s potential open space acquisition objectives.
- After being presented with the need to exercise its Chapter 61A right-of-first refusal, the Town’s Community Preservation Committee (“CPC”) held an extensive public process to vet the merits of this open space acquisition against other competing priorities for CPA funds.
- With the recommendation of the CPC, the Town’s 2010 Annual Town Meeting - by a unanimous vote - approved the acquisition of the Property, and voted to appropriate \$1,000,000 of CPA Funds for the purpose.
- After the due diligence activities revealed contamination at the Site, the Town’s Board of Selectmen, Community Preservation Committee, Finance Committee, and Open Space Committee have held numerous public meetings to receive public comments and to debate the merits of proceeding with the transaction. A number of these open meetings were televised on the Town’s cable access channel.
- The Town’s Board of Selectmen has specifically held two open meetings on October 4 and October 8, 2010 at which the Town’s Licensed Site Professional has answered extensive

questions from Town officials and the public concerning the contamination discovered at the Site. These open meetings were televised on the Town's cable access channel.

- The Town has posted extensive amounts of information on its website at <http://www.acton-ma.gov/index.aspx?nid=300> concerning the proposed acquisition of and contamination at the Property.
- The Town has scheduled a Special Town Meeting on October 25, 2010, to consider the necessary appropriations to complete the transaction. The Town Meeting warrant has been publicly posted and mailed to all registered voters in the Town.
- The Town's Licensed Site Professional will be in attendance at the Special Town Meeting on October 25, 2010, to answer questions from Town Meeting concerning the contamination at the Site and the proposed remediation.
- The current level of community support for or opposition to the Project will be gauged by the Special Town Meeting: the appropriation of the \$170,000 additional purchase monies for the Property requires a super-majority (2/3) vote to pass.
- The Board of Selectmen has voted to conduct a future public process to determine the terms and conditions of the Conservation Restriction for the Property.
- The Town will continue to keep citizens and residents apprised of developments on the Project, the Property and the Site by timely postings on its official website, <http://www.acton-ma.gov/>.
- The Town will supplement this extensive outreach process by complying with the Public Notification requirements of 940 CMR 23.00.

C. The Cleanup:

1.) Specify the Proposed Remediation Status for the property that is the subject of the proposed Agreement (*select one*):

Permanent Solution

2.) If the property that is the subject of the proposed Agreement is less than the entire Site, specify the Proposed Remediation Status for the entire Site.

Permanent Solution

3.) Describe how you propose the Proposed Remediation Status for the property that is subject to this Agreement (and, if different, for the Site as a whole) will be achieved. Your description need not include a detailed site assessment or cleanup plan, but must at a minimum include a conceptual plan setting forth whom the Applicant proposes to be doing this work and how it would be funded (by the Applicant, by other parties potentially responsible pursuant to Chapter 21E, by the Department of Environmental Protection, by other public or private funding sources, or by some combination of any of the above).

The Town proposes to remediate the soil contamination at the Site in accordance with the preliminary remediation plan developed by OTO in the September 29, 2010, report, supplemented by the results of ongoing sampling and analysis to be reported by OTO prior to Town Meeting. After the September 29, 2010, report was issued, OTO collected 20 additional shallow soil samples for lead and arsenic, the results of which (**Exhibit 11**) generally indicate

that:

- Samples collected in agricultural field area (13 samples) are all below MCP S-1 Standards; and
- Samples collected within former factory building footprint areas are generally above standards for either lead, PAHs and/or arsenic. (Samples from the small outhouse building location had 200 mg/kg arsenic. High lead concentrations were detected next to the L-shaped building footprint and in upper (western) portion of the main building respectively.)

Given these new results and OTO's prior reported results, OTO has caused a qualified laboratory to conduct two rounds of TCLP analysis on composite soil samples of the contaminated soil material from the Site. The laboratory results indicate that the material is not characteristically hazardous. See **Exhibit 12 and Exhibit 13**.

To temporarily limit access to the imminent hazard condition in areas of the Site affected by elevated arsenic concentrations above 40 ppm in shallow soils, the Town has installed temporary fencing around those areas as an Immediate Response Action.

The permanent remedy is expected to consist of the excavation from the Site and off-site disposal of approximately 810 tons of contaminated soil with concentrations greater than MCP S-1 Standards for PAH, arsenic and lead. OTO estimates that this work will cost approximately \$130,000. A more refined estimate of the probable cost of the work will be determined after OTO develops a specific remedial plan and related documentation in accordance with the MCP and after the Town issues a public bid specification under the required public procurement process to engage a remedial contractor. The Town proposes to appropriate up to \$200,000 at the Special Town Meeting in anticipation of these costs.

4.) If you are proposing a Permanent Solution, Remedy Operation Status, or Temporary Solution, as applicable, for less than the entire Site, explain why your request for a Brownfields Covenant Not to Sue Agreement is nevertheless appropriate, including in your explanation how the public health, safety and the environment are otherwise to be protected in the unaddressed portions of the Site.

Not applicable. Based on the Town's extensive environmental due diligence investigations consistent with recognized professional standards, the Town expects to achieve a Permanent Solution for the Site to which DEP has assigned Release Tracking Number RTN 2-18007. The Site is a portion of the Property. The Town's environmental due diligence investigations and the recent 13 soil samples taken from the agricultural portion of the Property confirm that the recognized environmental condition associated with the historic industrial activities on the Site do not extend to the agricultural portion of the Property. The Town plans to remediate the soil contamination associated with the recognized environmental condition at the Site in a manner that is protective of public health, safety, and the environment, and that complies with applicable laws.

5.) If you are an Eligible Person who is proposing only a Temporary Solution at the Site or portion of the Site that is the subject of the proposed Agreement, have you attached to this application an opinion issued by a Licensed Site Professional pursuant to 310 CMR 40.0860 stating with particularity the basis on which you believe that a Permanent Solution is not Feasible? *Yes or No*

Not applicable.

If your answer is "no," explain why not and when such an opinion will be provided.

6.) If you are an Eligible Person who is proposing a cleanup plan which may, but will not necessarily, include a Temporary Solution, explain, to the degree it is known, when you will be able to determine whether a Permanent Solution is Feasible.

Not applicable.

III. LIABILITY PROTECTION SOUGHT

1.) Are you seeking liability relief against third parties? *Yes or No*

If your answer is “yes,” note that you must comply with the notice requirements set forth in 940 CMR 23.06, and you must attach a Notice of Rights of Affected Third Parties on a form prescribed by the Attorney General. (Before completing that form, the Applicant should contact the Office of the Attorney General to confirm that he or she has the most recent version of the form.)

Yes. A Notice of Rights of Affected Third Parties is attached as **Exhibit 14**.

2.) Specify what precise liability relief you are seeking.

The Town seeks all applicable liability relief pursuant to M.G.L. c. 21E, § 3A(j)(3) and 940 CMR 23.00 including without limitation:

- Liability relief from any claims by the Commonwealth for contribution, response action costs or property damage pursuant to M.G.L. c. 21E or the common law;
- Liability relief for any claims for natural resources damages provided the Secretary of Energy and Environmental Affairs agrees to become a signatory to the Covenant Not to Sue Agreement; and
- Liability relief from any claims by any affected Third Parties for claims for contribution, response action costs or property damage pursuant to M.G.L. c. 21E or the common law.

3.) Explain why liability relief provided directly by statute is not sufficient.

The Town has not previously owned or operated the Property and is no way responsible for the presence of historic contamination released at or from the Property associated with the former industrial activities conducted at the Property. The Town intends to remediate the Site as described herein in compliance with applicable laws and regulations, including G.L. c. 21E and the MCP. As such, the Town will protect the public health, safety, welfare and the environment from the risks associated with the recognized environmental condition at the property, including the imminent hazard associated with the elevated arsenic concentrations in shallow soils at the Site. While these facts should certainly help to exonerate the Town on any future equitable allocation of response costs, the Town would continue to face potential liability by virtue of its status as the new owner of the Property. The Town has an immediate and compelling need to assure its residents and taxpayers that, in the event the Town purchases the Property with CPA and other public funds in an effort to preserve, protect and restore the Property for present and future generations, the Town will not thereby be subjected to future claims and liabilities concerning the historic activities at the Site or the Property over which the Town had no ownership or control; which contamination the Town did not cause, contribute to or exacerbate; and for which the Town is not otherwise legally responsible. Without liability relief under a Brownfields Covenant Not to Sue Agreement pursuant to M.G.L. c. 21E, § 3A(j)(3) and 940 CMR 23.00, the Town would be left with uncertainty and risk as to whether the public investment

of CPA and other public funds is protected. Notwithstanding its lack of liability, the Town may be forced to defend against costly claims by the Commonwealth or Third Parties.

4.) Explain why you think your request for liability relief is appropriate.

Liability relief is appropriate for all the reasons set forth in this Application. Without limitation, the proposed Project will directly result in significant public benefits with respect to the Property to be acquired by the Town and with respect to the Site comprising a portion of the Property. It will:

- Preserve the Chapter 61A portion of the Property in agricultural use;
- Remediate historic soil contamination at the Site (some of which is characterized as an “imminent hazard” under the MCP) to a Condition of No Significant Risk;
- Conserve the land in perpetuity as an important open space, conservation and recreational resource available to current and future generations of the Town forever;
- Improve the recreational and open space value of the Town-owned Assabet River Rail Trail corridor which abuts the land;
- Protect the historic farm land and associated open space from being forever lost to private development;
- Protect and improve the quality of life for current and future residents of Acton.

Subject to appropriation at the upcoming Special Town Meeting, the Town as a wholly innocent party stands ready to remediate the historic industrial soil contamination on the Site which the Town did not cause and for which it is not otherwise legally responsible. The Town will do so with public funds as part of an effort to preserve, protect and restore the Property for present and future generations and to preserve the Property’s agricultural, historic, natural, scenic and recreational values on behalf of its citizens, residents and taxpayers.

The discovery of extensive soil contamination has created substantial uncertainty concerning the transaction that threatens to kill the Project altogether. If the Town were to terminate the P&S, it is uncertain whether, when and by whom the soil contamination would be remediated. Moreover, if a developer were to proceed to purchase the Property, it would likely seek its own Brownfields Covenant Not to Sue Agreement from the Attorney General, without any of the public benefits offered by the Town in the form of preserving and protecting this precious agricultural and open space resource for generations to come. The Town seeks liability relief in order to assure the Town’s residents and taxpayers that the Town’s proceeding with the Project will not have the unintended consequence of saddling the Town with potential liabilities for the future.

5.) Specify the date or event upon which you request that such liability relief become effective.

The Town requests that liability relief become effective as of the closing date transferring the Property to the Town, currently scheduled for October 26, 2010.

In the event that the upcoming Special Town Meeting fails to appropriate funds sufficient for the Town to proceed and the Board of Selectmen chooses to terminate the P&S, the Town will notify the Brownfield Unit.

6.) If you are seeking liability relief against third parties, are you aware of the existence of third parties who believe that they are entitled to pursue a claim against you for Response Action costs, contribution or property damage? *Yes or No*

No.

If your answer is “yes,” describe the circumstances (include citations to any pending litigation and describe any efforts to settle those claims):

Not Applicable.

IV. ELIGIBLE PARTY STATUS OF APPLICANT

1.) Do you want your application to be considered as that of an Eligible Person? *Yes or No*

If your answer is “no,” you may skip the remainder of this section. A “no” answer is not an admission that you caused or contributed to the Release at issue or that you otherwise fail to meet the criteria of an Eligible Person, and should not be used as evidence of same in any other proceeding.

Yes.

2.) Are you a prospective Owner or Operator who does not own or operate, and never has owned or operated, the Site? *Yes or No*

Yes. As of the filing of this application, the Town has never owned or operated the Site.

If your answer is “yes,” you may skip the rest of this section.

3.) Were the Releases for which you are seeking liability relief reported to the Department of Environmental Protection prior to your first owning or operating the Site? *Yes or No*

If your answer is “yes,” how can you demonstrate this?

If your answer is “no,” have you attached to this application an Eligible Person Certification on a form prescribed by the Attorney General?

An Eligible Person Certification is intended to be used solely for deciding under what conditions the Attorney General should enter into Brownfields Covenant Not to Sue Agreements, and neither such a certification nor the Attorney General’s use of it shall be considered evidence of whether a Person is an Eligible Person in any other proceeding.

V. OTHER INFORMATION

1.) In order to assist the Attorney General in processing this application, specify the names and phone numbers of any officials at the Executive Office of Energy and Environmental Affairs, the Department of Environmental Protection, the Department of Housing and Economic Development, Massachusetts Development Finance Agency (MassDevelopment), or the City or Town in which the project is proposed that have been contacted with regard to the subject matter of this application.

The Town is both the project proponent and applicant in this matter. As such, all members of the Board of Selectmen, the Community Preservation Committee, the Finance Committee, the Open Space Committee, the Town Manager, Town Counsel, and numerous other Town officials have been engaged in the development and/or review of this project. For further information or to be directed to the appropriate town official, please contact either of the following:

Steven L. Ledoux
Town Manager

Stephen D. Anderson
(Acton Town Counsel)

Town Hall	Anderson & Kreider, LLP
472 Main Street	One Canal Park, Suite 200
Acton, MA 01720	Cambridge, MA 02141
Phone: (978) 264-9612	Phone: (617) 621-6500

2.) Attach any other information that you believe would be helpful to the Attorney General in reviewing this application. Please make note of attachments here.

EXHIBITS

Exhibit	Description
1	Purchase and Sale Agreement
2	First Amendment to Purchase and Sale Agreement
3	Second Amendment to Purchase and Sale Agreement
4	Third Amendment to Purchase and Sale Agreement
5	Fourth Amendment to Purchase and Sale Agreement
6	Fifth Amendment to Purchase and Sale Agreement
7	ASTM Phase I Environmental Site Assessment prepared by O'Reilly, Talbot & Okun Associates, Inc. ("OTO"), dated March 24, 2010
8	ASTM Phase II Environmental Site Assessment prepared by Groundwater & Environmental Services, Inc. ("GES") dated June 7, 2010
9	Additional Report of Soil and Sediment Sampling Program for the Caouette Property prepared by OTO, dated September 29, 2010
10	Draft Approval Not Required Plan of the Property prepared by Stamski & McNary, Inc., progress print dated June 15, 2010
11	OTO's letter dated October 6, 2010 with Lead and Arsenic Sampling Results
12	Alpha Analytical TCLP Laboratory Results dated October 1, 2010
13	ConTest Analytical TCLP Laboratory Results dated October 7, 2010
14	Notice of Rights of Affected Third Parties