



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

September 18, 2017

Council President Joseph P. Lopes
Members of the City Council
City Hall
New Bedford, MA 02740

RE: Activity and Use Limitation (AUL) for the Map 105 Lots 208 and 209

Dear Council President Lopes and Members of the City Council:

Enclosed, please find a proposed Order authorizing the Mayor to execute, on behalf of the City of New Bedford, an Activity and Use Limitation (AUL) for City owned property located off Manomet Street associated with the Release Tracking Number RTN 4-14112.

Based upon a Risk Assessment performed by Civil and Environmental Consultants, Inc., the City's Licensed Site Professional, it has been determined that with the restrictions limiting exposures to soil impacts identified at the above referenced lots, as set forth in the enclosed AUL, the area poses "No Significant Risk" to health, safety, public welfare or the environment under current conditions. The obligations set forth in the AUL must be undertaken and/or maintained at the property in order to maintain a condition of "No Significant Risk"

Since the AUL must be executed, recorded and properly filed prior to the submission of the Permanent Solution for RTN 4-14112, I respectfully request that prompt attention be given to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Mitchell", is written over the typed name.

Jonathan Mitchell
Mayor

cc: Michele Paul



CITY OF NEW BEDFORD

CITY COUNCIL

September 28, 2017

ORDERED that, the Mayor is hereby authorized to execute, on behalf of the City of New Bedford, an Activities and Use Limitation (AUL) for City owned property located off Manomet Street, associated with the Release Tracking Number RTN 4-14112, in substantially the same form as the attached draft. The subject property and the AUL Area are shown on a plan entitled "AUL PLAN MANOMET STREET ASSESSORS MAP 105 LOTS 208 & 209 NEW BEDFORD, MASSACHUSETTS PREPARED FOR: CITY OF NEW BEDFORD 133 WILLIAM STREET NEW BEDFORD MASSACHUSETTS", Scale 1" = 20, prepared by Farland Corp., 401 County Street, New Bedford MA 02740, and dated September 6, 2017. Said plan is to be recorded with the Bristol County (S.D.) Registry of Deeds.

Form 1075

NOTICE OF ACTIVITY AND USE LIMITATION

M.G.L. c. 21E, § 6 and 310 CMR 40.0000

Disposal Site Name: Former Cliftex Tanks, 194 Rear Riverside Avenue, New Bedford, Massachusetts

DEP Release Tracking No.: RTN 4-14112

This Notice of Activity and Use Limitation ("Notice") is made as of this ____ day of _____, 2017, by the City of New Bedford, 133 William Street, New Bedford, Bristol County, Massachusetts, together with his/her/its/their successors and assigns (collectively "Owner").

W I T N E S S E T H:

WHEREAS, the City of New Bedford, are the owner(s) in fee simple of those certain parcel(s) of land located in New Bedford, Bristol County, Massachusetts with the buildings and improvements thereon, pursuant to deeds recorded with the Bristol Registry of Deeds in Book 10217, Page 90;

WHEREAS, said parcel(s) of land, which is more particularly bounded and described in Exhibit A, attached hereto and made a part hereof ("Property") is subject to this Notice of Activity and Use Limitation. The Property is shown on a plan recorded in the Bristol County Registry of Deeds in Plan Book ____, Plan ____;

WHEREAS, a portion of the Property ("Portion of the Property") is subject to this Notice of Activity and Use Limitation. The Portion of the Property is more particularly bounded and described in Exhibit A-1, attached hereto and made a part hereof. The Portion of the Property is shown on a plan recorded with the Bristol County Registry of Deeds in Plan Book ____, Plan ____;

WHEREAS, the Portion of the Property comprises part of a disposal site as the result of a release of oil and/or hazardous material. Exhibit B is a sketch plan showing the relationship of the Portion of the Property subject to this Notice of Activity and Use Limitation to the

boundaries of said disposal site existing within the limits of the Property and to the extent such boundaries have been established. Exhibit B is attached hereto and made a part hereof; and

WHEREAS, one or more response actions have been selected for Portion of the Disposal Site in accordance with M.G.L. c. 21E ("Chapter 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000 ("MCP"). Said response actions are based upon (a) the restriction of human access to and contact with oil and/or hazardous material in soil [and/or groundwater] and/or (b) the restriction of certain activities occurring in, on, through, over or under the Portion of the Property. The basis for such restrictions is set forth in an Activity and Use Limitation Opinion ("AUL Opinion"), dated _____, which is attached hereto as Exhibit C and made a part hereof;

NOW, THEREFORE, notice is hereby given that the activity and use limitations set forth in this Notice of Activity and Use Limitation are as follows:

1. Activities and Uses Consistent with Maintaining No Significant Risk Conditions. The following Activities and Uses are consistent with maintaining a Permanent Solution and a condition of No Significant Risk and, as such, may occur on the Portion of the Property pursuant to 310 CMR 40.0000:
 - (i) Activities and uses consistent with commercial and industrial uses including, but not limited to landscaping and routine maintenance;
 - (ii) Recreational uses including, but not limited to, property maintenance and landscaping activities provided that such activities do not result in the relocation of soil, groundwater, or NAPL within or from the AUL area, do not disturb soil greater than one foot below grade, and are conducted in accordance with the Obligations and Conditions of this Notice;
 - (iii) Subsurface activities and excavation associated with underground utility and/or construction work provided that such activities do not result in the relocation of soil, groundwater, or NAPL within or from the AUL area and are conducted in accordance with the Obligations and Conditions of this Notice;
 - (iv) Such other activities or uses which, in the Opinion of a Licensed Site Professional (LSP) (as defined in the MCP), shall present no greater risk of harm to health, safety, public welfare or the environment than the activities and uses set forth in this Paragraph; and

- (v) Such other activities and uses not identified in Paragraph 2 as being Activities and Uses Inconsistent with the AUL.

2. Activities and Uses Inconsistent with Maintaining No Significant Risk Conditions. The following Activities and Uses are inconsistent with maintaining a Permanent Solution and a condition of No Significant Risk, pursuant to 310 CMR 40.0000, and, as such, may not occur on the Portion of the Property:

- (i) Use as a residence, school, or daycare;
- (ii) Any activities and/or uses which are likely to cause or result in the disturbance of or relocation of the soil, groundwater, or NAPL located approximately one foot or more below surface grade without prior development and implementation of a Soil Management Plan and Health and Safety Plan in accordance with the Obligations and Conditions of this Notice of AUL Opinion; and
- (iii) Use for agricultural purposes whereas the soil is used for the growing fruit or vegetables for human consumption.

3. Obligations and Conditions. The following obligations and/or conditions are necessary and shall be undertaken and/or maintained at the Portion of the Property to maintain a Permanent Solution and a condition of No Significant Risk:

- (i) A Soil Management Plan and Health and Safety Plan ("the Plan") must be prepared and implemented prior to the disturbance of soil located approximately one foot or more below surface grade and within the Area of AUL, or the relocation of said soil outside the Area of AUL. The Plan must be approved by a Licensed Site Professional (LSP) and must be implemented prior to the commencement of any activity that is likely to disturb soil located one or more feet below surface grade. The Plan should describe appropriate soil excavation, handling, storage, transport, and disposal procedures and include a description of the engineering controls and air monitoring procedures required to ensure that workers and receptors in the vicinity are not affected by fugitive dust or particulates. On-site workers directly involved in the soil disturbance/ relocation activities must review and sign off on the Plan and a copy of the Plan must be available on-site throughout the course of the soil disturbance activity.

- (ii) Any new utilities constructed in the AUL Area shall be constructed to prevent the creation of a preferential migration flow pathway for groundwater and/or NAPL and should be constructed under the direction of a Licensed Site Professional (LSP).

- 4. Proposed Changes in Activities and Uses. Any proposed changes in activities and uses at the Portion of the Property which may result in higher levels of exposure to oil and/or hazardous material than currently exist shall be evaluated by an LSP who shall render an Opinion, in accordance with 310 CMR 40.1080 *et seq.*, as to whether the proposed changes will present a significant risk of harm to health, safety, public welfare or the environment. Any and all requirements set forth in the Opinion to meet the objective of this Notice shall be satisfied before any such activity or use is commenced.
- 5. Violation of a Permanent or Temporary Solution. The activities, uses and/or exposures upon which this Notice is based shall not change at any time to cause a significant risk of harm to health, safety, public welfare, or the environment or to create substantial hazards due to exposure to oil and/or hazardous material without the prior evaluation by an LSP in accordance with 310 CMR 40.1080 *et seq.*, and without additional response actions, if necessary, to achieve or maintain a condition of No Significant Risk or to eliminate substantial hazards.

If the activities, uses, and/or exposures upon which this notice is based change without the prior evaluation and additional response actions determined to be necessary by the LSP in accordance with 310 CMR 40.1080 *et seq.*, the owner or operator of the Portion of the Property subject to this Notice at the time that the activities, uses and/or exposures change, shall comply with the requirements set forth in 310 CMR 40.0020.

- 6. Incorporation Into Deeds, Mortgages, Leases, and Instruments of Transfer. This Notice shall be incorporated either in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the Property or a portion thereof is conveyed.

Owner hereby authorizes and consents to the filing and recordation and/or registration of this Notice, said Notice to become effective when executed under seal by the undersigned LSP, and recorded and/or registered with the

appropriate Registry(ies) of Deeds and/or Land Registration Office(s).

WITNESS the execution hereof under seal this ____ day of September, 2017.

Mayor Jonathan F. Mitchell

COMMONWEALTH OF MASSACHUSETTS

Bristol,
ss

_____, 2017

On this ____ day of September 2017, before me, the undersigned notary public, personally appeared Jonathan F. Mitchell, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

as Mayor of the City of New Bedford

(official signature and seal of notary)

The undersigned LSP hereby certifies that he executed the aforesaid Activity and Use Limitation Opinion attached hereto as Exhibit C and made a part hereof and that in his Opinion this Notice of Activity and Use Limitation is consistent with the terms set forth in said Activity and Use Limitation Opinion.

Date: _____

Jonathan D. Kitchen, LSP

[LSP SEAL]

COMMONWEALTH OF MASSACHUSETTS

_____, ss

_____, 20__

On this ____ day of September, 2017, before me, the undersigned notary public, personally appeared Jonathan Kitchen (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Upon recording, return to:

City of New Bedford

133 William Street

New Bedford, MA 02740

Exhibit A

Property Legal Description

LEGAL DESCRIPTION
0 Manomet Street
NEW BEDFORD, MASSACHUSETTS

Beginning at a point on the northern side of Manomet Street, said point being the southeasterly corner of land now or formerly belonging to Cliftex Lofts LLC and the southwesterly corner of the herein described parcel;

THENCE: N 12° 54' 40" E a distance of 204.72' along said Cliftex Lofts LLC land to a corner and land belonging to Salgado's Riverside, LLC;

THENCE: N 89° 50' 16" E a distance of 61.73' along said Salgado's Riverside, LLC land to a corner;

THENCE: N 00° 45' 04" E a distance of 53.49' still along said Salgado's Riverside, LLC land to a corner;

THENCE: S 89° 52' 32" E a distance of 65.11' still along said Salgado's Riverside, LLC land to a corner;

THENCE: S 00° 07' 28" W a distance of 76.96' still along said Salgado's Riverside, LLC land to a point;

THENCE: S 13° 46' 45" W a distance of 83.41' still along said Salgado's Riverside, LLC land to a corner and land now or formerly belonging to Sterling Environmental Inc. Land;

THENCE: S 89° 49' 09" W a distance of 105.00' along said Sterling Environmental Inc. land to a corner;

THENCE: S 21° 21' 34" W a distance of 25.45' still along said Sterling Environmental Inc. land to a point;

THENCE: S 00° 32' 59" E a distance of 65.48' still along said Sterling Environmental Inc. land to Manomet Street;

THENCE: S 81° 58' 30" W a distance of 40.00' along the northerly boundary of said Manomet Street to the point of beginning;

Said parcel contains 19,975 +/- square feet.

Said parcel is shown on a plan entitled: "AUL Plan, Manomet Street, Assessors Map 105 Lots 208 & 209, New Bedford, Massachusetts" dated: September 6, 2017; Prepared by Farland Corp., Inc.; to be recorded at the Bristol County Registry of Deeds Southern District.

Exhibit A-1

AUL Legal Description

LEGAL DESCRIPTION
AUL Area – Off Manomet Street
NEW BEDFORD, MASSACHUSETTS

Beginning at a point 100.15' north of Manomet Street, said point being along a westerly boundary of land belonging to Salgado's Riverside, LLC and the easterly boundary of land belonging to the City of New Bedford. Being the southeastern corner of the herein described parcel;

THENCE: N 89° 26' 22" W a distance of 84.63' over land belonging to the City of New Bedford to a corner;

THENCE: N 00° 33' 38" E a distance of 77.79' over said City of New Bedford land and other land now or formerly belonging to the City of New Bedford to a corner and land of said Salgado's Riverside, LLC;

THENCE: N 89° 50' 16" E a distance of 31.73' along said Salgado's Riverside, LLC land to a corner;

THENCE: N 00° 45' 04" E a distance of 53.49' still along said Salgado's Riverside, LLC land to a corner;

THENCE: S 89° 52' 32" E a distance of 65.11' still along said Salgado's Riverside, LLC land to a corner;

THENCE: S 00° 07' 28" W a distance of 76.96' still along said Salgado's Riverside, LLC land to a point;

THENCE: S 13° 46' 45" W a distance of 56.72' still along said Salgado's Riverside, LLC land to a corner and point of beginning;

Said AUL area contains 10,779 +/- square feet.

Said Area of Activity And Use Limitation is shown on a plan entitled: "AUL Plan, Manomet Street, Assessors Map 105 Lots 208 & 209, New Bedford, Massachusetts" dated: September 6, 2017; Prepared by Farland Corp., Inc.; to be recorded at the Bristol County Registry of Deeds Southern District.

Exhibit B

Sketch Plan



NORTH

MAP 105 LOT 135
NIF
CLIFTEX LOFTS LLC
CIO WINN COMPANY

MAP 105 LOT 207
NIF
STERLING
ENVIRONMENTAL INC.

ASSESSORS
MAP 105 LOT 208
(PROPERTY BOUNDARY)

AUL AREA
(AREA=10,779± S.F.)

ASSESSORS
MAP 105 LOT 209
(PROPERTY BOUNDARY)

DISPOSAL SITE
BOUNDARY

MEAN HIGH WATER
AUGUST/SEPTEMBER 2009

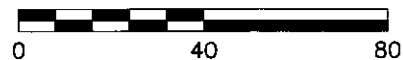
U.S. HARBOR LINE

ACUSHNET RIVER

LEGEND:

 AUL AREA

SCALE IN FEET



Civil & Environmental Consultants, Inc.

31 Bellows Road · Raynham, MA 02767
Ph: 774.501.2176 · 866.312.2024 · Fax: 774.501.2669
www.cecinc.com

CITY OF NEW BEDFORD
RTN 4-14112
194 REAR RIVERSIDE AVENUE
NEW BEDFORD, MASSACHUSETTS

SKETCH PLAN
ASSESSORS MAP 105 - LOTS 208 & 209

DRAWN BY:	RJF	CHECKED BY:	GAC	APPROVED BY:	*JDK	EXHIBIT:
DATE:	SEPTEMBER 2017	DWG SCALE:	1"=40'	PROJECT NO:	151-155	

B

Exhibit C

LSP Opinion

EXHIBIT C

ACTIVITY AND USE LIMITATION OPINION

Site Name: **Former Cliftex Tanks**
194 Rear Riverside Avenue
New Bedford, Massachusetts
MassDEP Release Tracking Number: 4-14112

In accordance with the requirements of 310 CMR40.1074, this Activity and Use Limitation (AUL) Opinion has been prepared to support a Notice of Activity and Use Limitation for the Disposal Site to which the Massachusetts Department of Environmental Protection (MassDEP) has assigned Release Tracking Number (RTN) 4-14112. The Disposal Site is located in New Bedford, Massachusetts and consists of portions of three separate parcels of land identified on the City of New Bedford's Assessors Map 105, as Lots s 183, 208, and 209. This AUL specifically applies to portions of Lots 208 and 209, which are owned by the City of New Bedford and located off of Rear Manomet Street. A metes and bounds description of Lots 208 and 209 is provided in **Exhibit A** of the AUL; a metes and bounds description of the AUL area at each lot is provided in **Exhibit A-1**; and a Sketch Plan depicting the survey plan of the properties, the AUL area, and the Disposal Site boundary is provided as **Exhibit B**.

DISPOSAL SITE DESCRIPTION

The property on which the Disposal Site is located consists of vacant parcels of industrial land located off of the northern side of Manomet Street and east of Riverside Avenue. Lots 208 and 209 were historically part of a larger property that was formerly utilized as a textile mill and which was subdivided in 2006. There are two abandoned 75,000-gallon concrete underground storage tanks (USTs) located on Lot 209. The USTs were formerly utilized to store No. 6 fuel oil and have recently been closed in-place. Records reviewed indicate that the USTs have been located there since at least 1961.

The former Cliftex Mill property is located west of the Disposal Site. The Cliftex Mill property has been redeveloped into the Manomet Place Lofts, which is a multi-unit, age 55 and greater residential housing complex. Whaler's Cove, another renovated mill complex which is now used for age 55 and greater residential housing, is located across Manomet Street to the south. A vacant parcel of land is located to the north and east. The Acushnet River, which flows into New Bedford Harbor, is located within 50 feet to the east of the Disposal Site.

DISPOSAL SITE HISTORY

In September, 1996, while conducting an inspection during demolition of a former boiler structure associated with the former Cliftex Mill, MassDEP identified a reportable threat of release associated with the two USTs. At the time of the inspection, the USTs were abandoned but contained approximately 30,000 gallons of No. 6 fuel oil. MassDEP assigned RTN 4-14112 to this threat of release (the Disposal Site) and issued a former owner of the property a Notice of Responsibility on September 16, 1998. Since that time, limited assessment of the extent of the Disposal Site was conducted. Subsurface investigations resulted in the detection of No. 6 fuel oil as non-aqueous phase liquid (NAPL) in the vicinity of the USTs.

The City of New Bedford acquired the property containing the Disposal Site circa 2006. Additional assessment of the nature and extent of the Disposal Site has been conducted which included the performance of a Site-specific Method 3 Human Health Risk Assessment and a Stage II Ecological Risk Assessment.

REASON FOR ACTIVITY AND USE LIMITATION

As a result of prior and recent assessment, it has been determined that impacts to the soil from a release of the No. 6 fuel oil remain at the Disposal Site. In addition, NAPL is present in the vicinity of the closed in-place USTs and at depths below 3 feet below the ground surface. The NAPL has been determined to be stable and have microscale mobility, as defined at 310 CMR 40.0006.

The performance of the Method 3 Risk Assessment resulted in a conclusion that current and potential future Site uses pose No Significant Risk to human health. However, pursuant to 310 CMR 40.1012(2)(d), an AUL is required to achieve a Permanent Solution at sites where NAPL with microscale mobility is present. Accordingly, in order to achieve a Permanent Solution for the Disposal Site, an AUL is required.

The purpose of this AUL is to provide notice to the current and any potential future property owner about the presence of NAPL so that appropriate measures can be taken to manage potential future exposures to the NAPL during possible construction or utility line work within the AUL area at depths greater than one foot below the ground surface. Such appropriate measures, as described herein, shall include establishing a Soil Management Plan prepared by a Massachusetts LSP for the handling of soil with NAPL impacts; and preparation of a Health and Safety Plan (HASP) to protect construction workers.

Exhibit D

Documentation of Signatory Authority

AUL 30-Day Record Interest Holder Waiver

AUL 30-DAY NOTIFICATION WAIVER

I, _____, acknowledge that on _____, the City of New Bedford, Massachusetts received a notice that an Activity and Use Limitation (AUL) will be placed on the following property:

Map 105, Lots 208 and 209

194 Rear Riverside Avenue

New Bedford, Massachusetts

As allowed by Massachusetts Contingency Plan (MCP) regulations (310 CMR 40.1074(1)(e) and 310 CMR 40.1074(f)), this waiver is granted to Civil & Environmental Consultants, Inc., by the owner, the City of New Bedford, allowing less than 30 days for the AUL waiting period.

Signature

Date

Name (Printed)

Title