



## II. THE PARTIES

A. The OAG is a duly constituted agency of the Commonwealth of Massachusetts charged with the legal representation of the Commonwealth and maintains offices at One Ashburton Place, Boston, Massachusetts 02108. Included within the OAG's authority is the authority to enter into Brownfields Covenant Not to Sue Agreements pursuant to G.L. c. 21E, §3A(j)(3).

B. The Town is a municipal corporation duly organized under the laws of the Commonwealth, with a principal office at 472 Main Street, Acton, Massachusetts 01720. The Town shall undertake the Project as discussed in Section IV.A.2 of this Agreement.

## III. STATEMENT OF FACT AND LAW

A. The Commonwealth enters into this Agreement pursuant to its authority under G.L. c. 21E, §3A(j)(3), and the Brownfields Covenant Regulations.

B. Unless otherwise expressly provided, terms used in this Agreement which are defined in the Brownfields Covenant Regulations shall have the meaning assigned to them under such regulations. Terms not defined in the Brownfields Covenant Regulations, but defined under G.L. c. 21E and/or the MCP, shall have the meaning assigned to them under G.L. c. 21E and/or the MCP. Terms used in this Agreement which are defined in the Brownfields Covenant Regulations, G.L. c. 21E, the MCP, as well as those defined in this Agreement, are capitalized.

C. The Property is approximately 10.2148 acres of land and a portion of the abutting Mill Pond at 2 Stow Street and 90 Martin Street in Acton, Massachusetts. The Property is currently used for agriculture. The southeastern portion of the Property, close to Mill Pond and the railroad right of way which abuts the Property to the east, was occupied by industrial uses in the late 1800s and early 1900s. The Property is more fully described in Exhibit A, which is attached and incorporated into this Agreement. Arsenic, polycyclic aromatic hydrocarbons ("PAHs") and lead are known to exist at the Property in the area of former industrial uses.

D. The Massachusetts Department of Environmental Protection ("MassDEP") has received notice of Releases of Oil and/or Hazardous Materials ("OHM") at the Property. MassDEP has assigned Release Tracking Number ("RTN") 2-18007 to those Releases. The areas where OHM have come to be located as a result of the Releases assigned RTN 2-18007 constitute the "Site," as that term is defined at 310 CMR 40.0006, for the purposes of this Agreement. The Site is also the "property addressed" by this Agreement as the term "property addressed" is used at 940 CMR 23.08(1) in the Brownfields Covenant Regulations. The Site is more fully described in Exhibit B, which is attached and incorporated into this Agreement. Exhibit B describes the environmental conditions in detail, including the nature and extent of contamination detected at the Site.

## IV. COMMITMENTS AND OBLIGATIONS

In consideration of the representations made and promises exchanged by and between the Parties, each of them covenants and agrees to the terms and conditions which follow.

A. REPRESENTATIONS AND COMMITMENTS BY THE TOWN

1. The Town represents that:

- a. it is an Eligible Person;
- b. it is not at the time of execution of this Agreement a person with potential liability for the Site pursuant to G.L. c. 21E;
- c. it is not now nor has it ever been previously affiliated with any person having potential liability for the Site pursuant to G.L. c. 21E, except as set forth below;
- d. its involvement with the Site has been limited to:
  - i. evaluating the Property for purposes of acquiring the Property;
  - ii. negotiating an agreement to acquire the Property; and
  - iii. communicating with the Commonwealth and federal agencies with respect to the remediation and redevelopment of the Property;
  - iv. collecting taxes and providing municipal services as normally incident to any property located within its jurisdiction;
- e. none of the Town's activities has caused or contributed to the Release or Threat of Release of OHM at the Site under G.L. c. 21E and/or the MCP; and
- f. The Town is not at the time of execution of this Agreement subject to any outstanding administrative or judicial environmental enforcement action arising under any applicable federal, state or local law or regulation.

2. The Town agrees to the following terms and conditions:

- a. The Town shall endeavor to acquire ownership of the Property and, if it becomes an Owner and/or Operator of the Property, undertake the Project by preserving the Property for agriculture and/or publicly-accessible open space, as the term "open space" is defined in the Community Preservation Act, G.L. c. 44B. The Town shall impose on the Property a Conservation Restriction approved by the Executive Office of Energy and Environmental Affairs. A full description of the Project is attached as Exhibit C to this Agreement.
- b. If it becomes an Owner and/or Operator of the Property, the Town shall achieve and maintain or arrange for the achievement and maintenance of a Permanent Solution for any Release of OHM occurring at the Site, and submit a Response Action Outcome ("RAO") Statement describing such Permanent Solution, in accordance with G.L. c. 21E, the

Standard of Care defined in G.L. c. 21E, and the MCP. If it becomes an Owner and/or Operator of the Property, the Town shall also cooperate fully with MassDEP.

- c. To cooperate fully includes, without limitation:
  - i. providing prompt and reasonable access to the portion of the Site owned or operated by the Town to MassDEP for any purpose consistent with G.L. c. 21E and the MCP;
  - ii. complying with the Release notification provisions established by G.L. c. 21E and the MCP;
  - iii. responding in a timely manner to any request made by the MassDEP or OAG to produce information as required pursuant to G.L. c. 21E;
  - iv. taking reasonable steps to prevent the Exposure of OHM to people at the Site or portion of the Site under the Town's control, such as (1) by fencing or otherwise preventing access to the Site if appropriate and/or necessary to prevent Exposure or (2) by taking action as otherwise required by G.L. c. 21E, the MCP or MassDEP;
  - v. containing any further Release or Threat of Release of OHM from a structure or container under the Town's control, to the extent necessary under, and in accordance with, G.L. c. 21E and MCP, upon obtaining knowledge of a Release or Threat of Release of OHM; and
  - vi. to the extent the Town conducts, or causes to be conducted, Response Actions at the Site, doing so in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP.

d. After the achievement of a Permanent Solution in accordance with Section IV.A.2.b of this Agreement, the Town shall operate the Property consistent with any Activity and Use Limitation ("AUL"), if any, recorded for the Property.

e. The Town shall provide a copy of this Agreement to any successors, assigns, lessees or licensees of the Town's ownership or operational interests in any portion of the Property ("Subsequent Owners and/or Operators").

## B. COVENANT NOT TO SUE BY THE COMMONWEALTH

### 1. The Town

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by the Town set forth in Section IV.A of this Agreement, and subject to the

Town's compliance with the terms and conditions of this Agreement and the Termination for Cause provisions described below in Section IV.B.5, the Commonwealth covenants not to sue the Town for Response Action costs, contribution, property damage, natural resource damages or injunctive relief under G.L. c. 21E, or for property damage under the common law, relating to any Release of OHM occurring at the Site prior to the execution of this Agreement (the "Covered Releases"). The covenant in this Paragraph shall vest on the effective date of this Agreement as defined in Section IV.E.5. This Agreement shall not affect any liability established by contract.

2. Subsequent Owners and/or Operators

The Commonwealth also covenants not to sue Eligible Persons who are Subsequent Owners and/or Operators, as defined in Section IV.A.2.e of this Agreement, for Response Action costs, contribution, property damage or injunctive relief under G.L. c. 21E, or for property damage under the common law, relating to the Covered Releases. The liability relief available to Subsequent Owners and/or Operators shall be subject to: the same terms and conditions as those that apply to the Town; and the Subsequent Owner's and/or Operator's covenant not to sue the Commonwealth in Section IV.C of this Agreement.

3. Applicability of the Agreement

This Agreement, except as it applies to claims for natural resource damages, shall be in effect unless and until the statutory protections available to the Town or Subsequent Owners and/or Operators pursuant to G.L. c. 21E, §5C are in effect. Protections in this Agreement from claims for natural resource damages shall not be affected if the statutory protections available under G.L. c. 21E, §5C are in effect. This Agreement is subject to the Termination for Cause provisions described below in Section IV.B.5.

4. Reservations of Rights

The Commonwealth's covenants in this Agreement shall not apply to:

a. any Release of OHM at or from the Property that first occurs after the date of execution of this Agreement;

b. any Release of OHM which the Town or any Subsequent Owner and/or Operator causes, contributes to, or causes to become worse, but if the cause or contribution is that of a Subsequent Owner and/or Operator, such reservation shall affect the liability protection applicable only to such Subsequent Owner and/or Operator and shall not affect the Town's liability protection under this Agreement;

c. any Release of OHM not discovered when an RAO Statement is submitted to MassDEP that would have been discovered if an assessment of the Property or portion of the Property covered by or addressed in the RAO Statement had been performed consistent with the Standard of Care in effect when the RAO Statement was submitted;

d. any Release or Threat of Release of OHM from which there is a new Exposure that results from any action or failure to act pursuant to G.L. 21E by the Town or

a Subsequent Owner and/or Operator during the Town's or a Subsequent Owner's and/or Operator's ownership or operation of the Property, but if the action or failure to act is that of a Subsequent Owner and/or Operator, such reservation shall affect the liability protection applicable only to such Subsequent Owner and/or Operator and shall not affect the Town's liability protection under this Agreement;

e. any Release of OHM not expressly described as one of the Covered Releases in Section IV.B.1 of this Agreement;

f. any claims (i) for damages for injury to, destruction of, or loss of natural resources due to a Release of Oil and/or Hazardous Material occurring after the execution of this Agreement, (ii) for exacerbation of injury to, destruction of, or loss of natural resources occurring after the execution of this Agreement, where original injury, destruction or loss of natural resources was due to a Release of Oil and/or Hazardous Material occurring either before or after the execution of this Agreement, (iii) for the costs of any natural resource damage assessment relating to conditions first caused or exacerbated after the execution of this Agreement, and (iv) for damages for injury to, destruction of, or loss of natural resources due to a Release of Oil and/or Hazardous Material not expressly described in Section IV, Paragraph B above. If, however, injury to, destruction of, or loss of natural resources, or the exacerbation of such conditions, is caused by a Subsequent Owner and/or Operator, this reservation shall affect the liability protection applicable only to such Subsequent Owner and/or Operator, and shall not affect the Town's liability protection.

#### 5. Termination for Cause

a. If the OAG or MassDEP determines that the Town submitted materially false or misleading information as part of its Application to Enter into a Brownfields Covenant Not to Sue Agreement, the OAG may terminate the liability protection offered by this Agreement for the offending party in accordance with Section IV.B.5.c of this Agreement. A statement made by the Town regarding the anticipated benefits or impacts of the proposed Project will not be considered false or misleading for purposes of this section if the statement was asserted in good faith at the time it was made.

b. If the OAG or MassDEP determines that the Town or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement, including, but not limited to, failure to achieve and maintain a Permanent Solution in accordance with Section IV.A.2.b of this Agreement, G.L. c. 21E and the MCP, failure to arrange for a timely response to a Notice of Audit Finding or any other notice requiring additional work to achieve and/or maintain a Permanent Solution, or failure to perform Response Actions in accordance with the Standard of Care, or if the OAG or MassDEP determines that the Town will not acquire ownership of the Property despite endeavoring to do so, the OAG may terminate the liability protection offered by this Agreement in accordance with Section IV.B.5.c of this Agreement. In the event that the liability protection is terminated solely because of a violation by a Subsequent Owner and/or Operator of one or more of the conditions set forth in Section IV.A.2.c.i through Section IV.A.2.c.v of this Agreement, such termination shall affect the liability protection applicable only to the Subsequent Owner and/or Operator and shall not affect the Town's liability protection.

c. Before terminating the liability relief provided by this Agreement, the OAG will provide the Town or a Subsequent Owner and/or Operator, as appropriate, with written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. If the OAG, in its sole reasonable discretion, deems it appropriate, the notice from the OAG shall provide a reasonable period of time for the Town or a Subsequent Owner and/or Operator, as appropriate, to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement.

d. Termination of liability relief pursuant to this section shall not affect any defense that the Town or a Subsequent Owner and/or Operator might otherwise have pursuant to G.L. c. 21E.

#### C. COVENANT NOT TO SUE BY THE TOWN AND ANY SUBSEQUENT OWNER AND/OR OPERATOR

1. In consideration of the Commonwealth's covenants not to sue in Section IV.B of this Agreement, the Town covenants not to sue and not to assert any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the following matters as they relate to the Site or this Agreement:

a. any direct or indirect claims for reimbursement, recovery, injunctive relief, contribution or equitable share of response costs or for property damage pursuant to G.L. c. 21E in connection with any of the Covered Releases;

b. any claims for "takings" under the Fifth Amendment to the United States Constitution, under the Massachusetts Constitution, or under G.L. c. 79 based on the argument that, with respect to a Covered Release, the requirements of Chapter 21E, the MCP, or the requirements of this Agreement constitute a taking;

c. any claims for monetary damages arising out of Response Actions at the Site and/or the Property;

d. any claims or causes of action for interference with contracts, business relations or economic advantage based upon the conduct of MassDEP pursuant to Chapter 21E prior to the date of this Agreement concerning any of the Covered Releases; or

e. any claims for costs, attorneys fees, other fees or expenses incurred in connection with the Covered Releases.

2. Subsequent Owners and/or Operators shall be bound by the Town's covenants in this Section IV.C. In the event that, despite these covenants, a Subsequent Owner and/or Operator asserts any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the claims listed in this Section IV.C, such claims or causes of action shall have no effect on the rights, benefits, and protections secured under this Agreement for any other entity.

#### D. PROTECTION FROM THIRD PARTY CLAIMS

With regard to the Covered Releases, the Town and any Subsequent Owner and/or Operator are entitled to the protection G.L. c. 21E §3A(j)(3) provides from claims for contribution, Response Action costs or property damage brought by third parties under G.L. c. 21E, §§ 4 and/or 5, or third party claims brought for property damage claims under the common law, based solely on the status of the Town or any Subsequent Owner and/or Operator as Owner or Operator of the Property and/or the Site, provided that: the Town has provided Affected Third Parties and the public with notice pursuant to G.L. c. 21E, §3A(j)(3) and 940 CMR 23.04(2); and the Response Actions upon which any RAO Statement submitted to MassDEP pursuant to Section IV.A.2.b of this Agreement relies meet the Standard of Care in effect when the RAO Statement is submitted to MassDEP.

#### E. GENERAL PROVISIONS

1. This Agreement may be modified only upon the written consent of all Parties.
2. If any court of competent jurisdiction finds any term or condition of this Agreement or its application to any person or circumstance unenforceable, the remainder of this Agreement shall not be affected and each remaining term and provision shall be valid and enforceable to the full extent permitted by law.
3. Each Party warrants and represents to the others that it has the authority to enter into this Agreement and to carry out its terms and conditions.
4. This Agreement may be fully executed by all Parties in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
5. Effectiveness


The Commonwealth's covenant not to sue the Town, as described in Section IV.B.1 of this Agreement, and the protections from third party claims provided to the Town in Section IV.D, shall be effective as of the date this Agreement is fully executed by all Parties.



In the matter of the Town of Acton  
Brownfields Covenant Not To Sue Agreement


IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

By:   
Benjamin J. Ericson  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Date: 11/24/10

TOWN OF ACTON

By:   
Steven L. Ledoux  
Town Manager  
Town of Acton  
472 Main Street  
Acton, MA 01720

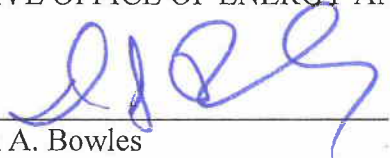
Date: 12/2/10

In the matter of the Town of Acton  
Brownfields Covenant Not To Sue Agreement

As to protections for the Town of Acton from claims for natural resource damages:

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

By:



Ian A. Bowles  
Secretary of Energy and Environmental Affairs

Date:

11/23/10

# Exhibit A

## EXHIBIT A

### PROPERTY DESCRIPTION

The Property consists of approximately 10.2148± acres, shown as Lot 1 on the plan entitled "Plan of Land in Acton, Massachusetts (Middlesex County)" dated October 22, 2010, prepared by Stamski and McNary, Inc., endorsed on November 30, 2010, on behalf of the Acton Planning Board as Approval under the Subdivision Control Law Not Required, recorded as Plan Number 858 of 2010 in the Middlesex South District Registry of Deeds on December 7, 2010.

**RECORD OWNER**

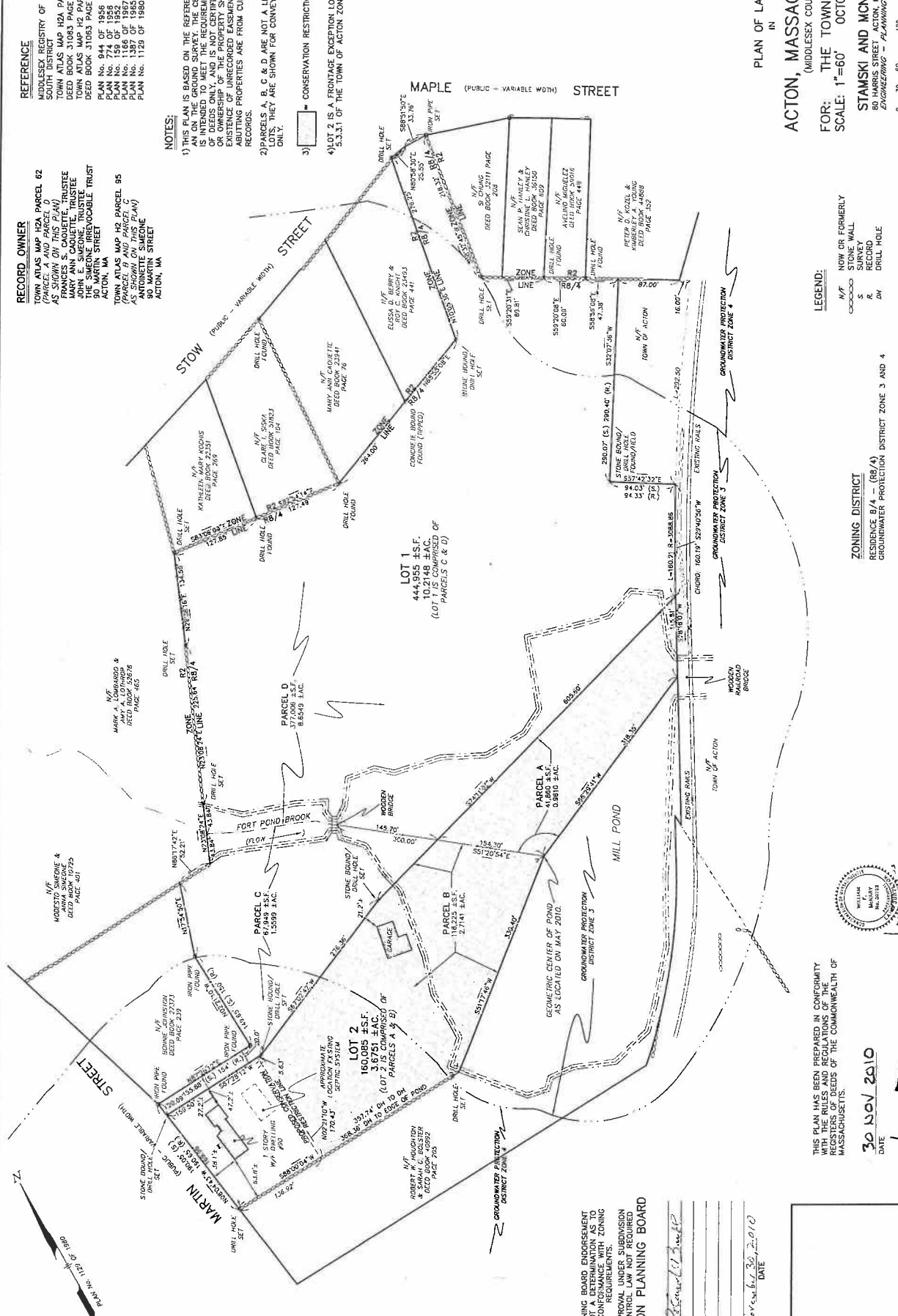
TOWN ATLAS MAP H2A PARCEL 62  
MIDDLESEX COUNTY DEEDS  
SOUTH DISTRICT  
TOWN ATLAS MAP H2A PARCEL 62  
DEED BOOK 1063 PAGE 229  
TOWN ATLAS MAP H2A PARCEL 62  
DEED BOOK 1063 PAGE 231  
PLAN No. 944 OF 1958  
PLAN No. 774 OF 1958  
PLAN No. 1166 OF 1967  
PLAN No. 1387 OF 1985  
PLAN No. 1129 OF 1980

**REFERENCE**

TOWN ATLAS MAP H2A PARCEL 62  
MIDDLESEX COUNTY DEEDS  
SOUTH DISTRICT  
TOWN ATLAS MAP H2A PARCEL 62  
DEED BOOK 1063 PAGE 229  
TOWN ATLAS MAP H2A PARCEL 62  
DEED BOOK 1063 PAGE 231  
PLAN No. 944 OF 1958  
PLAN No. 774 OF 1958  
PLAN No. 1166 OF 1967  
PLAN No. 1387 OF 1985  
PLAN No. 1129 OF 1980

**NOTES:**

- THIS PLAN IS BASED ON THE REFERENCED PLANS AND AN ON THE GROUND SURVEY. THE CERTIFICATION HEREON IS INTENDED TO MEET THE REQUIREMENTS OF THE REGISTRY OF DEEDS ONLY, AND IS NOT CERTIFICATION TO THE TITLE OR OWNERSHIP OF THE PROPERTY. THE EXISTENCE OF UNRECORDED EASEMENTS, OWNERSHIP OF ADJACENT PROPERTIES ARE FROM CURRENT ASSESSOR'S RECORDS.
- PARCELS A, B, C & D ARE NOT A LEGAL BUILDING LOTS, THEY ARE SHOWN FOR CONVEYANCE PURPOSES ONLY.
- CONSERVATION RESTRICTION AREA
- LOT 2 IS A FRONTAGE EXCEPTION LOT UNDER SECTION 3.3.3.1 OF THE TOWN OF ACTON ZONING BYLAW.



**LOT 1**  
444,955 ± S.F.  
10.2148 ± A.C.  
(LOT 1 IS COMPRISED OF PARCELS C & D)

**LOT 2**  
160,088 ± S.F.  
(LOT 2 IS COMPRISED OF PARCELS A & B)

PLANNING BOARD ENDORSEMENT IS NOT A DETERMINATION AS TO THE CONFORMANCE WITH ZONING REQUIREMENTS. APPROVAL BY THE PLANNING BOARD IS NOT REQUIRED FOR THE SUBMISSION OF A ZONING PERMIT APPLICATION TO THE ACTON PLANNING BOARD

*Robert J. Houghton*  
DATE: Nov 20, 2010

THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE MASSACHUSETTS BOARD OF REGISTRY OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

30 NOV 2010  
DATE

REGISTERED PROFESSIONAL LAND SURVEYOR



**LEGEND:**

- N/F NOW OR FORMERLY
- STONE WALL
- SURVEY
- RECORD
- DRILL HOLE

**ZONING DISTRICT**  
RESIDENCE B/A - (R8/4)  
GROUNDWATER PROTECTION DISTRICT ZONE 3 AND 4

PLAN OF LAND IN  
**ACTON, MASSACHUSETTS**  
(MIDDLESEX COUNTY)  
FOR: **THE TOWN OF ACTON**  
SCALE: 1"=60'  
OCTOBER 22, 2010

**STAMSKI AND MCNARY, INC.**  
80 HARRIS STREET ACTON, MASSACHUSETTS  
ENGINEERING - PLANNING - SURVEYING



(4643.AMR2.dwg) Stow Street & Martin Street Sit-1643

# Exhibit B

## EXHIBIT B

### SITE DESCRIPTION AND SUMMARY OF ENVIRONMENTAL CONDITIONS

The Site constitutes a portion of the Property described in Exhibit A. The environmental conditions at the Site, including the nature and extent of contamination detected during the Town's environmental due diligence investigations at the Site, are as follows:

In early 2010, O'Reilly, Talbot & Okun Associates ("OTO") conducted an ASTM Phase I Environmental Site Assessment for the Property. OTO determined that 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. 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.

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. 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 wetland/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 constituted 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. 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 one of the former factory buildings. 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 by OTO. DEP has assigned Release Tracking Number RTN 2-18007 to the 2-hour reporting condition.<sup>1</sup>

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<sup>1</sup> In the ASTM Phase 2 investigation, one sampling point was installed 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

OTO conducted additional soil testing on October 4, 2010, and identified another location exceeding the 2-hour imminent hazard threshold near the previously identified imminent hazard areas. The Town has placed steel fencing around the imminent hazard areas to mitigate potential exposure thereto. OTO collected soil samples from the adjacent farm field area of the Property. None of these samples presented lead or arsenic concentrations above applicable RCS-1 criteria. OTO also conducted further wetland/sediment sampling and predicted that there was no foreseeable need for remediation in the Pond on the property, subject to an ecological risk characterization pursuant to the MCP.

The following reports further describing the environmental conditions at the Site are on file and publicly available with the Town Planner of the Town of Acton, Town Hall, 472 Main Street, Acton, MA 01720:

<b>Description</b>
ASTM Phase I Environmental Site Assessment prepared by OTO dated March 24, 2010
ASTM Phase II Environmental Site Assessment prepared by GES dated June 7, 2010
OTO's Additional Report of Soil and Sediment Sampling Program dated September 29, 2010
OTO's letter dated October 6, 2010 with Lead and Arsenic Sampling Results
Alpha Analytical TCLP Laboratory Results dated October 1, 2010
ConTest Analytical TCLP Laboratory Results dated October 7, 2010
OTO's Additional Soil and Sediment Sampling Program Report dated October 25, 2010

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reportable concentrations of PAH, arsenic, and lead. The Town has reported this condition to DEP and DEP has assigned RTN 2-17998 to that reported release. In the event that RTN is joined by the Town's LSP to RTN 2-18007 under the MCP, RTN 2-17998 will be considered within the scope of the attached Covenant for purposes of the definition of "Site" in the Covenant.



# Exhibit C

## EXHIBIT C

### PROJECT DESCRIPTION

The Project that is the subject of this 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.<sup>1</sup> The Town will 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 Town proposes to remediate the shallow soil contamination to achieve a permanent solution at the Site in accordance with the preliminary remediation plan developed by its Licensed Site Professional (“LSP”) O’Reilly, Talbot, and Okun (“OTO”). This remedy is expected to consist of the excavation from the Site and off-site disposal of approximately 810 tons of contaminated soil.
- 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.” 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 Carl Simeone 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 Carl Simeone would have the option of considering a new or renewed Farm Lease at the expiration of the 10-year term.
- The Property abuts the Assabet River Rail Trail Property previously acquired by the

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<sup>1</sup> 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. ....”

Town from 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). In the event a portion of the Property is to be used for these purposes, that work would be performed within the same time frame as the development of the Rail Trail itself.

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.