

COPY

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF)	BROWNFIELDS COVENANT
)	NOT TO SUE AGREEMENT
MASSACHUSETTS BAY TRANSPORTATION)	
AUTHORITY)	
)	RTN – 3-28750
REDEVELOPMENT OF)	
)	
600-800 IRON HORSE PARK)	
NORTH BILLERICA, MASSACHUSETTS)	
)	
)	
)	

I. STATEMENT OF PURPOSE

A. This Agreement is made and entered into by and between the Office of the Attorney General (the "OAG") on behalf of the Commonwealth of Massachusetts (the "Commonwealth"), and the Massachusetts Bay Transportation Authority ("MBTA"). Collectively, the OAG and MBTA are referred to as the "Parties."

B. This Agreement is entered into pursuant to the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, as amended and codified in Massachusetts General Laws Chapter 21E ("G.L. c. 21E"), and the OAG's Brownfields Covenant Not to Sue Agreement Regulations at 940 CMR 23.00 ("Brownfields Covenant Regulations"), with reference to the Massachusetts Contingency Plan, 310 CMR 40.0000 (the "MCP"). This Agreement relates to the redevelopment of the approximately 18.56-acre property within the former Eastern Terminals, Inc. portion of the Iron Horse Park Superfund Site ("IHPSS") located at 600-800 Iron Horse Park (the "Property") for storage of track infrastructure equipment and materials for its commuter rail operations and later for a dispatch center, offices, and a maintenance shop (the "Project").

C. The Parties intend to set forth in this Agreement their respective duties, obligations, and understanding so that the Project can contribute to the physical and economic revitalization of an area of Billerica, Massachusetts. The Parties agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), addresses potential claims by the Commonwealth as to the MBTA and is predicated upon the MBTA's compliance with the terms and conditions of this Agreement. This Agreement also addresses potential claims brought by third parties for contribution, response action costs, or property damage pursuant to G.L. c. 21E, §§ 4 and 5 or for property damage claims under common law. This Agreement does not, however, address liability arising under contract law.

D. The Parties agree that the MBTA's ability to complete the Project may be contingent upon independent approval processes of other departments, agencies, and instrumentalities of the federal, state, and local governments. Nothing in this Agreement should be construed as an endorsement by the OAG of the proposed Project for such approval processes. MBTA's failure to secure independent governmental approvals for the proposed remediation shall not excuse the MBTA from performance of any term or condition of this Agreement.

E. The Commonwealth believes that this Agreement is fair, consistent with G.L. c. 21E, and in the public interest and has entered into this Agreement as part of an effort to revitalize an area of Billerica, Massachusetts.

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 MBTA is a body politic and corporate, and a political subdivision of the Commonwealth of Massachusetts.

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 that are defined in the Brownfields Covenant Regulations, G.L. c. 21E, or the MCP are capitalized.

C. The Property is comprised of two parcels consisting of approximately 18.56-acres located at 600-800 Iron Horse Park, partially within the IHPSS Operable Unit 3 ("OU3"). Within OU3, Superfund remedial actions were completed at Area of Concern 5 ("AOC5") with the capping of a strip of land along the eastern edge of the Property with asphalt. Title to the Property is recorded in the Northern Middlesex Registry of Deeds at Book 1553, Pages 421 and 422. A full description of the Property is attached as Exhibit A and incorporated into this Agreement. Due to the historic railroad and industrial operations, the Property is contaminated with Oil and Hazardous Material.

D. An area covering approximately 3.49 acres of the northeastern portion of the Property was formerly used for wood pole storage, and as a result, pentachlorophenol, a wood preservative, was detected in soil in this area. The Massachusetts Department of Environmental Protection ("MassDEP") received notices of Releases of Oil and/or Hazardous Materials at or

from the Property and has assigned Release Tracking Number 3-28750 to the Releases. Petroleum hydrocarbons, lead, antimony, and arsenic are also present in the soil. Although not characterized at the Site to date, soil contaminated with dioxins is also possible due to their common presence as an impurity in wood treatment chemicals such as pentachlorophenol. The Releases and/or Threats of Release of Oil and/or Hazardous Materials, as those terms are defined at 310 CMR 40.0006, that have been assigned RTN 3-28750 constitute the "Covered Releases" for the purposes of this Agreement. The areas where Oil and Hazardous Material have come to be located as a result of the Covered Releases constitute the "Site," as that term is defined at 310 CMR 40.0006, for the purposes of this Agreement. The Site is more fully described on Exhibit B.

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 that follow.

A. REPRESENTATIONS AND COMMITMENTS BY APPLICANT

1. MBTA represents that:
 - a. it is an Eligible Person;
 - b. 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;
 - c. its involvement with the Site has been limited to:
 - i. negotiating to purchase the Property;
 - ii. communicating with the Commonwealth and local authorities with respect to the Project and various permitting issues with respect to the Property;
 - iii. acquiring the Property in September 2016;
 - iv. evaluating the Property for purposes of constructing the Project;
 - v. conducting assessment actions at the Site, as described in Exhibit C; and
 - vi. participating as a Settling Defendant in the IHPSS OU3 Consent Decree entered into between the Settling Defendants and USEPA and the Commonwealth of Massachusetts for unrelated parcels within the IHPSS, and contributing to the general response action costs for AOC5,

and some of those funds were used for capping a strip of land along the eastern edge of the Property.

d. none of its activities has caused or contributed to the Release or Threat of Release of Oil and/or Hazardous Material at the Site under G.L. c. 21E and/or the MCP.

e. it is not at the time of execution of this Agreement subject to any outstanding administrative or judicial environmental enforcement action at the Property arising under any applicable federal, state or local law or regulation as to the Covered Releases.

2. MBTA agrees to the following terms and conditions:

a. the MBTA acquired the Property in September 2016, and as Owner and/or Operator of the Property shall endeavor to undertake the Project. The Project is expected to create at least 10 new full-time jobs in transportation, storage, and/or distribution and will provide necessary staging and storage with track access for general MBTA commuter rail operations. Consolidation of three storage areas that have been displaced by the Green Line Extension Project will reduce MBTA costs and will provide greater efficiency in MBTA operations. The Project is more fully described in the plan attached as Exhibit D and incorporated into this Agreement.

b. the MBTA shall achieve and maintain or arrange for the achievement and maintenance of a Permanent Solution for the Covered Releases at the Site pursuant to G. L. c. 21E and the MCP, and submit a Permanent Solution Statement, or, if applicable, a Temporary Solution Statement, provided it can demonstrate that it cannot achieve a Permanent Solution with respect to such portion of the Site, pursuant to G. L. c. 21E and the MCP, describing such Permanent Solution or Temporary Solution, as applicable, in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP. If the MBTA cannot demonstrate that it is not feasible to achieve a Permanent Solution for any portion of the Site, the MBTA shall achieve and maintain a Permanent Solution for such portion of the Site. If the MBTA achieves a Temporary Solution and for so long as the Temporary Solution remains the remediation status, the MBTA shall continue to comply with all requirements of G.L. c. 21E and the MCP, including the achievement of a Permanent Solution as and when it becomes feasible pursuant to the G.L. c. 21E and the MCP, including, without limitation, 310 CMR 40.1050.

c. the MBTA shall cooperate fully with MassDEP and OAG with respect to the Covered Releases and the Site, including, without limitation:

i. providing prompt and reasonable access to the Property to MassDEP for any purpose consistent with G.L. c. 21E and the MCP, and to other persons intending to conduct Response Actions pursuant to 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 people to Oil and/or Hazardous Material, such as by fencing or otherwise preventing access to the Site if appropriate and/or necessary to prevent Exposure or as otherwise required by G.L. c. 21E, the MCP, MassDEP, or a Licensed Site Professional acting on behalf of the MBTA;

v. taking reasonable steps to contain any further Release or Threat of Release of Oil and/or Hazardous Material from a structure or container at the Site, upon obtaining knowledge of a Release or Threat of Release of Oil and/or Hazardous Material; and

vi. conducting, or causing to be conducted, Response Actions at the Site in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E and the MCP.

d. the MBTA shall ensure that the Property is operated consistently with any Activity and Use Limitation (“AUL”) recorded with respect thereto.

e. the MBTA shall provide a copy of this Agreement to any successors and assigns as well as to any lessees, sub-lessees, licensees and sub-licensees of the MBTA’s interests in the Property.

B. COVENANT NOT TO SUE BY THE COMMONWEALTH

1. Covenant as to the MBTA

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by the MBTA set forth in Section IV, Paragraph A of this Agreement, and subject to the MBTA’s compliance with the terms and conditions of this Agreement and the Termination for Cause provisions described below in Section IV, Paragraph B, subparagraph 5, the Commonwealth covenants not to sue the MBTA, pursuant to G.L. c. 21E, for Response Action costs, contribution, property damage, or injunctive relief or for property damage under the common law, relating to the Covered Releases, so long as the Response Actions upon which the Permanent Solution Statement or, if applicable, Temporary Solution Statement to be filed with respect to the Covered Releases meet the Standard of Care in effect when the Permanent Solution Statement or, if applicable, Temporary Solution Statement was submitted to MassDEP. 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 first began ownership or operation of the Property subsequent to the effective date of this Agreement (“Subsequent Owners and/or Operators”) pursuant to G.L. c. 21E for Response Action costs, contribution, property damage, or injunctive relief, 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 (a) the same terms and conditions as those that apply to the MBTA and (b) the Subsequent Owner's and/or Operator's covenant not to sue the Commonwealth in Section IV, paragraph C, below.

3. Applicability of the Agreement

This Agreement shall be in effect unless and until the statutory protections available to the MBTA or Subsequent Owners and/or Operators pursuant to G.L. c. 21E, §5C are in effect. This Agreement is subject to the Termination for Cause provisions described below in Section IV, Paragraph B, subparagraph 5.

4. Reservations of Rights

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

a. any new Release of Oil and/or Hazardous Material at or from the Property that occurs after the date of execution of this Agreement;

b. any Release of Oil and/or Hazardous Material which the MBTA 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 MBTA's liability protection under this Agreement;

c. any Release of Oil and/or Hazardous Material at the Site that has not been discovered when any past RAO Statement or future Permanent Solution Statement or, if applicable, Temporary Solution Statement is submitted to MassDEP that would have been discovered if an assessment of the releases covered by or addressed in the RAO Statement, Permanent Solution Statement, or Temporary Solution Statement had been performed consistent with the Standard of Care in effect when the such Statement was or will be submitted;

d. any Release or Threat of Release of Oil and/or Hazardous Material from which there is a new Exposure that results from any action or failure to act by the MBTA or a Subsequent Owner and/or Operator during the MBTA'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 MBTA's liability protection under this Agreement;

e. any Release of Oil and/or Hazardous Material not expressly described as one of the Covered Releases; and

f. any claims for damages for injury to, destruction of, or loss of natural resources.

5. Termination for Cause

a. If the OAG or MassDEP determines that the MBTA 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 in accordance with Subparagraph 5.c. below. A statement made by the MBTA regarding the anticipated benefits or impacts of the proposed Project will not be considered false or misleading for purposes of this Subparagraph if the statement was asserted in good faith at the time it was made.

b. In the event that the OAG or MassDEP determines that the MBTA has violated the terms and conditions of this Agreement, including but not limited to failing to complete the Project, failing to achieve a Permanent Solution, or if applicable, a Temporary Solution; failing to cooperate in the maintenance of a Temporary or Permanent Solution at the Site in accordance with G.L. c. 21E and the MCP, or failing to cooperate in arranging a timely response to a Notice of Audit Finding or any other notice requiring additional work to achieve and/or maintain a Temporary or Permanent Solution at the Site, the OAG may terminate the liability protection offered by this Agreement in accordance with Subparagraph 5.c., below. In the event 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.vi of this Agreement, such termination shall affect the liability protection applicable only to the Subsequent Owner and/or Operator and shall not affect the MBTA's liability protection.

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

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

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

1. In consideration of the Commonwealth's covenants not to sue in Section IV, Paragraph B, the MBTA 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 G.L. c. 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 G.L. c. 21E prior to the date of this Agreement concerning 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 MBTA's covenants in this Paragraph 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 Paragraph C, such claims and/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 any Covered Releases, so long as the Response Actions upon which the Permanent Solution Statement or, if applicable, Temporary Solution Statement relies meets the Standard of Care in effect when it was submitted to MassDEP, the MBTA and any Subsequent Owner or Operator are entitled to the protection G.L. c. 21E §3A(j)(3) provides from claims for contribution, cost recovery, or equitable share brought by third parties pursuant to G.L. c. 21E, §§ 4 and/or 5, or third party claims brought for property damage claims under common law or G.L. c. 21E, §5, based solely on the status of the MBTA and/or any Subsequent Owner or Operator as owner or operator of the Property or the Site, provided, however that the MBTA has satisfied the notification provisions of G.L. c. 21E, §3A(j)(3), and 940 CMR 23.04(2).

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. The terms of this Agreement shall be effective as of the date it is fully executed by all Parties and when the MBTA acquires title to the Property.

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL
MAURA HEALEY
ATTORNEY GENERAL

By: Nancy E. Harper
Nancy E. Harper
Assistant Attorney General
Deputy Division Chief
Environmental Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

By: [Signature]
Name: Michelle Kalowski
Title: Chief Counsel
Date: 10/22/19

EXHIBIT A

**Legal Description
600-800 Iron Horse Park
Billerica, MA**

A certain property situated off the Easterly side of Iron Horse Park in the Town of Billerica, County of Middlesex, Commonwealth of Massachusetts, bounded and described as follows:

Beginning at the northeasterly corner of the parcel to be described hereafter; thence

S49°16'49"E	Four hundred seven and twenty-four hundredths feet (407.24') to a point; then
S40°40'16"W	One thousand nine hundred eight-five and seventy-one hundredths feet (1985.71') to a point; then
N49°12'51"W	Four hundred seven and twenty-four hundredths feet (407.24') to a point; then
N40°40'16"E	One thousand nine hundred eight-five and twenty-four hundredths feet (1985.24') to the point of beginning.

The above described parcel contains an area of 808,565 square feet (18.56 acres), more or less, and is more particularly shown on "Land Acquisition Plan, Town of Billerica, Middlesex County," dated November 3, 2015, prepared by Bryant Associates, Inc. for the Massachusetts Bay Transportation Authority and recorded on September 28, 2016 in the Middlesex North Registry of Deeds, Book 242, Plan 46.

Exhibit B Description of MCP Site

The property at 600 – 800 Iron Horse Park in Billerica, Massachusetts is comprised of approximately 18.56 acres of land. The northeastern portion of the property was historically used to store wood utility poles, which were treated with pentachlorophenol. Over time, pentachlorophenol dripped off of the utility poles and impacted the near-surface soil over approximately 4.03 acres of the property.

In response to odor complaints by vicinity residents, representatives of the MassDEP and GZA, on behalf of McFarland Cascade Pole and Lumber Company (McFarland), collected soil samples from six locations at the Site in July 2009. Soil samples were collected at depths of 0 to 6-inches (surficial samples), and approximately 18 inches below ground surface (bgs) from five locations (designated Location 2 through Location 6) within the pole storage yard, and one location (Location 1) from the southwest adjoining lumber yard. Soil samples were analyzed for semi-volatile organic compounds (SVOCs), total petroleum hydrocarbons (TPH), TPH fingerprint and priority pollutant metals. Pentachlorophenol, a compound used in wood preservation, was detected in surficial soil samples from the pole storage area at concentrations ranging from 470 to 2,200 mg/kg, above the MassDEP RCS-2 Reportable Concentration of 10 mg/kg. Concentrations of TPH, some PAHs, and some metals were also detected in at least one surficial sample at concentrations above the applicable RCS-2 Reportable Concentrations. With the exception of one sample in which pentachlorophenol was detected at a concentration of 15 mg/kg, all of the constituent concentrations in the deeper samples were below the applicable RCS-2 values. These results indicated that the impacts were primarily surficial and that concentrations decrease significantly with depth. McFarland submitted a Release Notification Form (RNF) to MassDEP on October 19, 2009; RTN 3-28750 was subsequently assigned to the Site.

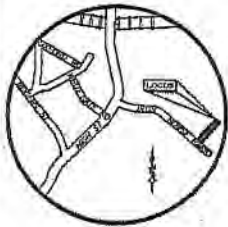
Subsequent additional investigations by GZA for McFarland defined the nature and extent of pentachlorophenol impacts to shallow soil across the northeastern portion of the property; this represents the Disposal Site Boundary, as shown on Exhibit B-1. This Disposal Site Boundary was generally confirmed by additional assessment activities undertaken by Kennedy/Jenks Consultants on behalf of MBTA in 2015, and expanded slightly to the southern portion of the property. Groundwater was found to have not been impacted by the release of pentachlorophenol to the Site soil.

On August 30, 2012, GZA filed a Class C-1 Temporary Solution for RTN 3-28750. The Site remains in Temporary Solution status. A Period Review of the Temporary Solution needs to be prepared and submitted to MassDEP by August 30, 2017 to maintain compliance with the MCP.

Note that a portion of the Iron Horse Park Superfund Site Operable Unit No. 3 (OU-3), Area of Concern No. 5 (AOC-5), known as the Contaminated Soils Area, extends onto the property at 600 – 800 Iron Horse Park. The remedy implemented for OU-3 AOC-5 was to cap the Contaminated Soils Area with an asphalt pavement cap to prevent direct contact exposures to the impacted soil. This remedy was implemented prior to the Kennedy/Jenks assessment activities in 2015. Exhibit B-2 shows the asphalt pavement cap where it extends onto the subject property of 600 – 800 Iron Horse Park. Exhibit B-3 shows the overlap of the asphalt

pavement cap with the Disposal Site Boundary for RTN 3-28750. Approximately 0.94 acres of the asphalt pavement cap associated with OU-3 AOC-5 extends onto the 600 – 800 Iron Horse Park property. Of the 0.94 acres of asphalt pavement cap on the 600 – 800 Iron Horse Park property, approximately 0.54 acres of the cap extends into the Disposal Site Boundary for RTN 3-28750.

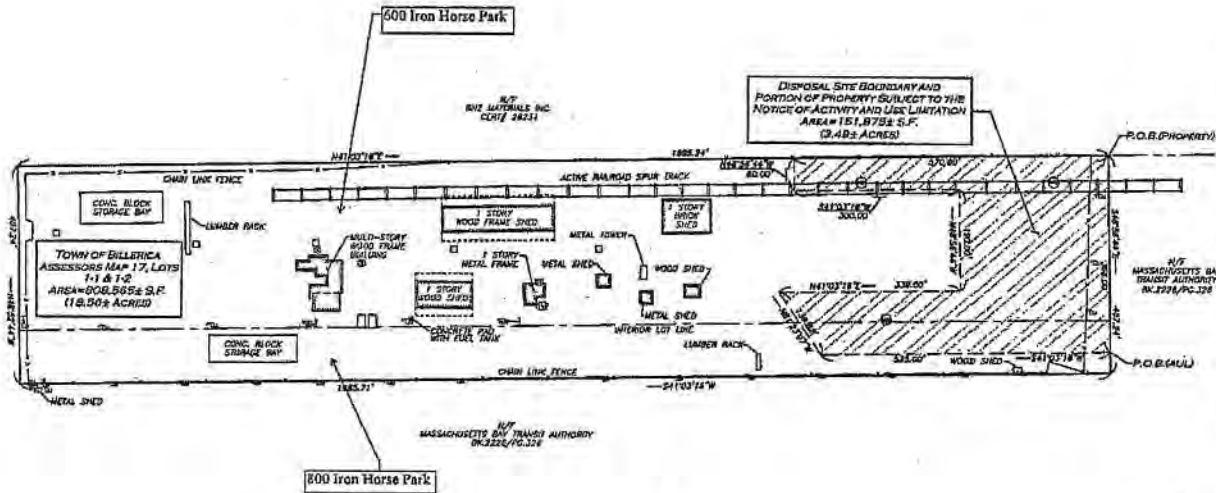
Exhibit B-1



LOCUS MAP
NOT TO SCALE

Note: The Notice of Activity and Use Limitation was terminated in 2012

IRON HORSE PARK
PROJECT - 30' (W)



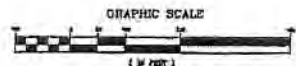
LEGEND	
SEWER MAINLINE (SWM)	⊖
SEWER BRANCH (SB)	⊖
UTILITY POLE	⊖
UTILITY POLE HANGER	⊖
UTILITY POLE HANGAR	⊖
OFF WIRE	⊖
FIRE HYDRANT	⊖
WASTON WELL	⊖
CONCRETE	⊖
PAV. AREA	⊖
BUILDING OVERLAP	⊖
PROPERTY LINE	⊖
ABUTMENT LINE	⊖
CHAIN LINK FENCE	⊖
RAILROAD TRACK	⊖
CONCRETE	⊖
ROW OF FOREMARK	⊖
ROAD	⊖
PAVE	⊖
PLAN BOOK	⊖
PLAN	⊖
CERTIFICATE OF TITLE	⊖
LAND COURT	⊖
LAND COURT CASE	⊖

- LOCUS REFERENCES**
- TOWN OF BELLERUCA ASSESSORS MAP 17, LOTS 1-7 & 1-2
 - LOT 1-1 FROM PLAN BOOK 82, PLAN 1A50
 - DEED BOOK 1554, PAGE 422
 - LOT 1-3 FROM PLAN BOOK 90, PLAN 32A
 - DEED BOOK 1554, PAGE 421

- PLAN REFERENCES**
- PLAN BOOK 104, PLAN 53A
 - PLAN BOOK 56, PLAN 40
 - L.C. 1828 A & B
 - PLAN BOOK 154, PLAN 28
 - PLAN BOOK 126, PLAN 28
 - PLAN BOOK 91, PLAN 38
 - PLAN BOOK 303, PLAN 120
 - PLAN BOOK 124, PLAN 37
 - PLAN BOOK 28, PLAN 23

NOTES

1. NORTH ARROW TAKEN FROM PLAN BOOK 82, PLAN 28A
2. DIMENSIONS AND PLAN REFERENCES ARE TAKEN FROM ADD. SEC. (NORTH) REGISTRY OF DEEDS IN LOWELL, MA.



UTILITY STATEMENT

THE UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND TESTING CONDUCTED BY ALLEN & MAJOR ASSOCIATES, INC. (A&M) MAKES NO GUARANTEE THAT THE UTILITIES SHOWN HEREON COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR DISCONTINUED. A&M FURTHER DOES NOT WARRANT THAT THE UTILITIES SHOWN ARE AT THE EXACT LOCATION INDICATED. A&M HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.



FOR REGISTRY USE ONLY

WE HEREBY CERTIFY THAT

THIS PLAN IS THE RESULT OF AN ACTUAL ON THE GROUND SURVEY PERFORMED BY OR BETWEEN JULY 21, 2010 AND JULY 22, 2010. THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS DATED JANUARY 1, 1978 AND REVISED JANUARY 12, 1985.

ACCORDING TO SECTIONS AND PLANS OF RECORD, THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES SHOWN ON THE ORIGINAL RECORDS, AND THE LINES OF THE CONCRETE OR PAVED STREETS AND HIGHWAYS ESTABLISHED AND THAT NO NEW LINES FOR THE PURPOSES OF EXISTING OWNERSHIP OR FOR NEW LOTS ARE SHOWN.

THE ABOVE CERTIFICATION IS INTENDED TO AFFECT THE EFFECT OF THESE RECORDS AND THE REGISTRATION OF PLANS AND IS NOT A CERTIFICATION TO THE TITLE OR CORRECTNESS OF THE PROPERTY SHOWN, EITHER OF RECORDS OR OTHERWISE.

ACCORDING TO CURRENT TOWN OF BELLERUCA ASSOCIATES' INFORMATION, THE ABOVE IS CERTIFIED TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF.

ALLEN & MAJOR ASSOCIATES, INC.

PROFESSIONAL CIVIL ENGINEER FOR MASSACHUSETTS
ALLEN & MAJOR ASSOCIATES, INC.

REV	DATE	DESCRIPTION

PROJECT: **600-800 IRON HORSE PARK**
BELLERUCA, MA

PROJECT NO. 1103-10 DATE: 06/24/10

SCALE: 1" = 100' DWG. NAME: S116415-04L

DRAWN BY: EAC CHECKED BY: GON/KAC

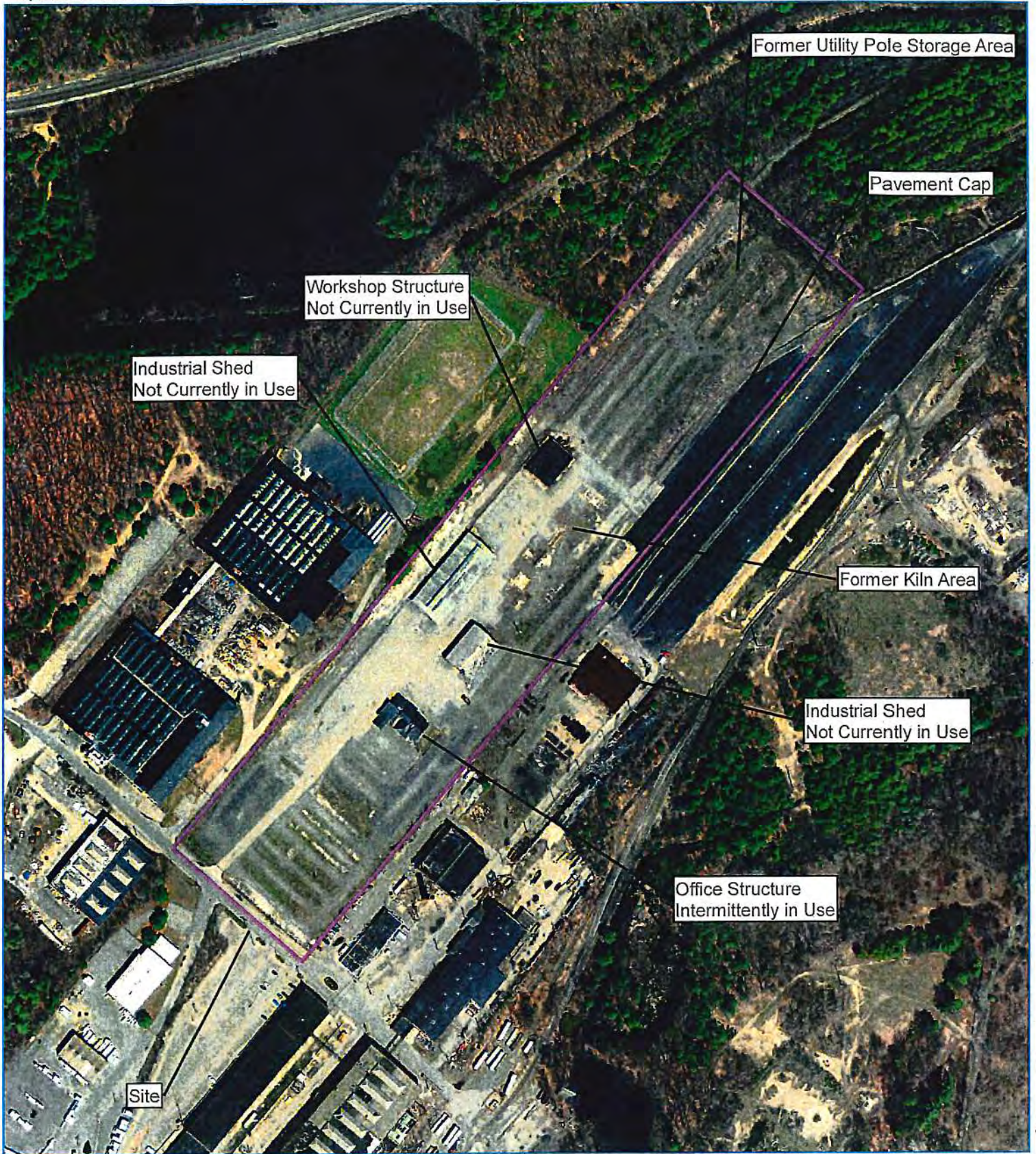
ALLEN & MAJOR ASSOCIATES, INC.
Civil & Mechanical Engineers • Land Surveying
Professional Engineers • Environmental Scientists
P.O. Box 3118
Woburn, Massachusetts 01890
TEL: (617) 835-8810
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REGISTERED PROFESSIONAL ENGINEERS - MASSACHUSETTS


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DRAWING TITLE: **ACTIVITY AND USE LIMITATION AREA**

SHEET NO. **1**



Legend

 600-800 Iron Horse Park Property Line



**Massachusetts Bay
Transportation Authority**

**Exhibit B-2
600-800 Iron Horse Park
North Billerica, Massachusetts**







0 300 600 Feet

Source:
USGS 2013 Imagery, MassGIS Level 3 Assessor's Parcels,
MassGIS MassDOT Roads

Prepared by: Kennedy/Jenks Consultants



Legend

-  600-800 Iron Horse Park Property Line
-  RTN 3-28750 Disposal Site Boundary (DSB)
-  Pavement Cap on 600-800 Iron Horse Park
-  Pavement Cap Overlap with DSB



**Massachusetts Bay
Transportation Authority**

**Exhibit B-3
600-800 Iron Horse Park
North Billerica, Massachusetts**



Source:
USGS 2013 Imagery, MassGIS Level 3 Assessor's Parcels,
MassGIS MassDOT Roads

Prepared by: Kennedy/Jenks Consultants

Exhibit C
Summary of MBTA Assessment Activities

Prior to acquisition of the property at 600-800 Iron Horse Park, Massachusetts Bay Transportation Authority (MBTA) undertook a multi-step assessment of environmental conditions in soil and groundwater, as well as an assessment of hazardous building materials present within the structures on the property.

Kennedy/Jenks Consultants was retained by MBTA to conduct a Phase I Environmental Site Assessment (Phase I ESA) for Parcels 17-1-1 and 17-1-2 located at 600-800 Iron Horse Park, Billerica, Massachusetts, hereinafter referred to as "the Site". The Phase I ESA was completed in general compliance with ASTM International (ASTM) E 1527-13, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process* (the Phase I Standard). The purpose of this Phase I ESA is to identify, to the extent feasible pursuant to the process described in the Standard, Recognized Environmental Conditions (RECs) in connection with the Site. The Phase I ESA was completed utilizing the ASTM Phase I Standard as guidance.

Four RECs were identified to exist at the Site.

REC #1 – Commercial Uses of Target Property

The Site has been historically used for commercial purposes. The parcel was first developed to include railroad track leads in the early 1900s for use by Boston & Maine Railroad. After the sale of the Site to Eastern Terminals, Inc. in 1963, a variety of industrial purposes occurred at the Site, most notably the transport and storage of pentachlorophenol-soaked utility poles. This led to a documented release of pentachlorophenol to the environment, which is still active within the Massachusetts Contingency Plan regulatory framework as a Class C-1 Response Action Outcome (RAO), a Temporary Solution. Groundwater sampling conducted by GZA in April 2010 did not indicate the presence of pentachlorophenol in the three samples collected. Pentachlorophenol is anticipated to degrade in soil and therefore it is also unlikely that this compound would migrate off-site.

Three OHM storage tanks used to store fuel oil and gasoline were documented at the Site starting in 1988, with the removal of the two tanks in 1998 and 1999; the status of the third tank could not be confirmed. The use of heavy machinery and the potential storage of OHM during industrial operations at the Site is a potential source of OHM releases to the environment. The historical storage and usage of OHM on the Site and the documented releases to the environment are considered a REC.

REC #2 – Industrial Uses of Adjacent Properties

A variety of industrial facilities and parcels abut the Site within the Iron Horse Park area. The majority of these parcels have NPL disposal sites or MassDEP disposal sites identified within their boundaries. The industrial park at Iron Horse Park was first developed in the early 1900s for use as a rail yard. There have been many additional industrial uses including the transport and stockpiling of hazardous materials, the disposal of hazardous materials in landfills, and the disposal of wastewater in unlined lagoons. There have been several historical releases and associated remedial activities in this area. Based on the review of the USEPA and MassDEP

files, several of the documented releases may have impacted the Site. Based on the historical usage of this area and the dates that the industrial park operated, there is the potential for unidentified or undocumented releases to have occurred at and adjacent to the Site. Therefore, the historical industrial usage of the adjacent properties is identified as a REC.

REC #3 – Urban Fill

During Site reconnaissance activities, trace amounts of brick and pavement debris and slag were observed in the surficial soils in the northern portion of the Site. The Site was once used as a rail yard, with various track leads that were subsequently removed. Several track leads were observed in the northern portion of the Site during the Site reconnaissance activities on July 30, 2015. Urban fill was commonly used to bring railroad track areas to level, and is likely present in the subsurface at the Site. Urban fill may contain various contaminants of concern, specifically, heavy metals such as arsenic and lead, and polycyclic aromatic hydrocarbons (PAHs).

REC #4 – Historical On-Site Railroad Tracks

According to historical sources, the Site was once occupied by an array of railroad track leads. Historical railroad ROWs are often impacted with residual OHM, including metals, pesticides, petroleum constituents, and PAHs. Railroad-related sources of OHM may include creosote- or arsenic-laced railroad ties, herbicides, lubricating oils, diesel fuel, and diesel exhaust. In addition, fill of unknown origin used to bring the tracks to grade may contain debris, coal, coal ash, coal slag or other potential contaminants. Therefore, there is the potential for OHM-impacted environmental media to exist on-Site, which is deemed a REC.

In addition to the four RECs, one de minimus condition was identified at the Site.

De Minimis Condition #1 – Potential Presence of Hazardous Building Materials

Asbestos-containing materials (ACM) such as roof flashing, shingles, tiles, and pipe insulation, as well as lead-based paint (LBP), mercury switches, PCB-containing light ballasts and other hazardous building materials (HBM) may be present in association with the existing Site structures. Although considered to be non-scope items as part of the Standard, these materials would require special handling in the event that the structures are demolished as part of Site redevelopment, and were identified as a *de minimis* condition for the benefit of MBTA.

Based on the findings of the Phase I ESA report, Kennedy/Jenks Consultants recommended the following:

- MBTA should consider whether the existing office building or the warehouse buildings will be occupied in the future, or whether a similar occupied building will be constructed on the Site. If so, MBTA should be aware that the potential exists for vapor intrusion to occur, and should be prepared to conduct soil vapor sampling and analyses, indoor air sampling and analyses, and potentially mitigate the vapor intrusion, should it be found to occur within on-Site occupied buildings.
- MBTA should consider conducting a Phase II Site Assessment at the Site including sampling of subsurface media (soil and/or groundwater) based on REC #1, REC #2, REC #3, and REC #4. Based on the historical usage of the Site as a rail yard and the historical

usage and storage of OHM at the Site and in close proximity to the Site, there is the potential for an environmental condition to exist at the Site.

- Letters between MassDEP and Eastern Terminal indicate that RTN 3-28750 can be closed out of the MCP by installation of a pavement cap in the northern portion of the Site and the attachment of an AUL to the property for pavement cap maintenance. This work should be undertaken to close out the RTN.

MBTA accepted these recommendations, and Kennedy/Jenks Consultants was retained by MBTA to conduct a Phase II Environmental Site Assessment (Phase II ESA) for 600-800 Iron Horse Park. The Phase II ESA was completed in general conformance with ASTM International (ASTM) E 1903-11, *Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process* (the Phase II Standard).

The purpose of the Phase II ESA was to assess if the recognized environmental conditions (RECs) and *de minimis* conditions identified during the Phase I assessment, including the historical commercial use of the property and the potential presence of urban fill have affected surface and subsurface conditions at the property, and if hazardous building materials, identified as a *de minimis* condition, were present in the structures that are located on the property. The Phase II ESA was completed utilizing the ASTM Standard as guidance. RECs are defined in the Phase II Standard as “*the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment.*”

Based on the results of the groundwater sampling, a REC does not appear to exist with regard to the groundwater. However, results of soil sampling identified several RECs related to the former use of the property and the larger Superfund Site. In addition, due to the planned reuse of the Site, the presence of hazardous building materials at the Site is considered a REC.

Historical Use of the Site for Utility Pole Storage

The presence of elevated levels of pentachlorophenol in shallow soil, above the MCP Method 1 standard, has been identified in various locations across the Site. The distribution of these elevated concentrations of pentachlorophenol is not widespread, and as previously concluded in prior MCP reports completed for the Site, it appears to be related to the former storage of utility poles at the Site. The historical storage of utility poles at the Site and the contamination that is associated with the former storage is considered a REC.

Historic Fill

The presence of elevated levels of arsenic and antimony are likely attributable to the historical fill that contains coal, coal ash, and wood ash. Although the presence of these compounds is exempt from reporting under the MCP, the presence of historical fill containing coal, coal ash, and wood ash is considered a REC.

Presence of Lead in Surface Soils

One soil sample that was collected adjacent to the asphalt cap (SS-1) was found to contain an elevated concentration of lead. The presence of lead in this location can be attributed to the

larger Superfund Site that is being managed by EPA and it appears the extent of the elevated lead contamination that was intended to be capped was not fully defined. The contamination associated with the Superfund Site that encroaches onto the Site is considered a REC.

Hazardous Building Materials

Based on the sampling completed as part of the Phase II ESA, lead-based paint (LBP) and asbestos-containing materials (ACM) are present in the buildings that exist on the Site. PCBs were not identified in the samples that were collected. However, it is likely PCB-containing equipment (fluorescent light fixture ballasts and fluorescent tube lights) are located within certain buildings at the Site. Mercury-containing equipment (thermostats) and potential mercury-containing equipment (thermostats, thermometers, pressure gauges, and fluorescent light bulbs) were observed within the buildings at the Site. During future demolition and renovation activities conducted at the Site, additional sampling may be necessary to identify additional hazardous building materials so the materials can be segregated and properly disposed. Based on the materials already identified at the Site and the future planned reuse of the Site, the presence of hazardous building materials is considered a *de minimus condition*.

Based on the results of the Phase II ESA, Kennedy/Jenks Consultants recommended the following:

- MassDEP had already notified the prior owner of the property, Eastern Terminals, Inc., that the MCP Site identified as RTN 3-28750 can be closed out with the installation of an asphalt pavement cap and implementation of an AUL requiring pavement maintenance. Installation of a pavement cap and filing of an AUL would still allow the MBTA to utilize the Site for its proposed use. Therefore, Kennedy/Jenks recommended incorporating a pavement cap into the redesign of the Site.
- With regard to the hazardous building materials, Kennedy/Jenks recommended that painted materials, materials that potentially contain asbestos, light ballasts, and thermostats be properly managed and disposed of during future renovation and/or demolition activities, and noted that some additional sampling may be required to confirm the presence or absence of hazardous materials if additional materials that were not accessible during the hazardous building material's survey are identified during future renovation and/or demolition activities.

Exhibit D

Summary of MBTA Project

The MBTA acquired the property located at 600-800 Iron Horse Park in Billerica, Massachusetts (the "Property") in September 2016 and will remediate and redevelop the Property for the Project. The planned Project includes:

- a new MBTA Operations/Dispatch building to be located in the southwestern portion of the property; and
- a new materials storage yard to support commuter rail operations and replace three storage areas that will be relocated from Somerville during the Green Line Extension project.

The relocation of the commuter rail materials storage yard is necessary for the Green Line Extension project. The relocation is needed to provide the MBTA with sufficient construction laydown and storage to build the Green Line Extension project. The consolidation of three commuter rail materials storage yards at the Property will reduce MBTA costs and will provide greater efficiency in MBTA operations.

The MBTA operations at the Property will provide a total of 80-100 new and retained jobs. The 80-100 jobs will include 60-70 positions in the Operations/Dispatch building during three shifts per day, seven days a week; 10-12 jobs in the materials yard; and 20 new or relocated jobs in a planned new work equipment repair facility to be added at the site.