

Form 1075

NOTICE OF ACTIVITY AND USE LIMITATION  
M.G.L. c. 21E, § 6 and 310 CMR 40.0000

BK 7863 PG 305  
11/08/05 03:14 DOC. 38400  
Bristol Co. S.D.

Disposal Site Name: **545 Orchard Street, New Bedford, MA**  
DEP Release Tracking No.(s): **4-00688**

This Notice of Activity and Use Limitation ("Notice") is made as of this 7th day of July, 2005, by **Clarks Cove Development Company, LLC, 651 Orchard Street, Suite 200, New Bedford, MA 02744**, together with his/her/its/their successors and assigns (collectively "Owner").

WITNESSETH:

WHEREAS, **Clarks Cove Development Company, LLC**, is the owner in fee simple of that certain parcel of vacant land located in **New Bedford, Bristol (South) County, Massachusetts**, pursuant to a deed recorded with the **Bristol (South) County Registry of Deeds in Book 7223, Page 263**;

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 19, Plan 2**;

WHEREAS, the Property comprises all 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 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 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 (b) the restriction of certain activities occurring in, on, through, over or under the Property. The basis for such restrictions is set forth in an Activity and Use Limitation Opinion ("AUL Opinion"), dated 8/25/2005, (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 said AUL Opinion are as follows:

1. Activities and Uses Consistent with the AUL Opinion. The AUL Opinion provides that a condition of No Significant Risk to health, safety, public welfare or the environment exists for any foreseeable period of time (pursuant to 310 CMR 40.0000) so long as any of the following activities and uses occur on the Property:

The language in these forms are part of promulgated regulations and cannot be modified in any way unless so noted (within brackets) in the form itself.

PLEASE RETURN TO:

LANDAMERICA  
150 FEDERAL STREET, SUITE 200  
BOSTON, MA 02110  
ATTN: APW FILE NO. 8533

(i) Maintenance of the property as an unpaved, vacant lot. The permitted use of the Property as an unpaved vacant lot is contingent upon the Property being enclosed with a secure fence or wall which will prevent access to the Property by all persons with the exception of the Owner and his/her/its agents for inspection or maintenance activities at the Property;

(ii) Construction activities and underground utility repair, including soil excavation and regarding activities, provided a Soils Management Plan and Health and Safety Plan is implemented prior to the commencement of such activities;

(iii) Commercial and industrial activities and uses provided that the Property remains entirely covered with any of the following structures or materials or any combination of the following structures or materials; (1) a building foundation with a concrete floor, (2) an impervious surface such as concrete or asphalt pavement, (3) greater than three (3) feet of clean fill placed upon the ground surface at the existing ground elevation with landscaped vegetation

(iv) Such other activities or uses which, in the Opinion of an LSP, 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 the AUL Opinion. Activities and uses which are inconsistent with the objectives of this Notice of Activity and Use Limitation, and which, if implemented at the [Property] [Portion of the Property], may result in a significant risk of harm to health, safety, public welfare or the environment or in a substantial hazard, are as follows:

(i) Residential, agricultural, outdoor and indoor recreational or institutional activities and uses (institutional activities and uses inconsistent with the AUL Opinion are specifically associated with daycare centers, schools, orphanages and educational facilities);

(ii) Commercial/industrial use in the absence of barriers identified in 1(iii); and

(iii) Excavation of and exposure to Property soils with the exception of future construction/site development activities and short duration excavation for the purposes of underground utility repairs or installation.

3. Obligations and Conditions Set Forth in the AUL Opinion. If applicable, obligations and/or conditions to be undertaken and/or maintained at the Property to maintain a condition of No Significant Risk as set forth in the AUL Opinion shall include the following:

(i) As an unpaved, vacant lot, obligations and conditions set forth in the AUL Opinion to



be undertaken and/or maintained at the Property include indefinite maintenance of a secure fence or wall which will prevent access to the Property by all persons with the exception of the Owner and his/her/its agents for inspection or maintenance activities at the property;

(ii) During any construction/site development activities, obligations and conditions set forth in the AUL Opinion to be undertaken and/or maintained at the Property include: maintenance of a secure fence or wall which will prevent access to Property soils by all persons with the exception of the Owner and his/her/its agents and construction/site development workers; the implementation of a Soil Management Plan under the direction of a Licensed Site Professional; and implementation of a Health and Safety Plan prepared by a certified industrial hygienist; and

(iii) During any commercial and industrial activities and uses at the Property, the Property must remain entirely covered with the structures or materials identified in (iii) indefinitely except to conduct construction/site development activities or short term utility repairs..

4. Proposed Changes in Activities and Uses. Any proposed changes in activities and uses at 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 Response Action Outcome. 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 an LSP in accordance with 310 CMR 40.1080 *et seq.*, the owner or operator 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 7<sup>th</sup> day of July, 2005.

Clarks Cove Development Company, LLC

  
\_\_\_\_\_  
John E. Williams, Manager

[COMMONWEALTH OF MASSACHUSETTS]  
[STATE OF \_\_\_\_\_]

\_\_\_\_ Bristol \_\_\_\_\_, ss

\_\_\_\_ July 7 \_\_\_\_\_, 2005

Then personally appeared the above-named John E. Williams, Manager and acknowledged the foregoing instrument to be the free act and deed of said Limited Liability Company before me,

*Sara B. O'Leary*

Notary Public: Sara B. O'Leary  
My Commission Expires: 12-02-2005



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

Date: \_\_\_\_\_

*Robert W. Nicoloro*

[Name of LSP]  
[LSP SEAL]



[COMMONWEALTH OF MASSACHUSETTS]  
[STATE OF New Hampshire]

Rockingham County Sept 20, 2005

\_\_\_\_\_, ss

Then personally appeared the above named \_\_\_\_\_ and acknowledged the foregoing instrument to be his[her] free act and deed before me,

*Sara B. O'Leary*  
Notary Public: Sara B. O'Leary  
My Commission Expires: 12-02-2005



Upon recording, return to:

Clarks Cove Development Company, LLC  
c/o John E. Williams, Manager  
651 Orchard Street, Suite 200  
New Bedford, MA 02744





**Massachusetts Department of Environmental Protection**  
*Bureau of Waste-Site Cleanup*

BWSC113

**ACTIVITY & USE LIMITATION (AUL) TRANSMITTAL FORM**

Release Tracking Number

Pursuant to 310 CMR 40.1056 &amp; 40.1070 - 40.1084 (Subpart J)

4 - 688

**A. DISPOSAL SITE LOCATION:**

1. Disposal Site Name: Former Manufacturing Site2. Street Address: 545 Orchard Street3. City/Town: New Bedford4. ZIP Code: 02740-0000

☒ 5. Check here if a Tier Classification Submittal has been provided to DEP for this disposal site.

☐ a. Tier 1A    ☐ b. Tier 1B    ☐ c. Tier 1C    ☒ d. Tier 2

6. If a Tier I Permit has been issued, provide Permit Number: \_\_\_\_\_

**B. THIS FORM IS BEING USED TO:** (check one)

- ☒ 1. Submit a certified copy of a **Notice of Activity and Use Limitation**, pursuant to 310 CMR 40.1074.
- ☐ 2. Submit an **Evaluation of Changes in Land Uses/Activities and/or Site Conditions after a Response Action Outcome Statement** has been filed pursuant to 310 CMR 40.1080.
- ☐ 3. Submit a certified copy of an **Amended Notice of Activity and Use Limitation**, pursuant to 310 CMR 40.1081.
- ☐ 4. Submit a certified copy of a **Partial Termination of a Notice of Activity and Use Limitation**, pursuant to 310 CMR 40.1083(3).
- ☐ 5. Submit a certified copy of a **Termination of a Notice of Activity and Use Limitation**, pursuant to 310 CMR 40.1083(1)(d).
- ☐ 6. Submit a certified copy of a **Grant of Environmental Restriction**, pursuant to 310 CMR 40.1071.
- ☐ 7. Submit a certified copy of an **Amendment of a Grant of Environmental Restriction**, pursuant to 310 CMR 40.1081(3).
- ☐ 8. Submit a certified copy of a **Partial Release of a Grant of Environmental Restriction**, pursuant to 310 CMR 40.1083(2).
- ☐ 9. Submit a certified copy of a **Release of a Grant of Environmental Restriction**, pursuant to 310 CMR 40.1083(1)(c).
- ☐ 10. Submit a certified copy of a **Confirmatory Activity and Use Limitation**, pursuant to 310 CMR 40.1085(4).

11. Provide Additional RTNs:

☐ a. Check here if this AUL Submittal covers additional Release Tracking Numbers (RTNs).

b. Provide the additional Release Tracking Number(s) covered by this AUL Submittal.

☐ -     ☐ -

(All sections of this transmittal form must be filled out unless otherwise noted above.  
 BWSC113A is required for all submittals listed above)



**Massachusetts Department of Environmental Protection**  
**Bureau of Waste Site Cleanup**

BWSC113

**ACTIVITY & USE LIMITATION (AUL) TRANSMITTAL FORM**

Pursuant to 310 CMR 40.1056 & 40.1070 - 40.1084 (Subpart J)

Release Tracking Number

4 - 688

**C. AUL INFORMATION:**

1. Document (per Section B) Recording and/or Registration Information:

a. Name of Registry of Deeds and/or Land Registration Office: Bristol County (South)

b. Book and Page Number and/or Document Number: \_\_\_\_\_

c. Date of recording and/or registration: \_\_\_\_\_

mm/dd/yyyy

2. Is the address of the property subject to AUL different from the disposal site address listed above?

☒ a. No ☐ b. Yes If yes, then fill out address section below.

3. Street Address: \_\_\_\_\_

4. City/Town: \_\_\_\_\_

5. ZIP Code: \_\_\_\_\_

**D. PERSON SUBMITTING AUL TRANSMITTAL FORM:**

1. Check all that apply: ☐ a. change in contact name ☐ b. change of address ☐ c. change in the person undertaking response actions

2. Name of Organization: Clarks Cove Development Company, LLC

3. Contact First Name: John

4. Last Name: Williams

5. Street: 651 Orchard Street, Suite 200

6. Title: Manager

7. City/Town: New Bedford

8. State: MA

9. ZIP Code: 02744-0000

10. Telephone: (508) 992-7911

11. Ext.: \_\_\_\_\_

12. FAX: (508) 991-8687

13. Is the person described in this section the owner of the property?

☒ a. Yes ☐ b. No, if checked then Section G must be filled out by at least one owner.

☐ c. Check here if providing names and addresses of any additional owners in an attachment.

**E. RELATIONSHIP TO DISPOSAL SITE OF PERSON SUBMITTING AUL TRANSMITTAL FORM: (check one)**

☒ 1. RP or PRP ☒ a. Owner ☐ b. Operator ☐ c. Generator ☐ d. Transporter

☐ e. Other RP or PRP Specify: \_\_\_\_\_

☐ 2. Fiduciary, Secured Lender or Municipality with Exempt Status (as defined by M.G.L. c. 21E, s. 2)

☐ 3. Agency or Public Utility on a Right of Way (as defined by M.G.L. c. 21E, s. 5(j))

☐ 4. Any Other Person Submitting AUL Specify: \_\_\_\_\_





**Massachusetts Department of Environmental Protection**  
**Bureau of Waste Site Cleanup**

BWSC113

**ACTIVITY & USE LIMITATION (AUL) TRANSMITTAL FORM**

Release Tracking Number

Pursuant to 310 CMR 40.1056 &amp; 40.1070 - 40.1084 (Subpart J)

4 - 688

**F. REQUIRED ATTACHMENT AND SUBMITTALS:**

- ☐ 1. Check here to certify that notice of the proposed Activity and Use Limitation (AUL) was given to all record-interest holders, if any, in accordance with 310 CMR 40.1074(1)(e), via certified mail.
- ☐ a. Check here if there were no record interest holders.      b. Date of certified mailing: \_\_\_\_\_  
 mm/dd/yyyy
- ☐ c. Check here to certify that names and addresses of all record holders notified is attached.
- ☐ 2. Check here to certify that within 30 days of recording and/or registering the AUL, including amending, releasing or terminating the AUL, a copy of the AUL was/will be provided to the Chief Municipal Officer, the Board of Health, the Zoning Official, and the Building Code Enforcement Official in the community(ies) where the the property subject to such Activity and Use Limitation is located.
- ☐ 3. Check here to certify that within 30 days of recording and/or registering the AUL, including amending, releasing or terminating the AUL, a Legal Notice was/will be published in a newspaper with circulation in the community(ies) where the property subject to the AUL is located.
- ☐ 4. Check here to certify that within 7 days of publishing a Legal Notice in a newspaper with circulation in the community(ies) where the property subject to the AUL is located, a copy of the notice was/will be submitted to DEP.
- ☐ 5. Check here to certify that within 30 days of recording and/or registering the AUL, including amending, releasing or terminating the AUL, a certified copy of the AUL, including the LSP Opinion containing the material facts, data, and other information, will be submitted to DEP.
- ☐ 6. Check here if any non-updatable information provided on this form is incorrect, e.g. Site Address/Location Aid. Send corrections to the DEP Regional Office.
- ☐ 7. If an **Evaluation of Changes in Land Uses/Activities and/or Site Conditions after a Response Action Outcome Statement** is being submitted, check here to certify that the LSP Opinion containing the material facts, data, and other information is attached.

**G. CERTIFICATION OF OWNER OF PROPERTY, IF NOT PERSON SUBMITTING AUL TRANSMITTAL FORM:**

1. I, N/A, attest under the pains and penalties of perjury that I am the owner of said property(ies), subject to the AUL

2. \_\_\_\_\_ 3. Date: \_\_\_\_\_  
 Signature mm/dd/yyyy

4. Name of Organization: \_\_\_\_\_

5. Contact First Name: \_\_\_\_\_ 6. Last Name: \_\_\_\_\_

7. Street: \_\_\_\_\_ 8. Title: \_\_\_\_\_

9. City/Town: \_\_\_\_\_ 10. State: \_\_\_\_\_ 11. ZIP Code: \_\_\_\_\_

12. Telephone: \_\_\_\_\_ 13. Ext.: \_\_\_\_\_ 14. FAX: \_\_\_\_\_





**Massachusetts Department of Environmental Protection**  
**Bureau of Waste Site Cleanup**

BWSC113

**ACTIVITY & USE LIMITATION (AUL) TRANSMITTAL FORM**

Pursuant to 310 CMR 40.1056 & 40.1070 - 40.1084 (Subpart J)

Release Tracking Number

4 - 688

**H. CERTIFICATION OF PERSON MAKING SUBMITTAL:**

1. I, John E. Williams, Manager, attest under the pains and penalties of perjury (i) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this transmittal form, (ii) that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material information contained in this submittal is, to the best of my knowledge and belief, true, accurate and complete, and (iii) that I am fully authorized to make this attestation on behalf of the entity legally responsible for this submittal. I/the person or entity on whose behalf this submittal is made am/is aware that there are significant penalties, including, but not limited to, possible fines and imprisonment, for willfully submitting false, inaccurate, or incomplete information.

Pursuant to 310 CMR 40.1074 (1)(f), I also hereby certify under penalties of perjury, that either I (if person submitting the AUL Transmittal Form is the property owner), or

Clarks Cove Development Company, LLC

**2. Name of Property Owner**

am/is identified on the Notice of AUL as the owner of the property subject to the AUL, owned such property on the date that the AUL was recorded and/or registered

3. By:

Signature

4. Title: Manager

5. For:

Clarks Cove Development Company, LLC

6. Date:

7/7/05

(Name of person or entity recorded in Section D)

mm/dd/yyyy



7. Check here if the address of the person providing certification is different from address recorded in Section D.

8. Street: \_\_\_\_\_

9. City/Town: \_\_\_\_\_

10. State: \_\_\_\_\_

11. ZIP Code: \_\_\_\_\_

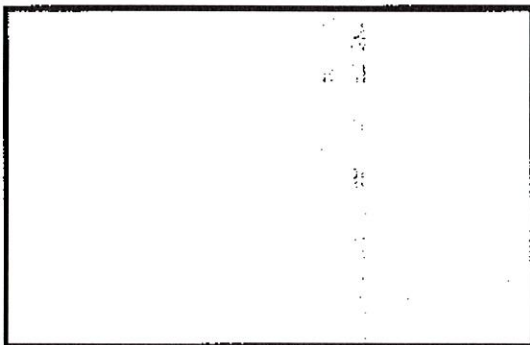
12. Telephone: \_\_\_\_\_

13. Ext.: \_\_\_\_\_

14. FAX: \_\_\_\_\_

**YOU ARE SUBJECT TO AN ANNUAL COMPLIANCE ASSURANCE FEE OF UP TO \$10,000 PER BILLABLE YEAR FOR THIS DISPOSAL SITE. YOU MUST LEGIBLY COMPLETE ALL RELEVANT SECTIONS OF THIS FORM OR DEP MAY RETURN THE DOCUMENT AS INCOMPLETE. IF YOU SUBMIT AN INCOMPLETE FORM, YOU MAY BE PENALIZED FOR MISSING A REQUIRED DEADLINE.**

Date Stamp (DEP USE ONLY:)





**Massachusetts Department of Environmental Protection**  
*Bureau of Waste Site Cleanup*

BWSC113A

**ACTIVITY & USE LIMITATION (AUL) OPINION FORM**

Pursuant to 310 CMR 40.1056 &amp; 40.1070 - 40.1084 (Subpart J)

Release Tracking Number

4 - 688

**A. DISPOSAL SITE LOCATION:**1. Disposal Site Name: Former Manufacturing Site2. Street Address: 545 Orchard Street3. City/Town: New Bedford4. ZIP Code: 02740-0000**B. THIS FORM IS BEING USED TO:** (check one)

- ☒ 1. Provide the LSP Opinion for a **Notice of Activity and Use Limitation**, pursuant to 310 CMR 40.1074.
- ☐ 2. Provide the LSP Opinion for an **Evaluation of Changes in Land Uses/Activities and/or Site Conditions after a Response Action Outcome Statement**, pursuant to 310 CMR 40.1080. Include BWSC113A as an attachment to BV/SC113. Section A and C do not need to be completed.
- ☐ 3. Provide the LSP Opinion for an **Amended Notice of Activity and Use Limitation**, pursuant to 310 CMR 40.1081(4).
- ☐ 4. Provide the LSP Opinion for a **Partial Termination of a Notice of Activity and Use Limitation**, pursuant to 310 CMR 40.1083(3).
- ☐ 5. Provide the LSP Opinion for a **Termination of a Notice of Activity and Use Limitation**, pursuant to 310 CMR 40.1083(1)(d).
- ☐ 6. Provide the LSP Opinion for a **Grant of Environmental Restriction**, pursuant to 310 CMR 40.1071.
- ☐ 7. Provide the LSP Opinion for an **Amendment of a Grant of Environmental Restriction**, pursuant to 310 CMR 40.1081(3).
- ☐ 8. Provide the LSP Opinion for a **Partial Release of a Grant of Environmental Restriction**, pursuant to 310 CMR 40.1083(2).
- ☐ 9. Provide the LSP Opinion for a **Release of a Grant of Environmental Restriction**, pursuant to 310 CMR 40.1083(1)(c).
- ☐ 10. Provide the LSP Opinion for a **Confirmatory Activity and Use Limitation**, pursuant to 310 CMR 40.1085(4).

(Unless otherwise noted above, all sections of this form (BWSC113A) must be completely filled out, printed, stamped, signed with black ink and attached as an exhibit to the AUL Document to be recorded and/or registered with the Registry of Deeds and/or Land Registration Office.)

**C. AUL INFORMATION:**

1. Is the address of the property subject to AUL different from the disposal site address listed above?

☒ a. No ☐ b. Yes If yes, then fill out address section below.

2. Street Address: \_\_\_\_\_

3. City/Town: \_\_\_\_\_

4. ZIP Code: \_\_\_\_\_





Massachusetts Department of Environmental Protection  
Bureau of Waste Site Cleanup

BWSC113A

## ACTIVITY &amp; USE LIMITATION (AUL) OPINION FORM

Release Tracking Number

Pursuant to 310 CMR 40.1056 &amp; 40.1070 - 40.1084 (Subpart J)

4 - 688

## D. LSP SIGNATURE AND STAMP:

I attest under the pains and penalties of perjury that I have personally examined and am familiar with this transmittal form, including any and all documents accompanying this submittal. In my professional opinion and judgment based upon application of (i) the standard of care in 309 CMR 4.02(1), (ii) the applicable provisions of 309 CMR 4.02(2) and (3), and 309 CMR 4.03(2), and (iii) the provisions of 309 CMR 4.03(3), to the best of my knowledge, information and belief.

> if Section B indicates that a **Notice of Activity and Use Limitation** is being registered and/or recorded, the Activity and Use Limitation that is the subject of this submittal (i) is being provided in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (ii) complies with 310 CMR 40.1074;

> if Section B indicates that an **Evaluation of Changes in Land Uses/Activities and/or Site Conditions after a Response Action Outcome Statement** is being submitted, this evaluation was developed in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (ii) complies with 310 CMR 40.1080;

> if Section B indicates that an **Amended Notice of Activity and Use Limitation or Amendment to a Grant of Environmental Restriction** is being registered and/or recorded, the Activity and Use Limitation that is the subject of this submittal (i) is being provided in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (ii) complies with 40.1081;

> if Section B indicates that a **Termination or a Partial Termination of a Notice of Activity and Use Limitation, or a Release or Partial Release of a Grant of Environmental Restriction** is being registered and/or recorded, the Activity and Use Limitation that is the subject of this submittal (i) is being provided in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (ii) complies with 310 CMR 40.1083;

> if Section B indicates that a **Grant of Environmental Restriction** is being registered and/or recorded, the Activity and Use Limitation that is the subject of this submittal (i) is being provided in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (ii) complies with 310 CMR 40.1071;

> if Section B indicates that a **Confirmatory Activity and Use Limitation** is being registered and/or recorded, the Activity and Use Limitation that is the subject of this submittal (i) is being provided in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (ii) complies with 310 CMR 40.1085(4);

I am aware that significant penalties may result, including, but not limited to, possible fines and imprisonment, if I submit information which I know to be false, inaccurate or materially incomplete.

1. LSP #: 4290

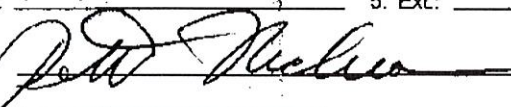
2. First Name: Robert

3. Last Name: Nicoloro

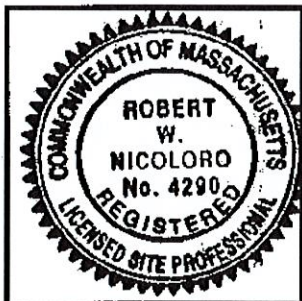
4. Telephone: (603) 431-4899

5. Ext: \_\_\_\_\_

6. FAX: (603) 431-5982

7. Signature: 8. Date: 08252005  
mm/dd/yyyy

9. LSP Stamp:



BK 7863 PG 316

**EXHIBIT A**



Legal Description of the Property

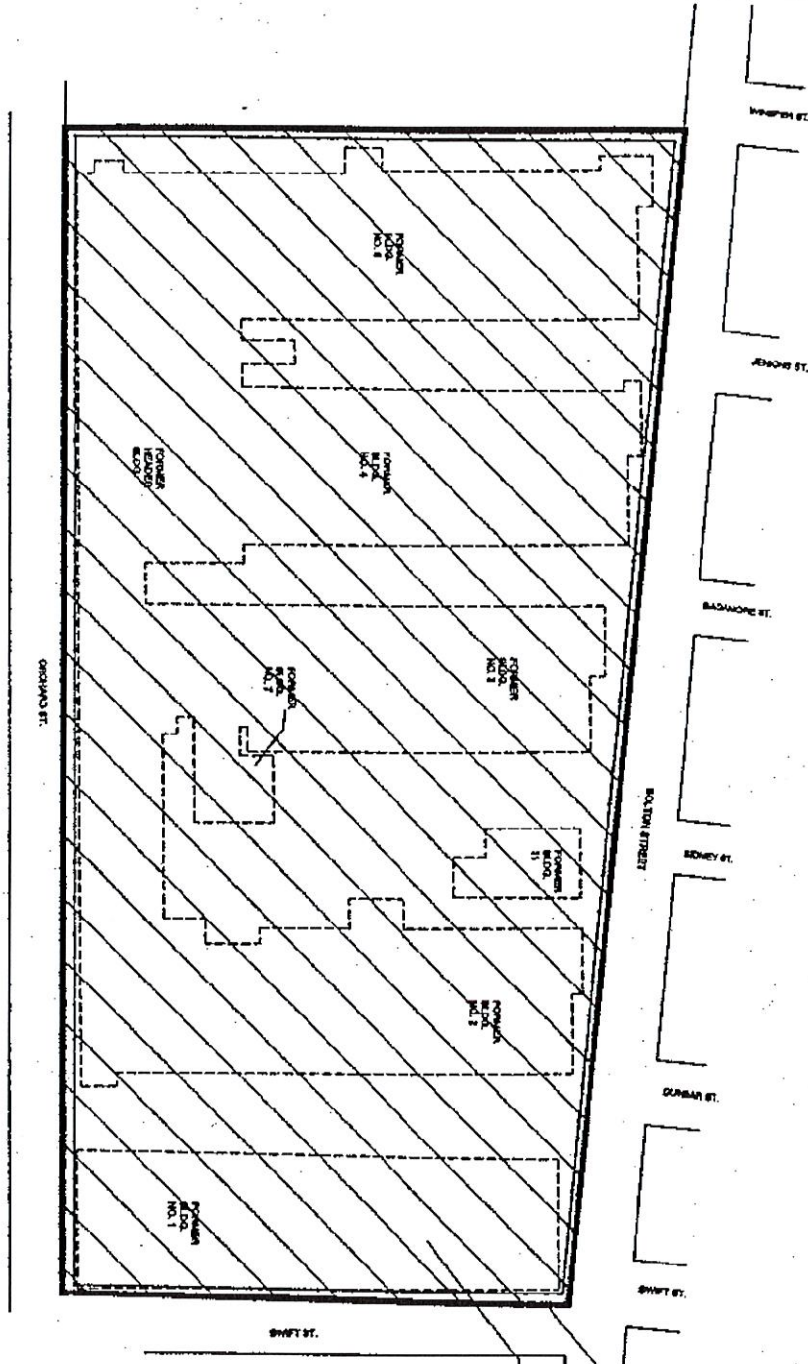
The following Metes & Bounds are to describe the Property located at 545 Orchard Street

Beginning at the northwesterly corner thereof at the intersection of Bolton Road and Swift Street; thence running easterly by said Swift Street four hundred forty-five (445) feet, more or less, to Orchard Street; thence running southerly by said Orchard Street nine hundred eighty and eighty one-hundredths (980.80) feet to property now or formerly of the Gosnold Mills; thence running westerly at an interior angle of eighty-nine degrees fifty-one minutes ( $89^{\circ} 51'$ ) by said Gosnold Mills land in part through the center of a brick wall five hundred forty-one and eighty-three one-hundredths (541.83) feet, more or less, to said Bolton Road; and thence running northerly by said Bolton Road about nine hundred eighty-five (985) feet to the point of beginning.

BK 7863 PG 318

**EXHIBIT B**





RESTRICTED AREA  
(HATCHED)

BOUNDARY OF  
DISPOSAL SITE

LEGEND:

CHAIN LINK FENCE

OUTLINE FOOTPRINT OF FORMER BUILDING  
(REMOVED)



BASED ON PLAN BY ROCK ASSOCIATES, INC.

SKETCH PLAN  
141 ORCHARD STREET  
NEW BEDFORD, MASSACHUSETTS

CH 11-12  
Working Drawing Number

**EXHIBIT C**



**ACTIVITY AND USE LIMITATION OPINION**

In accordance with the requirements of 310 CMR 40.0174, this Activity and Use Limitation Opinion has been prepared for a parcel of land owned by Clarks Cove Development, LLC, and located at 545 Orchard Street, New Bedford, Bristol County, Massachusetts. The Site is approximately 11 acres with no structures and is situated approximately 1,500 feet northwest of Clarks Cove within a high density, mixed urban residential/commercial/industrial zone. The property is graded as an open field lot and is completely fenced.

**Site History**

The Site is a former manufacturing location first developed as a textile mill in the early 1890's by American Cotton Fabric Corporation. The Goodyear Tire & Rubber Company (Goodyear) purchased the mill in the 1920s for the manufacture of rubber tires and specialty rubber products. The property is located in New Bedford, Massachusetts and is bordered to the north by Swift Street, to the east by Orchard Street, to the west by Bolton Street, and to the south by Howland Place Retail Mall complex. Goodyear conducted facility decommissioning activities following the closure of the plant and removal of operations and equipment. Decommissioning activities included the removal by demolition of all structures on the property and preparation of the property for sale and future redevelopment. During the course of decommissioning activities, it was discovered that lubricating oils from machinery had been released to soil and groundwater at the Site. Short Term measures were conducted at the site and Phase II Activities were initiated. The assessment activities completed at the Site indicated that lead, petroleum hydrocarbons, polycyclic aromatic hydrocarbons and volatile organic compound residuals were present in the soil and groundwater at the Site. Furthermore, based on the results of additional Phase II activities conducted in 1999, oil and/or hazardous materials were determined not to be migrating from the Site. Furthermore, it was concluded that no uncontrolled sources remain at the Site. Concentrations of OHM on-site were determined to be below S-2 soil standards and below GW-2 groundwater standards and in certain location on-site below GW-1 standards.

**Reason for Activity and Use Limitation**

An AUL is required to achieve and maintain a condition of No Significant Risk on the subject Property. In addition, the implementation of the AUL is being used to provide notice of the existence of contamination to future holders of an interest(s) in the subject Property, and to place additional conditions on Site uses.

**Permitted Activities and Uses Set Forth in the AUL Opinion**

- (i) Maintenance of the property as an unpaved, vacant lot. The permitted use of the Property as an unpaved vacant lot is contingent upon the Property being enclosed with a secure fence or wall which will prevent access to the Property by all persons with the exception of the Owner and his/her/its agents for inspection or maintenance activities at the Property.
- (ii) Construction activities and underground utility repair, including soil excavation and regarding activities, provided a Soils Management Plan and Health and Safety Plan is implemented prior to the commencement of such activities;
- (iii) Commercial and industrial activities and uses provided that the Property remains entirely covered with any of the following structures or materials or any combination of the following structures or materials; (1) a building foundation with a concrete floor, (2) an impervious surface such as concrete or asphalt pavement, (3) greater than three (3) feet of clean fill placed upon the ground surface at the existing ground elevation with landscaped vegetation; and
- (iv) Such other activities or uses which, in the Opinion of an LSP, 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.

**Activities and Uses Inconsistent with the AUL Opinion**

- (i) Residential, agricultural, outdoor and indoor recreational or institutional activities and uses (institutional activities and uses inconsistent with the AUL Opinion are specifically associated with daycare centers, schools, orphanages and educational facilities);
- (ii) Commercial/industrial use in the absence of barriers identified above; and
- (iii) Excavation of and exposure to Property soils with the exception of future construction/site development activities and short duration excavation for the purposes of underground utility repairs or installation.

LSP Signature:



LSP Seal

Date: 8-25-2005License Number: 4290





