



Bk: 37318 Pg: 055

Recorded: 12/10/2002

Document: 00000898 Page: 1 of 10

10

AMENDMENT AND RATIFICATION OF NOTICE OF ACTIVITY AND USE LIMITATION

(for amending and ratifying a Notice of Activity and Use Limitation recorded on or before  
October 29, 1999

WITNESSETH:

This Amendment and Ratification of Notice of Activity and Use Limitation ("Amendment and Ratification") is made as of this 9<sup>TH</sup> day of DECEMBER, 2002, by the Town of Sudbury, 322 Concord Road, Sudbury, Massachusetts, together with his/her/its/their successors and assigns (collectively "Owner").

WITNESSETH:

WHEREAS, Owner is the owner in fee simple of a certain parcel of land located in Sudbury, Middlesex County, Massachusetts, (Property"), pursuant to a deed recorded with the Middlesex County Registry of Deeds in Book 5570, Page 017;

WHEREAS, the Property comprises a disposal site, or part of a disposal site, as the result of a release of oil and/or hazardous material ("the Disposal Site"). 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 ("the MCP"). Said response actions are based upon (a) the restriction of human access to and contact with oil and/or hazardous material in soil and/or groundwater, and/or (b) the restriction of certain activities occurring in, on, through, over or under the Property or a portion thereof. The Department of Environmental Protection has identified the Disposal Site as Release Tracking Number 3-14035 and Release Tracking Number 3-1149;

WHEREAS, on May 14, 1997, the Town of Sudbury filed a Notice of Activity and Use Limitation with the Middlesex County Registry of Deeds in Book 27291, Page 332 imposing an activity and use limitation on a portion of the Property ("the Original AUL"). The portion of the Property affected by the Original AUL and this Amendment and Ratification is hereinafter referred to as "the AUL Area." The AUL describes activities and uses that are permitted within the AUL Area, and defines obligations and conditions that must be maintained within the AUL Area. The AUL also describes uses and activities which, if carried out within the AUL Area, could result in Significant Risk to health, safety, public welfare or the environment due to potential exposure to residual contamination.

WHEREAS, the following amendments to the Original AUL are necessary to ensure that a condition of No Significant Risk is maintained at the Disposal Site.

Street Address of Property: 322 Concord Road, Sudbury, MA

MARGINAL REFERENCE REQUESTED  
BOOK 5570 PAGE 17

MARGINAL REFERENCE REQUESTED  
BOOK 27291 PAGE 332

NOW, THEREFORE, Owner hereby amends the Original AUL as follows:

AUL Opinion

The basis of the Original AUL, as amended herein, is an Activity and Use Limitation Opinion (“AUL Opinion”), prepared by a Licensed Site Professional and attached hereto as Exhibit B. Said AUL Opinion replaces and supercedes any AUL Opinion contained or referenced in the Original AUL.

Site Activities and Uses

The following descriptions of Permitted Activities and Uses, Activities and Uses Inconsistent with the AUL Opinion, and Obligations and Conditions replace and supercede those contained in the Original AUL.

1. Permitted Activities and Uses. A condition of No Significant Risk to health, safety, public welfare or the environment exists for any foreseeable period of time so long as any of the following activities and uses occur within the AUL Area:

- i. Activities and uses including, but not limited to, retail, commercial, municipal office use, or industrial use or development and activities which do not disturb or relocate the contaminated subsurface soil located within the Portion of the Property.
- ii. Activities and uses not expressly prohibited by this Notice of AUL.
- iii. Such other activities and uses which, in the Opinion of a Licensed Site Professional (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.

2. Activities and Uses Inconsistent with the AUL Opinion. The following activities and uses, if implemented within the AUL Area, may result in a Significant Risk to health, safety, public welfare or the environment:

- i. Activities and uses which cause direct contact with, disturbance of, or relocation of the contaminated soil currently located within the Portion of the Property, without the prior development of a Health and Safety Plan pursuant to 310 CMR 40.0018 and a Soil Management Plan pursuant to 310 CMR 40.0030 by a LSP.

The Health and Safety Plan must specifically detail the required level of personal protective equipment and environmental monitoring necessary to protect workers and receptors in or on the Portion of the Property. The Soil Management Plan must detail soil excavation, handling, storage, transport, and disposal procedures, and should include a description of the engineering controls which will be implemented to control exposures to soils and/or particulates in or on the Portion of the Property. Both the Health and Safety Plan and the Soil Management Plan must be in place prior to the initiation of any excavation activities in or on the Portion of the Property. Workers must be informed of the requirements of the plans, and copies of the plans must be available at the Property throughout the duration of the project.


- ii. Use of the Portion of the Property for agricultural purposes, including the growing of fruits and vegetables for human consumption.
- iii. Use of the Portion of the Property as a residence, school, daycare, nursery, playground, recreational area.

3. Obligations and Conditions. The following obligations and/or conditions must be maintained within the AUL Area in order to maintain a condition of No Significant Risk:

- i. Areas of the Portion of the Property that are currently paved, as depicted on the Sketch Plan (Exhibit C) must remain paved and maintained under an asphalt or concrete barrier to prevent the disturbance or accessibility of contaminated soil within the Portion of the Property.
- ii. Should the performance of any subsurface excavation activities be deemed necessary in or on the Portion of the Property, a written Health & Safety Plan and Soil Management Plan must first be prepared by a LSP. All workers must be informed of the presence of contaminated soil on the Portion of the Property and of the requirements of the Health & Safety and Soil Management Plans, as described in Prohibited Activity #2, above. The pavement/soil barrier must be fully and immediately repaired/replaced following the completion of excavation activities.

Except as expressly amended herein, the Original AUL is hereby ratified and confirmed. Owner authorizes and consents to the recordation and/or registration of this Amendment, which shall be deemed to be effective as of the date the Original AUL was recorded and/or registered.

WITNESS the execution hereof under seal this 9<sup>TH</sup> day of DECEMBER, 2002

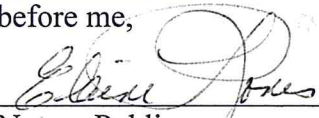
  
 \_\_\_\_\_  
 Maureen G. Valente  
 Sudbury Town Manager  
 For the Town of Sudbury

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEY, ss

DECEMBER, 2002

Then personally appeared the above-named MAUREEN G. VALENTE and acknowledged the foregoing instrument to be her free act and deed before me,

  
 \_\_\_\_\_  
 Notary Public:  
 My Commission Expires: 6/4/04  
 Elaine Jones



The undersigned Waste Site Cleanup Professional certifies that, in his opinion, the terms of the Original AUL, as amended herein, are consistent with the AUL Opinion attached hereto as Exhibit B, and are appropriate to maintain a condition of No Significant Risk at the Disposal Site.



Craig E. Blake  
Craig E. Blake

COMMONWEALTH OF MASSACHUSETTS

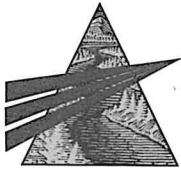
Suffolk County, ss

December 6, 2002

Then personally appeared the above-named Craig E. Blake and acknowledged the foregoing instrument to be his free act and deed before me,

Joyce M. Mello  
Notary Public:  
My Commission Expires: 5/26/06  
Joyce m. mello

Upon recording, return to:  
Town Manager, 322 Concord Road, Sudbury, MA 01776



**EXHIBIT B**

**ACTIVITY AND USE LIMITATION OPINION**

December 6, 2002

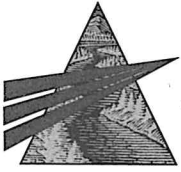
Ms. Maureen G. Valente  
Sudbury Town Manager  
322 Concord Road  
Sudbury, MA 01776

RE: Activity and Use Limitation Opinion  
322 Concord Road, Sudbury, MA  
DEP RTNs 3-14035 and 3-1149

Dear Ms. Valente:

This Activity and Use Limitation (AUL) Opinion is written to support the Notice of Activity and Use Limitation (310 CMR 40.1074) for a portion of the above referenced property (herein referred to as a "Portion of the Property"). As shown on the Sketch Plan attached as Exhibit C, the Notice of AUL applies to the Portion of the Property which is also a portion of the Disposal Site (herein referred to as the "Site"). The Notice of AUL accompanies a Class A-3 Response Action Outcome (RAO) Statement (310 CMR 40.1000) for the Site, which is identified by the Department of Environmental Protection (DEP) Release Tracking Numbers (RTNs) 3-14035 and 3-1149. This AUL Opinion addresses the following:

- Why the Notice of AUL is appropriate to achieve and/or maintain a level of no significant risk (NSR);
- Activities and Uses to be Permitted on the Portion of the Property;
- Activities and Uses to be Prohibited and/or limited on the Portion of the Property; and
- Obligations or Conditions necessary to maintain a level of NSR.



### **Need for Notice of AUL**

The Site subject to the RAO is defined as DEP RTNs 3-14035 and 3-1149. The Site consists of the portion of property owned by the Town of Sudbury known as 322 Concord Road. As shown in Exhibit B of the Notice of AUL, the AUL applies to the entire property which covers an area of approximately 0.75 acres, and includes the location of a former fuel oil underground storage tank. Residual soil contamination remains in this area in excess of S-1 Method 1 Standards.

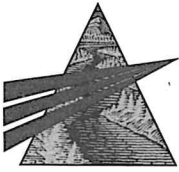
A Method 3 Risk Assessment was conducted to support the RAO and document a condition of NSR for Site-specific current and likely foreseeable exposures to subsurface contamination at the Site. Contaminated soils are inaccessible below pavement at a depth of up to approximately 10-12 feet below ground surface. Soils in this area are classified as S-3. There is no current exposure to onsite workers or trespassers. A level of NSR was demonstrated for a potential future construction/utility worker scenario.

The AUL is necessary to restrict the potential for contact with subsurface soils on the Portion of the Property which has concentrations of total petroleum hydrocarbons (TPH), 2-methylnaphthalene, and 1-methylnaphthalene above the current S-1 Method 1 Standard and which has been detected at a depth of 6 to 16 feet below ground surface.

### **Activities and Uses Permitted on the Portion of the Property**

The site activities and uses to be permitted on the Portion of the Property include the following:

- i. Activities and uses including, but not limited to, retail, commercial, municipal office use, or industrial use or development and activities which do not disturb or relocate the contaminated subsurface soil located within the Portion of the Property.
- ii. Activities and uses not expressly prohibited by this Notice of AUL.
- iii. Such other activities and uses which, in the Opinion of a Licensed Site Professional (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 Prohibited on the Portion of the Property**

The site activities and uses that are prohibited or limited on the Portion of the Property include the following:

- i. Activities and uses which cause direct contact with, disturbance of, or relocation of the contaminated soil currently located within the Portion of the Property, without the prior development of a Health and Safety Plan pursuant to 310 CMR 40.0018 and a Soil Management Plan pursuant to 310 CMR 40.0030 by a LSP.

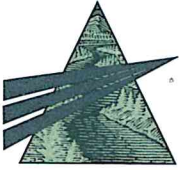
The Health and Safety Plan must specifically detail the required level of personal protective equipment and environmental monitoring necessary to protect workers and receptors in or on the Portion of the Property. The Soil Management Plan must detail soil excavation, handling, storage, transport, and disposal procedures, and should include a description of the engineering controls which will be implemented to control exposures to soils and/or particulates in or on the Portion of the Property. Both the Health and Safety Plan and the Soil Management Plan must be in place prior to the initiation of any excavation activities in or on the Portion of the Property. Workers must be informed of the requirements of the plans, and copies of the plans must be available at the Property throughout the duration of the project.

- ii. Use of the Portion of the Property for agricultural purposes, including the growing of fruits and vegetables for human consumption.
- iii. Use of the Portion of the Property as a residence, school, daycare, nursery, playground, recreational area.

### **Obligations and Conditions**

Obligations and conditions necessary to maintain a level of NSR at the Portion of the Property include the following:

- i. Areas of the Portion of the Property that are currently paved must remain paved and maintained under an asphalt or concrete barrier to prevent the disturbance or accessibility of contaminated soil within the Portion of the Property.
- ii. Should the performance of any subsurface excavation activities be deemed necessary in or on the Portion of the Property, a written Health & Safety Plan and Soil Management Plan must first be prepared by a LSP. All workers must be informed of the presence of contaminated soil on the Portion of the Property and of the requirements of the Health & Safety and Soil Management Plans, as described in Prohibited Activity #2, above. The pavement/soil barrier must be fully and immediately repaired/replaced following the completion of excavation activities.



# WOODARD & CURRAN

Engineering • Science • Operations

This AUL Opinion is developed consistent with 310 CMR 40.1074 for the Portion of the Property, and will be submitted to the Massachusetts DEP with the RAO for the Site (RTNs 3-14035 and 3-1149) pursuant to 310 CMR 40.1056(2)(g).

Sincerely;

WOODARD & CURRAN, INC.

Craig E. Blake, P.E., LSP 3760  
Senior Project Manager



cc: Paul Kenny, Sudbury Legal Counsel  
DEP, Bureau of Waste Site Cleanup





ACTIVITY & USE LIMITATION (AUL) OPINION FORM

3 - 14035

COMPLETE THIS FORM AND ATTACH AS AN EXHIBIT TO THE AUL DOCUMENT TO BE RECORDED AND/OR REGISTERED WITH THE REGISTRY OF DEEDS AND/OR LAND REGISTRATION OFFICE.

A. LOCATION OF DISPOSAL SITE AND PROPERTY SUBJECT TO AUL:

Disposal Site Name: Sudbury - 322 Concord Road  
Street: 322 Concord Road Location Aid: Town Hall  
City/Town: Sudbury ZIP Code: 01776-0000  
Address of property subject to AUL, if different than above. Street: \_\_\_\_\_  
City/Town: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

B. THIS FORM IS BEING USED TO:

Provide the LSP Opinion for an Amendment and Ratification of a Notice of Activity and Use Limitation, pursuant to instructions provided by DEP in a Notice of Audit Findings issued to: Town of Sudbury  
Name of Organization or person: \_\_\_\_\_  
Date issued: 06/19/2002

C. LSP OPINION:

I attest under the pains and penalties of perjury that I have personally examined and am familiar with this submittal, 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 (iii) the provisions of 309 CMR 4.03(5), to the best of my knowledge, information and belief.

The Amendment and Ratification of the Activity and Use Limitation that is the subject of this submittal is being provided in accordance with instructions provided by the Department of Environmental Protection in a Notice of Audit Findings issued to:

Name of Organization or person: Town of Sudbury  
Date issued: 06/19/2002

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.

Check here if the Response Action(s) on which this opinion is based, if any, are (were) subject to any order(s), permit(s) and/or approval(s) issued by DEP or EPA. If the box is checked, you MUST attach a statement identifying the applicable provisions thereof.

LSP Name: Craig Blake LSP #: 3760 Stamp: \_\_\_\_\_  
Telephone: (781) 251-0200 Ext.: 2426  
FAX: (781) 251-0847  
LSP Signature: *C. Blake*  
Date: 12/06/02

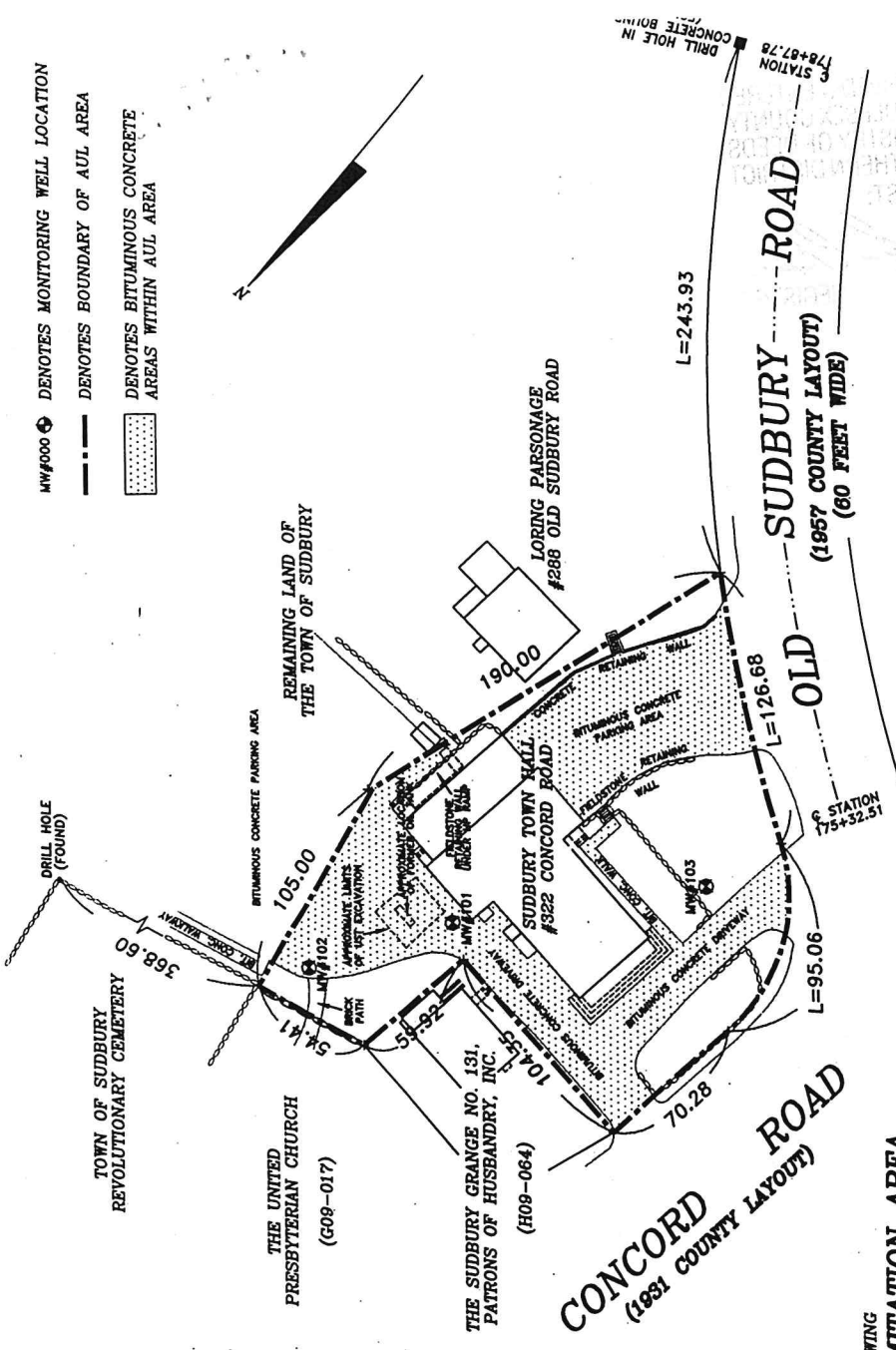


YOU MUST COMPLETE ALL RELEVANT SECTIONS OF THIS FORM OR DEP MAY FIND THE DOCUMENT TO BE INCOMPLETE.

EXHIBIT C

DEED REFERENCE:  
BK. 5570:PG. 017  
PLAN REFERENCE:  
NO. 552 OF 1931  
PROPERTY MAP H09; PARCEL 062

- MW#000 ⊕ DENOTES MONITORING WELL LOCATION
- DENOTES BOUNDARY OF AUL AREA
- [Stippled Area] DENOTES BITUMINOUS CONCRETE AREAS WITHIN AUL AREA



SKETCH PLAN SHOWING  
**ACTIVITY AND USE LIMITATION AREA**  
OVER A PORTION OF PROPERTY OWNED BY THE  
**TOWN OF SUDBURY, MASSACHUSETTS**  
322 CONCORD ROAD SUDBURY, MA 01776

TOWN OF SUDBURY ENGINEERING DEPARTMENT  
DATE: DECEMBER 2, 2002

