

# Request for Proposals (RFP)

## Market Landing Park Expansion



**RFP Response Deadline:** Wednesday, December 23, 2020 (10:00 am)  
**Site Visit (optional, but recommended):** Thursday, December 3, 2020 (2:00 pm)

### Project Description, Background, Conditions & Instructions to Proposers

#### Summary Scope of Work, Required Expertise & Project Deliverables

The City of Newburyport seeks a highly qualified consultant team to provide landscape architecture, architecture (limited), civil engineering, environmental and permitting services required to undertake a substantial waterfront park expansion project in downtown Newburyport. All consultants responding to this RFP shall have the aforementioned expertise on the proposed project team. This solicitation from prospective firms calls for Price and Non-Price proposals for the aforementioned services up to and including Final Schematic Design and Detailed Construction Cost Estimates (Tasks 1-6 of the Scope of Services herein), however the City reserves the right to continue with the selected consulting team into Construction Documents, Bid Phase Services, and Construction Administration (Tasks 7-9) pending successful completion of Tasks 1-6.

Key deliverables from the Scope of Services include:

1. Detailed site survey and base plan;
2. Schematic site plans;
3. Detailed construction drawings and specifications suitable for bidding purposes;
4. Illustrative perspective renderings;
5. Both rough (early) and detailed (refined) construction cost estimates, as design progresses;
6. Construction Management Plan addressing parking relocation, site access, staging areas, and traffic control on and around the site during construction.
7. Licensed Site Professional (LSP) guidance on soil remediation and construction protocols within existing Activity and Use Limitation (AUL) areas;
8. Permit approvals required for the project, including but not limited to DEP Chapter 91 Waterways Licensing, DEP Massachusetts Contingency Plan (MCP) reporting requirements, and local approvals from the Conservation Commission (work in riverfront buffer area), Planning Board (Site Plan Approval) and Department of Public Services (Stormwater Management).

A detailed scope of services with required tasks and deliverables is provided in later portions of this RFP.

## Project Site, Description & Background

The project site consists of approximately 4.6 acres (202,000 sq.ft.) of land in downtown Newburyport adjacent to the existing Market Landing Park and Mayor Peter J. Matthews Memorial Boardwalk along the Merrimac River. (See East and West lots depicted in Exhibit A.) The subject property was transferred to the City of Newburyport in June 2020 by the state legislature in conjunction with dissolution of the former Newburyport Redevelopment Authority (NRA), which had controlled the subject property for several decades since it was taken by eminent domain during urban renewal efforts in the 1960's. The site had been slated for redevelopment under an Urban Renewal Plan, which expired in 2005. Redevelopment proposals in the last 15 years have also been rejected. For several decades the primary use of this land was two large parking lots serving the downtown area and providing revenues for the NRA. The City now manages the existing parking lots and revenues generated therefrom. The primary purpose of this project is to convert a substantial portion of the existing waterfront parking lots into additional park space flanking both sides of Market Landing Park, and to strengthen the interactivity and maritime opportunities within the adjacent tidal areas of the Merrimack River jointly owned by the City and Waterfront Trust.

## Recent "Interim" Park Improvements on the Project Site

In 2019 the City initiated the process of interim park expansion by removing some parking space from both the East and West lots while adding loam and seed to create expanded lawn space. (See Exhibit E for an overview of these recent changes to the project site.) The interim lawn spaces were aligned so as to coincide roughly with the desired location of permanent park space shown on a so-called "framework" plan. The framework plan, which was approved by resolution of the City Council in May 2017, incorporates a curvilinear bike path "spine" separating new park "wings" from parking areas closer to Merrimac Street and Water Street, which will be retained. (See Exhibit D for 3 variations of the "framework" plan to be reconciled by the consultant in final schematic design.)

## Order of Magnitude for Primary Park Improvements

Following is a conceptual estimate of the size and scope of notable site improvements to be included in the project, as depicted in Exhibit D:

a. <b>New Park Space (West Lot "wing")</b>	20,000 +/- sq.ft.
b. <b>New Park Space (East Lot "wing")</b>	56,000 +/- sq.ft.
c. <b>Bike Path Connection ("spine")</b>	1,000 +/- linear feet <i>[x 10' paved width]</i>
d. <b>Remaining Parking Lot/Area (West Lot)</b>	30 +/- parking spaces
e. <b>Remaining Parking Lot/Area (East Lot)</b>	90 +/- parking spaces
f. <b>Merrimac Street Pocket Park</b>	7,000 +/- sq.ft.
g. <b>Restrooms/Visitor Center (site area)</b>	5,000 +/- sq.ft. <i>[accessory structure/park amenity]</i>
h. <b>Connecting Walkways &amp; Site Amenities</b>	To Be Determined

## Existing & Required Survey Plans

A property line survey has been completed for the project area to depict the metes and bounds of lands now owned by the City (formerly NRA) and Newburyport Waterfront Trust (WFT). This survey, provided to the consultant will need to be updated with a detailed ground survey to incorporate topography and

all physical features with accuracy, and to incorporate the location of subsurface utilities or other features identified by the City's Department of Public Services (DPS) Engineering Division, City Electrician, National Grid and others.

### **Integration with Existing & Adjacent Site Improvements & Grading**

Plans for park expansion on City-owned land (East and West Lots) shall be designed so as to integrate with, and provide a smooth transition to, improvements on adjacent land owned by the WFT, City and others (*e.g. accessible walkways, grading, materials palette, etc.*) It is also anticipated that expanded park "wings" will benefit from the addition of more fill, thereby raising grades to meet the height of an earthen berm separating the central boardwalk from existing parking lots (See Exhibit N) in order to provide better views to the Merrimack River, match the grade of the existing Market Landing Park, and improve the site's resilience in the face of sea-level rise and storm surge. Pedestrian access to the boardwalk from new park areas must align with existing openings in the raised berm. (See Exhibits N & O.) Many of the pathways through Market Landing Park and the City-owned land are "ways to the water" set by a court-approved stipulation, entered into during 1980. (See Exhibit P.)

### **Known Environmental Conditions**

Extensive environmental testing has been done on the subject property. Prior reports obtained by the NRA, City and/or WFT will be provided to the consultant for use in this project. A Phase I Site Assessment was obtained by the WFT in anticipation of proposed park expansion and transfer of land. (See Exhibit J.) A sketch plan depicting the location of previous borings and test pits with available data is also included in Exhibit J. Additional on-site testing may be necessary, pending the development of a conceptual plan for proposed park improvements with topographic information and the anticipated depth of subsurface utilities. In accordance with two existing Activity and Use Limitations (AULs) all site excavation and soil remediation for this project must be managed by a Licensed Site Professional (LSP) with applicable protocols, documentation and reporting. Both AULs permit the proposed park use and related parking lot adjustments provided applicable protocols are followed. (See Exhibits K and L.) Because subsurface excavation is likely to encounter contaminated soils it is essential that the consultant design park improvements, parking areas, irrigation systems, drainage and infrastructure so as to minimize any soil excavation required to construct the project. As a general rule, the City seeks to add fill to the site, and avoid to the extent possible the removal of existing soil, recognizing that proper encapsulation may, in some cases, be required for such soil to remain. For this reason, additional fill should generally extend as far as possible up gradient towards Merrimac Street and Water Street. However, the interface with existing grading will need to be carefully considered with respect to drainage, accessibility, vehicular access, etc.

### **Design Considerations for Stormwater Management, Sea Level Rise (SLR) & Parking Areas**

The consultant shall provide recommendations for both traditional and Low Impact Development (LID) stormwater management features associated with remaining parking areas, including but not limited to rain gardens, pervious pavers and/or pavement. Due to subsurface soil contamination the consultant shall avoid use of underground infiltration systems or other design elements which would require extensive excavation and soil remediation. Integration of proposed stormwater management systems with similar or related features on adjacent property must be coordinated with the City's Department of

Public Services (DPS) Engineering Division and/or others as appropriate. Within the remaining parking areas to be retained, the consultant shall provide layout plans to provide the maximum number of parking spaces feasible while taking into account circulation patterns, adequate drive isle access, pedestrian connectivity, adjacent landscaping and screening, among other typical considerations.

While the adjacent Merrimack River is tidally influenced and stormwater attenuation is therefore not required by stormwater policy, any feasible water quality treatment will be an essential improvement over existing conditions (i.e. sheet flow). The Consultant shall work with the City's Engineering Division (Department of Public Services) to identify any subsurface stormwater management features on the Project Site, or connected and in the nearby vicinity, which should be further examined and/or upgraded prior to installation of final park and/or parking improvements (e.g. granite or wood box culverts, undersized or collapsed pipes/culverts, etc.). It will also be necessary to account for existing and projected base flood elevations, anticipated sea-level rise (SLR) and storm surge from the adjacent Merrimack River, including salt water overflows into the park (impacting proposed plantings and lawn space) and potentially resulting in storm water inflows across Market Square, Ferry Wharf Way, and other locations on the Project Site or adjacent thereto. Accordingly, the expanded park should incorporate drainage systems with backflow preventers, stormwater outlets through the existing bulkhead wall (where feasible), use of salt-tolerant plantings, etc. The expanded park should incorporate resilient design features and reduced long-term operation and maintenance (O&M) obligations so as not to create an undue financial burden on the city's taxpayers. See Exhibit F for maps depicting existing base flood elevations and projected sea level rise on and around the project site in downtown Newburyport.

For additional background a copy of the City's recently developed Climate Resiliency Plan can be viewed and downloaded here:

[https://www.cityofnewburyport.com/sites/g/files/vyhlf3521/f/uploads/newburyport\\_climate\\_resiliency\\_plan\\_10-08-2020\\_final.pdf](https://www.cityofnewburyport.com/sites/g/files/vyhlf3521/f/uploads/newburyport_climate_resiliency_plan_10-08-2020_final.pdf)

### **Additional Design Requirements & Considerations**

While the general location of primary site improvements (e.g. park, parking and bike path alignment) has already been determined through broad local input over the course of many years, culminating in the City Council's adoption of the framework plan in May 2017, community input will be needed in the course of conceptual/schematic design, particularly on the nature of improvements proposed in new park areas (the "wings" to Market Landing Park"). In addition, as noted above, a settlement agreement memorialized years ago (See Exhibit P) requires the establishment of a revived public way providing pedestrian access to the waterfront and central boardwalk. This revived "Ferry Wharf Way" (See Exhibit A) is to be constructed in accordance with said settlement agreement between Market Square and the central boardwalk. A second revived Central Wharf Way (non-vehicular) is to be constructed in the West Lot opposite Unicorn Street in accordance with said settlement agreement. Additional design requirements or expectations for this park expansion project can be found in both the Special Act and City Council Resolution contained in Exhibit Q (*see highlighted portions*) both of which are incorporated herein by reference. In general, views to the Merrimack River from Merrimac Street and Water Street are to be maintained down public ways and across the Project Site.

There are two small temporary structures in the West lot adjacent to Market Landing Park providing seasonal bathroom facilities and visitor information. (See Exhibit M.) Design for this area of the project should include a small permanent structure facing Merrimac Street to replace these aging facilities, compatible with architecture in the adjacent Market Square area of downtown Newburyport (e.g. use of brick, granite, metal and glass). No other buildings are proposed or anticipated in relation to this project. Because the design costs for this facility are expected to be below \$30K and the construction costs are estimated to be below \$300K this project is exempt from the so-called designer selection law applicable to larger building projects.

For a schematic overlay of the project site noting major site and project features proposed, and their relative size, see Exhibit A. It should be noted that proposed park improvements should be designed to maintain both physical access and off-season storage of the harbormaster's docks and crane access to the water's edge. (See label in Exhibit A). Representative photos of the existing site, including parking areas, Market Landing Park, the central boardwalk, perpendicular public walkways, adjacent buildings, streetscapes and sidewalks is included in Exhibits N and O. A few interpretive panels will be installed as an amenity within the proposed park expansion, on topics such as the park's history, the history of downtown Newburyport, the City's maritime history, Urban Renewal or other subjects as determined by the City. (See Exhibit H for Newburyport standard.)

### **Project Management & Stakeholder Input**

The consultant's scope of services will be undertaken in periodic consultation with an established "Ad Hoc Committee on Central Waterfront" and under the direct supervision of the City's Director of Planning & Development who will serve as Project Manager for the City.

### **Timeframe for Completion**

The City would like to complete this design phase for the project (Tasks 1-6 as described herein) within a six (6) month period, roughly between February 1, 2021 and August 1, 2021. Written proposals shall include a proposed project timeline following the itemized tasks listed herein and adhering to this timeframe to the extent feasible. The consultant's proposed timeline will be considered as part of the non-price proposals reviewed and evaluated under this RFP.

### **Public Meetings & Public Participation**

The Consultant will meet regularly with the Director of Planning & Development throughout the project, typically during the day. At this time, due to the ongoing coronavirus pandemic we anticipate use of the Zoom meeting platform for various meetings, however some meetings and site visits will be necessary on-site or at City facilities to facilitate coordination between the consultant and City officials.

Periodic meetings with the Ad Hoc Committee on Central Waterfront will also be required, typically during evenings. Two or more broad public meetings will be held during the course of this project to inform the larger community about the progress of work, schematic plans, cost estimates, the nature of proposed park and site improvements, and overall timeline for bidding and construction.

## **Scope of Work by Task**

The consultant will supply all labor, materials, out-of-pocket expenses and travel necessary to complete the following Scope of Services, inclusive. Time is of the essence. The consultant must be available to start immediately and diligently and systematically advance the project as described herein.

*For all tasks and deliverables, the Consultant shall deliver both hard-copy and electronic versions of all files (plans, reports, etc.) in agreed-upon standard file formats accessible by the City (Word, Excel, JPEG, PDF, PPT, AutoCAD, ArcGIS, etc.). Specifically, all inventories and tables shall be provided in Word or Microsoft Excel format, all text documents shall be provided in Microsoft Word format, all presentations shall be provided in Microsoft PowerPoint format, and all photographs or scanned media shall be provided in JPEG image format. All survey information, site plans, architectural drawings, schematic or otherwise shall be delivered via email or download links, viewable and editable in AutoCAD 2015 and Adobe PDF. Original/native file formats shall be provided along with the PDF versions for all deliverables. An alternative program or electronic plan format may be used subject to approval by the City's Director of Planning & Development (Project Manager). Any and all such plans, reports and deliverables shall become the property of the City and shall be available for use by the City as necessary in the future without limitation.*

Work for this project is divided into the following key tasks:

### **Task 1: Initial Site Assessment/Review of Reports**

The Consultant shall obtain, and review, copies of any existing plans and reports related to the project site provided by the Director of Planning & Development and other City officials. All plans previously scanned or digitized by the City will be provided to the Consultant accordingly, as will the property survey and drawings detailing existing infrastructure on or adjacent to the project site.

The Consultant shall meet with the Director of Planning & Development and other City officials to conduct a thorough inspection and assessment of existing conditions at the project site and all abutting properties where integration of park design is required. The Consultant shall provide the Director of Planning & Development with a memorandum and schematic site plan summarizing the discussions, comments, concerns and/or findings regarding existing conditions, constraints and/or areas of concern obtained during this process.

*Deliverables:* The Consultant shall provide one (1) digital copy of the summary memorandum developed during this task, including any associated plans and reports described herein.

*Meetings:* The Consultant shall schedule two (2) days of site visits to the project site with the Director of Planning & Development and other City officials at mutually agreeable times. These meetings will be during weekday work hours. It shall be the responsibility of the Consultant to ensure attendance by any and all subconsultants required for the assessment and/or involved in the design of proposed improvements. Meetings for purposes other than

*on-site inspection may be in person or remote via Zoom (at the discretion of the Director of Planning & Development).*

## **Task 2: Site Survey & Base Plan Preparation**

Using existing site survey plans available from the City, the Consultant shall undertake a detailed site survey of the project site to obtain and confirm topographic information, precise location of all physical features, and the location of known subsurface utilities and conditions that may impact the project. Grading plans shall take into account topography on adjacent property within 50' of the Project Site boundaries (See Exhibit A) and utility plans shall encompass any and all upstream stormwater management features directly or indirectly connected to the Project Site (e.g. manholes, rim/invert elevations, pipe diameters, etc.) The City will make available to the Consultant any existing reports, plans, data and/or details related to this project for incorporation into base drawings. While existing plans will be made available to the consultant, it shall be the sole responsibility of the Consultant to verify the accuracy and comprehensiveness of the resulting survey/base plan set used in this project. Such plans shall be suitable for use as the scaled base drawing for both schematic design development and final Bid Documents required for this project in remaining Tasks.

Detailed photographs shall be taken of existing conditions throughout the project site and of adjacent properties where integration of park design is required.

*Deliverables: The Consultant shall provide one (1) digital copy of the site survey and base plan set developed during this task, including any associated plans and reports.*

## **Task 3: Meetings with the Director of Planning & Ad Hoc Committee**

The Consultant shall meet with the Director of Planning & Development and Ad Hoc Committee on Central Waterfront to summarize and review information obtained in the previous Tasks and to obtain stakeholder input on potential site improvements where the "Framework Plan" requires more detail (e.g. layout and elements to be included in the new park "wings"). The Consultant shall provide the Director of Planning and Development with a memorandum summarizing the discussions, comments, concerns and/or findings obtained during these meetings.

*Deliverables: The Consultant shall provide one (1) digital copy of the summary memorandum developed during this task, including any associated plans and reports.*

*Meetings: The Consultant shall also attend one (1) meeting with the Director of Planning & Development and other City officials. This meeting will be during weekday work hours. The Consultant shall also attend one (1) meeting with the Director of Planning & Development and Ad Hoc Committee on Central Waterfront. This meeting will be during weekday evening hours. Meetings may be in person or remote via Zoom (at the discretion of the Director of Planning & Development).*

*Throughout the remainder of the project, the Consultant shall meet with the Director of Planning & Development, and other officials as deemed necessary by the City, approximately once every two weeks, during weekday work hours to ensure that the project remains on schedule and to review any and all relevant project details. Meetings may be in person or remote via Zoom (at the discretion of the Director of Planning & Development).*

#### **Task 4: Schematic Design Development & Construction Cost Estimates**

Based on all information gathered, generated and discussed under the above Tasks, and consistent with the scope of work, background and considerations described in this RFP, the Consultant shall provide no less than three (3) conceptual/schematic design plans of potential park improvements (*and one overall perspective rendering of each*) for review by the Director of Planning & Development and Ad Hoc Committee on Central Waterfront. A memorandum shall be submitted summarizing the key elements included within each concept plan and noting the substantive differences between the alternatives. A rough cost estimate shall be included with each scenario to indicate the order of magnitude costs associated with proposed site improvements and all ancillary costs associated with final design, bidding, construction and/or construction administration necessary to complete the project.

*Deliverables:* *The Consultant shall provide one (1) digital copy of the plans, cost estimates and summary memorandum developed during this task.*

#### **Task 5: Obtain Feedback from City Officials**

The conceptual plans and memorandum developed under Task 4 shall be reviewed by the City (Director of Planning & Development, Ad Hoc Committee on Central Waterfront and other City officials) in order to provide feedback and direction to the Consultant. The City, (through the Director of Planning & Development and Ad Hoc Committee on Central Waterfront) shall provide direction to the Consultant as to which of the alternative schematic/concept plans is preferred, and what other changes or adjustments may be desired in the preferred concept plan. The Consultant shall provide a detailed memorandum summarizing all feedback, findings and recommendations accordingly.

*Deliverables:* *The Consultant shall provide one (1) copy of the summary memorandum developed during this task, including any associated plans and reports.*

*Meetings:* *The Consultant shall attend two (2) meetings with the Director of Planning & Development and other City officials to review and obtain feedback on schematic/conceptual design plans developed under Task 4. These are expected to be daytime meetings.*

*Meetings:* *The Consultant shall attend three (3) public meetings with the Ad Hoc Committee on Central Waterfront and/or general public, to present a summary of tasks completed to date, review alternative schematic plans, and present the preferred alternative plan for proposed improvements. These will be evening meetings.*

**Task 6: Finalize Schematic Design Plans & Construction Cost Estimates**

Based on all information gathered, generated and discussed under the above Tasks, and in response to feedback and direction from City officials, the consultant shall revise and finalize the schematic design plans and the associated construction cost estimate for the preferred alternative schematic/concept plan selected by the City. Final schematic plans for proposed park improvements shall incorporate all changes and/or adjustments as desired by the City. One overall perspective rendering of the proposed plans shall also be provided to convey the selected design concept to a larger public audience.

*Deliverables: The Consultant shall provide one (1) digital copy of the summary memorandum developed during this task, including any associated plans and reports described herein.*

*Meetings: The Consultant shall attend three (3) meetings with the Director of Planning & Development, Mayor, Council President and/or other City officials to review and obtain feedback on schematic/conceptual design plans developed under Task 4. These are expected to be daytime meetings.*

*Meetings: The Consultant shall attend two (2) public meetings with the Ad Hoc Committee on Central Waterfront and general public to present a summary of tasks completed to date, review alternative schematic plans, and present the preferred alternative plan for proposed improvements. This will be an evening meeting.*

**OPTIONAL TASKS BELOW ASSOCIATED WITH CONTRACT EXTENSION FOR ADDITIONAL DESIGN SERVICES**

Upon successful completion of the above Tasks 1-6 the City may elect to extend the consultant's contract to include design services associated with full design, preparation of bid package drawings and specifications, bid phase services and construction administration services. The consultant's fee for these additional services (Tasks 7-9) will be negotiated at that time, following successful completion of Final Schematic Design.

**Task 7: Construction Documents (Bid Package, Drawings & Specifications)**

The Consultant shall prepare a complete Bid Package, plans/drawings, specifications and other materials suitable for bidding the proposed project (based on the preferred alternative selected by the City under the previous Tasks) under Massachusetts public procurement laws, in coordination with the Director of Planning & Development.

Draft (75%) Construction Documents: After sufficient consultation meetings, the design Consultant shall deliver 75% design plans, details and specifications to the City for review and comment, along with detailed cost estimates for comparison with anticipated construction bids. The Consultant shall customize a first draft of the required front-end bid documents (for the selected Contractor) which will be supplied in proper form by the City.

Final (100%) Construction Documents: Based upon City review and approval of the Draft 75% submittal above, the Consultant shall prepare final stamped construction drawings, plans and specifications suitable for bidding along with a final detailed cost estimate. All documents must be checked and coordinated for completeness and consistency.

During this Task/Phase the Consultant shall also apply for and obtain all permit approvals required for construction of the project, including but not limited to DEP Chapter 91 Waterways Licensing, DEP Massachusetts Contingency Plan (MCP) reporting requirements, and local approvals from the Conservation Commission (work in riverfront buffer area), Planning Board (Site Plan Approval) and Department of Public Services (Stormwater Management). Copies of these permit approvals shall be included in the bid package issued to prospective contractors under Task 8 below. The Consultant shall be responsible for any and all modifications to the proposed plans or submissions required by any of the aforementioned permit granting authorities prior to their finalization.

*Deliverables: The Consultant shall provide copies of the entire bid package (including plans, details, specifications and front-end documents). The consultant shall provide three (3) sets of 24"x36" plans, plus one (1) digital set of all plans and documents developed under this task in both CAD and PDF format.*

*Meetings: The Consultant shall attend two (2) meetings with the Director of Planning & Development and other City officials to review the Draft 75% package before the Final 100% package is prepared. These will be daytime meetings.*

*Meetings: The Consultant shall attend any and all meetings, or public hearings, required by the aforementioned permit granting authorities in order to obtain their written approval of the proposed project and improvements. These will most likely be evening meetings.*

## **Task 8: Bid Phase Services**

The Consultant shall, in coordination with, and as directed by the City, compile bid documents for distribution to interested contractors responding to the invitation to bid developed in Task 7, respond to questions, and issue any required addenda. The Consultant shall prepare a written response to all questions from Contractors regarding the bid documents during the bid phase for review by the Director of Planning & Development prior to issuance. The Consultant shall facilitate and participate in the Pre-Bid Conference. Bids shall be evaluated by the Consultant along with the qualifications and responsibility of the apparent low bidder(s), with a recommendation thereon, for the City's consideration prior to award of a construction contract.

*Deliverables: The Consultant shall provide one (1) digital copy of any memoranda, correspondence, tabulation or reports developed during this task, including any associated plans and reports. All communications with contractors shall be coordinated in advance with the Director of Planning & Development.*

**Task 9: Construction Administration**

The Consultant shall provide Construction Administration (CA) Services during construction of the project. This includes, but is not limited to, attendance at regular progress meetings, review of shop drawings and submissions from the Contractor, resolution of any discrepancies found in the bid package, guidance on plan changes required due to unforeseen field conditions, preparation of punch lists, and review of payment requisitions.

The Consultant shall attend a Pre-Construction Conference with the Director of Planning & Development and selected Contractor to review construction activities for the project. The Consultant shall make routine visits to the site to monitor progress and quality of the contractor's work and to certify that work performed is in accordance with the contract documents. The Consultant shall review and approve all shop drawings and submittals, clarify design intent and interpret contract drawings, and provide change orders as needed.

The Consultant shall coordinate with the contractor to provide as-built record drawings at the end of the project to reflect any changes to the completed project from the original plans and bid package.

The Consultant shall provide the City with an operations and maintenance manual summarizing the materials, suppliers, and systems utilized in the project, and specifying the regular assessments and routine or preventative maintenance required to maximize the life cycle of the improvements.

*Deliverables: The Consultant shall provide one (1) digital copy of any plans, memoranda, correspondence, tabulation or reports developed during this task. All communications with contractors shall be coordinated in advance with the Director of Planning & Development. Three (3) sets of 24"x36" as-built plans, plus one (1) digital set shall be submitted to the Director of Planning & Development in both CAD and PDF formats.*

**Site Visit / Walk-Through (Briefing Session)**

All firms interested in submitting a response to this RFP are invited to attend a walk-through of the central waterfront at **2:00 pm on Thursday, December 3, 2020** (meet on the central granite stage at Market Landing Park). The purpose of the walk-through is to familiarize interested firms with the project area and its context prior to submission of a Proposal. The walk-through (briefing session) is not mandatory, but highly recommended and attendance will be noted.

## **Project Contact**

The City's Project Manager and primary contact for this project will be:

Andrew R. Port, Director of Planning & Development  
Office of Planning & Development  
Newburyport City Hall  
60 Pleasant Street  
Newburyport, MA, 01950

Phone: (978) 465-4400  
Email: [aport@cityofnewburyport.com](mailto:aport@cityofnewburyport.com)

All questions regarding this RFP, the project and required Scope of Services shall be submitted via email to the Director of Planning & Development.

## **Proposal Format & Submission Requirements**

### **Deadline & Mailing Address**

Responses to this RFP, both hardcopy and electronic, are due no later than **10:00 am on Wednesday, December 23, 2020**. One (1) unbound/non-stapled hard copy of the submission plus a complete digital version (in PDF format) must be provided. All proposals shall be submitted to the City via the following:

**Hard Copy:** Andrew R. Port, AICP, Director of Planning & Development  
Office of Planning and Development  
City of Newburyport  
60 Pleasant Street  
Newburyport, MA 01950

*Attn: RFP – Market Landing Park Expansion*

**Electronic:** [aport@cityofnewburyport.com](mailto:aport@cityofnewburyport.com)

Subject Line: *RFP – Market Landing Park Expansion*

### **Price Proposals**

Price and Non-Price Proposals shall be submitted separately. The Price Proposal shall be submitted only in Hard Copy format, as a short simple letter in a sealed envelope as indicated above. The Price Proposal should not be submitted via email. The inclusion of cost information with the non-price proposal may result in the consultant's disqualification.

The best price for this proposal is the lowest price offered by a proposer deemed to have complied RESPONSIBLY with the requirements and Selection Criteria of this Request for Proposals. Price Proposals shall be submitted as a not-to-exceed price for each itemized Task 1-6 as indicated in the Scope of Work herein and a total not-to-exceed price for the entire Contract (Tasks 1-6 only). As indicated above, the City may elect to extend the consultant's contract to include the additional design services identified in Tasks 7-9. The consultant's fee for these additional services will be negotiated at that time, following successful completion of Final Schematic Design (Task 6).

Any costs the successful proposer incurs in fulfilling the contract shall be part of the price proposed including but not limited to salary, overhead, indirect costs and profit, travel time, mileage, copying, telephone, faxing, and any others.

## Non-Price Proposals

Submissions must contain the elements listed below, and respondents should clearly identify these sections. There is no minimum or maximum page limit, and respondents are expected to balance the completeness of their response with succinctness and brevity.

Section	Section Title & Contents
Section 1	<b>Qualifications of the Firm</b> <p><b>A) Letter of Transmittal:</b> Letter of introduction providing a narrative describing the nature, size, background, and qualifications of the firm, the names and background of all personnel who will be working on the contract from all firms, including subcontractors. Identify lead professionals and key personnel in each field of expertise.</p> <p><b>B) Resumes:</b> Resumes of the principals and staff, lead professionals and key personnel in each field of expertise including any Subconsultants. Identify all firms and key individuals participating in the project, including architects, landscape architects, engineers, preservation professionals, etc. Identify the prime firm, principal-in-charge, project manager and relationship between the prime firm and other firms participating on the team, if any. Provide company profiles and resumes for key individuals. Subcontracted services, for which the firm does not have in-house capabilities, expertise, or qualifications, should be clearly noted within the proposal.</p> <p><b>C) References:</b> A minimum of three (3) references for previous park design projects including name, title, agency, address, phone and email contact information.</p> <p><b>D) Professional Registrations:</b> Indicate any professional registrations (i.e. AICP, AIA, ASLA, etc.) for all principals and key staff to be assigned to this project.</p>

	<p><b>E) Relevant Experience:</b> Previous and on-going experience with similar work. Describe relevant projects and experience for firms and key individuals within the last 5-10 years. Include at least three (3) examples of comparable park designs developed by the firm within the last five 5-10 years.</p>
<b>Section 2</b>	<b>Approach to the Project &amp; Scope of Work</b>
	<p><b>Approach to Design Work:</b> Written proposals shall include an outline of the firm's method for providing and delivering high quality services and deliverables for the Scope of Work contained in the RFP. Proposals should not restate the scope of work provided herein, but rather suggest the unique approach of the Consultant to this particular project supported by evidence of prior experience.</p> <p><b>Proposed Schedule:</b> The City would like to complete this design phase for the project (Tasks 1-6) within a six (6) month period, roughly between February 1, 2021 and August 1, 2021. Written proposals shall include a proposed project timeline following the itemized tasks listed herein and adhering to this timeframe to the extent feasible. The consultant's proposed timeline will be considered as part of the non-price proposals reviewed and evaluated under this RFP.</p>
<b>Section 3</b>	<b>Attachments &amp; Documentation</b>
	Certificate of Non-Collusion & Tax Compliance (See Exhibit R for required form.)

## Selection Criteria

Review of qualifications and selection of a Consultant shall be made by the Mayor and Director of Planning & Development in direct consultation with the City's Ad Hoc Committee on Central Waterfront. Proposals will be ranked based on the following criteria:

1. **Extent of Experience:** The lead should have a minimum of five (5) years experience. The lead firm and subconsultants must have proven experience and familiarity with Massachusetts public construction laws and procedures. The team should have substantial experience with both conceptual and detailed design of proposed park (and parking) improvements, and provide evidence of successfully completed projects.

Cost Control: The design team should demonstrate that cost estimates for prior projects have been reasonably accurate, that pre-bid estimates were comparable with bids received, and that final project design costs compared favorably with the original contract amounts.

Construction oversight: The design team should demonstrate a track record of maintaining effective working relationships with general contractors, reviewing submissions in a timely

manner, making inspections, keeping projects on schedule, reviewing and negotiating requests for change orders, etc.

2. **Quality of Work/References:** The lead firm and subconsultants must have consistently strong and positive references with credible clients regarding the quality, responsiveness and timeliness of its performance on other projects, consistent with the above.
3. **Communication:** The lead firm and subconsultants must have excellent communication skills as evidenced by the written submission and any interviews of the proposed team.
4. **Approach & Timeframe:** The team must demonstrate a thorough grasp of the City's project and a sound understanding of the City's parameters and desired timeline for completion.
5. **Capacity, Financial Stability, Availability:** Individuals assigned to this project must be available for meetings in the City of Newburyport days or evenings, as required. The volume of the firm's current and projected work load must not adversely affect its ability to immediately initiate work and to follow through with the project in a responsive, timely and professional manner. The firm must be financially stable, and capable of devoting a significant amount of time to this project in order to complete the work within the schedule outlined in this RFP. The firm must have/provide professional liability errors and omissions insurance at its own expense.

The top three (3) ranked finalists among the respondents to this RFP, based on written proposals, may be interviewed by the Mayor, Director of Planning & Development and/or Ad Hoc Committee on Central Waterfront prior to final selection and contract award.

### **Conditions of this Solicitation**

- A. The City will enter into a standard form City contract with the selected Consultant in accordance with this RFP. Incorporated within the Contract shall be a copy of this RFP, the Scope of Work herein, and the consultant's Price and Non-Price Proposals.
- B. All proposals will become a matter of public record, subject to the provisions of the Massachusetts public records law (M.G.L. Chapter 66, Section 10) and the corresponding regulations and exemptions. Submission of a proposal acknowledges the City's obligations under M.G.L Chapter 66 if a public records request is received by the City.
- C. The City reserves the right to interview any and all respondents. The City reserves the right to modify or withdraw this request at any time, to reject any or all proposals, to request additional information either in writing or through interviews of selected proposers, and to award a contract in the City's best interest.

### **Compliance with Federal, State and Local Laws, Statutes & Regulations**

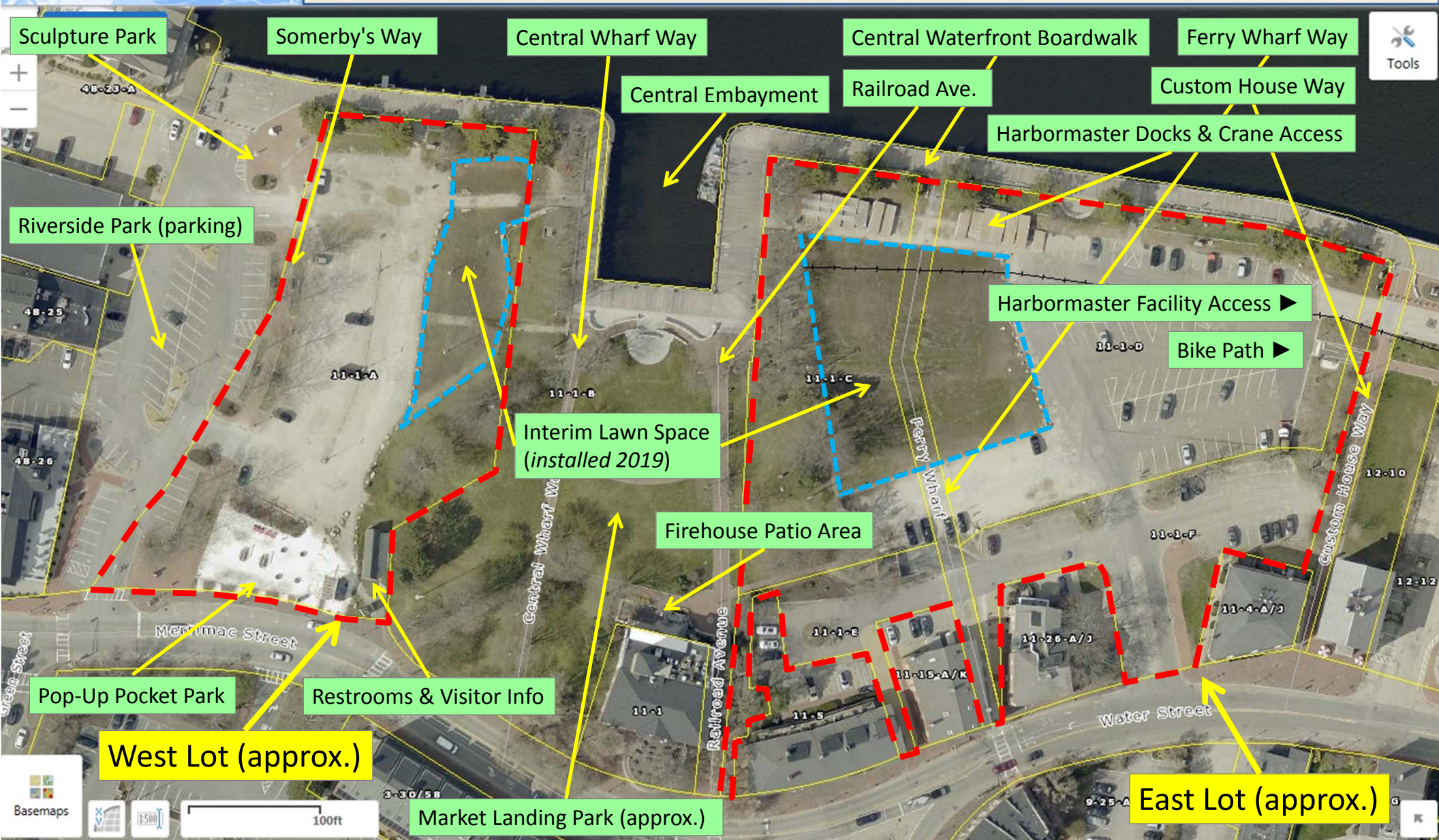
The Consultant (and any subconsultants) shall adhere at all times to a standard of care consistent with that provided by other professionals doing similar work in this region including any professional certifications, standards or guidelines, and any and all laws, statutes and regulations, as applicable to the profession(s).

**List of Exhibits (RFP Attachments)**

- Exhibit A:** Central Waterfront GIS Orthophoto & Approximate Location of Proposed Site Improvements
- Exhibit B:** Central Waterfront Property Survey
- Exhibit C:** Known Environmental Conditions & Previous Test Pits and Boring Locations
- Exhibit D:** Conceptual “Framework Plan” for Park Expansion  
*(3 variations to be “reconciled” in final schematic design)*
- Exhibit E:** Interim Park/Lawn Improvements & Parking Reductions
- Exhibit F:** Maps Depicting Flood Zones & Projected Sea Level Rise (SLR)
- Exhibit G:** Central Waterfront – Oblique Aerial Photos
- Exhibit H:** Standard Interpretive Panel Design – Newburyport, MA
- Exhibit I:** Members: Ad Hoc Committee on Central Waterfront
- Exhibit J:** Phase I Site Assessment
- Exhibit K:** Activity & Use Limitation (AUL) - West Lot
- Exhibit L:** Activity & Use Limitation (AUL) - East Lot
- Exhibit M:** Existing Interim/Seasonal Public Restrooms & Visitor Booth
- Exhibit N:** Photos of Existing Central Boardwalk & Market Landing Park
- Exhibit O:** Photos of Parking Lots, Existing Public Walkways, Pop-Up Pocket Park
- Exhibit P:** Settlement Agreement/Stipulation Regarding Pedestrian Ways & Access to the Waterfront
- Exhibit Q:** Special Act & City Council Resolution *(portions applicable to Park Design & Construction)*
- Exhibit R:** Certificate of Non-Collusion & Tax Compliance  
*(Required with all RFP responses)*

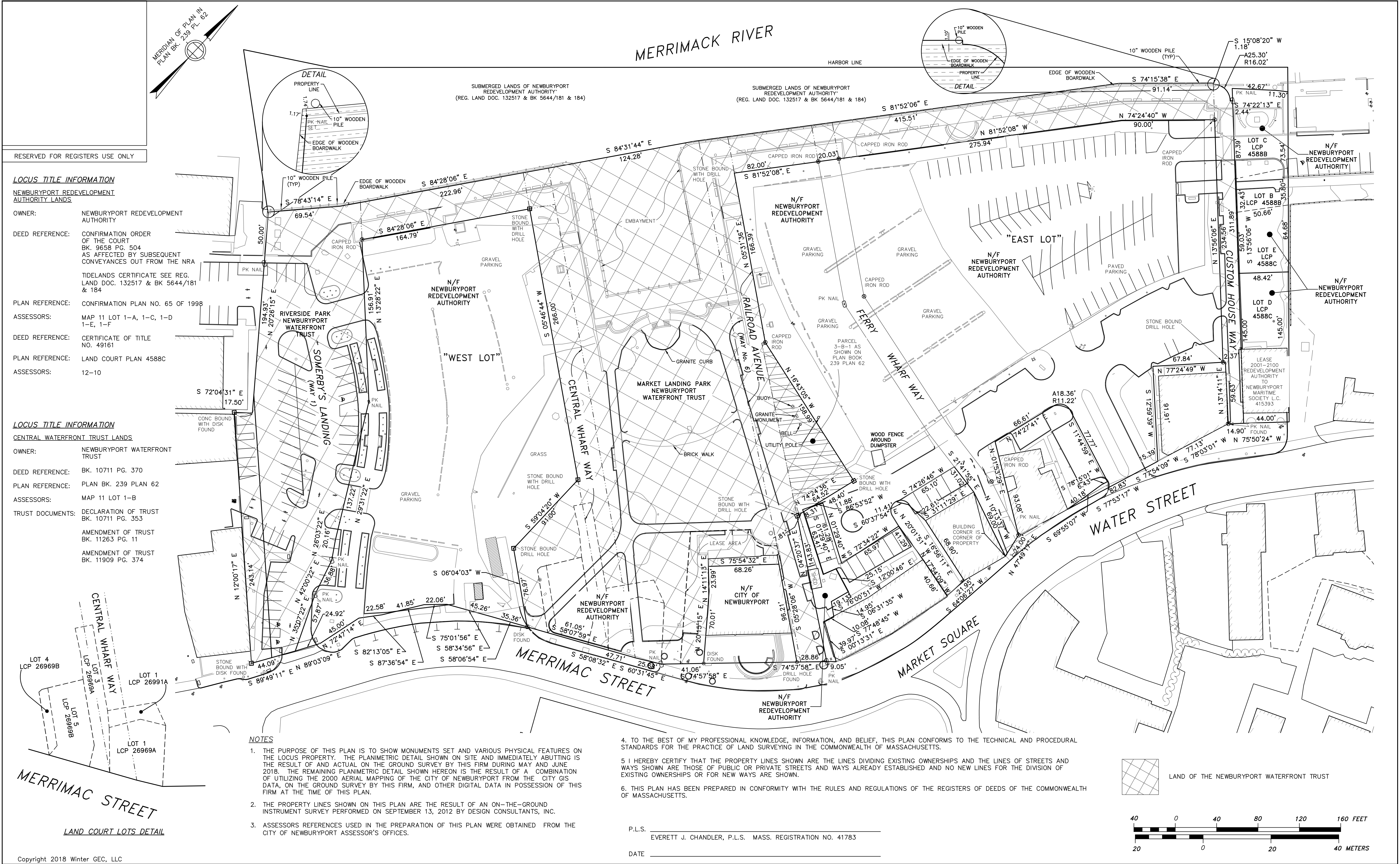
**Exhibit A**  
**Central Waterfront GIS Orthophoto**  
**&**  
**Approximate Location of Proposed Site Improvements**





# Exhibit B

## Central Waterfront Property Survey



**LOCUS TITLE INFORMATION**  
NEWBURYPORT REDEVELOPMENT AUTHORITY LANDS

OWNER: NEWBURYPORT REDEVELOPMENT AUTHORITY

DEED REFERENCE: CONFIRMATION ORDER OF THE COURT BK. 9658 PG. 504 AS AFFECTED BY SUBSEQUENT CONVEYANCES OUT FROM THE NRA

TIDELANDS CERTIFICATE SEE REG. LAND DOC. 132517 & BK 5644/181 & 184

PLAN REFERENCE: CONFIRMATION PLAN NO. 65 OF 1998

ASSESSORS: MAP 11 LOT 1-A, 1-C, 1-D 1-E, 1-F

DEED REFERENCE: CERTIFICATE OF TITLE NO. 49161

PLAN REFERENCE: LAND COURT PLAN 4588C

ASSESSORS: 12-10

**LOCUS TITLE INFORMATION**  
CENTRAL WATERFRONT TRUST LANDS

OWNER: NEWBURYPORT WATERFRONT TRUST

DEED REFERENCE: BK. 10711 PG. 370

PLAN REFERENCE: PLAN BK. 239 PLAN 62

ASSESSORS: MAP 11 LOT 1-B

TRUST DOCUMENTS: DECLARATION OF TRUST BK. 10711 PG. 353

AMENDMENT OF TRUST BK. 11263 PG. 11

AMENDMENT OF TRUST BK. 11909 PG. 374

**LAND COURT LOTS DETAIL**

LOT 4 LCP 26969B

LOT 3 LCP 26969A

LOT 5 LCP 26969B

LOT 1 LCP 26991A

LOT 1 LCP 26969A

**NOTES**

1. THE PURPOSE OF THIS PLAN IS TO SHOW MONUMENTS SET AND VARIOUS PHYSICAL FEATURES ON THE LOCUS PROPERTY. THE PLANIMETRIC DETAIL SHOWN ON SITE AND IMMEDIATELY ADJUTING IS THE RESULT OF AN ACTUAL ON THE GROUND SURVEY BY THIS FIRM DURING MAY AND JUNE 2018. THE REMAINING PLANIMETRIC DETAIL SHOWN HEREON IS THE RESULT OF A COMBINATION OF UTILIZING THE 2000 AERIAL MAPPING OF THE CITY OF NEWBURYPORT FROM THE CITY GIS DATA, ON THE GROUND SURVEY BY THIS FIRM, AND OTHER DIGITAL DATA IN POSSESSION OF THIS FIRM AT THE TIME OF THIS PLAN.

2. THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE RESULT OF AN ON-THE-GROUND INSTRUMENT SURVEY PERFORMED ON SEPTEMBER 13, 2012 BY DESIGN CONSULTANTS, INC.

3. ASSESSORS REFERENCES USED IN THE PREPARATION OF THIS PLAN WERE OBTAINED FROM THE CITY OF NEWBURYPORT ASSESSOR'S OFFICES.

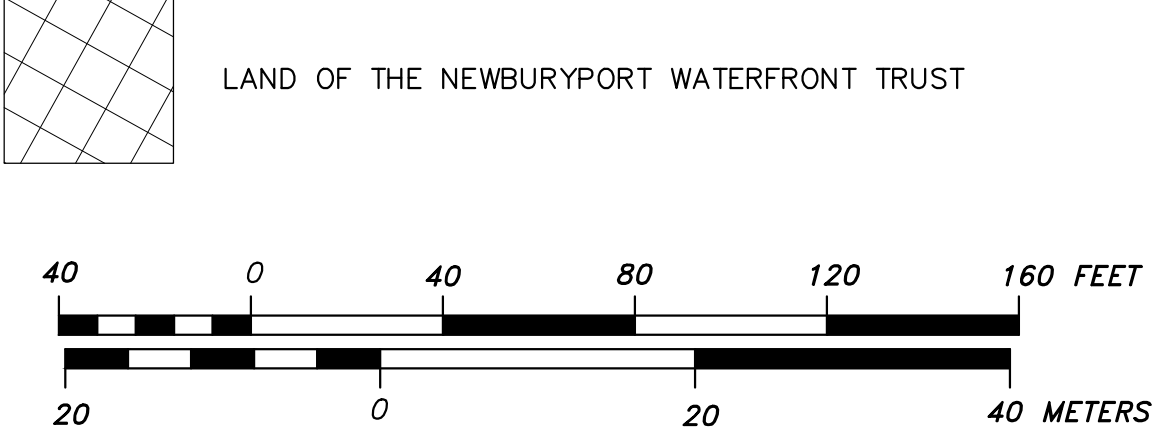
4. TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THIS PLAN CONFORMS TO THE TECHNICAL AND PROCEDURAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS.

5. I HEREBY CERTIFY THAT THE PROPERTY LINES SHOWN ARE THE LINES DIVIDING EXISTING OWNERSHIPS AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS AND WAYS ALREADY ESTABLISHED AND NO NEW LINES FOR THE DIVISION OF EXISTING OWNERSHIPS OR FOR NEW WAYS ARE SHOWN.

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

P.L.S. \_\_\_\_\_  
EVERETT J. CHANDLER, P.L.S. MASS. REGISTRATION NO. 41783

DATE \_\_\_\_\_



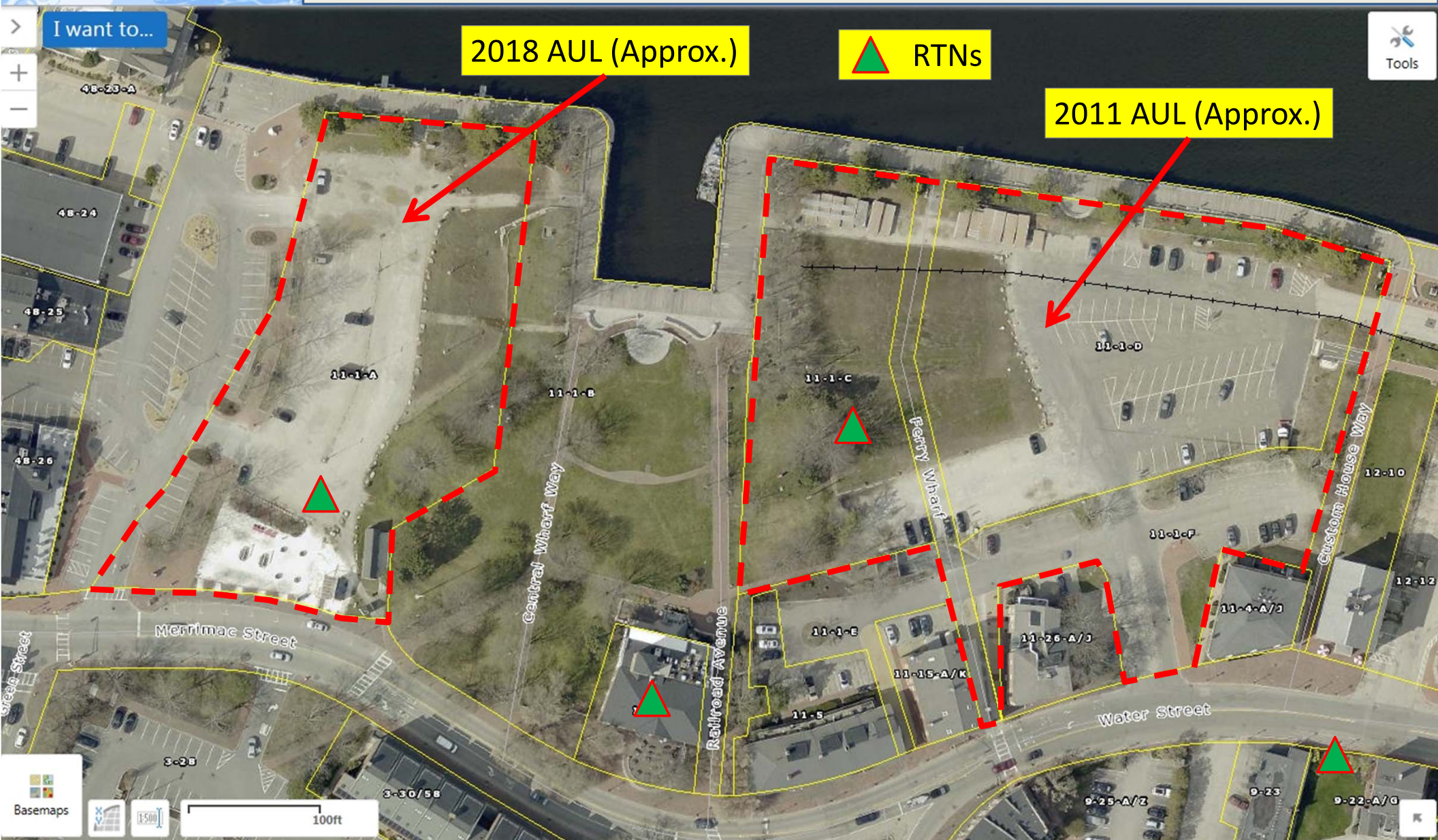
# **Exhibit C**

## **Known Environmental Constraints**

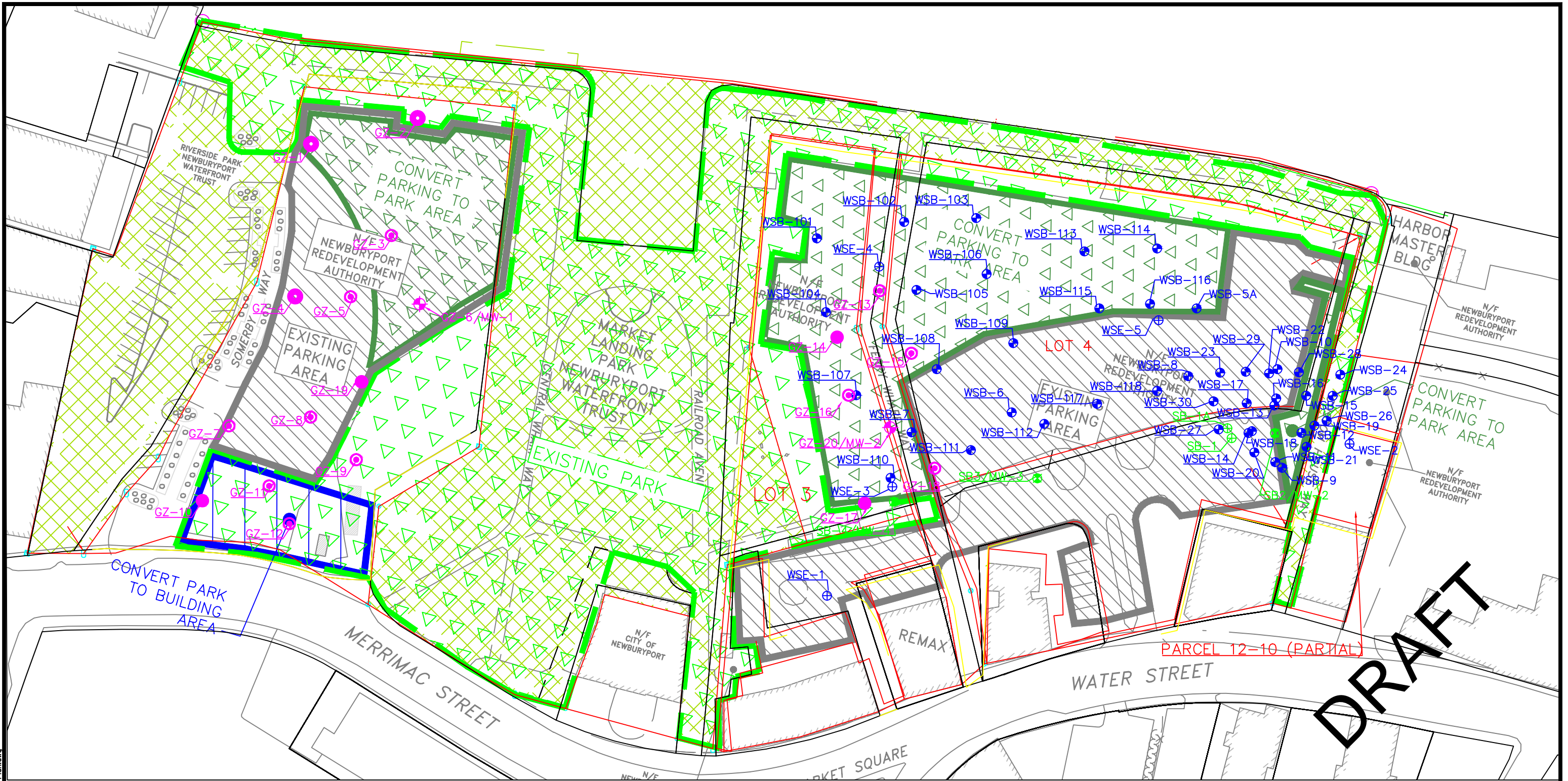
### **&**

## **Previous Test Pits and Boring Locations**

## Central Waterfront - Known Environmental Conditions (9/24/2020)



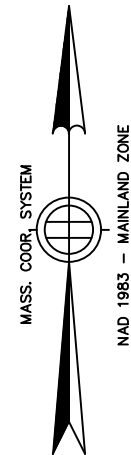
FILE: S:\Environmental\Projects\Newburyport Waterfront\Figure\Site Plan.dwg



LEGEND

- |  |  |  |   |  |                   |
|--|--|--|---|--|-------------------|
|  | 2013 GZA ENVIRONMENTAL BORING WITH MONITORING WELL |  | 1997 SOIL BORING ADVANCED BY SIMMONS ENVIRONMENTAL SERVICES, INC      |  | PARCEL BOUNDARIES |
|  | 2013 GZA ENVIRONMENTAL BORING FOR DISPOSAL         |  | 1997 MONITORING WELL INSTALLED BY SIMMONS ENVIRONMENTAL SERVICES, INC |  | RAO BOUNDARIES    |
|  | 2013 GZA ENVIRONMENTAL BORING FOR SCREENING        |  | 2009 GROUNDWATER MONITORING WELL INSTALLED BY WESTON & SAMPSON        |  |                   |
|  | 2013 GZA GEOTECHNICAL BORING LOCATION              |  | 2009 SOIL BORING ADVANCED BY WESTON & SAMPSON                         |  |                   |

SCALE: 1" = 75'  
0 75 150 300



Newburyport Waterfront RTNs: 3-15445 & 3-31885 Newburyport, MA	
WELL AND BORING LOCATION PLAN	
	2 Liberty Square 6th Floor Boston, MA 02109 (617) 350-3444
DRAWN BY: AHC	DATE: AUGUST 2017
CHECKED BY: RN	

FIGURE  
1

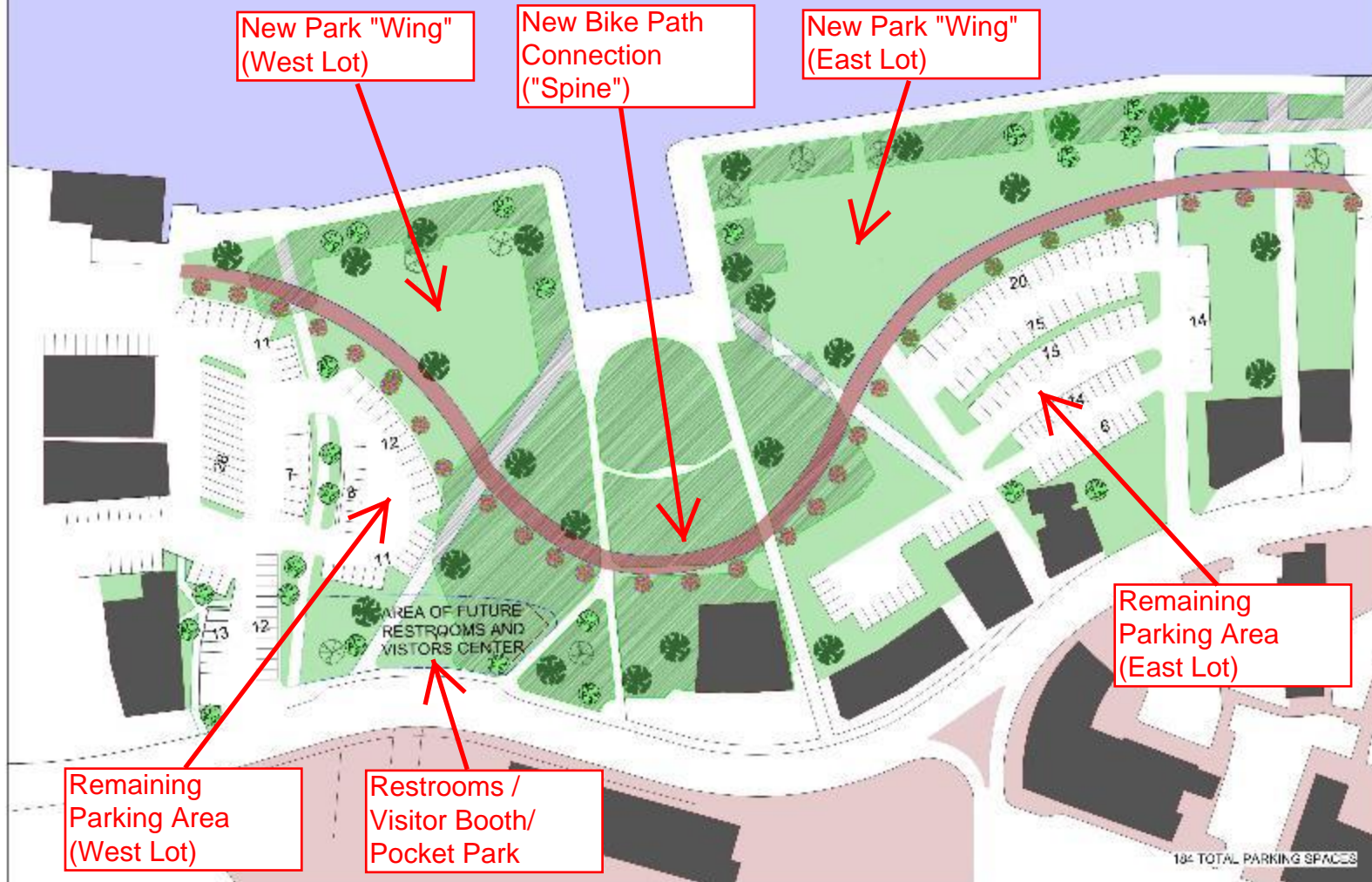
## Exhibit D

# Conceptual “Framework Plan” for Park Expansion

*(3 variations to be “reconciled” in final schematic design)*

1. **“Sidford-Uhlig” Concept Plan** *(see notations for key features)*
2. **“COW” Concept Plan**
3. **“Andy Port” Concept Plan**

Key Elements of Conceptual "Framework Plan" For Park Expansion ("Sidford-Uhlig" Concept Plan)



NEWBURYPORT WATERFRONT  
SITE PLAN

NEWBURYPORT, MA 01850

SITE PLAN

DATE

11/08/2016 CS

11/21/2016 CS

SCALE: 1" = 40'

HALVORSON DESIGN PARTNERSHIP, INC.

ANDREW SIDFORD ARCHITECTS

44 Newmarket Street, Newburyport, MA 01850  
978.462.1667 www.sidfordsidford.com

A2



(plan view)

**“COW” (Citizens for an Open Waterfront) Concept Plan**



(view from water)

"Andy Port" Plan

Arc of Bike Path "Spine"  
(Between Park & Parking)

LOCUS TITLE INFORMATION  
NEWBURYPORT REDEVELOPMENT  
AUTHORITY LANDS

OWNER:  
DEED REF:  
PLAN REFERENCE:  
ASSESSORS:  
DEED REFERENCE:  
PLAN REFERENCE:  
ASSESSORS:

AS SET FORTH BY SUBSEQUENT  
CONVEYANCES OUT FROM THE NRA  
CONFIRMATION PLAN NO. 65 OF 1998  
MAP 11 LOT 1-A, 1-C, 1-D  
1-E, 1-F  
CERTIFICATE OF TITLE  
NO. 49161  
LAND COURT PLAN 4588C  
12-10

LOCUS TITLE INFORMATION  
CENTRAL WATERFRONT TRUST LANDS

OWNER:  
D  
P  
A  
T

AMENDMENT OF TRUST  
BK. 11263 PG. 11  
AMENDMENT OF TRUST  
BK. 11909 PG. 374

AMENDMENT OF TRUST  
BK. 11263 PG. 11  
AMENDMENT OF TRUST  
BK. 11909 PG. 374

Somerby Way  
(NRA > WFT)

NRA West @ Merrimac  
(NRA > City) (Visitor Center)

Firehouse Patio  
(WFT > City/Firehouse)

4. TO THE BEST OF MY  
STANDARDS FOR THE P  
5. I HEREBY CERTIFY TH  
WAYS SHOWN ARE THO  
EXISTING OWNERSHIP  
6. THIS PLAN HAS BEE  
OF MASSACHUSETTS.

P.L.S.  
EVERETT J. CHANDLER, P.L.S. MASS. REGISTRATION NO. 41783

DATE

Copyright 2012 Design Consultants, Inc.

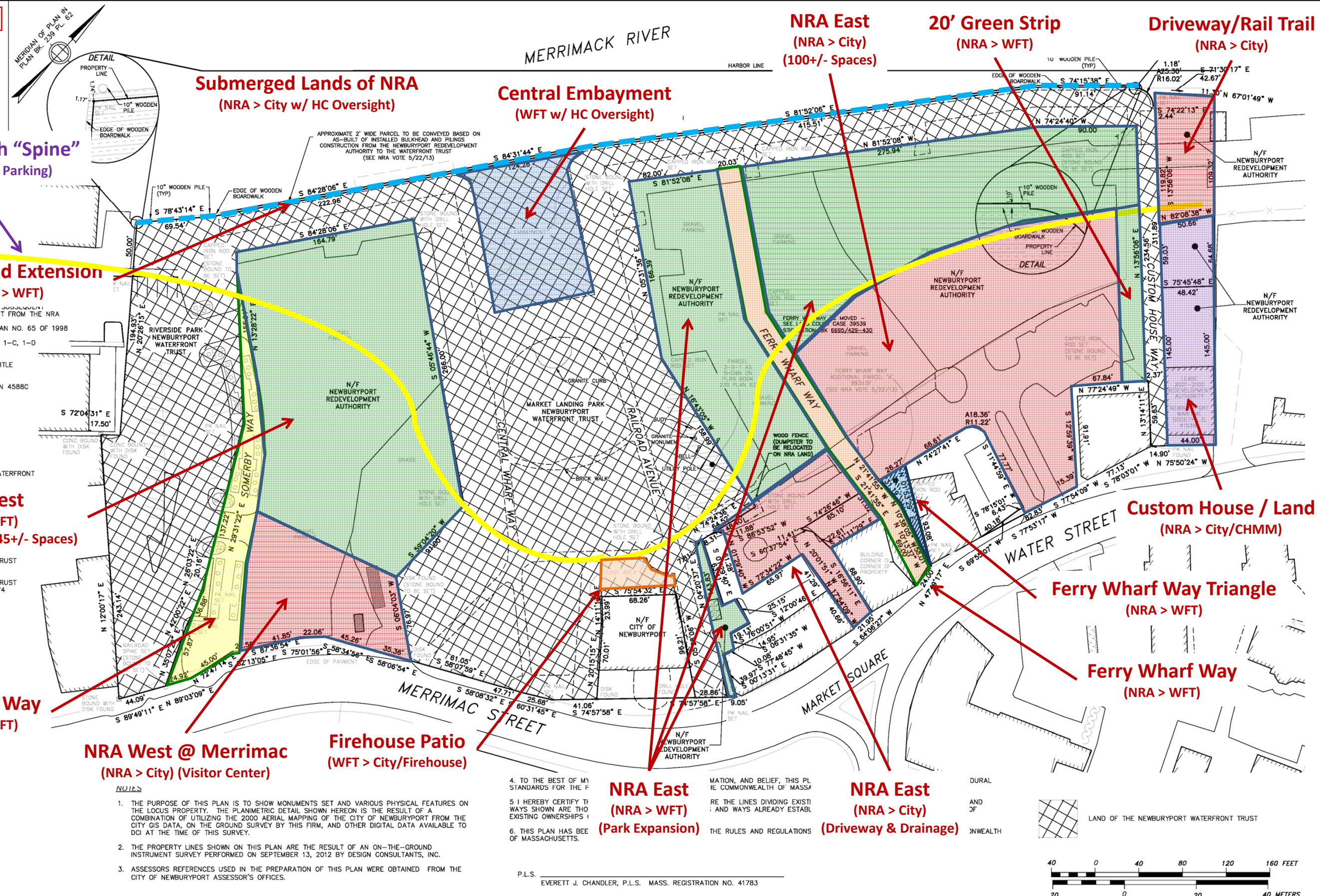
Proposed Land Distribution  
Upon NRA Dissolution

City of Newburyport  
Schematic Plan - 4/4/2017

PLAN OF LAND  
MERRIMAC AND WATER STREET  
(CENTRAL WATERFRONT)

PLAN OF LAND IN  
NEWBURYPORT, MASSACHUSETTS  
SURVEYED FOR  
NEWBURYPORT WATERFRONT TRUST &  
THE NEWBURYPORT REDEVELOPMENT AUTHORITY

PROJECT NO.  
2012-069  
DATE: JAN. 29, 2014  
SHEET NO.  
1 OF 1

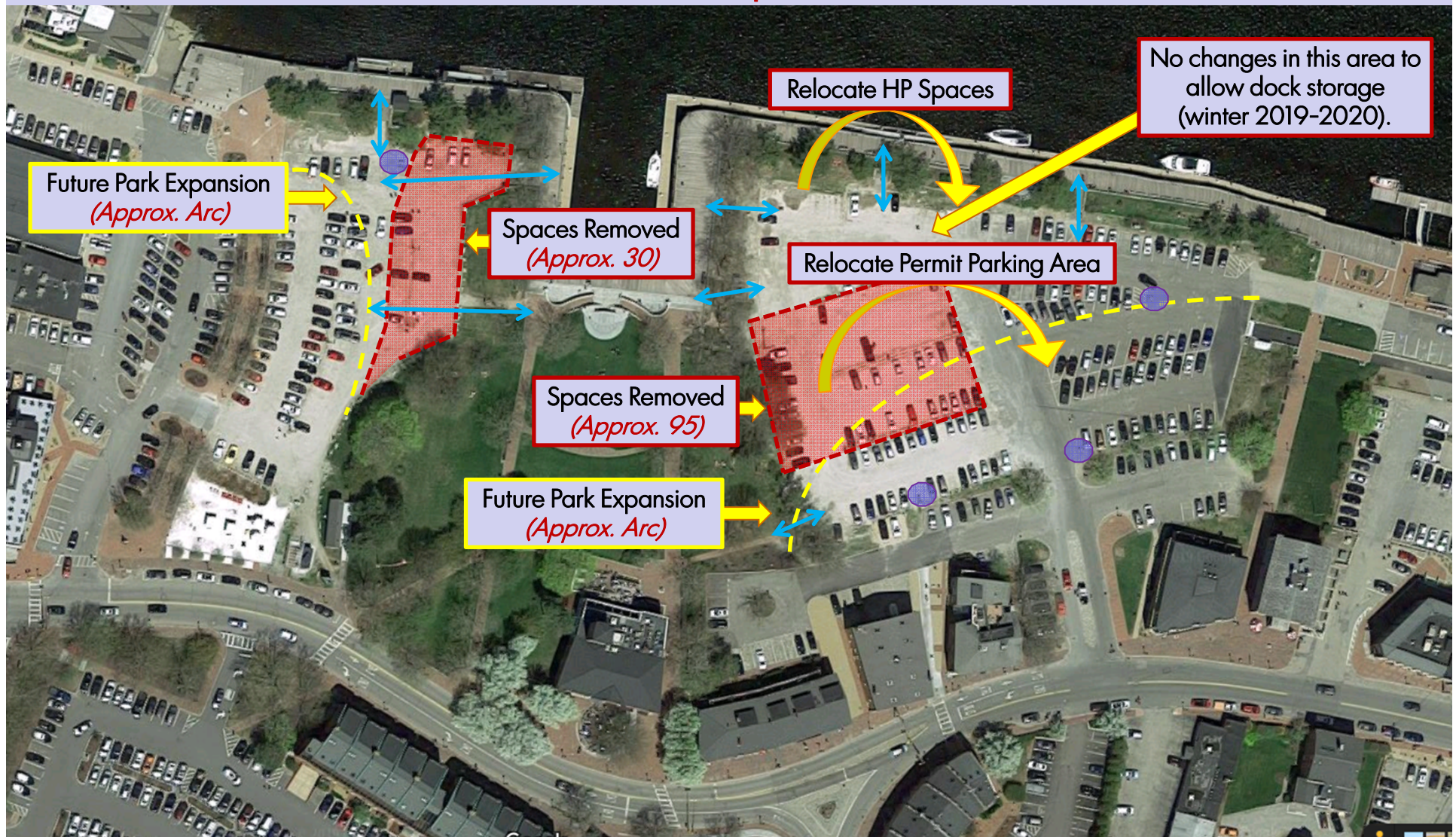


# Exhibit E

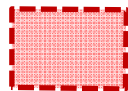
## Interim Park/Lawn Improvements & Parking Reductions

# 2019 Central Waterfront Parking Reductions – NRA East & West Lots

## Interim Park Improvements



↔ Maintain Access to Pedestrian Path  
● Maintain Access to Payment Kiosk



6" Loam & Seed

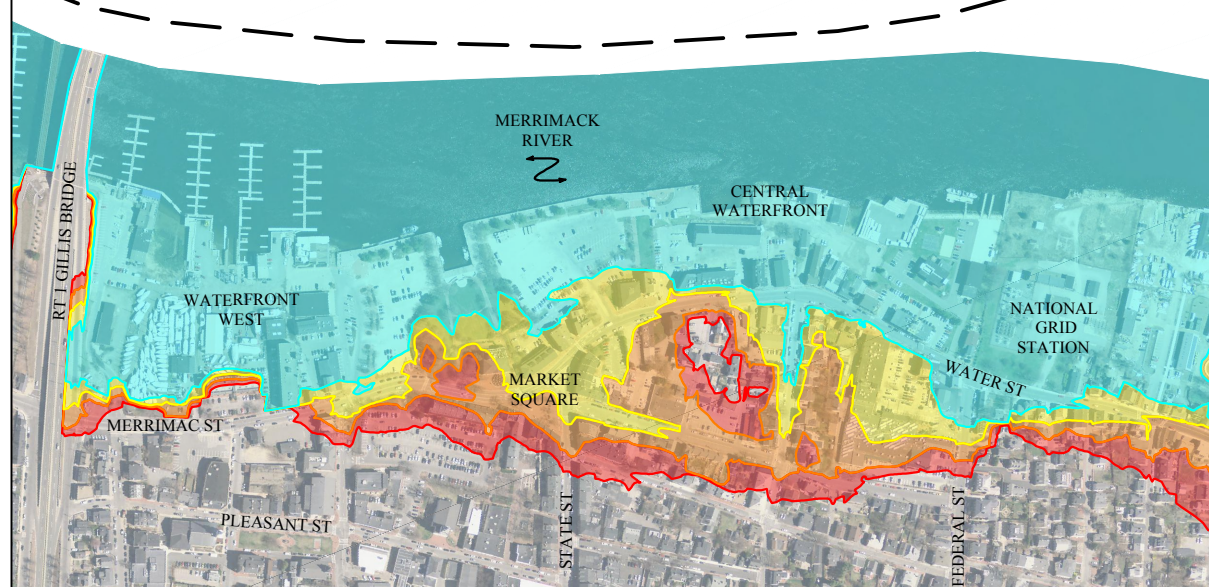
Signage:

**Future Park Space**  
additional parking available in the  
Titcomb Street Parking Garage

# Exhibit F

## Maps Depicting Flood Zones & Projected Sea Level Rise (SLR)

# FEMA FLOOD INUNDATION MAPS with FUTURE SEA LEVEL RISE WEST and CENTRAL WATERFRONT



## LEGEND

FEMA +0'	(Current Day)
FEMA +2'	(2050)
FEMA +3'	(2070)
FEMA +6'	(2100)
CITY BOUNDARY	---

## NOTE:

1. FEMA = 100 YEAR BASE FLOOD ELEVATION (BFE)
2. FEMA FLOOD ZONE AREAS AS DEPICTED HEREIN ARE APPROXIMATE AS THEY COINCIDE WITH THE TOPOGRAPHIC ELEVATIONS PROVIDED BY MASSGIS. SEE DATA SOURCE REFERENCES. THESE FLOOD ZONES ARE FOR RESILIENCY PLANNING AND ILLUSTRATIVE PURPOSES ONLY AND SHALL NOT BE CONSTRUED AS OFFICIAL FLOOD ZONES. FOR OFFICIAL FLOOD ZONE LOCATIONS, REFER TO FEMA FLOOD INSURANCE RATE MAPS.

PREPARED BY:  
CITY OF NEWBURYPORT  
ENGINEERING DIVISION  
DATE: OCT. 2019

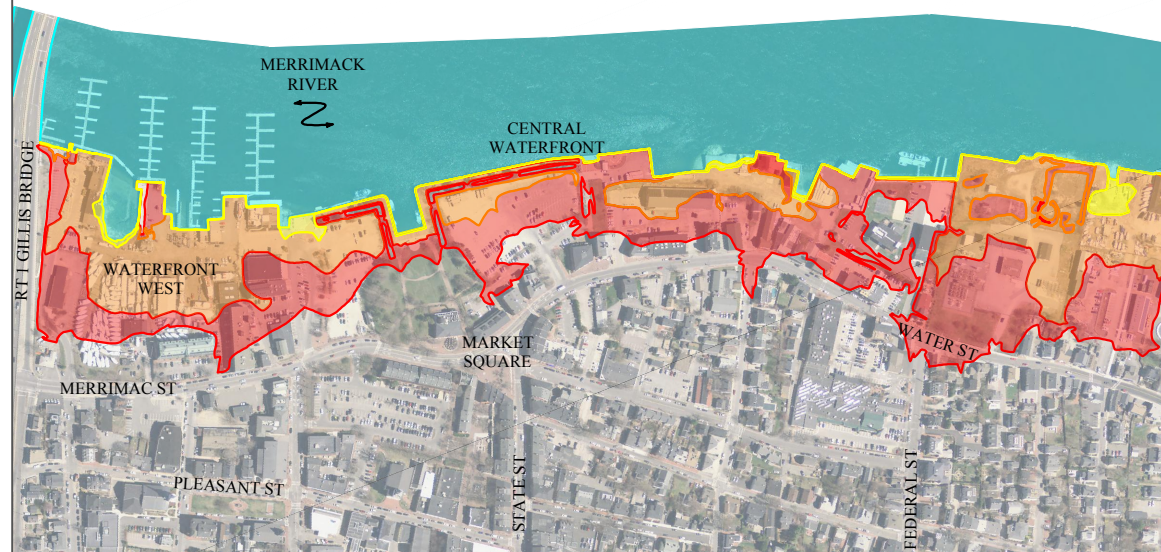


## DATA SOURCES:

MassGIS 2013/14 ORTHOMOSAIC and 2011 TOPOGRAPHIC DATA SETS  
FEMA F.I.R.M'S JULY 3, 2012 and JULY 16th, 2014  
DATUM: NAVD88

# MEAN HIGH WATER with FUTURE SEA LEVEL RISE

## WEST and CENTRAL WATERFRONT



### LEGEND

MEAN HIGH WATER (MHW)		(Current Day)
MHW + 2' SEA LEVEL RISE		(2050)
MHW + 3' SEA LEVEL RISE		(2070)
MHW + 6' SEA LEVEL RISE		(2100)
CITY BOUNDARY		

### NOTE:

1. MHW = ELEVATION 4.2 ±

PREPARED BY:  
CITY OF NEWBURYPORT  
ENGINEERING DIVISION  
DATE: OCT. 2019



DATA SOURCES:

MassGIS 2013/14 ORTHOMOSAIC and 2011 TOPOGRAPHIC DATA SETS  
DATUM: NAVD88

# Exhibit G

## Central Waterfront – Oblique Aerial Photos

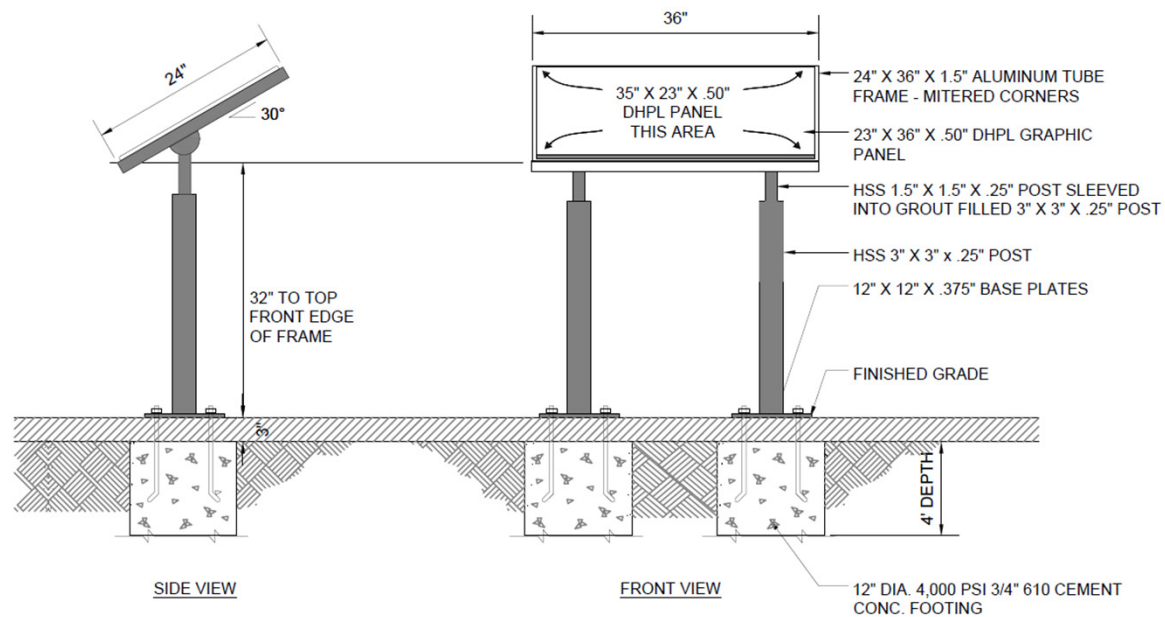




# Exhibit H

## Standard Interpretive Panel Design – Newburyport, MA

## Standard Interpretive Panel Design – Newburyport, MA



1 INTERPRETIVE SIGN  
NOT TO SCALE

# Exhibit I

## Members: Ad Hoc Committee on Central Waterfront

### **Members:**

---

1. Cllr. Jared Eigerman, Ward 2, Council President
2. Cllr. Barry Connell, At Large, Chair, Cmte. on Neighborhood & City Service
3. Cllr. Sharif Zeid, Ward 1
4. Cllr. Heather Shand, Ward 3, Chair, Cmte. on Planning & Development
5. Cllr. Jim McCauley, Ward 5

### ***Ex Officio (Non-Voting) Members:***

---

1. Mayor Donna Holaday
2. Kim Turner, Chair, Parks Commission
3. Planning Director Andy Port
4. Parks Director Lise Reid
5. DPS Director Tony Furnari
6. City Engineer Jon-Eric White
7. Harbormaster Paul Hogg
8. Matt Pieniazek, Waterfront Trust, Trustee
9. Bill Harris, Waterfront Trust, Settlor

### **To Be Involved:**

---

Finance Director Ethan Manning  
Parking Clerk Richard Jones

# Exhibit J

## Phase I Site Assessment

**DRAFT**  
**PHASE I ENVIRONMENTAL  
SITE ASSESSMENT**

**Waterfront Park  
24 Merrimac Street and  
Ferry Wharf  
Newburyport, Massachusetts**



**August 2018**

TRC Project No: 305669.0000.0000

Prepared For:

Newburyport Waterfront Trust  
60 Pleasant Street  
Newburyport, Massachusetts 01950

Prepared By:

TRC  
2 Liberty Square  
Boston, Massachusetts  
(617) 350-3444  
(617) 350-3443

---

**Tracy A. Dionne**  
Geologist  
TRC Environmental Professional

---

**Ryan Niles, PG**  
TRC Project Manager



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## EXECUTIVE SUMMARY

Subject to the qualifications and limitations stated in Section 1 of this report, TRC Environmental Corporation (TRC) was retained by Newburyport Waterfront Trust (also known as “Client” or “User”]) to perform a Phase I Environmental Site Assessment (ESA) of Waterfront Park located at 24 Merrimac Street and Ferry Wharf [including Newburyport Redevelopment Authority (NRA) East Lot and West Lot] in Newburyport, Essex County, Massachusetts (herein referred to as the “Site”). TRC’s assessment was conducted in connection with the Client’s planned transfer of ownership of the Site. The Phase I ESA described in this report was performed in accordance with the scope and limitations of the American Society of Testing and Materials Practice E 1527-13 *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process* (ASTM E 1527-13). Limiting conditions and/or deviations from the ASTM E 1527-13 standard are described in Sections 1.3 and 7.5 of this report.

The approximately 8.7-acre Site is located at 24 Merrimac Street and Ferry Wharf identified as Waterfront Park and includes NRA East and West Lots, in Newburyport, Essex County, Massachusetts in a mixed commercial and residential area. The Site consists of five separate parcels, identified by the City of Newburyport tax assessor as follows:

- 22 Merrimac Street (Parcel 11-1-B);
- 24 Merrimac Street (Parcel 11-1-A);
- Ferry Wharf (Parcel 11-1-C);
- Ferry Wharf (Parcel 11-1 D); and
- 1-23 Water Street Rear (Parcel 11-1-F).

The Site is currently used as a public park and two parking lots.

As a result of the Phase I ESA, including but not limited to our visual observation of the Site; review of historical information, environmental databases, and information provided by the User; interviews with current Site representative(s); and TRC’s professional judgment, the following *recognized environmental conditions* (RECs) and/or *controlled recognized environmental conditions* (CRECs) associated with the Site, as defined by the ASTM E 1527-13 standard were identified:

### Recognized Environmental Conditions (RECs)

#### REC No. 1 – Arsenic and Petroleum Impacted Soils

Impacted soils have been identified on the NRA West Lot, which is a portion of the Site. Two releases to have been reported to the Massachusetts Department of Environmental Protection (MassDEP). Release Tracking Number (RTN) 3-31885 is associated with a release of petroleum hydrocarbons, polycyclic aromatic hydrocarbons (PAHs) and metals (arsenic and lead) to soil identified in August 2013. The petroleum release was attributed to a release from a former

filling station and the PAHs and metals were attributed to the presence of coal and coal ash in historic fill material.

RTN 3-34699 was assigned in November 2017 by MassDEP for detected arsenic at boring GZ-6 (conducted by GZA in August 2013) in soil at higher than background levels for coal and coal ash associated with fill material. GZA attributed the elevated arsenic concentration to fill material, however, ESS Group, Inc. (ESS) considered the concentration to far exceed the MassDEP published background level by MassDEP, and therefore provided notification of the release to MassDEP. RTN 3-34699 was assigned, then linked to primary RTN 3-31885.

Release Abatement Measure activities were conducted by ESS in April 2018, which included soil excavation and off-site disposal. A Permanent Solution Statement with Conditions is currently being prepared by ESS. An AUL is planned to cover the entire NRA West Lot. Based on the current open status of RTN 3-11885, this condition is considered a REC.

#### REC No. 2 – Impacts from Former Coal Storage

The eastern portion of the Site was used for storage of coal for approximately 60 years. Areas identified on historical Sanborn maps include coal pockets on the northern and eastern portions of the East Lot. Limited subsurface investigations have been conducted in these areas for the presence of metals and PAHs associated with coal. Previous investigations include borings in the eastern portion of the East Lot; however, the depth of samples analyzed for metals (other than lead) and PAHs were to approximately 6 feet below ground surface. The northern portion of the East Lot has not been evaluated for the presence of metals and PAHs in the areas of the former coal pockets.

TRC considers the likely presence of metals and PAHs in the ground surface as a result of coal storage at the Site to be a REC.

#### Controlled Recognized Environmental Conditions (CRECs)

##### CREC No. 1 – Lead Impacted Soil

A release of lead to subsurface soil in the NRA East Lot was reported to MassDEP in July 1997 (Release Tracking Number 3-.15445). Lead in soils extended across five parcels (Parcel ID Nos. 11-1-C, 11-1-D, 11-1-E, 11-1-F and a portion of 12-10) for a total of 3.2 acres, which is a portion of the NRA East Lot. Lead impacts in some areas extended to 14 feet below ground surface. Impacts are associated with the Site's historic commercial/industrial uses. To achieve a No Significant Risk, the entire area was placed under an Activity Use Limitation (AUL). Based on the AUL implemented on a portion of the Site, this is considered a CREC.

This Executive Summary is part of this complete report; any findings, opinions or conclusions in this Executive Summary are made in context with the complete report. TRC recommends that the User read the entire report for all supporting information related to findings, opinions and conclusions.

## **Legal Notice**

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## 1.0 INTRODUCTION

TRC Environmental Corporation (TRC) has prepared this Phase I Environmental Site Assessment (ESA) for Newburyport Waterfront Trust (hereinafter “Client” or “User”).

This report was prepared for and may be relied upon by Client for the purposes set forth herein; it may not be relied on by any party other than the Client and reliance may not be assigned without the express approval of TRC. Authorization for third party reliance on this report will be considered by TRC if requested by the Client. TRC reserves the right to deny reliance on this report by third parties.

### 1.1 Purpose and Scope of Services

The following Phase I ESA was performed for the property located at Waterfront Park located at 24 Merrimac Street and Ferry Wharf [including Newburyport Redevelopment Authority (NRA) East Lot and NRA West Lot], in Newburyport, Essex County, Massachusetts (hereinafter the “Site”). A Site location map is included as **Figure 1**. This Phase I ESA has been prepared by TRC in accordance with the American Society for Testing and Materials E 1527-13 *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process* (ASTM E 1527-13) and is intended for the sole use of Newburyport Waterfront Trust per TRC’s Proposal dated May 11, 2018 and approved by Newburyport Waterfront Trust via email to Mr. Ryan Niles of TRC on May 24, 2018.

The purpose of this assessment is to identify *Recognized Environmental Conditions* (RECs) at the Site, as defined by the ASTM E 1527-13 standard. The completion of this Phase I ESA report may be used to satisfy one of the requirements for the User to qualify for the *innocent landowner, contiguous property owner, or bona fide prospective purchaser* limitations pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), thereby constituting *all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice* as defined by 42 U.S.C. §9601(35)(B) of CERCLA.

TRC understands that this assessment is not funded with a federal grant awarded under the United States Environmental Protection Agency (U.S. EPA) Brownfields Assessment and Characterization program.

The Scope of Services for this Phase I ESA included the following tasks:

- Site and vicinity reconnaissance;
- Site and vicinity description and physical setting;
- Historical source review and description of historical Site conditions;
- Interviews with owners, operators, and/or occupants of the Site, and/or local officials;
- Review of environmental databases and regulatory agency records;
- Review of previous environmental reports/documentation, as applicable;
- Review of environmental liens, if provided or authorized to obtain by the User; and

- Preparation of a report summarizing findings, opinions and conclusions.

Pursuant to the ASTM E 1527-13 standard, recommendations to conduct Phase II sampling or other assessment activities are not required to be included in this report. TRC can provide such recommendations upon request.

## 1.2 Additional Services

Items outside the scope of the ASTM E 1527-13 standard include, but are not limited to, the following:

- Asbestos-containing building materials
- Radon
- Lead-based paint
- Lead in drinking water
- Wetlands
- Regulatory compliance
- Cultural and historic resources
- Industrial hygiene
- Health and safety
- Ecological resources
- Endangered species
- Indoor air quality unrelated to *releases of hazardous substances or petroleum products* into the environment
- Biological agents
- Mold

No additional services were performed outside the scope of the ASTM E 1527-13 standard.

## 1.3 Deviations to ASTM E 1527-13 Standard

Notwithstanding additions to the ASTM E 1527-13 standard, as listed in Sections 1.2 and 9, if applicable, no significant deviations or deletions to the ASTM standard were made during this Phase I ESA.

## 2.0 SITE DESCRIPTION

### 2.1 Site Location and Legal Description

The approximately 8.7-acre Site is located at 24 Merrimac Street and Ferry Wharf (including NRA East and West Lots), in Newburyport, Essex County, Massachusetts in a mixed commercial and residential area and consists of five separate parcels, identified by the City of Newburyport tax assessor as follows:

- 22 Merrimac Street (Parcel 11-1-B);
- 24 Merrimac Street (Parcel 11-1-A);
- Ferry Wharf (Parcel 11-1-C);
- Ferry Wharf (Parcel 11-1 D); and
- 1-23 Water Street Rear (Parcel 11-1-F).

The Site is zoned as commercial and is currently owned by Newburyport Waterfront Trust and Newburyport Redevelopment Authority. The Site is bounded by the Merrimack River to the north; commercial and residential properties, Merrimac Street and Water Street to the south; commercial properties the east; and commercial properties to the west. A Site location map is included as **Figure 1**.

### 2.2 Site Improvements

Current on-site improvements are listed in the following table. A Site layout plan is included as **Figure 2**.

**Table 2.1 - Site Improvements**

Site Feature	Description
Buildings (stories)	On parcel 11-1-A: one public restroom (approximately 600 square feet) wood construction; and one visitor information booth (approximately 260 square feet) also of wood construction. On parcel 11-1 B: one approximately 150 square foot building (shack) of wood construction (Newburyport Whale Watch)
Construction date(s)	Approximately 2001
Exterior areas	Vegetated and Landscaped areas in the central portion of the Site, with paved and unpaved parking areas on the eastern and western portions of the Site (known as NRA East and West Lots). The central portion of the Site also has brick walkways. The northern portion of the site is surrounded by a wood boardwalk, adjacent to the Merrimack River. The south central portion of the Site contains a gravel-covered area used as a recreational park (approximately 4,700 square feet). Pedestrian walkways on Site include Custom House Way on the eastern edge (access from Water Street), Ferry Wharf in the eastern portion in the East Lot, Railroad Avenue and Central Wharf Way in the grassy park area and Somerby Way, adjacent to the West Lot.
On-site roads/rail lines	N/A

**Table 2.1 - Site Improvements**

Site Feature	Description
Other large equipment	N/A
Potable water supply	Municipal - City of Newburyport
Sewage disposal system(s)	Unknown
Heating/Cooling system fuel source(s)	N/A
Back-up fuel source(s)	N/A
Electricity supplier(s)	National Grid
Storm water system	Municipal City of Newburyport storm water sewer

## 2.3 Current and Historical Site Use

### 2.3.1 Current Site Use

The approximately 8.7-acre Site is currently operated by the Newburyport Waterfront Trust as a recreational park with two public parking lots.

### 2.3.2 Previous Owner and Operator Information

Based on information provided by the User (Section 3), the historical record review (Section 4), and/or interviews conducted during this Phase I (Section 6), historical Site ownership and operator information is provided in the tables below.

**Table 2.2 - Previous Owner and Operator Information**

Site Owner – Parcel 11-1-A	From	To
Various Owners	1888	Unknown
Unknown	Unknown	1986
Newburyport Redevelopment Authority (NRA)	c. 1986	Present

Site Operator	Description	From	To
Various uses/operators	Multiple uses (see Section 4.1)	1888	c.1965
Unknown	Vacant parcel	1978	c. 1986
NRA	Parking Lot	c.1986	Present

Site Owner – Parcel 11-1-B	From	To
Various Owners	1888	Unknown
NRA	Unknown	11/16/1990
City of Newburyport	11/16/1990	2/25/1991
Newburyport Waterfront Trust	2/25/1991	Present

Site Operator	Description	From	To
Various uses/operators	Multiple uses (see Section 4.1)	1888	c.1965
Unknown	Vacant parcel	Unknown	c. 1978
Newburyport Waterfront Trust	Park	1994	Present

Site Owner – Parcel 11-1-C	From	To
Various Owners	1888	Unknown
NRA	Unknown	Present

Site Operator	Description	From	To
Various uses/operators	Multiple uses (see Section 4.1)	1888	c.1965
Unknown	Vacant parcel	Unknown	c. 1978
NRA	Parking lot/Vacant Parcel	c. 1986	Present

Site Owner – Parcel 11-1-D	From	To
Various Owners	1888	Unknown
NRA	Unknown	Present

Site Operator	Description	From	To
Various uses/operators	Multiple uses (see Section 4.1)	1888	c.1965
Unknown	Vacant parcel	Unknown	c. 1978
NRA	Parking lot/Vacant Parcel	c. 1986	Present

Site Owner – Parcel 11-1-F	From	To
Various Owners	1888	10/22/2015
NRA	10/22/2015	Present

Site Operator	Description	From	To
Various uses/operators	Multiple uses (see Section 4.1)	1888	c.1965
Unknown	Vacant parcel	Unknown	c. 1978
NRA	Park	1994	Present

## 2.4 Physical Setting

According to the United States Geological Survey (USGS) topographic map, Newburyport East quadrangle dated 2012 (**Figure 1**), the Site is located adjacent to the south of the Merrimack River, the Site topographic elevation is approximately 6 feet above mean sea level (MSL), and local topography slopes to the north-northeast. The topographic downward slope observed at the Site during the Site reconnaissance is generally flat. Based on local topography and historical environmental reports provided to TRC, as applicable the assumed direction of shallow ground water flow is to the north-northeast towards the Merrimack River. However, a subsurface investigation would be required to determine actual ground water flow direction.

The database radius report supplied by Environmental Data Resources, Inc. (EDR) of Milford, Connecticut was reviewed to obtain information regarding the dominant soil composition in the Site vicinity. This information is summarized below:

Hydric Status: Unknown  
Soil Surface Texture: Not reported

Soil Component Name: URBAN LAND  
Deeper Soil Types: Not reported

Please refer to the Geotcheck Physical Setting Source Summary of the EDR report presented in **Appendix A** for further information regarding the soil composition in the Site vicinity. According to EDR, the Site is located in a Federal Emergency Management Agency (FEMA) flood zone. Central and southern portions of the Site are classified as Protected Open Space. A MassDEP Priority Resources Map is provided as **Figure 3**.

### 3.0 USER PROVIDED INFORMATION

According to the ASTM E 1527-13 standard, certain tasks that may help identify the presence of RECs associated with the Site are generally conducted by the Phase I ESA User. These tasks include: providing, or authorizing the *environmental professional* to obtain, recorded land title records for environmental liens or activity and land use limitations (AULs); providing specialized knowledge related to RECs at the Site (e.g., information about previous ownership or environmental litigation); providing commonly known or *reasonably ascertainable* information within the local community about the *property* that is material to RECs in connection with the *property*; and informing the *environmental professional* if, as believed by the User, the purchase price of the *property* is lower than the fair market value due to contamination. A list of requested information was included in TRC's signed proposal dated May 11, 2018 (see Section 1.1). Information provided by the User pursuant to that request is listed in Section 8.0. A copy of the User questionnaire is included in Appendix B.

#### 3.1 Title & Judicial Records for Environmental Liens or Activity and Use Limitations

In addition to reviewing the EDR report (discussed in Section 4.2), local municipal records (Section 4.4), and the Massachusetts Land Records on-line database (Section 4.4), TRC obtained supplemental information regarding AUL-listed properties within Newburyport from the MassDEP reportable release database. Evidence of an AUL associated with the Site was identified, associated with Release Tracking Number (RTN) 3-15445.

#### 3.2 Specialized Knowledge

The User was aware of specialized knowledge related to RECs at the Site.

#### 3.3 Property Value Reduction Issues

The User was not aware of property valuation reduction issues regarding the Site.

#### 3.4 Commonly Known or Reasonably Ascertainable Information

TRC was supplied with commonly known and/or reasonably ascertainable information regarding the Site by Mr. William Chapman of ESS Group, Inc. This information was used during this Phase I ESA and has been incorporated in this report as applicable.

#### 3.5 Reason for Conducting Phase I

It is TRC's understanding that the User requires a Phase I for the potential transfer of ownership of the Site.

## 4.0 RECORDS REVIEW

### 4.1 Historical Use Information

Information regarding Site and vicinity historical uses was obtained from various publicly available and practically reviewable sources including:

- Aerial photographs (scale: 1" = 500') dated 1938, 1952, 1960, 1965, 1978, 1986, 1993 (scale: 1" = 750') dated 1995, 2006, 2008, 2012 and 2016;
- Sanborn fire insurance maps dated 1888, 1894, 1900, 1906, 1914, 1924, 1946 and 1961;
- Topographic maps dated 1890, 1894, 1932, 1934, 1943, 1944, 1947, 1952, 1966, 1979, 1985, 1987 and 2012;
- City directories dated 1961, 1965, 1968, 1973, 1977, 1982, 1987, 1992, 1995, 2000, 2005, 2010 and 2014;
- Local municipal records;
- An environmental database report; and
- Interviews with Site representative and regulatory agency officials, as necessary.

Historical research documentation is included in **Appendix C**.

#### 4.1.1 Site History

#### Operational History

**Table 4.1 - Site History**

Year	Site History
1888	The northern portion of the Site property appears to have five wharfs (Mercantile Wharf, Central Wharf, City Wharf, Ferry Wharf and Coal Pockets & Wharf) on the Merrimack River. Several buildings appeared across the Site with the following labels: P.& R. Coal & Iron Co., Coal houses, iron and junk warehouse, fish smoking, Globe Soap Co., a coal shed, storage, stores, printing, City R.R. Freight Depot, J.B & E. Knights Grist Mill & Elev. (Knight Grain Company), J.N. Brackett & Co. Heel Factory, American House, lumber, hotel, lime, cement & shingle warehouse, storage for boats and a few dwellings. Coal pockets and a wharf are present on the northeast corner of the Site, north of the Coal House and adjacent to the river. A tank (size not reported) is located off the southeast corner of the Globe Soap Company. Railroad tracks enter the Site from the east and stop on the center of the Site.

**Table 4.1 - Site History**

Year	Site History
1894 - 1906	<p>The Site appears to have similar structures across the Site that appeared in 1888, except a few more smaller buildings appear in the southern half of the Site. There are no longer five wharfs; only Mercantile Wharf and Central Wharf remain, the former wharfs have been filled in and a large coal house (Philadelphia and Reading Coal and Iron Company) appears. The railroad tracks have expanded on the eastern side of the Site. In the central portion of the Site a new operation appears the Newburyport Gas and Electric Company and Jas C. Company Lumber Yard. The tank off the southeast corner of the Globe Soap Company no longer appears and an addition to the building appears where the tank was located.</p> <p>In 1906, a few of the businesses changed to include antique furniture, machine shop, billiards, and sail lofts. The structures remain unchanged and the larger operations (lumber, grain and coal) remain. The Newburyport Gas and Electric Company is operating.</p>
1906 - 1914	<p>Four sheds (lumber and coal) and a stable in the lumber yard (western side of the Site) are removed. In the same location a concrete painting mill appears and just north is a buried gasoline tank. Jas C. Colemans Lumber Yard is replaced by The Brooks Construction &amp; Lumber Company. Additional areas of coal pockets appear by 1914 in the northeastern portion along the river, and on the southeast portion of the Site, west of the former Coal House, which is labeled as a wood &amp; coke storehouse by 1914. Additional new businesses include a carpenter, store house (former Globe Soap Co.), salt shed, beef warehouse, junk storage and general store house.</p>
1914 - 1924	<p>The Brooks Construction &amp; Lumber Company has taking over most of the western side of the Site with storage buildings and an office. Along Merrimac Street no dwellings exist had have been replaced by stores, a tin shop and a bakery. The buried gasoline tank located north of the painting mill no longer appears in 1924 and is labeled as a lumber pile. . The eastern side of the Site remains unchanged.</p>
1924 – 1946	<p>The eastern side of the Site formerly occupied by Philadelphia and Reading Coal and Iron Company appears vacant with three large structures removed. The central portion of the Site was formerly occupied by Knight Grain Company appears vacant with the two structures removed. Railroad tracks remain. The channel between Mercantile Wharf and Central Wharf appears to be fill in with a new lumber shop. The Brooks Construction &amp; Lumber Company is replaced with Diamond Match Company (building materials). The western corner of the Site had several structures removed. The three coal pocket areas are present until at least 1924 until sometime before 1946. Along Merrimack Street the stores were removed and replaced by a filling station (west of the adjoining fire station) with three tanks of the eastern corner of the station. A welding shop, road equipment storage and feed storage took over three of the western structures.</p>
1946 -1978	<p>In 1961, a second filling station appears in the western corner of the Site, no tanks were visible on the Sanborn Map. A few stores appeared along Merrimac Street and a Garage appears on the eastern portion of the Site. The railroad tracks appear to be removed except one track.</p>
1978 – Present	<p>All structures appear to be removed with a partially paved parking lot on the eastern and western sides of the Site with a grassy park in the center which is currently present.</p>

It does not appear that topographic contours in the Site area have significantly changed during the time period reviewed, however areas between the wharfs were filled in in the late 1800s and early 1930s.

## Hazardous Substances

Hazardous substances including raw materials; finished products and formulations; hazardous wastes; hazardous constituents and pollutants including intermediates and byproducts that were historically present at the Site appear to have been petroleum products, wood chemicals, coal, gasoline, and other chemicals associated with the historical use of the Site. Current hazardous substances and petroleum products observed during the Site reconnaissance - including unidentified substance containers (when open or damaged, and containing unidentified substances suspected of being hazardous or petroleum products) - are discussed in Section 5.2.

### 4.1.2 Adjoining Property History

**Table 4.2 - Adjoining Property History**

Year	Adjoining Property History
North	Since at least the late 1800's the Merrimack River has been present.
East	Custom House Wharf with two commercial/industrial structures have been present since the late 1800s; occupants of the structures over time have been iron & junk warehouse, hardware store, National Biscuit Company storage, Custom Heel Company, furniture store and musical stage.
South	Merrimack and Water Streets have been present since the late 1800s; beyond has been several commercial properties changing tenants over time since the late 1800's until the present. Notable tenants include fire station/police station (located before Merrimack street), undertakers and coffin warehouse, hardware and paint store, leather shop and filling station (located south off the western corner of the Site).  One of the stores off the corner of the Site along Merrimack Street has a gas tank identified near the Street in 1924 until 1946, in 1961 it appears removed.
West	Brown's Wharf has been present since the late 1800s; along the wharf several commercial/industrial structures since the late 1800s, tenants over the years have been rigging yard, coal house, 2 <sup>nd</sup> hand furniture store, furniture repair, paint and varnish store, tow boat company, auto repair shop, restaurant, and a boat yard.

### 4.1.3 Surrounding Property History

**Table 4.3 - Surrounding Property History**

Year	Surrounding Property History
1888 - Present	This area has been occupied by commercial/ industrial business from at least 1888 to the present. A few residential properties have appears over time.

## 4.2 Database Report & Environmental Record Review

A database search report that identifies properties listed on state and federal databases within the ASTM-required radii of the Site was obtained from EDR and is included in **Appendix A**.

The environmental database report identified 149 properties/listings. These properties included those that could be mapped and those that could not (i.e., orphan properties). The Site and the adjoining properties were listed in the database search report.

#### 4.2.1 Subject Site

Site information included in the database search report is summarized in the following table:

Site Facility Name(s) and/or Listed Address(es)	Waterfront Park, West Lot - Petroleum Release – Merrimac Street, Newburyport, MA 01950 McCarthy Transportation - Water Street, Newburyport, MA 01950
EDR Map No(s).	A1, A2, and orphan list
Database(s)	SHWS, INST Control, Spills, ENF and RELEASE
Description/ID No(s).	RTNs: 3-15445, 3-31885 and 3-34699
Database Review Summary	<p><b>RTN 3-15445:</b> According to the EDR report and MassDEP reports, a release of lead was identified in the subsurface soil and was reported to MassDEP on July 7, 1997 and assigned RTN 3-15445. Lead was identified in soil at concentrations up to 17,000 milligrams per kilogram (mg/kg) on the East Lot portion of the Site.</p> <p>In January 2008, MassDEP issued an Administrative Consent Order to the NRA due to non-compliance, and failure to perform additional response actions. A Phase II Comprehensive Site Assessment (CSA) with a Phase III Response Action Plan (RAP) or Response Action Outcome (RAO) was required to be submitted by November 30, 2009.</p> <p>In November 2009, Weston &amp; Sampson Engineers, Inc. (Weston &amp; Sampson) submitted a Phase II CSA and Phase III RAP for RTN 3-15445 to MassDEP. According to the Weston &amp; Sampson Phase II CSA, a limited site investigation was conducted by Simmons Environmental in January 1997. Four soil borings were advanced to a maximum depth of 14 feet below grade. Soil samples were analyzed for metals (arsenic, cadmium, chromium, lead and mercury), volatile organic compounds and petroleum hydrocarbons. Only lead exceeded the RCS-1 soil standard in SB-2 and SB-3; extractable petroleum hydrocarbons were detected in SB-4. Three of the soil borings were converted to monitoring wells. Petroleum hydrocarbons were also detected in groundwater in one well, SB/MW-4. The soil borings/wells were located along the southern areas of the East Lot.</p> <p>In May 2009, Weston &amp; Sampson advanced 10 soil borings during the Phase II CSA to further evaluate the lead release (RTN 3-15445). One sample from each boring was analyzed for extractable petroleum hydrocarbons (EPH) with target PAHs and lead. No other metals were analyzed. Five of the borings were converted to monitoring wells. Four additional borings were advanced in August and September 2009 and 16 more borings were advanced in September 2009. The supplemental sampling was primarily to evaluate the lateral and vertical of lead in soil. A few samples were also analyzed for VPH and EPH. Lead concentrations ranged from 3.7 mg/kg to 17,000 mg/kg.</p>

Database Review Summary

A Phase I Initial Site Investigation for RTN 3-15445 (in the East Lot) was conducted by Ransom Environmental Consultants, Inc. (Ransom) in June 1998. No sampling was conducted. Ransom's findings stated that condition of No Significant Risk does not exist at the site and additional response actions are warranted.

According to Weston & Sampson's Class B-2 Response Action Outcome Statement dated November 2011, lead extends across five parcels (Parcel ID Nos. 11-1-C, 11-1-D, 11-1-E, 11-1-F and a portion of 12-10) for a total of 3.2 acres. This area is a portion of the East Lot. Lead impacts in some areas extended to 14 feet below ground surface. Soil and groundwater samples were collected and analyzed. A total of 300 soil samples were analyzed for lead; results indicated 95 samples exceeded the MCP Reportable Concentrations. No groundwater impacts were identified and groundwater flow was reported toward the north. Weston & Sampson concluded that impacts are associated with fill material. Weston & Sampson also concluded that due to the extent of the lead impacts to soil, excavation and replacement of soils was impractical. To achieve a No Significant Risk, the entire area was placed under an Activity Use Limitation (AUL) to "lock in" the impacted soil under the paved parking lot. A Class B-2 RAO prepared by Weston & Sampson was submitted on November 30, 2011, indicating that remedial actions have not been conducted because a condition of No Significant Risk exists. This condition is contingent upon the implemented AUL.

**RTN 3-31885:** According to the EDR report and MassDEP, a release of petroleum-related compounds and metals was identified in the subsurface soil associated with the former industrial/commercial property use and was reported to MassDEP on November 22, 2013 and assigned RTN 3-31885 (Parcel ID No. 11-1-A). This area is a portion of the West Lot. GZA was performing a subsurface investigation for future redevelopment in 2013 when the release was identified. GZA attributed the presence of metals and polycyclic aromatic hydrocarbons (PAHs) to historic fill.

Database Review Summary

The elevated petroleum hydrocarbons were attributed the former fill station that existed on the southern portion of the west side of the Site (c. 1946-1961). GZA's investigation in 2013 included 13 soil borings on both the eastern and western portions of the Site and one groundwater monitoring well was installed. Soil samples had reportable concentrations of C11-C22 aromatic hydrocarbons and C9-C18 aliphatic hydrocarbons (excluding the detections for arsenic and PAHs attributed to fill). The groundwater sample result was non- detect. Groundwater flow was reported to be toward the northwest.

In 2017, EES Group took over the investigation for RTN 3-31885. A Phase II Comprehensive Site Assessment was prepared by ESS Group identified the horizontal and vertical extent of the petroleum impacts, fill material, PAHs and metal impacts. The lateral and vertical extents were identified by conducting additional subsurface assessment which included eleven soil borings, four test pits and installation of three additional monitoring wells. A Method 1 Risk Characterization and Method 3 Stage I Environmental Screening was performed; results indicated that No Significant Risk exists for all contaminants of concern (COCs) except arsenic, for which remedial action will be needed to achieve a permanent solution. The Method 3 Stage I Environmental Screening showed no significant pathways existed between the Site and aquatic environment.

In February 2018, a Release Abatement Measure Plan (RAM Plan) was submitted for both RTNs (3-31885 and 3-34699). The RAM Plan addresses the impacted soil including elevated arsenic by excavation and off-Site disposal to achieve a Permanent Solution with No Conditions.

**RTN 3-34699:** According to the EDR report and MassDEP, a release was identified in the subsurface soil of arsenic associated with the former industrial/commercial property use and was reported to MassDEP on December 29, 2017 and assigned RTN 3-34699. GZA was performing subsurface investigation related to the primary RTN and identified the arsenic release, which was attributed to coal ash (historic fill) in 2013. ESS Group re-evaluated the levels in 2017 and disagreed with GZA conclusions and reported the release in 2017. Based on the MassDEP and ESS Group, the RTN is listed as closed as of February 22, 2018 and the RTN was linked with the primary RTN 3-31885.

Based on the regulatory status of the East Lot on Site and current release investigation at the West Lot on the Site, the subsurface is impacted at the Site.

According to information provided to TRC by Mr. William Chapman of ESS Group, Inc. (ESS), the current status of activities at the West Lot are as follows:

- RAM activities were completed in April 2018 in the West Lot. Soils impacted with elevated arsenic concentrations at and around the soil boring GZ-6 were removed.
- Post excavation soil data and other site-wide soil data were used to conduct a risk characterization and calculate Exposure Point Concentrations. Based on ESS's calculations, the EPC for arsenic exceeds the applicable Method 1 soil standards and background level (both are 20 milligrams per kilogram) for current and reasonably foreseeable Site activities and uses. A Method 3 Risk Characterization is being conducted to determine what site activities and uses are at risk and allowable, or not allowable.

- ESS is proposing a Permanent Solution with Conditions statement with a RAM Completion Report which will include an AUL.

At the time of preparation of this report, the aforementioned information has not yet been submitted to MassDEP as report preparation and a risk characterization are currently being conducted.

#### 4.2.2 Adjoining & Surrounding Property Record Review

TRC evaluated the following factors to determine whether additional environmental records should be reviewed with respect to the potential for contaminant migration from the adjoining and surrounding properties:

- (1) Whether the property is up-gradient or down-gradient of the Site vis-à-vis **ground water migration** based on the local topography, and the assumed ground water depth and north shallow ground water flow direction;
- (2) Whether the property is up-gradient or down-gradient of the Site vis-à-vis **vapor migration** based on readily available information pursuant to the ASTM E 1527-13 standard including soil and geological characteristics; contaminant characteristics; contaminated plume migration data; and significant conduits that might provide preferential pathways for vapor migration such as major utility corridors, sanitary sewers, storm sewers, and significant natural conduits such as Karst terrain (vapor migration may also be influenced by the age and design of infrastructure features associated with these conduits);
- (3) Property case status (i.e., Massachusetts Department of Environmental Protection [MassDEP] has issued a No Further Action letter or a Response Action Outcome [RAO] Statement or Permanent Solution Statement has been submitted.
- (4) Type of database and whether the presence of contamination is known; and
- (5) The distance between the listed property and the Site. As allowed by ASTM E1527-13, TRC adjusted ASTM-specified approximate minimum search distances for governmental records due to the Site's densely-developed setting. Database listings were reviewed for properties located within a 1/8-mile radius of the Site.

Based on this evaluation, TRC limited the review of additional environmental records to the properties listed below, since the potential for contamination to be migrating to the Site from the other properties identified by the database search is considered low.

##### 4.2.2.1 Adjoining Properties

Adjoining property information included in the database search report is summarized in the following table:

<b>Facility Name(s) and/or Listed Address(es)</b>	Old Newburyport Fire Station – Market Place, Newburyport, MA 01950
<b>EDR Map No(s).</b>	A3
<b>Database(s)</b>	LUST and RELEASE
<b>Description/ID No(s)</b>	RTN 3-004517
<b>Database Review Summary</b>	<p>According to the EDR report and MassDEP file, a release occurred from a UST located at the former gas station and was reported to MassDEP on July 15, 1993 and was assigned RTN 3-004517. According to the RAO prepared by Higgins Environmental Associates (HEA), in 1990 and 1991, petroleum impacted soil (approximately 250 cubic yards) was excavated and a groundwater extraction/treatment system was used during 1990-1991. MassDEP reportedly approved to discontinue groundwater treatment and extraction in 1991. HEA was unable to determine the volume of water extracted and treated. The release was reported to be limited to the building footprint.</p> <p>MCP Method 1 and Method 3 Risk Characterizations were conducted by HEA to evaluate any risk due to impacts in the soil and groundwater. No Significant Risk existed associated with this release. A Class A-2 RAO was submitted by HEA on August 15, 1993 indicating a permanent solution has been achieved. Contamination has not been reduced to background.</p> <p>Based on the regulatory status and release boundary (limited to the footprint of the building), this release is not expected to impact the Site.</p>

#### 4.2.2.2 Surrounding Properties

Surrounding property information included in the database search report is summarized in the following tables:

<b>Facility Name(s) and/or Address(es)</b>	Village Wash Tub Laundromat – 26 Water Street, Newburyport, MA 01950
<b>Approximate Location Relative to Site</b>	121 feet, east
<b>EDR Map No(s).</b>	B4
<b>Database(s)</b>	EDR Historic Cleaners
<b>Description/ID No(s).</b>	N/A
<b>Presumed Hydrogeologic Setting</b>	Up-/Cross-gradient

<b>Database Review Summary</b>	<p>According to the EDR report, the Village Wash Tub Laundromat was listed from 1997 until 2014. The type of cleaning was “drycleaning plants, except rugs”. TRC called the Village Wash Tub Laundromat on June 6, 2018. The employee told TRC that no drycleaning is performed on the property and has never, that drycleaning is an off-Site service.</p> <p>Based on no release identified, distance and phone interview this listing is not expected to impact the subsurface of the Site.</p>
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<b>Facility Name(s) and/or Address(es)</b>	W E Atkinson Co. – 27 Water Street, Newburyport, MA 01950
<b>Approximate Location Relative to Site</b>	133 feet, east
<b>EDR Map No(s).</b>	B5
<b>Database(s)</b>	SHWS and RELEASE
<b>Description/ID No(s).</b>	RTN 3-02683
<b>Presumed Hydrogeologic Setting</b>	Up/Cross-gradient
<b>Database Review Summary</b>	<p>According to the EDR report and MassDEP file, a petroleum release was identified related to the former fuel depot and was reported to MassDEP on January 15, 1990 and was assigned RTN 3-02683. According to the RAO prepared by Sanborn, Head &amp; Associates, Inc (SHA) a subsurface investigation began in 1989; petroleum impacts were identified in the soil and groundwater. Approximately 67 tons of impacted soil were removed near the southeast corner and an RAO was submitted by Simmons in 1994. Simmons continued investigation including soil borings, groundwater monitoring wells and sampling for the remaining of the Site. Ransom Environmental took over investigations in 1995, which included soil excavations, additional sampling and soil treatment.</p> <p>Due to a property transaction, SHA conducted a file review of prior consultant’s reports and collected supplemental data. Conclusions indicated soil results related the exceedances of PAH, lead and arsenic to the historic fill material of the area. Groundwater did not have recent exceedances. A Method 3 Risk Characterization was conducted for the Site by O’Reilly, Talbot and Okun Associates, Inc., resulting in a condition of No Significant Risk. A Class A-2 RAO was submitted by Sanborn, Head &amp; Associates, Inc. on December 30, 2005 indicating a permanent solution has been achieved. Contamination has not been reduced to background.</p> <p>Based on the regulatory status this release is not expected to impact the subsurface of the Site.</p>

<b>Facility Name(s) and/or Address(es)</b>	20 <sup>th</sup> Century Cleaners & Laundries – 10 Liberty Street, Newburyport, MA 01950
<b>Approximate Location Relative to Site</b>	188 feet, south

<b>EDR Map No(s).</b>	6
<b>Database(s)</b>	EDR Historic Cleaners
<b>Description/ID No(s).</b>	N/A
<b>Presumed Hydrogeologic Setting</b>	Up-gradient
<b>Database Review Summary</b>	<p>According to the EDR report, the 20<sup>th</sup> Century Cleaners &amp; Launderers was listed in 1970, 1980 until 1983. The type of cleaning was “drycleaning plants, except rugs”.</p> <p>Based on no reported releases or evidence of use of solvents, operations at this facility are not expected to impact the Site.</p>

<b>Facility Name(s) and/or Address(es)</b>	Hilton’s Marina LLC; BP Gibbs Station 00880 and Gibbs Oil Company LT – 51 Merrimac Street, Newburyport, MA 01950
<b>Approximate Location Relative to Site</b>	253 feet, west
<b>EDR Map No(s).</b>	C7, C8 and C9
<b>Database(s)</b>	LUST, UST, AST, Financial Assurance, EDR Historic Auto, SHWS and RELEASE
<b>Description/ID No(s).</b>	RTN 3-03593 and 3-24395
<b>Presumed Hydrogeologic Setting</b>	Cross-gradient

<p><b>Database Review Summary</b></p>	<p><b>RTN 3-03593:</b> According to the EDR report and MassDEP file, a petroleum release was identified in the soil and groundwater from a gas station and was reported to MassDEP on July 15, 1991 and was assigned RTN 3-03593. Five monitoring wells were installed in 1990 by IEP, Inc. Documented groundwater flow is to the north-northwest. Soil and groundwater analysis results were below the Method 1 Standards. A Class B-1 RAO was submitted by Geologic Services Corporation on September 8, 1995 indicating a permanent solution has been achieved and No Significant Risk exists.</p> <p><b>RTN 3-24395:</b> According to the EDR report, a petroleum release was identified from a UST and was reported to MassDEP on November 8, 2004 and was assigned RTN 3-24395. A Class A-2 RAO was submitted on January 10, 2005 indicating a permanent solution has been achieved. Contamination has not been reduced to background.</p> <p>The marina had four 4,000-gallon gasoline USTs removed in 1986; one 10,000-gallon diesel UST removed in 2004; and two 5,000-gallon gasoline USTs removed in 2011. Currently in use is a 10,000-gallon diesel fuel AST.</p> <p>The property was listed as several gas stations (O’Connell’s B P, Gibbs Station, Standard Oil Co, BP America Inc and Gibbs Oil Company) that operated from 1973 until 2005.</p> <p>Based on the regulatory status, cross-gradient orientation to the Site, and documented groundwater flow direction, these releases are not expected to impact the subsurface of the Site.</p>
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<p><b>Facility Name(s) and/or Address(es)</b></p>	<p>Green Street Parking Lot –Merrimack and Green Street, Newburyport, MA 01950</p>
<p><b>Approximate Location Relative to Site</b></p>	<p>276 feet, west</p>
<p><b>EDR Map No(s).</b></p>	<p>C10</p>
<p><b>Database(s)</b></p>	<p>Finds and US Brownfields</p>
<p><b>Description/ID No(s).</b></p>	<p>N/A</p>
<p><b>Presumed Hydrogeologic Setting</b></p>	<p>Cross-gradient</p>
<p><b>Database Review Summary</b></p>	<p>According to the EDR report, a Phase I ESA was performed on the surface parking lot on Green Street for the Merrimack Valley Planning Commission in 2005. The Phase I ESA identified that hazardous materials and petroleum products impacted the surface soils. No additional information was provided. No information was identified on the MassDEP reportable release database,</p> <p>Based on the cross-gradient orientation to the Site, these petroleum impacts to surface soils are not expected to impact the subsurface of the Site.</p>

<b>Facility Name(s) and/or Address(es)</b>	No Location Aid – 15 and 23 Liberty Street, Newburyport, MA 01950
<b>Approximate Location Relative to Site</b>	332 feet, southeast
<b>EDR Map No(s).</b>	D11
<b>Database(s)</b>	SHWS, INST CONTROL, ENF and RELEASE
<b>Description/ID No(s).</b>	RTN 3-22163
<b>Presumed Hydrogeologic Setting</b>	Up/Cross-gradient
<b>Database Review Summary</b>	<p>According to the EDR report and MassDEP, a release of lead and PAHs were identified in the subsurface soil and was reported to MassDEP on October 1, 2002 and assigned RTN 3-22163. According to the RAO prepared by Environ International Corporation, the only source of impacts is a former 2,000-gallon fuel oil UST. Fill material was also identified at the property and is attributed to the PAHs in soil at the property. These findings were supported by soil and groundwater sampling and observations. Based on a Method 3 Risk Characterization, a Condition of No Significant Risk exists, however an AUL was implemented to restrict residential use of the property. A Class B-2 RAO prepared by Environ International Corporation was submitted on June 15, 2007, indicating that remedial actions have not been conducted because a level of No Significant Risk (NSR) exists. The NSR condition is contingent upon an Activity Use Limitation (AUL) on the property.</p> <p>Based on the regulatory status, this release is not expected to impact the subsurface of the Site.</p>

<b>Facility Name(s) and/or Address(es)</b>	Windward Yacht Yard –58 Merrimac Street Rear, Newburyport, MA 01950
<b>Approximate Location Relative to Site</b>	363 feet, west
<b>EDR Map No(s).</b>	C14
<b>Database(s)</b>	SHWS and RELEASE
<b>Description/ID No(s).</b>	RTN 3-18528
<b>Presumed Hydrogeologic Setting</b>	Cross-gradient

<b>Database Review Summary</b>	<p>According to the EDR report and MassDEP, a release of hydraulic oil and oil was observed as a sheen on the Merrimack River and was reported to MassDEP on July 18, 1999 and assigned RTN 3-18528. According to the RAO prepared by Simmons Environmental Services, Inc., Immediate Response Actions included surface water sampling, soil sampling, and identification of the sources, which was a stationary crane hydraulic line. The hydraulic line was replaced and impacted soils excavated and removed off Site for recycling. Confirmatory samples were collected and results below the Method 1 risk limits. A Class A-2 RAO was prepared by Simmons Environmental Services, Inc and submitted on July 20, 2000, indicating a permanent solution has been achieved. Contamination has not been reduced to background.</p> <p>Based on the regulatory status, this release is not expected to impact the subsurface of the Site.</p>
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<b>Facility Name(s) and/or Address(es)</b>	Wendover Wood Works – 29-35 Liberty Street, Newburyport, MA 01950
<b>Approximate Location Relative to Site</b>	482 feet, southeast
<b>EDR Map No(s).</b>	D15
<b>Database(s)</b>	SHWS and RELEASE
<b>Description/ID No(s).</b>	RTN 3-01292
<b>Presumed Hydrogeologic Setting</b>	Up/Cross-gradient
<b>Database Review Summary</b>	<p>According to the EDR report and MassDEP, a release was reported to MassDEP on November 15, 1988 and assigned RTN 3-01292. According to a Licensed Site Professional (LSP) Evaluation Opinion Letter, soil and groundwater samples were collected. Tetrachloroethene was detected in two groundwater samples; however, concentrations were below the reportable concentrations. In October 1998, Ransom Environmental Consultants, Inc. (Ransom) conducted a Limited Subsurface Investigation that indicated no reportable concentrations were detected in soil. The Ransom LSP Opinion Letter dated 1/26/1999 stated that a release had not occurred at the site and additional response actions are not warranted.</p> <p>Based on the regulatory status, this release is not expected to impact the subsurface of the Site.</p>

<b>Facility Name(s) and/or Address(es)</b>	The Book Rack –58 State Street, Newburyport, MA 01950
<b>Approximate Location Relative to Site</b>	590 feet west of the Site
<b>EDR Map No(s).</b>	18
<b>Database(s)</b>	SHWS, LAST and RELEASE

<b>Description/ID No(s).</b>	RTN 3-27611
<b>Presumed Hydrogeologic Setting</b>	Up-gradient
<b>Database Review Summary</b>	<p>According to the EDR report, a release of 200 gallons of #2 fuel oil from a residential AST pipe and was reported to MassDEP on April 3, 2008 and assigned RTN 3-27611. A Class A-2 RAO was submitted on April 8, 2009, indicating a permanent solution has been achieved. Contamination has not been reduced to background.</p> <p>Based on the regulatory status and distance from Site, this release is not expected to impact the subsurface of the Site.</p>

<b>Facility Name(s) and/or Address(es)</b>	Central Congregational Church –14 Titcomb Street, Newburyport, MA 01950
<b>Approximate Location Relative to Site</b>	630 feet, west-southwest
<b>EDR Map No(s).</b>	20
<b>Database(s)</b>	ASBESTOS, LAST and RELEASE
<b>Description/ID No(s).</b>	RTN 3-13860
<b>Presumed Hydrogeologic Setting</b>	Cross-gradient
<b>Database Review Summary</b>	<p>According to the EDR report, a release of 200 gallons of #2 fuel oil from an AST at a church was reported to MassDEP on June 4, 1996 and assigned RTN 3-13860. A Class A-2 RAO was submitted on August 2, 1996, indicating a permanent solution has been achieved. Contamination has not been reduced to background.</p> <p>Based on the regulatory status, cross-gradient orientation and distance from the Site, this release is not expected to impact the subsurface of the Site.</p>

### 4.3 Previous Reports

The following environmental reports and documents regarding the Site were reviewed by TRC:

- March 28, 1978, *Port and Market, Archeology of the Central Waterfront, Newburyport, Massachusetts*, prepared by A. Faulkner, K. M. Peters, D. P. Sell and E. S. Dethlefsen.
- July 1998, *Phase I Initial Site Investigation, Proposed Newburyport Inn and Conference Center Site, Water and Merrimac Streets, Newburyport, Massachusetts, MA DEP Release Tracking No. 3-05445*, prepared by Ransom Environmental Consultants, Inc.
- March 7, 2008, *Administrative Consent Order and Notice of Non-Compliance*, RTN 3-15445 issued to Newburyport Redevelopment Authority, by MassDEP.

- November 2009, *Phase II Comprehensive Site Assessment and Phase III Remedial Action Plan, Parcels 11-1C through 11-1F and Parcel 12-10 (Partial)*, (Previously known as Parcel 3A NRA Property Parking Lot, Newburyport, Massachusetts, RTN 3-15445, prepared by Weston & Sampson Engineers, Inc.
- May 2011, *Supplemental Phase II Comprehensive Site Assessment, Phase III Remedial Action Plan and Phase IV Remedy Implementation Plan, Parcels 11-1C through 11-1F and Parcel 12-10 (Partial)* (Previously known as Parcel 3A NRA Property Parking Lot, Newburyport, Massachusetts, RTN 3-15445, prepared by Weston & Sampson Engineers, Inc.
- November 23, 2011, *Notice of Activity and Use Limitation*, Form 1075 – AUL for NRA Property Parking Lot on the parcel identified as Lot 3 on Plan No. 39539A recorded at Land Registration Office at Essex County Registry of Deeds on May 18, 1983, and the parcel identified as Lot 4 on Plan No. 39539A recorded at the Land Registration Office on May 18, 1983 (now known as Parcels 11-1C, 11-1D, 11-1E, 11-1F and a portion of Parcel 12-10). Restricted uses include residence, school, nursery, day care or recreational use where children may disturb soils; gardening, and landscaping below surface grade.
- November 2011, *Class B-2 Response Action Outcome Statement*, Parcel 3A, NRA Property Parking Lot, Water Street, Newburyport, Massachusetts, RTN 3-15445, prepared by Weston & Sampson Engineers, Inc.
- November 9, 2018 (2017), ESS Group Memorandum to Robert Uhlig, Newburyport Redevelopment Authority from Bill Chapman, ESS – memorandum regarding updated pf current assessment and proposed remedial actions on the West Lot.
- November 2017, *Phase II Comprehensive Site Assessment Report and Completion Statement RTN 3-31885 West Lot – 24 Merrimac Street, Newburyport, Massachusetts*, prepared by ESS Group, Inc.
- February 26, 2018, *Release Abatement Measure Plan RTNs 3-31885 and 3-34699 West Lot – 24 Merrimac Street, Newburyport, Massachusetts*, prepared by ESS Group, Inc.

Information provided in these reports is summarized below and/or throughout this report.

The Class B-2 RAO prepared by Weston & Sampson Engineers, Inc. (WSE) dated November 2011 indicates that the investigation of lead and petroleum hydrocarbon analysis for soil was conducted predominantly on the eastern portion of the East Lot, with a few borings and monitoring wells also on the western portion of the lot. Lead concentrations in soil samples ranged from less than 300 mg/kg to greater than 3,000 mg/kg (in the area northwest of the Custom House). Extractable petroleum hydrocarbons (EPH) were detected in samples collected from 11 soil borings and several PAHs were detected in samples collected from five of the 11 soil borings in May 2009; none of the concentrations exceeded the MassDEP Standards.

Supplemental soil boring data collected by WSE in April 2011 included the analysis of RCRA 8 Metals in soil from seven of 18 total soil borings; the remaining samples were analyzed for lead only. The supplemental borings were advanced across the western, central and eastern portions

of the East Lot. Several of the soil samples from borings WSB-113 through WSB-118 had detections of arsenic, chromium and/or SVOCs at concentrations exceeding the MassDEP standards at depths of 0-3 feet below ground surface. Lead was detected in two samples at the 0-1 foot interval at concentrations exceeding the MassDEP standard. Lead was detected at elevated concentrations during the Phase II CSA; however, WSE stated that no Exposure Point Concentrations exceed the Upper Concentration Limits and no “hot spots” were identified on the site (East Lot). An AUL was placed on parcels 11-1C, 11-1D, 11-1E and 11-1F. A condition of No Significant Risk was determined to exist on parcel 12-10 and therefore was not included in the AUL. No source of the lead other than that in fill material was identified. Lead was not detected in groundwater. Other metal exceedances in soil were also attributed to fill material in the areas where they were identified.

The Port and Market Report details the archaeology of the central waterfront in Newburyport, Massachusetts. Landfilling was noted to have occurred during wharf construction and building demolition in the 1700s. By 1830, coal and wood were sold in the area of Ferry Wharf and the Gunnison Buildings (East Lot). This area was reportedly used for coal storage for 60 years. The Site was operated by Philadelphia and Reading Coal and Iron Company since c. 1888 until c. 1924.

Copies of the reports are provided in Appendix E.

The following environmental reports regarding the adjoining and surrounding properties were reviewed by TRC:

- September 1995, *LSP Evaluation Opinion Former BP Site No. 00880 51 Merrimac Street, Newburyport, MA RTN 3-3593*, prepared by Geologic Services Corporation;
- January 15, 1999, *Licensed Site Professional (LSP) Evaluation Opinion 29-35 Liberty Street Newburyport, Massachusetts MA DEP Site Number 3-1292*, prepared by Ransom Environmental Consultants, Inc.;
- July 2000, *Documentation in Support of a Immediate Response Action Completion Report & Class A-2 Response Action Outcome Statement*, prepared by Simmons Environmental Services, Inc.;
- August 8, 2005, *City of Newburyport Former Newburyport Fire Station Market Square, Newburyport, Massachusetts*, prepared by Higgins Environmental Associates, Inc.;
- December 2005, *Class A-2 Response Action Outcome Statement W.E. Atkinson Company, Newburyport, Massachusetts RTN 3-2683*, prepared by Sanborn, Head & Associates, Inc.
- June 2007, *Response Action Outcome Class B2 Property at 15 & 23 Liberty Street Newburyport, Massachusetts RTN 3-22163*, prepared by Environ International Corporation.

Information provided in these reports is summarized throughout this report. Reports associated with RTNs are available on the MassDEP Reportable Release Database at: <https://eeaonline.eea.state.ma.us/portal#!/search/wastesite>.

#### 4.4 Other Environmental Record Sources

Per the ASTM standard, local or additional state records were reviewed to enhance and supplement the ASTM-required federal and state records reviewed and discussed earlier in this report. These additional records include state agency lists of: waste disposal facilities; brownfield properties; hazardous waste/contaminated facilities; registered storage tanks; records of emergency release reports; and records of contaminated public wells. Local sources that were contacted to obtain this information include: Department of Health/Environmental Division; Fire Department; Planning Department; Building Permit/Inspection Department; land records (for AULs); Local/Regional Pollution Control Agency. Information from these sources discussed below:

**Table 4.4 - Other Environmental Record Sources**

STATE REGULATORY AGENCY LISTIES/ DEPARTMENTS	Available Information
Department of Health/ Environmental Division	TRC contacted the City of Newburyport Health Department on June 11, 2018. A response has not yet been received.
Fire Department	TRC contacted the City of Newburyport Fire Department on June 11, 2018. Deputy Bradbury responded on June 18, 2018 via telephone and stated the Fire Department does not have records for tanks at the Site, and they did not start keeping records until the 1980s.
Planning Department	TRC contacted the City of Newburyport Planning Department on June 11, 2018. A response has not yet been received.
Department of Public Services	TRC contacted the Newburyport Department of Public Services on June 15, 2018. A response has not yet been received.
Building Permit/Inspection/ Construction Department	TRC contacted the City of Newburyport Building Department on June 11, 2018. A response has not yet been received.
Emergency Management Department	TRC contacted the City of Newburyport Emergency Management Department on June 11, 2018. A response has not yet been received.
Land Records	TRC contacted the City of Newburyport Assessor's Office on June 11, 2018. Five property record cards and a parcel map were obtained. TRC also searched the Essex County Registry of Deeds database ( <a href="http://salemdeeds.com/salemdeeds/">http://salemdeeds.com/salemdeeds/</a> )  One Quitclaim Deed for Parcel 11-1-B was identified for the transfer of the parcel from Newburyport Development Authority to the City of Newburyport.
Local/Regional Pollution Control Agency	TRC reviewed documents on the MassDEP Waste Site & Reportable Release database for information regarding on-Site and adjacent property releases. Information obtained is provided in Section 4.2. <a href="https://eeaonline.eea.state.ma.us/portal#!/search/wastesite">https://eeaonline.eea.state.ma.us/portal#!/search/wastesite</a>

Obtained documents are provided in Appendix E.

## 5.0 SITE RECONNAISSANCE

### 5.1 Methodology and Limiting Conditions

Ms. Tracy Dionne, TRC Geologist, conducted a Site reconnaissance of accessible areas on and around the Site on June 11, 2018 for the purpose of identifying potential RECs, and was not accompanied as site access was not restricted. Photographs taken during the reconnaissance are provided in **Appendix D**. A Site layout plan is included as **Figure 2**.

Three buildings are present on the Site. One shack for the Newburyport Whale Watch located on the boardwalk on the northern portion of the Site, one information booth and one Public Restroom building. Only a portion of the Public Restroom building interior was accessed.

### 5.2 Exterior Site Observations

Unless otherwise noted, the items listed in the table below appeared in good condition with no visual evidence of staining, deterioration or a discharge of hazardous materials; and there are no records of a release in these areas. Items where further description is warranted are discussed in the section(s) following the table.

**Table 5.1 - Exterior Site Observations**

Item	Present (Current/ Historic/ No)	Description
Hazardous material storage or handling areas	No	(see Section 5.2.1)
Aboveground storage tanks (ASTs) and associated piping	No	Not Observed
Aboveground storage tanks (ASTs) and associated piping	Historic	One tank (size and content unknown) associated with Globe Soap Co.; present since at least 1888, removed c. 1924.
Underground storage tanks (USTs) and associated piping	No	Not Observed
Underground storage tanks (USTs) and associated piping	Historic	One underground gasoline tank (size unknown) on western portion of the Site, present in 1916 and is not present as of 1914.
Drums & containers ( $\geq 5$ gallons)	No	Not Observed
Odors	No	Not Observed
Pools of liquid, including surface water bodies and sumps (handling hazardous substances or substances likely to be hazardous only)	No	Not Observed
Polychlorinated Biphenyls (PCBs) / Transformers	Yes	One pad-mounted transformer on the eastern portion of the Site, on eastern edge of grass at Waterfront Park. A non-PCB label was not observed on the transformer.
Stains or corrosion	No	Not Observed
Drains & sumps	Yes	Floor drain observed in the public restroom
Pits, ponds & lagoons	No	Not Observed
Stressed vegetation	No	Not Observed

**Table 5.1 - Exterior Site Observations**

Item	Present (Current/ Historic/ No)	Description
Historic fill or any other fill material	Historic	Wharfs were filled in in approximately in the late 1800s and early 1930s.
Wastewater (including storm water or any discharge into a drain, ditch, underground injection system, or stream on or adjacent to the Site)	Yes	Multiple storm drains on edges of parking lots and along walkways in Waterfront Park.
Wells (including dry wells, irrigation wells, injection wells, abandoned wells, or other wells)	Yes	One groundwater monitoring well observed on western portion of Site, in West Lot.
Septic systems or cesspools	No	Not Observed

### 5.2.1 Hazardous Substances

Hazardous substances including raw materials; finished products and formulations; hazardous wastes; hazardous constituents and pollutants including intermediates and byproducts that are currently present at the Site; and unidentified substance containers (when open or damaged, and containing unidentified substances suspected of being hazardous or petroleum products) were observed at the Site during the Site reconnaissance.

### 5.3 Adjoining and Surrounding Properties Reconnaissance

#### 5.3.1 Adjoining Properties

During the Site reconnaissance, TRC viewed the adjoining properties from the Site and publicly accessible areas (e.g., public roadways, etc.).

**Table 5.2 - Adjoining Properties Reconnaissance**

Direction from Site	Current Land Use Description
North	Merrimack River and beyond is residential and commercial properties
East	Commercial properties (Custom House Maritime Museum, retail stores)
South	Commercial and residential properties and Merrimack and Water Streets; c
West	Commercial properties (restaurants, retail stores and offices)

#### 5.3.2 Surrounding Properties

Surrounding properties generally include mixed commercial and residential to the east, south and west.

## 6.0 INTERVIEWS

The following persons were interviewed to obtain historically and/or environmentally-pertinent information regarding RECs associated with the Site.

1. Mr. William Chapman, Market Director – Land & Waterfront Development, of ESS Group, Inc., associated with the Site for 4 years – *Key Site Manager*, as defined by the ASTM standard and identified by the property owner/User
2. Attorney Bill Harris, Settlor of the Newburyport Waterfront Trust

The information provided is discussed and referenced in the text or provided below. Other references and sources of information are included in **Appendix E**.

Ms. Tracy Dionne spoke to Mr. Chapman on June 15, 2018. Mr. Chapman stated he is most familiar with the West Lot of the Site and that NRA has owned the Site since the mid to late 1960s. He was not aware of any surface releases or spills at the Site or releases of chemicals or petroleum products to any storm water drains or catch basins on the Site.

Regarding the Public Restrooms, Mr. Chapman was unaware whether they were connected to the City sanitary sewer system or if a holding tank is present at the Site. He also was not sure where the floor drains lead to.

RAM activities were completed in April 2018; approximately 60 to 75 cubic yards of arsenic-impacted soil was removed from the West Lot at the Site, in the vicinity of GZ-6. At the time of the interview with TRC, ESS had completed a Method 3 Risk Characterization for the West Lot and is currently preparing a Permanent Solution Statement with Conditions to be submitted to MassDEP for the entire West Lot. The current AUL plan on the entire West Lot is based on historic fill in that area. The AUL will restrict usage of the property for future use as residential or as a day care facility. Mr. Chapman indicated that the Permanent Solution Statement with Conditions and AUL are planned to be completed and submitted to MassDEP by mid-August, 2018.

According to correspondence from Mr. Harris, The entire area was designated as an archaeologically significant area by the National Park Service in 1979.

A 3 story coal pocket at water's edge straddled the Custom House Lot (most easterly of the NRA parcels) and what has been called Lot D2 to the west. Another coal pocket at right angle, somewhat to the west. He also noted that the sampling for heavy metals performed in both the Weston & Sampson sampling of 2009 and the follow-up sampling of 2011, separate report, did not take any core samples from the location of the larger Philadelphia & Reading Coal Pocket that operated by the water's edge in the years 1873 – 1926 and that the 2009 sampling was not tested for anything but lead.

The Same Philadelphia & Reading Coal and Iron Company sourced coal from the same mines in Pennsylvania -- with extensive borings from the Salem, MA coal pocket, 1873 - 1916, show arsenic, molybdenum, and various other heavy metals.

Mr. Harris stated that future uses would be for a park with infrastructure for future vehicle parking including a solar charging station.

DRAFT

## 7.0 FINDINGS, OPINIONS AND CONCLUSIONS

Potential findings can include RECs, historical RECs (HRECs), controlled RECs (CRECs) and *de minimis* conditions, pursuant to the ASTM E 1527-13 standard.

RECs are defined as the presence or likely presence of any *hazardous substances* or *petroleum products* in, on, or at a *property*: (1) due to any *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*.

CRECs are defined as a REC resulting from a past *release* of *hazardous substances* or *petroleum products* that has been addressed to the satisfaction of the applicable regulatory authority (for example, as evidenced by the issuance of a no further action letter or equivalent, or meeting risk-based criteria established by regulatory authority), with *hazardous substances* or *petroleum products* allowed to remain in place subject to the implementation of required controls (for example, *property* use restrictions, *activity and use limitations*, *institutional controls*, or *engineering controls*).

HRECs are defined as a past *release* of any *hazardous substances* or *petroleum products* that has occurred in connection with the *property* and has been addressed to the satisfaction of the applicable regulatory authority or meeting unrestricted use criteria established by a regulatory authority, without subjecting the *property* to any required controls (for example, *property* use restrictions, *activity and use limitations*, *institutional controls*, or *engineering controls*).

*De minimis* conditions are defined as a condition that generally does not present a threat to human health or the *environment* and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be *de minimis conditions* are not RECs nor CRECs.

TRC has performed a Phase I ESA in conformance with the scope and limitations of ASTM E 1527-13 at the property located at **Waterfront Park, 24 Merrimac Street and Ferry Wharf (including NRA West and East Lots)** (Site), see **Appendices F and G**. Deviations from this standard are described in Sections 1.3 and 7.6 of this report.

### 7.1 RECs and CRECs

This assessment has revealed no evidence of RECs (including CRECs) in connection with the Site, except for the following:

#### REC No. 1 – Arsenic and Petroleum Impacted Soils

Impacted soils have been identified on the NRA West Lot, which is a portion of the Site. Two releases to have been reported to the Massachusetts Department of Environmental Protection (MassDEP). Release Tracking Number (RTN) 3-31885 is associated with a release of petroleum hydrocarbons, polycyclic aromatic hydrocarbons (PAHs) and metals (arsenic and lead) to soil identified in August 2013. The petroleum release was attributed to a release from a former

filling station and the PAHs and metals were attributed to the presence of coal and coal ash in historic fill material.

RTN 3-34699 was assigned in November 2017 by MassDEP for detected arsenic at boring GZ-6 (conducted by GZA in August 2013) in soil at higher than background levels for coal and coal ash associated with fill material. GZA attributed the elevated arsenic concentration to fill material, however, ESS Group, Inc. (ESS) considered the concentration to far exceed the MassDEP published background level by MassDEP, and therefore provided notification of the release to MassDEP. RTN 3-34699 was linked to primary RTN 3-31885.

Release Abatement Measure activities were conducted by ESS in April 2018, which included soil excavation and off-site disposal. A Permanent Solution Statement with Conditions is currently being prepared by ESS. An AUL is planned to cover the entire NRA West Lot. Based on the current open status of RTN 3-11885, this condition is considered a REC.

#### REC No. 2 – Former Coal Pockets

The eastern portion of the Site was used for storage of coal for approximately 60 years. Areas identified on historical Sanborn maps include the northern and eastern portions of the East Lot. Limited subsurface investigations have been conducted in these areas for the presence of metals and PAHs associated with coal. Previous investigations include borings in the eastern portion of the East Lot; however, the depth of samples analyzed for metals (other than lead) and PAH were to approximately 6 feet below ground surface. The northern portion of the East Lot has not been evaluated for the presence of metals and PAHs in the areas of the former coal pockets.

TRC considers the likely presence of metals and PAHs in the ground surface as a result of coal storage at the Site to be a REC.

#### CREC No. 1 – Lead Impacted Soil

A release of lead to subsurface soil in the NRA East Lot was reported to MassDEP in July 1997 (Release Tracking Number 3-15445). Lead in soils extended across five parcels (Parcel ID Nos. 11-1-C, 11-1-D, 11-1-E, 11-1-F and a portion of 12-10) for a total of 3.2 acres, which is a portion of the NRA East Lot. Lead impacts in some areas extended to 14 feet below ground surface. Impacts are associated with the Site's historic commercial/industrial uses. To achieve a No Significant Risk, the entire area was placed under an Activity Use Limitation (AUL). Based on the AUL implemented on a portion of the Site, this is considered a CREC.

## **7.2 HRECs**

This assessment has revealed no evidence of HRECs in connection with the Site.

## **7.3 De Minimis Conditions**

This assessment has revealed no evidence of *de minimis* conditions in connection with the Site.

## 7.4 Data Gaps

TRC has made an appropriate inquiry into the commonly known and reasonably ascertainable resources concerning the historical ownership and use of the Site back to the first development per 40 CFR Part 312.24 (*Reviews of Historical Sources of Information*). Data gaps identified during this assessment include the following:

1. Unable to trace land ownership for parcels prior to ownership by NRA and City of Newburyport.
2. Unable to assess interior of Newburyport Whale Watch shack and Information Booth.

Based on historical sources reviewed, Data Gap No. 1 is not considered *significant*, as property uses were identified until at least the mid-1960s, and following that the land was vacant before utilizing as a park and parking lots. Data Gap No. 2 is not considered significant as the building are used for public information and/or commercial use for ticket sales.

## 7.5 Limiting Conditions and Deviations

### 7.5.1 Accuracy and Completeness

The ASTM E 1527-13 standard recognizes inherent limitations for Phase I ESAs that apply to this report, including:

- Uncertainty Not Eliminated – No Phase I ESA can wholly eliminate uncertainty regarding the potential for RECs in connection with a property. Data gaps identified during this Phase I ESA are listed in Section 7.4.
- Not Exhaustive – A Phase I ESA is not an exhaustive investigation.
- Past Uses of the Property – A review of standard historical sources at intervals less than five years is not required.

The Client is advised that the Phase I ESA conducted at the Site is a limited inquiry into a property's environmental status, cannot wholly eliminate uncertainty, and is not an exhaustive assessment to discover every potential source of environmental liability at the Site. Therefore, TRC does not make a statement i) of warranty or guarantee, express or implied for any specific use; ii) that the Site is free of RECs or environmental impairment; iii) that the Site is "clean"; or iv) that impairments, if any, are limited to those that were discovered while TRC was performing the Phase I ESA. This limiting statement is not meant to compromise the findings of this report; rather, it is meant as a statement of limitations within the ASTM standard and intended scope of this assessment. Specific limiting conditions identified during the Site reconnaissance are described in Section 5.1. Subsurface conditions may differ from the conditions implied by surface observations, and can be evaluated more thoroughly through intrusive techniques that are beyond the scope of this assessment. Information in this report is not intended to be used as a construction document and should not be used for demolition, renovation, or other construction purposes.

This report presents TRC's site reconnaissance observations, findings, and conclusions as they existed at the time of the Site reconnaissance. TRC makes no representation or warranty that the past or current operations at the property are, or have been, in compliance with all applicable federal, state and local laws, regulations and codes. TRC makes no guarantees as to the accuracy or completeness of information obtained from others during the course of this Phase I ESA report. It is possible that information exists beyond the scope of this assessment, or that information was not provided to TRC. Additional information subsequently provided, discovered, or produced may alter findings or conclusions made in this Phase I ESA report. TRC is under no obligation to update this report to reflect such subsequent information. The findings presented in this report are based upon reasonably ascertainable information and observed Site conditions at the time of the assessment.

This report does not warrant against future operations or conditions, nor does it warrant against operations or conditions present of a type or at a location not assessed. Regardless of the findings stated in this report, TRC is not responsible for consequences or conditions arising from facts that were not fully disclosed to TRC during the assessment.

An independent data research company provided the government agency database referenced in this report. Information regarding surrounding area properties was requested for approximate minimum search distances and was assumed to be correct and complete unless obviously contradicted by TRC's observations or other credible referenced sources reviewed during the assessment.

TRC is not a professional title insurance or land surveyor firm and makes no guarantee, explicit or implied, that any land title records acquired or reviewed, or any physical descriptions or depictions of the property in this report, represent a comprehensive definition or precise delineation of property ownership or boundaries.

### **7.5.2 Warranties and Representations**

This report does not warrant against: (1) operations or conditions which were not evident from visual observations or historical information provided; (2) conditions which could only be determined by physical sampling or other intrusive investigation techniques; (3) locations other than the client-provided addresses and/or legal parcel description; or (4) information regarding off-site location(s) (with possible impact to the Site) not published in publicly available records.

### **7.5.3 Continued Validity/User Reliance**

This report is presumed to be valid, in accordance with, and subject to, the limitations specified in the ASTM E 1527-13 standard, for a period of 180 days from completion, or until the Client obtains specific information that may materially alter a finding, opinion, or conclusion in this report, or until the Client is notified by TRC that it has obtained specific information that may materially alter a finding, opinion, or conclusion in this report. Additionally, pursuant to the ASTM E 1527-13 standard, this report is presumed valid if completed less than 180 days prior to the date of acquisition of the property or (for transactions not involving an acquisition) the date of the intended transaction.

#### **7.5.4 Significant Assumptions**

During this Phase I ESA, TRC relied on database information; interviews with Site representatives, regulatory officials, and other individuals having knowledge of Site operations; and information provided by the User as requested in our authorized Scope of Work. TRC has assumed that the information provided is true and accurate. Reliance on electronic database search reports is subject to the limitations set forth in those reports. TRC did not independently verify the information provided. TRC found no reason to question the validity of the information received unless explicitly noted elsewhere in this report. If other information is discovered and/or if previous reports exist that were not provided to TRC, our conclusions may not be valid.

## 8.0 REFERENCES

Table 8.1 - References Information

Description/Title of Document(s) Received or Agency Contacted	Date Information Request Filled/Date of Agency Contact	Information Updated	Reference Source
United States Geological Survey 7.5 Minute Topographic Quadrangle: Newburyport East, MA dated 2012	NA	Current	USGS
Aerial photographs dated (scale: 1" = 500') 1938, 1952, 1960, 1965, 1978, 1986, 1993 (scale: 1" = 750'), 1995, 2006, 2008, 2012 and 2016.	Request No. 5317428.8 on May 31, 2018	Current	EDR
Topographic maps dated 1890, 1894, 1932, 1934, 1943, 1944, 1947, 1952, 1966, 1979, 1985, 1987 and 2012.	Request No. 5317428.4 on May 31, 2018	Current	EDR
Local street directories dated: 1961, 1965, 1968, 1973, 1977, 1982, 1987, 1992, 1995, 2000, 2005, 2010 and 2014.	Request No. 5317428.5 on June 1, 2018	Current	EDR
Sanborn maps dated 1888, 1894, 1900, 1906, 1914, 1924, 1946 and 1961.	Request No. 5317428.3 on June 1, 2018	Current	EDR
American Society for Testing and Materials (ASTM). <i>Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process</i> , ASTM Designation E1527-13. 2013.	NA	Current	ASTM

**Table 8.1 - References Information**

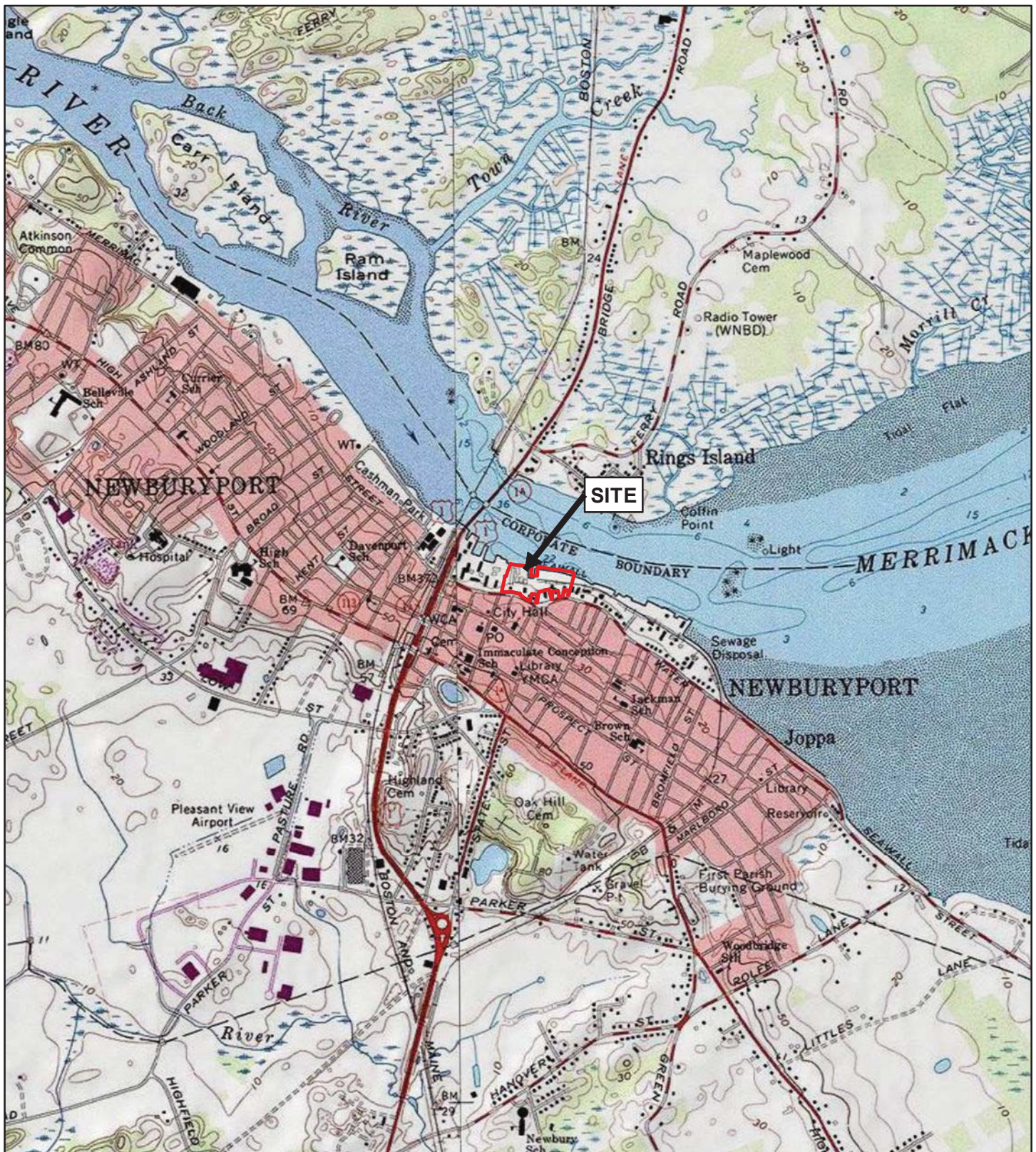
Description/Title of Document(s) Received or Agency Contacted	Date Information Request Filled/Date of Agency Contact	Information Updated	Reference Source
MassDEP Reportable Release Sites	June 5, 2018	Current	MassDEP Website (eDEP) <a href="https://eeaonline.eea.state.ma.us/portal#!/search/wastesite">https://eeaonline.eea.state.ma.us/portal#!/search/wastesite</a>
Radius Map Report / EDR	Request No. 05317428.2r on June 1, 2018	Current	Multiple federal and state agencies
Previous Reports	Various	Current	See Section 4.3
ESS Group Memorandum	November 9, 2018 (2017)	NA	User Provided Document. See Section 4.3
<i>Notice of Activity and Use Limitation, Form 1075, NRA Parking Lot, November 23, 2011</i>	June 20, 2018	NA	User Provided Document. See Section 4.3
<i>March 28, 1978, Port and Market, Archeology of the Central Waterfront, Newburyport, Massachusetts</i>	June 20, 2018	NA	User Provided Document. See Section 4.3
<i>May 2011, Supplemental Phase II Comprehensive Site Assessment, Phase III Remedial Action Plan and Phase IV Remedy, RTN 3-15445 prepared by Weston &amp; Sampson Engineers</i>	June 20, 2018	NA	User Provided Document. See Section 4.3

## **9.0 ADDITIONAL SERVICES**

No additional services were performed during this Phase I ESA.

DRAFT

## FIGURES



Approximate Site Boundary

0 2,000  
Feet



Wannalancit Mills  
650 Suffolk Street  
Lowell, MA 01854  
978-970-5600



**SITE LOCATION MAP**  
**WATERFRONT PARK**  
**24 MERRIMAC STREET**  
**AND FERRY WHARF**  
**NEWBURYPORT, MA**

FIGURE 1

JUNE 2018

Base Map: Copyright© 2013 National Geographic Society, i-cubed



Approximate Site Boundary

← Groundwater Flow Direction

Adjoining Parcels

▲ RTN Location

AUL: Activity and Use Limitation

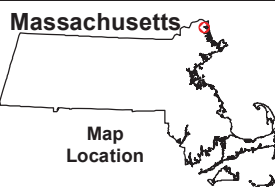
Note: All locations are approximate.

Base Map: ESRI and affiliates

0 300  
Feet



Wannalancit Mills  
650 Suffolk Street  
Lowell, MA 01854  
978-970-5600



**SITE LOCATION MAP**  
**WATERFRONT PARK**  
**24 MERRIMAC STREET**  
**AND FERRY WHARF**  
**NEWBURYPORT, MA**

FIGURE 1

JUNE 2018

# Exhibit K

## Activity & Use Limitation (AUL) - West Lot

DE  
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728

Form 1075

Note: Pursuant to 310 CMR 40.1074(5), upon transfer of any interest in or a right to use the property or a portion thereof that is subject to this Notice of Activity and Use Limitation, the Notice of Activity and Use Limitation 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. Within 30 days of so incorporating the Notice of Activity and Use Limitation in a deed that is recorded or registered, a copy of such deed shall be submitted to the Department of Environmental Protection.

NOTICE OF ACTIVITY AND USE LIMITATION

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

Disposal Site Name: Waterfront Park, West Lot  
DEP Release Tracking No.(s): 3-31885 & 3-34699

This Notice of Activity and Use Limitation ("Notice") is made as of this 13 day of ~~NOVEMBER~~, 2018, by Newburyport Redevelopment Authority, a public body, politic and corporate, organized and existing under the laws of the Commonwealth of Massachusetts and having a usual place of business at 60 Pleasant Street, Newburyport, Essex County, Massachusetts 01959, together with its successors and assigns (collectively "Owner").

WITNESSETH:

WHEREAS, Newburyport Redevelopment Authority, is the owner in fee simple of those certain parcels of vacant land located in Newburyport, Essex County, Massachusetts, pursuant to an Order of Taking recorded with the Southern Essex District Registry of Deeds in Book 5516, Page 357;

WHEREAS, said parcels of land, which are 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 Southern Essex Registry of Deeds in Plan Book 239, Plan 62;

WHEREAS, the Property comprises all of a disposal site as the result of release(s) 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. A description of the basis for such

restrictions, and the oil and/or hazardous material release event(s) or site history that resulted in the contaminated media subject to the Notice of Activity and Use Limitation is attached hereto as Exhibit C and made a part hereof;

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

1. Activities and Uses Consistent with Maintaining No Significant Risk Conditions. The following Activities and Uses are consistent with maintaining a Permanent Solution and a condition of No Significant Risk and, as such, may occur on the Property pursuant to 310 CMR 40.0000:
  - (i) Use of the Property for commercial, industrial, and similar uses and activities associated therewith, including but not limited to pedestrian and/or vehicular traffic, parking, landscaping (raking, mowing, weeding, fertilizing, trimming, mulching, and planting of non-edible flowers, shrubs), routine maintenance of the property (plowing and shoveling of snow, sidewalk crack repair, sprinkler repair), routine activities associated with commercial or industrial use, and recreational use;
  - (ii) Use of the Property for recreational activities, including its present partial use as a park;
  - (iii) Underground utility and/or construction activities performed on an emergency basis including, but not limited to soil excavations;
  - (iv) Activities and uses not expressly prohibited by this Notice of AUL;
  - (v) Such other activities or uses which, in the Opinion of a Licensed Site Professional, 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
  - (vi) Such other activities and uses not identified in Paragraph 2 as being Activities and Uses inconsistent with maintaining No Significant Risk Conditions.
2. Activities and Uses Inconsistent with Maintaining No Significant Risk Conditions. The following Activities and Uses are inconsistent with maintaining a Permanent Solution and a condition of No Significant Risk pursuant to 310 CMR 40.0000, and, as such, may not occur on the Property:
  - (i) Use of the Property as a residence, school, nursery, daycare and/or other such use unless approved by a Licensed Site Professional based on a revised risk assessment specific to the adult, youth and child receptors;

- (ii) Gardening of fruits and vegetables for human consumption, unless such produce is grown in soils newly brought onto the Property and is completely separated from existing soils in containers or raised beds;
- (iii) Any excavation activity, excluding that described in Paragraph 1(iii), which is likely to disturb soil without a Soil Management Plan, a Health and Safety Plan and a Licensed Site Professional Opinion, in accordance with Paragraph 3 (Obligations and Conditions); and
- (iv) The relocation of soil excavated from the Property, unless such relocation is first evaluated by a Licensed Site Professional who renders an Opinion stating that such relocation is consistent with maintaining a condition of No Significant Risk.

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

- (i) A Licensed Site Professional Opinion and Soil Management Plan must be prepared prior to the commencement of any activity, excluding that described in Paragraph 1(iii), which is likely to require disturbance at the Property or relocation from the Property soil from the ground surface to 16 feet below ground surface. The Soil Management Plan shall describe appropriate soil management, characterization, handling, storage, transportation and disposal procedures in accordance with the provisions of the MCP cited in 310 CMR 40.0030 et seq. and describe proper engineering controls to be implemented to reduce, limit or prevent exposure to and from soils from the ground surface to 16 feet below ground surface. Workers who may come in contact with oil and/or hazardous material in soil should be appropriately trained on the requirements of the Soil Management Plan, which must remain available on-Site through the course of the project;
- (ii) A Health and Safety Plan must be prepared and implemented prior to the commencement of any activity, excluding that described in Paragraph 1(iii), which is likely to require disturbance of Property soils at the Site from the ground surface to 16 feet below ground surface. The Health and Safety Plan should be prepared by a Certified Industrial Hygienist or other qualified individual appropriately trained in worker health and safety procedures and requirements. The Health and Safety Plan should specify the type of personal protection, engineering controls and environmental monitoring necessary to prevent worker and other potential receptor exposures to oil and/or hazardous material in soil through ingestion, dermal contact and inhalation. Workers who may come in contact with the contaminated soil should be appropriately trained on the requirements of the Health and Safety Plan and in accordance with OSHA requirements. The Health and Safety Plan must remain available on-Property throughout the course of the project; and

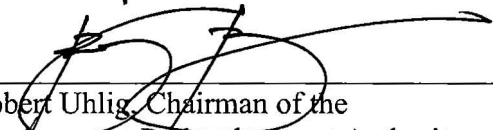
- (iii) The relocation of soil excavated from the Property, unless such relocation is first evaluated by a Licensed Site Professional who renders an Opinion stating that such relocation is consistent with maintaining a condition of No Significant Risk.
- 4. Proposed Changes in Activities and Uses. Any 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 a Licensed Site Professional who shall render an Opinion, in accordance with 310 CMR 40.1080, as to whether the proposed changes are inconsistent with maintaining a Permanent Solution and a condition of No Significant Risk. Any and all requirements set forth in the Opinion to meet the objective of this Notice shall be satisfied before any such activity or use is commenced.
- 5. Violation of a Permanent or Temporary Solution. The activities, uses and/or exposures upon which this Notice is based shall not change at any time to cause a significant risk of harm to health, safety, public welfare, or the environment or to create substantial hazards due to exposure to oil and/or hazardous material without the prior evaluation by a Licensed Site Professional in accordance with 310 CMR 40.1080, and without additional response actions, if necessary, to maintain a condition of No Significant Risk.

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 a Licensed Site Professional in accordance with 310 CMR 40.1080, 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 in accordance with 310 CMR 40.1074(5).

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 Licensed Site Professional, 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 November, 2018.

  
Robert Uhlig, Chairman of the  
Newburyport Redevelopment Authority

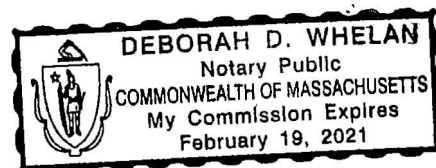
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

Nov. 7, 2018

On this 7<sup>th</sup> day of November, 2018, before me, the undersigned notary public, personally appeared Robert Uhlig, proved to me through satisfactory evidence of identification, which was personally known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily as Chairman of the Newburyport Redevelopment Authority for its stated purpose.

  
(official signature and seal of notary)



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

Date: November 11, 2018

[Signature]  
Name  
[Licensed Site Professional SEAL]



COMMONWEALTH OF MASSACHUSETTS

SSer, ss

Nov. 10, 2018

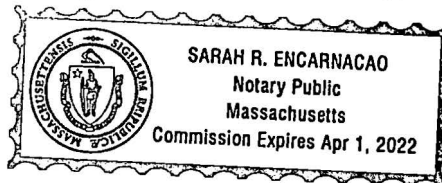
On this 10<sup>th</sup> day of November, 2018, before me, the undersigned notary public, personally appeared Joseph Jammallo Joseph M. Jammallo, LSP proved to me through satisfactory evidence of identification, which were MA DL, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

As LSP for Newburyport Redevelopment Authority

[Signature] (official signature and seal of notary)

Upon recording, return to:

Newburyport Redevelopment Authority  
60 Pleasant Street  
Newburyport, MA 01950



## **EXHIBIT A**

### **Written Legal Description of the Property**

Waterfront Park, West Lot  
24 Merrimac Street, Newburyport, Massachusetts 01950  
RTNs 3-31885 and 3-34699

Those certain parcels of land located on Merrimac Street, Newburyport, Essex County, Massachusetts being more particularly described as Parcel 3-A and Parcel 3-A-1 on plan entitled "Plan of Land in Newburyport Re-Use Parcel 3 Prepared for Newburyport Redevelopment" dated July 1983 Revised November 19, 1987 made by Pembroke Land Survey Co. recorded with Essex South Registry of Deeds in Plan Book 239, Plan 62. Said parcels are particularly bounded and described as follows:

#### **Parcel 3-A-1**

Beginning at a point on the northerly side of Merrimac Street and at southeast corner of Parcel 3-A-1, as shown on above mentioned plan, thence running:

SOUTHWESTERLY      along Merrimac Street, twenty-four feet and 92/100 (24.92) feet;  
thence running more

NORTHEASTERLY      by Public Park, fifty-seven and 87/100 (57.87) feet; thence running  
more

SOUTH                  by Parcel 3-A, forty-seven and 66/100 (47.66) feet, to the point of  
beginning.

Said parcel (3-A-1) containing 582 square feet of land, be said contents and any or all said measurements more or less and however otherwise the same may be bounded, measured and described.

#### **Parcel 3-A**

Beginning at a point on the northerly side of Merrimac Street and at southeast corner of Parcel 3-A, as shown on above mentioned plan, thence running:

NORTHWESTERLY      along Merrimac Street, thirty-five and 36/100 (35.36) feet; thence  
running more

NORTHWESTERLY      along Merrimac Street, forty-five and 26/100 (45.26) feet; thence  
running more

WEST                    along Merrimac Street, twenty-two and 06/100 (22.06) feet, thence  
running more

SOUTHWESTERLY      along Merrimac Street, forty-one and 85/100 (41.85) feet, thence  
running more

**EXHIBIT A (Continued)**

Written Legal Description of the Property

Waterfront Park, West Lot  
24 Merrimac Street, Newburyport, Massachusetts 01950  
RTNs 3-31885 and 3-34699

**Parcel 3-A (Continued)**

WEST	along Merrimac Street, twenty-two and 58/100 (22.58) feet, thence running more
SOUTHWESTERLY	along Merrimac Street, forty-five and 00/100 (45.00) feet, thence running more
NORTH	by Parcel 3-A-1, forty-seven and 66/100 (47.66) feet, thence running
NORTHEASTERLY	by Public Park, thirty-six and 88/100 (36.88) feet, thence running
NORTHEASTERLY	by Public Park, twenty and 16/100 (20.16) feet, thence running
NORTHEASTERLY	by Public Park, one-hundred thirty-seven and 22/100 (137.22) feet, thence running
NORTH	by Public Park, one-hundred fifty-six and 91/100 (156.91) feet, thence running
EAST	by Public Park, one-hundred sixty-four and 79/100 (164.79) feet, thence running
SOUTH	by Central Wharf Way, two-hundred sixty-six and 00/100 (266.00) feet, thence running
SOUTHWESTERLY	by Public Park, ninety and 00/100 (90.00) feet, thence running
SOUTH	by Public Park, seventy-six and 97/100 (76.97) feet, to the point of the beginning.

Said parcel (3-A) containing 71,399 square feet of land, be said contents and any or all said measurements more or less and however otherwise the same may be bounded, measured and described.

**EXHIBIT B**

Sketch Plan

Waterfront Park, West Lot  
24 Merrimac Street, Newburyport, Massachusetts 01950  
RTNs 3-31885 and 3-34699



## **EXHIBIT C**

### **BASIS FOR ACTIVITY AND USE LIMITATION**

**Waterfront Park, West Lot  
24 Merrimac Street,  
Newburyport, Massachusetts 01950  
RTNs 3-31885 and 3-34699**

ESS Group, Inc. (ESS), on behalf of Newburyport Redevelopment Authority (NRA), has prepared this Licensed Site Professional (LSP) Opinion (the Opinion) in support of a Notice of Activity and Use Limitation (AUL) for the property located at 24 Merrimac Street in Newburyport, Massachusetts (the Property). This exhibit (Exhibit C) is a narrative that describes the basis for the AUL and was prepared in accordance with Sections 40.1074(2)(e) through (g) of the Massachusetts Contingency Plan (MCP; 310 CMR 40.0000) and Draft Policy #WSC-14-300 (Guidance on Implementing Activity and Use Limitations – Public Review Draft; 2014). The Property is the location of a release of petroleum hydrocarbons and arsenic to soil reported to the Massachusetts Department of Environmental Protection (MassDEP) and assigned Release Tracking Numbers (RTNs) 3-31885 and 3-34699, respectively.

#### **A. Statement on Why AUL is Appropriate to Maintain a Permanent Solution and Condition of No Significant Risk [310 CMR 40.1074(2)(e)]**

Subsurface investigations (i.e., assessment response actions) were completed on the Property to determine the presence and thereafter the source, nature and extent of oil and/or hazardous materials (OHM) in soil and groundwater. No OHM was detected in groundwater above applicable MCP Reportable Concentrations (RCs) therefore remedial response actions did not apply to groundwater. Based on the investigative findings it was determined that remedial response actions were not necessary for the OHM detected in Property soils, with the exception of one area where elevated arsenic was identified. The elevated arsenic presented a condition of Significant Risk of harm from ingestion and dermal contact with soil containing arsenic. After a focused remedial response action was completed, that consisted of the removal and off-Property disposal of arsenic-impacted soils, all analytical data for soil and groundwater was used in a Risk Characterization (refer to below) to evaluate potential risks posed by all residual OHM (petroleum constituents and arsenic) in soil to human health, safety, public welfare and the environment. Refer to Item B for more detail on assessment and remedial response actions completed on the Property.

A Method 3 Risk Characterization<sup>1</sup> (M3RC) was performed to evaluate the potential risks posed by OHM in soil to human health, safety, public welfare and the environment. Pursuant to 310 CMR 40.0370, the M3RC to determine potential risks and the need for any response actions included certain polynuclear aromatic hydrocarbons (PAHs) and lead that were attributed to the presence of coal and coal ash in Historic Fill and therefore otherwise exempt

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<sup>1</sup> A Method 3 Risk Characterization is a quantitative site-specific approach for evaluating the cumulative risk of harm to human health, safety, public and the environment based on data collected from the Property.

from reporting. The M3RC concluded that only arsenic in soils poses a Significant Risk of harm to the future residential use of the Property. The M3RC determined that other OHM in soils do not pose a Significant Risk of harm to recreational receptors, commercial/industrial workers, construction/utility workers, safety, public welfare and the environment. Therefore, based on the conclusion in the M3RC, this AUL restricts the use of the Property as a residence, school, nurse, or daycare to limit certain potential exposure pathways to soils.

The implementation of the AUL is appropriate to confirm that Property activities and uses will avoid significant risk of harm to human health by restricting certain uses and imposing obligations and conditions on certain activities to provide a conservative margin of safety to ensure continued no significant risk of harm to human health for recreational receptors, commercial/industrial workers and construction/utility workers. Furthermore, implementation of the AUL is necessary to support a Permanent Solution at the Property. The AUL applies to the entire Property, which is more particularly described in Exhibit A of the AUL. The two Property RTNs (3-31885 and 3-34699) will achieve MCP closure by the filing of a Permanent Solution with Conditions (PSC) Statement with the MassDEP concurrent with the implementation of the AUL.

#### **B. OHM Releases and Disposal Site History [310 CMR 40.1074(2)(f)]**

During environmental and geotechnical testing in 2013, certain extractable and volatile petroleum hydrocarbons (EPH and VPH), PAHs and metals were detected in soils at concentrations above applicable RCs for soil category RCS-1. The EPH fractions included C11-C22 aromatic hydrocarbons and C9-C18 aliphatic hydrocarbons and VPH fractions included C9-C10 aromatic hydrocarbons. The PAHs included: benzo(b)anthracene, benzo(a)pyrene and dibenzo(a,h)anthracene. The metals were arsenic and lead. The EPH and VPH detections were determined to be reportable to MassDEP and triggered a 120-day release notification condition. The source of the EPH and VPH was believed to be undocumented past releases from a former filling station (circa 1946 to 1961) located on the southwestern portion of the Property. The PAHs and metals were attributed to the presence of coal and coal ash in Historic Fill (GZA – 2013) and, therefore, were considered exempt from reporting [310 CMR 40.0317(9)]. MassDEP was notified of the RCS-1 exceedances via a Release Notification Form (RNF; BWSC Transmittal Form 103) submitted to the MassDEP on November 22, 2013. MassDEP assigned RTN 3-31885 to the Property/release.

On November 7, 2014, a Phase I Initial Site Investigation (ISI) Report and Tier Classification Submittal were filed with the MassDEP. The disposal site was classified as Tier II on the basis that Property conditions did not meet any of the Tier I Classification criteria [310 CMR 40.0520(2)]. Between May 2015 and July 2017, Comprehensive Site Assessment (CSA) activities were performed on the southern portion of the Property. The investigations and associated results were summarized in a Phase II CSA Report filed with the MassDEP on November 29, 2017. Based on a combined Method 1 Risk Characterization and Method 3 Stage I Environmental Screening, it was concluded in the Phase II CSA Report that: (i) contamination in groundwater does not pose a risk of harm to human health, public welfare,

safety, and the environment; and (ii) arsenic in soil across the Property poses a condition of Significant Risk to human health for current and reasonably foreseeable uses and activities. The results of the risk characterization suggested that remedial response actions were necessary to address elevated arsenic in soil at one specific on-Property area in order to achieve a Permanent or Temporary Solution.

Further evaluation of the soil analytical data showed that arsenic existing in soil at one on-Property location was significantly higher than the background levels for arsenic in fill material (as established in Table 1 of MassDEP's Background Levels of Polycyclic Aromatic Hydrocarbons and Metals in Soil - Technical Update; 2002). As a conservative measure, the arsenic above the RCS-1 limit was reported to the MassDEP on December 29, 2017 via filing of a RNF. MassDEP assigned RTN 3-34699 to the Property/release. This secondary RTN was linked to the primary RTN (3-31885) via filing of BWSC Form 107 with MassDEP on February 22, 2018.

A Release Abatement Measure (RAM) Plan was submitted to the MassDEP on February 26, 2018 describing the proposed excavation and off-Property disposal of elevated arsenic in soil from the east-central portion of the Property. The objectives of the RAM were to reduce arsenic concentrations in soil/Historic Fill to acceptable MCP risk-based standards and/or Anthropogenic Background levels. The RAM was performed on April 25, 2018 and included the excavation and off-Property disposal of approximately 90 tons of arsenic-impacted soil. These remedial response actions were documented in a RAM Completion Report filed with the MassDEP on July 7, 2018. The RAM Completion concluded that, because residual arsenic concentrations in soils (Property-wide) are greater than the applicable MCP risk-based standard and the Background Level, continued CRA activities (e.g., in this case implementation of an AUL) were required for the Property to achieve a Permanent Solution.

A M3RC was then completed to evaluate the risk of harm to human health, safety, public and the environment for the entire disposal site. The M3RC concluded that a condition of Significant Risk of harm to human health exists at the Property for hypothetical future residents. In order to achieve a condition of No Significant Risk for future foreseeable activities and uses of the Property, an AUL is necessary to restrict future residential development and to establish certain obligations for other future uses and activities (including a school, nurse, or daycare) on the Property.

### **C. Description of the Contaminated Media and Extent of OHM [310 CMR 40.1074(2)(g)]**

Based on various subsurface investigations and associated testing of soil and groundwater quality on the Property (2013 through 2018), numerous PAHs, arsenic, lead, EPH and VPH were detected above the applicable MCP risk-based standards (which are Method 1, S-1/GW-2 and S-1/GW-3) in soil samples at select locations on the Property. No OHM was detected in the groundwater samples above applicable MCP Method 1, GW-2 or GW-3 standards.

The source of EPH and VPH in soil (~5 to 8 feet) is believed to be from undocumented releases of petroleum-based constituents from the former filling station located on the southwestern

corner of the Property. The source of the PAHs and metals (arsenic and lead) is believed to be from miscellaneous debris (e.g., coal, coal ash, asphalt, wood and other anthropogenic materials) contained within the Historic Fill across the Property.

The EPH and VPH have been horizontally delineated in soil on southwestern portion of the Property to acceptable Method 1 risk-based limits. The vertical limits of EPH and VPH have been delineated and are defined by groundwater quality. Groundwater testing shows that no EPH or VPH exist above applicable Method 1, GW-2 and GW-3 limits.

Arsenic, lead and certain PAHs have been horizontally and vertically delineated to the extent practical and consistent with the MCP Response Action Performance Standard (310 CMR 40.0191) for a Historic Fill site. These metals and PAHs are expected to be intermittently present and detectable in Historic Fill across the entire Property (~1 to 16-feet in depth). The arsenic, lead, and PAHs concentrations in Historic Fill are generally comparable to the published Background Levels because the Historic Fill has been documented to contain coal, coal ash, wood ash and other miscellaneous debris. With one exception, all PAH and lead concentrations in Historic Fill are below MassDEP's published Background Levels, while ~25% of the arsenic concentrations in Historic Fill are above the published Background Level (20 mg/kg).

**EXHIBIT D**

**SIGNATORY AUTHORITY  
Waterfront Park, West Lot  
24 Merrimac Street,  
Newburyport, Massachusetts 01950  
RTNs 3-31885 and 3-34699**

**NEWBURYPORT REDEVELOPMENT AUTHORITY  
CERTIFICATE OF SECRETARY  
ACTION by UNANIMOUS CONSENT OF AUTHORITY MEMBERS**

RE: Activity and Use Limitation  
NRA West Lot, 24 Merrimac St., Newburyport, MA 01950  
RTNs 3-31885 and 3-34699  
Page 1 of 2

The undersigned, being the Secretary of the **NEWBURYPORT REDEVELOPMENT AUTHORITY**, an authority duly established under Massachusetts General Laws Chapter 121B (the NRA) certifies that the following resolutions were adopted by unanimous consent of the membership of the Authority, and that each of the following resolutions presently is in full force and effect without change:

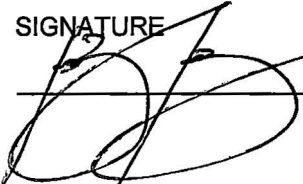
VOTED: To enter an Activity and Use Limitation restricting the "NRA West Lot" designated in RTNs 3-31885 and 3-34699 and described in the AUL document.

VOTED: To authorize the Chairman of the NRA to negotiate, execute and deliver in the name of and on behalf of the NRA, all instruments, agreements, and documents as he shall deem necessary or advisable in order to affect the Activity and Use Limitation authorized by the above Vote, including but not limited to the recording of the Activity and Use Limitation at the Essex South District Registry of Deeds along with similar supporting documents.

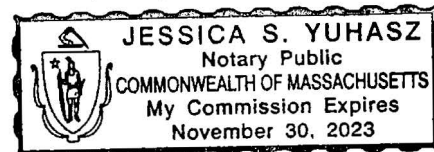
The undersigned further certifies that the following person is the duly elected and qualified officer of the NRA, holding the office set forth opposite his name, and the signature appearing opposite his office is the genuine signature of such person:

NAME	OFFICE or POSITION
Robert Uhlig	Chairman

SIGNATURE

 11/3/18





Date 11/30/22

NEWBURYPORT REDEVELOPMENT AUTHORITY  
CERTIFICATE OF SECRETARY  
ACTION by UNANIMOUS CONSENT OF AUTHORITY MEMBERS

RE: Activity and Use Limitation  
NRA West Lot, 24 Merrimac St., Newburyport, MA 01950  
RTNs 3-31885 and 3-34699

Page 2 of 2

I have executed this Certificate on this 3 day of Nov, 2018.

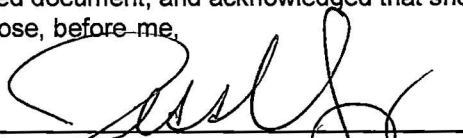


David St. Cyr, Secretary of the NEWBURYPORT  
REDEVELOPMENT AUTHORITY

COMMONWEALTH OF MASSACHUSETTS

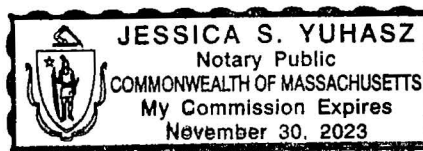
Essex, ss.

On this 3 day of Nov, 2018, personally appeared **David St. Cyr, as he is Secretary of the Newburyport Redevelopment Authority**, proved to me through satisfactory evidence of identification, which was a Driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged that she signed it voluntarily as Secretary, for its stated purpose, before me.



Notary Public

My commission expires: 11/30/23



# Exhibit L

## Activity & Use Limitation (AUL) - East Lot

ME  
23

TD 14

Form 1075

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11/25/2011 12:19 NOTC AUL Pg 1/23

NOTICE OF ACTIVITY AND USE LIMITATION

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

Disposal Site Name: NRA Property Parking Lot

DEP Release Tracking Number: 3-15445

This Notice of Activity and Use Limitation ("Notice") is made as of this 23<sup>rd</sup> day of November, 2011, by NEWBURYPORT REDEVELOPMENT AUTHORITY, a public body, politic and corporate, organized and existing under the laws of the Commonwealth of Massachusetts and having an usual place of business at 60 Pleasant Street, Newburyport, Essex County, Massachusetts 01950, together with its successors and assigns (collectively "Owner").

WITNESSETH:

WHEREAS, NEWBURYPORT REDEVELOPMENT AUTHORITY is the owner in fee simple of those certain parcels of vacant land located in Newburyport, Essex County, Massachusetts, pursuant to a confirmation recorded with the Essex County Registry of Deeds in Book 9658, Page 504.

WHEREAS, said parcels of land, which are 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 Essex County Registry of Deeds as Plan No. 65 of 1988, being shown as lots 3 and 4 on a plan entitled "Confirmation Plan of Land in Newburyport", dated July 30, 1982, drawn by Pembroke Land Survey Company, Surveyors, and also filed with the Land Registration Office of said Registry as Plan No. 39539A on May 18, 1983;

WHEREAS, the Property comprises part of a disposal site as the result of a release of oil and/or hazardous material. Exhibit B is a sketch plan showing the relationship of the 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 November 23<sup>rd</sup>, 2011, (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:

CERTIFICATE OF SECRETARY  
NEWBURYPORT REDEVELOPMENT AUTHORITY  
RE: Activities and Use Limitation  
NRA Property Parking Lot, Newburyport, MA 01950  
RTN 3-15445  
November 23, 2011  
Page 2 of 2

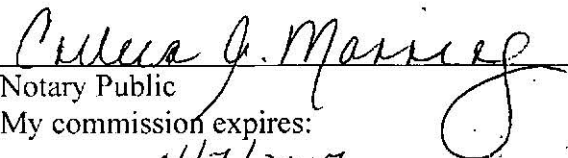
I have executed this Certificate on this 23<sup>rd</sup> day of November, 2011.

  
\_\_\_\_\_  
PATRICIA DORFMAN, Secretary of the  
NEWBURYPORT REDEVELOPMENT AUTHORITY

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 23<sup>rd</sup> day of November, 2011, personally appeared **PATRICIA DORFMAN**, as she is **Secretary of the Newburyport Redevelopment Authority**, proved to me through satisfactory evidence of identification, which was a Driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged that she signed it voluntarily as Secretary, for its stated purpose, before me,

  
\_\_\_\_\_  
Notary Public  
My commission expires:  
4/7/2017

- (i) Commercial and/or industrial activities and uses including but not limited to, pedestrian and/or vehicular traffic, landscaping, and routine maintenance of landscaped areas, which do not cause and/or result in the direct contact with, disturbance of, and/or the re-location of metals-contaminated soil currently located at depths of 2 to 14 feet below surface grade;
- (ii) Excavation associated with short-term (three months or less) underground utility and/or construction, which is likely to disturb metals-contaminated soil located at 2 to 14 feet below surface grade provided that it is conducted in accordance with a Soil Management Plan (SMP) and a Health and Safety Plan (HASP) prepared and implemented in accordance with Obligations (i) and (ii) of this Opinion prior to the commencement of such activity;
- (iii) Activities which maintain the structural integrity of impervious surfaces, including the asphalt pavement at portions of the Property;
- (iv) Any landscaping activities raised above the existing surface grade and such that soils below the surface grade are not disturbed by the landscaping activities;
- (v) 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; and,
- (vi) 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, 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) Use of the property as a residence, school, nursery, daycare, recreational area and/or other such use at which the child's presence is likely to disturb soil unless approved by an LSP based on a revised risk assessment specific to the child receptor;
- (ii) Growth and human consumption of fruits and vegetables or any other agricultural product in soil;
- (iii) Landscaping which results in intrusive activities below the existing surface grade;
- (iv) Any short-term (three months or less) activity including, but not limited to, excavation which is likely to disturb metals-contaminated soil located at 2 to 14 feet below surface grade without the prior development and implementation of a SMP and HASP in accordance with Obligations (i) and (ii) of this Opinion;
- (v) Any long-term (greater than three months) activity which is likely to disturb metals-contaminated soil located at 2 to 14 feet below surface grade, unless such activity is first evaluated by an LSP who renders an Opinion stating that such activity is consistent with

maintaining a condition of No Significant Risk and that such activity is conducted in accordance with Obligations (i) and (ii) of this AUL; and,

- (vi) The relocation of metals-contaminated soil located at 2 to 14 feet below surface grade, unless such activity is first evaluated by an LSP who renders an Opinion which states that such relocation is consistent with maintaining a condition of No Significant Risk.

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) A SMP must be prepared by an LSP and implemented prior to the commencement of any activity which is likely to disturb metals-contaminated soil located 2 to 14 feet below surface grade within the AUL Area. The SMP should describe appropriate soil excavation, characterization, handling, storage, transport, and disposal procedures and include a description of the engineering controls and air monitoring procedures necessary to ensure that workers and receptors in the vicinity are not affected by fugitive dust or particulates. On-site workers who may come in contact with the contaminated soil should be appropriately trained on the requirements of the SMP, and the plan must be available on-site throughout the course of a project. The SMP must be prepared in accordance with the guidelines discussed in the AUL Opinion attached hereto as Exhibit C;
- (ii) A HASP must be prepared by a certified Industrial Hygienist or other qualified individual sufficiently trained in worker health and safety requirements and implemented prior to the commencement of any activity which is likely to disturb metals-contaminated soil located at 2 to 14 feet below surface grade within the AUL Area. The HASP should specify the type of personal protection (i.e., clothing, respirators), engineering controls, and environmental monitoring necessary to prevent worker exposures to metals-contaminated soil through dermal contact, ingestion, and/or inhalation. On-site workers who may come in contact with the contaminated soil should be appropriately trained on the requirements of the HASP, and the plan must be available on-site throughout the course of a project. The HASP must be prepared in accordance with the guidelines discussed in the AUL Opinion attached hereto as Exhibit C;
- (iii) The metals-contaminated soil located at 2 to 14 feet below surface grade within the AUL Area must remain at depth and may not be relocated, unless such activity is first appropriately evaluated by an LSP who renders an Opinion which states that such relocation is consistent with maintaining a condition of No Significant Risk; and,
- (iv) Landscaping activities must be conducted above the existing surface grade.

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.

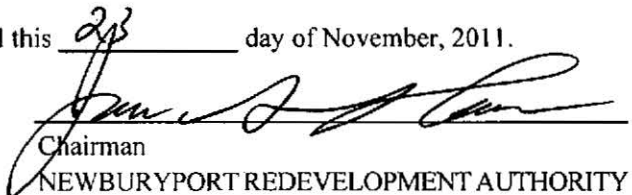
5. Violation of a Response Action Outcome. The activities, uses and/or exposures upon which this Notice is based shall not change at any time to cause a significant risk of harm to health, safety, public welfare, or the environment or to create substantial hazards due to exposure to oil and/or hazardous 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 23 day of November, 2011.

  
Chairman  
NEWBURYPORT REDEVELOPMENT AUTHORITY

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

November 27, 2011


On this 27 day of November, 2011, before me, the undersigned notary public, personally appeared James Shanley, who proved to me through satisfactory evidence of identification, which were photo ID, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

As Clerk for NEWBURYPORT REDEVELOPMENT AUTHORITY, a corporation

Notary Public: Colleen J. Manning  
My Commission Expires: 4/7/2017

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

Date: 11/23/11

  
George D. Naslas  
[LSP SEAL]



COMMONWEALTH OF MASSACHUSETTS

Essex, ss

November 23, 2011

On this 23rd day of November, 2011, before me, the undersigned notary public, personally appeared George D. Naslas, P.G., LSP #6524, who proved to me through satisfactory evidence of identification, which were personally known to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

As LSP for NEWBURYPORT REDEVELOPMENT AUTHORITY, a corporation

Notary Public: Angela M. Lately  
My Commission Expires: 7/29/2016

Upon recording, return to:

Newburyport Redevelopment Authority  
60 Pleasant Street  
Newburyport, MA 01950

## **Exhibit A**

### **Written Legal Description of the Property**

NRA Property Parking Lot  
Newburyport, MA 01950  
RTN 3-15445

The parcel of land in Newburyport, Essex County, Massachusetts, shown as lot 3 on a plan entitled "Confirmation Plan of Land in Newburyport", dated July 30, 1982, drawn by Pembroke Land Survey Company, Surveyors, recorded in the Essex County Registry of Deeds as Plan No. 65 of 1988, and also filed with the Land Registration Office of said Registry as Plan No. 39539A on May 18, 1983, and being more particularly bounded and described as follows:

BEGINNING	at the northwestern corner of Lot 3 and Railroad Avenue, as shown on above mentioned plan, and thence running
EASTERLY	by Waterfront Park, eighty-two (82) feet,
SOUTHERLY	by Ferry Wharf Way, one hundred forty (140) feet,
SOUTHEASTERLY	by Ferry Wharf Way, two hundred twenty and 92/100 (220.92) feet,
SOUTHWESTERLY	fifty-four and 25/100 (54.25) feet by land now or formerly of C & S Rentals,
SOUTHERLY	sixty-eight and 90/100 (68.90) feet by land now or formerly of C & S Rentals,
SOUTHWESTERLY	by Market Square, twenty-one and 95/100 (21.95) feet,
NORTHERLY	forty and 66/100 (40.66) feet,
SOUTHWESTERLY	seven and 98/100 (7.98) feet,
NORTHERLY	fifteen (15) feet,
SOUTHWESTERLY	eighty-seven and 92/100 (87.92) feet,
SOUTHERLY	fourteen and 95/100 (14.95) feet,
SOUTHWESTERLY	ten and 8/100 (10.08) feet,
SOUTHERLY	thirty-nine and 97/100 (39.97) feet by land now or formerly of James O. McFarland,
WESTERLY	by Market Square, nine and 5/100 (9.05) feet,
NORTHERLY	by Railroad Avenue, three hundred fourteen and 27/100 (314.27) feet,
EASTERLY	three and 52/100 (3.52) feet, and
NORTHERLY	by Railroad Avenue, one hundred sixty-six and 39/100 (166.39) feet to the point of beginning.

Said parcel containing 41,888 square feet of land, be said contents and any or all said measurements more or less and however otherwise the same may be bounded, measured and described.

**Exhibit A - Continued**

**Written Legal Description of the Property**

The parcel of land in Newburyport, Essex County, Massachusetts, shown as lot 4 on a plan entitled "Confirmation Plan of Land in Newburyport", dated July 30, 1982, drawn by Pembroke Land Survey Company, Surveyors, recorded in the Essex County Registry of Deeds as Plan No. 65 of 1988, and also filed with the Land Registration Office of said Registry as Plan No. 39539A on May 18, 1983, and being more particularly bounded and described as follows:

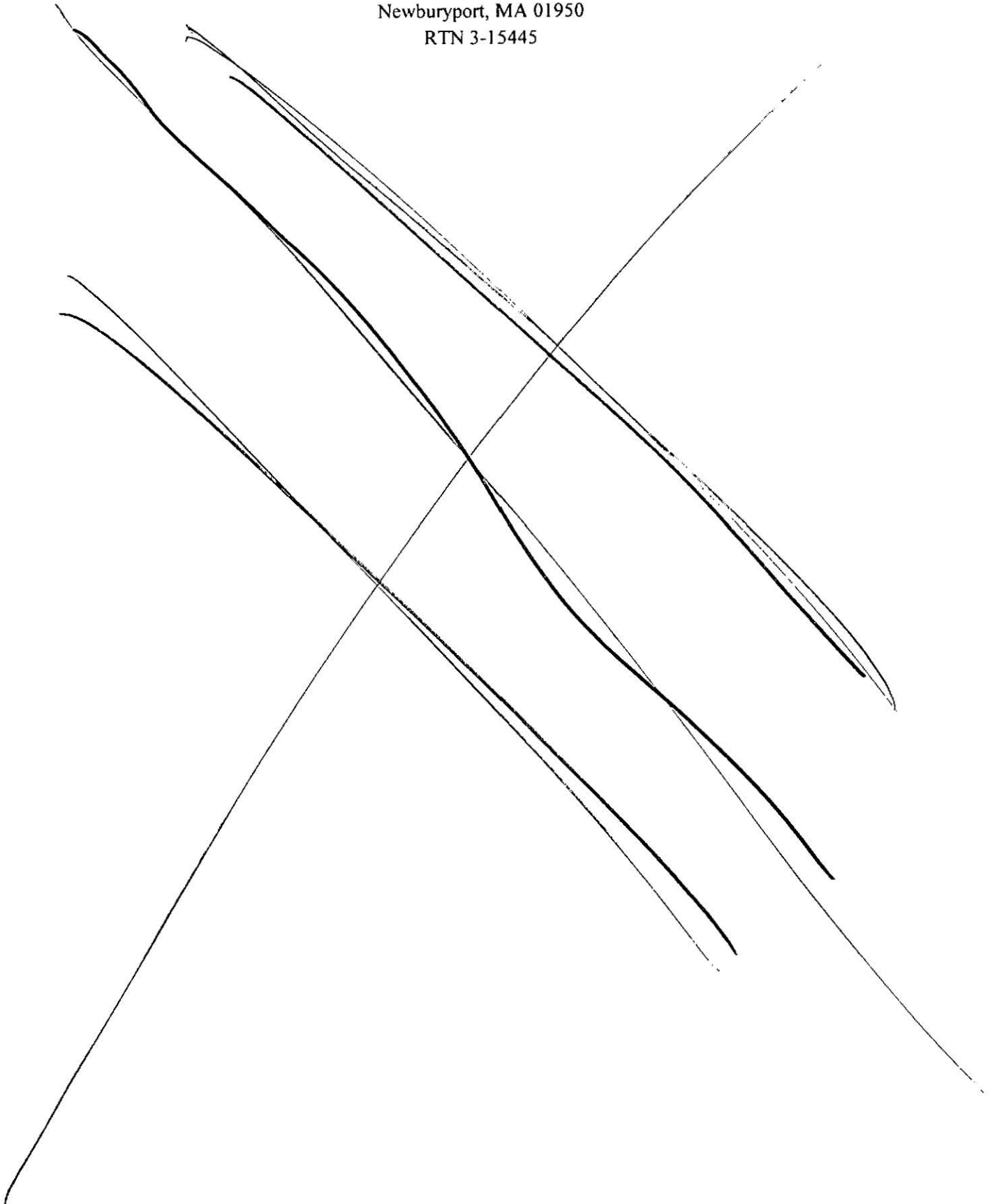
BEGINNING	at the northeastern corner of Lot 4 and Custom House Way, as shown on above mentioned plan, and thence running
SOUTHWESTERLY	by Custom House Way, two hundred thirty-four and 56/100 (234.56) feet,
WESTERLY	sixty-seven and 84/100 (67.84) feet,
SOUTHWESTERLY	ninety-one and 91/100 (91.91) feet by land now or formerly of Crescent Development Associates,
WESTERLY	by Water Street, ninety-eight and 22/100 (98.22) feet,
NORTHERLY	twenty-four (24) feet,
EASTERLY	eight (8) feet,
NORTHERLY	twenty-four (24) feet,
WESTERLY	fourteen (14) feet,
NORTHERLY	eleven and 50/100 (11.50) feet,
WESTERLY	forty-one and 32/100 (41.32) feet,
SOUTHWESTERLY	seventy-nine and 19/100 (79.19) feet by land now or formerly of I.S.N. Corp.,
NORTHERLY	by Ferry Wharf Way, fifty-eight and 1/100 (58.01) feet,
NORTHWESTERLY	by Ferry Wharf Way, two hundred seventeen and 60/100 (217.60) feet,
NORTHERLY	by Ferry Wharf Way, one hundred thirty-five and 8/100 (135.08) feet,
EASTERLY	by Waterfront Park, two hundred seventy-five and 94/100 (275.94) feet, and
SOUTHEASTERLY	by Waterfront Park, ninety (90) feet, to the point of beginning.

Said parcel containing 94,255 square feet of land, be said contents and any or all said measurements more or less and however otherwise the same may be bounded, measured and described.

**Exhibit B**

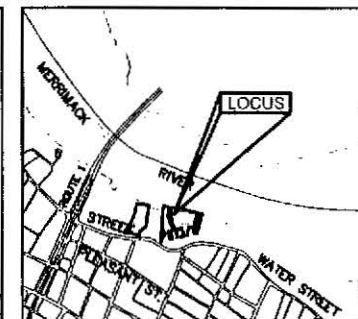
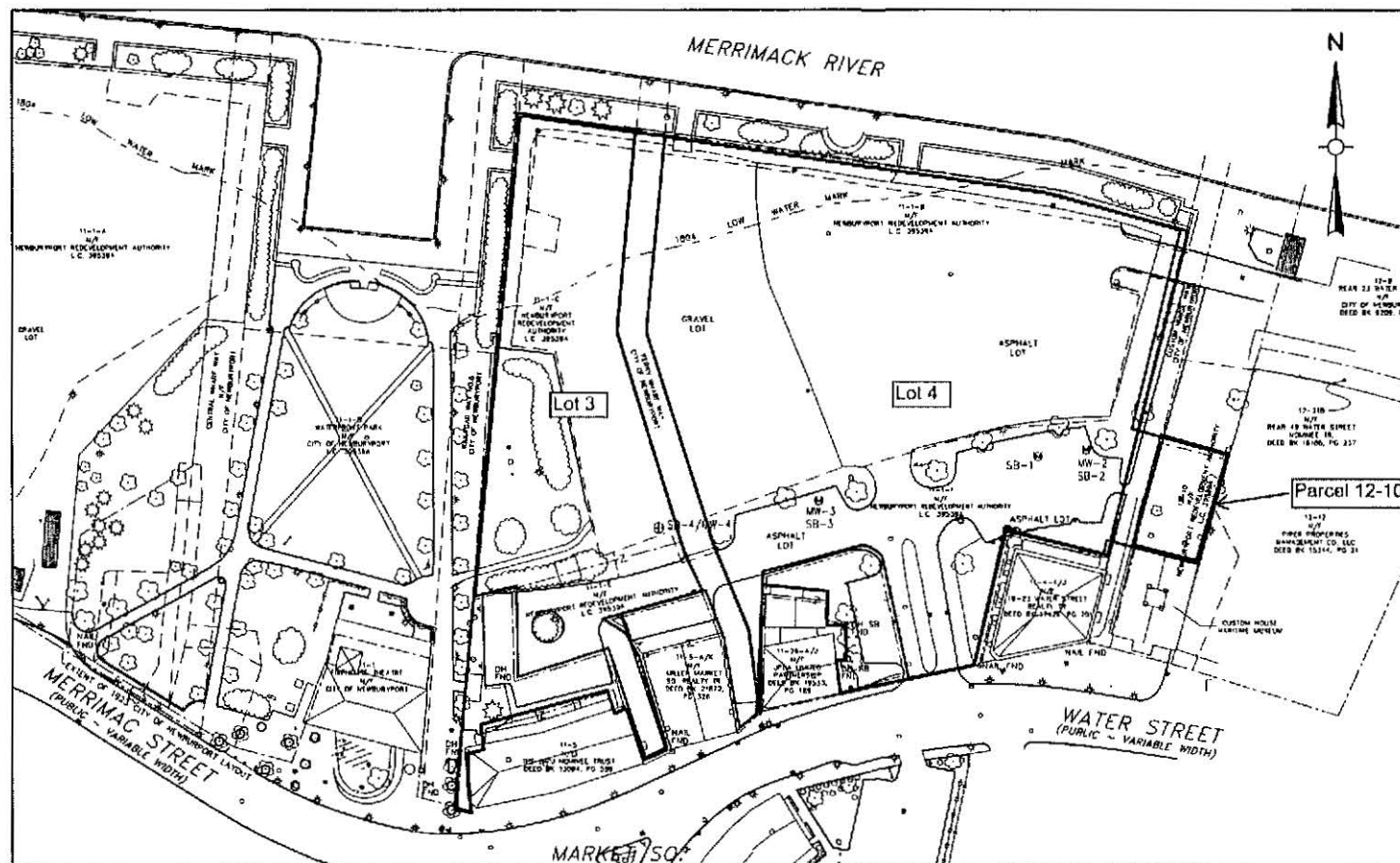
**Sketch Plan**

NRA Property Parking Lot  
Newburyport, MA 01950  
RTN 3-15445



# EXHIBIT B - SKETCH PLAN (page 1 of 3)

Weston & Sampson



VICINITY MAP

## LEGEND:

RAO disposal site boundaries

AUL boundaries apply to only Lots 3 and 4

SCALE: 1"=80'

## NOTES:

- 1) THE PURPOSE OF THIS PLAN IS TO DELINEATE NEWBURYPORT REDEVELOPMENT AUTHORITY OWNED PARCELS.
- 2) THE BOUNDARIES SHOWN HEREON HAVE BEEN DETERMINED FROM RECORD INFORMATION AND AN ON-THE-GROUND INSTRUMENT SURVEY.
- 3) OWNERSHIP REFERENCES ARE FROM THE CITY OF NEWBURYPORT ASSESSOR'S DEPARTMENT.
- 4) MERIDIAN IS BASED ON WORKS FROM NCE "OPUS" POST PROCESSED GPS COORDINATES OBTAINED ON REFERENCE POINT "A" AS SHOWN HEREON.
- 5) I CERTIFY THAT THIS PLAN CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS AND THAT THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES SHOWING EXISTING OWNERSHIP AND THE LINES OF THE STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR THE NEW WAYS ARE SHOWN AND THAT THE CERTIFICATION SHOWN HEREON IS INTENDED TO MEET REQUIREMENTS OF DEEDS REQUIREMENTS AND IS NOT A CERTIFICATION TO THE TITLE OR OWNERSHIP OF THE PROPERTY SHOWN.

FIGURE 2

CITY OF NEWBURYPORT, MASSACHUSETTS  
WATERFRONT PARCEL BOUNDARY

## SITE PLAN

DESIGNED BY: LEW CHECKED BY: JSC DATE: OCTOBER 2011

Weston & Sampson®

65  
1988  
3p



(SEE SHEET 1)

MERRIMACK

EXHIBIT B (page 2 of 3)  
92343

39539A  
SHEET 2 OF 3

RIVER

Face of Piling

WATERFRONT PARK

AVENUE

FERRY

Lot 3 AUL boundaries

(SEE SHEET 3)

WHARF (Variable Width)

CENTRAL WHARF (Variable Width)

MERRIMACK STREET

MARKET SQUARE  
(Public-Variable Width)

W STREET MALL

LIBERTY STREET

ESSEX REGISTRY OF DEEDS SO DIST SALEM MASS  
Received Aug 1988 with Dea Chan,  
Newburyport Redevelopment Authority  
Rec B 9658 P 504 Filed as No 65 1988  
Attest  
3pls)  
Register of Deeds

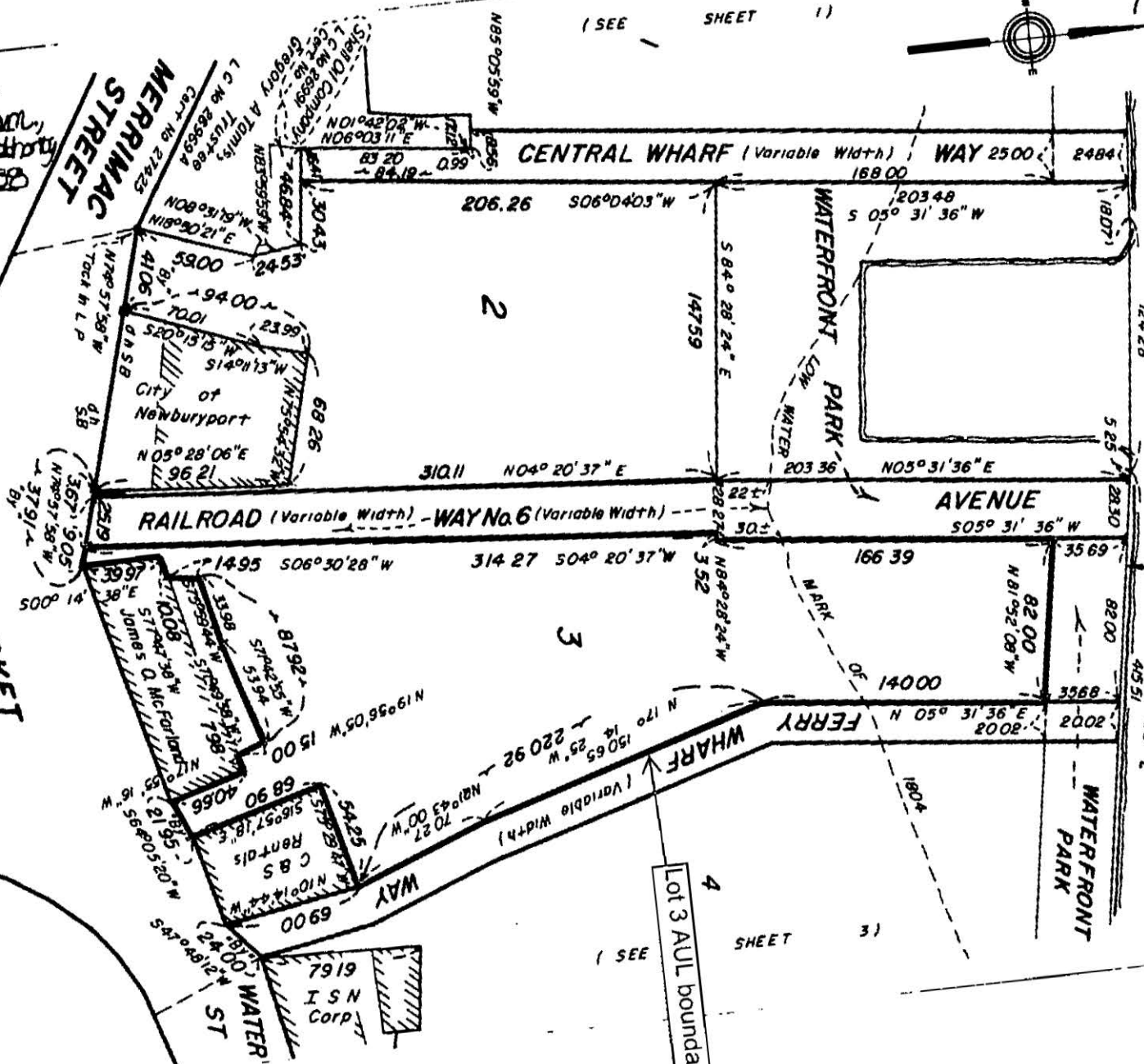
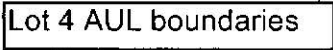


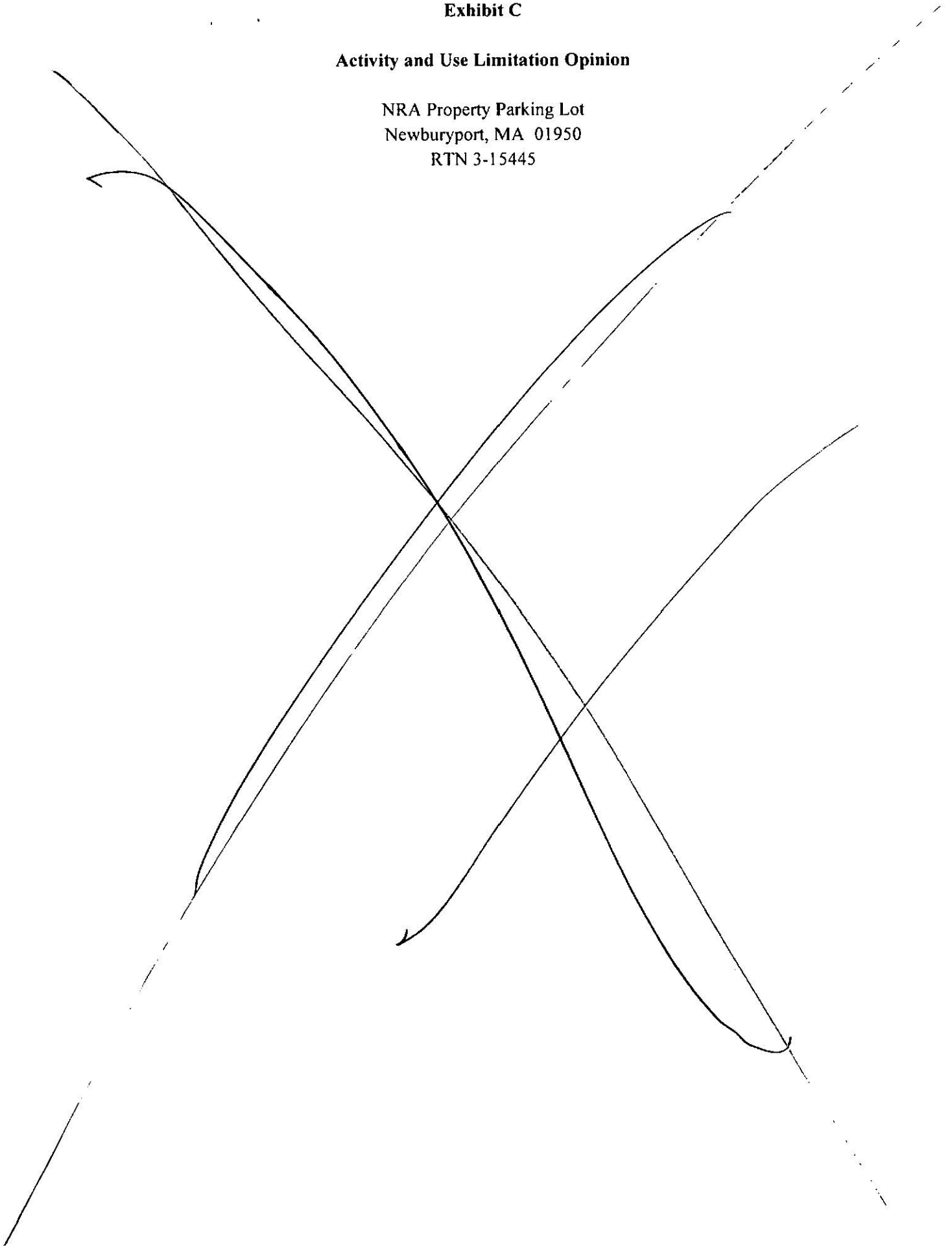
EXHIBIT B (page 3 of 3)



**Exhibit C**

**Activity and Use Limitation Opinion**

NRA Property Parking Lot  
Newburyport, MA 01950  
RTN 3-15445



## **EXHIBIT C**

### **AUL LSP OPINION NARRATIVE**

In accordance with the requirements of the Massachusetts Contingency Plan (MCP), 310 CMR 40.1074, this Licensed Site Professional (LSP) Opinion was prepared in support of a Notice of Activity and Use Limitation (AUL) for the Parcel 3A NRA Property Parking Lot located on Water Street in Newburyport, Massachusetts (the "Site"). The Massachusetts Department of Environmental Protection (MassDEP) issued Release Tracking Number (RTN) 3-15445 in July 1997 following notification of lead concentrations in soil exceeding the applicable Reportable Concentration (RC) for the S-1 reporting category (RCS-1) of 300 milligrams per kilogram (mg/kg), as defined in the Massachusetts Contingency Plan (MCP) at 310 CMR 40.1600.

#### Site and Property Description

According to the Newburyport Assessor's Office, the Site consists of five abutting parcels totaling approximately 3.2 acres located in downtown Newburyport, Massachusetts northeast of the intersection of Water Street, Merrimac Street and Market Square. The Site was previously known as Parcel 3A NRA Property Parking Lot, but parcel designations have changed and are currently identified at the Newburyport Assessor's Office as 11-1C, 11-1D, 11-1E, 11-1F and 12-10 (partial).

The Site is abutted by Water Street to the south; the Merrimack River to the north; Waterfront Promenade Park to the west; and, the Harbormaster Building and a commercial building (35-41 Water Street) to the east. Parcels 11-1C through 11-1F are vacant and currently used for municipal parking. The Site includes a portion of Parcel 12-10 (25 Water Street) to the north of the Custom House, which is occupied by the Maritime Museum. Parcels 11-1D and 11-1F are paved. The western portion of the Site (Parcel 11-1E and Parcel 11-1C) has recently been re-graded and compacted with clean fill material.

The Site is divided by two right-of-ways, both of which are owned by the City of Newburyport. Ferry Wharf Way is located east of Parcels 11-1C and 11-1E. The second right-of-way, Custom House Way, separates the Maritime Museum parcel (25 Water Street) from Parcels 11-1D/11-1F. Topographically, the Site is flat with a slight downward grade toward the Merrimack River. Commercial buildings are located on Water Street on the southern Site boundary. A public walkway is located on the northern boundary along the waterfront. Residential properties are located within 500 feet to the south and east of the Site along and across Water Street.

The NRA took ownership of the Site in the mid- to late 1960s. Prior to this, the Site had a long history of industrial/commercial use. Review of Sanborn maps from 1888 to 1924 indicated that approximately half of the Site was owned and occupied by the Philadelphia and Reading Coal and Iron Company. The other half was used for coal, lumber, and general storage, and contained a number of businesses including Globe Soap Company, Eagle Chemical Company, fish markets, beef and furniture warehouses, paint and hardware stores, a carpenter shop, a bowling alley, a barber shop, and a grocery store. Railroad tracks were shown in all Sanborn maps during this period along the northern portion of the Site.

This AUL Opinion applies to a portion of the disposal site identified by RTN 3-15445 that is currently owned by the Newburyport Redevelopment Authority and identified by the Newburyport Assessor's Office as parcels 11-1C, 11-1D, 11-1E, 11-1F, and excludes the portion of the disposal site identified as

Parcel 12-10 (25 Water Street). The AUL boundaries are equivalent to the legal (metes and bounds) description of the property attached as Exhibit A, and parcel boundaries outlined on recorded survey plans shown in Exhibit B.

#### Site and Release History

A Limited Site Investigation was conducted in January 1997 by Simmons Environmental. Soil analytical results indicated that all concentrations were below the applicable RCS-1 standards except for lead and C<sub>10</sub>-C<sub>22</sub> aromatic hydrocarbons. The source of the contamination appears to be attributed to historic fill that was likely placed during multiple filling events that extended the shoreline from the estuary bank out to the channel.

An Initial and Supplemental Phase II Comprehensive Site Investigation was conducted by Weston & Sampson in May 2009 and April 2011, respectively. During the initial Phase II investigation, a total of 22 samples had lead concentrations greater than the MCP Method 1 Cleanup Standard of 300 mg/kg, and 10 of these exceeded MassDEP's "background" concentration of 600 mg/kg for lead in urban fill material containing wood or coal ash (MassDEP, May 2002). Soil samples collected during the Supplemental Phase II investigation indicated that soil samples were found to contain lead, arsenic, and chromium concentrations exceeding the MCP Method 1 Cleanup Standards; however, the concentrations were below MassDEP's "background" concentrations for these metals in urban fill material containing wood or coal ash. In addition, several SVOCs exceeded the applicable MCP Method 1 Cleanup Standards.

In May 2011, Weston & Sampson completed a Supplemental Phase II Comprehensive Site Assessment Report, Phase III Remedial Action Plan, and Phase IV Remedy Implementation Plan. This report indicates that lead concentrations in soil range from 3.7 to 17,000 mg/kg. Of the 95 soil samples analyzed for lead, approximately one-third exceeded the MCP Method 1 Cleanup Standard of 300 mg/kg. The Phase III evaluation of remedial response action (RAA) alternatives focused on eliminating potential exposure to contaminated soil under future use conditions. Elimination and/or source control was not a primary objective because there is no defined source area(s) and elimination would require removal of all fill material, which is neither practical nor necessary to achieve a condition of No Significant Risk. The alternatives evaluated were limited site excavation with off-Site disposal, capping, and implementation of an AUL. The selected RAA alternative involves a combination of AUL implementation, capping areas containing elevated lead concentrations, and excavation as required for Site development. Pre-characterization of soil in areas to be excavated is recommended to evaluate disposal options because of the possibility that excavated soil will require disposal as RCRA hazardous waste. An AUL ensures that future Site activities and uses associated with Site development work and post-development use will not result in potential risk of harm to human health. The Phase IV RIP focused on the response action objectives, Site characteristics, conceptual plan, design criteria, methods for spill control, waste management procedures, potential environmental impacts and procedures for inspection and monitoring of remedial construction.

#### Reason for Activity and Use Limitation

A Method 3 risk characterization was performed to evaluate whether a condition of "No Significant Risk" ("NSR") to human health, safety, public welfare, and the environment exists under current and future Site use conditions due to the presence of lead in fill material at the Site. Based on the risk assessment performed as part of the Phase II, the following conclusions were developed:

<u>Human Health:</u>	A condition of NSR to human health exists under current use conditions as a parking lot and museum. A condition of NSR also exists for construction workers involved in excavation or grading activities during future development of the Site. A condition of NSR does <u>not</u> exist for park users assuming there is exposure to soil at 2 to 5 feet below grade.
<u>Safety:</u>	A condition of NSR to safety exists for current and future use at the Site.
<u>Public Welfare:</u>	A condition of NSR to public welfare exists for current and future Site uses.
<u>Environment:</u>	Based on the results of the Stage I screening, a condition of NSR to the environment exists for current and future Site uses.

In order to meet the MCP requirements for foreseeable future residential use of the property where children might be present with high frequency (e.g., any children reside, attend school or attend day care at the Site) and high intensity (e.g., potential to disturb underlying soils that results in direct contact or inhalation of soil-derived dust), soils from 2-14 feet below surface grade would be required to meet the MCP Method 1 S-1 Soil Standards.

Since analysis of soil samples indicated that concentrations of lead exceed the MCP Method 1 S-1 Soil Standards in the subsurface soils at the Site and, due to the given impracticability of excavating and replacing all lead-impacted soil with clean soil, the decision was made to restrict access to the soils below grade using an Activity and Use Limitation. In order to demonstrate that a condition of NSR to health, safety, public welfare and the environment has been achieved currently and for the foreseeable future, an MCP Risk Characterization was performed to support a Response Action Outcome for the subject release.

In order to achieve a level of NSR for future foreseeable site activities and uses of the Site, an AUL is necessary to ensure that soils remain inaccessible to children/residential receptors and these exposure pathways remain incomplete. An AUL is necessary to "lock in" the assumptions and restrictions of the Risk Characterization regarding future site activities and uses. Certain exposure pathways at the Site are being restricted since such exposures could potentially result in a significant risk to health due to possible frequent, intensive, and long-term contact with contaminated soils. Based upon implementation of an AUL, the Disposal Site under RTN 3-15445 will achieve regulatory closure with the filing of a Class B-2 Response Action Outcome (RAO) concurrently with the AUL.

#### Permitted Uses and Activities

- (i) Commercial and/or industrial activities and uses including but not limited to, pedestrian and/or vehicular traffic, landscaping, and routine maintenance of landscaped areas, which do not cause and/or result in the direct contact with, disturbance of, and/or the re-location of metals-contaminated soil currently located at depths of 2 to 14 feet below surface grade;
- (ii) Excavation associated with short-term (three months or less) underground utility and/or construction, which is likely to disturb metals-contaminated soil located at 2 to 14 feet below surface grade provided that it is conducted in accordance with a Soil Management Plan (SMP) and

a Health and Safety Plan (HASP) prepared and implemented in accordance with Obligations (i) and (ii) of this Opinion prior to the commencement of such activity;

- (iii) Activities which maintain the structural integrity of impervious surfaces, including the asphalt pavement at portions of the Property;
- (iv) Any landscaping activities raised above the existing surface grade and such that soils below the surface grade are not disturbed by the landscaping activities;
- (v) 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; and,
- (vi) Such other activities and uses not identified in Paragraph 2 as being Activities and Uses Inconsistent with the AUL.

#### Restricted Uses and Activities

- (i) Use of the property as a residence, school, nursery, daycare, recreational area and/or other such use at which the child's presence is likely to disturb soil unless approved by an LSP based on a revised risk assessment specific to the child receptor;
- (ii) Growth and human consumption of fruits and vegetables or any other agricultural product in soil;
- (iii) Landscaping which results in intrusive activities below the existing surface grade;
- (iv) Any short-term (three months or less) activity including, but not limited to, excavation which is likely to disturb metals-contaminated soil located at 2 to 14 feet below surface grade without the prior development and implementation of a SMP and HASP in accordance with Obligations (i) and (ii) of this Opinion;
- (v) Any long-term (greater than three months) activity which is likely to disturb metals-contaminated soil located at 2 to 14 feet below surface grade, unless such activity is first evaluated by an LSP who renders an Opinion stating that such activity is consistent with maintaining a condition of No Significant Risk and that such activity is conducted in accordance with Obligations (i) and (ii) of this AUL; and,
- (vi) The relocation of metals-contaminated soil located at 2 to 14 feet below surface grade, unless such activity is first evaluated by an LSP who renders an Opinion which states that such relocation is consistent with maintaining a condition of No Significant Risk.

#### Obligations and Conditions

- (i) A SMP must be prepared by an LSP and implemented prior to the commencement of any activity which is likely to disturb metals-contaminated soil located 2 to 14 feet below surface grade within the AUL Area. The SMP should describe appropriate soil excavation, characterization, handling,

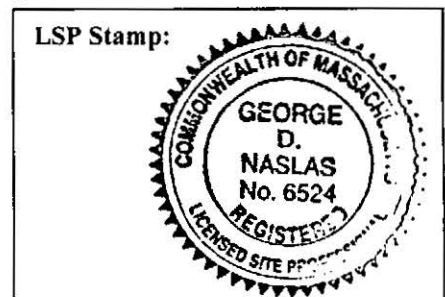
storage, transport, and disposal procedures and include a description of the engineering controls and air monitoring procedures necessary to ensure that workers and receptors in the vicinity are not affected by fugitive dust or particulates. On-site workers who may come in contact with the contaminated soil should be appropriately trained on the requirements of the SMP, and the plan must be available on-site throughout the course of a project. The SMP must be prepared in accordance with the guidelines discussed in the AUL Opinion attached hereto as Exhibit C;

- (ii) A HASP must be prepared by a certified Industrial Hygienist or other qualified individual sufficiently trained in worker health and safety requirements and implemented prior to the commencement of any activity which is likely to disturb metals-contaminated soil located at 2 to 14 feet below surface grade within the AUL Area. The HASP should specify the type of personal protection (i.e., clothing, respirators), engineering controls, and environmental monitoring necessary to prevent worker exposures to metals-contaminated soil through dermal contact, ingestion, and/or inhalation. On-site workers who may come in contact with the contaminated soil should be appropriately trained on the requirements of the HASP, and the plan must be available on-site throughout the course of a project. The HASP must be prepared in accordance with the guidelines discussed in the AUL Opinion attached hereto as Exhibit C;
- (iii) The metals-contaminated soil located at 2 to 14 feet below surface grade within the AUL Area must remain at depth and may not be relocated, unless such activity is first appropriately evaluated by an LSP who renders an Opinion which states that such relocation is consistent with maintaining a condition of No Significant Risk; and,
- (iv) Landscaping activities must be conducted above the existing surface grade.

This AUL Opinion is based upon information presented in:

- *The Massachusetts Contingency Plan* 310 CMR 40.0000, revised February 14, 2008.
- Massachusetts Department of Environmental Protection, *Guidance on Implementing Activity and Use Limitations*. May 1999.
- Phase I Initial Site Investigation, Ransom Environmental Consultants, Inc., July 1998.
- Tier II Extension, VHB/Vanasse Hangen Brustlin, Inc, April 2008.
- Tier II Extension, Weston & Sampson, Inc, September 2010.
- Supplemental Phase II Comprehensive Site Assessment Report, Phase III Remedial Action Plan, and Phase IV Remedy Implementation Plan, Weston & Sampson, May 2011.
- Class B-2 Response Action Outcome Statement, Weston & Sampson, November 2011.

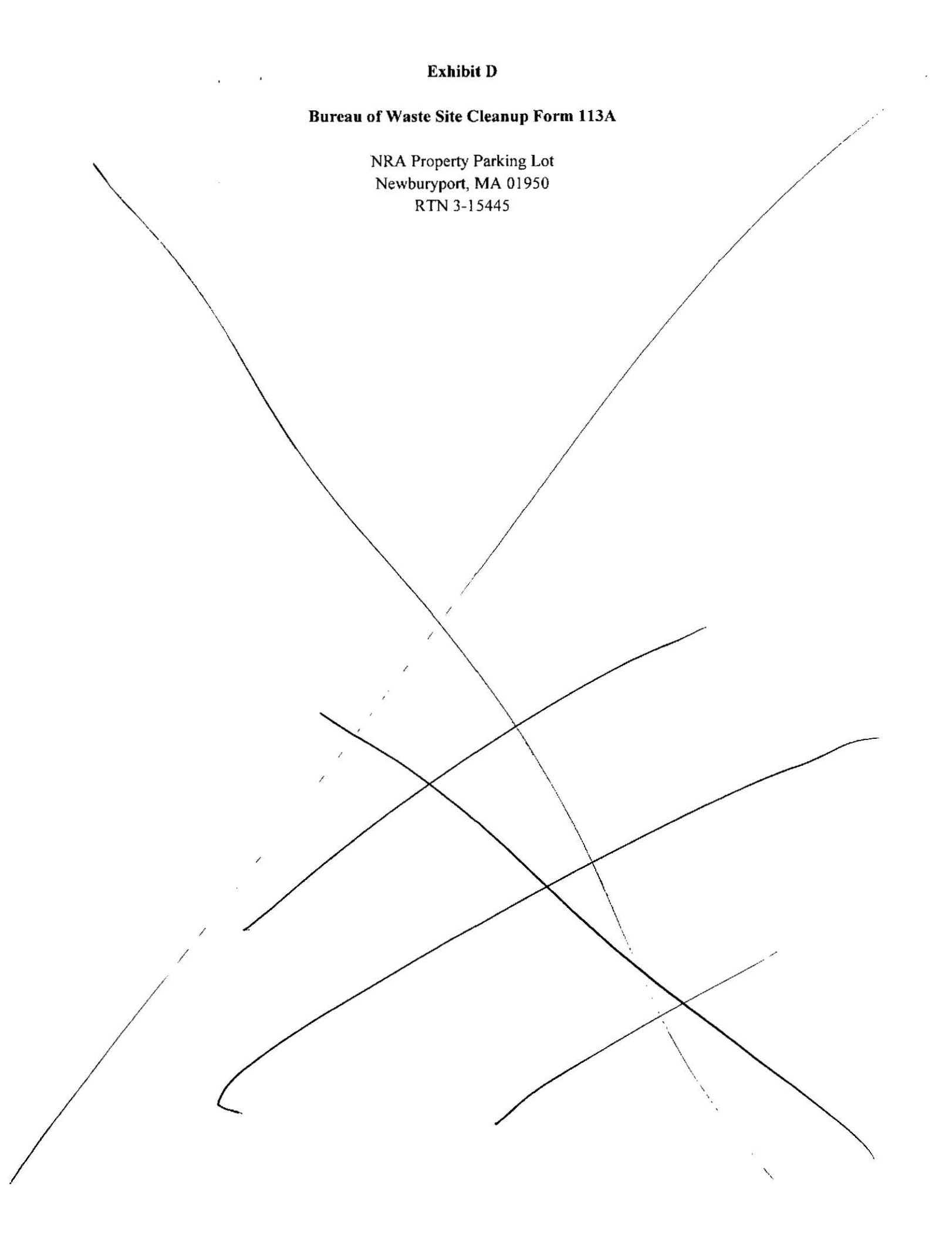
LSP Signature: George D. Naslas  
LSP Name: George D. Naslas, P.G., LSP #6524  
Date: 11/23/11, 2011

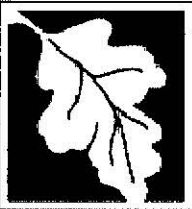


**Exhibit D**

**Bureau of Waste Site Cleanup Form 113A**

NRA Property Parking Lot  
Newburyport, MA 01950  
RTN 3-15445





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

**BWSC113A**

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

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

Release Tracking Number

**3** - **15445**

**A. DISPOSAL SITE LOCATION:**

1. Disposal Site Name: Parcel 3A NRA Property Parking Lot

2. Street Address: Water Street

3. City/Town: Newburyport 4. ZIP Code: 01950-0000

**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 BWSC113. 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.)

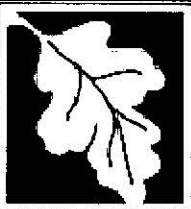
**C. AUL INFORMATION:**

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 & USE LIMITATION (AUL) OPINION FORM

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

Release Tracking Number

3 - 15445

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.

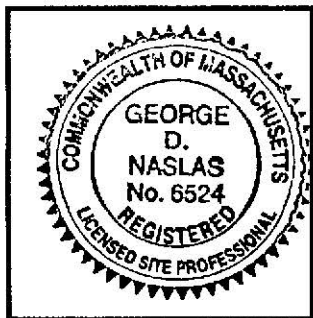
1. LSP #: 6524

2. First Name: George 3. Last Name: Naslas

4. Telephone: (978) 532-1900 5. Ext.: 2279 6. FAX: (978) 573-4080

7. Signature:  8. Date: 11/23/11  
mm/dd/yyyy

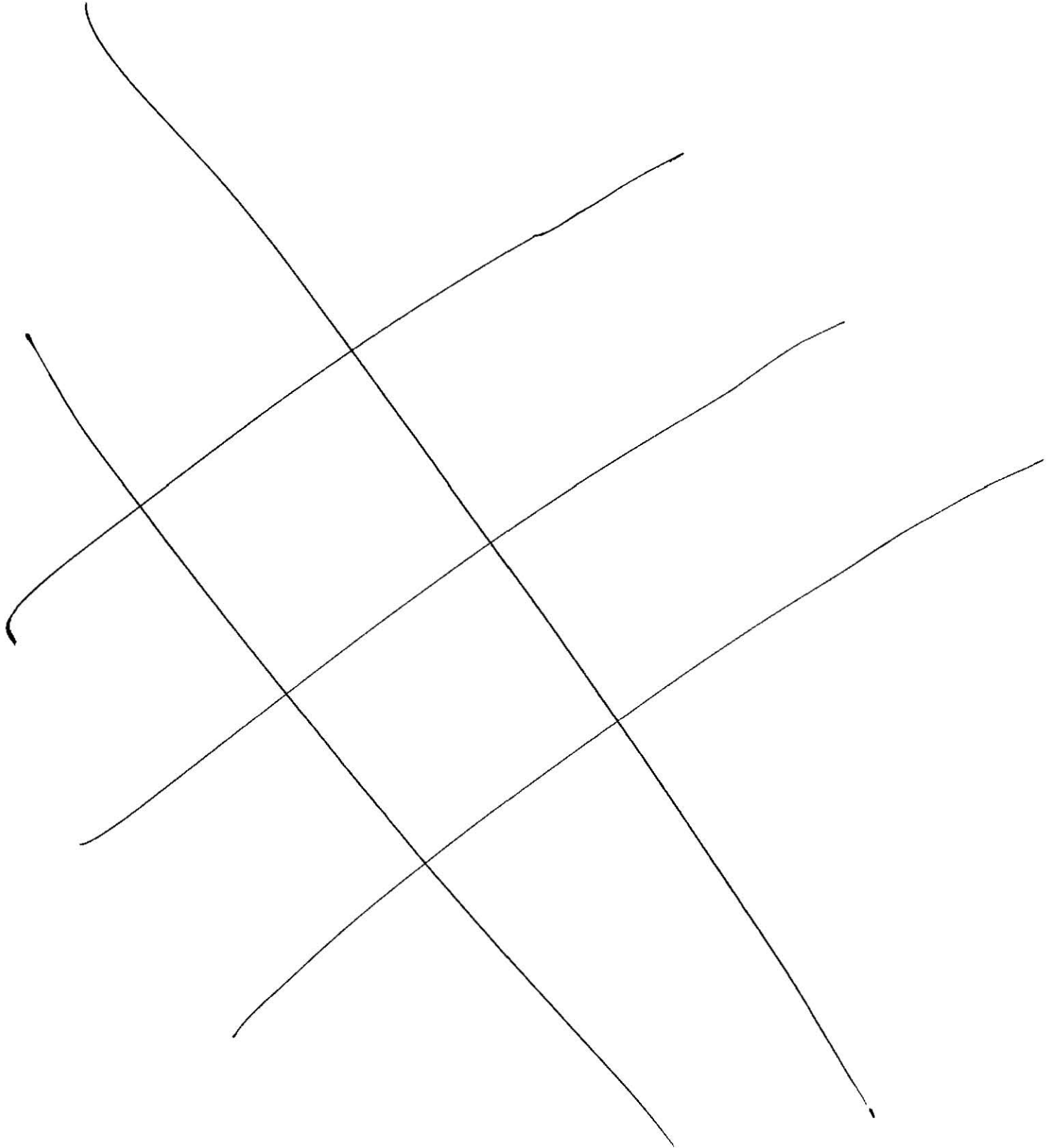
9. LSP Stamp:



**Exhibit E**

**Clerk's Certificate, 310 CMR 40.1074(2)(c)**

NRA Property Parking Lot  
Newburyport, MA 01950  
RTN 3-15445



**NEWBURYPORT REDEVELOPMENT AUTHORITY  
CERTIFICATE OF SECRETARY  
ACTION by UNANIMOUS CONSENT OF AUTHORITY MEMBERS**

RE: Activity and Use Limitation  
NRA Property Parking Lot, Newburyport, MA 01950  
RTN 3-15445

The undersigned, being the Secretary of the **NEWBURYPORT REDEVELOPMENT AUTHORITY**, an authority duly established under Massachusetts General Laws Chapter 121B (the NRA) certifies that the following resolutions were adopted by unanimous consent of the membership of the Authority, and that each of the following resolutions presently is in full force and effect without change:

VOTED: To enter an Activity and Use Limitation restricting the "NRA Property Parking Lot" designated in RTN 3-15445 and described in the AUL document.

VOTED: To authorize the Chairman of the NRA to negotiate, execute and deliver in the name of and on behalf of the NRA, all instruments, agreements, and documents as he shall deem necessary or advisable in order to effect the Activity and Use Limitation authorized by the above Vote, including but not limited to the recording of the Activity and Use Limitation at the Essex South District Registry of Deeds along with similar supporting documents.

The undersigned further certifies that the following person is the duly elected and qualified officer of the NRA, holding the office set forth opposite his name, and the signature appearing opposite his office is the genuine signature of such person:

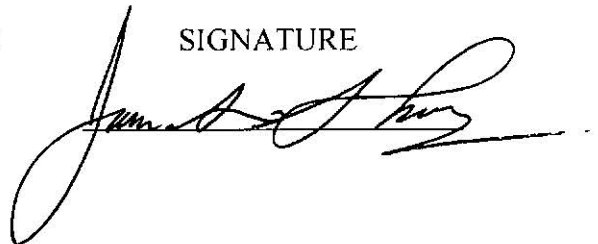
NAME

OFFICE or POSITION

SIGNATURE

James Shanley

Chairman

A handwritten signature in black ink, appearing to read 'James Shanley', written over a horizontal line.

# Exhibit M

## Existing Interim/Seasonal Public Restrooms & Visitor Booth



## Exhibit N

# Photos of Existing Central Boardwalk & Market Landing Park



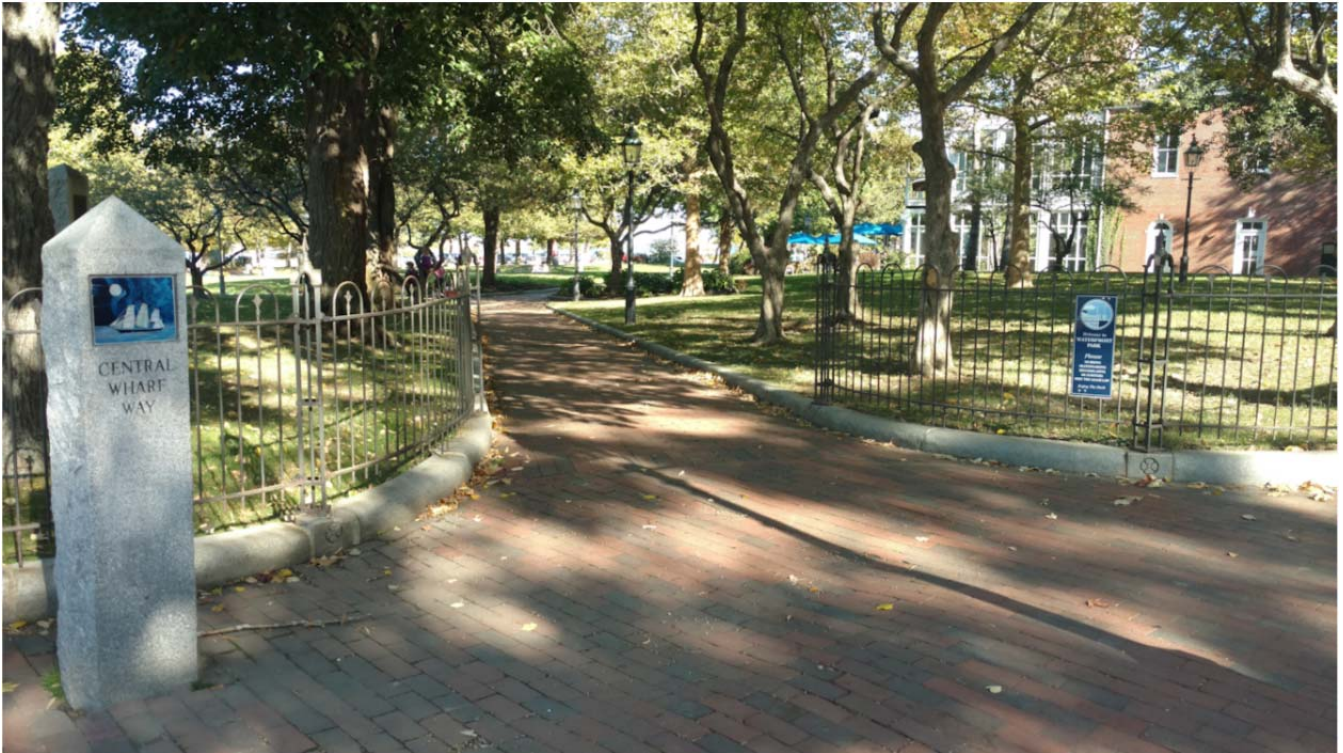
**Sculpture Park, West End of Central Boardwalk, Riverside Park (WFT)**



**View East through Interim Lawn Space to Central Embayment & Market Landing Park, West Lot**



**Interim Lawn Space, West Lot**



View from Merrimac Street down Central Wharf Way into Market Landing Park



View of Firehouse Patio Space, Southern End of Market Landing Park



**Granite Walls, Steps & Ramps, View from Central Embayment, Market Landing Park**



**View East along Central Boardwalk (Note raised berm & East Lot/Parking to right)**



View East along Central Boardwalk from raised berm (East Lot/Parking to right)



Granite Seating Area, Central Boardwalk (East Lot/Parking in background)



**Pedestrian Access through raised berm between Central Boardwalk & East Lot/Parking**



**Pedestrian Access through raised berm between Central Boardwalk & East Lot/Parking**



**View East along Central Boardwalk, Heavy Pedestrian Traffic (2008)**



**Tall Ship El Galeon, View West along Central Boardwalk (Heavy Pedestrian Traffic)**



**Central Lawn, Market Landing Park, looking towards stage area and Central Embayment**

## Exhibit O

### Photos of Parking Lots, Existing Public Walkways, Pop-Up Pocket Park



Somerby's Way, West Lot & Riverside Park (WFT)



View East from East Lot, facing Harbormaster/Visiting Boater Facility & Bike Path



View East from East Lot, facing Bike Path



**View West across East Lot/Parking**



**View of transition between paved and unpaved parking (East Lot looking West)**



**View South through Ferry Wharf Way towards Market Square (East Lot)**



**View North through Ferry Wharf Way towards East Lot**



**View of Pop-Up Pocket Park, Merrimac Street/West Lot (parking to right/rear)**

# **Exhibit P**

## **Settlement Agreement/Stipulation**

### **Regarding Pedestrian Ways & Access to the Waterfront**

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

LAND COURT  
NO. 39539

LAND COURT

Mar 31 1990

FILED

NEWBURYPORT REDEVELOPMENT AUTHORITY

v.

COMMONWEALTH &amp; another

## STIPULATION

The undersigned parties to the above proceedings hereby agree and stipulate as follows:

1. The Newburyport Redevelopment Authority shall convey to the City of Newburyport, and the City of Newburyport agrees to convey to the Trustees of the Newburyport Waterfront, the Ways, Market Landing, Promenade, and Riverside Park (hereinafter collectively referred to as "Settlement Areas") as substantially shown on a plan entitled "Newburyport Waterfront Ways Traced by R. Barnes from Metcalf and Eddy Plan 3/12/1968". (Exhibit A). Said Trustees shall hold these Settlement Areas in public trust forever, and the public shall have free access to these Settlement Areas forever. Said Trustees will not have the power to alienate or transfer any interest in these Settlement Areas, except to the City of Newburyport for public use.

2. It is agreed that the way known as Central Wharf Way shall be at least twenty five (25) feet in width, and may be relocated no more than thirty five (35) feet in a westerly direction, and along Merrimac Street in an easterly direction not more than one hundred thirty five (135) feet. Central Wharf Way may be connected to the riverfront Promenade either directly or by joining and merging with the Promenade running along the westerly side of the slip or embayment.

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ATTORNEY AT LAW  
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(617) - 452-8365

DEPUTY RECORDER

*Jeane M. Maloney*

It is agreed that the Newburyport Redevelopment Authority will make a good faith effort to locate Central Wharf Way opposite the intersection of Merrimac Street and Unicorn Street. It is further agreed that the Way known as Ferry Wharf Way may be relocated in an easterly or westerly direction provided that after said relocation, one may have visual access to the Merrimac River from a point on Water Street where said R. Barnes Plan shows the intersection of Water Street and Ferry Wharf Way.

3. It is agreed that in the alternative to the above-mentioned R. Barnes Plan, said parties may agree to adopt any plan to be proposed and prepared by planners available to the Newburyport Redevelopment Authority, retained by the Office of Community Development of Newburyport, relative to the Settlement Areas, provided that the Newburyport Redevelopment Authority and the Committee on Civic Rights of the Friends of the Newburyport Waterfront (hereinafter the "Committee"), each by a majority vote of the members present at a duly called meeting, and the City of Newburyport through its Mayor agree to accept such substitute plan.

4. The conveyance from the Newburyport Redevelopment Authority to the City of Newburyport, and subsequently to said Trust, shall reserve to the Newburyport Redevelopment Authority, its successors and assigns, the right to construct pedestrian crosswalks in the air space not less than approximately ten (10) feet over said Ways, and Market Landing to be conveyed thereby. It is agreed that said pedestrian crosswalks in the air space will not result in an unaesthetic architectural effect.

5. Said Riverside Park shall be dedicated as a public park forever, provided that public parking is not an excluded use in said Park. Riverside Park shall contain a public pedestrian walkway and park landscaping running between Merrimac Street and the Merrimac River. Said walkway and park landscaping

*Jeanne M. Melony*  
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together shall be no less than an average of twenty-five (25) feet in width. It is agreed that motor vehicle traffic will be permitted to cross said walkway and park landscaping to remaining land of the Newburyport Redevelopment Authority at no more than two locations. Each said location shall be no more than twenty (20) feet in width. Furthermore, an area at the northerly end of Riverside Park running from the easterly end of the existing boat ramp to the westerly end of the Promenade and equal in width to the Promenade shall be maintained as a public pedestrian area with parking not allowed. The facilities in the pedestrian area shall be so constructed and maintained as to permit emergency use for marine activities.

6. The Parties waive all rights of review and appeal, provided however, the Newburyport Redevelopment Authority reserves the right to such further review by the Land Court, Appeals Court, or the Supreme Judicial Court of the Commonwealth of Massachusetts, for that part of the Decision of the Appeals Court in these proceedings relating to the "Public Trust" affecting the portion of the premises below the "natural" low water mark as referred to in said Decision, provided that if said Authority shall seek such determination, neither the Committee nor any other party shall be precluded by the terms of this Stipulation from appearing in opposition at such proceedings, and provided further that except as set forth in this paragraph, the parties agree that this Stipulation is a complete settlement of all the claims raised by said Committee in these proceedings.

7. The above conveyance shall further provide that the City of Newburyport, by its acceptance and recording of the Deed relating to this conveyance, agrees to maintain the Parcel known as Riverside Park as a public park subject to the rights of said Trust. The City further agrees to maintain said Ways, Market Landing, and Promenade after said conveyance.

A TRUE COPY  
ATTEST:

*Leanne M. Meloney*  
DEPUTY RECORDER

RICHARD B. JONES  
ATTORNEY AT LAW  
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MASSACHUSETTS 01950  
(617) 462-8388

8. Said Committee further agrees, at the request of the Newburyport Redevelopment Authority, to execute any documents or join in any petition which may be required in order to confirm with the United States District Court of the District of Massachusetts that the premises are no longer subject to any order, stipulation or injunction of such Court prohibiting or limiting in any way the use or transfer of title to such premises. It is agreed, subject to the exceptions contained in Paragraph Six (6), that this Stipulation is a complete settlement of all the claims raised by and between the Newburyport Redevelopment Authority and said Committee, Peter A. Latham, Joanne C. Purinton, Thomas C. Candee, William R. Harris, and Historical Survey Associates, Inc., in these proceedings.

9. Said conveyance, with exception of Ferry Wharf Way and Central Wharf Way, shall occur upon the completion of proceedings in the Massachusetts Land Court and entry of final judgment and the expiration of all rights of appeal, and as required in the Decision of the Massachusetts Appeals Court, referred to above, and contemporaneously with the entry of a decree of the Land Court confirming the Newburyport Redevelopment Authority title to the premises, subject only to the matters set forth in the Decree of the Land Court, modified as required by the above mentioned Decision of the Appeals Court and not inconsistent with the terms of this Stipulation. Ferry Wharf Way and Central Wharf Way shall be conveyed and recorded no later than immediately preceding the conveyance for development of the land abutting said Ways.

A TRUE COPY  
ATTEST:

*Jeane M. Maloney*

DEPUTY RECORDER

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See Plans filed in Land Court, Land Court Case #39539

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BK 6695 PG 432

NEWBURYPORT REDEVELOPMENT AUTHORITY  
By its Chairman

James E. Farley

COMMITTEE ON CIVIC RIGHTS OF THE  
FRIENDS OF THE NEWBURYPORT  
WATERFRONT

By its Attorney

William R. Harris

PETER A. LATHAM, JOANNE C. PURINTON,  
THOMAS C. CANDEE, WILLIAM R. HARRIS,  
HISTORICAL SURVEY ASSOCIATES, INC.  
By their Attorney

William R. Harris

CITY OF NEWBURYPORT

By its Mayor

Richard E. Sullivan

COMMONWEALTH OF MASSACHUSETTS

By its Attorney;

*subject to any and  
all rights of the Commonwealth  
with respect to its public trust  
and its right of entry for  
condition broken, if any there be,  
and the legislative authority to  
change existing usage of the  
subject property. By Howard R. Palmer,  
Assistant Attorney General*

A TRUE COPY  
ATTEST:

Jeanne M. Maloney

DEPUTY RECORDER

ESSEX SS. RECORDED

April 18, 1980

21 M. PAST 12

P. M. INST. #147

# **Exhibit Q**

## **Special Act & City Council Resolution**

*(portions applicable to Park Design & Construction)*

Chapter **96**  
of the Acts of 2020

T H E   C O M M O N W E A L T H   O F   M A S S A C H U S E T T S

*In the One Hundred and Ninety-First General Court*

**AN ACT TO DISSOLVE THE NEWBURYPORT REDEVELOPMENT AUTHORITY AND TRANSFER ITS LANDS TO THE CITY OF NEWBURYPORT.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Notwithstanding section 4 of chapter 121B and section 51 of chapter 155 of the General Laws or any other general or special law to the contrary, the Newburyport redevelopment authority, established on February 1, 1960 by vote of the city council of the city of Newburyport pursuant to said section 4 of said chapter 121B, is hereby dissolved and shall not be continued as a body corporate after the effective date of this act. No approval from the department of housing and community development or any other state agency shall be necessary to effect the same.

SECTION 2. Notwithstanding any general or special law to the contrary, the entirety, without exception, of all monies, and personal and real property interests whatsoever held by the Newburyport redevelopment authority are hereby transferred and conveyed to, and shall be vested in, the city of Newburyport, with all lands whatsoever, including, without limitation, tidelands, whether flowed or filled, to be held permanently for the purposes of park and conservation uses; provided, however, that: (i) public parking shall not be an excluded use; and (ii) all existing public rights for fishing, fowling and navigation within said tidelands shall be preserved in their entirety.

The city may execute and deliver a certificate in a form suitable for recording referencing the passage of this act along with a copy of said act and the register of deeds for Essex county shall accept the same for recording and make a marginal reference thereto upon the record of all applicable deeds for real property heretofore owned by the Newburyport redevelopment authority, as provided in summary format by the city of Newburyport. The land court shall also accept said certificate and a copy of this act for the purposes of issuing a certificate of title to the city of Newburyport for any registered land heretofore owned by the Newburyport redevelopment authority.

SECTION 3. The city of Newburyport shall, for all purposes, be the successor of interest to the Newburyport redevelopment authority under the stipulation in land court case number 39539, dated March 31, 1980, and recorded in Essex South district registry of deeds at book 6695, page 428, including, without limitation, as to all outstanding obligations thereunder.

SECTION 4. The city of Newburyport shall reserve any monies transferred to the city pursuant to section 2, in addition to no less than 100 per cent of any ongoing meter revenues generated from parking on the land solely for the purposes of design, construction, maintenance or operation of an extended waterfront park and related infrastructure on: (1) the lands described in section 2; provided, however, that the lands shall be protected under article 97 of the Constitution; and (2) adjacent property as deemed necessary by the city of Newburyport for the purposes of integrating the waterfront park expansion with adjacent public parks, ways and infrastructure. Such funds shall be placed into a separate, designated receipts reserved for appropriation fund for these purposes as improvements to the public realm.

SECTION 5. If any provision of this act conflicts with any provisions of any general or special law, state agency regulations or guidelines, the provisions of this act shall govern.

If after the effective date of this act, the city of Newburyport determines that a new redevelopment authority shall be necessary in the city for any reason, it may vote to organize a new redevelopment authority in accordance with section 4 of chapter 121B of the General Laws.

SECTION 6. All members of the Newburyport redevelopment authority immediately prior to the effective date of this act shall immediately transfer all files, legal and financial records or other materials belonging to the Newburyport redevelopment authority to the city of Newburyport, acting through its office of planning and development. Such files, records and materials shall include any such items held by consultants or legal counsel to the Newburyport redevelopment authority, without reservation.

SECTION 7. The city of Newburyport shall design, fund and construct an extended waterfront park. On a best-efforts basis, the design shall be consistent with the principles and references documented in the ad hoc central waterfront committee's proposed amendment, dated May 30, 2017 agreed upon by the Newburyport city council in May 2017, which is on file with the city clerk.

SECTION 8. This act shall take effect upon its passage.

House of Representatives, June 4, 2020.

Passed to be enacted,

*Paul J. Donato*, Speaker.

In Senate, June 11, 2020.

Passed to be enacted,

*Karen E. Spillia* President.

June 19, 2020.

Approved,  
at 12 o'clock and 10 minutes, P. M.

*Charles D. Bates*  
Governor.

**AD HOC CENTRAL WATERFRONT COMM. – PROPOSED AMENDMENT, MAY 30, 2017**

The *Ad Hoc* Central Waterfront Committee was charged to develop policies and objectives regarding a long-term vision for the Central Waterfront, including number of parking spaces, land ownership, and operational and maintenance responsibilities, subject to full Council approval. The Committee recommends that the City Council endorse the following terms of a final settlement.

**Executive Summary of Proposed Settlement:**

- NRA grants all parcels to Waterfront Trust for public park and waterside uses, *except* Firehouse Patio (City leases to Firehouse Ctr.) and Custom Hse. land (City leases to Custom Hse.)
- City takes exclusive easement to operate public parking at West & East Parking Lots
- Submerged lands equitably split between City and Waterfront Trust
- Construction of expanded park contingent upon raising capital funds

**1. Master Plan reconciling Sidford-Uhlig Plan + COW Plan + Andy Port Plan**

- a. Expanded Market Landing Park, including widened shoreline berm
- b. Reconfigured and smaller West Parking Lot and East Parking Lot
- c. Dimensions and locations of “Ways” settled for all time, with all ways perpendicular to shore, and non-vehicular Central Wharf Way aligned with Unicorn Street
- d. Clipper City Rail Trail passes through as a “loop”
- e. Firehouse Center lease with City adds patio as facility of public accommodation
- f. Custom House lease with (now) City adds land back to bulkhead, subject to current public uses
- g. Harbor Master operates all water-dependent uses (docks), as today

**2. Waterfront Trust reorganizes, such that:**

- a. Board of Trustees increases to seven (7). Mayor appoints four (4) and City Council appoints three (3). First two appointed by Council = 1 NRA member + 1 Settlor.
- b. One trustee serves ex-officio on Harbor Commission, and one Harbor Commissioner (or Harbor Master) serves as ex-officio on Waterfront Trust.
- c. No further role for 1980 litigants (Settlers) or the NRA
- d. Primary mission = stewardship of “public park and waterside uses”
- e. Acts as City commission: open meeting, conflicts of interest, & public records laws
- f. Can grant easements solely to government agencies for public purposes, at below market
- g. Duty to charge reasonable usage fees for public park and waterside uses
- h. Audit and enforcement rights by City Council and citizens
- i. Amendments require 2/3 Trustees + 2/3 City Council + Attorney General

**3. Diverse, direct revenue streams to an autonomous Waterfront Trust**

a. Existing Income to continue:

Riverside Park parking revenues
Embayment + Upriver ≈250 linear ft. dockage fees
Park usage fees, etc
Donations, etc

**AD HOC CENTRAL WATERFRONT COMM. – PROPOSED AMENDMENT, MAY 30, 2017**

**b. New income from West & East Park Lots that increase with Park size/costs:**

Park Size	West & East Pkg. Lot Revenues		City Cash Payment
4 acres (current)	10% Trust / 90% City		\$0
4.5 acres	30% Trust / 70% City	+	\$12,500
5 acres	50% Trust / 50% City		\$25,000
5.5 acres	70% Trust / 30% City		\$37,500
6+ acres (built out)	90% Trust / 10% City		\$50,000

**Parking Revenue shares are fixed; require mutual City/Trust agreement to change**

- c. **New income from any docks extended outward from Embayment/Upriver ≈250 linear feet, shared with City in equal proportion to City's share of capital/grant investment.**
  - d. **New income from ≈\$350,000 endowment fund created from WT and NRA reserves (Principal cannot be spent)**
  - e. **City not obliged to help fund construction, maintenance, or replacement of any WT property excepting the Bulkhead**
- 4. NRA grants 100% of its land, with no "deadline" for agency dissolution**
- a. **WT accepts NRA land, and confirmation of the following rights:**
    - i. **Bulkhead**, but City gets right to access for public waterside uses
    - ii. **Riverside Pk./Somerby Way**, including all rights to public parking use
    - iii. **West Parking Lot**, but City gets exclusive easement for public parking use
    - iv. **East Parking Lot**, but City gets exclusive easement for public parking use
    - v. **Scrap of land east of Railroad Avenue**
    - vi. **Non-exclusive easement for telecommunications at Firehouse Center**
    - vii. **Embayment**, including all rights to use and revenue (no change)
    - viii. **Submerged lands upriver of Embayment (≈250 linear ft.), including use and revenue**
  - b. **City accepts two parcels for non-profit tenants, and confirmation of the following rights:**
    - i. **Firehouse Center patio**, but restricted to use by City's non-profit Firehouse tenant
    - ii. **Submerged lands downriver of Embayment**, including use and revenues
    - iii. **Land behind Custom House to Bulkhead**, but restricted to use by City's non-profit Custom House tenant, subject to existing public uses, under a new 99-year lease
    - iv. **Non-exclusive easement for Clipper City Rail Trail** (Mass. rights, too)
    - v. **Non-exclusive easement for underground utilities**
    - vi. **Non-exclusive easement for operations and maintenance**
    - vii. **Vehicular public way through Riverside Park** (Mass. rights, too.)
    - viii. **Exclusive easement for public parking use at West & East Pkg. Lots** (resident privs.)
    - ix. **Non-exclusive easement to provide public safety services**
  - c. **Accurate surveys and subdivision maps to be recorded**
- 5. Parties agree to cooperate reasonably regarding planned public park expansion**
- a. **NRA to resolve Activities Use Limitation (AUL) with US EPA**
  - b. **City to assist in identifying grants to fund construction of capital improvements**
  - c. **Waterfront Trust obliged to build capital improvements only once funding in place**

# Exhibit R

## Certificate of Non-Collusion & Tax Compliance

(Required with all RFP responses)

---

**CERTIFICATE OF NON-COLLUSION and TAX COMPLIANCE**

Complete this page by signing in the space below, and return with completed non-pricing pages

**As required under Chapter 233 and 701 of the Mass. Acts and Resolves of 1983 and Chapter 30B as Mass. General Laws, when returning the City's solicitation documents, certification must be made to the following by signing in the space indicated below. Failure to offer such signature may result in rejection of the bid.**

1. "The undersigned certifies under the penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word person shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group or individuals" and also;
2. "Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that I, the undersigned bidder, have complied with all laws of the Commonwealth relating to taxes, reporting of employees and contracts, and withholding and remitting child support.

**This bid is submitted by:**

---

(Complete name of firm to be given here)

Signature: \_\_\_\_\_

BUSINESS ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Person to Contact: \_\_\_\_\_

Tel: \_\_\_\_\_

Employer I.D.# \_\_\_\_\_

**DATE:**

\_\_\_\_\_

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