



Fairhaven Board of Selectmen

October 30, 2017 Meeting Minutes

Present: Chairman Robert Espindola, Vice Chairman Daniel Freitas, Clerk Charles Murphy, Town Administrator Mark Rees, Human Resources Director Anne O'Brien, and Administrative Assistant Vicki Paquette

Mr. Espindola called the meeting to order in the Town Hall Banquet Room at 6:32 p.m. The meeting was recorded by Cable Access.

MINUTES

- Mr. Freitas motioned to approve the minutes of the October 2, 2017 meeting, open session. Mr. Murphy seconded. Vote was unanimous. (3-0).
- Mr. Freitas motioned to approve the minutes of the October 2, 2017 meeting, executive session, with one amendment. Mr. Murphy seconded. Vote was unanimous. (3-0).

TOWN ADMINISTRATOR REPORT

Mr. Rees updated the Board on several matters:

- Mr. Rees and Bill Roth, Director of Planning and Economic Development, met with the HKT Architects. Mr. Roth gave a tour of the town.
- Mr. Rees attended the third meeting of the Greater New Bedford Opioid Task Force.
- Mr. Rees and Mr. Roth met with Stratford Group who will be seeking CPA funding in FY 19.
- Mr. Rees attended the ICMA conference where the Town was given an award for the Electrical aggregation program and Mr. Rees received a forty year Service Award.
- Mr. Rees informed the group of some recent changes going on at Town Hall. Patricia Pacella has been appointed to Administrative Assistant in the Building/Cable Offices, Amanda Blais has been appointed to Administrative Assistant in the Board of Health, and Vicki Paquette to Assistant to the Town Administrator in the Selectman's Office.

COMMITTEE LIAISON REPORTS

Under committee liaison reports:

- Mr. Freitas said that the Historical Commission will meet next week on November 8, 2017
- Mr. Freitas said he met with the Rogers School committee. No one from the public showed up for the question and answer session.

- Mr. Freitas reported on the Marine Resources Committee (MRC). Mr. Freitas was upset with the chair of that committee, regarding comments that the MRC made against the Board of Selectmen, the Harbormaster and the Assistant Harbormaster, and how the members of the MRC treat Town staff. He feels that members of the committee have gone to the local press and stories are being written based on the accusations of the committee. Mr. Freitas said he will not be attending anymore MRC meetings. Mr. Freitas said that he felt the MRC was overstepping its authority and charge.
- Mr. Murphy reported that the Manjiro Festival had taken place recently and it was a success.
- Mr. Murphy said the Commission on Disability had not met yet.
- Mr. Espindola said that the Wellness Committee is trying to add more structure and will be given more support. He will be meeting with Blue Cross Blue Shield.
- Mr. Espindola had a conference call with Energy Aggregation. In mid–November, Eversource will be announcing the new rates effective January 18, 2018. These will be in effect for six months. Customers will still have the option of opting out of the program and those that have previously opted out will not have to opt out again.
- Mr. Espindola asked if there was a way to have better communication with the Tree Warden. Given this weekend’s recent storm, residents have been calling him and asking about removing fallen trees and branches. Ms. O’Brien explained that all calls are directed to the Tree Warden and are placed on a priority list to be removed.

ADOPT FY 19 POLICIES AND GOALS

Mr. Rees met on October 14, 2017 with the Board of Selectmen in a workshop to come up with ideas and objectives to guide the activities of Town departments for FY19. Chairman Espindola would like to see Goal 3 to add: revised rules and regulations for Marine resources and waterways.

Mr. Freitas made a motion to approve the policies and goals (See Attachment A). Mr. Murphy seconded. Vote was unanimous. (3-0).

ROGERS SCHOOL ACTION PLAN COST ESTIMATES

There are two proposals for Rogers School. The estimate to put the school on the National Historic Registry is \$30,000 maximum and could come from CPC funds. This would have to go before town meeting in May.

The costs to “moth ball” the school would be in two phases. Phase 1 will be \$5,000 to “moth ball” the school and Phase 2 would be an additional \$5,000 for the maintenance once the school is moth balled. Mr. Freitas made a motion to support the first phase of mothballing for the Rogers School building. Mr. Murphy seconded. Vote was unanimous. (3-0).

PARKING CLERK

Mr. Freitas made a motion to appoint Vicki Paquette parking clerk. Mr. Murphy seconded. Vote was unanimous. (3-0).

A-1 CRANE SITE PLAN APPROVAL

Mr. Freitas made a motion to accept the site plan for A-1 Crane (see Attachment B). Mr. Murphy seconded. Vote was unanimous. (3-0).

NORTH STREET COURT DECISION

Town Counsel Tom Crotty explained that the owner of the North Street property was successful in court proving that the small piece of land between his property and his neighbors' property was not a public right of way. Attorney Crotty said that there are still conservation issues there and the home owner would still be subject to those rules. (Attachment C)

MATTAPOISETT WOMENS CLUB

At 7:00pm the board heard from Lori Bardwell from the Mattapoisett Womens Club regarding Veteran's Day. Ms. Bardwell read an article from Sippican weekly explaining an idea that Mary O'Keefe developed involves getting all area cities and towns to ring bells on November 11 at 11am for one minute in remembrance of Veterans. Mr. Freitas made a motion that the Town will participate in ringing the bell at Town Hall. Mr. Murphy seconded. Vote was unanimous. (3-0).

AL BENAC PROCLAMATION

The board met with Mr. Benac at 7:15pm. Mr. Benac said that he has purchased some artwork from the estate sale at the Colonial Club. Resident Cathy Delano read from a list of Mr. Benac's accomplishments. She called him an "unsung hero". Selectmen presented Mr. Benac with a proclamation for his dedication to the Town of Fairhaven. (Attachment D)

OPIOID TASK FORCE

At 7:28 p.m. the board met with New Bedford Chief of Police Joseph Cordiero in regards to the Greater New Bedford Opioid Task Force. Also in attendance were Fairhaven Police Chief Michael Meyers, Fairhaven Fire Chief Timothy Francis, Deputy Fire Chief Todd Correia, and Health Agent Mary Friere-Kellogg. Chief Cordeiro explained the efforts that will be taking place to help combat the opioid crisis in our area.

CABLE ADVISORY COMMITTEE

The Cable Advisory Committee and Cable Access Director Bobby Brusio met with the select Board at 7:45pm. Committee members Barbara Acksen and Michael Merrolla were also in attendance. Board members and Mr. Brusio met with Attorney Solomon to create policies and procedures in regards to cable access. Mr. Brusio explained that Channel 18 is up and ready to go as soon as the policy is adopted. Mr. Rees will look into an insurance policy. Mr. Freitas made a motion to approve the policies and procedures to Fairhaven Cable TV. Mr. Murphy seconded.

Vote was unanimous. (3-0). Chairman Espindola said the license renewal for Comcast will be coming up soon. The current contract ends in 2018.

COMMERCIAL MARIJUANA LAW/REGULATIONS

Town Counsel Tom Crotty and Bill Roth spoke to the board regarding the laws on commercial and recreational marijuana. They explained that the town would need to look at zoning by-laws and general by-laws and formulate a policy for the sale of recreational marijuana. Attorney Crotty suggested setting up an advisory committee consisting of Mr. Rees, Police Chief Myers, Board of Health Agent Mary Friere-Kellogg, a member of the Planning Board, a member of the Board of Health and a member of the Board of Selectmen. Mr. Murphy volunteered to serve on this committee. Mr. Freitas made a motion to set up a committee to advise the Board of Selectmen. Mr. Murphy seconded. Vote was unanimous. (3-0).

ATLAS TACK

Bill Roth spoke to the board regarding notice about Atlas Tack and the superfund restoration and the limitations on the property. Mr. Roth explained that the Town was notified by the State because we are abutters to the property. The EPA will give notice to the owners, no action is required by the Board of Selectmen at this time. (Attachment E)

OTHER BUSINESS

In other business:

- Mr. Freitas wished Fire Fighter Jimmy Rocha well on his retirement. Mr. Murphy and Chairman Espindola also wished him well.
- Mr. Murphy showed a calendar produced by the Standard Times and noted that Fairhaven had pictures in three out of the twelve months.

At 9:00 p.m. Mr. Freitas motioned to adjourn. Mr. Murphy seconded. Vote was unanimous. (3-0).

Respectfully,

Vicki L. Paquette
Administrative Assistant
Minutes approved 11-07-2017

Documents appended:

- A. FY19 Policy Goals And Objectives

- B. A-1 Crane Site Plan Approval
- C. North Street Court Decision
- D. Al Benac Proclamation
- E. Atlas Tack

Attachment A

Board of Selectmen

FY 19 Policy Goals (~~Approved 10/16/16~~) with Objectives

~~Status Update 10/13/17~~

October 7, 2017 Work Shop

Goal 1: Human Resources Improvements

To strengthen the Town's Human Resources operation in ways that will enhance employee productivity, create an atmosphere of mutual respect and team work, develop an equitable and competitive compensation and benefits plan, and foster employee accountability for job performance.

FY19 Objectives

A-Complete the process of establishing a Human Resources Department

B-Revise Personnel Rules and Regulations and write Employee Handbook

C-Complete Wage and Classification Plan for Non-union Employees

D-Complete Classification Plan for Clerical Union Employees

E-Work with Department Directors on developing succession and cross training plans for key employees

F-Determine the feasibility of revamping the Employee Health Insurance program to incentives healthy living of town employees and dependents

G-Establish a citizen committee to study the pros and cons of making the Town Clerk position an appointed position.

Many strides are being taken to centralize and modernize the Town's approach to human resources. At May 2017 Town Meeting, the Town voted to appropriate funding for the creation of the Human Resources Director position, and in September 2017, that position was filled. As of October, the plan is to centralize all Town offices concerning Human Resources to one location. The Community Nurses vacated their basement office space, and that space will now be occupied by the Human Resources Director, the Principal Clerk in charge of benefits coordination, and the Payroll Operator. We believe that this move will improve departmental operations, communication, and improve efficiency.

Other major efforts underway include an RFP for a third party HR consultant to undertake an update of the Town's wage and compensation plan for both non-union personnel and 17 clerical union positions. Some of these job descriptions have not been revised in decades. This RFP includes a request to review current personnel policies and procedures, and the creation of an employee handbook.

All municipal collective bargaining agreements (four Board of Selectmen Agreements and three Board of Public Works agreements) were successfully negotiated for the period from July 1, 2016 to June 30, 2019. The contracts were financially sustainable, began the process of being competitive in the municipal labor market so as to attract and maintain a well-trained work force and improved management rights.

Goal 2: Town Committees Collaboration

Recognizing that volunteers, both elected and appointed, play an integral part in improving Town government and enhancing civic engagement, establish methods and practices that will enhance collaboration and coordination between various boards, improve interaction with the public, and provide educational resources to ensure compliance with applicable federal, state and local laws and regulations.

FY19 Objectives

A-Conduct, at least Semi-Annually, a meeting of all chairs (or their representatives) of town boards, commissions and committees to discuss matters of mutual interest and ways to collaborate.

B-Write a hand book for volunteers who serve on town boards that provides for a code of conduct, responsibilities and information on Federal State and Local laws that may impact them.

The work of the Planning Board and the Planning and Economic Development Department in developing the Master Plan, the Open Space Plan and the Hazardous Mitigation Plan required outreach and input from a number of the Town committees.

The Human Resources Department arranged for five sessions on Sexual Harassment training, one of which was in the evening to allow for convenient participation for volunteers who serve on town committees.

Goal 3: Inter and Intra Governmental Cooperation

Identify and advance opportunities for cooperation between Town departments, Fairhaven Public Schools, neighboring municipalities, non-profit organizations and regional governments as ways to improve services and reduce costs.

FY19 Objectives

A-Complete Indirect Cost Allocation Agreement with Fairhaven Public Schools

B-Complete Revenue Sharing Agreement with Fairhaven Public Schools

C-Complete Memorandum of Understanding on Cable Access Television with Fairhaven Public Schools

D-Work with State and Regional Partners on advocating for the South Coast Rail Extension

E-Determine the Feasibility of a Veterans Services District

F-Determine the Feasibility of a Regional Emergency Dispatch Center

G-Reach out to neighboring communities regarding regionalization of the Animal Shelter

H-Determine the most cost effective way to network town and school buildings

I-Review possible ways that the town and school building maintenance can be made more efficient and effective.

The School and Municipal departments have successfully implemented a consolidated information technology department which has greatly increased user support and is currently reviewing options for greater connectivity between departments and schools. Other Town/School collaborative efforts currently ongoing including an MOU on public cable access and a written agreement on the state required indirect cost plan.

With the leadership of the Fire Department, the Town's emergency management response plan that involves a multitude of town and school departments was completely revised and updated.

The Town has partnered with the Seven Hills Foundation and the Greater New Bedford Opioid Task Force to address the substance abuse crises that is currently impacting the Town and the region.

The Board of Health, Police Department and Fire Department all participate in regional mutual aid initiatives that allow for additional resources and coordination during emergencies and savings through economies of scale.

Goal 4: Financial Sustainability

Establish long term financial sustainability for the Town by adherence to approved financial policies regarding reserve levels, balanced budgets and capital financing, financial forecasting, controlling fixed costs (pension, OPEB, Health Insurance) and augmenting revenues (tax base expansion, grants, user fees).

FY19 Objectives

A-Request that Department Directors report at least semi-annually on their efforts to identify and apply for grants that would benefit their departments.

B-Expand the Capital Improvement Plan to include Water and Sewer Enterprise Funds

C-Develop a monthly Executive Summary Report of Key Financial Indicators

D-Explore the feasibility of implementing "Open Check Book" or similar software to promote transparency of town financial activity.

The FY18 Budget which was jointly recommended by the Board of Selectmen and the Finance Committee and approved by the May 2017 Town Meeting was fully compliant Board of Selectmen approved financial policies. Reserves (Free Cash, Stabilization and Capital Stabilization) all met or exceeded targeted levels, the operating budget was structurally balanced with no one time funding sources used to balance the budget and the capital budgeting process was significantly improved with the introduction of a objective project rating system and a five year financial forecast.

The Town's pension obligation was fully funded at the amount required by retirement board. OPEB was similarly funded consistent with the Board's financial policies and health insurance costs remained stable with the 2% premium increase, considerable below average.

Property Tax "New Growth" was the highest amount in 12 years.

The Town was the recipient of three Community Compact Grants from the state which are paying for the consultants to update the Town's Personnel Policies, assist in the consolidation of the information technology operations and to develop an Economic Development Plan. In addition, the Hazardous

Mitigation Plan was paid for through a state grant. The Town was also the recipient of two sea port council grants to continue improvements to Union Wharf bulkheads and to construct a public safety marina.

Goal 5: Economic Development

Diversify and expand the Town's property tax base by implementing strategies and programs that will help existing businesses and industries grow and make Fairhaven an attractive place for new businesses and industries to locate within the town. Included in this goal is the redevelopment of underutilized commercial properties along the various retail corridors in Town and the Atlas Tack property.

FY19 Objectives

A-Complete the Economic Development Plan and begin implementation

B-Promote Tourism by improving access to the waterfront, supporting restaurant and lodging sectors, strengthening our ties with our sister cities in Japan and Portugal, partnering with New Bedford (including the water taxi service), and looking at the feasibility of bicycle ride sharing program

C-Develop a strategy to address the Atlas Tack Property

The Economic Development Committee has been meeting regularly and has hired the consulting firm, RXM to help in preparing an economic development plan which is in the beginning stages of being drafted.

There was some activity on the Rt. 6 Corridor with Planet Fitness, an expanded Ocean State Job lots and Tractor Supply all filling vacant retail spaces.

The Town has also worked with individual businesses to help them with the operations including an agreement with Fairhaven Shipyard to allow them to build a new pier, arranging for Northeast Maritime Institute to locate their marine assets on the Fairhaven side of the harbor and the Police Department assisting the Titleist Corporation in developing a bomb threat protocol for their cooperate headquarters.

Goal 6: Health ~~and~~ Welfare ~~of~~ Town Residents

Since the health and welfare of the Town's residents is of paramount importance to the community and given that the on-going opioid addiction crises is not abating, develop an interdepartmental approach involving the Board of Health, School Department, Fire & EMS department, Police Department and other stakeholders that will develop education, referral, treatment and response protocols that will effectively address this serious public health and quality of life issue. Document this process as a possible template to address present and future community health and welfare issues. In addition, identify other initiatives that promote the health and welfare of town residents.

FY19 Objectives

A-Continue and Expand Participation in the Greater New Bedford Opioid Task Force

B-Continue to Revise and Improve the Town's Emergency Management Response Plan

The Board of Health, with the support of the Police and Fire Departments, has entered into an agreement with the Seven Hills Foundation to provide for outreach and follow up services to substance abusers and we have recently started to participate in Greater New Bedford Opiate Task Force.

A new emergency management response plan was written that will improve significantly the town's ability to respond to natural disasters.

~~*As result of additional funding included in the FY18 budget, the BPW will be able to restore curb side leaf collection.*~~

Goal 7: Civic Engagement

Recognizing that what makes a municipality a community is the degree of civic engagement by its residents, implement methods and programs to improve communication and involvement between the Town government and residents with a focus of volunteer recruitment, transparency of information, timely response to citizen concerns, and use of modern communication technology, including public access television and social media.

FY19 Objectives

A-Develop and Implement a standardized reporting system where by Departments report regularly on their activities to the Town Administrator which is then presented to the Board of Selectmen and posted on the Towns Website.

B-Start programing on the Public Access Channel

C-Complete the installation of the Town's new Website

We have further developed our social media presence in the past year, expanding from exclusive website and Facebook presence to include Twitter, Livestream and Instagram. The Town has a new website design that will go live by late 2017/early 2018, once the website content migration is complete. The Police Department has also installed a more informative, user friendly Web Page that allows residents to report crimes and to request services such as speed control.

Utilizing local television, live streaming platforms, social media and event marketing, the newly revitalized Fairhaven Public Access Television has been working with Town Departments, Boards and Committees to improve communication to residents on town events and projects.

The Police Department conducted its first National Night Out event to promote civic engagement with the police department which proved to be very successful and will only grow in future years.

The Planning Board and the Department of Planning and Economic Development conducted extensive public outreach efforts to engage the public and stake holders in the Master Plan, Open Space Plan and Hazardous Mitigation plan

Goal 8: Long Term Planning

There are number of dynamic changes that will be impacting Fairhaven now and into the future, including the condition of the town's aging infrastructure, sea-level rising, community demographics, energy consumption, and federal/state environmental regulations. To begin addressing these matters, an

emphasis must be placed on long-term planning, including work on the Town's Master Plan, Hazard Mitigation Plan and Capital Improvement Plan.

FY19 Objectives

A-Complete and adopt the Town Master Plan and begin implementation

B-Complete and adopt the Hazard Mitigation Plan and begin implementation

C-Complete and adopt the Public Facilities Improvement Plan and begin implementation

D-Complete and adopt the Open Space Plan and begin implementation.

E-Successfully negotiate a discharge permit with EPA/DEP that brings the town into compliance but minimizes financial impact to rate payers to the extent possible.

F-Subject to Board of Selectmen approval, begin implementation of the Rogers School Re-use Action Plan

The Planning Board is well underway with the Master Plan and the final of three public meetings has been concluded. The plan is in a final draft form and has been widely circulated to the public and various town boards and committees. The Hazards Mitigation Plan is halfway completed and the next local Planning Team and Public meetings will be held in late October. The Open Space Plan is in the final draft form and the last public of the public meetings for this plan will be scheduled in the near future. The consultant has been hired to do the Public Facilities Improvement Plan and will be meeting with the Capital Planning Committee in October to start this project.

As part of the budgeting process, the town developed a five year financial forecast and a five year capital plan.

The Board of Public Works is developing and implementing multiyear plans to maintain roadways (updated pavement management plan), sewer plant improvements (\$ 5 million approved funding) and ensure our water supply (construct new Tinkham Lane well). The BPW is also in negotiations with the EPA/DEP to develop a long term plan to bring the Town into compliance with new discharge limits while trying to mitigate costs to tax payers.

The Rogers School Re-use Study was completed which reviewed various options and their relative viability. An action plan was also developed that is currently under review by the Board of Selectmen.

GOAL 9: Improve municipal services

The Town is in the business of delivering services to residents and businesses and, as such, departments should continually strive to improve municipal services in the most efficient and effective manner possible.

FY19 Objectives

A-Departments will identify two services they provide to the public, or would like to provide, and submit a plan to the Town Administrator identifying specific ways the delivery of those services can be improved (including reducing the costs of providing those services.)

B-Recommend approval of the "Green Communities" program to the May 2018 Annual Town Meeting

C-Recommend approval of the “Complete Streets” program to the May 2018 Annual Town Meeting.

D-Determine the Feasibility of installing a Dog Park

As result of additional funding included in the FY18 budget, the BPW will be able to restore curb side leaf collection.

Attachment B

SELECTMEN'S MEETING

Monday, October 30, 2017
@ 7:15 PM

A-1 Crane Company, Inc.
86-88 Middle Street
Fairhaven, MA 02719

RE: Repair Garage License

Plan OK as is. Stipulations on License stays the same as
Previous owner's License.

**“No painting of vehicles. Total cars on site; 50
(46 Outside, 4 Inside)”**

Buising Coverage 24.7

SURVEY CERTIFICATIONS

I CERTIFY THAT THIS PLAN CONFORMS WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS AND THE PROPERTY LINES AND WAYS SHOWN WERE ESTABLISHED PRIOR TO THIS PLAN AND THAT NO NEW PROPERTY LINES OR WAYS ARE SHOWN.

I HEREBY CERTIFY THAT THIS SURVEY WAS ACTUALLY MADE ON THE GROUND FOR RECORD DESCRIPTION AND WAS PERFORMED IN ACCORDANCE WITH THE SURVEYING ACT, PROCEDURAL AND TECHNICAL STANDARDS FOR CADASTRAL, ORIGINAL AND REINSTATEMENT SURVEY IN THE COMMONWEALTH OF MASSACHUSETTS.

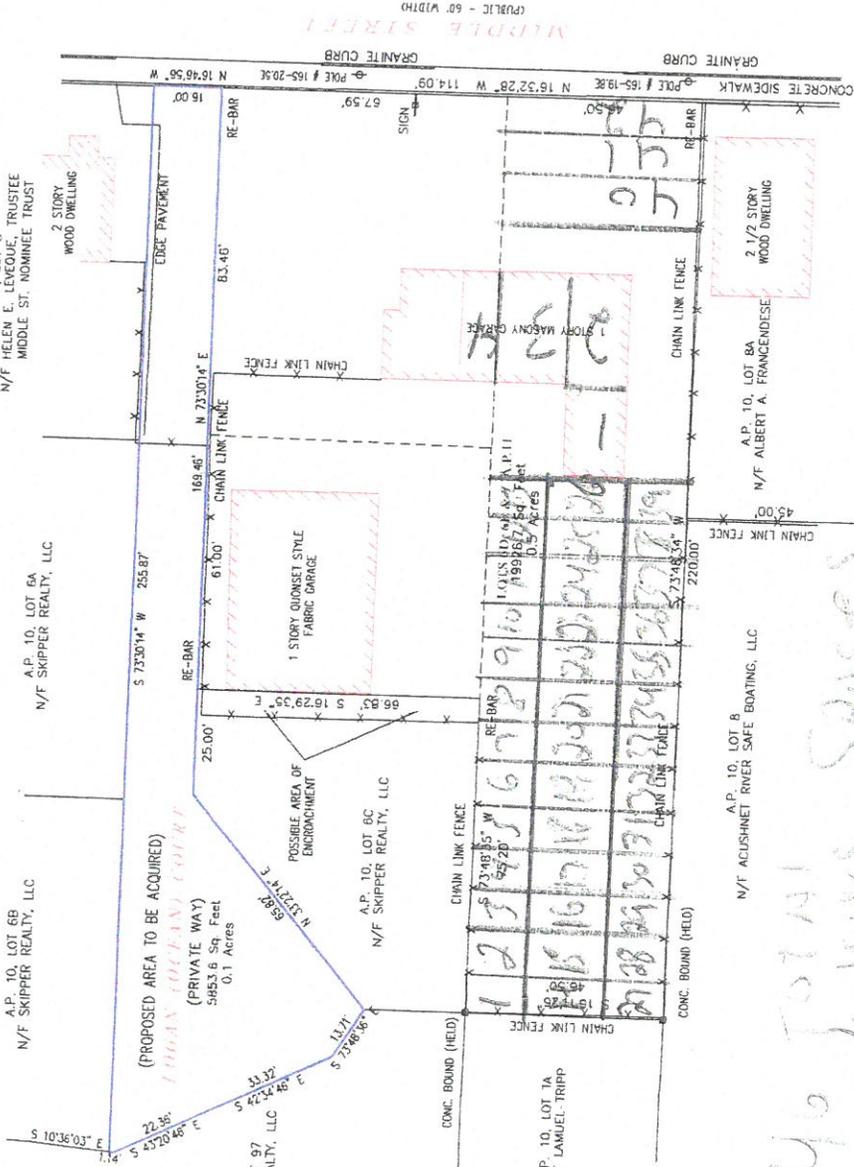
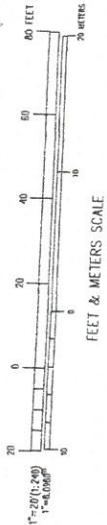
SIGNED: _____ DATED: _____

LOCUS PLAN (NOT TO SCALE)

REFERENCES

- DEEDS
- LOT 6 & 7 : DEED BOOK 4768, PAGE 127
 - LOT 6B: DEED BOOK 10631, PAGE 137
 - LOT 7A: DOCUMENT # 13717
 - LOT 8: DEED BOOK 1742, PAGE 296
 - LOT 8A: DEED BOOK 9156, PAGE 156
 - LOT 8C: DEED BOOK 9139, PAGE 298
- PLANS
- PLAT ENTITLED "PLAN OF LAND IN FAIRHAVEN, MASS. SURVEYED FOR EDWARD J. BURNS, OCTOBER 19, 1983. SCALE: 1"=40'. ARTHUR J. HAMPSON, INC. ENGINEERS & SURVEYORS" - RECORDED JANUARY 17, 1984.
 - PLAT ENTITLED "SUBDIVISION OF LOT A SHOWN ON PLAN EXAS FILED WITH CERT. OF TITLE NO.803 SOUTH REGISTRY DISTRICT OF BRISTOL COUNTY LAND IN FAIRHAVEN, AUGUST 19, 1939, SAMUEL H. CORSE, SURVEYOR" IN LAND REGISTRATION BOOK 12, PAGE 207.

- LEGEND
- POLE # UTILITY POLE
 - FENCE
 - ▭ STONEWALL
 - PROPERTY LINE
 - TREE



46 TOTAL PARKING SPACES

Patrick Carr 42 outside - 10x15
86-88 Middle St. 4 Inside - 15x20
ATCrane, Co. Parkings Spaces

OWNER OF RECORD:
Jerry's Auto & Cycle Service, Inc.
86 Middle Street
Fairhaven, Ma 02719

NO.	DATE	REVISIONS

PLAN SHOWING PROPOSED ACQUISITION OF LOGAN COURT FOR JERRY'S AUTO & CYCLE SERVICE, INC. FAIRHAVEN, MA.

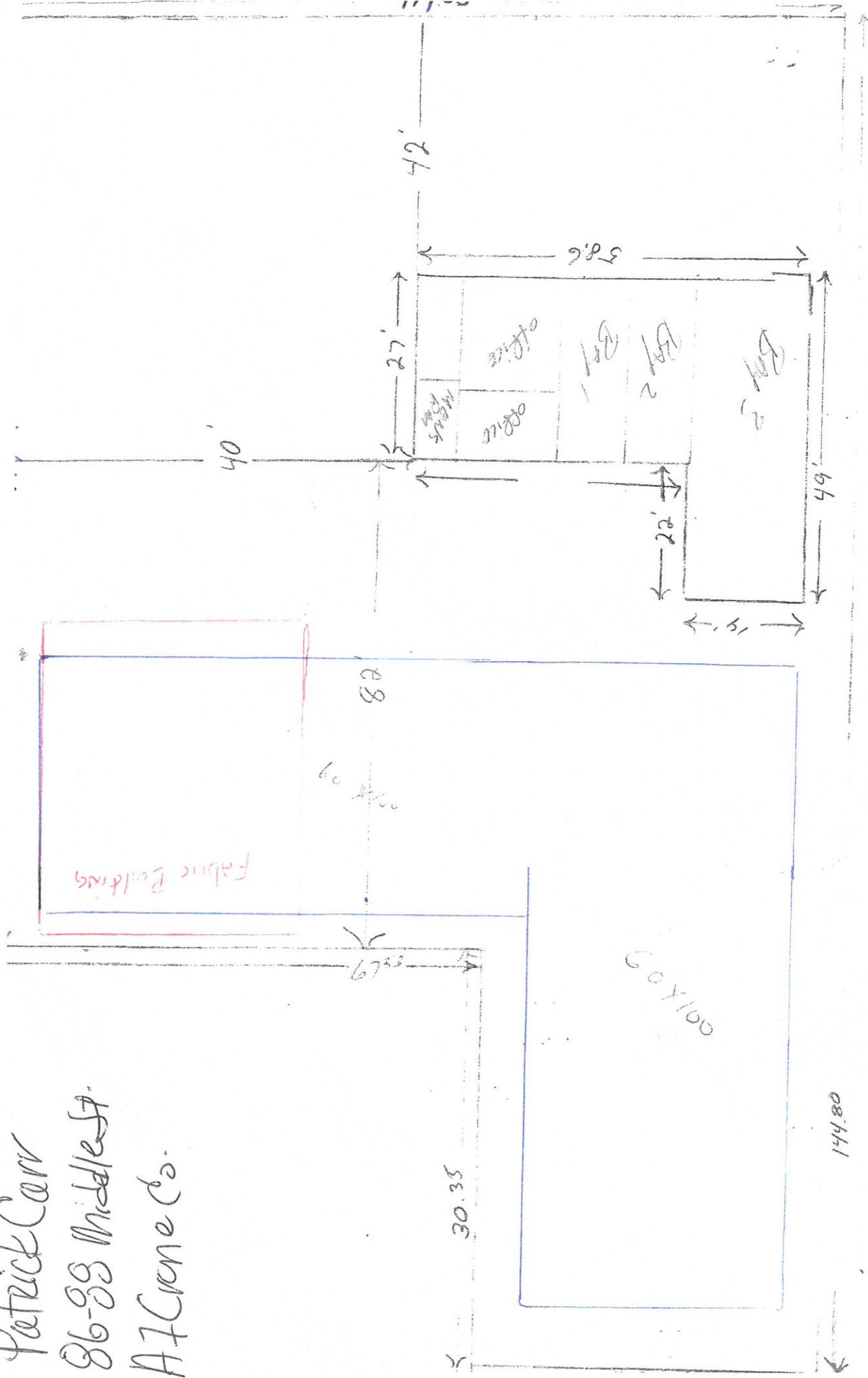
DATE: JULY 8, 2014
SCALE: 1"= 20'



THIS DOCUMENT IS THE PROPERTY OF DOUGLAS SURVEYING GROUP. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM.

DATE: 08/18/15
PAGE: 1 OF 1

Patrick Carr
86-88 Middle St.
A7Crane Co.



Attachment C

From: [Mark Rees](#)
To: [Bob Espindola](#); [Charles K. Murphy](#); [Daniel Freitas](#)
Cc: [Wayne Fostin](#); [Bill Roth](#); [Anne O'Brien](#); tomcrotty@tcrottylaw.com
Subject: FW: North Street Extension
Date: Tuesday, September 05, 2017 1:19:27 PM
Attachments: [TPC Judgment and Decision on Summary Judgment 20170905.PDF](#)

Board members, Please see the email and attachment from Tom Crotty regarding the North Street Extension. Please let me know if you would like to have this matter on your September 18th agenda which would be within the 30 day appeal period. Since the court's decision is a public record, I plan on sending a copy of the decision to Jay Simmons latter today.

Mark

From: Tom Crotty [<mailto:tomcrotty@tcrottylaw.com>]
Sent: Tuesday, September 05, 2017 1:07 PM
To: Mark Rees <mrees@fairhaven-ma.gov>; Wayne Fostin <wayne@fairhaven-ma.gov>; Bill Roth <billr@fairhaven-ma.gov>
Subject: RE: North Street Extension

All

This will supplement my earlier email (below).

Although this decision can be appealed to the State Appeals Court we would be making the same argument to that court that we made in the Land Court. I do not believe that our likelihood of success would be any greater on appeal.

If we do not appeal it, this decision will be final. That means several things:

- The Town will not be obligated to maintain the road.
- The public would not have the right to pass over the property.
- Abutters would not have the rights they may otherwise have when abutting a public way – principally the right to “subdivide” their property under ANR procedures.
- The rights of abutters in the way, for example the right to use it for access to their properties, would be a private matter between the owners of the abutting properties. The Town would not be a party to a determination of those rights.

Please let me know if you wish to meet to discuss whether this is a decision the Board wishes to appeal.

Tom

From: Tom Crotty [<mailto:tomcrotty@tcrottylaw.com>]
Sent: Tuesday, September 05, 2017 12:28 PM
To: mrees@fairhaven-ma.gov; 'wfostin@fairhaven-ma.gov'; Bill Roth (billr@fairhaven-ma.gov)
Subject: North Street Extension

All

Attached is the decision of the land court determining that North Street is not a public way.

The Town has thirty days to notify the court if it wishes to appeal this decision.

Please let me know if you want to meet to discuss this.

I will be away the week of September 11, returning on the 18th and I am available most days that

week except Thursday, the 21st .

Tom

Thomas P. Crotty
Thomas P Crotty & Associates, PLLC
5 Dover Street, Suite 102
New Bedford, MA 02740

tel 508.990.9101
fax 508.990.9108

tomcrotty@tcrottylaw.com



Town of Fairhaven
Massachusetts

Proclamation

Whereas: **ALBERT F. BENAC** in his 90th year and a longtime resident of Fairhaven has diligently and devotedly attended decades of town meetings and graciously shared his expertise and knowledge of the past to shape a successful future for Fairhaven; and

Whereas: **ALBERT F. BENAC** has volunteered for innumerable hours, assisting and directing the efforts of the Fairhaven Historical Society and its museum in the Academy building; and

Whereas: **ALBERT F. BENAC** has purchased historical artworks, signposts and displays, often at his own expense, and donated them to the town for the benefit of our residents and all who visit Fairhaven; and

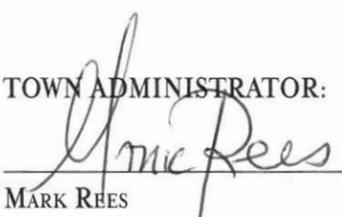
Whereas: **ALBERT F. BENAC** has made his presence felt in his role as Art Curator and as an involved citizen in the most exemplary way; as a true gentleman with unassailable dedication; and, with positive persistence:

Now, therefore, we the undersigned do hereby proclaim our sincere appreciation to

ALBERT F. BENAC

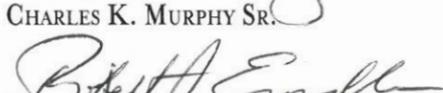
for his civic engagement and for the example he has consistently set to all our citizens by his participation in, and championing of, Fairhaven's unique history and future endeavors.

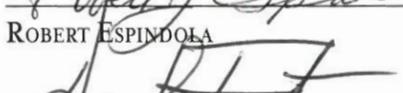
TOWN ADMINISTRATOR:


MARK REES

SELECTMEN:


CHARLES K. MURPHY SR.


ROBERT ESPINDOLA


DANIEL FREITAS



October 30, 2017
DATE

Attachment E

ATLAS TACK CORPORATION

266 BEACON STREETS, 2ND FL.

BOSTON, MA 02116

(617) 262-4315 Telephone

(617) 262-4376 Facsimile

September 28, 2017

By Certified Mail #7016 2710 0000 7195 9256

Town Clerk
Tax Collector
Town of Fairhaven
40 Center Street
Fairhaven MA 02719

RE: Notice of NAUL and other required information

Disposal Site Name: Atlas Tack Corporation Superfund Site

Town: Fairhaven MA

Mass DEP Release Tracking #(s): 4-0000068

US EPA Site ID #: MADOO1026319

Property Location-Street Address: 83-85 Pleasant Street, Fairhaven MA 02719

Dear Sir or Madam:

This Notice and its attachments are being sent to you as Notice of a proposed NAUL (Notice of Activity and Use Limitation) and other required information for the above-referenced area that is required to be given to all current record-interest holders in accordance with 310 CMR 40.1074 (1)(d) for a Notice of NAUL. This information in regard to the above-referenced area hereby notifies you of the existence and location of oil and/or hazardous material within such area and the terms of such proposed Notice, and that a NAUL, substantially similar in form to the draft NAUL attached will be submitted to EPA and MassDEP, and upon approval by those agencies recorded at the appropriate Registry of Deeds.

Sincerely yours,



M. Leonard Lewis, President

Atlas Tack Corporation

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2017 OCT - 3 P 2:24
BOARD OF SELECTORS

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

42 U.S.C. § 9601, *et seq.*; 40 CFR Part 300; M.G.L. c. 21E, § 6; and 310 CMR 40.0000

[Note: This Notice of Activity and Use Limitation has been recorded pursuant to 310 CMR 40.0111 as part of an institutional control for a site that is both a federal Superfund site, listed on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and a disposal site under M.G.L. c. 21E.]

Superfund Site Name: Atlas Tack Corporation Superfund Site
Site Location: Fairhaven, Massachusetts
EPA Site Identification Number: MAD001026319
MassDEP Release Tracking No.: 4-0000068

This Notice of Activity and Use Limitation (“Notice”) is made as of this ____ day of June, 2017, by Atlas Tack Corporation, together with its successors and assigns (collectively “Owner”). All capitalized terms used herein without definition shall have the meaning given to them in the Massachusetts Oil and Hazardous Materials Release, Prevention and Response Act, M.G.L. c. 21E, as amended (“Chapter 21E”) and the Massachusetts Contingency Plan, 310 CMR 40.0000, as amended (the “MCP”).

WITNESSETH:

WHEREAS, Atlas Tack Corporation is the owner in fee simple of that certain parcel of land located in the Town of Fairhaven, Bristol County, Massachusetts, with the buildings and improvements thereon, pursuant to deeds recorded, respectively, with the Bristol County South Registry of Deeds in Book 217, Pages 246-253 on June 22, 1901, Book 504, Pages 55-57 on July 27, 1920, and Book 497, Pages 287-291 on May 4, 1920, said parcel of land more particularly bounded and described in Exhibit A attached hereto and made a part hereof (the “Property”);

WHEREAS, certain portions of the Property have been designated, respectively “Area A” and “Area B,” Area A and Area B together comprising the entirety of the Property, and each being more particularly bounded and described in Exhibit B;

WHEREAS, the Property, Area A and Area B is shown on a plan entitled "Plan of Property, Including Area A and Area B" ("Plan") recorded in the Bristol County South Registry of Deeds in Plan Book _____, Plan _____, a photo-reduced version of which is attached hereto as Exhibit C;

WHEREAS, the Owner is a Settling Party to a judicial consent decree with the United States ("Consent Decree"), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, for the Atlas Tack Corporation Superfund Site, Atlas Tack Corp. v. Fairhaven, No. 01-10501 WGY (lead case); United States v. Atlas Tack Corp., No. 03-11601 WGY; U.S. v. Atlas Tack Corp., No. 04-11880 WGY, under Section XIII of the Consent Decree, the Owner being obligated to establish and comply with Institutional Controls (as that term is defined in the Consent Decree) with respect to the Property;

WHEREAS, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and the National Contingency Plan, 40 CFR §§ 300.1, *et seq.* (the "NCP"), the United States Environmental Protection Agency, an agency established under the laws of the United States ("EPA"), having its New England regional office at Five Post Office Square, Boston, Massachusetts 02109 ("Region 1"), placed land containing the Property on the National Priorities List, set forth at 40.C.F.R. Part 300, Appendix B, by publication in the Federal Register on February 21, 1990, 55 Fed. Reg. 6154-6176, due to a release of hazardous substances, as that term is defined by the Section 104 of CERCLA, 42 U.S.C. § 9604 ("Hazardous Substances"), such land being a federal Superfund Site known as the Atlas Tack Corporation Superfund Site ("Superfund Site");

WHEREAS, pursuant to Chapter 21E and the MCP, the Massachusetts Department of Environmental Protection, an agency established under the laws of the Commonwealth of Massachusetts, having its principal office at One Winter Street, Boston, Massachusetts 02108 ("MassDEP"), assigned to releases of oil and/or hazardous materials occurring at, from or onto the Property MassDEP Release Tracking Number 4-0000068, and all places where such oil and/or hazardous materials have come to be located are a disposal site under Chapter 21E and the MCP (the "Disposal Site");

WHEREAS, in a document entitled, "Record of Decision, Atlas Tack Corporation Superfund Site," dated March 10, 2000, and as modified in a document entitled Explanation of Significant Differences, Atlas Tack Corporation Superfund Site Fairhaven, Massachusetts, dated September 16, 2009 (collectively, the "ROD"), said ROD being on file at the EPA Region I Record Center located at Five Post Office Square, Boston, Massachusetts ("EPA Region 1 Record Center"), EPA, with the concurrence of MassDEP, as evidenced by a letter of concurrence, from Deirdre C. Menoyo, Assistant Commissioner, Bureau of Waste Site Cleanup, Massachusetts Department of Environmental Protection, to Patricia Meaney, Director, Office of Site Remediation, EPA Region 1, dated March 9, 2000, has selected one or more response actions (collectively, the "Selected Remedy") for the Superfund Site in accordance with CERCLA and the NCP;

WHEREAS, the Selected Remedy is based, in part, upon the restriction of human access to and contact with Hazardous Substances in soil, sediment, and/or groundwater and the restriction of certain uses and activities occurring in, on, through, over or under the Property;

WHEREAS, in a document entitled "IC Design Statement," dated _____, 2016 (the "IC Design Statement"), said IC Design Statement being attached hereto as Exhibit D, EPA approved a remedial design for land use restrictions and other institutional controls at the Superfund Site;

WHEREAS, the IC Design Statement contains a description of the basis for land use restrictions, and the release event(s) or site history that resulted in the contaminated media subject to this Notice, including (a) a statement that specifies why the Notice is necessary to the Selected Remedy; (b) a description of the release event(s) or site history that resulted in the contaminated media subject to the Notice (*i.e.*, date of the release(s), to the extent known, release volumes(s), and response actions taken to address the release(s)); (c) a description of the contaminated media (*i.e.*, media type(s) and approximate vertical and horizontal extent) subject to the Notice, (d) a statement of which activities and uses are consistent, and which are inconsistent, with maintaining the Selected Remedy, (e) a description of all other components of the institutional and land use controls at the Property;

WHEREAS, pursuant to 310 CMR 40.0111(1), MassDEP shall deem response actions at a disposal site subject to CERCLA adequately regulated for purposes of compliance with the MCP provided certain enumerated conditions are satisfied, including disposal sites subject to CERCLA with respect to which MassDEP has issued a letter of concurrence;

WHEREAS, pursuant to 310 CMR 40.0111, land use controls may be implemented at disposal sites deemed adequately regulated under CERCLA by means of a Notice of Activity and Use Limitation; and

WHEREAS, pursuant to 310 CMR 40.0111(10), disposal sites adequately regulated under CERCLA at which (a) remedial actions have been completed in accordance with the ROD for the site, (b) subsequent design, construction, and other pertinent plans have been approved by EPA, and (c) EPA has certified completion of the remedial action, will be considered to have achieved a Permanent Solution under M.G.L. c. 21E and the MCP for those hazardous substances subject to such remedial actions.

NOW, THEREFORE, notice is hereby given that the activity and use limitations required by the ROD and more particularly set forth in the IC Design Statement are as follows:

1. Activities and Uses Consistent with Maintaining the Selected Remedy.

- A. The following Activities and Uses, if they occur on Area A, are consistent with maintaining the Selected Remedy and, as such, may occur on Area A without compromising the Permanent Solution that has been achieved for the Site:

ZONING

- i. Excavation, drilling or otherwise disturbing the soil in the top 24 inches below grade existing on the date of this Notice;
- ii. Excavation, drilling or otherwise disturbing the soil below 24 inches below grade existing on the date of this Notice, provided such excavation, drilling or soil disturbance has been previously approved by MassDEP pursuant to a Excavation Approval in accordance with Paragraph 5, below;
- ✓ iii. Commercial and industrial use, excluding daycare facilities;
- iv. Recreational activity and recreational uses approved by MassDEP pursuant to Recreational Approval in accordance with Paragraph 4, below;
- v. Placement of surface materials including, but not limited to, paving, and placement of barriers of stone or concrete;
- vi. Routine maintenance and repair of landscaped areas by an adult worker including, but not limited to, lawn mowing, seeding, mulching, weeding, or planting; and
- vii. Such other activities and uses not identified in Paragraph 2.A, below, as being Activities and Uses inconsistent with maintaining the Selected Remedy.

B. The following Activities and Uses, if they occur on Area B, are consistent with maintaining the Selected Remedy and, as such, may occur on Area B without compromising the Permanent Solution that has been achieved for the Site:

- i. Excavation, drilling or otherwise disturbing the soil, provided such excavation, drilling or soil disturbance has been previously approved by MassDEP pursuant to an Excavation Approval in accordance with Paragraph 5, below;
- ii. Recreational activity and recreational uses approved by MassDEP pursuant to a Recreational Approval in accordance with Paragraph 4, below;
- iii. Placement of surface materials including, but not limited to, paving, and placement of barriers of stone or concrete;
- iv. Routine maintenance and repair of landscaped areas by an adult worker including, but not limited to, lawn mowing, seeding, mulching, weeding, or planting; and

- v. Such other activities and uses not identified in Paragraph 2.B, below, as being Activities and Uses inconsistent with maintaining the Selected Remedy.

2. Activities and Uses Inconsistent with Maintaining the Selected Remedy.

A. The following Activities and Uses, if they occur on Area A, are inconsistent with maintaining the Selected Remedy, and, as such, may not occur on Area A without compromising the Permanent Solution that has been achieved for the Site:

- i. Withdrawal, consumption, exposure or utilization of groundwater, for any purpose including potable, industrial, irrigation, or agricultural use except for activities associated with operation and maintenance or monitoring of the Selected Remedy;
- ii. Excavation, drilling or otherwise disturbing the soil below 24 inches below grade existing on the date of this Notice for any purpose, except any excavations, drilling or soil disturbances approved by MassDEP pursuant to an Excavation Approval in accordance with Paragraph 5, below;
- iii. Cultivation of plants or crops for human consumption;
- iv. Residential use, or use as a school or childcare center;
- v. Recreational activity or recreational use not approved by MassDEP pursuant to Recreational Approval in accordance with Paragraph 4, below; and
- vi. Any activity or use that would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy, including, but not limited to the monitoring wells that are components of the Selected Remedy, to provide long-term environmental monitoring of on-site groundwater. Reference is made to the Plan, which provides information as to engineering detail and the location within the Property of certain of the foregoing components of the Selected Remedy.

B. The following Activities and Uses, if they occur on Area B, are inconsistent with maintaining the Selected Remedy, and, as such, may not occur on Area B without compromising the Permanent Solution that has been achieved for the Site:

- i. Withdrawal, consumption, exposure or utilization of groundwater, for any purpose including potable, industrial, irrigation, or agricultural use except for activities associated with operation and maintenance or monitoring of the Selected Remedy;

- ii. Excavation, drilling or otherwise disturbing the soil, for any purpose, except any excavations, drilling or soil disturbances approved by MassDEP pursuant to a Excavation Approval in accordance with Paragraph 5, below;
 - iii. Cultivation of plants or crops for human consumption;
 - iv. Residential use, commercial, or industrial activity, including use as a school or childcare center;
 - v. Recreational activity or recreational use not approved by MassDEP pursuant to Recreational Approval in accordance with Paragraph 4, below; and
 - vi. Any activity or use that would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy, including, but not limited to the monitoring wells that are components of the Selected Remedy, to provide long-term environmental monitoring of on-site groundwater. Reference is made to the Plan, which provides information as to engineering detail and the location within the Property of certain of the foregoing components of the Selected Remedy.
3. Obligations and Conditions. The following obligations and/or conditions are necessary and shall be undertaken at the Property to maintain the Selected Remedy and to avoid compromising the Permanent Solution that has been achieved for the Site:
- A. Compliance by the Owner with all applicable laws, rules, and regulations regarding soil management and disposition; and
 - B. Submission by the Owner of an annual compliance letter to EPA and MassDEP, no later than June 1 of each calendar year, which shall (a) describe generally the permitted activities and uses that have occurred on the Property during the past calendar year and (b) certify that all activities and uses that have occurred at the Property in the previous year are consistent with this Notice and with any approvals or plans issued or prepared in connection with this Notice, such certification to include any supporting information upon which such certifications are based.
4. Recreational Approval. Any approvals of recreational uses or recreational activities within the Area A or Area B issued in connection with this Notice ("Recreational Approvals") shall be obtained as follows:
- A. Submittal of Request for Recreational Approval. Owner shall submit to MassDEP, with a copy to EPA, a written request for approval of a recreational use or activity within Area A or Area B ("Request for Recreational Approval"). The

Request for Recreational Approval shall be submitted to MassDEP and EPA at least thirty (30) days in advance of the proposed date for the commencement of such use or activity, and shall be prepared and signed by a qualified hazardous waste site cleanup professional, such as a "Licensed Site Professional" or "LSP" as defined in the MCP at 310 CMR 40.0006(12) ("Qualified Professional").

- B. Contents of Request for Recreational Approval. The Request for Recreational Approval shall include a detailed description of the proposed recreational use or recreational activity, and any risk assessments and other plans necessary in order to show that the proposed recreational use or activity will (1) not result in an unacceptable risk to human health and the environment; and (2) not disturb or interfere with, or be reasonably likely to disturb or interfere with, the implementation, operation or maintenance of the Selected Remedy (collectively, the "Recreational Performance Standards").
 - C. Additional Materials. At any point after a Request for Recreational Approval is submitted to MassDEP, and prior to any approval (including any presumptive approval) or denial thereof, MassDEP may request the submittal of such additional materials that MassDEP deems necessary to ensure that the Recreational Performance Standards are met (collectively, "Additional Recreational Materials").
 - D. Approval or Denial. MassDEP, in consultation with EPA, may (1) approve, with or without conditions, the Request for Recreational Approval, as supplemented with any Additional Recreational Materials, pursuant to a Recreational Approval, or (2) deny the Request for Recreational Approval. Unless within thirty (30) days after MassDEP receives the Request for Recreational Approval MassDEP requests Additional Recreational Materials, denies the Request for Recreational Approval, or otherwise notifies Owner that no presumptive approval may be inferred, then the Request for Recreational Approval shall be presumptively approved on the thirtieth (30th) day after receipt by MassDEP of the Request for Recreational Approval.
5. Excavation Approval. Any approvals of excavations, drilling or soil disturbances within Area A or Area B issued in connection with this Notice ("Excavation Approvals") shall be obtained as follows:
- A. Submittal of Excavation Request. Owner shall submit to MassDEP, with a copy to EPA, a written request to excavate, drill or disturb the soil within Area A or Area B ("Excavation Request"). The Excavation Request shall be prepared and signed by a Qualified Professional.
 - B. Contents of Excavation Request. The Excavation Request shall include a detailed explanation and map of the proposed excavation, drilling or soil disturbance, a performance schedule, and all health and safety plans, soil management plans and any other plans necessary to show that the proposed excavation or disturbance

will (1) not result in an unacceptable risk to human health and the environment; (2) not disturb or interfere with, or be reasonably likely to disturb or interfere with, the implementation, operation or maintenance of the Selected Remedy, including by ensuring that all components of the Selected Remedy, including without limitation all caps and covers, are restored after the proposed excavation, drilling or soil disturbance to a condition that meets the standards established under the ROD; (3) ensure that soils from the top 24 inches of excavated soil are, at all times during the proposed excavation, drilling or soil disturbance, segregated from soil excavated from below 24 inches of the surface; (4) ensure that any soils removed from Area A or Area B are either replaced at the same location from which they were removed or analyzed, below the applicable depth interval, or managed and disposed of off-Property in accordance with all applicable federal and state laws and regulations; (5) ensure that following any disturbance to the soil cover, the soil cover shall be restored to the previously existing grade thereby ensuring a minimum cover depth of 24 inches; and (6) ensure protection of worker safety and health and the proper and safe management of groundwater and contaminated soils and sediments (collectively, the "Excavation Performance Standards").

- C. Additional Materials. At any point after an Excavation Request is submitted to MassDEP, and prior to any approval or denial thereof, MassDEP may request the submittal of such additional materials that MassDEP deems necessary to ensure that the Excavation Performance Standards are met (collectively, "Additional Excavation Materials").
 - D. Approval or Denial. MassDEP, in consultation with EPA, may (1) approve, with or without conditions, the Excavation Request, as supplemented with any Additional Excavation Materials, pursuant to an Excavation Approval, or (2) deny the Excavation Request.
 - E. Expiration of Excavation Approvals. Except as otherwise extended by MassDEP, in consultation with EPA, all Excavation Approvals shall expire one hundred eighty (180) days after the issuance thereof, unless the activities described therein are substantially commenced on the field within such time.
 - F. Certification of Completion. No activities shall be deemed to have been conducted in accordance with an Excavation Approval thirty (30) days after the substantial completion or cessation of such activities unless within such time a Qualified Professional submits to MassDEP, with a copy to EPA, a written statement certifying that all requirements of the Excavation Approval have been satisfied.
6. Emergency Excavation. If it becomes necessary to excavate within Area A or Area B as part of a response to an emergency (for example, repairing utility lines or responding to a fire or flood), the provisions of Paragraph 2 of this Notice shall be suspended with respect

to such excavation to the extent necessary to permit such response, provided that the Owner:

A. orally notifies the following persons of such emergency as soon as possible but no later than two (2) hours after having learned of such emergency:

- i. EPA National Response Center at (800) 424-8802;
- ii. EPA Region 1, Office of Site Remediation and Restoration, Emergency Planning and Response Branch at (617) 918-1236;
- iii. MassDEP Emergency Response at (888) 304-1133; and
- iv. MassDEP Regional Office of Emergency Response Section at (508) 946-2700;

or such other persons as MassDEP and EPA, respectively, may identify in writing, from time to time, to Owner for such oral emergency response notifications;

B. notifies MassDEP and EPA in writing of such emergency no later than five (5) days after having learned of such emergency, such notifications to be sent to the following addresses:

- i. Project Manager for
Atlas Tack Corporation Superfund Site
MassDEP – BWSC
1 Winter Street
Boston, MA 02108; and
- ii. Remedial Project Manager for
Atlas Tack Corporation Superfund Site
EPA Region 1, Office of Site Remediation and Restoration
5 Post Office Square., Suite 100
Boston, MA 02119;

or to such addresses as MassDEP and EPA, respectively, may identify in writing, from time to time, to Owner for such written emergency response notifications;

- C. limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency;
- D. implements all measures necessary to limit actual or potential risk to the public health and environment;

- E. engages a Qualified Professional to oversee the implementation of this Paragraph, and to prepare and oversee the implementation of a written plan ("Emergency Restoration Plan") that will restore the Property to a condition that meets or exceeds the performance standards established under the ROD for the Selected Remedy and that is consistent with this Notice, and to review and evaluate response actions contained in the Emergency Restoration Plan to ensure minimal disturbance of any contaminated soils and sediments; and
- F. performs all actions laid out in the Emergency Restoration Plan within thirty (30) days of the occurrence of the emergency or within such other time period as may be approved by MassDEP and EPA in writing, and submit a copy of the Emergency Restoration Plan to MassDEP and EPA within ten (10) days of its performance, with a statement from the cleanup professional confirming that the Property has been restored to the standard described above.
7. Proposed Changes in Activities and Uses; Amendments. Pursuant to 310 CMR 40.0111(8)(c), the Owner must notify and obtain approval from EPA and MassDEP of any proposed change in activities and uses at the Property that is not provided for in this Notice. Pursuant to 310 CMR 40.0111(8)(d), the Owner must obtain EPA and MassDEP approval of any Amendment or Termination of this Notice. All EPA and MassDEP approvals of any Amendment or Termination of this Notice must be in writing and be recorded and/or registered with the appropriate Registry(ies) of Deeds and/or Land Registration Office(s) to be effective.
8. Notices. Unless provided otherwise, any notices of letters required by this Notice of Activity and Use Limitation shall be sent to the following addresses:
- As to MassDEP:
- Project Manager for
Atlas Tack Corporation Superfund Site
MassDEP – BWSC
1 Winter Street
Boston, MA 02108; and
- As to EPA:
- Remedial Project Manager for
Atlas Tack Corporation Superfund Site
EPA Region 1, Office of Site Remediation and Restoration
5 Post Office Square., Suite 100
Boston, MA 02119;
9. Violations. The activities, uses and/or exposures upon which this Notice is based must not change at any time to (a) cause risks that are not protective of human health or the environment, pursuant to the criteria set forth in the NCP at 40 CFR 300.430(e)(2)(i), (b)

interfere with the Selected Remedy, or (c) cause a significant risk of harm to health, safety, public welfare, or the environment pursuant to Chapter 21E and the MCP.

Compliance with the terms and conditions of this Notice is subject to enforcement pursuant to Chapter 21E, the MCP, M.G.L. c. 21A, § 16 and 310 CMR 5.00 and CERCLA and the NCP. Such enforcement may include, without limitation, enforcement with respect to (a) any activities or uses that may occur that are described in Paragraph 2 of this Notice as being inconsistent with the Selected Remedy, (b) any failure to undertake any obligations and conditions described in Paragraph 3 of this Notice as being necessary to maintain the Selected Remedy, and (c) any other failure to maintain the Selected Remedy or Permanent Solution resulting from a failure to act consistently with this Notice.

10. 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).

11. Reservation of Rights

This instrument shall not limit or otherwise affect the right of EPA and/or MassDEP to obtain access to, or restrict the use of, the Property pursuant to CERCLA, Chapter 21E, or any other applicable statute or regulation.

This instrument shall not release the Owner or any other party from liability for releases of oil or hazardous substances or materials, nor shall this instrument excuse the Owner or any other party from complying with CERCLA, Chapter 21E, or any other applicable federal, state or local laws, regulations, or ordinances or by-laws.

Owner hereby authorizes and consents to the filing and recordation and/or registration of this Notice, said Notice to become effective when recorded and/or registered with the appropriate Registry(ies) of Deeds and/or Land Registration Office(s).

WITNESS the execution hereof under seal this _____ day of _____, 2017.

Name: M. Leonard Lewis

As President of Atlas Tack Corporation and not individually
Title

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

On this ____ day of _____, 2017, before me, the undersigned notary public, personally appeared M. Leonard Lewis, President of Atlas Tack Corporation, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, as President of Atlas Tack Corporation, for its stated purpose.
(as President, for Atlas Tack Corporation, a corporation)

My Commission expires: _____ (official signature and seal of notary)

In accordance with CERCLA, 42 U.S.C. § 9601, *et seq.*, and the National Contingency Plan, the United States Environmental Protection Agency, Region I, hereby approves this Notice of Activity and Use Limitation.

Date: _____

Name
Director, Office of Site Remediation and Restoration
U.S. Environmental Protection Agency
Region 1

In accordance with M.G.L. c. 21E, § 6, and the Massachusetts Contingency Plan (310 CMR 40.0000), the Department of Environmental Protection hereby approves this Notice of Activity and Use Limitation (as to form only).

Date: _____

Name
Assistant Commissioner
Department of Environmental Protection

List of Exhibits:

- Exhibit A: Legal Description of the Property
- Exhibit B: Legal Description of Area A and Area B
- Exhibit C: Plan of Property, Including Area A and Area B
- Exhibit D: IC Design Statement

Return to:

Kimberly White
Remedial Project Manager for
Atlas Tack Corporation Superfund Site
EPA Region 1, Office of Site Remediation and Restoration
5 Post Office Sq., Suite 100, OSRR07-01
Boston, MA 02119

Exhibit A

The area of land in the Town of Fairhaven,

Beginning at a stone bound at the Northeast corner of Church Street and Pleasant Street;

thence N 07°54'33" W a distance of 475.41', by Pleasant Street, to a corner;

thence N 71°46'00" E a distance of 935.40' by the Southerly line of the former railroad, now or formerly of the Town of Fairhaven, to a point;

thence N 71°46'00" E a distance of 402.30' by the Southerly line of the former railroad, now or formerly of the Town of Fairhaven, to a corner;

thence S 35°35'35" E a distance of 161.31' to a point;

thence Easterly and Southerly by the thread of Boy's Creek 562' ± to a lot corner;

thence S 52°29'01" W a distance of 330.23' to a lot corner;

thence N 43°26'33" W a distance of 21.17' to a point;

thence N 39°45'50" W a distance of 72.29' to a [point];

thence N 30°10'15" W a distance of 131.17' to a lot corner;

thence S 70°54'45" W a distance of 306.43' to a point;

thence S 70°45'45" W a distance of 782.36' to a corner;

thence S 51°18'50" W a distance of 114.66' to a corner;

thence S 79°30'56" W a distance of 111.97', by Church Street, to a stone bound;

which is the point of beginning,

having an area of 718,899.2 square feet or 16.53 acres

Exhibit B

AREA A

The area of land in the Town of Fairhaven,

Beginning at a stone bound at the Northeast corner of Church Street and Pleasant Street;

thence N 07°54'33" W a distance of 475.41', by Pleasant Street, to a corner;

thence N 71°46'00" E a distance of 935.40' by the Southerly line of the former railroad, now or formerly of the Town of Fairhaven, to a corner;

thence S 40°40'16" E a distance of 17.74' to a corner;

thence N 73°35'40" E a distance of 72.47' to a corner;

thence S 09°51'53" E a distance of 19.96' to a corner;

thence S 08°30'47" E a distance of 229.26' to a corner;

thence S 08°38'03" E a distance of 127.55' to a corner;

thence S 22°50'07" W a distance of 23.79' to a corner;

thence S 26°27'03" W a distance of 29.41' to a corner;

thence S 70°45'45" W a distance of 782.36' to a corner;

thence S 51°18'50" W a distance of 114.66' to a corner;

thence S 79°30'56" W a distance of 111.97', by Church Street, to a stone bound;

which is the point of beginning,

having an area of 449,968.3 square feet or 10.330 acres

Exhibit B

AREA: B

The land in the Town of Fairhaven,

Beginning at a point 422.24' Southwesterly from the intersection of Westerly line of Hyland Street and Southeasterly line of the former railroad, now or formerly the Town of Fairhaven;

thence S 71°46'00" W a distance of 402.30' by said land now or formerly of the Town of Fairhaven, to a point;

thence S 40°40'16" E a distance of 17.74' by Area A to a point;

thence N 73°35'40" E a distance of 72.47' by Area A to a point;

thence S 09°51'53" E a distance of 19.96' by Area A to a point;

thence S 08°30'47" E a distance of 229.26' by Area A to a point;

thence S 08°38'03" E a distance of 127.55' by Area A to a point;

thence S 22°50'07" W a distance of 23.79' by Area A to a point;

thence S 26°27'03" W a distance of 29.41' by Area A to a point;

thence N 70°54'45" E a distance of 306.43' to a lot corner;

thence S 30°10'15" E a distance of 131.17' to a lot corner;

thence S 39°45'50" E a distance of 72.29' to a lot corner;

thence S 43°26'33" E a distance of 21.17' to a lot corner;

thence N 52°29'01" E a distance of 330.23' to a lot corner;

thence Northerly and Westerly by the thread of Boy's Creek 562' ± to a lot corner;

thence N 35°35'35" W a distance of 161.31' to a lot corner;

which is the point of beginning, having an area of 268,930.9 square feet, or 6.2 acres



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
New England Region
Five Post Office Square – Suite 100
Boston, Massachusetts 02109-3912

INSTITUTIONAL CONTROL DESIGN STATEMENT

1. Introduction

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., ("CERCLA") and the National Contingency Plan, 40 CFR Part 300 (the "NCP"), this document contains a description of the basis for land use restrictions, the release event(s) or site history that resulted in the contaminated media that require institutional controls in the form of Activity and Use Limitations, and uses that are consistent and inconsistent with Selected Remedy (as described below).

A Notice of Activity and Use Limitation is necessary and appropriate at the Atlas Tack Corporation Superfund Site located in Fairhaven, Massachusetts ("Site"), a site listed on EPA's National Priorities List ("NPL"), based on the fact that contaminants remain in place at levels higher than those appropriate for unlimited use or unrestricted exposure; groundwater underlying the Site contains hazardous substances at levels that present an unacceptable risk of exposure; and certain remedial measures constructed at the Site must be protected and maintained to ensure that the Selected Remedy remains protective.

EPA's Record of Decision dated March 2000, specified the need for Institutional Controls to ensure long-term performance and protectiveness of the Selected Remedy. Accordingly, the Institutional Controls described herein are necessary and appropriate to ensure that the Selected Remedy for the Site remains protective of human health and the environment. The remedy for the Site as described in the ROD and in any ROD Amendments or Explanation of Significant Differences is referred to herein and in the Notice as the "Selected Remedy."

2. Site History/Background

The Site is located at 83 Pleasant Street in Fairhaven, Bristol County, Massachusetts. The Site is approximately 48 acres and is located about 0.5 mile from Fairhaven Center in a predominantly residential area. It is bounded by a bicycle path, residences and a few commercial/light industrial businesses to the north, a tidal marsh to the east and south, a former elementary school about 200 feet to the northwest, and residences immediately to the south. The Site includes property owned by the Atlas Tack Corporation ("Atlas Tack"), a property at the end of Church Street owned by the Hathaway-Braleley Wharf Company, Inc. ("Hathaway-Braleley"), and portions of Boys Creek and the adjacent saltwater tidal marsh extending to Buzzards Bay. A hurricane dike (also referred to as "barrier"), built in the early 1960s, runs northeasterly through the marsh area of the Site.

The former Atlas Tack facility was built in 1901 and manufactured cut and wire tacks, steel nails, and similar items until approximately 1985. From the 1940s until some point in the late 1970s or 1980s, process waste containing acids, metals such as copper and nickel and solvents were discharged into drains in the floor of the main building and into an on-site, unlined acid neutralizing lagoon. Waste containing cyanide and heavy metals were also discharged into the lagoon, which was located approximately 200 feet east of the manufacturing building and adjacent to a saltwater tidal marsh in Buzzards Bay Estuary. The lagoon effluent discharged to the salt marsh and Boys Creek. Some chemicals utilized in the facility permeated the floors and timbers of the building and migrated to adjacent soils and groundwater.

Approximately 8,500 cubic yards of industrial fill was deposited on top of the original marsh surface to the east of the Atlas Tack buildings. A disposal area (designated in EPA Site reports as the Commercial and Industrial Debris or CID Area), located on the Hathaway-Brale property, may also have received wastes from Atlas Tack and other sources. The CID contained approximately 3,000 to 4,000 cubic yards of material.

In February 1990, the Site was placed on the National Priorities List and a Remedial Investigation/Feasibility Study was completed in 1998. For the purposes of the remedial investigation, the Site was divided into the Commercial Area, various Non-Commercial Areas (Solid Waste and Debris, Marsh, and Creek Bed Area), and Groundwater. The Commercial Area, and Solid Waste and Debris Area contained the majority of the contamination at the Site. The contaminants migrated into the Marsh and Creek Bed Area.

Affected Media

The following summarizes the affected media and contaminants of concern prior to EPA's implementation of the Selected Remedy:

Soil

Commercial Area: This area included both the soils surrounding the Atlas Tack building and sludges and waste areas inside and formerly inside the building. Contaminants identified in these areas were metals (including arsenic, beryllium, cadmium, chromium, copper, lead, nickel, and zinc), cyanide, volatile organic compounds (VOCs, primarily toluene), semi-volatile organic compounds (SVOCs, primarily polycyclic aromatic hydrocarbons [PAHs]), and polychlorinated biphenyls (PCBs) (Arochlor 1260). Rainfall caused the leaching of the Site contaminants into the groundwater resulting in their eventual migration to the marsh and Boys Creek. Surface water runoff was also a means of migration of contaminants from the Commercial Area to other areas on and off the Site. Additionally, some of the contaminants leached from the soils located below the groundwater table.

Solid Waste and Debris Area: This area included the Fill Area, Former Lagoon Area, and Commercial and Industrial Debris Area at the eastern end of Church Street. Contaminants identified in these areas were metals (including antimony, copper, lead, and zinc), cyanide, VOCs, PAHs, PCBs, and pesticides. The contamination in this area migrated via groundwater and surface water runoff to Boys Creek and Marsh Areas, and eventually off the Site into Buzzards Bay.

Marsh Area: Contaminants identified in this area were metals (including cadmium, copper, and zinc), cyanide, and VOCs. The contaminant concentrations in the marsh near the source area (Solid Waste and Debris Area) were as much as an order of magnitude higher than the contaminant concentrations outside the hurricane barrier. The contamination in this marsh (and marshes in general) were adsorbed by the marsh soils and/or vegetation. Also, the hurricane barrier limited surface water flow into this marsh and the flushing out of this marsh.

Groundwater

Contaminants identified in the groundwater were metals (including beryllium, cadmium, copper, lead, nickel, and zinc), cyanide, and VOCs. Groundwater below the Site exceeded Ambient Water Quality Criteria (AWQC) [now the National Recommended Water Quality Criteria (NRWQC)] for cadmium, copper, lead, mercury, nickel, zinc, and cyanide. Contaminated groundwater flows from under the Site in a northeasterly direction and discharges into the marsh and Boys Creek.

Surface Water

The surface water bodies at the Site include the main channel and tributaries of Boys Creek. AWQC were exceeded in these water bodies for the following metals: arsenic, cadmium, copper, lead, nickel, silver, and zinc; and cyanide. Contaminated groundwater and rainfall runoff from the upland portion of the Site is a significant source of this contamination. The water in Boys Creek flows into Buzzards Bay.

Sediment

The contaminated sediments at the Site were located in the main channel and tributaries of Boys Creek. These are collectively referred to as the Creek Bed Area. Contaminants identified in this area were metals (arsenic, cadmium, copper, nickel, and zinc); cyanide; and pesticides. Contaminants that reached the Creek Bed Area via groundwater or rain runoff were either absorbed by the sediments or migrated into the surface water.

Biota

The Site shellfish and fish were found to contain metals, SVOCs, and pesticides in concentrations greater than those found in the shellfish and fish at the background location on West Island in Fairhaven. Samples of sediment in the marsh and Boys Creek showed elevated concentrations of cadmium, copper, lead, nickel, zinc, and pesticides (dichloro-diphenyl-trichloroethane [DDT] and Dichlorodiphenyldichloroethylene [DDE]) as compared to background concentrations.

Overall Risk Assessment Conclusion Prior to Remediation

Results of the baseline human health risk assessment identified concentrations of arsenic, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), and lead in soils and sediments in the commercial area and Boys Creek that are present at levels which represent unacceptable carcinogenic and non-carcinogenic risks. Given the anticipated future use of the Site, commercial/industrial use, worker exposure to contaminated soil in the Commercial Area was considered the principal human health threat at the Site. Human health risks were also posed by ingestion of contaminated shellfish from Boys Creek.

Results of the baseline ecological risk assessment identified concentrations of copper, lead, mercury, nickel, silver, zinc and cyanide in surface waters throughout the site that frequently exceeded unacceptable risk levels. The risk to aquatic organisms in the surface waters and associated wetlands from exposure to these chemicals was of ecological concern. Concentrations of endosulfan sulfate, anthracene, DDT (total), cadmium, copper, cyanide, lead and zinc were identified as representing the greatest risk to the survival, reproduction and growth of the benthic community. The risk to the benthic community was confirmed by results from the sediment toxicity testing, which indicated an increase in mortality at locations north of the hurricane barrier where contaminants of concern were elevated. Through direct consumption of marsh vegetation and incidental ingestion, the meadow vole is potentially at risk from exposure to several compounds. The chemicals contributing the greatest risk were endosulfan II, endosulfan sulfate, iron, and lead. The exposure pathway responsible for risk to the black duck was the ingestion of benthic fauna and incidental sediment ingestion. Arsenic and cyanide were the major contaminants of concern contributing to the risk to the black duck and great blue heron, through the ingestion of contaminated fish.

Neither Boys Creek nor the groundwater beneath and in the vicinity of the site is currently or expected to be used for drinking water because the water is brackish due to its proximity to the ocean.

Selected Remedy

In March 2000, EPA issued a ROD that set forth the Selected Remedy at the Site. Surface soils, 0-2 feet in depth in the Commercial Area and sediments in Boys Creek was the focus of the remedial action necessary to protect human health, while soils, sediments, and groundwater throughout the Site was the focus of the remedial action necessary to protect invertebrates, fish, and wildlife. The major components of the selected remedy included:

- the excavation, treatment, and off-site disposal of approximately 55,000 cubic yards of contaminated soil, debris and sediment, demolition of contaminated buildings;
- marsh mitigation and restoration of the affected areas;
- monitored natural attenuation (MNA), with phytoremediation (planting of specific types of trees to lower the level of residually contaminated groundwater) as an enhancement component, was chosen to address the groundwater beneath the Site;
- long term (30 years) monitoring of soil, sediment, surface water and vegetation; and
- establishment of institutional controls

The ROD also required that a more extensive bioavailability study be implemented to determine the extent of sediment removal in the marsh area. Cleanup levels were developed based on the correlation between the level of contamination (principally metals) and associated toxicity data for each sampling location.

The Interim Groundwater Cleanup Levels (IGCLs) established in the ROD are ecologically based, four out of the five IGCL parameters (copper, nickel, zinc, and cyanide) are based on the NRWQC subject to a dilution factor. There is no NRWQC standard for toluene. Therefore, the

Massachusetts Contingency Plan (MCP), Upper Concentration Limit (UCL) for toluene was used.

An ESD was issued on September 16, 2009. The primary remedy changes were:

- Rather than restore the freshwater wetland and salt water marsh areas to the precise contours that existed in 1901, the area of saltwater marsh north of the hurricane dike was designed with a smaller footprint because the maximum tidal flow through the dike was believed to be insufficient to sustain a larger area of saltwater marsh.
- Elimination of the phytoremediation component of the remedy because EPA determined that lowering the groundwater table would not allow for enough groundwater flow into the freshwater wetland area, which would substantially frustrate a key feature in the design of the wetland, i.e., sustaining sufficient standing water to minimize the growth of the common reed (*Phragmites australis* or *Phragmites a.*), an invasive species.

Remedy Implementation

Remedial cleanup activities were conducted in three phases from June 2005 – September 2007.

- Phase I, the Commercial Area Remediation, initiated in June 2005, included: demolition of the three-story manufacturing building, the power plant building and smokestack; demolition and excavation of the concrete slabs remaining from the previously demolished, former one-story building, and from other buildings demolished in this phase; and excavation and off-site disposal of contaminated soil, sludge and debris. 5,480 cy of contaminated soil and 775 cy of plating sludge (RCRA listed waste F009) were excavated and disposed of at appropriate off-site licensed landfills in Phase I. Following demolition and excavation, the area was backfilled and graded to facilitate proper site drainage. This phase was completed in March 2006.
- Phase II the Solid Waste and Debris Area Remediation, initiated in 2006, involved excavation and off-site disposal of 36,600 cy of contaminated soil and debris from the solid waste disposal (fill) areas on the Atlas Tack property and the Former Lagoon Area (east of the Commercial Area), and the Commercial and Industrial Debris Area located on the Hathaway-Braleay property. Most of the fill areas remediated in this phase were originally wetland. As the remedy called for these areas to be restored as wetland, restoration of this area, including final grading, occurred in conjunction with the marsh restoration activities during Phase III.
- Phase III, the Boys Creek Marsh and Boys Creek Remediation and Site Restoration, initiated in January 2007, entailed excavation of contaminated marsh sediment and creek bed sediment and restoration of the site. 36,430 cy marsh and creek bed sediment was removed. Site restoration activities included: installation of a security fence and boulder barricade; regrading, placement of loam, and seeding with a wildflower seed mix; planting of salt marsh vegetation; installation of coir fiber logs and biodegradable erosion control blankets along Boys Creek to prevent erosion; *Phragmites a.*, also known as common reed, growing near the restored area was controlled with herbicide to deter it from spreading into the restored area; and adjacent upland areas were planted with trees and shrubs, and were seeded with native plant seed mixes. Temporary fencing was installed to deter grazing on herbaceous plantings by waterfowl. The wetlands were

restored and included re-creation of a fresh and salt water wetland environment (approximately 5.5 acres).

All components of the remedy were performed in accordance with the plans and specifications approved by EPA.

Remaining Contamination

Groundwater beneath and in the vicinity of the Site remains contaminated, but groundwater is not used as a drinking water supply and interim groundwater cleanup goals are ecologically based. Since 2007, concentrations of several contaminants of concern have been monitored under an established long-term groundwater monitoring (LTGM) plan associated with monitored natural attenuation and will continue until interim ecological clean up goals are attained.

Institutional controls ("ICs") are required on the Atlas Tack property north of the hurricane dike to ensure that the remedy is protective of human health and the environment. Specifically, these are needed to prevent any future use of the groundwater at the Site for drinking water. Also, the ROD contemplated that ICs would include restricting the types of use and construction within portions of the Commercial Area to only commercial and industrial uses (i.e., no residential use). Institutional controls are required in the Non-Commercial Area to limit the use of that area to certain recreational uses consistent with the risk assessment and with the response actions conducted in that area.

Accordingly, because of the need for somewhat different controls in the Commercial Area and Non-Commercial Areas of the Site, for purposes of the ICs, this area of the Atlas Tack property has been designated as Area A and Area B, consistent with Appendix G of the consent decree with the United States ("Consent Decree") between Atlas Tack (and others) and the United States, in the consolidated cases of Atlas Tack Corp. v. Fairhaven, No. 01-10501WGY (lead case); United States v. Atlas Tack Corp., No. 03-11601WGY; U.S. v. Atlas Tack Corp., No. 04-11880WGY.

3. Summary of Required Institutional Controls

a. Activities and Uses Consistent with Maintaining the Selected Remedy.

- i. The following Activities and Uses, if they occur on Area A, are consistent with maintaining the Selected Remedy and, as such, may occur on Area A without compromising the Permanent Solution that has been achieved for the Site:
 1. Excavation, drilling or otherwise disturbing the soil in the top 24 inches below grade existing on the date of the Notice;
 2. Excavation, drilling or otherwise disturbing the soil below 24 inches below grade existing on the date of the Notice, provided such excavation, drilling or soil disturbance has been previously approved by MassDEP pursuant to the Notice;

3. Commercial and industrial use, excluding daycare facilities;
 4. Recreational activity and recreational uses that have been previously approved by MassDEP pursuant to the Notice;
 5. Placement of surface materials including, but not limited to, paving, and placement of barriers of stone or concrete;
 6. Routine maintenance and repair of landscaped areas by an adult worker including, but not limited to, lawn mowing, seeding, mulching, weeding, or planting; and
 7. Such other activities and uses not identified as being activities and uses inconsistent with maintaining the Selected Remedy.
- ii. The following Activities and Uses, if they occur on Area B, are consistent with maintaining the Selected Remedy and, as such, may occur on Area B without compromising the Permanent Solution that has been achieved for the Site:

1. Excavation, drilling or otherwise disturbing the soil, provided such excavation, drilling or soil disturbance has been previously approved by MassDEP pursuant to the Notice;
2. Recreational activity and recreational uses that have been previously approved by MassDEP pursuant to the Notice;
3. Placement of surface materials including, but not limited to, paving, and placement of barriers of stone or concrete;
4. Routine maintenance and repair of landscaped areas by an adult worker including, but not limited to, lawn mowing, seeding, mulching, weeding, or planting; and
5. Such other activities and uses not identified as being activities and uses inconsistent with maintaining the Selected Remedy.

b. Activities and Uses Inconsistent with Maintaining the Selected Remedy.

- i. The following Activities and Uses, if they occur on Area A, are inconsistent with maintaining the Selected Remedy, and, as such, may not occur on Area A without compromising the Permanent Solution that has been achieved for the Site:
 1. Withdrawal, consumption, exposure or utilization of groundwater, for any purpose including potable, industrial, irrigation, or

agricultural use except for activities associated with operation and maintenance or monitoring of the Selected Remedy;

2. Excavation, drilling or otherwise disturbing the soil below 24 inches below grade existing on the date of the Notice for any purpose, except any excavations, drilling or soil disturbances approved by MassDEP pursuant to the Notice;
 3. Cultivation of plants or crops for human consumption;
 4. Residential use, or use as a school or childcare center;
 5. Recreational activity or recreational use not approved by MassDEP pursuant to the Notice; and
 6. Any activity or use that would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy, including, but not limited to the monitoring wells that are components of the Selected Remedy, to provide long-term environmental monitoring of on-site groundwater.
- ii. The following Activities and Uses, if they occur on Area B, are inconsistent with maintaining the Selected Remedy, and, as such, may not occur on Area B without compromising the Permanent Solution that has been achieved for the Site:
1. Withdrawal, consumption, exposure or utilization of groundwater, for any purpose including potable, industrial, irrigation, or agricultural use except for activities associated with operation and maintenance or monitoring of the Selected Remedy;
 2. Excavation, drilling or otherwise disturbing the soil, for any purpose, except any excavations, drilling or soil disturbances that have been previously approved by MassDEP pursuant to the Notice;
 3. Cultivation of plants or crops for human consumption;
 4. Residential use, commercial, or industrial activity, including use as a school or childcare center;
 5. Recreational activity or use not approved by MassDEP pursuant to the Notice; and

6. Any activity or use that would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy, including, but not limited to the monitoring wells that are components of the Selected Remedy, to provide long-term environmental monitoring of on-site groundwater.

c. Obligations and Conditions. The following obligations and/or conditions are necessary and shall be undertaken at the Property to maintain the Selected Remedy:

- i. Compliance by the Owner with all applicable laws, rules, and regulations regarding soil management and disposition; and
- ii. Submission by the Owner of an annual compliance letter to EPA and MassDEP, no later than June 1 of each calendar year, which shall (a) describe generally the permitted activities and uses that have occurred on the property subject to the Notice during the past calendar year and (b) certify that all activities and uses that have occurred at the property subject to the Notice in the previous year are consistent with the Notice and with any approvals or plans issued or prepared in connection with the Notice, such certification to include any supporting information upon which such certifications are based.

4. Implementation of Notices

For the reasons described above and in relevant EPA decision documents, a Notice of Activity and Use Limitation should be implemented and recorded at the Site pursuant to CERCLA, the NCP, and regulations set forth in the Massachusetts Contingency Plan at 310 Code of Massachusetts Regulations Sections 40.0111(8), 40.1070(4), and (as applicable) 40.1074.

Date: _____

1/9/17



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