

RESOLUTION OF THE CITY COUNCIL

No. 195

Approved May 10, 2023

RESOLVED, DECREED AND ORDERED:

The Rhode Island Department of Environmental Management has requested certain environmental land use restrictions be recorded against certain City-owned land located at 61 Baxter Street (Assessor's Plat 48 Lot 780), 57 Baxter Street (Assessor's Plat 48 Lot 781), 5 Norwich Avenue (Assessor's Plat 48 Lot 782), and 9 Norwich Avenue (Assessor's Plat 48 Lot 783) as a result of environmental remediation efforts conducted at the above described properties. The City Council hereby authorizes the Mayor to enter into the environmental land use restriction attached as Exhibit A.

IN CITY COUNCIL
MAY 04 2023
READ AND PASSED


RACHEL M. MILLER, PRESIDENT

CLERK

I HEREBY APPROVE.


Mayor

Date: 5/10/23

ENVIRONMENTAL LAND USAGE RESTRICTION

This Declaration of Environmental Land Usage Restriction ("Restriction") is made on this 4th day of May, 2023 by **the City of Providence**, and its successors and/or assigns (hereinafter, the "Grantor").

WITNESSETH:

WHEREAS, the Grantor, the City of Providence, is the Owner in fee simple of certain real property identified as **the City of Providence Tax Assessor's Plat Map 48, Lots 780, 781, 782, and 783** in Providence, Rhode Island (the "Property"), more particularly described in Exhibit A (Legal Description) which is attached hereto and made a part hereof;

WHEREAS, the Property has been determined to contain soil which is contaminated with certain Hazardous Materials in excess of applicable **residential Direct Exposure Criteria** pursuant to the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases ("Remediation Regulations");

WHEREAS, the Grantor and the Rhode Island Department of Environmental Management ("Department") have determined that the environmental land use restrictions set forth below are consistent with the regulations adopted by the Department pursuant to R.I.G.L. § 23-19.14-1 and that this restriction shall be a Conservation Restriction pursuant to R.I.G.L. § 34-39-1 et. seq. and shall not be subject to the 30-year limitation provided in R.I.G.L. § 34-4-21;

WHEREAS, the Department's written approval of this Restriction is contained in the document entitled: **Remedial Approval Letter** issued pursuant to the Remediation Regulations;

WHEREAS, to prevent exposure to or migration of Hazardous Substances and to abate hazards to human health and/or the environment, and in accordance with the **Remedial Approval Letter**, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the **Property**;

WHEREAS, the Grantor believes that this Restriction will effectively protect public health and the environment from such contamination; and

WHEREAS, the Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against the Grantor and the Grantor's successors and assigns.

NOW, THEREFORE, Grantor agrees as follows:

- A. Restrictions Applicable to the Property:** In accordance with the **Remedial Approval Letter**, the use, occupancy and activity of and at the **Property** is restricted as follows:
- i. No residential use of the **Property** shall be permitted that is contrary to Department approvals and restrictions contained herein;
 - ii. No groundwater at the **Property** shall be used as potable water;
 - iii. No soil at the **Property** shall be disturbed in any manner without written permission of the Department's Office of Land Revitalization & Sustainable Materials Management, except as

permitted in the Department-approved Soil Management Plan (SMP), Exhibit B and attached hereto;

- iv. Humans engaged in activities at the **Property** shall not be exposed to soils containing Hazardous Materials and/or petroleum in concentrations exceeding the applicable Department approved Direct Exposure Criteria set forth in the Remediation Regulations;
- v. The engineered controls at the **Property** described in the **SMP** contained in Exhibit B attached hereto shall not be disturbed and shall be properly maintained to prevent humans engaged in **recreational** activity from being exposed to soils containing Hazardous Materials in concentrations exceeding the applicable Department-approved **residential** Direct Exposure Criteria in accordance with the Remediation Regulations; and

B. No action shall be taken, allowed, suffered, or omitted at the Property if such action or omission is reasonably likely to:

- i. Create a risk of migration of Hazardous Materials and/or petroleum;
- ii. Create a potential hazard to human health or the environment; or
- iii. Result in the disturbance of any engineering controls utilized at the **Property**, except as permitted in the Department-approved **SMP** contained in Exhibit B.

C. Emergencies: In the event of any emergency which presents a significant risk to human health or to the environment, including but not limited to, maintenance and repair of utility lines or a response to emergencies such as fire or flood, the application of Paragraphs A (iii.-v.) and B above may be suspended, provided such risk cannot be abated without suspending such Paragraphs and the Grantor complies with the following:

- i. Grantor shall notify the Department's Office of Land Revitalization & Sustainable Materials Management in writing of the emergency as soon as possible but no more than three (3) business days after Grantor's having learned of the emergency. (This does not remove Grantor's obligation to notify any other necessary state, local or federal agencies.);
- ii. Grantor shall limit both the extent and duration of the suspension to the minimum period reasonable and necessary to adequately respond to the emergency;
- iii. Grantor shall implement reasonable measures necessary to prevent actual, potential, present and future risk to human health and the environment resulting from such suspension;
- iv. Grantor shall communicate at the time of written notification to the Department its intention to conduct the Emergency Response Actions and provide a schedule to complete the Emergency Response Actions;
- v. Grantor shall continue to implement the Emergency Response Actions, on the schedule submitted to the Department, to ensure that the **Property** is remediated in accordance with the Remediation Regulations (or applicable variance) or restored to its condition prior to such emergency. Based upon information submitted to the Department at the time the ELUR was recorded pertaining to known environmental conditions at the **Property**, emergency maintenance and repair of utility lines shall only require restoration of the **Property** to its condition prior to the maintenance and repair of the utility lines; and

- vi. Grantor shall submit to the Department, within ten (10) days after the completion of the Emergency Response Action, a status report describing the emergency activities that have been completed.
- D. Release of Restriction; Alterations of Subject Area:** The Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of the **Property** inconsistent with this Restriction unless the Grantor has received the Department's prior written approval for such alteration. If the Department determines that the proposed alteration is significant, the Department may require the amendment of this Restriction. Alterations deemed insignificant by the Department will be approved via a letter from the Department. The Department shall not approve any such alteration and shall not release the **Property** from the provisions of this Restriction unless the Grantor demonstrates to the Department's satisfaction that Grantor has managed the **Property** in accordance with applicable regulations.
- E. Notice of Lessees and Other Holders of Interests in the Property:** The Grantor, or any future holder of any interest in the **Property**, shall cause any lease, grant, or other transfer of any interest in the **Property** to include a provision expressly requiring the lessee, grantee, or transferee to comply with this Restriction. The failure to include such provision shall not affect the validity or applicability of this Restriction to the **Property**.
- F. Enforceability:** If any court of competent jurisdiction determines that any provision of this Restriction is invalid or unenforceable, the Grantor shall notify the Department in writing within fourteen (14) days of such determination.
- G. Binding Effect:** All of the terms, covenants, and conditions of this Restriction shall run with the land and shall be binding on the Grantor, its successors and assigns, and each Owner and any other party entitled to control, possession or use of the **Property** during such period of Ownership or possession.
- H. Inspection & Non-Compliance:** It shall be the obligation of the Grantor, or any future holder of any interest in the **Property**, to provide for annual inspections of the **Property** for compliance with the ELUR in accordance with Department requirements.
- An officer or Director of the City with direct knowledge of past and present conditions of the Property (the "Company Representative"), or a qualified environmental professional will, on behalf of the Grantor or future holder of any interest in the Property, evaluate the compliance status of the Property on an annual basis. Upon completion of the evaluation, the City Representative or environmental professional will prepare and simultaneously submit to the Department and to the Grantor or future holder of any interest in the Property an evaluation report detailing the findings of the inspection, and noting any compliance violations at the Property. If the Property is determined to be out of compliance with the terms of the ELUR, the Grantor or future holder of any interest in the Property shall submit a corrective action plan in writing to the Department within ten (10) days of receipt of the evaluation report, indicating the plans to bring the Property into compliance with the ELUR, including, at a minimum, a schedule for implementation of the plan.**
- In the event of any violation of the terms of this Restriction, which remains uncured more than ninety (90) days after written notice of violation, all Department approvals and agreements relating to the **Property** may be voided at the sole discretion of the Department.
- I. Terms Used Herein:** The definitions of terms used herein shall be the same as the definitions contained in Section 1.4 (DEFINITIONS) of the Remediation Regulations.

IN WITNESS WHEREOF, the Grantor has hereunto set (his/her) hand and seal on the day and year set forth above.

By: Brett P. Smiley
Mayor Brett P. Smiley

STATE OF RHODE ISLAND

COUNTY OF Providence

In Providence, in said County and State, on the 10 day of May, 2023
(City/Town)

before me Personally appeared Brett P. Smiley to me known and known by me to be the party executing the foregoing instrument and (he/she) acknowledged said instrument by (him/her) executed to be (his/her) free act and deed.

Notary Public: Angela J. Harris
ANGELA J. HARRIS
Notary Public of Rhode Island
My Comm. Expires: 7/1/2026
My Commission Expires: 7/1/2026
PUBLIC
RHODE ISLAND

Approved as to form and correctness:
Jeff Dana
Jeff Dana, City Solicitor

ELUR – Exhibit A – Legal Descriptions

61 Baxter Street, Lot 780

That certain lot or parcel of land with all the buildings and improvements thereon, situated on Norwich Avenue and Baxter Street in the City and County of Providence and State of Rhode Island, bounded and described as follows:

Beginning at the point of intersection of the northerly line of Norwich Avenue with the westerly line of Baxter Street, and turning thence westerly bounding southerly on said Norwich Avenue a distance of Eighty (80) feet to land now or lately of John B. Sayig and wife; thence turning and running northerly bounding westerly on said Sayig land a distance of Forty (40) feet to land now or lately of the Estate of Annie Tashjian, thence turning and running easterly bounded northerly on said Tashjian land a distance of Eighty (80) feet to said Baxter Street a distance of Forty (40) feet to said Norwich Avenue and the point or place of beginning.

Said tract comprises the southerly one half of lots no. 15 and 16 on that plat entitled "Map of house lots belonging to Gardner H. Burgess, drawn from a survey by Schubarth & Haines, July 1850 by W S Haines December 1860" which plat is recorded in the office of the recorded of deeds in the City of Providence in Deed Book 9 at page 17 and (copy) on plat card 244.

57 Baxter Street, Lot 781

That certain tract or parcel of land with all the buildings and improvements thereon situated on the westerly side of Baxter Street in the City of Providence, State of Rhode Island, bounded and described as follows:

Beginning at a point in the westerly line of Baxter Street, forty (40) feet, more or less, northerly from the northerly line of Norwich Avenue, said point of beginning being at the northeasterly corner of land now or lately of Frank P. McDonough and wife, and running thence westerly bounding southerly on said McDonough land a distance of eighty (80) feet to land now or lately of Patrick Keegan and wife; thence turning and running northerly bounding westerly on said Keegan land a distance of forty (40) feet to land now or lately of Frank M. Dillman Estate; thence turning and running easterly bounding northerly in part on said last named land and in part on land now or lately of Clarence G. Holland and wife a distance of eighty (80) feet to Baxter Street, thence turning and running southerly bounding easterly on said Baxter Street a distance of forty (40) feet to said McDonough land and the point or place of beginning.

Said tract comprises the northerly one half of Lot No. 15 and 16 on that plat entitled "Map of house lots belonging to Gardner Burgess, drawn from a survey by Schubarth & Haines, July 1850 by W S Haines December 1860" which plat is recorded in the office of the recorded of deeds in the City of Providence in Plat Book 9 at page 17 and (copy) on plat card 244.

5 Norwich Avenue, Lot 782

That lot of land with all the buildings and improvements thereon, situated in the City of Providence, County of Providence, and State of Rhode Island and more particularly described as follows:

That Lot of land with all the buildings and improvements thereon, situated in the City of Providence, in the State of Rhode Island, in that part formerly a portion of the City of Cranston, in the northerly side of Norwich Avenue, about eighty (80) feet westerly from Dexter Street, laid out and designated as Lot No. 14 (Fourteen) on that plate entitled, "Map of house lots belonging to Gardner M. Burgess, drawn from a survey by Schubarth and Haines, July 1950 by W A Haines, December 1868" recorded in the Office of the Recorder of Deeds in said City of Providence in Plat Book 9 at page 17 and (copy) on Plat Card 244. Said Lot bounds southerly on said Norwich Avenue upon which it measures about forty (40) feet and holding that width extends about eighty (80) feet, bounding easterly on land now or lately of Georgette Kidd, westerly on land now or lately of John J. Flemming and wife, and northerly on land now or formerly of Mary E. and Mary K. Dow in part and in part on land now or lately of Frank M. Killman Estate and Widow Virginia.

9 Norwich Avenue, Lot 783

That certain lot or parcel of land, together with all the buildings and improvements thereon, situated on the northerly side of Norwich Avenue, in the City and County of Providence and State of Rhode Island, laid out and designated as Lot No. 13 (Thirteen) on that Plat entitled, "Map of house lots belonging to Gardner M. Burgess, drawn from a survey by Schubarth and Haines, Dec. 1960 which Plat is recorded in Plat Book 9 at page 17 and (copy) on Plat Card 244.

Exhibit B
Soil Management Plan
Baxter Street and Norwich Avenue Playground
Assessor's Plat 48; Lots 780, 781, 782, and 783
Providence, Rhode Island

This Soil Management Plan (SMP) has been prepared to establish procedures that will be followed should future construction/maintenance activities at the **Baxter Street and Norwich Avenue Playground** property require the need to manage soils excavated from the subsurface or when existing site surfaces / Department approved engineered controls (e.g., asphalt, concrete, landscaping and/or foundations) are disturbed. The plan serves to supplement, and will be initiated by, the RIDEM notification requirement established by the Environmental Land Use Restriction (ELUR) for the property.

Background

The Property, located at 57 and 61 Baxter Street and 5 and 9 Norwich Avenue, was formerly developed for residential and recreational purposes, but more recently solely for recreational purposes. The property was found to contain lead, naphthalene, polychlorinated biphenyls (PCBs), and semivolatile organic compounds during a site investigation performed at the property. The property currently consists of parcels developed as a recreational playspace northwest of the intersection of Baxter Street and Norwich Avenue in Providence. The Department approved remedy included excavation of contaminated soils and capping across the property. The regulated site soils are covered with Department approved engineered controls, consisting of stabilized stonedust paving, asphalt pavement, engineered wood fiber playground safety surfacing, and planted/landscaped play/outdoor learning areas in order to prevent direct exposure to regulated soils which exceed the Department's Method 1 Residential Direct Exposure Criteria.

Applicable Area

This SMP and affiliated ELUR, which restricts the property to recreational use, pertains to the **entire** Property as outlined on the attached Site figure.

Soil Management

The direct exposure pathway is the primary concern at the site. Individuals engaged in activities at the site may be exposed through incidental ingestion, dermal contact, or inhalation of vapors or entrained soil particles if proper precautions are not taken. Therefore, the following procedures will be followed to minimize the potential of exposure.

During site work, the appropriate precautions will be taken to restrict unauthorized access to the property.

During all site/earth work, dust suppression (e.g. watering, etc) techniques must be employed at all times. If it is anticipated due to the nature of the contaminants of concern that odors may be generated during site activities, air monitoring and means to control odors will be utilized, as appropriate (e.g. odor-suppressing foam, etc).

In the event that an unexpected observation or situation arises during site work, such activities will immediately stop. Workers will not attempt to handle the situation themselves but will contact the appropriate authority for further direction.

In the event that certain soils on site were not previously characterized, these soils are presumed to be regulated until such time that it is demonstrated to the Department, through sampling and laboratory analysis that they are not regulated. (For example, presumptive remedies or locations of previously inaccessible soil.)

If excess soil is generated / excavated from the Property, the soil is to remain on-site for analytical testing, to be performed by an environmental professional, in order to determine the appropriate disposal and/or management options. The soil must be placed on and covered with polyethylene/plastic sheeting during the entire duration of its staging and secured with appropriate controls to limit the loss of the cover and protect against storm-water and / or wind erosion (e.g. hay bales, silt fencing, rocks, etc).

Excavated soils will be staged and temporarily stored in a designated area of the property. Within reason, the storage location will be selected to limit the unauthorized access to the materials (e.g., away from public roadways/walkways). No regulated soil will be stockpiled on-site for greater than 60 days without prior Department approval.

In the event that stockpiled soils pose a risk or threat of leaching hazardous materials, a proper leak-proof container (e.g. drum or lined roll-off) or secondary containment will be utilized.

Soils excavated from the site may not be re-used as fill on residential property. Excavated fill material shall not be re-used as fill on commercial or industrial properties unless it meets the Department's Method 1 Residential Direct Exposure Criteria for all constituents listed in Table 1 of the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (Remediation Regulations). Copies of the laboratory analysis results shall be maintained by the site owner and included in the annual inspection report for the site, or the closure report if applicable. In the event that the soil does not meet any of these criteria, the material must be properly managed and disposed of off site at a licensed facility.

Site soils, which are to be disposed of off-site, must be done so at a licensed facility in accordance with all local, state, and federal laws. Copies of the material shipping records associated with the disposal of the material shall be maintained by the site owner and included in the annual inspection report for the site.

Best soil management practices should be employed at all times and regulated soils should be segregated into separate piles (or cells or containers) as appropriate based upon the results of analytical testing, when multiple reuse options are planned (e.g. reuse on-site, reuse at a Department approved Industrial/Commercial property, or disposal at a Department approved licensed facility).

All non-disposable equipment used during the soil disturbance activities will be properly decontaminated as appropriate prior to removal from the site. All disposable equipment used during the soil disturbance activities will be properly containerized and disposed of following completion of the work. All vehicles utilized during the work shall be properly decontaminated as appropriate prior to leaving the site.

At the completion of site work, all exposed soils are required to be recapped with Department approved engineered controls (minimum of 2 ft of clean fill or equivalent: building foundations/concrete blocks/structures (tree stumps, boulders, equipment pads, etc.); 4 inches of pavement/concrete/stabilized stonedust paving underlain with a minimum of 8 inches of clean fill; 12"-18" of engineered wood fiber playground safety surfacing; and/or planted areas consisting of 1 foot of clean fill underlain with a geotextile liner) consistent or better than the site surface conditions prior to the work that took place. Please note that the RIDEM-approved capping plan for the Site also included a minimum of 4-inches of clean fill over a geotextile fabric in areas of mature trees, and clean fill can be comprised of soil (i.e., common borrow, loam, etc.) or wood fiber mulch. These measures must also be consistent with the Department approved ELUR recorded on the property. Any clean soil fill material (i.e., does not pertain to stone dust, stone, or mulch) brought on site is required to meet the Department's Method 1 Residential Direct Exposure Criteria or be designated by an Environmental Professional as Non-Jurisdictional under the Remediation Regulations. The Annual Inspection Report for the site, or Closure Report if applicable, should include either analytical sampling results from the fill demonstrating compliance or alternatively include written certification by an Environmental Professional that the fill is not jurisdictional.

Worker Health and Safety

To ensure the health and safety of on-site workers, persons involved in the excavation and handling of the material on site are required to wear a minimum of Level D personal protection equipment, including gloves, work boots and eye protection. Workers are also required to wash their hands with soap and water prior to eating, drinking, smoking, or leaving the site.

Department Approval

In accordance with Section A ii of the ELUR, no soil at the property is to be disturbed in any manner without prior written permission of the Department's Office of Land Revitalization & Sustainable Materials Management, except for minor inspections, maintenance, and landscaping activities that do not disturb the contaminated soil at the Site. As part of the notification process, the site owner shall provide a brief written

description of the anticipated site activity involving soil excavation. The notification should be submitted to the Department no later than 60 days prior to the proposed initiation of the start of site activities. The description shall include an estimate of the volume of soil to be excavated, a list of the known and anticipated contaminants of concern, a site figure clearly identifying the proposed areas to be excavated/disturbed, the duration of the project and the proposed disposal location of the soil.

Following written Notification, the Department will determine the post closure reporting requirements. Significant disturbances of regulated soil will require submission of a Closure Report for Department review and approval documenting that the activities were performed in accordance with this SMP and the Department approved ELUR. Minor disturbances of regulated soil may be documented through the annual certification submitted in accordance with Section H (Inspection & Non-Compliance) of the Department approved ELUR. The Department will also make a determination regarding the necessity of performing Public Notice to abutting property owners/tenants concerning the proposed activities. Work associated with the Notification will not commence until written Department approval has been issued. Once Department approval has been issued, the Department will be notified a minimum of two (2) days prior to the start of activities at the site. Shall any significant alterations to the Department approved plan be necessary, a written description of the proposed deviation, will be submitted to the Department for review and approval prior to initiating such changes.

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