

**NICHOLAS A. ANDRIANAS, P.E.
NAC CONSULTANTS, INC.**

28 Henry Street
Kings Park, New York 11754
631-269-2680
Fax 631-269-2685

December 12, 2012

Mr. Jeffery Trad
Project Manager
New York State Division of Environmental Conservation
Division of environmental Remediation, BURE
625 Broadway
Albany, New York 12233-7017

**RE: Gibson and Cushman Dredging Co., LLC\38 Homan Avenue
Bay Shore, New York 11706
Site No. V00352**

Dear Mr. Trad,

The Periodic Review Report for the referenced site is enclosed. The report includes the Industrial and Engineering Controls Certification.

Call me if you have any questions.

Sincerely,
NAC CONSULTANTS INC.

A handwritten signature in black ink, appearing to read 'Nicholas A. Andrianas', written over the printed name below.

Nicholas A. Andrianas, P.E.

cc: Peter Hough (38 Homan Avenue LLC)



Enclosure 2
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Site Management Periodic Review Report Notice
Institutional and Engineering Controls Certification Form



Site No. V00352	Site Details	Box 1
Site Name Gibson and Cushman Dredging Co., LLC		
Site Address: 38 Homan Avenue	Zip Code: 11706	
City/Town: Bay Shore		
County: Suffolk		
Site Acreage: 1.5		
Reporting Period: November 15, 2009 to November 15, 2012		
		YES NO
1. Is the information above correct?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If NO, include handwritten above or on a separate sheet.		
2. Has some or all of the site property been sold, subdivided, merged, or undergone a tax map amendment during this Reporting Period?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Has there been any change of use at the site during this Reporting Period (see 6NYCRR 375-1.11(d))?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Have any federal, state, and/or local permits (e.g., building, discharge) been issued for or at the property during this Reporting Period?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If you answered YES to questions 2 thru 4, include documentation or evidence that documentation has been previously submitted with this certification form.		
5. Is the site currently undergoing development?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Box 2
	YES NO
6. Is the current site use consistent with the use(s) listed below? Industrial	<input checked="" type="checkbox"/> <input type="checkbox"/>
7. Are all ICs/ECs in place and functioning as designed?	<input checked="" type="checkbox"/> <input type="checkbox"/>

**IF THE ANSWER TO EITHER QUESTION 6 OR 7 IS NO, sign and date below and
DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.**

A Corrective Measures Work Plan must be submitted along with this form to address these issues.

Signature of Owner, Remedial Party or Designated Representative

Date

SITE NO. V00352

Box 3

Description of Institutional Controls

Parcel

Owner

Institutional Control

394-0100-048

38 Homan Avenue, LLC

Building Use Restriction

Ground Water Use Restriction

Landuse Restriction

Soil Management Plan

Box 4

Description of Engineering Controls

Parcel

Engineering Control

394-0100-048

Alternate Water Supply
Cover System

Engineering Control Details for Site No. V00352

Parcel: 394-0100-048

A Declaration of Covenants and Restrictions was filed with the Suffolk County Clerk on 11/15/2007. It contains cap maintenance requirement, groundwater use restriction, landuse restriction, and building use restriction as well as the Soils Management Plan.

Periodic Review Report (PRR) Certification Statements

1. I certify by checking "YES" below that:

a) the Periodic Review report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

b) to the best of my knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and the information presented is accurate and complete.

YES NO

☒ ☐

2. If this site has an IC/EC Plan (or equivalent as required in the Decision Document), for each Institutional or Engineering control listed in Boxes 3 and/or 4, I certify by checking "YES" below that all of the following statements are true:

(a) the Institutional Control and/or Engineering Control(s) employed at this site is unchanged since the date that the Control was put in-place, or was last approved by the Department;

(b) nothing has occurred that would impair the ability of such Control, to protect public health and the environment;

(c) access to the site will continue to be provided to the Department, to evaluate the remedy, including access to evaluate the continued maintenance of this Control;

(d) nothing has occurred that would constitute a violation or failure to comply with the Site Management Plan for this Control; and

(e) if a financial assurance mechanism is required by the oversight document for the site, the mechanism remains valid and sufficient for its intended purpose established in the document.

YES NO

☒ ☐

**IF THE ANSWER TO QUESTION 2 IS NO, sign and date below and
DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.**

A Corrective Measures Work Plan must be submitted along with this form to address these issues.

Signature of Owner, Remedial Party or Designated Representative

Date

IC CERTIFICATIONS
SITE NO. V00352

Box 6


SITE OWNER OR DESIGNATED REPRESENTATIVE SIGNATURE

I certify that all information and statements in Boxes 1, 2, and 3 are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I Peter Hongu at 38 Homestead Ave, Islip, NY
print name print business address ^{Daysville} Town of

am certifying as OWNER/ managing member (Owner or Remedial Party)

for the Site named in the Site Details Section of this form.


Signature of Owner, Remedial Party, or Designated Representative
Rendering Certification

12/11/2012
Date

IC/EC CERTIFICATIONS

Box 7

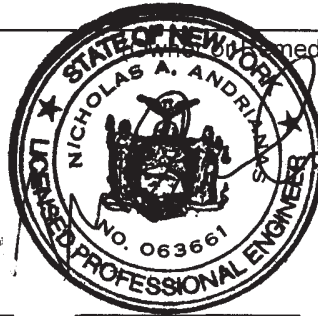
Professional Engineer Signature

I certify that all information in Boxes 4 and 5 are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I Nicholas A. Andrian at 28 Henry Street Kings Park NY
print name print business address 11754

am certifying as a Professional Engineer for the _____ (Remedial Party)

[Signature]
Signature of Professional Engineer, for the Owner or Remedial Party, Rendering Certification



Stamp
(Required for PE)

12/12/12
Date

PERIODIC REVIEW REPORT

38 HOMAN AVENUE LLC

GIBSON & CUSHING DREDGING CO. LLC

**38 Homan Avenue
Bayshore, New York**

SITE NUMBER V00352

December 2012

Prepared By: Nicholas A. Andrianas, P.E.

**NAC CONSULTANTS, INC.
28 Henry Street
Kings Park, New York 11754
(631) 269-2680
(631) 269-2685 FAX**

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FIGURES

Figure 1

Site Location

1.0 INTRODUCTION

The Gibson & Cushman Dredging Co. LLC site is a New York State Department of Environmental Conservation (NYSDEC) designated Voluntary Cleanup Agreement (VCA) Site. In accordance with the New York State Department of Environmental Conservation's March 3, 2010 letter and Title 6, NYCRR Part 375 Regulations, this periodic Review Report (PRR) documents the facility's compliance with the "Site Management" requirements of the VCA.

The site is located at 38 Homan Avenue, Bayshore, New York. The property is approximately 1.5 acres, is privately owned and is industrially zoned. The site is used for the storage and maintenance of dredging equipment. Barges used for the dredging operations are berthed at the creek adjacent to the property. The site consists of two parcels, known as the south and the north parcels. A two story building and maintenance shop are located on the north parcel. There are two maintenance buildings on the southern parcel.

Remediation of soil at the north and south parcels was completed in March 2006 as reported in the April 2006 certification provided by J.R. Holzmacher, P.E., LLC. A copy of the certification reported was reviewed for this PRR.

2.0 SITE OVERVIEW

The Site Plan taken from the April 2006 Certification report is shown in Figure 1. The property is bounded on the west and south by Pentaquit Creek, on the north by an industrial property and on the east by Homan Avenue.

Upon completion of the remediation in 2006 to remove metals and petroleum contaminated soils, some remaining soils at the property did not meet the NYSDEC recommended soil cleanup objectives. A deed restriction and soil management plan were developed to address the following:

- Prevent the use of on-site groundwater
- Maintain a clean fill cover
- Prohibit excavation at the site with NYSDEC permission
- Restrict the site to commercial and industrial uses
- Permit change of use or construction with NYSDEC approval

A copy of the recorded deed for 38 Homan Avenue LLC filed with the Soil Management Plan was reviewed for this PRR.

3.0 EVALUATE REMEDY PERFORMANCE, EFFECTIVENESS, AND PROTECTIVENESS

The site is subject to engineering and institutional controls that are in place. This section does not apply.

4.0 IC/EC PLAN COMPLIANCE REPORT

The institutional and engineering controls were reviewed and found to be in compliance with the requirements of the VCA. The documents are attached as Appendix A. The Site Management Plan (SMP) and deed restrictions were available for review in the preparation of this PRR. A site visit was conducted by Nicholas A. Andrianas, P.E. on November 13, 2012. The site was observed to be in compliance with the SMP at the time of the visit. The grassed areas and the areas backfilled during the March 2006 remediation were found to be maintained in compliance with the VCA and the SMP. The recent storm floods of Sandy caused damage to the interior of the building and it was under repair at the time of the site visit. The clean fill cover required by the SMP appeared to be in place and not physically damaged by the storm flood waters.

In addition to the structures shown in the VCA remediation documents, a temporary aboveground, shrink wrapped, framed, work shed was observed on the north parcel at the time of the site visit on November 13, 2012. The shed appears to be set on grade and there were no footings evident in the clean, backfilled areas.

The institutional controls certification is attached. The deed restriction was confirmed to be in place on December 5, 2012 by the Suffolk County Clerk's Office.

5.0 MONITORING PLAN COMPLIANCE REPORT

This section is not applicable.

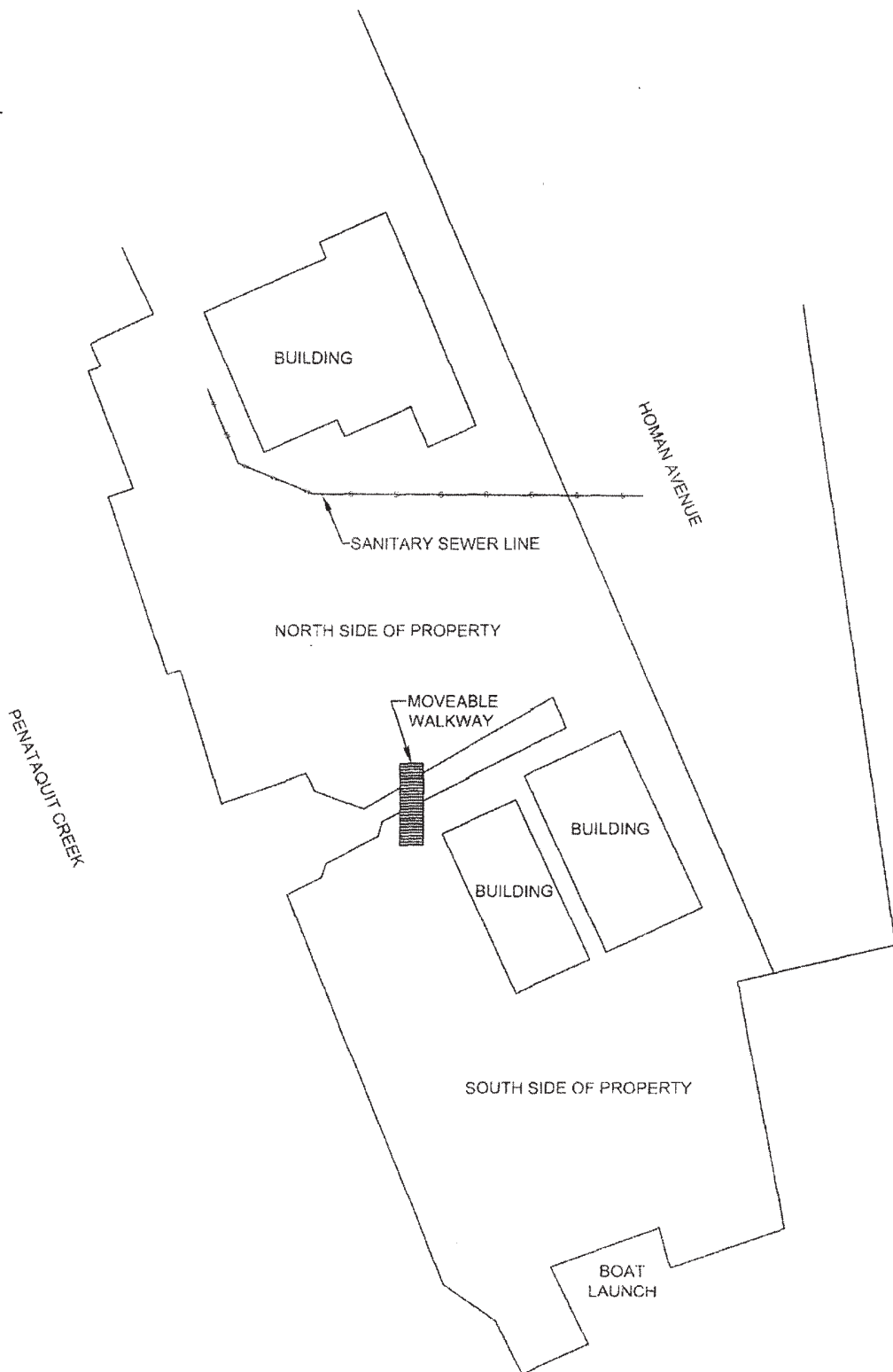
6.0 OPERATION & MAINTENANCE (O&M) PLAN COMPLIANCE REPORT

This section does not apply.

7.0 Overall PRR Conclusions and Recommendations

The requirements for each component of the SMP including the institutional controls are in compliance with the NYSDEC approved plans.

Future PRR submittals should continue at the current frequency.



SCALE: 1" = 50'

PREPARED BY:
J.R. HOLZMACHER P.E., LLC
*The Third Generation of Excellence
in Water Supply, Water Resources,
Civil and Environmental Engineering*
300 WILLY ROAD
SUITE 203
FALLENBURG, NEW YORK 11769
PHONE # (815) 231-2220
FAX # (815) 234-2221
E-MAIL: info@holzmach.com
www.holzmach.com

TITLE:

SITE PLAN
38 HOMAN AVENUE
BAY SHORE, NEW YORK

OWN:	SCALE:	DATE:	PROJECT NO.:
APK	NOTED	03/30/06	BrEnv 06-01
CHKD:	APPR:	REV:	NOTES:
JMD	JRH	-	-
FIGURE NO.		1	

ANNETTE EADERESTO, LLC

ATTORNEY AT LAW
18 RAILROAD AVENUE
P.O. BOX 1186
CENTER MORICHES, NEW YORK 11934

Annette Eaderesto

(631) 878-2282
FAX (631) 878-6803

December 19, 2007

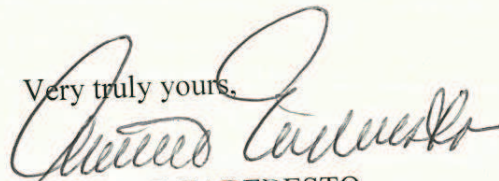
Ms. Lisa Santoro
P.W. Grosser Consulting
630 Johnson Avenue Suite 7
Bohemia, New York 11716

Re: 38 Homan Avenue Deed Restriction & Soil Management Plan
Our File R-3491

Dear Ms. Santoro:

Enclosed please find a copy of the recorded deed for 38 Homan Avenue LLC, filed with the Soil Management Plan (SMP) and also the Declaration of Covenants attached thereto.

Very truly yours,


ANNETTE EADERESTO

AE:jm
enclosures

*✓ w/ Lisa M
pd up to date*



SUFFOLK COUNTY CLERK
RECORDS OFFICE
RECORDING PAGE

Type of Instrument: DEEDS/DDD
Number of Pages: 17
Receipt Number : 07-0106955
TRANSFER TAX NUMBER: 07-11063

Recorded: 11/15/2007
At: 01:55:00 PM
LIBER: D00012530
PAGE: 447

District:	Section:	Block:	Lot:
0500	394.00	01.00	048.000

EXAMINED AND CHARGED AS FOLLOWS

Deed Amount: \$1,700,000.00

Received the Following Fees For Above Instrument

		Exempt			Exempt
Page/Filing	\$51.00	NO	Handling	\$5.00	NO
COE	\$5.00	NO	NYS SRCHG	\$15.00	NO
EA-CTY	\$5.00	NO	EA-STATE	\$165.00	NO
TP-584	\$5.00	NO	Notation	\$0.00	NO
Cert.Copies	\$0.00	NO	RPT	\$30.00	NO
Transfer tax	\$6,800.00	NO			
			Fees Paid	\$7,081.00	

TRANSFER TAX NUMBER: 07-11063

THIS PAGE IS A PART OF THE INSTRUMENT
THIS IS NOT A BILL

Judith A. Pascale
County Clerk, Suffolk County

Number of pages 17

This document will be public record. Please remove all Social Security Numbers prior to recording.

RECORDED
2007 Nov 15 01:55:00 PM
Judith A. Pascale
CLERK OF
SUFFOLK COUNTY
L 000012530
P 447
DT# 07-11063

Deed / Mortgage Instrument	Deed / Mortgage Tax Stamp	Recording / Filing Stamps
----------------------------	---------------------------	---------------------------

3 FEES

Page / Filing Fee 51
Handling 5.00
TP-584 5
Notation _____
EA-52 17 (County) 5
EA-5217 (State) 165
R.P.T.S.A. 30 00
Comm. of Ed. 5.00
Affidavit _____
Certified Copy _____
NYS Surcharge 15.00
Other _____

Sub Total 66



Sub Total 215

Grand Total 281

Mortgage Amt. _____
1. Basic Tax _____
2. Additional Tax _____
Sub Total _____
Spec./Assit. _____
or _____
Spec. /Add. _____
TOT. MTG. TAX _____
Dual Town _____ Dual County _____
Held for Appointment _____
Transfer Tax 6,800. AL
Mansion Tax _____

The property covered by this mortgage is or will be improved by a one or two family dwelling only.

YES _____ or NO _____

If NO, see appropriate tax clause on page # _____ of this instrument.

4 Dist. 0500 07028285 0500 39400 0100 048000 2.000 5 Community Preservation Fund

Real Property Tax Service Agency Verification



Consideration Amount \$ _____

CPF Tax Due \$ _____

6 Satisfaction/Discharges/Releases List Property Owners Mailing Address
RECORD & RETURN TO:

ANNETTE SADORO ESQ.
18 RAILROAD AVE
CENTER MORICHES NY 11934

Improved _____

Vacant Land _____

TD _____

TD _____

TD _____

Mail to: Judith A. Pascale, Suffolk County Clerk
310 Center Drive, Riverhead, NY 11901
www.suffolkcountyny.gov/clerk

7 Title Company Information

Co. Name FIDELITY NATIONAL TITLE INC.

Title # 63183

8 Suffolk County Recording & Endorsement Page

This page forms part of the attached Deed made by:

(SPECIFY TYPE OF INSTRUMENT)

GIBSON AND CUSHMAN DREDGING
COMPANY, LLC

The premises herein is situated in
SUFFOLK COUNTY, NEW YORK.

TO
38 HOMAN AVENUE, LLC

In the TOWN of ISLIP

In the VILLAGE

or HAMLET of BAYSHIRE

BOXES 6 THRU 8 MUST BE TYPED OR PRINTED IN BLACK INK ONLY PRIOR TO RECORDING OR FILING.

(over)

THIS INDENTURE, made the 22 day of May, 2007
BETWEEN

Gibson and Cushman Dredging Company, LLC

with offices at 53 Pinehill Trail West, Tequesta, FL, 33469

party of the first part, and

38 Homan Avenue, LLC

with offices at 61 Clinton Street, Center Moriches, NY, 11934

party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the

See Schedule "A-1" Annexed Hereto and Subject to the Declaration of Covenants and Restrictions Annexed Hereto as
Schedule "B"

PROMISES ARE KNOWN AS 38 HOMAN AVE BAYSHORE NY
DISTRICT 0500 SECTION 39/4.00 BLOCK 01/00 LOT 04/000 SUFFOLK COUNTY TAX MAP
BEING & INTENDED TO BE THE SAME PREMISES AS THOSE MENTIONED
IN DEED DATED 3/5/98 & RECORDED 4/10/98 IN L. 118878, 868 TO
GRANTORS HEREIN

TOGETHER with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the above-described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.


AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:


Gibson and Cushman Dredging Company, LLC
BY CHRISTOPHER KIRK

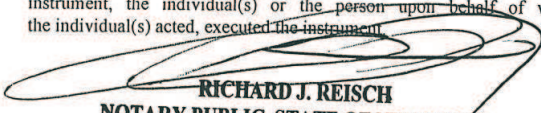
Acknowledgement taken in New York State

State of New York, County of Nassau

, ss:

On the 22 day of May in the year 2007 ,
before me, the undersigned, personally appeared

CHRISTOPHER KIRK
personally known to me or proved to me on the basis of
satisfactory evidence to be the individual(s) whose name(s) is
(are) subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their
capacity(ies), and that by his/her/their signature(s) on the
instrument, the individual(s) or the person upon behalf of which
the individual(s) acted, executed the instrument.


RICHARD J. REISCH
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02RE6033881
QUALIFIED IN SUFFOLK COUNTY
COMMISSION EXPIRES DECEMBER 6, 2009

Acknowledgement by Subscribing Witness taken in New York State

State of New York, County of Nassau

, ss:

On the day of, in the year
before me, the undersigned, personally appeared

the subscribing witness to the foregoing instrument, with whom I
am personally acquainted, who being by me duly sworn, did
depose and say, that he/she/they reside(s) in

that he/she/they know(s)

to be the individual described in and who executed the
foregoing instrument; that said subscribing witness was
present and saw said

execute the same; and that said witness at the same time
subscribed his/her/their name(s) as a witness thereto.

Title No.:

65183
Gibson and Cushman Dredging Company, LLC

TO
38 Homan Avenue, LLC

Distributed by
TitleVest[®]
www.titlevest.com

Acknowledgement taken in New York State

State of New York, County of

, ss:

On the day of in the year
before me, the undersigned, personally appeared

personally known to me or proved to me on the basis of
satisfactory evidence to be the individual(s) whose name(s) is
(are) subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their
capacity(ies), and that by his/her/their signature(s) on the
instrument, the individual(s) or the person upon behalf of which
the individual(s) acted, executed the instrument.

Acknowledgement taken outside New York State

*State of, County of,

ss:

*(or insert District of Columbia, Territory, Possession or
Foreign Country)

On the day of in the year
before me, the undersigned, personally appeared

personally known to me or proved to me on the basis of
satisfactory evidence to be the individual(s) whose name(s) is
(are) subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their capacity(ies),
and that by his/her/their signature(s) on the instrument, the
individual(s) or the person upon behalf of which the individual(s)
acted, executed the instrument, and that such individual made
such appearance before the undersigned in the

(add the city or political subdivision and the state or country or
other place the acknowledgement was taken).

DISTRICT
SECTION
BLOCK
LOT

COUNTY OR TOWN

RETURN BY MAIL TO:

Zip No.

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

Fidelity National Title Insurance Company
TITLE NO. 05-7404-63183-SUFF

SCHEDULE A-1 (Description)

AMENDED 12/30/05:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Islip, at Bayshore, Suffolk County, New York, bounded and described as follows:

BEGINNING at the northeast corner thereof on the west side of Homan Avenue and at the southeast corner of land now or formerly of Henry L. Brown;

RUNNING THENCE by the west side of said Homan Avenue South 21 degrees 41 minutes East, 284.93 feet to the bulkhead of Penataquit Creek;

THENCE by the general line of the bulkhead of Penataquit Creek South 77 degrees 02 minutes 10 seconds West, 4.00 feet;

THENCE South 12 degrees 57 minutes 50 seconds East, 87.00 feet;

THENCE South 71 degrees 22 minutes 16 seconds West, 99.10 feet all by the general line of the bulkhead on Penataquit Creek to the southeast corner of the slip;

THENCE North 58 degrees 24 minutes 15 seconds West, 27.00 feet;

THENCE North 21 degrees 41 minutes West, 135.90 feet;

THENCE North 62 degrees 34 minutes 30 seconds East, 33.00 feet;

THENCE North 14 degrees 40 minutes 40 seconds West, 3.16 feet all by the general line of the bulkhead on Penataquit Creek to the southwest corner of the slip;

THENCE across the mouth of said slip North 19 degrees 41 minutes West, 18.87 feet to the northwest corner of said slip;

THENCE by the general line of the bulkhead on Penataquit Creek North 19 degrees 49 minutes 50 seconds West, 60.25 feet;

THENCE North 19 degrees 24 minutes 10 seconds West, 111.14 feet;

THENCE South 66 degrees 31 minutes 30 seconds West, 19.39 feet;

THENCE North 48 degrees 08 minutes 50 seconds West, 1.76 feet all by the general line of the bulkhead of Penataquit Creek to land now or formerly of Henry L. Brown;

THENCE by said land North 63 degrees 02 minutes East, 119.57 feet to the point of BEGINNING.

THE POLICY TO BE ISSUED under this commitment will insure the title to such buildings and improvements on the premises which by law constitute real property.

FOR CONVEYANCING ONLY: Together with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.

Schedule B

DECLARATION of COVENANTS and RESTRICTIONS

THIS COVENANT, made the 7th day of September, 2007 by 38 Homan Avenue LLC, organized and existing under the laws of the State of New York and having an office for the transaction of business at 61 Clinton Street, Center Moriches, NY, 11934

WHEREAS, 38 Homan Avenue, LLC is the owner of a voluntary cleanup site in New York State as site number V00352-1, located at 38 Homan Avenue, Bay Shore, NY 11706, consisting of approximately .97 acres, Tax Map designation 0500, 394.00, 01.00, and 04800 and more particularly described in SCHEDULE "A" attached to this covenant and made a part hereof, and hereinafter referred to as the "Property"; and

WHEREAS, the property is the subject of Voluntary Agreement issued by the New York State Department of Environmental Conservation to Gibson and Cushman Dredging Company, LLC; and (SEE ATTACHED SCHEDULE C)

WHEREAS, the New York State Department of Environmental Conservation set forth a remedy to eliminate or mitigate all significant threats to the environment presented by hazardous waste disposal on the site in a Voluntary Agreement dated October 10, 2001 and such Work Plan for the implementation of the Voluntary Agreement required that the property be subject to restrictive covenants ;

NOW, THEREFORE, 38 Homan Avenue LLC for itself and its successors and/or assigns, covenants that:

First, the Property subject to this Declaration of Covenants and Restrictions is as shown on the map attached to this Declaration as Appendix B and made a part hereof, and consists of the property described in SCHEDULE 'A' annexed hereto.

Second, unless prior written approval by the New York State Department of Environmental Conservation or, if the Department shall no longer exist any New York State Agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as the "Relevant Agency," is first obtained, no person shall engage in any activity that will, or is reasonably anticipated to, prevent or interfere significantly with any proposed, ongoing or completed program at the Property that will, or is reasonably foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage.

Third, the owner of the Property shall maintain the clean soil cap placed during the Voluntary Cleanup by maintaining its grass cover or after obtaining the written approval of the Relevant Agency, by capping the Property with another material.

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for industrial/commercial without the express written waiver of such prohibitions by the Relevant Agency. It is anticipated in the future that the Property may be used for residential purposes and the Department agrees to such residential use provided the Procedures in

the Soil Management Plan are implemented.

Fifth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the owner first obtains permission to do so by the Relevant Agency.

Sixth, the owner of the Property shall continue in full force and effect any institutional and engineering controls, including the attached Soils Management Plan that the Department required Respondent to put into place and maintain unless the owner first obtains permission to discontinue such controls by the Relevant Agency.

Seventh, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property and shall provide that the owner, and its successors and assigns, consents to the enforcement by the Relevant Agency of the prohibitions and Restrictions recorded by this Declaration of Covenants and Restrictions, and hereby covenants not to contest the authority of the Department to seek enforcement.

Eighth, the owner of the Property may Petition the department to modify or terminate this Declaration of Covenants and Restrictions at such time as it can certify that reliance upon such covenants and restrictions is no longer required to meet the goals of the Remedial Program. Such Certification shall be made by Professional Engineer. The Department shall not unreasonably withhold its consent to such Petition.

Ninth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions.

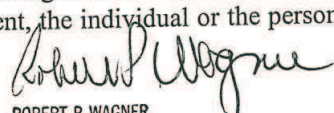
38 HOMAN AVENUE LLC


PETER HOUGH Managing Member

Acknowledgment taken in New York State

State of New York, County of Suffolk, ss:

On the 7th day of September in the year 2007, before me, the undersigned, personally appeared PETER HOUGH personally know to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person of which the individual acted, executed the instrument.


ROBERT P. WAGNER
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01WA4812158
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES JUNE 30, 2010

Fidelity National Title Insurance Company
TITLE NO. 05-7404-63183-SUFF

SCHEDULE A-1 (*Description*)

AMENDED 12/30/05:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Islip, at Bayshore, Suffolk County, New York, bounded and described as follows:

BEGINNING at the northeast corner thereof on the west side of Homan Avenue and at the southeast corner of land now or formerly of Henry L. Brown;

RUNNING THENCE by the west side of said Homan Avenue South 21 degrees 41 minutes East, 284.93 feet to the bulkhead of Penataquit Creek;

THENCE by the general line of the bulkhead of Penataquit Creek South 77 degrees 02 minutes 10 seconds West, 4.00 feet;

THENCE South 12 degrees 57 minutes 50 seconds East, 87.00 feet;

THENCE South 71 degrees 22 minutes 16 seconds West, 99.10 feet all by the general line of the bulkhead on Penataquit Creek to the southeast corner of the slip;

THENCE North 58 degrees 24 minutes 15 seconds West, 27.00 feet;

THENCE North 21 degrees 41 minutes West, 135.90 feet;

THENCE North 62 degrees 34 minutes 30 seconds East, 33.00 feet;

THENCE North 14 degrees 40 minutes 40 seconds West, 3.16 feet all by the general line of the bulkhead on Penataquit Creek to the southwest corner of the slip;

THENCE across the mouth of said slip North 19 degrees 41 minutes West, 18.87 feet to the northwest corner of said slip;

THENCE by the general line of the bulkhead on Penataquit Creek North 19 degrees 49 minutes 50 seconds West, 60.25 feet;

THENCE North 19 degrees 24 minutes 10 seconds West, 111.14 feet;

THENCE South 66 degrees 31 minutes 30 seconds West, 19.39 feet;

THENCE North 48 degrees 08 minutes 50 seconds West, 1.76 feet all by the general line of the bulkhead of Penataquit Creek to land now or formerly of Henry L. Brown;

THENCE by said land North 63 degrees 02 minutes East, 119.57 feet to the point of BEGINNING.

THE POLICY TO BE ISSUED under this commitment will insure the title to such buildings and improvements on the premises which by law constitute real property.

FOR CONVEYANCING ONLY: Together with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.

SEP-05-2007 14:55 From: A. EADEREST, ATTN. 631 878 6803

To: 5555555

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Aug 23 07 09:27a PETER HOUGH

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SCHEDULE C

**Gibson and Cushman Dredging Co., LLC
VCP Site No. V00352
Soils Management Plan**

1. Overview and objectives

The site is a 1.5 acre, occupied industrial/commercial property currently owned by Gibson and Cushman Dredging (GCD). The location of the property is shown on Figure 1. The site has been characterized during several previous investigations. The user should refer to the previous investigation reports for more detail, as needed.

The objective of this Soils Management Plan (SMP) is to set guidelines for management of soil material during any future activities which would breach the cover system at the site. This SMP addresses environmental concerns related to soil management and has been reviewed and approved by the New York State Department of Environmental Conservation (NYSDEC) as shown in Exhibit 1-1.

2. Nature and extent of contamination

Based on data obtained from previous investigations and the remediation done at the site, an April 2006 Final Certification Report was developed by J. R. Holtzmaier, P.E., LLC.

The constituents of potential concern (COPCs) for soil consist primarily of RCRA metals and petroleum hydrocarbons. Results of historical ground water sampling indicate that constituents in the soil/fill material have impacted ground water quality slightly with metals and petroleum hydrocarbons, requiring treatment prior to use.

3. Contemplated use

As part of the redevelopment project, the property has been identified for office and light industrial uses. Specific uses for this zoning category are as defined in the Voluntary Cleanup Agreement as: "Contemplated Use: Commercial/Industrial uses excluding day care, child care and medical care uses." Given the Property location, it is anticipated that residential use may occur in the future. If demolition and construction is performed for residential purposes, capping of soil in the areas listed below will be performed in accordance with Section 4.0 of the SMP.

- Soil within five feet and under the two-story structure located on the Northern Parcel.
- Soil within five feet and under the two structures located on the Southern Parcel.
- Soil within 15 feet landward of the bulkhead.

4. Purpose and description of surface cover system

The purpose of the surface cover system is to eliminate the potential for human contact with fill material and eliminate the potential for contaminated runoff from the property. The cover system

SEE ATTACHED FOR LEGIBLE COPY OF
THIS SCHEDULE C

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will consist of one of the following types of clean material:

- Soil: 24 inches of vegetated soil cover, in outdoor vegetated areas.
- Asphalt: a minimum of 6 inches of material (asphalt and subbase material) in areas that will become roads, sidewalks, and parking lots. Actual cross sections will be determined based on the intended use of the area.
- Concrete: a minimum of 6 inches of material (concrete and subbase material) in areas that will become slab-on-grade structures or for roads, sidewalks, and parking lots in lieu of asphalt. For slab-on-grade structures, an 8-mil polyethylene vapor barrier will be placed beneath the concrete (for sites impacted by VOC contamination only). Actual cross sections will be determined based on the intended use of the area.

5. Management of soils/fill and long term maintenance of cover system

The purpose of this section is to provide environmental guidelines for management of subsurface soils/fill and the long-term maintenance of the cover system during any future intrusive work which breaches the cover system.

The SMP includes the following conditions:

- Any breach of the cover system, including for the purposes of construction or utilities work, must be replaced or repaired using an acceptable borrow source free of industrial and/or other potential sources of chemical or petroleum contamination. The repaired area must be covered with clean soil and reseeded or covered with impervious product such as concrete or asphalt, as described in Section 4, to prevent erosion in the future.
- Control of surface erosion and run-off of the entire property at all times, including during construction activities. This includes proper maintenance of the vegetative cover established on the property.
- Site soil that is excavated and is intended to be removed from the property must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives. (Refer to Section 5.1).
- Soil excavated at the site may be reused as backfill material on-site provided it contains no visual or olfactory evidence of contamination, and it is placed beneath a cover system component as described in Section 4.
- Any off-site fill material brought to the site for filling and grading purposes shall be from an acceptable borrow source free of industrial and/or other potential sources of chemical or petroleum contamination. Off-site borrow sources should be subject to collection of one representative composite sample per source. The sample should be analyzed for TCL VOCs, SVOCs, pesticides, PCBs, and TAL metals plus cyanide. The soil will be

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acceptable for use as cover material provided that all parameters meet the NYSDEC appropriate soil cleanup objectives included in 6 NYCRR Part 375 Subpart 375-6.

Prior to any construction activities, workers are to be notified of the site conditions with clear instructions regarding how the work is to proceed. Invasive work performed at the property will be performed in accordance with all applicable local, state, and federal regulations to protect worker health and safety.

The Owner shall complete and submit to the Department an annual report by January 15th of each year. Such annual report shall contain certification that the institutional controls put in place, pursuant to the Voluntary Cleanup Agreement and the Workplan, are still in place, have not been altered and are still effective; that the remedy and protective cover have been maintained; and that the conditions at the site are fully protective of public health and the environment.

If the cover system has been breached during the year covered by that Annual Report, the owner of the property shall include the following in that annual report:

- A certification that all work was performed in conformance with this SMP.

The Annual report must be sent to the Agency below or subsequent relevant agency.

New York State Department of Environmental Protection
Attn: Jeffrey E. Trad, PE (or Current Project Manager)
625 Broadway
Albany, New York 12233-7013

In addition, deed restrictions have been implemented in accordance with the requirements of the Voluntary Cleanup Program, ~~limiting the future use of the property to business, commercial, or industrial development~~ *

5.1. Excavated and stockpiled soil/fill disposal

Soil/fill that is excavated as part of development which can not be used as fill below the cover system will be further characterized prior to transportation off-site for disposal at a permitted facility. For excavated soil/fill with visual evidence of contamination (i.e., staining or elevated Photoionization Detector (PID) measurements), one composite sample and a duplicate sample will be collected at a frequency to satisfy the disposal facility or at a minimum of one per 500 to 1000 cubic yards of stockpiled soil/fill. For excavated soil/fill that does not exhibit visual evidence of contamination but must be sent for off-site disposal, one composite sample and a duplicate sample will be collected at a frequency to satisfy the disposal facility or at a minimum of one per 2000 cubic yards of stockpiled soil. A minimum of one sample will be collected for volumes less than 2000 cubic yards. *

The composite sample will be collected from five locations within each stockpile. ~~A duplicate composite sample will also be collected.~~ Soils will be screened at each location with a PID or *

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equivalent and measurements recorded for each of the five individual locations. One grab sample will be collected from the individual location exhibiting the greatest signs of contamination, based upon PID response, visual or olfactory, ~~with the highest PID measurement~~. If none of the five individual sample locations exhibit PID readings, one location will be selected at random. The composite sample will be analyzed by a NYSDOH ELAP-certified laboratory for pH (EPA Method 9045C), Target Compound List (TCL) SVOCs, pesticides, and PCBs, and TAL metals, and cyanide. The grab sample will be analyzed for TCL VOCs. 

Soil samples will be composited by placing equal portions of fill/soil from each of the five composite sample locations into a pre-cleaned, stainless steel (or Pyrex glass) mixing bowl. The soil/fill will be thoroughly homogenized using a stainless steel scoop or trowel and transferred to pre-cleaned jars provided by the laboratory. Sample jars will then be labeled and a chain-of-custody form will be prepared.

Additional characterization sampling for off-site disposal may be required by the disposal facility. To potentially reduce off-site disposal requirements/costs, the owner or site developer may also choose to characterize each stockpile individually. If the analytical results indicate that concentrations exceed the standards for RCRA characteristics, the material will be considered a hazardous waste and must be properly disposed off-site at a permitted disposal facility within 90 days of excavation. If the analytical results indicate that the soil is not a hazardous waste, the material will be properly disposed off-site at a non-hazardous waste facility. Stockpiled soil cannot be transported on or off-site until the analytical results are received.

5.2. Subgrade material

Subgrade material used to backfill excavations or placed to increase site grades or elevation shall meet the following criteria.

- Excavated on-site soil/fill which appears to be visually impacted shall be sampled and analyzed. If analytical results indicate that the contaminants, if any, are present at concentrations below the Site Specific Action Levels (SSALs) shown in 6 NYCRR Part 375 Subpart 375-6, Table 375-6.8(a): Unrestricted Use Soil Cleanup Objectives, the soil/fill can be used as backfill on-site.
- Any off-site fill material brought to the site for filling and grading purposes shall be from an acceptable borrow source free of industrial and/or other potential sources of chemical or petroleum contamination.
- Off-site soils intended for use as site backfill cannot otherwise be defined as a solid waste in accordance with 6 NYCRR Part 360-1.2(a).
- If the contractor designates a source as "virgin" soil, it shall be further documented in writing to be native soil material from areas not having supported any known prior industrial or commercial development or agricultural use.

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- Virgin soils should be subject to collection of one representative composite sample per source. The sample should be analyzed for TCL VOCs, SVOCs, pesticides, PCBs, arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, and cyanide. The soil will be acceptable for use as backfill provided that all parameters meet the SSALs.
- Non-virgin soils will be tested via collection of one composite sample per 500 cubic yards of material from each source area. If more than 1,000 cubic yards of soil are borrowed from a given off-site non-virgin soil source area and both samples of the first 1,000 cubic yards meet SSALs, the sample collection frequency will be reduced to one composite for every 2,500 cubic yards of additional soils from the same source, up to 5,000 cubic yards. For borrow sources greater than 5,000 cubic yards, sampling frequency may be reduced to one sample per 5,000 cubic yards, provided all earlier samples met the SSALs.

SCHEDULE C

Gibson and Cushman Dredging Co., LLC
VCP Site No. V000352
Soils Management Plan

1. Overview and Objectives

The site is 1.5 acres, occupied industrial/commercial property currently owned by Gibson and Cushman Dredging (GCD). The location of the property is shown on Figure 1. The site has been characterized during several previous investigations. The user should refer to the previous investigation reports for more detail, as needed.

The objectives of this Soils Management Plan (SMP) is to set guidelines for management of soil material during any future activities which could breach the cover system of the site. This SMP addresses environmental concerns related to soil management and has been reviewed and approved by the New York Department of Environmental Conservation (NYSDEC) as shown in Exhibit 1-1.

2. Nature and extent of contamination

Based on the data obtained from previous investigations and the remediation done at the site, an April 2006 Final Certification Report was developed by J. R. Holtzmacher, P.E., LLC.

The constituents of potential concern (COPCs) for soil consist primarily of RCRA metals and petroleum hydrocarbons. Results of historical ground water sampling indicate that constituents in the soil/fill material have impacted ground water quality slightly with metal and petroleum hydrocarbons, requiring treatment to use.

3. Contemplated Use

As part of the redevelopment project, the property has been identified for office and light industrial uses. Specific uses for this zoning category are as defined in the Voluntary Cleanup Agreement as: "Contemplated Use: Commercial/Industrial uses excluding day care, child care and medical care uses." Given the Property location, it is anticipated that residential use may occur in the future. If demolition and construction is preformed for residential purposes, capping of soil in the areas listed below will be preformed in accordance with section 4.0 of the SMP.



- Soil within five feet and under two-story structure located on the Northern Parcel.
- Soil within five feet and under the two structures located on the Southern Parcel.
- Soil within 15 feet landward of the bulkhead.

4. Purpose and description of surface cover system

The purpose of the surface cover system is to eliminate the potential for human contact with fill material and eliminate the potential contaminated runoff off the property. The cover system

will consist of one of the following types of clean material:

- Soil: 24 inches of vegetated soil cover, in outdoor vegetated areas.

- Asphalt: a minimum of 6 inches of material (asphalt and subbase material) in areas that will become roads, sidewalks, and parking lots. Actual cross sections will be determined based on the intended use of the area.

- Concrete: a minimum of 6 inches of material (concrete and subbase material) in areas that will become slab-on-grade structures or for roads, sidewalks, and parking lots in lieu of asphalt. For slab-on-grade structures, an 8-mil polyethylene vapor barrier will be placed beneath the concrete (for sites impacted by VOC contamination only). Actual cross sections will be determined based on the intended use of the area.

5. Management of soils/fill and long term maintenance of cover system

The purpose of this section is to provide environmental guidelines for management of subsurface soils/fill and the long-term maintenance of the cover system during any future intrusive work which breaches the cover system.

The SMP includes the following conditions:

- Any breach of the cover system, including for the purposes of construction or utilities work, must be replaced or repaired using an acceptable borrow source free of industrial and/or other potential source of chemical or petroleum contamination. The repaired area must be covered with clean soil and reseeded or covered with impervious product such as concrete or asphalt, as described in Section 4, to prevent erosion in the future.

- Control of surface erosion and run-off the entire property at all times, including during construction activities. This includes proper maintenance of the vegetative cover established on the property.

- Site soil that is excavated and is intended to be removed from the property must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives. (Refer to Section 5.1)

- Soil excavated at the site may be reused as backfill material on-site provided it contains no visual or olfactory evidence of contamination, and it placed beneath a cover system component as described in Section 4.

- Any off-site fill material brought to the site for filling and grading purposes shall be from an acceptable borrow source free of industrial and/or other potential sources of chemical or petroleum contamination. Off-site borrow sources should be subject to collection of one representative composite sample per source. The sample should be analyzed for TCL, VOCs, SVOCs, pesticides, PCBs and TAL metals plus cyanide. The soil will be

equivalent and measurements recorded for each five individual locations. One grab sample will be collected from the individual location exhibiting the greatest signs of contamination, based upon PID response, visual or olefactory, ~~with the highest PID measurement~~. If none of the five individual sample locations exhibit PID readings, one location will be selected at random. The composite sample will be analyzed by a NYSDOH ELAP-certified laboratory for pH (EPZ Method 9045C). Target Compound List (TCL) SVOCs, pesticides and PCBs, and TAL metals and cyanide. The grab sample will be analyzed for TCL VOCs. *

Soil samples will be composited by placing equal portions of fill/soil from each of the five composite sample locations into a pre-cleaned, stainless steel (or Pyrex Glass) mixing bowl. The soil/fill will be thoroughly homogenized using a stainless steel scope or trowel and transferred to pre-cleaned jars provided by the laboratory. Sample jars will then be labeled and a chain-of-custody form will be prepared.

Additional characterization sampling for off-site disposal may be required by the disposal facility. To potentially reduce off-site disposal requirements/costs, the owner or site developer may also choose to characterize exceed the standards for RCRA characteristics, the material will be considered a hazardous waste and must be properly disposed off-site at a permitted disposal facility within 90 days of excavation. If the analytical results indicate that the soil is not a hazardous waste, the material will be properly disposed off-site at a non-hazardous waste facility. Stockpiled soil cannot be transported on or off-site until the analytical results are received.

5.2 Subgrade material

Subgrade material used to backfill excavations or placed to increase site grades or elevations meet the following criteria.

- Excavated on-site soil/fill which appears to be visually impacted shall be sampled and analyzed. If analytical results indicate that the contaminants, if any, are present at concentrations below the Site Specific Action Levels (SSALs) shown in 6NYCRP. Part 375 Subpart 375-6.8(a): Unrestricted Use Soil Cleanup Objectives, the soil/fill can be used as backfill on site.

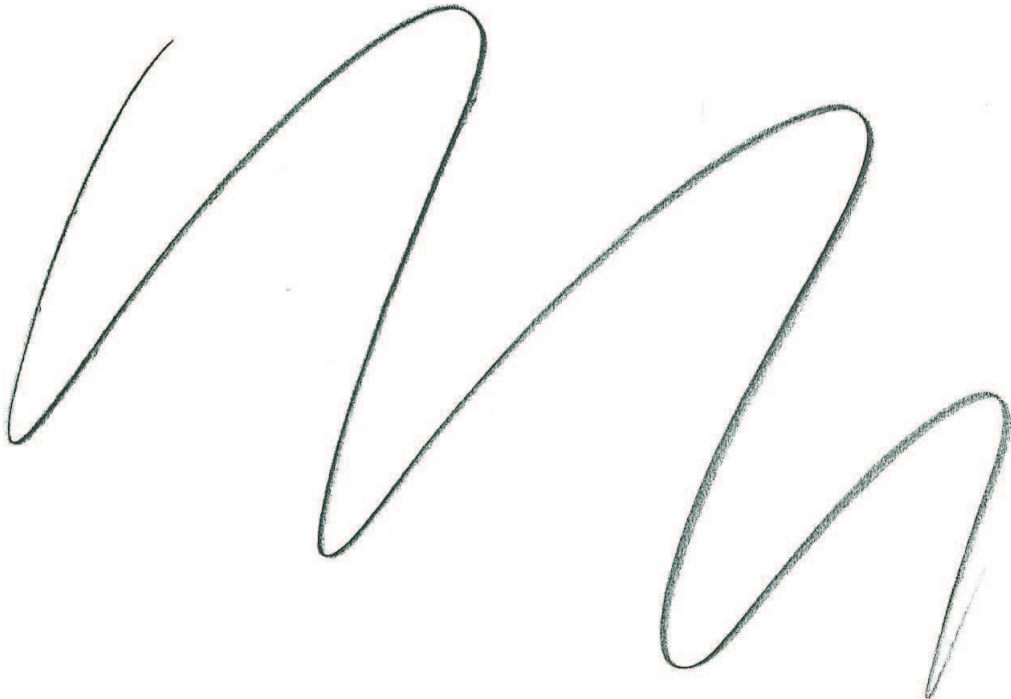
- Any off-site material brought to the site for filling and grading purposes shall be from an acceptable borrow source free of industrial and/or other potential sources of chemical or petroleum contamination.

- Off-site soils intended for use as site backfill cannot otherwise be defined as a solid waste in accordance with 6NYCRR Part 360-1.2(a).

- If the contractor designates a source as "virgin soil," it shall be further documented in writing to be native soil material from areas not having supported my known prior industrial or commercial development of agricultural use.

-Virgin soils should be subject to collection of one representative composite sample per source. The sample should be analyzed for TCL VOCs, SVOCs, pesticides, PCBs, arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and cyanide. The soil will be acceptable for use as back/fill provided that all parameters meet the SSALs.

-Non-virgin soil will be tested via collection of one composite sample per 500 cubic yards of material from each source. If more than 1,000 cubic yards of soil are borrowed from a given off-site non-virgin soil source and both samples of the first 1,000 cubic yards meet SSALs, the sample collection frequency will be reduced to one composite for every 2,500 cubic yards of additional soils from the same source, up to 5,000 cubic yards. For borrow sources greater than 5,000 cubic yards, sampling frequency may be reduced to one sample per 5,000 cubic yards, provided all earlier samples met the SSALs.

A large, stylized handwritten signature in dark ink, consisting of several sweeping, interconnected loops and curves.

Jeffery Trad - filed deed restriction and receipt

From: Lisa Santoro <LisaS@pwgrosser.com>
To: Jeffery Trad <jetrad@gw.dec.state.ny.us>
Date: 1/9/2008 12:35 PM
Subject: filed deed restriction and receipt

Jeff-Attached is the filed document. The document does not match the package I sent this attorney (people!) and when I just flipped through the attachment I noticed hand written edits to make consistent with what I sent her. I don't get it. Let me know if this is a problem. There are handwritten asterisks and other marks. Call if we need to discuss, numbers below. Ugh.

Lisa

Lisa Santoro
Vice President
P.W. Grosser Consulting
630 Johnson Avenue, Suite 7
Bohemia, NY 11716
631.589.6353 Office
516.315.6001 Cell
631.589.8705 Fax
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