COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:

O’Donnell Family Realty Trust

File No.: ACO-SE-16-3P-003

ADMINISTRATIVE CONSENT ORDER

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, Massachusetts 02347.

2. The O’Donnell Family Trust ("Respondent") is a Trust with its principal office located at 54 Grove Street, Kingston, Massachusetts, 02364. The mailing address for the purpose of this Consent Order is O’Donnell Family Realty Trust, c/o Mary O’Donnell, 54 Grove Street, Kingston, Massachusetts, 02364.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c 111, §§ 142A-142O and the associated Air Pollution Control Regulations at 310 CMR 6.00, 310 CMR 7.00, and 310 CMR 8.00; M.G.L. c. 131 §40 and the associated Wetlands Regulations at 310 CMR 10.00; M.G.L. c. 111, §§ 150A and 150A1/2, the Solid Waste Regulations at 310 CMR 19.000, and the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00; M.G.L. c. 21E and the Massachusetts Contingency Plan ("MCP") at 310 CMR 40.0000; and Section 277 of Chapter 165 of the Acts of 2014. MassDEP has authority under M.G.L. c. 21E, §6 to specify reasonable requirements to regulate activities which may cause, contribute to, or exacerbate a release of oil or hazardous materials, to prevent and control and to counter the effects of such releases. MassDEP also has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. The Respondent is the current owner and operator of the property formerly known as O’Donnell Sand and Gravel, Inc., located at 48 Marion Drive, Kingston, Massachusetts 02364 ("Property" or "Site"). The Property consists of 105.488 acres as described below. Reclamation and restoration activities ("Site Reclamation Activities") are being proposed for 60± acres to prepare the Site for an “environmentally sound community village” of mixed used development
("Project"). Approximately 42 acres of the western portion of the Property are occupied by three wind turbines. Sand and gravel excavation operations will continue outside the 60± acres designated for the Project, until the final grades established in the Soil Management Plan (SMP) for the Site Reclamation Activities are achieved. Active sand and gravel operations will cease at that time.

5. The Property consists of eleven parcels located at 48 Marion Drive, Kingston, Massachusetts, recorded at the Plymouth County Registry of Deeds in:

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Deed and Assessor's Parcel information are from the “ALTA-ACSM Land Title Survey” site plan, dated May 23, 2014, submitted with the SMP received by MassDEP on October 4, 2016 (see Paragraph 6.N.). Page numbers in brackets are per Town of Kingston, Board of Assessors records.

6. The following facts and allegations have led MassDEP to issue this Consent Order:

A. The Respondent and MassDEP are entering into this Administrative Consent Order to establish the requirements for the Respondent to reclaim the Site and prepare it for its future development in accordance with the “Interim Policy on the Re-Use of Soil for Large Reclamation Projects” (COMM-15-01 or “Reclamation Soil Policy”). These activies include, but are not limited to, an enforceable schedule and stipulated penalties for noncompliance with the requirements of this Consent Order. MassDEP and the Respondent are not entering into this Consent Order as the result of any existing non-compliance by the Respondent.

B. The Respondent is proposing to conduct sand and gravel-pit Site Reclamation Activities on the Property to support the Project. The Respondent proposes to regrade the Site with imported soils.

C. It has been estimated that approximately two-million cubic yards (cy) of soil are
necessary to achieve the final grades established in the SMP.

D. The placement, dumping, disposing or reuse of soil containing oil and hazardous material ("OHM") into the environment is a release as that term is defined in M.G.L. c. 21E § 2. Depending on the site-specific conditions and the nature of the OHM present in the soil, such releases may have significant adverse human health and environmental effects.

E. MassDEP has authority under Section 277 of Chapter 165 of the Acts of 2014 to establish regulations, guidelines, standards or procedures for determining the suitability of soil used as fill material for the reclamation of quarries, sand pits and gravel pits. The regulations, standards or procedures shall ensure the reuse of soil poses no significant risk of harm to health, safety, public welfare or the environment considering the transport, filling operations and the foreseeable future use of the filled land.

F. MassDEP has authority under M.G.L. c. 21E, §6 to specify reasonable requirements to regulate activities which may cause, contribute to, or exacerbate a release of oil or hazardous materials, to prevent and control and to counter the effects of such releases to the environment.

G. MassDEP has authority under M.G.L. c. 21E, § 9 to order potentially responsible parties ("PRPs") to conduct assessment, containment and removal actions, or to require the production or analysis of samples or records, consistent with the requirements of the MCP and as MassDEP reasonably deems necessary. Issuance of an order pursuant to § 9 does not preclude MassDEP from recovering damages, costs, civil penalties, criminal fines and sanctions, injunctive relief, or any action authorized by M.G.L. c. 21E, § 4.

H. M.G.L. c. 21E, §5 sets out liability for the release or any threat of release of oil or hazardous material. This liability includes the owner or operator of a site from or at which there is a release or threat of release as well as any person who at the time of storage or disposal of any hazardous material owned or operated the site at or on which such hazardous material is stored or disposed of and from which there is a threat of release and any person who contracts to arrange for the transport, disposal, storage or treatment of hazardous material to or in a site from or at which there is a threat of a release.

I. Pursuant to M.G.L. c. 21E, §3, MassDEP promulgated the regulations found at 310 CMR 40.0000, commonly known as the Massachusetts Contingency Plan ("MCP").

J. 310 CMR 40.0032(3), known as the “similar soils” section of the MCP, states:
Soils containing oil or waste oil at concentrations less than an otherwise applicable Reportable Concentration and that are not otherwise a hazardous waste, and soils that contain one or more hazardous materials at concentrations less than an otherwise applicable Reportable Concentration and that are not a hazardous waste, may be transported from a disposal site without notice to or approval from the Department under the provisions of...[the MCP], provided that such soils:

(a) are not disposed or reused at locations where the concentrations of oil or hazardous materials in the soil would be in excess of a release notification threshold applicable at the receiving site, as delineated in 310 CMR 40.0300 and 40.1600; and

(b) are not disposed or reused at locations where existing concentrations of oil and/or hazardous material at the receiving site are significantly lower than the levels of those oil and/or hazardous materials present in the soil being disposed or reused.

K. 310 CMR 40.0006 contains the following applicable definitions:

Contaminated soil means soil containing oil and/or hazardous material at concentrations equal to or greater than a release notification threshold established by 310 CMR 40.0300 and 40.1600.

Hazardous Material means material, including, but not limited to, any material in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. ... The term shall also include, but is not limited to, material regulated as hazardous waste or recyclable material under 310 CMR 30.000.

No Significant Risk means a level of control of each identified substance of concern at a site or in the surrounding environment such that no such substance of concern shall present a significant risk of harm to health, safety, public welfare or the environment during any foreseeable period of time.

Oil means insoluble or partially soluble oils of any kind or origin or in any form, including, without limitation, crude or fuel oils, lube oil or sludge, asphalt, insoluble or partially insoluble derivatives of mineral, animal or vegetable oils and white oil. The term shall not include waste oil, and shall not include those substances which are included in 42 U.S.C. §9601(14).
Reportable Concentration and RC each means the concentration of oil or hazardous material in soil or groundwater which requires notification to the Department under MGL c. 21E, § 7 and/or 310 CMR 40.0360 through 310 CMR 40.0362.

L. On October 2, 2013, MassDEP issued the “Similar Soils Provision Guidance” (WSC#-13-500 or “Similar Soils Policy”) and this policy was revised on September 4, 2014. The Similar Soils Policy addresses the specific requirements of 310 CMR 40.0032(3) and the criteria by which a Licensed Site Professional (“LSP”) may determine that soil may be moved without prior notice to or approval from the Department. The Similar Soils Policy is not applicable to the excavation and movement of soil from locations other than Disposal Sites as defined in M.G.L. c. 21E § 2, nor to the management of soils considered Remediation Wastes as defined in the MCP at 310 CMR 40.0006. Moreover, nothing in the Similar Soils Policy eliminates, supersedes or otherwise modifies any local, state or federal requirements that may also apply to the movement or management of soil, for this Project or other similar projects, including any local, state or federal permit or approvals that must be obtained before placing soil at a receiving location.

M. On August 28, 2015, MassDEP issued the “Interim Policy on the Re-Use of Soil for Large Reclamation Projects” (COMM-15-01 or “Reclamation Soil Policy”) pursuant to Section 277 of Chapter 165 of the Acts of 2014. The Reclamation Soil Policy describes MassDEP’s intent to issue site-specific approvals, in the form of an Administrative Consent Order, to ensure the reuse of large volumes of soil for the reclamation of sand pits, gravel pits and quarries poses no significant risk of harm to health, safety, public welfare or the environment and would not create new releases or threats of releases of oil or hazardous materials.

N. Respondent submitted to MassDEP a SMP for the Site Reclamation Activities, which was finalized on dated October 4, 2016. The SMP was prepared on behalf of Respondent by Richard R. DeBenedictis, P.E., 57 Sanderson Drive, Plymouth, Massachusetts, 02360. The SMP includes the following documents:

- Application letter describing the site, site history, soil conditions, site uses, the reason for submitting a fill reuse plan, and applicability relative to the Interim Policy on the Re-Use of Soil for Large Reclamation Projects (Policy # COMM -15-01), August 28, 2015;
- Locus Map;
- ALTA-ACSM Land Title Survey site plan;
- Groundwater contour map;
- Base Contour and Final Contour maps, April 1, 2016;
- Stormwater Pollution Prevention Plan (SWPPP), with draft inspection log forms;
- Phasing and sequencing plan for the proposed Site Reclamation Activities;
- Copy of the Similar Soils Provision Guidance, WSC#-13-500.

The SMP dated October 4, 2016 is incorporated fully by reference and attached hereto as Attachment A. The SMP establishes the parameters of the Site Reclamation Activities; the criteria for the acceptance of soil at the Property; the protocols for monitoring and recording environmental conditions before, during, and after Site Reclamation Activities at the Property, and the Final Grades for the Site Reclamation Activities.

O. The Project will receive soils from off-site sources to raise the existing grades of the ground surface of the Property to elevations that are similar to those that existed prior to sand and gravel excavation activities, as modified to facilitate redevelopment. The final grades are established in the SMP.

P. The Property consists of eleven parcels of land totaling 105.488 acres. Approximately 60 acres will be used for Site Reclamation Activities. The Property is zoned industrial (IND LD DV, Land Code 4400). The Site Reclamation Activities will only use soils that meet the Acceptance Criteria specified in the SMP.

Q. The Kingston Board of Selectmen (BOS) unanimously approved the Site Reclamation Activities in a letter of support dated October 29, 2015 that was sent to MassDEP. The letter stated that the BOS and other applicable town departments and committees will be involved and provide oversight throughout the duration of the Site Reclamation Activities.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues and Respondent hereby consents to this Order:

7. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enter into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

8. MassDEP’s authority to issue this Consent Order is conferred by the statutes and regulations cited in Part II of this Consent Order.
9. Respondent shall perform the following actions:

A. Upon the effective date of this Consent Order, Respondent shall perform any and all activities related to the Site Reclamation Activities in compliance with M.G.L. c.21E, the MCP, the Similar Soils Policy, the Reclamation Soil Policy, and all other applicable local, state, and federal laws and regulations.

B. No work subject to the jurisdiction of the Wetlands Protection Act shall commence unless and until the Respondent files a Request for a Determination of Applicability or Notice of Intent with the local Conservation Commission and receives a Negative Determination of Applicability or a Final Order of Conditions authorizing said work and all appeal periods have elapsed.

C. Upon the effective date of this Consent Order, Respondent shall perform any and all activities related to the Site Reclamation Activities in compliance with the SMP, as amended from time to time with the written consent of all parties, which is incorporated fully herein by reference.

D. Respondent shall ensure that Site Reclamation Activities do not result in a Condition of Air Pollution with respect to dust, noise, and odors pursuant to 310 CMR 7.01.

E. Respondent shall ensure that Site Reclamation Activities do not result in the alteration of any Areas Subject to Protection under M.G.L. c 131, § 40 unless approved by the Town of Kingston Conservation Commission.

F. Respondent shall implement a groundwater monitoring program outlined in the SMP at the Site to monitor groundwater quality and assess potential changes to environmental conditions at the Site during and after Site Reclamation Activities.

G. Respondent shall accept only soil that has been adequately characterized pursuant to the SMP prior to transport to the Property. Soil shall be subject to a suite of required field screening methods and laboratory analyses to demonstrate that chemical constituents in the soil are within the site-specific Soil Acceptance Criteria identified in the SMP. Chemical characterization shall be completed by collection of soil samples and analysis by a Massachusetts certified laboratory. Averaging of concentrations shall not be allowed. The analytical suite and laboratory methods required for soil acceptance, and frequency of sampling requirements, are specified in the SMP.

H. All soil utilized by the Respondent for the Site Reclamation Activities shall meet the soil acceptance criteria specified in the SMP, as amended from time to time and approved in writing by MassDEP.
I. Respondent shall ensure that soils brought to the Property during the Site Reclamation Activities, with the exception of loads quarantined or rejected in accordance with the quality control measures in the SMP, shall not be removed from the Property either during or at any time after completion of the Site Reclamation Activities.

J. Respondent shall cease accepting soil from a sending site when any load from such site is rejected as a result of field screening; visual or olfactory Quality Assurance/Quality Control ("QA/QC") inspection by Respondent; or the QA/QC testing conducted by the Independent Third Party Inspector, as specified in Paragraph 9.R below, until Respondent receives a written explanation and assurance from the sending site that no additional similar loads will be transported to the Property.

K. Respondent shall ensure that soils quarantined for QA/QC testing by the Third Party Inspector are either accepted and reused, or rejected and removed from the Property within thirty (30) days of deposition for proper management. Loads of soil that are rejected as a result of field screening, or visual or olfactory QA/QC inspection by Respondent, shall be removed from the Property within seven (7) days of deposition. For each rejected load, Respondent shall report the following to MassDEP in the next Construction Status Report, as specified in Paragraph 9.P. below:

i. the reasons the load was rejected;

ii. the name and address of the hauler;

iii. the license plate number of the truck/tractor;

iv. the name and address of the generator; and

v. the corrective actions taken by Respondent.

L. The Site Reclamation Activities being undertaken pursuant to this Consent Order shall be conducted under the supervision of a Licensed Site Professional ("LSP") or Qualified Environmental Professional ("QEP") to provide oversight of the work described in the SMP and to (i) review soil packages as that term is used in the SMP, and (ii) conduct monthly inspections, sampling, and analysis pursuant to the SMP. LSP means a hazardous waste site cleanup professional, as defined in M. G. L. 21A, § 19, holding a valid license issued by the Board of Registration of Hazardous Waste Site Cleanup Professionals pursuant to M. G. L. 21A, §§ 19 through 19I. QEP means an individual who: is knowledgeable about the procedures and methods for characterizing wastes and contaminated media; is
familiar with Massachusetts and Federal regulations applicable to the management of such materials; performs or oversees the management of Contaminated Soil as an integral part of his or her professional duties; and is professionally licensed or certified in a discipline related to environmental assessment (i.e., engineering, geology, soil science or environmental science) by a state or recognized professional organization. The QEP/LSP shall, at a minimum:

i. Observe the work for compliance with the SMP and provide recommendations for corrective actions to Respondent;

ii. Review all Soil Profile Packages, as that term is used in the SMP, and provide written recommendations for acceptance or denial to Respondent;

iii. Conduct the on-site quality control procedures pursuant to the SMP; and

iv. Perform the periodic collection and analysis of groundwater samples pursuant to the SMP. Any contractual relationship between Respondent and the LSP/QEP overseeing the Site Reclamation Activities work required hereunder shall require the LSP/QEP overseeing the Site Reclamation Activities, as a condition of the contract, to implement work consistent with the provisions of this Consent Order.

M. Respondent shall comply with the following restrictions:

i. Soil approved for use at the Property shall contain no more than 5% non-coated, non-painted, non-impregnated brick and concrete less than three-inches in the largest dimension, or cobbles less than six-inches in diameter.

ii. Soil approved for use at the Property may not contain solid waste such as wood, metal, wire, plastic, ceramic, ash, tires, pipe, potential asbestos containing materials, or other debris.

iii. The acceptance of Remediation Waste, as defined at 310 CMR 40.0006, is prohibited.

N. Respondent shall have an authorized representative on-site on a full time basis to observe off-loading of trucks and perform visual inspections of the soil to ensure compliance with visual, olfactory, and screening criteria as presented in the SMP.

O. Respondent shall obtain all local, state, and federal permits or approvals that may be required for the Project.
P. Respondent shall submit to MassDEP and the Town of Kingston Board of Selectmen the initial Construction Status Report within thirty (30) days of the issuance of this Consent Order but not later than seven (7) days before the date Respondent starts the receipt of imported soils at the Property. The initial Construction Status Report shall include, without limitation:

i. The projected schedule for the Site Reclamation Activities, including, but not limited to:
   a) Commencement of construction
   b) Major construction milestones
   c) Completion of construction

ii. The name and contact information for an on-call Site contact; and

iii. The results of the pre-construction groundwater monitoring, including boring and well construction logs for all of the monitoring wells, well elevations, groundwater gauging measurements, tabulated analytical results and laboratory analysis reports with chain of custody forms.

Q. After submittal of the initial Construction Status Report, the Respondent shall submit quarterly Construction Status Reports to MassDEP and the Kingston Board of Selectmen by the 15th of the following month. Each Construction Status Report shall include the following items:

i. A summary of the Site Reclamation Activities conducted at the Property during the prior 3-month reporting period, including a tabulated list of source locations, tons of material from each source location since the last report, cumulative tons of material from each source;

ii. Identification of the major activities anticipated to be performed during the next thirty (30) days;

iii. Identify any changes to the design of the Site Reclamation Activities, the schedule, and the Site contact information;

iv. Actions Respondent have taken or a schedule for actions Respondent intends to take in response to recommendations for corrective actions made by the Independent Third Party Inspector, if any;

v. Actions taken in response to the QA/QC results reported by the Independent Third Party Inspector, if any;
vi. A summary of the loads rejected as a result of visual or olfactory QA/QC inspection by Respondent, or the QA/QC testing conducted by the Independent Third Party Inspector, including but not limited to: the reasons the load was rejected, the name and address of the hauler, the license plate number of the truck/tractor, the name and address of the generator, and the corrective actions taken by Respondent; and

vii. The analytical results of the groundwater sample(s) collected during the inspections in a tabular format with the laboratory analytical reports and chain-of-custody documents as attachments, provided that analytical results for a given inspection may be submitted to MassDEP separately no later than forty-five (45) days after the date of such inspection, if not available for submittal with the inspection report.

viii. The Construction Status Report shall be signed by the LSP/QEP overseeing the Site Reclamation Activities and shall include the following certification signed by Respondent:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information.

R. Independent Third Party Inspections: Respondent shall engage the services of a qualified, independent individual (the “Independent Third Party Inspector”) to perform monthly inspections of the Property for compliance with the requirements of this Consent Order including, but not limited to, the SMP, Stormwater Pollution Prevention Plan (SWPPP), the Phasing and Sequencing of Construction Plan, and the Grading Plan. The Independent Third Party Inspector must hold certification as a Massachusetts Registered Professional Engineer or as an LSP. The Independent Third Party Inspector may be the same individual as the LSP/QEP overseeing the Site Reclamation Activities. Respondent shall be responsible for the timely performance of the activities required of the Independent Third Party Inspector in this Consent Order.

i. The Independent Third Party inspections shall be unannounced and randomly timed during normal operating hours.
During each inspection, the Independent Third Party Inspector shall, at a minimum:

a) Observe the practices involved in the receipt and/or placement of soil at the Property, to the extent that such activities are occurring;

b) Inspect the soil that is being unloaded and/or placed during the inspection, if any, and inspect all areas of the Property where soil has been placed since the previous inspection;

c) Collect grab soil samples from a minimum of one load of soil being delivered to the Property (if any arrive during the inspection) and submit the collected samples to a Massachusetts certified laboratory for the soil profile analyses specified in the SMP for QA/QC purposes. Respondent shall stockpile this load in a designated quarantine area pending the results of the analyses and provide the Independent Third Party Inspector with a copy of the Material Shipping Record for the load. If no loads arrive during the inspection, the sampling may be omitted for that month, or postponed to another date that month. A minimum of two samples shall be collected per calendar quarter during the operation of the Site Reclamation Activities;

d) Collect a minimum of six spot elevation measurements within the filled areas of the Property with respect to established benchmarks; and,

e) Inspect all erosion control measures including but not limited to, silt fences, hay bales, temporary basins, and swales.

The Independent Third Party shall have the authority to immediately stop work on the Site Reclamation Activities and Notify MassDEP and the local conservation commission upon observing any violation of the Wetlands Protection Act.

The Independent Third Party Inspector shall prepare an inspection report documenting the findings for each inspection and shall submit such report to Respondent and MassDEP on or before the 15th of each month. Each inspection report shall include, but not be limited to:
a) Observations of practices that are not compliant with the SMP and/or Consent Order;

b) Observations of solid and hazardous waste, stained soils, odors, and sheens;

c) A tabular summary of the quantities of soil, received and placed at the property, and the number of truck loads and quantity of soil rejected at the Site since the last inspection;

d) The results of the QA/QC testing of the soil samples collected during the inspection, including, but not limited to the following, provided that the QA/QC results for a given inspection may be submitted in the next monthly report if not available for submittal with the inspection report:

1. A copy of the Material Shipping Record for the load of soil that was sampled during the inspection, if any;

2. The analytical results in a tabular format comparing the results to the applicable RCS-1 Reportable Concentrations and Acceptance Criteria identified in the SMP;

3. A clear statement regarding whether any of the analytical results equal or exceed any applicable Reportable Concentration or Acceptance Criteria; and

4. The laboratory analytical reports and chain of custody documents;

e) Observations of airborne dust and dust control measures employed;

f) A plan showing spot elevation measurements and locations using the Grading Plan as a base plan, and a statement regarding whether the measured elevations comply with the final grades established in the SMP. The spot elevations should be established after every 100,000 cubic yards (CY) are placed at the property or every six (6) months, whichever occurs first. Upon achieving an elevation that is within ten (10) feet of the final grades, this frequency shall be changed to every 50,000 cy or every three (3) months;

g) Specific recommendations for repairs, replacement, or changes to erosion control measures at the Property;
h) Status updates of the actions taken by Respondent to implement the recommendations made in prior inspection reports, if any;

i) Actions the Respondent has taken or intends to take to correct such deviations with a schedule for completing such actions; and

j) A tabular summary of quantities of soil, received and placed at the property and the number of truck loads and quantity of materials rejected at the Site since the last inspection.

v. The Inspection Report shall be signed by the LSP/QEP overseeing the Site Reclamation Activities and shall include the following certification signed by Respondent:

*I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information.*

S. Respondent shall not exceed the maximum final grades established in the SMP.

T. The final stabilization of the top of the fill and all slopes shall be stabilized as described in the SMP.

U. Respondent shall notify MassDEP in writing if Respondent intends to terminate the Site Reclamation Activities before achieving the maximum finished grades as shown in the SMP. Respondent’s failure to perform SMP-related filling activities for any contiguous six-month period shall be deemed by MassDEP to be Respondent’s termination of the Site Reclamation Activities.

V. Respondent shall perform the following closure activities upon achieving the final grades established in the SMP, or upon Respondent’s termination of the Site Reclamation Activities before achieving the proposed final grades established in the SMP:

   i. Within 60 days of achieving the final grades established in the SMP or terminating the Site Reclamation Activities, Respondent shall address all outstanding recommendations made by the Project LSP/QEP and/or Independent Third Party Inspector;
ii. Within 90 days of achieving the final grades established in the SMP or terminating the Site Reclamation Activities, Respondent shall stabilize all slopes by applying suitable materials and establishing a vegetative cover;

iii. Within one hundred and eighty (180) days of achieving the final grades established in the SMP or terminating the Site Reclamation Activities, Respondent shall submit to MassDEP an As-Built Plan prepared and stamped by a Massachusetts Registered Land Surveyor or Professional Engineer. The As-Built Plan shall show the final elevations at the Property and any permanent stormwater management features; and

iv. Respondent shall continue monitoring the groundwater in accordance with the SMP.

Respondent shall maintain records of all soil accepted at the Property, including but not limited to generator applications, analytical profiles for soils, recommendations from the LSP/QEP overseeing Site Reclamation Activities and Acceptance/Approval documents for a minimum of seven (7) years after the completion of the Site Reclamation Activities. Any and all records, including records in electronic and paper form, shall be made available to MassDEP for inspection and reproduction upon request or within seven (7) calendar days of Respondent’s receipt of such a request by MassDEP.

10. MassDEP reserves the right to require Respondent to take any and all actions necessary to ensure that the activities conducted at the Property do not cause any nuisance conditions including, but not limited to, dust, noise, odor, or wetlands impacts.

11. MassDEP reserves the right to require Respondent to take any and all corrective actions recommended by the LSP/QEP overseeing the Site Reclamation Activities and/or the Independent Third Party Inspector within a reasonable time. Respondent’s failure to complete such corrective actions shall be considered a violation of this Consent Order.

12. For the purposes of this Consent Order, the Site Reclamation Activities may commence upon the execution of this Consent Order by MassDEP. Soil placed, dumped, disposed, or reused at the Property prior to execution of this Consent Order are not included in the Site Reclamation Activities.

13. Unless submitted via eDEP or except as otherwise provided herein, all notices, submittals, and other communications required by this Consent Order shall be directed to:

Millie Garcia-Serrano, Regional Director
MassDEP Southeast Regional Office
20 Riverside Drive
Lakeville, Massachusetts 02347

Such notices, submittals, and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

14. Force Majeure

A. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondent and Respondent’s employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondent or Respondent’s employees, agents, consultants, and contractors.

B. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.

C. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondent shall immediately, but in no event later than five (5) days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondent intends to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent’s right to request an extension based on the event.

D. If MassDEP determines that Respondent’s failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondent otherwise complies with the notice provisions set forth in Paragraph C above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondent’s failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent’s failure
to perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.

E. A delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

15. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

16. Respondent understands, and hereby waives, their right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

17. This Consent Order may be modified only by written agreement of the parties hereto.

18. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

19. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

20. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to: (a) enforce this Consent Order in an administrative or judicial proceeding; (b) recover costs incurred by MassDEP in connection with response actions conducted at the Property; and (c) recover damages for injury to and for destruction or loss of natural resources pursuant to M.G.L. c. 21E, § 5 or 42 U.S.C. 9601, et seq.

Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting MassDEP’s authority to: (a) perform response actions at the Site or (b) require Respondent to conduct response actions at the Site or take other actions beyond those required by this Consent Order in order to comply with all applicable laws and regulations.
including, without limitation, M.G.L. c. 21E and the MCP.

21. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

22. This Consent Order shall be binding upon Respondent and upon Respondent’s heirs, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent’s trustees, beneficiaries, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

23. Respondent shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if Respondent violates any provision of this Consent Order:

For each day, or portion thereof, of each violation, shall pay stipulated civil administrative penalties in the following amounts:

<table>
<thead>
<tr>
<th>Period of Violation</th>
<th>Penalty per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st through 15th days</td>
<td>$250.00 per day</td>
</tr>
<tr>
<td>16th through 30th days</td>
<td>$500.00 per day;</td>
</tr>
<tr>
<td>31st day and thereafter</td>
<td>$1,000.00 per day.</td>
</tr>
</tbody>
</table>

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent’s obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent’s failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights they may have to contest MassDEP’s determination that Respondent has failed to comply with the Consent Order and/or to contest the accuracy of MassDEP’s calculation of the amount of the stipulated civil administrative penalty. Upon
exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

24. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

25. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives, and contractors, access at all reasonable times to the Property for purposes of conducting any activity related to the oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

26. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

27. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

28. This Consent Order shall become effective on the date that it is executed by MassDEP.

**Consented To:**

**O’DONNELL FAMILY REALTY TRUST**

By: 

Mary O’Donnell
Trustee
O’Donnell Family Trust
54 Grove Street
Kingston, Massachusetts, 02364

Federal Employer Identification No.: 46-6658915

Date: October 7, 2016
In the Matter of: O'Donnell Family Realty Trust
ACO-SE-16-3P-003
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Issued By:
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Millie Garcia-Serrano
   Regional Director
   Department of Environmental Protection
   20 Riverside Drive
   Lakeville, Massachusetts 02347

Date: OCT 7, 2016