

Brownfields Project #: 05007-01-45
Brownfields Property: Carolina Log, 25 Howard Gap Road
Property Owner (In whole or part): Town of Fletcher



LAND USE RESTRICTIONS ("LUR") UPDATE

LUR 1: No use may be made of the Brownfields Property other than for Town of Fletcher offices, commercial office space, retail businesses, green space with walking trails, and residential townhomes and condominiums, except that areas within 300 feet of the dip tank depicted on Exhibit B of the Notice of Brownfields Property ("Notice") may not be used other than for commercial or retail structures or for parking lots and roadways, and not less than two (2) feet of clean fill may underlie landscaping and shrubbery within those areas. Disturbance by Prospective Developer of soil, landscaping and contours at the Brownfields Property shall not be deemed to violate subparagraph 8. of Exhibit A recorded with the Notice prior to issuance of a Certificate of Occupancy for the first building Prospective Developer constructs at the Brownfields Property. Prospective Developer shall submit a copy of said certificate to the Department of Environment and Natural Resources ("DENR") within three (3) days of its issuance. The following definitions apply to these land use restrictions:

- a. **Commercial Use:** An occupation, employment or enterprise carried on for profit by the owner, lessee, or licensee.
- b. **Office Space:** Structure or area where business or professional services are conducted or rendered.
- c. **Green Space:** An area of grass, shrubs or trees.

In compliance Out of compliance

Remarks: _____

LUR 2: Soil from the area within 300 feet of the dip tank depicted on Exhibit B of the Notice may not be removed from that area, unless it is characterized and disposed of at a regulated facility in accordance with applicable law.

In compliance Out of compliance

Remarks: _____

LUR 3: Soil underlying paved surfaces and buildings within 300 feet of the dip tank depicted on Exhibit B of the Notice may not be exposed without prior sampling and analysis of such soil to the satisfaction of DENR, and submittal of the analytical results to DENR. If such results disclose contamination in excess of the standards that DENR determines are applicable, the soil may not be exposed without the approval of DENR on such conditions as DENR imposes, including at a minimum compliance with plans and procedures, approved pursuant to applicable law, to protect public health and the environment during the activities that would expose such soil.

In compliance Out of compliance

Remarks: _____

LUR 4: As to each well covered by the long-term groundwater monitoring plan required by paragraph 15 of Exhibit A of the Notice, the owner of the portion of the Brownfields Property containing that well shall comply with the plan's provisions regarding that well until sampling reflects PCP concentrations below 300 parts per billion PCP for two consecutive years.

In compliance Out of compliance

Remarks: _____

LUR 5: No monitoring wells on the Brownfields Property may be decommissioned without the prior written approval of the relevant DENR program.

In compliance Out of compliance

Remarks: _____

LUR 6: Surface water and underground water at the Brownfields Property may not be used for any purpose without the approval of DENR.

In compliance Out of compliance

Remarks: _____

LUR 7: No activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) may occur on the Brownfields Property without prior sampling and analysis of groundwater to the satisfaction of DENR in any areas proposed for such activities, and submittal of the analytical results to DENR. If such results disclose to DENR contamination in excess of North Carolina's groundwater quality standards, the proposed activities may not occur without the approval of DENR on such conditions as imposes, including at a minimum requisite legal approval of plans and procedures to protect public health and the environment during the proposed activities.

In compliance Out of compliance

Remarks: _____

LUR 8: Soil, landscaping and contours at the Brownfields Property may not be disturbed without the approval of DENR, except for mowing and pruning of above-ground vegetation.

In compliance Out of compliance

Remarks: _____

LUR 9: No mining may be conducted on or under the Brownfields Property, including, without limitation, extraction of coal, oil, gas or any other minerals or non-mineral substances.

In compliance Out of compliance

Remarks: _____

LUR 10: No basements may be constructed on the Brownfields Property unless they are, as determined by DENR, vented in conformance with applicable building codes.

In compliance Out of compliance

Remarks: _____

LUR 11: None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in paragraph 9 of Exhibit A of the Notice, may be used or stored at the Brownfields Property without the prior approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

In compliance Out of compliance

Remarks: _____

LUR 12: The Brownfields Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the approval of DENR.

In compliance Out of compliance

Remarks: _____

LUR 13: The Brownfields Property may not be used for agriculture, grazing, timbering or timber production.

In compliance Out of compliance

Remarks: _____

LUR 14: The Brownfields Property may not be used as a playground, or for child care centers or schools.

In compliance Out of compliance

Remarks: _____

LUR 15: The Brownfields Property may not be used for kennels, private animal pens or horse-riding.

In compliance Out of compliance

Remarks: _____

LUR 16: During January of each year after this Agreement becomes effective, the then current owner of any part of the Brownfields Property shall submit a notarized Land Use Restrictions Update to DENR certifying that the Notice of Brownfields Property containing these land use restrictions remains recorded at the Henderson County Register of Deeds office, and that the land use restrictions are being complied with.

In compliance Out of compliance

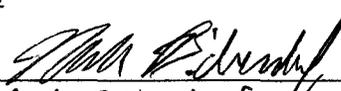
Remarks: _____

Notarized signing and submittal of this Land Use Restrictions Update constitutes certification that the Notice remains recorded at the Henderson County Register of Deeds office and that the Land Use Restrictions are being complied with.

This Land Use Restrictions Update is certified by Town of Fletcher,
owner of at least part of the Brownfields Property.

Name typed or printed of party making certification: Mark Biberdorf, Town Mgr

In the case of owners that are entities:

Signature of individual signing: 
Name typed or printed: Mark Biberdorf
Title: Town Manager

In the case of all owners:

Date: 8/19/2013

[Insert notary block from among the following that is pertinent to type of party submitting LURU: corporation, LLC, partnership or individual.]

[use for corporations]

[Insert Name of Corporation]



By: Town of Fletcher
Name typed or printed:
Title typed or printed:

Christine Thompson
Name typed or printed:
Secretary, Town of Fletcher (corporation name)

NORTH CAROLINA
_____ COUNTY

I, Janet G. Merrill, a Notary Public of the county and state aforesaid, certify that Christine Thompson personally came before me this day and acknowledged that he/she is the Secretary of Fletcher (corporation name), a Municipal (state) corporation, and that by authority duly given and as the act of the corporation, the foregoing Land Use Restriction Update was signed in its name by its Town Manager and attested by him/her as its Secretary.

WITNESS my hand and official stamp or seal, this 20th day of August, 2013.

Janet G. Merrill
Name:
Notary Public

My Commission expires: March 12, 2016

