

January 10, 2013

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First Class Mail

Mr. David Peacock
Brownfields Program
NC Division of Waste Management
Mail Service Center 1646
Raleigh, NC 28699-1646



Re: 2012 Land Use Restrictions Updates
Davidson River Village, LLC
Tract G (NCBP #14047-10-88) and Ecusta (NCBP #07016-03-88)

Dear Mr. Peacock:

We represent Davidson River Village, LLC, owner of the referenced Brownfields Properties. I've enclosed original Land Use Restrictions Updates (LURUs) for 2012 on behalf of Davidson River Village, LLC. Copies of the LURUs have also been provided to the chief public health and environmental officials of Transylvania County as required by the Notices of Brownfields Property.

Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Walker".

Christopher S. Walker

Enclosures

cc: Mr. James Boyer (via e-mail)
Mr. Steve Smith (via e-mail)
Ms. Tracy L. Wahl (via e-mail)

Brownfields Project #: 07016-03-88
Brownfields Property: Ecusta, 1 Ecusta Drive
Property Owner (In whole or part): Davidson River Village, LLC



NOTE to Brownfields Program: As to the Tract G Brownfields Property (NC DP # 14047-10-88), these land use restrictions are superseded by those in the Notice of Brownfields Property for Tract G recorded in Book 584, Page 793 at the Transylvania County Register of Deeds office on September 2, 2011.

LAND USE RESTRICTIONS (“LUR”) UPDATE

LUR 1: No uses other than the following may be made of the Brownfields Property, unless the Department of Environment and Natural Resources (“DENR”) or its successor in function provides prior approval:

- a. manufacturing consisting of pulp and paper production;
- b. a mixed industrial/commercial/retail business park for use by other businesses;
- c. supplying potable water and wastewater treatment capacity to local municipalities; and
- d. the commercial sale of electrical power.

In compliance X Out of compliance _____

Remarks: Pursuant to a Memorandum of Understanding with U.S. EPA and N.C. DENR (MOU), an Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser with U.S. EPA (BFPP Agreement), and an Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR’s Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 2: Without the approval of DENR or its successor in function, groundwater at the Brownfields Property may not be used for any purpose other than operating the Brownfields Property’s environmental compliance systems; provided, however, that Prospective Developer may use the groundwater production well located at the north end of the Brownfields Property, as denoted on Exhibit B and on the survey plat component to the Notice of Brownfields Property (“Notice”), in accordance with applicable law.

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 3: Surface water from the east or south ditches as depicted on Exhibit B and on the survey plat component to the Notice may not be used for any purpose, other than operating the Brownfields Property's environmental compliance systems, without the approval of DENR or its successor in function.

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 4: Except as provided in LUR 2 above, 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 or its successor in function in any areas proposed for such activities, and submittal of the analytical results to DENR or its successor in function. If such results disclose to DENR or its successor in function contamination in excess of North Carolina's groundwater quality standards, the proposed activities may not occur without the approval of DENR or its successor in function on such conditions as DENR or its successor in function imposes, including at a minimum legal approval of plans and procedures to protect public health and the environment during the proposed activities.

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 5: Soil underlying paved surfaces and buildings at the Brownfields Property may not be exposed without prior sampling and analysis of such soil to the satisfaction of DENR or its successor in function, and submittal of the analytical results to DENR or its successor in function. If such results disclose contamination in excess of the applicable standards as determined by DENR or its successor in function, the soil may not be exposed without the approval of DENR or its successor in function on such conditions as DENR or its successor in function imposes, including at a minimum legally approved plans and procedures to protect public health and the environment during the activities that would expose such soil.

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 6: 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 X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 7: No new basements may be constructed on the Brownfields Property unless they are, as determined by DENR or its successor in function, vented in conformance with applicable building codes, or without prior DENR approval.

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this

Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 8: 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 to the Notice, may be used or stored at the Brownfields Property without the prior approval of DENR or its successor in function, except in *de minimis* amounts for cleaning and other routine housekeeping activities; and in amounts suitable for use in laboratory or pilot plant research and development, and quality assurance and control. Prospective Developer may use and store at the Brownfields Property bulk quantities of high pH materials used in or generated by the production of pulp and paper, including sodium hydroxide (caustic), potassium hydroxide, and sodium sulphhydrate, so long as such storage either is secondarily contained, or is not in the area identified in the Hydrological Assessment of Caustic Chemical Spill at Ecusta Mill by Sevee Maher Engineers, Inc. dated May 2003 ("Caustic Report") as having been impacted by elevated pH and sampling in such area confirms the absence of pH in the groundwater above 8.5 standard units.

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 9: Within 30 days after the effective date of Exhibit A to the Notice and quarterly thereafter, the air in the bleach make up and oil storage rooms of the Brownfields Property's "Electrochem building," and in any other room at the Brownfields Property that DENR or its successor in function or any federal agency determines contains mercury vapor in excess of 10 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), shall be sampled for mercury vapor in a manner approved in advance by DENR or its successor in function. Such quarterly sampling shall continue for so long as quarterly sampling determines the air in such rooms contains mercury vapor in excess of 10 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). Within 30 days after sampling, written results shall be provided to DENR or its successor in function.

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch.

Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 10: If sampling determines that mercury vapor is present in excess of 25 $\mu\text{g}/\text{m}^3$, access to the bleach make up room and the oil storage room of the Brownfields Property's "Electrochem building," and to any other room at the Brownfields Property that DENR or another state or federal agency determines contains mercury vapor in excess of 25 $\mu\text{g}/\text{m}^3$, shall be limited to occasions when DENR or its successor in function determines in writing in advance that entry is essential for maintenance. The floors of all rooms covered by this restriction may not be breached unless DENR has first approved a plan that adequately provides for worker health and safety with respect to mercury vapors.

In compliance X Out of compliance

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 11: No person may be permitted to come in contact with sediments from the east or south ditches at the Brownfields Property, nor may any such sediments be removed, without prior sampling of the sediments for mercury to the satisfaction of DENR and, if mercury levels exceed 4.6 mg/kg, preparation of a plan satisfactory to DENR that provides for worker health and safety. In addition, ditches, and other drainage features containing sediments from the east or south ditches, shall be prominently posted with well-maintained weatherproof signs, positioned at intervals not to exceed one hundred (100) feet, that state "KEEP OUT OF THE DITCH – SEDIMENTS IN THE DITCH HAVE BEEN SHOWN TO CONTAIN MERCURY WHICH, IF CONTACTED, MAY BE HAZARDOUS TO YOUR HEALTH" in block letters at least three (3) inches tall, and access to the east and south ditches shall be limited to periodic mowing during which mowing personnel shall wear safety goggles and dust masks, or other personal protective equipment DENR approves in advance.

In compliance X Out of compliance

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this

Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

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

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 13: The Brownfields Property may not be used for agriculture or grazing; provided, however, that a community garden may be cultivated on the east bank of the portion of the Davidson River that flows through the Brownfields Property, and timbering is permitted on the southern and western edges of the Brownfields Property denominated "Timbering Permitted" on Exhibit B and on the survey plat component to the Notice.

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

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

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 15: The parking lot in the vicinity of the former suspected C&D landfill, as denoted on Exhibit B and on survey plat component to the Notice of Brownfields Property, shall be inspected, repaired to DENR's satisfaction, and maintained such that it continues to function as a protective cap. Adequate maintenance shall include, without limitation, prevention of "alligating" (interconnected cracking) sufficient to loosen portions of the parking lot larger than one inch in diameter.

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 16: During January of each year after Exhibit A to the Notice becomes effective, the then current owner of any part of the Brownfields Property shall submit a notarized LURU to DENR or its successor in function certifying that the Notice containing these land use restrictions remains recorded at the Transylvania County Register of Deeds office, that these land use restrictions are being complied with, and that the results of any post-closure sampling required by DENR's Solid Waste Section at the Process Island Landfill (which is located on the island adjacent to the Property in the Davidson River) have been provided to DENR's Public Water Supply Section.

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

LUR 17: The owner of the portion of the Brownfields Property containing the caustic recovery sump shall conduct screening every other week of the pH of the groundwater in said sump and shall, along with the LURU required by the preceding LURU 16, submit a letter report summarizing the procedures and results of such screening.

In compliance X Out of compliance _____

Remarks: Pursuant to the MOU, BFPP Agreement, and Administrative Agreement for State-Directed Assessment and Remedial Action with N.C. DENR, the Brownfields Property has been remediated under Time Critical and Non-Time Critical Removal Actions overseen by U.S. EPA and N.C. DENR's Inactive Hazardous Sites Branch. Multiple replacement Brownfields agreements are currently being negotiated for this Brownfields Property and other portions of the Ecusta Mill not subject to this Brownfields Agreement.

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

This Land Use Restrictions Update is certified by Davidson River Village, LLC, owner of at least part of the Brownfields Property.

Name typed or printed of party making certification: Davidson River Village, LLC

In the case of all owners:

Date: January 7, 2013

DAVIDSON RIVER VILLAGE, LLC
By: Brownfield Development I LLC, its sole member

By: [Signature]
Name typed or printed: Darin Bright
Authorized Person

STATE OF NEW JERSEY
MORRIS COUNTY

I, Maria A. DaSilva, a Notary Public of the county and state aforesaid, certify that Darin Bright personally came before me this day and acknowledged that he is an Authorized Person of Brownfield Development I LLC, the sole member of Davidson River Village, LLC, a Delaware limited liability company, and that by authority duly given and as the act of the company, the foregoing Land Use Restrictions Update was signed in its name by him.

WITNESS my hand and official stamp or seal, this 7 day of January, 2013.

[Signature]
Name typed or printed: Maria A. DaSilva
Notary Public

My Commission expires: _____

[Stamp/Seal]

MARIA A DASILVA
NOTARY PUBLIC OF NEW JERSEY
COMMISSION EXPIRES MAR. 22, 2013