

## Nikki Reid

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**From:** Jannice Ashley  
**Sent:** Wednesday, June 24, 2015 11:37 AM  
**To:** 'Peacock, David'; Wahl, Tracy  
**Cc:** Nikki Reid  
**Subject:** Brownfield LUR Updates-City of Asheville  
**Attachments:** Completed 2014 LUR-Ice Plant-90 Riverside Dr. unsigned copy 6-24-15.pdf; Completed 2014 LURU-14 Riverside Drive-unsigned copy 6-24-15.pdf

David and Tracy;

Attached please find unsigned copies of the completed 2014 LUR's for the Ice Plant-90 Riverside Dr. and the Wilma Dykeman Riverway-14 Riverside Dr. I am forwarding these for our City Manager's signature today but he is out of the office until the beginning of next week and we had promised that we would get these to you this week.

Will email and send originals as soon as we have them signed.

If you have any questions, feel free to get in touch with me or Nikki.

Thanks, Jannice

Jannice Ashley, AICP  
City of Asheville  
Assistant City Attorney  
828-259-5612 Office  
828-989-9625 Mobile

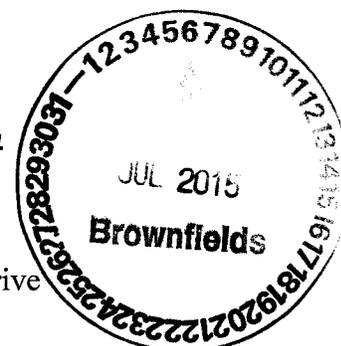


**NC BROWNFIELDS**  
**LAND USE RESTRICTIONS ("LUR") UPDATE**

Year Certification Made: 2014

Name: Asheville Ice Plant  
Project #: 09033-05-11

Address: 90 Riverside Drive  
County: Buncombe



Property Owner (In part or whole): City of Asheville

Read the following LURs and mark each restriction accordingly. Additional remarks may be added for compliance status clarification. Attach any required or supplemental documentation, sign, notarize and submit to the following address:

NC Division of Waste Management  
Brownfields Program  
1646 Mail Service Center  
Raleigh, NC 27699-1646

LUR 1: No use may be made of the Brownfields Property other than for retail, hospitality and office purposes, residential, park, playground, child care center and school purposes as limited by Land Use Restriction 10 below, all with associated driveways and parking, and, with prior written Department of Environment and Natural Resources ("DENR") approval, other purposes. For purposes of this restriction, the following definitions apply:

- a. "Retail" refers to the sale of goods directly to the consumer, but includes dance and art studios.
- b. "Hospitality" refers to provision of overnight lodging for paying customers, with associated reservation and cleaning services, utilities and on-site management and reception, in a building containing more than four individual rooms.
- c. "Office" refers to the rendering of business or professional services.
- d. "Residential" refers to use for a permanent dwelling of single family, multifamily, detached or attached structures; manufactured homes; mobile homes; group homes; boarding houses or dormitories.
- e. "Park" refers to outdoor areas, including those maintained in a natural state (which may serve as wildlife refuges) and those improved for active or passive recreation, that are useable by the public.
- f. "Parking" refers to areas designed and used for temporary accommodation of motor vehicles.

In compliance       Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 2: No use may be made of any structure depicted on the plat component of the Notice of Brownfields Property (“Notice”) unless and until a North Carolina-licensed professional engineer, with a specialty in structural engineering, issues a sealed certification that the structure in question is safe to use.

In compliance                       Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 3: Unless compliance with this LUR is waived in writing by DENR in advance, no use of the Brownfields Property may occur prior to decommissioning of the Brownfields Property’s refrigeration system and disposal of any residual ammonia, in accordance with applicable regulations that include without limitation those administered by the Hazardous Waste Section of DENR’s Division of Waste Management.

In compliance                       Out of compliance

Remarks: In January 2013, the City of Asheville demolished the building in accordance with local laws and regulations, including the decommissioning of the refrigeration systems and disposal of residual ammonia. No improvements have been made to the property since the demolition.

LUR 4: Soil within the areas denominated “Area of Possible Soil Contamination,” on the plat component of the Notice, may not be disturbed unless and until DENR approves in writing an excavation, grading, construction, and health and safety plan for the proposed disturbance that includes a schedule and requires:

- a. characterizing, removing (then sampling each excavation’s side walls and bottom to confirm that no soil contaminated in excess of the most recent version of the Protection of Groundwater Soil Remediation Goals of the Inactive Hazardous Sites Branch of DENR’s Superfund Section remains), handling and disposing of, in accordance with applicable law, soil containing any of the contaminants listed in Table A of the Brownfields Agreement (“Agreement”) in

excess of the standards derived using the most recent version of the subject Soil Remediation Goals; or

- b. capping the area with sufficient impervious material, defined for this purpose as asphalt, concrete, stone, brick, terrazzo, roofing, ceramic tile or other material approved in writing in advance by DENR, to prevent the absorption of surface water into the soil; or
- c. remediation of the area's contamination by means approved in writing in advance by DENR; and
- d. a written report regarding implementation of the measures required by the preceding subparagraphs a., b. or c. no later than 30 days following conclusion of implementation, and correction of any deficiencies DENR identifies in the report or implementation of the plan within 30 days after DENR provides written notice of such deficiencies.

In compliance                       Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 5: Soil not subject to the preceding LUR that underlies paved surfaces, other impervious surfaces and structures at the Brownfields Property, and/or is proposed to be disturbed in connection with any construction on the Brownfields Property, may not be disturbed unless DENR has been given a minimum of 10 business days advance written notice and has approved a plan to protect public health and the environment during the proposed soil-disturbing activities. DENR may inspect, and require screening or sampling for contaminants in, the disturbed soil. If screening or sampling discloses contamination that DENR determines may make the Brownfields Property unsuitable for the uses specified in LUR 1 above, at DENR's discretion as much soil as DENR requires shall be capped and/or disposed of in accordance with applicable law, and any other actions DENR requires to make the Brownfields Property suitable for such uses shall be taken. Any caps installed shall be maintained to DENR's satisfaction by those who own the affected portion(s) of the Brownfields Property over time.

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 prior written approval of DENR

In compliance       Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 7: 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 8: No basements may be constructed on the Brownfields Property unless they are, as determined in writing by DENR, vented in conformance with applicable building codes.

In compliance       Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

In compliance       Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 10: The Brownfields Property may not be used as a playground, or for child care centers or schools, other than on the following conditions: Such uses may occur on parcel 9638.08-97-0681.00 (9999 Riverside Drive) except in areas denominated "Area of Possible Soil Contamination" on the plat component of the Notice. Such uses may occur on parcel 9638.08-97-3660.000 (90 Riverside Drive) if, pursuant to sampling deemed satisfactory by DENR in writing, DENR issues a written determination that such uses are suitable for that parcel.

In compliance                       Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 11: No party conducting environmental assessment or remediation at the Brownfields Property at the direction of, or pursuant to a permit or order issued by, DENR may be denied access to the Brownfields Property for purposes of conducting such assessment or remediation, which is to be conducted using reasonable efforts to minimize interference with authorized uses of the Brownfields Property.

In compliance                       Out of compliance

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 12: During January of each year after the year in which the Notice is recorded, the owner of any part of the Brownfields Property as of January 1<sup>st</sup> of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DENR certifying that, as of said January 1st, the Notice remains recorded at the Buncombe County Register of Deeds office and that the Land Use Restrictions are being complied with, and stating:

- a. the name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the owner submitting the LURU if said owner acquired any part of the Brownfields Property during the previous calendar year.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b. the transferee's name, mailing address, telephone and facsimile numbers, and contact person's e-mail address, if said owner transferred any part of the Brownfields Property during the previous calendar year.

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\_\_\_\_\_  
\_\_\_\_\_

In compliance                       Out of compliance

Remarks: The City of Asheville acknowledges non-compliance with annual LURU submittals for calendar year 2013 and 2014. With this 2014 LURU submittal, the City confirms that we are currently in compliance with Land Use Restrictions and have been in compliance with the Land Use Restrictions since the City became the owner of the property.

The City of Asheville became owner of this property on November 30, 2012 and at that time, became the responsible party for the Brownfields Agreement that was originally filed for the Ice Plant property on December 13, 2010. In the years since the City became the owner, the City has maintained compliance with the recorded Land Use Restrictions. In January 2013, the City demolished the existing structures in accordance with the LURs. The vacant land has remained undeveloped since the demolition was completed.

In this submittal, the City seeks to correct the compliance issue for this item. The City staff have developed internal city roles and responsibilities in order to ensure future compliance with this item of the Brownfields Agreement.

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

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

Name typed or printed of party making certification: City of Asheville

In the case of owners that are entities:

Signature of individual signing: \_\_\_\_\_

Name typed or printed: \_\_\_\_\_

Title: \_\_\_\_\_



Gary Jackson

City Manager

In the case of all owners:

Date: June 26, 2014

City of Asheville

By: [Signature]  
Name typed or printed: Gary Jackson  
Title typed or printed: City Manager

ATTEST:

[Signature]  
Name typed or printed: ~~Magdalen Burleson~~ Jaimie Matthews  
City Clerk

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, Thomas Eugene Downing, a Notary Public in and for the State and <sup>Haywood</sup> County ~~aforsaid~~, certify that ~~Magdalen Burleson~~ <sup>Jaimie Matthews</sup> personally appeared before me this day and acknowledged that she is City Clerk of the City of Asheville, and that by authority duly given and as the act of the City of Asheville, the foregoing Land Use Restriction Update was signed in its name by its City Manager, sealed with its corporate seal, and attested by her as its City Clerk.

Witness my <sup>Deputy</sup> hand and official stamp or seal, this 26<sup>th</sup> <sup>deputy</sup> day of June, 2015.

[Signature]  
Notary Public

My Commission Expires:  
2-2-2016

THOMAS EUGENE DOWNING  
Notary Public, North Carolina  
Haywood County  
My Commission Expires  
February 02, 2016