

Brownfields Project #: 09055-05-80
Brownfields Property: Bendix Heavy Vehicle Facility, 727 Bendix Drive
Property Owner (In whole or part): DDSM Properties, LLC



LAND USE RESTRICTIONS ("LUR") UPDATE

LUR 1: As limited by the other land use restrictions, no use may be made of the Brownfields Property other than for manufacturing, warehousing, distribution, office space and other non-residential commercial purposes. For purposes of this restriction, the following definitions apply:

- a. **Manufacturing:** The assembly, fabrication, processing or repair of goods and materials using processes that , while legally compliant, may produce noise, smoke, fumes, vibration, dust, odors, glare, emissions or health or safety hazards outside of the building or property where such assembly, fabrication or processing takes place.
- b. **Warehousing:** The storage of goods for a business or other enterprise.
- c. **Office:** A use or structure where business or professional services are conducted or rendered.
- d. **Commercial:** An enterprise carried on for profit by the owner, lessee or licensee.

In compliance Out of compliance

Remarks: _____

LUR 2: Surface water at the Brownfields Property may not be used for any purpose without the prior written approval of the Department of Environment and Natural Resources ("DENR").

In compliance Out of compliance

Remarks: _____

LUR 3: 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 written 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 prior written 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 proposed activities.

In compliance Out of compliance

Remarks: _____

LUR 4: Soil on the Brownfields Property may not be disturbed without a minimum of seven (7) business days advance written notice to DENR, unless DENR states otherwise in writing in advance. At any time between DENR's receipt of said notice and the conclusion of soil-disturbing activities, DENR may inspect and sample, or require sampling of, the subject soil for contaminants. If DENR determines that soil involved would likely contaminate groundwater even if capped, or may pose an imminent threat to public health or the environment if disturbed, as much soil as DENR requires shall be removed and disposed of, or treated, such that DENR is satisfied the Brownfields Property is suitable for the uses specified in Land Use Restriction 1 above while fully protecting public health and the environment, and any other actions that DENR requires to make the Brownfields Property suitable for the uses specified in this Agreement while fully protecting public health and the environment shall be taken. If DENR determines that the soil involved would not likely contaminate groundwater if capped, and would not likely pose an imminent threat to public health or the environment if disturbed, as much soil as DENR requires shall be:

- a. removed and disposed of, or treated, such that DENR is satisfied the Brownfields Property is suitable for the uses specified in Land Use Restriction 1 above while fully protecting public health and the environment; or
- b. capped to the written satisfaction of DENR.

Any person who conducts activities pursuant to this Land Use Restriction shall, within 30 days after completion of said activities, submit to DENR a report that fully documents the

results of all assessment and remediation activities and that meets with DENR's written satisfaction.

In compliance Out of compliance

Remarks: _____

LUR 5: No building that is constructed on the Brownfields Property after the effective date of this Agreement, defined as any building not depicted on the plat component of this Notice, and that will contain indoor air space, may be used absent compliance with the following:

- a. An engineer licensed in North Carolina shall submit for written DENR approval design specifications for a passive vapor barrier system to be installed beneath the foundation of the building, and shall, within 30 days after installation of the approved vapor barrier system, provide DENR certification under seal that said system was installed in accordance with the approved design specifications. No action may be taken that would alter or impede the function of the vapor barrier system, including but not limited to any penetration of said system, without DENR's prior written approval.
- b. Within 30 days after installation of mechanical ventilation in the building, an engineer licensed in North Carolina shall provide DENR certification under seal that the ventilation system complies with the most current version of the Mechanical Ventilation section of the Ventilation chapter of the North Carolina State Building Code.

In compliance Out of compliance

Remarks: _____

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 Out of compliance

Remarks: _____

LUR 7: 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 8: None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in Tables A and B of the Notice of Brownfields Property ("Notice"), 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 9: The Brownfields Property may not be used as a playground, or for child care centers or schools.

In compliance Out of compliance

Remarks: _____

LUR 10: 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.

In compliance Out of compliance

Remarks: _____

LUR 11: During January of each year after the year in which the Notice is recorded, 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 recorded at the Rowan County Register of Deeds office, 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; and
- c. whether any vapor barrier and/or mitigation systems installed pursuant to Land Use Restriction 5 above have been modified in any way; if so, how; and whether the uses of the ground floors of any buildings containing such vapor barrier and/or mitigation systems have changed, and, if so, how.

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 Rowan County Register of Deeds office and that the Land Use Restrictions are being complied with.

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

Name typed or printed of party making certification: _____

In the case of owners that are entities:

Signature of individual signing: *Dwight F. Messinger*
Name typed or printed: DWIGHT F MESSINGER
Title: MANAGER

In the case of all owners:

Date: 2/18/13

[use for LLCs]

[Insert Name of LLC]

By: DWIGHT F MESSINGER
Name typed or printed: Dwight F. Messinger
Member/Manager

NORTH CAROLINA
ROWAN COUNTY

I, Christa R. Earnhardt, a Notary Public of the county and state aforesaid, certify that Dwight F. Messinger personally came before me this day and acknowledged that he/she is a Member of DDSM Properties, LLC, a NC (state) limited liability company, and its Manager, and that by authority duly given and as the act of the company, the foregoing Land Use Restriction Update was signed in its name by him/her.

WITNESS my hand and official stamp or seal, this 18th day of February, 2013

Christa R Earnhardt
Name typed or printed: Christa R Earnhardt
Notary Public

My Commission expires: 4/21/2015

[Stamp/Seal]

