City of Conover

Planning Department

MAY 2014
Brownfields

April 24, 2014

NCDENR
Div. of Waste Mgmnt- Brownfields Program
1646 Mail Service Center
Raleigh, NC 27699-1646

To Whom It May Concern:

Please find enclosed the 2013 Land Use Restrictions Update (LURU) form as required by the Brownfields Agreement and referenced by Brownfields Project Number 10052-06-18.

Thank you,

Terry B. Lail
Environmental Coordinator

Enc: LURU
Copy: File

[Post Office Box 549 | Conover, North Carolina | 28613 | voice/tdd (828) 464-1191 | fax (828) 465-5177]

Brownfields Project #: 10052-06-18 (Amendment 8-29-11)
Brownfields Property: Broyhill Furniture, 409 4th Street Place SE (now 403 Conover Station SE)
Property Owner (In whole or part): City of Conover

MAY 2014
Brownfields

LAND USE RESTRICTIONS ("LUR") UPDATE

LUR 1: No use may be made of the Brownfields Property other than for residential, retail (and, if the Department of Environment and Natural Resources ["DENR"] issues prior written approval, other commercial), transit depot, office, open space, parks, roadway and parking purposes. The following definitions apply to this restriction:

a. "Residential" refers to use for a permanent dwelling of any single- or multi-unit building.

b. "Retail" refers to the sale of goods directly to consumers.

c. "Commercial" refers to an enterprise carried on for profit by the owner, lessee or licensee.

d. "Transit depot" refers to a hub for provision of public transportation.

e. "Office" refers to the rendering of business or professional services.

f. "Open Space" refers to land maintained in an undisturbed natural state or improved for active or passive recreation, and used for recreation, natural resource protection and/or buffers.

g. "Parking" refers to an area designed and used for temporary accommodation of motor vehicles.

h. "Park" refers to any land owned by the public and open for use by the general public for active (including playgrounds) or passive recreational purposes or as a refuge for wildlife.

In compliance __X__ Out of compliance ____

Remarks: _____

LUR 2: Unless compliance with this Land Use Restriction is waived in writing by DENR in advance, no use of the buildings depicted on the plat component of the Notice of Brownfields Property ("Notice") may occur prior to a written determination by the official referenced in subparagraph 35.a. of the Brownfields Agreement ("Agreement") that documentation has been submitted reflecting compliance with all applicable legal requirements of the Lead and Asbestos Abatement Program of DENR's Division of Public Health.

In compliance __X__ Out of compliance ____

Remarks: _____

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LUR 3: The ground level of any building hereafter constructed on the Property may not be used unless, prior to construction, DENR was consulted regarding the proximity of the building to the groundwater contamination depicted on the plat component of this Notice and, if DENR determined that the footprint of the building would fall within 200 feet of such contamination, unless:

a. a vapor mitigation system, approved in advance in writing by DENR, was installed in the building and within 30 days thereafter DENR was provided certification of proper installation under seal of a professional engineer licensed in North Carolina, as well as photographs illustrating the installation and a brief narrative describing it; or

b. an assessment of the risk posed by soil gas to potential users of the building demonstrated to DENR's written satisfaction that no vapor barrier, sub-slab venting nor mitigation system was required.

In compliance __X__ Out of compliance ____

Remarks: _____

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LUR 4: Unless compliance with this Land Use Restriction is waived in writing by DENR in advance, the building designated "Former Finishing Building," on the plat component of this Notice, may not be used until plans for a vapor mitigation system are approved in writing by DENR and installed to DENR's written satisfaction.

In compliance __X__ Out of compliance ____

Remarks: **Building Demolished**

LUR 5: Except for any soil-disturbing activities associated with vapor mitigation pursuant to Land Use Restriction 3.a. above, soil in the areas designated "Area of Possible Soil Contamination" on the plat component of the Notice, and soil underlying paved and other impervious surfaces and buildings at the Brownfields Property, may not be disturbed unless and until DENR approves in writing a plan with a schedule, which is then implemented and that requires:

a.

i. remediation and/or removal of sufficient soil to satisfy DENR that the Brownfields Property is suitable for the uses specified in Land Use Restriction 1 above and public health and the environment are fully protected despite any remaining soil contamination, as confirmed by sampling of each excavation's side walls and bottom; or

ii. a risk assessment of the area(s) subject to the plan, completed and sealed by a North Carolina-licensed professional engineer whose work is principally environmental, that evaluates exposures to the contaminants identified in Tables A and B of the Notice, and compliance with the preceding subparagraph if the risk assessment leaves DENR unpersuaded that the Brownfields Property is and will remain suitable for the uses specified in Land Use Restriction 1 above and public health and the environment are and will remain fully protected without soil remediation or removal; and

b. a written report regarding implementation of the plan, submitted no later than 30 days following its implementation, and correction of any deficiencies DENR identifies in the report or in implementation of the plan within 30 days after DENR provides written notice of such deficiencies.

In compliance __X__ Out of compliance ____

Remarks: _____

LUR 6: No utility corridor work may be initiated at the Brownfields Property unless a plan, including at a minimum the following, has been approved in writing by, and implemented to the written satisfaction of, DENR:

a. provisions for field screening of volatiles;

b. soil sampling protocols and methods in the event field screening limits for volatiles are exceeded;

c. soil management provisions in the event soil sampling reveals contamination in excess of the most recent Protection of Groundwater Soil Remediation Goals of DENR's Inactive Hazardous Sites Branch or the Maximum Soil Contaminant Concentrations of DENR's Underground Storage Tank Section;

d. the requirements that a written report regarding the plan's implementation be submitted to DENR and that any deficiencies DENR identifies in the report or in the plan's implementation plan be corrected to DENR's written satisfaction.

In compliance __X__ Out of compliance ____

Remarks: _____

LUR 7: No use of the Brownfields Property may occur after the 30th day following recordation of the Notice, unless DENR has received a written plan for monitoring groundwater at the Brownfields Property through sampling and analysis, and Brownfields Property use shall terminate unless any deficiencies DENR identifies in the plan are corrected to DENR's written satisfaction within time periods established by DENR.

a. At a minimum, the plan shall require:

i. designation of at least three (3) monitoring wells to be sampled pursuant to the plan;

ii. sampling of the designated wells for volatile organic compounds, and Massachusetts Department of Environmental Protection ("MADEP") volatile petroleum hydrocarbons ("VPH") and extractable petroleum hydrocarbons ("EPH"), at least once each year during the same seven-day period;

iii. analysis of the samples by the most current version of U.S. Environmental Protection Agency Method 8260 and the most current MADEP protocols for VPH and EPH;

iv. provision of the sampling analyses to DENR in writing within 30 days after sampling; and

v. replacement of any of the designated wells if DENR determines it warranted in writing due to redevelopment activities.

b. When the plan requires sampling, analysis, reporting or replacement of a well installed pursuant to the plan, the then owner of the affected portion(s) of the Brownfields Property shall be responsible for compliance. The plan shall be available from DENR and may be amended with DENR's prior written approval. Permission to cease required monitoring may be requested of DENR if sampling pursuant to the plan shows the concentrations of any and all detected volatile organic compounds, and MADEP VPH and EPH, declining for a minimum of three (3) consecutive years.

In compliance __X__ Out of compliance ____

Remarks: _____

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LUR 8: 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 __X__ Out of compliance ____

Remarks: _____

LUR 9: 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 __X__ Out of compliance ____

Remarks: _____

LUR 10: 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, 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 __X__ Out of compliance ____

Remarks: _____

LUR 11: The Property may not be used as a playground, or for child care centers or schools, except for the southern portion of the property as depicted on the plat component of the Notice. As of September 26, 2011 playgrounds and recreational areas are acceptable on the southern portion of the Property.

In compliance __X__ Out of compliance ____

Remarks: _____

LUR 12: The owner of any portion of the Brownfields Property where any existing, or later-installed, DENR-approved monitoring well is damaged or removed shall be responsible for repair or replacement, as the case may be, of any such wells to DENR's written satisfaction and within a time period acceptable to DENR.

In compliance __X__ Out of compliance ____

Remarks: _____

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LUR 13: No party conducting environmental assessment or remediation at the Brownfields Property at the direction of, or pursuant to a permit, order or agreement issued or entered into 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 __X__ Out of compliance ____

Remarks: _____

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LUR 14: 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 1st of that year shall submit a notarized LURU to DENR certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Catawba 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.

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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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c. whether any vapor mitigation systems installed pursuant to Land Use Restrictions 3 or 4 above are performing as designed, and whether the uses of the ground floors of any buildings containing such systems have changed, and, if so, how.

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In compliance __X__ Out of compliance ____

Remarks: _____

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Notarized signing and submittal of this Land Use Restrictions Update constitutes certification that the Notice remains recorded at the Catawba 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 Conover**, owner of at least part of the Brownfields Property.

Name typed or printed of party making certification: **Donald E. Duncan, Jr.**

Signature of individual signing: _____

Name typed or printed: **Donald E. Duncan, Jr.**

Title: **City Manager**

Date: 4/25/14

CITY OF CONOVER SEAL NORTH CAROLINA

NORTH CAROLINA
CATAWBA COUNTY

I, CARA C. REED, a Notary Public of the county and state aforesaid, certify that DONALD E. DUNLAN, JR personally came before me this day, demonstrated her/his identity, and signed the foregoing Land Use Restriction Update.

WITNESS my hand and official stamp or seal, this 25TH day of APRIL, 2014.

Cara C. Reed
Name typed or printed: CARA C. REED
Notary Public

My Commission expires: 10-22-2016

[Stamp/Seal]

CARA C. REED
NOTARY PUBLIC
CATAWBA COUNTY, NC