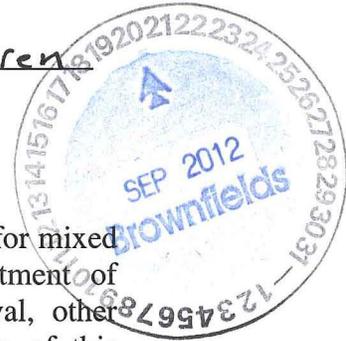


**Brownfields Project #: 10067-06-92**

**Brownfields Property: Cole Orchard, 1496 Summit Springs Dr.**

**Property Owner (In whole or part):** Robert & Samantha Garren



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

LUR 1: No use may be made of the Brownfields Property other than for mixed residential, office, hospitality, park, open space, retail and, if the Department of Environment and Natural Resources ("DENR") issues prior written approval, other commercial purposes, with associated driveways and parking. For purposes of this restriction, the following definitions apply:

- a. "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.
- b. "Office" refers to the conduct or rendering of business or professional services.
- c. "Hospitality" refers to provision of overnight lodging facilities for paying customers, along with reservation and cleaning services, combined utilities and on-site management and reception, in a building containing more than four individual rooms.
- d. "Park" refers to outdoor areas, including those maintained in a natural state (which may serve as a refuge for wildlife) and those improved for active or passive recreation, that are owned and useable by the public.
- e. "Open space" refers to outdoor areas within a development site that are set aside for the use and enjoyment of residents of the development or of the general public.
- f. "Retail" refers to the sale of goods directly to the consumer.
- g. "Commercial" refers to an enterprise carried on for profit by the owner, lessee or licensee.
- h. "Parking" refers to areas designed and used for temporary accommodation of motor vehicles.

In compliance  Out of compliance

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

---

---

---

LUR 2: No redevelopment, as defined by DENR, may occur at the Brownfields Property until DENR approves in writing a plan to suppress dust during redevelopment, minimize atmospheric and stormwater transport of arsenic-contaminated soil during redevelopment through erosion and sedimentation control, and minimize worker's exposure to arsenic during redevelopment, and redevelopment may continue only so long as DENR determines there is compliance with the plan.

In compliance  Out of compliance

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

---

---

---

LUR 3: Retail or commercial use of the Brownfields Property may only occur in the area designated "Retail/Commercial" on the plat component of the Notice of Brownfields Property ("Notice"), and neither of those uses may occur unless and until DENR determines in writing that arsenic in soil in that area does not exceed 100 milligrams per kilogram as generated by a site-specific human health risk assessment.

In compliance  Out of compliance

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

---

---

---

LUR 4: Residential use of the Brownfields Property may only occur in the area designated "Residential" on the plat component of the Notice, and that use may not occur unless and until DENR determines in writing that arsenic in soil in that area does not exceed 21 milligrams per kilogram as generated by a site-specific human health risk assessment.

In compliance  Out of compliance

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

---

---

---

LUR 5: Only areas designated "Common Area" on the plat component of the Notice may be used for open space or parks, and neither of those uses may occur in any such area unless and until:

- a. DENR approves in writing a plan for sampling and analyzing surface soil in the area for arsenic, using the most current version of U.S. Environmental Protection Agency ("EPA") Method 6010, that includes a grid for sampling where picnicking/eating/ cooking and playgrounds are proposed for the area;
- b. DENR approves in writing a report regarding the sampling that is submitted within 30 days thereafter; and
- c. DENR determines in writing that arsenic in soil in the area does not exceed 21 milligrams per kilogram, with or without remediation pursuant to a plan approved in writing in advance by DENR.

In compliance  Out of compliance

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

LUR 6: Any encountering or exposure of stained or odorous soil, soil that may be contaminated, or containers of possible contaminants shall be reported to DENR by telephone, and by e-mail and/or facsimile, within 24 hours. Within a time period satisfactory to DENR, such soil as DENR requires shall be sampled to DENR's written satisfaction for arsenic, and the samples analyzed, using the most current version of EPA Method 6010; or, if DENR determines that a contaminant other than arsenic is possibly involved, using methods DENR deems appropriate. If the sampling reflects any exceedance of applicable standards, the owner of the affected area may be required by DENR to leave the affected soil in place, cap it, remove it or implement other remedial measures to DENR's written satisfaction.

In compliance  Out of compliance

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

LUR 7: No activities that encounter, expose, remove or use groundwater or surface water (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 or surface water 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 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, 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: 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 10: 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 December January 1st each of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DENR certifying that the Notice remains recorded at the Henderson 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; and
- 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.

In compliance  Out of compliance

Remarks: LURU is late this year due to contractor/Developer  
going bankrupt & no longer an HOA, Owners have  
been added to yearly reminder list now that they  
are in control of this process.

Notarized signing and submittal of this Land Use Restrictions Update constitutes certification that this 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 Robert Garren,  
owner of at least part of the Brownfields Property.

Name typed or printed of party making certification: Robert Garren

In the case of owners that are entities:

Signature of individual signing:   
Name typed or printed: Robert Garren  
Title: Owner

In the case of all owners:

Date: 9-13-2012

[use for individuals]

[Name of Owner]

By: Robert Garren *Robert Garren*

Name typed or printed: Robert Garren

NORTH CAROLINA  
Henderson COUNTY

I, Teresa Garren, a Notary Public of the county and state aforesaid, certify that Robert Garren 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 13<sup>th</sup> day of September, 2002.

Teresa Garren *Teresa Garren*

Name typed or printed:  
Notary Public

My Commission expires: \_\_\_\_\_

