

Brownfields Program
File Room Document Transmittal Sheet

23

Your Name: Shirley Liggins
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Facility Name: Purser Drive
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North Carolina Department of Environment and Natural Resources
Division of Waste Management

Beverly Eaves Perdue
Governor

Dexter R. Matthews
Director

Dee Freeman
Secretary

August 5, 2011

CERTIFIED MAIL

Mr. Brad Rogers
Wal-Mart Real Estate Business Trust
PO Box 8050
Bentenville, AK 72712

Subject: Notice of Noncompliance, N.C.G.S. §130A-310.35(f)
Annual Land Use Restrictions Update
Purser Drive
816 Purser Drive, Wake County
Project Number: 10067-06-92

Dear Mr. Rogers:

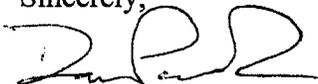
Pursuant to the land use restrictions listed in the Notice of Brownfields Property recorded at the Wake County Register of Deeds, all owners of the brownfields properties are required to submit an annual certification to maintain liability protection granted by the Brownfields Agreement for the subject property. Our records indicate that Wal-Mart Real Estate Business Trust is a current owner of at least part of the subject brownfields property and that an annual certification from this company has not been received.

To minimize the chance of an assessment and/or cleanup order, and/or civil penalties, Wal-Mart Real Estate Business Trust or its authorized agent should immediately complete, sign, notarize, and submit the attached Land Use Restrictions Update ("LURU") form to the following address:

NC Brownfields Program
Mail Service Center 1646
Raleigh, NC 27699-1646

Please retain a copy of the attached form for future LURU submittals or you may request an electronic version by e-mailing me at David.Peacock@ncdenr.gov. Should you have any questions or have information showing that you have not owned any part of the brownfields property since the Notice of Brownfields Property was recorded, please contact me by telephone at (910) 796-7401 or by e-mail.

Sincerely,

A handwritten signature in black ink, appearing to read 'D Peacock', written in a cursive style.

David Peacock
Brownfields Compliance Coordinator

W/Enclosures

Cc: Central Files
Ec: Bruce Nicholson, NCDENR
Rob Gelblum, Special Deputy Atty. General

Brownfields Project #: 10067-06-92

Brownfields Property: Purser Drive – Garner, 816 & 818 Purser Drive

Property Owner (In whole or part): _____

LAND USE RESTRICTIONS (“LUR”) UPDATE

LUR 1: No use may be made of the Brownfields Property other than for retail, office, hotel, and, with North Carolina Brownfields Property’s (“NCBP”) prior written approval and upon such conditions NCBP may impose, residential uses. For purposes of this restriction, the following definitions apply:

- a. “Retail” refers to the sale of goods directly to the consumer, and includes restaurant use.
- b. “Office” refers to the conduct or rendering of business or professional services.
- c. “Hotel” refers to a building, containing more than four individual rooms, where overnight lodging facilities, including reservation, cleaning and reception services, utilities and management, are provided to paying customers.
- 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.

In compliance _____ Out of compliance _____

Remarks: _____

LUR 2: No activities that remove or use groundwater (e.g., installation of water supply wells or construction or excavation activities that will encounter groundwater) may occur on the Brownfield Property without prior sampling and analysis of groundwater to the satisfaction of NCBP in any areas proposed for such activities, and submittal of the analytical results to NCBP. If such results disclose to NCBP contamination in excess of North Carolina’s groundwater quality standards, the proposed activities may not occur without prior written approval of NCBP on such conditions as NCBP 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 3: No building on the Brownfield Property may be used unless, prior to its construction, NCBP has been consulted regarding the proximity of the planned building to the Property's volatile contaminant plume. If NCBP determines that the footprint of the building would fall within 100 feet of said plume, it may not be constructed without a vapor barrier system and/or mechanical or passive vapor mitigation system approved in writing in advance by NCBP. Within 30 days following installation of the vapor barrier system and/or mechanical or passive vapor mitigation system, NCBP shall be provided with 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. With NCBP's prior written approval, additional investigation activities which may include, without limitation, soil gas testing performed to NCBP's written satisfaction, may be conducted, and installation of a vapor barrier and/or mitigation system possibly excused, so long as the proponent makes an advance written commitment to install a vapor barrier and/or mitigation system if NCBP so requires based on review of a report of the investigation activities.

In compliance ____ Out of compliance ____

Remarks: _____

LUR 4: No mining may be conducted on or under the Brownfield Property, including, without limitation, extraction of coal, oil, gas or any other minerals or non-mineral substances.

In compliance ____ Out of compliance ____

Remarks: _____

LUR 5: No basements may be constructed on the Brownfield Property without the prior written approval of NCBP.

In compliance ____ Out of compliance ____

Remarks: _____

LUR 6: None of the contaminants known to be present in the environmental media at the Brownfield Property, including those listed in paragraph 8 of the Brownfields Agreement ("Agreement"), may be used or stored at the Brownfield Property without the prior written approval of NCBP, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

In compliance ____ Out of compliance ____

Remarks: _____

LUR 7: No party conducting environmental assessment or remediation at the Brownfield Property at the direction of, or pursuant to a permit or order issued by, the Department of Environment and Natural Resources ("DENR") may be denied access to the Brownfield Property for purposes of conducting such assessment or remediation, provided that such party shall use reasonable efforts to minimize interference with lawful operations on the Brownfield Property.

In compliance ____ Out of compliance ____

Remarks: _____

LUR 8: During January of each year after the year in which the Notice of Brownfields Property ("Notice") is recorded, the owner as of December 1st of the prior year of any part of the Brownfield Property shall submit a notarized Land Use Restrictions Update ("LURU") to NCBP certifying that this Notice containing these Land

Use Restrictions remains recorded at the Wake County Register of Deeds' office and that these Land Use Restrictions are being complied with. The LURU shall also state:

- a. the full name, mailing address, telephone and facsimile numbers, and e-mail address of the owner submitting the LURU if said owner acquired any part of the Brownfield Property during the previous calendar year. Insert information:

- b. the transferee's full name, mailing address, telephone and facsimile numbers, and e-mail address, if said owner transferred any part of the Brownfield Property during the previous calendar year. Insert information:

- c. whether any vapor barrier and/or mitigation systems installed pursuant to Land Use Restriction 3 above are performing as designed, and whether the uses of the ground floors of any buildings in the portion of the Brownfield Property subject to the LURU that contain such vapor barrier and/or mitigation systems have changed, and, if so, how. The LURU shall also describe any maintenance and repair of any such vapor barrier and/or mitigation system(s) that has been performed since the last LURU regarding the subject portion of the Brownfield Property. Alternatively, a homeowners' association may perform the duties imposed by this Land Use Restriction on behalf of particular owners of the Property, if said association submits to DENR evidence satisfactory to DENR that it is authorized to serve as the subject owners' agent in this regard, and executes a notarized instrument satisfactory to DENR accepting responsibility for such performance.

Yes (include attachments) _____ No _____

Remarks: _____

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

[Insert notary block from among the following that is pertinent to type of party submitting LURU: corporation, LLC, partnership or individual.]
[use for corporations]

[Name of Corporation]

By: _____

Name typed or printed:

Title typed or printed:

ATTEST:

Name typed or printed:

Secretary, _____ (corporation name)

NORTH CAROLINA
_____ COUNTY

I, _____, a Notary Public of the county and state aforesaid, certify that _____ personally came before me this day and acknowledged that he/she is the Secretary of _____ (corporation name), a _____ (state) corporation, and that by authority duly given and as the act of the corporation, the foregoing Land Use Restriction Update was signed in its name by its _____ and attested by him/her as its Secretary.

WITNESS my hand and official stamp or seal, this ____ day of _____, 200_.

Name:
Notary Public

My Commission expires: _____

[Stamp/Seal]

[use for LLCs]

[Name of LLC]

By: _____
Name typed or printed:
Member/Manager

NORTH CAROLINA
_____ COUNTY

I, _____, a Notary Public of the county and state aforesaid, certify that _____ personally came before me this day and acknowledged that he/she is a Member of _____, LLC, a _____ (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 _____ day of _____, 200_.

Name typed or printed:
Notary Public

My Commission expires: _____

[Stamp/Seal]

[use for Partnerships]

[Name of General Partner]

By: _____
Name typed or printed:
General Partner

NORTH CAROLINA
_____ COUNTY

I, _____, a Notary Public of the county and state aforesaid, certify that _____ personally came before me this day and acknowledged that he/she is a General Partner of _____, a _____ (state) partnership, and that by authority duly given and as the act of the partnership, the foregoing Land Use Restriction Update was signed in its name by him/her.

WITNESS my hand and official stamp or seal, this _____ day of _____, 200_.

Name typed or printed:
Notary Public

My Commission expires: _____

[Stamp/Seal]

[use for individuals]

[Name of Owner]

By: _____
Name typed or printed:

NORTH CAROLINA
_____ COUNTY

I, _____, a Notary Public of the county and state
aforesaid, certify that _____ 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 ____ day of
_____, 200_.

Name typed or printed:
Notary Public

My Commission expires: _____

[Stamp/Seal]

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Total Payment

Mr. Brad Rogers

Sent To Wal-Mart Real Estate Business Trust

Street, A; PO Box 8050
or PO Box Bentenville, AK 72712
City, State