

Brownfields Program  
File Room Document Transmittal Sheet

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North Carolina Department of Environment and Natural Resources  
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August 5, 2011

**CERTIFIED MAIL**

Mr. Stephen Lane  
Virginia Road, LLC  
723 McMullan Avenue, Unit 603  
Edenton, NC 27932

Subject: Notice of Noncompliance, N.C.G.S. §130A-310.35(f)  
Annual Land Use Restrictions Update  
Leary Brothers  
101 Virginia Road, Chowan County  
Project Number: 09049-05-21

Dear Mr. Lane:

Pursuant to the land use restrictions listed in the Notice of Brownfields Property recorded at the Chowan 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 Virginia Road, LLC 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, Virginia Road, LLC 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](mailto: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 over a horizontal line.

David Peacock  
Brownfields Compliance Coordinator

W/Enclosures

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

**Brownfields Project #:** 09049-05-21

**Brownfields Property:** Leary Brothers, 101 Virginia Road

**Property Owner (In whole or part):** \_\_\_\_\_

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

LUR 1: No use may be made of the Brownfields Property other than retail, office and, with the Department of Environment and Natural Resources' ("DENR") prior written approval, other commercial uses, or a mixture of the foregoing uses. For purposes of this restriction, the following definitions apply:

- a. "Retail" refers to the sale of goods, products or merchandise directly to the consumer.
- b. "Office" refers to the conduct or rendering of business or professional services.
- c. "Commercial" refers to an enterprise carried on for profit by the owner, lessee or licensee.

In compliance \_\_\_\_ Out of compliance \_\_\_\_

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

LUR 2: No structure depicted on the plat component of the Notice for Brownfields Property ("Notice") may be demolished unless and until a plan, prepared by a professional engineer or geologist licensed in North Carolina for the collection and analysis of soil samples from beneath the structure, is approved in writing by DENR. The owner of the affected portion of the Brownfields Property shall be responsible for soil sampling and analysis, within two days after demolition and in accordance with the approved plan, by an environmental professional approved in writing in advance by DENR, and for submittal to DENR, by a deadline acceptable to DENR, of a report of the sampling procedures and results that meets with DENR's written satisfaction. If soil contamination is discovered that DENR determines would likely contaminate groundwater even if capped, or that may pose an imminent threat to public health or the environment if exposed, as much soil as DENR reasonably requires shall be removed and disposed of in accordance with applicable law, and any other actions that DENR reasonably requires to make the Brownfields Property suitable for the uses specified above in Land Use Restriction 1 while fully protecting public health and the environment shall be taken. If soil contamination is discovered that DENR determines would not likely contaminate groundwater if capped, or likely pose an imminent threat to public

health or the environment if exposed, as much soil as DENR reasonably requires shall be removed and disposed of in accordance with applicable law or capped to the written satisfaction of DENR.

Moreover, unless compliance with this requirement is waived in writing by DENR in advance, the owner of any portion of the Brownfields Property where any building depicted on the plat component of the Notice is demolished shall be responsible for submittal to DENR, within 30 days after demolition, of documentation sufficient to demonstrate, to DENR's written satisfaction, that such demolition was conducted in accordance with applicable legal requirements, including without limitation those administered by the Lead and Asbestos Abatement Program of DENR's Division of Public Health.

In compliance \_\_\_\_ Out of compliance \_\_\_\_

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

LUR 3: 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) 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. Any groundwater exposed during construction or excavation activities shall be contained on the Brownfields Property until it is properly characterized for disposal purposes by an environmental professional approved in writing in advance by DENR, then disposed of in accordance with applicable law.

In compliance \_\_\_\_ Out of compliance \_\_\_\_

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

LUR 4: 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 5: 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 6: 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 7: The Brownfields Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the prior written approval of DENR.

In compliance \_\_\_\_ Out of compliance \_\_\_\_

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

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LUR 8: The Brownfields Property may not be used for agriculture, grazing, timbering or timber production.

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

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 1<sup>st</sup>, the Notice remains recorded at the Chowan County Register of Deeds office and the land use restrictions are being complied with, and stating:

- a. the address of the owner submitting the LURU if said owner acquired any part of the Brownfields Property during the previous calendar year. Insert Information:

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

- 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. Insert information:

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

For purposes of the land use restrictions set forth above, the DENR point of contact shall be the DENR official referenced in paragraph 34.a. of Exhibit A hereto, at the address stated therein.

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 Chowan 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: \_\_\_\_\_

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

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

In the case of all owners:

Date: \_\_\_\_\_

**[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 Owner]

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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Leary Bros  
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Mr. Stephen Lane  
Sent To Virginia Road, LLC  
Street, 723 McMullan Avenue, Unit 603  
or PO Box Edenton, NC 27932  
City, St.