

NC BROWNFIELDS
LAND USE RESTRICTIONS (“LUR”) UPDATE

Year Certification Made: 2022

Name: Wrightsville Avenue
Project #: 16033-12-065

Address: 2501-2509 Wrightsville Avenue
County: New Hanover

Property Owner (In part or whole): _____

Read the following LURs and mark each restriction accordingly. Additional remarks may be added for compliance status clarification. Attach any required or supplemental documentation, sign, notarize and submit to the following address:

NC Division of Waste Management
Brownfields Program
1646 Mail Service Center
Raleigh, NC 27699-1646

LUR 1: No use may be made of the Property other than for commercial or mixed use to be comprised of commercial and residential components. For purposes of this restriction, the following definitions apply:

- i. Commercial - an enterprise carried on for profit by the owner, lessee or licensee; and
- ii. Residential - Attached permanent single family or multifamily dwelling situated as a second story (or higher) above a ground floor office, retail, or commercial space.

In compliance Out of compliance

Remarks: _____

LUR 2: 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 Property without prior sampling and analysis of groundwater to the written satisfaction of the Department of Environment and Natural Resources (“DENR”) in any areas proposed for such activities, and submittal of the analytical results to DENR. If such results reflect contaminant concentrations that exceed the standards and screening levels applicable to the uses authorized for the Property, the groundwater-related activities proposed may only occur in compliance with any written conditions DENR imposes.

In compliance Out of compliance

Remarks: _____

LUR 3: Soil on the Property within the area denominated “Area of Known Contamination” on the plat component of the Notice of Brownfields Property (“Notice”) referenced in Paragraph 18 of the Brownfields Agreement (aka: “Exhibit A”), may not be disturbed unless and until DENR states in writing, in advance of the proposed disturbance, that the disturbance may proceed, if carried out along with any measures DENR deems necessary in connection with the proposed disturbance to avoid rendering the Property unsuitable for the uses specified in LUR 1 above or public health or the environment less than fully protected.

In compliance Out of compliance

Remarks: _____

LUR 4: Areas not covered by buildings or other impervious surfaces will be covered and maintained with no less than one foot of clean fill or landscaped in such manner approved by DENR in advance.

In compliance Out of compliance

Remarks: _____

LUR 5: No building may be constructed on the Property within the area denominated “Area of Known Contamination” on the plat component of the Notice referenced in Paragraph 18 of Exhibit A, unless and until DENR determines in writing that:

- i. the building would be sufficiently distant from the Property’s soil and groundwater contamination that the building’s users, public health and the environment will be protected from risk from soil vapor intrusion related to said contamination; or
- ii. a plan for a soil vapor intrusion mitigation system, approved in writing by DENR in advance and including a proposed performance assessment prior to the building’s use for demonstration of the system’s protection of the building’s users, public health and the environment from risk from soil vapor intrusion, is implemented to the satisfaction of a North Carolina-licensed professional engineer as reflected by implementation documentation sealed by said engineer.

In compliance Out of compliance

Remarks: _____

LUR 6: None of the contaminants known to be present in the environmental media at the Property, including those appearing in Exhibit 2 of Exhibit A, may be used or stored at the 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 Property may not be used as a playground, or for child care centers or schools.

In compliance Out of compliance

Remarks: _____

LUR 8: The Property may not be used for kennels, private animal pens or horse-riding.

In compliance Out of compliance

Remarks: _____

LUR 9: The owner of any portion of the Property where any existing, or subsequently installed, 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 10: Neither DENR, nor any party conducting environmental assessment or remediation at the 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 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 Property.

In compliance Out of compliance

Remarks: _____

LUR 11: During January of each year after the year in which the Notice is recorded, the owner of any part of the Property as of January 1st of that year shall submit a notarized Land Use Restrictions Update (“LURU”) to DENR, and to the chief public health and environmental officials of New Hanover County, certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the New Hanover County Register of Deeds office and that the land use restrictions are being complied with, and stating:

- i. 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 Property during the previous calendar year.

- ii. 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 Property during the previous calendar year.

- iii. whether any vapor barrier and/or mitigation systems installed pursuant to LUR 5 above are performing as designed, 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 of Brownfields Property remains recorded at the New Hanover 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 on this ___ day of _____, 20__.

Name typed or printed of party making certification: _____

[Note: additional entities or owners may be added if appropriate (i.e. multiple managing members/entities)]

By: _____ (signature)
Name typed or printed: _____
Title typed or printed: _____

NORTH CAROLINA
_____ COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____.

Date: _____

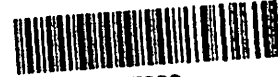
Official Signature of Notary

(Official Seal)

Notary's printed or typed name, Notary Public
My commission expires: _____

2
260

BK: RB 5937
PG: 1596-1598
RECORDED
12-15-2015
04:41:55 PM
BY CAROLYN JOHNSON
DEPUTY



2015037938
NEW HANOVER COUNTY, NC
TAMMY THEUSCH BEASLEY
REGISTER OF DEEDS

NC FEE \$26 00

NORTH CAROLINA SPECIAL WARRANTY DEED

Excise Tax: \$

Parcel Identifier No. 5412-01-014-0000 Verified by _____ County on the ____ day of _____, 20
By: _____

Mail/Box to: William T. Hutchins, Jr., 4011 University Drive, Suite 300, Durham, NC 27707

This instrument was prepared by: William T. Hutchins, Jr. (without benefit of title examination)

Brief description for the Index:

THIS DEED made this 7 day of December, 2015, by and between

GRANTOR	GRANTEE
Investors Trust Company, Successor Trustee of the Susan A. Myers Generation Skipping Trust Under Agreement dated February 4, 2004 121 North Columbia Street Chapel Hill, NC 27514	Susan A. Myers 2517 Wrightsville Ave. Wilmington, NC 29403

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does remise, release and ever quitclaim unto the Grantee all right, title and interest in and to all that certain lot or parcel of land situated in New Hanover County, North Carolina and more particularly described as follows:

BEGINNING at a point in the northern line of Wrightsville Avenue at the southeastern corner of Lot No. 171 Spofford Subdivision as recorded in Map Book 6, Page 50 of the New Hanover County Registry, and running thence North 13° 20' 00" East and along the eastern line of said Lot No. 171 165.80 feet; thence North 75° 59' 26" West 212.96 feet; thence South 44° 01' 01" West 82.28 feet; thence South 13° 17' 11" West 215.98 feet to the northern line of Wrightsville Avenue; thence along and with the northern line of Wrightsville Avenue North 76° 23' 00" West 128.20 feet; thence North 44° 00' 00" East 5.80 feet; thence North 78° 23' 00" West 32.05 feet to the point of BEGINNING, and being all of the parcel identified as PIN 5412-001-014-000 by the Office of the New Hanover County Tax Assessor.

All or a portion of the property herein conveyed does not include the primary residence of the Grantor.

TO HAVE AND TO HOLD the aforesaid interest in the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, other than the following exceptions:

Ad valorem tax for 2015 and subsequent years not yet due and payable.
Easements and restrictions of record.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

INVESTORS TRUST COMPANY, SUCCESSOR TRUSTEE
OF THE SUSAN A. MYERS GENERATION SKIPPING TRUST

By: Stephen E. Pike
Name: Stephen E. Pike
Title: President

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

I certify that the following person personally appeared before me this day, acknowledging to me that (s)he signed the foregoing document:

Date: 12/1/2015

Virginia C. Rouse
Notary Public

Print Name: Virginia C. Rouse

My commission expires: 9/14/2020



EXHIBIT "C"

BEGINNING at an iron located in the northern boundary of Wrightsville Avenue, which iron is located at the southeast corner of the parcel now or formerly owned by 2405 Wrightsville Avenue and running North 13° 20' 00" East 165.80 feet; thence running North 75° 59' 26" East 212.96 feet; thence running South 44° 18' 01" West 62.28 feet to an iron; thence running South 13° 17' 11" West 215.98 feet to a point in the northern boundary of the right-of-way of Wrightsville Avenue; thence running along and with the northern boundary of Wrightsville Avenue North 76° 23' 00" West 128.20 feet to an "X" in concrete; thence running approximately 10 feet in a northeasterly direction to a nail; thence continuing along and with the northern boundary of the right of way of Wrightsville Avenue in a westerly direction approximately 30 feet to the place and point of BEGINNING and BEING all of that 0.77 acre, more or less, parcel known as New Hanover County Tax Parcel R05412-001-014-000 and known as 2501, 2503, 2507 and 2509 Wrightsville Avenue.

uses of the ground floors of any buildings containing such vapor barrier and/or mitigation systems have changed, and, if so, how.

GROUNDWATER

Groundwater contaminants in micrograms per liter (the equivalent of parts per billion), the standards for which are contained in Title 15A of the North Carolina Administrative Code. Subchapter 2L, Rule .0202; April 1, 2013 version:

Groundwater Contaminant	Sample Location	Date of Sampling	Maximum Concentration (g/L)	Standard (g/L)
Bis(2-ethylhexyl) phthalate	MW-2	11/23/2009	3.8	3
Arsenic	TW-S-2	03/24/2009	22.5	10
Arsenic	TW-S-5	03/24/2009	15.5	10
Arsenic	TW-S-6	03/24/2009	33.9	10
Arsenic	MW-1	04-08-2010	16.5	10
Arsenic	MW-2	04/08/2010	40.0	10
Chromium	TW-S-2	03/24/2009	110	10
Chromium	TW-S-5	03/24/2009	18.6	10
Chromium	TW-S-6	03/24/2009	112	10
Chromium	MW-1	11/23/2009	253	10
Chromium	MW-2	04/08/2010	101	10
Lead	TW-S-2	03/24/2009	50.8	15
Lead	TW-S-6	03/24/2009	57.0	15
Lead	MW-1	11/23/2009	130	15
Lead	MW-2	04/08/2010	56.6	15
Thallium	TW-S-6	03/24/2009	0.230	0.2*
Thallium	MW-1	11/23/2009	0.510	0.2*

*=Interim Maximum Allowable Concentration (IMAC) (January 1, 2010) enforceable as a 2L standard

SOIL

Soil contaminants in milligrams per kilogram (the equivalent of parts per million), the screening limits for which are derived from the Preliminary Industrial Health- Based Soil Remediation Goals of the Inactive Hazardous Sites Branch of DENR's Superfund Section (March 2015 version):

Soil Contaminant	Sample Location	Depth (ft)	Date of Sampling	Maximum Concentration Exceeding Screening Limit (mg/kg)	Industrial Screening Limit ¹ (mg/kg)
Arsenic	S-2	4	3/24/2009	3.01	0.67
Arsenic	S-7	3	3/24/2009	1.84	0.67
Arsenic	S-8	2-3	11/23/2009	12.2	0.67
Arsenic	S-8	6-7	11/23/2009	3.02	0.67
Arsenic	S-9	3-5	11/23/2009	1.18	0.67
Arsenic	S-9	5-6	11/23/2009	1.87	0.67
Arsenic	S-10	1-2	11/23/2009	0.864	0.67
Arsenic	S-10	5-6	11/23/2009	0.799	0.67
Arsenic	S-11	0-2	11/23/2009	1.61	0.67
Arsenic	S-12	2-3	11/23/2009	3.12	0.67
Arsenic	S-13	3-4	11/23/2009	1.17	0.67
Arsenic	S-13	6-7	11/23/2009	1.32	0.67
Arsenic	S-14	0-1	2/23/2010	18.2	0.67
Arsenic	S-15	3-4	2/23/2010	161	0.67
Arsenic	S-16	0-2	2/23/2010	1.62	0.67
Arsenic	S-16	3-4	2/23/2010	1.03	0.67
Arsenic	S-17	1-2	2/23/2010	0.869	0.67
Arsenic	S-17	3-4	2/23/2010	0.688	0.67
Arsenic	S-18	1-2	2/23/2010	2.16	0.67
Arsenic	S-19	0-1	2/23/2010	3.17	0.67
Arsenic	S-19	2-3	2/23/2010	1.02	0.67
Arsenic	S-20	1-2	2/23/2010	1.08	0.67
Arsenic	S-20	4-4	2/23/2010	0.712	0.67

Arsenic	S-21	2-3	2/23/2010	1.75	0.67
Arsenic	S-21	4-5	2/23/2010	4.88	0.67
Arsenic	S-22	1-2	2/23/2010	2	0.67
Arsenic	S-22	3-4	2/23/2010	2.27	0.67
Arsenic	S-23	3-4	11/19/2010	1.7	0.67
Arsenic	S-24	3-4	11/19/2010	0.8	0.67
Arsenic	S-24	5-6	11/19/2010	0.69	0.67
Arsenic	S-26	2-3	11/19/2010	0.69	0.67
Arsenic	S-27	3-4	11/19/2010	2	0.67
Arsenic	S-27	6-7	11/19/2010	10.5	0.67
Arsenic	S-28	1-2	11/19/2010	0.68	0.67
Arsenic	S-28	5-6	11/19/2010	0.73	0.67
Arsenic	S-29	3-4	11/19/2010	1.3	0.67
Arsenic	S-29	5-6	11/19/2010	0.71	0.67
Arsenic	S-30	2-3	11/19/2010	1.2	0.67
Arsenic	S-30	5-6	11/19/2010	1.2	0.67
Arsenic	S-31	3-4	11/19/2010	0.7	0.67
Arsenic	S-32	3-4	11/19/2010	0.99	0.67
Thallium	S-4	6	3/24/2009	0.3	0.16
Thallium	S-8	6-7	11/23/2009	0.2	0.16
Thallium	S-9	3-5	11/23/2009	0.166	0.16
Thallium	S-11	6-7	11/23/2009	0.177	0.16
Thallium	S-12	2-3	11/23/2009	0.265	0.16
Thallium	S-13	3-4	11/23/2009	0.306	0.16
Thallium	S-19	0-1	2/23/2010	0.34	0.16
Thallium	S-22	1-2	2/23/2010	0.161	0.16
Naphthalene	S-31	3-4	11/19/2010	3060	3.8
Naphthalene	S-31	6-7	11/19/2010	5080	3.8
n-Butyl Benzene	S-31	3-4	11/19/2010	508	110
n-Butyl Benzene	S-31	6-7	11/19/2010	621	110
sec-Butylbenzene	S-31	3-4	11/19/2010	697	150
sec-Butylbenzene	S-31	6-7	11/19/2010	818	150
1-Methylnaphthalene	S-31	3-4	11/19/2010	26100	17
1-Methylnaphthalene	S-31	6-7	11/19/2010	17600	17
2-Methylnaphthalene	S-31	3-4	11/19/2010	40100	46
2-Methylnaphthalene	S-31	6-7	11/19/2010	30200	46
Benzo(a)anthracene	S-8	2-3	11/23/2009	0.17	0.15
Benzo(a)anthracene	S-10	1-2	11/23/2009	17	0.15
Benzo(a)anthracene	S-10	5-6	11/23/2009	0.68	0.15
Benzo(a)anthracene	S-12	2-3	11/23/2009	0.17	0.15
Benzo(a)anthracene	S-13	3-4	11/23/2009	0.25	0.15
Benzo(a)anthracene	S-15	3-4	2/23/2010	0.16	0.15
Benzo(a)anthracene	S-16	0-2	2/23/2010	2.4	0.15
Benzo(a)anthracene	S-16	3-4	2/23/2010	1.4	0.15
Benzo(a)anthracene	S-20	5-2	2/23/2010	0.48	0.15
Benzo(a)anthracene	S-22	3-4	2/23/2010	0.8	0.15

Benzo(a)pyrene	S-2	4	3/24/2009	0.14	0.015
Benzo(a)pyrene	S-8	2-3	11/23/2009	0.21	0.015
Benzo(a)pyrene	S-9	5-6	11/23/2009	0.093	0.015
Benzo(a)pyrene	S-10	1-2	11/23/2009	19	0.015
Benzo(a)pyrene	S-10	5-6	11/23/2009	0.75	0.015
Benzo(a)pyrene	S-11	0-2	11/23/2009	0.08	0.015
Benzo(a)pyrene	S-12	2-3	11/23/2009	0.21	0.015
Benzo(a)pyrene	S-13	3-4	11/23/2009	0.32	0.015
Benzo(a)pyrene	S-14	0-1	2/23/2010	0.22	0.015
Benzo(a)pyrene	S-15	0-1	2/23/2010	0.2	0.015
Benzo(a)pyrene	S-15	3-4	2/23/2010	0.18	0.015
Benzo(a)pyrene	S-16	0-2	2/23/2010	3.1	0.015
Benzo(a)pyrene	S-16	3-4	2/23/2010	1.5	0.015
Benzo(a)pyrene	S-17	1-2	2/23/2010	0.037	0.015
Benzo(a)pyrene	S-18	1-2	2/23/2010	0.12	0.015
Benzo(a)pyrene	S-19	0-1	2/23/2010	0.064	0.015
Benzo(a)pyrene	S-19	2-3	2/23/2010	0.074	0.015
Benzo(a)pyrene	S-20	1-2	2/23/2010	0.42	0.015
Benzo(a)pyrene	S-20	3-4	2/23/2010	0.1	0.015
Benzo(a)pyrene	S-22	1-2	2/23/2010	0.096	0.015
Benzo(a)pyrene	S-22	3-4	2/23/2010	1.1	0.015
Benzo(b)fluoranthene	S-2	4	3/24/2009	0.22	0.15
Benzo(b)fluoranthene	S-8	2-3	11/23/2009	0.34	0.15
Benzo(b)fluoranthene	S-10	1-2	11/23/2009	26	0.15
Benzo(b)fluoranthene	S-10	5-6	11/23/2009	1	0.15
Benzo(b)fluoranthene	S-12	2-3	11/23/2009	0.35	0.15
Benzo(b)fluoranthene	S-13	3-4	11/23/2009	0.5	0.15
Benzo(b)fluoranthene	S-14	0-1	2/23/2010	0.26	0.15
Benzo(b)fluoranthene	S-15	0-1	2/23/2010	0.27	0.15
Benzo(b)fluoranthene	S-15	3-4	2/23/2010	0.25	0.15
Benzo(b)fluoranthene	S-16	0-2	2/23/2010	3.7	0.15
Benzo(b)fluoranthene	S-16	3-4	2/23/2010	1.8	0.15
Benzo(b)fluoranthene	S-20	1-2	2/23/2010	0.57	0.15
Benzo(b)fluoranthene	S-22	3-4	2/23/2010	1.4	0.15
Benzo(k)fluoranthene	S-10	1-2	11/23/2009	9.1	1.5
Dibenzo(a,h)anthracene	S-10	1-2	11/23/2009	2.9	0.015
Dibenzo(a,h)anthracene	S-10	5-6	11/23/2009	0.1	0.015
Dibenzo(a,h)anthracene	S-14	0-1	2/23/2010	0.042	0.015
Dibenzo(a,h)anthracene	S-16	0-2	2/23/2010	0.3	0.015
Dibenzo(a,h)anthracene	S-16	3-4	2/23/2010	0.18	0.015
Dibenzo(a,h)anthracene	S-20	1-2	2/23/2010	0.066	0.015
Dibenzo(a,h)anthracene	S-22	3-4	2/23/2010	0.053	0.015
Fluorene	S-31	3-4	11/19/2010	785	460
Indeno(1,2,3-cd)pyrene	S-10	1-2	11/23/2009	10	0.15
Indeno(1,2,3-cd)pyrene	S-10	6-6	11/23/2009	0.42	0.15
Indeno(1,2,3-cd)pyrene	S-16	3-4	2/23/2010	0.55	0.15

Indeno(1,2,3-cd)pyrene	S-20	1-2	2/23/2010	0.2	0.15
Indeno(1,2,3-cd)pyrene	S-22	3-4	2/23/2010	0.56	0.15

- Screening limits displayed for non-carcinogens are for a hazard quotient equal to 0.2. Screening limits displayed for carcinogens are for a 1.0E-6 lifetime incremental cancer risk.

***NOTICE OF INTENT TO REDEVELOP A BROWNFIELDS
PROPERTY***

North Carolina's Brownfields Property Reuse Act (the "Act"), North Carolina General Statutes ("NCGS") § 130A-310.30 through 130A-310.40, provides for the safe redevelopment of properties that may have been or were contaminated by past industrial and commercial activities. One of the Act's requirements is this Notice of Intent to Redevelop a Brownfields Property approved by the North Carolina Department of Environment and Natural Resources ("DENR"). See NCGS § 130A-310.34(a). The Notice of Intent must provide, to the extent known, a legal description of the location of the brownfields property, a map showing the location of the brownfields property, a description of the contaminants involved and their concentrations in the media of the brownfields property, a description of the intended future use of the brownfields property, any proposed investigation and remediation, and a proposed Notice of Brownfields Property prepared in accordance with NCGS § 130A-310.35. The party ("Prospective Developer") who desires to enter into a Brownfields Agreement with DENR must provide a copy of this Notice to all local governments having jurisdiction over the brownfields property. The proposed Notice of Brownfields Property for a particular brownfields project is attached hereto; the proposed Brownfields Agreement, which is attached to the proposed Notice of Brownfields Property as Exhibit A, contains the other required elements of this Notice. Written public comments may be submitted to DENR within 30 days after the latest of the following dates: the date the required summary of this Notice is (1) published in a newspaper of general circulation serving the area in which the Property is located, (2) conspicuously posted at the Property, and (3) mailed or delivered to each owner of property contiguous to the brownfields property. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Those periods will start no sooner than July 30, 2015, and will end on the later of: a) 30 and 21 days, respectively, after that; or b) 30 and 21 days, respectively, after completion of the latest of the three (3) above-referenced dates. All comments

and meeting requests should be addressed as follows:

**Mr. Bruce Nicholson
Head, Brownfields Program
Division of Waste Management, DENR
NC Department of Environment and Natural Resources
1646 Mail Service Center
Raleigh, North Carolina 27699-1646**

LAND USE RESTRICTIONS

1. No use may be made of the Property other than for commercial or mixed use to be comprised of commercial and residential components. For purposes of this restriction, the following definitions apply:

- i. Commercial - an enterprise carried on for profit by the owner, lessee or licensee; and
- ii. Residential - Attached permanent single family or multifamily dwelling situated as a second story (or higher) above a ground floor office, retail, or commercial space.

2. 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 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 reflect contaminant concentrations that exceed the standards and screening levels applicable to the uses authorized for the Property, the groundwater-related activities proposed may only occur in compliance with any written conditions DENR imposes.

3. Soil on the Property within the area denominated "Area of Known Contamination" on the plat component of the Notice of Brownfields Property referenced in Paragraph 18 below, may not be disturbed unless and until DENR states in writing, in advance of the proposed disturbance, that the disturbance may proceed, if carried out along with any measures DENR deems necessary in connection with the proposed disturbance to avoid rendering the Property unsuitable for the uses specified in Restriction No. 1. above or public health or the environment less than fully protected.

4. Areas not covered by buildings or other impervious surfaces will be covered and maintained with no less than one foot of clean fill or landscaped in such manner approved by DENR in advance.

5. No building may be constructed on the Property within the area denominated "Area of Known Contamination" on the plat component of the Notice of Brownfields Property referenced/in Paragraph 18 of the Agreement (Exhibit A to this Notice), unless and until DENR determines in writing that:

- i. the building would be sufficiently distant from the Property's soil and groundwater contamination that the building's users, public health and the environment will be protected from risk from soil vapor intrusion related to said contamination; or
- ii. a plan for a soil vapor intrusion mitigation system, approved in writing by DENR in advance and including a proposed performance assessment

prior to the building's use for demonstration of the system's protection of the building's users, public health and the environment from risk from soil vapor intrusion, is implemented to the satisfaction of a North Carolina-licensed professional engineer as reflected by implementation documentation sealed by said engineer.

6. None of the contaminants known to be present in the environmental media at the Property, including those appearing in Exhibit 2 to the Agreement (Exhibit A to this Notice), may be used or stored at the Property without the prior written approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

7. The Property may not be used as a playground, or for child care centers or schools.

8. The Property may not be used for kennels, private animal pens or horse-riding.

9. The owner of any portion of the Property where any existing, or subsequently installed, 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.

10. Neither DENR, nor any party conducting environmental assessment or remediation at the 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 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 Property.

11. During January of each year after the year in which this Notice is recorded, the owner of any part of the Property as of January 1st of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DENR, and to the chief public health and environmental officials of New Hanover County, certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the New Hanover County Register of Deeds office and that the land use restrictions are being complied with, and stating:

i. 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 Property during the previous calendar year;

ii. 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 Property during the previous calendar year; and

iii. whether any vapor barrier and/or mitigation systems installed pursuant to Restriction No.5 above are performing as designed, and whether the

Brownfields Program Guidelines and Issue Resolutions December 2013

This document is provided as guidance for the brownfields agreement process. In this document we set out provisional interpretations of those parts of the brownfields statute that the regulated community has indicated are unclear or that have been amended by legislative act since the law was enacted.

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ISSUE 1: PURPOSE OF THE ACT (back to top)

The Brownfields Property Reuse Act (the Act) of 1997 is intended to encourage and facilitate the redevelopment of abandoned, idled, or underused properties that have actual or perceived environmental contamination by removing barriers to redevelopment posed by the prospective developer's (PD's) potential liability clean-up costs. The Act is not intended to circumvent practical or necessary remediation of properties under any state or federal cleanup program. The Act is clearly intended for sites at which legitimate redevelopment is both planned and possible. Brownfields agreements are only appropriate when a PD commits to a redevelopment project which the Department believes will have public benefit and will leave public health and the environment protected. Brownfields agreements are not appropriate for situations involving only cleanup, or even situations involving cleanup and conveyance but no redevelopment. The Department intends to use the discretion provided for in G.S. § 130A-310.32 to enter into brownfields agreements only for properties with legitimate redevelopment projects where the Department perceives that cleanup liability is a significant impediment to the property's redevelopment. A brownfields agreement is appropriate for a non-causative buyer or seller of a brownfields property when liability relief is necessary for the redevelopment of the property to proceed. The Department intends to interpret the provisions of the Act as broadly as possible in order to provide liability relief for as many redevelopment projects as possible. For example, the Department realizes that some PDs will need to purchase properties before the technical reviews required by the brownfields process or a brownfields agreement are complete. Therefore, the Department intends to consider a PD that demonstrates such need to be a "buyer" under the Act as long as the PD's Brownfields Property Application is submitted to the Department before the PD purchases the property. The Department cautions, however, that the submission of a Brownfields Property Application and the Department's initiation of the review of technical data does not guarantee that the Department will enter into a brownfields agreement.

ISSUE 2: RELATIONSHIP TO VOLUNTARY CLEANUP PROGRAM (back to top)

The Department recognizes that the Brownfields Program provides a mechanism that is a part of the overall effort to redevelop contaminated sites in North Carolina. Many of the sites addressed by the

Voluntary Cleanup Program (VCP) within the Inactive Hazardous Sites Branch are cleaned up for the purposes of property transfer and/or redevelopment and transfer. Both the Brownfields Program and the VCP can result in the redevelopment of contaminated brownfields properties. The difference between the two programs lies in whether the party seeking entry into the program did or did not cause or contribute to the contamination at the site. The Brownfields Property Reuse Act (the Act) of 1997 allows only those parties who did not cause or contribute to the contamination, called prospective developers (PDs), to enter the Brownfields Program, and sets forth public policy that allows the Department to treat a PD differently than it treats the polluter of the property. In making this separation clear, the Act allows the Brownfields Program to work with PDs toward the safe redevelopment of sites and provides PDs unprecedented regulatory flexibility and liability protection unavailable to polluters participating in the VCP.

The State's VCP provides a means for parties who are responsible for site contamination to voluntarily achieve final remediation of a site. Whereas the State's Brownfields Program is primarily a redevelopment initiative, the VCP is fundamentally a cleanup program. Because VCP site cleanups restore value to formerly contaminated properties, and enable lenders to make conventional (collateral) loans for redevelopment or expansion, the VCP is also an integral part of successful redevelopment. Under the VCP, the remedy may, in certain circumstances, involve alternate cleanup standards and institutional controls. Barring severe site hazards, the Department will place oversight of the voluntary cleanup under the privatized portion of the voluntary cleanup program, known as the Registered Environmental Consultant or "REC" Program. RECs are responsible both for conducting the cleanup and for certifying its regulatory compliance in place of state oversight. Statutorily authorized rules for this program are designed to accomplish a complete cleanup and address all contaminated media.

In contrast to VCP projects, brownfields projects require site-specific decisions about restricting assessments for certain media and about determining protective engineering and institutional measures, and require the Department to then weigh these factors against the potential public benefits of the redevelopment. In addition, under the Brownfields Program the Department provides a brownfield agreement that both defines and limits the PD's liability for cleanup at the site. For these reasons the Department necessarily must be directly involved in making these judgments and in ensuring all decisions and protective measures are properly designed and implemented.

ISSUE 3: PUBLIC BENEFIT (back to top)

G.S. § 130A-310.32(a)(3) requires that a prospective developer (PD) provide the Department with information necessary to demonstrate that the proposed redevelopment will have "public benefit commensurate with the liability protection provided." While the public benefit may be difficult to quantify, in its Brownfields Property Application the PD must provide as detailed a description of such benefits as possible. Public benefits have included such factors as job creation, tax base improvements, revitalization of blighted area, improved retail shopping opportunities, as well as potential cleanup activities or project set-asides that have community or environmental benefits. The Department intends to agree to a brownfields redevelopment project at those properties where reuse is clearly to the public's benefit, and where the public feels protected by the terms of the agreement and views the redevelopment as a positive step for the local community.

In general, the Department would like to see letters of support for the proposed redevelopment from a local governmental unit(s) (city, county, etc.) and community groups. The Department believes the best evidence and demonstration of perceived public benefit is that provided by local community groups representing the people living and working in areas adjacent to the proposed redevelopment, who submit letters of support describing the public benefits in terms that relate to improving the quality of life for the neighboring communities. The inclusion of such support letters with the Brownfields Property Application is recommended and encouraged.

The Department does not intend to refuse to enter into a brownfields agreement based solely on a lack of letters of support included with the Brownfields Property Application. Rather, letters of support from the public and from local governments, whether submitted with the Brownfields Property Application or during the public comment period, will help guide the Department in considering whether to enter into an agreement. However, the Department will give priority in the allocation of its resources to those projects that demonstrate the most benefit to the community and that have the strongest local support. The Department strongly recommends that PDs enlist the support of the local government, community and environmental groups as early in the redevelopment process as possible.

ISSUE 4: FEDERAL SUPERFUND SITES (back to top)

G.S. § 130A-310.37(c) prohibits the Department from entering into brownfields agreements for federal Superfund sites. This prohibition will leave eligible for a brownfields agreement most properties that are not priorities for the US EPA, notably those sites formerly listed on the US EPA CERCLA Information System (CERCLIS) as having no further remedial action planned (NFRAP) and lightly contaminated properties not listed on CERCLIS. There are some properties, however, that are heavily contaminated, or that pose a great health or environmental risk. These properties are noted on CERCLIS as sites in the nation that pose the highest risks and that have thus been listed on the National Priorities List (NPL). These properties remain under the jurisdiction of the US EPA. Under the present federal law, any responsible party, including any "non-innocent" owner, at one of these properties may be held jointly and severally liable for the entire cost of cleanup of the property. Therefore, the Department will not enter into a brownfields agreement for any part of a property that lies within a NPL site.

Additionally, there are sites listed on CERCLIS, called NPL-caliber sites, which, pending further investigation, are likely to be listed on the NPL, and others, called response action properties, that have had response actions funded and conducted by the US EPA. Because federal liability will remain an issue for these sites, a brownfields agreement between the Department and a prospective developer will not entirely define the cleanup liability. For this reason, the Department will consider brownfields agreements on NPL-caliber sites and response action properties only with the knowledge and involvement of the US EPA. Note that the US EPA "Guidance On Agreements with Prospective Purchasers of Contaminated Property" explains the circumstances under which the US EPA may enter into an agreement with a prospective purchaser for an NPL, NPL-caliber, or response action site.

ISSUE 5: SUBMISSION OF REPORTS AND FEES (back to top)

G.S. § 130A-310.39(a)(1) requires that "A prospective developer who submits a proposed brownfields agreement for review by the Department" pay an initial fee of two thousand dollars (\$2,000). As a matter of practicality and convention, the Department will prepare and submit to the prospective developer (PD) for review a draft brownfields agreement that is acceptable to the Department. The initial \$2,000 fee is due at the time the Department submits its draft agreement, and further negotiation between the Department and the PD regarding the terms of the agreement will be predicated on the Department's receipt of this initial fee. A second fee in that defrays the full cost to the Department and the Department of Justice is due prior to executing the brownfields agreement. Regarding this second fee, PDs should be aware that, at the present time, the services provided by the Brownfields Program are partially defrayed by a federally funded grant, but that there are no state funds appropriated for any of the technical guidance or legal review provided by the Department and the Department of Justice for this Program. At this time the secondary fee as provided for under G.S. § 130A-310.39(a)(2) can be satisfied in a number of ways, depending on the program option the prospective developer has chosen. Under the standard process, this secondary fee is currently set through cost averages for brownfields agreement development at \$6,000. Under the expedited Redevelopment Now program option where fees alone defray all costs and no federal resources are used, the fee for a nearly dedicated project manager is \$30,000 (if such a project manager is available at the time of application). Entities ineligible themselves to be a prospective developer but are in the

Ready for Reuse Program option and are paying fees on behalf of a future prospective developer, pay a total of \$15,000 in two installments.

In order to comply with the statute, if the Department or the Department of Justice incurs higher costs than provided in the fees above, the Department reserves the right to request from the PD a fee equal to all costs incurred from such time until the agreement is complete and signed. After the agreement is signed the Department will not ask for full cost fees retroactively. All checks should be made payable to NC DENR. Reports and checks should be sent to: NC Division of Waste Management, ATTN: Shirley Liggins, 401 Oberlin Road, Suite 150, Raleigh, NC 27605.

ISSUE 6: GROUND WATER AND SOIL REMOVALS (back to top)

The Department will consider entering into brownfields agreements for properties where groundwater and soil are contaminated somewhat in excess of unrestricted use standards, and will generally allow the prospective developer to refrain from cleaning up either media if the contamination poses no unacceptable risk to people or the environment. Some properties, however, may contain highly contaminated areas where a redevelopment plan may eliminate risks to people, but may not eliminate significant risks to the environment or to the long term safety of the redevelopment. Although a redevelopment design may eliminate these areas as risks to people using the property, such areas may remain a continuing source of groundwater contamination, reduce the margin of safety provided by the redevelopment design, or jeopardize the permanence of the agreement. As an example, some properties may have petroleum products or other contaminants floating on top of the ground water or contain pockets of highly contaminated soils. As another example, the public and the Department may feel comfortable when an asphalt parking lot covers soil contaminated at three times unrestricted use standards, but may feel much less comfortable if there are hot spots in the area significantly more contaminated, even though the redevelopment design indicates both areas would be made safe. Remediation of highly contaminated areas will decrease the likelihood that the agreement will be reopened in the future due to an increased calculated risk, and will reduce the chance of third party lawsuits. In sum, the Department believes that it is in the best interest of the public to clean up these highly contaminated areas whenever practical and intends to specify in the brownfields agreements that those areas are to be cleaned up accordingly.

ISSUE 7: GROUND WATER RECEPTORS (back to top)

In order to redevelop properties where groundwater contamination exists, it is important to identify and eliminate any pathway from the contaminated groundwater to any "receptor." Receptors in this sense include not only wells that supply people with groundwater for drinking, cooking, bathing and so forth, but also other avenues whereby contaminated groundwater, or volatiles from contaminated ground water, can reach people. These include basements, utility manways and chases, storm sewers, other underground utilities, drains, and surface water flows and seeps. The brownfields process will generally require the identification, by conducting a thorough receptor survey, and elimination of all identified pathways by which people could be exposed to contaminants in the groundwater.

ISSUE 8: UNDERGROUND STORAGE TANK PROGRAM (back to top)

Amendments to the Brownfields Property Reuse Act of 1997 makes those properties which fall under Part 2A of Article 21A of Chapter 143 of the General Statutes (the Underground Storage Tank Program) eligible for brownfields agreements. The Department recognizes that USTs are part of the contamination problem of many properties, and that their remediation should be addressed concurrently with any plans for redevelopment under a brownfields agreement. It is the policy of the program that releases from USTs may be assessed and remediated or addressed in the normal brownfields risk-based manner. However, if under Trust Fund Guidelines such reimbursement is available to the prospective developer and they decide to seek reimbursement from the UST Trust Fund under Trust Fund Guidelines, the

prospective developer must conduct the cleanup action under the UST program guidance in accordance with UST Rules governing such remediations in order to be eligible for UST Trust Fund reimbursement. Should the prospective developer decide to do this, such remediations guided by the UST Program under its normal processes can still be included as provisions in brownfields agreements. Regardless, if potential reimbursement under the UST Trust Fund is something the Prospective Developer wishes to explore, they should discuss that possibility with the UST Program.

Prospective Developers should note that closure of USTs is a regulatory requirement of tank owners (the PD may or may not be the tank owner, depending on the site circumstances) and not a remedial action. Hence, tank closure requirements, if they exist, remain unaffected by brownfields agreements.

Some properties that are candidates for a brownfields agreement may have had USTs removed but may not have had the residual soil contamination remediated to standards. In such cases, the PD may not be responsible for any UST cleanups. Nevertheless, the Department intends to condition brownfields agreements on the commitments, either by PDs or by the parties responsible for the USTs, to comply with UST legal requirements. In neither case will the redevelopment be allowed to impede the final remediation of the USTs.

ISSUE 9: INSURANCE AS SAFETY [\(back to top\)](#)

Brownfields agreements are designed to allow redevelopment of contaminated properties provided the properties can be made safe for their intended reuse. The Department recognizes that properties can be made safe in various ways, such as engineered controls, institutional controls, soil or ground water removals or cleanups, and impervious caps. There have also been suggestions for contingency plans, in case the agreed upon methods do not work or fail in the future, and for insurance policies covering expenses for future harm caused by the redevelopment. The Department considers many of the methods by which prospective developers intend to protect those people working and living on or in the vicinity of redeveloped properties as viable ways to make properties safe. However, the Department does not consider methods to compensate people for harm caused by unsafe redevelopment as legitimate ways to make properties safe for the intended reuse as required by the Act.

ISSUE 10: PERMITS [\(back to top\)](#)

There is nothing in the Brownfields Property Reuse Act of 1997 that relieves the prospective developer from having to obtain any and all applicable permits, licenses, and approvals for any Brownfields Property response actions or redevelopment.

ISSUE 11: LIABILITY PROTECTION [\(back to top\)](#)

One of the major benefits to prospective developers (PDs) who enter the Brownfields Program, but which is generally unavailable to those in cleanup programs, is the liability protection offered in the form of a covenant-not-to-sue contained in the brownfields agreement. Once the "safe-making" actions specified in the brownfield agreement are completed, liability protection is automatically in force which protects the PD from enforcement action by the Department for remaining contamination known to exist at the site prior to its redevelopment (it is important to note that the agreement does not provide liability protection concerning future site contamination for which the PD or other party may be responsible). Because the brownfields agreement defines the PD's cleanup liability at the property, and limits that liability to those actions specified in the agreement, it removes the uncertainty regarding site cleanup costs. In this way, the agreements function to provide comfort to lenders or other entities that would not otherwise be willing to offer project funding. The brownfields agreement, then, is the chief mechanism for breaking this common barrier to obtaining redevelopment financing. In their

Brownfields Property Applications, PDs must make the case that the liability protection provided by a brownfield agreement is necessary to break such a barrier or is otherwise required for the redevelopment project to proceed.

ISSUE 12: OWNER/OPERATOR VS. BUYER AS PROSPECTIVE DEVELOPER ([back to top](#))

Owners of potential brownfields properties who did not cause or contribute to the contamination are potentially eligible to be prospective developers (PDs) under the brownfields statute. In most cases, owners who did not operate the industrial facility on the property, and, likewise, buyers having no history with the property, will have little difficulty establishing that they did not cause or contribute to the site contamination. However, owners who have operated the industrial facility on the property will naturally find it much more difficult to prove to the Department that they did not cause or contribute to the contamination at the property. Furthermore, as stated above in Issue 1, the Program will not be used to circumvent statutorily supported efforts by state or federal cleanup programs to enforce against parties responsible for contamination on the property. Therefore, the Brownfields Program's policy is to provide these cleanup programs the opportunity to enforce against an owner/operator as a potentially responsible party before the Program considers any effort the owner/operator may make to prove, as an applicant PD, that they did not cause or contribute to site contamination. Hence, in order to maintain consistency with the intent of the law, not interfere with any potential enforcement by state and federal cleanup programs, and use resources efficiently to expedite the redevelopment of these sites, the Department strongly encourages the buyer/future owner to apply as the PD rather than have the owner who was the operator of the facility apply as the PD.