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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Metropolitan Boston – Northeast Regional Office

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Commissioner

OCT 26 2001

808 Memorial Drive Associates, LP
1201 Third Ave., Suite 5400
Seattle, WA 98101
c/o Security Properties, Inc.
Attn: Scott Ployer

Re: Cambridge – 812 Memorial Dr.
RTN 3-13933
Response Action Outcome
Activity and Use Limitation
Interim Deadline

808-812 Memorial Drive Housing Trust
280 Franklin St.
Cambridge, MA 02139
Attn: Peter Daly, Trustee

**RAO SCREENING REVIEW
AUL SUMMARY COMPLIANCE REVIEW
AUL FIELD INSPECTION AUDIT FINDING**

Dear Mr. Ployer and Mr. Daly:

On February 24, 1997, the Department of Environmental Protection (the Department) received a Class A-3 Response Action Outcome (RAO) Statement and Activity & Use Limitation (AUL) for the above-referenced site. On August 5, 1998, the Legislature enacted the "Brownfields Act" which called on the Department of Environmental Protection to conduct a targeted audit of all sites at which Activity and Use Limitations ("AULs") have been implemented in order to ensure that these actions are meeting the requirements of Massachusetts laws and regulations, including Massachusetts General Law chapter 21E and the Massachusetts Contingency Plan (MCP). The Department's audit of this site consisted of an RAO Screening Review, an AUL Summary Compliance Review, and an AUL Field Inspection to observe the condition of the area subject to the AUL.

RESPONSE ACTION OUTCOME (RAO) SCREENING REVIEW

A screening review of the RAO was performed using a standard Department checklist. Examples of the Department's checklists are available on the Internet at <http://www.state.ma.us/dep/bwsc/audits.htm>. The Department is not directing you to undertake

This information is available in alternate format by calling our ADA Coordinator at (617) 574-6872.

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further response actions at this time. Please note, however, that the review conducted by the Department was not a comprehensive audit, and the Department reserves the right to conduct a comprehensive audit of the RAO at any time in the future. It is possible that a future audit, if one occurs, may identify deficiencies and/or violations of applicable laws and regulations, and may require you to undertake further response actions at the site.

AUL SUMMARY COMPLIANCE REVIEW

Chapter 206 of the Acts of 1998 (The Brownfields Act) requires that the Department conduct an audit of all sites with AULs. In carrying out this mandate, the Department has established special procedures for reviewing AULs recorded on or before October 29, 1999, including the AUL submitted as part of the RAO for your site. Please note that these procedures do not apply to AULs recorded on or after October 30, 1999, and this Summary of AUL Compliance Review should not be relied upon to predict audit results for such AULs.

Applying the procedures described above, the Department has identified errors in the AUL that require correction. Specifically:

1. The AUL does not adequately define what uses and activities are permitted at the site, what uses and activities are restricted, or what obligations and conditions must be maintained at the site.
 - (a) The AUL does not clearly identify what categories of use may occur at the site (i.e. commercial, residential, school, day care, etc.). The AUL must be more specific in this regard.
 - (b) The AUL permits "passive park activities such as walking and sitting" while prohibiting recreational sport activities. This creates a contradiction within the terms of the AUL, because use of the area as a park is considered a recreational use. The word "park" must be eliminated from "passive park activities", in order to eliminate the contradiction between these permitted and prohibited activities.
 - (c) The AUL permits landscaping "from time to time" as well as application and removal of paving "from time to time". Use of "from time to time" is subjective, allowing different people to draw different conclusions about how often an activity is permitted. The AUL must either eliminate this phrase or be more specific when describing how frequently an activity may be performed.
2. The AUL was implemented by 808 Memorial Drive Associates, LP who conveyed the property subject to the AUL to 808-812 Memorial Drive Housing Trust. As part of the terms of the AUL that was implemented by 808 Memorial Drive Associates, LP, they were to "incorporate (the AUL) either in full or by reference in all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the Property or a portion thereof, is conveyed." (Paragraph 6 of Form 1075). The deed into 808-812 Memorial Drive Housing Trust does not reference the AUL. This reference ensures that the AUL appears in the chain of title and the public is notified of its existence. Please ensure that all requirements for marginal references contained in the attached instructions are complied with so that the AUL is properly noted in the chain of title for this property.

To correct these errors, an Amendment and Ratification of Notice of Activity and Use Limitation must be implemented within 180 days of the date of this Notice, using the enclosed form and instructions. Please note that the AUL Opinion must be prepared and attached to the Amendment and Ratification Form using Form 114S. Alternatively, you may submit a new RAO Statement within 180 days of the date of this Notice, documenting the achievement of a Class A-1, A-2, or B-1 RAO at the site (i.e. an RAO that does not rely on an AUL to maintain a level of No Significant Risk). This is an enforceable interim Deadline issued pursuant to M.G.L. c.21E, 310 CMR 40.0167 and 310 CMR 40.1140. If you do not meet this deadline you will be subject to enforcement action by the Department.

On July 10, 1997, 808 Memorial Drive Associates, LP sold the 812 Memorial Drive property to 808-812 Memorial Drive Housing Trust. It is the responsibility of both the former and current property owners to correct the error identified in the AUL. However, the current owner of the property must sign the corrected AUL (Amendment and Ratification).

The Department has prepared forms and detailed instructions for implementing the required AUL corrections. Copies of the forms and instructions are attached, and are available on the Department's AUL Audit Project web page, <http://www.state.ma.us/dep/bwsc/files/audits/aulfix.htm>. This web page will be updated periodically to address any commonly asked questions that arise as a result of AUL audits.

The Department is also offering several training workshops in the next few months. The Department recommends that you (and/or the Licensed Site Professional (LSP)/attorney preparing your AUL corrections) attend one of these workshops if you have questions on how to proceed. The training schedule is also available on the Department's AUL Audit Project web page. To obtain a schedule and/or register for the workshops, contact Thomas Potter, DEP's Statewide Audit Coordinator at (617) 292-5628.

AUL FIELD INSPECTION AUDIT FINDING

On February 2, 2000, the Department conducted an AUL Field Inspection at the location identified above to observe conditions related to an area subject to a Notice of Activity & Use Limitation. In particular, the AUL field inspection focused on activities and uses consistent with the terms and conditions of the AUL and whether obligations and conditions required to maintain a condition of No Significant Risk were being met.

The Department did not identify any violations of the requirements applicable to the AUL maintenance at the site.

POST AUDIT COMPLETION STATEMENT REQUIRED

When the AUL Errors are corrected, you should submit to the Department (attention: BWSC Audit Section) a Post-Audit Completion Statement in accordance with 310 CMR 40.1170, a copy of which is attached.

LICENSED SITE PROFESSIONAL

A copy of this letter has been sent to Raymond Leather, LSP # 3211, the LSP-of-Record for the Disposal site.

LIMITATIONS & RESERVATION OF RIGHTS

Please note that the screening review conducted by the Department on the RAO was not a comprehensive audit, and the Department reserves the right to conduct a comprehensive audit of the RAO at any time in the future. It is possible that a future comprehensive audit, if one occurs, may identify deficiencies and/or violations of applicable laws and regulations, may require you to undertake further response actions at the site, and may invalidate the Activity & Use Limitation. The screening review is not a representation by the Department that the RAO complies with M.G.L. c. 21E, 310 CMR 40.0000, or any other laws, regulations, or requirements.

The Department's findings were based upon the accuracy and certainty of the information reviewed during the audit. These findings do not: (1) preclude future audits of past, current, or future actions at the site; (2) apply to actions or other aspects of the site that were not reviewed in the audit; (3) in any way constitute a release from any liability, obligation, action or penalty under M.G.L. c. 21E, 310 CMR 40.0000, or any other laws, regulations, or requirements. The Department retains authority to take or arrange, or to require any Responsible Party or Potentially Responsible Party to perform any response action authorized by M.G.L. c. 21E, which the Department deems necessary to protect health, safety, public welfare, or the environment.

Sincerely,

Patricia M. Donahue
Chief, Audit Section
Bureau of Waste Site Cleanup

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Scnoafv6_[05_31_01]

Attachments:

Audit Follow-Up Plan Transmittal Form & Post-Audit Completion Statement (BWSC-111)
AUL Amendment and Ratification Form and Instructions
Activity & Use Limitation (AUL) Opinion Form (BWSC-114S)

cc: Cambridge Board of Selectmen/Chief Municipal Officer
Cambridge Board of Health/Health Department
Cambridge Zoning Code Enforcement Official
Cambridge Building Inspector
Raymond Leather, LSP-of-Record (LSP #3211) RayTech, Inc., 5 Howard Dr.,
Plymouth, MA 02360
Thomas M. Potter, Audit Coordinator, DEP-Boston
NERO/Data Entry/RAO/TSAUD&AUDINS/NAFNVD

388 5

Consent Communication #2

A communication was received
from Department of Environmental
Protection regarding a response
Action Outcome Activity and Use
Limitation Interim Deadline for
812 Memorial Drive.

In City Council November 5, 2001

Referred to the
City Manager.

11-7-01
Copy sent
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