

Superfund Records Center

SITE: Mottolo

BREAK: 08.07

OTHER: 546779

BK 5488 PG 2644

NOTICE OF RESTRICTIVE COVENANTS

Site: Mottolo Superfund Site
Raymond, New Hampshire 03077
Map 5, Lot 87

NHDES Site No.: 198704094 RSN 2032

This Notice of Restrictive Covenants ("Notice") is made on this 14th day of October, 2013 by the State of New Hampshire through the Department of Environmental Services, Waste Management Division.

WITNESSETH

WHEREAS, the State of New Hampshire, Department of Environmental Services ("NHDES" at 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095) is the Owner in fee simple of that certain parcel of land located in Raymond, New Hampshire ("Property") and recorded at the Rockingham County, New Hampshire Registry of Deeds at Book 5097, Page 204; and,

WHEREAS, said parcel of land, which is more particularly bounded and described in Exhibit A, attached hereto and made a part hereof, is subject to this Notice of Restrictive Covenants. The Property is on Town of Raymond Tax Map 5, Lot 87; and,

WHEREAS, the Property comprises a Superfund site where releases of volatile organic compounds ("VOCs") and other hazardous materials have occurred; and,

WHEREAS, the U.S. Environmental Protection Agency issued a Record of Decision ("ROD") on March 29, 1991; and,

WHEREAS, the U.S. Environmental Protection Agency issued an amendment to the Record of Decision ("AROD") on September 22, 2010 based on sampling results obtained from studies conducted at and around the Site in 2009-2010; and,

WHEREAS, the remedy for the Site, set forth in the 1991 ROD, requires remediation of certain soil and groundwater and the implementation of institutional controls at the Site; and

WHEREAS, the remedy for the Site, set forth in the 2010 AROD, requires the extension of the public water supply, groundwater monitoring and institutional controls; and

WHEREAS, the ROD and AROD also require that the institutional controls restrict the use of groundwater and prevent the disturbance of on-going remedial actions at the Site until further notice; and

WHEREAS, the Town of Raymond Board of Selectmen adopted an ordinance on April 22, 2013, to prevent the withdrawal and use of groundwater within the limits of a

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ROCKINGHAM COUNTY
REGISTRY OF DEEDS



Groundwater Management Zone (GMZ) that includes both the Mottolo property and select vicinity properties; and

WHEREAS, Owner agrees, and intends by this document, to restrict activity and use of the Property as set forth herein, and to have all such restrictions run with the land and be binding upon Owner's successors and assigns; and,

WHEREAS, the State, acting by and through NHDES, has reviewed and approved this Notice of Restrictive Covenants.

NOW, THEREFORE, notice is hereby given that the restrictive covenants set forth below apply to the Property:

1. Permitted Activities and Uses.

All activities required by EPA, after consultation with the State, to meet the requirements of the ROD and AROD, as such may be amended, modified, restated and in effect from time to time, and any associated Statement of Work, are specifically permitted.

2. Restricted Activities and Uses.

Activities and uses which are inconsistent herewith, and which, if implemented at the Property, may result in a significant risk of harm to human health, safety, or welfare or to the environment or presents a substantial hazard, including, without limitation, as follows:

2.1 Any activity which is likely to disturb soil, including, but not limited to, excavation associated with underground utility or construction work;

2.2 Development of the Property for use as a commercial or industrial facility, residence, school, nursery, or recreational areas (such as parks or athletic fields);

2.3 Any activity including, but not limited to, relocation of contaminated soil unless such activity is first evaluated and approved by EPA and NHDES; and

2.4 Installation of groundwater wells, or any removal or exposure to groundwater (except for remediation and monitoring purposes), unless such activity is first evaluated and approved by EPA, NHDES, and the Town of Raymond.

3. Obligations/Conditions.

No soil excavation shall occur unless the following information, which is subject to review and approval by EPA and the NHDES, is submitted:

3.1 A Soil Management Plan, prepared by a qualified environmental consultant and approved by the NHDES prior to commencement of any subsurface activity that may involve impact to contaminated soil or that would result in direct contact to humans or

present a greater risk to the environment.

3.2 A site specific Health and Safety Plan, prepared by a certified industrial hygienist or other qualified health and safety professional, in accordance with 29 CFR 1910.120, prior to commencement of any subsurface activity that may involve impact to contaminated soil. The plan must clearly identify the location of the contaminated soils and specifically identify the types of personal protective equipment, monitoring devices, and engineering controls necessary to ensure that workers and others at the Property are not exposed to contaminated soil or other hazardous materials through dermal contact, ingestion, and/or inhalation of particulate dusts or hazardous materials.

3.3 Contaminated soil may not be relocated or moved unless first evaluated by an environmental consultant, which shall render an opinion that such relocation or movement of the soil is in accordance with the Soil Management Plan (if applicable) and is consistent with maintaining a condition that is protective of human health and the environment, as determined by the NHDES and EPA.

3.4 Prior to commencement of any subsurface activity, not contemplated by the ROD or AROD, as such may be amended, modified, restated and in effect from time to time, that may involve extraction or release of contaminated groundwater that could result in direct contact to humans, or present a greater risk to the environment; a human health and ecological risk assessment must be conducted by a qualified environmental consultant and approved by the NHDES and EPA.

3.5 If CERCLA actionable risks are identified for any activity not contemplated by the ROD or AROD, as such may be amended, modified, restated and in effect from time to time, a site specific Groundwater Management Plan must be prepared by a qualified environmental consultant and approved by the NHDES. In addition, a site specific Health and Safety Plan prepared by a certified industrial hygienist or other qualified health and safety professional, in accordance with 29 CFR 1910.120, must be accepted by the NHDES prior to commencement of any subsurface activity that may involve release or exposure to contaminated groundwater. The plan must clearly identify the types of personal protective equipment, monitoring devices, and engineering controls necessary to ensure that workers and others at the Property are not exposed to contaminated groundwater or other hazardous materials through dermal contact, ingestion, and/or inhalation.

3.6 Nothing in Paragraph 3 is intended to impose duplicate or greater requirements than those contained in the ROD or AROD, as such may be amended, modified, restated and in effect from time to time. All work required, authorized, and approved by EPA under the ROD and AROD, as such may be amended, modified, restated and in effect from time to time, or any related Statement of Work, shall be exempt from the requirements of this paragraph.

4. Emergency Procedures.

In the event of any emergency or condition that may result in significant risk of harm to human health from exposure to contaminants in the soil, the NHDES, as the Property Owner, shall:

4.1 Promptly notify the Town of Raymond and EPA of such emergency or condition.

4.2 Limit disturbance of contaminated media to the minimum reasonably necessary to adequately respond to such emergency or condition.

4.3 Implement appropriate precautions to reduce exposures to contaminated media by workers at the Property and neighbors to the Property.

4.4 Engage the services of an environmental consultant to supervise the preparation and implementation of a written plan, for review and approval by NHDES, for restoring the Property to a condition consistent with the restrictive covenants contained herein.

4.5 Take precautions to limit disturbance of contaminated media to the minimum necessary to respond to the emergency or condition.

5. Proposed Changes in Activities and Uses.

The restricted activities and uses set forth above may be amended or modified upon order of NHDES or EPA, and prior notice to the Town of Raymond. Any proposed changes in activities and uses at the Property that may result in a greater risk to exposure to contaminated media than currently exists at the Property shall be evaluated by NHDES and EPA as to whether the proposed changes will present an unacceptable level of risk to human health and the environment. Approval by the NHDES and EPA shall be required before such proposed activity or use is commenced.

6. Duration of Restrictions.

The activity and use restrictions set forth herein shall run with the land, and, pursuant to RSA 147-A:14-A and for the benefit of public health, safety, welfare, and environment of the State, the restrictions shall become binding upon successive owners of the Property or portions of the Property.

7. Termination of Restrictions.

The activity and use restrictions set forth herein may be terminated upon order by the NHDES, after consultation with EPA, with prior notice to the Town of Raymond, which shall be granted a reasonable opportunity to be heard, and upon a showing that these restrictions are no longer necessary to maintain the protection of human health and the environment, in accordance with applicable state drinking water standards, including

without limitation, wells on the property and actual or potential impacts on wells located on offsite properties.

8. Recordation.

This Declaration of Restrictive Covenants, any modifications or amendments, and any terminations are effective upon recordation of notice in the chain of title for the Property at the Rockingham County, New Hampshire Registry of Deeds. All recordation costs shall be the responsibility of the Property Owner.

9. Incorporation Into Deeds, Mortgages, Leases, and Instruments of Transfer.

This Notice shall be incorporated either in full or by reference into the chain of title of 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.

10. Violation of Restrictive Covenants.

The property owner shall notify NHDES in writing within 30 days of discovery of a violation hereof. Within 60 days of discovery of a violation, the property owner shall submit recommendations to correct the violation to NHDES for approval, including a corrective action plan and schedule for implementing the plan.

11. Notices.

Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To New Hampshire Department of Environmental Services:

Mottolo Superfund Site State Project Coordinator
New Hampshire Department of Environmental Services
P.O. Box 95, 29 Hazen Drive
Concord, New Hampshire 03302-0095
(603) 271-3503

To the Town of Raymond, New Hampshire

Town Manager
Town Hall
4 Epping Street
Raymond, New Hampshire 03077

To the United States Environmental Protection Agency:

Mottolo Superfund Site Remedial Project Manager
United States Environmental Protection Agency, Region 1
One Congress Street, Suite 1100, MC HBO
Boston, MA 02114-2023
(617) 918-1335

Property Owner, the State of New Hampshire, hereby authorizes and consents to the filing and recordation of this Notice, which shall become effective upon approval of NHDES and EPA and recordation of this instrument at the Rockingham County New Hampshire Registry of Deeds in the chain of Title for the Property.

WITNESSETH the execution hereof under seal this 14th day of October, 2013.

Date: 10/14/13

By: STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

Vicki Quiram
Vicki Quiram
Assistant Commissioner

NOTARY BLOCK

THE STATE OF NEW HAMPSHIRE

Merrimack, SS.

On the 14th day of October 2013, before me appeared Vicki V. Quiram known to me (or satisfactorily proven) to be the person whose name appears above, and he/she subscribed his/her name to the foregoing document.

Michele LH Regan

Notary Public/Justice of the Peace

My commission expires:

MICHELE LH REGAN
★ NOTARY PUBLIC - NEW HAMPSHIRE ★
My Commission Expires October 22, 2013

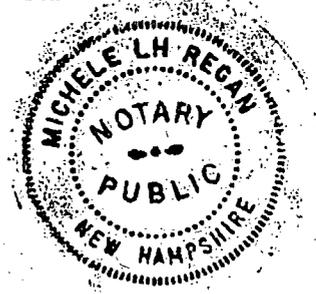


EXHIBIT A TO NOTICE

**Property Description of Lot Subject to Restrictions
Town of Raymond Tax Map 5, Lot 87**

Parcel One: A certain tract of land, with the buildings thereon, situated in said Raymond on the easterly side of the Blueberry Hill Road, so-called, being more particularly bounded and described as follows:

Commencing at an iron pipe set in the ground at the northwesterly corner of the within conveyed premises, said bound being one hundred twenty (120) feet easterly from said road on a line of wire fence running easterly; thence easterly by land formerly of the Spaulding & Frost Company and now or formerly of the Johnson Lumber Company and following said wire fence to a bound; thence turning southerly still by said Johnson Lumber Company land and said wire fence to a bound; thence westerly still by said Johnson Lumber Company land and said wire fence to an iron stake at the said Blueberry Hill Road; thence northerly by said Blueberry Hill Road eight hundred (800) feet, more or less, to an iron stake at the end of a stone wall; thence easterly at about a 90° angle to said road one hundred fifty-seven (157) feet to a wall corner and iron pipe; thence northerly five hundred forty-six (546) feet, more or less, partly by said stone wall to said point of beginning.

Parcel Two: Also a certain parcel of land situated in said Raymond, on the easterly side of Blueberry Hill Road, so-called, said parcel being across the road from the former Gillingham place, now or formerly owned by Margaret Chafe, being more particularly bounded and described as follows:

Commencing at an iron pipe set in the ground at the northwest corner of the within conveyed premises; thence, easterly by lands formerly of Spaulding & Frost Company and now or formerly of the Johnson Lumber Company and following a wire fence one hundred twenty (120) feet to an iron pipe set in the ground; thence southerly partly by a stone wall and by other land now or formerly of the Anthony J. Mottolo et al, five hundred forty-six (546) feet to a wall corner; thence westerly by said Mottolo land one hundred fifty-seven (157) feet to said road; thence northerly by said road six hundred fifty-five (655) feet to the point of beginning.