

# CMG ENVIRONMENTAL, INC.

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June 27, 2005

Town of Wayland Board of Selectmen  
41 Cochituate Road  
Wayland, MA 01778

**Re: Activity & Use Limitations (AULs)  
Former Raytheon Facility  
430 Boston Post Road, Wayland MA  
CMG ID 2002-003**

Dear Selectmen:

As you know, the Town of Wayland retained CMG Environmental, Inc. (CMG) to provide independent technical review, public commentary, and specific advice to the Town regarding environmental matters at the former Raytheon facility located at 430 Boston Post Road (the Site). In light of recent interest in development of the Site, we thought it appropriate to explain the AULs recorded on the Site parcel in case you were not fully aware of them.

The purpose of this letter is to emphasize:

- The deed restrictions summarized herein are legally binding on the large majority of developable land at the Site (77 of the total 86 acres);
- Among the restrictions are prohibitions against residential use, children's daycare, public access, and recreational use; and
- The restrictions imposed by the Site owner on October 21, 1997 are unusual in that only the LSP-of-Record is authorized to amend or terminate them. This person is currently Mr. John Drobinski, P.G. of Environmental Resources Management, Inc., which is Raytheon's primary environmental subcontractor for the Site.

Therefore, it follows that any future development of this property must accommodate Raytheon's easement rights to limit Site activities or uses that might interfere with ongoing assessment and remediation of contamination identified at the property.

Development which includes residential uses is not allowed by the current deed restrictions, except as approved by the LSP-of-Record; it is possible to amend these restrictions to allow additional uses of the Site, but such amendment could prove to be a lengthy process.

## BACKGROUND

An AUL is a form of deed restriction established by the Massachusetts Department of Environmental Protection (DEP) as an institutional control restricting certain activities or uses of a property (or a portion thereof), to limit human exposure at an area of known soil contamination. The property owner may impose an AUL on a property it owns as a way to expedite regulatory closure of a release of oil and/or hazardous materials with DEP. The process involves recording the Notice of Activity and Use Limitation with the appropriate Registry of Deeds district within

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the Commonwealth (or, in the case of registered land, by filing with the appropriate district Land Court). The AUL and its restrictions remain in force even if the owner subsequently transfers ownership of the property. An AUL may be amended or terminated by subsequent Registry of Deeds (or Land Court, if appropriate) filings.

On October 21, 1997, Site owner Wayland Meadows Limited Partnership recorded a "Notice of Activity and Use Limitation" with the South Middlesex District Registry of Deeds in Book 27793, beginning on Page 141. Despite its title, this document is not an AUL as defined by DEP regulations, although it is worded much the same. For clarity, CMG will follow the practice of Raytheon and refer to this document simply as a "Deed Restriction." Raytheon and Wayland Meadows Limited Partnership also filed an "Easement and Restriction Agreement" with the South Middlesex District Registry of Deeds on October 21, 1997, in Book 27793, beginning on Page 167. Wayland Meadows Limited Partnership and Raytheon recorded these two documents on their own initiative and volition, to facilitate Raytheon's transition out of the property they had leased since the mid-1950s.

Subsequent Site owner Wayland Business Center, LLC registered a "Notice of Activity and Use Limitation" on a portion of the property with the South Middlesex Land Court on April 13, 1999, as Certificate 0210249 of Land Court Case No. 17983A (recorded in Book 1191, Page 99). The Site owner used this AUL as a mechanism to expedite regulatory closure of a fuel oil release encompassing a very limited portion of the Site.

#### DEED RESTRICTION (1997)

The Deed Restriction limits certain activities and uses on approximately 77 acres of the Site (see attached Figure 4 of the Phase II Comprehensive Site Assessment Report for the Site; CMG added a notation highlighting two minor errors in the legend). The key points of this restriction are detailed as permitted activities & uses, inconsistent activities & uses, and obligations & conditions.

#### Permitted activities & uses include:

- Commercial or industrial activities and uses such as office space, wholesale, retail, manufacturing, storage or warehousing, and assembly of goods; or
- Vertical expansion or remodeling of existing Site buildings, so long as this does not, in the opinion of the LSP-of-Record, limit performance of Comprehensive Response Actions.

#### Inconsistent activities & uses include:

- Residential, childcare, daycare, recreational, agricultural, horticultural, gardening, or public access uses (unless previously approved by the LSP-of-Record);
- Use of groundwater for irrigation or drinking water supply;
- Excavation, construction (or reconstruction) below grade, or underground utility maintenance that could expose subsurface contamination, unless approved by the LSP-of-Record; or
- Any activities or uses that would, in the opinion of the LSP-of-Record, hamper Comprehensive Response Actions.

Obligations & conditions include:

- Written certification of the LSP-of-Record is necessary for approval of any activities or uses listed as 'inconsistent' (such as residential use);
- Written certification of the LSP-of-Record is necessary for approval of land development, or changes to surface conditions (such as topography, surface cover, and paving);
- The LSP-of-Record must approve written procedures for response actions pertaining to monitoring, notification, management, or disposal of contaminated media (such as soil, groundwater, or sediment), waste, or debris;
- Raytheon and its representatives shall have unrestricted access to conduct response actions (assessment, containment, or remediation); and
- The property owner must maintain building foundations and pavement in a condition sufficient to prevent direct access to contamination.

(Note: This is not a direct quote of the Deed Restriction language; CMG has paraphrased wording for clarity.)

**EASEMENT & RESTRICTION AGREEMENT (1997)**

This document grants a perpetual easement to Raytheon allowing access for the purposes of environmental investigation and remediation, and requires Raytheon to restore the Site to substantially the same condition upon completion of these activities. Wording in this document indicates that the LSP-of-Record (and he only) has the ability to revise the area subject to the Deed Restriction (initially 77 acres) if he provides an official Revised LSP Opinion explaining why this is warranted. This easement is legally binding on all subsequent Site owners.

**NOTICE OF AUL (1999)**

The 1999 AUL limits activities and uses on approximately 36,630 square feet (about 0.8 acres) of the Site (see attached Figure 4). This small portion of the property is located within the Site building footprint (Building #16 and a portion of Building #3) and an adjoining, semi-enclosed courtyard. A 20,000-gallon underground storage tank formerly located here released No. 6 fuel oil to subsurface soil and groundwater. Raytheon had the tank removed in 1998, along with contaminated soil and groundwater. However, excavation ceased at 15 feet below grade, and some residual oil-contaminated soil remains at more than 15 feet below grade at this small portion of the Site. By prohibiting disturbance of residual contaminated soil, the AUL allowed this contamination to remain in place, while limiting the potential for human exposure to contaminated soil. The use of an AUL allowed Wayland Business Center, LLC to achieve regulatory closure with the DEP on the specific and limited matter of the No. 6 fuel oil release at the Site.

As with the Deed Restriction, there are permitted activities & uses, inconsistent activities & uses (called "Prohibited or Limited Activities and Uses" in this document), and obligations & conditions associated with this AUL. One difference between the two documents is that, as an official DEP AUL, the 1999 document may be amended or terminated by any currently-licensed LSP (provided there is sufficient evidence to support an LSP Opinion that this would be acceptable), whereas the 1997 Deed Restriction contains the unusual stipulation that only the LSP-of-Record may amend or terminate those restrictions. Please note that amendment or

termination of the 1999 AUL would not change any limitations imposed by the 1997 Deed Restriction, which encompasses a much larger and overlapping area.

Permitted activities & uses include:

- Commercial and industrial activities or excavation that will not disturb soil located more than six feet below grade; and
- Deeper excavation for construction or utility work, if conducted in accordance with a Soil Management Plan and a Health & Safety Plan developed by an LSP.

Prohibited or limited activities & uses include:

- Residential, childcare, daycare, recreational, agricultural, horticultural, or gardening uses (unless evaluated and approved by an LSP);
- Excavation or relocation of petroleum-impacted soil greater than six feet below grade, unless evaluated and approved by an LSP; and
- Installation of groundwater wells, except as necessary for assessment or remediation in compliance with DEP regulations.

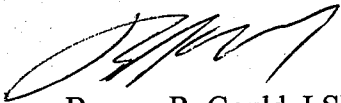
In brief, the recorded obligations and conditions reiterate that an LSP must evaluate and approve any activities that would disturb soil located greater than six feet below grade, and if warranted prepare a Soil Management Plan and/or a Health & Safety Plan to address potential risk situations arising from potential contact with petroleum-contaminated subsurface soil.

(Note: CMG also paraphrased the above wording for clarity, so it is not a direct quote of the AUL language.)

✂

It is my hope that this letter clearly explains what issues may arise at the Site due to the recorded Deed Restriction, Easement & Restriction Agreement, and AUL. I realize that these are technically complex and detailed issues. Please feel free to call me if you have any questions or if CMG can be of further assistance to you.

Sincerely,  
CMG ENVIRONMENTAL, INC.



Benson R. Gould, LSP, LEP  
Principal

Attachment: (Modified) Figure 4 from ERM Phase II Report

cc: Mr. Edwin Madera, Raytheon Corporation

2002-003\Correspondance\AUL Letter 6-27-05.doc



Wayland Conservation Commission Woodlands

Old Irrigation Culvert

Great Meadows National Wildlife Refuge

REGISTERED LAND BOUNDARY NOT SHOWN ON MAP

FIELD

WOODS

Waste Water Treatment Plant

Bituminous Driveway

Old Subury Road Route 27

GUARD STATION #1

Hamlen Parcel

Paved Parking

Unnamed Brook

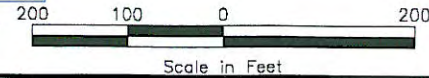
Boston Post Road Route 20

Russell's Garden Center

Legend

- FORMER RAYTHEON PROPERTY BOUNDARY
- ▭ EXISTING BUILDING
- TREE LINE
- REGISTERED LAND BOUNDARY
- LIMIT OF BORDERING VEGETATED WETLAND
- #21 BUILDING NUMBER
- ▭ FORMER STRUCTURES
- ▨ A.U.L. 13 APRIL 1999, ~0.08 ACRES
- ▨ A.U.L. 21 OCTOBER 1999, ~77 ACRES

NOTE: THESE SHOULD READ  
 "A.U.L. 13 APRIL 1999, ~0.8 ACRES" AND  
 "DEED RESTRICTION 21 OCTOBER 1997, ~77 ACRES"



<p><b>ERM</b>          399 BOYLSTON STREET-BOSTON, MA 02116          (617) 267-6377</p>	<p>Raytheon Company          430 Boston Post Road, Wayland, Massachusetts</p>		Designed by: Drawn by: Checked by: Reviewed by: Submitted by:	<p>Site Areas Subject to Notices of AULs</p> <p>Scale: 1" = 200'      Date: 3/08/01/03.12.01</p> <p>Drawing No. 00A202      Figure No. 4</p> <p>Contract No. 143.50</p>										
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