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April 2, 2012

BRRTS#: 07-67-547832
FID 267080440

Michael Seitz
Bank Mutual
400 N Moorland Rd, No. 202
Brookfield, WI 53005

Subject: Lender Liability Clarification and Current Environmental Conditions for the Undeveloped Subdivision Parcels – Portions of Cranberry Creek Subdivision, N168 W 20701 Main St, Jackson, WI 53037

Dear Mr. Seitz:

Purpose

On February 8, 2012, the Wisconsin Department of Natural Resources ("the Department") received a request, along with the required $500 fee, for a lender liability clarification letter. The purpose of this letter is to provide Bank Mutual with the requested clarification of environmental liabilities of Undeveloped Subdivision Parcels – Portions of Cranberry Creek Subdivision ("the Property"), located at N168 W 20701 Main St, Jackson, WI 53037 in Washington County, which Bank Mutual acquired on August 5, 2011 through enforcement of a security interest. Please refer to the attached Figure 1 (Parcel Map) for a map of the Parcels on the Property.

Request

The February 8, 2012, letter requested a determination from the Department on whether Bank Mutual is eligible for the lender liability exemption under s. 292.21, Wis. Stats., for the Property that the lender has acquired title to through enforcement of a security interest.

The following were also submitted with the request:

- Lender Liability Exemption Environmental Assessment Tracking Form, dated February 8, 2012; and
- Phase I Environmental Assessment Summary, Moraine Environmental dated October 28, 2011.

Summary of Environmental Conditions

- Bank Mutual acquired the Property on August 5, 2011 through foreclosure proceedings.
- Prior to 1960, the Property was listed as agricultural and open space. The Libby's Food Company occupied the Property from the 1960's to the 1980's. Northland Cranberries, Inc. then occupied the Property until approximately 2007. After Northland Cranberries, Inc. vacated the Property, development of the Cranberry Creek subdivision commenced.

- Moraine Environmental performed a site inspection on the Property on October 24, 2011. There were no items of environmental concern observed by Moraine on the Property.

- There were seven former above ground storage tanks (ASTs) or underground storage tanks (USTs) registered by the Department of Commerce, DCOMM, (now known as the Department of Safety and Professional Services-DSPS) at the Cranberry Creek Subdivision Property. The owner of each of the seven tanks was Northland Cranberries, Inc. from Wisconsin Rapids, Wisconsin. The registered tanks include five USTs and two ASTs. A summary of these tanks is provided below:

  Underground Storage Tanks

Type of Fuel	Capacity (gal)	Status
Fuel Oil	12,000	Closed / Filled with inert material as of July 1989
Leaded Gasoline	1,050	Closed / Removed as of August 1989
Unleaded Gasoline	550	Closed / Removed as of August 1989
Unknown	550	Closed / Removed as of July 1989
Unknown	1,050	Closed / Removed as of July 1989

  Aboveground Storage Tanks

Type of Fuel	Capacity (gal)	Status
Diesel Fuel	300	Closed / Removed as of January 2008
Fuel Oil	8,000	Closed / Removed as of March 2005

  All of the above-described tanks were removed from the Property with the exception of the 12,000 gallon fuel oil tank, which was abandoned in-place. This tank remains in the ground at the subdivision site.

- The Cranberry Creek Subdivision Property was the site of a business that was classified by the Department as a "Small Quantity Generator" of hazardous wastes. Waste types generated included spent non-halogenated solvents, ignitable and corrosive wastes and wastes containing chlordane. There were no violations by the generator and no enforcement actions against the generator. Due to the lack of enforcement actions and violations, the generation of hazardous waste is not expected to adversely impact the Cranberry Creek Subdivision property. Note: It is likely that Hazardous Waste Generator status was required due to the disposal of tank bottom sludge from the former underground tanks. The Cranberry Creek Subdivision property is no longer regulated as a hazardous waste generator.

  There were two petroleum underground storage tank releases (Seneca Tank Closure Cleanups in 1989), information about these releases can be obtained at BRRTS #03-67-000277. BRRTS numbers can be accessed at http://dnr.wi.gov/topic/Brownfields/clean.html

- There were two hazardous material spills (Northland Cranberries - wastewater spill & drum rolled off fork lift in 2000); BRRTS Spill numbers are #04-67-264628 and #04-67-270640.

- The releases and spills were investigated and remediated in accordance with Department regulations and have been issued case closures with no further actions required.

- WDNR issued a Build on Historic Fill Exemption for the Property on November 2, 2006 (BRRTS #07-67-547832). This exemption allowed for mixed residential buildings. Former Northland Cranberries facility pavement and foundation concrete rubble may be buried under portions of the properties. All known contaminated wastes were taken off site during deconstruction of the facility in 2007 – 2008.

- Currently the Property consists of vacant single lot parcels with some condo pads and 9.28 acres of open space. Nothing has been built structurally on these sites. Multi-family condominium units and single-family residences have been constructed on adjacent parcels; however they are not included in this assessment or in the foreclosure action conducted by Bank Mutual. There has been rough grading for roadways and limited underground electrical utility installation in front of the condo parcels. The majority of the subject parcel area is covered with grass. There are three to four small piles of construction rubble located throughout the area. In 1968, Graef, Anhalt, Schloemer & Associates completed a lead and asbestos inspection of several buildings on the Property. All asbestos related material was then hauled off-site to a licensed landfill. Then on October 24, 2011, Moraine Environmental performed an on-site inspection to confirm the only grading material piles remain on the property. These piles can be removed as part of future site development.

- Sampling was not conducted at the site during the EA. Based on the findings in the Phase I Report, which included site visit notes and photographs, interviews, WDNR and DCOMM file information, the Build On Historical Fill Exemption letter and the Fire Department records, there were no unknown wastes, substances in tanks, drums, containers, piles, etc that would require sampling of Property wastes, soils or groundwater as required in s. 292.21(1)(c)2.h. and i., Stats. Buried concrete and rubble may exist underground on portions of the properties.

Exemption Conditions

Under Wisconsin's Hazardous Substance Spill Law (the "Spill Law"), s. 292.11, Wis. Stats., a person who "possesses, controls or causes" a hazardous substance discharge is liable for taking necessary investigation and cleanup actions at the Property. Section 292.21, Wis. Stats., provides a liability exemption for lenders. A lender is not subject to s. 292.11(3), (4) or (7)(b) or (c), Wis. Stats., and is not liable under chapters 281, 285, 289, 291, or 293 to 299, Wis. Stats., for a discharge of a hazardous substance that occurred on the Property, before the lender takes title, possession or control of the Property through enforcement of a security interest in the Property. Section 292.55(1)(d)1., Wis. Stats., authorizes the Department to issue letters concerning potential liability for environmental pollution.

The lender must meet the conditions in s.292.21, Stats. to qualify for the liability exemption, including but not limited to the following provisions:

- The lender does not intentionally or negligently cause a new discharge of a hazardous substance or exacerbate an existing discharge.

- The lender notifies the Department of any known discharge of a hazardous substance.

- The lender conducts an environmental assessment of the Property not more than 90 days after the date the lender acquires title to, or possession or control of, the Property and files a complete copy of the environmental assessment with the Department not more than 180 days after the date the lender acquires title to, or possession or control of, the Property. The

requirements for conducting an environmental assessment are found in s. 292.21(1)(c)2., Wis. Stats.

- If a discharge of a hazardous substance occurs on or after the date, on which the lender acquires title to, or possession or control of, the Property, the lender implements an emergency action under s. NR 708.05, Wis. Adm. Code, in response to the discharge of the hazardous substance.

- For a hazardous substance released on or after the date on which the lender acquires title to, or possession or control of, the Property, the lender does not engage in the operation of a business at the Property, complete work in progress or take other actions associated with conducting the conclusion of the borrower's business (s. 292.21(1)(c)1., Wis. Stats.).

- The lender agrees to allow the Department and any party that possessed or controlled or caused the hazardous substance discharge, and their consultants or contractors, to enter the real Property to take action to respond to the discharge.

- The lender agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.

- The lender agrees to any other condition that the Department determines is reasonable and necessary to ensure that the Department or another person can adequately respond to the discharge.

Lender Liability Determinations

The Department has reviewed the materials submitted with Bank Mutual's Lender Liability Exemption Request. The Department believes that Bank Mutual meets the conditions of an exempt lender in s. 292.21, Wis. Stats., by taking title through enforcement of a security interest (foreclosure proceedings). In addition, the Department agrees to exercise enforcement discretion under Wisconsin's Hazardous Waste Management Laws, regarding the provisions of Ch. 291, Wis. Stats., and rules promulgated under that chapter.

The Department makes the following, site-specific liability determinations:

1. Bank Mutual acquired the Property through enforcement of a security interest in the Property, and has conducted the required environmental assessment within 90 days of taking title.

2. Bank Mutual provided a copy of the environmental assessment report to the Department within 180 days of acquiring title, as evidence that there has been no known discharge of hazardous substance at the Property.; other than the two spills listed above (Northland Cranberries - wastewater spill & drum rolled off fork lift in 2000), which were cleaned up and no further action required by the Department.

3. Bank Mutual has not intentionally or negligently caused a new hazardous substance discharge at the Property.

4. Bank Mutual has met the requirements for an environmental assessment under s. 292.21(1)(c)1.d. and (1)(c)2.a. through i, Wis. Stats., including the requirement that an

environmental assessment be conducted not more than 90 days after the date of acquisition of the Property. This environmental assessment report was conducted on October 7, 2011 and the Property was acquired, possessed or controlled on August 5, 2011.

5. If Bank Mutual continues to meet all of the conditions for liability exemption eligibility that are listed in s. 292.21, Wis. Stats, Bank Mutual will not be held responsible under Wisconsin's Hazardous Substance Spill Law, s. 292.11, Wis. Stats., for hazardous substance discharges which were present on the Property prior to Bank Mutual acquiring title to, or possession and control of, the Property. If contamination is later discovered that was not revealed by the environmental assessment, Bank Mutual will not be subject to ss. 292.11(3), (4), or (7)(b) or (c), Wis. Stats., and will not be liable under chs. 281, 285, 289, 291, or 293 to 299, Wis. Stats., for a discharge of a hazardous substance on the Property as long as Bank Mutual continues to comply with the requirements of s. 292.21(1)(c), Wis. Stats., and does not cause a new hazardous substance discharge or exacerbate an existing discharge on the Property.

6. The intent of this letter also is to clarify Bank Mutual's environmental liability under the state's Hazardous Waste Law, Ch. 291, Wis. Stats., if it has become "owner" of the Property, where the soil, groundwater or both may be contaminated with hazardous waste compounds. The US EPA has granted the Department the ability to exercise enforcement discretion under the state hazardous waste law in determining whether or not to hold a lender liable for clean-up costs, as an "owner" of a property with hazardous waste implications. The Department may exercise this enforcement discretion if a lender takes title to a property through methods consistent with the lender exemption criteria in the state Spill Law. In addition to meeting these statutory criteria, a lender would need to determine if any containerized material is defined as a hazardous waste, and properly manage the containerized waste.

The Department will not hold Bank Mutual liable for the investigation or clean-up of the Property under either the state's Spill Law or Hazardous Waste Laws, if the following requirements are satisfied:

- Bank Mutual's method of acquiring title to, or possession, or control of the real property is through the enforcement of a security interest;
- Bank Mutual properly manages any containerized hazardous waste materials in accordance with ch. NR 600, Wis. Admin. Code;
- The discharge of a hazardous substance was not caused by an action taken by Bank Mutual, or by a failure of the lender to act;
- Bank Mutual agrees that any material or environmental media generated at the Property (e.g., contaminated soil generated as part of trenching for utilities) will be managed in accordance with applicable federal and state laws; and
- Bank Mutual understands that a lender exemption, and the hazardous waste

  enforcement discretion decision by the Department, will continue throughout the name of the lender's ownership of the Property and beyond, but is not transferable from Bank Mutual to future owners.

Please note that this letter does not exempt any existing underground storage tanks on the Property from compliance with federal and state requirements, including ch. DSPS 10, Wis. Adm. Code. If you have questions regarding these requirements, you should contact the Department of Safety and Professional Services (formerly Commerce). All known underground tanks have been removed from, or closed in place at, the Property as listed above.

This response letter relates only to the state's lender liability clarification and exemption and makes no determination for other persons concerning the presence or absence of hazardous substances other than those identified in the reports provided.

To determine what specific actions would satisfy the **federal** lender liability requirements under CERCLA, we advise that you contact either Thomas Krueger at (312) 886-0562) or by email to Krueger.Thomas@epamail.epa.gov, or John Tielsch at (312) 353-7447 or by email to Tielsch.John@epamail.epa.gov. Their mailing address is U.S. EPA REGION 5, Office of Regional Counsel (C-14J), 77 W. Jackson Blvd., Chicago, IL 60604-3590. The U.S. EPA should be able to provide you with guidance on whether your current and proposed actions concerning the Property are consistent with the federal CERCLA lender liability requirements.

The Department tracks information on contaminated properties in a database that is available on the Internet at http://dnr.wi.gov/org/aw/rr/clean.htm. The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is included at the top of this letter. Click on "BRRTS on the web" to access information about this activity.

If you have any questions or concerns regarding this letter, please contact Project Manager, Christine F. Lilek at the Department's Southeast Region Plymouth Service Center directly at (920) 892-8756, extension 3025, or by email to Christine.Lilek@wisconsin.gov.

Sincerely,

Frances M. Koonce

Frances Koonce
Remediation and Redevelopment Supervisor
Southeast Region, Remediation and Redevelopment Program

Attach: Figure 1 (parcel map)

cc: Tom Sweet – Moraine Environmental (electronic copy)
Christine Lilek – WDNR Plymouth (electronic copy)
Margaret Brunette (electronic copy)
Dan Kolberg – RR/5

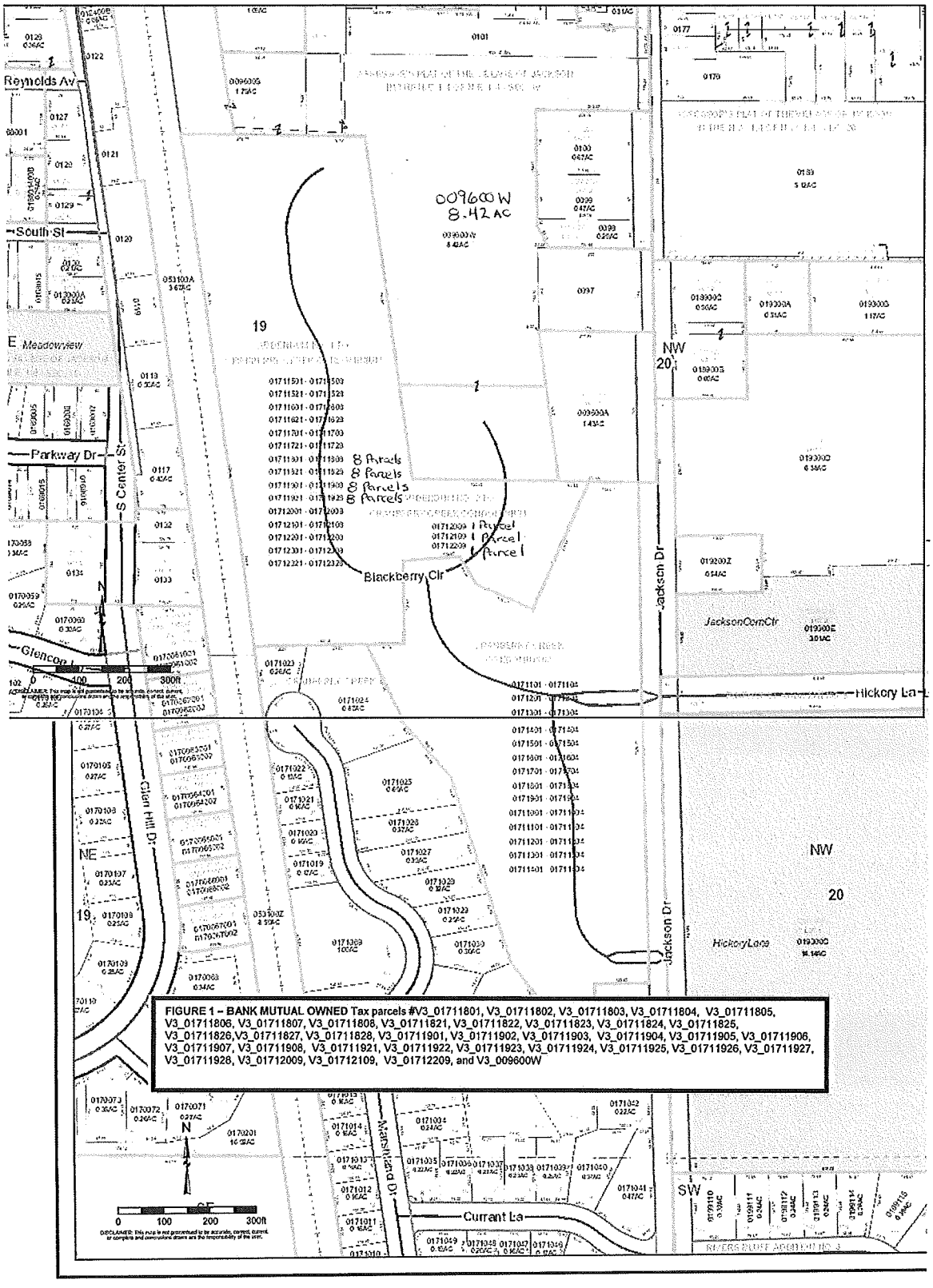

FIGURE 1 – BANK MUTUAL OWNED Tax parcels #V3_01711801, V3_01711802, V3_01711803, V3_01711804, V3_01711805, V3_01711806, V3_01711807, V3_01711808, V3_01711821, V3_01711822, V3_01711823, V3_01711824, V3_01711825, V3_01711826,V3_01711827, V3_01711828, V3_01711901, V3_01711902, V3_01711903, V3_01711904, V3_01711905, V3_01711906, V3_01711907, V3_01711908, V3_01711921, V3_01711922, V3_01711923, V3_01711924, V3_01711925, V3_01711926, V3_01711927, V3_01711928, V3_01712009, V3_01712109, V3_01712209, and V3_009600W