

Practical Benefits and Issues in the Redevelopment of Brownfield Sites: An Environmental Lawyer's View

Northwest Florida Brownfields Redevelopment Forum
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“The Deal” is the key: What makes a deal work for a developer?

- **Reasonable financial rewards**
- **Considering ordinary risks**
- **and acceptable environmental risks**
- **Including predictability of schedule and costs.**



Certainly, There are Legal and Practical Risks of Working with Contaminated Sites

- Statutory cleanup costs
- Financing fears
- Pre-closing or pre-construction delays
- Delays during construction
- Business interruption during later operation
- On-site Lawsuits: workers and others
- Off-site Lawsuits: neighbors
- Issues in later sales or re-financing

These all represent real financial and schedule risks to the Developer.



Why go to sites with Issues at

all?
Because There are Considerable
Advantages of Contaminated Sites:

- “Infill Sites” are often good business locations
- Infrastructure is in place
- Neighborhood project support
- Local government support
- Special financial incentives
- Better price!
- Many attractive areas are already “built out”



HOWEVER: Developers Must do the “Due Diligence” to feel comfortable to proceed

- A well qualified and experienced technical and legal team is crucial
- The team must have a close working relationship with FDEP or the delegated program
- The developer must assess - what is the acceptable environmental risk?
- This involves the predictability of schedule and costs



What are some types of sites we

see?

- Landfills – permitted & historic
- Golf Courses – arsenic from herbicides
- Former Agricultural Lands -pesticides
- “Legacy” Sites from manufacturers/industrial – various issues: metals, organics, etc.
- Gas Stations – tanks/waste oil/solvents
- Dry Cleaners - solvents
- Small Industry Sites – various issues: e.g., metal plating, boat builders, auto repair, machine shops



How Can We Address the Concerns?

- Knowledge, investigation, understanding and planning!
- Agency "closure" decisions
- Agency "comfort letters"
- Prudent deal structure & contract terms
- Thoughtful corporate structure
- **Environmental insurance**
- State Programs: tanks and dry cleaners
- **Brownfields Program (Our focus)**



How Does Brownfield Designation Help?

- **Liability protections**
- **Regulatory relief**
- **Economic Incentives: e.g., Voluntary Cleanup Tax Credits etc.**



How do Brownfields “Get Done”?

- Local government adopts brownfield designation and transmits to FDEP.
- “Responsible” person enters cleanup agreement or “BSRA”.
- Certain developer and end user benefits are then available
- Site rehabilitation proceeds under Chapter 62-780 F.A.C.



How Does Designation Work?

- **Statutory Process – much like local government zoning**
- **“Tricky” requirements for notice and public meetings.**
- **One set of criteria for an area designated at the initiative of local government**
- **Separate set of criteria for an area designated at the initiative of land owner**



What is a “BSRA”?

BROWNFIELDS SITE REHABILITATION AGREEMENT

- **Voluntary agreement between person who will clean up and FDEP (or delegated local agency)**
- **FDEP Form**
- **Certain important developer benefits are then available – e.g., Voluntary Cleanup Tax Credits or “VCTC” and liability relief**



An Important Benefit for Developers: Voluntary Cleanup Tax Credits

- 50% of Cleanup Costs up to \$500,000 per year
- Bonus of 25% when the site is formally closed
- Additional credits for solid waste removal
- Additional credits for health care facilities
- Additional credits for affordable housing



Another Important Benefit for Developers: Liability Protection

- Applies to BSRA signatory and later owners
- Provides certain third party liability protections
- Helps with lenders, tenants and other transactional parties



Today's Take Away:

With careful planning and the right development team, the advantages of contaminated sites often outweigh the risks and delay. With proper management of the risks, many sites have been successfully financed, completed, and occupied without incident; and, thereafter leased, bought and sold, and refinanced by major lenders and real estate companies and investment groups.

Increasingly, Development is Moving Forward at Sites with Environmental Issues.



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