

Brownfields redevelopment for the revitalization of sites



It seems like all the good properties have already been developed. The best new “location, location, location” now requires redevelopment with an environmental twist. The appeal of urban living and the revitalization of urban centers emphasize the value of developing brownfields, with their proximity to workforces, mature infrastructure, transportation networks, waterfronts and historic districts.

Revitalizing blighted properties into housing, mixed use or job-producing economic development happens when the environmental stigma of those properties is removed. Expedited brownfield cleanup opens the door to revitalizing urban cores and town centers while relieving some of the pressure to develop outlying green space.

While there is often no one definition of “brownfields,” it’s a term that describes properties with certain common characteristics. They are typically abandoned, for sale or lease; they may have been commercial or industrial; and they are known to be contaminated or haven’t been assessed due to fear of unknown contamination.

Massachusetts Cleanup Program

Brownfield sites in Massachusetts are cleaned up and developed under Chapter 21E of the Massachusetts General Laws and the Massachusetts Contingency Plan (MCP) regulations. Almost 15 years ago, the state created a “privatized program” to cleanup hazardous waste (and brownfields) sites. The state licenses engineers and scientists as Licensed Site Professionals (LSP). An owner hires an LSP to oversee the investigation and cleanup of these properties. LSPs submit reports to the state at key stages in the cleanup process, including a final statement when the cleanup is complete.

Liability Protections

Once a brownfield sites is cleaned up, the state ends liability for owners or developers who did not own the property when it became contaminated and who did not cause the contamination. Once the contamination is permanently cleaned up, the developer is protected from additional claims by the state and third parties under Chapter 21E, and from property damage claims

under common law.

Establish Clean Enough Standards

The goal of brownfields redevelopment is to clean up a property, often abandoned or underutilized, and to put it back into productive use. These cleanups are risk based; cleanup goals are established based on how the property will be used. Usually the less sensitive the use of the property, the less cleanup is necessary. Cleaning up an industrial property for reuse as a commercial building often requires less cleanup than for residences. The cleanup reflects how the property will be used, now and in the future and this use is locked in by a deed restriction, which is known as an Activity and Use Limitation (AUL).

Financial Incentives

In addition to developing a privatized and a risk-based cleanup program to encourage brownfields development, the Commonwealth has developed several financial incentives. These incentives are available to buyers, and sometimes sellers, of contaminated property provided there is a commitment to cleanup and redevelopment. A brownfields state-sponsored insurance program is available to backup that the cleanup is completed. The Commonwealth provides low-interest loans and grants for site assessment and cleanup and tax credits are often available for successful and permanent cleanups.

Stages of Brownfield Development

There are four key stages for most brownfield development projects: due diligence, acquisition, design and construction. Questions asked during due diligence stage are: Is the property contaminated and if so, how will the contamination affect the deal? Can the property be cleaned up for its intended use and how much will that cleanup be? When planning to purchase a property, an owner will typically have an American Society of Testing and Materials (ASTM) Phase I due diligence performed. The Phase I is based on collecting existing information and visiting a property. If areas of environmental concern are identified a Phase II investigation, including testing, is recommended. Evaluating a currently owned property in a similar manner to the ASTM standards will help identify environmental uncertainties associated with the planned development.

Once the decision is made to acquire a brownfields site, the contamination often affects the terms of the transaction. There are many ways the transaction can be executed

to address site contamination. For example, the value of the property may be reduced to reflect the cost of comprehensive site characterization and remediation costs; the current owner may maintain the responsibility for cleanup and the financial mechanisms are setup to access cleanup funds; or the cost of cleanup may be divided among the parties. The transaction may consider whether an AUL is appropriate and whether the restrictions are consistent with the intended development plan.

The project design should consider contamination. Contamination may affect how the project is designed. The contamination may affect the layout of building, open space and hardscape. Buildings and parking lots may be located to encapsulate contamination, minimizing the cost of soil excavation and disposal. A vapor barrier or geotextile layer may need to be incorporated in project designs. Technologies, such as subslab depressurization systems or vapor barriers can be designed directly into new buildings to eliminate exposure to harmful vapors.

An effective strategy for brownfield sites is to incorporate the cleanup directly into redevelopment. Cleanup can often be done as part of project construction, saving both time and money. The excavation for foundations, basements or underground parking during construction often provides adequate site cleanup.

Managing the risk

Brownfields do increase the risk to any development project, but these risks can be successfully managed. Like most risk management strategies, information is the key. What is contaminated: soil, groundwater, or indoor air? What type of contamination? How much contamination? A site that is contaminated because of “urban fill” likely will require much less upfront investigation than one contaminated with dry cleaning chemicals. When site contamination is understood, the cost to remediate can be accurately estimated. The cleanup can be integrated into the construction schedule, minimizing change orders and delays. The LSP can develop a regulatory compliance strategy that dovetails with construction.

Through a mixture of state laws and regulations, financial incentives, liability protections and the experience of seasoned environmental professionals, these once abandoned brownfield sites are being successfully redeveloped.

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