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By Mark G. Dotzour and Jeffrey M. Uryniak

from BROWNFIELDS to GREENBACKS

Brownfields. Every city has them. They are abandoned gas stations, idled manufacturing plants, vacated dry cleaners and other contaminated sites that mar the visual landscape and create health and safety hazards.

In the past, real estate developers and investors steered clear of such properties because government regulations, liability problems and difficulty securing financing made them far more trouble than they were worth to redevelop. But changes in government regulations, technology and market demand are making private developers take a second look at brownfields, which advocates promote as the best opportunities for private developers today.

An estimated 450,000 brownfields exist nationwide, ranging in size from less than an acre to several thousand acres. The sites have a variety of environmental problems, including deteriorating

buildings, asbestos, leaking petroleum storage tanks and low-to-moderate levels of other hazardous substances. There may be soil and groundwater contamination caused by discharges or dumping of organic and inorganic chemicals such as petrochemicals, solvents and metals. Interestingly, some brownfields suffer from the mistaken perception that they are contaminated when in fact they just need to be cleared of debris.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), passed in 1980, was designed to hold industry owners and operators responsible for pollution cleanup. This legislation did not limit responsibility for pollution to those who caused the contamination and did not limit the degree of responsibility of any party involved with the site. Consequently, property owners, developers, lenders and public officials were skeptical of brownfields redevelopment projects because of the substantial risks involved. The subsequent Superfund Amendments and Reauthorization Act of 1986 expanded cleanup requirements but did little to encourage brownfields redevelopment.

Risks of Redevelopment

Developers know that any project includes an element of risk. But brownfields redevelopment historically has carried exceptional risk for all parties involved, primarily because many costs cannot be pinned down until a project is well under way. Initially, project managers face the expense of identifying the types and levels of contamination present at the site. Cleanup costs can vary widely depending on whether problems such as previously undetected contaminants arise during the process. Legal fees and various consultant fees incurred to ensure regulatory compliance can be considerable.

Liability issues compound the uncertainty surrounding brownfields projects. Personal injury lawsuits prompted by site contamination, both on the site and on adjoining properties, are a possibility, as are suits filed by regulators or other third parties. In some cases, neighboring property owners must be compensated for the nuisance related to property contamination or the remediation process.

Lenders traditionally shied away from brownfields redevelopment projects in part because of uncertain property values both before and after cleanup. If borrowers defaulted before cleanup was completed, lenders were left with diminished collateral, making it difficult or impossible to recoup their investment.

SAN ANTONIO BROWNFIELDS. *The Whole Earth Provision Company in the Alamo Quarry Market (below) showcases the smokestacks from the old Alamo Quarry, a brownfield that was cleaned up and redeveloped. The former Longhorn Quarry site (next page, top) is being turned into a golf course. A warning sign posted at the former Aztec Ceramics site (next page, bottom) identifies the property as a brownfield.*



Changes Spur Brownfields Redevelopment

Recent social, legislative, economic and technological changes have made brownfields redevelopment projects less intimidating to developers and investors. Just as recycling efforts of all types have increased in popularity, brownfields redevelopment has taken on a more positive image. The public sector has realized the physical and economic benefits associated with redevelopment and has taken steps to encourage it.

Many brownfields are in downtown areas where real estate is at a premium. Redevelopment of these properties dovetails with the current trend toward infill development to limit urban sprawl. High resale prices serve as incentives for developers to take on the projects.

Changes in federal legislation have reduced some of the red tape associated with brownfields remediation. Risk-based cleanup standards are now in place, meaning that the extent of cleanup required is based on what the site will be used for. Residential uses require the highest cleanup standards, while less-than-pristine standards are acceptable for industrial sites as long as residual contaminants are minimized.

Technological advances have improved the reliability of contamination assessments and have significantly lowered cleanup costs.

Lender confidence in brownfields projects has been boosted in part by improvements in environmental site assessments. The American Society for Testing and Materials now provides lenders with a standardized format for evaluating contamination. Less uncertainty in assessment makes it easier for banks to quantify risk.

Financial institutions are consequently more willing to lend funds for brownfields projects, although such loans still have tougher-than-average underwriting standards. Developers can expect low loan-to-value ratios to hedge against hidden contamination and liability. A cleanup contingency fund to cover unexpected cost overruns may be required. Some lenders require borrowers to take out environmental insurance policies, which cover the costs of cleaning up any undetected contamination.

Federal, state and local incentives in the form of loan subsidies, low-interest loans and loan guarantees are now available to reduce brownfields capital costs. In addition, public contributions, tax abatement and tax credits are making redevelopment efforts more feasible. Assistance programs such as tax increment financing may be applied to projects in economically depressed areas. The Texas Natural Resource Conservation Commission (TNRCC) has more information on incentive programs on its website (<http://www.tnrcc.state.tx.us/permitting/remed/vcp/brownfields.html>).

Developers with little experience in brownfields remediation may benefit from the consulting services of an environmental redevelopment firm. These firms are experienced and well capitalized and specialize in remediation of contaminated properties. In addition to consulting services, they buy and clean up contaminated properties, then sell them to developers or end users who are thus spared the potential liability of holding title to polluted property.

An environmental redevelopment firm negotiates a cleanup agreement for a brownfield site with government regulators, takes title to the polluted property and conducts the cleanup. Once the site is clean and all parties have been insured against environmental liability, it sells the ready-to-develop property.

Other strategies exist to help developers hedge the risk in redeveloping brownfield properties, including indemnification agreements, negotiating a buying price that takes variable cleanup costs into consideration, self-insurance and third-party environmental insurance. Environmental insurance policies can be designed to meet the demands of both developers and lenders. Lenders can purchase policies to protect against losses resulting from defaulting brownfields developers.

Government Programs

The Environmental Protection Agency (EPA) made brownfields redevelopment a priority in 1993 through the Brownfields Initiative, which provides grants for environmental assessments of contaminated property. In 1997, the Taxpayer Relief Act included an income tax incentive to encourage cleanup and redevelopment of brownfields in distressed areas. With the new tax incentive, cleanup costs in certain areas are fully deductible in the year incurred.

In 1999, the EPA announced availability of more than \$30 million to help communities redevelop brownfields through revolving loan funds, which provide low-interest loans to restore abandoned properties to productive use. Brownfields Initiative strategies also include funding pilot programs and other research efforts, clarifying liability issues, entering into partnerships, conducting outreach activities, developing job training programs and addressing environmental justice concerns.

Grants of as much as \$200,000 are awarded to pilot cities through the EPA's Brownfields Economic Redevelopment Initiative to identify and evaluate sites and devise solutions. Grants have been awarded to the Rio Grande Council of Governments in Texas and New Mexico and to seven Texas cities: Dallas, Houston, Austin, Galveston, Laredo, Grand Prairie and Brownsville.

Pilot programs help local governments create the favorable environment needed to encourage developers to pursue brownfields projects. Brownsville's grant will be used to conduct site assessments and develop cost estimates for cleanup and redevelopment of a distressed neighborhood. In Dallas, an EPA brownfields pilot grant was used to evaluate downtown sites for potential reuse. This in turn attracted nearly \$53 million in private investment to clean and redevelop several properties.

Texas' Voluntary Cleanup Program

Texas took a big step toward accelerating brownfields remediation with the creation of a Voluntary Cleanup Program (VCP) in September 1995. VCPs encourage cleanup of contaminated properties by ensuring that future landowners and lenders have no liability to the state because of existing contamination.

Property owners or project developers must apply and be accepted by the VCP. Once a property is successfully remediated, the TNRCC issues a certificate of completion that is recorded at the county courthouse as part of the deed record. The certificate releases lenders and future owners from liability, thus making it easier to sell or transfer the remediated property.

VCPs benefit sellers because the value of the property is increased. Buyers and lenders benefit as well, as they are protected from future state claims against them as a result of existing contamination. They are protected if more stringent regulations



are enacted which, without the VCP certificate, may have required additional cleanup.

The TNRCC has received hundreds of applications for the VCP from representatives of dry cleaners, manufacturing facilities, shopping centers, warehouses, auto-related businesses and other commercial and industrial enterprises. One high-profile VCP success story stars the American Airlines Center, which will be the new home of the Dallas Stars and Dallas Mavericks. The arena, set to open in the fall of 2001, is located on the site of a former brownfield in downtown Dallas.

Identifying Redevelopment Opportunities

The EPA places contaminated properties on one of three lists based on level of contamination. These lists include many state hazardous waste sites and solid waste facilities where redevelopment is not feasible.

National Priorities list sites suffer from extreme levels of contamination and rarely offer cost-effective redevelopment opportunities. The Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) database consists of sites with high levels of contamination that could potentially be put on the National Priorities List. These typically have been of little interest to developers.

However, during the past few years, the EPA has removed more than 30,000 sites from the CERCLIS list, increasing the likelihood for redevelopment. The third list includes sites where no further EPA remedial action is planned. These sites may hold some development potential.

Because the majority of brownfield sites are not on the EPA's lists, interested developers must scout out redevelopment opportunities. Some local governments have unofficial lists of the brownfields in their communities. Abandoned commercial properties other than gas stations,

auto service shops, dry cleaners and others involving chemicals may offer redevelopment opportunities. In some cases, these properties suffer from the perception that they are contaminated, when in fact no contamination exists.

Future of Brownfields

Brownfields redevelopment benefits communities through urban regeneration, reduced sprawl, an increase in tax revenues and jobs and an improved living environment. The federal government's commitment to remediation of these properties over the past few years, along with numerous state and locally sponsored programs, is encouraging private developers to take on these projects.

Working together, the public and private sectors may be able to engineer a win-win scenario in which developers willing to undertake the elevated risks of brownfields remediation receive appropriate returns for their trouble. ♣

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