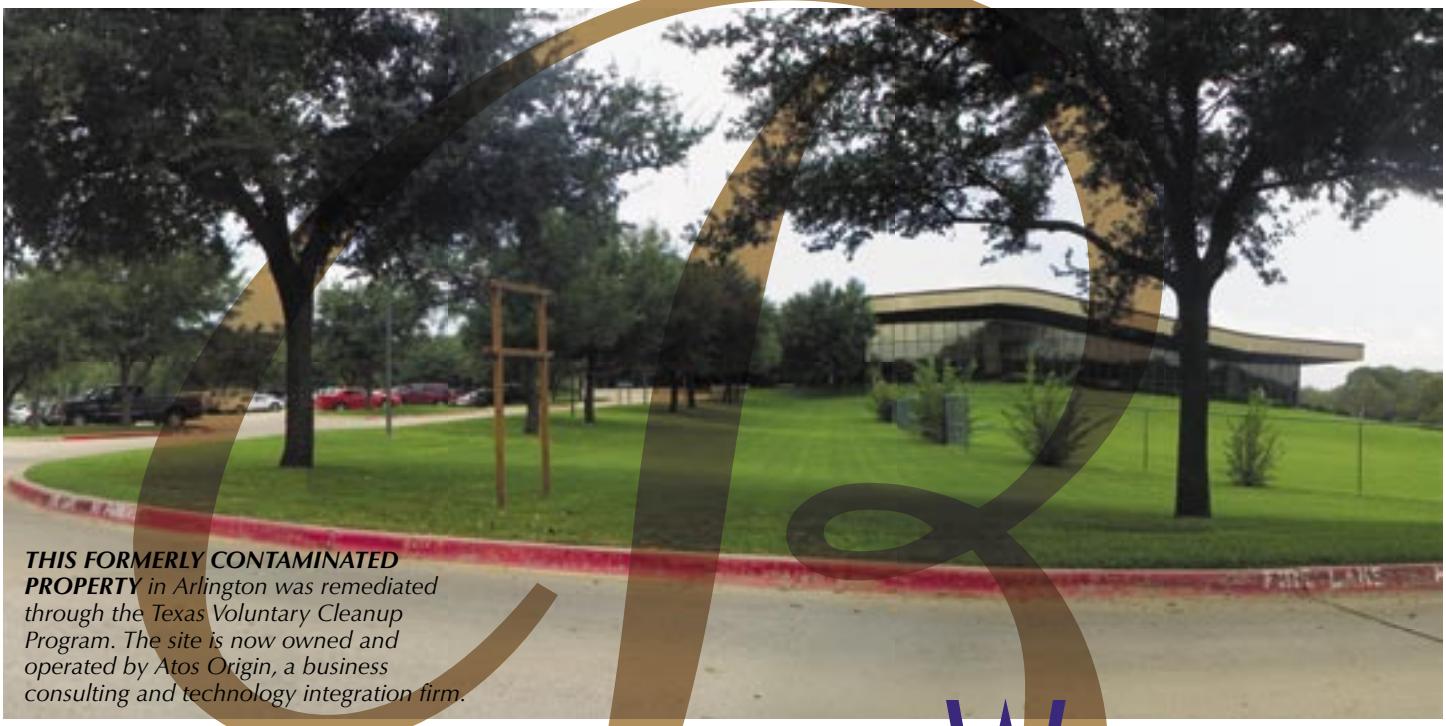
A Reprint from *Tierra Grande*



THIS FORMERLY CONTAMINATED PROPERTY *in Arlington was remediated through the Texas Voluntary Cleanup Program. The site is now owned and operated by Atos Origin, a business consulting and technology integration firm.*

BROWNFIELDS REDEVELOPMENT COMES OF AGE

By Nancy McQuistion

What a difference a decade makes. In the mid-nineties, brownfields redevelopment was still in its infancy. Most developers were unwilling to tackle contaminated properties because of strict regulatory requirements, substantial liability risks and uncertain cleanup costs.

Lenders were just as skeptical, for the most part refusing to finance brownfields projects. At that time, only a handful of states had incentives to encourage developers to return brownfields to productive use.

Today, things are different. Thousands of abandoned industrial sites, gas stations and other contaminated properties across the country have been cleaned up and turned into businesses, housing and parks, contributing to tax rolls and creating jobs.

Forty-nine states including Texas have brownfields redevelopment initiatives. And the first federal law addressing brownfields was passed in 2002.

The time is right for developers — large, small and in-between — to take another look at brownfields.

Conference Showcases Progress

Over 4,000 city, county, state and federal government officials, private developers and other stakeholders gathered in St. Louis in September for Brownfields 2004, a conference presented by the U.S.

HOUSTON'S DOWNTOWN *Aquarium sits on the cleaned-up site of a former fire station and waterworks plant. The project, which was redeveloped by Landry's Restaurants Inc., created 300 full-time jobs.*

Environmental Protection Agency (EPA) and the International City/County Management Association.

Keynote speaker and EPA Administrator Michael Leavitt (the Bush administration's nominee for Secretary of Health and Human Services) characterized the evolution of the agency's brownfields program over the past decade as a move from "mandate, regulate, litigate" to "collaborate, collaborate, collaborate."

The agency works closely with cities, counties, councils of governments, coalitions and other local government entities to identify existing brownfields on a communitywide or regionwide level.

"The majority of EPA funds go to cities and nonprofits," says Amber Howard Perry, brownfields project manager for the EPA's Region 6 office in Dallas. "They're the ones that get the jobs done."

The EPA also collaborates with the Texas Commission on Environmental Quality (TCEQ; formerly the Texas Natural Resource Conservation Commission), the state agency that regulates brownfields redevelopment. A memorandum of agreement between the two agencies allows property that meets TCEQ cleanup standards to be granted "No Further Action" status from the EPA, meaning that the EPA will not require additional cleanup.

The TCEQ receives roughly $500,000 per year from the EPA. These funds are used to enhance the state's voluntary cleanup program (VCP) and to hire contractors to conduct assessments of contaminated sites.

Remarks made during conference presentations indicate that many private developers are pleased with the collaborative working relationships they have with federal, state and local regulatory agencies. One developer on a panel commented that things have changed decidedly for the better, particularly over the past seven years.

"The EPA is great to work with," said Randy Jostes of Commercial Development Co. Inc. of St. Louis. Jostes says the agency is "looking for solutions" to make redevelopment of contaminated properties even less complicated and risky.

Another national developer who had worked on multiple Texas brownfields projects commented that developers and regulators in Texas work well together and enjoy collegial relationships, much more so than in other states. Two other panel members nodded in agreement.

Stakeholders Learn From Experience

So what changed between the early nineties and now? Simply put, everyone involved in brownfields redevelopment got wiser by virtue of experience. From a new and radically risky concept, cleanup and development of contaminated properties grew to be more familiar and understandable. Changes were made based on lessons learned.

Early on, the EPA's remediation standard required the same level of cleanup for all contaminated properties. In the late nineties, the agency began using risk-based corrective action standards that allowed different cleanup levels based on what the site had been used for in the past and the planned use for the redeveloped property. Property to be developed into a manufacturing site in an industrial park, for example, required less cleanup than a contaminated neighborhood site slated to be converted into a day-care center.

Cleanup technology was improving and becoming more affordable, too. Methods such as pump and treat, in which contaminated water is pumped out of its source, cleaned and returned, is gradually being replaced by bioremediation methods, which use living organisms to remove pollutants from soil or water. Treatments may include a process called monitored natural attenuation, in which chemicals are left to break down naturally over time.

As the number of completed projects increased, "developers and regulators gradually began to realize that brownfields could be redeveloped successfully and sold, often at a substantial profit," says Tom Jackson of Real Property Analytics Inc. in College Station. Jackson also is an adjunct professor in the land economics and real estate program at Texas A&M University.

Eventually, lenders began to hop on the brownfields bandwagon. By 1999, a national survey of banks conducted by Jackson's firm revealed that 73 percent of these lenders had been involved with loan applications for commercial or industrial properties with environmental problems. The loans were extended 52 percent of the time.

Those percentages are even higher today, Jackson says. Most banks now have environmental specialists on staff with expertise in the technical and financial aspects of brownfields redevelopment.

"Now contamination is just another type of risk. It's not a deal killer like it used to be."

— Tom Jackson, Real Property Analytics Inc.

Environmental Insurance Enters Arena

The emergence of environmental insurance revolutionized brownfields redevelopment, offering developers significant relief from the financial uncertainty inherent in remediation projects. Policies fall into two categories.

Cleanup cost cap insurance covers cost overruns that often occur during remediation, when the extent of contamination can be pinpointed. Historically, owners bore this financial burden alone.

Pollution legal liability (PLL) policies protect property owners against losses arising from preexisting and unknown pollution conditions, both onsite and offsite. Coverage also can be purchased for future pollution conditions that could occur during operation of a facility.

Developers speaking at the Brownfields 2004 conference uniformly praised PLL policies for eliminating a major source of concern — liability for third-party damage claims. In a 2003 survey of developers conducted by the University of Louisville, Resources for the Future and the University of Maryland, protection from the risk of third-party damage claims (for example, a lawsuit alleging that contamination spread to adjoining property) ranked as more important than protection from additional government-required remediation.

Environmental insurance policies are understandably site-specific and require extensive investigation during the underwriting process to identify types and extent of existing contamination. In some cases, a project's contractors may be insured along with the property owners.

Federal, State Protection Increases

Further liability protections resulted from passage of the Small Business Liability Relief and Brownfields Revitalization Act in 2002. The act built on the EPA's existing brownfields program by exempting certain contiguous property owners and prospective purchasers from liability under the federal Superfund program. At the same time, it expanded properties eligible for the program to include petroleum-contaminated sites.

On the state level, the VCP implemented in 1995 offers administrative, technical and legal incentives to brownfields redevelopers. Under the VCP, once a property meets established risk-based standards, parties not responsible for the contamination — including future lenders and property owners — are protected from liability to the state.

"The VCP certificate of completion breaks the chain of liability on a property," says Jay Carsten, manager of the VCP.

Realistically, obtaining a certificate of completion can take anywhere from several months to more than a year, Carsten says, depending on the complexity of the cleanup project. But the effort pays off, as certificates make it easier to sell redeveloped brownfields and often raise property values as well.

THE FERRIS WHEEL *at the downtown Houston Aquarium lends color to a former brownfield site.*

From the program's inception to July 2004, over 1,600 manufacturing facilities, shopping centers, dry cleaners, auto-related businesses, warehouses and other commercial and industrial enterprises submitted applications. Of these projects, nearly 800 have been issued final certificates of completion. More than 100 additional sites have received conditional certificates, indicating that a long-term cleanup is in progress, and some type of remediation system in place.

The TCEQ also implemented an innocent owner-operator program that gives a property owner immunity from liability to the state if property was contaminated by a source not located on the property, as long as the owner did not cause or contribute to the contamination source.

All these risk reduction factors have had a major impact on the brownfields remediation industry.

"Risk and return drives the entire process in all real estate deals," says Jackson. "Now contamination is just another type of risk. It's not a deal killer like it used to be."

Several developers speaking at the conference echoed Jackson's statement, commenting that zoning problems kill more deals than environmental issues.

Investors, Projects Evolve

In the beginning, brownfields were primarily redeveloped by large commercial enterprises specializing in remediation projects and looking for extraordinary returns. Although large firms are still active in the market — Cherokee Investment Partners, to name one — smaller development firms, nonprofits and ordinary investors are just as likely to be involved. The focus has shifted to long-term returns.

Projects don't have to be huge and urban, either. Linda Garczynski, director of the EPA's Office of Brownfields Cleanup and Redevelopment, says the EPA wants to increase awareness of how smaller brownfields projects and those in rural areas can benefit from federal and state brownfields programs.

A decade of progress has demonstrated that brownfields remediation can boost economic revitalization of communities by putting nonproductive, eyesore properties that may threaten public health back to good use, usually creating jobs in the process. From a developer's perspective, the bigger news is that money can be made on such projects.

The positives of brownfields redevelopment extend beyond dollars and cents. Many brownfields are being turned into much-needed greenspace, improving quality of life for local residents. And when properties become available in city centers, buyers may be less inclined to locate in the suburbs, thus reducing urban sprawl.

Remember Deal Basics

Brownfields remediation remains risky business, like all real estate investment. But a multitude of changes in the industry over the past decade have significantly lowered risks and increased profitability for brownfield developers.

One thing hasn't changed a bit, however. When all is said and done, basic real estate investment criteria should drive any decision to invest in contaminated properties.

"Despite their complexity, brownfield deals are fundamentally no different than other real estate deals," says Jackson. "The end use still has to make sense from a real estate standpoint."

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MORE ABOUT BROWNFIELDS PROGRAMS

Texas Voluntary Cleanup Program
www.tnrcc.state.tx.us/permitting/remed/vcp/index.html

Innocent Owner-Operator Program
www.tnrcc.state.tx.us/permitting/remed/vcp/iop.html

City of Dallas Brownfields Program
www.dallas-edd.org/bfieldpage.htm#showcase

City of Houston Brownfields Program FAQs
www.ci.houston.tx.us/citygovt/mayor/brownfields

City of Austin Brownfields Program
www.ci.austin.tx.us/watershed/brownfields.htm

City of El Paso Brownfields Program
www.elpasotexas.gov/econdev/services_brownfields.asp

City of San Antonio Brownfields Redevelopment Program
www.sanantonio.gov/nad/brownfields.asp?res=1280&ver=true

U.S. Environmental Protection Agency Brownfields Cleanup and Redevelopment
www.epa.gov/brownfields

U.S. Department of Housing and Urban Development Brownfields Economic Development Initiative
www.hud.gov/offices/cpd/economicdevelopment/programs/bedi/index.cfm

International Economic Development Council's Brownfields Redevelopment Manual
www.iedconline.org/brownfields_redevelopment_manual.html

National Brownfield Association
www.brownfieldassociation.org

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