

**Legal Issues and
the Business of Brownfields
~ *Managing Risk and Making Money* ~**

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Environmental Concerns for Developers

- ❖ Is It Safe?
- ❖ Potential Legal Liability
 - ☐ Government
 - ☐ Buyers, Tenants and Neighbors
- ❖ Potential Practical Liability
 - ☐ Financing Costs
 - ☐ Construction Costs
 - ☐ Timing



What the Developer Needs to Know

- ❖ Prior Use
- ❖ Assessment of Environmental Condition
- ❖ Legal and Regulatory Status
- ❖ Remedial Options
- ❖ Costs
- ❖ Timing Issues



Liabilities

- ❖ Legal
 - Federal
 - State
 - 3rd Party
- ❖ Practical
 - Financing
 - Construction
 - Operations
 - Image



Legal Liabilities: Federal

- ❖ Due Diligence Is the Key
- ❖ If Contamination Occurred Before Taking Title,
No Liability



Legal Liabilities: North Carolina

- ❖ Even if No Federal Liability, Probably Have State Liability
- ❖ Brownfields Agreements
 - Expressly Say No Liability
- ❖ Risk-Based Approach
 - Limited Clean Ups
 - Use of Deed Restrictions



3rd Party Liability

- ❖ Neighboring Properties
 - ❑ Are There Really Any Risks?
 - ❑ Insurance Products



Practical Liabilities

- ❖ Will Environmental Conditions:
 - ❑ Increase Cost of Money
 - More Collateral
 - Higher Rates
 - ❑ Investigation and Clean Up Costs 100% Deductible From Federal Income Taxes
 - Not Capitalized
 - ❑ Brownfields Tax Credits

North Carolina Property Tax Credits

- ❖ Percentage of the appraised value for the qualified improvements that is excluded:

Year	Percent of Value Excluded
Year 1	90%
Year 2	75%
Year 3	50%
Year 4	30%
Year 5	10%



Practical Liabilities

- ❖ Will Environmental Conditions:
 - Increase Cost of Construction
 - Delays
 - Handling Contaminated Dirt
 - Dewatering Dirty Water



Practical Liabilities

- ❖ Will Environmental Conditions:
 - Interfere with Operations
 - Wells in Parking Lot
 - Operation of Treatment System
 - People On-Site Who Look Out of Place



Contamination from Off-Site Source

- ❖ No liability if Cooperate With Responsible Party



Underground Petroleum Storage Tanks

- ❖ Not Eligible for Brownfields
- ❖ Who Is Responsible?
- ❖ Compliance Options
- ❖ Will the Government Reimburse Me?



Negotiation Issues at Brownfields Sites

- ❖ Lower Price
- ❖ Liability Protection: Practical and Legal
- ❖ Getting Fair Share of Incentives
- ❖ How Long Does It Take?





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