BROWNFIELD PARTNERS

Fogarty Advisory Services, LLC and the Maguire Group

A QUALIFIED APPROACH TO ADDRESS THE SPECIFIC NEEDS OF REAL ESTATE DESIGNATED AS "BROWNFIELD"

PREPARED BY
FOGARTY ADVISORY SERVICES LLC

Introduction

The Environmental Protection Agency (EPA) defines a "BROWNFIELD" as "abandoned, idled, or underused industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination."

During the third annual Conference of Mayors (February 2000), it was identified (by 231 mayors representing 42 states) that there were more than 21,000 Brownfield sites comprising more than 81,000 acres of abandoned or underutilized land. These figures identify the pervasiveness of the Brownfield problem throughout the United States, and the many missed opportunities to recycle individual sites back to productive use.

Developers are reluctant to risk the potential costs associated with hazardous waste assessment and cleanup, for which owners can be liable even if they were not involved with the original contamination of the property. Lenders have been unwilling to participate in Brownfield revitalization due to potential liability, collateral risks, and bankruptcy risk by the project sponsors. The result is increasing development of "green space," urban sprawl, and continued economic decline in the former industrial and commercial areas. Surprisingly, these very areas suffering from economic decline are often well located in heavily traveled areas. This often describes a prime candidate for real estate re-deployment.

The purpose of this plan is to bring to light the very real opportunities that exist in the "Brownfield" arena, and to identify the proper business strategy to exploit the opportunity.

Background

In order to fully appreciate the opportunities of investing in appropriate "Brownfield" sites, it is first necessary to understand the background of the Superfund program (which represents the worst case scenario to the investor). The following paragraphs contain various acronyms that have evolved into its own language regarding the Superfund program. The following will present a time line of the Superfund, and its progress up to the current date (20th anniversary).

Responding to public concern over "midnight dumping" of toxic wastes, Congress establishes authority for controls over hazardous waste from its creation through its disposal. The Resource Conservation and Recovery Act (RCRA) is a federal law enacted in 1976 to establish a regulatory system that tracks hazardous substances from their generation to their disposal. The law required the use of safe and secure procedures in treating, transporting, storing and disposing of hazardous substances. RCRA is designed to prevent the creation of new and uncontrolled hazardous waste sites. During this time Congress enacts the Toxic Substances Control Act (TSCA) providing EPA with the authority to protect public health and the environment.

In 1978 President Carter declares a state of emergency at Love Canal, New York, after a startling increase in public health risks to the surrounding residents. This incident precipitates the heightening of public awareness of the grave perils of unregulated hazardous waste dumping in and around residential communities. In 1979, the House and Senate hold extensive hearings on the dangers of toxic waste dumps, and major bills are passed to create a "superfund" for dealing with those dangers.

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA is a special tax that feeds a trust fund (commonly known as Superfund) to be used to investigate and clean up abandoned or uncontrolled hazardous waste sites. CERCLA required (for the first time) that the EPA step beyond its traditional regulatory role and provide response authority to clean up hazardous waste sites. The EPA has primary responsibility for managing cleanup and enforcement activities authorized under CERCLA. Under the program EPA can pay for the cleanup when parties responsible for the contamination cannot be located or are unwilling or unable to perform the work, or take legal action to force parties responsible for contamination to clean up the site or reimburse the Federal government for the cost of the cleanup.

The National Priorities List (NPL) is EPA's list of the most serious uncontrolled or abandoned hazardous waste sites identified for possible long-term remedial response under the Superfund. Inclusion of a site on the list is based primarily on a group of scores the site receives under the Hazard Ranking System (HRS). The HRS is the primary screening tool used by EPA to assess the risks posed by specific sites.

Based on the scores received from the screening process, determinations are made as to which sites belong on the NPL. The purpose of the NPL is primarily to serve as an informational and management tool. The initial identification of a site for the NPL is intended as a guide for the EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine which CERCLA-financed remedial action (s), if any, may be appropriate. The NPL also serves to notify the public of sites the EPA believes warrant further investigation.

The Superfund Amendments and Re-authorization Act (SARA) were passed by Congress in 1986 in order to strengthen CERCLA authorities. To provide more authority to handle these complicated problems, Congress made changes to cleanup and enforcement processes. One key provision includes a mechanism for public participation under the EPA's *community right to know* program. SARA also required State involvement at every phase of the Superfund program. On the enforcement side, one of the most significant changes encouraged voluntary settlements instead of litigation. This provided the basis for EPA's "Enforcement First" policy, which has resulted in more sites being cleaned up by responsible parties instead of the EPA using the Superfund. SARA also required that

facilities owned by the government comply with CERCLA in the same manner as any non-government facility.

Accomplishments of the Superfund program (end of FY 2000)

757 Superfund sites have had all cleanup construction completed
There are 1450 final NPL sites: 1330 of these sites (92%) are either undergoing cleanup construction (remedial or removal), are completed, or are deleted (218 sites deleted)
410 of the 1450 sites (28%) have cleanup construction underway and an additional 187 (13%) have had or are undergoing a removal cleanup action.
There are 59 sites proposed for listing on NPL. Of these, 35 have had or are undergoing cleanup actions (remedial or removal)
Over 1,000 sites have all final cleanup plans approved
Over 6,400 removal actions have been taken at hazardous waste sites to immediately reduce the threat to public health and the environment.
Since FY 1992, responsible parties continue to perform over 70% of new remedial work at NPL sites (as of FY 1999).
Over the life of the Superfund program, EPA has reached settlements with private parties with an estimated value of over $ 16 billion (as of FY 1999)
EPA "gets the little guys out". The Superfund enforcement program has achieved over 430 de minimis settlements with more than 21,000 small waste contributors (as of FY 1999)
The EPA and its State partners have assessed over 41,000 sites and more than 32,000 sites have been removed from the CERCLIS waste site list to help promote the economic redevelopment of these properties.

Steps for cleaning up a Superfund Site:

Site discovery-process begins when a hazardous substance release is identified and reported to EPA
CERCLIS- Site is listed in the Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS), which inventories and tracks the releases providing information to the response agencies
Preliminary Assessment- This is the first stage of the site assessment. Preliminary Assessments are conducted to determine if an Emergency Removal Action is necessary, and to establish Site Inspection priorities.
Site Inspections- The second stage of a site assessment involves on-site investigations to determine the extent of a release or potential for release. The site inspection usually involves sample collection and may also include the installation of ground water monitoring wells.

Removal Action- A short term, fast track Federal response to prevent, minimize, or mitigate damage at sites where hazardous material have been released or pose a threat of release. Removal Actions may occur at any step of the response process.

Hazard Ranking System- Site assessment information is used in the HRS to evaluate the environmental hazards of the site.
NPL listing- the NPL is a list of abandoned or uncontrolled hazardous substance sites that are the national priorities for long-term clean up, making them eligible for Federal Cleanup Funds.
Remedial Investigation / Feasibility Study- Once a site has been placed on NPL, a Remedial Investigation (RI) and Feasibility Study (FS) are conducted. The purpose of the RI is to collect data necessary to assess risk and support the selection of response alternative. The FS is a process for developing, evaluating and selecting a remedial action.
Record of Decision (ROD)- Once an RI /FS is completed; a Record of Decision is generated which outlines the cleanup actions planned for the site.
Remedial Design (RD)-The Remedial Design is the set of technical plans and specifications for implementing the cleanup actions chosen in the ROD.
Remedial Action- This is the execution of construction and other work necessary to implement the chosen remedy,
Construction Completion- This is where physical construction of all clean up remedies is complete, and all immediate threats have been addressed, and placed under control.
Operation and Maintenance- these activities are conducted at the site after remedial construction activities have been completed to monitor and ensure that the cleanup methods are working properly.
Deletion from NPL

Superfund time line:

CERCLA- Comprehensive Environmental Response, Compensation, and Liability Act
Enacted December 11, 1980- trust fund of $ 1.6 billion is authorized over 5yr period.
Amended by the Superfund Amendments and Re-authorization Act (SARA), enacted October 17, 1986- trust fund of $ 8.5 billion authorized over 5 years
Extended to September 30, 1994- additional $ 5.1 billion authorized

NCP- National Oil and Hazardous Substances Pollution Contingency Plan Implements Superfund
Revised July 16, 1982 to incorporate CERCLA requirements
Amended October 17, 1986 by SARA

Revised March 8, 1990 in response to CERCLA

HRS- Hazard Ranking System
Promulgated July 16, 1982 as appendix A of the NCP
Revised December 14, 1990 in response to CERCLA Section 105 added by SARA
Effective date March 14, 1991

NPL- National Priorities List
Promulgated September 8, 1983, as Appendix B of the NCP
Last sites proposed under HRS promulgated February 11, 1991
First sites proposed under the revised HRS July 29, 1991
First sites added to NPL under the revised HRS October 14, 1992

CCL- Construction Completion List
Category activated February 11, 1991
List activated March 2, 1993

Removing Legal Barriers to Economic Development

One of the biggest success stories of the Superfund program has been the return of formerly contaminated properties to productive use. Areas once written off as toxic eyesores have been transformed into office buildings, recreational centers, industrial facilities, and even wildlife habitats.

One recent success story is the Fairchild Semiconductor site in California, which now hosts the World Headquarters of Netscape Communications. This once vacant property is now the workplace for some 1,600 executives and employees generating more than $ 11 million annually in local and State taxes. The site is also the future or current home to additional technology tenants such as America Online, Hewlett Packard, and KPMG Peat Marwick. In all there have been more than 190 success stories at Superfund sites in all areas of the country, with more than 150 of the sites involving a totally new use for the property.

The keys to success are within the local community and the partnerships it is willing to create. And the government has clearly learned that in order to make the process more efficient and effective, the private sector must be included.

Perhaps the greatest impediment to re-use is the concern of liability on the part of the prospective purchaser. One way the Federal Government addresses these concerns is by entering into Prospective Purchaser Agreements (PPA's) with potential buyers of

contaminated property. A PPA is an agreement where the EPA conditionally releases a buyer from Superfund liability for contamination that existed before the buyer began work at the site. The PPA will not provide protection for any hazardous conditions created by the purchaser, however in return for the conditional release from liability, the buyer agrees to help EPA with its mission of protecting human health and the environment. The PPA requires that the buyer:

Avoid any activities that would disturb the cleanup process
Provide the EPA with access to the site so the EPA can monitor the cleanup
Help perform or pay for the cleanup itself.

OPPORTUNITY

The remainder of this plan will discuss the opportunity to identify and capitalize on undervalued real estate classified as "Brownfield". The majority of assets targeted will be Municipal, Corporate or Privately owned, where there exists a potential problem, but one that would not qualify for Superfund designation.

Brownfield Partners is a collaboration of effort that combines the engineering expertise of the Maguire Group (and /or other licensed environmental professionals), the real estate acumen of Fogarty Advisors and the full service real estate capabilities of Rafferty Specialty Finance. Together the partnership looks to identify and capitalize on real estate transactions that are currently distressed due to the complications of environmental impairment yet well suited for re-deployment based on the partner's ability to identify, assess, and mitigate existing impediments.

Division of Responsibilities

The division of responsibilities between Maguire, Rafferty and Fogarty, will address all relevant impediments to a particular transaction and can address each problem head on in a time efficient and cost effective manner.

The responsibilities of each party will be as follows

Maguire will identify initial opportunities from existing work flow, and perform preliminary environmental site assessments
Fogarty Advisors will identify re-use potential for each individual site
Rafferty Specialty Finance will support the implementation of specific development opportunities that may arise from the Environmental studies
Maguire will perform the oversight to any cleanup, and process the necessary certifications to insure proper closure with DEP and EPA

Fogarty Advisors will identify, qualify and transact with specific investor groups to implement the appropriate redevelopment proposal and disposition of the site.

Income potential will be realized from consultation fee income, fees earned from the syndication / brokering of deals, property management agreements, and operating income produced by individual properties that ultimately will be retained in the partnership's real estate portfolio.

THE ENVIRONMENTAL ENGINEER / CONSULTANT

Maguire Associates specializes in the following areas for its corporate, municipal, and individual customers;

Environmental Investigation services
Corrective Remedial Action
Hazardous Waste Management
Risk Management Planning Services
Structural Inspection Services
Civil Engineering / Site Development Services
Field Technical services
Environmental Management Information systems
Brownfield Development

Maguire Associates is a full service consulting firm with a staff of 350 people that specialize in Architecture and design, environmental / civil engineering, and construction management. Their staff includes professionals with a diverse array of disciplines including; chemical, civil, geo-technical, mechanical, and environmental engineers.

Maguire has offices in, Maine, New Hampshire, Rhode Island, Massachusetts, Connecticut, New Jersey and Pennsylvania. Since 1938 they have served over 4000 clients in the industrial, governmental, and commercial sectors in evaluating specific environmental concerns and developing cost effective solutions to ensure compliance with State and Federal regulations.

Maguire is an effective lead agency in identifying real estate opportunities based on their core business, which is preliminary to any re-development work. Their interest to "partner" in Brownfield site assessments and "principal" in select transactions is a progressive approach to expanding their existing business model and participate in greater deal flow.

It makes economic sense to include the real estate consultant at their preliminary work stage, because the remedy can be tailored down or expanded based on the proposed re-use of the property. The presence of the real estate consultant and the engineer (working together) at the front end of the process also provides a compelling "solution oriented"

approach for the landowner who is able to better determine the most favorable disposition strategy.

The Real Estate Consultant

Rafferty Specialty Finance Company and Fogarty Advisors will consult on the best possible re-deployment for each individual site. This can include all land use types, sizes and conditions. The ability to perform financial engineering, investment syndication, property management services, and act as a principal in select opportunities, Rafferty Specialty Finance and Fogarty Advisors serve their clients with a high degree of proficiency, and economy.

Individual sites will be assessed on their own merits including but not limited to:

Property location, demographics, area trends, risks and mitigants
Access and Egress to and from the property
Land configuration, assemblage / subdivision issues
Establishment of construction budgets, preparation of projections and forecasting
Identify, qualify and negotiate with prospective tenants / property users
Identify local stakeholders, prepare proposals, and present financing packages
Perform deal syndication, qualify negotiate, and close with prospective investors
Prepare complete cash flow analysis including, waterfall, yield and IRR.

Seven steps for Brownfield re-development

The Brownfield re-development process can be divided into seven basic steps. These steps may be undertaken by private and / or public sponsors serving as developers. Each stage has its own unique needs and, as a result, different financing strategies are required for developers that come into the picture at a specific point in the timeline.

The seven steps to redevelopment include:

1. Site Identification
2. Initial site assessment
3. Economic assessment
4. Detailed Site Assessment
5. Project Development and Financing
6. Cleanup Planning and Execution
7. Re-development of the Property

Typically Brownfield sites are separated into three categories based on their redevelopment potential. These categories reflect a ñpriority approachò to site selection. As with any investment, the expected return needs to be commensurate with the risks, and

it is necessary to perform an assessment of viability as early in the process as possible. The stages can be classified as:

- Viable sites- here the private market is already working towards redevelopment without any public assistance. These sites have a low potential for environmental liability, or such a high potential rate of return that the risks are more than adequately covered.
- Threshold Sites- these sites are marginally viable and will not be re-deployed without some form of public assistance. These sites have either fewer economic advantages than a viable site, or greater potential for environmental liability.
- Non-Viable sites- these sites have a significant potential for environmental liability, and economic advantages are minimal at best. These sites will require significant public assistance to re-develop, and should be avoided without that assistance.

Properties that are viable should be the first priority from both the municipality and the developerôs point of view. It should be the goal of the municipality to provide timely review and comment of proposed re-use plans submitted by the developer. Further the municipality should be involved in the liability clarification, and release process (for the developer) upon completion of any clean up performed.

Threshold sites may require incentives to motivate private sector interest and increase the rate of return for the investor. Financing strategies such as grants, low interest rate loans and tax abatements are the most common. In addition, limitations on the potential liability may need to be established in advance of a developer becoming involved with a project. The goal of a municipality is to move a Threshold site into Viable status, and transfer Non Viable sites to Threshold.

Non-Viable sites may be the most suitable candidates for the government-sponsored programs such as Superfund, which can invest public capital in order to perform improvements that would make an otherwise unattractive site economically viable. Unless a severe health or environmental risk exists, these sites are most likely to addressed last in the priority of re-development.

Brownfield Financial Incentives

Most financial incentives are available to municipalities and third parties that are willing to redevelop contaminated sites. The incentives consist primarily of grants, low cost loans, and tax credits. To encourage the investigation, remediation, and redevelopment of contaminated sites, New York (for example) and the US EPA have developed the following programs:

Clean Water / Clean air bond act / Environmental Restoration Project (NY)- This program provides grants to municipalities to cover up to 75% of the costs to investigate and remediate Brownfields. The municipality is not required to own

the property at the time of application, but must have ownership by the time the State assistance contract is granted. At the completion of the site cleanup, the State will indemnify the municipality against future actions.

Drinking Water State Revolving Fund (NY)- Municipalities may obtain a low cost loan to fund the municipality's 25% portion of the Environmental Restoration Project.

Community Reinvestment Act- Lenders may obtain Community Reinvestment Act (CRA) credits for financing clean up or redevelopment of industrial sites, which are part of low and moderate income community revitalization.

Environmental Opportunities Act- Development of vacant or underutilized parcels designated by a municipality may be eligible for a reduction in property taxes for up to ten years.

Clean Water / Clean Air Bond Act State Assistance for Solid Waste Projects- New York State will grant municipalities up to 50% of landfill closure costs not to exceed $ 2 million. Municipalities with a population of less than 3,500 qualify for up to 70% of eligible cost not to exceed $ 2 million.

Brownfields Assessment Demonstration Pilot (Federal)- States, municipalities, and Indian Tribes are eligible for $ 200,000 grants from the EPA to establish Brownfield Assessment models. The grant may be used to assess, identify, characterize sites and for site response or cleanup planning and design. An additional $ 50,000 may be awarded to an applicant to assess the contamination of a Brownfield site that is or will be used for green space purposes.

Targeted Brownfield Assessment Program (Federal)- The EPA provides funding and /or technical assistance to State, municipalities, and Indian Tribes for Phase I and Phase II environmental assessments and for establishing cleanup options and cost estimates based on futures uses and redevelopment plans. This funding may only be used for sites that are contaminated or suspected to be contaminated with hazardous substances. Sites contaminated only with petroleum products are not eligible for assistance.

Brownfield Cleanup Revolving Loan Fund Demonstration Pilot (Federal)- The EPA will provide low cost loans up to $500,000 to enable eligible states, cities, and towns, to clean up Brownfields. Funds may be used for evaluation of cleanup alternatives, site cleanup, and site monitoring.

1986 Environmental Quality Bond Act Title III (NY)- Municipalities that own or operate sites that the NYSDEC has classified as a Class 1 or Class 2 (poses significant threat) Inactive hazardous waste sites are eligible to receive 75% of the

cost to investigate and remediate the site. A municipality is eligible for the funds only after it enters into a Consent Order.

Brownfields Economic Development Initiative (HUD)- HUD will provide up to $2 million in grants to community development block grant communities and non-entitlement communities eligible to receive loan guarantees. The funds can be used for land write downs, site remediation costs, funding reserves, over-collateralizing Section 108 loans, and financing to innocent public or private sector entities to remediate contamination.

Common Goals for a municipal Brownfield Study

The benefits of Brownfield redevelopment can be substantial. They include but are not limited to:

Tax base growth
Job creation
Neighborhood revitalization
Environmental protection

Among the many impediments to Brownfield redevelopment, the most common include:

Cleanup funds needed
Potential liability issues
Environmental Site Assessments
Environmental Regulations
Market Conditions
Standards for Cleanup established
Land assembly deficiencies
Community Concerns
Neighborhood Conditions.

In many instances the process of addressing Brownfields has led to an overall restructure to the way a municipality approaches its own future goals. The process must address the following common goals in order to achieve success:

1. Apply for and obtain funding for environmental site assessments
2. Inventory available sites
3. Identify those sites with the greatest redevelopment potential
4. Incorporate seasoned real estate professionals to redesign and market properties for re-use.
5. Introduce and incorporate local stakeholder banks to assist in financing
6. Establish tax incentives for investment
7. Identify and implement financial programs to induce investment

8. Implement marketing programs for business recruitment and retention
9. Establish a streamlined permitting process
10. Incorporate education and information assistance for the general public
11. Establish property transfer file evaluations to expedite orderly transfers
12. Provide standardized buyer / seller agreements that conform to laws and regulations established by DEP, local, State, and Federal guidelines.
13. Achieve economic revitalization, job creation, and increased environmental protection.

Access to Insurance is paramount for the economic success of any Brownfield project. It is most often the insurance product that provides the Lender with the necessary comfort to lend on a particular project. The availability of tailored insurance programs to handle complex environmental situations is becoming more readily available. Some of the most common coverages include:

- Pollution Legal Liability Coverage-this protects the insured against suits brought for damages caused by the spread of contamination from the insured site onto a neighboring property.
- Remediation Legal Liability-this coverage protects the insured for the cost of remediating any additional contamination that is discovered on site. Additional security to the insured is provided for unknown pre-existing contamination at the time the site was acquired.
- Remediation Stop Loss coverage-This is one of the most critical coverages offered by insurers. The Stop Loss policy or ñCap Costò allows the developer to cap the cost of remediation providing the investor with a greater certainty of their break-even point.
- Owner Controlled Environmental Insurance Program-this is a wrap policy to provide owners or prime contractors with the combined coverage for Commercial General Liability, Operations and Professional Services, Contractors Pollution occurrence, Errors and Omissions Liability, Non-Owned disposal site coverage, Owners spill coverage, and supplemental environmental automobile insurance.
- Secured Creditor Impaired Property Policy-This type of coverage protects a lender from having to enter the chain of ownership on an environmentally impaired property. This insurance pays the outstanding loan balance when a default occurs and an environmental condition exits.

Conclusion

Understanding the applicable regulatory guidelines is crucial to selecting the appropriate technologies for cleaning up a Brownfield site. It is important to note that many Brownfield sites will be managed under state regulatory authorities. Therefore it is absolutely necessary to have a partner like the Maguire Group provide the appropriate guidance, expertise and oversight throughout the redevelopment process.

Understanding the financing vehicles available is crucial to the success of any real estate transaction. Financing is the backbone to any Brownfield redevelopment project, and can make a marginally feasible site viable based on alternative strategies available. Financial assurances such as Loan Guarantees (HUD section 108) for project sponsors, and Bond / loan insurance provide the necessary credit enhancement to allow lenders and capital providers to participate readily in the redevelopment process.

Financial incentives for redeveloping Brownfield sites are constantly evolving. Currently the project sponsor should look to achieve some form of relief through any one or combination of the following:

- Tax abatements
- Low interest rate loans
- Federal and State grants
- Bond financing

Overcoming liability concerns is probably the most important aspect to Brownfield redevelopment. For many investors the potential liability is a non-starter, however the government has recognized this and makes available various forms of assurances in order to motivate and incent private sector investment.

Liability assurances are currently available in the form of;

- No further action letter
- Covenant not to sue
- Certificate of completion
- Liability release

These assurances make it possible for the existing land owner or prospective purchaser to address the uncertainty surrounding participation in a project, and properly address such an important concern that will impede access to capital.

For further information

If you or your company would like more information on participating as a Brownfield Partner, please contact:

Patrick J. Fogarty
President
Fogarty Advisory Services, LLC
101 Dover Parkway
Stewart Manor, New York 11530
Telephone 917-745-6822
Email patrickfogarty@optonline.net