Brownfield Redevelopment Tools in Georgia

Georgia Department of Community Affairs
Revitalization Tools:
Urban Redevelopment Act/
Opportunity Zones Training

Hinesville, GA
April 7, 2005

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Brownfields – Federal Definition

- Real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant
- Includes mine-scarred property and former crack houses
Georgia Brownfields Legislation

- Georgia Hazardous Site Reuse and Redevelopment Act
  - Amended 2002

- Brownfields Tax Incentive Law
  - Enacted 2003
Georgia Brownfields

- Must have a pre-existing release of hazardous constituents in order to qualify for Georgia incentives
- Are not considered to include petroleum releases
Georgia’s Approach to Brownfields Redevelopment

• Recognizes that real estate factors, rather than contamination factors, drive redevelopment
What incentives does Georgia offer?

• Two Types of Incentives:
  – Liability Limitation
  – Tax Incentive
What liability is limited under Georgia’s Brownfields Program?

- Liability for the cost of groundwater cleanup
- Liability for third party claims (lawsuits) arising from the contamination
Why is the limitation of liability important?

• It is now possible to buy contaminated property in Georgia without becoming responsible for groundwater cleanup
  – The liability for groundwater cleanup remains with the seller
• The new owner can’t be sued for issues resulting from prior contamination
What responsibilities do I assume when buying a Brownfield?

- The buyer typically assumes responsibility for:
  - Site investigation (soil and groundwater)
  - Soil cleanup
  - Source material cleanup
  - Compliance Status Report
Why investigate groundwater?
I won’t be cleaning it up.

The groundwater investigation forms the basis for the limitation of liability. It establishes the baseline site conditions for which you ARE NOT responsible.
How does the limitation of liability take effect?

- There are two ways:
  - Upon approval of the Corrective Action Plan
  - Upon concurrence with the Compliance Status Report
More about Georgia’s Limitation of Liability

- Dependent upon completing Corrective Action as planned
- Fully transferable (with one exception)
What is the exception?

- The property cannot be transferred back to any party that had a role in contaminating it.
- Doing so will result in the loss of the limitation of liability.
How does the tax incentive work?

- The prospective purchaser files an application for a limitation of liability.
- Following approval of the application, the new owner applies to the local taxing authority for preferential tax assessment.
- The tax assessment applies for the first of 10 years, or until the EPD-certified site investigation and cleanup costs are recouped.
Two Categories of Georgia Brownfields Eligibility

• Brownfields property eligibility

• Brownfields prospective purchaser eligibility

• Both must be eligible
Georgia Brownfields Properties

Must:

• Have a preexisting release of a hazardous waste, hazardous constituent, or hazardous substance
How do I know if there is a preexisting release?

- If you obtain environmental sampling data showing a release

- If the property was placed on the State superfund list

- If EPD has been notified of a release of hazardous constituents, even if the property was not listed
Can state superfund sites be Brownfields?

- Yes, providing the prospective purchaser of the site is eligible, and
- There are no outstanding liens on the property under the state superfund act
Two Types of Georgia Brownfields Cleanups

- Voluntary Brownfields Cleanups – for sites that are **not** on the state superfund list
- Regulated Brownfields Cleanups – for sites that are **on** the state superfund list
All Georgia Brownfields
Cleanups

- Can result in limitations of liability if criteria are met
- Can result in tax incentives if criteria are met
- Protect human health and the environment through cleanup to risk reduction standards
What are Risk Reduction Standards?

- Cleanup standards promulgated under Georgia’s state superfund law
- Two types, based on the use of the property:
  - Residential
  - Non-residential
More Georgia Eligibility Criteria

- Eligible Properties Must Not:
  - Be a federal superfund site
  - Be under a federal cleanup order
  - Be a hazardous waste facility
How will I know whether these criteria apply?

EPD has records on these types of sites and will be able to give you information about the property you are considering purchasing.
Brownfield Purchaser Eligibility

Is Prospective!!!

If you already own the site, you cannot apply!!!
Prospective Brownfields Purchasers Must Not:

• Have contributed to the release of hazardous substances
• Have a substantial business relationship or other affiliation with a party responsible for the release
• Be in violation of EPD’s enforcement authority
Voluntary Brownfields Cleanups

• Are not “regulated” cleanups, although they do clean up to the same promulgated risk reduction standards as state superfund cleanups
Voluntary Brownfields Cleanups

• Address contaminated soil
• Address source material
• Establish baseline for groundwater limitation of liability
• Apply risk reduction standards to soil and source material
Georgia’s Approach to Voluntary Brownfields Cleanup

- Recognizes that timeliness is critical
- Relies on being available to prospective purchasers
- Encourages working face-to-face in lieu of paper exchanges for most purposes
- Is based on achieving results that accommodate needs of all stakeholders
Benefits of Voluntary Brownfields Approach

- Real-time decision-making
- Reduced transaction costs
- Common understanding of next steps
May we help you?

- Georgia’s new Brownfields program is committed to helping redevelopment efforts

- We’ve learned that contamination doesn’t have to get in the way of redevelopment

- We are available to discuss your project, even if you’re still just thinking about it
Georgia Brownfields Contacts

- Voluntary Brownfields:
  - Madeleine Kellam 404/656-7802
  - madeleine_kellam@mail.dnr.state.ga.us

- HSI Brownfields:
  - Tim Cash 404/657-8600
  - tim_cash@mail.dnr.state.ga.us
2002 Small Business Liability Relief and Brownfields Revitalization Act

Modified the Environmental Protection Agency’s existing brownfields program:

- Authorizes up to $200mm in funding annually through grants to “eligible entities”:
  1. assessment
  2. cleanup
  3. revolving loan fund
  4. job training
Federal Brownfield Resources

2002 Small Business Liability Relief and Brownfields Revitalization Act

– First grant round under new legislation - $73 million awarded in 2003
  • Augusta, Georgia – only GA award in 2003
– 2004 grants – 2 Georgia projects
  • Atlanta Youth Soccer Organization
  • Lumber City – regional focus
  • 17 awards nationwide to regional projects – rural focus
Who is eligible for a grant?

• General purpose unit of local government
• Land clearance authority
• Governmental entity
• Regional council
• Redevelopment agency
• State
• Indian Tribe
• Nonprofit organizations (cleanup grants only)
Assessment Grants

- Per Site - Up to $200,000 for Hazardous Substances and up to $200,000 for Petroleum Assessment
- Eligible Activities:
  - Site inventories
  - Phase I and Phase II environmental assessments
  - Cleanup planning
  - Community involvement
Revolving Loan Fund Grants

- Up to $1 million per year per qualified applicant
- Co-applicants can combine application totals
- Awards made over five years
- 60% must be used as loan funds
- 40% may be used for clean up grants
Assessment, Cleanup and Revolving Loan Fund Grants

• Basic Threshold Criteria
  • Applicant Eligibility
  • Community Involvement
  • State Letter
  • Site and Ownership Eligibility
Assessment, Cleanup and Revolving Loan Fund Grants

- Basic Ranking Criteria
  - Budget
  - Community Need
  - Site Selection Process
  - Sustainable Reuse
  - Greenspace

- Basic Ranking Criteria
  - Community Involvement (PLANNING)
  - Leveraging
  - Ability to Manage Grants
  - Reduction of Threats
Additional Information

- EPA Region 4 Brownfields Program
  Contact:
  - Olga Oliver Perry – EPA Brownfields Coordinator for the State of Georgia
    - [perry.olga@epa.gov](mailto:perry.olga@epa.gov)
    - (404) 562-8534
    - [www.epa.gov/brownfields](http://www.epa.gov/brownfields) - examples and descriptions of successful applicants from Region 4 and around the country
Environmental Insurance

- Seller incentive
- Fills “gaps” in the transaction
- Variety of tools available
Environmental Insurance

- Capping Cleanup Costs – protects against cost overruns when remediating for known contaminants
- Pollution Liability – protects against liability from:
  - Unknown pre-existing conditions
  - New pollution
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