

GUIDANCE - THE PUBLIC NOTICE PHASE OF THE NC BROWNFIELDS PROCESS

September 1, 2009

This guidance is provided to facilitate Prospective Developer's ("PD's") compliance with the statutory requirements regarding the public notice aspects of the NC brownfields process. The General Assembly modified these requirements in Session Law 2009-181, and this guidance has been revised in accordance with this statutory revision. For the convenience of those familiar with our previous guidance, these revisions are highlighted in yellow. Because they are integral to this process, a description of the brownfields documents precedes the description of PD's responsibilities regarding public notice. In order to ensure the safe reuse of properties being redeveloped under the NC Brownfields Program (NCBP), the Brownfields Property Reuse Act of 1997 requires the preparation of the following four brownfields documents:

- **Brownfields Agreement (BFA)** – A contract and covenant-not-to-sue between PD and the NC Department of Environment and Natural Resources ("DENR") that 1) provides details regarding the PD, its intended reuse of the brownfields Property, and the history of and contamination at the Property, 2) describes what work the PD must perform and what land use restrictions will be imposed at the Property, 3) explains the liability protection that the BFA provides to the PD, and 4) describes conditions under which PD may be required to perform additional remediation at the Property;
- **Notice of Brownfields Property (NBP)** – A four to five page document that recites certain statutory provisions, provides basic information regarding the brownfields Property and the planned redevelopment project, and lists the land use restrictions that will be imposed at the Property to help ensure its safe reuse. The recordation of the NBP allows these restrictions to run with the land. The NBP has three exhibits: Exhibit A - the Brownfields Agreement; Exhibit B – the survey plat; and Exhibit C – the legal description of the Property;
- **Notice of Intent to Redevelop a Brownfields Property (NI)** – A generic, one-page document that functions as a cover letter to introduce the other brownfields documents (the NI and the other documents, when taken together, comprise the "full" Notice of Intent to Redevelop a Brownfields Property, that package of information PD makes available for the public's review during the public comment period); and
- **Summary of the Notice of Intent to Redevelop a Brownfields Property (SNI)** – A one-page document that summarizes the information in the full Notice of Intent. The SNI is published in a newspaper with circulation in the area of the brownfields Property, is physically delivered to the owners of properties contiguous to the brownfields property, and is physically posted at the Property. The public comment period begins on the later date of the SNI's publication in the newspaper, posting at the site, or delivery to contiguous property owners. In order to facilitate its readability, we recommend that a version of the SNI printed with a larger font size be used for the SNI's physical posting at the Property. Additionally, to provide some protection from the elements, we recommend the SNI be placed inside a sealed, clear plastic sleeve at the time of posting.

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After the terms of these four documents have been agreed upon and are acceptable to both parties (including the NCBP project manager having in-hand an “approvable” survey plat, Exhibit B to the NBP), Rob Gelblum, or the then-current NCBP attorney, will notify PD that the brownfields project is approved to proceed to public notice. The following is a detailed description of PD’s responsibilities in order to fully comply with the statutory provisions regarding the public notice phase of the NCBP brownfields process.

Pre-Public Comment Actions

For a period of at least 30 days, PD must make available for the public’s review the “full NI package,” which consists of the following elements: 1) the one-page NI, 2) the draft NBP and its three Exhibits, 3) the draft BFA, 4) the survey plat, and 5) the legal description. **Before the public comment period can begin**, PD must complete the following **five actions** in accordance with N.C.G.S. § 130.310.34.(a):

1. Provide a copy of the full NI to all local governments having jurisdiction over the subject brownfields Property, such as to the offices of the city and county manager;
2. Provide a copy of the full NI to the location, as specified in the SNI, where the full NI will be available for public review, if different than the local government offices, above. Frequently, a public library or the City Manager’s Office are used for this purpose;
3. Arrange for the publication of the SNI in a newspaper of general circulation serving the area in which the Property is located;
4. Mail or deliver a copy of the SNI to each owner of property contiguous to the brownfields property. If PD intends to mail the SNI, the Program deems the use of USPS’ certified mail as sufficient documentation of the statutory mailing requirement. If PD intends to deliver the SNI, the Program would require the dated signature of said owner acknowledging its receipt of the SNI.
5. Conspicuously post the SNI at the Property.

Public Comment Start Date

All five elements of the full NI package [1) the one-page NI, 2) the draft NBP, and its three Exhibits, 3) the draft BFA, 4) the survey plat, and 5) the legal description] must be in a form acceptable to both parties *before* PD can be authorized by the program to proceed to public notice and the public comment phase of the brownfields agreement process. In accordance with N.C.G.S. § 130.310.34.(b), **a public comment period of at least 30 days begins on the latest date of PD’s completion of the SNI’s publication, posting, and mailing or delivering.** The public comment period will start from the latest date of publication, posting, and mailing or delivering of the SNI. In order to determine the start date of the public comment period, NCBP will require a clear accounting from PD (via email or other correspondence) as to the dates it completed the required publication, posting and mailing or delivering of the SNI. The start date is “day zero” and the first *counting* day of public comment will be the day *following* the mailing or delivery date.

PD’s Confirmation Correspondence

Finally, PD must confirm that the above-listed five pre-public comment actions have been completed by providing to DENR confirmatory documentation as follows:

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- For the placement of the full NI at local government offices and any other location where the full NI will be available for public review, preferably provide a letter from each such office or location confirming receipt of the full NI from the PD, but at a minimum provide copies of PD's letter of transmittal to each such office or location;
- For the publication of the SNI in the newspaper, preferably provide an affidavit of publication from the publishing entity, but at a minimum provide a photocopy of the actual SNI as published that also indicates the name of the publishing entity and the date of publication;
- For the mailing or delivering of the SNI to owners of property contiguous to the Brownfields Property:
 - *Mailing option* - for each owner of record of contiguous property, a copy the stamped receipt provided by USPS indicating the date of the certified mailing and the recipient's name and address.
 - *Delivering option* - the dated signature of each owner acknowledging physical receipt of the SNI; and finally
- For the posting of the SNI at the Property, provide dated correspondence with attached photographs, one close-up and one more distant, of the actual SNI as posted at the Property.

If you have any questions or require additional information regarding the public notice phase of the NC brownfields process, please contact the project manager assigned to your redevelopment project.