



REQUEST FOR BOARD ACTION

ITEM NO. 23.

DATE OF MEETING: July 11, 2011

REQUESTED BY: Rick Benton, County Manager

SHORT TITLE: Resolution Authorizing Execution of Brownfields Agreement for Property Acquired on US 421

BACKGROUND: The County has been collaborating with the North Carolina Department of Environment and Natural Resources to establish brownfields designation for the property acquired from BASF in December, 2010. The site was declared eligible for designation in October, 2010 (see attached letter of eligibility). The proposed agreement is attached for consideration, which will cover the entire property acquisition (396 acres). A 30 day public comment period is required before the agreement can be executed.

Having brownfields designation provides for numerous benefits: liability protection for new owner/developer; BASF will retain liability and responsibility for mitigation, etc.; makes the property usable for industry; requires compliance with mitigation measures; makes financing possible for new industry; provides for potential local property tax incentives for 5 years for a new industry-Year 1: 90%; Year 2: 75%; Year 3: 50%; Year 4: 30%; Year 5:10% (which makes the site competitive against non-brownfields sites).

The agreement requires restrictions of use of the property as follows: the only use allowed is for a commercial/industrial park; groundwater at the property may not be used for any purpose without the approval of DENR; soil may not be disturbed without DENR approval in writing; DENR must be assured that the contamination does not present a risk for new buildings to be constructed; the property may not be used as a park or for sports of any kind without prior approval of DENR; the property may not be used as a playground, child care center, K-12 schools, kennels, private animal pens or horse riding.

A copy of the draft agreement is attached.

SPECIFIC ACTION REQUESTED: To consider a resolution authorizing execution of the Brownfields Agreement with DENR.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

PB
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby authorizes execution of the Brownfields Agreement between the County and the North Carolina Department of Environment and Natural Resources. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Brown ___ Tate ___ Rivenbark ___ Ward ___ Williams ___

George R. Brown, Chairman Date

ATTEST Date



North Carolina Department of Environment and Natural Resources

Dexter Matthews, Director

Division of Waste Management

Beverly Eaves Perdue, Governor
Dee Freeman, Secretary

October 26, 2010

Sent Via E-mail and USPS

Mr. Rick Benton
County Manager
County of Pender
P.O. Box 5
Burgaw, NC 28425
rbenton@pendercountync.gov

Subject: Letter of Eligibility
Former BASF Facility
110 Vitamin Drive
Pender and New Hanover Counties
Brownfields Project Number 14031-10-71

Dear Mr. Benton:

The North Carolina Department of Environment and Natural Resources (DENR) has received and reviewed your September 21, 2010 Brownfields Property Application (BPA) submitted on behalf of Pender County as a Prospective Developer seeking a brownfields agreement regarding the subject site. Upon review of the letters with respect to the requirements of the Brownfields Property Reuse Act of 1997, DENR has determined that this project is eligible for entry into the North Carolina Brownfields Program and for continued evaluation for a Brownfields Agreement.

The next step in the process will involve a detailed review of available environmental and other relevant data to determine what is currently known about contamination at the site, and what, if any, information gaps may exist that may require additional assessment. We are in receipt of the following documents submitted with your BPA:

Title	Prepared by	Date of Report
Remedial Action Plan	MACTEC	March 23, 2010
Remedial Investigation Work Plan	MACTEC	December 10, 2009

401 Oberlin Road, Suite 150, Raleigh, NC 27605
1646 Mail Service Center, Raleigh, North Carolina 27699-1646
Phone 919.508.8400 \ FAX 919.715.4061 \ Internet <http://wastenotnc.org>

One
North Carolina
Naturally

Annual Report of Groundwater for 2008	Mactec Engineering and Consulting, Inc. (MACTEC)	May 13, 2009
Annual Report of Groundwater Remediation for 2006	MACTEC	December 28, 2006
Annual Report of Groundwater Remediation for 2004	MACTEC	July 7, 2005
Report of Annual Groundwater Monitoring for 2000 & Additional Assessment Activities	Law Engineering and Environmental Services, Inc. (LAW)	April 9, 2001
Environmental Baseline Assessment	LAW	January 12, 2001
Review of Hydrogeologic Cross Sections, Pee Dee Formation Review	LAW	September 20, 2000
Annual Report of Groundwater Remediation for 1997	LAW	April 7, 1998
Site Assessment and Corrective Action Plan for Main Plant Area	ENSR Consulting and Engineering	August 12, 1996
Interim Corrective Action Plan	LAW	September 14, 1995
Report of Groundwater Assessment	LAW	August 15, 1995

Historical site information from the files of DENR's Division of Waste Management will also be utilized during the evaluation process. Please forward any additional information or data you may have or can acquire for our evaluation. This should include reports from other DENR agencies or regional offices. We will contact you regarding any additional assessment that may be necessary to establish that the property is or can be made suitable for the intended reuse, as required by statute.

According to the BPA, the intended redevelopment for the site is as an industrial park. Because risk management decisions may vary depending on the nature of the redevelopment, it will be important that DENR review the locations of the various elements. Please forward any maps or drawings indicating these details, even if they are only preliminary or conceptual. **Also:** Pending execution of a Brownfields Agreement, eligibility is provisional. You do not have the protections such an agreement offers unless and until it is executed. Thus, you operate at the site pending conclusion of a Brownfields Agreement at the risk of jeopardizing your eligibility and/or becoming a party responsible for the contamination at the site if an agreement is not finalized. This makes it very much in your interest to consult closely with me regarding any planned site activities prior to agreement finalization.

If a party other than the Prospective Developer will own the Brownfields property at the conclusion of the brownfields process, the final document (which gets recorded at the Register of Deeds' office) must be signed not only by the Prospective Developer but by that owner. Failure by the Prospective Developer to ensure, by the time Brownfields Agreement negotiations are complete, the willingness to sign of any such party, and to provide DENR the exact name, e-mail address, telephone number and U.S. mail address of the party (along with signatory/signatory's

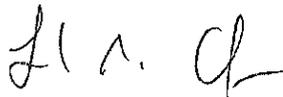
Letter of Eligibility
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title in the case of an entity) will retard, and could prevent, the Brownfields Agreement taking effect.

If the Prospective Developer does not actually buy the property for redevelopment, it loses its eligibility for the Brownfields Program. That means the Prospective Developer itself, not an affiliate or any other party.

The Brownfields Program looks forward to working with you to advance this brownfields redevelopment project. If you have questions about this correspondence or require additional information, please feel free to contact Sam Watson by phone at (910) 796-7408, or by e-mail at samuel.watson@ncdenr.gov.

Sincerely,



Linda M. Culpepper
Deputy Director
Division of Waste Management

cc: Project File

cc: Rob Gelblum, DOJ
Bruce Nicholson, DENR

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF: Pender County

UNDER THE AUTHORITY OF THE)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT)	Former BASF Facility
OF 1997, N.C.G.S. § 130A-310.30, <i>et seq.</i>)	110 Vitamin Drive
Brownfields Project # 14031-10-71)	Pender/New Hanover Counties

I. INTRODUCTION

This Brownfields Agreement (“Agreement”) is entered into by the North Carolina Department of Environment and Natural Resources (“DENR”) and Pender County (collectively the "Parties") pursuant to the Brownfields Property Reuse Act of 1997, N.C.G.S. § 130A-310.30, *et seq.* (the “Act”).

Pender County is a duly constituted North Carolina local government. This Agreement concerns the county’s plans to market certain acreage as an industrial park to spur economic development in the area. A map showing the location of the acreage is attached hereto as Exhibit 1.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Section VIII (Certification), Section IX (DENR’s Covenant Not to Sue and Reservation of Rights) and Section X (Prospective Developer’s Covenant Not to Sue), the potential liability of Pender County for contaminants at the property which is the subject of this Agreement.

The Parties agree that Pender County’s entry into this Agreement, and the actions undertaken by Pender County in accordance with the Agreement, do not constitute an admission of any liability by Pender County.

The resolution of this potential liability, in exchange for the benefit Pender County shall provide to DENR, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in the Act or elsewhere in N.C.G.S. 130A, Article 9 shall have the meaning assigned to them in those statutory provisions, including any amendments thereto.

1. "Property" shall mean the Brownfields Property which is the subject of this Agreement, and which is depicted in Exhibit 1 to the Agreement.
2. "Prospective Developer" shall mean Pender County.

III. STATEMENT OF FACTS

3. The Property comprises approximately 400 acres at the northwest corner of New Hanover County and southwest corner of Pender County, and consists of pine trees, swamp, and industrial and commercial property and facilities formally operated by BASF Corporation ("BASF"). Prospective Developer has committed itself to redevelopment of it for no uses other than as a commercial/industrial park.

4. The Property is bordered to the north by undeveloped property owned by Corbett Industries Inc. and property being developed by Pender County; to the south by undeveloped property owned by BASF; to the east by U.S. Highway 421, beyond which lie undeveloped properties owned by Phillips Leasing Systems LLC and Pender County; and to the west by the Cape Fear River.

5. Prospective Developer obtained or commissioned the following reports, referred to hereinafter as the "Environmental Reports," regarding the Property:

Title	Prepared by	Date of Report
Remedial Action Plan	MACTEC	March 23, 2010
Remedial Investigation Work Plan	MACTEC	December 10, 2009
Annual Report of Groundwater for 2008	Mactec Engineering and Consulting, Inc. ("MACTEC")	May 13, 2009
Annual Report of Groundwater Remediation for 2006	MACTEC	December 28, 2006
Annual Report of Groundwater Remediation for 2004	MACTEC	July 7, 2005
Report of Annual Groundwater Monitoring for 2000 & Additional Assessment Activities	Law Engineering and Environmental Services, Inc. ("LAW")	April 9, 2001
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Interim Corrective Action Plan	LAW	September 14, 1995
Report of Groundwater Assessment	LAW	August 15, 1995

6. For purposes of this Agreement, DENR relies on the following representations by Prospective Developer as to use and ownership of the Property:

- a. Takeda Vitamin and Food USA, Inc. purchased and developed some of the Property in the early 1980s for the manufacture of various vitamin products;
- b. Takeda Vitamin and Food USA, Inc. was merged into BASF in 2001; the facility continued manufacturing vitamin products under the BASF name.

c. BASF ceased operations at and closed the facility in March 2009.

d. Prospective Developer purchased the Property in December 2010.

7. Pertinent environmental information regarding the Property includes the following:

a. Groundwater at the Property is contaminated with volatile organic compounds (chlorinated solvents and petroleum-based compounds), and inorganics such as metals, arsenic and chloride, due to releases that occurred during vitamin production. The volatility of the compounds creates a risk that contaminated vapor will enter any buildings constructed on the Property.

b. Soil at the site contains arsenic, thallium and mercury.

b. Data tables reflecting the concentrations of and other information regarding the Property's regulated substances and contaminants appear in Exhibit 2 to this Agreement.

8. For purposes of this Agreement DENR relies on Prospective Developer's representations that Prospective Developer's involvement with the Property has been limited to obtaining or commissioning the Environmental Reports, preparing and submitting to DENR a Brownfields Property Application dated September 21, 2010, and purchasing the Property on December 3, 2010. 9. Prospective Developer has provided DENR with information, or sworn certifications regarding that information on which DENR relies for purposes of this Agreement, sufficient to demonstrate that:

a. Prospective Developer and any parent, subsidiary, or other affiliate has substantially complied with federal and state laws, regulations and rules for protection of the environment, and with the other agreements and requirements cited at N.C.G.S. § 130A-310.32(a)(1);

b. as a result of the implementation of this Agreement, the Property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment;

c. Prospective Developer's reuse of the Property will produce a public benefit commensurate with the liability protection provided Prospective Developer hereunder;

d. Prospective Developer has or can obtain the financial, managerial and technical means to fully implement this Agreement and assure the safe use of the Property; and

e. Prospective Developer has complied with all applicable procedural requirements.

10. Prospective Developer has paid the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1), and shall make a payment to DENR of \$3,500 at the time Prospective Developer and DENR enter into this Agreement, defined for this purpose as occurring no later than the last day of the public comment period related to this Agreement. The Parties agree that the second payment shall constitute, within the meaning of N.C.G.S. § 130A-310.39(a)(2), the full cost to DENR and the North Carolina Department of Justice of all activities related to this Agreement.

IV. BENEFIT TO COMMUNITY

11. The redevelopment of the Property proposed herein would provide the following public benefits:

a. a return to productive use of the Property

b. a spur to additional community redevelopment, through improved neighborhood appearance and otherwise

- c. tax revenue for affected jurisdictions;
- d. additional industrial space for the area; and
- e. “smart growth” through use of land in an already developed area, which avoids development of land beyond the urban fringe (“greenfields”).

V. WORK TO BE PERFORMED

12. Based on the information in the Environmental Reports, and subject to imposition of and compliance with the land use restrictions set forth below, and subject to Section IX of this Agreement (DENR’s Covenant Not to Sue and Reservation of Rights), DENR is not requiring Prospective Developer to perform any active remediation at the Property.

13. By way of the Notice of Brownfields Property referenced below in paragraph 18, Prospective Developer shall impose the following land use restrictions under the Act, running with the land, to make the Property suitable for the uses specified in this Agreement while fully protecting public health and the environment. All references to DENR shall be understood to include any successor in function.

a. No use may be made of the Property other than for a commercial/industrial park with related water/sewer infrastructure, and as part of a hiking trail (with a restroom facility and parking lot) along the former railroad right-of-way adjacent to the west side of U.S. 421. For purposes of this restriction, Commercial/Industrial Park Development is defined as a form of development characterized by a unified site designed for a variety of commercial and industrial uses, open space, buffers, and a mix of building types in which flexibility is given to the project planning by allowing for the specific land uses to be determined as the market need arises, so long as DENR does not determine that any of the other Land Use Restrictions are being violated

and that any of the conditions referenced in N.C.G.S. 130A-310.33(a) and (c) are present.

b. Groundwater at the Property may not be used for any purpose without the prior written approval of DENR.

c. Other than in connection with demolition/removal of certain structures and utilities by June 7, 2013 pursuant to section 12.1 of the Prospective Developer/BASF Corporation purchase agreement regarding the Property, soil on the Property may not be disturbed unless and until DENR states in writing, in advance of the proposed disturbance, that the disturbance may proceed, if carried out along with any measures DENR deems necessary in connection with the proposed disturbance to avoid rendering the Property unsuitable for the uses specified in subparagraph 13.a. above or public health or the environment less than fully protected.

d. No building may be constructed on the Property until:

i. DENR determines in writing, based on submittals from the building's proponent, that the building's users, and public health and the environment, would not be at risk from the Property's volatile contaminant plume; or

ii. vapor mitigation measures approved in writing by DENR in advance are installed to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's seal, and photographs illustrating the installation and a brief narrative describing it are submitted to DENR and deemed satisfactory in writing by that agency.

e. None of the contaminants known to be present in the environmental media at the Property, including those appearing on the plat component of the Notice referenced in paragraph 19 below, may be used or stored at the Property without the prior written approval of

DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

f. The Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the prior written approval of DENR.

g. The Property may not be used as a playground, or for child care centers, preschools or kindergarten through 12th grade schools.

h. The Property may not be used for kennels, private animal pens or horse-riding.

i. The owner of any portion of the Property where any existing, or subsequently installed, DENR-approved monitoring well is damaged shall be responsible for repair of any such wells to DENR's written satisfaction and within a time period acceptable to DENR.

j. Neither DENR, nor any party conducting environmental assessment or remediation at the Property at the direction of, or pursuant to a permit, order or agreement issued or entered into by DENR, may be denied access to the Property for purposes of conducting such assessment or remediation, which is to be conducted using reasonable efforts to minimize interference with authorized uses of the Property.

k. During January of each year after the year in which the Notice referenced below in paragraph 18 is recorded, the owner of any part of the Property as of January 1st of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DENR, and to the chief public health and environmental officials of Pender County and New Hanover County, certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Pender County and New Hanover County Register of Deeds offices and that the land use restrictions are being complied with, and stating:

i. the name, mailing address, telephone and facsimile numbers, and

contact person's e-mail address of the owner submitting the LURU if said owner acquired any part of the Property during the previous calendar year; and

ii. the transferee's name, mailing address, telephone and facsimile numbers, and contact person's e-mail address, if said owner transferred any part of the Property during the previous calendar year.

14. The desired result of the above-referenced land use restrictions is to make the Property suitable for the uses specified in the Agreement while fully protecting public health and the environment.

15. The guidelines, including parameters, principles and policies within which the desired results are to be accomplished are, as to field procedures and laboratory testing, the Guidelines of the Inactive Hazardous Sites Branch of DENR's Superfund Section, as embodied in their most current version.

16. The consequences of achieving or not achieving the desired results will be that the uses to which the Property is put are or are not suitable for the Property while fully protecting public health and the environment.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

17. In addition to providing access to the Property pursuant to subparagraph 13.j. above, Prospective Developer shall provide DENR, its authorized officers, employees, representatives, and all other persons performing response actions under DENR oversight, access at all reasonable times to other property controlled by Prospective Developer in connection with the performance or oversight of any response actions at the Property under applicable law. While Prospective Developer owns the Property, DENR shall provide reasonable notice to Prospective

Developer of the timing of any response actions to be undertaken by or under the oversight of DENR at the Property. Notwithstanding any provision of this Agreement, DENR retains all of its authorities and rights, including enforcement authorities related thereto, under the Act and any other applicable statute or regulation, including any amendments thereto.

18. DENR has approved, pursuant to N.C.G.S. § 130A-310.35, a Notice of Brownfields Property for the Property containing, inter alia, the land use restrictions set forth in Section V (Work to Be Performed) of this Agreement and a survey plat of the Property. Pursuant to N.C.G.S. § 130A-310.35(b), within 15 days of the effective date of this Agreement Prospective Developer shall file the Notice of Brownfields Property in the Pender County and New Hanover County, North Carolina register of deeds' offices. Within three (3) days thereafter, Prospective Developer shall furnish DENR a copy of the documentary component of the Notice containing a certification by the register of deeds as to the Book and Page numbers where both the documentary and plat components of the Notice are recorded, and a copy of the plat with notations indicating its recordation.

19. This Agreement shall be attached as Exhibit A to the Notice of Brownfields Property. Subsequent to recordation of said Notice, any deed or other instrument conveying an interest in the Property shall contain the following notice: "The property which is the subject of this instrument is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the _____ County land records, Book ____, Page ____." A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions), though financial figures related to the conveyance may be redacted.

20. The Prospective Developer shall ensure that a copy of this Agreement is provided to

any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section (Access/Notice To Successors In Interest), Section V (Work to be Performed) and Section XI (Parties Bound & Transfer/Assignment Notice) of this Agreement.

VII. DUE CARE/COOPERATION

21. The Prospective Developer shall exercise due care at the Property with respect to regulated substances and shall comply with all applicable local, State, and federal laws and regulations. The Prospective Developer agrees to cooperate fully with any remediation of the Property by DENR and further agrees not to interfere with any such remediation. In the event the Prospective Developer becomes aware of any action or occurrence which causes or threatens a release of contaminants at or from the Property, the Prospective Developer shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under N.C.G.S. 130A-310.1 and 143-215.85, and Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify DENR of such release or threatened release.

VIII. CERTIFICATION

22. By entering into this agreement, the Prospective Developer certifies that, without DENR approval, it will make no use of the Property other than that committed to in the Brownfields Letter of Intent dated September 21, 2010 by which it applied for this Agreement. That use is as a commercial/industrial park. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DENR all information known

to Prospective Developer and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any regulated substances at the Property and to its qualification for this Agreement, including the requirement that it not have caused or contributed to the contamination at the Property.

IX. DENR'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

23. Unless any of the following apply, Prospective Developer shall not be liable to DENR, and DENR covenants not to sue Prospective Developer, for remediation of the Property except as specified in this Agreement:

a. The Prospective Developer fails to comply with this Agreement.

b. The activities conducted on the Property by or under the control or direction of the Prospective Developer increase the risk of harm to public health or the environment, in which case Prospective Developer shall be liable for remediation of the areas of the Property, remediation of which is required by this Agreement, to the extent necessary to eliminate such risk of harm to public health or the environment.

c. A land use restriction set out in the Notice of Brownfields Property required under N.C.G.S. 130A-310.35 is violated while the Prospective Developer owns the Property, in which case the Prospective Developer shall be responsible for remediation of the Property to unrestricted use standards.

d. The Prospective Developer knowingly or recklessly provided false information that formed a basis for this Agreement or knowingly or recklessly offers false information to demonstrate compliance with this Agreement or fails to disclose relevant information about contamination at the Property.

e. New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the Property that has not been remediated to unrestricted use standards, unless this Agreement is amended to include any previously unreported contaminants and any additional areas of contamination. If this Agreement sets maximum concentrations for contaminants, and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by this Agreement.

f. The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the Property due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the Property or (ii) the failure of remediation to mitigate risks to the extent required to make the Property fully protective of public health and the environment as planned in this Agreement.

g. The Department obtains new information about a contaminant associated with the Property or exposures at or around the Property that raises the risk to public health or the environment associated with the Property beyond an acceptable range and in a manner or to a degree not anticipated in this Agreement.

h. The Prospective Developer fails to file a timely and proper Notice of Brownfields Property under N.C.G.S. 130A-310.35.

24. Except as may be provided herein, DENR reserves its rights against Prospective

Developer as to liabilities beyond the scope of the Act, including those regarding petroleum underground storage tanks pursuant to Part 2A, Article 21A of Chapter 143 of the General Statutes.

25. This Agreement does not waive any applicable requirement to obtain a permit, license or certification, or to comply with any and all other applicable law, including the North Carolina Environmental Policy Act, N.C.G.S. § 113A-1, et seq.

X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

26. In consideration of DENR's Covenant Not To Sue in Section IX of this Agreement and in recognition of the absolute State immunity provided in N.C.G.S. § 130A-310.37(b), the Prospective Developer hereby covenants not to sue and not to assert any claims or causes of action against DENR, its authorized officers, employees, or representatives with respect to any action implementing the Act, including negotiating, entering, monitoring or enforcing this Agreement or the above-referenced Notice of Brownfields Property.

XI. PARTIES BOUND

27. This Agreement shall apply to and be binding upon DENR, and on the Prospective Developer, its officers, directors, employees, and agents. Each Party's signatory to this Agreement represents that she or he is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the Party for whom she or he signs.

XII. DISCLAIMER

28. This Agreement in no way constitutes a finding by DENR as to the risks to public health and the environment which may be posed by regulated substances at the Property, a representation by DENR that the Property is fit for any particular purpose, nor a waiver of

Prospective Developer's duty to seek applicable permits or of the provisions of N.C.G.S. § 130A-310.37.

29. Except for the Land Use Restrictions set forth in paragraph 13 above and N.C.G.S. § 130A-310.33(a)(1)-(5)'s provision of the Act's liability protection to certain persons to the same extent as to a prospective developer, no rights, benefits or obligations conferred or imposed upon Prospective Developer under this Agreement are conferred or imposed upon any other person.

XIII. DOCUMENT RETENTION

30. The Prospective Developer agrees to retain and make available to DENR all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for ten years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. At the end of ten years, the Prospective Developer shall notify DENR of the location of such documents and shall provide DENR with an opportunity to copy any documents at the expense of DENR.

XIV. PAYMENT OF ENFORCEMENT COSTS

31. If the Prospective Developer fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section V (Work to be Performed), it shall be liable for all litigation and other enforcement costs incurred by DENR to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

32. Unless otherwise required by DENR or a Party notifies the other Party in writing of a change in contact information, all notices and submissions pursuant to this Agreement shall be sent by prepaid first class U.S. mail, as follows:

a. for DENR:

Samuel P. Watson
N.C. Division of Waste Management
Brownfields Program
Mail Service Center 1646
Raleigh, NC 27699-1646

b. for Prospective Developer:

Rick Benton, County Manager
Pender County
P.O. Box 5
Burgaw, NC 28425

Notices and submissions sent by prepaid first class U.S. mail shall be effective on the third day following postmarking. Notices and submissions sent by hand or by other means affording written evidence of date of receipt shall be effective on such date.

XVI. EFFECTIVE DATE

33. This Agreement shall become effective on the date the Prospective Developer signs it, after receiving it, signed, from DENR. Prospective Developer shall sign the Agreement within seven (7) days following such receipt.

XVII. TERMINATION OF CERTAIN PROVISIONS

34. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

35. With regard to claims for contribution against Prospective Developer in relation to the subject matter of this Agreement, Prospective Developer is entitled to protection from such claims to the extent provided by N.C.G.S. § 130A-310.37(a)(5)-(6). The subject matter of this Agreement is all remediation taken or to be taken and response costs incurred or to be incurred by DENR or any other person in relation to the Property.

36. The Prospective Developer agrees that, with respect to any suit or claim for contribution brought by it in relation to the subject matter of this Agreement, it will notify DENR in writing no later than 60 days prior to the initiation of such suit or claim.

37. The Prospective Developer also agrees that, with respect to any suit or claim for contribution brought against it in relation to the subject matter of this Agreement, it will notify DENR in writing within 10 days of service of the complaint on it.

XIX. PUBLIC COMMENT

38. This Agreement shall be subject to a public comment period of at least 30 days starting the day after the last to occur of the following: publication of the approved summary of the Notice of Intent to Redevelop a Brownfields Property required by N.C.G.S. § 130A-310.34 in a newspaper of general circulation serving the area in which the Property is located, conspicuous posting of a copy of said summary at the Property, and mailing or delivery of a copy of the summary to each owner of property contiguous to the Property. After expiration of that period, or following a public meeting if DENR holds one pursuant to N.C.G.S. § 130A-310.34(c), DENR may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or

inadequate.

IT IS SO AGREED:
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
By:

Linda M. Culpepper Date
Deputy Director, Division of Waste Management

IT IS SO AGREED:
PENDER COUNTY
By:

George Brown, Jr. Date
Chairman, Board of Commissioners

Groundwater contaminants (in micrograms per liter, the equivalent of parts per billion), the standards for which are contained in Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202 (April 2011 update of January 2010 version):

Groundwater Contaminant	Sample Location	Date of Max. Concentration Sampling	Max. Concentration above Unrestricted Use Std. (µg/L)	Unrestricted Use Std. (µg/L) (for reference only)
Acetone	MW-21D	3/25/1997	110000	6000
Acetone	MW-30D	6/28/1995	109000	6000
Acetone	MW-31D	9/24/1997	300000	6000
Acetone	MW-33D	6/28/1995	558000	6000
Acetone	MW-34	9/21/2000	120000	6000
Acetone	MW-34D	12/14/2000	8600	6000
Acetone	MW-35	3/25/1997	38000	6000
Acetone	MW-37	6/26/1997	9100	6000
Acetone	MW-3D	9/21/2000	8900	6000
Acetone	RW-17	9/21/2000	12000	6000
Acetone	RW-3	3/25/1997	7200	6000
Antimony	PS-RW-17	6/3/2009	14.9	1
Arsenic	CP-MW13D	6/4/2009	31.4	10
Arsenic	CP-RW11	6/4/2009	27.6	10
Arsenic	CP-RW12	6/4/2009	14.9	10
Arsenic	PS-MW-31D	8/11/2009	14.9	10
Arsenic	PS-RW-17	6/3/2009	751	10
Arsenic	SB-MW-2D	6/3/2009	173	10
Arsenic	SB-MW-8D	8/11/2009	12.5	10
Arsenic	SL-MW21D	6/3/2009	130	10
Arsenic	SL-MW5	6/3/2009	13.4	10
Arsenic	SL-MW7	8/11/2009	13.9	10
Arsenic	SL-RW10	8/11/2009	31.8	10
Benzene	MW-10D	9/24/1997	28	1
Benzene	MW-11D	9/24/1997	77	1
Benzene	MW-12D	6/28/1995	8.2	1
Benzene	MW-13D	6/28/1995	15.1	1
Benzene	MW-14D	6/28/1995	295	1
Benzene	MW-15D	12/16/1997	19	1
Benzene	MW-16D	9/17/2008	1.81	1
Benzene	MW-19D	6/28/1995	87.3	1
Benzene	MW-21D	3/25/1997	390	1

Benzene	MW-27D	6/8/2000	3	1
Benzene	MW-2D	6/8/2000	2.0	1
Benzene	MW-30D	9/24/1997	37	1
Benzene	MW-31D	6/28/1995	8950	1
Benzene	MW-34	9/21/2000	210	1
Benzene	MW-34D	6/8/2000	6	1
Benzene	MW-35	12/16/1997	24	1
Benzene	MW-38D	12/14/2000	6	1
Benzene	MW-39D	7/7/2004	17.8	1
Benzene	MW-3D	12/16/1997	300	1
Benzene	MW-8D	12/16/1997	26	1
Benzene	RW-10	9/24/1997	350	1
Benzene	RW-11	12/16/1997	89	1
Benzene	RW-12	3/25/1997	20	1
Benzene	RW-14	3/3/2004	24	1
Benzene	RW-15	7/7/2004	98.20	1
Benzene	RW-16	3/3/2004	350	1
Benzene	RW-17	3/3/2004	470	1
Benzene	RW-18	9/21/2000	6	1
Benzene	RW-19	12/14/2000	5	1
Benzene	RW-2	6/28/1995	10.6	1
Benzene	RW-3	9/21/2000	30	1
Benzene	RW-4	6/28/1995	18	1
Benzene	RW-5	6/28/1995	27.1	1
Benzene	RW-6	6/28/1995	43.3	1
Benzene	RW-7	6/28/1995	22.9	1
Benzene	RW-8	6/28/1995	13.9	1
Benzene	RW-9	9/24/1997	310	1
Benzene	W-1903B	6/28/1995	19.7	1
Cadmium	PS-RW-17	6/3/2009	191	2
Chloride	MW-10D	12/16/1997	1520000	250000
Chloride	MW-11D	9/21/2000	4240000	250000
Chloride	MW-12D	3/1/2000	326000	250000
Chloride	MW-13D	6/26/1997	1214000	250000
Chloride	MW-14D	9/24/1997	7660000	250000
Chloride	MW-15D	12/16/1997	482000	250000
Chloride	MW-16D	3/20/2008	586000	250000
Chloride	MW-21D	12/16/1997	1040000	250000
Chloride	MW-24D	3/3/2004	630000	250000
Chloride	MW-2D	9/21/2000	5605000	250000

Chloride	MW-30D	6/26/1997	413000	250000
Chloride	MW-31D	6/26/1997	1530000	250000
Chloride	MW-32D	3/25/1997	530000	250000
Chloride	MW-33D	3/25/1997	1500000	250000
Chloride	MW-34	9/24/1997	1390000	250000
Chloride	MW-34D	6/26/1997	1068000	250000
Chloride	MW-35	12/16/1997	281000	250000
Chloride	MW-36	9/21/2000	356000	250000
Chloride	MW-37	6/26/1997	1117000	250000
Chloride	MW-38D	9/21/2000	845000	250000
Chloride	MW-3D	6/28/1995	90,000,000	250,000
Chloride	MW-42	12/14/2000	372000	250000
Chloride	MW-42D	3/3/2004	444000	250000
Chloride	MW-7	12/14/2000	1021000	250000
Chloride	MW-8D	9/24/1997	4879000	250000
Chloride	RW-10	9/21/2000	515000	250000
Chloride	RW-11	12/16/1997	566000	250000
Chloride	RW-12	6/26/1997	342000	250000
Chloride	RW-13	3/25/1997	630000	250000
Chloride	RW-14	9/21/2000	280000	250000
Chloride	RW-15	9/21/2000	699000	250000
Chloride	RW-16	12/14/2000	1025000	250000
Chloride	RW-17	12/14/2000	1523000	250000
Chloride	RW-18	3/3/2004	1360000	250000
Chloride	RW-19	9/21/2000	908000	250000
Chloride	RW-2	12/14/2000	264000	250000
Chloride	RW-3	3/25/1997	370000	250000
Chloride	RW-3	9/21/2000	670000	250000
Chloride	RW-4	9/21/2000	928000	250000
Chloride	RW-5	12/16/1997	2060000	250000
Chloride	RW-6	3/25/1997	2300000	250000
Chloride	RW-7	12/16/1997	464000	250000
Chloride	RW-8	12/14/2000	457000	250000
Chloride	RW-9	3/20/2008	491000	250000
Chloride	W-1903B	6/28/1995	830000	250000
Chloroform	MW-13D	6/28/1995	99.6	70
Chloroform	MW-31D	6/28/1995	520	70
Chloroform	MW-33D	6/28/1995	176	70
Chloroform	W-1903B	6/28/1995	357	70
Chromium	PS-RW-17	6/3/2009	78.4	10

Chromium	SL-MW5	6/3/2009	51.9	10
Fluorotrichloromethane	W-1903B	6/28/1995	2250	2000
Lead	PS-RW-17	6/3/2009	38.7	15
Methyl Isobutyl Ketone	MW-21D	6/28/1995	9180	100
Methyl Isobutyl Ketone	MW-31D	6/28/1995	5530	100
Methyl Isobutyl Ketone	MW-3D	6/28/1995	551	100
Methylene Chloride	MW-13D	6/28/1995	66.4	5
Methylene Chloride	MW-31D	6/28/1995	3200	5
Selenium	PS-RW-17	6/3/2009	36.1	20
Thallium	CP-RW11	6/4/2009	14.2	0.2
Thallium	CP-RW12	6/4/2009	16.0	0.2
Thallium	DP-6	8/14/2009	3.8	0.2
Thallium	PS-MW-32D	6/3/2009	3.5	0.2
Thallium	PS-MW-33D	6/2/2009	3.0	0.2
Thallium	PS-MW-34DA	6/2/2009	3.6	0.2
Thallium	PS-RW-17	6/3/2009	12.1	0.2
Thallium	PW-MW-43	8/12/2009	5.3	0.2
Thallium	SB-MW-2D	6/3/2009	4.4	0.2
Toluene	MW-13D	9/24/1997	9400	600
Toluene	MW-21D	6/28/1995	6770	600
Toluene	MW-30D	6/28/1995	26900	600
Toluene	MW-31D	12/16/1997	51000	600
Toluene	MW-33D	6/28/1995	29400	600
Toluene	MW-34	6/26/1997	310000	600
Toluene	MW-34D	9/24/1997	39000	600
Toluene	MW-35	6/26/1997	9200	600
Toluene	MW-3D	6/28/1995	2150	600
Toluene	RW-10	9/24/1997	810	600
Toluene	RW-11	3/25/1997	3600	600
Toluene	RW-16	12/14/2000	6700	600
Toluene	RW-17	3/3/2004	7600	600
Toluene	RW-9	12/16/1997	710	600
Trichloroethene	MW-3D	6/28/1995	5.7	3
Zinc	PS-RW-17	6/3/2009	37400	1000

Soil contaminants (in milligrams per kilogram, the equivalent of parts per million), the screening levels for which are derived using the Preliminary Unrestricted Use Health Based Remediation Goals (January 2010 version) of the Inactive Hazardous Sites Branch of DENR's Superfund Section:

Soil Contaminant	Sample Location	Depth	Date of Max. Concentration Sampling	Max. Concentration above Unrestricted Use Screening Level (mg/kg)	Unrestricted Use Screening Level ¹ (mg/kg) (for reference only)
Arsenic	PW-SS1	1-1.5 ft.	5/29/2009	8.2	4.4
Thallium	PW-SS1	1-1.5 ft.	5/29/2009	2.2	1
Thallium	PW-SS8	1-1.5 ft.	5/29/2009	1.1	1
Mercury	SBSS-5 1	1-1.5 ft.	5/28/2009	7.4	1.1

¹ Screening levels for carcinogens are for 1E-06 risk target; for non-carcinogens they are for 0.2 hazard index.

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1. What is a brownfield site?

A brownfields site is any real property that is abandoned, idled or underutilized where environmental contamination, or perceived environmental contamination, hinders redevelopment. The hindrance comes from the fact that it is very difficult to obtain loans for redevelopment on these properties because they come with potential environmental cleanup liability. The NC Brownfields Program is designed to alleviate that liability for prospective developers of these properties so as to facilitate the redevelopment of the property.

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2. What is a brownfields agreement?

The department will enter into an agreement with the developer that is in effect a covenant

not-to-sue contingent on the developer making the site suitable for the reuse proposed. The brownfields agreement provides both the site-specific actions necessary to make the site suitable for reuse and the covenant not-to-sue once these actions are complete. A brownfields agreement is designed to break environmental liability barriers that hinder a developer's ability to obtain project financing. The agreement specifies actions to be conducted by the developer that are based on making the site suitable for the use intended. These actions can be costed, and then a business decision can be made by the developer and lenders without uncertain liability. See [question 6](#) for more details on the benefits of a brownfields agreement.

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3. I hear about the U.S. EPA Brownfields Program (federal level) and the North Carolina Brownfields Program (state level). What's the difference?

The U.S. EPA began the Brownfields Initiative in 1995 and since that time the states have been heavily involved in supporting these actions through passage of supportive state statutes. The federal and state roles in brownfields differ, but they are all designed to encourage the cleanup and reuse of abandoned contaminated properties referred to as brownfields.

The federal program functions to provide funding to states to develop and operate programs such as this. It also provides grants to local governments, on a competitive basis, for assessment and cleanup of brownfields sites. The federal brownfields statute ([Small Business Liability Relief and Brownfields Revitalization Act](#)) became effective in 2002. It outlines environmental liability and under what circumstances it is deferred to the state and under what circumstances it remains with the federal government.

The state Brownfields Program operates under state statute ([Brownfields Property Reuse Act of 1997](#)) to offer liability protection to noncausative parties in return for actions on the site that make the site suitable for the reuse proposed and for the public benefit of the redevelopment project.

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4. Is there any brownfields funding available and from whom?

This is one of the central differences between the federal and state brownfields programs.

Although the state brownfields program has no upfront funding available to private party prospective developers, a brownfields agreement obtained from the program entitles the developer to a [property tax exclusion](#) on the improvements made to the property for a period of five years. This exclusion can more than pay for assessment and cleanup activities on many projects. See our [Tax Incentive FAQ](#) for more information on how it is applied.

The U.S. Environmental Protection Agency does have competitive brownfields grants for the assessment and cleanup of brownfields properties as well as grants for setting up local revolving loan funds. Limited funds are also available for job training grants, also on a competitive basis. Under this brownfields grants program, North Carolina local government entities have been awarded millions of dollars for brownfields activities. This list includes Charlotte, Winston-Salem, Fayetteville, Raleigh, Greensboro, Winston-Salem, High Point, Concord, Farmville, Wilmington, the Land-of-Sky Regional Council of Governments and others. Deadline for submittal of proposals is generally in the fall of each year. For more information on how to apply please see our [Federal Brownfields Program Links](#). However, it's important to note that the awarding of such a grant is not required to participate in the North Carolina Brownfields Program.

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5. What's the difference between the state's Voluntary Cleanup Program, the Inactive Hazardous Sites Program and the Brownfields Program?

The "Voluntary Cleanup Program" is the shorter name for the North Carolina Inactive Hazardous Sites Program. It has existed since 1987 as is designed to encourage cleanups of contaminated properties. Any party may conduct cleanup activities under this program. Most of the parties who do so are responsible parties who caused or contributed to the contamination at the site. The Voluntary Cleanup Program is separate and apart from the state's Brownfields Program, which was authorized by a different statute in 1997. The major differences are that the Brownfields Program, and its associated benefits, are only available to parties who did not cause or contribute to the contamination at the site and who desire to redevelop the property. For what those benefits are see the next question. Also, a brownfields site by necessity is one that is abandoned, idled or underutilized, and where there is an interest in redevelopment. That may or may not be the case with a Voluntary Cleanup Program Site.

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6. For a developer of brownfields properties, what are the benefits of obtaining a brownfields agreement?

In short, a brownfield agreement is designed to provide a tool for developers to handle environmental liability such that they can begin to look at a brownfields property as an opportunity instead of immediately walking away from it. The following are specific benefits:

- 1) The agreement provides strong liability protection that can be shown to a lender in order to obtain project financing;
- 2) The site remedies under the program are designed to prevent exposure and make the site suitable for reuse, not to meet environmental standards required of the site polluter in traditional cleanup programs. Thus they are less costly, particularly with respect to groundwater remedies;
- 3) since remedies are put in the agreement up-front and therefore represent known costs, a business decision can be made with much reduced uncertainty;
- 4) Closure for the prospective developer can be obtained in a matter of six to twelve months, which is typically much less time than for most other cleanup programs;
- 5) The liability protection passes on to all new owners so long as they adhere to land use restrictions (e.g. don't use the groundwater). This can be a selling point; and
- 6) The brownfields property tax incentive significantly reduces property taxes for five years after completion of improvements to the property. This benefit typically pays for or at least offsets site environmental assessment or cleanup activities that the developer must conduct in the program.

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7. Okay, so if I want a brownfields agreement, what's the process like, how long does it take and how much does it cost?

The process is outlined on our [FlowChart](#). It begins with the application by the prospective developer who needs the program's services submitting a [Brownfields Property Application \(BSPA\)](#) with the data that is necessary for the program to determine if the site and the developer are eligible under the [Brownfields Property Reuse Act](#). The flexibility the Act allows makes for a different process than most other programs as DENR and the prospective developer work in partnership toward the brownfields agreement. The process is less adversarial and more of a partnership since there is common interest for DENR and the prospective developer to reach a brownfields agreement that protects public health and the environment and encourages the reuse of the property.

Obviously the process also is dependent on the conditions at each site, as well as the end use proposed by the developer. For example, residential uses generally require more sampling to assure public health protection than does industrial use. At some sites sufficient environmental data already exists and no further assessment data is necessary. This saves time and expense. Some sites require more assessment than others. Many sites have motivated developers who respond to our technical guidance and sample sites without delay. Others respond less quickly and are in a slower development mode. Also, each brownfields agreement has a 30-day public comment period that needs to be factored into timing. Even with this, a motivated developer on a site that is not technically complex can generally obtain a brownfields agreement in six to eight months. When compared to other cleanup programs

and the liability protection provided, most developers who have had environmental issues to deal with on other sites outside the Brownfields Program will say this is exceedingly fast.

The ultimate costs are again specific to the site conditions, the existing site data, and the proposed land use. But the built in advantages of the Brownfields Property Reuse Act are designed to make costs for noncausative parties both reasonable and well defined before the brownfields agreement is signed. Costs include assessment (often) remediation (if any), and transactional costs (attorney, if necessary, although we have had prospective developers receive brownfields agreements with little or no attorney involvement).

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8. What's the operational history of the program?

The program has provided more than 80 brownfields agreements to date and has 100+ in the pipeline. The projects range in size from a \$100,000 small business expansion to a neighboring lot to projects valued at more than \$100 million in private investment. In addition to the private investment facilitated, these projects had given the state thousands of jobs and returned abandoned eyesores into new tax performers for local governments. There is an [inventory of brownfields projects](#) on our web site.

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9. Can you give me a list of available brownfields properties?

Not per se. The list would be tens of thousands of properties long and take resources to create beyond the scope or purpose of the program. Perhaps more importantly, the creation of a list of properties would probably have a stigmatizing effect. The misuse of the list of properties that had or might have had contaminant releases for the Superfund Program to investigate, known as the CERCLIS list, was probably one factor why these properties would not transact in the marketplace to begin with. Therefore, we have little interest in repeating such a list. However, some existing lists might have some relevance and use in such a search. There is a list of sites known as the [Inactive Hazardous Sites Inventory](#) created under the [Inactive Hazardous Sites Program](#) (Voluntary Cleanup Program). It is a list of sites where there have been releases in the state. Though all the sites on it are brownfields sites (some are very much operating facilities), some of the tens of thousands of potential brownfields are on the list. There is also a [list of old landfills](#) that existed prior to the advent of solid waste regulations. Projects have entered into the Brownfields Program that are Landfill redevelopments into recreational and/or greenspace. Finally, although not a listing specific to environmentally impacted properties, you may wish to look at the [Department of Commerce's Certified Site Listings](#). Some buildings or properties on this list may fit the definition of a brownfields property, though it is definitely not a list that is specific to brownfields.

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10. What if I redevelop the property and want to sell it afterwards; does the new owner get the liability protection and the tax incentive?

Yes. So long as they did not cause or contribute to the contamination at the site, they get the benefits of liability protection of the agreement just as the prospective developer did. A brownfields agreement should continue to facilitate the transferability of the property into the future. Also note that future owners do have the same responsibility to adhere to any land use restrictions in the agreement (for a hypothetical example, not to use the groundwater). Land use restriction violations are the responsibility of the owner at the time of the violation, so such land use restrictions violations do not come back onto past owners/developers.

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11. Do I need a brownfields agreement from the U.S. EPA if I get one from the state?

No. The liability protection at the federal level comes via statute and not via contractual

agreement. The federal brownfields statute defers jurisdiction of such sites to the state so that, in effect, the brownfields agreement is the agreement that governs the liability from the state and federal level. Should a site be of interest to the federal government (e.g., they have spent emergency response funds at the site in the past) the program would consult with the U.S. EPA on the site's eligibility for the brownfields program. Unless the site is headed for the National Priorities list, it is a likely candidate for the state brownfields program.

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12. How can my local government apply for a brownfields grant?

This grant program is administered by the U.S. EPA and information is passed through the EPA brownfields web page. The NC Brownfields Program has links and announcements as well. Interested North Carolina local governments or councils of government can talk to us or to Michael Norman at the U.S. EPA Region 4 office in Atlanta (404-562-8792, Norman.Michael@epamail.epa.gov).

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13. Can individual developers apply for federal brownfields grants?

Only local governments, councils of governments, and in some cases community development corporations can apply for grants. For the criteria please refer to the U.S. EPA's Brownfields Grant Application Guidance which can be found on [EPA's brownfields web site](#).

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14. I caused or contributed to the contamination at a brownfields site. How can I take part in this process?

If you caused or contributed, you may not obtain a brownfields agreement. But the program stands ready to help a prospective developer who desires to buy your brownfields site so that the property can transfer and the asset can be sold (so long as the property is abandoned, idled or underused and the transfer is not a real estate transfer for the purposes of continued operation of an already operating facility). Also, while this might facilitate the sale of this asset, it does not legally alleviate your past or future site liability. The brownfields program is not the program who will be making that determination of future liability for responsible parties. The program of cleanup jurisdiction will remain in that role regarding any responsible parties.

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15. I already own the site but did not operate it or cause or contribute to the contamination. I may wish to redevelop the site or sell to someone who wants to redevelop. How can I take part in this process?

A prospective developer is defined in the statute as an entity who desires to buy or sell for the purposes of redeveloping the property and did not cause or contribute to the contamination. Note that this takes into account sellers as well as buyers. Policy on this is covered under Issue 1 of the Program's Guidance entitled [Brownfields Program Guidelines and Issue Resolutions](#).

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16. Are there any sites that are excluded by their nature from getting a brownfields agreement?

Two types of sites are excluded from obtaining a brownfields agreement. The first is National Priorities List sites. These are sites on the federal Superfund program's worst sites list. There are only 45 of these sites in North Carolina. The second type of excluded sites is underground petroleum storage tanks sites that are subject to the Underground Storage Tank Trust Fund, and which are excluded only if that's the only type of contaminant on the site.

Mixed contamination sites that include UST contamination with contamination from another source are still eligible for brownfields agreements (as are sites contaminated by releases from aboveground petroleum tanks). If you have questions regarding this point you may refer to Issue 8 under the Brownfields Program Guidelines and Issue Resolutions.

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TAX INCENTIVES

To help prospective developers take advantage of the brownfields property tax incentive (N.C.G.S. §105-277.13), Brownfields Program staff sat down with the experts from the N.C. Department of Revenue's Property Tax Division. The new statute offers many potential benefits, but like any new law, it also creates questions.

With that in mind, we asked DOR staff some common questions about North Carolina's brownfields tax incentive. The answers below should help developers better understand DOR policy on how to implement the tax incentive.

Also, click here to view a tax incentive presentation given by Daphne Olszewski at the April 1, 2004 N.C. Brownfields Workshop for Developers and Local Governments

Tax Incentives FAQ

1. When does a brownfields property's five-year period of tax exclusion begin?
2. What do prospective developers or property owners have to do to get the BF tax exclusion?
3. When should property owners file applications for the BF exclusion?
4. Do BF exclusions pass to future owners? Does it make a difference if the property is actively being redeveloped or if redevelopment has not yet taken place?
5. If the property is sold after the tax exclusion period begins, what must new owners do to get the remaining exclusion? Is this process the same if the owner has an outparcel from a BF property and plans to develop it later?
6. Does DOR ask counties to routinely establish a pre-BF tax exclusion valuation baseline? If not, what valuation is used?
7. What criteria does the DOR consider when it defines "eligible improvements" to a brownfields property? Are the criteria for residential, commercial and industrial properties different or the same?
8. If a property is sold after its tax exclusion period begins, should current year taxes be prorated pro-rata between the buyer and seller (i.e. at the closing of the property transfer)?
9. If an original BF property is subdivided into different tax parcels, is there a time limit to complete development on the "outparcels" in order to keep the five-year tax exclusion benefit?
10. Can each phase or outparcel of development within an original BF footprint get its own five-year exclusion period? If a phased approach is used, should the property be broken into different tax parcels before applying the first phase's tax exclusion?
11. If a brownfields property is sold after its tax exclusion period begins, does the new owner get the remaining exclusion? What if the property has building(s) that have separate owners? (e.g. individual owners of a condo/townhouse within a redevelopment or a single

- retail property within a complex of such properties? Do the building owners get the remaining years of tax exclusion?
12. If a property is subdivided after its five-year tax exclusion begins, does the owner of the new parcel get the remaining years of exclusion?

1. When does a brownfield's property's five-year period of tax exclusion begin?

An owner of land is entitled to the partial exclusion provided by this section for the first five taxable years beginning after completion of qualifying improvements made after the later of July 1, 2000, or the date of the brownfields agreement. The five-year period begins the first January following the completion of the improvements.

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2. What do prospective developers or property owners have to do to get the BF tax exclusion?

The owner should make a one-time application as required under G.S. §105-282 1(a)(2)c. It should be noted that documentation should be provided to the assessor's office to show that the property is eligible for the exclusion. This would include providing a copy of the brownfields agreement with the application as well as documentation that the improvements have been completed.

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3. When should property owners file applications for the BF exclusion?

During the month of January, which is the regular listing period. This would be the listing period after completion of the improvements.

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4. Do BF exclusions pass to future owners? Does it make a difference if the property is actively being redeveloped or if redevelopment has not yet taken place?

Yes, for the property that is receiving the brownfields exclusion. It could pass to new owners after a new application is made and approved. The exclusion does not exist for properties that have not gone under redevelopment. Both the brownfields agreement and the construction of qualifying improvements (made after July 1, 2000) must exist.

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5. If the property is sold after the tax exclusion period begins, what must new owners do to get the remaining exclusion? Is this process the same if the owner has an outparcel from a BF property and plans to develop it later?

File a new application with the assessor's office during the month of January, which is the regular listing period, following the transfer of the property. And, yes, after qualifying improvements have been made, the taxpayer would need to make an application for exclusion. If the property is a vacant outparcel, then the property only is valued as a vacant tract.

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6. Does DOR ask counties to routinely establish a pre-BF tax exclusion valuation baseline? If not, what valuation is used?

No. The counties will use the schedule of values that were adopted by the county commissioners to value all property in the county. Market value as of the counties' last

reappraisal is the standard in North Carolina.

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7. What criteria does the DOR consider when it defines "eligible improvements" to a brownfields property? Are the criteria for residential, commercial and industrial properties different or the same?

The statutes do not specify any particular type of property. Criteria are established in the statutes. G.S. §105-277.13 (b), states:

"qualifying improvements on brownfields properties" and "qualifying improvements" mean improvements made to real property that is subject to a brownfields agreement entered into by the Department of Environment and Natural Resources and the owner pursuant to G.S. §130A-310.32.

Any improvements made to real property that is subject to a brownfields agreement are eligible for the exclusion.

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8. If a property is sold after its tax exclusion period begins, should current year taxes be prorated privately between the buyer and seller (i.e. at the closing of the property transfer)?

That would need to be addressed by the buyer and seller. Neither our department nor the county will address prorating of property taxes. That is strictly between the two parties involved in the sale. The owner as of January 1 is considered the owner for the tax year that begins July 1 of that year.

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9. If an original BF property is subdivided into different tax parcels, is there a time limit to complete development on the "outparcels" in order to keep the five-year tax exclusion benefit?

No. The property or individual parcel would not receive the exclusion until the property was entered into a brownfields agreement and after completion of qualifying improvements had been made. See question #10 for more details.

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10. Can each phase or outparcel of development within an original BF footprint get its own five-year exclusion period? If a phased approach is used, should the property be broken into different tax parcels before applying the first phase's tax exclusion?

Yes, each phase or outparcel would have its own five-year period. For example, if a parcel has five apartment buildings built on it in different years, then each building's starting period of the exclusion would be at different times. This will possibly be difficult for the counties to administer, but our office believes that each qualifying improvement has its own five-year period. A separate tax parcel for each improvement or phase would make it easier to administer, but is not required.

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11. If a brownfields property is sold after its tax exclusion period begins, does the new owner get the remaining exclusion? What if the property has building(s) that have separate owners? (e.g. individual owners of a condo/townhouse within a redevelopment or a single retail property within a complex of such properties.) Do the building owners get the remaining years of tax exclusion?

Yes, if it is qualifying improvements on a brownfields property and a new application is made

and approved. The new owner would be entitled to the remaining year(s) of the exclusion.

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12. If a property is subdivided after its five-year tax exclusion begins, does the owner of the new parcel get the remaining years of exclusion?

If the example for this question were pertaining to a parcel with qualifying improvements (improved real property), as outlined in the statutes, the answer would be "yes." Remember, a new application is required of the new owner. Parcels that are vacant are not entitled to the exclusion. For real estate improvements that are part of the sale, we would say "yes." If only vacant land is sold from a tract that has improvements, then the answer would be "no" until new improvements are made to the vacant tract.

Partial Improvements and Exclusion - Improvements that are only partially completed as of January 1 will be appraised in accordance with the degree of completion on January 1 and the exclusion does not apply to these partially completed improvements until they are completed. The exclusion starts the first January following the completion of the improvements provided the proper application for exclusion has filed in a timely manner by the owner.

New Improvements and Exclusion - Brownfields that have improvements on them already are not eligible for the exclusion unless new improvements are made to the property after July 1, 2000. These new improvements can be in the form of new buildings and improvements or renovation of existing buildings and improvements.

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