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Coastal Resources Management Center



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## **Brownfield Redevelopment Along the Coastal Edge: New England Experiences**

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## **Introduction**

Successful coastal brownfield redevelopment requires a timely approach to the following critical components (1) a comprehensive brownfield site selection and acquisition strategy, (2) analysis of environmental liability, (3) coastal permitting strategy and site feasibility analysis, (4) demolition, site preparation and remediation strategy, (5) addressing stakeholders' concerns, and (6) identifying public/private partnership opportunities such as public financial incentives and leveraging private investment. Two recent coastal brownfield redevelopment projects within Connecticut's coastal zone--the Pfizer Global Development/Central Research Facility in New London, Connecticut and the development of the Bridgeport Regional Maritime Center--are profiled to highlight the steps necessary to redevelop coastal brownfield sites into viable economic and environmentally sensitive projects.

## **Coastal Brownfields Redevelopment "Game Plan": Coastal Connecticut Success Stories**

Let's assume you are the director of a municipal planning or economic development commission of a coastal community and you're looking for ways to bring formerly productive but now underutilized (or worse yet, blighted), tax delinquent, environmentally challenged properties--so called "brownfields"--back to their full development and tax-generating potential. How do you and others on municipal staff work with the business community, regulators, lenders and other key participants to make such sites "workable"? Or, maybe you're the corporate director of a successful business located in a coastal area that would like to expand its operations. You'd like to stay in the coastal community where

you have prospered and grown comfortable, but developable and suitable coastal/waterfront "greenfield" sites are either unavailable, too costly to purchase and develop, or have sensitive coastal resources that restrict appropriate development. Underutilized coastal brownfield sites may be available for redevelopment but present obstacles due to potential and unquantifiable environmental liability and challenging or unpredictable permitting demands. Particular sites may come to mind that, at first, seem viable but the perceived costs of cleanup or future liability combined with the potential for protracted permitting may appear to be an insurmountable obstacle.

In either scenario, the process of assembling and implementing a "game plan" for coastal brownfield redevelopment will generally follow these steps (1) develop a site selection and acquisition strategy including project development, feasibility analysis, and arranging financing, (2) identify/document "core terms" of the agreement to redevelop a brownfield site, (3) develop a communications plan, (4) implement a "brownfields" resources program, (5) anticipate obstacles, (6) secure financing, and (7) stick to the deal.

The first step is site selection and acquisition and it involves many quantifiable and intangible factors that influence the decision for locating a new or expanding business within the coastal zone. Obviously the "kind" of business or waterfront use is a key consideration. A retail business will have different site selection criteria than an office complex, small manufacturing facility, warehouse or transit facility. Water-dependent uses such as marinas, ports and ferry terminals or boat building and repair businesses will also present an entirely different set of needs from non-water-dependent coastal land uses.

Although not all-inclusive, site selection criteria generally include (1) location in terms of geography, traffic, residential and other significant demographic and land use patterns, (2) adjacent neighborhood including abutting business types and the likelihood of "synergy," community "atmosphere," and receptivity to proposed redevelopment uses, (3) size and configuration of site, (4) transportation infrastructure such as roads, traffic capacity, ease of access and parking, (5) coastal site plan and development regulations, zoning and other land use restrictions, (6) availability, location and capacity of existing utilities, (7) the status of enterprise or empowerment zone designation to leverage federal tax abatements or grants, (8) municipal property tax status relevant to special tax assessments or exemptions, abatements or deferrals, (9) known environmental history, (10) statutes requiring investigation and/or filings as a result of the transfer of the property, (11) cost/benefit analysis, and (12) the extent, quality and function of remaining coastal resources such as tidal wetlands, coastal floodplains, intertidal mudflats to be protected or managed on the coastal brownfield site.

Once a particular property is identified, the order of events may vary or become less clear. Some prefer first to know that the intended uses are feasible while others insist on first gaining comfort with the environmental conditions of the brownfield. Information gathering and project/site feasibility analysis will include a survey of current or past uses of the property, and previous feasibility or market studies. The most helpful investigations for this often include analyses of the real estate market, title searches, tax records, inventories of adjacent facilities, review of zoning and wetlands maps, and Phase I, II, and III

environmental site assessments and remedial action plans. Project development and feasibility analysis will also include assessing the requirements of traditional environmental programs, the availability of remediation programs and their requirements and environmental justice/equity issues. This first step also requires that an integrated "critical path" timeline be adopted identifying key environmental risk management, remedial/permitting milestones, and relevant compliance and permitting jurisdictions.

The extent of this project development and feasibility analysis depends on the type of coastal brownfield site. Visualize just a few: old utility sites, former textile mills, institutional, commercial or residential properties, old petrochemical sites, former manufacturing sites, closed landfills, and abandoned federal government/military facilities. Many of these brownfield sites are typically found in coastal and waterfront areas. As stated previously, this research needs to be converted into a meaningful environmental/land use/remediation analysis with timelines and budgetary considerations. A comprehensive property investigation also determines land title issues and baseline environmental conditions, preferred and alternate sites, most desirable option for acquisition--lease or purchase--and the most favorable terms for financing.

The Pfizer Global Development/Central Research Facility in New London, Connecticut, is a good example of the importance of a well-thought and comprehensive site selection and acquisition strategy. This project involved, through a successful joint public/private partnership with the State of Connecticut, the City of New London and Pfizer, the redevelopment of a 25 acre vacant coastal brownfield site on the Thames River into a 750,000 square foot, \$250 million pharmaceutical research facility incorporating coastal public access and tidal wetlands restoration. In the late 1990s, Pfizer needed to find new space to expand its research and development operations. Pfizer considered many sites in nearby communities, other states as well as overseas to expand. It ultimately settled on the New London, Connecticut coastal brownfield site.

Although site selection often involves applying traditional criteria such as location, size, infrastructure, taxes, construction and operating costs, Pfizer's site selection process also included considerations related to the national and state election cycle at the time, involvement by Pfizer corporate leaders, the Governor of Connecticut and other elected officials leaders, the President of Connecticut College, community outreach, response and support for project, and time. Two central questions framed by Pfizer's corporate headquarters needed to be answered in the affirmative (1) could the project be completed within Pfizer's preferred timeframe and (2) could the project be completed on a coastal brownfield without any environmental exposure or liability beyond those encountered in developing a greenfield parcel. Other factors included land title, baseline environmental conditions, impact on coastal resources, tidal wetlands restoration costs, accessibility from the Pfizer/Groton facility, options for acquisition (lease or purchase), limiting infrastructure costs, and obtaining economic incentives in exchange for Pfizer's investment in the region. The success to Pfizer's site selection process was due to effective real estate and environmental due diligence conducted within a comprehensive land use and environmental permitting framework combined with a strong environmental liability management plan.

The second step is identifying and documenting "core terms" of the agreement to redevelop a brownfield site and requires agreement on high priority core terms of the brownfield project such as price, responsibility/liability allocation, permit approval and construction schedule, and nonnegotiable conditions. It is critical that all parties appreciate that documenting the "deal" improves the project and provides predictability. These terms should include an overall "environmental liability management strategy" which typically includes contractual and indemnification agreements, covenants not to sue, prospective purchaser agreements, "comfort letters" or "no further action required letters" from regulatory agencies, and land use restrictions. Environmental liability insurance such as first party and third party liability insurance for remediation actions or personal property/property damage coverage and remediation cost cap and regulatory reopener coverage, may also be a consideration. Documentation of and agreement on these and other terms has proven invaluable in brownfield transactions.

The Bridgeport Regional Maritime Facility is a good example of an environmental liability management strategy. This coastal brownfield project involved defending the Bridgeport (Conn.) Port Authority in a condemnation appeal and injunction action filed by the owner of a former foundry and steel manufacturing facility who sought to avoid cleanup costs on a 45-acre site located directly on Long Island Sound. The parcel is the last deepwater coastal site in Bridgeport, Connecticut, the state's largest city. The site was condemned by the Port Authority to redevelop into the Bridgeport Regional Maritime Facility. Issues included the environmental conditions of the property after decades of use as a foundry, determining whose responsibility it would be to remediate those conditions and the fair market value of a brownfield site. The suits were settled; the settlement included an agreement that the Port Authority would obtain environmental cost cap insurance and pollution legal liability insurance. Remediation is on-going, as is construction of the major tenant's operations. The remediation includes the use of several "environmental land use restrictions" which will restrict the use of the site to industrial/commercial uses (thus allowing the use of less stringent remediation criteria) and will allow contaminated soil to remain on-site after having been rendered inaccessible. When completed, the Bridgeport Regional Maritime Facility will include a boat builder specializing in building sailing ships and high speed ferries and repairing yachts and an oyster company and possibly a barge feeder system where containers are shipped on barges from the metropolitan New York area to Bridgeport and then transferred to trucks in Bridgeport, thus removing trucks from Interstate 95 between New York City and Bridgeport.

Communications is another critical step to redeveloping coastal brownfield sites, especially when various "stakeholders" are involved. Individuals should be designated as primary "contact points" on given topics and terms. Status meetings and periodic reports are also valuable in ensuring good internal and external communications. All stakeholders, whether owners, developers, regulators, governmental officials and agencies, lenders, or neighborhood and civic groups, should be identified early in the process and communicated with on a regular basis.

Implementing "brownfields" resources is necessary when the transaction progresses to conveyance, demolition, site preparation and development task. Nothing is more

indispensable to the project's ultimate success than thorough planning and implementing strategies for limiting the cost and liability of remediation and compliance with regulatory laws. For example, demolition, site preparation and remediation planning tasks typically include contracting and coordinating demolition and construction contractors, establishing a site demolition and preparation timeline, establishing an environmental management system protocol for compliance with permit approvals, establishing record keeping protocols, implementing a contingency plan for unknown or undiscovered site environmental conditions and post-remediation monitoring, and implementing appropriate environmental land use restrictions or institutional or engineering controls. Included in this effort is negotiating prospective purchaser agreements, releases, indemnities, covenants not to sue or similar devices regarding site investigation, cleanup levels, potential institutional controls, all applicable regulatory requirements and responsibilities and cleanup liability from both governmental and private parties. In addition, policy issues might include condemnation and relocation of individuals or businesses as well as public input on the property's environmental condition and impact after development.

Obviously, in any transaction, cost is an important factor, and redeveloping "problem" sites has benefited from new and varied opportunities for risk management leading to private financing as well as public funding. Conventional lenders have become sensitive to their responsibilities under the Community Reinvestment Act. At the local level, public financing through municipal development, redevelopment or manufacturing assistance bonds, revenue bonds, tax increment financing bonds or tax-exempt facility bonds exists. Municipalities can also provide property tax incentives, abatements and deferrals. Connecticut has the Connecticut Brownfield Redevelopment Authority, as a subsidiary of the Connecticut Development Authority which has inventoried municipal brownfields and provides grants for investigation and remediation of brownfields. Connecticut's Urban Sites Remediation Program provides partial funding through a cooperative program between the Departments of Environmental Protection and Community and Economic Development. The Special Contaminated Property Remediation Insurance Fund also provides low-interest loans cleanup funding.

At the federal level, the Brownfields Action Agenda requires U.S. Environmental Protection Agency and U.S. Department of Housing and Urban Development to conduct brownfield assessment demonstration pilots and establish cleanup revolving loan fund pilots. The Taxpayer Relief Act of 1997 provides qualified deductions for remediation costs. The federal Clean Water Fund also provides funds through a revolving loan program. Federal enterprise communities and empowerment zones enjoy the extensive benefits of employment credits, work opportunity credits and accelerated depreciation under qualifying conditions for start-up or expanding businesses.

As with other major coastal projects, it is important to anticipate obstacles and "stick to the deal." With diligent "follow through," the odds of achieving a successful coastal brownfield redevelopment project are enhanced.

*Earl W. Phillips, Jr. and Pamela K. Elkow are attorneys with the firm's LandLaw Section and members of the Center. Keane Callahan is an environmental analyst with the firm's*

*LandLaw Section and also a member of the Center. Please email [Earl](#), [Pam](#) or [Keane](#) if you have any questions about this article. Click [here](#) to access Mr. Phillips' CZ '03 PowerPoint presentation (Be patient, its a large file).*

#### **Coastal eNews and Notes**

### **Draft Environmental Impact Statement Issued on Long Island Sound Disposal Sites**

The U. S. Environmental Protection Agency (EPA) in cooperation with the U.S. Army Corps of Engineers and other federal and state agencies recently issued a Draft Environmental Impact Statement (DEIS) proposing to designate two existing dredged material disposal sites--the Central Long Island Sound Disposal Site and Western Long Island Sound Disposal Site--located offshore from New Haven and Stamford, Connecticut, respectively. These sites are used for the disposal of suitable dredged material removed from the central and western portions of the Long Island Sound region of Connecticut, New York and other nearby harbors or dredging sites. The EPA is accepting public comments on the DEIS until 5 p.m. on October 27, 2003.

Pursuant to Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 et seq., EPA is authorized to designate sites where ocean disposal or ocean dumping, may be permitted. The primary laws governing ocean disposal of dredged materials are the MPRSA and the Clean Water Act (CWA). All dredged material disposal activities in Long Island Sound, whether from Federal or non-Federal projects of any size, are subject to the requirements of Section 404 of the CWA, 33 U.S.C. 1344. In addition, Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq., requires that Federal agencies prepare an environmental impact statement on proposals for major Federal actions significantly affecting environmental quality. The objective of NEPA is to build into agency decision-making process careful consideration of all environmental aspects of proposed actions, including evaluation of reasonable alternatives to the proposed action. While NEPA does not apply to EPA activities in designating ocean disposal sites under the MPRSA, EPA has voluntarily agreed as a matter of policy to conduct a NEPA environmental review in connection with ocean dumping site designations (See 63 FR 58045 (October 29, 1998), "Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act").

According to the DEIS, this action is necessary to provide long-term dredged material disposal sites for the current and future disposal of this material, and these site designations are for an indefinite period of time. The appropriateness of open water disposal for any specific, individual dredging project is determined on a case-by-case basis under the permit/authorization process governing the open water disposal of dredged material. The sites are subject to continuing monitoring to ensure that unacceptable, adverse environmental impacts do not occur.

The DEIS and related documents can be accessed on the [EPA New England Region's homepage](#). Written comments should be sent to: Ms. Ann Rodney, U.S. Environmental Protection Agency New England Region, One Congress Street, Suite 1100 (CWQ), Boston,

MA 02114-2023 or electronically to [Rodney.Ann@epa.gov](mailto:Rodney.Ann@epa.gov).

## Clean Water Projects Estimated at \$181 Billion

According to a recently published U.S. Environmental Protection Agency (EPA) report entitled *Clean Watersheds Needs Survey 2000 Report to Congress*, the cost to upgrade and improve existing clean water facilities involving wastewater collection and treatment, reductions in sewer overflows, stormwater management, and nonpoint source controls and critical to meeting the objectives of the Clean Water Act, is approximately \$181 billion. Under the Clean Water Act, EPA is required every four years to report to Congress the estimated cost of clean water infrastructure projects. The latest estimate is an increase of about \$26.6 billion from the last survey issued in January 1996.

The survey estimates the costs for the following clean water infrastructure (1) \$50.6 billion for combined sewer overflows, (2) \$36.8 billion for secondary wastewater treatment, (3) \$57.2 billion for wastewater treatment, including costs for advanced treatment, (4) \$32.7 billion for new wastewater treatment needs, (5) \$13.8 billion for nonpoint source pollution control and (6) \$57.2 billion for rehabilitation, expansion, replacement, and upgrades to existing infrastructure. All these projects are eligible for funding under the Clean Water Act state revolving fund (SRF). The SRF currently revolves at about \$2 billion annually and receives about \$1.35 billion annually through EPA's budget. Click [here](#) to access the report.

### **Coastal Resources Management Center Creates Exhibit on the Clean Water Act and Coastal Zone Management Act**

The Coastal Resources Management Center's (CRMC) new exhibit entitled, *Sound Investment: Celebrating 30 Years of the Clean Water Act and Coastal Zone Management Act*, is currently on display through October 30, 2003 at SoundWaters' Community Center for Environmental Education in Stamford, Connecticut. Showcasing the 30-year history of the Clean Water Act and the Coastal Zone Management Act, members of the CRMC assisted in creating the exhibit highlighting 30 years of coastal management. Click [here](#) to get a glimpse of exhibit panels on display. Contact [Keane Callahan](#) if you would like to receive an exhibit poster and bookmark. Click [here](#) for more information about SoundWaters.

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